

Business Insurance

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In Brief

Retiree plans may be exempt from law

Retiree-only health care plans would be "grandfathered" and exempt from key requirements mandated by the new health care reform law, according to draft regulations prepared by the Internal Revenue Service and the departments of Labor and Health and Human Services. The exemption would mean retiree-only health care plans would not have to comply with requirements banning lifetime dollar limits and that coverage be extended to adult children up to age 26.

Judge orders AIG to turn over records

A federal judge ordered American International Group Inc. to turn over records by Sept. 1, as part of an ongoing legal battle with competitors over possible premium underreporting to

See **IN BRIEF** page 21

LIABILITY & LITIGATION

Oil spill takes big toll on some sectors

Fishing, hospitality among hardest hit; coverage still unclear

By **ZACK PHILLIPS**

As the impact of the Deepwater Horizon oil spill spreads to an increasing number of Gulf Coast businesses, observers say a relatively small number of issues likely will determine how successful those businesses are in recovering losses.

A ruptured undersea pipeline has been spewing oil into the Gulf of Mexico since April 22, when the Deepwater Horizon oil rig sank after a fire and explosion. BP P.L.C., which was operating the rig, has partially covered the leak with a containment dome that is funneling about 16,000 barrels of oil a day to surface ships.

But some researchers now say the leak likely is gushing 20,000 to 40,000 barrels a day—far higher than first estimated—making this spill five to six times worse than the 1989 Exxon Valdez spill in Alaska. The leak is not expected to be completely contained until August.

The spill endangers at least \$1.6 billion of tourism, recreational and commercial fishing, and economic benefits from coastal wetlands, according to the Corpus Christi, Texas-based Harte Research Institute for Gulf of Mexico Studies at Texas A&M University.



AP PHOTO

A boat pulls oil-covered booms through the Barataria Bay from the Gulf of Mexico last week. The spill is endangering tourism and fishing in the area, among other business sectors.

TOO HIGH: Ill says insurers, reinsurers cannot provide proposed \$10 billion liability capacity. **PAGE 21**

The impact on fishing operations has been dramatic. Of the seafood consumed in the U.S., the Gulf produces about 2%, although it produces about 70% of the oysters, according to the National Fisheries Institute Inc. in Washington, Va. New Orleans-based P&J Oyster Co., the oldest oyster supplier in the

country at 134 years, shut down last week and others have said they may have to do the same.

Some businesses also carry "civil action" or "ingress/egress" coverage for cases in which a governmental authority limits access to an area after a disaster, forcing an industry to shut down. But that coverage also typically must be triggered by direct property damage from a covered peril, so those policyholders will face similar hurdles to those seeking recovery under business

See **SPILL** page 21

BP workers exposed to illness, injury from cleanup

By **ROBERTO CENICEROS**

VENICE, La.—BP P.L.C. and its contractors face an array of worker injury claims as well as questions over workforce safety practices as they marshal a massive cleanup operation in the Gulf of Mexico.

The sheer volume of workers used in the onshore and offshore cleanup operations and the toxic substances involved make workers compensation claims inevitable, experts say.

And as the claims flow in, insurance underwriters may tighten their offerings of Jones Act injury claims coverage for oil-industry risks, they say.

The range of jobs required to limit damage caused by oil gushing from the ruptured pipe in the Gulf of Mexico—including ocean operations and land-based work—will lead to claims under the workers comp statutes of several states and under federal laws, insurance and

See **CLEANUP** page 20

AGENTS & BROKERS

Marsh sharpens focus with \$1.13 billion Kroll sale

By **RODD ZOLKOS**

NEW YORK—Marsh & McLennan Cos. Inc.'s sale of Kroll Inc. removes what had become a noncore opera-

tion from the company while providing cash Marsh can use in its strategy of acquiring small and mid-size commercial brokerage operations.



Mr. Cherkasky

MMC announced last week that it had reached an agreement to sell Kroll to Falls Church, Va.-based Altegrity Inc. in a cash transaction

valued at \$1.13 billion. The transaction is expected to close by late September, subject to regulatory approvals and closing conditions.

Screening and security company Altegrity is owned by private equity firm Providence Equity Partners. Its CEO, Michael G. Cherkasky, was president and CEO of Kroll when New York-based Marsh & McLennan paid \$1.9 billion to acquire the risk consulting and technology company in July 2004, and replaced Jeffrey W. Greenberg as MMC's CEO in October of that year, shortly after former New York Attorney

See **KROLL** page 6



SPOTLIGHT

GLOBAL RISKS: INTERNATIONAL REGULATION

U.S. moving ahead with financial reforms; Solvency II to have far-reaching effects; European capital regime expected to bring significant change. **PAGE 11**

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VIDEO: INSURANCE BROKER INSIGHTS

Business Insurance talks with Walter Harris, CEO of T&H Group Inc., about the secret behind the brokerage's impressive productivity rate, as well as his view of the future of T&H.



COBRA SUBSIDY FAQ

Congressional support for once politically popular extensions of federal COBRA premium subsidies for laid-off workers may be waning. Editor-at-Large Jerry Geisel answers frequently asked questions about the COBRA provisions online. To see the latest, go to the Online Features section of the home page.

COMP BLOG

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MOST POPULAR STORIES Week of June 7, 2010

1. Senate tax bill omits COBRA subsidy extension
2. Swett & Crawford in merger talks with Cooper Gay
3. Obama giving states \$250M to review health insurance costs
4. Senate amendment would extend COBRA subsidy
5. RSA Insurance chairman warns Obama over BP attacks
6. Broker Marsh names U.S. construction practice leader
7. HHS offers FAQs on early retiree reinsurance program
8. Most employers to wait to cover adult children: Survey
9. Prudential too small to buy AIG insurer unit: Greenberg
10. Not enough insurance for \$10B oil spill liability cap: III

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MERGERS & ACQUISITIONS

Swett plans business combination with Cooper Gay

Tie-up of big firms would give both larger footprint

By SALLY ROBERTS

LONDON—Executives from Cooper Gay (Holdings) Ltd. and Swett & Crawford Group Inc. confirmed last week that they are in “advanced deal discussions” to create a global wholesale and reinsurance brokerage firm.

The potential combination of the world’s fifth largest reinsurance brokerage with the nation’s third-largest wholesaler still is subject to stakeholder and legal approval, but

executives said they hope to have it completed within a month.

Observers say the deal makes strategic sense as it satisfies London-based Cooper Gay’s desires to expand in the U.S. wholesale market, while giving Atlanta-based Swett new international and reinsurance capabilities.

As a combined entity, the firm also will be in a better position to launch an initial public offering in the future, giving Swett & Crawford’s private equity owners an exit strategy, observers say.

Chicago-based Aon Corp. sold Swett for an undisclosed amount to a group of private equity investors led by HM Capital Partners L.L.C. in 2005 amid the broker compensa-



Neal Abernathy will continue to head Swett & Crawford.

tion scandal that erupted in the retail brokerage industry.

Swett & Crawford reported pre-

mium volume of \$2.20 billion for 2008, the latest year for which figures are available. *Business Insurance* estimates that the wholesaler had \$198.4 million in gross revenues in 2008. Cooper Gay reported fees and commissions of £100.5 million (\$145.5 million) for 2009. Swett & Crawford has offices in 24 states. Cooper Gay has offices in 17 countries.

In a joint statement issued last week, Cooper Gay and Swett said they are seeking to combine their operations into a new London-based holding company that will be led by Cooper Gay’s group CEO Toby Esser. Neal Abernathy, president and CEO of Swett, will continue in his current role with Cooper

Gay’s existing North American businesses reporting to him as well.

Both firms will continue to operate under their existing names.

Cooper Gay has been open about its wish to grow organically and by acquisition and it has looked at a “good number” of potential acquisitions in the wholesale and managing general agency space during the past couple of years, Mr. Esser said in an interview. “To our mind, Swett is a perfect fit.”

While Swett & Crawford places a lot of business in the London insurance market, it does not have a physical presence there, Mr. Esser noted, and it does not have a

See **SWETT** page 18

LIABILITY & LITIGATION



NYT PHOTOS

New York police and firefighters respond to the Sept. 11, 2001, attacks. Lawyers for responders with health claims agreed to a settlement last week.

New pact boosts payout for WTC worker injuries

By COLLEEN MCCARTHY

NEW YORK—Attorneys for the WTC Captive Insurance Co. and lawyers representing thousands of Sept. 11, 2001, rescue and recovery workers said they reached a revised settlement agreement that offers as much as \$125 million more to workers than the previous proposal.

The revised pact was presented last week to U.S. District Judge Alvin Hellerstein, who granted preliminary approval to the deal, describing it as “far superior” to the original agreement.

In March, Judge Hellerstein criticized the previous settlement as inadequate and sent both sides back to renegotiate.

Under the new agreement, about 10,000 plaintiffs, including police officers, firefighters and construction workers, would receive between \$625 million and \$712.5 million in compensation, up from the previous offer of \$575 million to \$657 million.

The plaintiffs were precluded from participating in the federally

funded program because their health problems did not manifest until after the Victim Compensation Fund closed in 2003.

To increase the net settlement, the WTC Captive will add an additional \$50 million to \$55 million in cash to the deal. In addition, plaintiffs’ attorneys reduced their fees from 33% to 25% of the settlement amount, adding more than \$50 million to the pot available to compensate victims, lawyers said.

On Thursday, the judge said the new agreement satisfied many of his previous concerns. “This is a good deal. I am very excited about this deal,” he said.

The workers will be paid based on the severity of their injury as determined by a formula laid out in the settlement. In addition, plaintiffs who develop certain blood and respiratory cancers will be enrolled in a special insurance policy with MetLife Inc. with limits up to \$100,000.

Payments will be made by WTC

See **WTC** page 18

BI subscribers get exclusive content

Subscriptions to *Business Insurance* will become even more valuable this week, as paying subscribers will have exclusive access to an array of *Business Insurance* content online.

Beginning June 15, *BusinessInsurance.com* will introduce a new tiered access model, in which much of the online content that originates from the print publication will be restricted as premium content for paid subscribers of *Business Insurance*. Additional web content, including online news and blogs, will require free online registration.

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EMPLOYMENT PRACTICES

Workplace bullying threatens employers

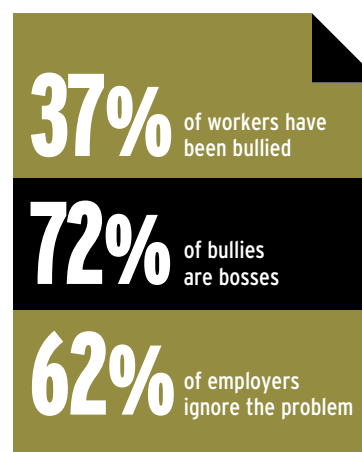
By JUDY GREENWALD

Employers should prepare for a flood of litigation if states approve legislation making it easier for employees to sue over workplace bullying, observers warn.

Anti-bullying bills were approved by the senates of the New York and Illinois legislatures this year, but the legislation stalled in their respective houses.

Observers expect, however, that anti-workplace bullying legislation will be reintroduced next year in those states and elsewhere, and some say eventual passage is likely.

Bullied workers can use existing laws to sue their employers under various causes of action, including sexual, gender, religious and disability discrimination laws. In addition, they can seek relief under federal Occupational Safety and Health Administration regulations. But, the legislation’s proponents say, these laws still exclude many, if not most,



instances of workplace bullying.

Opponents to the legislation, however, say the term bullying often is vaguely defined and could be inappropriately applied to a variety of behavior, including a lost temper or justifiable terminations or reprimands (see story, page 18).

Workplace bullying is widespread, according to a widely

quoted 2007 survey by Utica, N.Y.-based market research firm Zogby International, which was commissioned by the Bellingham, Wash.-based Workplace Bullying Institute. According to the survey, 37% of workers have been bullied, 72% of bullies are bosses and 62% of employers ignore the problem.

David C. Yamada, a professor at Suffolk University Law School and director of the New Workplace Institute, both in Boston, said most anti-bullying legislation, including the measures that failed to win passage in New York and Illinois, are based on a model he originally developed in 2002 call the Healthy Workplace Act, which has been updated several times since.

Many observers expect eventual passage of anti-bullying legislation in some states. Legislation is expected to be introduced in at least a dozen states next year, said Gary

See **BULLY** page 18

AGENTS & BROKERS

Blagojevich, others discussed Near North deal: Witness

By RODD ZOLKOS

CHICAGO—In testimony at the federal corruption trial of former Illinois Gov. Rod Blagojevich, the ex-governor's one-time chief of staff detailed a plan he said that he, the governor and others discussed about purchasing the insurance brokerage operations of Near North National Group Inc. and using the firm to place state insurance business from which they would personally benefit.

According to local news reports, during questioning last Wednesday at Mr. Blagojevich's trial in U.S. District Court in Chicago, Alonzo Monk said the plan to purchase the brokerage was one of several ideas he, Mr. Blagojevich and the others

hoped would allow them to profit personally from Mr. Blagojevich's position as governor.

Near North was available for purchase because Near North's owner, Michael Segal, was then under indictment on federal fraud and racketeering charges. He was convicted on those charges in 2004.

According to a report in the Chicago Tribune, Mr. Monk testified that the insurance brokering plan relied on the fact that J. Anthony Clark, then director of the Illinois Department of Insurance, and Michael Rumman, then director of the state's Central Management Services department, which handles state purchasing, were friends of real estate developer and Blagoje-

vich fundraiser Antoin Rezko. Mr. Rezko, whom Mr. Monk said also participated in the plans, is himself awaiting sentencing on fraud and other charges.

Asked about Mr. Monk's claims, Mr. Clark, now an attorney in private practice in Chicago, said, "No one ever brought to me any plan to set up an insurance broker that was connected to Mr. Rezko or the governor."

Mr. Rumman could not be reached.

Mr. Monk, who has pleaded guilty to charges in the Illinois state government corruption case and reached a plea agreement with prosecutors, has been cooperating in the Blagojevich case.



AP PHOTOS

Former Illinois Gov. Rod Blagojevich, left, is at the center of a federal corruption trial. His former chief of staff, Alonzo Monk, testified last week.

INTERNATIONAL



Attendees of the International Insurance Society's 46th Annual Seminar met in Madrid.

Insurers given breathing space as regulators first target banks

By MICHAEL BRADFORD

MADRID—Governments worldwide are targeting banks first with new regulations that will change the way they operate, giving insurers some breathing room before they come under fresh scrutiny, an economist said.

"There is no question whatsoever that the banks are regarded as the bête noires and, therefore, have to be controlled," Geoffrey Bell, president of Geoffrey Bell & Co. in New York, told attendees of the International Insurance Society's 46th Annual Seminar in Madrid.

In discussions with regulators, Mr. Bell said he has learned that insurers are regarded as a much lower priority when it comes to writing new rules for financial services companies.

Speaking during a panel discussion, Mr. Bell said he believes that "while banks are going to be asked to increase their capital and liquidity by the end of this year, it's going

to be another year or more before they get around to the insurance business."

Insurers worldwide eventually will be required by regulators to boost their capital levels, "but I doubt that it will be by very much," Mr. Bell said, because insurers are well-capitalized and, apart from American International Group Inc., were not linked to the financial crisis.

In Europe, large insurers have passed stress tests that prove their stability, another panelist said.

José Manuel Martínez, chairman and CEO of MAPFRE S.A. in Madrid, said he thinks regulators "will resist the easy temptation of increasing the capital requirements of insurance companies. Fifteen days ago, we received the information that the largest European insurance companies, representing 60% of the market, have passed the most severe stress tests" required by the Committee of European Insurers and

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P/C INSURERS

Prospects for AIG payback still unclear

Panel says bailout offered too quickly, put taxpayers at risk

By MARK A. HOFMANN

WASHINGTON—Whether the federal government will fully recoup its financial assistance to American International Group Inc. remains "unknowable," according to a report issued last week by a congressionally created panel.

The Congressional Oversight Panel, which Congress established to monitor the use of funds provided to financially impaired companies under the Troubled Asset Relief Program, also said the government's actions in rescuing AIG continue to have negative effects on the financial marketplace.

The report, "The AIG Rescue, Its

Impact on Markets, and the Government's Exit Strategy," criticizes the federal government for failing to exhaust all options before committing public funds to rescue AIG and take a nearly 80% ownership stake in the company in September 2008 as the financial services giant nearly collapsed.

READ the panel's report on AIG and other public documents at www.BusinessInsurance.com

Federal authorities "broke new ground" with AIG, said the report. "They put U.S. taxpayers on the line for the full cost and full risk of rescuing a failing company."

The report says that as of May 27, 2010, the federal government had authorized more than \$181.3 billion in various forms of financial assistance to AIG. In its 2010 first-quarter earnings report, AIG esti-

mated that it owed the government about \$101.6 billion.

"I believe we will pay back all we owe to the U.S. government" with a "suitable profit" for the government, AIG President and CEO Robert Benmosche told the oversight panel during a hearing in late May (BI, May 31). "Were it not for the commitment of the U.S. government at a time of great uncertainty, AIG would not be on the path it is today," Mr. Benmosche said.

The panel report, however, noted that the Congressional Budget Office estimates that taxpayers will lose \$36 billion. The report said that a "large portion" of the funds needed for repayment will be generated through the sale of AIG assets and AIG assets bought by the government to assist AIG as well as AIG

See AIG page 6

HEALTH CARE BENEFITS

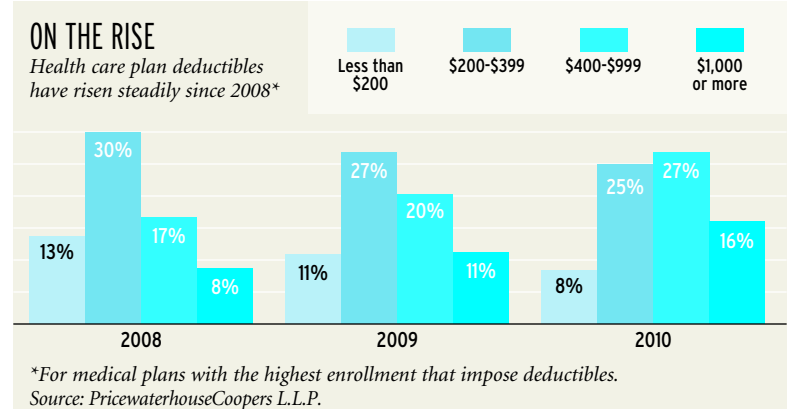
Firms shift more health costs to employees

By JERRY GEISEL

As medical costs continue to rise, employers continue to increase deductibles and other out-of-pocket payments made by health care plan enrollees, according to a survey to be released today.

Twenty-seven percent of employers imposed deductibles of at least \$400 this year for in-network services for their health care plans with the largest enrollment, while 16% imposed deductibles of at least \$1,000, according to a PricewaterhouseCoopers L.L.P. survey of 674 employers.

In 2009, only one in five employers imposed a deductible of at least \$400 for in-network services, and only 11% set employee deductibles at \$1,000 or more, according to the



survey.

Cost-shifting is even greater for employees receiving out-of-network services.

For example, 29% of responding

employers said they imposed deductibles of at least \$1,000 this year for services delivered by out-of-

See PLANS page 19



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Kroll: Sale of noncore unit sharpens MMC's focus

CONTINUED FROM PAGE 1

General Eliot Spitzer brought fraud and bid-rigging charges against Marsh.

At the time MMC acquired Kroll, Mr. Greenberg said in an analysts call that "the combination of Marsh and Kroll will enable us to offer end-to-end risk mitigation services to our clients from diagnostics and analytical tools to post-event and advisory services."

"The original plan to be able to cross-sell Kroll's services through the brokerage business never really got any momentum, particularly because of the bid-rigging scandal in '04 and leadership changes in the organization," said Mark Lane, a principal at William Blair & Co. in Chicago.

"So it never fit strategically. It got to be noncore," Mr. Lane said. "So it makes sense for them to take those proceeds and invest in their core

business."

Meyer Shields, principal at Stifel, Nicolaus & Co. Inc. in Baltimore, noted that when MMC acquired Kroll, the company had a broader business strategy.

"When you look back at when Kroll was acquired, that was when they still owned Putnam (Investments)," Mr. Shields said. "So if you look at what they were trying to achieve in professional services, it was very different than it is now." MMC sold Putnam in 2007 for \$3.9 billion.

"I think it was really just a matter of time," Mr. Shields said of the Kroll divestiture. "Clearly, there was never any emphasis on Kroll being an important strategic part of MMC."

In fact, instead of a strategic component, Kroll had come to be seen as a drag on MMC's financials. When he replaced Mr. Cherkasky as MMC's president and CEO at the

start of 2008, Brian Duperreault set out to turn Kroll around.

But the drag continued and MMC sold off some of Kroll's operations, including selling Kroll Government Services to New York-based private equity firm Veritas Capital for an undisclosed sum in 2009, and Kroll Laboratory Specialists, Kroll's substance abuse testing business, to Inverness Medical Innovations Inc. for \$110 million in cash this year.

In March, MMC began accepting bids for Kroll's remaining operations, seeking approximately \$1.3 billion.

Analysts thought MMC had done well with the \$1.13 billion it ultimately received for Kroll.

"I think it's a good decision, and they also seemed to get a good price," said William Blair's Mr. Lane.

While the price is "a little bit less than numbers that were quoted in the press earlier," Stifel, Nicolaus' Mr. Shields said he thinks MMC will come out ahead in terms of the multiples associated with the sale proceeds.

With the \$1.13 billion, "they can buy much more insurance-related earnings than they gave up with Kroll," he said.

In a statement announcing the sale, Mr. Duperreault said that while Kroll had been "a valued member" of the company, MMC had decided "our long-term strategy is to focus on the risk and insurance services and consulting businesses."

In announcing it was affirming its existing ratings of MMC after the sale announcement, Moody's Investors Service Inc. said it expects MMC to use the sale proceeds for such purposes as debt reduction, acquisitions and contingencies.

The Kroll sale "will enhance MMC's financial flexibility while moderately reducing its business diversification," Bruce Ballentine, Moody's lead analyst for MMC, said in a statement.

"MMC has the world's largest insurance brokerage and consulting operations, and it is well diversified in terms of products, clients and geographic scope," Mr. Ballentine said. "The proposed divestiture will allow the company to focus on these core businesses."

In early 2009, Marsh embarked on a new middle-market strategy with the formation of its Marsh & McLennan Agency L.L.C. operation. The company has focused on advancing that middle-market portion of its business through acquisitions of small and midsize brokers, looking to build out a hub-and-spoke model around the country.

Commentary

Lessons to be learned from Gulf oil spill

Massive loss, delays in paying claims, angry claimants, regulators threatening action.

Sound like a post-hurricane nightmare for an insurance company? It's not. This situation is happening now for BP P.L.C. after the Gulf oil disaster.

Damage from the largest-ever U.S. oil spill is growing as crude collects on the Gulf of Mexico's shores, polluting wetlands, killing sensitive wildlife and effectively shutting down all businesses that rely on those coastal resources. Fishing, hospitality, tourism—even the Gulf oil business itself—are hurting badly.

And BP is mostly alone in addressing claims from the spill. It is largely self-insured.

In a filing last week, BP indicated its response to the spill so far has cost \$1.43 billion. Its chief executive said the oil giant would pay "all legitimate claims," but it faces thousands of them. BP already has paid more than 20,000 claims totaling \$53 million. The ultimate liability could total tens of billions of dollars, according to some analysts.

Members of Congress are asking tough questions and demanding answers of BP and others. Insurance Information Institute President Robert Hartwig testified in a hearing last week that the global insurance and reinsurance market cannot supply enough capacity to energy companies if the Oil Pollution Act's liability limit is raised to \$10 billion from its current \$75 million. Mr. Hartwig noted that worldwide energy insurance premiums total only about \$3 billion, and new capital is reluctant to enter the marketplace. Add in the enormous litigation that is certain to come after the Gulf spill and that will make investors even less interested in expanding energy insurance capacity.

It's obviously a lot easier to obtain \$75 million or \$100 million in coverage than \$1 billion or more in limits, but legislators ought to consider that the \$75 million limit applies to a range of energy companies, not just the giants such as BP, for which that amount equates to a decimal point in earnings. Many of the oil industry companies operating in the Gulf are small, and they would be unable to afford significant amounts of additional insurance, much less retain



REGIS
COCCIA

Editor Regis Coccia's commentary appears periodically. He can be reached at: rcoccia@businessinsurance.com

billions of dollars in risk, if the liability cap were lifted.

There will be a lot of debate on how to amend the oil pollution liability limits, which is healthy. BP, for its part, has pledged to bear the responsibility for the spill and its cleanup, as it should. Whether BP will be mortally wounded by its Gulf mishap is a chapter still to be written.

The disaster in the Gulf

Legislators ought to consider that the \$75 million limit applies to a range of energy companies, not just the giants such as BP, for which that amount equates to a decimal point in earnings.

should never have happened, but it did. A root-cause analysis may determine that some steps that led to the spill were either skipped or omitted, but what we're left with is a huge problem that needs to be addressed now. It will be necessary to develop long-term solutions later.

As for BP and its massive claims, what should it do now?

I think BP can learn a lot from insurance companies, which are in the business of helping people and businesses recover after losses. But I also submit that insurance companies can learn a lot from BP's handling of the Gulf oil spill claims. How this ultimately is resolved will be instructive for both.

MMC AND KROLL

After several years of ownership, MMC puts Kroll back in the hands of its ex-CEO

JULY 2004: Marsh & McLennan Cos. Inc. acquires Kroll Inc. for approximately \$1.9 billion cash.

OCTOBER 2004: Kroll CEO Michael G. Cherkasky replaces Jeffrey W. Greenberg as MMC CEO.

JANUARY 2008: Brian Duperreault replaces Mr. Cherkasky as MMC president and CEO and lists Kroll among underperforming MMC operations he hopes to fix.

MAY 2008: MMC rebuffs Kroll buyout inquiry from London-based B.C. Partners Ltd. Mr. Duperreault announces plans to divest Kroll Government Services Inc. and Kroll Factual Data Corp. and moves Kroll's corporate advisory and restructuring business into a separate unit. MMC takes \$540 million in impairment charges in connection with the realignment.

NOVEMBER 2008: Simon V. Freakley, CEO of the realigned corporate advisory and restructuring business, leads a management buyout of the unit's European business in conjunction with a management buyout of the unit's U.S.

operations known as Kroll Zolfo Cooper. The companies begin operating as separate partnerships under the name Zolfo Cooper. Also that month, MMC sells U.K.-based restructuring unit Kroll Talbot Hughes to management. The business is renamed Talbot Hughes McKillop L.L.P.

JUNE 2009: MMC sells Kroll Government Services to New York-based private equity firm Veritas Capital for an undisclosed sum. The unit is renamed KeyPoint Government Solutions Inc. MMC takes a \$315 million impairment charge in connection with the sale.

FEBRUARY 2010: MMC agrees to sell Kroll Laboratory Specialists to Inverness Medical Innovations Inc. for \$110 million in cash.

MARCH 2010: MMC is reported to be accepting bids for the remainder of Kroll's operations, seeking \$1.3 billion.

JUNE 2010: MMC announces agreement to sell Kroll to Altegrity Inc.—headed by Mr. Cherkasky—for \$1.13 billion.

AIG: Bailout payback prospects unclear

CONTINUED FROM PAGE 4

units sold to third parties or to the public.

"The uncertainty lies in whether AIG's remaining business units will generate sufficient new business to create the necessary shareholder value to repay taxpayers in full," said the report. It said the final cost or profit to taxpayers is "unknownable, but it is clear that taxpayers remain at risk for severe losses."

In response to the report, an AIG spokesman said in an e-mail: "As Bob Benmosche told the panel during the hearing, we are well on our way to remaking AIG into a more streamlined and focused company. AIG is focused on repaying taxpayers, strengthening our companies, and building shareholder value."

The report said markets have interpreted the government's willingness to rescue AIG as "a sign of a

broader implicit guarantee of 'too-big-to-fail' firms." The rescue demonstrated that federal authorities "would commit taxpayers to pay any price and bear any burden to prevent the collapse of America's largest financial institutions, and to assure repayment to the creditors doing business with them."

"So long as this remains the case, the worst effects of AIG's rescue on the marketplace will linger," the report states.



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Business Insurance OPINIONS

Final decision needed on COBRA subsidy

LAWMAKERS ON CAPITOL HILL are debating whether to extend the federal COBRA premium subsidy again.

The issue, on which Congress is likely to decide soon, is one on which we have decidedly mixed feelings.

At the time the original subsidy legislation was passed in February 2009, we backed it as a reasonable approach as the country headed into its worst economic downturn since the 1930s.

COBRA was conceived as a bridge to help employees and their dependents maintain group coverage when they otherwise would have lost it, such as a result of a layoff.

While the premiums would be costly, beneficiaries typically could afford them if they were out of work for only a couple of months and would have group coverage again through their new employers. But the economic downturn made it much more difficult to get new jobs and, with that, new group coverage quickly.

And with no regular income, many laid-off employees lacked the means to pay COBRA premiums. Congress recognized that problem and passed legislation in which the government pays 65% of laid-off workers' premiums for a period of time.

We think the subsidy law has served a good purpose. It has allowed millions of laid-off employees to maintain coverage, increasing the likelihood that their medical problems were treated promptly before they developed into expensive-to-treat complications.

But such laws can't be continued indefinitely; the cost to the government and taxpayers is too high. Still, fair warning should be provided to the public. Lawmakers gave no such warning prior to the May 31 subsidy expiration. We think a fair and reasonable approach would be for lawmakers to provide one more extension—perhaps two months—and make it clear that will be the last one.

A fair and reasonable approach would be for lawmakers to provide one more extension.

Anti-bullying efforts don't require legislation

EMPLOYERS IN some states soon may have to deal with well-meant but misguided legislation that would outlaw workplace bullying.

As we report on page 3, although efforts to introduce such legislation have been unsuccessful so far, further attempts are expected, and some believe enactment of these bills may be inevitable.

Many fear this could open a flood of litigation, and would be another headache for employers, who already must run the gamut of numerous federal and state anti-discrimination laws, many of which cover the issue of workplace bullying.

Furthermore, unlike sex or age discrimination, the term bullying is ill defined and often hard to pinpoint, which would make it difficult for employers to know precisely how to comply with any law.

Many fear, for instance, that justifiable reprimands and terminations, or even a momentarily lost temper, could trigger a lawsuit if such legislation is approved.

These efforts have been described as an ill-advised attempt to legislate civility. However worthy this impulse may be, it should not be enacted into law.

There is no question bullying can have a devastating emotional and psychological impact on its victims, and should be stopped in its tracks. But employers are already well aware of this problem and likely already are addressing it in their employment policies and practices.

Trying to legislate the issue will increase costs for businesses and add to an already overburdened civil justice system, to little effect.



WRITE

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THIS WEEK'S RESULTS

Would you want to be BP's risk manager?



Yes, I'd relish the challenge
43%

Only if I needed a job
8%

No way
48%

NEXT WEEK'S QUESTION

Should the COBRA premium subsidy again be extended by Congress?

PERSPECTIVES

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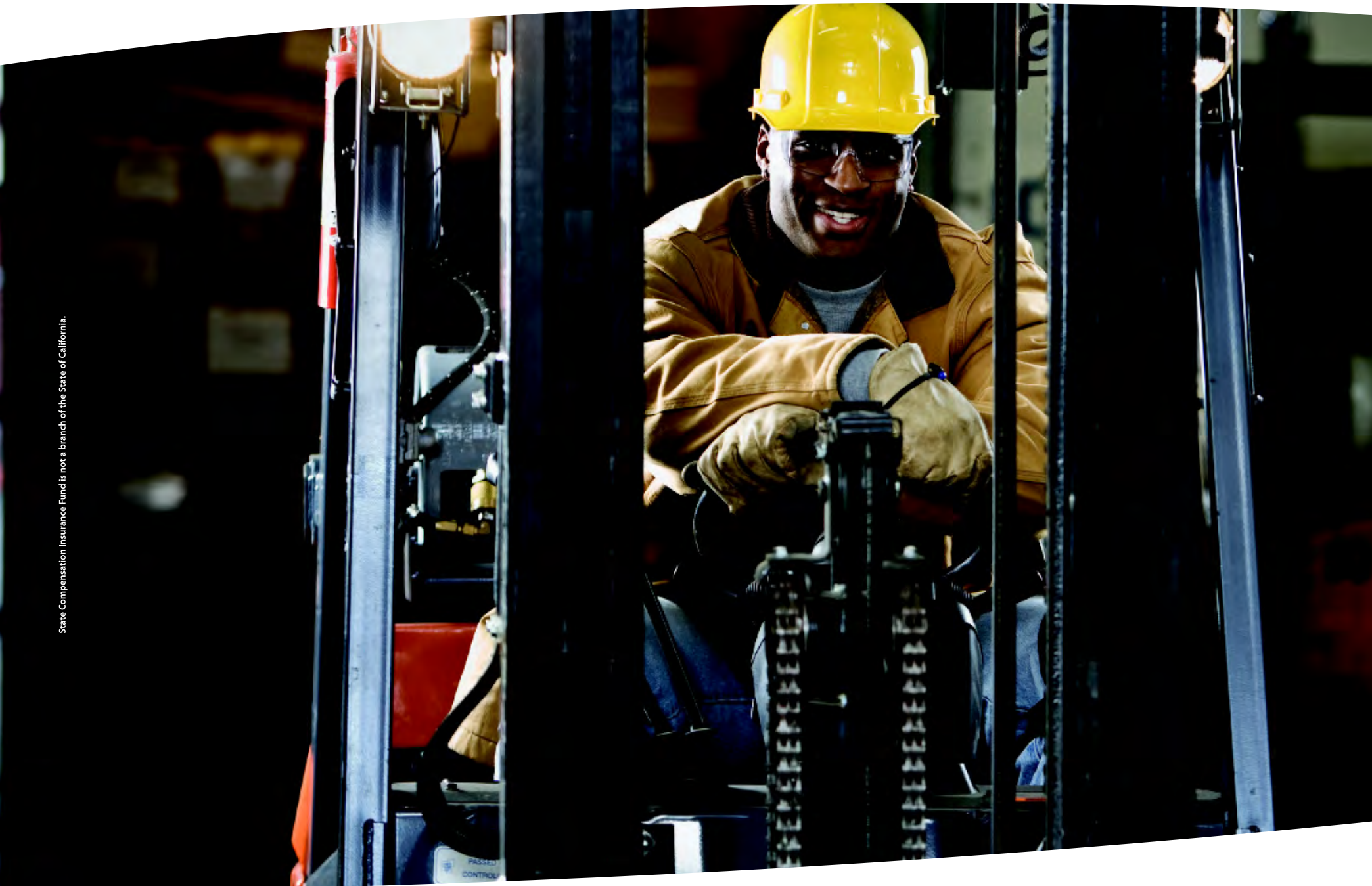
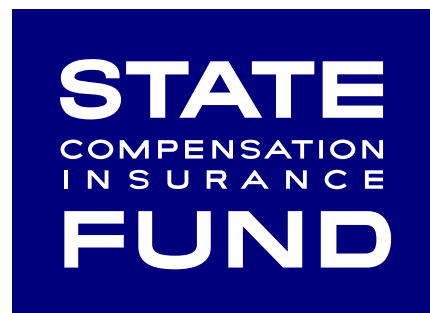


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Products & Services

Lexington cover backs self-storage owners

BOSTON—Lexington Insurance Co. has introduced property and liability coverage for storage facility owners.

The Self Storage Facilities Program aims to address the needs of storage facilities that rent space to individuals and businesses, the Boston-based property/casualty excess and surplus

lines insurance unit of Chartis Inc. said in a statement.

"With over 52,000 self-storage facilities in existence, representing over 2.35 billion square feet of storage, the self-storage industry in the U.S. has routinely been identified as a top-tier growth industry," Vince Pugliese, senior vp and program division executive, said in the statement.

Lexington said it has partnered with Hunt Valley, Md.-based wholesale brokerage All Risks Ltd. to deliver the program to clients.

The program is offered as part of a package or as a stand-alone policy, and includes equipment breakdown, crime coverage, sales and disposal liabilities, and consumer goods legal liability, among others.

For more information, contact Mark Mahanna, assistant vp for Lexington, at 617-330-8470 or mark.mahanna@chartisinsurance.com.

Hartford targets consultant liability

HARTFORD, Conn.—Hartford Financial Services Group Inc. has developed miscellaneous professional liability coverage for self-employed consultants and small consulting firms.

The program is intended to address the growing segment of self-employed professionals establishing their own consulting firms due to recent economic pressures, the Hartford, Conn.-based insurer said in a statement.

Hartford said these firms are at risk of being sued, such as for negligence in rendering advice.

"Even if the lawsuit is not successful, the consultant can incur some hefty defense costs in fighting the suit," Stephen Prymas, vp of financial products underwriting, said in the statement. "For many small firms, that could mean the end of their business."

The coverage is underwritten through Hartford Financial Products, Hartford's professional liability underwriting unit, and available to firms generally with less than \$1 million in revenue in consulting services, Hartford said. Premiums start at less than \$1,000.

For more information, contact Will Demers, director of financial

products underwriting, at 860-843-5520 or william.demers@thehartford.com.

Navigators launches D&O program for nonprofits

NEW YORK—Navigators Group Inc. has introduced nonprofit directors and officers liability coverage through its underwriting subsidiary and a partnership with Victor O. Schinnerer & Co. Inc.

The program is underwritten by Navigators Management Co. Inc. and Chevy Chase Md.-based managing general underwriter Schinnerer acts as program administrator, the New York-based insurer said in a statement.

Coverage includes wage and hour defense, shared and separate limit options, circumstance reporting, and broad definitions of subsidiaries, among others. Admitted filing of the program is under way in 44 states.

Navigators said in addition to the many classes of nonprofit organizations that Schinnerer underwrites, eligibility has been added for senior care facilities and social service organizations.

For more information, contact Brian Turner, vp of Navigators Professional, at 212-613-4338 or bturner@navg.com.

FM Global sets up mobile device site

JOHNSTON, R.I.—Factory Mutual Insurance Co., which does business as FM Global, has developed a website for mobile devices.

The website is accessible from any smartphone or mobile device with a Web browser, the Johnston, R.I.-based specialty insurer said in a statement.

FM Global said the mobile site allows clients to report losses, access global contact and company information, and news updates.

To access the mobile site, go to www.fmglobal.com/?mobile=true.

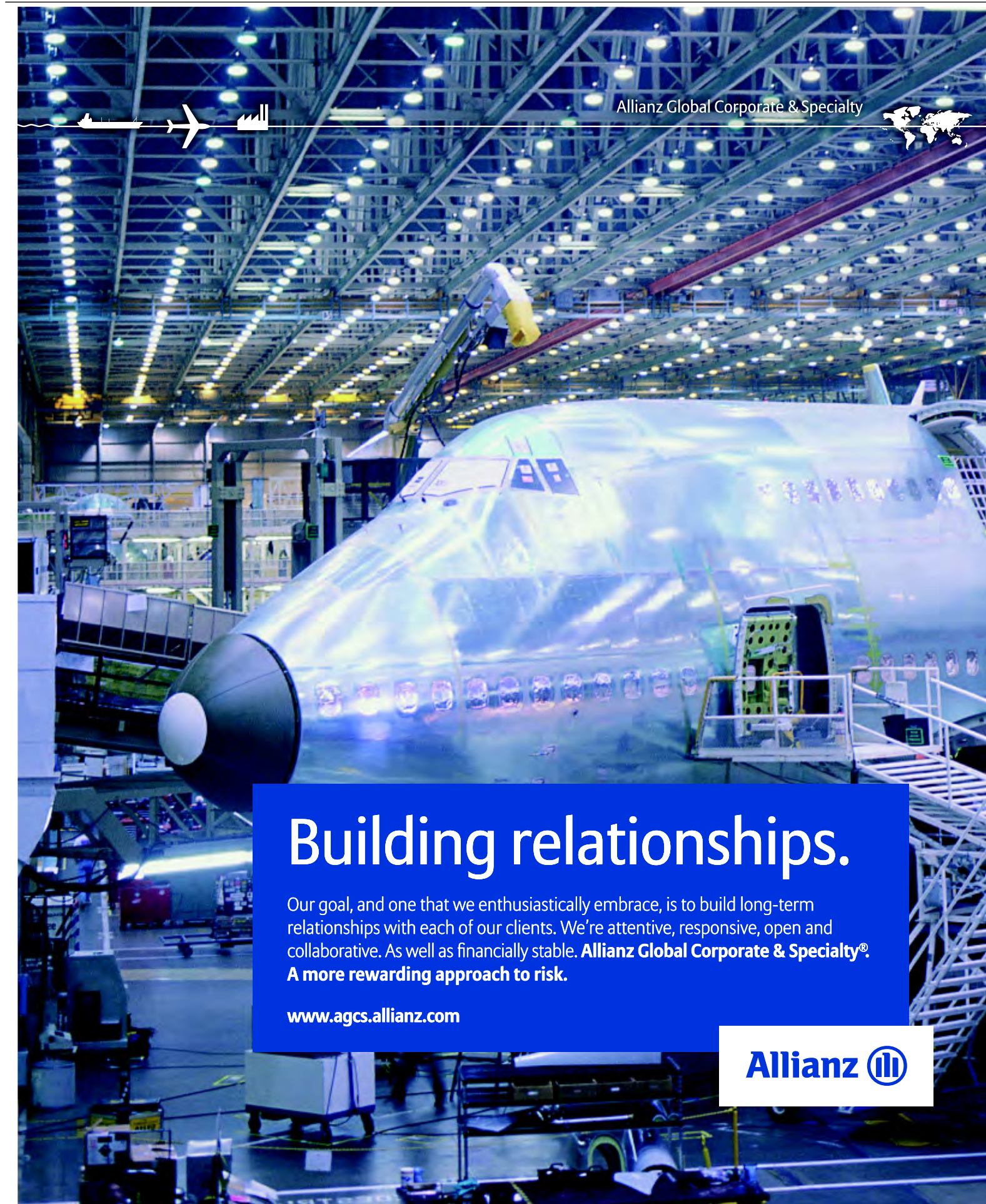
Mercer offers online enrollment

NEW YORK—Mercer L.L.C., the consulting unit of Marsh & McLennan Cos. Inc., has introduced an online benefit enrollment service for small employers.

Mercer EnrollNet, available to employers with fewer than 1,000 employees, is accessible through a Web portal and allows employees to choose benefits, communicate benefit elections to insurers and complete payroll deductions, New York-based Mercer said in a statement.

Mercer EnrollNet is bundled with Mercer's HR programs or can be a stand-alone option.

For more information, contact Miriam Siscovick, public relations assistant, at 212-345-4760 or miriam.siscovick@mercercorp.com.



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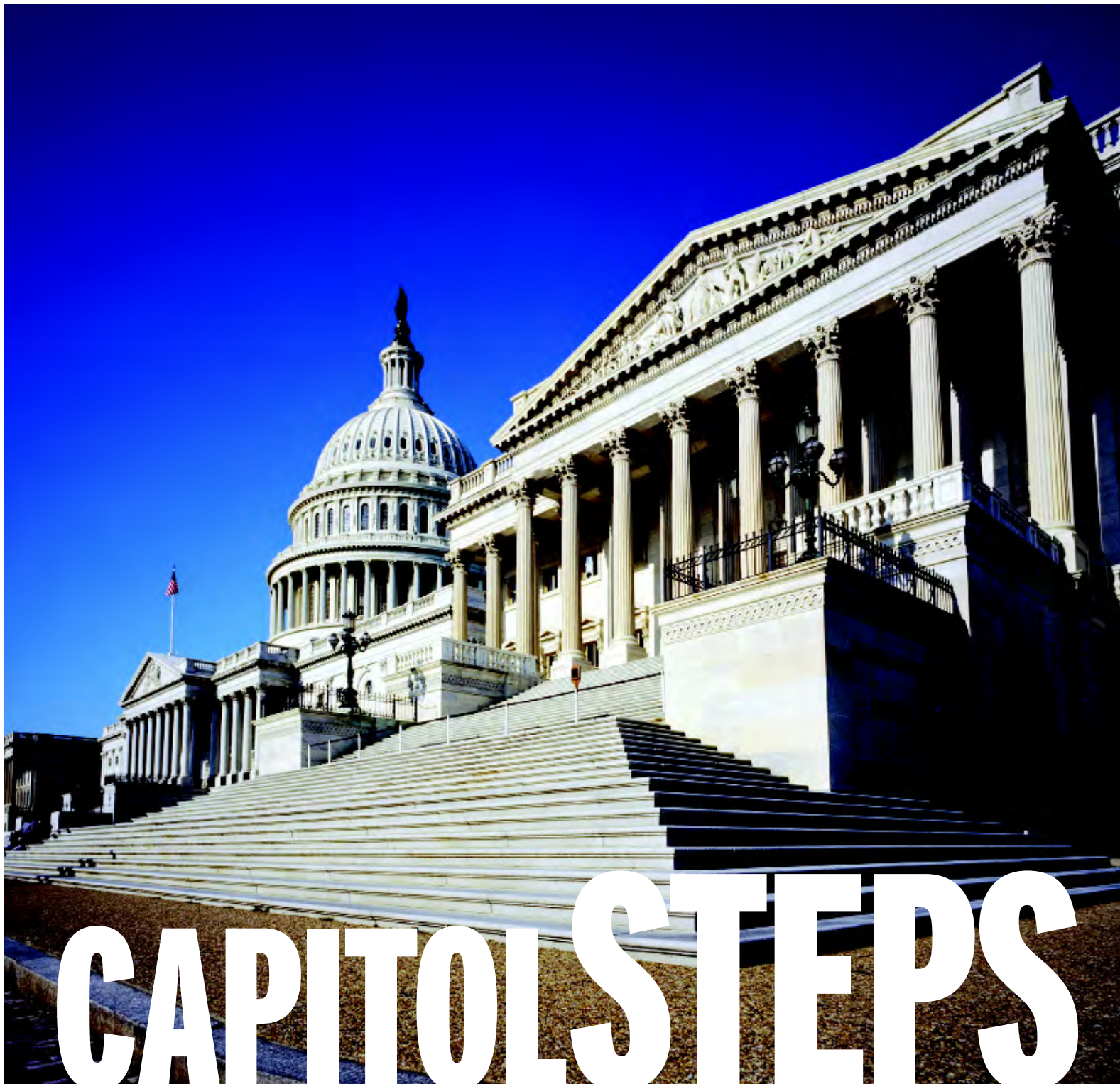
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Reconciliation of financial services reform bills expected

By **JEFF CASALE**

Congress is expected to begin reconciling two bills into one measure to reform the U.S. financial services regulatory system—work that could begin as soon as this week—and many insurance industry groups back the Senate-passed measure.

The bills—S.B. 3217, the Restoring America's Financial Stability Act of 2010, and H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009—differ in their provisions to establish an Office of National Insurance to provide federal expertise and coordinate discussions on international insurance issues.

The Senate version, introduced by Sen. Christopher Dodd, D-Conn., would establish the federal insurance office with-

in the U.S. Treasury Department.

The House version maintains the state-based regulation framework for insurers while establishing a separate Consumer Financial Protection Agency. The agency would exclude the property/casualty insurance industry from its jurisdiction when addressing issues such as consumer protection and issues with financial products, something that opponents of the bill say will cause regulatory confusion.

House and Senate negotiators are to begin work this week on reconciling the differing measures.

Insurance industry organizations also are divided on the bills. Some question how much power such an office should wield in international insurance negotiations, while others say

the office is exactly the “focal point” the United States needs to have a stronger presence within the global insurance industry.

“Insurance regulation is increasingly being governed by international standards, and the U.S. needs to have some power because it is costing us in our ability to knock down barriers and create jobs,” said David Snyder, vp and associate general counsel at the American Insurance Assn. in Washington. “We need to be more globally competitive and have better negotiating power.”

The Senate- and House-passed bills differ on how far the insurance office could pre-empt state regulators, with the Senate bill giving it more power to do so for certain international insurance issues than the House version.

In a June 1 letter to the Senate

Banking, Housing and Urban Affairs Committee, which Sen. Dodd chairs, the National Assn. of Mutual Insurance Cos. said pre-emption powers in the Senate bill “go too far.” NAMIC prefers the House-passed provisions on the office’s pre-emption power and said certain limitations should be placed on its subpoena power.

The National Assn. of Insurance Commissioners said it agrees with NAMIC and prefers limiting the insurance office’s power and requiring it to consult with state regulators and Congress before negotiating international agreements.

Still, Mr. Snyder said the House version lacks teeth when it comes to regulation and keeps the United States from having a

See **REFORM** next page

Global Risks:
International
Regulation

SPOTLIGHT

**JORDAN'S INSURANCE
DIRECTOR MOVES ON
TO NEW ENDEAVORS**

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**SOLVENCY II EFFECTS
WILL EXTEND BEYOND
EUROPE**

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**INSURANCE BUYERS
CONCERNED ABOUT
COST, AVAILABILITY**

PAGE 14

**U.S. REGULATORS
STUDY EUROPE'S
REFORM RULES**

PAGE 15

Questions & Answers

Bassel Hindawi almost turned down the job that led to the formation of Jordan's insurance regulatory authority 10 years ago. After deciding it was an opportunity to "make a difference and contribute to the development of a key component of the economy," Mr. Hindawi agreed to steer development of the Insurance Commission of Jordan and become its first director general. He stepped down from the post last month, having overseen an insurance market that has increased significantly since he took office. The regulatory model he established is seen as groundbreaking in the Middle East and Mr. Hindawi has worked to put Jordan on the map as an insurance and reinsurance hub. He spoke with Business Insurance Senior Editor Michael Bradford about his tenure with the commission and how Jordan's insurance market has evolved.



Jordan became Middle East model

Q: How did you become involved in creating the Insurance Commission of Jordan?

I was asked by the government of Jordan to work on reforming the insurance sector and setting up an insurance regulatory authority. It took us just under three years to get a new law that was in line with international best practices incorporating the International Assn. of Insurance Supervisors' standards. It was a very demanding phase to draft the law with the help of experts, discussing it with the industry and carrying it through the process, which ultimately required approval by Parliament.

Q: What were you doing before accepting the role?

I worked for the International Monetary Fund in Washington. I returned to Jordan in early 1997 and assumed the post of adviser to the Ministry of Industry and Trade. I was then asked to manage the insurance sector. I initially hesitated before deciding it was the right thing to do.

Q: How were insurers regulated before the commission was formed?

There was not much of a regulatory process except for a small department within the Ministry of Industry and Trade that was handling day-to-day paperwork. There was not very much effective regulation.

Q: How did that change under the commission?

When I was appointed director general of the Insurance Commission—a political appointment by the Council of Ministers—my mission was to build a new institution from scratch. That's how we started. I put together a small team that was very much engaged in putting together the commission with all its internal processes. Equally important, my first task was to

put together an action plan so that there was a systematic process of achieving the objectives of the commission. There were three components: 1. the internal institutional requirements for the commission, 2. priority steps needed to introduce a new regulatory framework and 3. policies the insurance commission needed to engage in to encourage development and growth of the sector.

Q: How has Jordan's insurance market changed since the commission was established?

Over the last 10 years, the market has quadrupled in terms of premiums, which were close to \$515 million at the end of 2009. Apart from that growth, we put in place a very advanced regulatory framework that is prudent but business-friendly. It is based on a supervisory framework in line with best practices and international standards.

Q: Has the number of insurers grown over the past 10 years?

The number of insurers has increased slightly, but it was not our objective to add too many players on the direct side for a country such as Jordan with a relatively small economy. We wanted to improve the quality of services and were keen on pushing companies to consolidate. Unfortunately, that has not happened. At the same time, we want to attract the interest of international players that can bring in know-how which would, in our view, contribute to raising the bar in providing better-quality services and new products to cater to the needs of society.

Q: Has Jordan's reinsurance business developed during your tenure?

Reinsurance fits into our strategy to promote Jordan as a regional hub for the Middle East and North Africa. Most of the reinsurance business is ceded to reinsurers outside the region. We

have approached international reinsurers to set up operations in Jordan; it's a recent effort and we are starting to see positive responses from reinsurers and interest in Jordan as a hub. Considering that it is such a large region, from the (Persian) Gulf countries to North Africa, there is room for multiple players.

Q: How are the changes in Jordan viewed in the Middle East?

We have been recognized as a model regulatory authority in the region, a catalyst for others to reform their insurance regulation. An initiative I led in 2006 set up a regional forum for commissions. We engaged in a dialogue with many of the regulators in the region; and in the last quarter of 2006, the Arab Forum of Insurance Regulatory Commissions was established. We started with around 11 or 12 members and now there are around 17. This forum was established to develop regulatory frameworks and promote adoption of international standards.

Q: Does Jordan have an active risk management community?

Risk management is an area that needs further development in Jordan and the region. We are quite keen on bringing in international expertise to set up specialized companies to contribute to the development of risk management.

Q: What are your plans for life after serving as director general of the Insurance Commission?

I want to take a short break and think closely about my options before making a final decision. Leaving was a difficult decision to make, having built the commission from scratch. There was an emotional attachment and it was not easy. But I had been thinking of it on and off and came to the conclusion that it was time to move on and do something else.

Reform: Financial services bills draw mixed reaction

CONTINUED FROM PREVIOUS PAGE

"unified voice in the open market."

"One of the major problems with the House version is there is no ability to represent the U.S. from a regulation perspective," Mr. Snyder said. "The NAIC is not a regulatory group...The House bill stops short of the reform we really need, which is national regulation."

While U.S. insurers and reinsurers already have wide access to the international market, David Matcham, chief executive of the London-based International Underwriting Assn., said the real advantage of the Senate bill would be a unified regulatory voice. The Senate bill also provides a "harmonized and equivalent approach" to reinsurance rules, which he said typically differ from state to state.

"The NAIC has always acted as the voice of the (insurance) industry, but many have, some for a long while, said that the U.S. would be better served with a single point of contact; and the ONI seems to be that point of contact," Mr. Matcham said. "The state system is inefficient, but the Senate version does not take away any consumer protections or regulation that is required."

The Reinsurance Assn. of America

and Assn. of Bermuda Insurers & Reinsurers agree with the stance taken by Messrs. Snyder and Matcham. The RAA and ABIR say the Senate bill's language aligns more closely with the underlying purpose of the national insurance office's role in international insurance issues—allowing the United States to have "a credible and

authoritative voice in the global arena that enhances the continued viability of the United States insurance and reinsurance markets," the organizations said in a statement.

Scott Clark, secretary and director-external affairs for the New York-based Risk & Insurance Management Society Inc., said RIMS also favors the Senate's "stronger language" to the House's version of the bill. He added that

the House's version "would weaken the power needed by U.S. companies" to work internationally.

"The detractors (of the Senate bill) want to believe or say that the Office of National Insurance is going to replace or denigrate the state regulatory system as far as (insurance) rate settings, and we disagree with that," Mr. Clark said. "The ONI will do nothing to replace or denigrate the current setting of rates and premiums. It will only help."

'The House bill stops short of the reform we really need, which is national regulation.'

David Snyder, American Insurance Assn.



AP PHOTO

Senate Banking Committee Chairman Christopher Dodd, D-Conn., (right) has proposed establishing an Office of National Insurance within the U.S. Treasury Department.

Solvency II's regulation will extend far beyond Europe

More standardization of risk management practices foreseen

By **STUART COLLINS**

The proposed Solvency II regulations for insurers based in Europe will have far-reaching implications for U.S. insurers with European operations or those that are part of a European group, experts say.

Solvency II establishes a risk-based approach to setting regulatory capital, requiring new levels of risk management, governance and transparency for insurers operating in the European Economic Area starting Dec. 31, 2012.

While the jurisdiction of Solvency II does not extend directly to U.S.-based companies, "Solvency II is a potentially big issue for U.S.-domiciled insurers with European subsidiaries because they would be subject to an unfamiliar European regime affecting the parent company," said Ambereen Salamat, London-based partner at Edwards Angell Palmer & Dodge U.K. L.L.P. "So it would be a case of the tail wagging the dog."

Solvency II's group supervision and group solvency provisions would directly affect U.S. carriers that are part of European groups, and influence the capital requirements and internal controls of U.S. parent companies with subsidiaries in Europe, Ms. Salamat said.

However, Solvency II also includes a provision that enables the European Commission to grant "equivalence" to the supervision of non-EEA domiciles.

"If the U.S. were assessed as equivalent, an EEA regulator would rely on U.S. supervisors for group solvency and supervision," Ms. Salamat said. "But nonequivalence would mean U.S. parent companies could potentially be required to hold more capital, implement internal controls, report risk concentrations and intergroup transactions, and carry out risk and solvency assessments at a group level," she said.

Insurers in the U.S. are likely to be affected by Solvency II as U.S. companies with European subsidiaries and U.S. carriers that are part of European groups implement elements of Solvency II such as enterprise risk management and internal models in the U.S., said Melissa Salton, Princeton, N.J.-based vp and chief risk officer at Munich Reinsurance America Inc., the U.S. operations of Munich Reinsurance Co.

Risk and capital management standards are likely to rise within operations that are part of international groups, said John Hume, London-based executive vp and chief financial officer of XL Capital Ltd.'s reinsurance operations "To the extent that Solvency II raises the bar within a European operation that is part of an international group, that bar will be raised for all

entities within the same family as standardized risk management practices, measurement and reporting techniques are rolled out," he said.

Many practices associated with Solvency II, such as internal models and ERM practices, already have been adopted by some U.S. insurers, said Rob Jones, managing director in London at Standard & Poor's Corp.

However there are some fundamental elements of Solvency II that have not yet found their way to the U.S., he said. For example, U.S.

insurers do not typically use market-consistent valuations for assets and liabilities; and internal models are seen as a useful tool by some insurers, but typically are not influential in strategic decisionmaking, he said.

In the midterm, enterprise risk management is likely to become more of a feature in the U.S. insurance market as international companies require the same levels of risk controls for their U.S. subsidiaries as they do in Europe, said Frank Achtert, Munich-based managing director at Guy Carpenter &

Co. L.L.C. In the longer term, U.S. insurance supervisors are likely to look at Solvency II and consider whether to require similar risk management, internal controls and systems to control the limits underwritten, he added.

Solvency II is likely to affect global standards and could bring about U.S. regulatory changes through the exchange of ideas and the potential of supervisory equivalence, said David Snyder, the Washington-based general counsel for the American Insurance Assn.

The AIA would like the U.S. to

win temporary equivalence from the European Commission, conditioned on reform of the U.S. insurer regulatory framework over time, Mr. Snyder said.

"Nonequivalence with Solvency II would be a competitive disadvantage, requiring major restructuring and leading to an inefficient use of capital by U.S. insurers in Europe," Mr. Snyder said.

Solvency II could indirectly affect U.S. regulation if it becomes a de facto global standard, Mr. Jones

See **SOLVENCY** next page



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Insurance buyers concerned about cost and availability

Required levels of capital likely not final until 2011

By **STUART COLLINS**

Europe's insurance industry looked ready to enjoy lower regulatory capital requirements under Solvency II, but that all changed with the financial turmoil that took hold in 2008 and spread worldwide.

Today, insurance buyers are concerned that they will face higher prices and reduced availability of some commercial insurance and reinsurance when the new regulations go into effect on Dec. 31, 2012.

The financial crisis forced European regulators to rethink the calibration of the proposed Solvency II capital regime, resulting in proposals for substantially higher capital requirements, said Rob Jones, managing director in London at Standard & Poor's Corp.

Last year's proposal from the Frankfurt-based Committee of European Insurance and Occupational Pensions Supervisors would have resulted in capital levels 70% higher than recommended by a 2008 quantitative impact study known as QIS 4. Capital requirements under the next impact study, QIS 5, are likely to be much lower, but still well above QIS 4, Mr. Jones said.

Although the final calibration of Solvency II will not be known until 2011, capital levels generally are expected to increase for European insurers, said Clara Hughes, associate director at Fitch Ratings Ltd. in London.

"Under QIS 4, reinsurers, captives and non-life players showed the greatest deterioration in solvency ratios when compared to Solvency I," Ms. Hughes said. "All other things being equal, Fitch considers it likely that this would remain the case under QIS 5."

Last week, Karel van Hulle, head of the European Commission's internal market and services unit, raised the possibility of a sixth study, depending on the results of QIS 5. During a Madrid meeting of the International Insurance Society, he said QIS 6, if needed, would focus on "targeted issues" to allow a final decision "on the basis of facts, not dreams or theories."

Higher capital levels could lead insurers to increase their hedging of asset and liability risks—potentially buying more reinsurance—and changing their business mix in favor of less capital-intensive lines of business, Ms. Hughes said. There also is the potential for consolidation among smaller insurers struggling with the cost of compliance and the need to raise capital to meet potentially higher solvency requirements, she said.

In the absence of equivalent supervisory agreements between the United States and Europe, European insurers could reconsider

the viability of U.S. operations, should they be subject to significantly higher capital charges under Solvency II than domestic U.S. carriers, Ms. Hughes said.

The Brussels-based Federation of European Risk Management Assns. is concerned that commercial insurance and reinsurance buyers would have to pay significantly more for their coverage if insurers' regulatory capital requirements increase as signaled by CEIOPS' recent advice to the European Commission on Solvency II.

A March Comité Européen des Assurances report, "Why Excessive Capital Requirements Harm Consumers, Insurers and the Economy," suggested that "the price of more capital-intensive general insurance could increase by some 20% on average with a potential reduction in capacity, especially for more capital-intensive long-tail exposures and catastrophe risks," said Peter den Dekker, FERMA's president and corporate insurance risk man-



'Solvency II will affect the U.S. and Asian risks covered by multinational companies' global insurance programs written by European insurers.'

Peter den Dekker, Stork B.V.

ager at Naarden, Netherlands-based aerospace company Stork B.V.

The new regulations also will apply to non-European Union exposures written by European insurers, Mr. den Dekker said. "Solvency II will affect the U.S. and Asian risks covered by multinational companies' global insurance programs written by European insurers," he said.

Global programs with European exposures written by U.S. insurers also will be affected by Solvency II because European fronting insurers may have to apply capital charges to business reinsured to domiciles that do not have equivalent supervisory status, he added.

FERMA members also are concerned about the threat of reduced availability of coverage and insurers' commitment to volatile lines of business.

"While it is still speculation on how Solvency II will turn out, the main concern of risk managers is the availability of coverage in the long term. Many of our companies rely on the insurability of certain risks and the commitment of insurers when deciding whether to invest and develop new products or business

opportunities," Mr. den Dekker said. "There is already competition between underwriters for capital within an individual insurer, and this could increase under Solvency II."

"There is no guarantee that our insurance partners will still be active in the industrial insurance market in 10 years time, or whether they will have run away from the more capital-intensive lines," Mr. den Dekker said.

Some insurers may find the bar too high due to the capital required or costs associated with higher standards of risk management systems and disclosure, said John Hume, London-based executive vp and chief financial officer of XL Capital Ltd.'s reinsurance operations.

"Some companies will face greater pressures to merge, be acquired or perhaps, in more extreme circumstances, even cease operations. Similarly, some companies may find that the capital they are carrying will need to be raised significantly under Solvency II and

will overcome this by either writing less business or passing on more or raising more capital," Mr. Hume said.

FERMA's concerns are valid, said S&P's Mr. Jones.

"Higher capital requirements could lead to an increased cost of transferring risk to insurance markets, and this may be an issue for the price and availability of capacity on offer from European insurers. This could work in favor of U.S. insurers operating in Europe," Mr. Jones said.

Advantage shifts

A year ago, U.S. insurers were concerned that E.U. capital requirements under Solvency II would be too low and give a competitive advantage to European insurers in the U.S. market, said Therese M. Vaughan, Washington-based CEO at the National Assn. of Insurance Commissioners. "Now it is the other way around," she said.

Even if required capital levels do increase, it is too early to assess what effect, if any, Solvency II will have on the availability of reinsurance, said Frank Achtert, Munich-based

managing director at Guy Carpenter & Co. L.L.C. Global reinsurers already use internal capital models similar to those they are likely to seek authorization for under Solvency II, he said.

To establish capital requirements under Solvency II, insurers have the option to apply for internal model approval or use the standard formula, said Andrew Pryde, group actuary at Beazley Group.

It is anticipated that insurers that achieve internal model approval, which Beazley is aiming for, may require lower levels of capital than under the standard formula. This is because the standard formula under Solvency II will be calibrated to fit the range of European insurers, whereas an internal model should better reflect an individual insurer's risk profile, he said.

The impact of Solvency II on groups, particularly with significant U.S. operations, still is being explored. Beazley applies one risk management standard across the group and already allocates capital to classes of business as part of the business planning process, Mr. Pryde said. At this stage of the implementation process, "we believe that the classes of business we underwrite across the whole group will remain viable in a Solvency II environment," he said.

If Solvency II requires European insurers to hold significantly higher levels of capital than currently, the additional demand for reinsurance could put pressure on global reinsurance capacity and pricing, Mr. Achtert said.

Provisions for group solvency under Solvency II also could have a "kickback" for U.S. cedents, he added. While the scope of Solvency II does not extend to the supervision of U.S. legal entities, European reinsurance groups will be required to put aside risk capital for non-E.U. exposures at a group level, Mr. Achtert said.

"Reinsurers may need more capital (under Solvency II), but whether this will be significant for U.S. exposures or whether it will have a major impact on price and capacity, it is too early to tell," he said.

There are other potential implications of Solvency II for U.S. cedents, Mr. Achtert said.

The risk management and internal controls required by Solvency II could further enhance reinsurers' early warning systems which, in turn, could affect reinsurance catastrophe capacity for the United States as reinsurers seek to control their aggregate exposures, he said.

Solvency II also will raise the bar in the quality of data that reinsurers will require of cedents, he said. The higher levels of transparency and disclosure required by Solvency II and the demands of reinsurers' internal models will increase pressure on primary insurers to provide more accurate data, he said.

Solvency: Europe's proposed capital rules also will affect U.S. insurers

CONTINUED FROM PREVIOUS PAGE

said. For example, Bermuda has been aligning its regulatory regime with Europe; more recently, Mexico and Israel reportedly were weighing adoption of Solvency II in the near future, he added.

Solvency II has been designed to fit the European insurance market, but the European insurance industry and its supervisors consider the principles of Solvency II as "an appropriate model for insurer solvency worldwide," said Alberto Corinti,

deputy director general and director of economics and finance at the Brussels-based European insurance and reinsurance federation Comité Européen des Assurances.

"Global convergence of regulatory practice is crucial and supervisors should work hard to achieve it," Mr. Corinti said. "It will be up to U.S. insurance commissioners to define their own regimes for their jurisdictions, but insurers want open discussion and a common understanding to be reached on the development of regimes in both Europe and

the United States."

Solvency II also will have long-term effects on U.S.-based insurers, said Robert P. Hartwig, president of the Insurance Information Institute in New York.

"Over time, Solvency II will have an increasing influence on regulation in the U.S. market through efforts to coordinate supervision on a global basis, but this will be a slow process," Mr. Hartwig said.

The challenge for U.S. and European regulators will be how best to supervise international insurance

groups, said Therese M. Vaughan, Washington-based CEO at the National Assn. of Insurance Commissioners. She said U.S. insurance supervisors are concerned with the risk of regulatory arbitrage and too many regulators with different rules create an efficiency issue.

"Solvency II's answer to the issue of group supervision is the equivalence assessment process, but I am not sure that the most efficient way (to supervise international groups) is to figure out who is equivalent to whom," Ms. Vaughan said. "That is

not the model we in the U.S. are used to, nor one that we find works best."

"U.S. state regulators supervise groups through confidential reliance—where there is constant dialogue and cooperation between state commissioners. They also challenge each other. If they aren't comfortable with (how an insurance group is being supervised), they can step in and put pressure on the home state supervisor to take action," Ms. Vaughan said. "This is the culture we would like to see in a global standard."

U.S. regulators study Solvency, other rules

The United States is unlikely to adopt Solvency II in its entirety, but there are lessons that can be learned from Europe's new regulations that go into effect in 2012 and some U.S. insurance supervisors likely will adopt some Solvency II provisions, says Robert P.



Mr. Hartwig

Hartwig, president of the Insurance Information Institute in New York.

Already, there are many similarities between the proposed Solvency II framework and the direction of U.S. regulation, said Therese M. Vaughan, Washington-based CEO at the National Assn. of Insurance Commissioners.

The U.S. developed its risk-based framework in the 1990s and it is similar to the standard model under Solvency II, with different charges for different risks, she said.

U.S. supervisors also have been considering other aspects covered by Solvency II. For example, developing group supervision is a priority for the NAIC, while the NAIC as part of its Solvency Modernization Initiative is examining updating corporate governance requirements and revising its U.S. capital framework, she said.

Convergence of U.S. regulation with Solvency II is most likely to occur in the areas of risk management and the public reporting of insurers' data, she said.

"U.S. supervisors could learn from the Solvency II 'own risk and solvency assessment,' and there are things that may be learned on risk management and governance from Solvency II. In return, European regulators can learn from the U.S. about transparency and data reporting and analysis, an area U.S. supervisors are strong in," Ms. Vaughan said.

U.S. regulators are studying Solvency II as well as risk-based capital regimes in Australia and Canada as part of the NAIC's Solvency Modernization Initiative, she said.

However, the United States will not adopt Solvency II in its entirety, she said.

"The NAIC will watch Solvency II, but we don't see it as a global system to gravitate to. We struggle with the idea that Solvency II should be held up as a global capital system when it is so new and when its calibration is still a work in process," Ms. Vaughan said.

—By Stuart Collins

Court upholds work comp based on multiple jobs

Ohio high court rules wages from other jobs can be combined

By ROBERTO CENICEROS

COLUMBUS, Ohio—Wages from multiple jobs can be combined to calculate workers compensation benefit levels, Ohio's Supreme Court decided in ruling against a unit of FedEx Corp., which is self-insured.

The case of *FedEx Ground Package*

System Inc. vs. Industrial Commission of Ohio et al. stemmed from an undisclosed injury that Christopher J. Roper suffered in 2006 while working part time for FedEx.

FedEx calculated that Mr. Roper's temporary total disability compensation benefits based on an average weekly wage of \$160.45 and a full weekly wage of \$250.80, court records show.

Those amounts were based only on earnings at FedEx.

But Ohio's Industrial Commission granted Mr. Roper a higher level of workers comp benefits and cal-

culated an average weekly wage of \$417.05 and a full weekly wage of \$457.36.

The commission's wage calculations included pay from a second job that Mr. Roper held at a pest control company, which "paid considerably more than the job at FedEx," court records state.

FedEx appealed, arguing the commission abused its discretion, but a state appellate court ruled against the employer.

On appeal to Ohio's Supreme Court, FedEx argued among other things that including wages from

concurrent employment discourages the claimant from continuing to work at the second job if the individual is medically able to so.

However, the Ohio Supreme Court ruled last week that it was not persuaded by FedEx's argument and said "there is no statutory basis for excluding concurrent wages" in upholding the appellate court.

The court also ruled, "a claimant who is still physically capable of working the second job but chooses not to cannot receive temporary total disability compensation."

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Low cost, flexibility boost CITs

Collective investment trusts make comeback in 401(k) plans

By ROBERT STEYER

Launched two years before the Wall Street crash of 1929, collective investment trusts are making a comeback in 401(k) plans, offering a lure of lower fees and greater flexibility in investment options.

"The impression we have is that CITs are continuing to gain momentum," said Steve Deutsch, director of collective trusts and separate accounts for Morningstar Inc. in Chicago. "The products are being given more focus by money management firms," which are lowering investment minimums and adding target-date funds to the CIT menus.

Mutual funds dominate 401(k) plans, but CITs have been gaining market share, according to Cerulli Associates in Boston. CITs had 17% of the market in 2005 vs. 45% for mutual funds. By 2008, the CIT market share was 20.9%, while the mutual fund share was 44.6%.

In the early days of 401(k) plans, CITs "greatly outnumbered" mutual funds as investment options, said a recent Cerulli Associates report. At that time, the typical CIT was valued quarterly and provided "only a limited disclosure statement" about investment strategy, said the report. Mutual funds surged ahead by offering daily valuation and "superior" disclosure to clients, the report said.

Now, however, most CIT offerings can be valued on a daily basis, administration costs have dropped, and product customization has provided a stiff challenge to mutual funds, Cerulli said.

The momentum driving greater interest in CITs is propelled by prospects of lower costs, Mr. Deutsch wrote in a recent analysis of the CIT market. These include "reduced marketing expenses, no 12b-1 fees, no time and cost of independent boards, no Securities and Exchange Commission and state filings, no prospectuses (and a) lower record-keeping burden," he wrote.

Other benefits include the ability of plan executives—especially from large plans—to negotiate prices and to customize investment options, he said. Some 45% of defined contribution plans use collective investment trusts, according to Morningstar's estimates. Among those with at least 1,000 participants, 70% do.

Popular reasons

The passage of the Pension Protection Act and the prospect of more fee-disclosure regulations are some reasons CITs could increase in popularity, said Richard A. Davies, senior managing director for defined contribution services at AllianceBernstein L.P. in New York, which manages \$4.7 billion in CITs.

"Plan sponsors are becoming more sensitive to costs," said Mr. Davies, adding that rules governing CITs enable a more "streamlined"

cost structure vs. that of mutual funds.

Intel Corp. in Santa Clara, Calif., made a big commitment to CITs in its two defined contribution plans. In its \$4.43 billion profit-sharing plan, CITs account for 72% of assets. In the 401(k) plan, CITs represent 22% of the \$4.36 billion in assets, said Stuart Odell, assistant treasurer for retirement investment.

"Fees are a big part of it, but the other piece is flexibility," he said. Intel can invest in a CIT that tracks the S&P 500 index at a fee under one basis point, less than half the cost of the least expensive mutual fund institutional share for the same index.

Intel started using CITs in the mid-1990s because they offered investment options that replicated certain indexes, such as the Russell 1000 Value and Nasdaq 100, that weren't available in mutual fund formats, Mr. Odell said.

Intel also offers customized tar-

'The impression we have is that CITs are continuing to gain momentum. The products are being given more focus by money management firms,' which are lowering investment minimums and adding target-date funds to the CIT menus.

Steve Deutsch, Morningstar Inc.

get-date funds via CITs. "You can't do that with an off-the-shelf '40 Act fund," he said.

"Our target-date funds consist of multiple underlying managers," he explained. "We are able to maintain the overall structure of the target-date fund, but we have the flexibility to add managers (or) asset classes without having to change the entire fund or family of funds."

Cost was the motivation for Chicago-based Akzo Nobel Inc. CITs now account for about 11% of its \$1.2 billion in defined contribution assets, said Jaime Erickson, manager of defined contribution plans.

A 2008 fee study to determine whether the plan could offer similar investment opportunities for lower costs prompted Akzo Nobel to replace target-date funds from Fidelity Investments with a CIT target-date family offered by Barclays Global Investors, now BlackRock Inc.

The then-BGI fees were 15 basis points across the board; for the Fidelity Freedom fund family, the cost ranged from 40 basis points to 90 basis points, she said.

CITs are being marketed to small plan sponsors, too, for investment versatility. "Our typical plan sponsor has 100% of assets invested in

CITs because CITs allow them access to institutional money managers, ETFs and mutual funds," said Ian Sheridan, chief executive of First Mercantile in Memphis, Tenn., which manages \$4 billion in CIT assets. "We're seeing a lot of growth and interest" in sponsors with defined contribution assets of \$30 million or less.

Some regulatory differences between CITs and mutual funds have caught the attention of Andrew J. Donohue, SEC director of the Division of Investment Management. "Collective investment trusts are regulated by the banking agencies and may rely on an exclusion from registration under the Investment Company Act," he said in a speech last month at the Practising Law Institute's investment management program in New York. "The premise underlying this exclusion is that banks exercise full investment authority over the pooled assets, among other things."

Mr. Donohue said his division "is looking at whether, under certain conditions, this exemption is properly relied upon and consistent with the (Investment Company) Act and whether it denies investors appropriate protections."

Although he said his remarks were his own and didn't necessarily reflect views of the SEC or commission members, he concluded: "As we learn more about the structure and operation of these platforms, we will be considering...whether there may be a need for any regulatory recommendations."

Some drawbacks

There are some drawbacks to CITs. For example, participants can't make relative comparisons with the same ease as they can with mutual funds, Morningstar's Mr. Deutsch said. "Participants can't go to a third party, which makes the participant reliant on the sponsor."

Fact sheets provided by the plan might give only the top 10 holdings and provide only a preferred benchmark, rather than one offered by a third party, Mr. Deutsch added. Participants accustomed to checking ticker symbols and reading prospectuses may be flummoxed by the lack of both for CITs.

Some concerns about CITs are being mollified by advances in technology or improvements in communication, but participant education still is necessary.

When Akzo Nobel changed its target-date fund family to CITs, it sent a 20-page brochure describing the changes and explaining why the changes were made, said Ms. Erickson, the manager of defined contribution plans.

However, a "small number of employees" were miffed when they couldn't find ticker symbols and had trouble finding more detailed information. As a result, she worked with the provider to create customized fact sheets posted quarterly on the Internet.

Robert Steyer is a reporter for *Pensions & Investments*, a sister publication of *Business Insurance*.

UP CLOSE



JOHN CSIK

NEW JOB TITLE: St. Louis-based chief financial officer of Safety National Casualty Corp.

PREVIOUS POSITION: St. Louis-based senior vp of finance for Safety National

GOALS FOR NEW POSITION: We want to do our part to continue the profitable financial growth of Safety National. That means providing Safety's management team with accurate financial data and the analysis and recommendations needed to make appropriate business decisions. This will allow senior management to stay focused on ventures that make the most sense for the company from a financial perspective. We also want to maintain our excellent external relationships with our key stakeholders: rating agencies, investors, stock equity analysts and our business partners. One of the strengths of our company is that senior management is always accessible to meet the needs of our business partners.

INDUSTRY CHALLENGES: Of course, the current state of the

economy and the impact that has on the workers compensation market continues to be a challenge. Workers compensation premiums are based on payrolls and payrolls are down. So far, Safety National has been fortunate to weather this storm due to our business mix, which has proven to be less economically sensitive, and our expansion into complementary lines of business.

HOBBIES: I enjoy playing golf. I am a big sports fan. I like to listen to and watch baseball games in particular. I am active in my church and active with my children.

ADVICE: Strive to be a calming influence. Focus on solutions to problems and getting tasks and projects completed. Also, live by the golden rule and be respectful of the contributions that every single person makes to reach the organization's goals.

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Solvency II may need further study: Official

Big capital increases not anticipated for most insurers

By MICHAEL BRADFORD

MADRID—Insurers that hoped the fifth quantitative impact study would be the final one before implementation of Solvency II may be disappointed by a European Commission official saying a sixth study can't be ruled out.

The QIS 5 survey of insurers by the Committee of European Insurance and Occupational Pension Supervisors is to begin late this summer. The series of studies is designed to shape the structure of Solvency II, the risk-based capital framework for insurers scheduled for implementation in late 2012.

Insurers and others have expressed concern that information in the fifth survey could lead to significantly higher capital requirements under Solvency II.

While that would be unexpected for the market as a whole, some individual insurers could see capital requirements rise, said Karel van Hulle, head of the commission's internal market and services unit.

During a panel discussion at the International Insurance Society's 46th Annual Seminar in Madrid, Mr. van Hulle also said QIS 5 will not necessarily be the final survey.

"If QIS 5 were to lead to the conclusion that what we have pro-

posed...is not satisfactory, we may well want to do a further test, which we will call QIS 6, where we will test some targeted issues," Mr. van Hulle said.

A sixth survey would not be as broad as QIS 5, he said, but, if needed, it would be carried out "so that we can take a final decision on the basis of facts, not on dreams or theories."

Greg Carter, managing director at Fitch Ratings in London, said during the panel discussion that insurers can expect higher capital requirements as a result of QIS 5.

"QIS 5 is going to raise the bar in terms of capital requirements," Mr. Carter said. "For many of you in the room, you'll be relieved that it's not as high as it could have been, but certainly our view is that it's going to raise the bar."

Mr. van Hulle said the commission "would be surprised if, for the industry as a whole, Solvency II will lead to higher capital requirements."

Companies underwriting "risky business," however, may have to increase capital "because we will go for a full risk-based regime," Mr. van Hulle said.

While it is difficult to predict which or how many companies would be potentially short of capital under QIS 5, it is reasonable to expect that if the survey "raises the bar," there will be more than the few found by QIS 4 to be in need of boosting capital under Solvency II, Mr. Carter said.

Companies that find themselves



MICHAEL BRADFORD

Insurers meeting at the International Insurance Society's 46th Annual Seminar in Madrid heard that the fifth quantitative impact study may not be the final one before implementation of Solvency II in late 2012.

undercapitalized may find it difficult to raise additional funds, Mr. Carter said.

"I can think of one company in particular that looked to the equity markets to raise capital" to fund an acquisition and "got rebuffed," said Mr. Carter, who did not elaborate. "The debt markets can be even more fickle. Over the last few years, it's been difficult for all but the strongest companies to tap those markets."

Other capital-raising measures such as securitization "have been difficult in volatile markets and we

have seen a number of capital-market transactions recently that have either been scaled back or abandoned," Mr. Carter said.

He said the results of QIS 5 will help Fitch "focus on the capital landscape" in the rating agency's work to assess Solvency II's effect on insurers' financial strength.

"But we must not lose sight of the fact that capital is just one part of our analysis and there are many other things that go into the rating process," he said. "What is clear is that there will be some companies

that need to raise capital or reduce risks, and those companies that can't do that quickly or easily will face challenges."

Also on the panel were Ricardo Lozano, director general of Spanish regulator Directorate General for Insurance & Pension Funds in Madrid; and Roger Sellek, managing director, global financial services at A.M. Best Co. Inc. in London. The discussion moderator was Therese M. Vaughan, CEO of the National Assn. of Insurance Commissioners in Washington.



MICHAEL BRADFORD

IIS conference draws 300 to Madrid

MADRID—The International Insurance Society's 46th Annual Seminar in Madrid featured three days of discussions that focused largely on the condition of the insurance market and regulatory developments in the wake of the financial crisis.

More than 300 attendees heard speakers and panelists from 13 countries during the seminar held June 6-9 at the Westin Palace Hotel.

Brian Duperreault, chairman of the IIS and president and CEO of Marsh & McLennan Cos. Inc., said in an opening speech that the financial crisis has provided valuable lessons to insurance market participants.

Next year's seminar will be held June 19-22 in Toronto. More information on the IIS is available online at www.iisonline.org.

—By Michael Bradford

IIS: Regulators eye banks in financial reform push

CONTINUED FROM PAGE 4

Occupational Pensions Supervisors.

He acknowledged, though, that there are uncertainties about how Solvency II, the risk-based capital framework scheduled for implementation at the end of 2012, could bring changes to insurer capital requirements.

"We also have Basel III," Mr. Martínez said of that regulatory proposal for banks and other financial institutions, and "we don't know how the new regulation of the banking industry will affect us" as it relates to banks that invest in insurance companies.

Capital increases

If regulators require insurers and reinsurers to increase their capital levels "in a bulk fashion" because of fears of repeating the financial crisis, "this would be wrong," said Stefan Lippe, CEO of Swiss Reinsurance Co. in Zurich and a panelist at the seminar. Doing so would "reduce the important role of the

If insurers have proven they can be successful with the amount of capital they hold, 'why should we increase our capital? This is, to me—and I beg your pardon—this is stupid.'

José Manuel Martínez, MAPFRE S.A.

insurance industry as a buffer."

"Take as a simple example, the (natural catastrophe) area," said Mr. Lippe. Large increases in capital would mean policyholders would have to pay much higher rates for windstorm, earthquake and other natural catastrophe-related cover-

age, he said.

If policyholders refuse to pay higher rates, "this means it goes straight to the government and taxpayer," Mr. Lippe said of the burden of recovering from catastrophe losses.

"In my opinion, clearly we have enough capital," MAPFRE's Mr. Martínez. "Capital is (used) to avoid the bankruptcy of the company," he added, pointing out that only a small percentage of insurers have ever failed due to insufficient capital.

If insurers have proven they can be successful with the amount of capital they hold, "why should we increase our capital? This is, to me—and I beg your pardon—this is stupid," Mr. Martínez said.

Mr. Bell suggested insurers eventually may be required to hold "buffer capital," which would be funds set aside to use in times of crisis. "I suspect that will be a feature of your industry over the next few years," he said.

Also on the panel was Donald Stewart, CEO of Sun Life Financial Inc. in Waterloo, Ontario. Brian Duperreault, president and CEO of Marsh & McLennan Cos. Inc. in New York and IIS chairman, moderated the discussion.

Bully: Workplace concern threatens employers

CONTINUED FROM PAGE 3

Namie, the Workplace Bullying Institute's co-founder and a supporter of the legislation.

"I think we're on the precipice" of success, said Mr. Yamada. "We seem to be getting closer to eventual passage....I think it is just a matter of time."

"I think it's inevitable," said Robert Nobile, a partner with law firm Seyfarth Shaw L.L.P. in New York, noting several European countries already have anti-bullying laws.

Anti-bullying legislation has been defeated four times in Oregon, but "it's a matter of time before there is a statute," said Tamsen L. Leachman, a partner with law firm Dunn Carney Allen Higgins & Tongue L.L.P. in Portland, Ore.

The publicity surrounding the January suicide of 15-year-old Phoebe Prince, who hanged herself after being bullied by classmates, may increase pressure for passage of anti-bullying laws, say some observers.

A major court decision in this area was a 2008 opinion by the Indiana Supreme Court in *Daniel H. Raess, M.D. vs. Joseph E. Doescher* in which the court upheld a \$325,000 jury verdict for an assault claim brought by Mr. Doescher.

The case involves a 2001 incident, in which Dr. Raess, a cardiovascular surgeon, became angry at Mr. Doescher, who runs an operating room heart/lung machine, causing Mr. Doescher to back up against a wall and raise his hands in defense, according to court documents.

"The legal issues in that case are mostly procedural and evidentiary, so they don't really establish any broad precedent in terms of bringing bullying-related claims," said Mr. Yamada, who believes this issue must be addressed through legislation rather than the court system.

Some observers believe, though, that there is no need for such legislation. "There are already existing laws that cover virtually every instance of workplace bullying if it's severe and intentional and consistent enough," including discrimination laws and OSHA regulations,

said John S. Ho, an attorney with law firm Bond, Schoeneck & King P.L.L.C. in New York.

However, Seyfarth Shaw's Mr. Nobile said there is a gap in these existing laws. "They don't cover conduct that is not based on one's status in a protected group or class so, in effect, this type of legislation fills that gap" if there is abusive treatment by a supervisor, said Mr. Nobile, who believes, though, that the issue can be controlled through the use of effective employer practices and training.

Many observers believe passage of anti-bullying legislation will lead to increased litigation against employers. Anti-bullying legislation could open the floodgates to litigation against employers "because every mean boss could create liability for a company," said Susan K. Lessack, a partner with law firm Pepper Hamilton L.L.P. in Berwyn, Pa.

D. Michael Reilly, a shareholder with law firm Lane Powell P.C. in Seattle, said his concern is "the definition of bullying is not real clear, and because there is not a lot of case law" defining it, "it's going to be tough for employers to know how to comply with the law. It will probably be a paradise for many people who would like to sue because it would be tough to get these cases resolved short of a full-blown trial."

An anti-bullying law will create a cause of action where one does not exist, said Garry G. Mathiason, a shareholder with law firm Littler Mendelson P.C. San Francisco. Plaintiffs in such lawsuits may not win, but filing a lawsuit increases employers' costs, plus there is the potential cost of nuisance settlements, Mr. Mathiason said.

Jonathan T. Hyman, a partner with law firm Kohrman Jackson & Krantz P.L.L. in Cleveland, said such legislation also will hamstring employers because "they'll be afraid of being sued if they are being too harsh." It could result in "employees having the potential to run the workplace because every petty slight or annoyance is going to be trumped up into this idea of bullying," he said.

Broad definition of bullying poses problem for firms

One of the major problems facing employers with the prospect of legislation outlawing workplace bullying is the term bullying is so ill-defined, say observers.

Something as relatively innocuous as a momentarily lost temper could be labeled bullying, they say.

"How do you adjudicate those issues?" asked Eric A. Tate, a partner with law firm Morrison & Foerster L.L.P. in San Francisco. "The range of conduct that could be unlawful just becomes infinite."

"Nobody's perfect," he said. "Do you really want to be the subject of being sued if you lose your temper? If you're on a deadline and somebody screws up royally, how do you discipline people?" said Mr. Tate.

Legislation that was passed by the New York Senate last month, but not voted on by the House, defined abusive conduct as conduct "that a reasonable person would find hostile, based on the severity, nature, and frequency of the defendant's conduct." It says also: "A single act normally will not constitute, abusive conduct, but an especially severe and egregious act may meet this standard." But critics say the entire concept of bullying is subject to individual interpretation.

The movement toward anti-bullying legislation "is now attempting to promote legally required civility in the workplace, which has never been the law, so it will be interesting

to see and watch where this goes," said Mary M. Krakow, a partner with Minneapolis-based law firm Fredrikson & Byron P.A.

"The U.S. Supreme Court and all the other courts following its lead have always said Title VII (of the Civil Rights Act of 1964) wasn't meant to be a workplace civility code, that there was a certain amount of...incivility that goes along with being just human and that we're all meant to endure," said Jonathan T. Hyman, a partner with Kohrman Jackson & Krantz P.L.L. in Cleveland.

However, David C. Yamada, a law professor at Suffolk University Law School in Boston, said his model anti-bullying law, which has been the basis of most of the proposed legislation that has been introduced, including New York's, is intended to make it difficult for workers to successfully claim they have been bullied.

"Someone would have to establish that the abusive conduct is both malicious in its intent and tangibly harmful to their health, so this goes well beyond everyday dust-ups in the workplace or disagreements," Mr. Yamada said.

"My hope is the main value of this statute will be preventative, that it will send a message out to employers that, by engaging in training and preventative practices, they can severely reduce any liability exposure under its statute," Mr. Yamada said.

—By Judy Greenwald

Employers should prepare for possible legislation, say observers. Ms. Leachman said: "We're at the point where employers can choose to deal with this on their own terms, and not have a statute that mandates what they must do."

"Employers would be smart to review their harassment policies,"

said Mr. Ho. "A good harassment policy is not going to be limited to just sexual harassment," he said. And if a law eventually is passed, "you would have to specifically create a workplace bullying policy. What it looks like will obviously depend on the law as written," he said.

WTC: Pact over injuries

CONTINUED FROM PAGE 3

Captive, a federally financed insurance fund established in 2004 with a \$1 billion grant to provide otherwise unavailable liability coverage to the city of New York and about 100 contractors.

The settlement provides "fair compensation, certainty now and closure for these plaintiffs who have waited so long," said Margaret Warner, Washington-based partner with McDermott Will & Emery and attorney for WTC Captive Insurance Co.

At least 95% of the plaintiffs must accept the terms by Sept. 30 for the deal to proceed.

The settlement provides 'fair compensation, certainty now and closure for these plaintiffs who have waited so long.'

Margaret Warner, McDermott Will & Emery

Lawyers and officials said they were "hopeful" the threshold will be met.

The agreement calls for a neutral third party to oversee the valuation of each claim. In addition, Kenneth R. Feinberg, who oversaw the Sept. 11th Victim Compensation Fund, will hear appeals of workers who dispute their claim or injury classification.

In court last week, Mr. Feinberg urged all claimants to participate."

"This settlement brings an end to one of the final chapters in the" 9/11 tragedy, he said.

In April WTC Captive attorneys appealed the judge's rejection of the previous settlement, arguing he does not have judicial authority over a private matter. The appeal will be dropped if the settlement is approved, lawyers said Thursday.

A fairness hearing is set for June 23.

Swett: Wholesaler plans combination with broker Cooper Gay

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reinsurance arm.

Cooper Gay, which has a large presence in the London market and is one of the world's largest reinsurance brokers, has a wholesale brokerage in the United States, which would "be wrapped up" into Swett if the deal proceeds, Mr. Esser said. There is "very little overlap" between the two businesses.

"The thing that excites me so much is that we are able to bring two companies together and have virtually no overlap. That's just tremendous energy for us without any distractions," Mr. Abernathy said.

"I'm very, very excited about all

'If they can mesh the cultures, two and two may make five when this deal is said and done.'

John Wicher, John Wicher & Associates Inc.

the opportunities" the combination with Cooper Gay brings, he said. "It just expands everything that we do. It brings us reinsurance capabilities; it gives us international capabilities and it gives us an opportunity to be better stewards of our premium and

work more closely with our markets to distribute products."

Insurance market observers say they too think the combination makes sense.

"The deal represents a nice marriage of Swett's dominant U.S. market position with Cooper Gay's established international business," said John T. Hompe, managing director and co-head of insurance investment banking at Keefe, Bruyette & Woods Inc. in New York. "Plus, transactions that feel more like mergers have a much greater chance of success in this business than straight-out acquisitions," he said.

"If they can mesh the cultures, two and two may make five when

this deal is said and done," said John Wicher, of John Wicher & Associates Inc. in San Francisco.

John Butler, managing director and head of Piper, Jaffray & Co.'s insurance practice in New York, also likes the idea of the combination. "They're both a bit underscaled and, with the long soft market, I'm sure they're both feeling a bit of pressure."

By combining operations, they get more diversification and that will put them in a better position to "ride out" the soft market and it certainly moves them in the direction of an IPO down the road, Mr. Butler said.

"This would be a very good merger on paper," agreed Kevin

Donoghue, managing director of Mystic Capital Advisors Group L.L.C. in New York. "I like the geographical diversification, combined size of the entities and global broking power. Combine these elements with the hope that the market is firming up on pricing, and the potential for growth is tremendous," he said. "I would think, given the scale of the combined organization, a public offering would be in sight in the next year."

"We definitely would be leaning that way," said Swett's Mr. Abernathy, referring to a potential IPO in the future.

Sarah Veysey contributed to this report.

Plans: Firms shift health costs to workers

CONTINUED FROM PAGE 4

network providers, up from 20% last year.

The reason employers are boosting deductibles and other employee cost-sharing requirements is obvious, said Michael Thompson, a principal in PwC's New York office.

"Employers cannot afford to absorb medical cost increases," Mr. Thompson said.

Additionally, by boosting cost-sharing requirements, employees are more likely to become more prudent consumers of health care services, he said.

Employers are taking other steps to shift costs to employees. For example, 53% now impose a coinsurance requirement in which employees pay a percentage of a bill for each hospital admission, up from 37% last year.

In addition, 32% of employers now impose coinsurance for specialty drugs, up from 23% in 2008, while 33% do so for brand-name drugs, up from 26% in 2008.

Coinurance usually means employees pay a larger share of a bill compared with copayments, in which employees pay a flat amount not tied to the amount of a charge.

"By requiring workers to spend more out-of-pocket at the point of care, employers believe they'll rein in utilization of services and drugs," the PwC survey concludes.

Expanding plans

Still, employers are doing more than shifting costs to employees.

Just more two-thirds say they plan to expand their wellness plans, while just less than one-quarter intend to add a high-deductible health insurance plan linked to health savings accounts.

In addition, 14% say they intend to implement a value-based health care plan design. Under such a design, cost-sharing requirements are set very low for services, such as annual physicals, that employers want to encourage in the belief that their use will reduce costs.

At the same time, more employees are opting to enroll in high-deductible plans, such as HSA-linked plans.

While such plans expose participants to more costs when services are used, employee premiums are much lower than in more traditional plan designs.

This year, 13% of respondents said their high-deductible plan had the highest number of

enrollees, up from 8% last year. By contrast, only 9% of employers reported that their health maintenance organization plan had the highest enrollment, down from 14% last year.

Meanwhile, PwC projects that medical costs will go up 9% in 2011 compared with 9.5% in 2010. One factor that could slow cost increases is the loss of patent protection next year for costly name-brand drugs, allowing the introduction of lower-cost generics.

"About \$26 billion in drugs are expected to go off patent in 2011, including the world's best-selling drug, Lipitor," the survey notes.

Several factors, though, are likely to inflate costs, according to PwC. For example, certain changes in Medicare payment rates will in some cases reduce payments that hospitals receive from Medicare. In response, those hospitals may try to offset those cuts by boosting charges for commercial payers.

Also, medical provider mergers and consolidations are expected to increase, which will give providers more bargaining power to seek higher rates, PwC said.

The survey and an accompanying report will be available later Monday at www.pwc.com/us/medicalcosts2011 and www.pwc.com/us/touchstone2010.



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Business Resilience: How to Bounce Back After an Unexpected Loss

Live Online: This Thurs. June 17, 2010 | 2 p.m. Eastern | Free of Charge

We all know that while it's impossible to predict the unexpected, it is possible to plan for it. What if one of your suppliers suffers a loss due to a fire, or your product has to be pulled back through the supply chain due to a found defect? Having the processes in place to help control the activities of such occurrences, while reducing the likelihood of occurrence of unintended effects, is what being resilient is all about.

Join Zurich Insurance in this complimentary webinar to help define the links in your supply chain and help you maintain sustainability and profitability. The webinar will also review how your business continuity management approach and business impact analysis can help increase the chances that a manufacturing business, or any business, will be able to recover faster after an interruption. The webinar will be presented by Cal Beyer, Zurich North America Commercial, Head of Manufacturing, and Linda Conrad, Zurich Services Corporation, Director of Strategic Risk Management. Roberto Cenicerros, Senior Editor of *Business Insurance*, will moderate the webinar.

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Storm Warning: Is the Northeast Prepared for Hurricane Risks?

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With the 2010 hurricane season officially underway June 1, many risk managers with coastal property are making their annual review of their loss control, catastrophe planning and insurance readiness. But what about in the Northeastern United States, where some of the country's greatest population density and infrastructure are located? Although hurricanes don't make landfall in the Northeastern United States as frequently as they do in the Southeast and Gulf Coast, they are potentially very costly. Catastrophe modeler AIR Worldwide estimates that if the "Long Island Express" hurricane of 1938 happened today, it would cause \$33 billion in insured damage.

To help risk managers and loss control professionals prepare for this threat, please join Richard Lafayette, VP and Managing Director of Crawford & Co.'s Global Technical Services Division; Darren R. Perry, Vice President of REI Engineers; Al Tobin, Managing Director and leader of Aon Risk Service's property practice; and *Business Insurance* Senior Editor, Mark A. Hofmann as they explore this risk and answer audience questions.

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AP PHOTO

Oil cleanup workers use high-pressure hoses to decontaminate retention booms used to contain oil from the Deepwater Horizon spill in the Gulf of Mexico. BP P.L.C. and its contractors will face an array of injury claims, experts say.

Cleanup: BP workers exposed to injuries

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legal sources said.

A BP spokesman said the company has 22,000 "hirees" and volunteers working on oil cleanup efforts, but he could not say how many are BP employees and how many are workers for contractors, who could be responsible for worker injury claims.

Whether an injury occurs on land or at sea will determine whether workers file state workers comp or federal claims, sources agree. Meanwhile, environmental and chemical exposures will determine the types of injuries reported, sources said.

"Just the day-to-day movement of that many workers is going to create incidents," said Gabriel J. Veninata, a workers comp defense

attorney at Hailey, McNamara, Hall, Larmann & Papale L.L.P. in Metairie, La.

"There is no doubt about it, and then when you toss into the mix the toxicity of the materials they are working with then you have additional claims beyond the normal slipping on the deck of a boat or on the dock. Absolutely, there are going to be claims and that belies the bigger picture of any type of toxic exposure."

The Occupational Safety and Health Administration has warned that cleanup workers face hazards caused by oil byproducts, chemical dispersants, drowning, heat, and snake encounters, among others.

"You are also going to see some benzene exposure (claims) because there is benzene in that oil and it's getting released into the air," said

Mark Noonan, a managing principal at Integro Insurance Brokers Ltd. in Boston.

"By the time (the benzene) gets to shore, a lot of it is evaporated, but will you see people with bronchial issues or other inhalation problems? I think so," he said.

Benzene is a natural part of crude oil that can cause dizziness, irregular heartbeats, unconsciousness, and even death, according to the Centers for Disease Control and Prevention.

But most worker injury claims likely will be "relatively minor to moderate" and their dispersal among several state and federal systems means they likely will not change terms for purchasing state workers compensation insurance or Jones Act coverage, Mr. Noonan said.

Some insurance market observers say, however, that BP-related deaths and injuries could affect Jones Act markets.

The act applies to workers injured on vessels and, in some cases, oil rig workers, allowing them to file lawsuits in federal court, several sources said.

Underwriters may tighten Jones Act excess coverage availability for energy companies because of the Deepwater Horizon rig disaster, which resulted in 11 deaths and caused the Gulf spill, and because of claims workers now employed in the cleanup effort are likely to file, said Mark Oakley, managing director in Houston for Aon Global Energy, a unit of Aon.

"We are all waiting to see what will happen within the marketplace, whether we are going to see any rate increase," Mr. Oakley said. "Certainly this type of incident gives rise to awareness by underwriters, especially in the Jones Act area. I believe we are going to see a lot of our excess underwriters require larger attachment points."

Gulf of Mexico events underscore that low-level Jones Act excess policies are much more exposed than their pricing suggests and that losses within certain scenarios are not as remote as previously thought, agreed Leo Magrath, marine practice leader for Towers Watson & Co. in New York.

"Logically, this would indicate that either the attachment point is too low, the price is inadequate, or some combination of both," Mr. Magrath said.

In addition to state workers comp or Jones Act claims, injured workers could file Federal Longshore and Harbor Workers Compensation Act claims, said Charles E. Lavis, an attorney at Lavis Law Firm in New Orleans.

The U.S. Department of Labor administers the LHWCA, which typically covers workers loading and unloading boats and those working on outer continental shelf projects like oil rigs.

Volunteer workers suffering from injuries or illnesses also could file

personal injury or general liability claims, as they would not be limited to the exclusive remedy provision of workers comp laws, Mr. Oakley added.

Many local boat owners and contractors hired to help with the cleanup are looking to purchase their own coverage for worker injuries, said Michael Lapeyrouse, president and CEO in Mobile, Ala., for American Equity Underwriters Inc., which provides state workers comp, Jones Act and Longshore insurance.

After the 1989 Exxon Valdez oil spill, some of the 11,000 workers participating in cleanup efforts in Alaska filed federal and state claims.

A National Institute for Occupational Safety and Health assessment of Alaska oil cleanup injuries conducted in early 1990 found about 1,800 state workers comp system claims filed in 1989, including one for a death caused by a heart attack and one for a worker crushed to death by a "dumb waiter." There were 800 claims for sprains and strains, cuts, or contusions and 250 for bronchitis-type respiratory problems.

Alaska's workers also complained for years afterwards of illnesses they claim were caused by dispersant chemicals.

Recent media reports say some Gulf of Mexico cleanup workers have complained about nausea, headaches and coughs they believe are caused by oil fumes and chemical dispersants.

Meanwhile, a May 25 OSHA memo expressed "growing concern over significant deficiencies in BP's oil spill response operations related to worker safety."

The memo said OSHA found hundreds of workers at one site did not have proper safety training. It also cited a lack of shade and cool drinks for some workers despite reported heat-related illnesses.

The deficiencies "present potentially grave consequences" for cleanup workers, the memo said. But OSHA said in a statement last week that BP has addressed many of those concerns.

Policyholder wins Fox River pollution case

By JOANNE WOJCIK

MADISON, Wis.—Two excess liability insurers must contribute \$10 million toward the cleanup of a 13.3-mile stretch of the Fox River in Wisconsin that had been polluted by polychlorinated biphenyls, or PCBs, an appellate court has ruled.

Under the 2-1 ruling last week by the Wisconsin Court of Appeals, Munich Reinsurance Co. and Westport Insurance Corp., a unit of Swiss Reinsurance Co. Ltd., each must pay Appleton Paper Co. \$5 million to cover its liabilities under the Comprehensive Environmental Response, Compensation and Liability Act. Seven other insurers had settled with Appleton while the case was on appeal after a 2008 jury verdict that held all nine of its insurers responsible for the cleanup costs.

The insurers had maintained they

were not liable because Appleton had assumed responsibility for the cleanup under a 1998 settlement it had reached with National Cash Register Co., from whom it had purchased a paper mill in 1978. NCR had dumped PCBs into the river between 1954 and 1971, and NCR and Appleton were named poten-

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

tially responsible parties under CERCLA in 1997, obligating them to remediate the contamination of the river. NCR and Appleton reached an indemnification agreement in which Appleton agreed to pay 55% of the cleanup costs while NCR would pay the remainder.

In 1998, Appleton notified its excess carriers of the PRP notice. However, none of its insurers

acknowledged coverage nor participated in its defense, according to court papers. At the time, the insurers said they had no duty to defend or pay cleanup costs because Wisconsin case law did not regard PRP notices as suits.

However, a July 2003 ruling by the Wisconsin Supreme Court found that government notice of a policyholder's responsibility for cleaning up contaminated property triggers an insurer's duty to defend under commercial general liability policies. The court, in *Johnson Controls Inc. vs. Employers Insurance Co. of Wausau*, also found that insurers were responsible for cleanup costs incurred under federal environmental statutes.

"The long and thoughtful opinion of the Wisconsin Court of Appeals is important because it deals with so many of the key issues that insurers use to try and defeat



U.S. ENVIRONMENTAL PROTECTION AGENCY

A stretch of the Fox River in Wisconsin was polluted by polychlorinated biphenyls, or PCBs. Insurers have been ordered to pay cleanup costs.

policyholder claims, particularly regarding insurance for environmental liabilities," said Randy Paar, co-lead attorney who represented Appleton Papers in the case and a partner in the New York office of

Kasowitz Benson Torres & Friedman L.L.P., in a statement.

The cleanup, which began in April 2009 and is estimated to cost hundreds of millions of dollars, is expected to continue until 2018.

Not enough insurance for \$10B oil spill liability cap: III

WASHINGTON—Energy insurers and reinsurers cannot provide the \$10 billion in liability capacity needed if lawmakers increase the liability cap in federal law to that level, the Insurance Information Institute president told a congressional panel last week.

Before III President Robert Hartwig spoke to the House Transportation and Infrastructure Committee, the sponsor of the Big Oil Bailout Prevention Act of 2010—Rep. Rush Holt, D-N.J.—said the Oil Pollution Act of 1990's liability cap of \$75 million in damages for oil spills is “laughable.”

Although the law requires responsible parties to pay for cleanup costs, the \$75 million liability cap for offshore facilities has not been increased since the law's enactment.

Referring to the damages caused by the explosion and fire of the Deepwater Horizon offshore oil rig, Rep. Holt said BP P.L.C. “should be liable for every last cent” of damages caused by the spill. “Revisiting the liability issue is long overdue.”

He said his bill would increase the liability limits retroactively to apply to the Deepwater

Horizon losses.

BP self-insured its liability and property exposures, Mr. Hartwig noted in his testimony. He also said worldwide energy premiums total between \$2.5 billion and \$3 billion a year and there is no indication that the liability capacity is shrinking.

But higher prices don't appear to be attracting additional capacity. “Contributing to the skittishness of new capital is the fact that the Deepwater Horizon event could well unleash one of the biggest tort actions in United States history,” Mr. Hartwig said. “As a practical matter, energy insurers and reinsurers simply cannot, at the current point in time, provide \$10 billion in capacity.”

In addition to the market generating no more than \$3 billion in annual premiums, factors he cited include the possibility that higher liability limits would increase demand and perhaps exhaust available capacity. Mr. Hartwig also said underwriting for very low-probability, extremely severe events is “very challenging.”

—By Mark A. Hofmann

Spill: Oil disaster hits tourism, fishing

CONTINUED FROM PAGE 1

interruption policies, legal experts said.

Tourism-related businesses have suffered huge losses as well, said Mike Papantonio, a Pensacola, Fla.-based shareholder in Levin Papantonio Thomas Mitchell Echsner Raftery & Proctor P.A., who said his firm represents thousands of plaintiffs hurt by the spill.

“We are representing hotels that are down 60% in rentals,” he said. “And all along the Florida coast, you have mom-and-pop types that come in and buy two or three condos on the beach and they rent them out—that’s how they make their income.”

Observers say one of the most prominent challenges facing such businesses is documenting their economic loss. That issue affected the ability of often cash-based fishing operations to recover after the Exxon spill, said Christopher B. Kende, the New York-based chair of international insurance at Cozen O'Connor P.C., who represented native regional and village organizations after the 1989 spill.

“You hear on TV about fisherman losing all this money, but they’re going to ask for tax records and want some substantiation,” he said.

Mr. Papantonio said such plaintiffs likely would have to use comparative analysis establishing the earnings of firms in their industry to make a successful liability claim against BP.

Most such companies do not car-

ry business interruption coverage, legal observers say. For those that do, documenting economic loss does not guarantee recovery. Most business interruption policies require property damage to trigger coverage, and often coastal waters and shores are excluded as property, legal experts say.

“A hotel on the coast—if bookings drop because people fear the beaches won’t be pristine, that’s not

‘You hear on TV about fishermen losing all this money, but they’re going to ask for tax records and want some substantiation.’

Christopher B. Kende,
Cozen O'Connor P.C.

a loss of income due to property damage,” said Laura A. Foggan, a Washington-based partner at Wiley Rein L.L.P. “That’s probably the No. 1 issue in the first-party business interruption context.”

A relatively new form of contingent business interruption coverage responds when property damage occurs to “leader properties”—businesses that attract the policyholder’s customers. So, for example, a golf course that relies on a nearby hotel for clients would be covered

for business interruption at the hotel. But that interruption still would have to be caused by direct property damage from a covered peril, and subject to pollution exclusions, experts said.

That means, legal observers say, that many affected businesses likely will pursue recovery through third-party liability claims or lawsuits.

The most significant legal issue in such cases will be pollution exclusions, which are common in liability policies, experts say.

“What was the exclusion intended to cover, a once-in-a-lifetime oil spill or buried environmental waste?” said Allan Kanner, founder of Kanner & Whiteley L.L.C. in New Orleans. “The burden is on the insurance company that would deny coverage, and it’s not a simple burden.”

Courts in different states have differed in their application of pollution exclusions, with Louisiana judges generally taking a more policyholder-friendly view. That means that which court hears a particular case, and which state laws are applied, will be another significant point of contention, legal observers say.

Louisiana also is one of the few states that allow direct action lawsuits against an insurer for its policyholder’s misbehavior. But Ms. Foggan said she did not expect such suits after Deepwater because they are more complicated and typically occur only when the defendant is bankrupt.

News In Brief

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states. AIG must review 400,000 documents and produce ones that are not confidential, U.S. District Court Judge Sidney Schenkier said. Liberty Mutual Group Inc. and other AIG competitors are suing for fraud, claiming AIG underreported workers compensation premiums for several years to avoid paying state residual market assessments. AIG, in turn, has sued the competitors, alleging they engaged in similar fraudulent practices and conspired to harm AIG.

Liberty Mutual Group names Long president

David H. Long has been named president of Liberty Mutual Group Inc. effective July 1, the insurer said. He succeeds Edmund F. Kelly, who will remain the company’s chairman and CEO. Mr. Long, executive vp of Liberty International, will continue to lead the insurer’s international business unit while assuming responsibilities as president of Liberty Mutual Group, the insurer said in a statement.

Vermont captive director takes post in Florida

Peter Raymond will leave his position as Vermont’s director of captive insurance effective July 16 to take a position outside the captive industry as a contract examiner and consultant for the Florida Hurricane Catastrophe Fund. Mr. Raymond has been Vermont’s director of captive insurance since February 2008. Replacing Mr. Raymond as director of captive insurance will be Sandy Bigglestone, a 13-year veteran of Vermont’s captive division.

Senate amendment would extend COBRA subsidy

Employees laid off from June 1 through Nov. 30 would be eligible for COBRA premium subsidies under a tax bill amendment. The amendment to H.R. 4213 would need approval by the Senate, which is considering amendments to the broader bill. The last congressional extension of the subsidy expired May 31, which means employees involuntarily terminated starting June 1 have not been eligible to receive the subsidy.

CVS to remove Walgreens from PBM networks

CVS Caremark Corp. announced last week it was removing Walgreen Co. from its retail pharmacy benefit management networks beginning July 9 after negotiations broke down. CVS accused Walgreens of seeking to increase reimbursement rates above those paid under its contract. Instead of participating in CVS Caremark’s networks, Walgreens said it would concentrate on growing its own PBM business by contracting directly with employers.

Groups denounce proposed reinsurance tax change

Legislation to cap the deductibility of reinsurance premiums paid by U.S. insurers to their foreign affiliates will boost costs, reduce capacity and spur retaliatory action by other countries, according to a letter sent to the chairmen and ranking members of Congress’ tax-writing committees. Referring to the bill, H.R. 3424, the Coalition for Competitive Insurance Rates and numerous other groups, including the Risk & Insurance Management Society Inc., said in their letter that the “punitive tax regime” of the legislation “will result in less insurance capacity and increased insurance costs for U.S. consumers.” The letter was released in conjunction with the annual “RIMS on the Hill” event in Washington.

Noted

Last month’s **tornadoes in central Oklahoma** resulted in insured losses of \$595 million, according to Insurance Services Office Inc.’s Property Claims Service unit....**Brit Insurance Holdings N.V.** last week rejected a £785 million (\$1.2 billion) takeover offer from Apollo Global Management L.L.C., Bloomberg reported....**Munich Reinsurance Co.** increased its estimated losses from the February earthquake in Chile to \$1 billion from its previous estimate of \$700 million. **Swiss Reinsurance Co.**, meanwhile, updated its quake loss to approximately \$630 million from \$500 million....**Hawaii Insurance Commissioner J.P. Schmidt** will leave his state government position July 1 to join the Bays Deaver Lung Rose Holma firm in Honolulu. No replacement has been announced....**Guy Carpenter & Co. L.L.C.** has named Liz Flynn as global chief operating officer, succeeding Charlie Fry, who has left the company....**Catlin Group Ltd.** has canceled its plans to launch a sidecar-style special-purpose vehicle after failing to find investor support.



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Internet firm strikes out with MLB site

Major League Baseball says indecency, profanity and obscenity are three strikes against an Internet provider and MLB is crying foul over the objectionable content on its website.

MLB Advanced Media L.P., MLB's Internet arm, has filed suit in New York State Supreme Court asking it to order St. Louis-based Charter Communications Inc. to identify people using its Internet services who have posted sexually explicit material on MLB.com, Reuters reported recently.

According to the report, one or more people have posted dozens of "threatening, abusive, obscene, vulgar, demeaning, offensive, pornographic, profane, sexually explicit, indecent and inappropriate" messages and images on MLB.com message boards since July 2009.

MLB said it has traced the Internet protocol addresses used to post the objectionable material to Charter and wants those addresses so it can pursue appropriate action, according to Reuters.

An MLB spokesman could not be reached for comment.

In a statement, Charter said, "We will evaluate MLB's request and disclose subscriber information only as required by law, making certain that we comply with applicable law while respecting the privacy of our customers."

Business Insurance END PAGE

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COURTESY OF WISCONSIN DIVISION OF WORKER'S COMPENSATION

President John F. Kennedy, Vice President Lyndon Johnson and Wisconsin Gov. Gaylord Nelson, along with U.S. Postmaster General J.E. Day, mark the 50th anniversary of workers compensation with a postage stamp in 1961.

Comp group seeks stamp of approval

A U.S. Postal Service advisory committee is weighing a proposal that would have it approve the creation of a stamp commemorating workers compensation's 100th anniversary.

The workers comp system was born in 1911 when nine states began adopting laws requiring companies to compensate workers for on-the-job injuries in exchange for workers generally giving up the right to sue.

Fifty years later, President John F. Kennedy, Vice President Lyndon B. Johnson and Wisconsin Gov. Gaylord Nelson joined in a White House ceremony to recognize workers comp by unveiling a 50th anniversary postage stamp.

Wisconsin lays claim to adopting the first "constitutional workers compensation law" in the United States.

In 2008, with workers comp's 100th

anniversary three years away, the Wisconsin Division of Worker's Compensation submitted the proposal for a new commemoration stamp.

The Postal Service Citizens' Stamp Advisory Committee typically takes at least three years to determine whether it approves of ideas for new stamps, according to the Workers' Compensation Centennial Commission.

The Madison, Wis.-based Centennial Commission recently formed as a nonpartisan organization to get other states involved in efforts to celebrate 100 years of workers comp.

"Our goal is to celebrate the rich history of the U.S. workers compensation system, beginning with its inception in the Wisconsin Progressive Era, to its enduring impact on every American worker and employer," the Commission's website says.

Comp judge weeds out claim denial

Smoking marijuana and then feeding bears may be "ill-advised to say the least, and mind-bogglingly stupid to say the most," but a workers compensation judge in Montana ruled it was not the main reason a worker was attacked by a grizzly.

"When it comes to attacking humans, grizzlies are equal-opportunity maulers; attacking without regard to race, creed, ethnicity or marijuana usage," Judge James Jeremiah Shea of the Helena-based Montana Workers' Compensation Court ruled in granting workers compensation benefits to Brock Hopkins.

Mr. Hopkins had smoked marijuana at the privately owned Great Bear Adventures park in West Glacier, Mont., in November 2007 and then went to the bears' pen to feed them, according to the decision.

One of the bears attacked and Mr. Hopkins escaped by crawling under an electrified fence, but he suffered severe injuries.

However, park owner Russell Kilpatrick and the state Uninsured Employers Fund sought to deny Mr. Hopkins the workers comp benefits.

They argued that Mr. Hopkins smoking marijuana was a "major contributing cause" of the attack.

They also argued that the park had no employees. Mr. Kilpatrick contended that Mr. Hopkins was a volunteer, and money Mr. Kilpatrick paid him was given randomly "out of my heart."

But the judge ruled the argument "not credible. There is a term of art used to describe the regular exchange of money for favors—it is called 'employment,'" said Judge Shea in his recent decision.



VIDEO SHOWS REINSURANCE IS SIMPLE NECESSITY

When you think "YouTube," odds are you think of clever or wacky videos. Odds are you don't think about reinsurance.

But a group opposed to a proposed tax on certain reinsurance transactions has taken to the video-sharing website to make its case to the public.

The Washington-based Coalition for Competitive Insurance Rates recently posted a video explaining reinsurance on the site. The group, which counts the Risk & Insurance Management Society Inc. among its members, wants to prevent H.R. 3424 from becoming law. The bill

would amend the Internal Revenue Code to disallow the federal tax deduction for certain reinsurance premiums.

"Like their customers, insurance companies have to buy insurance to manage their risks," says an off-screen narrator, who explains that insurers buy their coverage from reinsurers. The narrator further explains that reinsurers help keep consumers' insurance rates down.

But H.R. 3424 would "attack this necessary risk-sharing function," says the video's narrator, who warns of higher costs to consumers as the word "tax" appears at every

link in the diagram. The narrator goes on to explain how foreign insurers and reinsurers have covered a variety of U.S. disasters.

The video might not be as catchy as those featuring pets and babies, but its creators obviously are counting on it to have a greater impact than any cute pet trick in the halls of Congress.

Watch the video at www.youtube.com/watch?v=9xGHj1y0VnY or just search for a video called "The New Insurance Tax" at www.youtube.com.

As of last Friday, it had been viewed more than 8,000 times.



A YouTube video posted by the Coalition for Competitive Insurance Rates features an explanation of reinsurance.

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