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'BIG DATA' PRESENTS BIG CHALLENGES FOR IT SYSTEMS / PAGE 4

inBrief

AIG repays loan from Fed

American International Group Inc. has repaid the outstanding loan from the Federal Reserve Bank of New York to Maiden Lane III as a result of the recently completed auctions by the bank of certain Maiden Lane III L.L.C. assets, the bank and AIG said last week. Maiden Lane III was a facility created in late 2008 to buy collateralized debt obligations from AIG counterparties after the U.S. assumed a nearly 80% ownership stake in AIG after the insurer's near-collapse.

GC Securities places cat bonds

GC Securities, a division of MMC Securities Corp., has placed \$250 million in

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SPOTLIGHT

PRODUCT LIABILITY

Market in transition as loss experience gets more scrutiny; imports increase U.S. firms' potential liabilities; risk management a key part of food safety. **PAGE 9**

EMPLOYMENT PRACTICES

Soldiers return to civilian jobs

Veterans' rights put compliance onus on former employers

By **JUDY GREENWALD**

As the United States accelerates the withdrawal of troops from Afghanistan, employers are obligated to accommodate military veterans who want to return to their previous jobs.

But complying with federal law, most notably the broadly worded Uniformed Services Employment and Reemployment Rights Act of 1994, is a challenge.

Furthermore, veterans who are injured or disabled during their military service also may fall under the Americans with Disabilities Act, requiring employers to comply with both laws, experts say.

Thousands of veterans could return to the workforce given President Barack Obama's commitment to withdraw 23,000 troops from Afghanistan by the end of the summer and his plan to turn security entirely over to the Afghan government by 2014.

USERRA forbids employers from taking any adverse action against employees because of their mili-



AP PHOTO

An estimated 1 million U.S. military veterans will return to civilian life over the next three years, according to Falls Church, Va.-based nonprofit Blue Star Families.

tary service. It says returning veterans who otherwise meet the eligibility criteria must be promptly reinstated in the same positions in

terms of status, seniority and pay rate that they would have attained had they remained employed continuously, which is commonly

known as the "escalator principle," (see box, page 20).

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PENSIONS

Others likely to emulate GM's pension strategy

By **JERRY GEISEL**

Other employers are likely to follow the path that General Motors Co. is blazing by purchasing a group annuity to help shed \$26 billion in pension liabilities, benefit experts say.

Under its two-part strategy, GM has signed a contract to purchase

a group annuity from Prudential Insurance Co. of America that will replace benefits that longtime retirees—salaried employees who retired before Oct. 1, 1997—received from GM.

Under the second part, some 42,000 salaried employees who retired after Oct. 1, 1997, but before Dec. 1, 2011, have until

\$26B

General Motors Co. is purchasing a group annuity to help shed \$26 billion in pension liabilities.

Ammann described as the automaker's "de-risking strategy" is similar to a plan that Ford Motor Co. announced in May in which Ford is offering salaried retirees a one-time opportunity to convert their monthly annuity into a lump-sum benefit.

In the case of GM, most salaried employees and retirees who receive benefits on or after Dec. 1, 2011, will be moved into a new pension plan with the benefits they have earned in the current plan, which GM will terminate.

They will have a choice of taking their pension, which will not earn additional credits, as a lump-sum or as a monthly annuity. The monthly annuity will be paid by the new GM pension plan, not by

late July to decide whether to take a lump sum benefit or continue receiving their monthly payment. Those who continue monthly payments, though, will receive them from Prudential rather than from GM's pension plan.

The lump sum approach that is part of the what GM Senior Vp and Chief Financial Officer Dan

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2. GALLERY: Evolution of flexible spending accounts
3. Most employers plan to keep offering health care coverage
4. Commercial P/C insurance rates rose 5% in first quarter
5. SEC guidelines drive renewed interest in cyber risk coverage
6. Smokers to pay \$10 more a month for health insurance: Duke
7. Ex-partner sues Dewey, says law firm was Ponzi scheme
8. PTSD of employee who witnessed deaths compensable
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BLOOMBERG

Pat Ryan is the first laureate of the Midwestern Insurance Hall of Fame. View a photo gallery of some of his many achievements at www.businessinsurance.com/photos.

Ryan named Hall of Fame's first laureate

Katie School honors industry vet's service

By MARK A. HOFMANN

CHICAGO—Ryan Specialty Group L.L.C. Chairman and CEO Patrick G. Ryan has added yet another distinction to an already impressive resume—the first laureate of the Midwestern Insurance Hall of Fame.

Mr. Ryan formally received the award last week in Chicago. According to the Katie School of Insurance and Financial Services at Illinois State University in Normal, the mission of the

Midwest Insurance Excellence Awards and Hall of Fame “is to educate and inspire students and other stakeholders of the insurance industry by relating examples of how individual people and insurance organizations have benefited society, and industry, with their actions and deeds.”

“The Excellence Awards and Hall of Fame publicly honors individuals and organizations that are doing, or have done, exemplary work in the Midwest related to the insurance industry,” the Katie School says on its website.

“It’s very flattering. I’m honored,” said Mr. Ryan, who gained fame for building what is now Aon P.L.C. into a global powerhouse. “I love the industry. The industry is something I believe has contributed to the social well-being of civilization. It’s an industry that free markets need.”

“I really believe that the insurance industry offers a unique career to young people,” said Mr. Ryan. “Too often, they get a good education and think they ought to be a

See RYAN page 18

HEALTH CARE REFORM

Employers likely to keep health cover

Major insurers vow enhancements stay however court rules

By JERRY GEISEL

The overwhelming majority of employers say they will or are likely to offer health coverage to their employees in 2014 when key provisions of the health care reform law go into effect, according to a survey of more than 900 benefit professionals

Meanwhile, several major insurers said last week that even if the Supreme Court overturns the Patient Protection and Affordable Care Act, they will continue to provide certain coverage that the law mandates.

As for employer sentiment, an International Foundation of Employee Benefit Plans survey found that 86% of employers will or plan to offer employee coverage in 2014. Ten percent said they are somewhat likely to continue coverage.

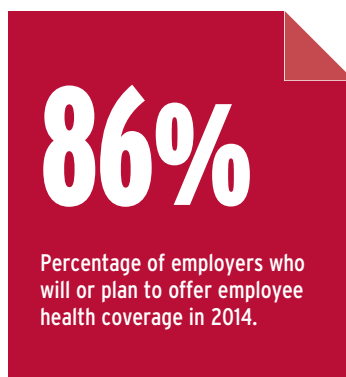
Just 1% said they definitely will not offer coverage, while nearly 4% said they are somewhat or very unlikely to offer coverage in 2014.

Employers cited retaining and attracting employees as the top reasons for continuing to offer health insurance to employees, even though federal premium subsidies would be available to their lower- and middle-income employees to buy coverage in state insurance exchanges should

employers drop their health plans.

About 55% of respondents said retaining current employees and attracting future talent were the top reasons they will keep their plans and about 53% said maintaining and/or increasing employee satisfaction and loyalty was the top reason for retaining coverage in 2014.

“Employers will have a continuing need to attract and retain



talent,” said Michael Wilson, CEO of the Brookfield, Wis.-based International Foundation.

“Employers still believe that offering a health care plan provides an important competitive advantage,” said Helen Darling, president of the National Business Group on Health in Washington.

Savings hard to pin down

Others note that few employers would reap significant savings by terminating their health plans.

“It is hard to make the math work for most employers,” said Michael Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York.

Costs faced by employers that terminate coverage include a \$2,000 penalty per full-time employee imposed by PPACA that cannot be deducted on the company’s taxes, as well as grossing up employees’ salaries to offset at least some of the premiums employees would have to pay for coverage in state insurance exchanges.

Any amounts added to employees’ salaries to help pay for coverage would result in an increase in their taxable incomes, which in turn would boost payroll taxes paid by their employers.

In addition, employers, at least initially, would be reluctant to drop coverage because of the many unknowns related to the exchanges, Ms. Darling said. Those unknowns include the rates insurers writing coverage in the exchanges would charge and whether, due to higher-than-expected costs, the government might cut back on subsidies to lower-income individuals purchasing coverage through an exchange, Ms. Darling said.

“There are so many unknowns it would be almost irresponsible to think of getting out (of offering coverage) right now,” Ms. Darling said.

Meanwhile, UnitedHealthcare and Humana Inc. were among major insurers that said last week

that they will continue offering certain health coverage no matter how the Supreme Court rules on the health care reform law.

For example, Humana and UnitedHealthcare said they will not impose lifetime dollar limits, will offer preventive services without copayments as well as coverage to employees’ adult children up to age 26.

Self-funded plans

The continuation of those health care reform law-mandated requirements, though, would not apply to self-funded employers. Humana said it would work with self-insured clients to “emphasize the importance of the continuity of policies and coverage.”

However, absent a change in tax law, the coverage for some adult children would become taxable to the employee. Prior to the passage of PPACA, coverage could be provided tax-free for employees’ children up to age 19 and to age 24 for full-time students.

Because of the popularity and relative low cost of the adult child coverage, lawmakers might pass legislation to keep its tax-free status if the reform law were overturned, some say.

If congressional Democrats and Republicans agree on anything, continuing the tax-free status of adult child coverage is one health care reform law provision on which there could be an agreement, said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

PROPERTY/CASUALTY INSURANCE

Insurance rates rise, but will trend last?

Hines Symposium panelists see market testing price changes

By SHEENA HARRISON

CHICAGO—The property/casualty insurance market is hardening, but it is unclear whether rate increases are here to stay and lines such as workers compensation continue to present challenges, panelists said during the 2012 Harold H. Hines Jr. Memorial Symposium.

Three panelists discussed the evolving market and economic challenges during the symposium, titled “Navigating the Changing Marketplace.” About 150 people attended the June 4 event at the Union League Club of Chicago.

Thomas F. Motamed, Chicago-based chairman and CEO of CNA Financial Corp., said he sees a “transitional” insurance market in which some accounts still are experiencing rate reductions. Still, he said, insurers have sought modest rate increases in recent months.

“Many of the lines of business today are priced at levels that were equivalent to 2002,” Mr. Motamed said. “So there’s been a tremendous reduction in pricing over the last decade, which is one of the reasons why underwriters are trying to push rates back up.”

Whirlpool Corp. is expecting midyear rate hikes and reductions for its various insurance policies that are in the process of being renewed now, said Scot M. Schwarting, director of risk management for the appliance manufacturer in Benton Harbor, Mich.



Mr. Keeping



Mr. Motamed



Mr. Schwarting

Mr. Schwarting said when the company gets to its November renewals, that will show whether the property/casualty market price increases will be sustained.

“Are we at a tipping point where everybody’s piling on and showing rate increases? No, I don’t see that,” Mr. Schwarting said, “but I think the market is certainly testing to see what it will bear.”

Workers comp is among lines where insurers are looking to increase rates, Mr. Motamed said. He noted that margins for workers comp have been hurt by medical inflation rates of 7% to 9%,

while the largest portion of workers comp costs are medical payments rather than indemnity costs.

“States will say you have to lose a lot of money before we give you get a rate increase,” Mr. Motamed said. “Well, we’re losing a lot of money, so we’ll probably get some rate increases.”

Panelists agreed that the market is interested in developing new insurance lines, but also said that it has been difficult to develop sufficient capacity for innovative products.

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CAPTIVES

Bermuda captives capitalize on opportunities

Health care system, hardware chain expand coverage

By MIKE TSIKOUDAKIS

SOUTHAMPTON, Bermuda—Mature captive insurance companies are looking for ways to effectively optimize capital from their structures and expand their operations by examining emerging coverage opportunities.

While identifying and quantifying gaps in coverage can be challenging, captive insurance structures can effectively fill in a lot of those gaps, William Montanez, director of risk management for Ace Hardware Inc. in Chicago, said during a session at the 2012

Bermuda Captive Conference held June 3-6 at the Fairmont Southampton Bermuda Resort.

Ace Hardware's Bermuda-based captive, New Age Insurance Ltd., was formed in 1996 and gives the retailer a vehicle to have assets to pay for losses, Mr. Montanez said.

"Any insurance risk is contained in the captive," he said. "We have no insurance risk on the corporate balance sheet."

As each Ace Hardware store is independently owned, Mr. Montanez is looking to enhance the coverage options for retailers and increase the risk program's retail market penetration, where 30% of the retailers participate in the program.

Assuming an organization has a surplus redundancy through its captive, there are many opportuni-

ties to increase retentions on existing underwriting programs, consider greater investment in equities or enter new lines of business, said Jim McNichols, Asheville, N.C.-based consulting actuary for Aon P.L.C.'s Aon Global Risk Consultants.

While there are many opportunities to expand an organization's captive in health care and health sciences, risk modeling techniques are required to assess key risk exposures of such an expansion—namely underwriting risk, reserve liability, interest rate risk, credit risk and equity investment liability, he said during the session, which was moderated by Robert Paton, executive vp at Aon Risk Solution's captive and insurance management practice in Hamilton, Bermuda.



Nearly 600 people attended the Bermuda Captive Conference, which was held June 3-6 at the Fairmont Southampton Bermuda Resort.

"All those risks need to be analyzed and evaluated," Mr. McNichols said. "Dynamic risk management techniques need to be

deployed." Judy Hart, executive vp and

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QUESTIONS & ANSWERS

John C. Smith serves as executive vp of Frank Crystal & Co. and leader of its national business development unit in New York. He spoke with Business Insurance Senior Editor Mark A. Hofmann about the market and the opportunities available to Frank Crystal and other insurance brokerages.

Frank Crystal grows clients one at a time

Q: What is the current state of the property/casualty market, and what's driving it?

On the property side, we're seeing increases in the property market. All the new modeling that's going on in the industry has had an impact on the property rates and how the rating agencies and others are looking at property, coupled with the losses we've all been experiencing around the world. The carriers are beginning to increase rates. We're seeing somewhere around 10% to 15% average rate increase on the property side. The cat exposure would be on the higher end. We're not necessarily seeing coverage being pulled back yet, mostly just seeing increases on the rate side.

On casualty—certainly on the excess casualty, which has been so depressed anyway—we're seeing 5% to 10%, 15% increases.

There's (push back), but those clients that you've been having ongoing regular daily dialogue with about the market and the efforts behind the rate increases are a bit more accepting. This is probably the third or fourth hard market in my career, and it's same reaction every time: What can we do to get a flat renewal? There's



Mr. Smith

resistance and some very good dialogue with clients about what they really need and want in their program.

Q: Frank Crystal was recognized recently as being the most productive U.S. brokerage—how did you achieve that?

We've got a lot of interesting things. We've become a destination for veterans in the industry. We're talking to a lot of old pros who want to get back into the day-to-day client service business. We provide a pretty nice platform, being private and independent and a flat organization. We have nine offices around the U.S. and an international network, so we're able to provide for senior brokers in the industry an opportunity to come and do their trade in a place like Frank Crystal.

Q: Where does Frank Crystal see growth opportunities?

We are predominately a mid- to higher-end middle-market firm, with an impressive representative list of global risk management

See **SMITH** page 19

RISK MANAGEMENT

Proving risk management value

Build consensus to achieve goals for organization

By **RODD ZOLKOS**

NASHVILLE, Tenn.—For a risk manager, demonstrating and communicating risk management's value to others in the organization and making sure risk management is viewed in a favorable light can be essential to achieving the risk management mission.

According to a moderator of a session focused on demonstrating the value of risk management at the Public Risk Management Assn.'s annual conference,

held this month in Nashville, Tenn., the profession can be especially important in budget-challenged times.

"These days, it's all about proving your worth," said Mark Walls, vp-claims at Safety National Casualty Corp. in St. Louis.

Panelist Abbie Hudgens, workers compensation administrator in the Tennessee Department of Labor and Workforce Development, said it's important that the risk manager understand the goals and missions of the organization, because the focus of risk management is on identifying and controlling things that could interfere with that mission.

Another panelist, Sandra Bodensteiner, claims manager

for the city of St. Paul, Minn., Office of Human Resources, suggested one place to start in demonstrating risk management's value is trying to align risk management's goals with every department's objectives and those of every level of management in the organization, from the ground up.

"If you have the people you're working with with you, you can actually find out what their needs are and you can become a resource to them," Ms. Bodensteiner said.

Several members of the panel stressed the value of employing others in the organization and the community in the risk

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TECHNOLOGY

'Big data' challenges insurer legacy systems

By **BILL KENEALY**

SAN DIEGO—Technology advances offer new opportunities for the insurance industry while simultaneously threatening its antiquated infrastructure and business models, experts say.

Indeed, the insurance industry's aggrieved relationship with technology was a constant theme of discussion at the Insurance Accounting Systems Assn. Inc.'s annual conference in San Diego.

Perhaps no technology exemplifies the challenges and opportunities more than "big data" analytics, which uses massive

data sets and complex algorithms to augment or replace human decision-making in business processes.

During a panel discussion, Deborah Smallwood, founder of Boston-based insurance advisory firm Strategy Meets Action, said compared with industries such as banking and retail, the insurance industry has been slow to capitalize on the potential of "big data" to improve processes such as underwriting, marketing and claims management.

"Our research indicates that

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IASA DRAWS 2,425

SAN DIEGO—Some 2,425 attendees, including insurance company executives and technology providers, attended the Insurance Accounting Systems Assn. Inc.'s Educational Conference and Business Show held June 3-6 in San Diego.

Sessions focused on accounting, risk management, regulatory compliance, the role of social media in claims fraud detection and the viability of cloud computing in insurance core systems.

Next year's forum will be held June 2-5, 2013, at the Gaylord National Hotel & Resort in Washington.

—By Bill Kenealy



YOU CAN'T PREDICT ACCIDENTS, BUT YOU CAN SEE COMPLICATIONS COMING A MILE AWAY.

INDUSTRY:
MANUFACTURING

CUSTOMER:
FURNITURE DESIGNER

CASE OBJECTIVE:
MANAGE UNRELATED COMPLICATIONS
OF AT-WORK INJURY



CASE SPECIFICS:

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COMMERCIAL AUTO
GENERAL LIABILITY
PROPERTY
WORKERS COMPENSATION
GROUP BENEFITS



Mid-Market EXECUTIVE

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

Preparing for data breach risk

Cyber insurance helps, but mitigation is key

By MATT DUNNING

PHILADELPHIA—While only a fraction of U.S.-based companies have cyber risk or network security insurance, covering financial losses associated with a cyber-security breach does not mitigate the risk of a breach itself, data protection experts warn.

Roughly three-quarters of U.S.-based companies do not have cyber risk or network security insurance, citing confidence in their own internal controls or a general disbelief in their exposure for forgoing the coverage, according to a recent study by New York-based Towers Watson & Co.

Conversely, companies that do purchase the coverage—particularly small and mid-size firms, experts said—tend to assume that the insurance relieves them of having to develop data protection protocols and breach preparation strategies (see box).

“It’s one of the most common misconceptions that we see in this space,” Larissa Crum, executive vp at Claysburg, Pa.-based Immersion Ltd., said during the 2012 NetDiligence Cyber Risk and Liability Forum, held June 4-5 in Philadelphia. “Mitigating the risk is really all about preparation, while purchasing cyber insurance is really only about transferring the cost of the risk. They’re not mutually exclusive.”

To substantively reduce their exposure to data breaches, companies must adopt a shared responsibility for cyber security procedures and breach response planning across multiple corporate disciplines, including risk management, information technology, legal counsel, outside consultants and senior company leaders. Above all, the experts said, those preparations must be made before a breach if they are to be of any real value.

“If you’re trying to back into the preparation strategy once an event has begun, you’re not going to be thinking clearly and there’s a whole slew of things that can go wrong,” said Christopher Novak, a managing principal at New York-based Verizon Business, a division of Verizon Communications Inc. “We stress to folks the importance of getting these things moving before a breach event begins, because it can really go a long way toward mitigating your losses and liability.”

One crucial piece of effective cyber risk mitigation that mid-market companies often overlook is developing and regularly testing a crisis response plan. Generally, companies should identify ahead of time key internal personnel best suited to separately address the issues that typically arise during a cyber-related crisis, experts said.

Risk management leaders and general counsel can focus on coverage-related matters such as cross-policy response and claims processing, while IT managers and



Proactive steps for data breach response

In a recent study by New York-based Towers Watson & Co., most companies indicated that they had not performed comprehensive information security risk assessments or network penetration tests.

Experts say many companies in the middle market put themselves at greater risk by waiting until a data breach occurs to draft and implement data protection and breach response policies. Some proactive low-cost steps that mid-market firms can take to reduce their exposures are:

- Developing and rehearsing a documented crisis response plan. Be sure to include all key internal players, such as risk management, legal counsel, information technology, auditors and accountants, as well as external emergency contacts such as law enforcement, providers and other business partners, public relations consultants and forensic investigators.
- Demonstrating senior-level support for the plan’s development

and regular testing.

- Training all employees and third-party providers on proper data management, including equipment transport, smartphone and mobile device use, password and encryption updates, and point-of-transfer exposures. Consider including adherence to data management policies in employee performance reviews.

- Insisting that business partners conduct “stress tests” of their own data breach response plans to gauge business continuity protections.

- Maintaining an up-to-date contact list for breach notification recipients.

- Monitoring data aggregation and storage, and eliminating unnecessary or redundant files.

- Ensuring open communication between risk management, IT and senior-level management teams. Consider cross-training the departments to enhance their understanding of unfamiliar terminology and goals.

—By Matt Dunning

internal auditors can focus on determining the source and extent of the breach itself.

Companies also should designate personnel to handle media inquiries and public statements, provider interactions and notification responsibilities for affected cus-

tomers, including continuous maintenance of a dedicated contact list to notify customers, suppliers and others.

External points of contact also can be of vital importance when a data breach does occur. Crisis response planning typically

should include regular communication with providers and business partners to address continuity issues, as well as local and federal law enforcement, outside legal counsel, public relations firms and forensic investigators.

“In the event of a crisis, you don’t want to find yourself stumbling to get hold of a vendor, get a press release together or fighting amongst leadership to determine who’s going to answer media questions,” said Richard Pcihoda, director of risk management at Philadelphia-based PREIT Services L.L.C. “It’s important to have an internal and external team that’s ready to go, and those teams need to have a written plan.”

As robust as a mid-market company’s data breach response plan may be on paper, only thorough and frequent testing of that plan will indicate its real value. Routinely conducting tabletop rehearsals or simulated breach events can minimize complications during an actual crisis by exposing outdated lines of contact, lagging incident response times and other weaknesses in the overall planning, experts said.

“Walk through the scenarios and make sure you have some senior executives to emphasize that it’s important,” said Keith Morales, information security officer for the Federal Reserve Bank of Philadelphia. “It may not be perfect and you may get it wrong, but at least your company will know who the key players are and will have some measure of response.”

Also commonly overlooked, especially at the mid-market level, is how a company’s employees influence its data protection efforts. According to a study by Philadelphia-based NetDiligence, the marketing arm of Network Standard Corp., on cyber liability claims, more than one-quarter of the data breach claims analyzed were attributable to lost equipment and other employee errors. Experts said training employees—particularly anyone who regularly transports data or equipment offsite—is a low-cost method to reduce the risk of data security failures.

“Without that kind of fundamental awareness among the entire staff, the risks that they expose themselves and the company to run the full gamut,” said Oliver Brew, vp of professional liability at Boston-based Liberty Mutual Underwriters Inc. “It’s not just the IT staff that needs to worry about data security; it’s every employee’s responsibility to manage any data that they’re handling. It’s a cultural issue that should be led from senior management all the way down to the general workforce.”

One tactic experts suggested to enhance employees’ efforts to avoid cyber risks is incorporating adherence to company data protection policies in performance reviews, at least for key personnel if not all employees.

“Identify within your company who could cause the biggest problem or loss event if something goes wrong with their equipment or if something is lost,” said Rebecca Cady, director of risk management at the Washington-based Children’s National Medical Center. “Make sure that those individuals’ bosses are looking at whether they’re being diligent in protecting their data.”

Opinions

EDITORIAL

Pension plans under siege

It would be difficult not to be ambivalent about General Motors Co.'s pension "de-risking" strategy. As we report on page 1, GM's plan has two elements. First, tens of thousands of retirees who had been receiving a monthly benefit from GM's salaried pension plan—in some cases for decades—will instead receive a check for the same amount from Prudential Insurance Co. of America.

In addition, certain GM retirees will be given a one-time opportunity to opt for a lump-sum benefit to replace their monthly benefit. Those retirees who decline the offer will continue to receive their monthly benefit, only Prudential, not the GM pension plan, will be writing the check.

Those changes are the result of GM's decision to purchase a giant group annuity policy from Prudential. We certainly understand the logic driving GM's plan. Through its action, the company estimates it will remove \$26 billion in pension liabilities from its balance sheet.

No longer will GM have to worry, for example, about interest rate changes and how those changes will affect the amount of contributions it has to make to the plan. Nor will it have to be concerned about longevity risk—that is, if retirees live longer than expected and how much that would cost GM in terms of increased contributions to its pension plan.

And, of course, GM, as its executives have said, will be more able to focus on core business without being distracted by pension plan-related issues, such as plan administration.

We absolutely understand GM's motives driving its strategy, and we are impressed that an insurer has the resources to handle this huge transaction.

That said, the transaction is yet another example of how the nation's once-robust employment-based defined benefit plan system is withering away. It speaks volumes that GM is willing to pay what it estimates to be between \$3.5 billion and \$4.5 billion in transaction-related expenses—principally boosting plan funding and purchasing the group annuity—before turning the obligations over to Prudential rather than continuing the plan.

Federal pension regulators and lawmakers should take note and take a look at what they can do so other employers that want to continue their plans do not find that the costs and risks of maintaining a plan do not exceed the cost of folding it.

LETTERS

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SCHILLERSTROM



COMMENTARY

Varied health care rulings possible

One of the biggest guessing games in the benefits community right now is when the Supreme Court will hand down its decision regarding the constitutionality of the health care reform law.

Earlier this month, for example, a rumor took off that a high court decision was imminent.

One can understand the speculation. The decision handed down by the justices will be hugely important. I'm hard pressed to think of any ruling in recent years that could affect so many people and organizations as this one.

That said, does anyone think that the decision—unlike so many other Supreme Court rulings that have ended uncertainty—will be the final word on the Patient Protection and Affordable Care Act?

Hardly. If the entire law is found unconstitutional, that will set in motion a big range of issues that regulators and legislators will have to confront. Take the issue of a health care reform law provision—one of the more popular ones—that requires employers to extend coverage to employees' adult children up to age 26.

If the law were to be struck down, does that mean the coverage employers have been providing to employees' older children since the age 26 mandate took effect last year would be retroactively taxable?

And if that was the case, just think of the huge administrative burden on employers in sending out revised W-2 wage and income statements, as

they would have to calculate how much employees would owe in taxes.

Legislators in one fell swoop could nip that problem in the bud by passing legislation to make clear that no taxes would be due in that situation. But in today's highly partisan political environment where lawmakers can't agree on much of anything, fast resolution of that issue is no sure bet.

And what if just the law's individual mandate is overturned? That, too, would seem to be a natural trigger for congressional action. If individuals could obtain coverage anytime, such as after they were diagnosed with an illness, wouldn't that lead to massive adverse selection, putting into doubt whether insurers could provide coverage to the uninsured and others in state health insurance exchanges the law authorizes?


And what if the entire law passed constitutional muster? That would not be the end of the debate and controversy over the health care reform law. Republican presidential candidate Mitt Romney, for example, has pledged that if elected one of his first actions as president would be to seek repeal of the health care reform law.

In sum, to paraphrase a famous quote of Winston Churchill's, the Supreme Court ruling may be the end of the beginning regarding the debate and future of the health care reform law, but it is far from the end.

Contact: jgeisel@businessinsurance.com



JERRY GEISEL
EDITOR-AT-LARGE



HIGHER RISKS HIGHER RATES

*Product liability market in flux;
loss histories, expanding capacity
lead to spread of rate increases*

By JUDY GREENWALD

Pricing in the product liability market is a mixed picture, with rate changes depending on loss history and plentiful capacity limiting increases.

"It's a market in transition right now," said Vince Gaffigan, St. Louis-based senior vp, director of risk management for Lockton Cos. L.L.C. "No one is getting decreases" for product liability business.

Mr. Gaffigan said less risky products probably are seeing rate increases of 5% to 8%. For the riskier class, "you're seeing higher single-digit, low double-digit increases," he said.

William Milaschewski, director of risk management for Boston-based Cabot Corp., said at the fine particle manufacturer's latest renewal in October, the market looked like it could be in "the beginning period of transition, and that's probably still going on at this point."

"Part of it depends on what your loss experience is," said Linda Pirlot, Walnut Creek, Calif.-based assistant risk manager for Del Monte Corp. "If you don't have a frequency problem or a severity problem," rate hikes are "not going to be more than 5% or so."

See **MARKET** next page

Product
Liability

SPOTLIGHT

**IMPORTS CAN ADD
LIABILITY ISSUES
FOR U.S. FIRMS**

PAGE 11

**RISK MANAGEMENT
KEY COMPONENT
OF FOOD SAFETY**

PAGE 12

Market: Product liability sees spread of pricing

CONTINUED FROM PREVIOUS PAGE

Robert J. Lala Jr., Chicago-based senior vp, primary casualty, for Liberty International Underwriters, a unit of Liberty Mutual Group Inc., said some of the product liability business that was written by the standard market "is now making its way back to the surplus lines market.

"As often happens when premiums start to increase, insureds look to carrying higher retentions," he said. "Surplus lines insurers tend to like higher attachment points anyway."

He said LIU rate increases have been 5% to 10%.

"It's obvious that the market has kind of bottomed out and (insurers) had to increase prices," Mr. Lala said.

Still, there is "a lot of surplus in the market, which is helping to hold the prices down," Mr. Gaffigan said.

Mike Stankard, Detroit-based managing director and industry and materials practice leader for Aon P.L.C. and its branded automotive practice leader, said although he is seeing insurers trying to raise rates, it is "being offset by so much capacity and so many alternative markets, I think it's going to be very difficult" to raise rates except for troubled accounts.

In addition, "there are strategies that brokers are using to minimize rate increases," such as having four insurers split \$100 million in capacity, Mr. Gaffigan said.

One oft-cited factor driving increased rates in the product liability market is legal costs.

Bob Nevins, Boston-based vp of product liability at Lexington Insurance Co., said legal expenses continue to escalate, so rate increases are necessary from a profitability standpoint.

"You're getting higher verdicts. You've got a very, very aggressive plaintiffs' bar, and there seems to be a new theory at least every day as to why manufacturers would be liable for an accident or injury," said Peter Dion, Chicago-based director-product liability for Zurich Services Corp. "And you're seeing that reflected in settlements going up, and jury verdicts going up."

"The cost of health care and the medical for the injured parties have all escalated" while rates have decreased for the past six years, said Mr. Lala.

"Now we're beginning that walk up the hill to get the premium commensurate with what the losses will be," he said.

"As rates creep up," said Mr. Gaffigan, markets that did not want "to chase pricing to the bottom" are starting to show more interest, thus increasing capacity.

With loss experience deteriorating, Lexington looks for at least 10 years of data to get a better picture of the account's experience. Product liability is long-tail insurance, so five to six years of loss experience does not give an underwriter

sufficient information to set rates, Mr. Nevins said.

With greater underwriter scrutiny of such risks, "capacity's not being given away for those that don't deserve it," said Mr. Milaschewski.

Where buyers needed to make their submissions 90 days in advance, they must now be submitted up to 120 days beforehand because insurers are asking more questions, making more documentation requests and probably asking for more meetings with their underwriters, Mr. Gaffigan said.

In addition, "there's a greater awareness on the part of buyers" who now "may be looking for higher limits," Mr. Gaffigan said.

Mr. Gaffigan said particularly for consumer-oriented products, the big retailers are "starting to take a sharper look" at manufacturing quality assurance and compliance practices.

Large retailers are starting to place "a greater emphasis on mak-

'As often happens when premiums start to increase, insureds look to carrying higher retentions. Surplus lines insurers tend to like higher attachment points anyway.'

Robert J. Lala Jr., Liberty International Underwriters

ing sure the people who supply their stores have adequate limits and adequate coverage and, more importantly, are taking the right steps in the manufacturing process to protect the consumer," he said.

Pamela Ferrandino, New York-based casualty practice leader for Willis North America, pointed in particular to produce growers and said large chains are asking growers to purchase product liability insurance.

Large national chains are "looking to transfer the risk they would assume from selling the products as far down as they can," because they "don't want to assume the liability for selling" them, she said.

The 2011 Food Safety Modernization Act also is affecting the market, said Mr. Dion. That law, a reaction to food recalls in 2009 and 2010, "is probably the most comprehensive food safety law enacted in the past 50 years," he said.

The legislation's provisions include calling on food importers to certify that their supplies are safe and the hiring of 4,000 Food and Drug Administration inspectors to inspect foreign and domestic facilities, he said.



U.S. grocery store chains are 'a very clear driver in the marketplace right now.' Many of the chain grocers 'are demanding evidence of recall coverage' from their suppliers.

Peter Dion, Zurich Services Corp.

Food sector leading demand for product recall coverage

Emerging from the shadow of product liability coverage, growing usage by the food and beverages sector is expected to be among factors increasing demand for product recall insurance, observers say.

Product recall insurance can cover many expenses related to recalling products, including loss of business income.

For example, the RecallResponse policy offered by Boston-based Lexington Insurance Co. includes costs associated with notifying customers of a produce recall as well as shipping, disposal, repairing, replacing or providing refunds for recalled products. Expenses associated with extra warehousing and personnel to support a recall can be insured as an endorsement.

"It covers the full balance sheet exposure that a company would suffer if they had an insured event, so we characterize this coverage as being a balance sheet protection," said Ian Harrison, a partner at Lockton Cos. L.L.P., a London unit of Lockton Cos. L.L.C.

Mr. Harrison said the market's largest segment, food and beverages, has about \$350 million in annual premiums. Observers estimate food and beverages account for about 75% of the product recall market, while consumer goods and automobile parts are growing segments of the business.

A major reason for product recall's relatively small takeup compared with product liability insurance is that it took off only after the 1982 Tylenol poisonings, while product liability coverage has been in existence for many decades. Other reasons could include a lack of understanding of the coverage, that it is relatively expensive as well as firms' confidence in their internal controls and ability to control the exposure, experts say.

The latter, though, "may be misplaced because a recall can occur because of something happening outside the company's control," such as an outsourced part of the manufacturing process, said Louis Lubrano, New York-based senior vp of global crisis management for Liberty International Underwriters, a unit of Liberty Mutual Group Inc.

Linda Pirlot, Walnut Creek, Calif.-based assistant risk manager for Del Monte Corp., which has this coverage, said, "It's a cost-benefit analysis, where some companies just don't

realize the amount of money it can cost to recall a product. They also don't realize what kind of market clout" major retailers have. "They can demand you take a product off their shelves and reformulate it without there being an official recall."

U.S. grocery store chains are "a very clear driver in the marketplace right now," said Peter Dion, Chicago-based director-product liability for Zurich Services Corp. Many of the chain grocers "are demanding evidence of recall coverage" from their suppliers, he said.

Bob Nevins, Boston-based vp of product liability for Lexington, said the coverage is particularly important for small- to medium-size companies because large companies generally take sizable retentions and have sophisticated quality management programs.

David Pugson, London-based senior vp of Willis North America's casualty practice, predicted the market will grow as the coverage develops for sectors outside food and beverages.

Mr. Lubrano estimates there are about 15 markets that write the coverage, including Lloyd's of London syndicates. Several insurers have come into the market recently, and more are interested in doing so "because they see this as an area where there's less competition for business."

"I think that as product recall becomes a more necessary coverage for various kinds of insureds to carry, we'll see more carriers offering the coverage," said Lori Hunter, executive vp at Los Angeles-based Worldwide Facilities Inc., a wholesale broker and managing general agency.

"Part of the problem now is not many underwriters have expertise, so there's not a lot of intellectual capital out there" in the market, she said.

Mr. Pugson said many buyers purchase capacity of \$10 million to \$20 million. Lexington, for instance, offers limits up to \$10 million in its RecallResponse policy, before an endorsement.

Bernie Steves, Chicago-based managing director of Aon Risk Solutions' crisis management team, said capacity up to \$100 million can be pulled together from several sources, "but a lot of that depends on the types of products involved," including whether it is safety-critical and the type of coverage sought.

—By Judy Greenwald

Foreign imports can create added liability for U.S. firms

Overseas suppliers often reduce costs, but add trouble

By **MATT DUNNING**

More U.S. manufacturers and retailers are trying to reduce costs by partnering with foreign suppliers, but experts say just one recall or significant injury claim could wipe out the financial benefits of importing raw materials, components or finished goods from overseas.

"If you're buying and incorporating a foreign product and it fails, one of the biggest problems you run into is recovering losses from the foreign manufacturer," said William Shelley, chair of Cozen O'Connor P.C.'s global insurance group in Philadelphia.

Unfortunately, experts say, many U.S. companies fail to perform the recommended due diligence to ensure that a foreign supplier has adequate finances and

sufficient local product liability insurance to respond to claims brought in the United States and abroad.

"There are a lot of companies, especially in the mid-sized range, who don't have the resources to fully vet some of their foreign partners," said Anthony Upshaw, a Miami-based partner at McDermott Will & Emery L.L.P. "Materials or products might be cheaper from a foreign location, but not having the opportunity to locate someone there full time or at least visit on a regular basis can create a big risk for a company."

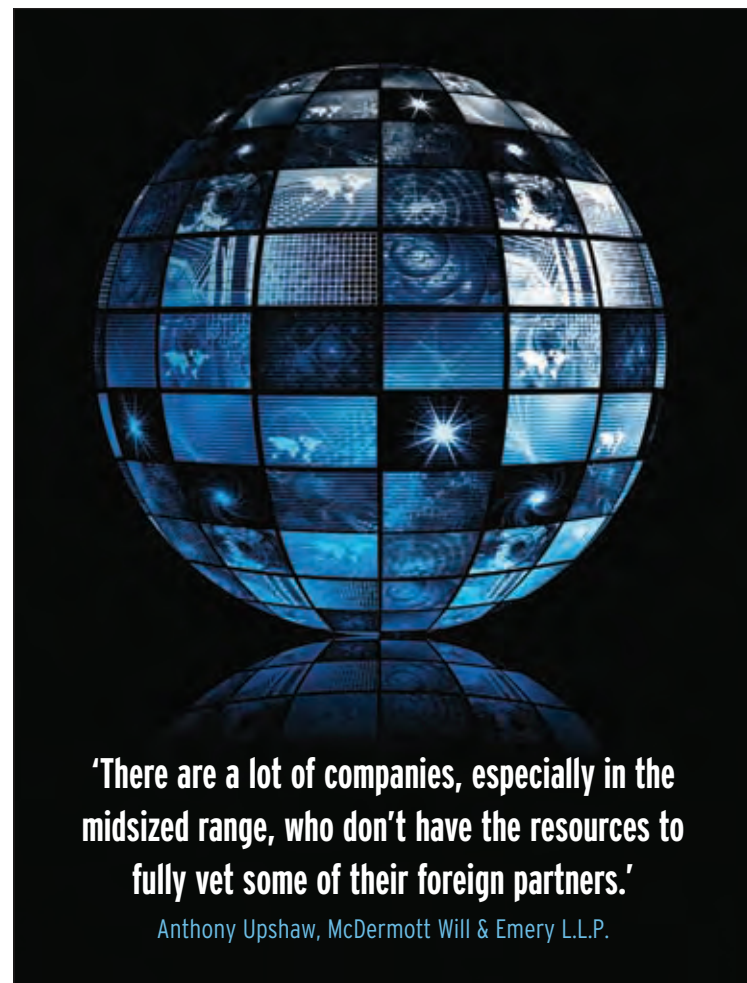
If not limited by its own size, a U.S.-based importer's efforts to obtain loss recovery assurance from overseas suppliers could be frustrated by its foreign partners' size or location, experts said. Many smaller foreign suppliers may not be able to provide detailed accounting information to demonstrate long-term financial solvency or, if they even have the coverage, product liability documentation beyond a simple

proof of insurance.

Additionally, corporate laws can differ greatly by nation, particularly those governing product-related liability. Even if a foreign supplier is determined to be the source of a defective or contaminated product, U.S.-based firms may receive little if any help from overseas governments in recovering losses attributable to a supplier's product.

"If it's a fairly small supplier, for instance, and they cause a really major problem for a company here in the United States, the sad reality is that they could just elect to close their doors if the claims are going to bankrupt them," said Dave Skiljan, a Cleveland-based vp and casualty practice leader at Hylant Group Inc. "In some countries, you can complain all you want to the local government, but they're not likely to do anything about it."

As more U.S. companies turn to foreign suppliers, experts said the push for tighter scrutiny of loss recovery protections could be less



'There are a lot of companies, especially in the mid-sized range, who don't have the resources to fully vet some of their foreign partners.'

Anthony Upshaw, McDermott Will & Emery L.L.P.

voluntary and more of a mandate from domestic insurers as a condition of coverage.

"You could have an insurer say they want to know who your for-

ign suppliers are and what their degree of reliability is," Mr. Shelley said. "We haven't seen too

See **IMPORTS** next page



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Imports: Foreign supplies can increase liabilities

CONTINUED FROM PREVIOUS PAGE

much of that yet, but I think as globalization continues, you're going to see it more."

One popular method among a growing number of U.S.-based firms of ensuring some measure of protection is through contractual agreements. U.S. companies with enough leverage over their prospective foreign partners have had some success requiring certain product liability insurance limits, terms and conditions that a supplier otherwise would be unlikely to purchase.

"Local insurers and insurance products vary greatly from country to country and may not include things that we would typically see in U.S. like additional insured provisions and waivers of subrogation," said Michael Rodgers, New York-based senior vp and international casualty practice leader at Marsh Inc.

In addition to comparatively low limits, overseas product liability policies often include certain jurisdictional exclusions—many policies specifically exclude claims made in the United States, if not all outside nations—that can be addressed through contractual agreements. Some firms also have been able to mandate through contracts coverage for brand and reputational harm, experts said.

"You really have to do that on

a country-by-country basis because markets can differ greatly even within the same region," Mr. Rodgers said.

In cases where adequate insurance is not available in a supplier's local market, U.S.-based firms can establish domestically written insurance programs for their foreign partners and require

'You might get a supplier that's a great partner and you might not, but you're not going to know that unless you audit the company and the manufacturing process.'

Bill Harrison, Marsh Inc.

participation as a condition of their business contract.

"Often, our clients in the retail and manufacturing sectors are able to get very low premium for their own product liability policy because they have such an effective and tightly controlled risk transfer program," said Pam Ferrandino, New York-based executive vp and casualty practice co-

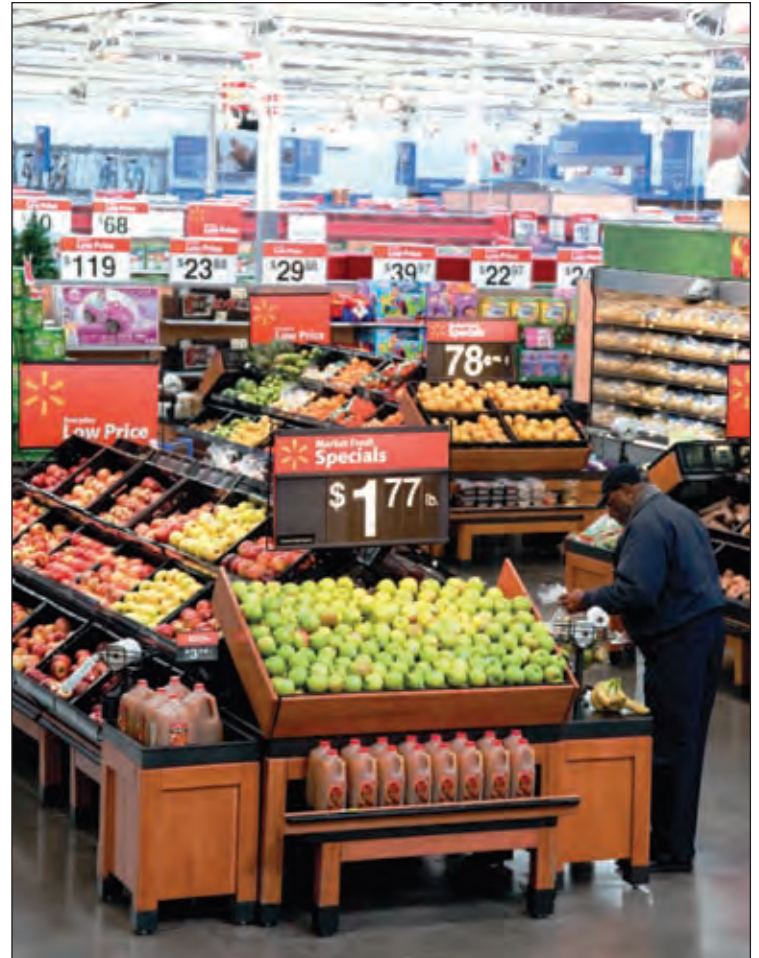
leader for Willis North America Inc. "While they still stand the risk of being named as part of a product liability claim, a vendor program is one way for companies to obtain sufficient and valid insurance and indemnification."

However, some experts warned that overseas provider insurance programs can be difficult to place due to the kinds of overseas firms they attract.

"The larger vendors and suppliers are able to meet the contractual requirements on their own," Mr. Rodgers said. "So you end up with the smaller or higher-risk suppliers being the only vendors willing to participate in the program."

Even with a watertight contractual risk transfer agreement in place, a company based in the United States could still be forced into litigation with a foreign supplier if it refuses to honor the contract when a claim arises. Success in those cases would depend largely on the nature of the supplier, its insurer and its country, making advance evaluation of potential overseas partners all the more crucial, experts said.

"You might get a supplier that's a great partner and you might not, but you're not going to know that unless you audit the company and the manufacturing process," said Bill Harrison, a Princeton, N.J.-based product liability practice leader at Marsh Inc. "If you're not willing to do that, you better manufacture the product yourself in a plant that you can monitor."



AP PHOTO

Wal-Mart says it uses an independent, unbiased approach for auditing suppliers to ensure that they take food safety seriously.

Risk management key to food safety

Hazard analysis, risk-based prevention stressed in new law

By ROSEANNE WHITE GEISEL

While businesses await regulations for last year's Food Safety Modernization Act that gives the Food and Drug Administration the authority to order recalls, experts advise companies in the food industry to enhance their risk management efforts now.

"A key focus of the new law is hazard analysis and risk-based preventive controls," said Leslie Krasny, a San Francisco-based partner with law firm Keller & Heckman L.L.P.'s food and drug practice.

An FDA fact sheet explains that the FSMA requires food-related businesses "to evaluate the hazards in their operations, implement and monitor effective measures to prevent contamination, and have a plan in place to take any corrective actions that are necessary."

The FDA is required to establish "science-based" standards for the safe production and harvest of produce to minimize the risk of foodborne illnesses or death. The law also gives the FDA the authority to order food recalls (see chart, page 13) rather than just advising companies to do so.

No date has been set for release of the rules.

Despite enactment last year of

the FSMA, it does not introduce an entirely new system for the food industry, said food microbiologist James S. Dickson, a professor in the animal science department of Iowa State University in Ames.

The FDA has reviewed what has been learned since the seven risk management principles of the Hazard Analysis & Critical Control Point system became the standard 15 years ago, Mr. Dickson said. Those standards have been mandatory only for meat, juice and seafood, but most of the industry has implemented them voluntarily, experts say.

With the focus on prevention rather than just responding to foodborne illness outbreaks, the law "places primary responsibility on the industry. These highly technical risk assessments and evaluations of preventive controls require scientific experts," said Ms. Krasny, who works with food industry companies on regulatory compliance and liability exposure issues. Companies must make sure they have such experts on board, she said.

Risk assessment, analysis and prevention should be hallmarks of food industry operations, according to Mr. Dickson. "If I had a brand reputation to protect or a percentage of the market to hang on to and grow, I wouldn't stop solely at what the regulations are," he said.

See **FOOD** next page

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But, he noted, even the experts can't eliminate risk. "Somehow there's got to be a balance between the regulatory side, the production side and the consumer side," Mr. Dickson said. When dealing with produce and animal products, "zero risk is simply not attainable."

For that reason, "the main thing a risk manager should be looking at is things they can control" when identifying a company's potential liability exposure, said William Marler, managing partner of Seattle-based Marler Clark L.L.P., which represents victims of foodborne illnesses. "Come up with a strategy to make sure your suppliers care about food safety."

Wal-Mart Stores Inc. says it has done just that.

"Wal-Mart was the first U.S.-based grocery chain to require our suppliers to achieve factory certification using one of the Global Food Safety Initiative-benchmarked standards," a spokeswoman for the Bentonville, Ark.-based company said in an email. "The traditional way of auditing suppliers was simply not meeting our expectations. We wanted an independent, unbiased approach for auditors to ensure our suppliers take food safety as seriously as we do. We must keep our suppliers and auditors accountable, so we can ensure our customers are getting safe food."

A company can protect its reputation and brands by following these steps, Mr. Marler said. "Arm yourself with good, current information. Be proactive. Make food safety part of everything you do. Treat customers with respect."

He also suggests that food handlers be well trained, certified and have appropriate vaccinations.

In addition to identifying risks and developing and implementing a risk management plan, food industry companies must have sufficient insurance coverage and "make sure the policy provides the scope of coverage they want," said Ms. Krasny. "Subtle differences in wording can have significant legal implications," she said.

For example, if a company's recall turns out to be unnecessary based on subsequent information, some recall policies will not cover such losses. Under other policies, a reasonable belief that a recall was warranted would trigger the coverage, she said.

"Risk managers really need to pay attention to past foodborne illnesses to see which companies have been insured enough," Mr. Marler said. "Then they should compare their risk profile to cases they've seen" to estimate the amount of coverage that is warranted.

Before signing an insurance contract, risk managers should make sure that the insurer will provide defense counsel with experience in food safety law, Mr. Marler said.

In addition to a food firm's own insurance coverage, "Make sure you are a named additional insured in your suppliers' insurance contracts," Mr. Marler said.

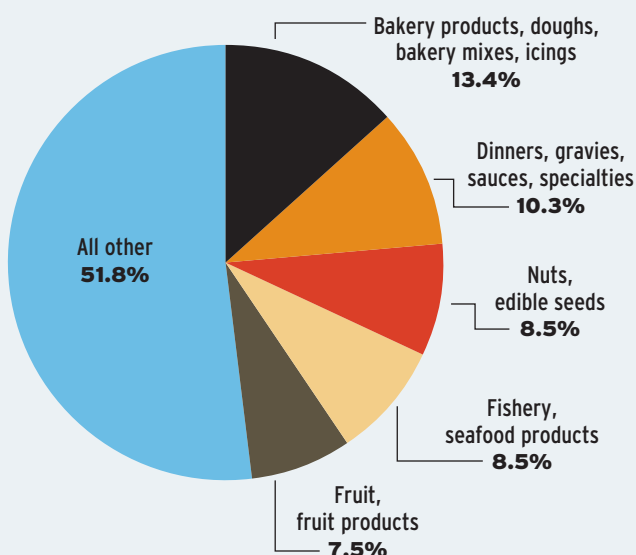
Mr. Dickson, who is in charge of Iowa State's Food Safety Consortium, a research partnership including the University of Arkansas and Kansas State University, said much has been learned from foodborne illness outbreaks and improvements have been made.

"When the big outbreak of contaminated spinach happened in 2006, that was a big leap" in the food industry's commitment to tracking the sources and destinations of their products. "Incidents spur a lot of research in the industry," Mr. Dickson said.

FOOD RECALLS

Five categories accounted for nearly half of all recalls of foods regulated by the U.S. Food and Drug Administration from 2005 through 2009.

PERCENTAGE OF ALL RECALLS BY CATEGORY



Source: Congressional Research Service

Products & Services

Willis updates D&O dictionary

NEW YORK—Willis North America has published a new version of its Directors and Officers Liability Insurance Dictionary, the unit of Willis Group Holdings P.L.C. announced in a statement.

The free edition contains more than 100 terms, with their general context and relevance in coverage discussions. The dictionary also includes updates to the entries about sections 11, 12 and 15 of the U.S. Securities and Exchange Act of 1934 that deal with security offerings.

The revision was made after changes in litigation concerning executives and the ensuing changes to D&O coverage.

"In discussions regarding D&O insurance, we invariably mingle the language of law, finance and insurance, all otherwise separate and distinct disciplines with their own unique concepts and terms of usage," said Ann Longmore, executive vp of FINEX North America, Willis' executive risks practice, in a statement. "This makes every conversation potentially full of pitfalls for unwary individuals knowledgeable in their own areas of expertise, but not so much when addressing insurance matters."

Separate U.S. and U.K. versions are available.

The dictionary can be downloaded at blog.willis.com/downloads/d-o-dictionary.

Verisk program offers aerial property inspection

JERSEY CITY, N.J.—Verisk Insurance Solutions has introduced a product that allows underwriters to inspect properties from their desktops, the Verisk Analytics Inc. unit said.

As a part of its 360Value program, 360Virtual Inspection uses high-quality aerial imagery to identify properties and building characteristics.

The program gives up to seven different views, so underwriters can look at building characteristics such as style, roof shape, materials and exterior wall type. Also available are measuring tools to assess additional information, such as the property's square footage.

The program can be used to analyze properties for liability hazards such as pools, trampolines and dog kennels, as well as catastrophe hazards such as setback from brush lines in wildfire zones or nearness to the ocean for flood or hurricane risk.

"360Virtual Inspection can significantly help property insurers streamline the risk assessment process," Scott Amussen, assistant vp and 360Value product manager, said in a statement. "On a per-property basis, the cost of using

to serving the needs of the rental business marketplace."

For more information, contact Mr. Cecil at 603-334-3084 or at Gerald.Cecil@willis.com.

Marsh offers protection from cloud failures

NEW YORK—As more companies turn to cloud computing to manage their data storage needs, Marsh Inc. announced the release of an endorsement product designed to shield policyholders from the financial damage cloud system failures can inflict.

Because most cloud provider service agreements do not offer much in the way of indemnification, companies using cloud data management systems often have little chance of recovering financial losses stemming from a service interruption.

Marsh's CloudProtect protects companies from first-party revenue losses and extra expenses in the event that its cloud services provider suffers a cyber attack, slips into insolvency or is otherwise prevented from rendering contracted services, according to the New York-based broker.

The new product, developed in conjunction with "leading cyber risk insurers," also covers a policyholder's procurement costs for new cloud services contracts, the company's statement said.

"Cloud computing enables much more efficient computing by centralizing storage, memory, processing and bandwidth, but it also can lead to network interruptions and lost income should the cloud go down," Robert Parisi, network security and privacy practice leader for Marsh, said in the statement. "Marsh's CloudProtect solution helps to mitigate this risk by offering additional protections that are not adequately addressed by traditional insurance policies."

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Perspectives

The number of U.S. securities lawsuits involving reverse mergers of Chinese companies into U.S. shell companies has made headlines in the past couple of years. And with more Chinese companies listing their securities on U.S. exchanges, the potential for more lawsuits has grown. Mark Hersh, a partner at Reed Smith L.L.P., discusses what kind of insurance coverage directors and officers of Chinese companies should look for.

D&O coverage important for listed Chinese firms

By Mark S. Hersh

China's rise as an economic powerhouse has resulted in a large increase in the number of Chinese companies listing their securities on U.S. exchanges, often accomplished by reverse mergers, in which the Chinese company merges into a publicly traded U.S. shell company.

Not surprisingly, this has led to a rise in U.S. securities lawsuits—as well as SEC investigations and enforcement actions—against Chinese companies. Particularly in light of this trend, it is important that Chinese companies listing in the U.S. have an adequate directors and officers liability insurance program in place to cover the increased potential U.S. liabilities of their directors and officers and the company itself.

D&O insurance gained a lot of attention after corporate scandals like Enron Corp. and Worldcom Inc., as well as the passage of the Sarbanes-Oxley Act of 2002. It covers loss—typically defense costs, settlements and judgments—resulting from lawsuits and other claims made during the policy period.

Though D&O policies originally provided coverage just for claims against directors and officers, many companies now also purchase entity coverage, which provides coverage to the company itself, typically just for securities claims. This entity coverage is part of the D&O policy and shares policy limits with the traditional Side A and Side B coverage. Side A coverage covers the directors and officers themselves, and it applies only when the company is not indemnifying them. Side B coverage covers the company, essentially reimbursing it to the extent it must indemnify its directors and officers in connection with claims made against them. Because companies usually indemnify their



Mr. Hersh

Chinese companies with securities listed in the United States should pay close attention to their D&O insurance program to ensure that it provides adequate protection in light of the potential liabilities.

officers and directors for loss, Side B coverage is more common than Side A coverage.

However, Side A coverage is critically important to protecting the personal assets of directors and officers, serving as a backup to corporate indemnification where it is not available. Most commonly, this occurs where a derivative suit is filed on behalf of the company against its directors or officers, in which case the company may not be allowed to fund a settlement or judgment because essentially it would be paying itself; or the company is in bankruptcy and unable to indem-

nify its directors and officers.

Bankruptcy can be a nightmare scenario for directors and officers; because they are not being indemnified by the company, there is a higher likelihood of claims against them related to the company's financial distress, and there is a risk that the D&O policy proceeds will be deemed an asset of the bankrupt estate and available to them only by court order. In part for this reason, many companies supplement their traditional D&O policies with stand-alone or difference-in-conditions Side A policies, which will not be deemed an asset of the bankrupt estate.

Chinese companies with securities listed in the United States should pay close attention to their D&O insurance program to ensure that it provides adequate protection in light of the potential liabilities. In the United States, D&O insurance is sold through brokers, who put together programs consisting of primary and excess insurance. Some U.S. companies also retain policyholder coverage counsel to review their policies, assess their adequacy and make suggestions for improvements. For a Chinese company, which is less likely to have a risk manager experienced with purchasing D&O insurance covering U.S. liabilities, the assistance of a good broker is essential, and the assistance of coverage counsel may be prudent as well.

The D&O policies usually are placed or renewed on a yearly basis, at which time the policyholder has the opportunity to negotiate some of the policy's key terms. Because coverage may depend on the exact policy language used—even the placement of a comma can make a difference—this is a very important opportunity for companies to secure the best coverage possible, or at least the best value for the level of coverage desired.

There are numerous important considerations in buying a D&O insurance policy—too many to

discuss all of them here—but a few of the key ones are:

- The amount of coverage, also known as the policy limits of liability. Chinese companies should understand that in the United States, defense costs alone (i.e. legal fees) can run into the tens of millions of dollars if the company is facing a major lawsuit, and then it may cost tens of millions more to settle a case. Public companies with very large market caps typically will have at least \$100 million in coverage. Lehman Brothers Holdings Inc., for example, had \$250 million in D&O insurance in 2008, the year that it filed for bankruptcy. Such large insurance programs are structured as a “tower,” consisting of a primary policy with multiple excess policies stacked on top of it. Insurance brokers can help a company decide the appropriate level of coverage.

- As stated above, companies must decide whether to purchase stand-alone or difference-in-condition Side A policies to give their directors and officers extra protection in the event that the policy limits are consumed by the company or the company goes into bankruptcy. Some Side A policies are also nonrescindable, which means that the insurance carrier may not rescind or nullify the policy even if the company made misrepresentations in procuring the policy. Some companies also purchase a separate policy covering only independent directors, who are likely to be the least culpable actors in the event of claims alleging corporate wrongdoing, but who may be concerned about the more culpable actors or the company consuming all of the policy proceeds.

- It is particularly important for Chinese companies to review the Side A insurance agreement language carefully to ensure that it is in sync with the company's indemnification policies and that the company's directors and officers get maximum protection.

- What kinds of claims are covered is a key issue and will depend on the policy's definition of “claim.” Lawsuits always fall within the definition of “claim” but government investigations may not. Yet investigations can cost a

Continued on next page

CONTINUED FROM PREVIOUS PAGE

company many millions of dollars in legal fees. If a Chinese company wants coverage for investigations by the SEC or other government agencies, it should negotiate for a broad definition of claim that explicitly includes formal and informal investigations.

■ All D&O insurance policies contain many policy exclusions, some of which may be negotiable at the time the policy is placed or renewed. One key exclusion is commonly called the “fraud” exclusion. Because many lawsuits contain allegations of fraud that are never proven—because the case settles or the defendant prevails—it is very important that the policyholder negotiate for language that allows the exclusion to be triggered only where there is a judgment or other final adjudication of fraud. Most insurers will agree to this, but some may do so only if asked.

■ When a policy is first placed, and sometimes also upon renewal, the policyholder company will have to complete an application in which it provides information about itself and its business. If the company is publicly traded, its public securities filings will be considered incorporated into the application. Companies often are asked to represent that they are not aware of any facts or circumstances that could give rise to a claim. The application process is critical because any material misrepresentations in the application may be grounds for rescission of the policy, and under the laws of many U.S. states, no intent to deceive is necessary. A Chinese company unfamiliar with this process is potentially at risk and should seek guidance to help it complete the application accurately and in some cases to negotiate the most favorable application language.

Even after a D&O program is in place, a Chinese company unfamiliar with D&O insurance in the U.S. must exercise caution to ensure that it does not forfeit coverage. The main area of concern is the reporting of claims to the insurers, which can be a trap for the unwary. D&O policies have strict requirements for the prompt reporting of claims and, in many states, late reporting will forfeit coverage even where the insurer is not prejudiced. Reporting lawsuits is relatively easy, but a subpoena or a letter demanding money may also be a “claim,” and the failure to report it could cost the company millions in insurance coverage if a lawsuit follows. Chinese companies listed in the United States should be aware of these issues and may need assistance setting up internal protocols to ensure the prompt reporting of claims that may be covered by their D&O policies.

From negotiating the most favorable policy terms, to properly completing the policy application, to timely reporting of

claims, some level of sophistication is required to maximize the value of D&O insurance and to avoid mistakes that can reduce or jeopardize coverage. Chinese companies should seek professional advice regarding their U.S. D&O insurance program to ensure that it is adequate to cover the exposure they may face under U.S. law, and that they fully comply with its terms and conditions.

Mark Hersh is a partner at Reed Smith L.L.P. in Chicago and a deputy practice group leader of Reed Smith's insurance recovery group. He can be reached at 312-207-6427 or mhersh@reedsmith.com.



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State pension funds' reductions of cost-of-living adjustments have, so far, not been rejected by the courts, said Alicia H. Munnell, director of the Center for Retirement Research at Boston College.

State funds curb COLAs to relieve pension burden

Billions in savings achieved quicker than other strategies

By HAZEL BRADFORD

State pension plan executives and state legislatures increasingly are turning their attention to cost-of-living adjustments to pensions for current and future retirees as a way to get immediate and dramatic results in retirement program reforms.

Modifying COLAs is an immediate fix that keeps more money in the systems. Other changes, which include reduced benefits, increased employee contributions and switching to defined contribution or hybrid plans, might take years to show savings.

Just since 2009, 11 states changed COLAs for the pensions of current retirees, five changed them for current employees and five changed them for future hires, according to a new brief from the National Assn. of State Retirement Administrators.

COLA changes for current retiree benefits were made by the Arizona State Retirement System, Public Employees' Retirement Assn. of Colorado, Kansas Public Employees Retirement System, Maine Public Employees Retirement

System, Massachusetts State Employees Retirement System, Public Employees Retirement Assn. of Minnesota, Public School Retirement System of Missouri, New Jersey Division of Investment, Oklahoma Public Employees Retirement System, Employees' Retirement System of Rhode Island and South Dakota Retirement System.

COLA changes affecting the retirement benefits for current employees were made by the Florida Retirement System, Kansas public employees' plan, Maryland State Retirement & Pension System, Virginia Retirement System and Washington Public Employees' Retirement System.

Future hires' benefits were changed by the Employees' Retirement System of the State of Hawaii, State Employees' Retirement System of Illinois, Kansas public employees plan, State of Michigan Retirement Systems and Utah State Retirement Systems.

Billions in relief

For some states that have curbed their COLAs, including Colorado and South Dakota, it has brought billions of dollars in much-needed relief to their state retirement systems and avoided more painful choices on the investment side. "It can put the plan in a more positive cash flow

near term, and with less money flowing out, there is more money to be invested," said Ron Snell, senior fellow at the National Conference of State Legislatures in Denver.

The saving that comes from changing COLAs depends on how dramatic the changes are, and how long the cuts will last. The \$10.6 billion Augusta-based Maine retirement system canceled its COLA for three years so far, while the \$58.8 billion Olympia-based Washington state fund eliminated it for some employees' retirement benefits and limited it for others. Virginia will cap COLA increases in retirement benefits at 3% for non-vested participants and 5% for vested participants in the \$53.6 billion Richmond-based fund.

Several pension funds, including the \$6.5 billion Oklahoma City-based Oklahoma Public Employees and \$72.1 billion Trenton-based New Jersey Division of Investment, tie any resumption of COLAs to specific levels of pre-funding or investment returns. Some funds, like the \$6.9 billion Providence-based Rhode Island Employees, tie it to both.

"It's very tempting," said Alicia H. Munnell, director of the Center for Retirement Research at Boston College, in an interview. "You get a big reduction in your liability

immediately. There are very few (other) things you can do. I think that COLAs are vulnerable."

The concept of a COLA is straightforward, but the design is another matter. "We were impressed with the wide variety of them," said Keith Brainard, research director for NASRA in Georgetown, Texas, in an interview. NASRA identified a dozen basic COLA configurations, including adjustments that are automatic or provided ad hoc by a governing board. Some state and local governments base COLAs on a fixed rate, typically 3%, or the consumer price index, while others tie it all or in part to the investment performance or funding level of the plan.

And plan administrators are getting ever more creative, Mr. Brainard noted, with some applying COLAs to a limited portion of a retiree's annual benefit—for example, the first \$35,000—or making retirees wait longer for it. One variation pegged to investment returns involves the creation of a separate reserve account that is funded and distributed only when the main fund has excess earnings.

One of the richest COLAs, offered by 10 states, is an automatic 3% boost compounded on the accrued benefit. That can add 26% to a plan's benefits cost, according to an analysis by Gabriel Roeder Smith & Co., an actuarial and pension consulting firm. Even a modest 1% COLA can add 7% to total costs, according to the analysis.

That makes COLAs ripe for cost-cutting. That was the case in South Dakota, where a previously automatic 3.1% COLA that had to be prefunded accounted for 25% of present benefit costs. "That's \$2 billion that we knew were out there," said Robert A. Wylie, executive director/administrator of the \$8 billion South Dakota Retirement System, Pierre, in an interview. "It is a huge leverage on the overall cost of the plan, and people don't recognize that."

It helped that state statute required retirement system officials to make changes when the funding threshold fell below 80%. When that happened in 2010, they calculated that getting back to 80% would take \$400 million. They got three-fourths of the way by simply changing the COLA to 2.8% from 3.1%. "You can't get that kind of savings with other benefits," Mr. Wylie said. The fiscally conservative state didn't want to lower anyone's benefit, "but we wanted to slow the growth," he said.

So far, the change "has worked out amazingly well," Mr. Wylie said. The plan went to 103% funded in the fiscal year ended June 30, 2011, from 88% in fiscal 2010 and 76% in fiscal 2009. He attributes 8% of that growth to investment performance, and 4%

from the COLA change, which also saved on opportunity costs by having more money to invest, he noted. "It's a compounding effect."

\$9 billion difference

Changing the COLA made a \$9 billion difference in Colorado, where the \$38 billion Denver-based retirement system made a lot of changes to benefits in recent years but not enough to forestall running out of money before the changes kicked in, said Meredith Williams, executive director of Colorado PERA. "We costed out every element of our benefits—work longer, pay more, receive less—and did a lot of 'what if' analysis. It became clear that it was essential to do something with the COLA. You cannot survive without adjusting the COLA."

Facing a drop below 40% funding would have also forced a more conservative investment approach, Mr. Williams noted. "If we had continued down the same path, we would have had to change the asset allocation."

The Colorado pension fund's COLA solution, which included replacing an automatic 3.5% increase with an initial one-year freeze and a subsequent 2% cap tied to investment returns for current retirees and employees' future retirement benefits, plus a 1% COLA for new employees, kept \$3 billion a year more in the fund since the change was made in 2010.

Spreading the pain around instead of singling out one group helps, noted South Dakota's Mr. Wylie. "COLA was an ideal place to do the change because it impacts everybody. That was very palatable."

COLA changes also are succeeding where other benefits changes have not—in court.

"I haven't seen any courts reject them," CRR's Ms. Munnell said. "You see the courts distinguish between core benefits and COLA. But you have to have a reason for doing it."

"We could demonstrate that we were unsustainable," Mr. Wylie said. "We had to do something within legal parameters, and we couldn't change basic benefits. The COLA was a different animal, because it had been changed up and down."

Just to be sure, system officials conducted a listening tour around the state to convince stakeholders and politicians that it was necessary. That didn't prevent a legal challenge, but like courts in other states, the COLA changes have been consistently upheld as necessary steps that don't violate benefit promises.

Hazel Bradford is a reporter at Pensions & Investments, a sister publication of Business Insurance.

'It's very tempting. You get a big reduction in your liability immediately. There are very few (other) things you can do. I think that COLAs are vulnerable.'

Alicia H. Munnell,
Center for Retirement Research at Boston College

UP COMINGS & GOINGS CLOSE

DAN NASH



NEW JOB TITLE: Chicago-based national health care practice group leader for Zurich North America.

PREVIOUS POSITION: Chicago-based regional vp for specialty products for Zurich North America.

LOOKING FORWARD TO: I am looking forward to getting out and meeting new brokers and customers.

CHALLENGES FACING INDUSTRY: The first challenge is what will happen with health care reform and how that will play out going forward. It looks like the dollar is shrinking going into the health care field...hospitals need to be more operationally efficient. Some of these systems can't go at it alone, so they are merging. That creates challenges because some systems operate differently.

INDUSTRY OUTLOOK: My outlook is change. If you look at how payment is coming through these days, it is no longer a volume-based operation, it will be valued based on the medical outcomes of patients.

FIRST EXPERIENCE IN JOB MARKET: My first job I was an underwriter for medical malpractice for doctors.

COLLEGE MAJOR: Economics and marketing.

ADVICE: Try to have as much fun as you can. Go meet people. Call them on the phone. Get away from the texting and the email. This is a people business.

OUTSIDE THE INDUSTRY, A DREAM JOB: To play left field or first base for the Chicago Cubs.

HOBBIES: Fishing and hiking.

FAVORITE BOOK: The book I couldn't put down was "The DaVinci Code" (by Dan Brown). I was intrigued. I had no idea where the story was going.

FAVORITE MEAL: Italian. Some type of pasta, salad and a glass of red wine.

ON A SATURDAY AFTERNOON: I am either practicing lacrosse or shooting baskets in the driveway with either one of my boys.

EMAIL OR PHONE, AND WHY: Phone. I like the personal connection in the relationship.

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PRIMA: Proving value

CONTINUED FROM PAGE 4

management effort.

"You cannot be everywhere at once," said Marilyn L. Rivers, director of risk and safety of the City of Saratoga Springs, N.Y. The strength of any risk management analysis relies on all of the people in the field, she said, adding, "They're all your eyes and ears out there that are helping you identify the strengths and the weaknesses."

Ms. Rivers chairs a 19-member multidisciplinary safety committee in Saratoga Springs that meets monthly. With such team efforts, risk management has been woven so tightly into the fabric of the city's organization "that there's not even a second thought about involving risk management" in various departments' plans, she said.

Panelist Betty P. Coulter, director of risk management and insurance, University of North Carolina at Charlotte, offered some suggestions for risk managers looking to build teams within their organizations. "The key thing about a team is find those who are engaged, those who want to make the workplace safer, those who want to go home the same way they came in, those who want to add value," she said.

When risk managers develop those team relationships, they can find out more about their organizations and begin to build trust, Ms. Coulter said. "What you find is you become so ingrained in your organization that you become invaluable," she said.

While risk managers often think about documents like annual reports when they think about communicating risk management's message and accomplishments, Ms. Hudgens said it's important to be aware of the value of the little messages risk management is sending every day. "These small messages...these messages probably do more to sell your program than any big document you put out," she said.

And when discussing risk management subjects with others in the organization or community, it's important to "keep it simple," some panelists noted.

"Speak in simple terms, avoid a lot of acronyms if you're able to do that," Ms. Coulter said. "And, of course, relationships matter. No matter who it is in your organization, make them feel valuable."

In another PRIMA conference session examining the human side of risk management, panelist Victoria Nolan, risk and benefits manager of Clean Water Services in Hillsboro, Ore., noted the importance of risk managers understanding and enhancing risk management's reputation in their organizations.

"It's important that you tap into knowing where you are in your organization," Ms. Nolan said. If risk management is viewed as an impediment, people will tune the department out, she said. It's far better in terms of accomplishing risk management's mis-

1,100 ATTEND PRIMA CONFERENCE

NASHVILLE, Tenn.—This year's 33rd annual conference of the Public Risk Management Assn. drew approximately 1,100 attendees to the Gaylord Opryland Hotel June 3-6 in Nashville, Tenn.

During the conference, Dan Hurley, senior director, risk management and safety at Norfolk, Va., Public Schools, was sworn in as PRIMA's president during the association's annual membership luncheon. Betty P. Coulter, director of risk management and insurance, University of North Carolina at Charlotte, was sworn in as PRIMA's president-elect. She will assume the PRIMA presidency in June 2013.

PRIMA's 34th annual conference is scheduled for June 2-5, 2013, in Tampa, Fla. For more information, visit PRIMA's website at www.primacentral.org.

sion to be viewed as helpful and resourceful "problem solvers."

"If people don't know what you

do, that's not a good thing," Ms. Nolan said. "You want to be in the main office if you can. You want to be where the hub of activity is."

Communication is an important place to start to enhance risk management's reputation in an organization, Ms. Nolan said, though it's important to be aware of differences in communication styles. "It's the communication, but it's also the style that you deliver the communications that can create problems for you," she said.

The conflict comes when one party's communications style is the opposite of the other party's, she said, so a risk manager wants to be assertive in communications while understanding other people's communications styles.

Another panelist in that session, Eva LaBonte, risk and benefits analyst with Clean Water Services, noted that strong risk management departments communicate their vision and goals; respond to problems and questions; involve employees as part of any risk assessment, loss prevention or implementation process; and care about employees as individuals.

And, she said, risk managers that invest in employee engagement see a higher ratio of workers willing to engage in safe work practices. "You want to make everyone a risk professional," Ms. LaBonte said. "You want people to find a way to use their natural concern for themselves to listen to what you have to say."

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Honor a 'special' one for Snap-on's Kugler

By **RODD ZOLKOS**

Daniel H. Kugler is deeply involved in sharing his risk management knowledge with others as a teacher, so to be recognized as the first individual award honoree in the Katie School of Insurance and Financial Services of Illinois State University's Midwestern Insurance Innovation and Leadership Awards & Hall of Fame is something special.

"I was surprised, pleasantly. To me it's a big deal," said Mr. Kugler, assistant treasurer-risk management at Snap-on Inc. in Kenosha, Wis. "To be the first one is kind of special."

In announcing its recognition of Mr. Kugler, who was *Business Insurance's* 2002 Risk Manager of the Year, the Katie School called him "an example of innovation and leadership in risk management and insurance, serving the next generation, from right here in the Midwest."

The award recognizes an individual "whose activities bring honor and dignity to risk management and insurance professionals working in the risk management and the insurance industry."

Mr. Kugler joined Snap-on in 1979 as a risk analyst and is responsible for directing the company's worldwide risk management activities as well as security and loss-prevention programs for the parent company and its subsidiaries. He also leads Snap-on's captive insurance operations.

Among risk management innovations that the Katie School cited in recognizing Mr. Kugler are his using Snap-on's captives, tapping technology to reduce workers compensation claims by quickly identifying areas that require intervention, and implementing a



Teaching is 'a nice hobby for me. I stink at golf. I don't do woodworking. I don't hunt or fish. So I look at this as my hobby.'

Daniel H. Kugler

more efficient claims administration process.

Mr. Kugler's involvement with risk management education includes frequent Katie School visits. He's twice been a Spencer Educational Foundation Risk Manager in Residence there and usually is on campus once or twice a year to teach a class.

Among other teaching activities, Mr. Kugler, who also serves on the board of the Risk & Insurance Management Society Inc., teaches risk management, managerial economics, international economics and sustainability at Concordia University Wisconsin.

Teaching, Mr. Kugler said, is "a nice hobby for me. I stink at golf. I don't do woodworking. I don't hunt or fish. So I look at this as my hobby."

Ryan: First laureate

CONTINUED FROM PAGE 3

lawyer or a banker and don't look carefully at the insurance industry."

"In the insurance industry, I have not seen hardworking, talented people made redundant," said Mr. Ryan. "It can happen in a particular company, but that talent is immediately grabbed up by others," he said. "If you become really good at something in the insurance industry, you should have lifelong employment."

Others in the industry hailed the choice of Mr. Ryan as this year's laureate.

"Pat Ryan's being named laureate by the Midwestern Insurance Hall of Fame is recognition of his vision for the value that risk management and HR consulting can provide clients," said Aon President and CEO Gregory Case in an email. "The impact of that vision, and Pat's desire to provide clients with distinctive products and services, transformed our industry and solidified his place as one of the true leaders in our field."

"Pat Ryan is an insightful leader whose many extraordinary efforts

have long energized and benefited this great industry," said Ken A. Crerar, president of the Washington-based Council of Insurance Agents & Brokers, in an email. "His entrepreneurial spirit and vision for the future are unmatched, and we congratulate him on this accomplishment."

Mr. Ryan's insurance career stretches to 1964, when he established Pat Ryan Associates, a small managing general agency that distributed specialty credit life insurance products to automobile dealers. Through a series of major acquisitions in the 1980s and 1990s—including Combined International Corp., Rollins Burdick Hunter Group Inc., Hudig-Langeveldt Group B.V., Frank B. Hall & Co. and Alexander & Alexander Services Inc.—Mr. Ryan built his agency into Aon Corp., the world's largest brokerage, according to *Business Insurance's* 2011 broker rankings.

Eighteen months after retiring from Aon in 2008, Mr. Ryan established Ryan Specialty, a holding company of managing general underwriters and managing general agencies that provide specialty insurance services to retail agents and brokers worldwide.

Looking back, Mr. Ryan said, "clearly, the landscape for providers of capital for risk,

providers of service, distribution has shifted. A lot of household names are no longer around, been absorbed through merger." He also noted the emergence of the Bermuda insurance market as a global player and changes with Lloyd's of London "going through hard times and coming back very strongly in the last decade" as significant developments.

He added that globalization of the brokerage industry—of which Aon is a beneficiary—also is significant, but said "what hasn't changed is just as important."

"Disintermediation hasn't occurred," he said. "Even though technology has become such an important part of the industry, the buyers need to still look somebody eyeball to eyeball and say, 'I want you to represent me, I trust you'll be there for me when I have a claim.'"

He said he doesn't foresee "dramatic consolidation" in the industry, but he sees more emphasis on specialization. "I think that will continue," he said, adding that the "financial supermarket strategies of the 1990s" basically didn't work. "People are moving toward what they're really good at, what specialties can they bring. I think there will be a lot more specialization, because the need for expertise has been very much in demand."

Young leader, organization, agency honors

Aside from its 2012 laureate and individual awards, the Katie School of Insurance and Financial Services of Illinois State University's Midwestern Insurance Innovation and Leadership Awards & Hall of Fame honored Jason A. Marion, vp of business development at AB Resources Inc., with its young leader award.

While a student at Illinois State University in Normal, Mr. Marion learned about life insurance and financial planning during an internship at Frankfort, Ill.-based AB Resources. He found that consumers and advisers misunderstood annu-

ities, prompting him to co-found AnnuityDecision.com, an independent website that provides comprehensive education on the subject.

The effort has been a success, reaching 45 nations and becoming a high-traffic site for consumers and advisers, according to the judges.

Organizations honored by the Midwestern Insurance Innovation and Leadership Awards were: **INSURANCE ORGANIZATION AWARD:** Appleton, Wis.-based MicroInsurance Centre and its founder and president, Michael J. McCord, were honored for the

organization's efforts to help people in 60 nations over 16 years to get insurance at a good value to protect their businesses and other assets.

INSURANCE AGENCY AWARD: The Financial Resource Network and the Cassara Clinic as well as Lou Cassara, chairman and CEO of the Cassara Clinic and president and CEO of the Financial Resource Network, for the Financial Resource Network's efforts to educate clients about wealth preservation and business planning strategies and for Cassara Clinic's professional development activities.

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Hines: Prices rise, but will trend last?

CONTINUED FROM PAGE 3

Matt Keeping, New York-based chief placement officer of Willis North America Inc., said insurers have worked to provide products for risks such as cyber liability and supply chain disruption. However, he said insurers have not yet been able to generate consistent offerings or enough capacity to fit client needs.

"They are individually responding well, but they're not coming together as a market," Mr. Keeping said.

He said he expects more demand for cyber liability and supply chain coverage. He also said he believes clients would be interested in insurance that would

protect against risks related to protests, such as those held during last month's NATO Summit in Chicago.

"You not only have an angry mob; it's who makes up that angry mob," Mr. Keeping said. "Actually, there's some pretty highly qualified people in those angry mobs; and if they get really angry, heaven knows what they can do by way of some form of cyber attack or something else around that space."

Insurers may be reluctant to introduce new products because they don't fully understand evolving risks or how to profitably price new lines, Mr. Motamed said.

"This is a business that, quite honestly when you price a prod-

uct, you don't know if you're going to make money or not," Mr. Motamed said. "So you're going to have a natural reluctance to jump in with lots of capacity as a market or as an underwriter if you don't know where that's going."

The annual Hines Symposium—honoring the late Harold H. Hines Jr., former president and CEO of Rollins Burdick Hunter Co., a predecessor of Aon Corp.—was presented by the Chicago chapter of the Risk & Insurance Management Society Inc. and *Business Insurance*.

Timothy J. Cunningham, a partner at Chicago-based OPTIS Partners L.L.C., moderated the panel.

IASA: Insurers face 'big data' opportunities, challenges

CONTINUED FROM PAGE 4

less than 9% of insurers are doing anything with big data," she said.

Chad Hersh, a partner at New York-based research and advisory services firm Novarica, said decades of legacy technology systems at many insurance companies have left them ill-suited to leverage big data.

Likewise, widespread deficiencies in data management means that the quality of the historical data insurers would use to populate today's analytic models may be wanting.

"The industry has decades of bad data that they can't rely upon to make critical business decisions," Mr. Hersh said. "They need to get better at handling 'little data' before they can move on to big data."

Ms. Smallwood agreed that accurate data is vital to allowing

insurers to make better use of analytics. "We are still worried about data quality," she said. "It's the industry's Achilles' heel."

Kimberly Harris-Ferrante, vp and distinguished analyst at Stamford, Conn.-based Gartner Inc., said dumping massive amounts of data into existing business processes with workers unable to make sense of it will ultimately slow productivity. However, the overwhelming similarities among processes at different insurance companies give insurance technology providers an opportunity to add strong ana-

lytic functionality to existing products, obviating the need for insurers to devise analytic models from scratch.

"Vendors need to step up and offer out-of-the-box models," she said.

Moving to the cloud

The insurance industry is in a similar holding pattern in adopting cloud computing, according to Ms. Harris-Ferrante.

Although the benefits of cloud computing, such as lower capital costs and rapid deployment, likely appeal to insurance chief informa-

tion officers, the relative lack of applications tailored to the industry is slowing adoption, she said.

"The utopia that we all have been waiting for is to move core system applications to the cloud," Ms. Harris-Ferrante said.

Mr. Hersh said he already is seeing signs of insurance companies moving core systems to the cloud. "We saw five or six cloud-based policy administration deals in the past year," he said. "Insurers think they can use it as one-off for certain lines of business."

Chuck Johnston, research direc-

tor at Boston-based Celent L.L.C., which is part of New York-based Marsh & McLennan Cos. Inc.'s Oliver Wyman unit, said challenges remain in how cloud computing services are managed and integrated.

"The proliferation of cloud vendors is itself a problem," he said. "Insurers looking to do end-to-end processes may prefer to work with a single vendor."

Mr. Hersh said insurers need the operational flexibility afforded by the cloud to keep abreast of changes in the marketplace.

"Business models are changing every six to 12 months," Mr. Hersh said. "The insurance innovation cycle is getting faster and faster."

Smith: Rates spur client dialogue

CONTINUED FROM PAGE 4

clients as well. With respect to our growth opportunities, we are an organic growth-focused organization as opposed to being acquisition oriented. Our expansion efforts are concentrated on growing one client at a time. We see the traditional middle-market segment as the area where we will continue to see growth in the economy and our business. However, we have also initiated a greater effort on a defined segment of the "risk management" sector where our flat organization, highly consultative service model, and an international global network that can deliver a more customized experience for our clients and prospects. Our clients in this segment are predominantly chief financial officers, general counsels and risk managers at those organizations that are looking for advice and counsel with a high-touch approach. We believe there is a real demand for a true independent risk adviser who provides day-to-day services the old-fashioned way, one client at a time.

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USERRA: Soldiers returning to jobs

CONTINUED FROM PAGE 1

USERRA is a “broader, more encompassing law” than other federal laws, said William H. Floyd III, a member at Nexsen Pruet L.L.C. in Columbia, S.C.

Mike Fischer, a partner at Quarles & Brady L.L.P. in Milwaukee, said he has seen employers make mistakes in complying with USERRA, which he described as a “muscular, pro-employee” law, for the past decade. Employers often are not knowledgeable about it because they deal with it infrequently, he said.

David Ruiz, employee benefits and risk manager for the Martin County School District in Stuart, Fla., said the district’s consulting firm keeps it apprised of anything in the law with which the district needs to comply, “and we govern ourselves accordingly. It’s as simple as that.”

The two biggest issues employers encounter with respect to USERRA are “not fully understanding their general obligations in reinstating returning veterans” and “not properly reinstating them to the position and the wage rate that they would have been earning if they had been working and not in the service,” said Richard I. Greenberg, a partner at Jackson Lewis L.L.P. in New York. Employers “must be very wary” of telling a returning veteran they do not have a job without first seeking legal advice, he said.

“Employers have to pay close attention” to deadlines regarding how soon they have to bring the veterans back, which depends on factors including the length of time the service member was deployed and whether he or she was injured, said Shannon D. Farmer, a partner with law firm Ballard Spahr L.L.P. in Philadelphia.

“Typically, the employer must reinstate within two weeks of the application for re-employment,”

JOB PROTECTION FOR MILITARY MEMBERS

The Uniformed Services Employment and Reemployment Rights Act of 1994 protects the civilian job rights and benefits of veterans and members of the Reserves. According to the Labor Department, the law:

- Establishes at five years the cumulative time that an individual may be absent from work for military duty and still retain their employment rights, with some exceptions.
- Requires employers to make reasonable efforts to accommodate disabled veterans, including giving convalescing veterans up to two years from the time they leave service to return to their jobs.
- Requires that returning service members be re-employed in the same job with the seniority and pay they would have attained had they not served in the military. Reasonable efforts must be made to refresh or upgrade their skills to help them qualify for re-employment.
- Sets deadlines to apply for re-employment based on a veteran’s time in the military. For instance, veterans who served more than 181 days must apply for re-employment within 90 days of release from service.
- Requires service members to give employers advance notice of their military duty, if possible.

Source: U.S. Department of Labor

Ms. Farmer said. “If there’s been several years of active duty, the regulations recognize that it may take a little bit more time because you have to open up a position,

which can mean laying off another employee or transferring someone else.”

There are exceptions to the rehiring deadlines, such as when the employee who replaced the veteran is finishing a long-term project, Mr. Fischer said.

“Otherwise, no matter how inconvenient it is for the employer, they’ve got to get the person back to work as soon as they’re qualified,” he said.

USERRA requires employers to make sure the veteran “isn’t disadvantaged and they don’t fall behind as a result of being deployed,” Ms. Farmer said. “But it’s a real struggle for the employer because, while being away in Afghanistan obviously has value to the country, it doesn’t mean (veterans) have developed the same skills that a person who’s been sitting here doing the job for that year has.”

Salaries, benefits

Observers say the “escalator principal” applies to automatic salary hikes as well as any seniority-related benefits, such as vacation, that otherwise would have accrued. If needed, employers must provide training to help the worker fill a new post. During training, the employer must assume the worker will successfully complete training and pay the worker at the higher rate, Mr. Fischer said.

Setting expectations is important, said Martha J. Zackin, of counsel at law firm Mintz Levin Cohn Ferris Glovsky & Popeo P.C. in Boston, citing cases she has seen where an employee believes he or she is entitled to something and sues if it does not materialize.

“It is important if (employers) are bending over backwards and giving more than they are required to, they should explain that and set expectations,” Ms. Zackin said

Bermuda: Capitalizing on opportunities

CONTINUED FROM PAGE 4

head of insurance operations for Endurance Risk Solutions (Bermuda) in Pembroke, Bermuda, said health care, as an evolving risk, provides a unique opportunity to use captives.

“The captive is a real tool to expand coverage,” she said.

Mr. Montanez said that as Ace Hardware has a lot of equity on the books, the possibility of expanding coverage to include health care is an opportunity.

“We can deliver a lot of value, not only to the human resource department, but to the organization,” he said. “It’s a win for everybody because we’re delivering health costs.”

As hospitals adopt the employment model for physicians, some health systems are expanding operations to include the associated liabilities into their captives, panelists said during a separate session.

“Health care reform based upon quality measures and patient outcomes is the key reason,” said Mary Gutman, managing member of the Gutman Group L.L.C. in Dayton, Ohio. “Compensation models for physicians are now taking into account not only productivity, but also how well they play in the sandbox.”

Ms. Gutman said health care systems employing physicians need to consider compliance issues, employment agreements, accurate financials of the practice to be acquired, reputation in the community and infrastructure to manage the volume of physicians that will join the health system.

Erin Eldridge, corporate director of physician risk management at Catholic Health Partners in Cincinnati, said all physicians who join the program are placed in the captive.

“We’re pretty draconian on that because it’s important to us that

we manage that risk,” she said during the session.

The health system includes 25 hospitals in Kentucky and Ohio, and it has moved 550 employee physicians into CHP’s captive, Ms. Eldridge said.

For health systems considering expanding their captives to include employee physician liabilities, the first thing to consider is the physician’s current coverage form and the health system’s captive domicile laws, said panelist Merry Robinson, client service team leader at Brower Insurance Agency L.L.C. in Dayton.

“You need to make sure you have the appropriate licenser,” Ms. Robinson said.

“If you have a new captive, you may want to fund more conservatively,” she said, noting that when funding physicians through an organization’s captive, different variances are available based on specialties.

While veterans have the right to seek their former jobs, it is not known how many will actually seek to do so under USERRA.

“Not everyone’s looking to return to the same position” they held before their military service and the employer may have gone out of business in the meantime, said Ms. Farmer.

In addition to long-term military service, USERRA bars employers from penalizing employees who leave their jobs for brief National Guard stints. For example, if a worker gets Tuesdays and Wednesdays off, the employer cannot schedule an employee to work those days to make up for the worker’s National Guard duty, said Mr. Fischer.

Employers may “think they’re being fair” when they require such schedule changes because they do the same when a nonmilitary employee needs personal time, but it is not permitted under USERRA, he said.

In addition, ADA requirements may apply if a veteran suffers an injury or disability during their military service. Aside from blindness, missing limbs and mobility impairments, veterans also could suffer from a post-traumatic stress disorder.

According to the Department of Labor’s Morgantown, W.Va.-based Job Accommodation Network, about 30% of men and women who have spent time in war zones suffer from PTSD.

In guidance issued in February, the Equal Employment Opportunity Commission said it is illegal for a firm to refuse to hire a veteran because the veteran either has or is assumed to have PTSD, and that an employer must make “reasonable accommodations” for such a worker.

“I think employers will probably struggle how to accommodate” the PTSD sufferer without having undue hardships imposed upon the employer, said Daniel Klein, a partner with Seyfarth Shaw L.L.P. in Boston.

CAPTIVE MEETING DRAWS 590 TO BERMUDA

SOUTHAMPTON, Bermuda—The eighth annual Bermuda Captive Conference, held June 3-6, drew 590 attendees to the Fairmont Southampton Bermuda Resort.

The conference hosted 44 exhibitors and 22 sessions that covered such topics as expanding mature captives, Solvency II, and financing employee benefits through captives.

The keynote was given by Ken Schmidt, former director of communication at Harley-Davidson Motor Co., who spoke about creating product demand through brand differentiation.

Next year’s Bermuda Captive Conference is scheduled for June 10-12, 2013, at the Fairmont Southampton.

For more information, visit www.bermudacaptive.bm.

—By Mike Tsikoudakis

Business Insurance

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PENSION PLAN 'DE-RISKING'

Steps General Motors Co. is taking to change the way benefits are provided to salaried retirees:

PARTICIPANT GROUP	BENEFIT PAYMENTS
Retired from GM on or after Oct. 1, 1997, and before Dec. 1, 2011	Select one-time lump-sum payment or continue to receive monthly annuity with benefit paid by Prudential Insurance Co. of America
Retired from GM prior to Oct. 1, 1997	Monthly benefit to be paid by Prudential
Most other employees and retirees who receive benefits on or after Dec. 1, 2011	Moved into new GM pension plan. Benefits to be paid by GM plan.

Source: General Motors Co.

Pension: Others likely to follow automaker's lead

CONTINUED FROM PAGE 1

Prudential, as will be the case with other salaried retirees.

"These actions represent a major step toward our objective of de-risking our pension plans and will further strengthen our balance sheet and give us more financial flexibility going forward," Mr. Ammann said in a statement.

"It allows us to focus more on our core business, which is building cars and trucks," he said during a briefing about another advantage of shedding the salaried retiree pension obligations.

However, those advantages—removing a \$26 billion liability from GM's balance sheet, transferring benefits administration to Prudential as well as no longer paying premiums to the Pension Benefit Guaranty Corp. for individuals no longer covered by the plan—will come at a price.

GM disclosed it will have to spend \$3.5 billion to \$4.5 billion on the transaction, which includes boosting funding of the pension plan and buying the group annuity. The salaried pension plan currently is 92% funded.

While GM is not the first company to transfer pension obligations through buying a group annuity from an insurer, it is the largest of its kind.

"The magnitude of the transaction is without precedent," said Rick Jones, national practice leader-retirement plans for Aon Hewitt in Lincolnshire, Ill.

Indeed, according to Aon Hewitt, pension liabilities annuitized in recent years have not exceeded \$1 billion per year, and no single annuity transaction topped \$1 billion since the 1980s. By contrast, GM is expected to annuitize a significant portion of the \$26 billion through the transaction.

'Annuity transactions can make the most sense for plans that are frozen and have a high proportion of retirees as opposed to active participants.'

Scott Campion, Oliver Wyman

The size of this deal and GM's name recognition will be a catalyst for more transactions, experts say.

"We think that this deal...could open the floodgates for similar deals," said Scott Campion, a senior manager in the Americas insurance practice at Oliver Wyman in New York.

Oliver Wyman and sister company Mercer L.L.C., both operating companies of Marsh & McLennan Cos. Inc., were selected by State Street Bank & Trust Co., the plan's independent fiduciary, to

act as its insurance adviser for the transaction.

"The level of employer interest is extremely high," said Phil Waldeck, senior vp in Hartford, Conn., with Prudential Retirement, a unit of Prudential Financial Inc.

Experts say risk transfer arrangements will have the greatest appeal to employers whose pension plan obligations are high relative to corporate size.

"Pension de-risking will be appealing to any plan sponsor with a large pension relative to their market cap. In particular, annuity transactions can make the most sense for plans that are frozen and have a high proportion of retirees as opposed to active participants," Mr. Campion said.

While interest may be high, employers will not rush into risk transfer arrangements, as companies carefully analyze these arrangements, some say.

"Employers do not make abrupt pension plan decisions," Mr. Waldeck said.

"You will not see a major trend this year, but you will see more companies do this down the road," Mr. Archer said.

The risk transfer has several key advantages, benefit experts note. Through the arrangement, employers transfer to another party—the annuity insurer—risks that are at the core of any defined benefit plan, said Mike Archer, a senior retirement consultant with Towers Watson & Co. in Parsippany, N.J.

Those risks include retirees living longer than expected, which would force bigger-than-expected pension plan contributions, Mr. Archer said.

There also is the risk of investments performing poorly or interest rates remaining low, which also could require additional plan contributions, he said.

In short, "You remove volatility and gain certainty," Mr. Jones said.

"Shedding pension risk allows management to focus on their core business," Mr. Campion said.

"You are offloading administration to others," Mr. Jones said.

Still, there is a potential downside to the approach. The amount that GM will have to pour into its salaried pension plan before Prudential takes on the risk, as well as the cost of the annuity, will tap funds that could have been used elsewhere.

The question that companies weighing a pension risk-transfer approach will be asking is what will be the best use of their cash, Prudential's Mr. Waldeck said.

inBrief

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catastrophe bonds on behalf of Travelers Indemnity Co. The notes, issued through Travelers special purpose vehicle Long Point Re III Ltd., represent a three-year, fully collateralized reinsurance agreement provided to Travelers. The insurance-linked securities are intended to guard against losses resulting from hurricanes affecting the United States from Virginia to Maine. GC Securities acted as the lead structurer and joint underwriter on the issuance, while AIR Worldwide Corp. was the modeling firm for the transaction.

P/C rates rose 5% in first quarter

Prices for commercial property/casualty insurance lines for the first quarter of 2012 rose 5% from those posted during the same period in 2011, according to new data from Towers Watson & Co. Moreover, the survey indicated the increase marked the fifth consecutive quarter that prices rose for all standard commercial lines.

Growth expected for global brokerages

A combination of rising commercial insurance prices and ongoing industry consolidation will fuel growth for the global insurance brokerage sector, according to a report released by Moody's Investors Service Inc. The report analyzes three global, publicly traded brokerage firms and seven midsize and smaller firms that are privately held.

Health care spending sees modest increases

Health care spending in the United States continues to rise only modestly as the lingering effects of the Great Recession and efforts to control costs have helped to hold down increases, according to a government report. Researchers at the Centers for Medicare & Medicaid

Services estimate that total health care spending rose 3.9% in 2011, the same as in 2010 and only slightly higher than 2009's 3.8% rise.

9.6% premium hike OK'd for CalPERS

Premiums for coverage offered through the California Public Employees' Retirement System will rise by an average of 9.6% in 2013 under a package given final approval last week. The premium hike, recommended by the CalPERS Pension and Health Benefits Committee, was approved by its Board of Administration. That 9.6% increase is more than double 2012's average increase of 4.1%.

PBGC to take over Dewey pensions

A federal judge approved the Pension Benefit Guaranty Corp.'s takeover and termination of three underfunded pension plans sponsored by failed law firm Dewey & LeBoeuf L.L.P. The plans are underfunded by more than \$80 million and have nearly 1,800 participants. The PBGC guarantees a maximum annual benefit of just under \$56,000 to participants in plans it takes over.

Alliant wins legal battle against Aon

A U.S. district court in California handed Alliant Insurance Services Inc. a victory in its ongoing legal battle with Aon P.L.C. over the alleged poaching of employees and customers. In a lawsuit filed last year, Aon alleged that several of its former executives conspired with Alliant to solicit at least 40 other employees of Aon's construction services group to quit Aon and join Alliant. Last week, Judge Dale Fischer of the United States District Court for the Central District of California struck down the noncompete provisions in Aon's employment agreements.

New insurance head named in Iowa

Nick Gerhart will become Iowa's next insurance commissioner at the end of the year. He will succeed Susan Voss, who has headed the department since 2005. Ms. Voss is retiring Dec. 31. Mr. Gerhart will join the insurance division this year.



Self-Funding Health Care

How midsize employers can cut costs and take control of their benefits programs

With health care cost increases still outpacing inflation, self-funding benefits is an option employers can't afford to ignore. Traditionally seen as a cost-saving strategy for large companies, self-funding benefits is now a realistic alternative for midsize and smaller employers too. This latest white paper from Business Insurance explains the advantages of self-funding health care benefits, how to avoid obstacles in the way of self-funding, and how to manage the move from buying insurance to taking control of your benefits program.

To Purchase visit www.businessinsurance.com/whitepaper

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INSIGHTS TODAY FOR THE RISKS OF TOMORROW

BUFFETT LUNCH SELLS FOR \$3,456,789

The economy may be emerging from a recession, but you wouldn't know it from the annual take-Warren Buffett-to-lunch auction.

For \$3.5 million—or more exactly, seven consecutive numbers, \$3,456,789—an anonymous bidder and seven others will get to have lunch with Mr. Buffett at the Smith & Wollensky steakhouse in New York, according to news reports.

That's more than a 30% increase over last year's record-breaking \$2.63 million eBay bid.

Auction proceeds benefit the San Francisco-based Glide Foundation, a social services organization that provides more than 1 million meals annually to 3,000 individuals in the San Francisco Bay area.

This is the 13th year the auction has been conducted. According to news reports, it was an exciting one. In the final hour of the bidding on Friday, bids jumped from \$1 million to the final \$3.5 million. There were 106 bids. Bidding started at \$25,000 and all bidders had to be pre-qualified.

But attendees cannot expect any hot stock tips. The only topic Mr. Buffett will not address is potential future investments, according to reports.

However, Ted Weschler, who won the past two auctions, landed a job working for Berkshire Hathaway as an investment manager.



This year's Power Lunch with Warren Buffett sold for a record of nearly \$3.5 million.

CONTRIBUTING: Matt Dunning, Judy Greenwald, Bill Kenealy

End Page



AP PHOTO

The Phillie Phanatic's antics got out of hand at a wedding in Philadelphia, claims a woman who says the mascot tossed her into a pool.

Phan phlailing after Phillie Phanatic phlip

It seems that Philadelphia's reputation as a tough sports town might not be a reflection of its rabid fan base alone. Apparently, the mascots can get pretty rowdy as well.

A lawsuit filed in Philadelphia's Court of Common Pleas on Monday accuses the "Phillie Phanatic"—the green, furry alien-looking creature that's been patrolling the stands at the Philadelphia Phillies' baseball games since 1978—of permanently injuring an Abington, Pa., woman by tossing her into a hotel pool in July 2010.

In her suit, Suzanne Peirce claims she was sitting in a poolside lounge chair at the Golden Inn Hotel & Resort in Avalon, N.J., watching the Phanatic entertain guests at her sister's wedding when, during his routine, the mascot lifted her and the chair together and tossed them into the pool.

The suit accuses the Phanatic of negligence for not warning her that he was about to

throw her in the pool and not considering the injuries he might cause, among a dozen other alleged failures or actions.

According to court documents, Ms. Peirce claims to have suffered a slew of "permanent injuries to her head, neck, back, body, arms, legs, bones, muscles, tendons, ligaments, nerves and tissues." Those injuries, according to the suit, include a herniated disc in her back, as well as "aggravation and/or exacerbation of all known and unknown pre-existing conditions, internal injuries of an unknown nature, severe aches, pains, mental anxiety and anguish and severe shock to her entire nervous system."

Ms. Peirce claims her injuries have prevented her from her "usual and daily activities and duties," and have cost her "large sums of money" for medical care. Her suit requests compensatory and punitive damages.

TYPO LEAVES VIOLINIST WITH A BAD NAME

A misprinted festival program has a London-based violin player seeking redress.

According to the London Evening Standard, Abdul Shahid was erroneously referred to as Bal Shahid in a program for the annual Baishakhi Mela Festival in London. The word "bal" translates to "pubic hair" in Bengali.

Mr. Shadid is suing the festival's organizer, the town council for the London borough of Tower Hamlets, for £300,000 (\$464,160) for damages.

The violinist says the typo has

'When I go outside everyone who knows me and my family are like "woo, woo, woo," making fun of me.'

Abdul Shahid

made him the target of "immense ridicule, taunting and humiliation" within the community and thus unable to work. Mr. Shadid told the paper that since the brochure was published, he hasn't left his home much and only feels comfortable going out at night.

"My name has been destroyed, it's a disaster," Mr. Shadid told the paper. "Everybody in this community knows me. When I go outside everyone who knows me and my family are like 'woo, woo, woo,' making fun of me."

OMG!: WORK EMAILS ARE OFTEN GOSSIP

While many people these days love to complain about how much harder they're working, apparently many still find the time to indulge in a bit of office gossip, says a report.

A study released last week by the Georgia Institute of Technology in Atlanta concludes that of the 112 emails sent daily by the average corporate email user, one in seven can be called gossip. The study was based on an examination of 600,000 emails of the now-bankrupt Enron Corp.

Furthermore, gossip is prevalent at all levels of the corporate hierarchy, said Eric Gilbert, an assistant professor at Georgia Tech's School of Interactive Computing and a co-author of the study. The research found that while the heaviest flow of gossip was among the rank and file, the second-heaviest flow

within a single level occurred among Enron vps and directors. The strongest upward flow of gossip was from the vps and directors to presidents and CEOs.

But this is not necessarily bad.

"Gossip gets a bad rap," Mr. Gilbert said in a statement, "When you say 'gossip,' most people immediately have a negative interpretation, but it's actually a very important form of communication....Gossip is generally how we know what we know about each other, and for this study we viewed it simply as a means to share social information."

However, the study also found that "negative gossip" was in fact 2.7 times more prevalent than positive gossip, although a significant portion of the messages were labeled as "sentiment-neutral," according to the report.



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