

Business Insurance

\$5

June 21, 2010

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SUPREME COURT SAYS / PAGE 3**



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DRUGMAKER / PAGE 3**

**P/C BUYERS' MARKET EXPECTED
TO CONTINUE WHILE ECONOMY
STRUGGLES / PAGE 4**

In Brief

SEC ends probe of former AIG unit head

The U.S. Securities and Exchange Commission has ended its probe of the former head of AIG Financial Products Corp., Joseph Cassano, and other executives, without taking an action, according to Reuters, which cited people familiar with the matter. The agency had been investigating the unit that was responsible for AIG's credit default swap portfolio. The move came after federal prosecutors in May decided not to bring criminal charges against Mr. Cassano in connection with the transactions that nearly brought down AIG.

Judge gives initial OK to Hartford's settlement

A federal judge has granted preliminary approval of a \$72.5 million settlement between Hartford Financial Services Group Inc. and 21,000 class members alleging fraud in structured settlement cases. In announcing the settlement last week, Hartford said it was settling the lawsuit to "avoid uncertainties and costs of continued litigation."

CVS, Walgreen end feud over reimbursements

CVS Caremark Corp. and Walgreen Co. ended a publicly acrimonious feud over reimbursements for prescription drugs that had prompted Walgreens, the nation's largest drugstore chain, to withdraw from Caremark's pharmacy benefit network. The multiyear agreement, terms of which were not disclosed, will enable Caremark members to continue to fill their prescriptions at Walgreens pharmacies.

See **IN BRIEF** page 21

HEALTH CARE REFORM

Health care reform exemptions detailed

*Rules set out how
health plans can keep
'grandfathered' status*

By **JERRY GEISEL**

WASHINGTON—Final interim rules issued last week will give employers only a temporary reprieve from complying with certain requirements of the new health care reform law, experts say.

The much-anticipated rules, a joint effort of the Internal Revenue Service, Department of Labor and the Department of Health and Human Services, detail the extent to which employers can change their health care plans, such as increasing the share of premiums that employees pay, and still be grandfathered, or exempt, from certain requirements of the law.

For example, grandfathered plans do not have to provide full coverage of preventive services. They also are exempt from a new external claims review process.

In addition, the requirement that

employers extend coverage to employees' adult children up to age 26 does not apply to grandfathered plans until Jan. 1, 2014, in situations where the adult child is eligible for coverage from his or her own employer.

Under the interim rules, though, plans will lose their grandfather status if they:

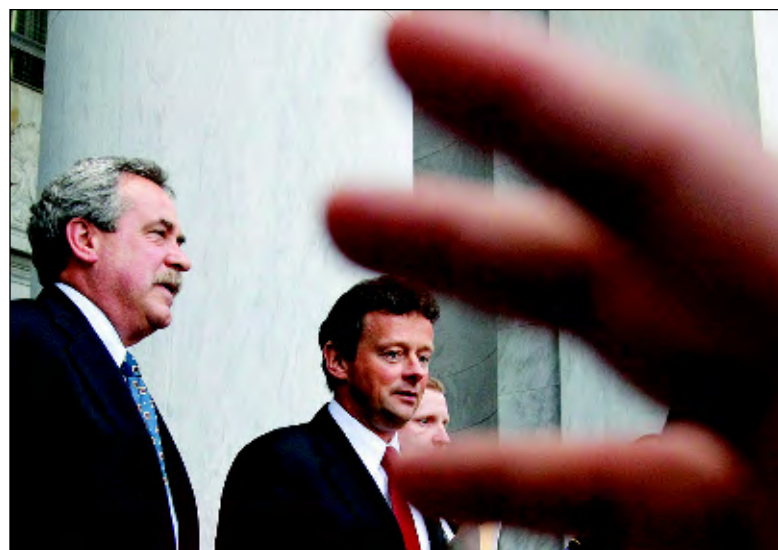
- Ever increase a coinsurance requirement.
- Increase by more than five percentage points the share of plan premiums paid by employees.
- Change the plan's insurer.
- Raise deductibles and out-of-pocket limits by more than a certain percentage, which is defined as the increase in the medical care component of the Consumer Price Index since March 23, plus 15 percentage points.
- Boost copayments by more than \$5, or a percentage equal to medical inflation plus 15 percentage points, whichever is greater.
- Eliminate coverage for a specific

See **GRANDFATHER** page 6

\$5

Under the interim rules, plans will lose their grandfather status if they boost copayments by more than \$5, or a percentage equal to medical inflation plus 15 percentage points, whichever is greater.

ENERGY



AP PHOTO

Amid protests over the Gulf of Mexico oil spill, BP Chief Executive Tony Hayward, center, leaves an Energy and Environment Subcommittee hearing last week in Washington. He testified about BP's actions in the spill.

Oil firms under pressure from insurers, Congress

By **ZACK PHILLIPS**

WASHINGTON—The developing negative congressional response to the Deepwater Horizon oil spill has risk managers and insurers concerned that the offshore energy market may be stretched too thin.

At the same time, energy companies are seeking higher limits on liability and other coverages as underwriters raise prices and ask policyholders to retain more risk, market observers said.

"It's very disconcerting to me as a

risk manager," said one offshore risk manager who asked not to be named. "You normally think about legal liability and then you sort of judge the judicial environment you're going to be in. All of this really seems to be coming from an entirely different direction. It's politically driven."

A ruptured undersea pipeline has been spewing oil into the Gulf of Mexico since April 20, when the Deepwater Horizon oil rig exploded and

See **SPILL** page 18

CLAIMS FUND:
Big BP fund won't
let insurers off
the hook for
spill-related
claims. **PAGE 18**

BENEFIT CONSULTANTS

Marsh pays \$500M to settle Mercer malpractice suit

By **JUDY GREENWALD**

NEW YORK—Marsh & McLennan Cos. Inc.'s \$500 million settlement

of litigation against Mercer Inc. by public employee retirement funds in Alaska is expensive but also removes a major risk hanging over

the firm, many observers say.

The settlement last week with the Alaska Retirement Management Board resolved a case that began in 2007 when the board sued MMC on behalf of 80,000 participants in the state's public employees and teachers retirement and benefit plans.

The suit, which was amended in 2009, alleged actuarial malpractice, breach of professional duty, breach of contract, fraud and misrepresentation, professional negligence and malpractice and negligent misrepresentation among other charges. It sought at least \$2.8 billion in damages in connection with Mercer's

work from 1992 to 2004.

The settlement avoids a trial that had been scheduled for July in Juneau, Alaska.

Mercer, which denied wrongdoing, said \$100 million of the settlement will be covered by insurance.

According to a source familiar with the settlement, on top of a \$200 million self-insured layer, a unit of New York-based American International Group Inc. is providing \$100 million of excess coverage. A Mercer spokesman had no comment and an AIG spokesman could

See **MERCER** page 17

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VIDEO: ISSUES IN RISK MANAGEMENT

Business Insurance talks with Robert Cartwright Jr., loss prevention manager of Bridgestone Americas Holding Inc., about the benefits and challenges of building a culture of safety.

COMINGS & GOINGS

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MOST POPULAR STORIES Week of June 14, 2010

1. Rules lay out exemptions to health care reform law
2. Marsh unit Mercer to pay \$500M to settle Alaska pension suit
3. Rating agency downgrades MMC outlook, affirms ratings
4. BP shuts oil capture after fire; unsure when restart
5. Cuts to U.S. health care waste could save \$36 trillion
6. Aon Asia Pacific CEO Fung dies
7. Rating agency downgrades MMC outlook, affirms ratings
8. Senate tax bill omits COBRA subsidy extension
9. Commercial insurance prices remain flat: Survey
10. Insurance broker Willis sets up distressed assets unit

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Business Insurance RESEARCH CENTER

"D&O 2.0: What You (and Your Boss) Need to Know About the Evolving Market" is a new *Business Insurance* white paper that outlines developments in directors and officers liability insurance. For purchase details, go to www.BusinessInsurance.com/whitepapers.

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DIRECTORS & OFFICERS LIABILITY

High court to hear D&O case

Ruling to determine level of disclosure for drug companies

By ZACK PHILLIPS

WASHINGTON—The U.S. Supreme Court has agreed to hear a case that may have significant implications for when securities class action lawsuits can be dismissed and when a manufacturer must disclose product safety concerns to investors.

Matrixx Initiatives et al. vs. James Siracusano et al. alleges that Matrixx and senior executives misled investors in the pharmaceutical

WHAT HAPPENED

- U.S. Supreme Court agreed to hear securities class action case on whether drugmaker misled investors over concerns about Zicam.

WHAT'S NEXT

- Ruling could set precedent on threshold for granting motions to dismiss.

maker about allegations that Zicam had caused anosmia—or a loss of smell—in some patients. The com-

pany argued that it was not obligated to disclose the anosmia complaints because they were not statistically significant.

The U.S. District Court for Arizona granted Matrixx's motion to dismiss the lawsuit in March 2006. In October 2009, the 9th U.S. Circuit Court of Appeals reversed that decision, denying the motion to dismiss. Last week, the U.S. Supreme Court agreed to hear Matrixx's appeal.

The appropriate threshold for courts to grant a defense motion to dismiss is a critical issue in many class actions. Many such cases settle

See **ZICAM** page 20



AP PHOTO

Shareholders of Matrixx, which makes Zicam, say that the firm's executives misled investors over allegations that the drug caused anosmia, or loss of smell. Last week, the U.S. Supreme Court agreed to hear the case.

LIABILITY & LITIGATION



An Ontario, Calif., police department SWAT team member sent sexually explicit text messages to his wife and mistress. The police department can search city-provided equipment, the U.S. Supreme Court ruled.

Employer wins case over searching worker texts

Police department did not violate rights of employees: Court

By JUDY GREENWALD

WASHINGTON—The U.S. Supreme Court issued a narrow but unanimous decision last week for public employers, ruling they can search an employee's text messages on city-provided equipment when a legitimate reason for that search exists.

The plaintiff in *City of Ontario, Calif., et al. vs. Jeff Quon et al.* was a member of the California city's police department SWAT team, who sent sexually explicit text messages to his wife and mistress, both police department employees, on a department-provided pager and exceeded his monthly allotment several times.

Before the city acquired the pagers, Mr. Quon signed an

employee acknowledgment that, among other things, said the city reserved the right to monitor all network activity, including e-mail and Internet use, and that users had no expectation of privacy.

However, Mr. Quon said he was informed verbally that the police department would not audit messages if he paid overage fees, which he did. But the city then asked Arch Wireless Operating Co. Inc., a unit of Westborough, Mass.-based Arch Wireless Inc., to send it transcripts of his messages as part of an investigation, court records state.

Mr. Quon and the recipients of his messages subsequently sued, alleging violations of the Fourth Amendment, which protects against unlawful searches and seizures.

The 9th U.S. Circuit Court of Appeals in San Francisco, in partially overturning a lower court decision, held in 2008 that employers

See **TEXTING** page 20

DIRECTORS & OFFICERS LIABILITY

BI white paper: D&O risks rising

The directors and officers liability insurance market may still be soft, but corporations and their executives are facing an increasing array of exposures.

In addition to a barrage of credit crisis-related litigation, corporations are confronted by stepped-up regulatory enforcement efforts, an explosion in defense costs, ballooning settlements and numerous emerging liabilities, according to a new research white paper.

The white paper, "D&O 2.0: What You (and Your Boss) Need to Know About the Evolving Market," finds that with the D&O market in its seventh year of declining rates, risk managers have access to plentiful capacity, but claims that do arise can quickly erode limits.

In one recent case, a \$50 million D&O program was almost wiped out by defense costs in litigation



New BI white paper available on changing D&O market.

that involved 17 law firms. Of the 15 largest class actions on record, 12 have been reached since 2006, according to the latest *Business*

Insurance white paper.

While credit crisis-related suits are still wending their way through the legal system, other exposures are expected to hit corporations soon.

With the Securities & Exchange Commission this year issuing guidance to public companies on climate change-related disclosure requirements, D&O claims are likely, the paper finds.

Stepped-up enforcement of anti-bribery statutes, increased cyberattacks, health care reform legislation, the growth of opt-out settlements in class action litigation and a host of other risks are all likely to result into D&O claims, the paper says.

For more information on emerging D&O risks, an analysis of coverage developments, legal developments, the outlook for the D&O insurance market and more, see www.business-insurance.com/whitepapers.

LIABILITY & LITIGATION

Court finds out-of-state blogger liable

By MARK A. HOFMANN

TALLAHASSEE, Fla.—A nonresident blogger can be sued for defaming a Florida-based company on her out-of-state website, the Florida Supreme Court has ruled unanimously.

The case, *Internet Solutions Corp. vs. Tabatha Marshall*, involved a Washington state-based blogger who posts consumer-related material on her website, according to the Florida Supreme Court. Internet Solutions is based in Nevada but has Orlando, Fla., as its principal place of business, the court noted in its ruling last week.

The company sued Ms. Marshall for defamation in federal court in Florida, but she sought to have the suit dismissed because of her lack of ties to Florida. The 11th U.S. Circuit

Court of Appeals eventually asked the Florida Supreme Court to determine whether Florida law applied in the case.

"According to (ISC), Marshall made posts on her website in which she accused ISC, an employment and recruiting firm, of ongoing criminal activity," according to the Florida Supreme Court decision.

"The only issue in this case is whether Marshall's allegedly defamatory posts on her website subject her to personal jurisdiction in Florida under this state's long-arm statute," the court said.

The court held unanimously that Ms. Marshall is subject to Florida law. It dismissed her contention that "her acts were completed in the state of Washington and nothing on the website could be published

to a Florida computer 'unless (and until) the reader reached up into Washington and retrieved it,'" according to the court.

Such an argument ignores the nature of the worldwide Web, the state high court said.

By posting the material on her website, Ms. Marshall "made the material accessible by anyone with Internet access worldwide," the court ruled. A nonresident commits defamation in Florida for purposes of Florida law when the nonresident "makes allegedly defamatory statements about a Florida resident by posting those statements on a website, provided that the website posts are accessible in Florida and accessed in Florida," ruled the Florida court, which returned the case to the appeals court.

P/C INSURERS

Sluggish economy keeps lid on insurance pricing

Buyer's market to remain in place until recovery: Experts

By COLLEEN MCCARTHY

NEW YORK—Excess capital and a weak U.S. economy are among key factors contributing to the lingering soft property/casualty insurance market, industry executives said.

In addition, any turn in the market likely will be the result of improved economic conditions rather than a catastrophic event, one industry executive said during last week's Standard & Poor's Corp. Insurance 2010 conference

in New York.

"Until the economy gets better, people are not going to pay us more for the (insurance) product," said Thomas F. Motamed, chairman and CEO of Chicago-based CNA Financial Corp.

Mr. Motamed said brokers routinely suggest that a catastrophe is needed to end the soft property/casualty market. "They believe that will drive the market, but I don't believe that for a second," he said during a panel discussion.

The best companies are well-capitalized right now, more so than a decade ago when a single catastrophe may have changed the market, Mr. Motamed said. Today, "compa-



'Until the economy gets better, people are not going to pay us more for the (insurance) product.'

Thomas F. Motamed,
CNA Financial Corp.

nies with strong balance sheets can afford to take some hits," he said.

New York-based S&P expressed a

similar view, saying the tepid economy continues to weigh on the property/casualty sector. It also said

rates will remain flat to down until the economic recovery gains momentum or a large-loss event serves as a catalyst for significant rate increases.

Due to the financial crisis, insurers have been dealing with reduced overall demand for commercial insurance—reflected in lower payrolls, fewer new business formations and increased bankruptcies—that has stalled progress on rate increases, S&P said in its midyear 2010 outlook this month.

The rating agency has maintained its negative outlook on the commercial lines sector of the U.S. property/casualty industry. The

See **S&P** page 16

PRODUCT LIABILITY



AP PHOTO

The federal government has found a "strong association" between tainted Chinese drywall and corrosion in homes, in this case an air conditioner.

La. drywall plan would bar insurers from refusing cover

Homeowners back federal legislation stalled in Congress

By JEFF CASALE

BATON ROUGE, La./WASHINGTON—Insurers would not be allowed to cancel or refuse renewal of homeowners policies in Louisiana due to Chinese drywall claims under legislation the state's Legislature passed last week.

Meanwhile, a U.S. House of Representatives subcommittee heard testimony last week on the need for a federal law to make it easier to enforce legal judgments against foreign entities for faulty products, such as the tainted drywall.

S.B. 595 passed the Louisiana Senate unanimously in April and passed the state House last week after revisions. The final bill does not include commercial policies, though the Senate version of the

bill did. The House amended the bill to strike that language before passing it unanimously. Louisiana Gov. Bobby Jindal is expected to sign the measure into law before the end of the month.

The bill, sponsored by state Sen. Julie Quinn, R-Metairie, would prohibit a homeowner's insurer from canceling or refusing to renew a policy and bar any increase in premium based on the presence of Chinese drywall or the filing of a claim by an insured that is based on Chinese drywall.

The building material, which was imported from China into the United States—primarily in the Southeast after Hurricane Katrina—has been linked to corrosion in electrical components in homes, including wiring, gas service piping, and fire suppression and alarm systems.

The U.S. Consumer Product Safety Commission in April issued guidelines that call for gutting of

See **DRYWALL** page 7

HEALTH CARE REFORM

How to cut waste in health spending

Common-sense tactics can cut dollars spent and improve care

By JOANNE WOJCIK

A few common-sense waste-cutting moves, many of which already have been used successfully by some organizations, could slash total U.S. health care system spending by \$3.6 trillion during the next decade, according to an analysis by Thomson Reuters Corp.

Recommended changes include fostering health care consumerism and cost transparency, improving care coordination by providing patients with a "medical home," encouraging patients to take better care of their health, creating a culture of performance improvement among providers to promote adop-

\$210B
PROCESSING CLAIMS accounts for \$210 billion of total U.S. health care system costs, the AMA estimates.

tion of best practices and reduce medical errors, and simplifying reimbursement and reducing opportunities for fraud.

Taken together, such changes could reduce health care system waste by 5% a year, adding up to \$3.6 trillion in 10 years, according to the Thomson Reuters white paper, "A Path to Eliminating \$3.6

Trillion in Wasteful Healthcare Spending."

The report, available online at <http://factsforhealthcare.com>, includes analyses of successful strategies applied by its consulting clients as well as other research on cutting waste in health care costs.

For example, Louisville, Ky.-based Humana Inc. expects to save \$3 to \$6 per member per year, and as much as \$10 to \$12 per member per year for those who are high users of medical care, by going paperless and sending explanation-of-benefits letters electronically, the report noted.

In addition, several large, self-insured employers have identified suspected duplicate claims ranging from 0.02% to 0.1% of paid claims, according to the report.

The Thomson Reuters report also

See **COSTS** page 7

RISK MANAGEMENT

Discovering all risks to an enterprise

PRIMA conference touts San Francisco's approach to ERM

By MARK A. HOFMANN

ORLANDO, Fla.—Neither Rome nor an effective public-sector enterprise risk management process was built in a day.

It can take several years to implement an ERM program, said Dorothy Gjerdrum, executive director of the Public Entity & Scholastic Division of Arthur J. Gallagher Risk Management Services Inc. in Eden Prairie, Minn. Doing so requires new skills, such as getting people to work together, she said during the Alexandria, Va.-based Public Risk



The Alexandria, Va.-based Public Risk Management Assn. held its annual meeting in Orlando, Fla.

Management Assn.'s annual meeting this month in Orlando, Fla.

ERM is "not just a bigger version of risk management," Ms. Gjerdrum

said. Instead, it is a process to try to discover all the risks facing an enterprise, especially those that could bring down the entity, she said during a discussion of how the City and County of San Francisco instituted ERM on a department-by-department basis.

Matt Hansen, director of risk management for the City and County of San Francisco, said the risk management department had only three employees, including himself, as it tackled ERM. The city hired Mr. Hansen in early 2008 to implement the process, and he hired Ms. Gjerdrum to help with the project. Today, the entity's risk management department serves about 60 departments, including

See **ERM** page 14

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A LOT OF THINGS CAN HAPPEN IN A MAJOR STORM.
WE MADE SURE THIS DIDN'T.

SWELL'S SEAFOOD RESTAURANT



SWELL'S
SEAFOOD
RESTAURANT

Catch of
the Day:
Sea Bass
BEEF

When our customer's frozen seafood warehouse was hit by a major storm, it sustained significant roof damage and lost power. Jeopardizing not only the inventory, but the restaurants that depend on it. So while other companies were still assessing the storm's impact, our claims experts were already arranging for repairs and securing refrigerated trucks plus fuel, to preserve the fish. Whether it's responding quickly, keeping you informed, or paying your claims in a timely fashion, we're committed to helping you protect your business before and after adversity strikes. That's our policy. For more information, contact your broker or agent or visit libertymutualgroup.com/property.



Aon Asia Pacific CEO dies

Successor to Bernard Fung has not yet been named

HONG KONG—Bernard Fung, the chairman and CEO of Aon Asia Pacific in Hong Kong, died May 27, Chicago-based Aon Corp. announced last week.

Mr. Fung, 57, led Aon's Asia-Pacific operations and was a member of its executive committee. He previously was CEO of Inchcape Insurance Brokers, an affiliate of Bain Hogg P.L.C., which Aon acquired in 1997, and before that served as head of Aon's Canadian retail brokerage operations.

A successor to Mr. Fung has not yet been named.

In a memo to Aon employees, President and CEO Greg Case wrote that "our dear friend and colleague impacted all he touched in a positive and inspirational way. What Bernie accomplished

in his life through his ability to motivate others is exceptional and something we all should aspire to."

Aon created a website to honor Mr. Fung at <http://memorialwebsites.legacy.com/bernardfung/homepage.aspx>. The insurance brokerage also plans to support the China Literacy Foundation Ltd., a charity with which Mr. Fung was affiliated to promote the improvement of schools and education in China, as well as dedicate part of its July 15 "Aon United Global Day" to Mr. Fung.

A remembrance ceremony was held for Mr. Fung on June 7, attended by government officials, industry leaders and 1,000 Aon colleagues, including Mr. Case, according to Aon.

In lieu of flowers, Mr. Fung's family requests well-wishers consider donating to a memorial fund of the China Literacy Foundation at www.clfl.org.



Mr. Fung

Grandfather: Health care reform exemptions detailed

CONTINUED FROM PAGE 1

ic medical condition.

While not explicitly clear, experts say the rules suggest that a plan could lose its grandfathered status if an employer terminates one plan and transferred employees to its remaining plan. An example cited in the guidance is a traditional preferred provider organization plan being replaced with a less costly consumer-driven health plan.

Whether the benefit of plans retaining grandfathered status exceeds the cost of not making certain changes, such as boosting coinsurance, is an analysis every employer will have to make.

"You have to do a cost-benefit analysis," said J.D. Piro, a principal in the Norwalk, Conn., office of Hewitt Associates Inc.

"You have to weigh the cost savings of being a grandfathered plan vs. the savings you would achieve through plan redesign," said Sharon Cohen, an attorney with Towers Watson & Co. in Arlington, Va.

Cost-benefit analysis

Ultimately, though, experts say the cost of not making changes that would result in plans losing their grandfathered status will exceed the benefits of being a grandfathered plan.

"You can't avoid (the health care reform law) rules forever. Plans have to change over time. Employers do not want their plans to be frozen in time," Ms. Cohen said.

Employers most likely to eschew grandfather status for their plans

REMAINING GRANDFATHERED

Changes that will not affect a health care plan's grandfathered status

- Increasing employee premium contribution by up to five percentage points
- Switching plan administrators
- Increasing deductible or out-of-pocket maximum by up to increase in medical inflation, plus 15 percentage points
- Boosting copayments by \$5-adjusted annually for medical inflation—or a percentage equal to medical inflation plus 15 percentage points, whichever is greater

Changes that will strip plans of grandfathered status

- Changing health insurers*
- Increasing coinsurance requirements
- Eliminating a covered benefit

*Allowed for plans offered as part of a collective bargaining agreement while agreement is in force

will be those whose plans impose only modest employee cost-sharing requirements and now need to

boost those requirements to better keep costs under control, experts say.

Federal regulators recognize employers will make changes that result in plans losing their exempt status.

By 2013, as many as 80% of plans with less than 100 employees will have relinquished their grandfathered status, as will nearly two-thirds of plans sponsored by employers with 100 or more employees, according to the rules published in the June 17 edition of the Federal Register.

Think of grandfathering as something "with planned obsolescence built into it. Over time, it will be too expensive or too awkward for employers to maintain plans" that meet grandfathering requirements, said Andy Anderson, a partner with Morgan, Lewis & Bockius L.L.P. in Chicago.

Rule specifics

The rules generally apply for coverage that was in place as of March 23. However, an impermissible plan design change made after that, such as raising a coinsurance requirement, would not cause a plan to lose its grandfathered status as long as the change were reversed prior to Jan. 1, 2011.

The rules also make clear that retiree-only health care plans are "excepted" plans and exempt from health care reform requirements. That means, for example, that retiree-only plans can have lifetime dollar limits, as many do, and do not have to extend coverage to retirees' adult children up to age 26.

Had that exception not been provided, "even more employers would have folded the (retiree health) plans," said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

Commentary

Bay State holds test run for health care reform

As we anxiously await the release of regulations to implement the Patient Protection and Affordable Care Act, it's a good time to check on developments in Massachusetts and its 2006 law that served as the template for many of the reforms included in the federal law.

One federal reform that has received a lot of attention is the new state-based health care exchanges, which are to be in operation by 2014 to provide coverage to individuals and small businesses. But if Massachusetts' recent experience involving its Connector insurance exchange is any indication of what's to come, we could be in for a rude awakening.

In April, several insurers boycotted the Connector's Business Express program, which launched in February to provide small-business coverage.

The insurers' action, which suspended small-group sales via Business Express, came in response to the Division of Insurance's rejection of most proposed health insurance rate increases that insurers insist are necessary because of rising health care costs, which have contributed to four of Massachusetts' five major health plans' operating losses last year.

The insurers assert that a larger share of the premium dollar is associated with the cost of medical care partly because many individuals are enrolling in plans only when they need treatment and dropping coverage soon afterward. In addition, certain hospitals and physician groups are using their market clout to boost reimbursement rates, the Massachusetts Assn. of Health Plans said in an April 12 statement.

Phones began "ringing off the hook" in March at Associated Industries of Massachusetts' Boston offices after businesses began hearing about insurers' rate hike requests, most of which were in the double digits, said Rick Lord, president and CEO of the employer group representing some 7,000 members. Although the phones silenced after the Division of Insurance rejected the rate hikes and ordered insurers instead to use their April 2009 rates, Mr. Lord expects the relief to be only temporary. That's because when the Division of Insurance eventually acts on insurers' 2010 rates, increases would be applied retroactively.

In response to the state agency's rejection of rate increases, the Massachusetts Assn. of Health Plans sought a preliminary injunction that would have allowed insurers to use their proposed 2010 rates. But a judge



JOANNE
WOJCİK

Senior Editor Joanne Wojcik
can be reached at:
jwojcik@businessinsurance.com

ordered insurers to first go through the Division of Insurance's administrative appeals process.

So far, only Neighborhood Health Plan has reached a settlement with the state agency, which approved a 7.7% 2010 rate increase vs. the 11% increase the insurer sought originally. Now, the other insurers see the 7.7% increase as an

If Massachusetts' recent experience involving its Connector is any indication of what's to come, we could be in for a rude awakening.

industrywide rate cap, though the state says that is not the case.

While the Massachusetts Division of Insurance reviews insurers' appeals, the official in charge of monitoring insurer solvency has sent an internal e-mail warning that the rates the division wants to impose on health plans "have no actuarial support" and could lead to "a train wreck" in the industry. The internal exchange was made public by insurance regulators after the Associated Press requested the information.

The Connector also has sent letters to the four insurers that refused to participate in Business Express, reminding them of their legal obligation to do so under Massachusetts' law. Those four—Blue Cross & Blue Shield of Massachusetts, Tufts Health Plan, Fallon Community Health Plan and Harvard Pilgrim Health Care—provide coverage to 80% of Massachusetts' small-business market, a Connector spokesman said. If the stalemate continues, the Connector may commence legal action, the letters warn.

Maybe it's a good thing Massachusetts' troubles are happening now as regulators decide how best to implement the federal law. Let's hope they're paying attention.

Drywall: La. plan would bar insurers from denying cover

CONTINUED FROM PAGE 4

homes in which the tainted drywall was installed, among other steps.

Federal hearing

The House Committee on Energy and Commerce's Subcommittee on Commerce, Trade and Consumer Protection heard testimony last week on the proposed Foreign Manufacturers Legal Accountability Act of 2010.

H.R. 4678 would require foreign manufacturers to designate a "registered agent" within the United States who would be held accountable should legal issues arise.

The bill, introduced in February by Rep. Betty Sutton, D-Ohio, came in response to a growing number of product recalls made by the CPSC in recent years, with a disproportionate number of those recalls involving imported products, particularly from China.

In 2007, the CPSC issued 473 recalls—the highest in nearly a decade—of which 82% were imported products. Further, of the 389 recalls involving imported products, 74% of the recalls involved products from China.

The proposed federal legislation would require that the foreign manufacturer's agent be registered in a state with "substantial connection to the importation, distribution, or sale of products of the foreign manufacturer or producer." Further, the bill says "registering an agent con-

sistent with the act constitutes acceptance by the manufacturer of personal jurisdiction of the state and federal courts of the state in which the agent is located."

If the foreign manufacturer fails to register an agent, the bill would prohibit importation of the products from that manufacturer.

Providing testimony at the hearing was William Morgan of Williamsburg, Va., one of several plaintiffs awarded \$2.6 million in damages in April in a suit over Chinese drywall made by Taishan Gypsum Co. Ltd., a subsidiary of German drywall manufacturer Knauf Plasterboard Tianjin Co. Ltd.

74%

OF THE 389 RECALLS involving imported products in 2007, 74% of the recalls involved products from China.

Mr. Morgan has been unable to collect any of the damages he's owed because Taishan failed to

respond to requests to appear in court. Taishan then appealed a judge's default ruling.

"Foreign manufacturers should not be allowed to sell products which destroy homes and make people sick with impunity," Mr. Morgan testified before the House subcommittee. "Unless these companies are required to make themselves amenable to being sued in a U.S. court, they should not be allowed to sell their products here."

Marianne Rowden, president and CEO of the American Assn. of Exporters and Importers, also testified before the subcommittee. She urged caution when considering

H.R. 4678, and said the bill is "ill advised" and could negatively impact U.S. businesses.

"Our experience over the last decade has been that regulating goods produced outside the United States requires a holistic risk management system and implementation of product safety legislation which would eliminate the need for H.R. 4678," Ms. Rowden testified.

In the Senate, S.B. 1606 also would require manufacturers to "establish a registered agent" in the United States "who is authorized to accept service of process on their behalf for the purpose of all civil and regulatory actions in state and federal courts." That bill, introduced in August 2009, was referred to the Senate Finance Committee.

Costs: Ways to cut health care waste

CONTINUED FROM PAGE 4

appears to support assertions made at last week's annual meeting of the American Medical Assn. in Chicago that eliminating claims-processing errors by health insurers could save \$15.5 billion annually.

The AMA report, "National Health Insurer Report Card," found that one-fifth of all health insurance claims are mishandled based on an analysis of claims processed by the eight largest U.S. health insurers.

Because each insurer uses different rules for processing and paying medical claims, it creates complexity, confusion and waste, AMA President Nancy Nielsen said in a statement accompanying the report.

Electronic records would reduce health care system waste significantly, the report concluded, pointing to a recent initiative involving the Minnesota Department of Health as an example. When fully implemented, a state law requiring the standard, electronic exchange of routine health care business transactions will save the state more than \$60 million per year.

Processing claims accounts for \$210 billion of total U.S. health care system costs, the AMA estimated.

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Business Insurance OPINIONS

Distortions persist in health reform debate

ONE OF THE more disturbing developments during the long and tortuous drive to pass health care reform legislation were the lies and exaggerations about what the legislation would and would not do and why reform was needed.

There was former Alaska Gov. Sarah Palin erroneously charging that an early version of the legislation would have created "death panels" comprising federal bureaucrats who would decide which individuals would deserve health care services based on "a subjective judgment of their level of productivity in society." None of the bills contained such a provision.

President Barack Obama was guilty of distortion, too. He charged that if the legislation was not passed, health insurers would "run amok" and raise rates without any accountability. We'd be the last to say insurers are angels, but to say reform was needed to prevent them from running amok was sheer demagoguery.

Now the distortions continue. Last week, Sen. Charles Grassley, R-Iowa, took the administration to task for its new rules specifying what changes employers could make to their health care plans and still be exempt from certain health care reform requirements.

Those rules, Sen. Grassley said, are "just more proof you actually can't keep what you like under the new partisan health reform law," contrary to what President Obama said.

In fact, nothing in the rules will require employers to change their plan designs. But what Sen. Grassley and others apparently do not understand is that health care plans have and will continue to change, regardless of whether the reform legislation was passed. With costs continuing to surge, employers have no choice but to look at plan redesign and these rules will have little impact on that decisionmaking.

There is much to criticize about the law, but it will be in everyone's best interest for that criticism to be informed to be useful.

Cooler heads needed to calculate liability cap

REP. RUSH HOLT, D-N.J., calls the Oil Pollution Act of 1990's liability cap of \$75 million for offshore facilities "laughable."

We couldn't agree more. The cap should be raised, and raised significantly. But as Congress considers legislation offered by Rep. Holt—who wants to raise the cap to \$10 billion—and others to change the cap, we hope they proceed carefully and do not allow the understandable anger directed at BP P.L.C. for the monster oil spill fouling the Gulf of Mexico to dictate the terms of reform.

It would be a mistake to replace even a ludicrously low cap like the OPA's with unlimited liability, as some lawmakers propose. Subjecting offshore drilling operators to limitless liability might make perfect political sense, but it falls a bit short in economic sense.

Unlimited liability would discourage domestic exploration. It also would raise the possibility the companies would go bankrupt before they covered all of their legitimate claims, leaving the taxpayers to pick up the tab. It's far better to allow a polluter to stay in business and pay every cent of the bill than to take the politically appealing step of subjecting the polluter to a corporate death sentence.

Congress should raise the OPA's liability cap. But, hard as it will be to do in today's atmosphere in Washington, lawmakers should do so in a measured rather than emotional manner. Raise it high enough so it hurts, but does not kill, the offender. The existing cap is indeed laughable, but eliminating it could have consequences that are no laughing matter at all.

Health care plans have and will continue to change, regardless of whether the reform legislation was passed.



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YES 57%

NO 42%

NEXT WEEK'S QUESTION

Which social media network do you use most for professional purposes?

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Duties to defend, indemnify not always linked

While the insurance law principle that says where there is no duty to defend, there is no duty to indemnify may be cited often, it does not hold true in all circumstances, says Joshua A. Mooney, an attorney with Ballard Spahr L.L.P. in Philadelphia. The application of this syllogism gives the principle a broad meaning that never was intended. Further, it violates the fundamental principle that the duties to defend and indemnify are independent duties, he says.

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Corporate pension plans see funding improvements

Due to healthier return environment, more contributions

By ROB KOZLOWSKI

The funded status of the 100 largest U.S. corporate pension plans improved slightly in 2009 after the disastrous previous year, *Pensions & Investments* magazine's review of annual reports shows.

The aggregate funded ratio of the top 100 plans rose to 83.9% in 2009 from 81.2% in 2008. The plans had an aggregate funding deficit of \$180 billion in 2009, based on projected benefit obligations. In the previous year, funding had plunged to a deficit of \$198.9 billion, wiping out five consecutive years of gains. The top 100 plans had an aggregate surplus of \$111.1 billion in 2007 and \$37.3 billion in 2006.

The small increase was due to a healthier return environment in 2009, as well as higher employer contributions.

"When we looked at contributions in 2009, it was the highest level since 2003. That's the environment you need to see to have a more healthy funded state," said Steven J. Foresti, managing director at Wilshire Associates Inc. in Santa Monica, Calif.

"There's the liability accounting side of things, too, which is driven in large part by interest rates," Mr. Foresti said. The increase in the funding ratio was tempered by lower interest rates.

Ten firms reported a funding surplus. FPL Group in Juno Beach, Fla., reported the highest funding ratio of the top 100 — 162%. The utility had \$3.03 billion in plan assets compared with \$1.87 billion in projected benefit obligations.

The rest of the top five were MeadWestvaco Corp. in Richmond, Va., with \$3.39 billion in plan assets and \$2.46 billion in pension benefit obligations, for a funding ratio of 138%; JPMorgan Chase & Co. in New York with \$10.22 billion in plan assets and \$7.98 billion in pension benefit obligations, at 128%; Bank of New York Mellon Corp. in New York, with \$3.3 billion in plan assets and \$2.8 billion in obligations, at 118%; and SunTrust Banks Inc. in Atlanta, with \$2.33 billion in plan assets and \$2.01 billion in projected benefit obligations, at 116%.

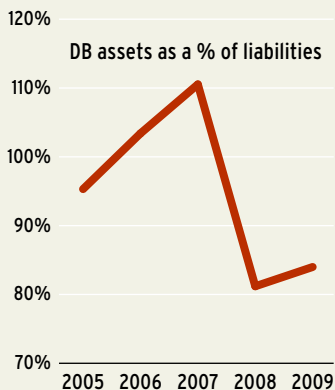
Airlines at bottom of list

Airlines once again were at the bottom of *P&I*'s funded status ranking.

Delta Air Lines Inc. in Atlanta reported plan assets of \$7.62 billion compared with \$17.03 billion in projected benefit obligations, for a funded ratio of 44.8%, the lowest of

REBOUND

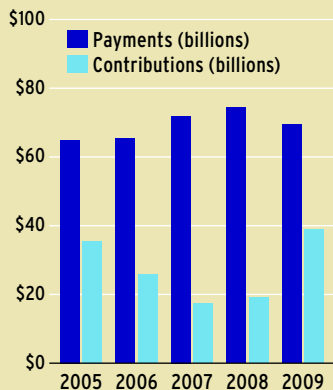
DB plans' funded status rose slightly last year after 2008's 29-point freefall.



Source: Company reports

CATCHING UP

Benefit payments dropped in 2009, while contributions skyrocketed.



Source: Company reports

the top 100.

Delta reported an actual return on plan assets of \$1.2 billion, or 15.7% of plan assets, and contributed \$200 million to its plan in 2009. The company also contributed \$558 million in April to its U.S. plans, bringing its total thus far in 2010 to \$665 million. The annual report announced the firm's intention to contribute a total of \$720 million this year.

In 2008, the first year after the merger of Delta and Northwest Airlines Inc., the airline reported \$7.3 billion in plan assets and \$15.9 billion in pension obligations, for a

Mich., 62.5%; and Goodyear Tire & Rubber Co. in Akron, Ohio, 63.9%.

Of the top 100 firms, JPMorgan Chase saw the greatest improvement in its funded ratio, an increase of 39 percentage points from 89.1% in 2008. The firm contributed \$2.8 billion to its pension plans and had an actual return on plan assets of \$1.15 billion, or 11.2% of plan assets, in 2009. A spokeswoman didn't return a phone call by press time seeking comment.

Actual returns on plan assets overall improved dramatically in 2009. Only two companies reported negative returns on plan assets, and both have fiscal years that included the market's downward spiral in fall 2008. (The other 98 are for calendar-year 2009.)

General Mills Inc. in Minneapolis, which had a fiscal year that ended May 31, 2009, reported a loss of \$1 billion, or 32%. Emerson Electric Co. in St. Louis, which had a fiscal year that ended Sept. 30, 2009, reported a loss of \$311 million, or 11%.

General Mills and Emerson Electric were two of the three firms that saw the greatest decrease in their funded ratios, along with Walt Disney Co. in Burbank, Calif., whose fiscal year ended on Oct. 3, 2009. Disney's return was relatively flat at \$25 million, or 0.5%.

Caterpillar Inc. in Peoria, Ill., experienced the greatest percentage return on plan assets, with 24.3%. The firm reported a return of \$2.19 billion in 2009 with a fair value of plan assets of \$9.02 billion. Eleven other firms also posted positive returns of more than 20%. A spokesman declined to comment, but the company's fourth-quarter earnings report cited "appreciation of Caterpillar stock" as one reason for its "strong asset returns."

The average long-term expected return on plan assets fell to 8.23% in 2009 from 8.31% in 2008. The average discount rate used to deter-

mine benefit obligations fell to 5.96% in 2009, from 6.45% in 2008.

Contributions jump

Overall, company contributions more than doubled in 2009, to \$38.8 billion from \$19.1 billion in 2008. Eleven firms contributed more than \$1 billion.

Exxon Mobil Corp. in Irving, Texas, made the largest employer contribution in 2009: \$3.07 billion. The firm's actual return on plan assets came to \$2.01 billion, or 19.6% of plan assets, bringing the funding ratio up to 73.5% in 2009, up from 50% in 2008.

The rest of the top five in contributions were JPMorgan, \$2.8 billion; Boeing Co. in Chicago, \$1.58 billion; Chevron Corp. in San Ramon, Calif., \$1.49 billion; and Lockheed Martin Corp. in Bethesda, Md., \$1.48 billion.

The top 100 intend to contribute about \$19.3 billion in 2010, considerably less than in 2009, because of funding relief in the Worker, Retiree, and Employer Recovery Act of 2008. That law eased funding regulations of the Pension Protection Act of 2006, allowing plans to smooth the value of pension assets over 24 months.

"Expected contributions as reported are not that high for the current year. Things change, but the real big picture that we're not required to report is what it looks like over the next several years," said Alan Glickstein, a Dallas-based senior retirement consultant at Towers Watson & Co. "The real pressure comes in 2011 and 2012."

Under the funding requirements in the 2008 law, for example, General Motors Co. in Detroit, alone would be required to contribute \$5.9 billion in 2013 and \$6.4 billion in 2014, according to a Government Accountability Office report.

However, funding requirements could change if the American Jobs and Closing Tax Loopholes Act of 2010 becomes law. On May 28, the bill, H.R. 4213, passed the House of Representatives and, at press time, was pending in the Senate.

The result of further pressure from pension fund executives for more funding relief, the new bill would allow defined benefit plans to stretch out amortization periods for investment losses for two of the years between 2008 and 2011, over a period of either nine or 15 years, at the option of the plan sponsor.

Concerning sponsors going forward is avoiding the pattern of getting funding levels up and experiencing new crises every time there is a market downturn.

"Look (ahead) to the future and look at not just getting back to higher funding levels, but also incorporating a derisking strategy while that's happening," Wilshire's Mr. Foresti said. "But I think there's an idea of dynamically thinking of asset allocation going forward."

"It's going to take contributions and going through this experience (market downturns) a couple of times in the last decade, (but) plans will look forward to taking a derisking strategy."

Rob Kozlowski is a reporter for *Pensions & Investments*, a sister publication of *Business Insurance*.

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401(k) advice proposal insufficient

Respondents to plan express concern over various aspects

By ROBERT STEYER

In trying to clarify who can give advice to 401(k) plan participants and under what circumstances, the Department of Labor appears to have antagonized just about everybody.

A wide swath of respondents—service providers, trade organizations, consumer groups—found something to dislike about proposed rules on providing investment advice and avoiding conflicts of interest in delivering the advice, according to comments filed recently with the Labor Department.

While praising the DOL for trying to protect consumers and to establish acceptable boundaries of advice-giving, respondents raised questions about specific investment advice issues such as using computer models, establishing fees and determining the relationship between advisers and affiliates.

Some also expressed concern, in written comments and in interviews with *Pensions & Investments* magazine, that the proposed regulations could take on a life of their own unless they were further clarified.

"In a system as big and complicated as the 401(k), unintended consequences lurk in the shadows of every regulatory change," said David Wray, president of the Chicago-based Profit Sharing/401(k) Council of America, in an interview.

"The Department of Labor is trying to figure out how advice can be provided without participants being taken advantage of," Ross A. Bremen, a partner at investment consultant NEPC L.L.C. of Cambridge, Mass., said in an interview. "In an attempt to solve this dilemma, the department has come up with something that is simplistic and potentially flawed."

Mr. Wray's organization and the Defined Contribution Institutional Investment Assn.—a group that represents institutional investment managers, recordkeepers, insurers, trust companies, consultants and plan sponsors that has Mr. Bremen as its chairman of the public policy and legal committee—filed formal comments asking for adjustments or revisions in the proposed regulations.

The proposed rules relate to the Pension Protection Act of 2006, which created some statutory exemptions to ERISA's prohibitions against certain investment advice for participants in 401(k) plans and individual retirement accounts.

"In general, investment advice given by an investment adviser to plan participants that pay additional fees to the adviser or its affiliates can violate" sections of ERISA and the Internal Revenue Code, the Labor Department said when it unveiled the proposed rules in March. "This has limited the types of investment advice arrangements available to participants in 401(k)

plans and IRAs."

The department's proposed rules seek to establish an exemption for advice that uses a "computer model certified as unbiased." Another exemption covers advice given on a level-fee basis, in which fees are the same regardless on the investment selected by a participant.

Such exemptions would be subject to several requirements, the Labor Department said. For example, the plan fiduciary must select the computer model or fee-leveling arrangement independent of an investment adviser or the adviser's affiliates; computer models used in providing advice must be certified in advance as "unbiased;" experts who certify the computer-model validity will be subject to certain

'The Department of Labor is trying to figure out how advice can be provided without participants being taken advantage of. In an attempt to solve this dilemma, the department has come up with something that is simplistic and potentially flawed.'

Ross A. Bremen, NEPC L.L.C.

qualifications; and fee-leveling deals must prohibit investment advisers from receiving payments from affiliates "on the basis of their recommendations."

Second time around

This is the second time the Labor Department has issued advice-giving regulations. The Bush administration's rules, scheduled to take effect March 2009, were delayed by the Obama administration on the grounds that officials wanted more public comment and more time to review the regulations.

In November, the department withdrew the regulations, saying a portion of the Bush-endorsed rules didn't adequately guard against conflicts of interests involving investment advisers and affiliates.

When the Labor Department offered its revised rules in March, officials said they were nearly identical to the Bush administration's regulations. Comments from industry participants, however, point to potential problems.

When Mr. Wray used the words "unintended consequences," he was referring to fears by his organization and by several others that the new rules could be interpreted as requiring certain computer models or investment theories as accept-

able advice. "The consequences can be quite broad—beyond the context of the regulation," he said.

The PSCA, the U.S. Chamber of Commerce and the ERISA Industry Committee told the Labor Department that the government should refrain from recommending investment theories as part of the advice-giving regulation. "In the preamble to the proposed rule, the DOL requests comments on whether it should provide regulations on what constitutes generally accepted investment theories," their jointly filed written comments stated.

"These questions are limited to the computer model, but any finding by the department will have repercussions beyond that," they added. "We emphatically urge the DOL to reject this idea."

If the Labor Department starts recommending investment theories, they warned, "then it will override the fiduciary obligations of the plan sponsors and the professionals."

Computer modeling provoked testy comment letters. "The department seems to be expressing a preference for a particular type of investment strategy, which is unprecedented and inconsistent with past DOL positions," wrote David Certner, legislative counsel and legislative policy director for AARP in Washington.

Noting that the DOL rule allows computer models to exclude advice on certain types of investments—including annuities and target-date funds—Mr. Certner argued that "a competent recommendation on investments cannot be made without...taking into account all investment options."

Vanguard objects

Vanguard Group Inc. of Malvern, Pa., objected to a passage in the Labor Department's discussion of its proposed rules that asked if restrictions should be placed on information used in creating the computer advice models. Restrictions could include historical risks and returns of different asset classes, information about participants, expenses for each investment option or the asset allocation for each option, the department said.

"Presumably, by limiting a computer model to a consideration of only these factors, it would be difficult to compare actively managed funds in the same asset class, thus establishing a strong preference for index vs. actively managed funds in an acceptable computer model," wrote Vanguard managing directors R. Gregory Barton and George U. Sauter.

Although Vanguard is a strong proponent of index funds, "we also believe that there is clearly a role for actively managed funds in an acceptable computer model," they added.

Active vs. passive was the issue that prompted the words "simplistic" and "flawed" from Mr. Bremen of NEPC. "If the DOL stipulates that inclusion of low-cost investment options are appropriate and that more expensive active management funds are less appropriate for the

advice model, there's a danger that these regulations could impact other plan sponsor decisions," he said in an interview.

For example, sponsors might worry about using active or passive investments "as part of their core lineup or what kinds of target-date funds to offer," said Mr. Bremen.

The DCIIA raised several red flags in its comments. Because investment models and theories change over time, "it would be counter-productive to narrowly define the way in which models are created or to mandate the use of specific models," the association wrote. "Plan fiduciaries, including investment advisers and plan sponsors, should be encouraged to take into account a broad range of considerations including fees, risk and historical investment performance" in preparing an investment menu.

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



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U.K. risk managers expect soft market to continue

By SARAH VEYSEY

MANCHESTER, England—The soft insurance market for most lines of coverage bought by U.K. risk managers looks to continue, a panel of insurers and brokers said at the Assn. of Insurance & Risk Managers annual conference last week.

But a majority of risk managers surveyed by AIRMIC said they believe the soft market may be coming to an end.

Despite a relatively high number of catastrophes in the first half of the year, insurers' balance sheets have not been greatly affected, so the soft market is likely to continue, said Richard Pryce, London-based president of ACE U.K., a unit of ACE Ltd., during a discussion forum at the conference.

Most insurers still are interested in acquiring new business and this likely will fuel a continued soft market, noted Brendan McManus, London-based CEO of Willis U.K. & Ireland, a unit of Willis Group Holdings P.L.C., during the forum.

"We are not seeing any hardening anywhere in the market," which is good news for buyers, Adrian Colosso, group chief executive

700 at AIRMIC meeting

MANCHESTER, England—Nearly 700 attendees gathered in Manchester, England, June 14-16 for the Assn. of Insurance & Risk Managers' annual conference.

During the conference, Paul Howard, head of group insurance and risk management at J. Sainsbury P.L.C., handed over chairmanship of AIRMIC to Nicola Harvey, group risk director at Christie's International P.L.C. Both are based in London.

Ms. Harvey's theme for her year in office is "embracing new horizons," she said.

Next year's conference will be held in Bournemouth, England.

—By Sarah Veysey

of London-based brokerage Heath Lambert Ltd., said during the forum.

Separately, George Davies, head of the risk management practice at Marsh Inc. in London, said the market for most coverage bought by large corporate clients remains soft.

During the past four years, average proper-

ty rates for Marsh's large-account clients have fallen by almost 24%, while average rates for employer liability coverage declined 26% during the period, he said.

Excess employers liability rates for large U.K. buyers fell 46.6% on average during the past four years, while public liability rates and excess public liability rates fell an average of 25%, Mr. Davies said.

In the first quarter of this year, most large-account clients continued to experience rate reductions, Mr. Davies said. During that period, property rates for Marsh's largest U.K. clients fell an average of 7%. For employers liability, that decrease was 2%. For excess employers liability, the average decrease was 1.5%, he said.

For public liability, rates fell an average of 1.3% in the first quarter, while rates for excess public liability insurance declined an average of 1.6%.

"The trend is beginning to slow, but there are still reductions," Mr. Davies said.

Risk managers questioned by AIRMIC before the conference, however, said they expect to see higher rates in certain lines.

Of 96 AIRMIC members surveyed in June,

92% said they believe the soft market is ending, said John Hurrell, London-based CEO of AIRMIC.

For property and business interruption coverage, 29% of respondents said they believe rates likely will rise during the coming year compared with 10% who said they believe rates would fall.

For employers liability, a compulsory coverage in the United Kingdom, 34% of respondents said they expect rate increases during the coming year compared with 10% who said they expect rates to fall.

For public liability coverage, 31% of respondents said they expect rates to rise compared with 9% who expect rate decreases.

Sixty-three percent said they expect automobile third-party rates to increase compared with just 3% who expect rates to fall.

For directors and officers liability coverage, 40% of respondents said they expect rates to increase during the coming year while 11% said they expect rates to fall.

And 41% of respondents said they expect rate increases for professional indemnity cover compared with 4% who said they expect rates to decrease.

Insurers need time to respond: Panel

Market can respond to events, but needs to develop coverage first

By SARAH VEYSEY

MANCHESTER, England—The insurance market can respond to events such as the recent volcanic ash cloud that closed large swaths of European airspace this year, but it must be given time to develop such coverage and cannot be expected to write "blank checks," a panel of experts said at the Assn. of Insurance & Risk Managers annual conference.

In April, an ash cloud caused by the eruption of a volcano in Iceland resulted in cancellation of thousands of flights to and from Europe, causing disruption for many companies.

Being unable to travel by air because of an Icelandic volcano probably did not make the risk list of many companies, noted Richard Pryce, London-based president of ACE U.K., a unit of ACE Ltd.

While the insurance industry can respond to such events, it must be given time to develop insurance coverage. Insurers cannot be expected to write open-ended coverage for unknown risks, he said at the Manchester, England, gathering last week.

"It's an iterative process," Mr. Pryce said. "We cannot give you a blank check."

Buyers must not expect "big bangs" in policy innovation, said Andreas Berger, London-based chief executive of Allianz Global Corporate Specialty U.K., a unit of Allianz S.E. Rather, coverage for emerging risks likely would be tailored to the specific needs of clients, he said.

Disruption caused by events such as the volcanic ash cloud gives risk managers the opportunity to discuss emerging risks at the C-suite



level within their companies, said Brendan McManus, London-based CEO of Willis U.K. & Ireland, a unit of Willis Group Holdings P.L.C.

Speaking from the floor, John Hurrell, London-based CEO of AIRMIC, said, anecdotally, the association's sense was that buyers believed insurers reacted "quickly and positively" to the ash cloud.

Other issues discussed by the panel included the effect that Solvency II, the forthcoming European Union risk-based capital regulatory regime for insurers, might have on captives.

Solvency II is likely to be put into effect in late 2012 and the treatment of captives under the directive still is the subject of debate.

Earlier in the conference, Peter den Dekker, president of the Federation of European Risk Management Assns. in Brussels, urged U.K. risk managers to get involved in lobbying efforts to try to ensure that capital and other requirements placed on captives by the directive are not too onerous.

Separately, Alan Fleming, London-based chairman of AIRMIC's

captive working group, said "some proportionality" is needed in the way captives, which have less infrastructure and fewer staff than traditional insurers, are treated by the regulatory regime.

He said AIRMIC was working with FERMA and the European Captive Insurance & Reinsurance Owners' Assn. to lobby European lawmakers.

Experts taking part in a discussion during the conference said it was too early to tell what effect Solvency II would have on captive insurers.

If captives fall under the directive's scope, risk managers' reactions will depend largely on the captive's organizational purpose, said Willis' Mr. McManus.

Even if Solvency II requires a large capital injection, some clients will continue to use captives because they are a fundamental part of the way they manage risk, he said.

Other clients, however, may decide that their reasons for operating a captive have become moot if capital requirements are increased, he noted.

AIRMIC to put more focus on nondisclosure rule

MANCHESTER, England—Overhaul of a 100-year-old U.K. law that puts insurance buyers at risk of having claims declined on the grounds of inadvertent nondisclosure will be a priority for the Assn. of Insurance & Risk Managers in the coming months.

At its annual conference in Manchester, England, last week, AIRMIC CEO John Hurrell said an increasing number of risk managers have told the London-based association that they have had claims denied based on nondisclosure language in the 1906 Marine Insurance Act that is applied to many insurance contracts in the United Kingdom.

Mr. Hurrell said the law, which places the onus on buyers to anticipate what a "prudent insurer" would deem "material" underwriting information, means that some risk managers have had claims denied for nondisclosure even when it is inadvertent and the information is irrelevant to the claim.

He said AIRMIC members, who on average buy insurance for six company departments across 10 countries, could not possibly disclose every detail that an insurer might deem to be material to coverage at some later stage.

AIRMIC has had preliminary discussions with insurers about inserting side agreements and clauses into contracts in a move to eliminate this problem. These talks have been

positive so far, Mr. Hurrell said.

Paul Maynard, London-based chief placement officer for Willis U.K. and Ireland, has had talks with insurers on behalf of AIRMIC. Parent Willis Group Holdings P.L.C. is one of AIRMIC's partner companies.

Mr. Maynard said if contracts included language that eliminates the risk of buyers inadvertently falling afoul of the 1906 law, brokers would be keen to provide similar clauses or side agreements to their clients.

In addition to discussions with insurers, AIRMIC said it plans to issue a guide this fall to help members avoid such claims denials in the future.

Mr. Hurrell said the guide would outline pitfalls of the system and provide model clause wording that should help alleviate the problem, among other things.

David Hertzell, head of the London-based Law Commission, said the independent organization appointed by Parliament that reviews laws in England and Wales would study the issue as part of a wider review of insurance law.

He said the Law Commission would examine ways to ensure greater fairness in the way buyers' claims are denied on nondisclosure grounds.

He said the Law Commission would base its recommendations to Parliament on "best market practice" in this area.

—By Sarah Veysey

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By JOANNE WOJCIK

Dental insurers are concerned that a provision in the health care reform law could erode demand for stand-alone dental coverage. The Patient Protection and Affordable Care Act requires that all insurance plans offered through state exchanges to individuals and employer groups with 100 or fewer lives include oral care for children up to age 21 beginning in 2014. It also bars insurance exchange plans from requiring participants to pay out-of-pocket expenses for preventive services, including preventive pediatric oral health care.

While an amendment to the law sponsored by Sens. Debbie Stabenow, D-Mich., and Blanche Lincoln, D-Ark., permits stand-alone dental plans to participate in the exchanges, it also provides the option to buy pediatric dental coverage directly from insurers or as part of comprehensive medical plans.

However, providers of stand-alone dental plans fear that once parents—especially those in lower income brackets—secure oral care for their children in their medical plan, they may drop stand-alone dental coverage for themselves.

They also are concerned about losing market share to large, national health insurers that can embed dental benefits into their medical plans.

Although the provision does not apply directly to midsize or large employers, some consultants predict that all employer-sponsored employee benefit plans eventually will cover all the “essential benefits,” including pediatric dental care, as the reform law is enacted.

Some 179 million U.S. residents—about half of the U.S. population—have dental coverage, either through stand-alone dental policies or public programs such as Medicaid, said Evelyn Ireland, executive director of the Dallas-based National Assn. of Dental Plans, whose members write more than 80% of the dental benefits in the United States.

Of those, 45 million people—including 25 million children—are covered by small-employer plans, she said.

Under the health care reform law, “those 25 million will be removed from their parents’ stand-alone dental coverage and put in the medical plan,” Ms. Ireland said. “The NADP’s concern is that the parents are likely to drop their stand-alone dental coverage once their kids are covered for dental by the medical plan.”

Ms. Ireland said an NADP analysis found that an additional 17 million children are likely to gain dental coverage as a result of the inclusion of pediatric dental coverage in medical plans under the health care reform law.

“But there could be many more adults who drop coverage” because of cost, she said.



FALLING OUT

Will stand-alone dental plans survive new mandate to cover children?

A standard family dental plan costs about \$100 per month on average before employer subsidies, but the cost does not drop significantly when children are not covered, Ms. Ireland said. Typical plans offer two options: individual coverage or family coverage.

Another NADP concern is that because most stand-alone dental plans have no affiliation with health insurers, they could lose the opportunity to cover small groups that buy coverage outside of state insurance exchanges that are to be in operation by 2014.

Although the health care reform law allows insurers to sell supplemental pediatric dental plans to complement medical coverage within the exchanges, it does not permit such a scenario outside the exchanges, Ms. Ireland said. As a result, insurers that sell health care policies to small businesses outside of insurance exchanges will be required to include pediatric dental coverage in their medical plans.

“It’s not like the medical plan can carve out the dental and subcontract it,” said Ms. Ire-

land, who added that it would be expensive for a medical plan to add pediatric dental coverage.

“One of our dental plan members that has a medical plan parent in one state estimated it would take \$50 million to integrate dental” into medical coverage, Ms. Ireland said.

Jeff Album, vp of public and government affairs for Delta Dental of California, New York, Pennsylvania and affiliates, said under his interpretation of the law, “only the insurers that can provide pediatric dental and vision in addition to medical coverage can sell coverage to the individual and small group market.”

The National Business Group on Health also weighed in on the issue in a letter sent to Sens. Lincoln and Charles Grassley, R-Iowa, in September.

“While the health reform legislation would still permit stand-alone adult coverage, stand-alone family coverage for vision and dental benefits have proven the most cost-effective. Many medical plans do not have relationships with either vision or dental provider networks and would have to subcontract for these services just for children, which will increase premiums for vision and dental coverage,” the NBGH said in the letter.

To remedy the situation, NADP has been lobbying Democratic lawmakers to pass corrective legislation that would allow pediatric dental coverage to be provided under a stand-alone dental plan if it is unavailable through a medical plan, regardless of whether coverage is purchased via an exchange.

“We think this is an oversight, and they simply failed to implement the provisions in the Stabenow-Lincoln amendment, which allows exchanges to offer stand-alone dental plans,” said Mr. Album, who is a member of the NADP’s board of directors based in San Francisco.

Although the essential benefits package that includes pediatric dental benefits applies only to individual and small-business policies, some consultants predict that employers of all sizes will be required to cover pediatric dental care eventually.

“Our understanding is that all medical plans will have to offer the essential benefits package at some point,” said Scott Keyes, a senior consultant at Towers Watson & Co. in Stamford, Conn.

Chantel Sheaks, a principal in the Washington office of Buck Consultants L.L.C., said that because of the expense associated with creating multiple types of plans, insurers are likely to make most of their employer health plan options mirror insurance exchange products.

“It’s inefficient for them to have that many different plan designs and get that many different regulatory approvals,” Ms. Sheaks said. “I think what we’re going to see is all insurers will only offer exchange products” to employers, regardless of their size.

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Retailers, big-box stores squeeze vision care insurers, providers

Some see less stand-alone cover, but others say uptake the same

By LOUISE ESOLA

Vision care insurers and providers are watching big-box stores and discount retailers take a greater share of eye examinations and eyeglasses sales, often at substantial discounts over what an employee would pay in premiums and copayments under traditional vision care plans.

Experts and discounters say the shift is a result of employees' rising share of health care-related costs and the difficult economy.

"If you do a cost analysis, retail vs. insurance...that's where you might see a drop in (vision care insurance) enrollment," said Arch Henderson, Hartford, Conn.-based Northeast vp for Lockton Cos. L.L.C. "The rising cost of health care has employees looking at their options a little closer."

"Is this driven by underlying economics? Yes," said Marcus Osborne, Bentonville, Ark.-based senior director for Wal-Mart Stores Inc.'s Healthcare Savings Program, which has contractual discounts with more than 3,000 employers nation-

give your employees additional benefits," Mr. Covill said.

For Wal-Mart, Mr. Osborne said the chain is negotiating up to 10% discounts off exams and eyeglasses for employers that link their websites to Wal-Mart's offerings. Because Wal-Mart's exams are less

than \$40 at most stores with an average \$38 for eyeglasses, the prices outpace anything offered through insurance companies and standard eye doctor offices, he said.

"There's no cost to employers or employees to get this discount; this discount is in return for free market-

ing," Mr. Osborne said.

Online "discount malls" also are jumping into the market, providing discounts on eyeglasses and contacts to company employees in exchange for referrals, Mr. Covill said.

However, Helen Darling, president of the Washington-based National Business Group on Health, said she hasn't seen a decline in vision care uptake and that most workers after a certain age need the regular eye care that comes with insurance.

"Oftentimes, people can get reimbursed for what they spend at Wal-Mart or Costco," Ms. Darling said.

Jody Feingold, Minneapolis-based consultant with the group and health care practice at Towers Watson & Co., said health care cost-

shifting as well as the weak economy seem "like it could become the case" to push more individuals away from stand-alone vision insurance to retailers.

But Wal-Mart's Mr. Osborne said workers often prefer smaller payroll deductions for vision care rather than paying the entire bill for an examination and corrective lenses or contacts from a retailer.

"It's as though people would rather pay more for something over time instead of paying it all at once at a store," Mr. Osborne said. "There is a sort of strange reality when you can save at (discount) stores, but you instead sign up for a more expensive plan. It's as though people say, 'If it's taken out of my payroll, I'll never miss it.'"

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'The big-box retailers are saying, 'If you put us on your intranet, we'll give your employees additional benefits.'

Chris Covill, Mercer L.L.C.

wide just for eye care, and is anticipating much growth in the future.

Mr. Osborne estimates that employees can save up to 60% in costs by forgoing supplemental vision insurance, which often is a voluntary, employee-paid benefit, and heading to a discount retailer like Wal-Mart, Sears, Roebuck & Co. or Target Corp. to meet their needs.

According to the U.S. Bureau of Labor Statistics, the larger the employer, the more likely an individual is to have access to a stand-alone vision plan. Only 4% of workers in companies with 49 or fewer employees had such access in March 2008 vs. 19% for companies with more than 500 employees.

According to vision and dental plan provider Ameritas Group, 50% of the U.S. population requires corrective lenses and 80% of those older than 45 require them.

Chris Covill, Atlanta-based national benefits practice leader with Mercer L.L.C., said an emerging trend is employers trying to move out of the vision care business altogether and, at times, negotiating discounts with retailers.

"The big-box retailers are saying, 'If you put us on your intranet, we'll

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Supplemental life can fill coverage gap

By LOUISE ESOLA

As employers continue to scale back their basic, paid life insurance offerings, all eyes are turning to supplemental life insurance as a voluntary benefit that could help fill the gap, experts say.

Employers offer the extra life insurance under their portfolio of benefits to attract and retain employees, say consultants who've seen employers slash company-paid life insurance benefits by as much as half, from twice an employee's salary to an amount equal to the worker's annual pay.

"We've seen employers cut back on the basic life insurance and that's made changes to what people are purchasing in supplemental life," said Jody Feingold, Minneapolis-based consultant with the group and health care practice with Towers Watson & Co.

In turn, experts say workers like the voluntary benefit because it often is less expensive than products sold in the individual marketplace, usually doesn't require invasive health assessments or proof of insurability, and premiums are deducted from paychecks. But uptake is slow, experts warn.

According to MetLife Inc.'s 2010 "Study of Employee Benefits Trends," 54% of workers get their life insurance from their employer, making supplemental life insurance a way to plug the hole left by cutbacks in basic, paid offerings, said Graham Cox, Bridgewater, N.J.-based vp of group life products for MetLife. "This is all a part of the cost shift for employers cutting costs," he said.

"Supplemental life is becoming more and more important today," said Jim Gemus, Roseland, N.J.-based vp of life product management with Prudential Group Insurance. "As employees make cuts to their basic

life insurance, group products like supplemental life provide individuals an easy way to get coverage."

If employees seek additional life insurance in the individual markets, they are likely to see higher premiums along with health examinations aimed at proving one's insurability. In the group marketplace, depending on the employer's deal with the insurer and the level of insurance, an employee often can forgo such health assessments.

"Very often you can get high levels of insurance without establishing insurability," said Mr. Gemus. "The process is much simpler."

"From our perspective, employees just like the convenience of supplemental life," said Rich Reda, Kansas City, Mo.-based vp of Lockton Cos.

L.L.C. "This will continue on to become a pretty stable product," he said, adding that many consultants expect to see more employees sign up for supplemental life.

But many say employers and insurers aren't yet seeing increased take-up of supplemental life, despite employer cutbacks in basic life insurance.

According to MetLife's annual study, 42% of U.S. workers have life insurance at two times their salary through either employer-paid or self-paid supplemental life programs. Fifty-three percent of that group described that coverage level as "adequate."

Meanwhile, MetLife's 2009 "Financial Impact of Premature Death" found that most beneficiaries who've suffered a loss deemed insurance at three times annual household income to be adequate.

This disparity between what some feel is adequate and what some feel to be inadequate helps explain why experts find supplemental life to be an "underused benefit for most," said MetLife's Mr. Cox. "The employer cuts (to basic life insurance) put pressure on supplemental life benefits, but underinsurance is still a problem."

Mr. Cox said many workers do not have enough life insurance coverage.

Lockton's Mr. Reda estimated that 20% to 30% of employees sign up for employer-offered supplemental benefits.

Helen Darling, president of the Washington-based National Business Group on Health, said cuts in other parts of their benefits package may leave employees struggling to allot more pay to supplemental life insurance, as with other voluntary benefits. However, the right information may convince some employees to see the value in supplemental life insurance.

"It's often a better buy than anything you could get as an individual," Ms. Darling said.

That's why experts say employers need to focus on educating their workforce.

"There is a lot of pressure on employers right now to make sure, if they aren't going to pay as much for the benefit anymore, that their employees understand the (voluntary) benefits," Mr. Cox said.

One way to get employees' attention is to present information on supplemental life at times other than open enrollment periods.

"Pulling life insurance (discussions and enrollment) out of the employee open enrollment cycle is one of the best strategies," said Rich Fuerstenberg, Princeton, N.J.-based partner with health and benefits and national specialty practice leader with Mercer Human Resource Consulting. While open enrollment usually takes place in the fall, some employers are holding open enrollment for life insurance this summer to allow employees to focus on life insurance outside of the barrage of other benefits information, he said.

Another way employers and insurers are adding enrollees is tailoring information to the worker, experts say. For example, employers are hosting presentations for employees, dividing groups by demographics. For example, a worker close to retirement might hear a different presentation than one with small children.

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1	Delta Dental Plans Assn. 1515 W. 22nd St., Suite 450, Oak Brook, Ill. 60523	630-574-6001 www.deltadental.com	54,000,000	93,600	7,000	208,800	84,000,000	Kim Volk, president/CEO
2	MetLife Inc. 200 Park Ave., New York, N.Y. 10166	877-638-2862 www.metlife.com	20,280,191	37,677	N/A	129,796	37,832,795	Michael H. Schwartz, Alan J. Vogel, Andy Laderman, vps-dental product management
3	Aetna Inc. 151 Farmington Ave., Hartford, Conn. 06156	877-238-6200 www.aetna.com	14,000,000	30,000	N/A	131,000	N/A	Alan S. Hirschberg, head-dental/vision products and services
4	CIGNA 1601 Chestnut St., Two Liberty Place, Philadelphia, Pa. 19192	800-257-5800 www.cigna.com	9,873,000	4,854	621	202,000	16,145,750	Matt Manders, president-CIGNA U.S. Service, clinical and specialty
5	United Concordia Cos. Inc. 4401 Deer Path Road, Harrisburg, Pa. 17110	888-884-8224 www.unitedconcordia.com	8,000,000	26,000	1,280	111,000 ¹	13,300,000	Daniel Lebish, chairman/CEO
6	Guardian Life Insurance Co. of America 7 Hanover Square, H-26-E, New York, N.Y. 10004	212-598-8000 www.glic.com	5,757,400	72,341	1,349	132,225	11,371,900	Christopher Swanker, vp-group dental
7	WellPoint Inc. 120 Monument Circle, Indianapolis, Ind. 46204	317-532-6000 www.wellpoint.com	4,200,000	N/A	N/A	85,360	N/A	Mike Walsh, president-WellPoint Dental
8	Ameritas Group 5900 O St., Lincoln, Neb. 68510	800-776-9446 www.ameritasgroup.com	3,254,363	55,807	625	134,000	3,669,745	Ken VanCleave, president-group division
9	Assurant Employee Benefits 2323 Grand Blvd., Kansas City, Mo. 64108	816-474-2345 www.assurantemployeebenefits.com	1,770,295	61,376	303	101,981	N/A	Dianna Duvall, senior vp-risk
10	Principal Financial Group 711 High St., Des Moines, Iowa 50392-0001	800-986-3343 www.principal.com	1,411,007	28,016	440	125,022	2,716,968	Theresa McConeghey, dental and vision director

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Long-term disability coverage still an option, but not popular

By ROBERTO CENICEROS

Most employers that have provided long-term disability insurance for their employees continue to do so despite challenging economic times, market sources say.

Overall, though, LTD insurance has a history of being a less popular benefit offering than health plans or life insurance. Providing an LTD benefit is particularly challenging today because employers are increasingly pressed to divert their dollars to health care coverage, observers say.

According to research and consulting firm LIMRA International Inc., about 20% of employers offering an LTD plan either require employees to pay for it entirely or pay for some portion of it, but allow their employees to pay to increase the coverage on a voluntary basis.

Providing an LTD plan often is overlooked by employers, particularly small ones, and by employees who may not understand the importance of income protection, insurers say.

Yet even though employers are increasingly challenged to fund benefits, educating more employers and employees that LTD coverage can be provided as a voluntary benefit could help increase the number of workers who access the income

protection plans, insurance industry sources say.

“Even though they may realize it’s valuable income protection, employee benefit managers are juggling rising health care costs against other benefits they are offering,” said Diane Russell, assistant vp of CIGNA Corp. group insurance product development in Philadelphia.

Employers providing LTD plans either require employees to pay the full cost of the insurance, pay a portion of it or provide it at no cost to workers.

Bureau of Labor Statistics data show that 33% of workers have access to LTD plans, Ms. Russell said.

The larger the employer, the more likely they are to make LTD plans available, sources said.

About 41% of U.S. employers with 10 or more employees offer their workers an opportunity to obtain LTD insurance, according to Windsor, Conn.-based LIMRA. But nearly 95% of companies with 5,000 or more employees offer LTD insurance options, according to LIMRA.

Compared with health or life insurance that protect against readily understandable risks, disability insurance presents “a little bit more of a nebulous message” because “disabilities come in all shapes and sizes” and may not be so obvious,

said Timothy Staggs, regional vp and head of sales in Atlanta for the employee benefits division of American United Life Insurance Co.

“You are not going to replace the energy that an employer or their broker put into health insurance,” Mr. Staggs said. “So you recognize that is the case and, as carriers in ancillary line coverage like disability and life insurance, it’s always been incumbent upon us to continue to educate brokers and their clients on the importance of disability insurance.”

It’s also incumbent on insurers to help educate employees about disability insurance during open enrollments and other opportunities that may present themselves, insurers said.

Employees often fail to understand the prevalence of disabilities. Despite limited company benefits budgets, insurers said LTD insurance is relatively inexpensive and averages about \$220 a year per employee.

But Helen Darling, president of the National Business Group on Health in Washington, disagreed. For employers, she said LTD coverage can be expensive, yet workers may not value it because most people never use the coverage.

“By and large, it’s a disability with a low incidence rate,” said Thomas

Perry, president of the Integrated Benefits Institute in San Francisco. “Typically, about 2% of a company’s workforce would have a disability.”

The Portland Maine-based Council for Disability Awareness reports, however, that almost one-third of U.S. residents entering the workforce today will become disabled before they retire. The organization is supported by disability insurers.

While some in the industry would like to see more sales of disability insurance, the line has held its own even during the recession, said Brad Molinsky, director of product management in Simsbury, Conn., for Hartford Financial Services Group Inc.

Sales of 100% employer-paid LTD insurance, for example, have not declined substantially, he said.

“We are still seeing pretty significant sales of 100% employer-paid long-term disability, which is interesting because you are looking at the economics of the recession,” Mr. Molinsky said. “One of our concerns was, ‘Are employers going to start dropping long-term disability coverage altogether?’ and what we have been seeing is that hasn’t been the case. I think employers are hanging in there for the longer haul...because they see the value.”

The total number of employers

offering LTD coverage in 2009 dropped about 1% from 2008, while the number of insured employees dropped by 3%, according to data released in April by JHA, a South Portland, Maine-based disability and group life risk management and research division of General Re Life Corp. It cited widespread layoffs and some employers eliminating disability coverage as the reason behind the decline in employers and employees purchasing coverage.

JHA’s findings are based on a survey of 27 U.S. insurers representing 95% of the group disability market.

But savvy employers may be rethinking how they view employee LTD cases, the IBI’s Mr. Perry said. Historically, employers assumed that many employees with a long-term disability would never return to their workforce.

But as employers continue to face a need to retain skilled employees, they are starting to wonder whether return-to-work programs should encompass LTD cases, Mr. Perry said.

“You never saw return-to-work programs in an LTD case,” Mr. Perry said. “It was certainly in short-term disability and workers comp, but I’m hearing more and more that employers are thinking more broadly (about return-to-work efforts), even in long-term disability.”

Market Moves

Gallagher acquires U.K. benefits broker

ITASCA, Ill.—Arthur J. Gallagher & Co. has acquired London-based employee benefits and insurance broker Risk & Reward Group.

The deal, for which financial terms were not disclosed, is Gallagher's first employee benefits acquisition in the United Kingdom, the Itasca, Ill.-based brokerage said in statement.

Risk & Reward Group has specialized in employee benefits and human resources consulting services since 1996.

According to the statement, Tim Johnson, managing partner for Risk & Reward Group, and his associates will continue to work from their London location and report to John Neumaier, executive vp of Gallagher's employee benefit consulting and broking unit.

Russia OKs international credit insurer license

MOSCOW—The Federal Service for Insurance Supervision of Russia has approved a license for Moscow-based ZAO Coface Rus Insurance Co. to become the country's first credit insurer for international companies and their Russian subsidiaries.

Through a partnership with Kapital Insurance Group in Moscow, Coface has been offering credit insurance since 2006.

According to a statement, the license allows Coface to deliver its own insurance offerings to Russian companies, which include credit management and ratings services.

"This move supports Coface's worldwide strategy to become the first global European rating agency," the credit insurer said in the statement.

Coface, which already underwrites suppliers credit insurance for nearly 10,000 Russian companies, aims to "support the real economy by providing protection for inter-company trade," the unit of Paris-based Coface S.A. said in the statement.

Global Special Risks opens Canadian office

CALGARY, Alberta—Wholesale brokerage and managing general agency Global Special Risks L.L.C. has opened an office in Calgary, Alberta.

The New Orleans-based unit of Faber & Dumas Ltd., a unit of Willis Group Holdings P.L.C., said in a statement that the Canadian office will focus initially on the local gas and oil industry and plans to expand into other industries throughout Canada.

Global Special Risks named Selena Halasz to head the Calgary office. Ms. Halasz joined the brokerage from Toronto-based Aon

Reed Stenhouse Inc.'s energy practice group, where she was account manager.

The office is located at 630 Sixth Ave., S.W., Suite 1000, Calgary, Alberta, Canada T2P 0S8. The telephone number is (403) 767-9209.

AIR's hurricane model certified in Florida

TALLAHASSEE, Fla.—The Florida Commission on Hurricane Loss Projection Methodology has certified AIR Worldwide Corp.'s latest U.S. hurricane model.

AIR has met the commission's standards every year since 1996, the Boston-based risk modeling firm said in a statement.

The Tallahassee, Fla.-based

commission certifies loss models used by insurers to calculate rate filings for developing residential and commercial residential properties.

The commission approved AIR's 2010 hurricane loss model, version 12, determining that "it is sufficiently accurate and reliable for projecting hurricane loss costs and probable maximum loss levels for residential property in Florida," said Randy Dumm, chair of the commission, in a June 8 notification of acceptance letter.

"AIR provided comprehensive documentation and explanations of the new science and data to the commission and its professional team," David Lalonde, senior vp at AIR Worldwide, said

in the statement.

AIR's hurricane model incorporates the latest meteorological understandings on hurricane structure and differentiates risk more precisely based upon geography, construction, occupancy, year built and individual building characteristics, AIR said.

First American Corp. splits to form CoreLogic

SANTA ANA, Calif.—First American Corp. has split its information solutions group and financial services group to form separate publicly traded companies.

The two Santa Ana, Calif.-based companies, financial information provider CoreLogic Inc. and title

insurer First American Financial Corp., began trading June 2 on the New York Stock Exchange, the companies said in a statement.

The transaction was completed through a spinoff of the common stock of First American Financial to shareholders of First American Corp., according to the statement.

TO SUBMIT ITEMS

BI's Market Moves column reports on activities by insurance industry companies and related entities. Please send news of Market Moves to Mike Tsikoudakis, 360 N. Michigan Ave., Chicago, Ill. or e-mail mtsikoudakis@businessinsurance.com.

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Retaliation Claims: What You Need to Know About This Growing Risk

Live Online: Wed. June 30, 2010 | 2 p.m. Eastern | Free of Charge

Retaliation claims against U.S. employers accounted for a greater number of charges filed with the Equal Employment Opportunity Commission than any other type of complaint filed with the commission last year. And the number of these claims is growing. Retaliation complaints tied with racial discrimination for the biggest increase among the various types of employment discrimination claims, according to the EEOC.

This *Business Insurance* webcast will help risk managers and other employer executives to analyze the reasons behind the growth of these claims, and to learn what employers can do to minimize their exposure. Join Gerald R. Maatman Jr., a partner at Seyfarth Shaw in Chicago, and Michael R. Buchanan, a shareholder with Ogletree Deakins in Dallas, for an examination of retaliation claims and answers to your questions in the live webcast. The webcast will be moderated by *Business Insurance* Senior Editor Judy Greenwald.

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PRIMA panel weighs federal insurance office, other issues

By MARK A. HOFMANN

ORLANDO, Fla.—Whether a federal insurance office would be beneficial is an “it depends” situation, an insurance executive told attendees at the Public Risk Management Assn.’s annual meeting.

Patricia H. Roberts, president and CEO of Riverside, Conn.-based Genesis Underwriting Management Co., a unit of General Re Corp., told public-sector risk managers that she gets “a little nervous” about federal insurance regulation and wonders, “What would the regulation be like?”

Ms. Roberts said she would “love” to see the creation of a system of optional federal charters for insurers. But if a federal insurance office was just another layer of regulation, costs would be driven up for everyone, she said.

She offered her comments during a panel discussion about the state of the insurance industry during the Alexandria, Va.-based PRIMA’s annual meeting this month in

‘We are not seeing an increased fraudulent claim count.’

Patrick M. Gallagher,
Arthur J. Gallagher & Co.

Orlando, Fla.

The proposed Office of National Insurance, which “is really a data-gathering advisory function” that could provide better federal level decisionmaking, said fellow panelist

Michael F. Klein, senior vp of business insurance and president of Travelers Cos. Inc.’s middle-market business in West Hartford, Conn. Congressional debate over financial services regulatory reform has demonstrated a lack of knowledge about the property/casualty business, he said.

Turning to the recession, Ron Hayes, whose term as PRIMA president ended on the last day of this year’s conference, asked the panelists if the economic downturn was leading to an uptick in insurance fraud. Mr. Hayes also is risk manager of the Calcasieu Parish Public Schools in Lake Charles, La.

“We are not seeing an increased fraudulent claim count,” responded Patrick M. Gallagher, managing director of worldwide property and casualty for Gallagher London, a unit of Arthur J. Gallagher & Co.



Outgoing President Ron Hayes asked panelists at PRIMA’s conference if the economic downturn was leading to an uptick in insurance fraud.

Ms. Roberts said she has been seeing more commercial insurance claims, but they reflect poor maintenance rather than fraud.

The state of the economy means this year’s renewals are about doing more with less, Mr. Gallagher said. Public-sector risk managers are dealing with budget cuts and staff reductions, leading them to rely more on their insurer and broker

partners, he said.

Mr. Hayes also questioned the panelists about the impact of the massive Gulf of Mexico oil spill caused by the April explosion of the Deepwater Horizon offshore oil rig, calling it the “largest environmental disaster in the history of modern man.”

Mr. Klein noted that BP P.L.C. self-insures, which would reduce the insured loss from the incident. But he said there will be hardening in the market for offshore drilling coverage.

He said the fact that Deepwater Horizon was a joint venture complicated risk management at the project. “We did not know about the risks they were taking,” he said, adding that the incident is likely to lead to greater emphasis on contingency planning.

Mr. Roberts pointed out that hurricane forecasters are predicting an unusually active season this year and hurricanes could worsen the impact of the oil spill.

There is “no question” that a 20-foot storm surge would make the problems caused by the oil spill “orders of magnitude” greater than they already are, Mr. Klein said.

Mr. Hayes moderated the panel discussion.

ERM: Ideal process determines all risks to an enterprise

CONTINUED FROM PAGE 4

four enterprise departments that bring money into the government’s coffers.

Mr. Hansen decided to start with his department and brought in vendors to his office for a day. The meeting sought to identify factors that would prevent the department from carrying out its mission and how to overcome those challenges, he said.

Risk management took the process to other departments, starting with the public utilities division. Risk workshops included a cross section of employees from each unit, said Mr. Hansen. It was easy to get people to talk about their own piece of the operation, although some were uncomfortable participating in one-on-one interviews used to aggregate risk information.

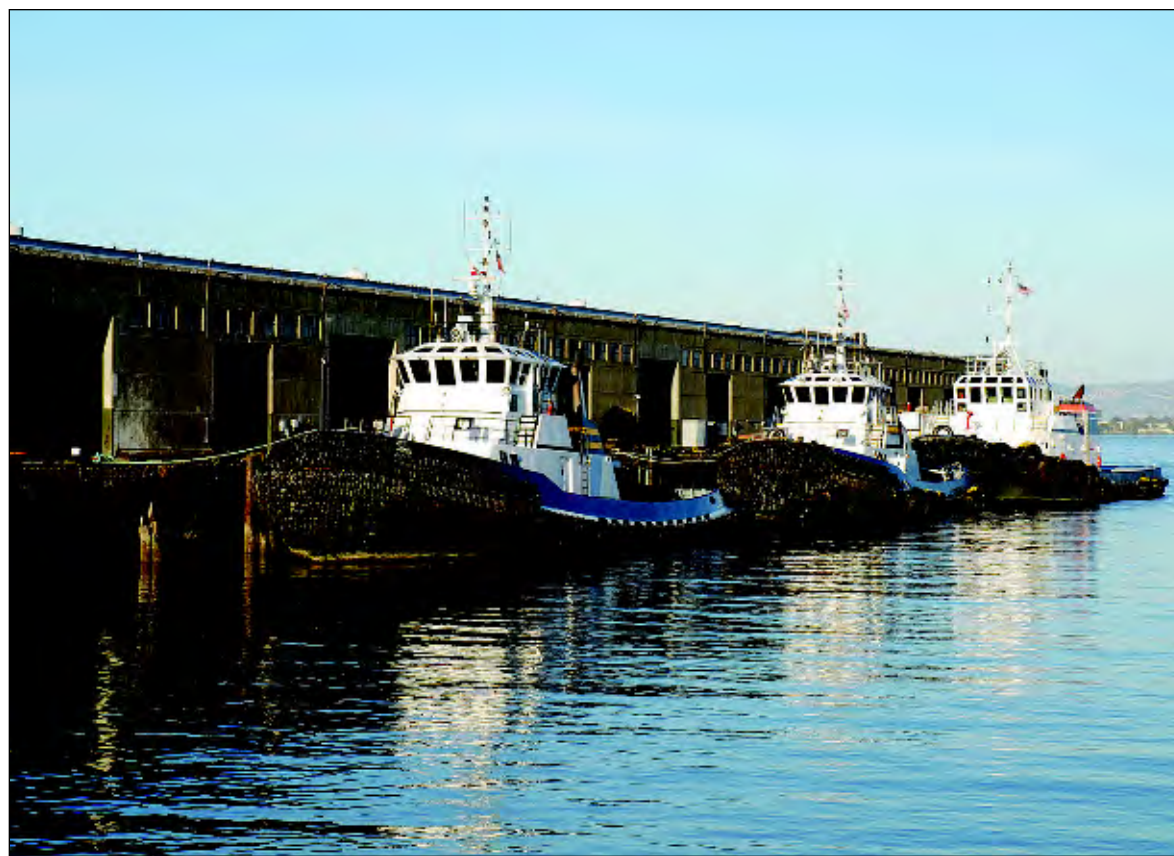
But Mr. Hansen said the “most surprising” aspect of the process was the level of participant excitement. The enthusiasm was evident despite the length of the meetings, which could run more than two hours, he said.

While getting support for ERM from the top was fairly easy, getting support throughout the management structure was not always easy, Ms. Gjerdrum said.

“It’s difficult for some managers,” she said. When asked to identify risks within their departments, “they may perceive they’re being criticized” because some managers see risk as a fault, she said.

Some also feared that identifying risks could lead to lawsuits and “turn into a payday for plaintiffs attorneys,” she said.

Ms. Gjerdrum said finding the right leaders to implement ERM was



The City and County of San Francisco’s enterprise risk management efforts already serve 60 governmental departments and have been expanded to the Public Utilities Commission and the Port of San Francisco (above).

not always easy. In addition, competing interests and the fact that departments “constantly fight fires” was a challenge. ERM proponents also ran into some “untouchable” risks, she said. These were often of a political nature—such as hiring processes. Participants agreed that such risks should be identified, but also realized that they could not be changed quickly, she said.

When ERM is fully implemented, various departments report to the risk management department to create an enterprisewide view of

risk, said Ms. Gjerdrum and Mr. Hansen. Accountability for risks will be clear and tied to managers and departments, and a consistent and coordinated approach to managing risks will be achieved.

In an interview after the discussion, Mr. Hansen said the first work groups started in fall 2008 and continued into the spring of 2009 for the risk management department program. Then the effort expanded to the Public Utilities Commission and the Port of San Francisco.

“Our experience has been posi-

tive to date in that we have accomplished substantive work within each of the departments/enterprises and received positive feedback on the process from the working group participants,” Mr. Hansen said. “We are now in a transition phase moving from implementation to operation of the ERM program, keeping in mind that the process is meant to be iterative and under ongoing review.”

Another expert with experience in implementing public-sector ERM said the name of the process can

make a difference.

“Risk often has a negative meaning or we equate it with danger,” said Sydney Doré, enterprise risk management specialist in the state of Washington’s Department of Social and Health Services in Olympia, during another session on ERM implementation. So when she was called on to implement ERM for state government, she changed the vocabulary a bit.

Rather than talk about risk management, “we talked about it as goal management,” Ms. Doré said.

Ms. Doré said the state followed a seven-step program to foster ERM. This included having a clearly stated goal, listing everything that could keep the goal from being reached, evaluating risk, prioritizing risk by identifying the most severe risk, treating and mitigating the risk, making a risk register that includes the treatment, and sharing the results with other departments.

“We didn’t fully implement ERM,” but did raise awareness of risks, said Ms. Doré. “There’s a lot ahead,” she said.

For example, many people aren’t comfortable revealing the biggest risk faced by their department in a public document such as a risk register, she said.

For public agencies, “tolerance for change is critically wounded” because of the economic downturn, Ms. Doré said.

With staff reductions, people find it hard to focus on ERM given all the other demands they face. Nevertheless, she said ERM works in Washington state.

If you want to move quickly, you have to ramp up your risk appetite, she said. “I think ERM makes people bold. It fosters a no-blame culture” and “helps us put scarce resources where they do the most good,” Ms. Doré said.

Consultative approach the path to public-sector success

PRIMA experts advise new risk managers to study, ask for help

By MARK A. HOFMANN

ORLANDO, Fla.—Perception can be critical to the success of a public-sector risk manager.

"Are you viewed as a consultant, the one who helps get things done?" asked Dean Coughenour, risk manager for the city of Goodyear, Ariz. "Is anyone listening to risk management?"

Mr. Coughenour asked those questions during a discussion about how new risk management professionals can make a difference quickly for their entities. His presentation took place at the Public Risk Man-

agement Assn.'s annual meeting in Orlando, Fla.

Risk management involves reducing the cost associated with risk; preventing predictable mishaps; and preparing for the unknown through a combination of reserves, risk transfer and retention, he said.

If a risk manager is viewed as a consultant, the risk manager gets to find out about things ahead of time, he said. "We are not the people who say, 'No.' We are the people who say, 'Yes, but let's do it this way,'" he said.

Mr. Coughenour said a risk man-

ager should build relationships with other managers within the government. A new risk manager also should look over the entity's loss history, which he said is the greatest predictor of future events.

He also advised risk managers to ask for help from other public-sector counterparts. "We share whatever we've got," Mr. Coughenour said.

He offered several concrete examples of how to deal with specific risk management issues in the public sector.

For example, risk managers should make sure they have an

accurate inventory of all vehicles in their fleet. He noted an incident where an old police cruiser that was being used in SWAT team training still was insured, which was an unnecessary expense.

Risk managers need to run motor vehicle record checks on the people who will drive public vehicles, he said. For example, they may find that a person who is driving not only lacks a current license but also has a conviction for driving under the influence, said Mr. Coughenour.

He also suggested that risk man-

agers ride with police, firefighters and sometimes public works employees. "Ride-alongs are absolutely critical," he said. Although employees may resist the idea, the ride-alongs help relationships, he said.

He also said risk managers should know their audience when they attempt to sell their program. When speaking to a municipal council or board, speak in the language they understand, said Mr. Coughenour. The language is that of money and the effects of risk management policy on citizens, he said.



The Public Risk Management Assn. held its conference June 6-9 in Orlando, Fla.

850 join PRIMA annual meeting in Orlando, Fla.

ORLANDO, Fla.—The Public Risk Management Assn.'s annual conference in Orlando, Fla., June 6-9 drew about 850 full conference registrants, according to the Alexandria, Va.-based organization of public-sector risk managers.

Laura Peterson, risk manager and agency general counsel for the state of Nebraska, succeeded Ron Hayes, risk manager of the Calcasieu Parish Public Schools in Lake Charles, La., as president of the group on the conference's last day.

PRIMA will hold its next annual conference in Portland, Ore., June 5-8, 2011.

The 2012 annual conference is slated for Nashville, Tenn., June 3-6.

—By Mark A. Hofmann

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- Joseph Molloy, Corporate Director of Benefits, North Shore-LIJ Health System
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S&P: Soft market due to excess capital, economy

CONTINUED FROM PAGE 4

negative outlook, in place since August 2008, indicates that S&P expects more downgrades than upgrades during the next 12 months.

Excess capital, estimated to be as much as \$100 billion for the property/casualty industry, likely will keep commercial and reinsurance pricing soft "for at least several years," said Jay Gelb, managing director at Barclays Capital in New York, an investment banking arm of Barclays Bank P.L.C., who was part of another panel at the conference.

Liam E. McGee, Hartford Financial Services Group Inc.'s chairman, president and CEO, said he is starting to see "some encouraging signs" of recovery. For example, the insurer experienced rate increases for the first time in six years during the first quarter of 2010.

In addition, retention rates have improved, but "it's far too soon to call this a trend," he warned while participating in another panel at the conference.

In an effort to manage the soft pricing cycle, insurers have focused on exercising strong underwriting discipline and reducing expenses, they said.

John N. Molbeck Jr., president and CEO of Houston-based HCC Insurance Holdings Inc., said a focus on expense ratios has helped the insurer withstand the economic crisis.



BUSINESS WIRE

'We view leveraging our capabilities as a way for us to counter what are clearly some very strong headwinds.'

Liam E. McGee,
Hartford Financial Services Group Inc.

HCC's expense ratios easily run between 500 and 1,000 basis points lower than competitors, he said. "When the market gets tight, that's a lot of cash flow that we can continue to generate," Mr.

Molbeck said.

In addition, diversification geographically and by lines of business are important to help manage the cycle, insurers said.

In April, Hartford said it was restructuring itself to reignite growth, splitting its business into three units: consumer markets, commercial markets and wealth management.

"We view leveraging our capabilities as a way for us to counter what are clearly some very strong headwinds," Mr. McGee said.

CNA's Mr. Motamed noted that the best-performing companies still are reporting combined ratios in the 90% to 94% range. "So they're doing pretty well" at this point in the cycle, he said.

"They are really the bellwether of what happens in the marketplace. They will determine at what point they need to earn more for their product," Mr. Motamed said.

Meanwhile, HCC's Mr. Molbeck cited a lack of price leadership by American International Group Inc. as another reason for lingering soft pricing.

"This is the first market in 30 years that AIG hasn't been out in front leading pricing," Mr. Molbeck said. Previously, when AIG decided to change pricing on its substantial capacity, "the market was able to follow along. We don't have that this time," he said.

Speaking as part of a separate panel, John Doyle, executive vp of Chartis Inc. and president and CEO of Chartis U.S., said any views on AIG's ability to lead a pricing change have been driven largely by a "theory on AIG market share."

"This is ultimately about supply and demand," Mr. Doyle said.

UP CLOSE

LAUREN BAILEY

NEW JOB TITLE: Chicago- and Los Angeles-based vp of entertainment and international commercial insurance for Fireman's Fund Insurance Co.

PREVIOUS POSITION: Chicago-based regional underwriting executive in personal insurance for Fireman's Fund.

GOALS FOR NEW POSITION: Fireman's Fund has a well-established brand in the entertainment market and so a lot of what I want to do is continue and sustain where we are today. We have a very long history in the business and our reputation is well known. It's a tremendous business to be a part of. That said, some of our focus is now on diversification into some new areas in entertainment insurance...such as live events, touring entertainers, music, promoters, etc. That will allow us to be even more relevant in the business of entertainment.

FIRST MARKET EXPERIENCE: I started as a personal lines underwriter. Candidly, it is



probably one of the best positions when coming into the insurance business. Underwriting is the cornerstone of the business. If you can get a good foundation in underwriting, those same principles always apply regardless of the type of business you are covering. I spent my first five years underwriting.

WHAT YOU WANTED TO BE WHEN YOU GREW UP: I started out thinking I was going to manage my own health club. I was a sports type of a person in school and I wanted a job that would let me use my interest in sports, combined with my business degree.

CAN'T-MISS TV SHOW: "24." I love it. I just watched the finale, which I had taped because I was traveling. I enjoy music, so I am actually into the television show "Glee."

E-MAIL OR PHONE, AND WHY: I prefer phone...instead of being brief and concise in e-mail, I find myself writing like I am writing a novel. I know I lose people halfway through. It's probably way too much for e-mail.

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- Crump Insurance Services Inc.
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- Miller Insurance Services Ltd.

INSURERS:

- Catlin Group Ltd.
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- Harleysville Insurance Group Inc.
- Parhelion Underwriting Ltd.

MANAGED CARE:

- Health Alliance Plan

Mercer: MMC pays \$500M to settle malpractice suit

CONTINUED FROM PAGE 1

not be reached.

In a statement, Mercer said it "concluded that a settlement was in the best interests of the company and its stakeholders for several reasons, including the uncertainty of the outcome of a jury trial in Juneau, with its high concentration of plan participants; the complex technical nature of the claims; and that plaintiffs were seeking at least \$2.8 billion in damages."

Alaska Attorney General Daniel S. Sullivan said in a statement that the two retirement funds face billions of dollars in unfunded liabilities that were caused by stock market declines, significant increases in health care costs "and, as alleged by the (Alaska Retirement Management) Board, Mercer's negligence."

"By a large margin, it is the largest such settlement in (U.S.) history for this kind of claim," Mr. Sullivan said.

He said the state public pension systems will receive about \$403 million after deducting court costs and the contingency fee for outside counsel.

Last week's settlement followed Mercer's agreement in May 2009—after a trial had started—to pay a \$45 million to settle allegations by Milwaukee County, Wis., to end a suit relating to the cost of employee pension enhancements that the county's board and executive approved in 2000.

In a statement last week, Mercer said, "We did not admit wrongdoing of any kind and we continue to believe our work on behalf of Milwaukee County met all applicable professional standards. For a variety of reasons, we believe settlement of the Milwaukee matter was prudent and in the best interest of our shareholders, clients and employees."

The Alaska settlement "gets it behind the company," said Bret Howlett, an analyst with Standard & Poor's Corp.'s Equity Research unit in New York.

"It's good to have certainty," said Clifford Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York, noting that investors had feared the total would be much larger.

Bruce Ballentine, a vp with Moody's Investors Service in New York, which affirmed MMC's ratings after the settlement, said, though,



AP PHOTO

Alaska Attorney General Daniel S. Sullivan said Marsh & McLennan Cos. Inc.'s \$500 million settlement with Alaska public employee pension funds "is the largest such settlement in (U.S.) history for this kind of claim."

SUIT BEGAN IN 2007

- The Alaska Retirement Management Board sues Mercer Inc. on behalf of 80,00 public employees.
- The suit, amended in 2009, alleges malpractice, breach of duty, fraud, misrepresentation, among other allegations.
- Marsh & McLennan Cos. Inc. says \$100 million of the settlement is covered by insurance.
- On top of a \$200 million self-insured layer, an AIG unit is providing \$100 million in excess cover.

\$500 million is a "fairly large number" and "one more in a series of charges" for restructuring, legal settlements and goodwill impairments

during the past few years.

"It has been a while since they had a clean year of earnings," Mr. Ballentine said. For example, MMC's first-quarter 2010 earnings reflected \$13 million in restructuring and legal and regulatory settlement expenses.

Other observers pointed to MMC's \$1.13 billion cash deal this month to sell Kroll Inc. to Falls Church, Va.-based Alteryx Inc. and MMC's \$1.17 billion in cash and cash equivalents on its balance sheet as of March 31.

"They believe their financial position is more than adequate enough to absorb this settlement," Mr. Howlett said.

Still, "the \$500 million, in our view, is a material amount," said Laline Carvalho, credit analyst at New York-based S&P, which downgraded MMC's rating outlook to negative from stable.

Ms. Carvalho said it is unclear how Mercer clients will interpret the settlement and what effect it

will have on Mercer's business.

Mercer, however, said: "Our clients have been supportive and we do not foresee a major impact on our business."

Other observers say they do not believe Mercer's reputation has been harmed by the litigation.

In light of Mercer's growth, "it doesn't seem as though there's been a major reputation hit," said Meyer Shields, principal at Stifel, Nicolaus & Co. Inc. in Baltimore.

More lawsuits are a possibility, though, said Thomas Mitchell, senior financial analyst with New York-based Miller Tabak & Co. L.L.C.

In light of the Alaska and Milwaukee settlements, he said cash-strapped municipalities with underfunded plans that have been Mercer clients will "find it difficult not to go ahead and at least explore the possibility that they may have some legitimate claim."

MMC's stock closed at \$23.14 on Friday, up from \$22.08 a week earlier.



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N.Y. comp board can assess self-insureds for loss payments: Court

By ROBERTO CENICEROS

NEW YORK—An appeals court last Thursday issued a stay allowing the New York State Workers' Compensation Board to begin assessing self-insured employers to pay for about \$500 million in losses attributed to failed group trusts.

The stay lifted a court ruling that prohibited SWCB from levying assessments on self-insured employers for workers compensation liabilities left by about 15 failed trusts.

The SWCB has authority to assess individual companies and group self-insurance trusts to pay for workers comp liabilities left by trusts that are insolvent.

But Thursday's court's action stemmed from a lawsuit filed by group self-insurance trusts managed by Latham, N.Y.-based First Cardinal L.L.C., which tried to stop SWCB assessments.

A judge had sided with First Cardinal and ruled the assessments unconstitutional.

SWCB is encouraged, however, by the stay because it means the agency eventually can win the lawsuit on the merits of its case, a comp board spokesman said. SWCB now can move ahead and begin issuing assessments "as soon as possible," the spokesman added.

Its first assessments will total about \$46 million, not the entire \$500 million required to cover all losses attributed to failed trusts, the spokesman said.

Meanwhile, the Self-Insurance Institute of America Inc. earlier last week rejected a New York state task force conclusion that all group self-insured workers compensation funds operating in the state be shut down by year-end.

"Clearly there were some New York SIGs that were operated in a negligent way, but we believe the task force recommendation is an overreaction," SIIA Chief Operating Officer Mike Ferguson said in a statement. "The industry is pre-

pared to work with the state to develop a new regulatory structure, which would greatly reduce the possibility of future failures and also assist the state in addressing the financial deficit associated with the failures."

The task force's recommendations, including shutting down workers comp SIGs by year-end, have been submitted to the New York Legislature and to Gov. David Paterson for consideration, the SIIA said.



AP PHOTO

BP P.L.C. CEO Tony Hayward (left), who later reportedly was relieved of day-to-day duties, last week again apologized for the Gulf of Mexico oil spill, but members of Congress sharply criticized his testimony.

Insurers still liable for losses

Despite \$20B BP fund, business interruption exposure remains

By MARK A. HOFMANN

WASHINGTON—BP P.L.C.'s proposed \$20 billion claims fund to pay for damages stemming from the Gulf of Mexico oil spill won't let insurers off the hook for paying claims to businesses shut down or harmed by the disaster, industry observers say.

Insurers will still be expected to pay valid claims, though it remains unclear how the BP fund will respond to subrogation efforts by insurers, they say.

BP announced the creation of the fund last week after its top executives met with President Barack Obama to discuss the spill, which began in late April after the Deepwater Horizon oil rig sank off the coast of Louisiana after a fire and explosion that killed 11 workers.

According to a BP statement, the company will begin funding the facility with a payment of \$3 billion in the third quarter of this year, followed by a \$2 billion payment in the fourth quarter.

BP will make quarterly payments of \$1.25 billion until \$20 billion is reached.

In the meantime, BP will set aside \$20 billion of its U.S. assets to meet its commitments arising from the spill.

The fund will pay "legitimate claims" including natural resource damage and state and local response costs. Fines would be paid separately.

Kenneth R. Feinberg, the Washington attorney

who oversaw the compensation fund for victims of the Sept. 11, 2001, terrorist attacks, will administer the fund (see box). This Independent Claims Facility will adjudicate on all Oil Pollution Act and tort claims. Payments will be made as soon as they are adjudicated by the fund, by a court or by agreement with BP.

The fund will not cap BP's liabilities, and any money left after all claims are paid will revert to BP, which has canceled the stock dividend that was scheduled to be paid today. More details "will be finalized and announced as soon as possible," said BP in the statement.

Despite the size of the fund, its impact on the commercial insurance industry should be minimal, say observers.

"I think the impact on the insurance industry generally will be minimized by the fact that they are still liable to pay legitimate claims," said Howard Mills, a former New York insurance superintendent who serves as director and chief adviser of the insurance industry group for Deloitte Services L.P. in New York.

"The insurers don't have the ability to say, 'this fund has been set up to mitigate your damage, therefore we don't have to pay,'" unless there was some very specific language in the relevant policies, he said. "The vast majority should not be impacted."

"This is really the government's response to the unprecedented scale of this disaster," said Mr.

Mills. "The typical business interruption claim is to cover a season or two; we're talking about the loss of an entire industry for a generation."

"I think it's kind of early to make predictions," said Laura Foggan, a partner who represents insurers at Wiley Rein L.L.P. in Washington.

"It seems that in some respects the fund is more like a set-aside to guarantee that money will be there for amounts owed by BP, and in that respect it's different from the 9/11 compensation fund," which was an alternate means of compensating victims, she said.

A policyholder attorney agreed that the existence of the fund should have little impact on the industry.

"The insurers absolutely cannot use the fund as reason to deny their contractual obligations to their own policyholders," said Gary Thompson, partner in the Washington office of Reed Smith L.L.P. "If an insurer pays a claim, it has a right of subrogation to pursue responsible third parties and, in this case, that might mean the insurers could pursue recovery from the BP fund. The insurers' primary obligation is to their policyholders," he said.

"If you have property damage, you have to make a decision whether to recover from your carrier or, if you don't have confidence your carrier is going to pay the claim, whether you should make beeline to the BP fund," he said.

"It's early in the process," said policyholder attorney John G. Nevius, shareholder and chair of the environmental law group at Anderson Kill & Olick P.C. in New York. Details, including guidelines for how the fund will pay claims, are unknown, he said.

"The expectation would be if you had the foresight to purchase business interruption coverage, that should be paid out first before you go the fund," he said.

Another question would be whether insurance companies can subrogate their losses against BP. "Would that be directly from BP or would that come out of the fund?" he said.

Mr. Nevius said "it's very interesting" that the fund can pay natural resources claims and response costs. "It makes the funds more readily available, but it also helps to limit BP's potential liability," he said.

BP will likely argue that as the fund creates a mechanism to address an array of liabilities there is less of a need for separate litigation or separate liability payments, Mr. Nevius.

"It's a smart strategy," he said, adding it will streamline the claims process and should reduce litigation. "A claimant's first step will be to go to the fund and not to go right into court."

"It's not clear" that a large number of claims will be directed into the facility, said Ms. Foggan. And because of the options available to claimants, the claims dealt with first by the facility might be those from people who have no insurance, she said.

She added that the fact the facility will respond to natural resources damages and response costs is "notable because those costs could be large."

Spill: Rates and demand on the rise

CONTINUED FROM PAGE 1

burned. It sank two days later.

BP P.L.C., which leased the rig, has partially covered the leak with a containment dome funneling about 16,000 barrels of oil a day to surface ships. Officials say the leak likely is now gushing 20,000 to 40,000 barrels a day and cannot be completely contained before August.

Under the Oil Pollution Act of 1990, BP is responsible for the cleanup costs, but its liability for damages is capped at \$75 million.

Last week, President Barack Obama said BP had agreed to establish a \$20 billion escrow account to pay damages to businesses and others affected by the spill. Lawmakers also have been working on legislation to increase or eliminate the Oil Pollution Act's liability cap. Experts said the escrow account would not stop those efforts.

The Big Oil Bailout Prevention Act of 2010 would increase the liability ceiling to \$10 billion. Sponsor Rep. Rush Holt, D-N.J., "still thinks there's a need for his bill to be passed," a spokesman said of the U.S. House measure, which has 75 co-sponsors.

Senate bill would lift cap

In the Senate, Sen. Robert Menendez, D-N.J., this month introduced the Big Oil Bailout Prevention Act, which would impose unlimited liability on violators.

James R. May, a professor at Widener Law School in Wilmington, Del., said he believes a total elimination of liability caps is unlikely. But he also said he didn't see the escrow account "stemming the pressure to either dramatically increase or eliminate the liability limits."

Offshore energy underwriters and risk managers are closely watching these developments, and many said it is too early to know how still-undetermined legislative changes would affect the market. But they

Continued on next page

Sept. 11 fund veteran to oversee spill fund

If the name of the person chosen to oversee the \$20 billion special fund BP P.L.C. has set up to pay for damages stemming from the Deepwater Horizon disaster seems familiar, it should be.

In fact, Kenneth R. Feinberg has become a sort of "czar of czars" when it comes to government compensation programs.

He's best known in the insurance industry for two roles. He is special master for TARP executive compensation, which oversees financial compensation paid to executives at companies that

received federal assistance from the Troubled Asset Relief Program, after the economic turmoil that began in late 2008. In that role, he limited the compensation of top executives at those firms, including American International Group Inc.

In addition, after the terrorist attacks of Sept. 11, 2001, Mr. Feinberg was asked by then-Attorney General John Ashcroft to serve as special master of the federal government's September 11th Victim Compensation Fund.

Mr. Feinberg also served as chief

administrator of the Hokie Spirit Memorial Fund, created after a gunman killed 32 people on the campus of Virginia Polytechnic Institute and State University in Blacksburg, Va., in 2007.

Mr. Feinberg is founder and managing partner of law firm Feinberg Rozen L.L.P. in Washington.

—By Mark A. Hofmann

Kenneth Feinberg, former special master of the September 11th Victim Compensation Fund, will oversee the oil spill compensation fund set up by BP P.L.C.



AP PHOTO

Continued from previous page

also said the market already is reacting to the spill and the potential regulatory changes.

"A lot of energy companies that operate in the Gulf of Mexico, particularly deepwater (firms), are seeking higher liability limits to deal with pollution liability," said John A. Rathmell Jr., Houston-based president of the marine and energy practice group at Lockton Cos. L.L.C. "And just that thrust of buyers...has started to change the dynamics of what the market is willing to offer and what price they're willing to offer."

Firms are being asked to retain more risk and rates have increased, particularly for third-party liability coverage, observers said.

Some insurers are asking energy firms to pay an additional premium per well drilled, one risk manager said.

One broker said the average liability premium is increasing 60% to 100% over last year's level. In the worst cases, premiums have gone up 200%, he said.

Hardening prices have prompted some insurers to consider increasing capacity, said Ron Baron, Houston-based executive vp of the global energy practice at broker Willis Group Holdings P.L.C.

But during testimony earlier this month before the Senate Committee on Environment and Public Works, Mr. Baron also said changing the Oil Pollution Act to have unlimited liability would require more capacity than the market could provide.

"The actual working capacity available in the insurance market as of today is in a state of flux; and although increased premiums should attract additional capacity over a period of time, it will not be sufficient to satisfy the liability/financial responsibility limits being proposed under" Sen. Menendez's bill, Mr. Baron said.

Maximum capacity for liability coverage of any one offshore energy risk is about \$1.9 billion, although insurers typically would commit only about \$1.25 billion to \$1.5 billion, Mr. Baron said. Maximum capacity for control-of-well insurance is about \$1 billion per risk, or between \$600 million and \$750 million in practice, he said. Control-of-well policies cover expenses from stopping an out-of-control well, including redrilling and pollution cleanup.

Beyond dramatic increases in liability limits, risk managers increasingly are concerned that lawmakers

will increase requirements for demonstrating financial responsibility.

Firms can meet those requirements with their balance sheet, if they have enough capital, or through a special form of insurance coverage. But observers say the market for Oil Spill Financial Responsibility Certification coverage is small and likely would not be able to provide enough capacity if the requirements were raised.

Current capacity for such coverage is no more than \$200 million, Mr. Baron said.

Financial ability test

Current requirements are designed based on the company's estimate of the amount of pollu-

'Like we have seen after many markets in duress, there are new alternative ways sometimes proposed, sometimes tried; and sometimes they pass the test of reality and sometimes they don't.'

Axel Brohm, Swiss Reinsurance Co.

tion its facility would cause in the worst-case scenario. For example, if the worst-case total discharge estimate were for less than 35,000 barrels of oil on the outer continental shelf, the firm would have to demonstrate financial ability to pay \$35 million. If it were more than 105,000 barrels, the requirement

would be \$150 million.

Those requirements probably are reasonable for one-time spills, said the risk manager who asked not to be named. But he wondered if the Deepwater Horizon incident would prompt regulators to revise the way the worst-case estimates are computed.

Axel Brohm, the Zurich-based head of energy and power for Swiss Reinsurance Co., said proposed congressional changes could challenge insurance market capacity, but that capacity perhaps could be filled through means other than traditional insurance.

"Like we have seen after many markets in duress, there are new alternative ways sometimes proposed, sometimes tried; and sometimes they pass the test of reality and sometimes they don't," Mr. Brohm said. "I'm pretty sure there are enough clever people out there already thinking of other ways to provide such capacity."

Mark A. Hofmann contributed to this story.

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Zicam: Disclosure at heart of drugmaker's appeal

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and plaintiffs gain leverage in settlement talks if a case survives a motion to dismiss.

Between 1999 and 2003, Matrixx received some complaints about Zicam and anosmia, two doctors compiled data on 10 such patients, and several customers sued, according to court documents.

During that time, Matrixx officials expressed optimism about future growth and did not mention the allegations and lawsuits.

In early 2004, media outlets began to report the allegations, causing a decline in Matrixx's stock value.

Matrixx officials initially called the allegations "completely unfounded," but later admitted that they did not know if Zicam caused anosmia and decided to conduct studies, court documents state.

The district court dismissed the suit, saying the number of allegations Matrixx executives were aware of was not statistically significant. The appeals court, however, concluded that was the wrong standard for a motion to dismiss and that questions of statistical significance should be decided at trial.

Requiring plaintiffs to present statistically significant evidence is very important for the life sciences industry and manufacturers because it helps get frivolous lawsuit dismissed early, said Erik J. Olson, a Palo Alto-based partner at Morrison & Foerster L.L.P., who is not involved in the case.

"There is always going to be anecdotal evidence that could reflect safety issues with respect to a device or drug," Mr. Olson said. "If...there is evidence of death following people taking a new cancer drug, you have to distinguish: Is that evidence of death due to cancer or due to the

cancer drug?"

The Supreme Court's decision also could be important because the 9th Circuit's ruling contravened decisions supporting a statistical significance standard in the 1st, 2nd and 3rd Circuit Courts of Appeal, Mr. Olson said.

Plaintiffs "could just flock to the 9th Circuit," he said. "Almost every drug in the U.S. is distributed in some way all across the U.S."

Mr. Olson said the Supreme Court typically has opted for somewhat subjective criteria over "bright-line" standards such as statistical significance, although he

said Justice Samuel Alito authored the 3rd Circuit's ruling supporting the statistical significance threshold when he was an appeals court judge.

The district court in *Matrixx* also ruled that the plaintiffs failed to allege that defendants acted with the required state of mind, misleading investors either intentionally or with deliberate recklessness. The appeals court disagreed and found that implication was at least as compelling as the defendants' argument.

Kevin LaCroix, a Beachwood, Ohio-based partner with executive liability inter-

mediary OakBridge Insurance Services L.L.C. who has blogged about the case, said the 9th Circuit's opinion raises the question of whether lawsuits can survive dismissal motions without specific allegations about what executives knew.

"All of that said...it is possible the court will narrow its focus just to" statistical significance, he said, via e-mail. "Even if the court just focuses on the statistical significance issue, it is important because many companies struggle with the question of when there are sufficient adverse event reports, such as customer complaints, that the company has to disclose them."

'There is always going to be anecdotal evidence that could reflect safety issues with respect to a device or drug.'

Erik J. Olson,
Morrison & Foerster
L.L.P.



AP PHOTO

Greensboro, N.C., resident David Richardson, shown in March 2009, attempts to smell a glass of wine. Mr. Richardson alleges he suffered a loss of smell after he used nasal cold remedy Zicam made by Matrixx Initiatives.

Texting: High court rules for public-sector employer

CONTINUED FROM PAGE 3

do not have the right to read the contents of an employee's text messages.

However, the U.S. Supreme Court unanimously overturned that ruling last week.

In explaining the narrowness of the decision, which did not rule on whether Mr. Quon had a reasonable expectation of privacy, Justice Anthony Kennedy said, "The judiciary risks error by elaborating too fully on the Fourth Amendment implications of emerging technology before its role in society has become clear...Prudence counsels caution before the facts in the instant case

are used to establish far-reaching premises that define the existence and extent of privacy expectations enjoyed by employees when using employer-provided devices."

The court, which remanded the case, ruled that the police department's search of Mr. Quon's text messages was reasonable because "the search was motivated by a legitimate work-related purpose and because it was not excessive in scope."

Although the Fourth Amendment does not apply to private employers, the decision benefits public and private employers, observers say.

"It was a great decision for

The decision 'recognized that employers can implement policies regarding appropriate use of their systems and reserve their right...to monitor their own systems.'

Katherine H. Parker,
Proskauer Rose L.L.P.

employers," said Katherine H. Parker, a partner with Proskauer Rose L.L.P. in New York. "It recognized that employers can implement poli-

cies regarding appropriate use of their systems and reserve their right...to monitor their own systems. It rejected the notion that an employer search has to be done in the least intrusive means possible; rather, (it ruled) that a search could be done so long as it was reasonable and justified for business reasons," she said.

The ruling establishes that employers have the right to monitor employee communications "so long as there was a clear policy in place," said Mark B. Wiletsky, of counsel at law firm Holland & Hart L.L.P. in Boulder, Colo.

Employers should inform their employees that when using an

employer's communications equipment or communication system, "they cannot assume they have workplace privacy and, in fact, they should be on notice that those communications can be monitored for legitimate workplace purposes," said James N. Shore, a partner with Stoel Rives L.L.P. in Seattle. "There can be many of those, depending on what the employer does."

However, Mr. Wiletsky warned there are limits to such searches. "I think employers can overstep their bounds if they try to access an employee's personal e-mail account or if they try to get into a social networking site that is otherwise locked by using an employee's password or user name without that employee's knowledge or permission," he said.

News In Brief

CONTINUED FROM PAGE 1

Senate OKs pension funding relief

The Senate on Friday approved legislation that would give employers more time to fund pension obligations. The pension funding relief provisions were incorporated into a broader bill, H.R. 3962, that would boost Medicare payment rates to doctors. The measure still has to be considered by the House, which is likely to take it up this week.

Commercial insurance prices remain flat: Survey

U.S. commercial insurance prices were flat during the first quarter of this year, the fifth consecutive quarter of flat or slightly rising prices after five years of steady declines, Towers Watson & Co. said in a study. In its "Commercial Lines Insurance Pricing Survey," the consulting firm said excess capacity in nearly every line of commercial insurance combined with below-average catastrophic losses to keep prices flat during the first quarter of 2010 compared with the same period in 2009.

XL gets approval to lower collateral requirements

XL Re Ltd., a unit of XL Capital Ltd., said it is the first Bermuda-domiciled reinsurance subsidiary to receive regulatory approval to establish lower collateral requirements as a foreign reinsurer. XL received approval from the Florida Office of Insurance Regulation to qualify as an "eligible reinsurer" in the state under the Florida Insurance Code.

Treasury seeks comments on terrorism insurance

The U.S. Treasury Department is seeking comments on the long-term availability and affordability of terrorism risk insurance. The department sent the notice to the Federal Register for publication. The comment period will close 45 days after the notice is published. U.S. law requires that the President's Working Group on Financial Markets, which Treasury Secretary Timothy Geithner chairs, conduct an ongoing analysis of the terrorism insurance

market. The working group is required to submit its findings to Congress this year.

Gibraltar's tax revamp includes captive insurers

Captive insurers in Gibraltar will pay a 10% corporate tax next year under changes that abolish corporate tax exemptions in the British territory. Captives formed before June 2006 had been exempt from Gibraltar's corporate taxes, which are 22%. Under the jurisdiction's recently passed income tax laws, all corporations will pay a tax rate of 10% beginning Jan. 1, 2011. Gibraltar had 17 captives at year-end 2009. The new legislation ends all distinctions between onshore and offshore business in Gibraltar.

RIMS hails OK of disaster standards

The Risk & Insurance Management Society Inc. is praising the Department of Homeland Security's adoption of final private-sector emergency preparedness standards. RIMS has been involved in discussions surrounding the Voluntary Private Sector Accreditation and Certification Preparedness Program since the framework was released in 2007. The three standards, which were developed by the National Fire Protection Assn., the British Standards Institution and ASIS International, are designed to promote business preparedness and continuity in the event of a disaster or unforeseen event. "RIMS believes very strongly that business continuity and emergency preparedness are a critical component of any organization's enterprise risk management plan," Carol Fox, chair of RIMS' Standards and Practices Committee, said in a statement. "We believe that the standards adopted by DHS allow organizations necessary flexibility in adopting a standard that meets their specific business objectives and budgets."

Noted

Rolf Tolle has joined the board of directors of **Beazley Furlonge Ltd.**, the London-based managing general agency unit of Beazley P.L.C. **Willis North America** said it has formed a practice to address the risks of financially distressed, foreclosed or abandoned properties. The practice will serve clients nationally and combines resources from Willis' practice areas to structure insurance programs for property owners, developers, investors and lenders, among others.

U.S. could have bigger cat role

GAO proposes bigger government function in nat cat programs

By JEFF CASALE

WASHINGTON—The Government Accountability Office has made four proposals that would increase the U.S. government's role in state natural catastrophe insurance programs.

In findings released last week, the GAO proposed facilitating the transfer of risk, guaranteeing state pre- and post-event bonds, establishing a federal lending facility for qualified state natural catastrophe insurance programs, and establishing a federal reinsurance program.

The GAO, which began studying the issue last August, looked at states that already have natural catastrophe programs. It also analyzed how the proposed federal changes would affect those state programs and how natural catastrophe insurance and reinsurance is provided in selected countries outside the United States.

The GAO said Florida's insurance and reinsurance programs

have more than \$2 trillion in combined exposures, which exceed that of all other state programs combined. It also found major growth in the state programs of Mississippi, Texas and Florida, in which the programs have grown

could lower premium rates and increase public participation in state catastrophe programs, they also could discourage private market participation and mitigation efforts and increase taxpayer exposure to potential costs.

This would occur, the GAO said in its report, as a result of decreased reinsurance purchases by some state programs and increased reliance on post-event funding, which could increase taxpayers' exposure to the potential costs in the event the state suffers financial hardship.

The GAO also reviewed natural catastrophe insurance programs of several countries that face natural catastrophe threats similar to the United States, including Australia, Canada, France, Germany, Japan, New Zealand and Switzerland. None of the countries had made "any significant changes" to their programs since the GAO last reviewed them in 2008, the office said.

In several of the countries, the national federal government acts as the reinsurer for natural catastrophe risks.

The report, "Natural Catastrophe Insurance Coverage Remains a Challenge for State Programs," is available at <http://www.gao.gov/>.

\$2 trillion

The GAO said Florida's insurance and reinsurance programs have more than \$2 trillion in combined exposures, which exceed that of all other state programs combined.

by 495%, 147% and 146%, respectively, since 2005.

When identifying its proposals to increase the federal role in natural catastrophe insurance, the GAO said it found that each would involve trade-offs that would need to be balanced. As an example, the GAO said that while the proposals

Statutory remedy prevails in suit

Sexual harassment case plaintiff can only collect on 1 of 2 claims

By JUDY GREENWALD

AUSTIN, Texas—A plaintiff who brings a statutory sexual harassment claim and a common law negligent supervision and retention claim can recover only the statutory remedy if both are based on the same facts, the Texas Supreme Court has ruled.

According to the June 11 decision in *Waffle House Inc. vs. Cathie Williams*, Ms. Williams quit her job as a waitress at a Waffle House restaurant in 2002 after unsuccessfully complaining about sexual harassment by a restaurant cook.

A jury found in Ms. Williams' favor on both the statutory sexual harassment claim under the Texas Commission on Human Rights Act as well as the common law negligent supervision and retention claims.

It awarded her \$425,000 in compensatory damages and \$3.46 million in punitive damages. The trial court subsequently entered a judgment of \$425,000 in compensatory damages and \$425,000 in punitive damages.

Ms. Williams elected to recover on the common law claim. Under

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

the statutory claim, she would have received a maximum of \$300,000 in compensatory and punitive damages.

Waffle House appealed.

The Texas Supreme Court on a 7-2 vote overturned an appellate court decision and held that the statutory claim pre-empts the common law claim "when the com-

plained-of negligence is rooted in facts inseparable from those underlying the alleged harassment."

The two claims against Waffle House "stem from the same boorish and objectionable conduct," the high court ruled. "Where the gravamen of a plaintiff's case is sexual discrimination that lies at the heart of the TCHRA, allowing negligence damages for a TCHRA violation would eclipse the legislature's prescribed scheme."

Allowing Ms. Williams "to recover on her tort claim would collide with the elaborately crafted statutory scheme, a scheme that, as with the workers compensation regime, incorporates a legislative attempt to balance various interests and concerns of employees and employers," the high court ruled.

The case was remanded to the appellate court.

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U.S. Rep. George Miller sent pies to Senate Finance Committee members to protest removal of a legislative provision to mandate greater 401(k) fee disclosure.

Taking a slice out of 'secret' 401(k) fees

"Pie-visory" was the headline of an announcement of a most unusual news briefing that Rep. George Miller, D-Calif., sent to the news media last week.

At the briefing, the chairman of the House Education and Labor Committee said he was sending pies—with one slice missing from each dessert—to the 23 members of the Senate Finance Committee.

The reason for the missing slice? In the words of Rep. Miller: The slice represents the "secret fees Wall Street takes" from 401(k) plan accountholders.

The symbolism referred to the decision of Senate Finance Committee Chairman Max Baucus, D-Mont., to exclude from a tax bill a provision that Rep. Miller championed in the House, which would mandate greater disclosure of fees imposed on 401(k) plan participants.

Such disclosure is vital, Rep. Miller maintained, because the "slice" can make a significant dent in the size of a participant's account balance at retirement.

He said a difference of just one percentage point in fees "would reduce overall retirement income by 28% over a lifetime of saving" and vowed to win inclusion of the changes.

Apple pie, anyone?

Business Insurance END PAGE

Contributing: Jeff Casale, Jerry Geisel, Rodd Zolkos



FIFA World Cup fans have elevated the vuvuzela, long a popular noisemaker in South Africa, to the worldwide spotlight amid concerns about its possible negative effects on hearing and spreading disease.

Abuzz about vuvuzelas

The only thing more annoying than all the talk about vuvuzelas—the plastic horns heard blaring during the 2010 FIFA World Cup matches in South Africa—is the sound they make, and now there is some concern that they may spread infectious disease.

The vuvuzela is a favorite among South African soccer fans. With tens of thousands of them blowing the horns, it sounds like the match is being played in a really loud beehive.

However, according to a report by the Wall Street Journal, health experts say that the horns can cause hearing loss and possibly even spread colds, the flu and other infectious diseases.

A study by Hear the World, a foundation launched by



Swiss hearing aid maker Phonak A.G., said the horn's sound can reach 127 decibels, which is louder than a lawn mower, chain saw or air horn. The foundation said extended exposure at 85 decibels can put a person at risk of permanent hearing loss, according to the WSJ report.

Beyond that, health experts told the newspaper that people blowing into vuvuzelas also can spray droplets of spit onto nearby fans and spread infectious diseases.

FIFA has ruled that the vuvuzela will remain a part of the World Cup matches in Johannesburg. However, television networks have been working on ways to minimize its buzz on their broadcasts.

Uninsured woman's shot misses target

Desperate times called for desperate measures for an uninsured Michigan woman.

Dealing with unbearable pain in her right shoulder and unable to see a specialist because she has no health insurance, Kathy Myers of Niles, Mich., reportedly shot herself in the right shoulder in hopes she could finally get some relief.

The 41-year-old woman is one of 1.2 million Michigan residents without health insurance, and she thought the only way she could get medical attention would be to shoot herself and be treated at an emergency room, according to press reports. Unfortunately, doctors only treated her gunshot wound and denied her a CT scan or MRI she was desperately seeking to identify the cause of her persistent shoulder pain.

"I really didn't accomplish what I hoped it would accomplish," Ms. Myers told a local Michigan television station. "I have no suicide wish. My life sucks right now, but I want to live. I've got lots to live for...I just want to take the pain away."

Ms. Myers was hoping to hit a bone or an artery so doctors would be forced to perform surgery and fix her injury, which pain medications were not alleviating. Ms. Myers is now looking for a specialist that might be willing to help her on an affordable payment plan.

The case has been sent to the local prosecutor's office to determine whether she will face criminal charges for discharging a weapon within city limits, according to reports.



MINIDRESS PUTS FANS IN DUTCH

What do you get when you mix FIFA World Cup soccer, Dutch women in orange minidresses and beer?

For two of the women at least, that combination earned them a trip to jail.

The two were part of a group of more than 30 women attending the Netherlands-Denmark game last week wearing orange minidresses provided by Dutch brewing company Bavaria N.V., and were ordered from the Soccer City Stadium in Johannesburg by officials from FIFA, soccer's international governing body, they said.

The women were arrested at their Johannesburg hotel and charged with being

involved in an "ambush marketing" campaign.

Such activities, in which a company benefits from an event without paying for advertising, violate South Africa's Merchandise Marks Act. The women later were released on bail of 10,000 rand (\$1,300), with a court appearance scheduled for today.

The Dutch brewer said it is providing the arrested women legal and other assistance, noting that 200,000 of the orange Dutch Dresses sold "within a short period time" of their introduction with eight-packs of Bavaria beer.

Bavaria is not an official World Cup sponsor. Budweiser, however, is.

Brewer Bavaria N.V. said it took just a short period of time to sell 200,000 of orange Dutch Dresses with eight-packs of its beer.



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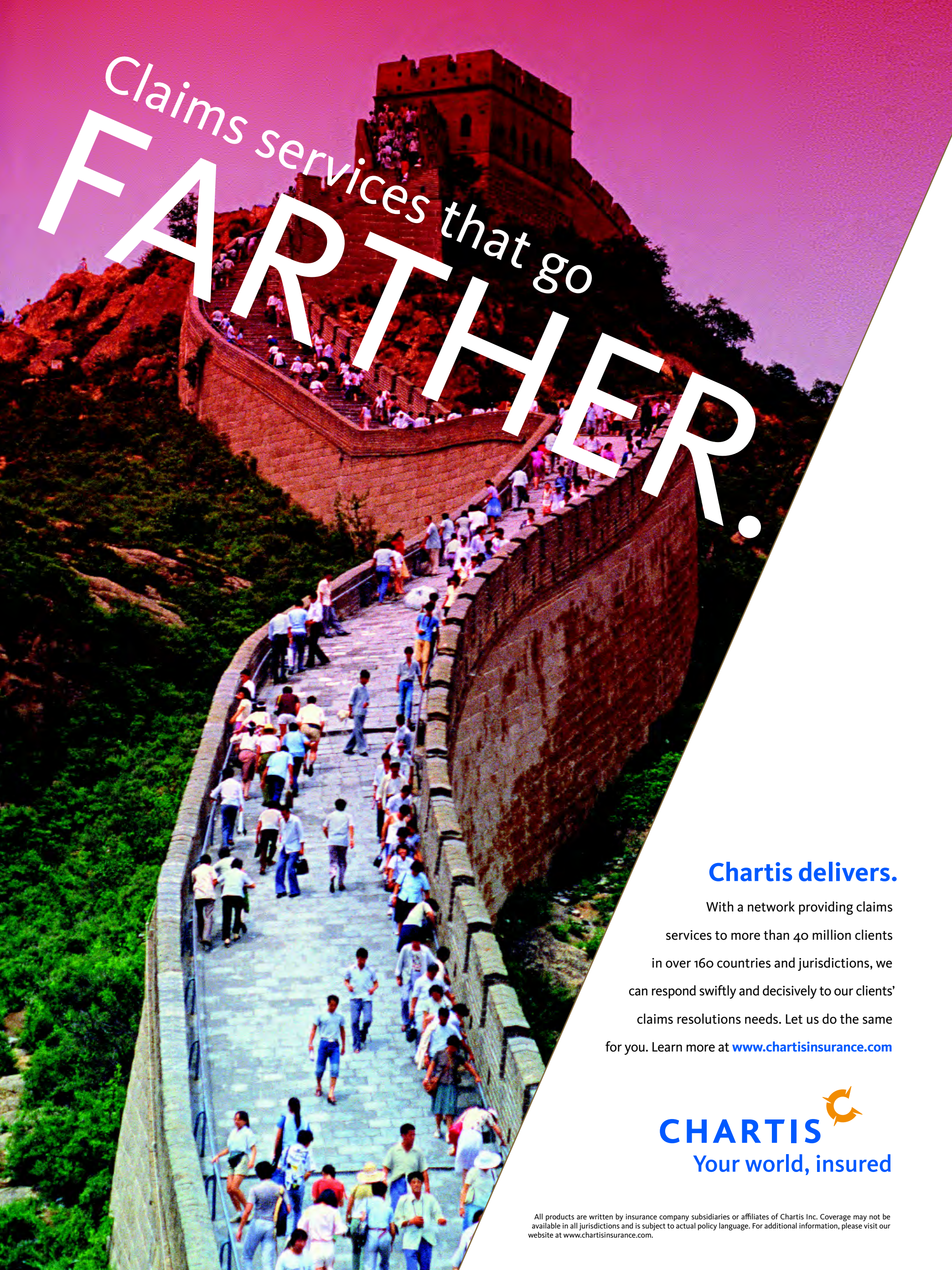
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