

Business Insurance

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UTILITY, SEVERAL INSURERS CAN SUE PORT AUTHORITY OVER SEPT. 11 LOSSES / PAGE 3

RETIRING CHIEF EXEC OF LIBERTY MUTUAL LOOKS BACK / PAGE 3

E. COLI OUTBREAK LOSSES FOR GERMAN GROWERS LARGELY UNINSURED / PAGE 4

In Brief

Ex-regulator tapped for FSOC position

President Obama has nominated S. Roy Woodall to fill the long-vacant insurance post on the Financial Stability Oversight Council. Mr. Woodall, a former Kentucky insurance commissioner, also served in the Treasury Department, working on terrorism insurance issues. Lawmakers established the council, which has the power to designate financial institutions as presenting a systemic risk to the economy, nearly a year ago.

Aon wins order against Alliant in poaching suit

Aon Corp. has won a temporary restraining order barring several former executives in its construction services unit and their new employer—Alliant Insurance Services Inc.—from

See **IN BRIEF** page 21

2011 BENEFIT MANAGER OF THE YEAR

**DELIA VETTER
EMC CORP.**

An aggressive, analytical cost-control approach that focuses primarily on



collaborative efforts to improve employee health has allowed EMC Corp.'s Delia Vetter to keep her company's health care

expenses in check while also engaging EMC's workforce. **PAGE 9**

EMPLOYMENT PRACTICES

Ruling raises bar for class actions

Supreme Court rejects Wal-Mart bias suit

By **JUDY GREENWALD**

WASHINGTON—Employers will have an easier time battling certification of potentially costly class actions as a result of last week's U.S. Supreme Court ruling in the massive Wal-Mart Stores Inc. litigation, observers say.

Experts say the 5-4 decision in *Wal-Mart Stores Inc. vs. Betty Dukes et al.* by the court, which ruled against a proposed class of some 1.5 million members, is a wake-up call for lower courts to demand more substantial evidence and more consistently hew to the law before granting class certification.

The suit originally filed in 2001 involves allegations that Bentonville, Ark.-based Wal-Mart promoted and paid female employees less than men despite females' higher performance ratings and seniority. The suit, which sought injunctive and declaratory relief, lost pay and punitive damages, would have cost Wal-Mart billions



Plaintiff Betty Dukes

if ultimately successful.

In 2007, a divided three-judge panel of the 9th U.S. Circuit Court of Appeals in San Francisco upheld a lower court's 2004 ruling that granted class action status to women who work or worked at Wal-Mart's 3,400 stores since 1998.

In its April 2010 decision, the en banc 9th Circuit ruled 6-5 to uphold most aspects of the district court's ruling in a technical opinion. It concluded that the proposed plaintiffs had enough in common to create a class despite their varying jobs and worksites.

But Supreme Court Justice Antonin Scalia disagreed in the ruling for the majority. "The crux of this case is commonality—the rule requiring a plaintiff to show that 'there are common questions of law or fact common to the class,'" he said, referring to Federal Rule of Civil Procedure 23(a).

See **WAL-MART** page 21

WORKERS COMPENSATION

Medicare rules spur rethink on some comp claims

By **ROBERTO CENICEROS**

Employers increasingly are opting to incur the additional costs of leaving workers compensation claims open rather than satisfy Medicare set-aside funding

requirements for closing cases with prescription drug expenses.

The practice contradicts the orthodox strategy of cutting workers comp expenses by closing claims as quickly as possible and is among several forces driving an

overall slowing of claims closures for older cases, employers, brokers and third-party administrators say.

But employers' reluctance to close some claims is driven by the large monetary value of prescription drugs that the Centers for Medicare and Medicaid Services have calculated will be needed for claimants' future medical expenses, the sources said.

Current law requires employers or their insurers to notify CMS when any workers compensation, liability or no-fault claim with a medical component involves Medicare-eligible beneficiaries. CMS then determines an amount that claims payers must set aside

to ensure payment of the claimant's future medical expenses so Medicare will not be stuck with those costs.

CMS did not respond to questions about its estimations of future pharmaceutical costs, but a CMS official told a hearing last week before the House Energy and Commerce Committee's Subcommittee on Oversight and Investigations that Medicare Secondary Payer reporting and recovery practices had saved Medicare more than \$50 billion during the past decade.

But when employers calculate the time value of money they

See **CMS** page 21

CLIMATE CHANGE



High court limits emissions lawsuits

Federal nuisance litigation blocked

By **JOANNE WOJCIK**

WASHINGTON—Although the U.S. Supreme Court ruled that the Clean Air Act "displaces" any federal common law public nuisance suit seeking to reduce greenhouse gas emissions, legal experts say it left open the door to state law claims and other types of litigation.

One such public nuisance suit is pending in federal court in Mississippi under that state's law. Many legal experts had thought *Ned Comer et al. vs. Murphy Oil USA et al.* was done when it was dismissed on procedural

grounds last year, but the suit was resurrected in late May.

In addition, weeks after oral arguments in *American Electric Power Inc. et al. vs. State of Connecticut et al.* on which the Supreme Court ruled last week, another type of climate change suit was filed based on a public trust theory.

"These cases are not going to go away," said Paul Blume, senior vp of state government affairs and acting general counsel for the Des Plaines, Ill.-based Property Casualty Insurers Assn.

See **WARMING** page 12

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INDEX

Advertiser Index	20
Business Resources	18
Commentary	6
End Page	22
Opinions	8
Market Moves	6
Professional Marketplace ..	18
Up Close	18

NEWSPAPER

Business Insurance

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NOMINATIONS



EVENTS

2011 NOMINATIONS DUE JULY 22: *Business Insurance's Women to Watch* feature recognizes women doing exceptional work in risk management, benefits management, commercial insurance and related fields. Download a nomination form at www.BusinessInsurance.com/womentowatch.

MOST POPULAR STORIES

Week of June 20, 2011

1. TRO bars Alliant from soliciting Aon employees, clients
2. Lawsuit over WTC tower collapse can proceed
3. Aon alleges employee, client poaching by Alliant
4. Supreme Court rules for Wal-Mart in landmark case
5. Oregon worker sues over sex change insurance denial
6. New Jersey Assembly passed worker benefits overhaul
7. Bermuda reinsurer property cat rates on the rise: Analysis
8. European Union may delay Solvency II deadlines
9. Supreme Court rejects global warming lawsuit
10. XL names excess, surplus lines president

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LIABILITY & LITIGATION

Court OKs suit over WTC loss

Utility says negligence was factor in collapse of 7 World Trade Center

By MATT DUNNING

NEW YORK—Nearly 10 years after the collapse of 7 World Trade Center—the third and final tower to fall during the Sept. 11, 2001, terrorist attack—Consolidated Edison Co. and its insurers have been given permission to sue the Port Authority of New York and New Jersey alleging negligence.

A three-judge panel of the 2nd U.S. Circuit Court of Appeals last week overturned part of a federal judge's 2009 ruling that had shielded the Port Authority from Con Edison's allegations of negligence in the design and construction of the tower and of diesel fuel tanks installed later by the building's tenants for their emergency generators.

A Con Edison substation was located beneath Port Authority-owned 7 WTC tower, a 47-floor structure that also was destroyed as a result of the attack on the two main WTC towers. The third tower collapsed late in the afternoon on Sept. 11, 2001, after burning for several hours, crushing the substation.

A year after the attacks, East Rutherford, N.J.-based Aegis Insurance Co. and several other insurers (see box) as subrogates of Con Edison filed suit against the Port Authority alleging that negligent design and construction of the tower, the diesel tanks or both contributed to the tower's collapse.

In July 2009, U.S. District Court Judge Alvin Hellerstein dismissed both claims based on his reading of specific clauses contained in the electric utility's original 1968 lease with the Port Authority.

However, the appeals court panel ruled unanimously last week that the Port Authority can be sued for negligence in the installation of the fuel tanks, which Con Edison alleges fed and exacerbated—through a faulty



Firefighters worked to douse a still-burning blaze at 7 World Trade Center, a 47-story New York building destroyed in the Sept. 11, 2001, terror attack.

AP PHOTOS

7 WORLD TRADE CENTER PLAINTIFFS

Named as co-plaintiffs in the suit against the Port Authority of New York and New Jersey, Consolidated Edison Co.'s insurers are:

- Aegis Insurance Services Inc., East Rutherford, N.J.
- Liberty Insurance Underwriters, New York
- National Union Fire Insurance Co. of Pittsburgh, Pa., New York
- Nuclear Electric Insurance Ltd., Wilmington, Del.
- Underwriters at Lloyd's of London

Source: Court documents

design—the fire that ultimately felled the tower.

“Con Edison’s negligence claim arises at least from the Port Authority’s independent duty, as owner of the leased premises, to exercise reasonable care to avoid damage to persons or property thereon,” the appeals court panel ruled.

While the panel upheld Judge

Hellerstein’s dismissal of the negligence claim related to the tower’s construction, it was not because the lease precluded it. Rather, the panel cited a New York state law that requires suits against the Port Authority to be preceded by a 60-day notice, which Con Edison failed to do.

“Obviously, we’re very pleased with the decision,” said Franklin Sachs, of counsel at Woodridge, N.J.-based law firm Greenbaum, Rowe, Smith & Davis, L.L.P., one of the firms representing Aegis and Con Edison. “Now we’ll see what happens next.”

Mr. Sachs said the case will return to Judge Hellerstein’s courtroom later this year, where it could be combined with a similar complaint that Con Edison and its insurers filed against the 7 World Trade Center’s designers and builders, Silverstein Properties Inc., and several tenants, including Salomon Bros. (later Citigroup Inc.), which commissioned some of the fuel tanks to run backup generators for its trading floor.

Silverstein Properties also was responsible for the design and construction of the new 7 World Trade Center, which was rebuilt in 2006.

CYBER LIABILITY

How to protect key corporate assets

Cyber attacks target companies’ competitive intelligence

By MALLORY GILLIKIN

It’s not a matter of if but when an organization will be hit with an “advanced persistent threat” cyber attack, experts say.

Such threats, which target high-level competitive intelligence such as product plans and merger and acquisition information, can be invisible to antivirus software and may remain undetected for years.

In a *Business Insurance* webcast titled “Dormant Dangers: Protecting Key Corporate Assets from Cyber Attacks,” Mark Greisiger, president of NetDiligence, said sophisticated hackers can use APTs to mine stored corporate data over long periods of time, with the risk amplified by common information technology outsourcing practices and data-sharing among business partners.



Mr. Greisiger



Mr. Collins

PROPERTY/CASUALTY INSURERS

Questions & Answers

Edmund F. Kelly will retire June 28 as CEO of Boston-based Liberty Mutual Group Inc., a position he has held since 1998, and will be succeeded by Liberty Mutual President David H. Long. Mr. Kelly, who will remain chairman of Liberty Mutual Holding Co., recently spoke with Business Insurance Senior Editor Mark A. Hofmann about his tenure and the issues facing the property/casualty insurance industry.



Kelly looks back

Q: What do you see as your greatest accomplishment at the helm of Liberty Mutual?

Obviously, taking an \$8 billion North American company and making it a \$33 billion global company sort of speaks for itself. But there are two things I’m most proud of.

One, I have had and am leaving behind a superb management team, and a great successor.

The second thing is when we started to expand, we developed these standards of behavior, if you will, principles of how we would hold ourselves accountable. And the fact that those principles are used throughout all the countries in which we do business and 46,000 people in the company follow them. The quality of the management team and my successor and the quality of the people and the way we approach business, that’s what really makes me proud.

Q: What were a couple of the standards of behavior?

For example, integrity, not just integrity in the compliance sense but in the broad sense that we do the right thing. We have relationships with our sellers and we have relationships with our vendors; we all hold each other to high standards. We have straightforward dealings internally with people; we’re direct and honest with them—that’s very, very important.

Probably the crowning glory of it came out at an annual management meeting where we get 120 top people from around the world together. The president of our Venezuelan operations was asked, “How hard is it?” You hear of potential corruption over there. He said, “We follow the law.” It’s as simple as that—we follow the law. He didn’t even hesitate. Where you’re able to operate an international company where that’s the instinctive response really makes it easier and also makes us very proud.

Q: What were the biggest challenges?

I’ll say it very, very simply—the CEO doesn’t do much. The CEO does two things: one, decide what to do; and two, find out who’s going to do it. The ongoing challenge is getting the right talent. The other stuff you can always tackle. We had the asbestos issue—we struggled and fought that, but we wouldn’t have won that without great talent. So, talent, talent, talent.

Q: How has the industry changed in the past decade?

If you’d asked me that a few years ago, I would have said much more professional management. I do believe it; I think it’s much, much better managed. We all understand the risk a lot better. We all understand our balance sheet and its implications. We’re more sophisticated politically.

That having been said, because of that, maybe, I have been stunned and indeed dismayed by the total lack of discipline in the commercial market in the last few years. With all the other good things we talk about how good the management is, clearly it’s wrong when it comes to commercial market pricing. I just don’t understand it.

Q: What do you think the property/casualty industry will look like five years from now?

Obviously, looking from Liberty Mutual’s activities, we believe two things: One, in the domestic market there will be considerable consolidation going forward. Two, for us and all the people that look at it, the source of real growth is going to be in the emerging economies. The people who do not have a flag firmly planted in those economies are going to lag. I think increasingly there have been global players, and we will be one of them that will influence the direction of the market.

INTERNATIONAL

German growers' E. coli losses mostly uninsured

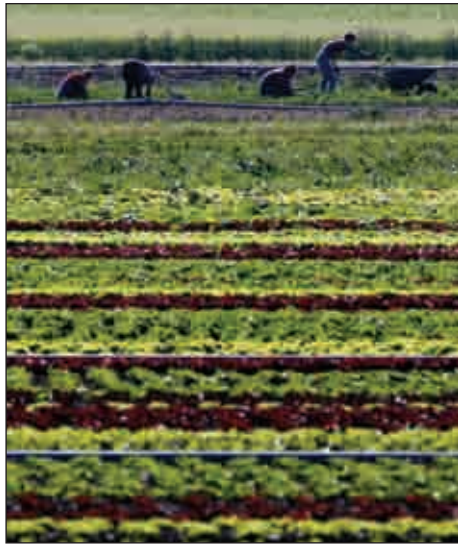
Liability remains unclear in deadly outbreak; E.U. offers compensation

By **STUART COLLINS**

The ongoing E. coli outbreak in Germany—the deadliest on record—has financially devastated the country's fresh food producers, but most of the losses they suffered likely will not be recoverable from insurers.

The outbreak, involving a rare strain of the bacteria *Escherichia coli*, has claimed some 43 lives and infected more than 3,800 people since it began in May.

It is the worst E. coli outbreak since 1996, when the bacteria affected some 9,000 in Japan. While the 1996 outbreak affected more people, it killed five; the deaths in Germany makes it the worst E. coli outbreak on record, according to the European Cen-



Vegetable farms in Germany faced financial losses after an E. coli outbreak was linked to crops grown in the country.

ter for Disease Prevention and Control.

Initially, the bacteria were thought linked to raw tomatoes, cucumbers and lettuce. Cucumber growers in Spain came under public scrutiny, leading to a costly loss of consumer confidence in the products they offered.

Spanish growers later were exonerated and the German food authority, the Robert Koch Institute, said the source likely was a bean sprout grower in northwestern Germany.

Spanish fruit and vegetable growers were losing as much as \$288 million a week, a producer association spokeswoman told Bloomberg.

The fresh produce industry in Europe, particularly Germany, has suffered severe financial losses as people stopped eating salads because of the E. coli outbreak, said Christof Bentele, London-based global managing director of Aon Ltd.'s recall and contamination crisis management group.

The Koch Institute had advised consumers to abstain from eating salads, but now advises against eating only raw bean sprouts.

Compensation plan

In part to compensate European producers, the European Union earlier this month announced a compensation plan totaling about \$300 million for vegetable growers that lost revenue in destroying certain crops.

As soon as it is clear that a particular product or producer is responsible for the outbreak, people will look for compensation for bodily injury claims, Mr. Bentele said.

The questions of causation and who is liable still are very much open, said Alfred Henneböhle, Cologne, Germany-based deputy and global head of liability at

See **OUTBREAK** page 20

CYBER RISKS

Preparation for hacker attacks helps in protecting, insuring firms

More companies plan for breaches as concern grows

By **RODD ZOLKOS**

PHILADELPHIA—Preparing in advance for a seemingly inevitable data breach will put a company in a better position to respond when its systems are attacked, as well as improve its position with insurers in seeking cyber risk coverage.

"That paradigm—that everybody is vulnerable to a security risk—is a new thing," Mary Guzman, senior vp at McGriff, Seibels & Williams Inc. in Atlanta, said at the NetDiligence

Cyber Risk & Privacy Liability Forum this month in Philadelphia. Ms. Guzman moderated a panel on data breach preparedness and plan execution.

"With data breaches, experience is critical," said panelist Vinny Sakore, vp of business development at Immersion Ltd. in State College, Pa. Consequently, it's important for brokers and consultants to educate clients on issues surrounding data breaches. "Some of the most basic truths that are out there—like there are state notification laws—can escape some people," he said.

Still, in talking with companies about preparing for a data breach, "A lot of it depends on the attitude of the client you're

talking to," said Adam Sills, a vp at Allied World Assurance Co. Ltd. in New York. The extent to which a company is truly prepared can come down to a genuine interest in taking the necessary steps vs. "how do I spend the least amount of money," he said.

If a company has a detailed response plan, as an underwriter "certainly we look very favorably on that type of organization," Mr. Sills said. But, he said, "I think there are a lot of people who still don't view data breaches as that big a deal."

A proper response plan will guide a company's actions after a breach, said Jeremy Henley, exec-

See **DATA** page 20



Some 760 people attended the Assn. of Insurance & Risk Managers' Annual Conference 2011 in Bournemouth, England.

AIRMIC

Solvency II adds pressure to boost insurance rates

AIRMIC panelists foresee more consolidation

By **SARAH VEYSEY**

BOURNEMOUTH, England—U.K. risk managers likely will not see a dramatic uptick in insurance rates in the immediate future, barring a major catastrophe, a group of industry leaders said earlier this month.

But the panelists at the Assn. of Insurance & Risk Managers' Annual Conference 2011 in Bournemouth, England, said Solvency II likely would add pressure to increase rates and could lead to market consolidation.

"The market is on the cusp at the moment," said Martin J. Sullivan, deputy chairman of London-based brokerage Willis Group Holdings P.L.C. While capacity remains abundant, he said catastrophe-exposed business around

the world likely is seeing rate increases of about 5% to 10%.

Underwriters have the capacity and appetite for new business, which typically is underwritten for a lower rate than the incumbent insurer offers at renewal, Mr. Sullivan said.

While industrywide catastrophe losses of about \$30 billion to \$50 billion already this year are thought likely to be "an earnings event, not a capital event," additional significant losses during the North Atlantic hurricane season could result in a "market change," he said.

While tragic, earthquakes in New Zealand and Japan were not "galvanizing events" that changed the way underwriters perceive

See **AIRMIC** page 20

BENEFITS MANAGEMENT

BI adds Benefits Management site

Business Insurance is now delivering our leading coverage of benefits issues on a new website.

The Benefits Management site features the latest news on health care and retirement benefits—including our comprehensive coverage of changes from the health care reform law—as well as in-depth features on key issues. In addition to news and analysis, the site features a career center and integration with social media platforms—all the tools benefits professionals need to succeed.

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Market Moves

Brown & Brown acquires benefits brokerage

DURHAM, Conn.—Brown & Brown of Connecticut Inc. has acquired a specialty employee benefits brokerage.

The Rocky Hill, Conn.-based unit of Brown & Brown Inc. acquired certain assets of Corporate Benefit Consultants L.L.C. for an undisclosed amount, Brown & Brown of Connecticut said in a statement.

Based in Durham, Conn., Corporate Benefit Consultants was founded in 1997 by Sonia L. Kaminsky and Joseph A. Fields, principals at the employee benefits brokerage. The firm specializes in health care plans for public and private companies, including negotiating plans for public entity employee unions.

Ms. Kaminsky and Mr. Fields, along with their staff, will join Brown & Brown of Connecticut's Rocky Hill offices, led by Donald M. McGowan Jr., executive vp of Brown & Brown of Connecticut.

CNA relocating New York office

NEW YORK—CNA Financial Corp. said its New York branch office is moving to a new location.

The office is relocating from 40 Wall St., New York, N.Y., 10005,

to 125 Broad St., New York, N.Y., 10002, the Chicago-based insurer said in a statement.

The 81,000 square-foot location in Lower Manhattan "will accommodate CNA's current staff and anticipated growth needs, while enabling the office to continue to serve the needs of its customers and producers," CNA said in the statement.

The move is scheduled for spring 2012.

Beecher Carlson buys health care broker

SANTA ANA, Calif.—Beecher Carlson Holdings Inc. has acquired a California-based insurance brokerage specializing in hospitals and other health care facilities.

The acquisition of DW Harper Group, for which financial terms were not disclosed, expands Beecher Carlson's national health care practice and medical malpractice focus, the Atlanta-based brokerage said in a statement.

Founded in 2006 by President and CEO David Harper, the Santa Ana, Calif.-based brokerage focuses primarily on medical malpractice, according to the statement.

"As the model for the delivery of health care continues to emerge, I knew that my platform of services would need to change," Mr. Harper said in the statement. "The choice was to build these products or find a business partner whose service values matched those of the DW Harper Group. In Beecher Carlson, I have found that company."

Beecher Carlson's Irvine, Calif., location will combine with DW Harper Group's Santa Ana offices,

a Beecher Carlson spokeswoman said.

Mr. Harper and DW Harper Group employees will join the brokerage and the DW Harper Group name no longer will exist, she said.

JLT Reinsurance opens Swiss office

BASEL, Switzerland—JLT Reinsurance Brokers Ltd. has opened an office in Switzerland, adding life reinsurance capabilities.

The Basel, Switzerland-based location follows the June 1 acquisition of U.S. RE Cos. Inc.'s Basel-based treaty reinsurance business, the London-based reinsurance brokerage unit of Jardine Lloyd Thompson Group P.L.C. said in a statement.

The branch is headed by Mark Lucas, general manager and partner at JLT Re. Most recently, he was managing director at U.S. RE, where he established the Basel branch that is responsible for production and placement of European nonlife and life reinsurance business.

The address of the new office is St. Alban-Vorstadt 14, 4052 Basel, Switzerland.

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. 60601 or email mtsikoudakis@businessinsurance.com.

Commentary

Age-old stereotypes no longer ring true

The opportunities for senior citizens in my little corner of the paved-over Texas prairie are so abundant that choosing how to spend the day could take most of the day for a crusty old curmudgeon like myself.

Just think, I tell myself each morning, now that I am solidly within the 55-and-older category that the local activities center defines on its website as the "senior" age group, I am eligible to participate, at no cost, in bingo, bridge, basic computer classes, mall walking or "knitting for charity."

Once a month, if the doc says my heart can withstand the excitement, I can join with the Fraternal Order of the Plaid Shirts for "monthly camaraderie," as the activity center describes a bunch of guys eating lunch and lying about their younger days.

Sound like fun for those of you over 55?

No? Did I forget to mention needlepoint? Defensive driving?

Not to belittle activities for seniors, and God bless the local centers across the United States that provide such activities, but are they serious about offering defensive driving classes for people in their mid-50s? Do they think our reflexes and decisionmaking skills are so eroded that we need a refresher course on how to operate an automobile?

Maybe it's time to think about redefining who's a senior citizen and who isn't.

For many of us who have crossed the 55 mark, we see our parents as the last generation of Americans who were "old" before they hit 60. Many of our parents had a tough row to hoe, and hard work took its toll after five decades. With so much of their days taken up by work and family, they had little time or enthusiasm for training and competition.

Times have changed, and it's fair to say that many folks in their 50s and 60s are still pretty youthful. In fact, I know a lot of "seniors" who are far fitter than people decades younger and would think it absurd to sign up for an outing at the mall.

I see it play out every weekend. On Saturday mornings, a group of cyclists I ride with rolls out of the bike shop parking lot at 8:30. A half-hour later, the average age of the guys doing the work at the front of the pack would be well north of 50—if only we could drop the thirtysomething guy who



MICHAEL BRADFORD

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

rides like a locomotive.

Nobody in that group is into potluck or knitting.

Take a look at the results of an amateur bike race or a 10 kilometer road race and you will see that there are plenty of older finishers with excellent results. Many have been running and racing bikes for decades and can more than hold their own against younger competitors.

Most older workers aren't what we used to think of as senior citizens.

This should all be good news for employers.

If you're one, how do you view your older workers? Is a 55-year-old a "senior" in your eyes? Or have you noticed that the older, experienced members of your workforce are just as productive, or more so, than the younger ones?

Fitter employees will have fewer health problems than their more sedentary colleagues, which will save the company money. Science has shown that exercise improves mood, which means fit employees are happy employees. There's nothing wrong with a sunny disposition around the office or on the plant floor.

Most older workers aren't what we used to think of as senior citizens. They can drive themselves home from work without a course on how to manage it. And when they get there, plenty are lacing up their running shoes or hopping on their bikes instead of draping an afghan over their knees.

That's one more stereotype shattered, and it's about time.

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**Andrew M. Miller, President & CEO
Polycom, Inc.**

Zurich HelpPoint

A single property insurance solution designed to help reduce coverage gaps and overlaps.

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Business Insurance OPINIONS

Top benefit managers cut costs, improve care

AT A TIME OF ever-increasing health care costs, benefit managers who can help tame those cost hikes are considered assets by their senior executives. But those benefit managers who can simultaneously curb costs and improve health care for employees should be highly valued by all stakeholders in their organizations.

Pulling off that difficult trick is one of the main reasons why Delia Vetter is hailed as an innovator by managers, employees and business partners of her firm, EMC Corp. It also is a key reason why she was named the *Business Insurance* Benefit Manager of the Year for 2011.

Benefit managers who can tame cost hikes are assets.

After realizing that increasing health care costs would threaten the profitability of her company, Ms. Vetter set out a multifaceted approach, steeped in data analysis, to contain costs and improve employee health care. Her deep understanding of the issues enabled her to produce a plan that convinced senior management to invest in benefits during a difficult economic period. Her ability to communicate effectively with employees and to deliver on her plan enabled her to produce significant returns on that investment over the long term.

Philia Swam faced a similar puzzle at Lafarge North America Inc.: how to control health care costs without reducing the breadth of coverage offered to employees.

Her effective use of wellness and preventive programs that successfully addressed that issue won her a place on *Business Insurance's* Benefit Management Honor Roll for 2011.

Using a creative mix of incentives and disincentives to coax employees to take better care of their health and to make more efficient use of health care services, Ms. Swam saved Lafarge money and improved the quality of life of her co-workers.

Congratulations to both of our 2011 honorees. Profiles begin on page 9.

Class-action war not won

BE HAPPY, but don't relax, is the message to firms as a result of last week's Supreme Court ruling in the massive Wal-Mart litigation, in which the court rejected the idea of forming a class of some 1.5 million plaintiffs.

Even on the face of it, the idea of having such a big class of plaintiffs strained credulity. Fortunately, the high court saw it that way in ruling that plaintiffs had failed to demonstrate that all those people have enough in common to form a class.

Furthermore, the court ruled, plaintiffs' suggestion that awards to all class members should be based statistically on the experiences of just a few in a "trial by formula" would have been just plain unfair to Wal-Mart Stores Inc.

But the ruling goes far beyond Wal-Mart. It also was a sharp warning to lower courts that they should proceed cautiously in granting class certification, keeping in mind that it is supposed to be the exception, not the rule. And courts also should make sure that plaintiffs have substantial evidence to back their claims of a common class, not just weak and unpersuasive statistical, sociological or anecdotal data.

All this is good news for firms as they face their own battles on the issue of class certification. But complacency would be highly premature. As experts pointed out, attempts to form class actions are far from over. They will just be more narrowly focused and targeted.

That means companies still must be on their toes and follow sound practices of making sure that their policies do not reflect any bias, that their managers and supervisors are adequately trained, and that there are good complaint procedures in place.

Business Insurance
Benefit Manager of the Year: **Delia Vetter**, EMC Corp.
Benefit Management Honor Roll: **Philia Swam**, Lafarge North America Inc.
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Will the Dodd-Frank reform law significantly decrease the risk of another financial crisis?



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NEXT WEEK'S QUESTION

Will the Supreme Court's Wal-Mart ruling reduce the number of class-actions?

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2011 BENEFIT MANAGER OF THE YEAR

Delia Vetter

Senior Director of Benefits and Programs
EMC Corp.



DOUG GOODMAN

Benefits investments contribute to bottom line

Strategy saves money while maintaining attractive benefits

By JOANNE WOJCIK

When projections in 2000 showed that EMC Corp.'s health care costs would double within five years, Delia Vetter warned top executives that the costs threatened the company's future.

Since its 1979 formation by former Intel Corp. executive Dick Egan and his college roommate Roger Marino, EMC had transformed from a tiny high-tech startup in a Hopkinton, Mass., garage into the world's leading developer and provider of software storage technology.

But Ms. Vetter, senior director of benefits and programs, said she discouraged EMC executives from cutting benefits or increasing employee cost-sharing to cover higher health care spending, reminding them that it was the company's rich benefits that helped it attract and retain the talented workforce fueling the company's innovation and growth.

Instead, she suggested EMC

invest in additional programs that could help curb those annual cost increases by helping employees improve their health.

"In 2000, our increases were coming in on average at 15%," per year she said. "At the time, the company, the economy, everything was taking a downturn. We couldn't continue at that pace from a sustainability perspective. We had to come up with a strategy to contain health care costs for the long term without shifting costs to employees."

To develop that strategy, Ms. Vetter and her staff collected data from all 38 of EMC's health plan providers with the help of her broker and consultant, Willis of Massachusetts Inc. in Boston, and put it into a data warehouse managed by Ingenix Inc., a division of UnitedHealth Group Inc.

Drivers identified

Together, they identified the top drivers of EMC's top health care costs and attacked them with strategic chronic care management and health improvement programs, then shared the information they compiled in the data warehouse with employees via one of earliest employer-spon-

sored electronic personal health records, powered by WebMD Health Services WebMD Inc.

To complete her research, Ms. Vetter also explored external cost drivers, including health care market forces. She spent a year mostly away from the office immersed in the health care marketplace, meeting with providers, insurers, health care coalitions, business roundtables and other employers.

As a result of her efforts, EMC's health care costs didn't double in five years. Rather, EMC saved enough money over roughly the same period of time to cover its 2010 annual health benefit costs for more than 40,000 employees and dependents—approximately \$223 million.

Thanks to its ability to contain its health care costs, EMC revenue grew at a compounded annual rate of 14.5% between 2003 and 2009. Moreover, despite tough global economic conditions and a sharp downturn in information technology spending, the technology and cloud computing company's 2010 revenues reached a record \$17 billion, 21% higher than 2009 and \$1 billion ahead of the goal company executives had

set at the beginning of the year.

Ms. Vetter fostered the realization among EMC's management that the cost of health benefits directly affects a company's ability to grow and prosper, an accomplishment that distinguishes her as the *Business Insurance* 2011 Benefit Manager of the Year.

Ms. Vetter also impressed on top executives that EMC needed to continue offering rich benefits without increasing cost-sharing to

attract talented high-tech workers to further fuel the company's growth.

Money invested

By containing health care costs, "it frees up the money to invest in other areas," said William Schlag, senior vp at Willis of Massachusetts in Boston, who has worked closely with Ms. Vetter

See **VETTER** next page

INSIDE:

PERSONAL HEALTH RECORDS PAGE 11

MORE ABOUT EMC CORP. PAGE 12

EMC'S DATA WAREHOUSE PAGE 12

SHARING STRATEGY PAGE 12

BENEFITS SCORECARD PAGE 13

FORMULA FOR CAREER SUCCESS PAGE 13

Vetter: Benefits investments contribute to EMC's bottom line

CONTINUED FROM PREVIOUS PAGE

throughout the years.

"Delia's accomplishments are usually a testament prescribed to a successful business leader rather than to a typical benefits organization," said Kevin M. Close, vp, global compensation, benefits and human resources information systems at EMC, in a letter nominating Ms. Vetter for Benefit Manager of the Year.

'Our goal is to educate employees about the environment, the challenges, and work collectively to make EMC a successful and healthy place to work.'

Delia Vetter, EMC Corp.

"These accomplishments include demonstrated (return on investment); leading technology innovation with the introduction of the first-ever employer-sponsored electronic personal health record in 2004; and increased quality of care and overall health of EMC employees through targeted programs," Mr. Close wrote.

"Being in the information technology business, it was an easier sell than it would have been for

other companies," said Ed Golitko, senior director of human resources at EMC. "One of the things that we preach to our own customers is that if you have data, you can influence your business and bring down your costs. Without data, you're just taking shots in the dark."

What was perhaps most astounding about Ms. Vetter's success in obtaining the resources necessary to implement her health care cost containment strategy was that it came on the heels of the "dot-com" bust of IT stocks, Mr. Golitko said.

"She went to the board to get \$2 million to deploy a strategy during an economic downturn. But she showed them that if we don't do something now," then things could get worse, he said.

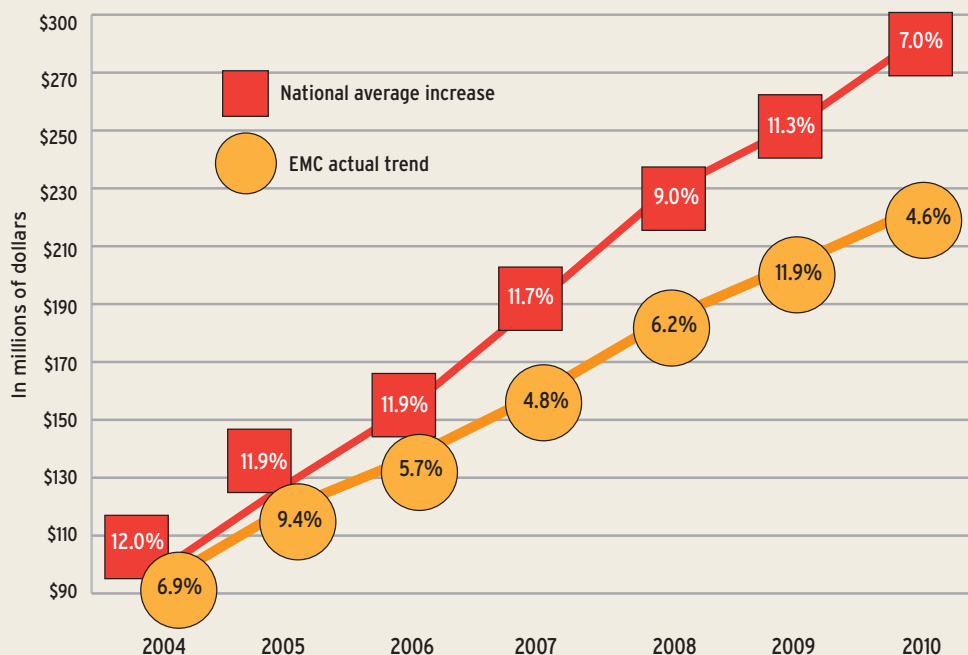
After winning upper management's support, Ms. Vetter turned to EMC employees to get their buy-in, starting with middle management and then meeting face to face with employees in "hundreds of meetings" conducted "all over the United States," she said.

"I called it Health Care 101," she said. "We articulated to them why it was necessary for us to work collectively, as a company and as employees, to contain health care costs. Our goal is to educate employees about the environment, the challenges, and work collectively to make EMC a successful and healthy place to work."

Among other things, she shared what she learned about the health care marketplace, how unhealthy lifestyle choices contribute to the

EMC CORP.'S HEALTH CARE COST TREND

Through prevention-focused efforts, EMC Corp.'s actual health costs (circle) vs. what they would have been had they risen at the national average cited in Towers Watson & Co.'s annual surveys, in millions of dollars.



Source: EMC Corp.

incidence of disease, and how new technologies and drugs added to treatment costs.

As part of that education, Ms. Vetter also explained that EMC was self-insured, and it was really shareholders paying for employees' health care.

"We always tie it back to the shareholder value because we're all shareholders," she said.

Finally, Ms. Vetter told employ-

ees how EMC planned to address health care cost increases and work to improve employees' health status, unveiling EMC's HealthLink portal in 2004, through which employees could access all of their health care information via an electronic personal health record.

"We told them about the personalized portal first, and that we were committed to continuing education and workshops relative to the population," she said.

In fact, since 2003, EMC has conducted monthly health benefits education workshops on a variety of topics. All of the topics are driven by regular analyses of the data collected in EMC's data warehouse.

After implementation of the multifaceted health management and employee engagement strategy spearheaded by Ms. Vetter and her benefits team beginning in 2002, EMC's health care costs increased only by 30% by 2007, rather than the projected 100%. That has resulted in estimated cost avoidance to date of \$223 million—about the size of EMC's 2010 health benefit budget.

Cost trends

Last year, EMC experienced a 4.6% medical trend increase, well below the national 7% average increase paid by large, self-funded U.S. employers.

And the company is containing costs while continuing to expand its health care offerings and without additional cost-shifting to employees.

EMC already provides all benefits mandated under federal law prior to the passage of the Patient Protection and Affordable Care Act. It also offers benefits mandated by the state of Massachusetts to all employees nationwide even though it is self-insured.

"We're a self-insured plan in fully insured's clothing," said Lauri

Tenny, director of benefits at EMC and a member of Ms. Vetter's team.

To keep employees apprised of and involved in their health care, "rather than talking about benefits once a year, it's an ongoing conversation, involving spouses and domestic partners in population health management," Mr. Schlag said.

To emphasize the fact that the objective is to work together, Ms. Vetter's initiative is called Driving Partnership in Health.

Today, 92% of EMC's employees are registered on the company's HealthLink site. Of these, 95% completed an annual health risk assessment. In addition, of the 58% of EMC spouses and domestic partners registered on HealthLink, 92% completed the health risk appraisal.

"When we started our strategy, we were looking to contain health care costs, create a healthy workforce and influence lifestyle behaviors," Ms. Vetter said. "It's a really simple equation: Utilization times price equals cost. If we could maintain a healthy workforce, decrease the utilization and help employees and family members do the right things by offering the right programs and resources, there's our savings."

"HealthLink and the data warehouse-fed PHR are the cornerstone of EMC's health care cost containment strategy. It is helping our employees become educated and to collect in one place all of their utilization from various providers," Ms. Vetter said.

"Doing things to make employees healthier is good for EMC," said Jack Mollen, executive vp of human resources. "We're a technology company, and 80% to 90% of our revenues are derived from products and services that we've developed over the last 18 months. At the pace at which a high-tech company runs, people have to be serious about their health."

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Personal health records show workers true cost of care

Private, portable electronic document includes health-related information, screenings and test results

By **JOANNE WOJCIK**

When EMC Corp. launched its personal health record in 2004, most employees had no idea what health care services actually cost, as they were accustomed to making only minimal copayments.

But the PHR, powered by WebMD Inc., has built-in price transparency, revealing the true cost of prescription drugs and all health care services, before and after insurer-negotiated provider discounts.

For many employees, it was a real eye-opener, said Delia Vetter, EMC's senior director of benefits and programs.

"We had employees with premature births who paid only \$250 for a \$600,000 claim," said the *Business Insurance* Benefit Manager of the Year. "Providing price transparency to employees has elevated the value they place on EMC-provided benefits."

Although employees can enter information into their PHRs, they also can opt to have their health records automatically populated with claims information, prescriptions, diagnoses, lab results and other health-related information transferred from EMC's data warehouse, which is managed by OptumInsight, a unit of United-Health Group Inc.

Later this year, imaging and radiology providers will be able to upload the results of those tests into employees' PHRs as well.

All self-reported information employees provide as part of their annual health risk assessments also is added to their PHRs.

In addition, the results of biometric tests performed as part of EMC's annual screening program automatically are added to employees' PHRs. That includes results of biometric tests for blood pressure, body composition, body mass index, height, weight, cardiac risk, fasting glucose levels and several cholesterol measures.

Blood pressure readings, captured using Bluetooth technology as part of EMC's SmartBeat remote hypertension monitoring program, also are automatically uploaded in participants' PHRs.

Private and protected

All of the PHR information is private and protected by secure technology in compliance with the Health Insurance Portability and Accountability Act, EMC officials say.

At first, gaining employee trust was a bit of a challenge given their familiarity with Internet technology, said members of Ms. Vetter's benefits team.

"The most challenging program to implement was the data warehouse, which powers the HealthLink portal, and trying to get employees to realize it's secure," said Lauri Tenney, director of benefits at EMC.

"We are an IT company, so people are very aware of security breaches and things like that,"

agreed Laura Burns, manager of benefit communications. "But it hasn't been paralyzing."

In fact, because Ms. Vetter and her benefits team have taken the time to respond to employees' concerns about the security of their health data, EMC now is considered a trusted source of health information, according to a 2008 independent survey conducted by The Partnership for Healthcare Excellence, a Boston-based nonprofit.

Nearly 40% of EMC's covered

members, including employees and spouses or domestic partners, have accessed their PHR. In addition, 92% of EMC's employees are registered on the company's HealthLink site. Of these, 95% completed an annual health risk assessment. Of the 58% of EMC employee spouses registered on HealthLink, 92% have completed the health risk appraisal.

"They now understand that this is the culture," said Ms. Burns.

"But for every employee that tests you, there are 10 who say,

"Thank you,"" said Bette Phillos, manager of operations and compliance and another member of Ms. Vetter's benefits team.

The PHR also is portable, so employees can take the information with them should they retire or leave the company. In addition, employees can share the information with their doctors.

The PHR complements various health education seminars and programs included in EMC's Healthy Rewards program. These include DASH for Health; the

LiveHealthy Medical Program, which manages chronic conditions; telephonic health coaching; and several online lifestyle improvement, assessment and tracking tools.

For example, when an analysis of EMC's cardiac- and hypertension-related claims suggested sleep disorders might be occurring, EMC conducted a seminar on sleep health that attracted a standing-room-only crowd of

See **PHR** next page

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EMC creates data warehouse to analyze health costs

Effort produces data-rich PHRs for employees

By JOANNE WOJCIK

To develop EMC Corp.'s Driving Partnership in Health strategy, Delia Vetter needed to drill down into the annual health care cost increases the company was experiencing to determine which cost drivers to target.

Even though EMC was self-insured, the senior director of benefits and programs at the Hopkinton, Mass.-based company could not access all plan members' claims and utilization data that was scattered among 38 health plans that administered EMC's benefits throughout the United States.

"We needed data to determine our cost drivers," Ms. Vetter said. "We also needed a way to leverage that data to drive the right programs" that would slow the cost increases.

Perhaps most importantly, EMC needed to find a way to share that information with its employees, Ms. Vetter said.

In 2001, before health care consumerism became an industry buzzword, Ms. Vetter theorized that if EMC could show its employees how health care costs were affecting the company's ability to grow and prosper, they would gladly participate in cost-

containment efforts.

She envisioned that a data warehouse combined with a personal health record would enable the personalization of the employee experience as a health services consumer, as well as allow an aggregate analysis of health care consumption and cost trends and identify opportunities to lower costs by improving workforce health.

Being a high-tech company, EMC certainly had the capacity to build and maintain such a data warehouse and PHR. But it wanted to give its employees the comfort of knowing that their health information would be private, Ms. Vetter said. EMC also wanted to make the PHR portable, allowing employees to take their personal health information with them when they retire or leave the company for any other reason, she added.

Partner search begins

Unfortunately, there was no single provider offering such a product at the time.

"We went out and looked at many, many vendors and had a high-level summit and described our vision. At that point in time, no one was doing that," Ms. Vetter said.

When EMC approached its health plans and pharmacy benefit manager for claims data to populate the data warehouse that Ms. Vetter started, they resisted, citing

concerns about the electronic transfer of protected health information.

"Basically, we had to say to them, this is where we're going. You're either with us or you're not. Then we'll have to find another health plan. When you do that, then all of a sudden, people are willing to work together," Ms. Vetter said.

EMC also had difficulty finding technology partners willing to work together to combine a data warehouse with a personalized health care portal.

The two that were included WellMed Medical Management Inc., which was acquired by WebMD Inc. shortly after it signed its contract with EMC, and Ingenix Inc., since renamed OptumInsight, a division of UnitedHealth Group Inc. However, neither company had done such a project previously.

"That collaboration was pretty amazing. They had never integrated and transferred data to a portal to personalize the experience for the individual," Ms. Vetter said.

"At first we didn't realize we were assembling a comprehensive and portable PHR. We were just trying to get useful information about consumption and true cost into the hands of employees. Then we realized that we were breaking new and important ground," Ms. Vetter said in a white paper co-written by David Dimond, EMC Consulting's national health care practice leader, who now shares EMC's experience with other employers as part of a consultancy practice.

"If there was a payer out there that could deliver this suite of solutions and could deliver this in a continuous, innovative way, we would have taken them on, but

there wasn't," he said, referring to health insurers that administer self-funded benefit plans.

"EMC has long been recognized for its commitment to innovation and its progressive approach to improving the health and well-being of its employee population," WebMD CEO Mark Emkjer said in a statement.

"EMC was among the first of

our large-employer clients to adopt a personal health record that automatically imports and houses medical claims data, laboratory data and prescription medication data. This has helped the company make both the cost of care more transparent to employees and family members and supported a shift toward consumer-driven care," Mr. Emkjer said.



EMC CORP.

- Founded: 1979 by former Intel Corp. executive Dick Egan and college roommate Roger Marino.
- Headquarters: Hopkinton, Mass.
- Business: Helps businesses transition to "cloud computing" by providing products and services designed to store, manage, protect and analyze data in a more flexible and cost-effective way. Provides technology, products and services directly to consumers in more than 100 countries.
- Number of employees: More than 48,500 employees around the globe with facilities in North America, Latin America, Europe, Asia, the Middle East and Africa.
- Customers: Include banks and other financial services firms, manufacturers, health care and life sciences organizations, Internet service and telecommunications providers, airlines and transportation companies, educational institutions and public-sector agencies.
- 2010 revenue: \$17.1 billion, surpassing 2009 revenue by 21% and ending the year \$1 billion ahead of the target the company's executives had set.

PHR: Electronic records show costs to workers

CONTINUED FROM PREVIOUS PAGE

employees. EMC added a series of questions about sleep habits to its health risk assessment and targeted certain individuals who decided to participate in a company-sponsored sleep study.

New programs added

This year, EMC introduced Women's Health Service, a program delivered by OptumHealth, a unit of UnitedHealth Group, to address infertility, maternity and neonatal intensive care management issues. The program requires plan members using infertility services to work with an OptumHealth nurse case manager to ensure the highest quality of care is received.

Also this year, EMC introduced a wellness incentive program, Choose 1 and Commit, which requires employees to participate in at least one health improvement program or activity, such as completing the health risk assessment, receiving a screening or exercising regularly, to qualify for a 6% discount on their biweekly contribution for single health coverage.

Next year, employees whose spouses or domestic partners are

covered under EMC's health plan also will be required to participate to receive a 12% discount on those contributions.

Although EMC does not impose a tobacco use surcharge, it offers a smoking cessation program in which 187 employees are enrolled.

In addition to its health management and improvement programs, all of which have zero cost for employees, EMC also offers on-site fitness centers at its headquarters in Hopkinton, Mass., where employees can use an Olympic-size pool, which also provides water for fire protection if needed.

EMC employees also can access the national Back-Up Care Advantage Program, which provides access to back-up child and elder care at a discounted rate that is subsidized by the company; the WealthLink, owned by MetLife Inc., and Asset Health, online financial education platforms; Accelerometer, an activity monitoring system that provides personal feedback and support to help make lasting changes toward a healthier, more active lifestyle; and Best Doctors, a free service that provides second medical opinions.

Consulting unit shares strategy with others

By JOANNE WOJCIK

EMC Corp. is sharing its experience of building its own data-driven health care management solution with other employers as part of its technology consulting services.

Initially, EMC is focusing on health care provider organizations, such as hospitals and integrated delivery systems, which is an organization that combines hospital, physician and other medical services as part of a larger health care system. That is because the Patient Protection and Affordable Care Act is forcing them to move away from a fee-for-service delivery model toward one in which they will be taking on more risk, said Dave Dimond, EMC Consulting's national health care practice leader.

Under PPACA, health care providers will become eligible to receive financial incentives for assuming greater responsi-

bility over patient care and outcomes, either by serving as medical homes or as accountable care organizations.

"To do this with patients, it's a great first step to do it with your own employees," Mr. Dimond said. "It starts with looking at the data and understanding the opportunity and risk with your own employees and to embrace some of the things that (Senior Director of Benefits and Programs Delia Vetter's) team did early on."

Connecting the dots

Because of Ms. Vetter's ability to connect the dots between an organization's health care costs and its financial performance, she often accompanies Mr. Dimond on sales calls.

"We are positioning Delia's organization as a consultant...to help other organizations do what EMC has done, to do it much faster, understanding the ecosystem of part-

ners out there and how to work with them efficiently, to get them to where they're bending the trend...and to get there quicker," Mr. Dimond said.

In addition to featuring Ms. Vetter and her team, EMC is "showcasing some of our partners that we expect to out-innovate each other every year," Mr. Dimond said.

"If someone would like to do what EMC has done—EMC did bend the trend beginning in 2004—we have a lot of knowledge and we would like to advise them in this regard," he said. "If you can shift the culture and tie it to financial performance, there's a big opportunity out there."

"Anytime you're a trendsetter, and that's what EMC has done in the employee health care arena, you become the expert," said Bette Phillos, manager of operations and compliance and a member of Ms. Vetter's benefits team.

Health care spending scorecard keeps costs on track

Studies, programs cut costs by targeting health problems

By JOANNE WOJCIK

Delia Vetter, EMC Corp.'s senior director of benefits and programs, constantly fine-tunes the company's data-driven health care cost management strategy as challenges in the health care marketplace continue.

With the help of EMC's broker and consultant, William Schlag, who is senior vp at Willis of Massachusetts Inc. in Boston, Ms. Vetter and her team have developed a health benefits information "scorecard" that tracks all of EMC's health care spending by quarter.

The scorecard includes data that is generated by the Hopkinton, Mass.-based company, a developer and provider of software storage technology, and stored in a data warehouse, which receives monthly feeds from all of the company's medical, pharmacy and behavioral health plan administrators. That allows top EMC executives to see not only how much the company is spending on every health benefit program, but also lets them track utilization of its myriad health promotion and care management programs.

EMC executives know the top 10 hospitals its employees use, diagnostic categories being treated, drugs being prescribed and the top 10 therapeutic classes of drugs.

The scorecard also tracks WebMD Inc. health coaching activity; HealthLink portal utilization,

including health risk assessment completion rates and personal health record access rates; and use of the Best Doctors free second-opinion program.

The scorecard even calculates return on investment in the Live-Healthy Medical Program, a chronic care management program administered by OptumHealth Inc., a unit of UnitedHealth Group Inc.

EMC also participates in independent medical studies when they can benefit EMC employees, using the results to drive further advances in its health management programs.

One example is the DASH for Health program, an optional Web-based nutrition and health program conducted in partnership with Boston University, whose results were reported in the Journal of Medical Internet Research.

After EMC identified 8,000 employees as taking anti-hypertension medications at an annual drug cost exceeding \$1.2 million with estimated total health costs approaching \$3.5 million, EMC decided to participate in the SmartBeat program, a six-month clinical trial of a remote patient monitoring program incorporating a wireless blood pressure cuff and communicator with an Internet-based feedback system to self-manage high blood pressure.

A total of 402 EMC employees participated in this study, resulting in statistically significant reductions in systolic and diastolic

blood pressure for the intervention group vs. the control group. The results: nearly 70% of employees participating in the intervention program achieved an overall decline in their blood pressure.

As a result of the success of that 2008 pilot, SmartBeat was expanded this year to include 500 additional EMC employees.

After a more recent review of EMC's cardiac- and hypertension-related claims suggested sleep disorders might be occurring, EMC held a seminar on sleep health that attracted a standing-room-only crowd of employees.

EMC added a series of questions about sleep habits to its health risk assessment and targeted individuals who responded affirmatively to ask them to participate in a sleep study, which was conducted by Chaska, Minn.-based Talk About Sleep Inc.

This year EMC also introduced a Women's Health Initiative because fertility and pregnancy costs are among the company's leading health care cost drivers.

Getting a better handle on its large claims enabled EMC to discontinue purchasing stop-loss coverage, resulting in additional benefit cost savings. According to the EMC scorecard, even though 17 of the 34 workers who had claims that would have pierced EMC's stop-loss coverage, which attached at \$400,000, the projected 2010 premium expense exceeded the potential reimbursement for the group by \$970,000.



DOUG GOODMAN

Business Insurance's Benefit Manager of the Year Delia Vetter, EMC Corp.'s senior director of benefits and programs, with Kevin Close, EMC's vp, global compensation and benefits.

Compassion, drive translates into successful career

Vetter's colleagues say strong, caring, helpful personality laid foundation for achievements in benefits

By JOANNE WOJCIK

When an EMC Corp. employee called one day to report that he had developed post-polio syndrome and wanted to know why the company's benefit plan didn't cover an electronic wheelchair, Senior Director of Benefits and Programs Delia Vetter promised she would help.

That willingness to help throughout her career is one reason that Ms. Vetter has gained the reputation of being accessible and involved.

"Delia is known as a person of action," said Ed Golitko, senior director of human resources at EMC. "She is very willing to grow, learn and to constantly improve the process. The status quo is not acceptable—even in her personal life."

But Ms. Vetter, 52, has an understanding others may lack. She also was afflicted with polio as a child, growing up in the Azores off the coast of Portugal. Ms. Vetter emigrated to the United States at age 9 with her parents.

In fact, it was her innate ability to relate to other people that led

her to her first career in human resources, and later, in employee benefits.

Because Ms. Vetter is bilingual, and the Boston area is home to a large concentration of Portuguese immigrants, she was recruited to become a translator and teach English as a second language to employees at Data General Corp., a Westboro, Mass., technology company where she worked prior to joining EMC in 1994.

"I became a translator. For Portuguese people, if they had any benefits or HR-related issue, I was their voice. I was always calling the benefits department on behalf of someone," Ms. Vetter said.

At first, she joined Data General's HR department as an assistant. Over time, her role grew from serving as a teacher and translator to managing compensation and employee relations. She said benefits particularly appealed to her because that was the subject that generated most of the questions for which she provided translation and advocacy services.

In 1994, Ms. Vetter joined EMC, which coincidentally acquired

Data General five years later, as senior benefits representative. She moved up the ranks to benefits manager in 1997, to senior manager of global benefits in 1999, director of benefits and programs in 2001, and senior director of

'The experience Delia has with her team and what they've accomplished in bending the trend is very much in demand.'

David Dimond,
EMC Consulting

benefits and programs in 2003.

She re-entered the corporate limelight in 2001 when she brought to EMC management's attention how double-digit increases in the cost of employee health care might adversely affect the company's future

growth strategy.

Ms. Vetter continues to "translate" for her fellow employees by advocating for better health care and by serving as a role model. She attributes the fact she has not suffered post-polio syndrome to her being able to have a healthy lifestyle, which includes regular exercise, healthy eating and maintaining a positive attitude.

"She can influence people and she has a passion when she's speaking that's contagious," Mr. Golitko said.

In fact, Ms. Vetter frequently speaks about EMC's health program success through her participation on employer panels at national and local conferences, including the World Health Care Congress, the Conference Board and Massachusetts' Health Care Cost Trends Hearings, where she testified on behalf of employers in March 2010.

Ms. Vetter's work at EMC also has been featured in major publications, and she regularly hosts visits from health care providers and other employers that are interested in benchmarking

EMC's results and adopting similar approaches in their organizations.

Ms. Vetter also serves as a mentor to other benefits professionals, sponsoring at least one emerging health care leader per semester through EMC's formal relationship with Brandeis University.

Recently, Ms. Vetter began working with David Dimond, EMC Consulting's national health care practice leader, to advise health care provider organizations, including hospitals and integrated delivery systems, on how to use data to take on more risk, a requirement to receive financial incentive payments under the Patient Protection and Affordable Care Act.

"The experience Delia has with her team and what they've accomplished in bending the trend is very much in demand out in the market with hospital systems and payers and other large organizations," Mr. Dimond said.

Ms. Vetter is divorced and has two adult children, Jennifer and Jeremy. Her passion is exercise, and she sometimes works out twice a day.

Focus on prevention cures cost inflation

Refusal to shift costs leads to healthier workforce

By **JERRY GEISEL**

Philia Swam began digging into Lafarge North America Inc.'s health care cost and claims data and found some discouraging news.

Many employees with chronic conditions were not taking the appropriate medications, resulting in huge hospital bills when those untreated conditions became acute problems.

The Reston, Va.-based construction material supplier's health care costs had increased an average of 13% a year from 2001 through 2006, driven at least in part by a large number of high-cost claims.

"Our employees were not going to the doctor for preventive care. They were waiting until they had the heart attack and then were rushed into the emergency room," said Ms. Swam, Lafarge's director of health benefits and employee insurance.

Ms. Swam rejected the approach taken by many employers seeing double-digit annual rises in their health care costs: shifting more costs, through higher deductibles and other cost-sharing requirements, to employees. Instead, she convinced top management to support a different approach: encouraging employees, through reducing or eliminating their cost-sharing requirements, to take better care of their health.

Under its Building a Better You program, which it unveiled in 2007, employees receive a wide variety of preventive care from in-network providers at no cost, with Lafarge offering monetary rewards in some cases.

To also encourage employees with the most common chronic conditions to take prescription drugs to treat asthma, diabetes and hypertension, copayments were slashed.

In addition, cost-sharing requirements were eliminated for X-rays and laboratory tests.

To make it even easier for employees,

Lafarge launched on-site health screenings at no cost to employees.

Today, Lafarge has a much different health care cost story to tell: In 2010, its health care costs per enrollee remained flat.

That accomplishment, among others, resulted in Ms. Swam being named to the *Business Insurance* 2011 Benefit Management Honor Roll.

Overcoming double-digit health care cost hikes is no fluke, Ms. Swam said.

"Emergency room visits are down. We are seeing more normal levels of severity. Cancers now are being diagnosed in stage 1 or stage 2 instead of stage 3 or 4. We are not seeing as many heart attacks," she said. In all, hospital admissions per 1,000 plan enrollees fell 5.5% last year, a figure Ms. Swam described as "extraordinary."

On the other hand, prescription drug costs have risen, which is exactly what Ms. Swam wanted. "We want our employees taking maintenance medications. If prescription drug costs go up, medical costs should go down, and we have seen that," she said.

Indeed, Lafarge's 2010's total medical costs of about \$86 million compare with initial projections of about \$89 million.

Contagious enthusiasm

Ms. Swam's colleagues credit her success to her deep-rooted, passionate belief that prevention—not cutting benefits—has the best chance of controlling health care costs.

Health and wellness is "something she is completely committed to. Her enthusiasm is contagious. Senior management, in particular, has said that if you believe in this that strongly, we are going to take your advice," said Dennis White, vp of human resources for Lafarge's aggregates and concrete unit in Alpharetta, Ga.

"She is very adept at working with senior management and with rank-and-file employees. At the employee level, she creates a level of excitement and understanding of why this is so important—not only from an organizational standpoint, but also from a personal standpoint," said Chris Cowan, vp of human resources at Lafarge's cement unit in Reston, Va.

"The programs she has presented make good common sense and she has made the business case clear. We don't have to spend a lot of time reflecting on whether or not these are good things to do," said Alan Burnside, Lafarge's senior vp of human resources, Americas zone in Paris.

Ms. Swam said the old corporate standby of employee cost-shifting is a failed model to bring health care costs under control.

"What we had done year after year, like other companies, was to shift costs. Here is the plan and this is what you will be paying in premiums," Ms. Swam said employees were told. "I felt passionately that we needed to get people to change behavior if we were to change the rate at which our health care plan costs were increasing."

Postcard makes a difference

The key was to get employees engaged and educate them, she said. Something as simple as sending out postcards to employees reminding them to have relevant health care screenings can produce dramatic



Philia Swam
Director of Health Benefits and Employee Insurance
Lafarge North America Inc.

JOHN DEAN

INSIDE:

TWO DOZEN HEALTH PLANS

WHITTLED TO THREE . . . PAGE 15

HEALTH CARE BENEFITS

A LONGTIME PASSION . . . PAGE 15

EMPLOYEES' PREMIUMS VARY

BY HEALTH PLAN PAGE 15

WHY LAFARGE PLANS DON'T

INCLUDE A CDHP PAGE 16

INCENTIVES BATTLE

CHRONIC CONDITIONS. . . PAGE 16

HEALTH CARE REFORM

PLUSES, MINUSES PAGE 16

results, she said.

Ms. Swam recalls an email she received from the spouse of an employee who had a prostate-specific antigen test after receiving a postcard from Lafarge that reminded him it was time to undergo the screening. While the test revealed the employee had prostate cancer, it was spotted early and overcome with treatment.

The employee's wife later emailed Ms. Swam, telling her that she saved her husband's life through the reminder to get the PSA test.

In the coming months, Lafarge will take other steps to improve its employees' health.

It will, for example, eliminate sugared sodas in on-site vending machines and distribute pamphlets designed to look like grocery shopping lists with lists of food items divided into categories according to how healthy they are.

"We are trying to take a more aggressive approach so people can understand food and the impact that it has on their lives," Ms. Swam said.

LAFARGE NORTH AMERICA INC.

■ **BUSINESS:** Manufacturer of cement, ready-mixed concrete, gypsum wallboard, aggregates, asphalt, paving and construction materials, and pipe products.

■ **FOUNDED:** 1956 and in 2006 became a wholly owned subsidiary of Lafarge S.A. of France.

■ **HEADQUARTERS:** Reston, Va.

■ **2010 REVENUES:** \$4.3 billion

■ **EMPLOYEES:** 12,000 in the United States and Canada

■ **OTHER FACTS:** Parent company is world's largest producer of cement, which accounts for about 60% of worldwide revenues, and has 76,000 employees worldwide. Supplied 110,000 tons of lime in 1864 for construction of the Suez Canal.

BENEFIT MANAGEMENT HONOR ROLL

Two dozen health care plans reduced to three PPOs

Sweeping changes eliminate HMOs, encourage prevention

By JERRY GEISEL

Why would a company offer employees two dozen health care plans?

Philia Swam, director of health benefits and employee insurance at Reston, Va.-based Lafarge North

Career path takes HR route to benefits post

Philia Swam doesn't hesitate when asked what attracted her to being a corporate benefits director.

"I've always wanted to help people understand their benefits," said the director of health benefits and employee insurance at Lafarge North America Inc. in Reston, Va.

After earning an undergraduate degree in 1994 at Flagler College in St. Augustine, Fla., where she majored in business administration and English, she attended Towson University in Maryland, where she received a Master of Science degree in human resources and organizational development in 1996.

After graduation, the Olney, Md., native landed a human resources position for a small perfume and cosmetic bottle manufacturer in Baltimore.

In 1998, Ms. Swam, heard of an opening for HR manager at Lafarge's construction materials division for the eastern United States. She got the job and has remained at Lafarge since then.

In 2004, she was promoted to her current position of director of health benefits and employee insurance.

Working at Lafarge has a special appeal, she said.

"Lafarge really has been a very innovative company. There is a whole lot of innovation. We are able to do things in a way...whether from a manufacturing perspective or from a people perspective that lots of companies don't seem able to do," said the 38-year-old named to the *Business Insurance* 2011 Benefit Management Honor Roll for her innovative efforts to hold down health care costs through establishing prevention and wellness programs.

Ms. Swam and her daughter, Alexandra, 5, live in Jefferson, Md., a small town in Frederick County.

—By Jerry Geisel

America Inc., didn't think there was a logical answer to that question. "It was just a nightmare. We didn't have the staff to administer all those plans," Ms. Swam said.

Of those plans, 22 were health maintenance organizations, for which cost increases were out of control, she said. So beginning in 2005, she began whittling down the number of plans. By 2007, the last HMO was gone.

With that, Lafarge gained greater economies of scale that allowed for detailed analysis of claim trends, setting the stage for sweeping design changes to encourage employees to make greater use of preventive services—the pillar of Lafarge's strategy to hold down increases in health care costs.

Today, 97% of eligible employees are enrolled in Lafarge's self-insured preferred provider organization plans offered by Aetna Inc.—92% in the "high" plan and 5% in the "low" plan.

The plans derive their names due to their designs: The high plan has higher employee premium contributions than the low plan but provides greater benefits. Both plans fully cover preventive services (see chart).

A third plan—known as the "base" plan—also is offered. Employees are placed in that plan if they do not complete an online health risk assessment and/or participate in open enrollment. Employee premium contributions are the same as the high plan, but the benefits are less. Just 3% of employees receive coverage in that plan, a reflection of the 97% employee participation rate for the online health assessment.

"The incentive (to take the online assessment) was that you will get a better health care plan vs. getting defaulted to a plan that still gives you coverage, but you are going to have to pay a lot more for it," Ms. Swam said.

Deductibles are not imposed for services delivered through in-network providers for employees opting for coverage in the high and low plans.

By contrast, employees defaulted in the base plan with single coverage are liable for a \$300 deductible for in-network services and a \$600 deductible if they have family coverage.

For services delivered by out-of-network providers, a \$500 deductible is imposed on employees with single coverage in the high plan and a \$1,000 deductible is assessed for those with family coverage.

For employees enrolled in the low plan, the annual deductible for out-of-network services is \$800 for single coverage and \$1,600 for family coverage.

In addition, drugs prescribed to treat chronic medical conditions require a lower copayment than those for other medical conditions under all the plans. Lafarge hopes this will encourage employees with chronic conditions to take

maintenance medications.

For example, drugs prescribed for asthma, diabetes and hypertension through a retail network pharmacy for a 30-day supply are subject to a \$5 copayment, regardless if the drug is a generic or preferred brand name. By contrast, a \$25 copayment is imposed for a 30-day supply of preferred brand name drugs prescribed for other medical conditions.

For these drugs—generic or preferred brand name—a \$12.50 copayment is charged for a 90-day supply purchased through St. Louis-based Express Scripts Inc., Lafarge's prescription benefit manager. Preferred brand name medications prescribed for other medical conditions and delivered through mail order are subject to a \$62.50 copayment.

Maintenance medications

"We are saving the asthmatics, the diabetics and those with high blood pressure a significant

EMPLOYEE PREMIUM CONTRIBUTIONS

Lafarge North America Inc. employees can choose from several health care plan designs. Their premiums depend on their income and the plan in which they enroll. Examples of what employees are paying this year for coverage include.

Type of coverage	Annual income <\$75,000	Annual income >\$75,000
High plan single	\$113.94	\$126.53
High plan family	\$353.52	\$487.67
Low plan single	\$81.68	\$98.95
Low plan family	\$253.43	\$381.40

Source: Lafarge North America Inc. 2011 Benefits Guide

amount of money to encourage them to take their maintenance medications," Ms. Swam said.

To focus employee attention on the reduced copayments for maintenance drugs to treat asthma, diabetes and hypertension, a paragraph in the prescription drug benefit section of Lafarge's annual benefits enrollment package advises in bold capital letters: "IF YOU DON'T READ ANYTHING ELSE...READ THIS!" The paragraph then explains the reduced copy-

ments for the maintenance drugs.

In addition, to encourage employees to use mail order to receive a 90-day supply of maintenance drugs, employees who instead use a retail pharmacy for a 30-day supply of a maintenance drug would pay the full cost after the second prescription is filled.

Other health care-related employee benefits offered by Lafarge include:

See **PLANS** next page

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Incentives help improve health

Reduced copayments, gift cards back preventive care efforts

By JERRY GEISEL

"An ounce of prevention is worth a pound of cure" is an old saying that Lafarge North America Inc. has applied to today's workforce.

Years ago, "employees were not going to the doctor for preventive care. We knew we had asthmatics who were not taking any medications. We also knew we had a high percentage of employees with high blood pressure, with no data to suggest that they were taking care of themselves," said Philia Swam, director of health benefits and employee insurance.

Starting in 2007, Lafarge added financial incentives to encourage employees to take medications for chronic conditions as well as seek preventive medical services.

The incentives include:

- Health care plan enrollees with asthma, diabetes and high blood pressure receive discounts on prescriptions to treat those conditions. A \$5 copayment is charged for a for a 30-day supply of a preferred brand name prescription drug filled at a retail pharmacy vs. a \$25 copayment for other preferred brand name prescriptions. A \$12.50 copayment is charged for a 90-day supply of asthma, diabetes and hypertension preferred brand name prescriptions filled through a mail-order program administered by prescription benefit manager Express Scripts Inc. A \$62.50 copayment is assessed on 90-day supplies of other preferred brand name medications.

- A \$75 Visa gift card is given for getting an annual wellness exam or certain preventive screenings.

- A \$150 Babies "R" Us gift card is given for completing an online health questionnaire during the first 16 weeks of pregnancy.

- A 12-week program, Lafarge Get Active, began last month at U.S. and Canadian Lafarge locations will award an Apple iPad2 to each member of teams comprised of Lafarge employees and their spouses who score the top results in exercise minutes, pedometer steps and weight loss percentage.

"We got about 5,000 people for the first go-around, which is pretty impressive," Ms. Swam said.

- Free smoking-cessation classes, an eight-week supply of nicotine replacement therapy—patches, lozenges or gum—and no copayments for tobacco-cessation prescriptions as long as participants are enrolled in the program.

Reform won't cure all problems

Law aids access but does little to alter individual behavior

By JERRY GEISEL

In the view of Philia Swam, director of health benefits and employee insurance at Lafarge North America Inc., the health care reform law is a mixed bag.

On the plus side, the Patient Protection and Affordable Care Act "will provide access to everyone who needs coverage," Ms. Swam said.

Congressional researchers estimated that more than 30 million uninsured U.S. residents would gain coverage, principally through federal premium subsidies for the lower-income uninsured and expanded eligibility for Medicaid.

On the negative side, she said, the law does nothing to encourage individuals to take basic steps, such as annual physicals, to detect medical problems early before they mushroom into expensive-to-treat complications.

"There is really nothing in the law that gets people to change their behavior." The lack of prevention focus means health care costs will continue to surge, she said.

In addition, the Joint Committee on Taxation estimated last year that a provision in the law—imposing a 40% excise tax on health insurance premiums that exceed \$10,200 for single coverage and \$27,500 for family coverage starting in 2018—would raise \$32 billion in new revenues during the first two years the tax is in effect.

Excise tax an issue

But Ms. Swam doubts the excise tax will raise a fraction of that amount. Employers will change their plans to keep costs below the level that would trigger the tax, as will Lafarge, she said. "We want to take care of our employees and their families, but the law (through the excise tax penalty) does not allow us to do that."

Like most employers, Lafarge has revamped its health care program to comply with PPACA.

One change it made was extending coverage to employees' adult children to age 26. Previously, Lafarge extended coverage to dependents to age 18, or 25 if they were full-time college students.

Lafarge also had to remove a \$2 million lifetime limit on covered expenses this year because PPACA bans lifetime dollar limits.

Meeting the requirements will increase plan costs about 2.5% this year, Ms. Swam said.

To comply with a health care reform law requirement that goes into effect in 2013, Lafarge will have to lower to \$2,500 from \$5,000 the maximum annual contribution employees can make to their health care flexible spending accounts. But the current average contribution is about \$2,000 a year among the nearly 30% of eligible employees who contribute to FSAs.

Like other employers, Lafarge has been analyzing the pluses and minuses of keeping its health care plans vs. eliminating coverage and paying the assessments set by the health care reform law.

Ultimately, Ms. Swam said, she expects the diversified supplier of construction materials to continue to provide such coverage.

"Our intent is to keep our plans, but probably not with the same designs as today," Ms. Swam said.

Plans: Two dozen cut to three PPOs

CONTINUED FROM PREVIOUS PAGE

Dental: Offered through an Aetna PPO, diagnostic and preventive services are covered in full with no deductible.

Basic and major services including fillings, extractions and crowns that are covered at 80% with a \$100 deductible for single coverage and a \$200 deductible for those with family coverage.

For out-of-network providers, employees are responsible for amounts exceeding reasonable charges. The plan has an annual maximum benefit of \$1,500 per

person, while orthodontics are covered at 80% with a lifetime maximum of \$1,500.

For employees earning less than \$75,000, the monthly premium for single coverage is \$6.61 and it is \$20.63 for those with family coverage. Employees earning at least \$75,000 a year pay \$7.39 per month for single coverage and \$28.46 for family coverage.

Vision: Offered through Vision Service Plan, benefits are based on whether services and products are delivered through providers in the VSP network or through open-access providers.

For example, a routine annual eye exam from a VSP provider would be covered in full after a \$10 copayment, but those outside VSP's network get a \$50 allowance toward the cost of the exam.

Lenses received through VSP providers also would be covered in full after a \$10 copayment. But for nonnetwork providers, there is a \$50 allowance for a prescription single-vision lenses, \$70 for bifocals and \$100 for trifocal lenses.

The monthly premium for the VSP vision plan is \$8.05 for single coverage and \$21.73 for family coverage.

Independent judging panel selects honorees

Business Insurance created the Benefit Manager of the Year award in 2005 to recognize excellence and innovation in employee benefits management.

In 2010, the magazine introduced the Benefit Man-

agement Honor Roll.

Honorees are selected by a panel of independent judges, including winners from the previous year and benefit experts.

Judges for the 2011 awards were:



Mr. Boress

LARRY BORESS, president and CEO of the Midwest Business Group on Health, a Chicago-based employer coalition and a member of the National Business Coalition on Health.



Mr. Custer

WILLIAM CUSTER, associate professor and director of the Center for Health Services Research at the Robinson College of Business at Georgia State University in Atlanta.

GARY EASTES, risk and benefits manager for the City of Knoxville, Tenn., and a member of the 2010 Benefits Management Honor Roll.



Mr. Eastes

MARIANNE MCMANUS, director of global health benefits at IBM Corp. in Somers, N.Y.

JOSEPH MOLLOY, corporate director of benefits at North Shore-LIJ Health System in Lake Success, N.Y.

2011 BENEFIT MANAGER OF THE YEAR

METHODOLOGY

The judges scored each nominee on a scale of one to 10, according to how well he or she:

- Innovatively and effectively applies benefit programs to solve one or more major problems for his or her organization.

- Exhibits leadership in achieving change within his or her organization.

- Skillfully uses technology to administer benefits programs and/or identify and address major problems such as health care cost drivers.

- Establishes and/or leads an effective benefits communication strategy to effectively inform employees of benefit program changes.

- Develops in his or her career and promotes the advancement of the benefits profession.



Ms. McManus



Mr. Molloy

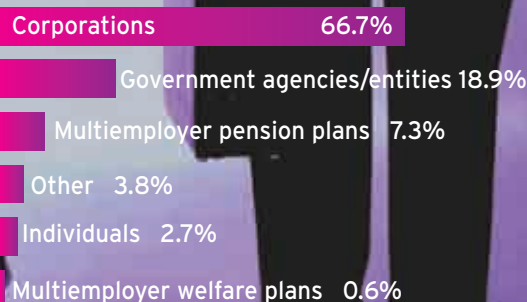
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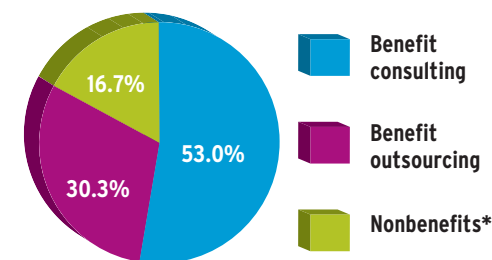
Percentages of type of clients served by benefit consultants



Source: BI Survey

BENEFIT SERVICES

Breakout of services offered



*Includes claims administration, compensation consulting, insurance commissions and other nonbenefit consulting including the brokering and placement of benefits
Source: BI Survey

WORLD'S LARGEST EMPLOYEE BENEFIT CONSULTANTS

Ranked by worldwide benefit consulting revenues*

Rank	Company/address	Phone/website	2010 benefit consulting revenues	% change	Percentage from benefit consulting
1	Towers Watson & Co. 875 Third Ave., New York, N.Y. 10022	212-725-7550 www.towerswatson.com	\$2,114,000,000 ¹	-1.7%	68.3%
2	Aon Hewitt Inc. 100 Half Day Road, Lincolnshire, Ill. 60069	847-295-5000 www.aon.com	\$2,000,000,000 ²	108.6%	45.0%
3	Mercer L.L.C. 1166 Ave. of the Americas, New York, N.Y. 10036	212-345-7000 www.mercer.com , www.imercer.com	\$1,773,708,600 ³	4.5%	56.0%
4	PricewaterhouseCoopers Human Resource Services 300 Madison Ave., New York, N.Y. 10017	646-471-3000 www.pwc.com/us/hrs	\$925,000,000	2.8%	60.0%
5	Buck Consultants L.L.C. 245 Park Ave., New York, N.Y. 10167-0002	212-330-1000 www.buckconsultants.com	\$410,000,000	-0.7%	100.0%
6	Gallagher Benefit Services Inc. 2 Pierce Place, Itasca, Ill. 60143	630-773-3800 www.gallagherbenefits.com	\$297,763,541	2.2%	88.0%
7	Alexander Forbes Ltd. Alexander Forbes Place, 61 Katherine St., Sandown, 2196 South Africa	27-11-269-0000 www.alexanderforbes.co.za	\$290,596,275 ^{4,5}	6.5%	79.0%
8	Segal Group Inc. 333 W. 34th St., New York, N.Y. 10001-2402	212-251-5000 www.segalco.com	\$191,500,000	2.2%	95.0%
9	Ernst & Young L.L.P.-Performance Reward & Human Capital 1101 New York Ave., N.W., Washington, D.C. 20005	202-327-6000 www.ey.com	\$185,375,259	-2.5%	100.0%
10	Lockton Benefit Group 444 W. 47th St., Suite 900, Kansas City, Mo. 64112-1906	816-960-9000 www.lockton.com	\$83,132,000 ⁶	34.7%	41.0%

*Excludes revenues from claims administration, compensation consulting, insurance commissions and other nonbenefit services including brokering and placement of benefits. 1 Fiscal year ending June 30. 2 Aon Corp acquired Hewitt Associates and merged it with Aon Consulting, October 2010. 2010 revenues are proforma to include the full year. 3 BI estimate. 4 Fiscal year ending March 31. 5 South African Rand= \$0.1304. 6 Fiscal year ending April 30.
Source: BI survey.

Researched by Kevin Edison

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Cyber: Protecting key corporate assets

CONTINUED FROM PAGE 3

The first step in combating APTs is identifying network insecurities, Mr. Greisiger said before outlining the four most common network weak spots, including a lack of database encryption.

Another speaker, Larry Collins, managing director and head of e-solutions at Zurich Services Corp., laid out practical solutions for improving risk management. Among other tips, Mr. Collins recommended companies use a detailed risk register to catalog each system, emphasizing the need for a methodical approach.

'You can be assured that the bad guys are going to be thorough, especially in the APT class.'

Larry Collins,
Zurich Services Corp.

"You can be assured that the bad guys are going to be thorough, especially in the APT class," said Mr. Collins. "Without that, you're going to be vulnerable."

Both experts recommend a

cyber risk policy to fill gaps in traditional business coverage, such as loss of business and reputational damage, especially for organizations that have been attacked in the past.

"Underwriters especially like to know that you've learned from an event, made remedial measures and are now battle-ready for the next event," said Mr. Greisiger.

Business Insurance Associate Editor Mike Tsikoudakis moderated the webcast.

An archived version of the free, hourlong webcast can be viewed at www.businessinsurance.com/webcasts.

UP Comings & Goings CLOSE



MIKE CONSTANTI

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INDUSTRY CHALLENGES: The impact of possible legislative changes to insurance law in respect to intermediaries' exposure when transacting

insurance (and) general downward pressure upon an intermediary's earnings.

BEST THING ABOUT A BAD ECONOMY: The crystallization of opportunities to demonstrate that you are stronger than the opposition.

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ADVICE: Be true to yourself.

SOMEONE ONCE TOLD ME: Steer away from office politics and concentrate on the job.

OUTSIDE THE INDUSTRY, A DREAM JOB: To own a large olive grove and have a successful business.

MOST PASSIONATE ABOUT: Family (and) career.

FAVORITE BOOK: "Great Expectations" by Charles Dickens.

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LEGAL NOTICE

NOTICE OF SCHEME CREDITORS' MEETING IN THE HIGH COURT OF JUSTICE (IN ENGLAND) CHANCERY DIVISION COMPANIES COURT No. 5125 of 2011 IN THE MATTER OF HIGHLANDS INSURANCE COMPANY (U.K.) LIMITED (IN ADMINISTRATION)

and IN THE MATTER OF THE COMPANIES ACT 2006 NOTICE IS HEREBY GIVEN that, by an order dated 17 June 2011 made in the High Court of Justice in the matter of Highlands Insurance Company (U.K.) Limited (in Administration) (the "Company"), a meeting (the "Scheme Meeting") was ordered to be summoned of Scheme Creditors (as defined in the Scheme hereinafter mentioned) of the Company for the purpose of considering and if thought fit, agreeing to a scheme of arrangement proposed to be made between the Company and its Scheme Creditors pursuant to Part 26 of the Companies Act 2006 (the "Scheme").

The Scheme Meeting will be held on 10 August 2011 at 3.00 pm at PricewaterhouseCoopers LLP, One Embankment Place, London, WC2N 6RH.

The chairman of the Scheme Meeting will address Scheme Creditors generally on the Scheme and on issues relevant to voting on the Scheme at the commencement of the Scheme Meeting.

Only Scheme Creditors may attend and vote at the Scheme Meeting, either in person or by proxy. Scheme Creditors are requested to complete the voting form (comprising of a form of proxy and a claims table) and return it to the Company, c/o Pro, Bruton Court, Bruton Way, Gloucester, GL1 1DA, United Kingdom; email: pro_hicukhelpline@proinsurances.com; fax: +44 (0) 1452 782 582, marked for the attention of Ian Leighton / Aine Davies, although if not so returned, it may be handed in by them at the registration desk at the Scheme Meeting prior to its commencement.

Each Scheme Creditor will be required to register its attendance at the Scheme Meeting. Registration will commence at 2.00 pm.

The Scheme is proposed between the Company and its Scheme Creditors being:

- (a) those persons who have, or may in the future have, claims against the Company in respect of a liability to which the Company was subject at 1 November 2007 or to which it became subject after that date arising directly or indirectly out of any reinsurance or retrocession policy of any kind whatsoever; and
- (b) creditors of the Company whose claims rank equally with creditors referenced in (a) above. These are likely to be persons whose claims are unsecured and arise otherwise than under a direct policy of insurance.

A letter from the Company, pursuant to Part 26 of the Companies Act 2006 and further information may be obtained by contacting the Company by phone on +44 (0) 1452 413 985; by email to pro_hicukhelpline@proinsurances.com; by fax on +44 (0) 1452 782 582; or by post to Pro, Bruton Court, Bruton Way, Gloucester, GL1 1DA, United Kingdom, for the attention of Aine Davies/Ian Leighton.

An electronic copy of the Scheme Document is available from www.ukhighlands.co.uk

By the order, the High Court of Justice has appointed Dan Schwarzmann or failing him Mark Batten to act as chairman of the Scheme Meeting and has directed the chairman to report the results of the Scheme Meeting to the court. The Scheme will be subject to the subsequent sanction of the High Court of Justice.

Dated: 20 June 2011
Clifford Chance LLP, 10 Upper Bank Street, London E14 5JJ

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- Re: Request For Proposal (RFP) 11-11

A Pre-Proposal Conference is scheduled for 10:00 a.m. on July 13, 2011 in conference Room 109, Building A, 3331 N. First Street, San Jose, CA. Proposals are due by 5:00 p.m. on July 28, 2011.

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Outbreak: Growers' E. coli losses mostly uninsured

CONTINUED FROM PAGE 4

Allianz Global Corporate & Specialty, a unit of Allianz S.E.

"If a company is clearly found to have caused bodily injury through a contaminated product, then it will be liable and its insurers would have to step in. But it is not yet certain that causation will be found or that insured companies will face claims," he said.

A spokeswoman for the European insurers' association, Comité Européen des Assurances, said it is too early to estimate the cost of the outbreak for insurers—"not least because the origin of the cause is still being assessed, which could affect the triggering of any insurance policy," she said.

Bodily injury claims are likely to end up with product liability insurers in Germany, said Mr. Bentele. German middle-market food producers typically are insured by domestic players, he said.

Not a market-changer

However, any losses borne by product liability insurers are unlikely to change the product liability market, Mr. Henneböhl said. "This type of loss happens from time to time, and only goes to illustrate the type of risk found in the food market and the need to insure accordingly," he said. "This outbreak is probably not enough on its own to impact the market."

The outbreak has been limited to people who lived in or visited Germany, but claims could be distributed throughout the food supply chain, said Mike Noonan, London-based head of strategic claims management at QBE European Operations, a division of the QBE Insurance Group.

"It may be that the source is not established with a great deal of certainty, but it could be credible enough to establish liability," Mr. Noonan said. E. coli claims can reach six figures because the bacteria can cause kidney failure and damage to the nervous system requiring long-term care, he added.

Product and general liability insurance will pay personal injury claims for E. coli, but they will do so only where the policyholder is found liable for causing bodily injury, said Mr. Noonan.

E. coli is detectable and outbreaks are preventable, so it is like-

ly companies with produce contaminated with E. coli—and their insurers—will have little defense to litigation, he added.

While product liability insurance may be called on to pay bodily injury claims, the bulk of financial costs borne by vegetable producers across Europe are likely to be uninsured, experts say.

The main source of first-party cover for food producers is product contamination insurance, which could pay for lost revenues and costs associated with a product recall or adverse media coverage, said Ian Harrison, product recall specialist at Lockton Cos. L.L.P. in London.

Generally, farmers that suffer losses not due directly to measures ordered by authorities are not eligible for coverage, said Reto J. Schneider, head of agriculture for Europe, Africa and the Americas at Swiss Reinsurance Co. in Zurich. "Their loss is unfortunate, but it is due more to media hype and consumer fear and must be considered an entrepreneurial risk," he said.

Other than limited cover available through sublimits on contaminated product insurance, stand-alone nondamage business interruption insurance due to all risks for agriculture is not available in Europe, experts say. The only exception is business interruption insurance in Germany for losses incurred by government orders in the livestock sector, such as mandatory slaughter or non-movement zones for various cattle diseases.

However, product contamination insurance is not designed to cover systemic or marketwide economic losses like those suffered by vegetable growers in Europe, said Mr. Harrison.

"The recent E. coli outbreak is yet another example of a contamination incident that has resulted in a significant loss of revenues for food producers that will have gone largely uninsured," he said.

Contaminated products insurance can pick up some nondamage business interruption losses—such as recall costs or lost profits resulting from a fall in consumer demand—but only where the insured has been found directly responsible for a contamination, said Ed Mitchell, London-based global recall manager at XL Insurance.

Another factor that is likely to limit insurers' losses is limited insurance uptake by growers. Contaminated product insurance is generally bought by companies that use such ingredients in their products, said Mr. Harrison.

"Fresh produce are now considered a high-risk category by insurers," he said. "Product contamination insurance for primary food producers is difficult to underwrite because there is limited processing, such as washing, which gives insurers fewer opportunities to manage the risk at critical points."

AIRMIC: Solvency II to add pressure

CONTINUED FROM PAGE 4

risk, said Tom Bolt, director of performance management at Lloyd's of London. They have, however, wiped out some of the excess catastrophe budgets of insurers and reinsurers, he said.

Rates reflect risks

While underwriters may not be "seeking payback" for the recent natural catastrophe losses, "they maybe cannot afford to be as generous anymore" and are charging rates for coverage that more accurately reflect the underlying risk, Mr. Bolt said.

"There is still a great deal of surplus capital in the market that needs to be fed," said Martin South, CEO of Marsh Inc.'s U.K. business in London. So rates are unlikely to harden rapidly in the short term.

He said, however, that some underwriters have strengthened their liability reserves, which can signal hardening rates in the future.

In the U.K. commercial insurance market, there is excess capital, said Adrian Brown, CEO of the U.K. arm of London-based RSA Insurance Group P.L.C. So unless there is a catastrophic event, any hardening is likely to be "gentle," he said.

Many insurers likely are not meeting their return-on-capital targets and will begin to feel pressure to increase rates, Mr. Brown said.

On another capital-related front, Solvency II, Europe's risk-based capital regulatory regime slated for introduction in 2013, "almost certainly will change the market," said RSA's Mr. Brown. "But we are a while away from that happening," he said.

Large, sophisticated insurers and reinsurers likely have a good idea of how the rules will affect them, but smaller players—those whose business is most likely to be affected by the changes—may be waiting for the rules to be finalized before adjusting their business models, he said.

The upcoming rules may lead to consolidation among smaller insurers that struggle to cope with Solvency II's requirements, said Mr. Brown. "I'm not sure that is good news for buyers," he said.

Mr. South agreed that Solvency II may be a "driver for consolidation."

Compliance with Solvency II places a huge burden on staff and will be costly for the Lloyd's of London market as well, said Mr. Bolt. Compliance likely will cost the market about £250 million (\$405.8 million) over three years, he noted.

New ideas needed

Panelists, including Marsh's Mr. South, urged the insurance industry to come up with new ideas to meet insurance buyers' changing needs. He said the insurance industry emerged from the recent global financial crisis with its reputation intact and the industry's excess capital makes it a good time to develop new products.

The most recent innovations in coverage, in environmental and directors and officers liability insurance, were "triggered by the legal environment," Mr. South said.

The world has changed, he said, with risks such as reputational issues and tsunamis like the one that hit Japan becoming of greater concern for risk managers.

"The premiums of the many pay for the claims of the few, so

for insurers to develop new products, they need to know that there is demand out there," Mr. South said.

"The insurance industry needs to listen more to our clients and respond to what keeps them awake at night and develop the products they need," he added.

AIRMIC draws 760 attendees

BOURNEMOUTH, England—The Assn. of Insurance & Risk Managers welcomed 760 attendees to its Annual Conference 2011 in Bournemouth, England.

Attendees at the June 6-8 gathering included Scott Clark, president of the Risk & Insurance Management Society Inc., and Peter den Dekker, president of the Brussels-based Federation of European Risk Management Assns.

At the end of the conference, Nicola Harvey, group risk director at London-based auction house Christie's International P.L.C., handed over the AIRMIC chairmanship to Paul Taylor, director of risk assurance at Windsor, England-based advanced materials group Morgan Crucible Co. P.L.C.

Next year's AIRMIC conference is set for June 11-13, 2012, in Liverpool, England.

—By Sarah Veysey

Data: Preparation helps protect firms

CONTINUED FROM PAGE 4

utive sales manager at ID Experts Corp. in San Marcos, Calif., and another panelist at the forum. "A well-done response plan is basically a checklist that takes away a lot of the decision making that has to be done" when an event occurs, he said.

Once a plan is in place, one of the best ways to test it is to do a "tabletop exercise." Such an exercise would basically be a mock breach, simulating such an event, said Mr. Sakore. Tabletop exercises are a standard practice in the business continuity area, he said. To make the process useful, however, the company has to make sure it brings together the right people from the organization to participate.

Rick Prendergast, senior vp at Kroll Fraud Solutions in Nashville, Tenn., said that the media have created a high level of awareness of data breach incidents over the past several months. With organizations finding that their breach costs are up 22% since 2009,

many are taking preparations more seriously and some are starting to certify that breach training has taken place across the enterprise, he said.

Mr. Prendergast stressed the importance of companies taking a thorough forensic approach after a breach and before they issue notifications about the event. "Forensics requires some patience," he said. While forensics can take some time, correct notifications based on good forensics can save the company's money and reputation, Mr. Prendergast said.

"There's about 60 questions that need to be answered" between an incident's occurrence and notification of the event, said Mr. Sakore. He noted, however, that forensics can be challenging in data breach cases involving a third-party vendor.

"When you have a vendor-client relationship, there's a tension there" if the client comes in to the vendor's office with a forensic investigator after a breach, he said.

300 attend cyber risk conference

PHILADELPHIA—The NetDiligence Cyber Risk & Privacy Liability Forum drew about 300 attendees.

Among issues discussed during the June 9-10 conference were state and federal regulations, emerging liability in social media and data breach preparedness.

NetDiligence, the marketing arm of Network Standard Corp., is planning a West Coast Cyber Risk & Privacy Liability Forum on Oct. 4-5 in Marina Del Rey, Calif. For more information, visit www.litigationconferences.com.

—By Rodd Zolkos

ADVERTISER

INDEX

Issue of June 27

ADVERTISER	PAGE #
About Your Benefits	18
Allstate Insurance	23
Aon Corporation	2
Business Insurance	6, 10, 17
Chartis	24
The Hartford	5
Prudential	11
Veterinary Pet Insurance Company	15
Zurich North America	7

News In Brief

soliciting Aon employees and clients for Alliant. In a chancery action filed in Cook County Circuit Court in Chicago, Aon Risk Services Cos. Inc. and Aon Risk Insurance Services West Inc. allege that the former executives violated their employment agreements with Aon when they joined Alliant. The group includes Peter Arkley, who resigned as chairman and CEO of Aon's construction services group to head Alliant's construction practice.

P/C net premiums up, net income down

U.S. property/casualty insurers' net written premiums grew 3.5% in the first quarter to \$108.59 billion, according to an analysis by the Insurance Information Institute, Verisk Analytics Inc.'s Insurance Services Offices Inc. unit and the Property Casualty Insurers Assn. of America. However, property/casualty insurers' net underwriting losses also rose to \$4.46 billion during the first quarter vs. a loss of \$1.78 billion during the same period last year. The property/casualty industry's first-quarter 2011 net income dropped 12.2% to \$7.81 billion from \$8.89 billion a year earlier.

Insured weather losses in U.S. at \$15.5B: Aon

Insured U.S. weather losses this year are at \$15.5 billion, three times the full-year average of the past 20 years, Aon Corp. said in an analysis. Severe weather in April and May included tornadoes and thunderstorms in several areas of the country, reinsurance brokerage unit Aon Benfield said in a report. Eight storms, including five that generated more than \$1 billion in losses, drove the costs. According to Aon, the economic loss figure, which typically is greater than insured losses, was at \$21.65 billion.

Urgent care notification rule to stay at 72 hours

Revamped health care reform law regulations will keep in place a Labor Department rule on the amount of time to notify health plan enrollees of coverage decisions involving urgent care. Last year, federal regulators said enrollees would have to be notified of an urgent care coverage decision within 24 hours of receipt of a claim. But in a joint amendment to the 2010 regulations published in Friday's Federal Register, the Health and Human Services, Labor and Treasury departments said that after considering the "costs and benefits of an absolute 24-hour decision making deadline," they will continue to allow plans to make notification of coverage decisions within 72 hours.

Wal-Mart: Supreme Court raises bar for class actions

CONTINUED FROM PAGE 1

However, "respondents have not identified a common mode of exercising discretion that pervades the entire company....In a company of Wal-Mart's size and geographical scope, it is quite unbelievable that all managers would exercise their discretion in a common way without some common direction. Respondents attempt to make that showing by means of statistical and anecdotal evidence, but their evidence falls well short," the majority ruled.

Evidence presented by a statistician and a labor economist are "insufficient to establish that respondents' theory can be proved on a classwide basis," the high court ruled. It also said plaintiffs' anecdotal evidence of 120 affidavits, which it said represented one of every 12,500 class members, is "too weak to raise any inference" of discriminatory per-

sonnel decisions.

The high court was unanimous on one point: that the plaintiffs did not appropriately seek back pay under the federal rules of civil procedure.

Employers can "take a deep breath," said Gerald L. Maatman Jr., a partner with Seyfarth Shaw L.L.P. in Chicago. "The days of fearing nationwide discrimination class actions on broad, amorphous theories are over."

"Class actions are going to be much more narrowly applied, in cases where there is a clear, overarching policy or practice," said Jonathan T. Hyman, a partner with law firm Kohrman Jackson & Krantz P.L.L. in Cleveland.

Ricki E. Roer, a partner with law firm Wilson Elser Moskowitz Edelman & Dicker L.L.P. in New York, said the decision reiterates "that class actions are the exception, not the rule; that our legal system is generally set up to allow a single

plaintiff to adjudicate" claims; and that "there are only very limited and stringent requirements for class actions to proceed," which have "gotten a bit tougher" as a result of this decision.

Anthony J. Oncidi, a partner with Proskauer Rose L.L.P. in Los Angeles, said, "Basically, the Supreme Court has thrown a cold bucket of water in the face of courts throughout the land that have gotten ridiculously sloppy when it comes to the commonality question."

Observers say particularly significant is the court's criticism of evidence presented by the plaintiffs.

Jonathan F. Cohn, a partner with Sidley Austin L.L.P. in Washington, said the court "applied a rigorous analysis and requires significant proof, and wouldn't let the plaintiffs get away with some ad hoc statistics, some amorphous testimony of sociological data and

a handful of anecdotes."

Archis A. Parasharami, a partner with Mayer Brown L.L.P. in Washington, said the key item in the ruling is that to try a case on a classwide basis, "the plaintiff has to actually show that it's realistic to do so and consistent with due process."

Sean P. Wajert, a partner with Dechert L.L.P. in Philadelphia, said it is significant the court was critical of the "trial by formula," advocated by the appeals court, in which a sample set of class members would be used to determine liability and back pay owed to the entire class, because it abridges Wal-Mart's rights.

Kevin M. McGinty, a member of Boston-based Mintz, Levin, Cohn, Ferris, Glovsky & Popeo P.C., said he doubts that fewer proposed class actions will be filed as a result of the ruling.

It is just that fewer will succeed, "and appropriately so," he said.

Warming: Court ruling limits emissions lawsuits

CONTINUED FROM PAGE 1

of America, which filed an amicus brief in *AEP*. Still, Mr. Blume is hopeful that the ruling will make plaintiffs and state attorneys general think twice before using courts to address climate change.

In *AEP*, the Supreme Court ruled unanimously that the 2nd U.S. Circuit Court of Appeals erred in 2009 when it allowed a 2004 federal common-law nuisance suit by eight states and three land trusts to go forward against five electric utilities. The high court relied on its 2007 decision in *Massachusetts et al. vs. Environmental Protection Agency et al.*, where it found that the Clean Air Act gives the U.S. EPA the authority to decide whether to regulate emissions of carbon dioxide and other greenhouse gases.

"Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions

from power plants; the delegation displaces federal common law," Justice Ruth Bader Ginsberg wrote for the court.

Since the 2007 ruling, the EPA began a rule-making process to set limits on greenhouse gas emissions from new, modified and existing power plants that use fossil fuels and committed to issuing a final rule by May 2012.

Despite the ruling, "the doors remain open on the state suits," PCI's Mr. Blume noted.

Some attorneys expect the issue could follow a trajectory similar to tobacco litigation, which resulted in the payment of billions of dollars in claims extending from states to individuals in massive class actions.

"The takeaway for industries is these cases aren't going away," Joanne Zimolzak, a partner at McKenna in Washington, said in an interview. "The court decided the case on the narrowest possible

grounds of displacement and remanded for consideration whether state law claims can go forward."

"This really kicked the can down the road because now it's a state-by-state thing," said John Nevius, a partner at Anderson Kill & Olick P.C. in New York.

J. Wylie Donald, a partner at McCarter & English in Wilmington, Del., said plaintiff lawyers already are testing other legal theories. "What is the purpose of climate change lawsuits? If it is to limit emissions and force a change in policy, then Our Children's Trust is doing that," he said.

Our Children's Trust is a non-profit based in Eugene, Ore., that filed lawsuits May 4 in 50 states and the District of Columbia, asking courts to declare that the atmosphere should be held "in trust" for the future. So far, one state—Montana—has rejected the argument.

"All of these cases are still standing on their two legs, albeit a little more shakily," said Richard Faulk, chair of the litigation department at Gardere Wynne Sewell L.L.P. in Houston, noting that another climate change nuisance suit is pending in the 9th U.S. Circuit Court of Appeals.

"The difference is the *Native Village of Kivalina et al. vs. ExxonMobil Corp.* case is a lawsuit for damages—relocation expenses and other damages—as opposed to asking a court to set regulatory limits and impose by injunction," he said. Plaintiffs in the case "are going to say that is a very significant distinction."

"*AEP* was a big victory for the energy industry, but it's not over and the dust hasn't settled," said John P. Krill Jr., a partner at law firm K&L Gates L.L.P. in Harrisburg, Pa.

"My expectation will be more litigation," he said.

CMS: Medicare rules spur rethink on comp claims

CONTINUED FROM PAGE 1

would have to set aside, more are opting to leave claims with a pharmacy component open and pay claims expenses over time rather than fund the lump sum that CMS calculated is necessary for a settlement, said Paul Braun, managing director of casualty claims for Aon Global Risk Consulting in Los Angeles.

"On cases that have to go to Medicare to get approved, we are seeing a large percentage of them come back with such high numbers (for future pharmaceutical expenses) that clients are just saying, 'I didn't anticipate that and I don't think it's beneficial for us to settle,'" Mr. Braun said.

Some employers are reaching agreements with the claimant to

settle the indemnity portion of claims while continuing to manage the medical component, rather than meet CMS' "off-the-charts" cost projections, said Roy Franco, chief legal and compliance officer for Franco Signor L.L.C. in Kenmore, N.Y.

CMS projections do not take into account that a higher-cost brand-name drug a claimant needs over the long term someday will be available in a lower-cost generic form, said Ken Martino, president and CEO of Atlanta-based TPA Broadspire Services Inc. Instead, CMS calculates the price of the brand name drug over the expected life of the claimant.

Another possibility is that CMS may fail to recognize that a claimant may need a prescription drug only for a finite period,

rather than for his or her expected lifetime.

"The way (CMS does) pharmacy projections, it just makes the numbers way too big and people back off and say, 'I don't want to settle,'" Mr. Martino said.

In light of such projections, some employers opt to wait until claimants are off certain drugs before settling a claim, he said.

To manage its expenses, Philadelphia-based ARAMARK Corp. has asked its workers comp managed care providers and MSA providers to review each claim that must be submitted to CMS with a "fine-tooth comb," said Carla Wynn, assistant vp of strategic claims management.

ARAMARK wants to ensure that claimants' doctors have clearly stated in claims documents when

medications will be necessary only for a finite period.

The practice is part of ARAMARK's strategy to ensure that before any file is submitted to CMS, claims handlers make certain that doctors properly sign off when a claimant no longer needs specific treatments, Ms. Wynn said.

The solid claims documentation helps assure CMS will not raise additional questions about a claimant's future medical needs. Should a CMS office raise such questions, the claim returns to the bottom of the stack of cases the CMS office has under review, which delays closure, Ms. Wynn said.

"If their turnaround time is 90 days, you have now reset the 90-day clock," she said.

Sunbather burned by bikini choice

A Long Island woman is suing the manufacturer of the two-piece swimsuit she wore on a hot August day in 2008 and ultimately wound up being unhappy with the “brand.”

Robin Corrente of Yaphank, N.Y., alleges that after about an hour of enjoying the afternoon sun on the 90-degree day, underwire in the black swimsuit's bikini top became superheated, leaving her with third-degree burns.

“After about an hour, I was hurting,” Ms. Corrente told the New York Post. “I went up to take a shower and I realized...I had a lot of blisters.”

A hospital visit confirmed the burns and, according to reports, doctors were forced to remove a dime-size piece of flesh from her right breast.

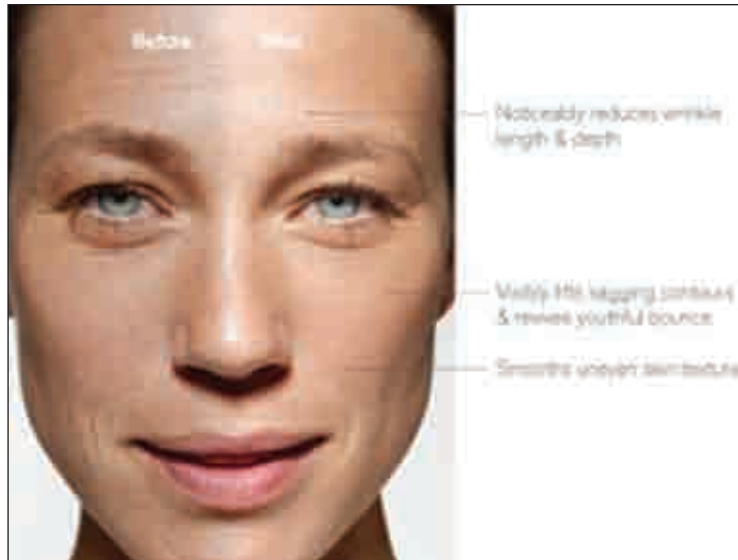
No information was available on the damages Ms. Corrente is seeking in the suit filed in Manhattan Supreme Court.

The swimsuit's manufacturer, Swimwear-Anywhere Inc., declined comment, according to reports.



Business Insurance END PAGE

Contributing: Jeff Casale; Mark A. Hofmann; Mike Tsikoudakis; Rodd Zolkos



ESTÉE LAUDER

An ad for anti-aging serum has led to a lawsuit filed by the model against Estée Lauder Cos. Inc.

Suit adds wrinkle to firm's image

They say beauty is only skin deep, but an Estée Lauder model is taking offense to an advertisement for anti-aging skincare.

Caroline Louise Forsling is suing the New York-based cosmetics giant in Supreme Court in Manhattan for \$2 million, according to the Daily Mail, alleging that the company used her image without permission in an ad for Origins Plantscription, a brand owned by Estée Lauder Cos. Inc.

The Swedish model is miffed that the ad is aimed at women ages 45 to 60, but she is only 35 and alleges the ad has “irreparably” damaged her career, according to the London newspaper.

The ad shows her face divided in half in a dramatization that features the wonders of serum treatments after four weeks.

The “before” picture on the left

side of the advertisement shows Ms. Forsling without makeup, with uneven skin tone and visible wrinkles. The “after” side shows a nearly flawless, wrinkle-free face.

The “before” photo reportedly was taken as a test shot and Ms. Forsling had no knowledge it would be used in an ad.

According to the Daily Mail, Ms. Forsling was duped and Estée Lauder did not disclose in the ad that she did not use the product, is not 45 “the so-called ‘dramatization’ of the product did not result from the use of the product by her, but rather reflected (their) manipulation of a photograph.”

Her lawyers are seeking a court order “barring defendants from any unauthorized use of Ms. Forsling’s image or likeness.”

Estée Lauder declined to comment on the suit.



VIDEO DIARY NEWSFLASH

Crisis plan is not there for zombies

As one U.K. city experienced recently, the walking dead can be an emerging risk with little or no insurance coverage for a zombie invasion.

City leaders conceded in good humor that Leicester, England, was not prepared for a zombie attack after nearly 200 people in horror makeup and tattered clothing reportedly took part in a “mass shamble,” shuffling and groaning in the streets around the city council’s offices.

The event came a week after a concerned citizen used a U.K. Freedom of Information Act request to ask city leaders about how a zombie attack would be handled.

According to news reports, the inquiry stated: “Can you please let us know what provisions you have in place in the event of a zombie invasion? Having watched several films, it is clear that preparation for such an event is poor and one that councils throughout the kingdom must prepare for.”

The Leicester City Council reportedly admitted there is no specific emergency plan for a zombie invasion, but said the request made them laugh.

The story went viral on social media sites and reportedly compelled John Dixon to organize “a small gathering for friends” that became a much larger zombie walk, which started at noon on a Saturday this month and continued one-half mile to the city council’s offices.

“There were just a couple of security guards at the building. We didn’t try to get inside—just pressed ourselves up against the glass like zombies do,” Mr. Dixon told the BBC.

Musician in a jam over injury claims

Vincent Foschini is a Philadelphia area rock musician who may find himself singing the blues.

According to the Pennsylvania attorney general’s office, Mr. Foschini was performing at a Philly bar when the low-rise stage collapsed in September 2008, causing him to fall into a speaker. He was taken to an emergency room and

released after being treated for bruised ribs.

Mr. Foschini sued the bar, alleging that his injuries permanently incapacitated him, forcing him to give up playing music, which was his sole source of income.

In a deposition, he alleged he was unable to lift almost any object and could not drive a vehicle. However, investigators hired by

Navigators Insurance Co. in 2009 found him playing with a band, moving band equipment and driving the van to the bars.

Although Mr. Foschini initially sought more than \$2.4 million in compensation for his injuries, once his lawyer saw the results of Navigators’ investigation, the claim shrunk to short-term pain and suffering and

medical expenses.

While his suit is not yet resolved, Mr. Foschini’s legal matters expanded last month when he was arrested on charges of insurance fraud, perjury and other misdeeds.

If those allegations are proven to a court’s satisfaction, Mr. Foschini may find himself singing a sad, sad song indeed.



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