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MANY WORKPLACE INJURIES TREATED OUTSIDE OF COMP, STUDY SAYS / PAGE 3

AIG TO REBRAND UNITS UNDER OLD NAME AS TARNISH FADES / PAGE 3

PENSION FUNDING MEASURE OFFERS EMPLOYERS RELIEF, UPS PBGC PREMIUM / PAGE 4

inBrief

Congress approves NFIP extension

Both houses of Congress have approved legislation that would extend the National Flood Insurance Program for five years. The extension was contained in a transportation funding bill given final approval by both chambers. The bill extends the NFIP—which was slated to expire next month—until Sept. 30, 2017. The measure also includes program reforms and the formation of a technical mapping advisory council.

Insurance rates firming worldwide

Rates in the global insurance market have firmed in general, according to the new Marsh Risk Management Global Insurance Index released by

See **IN BRIEF** page 21

SPOTLIGHT

PROPERTY/CASUALTY INSURANCE
MIDYEAR MARKET REPORT

Property cat risks see rate hikes; casualty rates firming after years of price declines; D&O prices changing; reinsurance alternatives temper increases. **PAGE 9**

HEALTH CARE REFORM

Health reform law upheld

Individual mandate ruled constitutional, but questions remain

By JERRY GEISEL

WASHINGTON—While the landmark Supreme Court decision upholding the heart of the health care reform law puts an end to years of uncertainty over whether law was constitutional, regulatory and political uncertainties continue.

In a 5-4 decision written by Chief Justice John Roberts, the high court upheld the law's individual mandate, ruling that lawmakers have the power to impose penalties on those who do not purchase health insurance.

"It is reasonable to construe what Congress has done as increasing taxes on those who have a certain amount of income, but choose to go without health insurance," Justice Roberts wrote. "Such legislation is within Congress' power to tax."

While the federal government does not have the power to force individuals to buy health insurance, "it does have the power to impose a tax on those without health insurance," he wrote.

INSIDE: Full coverage of the Supreme Court's historic health care reform ruling. **PAGE 18**

AP PHOTO

Chief Justice John Roberts' surprise move to align with the four liberal Supreme Court justices ensured that the health care reform law will remain in place, but regulators must clarify how the law will implemented.

In upholding the individual mandate, which will require most U.S. residents to enroll in a qualified health care plan in 2014 or pay a financial penalty, the high court let stand nearly all of the

See **HEALTH CARE** page 18

BIGGEST ISSUES

How the Supreme Court ruled in the health care reform law case

INDIVIDUAL MANDATE
Affirmed that Congress has the constitutional authority to impose an individual mandate. That mandate requires most U.S. residents to enroll in a qualified health care plan in 2014 or pay a financial penalty. "The federal government does have the power to impose a tax on those without health insurance," Chief Justice John Roberts wrote.

MEDICAID EXPANSION
The court ruled that Congress overstepped its authority with a reform law provision withdrawing federal funding of a state's Medicaid program if the state refuses to open the program to more lower-income individuals as specified in the Patient Protection and Affordable Care Act.

RISK MANAGEMENT

Firms use class action bans to deter lawsuits

By RODD ZOLKOS

Already utilized by many companies, clauses in end-user licensing agreements or other consumer contracts that ban consumers from turning to class actions to resolve product or service disputes are becoming more commonplace following a 2011 U.S. Supreme Court decision, experts say.

While the Supreme Court's 5-4 decision in *AT&T Mobility L.L.C. vs. Vincent and Lisa Concepcion* dealt with arbitration, legal experts say it provides companies a way to avoid class actions by requiring that disputes be addressed through arbitrations and that claims be brought individually rather than as a group.

> **'Certainly, I think there's been a movement for the past decade to put clauses in contracts to prohibit class treatment.'**
>
> Edward F. Sherman, Tulane University Law School.

"*Concepcion* came out of the fact that people were increasingly using (class action waivers) to come up with a rational way to deal with user disputes," said Kevin M. McGinty, a member of law firm Mintz Levin Cohn Ferris Glovsky & Popeo P.C. in Boston.

In a blog post in May announcing Microsoft Corp.'s plans to adopt class action waivers in its end-user licensing agreements, Tim Fielden, the Redmond, Wash.-based company's assistant general counsel, noted the 2011 ruling.

The ruling, Mr. Fielden wrote, permits the company's inclusion of language providing that customers whose claims can't be

See **CLASS** page 20

INDEX

Advertiser Index 19
Business Resources 18
Commentary 8
End Page 22
Opinions 8
Mid-Market Executive 6
Products & Services 16
Public Notices 16
Up Close 16

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AFFORDABLE CARE ACT RULING: The U.S. Supreme Court's 5-4 decision in favor of upholding the 2010 health care reform law gives employers some certainty in formulating changes to their benefit plans. Find news stories, video, a copy of the ruling and more at *www.BusinessInsurance.com/HealthCareLaw.*

LAST WEEK'S TOP FEATURES

www.BusinessInsurance.com/BITop10

1. Supreme Court to rule Thursday on health care reform law
2. Insurance agents disappointed by health care reform law ruling
3. Uncertainty ends after Supreme Court upholds individual mandate
4. Taxing power at heart of health care reform law ruling
5. Court upholds individual mandate in health care reform law
6. With Sandusky conviction, Penn State seeks resolution of claims
7. Obama administration confident health reform law will be upheld
8. Insurers struggling to maintain relevance for policyholders
9. Nine in 10 execs plan to rework risk management approach
10. Supreme Court health care decision

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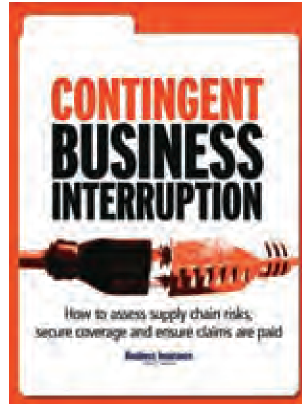

white paper

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NOMINATIONS: Deadline is July 13. Forms are available at *www.BusinessInsurance.com/Women2012Nominate.*

CYBER THREATS: *BI's* white paper explains how to manage them. *www.Business-Insurance.com/whitepapers*

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WORKERS COMPENSATION

Comp shifted to other insurers: Study

Market experts dispute assumptions used in research

By SHEENA HARRISON

SACRAMENTO, Calif.—Researchers at the University of California Davis say nearly 80% of direct and indirect costs that could be covered by workers compensation insurance are being paid by private health plans, government insurance programs or from workers' own pockets.

The study's lead author says underreported workers comp claims have resulted in discounted insurance premiums and decreased incentives for employers to improve their safety records.

However, workers comp experts are skeptical of the study, saying that workplaces have become safer over time, and that workers comp often covers costs for treatment unrelated to work injuries.

Harry Shuford, chief economist at Boca Raton, Fla.-based NCCI Holdings Inc., said the study shows the need for greater understanding between workers comp experts and the public health community, including researchers.

"At the base, our concerns and interests are the same," Mr. Shuford said. "We want a safer workplace. We don't want employees getting hurt, much less being killed, on the job, and I think both groups have lots of value to contribute if we can just get past this hurdle."

$29.9B

The study found that that 44.5%, or $29.9 billion, of medical costs for occupational injuries and illnesses was covered by workers comp, while 55.5% of medical costs, or $37.2 billion, was covered by other payers.

The report, Workers' Compensation Benefits and Shifting Costs for Occupational Injury and Illness, was published in the April edition of the Journal of Occupational and Environmental Medicine. It found that there were $249.6 billion in medical and indirect costs related to workplace injuries and illnesses in 2007.

Nonmedical costs included fringe benefits and personal productivity, factors that the researchers noted are not typically covered by workers comp insurance, as well as job wages.

Of total costs, $51.7 billion was paid by workers comp programs, while $197.9 billion was paid by other sources, including private health insurance, public or federal health plans, or out of pocket.

The study found that that 44.5%, or $29.9 billion, of medical costs for occupational injuries and illnesses was covered by workers comp, while 55.5% of medical costs, or $37.2 billion, was covered by other payers.

J. Paul Leigh, the study's lead author, said he believes the findings result largely from underreported occupational injuries—either from employers that don't want to face fines for safety hazards or from workers who perceive a stigma from workers comp claims.

"In the minds of many workers, it's a term like 'welfare,' and that term is radioactive for some people," said Mr. Leigh, a professor of public health sciences at the UC Davis. "People don't want that

See **COMP** page 20

LIABILITY & LITIGATION

Sandusky convicted, suits likely

Penn State pushes for quick settlement with abuse victims

By MIKE TSIKOUDAKIS

STATE COLLEGE, Pa.—Pennsylvania State University faces civil lawsuits that may prove to be complex and difficult to resolve following the conviction of former Assistant Football Coach Gerald A. Sandusky of child sexual abuse.

The university has urged victims to participate in a program to quickly address their concerns and compensate them for claims related to the university resulting from Mr. Sandusky's conduct, the State College, Pa.-based school said in a statement hours after Mr. Sandusky's conviction.

He was found guilty of 45 of the 48 sex-related counts for child sexual abuse involving 10 victims over 18 years, often on Penn State property.

"The purpose of the program is simple—the university wants to provide a forum where the university can privately, expeditiously and fairly address the victims' concerns and compensate them for claims relating to the university," Penn State President Rodney Erickson said in the statement.

Penn State's commercial general liability insurer, Pennsylvania Manufacturers' Assn. Insurance Co., filed suit in January seeking a declaratory judgment that Penn State is not entitled to coverage and a defense under certain policies issued by the Blue Bell, Pa.-based insurer.

Penn State countersued PMA for refusing to provide coverage in a civil lawsuit filed in November alleging that the university knew of and failed to prevent Mr. Sandusky's sexual misconduct. No trial date has been set yet.

According to news reports, eight of the known victims have hired attorneys to explore civil litigation against Penn State.

Penn State declined to comment on whether any claims have been settled.

As Penn State attempts to resolve civil litigation, "it's going to be very complicated and difficult," said Teena Hostovich, executive vp at Lockton Insurance Brokers L.L.C. in Los Angeles.

The criminal conviction of Mr. Sandusky strengthens the position

See **PENN STATE** page 21

AP PHOTO

Former Penn State Assistant Football Coach Gerald A. Sandusky was convicted on 45 counts of child sexual abuse late last month. Several of the victims are expected to file suits against the university seeking damages.

PROPERTY/CASUALTY INSURERS

AIG to rebrand units to reflect old name

Moves seen as sign that turnaround efforts succeeding

By MARK A. HOFMANN

NEW YORK—American International Group Inc.'s decision to return to the "AIG name in full" rather than operating its commercial property/casualty business under the Chartis brand is drawing generally positive reaction from market observers.

AIG President and CEO Robert H. Benmosche announced the decision to revert to the AIG name for all operations in an internal memo last week.

"I can say with pride that together we are close to achieving a complete turnaround of AIG, and we continue to make significant progress restoring our reputation," Mr. Benmosche wrote in the memo. "Research shows that the AIG name is well-respected among our partners and customers in every corner of our business. Therefore, we have made the decision: We will return to the AIG name in full."

AIG rebranded its commercial property/casualty insurance operations as Chartis Inc. in July 2009. That was less than a year after AIG stood on the brink of collapse, which led the federal government to assume a nearly 80% stake in the company. Since then, AIG has repaid much of the federal assistance.

"The increasing positive sentiment toward AIG is a positive asset," Mr. Benmosche wrote. "As we continue to make good on our goal to make American taxpayers whole plus a profit, AIG has the potential to stand for not just a turnaround but also for people's potential to accomplish the seemingly impossible when given the opportunity."

BLOOMBERG

Mr. Benmosche

Starting this fall, Chartis will be known as AIG externally and as AIG Property Casualty for internal "organizational purposes." AIG's SunAmerica Financial Group will become AIG Life & Retirement both internally and externally and all other entities will add an AIG tagline to their logos, according to the memo.

"Now is clearly the right time to call ourselves by the name that stands for the fact that we keep our promises and deliver on our commitment to uphold the highest standards for the benefit of all of our stakeholders: AIG," Mr. Benmosche wrote.

The AIG name is an asset, market observers said.

"I think particularly in the international area, the AIG name was preferred," said James Auden, an analyst with Fitch

See **AIG** page 7

PENSIONS

Bill easing pension contributions passes Congress

But premiums paid to the PBGC would increase

By JERRY GEISEL

WASHINGTON—Employers will be able to slash defined benefit plan contributions by billions of dollars over the next several years, but they will face sharply higher federal pension insurance premiums under legislation that won final congressional approval last week.

The pension-related provisions are included as part of a broader transportation funding bill, H.R. 4348, that won final approval last week in the House of Representatives and that President Barack Obama is expected to sign shortly.

The pension funding provisions mirror those approved earlier this year by the Senate. Effectively, employers would be able to use higher interest rates to value plan liabilities, reducing the value of the liabilities and the resulting contributions to the plans.

As under current law, the latest legislation would have employers continue to value plan liabilities based on interest rates on top-rated corporate bonds for three different segments, averaged over 24 months. Segments refer to when benefits are paid to participants.

Under this methodology, interest rates that value plan liabilities are based on the maturity date of the corporate bonds. For example, interest rates on pension liabilities to be paid within the next five years would be based on corporate bonds maturing within five years.

10%

The actual interest rate for each segment in 2012 would have to be within 10% of the average of those segment rates for the preceding 25-year period. In succeeding years, this 10% corridor would increase and top out at 30% in 2016.

The actual interest rate for each segment in 2012 would have to be within 10% of the average of those segment rates for the preceding 25-year period. In succeeding years, this 10% corridor would increase and top out at 30% in 2016.

If the methodology were in force today, the interest rate used to value benefits paid over the next five years would increase roughly three percentage points, with smaller, though still significant, percentage increases for benefits paid beyond five years, experts say.

However, the legislation also calls for steep increases in premiums employers pay the Pension Benefit Guaranty Corp., which currently has a $26 billion deficit in its insurance programs that guarantee most vested benefits to participants in plans the agency takes over from financially troubled employers.

Currently, all employers with defined benefit plans pay an annual PBGC premium of $35 per plan participant. The legislation would boost the premium by an additional $6 per plan participant in 2013 and another $7 per participant increase in 2014.

In addition, the measure would increase the so-called variable rate premium that is assessed on employers with underfunded plans

Currently, that premium is $9 per $1,000 of plan underfunding. The transportation legislation would increase that assessment in 2014 to $13 per $1,000 of plan underfunding and $18 per $1,000 underfunding in 2018.

However, regardless of the amount of the underfunding, the maximum variable rate premium could not exceed $400 per participant.

CATASTROPHES

AP PHOTO

The Waldo Canyon fire destroyed homes in the Mountain Shadows area of Colorado Springs, Colo. More than 24 square miles were burned by Friday.

Colorado wildfires burn thousands of acres

By MATT DUNNING

As firefighters in Colorado and adjacent states continued their weeklong battle Friday to quell a devastating outbreak of wildfires, state insurance officials said it could be weeks before they have a full view of the damage done.

As of Friday morning, 624 homes and commercial properties had been reported damaged or lost in fires concentrated in High Park, Waldo Canyon and Estes Park, said a spokeswoman for the Colorado Division of Insurance.

Meanwhile, catastrophe modelers and insurance executives said it was too early to know the extent of insured losses for the region as a result of the fire. As of Friday, Newark, Calif.-based risk modeling firm Risk Management Solutions Inc. reported that the Waldo Canyon fire was just 15% contained.

The Waldo Canyon fire began June 23, and had burned as many as 15,500 acres—more than 24 square miles—including some suburban neighborhoods near Colorado Springs by the end of the week.

"We're really not sure what the

See **WEATHER** page 21

Errors & Omissions

A headline on page 1 of the June 25 edition failed to fully explain the nature of the settlement between executives at General Reinsurance Corp., American International Group Inc. and the federal government. The executives admitted that aspects of a finite reinsurance transaction were fraudulent, not that they admitted committing fraud.

EMPLOYMENT PRACTICES

High court to rule in bias case

Justices to consider whether supervisors have power to fire

By JUDY GREENWALD

WASHINGTON—The U.S. Supreme Court has agreed to decide whether employers are liable for their supervisors' harassment only when the supervisor oversees the worker, or whether the supervisor must have the authority to hire and fire the employee.

The case, *Maetta Vance vs. Ball State University et al.*, concerns whether the Muncie, Ind.-based university could be held liable for the alleged racial harassment and intimidation experienced by Ms. Vance, the sole African-American employee in its banquet and catering department.

Ms. Vance accused supervisors and co-workers of harassment. A lower court dismissed the case and the 7th U.S. Circuit Court of Appeals upheld that ruling in June 2011 in part on the grounds that Ms. Vance had not established a basis for employer liability on the hostile work environment claim.

The Supreme Court, which accepted the case last week, has ruled on the issue previously under Title VII of the Civil Rights Act of 1964. In 1998 decisions in *Beth Ann Faragher vs. City of Boca Raton* and *Burlington Industries Inc. vs. Kimberly Ellerth*, the high court held that an employer is vicariously liable for severe or pervasive workplace harassment by a victim's supervisor.

However, lower courts subsequently split on how to define a supervisor, Ms. Vance said in the petition seeking Supreme Court review.

The 1st, 7th and 8th circuit courts of appeals have held that supervisors are those with power to "hire, fire, demote, promote, transfer or discipline" an employee. However, the 2nd, 4th and 9th circuit courts of appeals have defined supervisors as those who only direct and

See **BIAS** page 7

EMPLOYMENT PRACTICES

Discrimination claims take new turn

By MATT DUNNING

ATLANTA—Nontraditional harassment claims are growing in frequency and severity despite a steady reduction over the past 15 years in the total number of workplace harassment and discrimination charges.

To address that trend, employers should pay more attention to same-gender harassment claims and sexual harassment claims filed by men, for example, and treat them as seriously as traditional harassment claims, according to an employment attorney speaking at the Society for Human Resource Management's 2012 Conference and Exposition held last week in Atlanta.

-28%

Workers in the United States filed 11,364 sexual harassment charges in 2011, according to the U.S. Department of Labor, down 28% from the 15,889 recorded in 1997.

In addition, employers should evaluate their policies on workplace bullying, another speaker said. Although the legal framework for bringing bullying claims is less clear than harassment claims, it is possible for workers to use laws as the basis for bullying claims, she said.

Workers in the United States filed 11,364 sexual harassment charges in 2011, according to the U.S. Department of Labor, down 28% from the 15,889 recorded in 1997.

However, the percentage of those claims filed by men has increased steadily during that same 15-year period, to 16.3% in 2011 from 11.6% in 1997.

Harassment claims made on the basis of other federally protected traits also have increased in recent years, including claims based on an employee's military

See **SHRM** page 17

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

Investigating violence at work

Employers should probe entire workplace culture to find possible clues

By BILL KENEALY

Companies struck by an incidence of workplace violence need to move past the specifics of occurrence and focus on identifying and remedying systemic issues within their workplace that might have contributed to the incident, experts say.

While an investigation of the stressors acting upon the person responsible for the violence is a necessary first step, it cannot substitute for a more thorough investigation.

"To focus solely on the perpetrator and debriefings in the aftermath of an event is so yesterday," said Michael Mantell, a clinical psychologist and corporate workplace violence consultant based in San Diego. "The focus should instead be on workplace culture."

Mr. Mantell said a primary part of this self-investigation is seeking and rooting out any authoritarian or autocratic management styles within the company that may have contributed to the violence.

Additionally, companies should look to hire and promote people-savvy managers who are adept at reading the concerns of employees. "Do your managers know how to manage?" he said. "To manage people, you have to understand them."

Laurence Miller, a Boca Raton, Fla.-based author, speaker and police psychologist with the West Palm Beach, Fla., Police Department, agreed that having a well-run organization is a necessary precursor to preventing workplace violence.

"Companies that are perceived by their employees to be run fairly and equitably have a much lower incidence of violence," he said.

One hallmark of a well-run organization is to ensure an open dialogue between employees and management, he noted.

"When employees feel they don't have a voice, that's when you see threats of violence," Mr. Mantell added.

Accordingly, Mr. Miller said companies need to craft defined channels for employees to report incidents that may foreshadow future violence, such as employees or managers engaging in bullying.

"Often people are aware of problems but they don't have a real venue to report it confidentially," he said.

John Lane, Los Angeles-based vp of crisis management and resilience consulting at Control Risks Group Holdings Ltd., said written policies and executive endorsement of these programs is vital.

"Companies need to be able to demonstrate the development of a comprehensive policy and procedure for reporting and responding to cases of concern," he said. "This entails training employees at every level what the policies, philosophies are reporting procedures are."

Mr. Mantell said he sees progress on this front.

"Organizations are getting better at training managers in recognizing early warning signs and handling worker complaints," he said.

Richard Plansky, New York-based senior managing director in the business intelligence and investigations practice of security firm Kroll Inc., said that in addition to creating a culture that empowers employees and managers to report incidents of concern, training people on what to look for is also vital.

"Oftentimes incidents of extreme workplace violence are partially the result of mental illness, which can manifest itself in behavioral changes," he said. "Who better to notice those changes than people that work side-by-side? If people trust management and trust each other, and feel empowered and responsible coming forward, you have a great chance to nip (workplace) violence in the bud."

Mr. Miller said many problems can be prevented even earlier by instituting rigorous pre-employment screening and hiring not simply for skill but also for attitude, thereby avoiding bringing problems into the workplace in the first place.

"Don't hire trouble," he said. "Take the employee screening process seriously."

Mr. Plansky said similar rigor is advisable when terminating employees, noting that best practices surrounding termination have evolved in recent years. In addition to timing dismissals carefully to avoid weekends and holidays, employers are wise to include incentives for fired employees to behave well, such as back-loading severance packages.

"You can leaven the bad news with career counseling, resume coaches and placement," he said. "You want to show that employee some support so that they don't feel like they have been cast out into a void."

In addition to building out policies and procedures around hiring and firing practices, Mr. Lane recommends that companies create a vulnerability assessment, complete with a risk matrix that accounts for the peculiarities of a company's given industry and the physical security measures it has in place. He also advises companies to develop a dedicated prevention team to minister and advance a workplace violence preparedness program.

"Taking a proactive approach reduces liability and keeps away incidents that can interfere with you running your business," he said. "You can't prevent everything, but you can identify issues and take mitigating steps."

Workplace safety is employer's duty

Under the general duty clause of the Occupational Safety and Health Act of 1970, employers are expected to maintain a safe work environment.

While the federal Occupational Safety and Health Administration does provide guidance through guidelines and training and reference materials, a set of best practices for workplace violence preparedness was promulgated in September 2011 by ASIS International, a trade organization for security professionals, and the Society for Human Resource Management. Both Alexandria, Va.-based organizations are members of the American National Standards Institute, a standards-setting organization based in Washington.

John Lane, Los Angeles-based vp of crisis management and resilience consulting at Control Risks Group Holdings Ltd., said the new ANSI standard carries with it the thinking of key professionals from the safety arena.

"The new standard basically creates a new protocol or program to help employers develop the core components of workplace violence prevention programs," Mr. Lane said. "It raises the bar of responsibility for employers beyond just adhering to the general duty clause of the OSH Act."

Given the ready availability of workplace violence mitigation and training programs, Mr. Lane added that companies are well-served to proactively address the issue.

"When incidents happen, employers are going to have to answer to their level of preparedness and whether it meets best practices," he said.

—By Bill Kenealy

Federal Insurance Office seeks reinsurance input

Report due Sept. 30 on global market's effect on U.S.

By MARK A. HOFMANN

WASHINGTON—The Federal Insurance Office is seeking comments on the global reinsurance market and its role in supporting insurance in the United States.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the FIO is required to submit a report to Congress no later than Sept. 30 on the breadth and impact of the global reinsurance market on the United States.

In a notice that appeared in the Federal Register last week, the FIO asked for comments on:

- the purpose of reinsurance;
- the breadth and scope of the global reinsurance market;
- the role that the global reinsurance market plays in supporting insurance in the United States;
- the effect of domestic and international regulation on reinsurance in the United States;
- the role and impact of government reinsurance programs;
- the coordination of reinsurance supervision nationally and internationally; and
- any other topics relevant to the report.

Comments are due by Aug. 27.

Comments can be submitted electronically through the Federal eRulemaking Portal at Regulations.gov in accordance with the instructions. Comments will be available at Regulations.gov as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Electronic submissions are encouraged.

Comments also may be mailed to the Department of the Treasury, Federal Insurance Office, 1500 Pennsylvania Ave. NW, Washington, DC 20220.

Bias: Supervisor defined

CONTINUED FROM PAGE 4

oversee the alleged victim's daily work.

When the Supreme Court does rule on the issue, it will potentially impact a "great number of employment discrimination lawsuits filed countrywide," said Gerald L. Maatman Jr., a partner with law firm Seyfarth Shaw L.L.P. in Chicago.

"It's going to draw a line as to what exactly is a supervisor in terms of supervisory liability rules, which is "a question that has been left open since 1998 in the *Faragher* and *Ellerth* cases," he said, noting that the courts have struggled to determine the line between supervisor and co-worker.

Mr. Maatman said he believes there is a good chance the Supreme Court will agree with the 7th Circuit, which ruled that a supervisor is someone who has the power to hire and fire. That would be "consistent with the modern realities of the modern workplace," where someone who has this authority "tends to be looked at as a supervisor," he said.

AIG: Fewer negative perceptions

CONTINUED FROM PAGE 3

Ratings Inc. in Chicago. "As they've progressed from their problems, some of the negative aspects of the AIG name have diminished and it's still very well-known internationally and also domestically. It seems like they think that makes more sense to go forward."

The move shows that AIG no longer considers that the company is impaired, said Meyer Shields, director at Stifel Nicolaus & Co. Inc. in Baltimore. "AIG had some issues, but it also has a strong history, and I think that's really the point: to re-demonstrate confidence in the brand."

The AIG brand is very distinctive in the marketplace, said John Ward, CEO of Cincinnatus Partners L.L.C in Loveland, Ohio. "This is somewhat of an acknowledgement they can't change the past, so move forward with that distinctive brand."

The bigger the questions our changing climate poses, the better our answers need to be.

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Opinions

EDITORIAL

Repeal efforts a waste of time

President Obama got it exactly right when he said after the historic Supreme Court health care reform ruling last week that the time to refight political battles over the reform law is over.

There has been no shortage of fights since the passage in 2010 of the Patient Protection and Affordable Care Act—heated rhetoric, charge and counter-charge, political battles in Congress and lawsuits have all flowed.

Certainly citizens and their elected officials have the right to speak out, and they should exercise that right because change and improvement often flow from constructive criticism.

And litigation is a bona fide option for those who believe a law is illegal.

But now that the high court, in a decision written by Chief Justice John Roberts, a President George W. Bush appointee, has upheld the bulk of the law, including its core provision mandating that most U.S. residents enroll in a qualified health care plan or pay a financial penalty, we believe the time for political battles is over.

For regulators, their focus now should be on the development of fair, thoughtful and balanced implementation rules.

For employers, their attention will need to be directed at what they will have to do to comply with the law, as well as evaluating what type of plan designs will make the most sense in the years ahead.

That said, we don't want to rule out changes to the law. Indeed, two actions taken by Congress after the health reform law passed—one that repealed a needless financial form distribution requirement and a second that repealed a poorly conceived provision requiring employers in certain situations to give employees company-paid vouchers to buy coverage in state insurance exchanges—were necessary and welcome changes.

There is no doubt that there are other health care reform law provisions that are in need of improvement and perhaps even repeal. We are hard-pressed, for example, to understand why lawmakers put a $2,500 cap on flexible spending account contributions.

But an effort to repeal the full law, given the likely political makeup of Congress in the years ahead, seems pointless.

Just as important, whatever the flaws of the health care reform law may be, a return to the prehealth care reform era, which was characterized by a huge pool of uninsured along with the highest health care costs in the world, doesn't strike us as a step in the right direction.

LETTERS

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SCHILLERSTROM

COMMENTARY

Fight rising cyber threats by sharing

A specter is haunting Washington and it's not the Ghost of Elections Future.

We can be thankful for that. In a city consumed by political calculation, some serious people—and some serious people do remain in the capital even as November approaches—are sounding the alarm about a very real threat to the country's security.

That's the threat of a massive cyber attack.

Only three months ago, FBI Director Robert Mueller warned that while terrorism is still the FBI's top priority, "in the not-too-distant future, we anticipate that the cyber threat will pose the No. 1 threat to our country."

MARK A. **HOFMANN**
SENIOR EDITOR

That warning echoed during an event held last month in Washington by The Week magazine and Zurich Insurance Co. Ltd. The chairman of the House Intelligence Committee—Rep. Mike Rogers, R-Mich.—said cyber attack is "probably the single largest threat" the country faces.

So what's to be done? Rep. Rogers has sponsored a bill that would encourage public/private collaboration on cyber security. He said that while "we're good at protecting government cyber assets," the government needs to partner with the private sector by sharing classified cyber threat information with approved U.S. companies and enhancing cyber threat information sharing.

Rep. Rogers' bill—the Cyber Information Sharing & Protection Act—passed the House in April, but the Senate has taken no action. Further complicating matters is the White House threat to veto the measure in its present form over, among other things, privacy concerns.

It's hard to argue with Rep. Rogers' call for enhanced information sharing between the public and private sectors regarding cyber security. While it's reassuring to hear Rep. Rogers say the government's good at protecting its cyber assets, one must remember that those public-sector assets are integrated with private-sector ones, like the information technology systems of the power grid.

Think about a massive cyber attack on the power grid for a moment. We saw what happened in the aftermath of Hurricane Katrina when the power went off for quite a while in New Orleans, surrounding areas and neighboring states. It wasn't pretty.

Now, imagine the same thing happening today, but blacking out the entire East Coast for weeks. It would be "Road Warrior" time.

Information sharing—including the sharing of some classified information, provided adequate steps have been taken to prevent the unauthorized dissemination of the information—between the government and private sector is critical.

There's no guarantee that doing so would render all attacks harmless. But provided that the sharing is done right, it could provide another line of defense against a threat that grows more likely by the day.

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Property/Casualty Insurance

MIDYEAR MARKET REPORT

SPOTLIGHT

CASUALTY PRICES SEE HARDENING
PAGE 10

D&O PRICES FIRM AT PRIMARY LEVEL
PAGE 12

E&O RATES VARY BASED ON INDUSTRY
PAGE 12

WORKERS COMP SEES RISING RATES
PAGE 13

PRICE HIKES SLOW FOR REINSURANCE
PAGE 14

DIVIDED it STANDS

Property catastrophe rates rise, limited increases for other risks

By MARK A. HOFMANN

The commercial property market continues to firm, with rate increases this renewal season in the mid- to high single-digit range, industry observers say.

MIDYEAR MARKET REPORT
PROPERTY

Catastrophe-exposed accounts are experiencing greater increases, but some observers say there are signs that the rate of increase is slowing.

In addition, say observers, underwriters are focusing more on flooding peril than they have in recent years as well as paying closer attention to contingent business interruption.

The market is "bifurcated," said Dave Finnis, property practice leader for Willis North America Inc. in Atlanta.

"We divide it up between cat and noncat," with rates for catastrophe-exposed accounts up 7.5% to 12.5%. But noncatastrophe-exposed accounts are experiencing renewals with rates that are flat or perhaps up 5%, he said. In some cases, "there's so much capacity for noncat that if you really marketed it hard, you could probably even get a rate decrease."

"In general, the market is firm," said Sanjay Godhwani, U.S. and Canada property product line executive for American International Group Inc.'s Chartis Inc. unit in Boston. "Rates are up on cat-exposed risk 10% to 15% on average and 5% to 10% on other risks."

Insurers are approaching commercial property as two markets in another way, said Michael Korn, managing principal in charge of the national property practice for Integro Ltd. in San Francisco. Incumbents are under the direction of management to hold rates flat or get an increase while nonincumbent insurers are being quite aggressive, he said. "There's a lot of capacity in the market," he said.

With 2011 "being so dramatic a year" for catastrophe losses, accounts that already experienced a rate increase last year might find more tempered pricing at renewal this year.

"It's definitely account-by-account, based on

See PROPERTY next page

Casualty prices firm slightly after years of price cuts

Transportation risks, energy, construction seeing larger hikes

By MATT DUNNING

Experts noted significant firming in the commercial auto markets, particularly among lead umbrella lines for large fleet accounts.

MIDYEAR MARKET REPORT
CASUALTY

The primary and excess casualty markets in the United States showed signs of firming rates in the first half of this year, but industry experts say most rate increases have been modest.

While policy terms and conditions have remained mostly unchanged in the primary and excess markets, experts say fewer casualty buyers—even those with favorable loss histories in relatively low-risk industries—are renewing or securing coverage at reduced or flat rates this year compared with last year.

"Generally speaking, the market is headed in an upward trend, though I wouldn't describe it as a very steep trend," said Tony DeFelice, New York-based national casualty practice managing director at Aon Risk Solutions.

On average, rates have risen for primary and excess general liability, workers compensation and commercial automotive coverage by 1% to 5% over rates a year ago, Mr. DeFelice said.

"Some of these rate increases are not necessarily all that large," he said. "However, it's the first time clients may be seeing price increases in almost a decade. So in many cases, we've seen clients reject or at least object to those kinds of increases."

And while most rate firming among casualty markets has been modest, experts said, many primary and excess buyers in higher-risk industries such as energy, transportation, construction and life sciences have been presented with rate increases of 10 % to 15% over 2011.

"Underwriters are clearly focused on correcting those parts of their book that haven't been as profitable as they need to be," said Tracey Caffrey Ant, primary casualty placement leader at New York-based Marsh Inc. "There's still a lot of capacity in the marketplace, but we're definitely seeing trends of rates that are firmer than they were at this time last year."

The worst-performing risks among the primary coverage segments continue to be workers comp products, particularly guaranteed-cost policies, experts said.

Nationwide, workers comp insurance rates at the end of May increased by an average of 5% over 2011, according to Dallas-based electronic insurance exchange MarketScout. Experts said some buyers likely experienced rate increases as high as 15%, depending on their industry, geographical concentration of workers and previous loss history (see story, page 13).

"There are customers in the guaranteed cost workers comp space that are seeing very wide variations in terms of rate increases," said Russ Johnston, New York-based executive vp and chief operating officer of Chartis Inc. "Some of them might only see a benign increase, but some of them could see rate hikes of 10% to 15%, all the way up to 30% or 40%."

Experts also noted significant firming in the commercial auto markets, particularly among lead umbrella lines for large fleet accounts.

"What we've seen is that the lead umbrella market is putting a little bit of pressure on where it wants to attach," said Pamela Ferrandino, New York-based casualty practice leader for Willis North America Inc. Where insurers might have offered attachment points between $2 million and $3 million to large fleet accounts as recently as last year, those accounts are more likely today to encounter attachment points of $5 million to $10 million.

"It's not so much that accidents themselves are increasing, but the size of court awards and liability settlements associated with those accidents are adding severity into the line," Ms. Ferrandino said. Coupled with a multiyear soft market and flattened investment returns, "carriers don't have the income that they would need to temper the amount of rate and premium they require to meet profitability goals."

Across all coverage segments, lead umbrella casualty accounts have experienced rate increases ranging from 3% to 10%, depending on their specific risk profile, experts said.

"Sometimes, we do see flat renewals, but they're getting fewer and further between than they were a year ago," Ms. Ferrandino said.

More pronounced than any strengthening of rates, experts said, has been primary and excess underwriters' increasing focus on risk selection. Insurers are applying greater scrutiny to potential accounts, and more policy agreements are being filtered through upper-level management prior to finalization. In particular, that greater scrutiny is being applied to energy companies and their subcontractors involved in hydraulic fracturing operations, as well as nearly any type of building, manufacturing, logging or transportation operations being conducted in areas prone to wildfires, experts said.

"The more information you can provide to an underwriter about the risk that they're taking, the better and smoother the transaction is going to go," Mr. Johnston said, adding that high-risk buyers especially should be prepared with an executable plan to improve their company's risk profile.

"Otherwise, you're going to find yourself subject to what the market is doing right now to risks that are performing in that adverse fashion," he said. "If you're doing things to make changes, be very clear about what they are and exactly how you plan to get them done, as opposed to the more generic sort of commentary."

Property: Cat rates rise, limited increases elsewhere

CONTINUED FROM PREVIOUS PAGE

individual risk quality," said Randy Schreitmueller, a vp at Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global. "It's also a time that companies that have made an investment in risk improvement always can positively differentiate themselves, and they tend to do better than those who have not."

"Through the second quarter, we were seeing close to double-digit rate increases in our portfolio," said Joe Tinetti, Zurich North America's New York-based head of property for global corporate in North America.

"But there are certainly signs that the rate of rate increases was moderating a bit going into the third quarter," he said, adding that there is significant capacity available in the market.

"Commercial rates are up around 8% to 12% on average, compared to this time last year when rates were relatively flat," said Cliff Hope, chief property underwriter for Aspen Insurance Holdings Ltd. in Atlanta. "We started seeing flat to low-single-digit rate increases starting around July 1, 2011." But Aspen began seeing the rate of increases level off in April this year.

"The foot is off the gas for June 1," said Al Tobin, New York-based managing principal in Aon Risk Solutions' property practice. "Rates kind of peaked for April 1, and they're not flat, but they're back in the low single digits, which is great news for our buyers."

Alexandra Glickman, area vice chairman of Arthur J. Gallagher Risk Management Services Inc. in Glendale, Calif., described the market as "it depends."

"It depends on what the asset classes are, and it depends on the location of the risk," she said. "There's a lot more emphasis on Northeast flood as well Florida and Texas wind and weather."

Owners of multifamily structures can expect increases of as much as 20%, not just for the catastrophe perils but also attributional losses such as fire and water damage, she said. On the other hand, renewals for some accounts with California earthquake exposures have experienced flat to 6% increases, provided the account isn't a multifamilty dwelling, Ms. Glickman said.

Scott Clark, risk and benefits officer at the Miami-Dade County Public Schools, said he found the property market "significantly harder" as the May 1 renewal of his property account approached.

The Florida school system was not in a position to spend more money this year. The capital portion of the budget, which is funded by property taxes, funds property insurance—and property values in the area have deteriorated about 20% in recent years, he said.

"We went into the market with an eye to spend no more than we did last year," Mr. Clark said. Insurers "did as best as they could based on their own cost of risk to accommodate my renewals." Nevertheless, a roughly $21 million premium bought $200 million in coverage, down from the previous $250 million in coverage, he said.

The experience of John Grook, risk management administrator for Virginia Beach, Va., during his March 1 renewal was not so dramatic.

"We had a percentage change from flat to 4.62% increase," he said. "We almost never have a flat increase because of the capital improvement program. And we had to give up 3% of total insured value from named storm loss to a 5% named storm loss. But that's not an issue for us, because if there's a named storm that came through, we could recover that from (the Federal Emergency Management Agency)."

Observers said underwriters are taking a closer look at flood perils and associated exposures.

"Coming out of Hurricane Irene and Tropical Storm Lee and a pretty heavy rainstorm in the Northeast with resulting flood losses, we're re-underwriting our flood exposures and using various tools to look at accounts that are not only in flood zone A or close to flood zone A," said Tim Rose, senior vp and chief underwriting officer at Liberty Mutual Insurance Co.'s national property accounts unit in Weston, Mass. "We may offer less limits than we offer today."

"Floods are very unpredictable, and it's one of the tougher perils to evaluate and underwrite," he said.

"Everyone has always recognized flood as an exposure, but the losses had not accumulated," said Chartis' Mr. Godhwani. "The events of 2010 and 2011 raised awareness."

"When you go internationally, you don't have the same information to evaluate the risk," he said. "The industry understands that this is an exposure we have to understand more broadly than a binary decision of whether you are in a flood plain or not."

"On the flooding side, it's all about up-to-date information," said Aon's Mr. Tobin.

"The customer that has the unknowns" is the undesirable risk, he said. A global manufacturer that doesn't know its supplier information will be a less desirable risk or won't get contingent business interruption coverage, Mr. Tobin said.

"With the Thai floods and the Japan earthquake and tsunami, there have been a lot of supply chain issues, so contingent (business interruption coverage) is really being scrutinized," said Willis' Mr. Finnis. The heightened scrutiny affects the limits of what's being offered as well as the underwriting information to back up a request for any large limits, he said.

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CHARTIS

D&O pricing sees signs of firming

Most rate increases affecting primary layers

By JUDY GREENWALD

The directors and officers liability market generally is hardening, but pricing depends on factors that include a company's size and type and its loss history.

While rates are increasing overall, private and nonprofit entities are seeing higher increases. And small firms of all types are likely to see larger rate hikes, observers say.

MIDYEAR MARKET REPORT D&O

Rate hikes are occurring in the primary or low excess layers, while significant competition continues in the higher excess layers, observers say.

Among factors prompting higher rates is an "uptick in frequency" in D&O claims, which has boosted rates for the primary layer and is starting to affect the first excess layers, said Trevor Howard, senior vp of management liability with Liberty International Underwriters in New York.

"We've finally reached an inflection point where all the main primary carriers feel they no longer can stomach the decreases," said Will Fahey, New York-based head of D&O for large companies at Zurich North America.

Observers estimate rates range from 5% decreases to 15% increases in the primary layer, while the excess layers range from slight decreases to flat.

The majority of D&O primary business is seeing increases, "and depending on the risk profile, some of them are fairly large," although "there are a handful of flat renewals out there," said Mr. Fahey.

Accounts with no losses are experiencing single-digit increases, he said.

"Initial indications are (that) we're looking at flat renewals," said Mark Bennage, director of risk management at Little Rock, Ark.-based Windstream Corp. unit Windstream Communications. Mr. Bennage, whose broker is Kansas City, Mo.-based Lockton Cos. L.L.C., said he is pleased "because I was really expecting a small increase."

"We see signs of firming" in price and coverage, a move away from the years of price reductions and enhanced coverage. said Tim Bunt, Stamford, Conn.-based chief risk officer for real estate firm CBRE Group Inc. "A lot of that has to do with the industry space you're in."

Fred O. Pachón, vp of risk management and insurance for Santa Barbara, Calif.-based Select Staffing Inc., said, however, that although his company has not had any claims, its incumbent insurer "is certainly telegraphing some significant increases. And as we have gone to the market, what I'm seeing so far…is that (insurers) are being a bit more conservative as far as the underwriting requirements, and they are digging a lot deeper into the companies' financials."

"Everything being the same this year vs. last year, (insurers) still want a 5% to 7% increase," said Peter Taffae, a D&O and errors and omissions liability insurance expert at Los Angeles-based wholesale brokerage Executive Perils Inc.

Rate hikes are segmented, said Phil Norton, Chicago-based president of the professional liability division at Arthur J. Gallagher & Co.

"Nonprofits are getting more increases than are private companies, but more private companies are getting increases than publicly traded companies," he said.

"Insurers are working very hard to get increases across the board in their private-company books," said Bill Beck, Lockton's Kansas City, Mo.-based senior vp, insurance and claims counsel. "They're willing to walk away if they can't get the increase they feel they need to keep those books profitable."

Observers say claim activity is driving increases for private and nonprofit entities' accounts, as well as the fact that their D&O polices are often combined with employment practices liability coverage.

"Over the last few years, EPL claims frequency and frequency of D&O severity have both increased," said Steve Boughal, New York-based vp and chief underwriting officer of Hartford Financial Products, a unit of The Hartford Financial Services Group Inc. Insurers "have little choice but to revisit their underwriting approach in pricing."

Small firms are facing higher rate hikes than larger ones also, although the total premium is still likely to be less, said Ann Longmore, New York-based executive vp at Willis North America Inc. "The steepest increases are on the lower end of the spectrum," she said.

Brian Dunphy, managing director at broker Frank Crystal & Co. Inc. in New York, said, "Underwriters are looking at ways to adjust retention levels, and trying to put more of the onus on the insured to retain more of the risk by trying to push potential claims a little bit further down the road."

Meanwhile, "while there's lots of capacity in primary, there's even more capacity in excess," said Mr. Norton.

Tripp Sheehan, U.S. D&O practice leader for Marsh Inc. in Boston, said, "The feedback I hear from underwriters is that they continue to see an increase in frequency of low-severity losses," so it would make sense that primary rates would go up while "the excess would remain fairly competitive because the frequency of high-severity losses isn't going up."

Brokers "may make up some of the increases in primary and first excess layers, and try to recoup some of those dollars higher up in the program, where those layers are viewed as more of a commodity," said Jeremie Saada, New York-based underwriter, specialty lines division, for Beazley Group P.L.C.

However, "We are starting to see more and more excess carriers trying to follow what the primary is doing," said Colin Daly, Denver-based-managing principal for Aon P.L.C.'s financial services group.

Rates for E&O coverage vary, some accounts see reductions

By JUDY GREENWALD

Pricing in the errors and omissions liability market depends on the profession and the account.

Mortgage brokers, title agents and consultants are among professions finding less available capacity, but others are getting flat or even reduced rates, observers say.

There may be distinctions even within professions. Large law firms, for instance, are facing higher rates than their smaller counterparts.

Observers note also that network privacy and data security coverage, which may be written in conjunction with E&O policies, also can affect rates.

"There are 150-plus classes of business, so no two accounts are really the same," said Florence Levy, Denver-based senior vp and practice leader of professional risk solutions for Aon P.L.C.'s financial services group. However, insurers "are definitely focusing more on rates," particularly "for clients that are perceived to have a high exposure."

Generally, however, for "clean" accounts, "we're able to maintain some of the premiums by considering different structures or alternative structures, like bringing (insureds') retentions up in order to keep that rate down," she said. Rate hikes are "not across the board. There's still a lot of competition in the E&O space, especially within the excess markets."

Mickey Estey, managing director of the E&O practice at OakBridge Insurance Services L.L.C. in Beachwood, Ohio, said major insurers are seeking increases in the 5% to 10% range, while rates for those with high claim or litigation activity may be seeing increases up to 25%.

Mark Bennage, director of risk management at Windstream Communications, a Little Rock, Ark.-based unit of Windstream Corp., said, "I'm hoping to have a flat or modest increase in (rates), but I don't have any indications of what it will be."

Fred O. Pachón, vp of risk management and insurance for Santa Barbara, Calif.-based Select Staffing Inc., said, E&O insurers "are not telegraphing any significant increases. I think we will end up with more of a flatline renewal. That's consistent with prior years."

MIDYEAR MARKET REPORT E&O

"I would say across our portfolio, we saw premium go up about 2% to 3%," although "there continues to be a wide range of changes" with swings as wide as 40% reductions and 40% increases, said Sandy Codding, Boston-based leader in the U.S. commercial E&O advisory practice of Marsh Inc.'s FINPRO unit who focuses on technology, media, cyber and miscellaneous E&O business.

Professional classes of E&O business are seeing rate increases trending in the low to mid-teens, although "some of the better-performing classes are not quite that much," said Paul Romano, Farmington, Conn.-based executive vp at OneBeacon Professional Insurance, a unit of OneBeacon Insurance Group Ltd.

Christopher Keegan, New York-based senior vp, national resources E&O and e-risk for Willis North America Inc., said some large law firms as seeing higher rates, but smaller firms' rates are likely to be flat. "Certainly, the financial troubles of some of the larger law firms that are in the press has heightened the potential for lawsuits," he said.

"We're still seeing new markets coming into the space, which are competing on cyber risks and some of the higher excess risks, which are keeping that part of the marketplace…softer," Mr. Keegan added.

Phil Norton, Chicago-based president of the professional liability division at Arthur J. Gallagher & Co., said certain business is more difficult to place.

"I've experienced four deals that I've brought to the market the last few months where capacity has gotten restrictive, and either a carrier has left that little market segment" or insurers may be offering, for example, only $3 million in capacity, down from the $5 million they had offered previously, he said.

In addition, "We're seeing a lot of extra processing on the E&O with insurers asking for conference calls, where in the past we just got a quote," he said. "So it's more work and much more client intervention" that is required, particularly in segments that have lost capacity.

Insurers also may be cautious in cases where E&O coverage is combined with privacy and network security coverage, Mr. Estey said.

"We hear from the underwriters that with all the high-profile data breaches over the last six to 12 months, that is definitely a factor in their rating," said Mr. Codding.

Bill Beck, Kansas City, Mo.-based senior vp, insurance and claims counsel for Lockton Cos. L.L.C., said, however, "Notwithstanding the fact we see some hardening on the E&O front, underwriters are not pulling back, by and large, on terms and conditions.

"We're still able to obtain expansions to coverage where it makes sense to expand, and we see a fair amount of innovation coming from underwriters," Mr. Beck said.

Meanwhile, Mr. Codding said that while half a dozen insurers may regularly be willing to quote on the primary large-account business, there are another 25 to 30 that are willing to quote the excess layers. "Certainly as you go up the tower, you would expect the lower likelihood of claims."

Catherine Mulligan, New York-based senior vp-specialty E&O for Zurich North America, said, "I still see the excess market being very soft, particularly on first excess layers, which have been continuing to be priced quite aggressively."

Workers comp rates, retentions climb

Rising medical costs, insurer profitability affect overall pricing

By ROBERTO CENICEROS

Employers renewing their workers compensation policies likely will pay more for the coverage as claims costs rise and insurers' combined ratios deteriorate, experts say.

Purchasers of primary and excess workers comp insurance are seeing price increases, mostly in the single-digit range, brokers and insurers say, but insurers are fighting to hold on to favored accounts.

There also have been some increases in employer retention levels as insurers tighten their underwriting standards in an attempt to improve the line's profitability, they say.

"What we are seeing happening this year is that there is a growing recognition that changes need to be made in terms of workers compensation profitability," said Curt LeBeau, vp of insurance operations in Milwaukee for United Heartland, a unit of Accident Fund Holdings Inc. "And I think most carriers are taking some type of action to try to improve their results in the workers comp line."

Brokers also say underwriting standards are tightening.

"They are actually underwriting and looking at losses," said Bob Jacobsen, area vp for brokerage Arthur J Gallagher & Co. in Chicago. "The discipline is certainly back in the marketplace and, unfortunately for buyers, that means they are all going to pay more, at least in the guaranteed-cost market."

MIDYEAR MARKET REPORT
WORKERS COMP

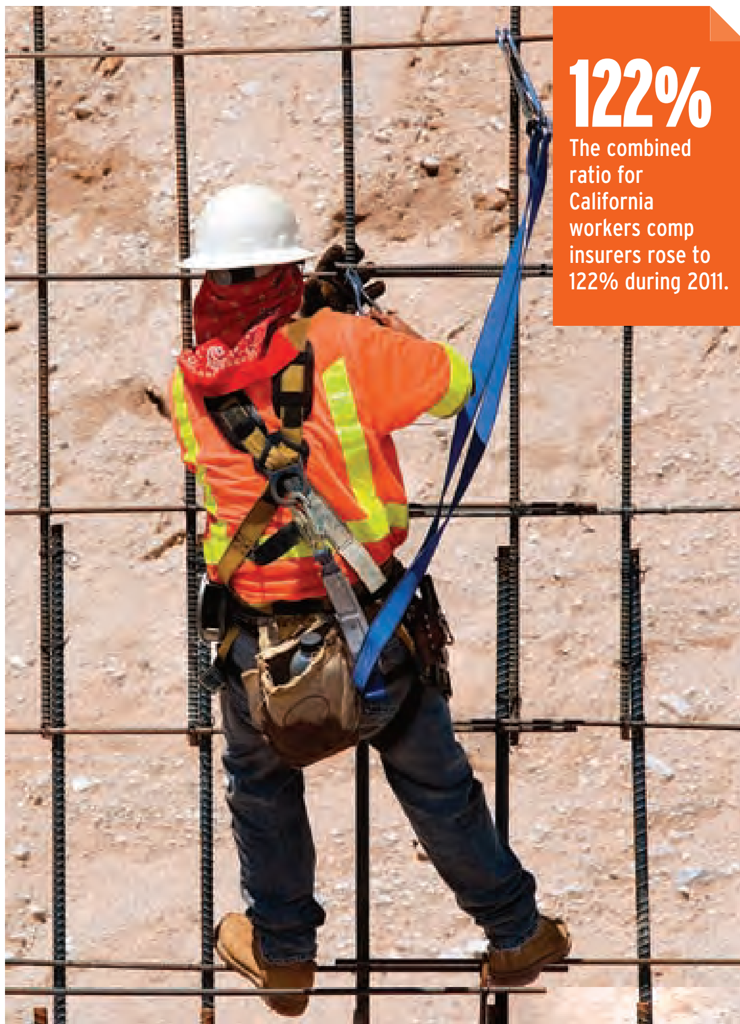
In general, the "cream of the crop" among guarantee-cost accounts are experiencing price increases ranging from about 5% to 7%, with some 10% increases, particularly in the Midwest, Mr. Jacobsen said. Similar accounts with loss-sensitive programs may see their pricing stay flat, "but those are harder to come by," he added.

A year ago, the nation's largest comp insurers held firm on pricing while regional underwriters still offered deals, sources said.

But now, "the regional insurers are actually being more firm" because they often don't have other lines to help drive their overall premium volume, Mr. Jacobsen said. "All the carriers are on the same page."

Overall, average price increases are in the mid-single-digit range, with guaranteed-cost programs seeing the greatest increases, said Jonathan Zaffino, managing director/U.S. casualty leader for Marsh Inc. in New York.

Buyers with less favorable loss experiences are getting additional underwriter scrutiny and higher prices, he said. While the market is transitioning, there are still deals to be had as insurer competition has not disappeared, Mr. Zaffino said.



122% The combined ratio for California workers comp insurers rose to 122% during 2011.

Because of its very favorable loss experience, four insurers including the incumbent were "deeply interested" in his workers comp program when he prepared for a June 1 renewal, said Dave Dolnick, risk manager for The Brady Cos. in San Diego.

He ended up with a price reduction provided by the incumbent, which Mr. Dolnick declined to name.

Other construction companies he has contacted recently have seen renewals range from flat to 3% to 7% higher, Mr. Dolnick said.

The excess workers comp market also is firming, but it is not yet a "hard market," said Gene Maier, senior vp of workers comp underwriting for St. Louis-based Safety National Casualty Corp.

"We are seeing increases in rates and self-insured retentions, especially where an account has an unfavorable loss experience," Mr. Maier said. "We are underwriting on an account-by-account basis and taking the necessary action based on the specific experience of that account."

In some cases, insurers are pushing for higher retentions; in other situations, buyers are opting for higher retentions, sources said.

Overall, discussions with buyers about increasing their retention levels, shifting to loss-sensitive programs or moving to an alternative program, such as a captive arrangement, are on the increase, they added.

"I would not say that we have seen a lot of shifting to that yet, but we have seen some increased consideration of (loss-sensitive) plans," Mr. LeBeau said. "There is still anxiety on the part of customers to getting into a program where your costs can vary."

While rates can vary depending on the account, Mr. LeBeau said he is seeing price increases ranging from about 2% to 5%.

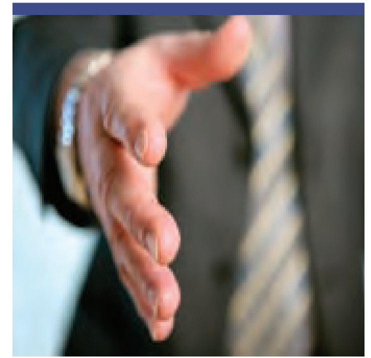
A range of issues are driving insurers to increase their pricing, sources said. Those include rising medical expenses, recession-related claim cost increases driven by an inability to return injured workers back to work and lackluster premium volume growth.

Last month, Fitch Ratings Ltd. reported that the workers comp line posted a 117% combined ratio nationwide for 2011, its worst result in 10 years and worse than the combined ratio for other lines.

Recent rate increases are an encouraging sign that the market has reached a cyclical bottom, but Fitch said it expects rising medical severity will continue to hit workers comp costs and the line's pricing will need further improvement.

"Fitch estimates that it will be difficult for the workers compensation market to have a combined ratio of 110% or better in 2012 or 2013 without significantly more price improvement," the rating organization said in a statement.

Meanwhile, the combined ratio for California workers comp insurers rose to 122% during 2011, up from 117% in 2010, the Workers' Compensation Insurance Rating Bureau of California reported last week.



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BLOOMBERG

A Honda Motor Co. vehicle was crushed after floods inundated Thailand industrial parks in 2011 causing water damage to vehicles and other products. The rise in reinsurance rates that followed last year's catastrophes moderated during 2012 midyear renewals.

Reinsurers recover from 2011 cats

Light losses, high capacity limit price hikes in 2012

By BILL KENEALY

Reinsurers reacted to huge catastrophe losses last year by increasing rates for cedents, but an influx of capacity and light disaster losses this year have limited that trend.

John DeMartini, New York-based leader of the catastrophe risk management practice at Towers Watson & Co., said the market has largely recovered from the spate of catastrophe-derived claims that marked 2011.

"The loss experience has been good thus far" this year, Mr. DeMartini said. "We are seeing a fairly level market in terms of pricing and capacity. Reinsurers are looking for mid-single-digit increases, and buyers are in negotiation mode and trying to hold that to under the 5% mark."

MIDYEAR MARKET REPORT
REINSURANCE

James Vickers, London-based Chairman of Willis Re International, noted that reinsurance rate increases are not universal.

"Where there are rate increases, they are all internally sensible and justified," Mr. Vickers said. "Even in Florida, the peak catastrophe zone area, we've even seen some risk-adjusted rate reductions."

David Flandro, New York-based global head of business intelligence for Guy Carpenter & Co. L.L.C., said 2011 was the first year since 1980 that most catastrophe losses were outside the United States.

"Reinsurance pricing depends to some extent on loss experience, and different geographies had widely varying loss experiences in 2011," he said. "If you look at the renewals on April 1 and June 1, you see those loss experiences filtering through."

Reinsurers' ability to pass higher rates on to the U.S. insurance market is indeed limited, said Bryon Ehrhart, Chicago-based chairman of Aon Benfield Analytics and Aon Benfield Securities.

"Reinsurers figured out that U.S. insurers pay the highest reinsurance margins of anyone in the world," Mr. Ehrhart said. "It didn't make sense for them to make even greater margins just because of international losses."

Another mitigating factor has been an influx of capital into the market.

"We did see some international reinsurers come into the reinsurance market when companies...pulled back," Mr. DeMartini said. "We even saw some Asian reinsurers come into the market. We also saw some domestic reinsurers who haven't traditionally written cat take advantage of the rising rates."

While the capital infusion was substantial, it was relatively small compared with the year following Hurricane Katrina, Mr. Ehrhart noted.

"Following large losses in the past, you've seen lots of capital flow," he said. "In 2006, you saw $35 billion in capital flow into the industry to support more catastrophe capacity that was needed. The largest ceded loss year was 2011, and the amount of capacity that we counted coming into the industry was $3 billion to $4 billion."

Mr. Vickers said that much of the new capital entering the market this year came in through shorter-term alternative methods such as catastrophe bonds or sidecars.

"There are always moments when new capital flows into the market," Mr. Vickers said. "What's interesting this time is that this new capital doesn't seem to want to get involved in the traditional reinsurance company model of backing and operating an insurance company for the medium to long term."

Thus, the geographic peculiarities of the 2011 losses paired with new capital in the market mean the hard market expected by some has not come to pass. "The market is stable and ordinary, but it is most definitely not a hard market," Mr. Vickers said. "The industry absorbed $100 billion in losses in 2011, and it is still business as usual. Buyers that are able to articulate what their portfolios look like are in pretty reasonable shape."

Nonetheless, Mr. DeMartini said reinsurance buyers need to be mindful of how reinsurers' methodologies, approaches and risk appetites have evolved in the past year.

"You can't assume that all reinsurers are modeling risk the same way and have the same appetite for the types of exposures that you have," he said. "The capacity is there, but it's not a situation where everybody is writing everything."

Mr. Flandro said he, too, expects greater caution on the part of reinsurers, especially in locations where risks may not be as well understood.

"Correlation and causation are not the same thing, but we do find it interesting that a lot of unmodeled events happened in developing markets such as Thailand and Chile," he said.

Mr. Vickers said he expects a tighter focus on the risks that supply chains present to business interruption underwriters.

"Of all the losses that happened last year, the one that will have the longest-term impact on the way people underwrite is the flood losses from Thailand," Mr. Vickers said. "What these losses are doing is forcing people to concentrate back on the original risk."

'You can't assume that all reinsurers are modeling risk the same way and have the same appetite for the types of exposures that you have.'

John DeMartini, Towers Watson & Co.

Cost of risk edges up in past year

By RODD ZOLKOS

Driven primarily by increased property insurance costs, the total cost of risk increased 1.7% during the past year, according to the 2012 RIMS Benchmark Survey released last week.

The survey by the New York-based Risk & Insurance Management Society Inc. shows the total cost of risk for participating companies increased to $10.19 per $1,000 in revenue this year from $10.02 per $1,000 in revenue last year.

The contribution of property insurance premiums to the total cost of risk increased nearly 9%, according to the survey, rising to $2.92 per $1,000 in revenue this year from $2.73 per $1,000 in revenue last year.

"The cost of risk did increase a bit, but really not very much," said Dave Bradford, president of Advisen Ltd.'s research and editorial division and editor-in-chief of the survey. "The biggest thing pushing up the cost of risk was the increase in property insurance costs, and that was almost guaranteed as a result of the natural catastrophe activity in 2011."

1.7%

The total cost of risk increased 1.7% during the past year, according to the 2012 RIMS Benchmark Survey.

"We did see a little bit of an increase in administrative costs, the cost of operating risk management departments," he said.

Advisen produces the annual survey.

About half of those surveyed said they use total cost of risk as a metric in their day-to-day risk management operations, Mr. Bradford said. Those who don't use the measure said they lack the necessary internal resources.

Among topical issues examined in this year's survey are risk managers' concerns about the potential risks social media might pose to their organizations.

"There emerged a fairly significant concern from a lot of risk managers, and a lot of that is around reputation risk," Mr. Bradford said.

Asked to assess reputational risks posed by social media on a one to five scale, with five being the most severe, the average response was 3.34, he said.

This year's survey includes data from more than 1,000 companies, according to RIMS. Survey participants receive the book for free; others can purchase it at *www.RIMS.org/book*.

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Products&Services

Hanover launches cover for craft breweries

WORCESTER, Mass.—The Hanover Insurance Group Inc. has launched specialty coverage for the craft brewery industry.

Hanover Craft Brewers Advantage is tailored to meet the needs of small and midsize brewers, contract brewers, microbreweries and brew pubs, the insurer said in a statement.

The coverage, with limits generally up to $500,000, includes protection against spoilage, contamination and changes in temperature. Hanover also offers property and transit endorsements. Liquor liability limits are offered up to $2 million.

The service is available through Hanover's middle-market advantage portfolio. For more information, contact James Lassen, director, middle-market segments, at 508-855-2958 or *jlassen@hanover.com*.

Chubb, FreightWatch offer cargo theft services

WARREN, N.J.—Chubb Corp. has partnered with FreightWatch International (USA) Inc. to offer cargo theft prevention services to the insurer's clients, Chubb said in a statement.

FreightWatch, a logistics security service, offers tracking services to help companies monitor their cargo and supply chains in real time. If a theft occurs at any time during a transport, FreightWatch alerts law enforcement agencies.

Chubb is offering insurance customers a 10% discount on such services. When cargo is stolen while being monitored, the insurer also will waive up to $10,000 in insurance deductibles if it is not recovered within 30 days.

Cost of the service varies based on clients' needs.

For information, contact Drew A. Feldman, vp and worldwide ocean marine manager, at 908-572-5307 or *dfeldman@chubb.com*.

ACE adds AD&D cover for manufacturers

PHILADELPHIA—ACE USA Inc. has added accidental death and dismemberment coverage to its manufacturing industry insurance.

The AD&D coverage is part of ACE PaC, a general liability and pollution policy form available to small and midsize companies, including those involved in chemical manufacturing, mixing and the distribution process, the ACE Group Holdings Inc. division said in a statement.

"We're pleased to offer accident insurance and risk management solutions to address serious work-related injuries that can have a devastating impact on employees and their families," Joe Vasquez, division president of ACE USA accident and health, said in the statement.

In states where AD&D coverage is permitted, "these enhancements help address the exposures faced by the manufacturing industry," he said. "They also address the financial security and resources necessary for dealing with an accidental loss."

For more information, contact Brian Farr, vp at ACE Casualty Risk, at *brian.farr@acegroup.com* or 215-640-1006.

Stuckey & Co. expands HarborGuard coverage

ST. LOUIS—Stuckey & Co. has expanded its HarborGuard coverage.

The extension includes broader eligibility rules for marinas, boat dealers and boat repair facilities, the insurer said in a statement.

Property coverage, excluding wind, now is available for first-tier coastal counties, including those in Florida. The program includes wind coverage if the location is more than 50 miles from the Gulf of Mexico or coast, but this service excludes Florida.

Property rates will be lowered for certain properties, typically land-based locations, said Jerry Lovine, general manager for Stuckey & Co.

Coverage is available up to $1 million per occurrence and $2 million in aggregate for general liability, marina operators legal liability, watercraft liability for rental boats and work boats, nonowned auto liability and liquor liability. The minimum annual premiums for the $1 million per-occurrence and $2 million aggregate limits are $2,500.

For more information, contact Mr. Lovine at 800-828-3452, ext. 27, or *jerry@stuckey.com*.

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LEGAL NOTICE

IN THE MATTER OF THE LIQUIDATION OF
COLONIAL COOPERATIVE INSURANCE COMPANY
Supreme Court County of New York
Index No.: 400236/10

NOTICE

Pursuant to an order of the Supreme Court of the State of New York, County of New York ("Court"), entered October 4, 2010 ("Liquidation Order"), the then-Superintendent of Insurance of the State of New York and his successors in office were appointed as liquidator ("Liquidator") of Colonial Cooperative Insurance Company ("CCIC") and, as such, has been directed to take possession of CCIC's property, liquidate its business and affairs, and dissolve its corporate charter pursuant to Article 74 of the New York Insurance Law ("Insurance Law"). The Superintendent of Financial Services of the State of New York has now succeeded the Superintendent of Insurance as Liquidator of CCIC. The Liquidator has, pursuant to Insurance Law Article 74, appointed Jonathan L. Bing, Special Deputy Superintendent ("Special Deputy"), as his agent to liquidate the business of CCIC. The Special Deputy carries out his duties through the New York Liquidation Bureau, 110 William Street, New York, New York 10038. The Liquidator has submitted to the Court a verified petition ("Verified Petition") seeking an order ("Order"): (i) approving the Liquidator's report ("Report") on the status of CCIC's liquidation proceeding ("Liquidation Proceeding"); (ii) establishing December 31, 2012 as the bar date ("Bar Date") for presentment of all claims other than claims for administrative costs and expenses; (iii) authorizing and directing the Liquidator to consider only those claims for actual losses arising under policies issued by CCIC that are presented to the Liquidator on or before the Bar Date; (iv) barring and discharging all claims for losses reported after the Bar Date; (v) authorizing the continued payment of administrative costs and expenses; (vi) authorizing the Liquidator to distribute CCIC's assets, consistent with this Court's orders and the priorities of Insurance Law Section 7434, to those creditors of CCIC with allowed claims, to the extent that, in the Liquidator's discretion, sufficient funds are available; (vii) extending judicial immunity to the Superintendent in his capacity as Liquidator of CCIC, his successors in office and their agents and employees, for any cause of action of any nature against them, individually or jointly, for any act or omission when acting in good faith, in accordance with the orders of this Court, or in the performance of their duties pursuant to Insurance Law Article 74; and (viii) providing for such other and further relief as this Court may deem just and proper.

A hearing is scheduled on the Verified Petition on the 13 day of September, 2012, at 9:30 a.m., before the Honorable Judith J. Gische, JSC, at the Courthouse, IAS Part 10, Courtroom 232, 60 Centre Street, New York, New York 10007. If you wish to object to the Verified Petition, you must serve a written statement setting forth your objections and all supporting documentation upon the Liquidator and Clerk of the Court, at least seven business days prior to the hearing. Service on the Liquidator shall be made by first class mail at the following address:

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

Should the Court issue the Order, all claims, with all supporting documentation, must be presented to the Liquidator on or before the Bar Date, which is the last date set by the Court to present claims in this Liquidation Proceeding.

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

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

Dated: June 8, 2012

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

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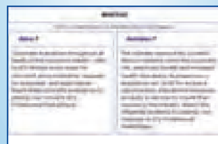

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UP CLOSE
COMINGS & GOINGS

LEISHA **CADWALLADER**

NEW JOB TITLE: Dallas-based vp for employee benefits for Denver-based insurance broker IMA Inc.

PREVIOUS POSITION: Dallas-based vp for employee benefits for insurance broker McGriff, Seibels & Williams Inc.

LOOKING FORWARD TO: First and foremost, I want to make a difference in this community.

GOALS FOR NEW POSITION: One of the goals is to bend the trend of double-digit increases for our clients.

CHALLENGES FACING INDUSTRY: The biggest challenge is health care reform and specifically whether employees are going to have to pay for health care or (if employers will have to) pay a penalty for their employees.

INDUSTRY OUTLOOK: Employees and employers will continue to purchase health insurance, as it is seen as an important asset in protecting their employees and their families.

BEST THING ABOUT A BAD ECONOMY: I would say that for entrepreneurs and different companies, opportunity comes with change.

FIRST EXPERIENCE IN JOB MARKET: Vp of employee benefits for Willis International.

COLLEGE MAJOR: Finance.

ADVICE: My overall advice is to seek to help others first.

OUTSIDE THE INDUSTRY, A DREAM JOB: Working in the fashion industry.

CAN'T-MISS TELEVISION SHOW: "Shark Tank," "Secret Millionaire."

FAVORITE MEAL: Dessert first, and then steak and a baked potato.

EMAIL OR PHONE, AND WHY: I prefer phone. I can get a lot accomplished over the phone.

Comings&Goings

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

TO SUBMIT ITEMS

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

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POSTING THIS WEEK

INSURERS
- ACE Westchester
- Aspen Insurance Holdings Ltd.

BROKERS
- BMS Group Ltd.
- Rutherfoord
- Poms & Associates Insurance Brokers Inc.
- Starkweather & Shepley Insurance Brokerage Inc.

OTHER PROVIDERS
- Hogan Lovells International L.L.P.
- EK Health Services Inc.
- Buck Consultants L.L.C.

Some 13,500 attended the Society for Human Resource Management's annual conference June 23-27 in Atlanta.

SHRM: Harassment claims growing in frequency, severity and among men

CONTINUED FROM PAGE 4

service, skin tone and religious customs.

"For years, I had been doing the standard gamut of race-related, gender-related claims, but every so often I would get things that were a little bit unusual," said Matthew Effland, a Los Angeles-based shareholder at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. "After doing a little digging, I was surprised to find out just how much things had changed."

For sexual harassment claims by male employees, typically it is a female co-worker or superior who is alleged to have committed the transgression, Mr. Effland said.

"Legally speaking, you couldn't come up with a situation that's easier for a company to deal with," he said. However, employers often fail to appreciate the seriousness of male victims' harassment claims, he added, mistakenly assuming if the allegedly inappropriate behavior "isn't welcome on some level today, it was probably welcome at some point in the past."

"In the courtroom, it's not going to matter whether it was a man harassing a woman or vice versa," Mr. Effland said. "If a jury believes that someone was being treated unfairly, they're going to hit the company and they're going to hit them hard."

Same-sex sexual harassment and discrimination claims also are more common, Mr. Effland said, even though federal laws do not yet prohibit certain types of harassment typically alleged in these cases. For example, an employee who claims he or she is being ostracized or ridiculed by co-workers specifically because he or she is gay would not be protected under federal law.

However, Mr. Effland said, a growing number of plaintiffs in same-sex discrimination suits have been able to demonstrate in court that the ill treatment they received was based, at least in part, on their gender, and therefore was illegal under the federal protective statutes.

"The courts have told us that as long as the harassment is on the basis of someone's gender, the gender of the aggressor doesn't matter," Mr. Effland said. "That's different than claiming that someone's harassing behavior is based on an alternative lifestyle. Don't confuse the two."

Another troubling tendency among employers, Mr. Effland said, is the assumption that behavior alleged in a harassment or discrimination claim is attributable to natural interactions among same-sex workforces.

"The common mistake is treating same-sex harassment as horseplay," Mr. Effland said. "I get this all the time, especially my clients in the manufacturing business, the trucking business and other industries typically dominated by men. Employers need to be very careful, because as we've seen, the courts are becoming increasingly more likely to treat it as a crime."

While recent surveys have revealed several unsettling trends for employers and their employees regarding bullying in the workplace, state and federal lawmakers have yet to reach a consensus on how best to address bullying as a matter of employment law.

"We're really talking about equal opportunity harassment," said Catherine Mattice, president of San Diego-based Civility Partners L.L.C., a human resources consultancy. "Bullying and harassment might be the same thing in theory, but the law doesn't address everybody. If the person doesn't seem to be motivated by one of those protected classes, then their actions wouldn't be covered under the law."

Although bullying behavior isn't an enforceable action under state or federal employment statutes, employers and individuals ultimately can be held liable for actions related to workplace bullying complaints, Ms. Mattice said.

Under the right circumstances, a bully's behavior could meet definitions of assault or intentional infliction of emotional distress. Alternatively, if a bully's behavior routinely compromises an employee's safety on the job and the company does nothing to stop it, the victimized employee might be able to seek relief under state and federal occupational safety and health laws.

"As employers, if you only focus on the legally protected categories, that's a mistake," Mr. Effland said. "What I see over and over are policies that outline a zero-tolerance stance on discrimination and harassment based on gender, race, nationality, age and all of the other protected categories under Title VII. But if you think about it, what that policy is really saying is that all other forms of harassment are just fine."

SHRM CONFERENCE DRAWS 13,500

ATLANTA—Approximately 13,500 people attended the Society for Human Resource Management's 2012 Conference and Exposition, which was held at the Georgia World Congress Center in Atlanta.

There also were some 700 exhibitors at the June 23-27 conference, at which speakers and panelists talked about human resources-related issues such as benefits management and compliance, employment practices liability trends and talent retention strategies.

The next annual conference will be held June 16-19, 2013, in Chicago.

For more information, go to *www.shrm.org/conferences*.

—By Matt Dunning

Survey finds benefits changing

There have been significant changes in employee benefit plan offerings and structures since 2008, according to the Society for Human Resource Management's 2012 employee benefits survey, The Employee Benefits Landscape in a Recovering Economy. The survey, which included responses from 550 SHRM member employers, found that:

EMPLOYEE HEALTH CARE OFFERINGS HAVE GENERALLY DECLINED

- Long-term care insurance: 28% (2012), 45% (2008)
- Retiree health care: 24% (2012); 32% (2008)
- Wholesale generic prescription programs for injectable drugs: 17% (2012); 24% (2008)
- HMO plan: 32% (2012); 42% (2008)
- Health savings account: 43% (2012); 29% (2008)

MORE EMPLOYERS OFFER DEFINED CONTRIBUTION PLANS, BUT MATCHES FALL

- Defined contribution retirement savings plan: 92% (2012); 84% (2008)
- Employer match for defined contribution plan: 68% (2012); 75% (2008)
- Roth 401(k) savings plan: 34% (2012); 21% (2008)
- Defined benefits pension plan (open): 21% (2012); 33% (2208)

EMPLOYERS OFFERING MORE PROGRAMS FOR WELLNESS

- Health and lifestyle coaching: 45% (2012); 33% (2008)
- Rewards/bonuses for completing wellness programs: 35% (2012); 23% (2008)
- Premium discount for completing HRA: 21% (2012); 11% (2008)
- Premium discount for tobacco abstention: 20% (2012); 8% (2008)

Court upholds individual mandate

Commerce Clause deemed irrelevant; taxing authority key

By JERRY GEISEL

WASHINGTON—The core of the Republican state attorneys' general argument on why the individual mandate was unconstitutional was that Congress lacked the legal authority under the U.S. Constitution's Commerce Clause to require the purchase of health insurance.

In upholding the mandate, Supreme Court Chief Justice John Roberts said the attorneys' general argument was not wrong, but irrelevant.

"The individual mandate cannot be upheld as an exercise of Congress' power under the Commerce Clause," Justice Roberts wrote for the majority in the 5-4 decision on the Patient Protection and Affordable Care Act. "In this case, however, it is reasonable to construe what Congress has done is increasing taxes on those who have a certain amount of income, but choose to go without health insurance. Such legislation is within Congress' power to tax."

"The federal government does not have the power to order people to buy health insurance. The federal government does have the power to impose a tax on those without health insurance," Justice Roberts concluded.

The chief justice's comments on the individual mandate were among dozens made by the justices in analyzing the issues before them.

For example, Chief Justice Roberts explained why lawmakers thought an individual mandate was essential to avoid adverse selection. Without a mandate, individuals would wait until they were sick to buy health insurance, which would drive up premiums for everyone.

"The individual mandate was Congress' solution to these problems," Justice Roberts said.

Supreme Court Chief Justice John Roberts, top left, voted with Associate Justices Breyer, Ginsburg, Kagan and Sotomayor in the 5-4 decision. Associate Justices Alito, Kennedy, Scalia and Thomas were in the minority.

> **'In coupling the minimum coverage provision with guaranteed-issue and community rating prescriptions, Congress followed Massachusetts' lead.' While, not everyone may approve of that policy decision, 'It was Congress' prerogative to make it.'**
>
> Associate Justice Ruth Bader Ginsburg, commenting on health care's role

Other justices discussed the crucial role of health insurance.

"Inescapably, we are all at peril of needing medical care without a moment's notice," Associate Justice Ruth Bader Ginsburg wrote.

In coupling an individual mandate with a requirement that health insurers provide coverage to all buyers—regardless of their health status—federal lawmakers looked to Massachusetts, the state that did just that in its 2006 health care reform law, Justice Ginsburg wrote.

"In coupling the minimum coverage provision with guaranteed-issue and community rating prescriptions, Congress followed Massachusetts' lead," Justice Ginsburg wrote. While, not everyone may approve of that policy decision, "It was Congress' prerogative to make it."

But other justices, in their dissent, described the individual mandate as a grave overreach of congressional authority.

Referring to healthy individuals who choose not to purchase coverage, "If Congress can reach out and command even those furthest removed from the interstate market to participate in the market, then the Commerce Clause becomes a font of unlimited power," Associate Justices Antonin Scalia, Anthony Kennedy, Clarence Thomas and Samuel Alito wrote in their joint dissent.

The case before the high court was "easy and straightforward" in another way, the dissenters wrote.

"What is absolutely clear, affirmed by the text of the 1789 Constitution, by the 10th Amendment ratified in 1791, and by the innumerable cases of ours in the 200 years since, is that there are structural limits upon federal power—upon what it can prescribe with respect to private conduct," the dissenters wrote.

While the Obama administration justified the mandate as a "straightforward exercise of government power" to regulate under the Commerce Clause because eventually nearly all individuals will purchase goods and services covered by insurance, that "definition of market participants is unprecedented, and were it to be a premise for the exercise of national power, it would have no principled limits," the dissenters wrote.

LOOKING AHEAD

With the Supreme Court upholding the health care reform law, employers now can focus on provisions that will take effect through 2018, including:

2013

Employee flexible spending account contributions limited to $2,500. Currently, there is no cap.

Tax deduction for employer-paid prescription drug costs for Medicare-eligible retirees reduced by federal subsidy employers have received under a 2003 law.

2014

Penalty of $2,000 per full-time employee imposed on employers not offering health care coverage.

Penalty on employers not offering "affordable" coverage, if single-coverage premium exceeds 9.5% of employee income. Penalty is $3,000 for each affected employee who receives a subsidy to purchase coverage through a state exchange, or $2,000 for each full-time employee, whichever is less.

2017

States authorized to open insurance exchanges to all employers.

2018

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Health care: High court upholds health care law

CONTINUED FROM PAGE 1

Patient Protection and Affordable Care Act of 2010.

The only PPACA provision rejected by the court was one in which states would have lost federal funding for their Medicaid programs if they did not expand those programs to cover more lower-income individuals.

The court ruling eliminates the huge uncertainties employers would have faced had the justices invalidated the entire law.

For example, one uncertainty was whether employers and other early retiree health care plan sponsors would have to return $5 billion they received in federal claims reimbursements under a program created by the law.

A second uncertainty involved a provision in the law that, generally effective Jan. 1, 2011, required employers to extend health insurance coverage to employees' adult children up to age 26. Along with that new requirement, Congress also changed tax law so the coverage would be tax-free up to age 26. Generally, under prior law, the tax-free age limit was 24.

Had the law been repealed, employees could have been liable for back taxes for children who qualified for the expanded coverage.

While those and other uncertainties have been put to rest by the Supreme Court decision, plenty of others remain.

"The uncertainties are by no

Continued on next page

CONTINUED FROM PREVIOUS PAGE

means over," said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

"On the one hand, at the macro level, the case has been settled. But there are still a lot of details to be settled before health care reform can be fully implemented," said Mike Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York.

On the regulatory side, federal officials have yet to issue final rules relating to several of the law's core provisions affecting employers.

For example, the law imposes a $2,000-per-employee penalty on employers that do not offer coverage to full-time employees.

But regulators have yet to make clear if the full penalty would apply if, for example, an employer made an inadvertent error or if just one full-time employee was not offered coverage.

Similarly, the penalty applies only for full-time employees—those working an average of 30 hours a week. No final guidance has been issued, though, on how the penalty would apply for employees whose hours significantly vary week by week or month by month.

In sum, "There is a great need for clarity on various aspects of the law," said Jane Jensen, a senior consulting actuary with Towers Watson & Co. in Denver.

"Many of the biggest regulatory questions remain unanswered," said Paul Dennett, senior vp-health care reform with the American Benefits Council in Washington.

Political uncertainties loom as well.

"There still will be efforts to repeal" the law, said Helen Darling, president of the National Business Group on Health in Washington.

The decision has not dampened Republican opposition to the law. Within hours of the Supreme Court ruling, Speaker of the House John Boehner, R-Ohio, renewed his call for health care reform law repeal.

"Today's ruling underscores the urgency of repealing this harmful law in its entirety," he said in a statement.

Indeed, later this month, the House of Representatives is expected to vote on a measure to repeal the law.

While a repeal bill has no chance of winning Senate approval, potentially that could change after the November elections if Republicans, who now hold 47 seats, gain control of the Senate and Mitt Romney, a supporter of repeal, defeats President Barack Obama. The only other way Republicans could succeed if President Obama is re-elected would be to have veto-proof majorities in both houses.

"The decision to uphold the entire ACA shifts the battlefield from the courts to Congress. The success of ACA opponents will depend largely on the results of the November election cycle," said Andy Anderson, a partner with Morgan, Lewis & Bockius L.L.P. in Chicago.

"There are two major uncertainties that lay ahead: who will be president and who will control Congress," added Paul Hackleman, health care and public employer analyst with the International Foundation of Employee Benefit Plans in Burlingame, Calif.

In fact, until the outcomes of the November elections are clear, making accurate predictions about the future of the health care reform law are difficult, if not impossible, some say.

"If you tell me who will be president and which party will control Congress, we can talk about what will be likely to happen," said J.D. Piro, a senior vp with Aon Hewitt in Norwalk, Conn.

"Other chapters in the political front have yet to be written," said Dave Guilmette, president of national pharmacy and product for Cigna Corp. in Bloomfield, Conn.

AP PHOTO

"Whatever the politics, today's decision was a victory for people all over this country whose lives will be more secure because of this law and the Supreme Court's decision to uphold it," President Obama said last week.

ADVERTISER INDEX

Issue of July 2

ADVERTISER	PAGE #
Aon Corporation	2
Arch Insurance Group	5
Business Insurance	11, 13, 15, 19, 21, 23
Florida State University	16
Liberty Mutual	24
Swiss Re	7

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Class: Bans on class actions deter suits

CONTINUED FROM PAGE 1

resolved informally with Microsoft can bring claims in small claims court or arbitration, but not as part of a class action.

"Certainly, I think there's been a movement for the past decade to put clauses in contracts to prohibit class treatment," said Edward F. Sherman, a professor at the Tulane University Law School in New Orleans. "The *Concepcion* case has really given more muscle to that."

"I think we'll see that being done in many, many contracts, certainly consumer contracts like cellphone contracts, services of various kinds," Mr. Sherman said. "Whether we'll see it in commercial contracts, contracts between two companies, is a little more doubtful."

"I think it was fairly common before and it's becoming more common now," said Brian T. Fitzpatrick, associate professor of law at the Vanderbilt Law School in Nashville, Tenn. "I don't know why any company wouldn't put class action waivers into arbitration agreements, because I don't know why any company would want to face a class action lawsuit."

In the wake of the Supreme Court's ruling in *Concepcion*, "For state law claims, these things are more or less bulletproof," Mr. Fitzpatrick said. While some questions remain about the ruling's impact on federal law claims, the vast majority of breach of contract, consumer fraud, breach of warranty and other product liability claims are going to be state law claims, he said.

Philip G. Kircher, a member of Cozen O'Connor in Philadelphia, said he expects to see class action waivers becoming more commonplace, "particularly in situations like Microsoft where they have millions of customers."

"There are obviously distinct advantages to a company like Microsoft" or other companies mass producing products priced in the hundreds of dollars, Mr. Kircher said. "In a situation where you mass produce a product that costs that much, it's probably a good idea to stick into the end-user licensing agreement a waiver of class actions," he said.

"A consumer is much less likely to sue over $600," Mr. Kircher said. "It's unlikely you're going to have many people bringing their own actions, because it's just too expensive."

"The problem is for consumers, and the good thing for companies is that when you get rid of class actions, companies are able to take advantage of consumers in small increments without ever having to pay it back," Mr. Fitzpatrick said. "That's the concern, that *Concepcion* has really let companies off the hook."

He noted that some believe many consumer fraud claims are frivolous and filed to force companies to settle. "My own personal view is there are better ways to deal with frivolous lawsuits than to just get rid of class action lawsuits," Mr. Fitzpatrick said.

But Mr. McGinty suggested that with class action waivers, "The incentive to bring claims when there's often no complaint—it's just a lawyer-driven claim—is gone."

'I don't know why any company wouldn't put class action waivers into arbitration agreements, because I don't know why any company would want to face a class action lawsuit.'

Brian T. Fitzpatrick,
Vanderbilt Law School

Mr. Sherman said that because many companies were concerned that barring class actions would be perceived as denying consumers access to the courts, many emphasize that consumers can go to small claims court or arbitration, with the company often offering to pay the arbitration costs.

"Sometimes they provide even that they'll pay legal fees for the individual to bring a small claims action," he said.

Indeed, in his blog post, Mr. Fielden wrote that when disputes go to arbitration, Microsoft will "promptly reimburse filing fees, and, if we offer less to resolve a dispute informally than an arbitrator ultimately awards, we will pay the greater of the award or $1,000 for most products and services—plus double the customer's reasonable attorney's fees."

Mr. Kircher suggested there are cases in which companies might want to avoid class action waivers, such as manufacturers of items where problems might cause widespread and more costly damages. In those cases, "If people are going to sue, you want them to sue as a class action."

"In the end, it brings the manufacturer total peace" rather than "thousands of actions across the country in 50 different states," he said. "Companies have to think about that."

"If you have a big problem, the ability to resolve that problem through some kind of class settlement obviously has some benefit for companies," Mr. McGinty said. "Those real big problems are rare."

And companies facing such cases have other ways of addressing consumer issues such as product recalls or refunds, Mr. McGinty said. "There are other ways of dealing with real problems that don't require the intervention of the courts or buying off of plaintiffs attorneys," he said.

Comp: Work injuries often unreported

CONTINUED FROM PAGE 3

term 'workers compensation' anywhere on their personnel report."

The study concludes that cost-shifting has resulted in employers paying artificially low workers comp premiums.

Mr. Leigh said he believes that workers comp premiums should be at least twice as high, and said lesser premiums don't give companies an incentive to keep their workers safe.

"Right now, the employers don't see the true cost of the injury," Mr. Leigh said.

John F. Burton Jr., professor emeritus at Rutgers and Cornell universities and a workers comp policy expert, generally agreed with the UC Davis study.

He said states have made it more difficult in the past 20 years for employees to obtain workers comp benefits, which would explain much of the cost-shifting found in the UC Davis report.

Mr. Burton also agreed that workers comp premiums are likely too low, based on occupational injury costs that are covered by other payers. He said shifting more costs to workers comp would offer additional protections for injured employees who otherwise depend on traditional health plans or their own savings to pay for health care.

"There's a lot of employers that don't have health insurance, and the ones that do don't necessarily provide health benefits that are as generous as those under workers compensation, especially among small employers," Mr. Burton said.

However, NCCI's Mr. Shuford contends that the study doesn't quantify costs that are covered by workers comp insurers that aren't job-related. For instance, he notes that insurers sometimes pay for bariatric surgery or smoking-cessation programs that help workers become healthier as they heal from job injuries.

Additionally, Mr. Shuford says the current cost of workers comp premiums already has encouraged employers to develop safer workplaces.

He pointed to data from the U.S. Bureau of Labor Statistics, which shows that 3.5 private-sector workers out of every 100 suffered workplace injuries and illnesses in 2010. That's down from 6.1 workers who suffered injuries or illnesses out of every 100 employees in 2000.

"It's never been safer to be a worker in America, no matter what occupation you're in," Mr. Shuford said.

Robert Hartwig, president of the Insurance Information Institute Inc. in New York, disputed the scope of the UC Davis study. While workers comp pays for indemnity costs, he disagreed with including home productivity or fringe benefits as part of the study's analysis.

'The workers compensation system works pretty well as a form of no-fault recovery for injured workers. But it was never meant to be a form of business interruption insurance, which is what's being proposed here.'

Robert Hartwig, Insurance Information Institute Inc.

"The workers compensation system works pretty well as a form of no-fault recovery for injured workers," Mr. Hartwig said. "But it was never meant to be a form of business interruption insurance, which is what's being proposed here."

Richard Weishaupt, senior attorney for Community Legal Services Inc. in Philadelphia, said he believes cost-shifting may occur because some workers don't understand the workers comp system.

His office provides legal help for Philadelphia's low-income population. Workers who come to the office often seek Social Security or Supplemental Security Income benefits after they were injured on the job, Mr. Weishaupt said.

"Some were miscategorized as independent contractors, and others just never knew that workers comp was an option," he said.

While Mr. Shuford said lack of awareness may prevent some workers from filing claims, he added that most people who suffer severe or debilitating injuries are directed into the system by employers or physicians.

When accounting for fraud and nonwork-related injuries, Mr. Shuford said the workers comp industry may be responsible for covering more than its fair share of claims.

"It's not a reflection of reality," he said of the UC Davis study findings.

Mr. Leigh stands by his research, and says workers would be better served by modifying the workers comp system to cover more injuries and illnesses.

"I'm just a big believer in prevention," he said.

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Penn State: Conviction likely to spawn lawsuits

CONTINUED FROM PAGE 3

of any claimants because it's been established by a court that the perpetrator was in fact guilty, Ms. Hostovich said.

"I think there will be a lot of discussion between the various law firms and counsel for the university and for the insurance company, because it is obviously a good thing to resolve these claims swiftly," she said. "It brings closure for the families, and it also allows Penn State to get through this, regroup and move on. But it's going to be very difficult and challenging."

With an operating budget of $4.5 billion in 2011, Penn State may face unlimited liability in civil litigation because it may not be able to invoke sovereign immunity, which protects state entities and employees from tort claims and imposes limits on liabilities, experts say.

Penn State has a captive insurer, Nittany Insurance Co., which it formed in 1993 in Vermont. Coverage provided by the captive includes general and professional liability, according to Penn State's website. The university said it expects its general liability and directors and officers insurance policies to cover the defense claims brought against the school, its officers, employees and trustees. If funds to pay claims and legal costs are exhausted, other sources of revenue other than alumni donations, student tuition and taxpayer money will be used, according to the university's website.

Nittany writes a relatively small deductible-reimbursement coverage before the commercial D&O policy attaches, a Penn State spokeswoman said in an email.

While Penn State's D&O liability insurers have tentatively agreed to reimburse the university for defense costs related to the Sandusky case, "discussions with our insurer are ongoing, as the claims subject to coverage evolve over time," a Penn State spokesman said.

The university said in its countersuit against PMA that its policies with the insurer are standard form CGL policies using the policy form devised by the Insurance Services Office Inc. Each policy period has an aggregate limit of $3 million and a limit of $2 million per occurrence, according to court documents.

> 'The legal fees in this could be huge, and it could take years.'
>
> John Roskopf, Educational & Institutional Insurance Administrators Inc.

"The university purchases excess liability insurance from various insurers, which have changed over the years," the Penn State spokesman said in an email.

From Penn State's perspective, the coverage litigation may prove to be useful, said Tom Baker, professor of law at the University of Pennsylvania Law School in Philadelphia.

"That actually can give Penn State more freedom in handling the settlements itself because if the insurance company isn't stepping up to the plate, they can't very well say, 'Don't take this settlement,'" Mr. Baker said.

"It's just a question of how big the check it's going to be writing."

Steven B. Davis, partner and chair of the insurance practice group for Stradley Ronon Stevens & Young L.L.P. in Philadelphia, said an insurance coverage dispute sometimes drives an organization's settlement strategy.

"It's often a dicey position for both parties to be in," he said. The insured, in this case Penn State, may want to say things during civil litigation that may negatively impact their coverage. Conversely, it's not usually the insurer's desire to have to say things in the coverage litigation that might impact the underlying civil litigation, Mr. Davis said.

"In a case of this nature, with the reputational risk issues involved, I can certainly agree that an early resolution strategy makes complete sense…especially if there's little likelihood of success with insurance coverage monies," Mr. Davis said.

Penn State's willingness to resolve claims quickly shouldn't be taken at face value, said John Roskopf, Chicago-based vp of risk management for Educational & Institutional Insurance Administrators Inc. in Chicago.

"Their desire to settle these matters does not necessarily equate into a willingness to simply roll over and pay a lot of money," he said, noting that the university most likely will look at each claim individually and assess damages and determine potential actions.

"For them to put a fence around their own liability and try to get this resolved and get releases is the right thing to do in terms of managing their reputation, focusing on the future, and definitely the right thing to do between managing that balance between litigation and settlement costs," Mr. Roskopf said. "The legal fees in this could be huge, and it could take years."

Weather: Fires burning in Colorado

CONTINUED FROM PAGE 4

extent of the damage is, because in all of these areas there are obviously severe restrictions on who can go in and out," said Bill Oklesen, vp and director of property claims at Kansas City, Mo.-based Lockton Cos. L.L.C. "It's going to be very difficult for anyone to determine what the real scope of loss is until these fires are out and we have a chance to get back in there, and that could be weeks away."

Indeed, RMS noted in its report that although weather forecasts indicated favorable conditions for battling the fire, full containment of the blaze could take two or three more weeks.

A second fire, concentrated in the Fort Collins suburb of High Park, had burned some 87,000 acres—nearly 136 square miles—and was 85% contained as of Friday. Firefighters indicated that they expected to have that fire contained over the weekend.

inBrief

CONTINUED FROM PAGE 1

Marsh Inc. The composite index, based on renewal data from 20 major countries in casualty, property and financial and professional insurance lines, showed a 1.4% increase in rates at renewal during the second quarter of this year compared with the same period a year ago.

Comp combined ratio hits 122% in California

The combined ratio for California workers compensation insurers rose to 122% during 2011, up from 117% in 2010, the Workers' Compensation Insurance Rating Bureau of California reported. The San Francisco-based bureau said insurers' earned premiums for 2011 totaled $10.4 billion. But incurred losses and expenses totaled $12.7 billion for the year, or 122% of earned premiums.

Business transaction risks for inexperienced lawyers

Business transactions present greater professional liability risks for attorneys in small and medium-size firms than many other practice areas, especially for attorneys with little experience, according to a study by CNA Financial Corp. Nearly 70% of business transaction claims are instituted against attorneys for whom these claims accounted for 5% or less of their firms' annual revenue, according to Chicago-based CNA's study of 998 closed claims that were filed between 1987 and 2009 against law firms with fewer than 35 attorneys. Business transactions include the negotiation and drafting of sales agreements, agency agreements, entertainment contracts and commercial transactions, according to the study.

P/C insurers' net income up in first quarter: Survey

U.S. property/casualty insurers' net income after taxes rose to $10.14 billion in first-quarter 2012, 29.7% over the year-ago period, according to a survey by Verisk Analytics Inc.'s Insurance Services Office Inc. unit and the Property Casualty Insurers Assn. of America. Net written premiums grew to $112.39 billion in the first quarter, up 3.1% from those of a year earlier. Policyholder surplus grew 3.7% to $570.67 billion from $550.31 billion at the end of 2011.

Texas comp costs drop on reform

Legislative reforms and management of medical care decreased the cost of workers compensation health care in Texas, the Cambridge, Mass.-based Workers Compensation Research Institute said in an analysis. The WCRI said it found that the cost per claim in Texas workers comp medical payments now is lower than the median for 16 states examined in its study, "Monitoring the Impact of Reforms in Texas, CompScope Medical Benchmarks, 12th Edition." Prior to the passage of workers comp reforms in 2001 and 2005, Texas had the highest and fastest-growing medical payment compared with other study states, the WCRI said in a statement.

No health premium help for Ill. state retirees

Tens of thousands of retired Illinois state employees will no longer receive the free or reduced-premium health care benefits they were promised, according to legislation signed by Illinois Gov. Pat Quinn. The new law, aimed at curbing the state's ballooning employee benefits obligations, will require current and future retirees to pay a percentage of their state-sponsored health care premium. Exactly how much retirees pay will be determined by their retirement income and years of service to the state, according to a statement from Gov. Quinn's office.

Acting insurance director named for Arizona

Germaine Marks has been named acting director of the Arizona Department of Insurance, Arizona Gov. Jan Brewer announced. Ms. Marks succeeds Insurance Director Christina Urias, who retired effective Friday. Ms. Marks most recently served as deputy director of the department, a position she assumed in 2003. She also served as Arizona's assistant attorney general.

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End Page

LITTLE LEAGUER SUED OVER WAYWARD THROW

A Manchester Township, N.J., woman who was struck in face by a baseball has filed a lawsuit against the athlete—a Little League catcher.

Elizabeth Lloyd reportedly is seeking more than $150,000 in damages and an unspecified amount for pain and suffering after Matthew Migliaccio, then 11, struck her with a baseball in 2010 as he was helping a pitcher warm up.

"I ran over to see if she was all right," Mr. Migliaccio, now 13, told the Asbury Park Press. "She said she was OK. I was just on with warming the pitcher up, and I was not horsing around."

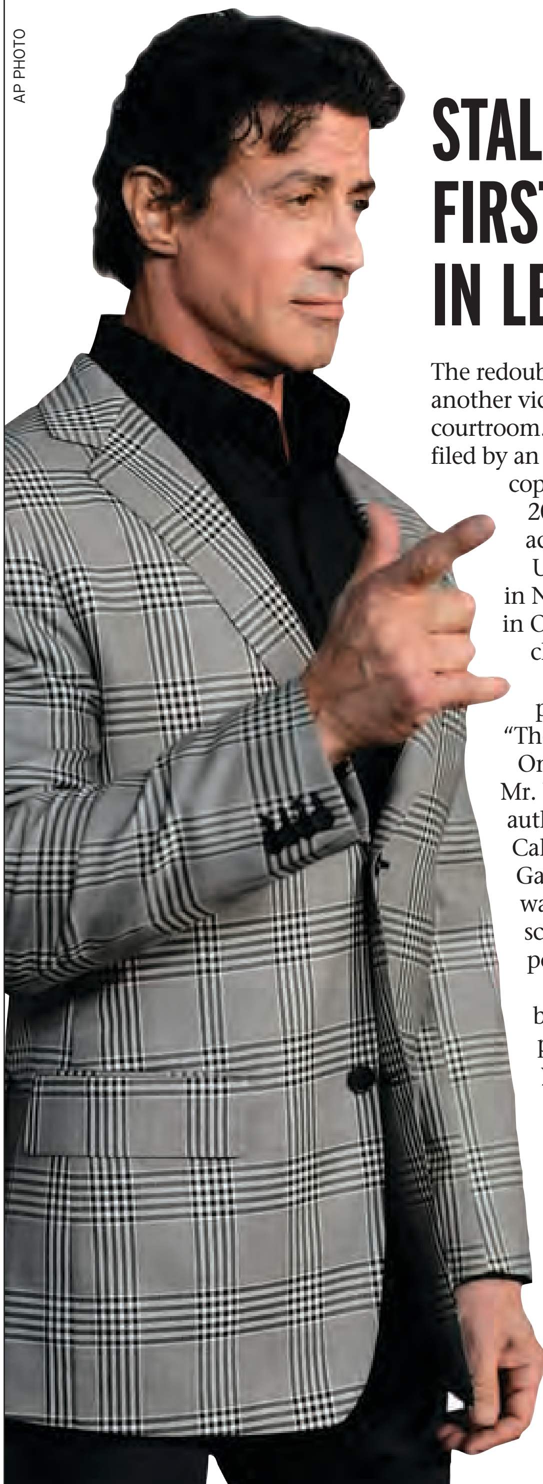
But in a lawsuit filed in April in an Ocean County, N.Y., court, Ms. Lloyd alleged the boy's actions were negligent and careless, causing permanent injuries, according to the Associated Press.

As part of the suit, Ms. Lloyd's husband alleged loss or impairment of his wife's "services, society and consortium."

An attorney for the Migliaccio family, Anthony Pagano, told the AP that while counts alleging negligence and carelessness are covered by homeowners insurance, other counts are not.

Little League Baseball Inc. reportedly has denied coverage, as insurance applies to coaches, players and concession stand workers, but not spectators.

"It's absurd to expect every 11-year-old to throw the ball on target," Bob Migliaccio, the boy's father, told the AP. "Everyone knows you've got to watch out. You assume some risk when you go out to a field. That's just part of being at a game."


AP PHOTO

Mr. Stallone

STALLONE WINS FIRST ROUND IN LEGAL FIGHT

The redoubtable Sylvester Stallone has won another victory, but this time in the courtroom. A judge has dismissed a lawsuit filed by an author who charged the actor with copying his screenplay to make his 2010 movie "The Expendables," according to news reports.

U.S. District Court Judge Jed Rakoff in New York dismissed the lawsuit filed in October by Marcus Webb, who charged the screenplay was "strikingly similar and in some places identical," to his own script, "The Cordoba Caper."

One issue in the lawsuit was that both Mr. Webb's script and the script co-authored by Mr. Stallone and David Callaham had a villain named Gen. Garza. Mr. Webb's lawyer had said it was notable that generals in both screenplays had the same names and positions.

But Judge Rakoff said, "There must be dozens of characters in movies, in plays, named Kelly or named, as you point out, Garza, or the like," he said. "Is Garza really a name sufficiently (different)? It is not like it is either a made up name or a very unusual name where you might—you know, if the name was Rumpelstiltskin."

A sequel, "The Expendables 2," is scheduled for release on Aug. 17. No word on whether there will be a Gen. Rumpelstiltskin in the movie.

WALKING JOINS ILLINOIS' LIST OF WORKPLACE HAZARDS

"Repetitive walking" has joined the list of occupational hazards that could earn workers compensation benefits in Illinois.

The Illinois Workers' Compensation Commission ruled in March that workers who are required to walk around on the job can claim that action resulted in a compensable work-related injury, according to a recent report from the Belleville News-Democrat.

The case, *Tracy Howell vs. State of Illinois*, involves a prison guard at Menard Correctional Center in Menard, Ill., according to news reports. A recent editorial by the Chicago Tribune said Mr. Howell received benefits for his foot surgery, as well as disability benefits, after claiming that his job required him to walk between three to 10 miles per day.

Menard prison guards and employees have filed at least 230 repetitive trauma claims in recent years, the News-Democrat said, though not all were for walking.

SNAKE EYES FOR INSURER IN CASINO MISHAP

Oklahoma's high court has rejected a workers compensation insurer's argument that it should enjoy the same sovereign immunity as its policyholder, a casino owned by the Osage Nation.

The Osage Nation is a federally recognized American Indian tribe, so it is not subject to the Oklahoma Workers' Compensation Court's jurisdiction, the Oklahoma Supreme Court ruled last week in *John A. Waltrip vs. Osage Million Dollar Elm Casino*.

However, Hudson Insurance Co. is subject to the court's jurisdiction, the state Supreme Court said.

The case began when Mr. Waltrip fell on a patch of ice while working as a casino surveillance supervisor. He injured his right shoulder and filed a workers comp claim in 2009, seeking medical care and temporary total disability benefits.

His employer and Hudson argued that the workers comp court lacked jurisdiction based on the tribe's sovereign immunity.

The workers compensation court agreed, holding that the tribe enjoys sovereign immunity and that its insurance policy provisions did not subject Hudson to liability for claims filed in state court.

But the Oklahoma Supreme Court disagreed. It noted that the tribe does not have a workers comp ordinance or process for resolving injured worker disputes.

"Under such circumstances, insurer's promise to provide benefits would become illusory and a sham," the state high court said. "Insurer's third-party administrator would by default become the final arbiter of the workers compensation claims of employees of the tribal enterprise."

On remand, that court was instructed to reinstate the claim against Insurer only.

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2-9 ▲ ✦ ■
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Ad/Materials Close: June 20

16 ✤ ▲ ✦
Broker Trends & Profiles
Top Brokers worldwide
Top 100 U.S. Agents & Brokers
Ad/Materials Close: July 2

23 ● ▲ ✦ ■
Theme issue: Exploring the Risk of Going Green
Ad/Materials Close: July 11

30 ▲ ✦
Catastrophe Management
Property Loss Consultants
Ad/Materials Close: July 18

August

6 ✤ ▲ ✦ ■
Pharmacy Benefit Management
Bonus Distribution: VCIA
Ad/Materials Close: July 25

13 ● ▲ ✦ ■
Theme Issue: Tackling the Toughest Workers Comp Claims
Top Third-Party Administrators
Ad Readership Study
Ad/Materials Close: Aug. 1

20- 27 ● ▲ ✦
Industry Financials, Midyear Results
Ad/Materials Close: Aug. 8

September

3 ● ■ ✦
Insurer Capital Management
Bonus Distribution: RVS
Ad/Materials Close: Aug. 22

10 ● ▲ ✦ ■
Theme Issue: Strategic Risk Management
Bonus Distribution: Einsurance Symposium
Ad/Materials Close: Aug. 29

17 ▲ ✦
Global Programs Reinsurance: Rendez-Vous Report
Bonus Distribution: IUMI
Ad/Materials Close: Sept. 5

24 ● ■
Quarterly Technology Focus: Enterprise Risk Management 2.0
Ad/Materials Close: Sept. 12

October

1 ● ■
Middle Market Risks & Local/ Regional Broker Leaders
Bonus Distribution: CIAB, SIIA, NRRA
Ad/Materials Close: Sept. 19

8 ▲ ✦
Excess & Surplus Lines Report
Surplus Lines Insurers
State excess/surplus lines taxes
Bonus Distribution: NAPSLO ASHRM, JIF
Ad/Materials Close: Sept. 26

October (cont.)

15 ▲ ✦ ■
Theme Issue: Developing and Attracting Talent
Ad/Materials Close: Oct. 3

22 ✦
Reinsurance: Trends & Issues
Bonus Distribution: PCI
Ad/Materials Close: Oct. 10

29 ● ■
Quarterly Technology Focus: Claims Management Solutions
Bonus Distribution: TMPAA
Ad/Materials Close: Oct. 17

November

5 ▲ ●
Employment Liability Risk Management
Bonus Distribution: PLUS
Ad/Materials Close: Oct. 24

12/19 ● ■ ▲ ✦
Theme Issue: Mid-market Construction Risks
Bonus Distribution: IRMI
Ad Readership Study
Ad/Materials Close: Oct. 31

26 ▲ ✦
Buyers Choice Awards
Ad/Materials Close: Nov. 14

December

3 ✤ ▲ ✦
Women to Watch
Bonus Distribution: BI's Women to Watch Workshop
Ad/Materials Close: Nov. 21

10/17 ● ✤ ▲ ✦ ■
Theme Issue: Wellness programs
Ad/Materials Close: Nov. 26

24/31 ✤ ▲ ✦
Market Sourcebook*/Year in Review
Ad/Materials Close: Dec. 12

Targeted Focus
- ● Corporate C-suite
- ✤ Benefit Management
- ▲ Brokers
- ✦ Insurers/Reinsurers
- ■ Middle Market

Monthly Theme issues include an exclusive reseach/data spread pull out poster.

Market Sourcebook will include the companies listed in our online Marketplace section www.businessinsurancemarketplace.com

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"TAKE SHELTER IMMEDIATELY."

A WARNING

THE MANUFACTURING PLANT WAS POWERLESS TO HEED.

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INDUSTRY:
MANUFACTURING

CUSTOMER:
AUTO PARTS COMPANY

CASE OBJECTIVE:
GETTING BUSINESS
BACK IN BUSINESS. FAST.

CASE SPECIFICS:

After a tornado struck on a holiday weekend, causing devastating roof and structural damage, this auto parts manufacturer faced a daunting task: get back in business or risk a daily loss of $300K in sales. At Liberty Mutual Insurance, we responded in less than three hours. We partnered with the customer and had contractors working immediately so a production and shipping operation could be set up in the parking lot. The company was fully operational by Monday. Partnership, knowledge, and quick response — three ways we help protect your business. To learn more, contact your agent or broker, or go to **libertymutualgroup.com/tornado**

COMMERCIAL AUTO
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GROUP BENEFITS

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