

# Business Insurance

July 26, 2010

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**SOFT MARKET CONTINUES FOR MAJOR P/C LINES IN SECOND QUARTER / PAGE 3**

**AIG SETTLES SUIT WITH OHIO AG CORDRAY / PAGE 3**

**ENGLISH-ONLY POLICIES FOR WORKPLACES RAISE LEGAL CONCERNS / PAGE 4**



## In Brief

### Obama signs financial services reform law

President Barack Obama signed into law a comprehensive financial services regulatory reform measure that creates a Federal Insurance Office within the Treasury Department. The Dodd-Frank Wall Street Reform and Consumer Protection Act also streamlines the collection of surplus lines insurance premium taxes and eases qualified risk managers' access to the nonadmitted market.

### Gotbaum renominated as PBGC director

President Barack Obama has once again nominated Joshua Gotbaum to be director of the Pension Benefit Guaranty Corp. The president originally nominated Mr. Gotbaum, an operating partner at private

See **IN BRIEF** page 21



## SPOTLIGHT WORKPLACE SAFETY

Cash incentives that reward good safety records can be counterproductive; teaching and engaging workers seen as vital to the success of efforts to reduce injuries; profiles of safety programs at Brunswick, Raytheon and Tenaska. **PAGE 10**

### AGENTS & BROKERS

# Aon goes back to taking contingents

*After pay ban lifted, 'big three' brokers adopt differing stances*

By **COLLEEN MCCARTHY**

**CHICAGO**—Aon Corp. last week ended its silence on whether it would collect contingent commissions, saying it would again accept the controversial payments in some cases.

The decision immediately was criticized by the Risk & Insurance Management Society Inc., but analysts say the move makes good business sense for the brokerage.

The announcement by Chicago-based Aon means that all of the world's three largest brokers have now staked out their positions on contingents after the ban on them accepting the incentive payments was lifted this year.

Aon said it will again accept all forms of compensation, including contingent and supplemental commissions, for its brokerage business where such pay is "appropriate and legally permissible."

The brokerage said it decided to accept the insurer-paid contingent commissions—which are tied to the volume or profitability of business

placed—after a worldwide review of payment practices.

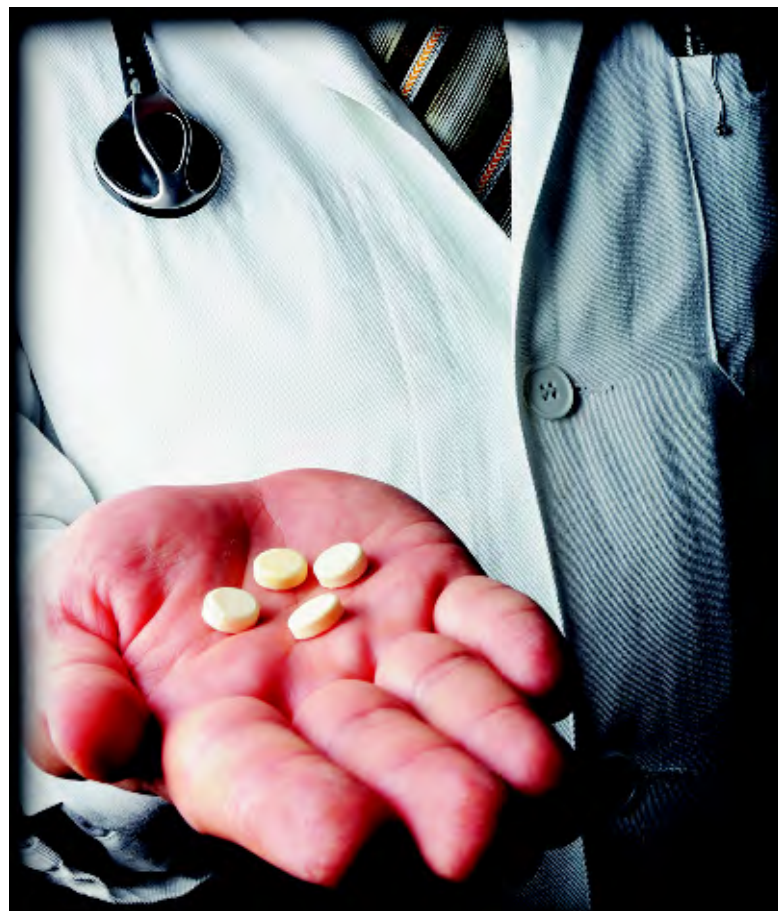
"We have conducted a great deal of research around broker compensation across the globe with a focus on serving the needs of our clients and competing on a level playing field in the marketplace," said Steve McGill, chairman and CEO of Aon Risk Solutions.

Mr. McGill declined to provide specifics about which geographical areas or market segments would be included in the compensation structure. In addition, he said there is no timeline for rolling out the change, saying that Aon is working with insurers and clients "to start bringing this strategy to life," he said.

The announcement sets out Aon's stance on the controversial commissions for the first time since officials this year lifted a five-year old ban that barred Aon and its biggest rivals—Marsh Inc. and Willis Group Holdings P.L.C.—from collecting such pay.

In 2005, amid a probe by then-New York Attorney General Eliot Spitzer, the world's largest brokers agreed to give up contingents, change their business practices and pay more than \$1 billion in total client restitution to settle allegations

See **AON** page 22



# Doctor drug dispensing pushes up comp costs

By **ROBERTO CENICEROS**

An increase in pharmaceuticals dispensing by doctors in several states is likely driving up workers compensation costs, experts say.

As more doctors link with companies that provide repackaged drugs with irregular identity codes to physician offices, the arrangements add extra costs and bypass established means of capping drug costs, they say.

See **DRUGS** page 22

### HEALTH CARE REFORM

# Health reform rules provide some clarity on claims issues

By **JERRY GEISEL**

**WASHINGTON**—New health care reform regulations clarify how health care plans must handle dis-

puted claims, but leave murky a key issue: how a new federal external claims review requirement will work.

The health care reform law mandates that employees in self-funded

**'We just don't know the details, and here, the detail is everything.'**

Sharon Cohen, Towers Watson & Co.

plans can request a "federal external review" after their request for coverage of a claim or benefit is denied through internal reviews conducted by employers and plan administrators.

"It would be the interjection of a third party into how an employer

runs their self-funded plans," said Andy Anderson, a partner with Morgan, Lewis & Bockius L.L.P. in Chicago.

But the 128 pages of regulations issued last week by the Internal Revenue Service and the Departments of Labor and Health and Human Services provides little detail on how federal external claims review panels will work, experts say.

"It is 4<sup>th</sup> and long and (regulators) punted on this one," said Sharon Cohen, an attorney with Towers Watson & Co. in Arlington, Va.

"There will be a lot more detail to

See **REFORM** page 17

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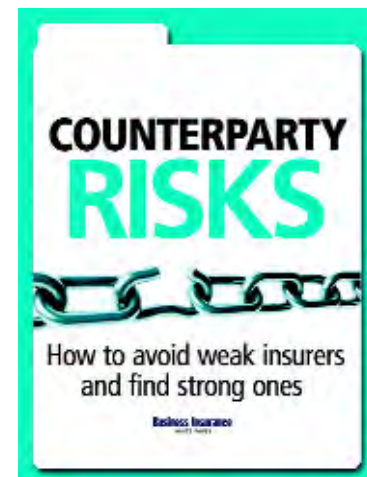
**Business Insurance's**  
**2010 WOMEN TO WATCH**

### NOMINATIONS DUE BY AUG. 20

The deadline to submit nominations for *Business Insurance's* 2010 Women to Watch feature has been extended to Aug. 20. Forms are online at [www.BusinessInsurance.com/section/women-to-watch](http://www.BusinessInsurance.com/section/women-to-watch).

## HEALTH CARE REFORM FAQ

*BusinessInsurance.com's* Health Care Reform section includes an updated FAQ that describes key provisions of the new law for employers.



### How to manage insurer risks

*Business Insurance's* newest white paper helps risk managers look beyond insurers' financial strength ratings to assess the security behind their programs. [www.BusinessInsurance.com/whitepapers](http://www.BusinessInsurance.com/whitepapers).

## BROKER BUZZ

Read Associate Editor Colleen McCarthy's blog for unique insight into agent and broker news.



## COMINGS & GOINGS

Search industry executive changes alphabetically by a person's name or company, as well as by date. Click on the Comings & Goings tab.



## MOST POPULAR STORIES Week of July 19, 2010

1. Aon to resume taking contingent commissions
2. Property/casualty rates drop in latest quarter: CIAB
3. Ryan Specialty wholesale unit makes first buy
4. Broker in U.K. noncompete battle tried to destroy laptop
5. RIMS criticizes Aon decision on contingents
6. Liberty Mutual reorganizes commercial markets unit
7. New AIG chair Miller had unhappy stint as Reliance exec
8. Financial reform law helps U.S. insurers, reinsurers: Analysis
9. Department of Labor to conduct FMLA study
10. New York approves workers comp loss cost rate hike

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## LOG ON WEIGH IN

*BusinessInsurance.com* users now have an expanded array of online community tools. Register and log in to customize your personal profile, create blogs, invite friends and join discussions.

*Business Insurance's* 2010 Directory of Agents & Brokers lists 136 companies that work directly with corporate or institutional policyholders and generate at least \$500,000 in gross revenues from commercial retail insurance brokerage business. Click on Directories under the Research Center tab.

## Business Insurance RESEARCH CENTER

## LIABILITY &amp; LITIGATION

# AIG's \$725M settlement raises concern about funding

Agreement resolves class action suit brought by Ohio AG

By JUDY GREENWALD

**COLUMBUS, Ohio**—American International Group Inc.'s recent \$725 million settlement reached with three Ohio pension plans resolves another legal distraction but has raised questions about the plans for funding the pact.

The settlement, announced this month by Ohio Attorney General Richard Cordray, resolves charges of anti-competitive market division, accounting violations and stock

price manipulation that allegedly occurred from October 1999 to April 2005.

Three Ohio public pension funds, represented by the attorney general, led the class action suit: the Ohio Public Employees Retirement System; the State Teachers Retirement System of Ohio, and the Ohio Police and Fire Pension Fund.

An AIG spokesman said in a statement, "We are pleased to have resolved this matter. This settlement ends a long-standing lawsuit, allowing AIG to continue to focus its efforts on paying back taxpayers and restoring the value of our franchise for the benefit of all our stakeholders."

Total recovery for AIG shareholders



Ohio Attorney General Richard Cordray

related to the charges is expected to be more than \$1 billion, Mr. Cordray said in a statement. This

includes previous settlements of \$72 million with General Reinsurance Corp.; \$97.5 million with AIG's auditor PricewaterhouseCoopers L.L.P.; and \$115 million with former AIG Chairman and CEO Maurice R. Greenberg, other former AIG executives and C.V. Starr & Co. Inc. and Starr International Co. Inc.—former AIG affiliates associated with Mr. Greenberg.

The case involved charges that former General Re and AIG executives used a bogus finite reinsurance transaction to help AIG manipulate its financial statements to falsely inflate its reported loss reserves by \$500 million. Executives from AIG and Gen Re in 2009 were convicted in connection with that deal. AIG

also was charged in connection with undisclosed contingent commissions to insurance brokers, a bid-rigging scheme with brokers, and stock price manipulation.

## Funding the deal

AIG said in a Securities and Exchange Commission filing that \$175 million of the \$725 million settlement will be paid into escrow within 10 days of preliminary court approval of the deal. No timeline has been set for approval by the federal district court in New York, according to a spokeswoman for the attorney general's office

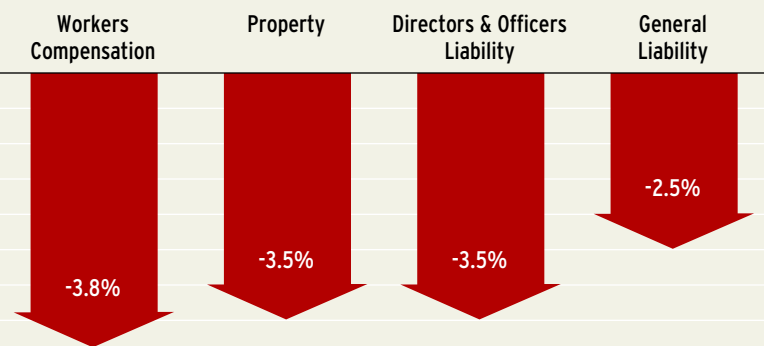
AIG's obligation to fund the

See **AIG** page 20

## P/C INSURERS

## RENEWAL PREMIUMS FALL

Change in average renewal premiums between second quarter 2009 and second quarter 2010



Source: RIMS Benchmark Survey

## P/C market remained soft through 2nd quarter: RIMS

Workers comp saw greatest decline in renewal premium

By MARK A. HOFMANN

The soft property/casualty insurance market continued through the second quarter of the year and there is no sign that the buyers' market will end anytime soon, according to a survey released last week by the Risk & Insurance Management Society Inc.

The RIMS Benchmark Survey, administered by New York-based consultant Advisen Ltd., found that average renewal premium dropped between 2.5% and 3.8% for property, general liability, directors and officers liability and workers compensation insurance.

The survey, based on information provided by risk managers, found that workers compensation experienced the greatest decline in the second quarter, at 3.8%, while property and D&O dropped by 3.5%.

The survey noted that the average

D&O premium, which had been buoyed by rate increases in the financial institution sector in 2008 and 2009, fell throughout the first half of 2010.

General liability registered the smallest decrease, at 2.5%.

"The soft market is still going strong," David K. Bradford, Advisen executive vp and editor-in-chief of the survey, said in a statement accompanying the results. "Insurance capacity remains abundant in almost every line and, as a result of the recession, demand for that capacity has fallen. Unless something happens to wipe out the excess capacity, premiums should continue to drop this year."

In an interview, Mr. Bradford said there were various differences among most of the lines surveyed since the first quarter, although he said property could be the one line "where there is a bit of significance" in the change. During the first quarter, property had dropped 2.9% (*BI*, April 19).

Mr. Bradford said that "we had

See **BENCHMARK** page 19

## AGENTS &amp; BROKERS

## Broker faces contempt of court charge

In noncompete case, admits he attempted to destroy laptop

By SARAH VEYSEY

**LONDON**—A U.K. High Court judge has refused a motion to stay contempt of court proceedings against a senior London market energy broker involved in a noncompete dispute between units of Marsh & McLennan Cos. Inc. and Aon Corp.

The broker, who in 2009 left Marsh Ltd. to join Aon Ltd., admits to throwing a laptop computer into a pond to cover up his involvement in a bid to win business that Marsh contends broke the terms of a six-month notice period, during which he was barred from working for or with a Marsh competitor.

In addition to facing those charges, Euan Nicolson, a former managing director in the construction team of Marsh's energy practice in London, is accused of mak-

**The laptop computer, which the broker admitted he had thrown into a pond near his home, was recovered by a forensics company employed by Marsh, court documents show.**

ing false statements and breaching court orders.

Mr. Nicolson is accused of helping Aon bid for the business of Milan-based energy company

Saipem S.p.A., an account previously brokered by Marsh, during his notice period, which ran from May to October 2009.

He also is accused of breaching an Oct. 1, 2009, court order that he must not destroy, tamper with, cancel or part with possession of any equipment—including computers and memory sticks—or destroy, delete or tamper with any documents relating to the case.

In a witness statement—his third in relation to this case—Mr. Nicolson admitted that he breached that order and that he had not previously told the truth about when he had disposed of a laptop computer used to keep in touch with five former Marsh colleagues who also joined Aon, among other things.

The laptop computer, which Mr.

See **CONTEMPT** page 19

## BI names best employers in industry

By RODD ZOLKOS

An in-depth evaluation has produced a list of 54 insurance industry companies to be recognized in this year's *Business Insurance* Best Places to Work in Insurance program.

Best Places to Work in Insurance is a joint effort of *Business Insurance* and the Harrisburg, Pa.-based Best Companies Group, and was open to all publicly or privately held property/casualty insurers, group life/health insurers, agents and brokers, reinsurers and third-party administrators with at least 25 employees working in the United States and serving the commercial insurance market.

This is the second year for the Best Places to

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Work in Insurance program, and the 54 companies on the 2010 list include 17 repeat honorees. Companies honored this year range in size from 25 employees to 8,830.

The companies identified alphabetically in this issue are to be celebrated as an elite group of employers that have created high-quality work-

places that encourage employees to thrive in a work environment they can love.

Best Companies Group, an independent workplace excellence research firm that manages other regional and industry programs in the United States and Canada, managed the registration pro-

Continued on page 9

## EMPLOYMENT PRACTICES

# English-only policies for workplaces have pitfalls

*Firms must have legitimate reasons for language rules*

By JUDY GREENWALD

A new law in Tennessee that permits English-only policies in the workplace could signal a growing trend among businesses, but observers say there are hazards for employers that adopt such policies.

While English-only workplace policies may be motivated by the uneasiness created by workers talking in a foreign language, the only legitimate reasons for such policies

that are permitted by Title VII of the Civil Rights Act of 1964 are safety- or business-related issues.

"It's pretty easy to make a misstep if you're not aware what the law is in this area," said Amy McAndrew, of counsel with law firm Pepper Hamilton L.L.P. in Berwyn, Pa.

"We run into it pretty frequently," said Dennis Westlund, a partner with law firm Stoel & Rives L.L.P. in Portland, Ore. "I probably get a call from a client on the English-only issue every couple of months or so."

It could become more of an issue



Gov. Phil Bredesen of Tennessee

in the future "as an unfortunate backlash to the illegal immigration issue," which is "what I think you're seeing in Tennessee," said James A. Matthews III, a partner with Fox Rothschild L.L.P. in Philadelphia.

The legislation that Tennessee Gov. Phil Bredesen signed into law in

June allows English-only policies "when the employer has a legitimate business necessity for such a policy, including but not limited to the safe and efficient operation of the employer's business."

Michael P. Burns, an associate

with law firm Horan, Lloyd, Karachale, Dyer, Schwartz, Law & Cook Inc. in Monterey, Calif., also said the issue is growing because of controversy about Arizona's anti-immigration legislation.

Gregg M. Lemley, a shareholder with Ogletree, Deakins, Nash, Smoak & Stewart P.C. in St. Louis, said it is becoming a "hot-button issue" and "more and more employers are likely to take a position on the issue one way or the other. That certainly could result in more litigation as employers become emboldened" and establish or apply English-only policies incorrectly.

There also will be "prudent employers on the other side pulling

back away from these things to the extent they don't want to be painted by that brush," Mr. Lemley said.

Under Title VII, employers can adopt an English-only rule if it is justified by "business necessity" (see story, page 18).

According to the Equal Employment Opportunity Commission's compliance manual, this includes emergencies, where workers must speak a common language to promote safety; cooperative work assignments, where a common language is needed to promote efficiency; and cases where it enables supervisors who speak only English to

See **ENGLISH** page 18

## FEDERAL LEGISLATION



AP PHOTO

The day before a bill to expand the National Flood Insurance Program at least temporarily stalled in Congress, the White House came out against plans to add windstorm coverage to the NFIP.

## Bid to add windstorm cover to NFIP remains up in the air

*White House opposes expanding program that covers flooding*

By MARK A. HOFMANN

**WASHINGTON**—Legislation that would require the National Flood Insurance Program to offer windstorm as well as flood coverage is in limbo.

The Multiple Peril Insurance Act, sponsored by Rep. Gene Taylor, D-Miss., appeared likely to come to a vote last week after the House agreed to a rule for its consideration. But once the rule was approved, House leaders took no further action on the bill.

The act, which is opposed by much of the property/casualty insurance industry, would expand the NFIP by adding windstorm coverage to the program, which cur-

rently provides only flood coverage. Insurers hold that the private market for windstorm insurance can meet demand for the coverage.

A day before the measure at least temporarily stalled, the White House issued a statement of administration policy opposing the measure. The statement said adding windstorm coverage to the NFIP would "unnecessarily duplicate" existing insurance products and "could 'crowd out' such products where they are offered." The statement added that "at a time when the NFIP is already facing serious challenges, the administration cannot support such an expansion."

Insurers welcomed the delay, but said they can't declare the bill dead yet.

Ben McKay, senior vp in the Washington office of the Property Casualty Insurers Assn. of America,

See **FLOOD** page 18

## EMERGING LIABILITIES

## Employers need social media rules

*Written policies seen as way to curb risks related to Facebook, Twitter*

By ZACK PHILLIPS

**BARCELONA, Spain**—Companies should develop a clear, written policy on the use of social networking sites to shield themselves from increasing liability related to the sites, a panel of legal experts said.

Speaking this month at the International Assn. of Defense Counsel's annual meeting in Barcelona, Spain, panelists said that although much of the law in this area is ambiguous or undefined, companies with reasonable and specific written policies often are viewed favorably by courts.

"Ten years ago was the start of e-discovery and we were all trying to understand the rules...that's where we are with social media," said Lana K. Varney, a partner at Fulbright & Jaworski L.L.P. in Austin, Texas. "There's an enor-

mous amount of uncertainty in this as courts struggle to get their arms around it...and as regulatory agencies (come) to the realization that they're not going to be able to regulate every aspect of it. It's too enormous."

Ms. Varney said that a company's written policy should spell out how employees are permitted to use social media sites during work hours, how the firm will train employees and monitor compliance, and what the consequences of violating the policy will be.

Ms. Varney said courts and regulators have struggled or declined to address a plethora of questions provoked by the widespread use of social networking sites, including: Who is responsible for defamatory posts from an anonymous user of a public site? Is a company liable for

misinformation posted on its social media site by an outside user? How can companies fulfill disclosure requirements given the space constraints of sites like Facebook or Twitter?

Ms. Varney said the Food & Drug Administration, the Federal Trade Commission, and the American Bar Assn., among other groups, are expected to issue regulations soon on social networking usage.

She said companies with pages or sites on social networking platforms should consider country-specific sites, because laws vary by nation.

Takis Kommatas, founder and managing partner of law firm T.G. Kommatas & Associates in Athens, Greece, said laws in the European Union are more favorable to and

See **TWITTER** page 21

## PENSION BENEFITS

## Pension problems can sink merger plans

By SARAH VEYSEY

Pension funds are playing a more important role in companies' decisions on whether to proceed with mergers or acquisitions of Europe-based companies, experts say.

Recent cases illustrate the importance of pension plans to prospective deals. There are several steps companies can take to ensure their pension plans' funding levels do not become a hurdle to M&A deals, experts say.

For example, Madrid-based airline Iberia S.A. is considering proposals by London-based British Airways P.L.C. and the trustees of British Airways' two defined benefit pension plans to shore up a combined deficit of £3.7 billion (\$5.67



REUTERS/LANDOV

British Airways is exploring ways to shore up its pension funding deficit to address a potential obstacle to a proposed merger.

billion) in the plans.

The pension plan deficit has been a potential stumbling block in the airlines' proposed merger.

In late June, British Airways

announced it had reached an agreement with the trustees of the two plans under which British Airways—

See **PENSION** page 6

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# Pension: Problems can sink merger plans

CONTINUED FROM PAGE 4

rather than the holding company of the merged airlines—would maintain its current level of annual contributions to the plans plus annual increases of about 3%, in line with inflation. This agreement would wipe out the two plans' deficits by 2023 and 2026, respectively.

This month, specialist U.K. life insurer Rothesay Life Ltd., a unit of Goldman Sachs Group Inc., said it would insure part of the liabilities of British Airways' larger defined benefit pension plan.

In addition, Pacific Life Re Ltd., a U.K.-based specialist reinsurer, said it had struck a reinsurance deal to provide Rothesay Life with protection against a proportion of the £1.9 billion (\$2.91 billion) longevity risk associated with Rothesay's agreement with British Airways.

Other M&As where pension plans have played a role include the January takeover of Birmingham, England-based chocolate maker Cadbury P.L.C. by Kraft Foods Inc. based in Northfield, Ill. This year, Kraft asked Cadbury staff to accept either a three-year pay freeze or opt out of the company's defined benefit pension plan, which is in the red.

Pension experts would not comment directly on cases such as British Airways and Cadbury, but say the status of pension plans has become a huge factor in companies' decisionmaking process when it comes to M&As.

There are many instances in which planned mergers have not

gone ahead because of a perceived problem with pension plan funding, said Marcus Hurd, head of corporate solutions at Aon Consulting in Leeds, England. Often, these failed mergers do not become public knowledge, he said.

While pension plans can appear to be fully funded, an equity market crash could alter that picture very quickly, Mr. Hurd said. Therefore, it is vital for companies interested in M&As to conduct thorough due diligence, he said.

If a proposed merger involves

**'You need to understand how things work in the country where you are buying' and understand the local rules.**

Chris Smith, Hewitt Associates Inc.

companies from different countries, the parties must ensure they understand the complexities of local laws and the way pensions are treated, Mr. Hurd said.

For example, U.K. pension plan trustees are obligated to look at how a merger would affect plan members and protect their rights. Companies seeking to acquire or merge with others must, therefore, ensure they are fully aware of their obligations and the obligations of parties such as trustees, he said.

Pension plan deficits can be a big problem in M&As, said Stuart Benson, a worldwide partner at Mercer Human Resource Consulting, a unit of Mercer L.L.C. in Manchester, England.

Recently, the emphasis has shifted from the size of the deficit to the size of the deficit compared with the size of the company, Mr. Benson noted.

While the size of the pension deficit was reflected in the price paid for an acquisition previously, now the longevity, mortality and investment risks also are factored into the price of any deal, he said.

Because there is no internationally agreed way of measuring pension deficits, there is always going to be debate about how it is "priced into" M&As, said Chris Smith, head of the London M&A team at Hewitt Associates Inc.

And the U.K. Pensions Regulator, for example, has fairly strong powers, such as the ability to issue contribution notices, which require companies to contribute a certain amount to their pension plans, about which companies looking to merge with or buy U.K. companies should be aware, Mr. Smith said.

"You need to understand how things work in the country where you are buying" and understand the local rules, he said.

There are creative solutions that companies can employ to mitigate potential problems, such as the use of contingent assets, which means using assets such as property as a sort of guarantee against pension payments, he added.

## Commentary

# Pet owners hounded by coverage exclusions



**JOANNE  
WOJCİK**

Senior Editor Joanne Wojcik can be reached at: [jwojcik@businessinsurance.com](mailto:jwojcik@businessinsurance.com)

When I adopted a 3-year-old Westie last year, I soon discovered that he was *canis non grata* among pet insurers. Just like many people who have been denied health insurance coverage because of pre-existing medical conditions, Rocky is ineligible for coverage because he has a heart murmur.

To me, the condition doesn't seem like that big of a deal. But my veterinarian wanted to send little Rocky to a canine cardiologist to undergo a \$700 echocardiogram, even after informing me that I wouldn't be able to insure him.

Concerned about Rocky's welfare, I sought a second opinion. The second veterinarian suggested that we monitor Rocky's condition and make sure he gets plenty of exercise and maintains a healthy weight. She reasoned that even if tests indicated Rocky's heart murmur could be repaired, it was unlikely that I would spend thousands of dollars on open heart surgery. After all, he is a dog, the second vet reminded me.

When I asked the second vet how the pet insurer could possibly find out about Rocky's pre-existing condition, she explained the diagnosis was part of his "permanent medical record" and that she would be required to disclose that information in the event of a claim. Otherwise, the insurer could void the policy based on misrepresentation, she said.

A California legislator is attempting to help other pet owners wrestling with similar pet insurance issues by introducing legislation that would make pet insurers post detailed policy information on their websites to better inform consumers about coverage limitations, especially pre-existing condition exclusions. In addition, the bill would mandate that pet insurers disclose how claims will be paid—either as a percentage of actual charges submitted or based on what is considered "reasonable and customary"—and whether coverage could be reduced or premiums increased based on claims experience during the previous policy period.

"A number of pet owners have complained to me that they bought a policy, and they weren't told about pre-existing conditions," California Democratic state Assemblyman Dave Jones told the Associated Press. Others complained after the coverage was reduced or premiums increased after their pets

developed chronic conditions, such as hypothyroidism, according to Mr. Jones.

While transparency is a good idea, I doubt the legislation will have much impact on the availability of coverage for pets if insurers are allowed to continue to discriminate based on health status. When it was introduced, the legislation would have barred insurers from denying coverage based on pre-existing

**Maybe I should just get a Social Security number for Rocky and add him as a dependent on my employer-sponsored insurance coverage.**

conditions, but that provision was stripped from the bill to gain pet insurers' support. Their complaint was similar to that cited by human health insurers in response to such a provision in the federal health care reform law: People would only buy coverage when their pets got sick.

Would pet insurers be more willing to guarantee the issuance of coverage to all pets, regardless of health status, if the legislation included a mandate similar to that in the federal health care reform law, requiring all pet owners to purchase coverage?

Most pet owners consider their canine and feline companions to be members of the family. In some cases, they serve as substitutes for children. Maybe I should just get a Social Security number for Rocky and add him as a dependent on my employer-sponsored insurance coverage. Then he'd be covered until age 26. But would that be calculated in people years or in dog years?

## 20<sup>TH</sup> WORLD CAPTIVE FORUM

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# Business Insurance OPINIONS

## Buyers must demand end to contingents

THE CONTROVERSY OVER contingent commissions among large insurance brokers continues, after last week's announcement by Aon Corp. that it will resume taking the payments.

As we report on page 1, Aon stated it will accept contingent and supplemental pay from underwriters on insurance placements where "appropriate and legally permissible." Contingent commissions are legal in the United States, and supporters view them as akin to a sales incentive common in many other industries.

In a statement reacting to Aon's announcement, the Risk & Insurance Management Society Inc. said contingent commissions "pose an inherent conflict of interest and interfere with the relationship of trust between the broker and the insurance consumer."

We couldn't agree more. When a broker's compensation is exclusively paid by the buyer, the broker has a

powerful incentive to work exclusively on behalf of the buyer to obtain coverage with the best terms and conditions. That incentive is eroded, if not destroyed, when brokers also are compensated by the providers of coverage.

Aon is not the only broker to accept contingents. Marsh Inc. accepts them on smaller accounts and business placed by its agency platforms. Willis Group Holdings P.L.C., even though it has sworn off accepting contingents and condemns other brokers for taking them, continues to receive millions of dollars in contingents through its acquisition of Hilb, Rogal & Hobbs Co. Arthur J. Gallagher & Co. also accepts contingents, as do many smaller brokers.

RIMS cannot force brokers to stop accepting contingent commissions. Ultimately, it is up to buyers to confront their brokers and demand a change in policy. If buyers don't, contingents will continue and buyers will be the losers.

## Partisan divide jams legislative process

WHEN THE NATION'S unemployment rate remains in the 9.5% range, passing legislation to extend unemployment benefits for a few more months would seem to be a slam-dunk proposition.

However, it took months to get a bill approved, and the measure got only the bare minimum of votes needed in the Senate to stop a Republican filibuster and bring the bill to a final vote. The struggle to consider what should have been a noncontroversial unemployment compensation measure is not an exception.

In fact, that bill's problems symbolize a near breakdown in the legislative process.

Once upon a time, Democrats and Republicans could consider an issue based on its merits. When Jim Baker, Secretary of Treasury during the Reagan administration, proposed in 1985 to wipe out 401(k) plans, Republicans and Democrats rose to the defense of the plans.

Things are different today. When health care reform legislation was introduced and considered, Democrats and Republicans showed little interest in working together.

The nation is the loser for the loss of bipartisanship, as compromise and consensus almost always leads to a better legislative product.

We would hope, as the November congressional elections near, that voters consider candidates not just on their positions, but also on their willingness to work with members of the other party.

*Ultimately, it is up to buyers to confront their brokers and demand a change in policy.*



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#### THIS WEEK'S RESULTS

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Chairman Harvey Golub  
25%

CEO Robert Benmosche  
25%

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30%

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17%

#### NEXT WEEK'S QUESTION

Should the National Flood Insurance Program begin to offer windstorm coverage?

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CONTINUED FROM PAGE 3

cess, conducted the surveys, evaluated the data over several months and ultimately selected the firms that made the cut.

The assessment was a two-part process. Part 1—responsible for 75% of a company's score—involved a confidential 76-question Employee Engagement & Satisfaction Survey, which was used to evaluate employees' workplace experience and the company culture. The second part of the assessment, responsible for the remaining 25% of a company's score, was an employer questionnaire, which collected information about each company's benefit programs, policies, practices and other general information.

Using the two sets of data, BCG experts conducted an in-depth analysis of each company's strengths and opportunities.

To make the Best Places to Work in Insurance list, each company had to demonstrate a minimum standard of excellence, and the companies honored this year "are indeed innovators and the ones other companies use as benchmarks," said Peter B. Burke,

**The companies honored this year 'are indeed innovators and the ones other companies use as benchmarks.'**

Peter B. Burke, Best Companies Group.

president of Best Companies Group.

BCG's work also involves comparative analysis of the companies making the list. In a special report in the Oct. 4 issue of *Business Insurance*, we'll reveal how the companies ranked and take a closer look at the 54 companies honored.

*Business Insurance* also will recognize the companies and celebrate their achievement at an event featuring an educational program and awards luncheon in September in New York.

Participation in the program was free, though participating companies can purchase the "BCG Employee Feedback Report" summarizing the data collected in the employee survey process. In addition to the employee opinion data, the report also includes transcribed employee-written comments as well as the insurance industry benchmarking data from the participating companies.

It's not too early to start thinking about the 2011 Best Places to Work in Insurance program. To sign up to be notified when information is available about next year's program, go to [www.bestplacestoworkins.com](http://www.bestplacestoworkins.com).

Workplace  
Safety

SPOTLIGHT

# BUILDING A BETTER

*safety incentive  
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COMPANIES THAT SET  
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**BRUNSWICK CORP. USES  
SYSTEMATIC, FORMAL  
PROGRAM**

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**RAYTHEON CO. CHARTS  
EACH PLANT'S INJURY  
RATES**

PAGE 14

**TENASKA INC.'S  
WORKER INVOLVEMENT  
A KEY TO SAFETY**

PAGE 14

## Cash incentives may ultimately hurt workplace safety

By LOUISE ESOLA

Instead of rewarding workers and departments that avoid industrial accidents with pizza parties and cash, experts say companies need to overhaul their incentive programs to create safer workplaces.

Employers need to look at various metrics—not just incident and accident reports required by the government—in crafting reward programs.

Enrollment in safety programs, for example, could be one metric for safety awards. Some experts say rewarding “near-miss” accidents is the way to build a better workplace.

“If you get 20 safety people in one room, you won’t get them to agree on one program,” said Brad Hammock, Washington-based partner and chair of Jackson Lewis L.L.P.’s workplace safety compliance group. “Safety incentive programs are a difficult issue; there is no one answer as to what makes an effective safety incentive program.”

One area where many experts agree is that the current reward system—in place among many companies nationwide—is not accomplishing its intended goal.

In 2009, while studying issues related to mandatory Occupational Safety & Health Administration injury reports, the Government Accountability Office found that underreporting of workplace safety incidents is rampant.

The GAO study found that safety programs that reward workers who avoid injuries may have something to do with workers and supervisors “fudging” the numbers,” Mr. Hammock said.

Experts said the government’s assertion is right on the mark.

“On the surface, it seems like a good idea: You want to provide incentives for people to avoid injuries in the workplace,” said Dr. Robert K. McLellan, Lebanon, N.H.-based chief of occupational and environmental medicine at Dartmouth-Hitchcock Medical Center. “The problem is these incentive programs may incent behaviors that are not really safe behaviors, but are designed to make the log look good.”

Experts say incentive programs that base rewards solely on the number of incidents and accidents reported tend to urge workers not to report injuries. “That’s when people start to hide things,” said Ron Prichard, founder of Plainfield, Ind.-based Arcanum Professional Services Inc., a firm that provides safety, quality and management consulting services for companies.

In an example cited by experts, cash incentives for managers are dangerous because employees could fear retaliation for reporting an incident. Managers who have a stake in reported incidents could pressure subordinates. This issue got the Northern California grocery chain Raley’s Family of Fine Stores in trouble recently when two managers were accused of urging injured workers to not file workers comp claims and rely on their health insurance to cover their injury.

Raley’s settled the case with the Sacramento County District Attorney’s

Continued on next page



**'On the surface, it seems like a good idea: You want to provide incentives for people to avoid injuries in the workplace. The problem is these incentive programs may incent behaviors that are not really safe behaviors, but are designed to make the log look good.'**

Dr. Robert K. McLellan, Dartmouth-Hitchcock Medical Center

Continued from previous page

Office in May. Supervising Deputy District Attorney Dale Kitching said the managers' cash bonuses were tied to "store profitability" and "profitability was tied to fewer workers comp claims."

"We argued that (the) managers had a monetary incentive" to reduce workers comp claims, Mr. Kitching added.

Experts also say that incentive programs that reward groups that avoid incidents can put workers in fear of "ruining it for everybody," said Mr. Prichard, who has spent several decades in construction and manufacturing risk management and consulting.

"Group pressure—to me, that's the worst one," Mr. Prichard said. "Someone gets hurt and they are afraid to talk about it because they fear how their cohorts will view them if they report their injury."

He said he considers many worker incentive programs to be "bribery."

"It always struck me that there was something wrong with this," Mr. Prichard said. "With incentives, people take shortcuts."

If a company wants to tie incentives to safety, experts say to tread carefully. One approach that's gaining popularity is a program that rewards employees for taking steps to create a safer workplace, whether that is attending a voluntary safety seminar, helping a worker avoid a mishap, or even maintaining equipment so that it is safe to use.

Safety Jackpot, for example, is a program created by Lenexa, Kan.-based Peavey Corp., a company that provides incentive programs and law enforcement supplies. In place at hundreds of companies, the program aims to create safer workplaces by giving workers "coins" that can be used to buy items

from a catalog of goods as a reward for on-the-job safety measures.

"Our (program) is really based on the behaviors tied to safety audits and safety training, even accident investigations," said Pat Tracy, unit manager for Safety Jackpot. "We are taking the behavioral approach...Nobody goes to work saying, 'I am not going to have an accident today.' But if we can tie the incentive to the behaviors, what we find is the accidents can be reduced."

Mr. Tracy said the Safety Jackpot system aims to change workplace cultures and provide incentives to workers who take safety steps. "An act as simple as cleaning a machine, locking, tagging a machine to make sure people know it's locked can mean a reward," he said. "We can reward people for wearing their protective equipment. It's all about creating a culture."

Dartmouth-Hitchcock Medical Center's Dr. McLellan said companies could consider rewarding employees who report incidents.

"By keeping accurate statistics, we are more able to understand where are the bigger problems are in the workplace and drive resources to prevent injuries," he said. "We want to know what injuries are associated with certain occupations. That's the whole purpose of reporting."

The GAO report recommended that OSHA reports include interviews with workers instead of just data.

"What we really need is a dashboard of metrics," Dr. McLellan said. "What we need is for (OSHA) to go outside of your office and try to mine information—going out into the workplace, into the emergency rooms, into the doctor's office to validate the numbers in the OSHA log."

The GAO's report recommends that OSHA inspectors interview workers during its regular audits.



## Worker education, involvement key to eliminating injuries

By **ROBERTO CENICEROS**

Eliminating workplace injuries requires educating workers and enlisting their support to help mitigate hazards and prevent accidents, said Skipper Kendrick, a consultant and former president of the American Society of Safety Engineers.

Workers suffer when things go awry and gain from training to identify safety lapses that could prevent them from returning home injury-free after a day's work, said Mr. Kendrick, president of Kendrick Global Enterprises L.L.C. in Hurst, Texas.

"Who is getting hurt out there?" Mr. Kendrick asked. "It's not the vice presidents. It's not the safety directors. It's the workers."

Companies with robust safety programs—such as Tenaska Inc., Raytheon Co. and Brunswick Corp.—implement various ways to engage their employees.

Workers run safety committees at power plants operated by Omaha, Neb.-based Tenaska Inc., for example. They review incident reports and recommend improvements (see story, page 14). They also devise new safety drills and meet annually with peers from other company

facilities to share their best practices.

Companies committed to eliminating injuries also have formalized health and safety programs and hold individual business units accountable for their safety records.

Eliminating workplace accidents requires more than just mere worker and manager "involvement" in safety programs, Mr. Kendrick said. Everyone within a company, from senior managers down to the factory workers, must be "committed," he said.

Workers and managers may also get involved in safety meetings, but that doesn't guarantee that a worker who discovers a slippery liquid on the shop floor will clean it up immediately rather than wait until a manager addresses it, Mr. Kendrick said.

Getting commitment requires holding people accountable for safety just as they are held accountable for producing a certain number of products with a certain quality level, he said.

Waltham, Mass.-based aerospace and defense contractor Raytheon Co. holds its business units accountable by prominently posting a chart at each facility (see story, page 14). The quarterly charts rank injury rates by com-

pany business unit. Units with above-average injury rates will hear from upper management while those with exceptionally low rates receive praise.

Lake Forest, Ill.-based Brunswick Corp. systematically ranks its business unit compliance with a structured corporate safety program that it rolled out in 2003 and has continued to improve since then (see story, page 13).

A reduction in workers compensation losses are among Brunswick's success measurements. Between 2002 and 2009, Brunswick reduced its number of workers compensation claims by 73% and its incurred costs by 65%.

But injury rates and workers compensation statistics are lagging indicators of how a company is doing, said Dave Selig, Brunswick's director of environmental health and safety.

To learn how well its facilities are complying with safety objectives known to reduce those lagging indicators, Brunswick's safety program includes an extensive questionnaire about safety practices that managers complete throughout the year.

"We have to look at every job to make sure we address every hazard so it's controlled appropriately," Mr. Selig said.

**'Who is getting hurt out there? It's not the vice presidents. It's not the safety directors. It's the workers.'**

Skipper Kendrick, consultant and former president of the American Society of Safety Engineers

# Brunswick health, safety program systematic, formalized

By **ROBERTO CENICEROS**

To reduce worker injuries, Brunswick Corp. adopted a systematic health and safety program coupled with formalized recognition of good behavior.

Successful results have followed, according to the company's injury data from operations that range from manufacturing pleasure boats to fitness equipment to billiards and bowling.

"My personal opinion is there is nothing that helps prevent accidents more than having a formalized process that addresses your hazards and controls them," said Dave Selig, director of environmental health and safety for the Lake Forest, Ill.-based company. "So we work real hard on that."

To implement its health and safety program, Brunswick Safety Management System, the company borrows from several established management systems including ANSI/AIHA Z10-2005, the American National Standard for Occupational Health and Safety Management Systems.

The document Brunswick uses as a model for its program is approved by the Washington-based American National Standards Institute. ANSI describes it as a "voluntary consensus standard (that) provides critical management systems requirements and guidelines for improvement of occupational health and safety."

"It's a model for a quality safety program," Mr. Selig said. "The model basically identifies all those things we expect our facilities to be doing to drive their safety performance."

Brunswick also maintains a point system and an audit process to rank how well facility managers and supervisors meet corporate-established safety objectives.

The audit consists of a 400-question evaluation that managers complete throughout the year. A scoring of their responses from 0 to 100 helps evaluate their performance and hold them accountable for improvements.

"People perform based on what they are measured on," Mr. Selig said.

Questions asked include whether their plant maintains a health and safety policy that meets criteria established by Brunswick and whether they performed a job safety analysis for each function in their plant and then followed up with safety training specific for each role, Mr. Selig said.

In addition, employees working with volatile chemicals used in making boats, for instance, need specific training on properly fitting respirators and maintaining them.

Each question asked of managers is weighted.

"The questions we think drive safety performance to a higher level have a greater weighting associated with them," Mr. Selig said of the scoring. Facilities that do everything expected earn up to 90 points.

But 10 additional points are possible if, for example, plant managers conduct inspections more frequent-

ly than on a monthly basis, as expected. Managers conducting the inspections look for hazardous conditions, such as safety guards missing from machinery.

Several years ago, Brunswick also implemented a recognition process for its facilities, Mr. Selig said. Facilities receive recognition every time they complete a year or 1 million hours of production without a lost-time incident.

In addition to that threshold recognition, plants also can win a "distinguished" award annually that includes an amount of money

## 75%

At Brunswick Corp., "distinguished" recognition requires meeting a recordable injury rate that does not exceed 75% of the companywide average and a lost-time injury rate that is 75% of an individual facility's previous year's rate.

the plant can spend per employee, Mr. Selig said. Facilities then opt to use the money in various ways.

One, for example, purchased a popcorn machine for the employee cafeteria.

Distinguished recognition requires meeting a recordable injury rate that does not exceed 75% of the companywide average and a lost-time injury rate that is 75% of an individual facility's previous year's rate.

Each year, a few plants deemed the best based on their performance metrics also receive a chairman's award. That includes a celebration attended by the company's chairman and workers get to vote on a

favorite charity that receives a corporate donation.

Throughout the years, hundreds of thousands of dollars have gone to charities.

The efforts have helped Brunswick reduce its corporatwide recordable incident rate from 8.4 per 100 employees in 2002 to 2.81 in 2009, Mr. Selig said. Its lost-time incident rate dropped from 2.09 to 0.50 during that period.

Brunswick uses 2002 as a benchmark because it started rolling out its Safety Management Systems process in 2003.

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## Charting injury rates a catalyst to lowering them at Raytheon Co.

By ROBERTO CENICEROS

Each Raytheon Co. facility prominently displays a "safety performance chart" published quarterly to show how the site's injury rate ranks against others within the corporation.

Copies of the chart also are distributed to the defense and aerospace contractor's board of directors, including Chairman and CEO William H. Swanson.

"You don't want to be at the bottom of that chart," said Ken J. Tierney, corporate senior director for environmental health and safety at the Waltham, Mass.-based company with 75,000 employees worldwide.

The chart is one of Raytheon's best practices to reinforce the importance of safety measures and reducing injuries, Mr. Tierney said.

As Raytheon's leader, Mr. Swanson is known for his commitment to safety and stressing business unit accountability in preventing injuries. The National Safety Council's Safety+Health magazine recognized Mr. Swanson as one of its 2010 CEOs Who Get It, meaning he actively oversees the well-being of Raytheon's employees.

"I don't think I have ever met another officer of any company as passionate about safety as he is," Mr. Tierney said of his boss. "Safety is just part of his DNA."

Mr. Swanson views safety as an indicator of Raytheon's overall performance. So a poor safety record probably would mean the entire company is underperforming while a good safety record indicates strong business productivity, Mr. Tierney said.

The impact of Mr. Swanson's order to prominently display the safety chart across about 110 locations is evident, Mr. Tierney said.

The chart highlights each facility's Occupational Safety & Health Administration recordable injury rate. About seven years ago, when the charts first were posted, the corporate average stood at around 3.5, or about 3.5 injuries per 100 employees per year.

### 0.66

About seven years ago, when Raytheon Co. first published its quarterly safety performance chart, the corporate average stood at around 3.5, or about 3.5 injuries per 100 employees per year. Now the average is 0.66, with the chart a significant catalyst in reducing the injury rate.

Now the average is 0.66, with the chart a significant catalyst in reducing the injury rate, Mr. Tierney said. Managers at facilities with an above-average injury rate receive notes regularly from Mr. Swanson expressing his expectations for improvement while those with a below-average rate receive his praise, Mr. Tierney added.

Facilities with an injury rate of 1 are considered World Class while those with an injury rate of less than 0.2 are considered Gold Standard, according to internal company rankings.

Individual facilities also have

developed practices to encourage their employees to participate in safety.

A Texas operation, for example, created a Safety Torch program that encourages workers to nominate co-workers demonstrating exceptional efforts.

An environmental health and safety council on the site then selects a monthly winner, who receives a gift certificate and trophy. The trophy is passed on to the next month's winner.

Another business unit formed employee safety teams that meet biweekly to review safety trends, participate in area audits and help with incident investigations. They also review employee safety suggestions and provide monetary rewards for good ideas.

Practices companywide include maintaining a Web-based database so employees can report near-accidents or submit information about safety concerns. Raytheon's environmental health and safety department tracks the database for potential improvements.

Ergonomic issues are the No. 1 cause of injuries at Raytheon, followed by slips and falls, Mr. Tierney said. But the company is working to reduce those with studies, such as surface coatings that can help prevent falls.

Overall, Raytheon's safety efforts derive from its core principles of valuing individual integrity, commitment and excellence, Mr. Tierney said.

"The first value is people," Mr. Tierney said. "If you can't provide a safe workplace, how can you say you value people?"

## Worker engagement drives safety efforts at Tenaska Inc.

*Employees actively involved in making workplace safer*

By ROBERTO CENICEROS

Worker involvement is one of nine key elements that drive quality safety efforts at Tenaska Inc., says an executive with the Omaha, Neb.-based company that manages 17 power-generating plants.

To help build safety into Tenaska's culture, hourly employees help determine loss-prevention procedures. They do so by serving on plant safety committees and attending a safety summit the company sponsors annually, said Todd Jonas, Tenaska's vp of operations.

"The folks that are going into that plant day in and day out, turning the wrench and climbing the ladder, we want to make sure they are participating in (our) safety programs and helping direct those programs, because it's those people and their co-workers that safety programs need to be designed to protect," Mr. Jonas said.

Workers oversee safety committees at each plant with a management representative only advising and assisting them.

Senior managers can review minutes from safety committee meetings to make sure they are on track. Each committee chairman is elected by hourly wage earners, Mr. Jonas said.

"That chairman is empowered to help manage that safety program within the guidelines set forth by our company," he said.

The committees might discuss where to place fire extinguishers and ladders, suggest new safety training and drills, or review incident reports and make recommendations for improvements.

There also is the annual safety summit in which representatives from all of Tenaska's safety committees meet over several days. They share ideas and present best practices at their respective facilities.

It's an event the participants look forward to, Mr. Jonas said. "Typically, managers are not there," but workers who attend must implement beneficial practices that have proven helpful at other company plants.

"Year after year, each of the safety programs at each of the plants gets improved," Mr.

Jonas said.

Corporate managers participate in the summits, however, to be on hand for awards given to individual plants.

A President's Award is handed out each year, for example, to a plant that improves the quality of its safety program, Mr. Jonas said. Quality improvements might include new training procedures or increasing the number of drills to respond to incidents such as fires or chemical spills.

Upper management's presence at the safety summits also presents workers with "opportunities to interact with senior-level management, and it demonstrates the commitment we have on a corporate basis to safety," Mr. Jonas said.

Management leadership and commitment, like worker involvement, is among the nine key elements of Tenaska's safety efforts. Other elements include



Two Tenaska generating plants have achieved Star Program status granted by the Occupational Safety & Health Administration's Voluntary Protection Program in 2008 and 2010.

developing effective safety procedures, regularly assessing and improving safety systems, encouraging behavior that supports safety objectives, ensuring the safety elements of workplace design, effectively communicating safety practices to workers, continually recognizing hazards and controlling them, and providing safety and skills training, Mr. Jonas said.

The efforts have paid off.

Two Tenaska generating plants have achieved Star Program status granted by the Occupational Safety & Health Administration's Voluntary Protection Program in 2008 and 2010. OSHA says the Star Program is for worksites with comprehensive safety and health management systems that achieve injury and illness rates below the national average for their industries and are self-sufficient in controlling hazards.

Tenaska worksites also received several awards from the Itasca, Ill.-based National Safety Council.

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## Products & Services

### AIR Worldwide updates U.S. hurricane model

**BOSTON**—AIR Worldwide Corp.'s latest version of its hurricane model for the United States has been updated to better differentiate between risks based on factors such as geography, construction, occupancy, year of construction and individual building characteristics, the Boston-based catastrophe modeling firm said in a statement.

AIR's Version 12.0 incorporates detailed claims information and other data from recent storms to provide a more comprehensive view of U.S. hurricane risk, AIR said in the statement.

Three states—Illinois, Indiana and Missouri—have been added to the model, AIR said, which reflects the risk of inland storm damage such as that caused by Hurricane Ike in 2008.

### Zurich offers workers comp cover for temporary staffing

**SCHAUMBURG, ILL.**—Zurich North America is offering workers compensation insurance to temporary staffing companies.

The program is administered through a partnership with Artex Risk Solutions Inc., which has been a workers compensation program administrator for Zurich for 15 years, the Schaumburg, Ill.-based unit of Zurich Financial Services Group said in a statement.

The program is offered to temporary staffing companies focusing on clerical, professional, medical professional and light industrial markets.

"In response to a declining economy, many temporary staffing firms have reduced in size over the past few years," Rosemarie Rogers, head of the workers compensation segment in the programs unit at Zurich, said in the statement. "This temporary staffing program will give customers an alternative to consider that may have been lacking previously."

Artex Risk Solutions specializes in workers compensation for professional employer organizations and will combine its marketing force and temporary staffing knowledge with Zurich's underwriting capabilities, according to the statement.

For more information, contact Mike Muehling, workers compensation profit center manager for Zurich, at 847-605-6978 or [mike.muehling@zurichna.com](mailto:mike.muehling@zurichna.com).

### Benchmark reporting service available from Marsh

**NEW YORK**—Marsh Inc. has launched a benchmark reporting service for clients and risk managers.

The service offers risk managers real-time, on-demand benchmarking analytics for U.S. purchasing and pricing trends across 20 major industry groups, the New York-based brokerage arm of Marsh & McLennan Cos. Inc. said in a statement.

The benchmarking tool also generates cross-industry reports on property/casualty and financial and professional lines, shifts in limits and retentions, and pricing in relation to exposure.

It is available through Marsh's global benchmarking portal, which includes information on 90,000 policies covering \$50 billion in premium placements, \$4 trillion in limits and \$15.5 trillion in total insured value, according to the statement.

For more information, contact Dusan Jovanovic, senior vp and

global benchmarking leader for Marsh, at 212-345-1870 or [dusan.jovanovic@marsh.com](mailto:dusan.jovanovic@marsh.com).

### Manchester Specialty offers home health care cover

**MANCHESTER, N.H.**—Manchester Specialty Programs Inc. has introduced a national program offering coverage to home health care providers and medical staffing firms.

The program offers all lines of coverage on admitted and nonadmitted paper, including general and products liability, excess coverage, fidelity bond, and directors and officers liability, among others, the Manchester, N.H.-based managing general agency said in a statement.

Everest National Insurance Co. is the exclusive carrier and will underwrite the coverage, according to the statement.

Manchester Specialty Programs is a newly created subsidiary of Avoca Insurance Holdings, licensed nationally to provide specialty commercial property/casualty coverages through licensed agents and brokers.

For more information, contact William D. Thompson, president and CEO of Manchester Specialty Programs, at 603-264-5486 or [wthompson@manchesterspecialty.com](mailto:wthompson@manchesterspecialty.com).

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## UP Comings & Goings CLOSE



### MARC LANGDON

**NEW JOB TITLE:** St. Louis-based sales executive and business adviser for Welsch, Flatness & Lutz Inc., a St. Louis-based risk management firm.

**PREVIOUS POSITION:** St. Louis-based vp and senior account manager of commercial real estate for St. Louis-based GE Capital Real Estate.

**GOALS FOR NEW POSITION:** First and foremost, I want to bring a fresh perspective. I also want to raise the level of expectations of my clients by truly understanding their business objectives and goals.

**INDUSTRY CHALLENGES:** To stop accepting the status quo and to start looking at things from the clients' perspective. Most agencies have positioned themselves as just vendors selling products and not working to solve problems.

**INDUSTRY OUTLOOK:** (The industry is) constantly changing. We need to understand those changes from the clients' perspective first and then look at how we are going to change, secondly.

**HOW I GOT WHERE I AM:** This is my first industry job. My background is in finance and business consulting. This is a natural progression for me, the insurance industry.

**WHAT YOU WANTED TO BE WHEN YOU GREW UP:** A professional baseball player. My father played and I always played growing up. I have a competitive streak.

**OUTSIDE THE INDUSTRY, A DREAM JOB:** Any position that challenges you to think creatively. I love to solve problems and build relationships by thinking creatively.

**MOST PASSIONATE ABOUT:** I am passionate about never lowering my expectations of myself or those around me. I always want to expect more of myself.

**CAN'T-MISS TV SHOW:** I think the best show in the history of television is "The Wire" on HBO. It forces you to think about things in life in a different way. It challenges you intellectually.

**E-MAIL OR PHONE, AND WHY:** I prefer face-to-face, but I prefer phone over e-mail. I think e-mail or text messaging is impersonal.

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## Comings & Goings

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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:

Mike Tsikoudakis  
Business Insurance  
360 N. Michigan Ave.  
Chicago, Ill. 60601-3806  
[mtsikoudakis@businessinsurance.com](mailto:mtsikoudakis@businessinsurance.com)

#### POSTING THIS WEEK

##### AGENTS:

■ WFL

##### BROKERS:

■ Alper Services L.L.C.  
■ Marsh Inc.

##### INSURERS:

■ Navigators Group Inc.  
■ Torus Executive Risks Ltd.  
■ Utica National Insurance Group

##### OTHER PROVIDERS:

■ Riskconnect Inc.  
■ Towers Watson & Co.  
■ Trustnode Inc.

##### REINSURANCE:

■ Guy Carpenter & Co. L.L.C.

## Reform: Rules cover claims decisions

CONTINUED FROM PAGE 1

be filled in," Mr. Anderson said.

"We just don't know the details, and here, the detail is everything," Ms. Cohen added.

Regulators, though, resolved numerous other issues. For example, the regulation updates a 2000 Labor Department rule on the amount of time plan enrollees will have to be notified of coverage decisions involving urgent care.

Under the regulations, enrollees will have to be notified of an urgent care coverage decision within 24 hours of receipt of a claim.

That is a big change from the decade-old Labor Department rule requiring such decisions to be made within 72 hours of receipt of a claim.

The agencies said "electronic communication will enable faster decision-making" compared with a decade ago.

Experts say such a requirement, given the advances in technology, should be able to be met.

"Of all the changes that will have to be made, the easiest case to be made" for faster coverage decisions

would kick in Jan. 1, 2011. However, the new rules would not apply to grandfathered plans. For a plan to retain grandfathered status, an employer, among other things, can't ever raise coinsurance requirements or boost premiums paid by enrollees by more than five percentage points.

The claims review and appeal requirements will be another variable for employers to consider when comparing the cost of keeping the grandfathered status of their health care plans or complying with health care reform requirements, Hewitt's Mr. Piro said.

The release of the claims regula-

tions—which comes after rules on coverage for preventive treatment and screenings, grandfathered plans, annual and lifetime dollar limits, and extension of coverage to employees' young adult children—likely will be the last health care reform regulations to be issued for a while, experts say.

"We have had quite a bit in the last few months. But now, there should be a respite," said Mike Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York.

Many other provisions of the new law kick in much later, reducing the need for quick regulatory guidance.



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### 24 hours

Under the new health care reform regulations, enrollees will have to be notified of an urgent care coverage decision within 24 hours of receipt of a claim. That is a big change from the decade-old Labor Department rule requiring such decisions to be made within 72 hours of receipt of a claim.

is for urgent care, said J.D. Piro, an attorney in the Norwalk, Conn., office of Hewitt Associates Inc.

The rules will impose new criteria to avoid conflicts of interest in claims decisions. For example, a health plan could not provide bonuses based on the number of denials made by a claims adjudicator.

In addition, the regulations require that notices of available internal and external claims appeals processes and review be provided in a "culturally and linguistically appropriate manner."

The requirement to provide notices in a language other than English will be based on the number or percentage of plan enrollees who are literate in a common non-English language. For plans that cover more than 100 participants, the threshold is 10% of plan participants, or 500 participants, whichever is less.

Plans also will have to step up the amount of information provided to enrollees when coverage is denied. For example, sufficient information would have to be provided to enable an enrollee to quickly identify the claim that is involved, including the date of service; the health care provider; the claim amount, if relevant; the diagnosis code and its meaning; as well as the treatment code.

The new requirements generally


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AP PHOTO

Students at Tennessee State University sit near a display against an English-only policy in January 2009. Legislation in Tennessee allows English-only policies in certain situations in the workplace.

## English: Pitfalls in policies for workplaces

CONTINUED FROM PAGE 4

monitor an employee's performance.

"After a thorough review of the legislation, the governor determined the English-only portion of the bill did not change Tennessee law," the governor's office said in a statement.

Tennessee's law mirrors federal law, said Leslie Silverman, a partner with Proskauer Rose L.L.P. in Washington and a former EEOC vice chair. "In a lot of ways, it doesn't really do anything but restate what Title VII would say about this whole matter."

Tennessee's law, which became effective immediately, requires employers to notify employees of the policy and the consequences of violating it.

Observers say English-only policies rarely are inspired by anti-immigrant or prejudicial attitudes. There are cases, though, in which such policies may be motivated by

the attitude that "they must be saying something bad about me and therefore I don't want them to be talking in a language I can't understand," said Ms. McAndrew. "There's where employers can generally get themselves into trouble."

Many employers "are deterred from adopting these policies because they realize they could be opening Pandora's box and exposing themselves to litigation," Mr. Burns said. "Simply, the benefits don't outweigh the liability."

### Service industries

Observers say English-only workplace policies tend to be an issue in areas where there are large immigrant populations and in industries where there is significant client contact, such as service industries, including retail or health care settings.

Mr. Matthews said "there have been very, very few cases that have found these (policies) to be illegal as applied," but policies that have

been found to be illegal were in cases with "truly outrageous facts, where there's some clear evidence that the main motivation there was because the employer just didn't like a particular ethnic group."

In a 2003 Massachusetts case, a federal judge in *Cosme vs. The Salvation Army* ruled against a plaintiff who contended she was terminated from her job for speaking Spanish. The Salvation Army had a policy forbidding speaking a foreign language other than during break and meal periods.

The court said an "English language policy does not, in and of itself, constitute discrimination or disparate treatment of bilingual employees." The judge also said that "while the EEOC does not favor English-only policies, the mere existence of one does not necessarily violate the regulations."

Observers say the amount of litigation on the issue has declined in recent years as employers gained a clearer understanding of

## Workplace language policies need careful consideration

Employers considering an English-only policy in the workplace "need to be able to identify and explain what their business need is," said Dennis Westlind, a partner with law firm Stoel & Rives L.L.P. in Portland, Ore.

If it is not a matter of customer service or assuring safety, then "it's a pretty good indicator you shouldn't have a policy," Mr. Westlind said.

"If an English-only policy is not necessary, don't adopt one," said Michael P. Burns, an associate with law firm Horan, Lloyd, Karachale, Dyer, Schwartz, Law & Cook Inc. in Monterey, Calif. "It's usually better to stay out of this hornet's nest than to go into it unnecessarily."

Any policy should be "carefully implemented, carefully worded and carefully followed" to avoid violating federal law, said Leslie Silverman, a partner with law firm Proskauer Rose L.L.P. in Washington and a former vice chair at the Equal Employment Opportunity Commission.

In some cases, said Ernest Haffner, senior EEOC attorney adviser, employers have adopted English-only policies that were "just a little bit broader than they needed to be."

James A. Matthews III, a partner with Fox Rothschild L.L.P. in Philadelphia, said if a policy

is called for, "common sense suggests you would try to tailor the rule as narrowly as possible to address the problem you've identified and not necessarily try to kill a flea with a sledgehammer."

If customers should complain that employees are "standing in front of them speaking a language they don't understand," which makes them feel uncomfortable, the question to ask is: "Do you need to promulgate a blanket English-only rule anytime, anywhere in the workplace," Mr. Matthews said, "or do you want to promulgate a rule that you'll speak English in business areas of the store when customers are present?"

Aaron R. Gelb, a shareholder with law firm Vedder Price P.C. in Chicago, said one case he was involved in concerned a bank teller who lodged a complaint with the EEOC for being reprimanded for speaking a foreign language with another bank employee in front of a customer.

The EEOC, however, did not pursue the matter. "There was no overreaching on the part of the employer to say, 'You don't speak your language on breaks,'" Mr. Gelb said. Instead, the employer's "measured response" to a customer's discomfort "kept them out of the crosshairs" of the EEOC.

—By Judy Greenwald

what is permitted.

EEOC charges on this issue totaled 190 in fiscal 2009, about an 8% decline from the previous year, said Dianna Johnston, assistant legal counsel with the EEOC. "A lot of employers are aware of our guidelines" on this issue, which have been in place since 1980, she said.

The EEOC remains aggressive in pursuing this issue, though.

"They've taken a pretty hard stance," Ms. McAndrew said. "When they see potential violations of the law, they're going to come down pretty hard on employers."

The EEOC looks at the issue "as a warning sign there is more discrimination going on, as well as that the policy itself can be discriminatory, so they take it very seriously," Mr. Westlind said.

## Flood: Bid to add wind cover to NFIP up in the air

CONTINUED FROM PAGE 4

said: "We're not taking anything for granted. We have to act like it's a certainty it will be coming up, because Rep. Taylor is not going to let up trying to garner support, so we can't let up our opposition."

"Our interpretation is that they counted the votes and concluded there was a likelihood it would be defeated and, therefore, the Democratic leadership pulled it to reassess what their options were," said Frank Nutter, president of the Reinsurance Assn. of America.

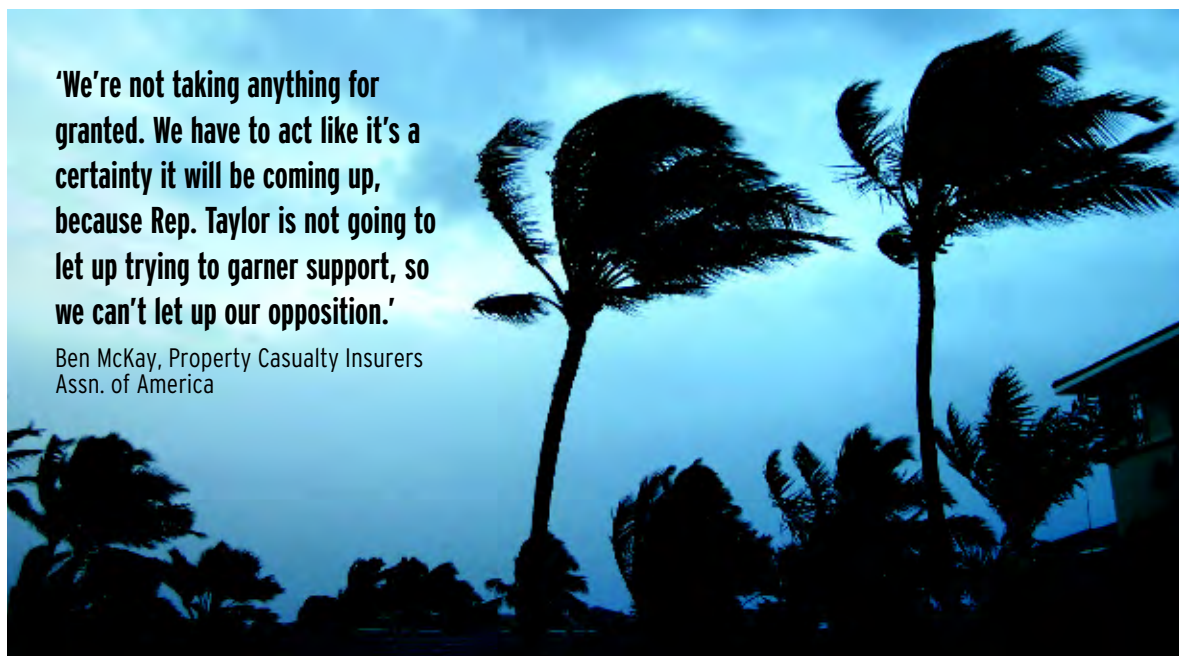
"Obviously, some significant

concerns were raised, leading to it getting pulled," said a spokesman for the National Assn. of Mutual Insurance Cos. in Washington. "I can only assume that supporters of the bill are going to keep pushing to try to get where they want to be."

Previous disagreements between the House and Senate over whether the NFIP should be expanded to include windstorm cover have led to an impasse during which the program has lapsed several times before being reauthorized on a short-term basis. The most recent extension will expire Sept. 30.

**'We're not taking anything for granted. We have to act like it's a certainty it will be coming up, because Rep. Taylor is not going to let up trying to garner support, so we can't let up our opposition.'**

Ben McKay, Property Casualty Insurers Assn. of America



# Benchmark: Q2 soft market

CONTINUED FROM PAGE 3

been hearing" that the soft pricing in property had been accelerating. "The numbers seem to support that, but we'll have to wait another quarter" to see if that's the case, he said.

He said that the "only thing I see that could turn the market in the short run" would be a major natural catastrophe that could soak up excess capacity.

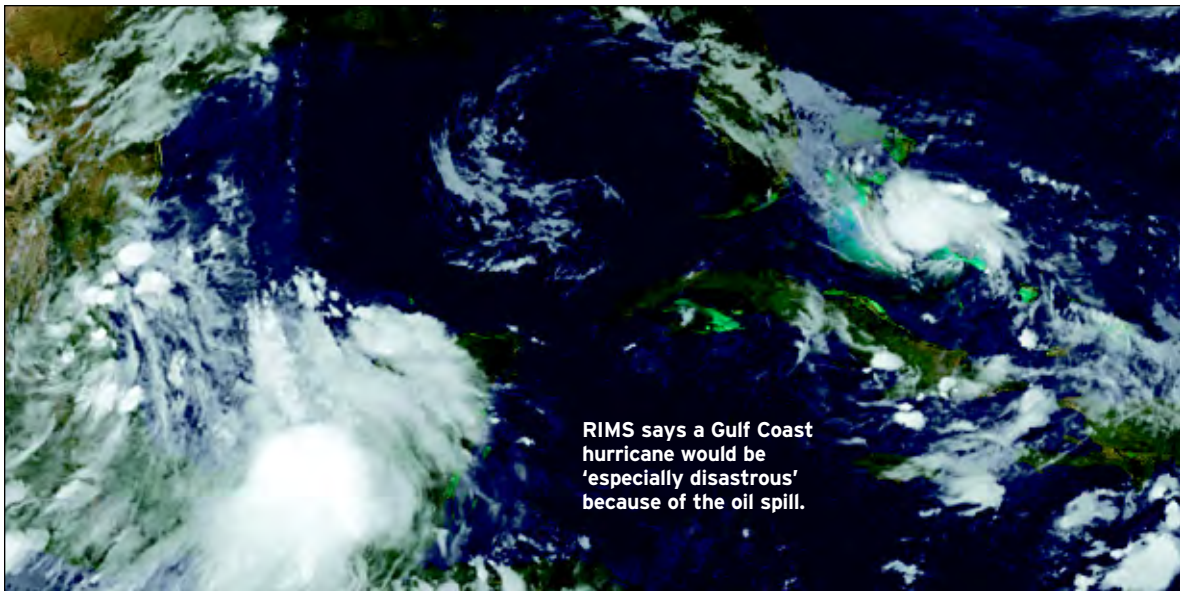
A RIMS board member warned in the statement that continued soft conditions are not guaranteed.

"Risk managers continue to benefit from lower premiums, but a big storm could cause the market to turn at any time," said Robert Cartwright, loss prevention manager for Bridgestone Americas Holding Inc. in Exton, Pa., and RIMS' director of member and chapter services. "Forecasts for the 2010 hurricane season are ominous, and a Gulf Coast hurricane could be especially disastrous

**'Risk managers continue to benefit from lower premiums, but a big storm could cause the market to turn at any time.'**

Robert Cartwright, Bridgestone Americas Holding Inc.

because of the oil spill. If catastrophe losses soak up enough capacity, prices could increase for all lines, not just property insurance."



RIMS says a Gulf Coast hurricane would be 'especially disastrous' because of the oil spill.

AP PHOTO/NOAA

# Contempt: Broker faces charges

CONTINUED FROM PAGE 3

Nicolson admitted he had thrown into a pond near his home, was recovered by a forensics company employed by Marsh, court documents show.

Mr. Nicolson also admitted disposing of computer memory sticks containing personal and Marsh-related data in a river.

In the third witness statement, Mr. Nicolson also acknowledged he had assisted Aon with other business during his notice period, though he said his involvement had been limited and was not significant.

Mr. Nicolson could face jail time if he is found guilty of the charges.

In the High Court last week, Justice Akenhead ordered a full hearing later this year on the allegations of contempt of court and making false statements.

A spokesman for Marsh declined to comment on the case. Aon said it was unable to comment on ongoing legal proceedings.

The High Court case is *Marsh Services Ltd. & Marsh Ltd. and Euan David Nicolson, Alister Gavin Laird & Aon Ltd., HQ09X04381*.

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# AIG: Deal raises funds concern

CONTINUED FROM PAGE 3

remainder of the settlement amount is conditioned on one or more common stock offerings, raising net proceeds of at least \$550 million, prior to final court approval, according to the SEC filing. However, it will be up to AIG's "unilateral discretion" as to whether market conditions are "commercially reasonable," says the filing.

AIG also will have to pay the \$550 million if it raises at least that amount through a secondary offering on behalf of the U.S. Treasury. In addition, the funds may be raised "from other sources," says the filing.

If AIG does not fund the \$550 million before final court approval of the settlement, plaintiffs may terminate the agreement, elect to acquire "freely transferable" shares of AIG common stock with a \$550 million market value, or extend the period for the insurer to complete a qualified offering, according to the SEC filing.

Richard Christopher Whalen, senior vp and managing director of Torrance, Calif.-based research firm Institutional Risk Analytics, said: "Right now, the only place they could get that money is from the Treasury. I don't really think AIG could do an equity offering right now. I just can't imagine what the offering would look like. There's so much uncertainty with respect to their future," he said of AIG. "Where they come up with the money is clearly an issue."

AIG will have the financial resources through the federal government's support to fund the settlement, said Sean Egan, president

of Wynnewood, Pa.-based Egan-Jones Ratings Co., a rating agency, although "it's sort of robbing Peter to pay Paul."

A spokeswoman for the Federal Reserve Bank referred a question on the settlement to AIG.

Ernest L. Patrikis, a partner with law firm White & Case L.L.P. in New York, and AIG's former general counsel, said: "You don't do a settlement unless you can pay the settlement. I don't regard that as an issue."

Mark Rouck, senior director at Fitch Ratings in Chicago said, "From a funding and liquidity standpoint, we don't view (the settlement) as a ratings concern."

"In the broad scheme of things,

## \$550M

AIG also will have to pay the \$550 million if it raises at least that amount through a secondary offering on behalf of the U.S. Treasury. In addition, the funds may be raised "from other sources," says an SEC filing.

it's one of several issues they have to deal with," including repaying the Federal Reserve and AIA's IPO. "Those are probably the more important things from our perspective right now, from a ratings perspective," Mr. Rouck said.

But the settlement may encourage other states to pursue litigation against AIG, say some observers. "There is no reason why they should not," said Mr. Egan.

But, Mr. Patrikis said, "There's statutes of limitations...It's a little late for people to start coming in."

One unknown is the possible effect of ongoing litigation on AIG's bottom line. Its 10-Q for the first quarter ended March 31, for instance, includes more than 10 pages detailing litigation involving



AIG has named Mark Tucker, former group chief executive of Prudential P.L.C., to head AIA Group Ltd., replacing Mark Wilson.

EPA/LANDOV

## AIG names new head of AIA

**NEW YORK**—AIG has named a new head for its Asian unit, AIA Group Ltd., and reportedly has chosen three underwriting banks to arrange an initial public offering for the unit.

AIG confirmed it has named Mark Tucker, former group chief executive of Prudential P.L.C., to head AIA Group Ltd., replacing Mark Wilson. Mr. Wilson announced in March 2009 that he was resigning from Prudential as of September, stating he had accomplished his goals.

The collapse of a deal for Prudential to buy AIA for \$35.5 million reportedly was a major factor in tensions between AIG CEO Robert Benmosche and AIG Chairman Harvey Golub, which led to

Mr. Golub's replacement by Robert S. Miller this month (*BI*, July 19).

AIG would not confirm a report that Deutsche Bank A.G., Goldman Sachs Group Inc. and Morgan Stanley have been selected by AIG to arrange a Hong Kong IPO for AIA, perhaps as early as this year.

Kevin Ahern, a credit analyst with New York-based Standard & Poor's Corp., which left the unit's ratings unchanged, said Mr. Tucker's experience with the business, as well as with running a public company, are both positives, although AIA "has gone through a fair amount of changes" in terms of whether it would be sold or there would be an IPO.

—By Judy Greenwald

the insurer.

"Rest assured, there'll probably be 15 pages the next time the report is issued," Mr. Egan said. "AIG will slowly work its way out of its problems, but it's going to be a long time, if ever, before it resumes its post at the top of the financial pedestal."

"You certainly can't handicap these things," said Mr. Whalen of the pending litigation. "I don't know what's going to happen with them, because if they have to go back to Treasury for more money, I think it becomes a very interesting question what happens...The politics of this is very nasty."

## AIG workers comp policyholders can proceed with suit: Court

**COLUMBIA, S.C.**—American International Group Inc. policyholders can proceed with a lawsuit alleging that underreporting of workers compensation premiums by the insurer harmed them, South Carolina's Supreme Court has ruled.

The ruling in *Temporary Services Inc. vs. American International Group Inc.* stems from a lawsuit filed in 2008 in U.S. District Court in Columbia, S.C. The plaintiffs in that case are seeking class action status on behalf of other policyholders that purchased AIG workers comp coverage between June 1, 1990, through July 1, 2007, court records show.

Plaintiffs claim several AIG units fraudulently charged excessive workers comp premiums by engaging in fraudulent practices, including underreporting premiums to the state Department of Insurance and an assigned risk pool.

The underreporting of premiums played a role in helping AIG inflate a loss-cost multiplier that insurers use to set their pricing, said Richard A. Harpootlian, a Columbia, S.C., attorney at Richard A. Harpootlian P.A. Inflating

**'The recent South Carolina Supreme Court decision is just an opinion on South Carolina law and is not a decision on the merits of the case.'**

Jennifer Barrett, Quinn Emanuel Urquhart & Sullivan L.L.P.

the loss-cost multiplier ultimately helped AIG inflate premiums that policyholders paid AIG, said Mr. Harpootlian, who represents the plaintiffs in the case.

The federal court hearing the case essentially asked South Carolina's Supreme Court to determine whether a state filed-rate doctrine bars the plaintiffs' lawsuit. The doctrine says that because a state agency has the authority to determine reasonable rates, courts should

not decide that issue.

The state Supreme Court on Monday ruled that because South Carolina's Department of Insurance was "not vested with the authority to determine the rates applicable to the workers compensation policies at issue...the filed-rate doctrine does not bar plaintiffs' claims."

However, there is no evidence to support the allegation that AIG harmed policyholders by underreporting the comp premiums, an attorney representing AIG said Wednesday.

Even if AIG had underreported premiums to South Carolina's Department of Insurance, it would not have affected premium amounts paid by the policyholders suing New York-based AIG, said Jennifer Barrett, an attorney at Quinn Emanuel Urquhart & Sullivan L.L.P. in New York. The plaintiffs' math is faulty, Ms. Barrett said.

"The recent South Carolina Supreme Court decision is just an opinion on South Carolina law and is not a decision on the merits of the case," Ms. Barrett said.

—By Roberto Cenicerros

# Securities litigation on the rise

By ZACK PHILLIPS

Securities litigation rose sharply in the second quarter this year, reversing a first-quarter decline and returning to the trend of recent years, according to an analysis.

New York-based Advisen Ltd. said last week that second-quarter securities litigation was 30% higher than the first quarter this year and 19% higher than the second quarter last year. Suits related to the Deepwater Horizon oil spill contributed to the trend, the report said.

"A surge in securities litigation in the second quarter of 2010 was driven by short-term reactions to headline-grabbing events as well as what are shaping up to be longer-term shifts in litigation trends," Advisen said in the report sponsored by ACE Ltd.

The number of suits filed against energy companies jumped 82% over the first quarter, driven by the Deepwater Horizon spill and the April 5 fatal explosion at the Upper Big Branch mine in West Virginia, Advisen said. The Deepwater Horizon also drove a near doubling in derivative suits in the second quarter compared with the first quarter, the report said.

Meanwhile, the report found that credit crisis-related filings this year have been far below previous years, but financial firms still represent the most popular target—named in about 34% of securities litigation in the second quarter. Investment bank Goldman Sachs Group Inc. or its directors and officers were named in five of the seven new credit crisis-related suits during the quarter, Advisen said.

One piece of favorable news for defendants is that the average settlement during the first half this year fell to \$18.9 million, more than \$10 million below the average settlement in 2009.

Still, the average securities class action settlement has risen sharply from \$10.4 million in 2009 to \$49.6 million in 2010, aided by eight proposed or final settlements of \$100 million or more, Advisen said.

But securities class action suits may be becoming less frequent. Securities class action suits accounted for almost half of all securities suits before 2006, but represented only 23% of such suits in 2009 and only 19% through the first half this year, the report said. Instead, breach of fiduciary suits now account for 33% of all second-quarter securities suits. Two-thirds of the suits were filed in state courts.

Securities fraud suits, a category in which Advisen counts suits brought by regulators or law enforcement agencies, increased slightly over the first quarter. Such filings accounted for 29% of all second-quarter suits compared with 36% in the first quarter and 38% in second quarter last year.

## News In Brief

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equity firm Blue Wolf Capital Management L.L.C. in New York, for the top PBGC position in November, but the nomination stalled in the Senate. President Obama bypassed Congress while it was in recess and named Mr. Gotbaum as PBGC director. But, as a recess appointee, Mr. Gotbaum can serve only through the end of 2011 under Senate rules.

### Ryan Specialty wholesale unit makes first buy

R-T Specialty L.L.C., the wholesale unit formed by Ryan Specialty Group, has made its first acquisition, buying Chartwell Independent Insurance Brokers L.L.C., the company said. Chartwell is a national wholesale broker with expertise in property accounts, R-T Specialty said.

### DOL to launch two FMLA initiatives

The Department of Labor will launch two initiatives related to the Family and Medical Leave Act. Last week, DOL officials said the department will conduct a study next year on how employees are using FMLA. The Department also expects to propose regulations by November providing guidance on amendments to FMLA that Congress approved last year.

### Anthem Blue Cross of California leader resigns

Anthem Blue Cross of California President and General Manager Leslie Margolin has resigned more than two years after taking the helm, the insurer's parent company confirmed. Mark Morgan, Anthem's vp of small-group sales, is replacing Ms. Margolin on an interim basis, effective immediately, Anthem said. Ms. Margolin led Anthem, a subsidiary of WellPoint Inc., when the Obama administration this year severely criticized the insurer for proposed rate hikes averaging 25%. The hikes were canceled after regulators discovered calculation errors in the rate filing.

### New York approves workers comp loss cost rate hike

New York state has approved a workers compensation loss cost rate

increase that averages 7.7%, effective Oct. 1, the New York Compensation Insurance Rating Board said. The hike was approved by the New York State Insurance Department.

### Fitch affirms Lloyd's of London A+ rating

Fitch Ratings Inc. has affirmed its A+ rating on the Lloyd's of London market but said 2010 likely will be a more challenging year for the market than 2009. Fitch said the rating affirmation reflected Lloyd's strong operating performance in 2009, which exceeded the agency's expectations. But Fitch said the market's 2009 results were boosted by a series of factors that are unlikely to be repeated in 2010, including a benign U.S. windstorm season and improved pricing conditions.

### Vermont adds 17 captives in first half

Vermont licensed 17 new captive insurance companies in the first six months of 2010, three more than during the same period last year. The state licensed 39 captives in 2009, the sixth-best year for the 29-year-old domicile. This year's formations have included 15 single-parent captives and two risk retention groups, according to the Vermont Department of Banking, Insurance, Securities and Health Care Administration.

### U.K. firm BLG adds 17 former Halliwells insurance lawyers

Law firm Barlow Lyde & Gilbert L.L.P. has boosted its insurance practice with the recruitment of 17 former partners from Halliwells L.L.P. The partners will join BLG's Manchester office, effective immediately. The team mainly focuses on catastrophic injury, fraud, regulatory and public sector work, BLG said in a statement. Halliwells, which warned in late June that it was in financial difficulty and risked going into administration, is being broken up.

### Bermuda Monetary Authority appoints COO

The Bermuda Monetary Authority, the regulator of the financial services sector in Bermuda, appointed Brad Erickson to the role of chief operating officer, effective immediately. Mr. Erickson takes over the newly created role and will focus on directing the BMA's operations and support functions and assisting in its strategic development.

# Class actions falter in Europe

*Laws allow litigation but complexities deter plaintiffs from suing*

By ZACK PHILLIPS

European countries clearly are moving toward legal regimes that permit class action litigation but still are struggling with implementation problems, a panel of legal experts said.

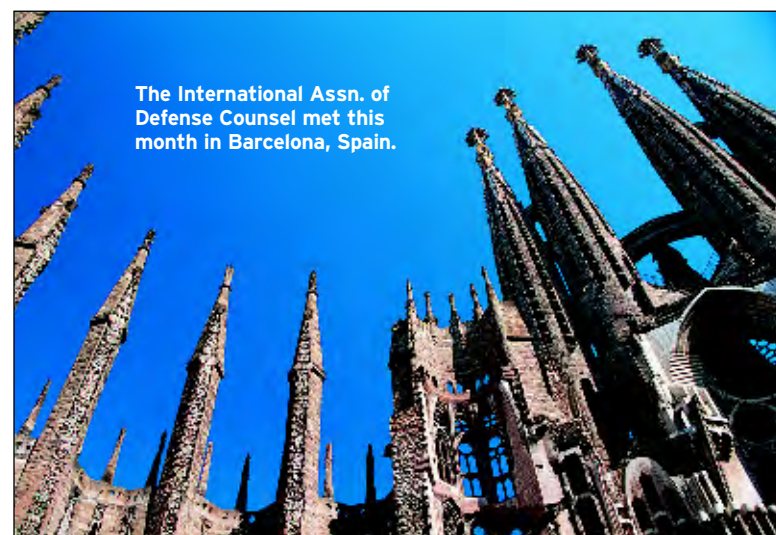
Panelists speaking this month at the annual meeting of the International Assn. of Defense Counsel in Barcelona, Spain, noted several problems and legal dilemmas courts, regulators and lawmakers face.

Italy began allowing class action litigation at the beginning of 2010, said Cinzia Altomare, manager of global casualty facultative at General Re Corp. in Milan. But the new regime has problems, such as its extreme complexity and a lack of a clear definition of what constitutes a class, so there has been little usage thus far, she said. Also, the list of groups eligible for class certification does not include investors, she said.

"Does it mean that investors are not admitted for class action in Italy? Nobody really knows," she said. "It seems the courts in the end will decide what to do. But in the meanwhile, it's a matter of muddy waters."

Rachael Mulheron, a professor of law at Queen Mary, University of London, who studied collective action for the U.K. government, said legislation that would have established opt-out class action litigation for claims in the financial services sector was about 10 days away from passage this year before parliamentary elections and the change in the United Kingdom's government doomed it, she said.

"It was really that close," she said.



"We may be without any sort of opt-out redress for another four years...We're in a very frustrating position."

Ms. Mulheron said her study identified reasons why an opt-out regime was needed, including the difficulties of the existing opt-in regime,

**'We may be without any sort of opt-out redress for another four years...We're in a very frustrating position.'**

Rachael Mulheron,  
Queen Mary, University of London

under which sometimes hundreds of thousands of claims must be filed separately; areas where government regulators can impose fines for wrongdoing but cannot secure compensation for victims; and the difficulties of English investors participating as a sub-class in a class action

suit in the United States.

Under the proposed legislation, plaintiffs in opt-out collective action cases would have been subjected to a more stringent merits test than solitary claimants, she said.

"We decided that English judges would be more comfortable if there was a tougher gate to get through," she said.

Given the movement toward more class action litigation in Europe, insurers should re-evaluate their policy limits; pay attention to whether defense costs are included in limits, which varies by country; and prepare for new and larger claims, Ms. Altomare said. She said insurers are concerned about the prospect of U.S.-style litigation emigrating to Europe.

"We base our financial strength, which enables us to pay claims for our clients, on a (cost) projection of experienced cases, and it is impossible to project and fund claims of that kind of size," she said, referring to some of the most expensive class action cases in the U.S. "How much would a policy cost? Nobody would pay us premiums to fund the cases."

## Twitter: Rules for social media needed

CONTINUED FROM PAGE 4

protective of users than U.S. law, and more focused on data privacy.

Under European law, Mr. Kommatas said that any operation on personal data must be transparent, for a legitimate purpose and not excessive, among other guidelines, and those requirements now apply to social networking providers, such

as Facebook, based outside the European Union.

"All these (sites) based in the U.S., since they are of course used in the E.U., can be held liable if they do not follow the principles of data protection," he said.

Ms. Varney said U.S. firms should regularly monitor their social media sites, and respond to and counter negative comments rather than

take legal action.

She said many companies hire third-party contractors to create their social networking sites; to screen potential new hires through social media sites, passing along only lawful and ethical information; and to manage their online reputation in part by pushing down negative sites and comments in search engine results.

## Business Insurance Webcasts & Webinars

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For details, visit [BusinessInsurance.com/Webinars](http://BusinessInsurance.com/Webinars)

### **Energy Security: Protecting Your Business From Energy Supply Disruptions**

**Live Online: Wed. Aug. 4, 2010 | 2 p.m. Eastern | Free of Charge**

The ongoing oil disaster in the Gulf of Mexico is focusing new attention on energy security. To help risk managers and loss control personnel understand their energy security exposure and how to address it, join Phillip Ellis, CEO of Willis Structured Risk Solutions in London, and Barry Franklin, a managing consultant of Towers Watson and a director in the company's corporate risk management practice, for this webcast. *Business Insurance* Senior Editor Mark A. Hofmann will moderate the live online webcast.

Webcast Sponsored by:  ZURICH

# Aon: Broker will again take contingents

CONTINUED FROM PAGE 1

that they steered business to insurers that paid the highest contingent commissions. However, the ban was never extended to smaller brokers, so the “big three” argued the restrictions created an unlevel playing field.

In February, Marsh, Aon and Willis reached agreements with state authorities to lift the ban and the rigorous disclosure requirements contained in their 2005 settlement agreements.

Willis quickly responded to the amendment, saying it would not resume collecting contingents on its core retail brokerage business worldwide, citing an inherent conflict of interest in the compensation practice. But Willis is receiving contingent commissions tied to business acquired in its 2008 acquisition of Hilb Rogal & Hobbs Co. Under previous terms of the ban, brokers were given a three-year grace period after completing a takeover to take contingent commissions on business generated by the acquired company. In the first quarter of 2010, Willis reported \$8 million in contingent commissions related to HRH, down 60% from the previous year. Willis said it has converted more than 90% of HRH’s legacy contingents into upfront commissions and aims to complete the conversion this year.

In March, Marsh said it would not accept contingent commissions within its core brokerage operations for large account and middle-market business in the United States and Canada. However, Marsh said it will accept contingents within its Marsh & McLennan Agency L.L.C. sub-

## Wholesale moves in-house

**CHICAGO**—Aon Corp. has taken its wholesale brokerage business in-house for placements into the London, Bermuda and Singapore markets.

As part of a new global policy, the Chicago-based broker will rely on its internal wholesale platforms to access and place business in those markets rather than use rival brokers, said Steve McGill, chairman and CEO of Aon Risk Solutions in Chicago.

The policy went into effect on all new and renewal business beginning after July 15, 2010.

However, the policy will not be applied to U.S. wholesale business, and Aon will continue to use third-party brokers for these placements, Mr. McGill said. Because domestic wholesale business, which operates in the U.S. surplus lines market, cannot be accessed directly by a retail broker, Aon plans to “continue to rely on the expertise of a selection of wholesalers” rather than seek to establish a U.S. wholesale unit, or purchase a wholesale broker in the United States, he said.

Mr. McGill said the move

was in line with the broker’s centralized approach to serving clients.

Analysts say the move will result in an immediate revenue gain, because Aon no longer will give up a portion of its commission to third-party brokers in those markets. Mr. McGill declined to say how much wholesale premium is placed through outside brokers in affected markets.

Although Aon said it has no plans to re-enter the U.S. wholesale market “at this time,” several industry observers said the move could mark the beginning of a shift that would see large retail brokers return to the U.S. wholesale business.

In 2005, the world’s largest brokers divested their wholesale units, after then-New York Attorney General Eliot Spitzer’s investigation into the brokerage industry. The actions were seen as a way for the brokerages to remove any perceived conflicts of interest that could arise from them owning retail and wholesale operations.

—By Colleen McCarthy

siary and within its U.S. and Canadian consumer business, which includes affinity, sponsored program and personal lines businesses.

Mr. McGill, estimating that con-

tingents made up roughly 2% of Aon’s revenue prior to the ban, said “it was not a significant portion of our revenue previously, and we don’t expect it to be a significant

portion moving forward.”

In 2003, prior to the ban, Aon collected \$169 million in contingent commissions; its total brokerage revenues for that year were around \$6.73 billion.

RIMS said it is “disappointed” by Aon’s decision to again accept contingent commissions. In a statement, RIMS reiterated its position that contingent commissions should be universally banned and called Aon’s move “a step backwards with regard to the level of service it provides to its clients.”

New York-based RIMS said it will continue to call on all brokers to forgo contingents, which it said “pose an inherent conflict of interest and interfere with the relationship of trust between the broker and insurance consumer, regardless of the nature of the client or the intermediary.”

A recent *Business Insurance* survey indicated many commercial insurance buyers—70.1%—believe contingent commissions represent a conflict of interest (*BI*, July 19).

But Aon said it believes it can “manage” any such potential conflicts through transparency and “comprehensive disclosures” that meet or exceed all legal requirements. “Based on the feedback we had from clients, we think appropriate disclosures will help to ease any (buyer) concerns,” Mr. McGill said.

U.S.-based clients will be provided a “quote disclosure report,” which includes comprehensive disclosures that detail all carrier responses, including quotes and declinations, gross premiums and expected total commissions on placements. In other jurisdictions, disclosures will meet or exceed all legal requirements, he said.

Michael Harrington, senior risk manager for EMC Corp. in Hopkinton, Mass., said he was “OK” with Aon’s position, as long as disclosures are provided up front. Mr. Harrington, who uses Aon for some placements, said he would expect to be informed about “what percentage of spend—on a line-by-line basis on my account—goes to contingent commissions; and in the aggregate, what percentage of the broker’s business comes from contingents,” he said.

Analysts welcomed the move.

Meyer Shields of Stifel, Nicolaus & Co. Inc. in Baltimore said, “we think this is absolutely the right decision,” noting his firm does not believe that fully disclosed contingent commissions represent a conflict of interest for brokers. Because negotiations will start now for 2011 contracts, Mr. Shields said he expects Aon to realize the revenue gains related to contingent commissions in 2012, estimating additional revenues “north of \$50 million” annually based on current premium volume. However, “they will get some client opposition and pushback,” he said.

For brokers, part of the appeal of contingents is that there are few expenses associated with them, and they are generally viewed as “high-margin profits,” said Mr. Shields. The payments “make up a small percentage of revenue, but a high percentage of profit,” he said.

For Aon, taking contingent commissions is another potential source of revenue, and should help offset current conditions, said Paul Newsome, an analyst with Sandler O’Neill & Partners L.P. in Chicago. He said he expects Aon’s revenue gains to be “meaningful,” but said soft market conditions likely will prevent it from reaching previous levels.

# Drugs: Doctor prescribing boosts costs

CONTINUED FROM PAGE 1

And in California, where 2007 workers comp reforms curbed physician dispensing, other nontraditional dispensing practices, including compound drugs and medical foods, are adding to comp costs, they say.

Nationwide, physicians dispensing common pharmaceuticals from their offices is a bigger workers compensation payer concern.

According to Boca Raton, Fla.-based NCCI Holdings Inc., physician-dispensed pharmaceuticals accounted for 17% of workers comp drug costs in 2008, the latest year for which data is available, up from 8% the prior year.

“We think it may be increasing costs,” said John Robertson, an NCCI director and senior actuary.

Physician dispensing can benefit patients as they are more likely to follow through with treatment regimens when their doctor personally provides medications, said John Aforismo, CEO at Wethersfield, Conn.-based RJ Health Systems International L.L.C., which conducts pharmaceutical clinical reviews.

But the practice also can increase costs as the “repackagers” profit from supplying doctors with pharmaceuticals, Mr. Aforismo said.

“So, of course, the cost of the

drug is going to go up, just because somebody has to make money here,” he said.

Companies that specialize in providing doctors with pharmacy dispensing machines help increase the distribution of pharmaceuticals from physician offices, sources said.

“We are seeing a definite uptick in cooperation between the physician and companies that will help the physician install machines in their office that dispense (common) medications, but in a special package or a different dose,” said Kevin Triebout, director of government affairs for Tampa, Fla.-based PMSI, a pharmacy benefits manager.

Selling repackaged drugs in unusual doses can increase the number of times a patient must visit a doctor’s office for prescription renewals, sources said.

In addition, doctor-dispensed repackaged drugs typically are assigned numbers other than the widely recognized National Drug Code numbers used to describe specific pharmaceuticals, sources added. Workers compensation fee schedules that cap pharmaceutical prices typically are based on a drug’s average wholesale price, but determining a drug’s AWP requires recognizing the NDC, sources said. So

the nonstandard NDCs used on repackaged drugs often facilitate charging prices above those allowed by state fee schedules, several sources agreed.

Deciphering the drugs prescribed for utilization review purposes and bill review cost-containment purposes also is challenging, especially when nonstandard codes are coupled with the manual or paper billing systems used by many doctor’s offices, sources added.

“You don’t get an automated assurance of drug utilization review on drugs that are being dispensed in a physician’s office,” said Jim P. Andrews, senior vp of pharmacy services at Healthcare Solutions Inc. in Atlanta.

Contracting with a doctor network and with a prescription benefit manager can address doctor-dispensing expenses, said Kimberly George, vp and national managed care practice lead in Chicago for Sedgwick Claims Management Services Inc.

But, ultimately, claims examiners must decide whether to approve the bills, Ms. George said.

Observers say a September 2009 California Workers Compensation Institute study on pharmaceutical costs in California’s system provides

insight on the potential for reforms to reduce doctor-dispensed repackaged drugs and the average payment for those pharmaceuticals.

In 2006, just before California curbed doctor dispensing, repackaged drugs accounted for 54.7% of the state’s workers comp prescriptions and 59.2% of prescription dollars. But soon after implementing regulatory changes, repackaged drugs dwindled to 10.5% of prescriptions and 8.3% of payments.

By the third quarter of 2008, repackaged drugs represented 8.1% of workers comp prescriptions and 5.8% of pharmaceutical payments.

However, repackaging appears to have been replaced in California by the increased prescribing of untested “compound drugs” and “medical foods,” sources say.

Compound drugs typically are an improvisational mix of pharmaceuticals and ointments or creams that doctors sometimes prescribe if they believe that a patient cannot tolerate the drug internally, said Alex Swedlow, executive vp of research and development for the Oakland, Calif.-based California Workers’ Compensation Institute.

But compound drugs are not subject to the U.S. Food and Drug Administration approval process that traditional pharmaceuticals undergo, and their efficacy remains questionable, Mr. Swedlow said.

Compound drugs typically are not subject to state fee schedules

that cap pharmaceutical charges, sources say.

In addition to California, there is an increase in bills reflecting their utilization in Florida and Georgia, said David Deitz, national medical director at Liberty Mutual Group Inc. in Boston.

Compounding drugs is a longstanding medical practice appropriate for some cases, he said.

“It’s just that we have observed in many instances that the use of compounded drugs appears to have no medical benefit for the injured worker,” Dr. Deitz added.

Compound drugs can be a significant cost driver, leaving employers and workers comp insurers confused over what they are being billed for, said Mr. Andrews.

“The bills we are seeing (in California) are 100%, 200%, 300% higher than what we believe is a valid California industrial fee schedule rate,” he said.

Observers say they also are seeing an increase in bills for prescribing medical foods in California. Medical foods essentially are vitamins prescribed along with pharmaceuticals, Mr. Andrews said. Some experts question the efficacy of medical foods in workers comp cases.

Research the CWCI is expected to release this week will document that doctor prescribing of compound drugs and medical foods is on the rise for treating injured California workers.



## Check yourself before you wreck yourself

For employers worried about their workers being a bit too hasty to send an e-mail in the heat of the moment, there is a new product designed to give these employees pause.

"ToneCheck," a product launched by Moncton, New Brunswick, Canada-based Lymbix Inc., is designed to evaluate the tone of an e-mail by examining its vocabulary and then warning the sender if it considers the language to be too emotionally charged.

For instance, instead of writing something has been annoying, troubling or upsetting, the program will suggest the sender write instead, "It has been concerning me for some time."

According to the company's website, the software's features include a "ToneCheck"



Lymbix Inc.'s ToneCheck program helps e-mail senders evaluate the tone in their messages to keep them from being too emotional.

which identifies and flags emotionally charged sentences; a "Tone Editor," which helps to adjust and preview the emotion in the messages before sending; a "Tone Alert Automated" flagging device that notifies the sender upon pressing "send" when an e-mail falls "outside your acceptable tone" balance, and offers the option to adjust or ignore; and a "Tone Tolerance," feature, which lets e-mail senders choose an "acceptable tone tolerance" and customize settings in a configuration panel for more or less sensitivity.

Microsoft Outlook users can download ToneCheck, which is in beta form, free for a limited time.

Further information is available at [www.tonecheck.com](http://www.tonecheck.com).

# Business Insurance END PAGE

Contributing: Michael Bradford, Jeff Casale, Judy Greenwald, Mark A. Hofmann



Vuvuzelas, like the one this boy is blowing, have been banned by several British soccer clubs.

## Vuvuzela's buzz wears off in U.K.

EPA/LANDOV

Tottenham Hotspur and other British soccer clubs are banning the vuvuzela horns that provided the buzzing background noise at the World Cup in South Africa this summer citing safety reasons.

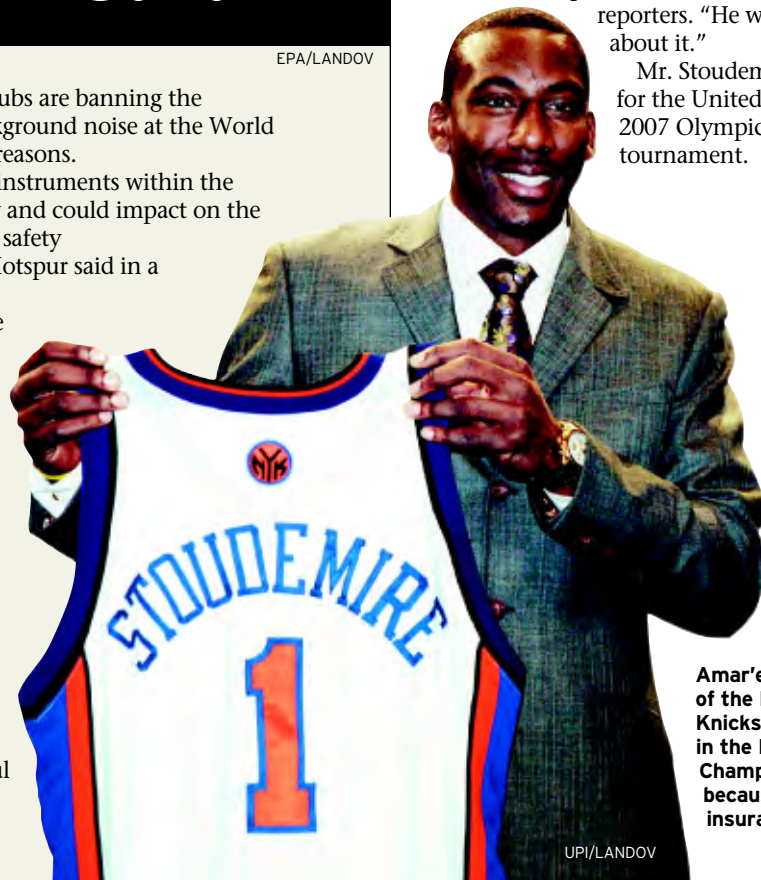
"We are concerned that the presence of the instruments within the stadium pose unnecessary risks to public safety and could impact on the ability of all supporters to hear any emergency safety announcements," London-based Tottenham Hotspur said in a statement.

Birmingham City said its decision to ban the horns on "health and safety grounds" was made after gathering feedback from team supporters and "relevant bodies" advising on safety matters.

Arsenal is forbidding vuvuzelas at its home matches "to ensure the safety of supporters on match days, which is of paramount importance to the club," the team said in a statement.

But Leeds United gave a different reason for banning the horns at its matches.

"They are a dreadful noise, and frankly we can do without them," Leeds United Chairman Ken Bates told Yorkshire Radio last Wednesday. "I like all the Leeds songs and the atmosphere our fans create without those awful things."



Amar'e Stoudemire of the New York Knicks will not play in the FIBA World Championships because he has no insurance.

UPI/LANDOV

## Laser maker strikes back at movie mogul

A crossing of corporate swords of a kind has entered a new phase.

The dispute began this year when Lucasfilm Ltd., the company headed by George Lucas, the man who created the "Star Wars" movie franchise, felt compelled to use the force of the law and sent a cease-and-desist letter to a Hong Kong company called Wicked Lasers. Lucasfilm claimed that Wicked Lasers' Pro Arctic Laser resembled the lightsabers used in the "Star

Wars" movies too closely.

"It is apparent from the design of the Pro Arctic Laser that it was intended to resemble the hilts of our lightsaber swords, which are protected by copyright," said the letter, which Wicked Lasers provided to CNN. The letter called the Wicked Lasers product "highly dangerous" with the potential to cause blindness and other injury.

Wicked Lasers CEO Steve Liu said "most people" consider

Lucasfilm's legal move "kind of ridiculous" and said this company "would never use" any comparison to the "Star Wars" weapon.

Wicked Lasers' responded by putting the cease-and-desist letter for sale on eBay, and according to published reports, sold it for \$3,850.

That ought to provide at least a down payment on the services of a legal Jedi if the duel moves on to court.



Lucasfilm Ltd. has sent a cease-and-desist letter to Wicked Lasers over its Pro Arctic Laser, claiming it resembles a lightsaber too closely.

WICKED LASERS

## A MINOR RENOVATION TO THE FACTORY AVOIDED A MAJOR OPERATION ON THE EMPLOYEE.

When an employee from a large furniture manufacturer developed recurring wrist pain, our Workers Compensation experts teamed with his doctor to quickly assess the situation. We discovered that changing the layout of his workspace would avoid painful surgery and allow him to continue working while he healed. Our regional medical directors, 24-hour claim response teams and loss control experts work together with you and your broker to develop effective solutions that help you keep employees safer and get them back to work. That's our policy. For more information, contact your broker or agent or visit [libertymutualgroup.com/workerscomp](http://libertymutualgroup.com/workerscomp).