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Business Insurance

July 28, 2008

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INSURED LOSSES FROM DOLLY WELL UNDER $1 BILLION, MODELERS ESTIMATE / PAGE 3

DEPARTMENT OF LABOR PROPOSES RULES ON 401(k) FEE REPORTING / PAGE 3

SEN. SPECTER WEIGHS TORT CHANGES AFTER RULINGS / PAGE 4

In Brief

Imperial Sugar faces $8.7M fine from OSHA

The Occupational Safety and Health Administration has proposed penalties of nearly $8.7 million against Imperial Sugar Co. and its two affiliates, alleging violations at their plants in Port Wentworth, Ga., and Gramercy, La., the safety agency announced last Friday. The citations followed an explosion and fire on Feb. 7 at the Port Wentworth refinery that killed 13 employees and hospitalized 40 others. Three employees remain hospitalized. According to OSHA, the proposed penalties represent the third-largest fine in the agency's history.

CICA survey shows decline in fronting

The Captive Insurance Cos. Assn.'s latest fronting survey found that nearly 60% of

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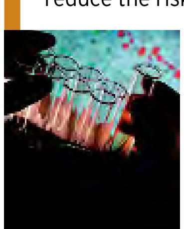
SECTOR BRIEFING

PHARMACEUTICAL & CHEMICAL



E.U. regulation aims to reduce the risks of making chemicals; a risk manager discusses why his company goes bare; rates fall for product liability on smaller firms; data on premiums and limits. **PAGE 9**

XINHUA/LANDOV

Runners bearing the Olympic torch near their goal of bringing the flame to Beijing, which hosts the Summer Games beginning Aug. 8.

With cover in place, games set to begin

Organizers obtained more than $400M in cancellation limits

By DAVE LENCKUS

BEIJING—Billions of dollars in insurance limits will cover a range of risks at the XXIX Olympiad next month in Beijing, though insurance buyers have earmarked a large portion of limits for contingency/cancellation risks, according to Olympic organizers and insurance experts.

But insurance will not cover a large segment of the Olympics' property risk, according to insurance market sources.

The Lausanne, Switzerland-based International Olympic Committee has funneled about $1 billion to the Beijing Organizing Committee for the Games of the XXIX Olympiad to finance the construction of sports facilities, athlete housing, media centers and other infrastructure for the games, an IOC spokeswoman said. But insurance market executives said they have not seen any of that risk reinsured into Western markets and that they do not think Chinese insurers could retain all of that risk.

Insurance experts believe the Chinese government is backing a lot, if not all, of that property risk. The organizing committee did not respond to requests for information.

Meanwhile, in addition to the various coverages it purchased, the U.S. Olympic Committee devised a catastrophe response plan for the games' U.S. contingent after such emergency information could not be obtained from either government or Olympic organizing officials in China, the USOC's risk manager said.

The Summer Olympic Games are scheduled to begin on Aug. 8 and

See **OLYMPICS** page 19

Broker pay hearings come to close in N.Y.

Witnesses differ on contingents; transparency urged

By SALLY ROBERTS

NEW YORK—New York producer compensation hearings concluded last week with state authorities hearing testimony from the Risk & Insurance Management Society Inc. and the world's three largest insurance brokers that have complained of unfair competition as a result of bans on them accepting contingent commissions.

In all, authorities heard testimony from more than 30 interested parties at three separate hearings held in New York state over the past two weeks.

The hearings concluded in Manhattan, where 18 witnesses expressed different views on issues such as contingent commissions, equal treatment, disclosure requirements, and the difference between agents and brokers.

New York Insurance Superintendent Eric Dinallo and New York Attorney General Andrew Cuomo held the hearings to gather information before issuing new regulations that address the compensation system established by their predecessors in 2005 and 2006 settlements with certain brokers and insurers.

Kermitt Brooks, first deputy superintendent of insurance in New York and chair of all three hearings, noted that both state offices may convene small working groups to work on more "narrow issues" and that further hearings may be held before issuing any new regulations.

To settle charges that they steered business to insurers that paid the highest contingent commissions, Marsh & McLennan Cos. Inc., Aon Corp. and Willis Group Holdings Ltd. agreed in 2005 to give up millions of dollars a year in contingent commissions and fully disclose their compensation practices to clients.

See **HEARINGS** page 20

Chubb strikes XL Re off facultative list

SCA exposure triggers concerns on security; no big impact foreseen

By JUDY GREENWALD

HAMILTON, Bermuda—An insurer's move to take XL Capital Corp. off its security list for facultative placements is unlikely to have a major direct financial impact on the Bermuda giant, though a larger concern is the potential damage to XL's reputation, say observers.

Warren, N.J.-based Chubb Corp. recently asked some reinsurance intermediaries to remove XL from Chubb's facultative security list—the list of reinsurers automatically eligible for a cedent's business—according to a market source familiar with the situation, who said at least one other insurer is considering such a move. Chubb declined to comment.

Reinsurance market observers say any loss of business from Chubb is unlikely to have a major impact on XL, which reported $9.14 billion in revenues and nearly $58 billion in assets for 2007. But the perception in the market of such moves could cause problems for the Bermuda-based insurer and reinsurer, they say.

The source of concern, observers say, is XL's ties to Security Capital Assurance Ltd., the holding company for financial guarantee units that XL spun off in 2006. Hamilton-based XL's 2007 results reflect $1.5 billion in charges that are primarily related to its SCA investment. It reported $430 million in net income in 2007 vs. $1.76 billion in 2006.

XL retains high financial strength ratings. Standard & Poor's Corp.,

See **XL** page 21

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On the Web

OLYMPICS 2008

See expanded coverage of Olympics preview

Business Insurance offers an online package of preview stories for the XXIX Olympics that are being held in Beijing with additional stories and a slideshow gallery. Go to *www.BusinessInsurance.com/Olympics2008*.

SECTOR BRIEFING

Issues that face drug and chemical makers

This week's Spotlight features the Pharmaceutical & Chemical Sector Briefing. The collection includes stories on the European Union's REACH initiative on chemicals, pharmaceutical product liability, coverage of clinical trials in emerging markets and more. It is available online at *www.BusinessInsurance.com/sectorbriefings*.

BROKER RESOURCES

See more about the largest brokers

Business Insurance's Spotlight section features the 37th annual Agent/Broker Profiles and Rankings, and online extras that include profiles of the world's leading brokers as well as charts of the Top 10 and Top 100 brokers. Go to *www.BusinessInsurance.com/brokers2008*.

WOMEN TO WATCH

Nomination forms for 2008 now online

Business Insurance will publish its third annual Women to Watch report on Dec. 1 and invites readers to nominate outstanding women working in insurance, risk management and employee benefits worldwide. The nomination deadline is Aug. 11. For a nomination form, go to *www.BusinessInsurance.com/womentowatch*.

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Rules seek disclosure of 401(k) expenses, fees

Employers say time needed to comply fully

By JERRY GEISEL

WASHINGTON—Employers sponsoring 401(k) and other individual account-based defined contribution plans will be able to comply with proposed Labor Department regulations to improve disclosure of plan fees and expenses, but they will need more time, experts say.

In addition, certain problems posed by the regulations need to be resolved before employers will be able to comply fully, experts say.

The proposed regulations, published July 23 in the Federal Register, are intended to improve disclosure of fees and expenses for investments in participant-directed individual account plans, such as 401(k) plans.

While much of that information already is available to participants, it often is scattered or not presented clearly, federal officials say.

"Workers need clear and concise information, not dozens of pages of 'legalese' about the investment options available under their plans, and they would benefit greatly from having that information in a comparative format," Secretary of Labor Elaine Chao said in a statement.

The Labor Department said the centerpiece of its proposal is a requirement that plan sponsors develop and distribute to participants a comparative chart with investment-related information, including fees and expenses.

In its proposed regulations, the Labor Department has developed a model chart, which employers could adopt, though employers also could develop their own charts.

The Labor Department's model chart is comprised of two parts. The first part would list by category the name of each investment option, such as stock funds or bond funds; the Web site for each investment option; the average annual total return over the last year, five years and 10 years; and rates of return for a benchmark index applicable for each fund.

The second part of the chart would list each investment option, its total operating expenses and fees that participants are charged. Examples include sales charges on amounts invested or redeemed, charges imposed on amounts withdrawn before maturity and service fees that some mutual funds impose for accounts with balances less than a certain amount.

Aside from the comparative chart, employers also would have to disclose when employees become eligible to participate in the plan and provide an annual description of fees and expenses charged to participants for plan administrative services. Information also would have

See **DISCLOSURE** page 18

Dolly adds to cat losses that already top $9B

By MARK A. HOFMANN

Catastrophe modelers have scaled back their estimates of insured property losses from Hurricane Dolly to well below $1 billion.

Late last week, Boston-based AIR Worldwide Corp. revised its estimate of U.S. insured property losses from the Category 2 hurricane that struck southern Texas July 23 near the Mexican border to between $300 million and $600 million, from an earlier estimate of $300 million to $1.2 billion.

"The revised loss estimate falls at the low end of the AIR's preliminary estimate of U.S. losses issued (earlier) due to the fact that Dolly's actual track inland was on the northern edge of the range of forecast tracks issued by the National Hurricane Center at the time of landfall," AIR said in a statement. "Because wind speeds and storm surge are higher on the right-hand side of hurricane tracks in the Northern Hemisphere, the largest concentration of exposure in the U.S.—Brownsville, Texas—was spared the worst of Dolly's winds."

AIR, a unit of Jersey City, N.J.-based Insurance Services Office Inc., estimated the storm would result in $50 million to $100 million in insured property damage in Mexico, adding that uncertainty about the Mexican loss estimate "stems in part from uncertainty surrounding take-up rates, the percentage of properties actually insured against wind and flood losses."

Newark, Calif.-based Risk Management Solutions Inc. said earlier in the week that U.S. storm losses would not exceed $750 million. RMS noted there was no significant damage to offshore oil platforms.

In a note to clients a few hours after Dolly made landfall, Oakland, Calif.-based modeler EQECAT Inc. predicted insured losses of $100 million to $800 million, "with a 'normal expectation' of market losses to be on the low end of the range."

REUTERS

Hurricane Dolly, which hit portions of the United States and Mexico last week, dumped heavy rain that led to flooding in Harlingen, Texas.

The Dolly losses come on top of catastrophe losses of almost $9.45 billion for the first half of this year, according to the ISO's Property Claim Services unit. U.S. catastrophe-related insured property losses for the first half of this year already exceed catastrophe losses for all of last year, which PCS estimated at $6.5 billion (*BI,* Jan. 21).

PCS said catastrophes caused an estimated $6.03 billion in insured property damages during second-quarter 2008. PCS said 16 catastrophes, or events with at least $25 million in insured property damage and affecting a "significant number of policyholders and insurers," occurred from April through June, prompting more than 1.2 million claims.

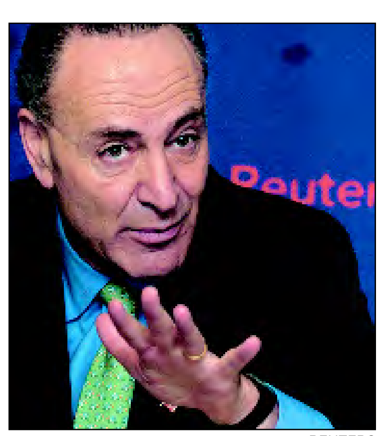
Rise in 401(k) loans, withdrawals sparks concern

By NICK WHITFIELD

The tough economy is leading more employees to tap their retirement savings for immediate needs, and the development has caught the attention of employers, plan administrators and federal legislators.

At a Senate Aging Committee hearing earlier this month, experts testified to the growing problem of 401(k) "leakage"—workers pulling money from their accounts through loans or hardship withdrawals.

Sens. Herb Kohl, D-Wis., and Charles Schumer, D-N.Y., introduced legislation that would limit 401(k) participants to three outstanding loans from their account at a time. Current law places no limit on the number of 401(k) loans but does limit the amount to



REUTERS

Sen. Charles Schumer, D-N.Y., is co-sponsoring a bill that would limit 401(k) withdrawals and ban 401(k) debit cards.

$50,000 or half the account balance, whichever is less. The bill also would ban 401(k) debit cards, which allow participants to spend the money borrowed from their account.

Sen. Schumer described the bill as a response to "companies peddling debit cards" that deplete individuals' retirement savings. "A decade ago, the mere idea of this legislation was enough to get companies to abandon this reckless practice. This time, we want to push this bill all the way to becoming law," he said.

While congressional interest in passing such a law appears limited, employers do have an interest in preserving employees' retirement savings, experts say.

"You don't want to be stuck as an employer with a lot of people who are working at your company just because they can't afford to retire yet," said Robyn Credico, national director of defined contribution consulting for Watson Wyatt Worldwide in Arlington, Va.

Statistics show more workers are relying on retirement savings for immediate needs, said Eric Levy, Norwood, Mass.-based worldwide partner and retirement business leader for Mercer L.L.C.

"About 11% of our participants (in plans Mercer administers) have loans outstanding," Mr. Levy said. Those outstanding loans grew 38% from the first half of last year to the first half of this year and average about $8,000, he said.

Hewitt Associates L.L.C. found an even larger proportion of borrowers among the pension plans it administers. In 2007, 22.3% of participants had an outstanding loan, up

See **401(k)** page 6

Pro-business rulings in high court may spur tort changes

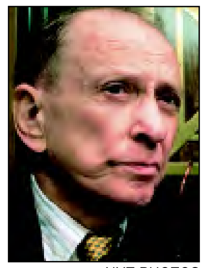
By MARK A. HOFMANN

WASHINGTON—Congress appears likely to attempt to reverse recent Supreme Court decisions that critics claim overly favored corporations at the expense of ordinary citizens.

Senatorial ire over decisions such as *Lily Ledbetter vs. Goodyear Tire & Rubber Co.* and *Exxon Shipping Co. et al. vs. Grant Baker et al.* was more than evident last week during a Senate Judiciary Committee hearing examining the effect of the high court's rulings on corporate behavior. Committee Chairman Sen. Patrick Leahy, D-Vt., made it clear he disagrees with the court.

"These recent Supreme Court decisions will do nothing to deter future corporate misconduct," Sen. Leahy said in his formal statement. "I expect they will encourage it by taking away the one incentive that big corporations tend to understand—significant financial consequences."

The concern was bipartisan. The panel's senior Republican, Sen. Arlen Specter, R-Pa., said it was "very useful" for the committee to review recent Supreme Court decisions, "especially when we are dealing with matters we can change by legislation."



NYT PHOTOS

Sen. Arlen Specter, R-Pa., believes the Judiciary Committee should review high court rulings.

The *Ledbetter* ruling "is a statutory matter—we can act on it," said Sen. Specter. He added, though, that Congress would have more difficulty doing so for court decisions based on constitutional rather than statutory grounds.

In last year's *Ledbetter* decision, the high court upheld a time limit under which a person could file an unlawful employment practices claim under Title VII of the Civil Rights Act of 1964 (*BI*, June 4, 2007).

In the *Exxon* decision this June, the court ruled that punitive damages awarded under federal maritime law could not exceed compensatory damages (*BI*, June 30).

The House passed legislation in July 2007 that would effectively overturn the *Ledbetter* decision, but the matter failed in the Senate. No legislation designed to overturn the *Exxon* ruling has emerged.

One witness before the Senate committee, while holding that the Supreme Court has not been overly favorable to businesses in its recent decisions, noted the high court has said that Congress can change laws.

Patricia A. Millett, a former assistant to the solicitor general in both the Clinton and current Bush administrations and now a partner in the Washington office of Akin Gump Strauss Hauer & Feld L.L.P., noted that the *Exxon* decision was based on maritime law, which Congress can certainly change.

Tort reform advocates say Congress is sending messages with such events as last week's hearing and the earlier vote by a House Judiciary Committee subcommittee to restrict the use of predispute arbitration agreements under a variety of circumstances (*BI*, July 21).

"I think it's setting the stage for any future confirmation hearings that come along for Supreme Court justices," said Glenn Lammi, chief counsel of the legal studies division at the Washington Legal Foundation, in Washington. "Congress wants judicial nominees to understand that Congress has a law-making role and they will use that authority where they think the court has gotten it wrong."

"Given the timing, this hearing seemed to be setting the stage for legislation in the next session, perhaps teeing up an arbitration bill," Lisa A. Rickard, president of the Washington-based U.S. Chamber Institute for Legal Reform, said in an e-mail statement.

Ms. Rickard said she believes the committee should follow an appeal by Sen. John Cornyn, R-Texas, at last week's hearing and launch hearings "on the real scandal—the widespread fraud and corruption in the plaintiffs' bar."

REUTERS

Since 2001, more than 1,450 planned terrorist attacks have been disrupted worldwide. This mosque in Albany, N.Y., was raided in 2004 and several members were arrested in a sting operation by the FBI.

Modeler raises estimate of terror attack losses

RMS says possibility of NBCR attack can't be discounted

By COLLEEN McCARTHY

NEW YORK—If there were a terrorist attack in the United States, the estimated insured losses have increased 8% in the past year due largely to the growing risk of chemical or biological attacks, according to Risk Management Solutions Inc.'s 2009 terrorism model.

While there have been no successful nuclear, chemical, biological and radiological terrorist acts, numerous planned attacks have been disrupted worldwide, said Andrew Coburn, London-based director of terrorism research for Newark, Calif.-based RMS.

In a report, "Terrorism Risk: 7-Year Retrospective, 7-Year Future Perspective," RMS said 1,450 planned terrorist attacks have been disrupted worldwide since 2001.

Strong indications that terrorist groups have resumed NBCR programs and are actively attempting to acquire such materials means the possibility of an NBCR attack in the United States cannot be discounted, Mr. Coburn said.

This information has been used to recalibrate RMS' 2009 terrorism model, resulting in an increase in modeled losses to $1.6 billion, RMS said last week in a New York conference updating the annual model it developed in 2002.

Another change since last year is "target substitution," which is triggered by governmental counter-terrorism efforts that have resulted in the "hardening" of most public sector targets, said Mr. Coburn.

"As the government protects its assets, it is actually pushing these risks onto the commercial and private sector," said Mr. Coburn, who cited major sports stadiums and commercial facilities as examples.

The RMS database of potential U.S. targets now numbers more than 4,000 locations.

See **TERROR** page 20

Federal pregnancy bias protections extend to infertility care: 7th Circuit

By JUDY GREENWALD

CHICAGO—The Pregnancy Discrimination Act provides employment discrimination protection to women who are undergoing in vitro fertilization procedures, according to the 7th U.S. Circuit Court of Appeals.

The three-judge panel's unanimous July 16 decision in *Cheryl Hall vs. Nalco Co.* is likely to be influential, as it is the first appellate ruling on this issue, observers say.

The decision is the second recent ruling extending PDA protections beyond traditional claims.

In May, the 3rd U.S. Circuit Court of Appeals held in *Jane Doe vs. C.A.R.S. Protection Plus Inc.* that the PDA grants employment discrimination protection to women who have had an abortion (*BI*, June 9).

READ the complete 7th U.S. Circuit Court of Appeals ruling online at: **www.BusinessInsurance.com**

In 2003, Ms. Hall, then a sales secretary in Nalco's Chicago office, took one leave of absence to undergo an IVF treatment, and when that was unsuccessful, she requested another leave to undergo a second treatment, according to the 7th Circuit decision.

Before she took the second leave, though, she was told by her supervisor that because of a consolidation, the firm was keeping only one of the two sales secretaries, and she was terminated. Her supervisor told her the termination "was in (her) best interest due to (her) health condition," according to the opinion.

Prior to the termination, the supervisor had also discussed the matter with the firm's employee relations manager.

According to the manager's notes, Ms. Hall had "missed a lot of work due to health" and in a section relating to her job performance, the manager cited "absenteeism-infertility treatments."

Ms. Hall sued, claiming her termination violated the Pregnancy Discrimination Act. A district court granted Nalco summary judgment on the ground that infertile women are not protected under the PDA because infertility is a "gender-neu-

See **BIAS** page 20

Tokio Marine expands in U.S. market

By JEFF CASALE

TOKYO—Tokio Marine Holdings Inc. last week said it will buy U.S. insurer Philadelphia Consolidated Holding Corp. in a $4.7 billion deal that would significantly expand the Japanese insurer's U.S. business.

The transaction, which is expected to close in the fourth quarter, would add Philadelphia Consolidated to the operations of Tokio Marine & Nichido Fire Insurance Co. Ltd. Tokio Marine's acquisition of the Bala Cynwyd, Pa.-based property/casualty insurer was unanimously approved by Philadelphia Consolidated's board of directors.

The deal gives the Tokyo-based insurer a "strong platform" to do business in the United States, said Hayato Isogai, chief executive officer of Tokio Marine Americas Corp. in New York. He added that Tokio Marine's interest in Philadelphia Consolidated was driven primarily by the U.S. insurer's strong leadership and focused underwriting practices.

NET PREMIUMS WRITTEN

Projected for fiscal-year 2008, in billions of dollars

Total International business of the Tokio Marine Group*	$5.2
Philadelphia Consolidated	$1.9
Total	$7.1

**Including Kiln Ltd.*
Source: Tokio Marine Holdings Inc.

"We usually do most of our business with Japanese-related businesses," said Mr. Isogai. "We have between $500,000 and $1 million in gross written premiums in the U.S., and about 80% of that is from Japanese-related businesses. We see this as a way to expand our business presence in the U.S. as the insurance market is much larger."

In 2007, Philadelphia Consolidated reported $327 million in net income after tax and $1.46 billion in net premiums written. Its combined ratio for the year was 74.3%.

The insurer has 47 offices and about 1,400 employees across the United States. It writes several lines of niche specialty commercial insurance—including commercial auto, workers compensation and professional liability—as well as personal lines.

Mr. Isogai said that he does not see any overlap in the types of products and services offered and the two insurers will "operate as is."

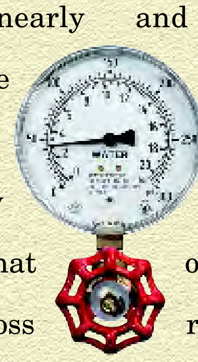
See **TOKIO** page 20

LOTS OF HEAT. A LITTLE WATER.

THE PERFECT RECIPE FOR A SAUNA.

OR A DISASTER.

WAUSAU PROPERTY AT WORK. A building material supply customer of ours recently moved into a larger building. Despite the extra space, it still had inventory stacked nearly to the ceiling. This presented a bit of a problem for the existing sprinkler system, which was not designed for high-pile storage. The system didn't have the necessary water and pressure to combat the type of intense fires that could result from the primarily wood materials. Our loss prevention experts estimated the entire $4 million inventory could be lost in a fire. Working together, we found a solution that appealed to both the company and its landlord. The existing system was replaced with one designed for high-pile storage and the building was outfitted with new heaters to prevent the pipes from freezing. In addition to protecting its inventory, the company saved almost $30,000 a year in premiums. It's all part of Wausau TotalValue℠ and our commitment to lowering our customers' total cost of risk. A commitment backed by the financial strength of the Liberty Mutual Group. To learn more, visit wausau.com or contact your Wausau representative.



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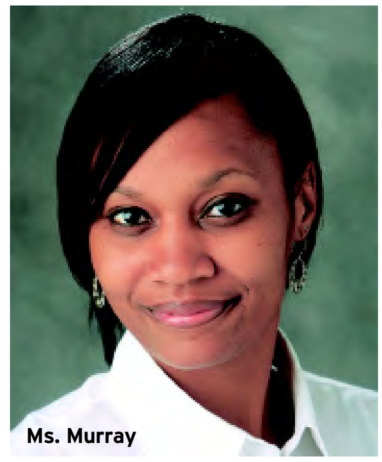
BI staffer in N.Y. named classified sales manager



DOUG GOODMAN

Ms. Murray

Business Insurance has promoted Monique Murray to classified sales manager. Ms. Murray, who is based in the magazine's New York office, previously was advertising traffic coordinator.

She joined *Business Insurance* parent company Crain Communications Inc. in 2004 and before that worked as an administrative assistant at Willis Group Holdings Ltd.

Ms. Murray can be reached at 212-210-0129 and by e-mail at *mmurray@businessinsurance.com*.

401(k): Accounts tapped in tough economic times

CONTINUED FROM PAGE 3

from 21.8% the prior year. The average loan also rose during the period to $8,144.

Interest on loans from 401(k) plans varies, but the most common arrangement charges one percentage point above the prime interest rate—generally cheaper than more conventional loans, experts say.

Imposing legal restrictions on loans might send the right message, but might not actually affect most loan programs, said David Wray, president of the Chicago-based Profit Sharing/401(k) Council of America. Most companies already limit outstanding loans to three or fewer, he said.

"The reason the law hasn't capped it before is that there is an argument to be made that people are just going to take out a bigger loan," said Lynne Dudley, senior vp-policy for the American Benefits Council in Washington.

Controlling the program

Whatever Congress does, employers can control 401(k) loans and withdrawals, Mr. Wray said. "The company controls the loan program down to the smallest detail, so if the company wants the loan program to work in a particular way, they can make it work that way."

Administrative options include fees to cover loan processing costs and act as a disincentive as well as setting minimum amounts to discourage workers from taking loans to cover minor expenses.

Although many employers have kept their education efforts simple for fear of opening themselves to liability, "the employer actually has quite a bit of latitude under the definition of education," Mr. Wray said. "The rules are quite broad and your advice has to be very personally directive before you're open to liability."

But employers should help workers learn the risks of and alternatives to taking loans and hardship withdrawals from their funds, he said. "It would be beneficial anytime, but especially now for companies to make financial planning available to employees. It's inexpensive if you use a call center approach, for example, and it avoids the employer actually providing advice," Mr. Wray said.

Having a loan program actually pulls in participants, Mr. Wray said—especially young and low-income workers. A 1997 Government Accountability Office study found a 6 percentage point increase in participation and an 8% increase in contributions for 401(k) programs that allow loans.

As for 401(k)-linked debit cards,

'The reason the law hasn't capped it before is that there is an argument to be made that people are just going to take out a bigger loan.'

Lynne Dudley
American Benefits Council

which allow a participant to spend the money borrowed from their account, Alison Borland, defined contribution consulting practice leader for Hewitt Associates in Lincolnshire, Ill., said debit cards have not been popular among employer sponsors. "Our clients generally seem to agree with us that debit cards are a bad idea, and we advise them that they're a bad idea. We agree that they make the loan process too easy," she said.

But Ms. Dudley of the American Benefits Council said there is one advantage of 401(k)-linked debit cards. "One piece of the debit card option that gets lost is that it does allow you to continue repayment after you leave your job," Ms. Dudley said. "If you want to solve defaults, the way is to allow people to pay after they leave their job."

Hardship withdrawals rare

Hardship withdrawals from 401(k) accounts also have increased in recent years but remain rare. For example, Mercer reported a 21% increase in hardship withdrawals in the first half of this year compared with the same period last year. Even so, less than 2% of participants made hardship withdrawals.

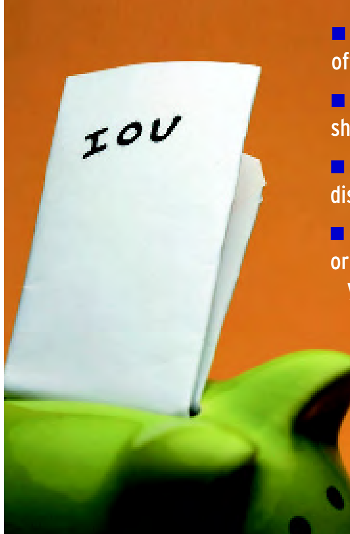
Unlike loans, there may be little employers can do to advise participants against hardship withdrawals.

"If you're going to take a hardship withdrawal, you have to go through a lot of hoops to show that you're in need," Ms. Credico said. "If you're taking a hardship withdrawal, you probably don't have any other avenues."

Mercer's Mr. Levy described the hardship withdrawal increase as "a little bit of a disturbing trend. Usually people take a loan before they take a withdrawal, but now it looks like they're going straight to the withdrawal."

401(K) LOANS AND WITHDRAWALS

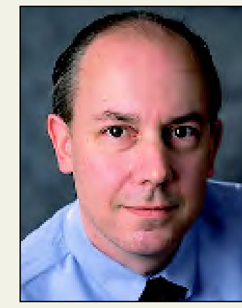
Thirty-six percent of U.S. workers had a defined contribution retirement plan, which includes 401(k) accounts, according to the 2004 Survey of Consumer Finances conducted for the Federal Reserve Board. Of 401(k) plans among clients of Hewitt Associates L.L.C.:



- 98% of 401(k) plans allow loans and 90% offer hardship withdrawals.
- Less than 1.5% of participants took a hardship withdrawal during 2007.
- 1% of loans default and result in a taxable distribution.
- Of participants who take loans, 15% suspend or reduce plan contributions. Employees 20-29 years old are the most likely to reduce or suspend their contribution.
- For a 35-year-old and assuming average fund growth of 7%, removing $10,000 from a 401(k) would result in $76,123 in unrealized savings by age 65, not counting any reduction or suspension of contributions.

Commentary

Battle over gun rights moves into workplace



DOUGLAS **McLEOD**

Senior Editor Douglas McLeod can be reached at: dmcleod@businessinsurance.com

Winning, as Richard Nixon once demonstrated, makes some people resentful.

No sooner is such a person victorious than he's looking, not to celebrate, but to audit the tax returns of the loser and all of the loser's friends.

The National Rifle Assn. seems like that kind of winner.

The NRA won big last month with the U.S. Supreme Court's ruling in *District of Columbia vs. Heller*. In a 5-4 decision, the court found for the first time in its history that the Second Amendment confers an individual's right to own firearms. It tossed out D.C.'s 1976 ban on handgun ownership, but said that some restrictions on gun possession may be permitted.

The NRA applauded, but good cheer isn't really what it does. Instead, it reacted to the win mainly with renewed expressions of outrage. It attacked anti-gun politicians and gun control advocates who criticized the ruling, saying they suffer from "anti-gun anxiety," a condition that does not affect "normal people."

It also filed lawsuits against San Francisco, Chicago and three Chicago suburbs to overturn gun bans similar to D.C.'s.

None of this is good news for employers: It suggests that the gun lobby will continue pushing for laws allowing any of us to carry any firearm anywhere, including to work.

Since 2005, the NRA and other gun advocacy groups have campaigned for state legislation to restrict employers' rights to ban firearms on their property. The battle, pitting gun owners' rights against the property rights of businesses, has been fought mainly over parking lots.

Earlier this month, Louisiana Gov. Bobby Jindal signed an NRA-backed bill that gives workers the right to keep legal guns in locked cars in their employers' parking lots. A similar law went into effect in Florida July 1, while Georgia enacted a law that requires employers' permission for parking lot gun storage.

These states are the latest of several—including Alaska, Kentucky and Oklahoma—to enact parking lot gun bills. (The latest laws come only weeks after a worker at a Henderson, Ky., company killed five co-workers and himself with a pistol he retrieved from his car after quarreling with a supervisor. Gun advocates seem to view incidents like this as natural disturbances that have nothing to do with the proximity of a gun.)

This isn't to say gun lobbyists are undefeated. Several other states have rejected parking lot gun bills. A federal court in Oklahoma blocked that state's law after finding that it was trumped by federal law requiring employers to maintain safe workplaces; that ruling is now on appeal to the 10th U.S. Circuit Court of Appeals.

Still, the NRA and its allies aren't letting up. Soon after the *Heller* decision—and as Georgia's new gun law went into effect—Georgia state Rep. Tim Bearden announced that he'd pack a handgun when picking up visitors at Atlanta's Hartsfield-Jackson International Airport; a gun rights group simultaneously sued to block officials from arresting anyone carrying a legal firearm in the airport's non-secured areas.

If we're going to allow people to carry guns anywhere, do we all get Kevlar vests?

Putting aside what kind of visitors prompt Rep. Bearden to carry a loaded weapon, isn't this getting a little ridiculous? If we're going to allow people to carry guns anywhere, do we all get Kevlar vests?

The fact is, the ruling has made meaningless the NRA's longtime slogan, "If guns are outlawed, only outlaws will have guns."

Guns can't be outlawed; the high court just said so. Wouldn't it be nice, then, if we could talk about some reasonable restrictions on gun possession?

Justice Antonin Scalia left room for this in his majority opinion: "The Second Amendment is not unlimited," he wrote. "It is not a right to keep and carry any weapon…in any manner whatsoever and for whatever purpose."

He also noted that the ruling should not "cast doubt" on prohibitions against gun possession by felons or laws forbidding guns in "sensitive places such as schools and government buildings."

He didn't mention workplaces, unfortunately. He should have.

But that's the kind of thing that keeps the NRA acting like a sore winner.

Business Insurance OPINIONS

Mass. health program deserves more support

SHOULD EMPLOYERS in Massachusetts be asked to help pay for the massive expansion of health care coverage mandated by the state's 2006 reform law?

That is the question that state regulators and legislators will be debating in the months ahead.

As we recently reported, Gov. Deval Patrick has proposed making it tougher for employers to escape an annual $295 per employee assessment. Under current rules, an employer is exempt from the assessment if at least 25% of full-time employees are enrolled in its group health insurance plan or if it pays at least 33% of premiums for individual coverage for employees within 90 days of their employment.

Gov. Patrick wants to make it mandatory to pass both tests in order for employers to be exempt from the assessment, a change that will trip up employers in high-turnover industries that impose lengthy waiting periods before new employees can enroll in their health plans.

The reason for the proposed change is that enrollment in a program in which the state subsidizes premiums for low-income uninsured residents is much higher than projected, creating a need for more money. Aside from employers, insurers and hospitals also would face new assessments to generate the needed revenue.

In this case, the pain is offset by the gains of the expansion of coverage.

The governor's proposals will be costly. Still, they should not be rejected out of hand. Moving to near-universal health care coverage, the goal of the Massachusetts reform law, is expensive. The only way to make that pain less objectionable is to spread it out.

In this case, the pain is offset by the gains of the expansion of coverage: more individuals, who because they have insurance coverage, get medical problems treated sooner, which improves their quality of life and reduces the likelihood of more expensive to treat medical conditions from developing.

Gov. Patrick's proposals will be hotly debated, but we hope that legislators continue to give this pioneering program, which already has made a huge dent in reducing the number of uninsured, the support it needs.

Congress sets stage for next administration

AT FIRST GLANCE, a series of congressional attempts to restrict or ban certain binding arbitration arrangements might look like an exercise in futility at best.

After all, the current Congress doesn't have that much life left, particularly given that lawmakers are slated to take a month or so off in a few weeks and return for another few weeks before recessing for the elections. And even if these anti-arbitration measures had been approved months ago, odds of them becoming law would have been quite slim in the face of probable presidential vetoes.

But a House subcommittee's votes on anti-arbitration legislation that we reported last week and the Senate Judiciary Committee's ongoing examination of pro-business Supreme Court rulings, as we report on page 4, are not idle exercises. Instead, they might be better viewed as mileposts on a road to the future.

The stage is being set for when the new Congress—almost certain to be less employer-friendly than the current one—convenes early next year. That's particularly true if the next administration is less kindly disposed to tort reform than the current one happens to be. The potential shape of things to come is being outlined, which should impress upon advocates of civil justice reform that their most challenging future battles may be simply to preserve the victories they've won rather than pursue new ones.

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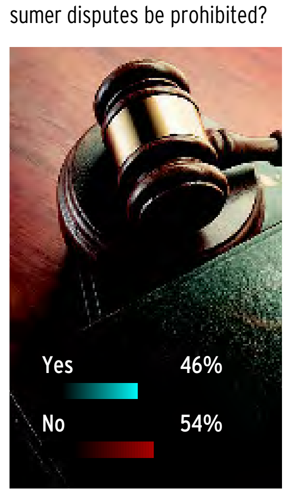
THIS WEEK'S RESULTS

Q Should the use of mandatory binding arbitration to settle employment or consumer disputes be prohibited?



NEXT WEEK'S QUESTION

Q: Over the next year, will the budget of your risk management department increase or decrease?

BI Online Poll tool is sponsored by Wausau Insurance Cos.

READ

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Recruits could alleviate possible worker shortage

As large numbers of experienced employees retire from the insurance industry, the sector soon will be short of skilled workers, writes Roger Nulton, president of commercial business for Fireman's Fund Insurance Co. in Novato, Calif. A way to attract new employees is to recruit directly from the college ranks to fill key positions and train them to develop and advance with each organization.

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CHEMISTRY CLASH

European Union's REACH initiative on chemicals affects companies that manufacture, import and use the products

By MICHAEL BRADFORD

Manufacturers that make and use chemicals face new regulations in Europe that could broaden their business interruption and liability risks while, at the same time, remove potentially harmful chemicals from the marketplace and make others safer to use.

The European Union's Registration, Evaluation, Authorization and Restriction of Chemicals regulation, or REACH, went into effect June 1, 2007, and will be phased in over 11 years. A preregistration phase for some chemicals began this summer and extends through November.

The regulations affect not only European chemical companies but importers and manufacturers that use the chemicals as well. Importers must make sure that chemicals they bring into Europe are properly registered and tested under REACH protocols.

The result, experts say, could be a shortage of some chemicals that do not make it through the registration process, leaving manufacturers with a potential loss of business and users without the supplies they need in their manufacturing processes.

See **REACH** next page

INSIDE

Questions & Answers

Pharmaceutical companies face particularly daunting risk management and insurance challenges in a marketplace where coverage can be expensive and riddled with exclusions. F. Hoffmann-La Roche Ltd., a large pharmaceutical company in Basel, Switzerland, solved their insurance coverage problems by abandoning the market for all but compulsory coverages. Peter Knecht, head of insurance at Roche, spoke to Business Insurance Europe Senior Reporter Michael Bradford about the company's approach to mitigating risks that are not covered by insurance.

Largest players battle exclusions by going without

Q: What are the biggest challenges you face as risk manager of a pharmaceutical company?

Our policy is to prevent losses and not insure them. This means we have our risk management tools in force for corporate safety, product safety, financial management and other areas. Product safety is surely one of the most important issues. We have a whole department in Basel for quality and safety. There are 300 people involved.

Q: Roche has been uninsured for several years, except where coverage is required by law. Why does the company prefer to go without insurance?

Since 2002 we have been without insurance except for compulsory coverages. Why? Because insurance policies have too many exclusions, especially in the pharmaceutical industry. One insurer has about 70 exclusions. If you have to accept all these exclusions, it becomes a very difficult exposure. That's the main reason we go without insurance.

Q: Do you think the insurance market will soften any time soon?

Not for the pharmaceutical industry. It may get even worse. Even if prices go down, we would not go back to the market. Every year, there are more exclusions in the coverage.

Q: Does Roche use self-insurance alternatives, such as captives or other mechanisms?

Yes, we have a captive. But otherwise we carry our risk on the balance sheet. If we have a loss, it is an operating expense.

Q: Without insurance, Roche has to be especially careful in managing its exposures. How are risks managed so that the potential for losses is minimized?

Product liability is our biggest exposure. As I mentioned, we have extensive quality control and, on the legal side, we must be careful to fulfill legal requirements all over the world. Another big problem for pharmaceutical companies is clinical trials. Every country has special conditions that must be fulfilled. The United States is the most strict. They are strict also in the United Kingdom and France, but not as much as in the U.S.

REUTERS

Officials with pharmaceutical maker Novartis International, which has manufacturing operations in Basel, Switzerland, expect no supply problems because of an E.U. directive affecting chemicals.

Despite REACH, pharmaceutical makers see no supply disruptions

Pharmaceutical companies do not expect to see chemical supply problems because of the European Union's new regulations authorizing the use of those substances.

The regulations, known as Registration, Evaluation, Authorization and Restriction of Chemicals, or REACH, are being phased in over the next several years. They require chemical manufacturers to register and test the substances they produce according to protocols developed under REACH.

Some market experts predict chemical users could suffer from shortages as manufacturers decide it is too expensive to produce some substances or chemicals are disallowed by the European Chemical Agency in Helsinki, Finland.

Pharmaceutical companies do not expect such disruptions.

"At the pharmaceutical level, REACH is not that much of a problem," said Claude Breutel, director, corporate insurance at Novartis International A.G., a pharmaceutical company in Basel, Switzerland. "For the number of chemical base substances that we buy, it does not appear to be problematic," he said of the new regulations. "These substances have been around for many years."

Companies such as Novartis do create new substances, Mr. Breutel said. "But the pharmaceutical business is regulated in a way that the end product would not fall under REACH because it is not a chemical; it is regulated as a drug."

—By Michael Bradford

REACH: E.U. directive may reduce some risks and increase others

CONTINUED FROM PREVIOUS PAGE

The European Chemicals Agency estimates about 30,000 chemicals will be registered during the process. There are more than 100,000 known chemicals in existence, according to ECHA, the Helsinki, Finland, agency established to implement the REACH directive.

While some say REACH is an opportunity to generate a vast amount of information that will lead to the more responsible use of chemicals, others say the regulations will create new risks and produce a mother lode of information for litigation-hungry attorneys.

The first order of business for chemical companies is to make it through the registration period, said Chris Bryce, chemicals and life science practice leader at Marsh Ltd. in London.

"It's very complicated," said Mr. Bryce, and chemical companies have to be careful not to make mistakes in the registration process. Those that do risk having their products banned, at least temporarily, he said.

"It's a huge administrative task," said a spokesman for the Brussels-based European Chemical Industry Council, or Cefic. "You need people who understand the regulations; filling out safety reports is not an easy task."

For most clients, 'it's brand new. The awareness in the industry is very, very low. It's even lower the moment you leave continental Europe.'

Bernd Wilke, Swiss Reinsurance Co.

Beyond administrative concerns, experts say some chemicals are likely to vanish from the market should manufacturers determine that their sales do not justify the time and expense of registering them. Chemicals also may disappear if ECHA deems a substance unsafe.

"There's a chance there will be some business interruption" if ECHA decides the risks outweigh the benefits of a chemical and disallows its use, said Bernd Wilke, senior risk engineer with Swiss Reinsurance Co. in Zurich.

Mr. Bryce said supply-chain disruptions are possible if a chemical maker decides the testing and registration process is too costly to make production of some substances worthwhile. "This could lead to chemicals vanishing because of the expense," he said.

But the full effect on the chemical supply chain is not yet clear, Mr. Wilke said.

Small and midsize enterprises may be the most vulnerable to interruptions, he said. "There are 22,000 SMEs registered as producers or users," Mr. Wilke said. "They are the key exposure. Large companies have spent a lot of time preparing for REACH" and are more likely to have plans in place to handle supply shortages, he said.

Jürg A. Schmid, senior risk engineer at Zurich Financial Services Group's global corporate unit in Zurich, agreed that large companies are planning for potential disruptions. "From what we see, they all reacted pretty quickly. They're all aware of it," he said.

Liability exposures could surface as well, experts say.

Supply disruptions could create an exposure for directors and officers, Zurich Financial's Mr. Schmid said. "If you as a producer have contracts that you guarantee and suddenly you don't have the substance" because it is not REACH-compliant, there is the possibility that a claim could affect a chemical maker's D&O coverage, he said

Mr. Bryce said there is an errors and omissions risk during the registration process. Large amounts of data are being gathered and submitted to regulators, he said. "Get it wrong and the chemical could be barred."

Mr. Wilke said E&O insurance might be necessary for chemical companies "because, if they make a mistake in meeting the REACH requirements, they may accidentally lose market authorization."

Jürg Busenhart, senior product manager at Swiss Re in Zurich, agreed that "there may be a new need for insurance solutions. If a wrong decision is made during the registration, it could have an impact on the balance sheet that may lead to losses and a need for coverage."

On the other hand, Mr. Busenhart said additional information generated by the directive will benefit the insurance market. "REACH will provide better information on chemicals, which will lead to a more transparent portfolio," providing more information to insurers about the risks they are underwriting, he said.

Insurers can meet any coverage challenges from REACH, experts agree.

"There is enough time for the insurance industry to come up with new products or tighten up old ones" because of the phased nature of the regulations, Mr. Busenhart said.

That said, insurers are not moving quickly to address exposures created by the new regulations, Mr. Wilke said. "The insurance industry is not very aware of REACH at the moment," he said. "For most of our clients, it's brand new. The awareness in the industry is very, very low. And it's even lower the moment you leave continental Europe."

Voluminous information that results from the registration of chemicals will serve as a double-edged sword, experts say. While it will be a comprehensive resource on the safety of the substances, it also creates publicly available ammunition that attorneys, particularly those in the United States, may be eager to use against the chemical industry.

"I'm sure that not only insurance companies look at these tests but also trial lawyers," said Mr. Schmid. While he does not foresee a rush to litigate, there could be an early surge of lawsuits that tapers off over time as the regulations' positive effects of making products safer take hold, he said.

The chemical industry should benefit from the regulations in the long run, the Cefic spokesman said.

"It is a unique opportunity to have a system that is the result of compromise between regulators and the industry that will generate information on substances and the know-how to use them," the spokesman said. "It can help restore and enhance the image of the chemical industry."

Product liability rates down for smaller pharmaceuticals

By ROSEANNE WHITE GEISEL

Product liability buyers for smaller pharmaceutical companies have insurers competing for their business, adding pressure to still-soft prices as overall market capacity stays about the same, industry experts say.

The largest pharmaceutical companies, however, continue to self-insure as the limits that are available are insufficient to cover their exposures—particularly in the United States. Greater limits are available in Europe, experts say.

At the same time, underwriters continue to impose exclusions unless drug makers provide scientific experts to clearly explain their products.

The competitive environment is being generated partly by underwriters entering the market, which is keeping rates soft, especially for companies with annual revenues of $5 billion or less, according to brokers and insurers.

The soft market is expected to continue another year in the United States and Europe, experts say.

"Global markets are stable and doing what they have to do to keep business," said Bruce Belzak, managing director and head of the life sciences practice for Marsh Inc. in New York, who said worldwide capacity remains about the same.

A pharmaceutical company based in the United States can purchase about $420 million in product liability limits, Mr. Belzak said. That amount has generally fallen since the late 1990s peak of $1.3 billion.

"Rates are stable or in some cases declining for lots of reasons," including the new sources of capacity, said Jim Walters, managing director for the life sciences and chemical group for Aon Corp. in Chicago.

"In Europe in the next 12 months, we don't see the capacity shrinking unless there's a global market catastrophe," said Simon Thompson, executive director of Aon Ltd.'s global liability practice in London and a casualty specialist for pharmaceutical and chemical companies.

Aon was able to secure €1 billion ($1.58 billion) of coverage for a client on a claims-made basis and secure broader coverage because of the competitive market, Mr. Thompson said.

About 80% of product liability coverage in Europe is on a claims-made basis, unlike the United States, where occurrence-based coverage is more common, he said.

Another difference from Europe

Continued on next page

New products aim to meet changing needs

The risk profile of the pharmaceutical industry is changing rapidly, brokers and insurers say, and they are trying to provide the programs and technology to meet those changing needs.

Many large pharmaceutical companies have sold their manufacturing facilities and outsourced production, said Bruce Belzak, managing director and head of the life sciences practice for Marsh Inc. in New York. That could reduce their risk in terms of product liability but increase it in terms of disruptions in the supply chain, Mr. Belzak said.

"The pace of change has quickened," said Neil Campbell, life science practice leader at Jardine Lloyd Thompson Group P.L.C. in London. "There is pressure on companies to increase efficiency," because the regulatory process slows introduction of new drugs and chemicals, and high-profile product liability cases have curtailed sales revenues, he said.

With the decision to outsource manufacturing, the supply-chain risk becomes increasingly apparent because glitches that cause medication shortages would displease shareholders of publicly traded companies, Mr. Campbell said.

In addition, the pharmaceutical and life sciences industry also faces increasing risks of product recalls, an outside company making and distributing counterfeit drugs, and threats related to the Internet.

One product being developed that reflects these changes is first-party multiline business interruption coverage that does not involve physical damage. That coverage would, among other features, protect against economic losses due to the inability of a supplier to provide products or service following regulatory action or insolvency.

JLT announced last month that it has designed such a product that will be underwritten by Lloyd's of London managing agency Kiln Ltd. and others.

Another issue challenging the pharmaceutical industry is conducting clinical trials overseas, where countries have different insurance requirements.

Marsh now offers a software program that simplifies the process of obtaining certificates of insurance for clinical trials overseas. Brokers or underwriters can complete an insurance application for a certain country online and answer the questions posed by underwriters in that country.

Berkley Life Sciences L.L.C. also plans to introduce software to obtain admitted coverage for clinical trials, but did not specify when that would happen.

Berkley already offers LS Prime Coverage, a flexible policy that can be customized to meet the policyholder's needs, said Jill Wadlund, president of the Ewing, N.J.-based insurer. LS Prime also protects against clinical trial risks that are not widely covered, such as medical monitoring expenses, abuse and molestation, and release of biological agents, Ms. Wadlund said.

—By Roseanne White Geisel

CONTINUED FROM PREVIOUS PAGE

is the U.S. litigation climate, which makes underwriting riskier for insurers, experts said.

For example, Merck & Co. last November agreed to a $4.85 billion settlement of U.S. claims related to the pain killer Vioxx, which was withdrawn from the market in 2004. Drug maker Wyeth, which is still dealing with fallout from the diet drug fen-phen that began in 1999, said it had recorded $21.1 billion in pretax charges through year-end 2007 related to diet drugs.

Insurers that previously did not write coverage for U.S. and European pharmaceutical and life sciences companies now are "putting a toe in the water. They are coming into the market with an average capacity of $5 million to $25 million," said Neil Campbell, life science practice leader for Jardine Lloyd Thompson Group P.L.C. in London.

"These (underwriters) are seeing returns to be made in the market," Mr. Campbell said. If a pharmaceutical or life sciences company has a good loss record, insurers are seeing an opportunity to look at a changing risk profile with a fresh perspective, he said.

European product liability rates are down about 10% from 12 to 18 months ago and there's more willingness to increase limits, Mr. Campbell said.

Berkley Life Sciences L.L.C., a Ewing, N.J., subsidiary of W.R. Berkley Corp., began writing pharmaceutical product liability coverage last year. The insurer writes coverage for U.S.-based companies ranging from startups to those with $10 billion in revenue.

"In the startup phase, if you have a good partnership, (the insurer) can have input into risk assessment," said Jill Wadlund, president of Berkley Life Sciences. "You can get your arms around the products and potential risks."

The market is the "softest I've ever seen it," she said. "Clearly, for Fortune 100 companies, there's never been enough product liability capacity."

"On the other hand, middle-market players will find coverage," Ms. Wadlund said.

While capacity is available for midsize and smaller companies, exclusions still are prevalent.

"The list of excluded products continues to grow," said Marsh's Mr. Belzak. To get coverage for something that underwriters want to exclude, Marsh drafts scientists from the client company to help insurers better understand the product and its associated risks, he said.

"Highly customized presentations to underwriters are key," Mr. Belzak said.

"Exclusions can be negotiated if you explain the risk management behind each product," said JLT's Mr. Campbell.

Chicago-based CNA Insurance Cos. provides "true risk transfer," partly by limiting exclusions, said Vp Underwriting Mark Wood. "We're maintaining the same limits profile" as CNA did when the market was hard. "We have an appetite for small firms (up to $1 billion in revenue) that are working on treatments for a limited number of diseases," he said.

While "negotiations are still started with a big set of exclusions," Aon's Mr. Walters said, "the market remains receptive to listening to the science."

One risk manager said it is a challenge to explain the science to underwriters.

"Underwriters don't always understand the biochemistry surrounding pharmaceutical products, and without that understanding it is hard to quantify risks," said Christina Reisinger, director of risk management for Cephalon Inc., a biopharmaceutical company based in Frazer, Pa., that had $1.7 billion in 2007 revenues.

For Cephalon, exclusions and the difficulty of getting coverage were key factors that led it to move to self-insure. "At the end of the day,

'Clearly, for Fortune 100 companies, there's never been enough product liability capacity. On the other hand, middle-market players will find coverage.'

Jill Wadlund,
Berkley Life Sciences L.L.C.

we weren't buying coverage that made sense. It (wasn't) true risk transfer," Ms. Reisinger said.

"What we have found in the last three to four years is that clients have become quite comfortable with high retentions," said Aon's Mr. Simon. With opportunities for lower rates in the competitive market, policyholders generally are purchasing higher limits rather than reducing retentions, he said.

In addition to product liability, directors and officers liability coverage for pharmaceutical companies also presents challenges.

"D&O would not be far behind (product liability) in terms of difficulty," said JLT's Mr. Campbell. "It depends upon the company's claims record," he said.

"A safety problem or failure in a clinical trial or disappointing results immediately leads to a stock drop and stockholder litigation," said Mr. Walters. "This happens in the pharmaceutical industry more than in other industries."

If the soft market lingers, capacity will likely decrease, said Berkley's Ms. Wadlund. But if rates stabilize, capacity may expand, she said.

"What happens with rates also depends upon an insurance company's stratification—whether pharmaceuticals are treated separately or would be part of an across-the-board liability (rate) rise," she said.

Mr. Thompson sees the continuation of the competitive environment and the availability of larger limits in Europe.

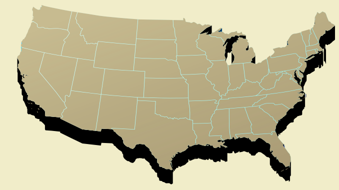
In the United States, Mr. Walters said, "We anticipate further softening of rates."

SECTOR SNAPSHOT

PHARMACEUTICAL & CHEMICAL

THE PHARMACEUTICAL AND CHEMICAL INDUSTRY includes a wide range of biotechnology firms, drug makers and chemical manufacturers. Information provided by **Advisen Ltd.** offers insight into the insurance purchasing practices of various organizations.

MADE IN THE U.S.A.



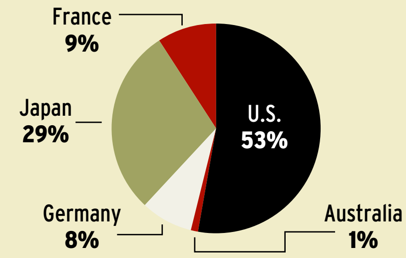
21%

of the world's chemicals are produced in the United States

Source: American Chemistry Council

R&D WORLD LEADERS

U.S. pharmaceutical companies lead the world in research and development

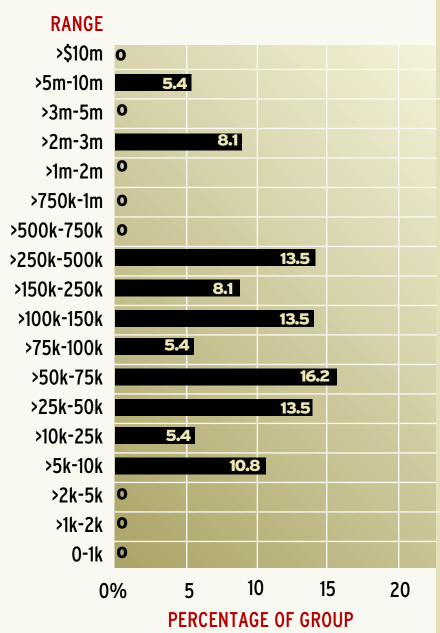


Source: Organisation for Economic Co-operation and Development

Premiums and limits distributions for pharmaceutical and chemical companies

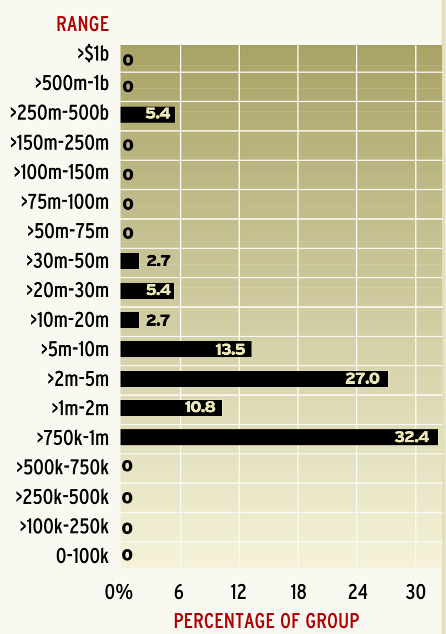
PRODUCT LIABILITY PREMIUM

Biotechnology & pharmaceutical industries



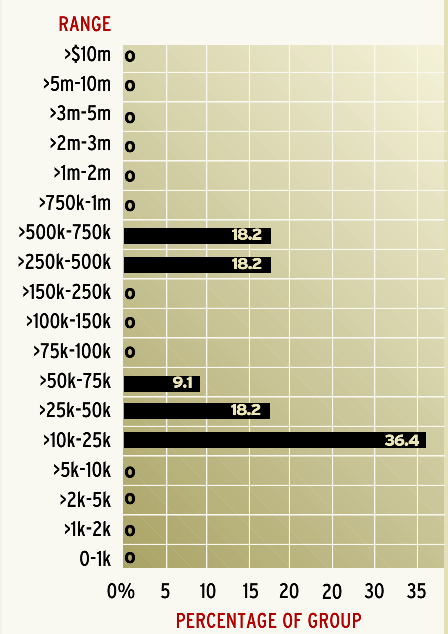
PRODUCT LIABILITY LIMITS

Biotechnology & pharmaceutical industries



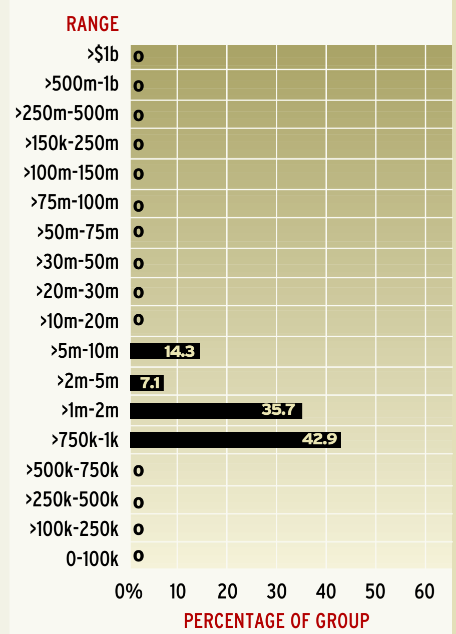
PRODUCT LIABILITY PREMIUM

Chemical industry



PRODUCT LIABILITY LIMITS

Chemical industry



Source: Advisen Ltd. For additional data on this and other industry sectors, visit www.advisen.com or call 1-212-897-4800.

Pharmaceutical trials go global, leading to coverage difficulties

Ethics committees' differing rules can add to confusion

By TONY DOWDING

Conducting clinical trials has gone global in recent years, leading to difficulties in arranging insurance programs for some pharmaceutical companies.

According to the National Institutes of Health, a division of the U.S. Department of Health and Human Services, there are currently more than 58,000 trials taking place in more than 150 countries. Clinical trials have been moving from Europe and the United States into emerging markets such as India, China, Vietnam and South America.

Reasons for the change include the cost of conducting the trials and the same people signing up for many clinical trials in the United States and Europe, which can cause problems if their bodies still contain drugs from a previous trial when they begin a new one. Places such as India can offer participants who haven't taken part in previous clinical trials, observers say.

Moving clinical trials to emerging markets does not seem to present any particular risk management challenges, though. The problems relate to local insurance requirements, and these appear to be as much of a headache in Europe as they are in emerging markets, according to observers.

Peter Knecht, head of insurance at Basel, Switzerland-based F. Hoffman-La Roche Ltd., said that the pharmaceutical company mostly carries out its clinical trials in the United States, Europe and South America.

"We have just one safety standard, which is applicable to the whole world," Mr. Knecht said. "We do not have standards by countries. In our standard operating procedures, it states that (clinical trials) must fulfill the legal requirements in each country. So from a risk management point of view, it makes no difference where the trials are held."

According to Mr. Knecht, the main problem is fulfilling the requirements of the ethics commissions in each country. These commissions or committees set out the standards and requirements for trials, including insurance. He said that different ethics commissions can have different standards, even within the same country.

"For example, Switzerland has at least 20 ethics commissions and they all ask for different things, which makes the insurance program quite complex…because we have to solve each problem on a case-by-case basis," he said.

Phil Fiscus, senior vp, life sciences for Chubb & Son in Whitehouse Station, N.J., said that ethics committees sometimes will make demands that are in addition to what the regulations of that country call for.

"Life sciences companies need to be aware of some of the requirements that are being placed on them and their insurers, since the problems that some of these requirements might impose could end up leaving them in a position where they don't have adequate insurance solutions, or where the cost is too expensive," Mr. Fiscus said.

> **'We have just one safety standard, which is applicable to the whole world. We do not have standards by countries.'**
>
> Peter Knecht,
> F. Hoffman-La Roche Ltd.

London-based Christopher Bryce, who leads the Clinical Trials Practice at New York-based Marsh Inc., said that in some ways, conducting trials in countries such as India is slightly easier than in Europe.

"You are starting to see a number of countries in Europe, such as France, Italy, Austria and Belgium requiring a period of (liability) coverage after the trial has been completed. France is particularly bad as it requires 10 years, whereas in Austria it is two years. France is difficult for insurers, because that 10-year requirement, in effect, makes it an occurrence policy, whereas they want to underwrite it on a claims-made basis."

With trials being conducted across the world, the insurance requirement has become global.

According to Gregor Koehler, president and CEO of Pallas Versicherung A.G., a captive insurance subsidiary of Leverkusen, Germany-based pharmaceutical firm Bayer A.G., there are three options for handling the global insurance requirements for clinical trials, and the choice depends on the organization and its way of doing business within the group.

The first option is to deal with the local markets without involving an international program, but he said that Bayer "does not favor this option."

The second option is to have a separate global clinical trials program through which all needed policies and certificates are arranged. Mr. Koehler described this option as "very elegant," providing a flexible way to deal with clinical trial insurance issues.

The third option is to add clinical trials into a global general liability/product liability program. "This is also a good option, but in some countries, you cannot insert clinical trials coverage into a local general liability policy, and this may cause additional work," he said.

Mr. Fiscus said that while it is preferable to have a global program, there aren't a lot of insurers that are able to address both the master program and the local placements that might be required.

Mr. Bryce said that Marsh doesn't view clinical trials as being a difficult subject, but the documentation is complex. "With companies wanting to go…countries around the world, such as India, you find that some of the companies that you…deal with in North America and Europe to write this business don't have wholly owned subsidiaries in these countries, so you have to deal with affiliates. So it can be difficult and time-consuming to get documents."

But documentation also is a problem in Europe, Mr. Bryce said. Most of Europe, with the exception of the United Kingdom, requires locally admitted clinical trials policies. "Most of mainland Europe requires a local policy, in the local language, and all the consent forms have to be in local language," he said.

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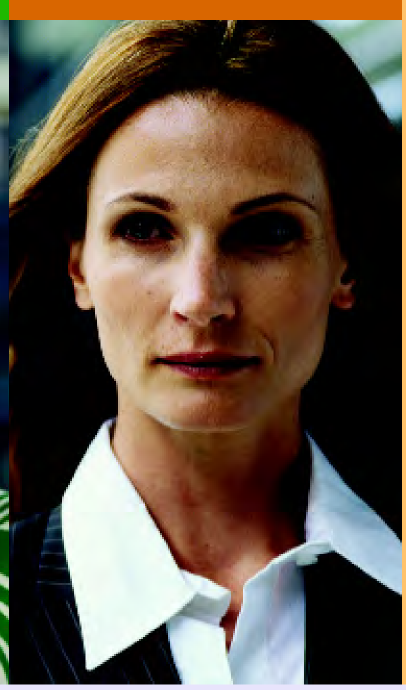

WOMEN TO WATCH

A Spotlight Report

Publishing: Dec. 1 | Ad Close: Nov. 19

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December 2, 2008

Business Insurance's Women to Watch Luncheon
at the
Waldorf=Astoria
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For more information, contact
Pat Ghazvini at
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PROFESSIONAL MARKETPLACE

LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

IN THE MATTER OF MALAYAN INSURANCE COMPANY (U.K.) LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

SCHEME OF ARRANGEMENT
between
MALAYAN INSURANCE COMPANY (U.K.) LIMITED
and its
SCHEME CREDITORS
(as defined in the Scheme of Arrangement referred to below)

NOTICE IS HEREBY GIVEN that by an Order dated **8 July 2008 ("the Court Order")** in the above matter, the High Court of Justice of England and Wales has directed that a meeting ("the Scheme Meeting") of the Scheme Creditors (as defined in the Scheme) of Malayan Insurance (U.K.) Limited ("the Company"), be held on **1 October 2008** at **the offices of Chiltington International Limited, Holland House, 1-4 Bury Street, London EC3A 5AW** commencing at **12 noon** (London time). The purpose of the Scheme Meeting will be to consider and, if thought fit, to approve (with or without modification) a scheme of arrangement proposed to be made and binding between the Company and its Scheme Creditors pursuant to Part 26 of the Companies Act 2006.

Scheme Creditors are creditors with a valid claim against the Company in respect of a liability of the Company under or in relation to a reinsurance contract effected by or on behalf of the Company.

All Scheme Creditors are requested to attend at the place and time referred to above. Scheme Creditors may vote in person at the Scheme Meeting or they may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place. Voting forms and proxy forms for use at the Scheme Meeting have been sent to all known policyholders and potential Scheme Creditors together with the Notice of the Scheme Meeting.

Downloadable files of the proposed Scheme Document (together with Explanatory Statement and Appendices, including the forms of voting and proxy) and the Court Order are available on the Scheme website: **www.chiltington.com/schemes/malayan**. If you require printed copies of these documents, please send your request to **Anne Bagshaw** at **Chiltington International Limited, Holland House, 1-4 Bury Street, London EC3A 5AW** and copies will be sent to you free of charge.

It is requested that proxies and voting forms be sent by Post to **Anne Bagshaw** at **Chiltington International Limited, Holland House, 1-4 Bury Street, London EC3A 5AW**, as soon as possible to arrive no later than 4pm (London time) on **29 September 2008.** A scanned copy sent in Portable Document Format (PDF) by email (address: **abagshaw@chiltington.co.uk**) or faxed copy (fax no. **44 (0) 20 7621 6344/55**) will be accepted if legible (and in the case of forms returned by email) they are received in the mailbox of the addressee and can be opened and printed by the recipient. Scheme Creditors are requested to return their completed proxies and voting forms in advance of the Scheme Meeting, although they may be handed in at the registration desk at the Scheme Meeting, provided that they are received at least one hour prior to the scheduled commencement of the Scheme Meeting.

The Court has directed that **Frank Attwood** of **21 Woodside Road, New Malden, Surrey KT3 3AW** or, failing him **Ian Marshall** of **Chiltington International Limited, Holland House, 1-4 Bury Street, London EC3A 5AW** be appointed to act as Chairman of the Scheme Meeting and has directed the Chairman to report the result of the Scheme Meeting to the Court. The Court has appointed Mr Colin Czapiewski to act as independent vote valuer for the purposes of reviewing and providing a final determination on the values to be placed on Scheme Claims (as defined in the Scheme) for voting purposes, if agreement cannot be reached with the Chairman.

In the event that the Scheme Creditors vote in favour of the Scheme by the requisite majority it will be subject to the subsequent approval of the Court.

Any Scheme Creditor that is unclear about the action he is required to take should contact **Anne Bagshaw** at **Chiltington International Limited, Holland House, 1-4 Bury Street, London EC3A 5AW, tel +44 (0)20 7621 6332; fax 44 (0) 20 7621 6344/55; email abagshaw@chiltington.co.uk.**

Dated July 27th 2008

CityNet Law, Solicitors, of St Martin's House,
16 St Martin's Le Grand,
London EC1A 4EN
Solicitors for Company

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION OF JOHN C. GIBBONS,
AS LIQUIDATOR OF **NEW CAP REINSURANCE CORPORATION LIMITED**,
DEBTOR IN FOREIGN PROCEEDINGS
CASE NO. 99-B-42752 (SMB)

NOTICE IS HEREBY GIVEN THAT ON JULY 15, 2008, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") CONTINUING THE PRELIMINARY INJUNCTION ORDER PURSUANT TO 11 U.S.C. §304 ORIGINALLY ENTERED IN THIS CASE ON MAY 7, 1999. THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING SCHEDULED TO BE HELD ON AUGUST 12, 2008 AT 10:00 A.M. (THE "RETURN DATE") BEFORE THE HONORABLE STUART M. BERNSTEIN, UNITED STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT LOCATED AT ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE STUART M. BERNSTEIN AND SERVED ON COUNSEL FOR THE PETITIONER LISTED BELOW, SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE. ANY PERSON WISHING TO OBTAIN A COPY OF THE ORDER SHOULD CONTACT COUNSEL TO THE PETITIONER.

CHADBOURNE & PARKE LLP
ATTORNEYS FOR THE PETITIONER
30 ROCKEFELLER PLAZA
NEW YORK, NEW YORK 10112
(212) 408-5100
ATTN: HOWARD SEIFE, ESQ.
FRANCISCO VAZQUEZ, ESQ.

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT • SOUTHERN DISTRICT OF NEW YORK

In re Petition of John Gibbons, as Liquidator of NEW CAP REINSURANCE CORPORATION LIMITED, Debtor in a Foreign Proceeding.

In a Proceeding Under Section 304 of the Bankruptcy Code
Case No. 99-B-42752 (SMB)

NOTICE OF MOTION FOR ORDER PURSUANT TO SECTION 304 GIVING EFFECT IN THE UNITED STATES TO SCHEME OF ARRANGEMENT AND FOR A PERMANENT ORDER

NOTICE IS HEREBY GIVEN that, in accordance with the Amended Order Scheduling Hearing and Specifying the Form and Manner of Service of Notice, dated July 17, 2008 (the "Scheduling Order") [Docket No. 94], the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has scheduled a hearing for August 12, 2008 at 10:00 a.m. (the "Hearing") before the Honorable Stuart M. Bernstein, Chief United States Bankruptcy Judge, in the Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004, to consider the Motion (the "Motion") of John Gibbons (the "Petitioner"), the duly appointed liquidator and a scheme administrator of New Cap Reinsurance Corporation Limited (the "Company"), for entry of an Order pursuant to 11 U.S.C. § 304 Giving Effect in the United States to Scheme of Arrangement and for a Permanent Injunction (the "Proposed Order").

PLEASE TAKE FURTHER NOTICE that the Proposed Order provides, among other things, that:

1. the scheme of arrangement between the Company and its creditors sanctioned by the Supreme Court of New South Wales made effective on April 28, 2008 (the "Scheme") shall be given full force and effect in the United States and be binding on and enforceable against all Creditors (as defined in the Motion) in the United States;
2. all persons and entities are permanently enjoined from taking any action in contravention of, or inconsistent with, the Scheme;
3. all persons and entities are permanently enjoined from seizing, repossessing, transferring, relinquishing or disposing of any property of the Company in the United States, or the proceeds thereof, to any person or entity other than the Scheme Administrators (as defined in the Motion);
4. all persons and entities are permanently enjoined from commencing or continuing any action or other legal proceedings (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) against the Company or any of its property or any proceeds, except as provided in the Scheme;
5. all persons and entities are permanently enjoined from enforcing any judicial, administrative or regulatory judgment, assessment or order or arbitration award and commencing or continuing any act for any action or other legal proceeding (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) or any counterclaim to create, perfect or enforce any lien, set-off or other claim against the Company or its property or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts, except as expressly permitted in the Scheme;
6. all persons and entities are permanently enjoined from drawing down any letter of credit established by, on behalf or at the request of, the Company, in excess of amounts expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established;
7. all persons and entities are permanently enjoined from withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest in excess of amounts expressly authorized by the terms of the contract and any related trust or other agreement pursuant to which such letter of credit, trust, escrow, or similar arrangement has been established; except, however, no drawing against any letter of credit shall be made in connection with any commutation unless the amount has been agreed in writing with the Scheme Administrators or by further order of the United States Bankruptcy Court;
8. all persons and entities in possession, custody or control of property of the Company in the United States, or the proceeds thereof, are required to turn over and account for such property or its proceeds to the Australia Liquidator (as defined in the Motion); and
9. all persons and entities that are beneficiaries of letters of credit established by, on behalf or at the request of, the Company or parties to any trust, escrow or similar arrangement in which the Company has an interest are required to: (a) provide notice to the Australia Liquidator of any drawdown on any letter of credit established by, on behalf or at the request of, the Company, or any withdrawal from, setoff against, or other application of property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest, together with information sufficient to permit the Australia Liquidator to assess the propriety of such drawdown, withdrawal, setoff or other application, including, without limitation, the date and amount of such drawdown, withdrawal, setoff or other application and a copy of any contract, related trust or other agreement pursuant to which any such drawdown, withdrawal, setoff, or other application was made, and provide such notice and other information contemporaneously therewith; and (b) turn over and account to the Australia Liquidator for all funds resulting from such drawdown, withdrawal, setoff, or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such letter of credit, trust, escrow or similar arrangement has been established.

PLEASE TAKE FURTHER NOTICE that any party in interest wishing to submit a response or objection to the Motion or the relief requested by the Motion must do so pursuant to the Bankruptcy Code and the Local and Bankruptcy Rules, in writing and setting forth the bases therefore, which response or objection must be filed with the Office of the Clerk of the Court, Room 534, One Bowling Green, New York, New York 10004-1408, and served on Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, NY 10112 (Attn: Howard Seife, Esq.) so as to be received by them all no later than 4:00 p.m. Eastern Time, August 7, 2008.

PLEASE TAKE FURTHER NOTICE that the response or objection to be filed with the Office of the Clerk of the Court must be filed: (i) electronically by registered users of the Court's electronic case filing system in accordance with General Order M-242 of the Bankruptcy Court for the Southern District of New York, a copy of which may be viewed on the Court's website, www.nysb.uscourts.gov; and (ii) by all other parties in interest on a 3.5 inch disc, with hard copy provided to the Chambers of the Honorable Stuart M. Bernstein, Chief United States Bankruptcy Judge, at the address specified above.

PLEASE TAKE FURTHER NOTICE that all parties-in-interest opposed to the Motion must appear at the Hearing at the time and place set forth above.

PLEASE TAKE FURTHER NOTICE that the Hearing may be adjourned from time to time without further notice other than an announcement in open court at the Hearing or the adjourned date or dates of the Hearing.

PLEASE TAKE FURTHER NOTICE that if no response or objection is timely filed and served as provided above, the Court may grant the relief requested by the Motion without further notice.

Copies of the order of the Supreme Court of New South Wales sanctioning the Scheme, the Motion, and the pleadings filed in support of the Motion will be made available upon request at the office of the Petitioner's United States Counsel at the address below:

CHADBOURNE & PARKE LLP • Attorneys for the Petitioner • 30 Rockefeller Plaza
New York, New York 10112 • (212) 408-5100 • Attn: Howard Seife, Esq. and Francisco Vazquez, Esq.

BUSINESS RESOURCES

International
NEWS

Italian law targets worker safety

By MICHAEL BRADFORD

ROME—Italian companies are being forced towards a new awareness of workplace safety by a law that could cost them heavy fines or halt their operations for serious violations.

The nudge comes from Decree 81, a law passed in April that fines employers up to €1.5 million ($2.38 million) if they are found responsible for causing work-related injuries or deaths. In serious cases, business activities could be ordered to be halted and prison sentences of six to 18 months could be handed down to those found responsible.

The tough penalties are causing Italian employers to pay more attention to workplace safety, which represents a cultural shift in a country where worker safety was not a priority except at the largest companies, sources say.

And, even at Italy's biggest companies, workplace safety is grabbing the attention of chief executive officers who have become more interested not only because of the fines, but because Decree 81 establishes the link between safety and corporate liability, sources say.

Giovanni Celeri, director, risk consulting at Marsh S.p.A. in Milan, said during at a discussion hosted in Milan by *Business Insurance Europe*, *Business Insurance*'s sister publication, that this link is important in the eyes of top management. "This is a great concern because it goes beyond the specialist, beyond the safety officer," he said of the responsibility to make sure workers are protected.

A breach of the safety regulations is now considered a failure of corporate governance, which puts more of the burden for safety onto an organization's top executives, said Marco Terzago, risk manager at SKF Industrie S.p.A. in Airasca, Italy.

The threat is greatest, sources say, for small and midsize companies, which form the largest part of Italy's economy.

There are many small construction companies, for example, with no safety measures in place, said Roberto Bosco, corporate risk manager at Mediaset Group Rtl. S.p.A. in Milan and chairman of the Associazione Nazionale dei Risk Manager e Responsabili Assicurazioni Aziendali, Italy's risk management association.

But while the new law has brought attention to risk management, most risk managers find themselves in a supporting role when it comes to workplace safety.

"Risk management at my company is not involved in the safety of workers," Mr. Bosco said during the discussion.

Other risk managers revealed that such an arrangement is not unusual in Italy, with safety responsibilities resting outside of their departments.

Roberto Moscogiuri, head of insurance at Enel S.p.A. in Rome, said the risk management and insurance departments at his company do not have direct responsibility for workplace safety either. Risk management does, however, cooperate with those in charge of safety at the company's operating units, he said.

Mr. Terzago said that SKF's environmental health and safety department oversees workplace safety. "Normally risk managers are not directly involved in health and safety," he said. "It is a full-time job. But of course the risk manager should work with health and safety."

PENALTIES AND INFRACTIONS

Employers face stiff penalties under Decree 81 if they are found to have inadequate measures in place to protect workers. The penalties that could be assessed, depending on the severity of the infraction, include:

- €8,000 ($12,677) minimum fine
- €1.5 million ($2.38 million) maximum fine if the employer is found to have been responsible for an injury or death
- Prison sentences of six to 18 months for those found responsible for an accident
- Business operations shut down in serious cases

Italy's comp insurer aims to help employers

Employers worried about running afoul of new legislation, which sets steep penalties if workers are injured at unsafe job sites, are getting some help from Italy's state workers compensation insurer.

Mr. Rubini

Italy's workers comp authority, commonly known as INAIL, has responded to the passage of Decree 81, which broadens the liability of employers found responsible for workplace accidents, by providing services to help keep workers safe.

Insurers generally do not provide a lot of advice for controlling workplace accidents because INAIL is the primary insurer of mandatory coverage for employee injuries, market sources say.

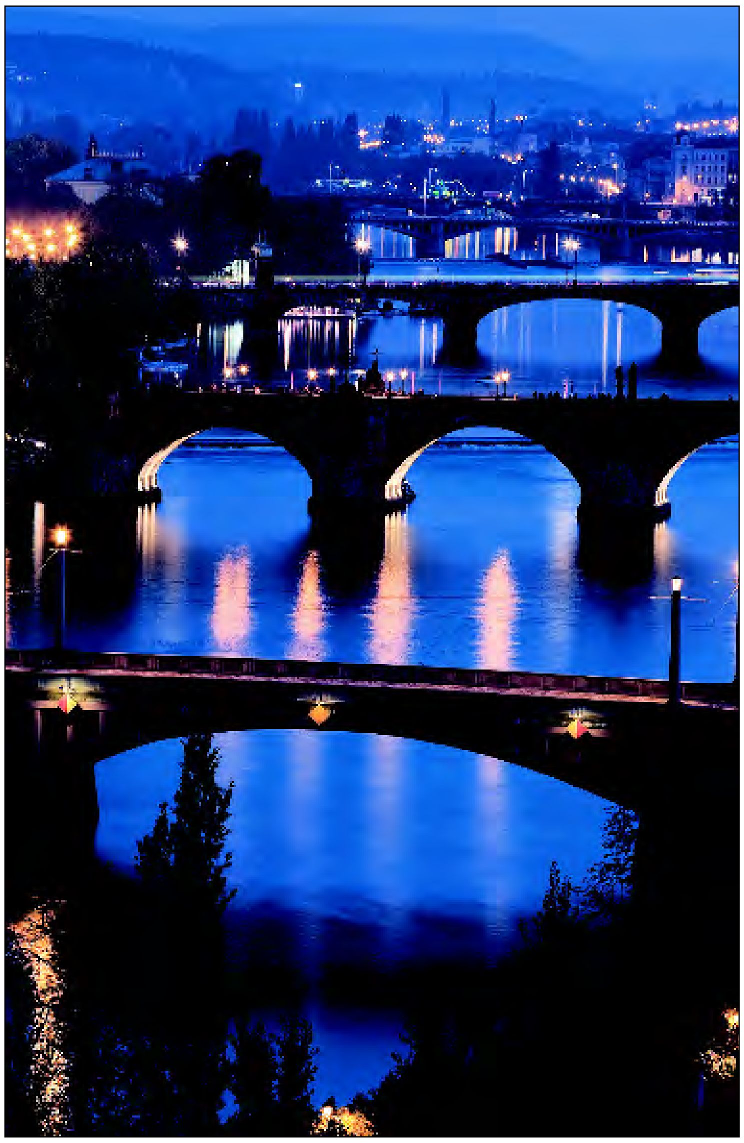
"This is peculiar to the Italian market and is a reason why the insurers are not motivated for the time being," said Paolo Rubini, director of risk management at Telecom Italia S.p.A. in Milan. Mr. Rubini, who also is vice chairman of the Associazione Nazionale dei Risk Manager e Responsabili Assicurazioni Aziendali, Italy's risk management association, spoke during a roundtable discussion in Milan.

"It is very difficult for an insurer to be an expert in workplace safety," said Marco Terzago, risk manager with SKF Industrie S.p.A. in Airasca, Italy. "So normally what you see in Italy is insurance companies that are not able to provide consulting services or risk engineers" who can help control workplace accidents, he noted.

But INAIL is beginning to provide some assistance to employers. A spokeswoman for the Rome-based agency said it has established accident prevention training courses, introduced an accident-prevention function in each of its branches and is improving its information systems since the passage of the law.

The new law calls for INAIL to provide consulting services to employers and training in workplace accident prevention for employees and managers, she said in an e-mail response.

—By Michael Bradford



The Federation of European Risk Management Assns. will hold its biennial forum in Prague next year, which will be hosted by the Assn. of Insurance & Risk Management Experts of the Czech Republic.

Czech group becomes member of FERMA

BRUSSELS, Belgium—The Assn. of Insurance & Risk Management Experts of the Czech Republic has been accepted as a member of the Brussels, Belgium-based Federation of European Risk Management Assns.

The Czech body, ASPAR CR, is based in Prague and was formally registered as an association in April 2007 after several years of informal meetings.

"We welcome this new and already very active risk management association from one of the larger countries in Eastern Europe," said Marie-Gemma Dequae, president of FERMA.

In October 2009, ASPAR CR will host FERMA's biennial forum in Prague.

—By Sarah Veysey

Products & Services

Lexington introduces truck broker liability cover

NEW YORK—Lexington Insurance Co. has introduced truck broker liability coverage to address an emerging transportation industry exposure.

The primary policy addresses liability risks of truck brokers that connect shippers that need to transport goods with authorized motor carriers.

The policy provides bodily injury and property damage liability coverage if the broker is sued in connection with a truck accident involving a motor carrier.

A recent federal court decision said that shippers and brokers failing to use "reasonable means" to perform background checks on motor carriers before they are retained could be liable for accidents caused by the motor carriers, according to the unit of American International Group Inc.

For more information, contact Rocco Modafferi, vp at Lexington, at 617-330-8462-or by e-mail at *rocco.modafferi@aig.com*.

Affiliated FM all-risk policy designed for education

JOHNSTON, R.I.—Affiliated FM, a unit of Factory Mutual Insurance Co., has rolled out an all-risk policy for educational institutions.

The product, based on the Johnston, R.I.-based insurer's proVision all-risk property policy, features three education-specific coverage extensions:

- The research and development extension covers the loss of animals, project prototypes and other materials. It also covers redoing testing, research and experiments, as well as continued fixed project charges and expenses.
- The repair and reshelving of library books, rare books and periodicals extension includes costs for data entry and inventory management.
- The form also extends coverage to the personal property of teachers and students up to $10,000 each.

The education policy offers business interruption coverage for tuition and fees, loss of rental income, ordinary payroll, emergency vacating expenses and contingent business interruption for contract services and suppliers.

For more information, contact Neal Jones, Affiliated FM's sales and marketing support specialist, at 401-275-3000, ext. 1788 or at *neal.jones@fmglobal.com*. More information can also be found online at *www.affiliatedfm.com/education*.

Darwin rolls out privacy liability cover

FARMINGTON, Conn.—Darwin Professional Underwriters Inc. has introduced Privacy//403, a privacy liability product for health care organizations, financial institutions and other companies that utilize data as part of their daily business practices.

The policy covers data privacy breaches, network security liability and media liability. It also provides coverage of first-party business interruption costs such as forensic investigative expenses, data restoration, extra expense and reduction in business income.

The insurance is aimed at companies that use, transmit or store personal and confidential information.

Policyholders also have access to legal and risk management consultation from Philadelphia-based law firm Pepper Hamilton L.L.P.

For more information, contact Adam Sills, Privacy//403 lead underwriter and product manager at 860-284-1382 or by e-mail at *asills@darwinpro.com*.

AIR model gauges Gulf of Mexico risks

BOSTON—AIR Worldwide Corp. has introduced the U.S Hurricane Model for Offshore Assets to help insurers and reinsurers better manage hurricane risks to oil platforms and rigs in the Gulf of Mexico.

Based on AIR's U.S. hurricane model, the product uses a single catalog of simulated events to enable companies to assess potential losses from hurricanes affecting onshore and offshore properties in the United States, Gulf of Mexico and Caribbean, according to the company.

Model features include generating estimates of physical damage and losses from wind and wave forces, a main concern for offshore platforms in the Gulf of Mexico.

The model also includes AIR's database of nearly 6,000 platforms and rigs located in federal waters in the Gulf of Mexico and structures in state waters off of Louisiana.

The model supports policy terms common in the offshore market such as complex single limits, sublimits and assured interest. Supported coverages include physical damage, business interruption and contingent business interruption, operator's extra expense, and debris removal and removal of wrecks.

The AIR U.S Hurricane Model for Offshore Assets is available via AIR's CLASIC/2 and CATRADER catastrophe risk modeling applications.

For more information, contact Paolo Bazzurro, director of engineering analysis at AIR Worldwide, at *pbazzurro@air-worldwide.com*.

TO SUBMIT ITEMS

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Recent events would trigger games coverage

Several developments in China in recent months typically would trigger contingency/cancellation coverage if similar events interrupt the Olympic Games in August, according to insurance market experts.

In March, 2,500 miles southwest of Beijing, Chinese troops quelled a riot that erupted in Lhasa, Tibet's capital, over Tibetans' objection to China's decades-long occupation.

In May, a devastating earthquake struck China's Sichuan province 960 miles southwest of Beijing. The quake, which was felt in Beijing, killed more than 69,000 people, and more than 18,000 are listed as missing, according to Chinese government reports.

For the past year, International Olympic Committee President Jacques Rogge has warned that high-endurance sports at the games would be postponed if Beijing's notoriously poor air quality threatens athletes' health on the days those events are scheduled.

To improve air quality, Chinese officials this month implemented a smog abatement plan that consists of pulling 60% of Beijing's 3.3 million vehicles off the road, shutting construction projects and pollution-spewing factories and opening a commuter train line in the city, according to Reuters news reports.

While contingency/cancellation insurance buyers likely would have trouble finding underwriters willing to cover pollution in general, insurers are open to covering a named form of pollution that exceeds a certain measurable level, said risk management consultant Mike Price, president of Atlanta-based Entertainment & Sports Insurance Experts Inc., a unit of Brown & Brown Inc.

Meanwhile, in April, the head of the international police organization INTERPOL said "a real possibility" exists that terrorists or anti-China groups could disrupt the games by targeting athletes, Reuters has reported.

—*By Dave Lenckus*

REUTERS/JASON LEE

To improve air quality, officials in China this month began a smog abatement program that pulled 60% of Beijing's cars off the road and shut down construction projects and factories.

Disclosure: More compliance time sought

CONTINUED FROM PAGE 3

to be disclosed on how the charges are allocated to individual accounts.

Finally, employers would have to disclose to participants on a quarterly basis the actual dollar amounts charged to their accounts during the preceding quarter for specified administrative expenses.

The proposed rules come at a time of increased scrutiny of fees paid by 401(k) plan participants. More than a dozen employers have been sued for charging participants paid excessive fees. Those suits still are pending.

In addition, House Education and Labor Committee Chairman George Miller, D-Calif., has led the charge to improve 401(k) plan fee disclosure.

That drive has been fueled by the enormous growth of the plans—the Labor Department estimates there are 65 million participants in 437,000 account-based plans—and concerns that participants lack sufficient information to compare the fees among various investment options.

By improving fee and expense disclosure, participants will save $6.1 billion between 2009 and 2018, the Labor Department estimates.

Benefit experts agree that improved 401(k) plan fee and expense disclosure is needed, but they have numerous concerns about the Labor Department's proposal that, if approved, would go into effect for plan years beginning on or after Jan. 1, 2009.

The most immediate concern, experts say, is employers need more time to get the necessary information from fund vendors and to prepare the disclosure forms.

"The challenge is to put everything together in the right format. A very significant effort is going to be required. It is going to take more time" than is being proposed, said Cindy Milsted, an attorney with Hewitt Associates L.L.C. in Lincolnshire, Ill.

In addition, some fee and expense information could be difficult for employers to obtain from fund vendors. For example, stable-value fund providers simply do not provide expense information, said Alan Vorchheimer, a principal with Buck Consultants L.L.C. in New York, but added that the problem will be resolved eventually.

"Plan sponsors will have to work with vendors to see that all the information is available," said Robyn Credico, director of defined contribution consulting at Watson Wyatt Worldwide in Arlington, Va.

Another problem is that for some investment options—company stock being the best example—it will be difficult, if not impossible, for employers to provide a benchmark index to participants, Mr. Vorchheimer said.

With greater fee and expense disclosure, another challenge for employers will be to step up investment education, said Marina Edwards, a senior consultant with Towers Perrin in Chicago.

For example, some plan participants may veer away from certain investment options because of high fees, not understanding that those funds produce greater investment returns than others in similar categories.

Comments on the Labor Department proposal are due by Sept. 8.

Olympics: Organizers secure coverage

CONTINUED FROM PAGE 1

end Aug. 24. The games are expected to draw 10,500 athletes from 205 invited countries, four more than in the previous Summer Games in Athens, Greece, four years ago, according to the Beijing Organizing Committee and the IOC.

Athletes are scheduled to compete in 28 sports and 302 events, some of which will be held in Hong Kong, Qingdao, Qinhuangdao, Shanghai, Shenyang and Tianjin, according to the Beijing Organizing Committee

The coverages in place for the games vary. Just the USOC, for example, purchased numerous coverages, including personal accident insurance for athletes, what amounts to workers compensation coverage for volunteers and property coverage for sports and computer equipment (see related story).

Lloyd's of London underwriter David Bruce of Hiscox P.L.C. estimates that insurance buyers have purchased $2 billion in limits to cover various Olympic risks.

But contingency/cancellation coverages—providing some buyers at least nine-figure limits—clearly account for the bulk of limits written for entities with Olympics-related risks.

The coverage would protect, among others, the IOC, U.S. television network NBC Universal and various sponsors of the games from either lost revenues or incurred expenses if the games were postponed or canceled due to events beyond the policyholders' control.

Local hoteliers and souvenir manufacturers are among other smaller businesses that also purchase the coverage, because they count on generating substantial revenues from the games, Mr. Bruce said.

Insurance market experts say the Olympics are a very safe risk for contingency/cancellation underwriters.

"Nothing is going to stop the Olympics from being completed," said Pat O'Connor, an executive vp with investment banker and insurance consultant City Securities Corp. of Indianapolis.

But several typically covered perils—including civil unrest and a devastating earthquake—have struck China in recent months, long after the time that insurance experts say buyers would have purchased contingency/cancellation coverage at rates much lower than they could negotiate this close to the games (see story, page 18).

The Beijing Games mark a significant expansion of the amount of contingency/cancellation coverage purchased by the IOC, according to its spokeswoman.

The IOC has purchased $415 million in cancellation and abandonment insurance limits to cover its financial losses if the Beijing Games were canceled before they began or if they are shut down before their scheduled conclusion, the spokeswoman confirmed.

The rate for the coverage was 2.26% for a premium of $9.38 million, she said.

The policy covers natural hazards—such as earthquake, flooding and typhoons—among other risks, said a spokesman for Munich, Germany-based Munich Reinsurance Co., one of the lead reinsurers on the risk.

It also covers terrorism, according to the IOC spokeswoman.

Munich Re "played a major part in designing" the coverage, the spokesman said.

The lead insurers of the multi-insurer subscription placement in the London market are Great Lakes Reinsurance (U.K.) P.L.C., a Munich Re subsidiary; and SR International Business Insurance Co. Ltd., a subsidiary of Swiss Reinsurance Co. of Zurich, Switzerland, according to the IOC spokeswoman.

Swiss Re, like Munich Re, is a lead reinsurer of the risk, she said.

Brokerage Benfield Group Ltd. of London placed the coverage, according to the IOC and Munich Re.

The coverage is a long-term policy that spans numerous games, according to the IOC and Munich Re. The policy covers the IOC for not only the Beijing Games but also the 2010 Winter Olympics in Vancouver, British Columbia, Canada, and the 2012 Summer Games in London.

The organization first purchased cancellation coverage in 2004 to protect itself if the Summer Games in Athens had been shut down. It bought $170 million of coverage for those games (*BI*, Aug. 9, 2004). For the Winter Games in Turin in 2006, the organization purchased $150 million in limits (*BI*, Feb. 6, 2006).

The IOC became interested in contingency/cancellation coverage in 2001, after Jacques Rogge was appointed president and determined that the organization's financial reserves were dwindling, according to the IOC spokeswoman. One of Mr. Rogge's priorities was ensuring that the IOC's funding would be protected if the games were canceled or interrupted, forcing the organization to return fees it charges for broadcast rights.

The IOC charged NBC a total of $3.5 billion for the exclusive U.S. television broadcast rights of five Olympic Games concluding with the Beijing Games, which alone cost the network $894 million, according to various reports.

With the contingency/cancellation insurance, the IOC would be able to continue financially supporting the national Olympic committees of countries that field athletes in the games and the International Federations that govern the various Olympic sports, the IOC spokeswoman said.

The policy, however, would not cover the IOC if some sports events were postponed because of poor air quality, the spokeswoman said. That would be unnecessary coverage, because the IOC has significant experience handling events that have to be rescheduled due to poor weather conditions, she said.

But that risk typically would be covered in a multiperil cancellation policy for broadcasters, according to Duncan Fraser, a London-based partner with JLT Sport, a unit of Jardine Lloyd Thompson Group P.L.C.

As U.S. television networks have done for the past few decades, NBC has purchased "an insurance policy to protect itself against the disruption or cancellation of the games," according to a spokesman. TV broadcasters have routinely purchased the coverage since the United States led a boycott of the Summer Games in Moscow in 1980 to protest the Soviet Union's 1979 invasion of Afghanistan, said the spokesman. He would not provide coverage details.

Market experts say a broadcaster's coverage limit typically is based on one of a few different measures: its budgeted gross revenues; its production costs; its revenues and production costs; or its revenues and anticipated profits.

NBC expects that its broadcast of the games will generate more than $1 billion in advertising revenue, according to Television Week, a sister publication of *Business Insurance* and *Business Insurance Europe*.

Insurance experts said the contingency/cancellation market could provide $1 billion in capacity to a single insurance buyer.

Instead of a so-called "inclusive" policy that covers numerous named perils, NBC could have opted to purchase several single-peril or limited-peril policies, said risk management consultant Mike Price, president of Atlanta-based Entertainment & Sports Insurance Experts Inc., a unit of Brown & Brown Inc.

Depending on how the risks were rated separately, buying numerous policies could have been cheaper, he said.

Mr. Price also said a single-peril policy covering a named pollution risk, such as air quality below a specific measure, could be less expensive shortly before the games if China's smog abatement program significantly improves air quality.

While an interruption of NBC's coverage of the games would have to be beyond the network's control for its contingency/cancellation coverage to respond, a major news event could trigger the coverage even if the games were not interrupted, Mr. Bruce said.

For example, if other networks were reporting on the news event and the use a split screen to simultaneously report the event and cover the Olympics would be insensitive, NBC likely would be able switch away from its Olympics broadcast to report on the breaking news and still tap its insurance, Mr. Bruce said.

Business Insurance Europe Senior Reporter Michael Bradford contributed to this report.

U.S. Olympic Committee obtains health-related cover

By DAVE LENCKUS

COLORADO SPRINGS, Colo.—The U.S. Olympic Committee dedicated the biggest portion of its insurance budget this year to health-related coverage for the U.S. contingent to the Summer Olympic Games in Beijing but passed up cancellation insurance, according to the organization's risk manager.

The organization also unexpectedly spent months developing a catastrophe response plan that it could activate in the event of an emergency during the games, said Elaine Marin, director of risk management in Colorado Springs, Colo. The organization was compelled to develop the plan when it could not obtain information on how an emergency would be handled during the games, she said.

Other coverages for the USOC provide it larger limits, but various health-related coverages for the more than 1,000 athletes, coaches, trainers, volunteers and organization staff and VIPs headed to Beijing accounted for "a big chunk" of the USOC's premium, Ms. Marin said.

Those health coverages include personal health, travel accident, foreign volunteer compensation and medical emergency evacuation coverage.

A variety of insurers write the coverage. Wells Fargo & Co. placed the coverages for the USOC.

For a smaller premium, the organization purchased much larger general liability and directors and officers liability limits, according to Ms. Marin. She would not provide coverage details beyond noting that the limits for both policies exceed $5 million and that the D&O policy also covers employment practices liability and fiduciary liability. Marsh Inc. placed the D&O coverage, she said.

The USOC also purchased property, automobile, inland marine and ocean marine insurance from various insurers, she said. Marsh and Wells Fargo each place some of the coverage, she said.

The organization, however, did not purchase cancellation coverage, unlike the International Olympics Committee, according to Ms. Marin. The USOC, which would have to return sponsorship funding if the games were canceled, made its coverage decision earlier this year before Ms. Marin was appointed risk manager.

The IOC purchased the insurance so it could continue funding national Olympic committees even if the games were interrupted or canceled, forcing the IOC to refund fees that television networks paid to broadcast the games.

The USOC decided to develop a plan for how it would protect the U.S. contingent if it were caught in an emergency in Beijing, after it had trouble obtaining sufficient information about how authorities in China would respond in an emergency, Ms. Marin said.

"We've been doing it for a number of months and continue to tweak it," Ms. Marin said.

She blamed the information problem on cultural differences, language problems and governmental red tape.

The USOC fashioned a plan by first forming a team drawn from its various divisions, including risk management, security, technology and international games, Ms. Marin said.

The team then built upon the USOC's own catastrophe plan, taking into account natural disasters and other perils the U.S. contingent could face.

"We really don't have any information from the Beijing Organizing Committee on what would happen in the event of an earthquake," Ms. Marin said. "We also have no idea what the government would do."

A May 12 earthquake 960 miles southwest of Beijing, which was felt in the Olympic host city, killed more than 69,000.

"We had to take that risk and develop our own policy and obviously allow some play in it if the Beijing Organizing Committee steps in," she said.

Among other perils, the plan also addresses severe weather emergencies, because the response plan in Beijing "is not even known to us at this point," Ms. Marin said.

After arriving in Beijing last week, however, Ms. Marin obtained some information on how authorities there would respond in emergencies, and the USOC's risk management plans were adjusted accordingly, she said. The USOC also had to "slightly revamp" its fire emergency plan after discovering that the doors at its facilities in Beijing are configured differently than anticipated, she said.

Terrorism risk is handled by USOC security, she said.

The plan also addresses some more mundane issues that still could result in injuries, Ms. Marin said. For example, it outlines for USOC staff, who are largely familiar with working in a U.S. office setting, several safety considerations for running a hospitality event in a foreign locale. Tips run from properly stacking material to ensuring electrical cords match the voltage of outlets.

"Sometimes it's the most basic things that will cause a loss when you're out of your element," Ms. Marin said.

Hearings: Testimony wraps

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New York authorities also reached settlements with several insurers that banned them from paying contingents on certain lines of business. Other brokers, including Arthur J. Gallagher & Co., reached settlements with other state attorneys general that curbed their ability to collect contingent commissions.

Since then, Marsh, Aon and Willis have criticized the current system, saying they are at a competitive disadvantage because the vast majority of the industry continues to collect contingents.

Last week, Janice Ochenkowski, president of New York-based RIMS, testified that contingent commissions and supplemental commissions create an inherent conflict of interest and should be prohibited for all brokers and independent agents that represent buyers.

At minimum, RIMS believes all compensation should be disclosed in writing, she said. "Complete disclosure of all compensation arrangements is not the perfect solution, but it will go a long way towards promoting transparency, re-establishing the trust between the broker and the customer, and providing customers with sufficient information to evaluate any potential conflicts of interest in the placement of insurance policies," Ms. Ochenkowski said in written testimony.

In separate testimony, Dan Glaser, chairman and chief executive officer of Marsh Inc., and Steve McGill, chairman and CEO of Aon Risk Services, said that full transparency is, indeed, in the best interest of clients and should be mandated industrywide.

According to both executives, clients can make more informed choices and evaluate any potential conflicts of interest if they know who their brokers are representing, how they are being compensated and the amount they are being compensated. With full disclosure, marketplace competition will determine what forms of compensation, including contingent commissions, ultimately survive, they said.

Both, however, avoided directly answering whether their brokerages supported lifting their current contingent commission bans.

Mr. Glaser testified that Marsh supported "replacing" its settlement agreement with an industrywide solution that is "fair and consistent" for all producers and addresses the interests of policyholders.

In terms of whether he supported extending its contingent ban or lifting it, Mr. Glaser said only that Marsh is "willing and able to compete" based on any rules that are set.

In his testimony, Mr. McGill said: "Aon's view on contingent commissions is that they should be allowed to continue, but with more detailed disclosure." He said such incentive compensation poses no irreconcilable conflict of interest and does not unavoidably result in steering clients toward less favorable insurers to maximize a producer's revenue.

Despite this, Mr. McGill said he did not want to give the impression that Aon would accept contingents again if it were allowed. He said that contingent commissions were never a material part of Aon's earnings and would not be a priority for the firm going forward.

Don Bailey, CEO of Willis North America Inc., who testified in the first hearing July 14 in Buffalo, N.Y., testified again last week, reiterating that Willis is "absolutely not agnostic" when it comes to contingent commissions. Such incentive payments pose a "clear and obvious conflict of interest" that transparency alone does not resolve, he said. Willis' position is that contingent commissions should be banned from the industry, he said.

When asked whether Willis would accept contingents if its current ban were to be lifted, Mr. Bailey said: "Any compensation directly linked to profit and growth with a carrier, we are against."

Several independent insurance agents who testified at all three hearings said contingent commissions are a legal form of compensation and do not result in any conflicts of interest. Rather, profit-based contingents reinforce the agent's role in educating, supporting and training customers and their employees on appropriate risk control and risk management practices, they said. They also noted that such profit-based arrangements do not influence agents' ability to be a strong claims advocate for the customer in the event of a loss due to the highly competitive marketplace.

The agents stressed the differences between the world's largest brokers and smaller, independent agents and encouraged the panel not to adversely affect independent agents for the wrongs of the megabrokers.

The only reason some of the megabrokers claim there is an unlevel playing field is "because of the consequences of their illegal and dishonest activity," said Neal Sullivan, chairman of the Independent Insurance Agents & Brokers of New York, who testified at the Albany, N.Y., hearing last week. "It is difficult to have any sympathy for the situation they now face, nor is it appropriate to paint the entire insurance community with the same brush."

The IIABNY, as well as other independent agents, said it supports voluntary disclosure upon the request of clients.

In the first testimony given by an insurer that reached a settlement with former regulators, Robert Cusumano, general counsel for ACE Ltd., testified last week that a "simple, clean and practical" solution would provide a fundamental distinction between agents, who represent insurers, and brokers, who represent buyers. He said agents should be allowed to collect contingents and brokers should be prohibited from doing so.

Mr. Cusumano said ACE supports disclosure and every intermediary should be required to distinguish whether they are an agent or a broker in each transaction with clients.

BY THE NUMBERS

Incentive compensation and disclosure practices among the 100 largest brokers of U.S. business:

6.9%* Average percentage of 2007 commission and fee income derived from supplemental compensation

40 The number of brokers that accept supplemental compensation and disclose it to clients when asked

29 The number that accept supplemental compensation and automatically disclose it to clients

8 The number that accept supplemental compensation but do not disclose it to clients

4 The number that do not accept any form of supplemental compensation

19 The number that did not provide their compensation reporting method

**Reflects the 58 companies that take such pay and reported a percentage*

Source: Business Insurance survey

Terror: Potential U.S. losses reach $1.6B

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RMS said large metropolitan cities are the most likely targets of potential terrorism and its updated model elevates the risk levels of cities that include Atlanta and Orlando, Fla.

"They may not be a target of the magnitude of New York City, but being some of the larger metropolitan cities in the South makes them attractive targets," Mr. Coburn said.

Since 2001, some two dozen potential terrorist plots have been uncovered in the United States—most involving New York or Washington, but also including Los Angeles, Miami and Chicago, Mr. Coburn said.

"City risk relativity is one of the most useful guides for insurers managing a multicity portfolio," Mr. Coburn said.

Since 2001, there have been an average three to seven attempted terrorism attacks in the United States each year, RMS said.

Despite the dynamic nature of the peril, terrorism risk as a whole is relatively stable because the increased threat is balanced by an aggressive counter-terrorism response, terrorism experts say.

But "the challenge is to not become complacent," said Bruce Hoffman, professor in the security studies program at Georgetown University in Washington.

Meanwhile, last year's seven-year extension of the federal terrorism insurance backstop also is helping to establish stability with respect to terrorism in the insurance industry, Mr. Coburn said.

"Insurance companies can now plan for a seven-year business cycle for their provision of terrorism coverage," he said.

Tokio: Builds U.S. presence

CONTINUED FROM PAGE 4

"We want to have a joint partnership with them," Mr. Isogai said.

James J. Maguire Jr., CEO of Philadelphia Consolidated, said in a statement that he views the deal as a way for the insurer to move to "the next stage of growth" and that the partnership will benefit not only both companies but customers, brokers, agents and employees as well.

Tokio Marine has been tackling global emerging markets recently, targeting Asia and Brazil by acquiring Singapore-based insurance holding company Asia General Holdings Ltd. in 2006 and Lloyd's of London insurer Kiln Ltd. in March.

Shuzo Sumi, president of Tokio Marine, said in a statement that the acquisition of Philadelphia Consolidated is part of the insurer's long-term growth strategy.

Analysts with New York-based Standard & Poor's Corp. expect that the acquisition will improve Tokio Marine group's diversification but could weaken its capitalization.

"Given the recent acquisition of Kiln, Tokio Marine group is challenged to promptly consolidate the acquired companies into the group and establish groupwide management and risk management systems," S&P said in a statement. "S&P views this as a key issue...to establish a solid business franchise that can achieve sustainable growth."

S&P affirmed Tokio Marine & Nichido Fire Insurance's AA rating and said that its outlook was stable.

Fitch Ratings affirmed its AA+ rating. Fitch said Tokio Marine can "expect higher profit growth than in the Japanese insurance market" and the purchase will add geographical diversity to its business portfolio.

Bias: New issue for 1978 law

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tral condition."

But the appeals court disagreed. The 1978 PDA, which amended Title VII of the Civil Rights Act of 1964, recognized "certain inherently gender-specific characteristics that may not form the basis for disparate treatment of employees," the opinion said.

"Employees terminated for taking time off to undergo IVF—just like those terminated for taking time off to give birth or receive other pregnancy-related care—will always be women," the opinion said.

"This is necessarily so; IVF is one of several assisted reproductive technologies that involves surgical impregnation procedure…Thus, contrary to the district court's conclusion, Hall was terminated not for the gender-neutral condition of infertility, but rather for the gender-specific quality of childbearing capacity," said the court, which remanded the case for further proceedings.

Jonathan T. Hyman, an employer attorney with Kohrman Jackson & Krantz P.L.L. in Cleveland, said, "I think this case really is a cautionary tale for companies that when you're dealing with issues that surround family responsibilities, you're much less likely in 2008 to get a sympathetic ear from the court."

This decision "does open up a new potential source of complaints by employees, and employers are going to want to be sensitive to that," said Paul Mollica, a plaintiff attorney with Meites, Mulder, Mollica & Glink in Chicago.

Observers agree that this decision is likely to be influential.

"I think this decision is very significant for defining more clearly what conditions are related to pregnancy" and it will be influential, said Marcia L. McCormick, an assistant professor at Samford University's Cumberland School of Law in Birmingham, Ala.

With more women putting off motherhood until their 30s or 40s, "I think you're going to see more and more cases like this, and I think to the extent that this is the first case that has directly tackled this issue, other courts are going to look at this case to guide them," said Mr. Hyman.

Employer attorney Sarah A. Kelly of Cozen O'Connor P.C. in Philadelphia said the decision concerns "new issues that weren't around" when the statute was approved, "and we're reading a lot into the statute now that I think is not necessarily obvious."

She said along with the 3rd Circuit's *Jane Doe* decision, this decision "creates extra protection for women who go through these procedures, but I think it's still going to be a fairly rare occurrence that this particular issue comes up."

The recurring issue under the PDA much more often will "be the woman who is six or seven months pregnant and doesn't get hired" or does not get a promotion, said Ms. Kelly.

Nalco's attorney, Mark A. Lies II, of Seyfarth Shaw L.L.P. in Chicago, said the company is still reviewing the decision.

Cheryl Hall, plaintiff-appellant, vs. Nalco Co., formerly known as Ondeo Nalco Co., a Delaware corporation, defendant-appellee, 7th U.S. Circuit Court of Appeals, No. 006-3684, July 16, 2008.

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respondents—compared with 43.7% in the prior-year survey—reported that fronting costs were 5% or less of annual premium. Additionally, nearly 26% said fronting costs were 6% to 10% of annual premium, and 2% said fronting costs were 11% to 15% of annual premium. CICA said there was a 21.5% increase in respondents whose programs were not fronted. In addition, respondents buying reinsurance decreased 11% over the previous year. The report also said 7% of survey respondents use their captive to fund employee benefits, up from 4.9% in the prior survey. Another 9.1% reported they intend to place benefits in their captive in the next five years, and 47% said they may consider it in the next five years. The survey had 89 respondents, which included single-parent captives, represented risk retention groups, and segregated cell, association and agency facilities.

Health Net settles suit over reimbursements

Health Net Inc. has agreed to pay $255 million to settle a class action lawsuit alleging it has been improperly underreimbursing plan members for out-of-network medical claims since 1997 by using a usual and customary database produced by Ingenix, a subsidiary of UnitedHealth Group Inc. The lawsuit, which was filed in U.S. District Court for the District of New Jersey in 2001, made many of the same allegations as those asserted by New York Attorney General Andrew Cuomo in an investigation launched earlier this year into other insurers' use of the Prevailing Healthcare Charges System developed by Ingenix. The system is used by the vast majority of the nation's health insurers to determine reimbursement rates for out-of-network providers. Under terms of the settlement, Health Net will pay $215 million to more than 2 million participants in its health insurance plans and will make business practice changes expected to cost $40 million.

New York comp body sues employers in failed trust

The New York State Workers Compensation Board is demanding $29 million from nearly 270 employers in a lawsuit filed in a New York Supreme Court. The employers participated in the Manufacturing Self-Insurance Trust, which was managed by New York Compensation Managers Inc. when it failed in 2006, a SWCB spokesman said. The lawsuit is the first the SWCB has filed against a workers comp self-insurance trust and more such litigation is expected. The suits cite employer members' joint and several liability responsibilities.

Max Capital to acquire Lloyd's insurer Imagine

Max Capital Group Ltd. plans to acquire Lloyd's of London insurance company Imagine Group (UK) Ltd., which does business as Imagine Lloyd's, from Imagine Insurance Co. Ltd. Bermuda-based Max Capital will pay around £11 million ($21.9 million) in cash, which includes the acquisition of Imagine Lloyd's operations in Denmark and Japan. Max Capital said it will replace letters of credit totaling approximately £90 million ($179.4 million) that an affiliate of Imagine has provided to fund Imagine Lloyd's syndicate commitments. London-based Imagine Lloyd's, through Lloyd's syndicates 1400, 2525 and 2526, underwrites specialty risks including property catastrophe, financial institutions, personal accident, employers' and public liability, and professional liability.

Noted

HCC Insurance Holdings Inc. has settled with the Securities and Exchange Commission regarding its historic **stock-option granting** process. The SEC made no allegations of fraud against the Houston-based company, and HCC was not required to pay any civil penalty, fine, or monetary damages as part of the settlement....An analysis by the Risk Retention Reporter found that **risk retention groups** wrote about $2.56 billion in premiums in 2007, a 3% decline from the previous year. That decrease compares with a 7.7% premium volume increase in 2006 and an 11.5% increase in 2005, when the traditional market was less competitive....The Florida Office of Insurance Regulation has published a draft rule for state cabinet review that explains how the insurance commissioner plans to implement a law allowing him to **relax collateral for non-U.S. reinsurers**. The highest rated reinsurers would not have to post collateral under a sliding scale that is essentially identical to those proposed by New York and the National Assn. of Insurance Commissioners, a spokesman says.

XL: Losses draw concerns

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Moody's Investors Service and Fitch Ratings, all based in New York, all have given XL a negative outlook, however, citing its SCA exposure. Oldwick, N.J.-based A.M. Best Co. Inc. downgraded XL in January to A, with a stable outlook.

S&P said in its outlook announcement that without a replenishment of capital, a charge exceeding $500 million would likely result in a downgrade.

According to Securities and Exchange Commission filings, as of March 31, XL's total net exposure under its facultative agreements with SCA subsidiaries was about $6.9 billion.

In addition, XL issued a guarantee covering SCA's pre-IPO business ensuring that XL Financial Assurance will pay losses when due. The guarantee is triggered if underlying debt securities default on principal and interest payments and if XLFA fails to pay claims. According to XL's annual report, as of March 31, the company's total net par outstanding falling under these guarantees was $69.57 billion, though only 2.3% of that total, or $1.58 billion, represents investments with a credit quality of BB or below.

XL's ultimate exposure has been estimated to be between $1 billion and $1.5 billion (*BI,* July 7).

A spokesman for New York-based American International Group Inc., the world's largest ceding insurer, said, "We have not taken XL off our approved list, but we are monitoring the situation closely." Other ceding insurers could not be reached late last week.

Responding to an earlier report on Chubb's action, XL issued a statement saying in part that XL "does not publicly...comment on any internal business agreements with our customers or partners."

The statement continued, "despite the challenges of the marketplace in general, and our own situation in particular, XL remains encouraged by the support of customers and brokers. We are grateful for the support as we work to resolve our relationship with SCA."

Concerns remain over XL's exposure to SCA.

"There is concern about (XL's) exposure to the subprime situation," said a market source who confirmed Chubb's move. Cedents are worried "there will be further developments down the road which will reduce their capital base, and they are making a pre-emptive move by taking them off the approved lists," said the source. Insurers would "rather act—and put them back on the list—than not act and have a serious problem develop."

"I would consider them essentially somewhat of a second-tier facultative player" in terms of the amount of business written, the source said, noting that XL usually works in the direct market rather than through intermediaries for its facultative placements. Several reinsurance brokers contacted declined to comment.

XL reported $2.3 billion in net premiums earned in reinsurance in 2007. A breakdown of XL's treaty vs. facultative business was not available. Observers note that facultative business is a fraction of the global reinsurance market, which is dominated by treaty business.

Chubb's action is not related to XL's treaty business.

One source noted that reinsurance recoverables are a bigger concern on facultative business, as treaty business often involves letters of credit and financial collateral.

"I think it's an issue of uncertainty and perception," said John Wicher of John Wicher & Associates Inc. in San Francisco. "The hardest thing to build in a business, I think, is patronage, and it's the easiest thing to lose."

Regardless of XL's actual financial circumstances, "the worst possible thing which can happen is the loss of confidence" in a marketplace where "there's so much uncertainty and, I think, real fear of the unknown," and where the insurance buyer has alternatives, said Mr. Wicher.

One analyst who asked not to be identified said, "XL is a huge company, with lots of lines of business," so "the financial impact is not going to be that significant. But "the perception is not too good," he said.

But John L. Ward, CEO of Cincinnati-based Cincinnatus Partners L.L.C., said that Chubb could continue to place facultative business with XL "on a one-off basis," even though the company would not do it on an automatic placement basis.

"I don't see a knee-jerk reaction in the market, but I do see growing pressure on XL to deal with the inevitable and to go public with their plan to stabilize their financial condition and give comfort to the marketplace and the rating agencies that they have adequately evaluated their problem and taken actions to assess it," he said.

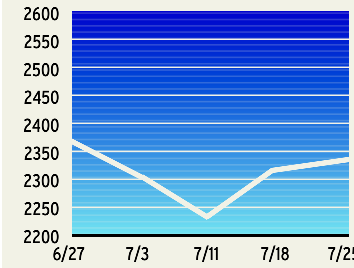
XL's stock closed at $18.77 Friday, down from a 52-week high of $82.10.

Stock Index

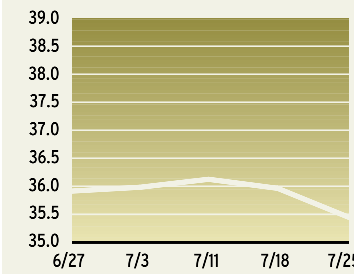
[7/21-7/25]

Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.IndustryFocus.com.

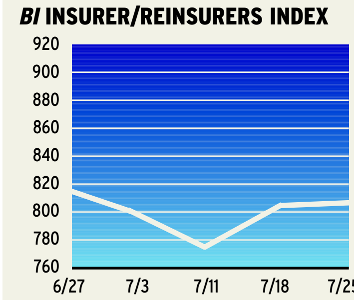
BI STOCK INDEX



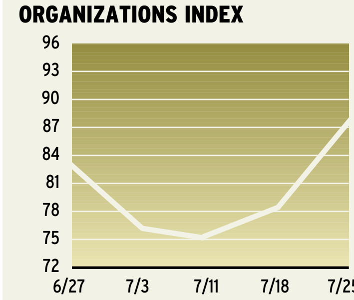
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

BI STOCK INDEX	2337.45	▲ 0.98%
DOW JONES	11370.69	▼ -1.09%
S&P 500	1257.76	▼ -0.23%

LARGEST GAINS

Philadelphia Consolidated	71.32%
Tower Group Inc.	16.58%
UnitedHealth Group Inc.	14.85%
WellPoint Health Networks	14.38%
Health Net Inc.	14.09%

LARGEST LOSSES

MBIA Inc.	-10.15%
AFLAC Inc.	-9.12%
Zenith National Insurance	-8.28%
AEGON N.V.	-8.24%
Old Republic International	-6.14%

Source: Financial Content Inc. http://financialcontent.com

Business Insurance END PAGE

Contributing: Jeff Casale, Regis Coccia, Dave Lenckus, Sarah Veysey

Grand opening: Willis HQ gets royal welcome

The Duke of York and chairman of Lloyd's of London formally welcomed the newest member of the neighborhood, Willis Group Holdings Ltd.

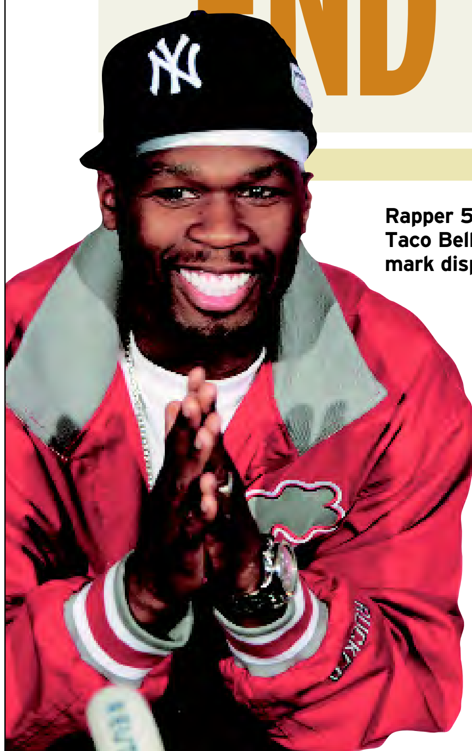
More than 1,500 people gathered in London's financial district for last week's opening of Willis' new headquarters at 51 Lime St. The Willis Choir and the Band of the Welsh Guards provided entertainment. The 28-story, 410-foot-tall building is the fourth-tallest in London.

At the opening attended by Lloyd's Chairman Lord Peter Levene—in his capacity as lord mayor locum tenens for London—the Duke of York quipped that Joe Plumeri, chairman and chief executive officer of Willis, specifically had requested that his office be higher than Lord Levene's in the Lloyd's building opposite the new Willis headquarters.

The building, which has no internal doors apart from those on bathrooms and boardrooms, was designed by Foster & Partners and won the 2007 New City Architecture Award for "its unique architectural form and contribution to the London skyline and streetscape."

©STANHOPE BY HUFTON & CROW

Willis' new headquarters building in London has been celebrated for its design.



Rapper 50 Cent is suing Taco Bell Corp. in a trademark dispute.

LANDOV

50 Cent, Taco Bell in beef over ad

50 Cent doesn't want a fast food chain to get richer using his name.

The rapper, whose real name is Curtis Jackson, is suing Taco Bell Corp. for allegedly "diluting the value of his good name," according to a lawsuit filed last week in federal court in New York.

The rapper accused the chain owned by Louisville, Ky.-based Yum! Brands Inc. of using his moniker in ads without his permission and says he is due $4 million in damages.

"Without seeking or obtaining Jackson's authorization, defendant Taco Bell made him the star and focus of its nationwide advertising campaign by using his name, persona and trademark to promote Taco Bell's business and products," court documents said.

The suit also cites an open letter from Taco Bell asking 50 Cent to change his name to the prices on a recently introduced value menu and rap outside a Taco Bell in exchange for donating to his chosen charity.

"We made a good faith, charitable offer to 50 Cent to change his name to either 79, 89 or 99 Cent for one day by rapping his order at a Taco Bell, and we would have been very pleased to make the $10,000 donation to the charity of his choice," Taco Bell's Rob Poetsch told reporters.

The rapper's suit claims the campaign hurt his street credibility, as "numerous Internet 'blogs' castigated (him) for 'selling out' by his apparent endorsement of Taco Bell."

Last year, 50 Cent netted $400 million when Coca-Cola Co. bought Glaceau, which produces Vitamin-Water's Formula 50. The drink is named after the rapper, who owned 10% percent when Glaceau was sold for $4.1 billion.

He also has sued previously for unauthorized use of his name and image.

50 Cent is best known for his debut album "Get Rich or Die Tryin'."

LAKE LAS VEGAS RESORT

The Lake Las Vegas Resort will host this year's CIAB Insurance Leadership Forum.

CIAB betting resort's woes won't mar ILF

Trouble seems to be following the 95th annual Insurance Leadership Forum.

First, labor disagreements at The Greenbrier in West Virginia forced the Council of Insurance Agents & Brokers to relocate its annual fall meeting, a premier event for the global insurance industry that draws more than 1,400 executive attendees.

Now, the owners of the Lake Las Vegas Resort, where the Oct. 4-7 ILF will take place, have filed for Chapter 11 bankruptcy protection.

In an e-mail last week to attendees, CIAB President Ken A. Crerar made it clear that the July 17 filing will in no way affect the hotels, golf courses, shops or other operations during the ILF. The resort is in the desert east of Las Vegas and is home to the two separately owned luxury hotels, the Ritz-Carlton and Loews, that will host the meeting.

Lake Las Vegas Resort said in a statement that it filed for protection from creditors as a result of "poor liquidity, substantial debt service, extremely challenging real estate market conditions and other legal and financial issues," and that it fully intends to remain in business following its reorganization.

Meanwhile, the dispute at The Greenbrier has remained unresolved since January.

ACLU vows to get to the bottom of city's policy on saggy pants

The Flint, Mich., police chief's crackdown on young men who wear saggy britches might be heading for a courtroom showdown over the fashion-conscious individuals' constitutional protection against illegal searches.

Police Chief David Dicks recently has warned young men walking along city streets to pull up their pants to fully cover their underwear or face prosecution under the city's indecent exposure/disorderly conduct ordinance. The misdemeanor is punishable with a 93-day jail sentence and a $500 fine.

Besides warning shirtless young men, Chief Dicks also has been stopping some who are fully dressed and pulling up their shirts to see if their underwear is then visible, a video recorded by the Detroit Free Press with the chief's permission shows.

In a July 14 letter, the Detroit-based American Civil Liberties Union of Michigan demanded the chief cease this "tremendous waste of scarce police resources."

As "unattractive, silly or offensive" the droopy drawers look might seem, the fashion statement does not run afoul of Flint's indecent exposure ordinance, wrote ACLU Michigan Legal Director Michael J. Steinberg. The ordinance bars revealing genitalia, buttocks and breasts, he said.

By stopping individuals, the chief is violating their Fourth Amendment protection against illegal search and seizure, Mr. Steinberg wrote.

The ACLU is especially troubled by Chief Dicks stopping men whose underwear is not visible until their shirts are lifted. "This practice is akin to lifting a woman's skirt in front of the camera to expose her underwear and then telling her she is indecently exposed. It must stop," Mr. Steinberg wrote.

In an interview, Mr. Steinberg said the chief last week refused to change his policy. As a result, the ACLU will defend anyone charged under the ordinance if they seek the organization's help, he said. The ACLU would attempt to move the case to federal court to challenge the policy.

The police chief's secretary said the issue "has been blown out of proportion," so the chief is not fielding any press calls.

AP

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