

OBESITY IN THE UNITED STATES

■ 35.7% of U.S. adults were obese in 2009-2010

■ Obesity was rising more quickly among men than women, making the prevalence nearly equal

■ Adults 60 and older were more likely to be obese than younger adults

Source: National Center for Health Statistics



LIABILITY & LITIGATION

Obesity as disease spells more litigation

Revised psychiatric manual also ups liability

BY JUDY GREENWALD

The American Medical Association's recognition of obesity as a disease is likely to lead to more disability litigation against employers.

Legal experts also expect more litigation in response to changes in the Arlington, Va.-based American Psychiatric Association's diagnostic manual of mental disorders.

The Chicago-based AMA voted in June to recognize obesity as a disease that requires a range of medical interventions to treat and prevent obesity.

"Recognizing obesity as a disease will help change the way the medical community tackles this complex issue that affects approximately one in three Americans,"

See **OBESITY** page 32

REGULATION

REGULATORS TARGET INSURERS POSING SYSTEMIC RISKS

Groups singled out prepare for higher capital rules



BY BILL KENEALY

As international and national regulators name insurers they view as "too big to fail," the insurance industry is pushing back on the designations as the affected insurers are simultaneously readying for heightened regulatory oversight.

While it is unclear what extra requirements regulators will impose on systemically important insurers, higher capital requirements are almost certain, observers say.

Earlier this month, the Basel, Switzerland-based Financial Stability Board of the Group of 20 nations designated nine global insurers as systemically important.

The G-20 announcement followed the decision last month by the Financial Stability Oversight Council of the U.S. Treasury Department to deem New York-based American International Group Inc. and Norwalk, Conn.-based General Electric Capital Corp. Inc., systemically important, while also considering Newark, N.J.-based Prudential Financial Inc. and New York-based Metropolitan Life Insurance Co. for the designation.

See **G-20** page 32

GLOBAL SYSTEMICALLY IMPORTANT INSURERS*

- Allianz S.E. (Munich)
- American International Group Inc. (New York)
- Assicurazioni Generali S.p.A. (Trieste, Italy)
- Aviva P.L.C. (London)
- Axa S.A. (Paris)
- MetLife Inc. (New York)
- Ping An Insurance (Group) Co. of China Ltd. (Shenzhen, China)
- Prudential Financial Inc. (Newark, N.J.)
- Prudential P.L.C. (London)

* As determined by the Financial Stability Board of the G-20

RISK MANAGEMENT

Insurers wary of schools with armed workers

Industry weighs risks of new Kansas law

BY RODD ZOLKOS

Allowing public school employees to carry weapons on the job is getting the attention of insurers that cover school districts, though few districts have allowed teachers and administrators to carry firearms on school property.

Sparked by December's mass shootings at Sandy Hook Elementary School in Newtown, Conn., and the National Rifle Association's subsequent call to arm teachers and other school employees, Kansas recently passed a state law that permits school districts to decide whether to allow employees with concealed-carry permits to bring firearms on campus.

And state lawmakers in at least 34 states are considering — and seven of the states have passed — some form of legislation to protect students and school teachers by allowing teachers or administrators to carry concealed weapons, according to the National Conference of State Legislatures.

In response to the new law in Kansas, the largest insurer of Kansas public school districts, Des Moines, Iowa-based EMC Insurance Cos., said it would not insure districts that allow employees to carry guns on school property.

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Endurance Specialty chairman and CEO talks expansion, Asia options

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U.S. MID-MARKET

'Top hat' retirement plans are on the rebound for high-level execs

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INTERNATIONAL

Country profile of Austria; Allianz, QBE among insurers on deadly train crash in Spain

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STRATEGIC RISK MANAGEMENT

RACING TOWARD RESULTS

SRM a natural fit to manage supply chains; analytics help risk managers with strategic risk; human resource issues create critical risks; firms target reputational risks with SRM.

PAGE 13

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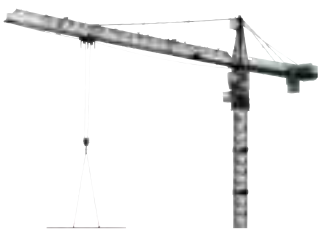
7/29/13

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NEWS

WORKERS COMPENSATION

TEMP WORKER DEATHS RAISE CONCERNS OVER SAFETY

Training, clear procedures needed to avoid injuries

BY SHEENA HARRISON

With employers hiring more temporary workers, safety needs to be improved to prevent injuries and deaths among contract employees, experts say.

Numerous factors play into temporary worker hazards, the largest of which includes a divide between staffing companies and employers about which side should provide safety training, said Fred Pachón, president of Ventura, Calif.-based consultancy Risk-Guards.

The number of serious injuries and fatalities is "pretty high in the staffing industry because there's a huge disconnect," said Mr. Pachón, who previously was vice president of risk management and insurance for a California staffing firm.

The Occupational Health and Safety Administration has ramped up its efforts to promote temporary worker safety in the aftermath of recent worker fatalities. David Michaels, OSHA's assistant secretary of labor for occupational safety and health, said in a June presentation that at least 14 temporary blue-collar workers at various companies died during their first day at a new worksite in the previous 12 months.

"People get to work, and their



The Occupational Health and Safety Administration has ramped up its efforts to promote temporary worker safety in the aftermath of recent worker fatalities. At least 14 temporary blue-collar workers have died during their first day at a new worksite in the past 12 months.

first day on the job is their last day on earth," said Mr. Michaels, who addressed safety professionals during the American Society of Safety Engineers' Safety 2013 conference in Las Vegas.

OSHA's focus on safety for temporary workers comes after employment growth in that sector. Temporary help services added 10,000 jobs in June and have seen hiring gains this year, according to the U.S. Bureau of Labor Statistics.

Though employers are required

to train all workers in safety procedures, Mr. Michaels said companies aren't investing in safety training for temporary workers because of uncertainty about how long such workers will stay on the job.

In addition to the transitional nature of temporary work, Mr. Pachón said workers often fall through the cracks when training is needed. While staffing

See **TEMPORARY** page 31

WORKERS COMPENSATION

Employers, labor battle court-set comp rates

BY ROBERTO GENICEROS

Imagine a trial court lacking actuarial sophistication supplanting an underwriter's expertise in setting workers compensation insurance rates.

That essentially is what happened in Ohio, argues an amicus brief filed July 19 by employer and labor supporters of the state's monopoly workers comp insurer, the Ohio Bureau of Workers' Compensation.

The brief in the ongoing case of *San Allen Inc. et al. vs. Stephen Buehrer, Administrator of the Ohio BWC* addresses a class action lawsuit now before Ohio's 8th Appellate District after a 2012 trial court ruling that the bureau, the nation's largest state fund, abused its rate-setting discretion for years.

In March, the Cuyahoga County Common Pleas Court ordered the bureau to pay \$859 million in restitution to nearly 270,000 Ohio businesses for allegedly overcharging

them through a group experience rating plan that discounted premiums for employers that pooled their individual claims experience over an eight-year period.

The plaintiffs are employers that did not participate in a group experience rating plan. They allege they paid higher premiums to subsidize discounts that the bureau provided to group experience-rated policyholders.

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CORRECTION

Due to a print production error, a chart ranking the 100 Largest Brokers of U.S. Business was omitted from the July 15 edition of *Business Insurance*. The complete ranking appears on page 18 of this edition. Subscribers also can view the chart on our interactive digital edition.

HEALTH CARE REFORM

Do EAPs satisfy minimum cover requirements?

Health reform law does not address issue

BY JERRY GEISEL

Too good to be true? That is what benefits experts are saying about an approach in which employers could offer ultralow-cost employee assistance plans to certain employees as a way of avoiding a big health care reform law penalty starting in 2015.

Experts say there's nothing in the 2010 health care reform law or in regulatory guidance explicitly precluding employers from offering an employee assistance plan as a way to meet a health care law requirement to offer coverage or pay a hefty fine.

Beginning in 2015, employers are liable for a \$2,000 penalty for every full-time employee, if they do not offer what the Patient Protection and Affordable Care Act calls minimum essential coverage to at least 95% of their full-time employees. The penalty was set to begin in 2014, but the U.S. Department of the Treasury earlier this month delayed the effective date by one year to 2015.

That penalty puts certain employers — such as companies with high-turnover workforces largely made up of lower-paid employees who have not been offered coverage — in a difficult position.

If they extend the same or similar comprehensive coverage they now provide to their other employees, the cost could be prohibitive. And if they continue to deny coverage to employees, that will trigger the \$2,000 per-employee penalty, which could amount to millions of dollars every year for larger employers.

As a far less costly alternative, experts say, employers could offer EAPs as a way to provide minimum essential coverage. These programs, which typically cost only a couple of hundred dollars a year per employee, provide referral services to certain types of health care providers. In some cases, the plans also will cover a specified number of provider visits, such as for counseling.

In many cases, employees are automatically enrolled in the plans, even if they are not eligible for regular group health care coverage.

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ONLINE
FEATURES

SOLUTION ARC

Lower workers comp costs
using managed care tactics

Employers can use a managed care approach to meet their workers compensation cost challenges.

www.BusinessInsurance.com/ManagedCareArc

VIDEO



Employer mandate delay

The weekly IN FOCUS video keys on health plan decisions employers face.

www.BusinessInsurance.com/video

DIRECTORY

Agents & Brokers Directory

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VIRTUAL CONFERENCE

Sign up for online comp event



Registration is open for *Business Insurance's* fourth annual Workers Compensation Virtual Conference on Aug. 22. The event is free.

www.BusinessInsurance.com/2013wcconference

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NEWS

PENSION BENEFITS

EMPLOYER GROUPS WELCOME
PBGC PROPOSAL TO REDUCE FILINGS

Change would streamline process of paying premiums

BY JERRY GEISEL

The administrative hassle and expense of paying mandatory insurance premiums to the Pension Benefit Guaranty Corp. would be reduced for large pension plan sponsors under a proposal the agency released last week.

In many cases, employers with at least 500 participants in their pension plans now make three filings and payments a year to the PBGC. Under the proposal, they would have to make just one filing and payment a year.

The proposal, which the PBGC said it hopes will be adopted for the 2014 plan year, has been welcomed by employers.

"This is something that will really benefit plan sponsors. It is very good news," said Deborah Forbes, executive director of the Bethesda, Md.-based Committee on Investment of Employee Benefit Assets, which represents large pension plan sponsors.

"These changes will help large employers by reducing the time and costs associated with premium payments," said Kathryn Ricard, senior vice president-retirement security with the ERISA Industry Committee in Washington.

Under current rules, pension plans with at least 500 participants pay PBGC premiums twice a year.

The first payment is due two months after the start of a plan



year, which is Feb. 28 for calendar year plans. What is known as the flat-rate premium is based on an employer's estimate on the number of plan participants as of the end of the prior year. The current flat-rate premium is \$42 per plan participant.

In addition, 9½ months after the start of a plan year — or by Oct. 15 for calendar-year plans — a plan sponsor pays its second flat-rate premium based on actual plan enrollment at the end of the prior year.

If its plan is underfunded, the employer then also pays a variable-rate premium, which currently is \$9 per \$1,000 of plan underfunding.

At the same time, an employer calculates the exact flat-rate premium based on the actual participant count at the end of the prior

year. The employer would make an additional payment, if it turns out that its earlier February estimate was too low.

If an employer underestimated its enrollment count in its February filing, it would be liable for a third payment covering interest charges on the flat-rate premium. That payment would be due after the employer received a bill from the PBGC.

By contrast, under its proposal, large plan sponsors would pay the flat-rate and variable-rate premium just once a year, 9½ months after the start of a plan year.

Since employers would know by Oct. 15 their actual plan enrollment on the last day of the prior year, the risk they now face of having to pay interest because they

See **PBGC** page 29

MERGERS & ACQUISITIONS

Firms hedge
against risks
in M&A dealsTransactional insurance
provides buffer

BY JOANNE WOJCIK

No matter how thorough the due diligence is prior to a merger or acquisition, sometimes deals go awry, such as when the post-acquisition revenue falls short of projections or the buyer incurs successor liability exposures such as unpaid income taxes or undetected environmental contamination.

Such complications can be especially hard on middle-market companies, which today are investing more of their own capital into mergers and acquisitions to ensure the investments yield attractive returns, sources say.

While M&A activity may have slowed during the first half of 2013, dealmakers expect an uptick in the second half as the economy improves, according to a recent online poll by Deloitte L.L.P., the New York-based firm that provides audit, financial advisory, tax and consulting services.

Though transactions in the middle market — valued at \$1 billion or less — dropped 5% in this year's second quarter from the first quarter, 76% of the 1,800 professionals responding to Deloitte's survey in May said they were significantly optimistic about the M&A market for the remainder of the year.

As deal activity picks up, there is often a concurrent uptick in post-transaction litigation alleging misrepresentation. However, there are transactional risk insurance products to mitigate these post-acquisition exposures, often obviating the need to file a breach of contract suit.

"In most purchase and sale agreements, the seller is going to make representations about the business," said Kevin Maloy, senior managing director at Crystal & Co. in New York. "These include disclosures of all known liabilities, that the business is in compliance with state and federal tax regulations, isn't violating any environmental laws, that its insurance is adequate. The buyer, in turn, may ask to be indemnified for any unintentional breaches of those representations."

This request can be satisfied either by depositing funds into an escrow account that can be used to

See **MERGERS** page 28

WOMEN TO WATCH DEADLINE APPROACHING

Time is running out to nominate someone for *Business Insurance's* Women to Watch annual recognition that will spotlight 25 women who are doing outstanding work in commercial insurance, reinsurance, risk management, employee benefits and related fields, such as law and consulting.

The deadline for this year's nominations is July 31. Honorees are selected from nominations submitted by readers of *Business Insurance*.

Each year, honorees are selected



by a panel of *Business Insurance* senior editors, who consider various criteria that include recent professional achievements, marketplace influence and contributions to the advancement of women in business.

This is the eighth year of the Women to Watch competition.

This year's honorees will be profiled in the Dec. 2 issue of

Business Insurance and recognized at our Dec. 3 Women to Watch Leadership Workshop and Awards Luncheon in New York.

The event also will offer special sessions and networking opportunities for current and previous honorees.

To nominate someone, go to www.businessinsurance.com/womentowatch2013.

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Helping executives at midsize firms and their brokers handle critical risks.

CONTRACTOR FAILURES DRIVING HIGH SURETY LOSSES

Bonding insurers expected to vet businesses stringently

BY MATT DUNNING

Payment and performance failures among small and midsize construction contractors were mostly responsible for the substantial increase in surety losses in 2012, and they are expected to continue driving claims through the remainder of 2013.

While U.S. surety insurers did not sustain the tidal wave of contractor defaults that many predicted last year, the industry's aggregate loss ratio rose to 22% in 2012, an increase of 8 percentage points over results from 2011, according to a report released July 2 by the Surety and Fidelity Association of America.

Much of the increase in losses, the SFAA report said, has been driven by contractor failures in the small and middle markets, as prolonged stagnation in certain construction segments — particularly publicly funded projects — has intensified competition for new projects among local and regional contractors.

Though the construction industry has shown modest economic improvement in the past 18 months, it has been driven almost entirely by privately funded projects (see chart), providing little relief for smaller contractors and surety companies that depend largely on federal, state and local government contracts.

"Governments, whether it's city, state or federal, really aren't putting out the amount of infrastructure work that they should be," said William Maroney, a New York-based surety practice leader at Wells Fargo Insurance Services USA Inc. "Overall, what we're seeing is a lack of projects for the small to medium-size contractors. They're still hurting for work, and it's a feeding frenzy at those lower levels."

To gain a competitive edge in pursuit of the limited number of new contracts available to them, small and midsize construction firms have been bidding projects at dramatically lower profit margins than they would under normal economic conditions, leaving them with less cash on hand to cover the cost of even routine work stoppages, project design changes or increased materials and labor expenses.

"There's also been a fair amount of creep among contractors into areas beyond their expertise when their core competencies have dried up," said Alan Murray, a senior vice president at New York-based Moody's Investors Service Inc. "The question for sureties is whether the contractor actually has the wherewithal to complete a project that isn't necessarily within the bounds of their traditional expertise."

With contractor defaults and project disputes largely occurring at the smaller end of the construction industry in 2012, the attendant surety losses were similarly concentrated among

small and midsize insurers, experts say.

A report published in February by Kansas City, Mo.-based Lockton Cos. L.L.C. indicated that the aggregate direct loss ratio among the top 10 U.S.-based sureties — representing nearly 65% of total direct written surety premiums — stood at 12.7% through the first three quarters of 2012, while the remainder of the marketplace reflected a loss ratio nearly three times as high, at 34% for the same time period.

For the most part, experts said surety losses in 2012 appear to have been weighted toward payment bond claims against contractors that, while financially solvent, fell behind on payments to suppliers and subcontractors.

Despite the uptick in surety losses, experts say midsize contractors with strong financial and project performance histories — as well as portfolios of current and pending projects that are within their capabilities — are still likely to find ample capacity and competitive rates in the surety market.

According to a market report published in January by Marsh Inc., surety bond rates for qualified mid-market contractors at the end of 2012 were generally flat or reduced by as much as 10% compared with rates from the prior year.

However, while the industry's loss experience in 2012 has not substantively affected capacity or pricing, experts said mid-market contractors should expect and prepare for increasingly thorough examinations of their businesses — and in most cases, of their subcontractors — when pursuing surety bonding.

"When it really gets down to it in today's marketplace, the more interaction contractors have with the surety, the more comfortable the people making the underwriting decisions are going to feel about the account," said Drew Brach, Marsh USA Inc.'s U.S. surety practice leader in Grand Rapids, Mich.

Aside from standard indicators of financial health such as cash flow, credit scoring and access to future capital, experts said surety underwriters likely will factor the size, scope, location, cost and duration of the project to be bonded against a

contractor's portfolio of previously completed projects to determine the contractor's realistic likelihood of completing the project as contracted.

"The level of scrutiny has absolutely ticked up. The whole surety industry over the past few years has relearned a few lessons about partnering with contractors with overly ambitious plans or who aren't adjusting their overhead to reflect their current situation," said Michael Bond, a Washington-based executive vice president and head of surety at Zurich Financial Services Inc. "For a lot of sureties, those were expensive lessons, so it's top of mind for them now to look at everything they can."

SURETY INDUSTRY LOSS RATIO

2012: 22%

2011: 14%

Source: Surety & Fidelity Association of America

KEY STATISTICS

Total U.S. public construction spending (in millions)

January 2012: \$280,256

May 2013: \$269,471

% change: (3.85%)

Total U.S. private construction spending (in millions)

January 2012: \$527,710

May 2013: \$605,435

% change: 14.73%

Direct premiums written (in millions, through Sept. 30, 2012)

Top 10 U.S. sureties: \$2,480

All others: \$1,345

Total industry: \$3,824

Sources: U.S. Federal Reserve and Lockton Cos. L.L.C.

BEST PRACTICES FOR GETTING BONDED

Midsize construction contractors entering the U.S. surety marketplace will find no shortage of bonding capacity, but experts say accessing that capacity has become a much more rigorous process in the past 18 months given recent loss trends.

Recommended best practices for contractors seeking to present themselves as a more attractive risk to surety underwriters include:

- Prepare and maintain detailed financial records, including reports outlining past and current project budgets, staffing histories, pending and completed litigation, and insurance policy holdings.
- Maintain liquidity commensurate with total active workload.
- Review the project to be bonded for compatibility with core competencies and field experience.
- Provide a realistic strategy for the bonded project's completion according to contract terms.
- Set and maintain prequalification standards for subcontractors and their sureties.
- Maintain consistent communication with key business partners, including the surety bond producer, project financier and internal general counsel.

By Matt Dunning

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'TOP HAT' RETIREMENT PLANS REBOUNDED FOR HIGH-LEVEL EXECs

Higher taxes boost interest in nonqualified deferred compensation plans

BY JOANNE WOJCIK

Nonqualified deferred compensation plans are growing again in response to last year's expiration of Bush-era tax cuts, which effectively increased income taxes on high-wage earners.

The plans, often called "top hat" or "excess" plans, are offered to company executives earning significantly more than most workers, enabling the executives to shelter a greater share of their taxable income than permitted under federal rules governing qualified deferred compensation plans, such as 401(k) plans (see related story).

The plans have risen in popularity among mid-market employers, according to PricewaterhouseCoopers L.L.P. About half of mid-market employers offered nonqualified deferred compensation plans in 2012, up from roughly one-third of employers two years earlier.

The Employee Retirement Income Security Act limits how much employees can set aside in tax-deferred retirement plans through a formula adjusted annually for inflation. This year's deferrals are capped at \$17,500, while workers older than 50 are allowed to contribute an additional \$5,000.

But executives in nonqualified deferred compensation plans can save as much as they want, and contributions and investment income accrued are taxed after they are withdrawn, just as 401(k) plans.

The popularity of nonqualified deferred compensation plans waned during the Great Recession. While industry experts attributed the decline mostly to economics — high-wage earners had less discretionary income to save, just like their rank-and-file counterparts —

MEDIAN CONTRIBUTIONS

Median annual contributions to nonqualified deferred compensation plans rose steadily in a three-year period. Among participants, roughly one-third plan to increase their deferrals.

Year	Amount contributed
2009	\$18,000
2010	\$20,000
2011	\$23,000

Source: 2012 Trends in Nonqualified Deferred Compensation Among Plan Sponsors & Participants, Principal Financial Group

the plans also lost favor when many were seized by bankruptcy courts to pay corporate debts.

Funds in nonqualified deferred compensation plans are considered corporate assets, regardless of whether they were contributed by the company or its executives. In response, some companies recently have purchased individual universal life insurance products to protect executives' retirement income.

During the recession, "a lot of firms began to phase out these types of plans. However, with the tax rate increases, we're seeing more demand," said Jack Abraham, a principal at PwC in Chicago.

The percentage of Fidelity Investments' mid-market clients offering nonqualified plans increased over the past five years from 8% to 11%, said Kevin O'Fee, vice president in defined contribution product management in Smithfield, R.I.

"There is certainly an upswing,"

he said. At the same time, the percentage of plan assets has increased 50% from the first-quarter of 2008 through the first-quarter of 2013, reflecting participants' stepped up contributions.

"Whenever there are tax changes, you see increased interest in these types of financial programs," said Yong Lee, chief operating officer of MullinTBG, an El Segundo, Calif.-based subsidiary of Prudential Financial Inc. that specializes in executive benefits. "Some of the executives' tax rates have gone up. They are looking to bring that down by deferring some compensation."

A 2012 MullinTBG survey found that 91% of companies offer nonqualified deferred compensation plans.

Also driving this resurgence is the fact that companies are contributing less to executives' retirement, forcing them to save more on their own, said Doug Frederick, leader of executive benefits at

Mercer L.L.C. in Louisville, Ky.

"Over the last three to five years, companies have reduced retirement benefits for the entire workforce. Most moved to defined contribution plans. Similar things have happened at the executive level ... The nonqualified deferred compensation plan is a good outlet, especially with the tax rate increases at the start of this year for the very high-wage earners," Mr. Frederick said.

Such plans, however, can be risky. If the business goes bankrupt, creditors can take all the funds in nonqualified deferred compensation plans.

"Think of Lehman Bros. Those folks lost it all," said Robert Babetti, head of the global executive compensation advisory service at J.P. Morgan Private Banking in New York.

"The only thing that an organization can do to protect individuals is to create a rabbi trust," a contractual obligation that the company will pay the benefits to the executive, said Lisa E. Silva, senior vice president of executive benefits at Longfellow Benefits in Boston. "But the money is still a corporate asset if the company goes belly up."

Among life insurance options to protect retirement funds is ING Insurance Solutions' self-owned life and retirement cover, which provides a death benefit and helps accumulate retirement funds, said Maggie Mitchell, vice president of advanced sales in Minneapolis.

Though the premiums must be paid on an after-tax basis, "growth on investments within the product is tax-deferred," she said. Moreover, executives can take out loans, which is not allowed under federal rules governing nonqualified deferred compensation plans.



PLANS EVOLVE TO ADD FLEXIBILITY

Originally designed to allow a company's highest-paid executives to defer their annual cash bonus and receive a fixed rate of return, nonqualified deferred compensation plans have evolved into flexible, multiuse executive retirement plans with investment options similar to their qualified retirement plan counterparts.

These "top hat" plans are exempt from many Employee Retirement Income Security Act rules, and require only a one-time filing with the Department of Labor to start such a plan.

Section 401A of the Internal Revenue Code requires companies to decide which elements of compensation can be deferred, as well as the timing and amount of withdrawals. There is no penalty for early withdrawal, as with 401(k) plans, which require participants to wait until they reach age 59-and-one-half to avoid paying a 10% early withdrawal penalty.

Also unlike 401(k) plans, participants in nonqualified deferred compensation plans are not permitted to take out loans.

Though neither the Labor Department nor Internal Revenue Service has defined what constitutes a top hat group, in Advisory Opinion 90-14A, Labor suggested that a top-hat plan must cover only those individuals who, by virtue of position or compensation, have the ability to affect or substantially influence the design and operation of the plan.

Several courts have ruled that a plan meets top-hat criteria if participation is limited to no more than 5% of a company's workforce. As such, most companies limit eligibility to employees holding management positions or whose salaries exceed a stated amount, typically \$250,000 annually.

By Joanne Wojcik

TOP REASONS

Why employers offer nonqualified deferred compensation plans

93%

Allow key employees to save more than qualified deferred compensation plans to allow them to retire

91%

Provide a competitive benefit package when recruiting key employees

86%

Retain key employees

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Allianz, QBE insurers for Spanish train crash

■ Units of Munich-based Allianz S.E. and Sydney-based QBE Insurance Group Ltd. are the personal injury and third-party liability insurers, respectively, for Spanish passenger train operator Renfe-Operadora, which experienced a deadly crash last week. The Renfe train derailed near Santiago de Compostela, Spain, killing at least 78 people. An investigation of the derailment continues. Iván de la Sota, CEO of Allianz Seguros, issued a statement regretting the loss of life. The statement said personal accident coverage for all passengers on public trains is mandatory under Spanish law, and that the insurer sent a team to the accident scene to assist in the investigation and aid victims. A QBE spokeswoman confirmed the company covered the third-party liability losses for Renfe.

Charman revamps Endurance exec ranks

■ In an effort to streamline its upper management structure and trim its operating expenses, Endurance Specialty Holdings Ltd. announced changes to its executive team. The Pembroke, Bermuda-based insurer and reinsurer said Joan deLemps will assume the role of chief risk officer effective immediately. Ms. deLemps was formerly Endurance's chief underwriting officer and replaces Nicholas Campbell, the former chief risk officer. In her new role, Ms. deLemps will have oversight for corporate underwriting, corporate actuarial, risk management and ceded reinsurance and continue to report to new Endurance Chairman and CEO John Charman. Simultaneously, the company said Catherine A. Kalaydjian has assumed the role of chief operations officer, replacing John O'Connor. Ms. Kalaydjian had served as Endurance's chief claims officer since March 2007 and was promoted to chief administrative officer in December 2012, retaining her claims role. In addition to these duties, Ms. Kalaydjian will gain management oversight of information technology, insurance and reinsurance underwriting operations, procurement and program management.

Citing Italy's downgrade, S&P downgrades Generali

■ Standard & Poor's Corp. has downgraded its financial strength rating of Assicurazioni Generali S.p.A. to A- from A because of its

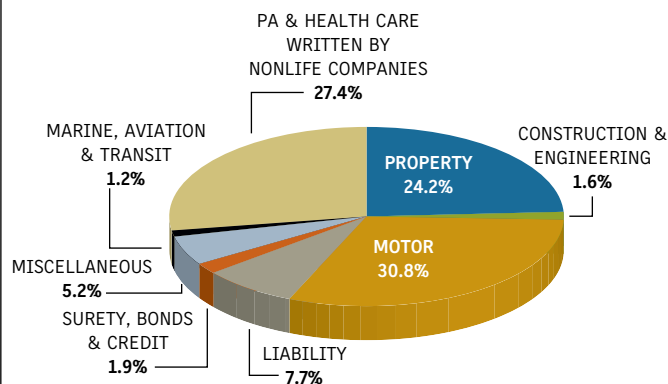
PROFILE: AUSTRIA

\$9.16
BILLION

The global recession did not affect Austrian insurers as dramatically as the industry feared. The market overall has been soft since 2006, and premium rates remain under pressure, but loss ratios continue to be favorable. But some clear tendencies are evident, such as higher court awards in auto third-party liability, increasing numbers of professions being required to buy professional liability coverage, and higher pain and suffering awards. The four largest insurers share more than 50% of the market.

◀ 2012 P/C premiums

MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

COMPULSORY INSURANCE

- Auto third-party liability
- Air carriers' third-party liability
- Professional liability for accountants, attorneys, brokers, music therapists and several other professions
- Cable car operators' liability
- Product liability for pharmaceutical manufacturers

NONADMITTED

Unauthorized insurers cannot carry on insurance activity in Austria. At the same time, there is nothing in the law that indicates insurance must be purchased from locally authorized insurers. This is generally interpreted to mean that insurers can issue policies from abroad if approached by a buyer.

INTERMEDIARIES

Company sales forces and tied agents dominate the personal lines business. The market share of the direct writers is insignificant. Brokers dominate the industrial sector, and their market share continues to grow. Austrian brokers are not permitted to place business with nonadmitted insurers, but they can service contracts where a foreign parent buys nonadmitted coverage for an Austrian subsidiary.

MARKET PRACTICE

Fronting policies often are used to prevent gaps in coverage. If an individual or company buys coverage from abroad, the policyholder waives protection provided by the Austrian regulators.

Information provided by Axco Insurance Information Services.
www.axcoinfo.com



AUSTRIA

POPULATION

8.47 million

AREA

32,377 square miles

NUMBER OF P/C INSURERS

68

2013 GDP CHANGE (PROJECTED)

1%

MARKET DEVELOPMENTS

UPDATED JULY 2013

■ In August 2012, construction companies were added to the professions requiring compulsory professional liability coverage. The minimum sum insured is \$1.3 million, increasing to \$6.6 million for companies with revenues in excess of \$50.7 million.

■ In January 2013, the minimum sums insured for compulsory professional liability coverage for insurance intermediaries and financial advisers were increased to \$1.7 million per loss and \$2.5 million per year.

■ In 2013, electricians are expected to be added to the list of professions requiring professional liability coverage.

■ This year, the Austrian government was in negotiations with U.S. authorities to come to a mutual agreement over the U.S. Foreign Account Tax Compliance Act.

■ An ongoing issue in Austria is the increased occurrence of fraud via online platforms offering freight forwarding services. Over the past few years, fraud-related claims have increased dramatically. Insurers are increasing deductibles for haulers and limiting coverage for subhaulers.

downgrade of the sovereign debt ratings of Italy. The rating agency said that, while the Trieste, Italy-based insurer has "strong international diversification, this only partially insulates Generali from Italian sovereign risk." On July 9, S&P downgraded Italy's sovereign debt to BBB from BBB+.

XL, Stone Point form ILS investment firm

■ XL Group P.L.C. and Stone Point Capital L.L.C. have formed a Bermuda-based investment management firm for insurance-linked securities and XL reinsurance products, the companies said. Dublin-based insurer XL will have 75% ownership of the firm, while Greenwich, Conn.-based private equity firm Stone Point Capital will own the remaining

25%, the companies said in a statement. The companies plan to invest \$135 million in the operation and secure third-party investors for the yet-to-be-named Bermuda-based firm. "This initiative with XL is designed to offer third-party investors an opportunity to invest in this asset class in partnership with one of the world's premiere reinsurance underwriters," Stone Point Capital CEO Charles A. David said in the statement.

PartnerRe estimates flood losses

■ PartnerRe Ltd. said it is likely to record pretax losses of \$50 million to \$60 million from June floods in Europe and \$45 million to \$60 million from June floods in Alberta, Canada. PartnerRe said that, given

the extent and timing of the destruction in Calgary and surrounding areas, there still is substantial uncertainty about the size of its loss from the Canadian floods.

Canada toughens rail safety rules

■ Canada has beefed up its safety standards for railways, reacting to the Quebec train disaster this month, and said that two "qualified persons" must run any train that hauls dangerous goods. In an emergency directive, most of which takes effect immediately, the Transport Department also said that trains carrying dangerous goods must not be left unattended on a main track. The July 6 Quebec disaster, in which 47 people died, occurred after an engi-

neer parked his train for the night on a main line uphill from the small town of Lac-Mégantic. The driverless train, consisting of five locomotives and 72 tanker cars full of crude oil, started rolling and accelerated into the center of the little lakeside town. There, it derailed and exploded into balls of fire, destroying the center of Lac-Mégantic.

Reuters

Regulator expands probe into reinsurers' Iran ties

■ New York's top financial regulator has expanded a probe into whether reinsurance companies have written policies on international trade with Iran, which could potentially violate new U.S. sanctions. In a letter posted to its website, the state's Department of

Financial Services asked reinsurers to explain their dealings with entities and people that have ties to Iran. The department also asked reinsurers to explain procedures in place to ensure compliance with the Iran Freedom and Counter-Proliferation Act of 2012, which took effect on July 1. Twenty reinsurers will receive the letter, including Hannover Re Group, Lloyd's of London and Swiss Re Ltd., a person familiar with the matter said. Those reinsurers were among those contacted last month by the regulator, whose superintendent is Benjamin Lawskey, over their dealings involving Iran.

Reuters

Catastrophe insurance rules not needed: FERMA

■ The Federation of European Risk Management Associations has told the European Commission that any new catastrophe insurance solutions should be market-based and not involve a compulsory insurance scheme. Responding to a green paper on natural and man-made disasters from the European Commission, FERMA emphasized suitable risk pricing to promote a risk management culture and said that where the private market is mature and working well, a compulsory arrangement is not desirable and in fact would create a moral hazard because, with rates divorced from exposures, it would not encourage risk mitigation efforts.

India grants extension to Iranian underwriters

■ India has extended a temporary approval to Iranian underwriters Kish P&I Club and Moallem Insurance Co. for covering container and tanker vessels calling at Indian ports in a move that should clear a backlog of nonoil shipments. The three-month extension is unlikely to revive imports of Iranian oil, as most Indian buyers have halted shipments because of an insurance issue related to their refineries. The previous approval given to Kish and Moallem to cover Iranian vessels lapsed on June 28.

Reuters

U.K. prosecutor charges brokers in Libor probe

■ Britain's fraud prosecutor has charged two former brokers at interdealer broker RP Martin with rigging Libor benchmark interest rates, broadening the scope of the

investigation into the scandal beyond big banks. The Serious Fraud Office said it had charged Terry Farr and James Gilmour with conspiracy to defraud seven months after arresting them. They are the first staff from a broking firm charged in connection with the Libor investigation in Britain. The two were arrested just before Christmas, along with former UBS and Citigroup trader Tom Hayes, who was last month charged with

eight counts of conspiracy to defraud as the SFO laid the groundwork for what could be the first Libor trial.

Reuters

Horsemeat contamination likely due to fraud: U.K.

■ The contamination of meat products with horse DNA was

most likely due to fraud and prosecutions should be pursued, a second British parliamentary report into the scandal said. "The evidence suggests a complex network of companies trading in and mislabeling beef or beef products, which is fraudulent and illegal," said Anne McIntosh, a legislator who chairs the cross-party Environment, Food and Rural Affairs Committee, which published the report. The

report was critical of retailers, arguing they should have been more vigilant against the risks of adulteration, especially where meat products were traded many times. It recommended retailers carry out regular DNA tests on meat and meat-based ingredients that form part of processed or frozen meat products, reporting results to the Food Standards Agency.

Reuters

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EDITORIAL

NEW DISORDERS PREPARE WAY FOR LAWSUITS

Perhaps it should be filed under the heading of the law of unintended consequences. With the best of intentions, the American Medical Association and the American Psychiatric Association have, probably unwittingly, created some serious difficulties for employers with their recent pronouncements on disability issues.

The AMA has decided to label obesity as a medical disease, while in its Diagnostic and Statistical Manual of Mental Disorders, the APA has added new disorders, among other changes.

These include social (pragmatic) communication disorder, a “persistent difficulty with verbal and nonverbal communication that cannot be explained with low cognitive ability,” and “mild neurocognitive disorder,” which “describes a level of cognitive decline” that “goes beyond normal issues of aging.”

Many experts now fear that, in conjunction with the Americans with Disabilities Amendments Act of 2008, these changes will provide many more opportunities for workers to claim a disability.

And that, as we all know, leads to more requests for accommodations and, inevitably, more lawsuits. Also, it is certain to lead to time-consuming efforts to provide reasonable accommodations and act as an added strain on employers’ already limited resources.

What to do? Experts recommend that about all employers can do is embark on the interactive process required by the ADA to develop a reasonable accommodation to workers’ disabilities.

But employers also should be mindful of the word “reasonable.” It would not be reasonable for instance, for a customer relations representative who is diagnosed with social communication disorder to be excused from having to talk to customers, because that is an essential job function.

Nor would any employer be expected to lower performance standards to accommodate an employee who has been diagnosed with mild cognitive disorder.

This will not necessarily protect employers from being targeted by an aggressive plaintiffs bar. But it will put them on solid ground in terms of being able to defend their rational employment decisions.

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SCHILLERSTROM



COMMENTARY

GROWTH OF PAIN MED ABUSE REQUIRES DIVERSE SOLUTIONS

Much more needs to be done about pain medication misuse and addiction. The problem’s ugly facts came into sharper view this month when the Centers for Disease Control and Prevention released findings showing that prescription pain medications are killing more women than ever.

Almost 48,000 U.S. women died from prescription painkiller overdoses between 1999 and 2010, with the number of women dying having increased 400% during the period. And for every death, 30 women went to the emergency room due to misuse or abuse problems.

Women aren’t alone here. But the CDC wanted to get the word out that while men are still more likely to die of prescription pain medication overdoses, the gender gap is closing. While female overdose fatalities rose 400%, prescription painkiller overdose deaths among men rose 265%.

Many of the deaths among men and women follow from drug-addiction problems that emerged after injuries treated legally with powerful narcotics.

The problem with opioid pain medications first came to my attention a couple of years ago when I heard two employers presenting at a conference. They described enlisting their pharmacy benefit managers and third-party administrators to identify doctors prescribing the addictive medications to their workers compensation claimants. Once those doctors are identified, they can be asked whether the drugs are absolutely necessary.

Since then, the workers comp industry has spread the word among doctors, regulators, employers, insurers, claims examiners and everyone else involved in



**ROBERTO
CENICERROS**

SENIOR EDITOR

the treatment of injured workers about the dangers of prescribing excessive painkillers and how to reverse the trend.

The widespread effort is warranted, and similar efforts outside the workers comp industry have included law enforcement cracking down on pill mills and doctors who flagrantly abuse their prescribing authority for profit.

Yet more can be done.

The same week the CDC released its report on women and the misuse of pain medications, CDC Director Dr. Tom Frieden told reporters that too many doctors are still prescribing powerful pain drugs developed for severe cancer pain and other major illnesses when physical therapy, exercise and other alternatives will do.

So there still is a need for doctors to talk to their patients about pain-treatment options that don’t involve addictive prescriptions. Medical guidelines for prescribing painkillers also must be followed.

Other measures that would help include states establishing or improving prescription drug monitoring programs aimed at helping reduce painkiller abuse and diversion, while the federal government could do more to educate the public and medical providers.

SPECIAL REPORT

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Human resource issues create critical risks

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Firms target reputational risks through SRM

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RACING TOWARD RESULTS

Boards, C-suites leading the push to adopt strategic risk management initiatives

RODD ZOLKOS

Interest in strategic risk management is increasing, but obstacles remain at many organizations to successfully implement the approach to managing risks. Among the challenges are the lack of defined risk appetites at many companies, poor internal communications, and a perception of risk that doesn't consider potential positive and negative outcomes.

"I think there's definitely a lot of interest, and I think risk professionals are definitely moving in that direction," said Carol A. Fox, director of the strategic and enterprise risk practice for the Risk & Insurance Management Society Inc. in New York.

As with any new discipline, Ms. Fox said there are "early adopters" of strategic risk management, commonly defined as identifying, assessing and managing the risk in an organization's business strategy. Others move more slowly.

Much of the interest in taking this approach to risk management is driven by company boards, Ms. Fox said.

"In our discussions, the boards are very interested in this area," she said, and are looking to their organizations' risk professionals to move the concept forward.

Linda Conrad, director of strategic business risk, Zurich Global Corporate at Zurich Insurance Co. Ltd. in New York, sees similar drivers for much of the increased interest in strategic risk management.

"We're seeing a lot of focus and pressure and requests from the board and C-suite to have a greater level of certainty and assurance, and making sure all of these risks are on the table and they won't be surprised by anything," Ms. Conrad said.

Turning risks into results

Among the reasons for the boards' interest in strategic risk management are pressures by regulators and rating agencies.

However, "regulatory and compliance are some of the impetus behind it, but to my mind if we leave it there it's kind of a shame," Ms. Conrad said. Instead, she said strategic risk management should be used to help organizations better embrace opportunities. "For me it's about turning risk into results," she said.

For many organizations, the reasons for adopting strategic risk management are similar to those that

See **RESULTS** page 16

RISK MANAGEMENT BY THE NUMBERS

98%: Companies with at least \$25 billion in annual revenue have a formal risk management department.

66%: Companies that would like broader coverage and better terms and conditions for commercial insurance.

33%: Companies measuring total cost of insurable risk.

28%: Companies that have a chief risk officer.

9%: Companies planning to create a captive or protected cell company in next three years.

Source: 2013 Aon Global Risk Management Survey

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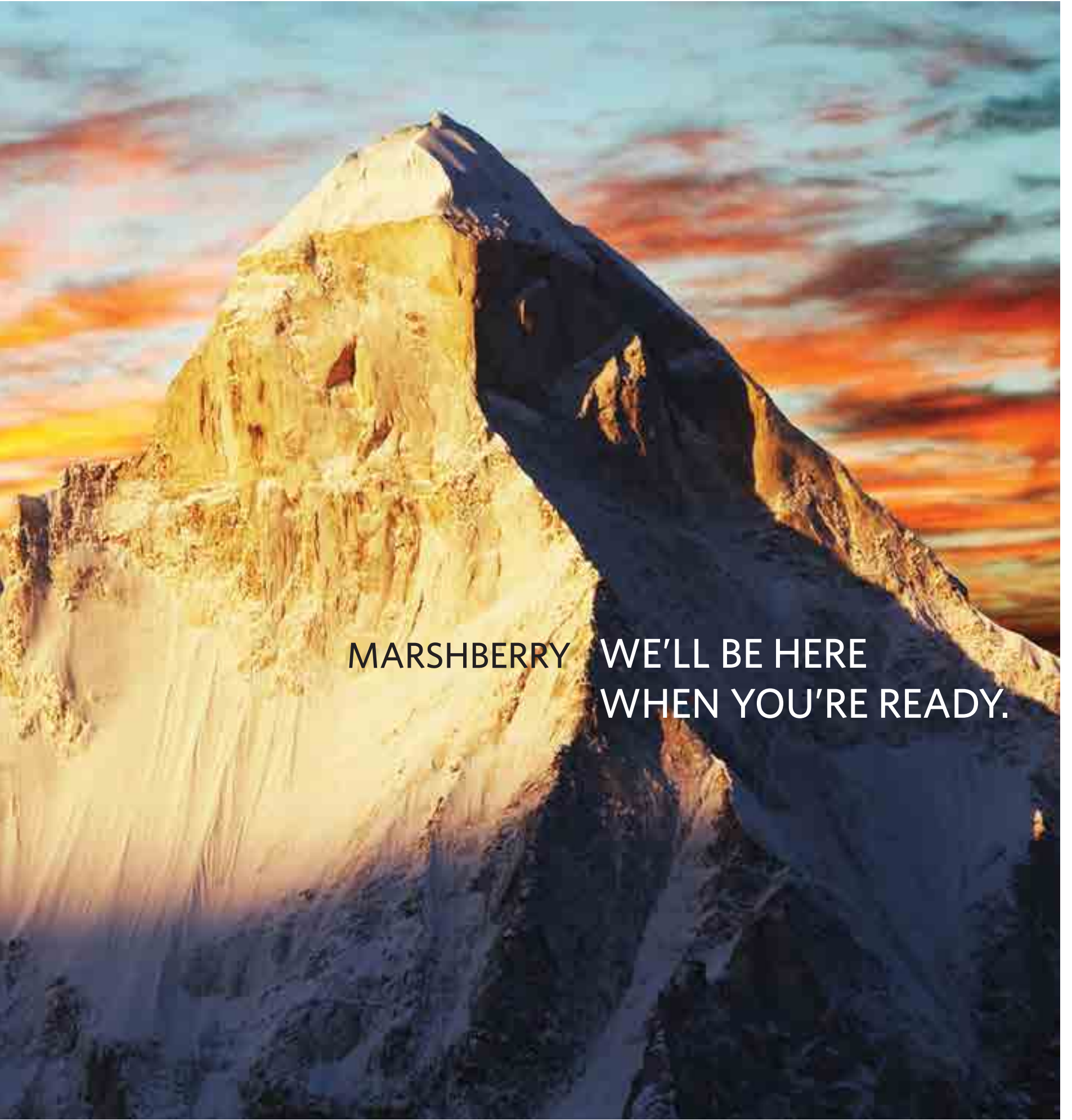


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SRM a natural fit to manage supply chain exposures

Formulate a detailed understanding of what drives your business

RODD ZOLKOS

With the critical role supply chains play in many companies' strategies, supply chain exposures are ideal candidates for consideration in a strategic risk management program.

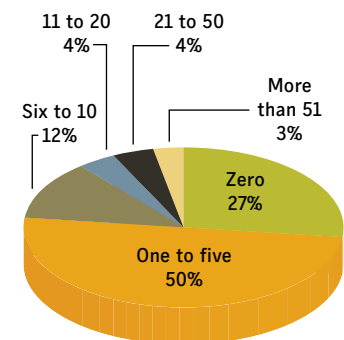
"It's such a key element of success or failure in a company that it's got to be built into strategy," said Linda Conrad, director of strategic business risk for Zurich Global Corporate, at Zurich Insurance Group Ltd. in New York.

While most companies' top supply chain consideration is reducing costs, many fail to recognize that a disruption could cost them those savings and more, Ms. Conrad said.

A blind spot for many organizations in addressing supply chain exposures is failing to manage out-

FREQUENT DISRUPTIONS

Supply chain disruptions per company per year based on a survey of global companies.



Source: Business Continuity Institute 2012 Supply Chain Resilience Survey

side risks the same way they manage their internal exposures, said Eric Jones, manager of FM Glob-

al's business risk consulting group in Dallas.

"You have to have consistency in how you manage risk," he said. "Ultimately, it comes down to forming as detailed an understanding as we can of the business and what the business drivers are."

Kirk Rider, director, ocean marine risk control at Travelers Cos. Inc. in New York, said that in working with clients in assessing supply chain exposures, he typically groups them into two categories: high velocity/high volume, and those whose supply chains are low velocity but involve critical shipments.

"When we talk about a critical shipment or something we really need to protect ... we typically have more critical path discussions with the client about the supply chain," Mr. Rider said, such as

whether there are risk aggregations at a single port.

"When you're talking about a high-velocity shipper, it's a little more difficult to get a strategic risk management program to attach to that because every (risk management) step someone has to take slows that process," Mr. Rider said.

In high-velocity supply chains, the best results usually come from working with the client and helping them develop a strategy of addressing exposures by making small adjustments along the way to accommodate any changes, Mr. Rider said.

Gary S. Lynch, managing director and global leader of risk intelligence and supply chain resiliency at Marsh Inc.'s risk consulting practice in New York, cited the April apparel factory collapse in

Bangladesh as evidence that supply chain risks can go beyond the cost of disruptions to threatening a company's reputation.

In response, some retailers are taking cues from the high tech industry and trying to be more creative in the way they evaluate supply chain exposures, looking to managing the risks in the various links in their supply chains as though they were exposures to be underwritten, Mr. Lynch said.

In the process, they're using predictive analytics and data, and "using that data to look at it through a risk lens and using that data to do more profiling around the places that are doing the sewing," Mr. Lynch said. "They're starting to get really good hard data that gives them the ability to match the investment decision to the exposure."

RESULTS

Continued from page 13

prompted them to adopt enterprise risk management, said Damon Levine, vice president of enterprise risk management at Assurant Inc. in New York.

"Some of the reasons would be similar to the idea behind ERM. It's not enough to look at things on a stand-alone basis," Mr. Levine said. "You want to have an understanding of your risk/reward profile in the aggregate. You want to be aware of how concentrations might grow."

Often, though, organizations "just focus on risks that move the needle on an enterprise level" and adopt enterprise risk management, Mr. Levine said.

It's possible, however, that while individual risks might not have an enterprisewide effect by themselves, many of them together — including the failure to meet a number of individual objectives — could have an effect on an organization's ability to meet its strategic goals, Mr. Levine said.

"Our general view on this is that we do see an increased adoption of SRM/ERM approaches," said Eric Jones, manager of FM Global's business risk consulting group in Dallas. "The thing that we see, though, is that there are still a lot of flaws out there involving a lack of robust processes around this."

In many cases, organizations still

lack a good definition of their risk appetite, and it's difficult to make good decisions about acceptable levels of risk without such a definition, Mr. Jones said.

Not understanding the how some risks or events are interrelated is another problem, he said.

"Also, I think there's a failure to identify certain types of risks," Mr. Jones said. And organizations often fail to understand worst-case scenarios, he said.

Meanwhile, poor internal communications and silo mentalities coupled with a focus on protecting rather than sharing data limits many organizations' chances for success with strategic risk management, Mr. Jones said.

"The companies that we see that are the best at managing risk are the ones that share data across the company," he said.

Ms. Fox said that how organizations perceive risk often is an obstacle to adopting strategic risk management. "I think the biggest challenge for many organizations is the perception of risk," she said. "In many settings, people think about risk as loss."

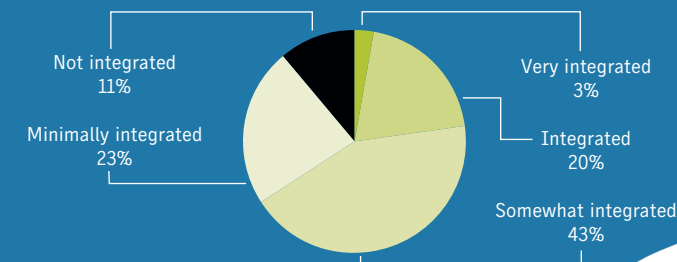
It's up to RIMS and others to lead the conversation about risk being neutral, with both potential upsides and downsides, Ms. Fox said, adding that it takes time for companies to develop that mindset.

An organization's risk culture can be another obstacle, Mr. Levine said.

"Buy-in is sometimes difficult to attain depending on the risk cul-

LINKING RISK MANAGEMENT AND STRATEGIC PLANNING

Degree to which risk management is integrated in the strategy and business planning process of North American companies.



Source: Towers Watson 2013 Risk and Finance Manager Survey

ture," he said. In some organizations applying risk management to strategic decision-making could be construed as "just holding us back," he said.

A mindset of estimating outcomes on a single-point basis also can hinder adoption of strategic risk management, Mr. Levine said. A single number "is of little

use from a risk management standpoint," he said. Instead, what's wanted is a range of possible outcomes to allow considering the upside and downside of risk.

Organizations that successfully implement strategic risk management enhance their chances of meeting their strategic objectives

and their ability to recognize and capitalize on opportunities, experts say.

"Putting the focus on strategic risk management allows us to go more on the opportunity side," Ms. Conrad said. "Risk can be managed as an opportunity as well as mitigating the downside of risk."

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2013 rank	2012 rank	Company	2012 U.S. revenue	% change
1	2	Aon P.L.C.	\$5,317,978,400	5.3%
2	1	Marsh & McLennan Cos. Inc. ¹	\$5,300,218,000	4.6%
3	3	Arthur J. Gallagher & Co. ¹	\$1,908,000,000	12.6%
4	5	Willis Group Holdings P.L.C.	\$1,625,260,000	1.3%
5	4	Wells Fargo Insurance Services USA Inc.	\$1,575,444,000	(3.2%)
6	7	BB&T Insurance Holdings Inc. ¹	\$1,480,274,900	34.1%
7	6	Brown & Brown Inc. ^{1,2}	\$1,386,359,169	20.0%
8	10	Lockton Cos. L.L.C. ³	\$745,291,000	17.7%
9	8	National Financial Partners Corp. ¹	\$744,167,359	7.4%
10	9	USI Holdings Corp. ^{1,4}	\$712,546,257	8.8%
11	11	Hub International Ltd. ¹	\$632,759,894	10.8%
12	12	Alliant Insurance Services Inc.	\$503,831,165	9.5%
13	13	Towers Watson & Co. ⁵	\$346,871,392	(3.7%)
14	15	AssuredPartners Inc. ¹	\$235,604,040	36.7%
15	14	Leavitt Group ¹	\$179,371,000	(4.7%)
16	17	CBIZ Benefits & Insurance Services Inc. ¹	\$173,400,000	8.4%
17	18	Keenan & Associates	\$149,342,000	3.6%
18	19	Meadowbrook Insurance Group Inc.	\$146,692,000	9.0%
19	21	Hays Group Inc., dba Hays Cos.	\$140,600,000	10.0%
20	20	Crystal & Co.	\$137,380,000	4.3%
21	22	Bollinger Inc.	\$131,910,000	12.0%
22	16	Jardine Lloyd Thompson Group P.L.C. ^{4,6}	\$120,253,826	4.0%
23	25	Wortham Insurance & Risk Management	\$113,135,480	13.2%
24	23	J. Smith Lanier & Co.	\$112,045,434	3.8%
25	28	Paychex Insurance Agency Inc. ⁷	\$109,400,000	18.5%
26	26	Holmes Murphy & Associates Inc.	\$104,163,118	6.9%
27	24	Regions Insurance Group Inc.	\$103,901,994	2.9%
28	31	Insurance Office of America Inc. ¹	\$101,816,014	13.5%
29	30	Hylant Group Inc. ¹	\$100,768,914	10.6%
30	33	The IMA Financial Group, Inc.	\$99,056,769	15.6%
31	35	Integro USA Inc. ¹	\$96,059,350	14.3%
32	36	Higginbotham & Associates ¹	\$92,105,000	15.6%
33	32	BancorpSouth Insurance Services Inc. ¹	\$90,677,466	1.8%
34	34	Barney & Barney L.L.C.	\$89,938,016	5.6%
35	52	PayneWest Insurance ¹	\$89,605,091	163.7%
36	29	Mesirow Insurance Services Inc. ^{4,8}	\$87,083,582	4.4%
37	38	Heffernan Group ¹	\$83,265,300	12.1%
38	40	Cottingham & Butler Inc.	\$77,649,000	11.3%
39	37	Ascension Insurance Inc.	\$77,531,000	2.8%
40	41	Woodruff-Sawyer & Co.	\$74,875,000	7.7%
41	44	Insurica Insurance Management Network	\$72,766,038	17.8%
42	NEW	R.K. Harrison Group Ltd. ^{5,9}	\$70,820,201	19.7%
43	42	Capacity Group of Cos. ¹	\$69,901,960	6.6%
44	43	First Niagara Risk Management Inc.	\$67,643,055	6.2%
45	47	Edgewood Partners Insurance Center, dba EPIC	\$63,712,320	9.3%
46	46	Frenkel & Co. ¹	\$61,450,874	5.1%
47	51	Assurance Agency Ltd.	\$59,043,156	13.3%
48	49	Eastern Insurance Group L.L.C.	\$57,422,669	1.2%
49	48	Huntington Insurance Inc.	\$55,876,590	(2.2%)
50	58	MHBT Inc. ¹	\$52,875,000	18.2%

2013 rank	2012 rank	Company	2012 U.S. revenue	% change
51	55	Oswald Cos. ¹	\$52,714,530	13.8%
52	50	Associated Financial Group L.L.C.	\$52,221,201	(3.5%)
53	53	Marshall & Sterling Enterprises Inc.	\$52,095,826	5.8%
54	57	Lawley Service Inc.	\$50,970,541	11.0%
55	56	Horton Group Inc. ¹	\$46,791,632	1.9%
56	54	Propel Insurance	\$45,300,000	(2.4%)
57	61	Risk Strategies Co.	\$44,917,576	9.9%
58	NEW	Sterling & Sterling Inc.	\$43,890,000	15.0%
59	60	InterWest Insurance Services Inc.	\$42,735,675	3.5%
60	64	Mahoney Group	\$42,386,149	11.3%
61	68	Frost Insurance Agency Inc. ¹	\$42,305,019	17.5%
62	62	Bowen, Miclette & Britt Inc. ¹	\$42,038,265	5.2%
63	73	SilverStone Group Inc.	\$41,166,000	19.0%
64	65	M&T Insurance Agency	\$40,746,000	8.2%
65	63	Riggs, Counselman, Michaels & Downes Inc.	\$40,354,915	3.2%
66	NEW	The Graham Co.	\$38,248,383	6.6%
67	72	M3 Insurance Solutions Inc.	\$38,217,467	8.5%
68	71	Scott Insurance	\$37,654,000	6.9%
69	69	Moreton & Co.	\$36,481,000	2.1%
70	67	Old National Insurance	\$36,444,344	0.7%
71	75	Starkweather & Shepley Insurance Brokerage Inc. ¹	\$35,735,000	8.3%
72	79	LMC Insurance & Risk Management Inc. ¹	\$35,388,048	20.9%
73	NEW	Parker, Smith & Feek Inc.	\$35,270,000	5.5%
74	70	Andreini & Co.	\$35,000,000	(1.7%)
75	66	Corporate Synergies Group L.L.C.	\$33,000,000	(10.8%)
76	77	Robertson Ryan & Associates Inc.	\$32,476,554	7.9%
77	NEW	Towne Insurance Agency L.L.C. ¹	\$32,402,697	6.9%
78	86	Lovitt & Touche Inc.	\$32,075,010	9.6%
79	NEW	TrueNorth Cos. L.L.C. ¹	\$31,252,000	19.4%
80	81	Roger Bouchard Insurance Inc.	\$30,794,125	11.0%
81	78	People's United Insurance Agency Inc.	\$30,513,000	2.9%
82	76	The Loomis Co.	\$30,428,153	(5.0%)
83	82	Charles L. Crane Agency Co.	\$30,000,000	11.1%
84	84	Cobbs, Allen & Hall Inc.	\$29,730,481	12.5%
85	NEW	Acrisure L.L.C. ¹	\$29,648,502	3.6%
86	85	Bankers Insurance L.L.C.	\$28,602,801	10.5%
87	100	Cook Maran & Associates ^{1,10}	\$28,414,000	59.1%
88	80	SullivanCurtisMonroe Insurance Services L.L.C.	\$28,022,400	(1.7%)
89	NEW	Tolman & Wiker Insurance Services L.L.C.	\$27,887,302	8.3%
90	83	Haylor, Freyer & Coon Inc. ^{1,11}	\$27,118,737	1.8%
91	87	J.W. Terrill, Inc.	\$27,000,000	9.3%
92	88	The Underwriters Group	\$26,114,220	7.7%
93	NEW	Tompkins Insurance Agencies Inc.	\$26,055,000	2.3%
94	93	Bolton & Co. Insurance Brokers ¹	\$24,395,678	17.0%
95	89	Brower Insurance Agency L.L.C.	\$23,891,000	2.3%
96	95	Benefit Controls Cos.	\$22,500,000	12.2%
97	NEW	M.J. Insurance Inc. ¹¹	\$22,389,999	3.0%
98	91	AH&T Insurance	\$22,134,351	1.6%
99	NEW	Murray Securus ^{1,12}	\$22,110,000	1.3%
100	98	Rich & Cartmill Inc.	\$21,813,720	1.1%

*Companies that derive more than 49% of their gross revenue from personal lines business are not ranked. 1 Reported U.S. acquisitions in 2012. 2 Pro forma to reflect July 1, 2013, purchase of Beecher Carlson Holdings Inc. 3 Fiscal year ending April 30. 4 2011 U.S. brokerage revenue reclassified or restated. 5 Fiscal year ending June 30. 6 British pound=1.6181 in 2012, \$1.5698 in 2011. 7 Fiscal year ending May 31. 8 Fiscal year ending March 31. 9 British pound=1.5705 in 2012, \$1.6043 in 2011. 10 Fiscal year ending Feb 28. 11 Fiscal year ending Aug. 31. 12 Fiscal year ending Sept. 30.



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ANALYTICS HELP RISK MANAGERS MAKE STRATEGIC PLANNING DECISIONS

Decreasing technology costs allow more organizations to buy in

RODD ZOLKOS

As they look to link risk management to their organizations' strategic planning, risk managers are increasingly finding various analytical tools and techniques that help them make better decisions and reduce loss costs.

Better and less expensive technology, along with the fact that companies already use some of the analytical tools in such "top-line" areas as sales, marketing and product development, make adopting the approaches to risk management an easier sell, experts say.

"The technology gets more democratized. More and more people can use it," said Edward S. Koral, specialist leader at Deloitte Consulting L.L.P. in New York. "This was the sort of thing that really required a lot of scale until recently."

For example, applying predictive analytics to claims activity had been done only by insurers, but in the past two or three years some large self-insured organizations have begun using the technique, Mr. Koral said. "The cost of developing the model has gone from a million dollars or more to a quarter of a million dollars or less," he said.

"There's also more wide-scale acceptance of predictive analytics as a business tool," Mr. Koral said. "They're probably already doing it in other aspects of their business. If the organization has already cast their lot with predictive analytics ... there's a corporate culture that supports it, understands it

(and) understands that it's good."

Carol A. Fox, director of the strategic and enterprise risk practice for the Risk & Insurance Management Society Inc. in New York, said she sees the analytical tools being particularly useful as risk managers seek to analyze a range of possible outcomes in their strategic risk management efforts.

"I think risk professionals are looking for tools that can enable them to look at more of the economics of the risk," Ms. Fox said. "Rather than looking at risk as a single point, look at risk as a range of potential outcomes, then how do my analytics help support that?"

Mark Moreland, executive vice president for strategic consulting at Lockton Cos. L.L.C. in Kansas City, Mo., said providing analytical tools has become an important part of what the broker brings to its clients. Lockton wants to be able to identify details clients might otherwise miss in the data and help them recognize opportunities and reduce costs.

With strategic risk management, "The larger the company, the more intertwined that is," Mr. Moreland said. "You're kind of aligning the risk management decision-making with the overall decision-making."

"So we're really focused on making sure, first of all, that our clients' strategies are aligned with their risk management strategies and that their risk management strate-

gies are aligned with their corporate strategies," he said.

Among other things, Lockton has devised a proprietary modeling technique called dynamic capital modeling, Mr. Moreland said.

"At the heart of that is that insurance is a form of capital," he said. The tool helps organizations determine whether it's cheaper to use insurance or their own capital to finance risk, and it has been particularly helpful in addressing questions of limit adequacy and determining the probability that losses will exceed certain limit levels, Mr. Moreland said.

Linda Conrad, director of strategic business risk for Zurich Global Corporate at Zurich Insurance Group Ltd. in New York, said her company uses a technique called total risk profiling in its own strategic risk decision-making.

"It's something that Zurich has used for well over 10 years now," she said. "It's basically an organized brainstorming or risk identification session."

The company uses the technique more than 200 times a year, Ms. Conrad said, applying it to "pretty much anything we do: How does our risk landscape change based on this proposed solution or project?" The approach helps the company increase the likelihood of success of an undertaking and promotes increased communication and collaboration on risks.

Eric Jones, manager of FM Global's business risk consulting group in Dallas, said there's great value in the analytical tools, though he sees flaws in the way some organizations are using them.

"We provide the analytical tools that companies need and the analytical tools that companies use to objectively measure risk," he said. "We really help clients by providing them with financial models and analytical tools to help them analyze risk."

"I do see analytics being used more and more. But the usage of these things is still too limited, and even when they are used, there's too much subjectivity involved in them," Mr. Jones said. "Even when analytics are used, often there's flawed data used in those analytics."

Ms. Fox agreed that it's important to look at the right data when using analytical tools in strategic risk management.

"Because of the vast information and data, how do you scrape that data and then use it in a way that actually informs?" she said.

While some companies might not yet be using the tools as effectively as they could, using analytics in risk management decision-making is becoming essential, Mr. Moreland said.

"Analytics is the future, and to get to that next level of thinking and the next level of decision-making — to focus on the right things — I can't overstate that," he said. "Because in the absence of that, all you're doing is wasting time on things that might not have the right payoff."

"The technology gets more democratized. More and more people can use it."

Edward S. Koral,
Deloitte Consulting
L.L.P.

MONITORING BUSINESS RISKS

Risks most often measured by U.S. companies, by percentage

77%



REGULATORY RISKS

69%



POLITICAL RISK

64%



OPERATIONAL RISKS

57%



LEGAL RISKS

52%



LIQUIDITY RISKS

Human resource issues create critical risks

BY MIKE TSIKOUDAKIS

Companies are working to link human resource departments within the strategic risk management process to address talent and other human capital risks, but there's still a way to go toward connecting the two.

Human capital risks are often among an organization's most critical risks, which can include succession planning for key executives, hiring and retaining top talent, labor negotiations and an aging workforce, among others.

While human capital exposures are so much a concern that many companies list the risks in their disclosure filings to the U.S. Securities and Exchange Commission, risk practitioners and human resource departments often are disconnected, experts say.

"A few years ago, we saw very few companies thinking about human capital risk as they were thinking about all their other risks," said Ellen S. Hexter, New York-based senior adviser of enterprise risk management at

The Conference Board Inc.

While people and risks "are integrally linked," the challenge of linking strategic risk management with human capital risks is that such risks traditionally have been folded into operational risk, she said.

"Every enterprise risk management project that I've done in the last 12-plus years, there's always at least one or more human capital risks that are absolutely strategic," said Corey Gooch, Chicago-based account director at Towers Watson & Co. "There is the issue about breaking down the silos, because risk managers are typically not seen as the expert in HR."

Human capital risk is difficult to quantify, "so it's not seen with the same importance or priority to other people as risks like supply chain disruptions," Mr. Gooch said.

Angel Hoover, Chicago-based group leader for rewards, talent and communications at Towers Watson, said human resource departments are working to quantify human capital risks.

"We still haven't cracked the code, certainly," she said. "But

we're getting better because business leaders are also getting more sophisticated about the questions they ask about HR and human capital outcomes."

As a result, HR departments are beginning to use different methodologies, including partnering with risk management and actuarial departments to model human capital risks, she said.

Human capital risks also are broad, ranging from succession planning risks to reputational risks, and no two organizations are handling the risks the same way, said Eddie Barrett, a Chicago-based director in Deloitte Consulting L.L.P.'s human capital consulting practice. "Some take a very narrow view of human capital risk and what the HR function should and shouldn't do, and some take a very broad view," he said.

Frank Fiorille, Rochester, N.Y.-based senior director of risk management for Paychex Inc., said to get a handle around talent risks, an organization can utilize the traditional risk management process.

"I think you can put that risk

through the traditional risk management apparatus and treat it almost as any kind of risk, whether it's credit risk or operating risk" to "analyze that risk and see where there's exposure," Mr. Fiorille said.

Today, the Conference Board's Ms. Hexter is "encouraged," as human capital issues more often are part of that overall strategic risk process when it comes to enterprise risk management.

A few years back, "many companies (had) a senior management-level risk committee, but there were very few heads of HR who were part of that committee, which is a big gap for companies," Ms. Hexter said. "More and more, the person who runs HR globally is on that senior risk committee."

Increasingly, companies look to appoint a chief human resource officer, which facilitates human capital risk discussions at the senior level, Mr. Barrett said.

Additionally, some organizations have appointed chief risk officers directly under the HR function to handle talent risks, a trend that may grow, Mr. Barrett said.

"We are seeing that a lot more CHRO's are appointing somebody as kind of their right-hand person for all things risk in the human capital space. Then that person is the HR interface to the risk function," Mr. Barrett said.

HR involvement in an organization's global risk strategy is "critical" to linking strategic risk management and human capital risks, Ms. Hexter said. "It is true, although not universally accepted, that both HR and risk should be enabling functions," she said.

A two-way relationship must be in place between human resource and risk management departments in order to successfully link talent risks within the strategic risk management process, Ms. Hoover of Towers Watson said.

Human resource departments need to leverage the strong analytical skills found within risk management, she said. "The risk management group needs to recognize that there is a (return on investment) and a value that can be derived from what is done in the HR space that is very tangible."

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CRITICAL SOURCES OF RISK

Percentage of U.S. companies that expect the following sources of risk to be the most important to monitor over the next five years:

GLOBAL ECONOMIC DEVELOPMENT

41%

GOVERNMENT SPENDING

32%

REGULATORY CHANGES

30%

SOCIAL MEDIA

27%

FINANCIAL RISK

27%

Source: Deloitte Development L.L.C.



FIRMS TARGET REPUTATIONAL RISKS THROUGH STRATEGIC RISK MANAGEMENT

Guarding an organization's reputation seen as a governance issue

BY RODD ZOLKOS

Considering potential threats to an organization's reputation as part of the strategic planning process can help reduce such risks and even position a company to enhance its reputation by allowing it to prepare an effective response when an event occurs.

"I think there is a very powerful connection between strategic risk management and reputation and brand management," said James W. DeLoach, managing director at consultant Protiviti Inc. in Houston.

"As we view certain events over the last several years, we have come to realize even the best household names, the best brands face their moment of crisis. No company is immune to the risk of a crisis," Mr. DeLoach said.

And reputation-threatening crises can take any number of forms, said Corey Gooch, senior enterprise risk management consultant at Towers Watson & Co. in Chicago. "Reputation risk could happen from anything," he said. "You could have a supply chain problem, you could have a labor issue, you could have a cyber attack."

From a strategic risk management perspective on risks associated with strategic decisions, it's important not just to consider those exposures' potential financial impact on the organization, "but also the potential impact on

your reputation should something occur," Mr. Gooch said. "I don't think you can simply look at a risk as what's this going to mean financially."

Gregg Anderson, a director at Crowe Horwath L.L.P. in Chicago, said companies' historical approach to addressing risk has focused on the financial impact. "Reputation risk is sort of asking the question, 'How do people or employees or investors perceive the reputation of the company,'" Mr. Anderson said. "I think historically people looked at reputation risk as something (public relations) people and attorneys deal with."

Larry Walsh, vice chairman at the Alexandria, Va.-based Hawthorn Group L.C., said reputation crises often are the result of a disconnect between expectations and performance. "That to me is very strategic," he said.

"The reputational impact of every decision has to be part of the checklist from product design to your practices to (human resources) policies," Mr. Walsh said.

"There are multiple areas in a company that are constantly touching stakeholders either formally or informally," said Nir Kossovsky, CEO and director of Steel City Re, a Pittsburgh-based broker/adviser specializing in corporate reputation management and risk transfer.

Stakeholders' expectations of the

company can be violated by something as simple as an internal human resources policy perceived as culturally insensitive, Mr. Kossovsky said. And social media or blog posts can quickly spread those perceptions, "which is why we always say reputation is not a PR issue, it's a governance and control issue," he said.

At the heart of efforts to address reputational risk at the strategic level are an organization's values, Mr. Walsh said.

"It's going to be values that drive decisions and drive behavior, and that's got to be tied to compensation and rewards," he said.

Mr. Gooch said that when consulting with clients, he tries to look at reputation risk not so much as an exposure unto itself but as an impact outgrowth of something else that could go wrong. "I think it's important that reputation risk get looked at as a component of any risk," he said.

Using strategic risk management to focus on risks that might prevent an organization from achieving its strategic goals, one understands that the impact of reputational damage from an event might be greater than the direct financial loss, Mr. Gooch said.

Citing the example of a company's reputation being damaged by a misstep in a particular market he said, "If one of those strategic areas was to grow this market, now you've significantly damaged your ability to achieve that strategy."

Considering reputational risks that might be associated with other exposures could lead a company to view those exposures as more significant in setting strategy, Mr. Gooch said. "That might actually lead to risks that might not be as high in a strategic risk management or enterprise risk management context getting bumped up the list," he said.

While considering reputational risk as part of strategic risk management can help organizations avoid or minimize such threats, it also can help them burnish their reputations by positioning them to effectively deal with crises when they do occur.

Organizations can identify situations that could couple high impact with high velocity — a rapid onset that involves senior management in a crisis situation almost immediately — along with persistence, Mr. DeLoach said, then make sure that a crisis plan and crisis management team is in place to deal with them.

"The marketplace really respects organizations that know how to manage a crisis," he said. "That bolsters reputation."

Mr. Gooch offered a similar view. "You can actually come out of a situation with an enhanced reputation if you respond well to it," he said. A reputation-threatening event "can be an enterprise killer or it can add value to a business depending on how well you're prepared to respond to it."

Sandy losses create complex claims



Mr. Galanti

BY JOSEPH GALANTI

While Superstorm Sandy wreaked havoc on countless homeowners, more than two-thirds of private-sector insurance payments for Sandy-related losses will go to businesses. Although many companies have policies in place, they were inadequately prepared for contingent losses and the amount of time required to address those losses.

The storm has proven to be a somber wake-up call, as they struggle to resume normal operations. There are numerous lessons to be learned from Sandy, and businesses that take a proactive look at losses resulting from natural disasters or other circumstances are more likely to succeed in preventing them during the next major event.

The effect of the storm has highlighted several additional coverages businesses require — but lacked — to more fully recover, including flood damage, contingent business interruption (covering losses attributable to damaged suppliers or customers), extended period of indemnity (covering business interruption losses beyond the damage repair date) and greater sublimits on existing coverage. Improving contingency planning to ensure adequate cash on hand or lines of credit sufficient to continuing operations during cash shortfalls attributable to the storm should also be a top priority.

In the aftermath of the storm, many businesses have realized just how sensitive supply chains can be to unforeseen events, particularly those businesses with complex supply chains as they suffered contingent losses due to damaged suppliers without having adequate alternate suppliers.

Other businesses, such as retail stores with numerous locations in the wide geographic swath of destruction, suffered such extensive property damage that they will require significant time and resources to restore their locations to pre-loss conditions. In fact, even after repairs are made, some policyholders continue to suffer losses, because their sales have not yet reached levels that would have been achieved had the damage not occurred.

Such losses may be covered under a special endorsement for business interruption called

Superstorm Sandy showed many businesses just how vulnerable they are to disruptions to their supply chains and to property damage. As policyholders pursue claims against their insurers, they should carefully consider potential factors that may delay or derail their claims, says Joseph Galanti, managing director with Alvarez & Marsal Global Forensic and Dispute Services.

“extended period of indemnity” coverage, which affords coverage beyond when repairs are completed through some defined period. Without such an endorsement, coverage would cease when repairs are completed, regardless of whether the business returned to its pre-loss condition. Similarly, businesses such as telecom providers, which may have planned to roll out new services, have been forced to shelve those plans so existing services can first be repaired and restored.

What we can expect going forward:

■ There likely will be significant disputes surrounding causation. The matching of the many potential coverage triggers — wind, flood, fire, service interruption, ingress/egress, civil authority, contingent business interruption — to specific losses may be challenging. Even if all such perils are covered under an insured's policy, there may be sublimits, idle periods or exclusions that might make it beneficial to categorize losses in one bucket versus another.

■ Quantum and coverage disputes are likely months or even years off, as claims usually follow the typical adjustment process until an impasse is met by the policyholder and carrier. Quantum issues often involve business interruption calculations because financial estimates of what would have occurred in the absence of the peril may differ between the policyholder and carrier. For example, a carrier may take the position that a policyholder's lost business income estimates are overstated because they do not reflect decreased economic activity attributable to the loss, but not caused by the policyholder's damaged property. The policyholder likely would disagree with such a carrier position.

■ Coverage issues often involve causation and specific policy language regarding what losses are covered versus excluded. Experienced coverage counsel should be sought on complex claims to help obtain an appropriate recovery.

■ The ability to obtain timely cash advances from carriers will continue to be important, both to complete repairs and to provide working capital for continued operations. Many businesses operating in the most damaged areas already will have revenue shortfalls from decreased economic activity to contend with; this will only exacerbate the cash flow issues faced by businesses with significant damage, some of which may have already been struggling from the recession. Those businesses that fail to secure adequate advances may run out of cash to fund operations and cease to exist.

■ Large, complex claims tend to languish, as the level of effort to move them along is significant and employees often get busy with regular duties and can lose interest. Many policies provide coverage for claim preparation fees, which typically makes the decision to bring in outside forensic accountants to assist a much easier one. Management can then focus on getting the company back in business, rather than becoming absorbed in assembling the particulars of their claim. Many claims often can take more than a year to settle, and having outside assistance can keep the claim process moving.

■ Industry knowledge and experience can be of paramount importance to policyholders working with forensic accountants on their claims team in identifying potential areas of recovery, as well as supporting lost business income calculations which are often challenged by carriers. Industry knowledge also can help build credibility with the carriers and their adjusters and accountants, which can in turn accelerate the claims process. Thus, deep industry knowledge cannot only help policyholders from a quantum perspective by ensuring no money is left on the table, but also by advancing the claim process through well-supported business interruption calculations.

■ Errors and omissions claims likely will increase, as many policyholders either thought they had secured coverage for particular types of losses such as flood, or were advised against such coverage by their brokers or advisers. Before Sandy, many policyholders and brokers felt the risk of a major Atlantic hurricane causing widespread damage was minimal so they did not purchase sufficient coverage.

Policyholders may nonetheless seek recovery for uninsured losses via negligence claims against their brokers' errors and omissions professional liability policies. Correspondence, meeting notes and other documentation contemporaneous with the underwriting process is often important in errors and omissions claims to demonstrate what risks policyholders intended their broker to cover under their insurance program, as well as what advice their broker provided to them.

In summary, while many businesses still are early on in the claims process, they should spend some time now to reflect on potential factors that can derail timely and amicable settlements with their carriers. Correctly anticipating issues that could thwart the claims process or inhibit recovery can smooth the process and help ensure an appropriate recovery is achieved.

For those whose claims are not progressing well, now is the time to take action and get back on track learning Sandy's lessons, but also putting it behind them as expeditiously as possible so they can get back to running their businesses.

Joseph Galanti is a managing director with Alvarez & Marsal Global Forensic and Dispute Services in Atlanta. He can be reached at jgalanti@alvarezandmarsal.com and at 404-720-5233.



The storm has proven to be a somber wake-up call, as they struggle to resume normal operations.

CHARMAN AIMS TO ADD VALUE AS ENDURANCE CHIEF

Q Why did you want to return to the industry, and what appealed to you about Endurance?

A I feel passionately about the industry, the quality of the people involved, the type of products and services we should provide and the added value that we should clearly and consistently demonstrate. As long as I believe I can add value, I will stay in the industry.

I really wanted to come back into the industry either as an owner or as a major shareholder. Importantly, as an owner-manager, I believe my management skills are then much more aligned and better focused on delivering shareholder value, and therefore I have a much more complete rather than a separated view. So I was delighted to have the opportunity to come back into the industry as a major shareholder of Endurance. The company, fortunately, is not broken. However, in simple terms, it had not really managed to get its act together in order to compete effectively in a fiercely competitive global marketplace. That's one of

Q&A

its great attractions — because there is so much more the company can achieve, executing on the wonderful global opportunities that are available to it, building new products in new geographies, as well as bringing excellence in every respect to its existing businesses.

Q How do you intend to make Endurance click?

A What I bring to Endurance is experience, understanding, management, focus and, impor-

tantly, global strategy. If management doesn't have strategy, it's not going to succeed. If you do not possess that critical vision and understanding — and I think few in our industry have demonstrated that ability — then the company can never differentiate itself from the rest of the pack.

On the insurance side, run by Jack Kuhn, we're going to build out our intellectual capital, products and geographies to reflect global economic activity over the next decade. We have a wonderful, high-quality, service-oriented agricultural business — which is the seventh-largest in the U.S. and therefore one of the largest in the world — staffed with very capable people. We will continue to grow that and find ways to provide an even better service and product range, not only to the farmers in the U.S., but also to those in the emerging markets of Asia and Latin America ... On the reinsurance side, which is run by Jerome Faure, we believe that the industry is and will continue in the near term to be overwhelmed with capacity, so our absolute focus will



JOHN CHARMAN

ENDURANCE SPECIALTY HOLDINGS LTD.

John Charman took over as chairman and CEO of Bermuda specialty insurer and reinsurer Endurance Specialty Holdings Ltd. at the end of May. The outspoken, London and Bermuda markets veteran previously was CEO of Axis Capital Holdings Ltd., the company he co-founded in Bermuda in 2001 and left last year. He recently spoke with Jonathan Kent, a freelance reporter in

Bermuda for *Business Insurance*, about how he intends to reinvigorate Endurance, expand its insurance platform, and pursue joint-venture opportunities in Asia. Edited excerpts follow.

be on global diversity, profitability, product and service, but definitely not scale.

Q Where do you see opportunities to expand Endurance's business?

A On the insurance side, the immediate opportunities for us clearly will be in Bermuda, the U.S., Asia and London. We will

consolidate and strengthen our existing reinsurance businesses in Bermuda, the U.S., Europe and Asia.

No globally minded company in our business can afford to ignore Asia. It's my intent to find a strategic Asian partner for us to form a joint venture for our Asian activities. It's a tough build-out from afar.

COMINGS & GOINGS

UP CLOSE: TIMOTHY WHITE

BOSTON-BASED SENIOR VICE PRESIDENT FOR U.S. WHOLESALE DISTRIBUTION
Ironshore Inc.

PREVIOUS POSITION: Boston-based vice president for wholesale property for Ironshore Inc.

CHALLENGES FACING INDUSTRY: Right now, there is an abundance of capital in the market, and that's driving supply.

INDUSTRY OUTLOOK: Given the marketplace, the inconsistent financial market, the overabundance of capital without adjustments (and) interest rates, I don't see things strengthening in the insurance industry.

FIRST INDUSTRY JOB: Underwriting assistant for RLI Insurance Co. in Peoria, Ill.

WHAT SURPRISED ME: Initial thoughts of insurance were, "It's boring and redundant." But as I got to learn more about the industry, I found it's quite exciting and changes from day to day. Always something new.

MYSELF IN 10 YEARS: I would like to be running a property-based insurance operation domestically.

ADVICE: Listen. The key is listening to your peers, your



clients, your co-workers, everyone you have interaction with. Don't think or act as though you know it all.

OUTSIDE THE INDUSTRY, A DREAM JOB: Ideally I'd love to work on a golf course, either as a golf professional or a maintenance worker mowing the lawns ... that sounds fantastic to me.

HOBBIES: Golfing. Running. Anything that keeps me in shape. I also love to read.

THING MOST PEOPLE DON'T KNOW ABOUT ME: I grew up on a farm in a very small town in central Illinois, population 600 people.

FAVORITE BOOK: I have a sick infatuation with three separate authors: Vince Flynn, Lee Child and John Sanford.

FAVORITE MEAL: Now that I am living in Boston, it's the lobster roll.

BEST CITY: It's Chicago. I am going to get a lot of grief around here for saying that.

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Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers. Please send news and photos of recently promoted, hired or appointed senior-level executives to: Kate Shepherd, *Business Insurance*, 150 N. Michigan Ave., Chicago, Ill. 60601-7524. kshepherd@businessinsurance.com.

Broker, underwriters collaborate on breach cover

Lockton Re, a unit of Lockton Cos. L.L.C., has brokered a partnership agreement between CloudInsure and Liberty International Underwriters, the global specialty unit of Boston-based Liberty Mutual Group Inc., to offer data breach insurance for CloudInsure customers.

Clients of CloudInsure, a unit of Cyber-RiskPartners L.L.C., can access the coverage to protect themselves against unintentional data breaches and technical errors and omissions, Lockton Re said.

"This new insurance platform combines CloudInsure's specialist underwriting models and analytical capacities with LIU's long track record of industry-leading solutions and strong financial stability, to create what will become the standard in cloud insurance," Tony Jones, executive director at Lockton Re, said in a statement.

Customers can access support services that include pre-loss risk management, credit monitoring and restoration, data breach notification services, post-loss computer forensics and legal advice.

"The cloud distribution network offers huge growth potential for the insurance industry, and at Lockton Re we are very excited to be working alongside companies with the necessary vision and expertise to recognize this opportunity," James Moss, executive director of Lockton Re London, said in the statement.

Malpractice product launched for mental health practitioners

Allied World U.S. and American Professional Agency Inc. have launched a medical malpractice insurance program for psychiatric nurse practitioners and physician assistants working in behavioral health.

The suite addresses exposures faced by nurse practitioners and physician assistants, while supervised by a psychiatrist, in the mental health field, Allied World Assurance Co. Holdings, the parent of Allied World U.S., said in a statement.

The coverage includes legal liability, personal and advertising injury, and privacy and licensing board complaint coverage, according to the statement.

"As the sole broker of professional liability insurance for members of the (American Psychiatric Association) and the American Academy of Child and Adolescent Psychiatry, the two largest psychiatric associations in the nation, we continually strive to meet the evolving needs of mental health practitioners," Peter T. Imbert, American Professional Agency's executive vice president, said in the statement.

XL launches platform for mobile risk engineering

XL Group P.L.C. has launched a mobile-enabled risk engineering platform for its property loss prevention services busi-



Allied World expands coverage of ACOs

Allied World Bermuda, a subsidiary of Allied World Assurance Co. Holdings A.G., has launched liability insurance for accountable care organizations that will retain least \$1 million of the risk.

The coverage is aimed at emerging Bermuda-centric ACO clients that want to secure excess capacity above the retention, the insurer said in a statement.

The coverage is for health care organizations that link provider reimbursement to quality-of-care metrics and cost-of-care reductions for an assigned number of patients.

"Public need, legislative directives and technological advances are challenging the model of how health care services are paid for and delivered," Frank D'Orazio, Allied World's president of Bermuda and international insurance, said in the statement.

"Health care organizations, particularly newly formed ACOs, will face a host of new exposures (under the U.S. health care reform law) on many fronts, Mr. D'Orazio said. "Our Bermuda health care team is well-versed in the new legislation and ready to assist our U.S. insureds and trading partners navigating this new landscape."

The new ACO coverage is in addition to insurance Allied World launched last year for U.S. ACO companies of all sizes, the insurer said.

ness, Global Asset Protection Services L.L.C., the insurer said.

The platform, developed in partnership with Teaneck, N.J.-based information technology infrastructure provider Cognizant Technology Solutions Corp., is a subscription-based service aimed at improving the quality of Dublin-based XL's risk consulting operations by giving underwriters and clients up-to-date information to help them make more informed decisions, the insurer said.

The mobile nature of the platform will enable XL's risk engineers to better access, capture and analyze critical data as well free up more time for consultation, the insurer said.

"We've been exploring how mobile technology could help us improve our colleague and customer service experience, and differentiate us as an employer of

choice and market leader," Tim Heinze, senior vice president and head of Global Asset Protection Services, said in a statement. "In Cognizant, we have found a company who shares our commitment to innovation and customer satisfaction and can work directly with our field engineers to conceptualize and incubate a next-generation solution that will further strengthen our distinctive value proposition."

Hospital indemnity coverage added to ING's Compass suite

ING U.S. Inc. has added hospital indemnity insurance coverage to its existing Compass suite of voluntary group health benefit plans.

The New York-based company's hospital confinement indemnity insurance provides plan members with fixed dollar coverage for costs associated with hospital admissions, including co-payments, coinsurance and deductibles, meals, visitor parking, lost work time, mortgage and utility payments, and other attenuated costs, according to a statement.

The plan includes optional coverage for costs related to admissions in critical care and rehabilitation facilities.

"With the addition of hospital indemnity coverage, we've expanded our Compass product suite to help employers offer affordable and flexible insurance benefits to employees with minimal administrative hassle while providing a well-rounded and affordable benefits package to their employees," Heather Lavalley, president of employee benefits distribution, said in the statement.

ING launched its Compass product suite in 2012, initially offering accident and critical illness coverage.

Additional options available include wellness incentives for annual health screenings, as well as bundling options with other Compass coverage products.

Digital Insurance unit readies health insurance exchange

Digital Benefit Advisors of Vermont said it will launch a private health insurance exchange this year for Vermont employers with more than 50 full-time workers.

DBA of Vermont, a Colchester, Vt.-based unit of Digital Insurance Inc., said it has reached an agreement with Blue Cross Blue Shield of Vermont to offer health benefit plans through the exchange for plan years starting Sept. 1.

The exchange, Digital Benefits Marketplace, also will provide employers and employees with administrative services and consumer decision-making tools.

"Executives, business owners and HR decision-makers desire one characteristic above all others when selecting an employee benefits strategy," Bob Gaydos, DBA's national director of private marketplaces, said in a statement, "a simple solution."

The exchange also will offer voluntary benefits via Reliance Standard Life Insurance Co., Delta Dental Plan Association and Guardian Life Insurance Co. of America.

DEALS & MOVES

USI Insurance Services buys Pennsylvania mid-market agency

USI Insurance Services L.L.C. has acquired mid-market insurance agency Cohen-Seltzer Inc., based in Fort Washington, Pa., for an undisclosed sum.

By acquiring Cohen-Seltzer, which provides risk management programs for commercial and personal lines business, Briarcliff Manor, N.Y.-based USI strengthens its position among Mid-Atlantic middle-market insurance brokerage firms, USI said in a statement.

Under terms of deal, Cohen-Seltzer's management team, including President and CEO B. Daniel Seltzer and Chairman Robert S. Seltzer, will remain in place.

Michael J. Sicard, chairman, president and CEO of USI, said Cohen-Seltzer's customer-centric culture aligns well with USI's resource-intensive, consultative business model.

"This acquisition enables us to further expand our market share in the Mid-Atlantic and plays an important role in USI's mission of becoming the national brand in the middle market and specialty market," Mr. Sicard said in a statement. "I couldn't be more pleased to have Bob, Dan and their talented team join us."

USI was ranked 10th in *Business Insurance's* 2013 ranking of largest brokers of U.S. business.

Zurich enters flood research academic cooperation pact

Zurich Insurance Group Ltd. has entered into a multiyear academic cooperation arrangement with the International Institute for Applied Systems Analysis in Laxenburg, Austria, and the Risk Management and Decision Processes Center of the Wharton School at the University of Pennsylvania in Philadelphia to support Zurich's flood resilience program.

Under the arrangement, Zurich and the institutions will work to identify and address gaps in research on flood resilience and community-based disaster risk reduction, demonstrate the benefits of pre-event risk mitigation over disaster relief after events and will work to improve public dialogue about disaster resilience.

In a statement, Zurich said floods affect more people around the world than any other type of disaster. The cooperation with Wharton and the IIASA will build on the complementary strengths of the two institutions, the insurer said, and will allow a broader scope of interdisciplinary research.

The collaboration will bring together more than 15 researchers at the IIASA and Wharton, Zurich said.

Leavitt Group purchases insurance agency United Valley

United Valley Insurance Services Inc. is set to join Leavitt Group Enterprises Inc. in a merger in which United Valley will remain a separate organization owned by Leavitt Group.

The merger is expected to close in August, and United Valley shareholders will receive cash in the merger, the companies said in a joint statement.

Terms of the deal were not disclosed. Leavitt Group Chairman and CEO Dane Leavitt said he believes the merger will strengthen both companies.

"United Valley members receive a committed, stable owner, and access to new services," Mr. Leavitt said in the statement. "The Leavitt Group achieves additional scale and a broadened set of relationships with high-quality independent insurance agencies."

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LEGAL NOTICE

IN THE MATTER OF THE LIQUIDATION OF ATLANTIC MUTUAL INSURANCE COMPANY Supreme Court County of New York, Index No.: 402424/10 NOTICE

Pursuant to an order of the Supreme Court of the State of New York, County of New York, entered on April 27, 2011 ("Liquidation Order"), the Superintendent of Insurance of the State of New York and his successors in office were appointed as liquidator ("Liquidator") of Atlantic Mutual Insurance Company ("Atlantic Mutual") and, as such, has been directed to take possession of Atlantic Mutual's property, liquidate its business and affairs, and dissolve its corporate charter pursuant to Article 74 of the New York Insurance Law ("Insurance Law"). The Superintendent of Financial Services of the State of New York has now succeeded the Superintendent of Insurance as Liquidator of Atlantic Mutual. The Liquidator has, pursuant to Insurance Law Article 74, appointed Michael J. Casey, Acting Special Deputy Superintendent ("Acting Special Deputy"), as his agent to liquidate the business of Atlantic Mutual. The Acting Special Deputy carries out his duties through the New York Liquidation Bureau, 110 William Street, New York, New York 10038.

PLEASE TAKE NOTICE that the Supreme Court of the State of New York, County of New York, has issued an order, dated July 11, 2013, establishing September 30, 2013, as the bar date for the presentment to the Liquidator of all claims against Atlantic Mutual or its insureds other than the Liquidator's claims for administrative expenses.

Requests for further information should be directed to the New York Liquidation Bureau, Creditor and Ancillary Operations Division, at (212) 341-6665. Dated: July 16, 2013. Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York as Liquidator of Atlantic Mutual Insurance Company.

LEGAL NOTICE

IN THE MATTER OF THE LIQUIDATION OF CENTENNIAL INSURANCE COMPANY Supreme Court County of New York, Index No.: 402424/10 NOTICE

Pursuant to an order of the Supreme Court of the State of New York, County of New York, entered on April 27, 2011 ("Liquidation Order"), the Superintendent of Insurance of the State of New York and his successors in office were appointed as liquidator ("Liquidator") of Centennial Insurance Company ("Centennial") and, as such, has been directed to take possession of Centennial's property, liquidate its business and affairs, and dissolve its corporate charter pursuant to Article 74 of the New York Insurance Law ("Insurance Law"). The Superintendent of Financial Services of the State of New York has now succeeded the Superintendent of Insurance as Liquidator of Centennial. The Liquidator has, pursuant to Insurance Law Article 74, appointed Michael J. Casey, Acting Special Deputy Superintendent ("Acting Special Deputy"), as his agent to liquidate the business of Centennial. The Acting Special Deputy carries out his duties through the New York Liquidation Bureau, 110 William Street, New York, New York 10038.

PLEASE TAKE NOTICE that the Supreme Court of the State of New York, County of New York, has issued an order, dated July 11, 2011, establishing September 30, 2013, as the bar date for the presentment to the Liquidator of all claims against Centennial or its insureds other than the Liquidator's claims for administrative expenses.

Requests for further information should be directed to the New York Liquidation Bureau, Creditor and Ancillary Operations Division, at (212) 341-6665. Dated: July 16, 2013. Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York as Liquidator of Centennial Insurance Company.

LEGAL NOTICE

IN THE MATTER OF THE LIQUIDATION OF FRONTIER INSURANCE COMPANY Supreme Court County of Albany, Index No.: 000097/2006 NOTICE

Pursuant to an order of the Supreme Court of the State of New York, County of Albany ("Court"), entered on November 16, 2012 ("Liquidation Order"), the Superintendent of Financial Services of the State of New York and his successors in office were appointed as liquidator ("Liquidator") of Frontier Insurance Company ("Frontier") and, as such, has been directed to take possession of Frontier's property and liquidate its business and affairs pursuant to Article 74 of the New York Insurance Law ("Insurance Law"). The Liquidator has, pursuant to Insurance Law Article 74, appointed Michael J. Casey, Acting Special Deputy Superintendent ("Acting Special Deputy"), as his agent to liquidate the business of Frontier. The Acting Special Deputy carries out his duties through the New York Liquidation Bureau, 110 William Street, New York, New York 10038. The Liquidator has submitted to the Court an affirmation ("Affirmation") seeking an order: (i) establishing December 31, 2013, as the bar date ("Bar Date") for the presentment to the Liquidator of all claims against Frontier other than the Liquidator's claims for administrative costs and expenses; and (ii) providing for such other and further relief as the Court may deem just and proper.

A hearing is scheduled on the Affirmation on the 6th day of September, 2013, at 10:30 a.m., before the Honorable Richard M. Platkin, J.S.C., Supreme Court of the State of New York at Albany County Courthouse, located at 16 Eagle Street, Albany, New York. If you wish to object to the Affirmation, you must serve a written statement setting forth your objections and all supporting documentation upon the Liquidator and Clerk of the Court, at least 14 days prior to the hearing. Service on the Liquidator shall be made by first class mail at the following address: Superintendent of Financial Services of the State of New York as Liquidator of Frontier Insurance Company, 110 William Street, New York, New York 10038, Attention: John Pearson Kelly, General Counsel.

In order to participate in the Frontier liquidation proceeding, all claims must be presented to the Liquidator on or before the Bar Date, which is the last date set by the Court to present claims in the Frontier liquidation proceeding.

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

Requests for further information should be directed to the New York Liquidation Bureau, Creditor and Ancillary Operations Division, at (212) 341-6241.

Dated: July 9, 2013. Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York as Liquidator of Frontier Insurance Company.

LEGAL NOTICE

To all persons or entities interested in the affairs of ULLICO CASUALTY COMPANY Supreme Court of the State of New York, County of New York, Index No.: 450995/13 Notice is Hereby Given:

I, Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York, has been appointed by an order ("Order"), of the Supreme Court of the State of New York, New York County ("Court"), filed July 8, 2013, as the ancillary receiver ("Ancillary Receiver") of Ullico Casualty Company ("Ullico") and with all of the rights and obligations granted to and imposed upon him pursuant to Article 74 of the New York Insurance Law ("Insurance Law"). The Ancillary Receiver has, pursuant to Insurance Law Article 74, appointed Michael J. Casey, Acting Special Deputy Superintendent ("Acting Special Deputy") as his agent to carry out his duties as Ancillary Receiver. The Acting Special Deputy carries out his duties through the New York Liquidation Bureau, 110 William Street, New York, New York 10038. II. All persons are permanently enjoined and restrained from commencing or prosecuting any actions, lawsuits or proceedings against Ullico, and all persons are permanently enjoined and restrained from commencing or prosecuting any actions, lawsuits or proceedings against the Superintendent as Ancillary Receiver or the New York Liquidation Bureau, its employees, attorneys or agents, with respect to this proceeding or in the discharge of their duties under Insurance Law Article 74; III. All persons are permanently enjoined and restrained from obtaining preferences, judgments, attachments or other liens, or making any levy against Ullico's property located in the State of New York or any part thereof; IV. All parties to actions, lawsuits and special or other proceedings within the jurisdiction of the courts of the State of New York in which Ullico, its policyholders or insureds, are obligated to defend a party or to provide a defense of any matter against an insured pursuant to an insurance policy, bond, contract or otherwise, are enjoined and restrained from proceeding with any discovery, court proceedings or other litigation tasks or procedures, including, but not limited to, conferences, trials, applications for judgment or proceedings on settlement or judgment, for a period of 180 days from the date of entry of this Order; V. All persons or entities having possession of information, such as, but without limitation, insurance policies, underwriting data, claims files (electronic or paper) and/or software programs owned by, belonging to or relating to Ullico that is necessary or desirable to permit the Ancillary Receiver to carry out his obligations, shall preserve such information, and immediately, upon the Ancillary Receiver's request and direction, provide and/or make such information available to the Ancillary Receiver; VI. The bar date of June 30, 2014 established in the domiciliary liquidation proceeding shall also be effective in this ancillary receivership proceeding; VII. Immunity is extended to the Superintendent in his capacity as Ancillary Receiver of Ullico, and his successors in office and their agents and employees, for any cause of action of any nature against them, individually or jointly, for any act or omission when acting in good faith, in accordance with the orders of this Court, or in the performance of their duties pursuant to Insurance Law Article 74; VIII. Ullico's license to do business in the State of New York is hereby revoked; IX. The Ancillary Receiver may at any time make further application to the Court for such further and different relief as he sees fit. X. All communications relating to ULLICO and to the Ancillary Receivership Proceeding thereof should be addressed to: **New York Liquidation Bureau, 110 William Street, New York, New York 10038, Attention: Jeanne Pannullo-Anderson, JPannullo@nylb.org.**

MICHAEL J. CASEY
Acting Special Deputy Superintendent and Agent for
the Superintendent as Ancillary Receiver
of Ullico Casualty Company

BENJAMIN M. LAWSKY
Superintendent of Financial Services of
the State of New York as Ancillary Receiver
of Ullico Casualty Company

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TRANSACTIONAL RISK COVER CAN HELP BUYERS, SELLERS

Introduced in the late 1990s, transactional risk insurance products have increased in popularity in recent years, especially among middle-market companies averse to assuming unfunded liabilities as part of a merger or acquisition, industry experts say.

Today's transactional risk products provide broader coverage and more favorable terms, competitive pricing and a streamlined underwriting process, these experts say. Premiums range from 2% to 4% of limits, with deductibles set at 1% to 3% of transaction value, depending on the severity of the exposures contemplated. The insurance market currently can provide aggregate limits of up to \$200 million per transaction.

Although transactional risk insurance policies are issued at the closing of a deal, the underwriting process usually begins several weeks before. They are manuscript policies that can be structured from either a buyer's or seller's perspective. Underwriters, often with legal backgrounds, get copies of all documents related to the transaction and conduct conference calls addressing all of the potential exposures identified. Diligence fees ranging from \$15,000 to \$25,000 are charged as part of the underwriting process.

The most common types of transactional risk insurance products are:

- Representations and warranties insurance, which provides coverage for financial loss associated with an unintentional breach in a representation or warranty within the executed purchase agreement.
- Tax liability insurance, which provides coverage for unpaid taxes, interest and penalties incurred by a taxing authority.
- Legal contingency insurance, which covers successor liability exposures and contract issues.
- Environmental liability insurance, which provides both first-party remediation and cost cap coverage for pre-existing, known conditions and pre-existing unknown conditions, as well as third-party liability coverage.

By Joanne Wojcik

MERGERS: Firms hedge risks of M&As

Continued from page 4

indemnify the buyer for any liabilities that arise after the transaction, or through the purchase of transactional risk insurance, he said.

He described one scenario in which an unidentified private equity buyer's environmental diligence revealed that a site adjacent to the seller's main metal stamping facility had been ordered by a state agency to remediate its site due to releases of various hazardous chemicals. As a result, the business declared bankruptcy, but the buyer was concerned that if the pollution migrated off-site, either the state or third parties would make a claim against the business.

Because the seller was not willing to provide escrow for the issue, Crystal & Co. arranged an environmental insurance policy for a one-time premium of \$105,000 that provided 10 years of pre-existing coverage for the site, including defense cost coverage for claims arising from third parties, including local, state or federal government agencies. By providing the \$10 million of coverage, the deal closed because the buyer was confident there was an A-rated asset in place to deal with potential liabilities and the sell-

er was not burdened by a long-term indemnification obligation.

Interest on the rise

Peter Rosen, a partner who heads the insurance coverage practice group at Latham & Watkins L.L.P. in Los Angeles, said he is seeing an increased interest among both buyers and sellers in transactional risk insurance to mitigate any downside risks stemming from deal activity.

"We have done a fair amount of placement transactions on behalf of our various corporate and finance clients on both the buy and sell side," he said. "Let's say you're a private equity firm, and you made some representations and warranties and want to backstop with a policy so that if there is a claim, you don't have to deal with it any more from a financial standpoint. You've now passed the downside risk onto the carrier, and you can essentially close your books on the transaction."

Jay Rittberg, vice president for mergers and acquisitions insurance at American International Group Inc. in New York, said the coverage also covers losses or liabilities stemming from criminal or fraudulent activity discovered after a deal

closes.

"The seller is making representations that their company is complying with the laws, but there is someone in the business who has committed a crime or acted fraudulently," Mr. Rittberg said. "That can lead to losses for the buyer after the deal closes. There could be liabilities related to the actions of the bad actor. The (representations and) warranty policy would respond."

Henry Jennings, senior vice president at Lockton Cos. L.L.C. in New York, said he recently used a transactional risk insurance product to protect the interests of a bank that financed a sale of a property where an underground storage tank had once been buried.

"The bank that financed the deal wanted an environmental liability policy. The underground storage tank was taken out, but it was unclear whether it was done clean," Mr. Jennings said.

Likewise, Mr. Jennings said he placed legal contingency insurance to contain potential liability costs associated with open litigation.

"The selling company may have insurance, but the limits may not be sufficient for the buyer to feel comfortable if there is an adverse outcome," he said.

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BUSINESS INSURANCE

PBGC: Administrative simplification

Continued from page 4

underestimated enrollment in their Feb. 28 filing would be eliminated.

“If we can’t cut the premiums, we can at least cut the hassle,” PBGC Director Josh Gotbaum said in a statement.

Benefits experts say the proposal would cut administrative expenses for employers and the PBGC.

“This is very good news and welcome simplification,” said Heidi Rackley, a partner with Mercer L.L.C. in Seattle.

“This will simplify plan administration without increasing risk to the PBGC,” said Sandy Wheeler, a director with PricewaterhouseCoopers L.L.P. in Washington.

“It is a proverbial win-win situation,” said Alan Glickstein, a senior consultant with Towers Watson & Co. in Dallas.

For employers with 100 to 499 participants, there would be no change under the proposal. Those plan sponsors already have until 9½ months after the start of a plan year to pay the PBGC premiums.

However, for small pension plan sponsors — those with less than 100 participants — the proposal would accelerate when they would pay premiums.

Currently, such sponsors have 16 months from the start of a plan year to pay the premiums. Under the PBGC proposal, however,



small pension plan sponsors also would have to pay the premiums within 9½ months after the start of a plan year.

For small plans that owe a variable-rate premium, though, the amount would be based on their funded status during the prior year.

That special treatment for small plans is because some value benefits at the end of a plan year and, as a result, they cannot calculate variable-rate premiums during the current year, the PBGC said.

“PBGC’s proposed solution to this timing problem is for small plans to determine the variable-rate premium using data from the year before the premium payment year,” the PBGC said.

The proposal comes at a time when the financial health of pension plans has been improving due to rising interest rates, which reduce the value of plan liabilities, and solid investments results in the equities market.

As of June 30, pension plans sponsored by companies in the S&P 1500 were 88% funded, up from 86% at the end of May and 74% at the end of 2012, according to a Mercer analysis. Pension funding levels haven’t been that high since October 2008, when plans were 89% funded on average.

Rising interest rates and a stronger equities market also could lead to a big improvement in the PBGC’s financial condition, experts say.

In fiscal 2012, the PBGC reported a \$29.1 billion deficit in its single-employer insurance program, up from \$23.3 billion the prior year.

The deficit should show a decline this year as interest rates rise, Ms. Forbes said.

EAP: Minimal essential cover option?

Continued from page 3

“Employers want everyone covered in these plans,” said Gretchen Young, senior vice president for health policy at the ERISA Industry Committee in Washington.

Benefits experts say that EAPs, especially if they offer coverage for counseling sessions, are health care plans.

But federal regulators have yet to rule if EAPs would qualify as minimum essential coverage.

It is “an open question as to whether an EAP is MEC. But we have nothing yet saying it is not MEC,” said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

Others, though, are skeptical.

“While I applaud the ingenuity of the approach, there is not a lot of room to argue that this is what Congress intended as minimum essential coverage,” said Ed Fensholt, senior vice president and director of compliance services at Lockton Benefit Group in Kansas City, Mo.

“The plans do not provide significant benefits in the nature of health care. I can’t imagine this is what Congress intended in specifying that plans have to offer minimum essential coverage,”

Andy Anderson, Morgan, Lewis & Bockius L.L.P.

with Morgan, Lewis & Bockius L.L.P. in Chicago.

And there are other ramifications of employers using their EAPs as a way of showing they offer minimum essential coverage.

Even if EAPs were seen as offering minimum essential coverage, they would surely fail another health care reform law minimum value test, which requires plans to cover at least 60% of the cost of a wide range of services.

If a plan fails the minimum value test, the employer is liable for a \$3,000 penalty for every employee eligible for a federal premium subsidy and uses that subsidy to buy coverage in a public insurance exchange rather than opting for coverage in the employer plan.

Under the health care reform law, in situations when employers only offer coverage for plans that do not offer minimum value, employees must be given the

option to reject the coverage, giving them the right to obtain government-subsidized coverage offered through exchanges.

As a result, employers may have to redesign their EAPs in situations when the EAP was the only health plan offered to employees, with employees automatically enrolled.

While only offering EAPs as a way of providing minimum essential coverage is being discussed, no employers are believed to have signed on to such an approach.

“I have not heard of any employers seriously looking at this for 2014,” said Amy Bergner, a managing director with PricewaterhouseCoopers L.L.P. in Washington.

“I believe this is an approach that few, if any, of our members would consider,” said Steve Wojcik, vice president of public policy with the National Business Group on Health in Washington.

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OHIO: Employers, labor battle court-set workers comp rates

Continued from page 3

Pool rating is prevalent across the United States, although typically it is limited to programs sponsored by associations of homogenous employers, sources said. But the preparers of a 2009 study by Deloitte L.L.P. wrote that they were unaware of any other state operating a group rating structure similar to Ohio's.

In the lawsuit with the bureau's group rating structure at its core, the Ohio trial court judge superseded the bureau's rate-making authority by devising a formula to determine the amount of money to be refunded to policyholders, said Roger Geiger, Ohio executive director of the National Federation of Independent Business.

"We just think it is very, very dangerous to ask the court to set rates," Mr. Geiger said. "They have now created a formula, which is basically setting rates to calculate rebates, and that puts the court in the position of determin-

ing this formula that they just don't have the expertise to do."

The court substituted its judgment for the bureau's by essentially ruling on the appropriateness of the bureau's rate-setting authority, agreed Andrew Doehrel, president and CEO of the Ohio Chamber of Commerce in Columbus, Ohio.

The chamber provides its members with a group rating plan insured by the bureau, and joined the NFIB and the Ohio AFL-CIO in filing the amicus brief.

"Amici's point is simple and direct: The courts are ill-equipped to deal with the complexities of premium-setting decisions for each of 260,000 employers, each having different loss experience, different projected cost of claims and different safety records, let alone factoring in projections as to the state of Ohio's economy, projected investment returns on loss reserves, the adequacy of State Fund reserves and literally dozens of other factors," the brief states.

OHIO'S COMP SYSTEM

- The Ohio Bureau of Workers' Compensation, which says it is the largest state-fund insurer in the nation, operates one of the country's four monopoly state workers comp systems.
- The bureau insures 254,000 Ohio employers and manages about 1 million open claims funded by \$28 billion in assets, according to its 2012 annual report. Medical and indemnity payments to injured workers totaled nearly \$2 billion in 2012, when it received 112,613 new claims.
- The three other state monopoly systems are North Dakota's Workforce Safety & Insurance, Washington's Department of Labor and Industries and Wyoming's Workers' Safety and Compensation Division.

Mr. Doehrel also argues that although the bureau's surplus is currently solid, taking \$859 million from the fund could force the insurer to raise its prices should its reserves diminish in the future.

"\$859 million is nothing to sneeze about," Mr. Doehrel said.

The defendant's supporters also argue that group-rated employers received reduced insurance pricing because they implemented solid safety programs that lowered their expenses.

They also argue that should the trial court's ruling stand, then every party that ever disputes the price they are charged for workers comp insurance in Ohio can take their grievance to court for relief.

But James A. DeRoche, a Cleveland attorney at Seaman Garson L.L.C. who is representing the plaintiffs, called the argument that the court has taken over rate-setting responsibilities from the bureau "complete and utter nonsense."

The court merely determined the proper amount of restitution owed the plaintiffs, Mr. DeRoche said.

Meanwhile, bureau officials have been traveling to Ohio businesses to publicize the rebate checks. In May, the bureau announced that

"larger-than-expected fund balances," generated by its "strong investment management," allowed the \$1 billion in rebates to be distributed among 210,000 employers.

But some businesses threw away the checks, thinking they were not legitimate.

In addition to the \$1 billion in rebates, the bureau also announced in May that it would "modernize" its premium collection system.

The Deloitte study found the bureau's group rate-setting structure to be unusual for several reasons, including failure to fairly align premiums with employer costs.

But Ohio's system is unique in many ways, Mr. Geiger said. For instance, Ohio employers historically have paid their premiums six months after their policy's inception. The bureau, however, said it is moving to a more common prospective premium collection system.

FIREARMS: No coverage for schools allowing armed workers

Continued from page 1

In a service bulletin sent to insurance agents in May, Bernie Zalaznik, resident vice president in EMC's Wichita office, said the decision was based on increased liability risk the insurer saw being created if school employees carrying firearms.

The bulletin said the insurer "cares deeply" about the safety of schoolchildren and respects school districts' choice about how to protect them, but said "EMC has concluded that concealed handguns on school premises pose a heightened liability risk. Because of this increased risk, we have chosen not to insure schools that allow employees to carry concealed handguns."

David Shriver, assistant executive director for insurance services and attorney for the Kansas Association of School Boards, said at least two other insurers have taken similar steps.

Continental Western Group, an Urbandale, Iowa, insurer owned by W.R. Berkley Corp., also won't write coverage for districts that allow employees to carry concealed weapons, he said, while Uniondale, N.Y.-based Wright Specialty Insurance secured approval from the Kansas Insurance Department for a policy exclusion for injuries or liabilities emerging from school employees' use of weapons. The insurers did not respond to requests for comment.

Michael McHugh, area senior executive vice president at Arthur J. Gallagher & Co. in Itasca, Ill., said after learning of insurers' reaction to the Kansas law, he approached insurers that cover the broker's public school clients about the issue.



GINA JACOBS / SHUTTERSTOCK.COM

Sparked by December's mass shootings at Sandy Hook Elementary School in Newtown, Conn., and the National Rifle Association's subsequent call to arm teachers and other school employees, Kansas recently passed a state law that permits school districts to decide whether to allow employees with concealed-carry permits to bring firearms on campus.

"Everybody is doing their due diligence and studying it and determining how it's going to affect them in particular states," Mr. McHugh said. "They're not going to make a rash decision. It's a delicate situation."

The National Conference of State Legislatures said before this year's legislative session it knew of no states that specifically authorized teachers and faculty to carry weapons in elementary and secondary schools, though some states do allow specific exemptions to school zone weapon bans, which could allow teachers or faculty to carry firearms. States that allowed exemptions include Alabama; Alaska, Arizona; California, Colorado, Connecticut, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington,

West Virginia and Wisconsin.

During this year's legislative sessions, the state legislatures national conference said more than 80 bills were introduced in at least 34 states specifically addressing arming teachers and/or administrators in schools with kindergarten through 12th grade.

These bills ranged from allowing school districts to set policies on employees carrying weapons to establishing "school sentinel" programs, to allowing teachers with concealed-carry permits to carry weapons on private school grounds. Of those, seven bills — including the one in Kansas — passed.

An Arkansas measure allowing churches operating private kindergarten through grade 12 schools to allow a person with a concealed handgun license to carry a firearm on school property became law without the governor's signature. Oklahoma enacted a law permitting licensed individuals to carry a weapon on private school property or on a school bus or vehicle used by a private school.

South Dakota authorized school boards to create school sentinel programs. Tennessee enacted a law allowing specified people under certain conditions to carry firearms on school grounds. Texas enacted a law that deals with the creation of school marshals. Virginia enacted a law which permits state-licensed security officers to carry firearms onto private or religious school property if they're hired by the school.

The tiny Harrold Independent School District in Harrold, Texas, is widely cited in news reports as an example of a school district that does have armed teachers, and it's reported that other unidentified school districts in Texas do, too.

Despite the new Kansas law, the issue of school employees carrying weapons in Kansas schools is not a pressing one at the moment in the state, Mr. Shriver said.

"From information we have, no Kansas school district has adopted policy language that allows staff to carry weapons," he said.

Following the Sandy Hook shootings, several Kansas school districts asked the Kansas school boards association to help craft language authorizing school administrators to carry weapons, he said, but the association's legal staff recommended that those districts not adopt such policies.

"The potential liability issues are too serious," Mr. Shriver said.

The association recommends to districts that want an armed individual on premises hire a school resource officer or retired police officer with more extensive training than the eight hours required for a Kansas concealed carry permit.

Daniel Howell, managing director of the public entity practice at

Alliant Insurance Services Inc. in San Francisco, said faculty and staff carrying handguns wasn't an issue during July 1 insurance policy renewals for elementary and secondary school district clients.

"On our K-12 renewals this year, I'm not aware of anywhere the issue was brought up as a contingency of their renewal," Mr. Howell said. However, an underwriter did ask whether excluding claims for losses emerging from an employee having a gun on campus would be a problem for the insured in the future, he said.

Jenny Emery, executive director of the Association of Governmental Risk Pools in Latham, N.Y., said the issue is being discussed by AGRiP members that cover public school risks, but the focus is more on risk management.

"They are in the process of what I would call evidence-based assessment of what's the best way to reduce risk," she said.

Kenneth Trump, president of National School Safety and Security Services in Cleveland, said he can understand insurers' concerns about risks involving armed teachers.

"It's a high-risk, high-liability proposition," Mr. Trump said. That's also why he recommends against it. "I fully support having trained, certified, fully commissioned police officers in our schools."

Police officers are trained to use firearms and also on other aspects of dealing with violent offenders and their own personal safety, Mr. Trump said.

"Schools are not law-enforcement agencies and school administrations don't have the skill set to run a quasi law enforcement agency," Mr. Trump said.

TEMPORARY: Worker deaths raise concerns over safety efforts

Continued from page 3

companies are required to provide general safety training to temporary workers, the employers who hire them are responsible for providing training that is tailored to the temp worker's specific responsibilities at the job site.

Many times, such safety failures are a matter of oversight, Mr. Pachón said. However, he said some injuries occur because of employer negligence.

For instance, employers sometimes hire and train temporary workers to do one job, then later assign them to perform different tasks they were not trained to perform, Mr. Pachón said.

The worst offenders, he said, hire temporary employees to perform dangerous work because their injuries will increase the staffing company's experience modification factor without affecting the employer's workers compensation costs. This factor is a component of the formula used to adjust a workers comp premium for the difference between a particular company's inherent risk and the average risk for all companies within the same line of work.

"A lot of them wash their hands of it," Mr. Pachón said of employers with unsafe practices. "They don't take ownership."

Duane R. Grange, Springfield, Ore.-based safety and human resources director for Selectemp Employment Services., said the company provides general safety training and works to carefully screen clients to keep workers safe.

That screening process includes a walk-through of the client's facilities and a review of the company's safety procedures. Selectemp also has written safety protocols clients can use to train Selectemp staffers before bringing them onto a job site.

Though the process typically weeds out unsafe employers, Mr. Grange said Selectemp has taken its temporary workers off of a job site when its employees were found to be doing work for which they weren't trained. That included one site where an employee was hurt while performing unapproved work.

"Three days later, we had another

employee in another area that wasn't authorized, so we pulled 35 people off the job," said Mr. Grange, whose firm processed 4,000 hiring placements last year. "And that's expensive, but we got our point across."

Comprehensive training

Huntington Ingalls Industries Inc., a Newport News, Va.-based shipbuilding contractor, has tried to keep its temporary employees safe by requiring comprehensive safety training for anyone who enters the company's premises,

said James R. Thornton, director of environmental health and safety. The company's sites include about 39,000 employees in Virginia, Mississippi, Louisiana and California. Less than 5% of these workers are temporary staffers.

"One of the things we can't afford is to bring in temporary workers who are not familiar with our processes, haven't been trained and put themselves and our workers at risk," Mr. Thornton said.

Huntington Ingalls has participated in OSHA's Voluntary Protection Program since 1995, and its injury rates have fallen 300% since

then, Mr. Thornton said. Much of that is because, under the program, the company has developed safety training and protocols that it follows strictly for all workers and visitors who come to a Huntington Ingalls site.

"You have a duty, a responsibility to make sure that they're afforded a safe and healthful visit or work tenure," Mr. Thornton said.

OSHA inspectors have begun asking temporary workers whether they have been properly informed about safety protocols, such as lockout-tagout procedures that shut down machines and pre-

vent them from accidentally turning on during maintenance, Mr. Michaels said in June. The agency also is working with the American Staffing Association and employers that use temporary staffing agencies on an initiative to protect contract workers.

While experts on both sides of the temporary staffing industry agree with OSHA's efforts, they say employers can best keep workers safe by following the "golden rule" with temporary hires.

"Treat them as you would your own employees," Selectemp's Mr. Grange said.

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G-20: Designated insurers will see higher capital requirements

Continued from page 1

AIG said it “welcomed” the move. But Prudential Financial has indicated that it will contest the designation, and MetLife has publicly pushed back on the notion that it presents systemic risk to the financial system.

Stuart Shipperlee, a partner at Litmus Analysis, an insurance analysis firm in London, said that the designation process had ignored some fundamental realities of how property/casualty and life insurers conduct business.

“Obviously there is no routine concept of a ‘run’ on an insurer as there is for a bank,” he said. “Some life insurance products can contain options for policyholders to demand an immediate payout, but that risk would be specific to the insurer, not really systemic.”

Rodney Clark, managing director at New York-based ratings firm Standards & Poor’s Corp., said that while the final rules under which the systemically important insurers will have to operate are still being formulated, regulators will almost certainly mandate that insurers hold more capital.

“We are expecting higher capital requirements,” he said. “If you

G-SIIs vs. SIFIs

■ G-SIIs are globally systemically important insurers, as designated by the Financial Stability Board of the Group of 20 nations. The FSB relies on a methodology created by the International Association of Insurance Supervisors to determine which insurers present a systemic risk and issues recommendations to the prudential regulators in the country where the insurer operates. Some insurers have complained the criteria and measurements the IAIS uses to designate a G-SII are not an objective gauge of systemic risk.

■ SIFIs are systemically important financial institutions, a designation made by the

Financial Stability Oversight Council of the U.S. Treasury Department under the auspices of the Dodd-Frank Wall Street Reform and Consumer Protection Act. SIFI designation is a three-step process in which insurers and other nonbank financial institutions submit increasing amounts of data to the FSOC, which then votes on whether or not to declare a company systemically significant. Designees are allowed to appeal. While the exact capital and regulatory requirements expected of SIFIs have yet to be released, observers expect the requirements to be more stringent than the G-20 recommendations.

have seen what has gone on with the banks, it’s a logical expectation.”

In addition to the capital requirements and oversight from the Federal Reserve and international regulators, insurers deemed to big

to fail will likely have to abide by rules governing what types of businesses they can conduct, Mr. Clark said.

“It may be uneconomic for insurers to hold that amount of capital,” he said. “It might cause them to

consider divestitures or strategies to decrease their size to get out from under those requirements.”

In January, MetLife announced that it has completed the sale of its banking arm, MetLife Bank, to GE Capital Retail Bank, a subsidiary of GE Capital.

Howard Mills, New York-based director and chief adviser of the insurance industry group at Deloitte L.L.P. and former superintendent of the New York State Insurance Department, said the reactions of the designated insurers would vary according to particularities of their business, but all should prepare to hold more capital.

“I would have to assume that the companies that have received this designation have been preparing for it for a long time,” he said. “They no doubt understand that going forward they will be subject

to dual regulation.”

An executive at one of the insurers designated systemically risky,

speaking on the condition of anonymity, said his company was well-prepared for the designation in the short term, but he expressed concern that if the forthcoming capital requirements are too stringent, the company would ultimately be forced to raise prices.

Mr. Clark of S&P agreed that overly onerous capital requirements have the potential to put the designated insurers at a competitive disadvantage.

“There’s a real balance that regulators

need to strike between being appropriately prudent versus going to too far and causing problems for the designated companies,” he said.

Sarah Veysey in London contributed to this report.



HEAR INTERVIEW

Access the *Business Insurance* interactive digital edition to hear Rodney Clark, managing director of Standard & Poor’s Corp., talk about the implications of the G20 nations’ list of globally risky insurance companies.

OBESITY: AMA position likely to increase burden on employers

Continued from page 1

Dr. Patrice Harris, a member of the AMA board, said in a statement. “The AMA is committed to improving health outcomes and is working to reduce the incidence of cardiovascular disease and Type 2 diabetes, which are often linked to obesity.”

Particularly when viewed in conjunction with the Americans with Disabilities Amendments Act of 2008, which significantly broadened the number of people it protects, the AMA’s position is likely to create increased demands on employers as well as litigation.

“It’s going to be very difficult for employers to prove that a recognized and diagnosed medical condition isn’t a protected disability,” said Jonathan T. Hyman, a partner with Kohrman Jackson & Krantz P.L.L. in Cleveland.

Historically, “courts have protected obesity under the ADA,” but only if the worker is morbidly obese. Now, by combining the expanded definitions of disability under the ADA and the AMA’s policy, “it’s going to be much easier for those who are classified with this new disease of obesity to argue they have a disability protected by the ADA,” Mr. Hyman said.

While the ADA already covered morbid obesity, “there’s always been a question” as to the level at which it becomes a covered disability, said Mark A. Shank, a partner with Gruber Hurst Johansen Hail Shank L.L.P. in Dallas. As a result

of the AMA’s action, the ADA and the Family and Medical Leave Act are “more likely to cover someone who’s obese,” he said.

More than one-third of U.S. adults are obese (see box, page 1).

As obesity remains a concern, “the issues of potential reasonable accommodations as to obese applicants and employees will become much more prevalent,” said Frank C. Morris Jr., a member of Epstein Becker & Green P.C. in Washington.

Eric B. Meyer, a partner with Dilworth Paxson L.L.P. in Philadelphia, said, however, “The issue will come down to a case-by-case analysis” of whether a worker has a disability. “Just because an employee comes to a manager or (human resources) and says, ‘I am obese, I have a disability,’ does not make it such,” he said.

However, Martha J. Zackin, of counsel at Mintz Levin Cohn Ferris Glovsky & Popeo P.C. in Boston, said the AMA defining obesity as a disease “becomes a powerful arrow in the plaintiff attorney’s quiver, so to speak, a powerful plus on the side of it being actually a disability under the ADA. I think it’s going to lead to litigation.”

Observers say employers should be sure to engage in the interactive process required by the ADA to accommodate employees who claim they are disabled because of obesity. Employers who ignore the issue “really run the risk of a potential ADA claim,” said Mr. Hyman.

APA expands list of mental disorders

Employers are expected to face increased accommodation requests and litigation due to changes in the American Psychiatric Association’s diagnostic manual.

The fifth edition of the Arlington, Va.-based association’s Diagnostic and Statistical Manual of Mental Disorders, known as DSM-5, was published in May.

The manual established new categories of disorders, lowered the diagnostic criteria for previously recognized disorders and removed certain exclusions from already recognized disorders, noted Darren Creasy, an associate with law firm Post & Schell P.C. in Philadelphia.

Douglas A. Hass, an associate with Franczek Radelet P.C. in Chicago, said the combination of DSM-5 and the Americans with Disabilities Amendments Act of 2008, which expanded definitions of disability, “means employers would be prudent to assume everything but the most transitory and minor impairments are going to be” considered a disability.

Two of the changes in DSM-5 most frequently cited by legal experts are the addition of

“mild neurocognitive disorder” and “social (pragmatic) communication disorder”

Social (pragmatic) communication disorder is defined as a “persistent difficulty with verbal and nonverbal communication that cannot be explained by low cognitive ability,” according to the manual.

A mild neurocognitive disorder “goes beyond normal issues of aging” and “describes a level of cognitive decline that requires compensatory strategies and accommodations to help maintain independence of and perform activities of daily living,” the manual states.

“You can easily come up with a situation” where an employer has performance issues with a worker who then claims he has a mild neurocognitive disorder, said Ryan A. Sobel, a senior associate with Squire Sanders (U.S.) L.L.P. in Cleveland. “So all of a sudden you have an ADA issue,” and potentially an age discrimination issue, which means employers “could potentially be walking into two claims.”

With respect to the communications disorder, said Mr. Sobel, there now is a disorder that explains why an employee does

not communicate well, which “injects more uncertainty and, with that uncertainty, more risk” into everyday employment decisions.

Both diagnoses have the potential to lead to more lawsuits, said James J. McDonald Jr., regional managing partner with Fisher & Phillips L.L.P. in Irvine, Calif.

However, he said while employers will have to deal with these issues through reasonable accommodations, “an employer does not have to accommodate an employee by eliminating an essential function of the job.”

For instance, an employee diagnosed with the social communication disorder who is required to communicate with customers as part of his job would not be entitled to an accommodation, Mr. McDonald said.

Nevertheless, engaging in the interactive process under the ADA “can take a significant amount of time,” and increasing the number of employees affected increases the burden on employers, said Joel S. Baras, counsel at Reed Smith L.L.P. in Philadelphia.

By Judy Greenwald

Commercial P/C insurance rates on the upswing in 2013

■ The Council of Insurance Agents & Brokers said commercial property/casualty pricing ticked upward in the second quarter of 2013, but at a slower rate than the beginning of the year. Property/casualty pricing for U.S.-based accounts rose at an average rate of 4.3% from April 1 to June 30, down from the 5.2% growth rate in the first three months of 2013, the council said. Meanwhile, commercial property/casualty insurers posted solid financial results for the first quarter of 2013, with net written premiums rising 1.2% from the first quarter of 2012 to \$47.2 billion, ratings firm A.M. Best Co. Inc. said in a report. The commercial lines segment also saw improved underwriting results as its combined ratio improved to 94.3% for this year's first quarter, compared with 95.3% in the year-ago period, the report noted.

Former AIG leader Greenberg alleges defamation by Spitzer

■ Former American International Group Inc. Chairman and CEO Maurice R. Greenberg has sued former New York Gov. Eliot L. Spitzer, alleging Mr. Spitzer made false and defamatory statements against Mr. Greenberg. According to *Maurice R. Greenberg v. Eliot L. Spitzer*, filed in New York State Supreme Court in Brewster, N.Y., Mr. Spitzer made the defamatory statements in media interviews in May and July 2012. In a CNBC interview with host Maria Bartiromo, for instance, Mr. Spitzer said AIG "was a black box run with an iron fist by a CEO who did not tell the public the truth." Mr. Spitzer also said, "AIG was being led by a CEO whose accounting was fraudulent. That's why the board removed him. He paid a fine of \$1.6 billion," according to the suit.

Second-quarter cat bond deals total \$2.2B, 2013 could hit \$7B

■ Nonlife catastrophe bonds issued during the second quarter totaled \$2.2 billion, up slightly from \$2.1 billion in the same period last year, according to a report by Willis Capital Markets & Advisory, a unit of brokerage Willis Group Holdings P.L.C. There were 10 nonlife cat bond deals made up of 14 tranches during the second quarter of this year, compared with seven deals made up of 12 tranches during the comparable period of 2012, Willis said. For the year to date, total nonlife capacity issued now stands at \$3.8 billion and could reach \$6 billion to \$7 billion by the end of the year, according to the report.

Benefits brokers uneasy about role as health care changes looms

■ U.S. insurance brokers and employers have divided opinions on the value of group health benefit placement and consulting services in view of the impending changes to the nation's health care system, a survey by Aflac Inc. has revealed. Nearly half of the more than 300 insurance brokers polled in supplemental insurer Aflac's 2013 Workforces Survey for Brokers said they are considering leaving the marketplace. But the vast majority of them — 85% — also say their clients are not ready for the impending changes under the Patient Protection and Affordable Care Act. Meanwhile, 55% percent of 1,884 employers said they've done nothing to prepare for the health care reform

law's impacts. The study further revealed that 75% of employees surveyed say they are relying on their employer to educate them on changes to their health benefit plans stemming from the reform law.

Comments sought on availability, affordability of terrorism insurance

■ The President's Working Group on Financial Markets wants comments on the long-term availability and affordability of terrorism insurance. The federal government has provided a backstop to the terrorism insurance market since enactment of the Terrorism Risk Insurance Act of 2002. The backstop is slated to expire at the end of next year. The working group is required by law to perform an ongoing analysis of the state of the terrorism insurance market and issue reports to Congress. Comments must be made in writing and received by Sept. 16.

New York's transit authority launches \$125M catastrophe bond

■ New York's Metropolitan Transportation Authority, the biggest transportation network in North America, is selling a \$125 million catastrophe bond designed to cover the costs of damage from a future storm or hurricane, investors said. The MTA, which suffered a \$5 billion hit from Superstorm Sandy in October 2012, will be able to offload the risk of incurring similar storm-related losses to investors, who will receive a yield in return for agreeing to pick up future repair bills.

Reuters

Penn State authorizes \$60M to settle abuse claims: Report

■ The trustees of Pennsylvania State University have authorized paying approximately \$60 million to settle with about 25 of 30 individuals who alleged they were sexually abused by former assistant football coach Jerry Sandusky, The Wall Street Journal reported. The university's board approved a resolution authorizing the university to make settlement offers to individuals who have made claims against Penn State in connection with Mr. Sandusky's actions. In a statement, the university said the authorization is limited to offers recommended by the board's legal subcommittee "within a range of dollar values described to the board in a confidential, attorney-client privileged session." Penn State officials "hope to conclude the process with the majority of the claimants within the next several weeks," according to the statement.

Humana sues Farmers Insurance over secondary payer practices

■ Humana Inc. has filed four federal lawsuits against Farmers Insurance Group of Cos. and related entities, arguing that the Medicare Secondary Payer Act entitles it to reimbursement from Farmers for benefits that Humana paid for Medicare Advantage and Medicare Part D plans. The cases could significantly affect "workers compensation and general liability claims involving Medicare beneficiaries reaching settlement, judgment or award," according to a memo issued by Medicare compliance firm Franco Signor L.L.C. The lawsuits were filed in U.S. District Courts in Kansas, Missouri, Tennessee and Texas within the past two weeks,

court records show. Each of the complaints filed by Humana argues that Farmers entities used "deceptive practices" to "shift their financial obligations under the Medicare Secondary Payer law to Medicare Advantage organizations and ultimately to the Medicare Trust Funds and to elderly and disabled Medicare Advantage enrollees."

U.S. sees lower-than-expected costs from health reform

■ Hoping to gain the high ground in an escalating war of words over the Patient Protection and Affordable Care Act, the U.S. administration forecast sharply lower-than-expected insurance costs for consumers and small businesses in new online state health care exchanges. A report by the U.S. Department of Health and Human Services said data from 10 states and the District of Columbia shows preliminary 2014 premiums on the lowest-cost midrange "silver" plans in those marketplaces to be 18% lower on average than earlier administration and congressional estimates.

Reuters

WTC developer can't recover damages from airlines

■ Developer Larry Silverstein cannot recover billions of dollars from airlines over the Sept. 11, 2001, destruction of the World Trade Center in New York because insurers have already compensated his company, a federal judge has ruled. U.S. District Judge Alvin Hellerstein said Mr. Silverstein's company has recovered more than \$4 billion from its insurers. Mr. Silverstein had sought to pursue damages at a trial from United Airlines and American Airlines, whose planes crashed into the World Trade Center.

Reuters

Cargo theft loss values up on fewer thefts in 2nd quarter

■ The average loss value of U.S. cargo thefts increased during the second quarter of 2013 compared with both this year's first quarter and the comparable quarter a year ago, but the volume of thefts declined, according to Freight-Watch International (USA) Inc. The cargo logistics firm said in a report that there were 194 thefts in the United States during this year's second quarter, including 45 in April, 66 in May and 83 in June. The average loss value per incident during the quarter was \$164,594. This is a 4% increase in value and a 15% decrease in volume compared with the first quarter of 2013, and a 27% increase in value and 12% decrease in volume compared with last year's second quarter.

Noted

■ The Missouri Department of Insurance has named Maria Sheffield captive program manager. Ms. Sheffield, who took the position July 8, succeeds John Rehagen, who was named deputy director of the insurance department's division of company regulation this year. ... **New Jersey Gov. Chris Christie** has vetoed legislation that would have guaranteed workers compensation benefits for public safety workers by presuming that several illnesses were linked to their jobs. Under S.B. 1778, it would have been presumed that public safety worker injuries, disabilities or deaths that "may be caused" by exposure to carcinogens or radioactive substances resulted from their work.

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Leg insurance a lengthy process

George Clooney may have lost interest in actress, model and former professional wrestler Stacy Keibler, but her 41½-inch legs draw enough attention from others that she's had them insured.

According to reports, Ms. Keibler recently confirmed that she has insured her legs, though she did not reveal details of the coverage.

Acknowledging that she joined the ranks of celebrities who've insured body parts some time ago, Ms. Keibler also commented on the complexity of the process.

In an interview with HuffPost Live, Ms. Keibler said to obtain the coverage, she had to have physicals and complete "lots of paperwork."

Covering her legs, she said, was "as hard as buying a house."

Fraud uncovered by sexual prowess

ANew York ophthalmologist was caught red-handed in a mail fraud case after his mistress testified that his bedroom technique showed he faked an injury to collect insurance proceeds.

Dr. Joseph Mermelstein earlier this month pleaded guilty to mail fraud, according to court filings in the U.S. District Court in New York.

He was accused of defrauding United Service Automobile Association Property & Casualty Insurance Co. and Guardian Life Insurance Co. of millions of dollars, claiming that an October 2003 traffic accident left him unable to use his left hand to perform eye surgery.

He also claimed that the crash left him sexually impotent.

However, Dr. Mermelstein's office manager and lover told prosecutors that the doctor was fully capable of performing sex acts during their trysts following the crash, according to court records.

Dr. Mermelstein previously pleaded guilty to Medicare fraud in a 2005 case, court records show.

RIHANNA TEED OFF OVER USE OF IMAGE ON TANK TOP



S_BUKLEY/SHUTTERSTOCK.COM

Rihanna is suing a retailer for unauthorized use of her image on a shirt.

While paparazzi-plagued celebrities have come to accept that their likenesses will be displayed without their permission in the tabloids, they get a little teed-off when they see their images staring back at them from someone's chest. Pop star Rihanna is suing Topshop, a fashion chain owned by British retailer Arcadia Group Brands Ltd., for using a photograph on a tank top that had been taken of her during the 2011 filming of a music video in Northern Ireland.

After learning about the "Rihanna Tank" being sold in Topshop stores, the singer contacted the company and Topshop changed the name to the "Headscarf Girl Tank" and then to "Icon Tank."

Despite this name change, Rihanna contacted her lawyers, who filed a suit seeking \$5 million in damages for the unauthorized use of her image. But Topshop is fighting back, according to British press reports. Topshop claims the suit is based on Rihanna's false assumption that only a celebrity or her successors may ever market or license the marketing of her character on clothing.

London's High Court is expected to rule on the dispute next week.

Business Insurance isn't all business all the time, and we know you're not either. So visit www.businessinsurance.com for more Off Beat stories and monthly photo galleries featuring the best of the weirdest news about insurance, fraud, liability issues and related topics that make people and companies do funny, silly and strange things.

Court rules in favor of cellar dweller

A man mistakenly thought to be missing just missed having to pay for the injuries sustained by a police officer looking for him.

An appellate court in New Jersey ruled earlier this month that Dane Almassy will not have to pay an insurance company to compensate for the workers compensation funds paid to a former Chester Township police officer who hurt his knee in a fruitless search for Mr. Almassy in 2006.

On the fateful night, Mr. Almassy abruptly exited a limo in which he was riding with friends, according to the Star-Ledger newspaper. When he failed to return, the limo driver called police, who searched for Mr. Almassy, who ultimately was found hiding in a friend's basement.

The New Jersey Intergovernmental Insurance Fund subsequently sued Mr. Almassy and two friends, claiming their negligence led to the officer's injury, according to the Star-Ledger. The court disagreed, stating that Mr. Almassy had no "duty of care" for the injured officer.



Jealousy justified firing of assistant

An Iowa dental assistant fired for being too attractive can relate to the 1980s shampoo commercial, where a spokesmodel implores, "Don't hate me because I'm beautiful."

In a recent ruling, the Iowa Supreme Court affirmed its decision that it was OK for her boss to fire Melissa Nelson.

The ruling upheld a lower-court decision that dismissed a discrimination lawsuit against dentist James Knight, who fired the assistant because his wife believed his attraction to the 33-year-old had become a threat to their marriage.

The court issued a second opinion on July 12, concluding as it did in its initial December 2012 ruling that current law permits bosses to fire employees they perceive as threats to their marriages, even if the subordinates have not engaged in any flirtatious or otherwise inappropriate behavior. The court said such firings are not to be considered sex discrimination because they are motivated by feelings, not gender.

Ms. Nelson's attorney, Paige Fiedler, had asked the court in January to reconsider its previous opinion, warning that it could be detrimental to achieving true gender and racial equality in the workplace.

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September 18 at Craftbar, 900 Broadway, New York - 6:00 – 8:00 pm

Northeast Region Honorees:

- **Javier Gonzalez**, executive vice president and partner at Axis Insurance Services L.L.C. in Franklin Lakes, N.J.
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- **Chris Keith**, a producer at The Graham Co. in Philadelphia
- **Brandon Mueller**, a partner at Seubert & Associates in Pittsburgh
- **Aaron Rosenfeld**, executive vice president of GFI Insurance Brokerage Inc. in New York
- **Dennis Tierney**, senior vice president of Marsh Inc.'s claims practice in New York
- **Michael Tomasulo**, management liability practice leader at AH&T Insurance Inc. and president of the brokerage's Northeast region in Newark, N.J.
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