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PRESENT COMPLEX  
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COULD EXTEND BEYOND  
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**VIOLENCE SHUTS DOWN  
MARUTI SUZUKI PLANT  
IN INDIA / PAGE 4**

## inBrief

Coverage unlikely in Penn State fines

Pennsylvania State University's insurance coverage likely will not respond to the \$73 million in unprecedented fines and penalties imposed by the NCAA and the Big Ten Council of Presidents and Chancellors for its failure in handling allegations of child sexual abuse by former Assistant Football Coach Gerald A. Sandusky. Meanwhile, Moody's Investors Service Inc. placed Penn State University on a credit rating review for possible downgrade in anticipation of fallout.

Zurich to add 150 jobs in Chicago

Zurich Insurance Group Ltd. will add 150 people to its downtown Chicago operations over the next few years, the insurer and

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## SPOTLIGHT CATASTROPHE MANAGEMENT

Disasters alter industry; roof designs cap losses; how operations in Missouri, Vermont, Florida handle disasters; property loss control consultant ranking. **PAGE 9**

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### WORKERS COMPENSATION

# Prices spike as market hardens

*Insurers seek to stem higher medical, indemnity costs*

By **ROBERTO CENICEROS**

Workers compensation insurance prices are increasing, substantially in some cases, and policy offerings are diminishing as insurers seek to address unprofitable combined ratios amid rising indemnity and medical costs.

Liberty Mutual Group Inc., for example, said in a conference call last week that on average it secured a 9% overall rate increase for workers comp policies that were sold during the second quarter of 2012 compared with the same period last year.

For middle-market accounts that purchased guaranteed-cost policies during the quarter, Liberty obtained a 12.1% increase on average, David H. Long, the Boston-based insurer's president and CEO, said during the call with analysts to discuss second-quarter results. Liberty is one of the nation's

biggest workers comp insurers.

"Some markets are being very aggressive pushing higher than that," said Kent D. Edgcombe, area president in Ridgeland, Miss., for Arthur J. Gallagher Risk Management Services Inc.

Meanwhile, employers are exiting workers comp guaranteed-cost policies that have fixed costs and taking on greater risk by purchasing loss-sensitive plans with lower premiums but higher deductibles, market experts say.

Companies are doing so because workers comp insurers are shrinking their offerings or raising policy prices, particularly for guaranteed-cost coverage, experts say.

The loss-sensitive plans increase employers' responsibility for claims management, because such plans often come with higher deductibles that hold them accountable.

But "loss-sensitive programs are not for every company," said Julie Burgess, senior vp and unit manager in national accounts for broker Lockton Cos. L.L.C. in Kansas

See **COSTS** page 23

### EMPLOYMENT PRACTICES

# Employee-owned devices boost employers' risks

By **JUDY GREENWALD**

Employees' love affair with their smartphones, digital tablets and other mobile devices can cause serious security and privacy problems for employers, because an increasing number of workers are bringing their devices to work.

Many employers are agreeing to let workers bring personal mobile devices to the office to keep them happy, improve productivity and perhaps save the company money, experts say. And in many cases, it simply may be a case of bowing to the inevitable, because workers are bringing their phones and tablets to work anyway.

See **DEVICES** page 24



### HEALTH CARE REFORM

# Health care reform rules move to center stage

*Guidance needed on compliance issues affecting employers*

By **JERRY GEISEL**

**WASHINGTON**—With last month's Supreme Court ruling ending uncertainty about the health care

reform law's constitutionality, regulatory uncertainties have leaped to the front and center of employer concerns.

Who will be considered a full-

time employee, how to meet an automatic enrollment requirement, how to communicate the availability of state insurance exchanges and how much will be paid under a temporary but often overlooked "reinsurance" mandate are a few of the many key compliance issues yet to be definitively addressed by final regulations.

"Where do we begin?" asked Michael Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York, referring to the sheer number of issues for which final rules have yet to be developed.

Some of the uncertainties involve core employer-related provisions of the Patient Protection and Affordable Care Act.

For example, starting in 2014, employers that do not offer coverage to full-time employees are liable for an annual penalty of \$2,000 per employee.

However, the health care reform law defines full-time employees in only the most general terms as those who work an average of at least 30 hours a week.

That broad definition is of little use to employers such as retailers, whose workforces often comprise employees whose work hours vary

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## LIABILITY &amp; LITIGATION

# Theater slayings present complex insurance matter

*Cinemark Holdings self-insures portions of liability coverage*

By MIKE TSIKOUKAKIS

**AURORA, Colo.**—The Colorado theater shooting that left 12 dead and dozens injured could tap various types of insurance covering the owner of the movie chain as well as outside entities.

James Holmes, 24, remained in custody last week as the suspect in the July 20 shootings at a Century 16 theater in Aurora, Colo., during a premiere screening of "The Dark Knight Rises." Dressed in body armor and his hair dyed orange, the suspect in the mass slaying has said little if anything to police since his arrest.

While such an event may trigger commercial property and business interruption policies as well as reputational and crisis management coverage, the brunt of the insurance response will fall under commercial general liability coverage, industry experts say.

Cinemark Holdings Inc., the owner of the theater chain, is self-insured for general liability claims with a cap of \$250,000 per occurrence and approximately \$2.7 million annually, the Plano, Texas-based company said in a filing with the Securities and Exchange Commission. It also is

self-insured for medical claims up to \$125,000 and fully insured for workers compensation claims.

Cinemark did not return repeated calls seeking comment.

Janice Ochenkowski, managing director of global risk management for Jones Lang LaSalle Inc. in Chicago, said general liability coverage will respond to third-party claims after a shooting.

"The insurance policies themselves don't have any exclusions for random acts of violence or mass events," Ms. Ochenkowski said.

**'From a litigation standpoint, everyone's going to get pulled in.'**

Dan Kleiman,  
Zurich North America Commercial

Cinemark's \$250,000 cap per occurrence is a reasonable retention for a claim, said Alex Levine, New York-based senior placement broker at Willis North America Inc.'s casualty corporate placement team.

"They'll probably have an umbrella program that sits on top. It could be as small as \$5 million or as large as hundreds of millions," Mr. Levine said.

In the Century 16 shootings, general liability coverage likely



AP PHOTO

James Holmes remains in custody as the suspect in a shooting spree that left 12 people dead and dozens wounded at an Aurora, Colo., movie theater owned by Cinemark Holdings.

would indemnify and defend the property owners, said Dan Kleiman, Schaumburg, Ill.-based vp of customer industry segments and head of the real estate segment for Zurich North America Commercial.

Other parties potentially connected to a theater operation, such as a property management company and other contracted third-party providers, likely would have their own general liability coverage that may respond as well, he said.

"From a litigation standpoint, everyone's going to get pulled in," Mr. Kleiman said, noting that plaintiff attorneys will examine the contracts of multiple parties that may be involved.

While general liability insurance is the first line of defense in claims by victims, other endorsements are available for large, one-time events, said Mary Craig Calkins, a Los Angeles-based partner at Jenner & Block L.L.P. who focuses on insurance recovery for policyholders.

Despite that availability, "I doubt that that's the type of situation that we have at Cinemark because it was a Thursday night—it wasn't the weekend, it

wasn't a one-time event," she said. "Those types of other policies probably would not be available for this type of situation."

Several insurers offer crisis response coverage that could be part of a company's general liability umbrella coverage or be an endorsement added to other types of coverage, said Tracy Knippenburg Gillis, New York-based leader of Marsh Inc.'s risk consulting and reputational risk and crisis management practice.

"It provides support in terms of getting assistance with crisis management response and it can also include real-time response," Ms. Knippenburg Gillis said, noting such insurance would cover the cost of providing post-traumatic counseling as well.

That particular endorsement typically is a \$50,000 sublimit depending on the insurer, she said.

While coverage for random acts of mass violence is available under general liability policies, it is important to minimize underwriter concerns that could lead to higher pricing, Ms. Ochenkowski said.

See **SHOOTINGS** page 25

## PROPERTY/CASUALTY

# Rigorously regulate AIG, report says

*Inspector general wants to avoid repeat of 2008 bailout*

By MARK A. HOFMANN

**WASHINGTON**—Extensive regulation of American International Group Inc. is critical to protecting taxpayers, according to a report by the Office of the Special Inspector General for the Troubled Asset Relief Program.

In its quarterly report to Congress, SIGTARP discusses events at AIG since the insurance giant's near-collapse in September 2008 and the subsequent infusion of federal assistance that left the government initially holding a nearly 80% stake in the company.

According to the report, AIG is the largest TARP investment of the U.S. Department of the Treasury, with the government holding 61% of AIG common stock.

"Taxpayers are still owed more than half of the original TARP investment—a significant \$36 billion of the \$67.8 billion TARP investment," according to the report. "According to the Treasury's TARP books and records, taxpayers have realized losses on the TARP investment from an accounting standpoint of \$5.5 billion on Treasury's sale of AIG stock."

But SIGTARP noted that because of the restructuring of the investments made by the Treasury Department and the Federal Reserve Bank of New York in January 2011, the government has made a gain so far in its AIG stock sales. This gain leaves \$30.4 billion in TARP funds outstanding, according to the report.

"One vital concern for AIG (and any future regulator of AIG) is determining the proper level of risk to make a profit while minimizing the chance of failure," the report said. "Although this is a continuing challenge for all companies, given its history, risk is of particular concern for AIG."

"The decisions regulators make today about AIG will be crucial to protecting taxpayers in the future," the report said. "Proper and effective supervision of AIG is just one of the many challenges regulators will face in the months and years to come. Effective, comprehensive and rigorous regulation of AIG is vital to ensure that history does not repeat itself and that taxpayers are protected."

See **AIG** page 25

## EMPLOYMENT PRACTICES

# Court rules claims adjusters due overtime pay

By JUDY GREENWALD

**LOS ANGELES**—A California appellate court ruling that Liberty Mutual Group's claims adjusters are eligible for overtime could reach other businesses in California beyond the insurance industry.

But some experts question whether the California Supreme Court, which already overturned a ruling by the Court of Appeals in the same case, will uphold this latest ruling should Liberty Mutual appeal.

*Frances Harris et al. vs. the Super-*

*rior Court of Los Angeles* has a complex history.

A trial court held initially that, based on two regulations by California's Industrial Welfare Commission, only some claims adjusters were eligible for overtime depending on whether they filed their claims before or after October 2000.

In 2007, the state appellate court ruled that all the claims examiners were eligible for overtime. However, the California Supreme Court overturned that ruling in December 2007 and remanded the case to the appel-

late court, holding that the appellate court had not used the "correct legal standard" in its ruling.

In its 2-to-1 ruling last week, a panel of the appellate court focused on the administrative exemption to California's overtime requirements. To be exempt from overtime, the court ruled that an employee must be primarily engaged in work "directly related to management policies or general business operations."

"We hold that, with the few exceptions we have noted, adjusters' work duties do not satisfy the qualitative component of

the 'directly related' requirement (to management policies or general business operations) because they are not carried on at the level of policy or general business operations," the panel wrote in ruling that the adjusters are entitled to overtime.

Employers and insurers are watching the case closely because of its potential to affect insurance claims adjustment expenses and workers compensation claims-handling practices significantly.

See **ADJUSTERS** page 22

## INTERNATIONAL

# Labor unrest shuttered Suzuki plant in India

*Damage insured, supply disruption largely uninsured*

By **STUART COLLINS**

**MANESAR, India**—A labor dispute that turned violent and led to the closure of the Maruti Suzuki India Ltd. auto plant in Manesar, India, is causing a supply chain disruption likely to be largely uninsured.

The subsidiary of Japanese car manufacturer Suzuki Motor Corp. makes two of the best-selling cars in India's fast-growing auto market.

The dispute reportedly is costing Maruti Suzuki an estimated \$15 million in lost production each day. The Indian company has lost \$700 million in market value since the riot closed the Manesar production plant almost two weeks ago.

Shares in Suzuki Motor Corp. had fallen 10% in value late last week.

The dispute started July 18, when a supervisor at the Manesar plant in the Indian state of Haryana made a job-related warning to a worker, which led to the worker's suspension.

The situation deteriorated into mob violence, resulting in the fatal burning of a general manager and the hospitalization of nearly 100 other managers and supervisors, according to Maruti Suzuki's website.

Safety fears meant that plant workers were locked out, halting production for more than a week.

Indian newspaper The Economic Times reported that Maruti Suzuki has 162.13 billion Indian rupees (\$2.93 billion) of insurance coverage with four local insurers: Gurgaon, India-based Iffco Tokio General Insurance Co. Ltd.; Pune, India-based Bajaj Allianz General Insurance Co. Ltd.; Kolkata, India-based National Insurance Co. Ltd.; and Chennai, India-based United India Insurance Co. Ltd.

The lead insurer, Iffco Tokio, is a joint venture of the Indian Farmers Fertilizer Co-operative and Japanese insurer Tokio Marine & Nichido Fire Co. Ltd. Bajaj Allianz is a joint venture of Bajaj Finserv Ltd. and German insurer Allianz S.E.

The report, which cited unnamed executives at Maruti Suzuki and Iffco Tokio, said the automaker faces a revenue loss of 4 billion Indian rupees (\$72.3 million), although insurance will cover plant damages of just 5 million Indian rupees (\$903,500). The property insurance covers only damage to plant and machinery, not the loss of revenue due to the plant shutdown, a Maruti executive told the newspaper.

A spokesman for Suzuki Motor Corp. said the company was unable to comment because of the ongoing investigation.

Insurance for the plant is likely to reside in the domestic market, although reinsurance sometimes



AP PHOTO

**Fires set in a labor dispute that turned violent destroyed portions of the Maruti Suzuki plant in Manesar, India, earlier this month. Insurance likely was provided by the local market, an expert said.**

is purchased in the international market when required limits are high, said Stephen Ashwell, head of the political violence team at Hiscox Ltd. in London. Property insurance offered by Indian companies typically would not exclude damage caused by riots, strikes and civil commotion, he said.

Labor disputes are common in India, but it is unusual for a dispute to escalate into violence, said Rachel Shoemaker, Singapore-based head of Asia forecasting at political risk consultant Exclusive Analysis Ltd.

Foreign and Indian companies increasingly consider the support-

iveness of local governments and their willingness to step in to take on the more militant labor unions, Ms. Shoemaker said.

For example, Mumbai, India-based Tata Motors Ltd. in 2008 had to abandon its construction of a manufacturing plant for the Nano—billed as the world's cheapest car—in West Bengal after violent local protests. Tata eventually built its plant in Gujarat, and West Bengal has struggled to attract investment ever since, Ms. Shoemaker said.

The Indian state of Haryana has a history of labor disputes, and the Maruti Suzuki plant already experienced strikes last year.

Labor relations in industrial zones across all sectors in India will remain challenging because companies face restrictions on laying off permanent staff, said Nigel Singh, Singapore-based South Asia Analyst at Control Risks Group Ltd.

Employment disputes are likely to continue to pose risks until India reforms its labor laws, although strikes are far more likely than the violence seen at Maruti Suzuki, said Mr. Singh. However, the current government lacks the necessary support from its coalition partners to even attempt such reforms right now, he said.

"Reform is not likely until after the 2014 election," Mr. Singh said. "Even then, a new government would find this tough."

The closure of the Maruti plant is likely to affect the company's suppliers and customers, Ms. Shoemaker said.

Many of Suzuki's suppliers have set up plants in the region and will be concerned how the plant closure will affect them as well as being exposed to the same militant unions, she said.

About one-third of the 150 suppliers to Maruti Suzuki in Manesar reportedly were affected by the temporary shutdown.

Maruti Suzuki said it had run out of stock for its top-selling models, the Suzuki Swift and DZire, produced at the Manesar plant. It could take up to six months to clear the backlog, it said.

## CATASTROPHES

## Building code legislation gains backers

By **MARK A. HOFMANN**

**WASHINGTON**—Backers of a measure that would encourage states to adopt more stringent building codes say they hope last week's hearing on the bill will build momentum toward passing it next year.

The measure has strong support across the property/casualty insurance industry. Every major property/casualty trade group belongs to the Washington-based BuildStrong Coalition, which includes individual insurers and noninsurance groups such as the American Institute of Architects and the National Fire Protection Assn.

Eight witnesses appeared before the House Transportation and Infrastructure Committee's subcommittee on Economic Development, Public Buildings and Emergency Management last week to



**U.S. Rep. Mario Diaz-Balart, R-Fla.**

discuss the Safe Building Code Incentive Act of 2011. None spoke against the measure.

Among other things, the bipartisan measure that Rep. Mario Diaz-Balart, R-Fla., introduced last year would authorize the president to increase the maximum contributions for a major disaster by 4% of the estimated aggregate amount of grants under the Robert T. Stafford Disaster Relief and Emergency Assistance Act if the affected state has and is actively enforcing an

See **CODES** page 22

## HEALTH CARE BENEFITS

## Workers value health coverage

By **JERRY GEISEL**

Fifty-three percent of employees doubt they could buy health insurance the same or better than the coverage their employers provide, according to a National Business Group on Health survey released last week.

"Most employees believe their employers do look out for them," NBGH President and CEO Helen Darling said during a Washington briefing where the survey of more than 1,500 employees was released.

Whether workers could get equal or better coverage on their own could be tested soon. Under the health care reform law, states are supposed to set up health insurance exchanges in which individuals can choose from plans offered by insurers. The federal government will "facilitate" the establishment of exchanges in states that choose not to set them up.

Some employees covered under group plans could turn to state exchanges, if their employers decide to drop their plans once the exchanges become operational. Surveys have found that 5% to 10% of employers may drop coverage when the exchanges start operating.

Clearly, according to the NBGH survey, many employees aren't confident they have the knowl-

edge to buy individual coverage. One-third of respondents said they were not confident in their ability to buy health insurance on their own.

The survey also found that 80% of employees endorse wellness plan designs that provide financial rewards to those meeting goals, but just 29% favor designs that require employees to pay more if health goals are not met.

"You can give (employees) more, but not take away," Ms. Darling said.

Even as employers have cut back benefits due to escalating costs, the level of employee satisfaction with their health care coverage is high. More than 60% of respondents reported that they were satisfied with their health plans, with 30% somewhat satisfied and 7% not satisfied.

Many employees, though, don't know or vastly underestimate the cost of their coverage. Sixty-two percent of respondents said they didn't know how much their employers are paying for the coverage, while 23% estimated that the cost was less than \$500 per month.

According to a Towers Watson Co. survey, the average cost of health insurance per employee is nearly \$9,000 this year.

In addition, according to the NBGH survey conducted in late May and June, 60% of employees value low premium contributions far more than a choice of plans.

**80%**

80% of employees endorse wellness plan designs that provide financial rewards to those meeting goals, but just 29% favor designs that require employees to pay more if health goals are not met.



**“TAKE SHELTER IMMEDIATELY.”**

# A WARNING

**THE MANUFACTURING PLANT WAS  
POWERLESS TO HEED.**

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**CUSTOMER:**  
AUTO PARTS COMPANY


**CASE OBJECTIVE:**  
GETTING BUSINESS  
BACK IN BUSINESS. FAST.

**CASE SPECIFICS:**

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

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INSURANCE

# Mid-Market EXECUTIVE

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

## CMS move could pose problems

Experts say change in Medicare set-aside rules would add time, costs

By SHEENA HARRISON

The Centers for Medicare and Medicaid Services is considering whether to issue new rules for Medicare set-asides in liability settlements—a move experts say could increase the time and costs needed to close liability claims.

It's not certain that CMS will implement such policies. But experts are watching closely to see whether CMS will change the procedures used to pay future medical costs for Medicare beneficiaries who receive liability settlements.

"This is a major issue for lawyers, insurers, retailers, Medicare beneficiaries and all other stakeholders in the (Medicare secondary payer) process," said attorney David Farber, counsel for the Washington-based Medicare Advocacy Recovery Coalition.

Retailers, in particular, appear to be concerned about the possibility of new Medicare rules for liability claims, said Jennifer Jordan, general counsel with MEDVAL L.L.C., a Medicare secondary payer compliance vendor in Columbia, Md.

That's because many deal with low-dollar liability claims, such as in-store slips and falls, Ms. Jordan said. Increased Medicare requirements could increase the amount of money needed to settle those claims, she said, because retailers would be responsible for paying future medical costs related to the claimant's injury.

"They would be forced to fund these future medicals out of proportion with their settlement amounts," she said.

Last month, CMS posted an advance notice of proposed rulemaking in the Federal Register. In the notice, the federal agency says it is considering an approval process for Medicare set-asides used to pay future medical costs in liability cases, similar to the "formal, yet voluntary" process that the agency already uses to approve set-asides in workers compensation settlements.

New rules are being considered for liability claims because CMS is looking for ways to collect and recoup funding for the Medicare insurance trust fund, said Martin Cassavoy, vp of strategic services for North Reading, Mass.-based Crowe Paradis Services Corp., a Medicare secondary payer compliance company.

"When Medicare beneficiaries are settling claims, Medicare wants to make sure that its interests potentially are protected," he said.

Under the Medicare Secondary Payer system, self-insured employers, insurers and others must notify CMS of workers comp and liability settlements or payments that involve Medicare recipients.

Medicare can use settlement funds to



### 76 days

A study released in March by the U.S. Government Accountability Office showed Medicare took 76 business days on average to respond to Medicare-related settlement notices in 2011.

recoup "conditional payments" that it previously has made on behalf of beneficiaries to medical providers. It also can require insurers, employers and other settlement parties to "set aside" funds to pay for future medical costs related to a beneficiary's injury.

In workers comp settlements, parties can ask CMS to review their proposed settlement agreements and determine how much money should be set aside for future medical costs. However, that approval process

**'This is going to increase legal costs, litigation, and add further congestion to the court system.'**

Dan Marshall, Aon Global Risk Consulting

does not exist for liability settlements.

Dan Marshall, managing director for risk control and claims at Aon Global Risk Consulting in Charlotte, N.C., said that Medicare set-asides have resulted in \$10 billion being placed in trust accounts to pay for medical costs related to 46,000 workers comp cases since 2001.

However, he said CMS has struggled to handle a high volume of workers comp set-aside reviews, which has resulted in delayed settlements for many claims.

A study released in March by the U.S. Government Accountability Office showed that Medicare took an average of 76 business days to respond to Medicare-related settlement notices in 2011.

Mr. Marshall expects a process to review and approve set-aside agreements for liability settlements would increase the backlog of claims processed by CMS and further bog down the claims resolution process.

"This is going to increase legal costs, litigation, and add further congestion to the court system," Mr. Marshall said. "It has a negative net effect should this rule be instituted."

Greg McKenna, counsel and head of compliance for Itasca, Ill.-based Gallagher Bassett Services Inc., agreed. While he said Medicare has a right to recoup costs that it has paid or would expect to pay on behalf of Medicare beneficiaries, he believes the addition of a set-aside approval process in liability settlements likely would add time and legal costs to liability cases.

"All of those things that make settlements more difficult tend to push cases toward litigation, which we know is a more expensive approach to claim resolution," Mr. McKenna said.

CMS is seeking comments until Aug. 14 from stakeholders about the advance rulemaking notice. Mr. Farber said the Medicare advocacy coalition is encouraging insurers, employers, Medicare beneficiaries and other stakeholders to submit comments.

"It's the first opportunity to impact CMS regulations in decades and we ought to take advantage of the opportunity presented to us," said Mr. Farber, who said the coalition plans to submit comments, but has not yet determined its stance on the advance notice.

Experts note that the advance notice does not mean that new rules are imminent for Medicare set-asides in liability settlements,

### Potential rule change could have effect on comp settlements

While the Centers for Medicare and Medicaid Services is considering whether to issue new rules for Medicare set-asides in liability claims, experts say the agency's recent memo also could affect workers compensation settlements.

CMS has a "formal, yet voluntary" approval process for Medicare set-asides used to pay future medical costs for Medicare beneficiaries who settle workers comp claims.

Some service providers who specialize in Medicare compliance for workers comp cases have forgone the optional process in order to reduce time and costs associated with closing those claims, said Martin Cassavoy, vp of strategic services for North Reading, Mass.-based Crowe Paradis Services Corp., a Medicare secondary payer compliance company.

However, an advance notice of proposed rulemaking issued by CMS last month contains wording that Mr. Cassavoy thinks could be used to make the set-aside approval process mandatory for workers comp.

"There's a strong likelihood that the current process surrounding workers compensation, if it doesn't change, at least gains some teeth," he said.

Dan Marshall, managing director for risk control and claims at Aon Global Risk Consulting in Charlotte, N.C., said CMS could be considering whether to expand the set-aside approval process already in place for workers comp.

"I think it's going to increase the scrutiny on the dollar figures and the estimated future medical spend as it relates to workers comp," he said of the rules in the recent advance notice.

—By Sheena Harrison

but rather that CMS is collecting feedback for any potential rulemaking.

Still, sources say the memo is being eyed carefully by Medicare compliance professionals.

"Within the industry I think there (are) a lot of folks taking notice about what might possibly be coming down the pike," said Cliff Connor, Itasca, Ill.-based vp of Medicare compliance for Gallagher Bassett.

MEDVAL's Ms. Jordan said the notice offers an opportunity for the insurance community to help guide new CMS rules based on their frustrations with the current set-aside approval process in workers comp.

"A lot of this process needs more compromise on both sides," she said.



# FIND A STABLE PATH

A Fortune 1,000 real estate holding company recently learned that its property insurer is ending its 100% coverage solution only a year after convincing its risk manager to consolidate the program with a single carrier. The risk manager and broker now have to frantically search the markets for coverage—potentially facing limited cat capacity, markets with suspect financial ratings, and markets that don't understand the nature of the company's business—such as the frequency of acquisitions and divestitures.

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# Opinions

## EDITORIAL

## Employers need rules to comply

**W**e hope last month's Supreme Court decision largely upholding the constitutionality of the health care reform law spurs federal regulators to get moving on guidance to help employers comply with the law.

Many of the key provisions affecting employers go into effect in 2014, but final regulatory guidance on those provisions has yet to be provided.

The importance of providing guidance to employers, as we report on page 1, cannot be overstated. One provision subjects employers to financial penalties if they do not offer coverage to full-time employees, but the Patient Protection and Affordable Care Act's definition of a full-time employee is sparse: someone who works an average of at least 30 hours a week.

That definition cries for guidance. For example, many retailers employ workers whose weekly hours can fluctuate substantially. In some months—say the December holiday season—employees may work far more than 30 hours a week. But in other months, employees may work far fewer than 30 hours a week.

Without regulatory guidance, retailers won't know whether they will be subject to a health care reform law penalty, if they do not offer coverage to those employees whose average hours can vary so significantly.

Plenty of other issues need to be settled as well. A strict reading of the law suggests that, if just one full-time employee is not offered coverage, employers will be liable for a \$2,000 penalty for each full-time worker they employ.

In a notice issued more than a year ago, the Treasury Department said it "contemplated" that forthcoming regulations would clarify that the assessment would not apply, if an employer offered coverage to all "or substantially all" of its full-time employees.

Regrettably, there has been no follow-up since then, and employers still lack definitive guidance on when the \$2,000 penalty will apply and when it will not.

In all fairness, regulators are overwhelmed. They are few in number and are tasked with writing rules for a huge and complicated law.

That said, employers are entitled to rules that will give them the time they need to make the necessary changes to comply with the law.

To ensure that, publishing health care reform law rules as quickly as possible should be the highest priority for federal regulators.

## LETTERS

Please send your letters to:  
Letters to the Editor, Business Insurance,  
150 N. Michigan Ave., Chicago, Ill. 60601-7524

Fax: 312-280-3174; email: [gsouter@businessinsurance.com](mailto:gsouter@businessinsurance.com)

## SCHILLERSTROM



## COMMENTARY

## Comp prices linked to profitability

**M**ultiline commercial insurers may be spreading some workers compensation cost increases onto employers' general liability rates to protect valued accounts from the competition.

I am told that is a historically common practice when the market for workers comp insurance firms.

It also points to another reason why a recent moderation in workers comp price increases may be temporary.

MarketScout, the Dallas-based electronic insurance exchange, reported in early July that workers comp coverage pricing moderated to an average 4% increase over the prior year.

That was down from a 5% increase in early May.

But I recently chatted with Pamela F. Ferrandino, casualty practice leader of placement for Willis North America Inc. in New York.

She explained that general liability and workers comp price changes are not always correlated. That provides multiline underwriters the opportunity to temper workers comp premium price increases by spreading comp costs onto general liability rates.

"You want to temper your workers comp increases because you want to protect business that is good business," Ms. Ferrandino said.

Currently, the workers comp insurance market remains competitive, so it makes sense that underwriters might implement that approach, and Ms. Ferrandino said her analysis shows there has been a "balloon budge" in general liability insurance pricing.

But insurers can't maintain that strategy forever. So

eventually they must return to raising workers comp pricing.

Also, given the current state of workers comp insurers' combined ratios averaging well above the profitability mark, it's hard to imagine renewal pricing can go anywhere but up.

I could be wrong.

Not long after this column appears in print, we should have another monthly reading from MarketScout on which way the workers comp insurance market is headed, so you can gauge the validity of my analysis.

Or it may take a few months more to see where it is going.

But there is another interesting fact from Ms. Ferrandino's look at recent rate trends: In January the Federal Reserve announced it expects interest rates to remain flat over the next two years.

It is unusual, she said, for the Fed to announce its expectations for interest rates over that long of a term. Usually the Fed's interest-rate expectation announcements

are for much shorter time frames. Following January's Fed announcement, comp rates firmed or flattened from prior decreases, Ms. Ferrandino said. It was a sign that underwriters immediately lost their optimism about being able to earn interest income from their hefty workers comp reserves.

So it seems increasingly clear that insurers will have to continue raising their prices to address those combined ratios.

Contact: [rceniceros@businessinsurance.com](mailto:rceniceros@businessinsurance.com)



**ROBERTO CENICEROS**  
SENIOR EDITOR



REUTERS

Houses in northeastern Japan burn after being swept out to sea in the wake of the earthquake and tsunami that hit the country in March 2011. The events were among last year's many natural catastrophes that caused total insured losses of \$116 billion.

# 2011 disasters alter industry

*Insurers, risk managers change their practices to reduce exposures*

By **BILL KENEALY**

The earthquakes, storms and floods that defined 2011 are still reverberating through the insurance industry.

In addition to the financial ramifications of the estimated \$116 billion in catastrophe-linked insured losses, last year's events have altered industry practices in areas such as underwriting, risk management and loss mitigation.

Cliff Hope, Atlanta-based executive vp and chief property underwriter for U.S. property for Aspen Insurance Holdings Ltd, said underwriters are tweaking the terms, conditions and deductibles of commercial policies for flood risk.

"We've seen a large shift in the way people underwrite flood," he said. "Underwriters are pulling back on their limits for flood coverage."

Mr. Hope said underwriters also are redoubling efforts to ensure that valuations on buildings are adequate so they can control their flood exposures by sublimiting. "One of the things we learned in 2011 is that if buildings are not valued correctly, you run into situations where people are underinsured," he said,

## 2011 CATASTROPHES

*The five largest catastrophes by insured losses during 2011*

2011 DATE	COUNTRY	EVENT(S)	LOSSES
March 11	Japan	Earthquake, tsunami	\$35.0 billion-\$40.0 billion
Feb. 22	New Zealand	Earthquake	\$13.0 billion
Aug. 1-Nov. 15	Thailand	Flooding, landslides	\$10.0 billion
April 22-28	United States	Thunderstorms, tornadoes	\$7.3 billion
May 20-27	United States	Thunderstorms, tornadoes	\$6.9 billion

*Source: Insurance Information Institute Inc., Munich Reinsurance Co.'s NatCatService*

adding that underwriters now need to measure their aggregate exposures in all geographic areas of the country, not just known catastrophe regions.

The cumulative effect of these changes is reflected in the marketplace as insurers alter the mix of business they are willing to accept, Mr. Hope said. "Insurers are excluding business in some cases, which is opening the door to excess and surplus lines business to address these exposures," he said.

Floods also brought to light a series of issues surrounding business interruption

insurance. "What we've seen is brokers trying to broaden wording on contingent business interruption coverage in case of a supply chain breakdown, specifically because of the Thailand floods," Mr. Hope said.

In a report released in April, Marsh Inc., a unit of New York-based Marsh & McLennan Cos. Inc., detailed how Thailand floods together with the twin earthquakes that struck Christchurch, New Zealand, brought to the fore issues sur-

See **FALLOUT** page 12

Catastrophe  
Management

# SPOTLIGHT

PROPERTY LOSS  
CONTROL  
CONSULTANTS  
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MEDICAL CENTER'S  
EMERGENCY PLAN  
SAVES LIVES  
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FURNITURE MAKER  
GLEANS LESSONS  
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ROOF DESIGNS  
CAN PUT LID  
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PAGE 16

FLORIDA INSURER  
EFFICIENTLY MELDS  
CAT RESPONSES  
PAGE 17

# TOP 10 PROPERTY LOSS CONTROL CONSULTANTS

Ranked by 2011 gross revenues from unbundled property loss control consulting

RANK	Company/Address	Phone/website	Unbundled property loss control consulting revenues	% of property loss control revenue from unbundled services	Total property loss control staff	Unbundled clients	Principal officer
1	ABSG Consulting Inc. 16855 Northchase Drive, Houston, Texas 77060	281-673-2800 <a href="http://www.absconsulting.com">www.absconsulting.com</a>	\$207,300,000	100%	1,700	1,800	David Weinstein, president/CEO-ABS Group
2	Aon Global Risk Consulting 200 E. Randolph St., Chicago, Ill. 60601	312-381-5063 <a href="http://www.aon.com">www.aon.com</a>	\$64,000,000	80%	535	1,750	Neil Harrison, group managing director
3	Arup 560 Mission St. Seventh Floor, San Francisco, Calif. 94105	415-957-9445 <a href="http://www.arup.com">www.arup.com</a>	\$63,020,000	100%	430	980	Andy Thompson, associate principal
4	Global Risk Consultants Corp. 100 Walnut Ave., Suite 501, Clark N.J. 07066-1247	732-827-4400 <a href="http://www.globalriskconsultants.com">www.globalriskconsultants.com</a>	\$60,907,000	100%	368	1,170	James Marsh, CEO; Chris Heaton, president
5	Marsh Risk Consulting 1166 Avenue of the Americas, New York, N.Y. 10036	866-928-7475 <a href="http://www.marshriskconsulting.com">www.marshriskconsulting.com</a> <a href="http://www.marsh.com">www.marsh.com</a>	\$45,000,000	68%	260	1,500	Michael Cormier, managing director/CEO of Marsh Risk Solutions; Jeffery Colburn, managing director/USA MRC leader
6	XL Global Asset Protection Services L.L.C. 100 Constitution Plaza, 12th Floor, Hartford, Conn. 06103	860-293-7901 <a href="http://www.xlgaps.com">www.xlgaps.com</a>	\$29,000,000	70%	183	235	Timothy Heinze, business leader; Scott Ewing, North American engineering leader
7	AXA MATRIX Risk Consultants 3130 S. Tech Blvd., Miamisburg, Ohio 45342	937-886-0000 <a href="http://www.axa-matrixrc.com">www.axa-matrixrc.com</a>	\$20,820,000	75%	151	180	Walter P. Luker, CEO; Alan J. Rodeck, Torsten Leske, senior vps
8	EFI Global Inc. 8811 FM 1960 Bypass Road W., Suite 400, Humble, Texas 77338	281-358-4441 <a href="http://www.efiglobal.com">www.efiglobal.com</a>	\$13,200,000	100%	280	60	Ron G. Holt, president and CEO; Ted Cleveland, vp operations
9	Regional Reporting Inc. 90 John St., New York N.Y. 10038	212-964-5973 <a href="http://www.regionalreporting.com">www.regionalreporting.com</a>	\$7,500,000	100%	250	300	Martin Myers, CEO; Louis Siegel, president
10	Paragon Risk Engineering, P.O. Box 648, Allenwood, N.J. 08720	732-785-0746 <a href="http://www.paragonconsults.com">www.paragonconsults.com</a>	\$6,850,000	100%	36	65	Robert McMullen, president; Tom Farrell, vp

## LARGEST BY TOTAL STAFF

Ranked by number of staff assigned to property loss control

COMPANY	TOTAL STAFF
ABSG Consulting Inc.	1,700
Aon Global Risk Consulting	535
Arup	430
Global Risk Consultants Corp.	368
EFI Global Inc.	280
Marsh Risk Consulting	260
Regional Reporting Inc.	250
XL Global Asset Protection Services L.L.C.	183
Zurich Services Corp.	180
AXA MATRIX Risk Consultants	151

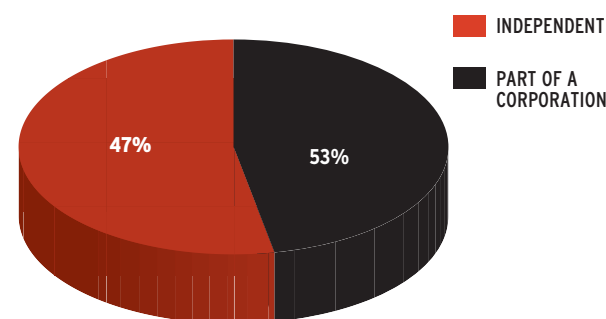
## LARGEST BY UNBUNDLED CLIENTS

Ranked by number of unbundled clients

COMPANY	UNBUNDLED CLIENTS
ABSG Consulting Inc.	1,800
Aon Global Risk Consulting	1,750
Marsh Risk Consulting	1,500
Global Risk Consultants Corp.	1,170
Arup	980
Regional Reporting Inc.	300
XL Global Asset Protection Services L.L.C.	235
AXA MATRIX Risk Consultants	180
Zurich Services Corp.	100
Risk Logic Inc.	75

## INDEPENDENT VS. PARENT COMPANY

Among property loss control consultants participating in the survey



Source: BI survey. Researched by Angelina Villarreal

Editor's note: Hughes Associates Inc. and Gallagher Bassett Services Inc. declined to participate in the survey.

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# Cat losses tame during first half of 2012

By MARK A. HOFMANN

It could be worse when it comes to this year's insured catastrophe-related losses.

That was evident this month as Munich Reinsurance Co. released its estimates for first-half 2012 catastrophe losses. According to the global reinsurer's report, natural catastrophe losses were "relatively mild" during the first six months of this year, totaling about \$12 billion.

That's significantly lower than those of the same period of 2011, when the Japanese earthquake and tsunami, New Zealand earthquakes and other disasters helped push the insured loss total to \$81.7 billion.

In the United States, Munich Re estimates insured catastrophe-related losses during the first six months of this year totaled \$9.3 billion, compared with the \$24.4 billion registered during the same period in 2011. The bulk of the U.S. losses—\$8.8 billion—stemmed from severe thunderstorm activity, including tornadoes and hail. For example, a hail event in the St. Louis area in late April caused about \$1 billion in insured damage. In fact, Munich Re found that the five costliest events during the first half of this year in terms of insured damage globally were all U.S. severe storm and tornado events.

Wildfires fueled by heat and drought caused an estimated \$500 million in insured damage in the United States during the first half of 2012, making them the second-costliest peril during the period. A few days after the Munich Re report, the Greenwood Village, Colo.-based Rocky Mountain Insurance Information Assn.,

## COSTLIEST CATASTROPHES

The costliest natural catastrophes in insured losses, 1950 through June 2012

YEAR	COUNTRY/REGION	EVENT(S)	LOSSES*
2005	United States	Hurricane Katrina	\$62.2 billion
2011	Japan	Earthquake, tsunami	\$35.0 billion-\$40.0 billion
2008	United States, Caribbean	Hurricane Ike	\$18.5 billion
1992	United States	Hurricane Andrew	\$17.0 billion
1994	United States	Northridge earthquake	\$15.3 billion

\*Insured-loss original value in U.S. dollars

Source: Insurance Information Institute Inc., Munich Reinsurance Co.'s NatCatService

which represents property/casualty insurers in Colorado, estimated that the recent Waldo Canyon and High Park wildfires in Colorado caused nearly \$450 million in insured personal lines property damage. That made this year's wildfire season to date the costliest in Colorado history, although the estimate did not include insured commercial property damage.

Munich Re noted there were no major earthquakes during the first half of this year. In contrast, last year's Japan earthquake and tsunami caused as much as \$40 billion in insured damage, Munich Re found.

One big unknown going forward is what effect, if any, hurricanes will have this year.

Munich Re said 2012 is the first year since 1908 that two named storms occurred in May. Hurricane season officially began June 1 and runs through November. In all, four named storms formed during the first half of this year, two of which made landfall and caused an estimated \$50 million in insured damage.

In its report, Munich Re noted that no major hurricane landfall has occurred in the United States since Hurricane Wilma in 2005. That was the same year Hurricane Katrina made landfall and devastated New Orleans, becoming the costliest catastrophe in terms of insured losses—an estimated \$62.2 billion—since 1950.

## Fallout: Industry practices

CONTINUED FROM PAGE 9

rounding how the denial of access clause in business interruption policies is treated by insurers when a catastrophe lasts for a prolonged period.

In the wake of a second earthquake that struck Christchurch, the government restricted public access to the city's central business district as well as shopping malls, hotels and businesses regardless of whether they sustained damage. Accordingly, Marsh advised buyers of commercial policies to check their policy to determine if the business interruption insurance covers against losses emanating from events as well as specific damage.

"An extended period whereby access is denied (as seen in Christchurch and Thailand) can expose any limitation," Marsh said in the report. "It is very helpful if the denial of access extension covers not just denial of access, but hindrance as well."

Another hard-learned lesson in

See **FALLOUT** page 14



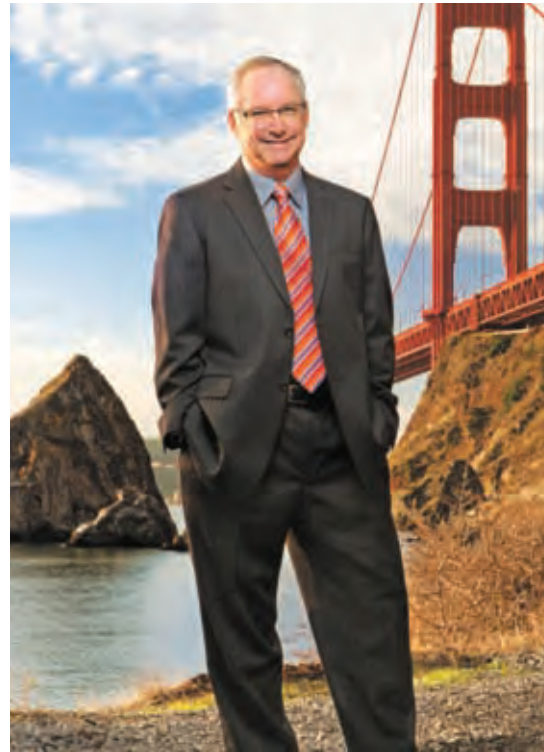
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# Emergency plan helped save lives in Joplin, Mo.

*Practice, changes protected building, staff from tornado*

By SHEENA HARRISON

**JOPLIN, Mo.**—Administrators at St. John's Regional Medical Center think a recently practiced disaster management plan helped to save numerous lives at the hospital, which was torn apart during the tornado in Joplin, Mo., on May 22, 2011.

St. John's, which had 2,200 employees and an average of 200 overnight patients per day, ran through its long-standing emergency management plan just four days prior to the catastrophic twister.

Shelly Hunter, chief financial officer for Mercy Health of Joplin-Carthage, said the plan, which had been in place for many years, was practiced by St. John's about twice per year and modified as needed.

That strategy, she said, helped St. John's staff and patients steel themselves from the massive tornado, which hit the hospital with winds of up to 112 miles per hour and destroyed the main hospital and various medical office buildings on the campus.

St. John's is part of Mercy, a Chesterfield, Mo.-based health care system that includes 31 hospitals.

"Our emergency generators were knocked over, our emergency power gas lines were blown, all of our battery-operated lights on the walls were blown off," Ms. Hunter said. "So we literally had no power, no water, every single window in the facility was blown out. And (there was) significant damage inside the hospital."

Five patients and one visitor at St. John's died in the tornado. Ms. Hunter thinks most people inside the facility were protected by a portion of the emergency plan that required hospital staff to move patient beds away from windows and into the hospital's hallways.

Staff members mobilized under the plan to carry patients out of the eight-level hospital and transport them to other hospitals in and near Joplin. The hospital's rehabilitation center—the part of St. John's campus that suffered the least storm damage—served as a triage center for patients that didn't need acute care.

St. John's had converted to a digital medical records system on May 1, 2011, just weeks before the tornado hit, Ms. Hunter said. That decision helped St. John's sister hospitals to access patient information within hours of the tornado, which allowed them to resume patient treatment plans.

"We knew what patients were in house (and) what their medical treatment was," Ms. Hunter said.



AP PHOTO

**St. John's Regional Medical Center in Joplin, Mo., was destroyed by the tornado that hit the area on May 22, 2011. A new \$1 billion facility is expected to be completed in 2015.**

"We were able to help with their care as we transferred them."

Since the tornado, St. John's has operated in a temporary facility that will house the hospital's operations until the new Mercy Hospital Joplin is constructed a few miles away. The \$1 billion facility is expected to be completed in 2015.

Ms. Hunter said the old St. John's facility was so ravaged by the tornado that it would have cost more to rebuild the hospital on its former site.

Plans for the new hospital

include \$8 million in storm-hardening measures that are meant to protect the new hospital in the event of another tornado, Ms. Hunter said.

That includes special film placed on windows that would reduce shattered glass, shelter rooms placed throughout the hospital, and extra structural support in the building's hallways. Underground power lines and a power generator with extra reinforcements also will help prevent power disruptions.

The cost for such protections

has not been covered by insurance and is being paid by Mercy. Ms. Hunter said St. John's had property, casualty and business interruption insurance that will help to pay for some rebuilding costs, as well as remediation at the former site, though the hospital system is in negotiations with its insurer.

The tornado also changed the procedures that Mercy employees use in emergencies, Ms. Hunter said. For instance, the hospital plans to implement "grab bags" that will be placed throughout the facility and will include flashlights and other emergency essentials.

The hospital also plans to include slippers for patients in its facility, because many patients did not have shoes after last year's tornado.

Additionally, employees now are required to store work contacts in their cell phones. While phone calls would not connect in the tornado's immediate aftermath, Ms. Hunter said, text messages were able to be delivered, which helped execute the emergency plan.

Overall, Ms. Hunter thinks Mercy's emergency preparedness and the system's efforts to train employees for emergencies helped lessen the losses that St. John's could have faced after the tornado.

"Having well-trained staff really makes all the difference because we did really well that night," Ms. Hunter said. "And I honestly believe it's because everyone knew what to do in each of their roles."

## Fallout: Lessons learned from 2011 catastrophes

CONTINUED FROM PAGE 12

2011 was the greater awareness of risk surrounding supply chains.

Eric Jones, Dallas-based manager of business risk consulting for FM Global, said his team has seen an uptick in demand for services in the wake of last year's events. Mr. Jones said the widespread business disruption that resulted from the floods that inundated Thailand last summer has caused risk managers across industries to reassess the robustness of their suppliers as well as the capabilities their own facilities in the event of an emergency.

"Companies are beginning to understand that if you outsource production to the Pacific Rim you better understand what your internal capabilities are as a whole," he said, adding that in addition to understanding their ability to mitigate a loss, companies need to take the next step and embed flexibility in operations and resiliency in their business models. "If a facility in Japan goes down, can you quickly start up elsewhere? Companies that are successful now recognize that

**'If a facility in Japan goes down, can you quickly start up elsewhere? Companies that are successful now recognize that business resilience is a competitive advantage as we go forward in a volatile world.'**

Eric Jones, FM Global

business resilience is a competitive advantage as we go forward in a volatile world."

It is important for risk managers to present an effective business case for risk improvement items to the corporate level, Mr. Jones said. Many of the decisions regarding the constituents of a supply chain

are made to achieve economic considerations, and thus have inherent tradeoffs from a risk management perspective, he said.

"When it comes to supply chains, the focus is often on cost reduction and profitability and not necessarily risk reductions," he said. "These events have brought risk management to the forefront and now maybe companies will weigh their options differently."

Moreover, Mr. Jones said there are small measures companies can take to mitigate risk, such as seeking geographically diverse vendors and duplicating tooling and schematics for factories and storing them remotely.

Likewise, Dale Seemens, Newark, Del.-based senior risk engineering consultant for Zurich Financial Services group, agreed risk mitigation need not be expensive.

"During Hurricane Irene, one of the things we saw was that storm sewer systems were backing up and then water would come up through the drains and flood the buildings. One thing we have been working with our customers with to mitigate this is to put check valves on storm sewer system lines to prevent water from coming into the building," Mr. Seemens said. "It's a very inexpensive fix."

## Cat model change in 2011 alters industry view of risk

Property/casualty insurers, reinsurers and reinsurance intermediaries use an array of sophisticated catastrophe models and tools to get a better sense of the risk presented by earthquakes, floods and windstorms.

Independent catastrophe modeling firms such as Boston-based AIR Worldwide Corp., Newark, Calif.-based Risk Management Solutions Inc. and Oakland, Calif.-based EQECAT Inc. serve underwriters and others with increasingly sophisticated offers.

But changes in modeling can significantly affect underwriting, necessitating adjustments to underwriting practices, capital requirements and reinsurance protections.

This was evident last year, when Risk Management Solutions released Version 11 of its U.S. hurricane model. After consider-

able questions from clients, the company issued a news release explaining that the increased volatility in its models was the direct result of improvements in underlying calibration data and modeling methodologies.

It is this inherent volatility in models has led many underwriters to develop a more nuanced view of risk by blending outputs from multiple models, said John DeMartini, New York-based leader of the catastrophe risk management practice at Towers Watson & Co.

"All these incidents from 2011 and the change in the RMS model got people thinking that they need to develop their view of cat risk," Mr. DeMartini said. "We should not be entirely model-dependent; we have other tools and analyses available to us."

—By Bill Kenealy

“The flooding in Thailand proved catastrophic and surprising. Dempsey Partners quickly mobilized their claims team to help us get results.”

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# Tropical Storm Irene teaches costly lessons

*Furniture maker's plant flooded after storm hit in 2011*

By **RODD ZOLKOS**

When Tropical Storm Irene caused widespread flooding in Vermont in August 2011, custom corporate furniture maker WallGoldfinger Inc.'s location on the Dog River in Northfield put it in a vulnerable spot.

Afterwards, a YouTube video of the water surrounding WallGoldfinger's plant made the steps necessary to mitigate the company's flood exposure obvious.

"We had two floors. The first floor had six-and-a-half feet of water," said Bill Miller, WallGoldfinger's chief financial officer. "The second floor would have had four-and-a-half feet of water except for two sets of double doors that held."

"The machines were all on the first floor, unfortunately, and they were destroyed," Mr. Miller said. Among them were a computer numerical control router and a CNC sander, both made in Italy.

"I would say 90% of the machinery had to be thrown out," said John Wall, the furniture maker's CEO. "We lost quite a bit of inventory and a little bit of work

in progress, and you lose a lot of shelving, racks and carts that you build up over the years."

Fortunately, some completed product avoided damage. "We were actually shipping the day after the flood and a couple of days after," Mr. Miller said.

Founded in 1971 as Union Woodworks, WallGoldfinger has evolved from a local woodworking shop focused on residential projects to a nationally known builder of high-end corporate furniture. With approximately 40 employees, WallGoldfinger has provided office furniture to the White House, the United Nations, the New York Stock Exchange, Fortune 50 companies and many of the largest law firms, among others.

The furniture maker was insured for its losses.

"We were insured up to the maximum of the National Flood Insurance Program," Mr. Miller said. Beyond that, WallGoldfinger financed its recovery through various financing agencies, with assistance from Vermont economic development officials.

But looking at those YouTube videos convinced company officials it needed to take steps to reduce its flood risk, Mr. Miller said. On June 18, the company moved into new facilities in a building that formerly housed an



AP PHOTO

Water covered Main Street in Waterbury, Vt., after Tropical Storm Irene hit in August 2011. The storm caused widespread flooding throughout the state.

Ethan Allen furniture plant in Randolph, Vt.

The move was the primary risk mitigation step the furniture maker took after the flood, Mr. Miller said. "Frankly, it was the YouTube videos where you see that water going around the plant," he said. "The variability in weather patterns is only going to increase. So the likelihood of a 100-year storm has become a 25-year storm."

On its old facility's second floor, it was at eye level with the top of a dam on the Dog River, Mr. Miller said, while at the new site flooding from Tropical Storm Irene didn't raise the level of the nearby White River to within 30 feet of its bank. "So we feel much more secure here," he said.

"I think the river here is probably 50, 75 feet below the factory, so it's really not a factor," Mr.

Wall said. "Our old mill, even though we'd been there 36 years, I think we had a lot more close calls than we even realized."

While saying the company had a very good landlord at its old location, Mr. Wall said that after evaluating the situation, staying in the former mill wasn't a viable option. "We couldn't be properly insured going back in there," he said.

"My feeling is you really can't do much if a river is going to come at you," Mr. Wall said. "I've never seen such power. I don't think you can fight a river. You've just got to move. We looked at all kinds of berming and other things, but I don't think it can be done economically."

Beyond the move to a less flood-exposed site, the furniture maker considered buying addi-

tional flood insurance beyond what national flood insurance provides.

"But that's obviously going to be very expensive, and there aren't many companies that offer that," Mr. Miller said. For now the company's focus is returning to full operations, though purchasing additional flood coverage remains "on the radar screen," he said.

The company is "quite close" to being fully operational at its new site, Mr. Miller said, and now has two CNC routers. Work to refurbish the damaged sander is nearing completion in Italy. With its open office environment and linear production flow, the new facility is "close to an ideal building for us," Mr. Miller said. "We're hoping this is really going to spur productivity."

## Building roof design critical to withstanding wind and hail

*Risk managers can limit losses when storms hit*

By **MARK A. HOFMANN**

Severe thunderstorms and the hail that accompany them present a peril that risk managers should not ignore, according to loss control experts.

Munich Reinsurance Co. released an analysis of catastrophe-related insured losses during the first half of 2012 showing that severe thunderstorms caused an estimated \$8.8 billion of the total of \$9.3 billion in catastrophe-related insured losses in the United States during the first six months of the year.

Although Munich Re's analysis included tornadoes in the severe thunderstorm category, the report also noted that a single hail event in the St. Louis area this spring caused about \$1 billion in insured damage.

Fortunately, with the right materials and approaches, risk managers and others

responsible for loss control can mitigate the damage these perils can wreak.

"Clearly, risk managers tend to focus on the biggest, baddest events, and sometimes they neglect the potential for death by a thousand cuts from these thunderstorms that pop up each year," said Louis Gritzo, vp of research for Factory Mutual Insurance Co., which does business as FM Global, in Norwood, Mass. He said that situation is particularly true in summer, when conditions are ripe for thunderstorms to occur. "Summer is the perfect time for risk managers to look for anything that can be damaged by wind or hail," he said.

A structure's roof is the first line of defense, he said.

Tim Reinhold, senior vp of research and chief engineer for the Tampa, Fla.-based Insurance Institute for Business & Home Safety, said that different types of roofs present different pluses and minuses. He cited built-up roofs, metal roofs and membrane-type roofs as examples.

A built-up roof typically has gravel atop it, which can blow off in high winds, he said. Such roofs, however, are more resilient than other types to hail.

Metal roofs are very strong, but long metal roofs can be weakened by thermal expansion and contraction, he said.

Membrane roofs feature a layer of polymer-type material, like a bigger, stronger tarp that goes over the roof, Mr. Reinhold said. The advantage of such coverings is that they are less expensive than other types of roofs, but the disadvantage is that "you really have to get the fastening right," he said. If there aren't enough fasteners in the middle, the roofs can balloon.

He said that in a typical business, the risk manager will hire a professional to conduct an assessment of the roof, looking for such hazards as water leaks. The roofer will check the flashing and the roof, and evaluate the roof and look at its condition.

It's key to use the right products and to

install them correctly, FM Global's Mr. Gritzo said. Products have to be certified to the level of hazard that is right for the area, he said. FM Approvals, a member of the FM Global Group, certifies products.

He said risk managers need to look for vulnerable areas such as skylights and asphalt shingles. In addition, they should make sure that any equipment on the roof is securely fastened. Other high-value items that need to be protected should be fastened, moved indoors or covered.

Glass should be treated with film that works like safety glass in a car, Mr. Gritzo said. The glass itself may be damaged, but the film will prevent water from entering the structure, he said.

Another issue to consider is power, Mr. Gritzo said.

"Having a backup power system is always a great idea," he said. "I would consider that as part of a risk manager's emergency response plan that will serve them for all of their perils," whether windstorm, snow storm, ice storm or a mild hurricane.

# Florida health insurer melds disaster plans

*Efficient approach helps save data, keeps workers safe*

By MARK A. HOFMANN

**JACKSONVILLE, Fla.**—A three-pronged approach to catastrophes helps Blue Cross & Blue Shield of Florida deal with whatever Mother Nature delivers.

It's no static approach, either, said John Phelps, director of business risk solutions for the Jacksonville, Fla.-based health insurer.

"It's not just a hurricane plan, it is a business continuity plan and emergency management plan," Mr. Phelps said. "The idea is you have an emergency, you manage that, and you move into business continuity, which is restoring the business. It's constantly improving the program as changes happen in the business. We're looking to make changes to increase efficiency. We're constantly pruning the vine for these programs."

The Blues have a triad of plans—an emergency management plan, a business continuity plan and a disaster recovery plan—to cope with catastrophes. The disaster recovery plan involves plans to restore data, connectivity and computing equipment. The business continuity plan deals with people, safety, logistics and locations. The emergency management plan, which Mr. Phelps heads, is designed to provide an immediate emergency response to any severe event.

He said the formalization of the plans started with 1992's Hurricane Andrew, which devastated parts of South Florida. At the time, the Blues only had a data center recovery plan, which is now referred to as the disaster recovery plan, Mr. Phelps said.

As the Blues have grown, their approach to catastrophe management has grown more comprehensive. The Blues have 19 offices and 11 retail stores across Florida. The retail locations provide a variety of services, and a few have a contracted with primary care physicians on-site in a separate clinic.

"Our priorities are employees, customers, operations and assets," Mr. Phelps said. "On the employee front, for a hurricane we have the benefit of knowing approximately where that could strike within a three-day window, so we can determine whether we have to close or whether there are safety issues like power lines down."

He said the Blues have enhanced off-site work capability so employees can work from home if need be. After the storm

passes, the Blues will offer aid to employees. For example, the company can provide small short-term loans if employees cannot access cash.

The Blues have a toll-free telephone number for employee information to communicate before, during and after a hurricane or other catastrophe strikes Florida, he said. The company also maintains an externally hosted emergency communications system that can reach cell-phones, home phones and emails—every form of communication "short of a carrier pigeon," he said.

Mr. Phelps said in addition to the formal plan the company will do many things outside the plan, if doing so improves the safety of employees or restores critical needed services to its customers. For example, post-hurricane, the company in the past has provided hot food for employees when there are no power or open restaurants, Mr. Phelps said.

The Blues also have a couple of levels of emergency power in operation, he said, as well as an inland data center.

"From a risk management standpoint, it's one of the sweetest pieces of concrete you're ever going to find," he said of the data center.

The company also has hot-site backup capability through an outside vendor.

Mr. Phelps said the Blues have identified key business areas and have determined a recovery time objective. "In other words, how long can we go without that function?" he said.

By going through an analysis, the Blues have determined which business functions need to be restored within given time frames after a catastrophe.

"Those business functions have developed a business continuity plan to make sure they will be up and running within their time frame," he said. He said the Blues have a repository for all of those plans through a vendor that is hosted off-site and out of state.

Hurricanes, tornadoes and tropical storms are just some of the perils the catastrophe plans have been assigned to address, Mr. Phelps said. Through acquisitions, the Blues have become responsible for locations in other states including California, Pennsylvania and Texas.

He said the Pennsylvania locations raise new challenges about dealing with perils, such as ice storms and blizzards, that do not affect Florida.

"I have personally managed responses to hundreds of events, floods, fires, hurricanes, suspicious substances and many other incidents that you normally wouldn't associate with an office occupancy," he said.

## Products & Services

### ACE Westchester launches product recall coverage

**ATLANTA**—ACE Westchester has announced a new standalone product recall underwriting unit.

The insurance covers recall and consultant costs with its basic policy, the wholesale insurance division of ACE Ltd. announced in a statement.

Additional coverage can be added to the basic product up to the full policy limit or can be sub-limited, depending on client needs. These add-ons include replacement costs, loss of gross profit, governmental recall and adverse publicity.

Policies are available up to \$10 million, but higher limits are offered on an as-needed basis. Besides covering restaurants for foodborne illness, the product covers companies involved with the manufacturing, distribution, exportation and wholesale sales of component parts, consumer goods and consumable products.

"The exposures related to product recalls have become an ongoing occurrence in many industries, not just the food and beverage industry, and they pose a significant liability for a company's balance sheet and overall brand reputation," Bruce Kessler, division president at ACE Westchester, said in a statement.

The company said Florian Beerli is overseeing the new unit as senior vp, product recall underwriting, North America. He reports to Mr. Kessler. Previously, Mr. Beerli was vp of crisis management at Crum & Forster Holdings Corp. He is based in Woodbridge, Conn.

For more information, contact Mr. Beerli at [florian.beerli@acegroup.com](mailto:florian.beerli@acegroup.com) or 678-234-8885.

### NetDiligence risk tools added to eRisk Hub portal

**PHILADELPHIA**—Network Standard Corp. has added three additional cyber risk assessment tools to its eRisk Hub portal, the company that does business as NetDiligence announced.

One tool, called the public rela-

tions cost calculator, was developed with ZING Communications Pty. Ltd., a New York-based PR firm. The product projects the potential costs of crisis communications services related to a cyber breach and the release of sensitive information. Another feature, the business interruption cost calculator, estimates first-party loss caused by a temporary outage in a business' online storefront or computer network. Variables include the number of hours a system was down, the current selling season, the percentage of transactions lost and insurance deductibles. The third tool, developed with law firm Baker & Hostetler L.L.P., evaluates contractual and operational risks associated with cloud computing. The service is intended to help negotiate a contract with service providers.

The tools are available for no additional cost to eRisk Hub licensors and users. For more information, contact Mark Greisiger, president, at 610-525-6383 or [mark.greisiger@netdiligence.com](mailto:mark.greisiger@netdiligence.com).

### Markel Corp. launches EPL phone, online services

**GLEN ALLEN, Va.**—Markel Corp. has launched new phone and online services for its employment practice liability policyholders, the company announced.

Available immediately, risk managers can contact a hotline managed by attorneys from Jackson Lewis L.L.P., a firm that specializes in the defense of harassment, discrimination, wrongful discharge and other workplace-related claims. They also have access to a website offering educational materials, risk management publications and newsletters. As part of the partnership, policyholders can attend Jackson Lewis seminars for free.

Its other new online resource, HR Care, is meant for human resources professionals. The website offers legal compliance information and training sessions available from Curtis Communications Inc., a company that offers human resource information and training services worldwide.

Both services are free for Markel's EPL policyholders. For more information, contact Salvatore Pollaro, managing director, management liability, at 212-551-2281 or [spollaro@markelcorp.com](mailto:spollaro@markelcorp.com).

### Gallagher offers support for health reform changes

**ITASCA, Ill.**—Arthur J. Gallagher & Co. has enhanced its suite of tools designed to help companies understand and execute a strategy for the U.S. Patient Protection and Affordable Care Act.

Offered through Gallagher Benefit Services Inc., the suite of support tools helps companies navigate the mandates, penalties, taxes and other aspects of the new legislation, the company announced.

One tool, the HCR Financial Outlook, estimates the penalties that may result from a company's existing plan and compares it with the cost of changing strategies.

Another service, the HCR Planner, helps employers stay on top of any alterations to the rules that could affect the organization, keep track of any gaps between a company's current benefit offerings and the new legal requirements, and determine how to respond to each change.

Also being offered is an actuarial modeling tool called Health Rating Model, or HRM, to help employers understand the financial effect the new requirements will have to their existing plans. These federally mandated changes could include the elimination of lifetime and annual dollar maximums as well as cost sharing for preventive services for non-grandfathered plans.

For more information, contact Sean Schubert, vp, sales and marketing, at 630-285-5942 or [sean\\_schubert@ajg.com](mailto:sean_schubert@ajg.com).

## TO SUBMIT ITEMS

BI's Products & Services column reports on new product offerings. Please send Products & Services news to Anna Gaynor, 150 N. Michigan Ave., Chicago, Ill. 60601 or email [agaynor@businessinsurance.com](mailto:agaynor@businessinsurance.com).

BI's Market Moves column reports on activities by insurance industry companies and related entities. Please send news of Market Moves to Anna Gaynor, 150 N. Michigan Ave., Chicago, Ill. 60601 or email [agaynor@businessinsurance.com](mailto:agaynor@businessinsurance.com).

# Employers plan to keep health plans: Study

By JERRY GEISEL

Most employers intend to keep offering health care plans to their employees, according to a new survey.

Eighty-one percent of the 560 employers surveyed by Deloitte L.L.P. said they intend to continue offering coverage over the next one to three years, while 10% anticipate dropping health cover-

age and 9% weren't sure.

"Employers offer health benefits to attract and retain employees and sustain job satisfaction," Deloitte noted last week as the major reason why employers plan to offer health coverage to their workers.

The findings are similar to those last month from the International Foundation of Employee Benefit Plans, which found that 85% of respondents said they definitely

would or were very likely to continue coverage. Larger employers, though, are more likely to do so, according to the Deloitte survey.

While 13% of employers with 50 to 100 employees anticipate dropping coverage in the next one to three years, just 1% of employers with 1,000 to 2,499 employees and 2% of employers with at least 2,500 employees anticipate dropping coverage.

# CATASTROPHE MANAGEMENT

## PLANNING FOR THE UNEXPECTED

The only thing you can say for sure about catastrophes is that they will happen. Hurricanes, tornadoes, earthquakes, tsunamis, floods, explosions and other natural and man-made disasters all can cause huge problems for businesses.

Being well-prepared for potential catastrophes, however, can help companies minimize damages to their property and survive when disaster strikes.

Securing properties and improving protection are the first steps businesses should take to keep their businesses safe. But even well-protected properties can face extensive damages when catastrophes strike. Companies need to be able to react quickly and bring in the right expertise to secure their buildings and recover quickly after a catastrophic event. And once the disaster has passed, businesses often need to consult with other experts to ensure their claims are submitted accurately and they secure all they are entitled to receive from their insurers.

This latest *Business Insurance* custom guide provides information on the experts that risk managers need to consult before, during and after a catastrophe – property loss control consultants and claims auditors.

# Engle Martin & Associates, Inc.

[www.englemartin.com](http://www.englemartin.com)

Hurricane season is often a time that brings catastrophe (CAT) management plans to the forefront for review, as companies prepare for the increased chance of a major loss. A key factor in preparation is identifying the catastrophe management team, including internal members as well as important external service partners. Collaborating with the right independent adjusting firm is an important piece of a carrier or policyholder's catastrophe plan since the adjuster acts as the "eyes and ears" during the catastrophe claim process. Prior to hurricane season, Engle Martin & Associates, Inc., a national commercial loss adjusting and claims management firm, establishes a partnership with their clients as a dedicated claims resource.

Engle Martin recognizes the necessity of expanding service capabilities on a moments notice to manage the onslaught of claims reported during a catastrophic event. This requires a special infrastructure with experienced personnel in place to handle CAT specific claims, while a separate team maintains daily field assignments to ensure consistent claims service to all clients. During a catastrophic event, Engle Martin's central hub in the corporate Atlanta office oversees the claims triage process. Contact is made with the policyholder before the loss site is inspected, in order to collect pertinent details such as the extent of damage, number of locations, and the ability for the policyholder to return to business. These details allow the Engle



**"Our adjusters remain focused on service during a CAT."**

**-Elissa Morgan,  
AVP of Engle Martin's  
Claims Support Group**

Martin catastrophe management team, led by Don Ouzts, *Vice President*, and Elissa Morgan, *AVP of the Claims Support Group*, to pair the appropriate level of adjuster with the claim based on the size and complexity of the loss. "Our adjusters remain focused on service during a CAT," says Morgan. "They work quickly in the field to establish estimates on damages so they can be reported properly to insurance carriers associated with the losses, ultimately expediting claim resolution."

Preparation is the key to CAT planning success and preselecting qualified service partners will ensure a smooth process when an event occurs.



ENGLE MARTIN & ASSOCIATES, INC.

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## At A Glance:

Engle Martin & Associates, Inc. is a leading national independent loss adjusting and claims management provider specializing in commercial property and casualty claims. The privately held and owner operated firm is committed to meeting the ever-changing demands of the insurance industry and to delivering consistent and quality claims service.

Engle Martin's team of insurance professionals has an unparalleled understanding of the complexities of risk and the innate ability to effectively control and manage the claims process through technical expertise, timely communication, and comprehensive loss reporting.

For more information, please visit our website at [www.englemartin.com](http://www.englemartin.com) or contact W. Todd Evans, Executive Vice President, at 800.818.5619 or [tevans@englemartin.com](mailto:tevans@englemartin.com).



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# Global Risk Consultants (GRC)

www.globalriskconsultants.com

## GRC's Natural Hazards Analysis

Awareness and concern for natural hazards has increased significantly, both from internal risk management as well as insurance liability perspectives. Global Risk Consultants (GRC) helps companies identify these exposures and evaluate their severity and potential business impact. Assistance is provided in such areas as developing plans that must be in place to deal with risks before any event takes place, and implementing cost-effective mitigation strategies to reduce their potential effects at the local site and corporate levels.

Natural hazards insurability and the associated costs for coverage are increasingly painful issues for risk managers. A step towards reducing this pain is to have accurate information at hand to tell a story about the actual risks present, how these risks impact the affected locations, and what passive or active mitigation efforts are currently in place or planned for the future.

A project undertaken for a GRC client involved three phases. The first phase consisted of a desk top review, identifying which facilities were exposed to a natural hazard risk. In the second phase, facilities that were identified as exposed were prioritized based on severity of exposure, criticality of the operations, insurable value of the facility, and other client-specific criteria. Finally, in the third phase, the facilities were visited on a priority basis by GRC experts to conduct thorough analysis and gather critical detailed information, and develop expected actual loss scenarios as well as mitigation recommendations on a site-specific basis. This approach can be undertaken for flood, earthquake, windstorm, or other natural hazard exposures, and the phases allow a client to select the depth of the



study based on priorities, exposures, information voids and budgets.

This is an example of the many ways GRC approaches natural hazard exposure analysis. The bottom line: information is of key importance. The goal: to put the client in a better position to understand their exposures and be in control of accurate information to negotiate coverage, mitigate and plan for expected/outlined scenarios. It may turn out that exposures are not as severe as once believed, there are favorable site conditions which reduce the risk, mitigation efforts have been undertaken to account for an event, simple solutions that can be completed quickly to lower the risk or other factors present that can be addressed/reported. But the answers are only uncovered after analysis is conducted, and then sound business decisions can be made on both the client's corporate and site-specific levels.

*“Our diverse array of in-house services are delivered worldwide and backed by over 50 years of risk control experience.”*

Global Risk Consultants (GRC) reduces your company's overall cost of risk. Our diverse array of in-house services are delivered worldwide and backed by over 50 years of risk control experience. With a 96% client retention rate, we provide complete loss reduction benefits through value-added programs.

Below is a closer look at each service and the details Global Risk Consultants provides for each.

**Fire Protection Engineering:** Evaluate and manage exposure to fire and explosion risks, develop action plans and cost-effective mitigation strategies, implementation at the local site and corporate levels, impairment monitoring, plan/project reviews, CAD diagrams, loss investigations, and customized client training programs.

**Boiler & Machinery Engineering:** Analysis of facilities production, process operations and utility systems, identify bottlenecks and ways to improve operational efficiencies, develop action plans to control losses and avoid breakdowns, mechanical integrity programs to assist with O.S.H.A process safety requirements, and preventive/predictive and critical electrical equipment maintenance programs.

**Infrared Thermographic Surveys:** Non-contact, non-destructive analysis of electrical and mechanical equipment, detect abnormal or unexpected thermal patterns which may cause equipment failure, infrared and airborne ultrasound

technology identifies 'invisible' threats, identify critical loss exposures and their severity/impact, and clients, on average, save \$14 for every \$1 spent on Infrared inspections.

**Jurisdictional Boiler & Pressure Vessel Inspections:** Code-required inspection/certification of boilers and pressure vessels, issuance of operating certificates for jurisdictional objects in the U.S., Canada & Puerto Rico, third-party inspections for fabrication of boilers/pressure vessels in the U.S., Europe & Asia, accredited by ASME and the National Board of Boiler Pressure Vessel Inspectors, and provide official documentation and tracking of certificates and violations/recommendations.

**Natural Hazard Analysis:** Identify natural hazard exposures and evaluate their severity and impact, earthquakes, floods, hurricanes, windstorms and other exposures, site-specific analyses to identify risks and develop action plans and mitigation strategies, collect primary/secondary modeling input data on a site-specific, building-by-building basis, and pre- and post-loss consulting to prepare sites for impending events and recovery.

**Client Data Management System:** Full-featured, easy-to-use, information management system, secure, easy online access via password from any internet connection, interactive tools including benchmarking, trending, rating, recommendation follow-up, multi-level access with 'one-stop' navigation screen, and site-specific and portfolio level reports, drill-downs, analysis and outputs.



### WHO WE ARE

The only unbundled property loss prevention company to offer a complete portfolio of in-house, site-specific services and risk management solutions.

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### SERVICES PROVIDED

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- Natural Hazards Data Collection & Analysis
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- Worldwide credibility with property insurance underwriters

### CONTACT

Mario Harpel  
Principal  
732-827-4429

Mario.Harpel@globalriskconsultants.com

# STRENGTH & STABILITY

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- Infrared Thermography
- Client Data Management System



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# Adjusters: Ruling could reach beyond insurers

CONTINUED FROM PAGE 3

Commenting on the ruling, Liberty Mutual said in a statement that it is “carefully reviewing that decision to evaluate our options.”

Attorneys differed in their interpretation of the ruling.

The administrative exemption “has been one of the most difficult to explain to clients” and the one that is “most often misused,” said Margaret J. Grover, an attorney with Kronick Moskovitz Tiedemann & Girard in Walnut Creek, Calif. “I think this gives us something to grab onto to describe it a little more clearly to clients.”

Jeffrey D. Polsky, a partner at Fox Rothschild L.L.P. in San Francisco, said the administrative exemption “remains a very confusing area of the law.”

“The difficulty is going to be advising clients” about how their particular situation does or does not meet the test of the adminis-

trative exemption “where there doesn’t seem to be consensus on what that test is,” he said.

Several legal experts say, if upheld, the ruling could extend beyond the insurance sector.

“This could have a significant effect on lower-level administratively exempt employees” such as human resources staff who are not policymakers, said D. Gregory Valenza, a partner with Shaw & Valenza L.L.P. in San Francisco.

The standard set by the appellate court ruling is “very broad and vague,” Mr. Polsky said. “It’s something that has to be addressed whenever you’re evaluating whether something qualifies for the administrative exemption, so I think the impact of this is going to be felt well beyond just claims adjusters.”

However, Enzo Der Boghossian, a partner with Proskauer Rose L.L.P. in Los Angeles, said “I think the holding of the appellate

court’s decision can be limited to the facts of this case.”

He added, though, “I do think that employers are well-advised to re-examine” workforce members who have been deemed exempt from overtime “to ensure that they meet the appropriate standard” set by the appellate court.

“My concern is that other courts will not scrutinize the facts at the level I think employers would like to see following the *Harris* court’s treatment of this, and that could end up hurting employers,” said Christopher W. Olmsted, a shareholder with Barker Olmsted & Barnier A.P.L.C. in San Diego.

Should Liberty Mutual appeal, “there’s at least a distinct possibility” that the California Supreme Court will revisit the issue and “feel that the Court of Appeals may not have followed its instructions fully, and that the analysis as a whole ended up with the wrong result,” Mr. Der Boghossian said.

Ms. Grover disagreed. “I think there is a good analysis laid out in this, as to why they got where they did.”

## UP CLOSE

### ANDREW GEORGE



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### LEGAL NOTICE

#### IN THE MATTER OF THE LIQUIDATION OF ASPEN U.S. INSURANCE COMPANY

Supreme Court County of New York  
Index No.: 401644/11

#### NOTICE

Pursuant to an order of the Supreme Court of the State of New York, County of New York (“Court”), entered August 24, 2011 (“Liquidation Order”), the then-Superintendent of Insurance of the State of New York and his successors in office were appointed as liquidator (“Liquidator”) of Aspen U.S. Insurance Company (“Aspen”) and, as such, has been directed to take possession of Aspen’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 Aspen. The Liquidator has, pursuant to Insurance Law Article 74, appointed Jonathan L. Bing, Special Deputy Superintendent (“Special Deputy”), as his agent to liquidate the business of Aspen. The Special Deputy carries out his duties through the New York Liquidation Bureau, 110 William Street, New York, New York 10038. The Liquidator has submitted to the Court a verified petition (“Verified Petition”) seeking an order: (i) approving the Liquidator’s report (“Report”) on the status of the Aspen liquidation proceeding (“Liquidation Proceeding”); (ii) authorizing the continued payment of administrative costs and expenses, including such costs and expenses pertaining to the closing of the Liquidation Proceeding; (iii) authorizing the Liquidator to distribute Aspen’s assets, to the extent assets are available after payment of administrative costs, expenses and other obligations of Aspen, to Aspen U.S. Holdings, Inc. (“Aspen Holdings”), as the immediate parent and sole shareholder of Aspen; (iv) terminating and closing the Liquidation Proceeding; (v) authorizing the Liquidator to continue to receive and disburse any future receivables to Aspen Holdings after the termination of the Liquidation Proceeding, without further application to this Court, and to continue to pay all administrative costs and expenses in connection with any such distributions; (vi) releasing and discharging the Liquidator, his predecessors and successors in office, and their agents, attorneys and employees, from any and all liability arising from their acts and omissions in connection with the Liquidation Proceeding; (vii) authorizing and directing the Liquidator, in his discretion, to destroy or otherwise dispose of any and all of the books, files, records and other property of Aspen without further order of this Court; and (viii) providing for such other and further relief as this Court may deem just and proper.

A hearing is scheduled on the Verified Petition on the 4th day of September 2012, at 9:30 a.m., before the Court at the Courthouse, IAS Part 15, 80 Centre Street, in the County, City and State of New York. If you wish to object to the Verified Petition, you must serve a written statement setting forth your objections and all supporting documentation upon the Liquidator and Clerk of the Court, at least seven business days prior to the hearing. Service on the Liquidator shall be made by first class mail at the following address:

Superintendent of Financial Services of the State of New York as Liquidator of Aspen U.S. Insurance Company  
110 William Street, New York, New York 10038  
Attention: John Pearson Kelly, Esq.  
General Counsel

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

Requests for further information should be directed to the New York Liquidation Bureau, Creditor Claims Department at (212) 341-6809.  
Dated: July 12, 2012

Superintendent of Financial Services of the State of New York as Liquidator of Aspen U.S. Insurance Company

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## Codes: Risk avoidance

CONTINUED FROM PAGE 4

approved state building code at the time a major disaster is declared. To be eligible for the increased federal funds, the state would have to submit its building code to the president for approval. To be approved, the state code would have to be consistent with the most recent version of a nationally recognized model building code, have been adopted within six years of the most recent version of the nationally recognized code, and use that national code as a minimum standard.

Rep. Jeff Denham, R-Calif., chairman of the subcommittee, said “study after study” has shown that investment in mitigation saves federal money. “Certainly I believe this is a very important issue,” Rep. Denham said in an interview after the hearing. He noted that California’s building codes have proved to be quite effective and, “if replicated across the nation, it could not only save money but, and more importantly, lives.”

He said he would like the subcommittee members to see the Insurance Institute for Business & Home Safety’s Chester County, S.C., facility. A video of a test of roofing on houses subject to high wind was presented at the hearing. “It certainly seems there is sup-

port on both sides of the aisle” for the legislation, Rep. Denham said.

Proponents say they hope support can be broadened in the next year, given the current session’s shrinking calendar.

“We’re very focused on next year, and laying down a strong predicate is very important,” said Julie Rochman, president and CEO of the Tampa, Fla.-based Insurance Institute for Business & Home Safety. “Strong, well-enforced building codes provide a level playing field of minimum standards that protect homes and businesses against both man-made and natural hazards.”

During her testimony in favor of the bill, Ms. Rochman said the IBHS thinks about 20 states’ codes would currently qualify, or would qualify with some minor changes to their laws and regulations, for the additional funding.

Jimi Grande, senior vp in the National Assn. of Mutual Insurance Cos.’ Washington office, said the issue is a critical one for the industry and its profitability.

“As the entire P/C industry has learned over the past few years, one of the ways for us to continue to be successful is to harden buildings,” Mr. Grande said. “We can’t stop the storm, but we can harden the buildings.”

Effective building codes are essential to an appropriate long-term hazard mitigation strategy, said Frank Nutter, president of the Washington-based Reinsurance Assn. of America. “Obviously, reinsurers bear the largest share of catastrophe losses in most events.”

# Costs: Shouldering risk

CONTINUED FROM PAGE 1

City, Mo.

One reason is that work comp insurers underwriting for a large-deductible policy scrutinize the employer's income statement and balance sheet to make sure policyholders can provide the collateral insurers require from an employer to secure potential losses within the deductible, Ms. Burgess said.

"They are valuing those financials so they can avoid taking credit risk," Ms. Burgess said. "Therefore, if you take on \$100,000 deductible, you are going to have to collateralize the expected losses within that \$100,000."

Regardless of the costs and the increased scrutiny, more employers are making the move to loss-sensitive work comp coverage.

With "guaranteed costs for larger insureds, the price is either going up or the availability is starting to shrink," said Drew Jones, senior vp for risk management services for Pennsylvania Manufacturers' Assn. Insurance Co., a Blue Bell, Pa.-based underwriter specializing in workers comp.

"And hence people are either returning to loss-sensitive or considering loss-sensitive (insurance programs) if the rate increases have been more than they budgeted for" or unacceptable, Mr. Jones said.

The move is mostly, but not entirely, affecting midsize policyholders, said Paul Braun, managing director of casualty claims for Aon Global Risk Consulting in Los Angeles.

Some larger employers that purchased guaranteed-cost policies the past few years during the soft insurance market cycle, when the price of such coverage was "cheap," also are shifting back to loss-sensitive programs, Ms. Burgess said.

"The market (had) been so soft that I have multimillion-dollar work comp accounts that have been guaranteed-cost. But they, too, are transitioning," Ms. Burgess said.

Shifting between guaranteed-cost and loss-sensitive workers comp coverage is common when insurance market cycles firm or soften, experts said.

But before employers switch, Mr. Braun said, they should understand that under a loss-sensitive arrangement they will be responsi-

ble for an array of new decisions, such as whether to unbundle their claims management by contracting with a third-party administrator. Under a guaranteed-cost plan, policyholders turn over most of such claims-handling decisions to their insurers.

Employers also must be sure they are "operationally ready" for the responsibilities of taking on greater risk through a loss-sensitive policy, said Kevin Finn, vp of national accounts at The Hartford Financial Services Group Inc. in Hartford, Conn.

Greater cooperation across the entire corporation is necessary, Mr.

Finn said. For example, a company's finance department or treasury would be more involved in meeting the insurer's collateral requirements, while operations managers may have to take on greater roles in reducing subsequent losses the employer would retain.

Over the long term, employers can realize savings with a loss-sensitive workers comp plan that requires them to play a more direct role in managing their claims instead of transferring all their workers comp risk to insurers, said Kevin Wick, a managing director for the Actuarial Insurance and Management Solutions Group of PricewaterhouseCoopers L.L.P. in Seattle.

But there will be fluctuations in claims costs, with the potential for some large losses to occur before the long-term savings materialize, he said.

There also are substantial loss-control considerations, such as whether an employer has the in-house staff or ability to pay for claims analysis that helps them understand certain issues, such as which business units are generating the greatest losses, Mr. Wick said.

"If you go self-insured with some notion that you are automatically going to have savings, that is naïve," Mr. Wick said. "You have to focus on controlling your costs throughout the organization."

Others agree that analyzing

losses is a first step.

"The first thing you really have to look at is where are your losses," said PMA's Mr. Jones. Then employers should conduct a cost-benefit analysis to determine their total cost of risk under various work comp programs, he added.

Employers evaluating the shift also must look at their loss trends and experience modification factors to see which direction they are heading, Gallagher's Mr. Edgcombe said.

"A lot of folks that buy guaranteed cost...kind of lose track of the fact that their open claims are going up," Mr. Edgcombe said. "And when you are on a deductible program, you are going to be continuing to write checks."

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# Devices: Technology raises risks

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Therefore, it is critical firms establish policies for the use of these personal devices to ensure company data is protected, experts say. There also are steps firms can take to segregate company and personal data.

Use of personal devices at work is “quickly becoming more the norm than the exception,” said Alan E. Brill, senior managing director of secure information services for New York-based Kroll Inc. There is “a huge demand for people to be able to access data on portable devices, whether those are smartphones or tablets, and a growing recognition on the part of corporations that that’s something that they’re going to do, so we very quickly went from, ‘Over my dead body,’ to, ‘How can we facilitate this in a secure way?’”

Philip L. Gordon, a shareholder with law firm Littler Mendelson P.C. in Denver, said more and more employees prefer to use their own devices because “in some instances the employee’s technology is actually better than the employer’s technology. Sometimes, it’s because the employee doesn’t want to carry a personal device and a business device.” And sometimes employees want to have their own device because of the music on it or because they want to keep their personal photos with them all the time, he said.

The time people spend at work also is a factor. “People are just more productive when they have access to their enterprise’s information all the time,” said Nicko van Someren, chief technology officer for Sunnyvale, Calif.-based Good Technology Inc., which provides mobile management technology solutions.

“The genie, on some level, is out of the bottle, so trying to address it is important,” said David Navetta, a Denver-based partner with the Information Law Group.

“It’s better to adapt policies to reality than to try to force reality into a policy,” said Regev Yativ, president and CEO of software firm Magic Software Enterprises Inc. (USA) in Laguna Hills, Calif., which permits employees to use their own devices at work. “If you allow people to work on something that they like, it will make them more productive and the (return on investment) will be much bigger.”

Employees’ bringing their own devices to work is “a huge issue,” said Jonathan T. Hyman, a partner with law firm Kohrman Jackson & Krantz P.L.L. in Cleveland. “It’s one of the most underappreciated security issues facing corporate America today,” he said. Companies do it because of the good will it engenders, “but they are, to a large degree, sacrificing control and security over their data.”

“The biggest risks for employers

## Employer policy on mobile devices essential

By JUDY GREENWALD

Employers should have appropriate policies and controls in place if they allow workers to bring their personal mobile devices to the office.

A first step to consider is why employers want to introduce a bring-your-own-device policy, and that can shape its provisions, experts say.

Aaron K. Tantleff, senior counsel with Foley & Lardner L.L.P. in Chicago, said, “You have to think about how you want to do it,” because some companies implement such policies to save money, while for others it is a recruiting tool or implemented for retention purposes.

While a policy for bringing personal smartphones and electronic tablets to work can be cost-effective, it also can be more expensive than not having one, depending on how the devices are supported. Companies also must determine who falls under the policy. While some firms allow anyone to bring their own devices to work, others do not allow workers who have access to restricted or confidential information, such as those in legal or human resources departments, he said.

Employers must be sure not to sacrifice control, said Jonathan T. Hyman, a partner with Kohrman Jackson & Krantz P.L.L. in Cleveland. “It might be something as simple as making sure a company retains the ability to remote-wipe the device if it’s lost or stolen,” he said.

Philip L. Gordon, a shareholder with Littler Mendelson P.C. in Denver, said there are “virtual sandboxes” available that create a space within a personal device for encrypted corporate data and applications that have a separate password from the rest of the device.

If an employee leaves the company or the device is lost or stolen, “that separate space can be removed from the device without having an impact on any of the nonbusiness information on the device,” Mr. Gordon said.

“Put employees on notice upfront that participation in the program is a privilege, not a right, and that, in order to enjoy the privilege, they need to agree to have” security controls installed on their personal devices to conduct company business or while on company premises, he said.

Employers also should require that the devices connecting to their networks meet certain criteria, such as having virus protection or that access is password-controlled, Mr. Tantleff said.

Company policies must be thoughtful, Mr. Tantleff said. If the policy is overly restrictive, “your employees will find ways to violate it.”

Peter S. Vogel, a partner with Gardere Wynne Sewell L.L.P. in Dallas, said many companies offer a stipend for part of the cost of employees’ personal devices. If employees accept, “then it creates a different contractual obligation” enabling the firm to exercise more control, he said.

Chicago, said most people will not leave their laptops lying around. But “people are a lot looser” with smartphones and other devices, and more likely to leave them behind in places such as restaurants. People are also prone to lending them “because their friends want to play ‘Angry Birds.’” They may also loan them to their children, who may download malware-infested apps, he said.

Another concern is company information winding up in the cloud because of employees’ actions, experts say. In these cases, “the extent to which you are able to completely control where your data is, who has access to it and how it’s...used can go out of your hands,” Mr. Brill said. “And depending upon the sensitivity of the data, not recognizing that phenomena can result in significant risk, which you may or may not be prepared to accept.”

Employers also have to worry about mixing business and personal information, including photos and emails, and what to do with company information on a personal device if the employee is terminated, Mr. Tantleff said.

The use of personal devices at work also raises complex privacy issues. Two years ago, the U.S. Supreme Court decided in *The City of Ontario et al. vs. Jeff Quon et al.* “that employees that use company-issued devices are not entitled to privacy,” said Peter S. Vogel, a partner with Gardere Wynne Sewell L.L.P. in Dallas.

However, if an employee is using his or her own device but doing company business and emailing intellectual property or conducting work over the personal device, “it becomes very complicated as to whether or not the employee is entitled to privacy” and who owns the intellectual property that is developed, Mr.

Vogel said.

Mr. Gordon said, “On the privacy side, it becomes more difficult for an employer to conduct workplace investigations...because once the employee owns the device and the information is on the employee’s device, the employee has the right to control the device,” and “the employer is at risk of committing a computer trespass, which is an offense in all 50 states if it accesses an employee’s personal device without permission.”

Employer policies differ on these personal mobile devices.

Littler Mendelson, the Denver law firm, does not permit its employees to use their own devices for work, said Michael McGuire, the firm’s Minneapolis-based chief information security officer. After considering all the issues involved, everything from tax issues on what obligation employers have to reimburse employees for using their personal devices, to data-related issues, data privacy and security issues, to the employment law issues that could arise if people look at inappropriate content at work, the firm decided “bucking the trend” of permitting employees to bring their own devices was justified, Mr. McGuire said.

Centreville, Va.-based Carfax Inc. permits only selected employees to use their own devices, Chief Information Officer Phil Matthews said. Its salesmen are expected to use company devices, including iPads, to make sure they have a “consistent experience” in making customer presentations, he said. “We want them to be well-prepared,” he said.

Product managers and developers who do not have direct customer contact are permitted to bring in their own devices if they wish, as long as they follow company guidelines and use them appropriately, Mr. Matthews said.

### POLICY CONSIDERATIONS

Employers implementing a bring-your-own-device policy should take the following steps:

- Determine the reasons for the policy.
- Decide to whom the policy applies within the company.
- Retain control over company data.
- Put employees on notice that bringing personal mobile devices to work is a privilege, not a right.
- Ensure devices that connect to the company network follow security protocols.
- Establish provisions for wiping company data if the device is lost or stolen or if the worker leaves the firm.
- Be sure the policy is not overly restrictive.
- Consider giving employees stipends to buy devices as a way of gaining more control.
- Conduct follow-up training on the policy, with periodic retraining.
- Consider appointing a privacy officer to guide the firm on rules in its particular industry.

are the device is going to be lost or stolen with sensitive customer employee information on it or corporate trade secrets, and that information will be exposed to third parties, potentially resulting in a security breach or a loss or misappropriation of confidential business information,” Mr. Gordon said.

Aaron K. Tantleff, senior counsel with Foley & Lardner L.L.P. in

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# Regulations: Employers await final rules on law

CONTINUED FROM PAGE 1

substantially week to week and season to season.

"Employers, especially retailers, are champing at the bit" for definitive guidance, said Molly Iacovoni, a senior vp with Aon Hewitt in Lincolnshire, Ill. "That is one of the hottest issues."

"The IRS has got to get moving on that one," agreed Chantel Sheaks, a principal with Buck Consultants L.L.C. in Washington.

Another vital issue for employers relates to a health care reform law provision affecting employees who do not select a health care plan or do not tell their employer that they don't want to enroll in a plan because they have coverage elsewhere, such as through a spouse's employer.

In such situations, employers with at least 200 employees will be required to automatically enroll the employee in one of their health care plans.

The IRS has not issued guidance related to how employers would comply with the requirement. For example, employers would need to know how much autonomy they would have in selecting the default plan for those employees who don't choose a plan.

Another area in which guidance is lacking is a requirement in which employers—by March of next year—have to communicate to employees the availability of state health insurance exchanges as a coverage option.

But regulators have yet to provide guidance on suggested wording of those notices, as well as how—electronically or in print—health insurance exchange infor-

## REGULATORY UNCERTAINTY

Health care reform law provisions for which there is no final guidance include:

- How employers are to determine if an employee is full time
- How much insurers and third-party administrators will be assessed under the "transitional" reinsurance program
- How employers should communicate the availability of health insurance exchanges to employees
- How employers should automatically enroll employees who don't choose a health care plan
- The safe harbor exempting employers from the \$2,000 per-employee penalty so long as they cover "substantially" all full-time employees

mation would be communicated to employees.

"Those are issues that would have to be addressed," said Paul Dennett, senior vp-health care reform with the American Benefits Council in Washington.

Guidance also is lacking on what some benefit experts label a "sleeper" provision—one that requires insurers and employers to fork over tens of billions of dollars to the government under the reform law's "transitional" reinsurance program.

That program is intended to help offset the losses health insur-

ers are expected to incur in providing coverage to high-risk individuals buying coverage in state insurance exchanges.

Regardless of those individuals' health status, insurers will not be able to deny them coverage. In addition, there will be limits on how much insurers will be able to vary premiums based on such factors as age.

Many of those individuals who—if their incomes are less than 400% of the federal poverty level—will be eligible for federal premium subsidies now are uninsured and, as a result, may have neglected to seek treatment for medical conditions.

To help offset insurers' adverse experience, the law authorizes financial assessments from 2014 through 2016 totaling \$25 billion to be imposed on health insurers and third-party claims administrators, in the case of self-funded employers. TPAs are expected to seek reimbursement of these assessments from their clients.

But so far, the government has not provided any guidance as to the methodology it will use to determine how much insurers and TPAs will pay. Most of the money will be paid to "reinsurance entities" states are supposed to set up. In turn, these entities will reimburse insurers providing coverage to high-risk individuals.

"How this will be assessed is not yet known," said Gretchen Young, senior vp-health policy with the ERISA Industry Committee in Washington.

Several sources said the assessment could run about \$60 per plan participant, at least during the first year.

If so, that could mean millions of dollars in new costs in the case of employers with very large health care plans.

"This could be a benefits horror story," Aon Hewitt's Ms. Iacovoni said.

# AIG: Oversight needed?

CONTINUED FROM PAGE 3

"At AIG, we welcome additional regulatory oversight which, combined with the discipline we have imposed on our company, only serves to make AIG much stronger," a spokesman for AIG wrote in an email. "AIG also remains committed to making America whole, plus a profit. Working with the U.S. Depart-

ment of the Treasury and the Federal Reserve, the total outstanding government support to AIG has decreased by approximately 83%, or by \$152 billion."

House Financial Services Committee Chairman Spencer Bachus, R-Ala., responded to the report by criticizing the government's handling of AIG.

"Regulators have done a poor job of overseeing AIG," he said.

"The government's mismanagement of AIG has enabled both the backdoor bailout of AIG's counterparties and massive bonuses to employees. The SIGTARP report today shows the management of AIG has not improved, the company remains 'too big to fail,' no one is meaningfully watching AIG, and the government is not qualified nor should it assume the task of running one of the nation's largest insurance companies. Clearly, Treasury must make ending the government bailout and management of AIG a top priority."

## inBrief

CONTINUED FROM PAGE 1

Chicago Mayor Rahm Emanuel announced. Zurich's move will eventually increase its downtown Chicago payroll to about 500 insurance and risk management professionals.

### Federal workers get EEOC guidance

The federal Equal Employment Opportunity Commission has issued a final rule modifying certain aspects of the complaint process used by federal employees and applicants who think they have been subjected to prohibited employment discrimination by federal agencies. Key revisions to the current statute under the final rule were published in the Federal Register.

### Damage from Vicente could reach \$300M

Insured damage from Typhoon Vicente could be as much as \$300 million, according to catastrophe modeler EQECAT Inc. The storm made landfall as a Category 3 typhoon in Taishan,

Guangdong, China, with maximum sustained winds of about 120 mph, according to EQECAT.

### Average duration rises for comp TTD benefits

The average duration of workers compensation temporary total disability claims benefits increased during the first half of 2011 in correlation with the struggling economy, according to a study by NCCI Holdings Inc. The average duration for the indemnity benefits was 149 days in the first six months of last year, compared with 147 days in 2010 and 144 days in 2008, the year after the recession began.

### Cat bond issuance reaches \$2.1B in Q2

Capital continues to flow into the reinsurance industry via catastrophe bonds, according to a report by reinsurance intermediary Aon Benfield. The report says seven catastrophe bond transactions totaling \$2.1 billion closed during the quarter.

### Arch Capital Group names new CFO

Mark D. Lyons will be executive vp and chief financial officer of Arch Capital Group Ltd. effective Sept. 1. David McElroy, president of Arch Financial & Professional Liability Group, will succeed Mr. Lyons as chairman and CEO of Arch Worldwide.

# Shootings: Trigger complex insurance case

CONTINUED FROM PAGE 3

"When speaking to underwriters who are evaluating the risk, it's very important to talk about your property's preparedness for the potential of an act of violence and to discuss and explain the security and staff training measures that have been implemented," she said.

While an incident such as the Aurora theater shooting is unexpected and tragic, victims and their families will seek recovery from multiple parties involved even if there's no liability or no steps that could have been taken to avoid such an attack, Ms. Craig Calkins said.

Still, victims must demon-

strate negligence or prove that the danger posed should have been known by the theater and other parties to win such litigation, experts say.

"There may well be an issue as to whether there are a single or multiple occurrences with so many people being injured and the number of deaths," Ms. Craig Calkins said.

The issue of single or multiple occurrences could affect how Cinemark's retention is applied, Willis' Mr. Levine said.

"If it's \$250,000 per injured person, the theater is going to have a lot more self-insured exposure than if it's \$250,000 for the incident itself," Mr. Levine said.



## Global Catastrophe Survival Guide: New Challenges to Casualty Risk Management

Risk managers must come to terms with the changing nature of the catastrophe risks they face as their businesses expand around the globe. This free white paper discusses the new challenges to casualty risk management and highlights the importance of developing effective catastrophe management plans.

To download this free sponsor whitepaper go to [www.businessinsurance.com/section/specialty-risks](http://www.businessinsurance.com/section/specialty-risks)

## POTTY MOUTH COULD CURSE JOB PROMOTION

Dropping an F-bomb at the office could cost you much more than 50 cents in the company swear jar, according to a study released last week.

Sixty-four percent of 2,298 hiring managers and human resources professionals surveyed said they typically have a lower opinion of employees who swear at the office, and 57% said they'd be more likely to promote employees who keep their language clean, according to a study by New York-based Harris Interactive Inc. A majority of employers surveyed also said swearing causes them to question an employee's professionalism, control, maturity and intelligence.

Nevertheless, 51% of employees questioned in the same study revealed they have been known to curse around the office, and more than half of them admitted they swear in front of their supervisors. For good measure, about one-quarter of the employers surveyed admitted swearing around their co-workers.

Demographically, office potty mouths are a varied bunch. According to the study, men (54%) are only slightly more likely to curse at work than women (47%). Employees in the prime of their careers (ages 35-44) were the most frequent offenders, while workers just starting out in the job market (ages 18-24) and nearing retirement (age 55 and older) were the least likely groups to swear on the job.



CONTRIBUTING: Roberto Ceniceros, Matt Dunning, Sheena Harrison, Rodd Zolkos

# End Page

## Kirstie Alley sued over diet claims

Former "Cheers" star Kirstie Alley is being sued for allegedly lying about how she shed 100 pounds.

The 61-year-old actress credits the Organic Liaison diet program for her weight loss. But in a lawsuit recently filed in Los Angeles, a plaintiff claims that Ms. Alley's weight loss is due to her performances on "Dancing with the Stars" and cutting back on her calorie intake.

The plaintiff, Marina Abramyan, said she tried the weight-loss program but that it's just another fiber and calcium supplement, according to reports. She also said she didn't lose any weight while using the product.

So Ms. Abramyan is claiming false and misleading advertising.

Ms. Alley, meanwhile, touts Organic Liaison products on her website, on a blog and on QVC, the home shopping network.

"I've got the energy of a 20-year-old and I lost 100 pounds!" she claims on her website.

Weight has been an ongoing issue for the actress. Reports say she reached 230 pounds about three years ago.

Now she claims to have found the Organic Liaison solution.

"She's more committed than ever to embracing a healthy and active lifestyle," her website states.

"Organic Liaison Rescue Me natural energy elixir continues to help her stay fit and fabulous."

Ms. Alley



AP PHOTO



AP PHOTO

Michael Brodtkorb has filed a lawsuit claiming wrongful termination, invasion of privacy and defamation.

## Senate aide claims bias after firing

A former Minnesota Senate aide who was fired after having an affair with the state's female former Senate majority leader is claiming he was discriminated against and was the victim of a double standard because female legislative staffers who have engaged in similar relationships with male lawmakers didn't lose their jobs.

In a suit filed last week in Ramsey County, Minn., District Court in St. Paul, Michael Brodtkorb claimed wrongful termination, invasion of privacy and defamation. The suit against the state of Minnesota, the Minnesota Senate and Secretary of the Senate Cal Ludeman seeks at least \$50,000.

According to reports, Mr. Brodtkorb was fired in December from his job as the Republican caucus communications director after having an affair with then-Senate Majority Leader Amy Koch. Ms. Koch resigned her Senate leadership post and indicated she would not seek re-election.

In a statement, current Senate Majority Leader Dave Senjem, a Republican, said Mr. Brodtkorb's suit was "without merit" and that the Senate was guilty of no wrongdoing in Mr. Brodtkorb's dismissal.



Lady Gaga

## GAGA DOLLS SUBJECT OF LAWSUIT

Lady Gaga is accused of toying with a doll manufacturer that says she and her management company delayed production for a line of action figures fashioned after the pop icon.

Van Nuys, Calif.-based MGA Entertainment Inc. last week filed a breach of contract lawsuit in New York Supreme Court against New York-based Bravado International Group Merchandising Services Inc., Culver City, Calif.-based Atom Factory L.L.C. and Lady Gaga, a.k.a. Stefani J. Germanotta.

MGA, which makes the popular line of Bratz dolls, says in filings that it worked with Bravado, a licensing company, and Atom Factory, Ms. Gaga's management firm,

to develop a line of Lady Gaga dolls.

The company claims that it made a "herculean effort" to prepare the Gaga dolls for a summer 2012 release, including paying a \$1 million licensing fee to Bravado for rights to develop the celebrity-branded toy.

However, MGA claims that Atom Factory, Bravado and Ms. Gaga have withheld final approval for the dolls because they want to change the ship date to 2013, when Ms. Gaga is scheduled to release a new album.

MGA is seeking more than \$10 million in damages and the ability to begin production on six different Lady Gaga dolls, according to court records.

AP PHOTO

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Photo: Deborah Feingold

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