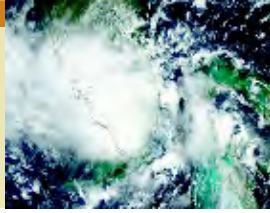


RISK MANAGERS, INDUSTRY SAY TERROR COVER BACKSTOP REMAINS NECESSARY / PAGE 3



STORM FORECASTERS SEE ACTIVE SEASON THIS YEAR / PAGE 3

AIG POSTS LOSS ON CHARGE, BUT ANALYSTS SEE POSITIVES AT INSURANCE UNITS / PAGE 3

In Brief

Deepwater insurance hit \$4B to \$6B: Analysis

Though the Deepwater Horizon disaster in the Gulf of Mexico is not estimated to be a major property/casualty insurance event, risk management consulting firm Towers Watson & Co. estimates commercial insured losses will range from \$4 billion to \$6 billion. Towers Watson said the insured losses are just a slice of economic losses suffered since the oil rig's April 20 explosion, fire and subsequent spill. So far, total economic losses in the Gulf are estimated at \$35 billion.

Health care reform law challenge advances

A federal judge has allowed a Virginia lawsuit challenging the Patient Protection and Affordable Care Act to go

See **IN BRIEF** page 24



SPOTLIGHT

CAPTIVES: RISK RETENTION STRATEGIES

RRGs the Rx for medical malpractice needs; financial services reform could boost RRGs; economy, soft pricing pressure rent-a-captive sector; *BI* rankings of largest policyholder-owned alternative facilities, rent-a-captive facilities. **PAGE 11**

EMPLOYMENT PRACTICES

Financial reforms up retaliation risk

Provisions designed to aid whistle-blowers seen boosting lawsuits

By **JUDY GREENWALD**

The Dodd-Frank Wall Street Reform and Consumer Protection Act, the financial services reform bill signed into law by President Barack Obama last month, significantly expands the opportunities for employees to file retaliation claims against their firms through several whistle-blower provisions, observers say.

The 848-page legislation creates new whistle-blower protections and incentives for employees under federal securities and commodities laws and expands existing whistle-blower protections under the Sarbanes-Oxley Act (see box, page 22).

Observers note that just by greatly expanding the possible number of potential whistle-blowers, the

law also increases the potential number of workers who ultimately may file retaliation claims.

Most observers say the new law can be expected to lead to an increase in litigation against companies.

"It's a very lengthy bill, with a lot of different provisions, and it's trying to do a lot of things, but fundamentally, its incentivizing people to

come forward with whistle-blowing complaints" and establishes "an enormously robust cause of action for claimed retaliation with serious penalties" and a burden of proof that tilts clearly in favor of the employee whistle-blower, said Bradford K. Newman, a partner with Paul Hastings Janofsky & Walker L.L.P. in Palo Alto, Calif.

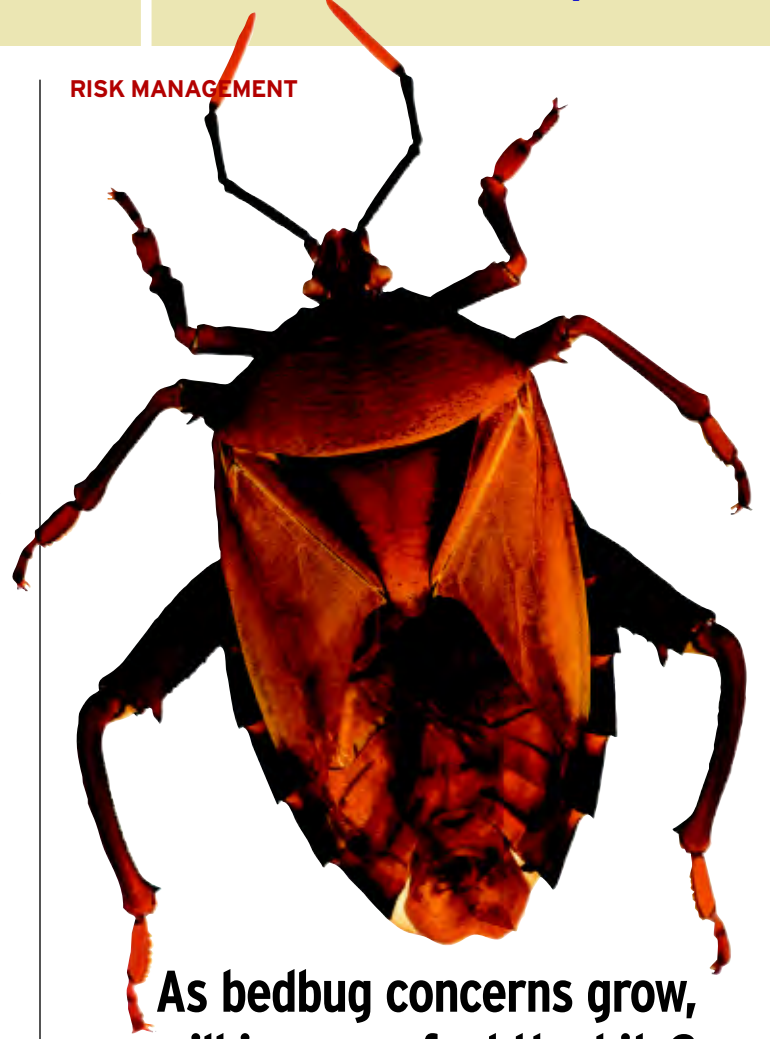
"Like all employment laws, while the goals may be lofty, the devil is in how the wording of the statute is written, and this is going to create a lot of work for

See **WHISTLE-BLOWERS** page 22

'While the goals may be lofty, the devil is in how the wording of the statute is written.'

Bradford K. Newman, Paul Hastings Janofsky & Walker L.L.P.

RISK MANAGEMENT



As bedbug concerns grow, will insurers feel the bite?

By **JEFF CASALE**

NEW YORK—Some hotels have been battling a surge of bedbugs for several years now, but the bloodsuckers have made their way into retail stores and caused companies to consider their insurance coverage options.

See **BUGS** page 24

HEALTH CARE REFORM

Employers seek help with health reform changes

By **JOANNE WOJCIK**

Anxious employers of all sizes and from nearly every industry have been asking their benefit consultants to calculate how the new U.S. health care reform law will affect their health plan costs.

The reviews have focused on near-term changes as well as later years as more provisions of the Patient Protection and Affordable Care Act take effect.

For some, the modeling exercises began even before President Barack Obama signed the legislation into

'They're looking at the more immediate tactical requirements that they need to make for their benefit plans for open enrollment, which is coming up in a few months.'

Rich Bailey, Mercer L.L.C.

law in March, and all that consultants had to work with were drafts of the legislation.

While demand for such modeling soared right after Congress passed the legislation, it has slowed since then as employers apply the infor-

mation they have received to their 2011 benefit plan decisions.

"Now they're looking at the more immediate tactical requirements that they need to make for their benefit plans for open enrollment, which is coming up in a few months," said Rich Bailey, a senior actuary in the Richmond, Va., office of consultant Mercer L.L.C.

In most cases, employers are choosing to forgo grandfathered status for their plans to have more control over the design of their plan, consultants say. Plans that qualify for grandfathered status are exempt from certain requirements, such as providing full coverage of preventive services. But to qualify

See **MODELS** page 23

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UNITED IN TEAM WORK

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CARTOONS BY SCHILLERSTROM

You've been seeing them in print in *Business Insurance* magazine for years. Now Roger Schillerstrom's weekly cartoons are available online as premium content. Registered paid print subscribers can access the cartoon archives at www.BusinessInsurance.com/section/cartoon.



Nominate leading industry women

The deadline to submit nominations for the *Business Insurance* 2010 Women to Watch feature has been extended to Aug. 20. Forms are available online at www.BusinessInsurance.com/section/women-to-watch.

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CAREER CENTER

Business Insurance's Career Center, powered by JobTarget, is designed to deliver new career opportunities with the same specialization and quality that *Business Insurance* delivers in its news and information services. Whether you are looking for a new job, or to hire for a new position, sign up at the Career Center to make your search more efficient and successful.



LET YOUR VOTES BE REGISTERED

The annual Readers Choice Awards survey is now online for readers to vote on their favorite insurance industry firms. www.BusinessInsurance.com/ReadersChoice.

MOST POPULAR STORIES Week of August 2, 2010

1. Property/casualty insurers turn to reserves: Analysis
2. Deepwater insured losses are \$4B to \$6B: Towers Watson
3. Virginia health care challenge can proceed
4. When AIG can repay federal bailout is unknown: GAO
5. MMC reports first-half profit of \$484M
6. AIG repays \$3.5B of Fed debt since April
7. Property/casualty insurers withstand tough economy
8. ACE CEO calls broker fees a 'conflict of interest'
9. MetLife raises \$3.15B for purchase of AIG unit
10. N.Y. AG opens probe of GE health care card

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FEDERAL LEGISLATION & REGULATION

Terror cover backstop still seen as vital

Buyer, industry groups urge administration to continue program

By MARK A. HOFMANN

WASHINGTON—If Congress allows the federal terrorism insurance backstop to expire, an alternative government-backed program must be put in place, risk managers and others say.

The federal backstop, which began with the Terrorism Risk Insurance Act of 2002 and was extended by the Terrorism Risk Insurance Program Reauthorization Act of 2007, isn't slated to expire

until 2014. But in comments filed with the President's Working Group on Financial Markets during recent weeks, backstop supporters made clear that they believe the program is working well and must be continued.

The working group sought comment on the long-term availability and affordability of terrorism risk insurance to meet the legal requirement that the working group, which is chaired by Treasury Secretary Timothy Geithner, conduct an ongoing analysis of the terrorism insurance market. It is required to submit its findings to Congress this year.

An additional report should be filed in late 2013, about a year before the program must be extend-

ed or allowed to expire.

Risk managers want to see the backstop continued.

"Though we have several years until the expiration of the act, all indications today are that there has been no change in behavior in the insurance markets" that would suggest that the program could lapse, Bradley R. Wood, senior vp-risk management at Marriott International Inc. in Bethesda, Md., and a longtime backstop advocate, said in an interview.

"It's important to lay the groundwork now in anticipation that policyholders will continue to find the act to be critical" in their efforts to procure reasonably priced and adequate insurance coverage, he said.

The New York-based Risk & Insurance Management Society Inc. made the same points in a comment letter filed with the Obama administration just before the comment period ended last week.

"The past seven years have demonstrated that the private sector alone is not able to sustain a competitive and healthy market for terrorism insurance," RIMS President Terry Fleming, who also is director-division of risk management for Montgomery County, Md., in Rockville, wrote in the comment letter.

He said the federal backstop "has worked well since its inception" and

See **TRIA** page 21

CATASTROPHES

Latest storm forecasts see active season ahead

Colorado State team expects 10 hurricanes

By MARK A. HOFMANN

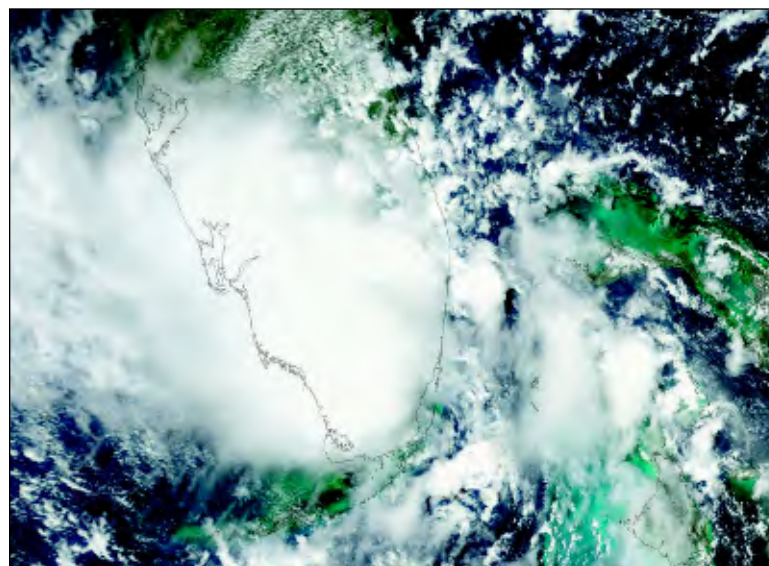
Forecasters continue to predict that this year's Atlantic hurricane season will be an active one.

In fact, Colorado State University's Tropical Meteorology Project last week predicted that 10 hurricanes, one of which already has occurred, will form this season. The National Oceanic and Atmospheric Administration issued its forecast a day later, in which it said it expects eight to 12 hurricanes.

However, insurance industry observers say the season would have to be extremely destructive to have any effect on the property insurance market.

The Fort Collins, Colo.-based CSU team's forecast was unchanged from one it issued in early June. The CSU forecasters said 18 named storms are expected to form before the hurricane season ends Nov. 30. The team predicted that five of the 10 hurricanes will grow into major hurricanes, packing winds of at least 111 mph.

NOAA called for 14 to 20 named storms, a slight decrease from the 14 to 23 named storms it predicted in late May. It also scaled back its prediction of the number of hurricanes from the eight to 14 it had predicted in May, and changed the number of major hurricanes to four to six from its previous prediction



A satellite view of Tropical Storm Bonnie as it passed over Florida and into the Gulf of Mexico late last month.

of three to seven.

Despite the predictions, insurance industry experts don't see the hurricanes causing a significant change in the ongoing soft property market.

"There's a lot of excess capital in

the property market," said Lara Mowery, managing director who leads the global property specialty practice at Guy Carpenter & Co. L.L.C. in Minneapolis. She said new

See **STORMS** page 21

P/C INSURERS

AIG reports strong results, talks of government exit

By JUDY GREENWALD

NEW YORK—American International Group Inc. reported strong operating results in its insurance operations despite its \$2.66 billion net loss for the quarter, which observers say bodes well for the future.

Meanwhile, AIG last week said it has begun discussions with the federal government about relinquishing its ownership of the company it bailed out in September 2008.

AIG's quarterly loss, which compared with \$1.82 billion in net income for the comparable quarter last year, was due primarily to a \$3.3 billion noncash goodwill impairment charge included in its discontinued operations, which are Amer-

AIG QUARTERLY RESULTS			
Net income (loss) for the past four quarters, in millions of dollars			
	20 2010	10 2010	40 2009
		\$1,451	\$455
	(\$2,656)		
			(\$8,873)

Source: Company filings

ican Life Insurance Co. and Nan Shan Life Insurance Co. Ltd.

Chartis Inc., its property/casualty

operation, reported \$955 million in operating income for the quarter, a 5.8% decline that reflected \$287 million of catastrophe losses. The quarterly combined ratio was 102% vs. 98.2% for the comparable period a year ago.

"We remain focused on monetizing (Asian unit AIA Group Ltd.) and ALICO as quickly as possible in order to repay taxpayers, at values reflecting the unique strengths of these highly attractive franchises," AIG President and CEO Robert H. Benmosche said in a statement in commenting on the quarter.

For the first half of 2010, AIG reported a \$799 million loss vs. a \$2.53 billion loss for the comparable period a year ago.

Referring to the \$15.5 billion sale of ALICO to New York-based MetLife Inc. announced in March, Mr. Benmosche said the deal "is proceeding as planned and is expected to close in the fourth quarter."

He noted that AIG decided recently to reinstate its plans to take AIA public "subject to regulatory approval and as market conditions permit." AIG's plan to sell AIA to Prudential P.L.C. in a \$35.5 billion deal collapsed in June (*BI*, June 7).

"In combination, these two transactions are expected to allow the company to substantially reduce its obligations to the Federal Reserve

See **AIG** page 21

Energy security risks explored in *BI* webcast

The challenges of energy supply disruptions have changed since the Deepwater Horizon disaster and risk managers are "recalibrating" how they view the risks, participants in a *Business Insurance* webcast said last week.

While oil and oil products provide one-third of the energy consumed in the United States, "oil price behavior after the spill does not demonstrate any fear of supply disruption and we can see that the U.S. has a wide range of serious suppliers of oil," said Phillip Ellis, CEO of Willis Structured Risk Solutions, a unit of Willis Group Holdings P.L.C., during the *BI* webcast "Energy Security: Protecting Your Business from Energy Supply Disruptions."

However, "the spill is having a significant impact on our thinking and approach towards risk management."

Historically, Gulf Coast risk managers tracked hurricanes as a cause of major insured losses, Mr. Ellis said. But the aftermath of the BP P.L.C. oil spill has forced risk managers into "recalibrating" their corporate catastrophe management plans to include risks such as damage to brand and reputation, environmental damage and legislative mandates.

"This is shifting attention more and more to preparation for and protection from catastrophic loss from whatever the source," Mr. Ellis said.

Panelists agreed traditional property and business interruption insurance is restrictive, requiring direct loss to property.

Barry Franklin, managing consultant for Towers Watson & Co. and a director in the company's corporate risk management practice in Chicago, said individual businesses cannot control an external energy supply disruption and should focus on mitigating its impact.

He noted that after a major catastrophe, companies need to be aware of predictable legislative responses, such as eliminating tort caps after the Gulf spill, and insurance price increases in specific sectors such as oil and gas exploration.

"Companies need to really understand their vulnerabilities and be able to measure the exposure they have to energy disruptions through either scenario analyses or stochastic modeling...to try and put some numbers around this so that it can get the attention it deserves," Mr. Franklin said.

BI Senior Editor Mark A. Hofmann moderated the webcast, which is available online at www.BusinessInsurance.com/section/webinars.

—By Mike Tsikoudakis

INTERNATIONAL

IASB looks to update insurance accounting standard

Transparency, comparability twin goals of latest effort

By SARAH VEYSEY

LONDON—An updated international accounting standard for insurance should make insurers' accounts more comparable and transparent, experts say.

The International Accounting Standards Board in late July published a draft of the international accounting standard that the IASB said aims to ensure greater consistency and comparability of insurers' accounts and make them easier to understand.

The London-based IASB, whose standards are required or permitted in about 100 countries, began a project six years ago to simplify



Sir David Tweedie, chairman of the IASB, said "a fundamental review of insurance accounting was long overdue."

the way insurance accounts are presented. The first phase of that project in 2004 produced International Financial Reporting Stan-

dard 4—an interim standard that allowed many existing practices to be retained, according to the IASB.

Phase 2 of the project will produce an updated standard that aims to make it easier to understand the financial position and performance of insurance companies when reading their financial statements. That standard, on which public comments will be accepted until Nov. 30, is slated for publication in 2011 and implementation in 2013.

"A fundamental review of insurance accounting was long overdue, with current practice resulting in financial information that is impenetrable to all but the most expert of users," Sir David Tweedie, chairman of the IASB, said in a statement of the proposed standard.

The U.S. Financial Accounting Standards

Board has been working with the IASB on the project and is slated later this summer to produce its own draft that is expected to differ slightly from the IASB's.

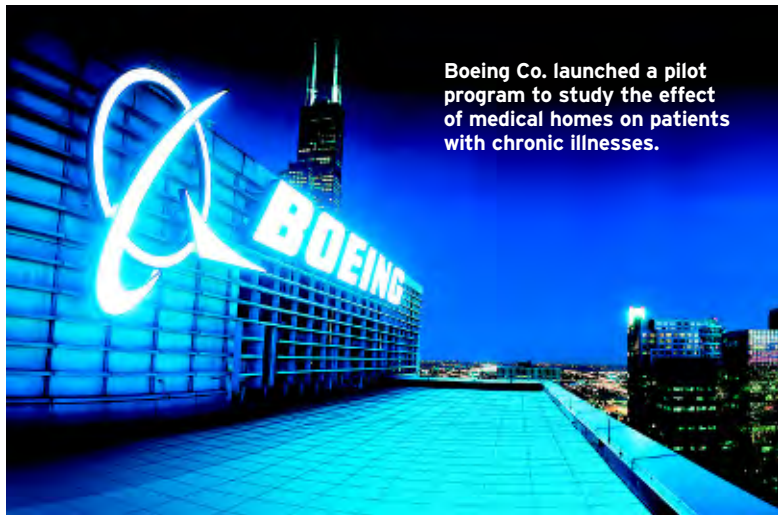
Among proposed changes to IFRS 4 is introducing a model that would focus on an assessment by an insurer of the amount, timing and uncertainty of future cash flows that are generated by existing insurance contracts. The model would generate information about the changes in the insurance liability faced by the insurer over the term of a contract.

The standard also would require insurers to reflect changes in cash-flow estimates in their profit or earnings statements during the period in which they arise.

Today, many insurers use "locked-in esti-

See **STANDARD** page 21

HEALTH CARE BENEFITS



Boeing Co. launched a pilot program to study the effect of medical homes on patients with chronic illnesses.

THE BOEING COMPANY

Boeing pilot program focuses on medical home

Initial results show program saved 20% in health care costs

By JEREMY SMERD

The patient, a middle-aged woman, had diabetes, heart damage and kidney disease. She weighed 300 pounds. Her doctors diagnosed her with depression but she was not ready to acknowledge that, let alone do something about it. One reason was that she didn't trust her health care providers. Why would she? Like most patients, her office visits were typified by long waits followed by a few minutes of face time with a doctor.

The patient's identity has been kept private by her health care providers at the Everett Clinic north of Seattle. But the Boeing Co., her

employer at the time, paid for her health insurance and, as such, had an economic interest in making sure she didn't land in the emergency room dying from the toxins her kidneys could no longer process, her only hope being a costly transplant or a lifetime of dialysis.

There is ample evidence that the sickest patients—those with multiple chronic illnesses—are also the most costly. The Milken Institute reported that chronic illnesses accounted for \$277 billion in health care costs in 2007 and \$1.1 trillion in lost productivity. Many employers have begun tackling chronic illness by changing the way they design their health benefits. Some, like mail services company Pitney Bowes Inc., reduce the cost of certain medicines to encourage patients with chronic illnesses to

See **HOMES** page 17

Errors & Omissions

Due to a reporting error, an Aug. 2 Commentary by Regis Coccia omitted some insurers that have operated for more than 175 years. Other longtime U.S. brands include The Philadelphia Contributionship, founded in 1752, and Insurance Co. of North America, part of ACE Group, founded in 1792.

INTERNATIONAL

Policy exclusion drafted for sanctions

Lloyd's Market Assn. inks wording to meet U.S. legal restrictions

By SARAH VEYSEY

LONDON—The Lloyd's Market Assn. has developed an exclusion clause to help underwriters ensure they do not breach trade or economic sanctions imposed on countries or organizations around the world.

The LMA, which represents underwriters in the Lloyd's of London insurance market, came up with provisional wording in July and, after receiving U.S. legal advice, recently revised that wording.

President Barack Obama's April executive order that placed restrictions on groups thought to be a threat to security in Somalia triggered the exclusion work, said Neil



The Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 imposes economic sanctions on companies—including insurers and reinsurers—that do business with entities that help Iran import refined petroleum.

Roberts, a senior technical executive at the London-based LMA.

There had been fears among shipowners, their insurers and other

parties that paying ransom to pirates, for example, indirectly

See **IRAN** page 25

Cast your votes for industry's best

CHICAGO—Balloting is now open for the 2010 *Business Insurance* Readers Choice Awards.

Now in its seventh year, the Readers Choice Awards invite *Business Insurance* readers to cast their votes for the companies that they believe offer the best overall combination of innovation, quality, service and value. This year's awards feature 18 categories:

- Best admitted property insurer.
- Best admitted liability insurer.
- Best workers compensation insurer.
- Best captive manager.
- Best employee assistance program provider.
- Best employee benefit consulting firm.
- Best insurance wholesaler.
- Best health plan provider.
- Best property/casualty reinsurer.
- Best reinsurance intermediary.



- Best retail brokerage, in four revenue subcategories.
- Best risk management consulting firm.
- Best surplus lines insurer.
- Best third-party claims administrator, in two subcategories.

Winners in these categories will be announced and profiled in the Nov. 22/29 issue of *Business Insurance* and online. To view profiles of winners in previous Readers Choice Awards competitions, please visit www.BusinessInsurance.com.

All votes are completely confidential, and *BI*'s ballot provides lists of the largest companies in each category for convenience only; voters may write in other companies if they choose.

Balloting will remain open until Sept. 24. To participate in this year's Readers Choice Awards, go to www.businessinsurance.com/section/readers-choice-awards.

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2010078



Conn. AG may push for legislation after court bars document release

By MARK A. HOFMANN

HARTFORD, Conn.—Connecticut Attorney General Richard Blumenthal may seek a legislative remedy to a state Supreme Court decision last week that banned him from releasing subpoenaed documents provided by Brown & Brown Inc. in an ongoing antitrust probe.

The Connecticut Supreme Court overturned a lower court decision that would have permitted Mr. Blumenthal to share about 12,000 documents acquired under subpoena from Daytona Beach, Fla.-based Brown & Brown in June 2006 as part of an antitrust probe launched in 2005.

But the attorney general and Brown & Brown could not reach agreement regarding the confidentiality of the material. Before a second group of documents was to be turned over to the attorney general in August 2006, Brown & Brown asked a lower court to determine the scope of confidentiality.

On May 1, 2007, the lower court ruled that limited disclosure of the confidential information was permitted, despite confidentiality provisions contained in the Connecticut Antitrust Act. Brown & Brown appealed.

Last week, the state Supreme Court ruled unanimously that the



AP PHOTO
Connecticut Attorney General Richard Blumenthal says the investigation of Brown & Brown will continue.

antitrust law bans disclosure of material gathered in an investigation for all people outside the attorney general's office with the exception of officials in other states or the federal government, and even that power is conditional.

An attorney for Brown & Brown said her client is "pleased that the court recognized that the confidentiality of subpoenaed business records is mandated by the statute."

Michelle Seagull, counsel with Axinn Veltrop & Harkrider L.L.P. in Hartford, Conn., added that Brown & Brown "intends to continue to

cooperate with the attorney general's investigation, although without the fear now that competitively sensitive information will be revealed to its competitors."

In a statement, Mr. Blumenthal said the decision in "no way limits our authority to subpoena documents and witnesses, and enforce compliance. It will impose some parameters on our ability to show or share documents with others outside the office."

He said the investigation of Brown & Brown will continue as part of a larger insurance investigation. "I am reviewing the court's decision—which reversed two trial court rulings—and will consider seeking legislative action to overrule its impact," Mr. Blumenthal said in the statement.

Ms. Seagull said the ruling could have an impact beyond Brown & Brown.

"As more general matter, there are businesses throughout the country that receive subpoenas from Connecticut's attorney general and likewise they will feel more comfortable working with the Connecticut attorney general to resolve those investigations," Ms. Seagull said.

Brown & Brown Inc. vs. Richard Blumenthal; Connecticut Supreme Court, S.C. 18334; Aug. 2, 2010.

Commentary

I'm not in Georgia, or Switzerland, anymore

I've experienced culture shock before, having moved a few times during my career as a journalist. When you start out in a small town in the South, nearly anywhere you move involves a degree of shock.

I left small-town Georgia in the 1980s to take a job as a sports writer in St. Thomas, an idyllic little outpost in the U.S. Virgin Islands. On the cab ride from the airport, I got a lesson in the cultural differences between sports on the mainland and the islands. Spotting a cricket match being played on a field within a high fence, I thought: "Those prisoners must be really hot out there."

There's not much cricket in Georgia, but there are plenty of prisons.

Later, after joining *Business Insurance* and moving to New York from New Orleans, I wondered why people stared through me when I offered a friendly hello on the subway. I soon stopped that behavior. Often on the New York subway, it's the people who return a greeting that you have to worry about.

Done with New York, I eventually returned to New Orleans, a place with so many cultural quirks that it hardly seems like part of the United States. One great thing about the city, though, is that no one cares if you breach whatever etiquette you assume exists there. *Laissez les bon temps rouler!*

From New Orleans, I landed in Switzerland, a country that has rules governing everything from the exact dimensions of your mailbox to the time of day you are allowed to vacuum the floor. My wife and I, clueless Americans on arrival, committed so many infractions in our first weeks here that we could hear the neighbors muttering: "There goes the neighborhood!"

All of this has been a warm-up for my fast-approaching departure from Zurich and imminent Texas-style reintroduction to America. I'll be filing my stories from Dallas starting in September, while doing my best to once again shake off culture shock and avoid offending the locals.

Dallas is not a new destination for me. I spent 11 years there in the 1980s and '90s working for *BI*. But it was during a recent house-hunting expedition that I realized just how much Dallas is not like Switzerland and that this adjustment is going to take some time—not that Dallas isn't a great place to live.

There are a lot of things to love about the city—Tex-Mex food and Sonny Bryan's barbecue are near the top of the list.



MICHAEL BRADFORD

Senior Editor Michael Bradford can be reached at: mbradford@businessinsurance.com

The winters are not nearly as harsh as in Switzerland. It's far cheaper than Zurich, and the people are proud and independent, which, come to think of it, makes them a lot like the Swiss.

But there are things I'll miss in Switzerland that just can't be duplicated in Texas.

I have a view of Lake Zurich and the distant mountains with my first cup of coffee in the morning. In the evenings, it is

It'll be nice to be able to make a little noise in Texas without worrying whether the police will show up.

possible to roll out of the driveway on a bicycle and ride over hills that offer spectacular sweeping views of the rolling Swiss landscape.

Dallas, on the other hand, is so flat that I'll be able to see Oklahoma while drinking my coffee and may have to ride as far as Austin to find rolling hills.

Then again, I don't care for some of the over-the-top regulations in Switzerland. I was never too keen on recycling in the United States where the payback isn't worth the hassle, so I won't miss the Swiss tradition of hauling my glass bottles half a mile away so I can sort them in containers according to their color.

I don't care for some of the other Swiss rules, such as ones that forbid taking a shower or using the dishwasher after 10 p.m., demand silence on Sundays and require informing the neighbors if I plan to have more than a few guests at one time.

It'll be nice to be able to make a little noise in Texas without worrying whether the police will show up. But I will miss the view from the kitchen table. Morning coffee will never be the same.

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It's never too early to prepare for battle

IT NEVER HURTS to prepare your argument early.

That's exactly what supporters of the federal terrorism insurance backstop did in their comments regarding the availability and affordability of terrorism coverage to the President's Working Group on Financial Markets. The argument offered by backstop supporters is simple and compelling: Without the backstop, an adequate amount of affordable terrorism insurance simply wouldn't exist.

The working group is required to report on the long-term availability and affordability of terrorism coverage to Congress this year. The group also is required to report to Congress on the state of the market in 2013, about a year before the program must be reauthorized or expire.

Supporters of the backstop need to start thinking about the argument they will make for extension of the program four years from now.

Supporters of the backstop—risk managers, insurers, reinsurers, brokers and others including *Business Insurance*—need to start thinking about the argument they will make for extension of the program four years from now. The comments submitted to the working group this year could provide the framework for that argument.

Four years may seem like a long time, but remember that passing the legislation that created the program in 2002 as well as the measures that extended the program in 2005 and 2007 were not easy tasks. There's no reason to believe that getting Congress to agree to an extension in 2014 will be any easier.

In their comments to the working group, backstop supporters have made a compelling case that it is indispensable. It's not too early to begin considering how that case can be made even stronger in anticipation of a battle over extending it four years from now.

Employers getting ahead on health plan changes

NOW IS THE TIME for employers to consider design changes they need to make to comply with the new health care reform law.

As we report on page 1, employers already are asking their consultants and brokers to model the impact that various designs will have on their plans.

The issues, such as the pros and cons of dropping coverage and paying financial penalties to the government, involve many variables and have to be analyzed thoroughly and thoughtfully, and that takes time.

Similarly, while the law exempts employers with grandfathered plans from complying with certain requirements that plans lacking grandfather status have to meet—such as providing full coverage of preventive services—there is a price employers will have to pay.

To obtain and retain grandfathered status for their health care plan, an employer can never raise coinsurance requirements or premiums paid by employees by more than five percentage points. Will the cost of keeping grandfathered status—limits on employee cost-sharing—exceed the benefit of being exempt from certain reform law requirements?

That's a question, like so many others, that will vary by employer, and likely will change over time.

Fortunately, many provisions in the law don't take effect until 2014 and, in the case of an excise tax on costly health care plans, not until 2018.

We hope employers use that time to make decisions on design changes that make sense for them and their employees.



WRITE

Business Insurance welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters.

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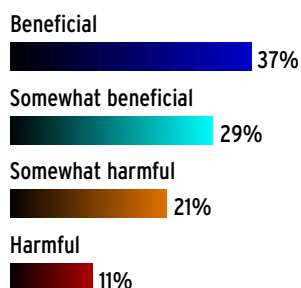
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THIS WEEK'S RESULTS

Q Has the Americans with Disabilities Act been beneficial or harmful to the workplace?



NEXT WEEK'S QUESTION

Q: How worried are you about coming into contact with bedbugs?

LETTERS

Clients free to choose their agents/brokers

TO THE EDITOR: Your July 26 editorial rant about "contingents" needs to be modified. So-called large "brokers" that represent buyers only need to be transparent. The buyer can easily switch brokers if they are unhappy.

You seem to quickly jump on a "cause of the day" that in truth is a very small component of insurance costs, and certainly does not indicate an understanding of the small-business market served by agents rather than the large brokers.

For insurance companies to reward their agents through a potential "contingent" commission if the business aggregated by the agent produces an underwriting profit in the future, which no one can be certain of, is quite reasonable. This is a small element in the cost structure of insurance but is an incentive to the betterment of clients, agents and insurance companies to attempt to aggregate good underwriting results. Since no one knows future loss ratios, there is an unavoidable incidence of risk. Isn't that part of markets?

I am always amazed people in journalism want many "rules" to make markets more fair in their view but would scream if subscription rates were regulated to be fair.

The client is and always has been free to select an agent/broker. Why not just let it be?

Wayne Six
Six & Geving Insurance Inc.
Colorado Springs, Colo.

Editor's note: The July 26 editorial pointedly does not mention agents. State laws regarding insurance producers are not uniform, but agents historically have had a different relationship with insurers from that of brokers. Agents are appointed by insurers and therefore represent those companies; brokers represent buyers. Business Insurance has maintained that contingent compensation is acceptable for agents but not for brokers.

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Products & Services

Lexington rolls out online health industry tool

BOSTON—Lexington Insurance Co. has launched an online resource for the health care industry.

LexOvations is an online tool available to policyholders and brokers that provides an overview of the insurer's health care practice, the Boston-based unit of Chartis Inc. said in a statement.

The website streamlines information about Lexington's products and services geared to health care organizations, such as risk management and claims services, webinars on health care topics, medical professional liability coverage and captive solutions, Lexington said in the statement.

It also has downloadable policy forms and allows sharing information with others by clicking the "share" tab to e-mail the information.

To view LexOvations, visit <http://www.lexovations.com/healthcare>.

NAS offers contractor liability coverage

ENCINO, Calif.—NAS Insurance Services Inc. has introduced a sexual

misconduct liability program for companies working under contract with certain public entities.

The sexual misconduct and molestation liability product provides a limit of up to \$1 million for vendors performing work for municipalities, schools and semipublic entities, the Encino, Calif.-based managing general underwriter said in a statement.

"In today's increasingly litigious environment, entities are being contractually required to carry limits of sexual misconduct and molestation insurance never before carried," NAS Insurance Services said on its website.

The claims-made policy offers worldwide coverage, including negligent hiring, failure to report

employees involved in sexual misconduct and an extended reporting period, among others, the MGU said in the statement.

NAS Insurance Services said the policy, which is written by Lloyd's of London, has a minimum deductible of \$10,000 and a minimum premium of \$7,000.

For more information, contact Genevieve Alexander, senior underwriter at NAS Insurance Services, at 818-808-4463 or galexander@nasinsurance.com.

Zurich expands contract litigation cover

SCHAUMBURG, Ill.—Zurich North America Commercial has expanded its existing coverage to protect

defendants in contractual lawsuits.

The Defendant Contract Litigation Insurance program aims to mitigate the risk of defendants paying plaintiffs' attorney fees should the defense fail in a breach of contract claim, the Schaumburg, Ill.-based unit of Zurich Financial Services Group said in a statement.

Zurich said the policy, which is provided through its Los Angeles-based program administrator Sonoma Risk Insurance Agency L.L.C., was developed in response to its program covering plaintiffs involved in contractual lawsuits.

"The financial liability of paying your adversary's legal fees is a serious concern," Craig Fundum, president of programs and direct markets for Zurich, said in the statement. "The Bureau of Justice Statistics recently reported that, on average, two out of three defendants in contract cases lose at trial."

The policy, which can be purchased up to 60 days after being served with a complaint, is triggered when a summary judgment is issued against the defendant or the plaintiff wins at trial. It is purchased on a surplus lines basis.

For more information, contact Damiano Servidio, head of professional services for Zurich's programs unit, at 212-553-5642 or damiano.servidio@zurichna.com.

Insurance Information Institute updates handbook

NEW YORK—The Insurance Information Institute Inc. has released an updated handbook about the basics of how insurance works.

The 196-page "Insurance Handbook" aims to help reporters, public policymakers, regulators, students, insurance company employees and academics better understand the commercial insurance industry, the New York-based nonprofit organization said in a statement.

"Congress is on the verge of creating for the first time a Federal Insurance Office within the U.S. Treasury Department," Robert Hartwig, president of the III said in the statement. "So there is widespread interest in learning more about our industry."

The handbook discusses different types of insurance and includes trend overviews and a glossary containing explanations of 500 insurance terms.

"Insurance Handbook" is available for \$20 per copy and can be downloaded as a PDF free of charge. For more information, visit www.iii.org.

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RRGs the Rx for medical malpractice needs

By **RODD ZOLKOS**

Market conditions have cooled some risk retention group activity, but RRGs involved in meeting the medical malpractice coverage needs of health care facilities and practitioners continue to see widespread use.

The risk retention group structure has become widely used to provide an alternative risk financing vehicle for health care providers that have difficulty affording or even finding coverage in traditional markets.

Many believe the trend will continue in the absence of national tort reform and some expect it to increase as hospitals respond to provisions of the new U.S. health care reform law.

"The demand for risk retention group activity and creation is very specific to the state you're talking about," said Thomas M. Jones, a partner at McDermott Will & Emery L.L.P. in Chicago. In Texas for example, "with the tort reform they enacted six or seven years ago, there's little activity," he said.

"The state where we're seeing a big demand for alternatives, which include RRGs, probably No. 1 in the country is New York," Mr. Jones said, citing the state's difficult medical malpractice environment driven in large part by high claims severity.

"At one point in the early 2000s, you couldn't buy a med mal policy in Pennsylvania," said David F. Provost, deputy commissioner in the captive division of the Vermont Department of Banking, Insurance, Securities & Health Care Administration.

See **MED MAL** page 13

Captives:
Risk Retention
Strategies

SPOTLIGHT

**BI RANKING: LARGEST
POLICYHOLDER-OWNED
ALTERNATIVE FACILITIES**
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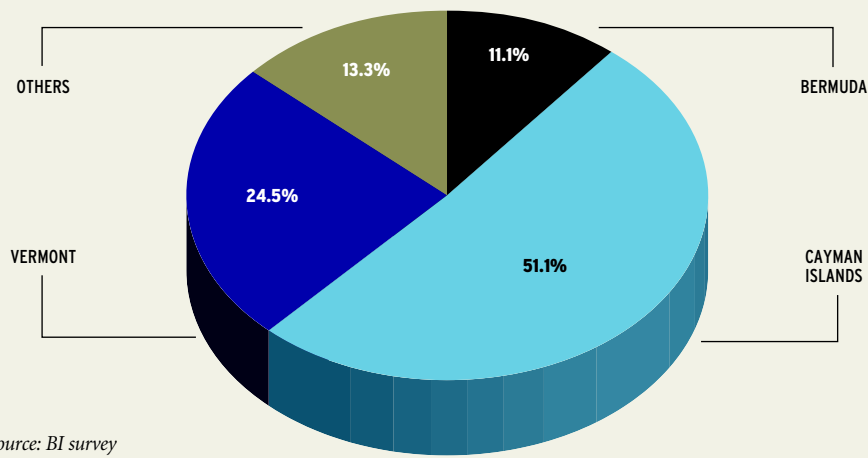
**BI RANKING: LARGEST
RENT-A-CAPTIVE
FACILITIES**
PAGE 14

**FINANCIAL SERVICES
REFORM COULD GIVE
RRGs A BOOST**
PAGE 15

**RENT-A-CAPTIVE SECTOR
PRESSURED BY SOFT
PRICING, ECONOMY**
PAGE 16

ONSHORE AND OFFSHORE

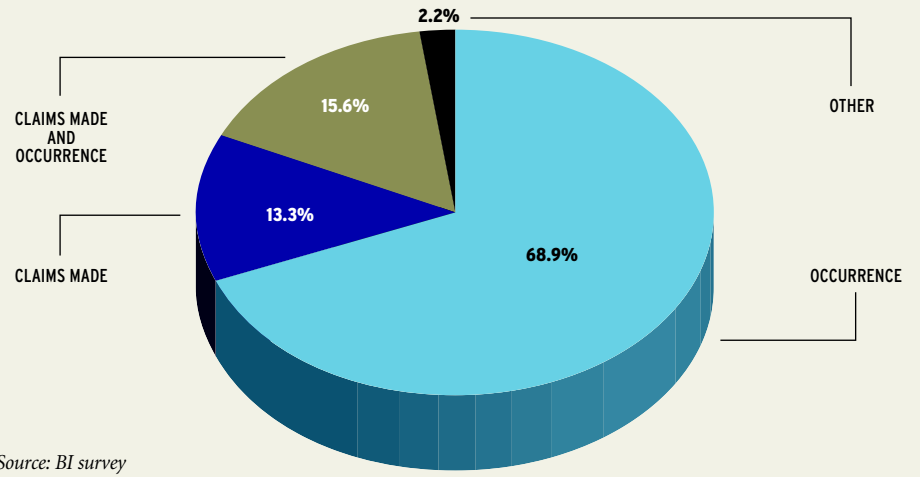
Policyholder-owned facilities by domicile



Source: BI survey

LIABILITY TRIGGERS

Coverage forms used by policyholder-owned facilities



Source: BI survey

Largest policyholder-owned alternative risk facilities

Ranked by 2009 gross premiums written

Rank	Facility/Domicile	2009 gross premiums written	2009 participants	Business conducted by participants	Risks insured	Management company	Phone/Web site	Contact
1	Associated Electric & Gas Insurance Services Ltd. Bermuda	\$1,114,219,000	366	Utility and related energy industries	D&O, excess liability, employment practices, excess workers compensation, fiduciary liability, professional liability, property	Liberty Mutual Management (Bermuda) Ltd. Maxwell Roberts Building, Fourth Floor, 1 Church St., Hamilton, HM 11 Bermuda	441-279-7925 www.aegislink.com	Alan J. Maguire, president/CEO
2	Oil Insurance Ltd. Bermuda	\$891,115,000	56	Chemical and mining, oil and gas exploration and production, petrochemicals, utilities	Control of well and third-party pollution liability, physical damage to property	OIL Management Services Ltd. 3 Bermudiana Road, Hamilton, HM 08 Bermuda	441-295-0905 www.oil.bm	George Hutchings, senior vp/COO
3	Raffles Insurance Ltd. Cayman Islands	\$174,798,739	279	Contractors, distributors, manufacturers	Auto liability, auto physical damage, general liability, workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands B.W.I.	345-946-2100 www.rafflesinsurance.com	Michael Gibbs, president-Kensington Management Group Ltd.
4	American Contractors Insurance Group Bermuda	\$128,296,000	39	Construction	Auto liability, financial guarantee, general liability, workers compensation	Atlantic Security Ltd. Windsor Place, 18 Queen St. Hamilton, HM HX Bermuda	441-295-5425 www.acig.com	William S. McIntyre, chairman
5	Affinity Insurance Ltd. Cayman Islands	\$102,756,738	266	Contractors, distributors, manufacturers, retail	Auto liability, auto physical damage, general liability, workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands B.W.I.	345-946-2100 www.affinityinsuranceltd.com	Michael Gibbs, president-Kensington Management Group Ltd.
6	Churchill Casualty Ltd. Cayman Islands	\$83,935,028	123	Contractors, distributors, manufacturers	Auto liability, auto physical damage, general liability, workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands B.W.I.	345-946-2100 www.churchillcasualty.com	Michael Gibbs, president-Kensington Management Group Ltd.
7	Oil Casualty Insurance Ltd. Bermuda	\$49,028,000	67	Chemical and mining, oil and gas exploration and production, petrochemicals, utilities	Excess general liability	OIL Management Services Ltd. 3 Bermudiana Road, Hamilton, HM 08 Bermuda	441-295-0905 www.oil.bm	Jerry Rivers, senior vp/COO
8	Everest Property Insurance Co. Cayman Islands	\$46,726,607	482	Manufacturing, service companies	Crime, boiler/machinery, property	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands B.W.I.	345-946-2100	Michael Gibbs, president-Kensington Management Group Ltd.
9	Columbus Insurance Ltd. Cayman Islands	\$44,567,444	69	Distributors, equipment dealers, manufacturers, retail stores	Auto liability, auto physical damage, general liability, workers compensation	Marsh-Captive Management Services P.O. Box 1051, Grand Cayman, Cayman Islands K1-1102 B.W.I.	345-914-5705 www.columbusinsuranceltd.com	Pamela Collins, assistant vp/senior account manager, Marsh-Captive Management Services Cayman Ltd.
10	Traffic Insurance Ltd. Cayman Islands	\$40,475,998	54	Trucking companies	Auto liability, auto physical damage, general liability, workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands B.W.I.	345-946-2100 www.trafficinsuranceltd.com	Michael Gibbs, president-Kensington Management Group Ltd.

Source: BI survey
Researched by Kevin Edison and Karen Tucker

Visit www.businessinsurance.com/directories for more information and to access the full searchable Directory of Policyholder-owned Alternative Risk Facilities. Business Insurance now offers the option to purchase the entire online directory as an Excel file or as a PDF.

Med mal: Health care facilities, practitioners turn to RRGs

CONTINUED FROM PAGE 11

"A lot of folks formed RRGs here to try to solve that problem," Mr. Provost said. Today, "about one-third of the Pennsylvania med mal premium is written through Vermont RRGs," he said.

"Not only did they manage to be able to buy insurance, but they cut the cost of their claims by 60%, because now they had to manage them," Mr. Provost said. "They had an insurance company they had to run, and they ended up saving a bundle."

"It goes right back to Captives 101 again: Focus management control on losses," Mr. Provost said.

An RRG is an attractive option to many health care entities willing to control exposures that would like to benefit from those loss-control efforts, said Brady Young, president and CEO of Strategic Risk Solutions Inc. in Concord, Mass.

"There's demand from certain physician groups and certain specialties that don't want to be treated like another insured in the commercial market," Mr. Young said. "They recognize that the operating flexibility a risk retention group gives you makes sense."

"Sometimes you'll see some specialties form their own group to pull themselves out of the general physician population, if you will," said David McRoberts, senior managing director at advisory and consulting firm LECG Corp. in Chicago.

Risk retention groups also offer the ability to write coverage directly across multiple states, another appealing factor to multistate groups.

Many major offshore health care entities have had offshore captives for decades, Mr. Young said. But they might face regulatory problems trying to write coverage directly in the United States from those offshore captives. Meanwhile, fronted programs can be expensive.

Offshore captives can't write insurance coverage directly, "so one way to do that is to set up an RRG," Mr. Jones said.

An often-cited example of using an RRG in conjunction with an offshore captive is that of Controlled Risk Insurance Co. of Vermont Inc. (A Risk Retention Group), which Harvard Medical Institutions Inc. formed in 1995 to operate in conjunction with the Cayman Islands-domiciled Controlled Risk Insurance Co. Ltd. captive that it formed in 1976.

"One of our big health care clients in Cayman is looking at forming a risk retention group," Mr. Young said, noting that the client covers 1,600 physicians through a fronted program.

RRGs offer a "very flexible structure to respond to multistate groups or even one-state groups," said Mr. Young, adding that his company also has a client in South Carolina using an RRG there to write coverage just in that state.

LECG's Mr. McRoberts noted, however, that proper governance and leadership are essential for an RRG. "One of the things that I think is important in forming a risk retention group...is to have the right

'At one point in the early 2000s, you couldn't buy a med mal policy in Pennsylvania.' Today, 'about one-third of the Pennsylvania med mal premium is written through Vermont RRGs.'

David F. Provost, Vermont Department of Banking, Insurance, Securities & Health Care Administration

people on board, the right kind of governance," he said.

For smaller groups, that might

mean looking to outsource some services at times, he said. "You want processes to be as good as they can be, but whether you can do it yourself is another issue," Mr. McRoberts said.

U.S. health care reform might drive additional use of RRGs and captives as health care facilities, looking to benefit from new outcome-based reimbursement policies, bring previously independent physicians on board as employees and increase their liability exposures in the process, said Michael Maglaras, president of consultant Michael Maglaras & Co. in Stamford, Conn.

"What my clients are busy doing is taking a second look at their captives—and/or forming new ones—because they're about ready, we think, in the next two or three years to acquire those (independent physicians) as employed physicians," Mr. Maglaras said. "If they do, their liability accrual on their balance sheet or their captives will increase greatly."

"So we're going to see a strong uptick in captive formations and in the amplification of existing captives because of these alignment strategies that are going to add a significant amount of risks to hospital balance sheets," Mr. Maglaras said.

"I'm seeing a big push. We're not just talking RRGs here; we're talking single-parent captives in Bermuda, Cayman and Vermont, and we expect a strong push in domestic domiciles because of this issue."

In some cases, new RRGs might be driven by efforts to achieve lower pricing by buying coverage as a group, Mr. Maglaras said.

"I think you may find hospitals joint venturing to form risk retention groups because of economies of scale," he said. "You can buy reinsurance together. You can get one audit instead of (multiple) audits and all the economies of scale that come with an RRG. I expect that and I expect new single-parent captives to form, and I expect an increase in size of existing captives."

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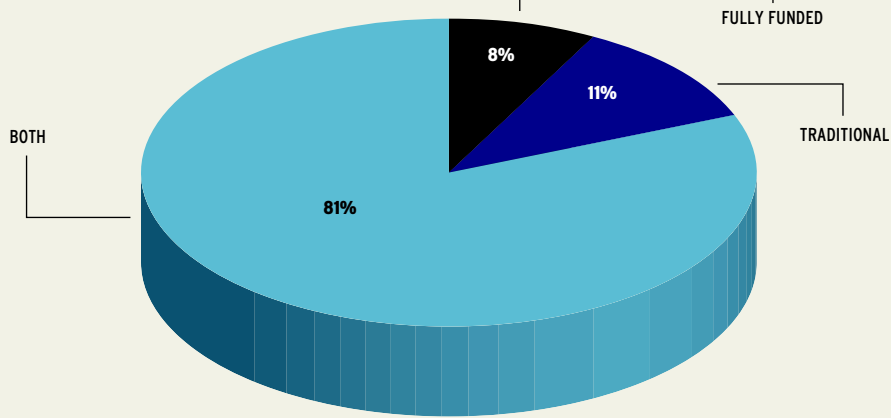
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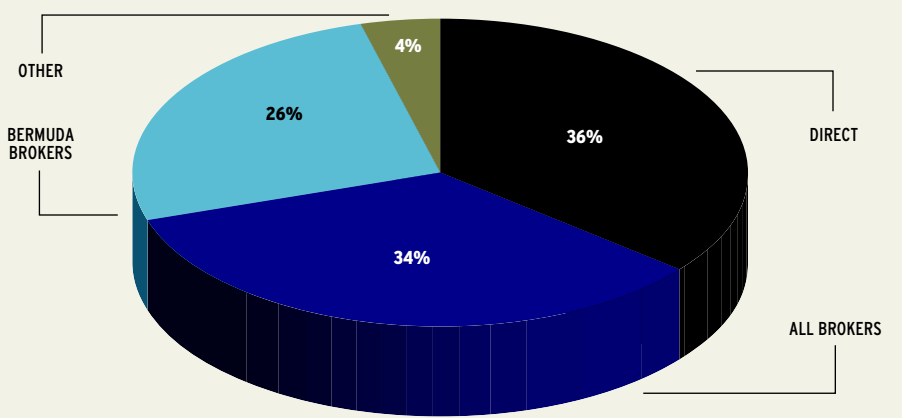
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TYPES OF RENT-A-CAPTIVE PROGRAMS



Source: BI survey

HOW RENT-A-CAPTIVES ARE ACCESSED



Source: BI survey

Largest rent-a-captive facilities

Ranked by 2009 gross premiums written

Rank	Facility/Domicile	2009 gross premiums written	Estimated 2010 gross premiums written	2009 participants	Estimated 2010 participants	Risks insured	Management company	Phone/Web site	Contact
1	Guardrisk Group of Cos. South Africa	\$461,647,713	\$621,969,189	372	374	Life, nonlife	Guardrisk Holdings Ltd. Alexander Forbes Place, 90 Rivonia Road, Fourth Floor, Sandton, 2146 South Africa	27-11-669-1100 www.guardrisk.co.za	Herman Schoeman, managing director
2	Universal Re-Insurance Co. Ltd. Bermuda	\$100,000,000	\$110,000,000	125	130	All lines	Atlantic Security Ltd. Windsor Place, 22 Queen St., Hamilton, HM 11 Bermuda	441-295-5425 www.asl.bm	Hal Forkush, president
3	Universal International Insurance Ltd. Bermuda	\$96,000,000	\$100,000,000	70	75	All lines	Atlantic Security Ltd. Windsor Place, 22 Queen St., Hamilton, HM 11 Bermuda	441-295-5425 www.asl.bm	Hal Forkush, president
4	Alternative Re Ltd. Bermuda	\$49,050,000	N/A	N/A	N/A	Auto liability, general liability, products and completed operations, property, workers compensation	Alternative Re Ltd. Wessex House, 45 Reid St., Hamilton, HM 12 Bermuda	441-278-9245 www.alternativegroup.bm	Gavin P. Coltery, president/COO
5	R&Q Quest (SAC) Ltd. ¹ Bermuda	\$31,445,000	\$40,000,000	32	35	All lines considered, general liability, property, workers compensation	R&Q Quest Management Services Ltd. F.B. Perry Building, 40 Church St., P.O. Box HM 2062, Hamilton, HM HX Bermuda	441-295-2482 www.rqih.com	Larry Turnbull, senior vp/treasurer
6	Lansdowne Insurance Co. Ltd. Bermuda	\$29,176,000	\$35,000,000	68	72	Property/casualty	CTC Insurance Management (Bermuda) Ltd. Burnaby Building, 16 Burnaby St., Hamilton, HM 11 Bermuda	441-295-8495 www.ctc-im.com	Andy McComb, president
7	SEG Insurance Ltd. Bermuda	\$20,805,589	\$16,000,000	50	45	Auto liability, general liability, workers compensation	Artex Risk Solutions (Bermuda) Ltd. Swan Building, 26 Victoria St., P.O. Box HM 2000, Hamilton, HM HX Bermuda	441-292-4654 www.rent-a-captive.com	Peter J. Mullen, executive vp
8	Stuart Insurance Group Ltd. Bermuda	\$20,104,928	N/A	9	9	Commercial auto liability, commercial general liability, warranty, workers compensation	Liberty Mutual Management (Bermuda) Ltd. P.O. Box HM 2455, Hamilton, HM JX Bermuda	441-296-2131	Peter Willitts, president-Liberty Mutual Management (Bermuda) Ltd.
9	Wyndham Insurance Co. (SAC) Ltd. Bermuda	\$14,388,000	\$16,500,000	30	34	Auto liability, business interruption, general liability, professional liability, property/casualty, workers compensation	CTC Insurance Management (Bermuda) Ltd. Burnaby Building, 16 Burnaby St., Hamilton, HM 11 Bermuda	441-295-8495 www.ctc-im.com	Andy McComb, president
10	Arlington Insurance Co. Ltd. Bermuda	\$12,623,790	\$12,000,000	52	50	Auto liability, general liability, workers compensation	Liberty Mutual Management (Bermuda) Ltd. P.O. Box HM 2455, Hamilton, HM JX Bermuda	441-296-2131	Melanie Neary, assistant vp

¹ Formerly Quest (SAC) Ltd. N/A=Not available.

Source: BI survey
Research by Kevin Edison and Karen Tucker

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Financial services reform could boost RRG legislation

But Congress not likely to take up risk retention bill

By MARK A. HOFMANN

WASHINGTON—The new financial services regulatory reform law could give risk retention groups a boost in getting additional legislation passed on Capitol Hill, observers say.

That's despite the fact that Congress is unlikely to take up the Risk Retention Modernization Act of 2010 before it adjourns for the November elections. The reason is the bill, which would have to be reintroduced in the next Congress, contains some of the same approaches as the surplus lines and reinsurance provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

That may be unsurprising because Rep. Dennis Moore, D-Kan., drafted the RRG bill as well as the surplus lines and reinsurance bill. Rep. Moore is retiring at the end of this Congress, but RRG supporters are optimistic that other sponsors will emerge.

Among other things, Rep. Moore's RRG bill would require the Treasury secretary to report to Congress and the White House on whether states are complying with the Liability Risk Retention Act of 1986. That law makes an RRG's domiciliary state its regulator, but some nondomiciliary states have ignored that provision by imposing fees and other requirements.

The bill also would require the U.S. comptroller general to report on ways to ensure that nondomiciliary states do not interfere with RRGs. It also would allow RRGs to write commercial property coverage and rename the law the Risk Retention Act.

In the meantime, Rep. Moore and the two other lawmakers sponsoring the bill—Reps. Suzanne Kosmas, D-Fla., and John Campbell, R-Calif.—have asked the Government Accountability Office to study states' compliance with existing RRG law (*BI*, Aug. 2).

"We believe once the report is completed, that will provide the background that we need in order to keep this bill alive in the next Congress," said Kevin Doherty, chairman of the Self-Insurance Institute of America Inc.'s alternative risk committee and a partner in the Nashville, Tenn., office of Burr & Forman L.L.P.

While noting that the final impact of the Dodd-Frank bill could give rise to unintended consequences, RRG backers say it should help their cause.

"It's going to take awhile to digest what actually has passed," said Robert Myers, general counsel of the Minneapolis-based National Risk Retention Assn. and a partner with Morris, Manning & Martin L.L.P. in Washington. "But the bill does address surplus lines and reinsurance."

The Dodd-Frank bill grants a single state the right to regulate certain

aspects of the surplus lines and reinsurance business (*BI*, July 19).

"The theme of that portion of the act is that a single state can effectively regulate and this is analogous to the LRRRA," said Mr. Myers. "This is another example of Congress trying to improve state insurance regulation by using the lead-state model."

Mr. Myers said the lead-state model could help focus congressional attention on RRGs' concern that nondomiciliary states in some cases "tend to wander off and do what they want to do."

"I think it's impossible to know for sure" what impact the new financial services law will have, Mr. Doherty said. "But I do believe, overall, there's a trend toward some type of federal oversight of our industry. I think that to the extent that that's true, in the long run, it's going to benefit risk retention groups."

Mr. Doherty said such a move would promote RRGs' biggest issue, "which is we need a federal overseer of risk retention groups to keep the states from overstepping their bounds."

The New York-based Risk & Insurance Management Society Inc. would like the law changed to allow RRGs to offer property coverage, said Scott Clark, RIMS secretary, director of RIMS' External Affairs Committee, and risk and benefits officer of Miami-Dade County Public Schools.

"It will continue on our radar screen and it will continue to be something we support," Mr. Clark said, but he noted that action is unlikely this session because of the shrinking legislative calendar.

Messrs. Myers and Doherty said

allowing RRGs to write property coverage would be a welcome expansion of RRGs' powers.

"We think there is a need for it in certain circumstances, particularly where you may have an insurance program for certain organizations like colleges and universities where the liability insurance is already being written through a risk retention group, and the underwriting has already been done, so it would make sense to add property," Mr. Myers said.

See **REFORM** next page



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Rent-a-captive sector reports drop in number of cells

By **STUART COLLINS**

The soft insurance market has not helped the rent-a-captive sector, with several domiciles reporting that the number of cells has decreased even as new formations continue, experts say.

Rent-a-captives, which enable companies to share the benefits and costs of captive ownership by forming a cell within a group captive to meet their insurance needs, have been around for about 40 years.

But within the past decade, several domiciles have improved on the

concept, passing legislation that legally separates the liabilities and assets of participants in what is known as protected, sponsored or segregated cell companies from participants in other cells.

The number of captives with cells and the number of cells had grown steadily, but the financial crisis and the soft insurance market disrupted the trend, said Steven Chirico, associate vp at Oldwick, N.J.-based rating agency A.M. Best Co. Inc. Cell captives continue to be formed, but some cells have closed or are inactive because of the repercussions of

the financial crisis on their owners, he said.

The development of sponsored cell captives in Vermont has been “modestly successful,” said David F. Provost, deputy commissioner of captive insurance at the Montpelier-based Vermont Department of Banking, Insurance, Securities & Health Care Administration.

The domicile has 18 cell captives with 80 cells, down from the peaks of 19 companies in 2006 and 106 cells in 2005. Total premiums for sponsored cells in Vermont dropped to \$24 million in 2009

from \$98 million in 2007, Mr. Provost said.

A large part of the decline has been due to closing or shrinking cells that write mortgage guaranty insurance, but cell captives in general did not grow as much as sponsors once expected, Mr. Provost said. Some sponsored cell companies never wrote any business and eventually closed, he added.

While captive cell numbers have declined in the soft market, some domiciles say interest in new formations is increasing.

Guernsey, where the number of protected cell companies declined in recent years, now is seeing applications increase to form new insurance cells, said Mike Poulding, deputy director at the International Insurance Division of the Guernsey Financial Services Commission in St. Peter Port, Guernsey.

“We believe that this is due to increasing acceptance of the PCC structure and the greater ease of establishment of a new cell as compared to a stand-alone insurance company.”

Guernsey has 64 insurance PCCs with 337 cells, down from 69 PCCs with 344 cells in 2008. The reduction was caused by fewer new PCCs and cells being licensed rather than an exceptional level of closures, Mr. Poulding said.

The Mediterranean island of Malta also has seen fresh interest in establishing cell companies, said Joe V. Bannister, the Attard, Malta-based chairman of the Malta Financial Services Authority. Malta, which first passed protected cell legislation in 2004, has four PCCs and 12 cells and is processing applications for another PCC and three more cells.

Soft insurance pricing makes retaining risk less attractive, so forming or joining a cell captive also becomes less appealing, said John Lochner, Weatogue, Conn.-based director of consulting services at Towers Watson & Co. “But companies continue to set up and join cell captives, so interest is still there even with the head winds of a soft market.”

While cell captives may not have been the “tremendous success” some sponsors would have liked, they have proved “useful,” Mr. Lochner said.

Cell captives enable a company to “rent a space” in a captive, which is particularly attractive for compa-

nies that are not of sufficient size or do not have sufficient time, capital and resources to set up a wholly owned captive. They also are attractive to entities that wish to separate liabilities, such as a hospital that wants to have its coverage for physicians held in separate cells, or real estate and construction companies involved in joint ventures, he said.

While a hard market drives captive activity overall, joining a cell company may be less costly for a company than establishing a single-parent captive in a soft market, said Rick Stasi, chief operating officer of Avizent Alternative Risk, a unit of Avizent, a Dublin, Ohio-based TPA and risk management service provider.

Avizent continues to add about five programs a year to its Bermuda-based captive cell company, Atlantic Gateway International Ltd., which typically sees 36 agency-owned cells offer insurance programs to more than 1,000 companies.

“The soft market has been prolonged, but we are seeing interest now pick up,” Mr. Stasi said. “The smart brokers and risk managers realize the market is primed to turn any time and are looking ahead to the next few years. We are already seeing some 10 or 12 new prospective programs.”

Even though there has been a general slowdown of captive formations, there still is plenty of interest from companies that want to form or join cell captives, said Everett Newman Jr., managing partner at Costa Mesa, Calif.-based United Alternative Risk Insurance Solutions L.L.C., a unit of Miller United Insurance Brokerage Inc.

Companies have been attracted to United’s cell captive for restaurant franchisees because it gives them more control over claims and the potential to participate in underwriting profits. The Restaurant Franchise Captive Program—which has a cell in Atlantic Gateway International—has returned profits of \$9.1 million on premiums of \$33 million, while participants have enjoyed loss ratios of 16% on average through better loss and claims management, he said.

United this year plans to launch another cell company—Restaurant Franchise Captive Program II, which is expected to exceed its existing program in terms of member companies within a year, Mr. Newman said.



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Reform: Boost for RRGs

CONTINUED FROM PREVIOUS PAGE

“There’s a need, particularly in the coastal areas” that are exposed to natural catastrophes, Mr. Doherty said.

Both RRG advocates also said they expect the effort to pass RRG legislation to continue.

“We still have bipartisan support,” said Mr. Myers. “We’ll miss Mr. Moore, but this is a good cause and we’ll find others to help us.”

“This is not a partisan issue—this is a common-sense issue,” said Mr. Doherty. If party strengths are closer as a result of November’s elections, lawmakers “will be looking for something they can agree on,” and RRGs should provide that area of agreement, he said.

“Whether we’ll get it passed next year or not, I can’t say, but I’m optimistic that it will continue to be an important issue that will have support,” Mr. Doherty said.

Homes: Boeing pilot program focuses on medical home for patients

CONTINUED FROM PAGE 4

take them. Others, like media firms NBC Universal and Discovery Communications, have built health clinics and instituted wellness programs to give patients the kind of care they are not getting elsewhere.

Chicago-based Boeing Co. tried a different approach. Rather than fill the gaps in the health care system with programs of its own, the aerospace company tried to prod change within the medical system. Last fall, Boeing announced the completion of a two-year pilot program in Seattle-area clinics for patients with chronic illnesses who get their health insurance through the company.

The program, begun in February 2007, was based on the concept of the medical home, which puts patients at the center of a team of nurses and doctors who are paid extra to actively manage a person's health and health care. The company decided it had a large enough population in the Seattle area to test whether doctors could improve the care they gave to patients beset by the most complex and costly chronic illnesses.

The phrase "medical home" is thought to have come from a 2002 study by seven U.S. family-medicine organizations advocating that every American should have a "personal medical home" to receive acute, chronic and preventive services.

Boeing's initial results appear promising. When compared with patients who had similar illnesses, the patients in the pilot program improved their health and the company showed a 20% savings in health care costs, Boeing reported in the journal *Health Affairs*. Also, the number of sick days taken by patients dropped by more than half.

The findings add to the growing acceptance that medical homes are a viable economic alternative to the way health care providers care for the sickest patients. Boeing joins a growing number of employers that are embracing medical homes. Other believers include IBM Corp. and the Patient-Centered Primary Care Collaborative, an organization of more than 500 employers, consumer groups, patient quality organizations, health plans, labor unions, hospitals and clinicians. The results of programs like Boeing's could help other medical home projects access billions of dollars from the federal government and spur health insurers to pay for the extra care.

"All these pieces of evidence support the conclusion that while medical homes for everybody might not save money, well-executed medical homes for the sickest 5%, 10%, 20% of the American population can indeed reduce total spending and improve quality," said Arnold Milstein, chief physician for Mercer Health and Benefits and a consultant on the project.

Though medical homes have been around in various forms for years, the concept has gained new currency among the medical community and employers that are dismayed over the explosion of chron-

ic illnesses and health care costs.

"We know, and our consultants helped inform us, that people with multiple complex conditions have the highest costs and suffer from health care being delivered in a fragmented system," said Theresa Helle, Boeing's manager of health care quality and efficiency initiatives.

In other words, sicker patients use more health care, but the additional care does not necessarily make them healthy.

A major reason for that is that the cures for chronic illnesses are complex; patients must change habits they've developed over a lifetime. Medical providers in medical

homes must act more like social workers, taking time to counsel, coach and urge people to manage their illnesses and their underlying social and psychological causes rather than prescribing solutions and doling out medicine during a 15-minute appointment every few months.

That counsel-and-coach approach means paying doctors differently. Boeing was willing to pay doctors more—an additional monthly per-patient fee that neither the company nor the clinics would disclose—to get them to provide the care their chronically ill patients needed. The fee is paid in addition to the money

for service that doctors already receive.

Knowing that patients would be more likely to enroll in the program if they were invited by their doctor, Boeing began its program by giving each of the three health clinics it worked with in the Seattle area a list of several thousand individuals the company and its insurer, Regence BlueShield of Washington, had determined would have very high health care costs during the next 24 months.

The program was voluntary for doctors and patients alike, so the clinics that got involved had the "right mind-set," said Pranav

Kothari, co-founder of Renaissance Health Inc., a medical consulting firm in Cambridge, Mass., and one of the consultants on the project. Boeing had learned the voluntary lesson the hard way when a previous effort requiring patients to switch doctors backfired.

The three Seattle-area clinics customized their approach to test two medical home models. The Virginia Mason Medical Center's clinics paired a patient's existing primary care physician with a nurse case manager who acted as the point person for patients. The Everett

See **HOMES** next page

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Homes: Boeing pilot program focuses on medical home for patients

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Clinic and the Valley Medical Center had a dedicated doctor and nurse manage all the cases.

"We're asking them to do motivational interviewing, compassionate listening, help patients change their behavior, and change the caregiver relationship to one of care partnership that works with a patient's social support system," Mr. Kothari said. "They're not really taught this in medical school."

Getting workers on board

Initially, some patients were skeptical.

"I think there was some curiosity of some of the (Boeing) staff people who we enrolled about... 'Why is my employer getting involved in this?' " says Carolyn Cone, the project manager for Virginia Mason's program.

After experimenting a bit, the clinic found that patients were more likely to enroll when their doctors reached out to them directly. Over a 24-month period, the clinic enrolled 387 patients.

Patients who opted into the program, formally known as the Intensive Outpatient Care Program, met with their doctor and a nurse who assessed their health and developed care plans intended to address their medical needs and put them on the long road to better health.

The initial one-hour "intake" meeting was itself a departure for physicians like Kevin Clay, a primary care doctor at the Everett Clinic. It was longer and more in-depth and gave doctors more time than they had ever spent with their patients.

"I learned things about them I hadn't known, and I've been taking care of them two or three years," Mr. Clay says.

Ms. Cone, the Virginia Mason case manager, said the medical home helps doctors and nurses deliver care to improve a patient's overall health rather than simply address a specific problem.

"In a typical model, you call your doctor when you are sick," she said. "Your doctor will react to the acute condition but won't necessarily be looking forward to address the overall problem and be proactive about a solution."

Once patients and doctors established a care plan, patients met regularly with doctors and nurses. A case manager, working with the patients and their medical providers, coordinated care among specialists. And the care team met daily to review patients' progress.

The clinics also improved their customer service. Patients could make appointments without having to wait. Those who needed immediate assistance could call their nurse or send the nurse an e-mail without having to go through an administrator. Mr. Clay also set up educational seminars to teach patients about their diseases and how to cook healthier meals.

Ms. Helle convened biweekly conference calls with the nurses from the three clinics to share what they were learning. Consultants from Mercer and Renaissance Health met quarterly with Boeing and all the teams to share what people had learned. Ms. Helle, meanwhile, provided monthly progress reports to Pam French, Boeing's director of global benefits.

Most importantly, nurses spent a lot of time reaching out to patients to give them support, guidance and encouragement.

"The key to success is the relationship a nurse develops with a patient," Ms. Helle says. "The nurse is motivating the patient to do behavioral changes which improve their health. It was all about nurse-patient relationship."

Sherry Stoll, a nurse administrator at Virginia Mason, says doctors "talk about 'Boy, you need to lose weight' or, 'You are not managing your insulin.' They have those conversations. What's different about this program is asking the patient why they are not eating the way the doctor asks them to eat or not having their eye exam or not getting their foot exam. What the nurse does is

explain why this is important ... helping patients to work toward their goals, change their behaviors so their overall health is better."

Because of privacy laws, Boeing says it could not make patients available for interviews. Ms. Helle quoted one patient's feedback on the program, saying, "I've been helped more in the last six months than in years of seeing multiple doctors."

Everett Clinic nurse Joleen Rodgers says many patients, especially those who are quite sick, already feel that the medical system has failed them. By providing personalized and persistent care, Ms. Rodgers said, she was able to develop trust that allowed her to slowly help the middle-aged woman with diabetes and kidney disease improve her health.

"She had not had a trusting personal relationship with a care provider," Ms. Rodgers says. "There was nobody to deal with her as a whole person."

Ms. Rodgers eventually earned the patient's trust, and in the process learned more about the woman. The patient's personal life was a source of stress, Ms. Rodgers said, with marital and financial problems and a history of child abuse.

"Over time she slowly let us in and let us know about her concerns," Ms. Rodgers said.

One concern was a breast lump that turned out to be cancer. Doctors had also suggested that she might suffer from depression; it took six months before the patient was ready to do something about it.

"How do you build trust? By building relationships," Ms. Rodgers said. "It's face to face. It's following through on a care plan. It's picking up the phone when a patient calls and being there when they need you."

"In the normal way health care works, patients like that woman are labeled noncompliant, difficult, recalcitrant," Ms. Rodgers said. "That's a label without getting into why they may be that way."

"There are a lot of barriers people have, and reasons why they don't do as we think they ought to or should do. Uncovering those barriers and dealing with them allows people to move forward. And the normal way health care works, we just don't have time to address those complex issues with patients, especially the mental and social issues that are the drivers of what and why they do what they do."

After two years, the patient's health improved. She reduced her weight to 150 pounds. Her tumor was removed. She managed her mental and physical health, but it was not enough. She recently died.

Ms. Rodgers does not know the exact cause of death, though she said the woman's health was fragile and her death was not unexpected, especially once the pilot project ended. "I cannot speculate why she passed away, but there was an abrupt discontinuation of interaction with the medical care team after the program ended in July of 2009," Ms. Rodgers says.

The strength of the relationship between a patient and the care team is a key indicator of whether a patient will improve his or her health. Dr. Milstein, the Mercer consultant who also is a psychiatrist and has studied the way other medical home models have worked, said some clinics whose technical care was only average were able to improve patients' health because the care teams treated patients with an extra measure of personal care.

Dr. Milstein says he visited practices in California that were not part of the Boeing experiment

but followed the medical home concept. And while some were not perfecting their diabetic patients' blood sugar levels, they were doing some things very well. "They were treating these patients beautifully," Dr. Milstein says. "I wanted to put my mother in this practice."

Cost savings

Most of the savings in the Boeing program came from reduced hospitalizations and emergency room visits, Ms. Helle says. The company realized a 20% savings compared with its control group after factoring in the additional money paid to doctors. The average number of workdays missed by patients in the last six months of the program dropped by 56.5%.

The lesson for employers elsewhere is that it is possible to pay doctors more to take special care of their sickest patients and still save money. Doctors' offices do not need to make major investments in information technology or other infrastructure. If the sickest chronically ill patients receive this kind of care, Dr. Milstein projects an initial total health care savings for employers of 3% to 6%.

The key to the concept's broader success is leadership from a large payer of health care. That could be either a large employer in a given community, like Boeing, or Medicare, with the purchasing power necessary to prod and pay doctors to rethink the way they care for patients.

Despite the pilot's success, Boeing ended the program in July 2009. Patients no longer have access to intensive nurse case managers. The system has gone back to the way things were.

"We made special arrangements with medically fragile patients to make sure they didn't fall through cracks," Ms. Helle says.

The success of the Boeing program underscores its weakness: Unless more employers or health plans are willing to pay doctors extra to care for patients in this way, medical homes will not be widely adopted.

Boeing says the pilot was never intended to be made permanent. The company instead focused on seeing whether the models it designed could improve care and reduce costs. Now Boeing wants insurers to step into

20%

Through using the program, Boeing realized a 20% savings compared with its control group after factoring in the additional money paid to doctors.

56.5%

The average number of workdays missed by patients in the last six months of the program dropped by 56.5%.

the breach.

The program's success has caught the eye of health insurers in the Seattle area that are looking to replicate it by sharing the cost savings with doctors. The clinics themselves see the value of the program. Virginia Mason has adopted some of the lessons from the medical home and says it is in preliminary discussions with health insurers to get paid for using a team approach to managing patient care. Boeing says it is studying ways to expand the program in other areas where it has large employee populations.

Regence, the largest insurer in the Northwest and intermountain regions of the United States, this spring began implementing an approach to pay doctors more for caring for patients with multiple complex, chronic illnesses using the medical home model.

"The complex patients, they're at the doctor all the time," Mr. Clay says. "The problem is, our current care model doesn't give you time to get to the bottom of their problems. You need to slow down and take time to analyze it. Sixty percent had behavior health issues."

Unless more insurers and employers pay doctors for the extra care they give patients, Mr. Clay says the medical home model won't be fully embraced by doctors. "If I saw each patient for an hour, my kids wouldn't be in college."

Jeremy Smerd is a reporter for *Workforce Management*, a sister publication of *Business Insurance*.

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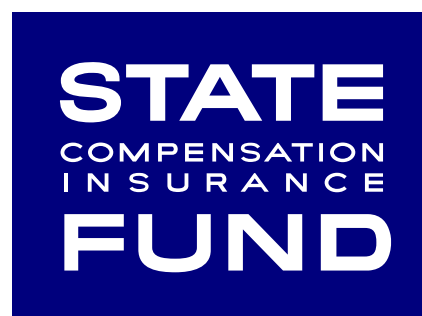
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Plan providers get long-awaited rule

By DOUG HALONEN

WASHINGTON—The Department of Labor's long-awaited rule detailing the fee and compensation information that service providers must give to plan sponsors is expected to be a boon to investment consultants.

"When it comes to the fees that need to be disclosed, sponsors often need help understanding the fees, and the help needs to be independent," said Robyn Credico, defined contribution leader at consultant Towers Watson & Co. in New York.

"I expect a lot of plan sponsors who haven't done this sort of analysis in the recent past to come out of the woodwork" to see if their fees are reasonable, added Matthew Gnbasik, managing director of the Blue Prairie Group L.L.C. in Chicago. "Most plan sponsors would be better served by using a good plan consultant in this process."

The rules, intended to shine a light on potential conflicts of plan service providers, apply to defined benefit and defined contribution plans, but most of the impact will be on defined contribution plans.

Under the rule, consultants—and many plan service providers—will be required to reveal to plan sponsors hitherto undisclosed compensation they are receiving, including any revenue sharing or finder's fees.

The new regulations, which go into effect on July 16, 2011, also are expected to be good for consultants because they require bundled providers to defined contribution plans—such as Vanguard Group Inc., Fidelity Investments and T. Rowe Price Group Inc.—to break out for clients the costs of record-keeping included in their packages.

"There's added value in using a consultant to benchmark the recordkeeping process and lead the

negotiation process with the provider," said Amy Reynolds, partner in the defined contribution consulting business at Mercer L.L.C. in New York.

Some consultants said they are already ensuring that the fees plan sponsor clients pay are reasonable, whether the sponsors are using a bundled or unbundled provider.

"We've been providing our clients a detailed analysis of fees for years," said Ross Bremen, partner, NEPC L.L.C. in Cambridge, Mass.

An unbundled provider—such as Hewitt Associates L.L.C.—offers recordkeeping services only and usually doesn't have a proprietary interest in the investment options on its platform. Bundled service providers offer packages of services that usually include at least some proprietary investment options.

The Labor Department delayed the effective date of its rule to give plan sponsors and service providers time to prepare.

The new regulation also requires providers to disclose whether they are acting as fiduciaries to plans.

The rule also requires broker-dealers and recordkeepers that provide unbundled services to disclose compensation information on investment options for which they provide brokerage or recordkeeping services.

The Labor Department termed the regulation an "interim final rule" because the agency is allowing public comment through Aug. 30, Phyllis Borzi, assistant secretary of labor for the Employee Benefits Security Administration, said during a July 15 teleconference.

Some ERISA attorneys warn that comments could result in rule changes that could reduce lead time to prepare for the new obligations.

Also raising some uncertainty is the vow by Rep. George Miller, D-

Calif., to keep pushing more comprehensive 401(k) fee legislation.

"Obviously, if Congress passes legislation, we'll have to...look at it in regards to the regulation," Ms. Borzi said during the teleconference. She also said she thought the rule requiring bundled providers to break out recordkeeping costs would be particularly controversial. "The people who offer bundled services won't like the rule," she said.

Executives at bundled service providers appeared undaunted.

"We are comfortable with our understanding of how the interim rule is intended to work," said David Abbey, managing counsel and vp of T. Rowe Price in Baltimore.

Ralph Derbyshire, senior vp and deputy general counsel at Fidelity Investments in Boston, said Fidelity officials are "fully prepared to comply with this new requirement."

"Many service providers, including Fidelity, have been providing much of this disclosure on a voluntary basis to plan sponsors for many years," he said.

"Because we have long been providing breakouts of many types of fees, we will need to make only minor changes to our existing fee disclosure reports," a spokeswoman for Malvern, Pa.-based Vanguard, said in an e-mail.

Alison Borland, retirement strategy leader at unbundled provider Hewitt in Lincolnshire, Ill., said, "The regulations will put different types of service providers...on a level playing field."

"Ultimately that means better transparency, more negotiating power and lower total costs for plan sponsors and plan participants."

Doug Halonen is a reporter for Pensions & Investments, a sister publication of Business Insurance.

UP Comings & Goings CLOSE



SEAN P. McDERMOTT

NEW JOB TITLE: Philadelphia-based director of property/casualty consulting services for Towers Watson & Co.

PREVIOUS POSITION: Atlanta-based executive vp and chief actuary for AXIS Insurance Co.

GOALS FOR NEW POSITION: My primary goal is on the mergers and acquisitions side, adding value for clients before, during and after a merger. For our general (property/casualty) practice, my goal is to help in any way that I can: enterprise risk management, economic capital modeling, predictive modeling, and all of the work we do.

INDUSTRY OUTLOOK: I think you'll see continual reserve releases as companies move through the soft market. Hopefully, the market will turn at some point. As far as mergers and acquisitions, we are seeing things pick up in 2010.

FIRST MARKET EXPERIENCE: I started in 1981 at the Insurance Services Office in New York. ISO was a great place to start. It gave me a fabulous foundation on commercial lines and the industry

as a whole.

CAREER HIGHLIGHT: Certainly Towers Watson now and AXIS before, and before that American Re(-Insurance Co.)....The last 20 years of my career I've worked with some really great companies with really great people. I am happy to be where I am; this is a continual highlight.

ADVICE: Be true to yourself. Everyone has different strengths and weaknesses. Your goal should be to get in a position where you maximize your strengths and seek out mentors and people who can help you minimize your weaknesses.

WHAT YOU WANTED TO BE WHEN YOU GREW UP: I wanted to be a rock star and I haven't given up.

OUTSIDE THE INDUSTRY, A DREAM JOB: Does Paul McCartney want to be an insurance executive? Once this insurance stuff is done, there's still hope. That or I would like to be a tenured college professor. Job security and summers off; that would be great.

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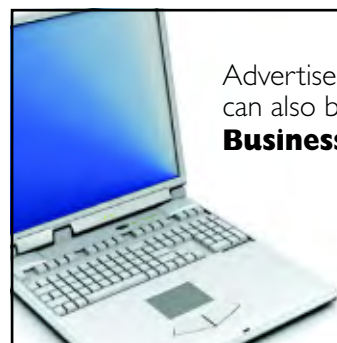
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Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers. Please send news and photos of recently promoted, hired or appointed senior-level executives to:

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AIG: Results strong, talk of government exit begins

CONTINUED FROM PAGE 3

Bank of New York and take significant steps towards a sustainable capital structure," Mr. Benmosche said.

As of June 30, AIG said its net outstanding borrowings under the Federal Reserve Bank of New York credit facility were \$20.5 billion, plus accrued interest and fees totaling \$6 billion. The net amount borrowed under the facility decreased by \$1.2 billion from June 30 to July 28, AIG said.

"In accordance with our longstanding commitment to repay our obligations to the U.S. government, in recent weeks we have commenced discussions with the (Federal Reserve Bank of New York), the Department of the Treasury and the trustees of the AIG Credit Facility Trust with respect to a proposed strategy" to repay the Fed "and allow the government to exit its owner relationship with AIG," Mr. Benmosche said.

On a related front, the Government Accountability Office said in a report last week that while it is unknown when AIG will be able to

repay the government, the scenarios now being considered include having AIG redeem shares owned by the Treasury Department, converting the shares to common stock and selling them later in a public offering, or selling the shares to an institutional buyer or buyers in a private sale.

Analysts generally said they were pleased with AIG's results.

"It seems that AIG had a decent quarter," said Clark Troy, Chapel Hill, N.C.-based senior analyst with research and consulting firm Aite Group L.L.C. That and Mr. Benmosche's statement that AIG is discussing how to reduce the government stake "is generally a positive trend."

Cliff Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York, said, "while there's always a lot of moving parts" in AIG's financial results, "the underlying insurance companies look like they're doing OK."

Chartis' 102% combined ratio for the quarter was "not that bad considering it was a relatively bad cat quarter," Mr. Gallant said.

AIG's life, aircraft leasing and mortgage businesses also showed improvements, he said.

"The problems are more at the parent level," Mr. Gallant said. "You still have significant interest payments to make and, of course, the question of how to pare down all your debt." But, "those are all capital structure problems. The business on the ground is OK."

Mr. Benmosche has been "a very effective CEO and has done a very good job in terms of stabilizing the company and, at some point, the corporate issues, one way or the other, will be resolved and Chartis will operate without that headache, and so I think it seems like they're effectively preserving value," Mr. Gallant said.

Bill Bergman, an analyst with Morningstar Inc. in Chicago, pointed to Chartis' 1.6% quarterly decline in net premiums, which were \$7.79 billion. "It appears we've got stabilized premiums as well as decent operating profitability in the general insurance operations," although it is "hard to know" what may be happening "under the surface" and to what extent the insurer is "underwriting at prices to keep business coming into the door."

But, he added, the financial results are a "positive sign."

However, Cathy Seifert, an equities analyst with Standard & Poor's Corp. in New York, said, "There's still a lot of execution risk" in AIG's strategy.

"To the degree they move along" in restructuring the business, "that's a good thing," Ms. Seifert said. "But it doesn't change the underlying metric."

TRIA: Terrorism cover backstop still seen as vital

CONTINUED FROM PAGE 3

was improved in 2007 by covering acts of domestic as well as foreign terrorism. He said RIMS believes "it is highly unlikely that terrorism risk insurance would continue to be available" at current coverage levels and prices if the federal government were to withdraw its support.

If the program expires, "there must be some alternative government-supported plan in place," Mr. Fleming wrote. "The commercial insurance market cannot adequately predict or measure the financial impact of terrorism and it will not be able to provide adequate coverage for this exposure."

"We think there is still a need, that the coverage will not be affordable or available if the federal government does not provide a backstop," Mr. Fleming said in an interview last week. As far as renewing the program, "we figure we have to fight that battle again in 2013 and 2014," he said.

Insurance industry groups also called the program necessary in their comments.

Without a federal program, "it is doubtful that a private market for 'conventional' terrorism insurance would exist, particularly for commercial properties and employment locations in what are considered 'high-risk' geographic areas," the Indianapolis-based National Assn. of Mutual Insurance Cos. wrote in its comment.

Even with a federal terrorism backstop, "there remains no potential for private-market development for chemical, nuclear, biological and radiological coverage" because of the nature of those risks. "Any 'solution' to that problem will need to be underwritten by the federal government, not the private insurance industry," NAMIC wrote in its comment letter.

Looking ahead, Marliis McManus, senior federal affairs director at NAMIC's Washington office, said in an interview last week that the 2013

review "will be the most timely study because Congress will be looking at reauthorizing the program, because it expires in 2014."

Permitting the program to expire without a successor backstop would eliminate the safety net it provides and "place more emphasis on those risk characteristics that are not controlled by the private market," J. Stephen Zielezienski, senior vp and general counsel of the Washington-based American Insurance Assn., wrote the working group. The "inevitable result" will be increased volatility and a "reluctance to expand capacity absent government intervention," he wrote.

The Washington-based Council of Insurance Agents & Brokers pre-

As far as renewing the program, 'we figure we have to fight that battle again in 2013 and 2014.'

Terry Fleming,
Montgomery County, Md.

dicted that allowing the program to lapse would result in terrorism risk coverage not being "widely available in the locations and industries at high risk," CIAB President Ken Crerar wrote. "To the extent that coverage would be available, it also is likely that prices will increase significantly, and that policy terms and conditions will be very restrictive."

Capital is the key factor for determining availability of terrorism insurance, wrote David M. Golden, senior director-commercial lines at the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America. "There simply isn't enough capital available in the property/casualty insurance industry to maintain a viable terrorism insurance market without continuing the government backstop," he said in his comment.

Storms: Forecasts predict active season

CONTINUED FROM PAGE 3

insurers and new capital continue to enter the market. "The magnitude of losses to actually turn the commercial insurance market would have to be substantial and, for an overall industry impact, over what we saw in 2004 and 2005," she said.

"It is unlikely that even an event that is larger than Katrina—\$45 billion in today's dollars—would turn the overall property market, unless

it is much larger," Robert Hartwig, president of the New York-based Insurance Information Institute, said in an e-mail. "Areas exposed to hurricane risk would likely experience a tightening, of course, driven by higher primary and reinsurance prices."

But he said there probably would be little change in other parts of the country or for other property exposures. He noted that insurers experienced about \$90 billion in insured

catastrophe losses during the 2004 and 2005 hurricane seasons.

"Hurricane-impacted property insurance and reinsurance prices did rise, but the impact was limited to hurricane-exposed areas," Mr. Hartwig wrote. "The industry is even better capitalized today than it was in 2004-05," and even a storm causing \$45 billion to \$50 billion in damage would represent a smaller share of surplus today than five years ago.

Standard: IASB looks to update insurance accounting standard

CONTINUED FROM PAGE 4

mates" that do not provide current information about liabilities, the IASB said.

Also under current practices, there often is a mismatch between assets backing insurance liabilities, which are measured at their current value, and those liabilities, the IASB said.

The standard would require liabilities to be measured in a way that would reflect economic changes, the IASB said.

The standard also would require insurers to incorporate and disclose information about a specific risk adjustment in their liabilities. This risk adjustment would be evaluated anew at the end of each reporting period.

The Brussels-based Comité

'Without doubt, IFRS 4 will create a level playing field for the insurance industry, providing all financial statement users—from policyholders to investors to analysts, competitors and regulators—with greater comparability and transparency.'

James Dean, Ernst & Young L.L.P.

Européen des Assurances, which represents insurers and reinsurers in Europe, welcomed the proposal. The IASB insurance standard would "better reflect the economics of insurance contracts in the way they are measured and reported," said Benoit Malpas, technical manager at the CEA, in a statement.

The consistency of reporting under the standard "will allow com-

parability among peers, which was one of the main requests from users of financial statements," Mr. Malpas said.

"Without doubt, IFRS 4 will create a level playing field for the insurance industry, providing all financial statement users—from policyholders to investors to analysts, competitors and regulators—with greater comparability and

transparency," said James Dean, global IFRS leader at Ernst & Young L.L.P. in London.

The standard likely would increase transparency as insurance reporting is inconsistent across jurisdictions and often difficult to understand, said Gail Tucker, a partner at PricewaterhouseCoopers L.L.P. in London.

The standard also would fit well with the upcoming changes being introduced with Solvency II, the proposed risk-based capital regulatory regime slated for introduction in the European Union at the end of 2012, she said.

There are similarities in the measurement of assets and liabilities in the proposed standard and Solvency II, but there also would be differences, said Frank Ellenbueger, a

partner at KPMG L.L.P. in Munich.

He said KPMG believes it would be better if these changes could be limited to areas where the standard and Solvency II have different objectives.

Insurers should begin planning now for the introduction of the standard, which likely will require them to reorganize their data or use new models, said Francesco Nagari, global IFRS leader at Deloitte L.L.P. in London.

While the introduction of the IASB standard may cause "short-term pain" for insurers, it will lead to "long-term gain" if the increased transparency of financial performance results in a reduced cost of capital, said Mr. Dean.

The exposure draft is available at www.ifrs.org.

Whistle-blower provisions included in bill

The 848-page Dodd-Frank Wall Street Reform & Consumer Protection Act, the financial services reform bill that President Barack Obama signed into law last month, contains several provisions related to whistle-blowers that protect them from retaliation. They include:

SECTION 748: The Commodity Exchange Act is amended to protect whistle-blowers and allows them to receive awards of 10% to 30% of any funds collected in monetary sanctions that total more than \$1 million.

"No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against a whistle-blower in the terms and conditions of employment because of any lawful act done by the whistle-blower" in providing information or assisting in an investigation.

Whistle-blowers who allege retaliation can bring charges in federal court, and are not required to meet any administrative requirements before filing a lawsuit. The statute of limitations is two years after the date of the alleged violation.

Those who prevail will be reinstated with the same seniority and status they would have had but for the retaliation; receive back pay and interest; and receive compensation for special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees and reasonable attorney fees. Predispute arbitration agreements are not valid or enforceable.

SECTION 922: This section, which amends the Securities Exchange Act of 1934, is similar to Section 748, except that whistle-blowers have up to six years to bring suit after the alleged retaliation.

Furthermore, those who prevail will receive two times the amount of back pay otherwise owed in addition to reinstatement and compensation. Predispute arbitration agreements are not enforceable. Also protected are whistle-blowing employees of "nationally recognized statistical rating organizations."

SECTION 929A: The Sarbanes-Oxley Act is amended to clarify that the employees of subsidiaries of publicly traded



President Barack Obama stands with the sponsors of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

AP PHOTO

companies receive whistle-blower protection. Courts have been divided over Sarbanes-Oxley's applicability to such subsidiaries.

In addition, Section 922(c) expands the statute of limitations for filing a whistle-blower claim under Sarbanes-Oxley from 90 days to 180 days, clarifies that plaintiffs can elect to try their cases in federal court before a jury and voids predispute arbitration agreements.

SECTION 1057: Whistle-blower protection is broadened to any employee who performs tasks related to a consumer financial product or service.

Covered whistle-blowers include those who provide information relating to a violation to the employer or a government agency, testify in any proceeding resulting from administration or enforcement of federal consumer financial law, file or institute any proceeding under federal consumer financial law or refuse to participate in any activity they believe violates the law.

An employee has 180 days after the alleged violation to file a complaint. If the Labor Department secretary does not issue a final order with 210 days after the complaint is filed, the worker may bring suit in federal court and is entitled to a jury trial.

An employee need demonstrate only by a preponderance of evidence that the protected conduct was a "contributing factor" to the reprisal. In its defense, though, the employer must demonstrate "by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior." A worker who prevails must be reinstated with back pay and receive compensatory damages.

Whistle-blower claims are exempted from mandatory arbitration agreements, except those included in collective bargaining agreements.

Source: The Dodd-Frank Wall Street Reform and Consumer Protection Act and attorneys' analyses. The law is available online at <http://www.gpo.gov/fdsys/pkg/BILLS-111hr4173ENR/pdf/BILLS-111hr4173ENR.pdf>.

with Conner & Winters L.L.P. in Washington, said, unless supervisors or managers are made aware a worker has a concern that could lead to a whistle-blower claim, and that worker has to be disciplined for unrelated reasons, "it could be misperceived by the employee."

Phillip Berkowitz, a partner with Littler Mendelson P.C. in New York, noted employees who claim retaliation in connection with a complaint filed with the SEC will have the "extraordinarily lengthy" period of six years after the date on which the alleged retaliation occurred to file an action.

Pointing to provisions in the act that prohibit pre-dispute arbitration agreements, Mr. Berkowitz said: "It has the potential to upend the way many disputes are resolved in the financial services industry."

Jennifer Brown Shaw, a partner with law firm Shaw Valenza L.L.P. in San Francisco, said, "We've seen a lot of case law these days about arbitration and whether employers can force employees" to arbitrate. "Now we have sort of another chipping away at arbitration."

Preparation critical

Employers need to prepare, observers say.

"These are extraordinarily protective laws" and "they are going to require all companies, regardless of whether they're publicly traded, to put into effect very stringent policies that make clear the rights of employees to bring claims of wrongdoing, and to provide training to employees who might otherwise engage in retaliatory conduct," Mr. Berkowitz said.

"Employers will need to manage their employees in a consistent and even-handed manner to avoid retaliation claims, but to also ensure that their employees are not misusing these statutory provisions," said Mr. Chinn.

"They're just going to have to pay more attention to it in their risk management practices," said Mr. Powell.

Mr. Pearlman said employers should create "a culture of accountability and integrity and ethics so employees can freely report internally" any complaints and "allow the internal complaint resolution process to work without any fear of retaliation." A manager who responds inappropriately to a complaint can lead the employee to perceive he made a mistake in complaining or is being retaliated against, even if this was not the case, Mr. Pearlman said.

Mr. Newman said employers are going to "need to carefully investigate all whistle-blowing claims to prevent the nightmare scenario of a meritless whistle-blower complaint followed by a meritless retaliation claim where, because of a lack of internal processes and due diligence, the fact finder thinks the employer should have done more, or didn't do enough."

Reporting should be two-pronged, said Mr. Glenn, with employees who want to report financial impropriety contacting a specific, designated compliance group within the firm, and with retaliation claims reported to a designated human resources representative.

Whistle-blowers: Financial reforms up retaliation risk

CONTINUED FROM PAGE 1

employment lawyers and, I believe, a lot of expenses for employers, and create a lot of claims that...statistically over time will be found to lack merit," he dismissed or successfully defended at trial, Mr. Newman said.

For instance, under the new whistle-blower provisions for financial services employees, an employee only has to prove that his or her protected activity was a "contributing factor" to any reprisal, Mr. Newman said. This "lacks the precision necessary for a fact finder, in my opinion, to really decide whether anyone was retaliated against or not," he said.

Jeremy J. Glenn, a partner with law firm Meckler, Bulger, Tilson, Marick & Pearson L.L.P. in Chicago,

said: "Because it expands the universe of people who are covered, it expands the damages they may recover if successful in retaliation actions, and it combines a series of proof burdens that are favorable" to the employees who make the claim.

Fredric D. Firestone, a partner with law firm McDermott Will & Emery L.L.P. in Washington, said the whistle-blower provisions' "substantial additional safeguards for whistle-blowers in the form of specific, anti-retaliation protections" include reinstatement to the same status the worker had before, two times the amount of back pay owed, and litigation costs and reasonable attorneys' fees.

Steven J. Pearlman, a partner with law firm Seyfarth Shaw L.L.P. in

Chicago, said, "This new statute really poses some very unique challenges to employers (that) they haven't had to deal with in such a pronounced way in the past."

For instance, it provides "a bounty to the employee to go straight to the SEC with information" they would otherwise have generally been expected to report to their employers, which might have set up sophisticated whistle-blower hot lines and anti-retaliation policies. Employees "now have significant economic incentive to bypass" these procedures, he said.

The law also expands the potential litigation by explicitly covering operating subsidiaries that report their financial results to the parent company, said Kurt A. Powell, managing partner with Hunton &

Williams L.L.P. in Atlanta.

Problems also can arise if the whistle-blower is a problem employee to begin with, say observers.

"There's always concern that employees will misuse anti-retaliation provisions like these and style themselves as whistle-blowers in an effort to shield themselves from anticipated criticism, poor performance reviews or even anticipated terminations," said Lloyd B. Chinn, a partner with Proskauer Rose L.L.P. in New York.

"You can't fire them" in cases such as these, said Ernest E. Badway, a partner with Fox Rothschild L.L.P. in Roseland, N.J. "You're sort of damned if you do and damned if you don't," he said.

Donn C. Meindersma, a partner

Models: Employers seek outside help to examine health care reform law impact

CONTINUED FROM PAGE 1

and retain grandfathered status, plans are barred from boosting coinsurance requirements or increasing the percentage of the premium paid by employees by more than a given percentage.

Meanwhile, brokers and benefit consultants continue to fine-tune their modeling capabilities as more information becomes available about how the law might affect health care plans in 2014, when state insurance exchanges are established, and in 2018, when excise taxes on high-cost health benefit plans will be assessed (see story).

Brokers and consultants estimate that more than half of their employer-clients have been modeled so far, and that all will have to make some changes to their health care plans beginning Jan. 1, 2011—either to comply with the health care law or to offset the additional costs of complying.

Company financial officials want “to understand the broader picture of how this will play out. This is where the modeling opportunity comes into play,” said Michael Thompson, a principal in PricewaterhouseCoopers L.L.P.’s New York office.

Focus depends on design

Lincolnshire, Ill.-based Hewitt Associates Inc. started modeling the legislation’s effect on employers as early as July 2009, said Bob Tate, chief health care actuary based in Atlanta. “But a much bigger flood hit after the Senate bill passed,” he said.

At first, most employers “wanted to see the impact going out a few years. But a lot of that was, and still would be, based on assumptions and speculation” since it’s impossible to predict such things as how many employees might be eligible for federal subsidies, Mr. Tate said. “Lately, they’ve been more interested in the impact on costs for 2011.”

“Some Fortune 50 companies were modeling (the impact of

‘There is no prestige attached to being grandfathered. The practical implications are that being grandfathered is a very expensive proposition for most employers, and the trade-off for most employers is fairly nominal.’

Randy Abbott, Towers Watson & Co.

health care reform legislation) last spring based on the House and the Senate bills,” recalled Randy Abbott, a senior consultant at Towers Watson & Co. in Wellesley Hills, Mass. “But we certainly saw a tsunami of activity after the legislation passed.”

“Certain people were challenged by senior management to get their arms around the long-term impact immediately,” Mr. Abbott said. “Others were saying they just wanted to get through 2011 and then they were going to take a more strategic approach.”

The focus of modeling exercises

by brokers and consultants has varied based on the type of employer, said Steve Ferruggia, principal of health and productivity at Buck Consultants L.L.C. in Secaucus, N.J.

“Unionized organizations are focused on the Cadillac tax,” he said. “Retailers with a lot of temporary help are looking at the mandates.”

So far, the types of employers seeing the greatest change are in the retail and hospitality industries,

consultants say.

“They’ve been offering limited medical plans, only providing coverage to 40-hour employees,” said Shannon Demaree, director of actuarial services at Lockton Cos. L.L.C. in Kansas City, Mo. “It would cost them more whether they keep or dump the plan. The only way to avoid it is to restructure their workforce—make them all under 30 hours.”

Mercer’s Mr. Bailey said he has found that plan participation rates are the single biggest indicator of the risk or exposure an employer

will likely face in the wake of the new law.

“High participation-rate employers are in a better position to project their costs. They also may be able to reduce benefits because their benefits are likely richer. By contrast, those with low participation and high cost-sharing are in the opposite position,” Mr. Bailey said.

Jason Green, vp of human resources at Baldor Electric Co., an equipment manufacturer in Port Smith, Ark., said his company’s management was interested in immediate and long-term effects of the law when he asked Lockton to apply its modeling tools about three months ago.

“We wanted to understand the financial implications on a year-by-year basis. We also wanted to look at the financial implications of each of the provisions individually. This exercise really helped fill in a lot of the blanks that still existed even weeks and months after the bill had passed,” Mr. Green said.

Looking ahead to 2014, 2018

When Rex Abercrombie, vp of benefits and compensation at Lake Forest, Ill.-based Tenneco Inc., approached Buck Consultants to perform modeling, “we posed the question to them: What do we need to do for 2011? They identified the plan design impact and the related financial impact associated with market reforms that take effect Jan. 1,” he said.

In addition, Mr. Abercrombie received impact analyses for 2014 and 2018. The reports were presented initially in April and revised in late June after the first batch of regulations were released by the departments of Health and Human Services, Labor and Treasury.

At this point and based on Buck’s

analysis, the only changes Tenneco needed to make were eliminating lifetime benefit limits, which had been \$1 million, and extend coverage to employees’ adult children up to age 26.

Mr. Abercrombie said Tenneco wasn’t concerned about retaining its grandfathered status because it already offers many of the benefits required by the health care reform law, including paying 100% of the cost of preventive care and extending coverage to employees who work 30 or more hours per week.

Now that the necessary changes have been made for 2011, “with regards to 2014 and 2018, we’re not making any decisions yet,” Mr. Abercrombie said. “A lot can happen between now and 2014.”

Mr. Abbott predicts that 80% to 90% of large employers will give up grandfathered status by Jan. 1, 2011, based on initial data collected in a Towers Watson survey that will be released later this month.

“There is no prestige attached to being grandfathered. The practical implications are that being grandfathered is a very expensive proposition for most employers, and the trade-off for most employers is fairly nominal,” he said.

Justin M. Kindy, a vp in the Denver office of Aon Consulting, a unit of Chicago-based Aon Corp., said his experience reflects this estimate.

“I’d say less than 10% are going out of their way to maintain grandfathered status,” Mr. Kindy said.

Instead, Aon Consulting recommends that employers “fundamentally rethink the design of their plans,” said Tom Lerche, health care practice leader in Chicago.

“A lot of these plans were designed 20 years ago in a different era. We really need to start from scratch,” Mr. Lerche said.

Models use current assumptions to project future needs

Determining the impact of health care reform on an employer-sponsored health care plan requires more than just comparing the current cost of coverage against the cost of the employer surcharge to drop coverage, brokers and benefit consultants say.

It’s a series of complex calculations that take into account factors such as employee salaries and annual pay increases; available plan designs; pretax contributions by the employer and the employee; annual cost increases; enrollment patterns; state, federal and FICA taxes for the employee and the employer; projected premiums for coverage purchased through the yet-to-be established state insurance exchanges; estimated annual household income; the cost of employer penalties; and the cost of the so-called Cadillac tax if the plan exceeds cost thresholds in 2018 when that tax begins.

Some models, such as that developed by Kansas City, Mo.-based Lockton Cos. L.L.C., consider the number of hours worked by part-time employees. Under the law, employers face stiff financial

penalties if they don’t offer coverage to employees working at least 30 hours a week.

While most models calculate both employer and employee costs in the event that an employer decides to drop coverage, these are only estimates since it is not known now what premiums will be charged by insurance exchanges, which will not be established until 2014.

For example, Lockton is using an estimate based on current individual market premiums, “but we believe that without medical underwriting, the premiums could be much higher,” said Shannon Demaree, director of actuarial services in Kansas City, Mo.

To project the likelihood that some low-wage employers might be eligible to receive federal subsidies to purchase coverage through one of the exchanges, Buck Consultants L.L.C. uses Census data, said Steve Ferruggia, a principal in health and productivity based in Secaucus, N.J.

“This is unique to the world of human resources,” Mr. Ferruggia said. “All HR planning has only looked at worker

‘Another variable is how rich the benefits are. A lot of employers, especially in the collectively bargained sphere, have low deductibles and low out-of-pocket maximums.’

Robert Schmidt, Milliman Inc.

income. Now we have to start looking at household income. So far, we’ve found that of married employees, more than three-quarters have a working spouse.”

To determine whether a health benefit plan might become subject to the 40% excise tax that begins in 2018 and apply to premium costs that exceed certain amounts, modelers look at plan design as well as employee and employer contributions, and then project year-to-year

increases in medical costs based on estimated future trends.

“Some employers could have Cadillac plans if health care costs continue their current trajectory,” said Robert Schmidt, a consulting actuary in the Boise, Idaho, office of Milliman Inc. “It depends in part on geography. If an employer operates in Southern California, their premiums are higher than they would be in Idaho.”

“Another variable is how rich the benefits are. A lot of employers, especially in the collectively bargained sphere, have low deductibles and low out-of-pocket maximums,” Mr. Schmidt said, which could elevate their health plan’s cost beyond the thresholds that trigger the tax. The thresholds are \$10,200 for individual coverage and \$27,500 for family coverage.

“Even if they aren’t quite Cadillac in 2018, the threshold only goes up by (the Consumer Price Index) plus 1%. So unless health care costs fall below that, more and more plans will be Cadillac plans,” Mr. Schmidt said.

—By Joanne Wojcik

News In Brief

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forward, forcing the Obama Administration to defend the landmark health care reform law. The state's suit alleges that a requirement that individuals buy health care coverage beginning in 2014 or face a penalty is unconstitutional. The Justice Department, arguing on behalf of the administration, said the suit should be dismissed because only individuals subject to the fine have standing to challenge the mandate, not states. At least a dozen other states have sued to overturn the law's individual mandate. Meanwhile, voters in Missouri passed a ballot initiative Aug. 3 prohibiting the federal government from requiring individuals to purchase health insurance.

Federal Insurance Office needs support: Letter

Seven organizations—including the Risk & Insurance Management Society Inc.—have sent a letter to Treasury Secretary Timothy Geithner concerning the new Federal Insurance Office established by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. In the letter, the groups said that foremost among their concerns is that FIO assume an active and meaningful international role. In addition to RIMS, the letter was signed by the American Council of Life Insurers, the American Insurance Assn., the Assn. of Bermuda Insurers & Reinsurers, the Council of Insurance Agents & Brokers, the Financial Services Roundtable and the Reinsurance Assn. of America.

P/C insurers tap reserves: Moody's

The U.S. property/casualty insurance industry already has tapped significant reserve redundancies, Moody's Investors Service said in a report. That means the insurers will have a narrower cushion for the next 12 to 24 months, Moody's said. The report—"U.S. P&C Insurers Harvest Significant Reserve Redundancy"—says a weak pricing environment is the primary challenge for domestic property/casualty insurers to build reserves at the same pace as recent years. The report said insurers reported less, though still substantial, benefit from reserve releases in their 2009 statutory earnings compared with 2008.

30% workers comp jump proposed for Calif.

Actuaries for the Workers' Compensation Insurance Rating Bureau of California have recommended a roughly 30% rate increase for policies incepting Jan. 1, 2011. The recommendation by the WCIRB's actuarial committee must

be approved by the governing committee before it goes to the California Department of Insurance for approval or disapproval. WCIRB's governing committee was to vote on the recommendation, a spokesman said.

Online index shows ERISA exemptions

A new online index launched by the Labor Department's Employee Benefits Security Administration gives employers and others immediate access to exemptions that the department has granted from Employee Retirement Income Security Act rules. The online index allows searching by subject for individual exemptions approved from 1996 through 2010, with links to the publication of the exemptions in the Federal Register.

Pension funding reform eases pressure: Analysis

Employers that sponsor defined benefit pension plans could collectively reduce their contributions between \$19 billion and \$63 billion as a result of recently enacted pension funding relief legislation, Towers Watson & Co. said in an analysis. Under the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, employers with underfunded defined benefit pension plans may elect to amortize funding shortfalls for any two plan years between 2008 and 2011 either over a 15-year period or by making interest-only payments for two years followed by seven years of amortization. The analysis found that required contributions could be reduced by \$19 billion to \$63 billion, depending on which of the two provisions and which plan years employers choose.

P/C rates fall 3% in July: MarketScout

Commercial property/casualty insurance rates dropped an average of 3% in July compared with a year earlier, MarketScout said. The Dallas-based electronic insurance exchange said the service industry enjoyed the most competitive pricing among industries surveyed, with average prices down 4%. Among lines of coverage, general liability experienced the greatest pricing decline with average prices down 5%.

Catlin names CEO of reinsurance, Swiss unit

Catlin Group Ltd. has appointed Peter Schmidt to the newly created positions of CEO of European reinsurance and CEO of Catlin Re Switzerland. Mr. Schmidt joined Catlin from credit insurer Atradius N.V., where he was chief market officer. Previously, he worked at Swiss Reinsurance Co. In his new role, Mr. Schmidt is responsible for the operations of Catlin Re Switzerland as well as the reinsurance operations of all of Catlin's offices in Europe. Catlin Re Switzerland will begin writing specialty classes of reinsurance later this year, subject to regulatory approval.



ZUMAWIRE WORLD PHOTOS

A billboard for Protect-A-Bed mattress protectors is seen in New York, where retailers have been dealing with complaints about bedbug infestations in some stores.

Bugs: Insurers to feel bite?

CONTINUED FROM PAGE 1

Some insurance experts say coverage against bedbug infestation could be "problematic," but lawyers aren't too quick to write off the possibility that a standard property damage policy could provide some coverage.

Business interruption, third-party liability claims and reputation risks also are areas that retailers and hoteliers need to consider as they deal with the increasing nuisance.

New York has been the focus of the bedbug issue, with a recent survey revealing that one of every 15 New Yorkers have dealt with an infestation. In New York, bedbugs have cropped up in various places including hotels, theaters, high-end retail stores and the public library.

"They are becoming a more widespread concern as the number of infestations increases," said Mac D. Nadel, Norwalk, Conn.-based U.S. practice leader for Marsh Inc.'s retail and wholesale food and beverage practice group. "The latest reports have put some focus on retailers, which shows it's not only just a hospitality business problem, but a property, real estate and general problem."

Media reports in July said the Bed Bath & Beyond Inc.-owned chain Buy Buy Baby Inc. in Manhattan was infested with bedbugs. However, Farmingdale, N.Y.-based Bed Bath & Beyond said the situation didn't necessitate a store closure.

After two independent services inspections of the entire store—including the sales floor, stock rooms, shipping areas and offices—four of the pests were found on two display chairs, which immediately were sealed in plastic and removed from the building, Bed Bath & Beyond said in a statement. Further inspections have found no further evidence of bedbugs, the company said.

Mayor Michael Bloomberg's administration reportedly fielded

11,000 complaints about the pests in 2009 compared with just 537 in 2004. As a result, \$500,000 has been committed to deal with the infestation.

However, reports have sprung up in Ohio and Los Angeles as well. Bedbugs—which are not known to spread disease but bite and leave itchy red welts—are more of a nuisance than anything else, but the problem they create is being taken seriously.

More importantly, it's no longer just a hospitality industry problem and the battle against bedbugs is

11,000

New York Mayor Michael Bloomberg's administration reportedly fielded 11,000 complaints about bedbugs in 2009 compared with just 537 in 2004. As a result, \$500,000 has been committed to deal with the infestation.

expected to continue.

"You really have to take the blinders off on this issue because they're starting to get into places that are not normally exposed to bedbugs," said Tracy Knippenburg Gillis, New York-based crisis management practice leader for Marsh Risk Consulting. "It makes it more important for retailers, hotels and other commercial businesses to have a process in place to mitigate the spread and to prevent further occurrences."

Most standard commercial property policies either have specific vermin exclusions for "infestation" or "loss due to insects" or have other broad "contamination" exclusions, insurance brokers and insurers said, adding that the policyholder has to

prove actual damage of items that were infested if exclusions aren't present in the policy.

David Kroeger, Chicago-based attorney within Jenner & Block L.L.P.'s insurance and reinsurance group, said policyholders should look closely at what the vermin exclusion says and how it categorizes and defines vermin.

"I wouldn't give up on the property policy immediately," Mr. Kroeger said. "Vermin exclusions may not focus on bedbugs, but may focus on insects like termites."

This is important, Mr. Kroeger said, because if a store or hotel is forced to shut down due to bedbug infestation and cannot reopen until after fumigation, business interruption coverage could be triggered.

For hotels, loss-of-attraction coverage could be applied for actual losses sustained due to cancellations or the inability to accept bookings for rooms due to murder and suicide, and also may apply to vermin, said Nancy Green, Chicago-based executive vp at Aon Risk Solutions, a division of Aon Corp.

She also said that type of coverage is an extension of a typical property policy and can provide some relief, typically up to \$1 million or higher, depending on the limits purchased.

Hotels and retailers also need to be aware of the potential of third-party liability, though most retention levels on a property policy will be higher than the amount of claims costs, she said.

"Any time you are a guest in a hotel and you have sustained bodily injury or damage to your property as a result of that stay, you have the right to make a claim," Ms. Green said. "Bedbug incidents are no different."

"However, it is often difficult to prove the source of infestation, as it is easy for a traveler to unknowingly transport bugs due to exposure which may have occurred prior to arriving at the hotel. Hotels are just as interested as guests are to quickly respond to and resolve bedbug incidents," she said.

Iran: Policy exclusion drafted for economic sanctions

CONTINUED FROM PAGE 4

could constitute a breach of that order.

Subsequent impositions of sanctions against Iran by the United States and the European Union, and a Lloyd's pledge not to underwrite petroleum shipments to Iran, underlined the need for such a clause, Mr. Roberts said last week in a phone interview.

The exclusion says there are instances in which underwriters cannot provide coverage if a sanction is breached and that certain situations, including imposition of

sanctions, prohibit insurers from offering cover, Mr. Roberts said.

Previously, individual underwriters in the political risk market devised exclusions to deal with sanctions, but there was no standard wording, he said.

The revised exclusion clause, devised by underwriters in the marine hull market, has been adopted by underwriters in the war market and is being studied by underwriters in the cargo market, Mr. Roberts said.

It is hoped that the wording is flexible enough to respond to similar situations in the future, Mr.

Roberts said.

In addition, the aviation market has a draft wording to cover sanctions, he noted.

In July, President Obama signed into law the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, which imposes economic sanctions on companies—including insurers and reinsurers—that do business with entities that help Iran import refined petroleum or develop its petroleum refineries (BI, July 5).

The law includes a specific exemption for insurers and reinsurers that conduct due diligence, but

the U.S. law does not specify what underwriters would have to do to meet the due diligence requirement.

Also in July, the European Union imposed sanctions on Iran's foreign trade, banking and energy sectors. Lloyd's then said it would not insure or reinsure refined petroleum shipments to Iran.

"We have directed the market not to cover shipments of refined petroleum going into Iran, and we will always comply with any applicable sanctions," Sean McGovern, Lloyd's director and legal counsel, said in a statement.



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Facebook post lands worker in hot water

A Dearborn, Mich., hospital worker discovered there is truth to the adage “be careful what you say, for it may come back to haunt you.”

The day after Cheryl James posted on Facebook that she had come “face to face” with a “cop killer” and hoped he “rotted in hell,” her supervisor at Oakwood Hospital fired her, saying she violated federal rules by disseminating protected health information about a patient in a public forum.

Although she didn't identify the suspect by name, the shooting and his arrest were highly publicized locally. Tyress Mathews faces the possibility of life in prison on multiple felonies, including killing a peace officer.



In a televised interview after her termination, Ms. James said she didn't feel she had violated the

privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996.

“I am familiar with HIPAA. I did not give out any of his information. I did not give out his name. I did not mention the hospital. I did not give out his conditions,” Ms. James said in the interview on a local news program.

Hospital management disagreed and issued a statement: “As health care providers, we have a legal and ethical responsibility to protect patient privacy and we are bound by HIPAA rules and regulations to ensure that we do. All of our employees are trained and expected to protect patient information. This means keeping details confidential that might make it easy to identify a patient, even if his or her name has not been revealed. That's why disciplinary action, even termination, may result from sharing information about patients inappropriately in any public forum or setting.”

Ms. James said she plans to fight her termination.

Business Insurance END PAGE

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Andy Griffith appears in a public service announcement for the Centers for Medicare and Medicaid Services.

CENTERS FOR MEDICARE AND MEDICAID SERVICES

GOP takes shots at Griffith's PSA spot

Life never got too complicated or too controversial in Mayberry, the fictional North Carolina town that served as the setting for the popular 1960s television program “The Andy Griffith Show.”

At most, Andy Griffith as Mayberry's Sheriff Andy Taylor calmed the nerves of comically overzealous Deputy Sheriff Barney Fife or imparted some moral lesson to his son, Opie.

But Mr. Griffith's latest role is stirring plenty of real-life controversy.

In a public service announcement for the Centers for Medicare and Medicaid Services, Mr. Griffith explains that changes brought about by the health care reform law will be good for seniors. He talks about new services people will receive, including free checkups, lower prescription costs and greater fraud protections.

“I think you are going to like it,” Mr.

Griffith tells his audience.

The commercial was launched July 30 on the 45th anniversary of Medicare as part of a broader education campaign about Medicare benefits changes.

Reports say Mr. Griffith was selected for the spot because he is highly trusted among seniors, many of whom believed misinformation distributed during efforts to derail the president's campaign to reform health care.

Who wouldn't trust Sheriff Taylor to always tell the truth?

But not everyone believes Mr. Griffith is on the level. Several GOP lawmakers sent a letter to Health and Human Services Secretary Kathleen Sebelius, calling the ad a violation of the spirit of federal laws prohibiting the use of taxpayer dollars for campaign purposes.

Other news reports say Mr. Griffith was not paid for his part in the PSA.

You can bet she didn't see this problem coming

In another case of “what's in a name,” a Chesterfield County, Va., woman is suing county officials for allegedly violating her religious rights.

Patricia Moore-King alleged that the violation stemmed from officials defining her as fortune teller rather than a spiritual counselor, according to the Associated Press.

The matter involves more than semantics. Fortune tellers must submit five references to get permission to operate, whereas spiritual counselors face less onerous requirements.

For her part, Ms. Moore-King said she's no fortune teller because she does not predict the future. Rather, she provides counseling through Tarot cards, astrology and a variety of other techniques, she said.

But when her case reached the U.S. District Court in Richmond, Va., last month, Judge Robert E. Payne declined to rule outright on the future of Ms. Moore-King's suit, according to AP.

Instead, he said she had failed to exhaust all of her options to obtain proper licensing and zoning. Although he didn't issue a ruling, the judge said that neither the plaintiff nor county officials had followed up on her license request, and said she needed to push for a resolution of the dispute before going to court.

“She's the author of her own misfortune,” Judge Payne said.



Serta makes the mattresses at the Bellagio Hotel in Las Vegas, which are available for purchase online.

LAWSUIT BAD FOR GOOD NIGHT'S SLEEP

“A good night's sleep is truly a vacation in itself,” states a Bellagio online advertisement for bed mattresses that customers can purchase, complete with a Bellagio label, from the Las Vegas hotel and casino.

But evidently Bellagio management has been losing sleep over alleged trademark infringement.

According to a Las Vegas Sun report last week, the unit of MGM Resorts International has filed a trademark infringement lawsuit against Italy-based Magniflex S.P.A. for selling a mattress it named the Bellagio.

According to the website for New York-based Magniflex USA Ltd., the company is one of Europe's largest foam mattress manufacturers and distributes its products internationally. Aside from retailers, Magniflex also provides its products to hotels, which

can put their own label on them.

But beds for the 3,933-room Bellagio are manufactured by Hoffman Estates, Ill.-based Serta International. Guests can purchase a Bellagio-branded mattress at a retail store in the resort or through the company's website.

According to the newspaper, Bellagio's lawsuit alleges that “Magniflex announced its Bellagio mattress long after Bellagio began selling mattresses and after Bellagio filed its trademark application for the Bellagio marks for mattresses.”

The lawsuit further states that Magniflex's use of the name Bellagio is likely to confuse or deceive customers. Magniflex could not be reached for comment.

Perhaps the companies can settle this with a pillow fight.



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