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ONE MAJOR M&A RISK MIDSIZE COMPANIES OVERLOOK IN DEALS / PAGE 6

In Brief

Health care reform rule unconstitutional: Court

The 4th U.S. Circuit Court of Appeals ruled that a key part of the health care reform law that will require individuals to enroll in a health care plan or pay a financial penalty is unconstitutional. The decision creates a split at the appeals court level, with the 6th U.S. Circuit Court of Appeals ruling in June that the imposition of the requirement fell under Congress' authority to regulate interstate commerce. The appeals court split makes it almost certain the U.S. Supreme Court will take up the issue.

Soft market near bottom: RIMS

Slight decreases in average renewal premiums in the second quarter of 2011 for

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SPOTLIGHTS

CATASTROPHE MANAGEMENT & DISASTER PLANNING

Learn what to do before, during and after a disaster to mitigate damage and expedite claims payout; largest property loss control consultants and top U.S. commercial building insurers ranked. **PAGE 9**

HEALTH CARE REFORM: COMPLIANCE

Reform regulations come quickly, often; big break for adult children; employers adjust retiree coverage as tax break ends. **PAGE 18**

PROPERTY/CASUALTY INSURERS

U.S. debt downgrade adds to uncertainty

S&P move won't rattle most insurers, but larger economic concerns mount

By **MARK A. HOFMANN**

WASHINGTON—While Standard & Poor's Corp.'s recent downgrade of U.S. sovereign debt appears unlikely to have an immediate impact on insurer investment, other factors associated with a weakened economy should be cause for concern, say observers.

The downgrade itself could mean higher interest rates and lower values for Treasury bonds and other fixed asset securities, according to analysts. But other factors, such as general economic conditions or a weakened dollar, could have a greater impact on property/casualty insurers than a downgrade of U.S. debt by one rating agency does, say observers.

S&P already has lowered ratings on five primarily life insurance groups to AA+ from AAA. And although S&P affirmed the AA+ ratings of five other insurance groups, including Berkshire Hathaway Inc., it revised its outlooks on ratings on these companies to negative from stable.

Meanwhile, National Assn. of Insurance Commissioners President Susan E. Voss said last week that S&P's action would not affect insurer investment.

"There is no impact on insurer investments in U.S. government and government-related securities from the actions recently taken by the rating agencies," said Ms.

See **DOWNGRADE** page 24

REINSURANCE

Berkshire joins bid battle for reinsurer Transatlantic

By **SONJA RYST**

NEW YORK—The fight to take over reinsurer Transatlantic Holdings Inc. looked set to turn into a slugfest last week as Berkshire Hathaway entered the battle with a \$3.2 billion offer.

That marked the third offer in two months for the former reinsurance affiliate of American International Group Inc. and provoked reactions from other participants in the bidding war, includ-

ing legal action.

Volatility in the stock market last week added a new dimension to the battle as the valuation of the two previous bids, which were largely stock-based, swung wildly.

And Transatlantic may hold out for a higher offer than any of those already on the table, some observers say.

The attempt to take over New York-based Transatlantic began in

See **BERKSHIRE** page 24

CATASTROPHES



The Sony Distribution Center in the Enfield area of London was looted and set on fire by rioters Aug. 8.

AP PHOTO

U.K. riot losses may top \$325M

Government faces claims from insurers

By **SARAH VEYSEY**

LONDON—Insurance claims from rioting and looting that engulfed areas of London and other major British cities last week are expected to run into hundreds of millions of pounds.

While the property damage and business interruption claims stemming from the riots likely will be covered under most commercial insurance policies, the government ultimately may pick up the tab for much of the damage.

Sources said it is too early to estimate what the final cost of the riots and looting will be to insurers, but the Assn. of British Insurers last week said the insured loss likely will be well over £200 million (\$327.8 million). While few insurers last week had estimates for losses from the riots, Allianz Insurance P.L.C., the U.K. unit of German insurer Allianz S.E., said it expects to pay out £25 million (\$41 million) in riot-related claims.

Nick Starling, director of general insurance and health at the London-based ABI, said

business interruption losses in particular were difficult to calculate at this early stage.

Most commercial insurance claims likely will be covered under standard policies, according to the ABI, the British Insurance Brokers Assn., and other experts. And insurers likely will be able to subrogate some claims to the police under the terms of U.K.'s 1886 Riot (Damages) Act.

The rioting and looting began in the Tottenham area of north London on Aug. 6 after a peaceful protest against the previous week's fatal police shooting of a local man.

Riots spread to other parts of north London on Aug. 7 as hundreds of people took to the streets fire-bombing buildings, smashing into stores and businesses, and looting their contents.

On the two succeeding days, violence and looting spread to other areas of London, and to at least 10 other English towns including Birmingham, Bristol, Liverpool and Nottingham.

See **RIOTS** page 25

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Business Insurance (ISSN 0007-6864) Vol. 45, No. 32, is published weekly, except for combined issues the first and second week of July, the fourth and fifth week of August and no issue the last week of December, by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Email address change to customerservice@businessinsurance.com or mail to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912, \$5 a copy and \$125 a year in the U.S. \$130 in Canada and Mexico (includes GST). All other countries, \$230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in U.S.A. Copyright © 2011 by Crain Communications Inc.

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INTERNATIONAL

Bermuda readies for Solvency II

Market confident it will meet Europe's regulatory requirements

By SARAH VEYSEY

HAMILTON, Bermuda—Confidence is high in Bermuda that the domicile will gain third-country equivalence with the Solvency II risk-based capital regulatory regime being drafted in Europe.

Bermuda is among the first wave of countries, along with Japan and Switzerland, that are being considered for third-country equivalence status, meaning its regulations have been accepted as comparable to the upcoming European rules.

Officials from the Frankfurt, Germany-based European Insurance and Occupational Pensions Authority visited Bermuda in May to make an on-the-ground assessment of the domicile's progress toward a new regulatory regime.

Initial feedback from that visit is expected by the end of this month, experts say.

The drive for Solvency II equivalence is part of a wider priority of ensuring that the wide array of insurance entities on the island—which include global reinsurers and captives—are subject to a pragmatic regulatory framework, said Jeremy Cox, CEO of the Bermuda Monetary Authority.

The BMA seeks to align its efforts with those of the International Assn. of Insurance Supervisors, which aims to level the playing field of international regulation and facilitate regulatory equivalence, he said.

"We see the importance of our framework being regarded as equivalent by other major jurisdictions that are relevant to our market," said Mr. Cox. "Such equivalence can provide, among other benefits, increased opportunities for Bermuda firms to operate in key markets under nondiscriminatory terms and less duplicative regulation."

Because of the "significant amount of commercial reinsurance business conducted between Bermuda and Europe, Solvency II is highly relevant to this market," said Mr. Cox.

Bermudian insurers and reinsurers are well-prepared for a risk-based capital regulatory regime, sources say.

Bermuda has been incorporating enhanced risk-based capital requirements into its regulatory framework since 2007, according to Mr. Cox.

In 2007, the BMA began a trial of the Bermuda Solvency Capital Requirement with large insurers, and in 2008 that requirement was implemented for large—Class 4—companies in Bermuda.

Class 3B companies, those whose total net premiums from unrelated business total \$50 million or more, also now are subject to the BSCR, and the model is being rolled out for the rest of the commercial insurance market.

Many Bermudian insurers have



Bermuda is among the first wave of countries being considered for third-country equivalence status under Europe's Solvency II capital regime.

European operations, which has helped drive the island's preparedness, said Mr. Cox.

Bermudian insurers and reinsurers are well-advanced in their preparations for a new regulatory regime, according to Charles Dupplin, CEO of Hamilton, Bermuda-based Hiscox Bermuda, a unit of Hiscox Ltd.

And the BMA has recruited some good regulators in recent months to help the island's efforts, he said.

This bolsters the regulator's credibility, said Arthur Wightman, a partner at PricewaterhouseCoopers L.L.P. in Bermuda.

"I would be extremely surprised if there were any problems on the technical side," said Mr. Dupplin. He said there is a mood of "cautious optimism" about EIOPA's feedback.

Companies in the market are well-prepared to begin operating under a new risk-based capital regime, experts say.

Companies in Bermuda have been "technically underwriting and using models"—an important facet of Solvency II—for longer than many of their European counterparts, said Mr. Wightman.

"On the whole, Bermudian insurers and reinsurers appear well-equipped to move to a risk-based capital regulatory model," said Brian Schneider, a director in the insurance team of Fitch Ratings Inc. in Chicago. "The majority of these companies have already developed sophisticated economic capital models."

Success of the equivalence drive is very important for insurance and reinsurance buyers across the world who rely on a solid, well-regulated insurance market in Bermuda, said Mr. Dupplin.

Well-run insurers and reinsurers will welcome the level playing field that the new regulatory system should put in place and the fact that it should help to prevent the collapse of insurers and reinsurers, Mr. Dupplin said. The costs of a company collapse often are partly borne by other players in the market, he said.

And it is important for Bermudian companies that equivalence

is granted, said Mr. Schneider.

"Solvency II does not allow European insurers to count reinsurance support towards their regulatory capital unless it is provided by reinsurers operating under a comparably rigorous regime," he said. "If Bermuda failed to gain third-country equivalence, it would place Bermudian reinsurers at a huge competitive disadvantage with respect to attracting European clients, at a time when demand for reinsurance from European primary companies is expected to surge," he said.

Companies and regulators in Bermuda are taking the Solvency II equivalence project very seriously, according to PwC's Mr. Wightman.

"They are very focused on ensuring that a focus on quality regulation is preserved," he said, "but are taking the view that equivalence doesn't mean equal."

Bermuda's regulators want to ensure that the rules are proportionate and risk-focused.

Therefore, he said, Bermuda's regulations eventually may place less of an administrative burden on companies as the way that national regulators interpret the European Solvency II rules.

"We intend to maintain a risk-based, proportionate approach to regulation for firms in our market, to ensure Bermuda correctly balances workable supervisory regimes with international expectations," Mr. Cox said of the BMA.

"In our view, consistency with international standards means broad equivalence, not line-by-line duplication of requirements," he said. "To simply copy standards wholesale from elsewhere would not be appropriate. This perspective is consistent with EIOPA's position regarding their Solvency II assessments, which states that while all applicable criteria under the directive need to be met for a positive equivalence assessment, a positive assessment does not require that every indicator be fulfilled," he said.

Potential delays to the start of the regime in the European Union likely will not hold up progress in Bermuda, Mr. Wightman said.

AGENTS & BROKERS

AssuredPartners buys broker Neace Lukens

By MICHAEL BRADFORD

LAKE MARY, Fla.—A recent acquisition of a regional broker aiming to expand its reach nationally could signal renewed interest by private equity firms in buying intermediaries.

Neace Lukens Holding Co., a Louisville, Ky.-based broker, announced last week that it was being acquired by AssuredPartners Inc., a Lake Mary, Fla., company backed by up to \$250 million in capital from Chicago-based private equity firm GTCR L.L.C.

Neace Lukens, with 2010 revenues of \$86 million, was ranked 24th in *Business Insurance's* annual list of the largest brokers of U.S. business. The brokerage confirmed that it plans to use funds from the deal to expand its regional presence to become a nationwide firm.

Terms of the deal were not released.

AssuredPartners, formed this year, is led by CEO Jim Henderson, the former vice chairman and chief operating officer of Daytona Beach, Fla.-based broker Brown & Brown Inc. Tom Riley, former regional president and chief acquisition officer at Brown & Brown, is president and COO of AssuredPartners, which was created to build a middle-market brokerage operation through investments in property/casualty and employee benefits brokers.

Retail and wholesale brokers have been targets of private equity firms for some time. A flurry of deals were completed in 2007, but transactions slowed during the credit crisis.

Among the 20 largest brokers in *BI's* ranking, Hub International Ltd., USI Holdings Corp. and Alliant Insurance Services are owned by private equity firms.

Sources say a firming commercial market could stir private equity firms to step up their efforts to acquire brokers.

"We are seeing increased private equity interest," said Bobby Reagan, president and CEO of Reagan Consulting Inc. in Atlanta. The firms slowed their acquisition activity after making notable investments in Hub, USI and Alliant, he said, but are optimistic that market trends are improving and brokers are well-positioned.

"The brokerage business is attractive because the cash flow is reasonably predictable," said Timothy J. Cunningham, a principal at OPTIS Partners L.L.C. in Chicago. It's a business that operates without the burden of requiring "major capital investments like in the manufacturing sector," he said.

In addition, brokerages look to be better investments as the soft market appears to be firming, Mr. Cunningham said. "There is some anticipation that will we see a market shift. I think we are at the bottom of the market."

AGENTS & BROKERS

Aon sues Riskconnect

Unit of broker says ex-staff stole secrets

By MIKE TSIKOUKAKIS

PHILADELPHIA—Aon eSolutions Inc. has sued risk management technology provider Riskconnect Inc. and three former Aon employees for alleged misappropriation of confidential information and unfair competition.

The lawsuit filed by Aon Corp.'s risk management technology unit alleges that before three former Aon employees resigned and accepted positions with competitor Riskconnect in May, they "copied and removed, without authorization, Aon computer files containing trade secrets and/or confidential business information for the apparent purpose of using information to solicit business for Riskconnect," the complaint says.

Aon also alleges Riskconnect encouraged or condoned the unauthorized activity and will benefit from unfair competition.

"It's a little surprising that this large competitor is trying to take

us on," said Kelly M. Barton, vp of marketing at Riskconnect, who also noted that the company had not yet seen the complaint last week.

Ms. Barton noted that Riskconnect has confidentiality and non-compete agreements with its own employees and expects employees joining from other companies to honor their own agreements.

"Of course, we don't know all the facts that they're alleging yet, but from what we have seen and understand, we can't imagine that there's any basis for it and we will absolutely defend Riskconnect and these three employees for their right to work at a market-leading company," Ms. Barton said.

Chicago-based Aon declined to comment.

Aon seeks injunctive relief and damages against the three employees and Riskconnect for wrongful activities, according to the suit filed in the United States District Court for the Eastern District of Pennsylvania.

WORKERS COMPENSATION

Job candidate testing program cuts Harley-Davidson's injuries

Physical ability to perform job tasks checked before workers hired

By **ROBERTO CENICEROS**

Harley-Davidson Motor Co. has significantly reduced musculoskeletal injury claims among new employees by making job offers contingent on a measurement of a potential job candidate's physical ability to complete tasks.

The motorcycle manufacturer has spent less than \$5,000 total on musculoskeletal workers compensation claims reported by new employees screened under a post-offer employment testing program, dubbed POET, launched in 2008, said Caroline O'Connell, Harley-Davidson's human resources process improvement project manager in Milwaukee.

"That is significant for us, because we were spending a lot of money on workers comp costs on new employees," Ms. O'Connell told the Disability Management Employer Coalition's annual conference held July

31-Aug. 3 in Dallas.

Before implementing the POET program, 43% of Harley-Davidson's employees suffered an injury within one to five years after they were hired, Ms. O'Connell said in an update to a 2009 DMEC presentation. "So spending less than \$5,000 on all of our work comp costs for musculoskeletal claims for candidates tested was significant for us," she said. "That is huge dollar savings."

Two years ago, Ms. O'Connell told the San Diego-based DMEC that its POET testing, provided by Hanover, Md.-based BTE Technologies Inc., helped improve return-to-work rates.

BTE's software and equipment works by measuring the job requirements and a worker's physical abilities to complete the job, said Connie Miller, vp of business development at BTE.

Harley-Davidson, which employs

about 5,700 workers, has tested more than 500 job candidates. About 18% of those potential employees have failed the test.

"That 18% failure rate for us is pretty significant," Ms. O'Connell said. "Let's say, for every employee that you failed and didn't bring into your workforce it (saved) you \$10,000 in a work comp claim. You can show significant cost savings," she said.

Since 2008, Harley-Davidson has reported no musculoskeletal-related claims among new hires in its Milwaukee facility, where it launched the program. In contrast, between 2008 and 2010 Harley-Davidson recorded 516 musculoskeletal claims in facilities where it did not apply POET testing, Ms. O'Connell said.

In 2010 it expanded the POET program to its operations in York, Pa., Ms. O'Connell said.

In 2010, the manufacturer expe-



AP PHOTOS

Harley-Davidson Motor Co. has reduced claims for musculoskeletal injury among its workers by testing them for their physical ability to do job tasks before offering them employment.

rienced only three musculoskeletal-related claims reported by workers tested in York. Those three cases account for the \$5,000 total spent on musculoskeletal claims for new hires, with two of them costing \$31 each for administrative filing fees. The third claim required medical treatment expenses to reduce inflammation.

In York, Harley-Davidson applied POET to evaluate its seasonal workforce. They don't have the health care benefits that full-time employees do, so they have a greater potential to file workers comp claims, Ms. O'Connell said.

"If you are going to tell somebody that they are not getting a job because they functionally can't perform it, you need to be right," BTE's Ms. Miller said.

The tests are legally defensible because Harley-Davidson has tested its existing workers as a benchmark, the speakers said.

The employer continues seeing return-to-work improvements. BTE's physical demand analysis of jobs at Harley-Davidson helps the employer with its return-to-work efforts by matching employees with work restrictions with appropriate jobs, said BTE's Ms. Miller.

WORKERS COMPENSATION

Integrated claims approach pays off

Employers report disability savings, better productivity

By **ROBERTO CENICEROS**

At University Hospitals Health System, "a claim is a claim" regardless of whether it originates from a short-term disability request or a workers compensation incident.

That's because the Cleveland-based employer of 23,000 workers integrates its in-house administration of both types of claims, Deborah L. Templin, manager of disability management services for University Hospitals, told the Disability Management Employer Coalition's annual conference held July 31-Aug. 3 in Dallas.

The integration efforts have helped reduce disability durations and costs while creating other system efficiencies such as improved benefit delivery for employees, Ms. Templin said.

Many employers can't measure their savings from integrating programs because they did not maintain data before they began integrating, said Karen English, a partner at Spring Consulting Group L.L.C. in Boston.

But "quite a few" employers report savings or program improvements of more than 11% related to reducing direct costs and lost-time costs from disability or workers compensation claims, and for improved return-to-work rates, Ms. English said.

Other benefits employers report include decreased absenteeism, increased productivity, and employee and employer satisfaction with program offerings, she said.

Typically, employers that integrate disability management offerings, which can include occupational and non-occupational programs, take different approaches, Ms. English added.

But, generally, they proceed along one of two tracks: They might begin integrating along an "absence management track" that includes integrating programs such as short- and long-term disability, family medical leave and sick leave. Or they might start by integrating health management programs, meaning they coordinate their group health plans and disease management, wellness and employee assistance programs as well as possible, Ms. English said.

"Generally, what happens is an employer might start on an absence management track then move to the health management track, or start with health management and move to absence management and then think about adding workers comp and then move all the way to a total absence management approach," Ms. English said.

But "doing it all at once would be way too much," Ms. English said. "Bite off what you can and move on to the next (program)."

To succeed, integration must be completed in phases, Ms. Templin said. "Anybody who sets out with a

lofty goal is not going to get it accomplished," she said.

Her road to integration began in 2003 by centralizing the health system's workers comp risks under one self-insured program, Ms. Templin said. University Hospitals' business units previously self-insured or separately purchased insurance.

A year later, University Hospitals created an online claims-reporting system, eliminating the lag time in claims reporting that occurred when different business units used different systems.

In 2005, it developed a medical provider network of its own doctors that now treats 87% of the health system's injured employees.

In 2008, Ms. Templin said she borrowed from the health system's experience of self-administering its workers comp claims to begin self-insuring and self-administering its "fully insured" short-term disability claims.

"I thought since we have the process in place, because a claim is a claim whether its occupational or non-occupational...aside from the litigation you see in workers comp, we could self-administer the workers comp and short-term disability together."

That, along with aggressive claims management and return-to-work efforts, have led to a 27% reduction in short-term disability durations, a 7% reduction in short-term disability costs excluding pregnancy, and a 16% reduction in average workers comp claim costs, Ms. Templin said.

WORKERS COMPENSATION



Learn from comp experts

Virtual conference set for Sept. 22

Learn more about the latest trends in workers compensation and key strategies for controlling costs—all without leaving your desk.

Business Insurance on Sept. 22 will present a free virtual conference to help employers better understand forces affecting their overall workers compensation risks, as well as where the insurance market is headed and how to deal with a critical component of medical costs—pharmaceutical expenses.

The one-day "Virtual Advantage Workers Comp Conference" will feature speakers and sessions, chats with expert panelists, a virtual exhibit hall, and the opportunity to network with workers compensation colleagues.

Conference keynote speaker Harry Shuford, chief economist for NCCI Holdings Inc., will review the state of the workers comp market nationwide, along with trends such as the upturn in claims frequency and medical cost inflation and issues such as obesity and prescription drug abuse.

In addition, a panel of four

experts will present a discussion on addressing pharmaceutical costs. The panel speakers are Becky Robinson, assistant vp-risk management for Hobby Lobby Stores Inc.; Julie A. Fortune, senior vp and chief claims officer for Arrowpoint Capital Corp.; Michael J. Shor, managing director of Best Doctors Occupational Health Institute, a part of Best Doctors Inc.; and Dr. Gary M. Franklin, medical director for Washington State Department of Labor and Industries and research professor in the Departments of Environmental and Occupational Health Sciences and Medicine at the University of Washington.

Also, join Roberto Cenicerros, *BI* senior editor and author of the *Comp Time* blog, who will moderate a panel of leading workers comp bloggers in examining key industry trends.

Third-party administrator Sedgwick Claims Management Services Inc., a sponsor of *Virtual Advantage 2011*, also will present at the event.

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Mid-Market EXECUTIVE

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

Don't overlook intellectual property issues during M&A

Firms often forget to fully evaluate intellectual assets

By **MATT DUNNING**

Pressed for time and short on resources, mid-market executives often approach a merger or acquisition with a limited understanding of their own intellectual property and patent assets, let alone those of the company with which they are dealing, experts said.

The consequences of that deficit of knowledge can be disastrous to the health of the deal, if not the company itself. As merger and acquisition activity in the middle market continues to trend upward, experts say the number of businesses not doing enough to shield themselves from hazards when it comes to the transfer of intellectual property and patent rights is likely to increase as well.

"As long as you have more companies doing deals, you're going to see more issues with (intellectual property)," said Jura Zibas, a partner at the White Plains, N.Y.-

based Wilson Elser Moskowitz Edelman & Dicker L.L.P. law firm. "That's largely just because they lack the experience."

One of the fundamental mistakes midsize companies often make when entering into a merger or acquisition, Ms. Zibas said, is failing to account for the full breadth of intellectual property holdings on both sides of the deal. She said midsize companies tend to focus only on revenue-generating properties such as formulas, product designs, recipes and software coding, leaving behind the rights to other copyrighted or trademarked material like former and current marketing plans, trade secrets, printed materials and Web content.

"There are so many things that can be intellectual property that you don't think about," Ms. Zibas said. "You might not realize that you have something of value that you're overlooking."

For companies planning to acquire a competitor or business partner, a thorough examination of the target's intellectual property and patent assets is crucial, experts said. Karl Pedersen, a senior vp of

Willis North America's errors and omissions and information risks practice in Los Angeles, said mid-market executives and in-house attorneys too often rely on boilerplate checklists to guide their inquiries into a target's holdings. Doing so, he said, ignores many of the intricacies of intellectual property and patent ownership and use that can affect the actual worth of a particular property, or worse, expose either or both parties to infringement litigation.

"Because of timing concerns, literally all they're checking is, 'What is it, when does it expire if it's a patent, and who ultimately owns the rights?'" Mr. Pedersen said. "They don't have the time or the resources to examine the possible infringement issues or design-around issues. For a mid-market company, that's where the greatest issue lies."

In particular, Mr. Pedersen said, midsize companies seldom take into account properties and patents that were developed using the licensed assets of another firm. Those licenses often contain exclusions on the right of use in the event of a merger or acquisi-

tion, especially those that occur between industry competitors.

"We've seen that time and time again," Mr. Pedersen said. "Those licenses can be critical to the deal, because they complement whatever it is that you're trying to buy. If you don't do the proper due diligence, you suddenly find out that you can't use the technology or property you've acquired because it's dependent on another company's asset."

Another common shortfall for midsize firms, experts said, is a

failure to understand the very nature of patent ownership and protection. John Brosnan, a senior vp of Aon Risk Solutions' media liability and intellectual property practice in Chicago, said many mid-market companies think of patent ownership as a positive right, as opposed to a negative one. Companies often assume the acquisition of a target's patent grants them exclusive utilization or manufacturing rights

See **MME PROBLEM** page 23

Both sides of a deal need own check lists

By **MATT DUNNING**

To avoid messy intellectual property and patent disputes during and after an acquisition or merger, all roads must pass through extensive due diligence and disclosure, according to several attorneys and insurance advisers.

Prior to the start of a transaction process, Karl Pedersen, senior vp of Willis North America's errors and omissions and information risks practice in Los Angeles, said a mid-market company's first task should be to produce a comprehensive due diligence request list, which will be delivered to the target company once the sale is in motion. Depending on the industry, he said, that list should include requests for complete title history for all registered trademarks and copyrights, patents and other written intellectual properties, as well as access to all relevant trade secrets necessary to the utilization of those rights.

"Part of that process is going to be interviewing key personnel," Mr. Pedersen said. "That should include a technology officer, a chief information officer if there is one, the various engineering heads, outside (intellectual property counsel). In the end, you're trying to identify both the owned and licensed properties, and that's paramount."

Companies being targeted for acquisition also will want to conduct their own assessment of their intellectual property assets, to determine their real-world value.

Josh Cohen, a senior vp for Marsh Risk Consulting's valuation services practice in New York, said the factors that can inform an asset's actual worth include the costs associated with owning and maintaining the asset, price points for sales of similar assets among similarly sized compa-

nies and the anticipated revenue a company can expect to extract from the asset, either through utilization or enforcement.

Mr. Cohen said while a few mid-market companies might have the in-house resources to conduct their own valuation assessment, such calculations often are best left to an independent third party.

Tapping the expertise of a certified accountant with intellectual property experience also is critical to the success of a deal, said Sandra Etherton, a principal of the Etherton Law Group L.L.C. in Tempe, Ariz. "Having a CPA on board is key to corraling the intellectual property rights," Ms. Etherton said. "I would say half of the issues that come up for a mid-market firm during a merger or acquisition are spotted by the accounting advisers, not the lawyers."

A standard policy for representations and warranties likely will cover most fees and penalties associated with intellectual property or patent disputes during the transaction process, but companies suddenly in possession of a much larger inventory of intellectual property might consider coverage for costs, penalties and loss of revenue from infringement litigation and enforcement of in-house property rights.

Though that coverage is available in the middle market, it is very limited in terms of capacity and largely rated on a case-by-case basis.

John Brosnan, a senior vp of Aon Risk Solutions' media liability and intellectual property practice in Chicago, said a company's success in securing long-term coverage depends to a certain extent on the industry in which it operates.

"It's a spotty market. There's not a lot of uniformity like you would find in a more standard line," he said.

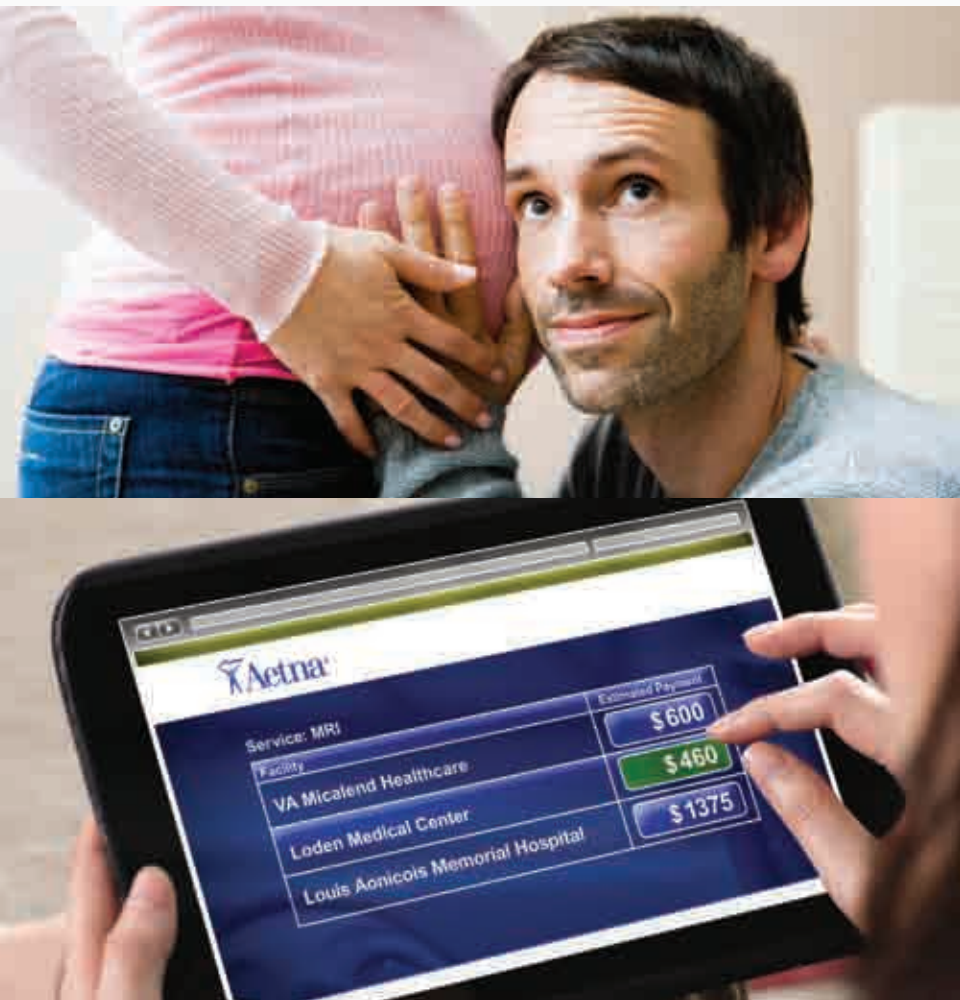


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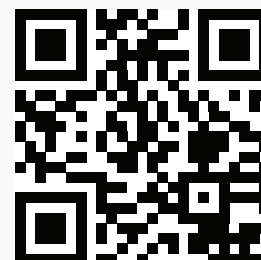
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Opinions

EDITORIAL

Right time to end COBRA subsidy

THE IMMINENT END of a federal program that provided rich federal premium subsidies of COBRA health care coverage to laid-off employees is perhaps an appropriate time to offer a few reflections.

That 65% federal COBRA premium subsidy was included as part of an economic stimulus measure Congress passed in early 2009 during the peak of the Great Recession.

Initially, the subsidy was available for up to nine months. Later, lawmakers extended the subsidy to 15 months.

Coverage is ending this month for that last batch of eligible individuals, and the subsidy program will come to its formal end. There would be little disagreement that the subsidy was costly. But we think the subsidies were in the national interest.

The subsidies helped millions of laid-off employees and their families retain their prior employment-based coverage that otherwise would have been unaffordable. That helped to ensure continuity of care and, even more important, it meant laid-off employees did not have to go to hospital emergency rooms—as so many uninsured do—for care that could be delivered in more cost-efficient settings.

By retaining coverage, there is no question that laid-off employees and their families were more likely to get treatment for routine medical problems early on, reducing the likelihood that the problems would develop into more expensive-to-treat medical conditions.

Finally, the continuation of health coverage for millions of laid-off workers surely reduced the amount of uncompensated care hospitals would have provided, a cost that likely would have been shifted to other insured patients, inflating their bills.

The subsidy program provided real value for the cost assumed by the nation's taxpayers. But with an improved economy, compared with early 2009, it was time for lawmakers to put an end to the program.

SCHILLERSTROM



COMMENTARY

Captives can ease volatility

With stock indexes swinging hundreds of points from day to day and a downgrade of the United States' debt rating, last week's word of the week had to be "volatility."

As it turns out, that volatility made it a good time to be at a captive conference—which I was, attending the annual gathering of the Vermont Captive Insurance Assn. in Burlington, Vt.

In his keynote address Wednesday morning, Robert P. Hartwig detailed a lengthy litany of events and factors contributing to that volatility and a general sense of, "What in the world is going on?"

The list was a mix of economic and financial events, political issues and natural disasters like the March 11 Japanese earthquake and tsunami that caused widespread death and destruction, but also disrupted company supply chains around the world.

But the turmoil those events caused is actually a good thing for the captive insurance industry, according to one captive expert at the conference.

"From the captive point of view, volatility is a great thing," said Stephen Cross, CEO of Aon Global Risk Consulting. "Underwriters can't respond to volatile issues, black swans, that sort of thing. Captives will."

Vermont's captive industry celebrated the 30th anniversary of the state's captive law this year, offering a convenient lens through which to view how far companies have come in their use of captives as a risk management and risk financing tool.

"Think about the captives that were formed 30 years ago and how they approached risk," said

Nancy Gray, Burlington-based regional managing director-Americas at Aon Global Insurance Managers. Back then, captives were primarily a risk transfer tool with an aim of reducing the cost of risk by reducing premiums, Ms. Gray said. Now, however, captives are increasingly being employed in addressing organizations' risks on an enterprisewide basis.

With that evolution comes consideration of the use of captives to address such risks as cyber risk, social media risk or supply chain exposures.

Steven R. Bauman, senior vp and head of captive services at Zurich Global Corporate, North America, in New York, said while he hasn't seen many clients actually implement supply chain programs in their captive yet, "We're certainly talking about it."

The notion of covering supply chain risks—and supply chain partners' exposures—in captives is part of a "theme of captives moving more toward a profit center and not just a loss center," Mr. Bauman said.

It's all but certain that captives' evolution will continue, and in 30 years' time companies likely will be using them to finance risks we haven't even begun to think about today.

According to Mr. Cross, given the pace of change and emerging exposures, that time frame might be even shorter.

"We're very foolish as a risk management community if we think in five years' time things will be done as they are now," he said.

Contact: rzolkos@businessinsurance.com

LETTERS

Cat model averages considered

TO THE EDITOR: In the property insurance world, there has been much discussion in 2011 regarding the number of losses in the first half of the year and, equally, the release of the new RMS 11.0 CAT Model.

Since the release of the new model, loss estimates have increased dramatically, in some cases more than 100%. The model has been the subject of much debate and has caused many to reconsider the potential exposure at risk. For example, insurers are faced with charging more for the exposure or reducing the amount of exposure. Meanwhile, insureds are concerned about buying ample limits for this exposure and the cost for this capacity.

I do not wish to debate the accuracy or legitimacy of the

See **LETTER** page 24



RODD ZOLKOS
SENIOR EDITOR

GIVEN THE HUGE FINANCIAL TOLL of hurricanes and other natural disasters—from property and equipment loss to business disruptions and supply chain slowdowns—companies are constantly striving to learn from the past to reduce the economic impact of tomorrow’s catastrophes. In this three-part series, *Business Insurance* offers a range of best practices to manage natural disaster risks before, during and after they strike.



AP PHOTO

WORST-CASE STUDIES

Disaster plans crucial to weathering a crisis

Risk managers, others offer catastrophe management lessons learned the hard way

By **RUSS BANHAM**

It’s hurricane season in the United States, and so far the tempests have been kind. But, as the extraordinary array of natural catastrophes in recent years has indicated, Mother Nature is merely providing a reprieve.

Learning from past disasters helped the Miami-Dade County Public Schools cope well with future hurricanes, according to the district’s risk and benefits officer, Scott Clark. “When Hurricane Andrew struck in August 1992, we suffered a \$95 million loss from the ground up,” said Mr. Clark, who also is the president of the New York-based Risk & Insurance Management Society Inc. “What we learned there we have carried forward, and have not endured any really significant property losses since.”

Under Mr. Clark’s watch are some 360

schools, comprising more than 1,500 buildings that collectively represent \$8.2 billion in property risk. The key lesson Mr. Clark learned was to remove any and all equipment from the roofs of schools and other facilities. Heating, ventilation and air conditioning units, among other machinery, had broken free of their moorings during Hurricane Andrew and punctured the roofs. Once the envelope of a building is opened, the real damage begins, Mr. Clark said.

“We’ve removed all the stuff off the roofs and now have it stored on ground in cement bunkers,” he said. “In schools that have flat roofs, we’ve built an 18-inch high parapet along the perimeter at top to reduce the possibility of debris hitting the roof. This way the parapet, and not the roof, suffers damage.”

Also learning from past losses is Andy Sal-

pante, loss-prevention manager at Chesterfield Services Inc., a third-party administrator in Uniontown, Ohio, that has been representing the Salvation Army since 1947. “Our losses from Hurricane Katrina guided the funding of a hurricane-impact survey of all major buildings in excess of \$10 million each,” Mr. Salipante said. “This, in turn, allowed us to do things we should have done in the past, such as removing or tying down equipment on roofs, replacing the flashing, installing 140-mph (wind-resistant) windows, and creating an emergency response plan that directs people to tie down interior furnishings. We’re much better prepared when the next one hits.”

Messrs. Clark and Salipante are two of several risk managers who learned hard lessons from

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Catastrophe
Management
& Disaster
Planning

SPOTLIGHT

**LARGEST PROPERTY
LOSS CONTROL
CONSULTANTS**

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**RANKING OF TOP
U.S. COMMERCIAL
BUILDING INSURERS**

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**COMMUNICATION,
BACKUP SYSTEMS
VITAL IN A CRISIS**

PAGE 13

**HOW TO MAXIMIZE
INSURANCE PAYOUT
AFTER A BIG LOSS**

PAGE 15

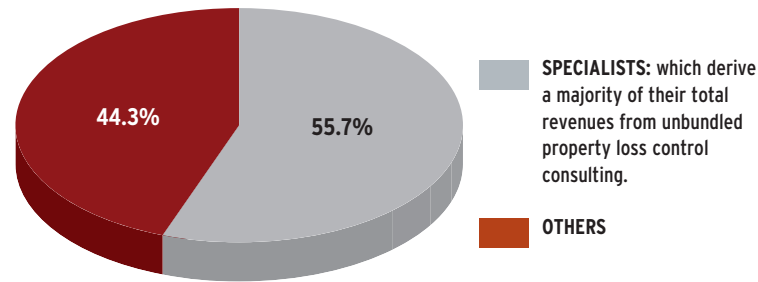
DATA snapshot

PROPERTY LOSS CONSULTANTS

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REVENUES FROM SPECIALIST VS. OTHER PROPERTY LOSS CONTROL PROVIDERS

Percentages of total revenue from all property loss control consultants listed



Source: BI Survey

LARGEST PROPERTY LOSS CONTROL CONSULTANTS

Ranked by 2010 gross revenues from unbundled property loss control consulting

Rank	Company/address	Phone/website	Unbundled property loss control consulting revenue	% of property loss control revenue from unbundled services	Total property loss control staff	Unbundled clients	Principal officer
1	ABSG Consulting Inc. 16855 Northchase Drive, Houston, Texas 77060	281-673-2800 www.absconsulting.com	\$205,400,000	100%	700	1,665	Tony Nassif, president/CEO-ABS Group
2	Arup 560 Mission St., Seventh Floor, San Francisco, Calif. 94105	415-957-9445 www.arup.com	\$58,280,000	100%	400	900	Andy Thompson, associate principal
3	Global Risk Consultants Corp. 100 Walnut Ave., Suite 501, Clark, N.J. 07066-1247	732-827-4400 www.globalriskconsultants.com	\$57,904,700	100%	349	1,014	William F. Ramonas, chairman/CEO
4	Aon Global Risk Consulting 200 E. Randolph St., Chicago, Ill. 60606	312-381-5063 www.aon.com	\$53,175,000	82%	320	1,500	Stephen Cross, CEO
5	Marsh Risk Consulting 1166 Ave. of the Americas, New York, N.Y. 10036	866-928-7475 www.marshriskconsulting.com , www.marsh.com	\$51,000,000	68%	250	1,500	John Merkovsky, managing director/risk consulting global leader
6	Hughes Associates Inc. 3610 Commerce Drive, Suite 817, Baltimore, Md. 21227	410-737-8677 www.haifire.com	\$30,000,000	100%	100	250	Phil DiNenno, president
7	XL Global Asset Protection Services L.L.C. 100 Constitution Plaza, 12th Floor, Hartford, Conn. 06103	860-293-7901 www.xlgaps.com	\$27,900,000	68%	194	240	Timothy Heinze, managing director
8	AXA MATRIX Risk Consultants ¹ 3130 S. Tech Blvd., Miamisburg, Ohio 45342	937-886-0000 www.axa-matrixrc.com	\$20,500,000	75%	140	165	Walter P. Luker, CEO
9	EFI Global Inc. 8811 FM 1960 Bypass Road W., Suite 400, Humble, Texas 77338	281-358-4441 www.efiglobal.com	\$12,990,000	100%	253	50	Ted Cleveland, Metts Hardy, regional vps
10	Regional Reporting Inc. 90 John St., New York, N.Y. 10038	212-964-5973 www.regionalreporting.com	\$9,000,000	100%	250	300	Martin Myers, CEO

¹ Formerly MATRIX Risk Consultants Inc.

Source: BI survey
Researched by Kevin Edison

LARGEST BY TOTAL STAFF

Ranked by number of total staff assigned to property loss control

Company	Total staff
ABSG Consulting Inc.	700
Arup	400
Global Risk Consultants Corp.	349
Aon Global Risk Consulting	320
EFI Global Inc.	253
Marsh Risk Consulting	250
Regional Reporting Inc.	250
XL Global Asset Protection Services L.L.C.	194
Zurich Services Corp.	175
AXA MATRIX Risk Consultants	140 ¹

¹ Formerly MATRIX Risk Consultants Inc.
Source: BI survey

LARGEST BY UNBUNDLED CLIENTS

Ranked by number of unbundled clients

Company	Unbundled clients
ABSG Consulting Inc.	1,665
Aon Global Risk Consulting	1,500
Marsh Risk Consulting	1,500
Global Risk Consultants Corp.	1,014
Arup	900
Regional Reporting Inc.	300
Hughes Associates Inc.	250
XL Global Asset Protection Services L.L.C.	240
Gallagher Bassett Services Inc.	200
AXA MATRIX Risk Consultants ¹	165

¹ Formerly MATRIX Risk Consultants Inc.
Source: BI survey

LARGEST INDEPENDENT PROPERTY LOSS CONTROL SPECIALISTS

Ranked by 2010 gross revenues from unbundled property loss control consulting*

Company	Unbundled property loss control revenue
ABSG Consulting Inc.	\$205,400,000
Global Risk Consultants Corp.	\$57,904,700
Hughes Associates Inc.	\$30,000,000
Paragon Risk Engineering	\$6,240,000
Risk Logic Inc.	\$1,850,000
Haines Fire & Risk Consulting Corp.	\$901,000
Allrisk Engineering Inc.	\$800,000
Fire Protection Solutions Inc.	\$652,137
Copper Harbor Consulting Inc.	\$325,000
Sebench Engineering Inc.	\$280,039

*Includes companies not owned by brokers or insurers with a majority of total revenues from unbundled property loss control.
Source: BI survey

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Before: Looking to past disasters for catastrophe planning lessons

CONTINUED FROM PAGE 9

previous natural disasters. In interviews with other risk managers and loss prevention experts at risk consultancies, law firms, insurance brokers and insurers, the best of all best practices for minimizing natural catastrophe and related human losses is this: Assess their impact well beforehand.

“Constructing scenarios of what can happen is essential, yet many organizations fail to do so,” said Howard Kunreuther, professor of decision sciences and co-director of the Wharton Risk Management and Decision Processes Center at The Wharton School, University of Pennsylvania in Philadelphia.

Others agree. “All companies in disaster-prone areas need to undertake failure mode and effects analyses, where a bunch of people in the organization get together and imagine worst-case scenarios, and how the business will sustain itself during such events,” said Robert Wolf, staff partner-risk management at the Society of Actuaries in Schaumburg, Ill. “The goal is to quantify potential costs

to prioritize mitigation strategies.”

“It’s all about preparation,” said Gerry Alonso, senior vp-claims at Providence, R.I.-based property insurer Factory Mutual Insurance Co., which does business as FM Global. “You want to protect buildings from potential damage, from boarding up windows to securing all equipment, and have pre-existing arrangements with contractors so your buildings are first in line to be repaired.”

Tracking danger

A key step in preparing for a natural disaster is grasping when it will strike. Quality Distribution Inc., a Tampa, Fla.-based trucking company, maintains close communications with hurricane trackers. “We have three separate people here who stay in close touch with the National Hurricane Center, which also is located in Tampa,” said Mike McDonald, vp of enterprise risk management. “These people also follow storms on our computers, and they reach out to employees when (storms) threaten via a 1-800 informational hot line, so everyone—and especially our drivers—knows what’s coming.”

Business disruptions caused by a disaster are not confined to a company’s own facilities, due to the complex, global links in many manufacturers’ supply chains. One link fails and the entire chain can unravel.

“The last 18 months have



shown that disasters occurring elsewhere can still affect U.S. companies direly,” said Mr. Alonso. “You need to know the laws, culture, language and customs of the countries you draw supplies from, and have back-up plans in place to mitigate the damage quickly.”

Gary Lynch, global leader of

risk intelligence and supply chain strategies at insurance broker Marsh Inc. in New York, advises organizations to prepare a supply chain resiliency plan “that is transparent throughout the various links,” he said. “You need visibility into each link to under-

‘What we learned...we have carried forward and have not endured any really significant property losses since.’

Scott Clark,
Miami-Dade County Public Schools

stand the economic impact when something breaks. Then you can take the appropriate response.”

As recent events have shown, a single natural disaster can set in motion other catastrophes. “Four of the five costliest earthquakes occurred in the last 13 months, and the one in Japan unleashed a tsunami and other perils, creating a domino effect,” said Mr. Wolf. “Companies with operations or supply partners in affected areas are not immune to the consequences, even though these events may be thousands of miles away.”

As Mr. Kunreuther states in “At War with the Weather: Managing Large-Scale Risks in a New Era of Catastrophes,” a recently published book he co-authored with Erwann O. Michel-Kerjan, the tragedy in Japan “is viewed by experts as an almost impossible combination of successive catastrophes...The series of disasters...has spurred thinking among business leaders and policy analysts about what steps need to be taken to prevent catastrophes that could have global impacts but are currently not on key decision-makers’ radar screens.”

Planning first, then action

While planning is the first step in gauging possible loss scenarios, acting on this information is next.

“About 85% of property damage in a hurricane comes from

wind-driven water, so the idea is to protect equipment from water damage by ensuring that all building openings, like windows, are hurricane wind-resistant, and having the roof inspected annually,” said Arnie Goldin, property specialist in insurer Chubb Group of Insurance Cos.’ Tampa, Fla., office. “You want to make sure the cladding—the protective shield of a building—is as puncture-proof as possible.”

Mr. Goldin further recommends developing emergency-preparedness plans that put certain employees in charge of particular responsibilities, such as shutting off utilities, covering equipment with plastic sheathing, making contact with contractors, and distributing flash drives to colleagues to capture data in case the communications and data network fails.

Labor Finders International Inc., a West Palm Beach, Fla.-based temporary staffing firm, stores all its data at a remote hot site far from company headquarters, despite operating in a building engineered to withstand a 150-mph windstorm. “We’re highly centralized here, so we also have a backup electrical system to keep us functioning if power is lost,” said Wayne Salen, director of risk management.

One last piece of advice comes from law firm Reed Smith L.L.P.: Make sure the insurance to transfer disaster risks has air-tight coverage terms, conditions and financial limits.

“In the wake of Katrina, many companies learned to their chagrin that the policy language was inferior to address the losses at hand,” said Gary Thompson, a partner in the firm’s Washington-based insurance recovery group. “The best way to ensure this doesn’t occur to you is to have a legal expert review the insurance policy. You need to think through to the end game when you’re well in front of it.”

Companies must remain vigilant.

As Mr. Alonso puts it, “The No. 1 killer of businesses is complacency. A major hurricane hasn’t hit the Northeast in more than 20 years, but that doesn’t mean one won’t strike tomorrow.”

TOP U.S. COMMERCIAL BUILDING INSURERS

Ranking based on direct premiums written for the commercial property as reported lines: commercial multiple peril (non-liability), fire and allied lines. Data, provided by SNL Financial L.C., as of Dec. 31, 2010, in thousands of dollars.*

Insurer	Direct premiums written	Percentage change from 2009
American International Group Inc.	\$3,430,000	-8.73%
Travelers Cos. Inc.	3,140,000	1.53
Zurich Financial Services Ltd.	3,050,000	-2.15
Liberty Mutual Insurance Co.	1,970,000	-3.69
Factory Mutual Insurance Co., dba FM Global	1,800,000	-7.66
Hartford Financial Services	1,270,000	-1.68
Chubb Corp.	1,170,000	-2.34
Allianz S.E.	1,090,000	-12.18
QBE Insurance Group Ltd. ¹	950,000	9.85
ACE Ltd.	880,000	0.57
CNA Financial Corp.	770,000	-7.49
Cincinnati Financial Corp.	730,000	4.25
Tokio Marine Group	690,000	0.37
Munich-American Holding Corp.	680,000	0.73
Hanover Insurance Group Inc.	430,000	17.66
Alleghany Corp.	430,000	-8.73
W.R. Berkley Corp.	400,000	0.37
Erie Insurance Group	380,000	5.45
American Financial Group Inc.	370,000	-9.12
Church Mutual Insurance Co.	320,000	4.96

*Based on National Assn. of Insurance Commissioners’ statutory property/casualty year-end statement filings. U.S. filers only. Data shown is a consolidation of data of the statutory filers within the SNL-defined group structures. Data may include small amounts of personal insurance. Balboa Insurance Group Inc. and Assurant Inc. were excluded from the chart because their business is focused on forced-placed homeowners insurance. ¹ QBE purchased forced-placed and voluntary property/casualty business from Balboa Insurance Co. on June 1. Figures effectively reflect totals prior to the sale. Source: SNL Financial

FIVE COSTLIEST HURRICANES BY INSURED LOSSES, 1980-2010

Losses in millions of dollars

Rank	Date	Event	Insured losses
1	Aug. 25-30, 2005	Hurricane Katrina	\$62,200
2	Sept. 6-14, 2008	Hurricane Ike	18,500
3	Aug. 23-27, 1992	Hurricane Andrew	17,000
4	Sept. 7-21, 2004	Hurricane Ivan	13,800
5	Oct. 19-24, 2005	Hurricane Wilma	12,500

Source: Insurance Information Institute

Contingency plans put to test when disaster strikes

Employee alerts, backup systems vital during crisis

By **RUSS BANHAM**

Even the best planning for natural disasters will not eliminate property losses and business disruptions, not to mention the possible loss of human lives.

Catastrophes—whether natural or man-made—present a conundrum. A company's disaster plan is activated when catastrophe strikes. Thus, the people needed to activate the plan are in the eye of the storm.

The hours before a natural disaster—assuming timely warning—is when companies unleash their mitigation responses. Buildings are secured, important records are moved to a safe location, equipment is tied down and/or relocated to higher floors to reduce flood perils, and critical metal machinery is oiled to inhibit oxidation. Communica-

'People forget about... interdependencies. A company is only as strong as its weakest links.'

Howard Kunreuther,
University of Pennsylvania

tions are in high gear: manufacturing partners are apprised to provide potential backup services, contractors are notified to prepare for possible repairs, phone trees are activated to instruct employees about next action steps, and insurance adjusters are informed of potential claims scenarios.

This is a thumbprint of what is a far more hands-on effort, of course. Assuming well-thought-out planning beforehand, a relatively smooth process should ensue. That said, count on surprises, because one disaster often breeds another. And just because a business was spared from calamity, that doesn't mean its vital suppliers, vendors, business partners and customers escaped the brunt.

"People forget about the impact of interdependencies," said Howard Kunreuther, professor of decision sciences and co-director of the Wharton Risk Management and Decision Processes Center at The Wharton School, University of Pennsylvania in Philadelphia. "A company is only as strong as its weakest links."

Imminent danger

The first step to executing the disaster preparedness/business contingency plan is to ensure that all employees are apprised of the

situation from a personal safety standpoint. That communication is followed by specific measures to maintain the flow of business and commerce, such as transferring employees and operations to an off-site location. Obstacles may arise, however.

"People may not be able to get to their homes, much less work," said Russ Owens, business contingency specialist with Chubb Group of Insurance Cos. in Houston.

Mr. Owens recalls the impact of Hurricane Andrew in 1992 on

Miami-based Burger King Corp.'s business contingency plan. Its "corporate headquarters was at ground zero, and while they were able to get the building up and running in a relatively short time, employees who were parents had kids whose schools were closed," he said. "So (the company) arranged for on-site child-care services to keep the business going, which was not in their (disaster preparedness) plan, but was a great idea nonetheless."

Robert Wolf, staff partner-risk management at the Society of

Actuaries in Schaumburg, Ill., advises companies to appoint a single person to ride herd on mitigation efforts. "A chief risk officer or someone else essentially in that role should be in charge to guide what should happen next," Mr. Wolf said. "Obviously, this should all go according to plan, but there are no guarantees. When one mitigation strategy doesn't work, there need to be alternative strategies. If the phone tree fails and there are no communications with partners and employ-

ees, another way of communicating must be arranged."

Quality Distribution Inc. has such a backup communications plan in place. "Every employee has a badge that has an 800 number on it, and they are told to call it in the event of an emergency," said Mike McDonald, vp of enterprise risk management at the Tampa, Fla.-based trucking company. "If for some reason the land lines fail, each functional department head has a plastic

See **DURING** next page

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During: Disaster plans put to the test in crisis

CONTINUED FROM PREVIOUS PAGE

card that lists the cell phone numbers of employees in their charge. Everyone is told to evacuate affected premises immediately, other than a skeleton crew that is prepared to stay here and oversee the protection of the facilities."

The company's headquarters building was constructed four years ago and is hurricane-resistant, but the crew has specific directions to mitigate potential damage. "People are our first concern; everything else can be replaced," Mr. McDonald said.

He is talking from experience. At the company's intermodal tanker facility in Chalmette, La., a suburb of New Orleans on the shore of the Gulf of Mexico, Hurricane Katrina unleashed its wrath.

"About a dozen tankers were swept out to sea, never to be seen again," Mr. McDonald said. "We now have specific procedures in place to secure the tankers, and we've encircled the entire perimeter in fencing to contain the tankers during extreme flood conditions. Once burned, twice shy."

Labor Finders International, a temporary staffing firm in West Palm Beach, Fla., also has a new, hurricane-resistant building it leases. Were a major hurricane to strike unexpectedly, restricting employees' ability to actually leave the building, the firm is prepared. "We've stocked the place with enough food and supplies to last a couple weeks at least, and the building is entirely outfitted with running water, showers and kitchens," said Wayne Salen, director of risk management.

Given Labor Finder's type of business, there are other concerns when catastrophes occur. "During a disaster is when client companies confront immediate staffing needs," Mr. Salen said. "While our computer systems are centralized, we utilize backup servers. Our people can access the system remotely from their cars to send temporary workers where they need to go."

Miami-Dade County Public Schools, which encompasses 360 schools in Florida, confronts a somewhat unique challenge during a disaster. "It is not uncommon for our facilities to be used as shelters and our buses to be utilized by county government to take residents out of low-lying areas," said Scott Clark, the district's risk and benefits officer. "Our first priority, of course, is to transport schoolchildren to their homes, but since the state requires us to take buses off the road if the winds are sustained and in excess of 42 mph, we need to be a soothsayer in predicting this stuff."

During all disasters, an organization's communications outreach also must include insurance adjusters.

Finley Harckham, a partner in the insurance recovery practice

of Anderson Kill & Olick P.C., a New York-based law firm, said: "Take charge of the claim. Typically, companies are shell-shocked, even with professional risk managers scrambling to get the business back on its feet. Claimants must dictate the tempo, conduct and adjustment of the claim. You don't want to be at the mercy of an overburdened adjuster who has 500 claims in front of them. You want to be the first one in line to get your check."



HURRICANE, WATER RISK MITIGATION

Steps to reduce the cost of hurricane and water claims

- Verify roof drains and gutters are clear of obstructions and flashings are properly secured.
- Make sure outside drains and catch basins are clean and water can flow into them.
- Remove outside debris, furniture and loose outdoor equipment.
- Install protections for windows and doors using plywood covers or shutters.
- Back up computer data and protect or remove important business records.
- Verify all stocks and files are skidded at least four inches above the floor.
- Move any vehicles and equipment to higher ground.
- Check your building's roof, making any repairs to cover or flashings.
- Secure or strap down equipment such as exhaust fans, condensers, air conditioning units, etc.

Source: Chesterfield Services Inc.

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Documentation, communication key following disaster

Working closely with adjusters, keeping proper loss records critical to maximizing insurance recovery

By **RUSS BANHAM**

The damage is done.

In the immediate aftermath of a natural disaster, a company wages Herculean efforts to put the business back on track. The business continuity plan is in play. Labors may include stabilizing the building and adjacent environment, operating from a remote site, and utilizing atypical means of communications,

among other measures.

At the same time, the insurance claims process begins. After a thorough on-site inspection, all insurers, brokers and agents are apprised of the initial extent of damage and loss. Working with contractors, forensic attorneys and accountants, photographs are taken, videos are filmed and lists are made compiling the disaster's toll.

Documentation is critical to

the claims-recovery process. That process will be easier if the enterprise has stored all its important documents, such as tax, accounting and inventory data, at a remote location.

"You need records to support a claim," said Ryan Carruth, a partner at RGL Forensics, an Atlanta-based international forensics accounting firm. "One of the obligations under the insurance contract is documentation supporting

the claim, particularly when it comes to business interruption claims."

Mr. Carruth added, "You could be doing millions of dollars of business a day, but if you don't have the records, there is no way to prove it."

Communication and prioritization

In many post-disaster scenarios, claims will be filed with more

than one insurer. Brokers will have the names of emergency contact people at each carrier, although insureds should have this information already in hand.

"Post-disaster, the most important objective is clear communication between the claimant and the insurance adjuster," said Gerry Alonso, senior vp-claims at Providence, R.I.-based insurer Factory Mutual Insurance Co., which does business as FM Global. "There should be one point of contact who is in charge of this process from the claimant end."

Triage is a key element in post-disaster actions. "If you see problems like a leaking pipe that you can attend to at the moment, don't wait for the insurance adjuster; take any means necessary to prevent further damage," said Arnie Goldin, property specialist with the Chubb Group of Insurance Cos. in Tampa, Fla. "Stop the bleeding now."

But there is one caveat: Emergency repairs should be reviewed beforehand with insurers, said Gary Thompson, a partner in the insurance recovery group in the Washington office of law firm Reed Smith L.L.P. "If you can't do this, then make sure the 'before-and-after' situation is clearly documented and photographed," he said.

Mr. Goldin also advised prioritizing which departments and functions are most crucial to the business returning to normalcy. "You want to get those parts of the organization running smoothly again first, followed by the rest," he said.

This is the process in place at Miami-Dade County Public Schools. "Our job is to get kids back in the classroom immediately," said Scott Clark, the district's risk and benefits officer. "We have a...team here that includes principals, chief custodians, maintenance officers, myself and others, under the direction of the superintendent of schools, who sweep in immediately after a disaster to determine the scope of damage at the affected institutions. We have a series of 20 questions we use to guide us in the post-disaster response: Is the power running, is the area flooded, are there physical signs of damage, and so on."

The responses to these questions are input into a computer at the school superintendent's office. "We're then able to prioritize the schools that can get back on track first, and direct resources accordingly," Mr. Clark said. "We can run split-day classes so kids from a school that will take longer to repair can attend the ones that are up and running sooner."

Dealing with insurers

Mr. Thompson, who has worked on dozens of large hurricane claims through the years,

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After: Strategies to maximize insurance recovery

CONTINUED FROM PAGE 15

recommends that notices be issued to all insurers on a timely basis, given the timing issues of many insurance policies. "If the policy requires a proof of loss within 30 days, obtain a written extension," he said. "Scrutinize all other time-related policy requirements."

Copy all loan documents, ground leases and other policy wordings, he added. "Loans and ground leases may require certain insurance conditions, but it is common to have inconsisten-

cies, which is why you want outside counsel to look at this stuff in advance," he said. "I've seen some business interruption policies, for instance, that are triggered by a cessation in operations. Insurance company lawyers will argue this means 'total cessation.' So if your hotel is (virtually) wiped out, (but) a couple rooms remain occupied, you could have trouble collecting on your business interruption claim."

An attorney can insert guards in a policy protecting against those types of arguments, he added.

Business interruption losses often can be larger than property damage losses after a natural catastrophe—hence the need to take charge of the adjusting process, said Finley Harckham, a partner in the insurance recovery practice at Anderson Kill & Olick P.C., a New York-based law firm. "Many companies make the mistake of dealing with the insurance company's adjuster without having their own adjuster involved," he said. "You need an advocate—a forensic attorney who can document the business interruption losses for you."

Without such an advocate, companies risk filing a claim that will be denied. "We saw claims after Katrina that were presented in ways guaranteed not to be paid," Mr. Harckham said. "For example, the claim will say 'the hurricane washed the house away.' But, what really happened was that wind tore the roof off and rain poured in to cause damage—both covered perils. After this, the storm surge came in, and then washed the house away."

As with everything else in business, the devil is in the details.

Documentation helps expedite claims payment

To ensure fast and full claims payments in the aftermath of a natural disaster, the onus is on the policyholder to have at the ready all necessary documents, especially as they relate to the cost of business disruptions, post-catastrophe.

"Insurance contracts require proper documentation—hence we caution insureds to document everything they can with photos, videos and written lists," said Frank Russo, managing director, property risk consulting, at insurance broker Aon Risk Solutions in Chicago. "That way, when the insurance adjuster takes over, everyone is on the same page insofar as the potential losses."

This is the procedure at The Salvation Army. "Once it is safe to enter the damaged building to make a preliminary tour of the affected areas, we document the condition of all objects, collections and the structure itself, using a digital camera and/or a video camera," said Andy Salipante, loss prevention manager at Uniontown, Ohio-based Chesterfield Services Inc., The Salvation Army's third-party claims administrator. "We also seek to make notes and even voice recordings to accompany photographs and videos during each step of the salvage process."

Other recommendations from Mr. Salipante include:

- Leave undamaged items in place if the environment is stable and the area secure. If not, move them to a secure, environmentally controlled area.
- If no part of the building is dry, protect all objects with loose plastic sheeting.
- Separate damaged items from undamaged ones.
- Until salvage begins, maintain each group in the same condition you found it.
- Retrieve all pieces of broken objects and label them.
- Check items daily for mold. If mold is found, handle objects with extreme care and isolate them. Note how long the materials have been wet and the indoor temperature and relative humidity.
- Make a rough estimate of the type of materials affected and the extent and nature of damage. A detailed evaluation can slow recovery.

"Documenting the damage is essential to ensure full insurance recovery," Mr. Salipante said.

—By Russ Banham

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Perspectives

The integrated product doctrine prohibits tort-based recovery when a defective product is integrated into a larger product that is damaged by the defective product, according to Adam Schwartz, a partner in the litigation practice at Pashman Stein P.C. in Hackensack, N.J. Several states have adopted the doctrine as a corollary to the economic loss doctrine, and it has the potential to affect “your work” CGL exclusions, resulting in reduced coverage.

Integrated product doctrine could complicate CGL coverage

By Adam Schwartz

In November 2010, the New Jersey Supreme Court became the latest court to consider adopting the integrated product doctrine as a corollary to the economic loss doctrine.

It prohibits tort-based recovery when a defective product is integrated into a larger product that is damaged by the defective product. Other states, including Illinois, Ohio, Nevada, Wisconsin, Texas and New York, already have accepted it.

While the integrated, or integral, product doctrine is a product liability concept, its adoption may carry implications beyond setting outer limits for product liability claims, potentially affecting the interpretation of the business risk or “your work” exclusions in standard commercial general liability policies.

The “your work” exclusions preclude coverage for claims arising out of faulty materials or workmanship supplied by the insured. The risk of defective workmanship is inherent in every business venture and not generally covered by a CGL policy. However, where an insured’s defective product or services injure people or damage property other than the insured’s own work, the “your work” exclusion is inapplicable.

The economic loss doctrine—a legal concept in the product liability field—prohibits a plaintiff from suing in tort for purely economic damages such as repair and

replacement of defective products, consequential lost profits and diminution in value. Courts have reasoned that harm to the product itself is better left to contract and warranty, rather than tort, law. However, like the “your work” exclusion, claims for personal injury or damage to other property are not precluded by the economic loss doctrine.

The integrated product doctrine enlarges the economic loss doctrine’s prohibition against tort-based recovery for damage to the product itself by expanding the definition of “product” to embrace larger assemblages that include the defective product. For example, if a defective automotive component damages the automobile, the integrated product doctrine would prohibit tort claims by the owner against the component supplier for damage to the automobile itself.

For those states that adopt the integrated product doctrine, this question arises: Will courts look to this expanded definition of “product” in determining the scope of the “your work” exclusion?

For example, under the doctrine, the parts of a house—e.g. siding, framing, foundation or windows—may be considered integrated into one larger product: the house. An insurer for a housing contractor could use the doc-

trine to argue that the entire “house” is actually the contractor’s “work,” regardless of the components the contractor actually installed, and therefore all claims against the contractor for damage to the house are excluded under the “your work” exclusion. If courts accept this argument, it could significantly reduce the insurance coverage available for contractors.

Additionally, standard CGL policies contain a “J5 exclusion,” which confines the scope of the business risk exception to the “particular part” on which the insured was working. However, as the “particular part” analysis often looks to how a component is integrated into a larger product, the expansiveness of the integrated product doctrine may reduce the effect of the J5 exclusion.

Only one reported court case directly addresses the interplay between the “your work” exclusions and the integrated product doctrine. In *Jacob vs. Russo Builders*, the insured mason applied insufficient mortar between exterior bricks, resulting in water infiltration. The homeowner sued to replace the defective masonry and to repair interior damage caused by the water leaks. The mason’s insurance company declined coverage. Although it was acknowledged that the cost to

replace the defective work was not covered under the mason’s CGL policy, the trial court found that the interior damage caused by the water constituted damage to “other property” and was covered.

On appeal, the insurer argued that the house should be viewed as an integrated (or “integral” under Wisconsin law) product, in that damage to the interior was damage to the product itself. Consequently, the insurer argued that the mason’s claim for coverage was barred by the “your work” exclusion. The Wisconsin Court of Appeals rejected that argument, noting that insurance policies are interpreted based upon the reasonable expectations of the insured. It held that an insured would not have viewed the house as an integrated product, and therefore, the integrated product doctrine should not be used to interpret the CGL policy.

Although some courts faced with this argument may follow *Jacob*, several states, including Florida, Idaho, Ohio, South Carolina, Texas, Utah and Washington do not subscribe to the reasonable expectations doctrine when interpreting policy language. Those states may look to the integrated product doctrine in determining the scope of the “your work” or J5 exclusions. If they do, insureds in those states face the possibility of an expanded “your work” exclusion and, as a result, reduced coverage.

Adam Schwartz is a partner in the litigation practice at Pashman Stein P.C. in Hackensack, N.J., where he specializes in commercial and construction litigation, as well as insurance coverage matters. Contact him at aschwartz@pashmanstein.com.



Mr. Schwartz

The integrated product doctrine enlarges the economic loss doctrine’s prohibition against tort-based recovery for damage to the product itself by expanding the definition of ‘product’ to embrace larger assemblages that include the defective product.

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SPOTLIGHT

BIG BREAK FOR ADULT CHILDREN, MODEST COST FOR EMPLOYERS

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EMPLOYERS ADJUST RETIREE COVERAGE AS TAX BREAK ENDS IN 2013

PAGE 21



Reform regulations come quickly, often

But employers await guidance on key issues, including when penalties kick in

By **JERRY GEISEL**

While last year's passage of health care reform legislation came after decades of discussion of reform proposals, the pace at which regulations are being released to implement the Patient Protection and Affordable Care Act has been anything but glacial.

The first batch of regulations—dealing with a key provision requiring employers to extend coverage to employees' adult children—came out within weeks after President Barack Obama signed the reform legislation into law.

Since then, regulations and other guidance have been released at a torrid pace.

"The speed at which regulators have gotten out rules is truly unprecedented," said Helen Darling, president of the National Business Group on Health in Washington.

The list of issues covered by regulations is sweeping and, beyond coverage of adult children, also includes:

- The requirements health care

plans must follow to obtain "grandfathered" status, which exempts the plans from complying with various health care reform law requirements, such as providing full coverage for preventive services.

- Which health care services are considered preventive and must be covered in full, except for grandfathered plans.

- The minimum annual dollar limits that can be imposed on coverage of essential benefits before annual limits are banned in 2014 and how temporary waivers can be obtained prior to 2014.

- How employers and other early retiree health care plan sponsors can obtain partial reimbursement for retiree health care plan participants' claims that fall within a certain range, as part of a \$5 billion program created by the health care reform law.

- How employers are to report, as required under the reform law, health care cost information on employees' W-2 wage and income statements.

There are several reasons why

regulators have moved so swiftly and issued guidance, the most significant being the near-immediate effective dates of some of the reform law's provisions.

"There really was a short deadline on many of the provisions, and that led to expedited rule-making," said Paul Dennett, senior vp-health care reform with the American Benefits Council in Washington.

The tight deadlines led to an unusual approach to rule-making in which rules were issued as "interim final" regulations. Under that approach, rules immediately went into effect, but regulators later could revise them after reviewing comments.

While that approach resulted in employers not knowing for sure how the rules might change, it also meant that regulators later could incorporate changes suggested by employers and others.

"That was the silver lining," Frank McArdle, a principal with Aon Hewitt Inc. in Washington, said in referring to the ability of regulators to make later changes.

And regulators have shown their willingness to listen and make changes to regulations.

For example, a requirement was removed that would have automatically denied grandfathered status to a health care plan if an employer changed insurers.

Employers said such a requirement made little sense and would have given their insurers an unfair competitive advantage, a point regulators later accepted.

"If an employer has to stay with the same insurance company to keep the benefits of having a grandfathered plan, the insurance company has undue and unfair leverage in negotiating the price of coverage renewals," the Department of Health and Human Services said at the time the rule was reversed.

"There has been a noticeable improvement in the regulatory approach. Regulators have been very much focused on employer input," Mr. McArdle said.

In other cases, to avoid public

Continued on next page

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relations fiascos, regulators have had little choice but to be flexible. One example involves the annual limit rules, which allow plans to impose annual limits of \$750,000 in 2011, \$1.25 million in 2012 and \$2 million in 2013. Annual limits are barred starting in 2014.

Those minimum limits, though, are many times higher than those offered by mini-med plans, which typically are provided to low-wage, short-term employees in high-turnover industries. Boosting limits to meet the required amounts would have resulted in huge premium hikes and the potential to put the cost of coverage beyond the reach of employees.

"The individuals would have been at significant risk of losing coverage," Mr. Dennett said, resulting in much embarrassment to an administration seeking to expand coverage.

The solution was simple: The administration set up a waiver process in which mini-med and other limited-benefit plans could

'There has been a noticeable improvement in the regulatory approach. Regulators have been very much focused on employer input.'

Frank McArdle, Aon Hewitt Inc.

win exemptions from the annual limit requirements by proving that compliance would result in a significant decrease in access to benefits or a significant increase in premiums.

"The administration recognized the practical reality of the situation" for mini-med plans, Mr. Dennett said. In all, more than 3 million employees and dependents are enrolled in plans that have received waivers.

Employers are hoping that same regulatory flexibility continues as rule-makers in the coming months address the issue of perhaps the greatest concern to employers: the reform law provision, effective in 2014, that will impose a penalty of up to \$2,000 a year for each full-time employee not offered health care coverage.

The provision, experts say, states clearly that the penalty would be assessed for all full-time employees—including those with coverage—if just one lower-paid full-time employee was not offered coverage, was eligible for a premium subsidy, and used the subsidy to purchase coverage in a state insurance exchange.

Employers say that without regulatory modifications there are numerous situations—such as a part-time employee not offered coverage and who temporarily works more than 30 hours a week—in which, through no fault of the employer's, it could be

liable for massive penalties even if it covers virtually all of its full-time employees.

Treasury Department officials said in May they would look into the issue and have sought employer comment.

Other reform law-related provisions for which rules have yet to be developed include defining what will be considered "essential" benefits, how employers are to "automatically" enroll employees in their plans, and how a 40% excise tax on health care premiums that exceed certain amounts will be applied.

"Clearly, there are some mega-issues yet to come," said Amy Bergner, a partner with Mercer L.L.C. in Washington.

WHERE THE MONEY HAS GONE

Biggest recipients by payments received, as of June 10, of a \$5 billion health care reform law program that partially reimburses early retiree health care plan sponsors for claims expenses.

Private employers	Amount received	All entities	Amount received
AT&T Inc.	\$141.5 million	United Auto Workers Retiree Medical Benefits Trust	\$220.7 million
Verizon Communications Inc.	91.7 million	AT&T Inc.	141.5 million
General Electric Co.	38.6 million	California Public Employees' Retirement System	98.7 million
The Boeing Co.	34.1 million	Verizon Communications Inc.	91.7 million
Alcatel-Lucent USA Inc.	27.4 million	State of New York	88.4 million
General Motors L.L.C.	26.8 million	State of New Jersey Treasury Department, Pension Accounting Services	77.6 million
Qwest Communications International Inc.	23.6 million	Teacher Retirement System of Texas	70.6 million
Caterpillar Inc.	20.3 million	Public Employees Retirement System of Ohio	70.6 million
Deere & Co.	14.2 million	Commonwealth of Kentucky	63.4 million
IBM Corp.	13.0 million	Georgia Department of Community Health	57.9 million

Source: Centers for Medicare & Medicaid Services



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Extending cover to adult children has only modest impact on costs

Plan enrollment edges up as result of health reform provision

By **JERRY GEISEL**

WASHINGTON—A provision in the health care reform law has enabled hundreds of thousands of employees' adult children to retain or win back group coverage while only modestly boosting employers' costs.

That provision, effective Jan. 1 for employers with calendar-year plans, was one of the first Patient Protection and Affordable Care Act mandates to go into effect. Affecting nearly every employer, it requires employers to extend coverage to employees' adult children until age 26.

Under the reform law the only eligibility requirement that employers can impose is that the employee's child be under age 26. That put an end to such common coverage requirements as college enrollment, financial dependency or residency with a parent, and bumped up the age to which coverage must be extended.

The elimination of the requirements resulted in hundreds of thousands of adult children retaining coverage from their parents' employers that otherwise would have been terminated, or having coverage restored that they had lost due to their age.

While the exact number of adult children who gained coverage in 2011 as a result of the reform law's age 26 provision isn't known, an analysis last year by several federal agencies put the range at between 700,000 to 2.1 million.

On average, the extension of coverage boosted plan enrollment by 2%, according to a recent Mercer L.L.C. survey of nearly 900 employers. But enrollment gains varied widely, with nearly one-quarter of respondents saying enrollment jumped at least 3%, and just over 20% saying that enrollment rose by less than 1%.

That wide variance in enrollment gains is a result of several



A provision in the health care reform law requires employers to offer coverage to employees' children up to age 26.

ADULT-CHILD COVERAGE

Rules that employers must follow to extend health care coverage to employees' adult children, as required by the Patient Protection and Affordable Care Act.

- Coverage must be extended through the day before a child turns 26 and can be continued on a tax-favored basis through year-end when the child turns 26.
- Mandate applies to employees' sons, daughters, stepchildren, adopted children and foster children.
- Employers cannot condition coverage on student status, residency, marital status or parental financial support.
- If an employer plan is "grandfathered," mandate does not apply until Jan. 1, 2014, for children eligible to enroll in another employer plan.
- Children who lose coverage when they turn 26 can enroll in COBRA.
- Special surcharges for extended coverage are not allowed, but employers can base employee premium contributions on number of covered dependents.

Source: Interim final rules by the Departments of Labor, Health and Human Services and Internal Revenue Service; Labor Department Frequently Asked Questions about the Affordable Care Act

factors, most notably prior plan design and workforce demographics, said Michael Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York.

Plan enrollment increases, for example, would be lower for employers that previously cut off coverage at age 24 than those ending coverage at 22. In addition, employers with older workforces would be more likely to have a higher proportion of employees with young adult children than employers with very young workforces.

Definitive statistics are not yet available, but consultants say cost increases likely will fall within a 0.5% to 1.5% range.

"Unless we have a shock claim, I believe we will be at or below our 0.5% increase estimate," said Joseph Molloy, vp-benefits/employee services at North Shore-LIJ Health System in Lake Success, N.Y.

"We figure our (earlier) cost estimate of less than 1% is still in the ballpark," said a spokesman for the California Public Employees' Retirement System in Sacramento.

Timely regulatory guidance eased potential compliance problems. "For the most part, implementation proceeded smoothly," PwC's Mr. Thompson said.

Within one month of the passage of the health reform legislation, the Internal Revenue Service made clear that employers could amend their plans immediately to provide the expanded coverage without employees being taxed on the coverage.

That guidance was welcomed by employers who wanted to provide the expanded coverage before the effective date of the age 26 requirement but were concerned about potential adverse tax consequences. Prior to the PPACA, the U.S. Tax Code allowed tax-free coverage of employees' children up to age 19, or up to age 24 for full-time students.

Additional regulatory guidance issued in May and June resolved other issues. The May guidance, for example, made clear that employers could not impose premium surcharges for the expanded coverage. But other pricing strategies would be permitted,

such as basing employee premium contributions on the number of covered dependents. In June, the IRS clarified that health care plans offered only to retirees would be exempt from the adult child coverage requirement.

Yet another potential administrative problem eased when states rapidly amended their laws so the expanded coverage would not be subject to state taxes. Wisconsin is the sole state that has not made such a change.

"The state taxation issue is largely gone," said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

While the provision's implementation went smoothly, employers have mixed feelings about the mandate.

"Is the new age requirement good/bad policy? Well, yes and no," said Philia Swam, director of health benefits and employee insurance at Lafarge North America Inc. in Reston, Va.

The coverage mandate is an appropriate one in certain situations, such as where employees' children graduate from college and haven't landed a job, Ms. Swam said.

"However, I don't find it acceptable that a married child, living in a different state, with a spouse and family of his or her own should be allowed to remain on their parent's health plan," she said.

Others say the mandate should not have been applied to situations where employees' adult children are offered coverage through the children's employers.

"The employer of the child's parent is stuck providing the coverage even in situations where the adult child can get good coverage from the child's employer, but doesn't want the coverage from his or her employer because of a modest premium contribution," said Helen Darling, president of the National Business Group on Health in Washington.

Under the health care reform law, employers with grandfathered plans can deny coverage in such situations, but only until 2014. And many employers with grandfathered plans don't deny coverage because of the time and expense needed to administer such a policy, consultants say.

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Employers adjust retiree drug plans as tax break ends

Different strategies adopted by firms to reduce costs

By LOUISE KERTESZ

Many employers that face the loss of a federal tax break for providing prescription drug coverage to Medicare-eligible employees in 2013 already are restructuring the benefit.

The tax break is part of the 2003 federal law that created the Medicare prescription drug program and was included to encourage employers to retain the prescription benefits offered to Medicare-eligible retirees.

Under the law, employers that retain prescription drug coverage for retirees that is at least equivalent to Medicare Part D coverage receive a tax-free contribution from the U.S. government equal to 28% of the employer's annual drug costs that fall within a certain range.

In addition, employers are permitted to deduct on their income taxes their entire retiree prescription drug expense, including costs for which they receive the tax-free government subsidy.

However, last year's federal health care reform law alters that tax treatment beginning in 2013. While the subsidies will continue, employers receiving them no longer will be allowed to take a tax deduction for the portion of prescription drug expenses subsidized by the government.

The value of the tax break has been significant.

"For corporate America, this makes a world of difference," said Michael S. Jacobs, national clinical practice leader at Buck Consultants L.L.C. in Atlanta.

If a company receives a \$500 per retiree subsidy for providing prescription drug coverage to a retiree, the subsidy's tax-free status makes it equivalent to \$1,500, he said.

Shortly after the passage of the Patient Protection and Affordable Care Act, a slew of companies announced they would take charges against earnings to reflect the loss of the tax break. One employer—Dallas-based AT&T Inc.—reported a \$1 billion charge against earnings.

With this change in tax law, many employers are restructuring the benefit and following one of two main strategies.

One strategy is to form an Employer Group Waiver Plan, which is a Medicare Part D plan that is offered through a pharmacy benefit manager or insurer that contracts directly with the Centers for Medicaid and Medicare Services. This takes advantage of manufacturer discounts of 50% on brand-name drugs and federal subsidies going forward. An employer would wrap a supplemental plan around the Part D plan to close gaps in the retiree's coverage.

This structure "can potentially reduce employers' pretax cost by 20% or more below current levels

under the (Retiree Drug Subsidy) program," according to an analysis by Martin Hill, a director and consulting actuary at PricewaterhouseCoopers L.L.P. in New York.

But consultants say the EGWP structure plus a wrap is challenging to administer, and particularly challenging to communicate.

"The ability of a vendor to support the structure could be a very significant consideration for plan sponsors in choosing a particular provider," said David Dross, a partner and managed pharmacy practice leader for Mercer L.L.C. in Houston.

A survey of nearly 250 large employers released in June by Towers Watson & Co. and the International Society of Certified Employee Benefits Specialists found that about one-third have already moved to an EGWP or intend to do so in the next two years.

The second strategy in restructuring a retiree prescription drug program involves a defined contribution approach, experts say.

Employers can "move retirees out of the group-based program into the individual Medicare market via private exchanges, typically in conjunction with a premium

subsidy," said John Grosso, an Aon Hewitt Inc. health care actuary in Norwalk, Conn.

"Companies would not want to tell a 75-year-old to go out on their own in the individual insurance market," Mr. Grosso said, so employers are partnering with stand-alone administrative entities and others that have multicarrier private health insurance exchanges, or with major insurers. These would serve as portals to the individual market for retirees and provide services such as call centers and advocacy.

In a mid-2010 survey and

before it was purchased by Aon Corp., a Hewitt Associates Inc. survey found that 73% of respondent employers anticipated changing their retiree drug plan in response to PPACA and 94% expected to implement such changes by 2013.

"Most of the employers and employer coalitions are looking at the private exchange world," said Dr. Jan Berger, medical director of the Midwest Business Group on Health in Chicago.

"It's not unusual for the pharmacy benefit to be utilized as a

See **COMPLIANCE** page 22

COURT-ORDERED LEGAL NOTICE

IF YOU PURCHASED COMMERCIAL INSURANCE POLICIES FROM JANUARY 1, 1998 THROUGH DECEMBER 31, 2004, A CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS

There is a proposed Settlement with certain insurance companies and brokerage firms who are Defendants in a class action lawsuit. In the suit, Plaintiffs allege that Defendants violated antitrust and other laws, by, among other things, allocating insurance policies or customers among the Insurer Defendants in return for the payment of certain commissions, and engaging in improper conduct with respect to the solicitation of bids for the policies. The **Settling Defendants** are AIG, Aon, AXIS, CNA, Crum & Forster, Fireman's Fund, Hartford, Liberty Mutual, Travelers, Willis/HRH and XL. The Settling Defendants deny the allegations made against them.

WHO IS INCLUDED IN THE CLASS

The **Settlement Class** is defined as: All individuals or entities that, from January 1, 1998 through December 31, 2004, inclusive ("**Class Period**"), purchased commercial insurance policies from any of the **Insurer Defendants** through any of the **Broker Defendants**, or from another insurer after soliciting insurance policy quotes or indications from any Insurer Defendant through any of the Broker Defendants, except to the extent that the Broker Defendant was acting as a managing general agent or managing general underwriter for an Insurer Defendant or through a captive program.

Insurer Defendants include the following Companies, along with their affiliated entities: ACE, AIG, AXIS, Chubb, CNA, Crum & Forster, Fireman's Fund, Hartford, Liberty Mutual, Munich/Am Re, Travelers, XL and Zurich.

Broker Defendants include the following Companies along with their affiliated entities: Aon, Gallagher, HRH, Marsh & McLennan Companies, Inc. ("**Marsh**"), Wells Fargo/Acordia, and Willis.

A list of the Insurer Defendants and the Brokers Defendants is contained in a **Detailed Notice** published on the Settlement website at www.insurancebrokeragesettlement.com.

WHAT DOES THE SETTLEMENT PROVIDE

The **Settling Defendants** have collectively agreed to pay the total amount of \$41 million to settle the claims against them. After deduction of certain fees and expenses from this amount, as permitted by the Court, 85% of the remaining money will be paid to certain purchasers of excess casualty insurance policies from certain of the Settling Insurers through **Marsh** (and/or its affiliates), and the remaining 15% will be used to fund a *Cy Pres* award, which is a charitable contribution, to Consumer Action (CA) and the Public Entity Risk Institute (PERI), and/or other recipients designated by the Court.

WHO WILL RECEIVE A PAYMENT

Payments will be made only to Settlement Class Members that purchased excess casualty insurance policies from certain of the **Settling Insurer Defendants** (AIG, AXIS, Fireman's Fund, Liberty Mutual, Travelers, XL, and/or their affiliated entities), where the purchase was brokered by Marsh (the "**Excess Casualty Claimants**").

If you are an Excess Casualty Claimant entitled to a payment, you do not need to do anything. Payments to Excess Casualty Claimants will be calculated and made based on the information that your insurer has about the policy or policies you purchased, the premium you paid

and information about your participation in other settlements concerning this same conduct.

If you believe you are an Excess Casualty Claimant and you did not receive a notice of this Settlement in the mail, you should contact the Claims Administrator at 1-866-903-1176, or visit the Settlement website at www.insurancebrokeragesettlement.com.

WHAT ARE MY LEGAL RIGHTS

If you do not want to be legally bound by the Settlement, you must exclude yourself in writing from the Class. The deadline for exclusion is **August 30, 2011**. The **Detailed Notice** of this Settlement, available at www.insurancebrokeragesettlement.com, gives instruction on what information must be included in the Request for Exclusion, and where it should be sent. If you do not exclude yourself, but instead stay in the class, you may object or comment on the Settlement by **August 30, 2011**.

The Court will hold a **Hearing** to determine whether to approve the Settlement on **September 14, 2011, at 12:00 PM, in Courtroom 2B, Martin Luther King, Jr. Federal Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101**. If the Court approves the Settlement, then the Settling Defendants will be dismissed from the action and any Settlement Class Member that has not properly excluded itself from the Settlement Class will be deemed to have **Released** the Settling Defendants from all claims related to the Class Action and will not be able to sue the Settling Defendants for any of the conduct that was the subject of the Class Action. A copy of the Release is available at www.insurancebrokeragesettlement.com. At the **Hearing**, the Court will also decide whether to award attorneys' fees and expenses to Class Counsel and approve Service Awards to the Named Plaintiffs. Class Counsel has requested to be awarded attorneys' fees of no more than 25% of the Settlement Fund (\$10,250,000), and litigation expenses of no more than \$400,000.

You or your own lawyer may ask to appear and speak at the hearing at your own expense. The **Detailed Notice** of this Settlement, available at www.insurancebrokeragesettlement.com, gives instructions on what you must do to get permission to speak at the **Hearing**.

WILL PARTICIPATION IN THIS SETTLEMENT AFFECT MY PARTICIPATION IN OTHER SETTLEMENTS IN THE CLASS ACTION?

No. Not all of the Defendants have settled the claims against them and your participation in this Settlement will **not** affect your ability to obtain relief from any of the Non-Settling Defendants in the Class Action if there is a later judgment against, or Settlement with the Non-Settling Defendants.

HOW CAN I OBTAIN ADDITIONAL INFORMATION?

If you think that you might be a Settlement Class Member, you can obtain more information, including a copy of the Detailed Notice, the Settlement Agreement and other documents relating to the Settlement by contacting the Claims Administrator at 1-866-903-1176 or by visiting www.insurancebrokeragesettlement.com.

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE FOR INFORMATION

Compliance: Employers adjust as tax break ends

CONTINUED FROM PREVIOUS PAGE

precursor, a test market" for benefit changes—in this case for "how defined contribution will affect employee recruitment and retention," Dr. Berger added. "Some companies will continue to file for the RDS even though the tax benefit is lost, but most will make the change if they can legally do so," Mr. Grosso said.

However, a March employer survey by Buck Consultants found that 75% who receive the subsidy had no plans to change their current strategy, a result that was "unexpected considering the savings expectations for moving to an EGWP," according to the survey analysis.

"We were already on a trajectory

of declining support for retiree medical coverage," said Helen Darling, president and CEO of the National Business Group on Health in Washington. "Taking this subsidy away will make it harder for those remaining to continue support for their plans."

One state has dropped the coverage as a result of the tax change, Mr. Jacobs said. But some employers will feel "it's not worth the hassle" to eliminate the program, because of labor relations and public relations issues, he said.

According to the recent Towers Watson/NBGH survey, 44% of very large employers provide some coverage to Medicare-eligible retirees vs. 47% last year and only 19% of companies provide such coverage to new hires.

Market Moves

XL, All Risks team up on auto dealer cover

HUNT VALLEY, Md.—XL Insurance has entered into a joint underwriting agreement with All Risks Ltd. to offer coverage for automotive dealers.

Through the partnership, Hunt Valley, Md.-based All Risks will offer a dealers open lot insurance program, said XL Insurance, a unit of Dublin-based XL Group P.L.C., in a statement.

The program will provide physical damage coverage for dealerships throughout the U.S., according to the statement.

The coverage is available to

franchised new car, used car, motorcycle, recreational vehicle and all-terrain vehicle dealers that have been in business for a minimum of three years.

The dealers open lot program's coverage includes comprehensive collision, false pretense, economic loss and spot delivery coverage, among others, the statement said.

Terms of the agreement were not disclosed.

Mercer acquires Florida brokerage

FORT LAUDERDALE, Fla.—Mercer L.L.C. has signed a definitive agreement to acquire the health and welfare and qualified plans practices of a Fort Lauderdale, Fla.-based brokerage.

The acquisition of Mahoney & Associates, for which terms were not disclosed, is expected to be completed on Aug. 31, the New York-based employee benefits unit of Marsh & McLennan Cos. Inc.,

said in a statement.

The acquisition aims to strengthen Mercer's employee benefits services in the Miami and Fort Lauderdale markets and expands the firm's defined contribution advisory practice, which serves employers with small-to-medium-size defined contribution retirement plans, according to the statement.

Mahoney & Associates was founded in 1963 and serves more than 100 national and international clients, including privately held and publicly traded companies, with a focus on health and welfare plans, qualified retirement plans, and executive compensation and benefits.

Mahoney & Associates will take on the Mercer brand and all employees will move to Mercer's Sunrise, Fla., offices, according to a spokesman for Mercer.

Mercer said the acquisition will make it the largest health and benefits broker in the region and the ninth-largest in the U.S.

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LEGAL NOTICE

IN THE MATTER OF THE CONSERVATION OF PACIFIC & GENERAL INSURANCE COMPANY LIMITED Supreme Court County of New York Index No.: 41406/88

NOTICE

On September 27, 1988, Pacific & General Insurance Company Limited ("P & G") was placed into conservation (the "Conservation Proceeding") and the then-Superintendent of Insurance of the State of New York, James P. Corcoran (and his successors in office), was appointed conservator ("Conservator") of P & G ("Conservation Order"). Pursuant to the New York Insurance Law ("Insurance Law") and the Conservation Order, the Conservator was given the responsibility of, among other things, conserving trust assets provided in connection with P & G's authorization to write business in the United States ("Trust Assets") consistent with Article 74 of the Insurance Law. The Conservator has submitted to the Court supervising P & G's conservation proceeding (the "Conservation Court") a petition ("Petition") seeking an order: (a) approving a conservation agreement dated January 13, 2011 (the "Conservation Agreement"), entered into between the Conservator and Ipe Jacob and Richard Graham White ("Office Holders") as scheme administrators of P & G's scheme of arrangement (the "Scheme of Arrangement"); (b) authorizing the Conservator to distribute the Trust Assets to the Office Holders in accordance with the Conservation Agreement; (c) discharging and releasing the Conservator, his predecessors and successors in office, agents, attorneys and employees from all further liability arising out of this conservation proceeding upon distribution of the Trust Assets to the Office Holders, in accordance with the Conservation Agreement, and the filing of a final report; and (d) terminating this conservation proceeding.

A hearing is scheduled on the Petition on October 5, 2011 at 11:00 a.m. before the Supreme Court of the State of New York, County of New York at the Courthouse, 1AS Part 53, Room 238, 60 Centre Street, New York, New York ("Hearing"). If you wish to object to the Petition, you must serve a written statement setting forth your objections and all supporting documentation upon the Conservator, Clifford Chance LLP and Clerk of the Court, within 30 days of notice. Service on the Conservator and Clifford Chance shall be made by first class mail at the following addresses:

The Superintendent of Insurance of the State of New York as Conservator of Pacific & General Insurance Company Limited
110 William Street New York, New York 10038
Attention: John Pearson Kelly, Esq.

With a copy to:
Clifford Chance LLP
10 Upper Bank Street
London, E14 5J
Attention: David Steinberg, Esq.

And another copy to:
Clifford Chance LLP
31 West 52nd Street
New York, New York 10019-6131
Attention: Jennifer DeMarco, Esq.

By filing the Petition, the Conservator is seeking permission from the Court to approve the Conservation Agreement. The Petition further provides that:

Pursuant to an order of the Conservation Court, the Conservator is conserving the Trust Assets pursuant to insurance regulations and law of the State of New York for the benefit of those persons protected by the Trust Assets ("American Policyholders").

Subject to the Conservation Court's approval, the Conservator and the Office Holders have, for the purpose of avoiding duplication of effort and expense, entered into the Conservation Agreement by which the Conservator will transfer the Trust Assets to the Office Holders for distribution to the American Policyholders in accordance with the terms of the Conservation Agreement and the Scheme of Arrangement.

The Conservation Agreement provides that the Office Holders will maintain the Trust Assets for distribution to American Policyholders through the Scheme of Arrangement so that they will receive a greater benefit than if distributed through a separate conservation proceeding.

The Conservation Agreement provides that the values of all American Policyholders' claims will be determined in accordance with the Scheme of Arrangement and such determinations will be binding on the Conservator.

The Conservation Proceeding will be terminated pursuant to the Conservator's application to the Conservation Court following the distribution of the Trust Assets to the Office Holders and the filing of a final report.

For this reason, all policyholders, creditors, claimants and other interested parties in respect of P & G are advised to review all available information and to protect their rights accordingly.

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

Requests for further information should be directed to the New York Liquidation Bureau, Creditor Claims Department at (212) 341-6814.

James J. Wrynn
Superintendent of Insurance of the State of New York as Conservator of Pacific & General Insurance Company Limited

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LEGAL NOTICE

IN THE MATTER OF THE LIQUIDATION OF ATLANTIC AMERICAN HEALTH INSURANCE COMPANY, AUSTIN LIBERTY INSURANCE COMPANY, AXEL INSURANCE COMPANY OF NEW YORK, MAJESTIC INSURANCE COMPANY OF NEW YORK, MBL PROPERTY AND CASUALTY INSURANCE COMPANY, AND NATIONAL HERITAGE TITLE INSURANCE COMPANY, INC. New York Supreme Court, Index No.: 401643/11

Notice is hereby given:

I, James J. Wrynn, Superintendent of Insurance of the State of New York, has been appointed by an order of the Supreme Court of the State of New York, New York County, filed on July 20, 2011 ("Liquidation Order"), as the liquidator ("Liquidator") of Atlantic American Health Insurance Company, Austin Liberty Insurance Company, Axel Insurance Company of New York, Majestic Insurance Company of New York, MBL Property and Casualty Insurance Company, and National Heritage Title Insurance Company, Inc. (collectively, the "Companies" and, as such, has been: (i) vested with all powers and authority exercised or implied under New York Insurance Law ("Insurance Law") Article 74, in addition to the powers and authority set forth in this Order; (ii) authorized and directed to immediately take possession of the Companies' respective property, liquidate the Companies' respective business and affairs, and dissolve the Companies' corporate charters in accordance with Insurance Law Article 74; (iii) vested with title to the Companies' respective property, contracts, rights of action; (iv) authorized and directed to take possession of the Companies' books, files, records and other property, wherever located, as of the date of entry of this Order; and (v) authorized and directed, without further notice of this Court, to destroy or otherwise dispose of any and all of the Companies' books, files, records and other property in the Liquidator's possession when he deems them to be no longer required in connection with the dissolution of the Companies.

II. In accordance with Insurance Law Section 7432(b), all claims against the Companies must be presented to the Liquidator by November 20, 2011. Claims presented after November 20, 2011, will not share in the distribution of assets until all allowed claims that were filed on or before November 20, 2011 have been paid in full with interest. All claimants who appear on the Company's books and records as of the date of entry of the Liquidation Order are deemed to have duly filed proofs of claim prior to November 20, 2011.

III. The officers, directors, shareholders, members, depositaries, trustees, policyholders, agents, servants, employees, attorneys, managers and affiliates of the Companies and all other persons other than the Liquidator and his agents are permanently enjoined and restrained from: (i) wasting or permitting to be done any act or thing that might waste the Companies' properties; (ii) transacting the Companies' business or disposing of the Companies' property, except as authorized by the Liquidator; (iii) interfering with the Liquidator in the possession, control or management of the Companies' properties or in the discharge of his duties; and (iv) disclosing any information that is proprietary to the Companies or not in the public domain, except as authorized by the Liquidator.

IV. All persons are enjoined and restrained from commencing or prosecuting any actions or proceedings against the Companies, the Liquidator or the New York Liquidation Bureau, their present or former employees, attorneys or agents with respect to any claims against the Companies.

V. All persons are enjoined and restrained from obtaining preferences, judgments, attachments or other liens, or making any levy against the Companies' assets or any part thereof.

VI. The Liquidator is authorized, permitted and allowed to sell, assign or transfer any and all stocks, bonds or securities, and any real or other property of the Companies at market price or better, or if there is no market price, at the best price obtainable at private sale at such times and upon such terms and conditions as, in his discretion, he deems to be in the best interest of the creditors of the Companies, and he is further authorized to take such steps and to make and execute such agreements and other papers as may be necessary to effect and carry out such sales, transfers and assignments.

VII. In accordance with Insurance Law Section 7405, all in-force contracts, leases, tax sharing agreements, employment contracts, and obligations of the Companies, however described, shall terminate and all liability thereunder shall cease and be fixed as of the date of entry of this Order unless expressly ratified in writing by the Liquidator.

VIII. The Companies, their officers, directors, shareholders, members, depositaries, policyholders, trustees, agents, servants, employees, attorneys, managers and affiliates, and all firms, corporations, associations, and other persons or entities having any property and/or information, including, but not limited to, business records, insurance policies, claims files (electronic or paper), software programs, bank records and/or any tangible or intangible items of value, belonging or relating to the Companies, shall preserve such property and/or information and immediately, upon the Liquidator's request and direction, assign, transfer, turn over and deliver such property and/or information to the Liquidator or his designees.

IX. Any person or entity providing claims processing services, data processing services, electronic records retention services or other information technology services to the Companies shall maintain and preserve all information in its possession relating in any way to the Companies, wherever located, including but not limited to all documents, data, electronic files and records, computer equipment (i.e., servers and printers), software programs and software licenses owned by the Companies, and are directed, upon the Liquidator's request, to promptly submit all such information to the Liquidator or his designees.

X. Any bank, savings and loan association, other financial institution or any other entity or person, which has on deposit or in its possession, custody or control of any of the Companies' funds, accounts or assets shall immediately, upon the Liquidator's request and direction: (i) turn over custody and control of such funds, accounts or assets to the Liquidator; (ii) transfer title of such funds, accounts or assets to the Liquidator; (iii) change the name of such accounts to the name of the Liquidator; (iv) transfer funds from such bank, savings and loan association or other financial institution; or (v) take any other action necessary for the proper conduct of the liquidation proceeding.

XI. Any distribution of assets shall be in accordance with the priorities set forth in Insurance Law Article 74.

XII. The corporate charters of the Companies are relinquished, forfeited, surrendered and annulled, and the Companies are dissolved.

XIII. All communications relating to the Companies and to the liquidation thereof should be addressed to: New York Liquidation Bureau, 110 William Street, New York, New York 10038, (212) 341-6218.

JAMES J. WRYNN
Superintendent of Insurance of the State of New York as Liquidator of Atlantic American Health Insurance Company, Austin Liberty Insurance Company, Axel Insurance Company of New York, Majestic Insurance Company of New York, MBL Property and Casualty Insurance Company, and National Heritage Title Insurance Company, Inc.

Hartford forms alliance to monitor supply chains

SANTA CLARA, Calif.—The Hartford Financial Services Group Inc. has entered into a strategic alliance with Intellex Corp. to reduce waste and improve quality for perishable food supply chains.

The partnership, which is through Hartford's corporate venture capital unit, aims to reduce the amount of produce lost and improve the overall quality of produce during the distribution process, Santa Clara, Calif.-based on-demand data tracking and monitoring provider Intellex, said in the statement.

Intellex's technology monitors produce at harvest through readers and tags placed in pallets, which also monitor its temperature and condition as it travels through the distribution process, according to the statement.

Hartford said the data captured will be used to underwrite policies based on data trends, specifically within its marine insurance market.

"Identifying cold chain issues quickly and routing perishables based on remaining shelf life are critical to enhancing customer profitability and operational effectiveness," said Alexander McGinley, marine underwriting officer at Hartford, in the statement.

ADVERTISER

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Need to publish a Legal Notice, Announcement or RFP ?

Contact Monique at 212-210-0129.

UP **Comings & Goings** CLOSE



KEVIN P. ROBINSON

NEW JOB TITLE: Los Alamitos, Calif.-based benefits adviser with employee benefits consultant LBL Insurance Services Inc./The LBL Group.

PREVIOUS POSITION: Santa Monica, Calif.-based vp at insurance agent James G. Parker Insurance Associates.

LOOKING FORWARD TO: The opportunity to help people in this ever-changing economy. It's pretty daunting with health care reform. I love helping employers traverse the pitfalls.

GOALS FOR NEW POSITION: I want to be the best that I can be. If I've got clients that are happy with what I am doing, I'm happy with that.

INDUSTRY CHALLENGES: There is so much uncertainty with health care reform....There are a lot of things coming into play that people haven't heard about. I try to be an expert in trying to explain that to people.

BEST THING ABOUT A BAD ECONOMY: The opportunity to slow down and help people.

FIRST MARKET EXPERIENCE: I worked at Blue Cross of California in the customer service call center. Before that I was in the music industry.

ADVICE: The industry is what you make of it. If you are driven, you can be successful.

HOBBIES: I'm a singer and a songwriter. I spend a lot of time with my kids. We are all very artistic.

MOST PASSIONATE ABOUT: I love mentoring people.

CAN'T-MISS TV SHOW: "The Voice." I want to show my kids that singing can be fun before it turns into a job.

ON A SATURDAY AFTERNOON: I'm with my kids. We'll go to the beach or go walk around. I love to see the world through their eyes.



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MME problem: IP, patent inventory key

CONTINUED FROM PAGE 6

to a particular product or technology. However, Mr. Brosnan warned, several patents may exist simultaneously for the same basic technology or product, and ownership of a patent doesn't necessarily protect a firm from infringement allegations.

"A patent doesn't mean you have the right to exploit that product or that technology, it just means you can prevent others from exploiting that product using that exact same patent information," Mr. Brosnan said. "It's not a get-out-of-jail-free

card. If that invention is covered by other patents, there can still be a lot of issues."

Acquisition targets can easily jeopardize their ability to capitalize on a deal if they haven't properly inventoried and evaluated their intellectual property and patent holdings, experts said. Particularly for private middle-market companies that do not have the benefit of public earnings statements to demonstrate their monetary worth, the value of intellectual property and patent holdings often is one of the central rubrics by which a sale price is negotiated. Absent an accurate

valuation of all of its intellectual property assets, a company is likely to struggle to get a fair price for its portfolio.

"There's a lot of embedded value in companies that can get overlooked, especially during the process of a merger or acquisition," said Josh Cohen, a senior vp for Marsh Risk Consulting's valuation services practice in New York.

"That happens more in the middle market because of limited resources and the inability to generate that detailed portfolio of intellectual property and patents from the seller's standpoint."



IN THE MATTER OF

AVIVA INTERNATIONAL INSURANCE LIMITED ("Aviva International")
(formerly CGU International Insurance Plc, Commercial Union Assurance Company Plc)
AND
AVIVA INSURANCE UK LIMITED ("Aviva UK")
(formerly Norwich Union Insurance Limited and Norwich Union Fire Insurance Society Limited)
AND
AVIVA INSURANCE LIMITED ("Aviva Insurance")
(formerly CGU Insurance Plc, General Accident Fire and Life Assurance Corporation Plc, General Accident Fire and Life Assurance Corporation Limited, General Accident Assurance Corporation Limited)
AND
CGU UNDERWRITING LIMITED ("CGU Underwriting")
(formerly Commercial Union Underwriting Limited, Union Assurance Limited)
AND
HAMILTON INSURANCE COMPANY LIMITED ("Hamilton")
AND
LONDON AND EDINBURGH INSURANCE COMPANY LIMITED ("London & Edinburgh")
(formerly London & Edinburgh General Insurance Company Limited, London and Edinburgh General Insurance Company Limited)
AND
THE OCEAN MARINE INSURANCE COMPANY LIMITED ("Ocean Marine")
AND
THE WORLD AUXILIARY INSURANCE CORPORATION LIMITED ("World Auxiliary")
(together, the "Applicants")
AND
IN THE MATTER OF PART VII OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

NOTICE

Notice is hereby given that the Applicants have made an application (the "Application") to the Royal Courts of Justice under Part VII of the Financial Services and Markets Act 2000 for an order sanctioning an insurance business transfer scheme (the "Scheme").

The Application provides for the transfer:

1. to Aviva Insurance of the entire general insurance business of Aviva UK and the entire general insurance business (excluding London market business and a limited number of Global Aerospace policies written in Canada by Aviva International) carried on by Aviva International, CGU Underwriting, Hamilton, London & Edinburgh, Ocean Marine, being business carried on in the United Kingdom and certain member states of the European Union; and
2. to Ocean Marine of the London market general insurance business carried on in the United Kingdom and certain member states of the European Union by Aviva Insurance, Aviva International, London & Edinburgh and World Auxiliary ("LM Transferors"). "London market" business refers to business reinsured to National Indemnity Company and written on or before 31 December 2000 (including any contractual renewals of such business) (i) through the International Underwriting Association of London ("IUA") or its predecessors (being the Institute of London Underwriters ("ILU") and the London Insurance and Reinsurance Market Association ("LIRMA")); and (ii) business identified as 'Global Risks' which was written by the LM Transferors.

Copies of a report on the terms of the Scheme prepared by an independent expert, Stuart Shepley FIA and a statement setting out the terms of the Scheme and containing a summary of the report of the independent expert, are available free of charge on Aviva's website at www.avivatransfer.co.uk. Any further news about the Transfers will be posted on the website so you may wish to check for updates.

You can also request free copies of any of these documents by writing to Aviva Transfer, PO Box 3062, Bristol BS2 8QY, United Kingdom or calling us on +44 117915 1983.

The Application will be heard before a Judge at the Royal Courts of Justice, Strand, London WC2A 2LL, United Kingdom on Wednesday, 5 October 2011. If approved by the Court, the transfer will take effect on 14 November 2011.

Any person who believes that he or she would be adversely affected by the transfer is entitled to either make written representations, or to be heard (in person or by a legal representative) at the hearing of the Application on 5 October 2011. Any person who intends to appear at the Court, or to make representations in writing, is requested to notify his or her objections as soon as possible, and by no later than 28 September 2011, to Ref CMS/EJXG/70-40495851 Clifford Chance LLP, 10 Upper Bank Street, London E14 5JJ, United Kingdom.

An application has also been made to the Court of Session in Scotland in relation to the transfer of general insurance business from CGU Bonus Limited and The Scottish Boiler and General Insurance Company Limited to Aviva Insurance. That application will be advertised separately. Details of it can be found on our website at www.avivatransfer.co.uk.

August 2011

* We're open 1pm to 1am Monday to Friday and 2pm to 10pm Saturday and 3pm to 9pm Sunday. All times are Eastern Daylight Time. Calls may be recorded or monitored. Calls will be charged at your operators international rates.

Downgrade: Larger economic concerns mounting

CONTINUED FROM PAGE 1

Voss, who is Iowa's insurance commissioner, in a statement. "Risk-based capital and asset valuation reserves are unaffected. State insurance regulators and the NAIC will consider changes to our regulatory treatment if it becomes necessary in the future."

On Aug. 5, S&P lowered its long-term sovereign credit rating on the United States to AA+ from AAA. The move came after Congress and the White House reached a last-minute agreement to raise the federal debt ceiling, thus eliminating the possibility that the federal government would not be able to honor all of its financial obligations.

"The downgrade reflects our opinion that the fiscal consolidation plan that Congress and the administration recently agreed to falls short of what, in our view, would be necessary to stabilize the government's medium-term debt dynamics," said S&P in a statement. "More broadly, the downgrade reflects our view that the effectiveness, stability and predictability of American policy-making and political institutions have weakened at a time of ongoing fiscal and economic challenges to a degree more than we envisioned when we assigned a negative outlook to the rating on April 18, 2011."

The two other major rating agencies—Moody's Investors Service Inc. and Fitch Inc.—did not downgrade the U.S. debt.

"There will be zero practical impact on the property/casualty insurance industry," said Robert Hartwig, president and economist at the insurance industry-supported Insurance Information Institute in New York. He noted the NAIC statement and added that, "from the perspective of policyholders and claimants, there is no impact on the solvency, liquidity or operations of insurers. In other words, it's business as usual."

"One theoretical effect of a downgrade is that interest rates on newly issued U.S. government bonds and most other forms of fixed income securities would rise," said the III in an analysis issued Aug. 8. "This would mean that the market value of existing U.S. government bonds and other fixed income assets would fall. The extent of the drop in value would depend on many things, but the net impact on the value of assets held by P/C insurers should be modest and manageable."

"I do tend to think that the impact will be very minimal," said Howard Mills, director and chief adviser of Deloitte Services L.P.'s insurance industry group in New York. He said reserves are very

strong and adequate to cover any foreseeable catastrophes. "It's just a piece of their holdings in what is a very robust reserve situation."

In the long term, there should be no real regulatory impact in terms of capital, said J. Paul Newsome, managing partner at Sandler O'Neill Partners L.P. in Chicago. "To the extent that we get higher interest rates out of this," the change could be positive for insurers, he said.

In a report issued after the downgrade, Guy Carpenter & Co. L.L.C., Marsh & McLennan Cos. Inc.'s reinsurance brokerage unit, said most reinsurers' risk-adjusted capital would "not be impacted significantly."

But broader economic forces could have an effect, said Guy Carpenter. For example, a weak dollar would make U.S. reinsurers more attractive acquisitions for foreign companies. And there could be a decline in financial institutions if they are directly linked to the government. "A general deterioration of credit among all U.S.-domiciled entities—and companies with relatively high exposure to a downgrade—is also a possibility," said the report.

In the near term, "we see the downgrade being overwhelmed by other things," such as a slowing economy and falling inflation expectations, said Matt Stroud, head of strategy and portfolio

construction for North America in Towers Watson & Co.'s investment business in New York. The premium environment for insurers could soften with the slowing economy, he said.

The economic slowdown and falling inflation expectation have produced falling yields and, "if anything, incomes from fixed income portfolio will be firmer than soft," he said.

"We've talked extensively with our members, and the overwhelming consensus is that the downgrade has minimal impact on our industry," said Robert Gordon, Washington-based senior vp-policy development and research for the Property Casualty Insurers Assn. of America. He said Treasury bonds make up only about 4% to 6% of PCI's members' total invested assets. He said some insurers have reduced their exposure to foreign sovereign debt.

But the "biggest issue is the uncertainty in the marketplace will cause people to be more conservative in their business decisions," he said.

The cost of additional regulations such as those imposed by the Dodd-Frank Wall Street Reform and Consumer Protection Act will add to the burden at a time when economic conditions can mean fewer business opportunities for insurers, he said.

Berkshire: Bid battle for Transatlantic heats up

CONTINUED FROM PAGE 1

June when Transatlantic announced a stock-for-stock merger with Zug-Switzerland-based Allied World Assurance Co. Holding A.G. A month later, Bermuda-based reinsurer Validus Holdings Ltd. transformed the orderly merger into a bidding war with a stock-and-cash bid.

Last week's offer of \$52 a share by Omaha, Neb.-based Berkshire's main reinsurance unit, National Indemnity Co., stirred things up further.

"Evidently Berkshire sees this as an attractive price for a well-established reinsurer," said Bruce Ballentine, an analyst in New York at Moody's Investor Service. "The pattern of Berkshire is to buy assets that seem undervalued."

The deal would make Warren Buffett's reinsurance units already significant position in the U.S. reinsurance market even more robust. National Indemnity is the largest U.S. reinsurer, based on net written premiums, according to the Reinsurance Assn. of America's 2010 report on reinsurers' financials. Transatlantic is the second largest and Berkshire's other reinsurance unit, General Re Group, is ranked as the eighth largest U.S. reinsurer by the RAA (see box).

"You have three sound companies looking to buy another sound company," said John Andre, vp at A.M. Best Co. Inc. "We're com-

IF BERKSHIRE WINS THE BATTLE

Based on 2010 net written premium in millions:

National Indemnity	\$3,913
General Re Group	1,312
Transatlantic/Putnam Reinsurance Co.	3,418
Total:	8,643

Source:RAA

fortable with all the parties involved."

Berkshire's bid came after the rival offers had diminished amid the stock market swoon during recent weeks. Allied World's all-stock merger agreement with Transatlantic sank to \$46.66 by market close on Friday, from its original \$50.76 per share value based on closing prices before the deal's announcement June 12. And Validus' cash-and-stock unsolicited offer plunged to \$46.72 from \$55.95 per share as of announcement July 12.

"Companies that have cash on their balance sheets tend to swoop in during difficult markets, and that's what Berkshire was trying to do," said Michael Yoshikami, CEO and founder of the Walnut Creek, Calif.-based investment adviser YCMNET Advisors Inc. who has invested in Berkshire, but isn't involved in any of the other companies in

the bidding war.

"And in all likelihood, that's why Transatlantic will probably hold out for a higher price. They know the stock is down because of the market" and probably feel their company is worth more, he said.

The move by Berkshire triggered moves by Validus and Transatlantic. Validus filed suit against Transatlantic in Delaware Chancery Court in Wilmington, seeking removal of an agreement between Allied World and Transatlantic that the reinsurer said had prevented it from entering deal talks.

In a letter to Transatlantic filed with the U.S. Securities and Exchange Commission on Thursday, Validus Chairman and CEO Ed Noonan complained about New York-based Transatlantic's "apparent lack of commitment to finding a mutually acceptable way that our companies can exchange nonpublic information."

He also said Validus would deliver a one-way confidentiality agreement that would permit Transatlantic to examine Validus' non-public information, but would not require Transatlantic to share its information with Validus.

On Friday, Transatlantic said that it had entered a confidentiality agreement with National Indemnity and would start discussions with the reinsurer.

Validus and Allied World say their bids provide Transatlantic

stockholders with the opportunity to participate in a combined company that would have the potential to improve its value in the future.

Allied World had offered to give Transatlantic shareholders a 58% stake in the combined entity, while Validus had offered 48% ownership. Berkshire has not yet announced all the details about its bid.

"I'd rather have (\$52 per share) today that I can deploy in a distressed marketplace, than ownership in a future entity that should do well," said Gregory W. Locraft, a Boston-based executive director covering property/casualty insurers at the New York financial services firm Morgan Stanley. He added that if Allied World and Validus are willing to raise their bids, those could be good transactions as well, but the Transatlantic board elected to engage in merger discussions in a distressed marketplace.

It's not the first time Berkshire has joined into a bidding war involving Validus. After Validus made an unsolicited bid for IPC Holdings Ltd. in 2009, Berkshire reportedly made an all-cash offer for the Bermudian property catastrophe reinsurer. But Validus ended up completing the deal in July 2009 for \$1.65 billion cash and stock.

Transatlantic did not return messages seeking a comment. Berkshire and Allied World declined comment.

Business Insurance

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News In Brief

several lines within the commercial insurance market suggest that the soft market may be near bottom, according to the RIMS Benchmark Survey. The survey, administered by Advisen Ltd., found that general liability, property and workers compensation premiums fell less than 1%, with directors and officers liability policies posting the largest decrease of 4.5% in the second quarter, the Risk & Insurance Management Society Inc. said in a statement.

IRS to issue health affordability test

The Internal Revenue Service said it will develop new rules that will make it easier for employers to determine if their health care plans are "affordable" and exempt from a stiff financial penalty mandated by the health care reform law. The IRS said it will develop a safe harbor in which coverage would be considered affordable so long as the premium contribution for single coverage did not exceed 9.5% of employees' W-2 wages. The IRS said it is developing the new safe harbor to give employers more certainty on whether their plans will pass the affordability test.

AIG files \$10B fraud suit against BofA

American International Group Inc. filed suit against Bank of America for \$10 billion plus punitive damages last week claiming it sold the insurer more than \$28 billion in fraudulent residential mortgage backed securities between 2005 and 2007. AIG said the more than \$10 billion it lost on the securities was a significant factor in the financial difficulties that started in 2008 for the company. The insurer said it is suing Bank of America, as the underwriter,

depositor and/or sponsor of the securities, and as the originator of the mortgage loans.

Verizon to reinsure group life in captive

The Labor Department has given Verizon Communications Inc. final approval to use its Vermont captive insurance company to reinsure group term life insurance benefits. Under the arrangement, Exchange Indemnity Co. will reinsure 100% of the risk with Prudential Life Insurance Co., which underwrites life insurance plans covering Verizon employees and subsidiary Verizon Wireless.

Insurance industry execs form MGA

A new managing general agency has been formed by two insurance market executives to write a broad book of business and acquire MGAs with diverse operations, the founders of K2 Insurance Services L.L.C. said. The San Diego-based MGA was formed by Pat Kilkenny, former chairman and CEO of Arrowhead General Insurance Services Inc.; and Bob Kimmel, former executive vp at Guy Carpenter & Co. L.L.C. Mr. Kimmel is president of K2, and Mr. Kilkenny is CEO. The MGA is funded by the two executives and private equity group Endeavour Capital in Portland, Ore.

Health care organizations expect to keep plans

Only a small percentage of health care organizations say they are seriously considering eliminating their health care plans due to the health care reform, according to a survey. Just 8% of respondents, which include health care systems, hospitals and long- and short-term care facilities, said they would "very seriously" consider the elimination of their health care plans in the future due to the health care reform law, while 20% would consider it and 57% would not consider it. The remaining 14% responding to the survey by Buck Consultants L.L.C. didn't know what their organization's future plans would be.

agree with the new model, because their hands are tied due to the rating agencies' requirement to measure the exposure based on the RMS model.

There are two other credible models that the industry uses to measure this exposure: one provided by AIR Worldwide Corp. and the other by EQECAT Inc. What I propose is that the industry—insurers and the rating agencies—consider utilizing an average of the three models, as opposed to relying exclusively on one model. A blended approach would alleviate the pricing and capacity concerns of both insurers and insureds.

David J. Finnis

Executive vp, national property practice leader
Willis Group Holdings P.L.C.
Atlanta

Riots: U.K. riot losses may top \$325M

CONTINUED FROM PAGE 1

Five people were killed as a result of the violence.

Among high-profile targets were a Sony Corp. film distribution center in north London, which was set on fire, and a 140-year-old furniture store in south London that burned down. Coverage for a Carpetright Group P.L.C. store in Tottenham, which was in the first building to be destroyed in the melee, was underwritten by Zurich Financial Services Group. That building also contained residential apartments.

Many businesses in London and the surrounding areas sent staff home early on Tuesday amid fears of further violence and disruption.

Most property insurance policies will cover owners and occupiers of commercial premises on an all-risk basis, according to Bill Gloyn, a partner in the European real estate division of London-based brokerage Jardine Lloyd Thompson Group P.L.C.

Various insurance policies may respond to the events of last week, said Caroline Woolley, head of the property practice of Marsh Inc. for Europe, the Middle East and Asia.

Ms. Woolley, who is based in London, said losses could be interpreted as resulting from property damage, vandalism, denial of access, riot and—potentially—political violence, among other things.

Insureds should check the wording of their policies, Ms. Woolley said, and notify their insurers—and, where applicable, the police—of any potential claims as quickly as possible. Policyholders also should gather as much infor-

mation as possible about their loss and, for example, take photographs where possible, in order to ensure that underwriters are fully apprised of claims, she said.

Most property policies likely will cover damage caused by the recent rioting, according to a spokesman for Zurich in the U.K.

Policies underwritten by Zurich typically include losses from criminal damage and riot, he said.

The issue of whether the events are deemed to be civil unrest or riot or simply damage to property and theft is really a "back-office" issue for insurers, he said.

Insurers will need to examine claims and then decide if they can subrogate those claims to the police under the Riot (Damages) Act (see related story).

The extent to which business interruption losses will be covered depends on the type of policy buyers have, experts said.

"Most traditional business interruption policies are concerned with property damage," said Ms. Woolley, so buyers should check their policy wordings to assess whether business interruption caused by denial of access, for example, would be covered.

It does not appear the violence was politically motivated and, therefore, any terrorism exclusions likely will not apply, loss adjuster London-based Crawford & Co. said in an advisory note.

Owners of vacant properties that have been damaged must check their policies carefully, according to JLT's Mr. Gloyn. In recent years, an increase in claims for damage to vacant properties has led some insurers to restrict coverage for such buildings, he said. For example, insurers may

require policyholders to have extra security on such properties. If policyholders have not followed such requirements, they could find themselves uninsured, he said.

According to London-based law firm Reynolds Porter Chamberlain L.L.P., most insurers require notification of riot claims within a short period—typically seven days—of an event, in order for insurers to file claims with police within 14 days.

Brit Insurance Holdings N.V., which operates a U.K. insurance company and a Lloyd's of London syndicate, among other things, said in a statement: "We need policyholders to notify us in seven days, as we are keen to provide them with the assistance they require."

The London-based Federation of Small Businesses advised policyholders to "ensure that there is a very prompt notification of the incident to the police followed by an immediate notification to your insurer or insurance broker."

"In any event, this must be done within seven days of the incident," the FSB added.

While the riots are not expected to have a market-turning effect on rates, they may lead to underwriters becoming more selective, sources said.

Fitch Ratings Ltd. said it did not expect losses from the riots to have a negative impact on the financial strength ratings of U.K. insurers.

"At current loss estimates, Fitch believes the industry as a whole will be able to absorb these losses into earnings," Chris Waterman, managing director in Fitch's insurance group in London, said in a statement.

Losses may be reimbursed under Riot Act

LONDON—A 19th-century law could allow insurers to be reimbursed by police for some of their losses from last week's rioting and looting in England.

The Riot (Damages) Act of 1886 allows insurers, or those who do not have insurance coverage, to claim compensation from the police in the event of riots.

According to the act, "where a house, shop, or building in any police district has been injured or destroyed, or the property therein has been injured, stolen, or destroyed, by any persons riotously and tumultuously assembled together, such compensation as herein-after mentioned shall be paid out of the police rate of such district to any person who has sustained loss by such injury, stealing or destruction."

The amount of compensation, according to the act, will be dependent on precautions taken by the claimant.

Last week, Prime Minister David Cameron announced

Riot (Damages) Act police compensation schemes will operate as normal and extended the amount of time claims can be made under the scheme to the maximum of 42 days, the London-based Assn. of British Insurers said Thursday. Under the terms of the Riot (Damages) Act, claims must be filed within 14 days of an event.

The act means insurers likely will be able to subrogate claims, in the policyholder's name, to the police, said Stuart White, a partner at London-based law firm Reynolds Porter Chamberlain L.L.P.

Businesses that have suffered damage from riots but are not insured also can make a claim directly to the police under the terms of the act, he said.

Loss adjuster Crawford & Co. said in a statement that it is unlikely that police would declare the events "a riot."

But the ABI said that "neither the Home Secretary nor the police need to designate the events as a 'riot' for police com-

ensation (provisions) to be activated." If the event falls within the definition of a riot within the Public Order Act 1986, then uninsured claimants and insurers will be able to bring claims for compensation from the police, the ABI said.

That act defines a riot as when "12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause (a reasonable person) to fear for his personal safety, each of the persons using unlawful violence for the common purpose is guilty of riot."

But the nature of recent events, which have left many property-crime scenes inaccessible or unsafe, means that it may be very difficult for claims to be filed within that time period, according to the ABI.

The act would only cover property losses and not business interruption claims.

—By Sarah Veysey

LETTER

CONTINUED FROM PAGE 8

new model, but I would like to suggest a shift in the industry's collective approach and method by which it measures catastrophe exposures going forward.

We all know that modeling natural catastrophe exposures is not an exact science, there are many variables to contend with, and each loss has its unique characteristics, which always seem to produce new risk factors to analyze.

In the past several months, I've had many conversations with the lead executives on the property side of most of the large insurers that provide this much-needed capacity. Insurers believe they are not in a position to agree or dis-



BLOOMBERG

Hotel guest sues over fine print

A California man is suing Hilton Hotels Corp. for charging him 75 cents for a USA Today newspaper he didn't read or even want.

But his lawsuit over the 75-cent hotel room doorstep delivery could jeopardize tens of millions of dollars in lost revenue that USA Today's parent, Gannett Co. Inc., earns annually from hotel distribution, according to a Forbes story.

About 555,000 of the 970,000 copies of USA Today distributed at hotels are paid for by the hotels, according to the Forbes story with the headline "How USA Today Slips \$82 million a Year Onto Your Hotel Bill."

The rest of the hotel USA Todays are paid for by guests, often unwittingly.

The practice of adding 75 cents to his hotel room bill for a paper he merely stepped over as he left his room irked Sacramento County resident Rodney Harman.

Unlike most hotel guests who never notice the hotel newspaper charge, or are too hurried to bother, Mr. Harman sued, alleging deceit and damage to the environment.

He discovered the charge several days after checking out when he saw some small print in a hotel key pouch stating that unless he specifically notified the hotel he didn't want the paper, he had to pay for it, according to a New York Times story.

Business Insurance END PAGE

Contributing: Roberto Cenicerros, Judy Greenwald, Mike Tsikoudakis, Sarah Veysey



Insurers may have to pick up the tab after Kings of Leon canceled 29 shows of their U.S. tour.

King-sized loss for event insurers

Lloyd's of London could be on the hook for as much as \$15 million after popular rock group Kings of Leon canceled the remaining 29 shows on its U.S. tour with frontman Caleb Followill claiming "vocal issues and exhaustion," according to news reports.

Mr. Followill reportedly told the audience during a July 29 show in Dallas, "I'm gonna go backstage, and I'm gonna vomit. I'm gonna drink a beer, and I'm gonna come back and play three more songs." He never returned.

But there apparently was more to the story. In a subsequent Twitter message, his brother and fellow band member Jared Followill said, "I love our fans so much. I

know you guys aren't stupid. I can't lie. There are problems in our band bigger than not drinking enough Gatorade."

The band members also include brother Nathan Followill and cousin Matthew Followill. The group, which was founded in Nashville in 1999, released its first album in 2003. Its greatest success to date has been a 2008 album, "Only by the Night."

This is not the first time a Kings of Leon concert has ended abruptly. Last July in St. Louis, the concert ended after just three songs when pigeons in the amphitheater's rafters bombarded the musicians with poop. This time, the problem wasn't for the birds.

Lloyd's is fave '80s building

It is one of the City of London's most distinctive landmarks with its famous "inside-out" design.

Now the Lloyd's of London building, designed by Lord Richard Rogers and opened by Queen Elizabeth II in 1986, has been named London's favorite 1980s building.

Now 25 years old, the building was named as a favorite 1980s design by respondents to a recent survey.

Almost 40% of the 112 people surveyed in the City of London named the Lloyd's building's external lifts as their favorite feature.

All the building's facilities—including pipes and ducts—are on the outside in order to maximize the internal space.

"This building is fantastic. It is known around the world and is truly iconic," said Richard Ward, CEO of Lloyd's, in a statement.

"There are many wonderful parts to it both inside and out, but one of the best features is the external lifts, which make you feel totally exposed and open to the elements. The building is 25 years old this year and is still modern, innovative and unique—it has really stood the test of time and will continue to do so no matter how many new buildings rise around it," he said.

The building is scheduled to be open to the public on Sept. 17 as part of London's Open House weekend.



Singer Lauryn Hill has been accused of harassment, humiliation and not paying a band member for his work.

Guitarist has axe to grind

Hip-hop artist Lauryn Hill is mean—or so says a former band member in a recent harassment lawsuit filed against the former Fugees singer.

In the suit, professional guitarist Jay Gore claims that while touring with Ms. Hill in Europe in 2007, she harassed and humiliated members of her band and crew backstage, and did not pay thousands of dollars owed to them, according to reports.

"After shows, Hill would demand that the musicians and road support personnel attend meetings where she would

engage in a person-by-person critique and berating," the suit said, according to reports. "At one point, Hill made a statement in front of the tour personnel to the effect that 'I can't believe I am paying you fools. You should be paying me.'"

Mr. Gore also claims that Ms. Hill never paid him his final installment once the tour ended in 2008, according to reports.

"Ms. Hill is symptomatic of celebrities in general who feel that it's an honor just to be seen or play with them, and that they don't have to do the

right thing to the people that they should be taking care of, and this lawsuit is a step to try to stop that kind of action," Mr. Gore's attorney, Nicholas Andrea, told XXL magazine.

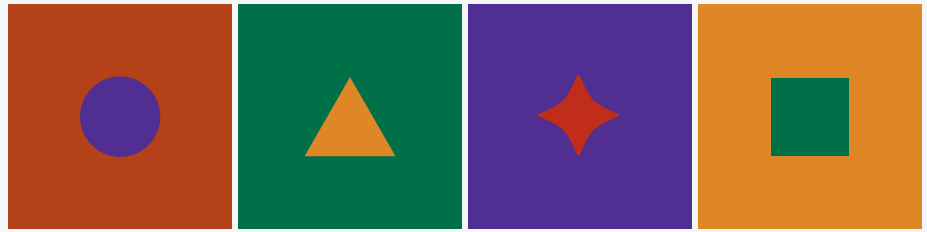
In the suit, Mr. Gore reportedly seeks \$3,500 in unpaid wages and \$20,000 in punitive damages.

Mr. Gore, a session musician, has worked with the likes of Hilary Duff and as a member of the Journey cover band Escape, according to reports.

Maybe future headliners will be a little nicer to him.

Alternative Risks

Special Report



On September 5 *Business Insurance* will devote the entire issue to exploring the risk financing innovations and options available to risk managers for transferring their risks outside of traditional insurance and reinsurance policies.

Coverage will include:

- How to use a captive to cover workers comp risks
- Tapping weather derivatives to structure alternative coverage
- 25 years after inception, an analysis of how risk retention groups being utilized
- The pros and cons of using risk retention groups vs. the commercial insurance market
- The benefits of using a captive to access the reinsurance market
- After a slew of catastrophes over the past 12 months, developments in the markets for cat bonds and industry loss warranties
- Alternative ways to cover supply chain risks

As businesses seek solutions for their risk financing challenges this issue will be one that C-suite executives and risk managers of both large and middle-market businesses will use to be more effective and refer back to time and time again.

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FIND A STABLE PATH

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

With Arch Insurance Group, our **Global Property** division can lead the way. As a specialty insurer, Arch's Property division provides a flexibly applied shared and layered solution with net and treaty capacity lines that are consistent and stable through any market cycle. We work with the broker and risk manager to help fortify their coverage portfolio against looming property exposures—providing companies with choice and stability.

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