Business Insurance

$5

August 22 & 29, 2011

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In Brief

AIG repays another $2.15B to government

American International Group Inc. has repaid the federal government an additional $2.15 billion, the Treasury Department announced. The repayment was funded by the sale earlier this year of AIG's Taiwan-based Nan Shan Life Insurance Co. to Ruen Chen Investment Holding Co. Ltd. The U.S. government's remaining outstanding investment in AIG through Treasury is $51 billion, according to the U.S. agency.

Chubb unit sues more than 20 firms

Chubb Corp. unit Federal Insurance Co. is suing more than 20 companies over their alleged refusal to pay their fair share of claims related to cleanup efforts around

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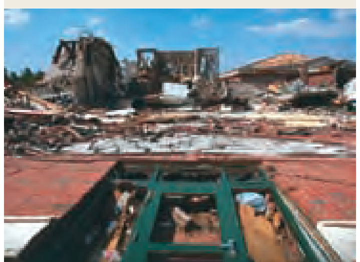

SPOTLIGHT

INDUSTRY FINANCIALS: FIRST-HALF RESULTS
Cat losses hit insurer profits; brokers boost revenue; low utilization aids health insurers. PAGE 9

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Companies consider their options; high-deductible plans gain; end FSA cap, advocates say. PAGE 14

LOSS CONTROL

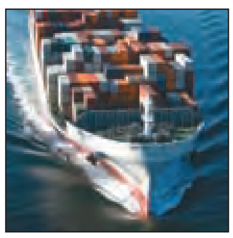
Cargo thieves change tactics

High-tech fraudsters use fake identities to lure customers

By MICHAEL BRADFORD

Thieves are taking cargo thefts to a new level, experts say.

In some cases, thieves are impersonating legitimate trucking companies. In other cases, they are setting up bogus businesses that appear to be real to gain access to trucking company shipments, the experts say.



"This is a new way that these thieves are operating," said Richard Kirk, vp of CargoNet, a Jersey City, N.J., division of the Insurance Services Offices Inc.'s crime analytics unit. The fraudsters, tapping the latest technology, can take company information from the Internet to make it appear they are a legitimate trucking firm, he said.

Sources say cargo thieves will even go so far as setting up a shell company with a website to add legitimacy, then place bids on electronic "broker load boards" to haul freight that shippers need help in delivering. "If they win work off the board, they walk in and take the cargo," Mr. Kirk said.

It is difficult to put an exact figure on the cost of cargo theft, sources say, but they agree it is at least a billion-dollar problem.

Barry Tarnef, assistant vp and senior risk specialist, loss control services, at Chubb Group of Insurance Cos. in Warren, N.J., said "there are a lot numbers out there and a lot of people floating them, but if I had to

See **CARGO** page 20

LIABILITY AND LITIGATION

AP PHOTO

An investigation was launched last week into the collapse of a stage at the Indiana State Fair, one of several stage collapses this summer.

Festival accidents increase

Liability limited in Indiana stage collapse

By RODD ZOLKOS

Music festivals have grown in number and popularity around the world in recent years, but this summer's festival season has been particularly notable for a spate of stage collapses.

A stage collapse before an Aug. 13 performance by Sugarland at the Indiana State Fair in Indianapolis resulted in at least six deaths. Another in Hasselt, Belgium, while the Smith Westerns performed at the Pukkelpop Festival, killed at least five last week.

Other incidents this summer include a video screen toppling

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EMPLOYMENT PRACTICES

Firms struggle to comply with ADA leave rules

By JUDY GREENWALD

Vague guidelines that require employers to consider leave requests under the Americans with Disabilities Act case-by-case are causing considerable problems for employers, who are trying to comply with the law while still effectively running their businesses.

Compounding the issue is the Equal Employment Opportunity Commission's aggressive pursuit of litigation in this area. The EEOC, which held a public hearing on the issue in June, is expected to publish clarifying guidelines later this year.

Employers are required to engage in an interactive dialogue with workers before reaching decisions on reasonable accommodations for ADA leave. While employers are not obligated to approve requests for indefinite leaves, there are no clear guidelines as to how firms can balance employee requests while avoiding undue hardship to their businesses, which observers say is not demanded by the law. A particular problem is incremental requests, where workers continue to ask for more time off.

"The challenge to employers is where to draw the line," said Peter J. Petesch, a shareholder with law firm Littler Mendelson P.C. in Washington.

"Despite the many documents that EEOC has issued on this subject, people are still getting it wrong," EEOC Commissioner Stuart J. Ishimaru said during the June hearing. "Perhaps that's part of the problem—that there are too many pieces, too much of a hodgepodge. And maybe there are times when our guidance could have been clearer."

In July, New York-based Verizon Communications Inc. agreed to pay $20 million to resolve an EEOC lawsuit involving the company's "no-fault" attendance plans, which the agency said did not provide reasonable accommodations for employees with disabilities.

An ADA case brought against Hoffman Estates, Ill.-based Sears Roebuck & Co., where the EEOC accused the retailer of having an inflexible workers compensation leave exhaustion policy, resulted in a $6.2 million settlement in 2009. Another ADA leave case against a unit of Minneapolis-based Super-

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Business Insurance

A guide to the new www.businessinsurance.com

As part of our efforts to provide news and in-depth analysis on the areas most relevant to you, we've redesigned our website and made several changes designed to enhance our content and improve navigation of the site. The following sections detail the major changes, including a new channel-based structure and the addition of rich features designed to help you confront critical challenges.

new content channels

We've divided our coverage into six core subject channels: Risk Management, Specialty Risk, Workers Comp, Mid-Market Executive, Brokers & Insurers and Benefits Management. Each channel has its own dedicated reporting staff that will focus on writing and finding news and information relevant to their channels.

solution arcs

This unique resource takes a structured approach to addressing key business challenges. The three-stage problem-solving process takes readers from identification to solution of an issue. Content for the Solution Arcs includes staff-written articles, analysis from industry experts, links to other relevant online resources and multimedia features.

Business Insurance (ISSN 0007-6864) Vol. 45, No. 33, 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.

DIRECTORS & OFFICERS LIABILITY

Reverse mergers affect D&O prices

Multiple rate increases target Chinese shell firms

By JUDY GREENWALD

Mounting litigation filed against Chinese reverse merger firms could contribute to a harder directors and officers liability insurance market, some observers say.

Because of the litigation, Chinese reverse merger firms, which also are undergoing increasing regulatory scrutiny, are experiencing multiple rate increases, higher retentions and more stringent terms and conditions at renewal, and even possible rescission of existing coverage, observers say.

A reverse merger is an acquisition of a private operating company by a publicly held shell firm. This allows Chinese companies to access the capital markets while avoiding the scrutiny, expense and time of registering an initial public offering.

Between January 2007 and March 2010, 159 companies from the China region accessed U.S. capital markets through a reverse merger deal, according to a March report by the Washington-based Public Company Accounting Oversight Board.

Lawsuits against these reverse merger firms account for a growing portion of securities litigation. Of 94 federal securities fraud class actions filed during this year's first half, 24 lawsuits were against Chinese reverse merger companies, about 25% of the total filed, according to a July report by San Francisco-based Cornerstone Research Inc. There were nine such suits a year earlier.

Charges against these companies include accusations of self-dealing, accounting irregularities and misleading financial statements, according to observers.

The alleged accounting deficiencies and corporate governance problems make "for a really easy case" from the plaintiffs bar's perspective, said Carl Bach, London-based head of NavPro Europe, a division of Navigators Underwriting Agency Ltd..

While most of these lawsuits are in the early stages, a federal judge in Los Angeles in July refused the defendant's motion to dismiss *Mark Henning vs. Orient Paper Inc.,* a lawsuit in which the company was accused of failing to disclose material related-party transactions between it and its main supplier, among other charges.

However, there also has been speculation that short sellers are criticizing the companies as part of a cynical strategy to profit by driving down their stock prices.

John Bruce, a partner with Kennedys Law L.L.P. in London, who represents D&O insurers in this litigation, said one-quarter of his firm's cases involve targeted companies that are sham firms, while the remainder may be the targets of short sellers.

"It doesn't look good when…half the board of directors resigns and are replaced with a whole new board" or when auditors abruptly resign, both of which have happened with Chinese reverse merger firms, said Anjali C. Das, a partner with Wilson Elser Moskowitz Edelman & Dicker L.L.P. in Chicago. However, she said, "It's obviously a very case-specific, fact-specific inquiry until the investigations are completed."

Will Fahey, New York-based head of D&O for large companies for Zurich North America, said, "I would argue that these cases may prove to have more teeth even than your typical securities claim because of the many facts involved when you have restatements and auditors resigning." These are "typically stronger, more concrete facts indicating fraud than you would normally see" in class action securities suits, he said.

In light of investigations by regulators, there may be political pressure on judges to "not dismiss these kinds of allegations outright," Ms. Das said.

In June, the U.S. Securities and Exchange Commission warned investors to "proceed with caution" with regard to investing in Chinese reverse mergers because many companies "either fail or struggle to remain viable following a reverse merger." It also

See **CHINA** page 21

Webinar covers how to prepare for catastrophes

Natural catastrophes can have a hugely disruptive impact on a business, affecting physical facilities, transportation, information technology systems, power supply and staffing. And the costs of such disruptions can be considerable, with long down periods threatening a businesses' very survival.

A free Sept. 14 *Business Insurance* webcast will feature business continuity experts who will explore issues risk managers and their companies should consider in developing plans. Panelists will include Gary S. Lynch, managing director at Marsh Risk Consulting, and public policy advisor Arietta Chakos.

Against a backdrop of real world events, the panelists will provide valuable insight aimed at helping organizations determine how they might be affected by catastrophic events, how to mitigate the impact on their operations, and the preparations necessary to ensure business continuity.

To register for the event, visit *www.businessinsurance.com/webinars.*

CATASTROPHES

U.K. riot damage giving rise to complex claims

Was recent civil unrest one event or many?

By SARAH VEYSEY

LONDON—Risk managers are sharing lessons learned from rioting and looting in many parts of England while single-event vs. multiple-event insurance coverage concerns have begun to arise.

The London-based Assn. of Insurance & Risk Managers set up an online resource for risk managers to gather information as a result of violence early this month that began in London and spread to several other cities, including Birmingham and Manchester (see box).

In addition, AIRMIC's retail special interest group has been particularly active in helping retailers exchange information in the wake of the attacks.

Many shops were damaged and ransacked as violence began Aug. 6 in Tottenham in north London after a peaceful protest about the fatal shooting of a local man by police spread to other parts of the country and then turned violent.

The London-based Assn. of British Insurers said the total cost to the industry likely will exceed £200 million ($325.6 million).

More than 1,000 people were charged as a result of the violence.

"Retailers certainly were the focus of the attacks and we all suffered to some extent," said John Windsor, chairman of AIRMIC's retail group.

"We've all learned that it has been crucial to have a business continuity plan and you need to get people around the table as quickly as possible" after an event has taken place, he said.

In addition, a useful lesson learned was assigning deputies to team leaders of various areas of the business continuity plan, which Mr. Windsor said ensured that team leaders did not become too exhausted.

Most retailers that suffered losses intend to pursue a claim with their insurers or against the police under the Riot (Damages) Act 1886, which enables insurers to subrogate losses to the police and also allows uninsured businesses or individuals to claim compensation from the police in the case of riots, he said.

Reacting to the riots and damage, U.K. Prime Minister David Cameron extended the time limit for filing claims under the law to 42 days from 14.

While many insurance policies have a seven-day notification clause, Zurich Financial Services Group Ltd. last week said it extended the deadline for its policyholders to file claims to 30 days from seven.

"The government is to be applauded for extending the time frame" for filing claims, but even 42 days is a tight deadline to file a complex claim, Mr. Windsor said.

He said that the sheer volume of claims likely to be filed as a result of the riots may result in a delay in processing them.

The insurance industry has responded well to policyholders' concerns about losses from the unrest, according to AIRMIC CEO John Hurrell.

One area still under discussion is whether the riots will be counted as one event or several events, he said.

If the riots are treated as different events, policyholder retentions would be greater than if they were classed as one event, he said. It appears as though insurers are addressing this issue on a case-by-case basis, he said.

It is important in such cases for policyholders to study their wordings carefully, said Caroline Woolley, London-based head of property for the Europe, Middle East and Africa region for Marsh Inc.

Some business interruption and property policies contain a 72-hour clause that likely would mean that losses occurring within that period would be treated as a single event, she said. Also, some policies have wording concerning protection and preservation of property.

For example, policyholders could be covered under business interruption insurance for any increased cost of protecting their business against damage if they had information that a threat was imminent, even if no damage occurred, she said. Policyholders that have such coverage need to demonstrate to their insurer that the damage threat was imminent, Ms. Woolley said.

"This is where information is key," she said.

For example, a separate accounting code for expenses connected with protecting a property makes it easier to prove the costs to an insurer, she said.

Another key area in some policies will be a "claims assistance" clause, which Ms. Woolley said covers the policyholder for the cost involved in engaging outside help to prepare a claim.

The use of claims assistance clauses is becoming more widespread, she said.

Many insurers last week were unable to estimate the extent of their exposure to riot-related losses, principally because of uncertainty surrounding business interruption claims.

A spokeswoman for the U.K. commercial lines unit of AXA S.A. said about 200 claims already had been filed.

In a statement, London-based Aviva P.L.C. said the majority of claims it had received were from commercial lines policyholders.

A spokesman for London-based RSA Insurance Group P.L.C. said it was too early for the insurer to estimate total claims.

RSA underwrote coverage for the Sony Corp. distribution center in Enfield, north London, which was destroyed by fire during the riots, sources said.

REUTERS

Many shops were damaged and ransacked, including a mobile phone shop above, as a peaceful protest in Tottenham in north London spread and led to violence in dozens of U.K. locations.

AREAS AFFECTED BY THE RIOTS

Violence in London affected the districts of:

- Brixton
- Bromley
- Camden
- Clapham
- Croydon
- Ealing
- East Ham
- Enfield
- Hackney
- Islington
- Lewisham
- Oxford Circus
- Peckham
- Stratford
- Waltham Forest
- Wood Green
- Woolwich

And then spread to several other English cities and towns, including:

- Birmingham
- Bristol
- Bury
- Gloucester
- Leicester
- Liverpool
- Manchester
- Nottingham
- Oldham
- Rochdale
- Salford
- Sefton
- West Bromwich
- Wolverhampton

HEALTH CARE BENEFITS

More detail needed on new health care benefit summaries

By JERRY GEISEL

WASHINGTON—A proposed regulation that would implement a requirement that employers issue a health care benefit statement to employees raises more questions than it answers, experts say.

The heart of the proposed regulation involves a multipage summary of health care benefits and coverage that is mandated by the federal health care reform law. The Internal Revenue Service and the Health and Human Services and Labor departments proposed the rule last week.

The statement, which employers and plan administrators would have to follow assuming the regulation is not altered, would have to be provided for every plan that an employer offers by March 23, 2012.

> 'There is just not enough here to tell us what to do.'
>
> Rich Stover, Buck Consultants L.L.C.

That is two years after enactment of the Patient Protection and Affordable Care Act.

One part of the Summary of Benefits and Coverage would be divided into three columns. One column, "Important Questions," would include:

- What is the premium?
- What is the overall deductible?
- Are there other deductibles for specific services?
- Is there an out-of-pocket limit on my expenses?
- What is not included in the out-of-pocket limit?

In an adjacent column, "Answers," responses to the questions would have to be provided. A third column, with the heading "Why this Matters," would include required additional detail.

In another section of the statement, employers would have to give examples of how coverage would apply in three specific situations: having a baby, treating breast cancer and managing diabetes. The government is considering adding three more unspecified examples.

For each example, employers would have to use a dollar figure dictated by the government on the amount that would be owed to providers. In the case of having a baby, the figure in the regulation is $10,000.

Then, the employer would fill in how much the employee would pay and how much the plan would pay.

Other information, also using government-supplied figures, would include sample care costs. For having a baby, cost information would include the first office visit, radiology, laboratory tests, and hospital charges for mother and child.

At the bottom of the example, under the heading, "You Pay," dollar figures would have to be provided on deductibles, copayments, coinsurance, and limits or exclusions.

Benefit experts say the proposed regulations raise numerous questions.

"There is just not enough here to tell us what to do," said Rich Stover, a principal at Buck Consultants L.L.C. in Secaucus, N.J.

For instance, the examples make no distinction between costs employees would pay depending on whether the service was delivered in or out of network, said Gretchen Young, senior vp-health policy with the ERISA Industry Committee in Washington.

In addition, requiring employers to use government-set figures,

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A LOT OF THINGS CAN HAPPEN IN A MAJOR STORM.
WE MADE SURE THIS DIDN'T.
448
SWELL'S SEAFOOD RESTAURANT
SWELL'S
SEAFOOD
RESTAURANT
Catch of the Day:
~~Sea Bass~~
BEEF

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

Don't wait for a riot to review coverage

By MATT DUNNING

As businesses in England begin to seek insurance coverage for revenue lost as a result of recent rioting, mid-market executives and business owners elsewhere might wonder how their business interruption coverage would respond to a sudden outbreak of civil unrest.

Mid-market companies can avoid battling their insurers over lost income in the event of a riot by thoroughly and regularly reviewing their policies and keeping tabs on the evolving nature of their total risk profile, including entities on both ends of the supply chain, experts say.

"Simply because a company loses income does not mean it has coverage for that loss," warned Stevan Phillips, a partner with the Seattle-based law firm of Stoel Rives L.L.P.

Most mid-market companies have some form of business interruption coverage built into their commercial property insurance policies that would respond to riot-related losses. Beyond income lost as a result of direct property damage, commercial property insurance also covers income lost due to restricted access to the property. In some cases, the coverage will pay employee wages in the event of a business interruption.

Separate insurance also is available for lost income due to utility service disruptions—primarily heating, cooling and electricity—and for losses by businesses that depend on the public's access to a nearby attraction, such as a stadium. But the parameters of coverage can vary depending on geography, industry and other factors.

"I am not sure there is a 'standard' business interruption policy regarding civil unrest," Mr. Phillips said. In civil unrest or large natural disasters, "there are a number of variations in policies which come into play."

Claims for lost income due to restricted access tend to be the most problematic because policies contain specific, often confusing criteria for qualified claims, including provisions regarding the duration of loss, proximity to the affected area and nature of restricted access, experts say.

For example, losses are typically not covered if the company was barred from its premises for less than 24 hours, said David Brenner, a principal at Seattle-based law firm Riddell Williams P.S. Insurers also usually impose a limit on how far a claimant's property can be from the restricted zone for there to be coverage. The policyholder also needs to show that the government's closure of an area precluded access to their property.

"That's definitely something to watch out for when you're putting a policy together," Mr. Brenner said, adding that many insurers switched from vague terms to more concrete mileage limits after the Sept. 11, 2001, terrorist attacks.

> **'Simply because a company loses income does not mean it has coverage for that loss.'**
>
> Stevan Phillips, Stoel Rives L.L.P.

Since most policies cover only complete inaccessibility, firms with facilities indirectly affected or companies with the ability to conduct business remotely, may not be able to claim business interruption losses, he noted.

The nature of a government-ordered blockade or evacuation also can be significant in determining the validity of the claim, said John Hughes, a New York-based senior vp in the global property practice of Marsh Inc. Insurers often limit coverage to cases in which access is prohibited due to an immediate threat to people or property, but restrictions designed to protect a certain area from possible harm would likely be excluded, even if they occur within a policy's proximity allowance, he said.

Mid-market businesses with multiple locations in affected areas could be subject to separate deductibles if the insurer deems the losses separate occurrences, said Mike Lebovitz, a Johnston, R.I.-based senior vp at Affiliated FM Insurance Co. Additionally, many mid-market companies tend to lump multiple locations together on a policy, not specifically naming them, which could become problematic if such unnamed locations are hit, he added.

"Sometimes unnamed locations have different coverage than the named locations," Mr. Lebovitz explained.

In addition to having a detailed knowledge of their local risks, mid-market companies should stay abreast of the risks posed to the entities on which they depend for both supplies and patronage, experts say.

Contingent business interruption coverage is available for companies worried that a disaster, whether natural or man-made, could render a key supplier or receiver incapable of conducting business. However, those policies carry many of the same restrictions as basic business interruption coverage, along with several limitations specific to the entities to be insured. Most insurers require companies to name the entities targeted in the coverage in advance and generally cover only "first-tier" suppliers and receivers.

"That would mean that your supplier is covered, but the supplier of your supplier is likely not included in the policy," Mr. Brenner said.

How to prepare for interruptions

Attorneys and insurance experts offer these tips on preparing for business interruption and pursuing reimbursement from insurers:

PREPARATION

- **EVALUATE YOUR RISK PROFILE:** Take stock of specific risks posed to your company, industry and area. Stay informed of developments that could lead to civil unrest. Perform the same evaluation for entities in your supply chain, primary customers and receivers.
- **KNOW YOUR POLICY:** Work with your broker or risk consultant to understand the limitations of your business interruption coverage, including duration and proximity exclusions.
- **DOCUMENTATION:** Insurers typically require claimants to provide evidence of damage or lost income, and proof of a government-ordered evacuation, if applicable. Keep copies of accounting records and your complete insurance policy in a secure offsite location.
- **LOSS CONTROL:** Invest in safety and security equipment. Rolling metal gates and shutters can prevent glass damage and looting, and well-maintained sprinkler systems can mitigate fire damage.
- **DRAFT A PLAN:** Establish internal protocols and procedures for disaster response, including designating emergency contacts and meeting points for employees. Maintain communication with local authorities, city officials and claims adjusters.

RECOVERY

- **REGAIN CONTROL:** Re-establish climate control to preserve what's been damaged and to prevent mold growth. Separate damaged and undamaged property, and hire a contractor to begin repairs.
- **TALLY THE DAMAGE:** Take a detailed inventory of what's been damaged or destroyed, noting the value and nature of the damage. For interruption claims, a forensic accountant may be needed to assess lost revenue.
- **NOTIFICATION:** Whether you intend to pursue a claim or not, it is important to notify your insurer or broker that damage or losses have been sustained. Also notify police of any property that has been stolen, damaged or destroyed.
- **WEIGH YOUR OPTIONS:** While reimbursement may be available, waiting periods, deductibles and payment caps may make it more beneficial to restock, repair damage and reopen before the claim is settled.

Opinions

EDITORIAL

EEOC guidance as clear as mud

EMPLOYERS HAVE TO KNOW they're in trouble when a commissioner of the Equal Employment Opportunity Commission describes his own agency's guidance on federal disability law as a "hodgepodge."

Commissioner Stuart J. Ishimaru made that comment at a June hearing on the issue of leave as reasonable accommodation under the Americans with Disabilities Act.

Unlike other laws—such as the Family and Medical Leave Act, which provides up to 12 weeks of leave time—the Americans with Disabilities Act requires employers to handle each leave request on a case-by-case basis after engaging in an interactive dialogue with the employee.

At the same time, employers are not required to make decisions that will cause them to suffer an undue hardship in running their business.

While this may sound simple on its face, it is far from easy in actual practice in employers' efforts to comply with the federal law.

Of particular concern is the employee who asks for a certain period of time off, then another period, then another. Where is the employer supposed to draw the line in accommodating the worker's requests?

Also difficult are situations in which the employer may be forced to explain to a worker how he or she cannot give the same amount of leave time as another worker was given the previous year for the same condition, because the employer's business situation has changed.

Compounding the problem has been the EEOC's aggressive pursuit of litigation against employers with "neutral" maximum leave policies, which the agency has deemed to be inflexible and contrary to the ADA.

In 2009, for instance, Sears Roebuck & Co. paid a $6.2 million settlement in a case in which the EEOC had accused it of having an inflexible policy on exhausting of workers compensation leave.

While this may be an intrinsically thorny issue, having unclear or inconsistent guidance from the EEOC does not help the situation.

Employers can only hope that when the EEOC comes out with the additional guidance on this issue, which is expected sometime this year, that their difficult task will be made easier.

SCHILLERSTROM

COMMENTARY

'Flight risks' need an anchor

As the economy improves, companies face a cyclical risk. I've heard it called it "flight risk," or the increased probability that employers will see some of their most productive workers walk out the door.

Employers with already slimmed-down workforces can't afford that.

It's ironic, but with millions of Americans unemployed, plenty of companies still struggle to fill job openings, Reuters reported this month.

Several factors are to blame, including a mismatch between the supply of skilled workers and employer labor demands, potential employees who can't relocate because home values have plummeted, and workers who have been unemployed so long that their skills have eroded.

ROBERTO
CENICEROS
SENIOR EDITOR

And this is happening in a labor market where employers should find it easier to fill jobs.

Imagine the stress that some executives at companies with thinned workforces will face when economic times improve and employees find it easier to move elsewhere.

Positions left unfilled longer could hinder productivity and the bottom line, just when demand for products and services is increasing.

There is also the baby boomer factor. Once the economy improves and lifts the stock market with it, boomers who decide to retire may well take with them highly desirable abilities, further depleting the labor pool's skills.

At the Disability Management Employer Coalition's recent annual conference in Dallas, this topic came up several times.

Keynote speaker Dr. Ron Leopold, vp and national medical director for MetLife Inc., said observers eventually expect to see a "resume tsunami."

He cited a recent MetLife employee benefits trend study estimating that 35% of U.S. workers hope to be working elsewhere when the job market opens up. And there is a correlation with productivity: The more productive the worker, the more likely they are to leave.

Employees are unhappy with the workload companies have laid on them in an effort to drive productivity and profitability during challenging economic times.

"They are not feeling the love," Dr. Leopold said.

But how can employers retain workers they value when competitors desiring their skills attempt to pull them away? Dr. Leopold offered some suggestions:

- Focus on your workers, not just the bottom line, because successful businesses never commoditize their human capital.
- Use health care benefits to engage workers and send the message that they are valued.
- Use short-term disability episodes and corresponding health improvement programs, for instance, to help employees understand their illnesses and what drives them and the related medical costs.

It's a window of opportunity to help keep productive workers on the job and it's a way to affect their feelings about their employer.

Employers that do that perhaps can mitigate their flight risk.

Contact: *rceniceros@businessinsurance.com*

LETTERS

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

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PUBLISHED AT 360 N. Michigan Ave., Chicago, Ill. 60601-3806, Fax: 312-280-3174, *biweb@crain.com*. Offices: 711 Third Ave., New York, N.Y. 10017-5806, Fax: 212-210-0704; Suite 814, National Press Building, Washington, D.C. 20045-1801, Fax: 202-638-3155; 6500 Wilshire Blvd., Suite 2300, Los Angeles, Calif. 90048-4947, Fax: 323-655-8157; 967 Bermuda Court, Sunnyvale, Calif. 94086-6750, Fax: 408-774-1155; 21 St. Thomas St., London SE1 9RY, U.K. Fax: +44-(0)20-7457-1440; Fax: 312 280-3174. 77 Franklin St., Suite 809, Boston, Mass. 02110-1510; Fax: 212-210-0704. $5 a copy and $97 a year in the U.S., $130 in Canada and Mexico (includes GST). All other countries, $230 a year (includes expedited air delivery). **FOR SUBSCRIPTION INFORMATION** and delivery concerns please email *customerservice@businessinsurance.com* or call 1-877-812-1587 (in the U.S. and Canada) or 1-313-446-0405 (all other locations.) Send subscription correspondence to Audience Development Department, *Business Insurance*, 360 N. Michigan Ave., Chicago, IL 60601-3806. Microfilm copies available: University Microfilms, 300 Zeeb Road, Ann Arbor, Mich. 48013. Microfiche copies: Bell & Howell, Micro Photo Division, Old Mansfield Road, Wooster, Ohio 44691. Portions of the editorial content of this issue are available for reprint or reproduction in other media. **FOR REPRINTS** or reprint permission, please contact Lauren Melesio/Crain Communications at 212-210-0707 or e-mail *BusinessInsurance@reprints.crain.com.*

AP PHOTO

Tornadoes ravaged the Alberta City community of Tuscaloosa, Ala., along with several other cities, In May. The impact of first-half 2011 catastrophes showed up in the profits numbers of large U.S. commercial property/casualty insurers. The threat of an active hurricane season still hangs over insurers.

Cat losses hit insurer profits

Soft market continues despite sharp drop in first-half income

By MARK A. HOFMANN

Property/casualty insurers, battered by two quarters of catastrophe losses, generally experienced significant drops in net income during the first half of the year despite continued reserve releases.

Yet many observers say the industry performed a bit better than might have been expected as the soft market persists despite firming of prices in limited categories.

Analysts also point out that insurers have entered the quarter traditionally hit hardest by hurricane losses.

The impact of the catastrophes was evident in a survey of large U.S. commercial property/casualty insurers that report quarterly results. First-half net written premiums for the group increased 7.4% over the same period last year and net income increased 17.8% in the same period. But the figure included a huge rebound by American International Group Inc., which had suffered a $799 million loss during the same period of 2010 followed by first-half 2011 net income of $2.11 billion. Excluding the AIG performance, the nine remaining insurance groups registered a 35.9% drop in net income over the same period a year earlier. The group's cumulative combined ratio deteriorated 8.5 points to 104.3% (see chart, page 10).

INDUSTRY FINANCIALS:
FIRST-HALF RESULTS

Still, some observers say the situation could have been far worse.

"Second-quarter results on an absolute basis were quite bad, mostly driven by large catastrophe losses," said J. Paul Newsome, managing partner at Sandler O'Neill & Partners L.P. in Chicago. "But relative to expectations, it was a slightly different story. The results were actually typically a little bit better than what I was looking for, but not always."

"There was a lot of good news, bad news going on over the first half," said Mark Dwelle, an insurance analyst with RBC Capital Markets, a unit of RBC Dominion Securities Inc. in Richmond, Va. "Really, no one was spared catastrophe losses; but at the same time, almost everybody enjoyed at least a modest degree—if not a significant degree—of new premium growth and rate firming."

"We always expect catastrophes to occur; so even though the story for the first half was very high catastrophe losses,

See **PROPERTY** next page

'Really, no one was spared catastrophe losses; but at the same time, almost everybody enjoyed at least a modest degree—if not a significant degree—of new premium growth and rate firming.'

Mark Dwelle, RBC Dominion Securities Inc.

INDUSTRY FINANCIALS:
First-Half Results

SPOTLIGHT

NEXT SPOTLIGHT Sept. 12: Workers Comp & Safety Management

Property: Cat losses hit profits

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we still think property/casualty companies fared well," said Enrico Leo, assistant vp-insurance team at Moody's Investors Service in New York.

Mr. Leo said prior-year reserve releases still are occurring, which helps offset catastrophe losses.

Prior-period reserve development may be a little slower now than a year ago, said James Auden, an analyst with Fitch Ratings in Chicago. Reserve redundancy that developed during the hard market has diminished in the past few years, he said.

"On the investment side, the other driver of earnings, investment yields tend to be very low," Mr. Auden said.

"I think it's pretty natural for reserves to fall over time," said Sandler O'Neill's Mr. Newsome. "If anything, I've been surprised that the reserve releases have held up as long as they have." Reserve releases are likely to decline slightly "as time goes on—as long as we don't get a major dose of inflation," he said.

But not everyone views the sector's performance as favorably.

Meyer Shields, director at Stifel Nicolaus & Co. in Baltimore, said property/casualty insurers performed "not so well" during the first half.

"I think the catastrophes actually disguise how bad things are," said Mr. Shields.

For the more than 50 companies that the firm tracks, reserve releases were "down about 60% year-over-year for the second quarter, he said. That means that underwriting profits are getting worse.

"There was a lot of chatter about the catastrophes. That was the big story in the quarter, but I don't think that was the most important," Mr. Shields said.

Some analysts say some insurance rates are firming.

"I guess we're getting some of the outcome on the rate side that we expected, but I would have assumed it would have been more supported by economic growth than the fact that everyone lost money and had to pick up rate," said RBC's Mr. Dwelle.

There has been "a little bit of improvement in the pricing environment in the second quarter compared to the first," said Mr. Newsome, who also noted it was not broad-based.

"I think the critical issue is whether or not we have another round of very volatile investments that hurt insurer income, and investment income appears to be at a stage where a lot of insurers are showing a lower investment income," he said.

"We are seeing premium growth maybe a little better than expected," with generally stable pricing and some companies "reporting a modest uptick," said Fitch's Mr. Auden.

Pricing remains soft

Still, the insurance market remains "very soft," Mr. Auden said.

"Price competition is still prevalent in the industry," said Moody's Mr. Leo. "There are some pockets that seem to be hardening a little bit. But by and large, long-tail commercial casualty is still a soft market, but the rate of decline has slowed and, in some cases, bottomed out."

For insurers, analysts say the hurricane season that runs through Nov. 30 could prove crucial.

"Peak hurricane months are upon us—that's the wild card," said Mr. Leo. "Absent a large event, it's probably going to be more of the same—soft pricing, select pockets are going to be firming up in terms of rates."

Mr. Newsome noted that the third quarter of any year typically is the worst for catastrophe losses for the property/casualty industry. He said a third quarter with light catastrophe losses would result in the industry remaining overcapitalized.

However, "if we have a bad one, things could be very different, because the second quarter was typically a loss for most insurers," Mr. Newsome said.

Mr. Shields predicted "more of the same ahead," saying he is not sure even a major catastrophe would drive the industry into a full-blown hard market.

PROPERTY/CASUALTY INSURERS' FIRST-HALF 2011 RESULTS

Largest U.S.-based or U.S.-listed property/casualty insurers that report quarterly results. Ranked by net premiums written, in millions of dollars.

Insurer	Net premiums written 2011	% Increase (decrease) 2011-2010	Net income 2011	% Increase (decrease) 2011-2010	Consolidated revenues 2011	Combined ratio 2011[1]	Combined ratio 2010[1]
American International Group Inc.	$18,333	18.9%	$2,110	N/M[2]	$34,112	111.2%	102.3%
Liberty Mutual Insurance Co.	15,306	5.6	192	(64.1)	16,941	107.5	103.5
Travelers Cos. Inc.	11,254	2.9	475	(63.9)	12,666	110.1	95.8
ACE Ltd.	7,399	5.8	866	(39.5)	8,061	98.4	91.2
Chubb Corp.	5,914	5.0	928	(5.5)	6,820	94.3	92.0
Hartford Financial Services Group Inc.	3,143	8.4	535	35.4	11,701	101.7	89.6
CNA Financial Corp.	3,130	5.4	349	(33.9)	4,513	103.8	95.8
W.R. Berkley Corp.	2,141	10.0	199.6	(12.8)	2,505	98.8	94.2
American Financial Group Inc.	1,700	9.5	138	(35.5)	2,132	97.0	88.0
Cincinnati Financial Corp.	1,547	2.8	13	(86.3)	1,904	120.1	105.2
Total	$69,867	7.4%	$5,805	17.8%	$99,720	104.3%	95.8%

1 Combined ratio includes dividends. 2 N/M = Not meaningful.
Source: Company reports

Largest brokers report revenue increases despite slow economy

An uptick in growth combines with efforts to limit expenses

By SONJA RYST

While the largest publicly traded insurance brokers increased their total revenue during the first half of the year, net income for three of the five declined due to reasons specific to each business.

Brokers' revenue "growth was partly just the relative improvement in the economy," said J. Paul Newsome, managing partner at Sandler O'Neill & Partners L.P. in Chicago. While insurance pricing firmed in limited areas, such as catastrophe-exposed property, overall "it's not a hard market by any standard," he said.

INDUSTRY FINANCIALS

BROKERS

"We're seeing positive signs" in the brokerage sector, said Cliff Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York. "Growth is picking up despite the worry in the world."

Others said the same. "Most of the commentary we've heard from the companies is that the economy is on its way to recovery," said Meyer Shields, an analyst for Baltimore-based Stifel, Nicolaus & Co. Inc.

"We've done a pretty good job of growing this business in difficult times and maintaining expenses," Brian Duperreault, president and CEO of New York-based Marsh & McLennan Cos. Inc., said during an analyst conference call. "So frankly, I don't worry about (the possibility of a slowdown in business because of weak economy) too much."

During the first half, Marsh's revenue climbed 10.9% to $5.81 billion compared with the same period of 2010. Meanwhile, its net income jumped 25.4% to $607 million.

Sales growth included MMC's Marsh Inc. brokerage and risk advisory unit, where underlying revenue grew across all of its geographies.

"We have had strong new business and really are executing much better than we have in the past," Marsh President and CEO Peter Zaffino said during the conference call.

Meanwhile, Chicago-based Aon Corp. boosted its net income by 52% to $504 million during the first half. Aon, which said it benefited from savings and sales gains related to last year's acquisition of consultant Hewitt Associates Inc.,

Continued on next page

CONTINUED FROM PREVIOUS PAGE

boosted its first-half profit by 47% to $5.55 billion.

"While macro conditions remain challenging globally, we are firmly on track to deliver growth in 2011, our restructuring programs are delivering cost savings and we have solid financial flexibility," Aon President and CEO Greg Case said in a statement on the broker's first-half earnings report.

While Aon and Marsh have mostly completed restructuring efforts, London-based Willis Group Holdings P.L.C. is in the midst of revamping its business.

While Willis' first-half revenue increased 5.6% to $1.87 billion, its net income sank to $119 million from $293 million during the same period in 2010.

While there has been "some improvement" in pricing for catastrophe-exposed property lines, the market still has "substantial capacity," Willis Chairman and CEO Joe Plumeri said during an analyst call. "We don't expect the environment to change significantly anytime soon."

Willis took charges, including $81 million net of taxes, for its operational review, an effort intended to align resources with growth strategies that included elimination of 600 positions between January and June. Willis also took a $171 million hit related to debt restructuring.

> 'Most of the commentary we've heard from the companies is that the economy is on its way to recovery.'
>
> Meyer Shields,
> Stifel, Nicolaus & Co. Inc.

"The strength of our diversified global business was again shown…even with continued global economic pressures and little change in the overall rate environment," Mr. Plumeri said.

But broker restructuring is expected to help their performance in the future, said Bruce Ballentine, an analyst in New York at Moody's Investors Service. "We expect further solid performance from the brokers, helped by some of the restructuring actions they've all taken over the last few years," he said.

Meanwhile, Arthur J. Gallagher & Co.'s first-half brokerage revenue climbed 5.5% to $993.5 million while its net income dropped 22.3% to $56.9 million from the year-earlier period.

The Itasca, Ill.-based broker acquired U.K. brokerage Heath Lambert Ltd. for about $158 million in May, which Gallagher Chairman, President and CEO J. Patrick Gallagher said is growing the broker's international presence. "We are doing a good job of controlling our expenses," he said in a statement.

Gallagher also purchased the third-party administrator and managed care service provider business of GAB Robins North America Inc. this year.

Middle market lags

Daytona Beach, Fla.-based Brown & Brown Inc. said its first-half revenue increased slightly to $509 million while its net income declined slightly to $83.3 million.

"We haven't seen improvement in the middle market as much as some people may have thought," Brown & Brown President and CEO J. Powell Brown said during an analyst call. He said he expects the environment to remain the same through year-end.

Among factors affecting its performance, Brown & Brown said insurers' recent losses put a dent in its profit-sharing contingent commissions. It reported $2.3 million in contingent commissions during this year's second quarter vs. $6.4 million last year.

Despite the various challenges, insurance brokerages "demonstrated great ability to keep profit margins high in a very difficult operating environment," said Tom Mitchell, an analyst in New York at securities firm Miller Tabak & Co. L.L.C. This suggests they'll have "enormous" room for improvement once global economic growth and customer demand begin to pick up more quickly, he added.

LARGEST INSURANCE BROKERS' FIRST-HALF 2011 RESULTS

Results for the largest publicly traded insurance brokers, ranked by total revenues in millions of dollars.

BROKER	TOTAL REVENUES	% INCREASE (DECREASE) FROM 2010	2011 NET INCOME*	% INCREASE (DECREASE) FROM 2010
Marsh & McLennan Cos. Inc.	$5,812	10.9%	$607	25.4%
Aon Corp.	$5,547	47.0%	$504	52.3%
Willis Group Holdings P.L.C.	$1,871	5.6%	$119	(59.4%)
Arthur J. Gallagher & Co.	$993.5	5.5%	$56.9	(22.3%)
Brown & Brown Inc.	$509	2.6%	$83.3	(2.3%)

**Includes the impact of acquisitions or discontinued operations.*
Source: Company reports

Lower utilization ups health insurers' earnings

Executives, analysts anticipate trend to end within a year

By MATT DUNNING

MAJOR U.S. HEALTH INSURERS' FIRST-HALF 2011 RESULTS

Largest publicly traded U.S. health insurers ranked by reported revenues, in millions for dollars and enrollment.

Insurer	2011 Revenue	2010 Revenue	% Increase (decrease)*	2011 Enrollment	2010 Enrollment	% Increase (decrease)*	2011 Net income	2010 Net income	% Increase (decrease)*
UnitedHealth Group Inc.	$50,666	$46,475	9.0%	39.0	39.0	(0.1%)	$2,613	$2,314	13.0%
WellPoint Inc.	29,995	29,504	1.7	34.2	33.4	2.1	1,628	1,599	1.8
Humana Inc.	18,474	16,969	8.9	11.0	10.3	6.6	775	559	29.5
Aetna Inc.	16,732	17,167	(2.5)	18.2	18.6	(1.9)	1,122	1,053	6.6
CIGNA Corp.	10,922	10,558	4.1	12.6	12.0	5.3	838	579	44.7
Health Net Inc.	6,302	6,835	(8.0)	2.9	2.9	0.8	(49.9)	62.2	N/M
Coventry Health Care Inc.	6,082	5,727	6.2	4.5	4.9	(6.7)	335	98	241.8

*N/M-not meaningful. *Percentage change reflects unrounded figures*
Source: Company reports

Bolstered mainly by reduced claims and modest enrollment gains, analysts say the nation's largest publicly traded health insurers met or exceeded their expectations for the first half of 2011.

Revenues for the top seven U.S. managed care firms increased an average of 5.1% vs. the first half of last year. Six posted higher net income during the first half, while five increased their enrollment, according to company documents (see chart).

INDUSTRY FINANCIALS
HEALTH INSURERS

However, analysts and company officials warned that the strong first-half returns relied too heavily on depressed utilization numbers, which have remained at near-historic lows due to a weak economy, to be considered sustainable in the long term.

In conference calls with investors, executives at several of the largest publicly traded health insurers said they expect utilization rates to increase in the next six to 12 months, but that was prior to the most recent stock market shake-up and renewed skepticism about the strength of the economy overall.

"Theses companies all agree that at some point, utilization is going to pick up," said Matthew Coffina, an equity analyst at Chicago-based Morningstar Inc. "As the economy improves, utilization will probably normalize, but it's anyone's guess as to when that will actually happen," he said.

5.1%

Revenue for the top seven U.S. managed care firms increased an average of 5.1% vs. the first half of last year.

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Six of the top seven U.S. managed care firms posted higher net income during the first half, while five increased their enrollment, according to company documents

At the top of the sector, Minnetonka, Minn.-based UnitedHealth Group Inc. had $50.67 billion in first-half revenue, a 9% increase from a year ago. The company's first-half net income totaled $2.61 billion, a 13% bump from the same period last year. Its membership remained essentially flat.

Second-quarter revenue rebounded for Indianapolis-based WellPoint Inc. after slumping in the first quarter. The company posted first-half total revenue of nearly $30 billion, 1.7% better than the previous year. Its net income increased 1.8% to nearly $1.63 billion.

WellPoint also reported a 2.1% increase in enrollment, totaling 34.2 million members. But it also said during an analyst conference call that it expects to shed most of those gains by the end of the year through attrition, due to poor job growth and other economic factors.

Louisville, Ky.-based Humana Inc. and Philadelphia-based CIGNA Corp. also reported significant jumps in revenue and profit. Humana's total revenue in the first six months of 2011, $18.47 billion, was 8.9% higher than the same period in 2010. Its net income jumped 29.5% to $775 million.

CIGNA, meanwhile, turned in a more modest 4.1% year-over-year increase in revenue, which totaled $10.92 billion.

However, the company posted a 44.7% increase in net income, which rose to $838 million. Analysts said the company's international segments were the key drivers of its growth.

Bethesda, Md.-based Coventry Health Care Inc. posted the

Continued on next page

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largest gain in net income among the seven health insurers. Its $335 million in first-half net income was 241.8% higher than the same period last year. In conference calls with analysts, company officials attributed the surge to savings from the settlement of a provider class action lawsuit in Louisiana against one of its subsidiaries that resulted in a payout much lower than Coventry had anticipated.

Not all of the largest managed care companies' year-over-year comparisons were positive.

After shedding nearly 700,000 lives in the first quarter, Hartford, Conn.-based Aetna Inc. grew its enrollment by 400,000 in the second quarter but remained 1.9% under its first-half 2010 benchmark. The company said it expects to lose another 300,000 lives in January 2012 due to the lapse of two accounts.

As the year began, investors and analysts were worried about the potential impact newly mandated minimum loss ratios would have on the insurers' balance sheets. But midway through 2011, analysts said the MLR issue largely has been mitigated by ongoing depressed utilization rates and is unlikely to affect earnings through the rest of this year.

"Given that those MLR floors were implemented for 2011, most of those impacts should have been felt by now," Mr. Coffina said. "That didn't happen, which means it's probably not likely to in the last half of the year."

Looking ahead, analysts said new challenges await the health care industry in what promise to be contentious negotiations on a long-term deficit solution in Washington. Twelve members of Congress this fall plan to devise more than $1 trillion in federal budget cuts, which analysts said is all but assured to affect funding for Medicare and Medicaid.

"This joint committee is eventually going to have to cut Medicare," said David Windley, a Nashville, Tenn.-based equity analyst for Jefferies & Co. Inc. "There's really no way around that, and concerns about rate cuts to Medicare could have a negative impact" on health insurers in general.

Analysts agree that the greatest obstacle health care insurers will face in the coming months is the state of the economy and particularly the nation's lackluster jobs market.

Joseph France, an equity analyst at New York-based Gleacher & Co. Securities Inc., said year-over-year results likely would remain favorable for the rest of 2011, but largely because they have been inflated based on abnormally low medical costs.

"That has to moderate at some point, and that means you're going to have fewer positive surprises," Mr. France said. Without significant growth in jobs, which analysts said is unlikely given the recent economic volatility and looming deficit battle, profit margins are positioned to flatten or fall in 2012.

'Virtually all of the business in 2011 was priced in 2010 during a period when costs were expected to rise, and they didn't. I don't think that delta is going to be as great in 2012.'

Joseph France, Gleacher & Co. Securities Inc.

"We're projecting flat or down earnings, simply because they don't have the tail wind of favorable development from prior years and prior quarters," Mr. France said.

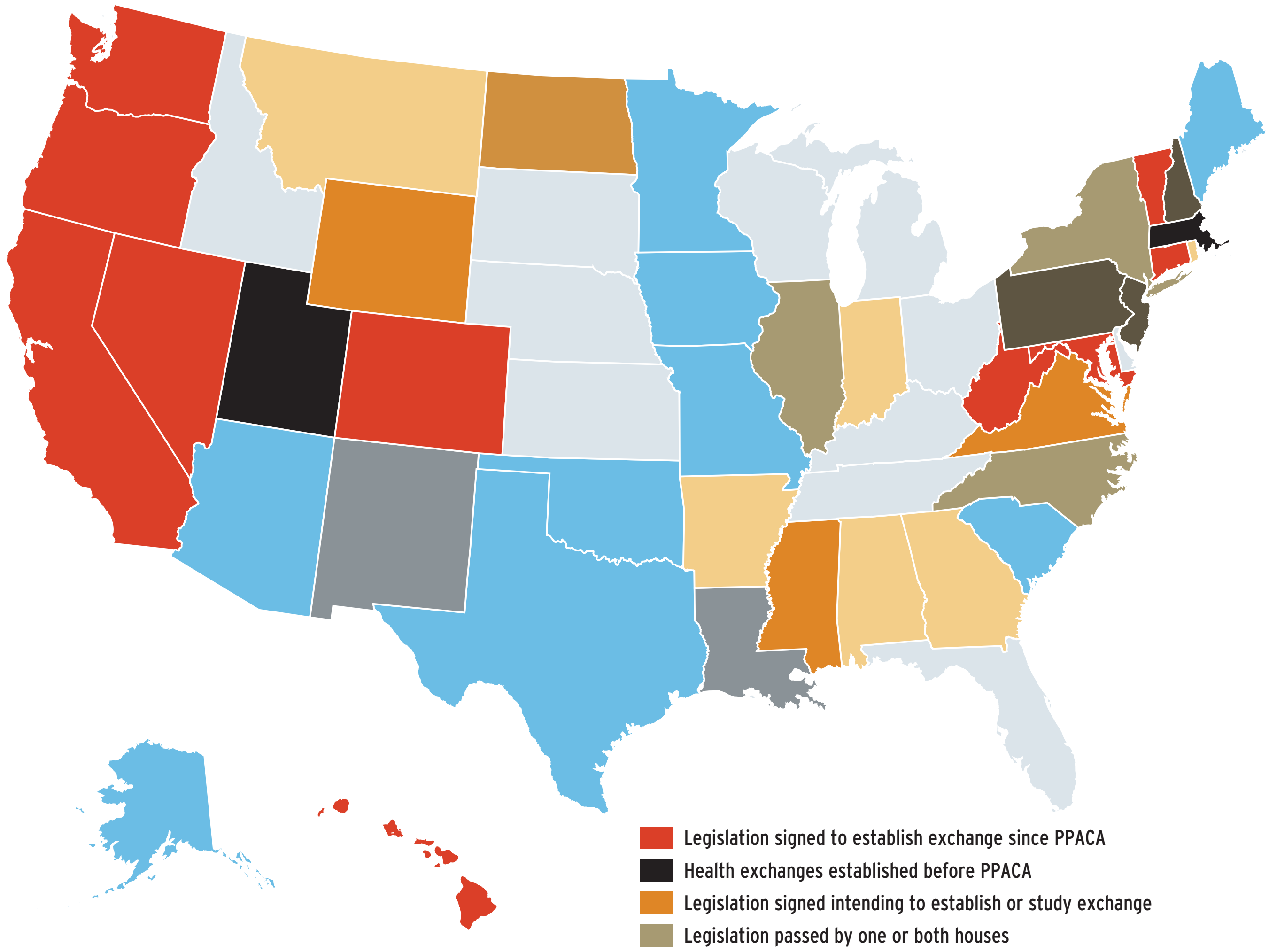
"Virtually all of the business in 2011 was priced in 2010 during a period when costs were expected to rise, and they didn't. I don't think that delta is going to be as great in 2012," he said.

HEALTH CARE REFORM:
Impact on Employers

SPOTLIGHT

STATE HEALTH EXCHANGES

Status of state efforts to establish health insurance exchanges as mandated by the federal Patient Protection and Affordable Care Act, under which states are to set up health insurance exchanges starting in 2014. The exchanges will be available to the lower-income uninsured, other individuals and small employers. States can open such exchanges to large employers in 2017.



- Legislation signed to establish exchange since PPACA
- Health exchanges established before PPACA
- Legislation signed intending to establish or study exchange
- Legislation passed by one or both houses
- Legislation pending in one or both houses [includes District of Columbia]
- Legislation failed
- Governor vetoed legislation
- No legislation
- Governor pursued nonlegislative options

Source: Commonwealth Fund Analysis of National Conference of State Legislatures Data as of July

Exchanges won't alter landscape

Large, midsize employers unlikely to drop coverage once state facilities open

By JOANNE WOJCIK

Despite early speculation to the contrary, employers are not expected to drop their health plans in droves after insurance exchanges open in 2014 under the Patient Protection and Affordable Care Act. Now that the legislative dust has settled, it appears only a fraction of employers are likely to do so.

Small employers and those with large part-time or seasonal workforces are among the most likely to discontinue their health care benefit programs, according to consultants. However, large and midsize employers are expected to stay the course, at least until the exchanges prove to be a viable alternative, consultants say.

A recent survey published by New York-based benefit consultant Mercer L.L.C., found that just 2% of employers are "very likely" to terminate medical plans after the insurance exchanges are operational, with another 6% "likely to do so" (*BI*, Aug. 1). However, 20% of small employers, defined as those with 500 or fewer employees, said they were likely to drop coverage, according to Beth Umland, director of research for health and benefits at Mercer.

Regardless of what they ultimately decide to do, though, most employers are evaluating their options, benefit consultants say.

"It's irresistible, but everybody's going to sit down and do the math. How much to stay in vs. get out? If the math says getting out is cheaper, they are going to be tempted to get out," said J.D. Piro, national practice leader for health and benefit legal consulting group Aon Hewitt Inc. in Norwalk, Conn.

But the success of the PPACA "depends on employers staying in the game," he said. "The government can't afford 160 million Americans abandoning the private health care market. If that begins to happen, the $2,000 penalty will become a $4,000 or $8,000 penalty, or maybe even a percent of payroll penalty," Mr. Piro said. At that point, "the math doesn't work anymore," he said.

In fact, that's what happened several

See **EXCHANGES** page 16

HEALTH EXCHANGE ASSISTANCE

*Federal grants awarded to states where legislation to establish exchanges has been signed into law, as of Aug. 15.**

STATE	AMOUNT
California	$40,421,383
Colorado	$999,987
Connecticut	$7,684,783
Hawaii	$1,000,000
Maryland	$34,413,430
Nevada	$5,045,076
Oregon	$58,065,907
Washington	$23,938,956
West Virginia	$10,667,694

**Excludes states where legislation has been signed intending to establish or study health insurance exchanges or states that implemented health insurance exchanges before PPACA.*

Source: National Conference of State Legislatures

FOR IN-DEPTH INFO ON CHANGES FROM HEALTH REFORM, VISIT THE ONLINE SOLUTION ARC ON THE BENEFITS MANAGEMENT CHANNEL OF

BUSINESSINSURANCE.COM

Exchanges: Employers plan to keep coverage

CONTINUED FROM PAGE 14

years ago when California lawmakers were considering whether to enact "pay or play" legislation that would have required employers to provide health care coverage or pay a tax to the state to do it for them, Mr. Piro said.

"At first it was just 3% of payroll, but when a lot of employers indicated they'd drop benefits, it fell apart," he said.

Employers had the opposite reaction in Massachusetts after that state passed its pioneering health care reform legislation that served as the model for the federal law.

Last year, 77% of Massachusetts employers offered coverage to employees, virtually unchanged from 76% in 2009, but up from 70% in 2005, the year before the passage of the state's health care reform legislation, according to the survey by the Massachusetts Division of Health Care Finance and Policy (*BI*, July 27).

Steve Wojcik, vp of public policy at the National Business Group on Health in Washington, expects that most employers will stay the course, at least in the near term.

"Beginning in 2014 and several years afterward, all employers will be comparing their coverage with the exchange coverage if for no other reason than because their employees will be doing that. They will want to make sure their coverage stacks up," he said. "Then, maybe in the longer term, if the exchanges actually work as intended and provide affordable choices, it may be an option for employers to consider in the future."

At some point, "there may be populations that may find the exchange coverage better," he said, citing as examples early retirees and COBRA-eligible individuals, "especially if they are eligible for a tax credit. There also may be some populations that employers don't cover at all, like part-time, contract or temporary workers. But that's not the same as employers dropping coverage," Mr. Wojcik said.

"Another population that may seek coverage through exchanges (is) dependents of employees at small companies," especially if employers reduce their subsidization of dependent coverage, he said.

Eileen Quenell, middle-market practice leader at Towers Watson & Co. in Arlington, Va., said the employers most likely to drop coverage are those whose workforces are comprised of large numbers of low-wage employees, or those that have high health care coverage opt-out or attrition rates.

She cited as examples employers in the retail and hospitality industries, or health care-related businesses such as extended-care facilities.

"It's the demographic. If there are greater than 25% opt-out rates, those are the ones that will be looking seriously at pay vs. play. We suspect the employees that are already opting out would become eligible for Medicaid or for subsidies," Ms. Quenell said.

However, "for the majority of middle-market companies that do not have this dynamic, the sense is they are going to wait and see what the exchanges look like in 2014," she said. Employers have "a healthy degree of skepticism" about whether the exchanges will provide viable alternative coverage options to their employees, she said.

It appears that even when it makes financial sense for employers to drop coverage and pay the $2,000 per-employee penalty to the federal government, they are reluctant to do so, according to Mark Olson, a senior consultant at Towers Watson in Boston.

DROPPING COVERAGE?

Survey results vary on the percentage of employers that may drop their health care plans after 2014, when the employer coverage mandate goes into effect.

ORGANIZATION: McKinsey & Co.

FINDINGS: 30% of respondents said they "definitely" or "probably" would drop coverage.

ORGANIZATION: Buck Consultants L.L.C.

FINDINGS: 8% of respondents say they would "very seriously" consider dropping coverage and 20% said they would consider it.*

ORGANIZATION: Mercer L.L.C.

FINDINGS: 6% of employers with at least 500 employees and 20% of employers with 10-499 employees said it was "likely" they would drop coverage.

**Respondents made up of health care organizations*

"We have two or three clients that I don't know how they could reach any other conclusion" but to drop coverage, Mr. Olson said. "They don't want to face the fact that they'd be better off paying the $2,000 and walking away. One client has a 30% opt-out rate because they charge a fair amount for contributions. Where benefits are needed to attract and retain employees, no one wants to be the first to drop coverage."

Aron Minken, a director at PricewaterhouseCoopers L.L.P. in New York, said that while most midsize employers are "staying the course," at least in the short-term, they are "keeping a very close eye on what's happening." But, Mr. Minken shares Mr. Wojcik's view that once the exchanges are established, some midsize employers may try to leverage them for certain populations, such as for part-time or seasonal workers.

Alternatively, midsize employers may offer to pay for a minimum, or bronze-level, plan in the exchange and then offer supplemental benefit programs through the workplace to differentiate themselves, Mr. Minken said.

Laurel Pickering, executive director of the Northeast Business Group on Health in New York, said none of the NEBGH's members, which mostly are large employers with 5,000 or more employees, are considering dropping coverage. On the contrary, many are discussing "doubling down and focusing on wellness."

Bill Guerci, a principal at middle-market broker Solid Benefit Guidance L.L.C. in River Vale, N.J., said his firm has been doing financial analyses on behalf of clients. So far, none of the employers with 200 to 1,000 employees have decided to drop benefits, because most are wary of the exchange offerings, Mr. Guerci said.

"Depending on the structure and the cost of the products that are in it, (exchanges) may be an option. But it's kind of like saying, 'How do you like the house?' without seeing the house," he said.

A large Edina, Minn.-based employer that publicly announced in March its consideration of dropping coverage appears to be having second thoughts.

Randy Pearce, president of Regis Corp., which operates Regis Salons, Supercuts and MasterCuts, among others, estimated it would cost $70 million to $90 million to provide health care coverage to approximately 32,000 workers who would be covered under PPACA in 2014. By contrast, the penalty would cost significantly less than that amount. Eighty percent of the company's 56,000 employees work enough hours to qualify for one of the company's plans, but only a fraction—9,250—enroll.

"It may be cheaper for us to pay the penalty and pay into the government pool than to pay into the plan that the government wants us to," Mr. Pearce told a local newspaper.

But in response to an email inquiry from *Business Insurance*, Regis all but recanted.

"Regis Corp. is dedicated to providing health benefits to employees, associates, stylists and team members. As health care reform evolves, we will continue to provide the benefits options our employees can afford while we look to the future and explore health care choices that best fit our employees' needs," said a company statement.

High-deductible CDHPs likely to gain popularity

Plans meet PPACA's minimum requirements

By JOANNE WOJCIK

Health care reform is likely to spur the growth of high-deductible consumer-directed health plans, employee benefit experts say.

Although CDHPs cost considerably less than traditional preferred provider organization or health maintenance organization plans, they still meet the minimum requirements of the Patient Protection and Affordable Care Act, the experts say.

Moreover, employers could gradually reduce their contributions to either the health reimbursement arrangements or health savings accounts that usually accompany the plans, to avoid becoming subject to the excise tax that will be assessed beginning in 2018, the benefits experts say.

"Unless there's a significant change in any of the legislation, CDHPs will remain a viable option post-health care reform," said Nick Calabrese, vp of CDHP product management at CIGNA Corp. in Bloomfield, Conn. "If you rewind the clock back to before health care reform, there was concern on our end whether they would be eliminated. But, by and large, they were left untouched."

In fact, the number of CIGNA clients offering CDHPs surged after health care reform, along with enrollment in those plans, according to Mr. Calabrese.

"If we look at the results through the first quarter of 2011, CDHP membership (among CIGNA clients) grew about 29%," he said. Perhaps the largest enrollment growth was among employer groups with 50 to 250 employees, which grew 35% between Dec. 31, 2010, and March 31, 2011.

In focus groups that CIGNA has conducted, the insurer learned that clients are looking for a double-duty plan that "will help them reduce costs and get employees more engaged and accountable for their health care. These plans do that, so it's been an attractive solution," Mr. Calabrese said.

"One of the interesting things about CDHPs is that even before health care reform, there was a trend toward employers using them as part of a cost-containment strategy," said Anna Turner, product manager at Benefitfocus in Charleston, S.C. "With reform, there's a lot of concern that premiums are going to be increasing as a result of the new benefit requirements. This is continuing to drive the existing momentum."

Research conducted during the past month by Aon Hewitt Inc. also confirms the growing prevalence of CDHPs.

"A huge amount—almost half—offers CDHPs," said Cathy Tripp, a senior consultant at Aon Hewitt in Minneapolis. "Eleven percent are full replacement (of health plan options), and 35% are looking at full replacement in the next three to five years."

In a survey Towers Watson & Co. conducted last fall, 66% of employers said they were planning to offer a CDHP in 2012, up from 53% in 2011.

"In some significant ways, health care reform is good for consumer-directed health plans since they tend to be more affordable," said Helen Darling, president and CEO of the National Business Group on Health in Washington. "On the employer side, we are seeing more interest in, and transition to, full replacement CDHPs," she added. "We also see more CDHPs as a choice and, as employee costs climb, we anticipate that more employees will find them attractive, because the contributions tend to be lower."

One of the primary reasons CDHPs are gaining in popularity is the fact that "they provide the most affordable option to satisfy the coverage mandate. In today's world, the lowest premium plan is an HSA-compatible alternative," said Jay Savan, a senior consultant at Towers Watson in St. Louis.

66%

In a survey Towers Watson & Co. conducted last fall, 66% of employers said they were planning to offer a CDHP in 2012, up from 53% in 2011.

Moreover, the average CDHP's actuarial value exceeds the minimum coverage requirements for the lowest-cost plan that employers will be required to offer under PPACA, he said.

Under PPACA, employers will be required to offer at least a basic health plan with an actuarial value of 60%, also known as the "bronze plan." That's the equivalent of a plan covering 60% of the cost of an employee's health care, with the employee responsible for the remainder, Mr. Savan said.

"When the (Senate) Finance Committee did its due diligence, it found CDHPs had a 72% actuarial value, which puts it ahead of the bronze-level requirement of 60%," he said.

CDHPs also meet the PPACA requirement that the plans be affordable, according to Mr. Savan.

"Employee contributions to premiums cannot exceed 9.5% of adjusted gross income for people at 400% of the poverty line. In 2011, that means the premium contribution cannot exceed $8,492 annually for a family of four," he calculated.

Because of their lower cost, CDHPs also are less likely to become subject to the "Cadillac tax" that will be levied on high-cost plans under PPACA, benefit experts say.

Beginning in 2018, a 40% tax will be assessed on the portion of plan costs that exceed $10,200 for single coverage and $27,500 for family coverage. The threshold will be indexed to the consumer price index plus 1% in 2019, with increases tied to the index in subsequent years.

For example, if the single premium for a CDHP is $9,000, and the employer deposits $1,200 in an HSA, the plan's value grows to $10,200. But if the plan's cost grows 5% the next year to $9,450, and the employer deposits another $1,200 in the HSA, the value of the plan will grow to $10,650, making $450 subject to the excise tax. However, the employer can avoid this tax if it reduces the HSA contribution accordingly.

"That account allocation becomes a little bit of a shock absorber and allows me to calibrate the total value of the plan right up to the threshold and not a nickel over. That's what you can do with an account-based health plan," Mr. Savan said.

FSA advocates push to end cap

Many employees likely affected by health care reform provision

By JERRY GEISEL

WASHINGTON—A grass-roots drive is under way to convince lawmakers to repeal a health care reform law provision that will cap how much employees can contribute each year to their flexible spending accounts, but even backers say the chances of a successful repeal are slim.

Under the provision in the Patient Protection and Affordable Care Act, contributions employees can make to their FSAs will be limited to $2,500 starting in 2013. In succeeding years, the annual limit will rise in tandem with increases in the Consumer Price Index.

Prior to PPACA, there was no federal limit on employees' annual FSA contributions. Employers, though, typically limit such contributions to $4,000 to $5,000 a year.

Nearly 20% of FSA participants contribute at least $2,500 a year to their accounts and would be affected by the cap, according to statistics compiled by benefit consultant and FSA administrator Aon Hewitt Inc. in Lincolnshire, Ill (see chart).

The change largely was revenue-driven, as lawmakers searched for ways to help fund PPACA's core provision: providing federal health insurance premium subsidies to the lower-income uninsured.

Limiting FSA contributions will raise an estimated $13 billion in federal revenue from 2013 through 2019, according to an analysis last year by the congressional Joint Committee on Taxation. The FSA cap increases revenue because the affected employees will have higher taxable incomes.

TAKING A HIT

Nearly 20% of flexible spending account participants will be affected when a $2,500 annual contribution limit begins in 2013.

Year	Average FSA contribution	% contributing $2,500-plus
2011	$1,412	18%
2010	$1,441	18%
2009	$1,348	16%

Source: Aon Hewitt Inc.

"This strictly was a revenue-raiser, but one that will have real consequences for employees," said Paul Dennett, senior vp-health care reform with the American Benefits Council in Washington.

The accounts have been a boon for employees to pay out-of-pocket expenses, such as prescription drug copayments and medical plan deductibles, with pretax dollars.

FSAs also have eased the financial burden for employees with chronic medical conditions, said Jody Dietel, chief compliance officer at WageWorks Inc., a San Mateo, Calif.-based FSA administrator.

In addition, FSAs have been invaluable in helping

See **FSAs** next page

Products & Services

ACE Westchester offers pollution policy

ROSWELL, Ga.—ACE Westchester has expanded its environmental insurance coverage with a premises pollution policy.

The Elite Premises Pollution Liability policy provides coverages that can accompany existing property/casualty programs, the Roswell, Ga.-based excess and surplus lines unit of ACE Ltd. said in a statement.

The policy enhancement aims to address risks and exposures for owners of facilities affected by environmental regulations, according to the statement.

"In response to ever-changing environmental regulations, it is crucial for businesses to monitor and upgrade their insurance programs," said Barbara Deas, division president of ACE Westchester's environmental unit, in the statement.

The premises pollution enhancement to the policy addresses environmental liabilities for new and pre-existing conditions as well as non-owned locations. The policy includes contractors pollution liability, transportation pollution and products pollution liability coverages.

The policy also includes enhanced coverage provisions such as broadened definitions of "pollution condition," "property damage" and "cleanup costs," among others, the insurer said in the statement.

For more information, contact Ms. Deas at 678-495-4220 or *barbara.deas@acegroup.com*.

College offers program on workers compensation

NEW YORK—The School of Risk Management, Insurance and Actuarial Science at St. John's University in New York is offering a workers compensation certificate program for the fall semester.

To offer the program, the School of Risk Management has partnered with Throggs Neck, N.Y.-based American Society of Workers Comp Professionals Inc., the nonprofit workers comp organization said in a statement.

The Workers Comp Professional Development Certificate Program begins on Sept. 19 and addresses the regulatory changes and concerns regarding workers compensation and insurance professionals, according to the statement.

"Employers have realized the value and importance of continued education and the effects it has on the company's bottom line," said Donald T. DeCarlo, founder and chairman of AMCOMP, in the statement. "Creating a pool of qualified candidates to lead the industry in the coming decades will ensure that policyholders and their employees are getting the best products and services available."

The 12-week program, taught by Mr. DeCarlo and Thomas A. Nowak, vp at Chartis Inc., focuses on workers compensation topics such as history, law and policy, coverage, underwriting, claims and risk management, among others.

For more information, contact Maria Sclafani, executive director at AMCOMP, at 718-892-0228 or *mcs@thebeaumontgroup.com*.

RMS adds enhancements to Data Quality Toolkit

NEWARK, Calif.—Risk Management Solutions Inc. has released an enhancement to its Data Quality Toolkit for insurers and reinsurers.

The latest version of the Data Quality Toolkit has building valuation capability that aims to assist insurers and reinsurers to assess and manage their exposure data, the Newark, Calif.-based catastrophe modeler said in a statement.

The toolkit identies geocoding, unusual exposure attribute combinations and inconsistent financial structure coding in users' data, according to the statement.

The addition of building valuation capability to the toolkit identifies valuation issues within specific lines of business in particular regions. It also provides information about the data quality of a single submission or across various risk portfolios.

For more information, contact Bridget Piraino, vp of risk consulting, at 201-912-8656 or *bridget.piraino@rms.com*.

Hanover expands cover for manufacturers

WORCESTER, Mass.—Hanover Insurance Group Inc. has expanded its insurance coverage for the manufacturing industry.

Hanover's specialty industrial unit has expanded its insurance coverage for the manufacturing industry to include environmental liability protection, the Worcester, Mass.-based insurer said in a statement.

The expansion of coverage allows the insurer's agent partners to provide opportunities for industrial businesses that increasingly face environmental risks, according to the statement.

"With more businesses investing in productivity improvements and innovation, there has been a revival of manufacturing companies in North America, creating an opportunity for independent agents," said Andre Krutainis, president of the insurer's specialty industrial unit, in the statement.

"A number of key coverage gaps exist in this complex market," Mr. Krutainis said in the statement, noting that the addition of environmental liability coverage is in response to the environmental exposures the manufacturing segment is experiencing as it rebounds.

For more information, contact Mr. Krutainis at 240-638-5718 or *akrutainis@hanover.com*.

TO SUBMIT ITEMS

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BI's Products & Services column reports on new product offerings.

MARKET MOVES
BI's Market Moves column reports on activities by insurance industry companies and related entities.

Please send Product & Services and Market Moves news to Mike Tsikoudakis, 360 N. Michigan Ave., Chicago, Ill. 60601 or email *mtsikoudakis@businessinsurance.com*.

UP CLOSE
Comings & Goings

BOB GLASSER

NEW JOB TITLE: New York-based partner heading East Coast property and business interruption claims practice for Dempsey Partners L.L.C., a forensic accounting, claims and risk consulting firm.

PREVIOUS POSITION: New York-based managing director of BDO Consulting, a division of BDO USA L.L.P.

INDUSTRY CHALLENGES: The biggest challenge in business interruption claims is many of the insurance companies are coming up with new and revised policy language where they are making it more difficult to quantify business interruption losses. They are putting in more restrictions in dealing with market conditions. The challenge is to stay on top of new policy language and making sure our clients understand the new changes. Another challenge is in the cyber risk area. You can have a break-in and not have property damage; you need to understand the impact of a cyber loss in a business interruption claim. That is breaking new ground.

EFFECTS OF A BAD ECONOMY: In a bad economy, you end up having a lot of disgruntled and displaced employees. In a bad economy, you tend to have losses because of disgruntled employees. You could have a sabotage issue. It's embarrassing to say, but it does cause problems. You also have more potential for employee fraud and employee dishonesty.

OUTSIDE THE INDUSTRY, A DREAM JOB: Teaching. I love learning and I love teaching younger people. There is so much out there to teach and learn. You can get ahead a lot easier in life by understanding how to do things, how to work with people. Importing knowledge and life experiences would be fun for me.

ON A SATURDAY AFTERNOON: After two hours of tennis on Saturday morning, I get to read the paper or take a nap to get ready for whatever my wife has planned for Saturday night.

EMAIL OR PHONE, AND WHY: I prefer phone. Email is very one-dimensional and can be misinterpreted.

Comings & Goings ONLINE

VISIT *www.businessinsurance.com/ComingsandGoings* for a full list of this week's personnel moves and promotions. Check our Web site daily for additional postings and sign up for the weekly email.

TO SUBMIT ITEMS

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

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REGULATORS
- New Jersey Compensation Rating and Inspection Bureau

OTHER PROVIDERS
- Mercer L.L.C.

FSAs: Advocates push to end cap

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employees pay for major unexpected medical costs that occur early in a year, said Ms. Dietel, who also is executive director of Save Flexible Spending Plans, a grass-roots advocacy group sponsored by the Employers Council on Flexible Compensation, a Washington-based trade group.

That's because the full amount an employee agreed to contribute to a FSA during a year would be available immediately to pay an uncovered health care expense even though the employee had not yet made the contributions, Ms. Dietel said.

In an effort to convince lawmakers to repeal the $2,500 contribution cap, FSA advocates are trying to dispel notions that the accounts are little more than tax shelters for the well-to-do.

According to Save Flexible Spending Plans, FSAs are used largely by the working middle class, with the average FSA participant earning $55,000 annually.

"We are trying to preserve the accounts for working families," Ms. Dietel said.

While lawmakers might be sympathetic to that issue, their willingness to repeal the $2,500 FSA cap is another matter.

"Any attempt to repeal a provision that costs revenue is far from a slam dunk," said Amy Bergner, a partner with consultant Mercer L.L.C. in Washington.

"In this era of fiscal restraint, a repeal of the FSA cap would clearly be an uphill battle," said Gretchen Young, senior vp-health policy with the ERISA Industry Committee in Washington.

Ms. Dietel said she doubts lawmakers will make a sound policy decision and repeal the cap.

"It is a tough fight because of the political and economic climate," she said.

Collapse: Festival accidents increase

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during a Flaming Lips concert in Tulsa, Okla., and a stage roof coming down during a Cheap Trick performance at a festival in Ottawa, Canada.

Sudden storms and high winds were common factors in all the incidents.

Even as the popularity of music festivals grows, the extent to which standards for stage construction and event safety are applied varies by jurisdiction and venue, some industry experts say.

"When the municipalities or the venues look at a temporary structure, it's under the radar many times," said William DesPres, risk engineering manager with Zurich North America in Lawrenceville, Ga.

"The whole thing with engineering these things is balancing cost and safety," Mr. DesPres said.

"There are standards in the staging industry, especially at that level," that address issues such as types of load, wind gusts and other factors, said James Chippendale, executive vp at Doodson Insurance Brokerage L.L.C. in Dallas.

'A lot of these past stage collapses, it's not so much the stage, it's everything else that goes on around the stage.'

James Chippendale,
Doodson Insurance Brokerage L.L.C.

He noted, however, that the "stage" often is a collection of components including backdrops, canopies, rigging, lights and video screens, each adding stresses to the overall system in conditions such as high winds. The interaction of those components must be considered in assembling an outdoor stage, he said.

"A lot of these past stage collapses, it's not so much the stage, it's everything else that goes on around the stage," said Mr. Chippendale, who works with the annual Lollapalooza and Austin City Limits music festivals.

"Those could all be different vendors," he said. At events presented by his firm's clients, the various vendors work together to understand how the different components affect one another.

"They're discussing it prior to the event. They're discussing it during the setup," he said. "Most of these companies are all working together and safety is first and foremost in everybody's minds."

Both stressed the importance of having a plan in place to deal with severe weather conditions, with graduated steps as weather conditions intensify, and sticking to that plan. "You definitely want someone to monitor the weather and you want to have a plan," Mr. DesPres said.

At festivals he works with, "We are watching weather patterns, we are talking to the National Weather Service," Mr. Chippendale said, with emergency measures in place to evacuate the field, the stage, etc. if weather conditions dictate.

He noted that there were weather issues at this year's Lollapalooza as a thunderstorm system approached Chicago the afternoon of Aug. 7.

"We were literally on the phone with all of the various entities talking about the storm that was approaching Chicago," Mr. Chippendale said. "We were well-prepared to evacuate the park if need be, postpone shows, evacuate the stage fronts."

As officials investigate the Indiana State Fair collapse, the first lawsuits in connection with the event were filed last week.

Fair officials reportedly had received an NWS severe thunderstorm warning and advised the audience of the possibility of severe weather, but the stage collapsed before an evacuation order was given.

Another outdoor performance in the area that evening—by the Indianapolis Symphony Orchestra at Conner Prairie—was canceled and the 7,000-person audience evacuated after officials received a weather advisory.

The fair's exposure to any claims apparently will be limited by Indiana law capping claims against public entities to $700,000 per individual and $5 million per occurrence. The fair is self-insured under that same Indiana code.

Mr. Chippendale acknowledged the frequency of recent stage collapses, but said it's important to view them against the increase in the number of outdoor music events.

"We've seen a rash of these in the last couple of years," he said. "It looks like it's becoming more and more frequent, but if you look at the sheer number of outdoor events and outdoor stages that are set up, it's still a tiny, tiny percentage" of the total, he said.

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Cargo: Thieves using different tactics

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hazard a guess, I would say (the cost) is somewhere between $1 billion and $2 billion per year" in the United States.

FreightWatch International (USA) Inc., an Austin, Texas-based logistics security agency that tracks cargo thefts, reported that the overall number of cargo thefts during the first half of the year fell 6.8% from a year earlier, to 433 incidents with an average value of $447,346. Stealing unattended loads remains the most common theft, but FreightWatch and others say trickery is on the rise.

A rash of "deceptive pickups," 15, occurred during the first half of this year vs. just three during the same period last year, according to FreightWatch.

Chubb reported 32 such incidents in 2010, double the number in 2009.

The weak U.S. economy likely has had an effect, sources said.

"In a down economy, shippers have slim budgets," said Brandon Stroud, vp-loss prevention at Falvey Cargo Underwriting Ltd. in Kingstown, R.I. To save money, some shippers are turning to electronic freight brokerage boards where thieves often prey, he said.

"The sites are not doing the vetting," Mr. Stroud said, "and in one case it was found that the site itself was not legitimate."

He recommends that companies looking to ship cargo deal "only with contracted companies rather than doing one-off shipments."

One form of fraud that is increasing involves setting up a legitimate trucking company on paper, gathering necessary approvals from the Department of Transportation and other sources, and even buying cargo insurance to have a policy available to show clients, Chubb's Mr. Tarnef said.

"They may take a couple of loads; and on the third load, as people get comfortable with them, they steal it," he said.

Consumer electronics, nonperishable food, apparel and pharmaceuticals remain high-target items for thieves, experts say.

"They are targeting high-value commodities," said Jim Howse, a partner with The Transportation Group, a Houston-based brokerage unit of Hub International Ltd. "No one is stealing trucks full of Cheerios."

But there has been an uptick in the theft of cargo containing metals such as copper, aluminum and steel, sources said.

"We have seen a significant increase in the theft of metals" as prices for those materials have risen sharply in recent years, CargoNet's Mr. Kirk said.

Metal cargo thefts soared 62.8% in the first half of the year, to 57 incidents with an average loss valued at $209,619, according to FreightWatch.

Mike McDonald, vp of enterprise risk management at Quality Distribution Inc. in Tampa, Fla., said his company hauls mostly hazardous materials rather than consumer goods, but that cargo also must be protected. "You can't just drive into a Walmart parking lot and leave a truck there. And you are not allowed, in most cases, to take a truck home with you," he said.

Preventing cargo theft takes vigilance, experts advise (see related story).

Because thefts sometimes involve cooperation of a trucking company employee, Mr. Howse said some insurers are adding warranties in their cargo policies that state coverage will apply only to loads that are not left unattended and have GPS tracking devices, among other requirements.

Driver training is critical

Driver training can go a long way in deterring theft or recovering a load quickly if it is stolen, says Richard Kirk, vp of CargoNet, a Jersey City, N.J.-based division of the Insurance Services Office Inc.'s crime analytics unit.

"Driver selection is very critical," said Barry Tarnef, assistant vp and senior risk specialist, loss control services, at Chubb Group of Insurance Cos. in Warren, N.J. "If you have a competent, honest, hardworking truck driver, you have a better chance of the cargo getting to the destination safely."

Trucking companies should provide the driver with information on the tractor and trailer and license plate number. Providing that quickly to authorities can make the difference between recovering and losing a load, Mr. Kirk said.

GPS devices should be embedded into cargo—"not in the trailer," Mr. Kirk advised. "Thieves will take the cargo off and load it into another trailer."

In addition, it's best to keep trailers on the road as much as possible, Mr. Tarnef said. "There's the old maxim: Cargo at rest is cargo at risk."

—By Michael Bradford

ADA: Firms struggle with leave rules

CONTINUED FROM PAGE 1

Valu Inc. resulted in a $3.2 million settlement last year.

Observers recommend that employers reconsider leave policies setting limits on the period of time employees can take off (see related story).

Jonathan T. Hyman, a partner with law firm Kohrman Jackson & Krantz P.L.L. in Cleveland, said employers have two big misconceptions when it comes to ADA leave: One is that they do not have to offer more than the 12 weeks provided under the Family and Medical Leave Act, and the second is that they can have "hard caps" that limit leaves of absences to specific days.

The EEOC has taken the position that hard-cap disability leave policies violate the ADA because they ignore "the interactive dialogue employers are supposed to have about a reasonable accommodation," Mr. Hyman said.

"The employer doesn't know where it stands," said Robin E. Shea, a partner with Constangy, Brooks & Smith L.L.P. in Winston-Salem, N.C. Before the Obama administration and "under old interpretations of the ADA, it was legal for employers to have a cutoff if somebody was out for certain predetermined periods of time. It was usually safe to let them go when they reached that limit," she said.

Now, though, "the EEOC has made it clear that automatic terminations are never going to be all right and, at the very least, the employer is going to have to make one last attempt at reasonable accommodation, which includes assignment to another vacant position, before cutting a person off, even if the person has been out of work for 12 months or 18 months or even two years," Ms. Shea said.

Susan K. Lessack, a partner with law firm Pepper Hamilton L.L.P. in Berwyn, Pa., said: "Everyone understands if someone is entitled to FMLA leave, they get the 12 weeks" After that, though, it is very common to have situations where the employee's physician says they need more time, "and the employer's faced with wanting to comply with its legal obligations under the ADA," but must also consider the company's business needs.

Stacie L. Caraway, a member of law firm Miller & Martin P.L.L.C. in Chattanooga, Tenn., said that because the ADA "doesn't set any floor or ceiling" as to how long employees can stay out on leave, "that can vary for the exact same employer over time for different positions and different employees."

Complicating the issue is that under the Americans with Disabilities Act Amendments Act, for which the EEOC released final rules in April, there are many more conditions under which employees are regarded as disabled.

Those amendments are frustrating to employers, said Russell D. Cawyer, a partner with law firm Kelly, Hart & Hallman L.L.P. in Fort Worth, Texas. "There are just so many more people who are now entitled to accommodation and that's where it's going to, I think, burden employers and businesses."

Employers advised to review strict policies on leave time

Employers should reconsider any policies they have that call for set periods of leave in light of the Equal Employment Opportunity Commission's aggressive pursuit of litigation in accommodating workers who take time off under the Americans with Disabilities Act, observers say.

Stacie L. Caraway, a member of Miller & Martin P.L.L.C. in Chattanooga, Tenn., said advised examining policies that sound mandatory or inflexible.

"The key word the EEOC wants to see right now is 'flexibility,'" said Ms. Caraway. "They want to see that each person has the opportunity to get a unique response to their particular situation."

Employers "should make sure that their policies and handbooks don't have a unilateral cutoff that says, 'If you're out for a certain period of time, you'll be terminated,'" said Susan K. Lessack, a partner with Pepper Hamilton L.L.P. in Berwyn, Pa.

Ellen E. McLaughlin, a partner with Seyfarth Shaw L.L.P. in Chicago, who spoke on behalf of large employers at an EEOC hearing in June, said the EEOC wants employers to send letters to employees when they are close to reaching their maximum leave period and allow them to ask for a reasonable accommodation that either would return them to work or extend their leave.

It also is critical "that human resources be trained to understand that when an employee asks for additional leave time, or suggests something that may assist them in returning to work, that they need to begin the interactive process with that employee," she said.

—By Judy Greenwald

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SUBSCRIPTIONS & SINGLE COPY SALES: 1-877-812-1587 (U.S. & Canada) 1-313-446-0450 (All other locations)

Business Insurance is published by Crain Communications Inc.
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News In Brief

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Deutsche Bank A.G. buildings damaged during the Sept. 11, 2001, terrorist attack on New York. More than 325 workers involved in the cleanup of Deutsche Bank's buildings had sued the German financial services firm, alleging that they suffered injuries from breathing the allegedly contaminated air and physically handling the debris without proper equipment.

Cat losses depress P/C insurers' net income

Catastrophe losses drove net income for U.S. publicly traded property/casualty insurance companies down to $1.38 billion during the second quarter of 2011, according to survey by Moody's Investors Service Inc. That was a drop of 68% from net income generated in the same quarter of 2010, according to the rating agency.

ILS provider forms to cover oil spill risks

A new company, CatVest Petroleum Services L.L.C., has been formed to help businesses transfer significant oil spill risks to capital markets through insurance-linked securities. The privately owned ILS provider, launched this month, is registered in Lewes, Del., with operations "globally distributed among a number of back-office locations," Jacob Walker, a managing director of CatVest, said in an email. CatVest said its ILS offerings would address a dearth of traditional insurance capacity exacerbated by last year's Deepwater Horizon oil spill in the Gulf of Mexico. CatVest said it will work with investors and issuers to develop the securities to cover the risk of significant spills of oil, gas, chemical or other hazardous substances.

Zurich Global Corporate names Hart COO

Zurich Financial Services Ltd. has named Sabrina Hart chief operating officer for Zurich Global Corporate, the insurer announced. Ms. Hart succeeds Adrian Sweeney, who has been named head of technical underwriting in Zurich North America's general insurance business. Previously, Ms. Hart served as head of risk operations within group risk management. She joined Zurich in 1997 as regional manager of the health care group in the Southeast region for Zurich North America Commercial. Ms. Hart will be based in New York.

Recession cut covered comp lives by 4.4% in '09

The Great Recession caused the number of U.S. lives covered by workers compensation insurance to drop 4.4% to 124.9 million in 2009, according to a National Academy of Social Insurance report. It was the largest decline in two decades, according to the Washington-based nonpartisan group's report, "Workers' Compensation: Benefits, Coverage and Costs, 2009."

Alterra Europe facility to write excess liability

Alterra Europe P.L.C. has opened a facility to write excess liability insurance from its recently licensed London operation, Alterra Europe-U.K. Branch. Paul Bland, formerly a class underwriter with the Catlin Syndicate at Lloyd's of London, has been named vp of casualty insurance operations at the new Alterra facility.

Judge dismisses bias suit against Bloomberg

In a strongly worded opinion, a federal judge dismissed a 2007 lawsuit in which the Equal Employment Opportunity Commission accused Bloomberg Inc. of engaging in a pattern or practice of bias against pregnant women. "'J'accuse!' is not enough in court," U.S. District Court Judge Loretta A. Preska said in the ruling granting summary judgment. "Evidence is required. The evidence presented in this case is insufficient to demonstrate that discrimination was Bloomberg's standard operating procedure, even if there were several isolated instances of individual discrimination. As its standard operating procedure, Bloomberg increased compensation for women returning from maternity leave more than for those who took similarly lengthy leaves and did not reduce the responsibilities of women returning from maternity leave any more than of those who took similarly lengthy leaves," Judge Preska ruled.

China: Suits increase over reverse mergers

CONTINUED FROM PAGE 3

has suspended trading in several reverse merger entities.

This month, the SEC announced it and PCAOB are working with the Chinese Ministry of Finance on audit oversight of public companies.

In addition, the New York and NASDAQ stock exchanges have proposed standards that would tighten rules under which these companies could be listed, observers say.

"Some of those suits are going to hit, and probably hit for significant dollars, and some of them won't," said Alexis J. Rogoski, a principal with law firm Boundas, Skarzynski, Walsh & Black L.L.C. in New York, who has represented D&O insurers in these cases. Despite what short sellers are saying, there are legitimate firms that have not "misrepresented themselves to the public," he said.

Kevin LaCroix, executive vp at OakBridge Insurance Services L.L.C. in Beachwood, Ohio, said even if the litigation survives motions to dismiss, plaintiff attorneys face many hurdles in pursuing these cases, including "trying to do discovery at that distance, where many of the key documents are in Mandarin or some other language."

This means there will be a "tremendous escalation right from the beginning in legal costs" under D&O policies, said Michael Chester, a New York-based principal with the Boundas law firm.

Most of the reverse merger firms had D&O coverage, experts say. Coverage bound before the spate of litigation averaged about $5 million, with relatively low retentions of about $150,000 to $250,000. The business is spread widely among D&O insurers, observers say. Because of these relatively low limits, this means if losses do impact the D&O market overall, it will be on the basis of frequency rather than severity, observers say.

With only one court decision so far, observers are unsure to how much the litigation ultimately will cost the industry,

> **'Some of those suits are going to hit, and probably hit for significant dollars, and some of them won't.'**
>
> Alexis J. Rogoski, Boundas, Skarzynski, Walsh & Black L.L.C.

which will depend at least in part on its success. But primary D&O insurers are "starting to feel the pain," said Tripp Sheehan, U.S. D&O practice leader for Marsh Inc. in Boston.

Some observers believe the litigation will be at least one factor leading to a harder D&O market. "This will contribute to that momentum," said Peter Taffae, a D&O liability insurance expert at Los Angeles-based wholesale brokerage ExecutivePerils Inc.

Others disagree, noting these companies represent only a small proportion of the total market. Maria Treglia, senior vp at Woodbury, N.Y.-based Program Brokerage Corp., likened the situation to 2008, when D&O rates for financial institutions hardened but the rest of the market remained soft, and the sector was "just completely carved out" from the rest.

Meanwhile, Chinese reverse merger companies seeking renewals are having difficulties, observers say. Brendan Dolan, Irvine, Calif.-based senior vp and southern California regional practice leader for Willis North America, said companies that had been able to get $5 million or $10 million of primary coverage are now getting quotes for only $1 million to $2 million of coverage. They also are being charged premiums of $50,000 to $100,000, where before they may have been able to get $10 million in coverage for $125,000, he said.

Observers say insurers are including "no prior acts" exclusions in polices, which excludes acts that occurred prior to the policy's inception, and financial restatement and fraud exclusions. "And that's if you can get the insurance at all," said Mr. Sheehan.

However, Anthony Zinicola, New York-based vp of international for Hartford Financial Products, said it would consider writing the business, depending on the individual submission's merits.

Mr. Fahey said the D&O sector will be more widely open to these submissions at some point "because Chinese companies are not going to go away. But at the moment, it's very much wait and see until they get their governance and accounting houses in order."

These companies are maturing to have better corporate governance procedures, said Joseph Monteleone, a New York-based partner with the Tressler L.L.P. law firm, "but that's not going to happen overnight."

Summary: Proposed rules raise numerous questions

CONTINUED FROM PAGE 4

which presumably would be national averages, could end up confusing employees if a particular employer's costs are different, which is likely since costs vary greatly across the country.

"This could end up confusing plan participants," said Jennifer Henrikson, senior counsel with Aon Hewitt Inc. in Lincolnshire, Ill.

Yet another source of confusion are some "Important Questions" and "Answers" that would have to be provided. A seemingly simple question, "What is the overall deductible?" could be difficult to answer in situations where employers, for example, link the amount of the deductible to employee compensation, Mr. Stover said. Still, the proposed regulations could change significantly.

Regulators have made it very clear that they want public comment, said Kelly Traw, a principal with Mercer L.L.C. in Washington.

Oct. 21 is the deadline for comments on the proposal, which is available online at *www.ofr.gov/OFRUpload/OFRData/2011-21193_PI.pdf*.

End Page

Contributing: Roberto Ceniceros, Matt Dunning, Judy Greenwald

Forbes Media L.L.C. sued a nonprofit firm in Russia for allegedly publishing an unlicensed edition of its magazine.

Publisher unflattered by imitation

Forbes Media L.L.C. is taking a nonprofit firm in Russia's Dagestan region to court for allegedly publishing an unlicensed "special edition" of its magazine.

A knockoff of Forbes' Russian edition, allegedly published last year by "a not-for-profit partnership of filling stations and the petroleum industry," depicts a businessman on the beach holding a globe, above the headline, "How to boost your capital in Dagestan," Forbes said in a statement.

The bogus edition allegedly published by the firm Neftyanik used the same typeface as the New York-based U.S. business magazine, but with an added shadow behind the word "Forbes."

"Forbes Media L.L.C.…appealed to the arbitration court of the Republic of Dagestan with a lawsuit for protection of its rights violated by the illegal use of its trademark," according to a statement posted on Forbes' Russian website.

Forbes filed the lawsuit Aug. 2 and said the case likely would be heard next month.

The U.S. Olympic Committee has ordered the Redneck Olympics to change its name. The event features a wife-carrying contest and lawn mower races.

A different kind of Olympic trials

The U.S. Olympic Committee has written the organizer of the Redneck Olympics, ordering the event to change its name or face a lawsuit.

The USOC reportedly objected to the use of "Olympics" in the moniker of the Aug. 5-7 Hebron, Maine, event, which included bobbing for pig feet; wife-carrying, mud-flopping and wet T-shirt contests; and lawn mower races. It also featured, according to its website, the "best dam" all-you-can-eat pig roast.

According to the Lewiston, Maine, Sun Journal, Redneck Olympics organizer Harold Brooks said he based the name on the original Olympics in Greece and has no plans to change it.

"I'm going to refuse to not use that word," he told the newspaper.

At least one commentator has taken Mr. Brooks' side. George Washington University Law Professor Jonathan Turley said in his blog, "The Olympics is a historical term used for sporting games. It seems grossly unfair that one group can claim such a historical term—in existence since 776 B.C. Why not trademark the term 'marathon' or 'Mardi Gras'?"

The Maine event had many similarities to the challenges in a July East Dublin, Ga., contest. However, the Summer Redneck Games, which have been ongoing since 1996, do not use the word Olympics and apparently have not run afoul of the USOC's claimed trademark rights.

Firm would like to be a Pepper too

It's been said that the recipe for Dr Pepper was born in Waco, Texas, during the late 1800s when the town was known as "six-shooter junction."

These days, the fight over Dr Pepper stems from a small town not far from the soft drink's birthplace.

Dublin, Texas, is home to Dr Pepper Bottling Co. of Dublin, which lays claim to being the oldest bottler of Dr Pepper. It still bottles the carbonated beverage using cane sugar rather than high fructose corn syrup.

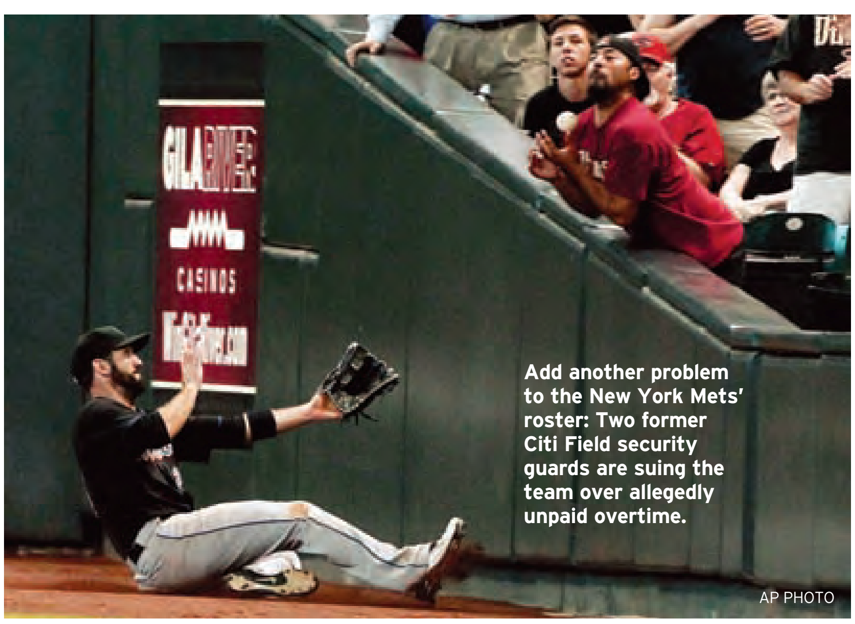
Tens of thousands of fans flock to Dublin annually to view the bottling company's 1930s machinery. Fans also have created opportunities for the Dublin bottling company to sell to them via the Internet and over the phone.

But Dr Pepper Snapple Group Inc. has sued the Dublin bottling company in federal court. In a statement, the Plano, Texas, firm says it wants Dublin Dr Pepper to market only within an agreed on six-county territory and stop marketing and packaging Dr Pepper with the phrase "Dublin Dr Pepper."

"Dublin's conduct dilutes our trademark and creates confusion in the marketplace," according to the statement.

Dublin Dr Pepper responded with a statement saying it is "confident that this lawsuit will not succeed" and it is "unfortunate" that Dr Pepper Snapple is asking "an overburdened court system to resolve what we believe is a business matter."

Dublin Dr Pepper vowed to continue bottling the beverage while its fans rallied with a music video and a Facebook page, "I Support Dublin Dr Pepper."



Add another problem to the New York Mets' roster: Two former Citi Field security guards are suing the team over allegedly unpaid overtime.

AP PHOTO

METS BALK AT OVERTIME DEMANDS

As if the New York Mets did not have enough problems already, they have been hit with a lawsuit alleging they failed to pay overtime to their Citi Field security guards.

Former Citi Field security guards Errol K. Roberts and David N. Vernord allege in their lawsuit that they regularly worked 40 hours a week plus six hours overtime for each Mets home game, yet say they did not receive the time-and-one-half they were due for working overtime.

Mr. Roberts worked first at Shea Stadium, then at Citi Field from about April 2006 until April 2009. Mr. Vernord was employed by the Mets from about June 2004 until October 2009.

They allege that the Mets violated the Fair Labor Standards Act by paying them $17 per hour, and a flat $102 for each home game they worked, which would have covered only their regular hourly rate, but not overtime, according to the Aug. 4 suit filed in federal court in Brooklyn. The suit seeks class action status.

Mets owners Fred Wilpon and Saul Katz already are being sued for $1 billion by Irving Picard, the court-appointed trustee seeking compensation for victims of disgraced businessman Bernard L. Madoff. The owners reportedly invested hundreds of millions of dollars with Mr. Madoff.

And that is not to mention the Mets' losing record this season. Their last World Series win was in 1986.

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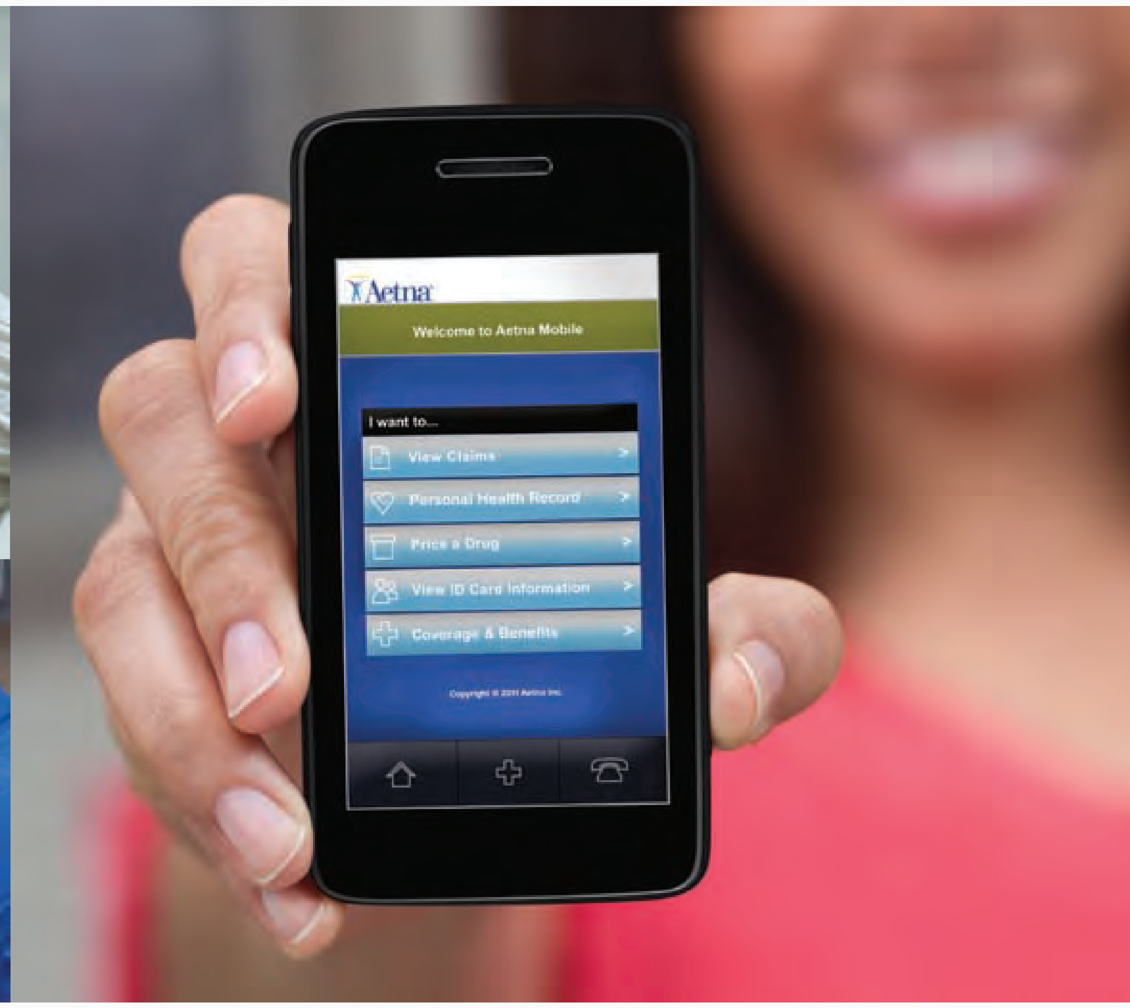

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