$5

Business Insurance

August 24, 2009

www.businessinsurance.com

PETER GARVEY SETS NEW COURSE FOR INTEGRO / PAGE 3

EMPLOYERS SEE RISE IN AGE BIAS CLAIMS AMID LAYOFFS / PAGE 3

In Brief

WTC property insurers can subrogate: Judge

A federal judge has upheld the right of commercial property insurers who insured the World Trade Center to pursue subrogation claims associated with losses stemming from the Sept. 11, 2001, terrorist attack that destroyed the twin towers. The judge denied three motions to bar subrogation by the property insurers brought by plaintiffs affiliated with Larry Silverstein, who leased the World Trade Center; a group of airlines, airport security companies and others; and certain defendants including the Silverstein companies in an action involving the destruction of Tower Seven of the WTC complex. The parties seeking the subrogation ban argued that New York's collateral source law barred all such subrogation claims.

See **IN BRIEF** page 22

SPOTLIGHT

WORKERS COMPENSATION & DISABILITY MANAGEMENT

Employers work closely with physicians to cut workers comp costs; experience matters when choosing an attorney to fight workers comp disputes; health care reform expected to have indirect affect on comp; Q&A with DMEC chief on the challenges posed by the financial crisis. **PAGE 9**

Challenges slowing health reform drive

Passage still expected, but scaled-back plan seen as likely outcome

By JERRY GEISEL

WASHINGTON—Federal health care reform legislation is ailing, but experts and observers say it's far from dead.

When the health care reform drive began early this year, Obama officials and Democratic congressional leaders brimmed with optimism. They predicted fast congressional action, with the House and Senate approving bills by the August recess, differences in those two bills being ironed out during the break and a final measure going to the president by mid-September or early October.

Although President Obama last week predicted such legislation will pass Congress by year end, the reform drive still seems to be in trouble, Washington observers say.

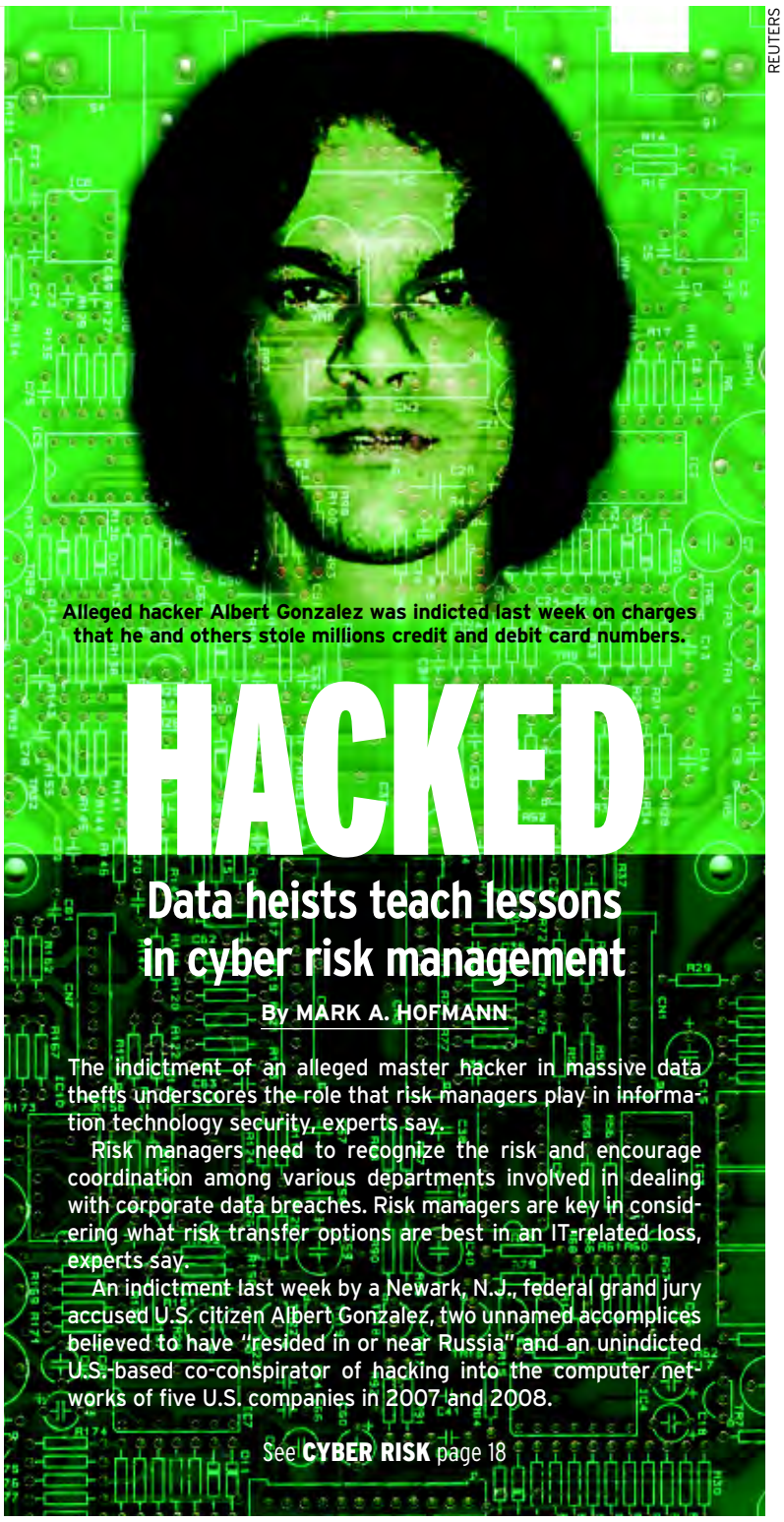
The House has yet to take up a bill already approved by three House committees. In the Senate, the pivotal Finance Committee has struggled for months to hammer out a package that will attract support from at least a few of the committee's Republican members, with no sign of an imminent agreement. Until that committee acts, the full Senate can't take up a bill.

Meanwhile, public support for reform legislation has slipped. A

UPI/LANDOV

President Obama maintains that a health care reform bill will pass this year.

See **REFORM** page 20



REUTERS

Alleged hacker Albert Gonzalez was indicted last week on charges that he and others stole millions credit and debit card numbers.

HACKED

Data heists teach lessons in cyber risk management

By MARK A. HOFMANN

The indictment of an alleged master hacker in massive data thefts underscores the role that risk managers play in information technology security, experts say.

Risk managers need to recognize the risk and encourage coordination among various departments involved in dealing with corporate data breaches. Risk managers are key in considering what risk transfer options are best in an IT-related loss, experts say.

An indictment last week by a Newark, N.J., federal grand jury accused U.S. citizen Albert Gonzalez, two unnamed accomplices believed to have "resided in or near Russia" and an unindicted U.S.-based co-conspirator of hacking into the computer networks of five U.S. companies in 2007 and 2008.

See **CYBER RISK** page 18

Employers consider short-haul medical tourism

More self-insured firms seek to cut costs by sending workers out of state for medical procedures

By JOANNE WOJCIK

When Scarborough, Maine-based supermarket chain Hannaford Bros. Co. announced last year that it would begin sending its employees to Singapore for knee and hip replacements to save the company money, it attracted the attention of several hospitals in Boston that offered to match the price.

What the company probably did not realize at the time was that it was at the forefront of an emerging market: domestic medical tourism.

Unlike foreign medical tourism,

patients don't leave the country. Instead, they travel to another city within the United States to have procedures for up to 75% less than they would pay if they were treated closer to home.

One of the primary reasons some U.S. medical facilities are willing to be paid less is that they are generally compensated upfront, before the procedures are conducted, which enables them to avoid the arduous task of seeking reimbursement afterward from insurers and third-party administrators. The facilities also receive a single package price that is negotiated beforehand.

"In many cases, if you're self-funded or a cash patient, a hospital is more willing to deal directly with you rather than work through (preferred provider organizations) or insurance companies," explained Alex Sanchez, managing director of Healthcare Concierge Services, a subsidiary of Miami-based Olympus Managed Health Care Inc., which has been bringing foreign individuals here for medical care since 1994.

Moreover, the pricing usually is negotiated on an individual basis, circumventing the hospital's man-

See **TOURISM** page 20

INDEX

Powerful.

Just Ask Our eSolutions Clients.

Aon eSolutions provides clients with the only integrated, personalized risk and insurance technology solutions configured to meet their unique business needs.

iVOS®, the insurance system from Aon eSolutions, delivers everything you need to take care of business: claims management, medical bill review, policy administration, case management, events management, and billing. Take advantage of the integrated one-system solutions, or just the capabilities you need.

Ready for the power of one?

Please call Aon eSolutions at +1.800.299.2711 to speak with an Aon expert, or **visit www.aon-esolutions.com/bi** to register for a demo of this powerful browser-based system.

AON eSOLUTIONS

On the Web

BI AUDIO

Listen to disability expert Carruthers online

Listen to the full interview of Disability Management Employer Coalition CEO Marcia Carruthers, a portion of which is featured on page 12, online in podcast format. Go online to *www.BusinessInsurance.com/section/audio* and click on the Benefits Management icon.

WOMEN TO WATCH

BI seeks nominations for Women to Watch

Business Insurance is accepting nominations for the 2009 Women to Watch feature, with a deadline of Aug. 31. Women in commercial insurance, reinsurance, risk management, employee benefits and related fields are eligible to be nominated for this annual feature, which spotlights 25 women who are doing outstanding work for their organizations. Profiles of the women will appear in the Dec. 7 issue of *BI*. To download a nomination form, go to *www.BusinessInsurance.com/womentowatch.*

BI DIRECTORIES

Rehabilitation, safety directories updated

Business Insurance has updated its Rehabilitation Service Providers and Independent Safety Consultants directories for 2009. To purchase these or any of *BI*'s other directories, visit *www.BusinessInsurance.com/directories.*

Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

Business Insurance (ISSN 0007-6864) Vol. 43, No. 29, is published weekly, except for combined issues the first week of June, the second week of June, the third week of June, the fourth week of June, the first week of July, the second week of July, the fourth week of July, the first week of August, the second week of August, the third week of August, and no issue the fourth 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: Send address changes to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912. $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). 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.

Integro readjusts to reflect market realities

Broker switches targets after misfired attempt to rival top-tier firms

By SALLY ROBERTS

NEW YORK—After scrapping plans to build from scratch a large-account brokerage on par with Marsh Inc. and Aon Corp., Integro Ltd. has set its sights on being a smaller, multispecialty brokerage.

New York-based Integro made headlines in 2005 when renowned insurance company builder Robert Clements and fellow former Marsh Inc. executives Roger E. Egan and Peter F. Garvey secured $320 million in a private securities placement to launch the large-account brokerage.

Peter F. Garvey, Integro's CEO, says the broker has moved its focus from large accounts to specialty business.

Rather than make acquisitions, Integro executives were hoping to build scale by capitalizing on the fallout at the world's largest brokers, which at the time were burdened by investigations into their business practices, class action lawsuits and hefty settlements with state attorneys general over abuse of contingent commissions.

Promising start

Things looked promising at first as Integro opened several offices and hired scores of experienced executives and producers from its competitors—as well as taking some of their clients. At the end of 2006—its first full year of operation—Integro generated $46 million in gross revenues, including a $10 million fee for its work in conceiving, sponsoring and developing the formation of Hamilton, Bermuda-based Ironshore Inc.

By 2008, however, it became clear that while Marsh, Aon and Willis Group Holdings Ltd. experienced difficulties as a result of industry investigations, clients, for the most part, stayed put.

As a result, "we had to adjust accordingly," said Mr. Garvey, Integro's founding president, who replaced Mr. Egan as chief executive officer last September.

Mr. Clements remains nonexecutive chairman.

Integro had to shift its business model and cut its costs.

"If we had stuck to the path we were on, we would have had to raise more capital eventually, because we were burning cash to support this large-size platform," Mr. Garvey said. "Rather than try-

See **INTEGRO** page 19

Age bias charges surge as firms shed workers

Employers prepare for legal onslaught as boomers fight back

By JUDY GREENWALD

When Mona R. Saunders, 54, was fired last year from her 18-year job at law firm Crowell & Moring L.L.P. in Washington, she did not go quietly.

In a lawsuit seeking $300,000 filed in July in District of Columbia Superior Court, the former researcher accused the law firm of age discrimination and retaliation for a previous age discrimination claim filed with the U.S. Equal Employment Opportunity Commission.

In the suit, Ms. Saunders argues she was promoted three times and never had performance issues until a new supervisor was hired in 2005, and the only reason the supervisor cited in firing Ms. Saunders in July 2008 was that she was not a "good fit" for the firm.

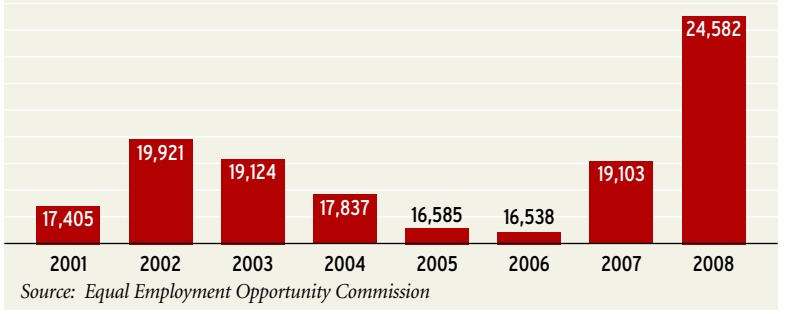
She filed a March 2006 complaint with the EEOC, alleging the supervisor "constantly" criticized her work and suggested her age made her unable to learn new tasks, according to court records.

A spokeswoman for the law firm had no comment on the suit.

As layoffs have abounded during the recession, observers say employers should brace themselves for more age discrimination lawsuits.

This will be exacerbated by the large percentage of 50 and older baby boomers in the population, and what observers say is many older workers' attitude that they have little to lose by filing a claim.

Employees 40 and older are protected by the Age Discrimination in Employment Act of 1967 and by the Older Workers Benefit Protection Act of 1990. ADEA protects job applicants and employees older than 40 from age discrimination; the OWBPA amended the ADEA to specifically prohibit employers from denying benefits to older employees.



Last week, the EEOC filed an age discrimination suit in federal district court in New York against Dallas-based AT&T Inc. and affiliated companies, charging that a policy introduced in 2006 against rehiring employees who had retired from AT&T under various retirement and severance programs has had an adverse impact on older individuals. AT&T issued a statement that

See **BIAS** page 22

Greenberg settles suit, which still targets AIG

By COLLEEN McCARTHY

COLUMBUS, Ohio—Maurice R. Greenberg, American International Group Inc.'s former chief, and five other defendants will pay $115 million to settle a shareholder lawsuit filed on behalf of several Ohio state pension funds.

The suit, which will continue against AIG, charges that the funds lost money on their investments in AIG due to alleged accounting fraud and anti-competitive practices at the New York-based insurer and AIG's restatement of its 2005 results.

A hearing on the issue of whether the suit should be granted class action status was held earlier this month; a ruling has not yet been issued.

The settlement agreement, which is subject to approval by federal court and the boards of the pension funds, includes three other former AIG executives—Howard I. Smith, Christian M. Milton and Michael J. Castelli—as well as C.V. Starr & Co. Inc. and Starr International Co. Inc., former AIG affiliates that are associated with Mr. Greenberg.

REUTERS/LANDOV

Mr. Greenberg

In a statement, Ohio Attorney General Richard Cordray, who is litigating the case, said he will now focus on preparing for trial against AIG.

"My office has negotiated agreements totaling $284.5 million from secondary defendants in this case. Yet AIG itself has so far refused to do right by investors who were wronged," Mr. Cordray said.

In an e-mailed statement, a spokeswoman for AIG said the company "has already paid $800 million to investors, including those that are part of the alleged class in this lawsuit—an amount which is almost three times what all the other defendants have agreed to pay combined.

"Any additional payments from AIG would not only come at the expense of taxpayers, but would greatly benefit the plaintiffs' lawyers who are litigating these claims and who would undoubtedly seek millions in fees from any judgment or settlement," the spokesman wrote.

It was unclear whether the cost of the settlement will be covered by directors and officers liability insurance.

Coverage for the defendants under an AIG policy issued by Great American Insurance Co. is being contested in court, according to documents filed in U.S. District Court for Southern District of New York.

Mr. Greenberg left AIG in 2005 amid investigations into the New York-based insurer's accounting practices.

Earlier this month, Messrs. Greenberg and Smith, AIG's former chief financial officer, reached an agreement to settle accusations by the U.S. Securities and Exchange Commission that they had altered AIG's financial records from 2000 to 2005 to inflate the insurer's earnings.

Government agencies issue fresh pandemic guidance

Companies should have a plan in place to deal with outbreak

By JEFF CASALE

Two federal agencies last week issued fresh guidance about what employers can do if there is a serious influenza outbreak.

The U.S. Department of Health and Human Services and the Centers for Disease Control and Prevention issued guidelines employers can follow to build a preparedness and action plan in a flu outbreak.

However, experts say fear of a pandemic may have waned and employers may have slipped into a false sense of security. Experts also note the H1N1 influenza virus could wreak havoc on employers if they're not prepared.

According to a World Health Organization update last week, more than 182,000 confirmed cases of pandemic flu have occurred in 177 countries and territories. Nearly 1,800 deaths have been reported as a result of the flu, the vast majority in the Americas.

Michael Keating, Atlanta-based director of Navigant Consulting Inc., said employers are aware of a potential flu outbreak, but some have not taken the simple step of forming a team to help outline how a company would operate should its workforce be hit by employee illness.

Chicago-based Navigant recently launched a survey of employers that focuses on risk management and human resource departments checking their preparedness in the event of a flu outbreak.

"Interest has kind of atrophied since late April when the outbreak first happened," Mr. Keating said. "There isn't a lot of new guidance out there, but what the CDC is advocating is (for employers) to prepare to be flexible."

In its guidelines (see related box), the CDC asks employers to work with employees to implement plans that can reduce the spread of flu, while keeping their business functioning during a slumping economy. The CDC also advises employers to encourage employees to receive a vaccination for seasonal flu as well as the H1N1 virus when that vaccine becomes available.

Mr. Keating and the CDC encourage employees with flulike symp-

See **FLU** page 21

INFLUENZA READINESS

Employers should take action now to plan for flu season, a government agency recommends. Steps they should take include:

- Establish or review an influenza pandemic plan and involve employees in devising a flexible plan.
- Conduct a focused discussion or exercise now to determine whether the plan has gaps or problems that need correction before flu season.
- Engage state and local health departments to confirm channels of communication and methods to disseminate local outbreak information.
- Allow ill workers to stay home without fear of losing their jobs.
- Develop other flexible leave policies to allow workers to stay home to care for sick family members or children if schools or child care programs close due to illness.

Source: Centers for Disease Control and Prevention

AP/CDC

23x

TEXT MESSAGING is 23 times as dangerous as nondistracted driving, reaching for an electronic device is 6.7 times as dangerous, and dialing a cell phone is 5.9 times as dangerous, according to a study.

Multitasking by drivers raises liability concerns

By MARK A. HOFMANN

Renewed buzz about the safety of using personal electronic communications devices while driving could mean new headaches for employers, according to experts.

Transportation Secretary Ray LaHood recently called for a "summit" to address issues associated with people who send text messages while driving. That came shortly after the release of a report—prepared in 2003 but withheld until July—showing that driving while using hands-free cell phones and other communications devices is nearly as unsafe as driving while using hand-held devices.

In the meantime, legal experts warn that rapidly growing numbers of state laws and local ordinances governing use of electronic devices while driving expose employers to new liability. While no state entirely bans using cell phones, six states ban hand-held cell phone use and 17 states and the District of Columbia ban text messaging for all drivers, according to the Washington-based Governors Highway Safety Assn. (see box, page 7).

In addition, Sen. Charles Schumer, D-N.Y., introduced legislation in late July that would ban mass transit drivers nationwide from texting while on the job, citing recent deadly accidents in Massachusetts and California caused by distracted mass transit drivers.

A July Virginia Tech Transportation Institute study found text messaging is 23 times as dangerous, reaching for an electronic device is 6.7 times as dangerous, and dialing a cell phone is 5.9 times as dangerous as nondistracted driving.

But there is no consensus on whether the issue should be dealt with legislatively, just as there is no consensus among risk managers and safety managers over what a company policy should contain.

In a paper updated in 2006, the Des Plaines, Ill.-based American Assn. of Safety Engineers said that operating a vehicle "while using a cellular phone is a potentially

See **HANDS** page 7

Errors & Omissions

In the Aug. 10 edition of Market Moves, the location of CNA Financial Corp.'s headquarters was misstated. CNA's headquarters is in Chicago.

N.Y. doubles continuity cover period

Link with COBRA extends health care to 36 months

By JERRY GEISEL

ALBANY, N.Y.—Employees in New York state who quit or are laid off from companies with insured health care plans can obtain health care continuation coverage up to 36 months—double the prior maximum—under legislation that Gov. David Paterson has signed into law.

The New York law coordinates with the federal COBRA law. Under COBRA, employees who lose their jobs can continue the health care coverage from their former employers by paying a premium equal to 102% of the group rate for up to 18 months.

Under the New York law that applies to insurance contracts issued on or after July 1, beneficiaries can obtain another 18 months of coverage, for a total of 36 months. The premium also is 102% of the group rate.

The second 18 months of coverage is available only to eligible beneficiaries who are enrolled in insured plans, not to individuals in self-funded plans. Federal law preempts states and cities from imposing requirements that relate to employee benefit plans. However, states and cities are not barred from imposing benefit requirements on insurers.

HEWITT STUDY: COBRA enrollment doubles after subsidy program begins. **PAGE 18**

The additional coverage doesn't apply to New York state beneficiaries in situations such as death, divorce or marital separation, who already are entitled to 36 months of COBRA coverage.

The New York law is similar to a 2002 law in California. The California law, though, allows insurers to charge beneficiaries a premium up to 110% of the cost of coverage, based on the group rate of the former employer.

In addition, a Texas law allows COBRA beneficiaries in insured plans to extend coverage up to six months after their COBRA coverage expires. Like New York, the Texas law allows insurers to charge a premium of 102% of the group rate.

More states are likely to follow the lead set by the nations' three most populous states, benefit experts say.

"I wouldn't be surprised if more states do the same. The state gets favorable press, while coverage is expanded at no cost to the state," said Rich Stover, a principal with

See **COBRA** page 18

Recession prompts captive changes

By RODD ZOLKOS

BURLINGTON, Vt.—An undeniable characteristic of the financial crisis is that its impact has cut across industry types and regions, so it's natural that captive insurance companies have been among those feeling its effects.

One of the key ways the crisis has touched captives is through potential counterparty exposures, said two captive insurance company executives who were part of the Financial Crisis and the Captive Industry panel at the Vermont Captive Insurance Assn.'s annual conference this month in Burlington, Vt.

"I think one area that's important is the reliance on reinsurers," said Skip Neilson, downstream team lead-Americas at Shell Oil Co. in Houston, which owns three captives that include Vermont-domiciled Noble Assurance Co.

Speakers at the Vermont Captive Insurance Assn. conference said counterparty exposures are growing.

Mr. Neilson said approximately 10 years ago, Shell's captives had a traditional "tower"-type reinsurance program, with various reinsurers each covering exposures in those towers. Since then, the company has "collapsed" the towers into a multiclass protection program that sees approximately 15 underwriters reinsuring portions of the overall broad program today.

Because of the new structure, while Shell's captive program still has been exposed to some reinsurers in "straits" during the economic crisis, it generally has fared well, Mr. Neilson said.

Richard D. Wilder, vp in the corporate insurance services department at J.P. Morgan Chase Bank N.A. in New York, which owns three captives that include Vermont-domiciled Park Assurance Co., said J.P. Morgan also has been looking to position itself to address

See **VCIA** page 21

Zurich HelpPoint

Today more than ever, it's here to help your world.

In the face of an unstable economy and an uncertain future, businesses are concerned about how they will navigate the coming months and importantly, how to identify and plan for a new set of risks.

We believe that quality business insurance has never been more important, or offered more value. Equally important is a clear understanding of the changing risk landscape. We launched *Zurich HelpPoint* to focus all our efforts as a global insurance group on delivering what our customers need when it matters most. Much more than a contact number or a website, it is a commitment to deliver help.

First, we can help by providing insurance solutions backed by a strong, stable financial position. Our solid balance sheet, disciplined financial approach and global diversification offer a position of strength in our industry.

Additionally, we can help by providing a truly global view of risk. For example, with one of our tools, the Global Risk Assessment Module, we can show how risks are interconnected around the world and how they can affect your business locally.

Finally, we can help by managing your total risk profile. With our specialists from your industry, we can identify key exposures and then help design insurance solutions to mitigate them.

For more than 135 years, we have provided the strength, global perspective and insurance expertise to help our customers and our industry.

To find out how we can start helping you, visit us at www.zurich.com

Here to help your world.

ZURICH®

Because change happenz℠

Smoker loses suit over withdrawn job

Judge rules ERISA does not protect prospective employee

By JOANNE WOJCIK

BOSTON—A case involving a prospective employee who was not hired after he tested positive for nicotine will have only marginal impact on the types of wellness plan incentives employers use to encourage healthier behaviors, though it highlights areas that require caution, benefits experts say.

A U.S. District Court judge in Boston last month dismissed a lawsuit that was filed by Scott Rodrigues in 2006 against Scotts Co. L.L.C. when the Marysville, Ohio-based lawn and garden product maker rescinded an employment offer contingent on a drug test that found nicotine in his urine, a violation of company policy barring employees from smoking on or off the job.

In his suit, Mr. Rodrigues charged that the company violated his right to privacy as well as the Employee Retirement Income Security Act.

However, Judge George A. O'Toole Jr. said Mr. Rodrigues admitted in a deposition that he smoked and did not try to keep his habit private. Moreover, the judge said ERISA did not apply because Mr. Rodrigues was not yet an employee and was working only on the condition that he pass the drug test.

Because the case did not involve the employee's participation in a worksite wellness program, it is not likely to influence employers' decision to use punitive approaches to force employees to abandon unhealthy behaviors, benefits experts say.

"I don't think employers can take any comfort in this case," said Anne Waidmann, director, human resource services at PricewaterhouseCoopers L.L.P., based in Washington. "The case was very narrow and was pursued under ERISA. But ERISA does not protect people who aren't yet employees."

Ms. Waidmann said employers should be more concerned about a March letter the Equal Employment Opportunity Commission sent to an employer that, as a condition of participating in its health benefit plan, required completion of a health risk appraisal consisting of a health-related questionnaire, a blood pressure test and a blood panel screening. The EEOC said requiring an employee to complete a health risk assessment to be eligible for health care coverage violates the Americans with Disabilities Act.

"I think employers still need to be cautious about wellness programs. You could end up discriminating against people with disabilities," Ms. Waidmann said.

Sharon Cohen, group and health care benefits counsel at Watson Wyatt Worldwide in Arlington, Va., said the ruling "lays down some groundwork for employers that they need to have a policy in place and that it needs to be very clear, with everything put in writing," she said.

Scotts did not return calls seeking comment on the case, *Scott Rodrigues vs. EG Systems Inc. dba Scotts Lawnservice*.

Commentary

Buyers need to work for level playing field

ADRIAN LADBURY

International Editor
Adrian Ladbury can be reached at aladbury@bieurope.com

The decision by state authorities in Illinois to allow Arthur J. Gallagher & Co. to again collect contingent commissions has reopened this spicy can of worms in the United States and beyond.

The move to amend the agreement Gallagher signed in 2005 barring it from collecting the controversial payment only applies to that firm, so similar agreements signed by rival brokers Marsh & McLennan Cos. Inc., Aon Corp. and Willis Group Holdings Ltd., are not directly affected by this decision. Moves to amend those agreements with various state authorities would have to be negotiated separately.

The floodgates have not been officially opened for an immediate and unbridled return of contingent commissions charged by the leading brokers, but authorities in Illinois and New York have indicated they would be willing to revisit the issue with other brokers, presumably to ensure a level playing field.

The fact that this is not an issue limited to the United States was made clear last week when the Federation of European Risk Management Assns. commented on this development.

FERMA, the federation that speaks at a pan-European and international level for the leading national risk and insurance management associations in Europe, is not happy with this apparent U-turn on the part of the Illinois authorities.

The problem is that the practice was not outlawed altogether in one quick, clean, elegant sweep of the regulatory brush.

FERMA President Peter den Dekker said European insurance buyers are worried about this latest move because they live in a "global village."

He said FERMA has campaigned for brokers to voluntarily stop accepting contingents and for full transparency of compensation arrangements. The development in Illinois is a significant step backward, Mr. den Dekker said.

The French risk management association, AMRAE, has organized a workshop to discuss whether European risk managers should call for a mandatory net quoting system—which includes no form of remuneration for the broker—that already operates in some European countries during the FERMA conference in Prague, Czech Republic, Oct. 4-7.

This will be a lively debate fueled by the fact that Gregory Case, president and chief executive officer of Aon, and Dan Glaser, chairman and CEO of Marsh Inc., will be on a panel debate during the conference moderated by Herbert Fromme of FT Deutschland and me.

The last FERMA conference in Geneva was dominated by the issue of broker remuneration as Willis' Sarah Turvill defended the broker's recent introduction of a supplementary 2.5% fee to help replace lost revenue from contingents. It seems delegates at this year's event will be treated to a lively, possibly heated, definitely open and healthy, debate.

There are two sharply defined and opposite points of view.

The big brokers say they operate at a competitive disadvantage because only they agreed to cease taking contingents, leaving the rest of the market free to continue collecting the commissions and take advantage of their larger rivals' weakened position.

The buyers say the cessation of contingent commissions was necessary and should be continued and extended to the whole market.

The problem is that the practice was not outlawed altogether in one quick, clean, elegant sweep of the regulatory brush.

European and U.S. supervisors have failed to follow through after former New York Attorney General Eliot Spitzer led the way. Instead, the regulators wound up mumbling about the primacy of market-based solutions.

What is needed now is strong and decisive action by regulators in the U.S. and Europe before the mess Mr. Spitzer exposed is re-created as the brokers manage to slink back to the pre-2005 situation.

Insurance buyers must help the regulators and themselves by strongly backing the efforts of their associations to make sure the field is not only level but is the best playing surface possible for both sides.

Hands: Renewed buzz in cell phone laws

CONTINUED FROM PAGE 4

unsafe act," but also noted that drivers face other distractions. "ASSE's view is that specifying cellular phones in legislation and regulation may not be the best route to take in addressing this issue….Perhaps an alternative course of action is to examine the existing laws and rewrite them, where appropriate, to give government officials more guidance as to what constitutes a hazardous act created by inappropriate actions, which may include use of electronic devices such as cellular telephones," the ASSE said.

Legal experts say the exposures employers face can be considerable.

"If there's an accident, a plaintiffs lawyer would use the violation of the local ordinance as prima facie evidence of negligence in order to prove that the employee and therefore the employer, through respondent superior liability, is liable for the accident," said Gerald Maatman, a partner at Seyfarth Shaw L.L.P. in Chicago. "Employers, if they're solely focused on this area, they need to have a policy in place for employees using a company vehicle to abide by all applicable laws and rules of the road. If an accident should occur because the employee is using a communications device while driving, they'd be acting outside the scope of their employment."

Given studies linking electronic device use to accidents, "it will be much more likely that plaintiffs lawyers will seek some sort of punitive component because of what is emerging as recognized by legitimate authoritative sources as contributing to the likelihood of injury and accident," said Peter Susser, a shareholder in the Washington office of Littler Mendelson P.C. It is a "very good idea" for companies to have a formal policy on the use of such devices and make sure employees know the company takes the issue seriously, he said.

Some Aon clients have set internal policies governing on-the-road electronic communications, said David W.J. Mitchell, director of risk control and safety for Aon Risk Services' trucking practice in Little Rock, Ark. In some cases, trucking companies have imposed policies that ban texting and e-mailing or even long conversations while driving, he said. They also encourage safe habits and voluntary cooperation because policies can be "almost impossible to enforce," he said. Employers are following up with continuing education in safety meetings as well.

But Frank D'Ambrosio, ASSE's administrator of the transportation practice and a senior vp at New York broker Frenkel & Co. Inc., said he hasn't seen a lot of company policies addressing the issue. Those that have policies have banned using electronic communications devices while driving, suggesting drivers pull over to check messages and make calls.

About a year ago, Atlanta-based DS Waters Inc., which delivers bottled water to offices and homes nationally, installed video cameras in some of its delivery vehicles, said Mike Belcher, director of safety.

The company found that about 50% of highway collisions involved some sort of cell phone use or distraction, he said.

"We have since put into place a pretty strict procedure. With any of our route trucks, cell phone use is prohibited," Mr. Belcher said.

"People were falsely under the impression that it was OK to use a mobile phone if you were using a hands-free device," he said. "But if you're looking down at the device, a hands-free device is not going to help you."

He noted that there had been no accidents attributed to cell phone use since the policy was adopted.

Labor Finders International Inc. has suffered no accidents related to electronic device use, said Wayne Salen, director-risk management at the Palm Beach Gardens, Fla.-based company. He said delivery drivers who drive temporary workers back and forth to job sites are not supposed to use electronic devices while they are driving. The ban, however, is not mandatory except when franchisees require it, he said.

"We do have salespeople who are out on the road during the work day, but we haven't gotten any more restrictive than" the policy regarding delivery drivers, he said.

But "if someone violates state law while on work, that's grounds for discipline up to and including termination," Mr. Salen said. "We keep track of those that present an exposure to (Labor Finders') auto fleet program."

At Pennsylvania State University in University Park, officials have discussed implementing a policy. However, "every time we brought it up, the Pennsylvania Legislature has coincidentally introduced legislation to restrict the use of cell phones," said Gary Langsdale, risk officer for the school.

CELL PHONE LAWS

State lawmakers have been active in regulating cell phone usage. Among laws already in force or going into force later this year or early next year are:

17 STATES HAVE BANNED TEXT MESSAGING FOR ALL DRIVERS:

Alaska, Arkansas[1], California, Colorado[2], Connecticut, Illinois[3], Louisiana, Maryland[1], Minnesota, New Hampshire[3], New Jersey, North Carolina[2], Oregon[3], Tennessee, Utah, Virginia, Washington and the District of Columbia

6 STATES BAN USING HAND-HELD CELL PHONES WHILE DRIVING:

California, Connecticut, New Jersey, New York, Oregon and Washington, the District of Columbia and the Virgin Islands.

1. Effective October 2009.
2. Effective December 2009.
3. Effective January 2010

Source: Governors Highway Safety Assn.

Business Insurance OPINIONS

New approach needed on health care reform

IT IS TOO SOON to say that the drive to pass comprehensive health care reform is dead, but it is safe to say the effort is in serious trouble with previously set deadlines for congressional action in a shambles, a stalemate in a key congressional committee and slipping public support.

It is not difficult to explain why the reform drive has bogged down. President Obama deserves some of the blame. Going in the opposite direction of the Clinton administration's 1993 effort, President Obama has only offered general principles and has left it to Congress to develop details of the legislation.

That hands-off approach resulted, especially in the House, with Democratic committee chairmen pushing bills that went far beyond the administration's basic goal of moving the nation closer to universal coverage. Those bills are junked up with provisions such as leaving it to government officials to determine what benefits are included in employer health care plans and effectively preventing employers from altering their retiree health care offerings.

It is not difficult to explain why the reform drive has bogged down.

Congressional leadership also has failed. Consideration of the legislation by House committees was a joke; two House panels each took about a day to pass their respective bills.

Finally, as we have noted before, sticking a so-called public option in the bill—a nonstarter for most congressional Republicans and many individuals with real concerns about what could be huge government expansion in the health care arena—has seriously eroded support for the broader reform drive.

We hope these obvious problems in approach will serve as a wake-up call for the administration and Congress. At minimum, they have to develop proposals that will have sufficient support, are in tune with what the public wants and are directly relevant to improving the nation's health care delivery and financing system.

Medical travel promotes healthy competition

WE ARE ENCOURAGED, as we report on page 1, that more employers are adding a medical tourism feature to their health care plans.

Employers provide financial incentives, such as waiving copayments and offering travel allowances to employees who are willing to travel within the United States, to undergo procedures at hospitals far from their homes where intermediaries have negotiated lower rates.

We can well understand the appeal to and interest by employers in medical tourism. The approach addresses, at least partly, a driver of high health care costs. As hospitals have merged in many parts of the country, employers, insurers and third-party claims administrators have lost leverage negotiating with health care systems facing little competition.

By hammering out deals with hospitals in parts of the United States that have lower costs, employers may increase their clout with hospitals in areas where most of their employees live. Hospitals, concerned about losing business, may be more flexible at the negotiating table.

For that reason, medical tourism is a promising approach that may help to cool medical care inflation, and employers would be wise to explore whether it makes sense to offer the benefit.

WRITE

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

Please send your letters to:

Letters to the Editor
Business Insurance
360 N. Michigan Ave.
Chicago, Ill. 60601-3806

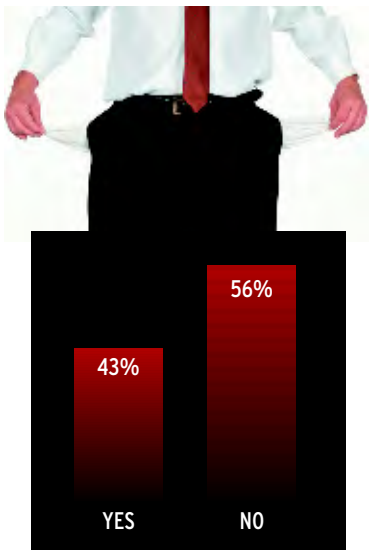
fax: 312-280-3174, e-mail:
rcoccia@businessinsurance.com

VOTE

in the *BI* Online Poll at
www.businessinsurance.com

THIS WEEK'S RESULTS

Q Is disclosure enough to prevent abuses of contingent commissions?



NEXT WEEK'S QUESTION

Q: Would you consider traveling out of state to undergo a medical procedure?

LETTERS

Cat backstop critics missing the point

TO THE EDITOR: Eli Lehrer and Frank Nutter completely miss the point in defending the status quo. The current system (*BI*, Aug. 20, "Interest in Cat Consortium Grows") works well for their reinsurance clients, but it leaves consumers and the American economy at huge risk.

They conveniently mischaracterize how a public-private partnership would work and how it would lower the cost of homeowners' insurance.

They overlook how a strong partnership leveraging the fundamentals of the private insurance market and the unique abilities of the public sector would strengthen the nation's financial system, eliminate the taxpayer bailouts, and protect the insurance system from collapsing after a truly massive event requiring a heretofore unthinkable systemwide bailout.

The Homeowners' Defense Act would strengthen America's financial infrastructure and allow states that have privately funded catastrophe backstops to access a national program that would spread risk and eliminate the "timing risk" that causes markets to contract and reinsurance prices to skyrocket.

Providing this type of backstop would ensure access to affordable homeowners' insurance, stabilize the market and prevent a collapse of the insurance sector should a truly massive event strike any of the nation's largest cities.

Because the program would only include those states where there is concern about natural catastrophes, the multibillion-dollar post-event bailouts, which are paid by all taxpayers in all states every time a massive event occurs, would be eliminated.

The purpose of the Homeowners' Defense Act is not to displace the

See **LETTERS** page 15

CLOSE COLLABORATION

Employers work with physicians to cut workers comp costs

By ROBERTO CENICEROS

Traditional managed care tools such as utilization reviews and doctor networks continue to wring costs out of employers' workers compensation programs, several observers say.

But a recent California Department of Insurance report questions the effectiveness of utilization reviews and certain doctor network practices.

The July 7 report that resulted from a rate hearing said off-the-shelf medical provider networks that focus solely on lowering payments to doctors could actually be encouraging more treatments and procedures.

In contrast, the report said self-insured companies that develop close relationships with specific doctors, while reviewing bills and utilization to reward effective medical treatment, have lowered costs and produced favorable return-to-work outcomes.

Employers nationwide could benefit from working closer with specific medical providers whom billing and claims outcome data have identified for their ability to reduce disability durations and costs, said Maddy Bowling, a principal in Chicago at Maddy Bowling Consulting Inc.

That could provide better claims outcomes than result from preferred provider networks that mainly offer a discount for treatment visits coupled with access to a large number of doctors, regardless of the doctors' experience or quality, Ms. Bowling said.

Given the continuing cost increases in medical care, "I really don't think those (PPO networks) are working in comp," Ms. Bowling said. "The most important thing you can do on a comp claim is refer the newly injured employee to the best doctor. That is going to have the most impact on whether your claim goes well or goes poorly."

Focusing on contracting only with doctors that have proven their ability to obtain favorable claims results, rather than a network touting access to a large number of doctors across a broad geographical area, also could eliminate a significant amount of utilization review, Ms. Bowling said.

Utilization reviews can irritate doctors, so they may be less likely to release an injured worker rather than risk releasing a patient too early, Ms. Bowling said. This can drive overhead costs higher.

Some insurers now realize that savings and efficiencies flow from a well-managed provider network that gives "proper treatment" rather than relying extensively on utilization review, the California Department of Insurance report said.

"Utilization review needs some utilization review itself," because a majority of medical requests are going through the process only to get approved, the report said. That means unnecessary reviews could add to costs.

Cost-containment expenses, including payments for bill reviews, utilization reviews and medical provider network services, are increasing.

In California, for example, insurers paid $284 million for cost containment in 2008, up from $187 million in 2007,

See **COSTS** page 13

Workers Compensation & Disability Management

SPOTLIGHT

Largest rehabilitation service providers

*Ranked by 2008 revenues from rehabilitation services provided directly to employers**

Rank	Company/Address	Phone/Web site	Revenues from rehabilitation services	Professional staff	Total clients	Closed cases in 2008	Independent medical exam cases	Expert opinion	Principal officer
1	**Coventry Workers' Comp Services** 720 Cool Springs Blvd., Suite 300, Franklin, Tenn. 37067	858-547-2528 *www.coventrywcs.com*	$208,000,000	1,300	1,400	197,000	31,000	250	Derrick Amato, COO-clinical services
2	**GENEX Services Inc.** 440 E. Swedesford Road, Suite 1000, Wayne, Pa. 19087	610-964-5100 *www.genexservices.com*	$170,000,000	1,090	1,230	122,600	17,300	0	Peter C. Madeja, president/CEO
3	**Intracorp** 1601 Chestnut St., Philadelphia, Pa. 19192	800-345-1075 *www.intracorp.com*	$114,821,893	658	531	85,043	492	114	Mark Farrell, president
4	**CorVel Corp.** 2010 Main St., Suite 600, Irvine, Calif. 92614	949-851-1473 *www.corvel.com*	$30,000,000	100	2,000	5,600	10,000	50	Dan Starck, president/CEO
5	**MedInsights Inc.** 206 Gothic Court, Suite 308, Franklin, Tenn. 37067	615-778-5100 *www.medinsights.com*	$12,500,000	78	265	4,926	0	0	Michael G. Repoli, president/CEO-TPA services
6	**M Hayes** 225 International Circle, Suite 201, Hunt Valley, Md. 21030	410-628-4050 *www.mhayes.com*	$9,000,000	118	350	4,079	345	55	Melinda Hayes, president/CEO
7	**F.A. Richard & Associates Inc. dba FARA** 1625 W. Causeway Approach, Mandeville, La. 70471	985-624-8383 *www.fara.com*	$6,700,000	36	219	1,500	125	0	M. Todd Richard, president/CEO
8	**Archer Consultants Inc.** 1101 Stewart Ave., Suite 300, Garden City, N.Y. 11530	516-683-0100 *www.archerconsultants.org*	$1,027,900	27	118	216	0	122	Dorris Wisotzik, president
9	**Total Care Management** P.O. Box 6528, Greenville, S.C. 29606	800-638-6829 *www.hewittcoleman.com*	$820,000	6	53	264	70	15	Charles R. Warne, CEO
10	**Cascade Disability Management Inc.** 4601 N.E. 77th Ave., Suite 250, Vancouver, Wash. 98662	360-713-5118 *www.cascadedisability.com*	$423,336	190	200	12,068	0	265	David Buonviri, president

*Rehabilitation management services are defined as providing all services included in the medical management or vocational rehabilitation of an injured or ill individual. They do not include the delivery of physical rehabilitation or treatment or case management for group life and health cases.
Source: BI survey
Researched by Karen Tucker

Largest independent safety consultants*

*Ranked by 2008 revenues from unbundled safety consulting services***

Rank	Company/Address	Phone/Web site	Unbundled safety consulting revenues	Total staff	Total unbundled clients	Corporate/ institutional clients	Principal officer
1	**Bureau Veritas** 11860 W. State Road 84, Suite 1, Fort Lauderdale, Fla. 33325	888-357-7020 *www.us.bureauveritas.com*	$510,929,000	3,900	52,000	51,750	Robert Donze, COO
2	**DuPont Safety Resources** 4417 Lancaster Pike, Wilmington, Del. 19805	800-532-7233 *www.safety.dupont.com*	$200,000,000	500	300	250	Jim Weigand, vp/general manager
3	**ATC Associates Inc.** 600 W. Cummings Park, Suite 500, Woburn, Mass. 01801	877-282-4756 *www.atcassociates.com*	$52,741,832	125	9,814	9,525	Bobby Toups, president/CEO
4	**E4Safety Professionals L.L.C.** 35 S. Galena Road, Sunbury, Ohio 43074	866-972-3389 *www.e4safety.com*	$14,670,000	198	150	150	Keith B. Snead, president
5	**Safety Management Group** 6500 Technology Center Drive, Suite 200, Indianapolis, Ind. 46278	800-435-8850 *www.safetymanagementgroup.com*	$12,585,350	91	273	273	Kent Burget, president
6	**Regional Reporting Inc.** 40 Fulton St., New York, N.Y. 10038	212-964-5973 *www.regionalreporting.com*	$12,000,000	300	300	20	Martin Myers, CEO
7	**Safety Resources** 10975 Grandview Drive, Overland Park, Kan. 66210	913-663-8500 *www.olsi.net*	$10,494,696	150	300	300	Paul Mazzei, president
8	**F.A. Richard & Associates Inc. dba FARA** 1625 W. Causeway Approach, Mandeville, La. 70471	800-259-8388 *www.fara.com*	$7,865,000	180	84	25	M. Todd Richard, president/CEO
9	**Risk Consultants Inc.** 6611 Watson St., Union City, Ga. 30291	770-964-1226 *www.riskcon.com*	$7,200,000	78	314	298	R. Michael Malone, president/CEO
10	**PSRG Inc.** 800 W. Sam Houston Parkway S., Suite 107, Houston, Texas 77042-1908	713-532-8800 *www.psrgroup.com*	$5,500,000	50	350	100	Robert J. Weber, president/CEO

*Includes companies not owned by brokers or insurers. **Reflects safety consulting revenues provided on a direct, unbundled basis.
Source: BI survey
Researched by Karen Tucker

Visit *www.businessinsurance.com/directories* for more information and to access the full searchable Directory of Rehabilitation Service Providers and Independent Safety Consultants.
Business Insurance now offers the option to purchase the entire online directory as an Excel file or as a PDF.

BUSINESS INSURANCE

YOUR SOURCE FOR TOTAL COVERAGE OF THE REINSURANCE MARKETPLACE

INVEST IN YOUR BRAND: ADVERTISE IN **BUSINESS INSURANCE.**

GLOBAL REINSURANCE MARKETS

Business Insurance's annual review of the news, trends and developments influencing the global reinsurance market.

- Bonus Distribution at the Monte Carlo Rendez-Vous and the CPCU meeting
- Exclusive ranking of Worldwide Insurers

Issue Date: Aug. 31
Ad Close: Ad space reservations closed Aug. 19

REINSURANCE: RENDEZ-VOUS REPORT

In depth coverage of the Monte Carlo Rendez-Vous de Septembre. Leading executives around the world will rely on this issue for the information they need from this major industry event.

Issue Date: Sept. 21
Ad Close: Sept. 9

For details about advertising opportunities, call 212-210-0137 or e-mail Advertising@BusinessInsurance.com

REINSURANCE: TRENDS & ISSUES

Insight into the latest developments and emerging trends in the reinsurance market and a look ahead to what's in store for the future.

- Includes our extensive Global Reinsurance Buyers Guide featuring profiles of the largest global buyers of reinsurance.
- Bonus Distribution at the TMPAA Summit and the PCI conference
- Exclusive ranking of Reinsurance Brokers

Issue Date: Oct. 26
Ad Close: Oct. 14

New York: 212-210-0137 | **Chicago**: 312-649-5286 | **Boston**: 617-292-4856
West Coast: 303-933-1802 | **London**: +44-207-457-1412

Business Insurance
www.BusinessInsurance.com
The Trusted Voice of the Risk and Benefits Management Marketplace.

How employers should choose attorneys to defend comp claims

Risk managers look for reputation, experience, accountability

By DAVE LENCKUS

Selecting an effective workers compensation defense attorney is an inexact science, risk management professionals and attorneys say.

Relying on attorneys' reputations is a good starting point, experts say.

But even after retaining an attorney, some risk managers and directors of workers compensation consider the relationship a trial run until the attorneys' response to various case management guidelines are evaluated.

The challenge in selecting an attorney is that it is "not like trying to draft a third baseman" by relying on various statistics, said defense attorney Rusty Watts, a partner with Swift Currie McGhee & Hiers L.L.P in Atlanta.

"There are lots of different ways to handle a workers comp claim," Mr. Watts said. Employers and attorneys sometimes do not share the same philosophy, though attorneys can adapt, he said.

So when risk management professionals are looking for successful and like-minded attorneys, "word of mouth is key," he said.

Regardless how successful an attorney is, the candidate must be familiar with the industry in which the employer operates, several risk management professionals said.

"They have to understand our business and have similar clients," said Diane M. Pidgeon, the Park Ridge, Ill.-based director of workers compensation for Advocate Health Care Network.

Tim Portale, assistant vp-environmental employee safety for Nashville, Tenn.-based hospital system HCA Corp., agreed.

"If a plaintiff's attorney is arguing that a client has a permanent injury, we want our attorney to know that's probably not true," Mr. Portale said. Often, workplace accommodations allow the injured worker to return or perhaps the injury has no effect on the worker's ability to return, he said.

Richard J. Roberts, the corporate risk manager for Simsbury, Conn.-based Ensign-Bickford Industries Inc., demands more than having experience representing similar defendants. Attorneys must tour the company's worksites "to see what employees do," which provides a perception that claimants' doctors sometimes do not have, he said.

The attorneys Mr. Roberts retains also must be one of their firms' top two attorneys, have experience representing injured workers and be respected by their states' workers comp judges.

Those overseeing risk management professionals agreed that an attorney's reputation among state workers comp board members is a critical resume item.

"You're pretty much seeing the same judges" from case to case, said Wayne L. Salen, director of risk management for Labor Finders International Inc. in Palm Beach Gardens, Fla. "The last thing you want to do is irritate them."

After retaining an attorney, risk management professionals take wide-ranging approaches to evaluating whether a lawyer merits continued work.

For example, Mr. Roberts, who has had longstanding relationships with Ensign-Bickford's workers comp attorneys, said the 10 to 12 litigated workers comp claims the company faces annually are too few and disparate to require defense attorneys to follow case management protocols.

Mr. Portale said workers comp statutes in the 20 or so states where HCA operates hospitals establish various deadlines for attorneys.

In Michigan, "a fair number of employers are still extremely informal" in their case management guidelines outside of electronic billing reviews, said defense attorney Michael Brenton, a partner at Murphy, Brenton & Spagnoulo P.C. in East Lansing, Mich.

Others say they take a more formal approach.

Labor Finders' Mr. Salen has established some case management protocols, although the company does not similarly defend each of the 250 to 750 litigated cases it faces annually.

Mr. Salen's protocols include deadlines to report a case's status to his department and the case adjuster, billing transparency and, most importantly, 24-hour turnaround of reports after a case hearing or deposition.

"I can't tolerate a lengthy delay," Mr. Salen said. "That's dollars to us," because those are lost-time cases. "We're trying to compress the process" of resolving cases.

Advocate's Ms. Pidgeon has implemented guidelines on defense strategies, which attorneys are required to submit within 60 days after receiving a case file, and quarterly case reviews.

One law firm's "breakdown in communication" and inability to close cases prompted Ms. Pidgeon to fire it last year. "It became pretty blatant (that) we weren't that important" to the firm, which assigned lower-ranking and error-prone associates to Advocate's cases, she said.

One risk manager at a company that has employees nationwide and faces nearly 500 litigated claims annually maintains that while state statutes tend to control the pace of litigated claims, risk managers can take control by tightly managing their attorneys.

Fred O. Pachón, vp of risk management and insurance for Select Staffing Inc. in Santa Barbara, Calif., insists the two dozen defense firms he has retained nationwide meet numerous strict deadlines designed to resolve cases within 90 days, including developing a detailed plan of action within 10 days. Attorneys also must follow his case management methodology (*BI*, April 20).

Mr. Pachón's aggressive defense style does not mean Select Staffing fights every case to judgment. Attorneys have the authority to settle cases up to $15,000 so no opportunity is missed to close a case and avoid higher litigation costs.

"Any claim has a price tag," and an employer can reach a relatively early settlement and avoid much higher litigation costs if it manages litigation aggressively, Mr. Pachón said.

Mr. Brenton agreed that early case assessments can be completed regardless of state statute.

But early settlements may not be possible, the defense attorney said. For example, he noted that Michigan law bars employers from settling on the future costs of an injured worker's disability no sooner than six months after the injury occurred.

Questions & Answers

With the recession forcing employers to streamline their workforce, companies are relying on absence and disability management programs to assure remaining employees are at work and productive. Marcia Carruthers is chief executive officer of the San Diego-based Disability Management Employer Coalition, whose members work to advance employer-integrated disability programs as well as absence and productivity management. Business Insurance Senior Editor Roberto Ceniceros asked Ms. Carruthers how the economy is affecting disability management programs and what role they will play once the economy begins to recover.

Recessionary tactics

Q: How have economic conditions affected absence and disability managers and their programs?

Just like other recessionary periods, disability and absence managers are very cost-conscious. That's not new, although I would say they are probably digging deeper in this recession. The disability management best practices that we've gained all along really do offer them cost-cutting solutions so they look to the best practices of our industry.

Second off, they're doing more themselves. There's less money for consultants, so they're looking for solutions and ways of running their programs that they can do within their own organization. So they're looking to their carriers and their brokers. They are looking for tools, for instance, like one DMEC just put out, a tools-of-the-trade reference guide that was very well-accepted at our annual conference.

Also, there is more interest in forming captives. So (employers are exploring) being self-insured (and administering more of their disability programs) themselves, where they looked to outsiders before.

In terms of being leaner, (they are) looking at a horizontal view of absence. That means they are looking at absence across disability and workers comp program lines vs. just looking at, say, claims administration or return-to-work within a workers comp program. That would be a more vertical view.

And I think that is true integration when you're looking at (several programs) from a horizontal as well as a vertical basis. It really improves efficiency and eliminates waste, such as overlapping coverage between programs.

And finally, the last thing is they're just working smarter. Harley-Davidson Motor Co., for example, has a computerized system (for evaluating) job demands (*BI*, July 27). That really increases their efficiency. (It's part of a) post-employment testing process that reduces their workers comp claims.

Q: So well-structured disability and absence management programs are helping companies survive?

Absolutely. But they also realize there are compliance risks and costs associated with not having an efficient program because of the increased complexity with all the new Family and Medical Leave Act regulations.

Attention to (tracking) incidental absence (with the help of technology) is also important. A nationwide study found that because (employers) were not paying attention to the first five days of incidents, or the first five days of an absence, their costs increased by 11%.

Q: How will disability and absence management programs play a role as the economy improves, yet employers will still have fewer employees?

Automation of absence management, besides being more efficient, it just requires less staffing and certainly it's something a lot companies have needed to do for a long time. I think this (recession) is probably a good juncture in which to do that, certainly for compliance as well. There's more and more of a need to do that. And as companies start adding more employees onto their payrolls, they've got this great automated system (to help them track and manage disability and incidental absences).

Q: What other factors do you see on the horizon that will shape disability and absence management programs?

No. 1, the increased interest in the behavioral aspect of disability or workers comp claims. We've seen this in terms of the interest of our members and more programs and more best practices (being put into place). Certainly, mental health parity is going to bring that to the forefront and the interest in decreasing employee stress and providing more resiliency programs for employees.

The second thing that is looming on the horizon is all of the legislation and all of the changes that are going to be coming forth from the Obama administration and the Democratic Congress. That is one of the things we're going to be looking at because—besides the health care aspect, which is getting on the press right now—there is a whole host of disability and absence-related factors that are going to be affected by health care reform.

Costs: Comp cases focusing on outcomes

CONTINUED FROM PAGE 9

according to a June Workers' Compensation Insurance Rating Bureau of California report.

While NCCI Holdings Inc. could not provide data on cost-containment expenses for the 38 states where it provides rating services, observers say cost-containment expenses have been rising across several states in the past two or three years.

Overall, medical costs for lost-time claims have increased 6% over each of the past three years, according to Boca Raton, Fla.-based NCCI, a unit of the National Council on Compensation Insurance Inc.

Utilization reviews can be used too often when applied repeatedly to treatments that are necessary, said Betsy Robinson, director of strategic program development for Intracorp, a Philadelphia-based workers comp and disability medical management company and unit of CIGNA Corp.

So Intracorp analyzes patterns of its network providers and does not conduct utilization reviews when the doctors are experienced in workers comp treatments and demonstrate a record of using best-practice guidelines.

'I know there has been some questioning of utilization review, but I think UR is the primary methodology, particularly on evidence-based medicine, for ensuring quality of care for your employees.'

Bill Zachry, Safeway Inc.

"We send them a letter and let them know, 'Your practice patterns have been positive, you operate within guidelines and we are not going to interrupt your medical treatment with UR,' " Ms. Robinson said.

But Intracorp continues to monitor bill utilization data to assure doctors don't stray from best-practices guidelines. It also conducts a utilization review when data shows doctors too often fail to operate within the guidelines.

To help address its work comp costs, Pleasanton, Calif.-based Safeway Inc. established its own "very focused network" of "high-quality doctors" rather than relying on a "generic" provider network, said Bill Zachry, vp of risk management for the grocery chain.

But Safeway's nurse practitioners still conduct utilization reviews to avoid unnecessary treatments and get the kind of health care that returns employees to work.

"I know there has been some questioning of utilization review, but I think UR is the primary methodology, particularly on evidence-based medicine, for ensuring quality of care for your employees," Mr. Zachry said.

State laws vary widely in governing the application of doctor networks and utilization reviews.

But because medicine is as much art as science, some utilization review always is necessary, said Paula Woolworth, senior vp of account management at GAB Robins Group of Cos. and a vp in the company's MedInsights workers comp managed care unit in Parsippany, N.J.

Even the best doctors rely on innovative treatments or may overuse certain medical services, Ms. Woolworth said. Utilization reviews also are necessary because health care industry pressures to make a profit can encourage overuse of services.

Increasingly, companies that provide third-party administrators and workers comp insurers with provider networks are basing fees on the ability to deliver favorable claims outcomes, said Anita Schoenfeld, a Dallas-based senior consultant and workers comp specialist at Tillinghast, a business unit of Towers Perrin. So they are using billing reviews, utilization reviews, and analyzing claim outcomes and disability durations to contract with doctors that produce the best claims outcomes.

"The networks are coming to the TPAs and saying, 'This is the data that we have to show our outcomes are better,' " Ms. Schoenfeld said. "That is the way they sell their services and choose their docs. They have been doing that for years on the employee benefit side. Now, (some of) those same networks are doing it on the comp side."

Yet employers still need to push their TPAs and insurers to assure they are contracting with doctors that are focused on favorable outcomes, several sources agree.

But claims outcomes are not the only consideration in determining whether a network is appropriate for a specific employer, said Heidi K. Mader, vp and national leader for the absence, disability, work comp and life management practice at Aon Consulting in New York.

Networks also must be evaluated for their quality of care, discounts and access, meaning the number of providers they have in geographical areas where an employers workers are located, Ms. Mader said

"Let's say you identify the best providers in the world, and the quality of those providers is superb," Ms. Mader said. "They get folks back to work (and) their costs are the lowest. (But) if those providers are a hundred miles away, guess what? No one is going to go to them."

Health care reform likely to affect workers compensation

By JOANNE WOJCIK

Changes made to the nation's health care system likely will affect workers compensation, even though legislation under debate makes no mention of occupational medicine, industry experts say.

Because workers comp medical costs comprise just 3% of overall U.S. health care spending, according to the National Council of Compensation Insurance Inc., experts say it is unlikely Congress will address it as part of health reform legislation.

In addition, the workers comp industry has been fighting to make sure occupational medicine stays out of legislation to reform health care to prevent a repeat the 1990s Clinton administration effort to include it.

"If you're trying to figure out how to reform the U.S. health care system, you're probably going to focus on the big things first," said Harry Shuford, chief economist at the Boca Raton, Fla.-based NCCI. "Work comp and bodily injury, liability, etc. are all very small. So they would be tertiary issues to address."

"The big issues that policymakers are wrestling with don't have much relevance to workers comp. Whether to have a public option, change the tax treatment of premiums paid by employers, I don't see either of those having a significant role in workers comp," Mr. Shuford said.

"Many people have made the comparison between this legislation and that which was proposed in the 1990s," said Paul Mattera, chief public affairs officer at Liberty Mutual Insurance Co. in Boston. The Clinton administration plan "would have taken the 40% of the work comp dollar that went to pay medical benefits and folded it into nonoccupational medical care. As a result, work comp carriers would only be responsible for the disability portion and wouldn't have been able to control any of the medical."

But "this time around, there's no explicit reference to work comp," which has brought the industry some relief, Mr. Mattera said. "We don't feel the same sense of panic this time, although there's deep concern, partly because it's unclear how it will play out as far as workers compensation is concerned."

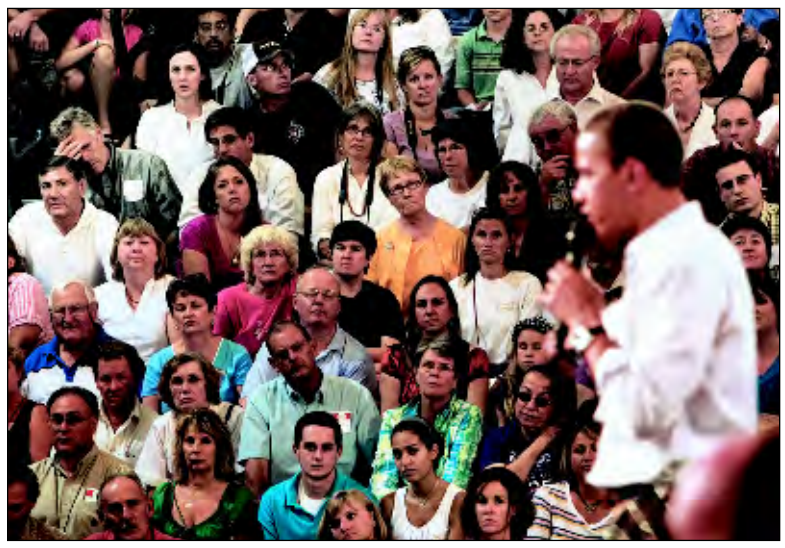
Regardless of the form that health care legislation takes, it likely will have an indirect effect on workers comp costs, industry experts say.

"You can't fundamentally alter the national health care system and not affect workers comp," said Dave North, president and chief executive officer of Sedgwick Claims Management Services Inc. in Memphis, Tenn.

"If you look back at the national dialogue that occurred at the start of the Clinton era, we saw in this country significant changes in health care in the years following, and there was no legislation passed. The heightened dialogue and awareness alone caused significantly positive health care reform for employers," Mr. North said.

Any efforts that improve the overall health of the population also could affect workers comp costs.

"An area we don't have an ability to touch from the occupational side is prevention and wellness," Mr. North said. "And we know that comorbidities—specifically obesity, diabetes, mental health and substance abuse—affect workers compensation. Comorbidities affect both the likelihood that a worker will have an injury as well as their recovery period."



REUTERS/LANDOV

President Obama speaks at a town hall meeting in Grand Junction, Colo., on Aug. 15. Although there is no mention of occupational medicine in health care reform proposals, changes likely will affect workers compensation.

"We see this in California," said Mark Webb, vp-governmental relations at Employers Direct Insurance Co. in Thousand Oaks, Calif. "In many cases, these conditions need to be brought under control before the work comp system" can treat an occupational injury, he said.

Obesity also is driving up the cost of occupational injuries, with comp carriers in some cases paying for bariatric surgery in addition to the workplace injury suffered to enable a claimant to return to work sooner and less likely to suffer re-injury because of his or her lower weight, Mr. Webb said.

Should health care reform efforts reduce medical errors, that also could positively affect workers comp costs, said Rita Nowak, vp, commercial lines and workers comp, at the Property Casualty Insurers Assn. of America in Des Plaines, Ill. Insurers must pick up the tab for such errors if they occur in the treatment of an injured claimant, she said. Medical errors also can lead to longer disability periods while claimants recover, she said.

Because many doctors treat occupational and nonoccupational illnesses and injuries, pay-for-performance revisions could compensate them based on outcomes and using evidence-based medicine, NCCI's Mr. Shuford said.

"If you start seeing a move from fee-for-service to some sort of pay-for-performance compensation structure" for health care, "you will see workers comp starting to adopt those as well," Mr. Shuford said.

But if health reform includes price controls on provider reimbursements, "we would be concerned about potential cost-shifting" by providers to work comp insurers "to recoup lost revenue," Ms. Nowak said.

"To the extent that this health reform creates a public plan, which seeks to reimburse providers at or below what they're being reimbursed today, they are going to look to other payers to recapture some of those costs," Liberty Mutual's Mr. Mattera said. "So cost-shifting could potentially be exacerbated with reform."

Likewise, any change in Medicare reimbursement rates would affect states that base their occupational health fee schedules on Medicare rates, leading to greater cost-shifting, Mr. Mattera said.

Workers comp pharmacy costs also are driven by state fee schedules that are linked indirectly to Medicare reimbursement rates, said Jay Krueger, chief strategy officer at Tampa, Fla.-based PMSI, a provider of pharmacy, medical services and equipment to the workers compensation and liability markets.

Mr. Krueger said health reform that requires providers to adopt technology also could increase costs in the workers comp system.

"Workers comp is not quite as technologically advanced as the group health side. To the extent that the federal government either mandates or provides stimulus money to adopt electronic solutions, that will represent wholesale change for the workers comp industry," he said.

"Long term, this is good for the industry," Mr. Krueger said, but "many companies have rather arcane (information technology) systems and the cost to upgrade them to meet health IT requirements is very significant."

But adoption of electronic medical records, which would provide claimants' full medical histories, could lead to quicker determinations of whether an injury is work-related, Mr. Webb said.

Products & Services

SunLife, ComPsych team to offer expanded EAP

TORONTO—Insurer Sun Life Financial Inc. has changed its employee assistance program to accommodate a wider range of clients in collaboration with Chicago-based EAP provider ComPsych Corp.

The Sun Life program is offered in three levels that include legal, financial, work-life and human resources assistance; phone counseling; health-risk assessments for employees; face-to-face meetings with financial planners and counselors; and free online wills.

The Toronto-based company also offers services to business owners that include a customized EAP Web site and identity theft restoration services in the program administered by ComPsych Corp.

For more information on EAP by Design, visit *sunlifemomentum.com*.

Crawford & Co. opens command center

ATLANTA—Insurer Crawford & Co. has opened a new command center at its Atlanta headquarters.

The center, used initially by the company's U.S. property/casualty segment, is intended to synchronize claims data, organizing information from points in the claims administration process and expediting client service.

Kevin Frawley, chief executive officer of the U.S. property/casualty unit, said Crawford & Co. also plans to use the command center for its other units.

Mr. Frawley said the system is intended to make claims management more consistent and enable the third-party administrator to spot trends quickly and respond to them.

For more information, contact Todd Cable, head of marketing, at *todd_cable@us.crawco.com* or 404-300-1287.

ANSI/ASSE fall-prevention standards revised

DES PLAINES, Ill.—The American Society of Safety Engineers says three new fall-protection standards developed by the American National Standards Institute have gone into effect.

While the standards are voluntary, ASSE representatives say they're useful to entire on-the-job safety and reduce exposure to legal liability.

The standards, which aim to prevent and minimize the severity of injuries from falls, are the biggest revision to the ANSI/ASSE fall-prevention standards in more than 15 years, and were spurred by an increase in injuries and fatalities caused falls on the job, said Randy Wingfield, chair of the ANSI/ASSE Accredited Standards Committee.

For more information or to purchase the ASSE/ANSI standards, contact Tim Fisher, the ASSE's agency director of practices and standards, at 847-768-3411.

TO SUBMIT ITEMS

BI's Products & Services column reports on new product offerings. Please send Product & Services news to Colleen McCarthy, 711 Third Ave., New York, N.Y. 10017 or e-mail *cmccarthy@businessinsurance.com*.

LETTERS

CONTINUED FROM PAGE 8

insurance industry, but rather to bolster it and to buttress the entire economy against the looming likelihood that a massive storm strikes in our economic centers like New York, Miami or Houston or that an earthquake rocks San Francisco, Los Angeles or St. Louis.

Absent a strong partnership between the traditional insurance market and the public sector, the economic ruin in the aftermath of a natural catastrophe striking one of these cities would be devastating.

Lehrer and Nutter's outright rejection of building a partnership between the private market and a national backstop is superficial and shortsighted; ignoring America's vulnerability today could be absolutely ruinous in the future.

Bradley S. Brewster
Executive Director
ProtectingAmerica.org

Marsh arrogant on liability cap

TO THE EDITOR: I just read Mr. Ceniceros' article (*BI*, July 20, "Risk Managers Have Mixed Views on Marsh Liability Cap") on Marsh's proposed liability cap. It seems Marsh's arrogance has never waned.

How would Mr. Glaser (or any members of the senior management team) feel if their doctor made them sign such an agreement? Would they sign one for their wife's OB-GYN prior to delivery of their child? If they were brought to a hospital, would they agree to admittance if the hospital made them sign such an agreement?

I myself am unfamiliar with such an agreement. Marsh states that "such limits are common among many professions." Which ones, Mr. Glaser?

We in the health care field would love to cap our liability. Tort reform capped noneconomic damages for some of us, but the financial damages are not limited?

Perhaps the best way to cap your liability is to do good work!

William Jennings
Corporate Director-
Risk Management
East Texas Medical Center
Regional Healthcare System
Tyler, Texas

PROFESSIONAL MARK

To place your ad, contact **Monique Murray** at (212) 210-0129 / fax: (212) 210-0704 /

Business Insurance, Classified Department, 711 Third Ave., New York, NY 10017-4036. Call for deta

HELP WANTED

United Church of Christ Insurance Board (UCCIB) is a property and liability insurance program created and owned by and for churches. Our goal is to provide resources that protect our church's two most valued assets: people and property. We are seeking a highly qualified Manager to lead our newly formed insurance services agency.

In this key member insurance services role, based in our headquarters in downtown Cleveland, Ohio, your responsibilities will include overseeing and managing all aspects of our internal specialized agency. Leads the delivery of property and casualty insurance related services to church-related participants in the Program and develops new, pre-qualified accounts within defined geographic areas. Supervises Client Representatives staff regarding all service policies, objectives and initiatives.

The successful candidate will have a Bachelor's degree in Business, Marketing or related field with five to seven years of insurance agency or brokerage experience, with a minimum of three to five years of supervisory experience preferred. Requires an Active Property & Casualty Insurance License and prior experience with agency management systems.

We offer an attractive compensation and benefits program including competitive salary, fully paid medical and dental coverage, 403(b) retirement plan, generous paid time off, and tremendous opportunities for growth and development.

To apply for this job, please e-mail: DCable@InsuranceBoard.org

HELP WANTED

The Claims and Insurance Department of Boston Medical Center has an opening for the DIRECTOR OF CLAIMS. A Bachelor's degree and experience in medical professional liability insurance is required.

Please forward resume to:
Edward Christiansen, Vice President
Boston Medical Center
One Boston Medical Center Place
Gambro 2, Boston, MA 02118
by fax (617) 414 5582
or email: ed.christiansen@bmc.org

Take full advantage of your resources!

In Print . . .

and Online

Contact Monique Murray at 212-210-0129 for details

LEGAL NOTICE

IN THE SUPREME COURT OF BERMUDA
IN THE MATTER OF MARINER REINSURANCE COMPANY LIMITED
(formerly The Mariner Assurance Company Limited)
AND IN THE MATTER OF THE COMPANIES ACT 1981

NOTICE IS HEREBY GIVEN that on August 13th 2009 the Supreme Court of Bermuda directed that a meeting of scheme creditors of the above Company (the "Meeting") be convened for the purpose of considering a scheme of arrangement between the Company and its scheme creditors pursuant to section 99 of the Companies Act 1981 (the "Scheme"). The Meeting will be held on October 15th 2009 at the offices of KMS Insurance Management Limited, America House, 2 America Square, London, EC3N 2LU, United Kingdom ("KMS"), commencing at 2 pm (London time).

Scheme creditors are all holders of policies underwritten by the Company or on its behalf through underwriting agencies. Scheme creditors may vote in person at the meeting or may appoint a proxy to attend and vote in their place.

Copies of the Scheme Document and proxy and voting forms can be obtained by contacting KMS or can be downloaded from the Scheme website www.mariner.bm.
Proxy and voting forms must be received by KMS at the above address by 5.30pm (London time) on October 14th 2009. Voting forms may also be handed to the Meeting Chairman prior to the commencement of the Meeting.

Policyholders with any questions concerning the action they are required to take should contact Richard Finney of KMS at the address above, by telephone on +44 (0) 207 488 5452 or by email: richard.finney@kmsim.com.

DATED August 14th 2009

LEGAL NOTICE

NOTICE

By order dated October 10, 2001, the Supreme Court of the State of New York, New York County, placed Frontier Insurance Company ("Frontier") into rehabilitation ("Rehabilitation Proceeding") and appointed as rehabilitator of Frontier ("Rehabilitator") the then-Superintendent of Insurance of the State of New York, Gregory V. Serio (and his successors in office) ("Rehabilitation Order"). Pursuant to the New York Insurance Law ("Insurance Law") and the Rehabilitation Order, the Rehabilitator was given the responsibility of, among other things, marshalling Frontier's assets and adjudicating claims consistent with Article 74 of the Insurance Law.

The Rehabilitator has submitted to the Court supervising Frontier's Rehabilitation Proceeding a verified petition ("Petition") seeking an order: (1) establishing a date certain ("Terramar Notice Date") as the last date on which a notice ("Terramar Notice") regarding any insurance policy or insurance or reinsurance contract issued by Terramar Insurance Company, Terramar Insurance Agency, Advanced Risk International, Ltd. or Terramar General Agency ("Terramar Policy") may be submitted to the Rehabilitator so as to preserve any obligation of Frontier pursuant to such Terramar Policy; (2) directing that the Terramar Notice shall be made on forms prescribed by the Rehabilitator and shall accurately and sufficiently set forth the required information identifying (a) the Terramar Policy pursuant to which Frontier has or may have an obligation ("Identified Terramar Policy"), (b) the policyholder(s) of such Identified Terramar Policy, (c) the person(s) with an interest in the Terramar Policy who, by submitting a Terramar Notice, seeks to preserve such person's interest in the Identified Terramar Policy ("Submitting Terramar Policy Interest Holder"), and (d) any claim under such Identified Terramar Policy where the Submitting Terramar Policy Interest Holder has knowledge of such claim prior to the Terramar Notice Date; (3) barring any claim against Frontier pursuant to any Terramar Policy unless such Terramar Policy and the policyholder(s) of such Terramar Policy have been accurately and sufficiently identified in a timely Terramar Notice; (4) barring any claim against Frontier pursuant to any Terramar Policy where the Submitting Terramar Policy Interest Holder had knowledge concerning such claim prior to the Terramar Notice Date and did not submit a timely Terramar Notice setting forth the required information concerning such claim; (5) barring any claim against Frontier pursuant to any Terramar Policy by any person other than the Submitting Terramar Policy Interest Holder who submitted the Terramar Notice in connection with such Terramar Policy; (6) establishing a date certain as the last date ("Bond Bar Date") on which a notice ("Bond Notice") regarding any bond issued by Frontier, including any surety bond or other bond or guaranty identified in New York Insurance Law Sections 1113(16) or 6801 ("Bond"), may be filed with the Rehabilitator so as to preserve any obligation of Frontier pursuant to such Bond; (7) directing that any Bond Notice shall be made on forms prescribed by the Rehabilitator and shall accurately and sufficiently identify (a) the Bond pursuant to which it is alleged that Frontier has an obligation, (b) the default, event, accident, or occurrence allegedly giving rise to a claim pursuant to such Bond ("Triggering Event"), (c) the date of the Triggering Event, (d) the alleged injury, loss or damage caused by the Triggering Event, (e) the dollar amount of the claim alleged as a result of the Triggering Event, and (f) the obligee or principal under such Bond who, by submitting a Bond Notice, seeks to preserve such person's rights under the Bond ("Submitting Bond Interest Holder"); (8) barring any claim against Frontier pursuant to any Bond unless a timely Bond Notice has been submitted that accurately and sufficiently identifies the Bond, the claim alleged pursuant to such Bond, and all other information required by the Bond Notice; (9) barring any claim under any Bond in which the Triggering Event occurs after a date certain ("Bond Cutoff Date"); (10) barring any claim against Frontier pursuant to any Bond by any person other than the Submitting Bond Interest Holder who submitted the Bond Notice in connection with such Bond; (11) approving the form and manner of notice to be given to all persons with an interest in a Terramar Policy or a Bond and all other interested parties (collectively, "Interested Persons") regarding this Order to Show Cause, the Petition and the relief sought herein; (12) approving the form and manner of notice to be given to all Interested Persons regarding the Terramar Notice Date, the Bond Cutoff Date, the Bond Bar Date and all other relief ordered herein; and (13) for other related relief as is just.

The Petition will be submitted to the Court on October 9, 2009 ("Return Date"). If you wish to object to the Petition, you must serve a written affidavit or affirmation setting forth your objections and all supporting documentation ("Answering Papers") upon the Rehabilitator so as to be received by the Rehabilitator at least seven days prior to the Return Date, and by submitting copies of the Answering Papers, with affidavits of service on the Rehabilitator, to the Clerk, at the Courthouse, located at 16 Eagle Street, Albany, New York, on or before the Return Date. Service on the Rehabilitator shall be made by first class mail at the following address:

The Superintendent of Insurance of the State of New York as
Rehabilitator of Frontier Insurance Company
123 William Street
New York, New York 10038-3889
(Attention: Andrew J. Lorin, Esq. – General Counsel)

All Frontier policyholders and creditors and other interested parties are advised to review all available information and to protect their rights accordingly. The Liquidator has posted the Petition on its website, www.NYLB.org. In the event of any discrepancy between this notice and the documents submitted to Court, the submitted documents control.

KERMITT J. BROOKS, Acting Superintendent
of Insurance of the State of New York as
Rehabilitator of Frontier Insurance
Company

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re Highlands Insurance Company (U.K.) Limited (in administration), Debtor in a Foreign Proceeding	)))	Chapter 15 Case No. 07-13970 (MG)

ORDER GRANTING MOTION PURSUANT TO BANKRUPTCY CODE SECTIONS 1521 AND 105(a) AND FED. R. BANKR. P. 7065 FOR PERMANENT INJUNCTION AND RELATED RELIEF

Upon the Motion Pursuant to Bankruptcy Code Sections 1521 and 105(a) and Federal Rule of Bankruptcy Procedure 7065 for Permanent Injunction and Related Relief (the "Motion"), the Memorandum of Law in support of the Motion (the "Memorandum of Law") and the Declaration of Dan Yoram Schwarzmann in support of the Motion, (the "Schwarzmann Declaration," and together with the Motion and Memorandum of Law, the "Chapter 15 Papers"), each filed on July 1, 2009 by Dan Yoram Schwarzmann and Mark Charles Batten (the "Movants") in this case; and upon the Court's consideration of the Chapter 15 Pleadings and the record of the hearing before this Court on August 18, 2009 and all prior hearings herein; and due notice of the Chapter 15 Pleadings being given thereof, which notice is deemed adequate for all purposes such that no other or further notice thereof need be given; and no objections to the relief requested in the Motion having been filed or raised thereto that have not been overruled, withdrawn or otherwise resolved; and after due deliberation and sufficient cause appearing therefor, this Court hereby finds and concludes as follows:

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Standing Order of Referral of Cases to Bankruptcy Judges of the United States District Court for the Southern District of New York (Ward, Acting C.J.), dated July 10, 1984; and

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and

C. Venue is proper in this District pursuant to 28 U.S.C. § 1410; and

D. The Movants, acting as the court-appointed joint administrators of Highlands Insurance Company (U.K.) Limited (In Administration) (the "Company"), are persons and the duly appointed foreign representatives of the Company (the "Administrators") within the meaning of 11 U.S.C. § 101(24); and

E. The relief requested in the Motion is necessary to effectuate the purpose of chapter 15 and to protect the assets of the Company and the interests of its creditors, and is not manifestly contrary to the public policy of the U.S; and

F. Absent the requested relief, the Company may be subject to the prosecution of judicial, quasi-judicial, arbitration, administrative or regulatory actions or proceedings in connection with a claim against the Company or its property in the U.S. thereby interfering with and causing harm to, the Company and the English Proceeding,[1] and as a result, the Company and its creditors, as a whole, would suffer irreparable injury for which there is no adequate remedy at law; and

G. Absent the requested relief, the English Proceeding and the Administrators' efforts in conducting the administration of the Company and the Scheme of Arrangement (the "Scheme") may be thwarted by the actions of certain creditors, a result inimical to the purposes of chapter 15 as reflected, *inter alia*, in 11 U.S.C. § 1501(a). Such actions may threaten, frustrate, delay and ultimately jeopardize the English Proceeding and the administration of the Company; and

G. The relief sought in the Motion will not cause undue hardship or inconvenience to parties in interest and, to the extent that any hardship or inconvenience may result, such hardship or inconvenience will be outweighed by the benefits to the Company, its estate and its creditors, as well as to the interests of cooperation between the courts of the U.S. and those of foreign jurisdictions; and

H. The relief requested in the Motion is necessary to the implementation of the Scheme and the effective resolution of disputes involving the Section 51 Transfers; and

I. The bankruptcy estate will receive substantial consideration in exchange for the release of claims against HIC US; and

J. The Settlement Amount will be used to pay claims of Scheme Creditors and the Administrators expect that allowed claims of Scheme Creditors will be paid in full (subject to discounting at a rate designed to reflect a risk free rate of return and other relevant deductions in accordance with the Scheme); and

K. The Administrators are entitled to the relief sought under 11 U.S.C. §§ 1521 and 105(a).

For all of the foregoing reasons, and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT as of the Effective Date and provided there has been no early termination of the Scheme:**

1. The Scheme shall be given full force and effect and be binding on and enforceable against all Scheme Creditors in the U.S.; and

2. All claims of Scheme Creditors shall be administered and adjudicated exclusively pursuant to the terms of the Scheme; and

3. All Section 51 Direct Policyholders/Claimants are required to make any and all claims in respect of their Section 51 Direct Policy and seek payment of such claims exclusively in accordance with the provisions of the Scheme and are precluded and enjoined from making any such claims except as specifically provided for under the Scheme; and

4. All Section 51 Direct Policyholders/Claimants are prohibited and enjoined from asserting any and all claims in respect of their Section 51 Direct Policy or seeking payment of such claims (including asserting or effecting a set-off based on such claims) against HIC US; and

5. Except as provided in the Scheme, all Scheme Creditors are permanently enjoined and restrained from taking any actions in contravention of, or that are inconsistent with, the terms of the Scheme or its administration, implementation or enforcement, including:

(a) transferring, relinquishing or disposing of any property of the Company located within the territorial jurisdiction of the U.S. or the proceeds thereof ("US Property");

(b) taking or continuing any act to obtain possession of, or exercise control over, the Company or any of its US Property;

(c) commencing or continuing any actions or proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), including by way of counterclaim, (each, individually, an "Action") against the Company or any of its US Property;

(d) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment, order or arbitration award against the Company obtained in connection with any Scheme Liability;

(e) commencing or continuing any act or proceeding to create, perfect or enforce any lien, attachment, set-off or other claim against the Company or any of its US Property, including, without limitation, rights under the Insurance Contracts;

(f) except as prohibited by § 1501(d) of the Bankruptcy Code, invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring the Company to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any Action arising out of a Scheme Liability and such statute, rule or requirement will be rendered null and void for Actions; provided however, that nothing in the order shall in any respect affect any Security Interest in existence as the Effective Date or the replacements for such Security Interest;

(g) except as prohibited by 11 U.S.C. § 1501(d), drawing down any letter of credit established by, on behalf of or at the request of, the Company unless expressly authorized by the terms of any contract or agreement pursuant to which the letter of credit has been established;

(h) except as prohibited by 11 U.S.C. § 1501(d), withdrawing from, setting-off against, or otherwise applying US Property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest in excess of amounts expressly authorized by the terms of the contract and any related trust or other agreement pursuant to which such trust, escrow or similar arrangement has been established.

6. Except as provided in the Scheme, all Scheme Creditors that are parties to any trust, escrow agreement or similar arrangement in which the Company has an interest, shall be required to:

(a) provide notice to the Administrators' United States counsel, Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019 (Attn: Sara Tapinekis), of any withdrawal from, set-off against, or other application of property that is the subject of any such trust or escrow agreement or similar arrangement in which the Company has an interest, together with information sufficient to permit the Company to assess the propriety of such withdrawal, set-off or other application, including, without limitation, the date and amount of such withdrawal, set-off or other application and a copy of any contract, related trust or other agreement pursuant to which any such withdrawal, set-off or other application was made, and provide such notice and other information contemporaneously; and

(b) turn over and account to the Company for all funds resulting from such withdrawal, set-off or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such trust, escrow or similar arrangement has been established;

7. Except as provided in the Scheme, all Scheme Creditors shall be required to:

(a) turn over and account to the Company for any US Property of the Company, or proceeds thereof, that relate to any Scheme Liability, of which they have possession, custody or control;

(b) deliver to the Company any books, papers or records of the Company that relate to any Scheme Liability, of which they have possession, custody or control and all Scheme Creditors having any books, papers or records that the Company or Scheme Adjudicator may reasonably require in relation to their duties or related to any matter that may affect the implementation of the Scheme shall preserve them and submit them to the Company or Scheme Adjudicator, or their designees, for examination at all reasonable times; and

(c) to the extent they have a claim of any nature or source against the Company or any US Property or are a party to any proceeding in which the Company is or was named as a party, or as a result of which a liability of the Company may be established, notify the Company, in accordance with the terms of the Scheme, and put the Administrators' United States counsel on the master service list of any such proceeding and to take such other steps as may be necessary to ensure that they receive (A) copies of any and all documents sent by the parties to such proceeding or issued by the court, administrator, arbitrator, regulator or similar official having jurisdiction over such proceeding, and (B) any and all correspondence or other documents circulated to parties named in the master service list;

8. Nothing herein shall prevent the continuance or commencement of proceedings against any insurer other than the Company (and HIC US as set forth above), provided however, that if any third party shall reach a settlement with, or obtain a judgment against, any person or entity other than the Company, such settlement or judgment shall not be binding on or enforceable against the Company;

9. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of the order or requests for any additional relief in the case filed under chapter 15 of the Bankruptcy Code and all adversary proceedings in connection therewith properly commenced and within the jurisdiction of this Court; and

10. No action taken by the Company, its successors, agents or representatives, or any of them, or its counsel, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Scheme, the order, the chapter 15 case, any further order for additional relief in the chapter 15 case, or any adversary proceedings in connection therewith, will be deemed to constitute a waiver of the immunity afforded to the Company, the Administrators, the Scheme Adjudicator or their successors, agents, attorneys or representatives pursuant to 11 U.S.C. § 1510; and

11. Nothing in this order shall alter or affect the terms of the Settlement Agreement or the venue and jurisdiction provisions thereof; and

12. This Order shall be in force as of the Effective Date and provided there is not an early termination of the Scheme in accordance with paragraph 7.3 of the Scheme. If the Scheme is terminated by the Administrators prior to the date upon which the Scheme is fully consummated, the Administrators shall immediately inform this Court of such termination; and

13. This Order shall be served:

(a) by first class postage prepaid mail, upon all known potential creditors whose addresses are reasonably available to the Company (or their counsel, if known to the Company) on August 28, 2009 (or as soon as reasonably practicable thereafter); and

(b) by publication in (i) *Insurance Day* (ii) the worldwide edition of the *Financial Times*, and (iii) the national edition of the *Wall Street Journal*, on August 26, 2009 and (iv) *Business Insurance* on August 26, 2009 (or as soon as reasonably practicable thereafter);

(c) and such service will be good and sufficient service and adequate notice for all purposes; and

14. The Chapter 15 Pleadings shall be made available by the Administrators upon request to the Administrators' U.S. counsel, Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019 (Attn: Sara M. Tapinekis).

Dated: New York, New York, **August 18, 2009**

/s/Martin Glenn
United States Bankruptcy Judge

[1] Capitalized terms not defined herein shall have the meaning given to such terms in the Motion.

KETPLACE

E-mail: mmurray@BusinessInsurance.com

ils on blind box and internet advertising

LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE, CHANCERY DIVISION, COMPANIES COURT
IN THE MATTER OF ALLIANZ SUISSE REINSURANCE LTD AND THE OTHER COMPANIES LISTED IN THE SCHEDULE TO THE APPLICATION (ALL BEING MEMBERS OF THE TRIMARK 1968 AND PRIOR YEARS POOLS) AND IN THE MATTER OF THE COMPANIES ACT 2006, No. 6661 of 2009
ADVERTISEMENT OF MEETING OF SCHEME CREDITORS
IN THE HIGH COURT OF JUSTICE, CHANCERY DIVISION, COMPANIES COURT
IN THE MATTER OF ALLIANZ SUISSE REINSURANCE LTD AND THE OTHER COMPANIES LISTED IN THE SCHEDULE TO THE APPLICATION (ALL BEING MEMBERS OF THE TRIMARK 1968 AND PRIOR YEARS POOLS) and IN THE MATTER OF THE COMPANIES ACT 2006

NOTICE IS HEREBY GIVEN that by an order dated 28 July 2009, the High Court of Justice has directed that meetings (the **Scheme Meetings**) of the Scheme Creditors (as defined in the Scheme) of certain companies that participated in the Trimark 1968 and Prior Years Pools listed in the Scheme document (the **Scheme Companies**) be held on 9 October 2009 at KPMG LLP, 1-2 Dorset Rise, London, EC4Y 8EN, commencing at 10am. The purpose of the Scheme Meetings will be to consider and, if thought fit, to approve (with or without modification) schemes of arrangement proposed to be made between each Scheme Company and its Scheme Creditors pursuant to Part 26 of the Companies Act 2006 (the **Scheme**). If you require a printed copy of the Scheme Document, Explanatory Statement and Appendices and/or the list of the Scheme Companies, please send your request to KPMG LLP or Axiom Consulting Limited at the addresses listed below and one will be sent to you free of charge. Copies of the Scheme, the voting form (including the proxy voting form) and the order of the English Court convening the Scheme Meetings will be available for inspection by Scheme Creditors on each Business Day until the closure of the Scheme Meetings in London at the offices of Aon Limited, Axiom Consulting Limited and KPMG LLP respectively at the addresses listed below. Scheme Creditors may vote in person at the Scheme Meetings or they may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place. Voting forms and proxy forms for use at the Scheme Meetings have been sent to all known Scheme Creditors together with this Notice. It is requested that proxies and voting forms be sent by post to Axiom Consulting Limited at the address below as soon as possible to arrive no later than 4pm (BST) on 2 October 2009. A faxed copy (fax: +44 (0)20 7767 2704) will be accepted if legible provided that the original is received by no later than 4pm (BST) on 7 October 2009. If Scheme Creditors fail to submit their proxies and voting forms by 4pm (BST) on 2 October 2009, they may be handed to the chairman of the Scheme Meetings (the **Chairman**) at the Scheme Meetings. The Court has directed that Mr. Philip Grant, Executive Chairman of Ambant Limited or, failing him, Mr. Michael Walker of KPMG LLP be appointed to act as Chairman and has directed the Chairman to report the result of the Scheme Meetings to the Court. Any Scheme Creditor that is unclear about or has any questions concerning the action he is required to take should contact KPMG LLP or Axiom Consulting Limited.

In the event that the Scheme Creditors vote in favour of the Scheme, it will be subject to the subsequent approval of the Court.

Scheme Manager	Axiom – Designated agent of Aon Limited
Aon Limited, 8 Devonshire Square, London, EC2M 4PL, United Kingdom Contacts: Mike Heap +44 (0)20 7086 0174, Paul Coster +44 (0)20 7802 0010 Fax: +44 (0)20 7216 3335 Email: mike.heap@aon.co.uk, paul.coster@aon.co.uk	**Axiom Consulting Limited,** Lloyds Chambers, 1 Portsoken Street, London, E1 8BT, United Kingdom Contacts: Trevor Sage +44 (0)20 7767 2846, John Farrow +44 (0)20 7767 2860 Fax: +44 (0)20 7767 2704 Email: trevor.sage@axiomc.com, john.farrow@axiomc.com
Scheme Adviser	**Legal Adviser**
Mike Walker and John Wardrop, KPMG LLP, 8 Salisbury Square, London, EC4Y 8BB, United Kingdom Contacts: Ben Webber +44 (0)20 7694 3994, Darryl Ashbourne +44 (0)20 7311 8787 Fax: +44 (0)20 7694 3126 Email: ben.webber@kpmg.co.uk, darryl.ashbourne@kpmg.co.uk	**Clifford Chance LLP,** 10 Upper Bank Street, London, E14 5JJ, United Kingdom Contacts: Philip Hertz +44 (0)20 7006 1666, Seema Shukla +44 (0)20 7006 8719 Fax: +44 (0)20 7006 5555 Email: philip.hertz@cliffordchance.com, seema.shukla@cliffordchance.com

Dated 29 July 2009

LEGAL NOTICE

NOTICE OF SANCTION AND EFFECTIVE DATE OF SCHEME OF ARRANGEMENT

IN THE HIGH COURT OF JUSTICE (IN ENGLAND)

No 13425 of 2009

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF

HIGHLANDS INSURANCE COMPANY (U.K.) LIMITED

(IN ADMINISTRATION)

and

IN THE MATTER OF THE COMPANIES ACT 2006

NOTICE IS HEREBY GIVEN that, by an order dated 30 July 2009 made in the High Court of Justice in the matter of Highlands Insurance Company (U.K.) Limited (in Administration) (the "**Company**"), a scheme of arrangement dated 1 May 2009 (the "**Scheme**") proposed to be made between the Company and its Scheme Creditors (as defined in the Scheme) pursuant to Part 26 of the Companies Act 2006, which was voted on and approved by Scheme Creditors during a meeting held on 18 June 2009, was sanctioned.

On 18 August 2009, the United States Bankruptcy Court entered an order granting, amongst other things, permanent injunctive relief under Chapter 15 of the United States Bankruptcy Code in favour of the Company in respect of the Scheme.

Following the obtaining of these orders, a copy of the order sanctioning the Scheme was lodged with the registrar of companies on 19 August 2009. Therefore, in accordance with the terms of the Scheme, the Scheme became effective on 19 August 2009 (the "**Effective Date**").

Scheme Creditors should note that there are TWO important deadlines in the Scheme.

First, Scheme Creditors must complete and submit (in accordance with the instructions thereon) a Claim Notification (as defined in the Scheme) so as to ensure that it is received by the Company by no later than 5 pm (London time) on 17 November 2009 (the "Claim Notification Date").

Second, Scheme Creditors who have submitted a Claim Notification by the Claim Notification Date must then complete and submit (in accordance with the instructions thereon) a Final Claim Form (as defined in the Scheme) so as to ensure that it is received by the Company by no later than 5 pm (London time) on 15 February 2010.

Scheme Creditors with Agreed Claims (as defined in the Scheme) are not required to submit a Claim Notification or Final Claim Form in respect of Agreed Claims. Such Scheme Creditors will be notified by the Company within 7 days of the Effective Date. If a Scheme Creditor is in any doubt as to whether it has an Agreed Claim, it should complete and submit a Claim Notification and Final Claim Form by the relevant deadlines.

Further information and copy documents (including Claim Notification and Final Claim Forms) may be obtained by contacting the Company as follows:

By phone: +44 (0) 1452 413 985

By fax: + 44 (0) 1452 782 582

By email: pro_hicukhelpline@pro-ltd.co.uk

Website: www.ukhighlands.co.uk

PricewaterhouseCoopers LLP

UP Comings & Goings CLOSE

BILL JOHNSTONE

NEW JOB TITLE: Toronto-based senior vp, global technical services, Americas, for third-party administrator Crawford & Co.

PREVIOUS POSITION: Toronto-based vp, global technical services, Canada, for Crawford & Co.

CAREER HIGHLIGHT: I just celebrated my 20th year with Crawford.

GOALS FOR NEW POSITION: My goal is to continue to build and grow a highly visible team to deal with high-end, large-loss technical claims that require and demand specific expertise. Also, I am interested in working more closely with insurers to help them understand how our GTS adjusters are a cost-effective way to achieve results for them.

INDUSTRY CHALLENGES: Our industry is facing the retirements of many skilled adjusters in the near future, so developing future talent and transferring knowledge to others is key.

INDUSTRY OUTLOOK: The industry, insurers, with some of the economic factors that have crept into the insurance world, are no different than everybody else in the world. They are looking at cutting costs and spending. We want to be able to show the market that we have expertise that ultimately will help them with their mitigation dollars. That keeps their insured satisfied.

FIRST EXPERIENCE IN JOB MARKET: I began my career in the industry at Liberty Mutual, handling (property/casualty) claims. I spent my first five weeks at a training course where I formed relationships I still have today, 22 years later.

WHAT I WOULD CHANGE ABOUT THE INDUSTRY: I would emphasize more face-to-face communication, as I believe we have lost personal connections on many levels. There was a time when you knew all the people you dealt with, whether they were brokers, examiners or underwriters. Now, it is common to hear people say, "Wow, I've finally met you after five years of dealing with you on claims."

ADVICE: When there is opportunity for higher education and learning, take it.

BUSINESS RESOURCES

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 e-mail.

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:

Allison Martinat
Business Insurance
360 N. Michigan Ave.
Chicago, Ill. 60601-3806

amartinat@businessinsurance.com

POSTING THIS WEEK

INSURERS:
- Markel International Ltd.
- American International Group Inc.
- Zurich Financial Services Group
- Chartis Inc.

BROKERS:
- Swett & Crawford Group Inc.
- Willis Aerospace

OTHER PROVIDERS:
- Towers Perrin
- Schirmer Engineering Corp.
- Mercer L.L.C.
- PMSI

COBRA: New York increases eligibility period up to 36 months

CONTINUED FROM PAGE 4

Buck Consultants L.L.C. in Secaucus, N.J.

"This is a trend that I see going forward," said Cathy Stamm, a principal in Mercer L.L.C.'s Washington office.

A fact sheet prepared by the office of Gov. Paterson, who signed the legislation into law in July, said the extended coverage is particularly important "in the current economy with its record high level of unemployment."

While the new law won't cost New York anything, it will boost employers' health care costs slightly because COBRA beneficiaries are heavier users of health care services than active employees and their dependents, experts say. COBRA enrollees incur about $1.50 in claims costs for every $1 in premiums they pay, benefit consultants say.

With COBRA beneficiaries being able to keep their health insurance for a longer period of time, insurers will have more claims to pay, a cost they ultimately will pass on to employers in higher premiums, consultants say.

Still, those cost increases should be modest, said Buck Consultants' Mr. Stover. That's because few beneficiaries continue COBRA for the entire 18 months and are likely to get group coverage from a new employer before COBRA expires.

COBRA enrollment doubles after subsidy program begins

The percentage of involuntarily terminated employees opting for COBRA continuing health insurance coverage has doubled since a federal subsidy program began, a study shows.

An economic stimulus measure Congress passed in February includes the federal government paying 65% of the COBRA premium for up to nine months for workers terminated involuntarily through year-end.

From March 1—when the subsidy generally became available—through June 30, monthly enrollment rates for laid-off employees averaged 38%, according to the Hewitt Associates Inc. analysis of COBRA enrollments among 200 large employers.

By contrast, from Sept. 1, 2008, through February 2009, on average 19% of involuntarily terminated employees were enrolled in COBRA.

"We expected the numbers to jump. The coverage becomes much more affordable" because of the subsidy, said Karen Frost, a health and welfare outsourcing leader for Hewitt in Lincolnshire, Ill.

The rise in COBRA enrollment also means higher costs for employers, though how much is not yet known.

COBRA premiums often are about $400 a month for individual coverage and $1,200 a month for family coverage. Those opting for COBRA typically make extensive use of medical services, often resulting in employers paying about $1.50 in claims for every $1 in COBRA premiums they collect.

With the government picking up 65% of the COBRA premium tab, the COBRA risk pool is likely improving, though premiums collected by employers still are not likely to equal claims, Ms. Frost said.

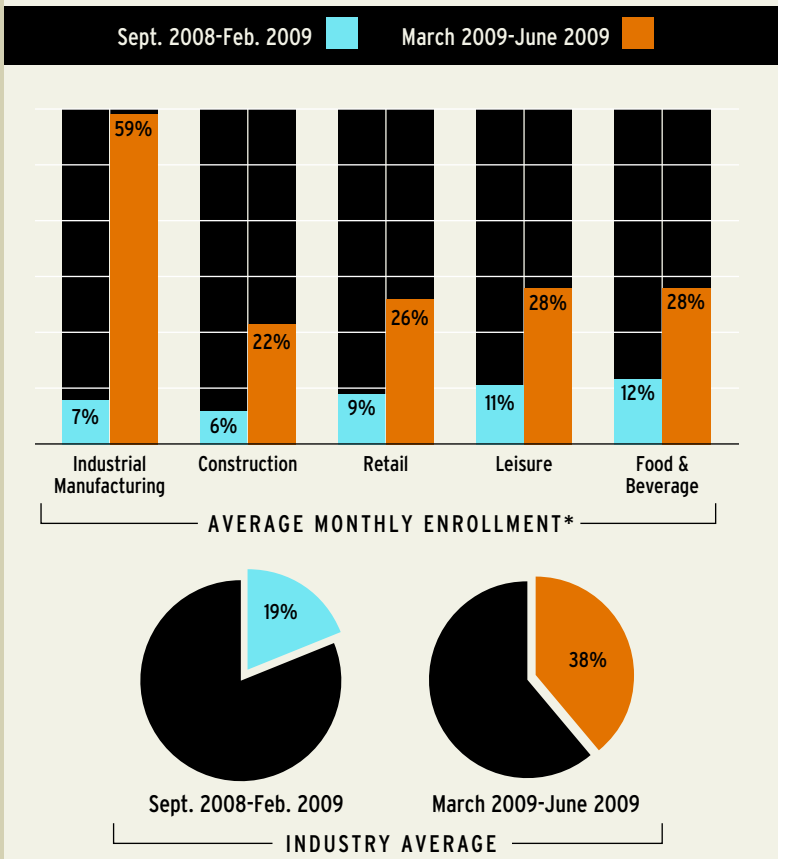
Individuals who can enroll in another group plan are ineligible for the COBRA subsidy.

The Hewitt survey is available at *www.hewitt.com*.

—By Jerry Geisel

SURGING COBRA ENROLLMENT

Industries with the biggest increases in COBRA enrollment since a federal premium subsidy kicked in



**of individuals eligible for COBRA due to involuntary termination*

Source: Hewitt Associates Inc.

Cyber: Charges in data thefts underscore risk managers' responsibility

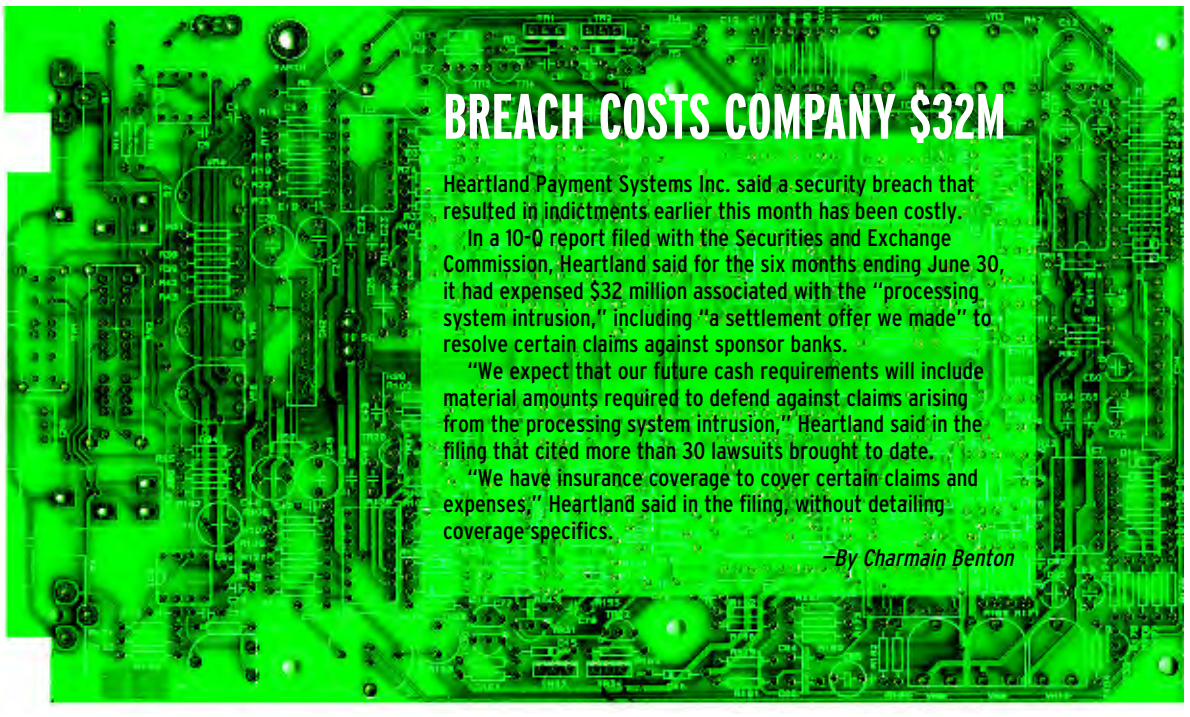
CONTINUED FROM PAGE 1

According to the indictment, the conspirators stole about 130 million credit and debit card numbers and other data from Princeton, N.J.-based Heartland Payment Systems Inc., which its Web site says processes about 4 billion transactions a year. They also are accused of stealing an undisclosed number of credit and debit card numbers from Dallas-based 7-Eleven Inc. and 4.2 million numbers from Portland, Maine-based supermarket chain Hannaford Bros. Co. The hackers also hit two other unnamed companies.

The defendants allegedly used so-called "SQL injection attacks" to achieve their ends. Structured query language is designed to retrieve and manage data on computer databases, according to the indictment. The injection attacks plant malicious software, or malware, that sends personal data to unauthorized parties.

Since then, Heartland and Hannaford have upgraded their security systems, spokesmen for the companies said in e-mails. These steps included enhanced data encryption. A spokeswoman said 7-Eleven's security had been enhanced after the breach, but declined to give details.

In a report filed with the Securities and Exchange Commission, Heartland, the only known publicly traded company in the group, said the cyber attack has been costly (see related story)



BREACH COSTS COMPANY $32M

Heartland Payment Systems Inc. said a security breach that resulted in indictments earlier this month has been costly.

In a 10-Q report filed with the Securities and Exchange Commission, Heartland said for the six months ending June 30, it had expensed $32 million associated with the "processing system intrusion," including "a settlement offer we made" to resolve certain claims against sponsor banks.

"We expect that our future cash requirements will include material amounts required to defend against claims arising from the processing system intrusion," Heartland said in the filing that cited more than 30 lawsuits brought to date.

"We have insurance coverage to cover certain claims and expenses," Heartland said in the filing, without detailing coverage specifics.

—By Charmain Benton

The case should be of concern to risk managers, observers say.

"The existence of the incident certainly gives rise to risk managers looking into what type of insurance protection they have and to double-check the IT practices and procedures in place to protect against this type of incident," said Matt Raffner, senior risk analyst at Walt Disney Co. in Burbank, Calif.

"The first thing is recognizing the risk," said Jim Whetstone, senior vp-technology and privacy at Hiscox USA in Chicago. "It's a business issue."

"We encourage companies to have a defensive in-depth security system. The more layers they have of security, the more of a deterrent it is," he said.

Defensive tactics

Risk managers should prenegotiate rates with forensics firms and law firms so the company is prepared in the event of a breach, he said.

"From a financial statement standpoint, they have to determine how these data breaches will affect their company's financial statement," said Kevin Kalinich, a national managing director at Aon Risk Services Central Inc. in Chicago.

Risk managers have to consider the risk financing alternatives, including insurance, and "how they're going to pay if an incident like this should actually occur," said Nicholas Economidis, an underwriter with Beazley USA's technology, media and business service team in Philadelphia.

In addition, the risk manager has to coordinate with each management silo that might be involved, including IT, human resources, financial and legal, "to make them most efficient," said Aon's Mr. Kalinich.

IT security experts say a constantly improving defense is essential.

"I'm a big fan of what I call security assurance or hacking yourself," said Mike Rothman, senior vp of strategy with Acton, Mass.-based IT consultant eIQnetworks Inc. "The bad guys are testing your defenses every day and the worst thing for a security professional is to be surprised."

Companies should use penetration-testing techniques to check vulnerabilities, said Fred Pinkett, vp-product management at Core Security Technologies in Boston.

Another lesson is that data needs to be encrypted even when moved internally, said Richard Wang, manager at SophosLabs U.S. in Burlington, Mass. "If it's encrypted, then the criminals can't do much with it," he said.

Yet Mr. Whetstone noted that a Hiscox review of 60 U.S. companies found only 7% implemented end-to-end encryption of sensitive data. Forty-two percent of the companies had suffered a data breach.

Several experts noted that sophisticated criminal organizations, including those from Russia, have gotten into data thefts.

"The real troubling thing is as long as there's a profit motive, this kind of thing is not going to go away," said Beazley's Mr. Economidis.

Integro: Revamped plan puts focus on specialty offerings

CONTINUED FROM PAGE 3

ing to be all things to all people so we could assume any business from clients that did not want to be with one of the big legacy brokers, we adjusted our focus and said, 'We are really good in certain specialty areas of complex property/casualty risks—let's focus on those areas,' " he said.

To support its new model, Integro eliminated roughly 20% of its workforce—or about 70 people—more than half of whom were in corporate back-office positions, Mr. Garvey said.

Acquisitions possible

Today, Integro considers itself a multispecialty brokerage for complex property/casualty risks, with areas of focus that include health care, real estate, high tech, private equity and financial institutions. It's looking to now grow those specialties and new specialty lines organically as well as through selective hires and acquisitions.

"We're certainly not abandoning the organic revenue growth model that we started out on; that's our primary model…but we're looking at a couple of specialty boutiques in North America right now," Mr. Garvey said. "Thankfully, we're in a healthy enough position now to be able to do those acquisitions without any additional capital."

With 280 employees and more than $60 million in annual revenues, Integro is a much stronger firm than before the changes, Mr. Garvey said. In the second quarter of 2009, the firm turned its first quarterly profit, and in the first six months it reported 20% organic growth in client revenue, Mr. Garvey said. Executives expect Integro to generate about $67.5 million in gross revenues by year-end. According to Integro, 2008 total revenues were $62.6 million.

"This year, we couldn't be happier with our results," Mr. Garvey said, noting that Integro has more than 25%—about $80 million—of its original investment capital, no debt and no long-tail liabilities.

"We're very fortunate that we were able to make the adjustments we made last September (before the financial crisis hit), and it looks like it was the right move," Mr. Garvey said.

Observers say that if there is a lesson to be learned from Integro's experience, it's that large, complex risks don't readily move from one broker to another.

> **'Integro has a much more viable business model now after retooling and restructuring their operations.'**
>
> Timothy J. Cunningham, OPTIS Partners L.L.C.

"In looking back, I don't think there were too many people out there at the time who thought it would be a mistake to do what they were doing," said Kevin P. Donoghue, managing director of Mystic Capital Advisors Group L.L.C. in New York. "History has proved just the opposite, and that says a lot about (Marsh, Aon and Willis) and how really sticky their core assets are to them."

"The nature of complex risk management business is that it does not move from broker to broker whimsically—it has a very long sales cycle. The institutional knowledge that the incumbent broker, like Marsh, has is very deep," said Timothy J. Cunningham, a principal with OPTIS Partners L.L.C. in Chicago.

"Integro has a much more viable business model now after retooling and restructuring their operations," Mr. Cunningham said.

Mark Lane, a principal with William Blair & Co. L.L.C. in Chicago, said he is "not that surprised" that Integro had to revamp its original business strategy. "Aon, Marsh and Willis have great assets and great people and access to resources that Integro could never pretend to have. They are difficult competitors to displace."

Reform: Drive for health care overhaul failing, but not doomed yet

CONTINUED FROM PAGE 1

poll earlier this month by the Kaiser Family Foundation found that just 45% of respondents believe the United States would be better if Congress passes reform legislation, down from 51% a month earlier.

At the same time, some congressional backers of reform legislation were shouted down during town hall meetings during the past few weeks.

'Something will pass'

Despite the delays in congressional action and rising public concerns, Washington observers and others say the reform effort is far from dead.

"In the end, a version of reform legislation will pass. There is too big a risk to both sides" if a bill isn't approved, said Frank McArdle, a consultant in the Washington office of Hewitt Associates Inc.

"The Democrats will be perceived as being unable to deliver, while Republicans will be portrayed as obstructionist," Mr. McArdle said.

"At the end of the day, something will pass," said Chantel Sheaks, a consultant with Buck Consultants L.L.C. in Washington.

"Reform is very much alive, but we are far from knowing the final outcome" said Kathryn Wilber, senior counsel-health reform with the American Benefits Council in Washington.

But a final bill is likely to be significantly different and slimmed down from the one approved by the House panels and the Senate Health, Education, Labor and Pensions Committee.

WASHINGTON TIMES/LANDOV

The pivotal Senate Finance Committee has struggled for months to hammer out a package that will attract support from at least a few of the committee's Republican members, with no sign of an imminent agreement. Observers say there likely will be some sort of bill passed.

"We are going to see a scaling back," said Steve Wojcik, vp-public policy with the National Business Group on Health in Washington.

The most likely provision to be scaled back is setting up an optional public health care plan.

Establishing such a plan—dubbed by former Vermont Gov. Howard Dean as Medicare for the nonelderly—has stoked fears that it would drive out private plans and ultimately lead to a single-payer system. Some say it is certain that the provision will be revamped, if not eliminated.

"The idea of a public plan option has been pretty much ended," Mr. Wojcik said.

Others see nonprofit health care cooperatives replacing a public health plan in the reform legislation.

"If I were a betting man, I'd see co-ops as a compromise" proposal that could win congressional passage, said Michael Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York.

Buck Consultants' Ms. Sheaks said one scenario that could develop is Congress passing insurance underwriting reforms and possibly an individual coverage mandate yet this year, leaving tougher issues for next year or later.

'Reform is very much alive, but we are far from knowing the final outcome.'

Kathryn Wilber,
American Benefits Council

Such reforms, which have no serious opposition, could include a ban on excluding preexisting medical conditions in the personal lines market. Congress in 1996 curbed the use of such exclusions, but only in the group market, as part of a broader law.

Provisions may fail

Other reforms legislators might embrace include guaranteed issue and renewals.

At the same time, provisions now in the bills that are not directly related to health care reform might be discarded as legislators move to slim the measures and defuse business opposition. Some provisions include making it more difficult for employers with retiree health care to reduce benefits, expanding COBRA health care continuation coverage and giving states the ability to create single-payer systems.

"In order for a bill to be successful, it will have to be one that is more moderate and be something that employers will feel comfortable with," Mr. McArdle said.

Tourism: Employers cut costs by using out-of-state medical facilities

CONTINUED FROM PAGE 1

aged care contracts with PPOs and health maintenance organizations, he added.

Most of the intermediaries facilitating this service began by operating in the international medical tourism market, either sending Americans out of the country for medical treatment or, like Olympus, bringing patients from other countries to medical facilities in the United States.

Greenwood Village, Colo.-based BridgeHealth International Inc., for example, launched its domestic network of 15 hospitals across the United States about six months ago in response to demand from its insurer and TPA clients, according to Victor Lazzaro, chief executive officer.

"They indicated they'd like the complement of domestic to international medical tourism," he explained. In addition to its domestic provider network, BridgeHealth has 25 hospitals in 10 countries in its international network.

Olympus saw the opportunity to use its existing infrastructure of nearly 30 domestic medical facilities to market to insurers, TPAs and self-insured employers that, like Hannaford, are looking to achieve the cost savings of medical tourism without leaving the country, according to Steve Jacobson, Olympus' chief executive officer.

Healthplace America, which specializes in domestic medical tourism, set up shop last year to market directly to self-insured employers. The Lisle, Ill.-based company provides access to a specialty network of 22 U.S. hospitals.

'It's a win for both the patient and the employer, because both of their shares of the expenses will be less.'

Michael Thompson,
PricewaterhouseCoopers L.L.P.

Like BridgeHealth and Olympus, Healthplace's services are limited to certain elective medical procedures, such as joint replacements, cardiac care and spinal surgeries. All three vendors screen the hospitals in their networks using such criteria as accreditation by the Joint Commission on Accreditation of Healthcare Organizations. They must be among the top hospitals ranked by the Leapfrog Group, HealthGrades Inc. and U.S. News & World Report. The facilities also must have performed a sizable number of the procedures sought.

"We're not a broad-based PPO," explained Todd Roscoe, CEO of Healthplace. "We are a specialty organization that pinpoints high-cost surgical procedures that we can move to a more cost-effective environment where there's a much greater supply of providers that enables price negotiation."

"It's a matter of supply and demand," said Olympus' Mr. Jacobson. "And if (a facility has) invested in the technology, they can do it much more cost effectively" than hospitals that don't have the resources, he noted.

Because of the potential savings of domestic medical tourism, employers usually offer employees financial incentives—such as waived or lower deductibles and copayments, as well as travel allowances for the employee and a companion—to encourage employees to use take advantage of the benefit.

"Surgery is our greatest expense," said Anita Boska, human resources manager at Dakota, Ill.-based Berner Food & Beverage Co., which contracted with Healthplace in January. In addition to waiving the $1,500 individual deductible in its consumer-driven health plan, employees who use the benefit can earn up to $1,000 in wellness credits, she said.

So far, three of Berner's 425 employees have used the benefit, Ms. Boska said, reducing the company's overall annual health benefit costs by $1,000 per employee per month.

In many cases, stop-loss insurers are willing to pick up the fees for domestic medical tourism services, which typically average about $2 per employee per month, because "it accrues to their benefit," according to Andrew Butler, president and CEO of Butler Benefit Services Inc., a TPA based in Davenport, Iowa, that has been working with Healthplace.

For example, an employer won't reach its $50,000 specific stop-loss attachment point if it pays $30,000 for a knee replacement through Healthplace instead of $90,000 through its regular PPO contract, Mr. Butler said.

"It's a win for both the patient and the employer, because both of their shares of the expenses will be less," observed Michael Thompson, a principal at PricewaterhouseCoopers L.L.P. in New York.

Regina Herzlinger, a professor at Harvard Business School who specializes in health care economics, said patients will agree to travel for surgery if they are given data that shows they will fare better, financially and in terms of care.

But some benefits experts say employers may have trouble persuading employees to leave their hometown, regardless of the savings.

"Most of my clients would feel very uncomfortable sending people away," said Carl Mowrey, managing director of Smart Business Advisory & Consulting L.L.C. in Chicago. "The individuals themselves would not want to do that, either. They would rather use their physician and specialist in the area."

"One factor might be where you live. If the medical facilities in your area have a very strong reputation, you're probably less inclined to believe that somewhere else is better," said Mr. Thompson. "On the other hand, if you're in a rural location, or an area that's not well known for its health facilities, you might be more inclined to take advantage" of medical tourism, he said.

VCIA: Risks spur captives to diversify

CONTINUED FROM PAGE 4

issues that might be associated with a major reinsurer having financial problems.

"A few years ago, we would have said we want to do business with fewer, bigger, very big reinsurers," Mr. Wilder said, noting the company believed that would simplify its reinsurance program. Now, though, J.P. Morgan has stepped back from that reliance on a few reinsurers in its captive program.

"You haven't seen a failure of any of the reinsurers or insurers that we use," Mr. Wilder said, adding that those companies' ratings have remained acceptable. But J.P. Morgan is examining its program and looking to do more with its captives because the company understands its captives' financial position and their capacity to take on risk, he said. When it transfers risk, J.P. Morgan is looking to spread the exposure among more insurers and reinsurers.

John Lochner, a principal at Towers Perrin in Weatogue, Conn., and moderator of the panel, said the consulting firm is seeing the financial crisis leading more companies to take a fresh look at their captive programs.

"We're…seeing a renewed interest, or uptick, in people challenging their captive program," Mr. Lochner said, whether that takes the form of doing captive "refeasibility" or re-engineering studies, questioning the adequacy or reasonableness of capital committed to the captive, or seeking to maximize cost efficiency.

At Shell, Mr. Neilson said one area of interest among senior management is greater utilization of the captive program and placing less risk with counterparties.

Responding to an audience question, Mr. Neilson said the financial crisis hasn't led Shell to require that its underwriters post collateral. "Nor have we," said J.P. Morgan's Mr. Wilder, "but I think it's a fascinating concept." But, he added, if you require collateral from your insurers, "why are you doing business with them to begin with?"

Asked about calls for crackdowns on offshore "tax havens" put forth by the Obama administration and others as part of legislation and regulation proposed in response to the financial crisis, Mr. Wilder said, "It's something that bears watching."

But, he said, he doesn't think it's something that will affect J.P. Morgan and said the company has elected to have its Bermuda-domiciled Hatherly Insurance Ltd. captive taxed as a U.S. corporation.

As for Shell, Mr. Neilson said, "We're doing what any astute international organization is doing."

"We're managing our tax obligation," he said. "We're doing it legally." Tax issues concerning captive domiciles, Mr. Neilson said, are "not something we're going to mount a full-fledged effort to greatly influence."

Flu: Government agencies issue fresh pandemic guidance

CONTINUED FROM PAGE 4

toms to stay home. Further, they encourage employers to remain flexible in allowing employees to stay home if they are ill without fear of losing their jobs.

"One of the most important things that employers can do is to make sure their human resources and leave policies are flexible and follow public health guidance," HHS Secretary Kathleen Sebelius said in a statement. "If employees are sick, they need to be encouraged to stay home."

Mr. Keating said some employees will abuse this flexibility, but also said employers can put policies in place to ensure employees are actually taking time off because they are ill. He mentioned actions such as unpaid leave and negative vacation balances as two ways of doing this when workers have already used their available days.

"Not getting paid or using vacation is enough to keep most people honest, but it provides that their job is still there for them once they are healthy again so they don't come to work sick in an effort to prevent the loss of their job," Mr. Keating said.

He also recommends that employers get to know their local health officials and community leaders, who will communicate flu risk information in affected local areas. Another way employers can gauge the seriousness of a flu outbreak is monitoring school closings, he said.

Government agencies also encourage that other steps—such as stocking up on hand sanitizer, soap, tissue and other infection-prevention products—be done as early as possible, so they will be readily available during an outbreak when stores and distributors may not be able to keep up with demand.

Identifying key people within the company who maintain relationships with key clients and ensuring they are vaccinated and remain healthy is another step employers can take, Mr. Keating said.

"It's a good idea to index the skills held by a few people in the organization," Mr. Keating said. "You have to plan how you're going to fill those roles should those people become sick, and there may not be time to cross-train someone. It's important to know where your vulnerabilities are and address them in advance."

More information on influenza and how businesses can prepare for an outbreak is available at *www.flu.gov*.

News In Brief

CONTINUED FROM PAGE 1

AIG wins dismissal of suit over comp premiums

A federal judge dismissed a lawsuit alleging American International Group Inc. underreported workers compensation premiums over several decades in order to underpay residual market assessments. The National Workers Compensation Reinsurance pool, which ultimately is operated by NCCI Holdings Inc., brought the suit that sought more than $1 billion in damages. Hundreds of insurers, many of them AIG rivals, participate in the pool. The pool argued that it was excluded from a 2006 settlement in which AIG agreed to pay states more than $300 million to settle allegations that it underreported workers comp premiums over several decades. But a federal judge in Chicago ruled that the pool and NCCI lacked standing to sue on behalf of pool members, said Michael Carlinsky, an attorney at Quinn Emanuel Urquhart Oliver & Hedges L.L.P. representing AIG. The dismissal of the pool's lawsuit, however, does not end the litigation, according to a pool spokesman. The federal judge still is considering the fate of a separate class action lawsuit brought by the pool members against AIG. Meanwhile, a counter complaint that AIG filed in response to the pool suit continues to move forward, Mr. Carlinsky said.

Workplace deaths hit record low in 2008

The number of U.S. workplace fatalities in 2008 fell to the lowest level since the Bureau of Labor Statistics began tracking fatal occupation injuries in 1992, according to a preliminary report released last week. A total of 5,071 fatal work injuries were recorded in the United States in 2008 compared with 5,657 a year earlier. The report notes that economic factors, including a reduction in hours worked, likely played a role.

Wrynn named N.Y. regulator

James J. Wrynn, an insurance attorney and executive director of the New York State Insurance Fund, has been tapped to become superintendent of the New York Insurance Department. He is to succeed Eric Dinallo, who resigned to become a visiting professor at New York University's Stern School of Business. Kermitt Brooks, first deputy superintendent under Mr. Dinallo, was acting superintendent since Mr. Dinallo's July departure.

RIMS establishes standards panel

The Risk & Insurance Management Society Inc. has formed a committee to support global risk management and develop better risk management standards and practices. RIMS Standards and Practices Committee will allow the society to increase its profile in the standards and practices arena, as well as making it a primary resource for global risk managers, RIMS said in a statement. The committee is chaired by Carol A. Fox, who is the past chair of RIMS Enterprise Risk Management Development Committee and senior director of risk management at Convergys Corp. Initial committee tasks include informing risk managers and organizations about various risk management standards, and working with the U.S. Department of Homeland Security on voluntary preparedness and business continuity.

Canadian company can use pension surplus for DC plan

In a closely watched case, the Supreme Court of Canada has ruled that an employer had the right to use a surplus in a defined benefit pension plan to fund a new defined contribution plan. Canada's Supreme Court ruled 5-2 in favor of Kerry (Canada) Inc.'s move in 2000, upholding a July 2007 ruling by the Ontario Court of Appeal that the Woodstock, Ontario-based food products company was allowed to pay defined contribution plan expenses from its defined benefit pension fund after taking into account the fund's surplus.

Noted

Hank Watkins has been named president of **Lloyd's North America**. Mr. Watkins, who most recently was senior vp-business development for Preferred Concepts L.L.C., succeeds LoriAnn Lowery, who left the position in June....The Workers' Compensation Insurance Rating Bureau of California said it will recommend a **22.8% pure premium rate hike** that, if approved, would be effective Jan. 1.

Bias: Charges surge as firms shed workers

CONTINUED FROM PAGE 3

said while it could not comment specifically on the suit, it does not tolerate discrimination of any sort.

Meanwhile, a June U.S. Supreme Court decision in *Jack Gross vs. FBL Financial Services Inc.* (*BI*, June 26) may make it easier for employers to defend age discrimination claims should they ultimately reach trial, although Congress is expected to seek to overturn the decision with legislation (see related story).

According to the EEOC, the number of age discrimination charges filed by employees in fiscal year 2008 increased 28.7%, to 24,582, from fiscal 2007. They accounted for 25.8% of all charges filed with the EEOC in fiscal 2008, behind race, sex and retaliation claims. The fiscal year runs from Oct. 1 to Sept. 30.

Observers, who note charges must be filed with the EEOC before plaintiffs can file suit, said they expect the number of age discrimination suits to increase more this year.

"You sort of have the perfect storm of things going on here," said Philip K. Miles III, an associate with law firm McQuaide Blasko in State College, Pa. "You have, first of all, an aging workforce" combined with "the huge economic downturn that we've been experiencing for the last couple of years."

Layoffs "usually result in more age claims than anything else," as firms seek to cut higher-salaried workers, which "often equates to seniority, which then equates to age," said Gregg M. Lemley, a shareholder with Ogletree, Deakins, Nash, Smoak & Stewart P.C. in St. Louis.

Furthermore, he said, the economy's hit on employees' stock portfolios means people who might have retired voluntarily are working longer and being laid off instead.

To some extent, it's "just because there's more people in their 50s and 60s and even into their 70s who are staying in the workforce, so we have that baby boomer generation reaching retirement," said Dennis Westlind, an attorney with law firm Stoel Rives L.L.P. in Portland, Ore.

Common sense helps deal with this issue, said Richard D. Tuschman, an attorney with Epstein Becker & Green P.C. in Miami. He said he has seen lawsuits in which plaintiffs allege comments such as, "You're too old for this job." Employees should be trained "that such discriminatory attitudes won't be tolerated in the workplace," he said.

Employers "need to make sure that their policies and procedures are applied consistently, and especially that performance issues are well-documented," Mr. Westlind said. "Where employers may get into trouble is where they are reluctant to go to an employee and address those performance issues," the issue is not well-documented and the employee is terminated later, he said.

Younger managers in particular often have difficulty interacting with older employees and "might feel intimidated and somewhat reluctant to face the performance issues," he said.

Randi W. Kochman, an attorney with Cole, Schotz, Meisel, Forman & Leonard, P.A. in Hackensack, N.J., said employers should "make sure they have an identifiable basis for the termination, an objective reason," particularly with group terminations.

If a termination is for performance reasons, "you want to be as close to using objective criteria as you can," Ms. Kochman said.

Mr. Tuschman said when he works with employers planning layoffs, "we look at the numbers." If layoffs reflect a disproportionate number of older workers, "we go back and ask the employer to take a second look at how the decision-making is being done."

John P. Barry, a partner with Proskauer Rose L.L.P. in Newark, N.J., said those handling terminations should be trained so employees do not automatically assume they lost their job because of their protected status, including age.

Severance packages help, say observers.

Mr. Lemley said employers are "smarter and more savvy" than the last economic downturn in the early 1990s and more frequently offer separation packages in which employees may choose to waive discrimination claims in exchange for severance.

The EEOC in July released guidance on this issue, which is available at *www.eeoc.gov/policy/docs/qanda_severance-agreements.html*.

Congress may try to reverse age discrimination standards

Many observers expect Congress to try to overturn a U.S. Supreme Court decision that may make it easier for employers to successfully defend age discrimination suits.

Observers point out that differences between the standard of evidence the high court in June established in this case for age discrimination cases vs. other discrimination lawsuits also could sow confusion among juries.

The Supreme Court held in its 5-4 decision in *Jack Gross vs. FBL Financial Services Inc.* that plaintiffs in age discrimination cases must prove age was the determinative factor in an adverse job action, not just one of several motivating factors, to successfully pursue their case.

Plaintiffs must prove their age "was the 'but-for' cause of the challenged adverse employment action." Otherwise, "the burden of persuasion does not shift to the employer to show that it would have taken the action regardless of age, even when a plaintiff has produced some evidence that age was one motivating factor in that decision," said the court's majority opinion.

Congressional leaders are expected to seek legislation to overturn the decision, as they did in an earlier age discrimination case. In January, President Obama signed into law the Lilly Ledbetter Fair Pay Act of 2009, which eases time limits on age discrimination claims. The law reversed the Supreme Court's 2007 decision in *Lilly Ledbetter vs. Goodyear Tire & Rubber Co. Inc.*

In a statement shortly after the *Gross* ruling, Sen. Patrick Leahy, D-Vt., said he was troubled by the decision and pointed to the *Ledbetter* ruling.

Rep. George Miller, D-Calif., the chairman of the House Education and Labor Committee, said in July that he will hold a hearing to determine how the *Gross* decision will affect workers' protections against age discrimination and other forms of workplace discrimination. No date has been scheduled.

Meanwhile, observers say the decision could cause some jury confusion. They point out that in sex and other discrimination cases, plaintiffs have to establish only that discrimination was a motivating factor in an adverse employment decision, and it does not necessarily have to be the determinative factor.

Having two standards of evidence could confuse juries in cases, for instance, where a woman older than 50 accuses her employer of age as well as sex discrimination, experts say.

—By Judy Greenwald

Business Insurance END PAGE

Paris Hilton does not have to stump up $8.3 million to compensate film investors who lost money on a "sorority romp" movie she acted in, a court ruled.

Court rules Paris made good on promo pledge

A federal judge in Florida sided with Paris Hilton last week in ruling that the Hollywood socialite and actress wasn't responsible for the 2006 movie flop "Pledge This!"

The film's investors sued Ms. Hilton for $8.3 million in damages in U.S. District Court in Miami, alleging that she failed to live up to her contract to promote the movie's release on DVD.

The investors argued that the film, which earned only $2.9 million worldwide, would have earned at least the $8.3 million it took to produce the film—had its star promoted it properly.

Ms. Hilton reportedly testified during the July trial that she did all she could to promote the movie, but said the producers' last-minute demands for appearances conflicted with her busy schedule.

Judge Federico Moreno agreed with the heiress, ruling there is no way to prove a link between Ms. Hilton's promotion efforts and the $8.3 million in damages sought by investors.

Ms. Hilton, however, is not totally off the hook.

According to reports, Judge Moreno said he would entertain arguments from the investors that Ms. Hilton should be forced to repay a part of her $1 million fee for promoting and acting in the film described by the Associated Press as a "college sorority romp."

Contributing: Jeff Casale, Judy Greenwald, Mark A. Hofmann, Sally Roberts

Hockey star sets new goals

Retired professional hockey player Jeremy Roenick is known best for his ability to outskate the defense and score, not his insurance business.

Yet Mr. Roenick, who retired earlier this month from 20 years in the National Hockey League in which he scored more than 500 goals and played in more than 1,350 games, is focusing on just that—Roenicklife Insurance Co.

"For many years, people asked what I was going to do after hockey. I never really thought about it because I only thought about being a hockey player," Mr. Roenick states on *Roenicklife.com*. "The physical pressure of a 20-year hockey career has made me more aware of my health needs, which has led me to pursue an interest in insurance."

Mr. Roenick would seem to know the importance of having insurance. He has a large scar down the front of his face and has played with is jaw wired shut from a hockey-related injury.

Roenicklife's portfolio of services includes individual insurance, risk management, employee benefits, financial planning and executive liability coverage.

Mr. Roenick offers this as a closing point to those interested in doing business with him: "I have tried to be the best I can be on the ice, so I expect Roenicklife Insurance to be nothing but the best for your insurance needs because—I'm your biggest fan."

Hockey great Jeremy Roenick is pursuing a second career as an insurance salesman.

REUTERS/LANDOV

SUIT DOESN'T RING TRUE, JUDGE SAYS

The franchisor of a Subway restaurant in New Smyrna Beach, Fla., is not liable for punitive damages for firing a worker who refused to remove her nose ring, a judge has ruled.

Hawwah Santiago, an assistant store manager and "sandwich artist" at the restaurant, was asked to remove her nose ring while at work because it violated company policy, according to the Orlando, Fla., federal judge's ruling.

Ms. Santiago refused and said the nose ring was a practice of her Nuwaubian religion. The Nuwaubian religion is an Eatonton, Ga.-based black supremacist cult, according to the Montgomery, Ala.-based Southern Poverty Law Center. Its leader, Dwight York, in 2004 was sentenced to more than 135 years in prison for child molestation and racketeering, according to a local news report.

Ms. Santiago sought a waiver of the uniform policy of the Subway franchisor, Milton, Conn.-based Doctor's Associates Inc., but was told she needed written verification of the religious practice. When she did not provide it, she was fired. Then the U.S. Equal Employment Opportunity Commission sued, charging religious discrimination.

A jury, however, found that Ms. Santiago did not wear the nose ring because of a sincerely held religious belief, according to the July 28 decision.

Still, the EEOC sought injunctive relief and punitive damages. But the court dismissed the case, noting Doctor's Associates changed its policy and no longer seeks documentation.

"The EEOC's own publications acknowledge that some inquiry into the sincerity of an employee's belief as well as into the religious nature of the belief is appropriate," Judge John Antoon II ruled. Otherwise, "an employer would have to grant an accommodation any time an employee requested one."

FRIENDS REQUEST PRIVACY FROM SITE

Do you know how your personal information is being used when you accept an invitation to join Facebook?

According to the Associated Press, a group of five Facebook users in Orange County, Calif., filed suit last week against the social networking site over just that question.

The plaintiffs—who the AP says include a photographer, two children and an actress/model—allege that Palo Alto, Calif.-based Facebook Inc. has violated state privacy laws as well as misled users about how personal information is used. The suit also accuses Facebook of data mining.

A Facebook spokesman declined to discuss of the particulars of the suit but e-mailed the AP: "We see no merit to this suit and we plan to fight it."

Even though Facebook has come under criticism before for its privacy practices, the charges could seem a bit hypocritical to some people. After all, Facebook users join in order to post personal information about themselves. It may be up to a jury to decide just how realistic expectations of privacy can be when people are forthcoming—some might say overly forthcoming—about details of their own lives.

Arch is well positioned to navigate– and succeed in these market conditions.

Guided by a powerful business compass, Arch has grown strategically to emerge as a leading provider of risk management solutions. Our disciplined underwriting and investing principles have driven the solid results we've achieved and that puts us in a strong position to respond to your market needs.

Disciplined Underwriting

- Broad product offerings–in both Primary and Specialty business, with strong capacity
- Careful risk assessment approach
- Robust regional platform throughout the U.S.
- Industry-leading underwriting talent

Disciplined Investing

- Sound, responsible investment practices
- Active capital management
- Strong balance sheet

Call us for innovative approaches to your National Accounts Casualty, Executive Assurance, Excess Workers' Comp, and Global Property needs.

A.M. Best: "A" Standard & Poor's: "A"

PROPERTY, CASUALTY & SPECIALTY PRODUCT SOLUTIONS

Strong and reliable coverage in a difficult insurance marketplace.

Contact your local broker or one of our regional offices today.

FRESH. THINKING. Arch Insurance Group®

ALTERNATIVE MARKETS | AVIATION | CASUALTY | CONSTRUCTION | ENERGY | ENVIRONMENTAL | EXCESS WORKERS' COMP | EXECUTIVE ASSURANCE | HEALTHCARE
LENDER PRODUCTS | NATIONAL ACCOUNTS CASUALTY | PROFESSIONAL LIABILITY | PROGRAMS | PROPERTY | SURETY | TRAVEL & ACCIDENT **www.archinsurance.com**