

Business Insurance

September 7, 2009

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REINSURANCE RATE HIKES EXPECTED TO BE MODEST AT RENEWALS / PAGE 3

FOREIGN INSURERS, BROKERS FACE SANCTIONS OVER CLIENTS' IRAN DEALS / PAGE 4

LAWYERS GROUP KNOCKS TRUCKING SAFETY / PAGE 4

In Brief

Congress to hear Obama on health reform plans

As part of a shift in strategy, President Barack Obama this week will make an address to a joint session, where he once again will urge legislators to pass health care reform legislation. Unlike earlier speeches, though, where he provided only general reform principles, in Wednesday's address, he is expected to be much more specific. President Obama's speech will be almost 16 years to the day that then-President Clinton made a prime-time address to Congress urging passage of his own reform package.

Liberty Mutual seeks to lead suit against AIG

Liberty Mutual Group Inc. business units are seeking to become lead plaintiffs in a lawsuit against American

See **IN BRIEF** page 26



The Station fire burns in the hills of the Tujunga area of Los Angeles on Aug. 31. As of Friday, the California wildfires had burned 147,000 acres.

Wildfires demonstrate need for preparations

By **MARK A. HOFMANN**

LOS ANGELES—Recent wildfires north of Los Angeles should serve as a reminder to risk managers to be prepared well ahead of time for the often fast-moving peril, according to experts.

As of Friday, the fires that authorities said were set intentionally had ravaged 147,000 acres, according to the Los Angeles County Fire Department. The blazes had destroyed 64 houses and 27 outbuildings and other structures, but only three commercial properties and two communications sites.

Observers credit the paucity of commercial development in the area of the blaze and weather conditions for the relatively light commercial losses.

"It's still very smoky," said Alexandra Glickman, area vice chairman for Arthur J. Gallagher Risk Management Services Inc. in Glendale, Calif. "But it's relatively far away from any commercial exposures."

"This is a very big fire. Fortunately, it is not occurring during the Santa Ana winds or it would be a much more severe event and pose an even more drastic risk for commercial and industrial properties," said Lou Gritzko, vp and manager of Factory

See **FIRES** page 26

Détente reached in AIG, Greenberg war?

Both sides agree to arbitrate disputes, new chief reaches out

By **COLLEEN MCCARTHY**

NEW YORK—American International Group Inc. and former Chief Executive Officer Maurice R. Greenberg agreed last week to binding arbitration to resolve various legal disputes, suggesting the formerly contentious parties are willing to mend ties, observers say.

The move came after comments by new AIG CEO Robert H. Benmosche to Reuters in recent weeks that he had been in talks with Mr. Greenberg.

An attorney for Mr. Greenberg said the leadership change at AIG led to the agreement.

The agreement, which also involves former AIG Chief Financial Officer Howard I. Smith, may bring an end to extensive litigation since Messrs. Greenberg and Smith left

the insurer in 2005 amid investigations of the company's accounting practices.

Last week's agreement came just hours after a federal judge ruled against AIG in a civil case involving Mr. Greenberg and former AIG affiliate Starr International Co. Inc., which Mr. Greenberg controls.

AIG declined to comment on the ruling, but some legal observers said an appeal is unlikely given the recent developments.

In a statement, AIG said the parties concluded that arbitration would be "more expeditious and cost-effective."

Under the agreement, binding arbitration will be used to settle several actions, including a \$1 billion derivative lawsuit AIG brought against Messrs. Greenberg and Smith alleging wrongdoing in accounting practices that resulted in losses to the company (*BI*, June 18, 2007). The Delaware Chancery Court suit prompted the men to file

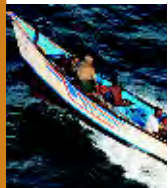
See **AIG** page 25

SPOTLIGHT

MARINE MARKET REPORT

As pirate attacks grow more frequent, shipowners find new protections against the danger, but war risk rates are rising as attacks increase. The cargo market's demand is shrinking as the recession takes hold across the globe. Stowaways are costing liability insurers more than \$20 million a year.

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Comp cheats confess all on social network sites

Investigators mine Web to fight invalid claims

By **ROBERTO CENICEROS**

Workers compensation claims investigators are increasingly scouring popular social networking Web sites such as Facebook, MySpace, and LinkedIn to help insurers and employers fend off bogus claims.

Some claimants supposedly too disabled to work post locations and dates for their upcoming sports competitions or rock band performances, boast of new businesses launched, and include date-stamped photographs of their physical activity, investigators say.

Others have openly bragged about fooling their employers with "Monday morning" workers comp claims for injuries that occurred the weekend prior and away from the workplace.

Personal, self-incriminating data



Investigators review claimants' online information for proof of fraud.

claimants load on social media sites has increased the efficiency of investigations and video surveil-

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

Business Insurance (ISSN 0007-6864) Vol. 43, No. 31, 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 Grafton 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. Copyright © 2009 by Crain Communications Inc.

Pressures expected to cap reinsurance rates

Reserve releases, fewer cat losses boost results

By JUDY GREENWALD

Price competition and higher retentions among primary insurers will keep U.S. reinsurance rates down this during the year-end renewal season, say observers.

While reinsurers have been relatively well disciplined in holding the line on pricing and pushed through some increases at midyear renewals, they suffered relatively few losses in the first half of 2009 and they continue to recover from the hit they took on their investment income last year, observers say.

Nineteen U.S. reinsurers surveyed

93.8%

Reinsurers posted a 93.8% combined ratio for the first half of 2009—a nearly four-point improvement over the same period in 2008—due in part to light catastrophe losses.

by the Washington-based Reinsurance Assn. of America posted a 93.8% combined ratio for this year's first half vs. the 97.5% reported by a comparable group for the same period in 2008. The reinsurers posted \$12.83 billion in net premiums written, a 0.8% increase from the total reported by the comparable group for the same period a year ago.

The reinsurers reported \$65.99

billion in policyholder surplus, a 9.3% decline from the total reported by the comparable group in the first half of 2008. This is a relative improvement, though, over the 15.2% decline reported by reinsurers surveyed for 2008 vs. 2007.

The reinsurers also reported a \$406.3 million net loss for the first half. This compares with the \$2.68 billion in net income posted by the comparable group in the first half of last year. The loss reflects in part a \$1.29 billion loss reported by National Indemnity Co., a unit of Berkshire Hathaway Inc. The reinsurer's were due writedowns on investment losses.

Reinsurers' combined ratios improved in part because there were fewer catastrophes this year than last, say observers.

"It's been a very light catastrophe

year thus far," said James Auden, senior director at Fitch Ratings in Chicago.

While primary insurers have been hit by cat losses, they largely have been hailstorms and tornadoes, which "don't really go into the reinsurance layers, so property reinsurers have had a very good underwriting year so far," Mr. Auden said.

"You saw a nice recovery at the six months," with most reinsurers reporting very strong underwriting results, driven by low catastrophe losses and the benefit of reserve releases, said Devin Inskip, senior financial analyst with Oldwick, N.J.-based A.M. Best Co. Inc.

"The reinsurers have been pretty disciplined with respect to their

See **RAA** page 24

Value-based plan design draws opposing views

Some cite flexibility; others, compliance burden

By JOANNE WOJCIC

WASHINGTON—A little-known provision in health reform legislation pending in the House of Representatives could give a boost to value-based insurance design principles, some employee benefit experts say.

The provision in H.R. 3200, the America's Affordable Health Choices Act of 2009, which has been passed by three House committees, would permit the use of cost-sharing incentives, such as lowering or eliminating copayments, to encourage plan members with chronic conditions to comply with drug treatment regimens or to use high-value health care screenings, such as eye exams for diabetics.

Some benefit experts say the pro-

vision, which applies specifically to the public health insurance option and to all exchange-participating health benefit plans—including employer-sponsored plans—could give employers greater flexibility in benefit plan design.

The legislation calls for establishing an insurance exchange of health plans from which individuals and businesses could choose to buy coverage. All of the participating plans would be required to offer a basic, minimum set of benefits prescribed in the bill. The bill also would set cost-sharing limits.

However, other employee benefit experts are concerned that mandating VBID principles would not only limit employer freedom over plan design, but increase costs by adding



LANDOV

Health and Human Services Secretary Kathleen Sebelius and Rep. Alan Grayson, D-Fla., discussed health care reform after touring a Florida clinic.

coverage requirements employer-sponsored plans must meet to be considered "qualified."

As it is written, H.R. 3200 would set up a federal Health Benefits Advisory Committee to recommend to the Department of Health and Human Services the slate of benefits employer-sponsored health plans

must offer, as well as the cost-sharing requirements the plans could impose. The HHS secretary can then accept, reject or modify the recommendations.

Although there is nothing in the bill requiring employers to amend

See **VALUE** page 23

Ruling opens door to gender stereotyping suits

Precedential 3rd Circuit decision could influence other federal appeals courts' Title VII rulings

By JUDY GREENWALD

PHILADELPHIA—A federal appeals court ruling that a gay man is not necessarily barred from filing a sexual discrimination claim under Title VII of the Civil Rights Act, even if there is no federal law banning discrimination based on sexual orientation, is one many observers say could be influential.

The ruling by the 3rd U.S. Circuit Court of Appeals in Philadelphia in *Brian D. Prowel vs. Wise Business Forms Inc.* says Mr. Prowel was told that a lack of work was the reason he was terminated in 2004. Most recently in his 13-year career with Butler, Pa.-based Wise, he operated a

encodes numbers and organizes business forms.

Mr. Prowel, who is homosexual, contended he was the victim of sex discrimination and retaliation. Unlike the "genuine stereotypical male" at the plant, he said he "had a high voice and did not curse; was very well-groomed; wore what others would consider dressy clothes; was neat" and "filed his nails instead of ripping them off with a utility knife," among other characteristics.

He said he was called "princess," "rosebud" and "faggot" by co-workers, among other incidents. He said he was terminated several months after his employer learned he had asked co-workers to testify on his

WHAT HAPPENED

■ The 3rd U.S. Circuit Court of Appeals ruled a gay man is not barred from filing a sex discrimination claim under Title VII.

WHAT'S NEXT

■ The federal appeals court said a jury should consider the man's sexual discrimination and retaliation allegations.

behalf in a lawsuit against the company.

In its unanimous decision overturning a lower court's dismissal of the case, the three-judge appeals court panel said Congress has reject-

ed legislation that would have extended Title VII to cover sexual orientation.

"This does not mean, however, that a homosexual individual is barred from bringing a sex discrimination claim under Title VII, which plainly prohibits discrimination because of sex," the court said in the ruling, which sets a precedent in the circuit.

"The line between sexual orientation discrimination and discrimination 'because of sex' can be difficult to draw," and the record here "is ambiguous on this dispositive question. Accordingly, Prowel's gender stereotyping claim must be submit-

See **BIAS** page 22

Bill targets Iran oil dealings

Foreign insurers, brokers would face sanctions over clients' activities

By ZACK PHILLIPS

Congress soon may take action on legislation that would allow economic sanctions against non-U.S. insurers, reinsurers and brokers helping Iran import refined petroleum, industry experts say.

The Iran Refined Petroleum Sanctions Act, H.R. 2194 and S.B. 908, specifically mentions companies that insure, reinsure, finance or broker for ships or shipping services that help deliver refined petroleum to Iran.

The bill, which would amend the Iran Sanctions Act of 1996, would make it easier for the Treasury Department to put such foreign

companies on a blacklist subject to economic sanctions.

"It's a little unusual for one of these broad-based sanction statutes to hone in on, not just an industry, but people who are providing financing for the industry," said Pieter Van Tol, a New York-based partner in international business law firm Lovells L.L.P.

The sanctions could halt some of a company's financial transactions or freeze its U.S. assets, including property in which it has an interest, among other remedies.

A company put on the sanctioned list could be treated as the functional equivalent of the Iranian government, said Hal Eren, who

once worked in the Treasury Department office that enforces U.S. trade sanctions and is now a New York-based partner in Eren Law Firm.

"Foreign (insurers and reinsurers) could be dramatically affected," Mr. Eren said.

While sanctions traditionally have focused on banks, Mr. Eren said insurers' and reinsurers' involvement in Iran's petroleum trade has come onto the U.S. government's radar screen recently.

"The Treasury Department has noticed that there are global insurance companies and reinsurance

See **IRAN** page 21



Insurers, reinsurers and brokers that provide coverage or services to companies shipping oil to Iran would face sanctions if Congress passes the Iran Refined Petroleum Sanctions Act.



The American Trucking Assn. disputes a recent study by the American Assn. for Justice that highlights trucking safety violations.

Lawyers group criticizes trucking industry safety

Trucks organization disputes conclusions on violations, crashes

By JEFF CASALE

WASHINGTON—A recent study by a trial lawyers group showing that more than 28,000 motor carrier companies have violated federal safety regulations drew the ire last week of the American Trucking Assn.

The American Assn. for Justice, formerly called the American Trial Lawyers Assn., said car drivers are sharing the road with trucks that have "incurred thousands of safety violations" and, as a result, preventable truck accidents are occurring.

Trucking companies are "violating safety standards to cut corners and maximize profits," the AAJ said.

In addition, the minimum insurance requirement for commercial

trucks, which has stood at \$750,000 per truck since 1980, is "completely inadequate," the Washington-based AAJ said in a statement.

But the ATA fought back, saying the commercial trucking industry is getting safer every year and that many of the safety violations cited by the AAJ are paperwork issues that have "no effect on safety."

In addition, a spokesman for the ATA said 28,000 motor carriers cited in the report constitute less than 5% of the total number of motor carriers in the United States, which is 579,759, according to the U.S. Federal Motor Carrier Safety Administration.

And studies by Virginia Tech and the American Automobile Assn. show that 78% to 80% of all car-truck crashes are caused by the driver of the car, the spokesman for the Washington-based ATA said in an e-mail. The ATA also noted that car-truck collisions became such a prob-

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Some firms restore 401(k) matches as economy shows signs of revival

Moves may reverse widespread trend to suspend payments

By JEFF NASH

Employers are starting to restore matching contributions to their 401(k) plans after extensive cost-cutting and signs of improvement in the economy.

Experts say these employers represent the first batch in what could be a major round of company match restoration in the coming months.

In recent weeks, executives at Kulicke & Soffa Industries Inc., Zep Inc. and The San Diego Union-Tribune L.L.C. said they would resume

matching employee contributions to their 401(k) plans. A fourth company, Starbucks Corp., announced in July that it will make a matching contribution for 2009, after last December making its 401(k) plan match discretionary, based on company profitability, because of concerns about the company's financial health.

These announcements come after moves by Tulsa, Okla.-based Dollar Thrifty Automotive Group Inc. and Akron, Ohio-based Goodyear Tire & Rubber Co., which reinstated their matches in January. Goodyear had stopped making contributions to its 401(k) plan in 2003, and while it has reinstated its match, it has frozen its \$4.26 billion defined benefit pension plan.

"There are certainly other compa-

nies that are restoring contributions, and many others that are now talking about it," said Bill McClain, a principal in the Seattle office of Mercer L.L.C. "In some cases, we're going to see a return to a discretionary match or to a lower rate match, but we'll see more companies returning as we head into 2010."

In a filing with the U.S. Securities and Exchange Commission earlier this month, semiconductor equipment maker Kulicke & Soffa in Fort Washington, Pa., said it would resume making matching contributions to the employees' 401(k) savings plan. The match which, according to the filing, was halted in January, will resume Sept. 1. A compa-

See **MATCHING** page 7

Benefit manager nominations open

Know an outstanding professional employee benefit manager? Nominate her or him for *Business Insurance's* 2009 Benefit Manager of the Year award.

BI established the Benefit Manager of the Year award in 2005 to recognize excellence in administering employee benefit programs. Readers of the magazine are invited annually to submit nominees for this award.

An independent panel of judges, representing prior winners, benefit brokerages, benefit consulting firms and other benefit service providers, scores nominees on the basis of seven criteria, and the highest-scoring candidate is named the Benefit Manager of the Year.

The criteria on which candidates are judged are how well a benefit manager:

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her employer.

■ Innovatively applies benefit programs to his or her organization's needs.

■ Effectively uses benefit programs to help control costs.

■ Exhibits leadership in achieving change within his or her organization.

■ Established an effective system for communicating benefit programs to employees.

■ Skillfully administers benefit programs through application of technology.

■ Develops in his or her career and promotes advancement of the benefits profession.

For more information and to download a nomination form, please visit www.BusinessInsurance.com. The nomination deadline is Oct. 9. A profile of the winner will appear in the Nov. 30 issue as well as at BusinessInsurance.com.

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Commentary

Numerous small risks add up to tragic results

Nine firefighters stepped from a helicopter to confront a routine California brush fire that ultimately trapped them, killing two and badly burning two others 16 years ago.

That tragedy occurred not far from where two other Los Angeles County firefighters died just days ago while battling the so-called Station fire last week, the largest brush fire in the county's history.

The Station fire had burned more than 200 square miles as of Friday, when it was roughly 40% contained. In contrast, the 1993 fire was a small, 50-acre blaze that should have been extinguished quickly before the firefighters headed home to their families.

Therein lies a lesson for workers and employers engaged in hazardous work. It's also a reminder for safety engineers and risk managers.

When it comes to hazardous duty, routine tasks quickly can become as dangerous as larger risks against which workers are more likely to be on guard.

In 1993, I was a reporter working several hundred feet from where a helicopter placed the firefighters on a hilltop overlooking an Altadena, Calif., neighborhood. Forty minutes later, a radio receiver crackled with the firefighters' adrenaline-stoked voices and I knew Crew 2-2 was in trouble. It was the gallantry displayed that day that fixed the memory of those brave men in my mind. The tragic sense of loss felt by their colleagues also haunts my recollections.

After departing the helicopter, the firefighters cut a containment line along an advancing edge of the fire in a "direct attack." A report into their deaths referred to their aggressive strategy as having "one foot in the black."

I called L.A. county fire officials for the investigation report years after I had stopped covering that beat and moved to a new job covering insurance risk management. I still wanted to know exactly what happened on that hill.

I thought about them again a few years later when I attended an American Society of Safety Engineers conference. A former Exxon refinery worker told the conference of a night his inattention to safety procedures resulted in an inferno that burned much of his body. His message was simple: Don't let the day-to-day routine lull you into passivity concerning safety procedures.

His graphic description of horrific days spent in a burn unit made me think of the critically burned firefighters, who must



**ROBERTO
CENICERROS**

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have suffered similar agony after they were airlifted off that blackened hill in 1993.

The investigation revealed several problems contributing to the 1993 tragedy. Firefighters were working in a small draw that acted as a chimney, allowing the fire to race up and trap them. The terrain was so steep and the soil so loose that it made running to safety "difficult to impossible." Bulky gloves made it difficult for some to deploy

Routine tasks quickly can become as dangerous as larger risks against which workers are more likely to be on guard.

emergency fire shelters, and radio communication problems stalled their call for help.

"On that fateful afternoon, no one on Crew 2-2 intended to take extraordinary risks or to place themselves in jeopardy; none of them displayed reckless disregard for their safety," the report states. "Yet the sad outcome is now history. So that history does not repeat itself, this report must be accepted...as a recognition and sad reminder that the dynamics of a wildland fire have the capacity to mislead, deceive, maim, and kill experienced, aggressive firefighters."

The report states that until that day, the Los Angeles County Fire Department had fought more than 30,000 wildland blazes since the last firefighter was lost battling a brush fire.

The report was the culmination of a meticulous examination of the event and took a dozen investigators weeks to complete.

But the day after the tragedy, I recall one U.S. Forest Service official saying he was stunned because the blaze the firefighters faced was such a small, routine fire when it started.

Matching: Employers slowly begin restoring 401(k) plan contributions

CONTINUED FROM PAGE 4

ny spokesman referred calls to David Anderson, vp and general counsel, who did not return a call seeking comment. The plan had \$37.98 million in assets as of Dec. 31, according to another filing.

Atlanta-based Zep restored a portion of its 401(k) matching contribution in July, after halting contributions in January. The plan, which had matched 50% of employees' salary deferrals, up to 6% of salary, now matches 25 cents on each dollar, up to a maximum of 6% of salary. The company hopes to fully restore the match in January, said Chief Administrative Officer Robert Collins, unless "something drastic happens to the economy or our business." The plan had \$127.3 million in assets as of Dec. 31, according to an SEC filing.

The Union-Tribune's matching contribution resumed in May, after the San Diego newspaper was purchased by Platinum Equity L.L.C., a Beverly Hills, Calif.-based private equity firm, according to a spokesman. The match had been suspended in February. The spokesman declined to disclose the size of the 401(k) plan or the details of its match program.

Indeed, companies now seem more eager to restart their suspended matching contribution plans than they did a few months ago.

According to a Watson Wyatt Worldwide survey of 175 large companies conducted in early August, 24% of respondents said they plan to reinstate or increase matching contributions within the next six months, compared with just 5% in a June survey by the firm.

Another 24% said they plan to partially or fully restore their contributions within the next year. Of those, 67% said they will go back to the contribution level in place prior to the suspension, 12% will do so at a lower level and 21% said the match will depend on the company's earnings.

"The data indicate that hopefully these companies have right-sized their businesses and are more comfortable with the economy," said Robyn Credico, director of the plan management group practice, North America, at Watson Wyatt in Arlington, Va. "I think we'll start to see more and more companies restoring their matches."

Thomas Harty, senior consultant at Portfolio Evaluations Inc. in Warren, N.J., agreed. "From a business perspective, we've gone from companies just looking to keep the lights on to where they're now getting back to business as usual and starting new projects. Restoring a match is one of those key decisions investment committees and boards will be making as things continue to improve."

Nearly 300 employers have announced plans to reduce or suspend their matches since June 2008, according to the Pension Rights Center in Washington. Roughly 10% of the 1,500 401(k) plans administered by Vanguard Group Inc. have either reduced or eliminated their employer match, said spokeswoman for Valley Forge, Pa.-based Vanguard. At

Fidelity Investments, nearly 8% of the 17,500 plans administered have done the same, according to a spokesman for the Boston-based investment management and benefits administration firm.

At the very least, experts agreed that the number of companies suspending matches has leveled off. Trisha Brambley, president of consultancy RESOURCES for Retirement in Newtown, Pa., said that while all her clients called her to discuss reducing or suspending matches at the end of last year, those inquiries have stopped. "Everybody that was going to do it, did it," she said.

Driving companies to resume making matches, said Mercer's Mr. McClain, is the desire to stay competitive and retain talent as economic conditions improve. "The decision to match has a huge impact on employee loyalty," he said. "It really sends a message; companies are looking to restore (matches) as quickly as possible to keep key employees."

Many companies that suspended their matches are likely to switch from a match based on a fixed portion of salary to discretionary matches based on company performance, said Ms. Credico.

Another strategy being discussed

by some companies that have suspended matches is to match contributions with company stock instead of cash, said Matthew Hutcheson, who runs Matthew Hutcheson L.L.C., an independent fiduciary firm in Boise, Idaho.

"While this strategy is cheaper for the company, it can be dangerous for participants and carries with it inherent conflicts of interest and important fiduciary considerations," said Mr. Hutcheson. "If plan sponsors are sensitive to those considerations, such transactions can be prudently managed."

Not everyone predicts a big wave of restoring matches. "When com-

panies began suspending, there was a herd mentality, with a lot of companies jumping in to do something," said Rob Vetere, senior vp at Diversified Investment Advisors Inc. in Purchase, N.Y. "The bounce-back will be more gradual. I don't predict a lot this year. We'll likely see it ramp up a little in 2010. The big question is whether or not all companies will restore their matches, and for those that do, whether they'll bring them back to their previous levels."

Jeff Nash is a reporter for Pensions & Investments, a sister publication of Business Insurance.



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Obama's leadership needed on health care

IS PRESIDENT OBAMA getting smarter when it comes to health care reform legislation?

We don't have the final answer to that question, but his decision to get more directly involved in working with Congress to shape the legislation is a step in the right direction.

Clearly, the health care reform drive is in trouble and the president deserves some of the blame. He largely had stayed out of the trenches, laid out only general principles and left it to legislators to develop the details.

That was a huge mistake.

The reform drive in the House, for example, was led by left-of-center Democrats who developed bills that justifiably produced fear and opposition, not support, among much of the American public.

We could pick out many examples of troubling provisions, but one that leaps out would leave it to a new commission to recommend plan designs that employers would have to abide by in order to avoid being hit with hefty fines. That sort of meddling, which could be counterproductive if employers decide to abandon their plans that endure such micromanagement, goes way beyond what we think health care reform is all about: moving the nation closer to universal coverage.

Fear also has been generated by the farcical way the legislation moved through committees. The House Ways and Means and Education and Labor committees passed the legislation after one day of consideration. We've seen legislators take more time to analyze and debate bills of far less importance.

The executive branch is supposed to provide leadership and that doesn't mean operating in the stratosphere, as President Obama has done on health care reform.

We welcome his decision to more directly insert himself in the reform effort and are eager to hear what he says this week.

Clearly, the health care reform drive is in trouble and the president deserves some of the blame.

Common-sense ways to fight wildfire risks

EARTH, WIND AND FIRE present potentially disastrous exposures in the form of earthquakes, hurricanes and wildfires. While wildfires might not command the same attention as the other two perils, they demand both respect and action.

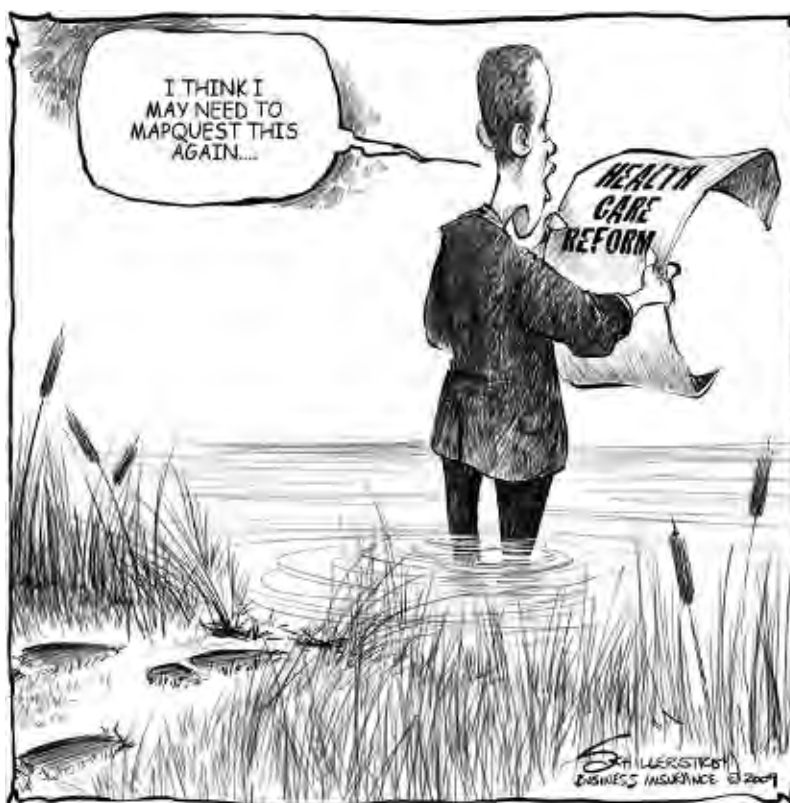
The recent wildfires north of Los Angeles underscored that point.

For a variety of reasons, the insured property damage—particularly to commercial structures—appears to be far less costly than it might have been. Had the fires occurred during the season of the Santa Ana winds, the story could have been far worse.

Fortunately, there are steps that risk managers and loss control professionals can take to mitigate this exposure.

As we report on page 1, most of them are exercises in common sense, such as cleaning up inflammable debris and having access to adequate water supplies. And, of course, having a plan to deal with a fire and its aftermath is positively essential.

Although the California wildfires have caused more than their share of tragedy for homeowners who have lost everything, the fact remains that they could have been far worse. That they were not as bad as they might have been is, in part, a matter of luck. Anyone facing a potential wildfire exposure should make sure a response plan is in place now to deal with the day when their luck runs out.



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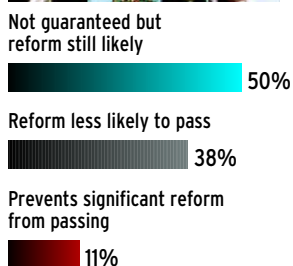
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THIS WEEK'S RESULTS

How will the death of Sen. Edward Kennedy affect health care reform legislation in 2009?



NEXT WEEK'S QUESTION

Should employers review comp claimants' Facebook profiles to vet claims?

READ

Perspectives and expert analysis online at
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Routine practice often furthers avoidable risks

Commonly accepted but unexamined routine practice often spawns unnecessary risks for businesses, say Richard Hershman and Wendy Shapss, senior managing directors of New York-based FTI Consulting Inc.'s forensic and litigation practice. The authors say two underlying causes account for most insurance contract disputes—ambiguity in language and inadequate underlying information. They recommend that organizations immediately take five steps to assess and mitigate the risks of all contracts, not just insurance.

ONLINE

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Products & Services

EQECAT updates, enhances cat modeling software

OAKLAND, Calif.—Catastrophe modeling firm EQECAT Inc. has made enhancements to its modeling software platform and added its European flood model to the program, the company said.

The WORLDCATenterprise version 3.13 software platform enhancements are based on new

research about North Atlantic hurricanes, European floods and earthquakes, particularly in the Himalayan Frontal Thrust region and South America, the company said.

The firm's EuroFlood model can be run on the software and enables insurers to assess building asset exposures to all flood types across Germany and the Danube River in Austria, the company said.

The company also updated its North Atlantic hurricane model to be consistent with the National Hurricane Center's historic data as of June 1, 2008. The model estimates damages and insured losses from hurricanes in the mainland U.S., the Caribbean, the Bahamas and Bermuda.

For more information, contact EQECAT at 510-817-3100 or visit www.eqecat.com.

Aon adds multilanguage capabilities to system

CHICAGO—Aon eSolutions, a unit of Chicago-based brokerage Aon Corp., has added multilanguage capabilities to its risk management information system to support markets in China and Japan, the company said.

RiskConsole is a browser-based RMS that has been utilized in the U.S. for the past five years. The system now allows users to enter, view and report on data in Mandarin and Japanese, and can be translated into other languages, the company said.

The program uses claims, exposure, policy and other risk-related information to provide risk managers with a comprehensive view of organization-wide risk, Aon said.

The multilanguage developments are driven, in part, by increasing regulatory demands in Japan and China, requiring firms to improve their corporate governance practice, Aon said.

For more information, contact Jennifer Turner, senior vp of global product management, at jennifer_turner@aon.com or 312-381-4541.

Liberty introduces GPS monitoring product

BOSTON—Liberty Mutual Agency

Markets, a Boston-based division of Liberty Mutual Group, has introduced a GPS-based product to monitor the driving behavior of commercial vehicle operators.

Onboard Advisor combines vehicle performance data with roadway information gleaned from Bradenton, Fla.-based GE Security's NavLogix GPS technology to record vehicle speed, braking and cornering maneuvers. Users also can replay driving events with Google street maps, Liberty Mutual said.

The system calculates safety scores and allows fleet managers to monitor and coach drivers on aggressive driving patterns, the company said.

Fleets that install Onboard Advisor can save 15% in commercial auto premiums in the first year, and up to 40% depending on performance, on renewal, the company said. The device and discount program is offered through eight regional companies, including Liberty Northwest Insurance Corp., Ohio Casualty Insurance Co. and Golden Eagle Insurance Corp. Additional carriers will be added in the next year. The product can also be purchased independently.

For more information, call Liberty Mutual at 877-803-5338 or visit www.onboardadvisor.com.

RIMS to host pandemic webinar

NEW YORK—The Risk & Insurance Management Society Inc.'s upcoming webinar "Pandemic Plan of Action" will offer businesses advice on understanding the risks posed by pandemics and clarify information on the H1N1 pandemic, the New York-based organization said.

The webinar, which is scheduled for Sept. 10 from 1 to 2 p.m.—will help risk managers implement effective action plans and address a variety of issues to help companies manage liability exposures before and after a pandemic, RIMS said.

The panelists will be Michael Keating, director of business continuity management at Chicago-based Navigant Consulting Inc.; Michael Liebowitz, director of risk management and insurance at New York University; and Joseph McMenamin, partner at New York-based law firm McGuire Woods L.L.P.

The program is free for RIMS members. Others can participate for a \$30 fee. For more information or to register, contact Amy Benson, RIMS communications associate, at 212-655-6059 or visit www.rims.org/pandemicaction.

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A suspected pirate skiff off the port of Bossaso, Somalia, in June. With the number of pirate attacks growing over the past year, several insurers have started offering policies designed to cover the risk. Previously, claims from pirate attacks fell under several different coverages.

REUTERS

Insurers on board with piracy risks

New coverages offered to protect shipowners as pirate attacks grow

By ZACK PHILLIPS

As pirate attacks against commercial vessels continue near Somalia, shipowners have seen a proliferation of new insurance products designed for the specific challenges presented by this type of piracy.

Traditionally, piracy was covered under hull and war risk policies, but that is changing as marine underwriters encourage owners of ships traveling pirate-infested waters to buy specialty coverages that typically are grouped under a kidnap and ransom policy.

In recent decades, the typical attack involved pirates boarding a ship, stealing cash and valuables, and fleeing. But in 2007, gangs of Somali pirates began hijacking commercial ships, holding the vessel and crew hostage—often for months—before releasing them for a ransom often in the seven-figure range.

Since then, pirates have expanded their reach from the Gulf of Aden, a choke point near the Suez Canal, to an estimated 1 million-square-mile area of the Indian Ocean.

In the first half of 2009, pirates near Somalia attacked 130 ships compared with 24 in the first half of 2008, according to the International Maritime Bureau's Piracy Reporting Center.

This type of piracy presents a challenge for marine underwriters and policyholders because, in most cases, the vessel, crew and cargo are returned relatively unharmed after

a hijacking. Shipowners' major expense in such cases is not the damage or the lost property, but rather the ransom.

Only a small minority of shipowners carry kidnap and ransom insurance and experts say it is unclear what other insurance may cover ransom payment. To date, shipowners without K&R cover have sought reimbursement for ransom expenses through voluntary agreements among various insurers to contribute a share, observers say.

But there are signs those voluntary agreements are becoming more contentious. In June, London-based shipowner Navalmar (U.K.) Ltd. took a Chinese cargo shipper to arbitration for its refusal to contribute to ransom reimbursement for the April hijacking of the MV Malaspina Castle (*BI*, July 27).

"The difficulty is the uncertainty," said Mark Cracknell, London-based chief executive officer of Aon Marine in the U.K. "You have to wait a long time for the (reimbursement) process to roll out...Some shipowners are concerned about...whether they get reimbursed if they have to pay ransom and what they would do if (a hijacking) actually happened."

Brokers and other observers say more marine underwriters are encouraging shipowners to buy separate K&R cover to provide clear-cut coverage for hijackings, ransom and related costs. In some cases, they are offering premium discounts.

K&R policies are not new, but historically they were designed for land-based kidnappings. Brokers and underwriters began offer-

ing marine K&R cover in late 2007 and early 2008, and this year added endorsements and provisions to cover various costs beyond the ransom payment.

K&R policies typically cover all expenses related to negotiating and delivering a ransom, which can be considerable. Often the money itself must be insured in case it is lost or stolen in transit; in the case of pirates off the coast of Somalia, the ransom often must be dropped from a helicopter or plane onto the hijacked ship.

Most K&R policies also pay for medical attention and psychological counseling for victims after the hijacking. The Malaspina Castle paid \$1.8 million in ransom and incurred an additional \$1.8 million in related costs, according to court records.

Some K&R policies, including one offered by broker Willis Group Holdings Ltd., also pay for the cost of refueling or making an unexpected port call after release. The K&R policy offered by Warren, N.J.-based Chubb Group of Insurance Cos. covers interest on loans taken out to pay a ransom.

But brokers and underwriters say one of the most important elements of K&R cover is that it provides an experienced security consultant to shepherd the shipowner through the process of negotiating and paying the ransom. Many K&R products come with the services of a particular security contractor. Hamilton, Bermuda-based Hiscox Ltd. works with London-based Control Risks Group Ltd.

130

In the first half of 2009, pirates near Somalia attacked 130 ships, compared with 24 in the first half of 2008.

See **PIRACY** next page

Marine Market Report

SPOTLIGHT

WAR RISK RATES RISE FOR HIGH-RISK AREAS AS ATTACKS INCREASE
PAGE 12

ECONOMY TAKES TOLL ON CARGO MARKET AS DEMAND SHRINKS
PAGE 16

STOWAWAYS COST LIABILITY INSURERS OVER \$20M A YEAR
PAGE 18

Turkish marines arrest suspected pirates in the Gulf of Aden. War risk rates have risen for some areas as insurers grow increasingly concerned about pirate attacks.



Insurers increase war rates for several high-risk areas

By **STUART COLLINS**

Rates for annual war risk coverage show no signs of increasing, but underwriters are charging significantly increased premiums for certain high-risk zones.

Competition and capacity in the marine war hull market remains high, according to Sean Woollerson, partner at JLT Ltd., part of Jardine Lloyd Thompson P.L.C. in London. As a result, insurance premiums ship owners and charterers

have to pay annually for their war cover have remained stable, he said.

But premium rates for marine war hull insurance—which covers physical damage from acts of war, piracy, terrorism, expropriation, derelict weapons of war, and strike action—have risen significantly in high-risk areas like the Gulf of Aden, Nigeria and Venezuela, say underwriters and brokers in the market.

Areas that are considered of

See **WAR** page 14

Piracy: Insurers on board with coverage

CONTINUED FROM PREVIOUS PAGE

Chubb works with Miami-based Ackerman Group L.L.C., although its policyholders can choose a different firm if they desire. Willis' Special Contingency Risks division has partnered with London-based Maritime & Underwater Security Consultants.

Doug Milne, London-based CEO of Willis' Special Contingency Risks practice, said the vast majority of clients ask the broker for help only a day or two before a voyage through pirate-infested waters. On that short notice, he said the security consultant helps plan a ship's route based on recent data of pirate attacks and sightings, provides security information, tracks the vessel and communicates regularly with the captain in transit. In addition to deterring or avoiding attacks, he said the program can help avoid liability lawsuits by crew members who felt the shipowner did not do enough to prepare.

"If you've identified the risk and are doing something about it, that helps your defense," Mr. Milne said.

In May, Daytona Beach, Fla.-based Brown & Brown Inc. began offering a general liability "wrap" policy covering armed security officers aboard ships as well as any liability for the shipowner that hires them. Katey Noonan, Brown &

Brown's Seattle-based marine division manager, said she believes the product, written by a Lloyd's of London syndicate she declined to name, is the first liability policy that covers security consultants with firearms on ships. Most shipowners, trade groups and insurers dislike the idea of putting arms on ships, because they could endanger crew or cargo, escalate the violence with pirates, and create legal and other problems. But some shipowners reportedly have employed armed security guards on their ships, and Ms. Noonan said the persistent hijackings and the prospect of general liability coverage may change some shipowners' minds.

"We called nine security firms; they all wanted applications," Ms. Noonan said. "They've got a lot of requests from (shipping) carriers. We think it's really going to step up. Especially as governments get tired of stepping in (to combat piracy)."

Other insurance that has become available during the past year is loss-of-hire cover for hijackings. Loss-of-hire insurance has long been available but previously excluded hijackings, said Gregory Bangs, Warren, N.J.-based vp and worldwide product manager for crime and K&R insurance at Chubb.

Chubb's loss-of-hire insurance for piracy has been available for about a year, he said. For an additional pre-

mium, a shipowner can add a loss-of-hire endorsement to its K&R policy. If a ship is hijacked, the insurance pays the shipowner a daily limit—for example, \$10,000 a day—for a specified number of days as compensation for the charter revenue lost while the ship is detained and inactive. The Malaspina lost \$605,000 in charter revenue—\$11,000 a day for 55 days—according to court records.

Similarly, broker Aon Risk Services Inc.'s suite of piracy products includes coverage for costs associated with a cargo delivery delayed by a hijacking. A delay-of-delivery policy covers a shipowner if the cargo recipient says that it lost money in the delay. A loss-of-market policy covers cargo owners if the value of the cargo drops while detained by pirates.

The Saudi oil tanker MV Sirius Star was hijacked Nov. 17, 2008, and released Jan. 9. In that time, the value of the 2 million barrels of crude oil it was carrying dropped from \$109.9 million to \$81.66 million, according to figures from the New York Mercantile Exchange.

Brokers say while interest in K&R policies is increasing, only a small portion of shipowners buy the coverage.

"It's another cost for (shipowners) when they can do without it," Mr. Cracknell said.

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War: Rates increase for high-risk regions

CONTINUED FROM PAGE 12

“enhanced risk” are listed by the London market’s Joint War Committee on the advice of an independent security consultant, Aegis Defence Services Ltd. There are more than 20 areas listed, mainly in Southeast Asia, the Middle East and Africa.

Charterers must notify their war hull insurers if their vessels operate in a “listed area,” and underwriters then impose an additional premium. Typically, the coverage period is for seven days. The additional premium is charged at the discretion of individual underwriters, said Neil Roberts, secretary to the Joint

War Committee of the Lloyd’s Market Assn.

In some of the high risk areas, such as the Gulf of Aden and the east coast of Somalia, piracy is a growing problem. There were 130 pirate attacks off the Horn of Africa in the first half of 2009, according to the ICC International Maritime Bureau’s Piracy Reporting Centre.

In addition, many underwriters are charging higher premium rates for vessels in the waters off Venezuela, which in June became the most recent area to be added to the Joint War Committee list of areas.

Venezuela was added to the list

because of concerns that the government may expropriate commercial maritime assets, including offshore installations. In May, the Venezuelan government seized 11 towing supply vessels owned by New Orleans-based Tidewater Inc.

Although it is at each underwriter’s discretion whether to act on listed areas of enhanced risk, most are requiring ship owners and charterers to notify them if they are operating off of Venezuela, said Rupert Atkin, chief executive of Talbot Underwriting Ltd. in London, and past chairman of the market’s Joint War Committee. Even if they do not charge a premium, notifica-

tion helps insurers gauge their exposure accumulations, he added.

Among other areas of heightened risk, the coast of Nigeria has seen a spate of pirate and terrorist attacks on offshore energy vessels and cruise ships, said Simon Stonehouse, marine hull underwriter at Brit Insurance Holdings P.L.C. in London. And attacks in the Niger Delta by terrorist group Movement for the Emancipation of the Niger Delta, have grown more violent in the past six months, he added.

In the past, MEND concentrated its attacks on oil and gas installations, but more recently it has been involved in piracy attacks on vessels off of the East Africa coast, according to Andrew Moulton, marine hull and war underwriter in London

for Ascot Underwriting Ltd.

Piracy attacks in the Gulf of Aden also have resulted in substantial premium increases for vessels off the Horn of Africa, as well as sparking a debate over coverage, brokers and underwriters say.

Pirate attacks off the Horn of Africa are generating plenty of claims for marine underwriters, but these are mostly for the payment of ransoms, brokers and underwriters say. Based on case law, these are being settled under general average, a legal principle whereby all the parties in a sea venture proportionally share any losses that result from an attempt to save the vessel in an emergency. But some cargo interests and protection and indemnity clubs are refusing to pay ransom claims under general average, underwriters and brokers say.

“When piracy was added to war policies as a named peril, underwriters did envisage it would be used to pay physical damage claims and not for the payment of ransom demands,” said Mr. Woollerson.

This issue is likely to be solved by the provision of endorsements and new wordings by war underwriters, or the purchase of specialist kidnap and ransom cover, Mr. Atkin said, and some underwriters have been adding new war policy wordings to accommodate ransom demands. “We have come up with a product where ransom is paid as part of the war policy,” said Mr. Atkin. “It is specific wording, and we have sold it to a few owners already.”

There is a need for more clarity in some war policies regarding piracy claims and ransom, Mr. Moulton said. But he recommends ship owners go to the specialist kidnap and ransom market for extensions to their war cover, and products tailored to the marine market have been developed by the contingency market, he said.

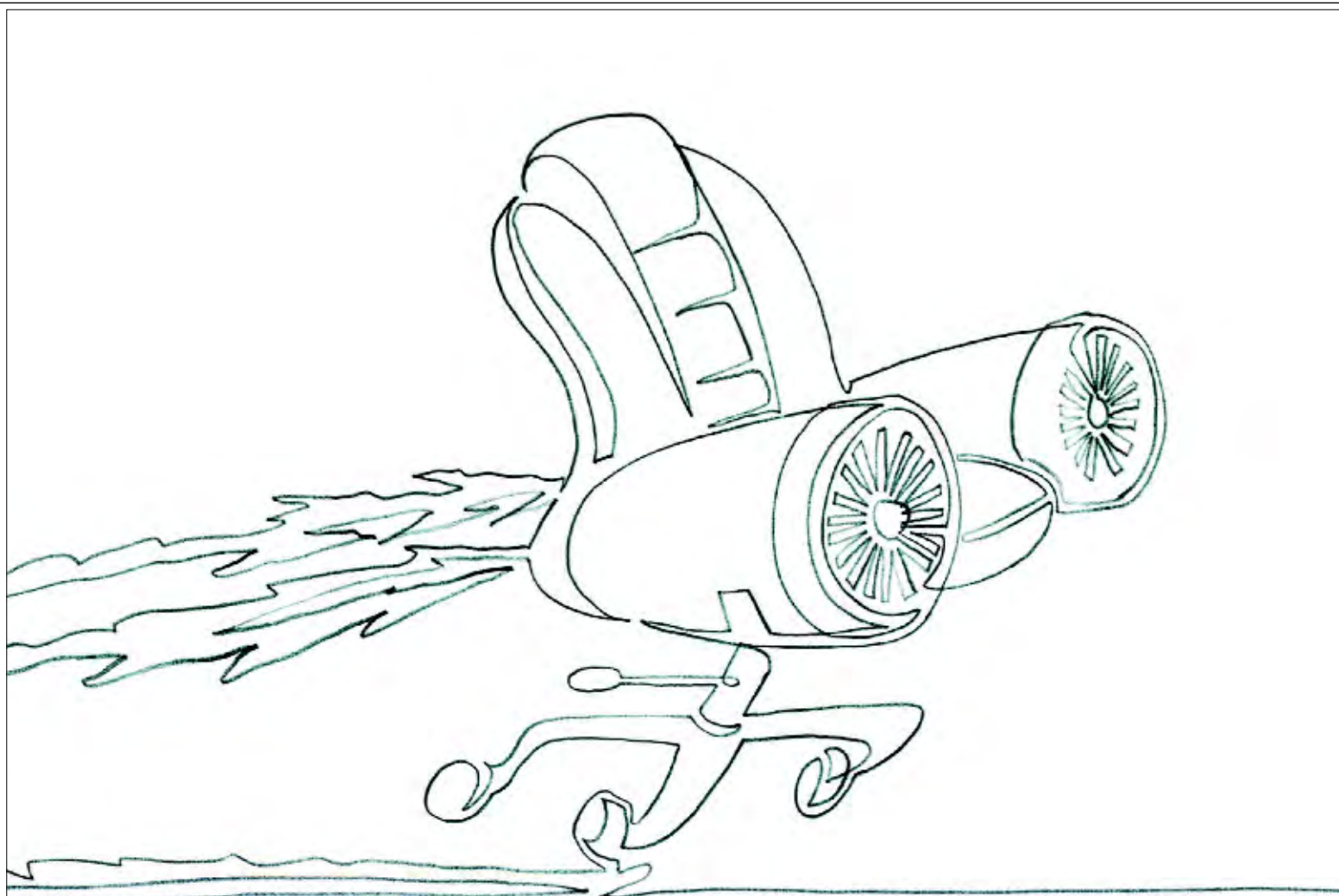
There are international efforts to counter piracy in the Gulf of Aden, but the area at risk is so vast that so far these efforts have been of limited effect, underwriters and brokers say.

“The naval presence does not yet mitigate the risk enough to reduce the additional premium and vessels are still being taken,” said Mr. Woollerson.

Coordinated patrols by Singapore, Malaysia and Indonesia helped bring piracy under control in the Malacca Straits, under the 2004 Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia agreement, said Mr. Atkin. As a result, piracy incidents significantly reduced in that area, but there have been some recent incidents again, he said.

There is concern about copycat piracy in other parts of the world after the high-profile attack off Somalia, according to Mr. Stonehouse. And piracy attacks could increase as the economic slowdown fuels such crimes, he added.

One area where additional premium rates have fallen in recent months is Sri Lanka, where the government ended its more-than-20-year fight with the Liberation Tigers of Tamil Eelam. The country remains a listed area, but additional premiums for vessels calling at Sri Lankan ports are no longer being charged, or have reduced substantially, said Mr. Atkin.



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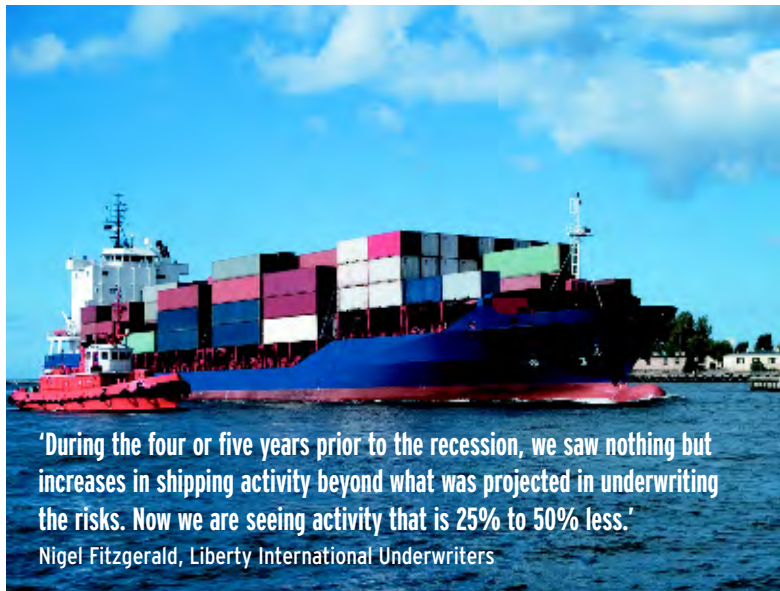


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'During the four or five years prior to the recession, we saw nothing but increases in shipping activity beyond what was projected in underwriting the risks. Now we are seeing activity that is 25% to 50% less.'

Nigel Fitzgerald, Liberty International Underwriters

Recession hitting marine market

Cargo policyholders, insurers suffering from lower revenues

By MICHAEL BRADFORD

Marine insurers and their policyholders are in the same boat when it comes to declining cargo revenue during the global recession.

Experts say cargo insurers are finding it difficult to impose rate hikes that could generate additional underwriting income as buyers,

some of whom renew their coverage at midyear, are looking to save money on insurance and other costs.

"Many of our clients have seen a dramatic drop-off in sales and demand for goods," said Patrick Hickey, vp-global corporate cargo, North America, for Zurich Global Energy's marine group in San Francisco. "As a result, there has been a drop-off in premiums and less of a need for our product," he said.

"The downturn really has made a difference," agreed Nick Gooding, senior cargo underwriter at XL

Insurance in London. "Insured values and turnover are much reduced. As a general rule, insured values are decreasing by around 20%. And it's really across the whole spectrum of cargo—motor cars being a very obvious example."

To illustrate just how far demand has fallen, Mr. Hickey cited the drop in the Baltic Dry Index, a measure of the cost of shipping dry bulk cargo. The index dove from 11,793 in May 2008 to 663 in December 2008 as the recession took its toll, he said.

"That is an amazing statistic," indicating that the plunge in demand for consumer goods has led to shrinking cargo loads around the world, Mr. Hickey said.

"During the four or five years prior to the recession, we saw nothing but increases in shipping activity beyond what was projected in underwriting the risks," said Nigel Fitzgerald, senior vp and global product line leader at Liberty International Underwriters in Houston. "Now we are seeing activity that is 25% to 50% less" than underwriters expected last year for this year's accounts.

Cargo underwriters have tried but had little success in boosting rates, market sources say. Considering the state of the world economy, observers say buyers likely would have little enthusiasm for higher prices.

"It is a very inopportune time to have that conversation with clients who are going through an unprecedented financial crisis," Mr. Fitzgerald said.

Pricing for coverage has been mostly flat for many years, with occasional small spikes after weather-related catastrophes or market-changing events such as the 2001 U.S. terrorist attacks. Unless there is a particularly nasty end to this year's hurricane season or an easing of the recession that leads to an uptick in shipping, sources say cargo rates likely will stay near current levels.

"You would think the combination of (insurers') lost investment income and reduced sales would cause prices to firm," said Patrick Murphy, managing principal at Integro Insurance Brokers Ltd. in New York. "But we're seeing that it's still competitive, which is good for our clients."

Despite the competition, cargo underwriters are paying attention to the risks they write and steady rates reflect that diligence, sources say.

Even in the competitive market, cargo rates still reflect the shipper's claims history. "It's still heavily loss-rated, so it depends on individual losses," Mr. Murphy said of coverage costs.

Underwriters are trying to hold renewal rates at expiring levels or seek moderate increases on accounts that are not heavily marketed, Mr. Murphy said. Buyers who shop their accounts generally will find lower coverage costs if marketing is not overused, he said.

Although cargo insurance pricing is competitive, it remains a money-maker because loss activity historically has been low, sources agree. As

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Stowaways a 'manageable problem' for shipowners, insurers

By MICHAEL BRADFORD

Shipowners have more to worry about than just the global recession putting a damper on their cargo loads. They also have to be concerned about who might be hiding in the nooks and crannies of their vessels.

Stowaways may not be a major problem compared with pressing priorities such as making sure the ship doesn't sink or discharge contaminants into the water, but they eat up money and time for vessel operators and insurers.

"It's not a huge, significant prob-

lem, but it is an aggravation to deal with," said Chris Spencer, director of loss prevention at Charles Taylor Consulting P.L.C., the London-based manager of the Standard Steamship Owners' P&I Assn. Ltd.

"It can be a real nuisance if a shipowner finds they've got a stowaway," said Joseph E.M. Hughes, chairman and chief executive officer of Shipowners Claims Bureau Inc., the New York-based manager of the American Steamship Owners Mutual Protection & Indemnity Assn. Inc. "Is it a problem? Yes, but it's a manageable problem."

The U.K. Protection & Indemnity

Club estimates the cost of stowaways at more than \$20 million per year to insurers. The International Maritime Organization said 3,525 incidents involving 11,329 stowaways were reported from January 1998 through December 2008.

Nearly all stowaways risk injury, death, imprisonment or an escorted return home, said Mr. Hughes. "The vast majority are economic refugees who are hoping for a new life somewhere else," he said.

A large percentage of stowaways board vessels in West Africa and South Africa. Stowaway incidents in those regions accounted for about

70% of those reported by Standard Club policyholders from 2003 to 2008, according to an analysis by the mutual insurer. North Africa, Colombia and the Caribbean also are popular embarkation points for illegal passengers, according to the analysis.

"Security at these ports is not as robust as it should be," Mr. Spencer said. West Africa is a particularly active region for stowaways because security at ports is lax and economic and other pressures provide impetus for some to attempt a free ride to a less volatile place, he said.

When a stowaway is found, P&I

clubs get involved.

"P&I clubs cover the consequences of having stowaways on board," Mr. Hughes said. Those consequences include costs related to detaining stowaways at ports, he said. In some cases, authorities may not allow a stowaway to disembark, which means the ship must take the illegal passenger back to the port where they got on the ship, a task Mr. Hughes said can be troublesome because stowaways often have no papers identifying their homeland.

Stowaway claims cost the American Club about \$5 million from 2004 through 2008, Mr. Hughes said.

The Standard Club has paid \$9.2 million in stowaway claims since 2000, Mr. Spencer said.

Preventing stowaways from gaining passage relies on more than port security, Mr. Spencer said.

Crews always should perform a "stowaway search" before leaving a port, especially in high-risk areas, he said. "Some ships don't do them as rigorously as others. If stowaways are determined, they can find a place to hide."

Cargo: Bad economy hits market

CONTINUED FROM PAGE 16

new underwriters enter the marketplace, the competitive cycle is prolonged.

A lack of significant losses in recent years has kept the global cargo market profitable, said Andy Bugler, managing director-international trade and logistics at Willis Marine in London. "For that reason, the market has attracted a lot of additional capacity, and the resulting competition has kept market rates soft against a backdrop of lower cargo volumes and falling commodity prices."

Because of the globalization of capacity, it would take a significant event or series of events to have a major effect on the market, Mr. Bugler said. That said, the recession has been responsible for a rise in attritional losses, especially from theft, and Willis has seen a year-to-date jump of around 25% in such claims, he said.

There are signs cargo insurers may be able to gradually increase their premium volume, if not rates, in the coming months, sources said.

"The market's recovery will be tied to the recovery in global trade, which most economists say will be slow," Mr. Fitzgerald said. A recovery in the manufacturing of goods that are transported in the maritime shipping industry will be slight through 2011, economists predict, which means any improvement in the cargo insurance market likewise will be gradual, he said.

"There will be improvements," Mr. Fitzgerald said. "But they will be modest."

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IRS issues new tax revenue ruling

Some reinsurance firms can qualify for favorable treatment

By JERRY GEISEL

WASHINGTON—A reinsurance company is entitled to favorable tax treatment even if it takes on just one risk from a primary insurer, as long as the reinsurer assumes risks from other insurers, the Internal Revenue Service says in a new Revenue Ruling.

The IRS in Revenue Ruling 2009-26, issued Sept. 1, lays out an example in which a reinsurer, called Z, agreed to reinsure the risks of just one policyholder of an insurer

called IC Y. The reinsurer also entered contracts assuming risks from other insurance companies.

Even though the reinsurer's agreement with IC Y covered only the risks of a single policyholder, it assumed sufficient risks through its agreements with other insurance companies to ensure risk distribution requirement for favorable tax treatment was met, the IRS said.

The IRS, following court rulings, requires risk distribution for an entity to be considered an insurance company.

In another example provided by the IRS in its ruling, Z entered into an agreement with IC Y in which Z took on 90% of the risks on insurance contracts written by IC Y for multiperil business in a 10-state

area. In return, IC Y agreed to pay to Z 90% of the premiums it received from policyholders on that business. The contract with IC Y was Z's only business.

In that arrangement, the risk distribution requirement also was met. Even though the agreement with IC Y was Z's only business, "the requirement of risk distribution was still met from the standpoint of Z as to each original policyholder," according to the IRS.

In the ruling, the IRS is saying that "in measuring risk distribution, you treat the reinsurance company as if it were insuring the risks of the direct insureds," said Chaz Lavelle, a tax attorney with Greenebaum, Doll & McDonald P.L.L.C. in Louisville, Ky.

Judge tosses Citi class action suit

By JEFF NASH

NEW YORK—A federal judge has dismissed a class action lawsuit filed on behalf of 150,000 participants in Citigroup Inc.'s two 401(k) plans, saying the company's inclusion of company stock as an investment option did not violate its fiduciary duties under ERISA.

U.S. District Court Judge Sidney H. Stein in New York tossed out the lawsuit, filed on behalf of participants in Citigroup's 401(k) Plan and the Citibuilder 401(k) Plan for Puerto Rico.

"Investment in Citigroup stock was presumptively prudent, and

plaintiffs have failed to allege facts in support of a possible claim to overcome that assumption," Judge Stein wrote in his ruling.

Judge Stein added that the two 401(k) plans "unequivocally required" that Citigroup stock be offered as an investment option, and thus "had no discretion and could not be acting as fiduciaries" with respect to the plans' investment in company stock. According to the ruling, the inclusion of the company stock was mandated in the terms of the plans.

"This court holds that neither the (Citigroup's) Investment Committee nor any other plan fiduciary had a duty to override

the plans' mandate that Citigroup stock be offered as an investment option," he wrote. "Not only does that holding accord with traditional principles of trust law, but it is consistent with ERISA's language, structure and purpose."

He also ruled plaintiffs failed to prove their claim that defendants breached their fiduciary duties by failing to provide "complete and accurate" information about the financial condition of Citigroup to plan participants.

Jeff Nash is a reporter for Pensions & Investments, sister publication of Business Insurance.

DOL withdraws proposed health test rule

By ROBERTO CENICEROS

WASHINGTON—The U.S. Department of Labor has withdrawn a proposed rule that would have affected how federal agencies conduct occupational health risk assessments.

Among other measures, the controversial rule would have required the U.S. Occupational Safety and

Health Administration and the U.S. Mine Safety and Health Administration to publish an advanced notice of proposed rulemaking for all regulatory actions regarding toxic substances or chemicals in the workplace (*BI*, Dec. 15, 2008).

Critics argued that the Labor Department under former President George W. Bush pushed the proposal through with little public input.

They also argued that it would have stalled new work safety regulations.

In Monday's Federal Register, the Labor Department said that, based on a careful review, it decided the proposed rule is unnecessary and it is more useful "to continue describing its internal risk assessment policies through guidance rather than through promulgation of a regulation."

UP CLOSE

Comings & Goings



JIM MACK

NEW JOB TITLE: Philadelphia-based partner of the financial services industry group at accounting and consulting firm Amper, Politziner & Mattia L.L.P.

PREVIOUS POSITION: Wayne, Pa.-based president of West Valley Group L.L.C.

GOALS FOR NEW POSITION: My primary goal is to extend the Amper brand into the Philadelphia and Pennsylvania insurance marketplaces.

INDUSTRY CHALLENGES: I think the industry has to continue to deliver the message that we are strong and some of the problems affecting the financial services industry don't exactly extend to the insurance companies. I think from a tactical level, (the insurance industry) needs to continue to work efficiently to manage the various layers of regulatory oversight.

INDUSTRY OUTLOOK: I think the outlook is bright. There are some areas that are quite soft right

now, some areas that are hard. There's a disconnect between the various lines. But on the whole, the industry is very strongly led. There is very effective regulation.

FIRST EXPERIENCE IN JOB MARKET: I entered professional service with Ernst & Young (in Philadelphia) and, as with anything in public accounting, you work for hours and hours and hours and you are learning every day. That was a great experience.

ADVICE: I think there are great opportunities in insurance. Companies are looking for talent.

OUTSIDE THE INDUSTRY, A DREAM JOB: I would love to be a swim coach. Been a swimmer my whole life and I love the sport. It teaches many things about hard work.

MOST PASSIONATE ABOUT: I am most concerned keeping everything in my life focused and in balance. Career success can breed opportunities to help in the community. We need to make sure that we keep in mind that we have to do the rest.

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Iran: Expanded sanctions would affect non-U.S. insurers and brokers

CONTINUED FROM PAGE 4

companies without which Iran's shipping cannot occur," Mr. Eren said. "Someone docking his tanker in Iran certainly needs insurance with which to do it....Someone is insuring Iran and someone is reinsuring that insurance."

Mr. Von Tol said the bill has not received a lot of industry attention since its April introduction, but reinsurers are beginning to examine existing contracts for exposure to the potential expanded sanctions. He said some reinsurers may not know the details of each underlying risk covered by a reinsurance treaty, raising the possibility that a reinsurer could have issued a policy that would violate this law.

But the legislation refers to companies that write business "with knowledge" after the law is enacted, and Mr. Eren said the Treasury Department would consider mitigating circumstances such as treaty reinsurance and not automatically put a company on the sanctioned list.

Mr. Von Tol said reinsurance treaties sometimes exclude activities prohibited by trade sanctions and other laws, but he said many exclusions were dropped or diluted during the soft market.

Mr. Eren and Matt Wulf, Washington-based vp and assistant general counsel at the Reinsurance Assn. of America, said the legislation could indirectly benefit U.S. reinsurers. U.S. reinsurers sometimes argue that existing U.S. trade sanctions make it difficult to compete for business by requiring U.S. reinsurers to exclude activities that foreign reinsurers can cover.

Extending economic sanctions to non-U.S. reinsurers could be seen as "leveling the playing field," Mr. Eren said.

Mr. Wulf said he thought the legislation had not received much industry attention because it has had no action since spring and has been overshadowed by other congressional priorities. But, Mr. Wulf said, "Anything involving Iran sanctions has a chance of passage."

Mr. Von Tol said he would be "shocked" if the legislation is not considered by late September.

"If engagement doesn't work, then I am prepared to mark up the bill in committee early this fall," said Rep. Howard L. Berman, chairman of the House Committee on Foreign Affairs and the sponsor of the House legislation, at a July 22 committee hearing on Iran.

In August, Sens. Jon Kyl, R-Ariz., and Joseph Lieberman, I-Conn., reportedly asked the Government Accountability Office for an updated list of companies involved in trading refined petroleum to Iran, including shippers and their insurers, citing the proposed Iran sanctions as the reason. A 2007 GAO report identified more than 30

40%

Despite being the world's fourth-largest oil producer, Iran reportedly imports 40% of its gasoline because its oil infrastructure has broken down.

potential foreign companies with business ties to Iran's energy sector, none of them in the insurance business.

Despite being the world's fourth-largest oil producer, Iran reportedly imports 40% of its gasoline because

its oil infrastructure has broken down. The United States wants Iran to negotiate handling of its uranium enrichment program, which Iranian leaders have said is intended to generate electricity while U.S. leaders worry Iran is trying to develop nuclear weapons. Expanded economic sanctions would encourage Iran to capitulate, the bill's text says.

"The political developments will determine whether and, if so, how fast this bill progresses," Mr. Eren said. "If things start getting better (in negotiations between Washington and Tehran), no one would want to pass this law. But if they

start getting bad or worse, they might."

But Mr. Eren said the mere consideration of expanding U.S. sanctions may chill half the business involved in Iran's petroleum trade without making them law. He said clients already have inquired about the bill.

"It may not be the actual sanctions, it may be threat of sanctions, just like it's the threat of litigation that sometimes chills things as opposed to the litigation itself," Mr. Eren said. "I'm sure insurers are saying, 'Let's lay off this Iran business. I don't want to be put on some blacklist.'"



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Belief a must in religious bias suits: Courts

By JUDY GREENWALD

Plaintiffs must prove they hold deeply felt religious convictions to win a religious discrimination lawsuit, two appeals courts have said in dismissing such suits.

It is insufficient for plaintiffs to merely state they are in conflict with their employers' religious beliefs, the courts have said.

In a ruling last month, the 3rd U.S. Circuit Court of Appeals upheld dismissal of a religious discrimination and retaliation claim in *Brian D. Prowel vs. Wise Business Forms Inc.* Mr. Prowel, who was terminated from his job in 2004 at Butler, Pa.-based Wise after 13 years, said he had received anonymous prayer notes at work, among other incidents.

"Prowel admits that no one at Wise harassed him based on his religious beliefs," the appeals court ruled. "Rather, Prowel contends that he was harassed for failing to conform to Wise's religious beliefs."

The court, however, did order that a jury consider his sexual discrimination and retaliation allegations.

Also ruling last month, the 6th U.S. Circuit Court of Appeals in Cincinnati turned aside a religious discrimination claim in *Alicia M. Pedreira vs. Kentucky Baptist Homes for Children Inc.*, in which Ms. Pedreira said she was terminated as a family specialist after her employer learned she

is a lesbian.

Ms. Pedreira sued the Louisville, Ky.-based organization, alleging religious discrimination and violation of the First Amendment.

While it is undisputed Ms. Pedreira was fired on account of her sexuality, she "has not explained how this constitutes

Both cases show there has 'to be an actual, good-faith belief on the part of the plaintiff that his or her religious belief had something to do with the termination' to win a religious discrimination claim.

Gino J. Benedetti,
Dilworth Paxson L.L.P.

discrimination based on religion," the three-judge 6th Circuit panel ruled unanimously. "Pedreira has not alleged any particulars about her religion that would even allow an inference that she was discriminated against on account of her religion, or more particularly, her

religious differences" with the organization.

"Furthermore, Pedreira does not allege that her sexual orientation is premised on her religious beliefs or lack thereof, nor does she state whether she accepts or rejects Baptist beliefs," the appeals court said in upholding a lower court's ruling.

The 6th Circuit ruling allowed Ms. Pedreira to pursue her First Amendment suit alleging violations based on the fact that as a "pervasively sectarian" organization, the program for neglected children received state and federal funds.

Gino J. Benedetti, an attorney with Dilworth Paxson L.L.P. in Philadelphia, said both cases show there has "to be an actual, good-faith belief on the part of the plaintiff that his or her religious belief had something to do with the termination" to win a religious discrimination claim.

However, Ms. Pedreira's suit focused on her self-admitted homosexual lifestyle.

"That's not tied to a religious belief, and that's the difference," Mr. Benedetti said.

Alicia M. Pedreira et al. vs. Kentucky Baptist Homes for Children Inc. et al.; 6th U.S. Circuit Court of Appeals, No. 08-5538; Aug. 31, 2009

READ public documents from this case and others at www.BusinessInsurance.com

Bias: Ruling allows for stereotyping suits

CONTINUED FROM PAGE 3

ted to a jury."

When the facts "are conspired in the light most favorable to Prowel, they constitute sufficient evidence of gender stereotyping harassment—namely, Prowel was harassed because he did not conform to Wise's vision of how a man should look, speak and act—rather than harassment based solely on his sexual orientation," said the court, which said a jury should consider Mr. Prowel's sexual discrimination and retaliation claims.

The court, however, upheld the lower court's dismissal of Mr. Prowel's religious discrimination claim (see related story).

Wise's attorney, Kurt A. Miller, a partner with Thorp Reed & Armstrong L.L.P. in Pittsburgh, declined comment.

Katie R. Eyer, Mr. Prowel's attorney and an associate with Salmons Goldshaw P.C. in Philadelphia, said the decision will be "highly significant and influential."

While many courts have recognized that these types of claims can be brought, they have said it is "too

hard to sort out" what is gender stereotyping and what is sexual orientation, and have thrown the cases out.

This 3rd Circuit ruling "really signals a new approach in how these cases are handled," said Ms. Eyer, who represented Mr. Prowel on behalf of the Philadelphia-based Equality Advocates Pennsylvania, a gay rights organization.

Jeffrey A. Pasek, a defense attorney with Cozen O'Connor P.C. in Philadelphia, said it's been known

for at least 30 years that Title VII can be extended to cover gender stereotypes.

He cited the U.S. Supreme Court's 1989 decision in *Price Waterhouse vs. Ann Hopkins*, in which the court ruled that a gender stereotyping claim could be filed under Title VII in the case of the woman allegedly denied a partnership because she did not act in a feminine manner.

The *Prowel* decision "will be influential because the case helps illus-

trate that if you are a homosexual, you don't lose the right to bring a gender stereotyping case," said Mr. Pasek. The ruling establishes that gender stereotyping and sexual orientation factors both can be present, he said.

Amy L. Bess, a partner with law firm Sonnenschein Nath & Rosenthal L.L.P. in Washington, said the 3rd Circuit is well respected and its ruling in *Prowel* "may provide some guidance and framework for other courts to analyze sex discrimination claims under Title VII in a more expansive way." She also said the ruling could lay the groundwork to allow claims that previously were dismissed.

Thomas H. McDonough, senior counsel with law firm Wisler Pearlstone L.L.P. in Blue Bell, Pa., said the decision "gives the plaintiffs bar an indication that adducing sufficient evidence of gender stereotyping is what is required for gay employees to state claims under Title VII," assuming such evidence exists.

Brian D. Prowel vs. Wise Business Forms Inc.; 3rd U.S. Circuit Court of Appeals, No. 07-3997; Aug. 28, 2009

READ documents from this case and other public documents at www.BusinessInsurance.com

Firm liable for crash outside of work time

Fatal wreck occurred on employee's way home from conference

By ROBERTO CENICEROS

LOS ANGELES—Warner Bros. Entertainment Inc. is liable for a fatal auto accident involving an employee driving home from an airport after attending an out-of-town conference, a California appeals court ruled last week.

Court records in *Chuenchomporn Jeewarat vs. Warner Bros. Entertainment Inc.* show the accident occurred in 2006 when the Warner Bros. vp left the airport and drove past his office, but did not stop, before continuing home on his regular commute route.

Before reaching his house, he was involved in an accident with another car, and one or both cars struck and injured pedestrians. One of the pedestrians died as a result, court records state.

The pedestrians struck by the cars sued and named the employer.

Warner Bros. filed a motion for summary judgment based on a "going and coming rule," which provides that an employer is not subject to vicarious liability for accidents occurring during an employee's commute to or from the workplace.

A trial court agreed with Warner Bros. and held that an employer is not vicariously liable for accidents occurring during a commute. But the appeals overturned, holding that attending an out-of-town business conference may be considered a "special errand" for the employer.

"In addition, when an employee intends to drive home from the errand, the errand is not concluded simply because the employee drives his regular commute route, but rather, the errand is concluded when the employee returns home or deviates from the errand for personal reasons," the appeals court said.

The appeals court ordered the trial court to enter a new judgment.

Trucks: Lawyer group knocks trucking safety

CONTINUED FROM PAGE 4

lem that the U.S. Department of Transportation partnered with state police nationwide and had representatives ride with truck drivers to observe unsafe actions by car drivers.

"The large-truck crash rate, injury rate and death rate are all at historic lows," the ATA spokesman said in the e-mail. "Trucking is the safest it has been since the DOT began keeping these statistics in 1975."

Dan Golden, senior director of commercial insurance for the Property Casualty Insurers Assn. of America, agreed with the ATA that trucking has become safer throughout the years. He also said that raising the minimum insurance requirements for trucking companies might price many companies and owner-operators out of the trucking business.

The AAJ argued in its study that the \$750,000 minimum level of insurance, when adjusted for inflation since 1980, is roughly equivalent to \$292,000. The AAJ acknowledged that larger motor carrier companies buy much higher limits than the required minimum, but that smaller companies often carry only the minimum insurance.

In its analysis, the AAJ said 87% of the trucking companies in violation of safety standards are small companies that have fleets of 10 trucks or less.

"The current minimum insurance requirements are woefully inadequate and punish injured consumers twice by leaving them to bear the burden of uncovered health care costs," AAJ President Anthony

87%

The AAJ said 87% of trucking companies in violation of safety standards are small companies that have fleets of 10 trucks or less.



Tarricone said in a statement.

But Mr. Golden said if the minimum insurance requirement was such an issue, people or groups other than the AAJ would be clamoring for a change. He noted that trucks carrying light hazardous materials must have at least \$1 million in insurance and those carrying hazardous materials must have at least \$5 million in insurance per vehicle.

"If (the raising of this issue) was happening on a regular basis—that truckers do not have adequate insurance limits—it might be more of an issue. That's just not happening right now," Mr. Golden said.

Value: Proposal design draws opposing views

CONTINUED FROM PAGE 3

their plans to meet the HHS standards, if they don't, the health plans might not be considered qualified, making them subject to an 8% payroll tax for each employee not enrolled in a qualified plan (BI, July 27).

Section 224(c) of the bill states: "To the extent allowed by the benefit standards applied to all Exchange-participating health benefits plans, the public health insurance option may modify cost sharing and payment rates to encourage the use of services that promote health and value."

Dr. A. Mark Fendrick, co-director of the University of Michigan's Center for Value-Based Insurance Design, in Ann Arbor, Mich., was instrumental in getting VBID into the House health reform bill after persuading U.S. Sens. Debbie Stabenow, D-Mich., and Kay Bailey Hutchinson, R-Texas, to include it in another piece of legislation that would establish a pilot program for some Medicare recipients using VBID principles. If adopted, S. 1040 would reduce or eliminate copayments for the treatment of 15 medical conditions under selected Medicare plans (see related story). S. 1040 has been introduced and referred to the Senate Finance Committee.

The VBID concept came to the senators' attention after a staff member read an article in the January 2008 issue of the journal Health Affairs that Dr. Fendrick had written on the subject. In that article, Dr. Fendrick explained the primary objective of VBID is to remove the financial barriers to purchasing "high-value" drugs or services with the hope of raising compliance and avoiding more expensive future medical costs, such as hospitalization.

"Almost all of the discussions regarding health reform have focused on the economics," Dr. Fendrick said in an interview with *Business Insurance*. "The creation of value-based insurance design acknowledges that some clinical services are more beneficial than others. If we can create a program that incentivizes individuals and health systems to do the right things, we can guarantee more

health for the dollar spent."

Incorporating VBID principles into the type of health plan employers would be required to offer might give them greater flexibility in designing health benefits, suggested Dr. Fendrick.

"Based on the conversations I have had with key staffers...the use of VBID principles is a mechanism to remain 'qualified' but use alternative plan designs," he said.

However, Helen Darling, president of the Washington-based National Business Group on Health, doubted that including VBID principles in health reform "would mean that employers would be off the hook for minimums," referring to what minimum level of benefits and cost-sharing might be required of "qualified" employer-sponsored health benefit plans.

Employers most likely would be required to meet the minimum requirements first before overlaying VBID, which could increase plan costs, she said.

Ray Wertz, an independent benefits consultant based in Elmhurst, Ill., questioned whether it would be possible to legislate VBID, which often is based on an employer's individual demographics.

"VBID is fluid. It recognizes innovation in health care. It tends to personalize treatment. How can you write a rule that, on one hand, regulates the dynamic nature of discretion and, on the other hand, makes you feel comfortable you're protecting people against discrimination?" he asked.

"If it's more open-ended, employers would say 'fine,'" said Chantel Sheaks, a principal with Buck Consultants L.L.C. in Washington. "They know their populations better than a regulatory board does. But if they start coming down and saying what specifically has to be covered, they're concerned they'll have to cover things that are not of value to them."

In fact, another part of H.R. 3200 requires employers to waive copayments and deductibles for a host of preventive health care services, she pointed out.

Employers also are concerned about the administrative burden complying with VBID would create, Ms. Sheaks noted.

Measure would cut some copays for seniors

WASHINGTON—Legislation introduced in the Senate to create a pilot program using value-based insurance design principles could prove beneficial to employers that provide retiree drug coverage if it is expanded to cover all Medicare beneficiaries, benefits experts say.

If passed, the Seniors' Medication Copayment Reduction Act of 2009, S. 1040, would reduce or eliminate copayments for the drugs used in the treatment of 15 medical conditions (see box) under selected Medicare Advantage plans that offer Part D prescription drug benefits.

The objective is to lower Medicare beneficiaries' out-of-pocket drug costs thereby increasing their compliance with prescribed drug regimens and reducing the likelihood of the need for more expensive treatment later on.

Backers of the measure expect the pilot to show lower costs for participating Medicare beneficiaries, who are more likely than the general population to have chronic conditions and take multiple medications. If that is the case, the legislation calls for expanding the project beyond the initial pilot plans.

"The one-size-fits-all copays that most patients face today does not distinguish high-value treatments from low-value treatments," said Dr. Mark Fendrick,

co-director of the Center for Value-Based Insurance Design at the University of Michigan in Ann Arbor, which was the driving force behind the legislation. "The inclusion of value-based design into the Medicare pro-

to Medicare-eligible retirees, according to Chantel Sheaks, a principal with Buck Consultants L.L.C. in Washington.

"The Medicare VBID demonstration project could help employers that are providing

CONDITIONS THAT WOULD BE COVERED

The Seniors' Medication Copayment Reduction Act of 2009 would reduce or eliminate copayments for the drugs used in the treatment of:

- Asthma
- Atrial fibrillation
- Deep venous thrombosis
- Chronic obstructive pulmonary disease
- Chronic renal failure
- Congestive heart failure
- Coronary artery disease
- Myocardial infarction
- Depression
- Epilepsy
- Diabetes mellitus
- Hypertension
- Hypothyroidism
- Schizophrenia
- Tobacco abuse disorder

gram will show that this approach can produce more health for every taxpayer dollar spent," said Dr. Fendrick, who has been working closely with the legislation's cosponsors, Sens. Debbie Stabenow, D-Mich., and Kay Bailey Hutchinson, R-Texas.

The approach also could save money for employers that provide prescription drug coverage

Medicare wraparounds," she said. Although the VBID concept has been applied with some success by many private employers, such as Pitney Bowes Inc. and Marriott Inc., and as part of the Diabetes Ten City Challenge, this legislation—if enacted—would be the first time it is applied to a publicly funded program.

—By Joanne Wojcik

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Merger doesn't eliminate retiree benefits: Court

Workers challenge move to cutoff health care coverage after bankruptcy disrupts previous arrangement

By JOANNE WOJCIK

TOLEDO, Ohio—Retirees of a former LG Philips Displays USA Inc. plant in Ohio have been given a second chance to pursue their two-year-old lawsuit seeking to restore their retiree health benefits, which were terminated in May 2006 after their former employer filed for bankruptcy.

In a 2-1 decision, a three-judge panel of the 6th U.S. Circuit Court of Appeals last week ruled the U.S. District Court had erred when it ruled that the company was released from its obligation to provide retiree health benefits after it merged with a Korean firm in 2001.

The appeals court also said the

district court should have considered the benefit plan documents before dismissing the case in October 2007.

Both decisions stem from a lawsuit filed in January 2007 on behalf of approximately 200 union and nonunion retirees claiming the company breached its collective bargaining agreement with hourly workers and fiduciary duties under the Employee Retirement Income Security Act when it terminated its retiree health benefits plan in May 2006.

The termination came four years after the company shut down the Ottawa, Ohio, plant where the retirees had worked. The plant, which had been owned by Netherlands-based Koninklijke Philips

Electronics N.V., was shut down in December 2002, approximately one year after Philips merged with Korea-based LG Electronics to form LG Philips Displays USA Inc.

All eligible retirees who retired before the plant closure continued



to receive company-sponsored health benefits.

However, benefits ended for those who retired after that date on May 31, 2006, about two weeks after LGP declared bankruptcy.

The U.S. District Court found that the transfer of assets that occurred as a result of the merger

released the former Philips from its obligation to provide retiree health benefits under the union contract and ERISA. The court also found that the company did not intend retiree health benefits to vest upon retirement, declining to review the summary plan description which specified that employees vested in the benefits if they retired after their 55th birthday with at least 15 years of service.

The appeals court disagreed with both findings, saying the court did not address all of the facts presented in the case and remanded it to the lower court for further proceedings.

David Zoll at Zoll, Kranz & Borgess L.L.C. in Toledo, Ohio,

who represented the retirees, said the case is significant because the union retirees were paying a substantial portion of the premium for their benefits, and that salaried retirees paid almost 100%.

"This wasn't a case where they just wanted to get a free ride on behalf of their company," he said.

The retirees—union and nonunion—pursued the case because many of them could not obtain health care coverage at any price in the individual market, according to Mr. Zoll.

LGP's attorney, Gregory Mersol, a partner at Baker & Hostetler L.L.P. in Cleveland, referred calls to the company's headquarters in Korea, which did not respond to a request for comment.

RAA: Various pressures cap price hikes for reinsurers

CONTINUED FROM PAGE 3

pricing," said Paul Newsome, analyst with Sandler O'Neill & Partners L.P. in Chicago.

Mark Lane, a principal and research analyst with William Blair & Co. L.L.C. in Chicago, said, "There continues to be pressure on top-line premium growth, given that continued pressure on pricing, and also pressure on exposure growth.

"However, that pressure is moderating somewhat, and you're starting to see some pricing improvements in certain parts of the reinsurance markets, particularly in the property catastrophe reinsurance area and property broadly," although property cat is a minority of the overall business.

Observers note the decline in reinsurers' policyholder surplus reflects the stock market performance in last year's second half. This year, "the surplus position has actually improved incrementally," said Kevin Lee, vp at Moody's Investors Service in New York.

Reinsurers are repositioning their investments and are more conservatively invested, said Mr. Inskeep.

Observers noted the rate hikes anticipated for this year have not materialized. "I've been expecting more firming than I've seen," said Bill Bergman, an analyst with Morningstar Inc. in Chicago.

Mr. Inskeep said, "Rates did not turn as we expected." Although catastrophe-exposed risks experi-

enced double-digit rate increases in June and July, casualty was slower to turn. But reinsurance pricing is stronger than in the primary market, Mr. Inskeep said. "The primary companies are very resistant to rate increases and are keeping retentions high," he said.

As to the reinsurance market's outlook, Mr. Auden noted that because this has been an orderly market from a competitive standpoint with disciplined underwriting, "we think this could be one of the first segments to go back to a stable outlook. But we're not there yet."

Mr. Lane said, "In general, we see things being sort of a slow grind, and gradual improvements vs. any dramatic improvements."

"One of the keys that will drive pricing higher would be more deterioration in underlying profitability," but "it seems that in the first half of the year, and particularly in the second quarter, that the claims inflation environment still remains pretty benign, and companies are continuing to recognize some favorable developments, so there doesn't seem to be any immediate pressure on profitability," Mr. Lane said.

Most observers say they anticipate a flat renewal season in January. Cliff Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York, said, "With surplus coming back and underwriting results being good, any kind of rate increases we

'Rates did not turn as we expected. The primary companies are very resistant to rate increases and are keeping retentions high.'

Devin Inskeep, A.M. Best Co. Inc.

TOP U.S. REINSURERS' FIRST-HALF 2009 RESULTS

Ranked by net reinsurance premiums written. All amounts in thousands of dollars.

REINSURER	NET WRITTEN REINSURANCE PREMIUMS		NET INCOME (LOSS) 2009	COMBINED RATIO	
	2009	2008		2009	2008
National Indemnity Co. ¹	\$2,597,351	\$2,725,691	\$(1,291,017)	80.4%	81.2%
Transatlantic/Putnam Reinsurance Co.	1,867,753	1,856,734	102,123	93.4	94.2
Munich Re America Corp. ²	1,213,610	1,089,085	(48,870)	98.8	105.2
Swiss Reinsurance America Corp. ³	1,091,552	857,885	422,223	98.4	108.5
Odyssey America Re/Odyssey Reinsurance ⁴	898,113	963,497	109,795	95.9	98.5
Everest Reinsurance Co.	828,120	788,316	154,608	87.5	102.5
General Re Group ⁵	684,150	673,557	4,783	97.6	110.1
Berkley Insurance Co.	653,576	669,146	51,876	95.5	93.9
American Agricultural Insurance Co.	435,821	237,789	(29,811)	124.4	99.9
Partner Re U.S. ⁶	385,894	395,194	(7,549)	102.2	108.9
Totals for top 10	\$10,655,940	\$10,256,894	\$(531,839)	93.1%	95.9%
Totals for all companies	\$12,830,616	\$12,729,593⁷	\$(406,252)	93.8%	97.5%

(1) Underwriting results exclude assumptions from affiliated General Reinsurance Corp. (2) Includes the combined results of Munich Reinsurance America Inc., American Alternative Insurance Corp. and the Princeton Excess and Surplus Lines Insurance Co. (3) Includes the combined results of Swiss Reinsurance America Corp. (SRA) and Westport Insurance Corp. (fka Employers Reinsurance Corp.), which are impacted by significant affiliated transactions with other members of the Swiss Re Group. (4) Includes combined results of Odyssey America Reinsurance Corp., Clearwater Insurance Co., Hudson Insurance Co., Hudson Specialty Insurance Co. and Clearwater Select Insurance Co. (5) All data presented for the North American Property/Casualty segment of the General Re Group. Underwriting results exclude certain intercompany transactions and other adjustments. Underwriting results also exclude cessions to certain affiliated members of the Berkshire Hathaway Group. (6) Includes the combined results of Partner Reinsurance Co. of the U.S. and its subsidiary PartnerRe Insurance Co. of New York, with all intercompany transactions excluded. (7) Total net premiums written shown for June 2008 are those reported in the June 2008 Reinsurance Underwriting Report.

Source: Reinsurance Assn. of America. For further information, contact the RAA at www.reinsurance.org.

saw the first half will flatten out. All things being equal, I would expect flat pricing come Jan. 1."

Mr. Lane said without a significant catastrophe loss in the fall, "it's hard for me to see any a major improvements in pricing" in January.

"There isn't a catalyst for big rate movement anywhere," said Mr. Auden. There may still be some positive movement in property cat rates, "but a lot less than what we had in 2009" while, for casualty, "at best we'll see modest rate increases."

Reinsurers are "challenged to

grow, with rates continuing to decline in most primary markets, and with the economy in recession, the exposure bases have shrunk," which affects reinsurance demand. As primary insurers try to retain more premium revenue, "they may not buy as much reinsurance," said Mr. Auden.

Moody's Mr. Lee said with ceding companies' solvency positions recovering, they "have been able to tap the capital markets, which suggests that those ceding companies have less of an urgent need for rein-

surance compared to nine months ago. We do not see demand for reinsurance increasing. We see it more flattish, and we think that in a few cases, people are actually going to buy less reinsurance," he said.

"And because the capital positions of reinsurance companies have been gradually recovering, and some of the alternative monies such as hedge funds and private equity have been gradually creeping back into the market, we expect there to be greater price competition going forward," Mr. Lee said.

AIG: Insurer, Greenberg agree to try arbitration to settle legal war



Maurice R. Greenberg, former chief executive officer of American International Group Inc., leaves federal court in New York on June 15. Mr. Greenberg and AIG have agreed to settle some disputes through arbitration.

CONTINUED FROM PAGE 1

a counterclaim against AIG. A similar derivative suit in New York also is subject to arbitration, which is to start Oct. 15 and finish by March 31, 2010.

In addition, the arbitration is to resolve claims by Messrs. Greenberg and Smith for "advancement or indemnification" related to legal expenses the duo has tried to recover.

Beyond that, the parties will consider arbitration on several other cases, pending rulings on motions to dismiss. This includes February assertions that Mr. Greenberg, SICO and Starr Foundation brought against AIG and its board of directors after the entities suffered losses from credit default swaps linked to subprime mortgages.

The arbitration will not include any pending claims by AIG shareholders against Messrs. Greenberg and Smith, according to a statement.

Observers say the move is a positive step for AIG, which has been selling assets to repay federal debt.

"This will enable them to focus on the real objective of restoring the company and rebuilding the brand," said John L. Ward, CEO of Cincinnati-based Cincinnatus Partners L.L.C.

Arbitration "is the best thing that can happen for U.S. taxpayers" because AIG's legal battles have been a "very costly distraction," said John Wicher, principal of John Wicher & Associates Inc. in San Francisco.

Cliff Gallant, an analyst with Keefe, Bruyette & Woods in New York, said he is glad the issue is "coming to some resolution." He said he assumes the former executives "explored several legal routes.

Hopefully, this means things are coming to a quiet end for the disagreement, so I think it'll be good for both sides."

Legal experts say arbitration generally is cheaper than deciding the case in court and offers a more relaxed setting to present a case. However, distinct disadvantages include limited appeal options, said Michael Cornacchia, a New York criminal defense attorney and former assistant U.S. attorney.

The arbitration agreement "reflects a desire to reach a resolution faster than in court," Mr. Cor-

'Hopefully, this means things are coming to a quiet end for the disagreement, so I think it'll be good for both sides.'

Cliff Gallant, Keefe, Bruyette & Woods

nacchia said.

"The outcome may not result in a true victory for either side, but by agreeing to arbitration, they are submitting to compromise," Mr. Ward said.

The legal battle in which AIG lost a round last week also may be considered for arbitration, after decisions on any appeals, according to AIG.

On Aug. 31, a New York federal judge rejected AIG's assertions that SICO breached a trust agreement to hold a special block of AIG shares solely for funding a well-known AIG executive compensation program.

U.S. District Judge Jed Rakoff upheld a July 7 advisory decision by the jury on the breach-of-trust claim. The jury previously rejected AIG's assertion of "conversion" and said Mr. Greenberg—who headed both companies for more than three decades—did not improperly seize the shares when he left in 2005.

AIG had argued a 1970 oral agreement set up the trust solely for AIG's benefit, and that Mr. Greenberg violated its terms by canceling the executive compensation program in 2005 to retaliate for being ousted. AIG had sought \$4.3 billion in damages, reflecting the sale of the shares since 2005.

"The law will not recognize such an oral trust unless the evidence of its creation is unequivocal," Judge Rakoff wrote in a 59-page ruling last week. "This is a burden that AIG has not come close to shouldering."

SICO's lawyer, David Boies of Boies, Schiller & Flexner L.L.P., argued that no AIG employee testified about the alleged trust and AIG never disclosed its existence to shareholders, auditors, attorneys or regulators.

The judge's ruling indicates that "he thought AIG's case was weak," said Peter Henning, a professor at Wayne State University Law School in Detroit. "I doubt they will pursue an appeal," he said.

AIG declined to comment on a possible appeal.

Meanwhile, AIG's state court lawsuit against Mr. Greenberg and other former executives, accusing them of taking \$4.3 billion in AIG stock held by SICO, has been stayed under the arbitration agreement. The state case in New York Supreme Court in Manhattan includes more defendants but similar claims as the federal case in which AIG lost a round last week.

Investigators: Comp cheats confess online

CONTINUED FROM PAGE 1

lance, which have been used for years to secretly record disability claimants engaged in physical activities, several sources said.

"It's the new video camera," Pierre Khoury, a special investigator for Harleysville Group Inc., a Harleysville, Pa.-based insurer, said of the social network sites. "Now we have a new kind of video camera, but we are not actually the ones filming. They are filming it for us."

Social networking sites increase the efficiency of video recording and reduce investigation costs by eliminating time spent searching for claimants and waiting for them to engage in behavior that contradicts their claim, said Howard Schneider, president of Schneider Associates, a private investigative agency in Thousand Oaks, Calif.

To start with, investigators lacking a photograph or address to ensure they have identified the right claimant they were hired to tail might find a picture and address on MySpace, Facebook or other sites such as Twitter or classmates.com, investigators said.

Then there is the listing of physical activities.

In one recent case involving a Los Angeles-area warehouse worker who filed a work-related back injury claim, traditional surveillance of his home proved fruitless, Mr. Schneider said.

'A lot of people post things they don't expect the insurance carrier is going to be looking at.'

Frank Pinder, GlobalOptions Group Inc.

So investigators found the claimant's Facebook site and learned about his participation in bowling tournaments and a bowling alley he frequented.

"It just amazes us how much information people provide," Mr. Schneider said.

An investigator visiting the bowling alley found a large banner congratulating the claimant for rolling

a perfect game and the date he rolled the game.

"Which was post date of loss," Mr. Schneider said. The investigator video recorded the banner for evidence and later video recorded the claimant competing in a tournament. To do so, the investigator melded among spectators video recording their friends and family participating in the tournament.

"It was the easiest surveillance we ever had to do," Mr. Schneider said.

It's common for claimants to load their social networking sites with dates, easing the way for investigators and their cameras to find them.

In another case, a judo instructor who claimed a total and permanent back injury posted the dates and location of his judo classes, said Frank Pinder, president of the fraud and SIU unit of GlobalOptions Group Inc., an Orlando, Fla.-based insurance claims investigation service.

A rodeo bronco rider also posted his competition dates. "We got videos of him riding a bucking bronco when he was not supposed to be able to get out of bed," Mr. Pinder said.

There have been several cases of claimants who play in rock bands in their spare time. The workers list their engagement dates and then provide audiences with particularly physical concert performances, Mr. Pinder added.

Investigators provide the evidence for insurers, third-party administrators and self-insured employers, but rarely learn of the claims' outcomes, they said.

Most of the evidence they collect is used to reject claims rather than to prosecute for fraud, several sources said. Yet some cases are referred for prosecution.

Alternative Service Concepts L.L.C., a Nashville, Tenn.-based third-party administrator, for example, recently referred a case to Florida prosecutors in which a claimant's Facebook posting tipped Global Options investigators to his business of selling jerky at flea markets, compromising his workers comp claim, an ACS spokesman said.

Social networking sites have become increasingly productive investigation tools because they are being used more by older audiences, Mr. Khoury said.

"The 30- and 40-somethings have taken it over and have caused the explosion," in social media use, said

Mr. Khoury, who is a member of the Baltimore, Md.-based International Assn. of Special Investigation Units and has spoken to the association on social media use.

Additionally, Web crawlers and other tools used to scour the postings continually improve, making the sites increasingly productive, Mr. Khoury added.

Word of the fraudulent claims-fighting successes also are driving more claims payers and their investigators to sift through social media, Mr. Pinder said. His organization dabbled in the practice and then got serious about digging through social sites five months ago.

He hired a technology company to develop a proprietary search tool he calls a "deep Web portal" that allows him to dig deeper into Internet information than "general-purpose Web crawlers" allow, Mr. Pinder said.

"A lot of people post things they don't expect the insurance carrier is going to be looking at," Mr. Pinder said. "Their geology hobbies, reunions, bowling, the leagues they are involved in, fishing tournaments, hunting clubs...pastimes, organizations. Then you can further mine that for information (counter to) their claim."

News In Brief

CONTINUED FROM PAGE 1

International Group Inc. over the underreporting of workers compensation premiums. Boston-based Liberty Mutual and its business units filed an amended complaint in federal court last week seeking to replace the National Workers Compensation Reinsurance Pool in ongoing litigation against AIG. On Aug. 20, a judge hearing the case dismissed the pool's lawsuit, ruling it lacked standing to sue AIG. The pool, operated by NCCI Holdings Inc. and made up of AIG competitors, filed the suit seeking more than \$1 billion in damages. The pool argued that it was excluded from a 2007 settlement in which AIG agreed to pay states more than \$300 million to settle allegations it underreported workers comp premiums for several decades to avoid paying its full share of residual market assessments.

N.Y. Liquidation Bureau gets new leadership

Dennis J. Hayes has been appointed special deputy superintendent of the New York Liquidation Bureau, New York State Insurance Department Superintendent James J. Wrynn said. Mr. Hayes has worked as a senior executive at the New York Liquidation Bureau since 1996, most recently as assistant special deputy superintendent. He replaces Mark Peters, who has led the bureau since April 2007 and will remain at the bureau as a special adviser.

Hannover Re pool aids securitizations

Hannover Reinsurance Co. has set up a \$60 million facultative risk pool that will allow it to transfer clients' risks directly to the capital markets. The reinsurer is pooling the risks of selected global clients and transferring them to Fac Pool Re, a vehicle created as part of Hannover Re's insurance-linked securities activities. The pool's purpose is to provide direct protection for cedents, the reinsurer said in a statement. The pool's capital stands at \$60 million, with Hannover Re keeping a share of around \$5 million in losses and assuming losses exceeding Fac Pool Re's capacity. Transactions are placed by Aon Benfield.

Lawmakers seek audit of AIG trust arrangements

Two key House Republicans have asked Treasury Secretary Timothy Geithner and Neil Barofsky, the special inspector general for the Troubled Asset Relief Program, for an audit of the federal government's trust arrangements for American International Group Inc. Reps. Darrell Issa, R-Calif., the ranking member of the House Committee on Oversight and Government Reform, and Spencer Bachus, R-Ala., the ranking member of the House Financial Services Committee, said in a letter they want an audit conducted of "the formation, content and operation of these (AIG) trust arrangements and the degree to which the public can be confident in their ability to hold the trustees accountable."

Ironshore raises \$300M to grow specialty lines

Ironshore Inc. said it has completed an equity capital deal that will provide \$300 million to support the growth of its specialty insurance business. Private equity firm GTCR Golder Rauner L.L.C. served as lead investor in the financing by purchasing \$200 million of the newly issued equity of Ironshore. In addition, Calera Capital, one of Ironshore's founding private equity partners, secured \$50 million in equity capital and other investors secured the remaining \$50 million.

N.Y. allows lump sums for loss-of-use injuries

New York Gov. David Paterson signed into law legislation that allows injured workers to collect compensation for loss-of-use injuries in one lump sum. Previously, workers collected incremental payments for losing extremities, but now they can request a lump sum under the law that went into effect when the governor signed it last week. The new law addresses a 2007 appeals court decision that had reversed a New York State Workers' Compensation Board and trial court finding that an employer had to pay a lump sum for a loss-of-use injury. The court said any departure from the periodic system of payments for loss of certain body parts would have to come from the Legislature.

Noted

Validus Holdings Ltd. has completed its \$1.65 billion cash-and-stock acquisition of IPC Holdings Ltd., bringing closure to the deal after months of bidding wars and negotiations.



Firefighters spray water on flames as they approach a neighborhood in the La Crescenta area of Los Angeles on Aug. 31.

REUTERS/LANDOV

Fires: Disasters show need for risk mitigation efforts

CONTINUED FROM PAGE 1

Mutual Insurance Co.'s FM Global Research in Norwood, Mass.

"This is just yet another time for risk managers to identify interdependency, identify ingress/egress routes, and to preplan for any restoration services they might need, particularly smoke removal," said Ms. Glickman. "It is most germane for companies with clean rooms and other operations that require ultrafiltered air."

One of the few major commercial facilities threatened by the fire stands atop Mount Wilson. There, a man-made metal forest of antennae and other broadcasting equipment appeared vulnerable as the flames spread.

Some of the equipment belongs to KABC-TV, the Los Angeles ABC affiliate that is owned by a subsidiary of Burbank, Calif.-based Walt Disney Co.

Preparation against the wildfire peril began with construction of the facility, Joe Manna, director-loss prevention and business continuity planning in Disney's corporate risk management department, said in an e-mail.

Because fires are prevalent in the area, the transmitter building was constructed with noncombustible, steel-reinforced concrete, and the antenna tower can withstand environmental conditions, Mr. Manna said.

"Protection also includes fire prevention and suppression that is feasible in the area. The station works with our property and business-interruption insurance carrier,

FM Global, to mitigate exposures such as replacing combustible vegetation with noncombustible landscaping within the allowable perimeter of the property and as allowed by the U.S. Forest Service," he said.

Because the volume of water needed to suppress a fire can be in short supply, the transmitter equipment is protected using a gas suppressant, and the station can shut

'If a risk manager is going to look to his property policy, the key is to look if there's a trigger of coverage.'

Arnold Mascali,
Aon Horizon Consultants

down the outdoor air dampers to prevent smoke and embers from entering the heating, ventilation and air conditioning system, Mr. Manna said.

"Thanks to the extraordinary efforts of the firefighting teams...the suppression system did not activate and the station was able to close those outdoor air intakes to prevent smoke from infiltrating the sensitive transmitter equipment," wrote Mr. Manna.

He said an initial engineering impact inspection "revealed no obvious smoke or fire damage to the

transmitter structure and its contents. There was also no evidence of burned or scorched vegetation in the area around the antenna tower and transmitter. Such assessments will continue until well after the fire threat is gone."

Risk managers in wildfire-prone areas can take several steps to mitigate the impact before a blaze occurs, said FM Global's Mr. Gritz. These include some of those taken by KABC.

For example, the site for a facility needs to be considered before it's built, he said. "Try to avoid slopes because fire spreads very quickly up slopes," he said.

Clearance zones should be created around all structures, with a minimum of 100 feet for grass fires and 330 feet for woodland fires, he said.

In the recent fires, authorities said brush in some areas had not been cleared for decades.

"If a risk manager finds himself in the position of having a fire in his backyard or region, there are three things they can do right away," said Mr. Gritz.

"The first is to remove any debris, clear the yard and anything on their roof—pine needles, leaves, refuse" to avoid it being set ablaze by burning embers, he said.

Facilities also should be protected from smoke, he said. Winds can carry smoke into sensitive interior areas, so seal windows and doors to keep ventilation systems working right.

Have a plan in case the fire gets closer, he said. This includes how to evacuate operations, maintain business continuity, and recover once the fire is out, he said.

Of course, risk managers also need to review property policies, said Arnold Mascali, managing director-rapid response for Aon Horizon Consultants in New York.

"If a risk manager is going to look to his property policy, the key is to look if there's a trigger of coverage, he said. "You have to have damage at an insured location before that property policy is triggered."

"Once you determine there has been damage at an insured location, some of the issues we see are issues regarding smoke damage," Mr. Mascali said.

For example, if a clothing retailer is inundated with smoke, damage to cloth and material can be more significant than damage to the building, he said. "You need to determine whether the clothing was damaged beyond repair," he said.

Senior Editor Roberto Cenicerros contributed to this report.



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END PAGE

Contributing: Jeff Casale, Judy Greenwald, Mark A. Hofmann, Zack Phillips



A modified Boeing 747 was used last week to help firefighters in California battle raging wildfires.

REUTERS/LANDOV

In effort to battle blaze, state fights fire with flier

Firefighters battling wildfires near Los Angeles have not yet contained the blazes, but they may have found an important new tool in their efforts.

Last week marked a debut of sorts for the Supertanker, a Boeing 747 modified by McMinnville, Ore.-based Evergreen International Aviation Inc. to be the largest and fastest aerial firefighting tool ever. After numerous demonstrations and one firefighting deployment in Alaska in July, the Supertanker last week received its first paid job and first job in the continental U.S. when fire officials contracted the jet to drop fire retardant on the 1,012-acre Oak Glen fire east of Los Angeles.

The Supertanker can fly 600 miles per hour—twice as fast as other aerial firefighting vehicles—and can carry a payload of 20,000 gallons. Many firefighting aerial vehicles can drop 3,000 gallons or less, and a McDonnell Douglas DC-10 aircraft operated by

Victorville, Calif.-based 10 Tanker Air Carrier carries about 12,000 gallons.

While most aerial vehicles use gravity to dump their entire payload at once, the Supertanker's system works with pressurized air tanks that allow the jet to drop retardant in dispersed amounts like rain, in several discrete drops to fight multiple fires at once, or all at once. The unique system also lets the Supertanker fly at low altitudes and at night.

According to Wired.com, it costs \$30,000 per hour to use the Supertanker, which Evergreen Aviation said it paid \$50 million to develop. The jet is headquartered at McClellan Air Force Base near Sacramento, Calif., but the company says it hopes to expand operations to governments and private companies in Western Europe, Australia and Brazil, and hopes to expand beyond firefighting to the cleanup and decontamination of oil spills and biological, chemical and radiation exposures.

Discrimination in the eye of the beholder?

Beauty queens also can be victims of religious discrimination, says a former Miss California USA.

Carrie Prejean has sued K2 Productions Inc., the Los Angeles-based franchisee that operates the Miss California USA pageant; its executive director; former co-executive director; and others alleging religious discrimination, among other charges.

During the question-and-answer session of the Miss USA pageant in April, Ms. Prejean said she believed marriage should be only between a man and a woman.

While she was named first runner-up in the Miss USA pageant, she subsequently lost her Miss California USA crown. State pageant officials said it was for "breach of contract" and her failure to attend scheduled appearances,

but Ms. Prejean said in her suit it was because of her support of traditional marriage.

The lawsuit, filed Aug. 27 in Superior Court in Los Angeles, alleges the defendants "conspired to get rid of her because of her religious beliefs. It made no difference that her belief concerning marriage coincides with the views of the majority of the people of California and the United States."

The suit accuses pageant officials of leaking to the press that Ms. Prejean had breast augmentation surgery for the Miss USA pageant and that she had suggested it, when in fact it was the pageant organizers' idea.

The lawsuit said Ms. Prejean has "suffered...as a result of defendants' false statements and the wrongful revocation of her title" and seeks unspecified damages for slander, libel, public disclosure of private facts, and emotional distress aside from religious discrimination.

According to reports, an executive with the Miss California USA pageant threatened a countersuit.



NAUGHTY CONTENT IN POPULAR GAME YIELDS NICE PAYOUT

Hidden sex scenes in a game already filled with violence, expletives and prostitution spawned a class action lawsuit that led to a multimillion-dollar settlement last week.

Take-Two Interactive Software Inc. and its Rockstar Games agreed to pay \$20.1 million to settle assertions that the company defrauded buyers of the video game "Grand Theft Auto: San Andreas" by neglecting to disclose that the video game has explicit sexual content.

The game is rated mature and its label warns that it contains images of drug use, intense violence, blood and gore, and strong language.

New York-based Take-Two said it will pay \$4.9 million and the company's insurers will pay \$15.2 million. A spokesman for Take-Two would not provide any insurer information about the settlement, which still needs a judge's approval.

In the class action filed in 2006 in U.S. District Court for the Southern District of New York, the plaintiffs alleged they bought the game not knowing there were hidden sex scenes in it that could be viewed by downloading software off the Internet.

Shortly before the suit was filed, Take-Two said it had stopped making that version of the game and was working on one that would block the downloaded software.

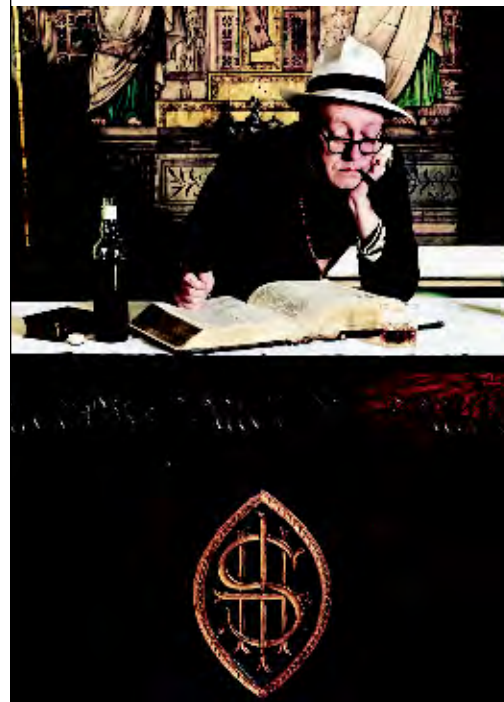
Additionally, the settlement would resolve investor claims that the company improperly backdated stock options, Take-Two said in a statement.

"Neither we, our subsidiary, nor any of the individuals admit any wrongdoing as part of the proposed settlement agreement," Take-Two said in a 10-Q filing with the Securities and Exchange Commission.

Carrie Prejean, who recently lost her title as Miss California USA, is suing pageant officials for religious discrimination.



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