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Business Insurance

September 12, 2011 www.businessinsurance.com

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MID-MARKET COMPANIES OFTEN LACK RIGHT COVER FOR DISASTERS / PAGE 6

In Brief

Health care reform challenges fail on appeal

Federal health care reform survived two legal challenges last week when an appeals court overturned two lower court rulings that had invalidated the individual mandate. The 4th U.S. Circuit Court of Appeals in Richmond, Va., ruled that the state of Virginia lacked legal standing to bring its suit. Separately, the court dismissed a lawsuit by Liberty University that had challenged the mandate as unconstitutional. Both are expected to be appealed to the U.S. Supreme Court.

Texas wildfires losses expected to top $100M

Wildfires in Texas will cause more than $100 million in insured damage, according to the Austin, Texas-based Insurance Council of Texas. The

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SPOTLIGHT

WORKERS COMP & SAFETY MANAGEMENT

Employers push for changes to Medicare rules for comp claims; at-home offices change profile of worker risks; claims related to chronic pain rise in comp; *BI* ranking of largest safety consultants. **PAGE 9**

9/11 TEN YEARS AFTER

Day of terror lives in memory

Insurance industry executives reflect on fateful morning

By DAVE LENCKUS

One felt the proud white tower shudder.

Another witnessed the sight that made it clear the horror was no accident.

Two were on airplanes when they heard the shocking news.

The fifth was stuck in crawling traffic outside the Capitol, listening to a radio shock jock doubting a caller's eyewitness account. Then she became a witness.

For five insurance industry executives, those were the first moments of the surreal Sept. 11, 2001, events that would change each of them.

Two executives headed brokerages and another led a major broker unit that lost scores of employees in the terrorist attack that sunny Tuesday morning. A construction broker for one of the firms was at the World Trade Center hours before an afternoon meeting to finish his presentation. The fifth had recently left the other firm and later would become involved in rebuilding ground zero.

Construction broker Joseph Russo, then an assistant vp at Aon Hamond & Regine, a unit of Chicago-based Aon Corp., was in the north tower finishing his presentation for an afternoon meeting with officials for the Port Authority of New York and New Jersey, which owned the twin towers.

Working in the authority's 64th-floor risk management office, Mr. Russo heard and felt an explosion above him.

As he and others began evacuating, Barry Glick, risk manager for the authority, and one of Mr. Glick's staff, Joe Grillo, said they would search the floor for anyone who needed assistance.

AP PHOTO

The National September 11 Memorial's reflecting pools stand in the footprints of the north and south towers of the collapsed World Trade Center.

Both died when the tower collapsed less than two hours later.

"(Mr. Glick) had a dry sense of humor and was extremely funny when he wanted to be, but he also was very professional and knew his stuff in and out," said Mr. Russo, now an executive vp with Willis of New York Inc.

See **9/11** page 26

Federal backstop remains vital terror cover tool

By MARK A. HOFMANN

One key legacy of the Sept. 11, 2001, terrorist attacks—the federal terrorism coverage backstop—has fulfilled its purpose, and backers of the program are hopeful that it will again be renewed and continue to fill a crucial gap for such coverage in the market.

Industry observers say the backstop, initially created by the Terrorism Risk Insurance Act to run until 2005, brought certainty to a marketplace attempting to confront a risk that could not be underwritten. By doing so, it encouraged economic growth in areas that were perceived to be vulnerable to terrorist attack.

The program since has been amended and extended twice, first through 2007 and then through 2014. As currently structured under the Terrorism Risk Insurance Program Reauthorization Act of 2007, the backstop would respond only after a terrorist attack causing at least $100 million in insured losses. Individual insurers would be subject to deductibles of 20% of their commercial property/casualty premiums before they could receive compensation from the backstop. Insurers also would have to cover an aggregate industry retention of $27.5 billion.

If, after the program begins covering losses, authorities determine that the retention has not been reached, the federal government could recoup the difference between what it paid and the retention. The payment would come from a surcharge not to exceed 3% of premium for lines of insurance covered by the program. The law limits the government's annual responsibility to $100 billion.

Under the Dodd-Frank Wall

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Business Insurance

Online features & highlights
www.businessinsurance.com

9/11

FLASHBACK: An online feature lets readers revisit our first post-9/11 issue. The Sept. 17, 2001, articles show an industry reeling from the unthinkable—including the deaths of hundreds of its own employees—and trying to determine the attacks' impact on the insurance market.

MOST POPULAR STORIES
Week of September 5, 2011

1. House panels to consider repeal of health plan 'grandfather' rules
2. Repeal federal health care reform law: Romney
3. Court tosses Virginia challenge to health care law
4. Alterra promotes three senior managers
5. Tropical Storm Maria forms in Atlantic
6. Man who contracted asbestosis not entitled to workers comp
7. Captive insurance becoming attractive to more midsize firms
8. Workers comp denied for spouse of sales manager working at home
9. Walgreen says it's ready to break up with Express Scripts
10. Large insurers form risk management group

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gallery

9/11 RELATED COVERS: A gallery of *Business Insurance* covers shows the many major stories arising from the Sept. 11, 2001, attacks. Some of those stories spanned several years.

SEPT. 14 WEBINAR: Learn critical business continuity strategies. *www.BusinessInsurance.com/webinars.*

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solution arcs

New features on *BusinessInsurance.com*, Solution Arcs, are designed to provide a wealth of resources to help readers confront critical business challenges.

These features present in-depth information on core challenges, organized into three stages designed to take readers through the problem-solving process: Identify & Analyze, Evaluate & Implement and Monitor & Adjust.

Each stage includes articles and other content from *Business Insurance* as well as Editor's Picks highlighting relevant outside views and resources.

The Solution Arcs are regularly updated to reflect developments, and readers can sign up to receive email alerts sent when new articles are added to a Solution Arc.

RISK MANAGEMENT

Supply Chain Risk Management

With companies reliant on third parties for raw materials or product components, breaks in the supply chain can threaten their core business, making it essential to identify supply chain threats and take the necessary steps to control them. This Solution Arc appears on our Risk Management channel.

BROKERS & INSURERS SOLUTION ARC BusinessInsurance.com

Solvency II Compliance and Business Challenges for Insurers

As the risk-based regulatory regime Solvency II comes into force in the European Union, what compliance, strategic and operational challenges do E.U. and non-E.U. insurers and reinsurers face? This Solution Arc appears on our Brokers & Insurers channel.

BENEFITS MANAGEMENT SOLUTION ARC BusinessInsurance.com

What Benefits Managers Need to Know about Health Care Reform

The landmark health care reform law created significant compliance requirements as well as benefit design and strategy issues. This Solution Arc appears on our Benefits Management channel.

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Managing and Insuring Cyber Security Risks

As cyber risks proliferate and become increasingly damaging, what can companies do to protect their systems from hackers and to mitigate their cyber exposures? This Solution Arc appears on our Specialty Risks channel.

MID-MARKET EXECUTIVE SOLUTION ARC BusinessInsurance.com

Shielding Your Top Executives from Liability

How midsize companies can assess and protect their directors and senior executives from personal liability related to their work. This Solution Arc appears on our Mid-Market Executive channel.

WORKERS COMP SOLUTION ARC BusinessInsurance.com

Getting the Most Out of Your TPA and Improving Outcomes

How can risk managers more effectively manage their TPA relationships to exert greater control over costs and outcomes? This Solution Arc appears on our Workers Comp channel.

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CATASTROPHES

Irene insured loss may exceed $6B

AP PHOTO

The ramps from Route 42 entering and exiting Route 11 in Bloomburg, Pa., disappeared into the flood waters from nearby Fishing Creek after the area was drenched by rain from Hurricane Irene. Homeowner insurers operating in the Northeast are expected to bear the brunt of insurance losses.

Latest disaster adds to costly year but won't turn rates

By SONJA RYST

Despite U.S. insured losses estimated as high as $6.6 billion, Hurricane Irene, which later became Tropical Storm Irene as it drenched the Northeast, added to already extensive catastrophe-related losses this year but was not a market-changing event, experts say.

Irene became a hurricane late last month as it left Puerto Rico. It did an estimated $500 million in damage in the Caribbean and the Bahamas as a Category 3 hurricane, according to estimates by Aon Benfield Inc.

It weakened to a Category 1 before making landfall in North Carolina. Then as a tropical storm, it dropped heavy rain along much of the East Coast and particularly the Northeast, resulting in extensive flooding.

Flooding issues continued in the Northeast last week as heavy rain moved through the area.

Irene killed at least 46 people in the U.S., caused power outages affecting some 8 million people and damaged tens of thousands of buildings, but losses were less than had been feared as the storm approached the United States, Aon Benfield, the reinsurance unit of Chicago-based broker Aon Corp., said in a statement. It estimated that U.S. insured losses would range from $1.6 billion to $6.6 billion.

Boston-based catastrophe modeler AIR Worldwide estimated Irene's insured losses at $3 billion to $6 billion. Oakland, Calif.-based EQECAT Inc. estimated insured losses at $1.5 billion to $2.8 billion. Newark, Calif.-based Risk Management Solutions has not yet estimated losses from Irene.

Rating agencies said the storm should not be a major capital or credit event for property/casualty insurers.

"It's not a monumental loss issue that'll change the dynamics of the industry," according to Meyer Shields, an analyst for Baltimore-based Stifel, Nicolaus & Co. Inc.

Major homeowner property insurers operating in the Northeast—such as Northbrook, Ill.-based Allstate Corp., New York-based Travelers Cos. Inc. and Boston-based Liberty Mutual Group Inc.—likely will bear the brunt of losses related to the storm, analysts say.

"This is a manageable exposure for the Hartford," a spokesman for Hartford, Conn.-based The Hartford Financial Services Group Inc. said in an email.

A spokesman for Fireman's Fund Insurance Co. said it was too soon to tell how much the Novato, Calif.-based insurer would pay in claims, but said claims had been received from all states hit by Irene, mainly homeowners.

As far as commercial losses, Matthew Nielsen, senior product manager at RMS in Newark, Calif., said a team from the firm saw hotels in Virginia Beach, Va., that suffered business interruption and broken windows, requiring some repairs. "For commercial (insureds), that's as bad as it got," he said.

Bob O'Brien, managing director of Marsh Inc.'s national property claims practice, said about 200 claims had been filed by businesses, including health care organizations, hospitality and retail firms, educational institutions and municipalities. Most were affected by service interruptions and flooding, he said.

Al Tobin, managing principal and national property practice leader for Aon Risk Solutions in New York, said potential losses from power outages appeared to be greater than building damage, noting that "everybody was super-prepared for Irene."

"On its own, Irene wouldn't have an impact on prices," said David Paul, a principal at ALIRT Insurance Research L.L.C. in Windsor, Conn.

But the storm did expand already extensive losses this year due to disasters in Japan, New Zealand, the United States and elsewhere. On Friday, Swiss Reinsurance Co. Ltd. estimated first-half insured losses were $70 billion, making it the second-most expensive insured loss year since 2005.

"This year is wearing away at the psychology of (insurance) underwriters," Mr. Paul said.

REINSURANCE

Reinsurance market stable despite series of catastrophes

By SARAH VEYSEY and SONJA RYST

Despite catastrophe losses, the outlook for the reinsurance market is stable, according to several rating agency reports issued last week.

The reports noted that reinsurers continue to face challenges but also continue to report adequate capital. In some cases, prices are rising.

For example, Oldwick, N.J.-based A.M. Best Co. Inc. noted in a report both "hopeful signs" and uncertainty affecting the sector related to developments such as catastrophes, regulatory changes and pricing.

Rates on large property catastrophe reinsurance programs have risen by up to 60% in Japan and Australia, according to Best. Jan. 1, 2012, reinsurance renewals in Europe may reveal more of the extent of the market turn from the effects of recent losses, and catastrophe modeler Risk Management Solutions Inc.'s new RiskLink Version 11 hurricane model will be factored into prices then, Best said.

60%

Rates on large property catastrophe reinsurance programs have risen by up to 60% in Japan and Australia

Meanwhile, New York-based Moody's Investors Service Inc. revised its outlook on the global reinsurance sector to stable from negative. In a statement, Moody's said the change reflects "momentum for a hardening in reinsurance rates, a refocusing on the value of reinsurance, and the good risk management and discipline across the sector in response to recent catastrophe events."

These positive trends look to neutralize the challenges facing the global reinsurance industry over the next 12 to 18 months, Moody's said in the report.

Despite record catastrophe losses in the first half, the reinsurance industry's capitalization remains strong, Dennis Sugrue, an analyst at Standard & Poor's Corp. in London, said during a briefing last week.

But the recent losses will dent the sector's profitability in 2011, and continued reserve releases—which have helped boost reinsurers' profits in recent years—are unsustainable, S&P said.

Rate increases are being seen in regions and lines of business that have been hit hardest by catastrophes this year such as earthquakes, S&P said, but price hikes are likely to be "uneven" for the rest of the year.

Reinsurers continue to report adequate capital despite catastrophe losses, Aon Benfield Analytics said in a report last week.

The reinsurance unit of Chicago-based brokerage Aon Corp. analyzed the financial position of 28 global reinsurers, including Germany-based Munich Reinsurance Co. and Zurich-based Swiss Reinsurance Co. Ltd., as of June 30. The reinsurers collectively had a pretax profit of $809 million for the first half of the year, down 95% from the same period in 2010.

Nonetheless, the group of reinsurers in the Aon Benfield Aggregate—or ABA—reported capital totaling $242.4 billion as of June 30, a 1.7% decline since the end of 2010.

"Despite the elevated level of catastrophe losses over the past 18 months, financial-strength ratings have remained broadly unchanged, reflecting continued robust capital positions," Mike Van Slooten, international head of Aon Benfield Analytics' international market analysis team, said in a statement.

Still, reinsurers face continued challenges. Best said several factors have given rise to uncertainty, including the possibility of delaying implementation of the new Solvency II risk-based regulatory regime. "Talk of a delay points to mixed consequences for global companies and their regulators," Best said in the report.

While S&P's outlook on the sector remains stable, reinsurers do face challenges, Mr. Sugrue said, including low interest rates limiting investment income.

The increased frequency and severity of catastrophes coupled with low investment margins may mean that some investors would be reluctant to "reload" or put more capital into reinsurers in the event of another major catastrophe.

It would likely take an event that wiped out 5% to 10% of reinsurers' capital to affect financial-strength ratings, Mr. Sugrue said.

LIABILITY & LITIGATION

After a client of Match.com was raped by a man she met through the site, the dating site began screening its members for registered sex offenders.

Background checks may invite liability

By MATT DUNNING

DALLAS—Internet dating heavyweight Match.com's recent announcement that it has voluntarily begun screening its members for registered sex offenders has some legal experts wondering if the Dallas-based company has opened itself up to a wave of new liability exposures.

In April, a Los Angeles woman sued Match.com after she was raped by a man she met using the website, who later was discovered to have six convictions for sexual battery. The plaintiff, Carole Markin, alleged that Match.com could have prevented the attack by checking prospective members against sex offender registries.

Prior to August, Match.com—like most online dating services—did not conduct background checks on its members.

However, "Companies have an obligation to act with reasonable care," said Mark Webb, Ms. Markin's San Francisco-based attorney.

Ms. Markin agreed to drop her suit in late August after Match.com announced it would weed out registered sex offenders using federal, state and local databases.

While Mr. Webb said he and his client were satisfied with Match.com's decision to conduct the background checks—which the company has insisted was not part of a settlement agreement, but rather a voluntary act—legal experts say the website likely exposed itself unnecessarily to potential liability. By barring registered sex offenders from the site, the company has made itself legally responsible if even one slips through the cracks, they said.

Considering the ease with which a person could fake an identity or otherwise hide criminal convictions to gain access to the site, several attorneys said it is probably only a matter of time before Match.com faces another lawsuit.

"It's basic tort-law negligence," said David Adler, a managing partner at Chicago-based law firm Adler & Franczyk L.L.C. "What Match.com is doing is not only increasing the scrutiny on themselves, but also the liability they could incur due to a breach of that new duty."

Even if checking registries could prevent all sex offenders from accessing the site, those checks would not prevent other violent criminals from opening accounts and setting up dates, experts say. If someone were to be attacked under those circumstances, the company could find itself defending a negligence claim similar to Ms. Markin's.

"Once the door is opened, it's going to be very difficult for them down the line to argue that they don't have a duty to screen for other issues," said Bradley S. Shear, Bethesda, Md.-based managing partner of the Law Office of Bradley S. Shear L.L.C. Mr. Shear said it was easy to imagine Match.com eventually being asked—or compelled by a court ruling—to screen for more categories of criminal offenses, from violent acts to drug convictions, burglary and fraud.

Civil litigation such as restraining orders, alimony and child support disputes also could become part of Match.com's screening or reporting responsibilities if a customer were victimized, Mr. Shear said.

"It's the kind of thing that sounds like a good idea at the start, but once you get the lawyers

See **MATCH.COM** page 29

Errors & Omissions

In the Sept. 5 issue, the story "RRGs still thriving 25 years after law's passage" misstated the year in which a law that authorized risk retention groups was passed. The law was passed in 1981.

DIRECTORS & OFFICERS LIABILITY

Mortgage securities suits unlikely to roil D&O market

Several major banks among those sued by federal agency

By JUDY GREENWALD

WASHINGTON—The Federal Housing Finance Agency's lawsuits against 17 financial institutions over their mortgage practices could lead to billions in losses for the firms, but the ultimate hit to the directors and officers liability market is expected to be limited.

Observers say the litigation's impact on D&O coverage—where such coverage is even available—is likely to be restricted to the already tight D&O market for financial institutions and not affect the broader D&O market.

Meanwhile, an investigation by state attorneys general and state banking regulators into mortgage foreclosure practices, which reportedly is in negotiations for a settlement, so far has not involved individual directors, although that may not remain true, say observers.

The FHFA's suits, filed in state and federal courts as conservator for Fannie Mae and Freddie Mac, charge the defendants—the firms, certain officers and unaffiliated lead mortgage underwriters—with violating federal securities laws and common law in the sale of residential private-label mortgage-backed securities to Fannie Mae and Freddie Mac.

The complaints seek damages and civil penalties under the Securities Act of 1933 and compensatory damages for negligent misrepresentation, while some also charge state securities law violations or common law fraud, according to the FHFA.

Prominent financial institutions named as defendants include Bank of America Corp., Citigroup Inc., General Electric Co., Goldman Sachs & Co., JPMorgan Chase & Co. and Merrill Lynch & Co.

The complaints "reflect FHFA's conclusion that some portion of the losses that Fannie Mae and Freddie Mac incurred on private-label mortgage-backed securities are attributable to misrepresentations and other improper actions by the firms and individuals named in these filings," said the FHFA in a statement.

"Discussions regarding these matters have taken place with several of the firms receiving complaints and, where constructive, they will continue," the statement continued.

GE said in a statement, however, it was only notified of claims against it "for the first time, without any prior discussion" when the lawsuit was filed.

Other defendants that have provided detailed responses to queries about the lawsuits say, among other comments, they will vigorously defend them, they are meritless, and that Fannie Mae and Freddie Mac were sophisticated financial institutions.

Kevin LaCroix, executive vp at OakBridge Insurance Services L.L.C. in Beachwood, Ohio, said the amount of money involved runs into the billions of dollars. He noted, for instance, that

See **D&O** page 28

Ms. Benton

Mr. Thomas

Ms. Downing

Ms. Barnes

BI makes changes to editorial staff

Business Insurance has made several changes to its Chicago-based staff.

- Charmain Benton has been promoted to assistant managing editor.

Ms. Benton, who previously was a copy editor, joined *Business Insurance* in June 2006. Before that, she held editorial positions at Advertising Age and Business Marketing—now B2B—both of which are sister publications of *BI*. She also worked at United Press International and at radio stations in Elgin and Aurora, Ill. She has a Bachelor of Arts in journalism from Northern Illinois University in DeKalb, Ill.

Ms. Benton can be reached at 312-649-5269 and at *cbenton@businessinsurance.com*.

- John Thomas has joined the publication as assistant managing editor.

Mr. Thomas previously was the editor of Playboy.com and a contributing editor at Playboy magazine. While at Playboy, he managed the creation of digital content and was the primary link between the new media and publishing divisions. He has a Bachelor of Arts in English and French and a Master of Arts in film studies, both from Emory University in Atlanta.

Mr. Thomas can be reached at 312-649-5274 and at *jthomas@crain.com*.

- Katherine Downing has been named copy desk chief for *Business Insurance*.

Ms. Downing, who joined *BI* in 2005, previously was online editor. Prior to that, she held positions at *BI* sister publications Modern Healthcare and Modern Physician, among other editorial positions. She has a Bachelor of Science degree from the University of Illinois at Urbana-Champaign.

Ms. Downing can be reached at 312-649-5417 and at *kdowning@businessinsurance.com*.

- In addition, Kathy L. Barnes has been named *Business Insurance*'s marketing manager.

Ms. Barnes, who joined *BI* in 1996, previously was assistant managing editor/multimedia. Prior to that, she served as *BI*'s graphics editor and assistant managing editor/graphics.

Before joining the publication, she was in charge of editorial systems support in the production department of *BI* parent Crain Communications Inc., among other managerial roles for Crain. She has a Bachelor of Arts degree in graphic arts from Illinois State University in Normal.

She can be reached at 312-649-5485 and at *kbarnes@businessinsurance.com*.

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

Irene swamps midsize businesses

Outside of danger zones, few buy flood coverage

By JOANNE WOJCIK

Many middle-market businesses whose operations were disrupted by Hurricane Irene are finding they are either uninsured or underinsured for lost income and property damage, especially if it was caused by flooding.

That's because most midsize businesses purchase standard business owner policies that do not provide the breadth of coverage that most large businesses buy using manuscript policies, insurance experts say.

Moreover, because many midsize businesses are especially cost-conscious, most located outside designated flood plains rarely buy flood insurance, even though it is readily available through the National Flood Insurance Program and commercial property insurers, the experts said.

Many midsize businesses also fail to seek reductions in waiting periods to trigger their business interruption coverage due to off-premises power outages, one of the major causes of loss from Hurricane Irene. In addition, coverage on some business owner policy forms is subject to a dollar deductible that must be met after the waiting period has expired.

Although the standard Insurance Services Office BOP form's 72-hour waiting period can be shortened through endorsement, many midsize business owners fail to seek such changes, said Robert Glasser, a partner at Dempsey Partners L.L.C. in New York. Business owners also can seek elimination of other deductibles, though many do not, he said.

"There is a huge difference between availability and what each individual mid-market entity might buy," said Paul Primavera, senior vp and practice leader for the national claim advisory group at Lockton Cos. L.L.C. in Washington. "The larger clients tend to have flood coverage. The smaller clients are inclined not to. They may be more cost-conscious."

According to the New York-based Insurance Information Institute, just 5% of flood insurance policies issued by the NFIP are purchased by businesses.

While some midsize businesses affected by the flooding that followed Hurricane Irene now are asking about purchasing flood coverage to protect themselves against future losses, it may not be soon enough, said Meg Errickson, director of claims at the Marsh & McLennan Agency L.L.C. in Somerset, N.J. There is a 30-day waiting period before such coverage becomes effective, she explained, and the arrival of Tropical Storm Lee is already triggering additional flooding.

But even businesses that purchased federal flood coverage may find it insufficient. Because NFIP policies are written on an "actual value basis," the property's value will be depreciated. As a result, few business owners are able to recoup the entire $500,000 in content coverage and $500,000 in property coverage available through the NFIP, said Bill Oklesen, Chicago-based vp and director of property claims for Lockton.

"That makes federal flood coverage difficult at times. If you have a situation where depreciated value of property is less than $500,000, they'll never pay you more than $350,000," Mr. Oklesen said.

Moreover, NFIP coverage does not provide business interruption coverage, noted Ken Auerbach, managing director and general counsel at E&K Insurance Inc., a middle-market insurance broker based in Eatontown, N.J.

"A difference-in-conditions policy or inland marine form may provide some business interruption coverage for flood, but it's expensive," Mr. Auerbach said. "So this is a big problem" for midsize businesses that rely on NFIP coverage.

While midsize businesses can purchase additional flood coverage from commercial insurers, those policies usually attach above NFIP limits, which in some cases can create a gap in coverage, experts said.

One Marsh Agency client, a midsize manufacturer whose facilities near Somerset, N.J., flooded, is subject to a $1 million deductible because it failed to purchase NFIP coverage, said Ms. Errickson. If it had bought the coverage, its deductible would have been only $387,000, she said.

"The majority of businesses in flood zones are covered. We've offered coverage to the businesses outside of flood zones, but they don't purchase it," she said.

Businesses that have business interruption coverage for off-premises power outages could have difficulty getting their claims paid if they don't also have flood coverage, said Ms. Errickson.

"As long as we have coverage for off-premises power outage, they should be covered. But we're running into situations where the power went out but there is also flooding," she said. "This will put to the test the wind vs. water litigation that followed Hurricane Katrina."

A federal judge in Mississippi ruled in August 2006 that an insurer is not responsible for any additional loss caused by water even if the property was initially damaged by wind. Although the decision involved homeowners insurance, it could have ramifications for commercial insurance, experts say.

Many commercial property insurance policies contain "sue and labor" clauses to cover costs incurred to protect property from impending damage, such as boarding up windows, but that coverage is subject to the same deductibles that apply to property damage, which can be substantial, said Steve Gilford, an insurance recovery and counseling partner at Proskauer Rose L.L.P. in Chicago.

Whether a commercial policyholder is also covered for lost income during the time the business is closed will "depend on the policy and whether there is actual physical damage" to the property being protected, Mr. Gilford said.

"The whole area of deductibles with business interruption coverage can be complicated," acknowledged Randy Paar, a partner at Kasowitz Benson Torres & Friedman L.L.P. in New York. As a result, "the policy can be interpreted in some very bizarre ways."

In a case Ms. Paar litigated following Hurricane Katrina, the insurer tried to apply a deductible equal to 5% of the value of all of a commercial policyholder's property, even though only one property was affected.

"Some customers in the mid-market are going to find they don't have all the coverage they need and, if they do have coverage, they'll be surprised by the deductibles," concluded Michael Lebovitz, senior vp at Affiliated FM in Providence, R.I.

Howard Mills, chief adviser for Deloitte L.L.P.'s insurance group in New York, said he expects business income losses to be significant among the retail and hospitality industries. However, whether those businesses will have sufficient insurance coverage is questionable.

"This situation highlights the importance of really understanding your insurance coverage and knowing what's covered and what isn't," he said.

REUTERS

Flood waters remained several feet deep in Wayne, N.J., at the end of August after Hurricane Irene hit. Many midsize businesses affected by the storm face sizable uninsured losses.

Best practices to secure cover for floods, other catastrophes

Businesses that were underinsured for Hurricane Irene should sit down with their brokers to review their losses and determine what coverage is available so they won't be caught off-guard the next time catastrophe strikes, experts say.

A typical hurricane insurance checklist recommends:

- Hire an outside modeling firm to perform an analysis of maximum probable losses based on various wind speeds and flood exposures, and secure appropriate coverage limits.
- Make sure deductibles apply to each named property vs. all covered properties.
- Review coverage limits for landscaping and debris removal to ensure they are adequate.
- Customize waiting periods for business interruption coverage to fit individual business needs and request that additional dollar deductibles be removed from the policy.
- Add coverage for claim preparation services, such as the cost of engineers and forensic accountants, to evaluate property damage and business income losses.

"Midsized businesses often err by trying to save money on premiums. But then they may be caught short when the time comes to file a claim and they discover they aren't covered or that the coverage is more restrictive than they actually thought," said Robert Meyers, senior vp and property/casualty practice leader at USI Insurance Services L.L.C. in Briarcliff Manor, N.Y.

—By Joanne Wojcik


"We're a growing company. And, with Zurich's help, we're already a global one."
Chip Bottone, President and CEO
FuelCell Energy, Inc.
Connecticut, USA
Zurich HelpPoint
International insurance solutions for the global companies of today and tomorrow.
FuelCell Energy is bringing renewable and ultraclean power generation to three continents—and counting. Zurich's ability to design a flexible insurance program in compliance with local and global regulations is helping them grow. And with a single, U.S.-based contact, supported by a global network spanning more than 170 countries, Zurich is making it even easier for FuelCell to manage their overseas risks. It's an example of how Zurich HelpPoint delivers the help businesses need when it matters most. Let FuelCell tell you more. Watch the video at www.zurichna.com/stories6
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Opinions

EDITORIAL

Terror backstop born of necessity

THE CHAOS AND UNCERTAINTY that followed the terrorist attacks of Sept. 11, 2001, affected virtually every aspect of American life. Risk management was no exception.

In fact, risk management was affected more than some other professional disciplines. After all, one of the immediate results of the attacks was that any sort of terrorism insurance coverage for areas deemed high risk for future attacks vanished. Insurers were faced with huge losses from a peril—terrorism—for which they had not collected a single dedicated premium dollar.

Faced with a risk that couldn't be underwritten, they didn't underwrite.

As we report on page 1, the situation led to an unusual alliance of risk managers, insurers, business and labor leaders to seek a solution to the lack of cover. Without insurance, economic activity slowed in an already uncertain economy, threatening projects in some of the nation's largest cities.

The result was a successful effort to create a federal terrorism insurance backstop that would respond to truly catastrophic future terrorist events. Although the concept enjoyed widespread bipartisan support, there were disagreements on the details, and final passage of the Terrorism Risk Insurance Act—also known as TRIA—didn't occur until late 2002.

During the effort to pass TRIA, and two subsequent efforts to reauthorize the program that now runs through 2014, risk managers exerted more influence in Washington than they ever had before, with the possible exception of successfully securing passage of the Liability Risk Retention Act of 1986. The efforts arose from necessity: Without the backstop, many companies would have been hard-pressed to find adequate terrorism insurance at any price.

Since then, risk managers have played a key role in passing the Nonadmitted and Reinsurance Reform Act, which became part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. They have grown increasingly sophisticated in the ways of Washington, to the point that the Risk & Insurance Management Society Inc. recently launched its own political action committee—RISK PAC.

That sophistication should lead risk managers to begin preparing now for the next drive to reauthorize the federal terrorism insurance backstop. The battle to create the program was hard-fought, and there's no reason to believe that the next battle to extend it will be easy.

LETTERS

9/11 an industry-altering event

TO THE EDITOR: Mike was a wholesale broker who liked to go to New Orleans for Jazzfest. Sam was a seasoned property guy whom other brokers looked to for advice. Tim was a claims guy proud of his Brooklyn roots. Trudi was a rising broker star. So was Doug. They and many others were

See **LETTERS** page 24

SCHILLERSTROM

COMMENTARY

United front won Congress' ear

The property/casualty insurance industry isn't known for its unanimity of opinion.

Just look at the way different companies and trade groups approach critical issues such as how the industry should best be regulated. There's a camp that favors an enhanced federal role, and there's another that wants regulation to remain in the hands of the states.

The industry doesn't generally speak with one voice, which can hamper its effectiveness on Capitol Hill. Yet when it does, the industry can be surprisingly effective. A case in point worth remembering is how the industry reacted in the immediate aftermath of the Sept. 11, 2001, terrorist attacks. First, insurers did the right thing—they generally paid claims for terrorism losses even though no one had ever collected a premium dollar to cover the terrorism exposure.

MARK A. **HOFMANN**
SENIOR EDITOR

Disputes were to be expected. What wasn't to be expected was how quickly virtually all factions in the industry united behind an idea to address the problem of terrorism losses. The idea was that the federal government should provide a backstop against insured losses stemming from future catastrophic terrorist attacks.

At first glance, it might seem unusual for the industry to call for what was basically a federal intervention. Generally speaking, insurers prefer a light regulatory hand and market-based solutions to problems wherever possible.

The catch with terrorism is that market-based solutions are rare and inadequate to provide coverage to the extent needed at a reasonable cost. Insurers say that terrorism defies underwriting, and they're right on that score. It's subject to all the twists and turns of which a fanatic's mind is capable.

And while advances in terrorism modeling have been made over the past decade, at least for now—and no doubt for the foreseeable future—this is a risk that can't be underwritten solely by the market.

But as was evident in the weeks after 9/11, just because a risk can't be underwritten doesn't mean that it can be ignored. Underwriters weren't going to cover it, which meant that businesses operating in areas deemed to be highly vulnerable to terrorist attack weren't going to get coverage.

Insurers, agents, risk managers and groups not generally associated with insurance, such as the U.S. Chamber of Commerce and some labor unions, took up the cause of having the government provide a terrorism insurance backstop for the private insurance marketplace. It took more than a year after the initial attacks for a bill—the Terrorism Risk Insurance Act of 2002—to reach President George W. Bush's desk. There would be two additional extensions of the program, which is now slated to run through the end of 2014.

The backstop has been a success in the sense that it did what it was supposed to—create an environment in which terrorism coverage is both available and affordable.

But it was also a success in the sense that its continued existence is in part insured because the insurance industry spoke with one voice on the matter—and Congress listened.

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SEEKING CLOSURE

Employers want changes to Medicare rule for comp claims

By ROBERTO CENICEROS

Employers hope that legislation introduced in the House will reduce the uncertainty and costly delays in closing workers compensation and liability claims that involve reporting to Medicare.

Under the Medicare Secondary Payer System, self-insured employers, insurers and others must notify the Centers for Medicare and Medicaid Services of all workers comp and other liability settlements or payments that involve Medicare recipients.

That way Medicare can recoup the "conditional payments" it makes to medical providers from insurers, employers and others that participate in a settlement. For workers comp claims, this has been the case since Jan. 1. For fiscal 2010, such efforts led to the Medicare Trust Fund recovering about $330 million for non-group health related claims, sources said.

But insurers and employers often are stymied from reaching settlements with workers comp claimants or parties to a liability claim because Medicare can take months to notify insurers and employers of its final demand, said David Farber, a partner at law firm Patton Boggs L.L.P. in Washington.

Without knowing Medicare's final demand, all sides don't know how much they should seek in the potential settlement, added Mr. Farber, who also is legislative and regulatory counsel for the Washington-based Medicare Advocacy Recovery Coalition, which advocates for improvements in the Medicare Secondary Payer program.

While parties to a claim don't want to settle until they learn of Medicare's final demand, Medicare won't disclose the amount in conditional payments it has made until the parties settle, observers say.

"It is almost a chicken and egg problem," said Melissa Shelk, vp of federal affairs for the American Insurance Assn. in Washington.

The end result is that employers' costs rise when claims remain open, and injured employees have to wait to receive settlements to which they are entitled.

In some cases, claimants died before Medicare released information that would have facilitated a settlement that could have benefitted their families, said William Zachry, vp-risk management at Safeway Inc. in Pleasanton, Calif.

"In certain respects, it's a denial of benefits to the legitimately injured third party or injured worker that this is creating," Mr. Zachry said. "For (employers), it creates difficulties because we want to settle. We want to get people on with their lives. We don't want to have to keep files open and run into huge delays that are unnecessary and inappropriate."

But a solution is in the works.

Reps. Tim Murphy, R-Pa., and Ron Kind, D-Wis., have introduced H.R. 1063, the Strengthening Medicare and Repaying Taxpayers Act.

Among other things, the SMART Act would require Medicare to respond within 65 days of a party's request for information on Medicare's final payment demand, said Russell Whittle, senior staff counsel and vp of Medicare secondary payer compliance for consultant Gould & Lamb Inc. in Bradenton, Fla.

Medicare still would have to respond before the parties involved in a claim reached a settlement, although H.R. 1063 would allow Medicare a 30-day grace period from the 65 days, Mr. Whittle said.

While similar legislation failed last year, this bill already has 32 House co-sponsors, and supporters plan to introduce a companion bill in the Senate as soon as this month, Mr. Farber said.

Additionally, the proposal enjoys backing from diverse stakeholders, Mr. Farber said.

In addition to employer and insurer groups, trial attorneys represented by the American Assn. for Justice also support the legislation. The AAJ said plaintiff attorneys are siding with defense attorneys as well as organizations representing their common foes, since the situation adversely affects plaintiffs.

"Industry loves this, and trial attorneys like this," Mr. Farber said. "When do those sides get on the same page?"

See **MEDICARE** next page

Workers Comp & Safety Management

SPOTLIGHT

NEXT SPOTLIGHTS Sept. 19: Pharmacy Benefit Management and Case Study—EPL Best Practices

Medicare: Firms want changes

CONTINUED FROM PREVIOUS PAGE

The bill's supporters include the New York-based Risk & Insurance Management Society Inc.

Chances of the bill's success gained a significant boost earlier this summer when the House Energy and Commerce Committee's Subcommittee on Oversight and Investigations held a hearing on improving the Secondary Payer system, sources said.

"That hearing was a huge deal," Mr. Farber said.

Answers expected soon from Medicare to questions raised during the hearing could encourage Congress to consider problem solutions contained in H.R. 1063, the AIA's Ms. Shelk said.

But with Congress preoccupied with other issues, such as the nation's deficit, it is difficult to handicap the bill's chances of passage, Ms. Shelk added, noting that measures contained in H.R. 1063 could be attached to a larger bill.

H.R. 1063 also would:

- Eliminate insurers' and employers' responsibility to obtain a Social Security number from Medicare beneficiaries with which they settle a claim and require Medicare to find an alternate method of identifying people receiving settlements and awards.
- Set a threshold amount for reporting a claim to ensure that the government does not spend more money collecting small claims than it would recover.
- Change the Medicare Secondary Payer statute so that Medicare is not required to impose a $1,000-a-day penalty for companies failing to report a settlement, though Medicare still would have the discretion to impose such a penalty.

Virtual Advantage focuses on pain meds

As employers work to bring their workers compensation costs under control, drug expenses—particularly related to narcotic pain medications—continue to be a key cost driver.

Rising costs—and strategies to address the overprescribing of pain medication—will be the focus of a panel discussion at an upcoming *Business Insurance* virtual conference on workers comp cost control.

Taking part in that discussion—and a subsequent live chat—will be Becky Robinson of Hobby Lobby Stores Inc., Julie A. Fortune of Arrowpoint Capital Corp., Michael J. Shor of Best Doctors Occupational Health Institute and Dr. Gary M. Franklin of the Washington State Department of Labor and Industries.

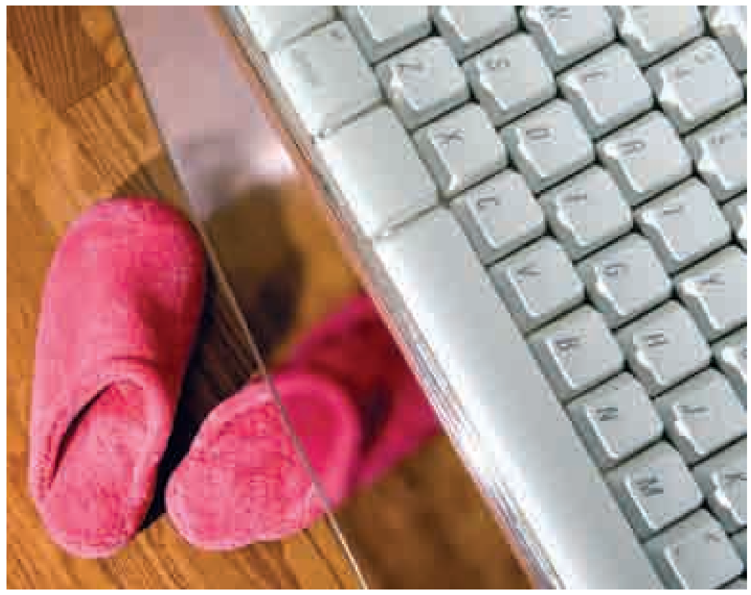
Business Insurance's Virtual Advantage 2011, which will be held Sept. 22, is free to attend. The one-day online event also will feature a virtual exhibit hall, and the opportunity to network with workers compensation colleagues.

Conference keynote speaker Harry Shuford of NCCI Holdings Inc. will review the state of the workers comp market and what lies ahead.

Roberto Ceniceros, *BI* senior editor and author of the award-winning Comp Time blog, also will moderate a panel of leading workers comp bloggers, who will examine key industry trends.

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

To learn more about the event and register, visit *www.businessinsurance/compcosts*.



At-home worker risks often go unaddressed

Proactive approach needed to avoid potential liabilities

By LOUISE ESOLA

As more companies allow their workforces to move from cubicles to home offices, outdated risk management plans may not be keeping up with the exposures related to at-home workers.

"A lot of companies are waiting and seeing," said Richard Lenkov, president of the Chicago-based National Workers' Compensation Coalition and a partner with Chicago-based Bryce Downey & Lenkov L.L.C. "You have all these new risks, but not a lot of specific (risk management) programs for working from home."

The trend of working from home is not new; the term "telework" was first used in the 1970s. Yet today, nearly 20% of the workforce works from home or remotely, with home being the main venue for remote work, according to World at Work's "2011 Survey on Workplace Flexibility." The survey found that in 2010, 26.2 million U.S. workers conducted some business outside of the office, a dip from 2008 data—33.7 million—that was pinned on a bad economy and unemployment.

At-home workforces "will grow with the growth of companies, and companies will need to start paying more attention to liabilities," said Sharon MacDougall, principal and founder of Corona Del Mar, Calif.-based Remote Workforce Consultants.

A 2011 white paper, "Virtual Workforce: The Changing Face of Absence and Productivity in the Technological Age," written by the San Diego-based think tank Disability Management Employer Coalition, found that the move from offices to home for work goes beyond the obvious real-estate-and-utilities savings of not having to pay rent for office space. Companies are looking to telecommuting because it improves recruitment and retention, increases productivity, decreases absenteeism and presenteeism, reduces stress and ensures business continuity in the event of unforeseen natural or man-made disasters, according to the white paper.

> **At-home workforces 'will grow with the growth of companies, and companies will need to start paying more attention to liabilities.'**
>
> Sharon MacDougall, Remote Workforce Consultants

Risks not managed

Yet risk management hasn't kept pace with the changes, say legal and loss control experts.

Attention to risk often "comes up after something has already happened," said Matthew Schiff, a management and employment attorney with Chicago-based Schiff & Hulbert.

"I'm sure (risk management) is on the radar, but it hasn't made an impact yet," said Charlie Martin, Norwalk, Conn.-based national claim consulting practice leader with Marsh Risk Consulting. "One of the main issues is we haven't seen a lot of claim activity. That's when we'll see more of this."

Experts referred to two recent cases that may drive the greater interest in telecommuting risk management plans.

In June, a New Jersey court granted workers compensation survivor benefits to the family of Cathleen Renner, an AT&T manager who died of a blood clot after sitting at her work computer at

See HOME page 12

Home: At-home worker risks often unaddressed until problem arises

CONTINUED FROM PAGE 10

home for long periods of time. Earlier that month, Oregon's Court of Appeals ruled that Mary S. Sandberg, a J.C. Penney & Co. saleswoman of window treatments and bedding, was entitled to workers compensation after she tripped on her dog while carrying fabric samples from her home to her car and suffered a broken wrist. Previously, an Oregon Workers' Compensation Board determined that her injury did not arise from her employment and denied her benefits.

A key suggestion for companies that want to allow employees to work remotely is to consider carefully which candidates are suited to such work.

Hourly workers—those subject to receiving overtime pay—are not good candidates because they can claim longer workweeks with little proof, subjecting employers to lawsuits stemming from overtime issues, said Mr. Schiff.

Experts also warn that new workers—those who have not established trust within the company—are not good candidates to work at home. Mr. Martin said companies could expose themselves to fraud—injuries that did not happen on the job, for example—if a new employee is dishonest. Trusted employees are less likely to commit fraud, he said.

Clearly identified and examined home office space and clearly defined duties are also important, experts say.

Remote Workforce Consultants' Ms. MacDougall said companies can set up an employee's home office by sending in a specialist to examine workspaces, desks, chairs and filing or storage systems to ensure that a worker has a comfortable, ergonomic office space that isn't cluttered. She estimated that it could cost between $2,000 and $5,000 to help create workspaces at home offices, a one-time cost that can help mitigate future losses. "Companies are saving up to $10,000 a year by allowing workers to work from home; this is just a one-time cost," she said.

From a legal standpoint, setting up—and even photographing—a worker's home-office space can ensure that if a workers comp claim arises, an employer can have proof that it helped create a safe work area, said Mr. Lenkov. "Don't rely on an employee to set up their own workspace," he added.

Companies with tighter budgets can help workers create their own office space with training materials and seminars, said Judy Sehnal, Hartford, Conn.-based technical manager in ergonomics for The Hartford Financial Services Group Inc.

"We advise companies on the right equipment and setup to help employees," she said. "We tell employers to create a written program, to look at equipment, set requirements and highlight safety issues."

Home visits often are necessary only after an employee complains about a health issue such as back pain, she added. "That's not very different than what happens in the traditional work environment."

As for work hours and duties, experts say employers can have employees log into a computer program to track time at work and time off to ensure that incidents occur during the defined workday.

"We tell employers to ensure that workers keep their work area separate from their living area," she said, highlighting yet another exposure: clutter around the home that can lead to trips and falls. Extension cords are another hazard. "We see that all the time when we look at workspaces," Ms. Sehnal said.

'We tell employers to create a written program, to look at equipment, set requirements and highlight safety issues.'

Judy Sehnal, The Hartford Financial Services Group Inc.

Another exposure could stem from work materials and lifting heavy boxes, said Richard Sabetta, managing principal and cofounder of Fort Hills, N.J.-based Risk Navigation Group.

For his small firm, which employs 11 workers who conduct business from home, Mr. Sabetta tries to have documents delivered electronically. "I don't want my colleagues lifting heavy boxes," he said.

Smaller firms, he added, have much more control when it comes to regulating a telework force. "The larger the company, the larger the exposure," he said.

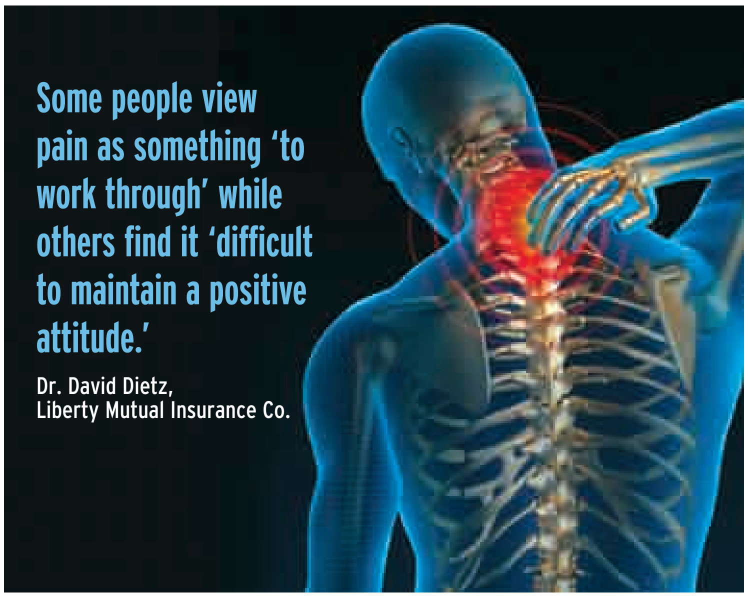
Another hurdle for companies that are just starting to address exposures is the blurry line that exists between home and business. "We are telling people what to do in their own homes," said Ms. Sehnal. "This can become a legal question at some point."

But, she warned, "the very worst thing a company can do is send employees out to work from home without addressing these issues."

We remember

September 11, 2001

aon.com/remembers



Employers seek solutions to workers' chronic pain

Early intervention, predictive modeling help curb claims

By ROSEANNE WHITE GEISEL

Chronic pain is an infrequent but growing aspect of workers compensation claims, but employers need concrete programs with measurable outcomes to respond to and reduce those types of injuries.

Dr. Gary Franklin, medical director for the Department of Labor and Industries in Washington state, which administers the state-run workers compensation insurance fund, said experiencing chronic pain is equivalent to becoming disabled.

From his experience, "everyone who remains in the system (after five months) is disabled," he said. "If you are not putting most of your effort" into preventing an injury from developing into chronic pain and therefore long-term disability, "you've lost the ballgame."

In March, Washington state's governor signed legislation into law to further establish medical homes to treat injured workers according to the state's best practices, and support monitoring patients for their entire recovery period.

Chronic pain is not defined precisely.

Dr. David Deitz, vp-national medical director for Liberty Mutual Insurance Co. in Boston, defines the situation as "any injury in which pain is as important as the disease and (the duration) is beyond the normal course of the injury."

According to the Institute of Medicine, chronic pain affects more than 116 million U.S. residents—more than heart disease, cancer and diabetes combined—and costs up to $635 billion a year in medical treatment and lost productivity.

Some people view pain as something "to work through," while others find it "difficult to maintain a positive attitude," Dr. Deitz said. Treatment depends on the individual patient's needs, but may include orthopedic, neurological, rehabilitative and psychological professionals.

A rise in claims involving chronic pain "coincides with an increase in the aging workforce," who are more likely to have other conditions or diseases, said Steven Iler, president of domestic primary claims at Chartis Claims Inc. in New York.

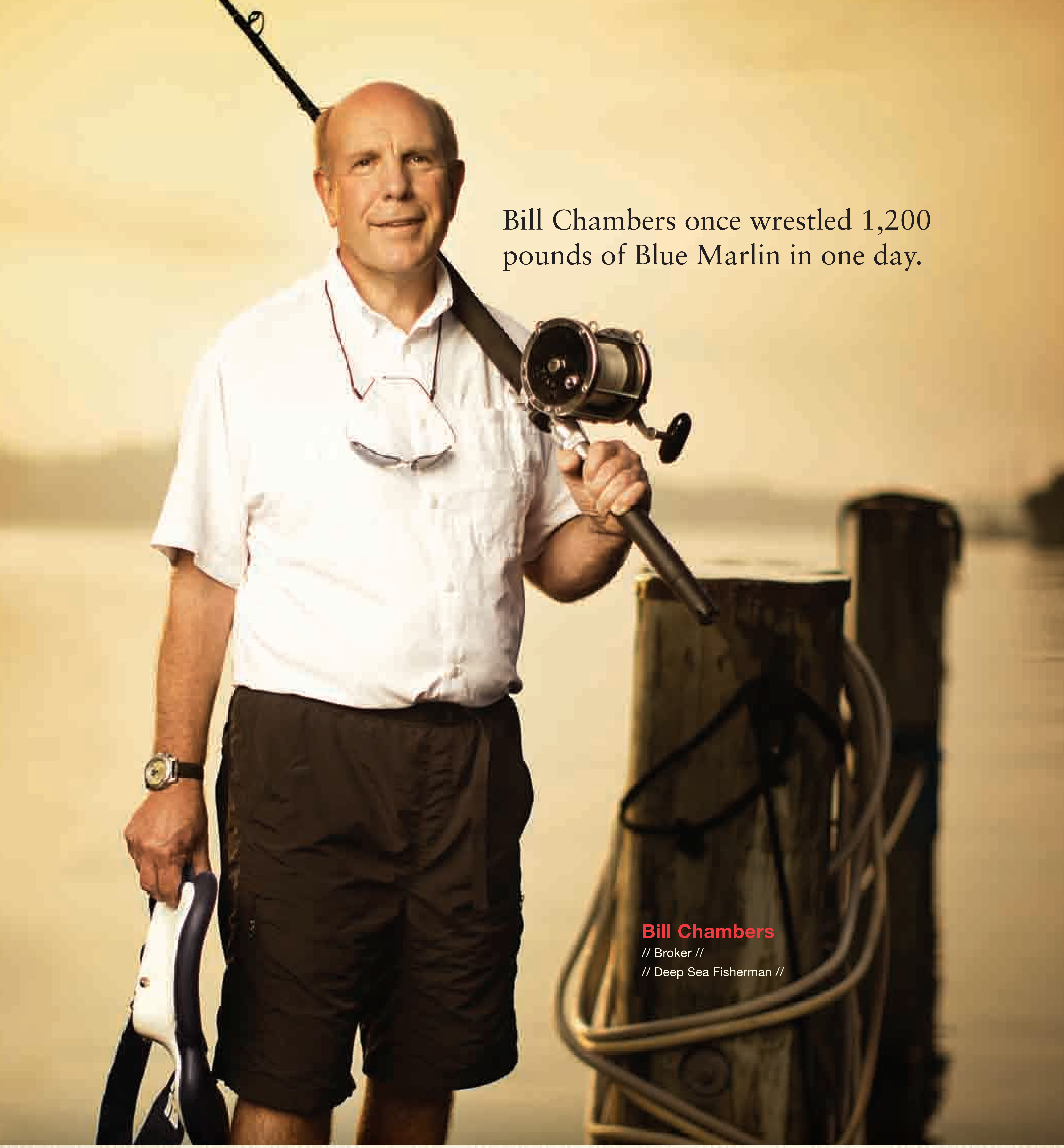
To prevent an injury from becoming a chronic pain claim, early intervention is required, said Maureen McCarthy, senior vp of workers compensation claims and managed care at Liberty Mutual.

Ms. McCarthy said the predictive modeling that Liberty Mutual launched in June "helps identify soft-tissue small kinds of claims that have the likelihood of escalating into high-cost claims. There's a disproportionate percentage of very simple soft-tissue claims that can become very serious," she said.

The model uses factors such as smoking, early treatment with narcotics and doctor shopping to flag claims that have the potential to escalate.

A predictive model also has been undertaken by grocery retailer Ahold USA Inc. in collaboration with its actuary, said Libby Christman, Ahold's Carlisle, Pa.-based

See **CHRONIC** page 16


Bill Chambers once wrestled 1,200 pounds of Blue Marlin in one day.
Bill Chambers
// Broker //
// Deep Sea Fisherman //

Chronic: Employers search for solutions to workers' chronic pain

CONTINUED FROM PAGE 14

senior director of risk management. The unnamed actuary is building a model based on 10 years of the company's workers comp data, Ms. Christman said. The grocery retailer expects the model, using factors about the claims and the incident, to create awareness of a claim's potential severity within 30 days of the injury.

Red flags, said Chartis' Mr. Iler, include patients with unrealistic expectations or those who are unwilling to cooperate, the absence of clear treatment goals, extended use of injected drugs or a doctor's opinion that the patient is prolonging treatment for their symptoms.

The insurer's peer-to-peer intervention with doctors has had a 40% success rate in getting them to stop prescribing narcotics outside of appropriate treatment guidelines, said Don Hurter, senior vp of medical management for Chartis in Orlando, Fla.

Messrs. Iler and Hurter said the proactive approach, which the company calls Pre Injury Management, encompasses educating employers to identify injured workers' pain and to understand treatment goals to enable an early return to work. Other steps, including preparing job descriptions to facilitate a stepped approach to modified-duty jobs have resulted in yearly increases in the number of employees who return to work after 21 days and 60 days, Mr. Iler said.

Preinjury management at Ahold starts with physical evaluations for associates offered warehousing jobs to ensure they can handle the physical demands, Ms. Christman said. The risk management department also conducts ergonomic evaluations on new equipment, certain work-area designs and work processes. Other efforts include having safety specialists meet with employees who have minor pain to change how the worker does their job.

Washington state's Dr. Franklin said there are several early steps to take when an injury occurs: Screen for disability risk, emphasize graduated exercise, get the patient back to work, track the doctor's activity and coach the employee.

Employers must have a plan and communicate it to supervisors, said Tom Lynch, chief executive of consultant Lynch Ryan in Wellesley, Mass. Supervisors also must be trained to "treat the employee as if he or she is still valued," he said.

A list of modified-duty jobs can be drafted by asking supervisors to list projects they would like to have done but don't have time to complete, Mr. Lynch said. Tailor the list to accommodate different injuries. Have health care providers review it. Then monitor how well-suited the job is to the injury and the employee's performance, he said.

Doctors must specify to employers an injured worker's capability for light-duty or modified-duty work, said Kim Haugaard, vp medical units at Texas Mutual Insurance Co. in Austin. "Don't let the employee sit home and focus on what's causing them pain," Mr. Haugaard said. "Show an interest in the employee. That really goes a long way."

"An employer should be very clear about their return-to-work program with their insurer or third-party administrator and also with the health care providers," said Ms. Christman. Her team often meets with health care providers to explain job modifications and build trust so doctors are not afraid to allow an employee to return to a modified-duty job.

Long-term usage

The most alarming problem that employers face is the long-term use of narcotics to treat an employee's chronic pain.

Insurers are monitoring opiate prescriptions, watching for those that exceed 60 days and using peer-to-peer medical review to combat this problem.

"Sometimes when a doctor sees a patient's drugs listed line item by line item, it's a little shocking," said Texas Mutual's Mr. Haugaard. "The doctor may not realize that the patient has been on a drug for 1½ years." The insurer will encourage a step-down program to gradually reduce and eliminate an injured worker's opiate prescriptions or pay for a detoxification program, if warranted.

Employers are doing the same. Oklahoma City-based Hobby Lobby Inc. has intensified a front-end monitoring program in conjunction with its TPA to be alert to instances where treatment of a minor soft-tissue injury has escalated to stronger medication at higher doses, said Fay Collier, assistant risk manager. They will discuss treatment approaches with the physician, sometimes bringing a nurse case manager on the team to communicate with the physician and injured worker and oversee treatment.

The craft and hobby retailer also recently began pharmacological reviews of longer-term claims for excessive narcotic use and other signs of ineffective or harmful treatment.

Employers also should, with their insurer's help, establish a benchmark against which to measure performance of their post-injury plans. Mr. Lynch recommends charting loss costs per $100 of payroll for a specific job classification.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DATA snapshot

SAFETY CONSULTANTS

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LARGEST INDEPENDENT SAFETY SPECIALISTS*

*Ranked by 2010 revenues from unbundled safety consulting services***

COMPANY	SAFETY CONSULTING REVENUE	% OF SAFETY CONSULTING
DuPont Sustainable Solutions	$160,000,000	100%
ATC Group Services Inc., dba ATC Associates Inc.	$54,193,048	30%
Behavioral Science Technology Inc.	$50,000,000	83%
Regional Reporting Inc.	$12,000,000	60%
Safety Management Group	$8,526,293	100%
PSRG Inc.	$6,000,000	100%
Risk Consultants Inc.	$5,900,000	97%
FDRsafety L.L.C.	$5,500,000	100%
J.A. Montgomery Risk Control	$3,586,035	100%
MoveSMART/Strategic Safety Associates	3,250,000	100%

**Includes companies not owned by brokers or insurers with a majority of total revenue from safety consulting.*
***Reflects safety consulting revenues provided on a direct, unbundled basis.*

LARGEST SAFETY CONSULTANTS

*Ranked by 2010 revenues from unbundled safety consulting services**

RANK	Company/address	Phone/website	Unbundled safety consulting revenues	Total staff	Total unbundled clients	Principal officer
1	Bureau Veritas 1601 Sawgrass Corporate Parkway, Suite 400, Fort Lauderdale, Fla. 33323	888-357-7020 *www.us.bureauveritas.com*	$465,400,000	3,600	49,000	Robert Donze, COO/executive vp
2	DuPont Sustainable Solutions 4417 Lancaster Pike, Wilmington, Del. 19805	800-532-7233 *www.safety.dupont.com*	$160,000,000	500	300	Jim Weigand, president
3	Marsh Risk Consulting[1] 1166 Ave. of the Americas, New York, N.Y. 10036	866-928-7475 *www.marsh.com,* *www.marshriskconsulting.com*	$93,900,000	375[2]	3,500	John Merkovsky, global practice leader
4	ATC Group Services Inc., dba ATC Associates Inc. 221 Rue de Jean, Suite 200, Lafayette, La. 70508	877-282-4756 *www.atcassociates.com*	$54,193,048	198	5,164	Bobby Toups, president/CEO
5	Liberty Mutual Commercial Markets 175 Berkeley St., Boston, Mass. 02117	617-654-4027 *www.libertymutual.com*	$50,250,000	334	20,000	David Long, president
6	Behavioral Science Technology Inc. 417 Bryant Circle, Ojai, Calif. 93023	800-548-5781 *www.bstsolutions.com*	$50,000,000	175	3,200	Colin Duncan, CEO
7	ESIS Inc. 436 Walnut St., WA10B, Philadelphia, Pa. 19106	215-640-1362 *www.esis.com/hse*	$32,000,000	190	711	David Patterson, president
8	Regional Reporting Inc. 90 John St., New York, N.Y. 10038	212-964-5973 *www.regionalreporting.com*	$12,000,000	250	300	Martin Myers, CEO
9	Overland Surveys, a division of Overland Solutions Inc.[3] 10975 Grandview Drive, Suite 400, Overland Park, Kan. 66210	877-856-8599 *www.olsi.net*	$8,700,000	150	350	Jeffery Haniewich, CEO, Overland Solutions Inc.
10	Safety Management Group 6500 Technology Center Drive, Suite 200, Indianapolis, Ind. 46278	800-435-8850 *www.safetymanagementgroup.com*	$8,526,293	75	175	Kent Burget, president

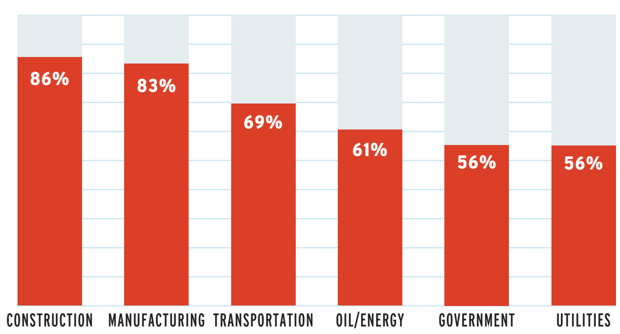
**Reflects safety consulting revenues provided on a direct, unbundled basis. 1 Property and safety consultants. 2 Includes property consultants. 3 Formerly Safety Resources.*

LARGEST SAFETY CONSULTANTS BY AMERICAN SOCIETY OF SAFETY ENGINEERS MEMBERSHIP

COMPANY	MEMBERS
LIBERTY MUTUAL COMMERCIAL MARKETS	300
ZURICH SERVICES CORP.	140
ESIS INC.	118
MARSH RISK CONSULTING	60
BUREAU VERITAS	50

Source: BI Survey. Researched by Karen Tucker

INDUSTRIES SERVED BY SAFETY CONSULTANTS*



**Percentage of safety consultants that serve these industries among companies participating in the survey.*

TRIA: Federal backstop remains key coverage tool

CONTINUED FROM PAGE 1

Street Reform and Consumer Protection Act, the Federal Office of Insurance is responsible for overseeing the terrorism insurance program.

Impact of 9/11

According to the New York-based Insurance Information Institute, the 9/11 attacks represented the largest cumulative claims payout in global insurance history until 2005's Hurricane Katrina. The attacks produced insured losses of about $32.5 billion, or $40 billion in 2010 dollars. The losses were sustained across multiple lines of insurance, including property, business interruption, aviation, workers compensation, life and liability.

$40B

The attacks produced insured losses of about $32.5 billion, or $40 billion in 2010 dollars.

But terrorism insurance per se did not exist. Insurers paid claims on a loss for which they had collected no specific premiums. Because of its nature, terrorism was a risk considered impossible to underwrite, and insurance dried up for areas—such as Manhattan and Washington—deemed likely targets for future attacks. As a result, risk managers, insurers and business groups pushed for some sort of federal terrorism insurance response.

"It was necessary because America was in shock after 9/11," said Robert Gordon, Washington-based senior vp-policy development and research with the Property Casualty Insurers Assn. of America who, as senior counsel to the House Financial Services Committee, drafted the first iteration of TRIA. "There were few terrorism events of any magnitude, and insurers had no idea of what their exposure was," he said.

Mr. Gordon said TRIA was conceived as a one-time program that would allow the insurance market to stabilize. By the time of the first extension, people realized that the program had worked "very well" and that without the backstop, businesses in areas perceived to be at high risk of terrorist attack would not have been able to find affordable terrorism coverage, he said.

"Insurers had so much uncertainty around terrorist risk after 9/11 that the market for coverage either was not existent or unreliable," said Frank Nutter, president of the Reinsurance Assn. of America in Washington. TRIA "seemed to establish a certainty in the market," he said, adding that "it's not as if the industry was providing the coverage and pricing for it; it wasn't an anticipated coverage-and-loss scenario."

"The Sept. 11 attacks were of a nature and scope unlike any other catastrophe in U.S. history, leaving deep concerns about the insurance industry's ability to provide terrorism coverage," said Jimi Grande, senior vp in the Washington office of the National Assn. of Mutual Insurance Cos. "TRIA improved take-up rates, affordability and, frankly, created an opportunity for terrorism coverage to exist in a meaningful way."

AP PHOTO

The Sept. 11, 2001, attacks on New York and Washington produced losses across multiple lines of coverage. As a result of the attacks, insurers, risk managers and business groups successfully lobbied for the creation of a federal terrorism insurance backstop. The program, which was extended twice, is due to expire in 2014.

For example, a Marsh Inc. survey found that the take up for terrorism insurance among commercial policyholders nearly doubled in 2004 to 49% from 27% in 2003, the first full year the backstop was in place. A study by the President's Working Group on Financial Markets released early this year said that the take-up rate has remained at about 60% since 2006.

"This public-private partnership has been successful in effectively managing insurers' exposure to acts of terror and has provided some market certainty by establishing statutory caps for insured terrorism losses that apply to both the insurance industry and federal government," said a spokesman for the American Insurance Assn. in Washington.

Risk managers understandably continue to be among the program's staunchest supporters.

"Looking back, TRIA is arguably one of the most important pieces of legislation to come out of Washington for the risk management community as a whole," said Bradley R. Wood, senior vp-risk management for Marriott International Inc. in Bethesda, Md.

"Shortly after 9/11, risk managers were faced with little or no terrorism insurance options," said Mr. Wood, who was active in the effort to establish the backstop. "As soon as TRIA became law, coverage immediately became available and premiums have been gradually declining ever since. This was an immediate success story for risk managers."

"TRIA is very important to many of our members who feel the risk for terrorism can be managed no other way than through outside financing and the availability of that financing continues to be extremely limited," said John Phelps, board liaison to the external affairs committee of the New York-based Risk & Insurance Management Society Inc. and director-business risk solutions at Blue Cross and Blue Shield of Florida Inc. in Jacksonville.

"Even today, there's no indication the reinsurance market is picking up the slack," said Marriott's Mr. Wood. "Until terrorism is eliminated, there will likely to a need for a continued federal role."

Renewal optimism

Advocates of a continued federal role feel that while there may be some resistance to renewing the program yet again in 2014, the program ultimately will be extended.

"There has been significant philosophical tension since the beginning of this debate about the appropriate scope of federal backstop," said Joel Wood, senior vp at the Council of Insurance Agents & Brokers in Washington.

"Nobody should be cocky about it, but I feel reasonably optimistic that as long as the terror threat remains, the backstop will be there to assure policyholders they will be made whole," he said.

"It is counterintuitive for us to seek federal backstop, and it's never the ideal," he said. "But the appetite and capacity to deal with a 9/11 event or beyond simply doesn't exist in the private market."

RAA's Mr. Nutter noted that "politics seem to favor retaining it, because it works well."

"It's a program that's cost the taxpayers very little considering the economic activity it's enabled," said PCI's Mr. Gordon.

"The program has helped the market, thankfully hasn't cost the U.S. government any money, and there will be those who will seek to scale it back when it expires in 2014," said NAMIC's Mr. Grande. "However, the terror risk that America faces has not diminished since 2001."

Perspectives

The events of Sept. 11, 2001, changed the way the United States viewed the security of its borders and its approach to terrorism. The insurance industry, which lost many of its own in the destruction of the twin towers in New York City that day, also changed. Without a federal backstop in place, insurance rates would have been out of reach for many businesses with terrorism exposures. Jack Seaquist, vp at AIR Worldwide, oversees the Boston-based catastrophe modeling firm's terrorism risk model and offers his thoughts on stabilizing an ever-evolving threat.

Trying to quantify terror risks

By Jack Seaquist

Since the tragic events of Sept. 11, 2001, anti-terrorism efforts by local, state and national agencies have combined with evolving political situations overseas, making the terrorism threat in the United States highly dynamic.

Groups that pose the threat, the types of weapons used, and the targets and locations of potential attacks change over time as new methods are developed and new situations arise.

Al-Qaida's core group has suffered from pressure on its leadership, highlighted by the May elimination of Osama bin Laden and other top leaders. This has degraded their capabilities to plan and conduct operations against Western countries. Their role has been reduced to inspirational leadership, significantly reducing the likelihood of a large-scale, coordinated attack in the United States. However, the group continues to draw up plans for operations on U.S. soil.

While counterterrorism actions have crippled al-Qaida's efforts to coordinate a sophisticated chemical, biological, radiological or nuclear attack, the U.S. intelligence community suspects that the group still is looking to acquire this capability. In the wake of the 1995 sarin attack on the Tokyo subway and the 2001 anthrax attacks in the United States, the potential for CBRN weapons to cause widespread casualties and contaminate infrastructure over a large area remains a threat.

Meanwhile, al-Qaida affiliates have eclipsed the core command as the most imminent threat. In Yemen, al-Qaida in the Arabian Peninsula has inspired and/or organized attacks against the U.S. in recent years. These include the November 2009 Fort Hood shooting, the Christmas Day 2009 airline bombing attempt and the October 2010 printer cartridge bomb in a cargo airplane. Although not al-Qaida in the Arabian Peninsula, the 2004 bombing of Madrid's subway system as well as the 2005 bombing of London's public transport system were also linked to al-Qaida.

AQAP now is heavily targeted by U.S. forces, but the group continues to call for domestic terrorist aspirants to conduct attacks in their home country using techniques espoused on the Internet. They discourage these potential terrorists from traveling to obtain training and weapons, and instead encourage the use of simpler weapons. From a catastrophe loss perspective, this reduces the resulting threat to events of lower intensity.

Recent political upheaval known as the "Arab spring" uprisings in countries such as Tunisia, Egypt, Libya, Yemen, Bahrain, Saudi Arabia and Syria have the potential for both positive and negative effects on the terrorist threat in the U.S. In the near term, these situations are more likely to cause increased civil unrest in those nations rather than a more formidable front of terrorist activity. At the same time, a vacuum of leadership could allow terrorist groups to establish new bases and attract new recruits.

Perhaps of greatest concern is the impact of the highly symbolic death of Mr. bin Laden, which has disrupted al-Qaida's core group. Jihadists have vowed vengeance and most experts agree that they aspire to a large-scale attack.

In anticipation of this, the U.S. government has enhanced its intelligence efforts. Nevertheless, the possibility of an increase in attacks, particularly by lone terrorists, remains a real concern.

Industry impact

The impact of Sept. 11, 2001, on the insurance industry was immediate. Once covered in most standard all-risk commercial policies, reinsurers either refused to renew terrorism coverage or began charging exorbitant rates. Unable to purchase reinsurance or to otherwise raise sufficient capital, insurers adopted new policy forms with terrorism exclusions. For a time, terrorism coverage was virtually nonexistent.

The U.S. government responded by passing the Terrorism Risk Insurance Act in November 2002, in part to help stabilize the market. TRIA, along with its renewals in 2005 and 2007, established the Terrorism Risk Insurance Program. For most commercial lines, the program provides government-furnished reinsurance for direct terrorism losses above the insurance company's deductible, subject to a copayment by the insurer.

Mr. Seaquist

The Terrorism Risk Insurance Program Reauthorization Act, which was passed in late 2007, extended the federal terrorism insurance program for seven years through 2014. This gave insurers the sense of stability needed for a viable market. Coverage of conventional terrorism has been made available at prices sufficiently reasonable for takeup rates to have grown and stabilized, particularly in areas perceived to be at high risk.

However, coverage for CBRN attacks has remained scant because insurers are unwilling to offer it—at least at prices policyholders can afford—given the potential magnitude of the losses. By AIR Worldwide estimate, a single CBRN event in New York could exceed $750 billion in insured losses, which would surpass the combined surplus of the U.S. property/casualty industry.

In the months following the attacks of 2001, considerable discussion took place on how best to prepare for and mitigate future losses from terrorist attacks. What were the chances of another attack? How frequently might such attacks occur, and how severe could they be in terms of insured loss?

Insurance markets function well when losses are relatively frequent, relatively small, uncorrelated and random. Catastrophe losses meet few of these criteria: they are large, infrequent and highly correlated. With respect to natural disasters, catastrophe modelers have in large degree overcome the obstacles to estimating future losses. Estimating losses from terrorist attacks, however, presents a much greater challenge.

Historical data on terrorist attacks is much more limited and may not be representative of the current threat. Even more importantly, while scientists and engineers can achieve mastery over the physical science underlying natural catastrophes and their impact on the built environment, terrorist activity resists scientific quantification. In addition, while natural catastrophe risk remains relatively stationary over time, terrorist threat is highly dynamic.

One year after the attacks of Sept. 11, 2001, and at the request of its clients, AIR released the first commercially available catastrophe loss estimation model for terrorism. The model estimates the likelihood of future terrorist attacks and their impact in insured property and workers compensation losses.

Where natural catastrophe models are constructed based on decades of historical data, AIR's terrorism model incorporates the judgment of a team of experts—a "red team"—familiar both with the available historical data and current trends. The red team is comprised of counterterrorism specialists who have decades of experience in government organizations such as the FBI, CIA, Department of Defense and the Department of Energy. With input from the team, AIR has developed a comprehensive database of potential targets, or landmarks, across the United States, which include many of the same buildings found in the Department of Homeland Security database and a subset of "trophy targets" that carry a higher probability of attack.

In an analysis of 32 terrorism cases against the U.S. homeland since Sept. 11, 2001, approximately 60% of the cases involved explosives and another 30% involved small arms. Of all target types, government and transportation were the most prevalent. Over the past 10 years, the relative frequencies of different weapons usage, target types and locations as determined by AIR's red team have been in good agreement with actual experience, validating the model's methodology. Fortunately, many of the actual plots were thwarted.

The future of the federal backstop for terrorism coverage is set to expire in 2014 as the administration considers limiting its exposure as part of deficit-reduction efforts. While the current appetite for terrorism coverage is healthy, many insurers have begun to make longer-term plans for terrorism risk management in the absence of the TRIP.

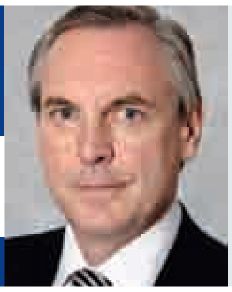
Sophisticated modeling tools will continue to play an increasingly important role in helping companies evaluate and manage their terrorism risk by enabling better risk selection and risk transfer decisions.

Jack Seaquist is an assistant vp at AIR Worldwide overseeing the Boston-based catastrophe modeling firm's terrorism risk model. He can be reached at jseaquist@air-worldwide.com.

PERSPECTIVES ONLINE

Read Vincent J. Vitkowsky's Perspectives on insurers' role in the war on terror.

www.businessinsurance.com



In the past 10 years, there have been some 40 unsuccessful terrorist plots against the U.S. The insurance industry has a vital role to play in preventing future attacks, says Vincent J. Vitkowsky, a partner at the law firm of Edwards Angell Palmer & Dodge L.L.P. Insurers should comply with economic sanctions programs and anti-money-laundering requirements, and consider supporting civil litigation against terrorist sponsors. Also, because cyber risks are among the most serious threats in the post 9/11 matrix, insurers need to evaluate their network security systems and have breach response plans in place, he says.

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We Remember and Honor

They were adored children, parents, husbands, wives and partners. They were sisters, brothers, cherished relatives and friends. They were our colleagues, and they remain forever in our hearts.

Legal legacy of attacks lingers after full decade

Wrongful death suit, property loss disputes still in the courts

By MATT DUNNING

Ten years after the attacks that felled the World Trade Center in New York and left a pair of scorched craters in the Pentagon and in rural Pennsylvania, legal fights over liability, business interruption and property damage continue.

Perhaps the most high profile of the open civil cases stemming from the events of Sept. 11, 2001, is that of the relatives of Mark Bavis, who was aboard United Flight 175 when it slammed into the South Tower of the World Trade Center. The Bavis family's 2002 lawsuit against United Airlines Corp. and Huntleigh USA Corp., the company United employed to run its security gates on the morning of the attacks, accuses the companies of gross dereliction of duty, as 14 of the 19 hijackers responsible for the attacks passed through United-controlled checkpoints.

"They didn't just fail a little; it was a wholesale failure," said Don Migliori, a Providence, R.I.-based attorney for Motley Rice L.L.C., which is representing the Bavis family. "Not one hijacker was deterred, nor one weapon confiscated. They did nothing that they were obligated to do under federal law."

Mr. Migliori said the case is scheduled to begin trial Nov. 7.

After Sept. 11, thousands of victims and their families entered the federally backed September 11th Victim Compensation Fund, which paid out more than $7 billion but carried with it a waiver of litigation rights against transportation agencies, the airlines and their subcontractors.

A small percentage of families refused the funds, electing instead to seek wrongful death damages against United and American Airlines, along with a slew of other companies and transportation authorities. But only the Bavis family's claim will be put to a jury, as the rest since have settled out of court. The family repeatedly has refused settlement offers from United, insisting that the airline be held accountable for its alleged security failures.

"They've put a very high premium on United taking more responsibility for what happened that day, beyond just writing a check," Mr. Migliori said, adding that the family also hopes to expose the specific security and planning weaknesses—heretofore barred from public release—they believe contributed to 9/11 as a teachable experience for aviation and safety administrators.

"They want folks to learn from the failures of that day," he said. "If they simply took compensation and walked away, all of this information gathered will just disappear."

Almost all of the remaining civil cases resulting from the events of Sept. 11 stem from claims of business interruption and/or lost property.

In June of this year, Consolidated Edison Co. of New York Inc. and its insurers—including East Rutherford, N.J.-based Aegis Insurance Services Inc.—were given permission to proceed with a suit against the Port Authority of New York and New Jersey alleging negligence in the collapse of 7 World Trade Center, the third and final tower to fall on 9/11. A three-judge panel of the 2nd U.S. Circuit Court of Appeals overturned part of a federal judge's 2009 ruling that had shielded the Port Authority from Con Edison's allegations of negligence in the design and construction of the tower and of diesel fuel tanks installed later by the building's tenants for their emergency generators.

A Con Edison substation was located beneath Port Authority-owned 7 WTC tower, a 47-floor structure that also was destroyed as a result of the attack on the two main WTC towers. The third tower collapsed late in the afternoon on Sept. 11, 2001, after burning for several hours, crushing the substation.

"Con Edison's negligence claim arises at least from the Port Authority's independent duty, as owner of the leased premises, to exercise reasonable care to avoid damage to persons or property thereon," the appeals court panel ruled.

Cantor Fitzgerald & Co., the securities trader that lost its headquarters when American Flight 11 crashed into the North Tower of the former Trade Center, is pursuing its 2004 claim against the airline and the plane's manufacturer, Chicago-based The Boeing Co., for lost property and business interruption. Cantor Fitzgerald lost 658 of its 960 New York employees in the attack, but was told in January that it could not include those deaths in its calculation of its monetary losses.

Similarly, after settling a years-long battle with his insurers over payouts from the loss of the World Trade Center complex, developer Larry Silverstein filed his own $12.3 billion suit against American and United Airlines and their security companies—as well as the agencies that run the airports in Boston, Newark, N.J., and Portland, Maine, and several partner companies to the airlines—seeking damages stemming from negligence and a failure to properly conduct security checks.

A spokesman for Mr. Silverstein's World Trade Center Properties L.L.C. said the firm's case against the airlines likely would be held until after the conclusion of the Bavis trial.

AP PHOTO

Relatives of a 9/11 victim allege that airport security failures were a factor in the attacks. Their lawsuit is one of several still pending.

LAWSUITS PENDING AFTER 10 YEARS

Allegations include security and planning weaknesses, negligence

PARTIES	LIABILITY TYPE	YEAR FILED
Mary Bavis vs. United Airlines Corp., Huntleigh USA Corp. et al.	Wrongful death	2002
Cantor Fitzgerald & Co. vs. American Airlines Inc., The Boeing Co. et al.	Property loss, business interruption	2004
Cantor Fitzgerald & Co. vs. Osama Bin Laden, al Qaeda, International Islamic Relief Organization et al.	Property loss, business interruption	2004
World Trade Center Properties L.L.C. vs. American Airlines Inc., United Airlines Corp. et al.	Property loss, business interruption	2008
Consolidated Edison of New York Inc., Aegis Insurance Services Inc. vs. Port Authority of New York and New Jersey	Property loss, business interruption	2009
St. Nicholas Greek Orthodox Church, Greek Archdiocese of America vs. Port Authority of New York and New Jersey	Property loss, business interruption	2011

LETTERS

CONTINUED FROM PAGE 8

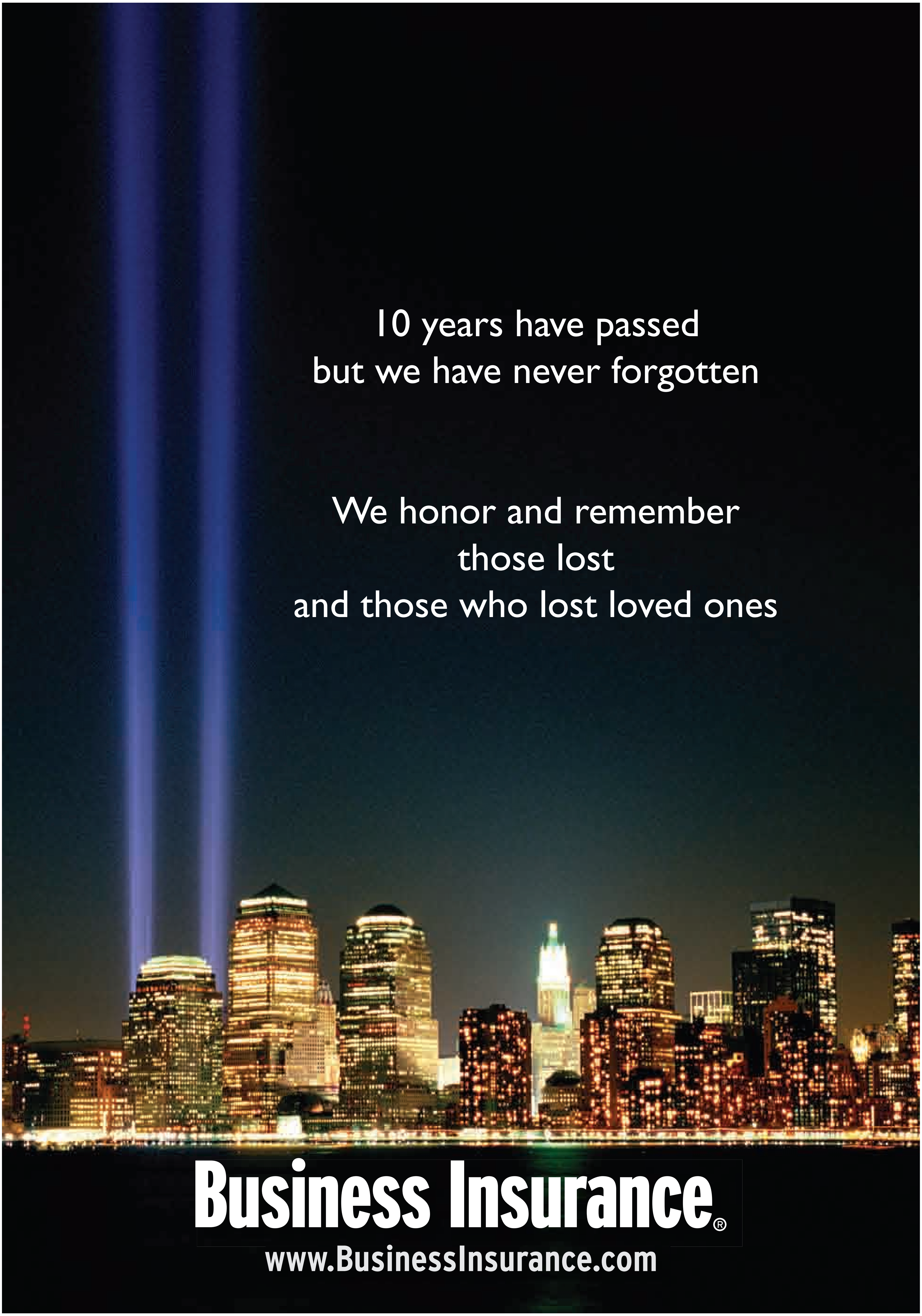
linked not only as victims of 9/11, but by another important fact: They were part of the New York insurance community, and would no doubt still be slugging it out today.

It boggles the mind that 10 years have passed since 9/11. And it takes getting used to that many current colleagues, whether brokers, wholesalers, underwriters or others, had not even started working then. Yet it's always there, simmering below the surface. If four insurance vets are having lunch, and for some reason someone brings up a former colleague or anything else about that day, then the dam is broken and the memories and details flow. They talk about where they were, the sights they saw, even the weather that day (a gorgeous September morning), if only for a few minutes, to be silenced again by the time they get to the coat check.

The insurance business has certainly changed since 9/11. The largest brokers were forced to change their business models, the largest insurers became leaner, and consolidation has dominated while at the same time more insurers emerged. There also have been more subtle changes in New York—firms have downsized, and carriers have eliminated many traditional events, including the Casualty & Surety dinner, which has not been held since 9/11. And, some might say, emails (and BlackBerrys) are used more often than many older brokers and underwriters, who prefer a personal conversation, would like to see.

However, as we reach the 10th anniversary of 9/11, I think it's important to realize that despite everything, we endure. Our insurance brokerage community lost more than any other industry in New York, so it's important to remember the victims, every one of them, as 10 years later we pass the site of the new (and old) World Trade Center on the way to the office every day. We need to recognize that we endure as we toast the memories of our former colleagues.

Robert C. Meder
Vp
Willis of New York Inc.
New York


10 years have passed
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AP PHOTO

The steel skeleton of a collapsed World Trade Center tower rises behind a destroyed New York subway station one day after the Sept. 11, 2001, terrorist attacks. Hundreds of insurance professionals were killed in the attacks.

9/11: Day of terror lives in memory as executives reflect on fateful morning

CONTINUED FROM PAGE 1

But the "true measure of the guy" is that he stayed behind to search the floor, Mr. Russo said. "That tells you everything you need to know right there."

Warren Mula was in his 105th floor office in the south tower that morning. Working as a managing principal at Aon Risk Services Inc., he arrived at work around 5:30 a.m. but left for an appointment two hours later. At an elevator bank, he met co-workers that he would never see again, as 176 employees of Aon were killed that day.

Mr. Mula learned in a call from his wife after his appointment that the WTC's north tower had been struck. "An accident," he thought.

Because of police blockades, he could not return to his office. Frustratingly, he had little information. "There were no smartphones then," said Mr. Mula, who now is the New York-based CEO of Aon Risk Solutions' broking business.

Then he saw the passenger jet hit the south tower. "It immediately kicked in that this was a full-fledged attack," he said. "You're numb" at that point, but still "you're mind is working 100 mph," said the executive who oversaw hundreds of employees.

Unaware of the extent of the damage to the south tower, he was confident his team would escape, and he felt certain they had when the 1,362-foot-tall structure succumbed less than an hour after it was hit.

Having exited the north tower as its twin was failing, Mr. Russo—caked in ash and glass shards—was running toward Mr. Mula's location; neither knew it.

Dusted with ash himself later on, rattled by thundering fighter jets overhead and chagrined that public transportation had shut down, Mr. Mula thought, "My God, this is a war zone."

"Everything was so out of whack," he said.

That was exemplified by his train ride home after hitching a ride across the Hudson River to New Jersey aboard a 12-seat powerboat.

He got off the boat and then scrambled over a commuter railway retaining wall running parallel to the New Jersey shoreline. Police stopped and questioned him, but they eventually allowed him to board a train—after hosing him down to decontaminate him.

"I was walking on the train in my suit, dripping wet, and no one looked at me twice," Mr. Mula said. That day, nothing seemed extraordinary because everything was, he said.

Patrick G. Ryan, then chairman and CEO of Aon, was asleep aboard a private jet flying him home from an overseas conference when a flight attendant woke him with news of the first crash and their own diversion to Newfoundland. They'd be landing shortly.

After another passenger jet hit the second tower, Mr. Ryan—by then checked in at a small motel—and Aon went into crisis mode. Aon immediately established a communications center in the Chicago area to look for missing employees, keep their families informed and update Aon employees worldwide.

During those first hours and days, when Aon couldn't locate 500 employees, "I think you're in shock," Mr. Ryan said about himself.

But with 50,000 employees looking to follow his lead, he could think only of acting efficiently but sensitively. "It was not a time to weep. You weep later. It was not a time to emote. You emote later," said Mr. Ryan, who is now chairman and CEO of Ryan Specialty Group L.L.C. in Chicago.

Marsh & McLennan Cos. Inc. lost even more employees than Aon—294, all in its north tower satellite office. Plus, at least 40 independent contractors who worked for Marsh perished, said Jack T. Sinnott, then chairman and CEO of Marsh Inc.

Mr. Sinnott was sitting in a plane on the tarmac at John F. Kennedy International Airport in New York when a flight attendant announced the north tower had been hit and his flight would be delayed. About 15 minutes later, news of the second crash spread through the cabin, and smoke from ground zero was visible to the passengers.

Mr. Sinnott told his wife that even if their flight could leave, he wouldn't.

The plane returned to the gate within the hour, but the frustrated Mr. Sinnott couldn't get out of the airport until late afternoon. Then he couldn't enter the city. And he never could reach Marsh's main office by phone.

He did get to his office the next day and worked with other staff and officials to create a crisis center.

After a day or two, Marsh—which still couldn't account for 600 employees—moved its family center to a hotel, where Mr. Sinnott met twice daily with families to update them and answer any questions he could.

He also gently but firmly dispelled their unrealistic or irrational conjectures. One was the notion that authorities had placed burn victims on a train bound for Montreal, where they'd be treated.

Mr. Sinnott has since retired and now is a senior adviser to private equity fund manager Stone Point Capital L.L.C.

Radio shock jock Howard Stern was doubting a caller's account of the pandemonium in New York, recalled risk manager Shari Natovitz, who was listening to the show in her car because her favorite sports talk show was having a "slow day."

Ms. Natovitz, now vp-risk management for the World Trade Center at Silverstein Properties Inc. in New York, then was building the construction practice at USI Insurance Services L.L.C.

She was creeping along in heavy traffic on a Virginia freeway en route to her office in Alexandria. Then traffic stopped. She was directly east of the Pentagon.

Several minutes later, there was a concussion. She turned and saw smoke rising from the Pentagon, the last target terrorists reached that morning.

Some vehicles pulled off the road, and traffic began moving. Immediately after reaching her office, Ms. Natovitz—who didn't own a cell phone then—began calling Marsh, which she had left 10 months earlier. She was extremely concerned about the whereabouts of her former construction group, which usually met in the WTC every September around that date.

She eventually reached someone who could confirm only the group was scheduled to meet there on a high floor in the north tower. She learned later that they didn't survive.

Ms. Natovitz and her USI colleagues then concluded that Alexandria, so close to the Capitol, might be unsafe and decided to go home. Her drive to Maryland on highways that by then had been deserted—except for police and military units blocking exits into Washington—was "eerie," she said.

All five executives said they learned something about themselves after their experiences. Some even changed something in their lives.

For Mr. Sinnott, the hundreds of colleagues at Marsh who died that day are remembered as family. But now that's how he also thinks of the "institution of Marsh."

Mr. Russo said he's "a lot calmer" now.

"You learn what's important and what's not," he said. "When you go through something like that, it gives you more empathy or perspective on the way things are."

Mr. Mula said an "incredibly sad" lesson for him was learning how well a toddler can grasp the concept of death. His daughter, then 3, taught him that when she greeted him as he walked in his door in his damp suit 10 years ago. "Daddy, I'm glad you're alive," she told him.

"You don't want to hear your 3-year-old say that," he said.

Mr. Ryan revealed that before the terrorist attacks, he had never cared much for hugging anyone other than his wife and children. It wasn't in his nature, he said.

But when meeting families of Aon employees who died in the attacks, so many wanted hugs, he said. He said he quickly came to understand and appreciate that they needed that human touch, because it is a vital part of the grieving and healing process.

Ms. Natovitz made a couple of changes.

While Silverstein did not select USI as its broker for the WTC rebuilding project, the company asked her to be the risk manager for it. As a tribute to her former Marsh colleagues, she quickly accepted.

She also purchased her first cell phone. Now, whenever she travels by air, she calls her husband and tells him she loves him before turning off the phone. "I think that's probably the most important change."

Ms. Natovitz paused a moment to collect herself.

Then, in a lighter tone, she said: "And when I see Pat Ryan, I'm going to ask for a hug."

'You learn what's important and what's not. When you go through something like that, it gives you more empathy or perspective on the way things are.'

Joseph Russo, Aon Hamond & Regine

ADVERTISER INDEX

Issue of September 12

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Business Insurance

'Wilprop' case changes the industry

WTC occurrence dispute teaches some tough lessons

By RODD ZOLKOS

The consequences of the Sept. 11, 2001, attack on New York's World Trade Center are many, but a significant legacy for the risk management and insurance world is the ongoing contentiousness and litigation surrounding the structures' property coverage.

Years of courtroom wrangling over applicable forms and definition of terms have led to an increased commitment to timely delivery of policies and contract certainty.

The property policy crafted by Willis Group Holdings for Silverstein Properties Inc. when Silverstein leased the twin towers and two other World Trade Center buildings from the Port Authority of New York and New Jersey in summer 2001 was massive. Assembling the capacity for the $3.55 billion program involved a complex array of layers and insurers.

In large part as a result of that complexity, and fueling the subsequent coverage disputes, was the fact that final policy wording on much of the program still was unfinished when the terrorists attacked months later.

"The reason the policies weren't issued was because…it was a very complicated process to get all this insurance," said Thomas McKay III, a partner with law firm Cozen O'Connor in Cherry Hill, N.J.,

"It certainly created a situation where there was ambiguity at the time of contract binding," said Aaron Davis, managing director in the national property practice at Aon Corp. unit Aon Risk Solutions in New York.

Following the attack, leaseholder Larry A. Silverstein argued that the twin towers' destruction constituted two separate occurrences, requiring the insurers on the property program to pay the $3.55 billion limit twice.

Mr. McKay represented Chubb Corp. in the so-called "Silverstein Phase I" trial to determine the form on which insurers bound their portion of the WTC coverage. Chubb, along with eight other insurers, were found to have bound under a form Willis had crafted that came to be known as "Wilprop," which established the Sept. 11, 2001, attack as a single occurrence.

"The biggest difference between the Wilprop form and all the other potential forms was that the Wilprop form had a very broad definition of the word 'occurrence,'" Mr. McKay said. Silverstein's property package had a fairly high deductible, he said. When Willis devised the form, it tweaked a stock form to broaden the definition of occurrence to include a series of events.

"They did that with the '93 (World Trade Center) bombing in mind," Mr. McKay said. "They didn't want to have multiple deductibles."

Meanwhile, other forms' definitions of occurrence were sufficiently vague enough to allow the event to be deemed multiple occurrences, a position taken by a jury regarding a separate group of insurers.

Ultimately, following various payments and settlements, insurers on the property program paid Silverstein approximately $4.55 billion.

Since the attack, timely delivery of insurance policies and achieving certainty about the contract terms have become high priorities for insurance buyers and their brokers. Insurers also recognize the importance of eliminating the sort of ambiguity that existed in the WTC case, many industry participants say.

"I think everyone is much more aware that they have to have proper policy documentation in place prior to policy renewal and review that documentation for completeness and accuracy," said Janice Ochenkowski, managing director at real estate services and investment management firm Jones Lang LaSalle Inc. in Chicago and chair of the international committee of the Risk & Insurance Management Society Inc. "They certainly all have a stake in it."

$7.1B

Larry A. Silverstein argued that the twin towers' destruction constituted two separate occurrences, requiring the insurers on the property program to pay the $3.55 billion limit twice.

"Certainly, the lessons that have flowed from the World Trade Center litigation have been fully adopted and ingrained from a policy placement perspective," said Aon's Mr. Davis. "The intent is to have contract certainty at the time of binding."

"The market has definitely evolved since the events of 2001," said Mike Nardiello, U.S. property placement leader at Marsh Inc. in New York. Contract delivery has become a central element of the binding process, he said, adding, "The form is the product."

Mr. Nardiello said depending on the complexity of the form, there still are accounts where binding occurs without the actual form in hand, "but the form is agreed to."

"Before 9/11 it was a looser environment when it came to delivery of policies," said David Finnis, North American property practice leader at Willis North America in Atlanta. "And following that event, even if you didn't have the agreed issued policy in your hands at time of binding, you had the full policy nailed down and finalized in e-mail form."

Mr. McKay noted contract certainty expectations for property/casualty policies and reinsurance contracts put forward in 2008 by then-New York Insurance Superintendent Eric R. Dinallo. "That doesn't apply outside of the state of New York, but the New York insurance commissioner is a leading commissioner in the country," he said.

"The London market made some significant changes as well…in an effort to get policies issued much quicker than they were," Mr. McKay said.

"London, which was notoriously slow in issuing forms, they've moved to contract certainty in a big way," Mr. Nardiello said.

A different view

A policyholder attorney had a different view of progress toward contract certainty and timely policy delivery.

Finley T. Harckham, partner at Anderson Kill & Olick P.C. in New York, recalled a property loss and business interruption case he was involved in for a client that operated retail stores in the World Trade Center. The insurer, he said, sought to calculate his client's business interruption loss based on business activity if its stores had survived the Sept. 11 attack and remained in business at the site "with all the smoldering rubble around it."

"Ultimately the court ruled in our favor," Mr. Harckham said. "They said you can't calculate it that way. You have to assume there were no attacks."

"This is an issue that I think is going to recur," he said. "You ask if there's greater contract certainty, and my answer would be no." Policies, he said, still "tend to be silent" on that issue of calculating lost business income after a catastrophe.

Timely delivery of insurance policies also is "still very much a problem," Mr. Harckham said. "From our experience, there has been no improvement in getting policies issued in a more timely manner. And the problem that occurred with the World Trade Center is recurring all the time."

Mr. Davis noted that while major catastrophe losses may still lead to litigation, "the majority of litigation that we have seen, at least on an anecdotal basis, what is at issue is not the actual contract wording; it's the interpretation of the meaning of that contract wording."

His group frequently deals with complex placements. The key there is achieving consistency across the contract, he said. "The focus is really on having terms and conditions that are agreed to across the board, by layer."

"Obviously what you want to do is avoid surprises" by making sure the insurer, broker and insured are all aware and in agreement with "the four corners of the contract," Mr. Davis said.

That can take time, said Mr. Nardiello.

"It starts with the prerenewal process and getting the submission into market with a good amount of lead time," he said. But insurers know that achieving contract certainty is in their best interests as well. "Nobody wants to get taken to court," he said.

News In Brief

CONTINUED FROM PAGE 1

council said that the largest fire took place in Bastrop County, where nearly 500 homes were destroyed. A fire near Gladewater destroyed about 20 homes, while another west of Austin destroyed dozens of residences.

Talas leaves up to $600M in insured losses in Japan

Insured losses in Japan from Tropical Storm Talas could reach up to $600 million, AIR Worldwide said. The catastrophe modeler said that although the storm, which made landfall Sept. 3, was weak when it came ashore, it was an "unusually large" storm.

Texas leads states in heavy equipment thefts

Texas led the nation in heavy equipment thefts last year, with loaders being the most frequently stolen piece of machinery, the National Insurance Crime Bureau said in a report. There were 6,474 nonmower heavy equipment thefts nationwide last year, and just 28% of the machinery was recovered, the Des Plaines, Ill.-based NICB said in the report. Texas recorded 1,023 thefts, the most of any state. Rounding out the top five states with the most thefts were California with 550, Florida with 525, North Carolina with 307 and Georgia with 276.

Property/casualty rates down in August: Survey

U.S. property/casualty insurance rates declined an average of 2% in August compared with a year earlier, MarketScout reported. But the electronic insurance exchange reported that rates for several lines—including commercial property—were flat, while rates for one line of coverage—surety—increased 1%. Umbrella/excess coverage reported the largest decrease, dropping 3% from a year earlier. Small accounts experienced average increases of 2%, while the largest accounts enjoyed average decreases of 4%, MarketScout said. August's 2% year-over-year decrease was identical to that registered in July.

D&O: Securities suit won't roil market

CONTINUED FROM PAGE 4

Fannie Mae and Freddie Mac purchased more than $33 billion in residential mortgage-backed securities from New York-based JPMorgan and its affiliates, according to the FHFA lawsuit filed against it in federal court in New York. "All these amounts are recoverable. That's what good lawsuits are made of," he said.

Based on the claims being made by the FHFA, these cases are going to be "very difficult" for the financial institutions and their directors and officers to defend, said Perry S. Granof, of counsel at law firm Williams Kastner in Chicago.

Thomas O. Gorman, a partner at Dorsey & Whitney L.L.P. in Washington, said, "In time, with complex cases like this, they tend to settle out, but that's not until the issues get more refined than they are at this point."

Defendants "can't afford all these fines and penalties and litigation, and they're going to be looking for deep pockets," said Peter Taffae, a D&O liability insurance expert at Los Angeles-based wholesale brokerage Executive Perils Inc.

But coverage may not necessarily be available, say observers. "These claims could be said to relate back to prior claims, under prior years, where the policies have generally been exhausted, or they could be later-year policies, where capacity was limited," said Richard J. Bortnick, a member of Cozen O'Connor in West Conshohocken, Pa.

The litigation will not significantly impact the D&O market for financial institutions, observers say. "The marketplace for financial institutions, particularly large money center institutions, has been under pressure for a long time, to the point where it's so strained, I don't think this could make it worse," said Mr. LaCroix.

Experts also generally say it will not affect the larger D&O market. "I don't see this significantly altering the whole (D&O) market," said Mr. Gorman, noting the financial institutions market is only a small portion of the total market.

UP CLOSE Comings & Goings

TRACY APPERSON

CURRENT POSITION: Overland Park, Kan.-based producer with Signature Select L.L.C., an IMA Financial Group Inc. company.

PREVIOUS POSITION: Overland Park, Kan.-based territory manager with Meadowbrook Insurance Group.

LOOKING FORWARD TO: Working with great people, (the) vision of where Signature Select is going, and how we will be helping businesses along the way.

GOALS FOR NEW POSITION: To continue to build lasting relationships and help clients manage and find solutions for their risks.

CHALLENGES FACING THE INDUSTRY: Since the recession, companies are taking a closer look at all expenses including the cost of insurance. Insurance policies should be designed to protect the assets of a company and not purchased solely on price.

INDUSTRY OUTLOOK: Cyber liability will be a common coverage, as the exposures have changed with the increase in technology.

BEST THING ABOUT A BAD ECONOMY: Are friends and family since, at the end of the day, they are what is most important.

ADVICE: Embrace who you are and all of your life experiences, whether good, bad or indifferent. They make you who you are today.

DREAM JOB: Jewelry designer.

HOBBIES: Reinventing vintage jewelry and charity work.

MOST PASSIONATE ABOUT: Putting a smile on someone's face.

FAVORITE MEAL: Chocolate.

ON A SATURDAY AFTERNOON: Cleaning my house.

Comings & Goings ONLINE

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

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- Lockton Cos. Inc.

INSURERS
- Hartford Financial Services Group Inc.

AGENTS
- TDECU Insurance Agency L.L.C.

REINSURANCE
- Liberty Mutual Reinsurance

Market Moves

USI expands in Southwest with benefits acquisition

HOUSTON—USI Insurance Services L.L.C. has acquired a Houston-based employee benefits insurance brokerage.

The acquisition of Plumhoff & Associates Inc. aims to strengthen USI's presence in the Southwest region of the United States, the Briarcliff Manor, N.Y.-based insurance brokerage unit of USI Holding Corp. said in a statement.

Plumhoff & Associates was founded in 1985 and specialized in corporate health and welfare benefits, executive benefits and international benefits for upper mid-market businesses, according to the statement. It will take on the USI name, and its employees will join the brokerage, according to a spokesman for USI.

USI said the deal, for which terms were not disclosed, is expected to contribute approximately $6.4 million in annual revenues.

Hanover sets up branch to serve D.C. area

RESTON, Va.—Hanover Insurance Group Inc. has established a branch office in Reston, Va., that serves as the company's health care business headquarters.

The new office expands the insurer's presence in the region, which includes a branch in Richmond, Va., Hanover said in a statement. It offers small commercial, middle market, inland marine, technology and surety coverages and services for the Washington metro area, along with personal lines products and services.

It also serves as the headquarters for Hanover's health care unit, which focuses on coverages for home health care-related businesses such as medical diagnostic equipment and allied health care agencies, the Worcester, Mass.-based insurer said in the statement.

David Williamson, regional vp for Virginia, leads the insurer's commercial lines business in the state from the new location, which employs 35. The office is located at 12100 Reston Executive Center at 12100 Sunset Hills Road, Reston Va., 20190. For more information, contact Mr. Williamson at 703-880-3830 or *dwilliamson@hanover.com*.

Ironshore syndicate to write crime coverage

LONDON—Ironshore Inc. has established a unit within its Lloyd's of London syndicate to underwrite commercial crime coverage.

Ironshore's Pembroke syndicate 4000 launched the commercial crime unit as an expansion of its financial lines operation, the Hamilton, Bermuda-based insurer said in a statement. The commercial crime policy indemnifies for losses resulting from internal and external crime-related threats. Sarah Markham has been named director of the unit and reports to Christopher D. Brown in London.

Match.com: Liability

CONTINUED FROM PAGE 4

involved and start to parse through all the different potential liability scenarios, it's pretty scary," Mr. Shear said.

For its part, Match.com has insisted that conducting the screening is by no means a promise of safety or a database free of sex offenders. In an email, the company said it does not foresee having to expand its restrictions to include other kinds of criminals.

"Match.com continues to stress that while these checks may help in certain instances, it is important that this effort does not provide a false sense of security to our members," the company said in the email. "With millions of members, and thousands of first dates a week, Match.com, like any other large community, cannot guarantee and is not responsible for the actions of its members."

Aside from the potential expansion of its exposure to its members' expectations of security, experts also wondered what effect Match.com's decision to screen for sex offenders would have on competitors.

Mr. Webb said he expects at least some online dating sites will consider implementing their own system of background checks, which he said likely would make online dating sites safer for their members.

Lori Nugent, a partner at Wilson Elser Moskowitz Edelman & Dicker L.L.P. in Chicago, said Match.com might have given itself a perceived competitive advantage over its rivals by offering to screen for sex offenders. However, she said, other companies should carefully evaluate their own services and risk profiles before making any changes.

"Those are business decisions that need to be made based on the type of service that they intend to provide," Ms. Nugent said, adding that clearly spelling out the limitations of the security measures in the company's terms of use contract might provide some shelter from liability.

"Whatever they decide to offer, the best thing for companies in this space is to be transparent about what they do and what they don't do," she said.

Other legal experts disagree, contending that once the duty of protection has been assumed, counting on disclaimers in a terms of use contract to protect a company from liability is at best misguided.

Erik Syverson, a managing partner at Los Angeles-based Miller Barondess L.L.P., said Match.com's decision to offer screening was perplexing from a legal standpoint and likely was made "to counteract whatever they've received as a result of this lawsuit."

"Otherwise, it makes zero sense to me from every single angle," said Mr. Syverson. "You're inviting litigation."

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End Page

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A sausage by any other name

Among the many things that Chicago holds dear are its encased meats.

A popular purveyor of one form of the local delicacy holds its trademark in similar esteem, to the extent that it's going to court to protect the business' name against rivals allegedly looking to confuse diners.

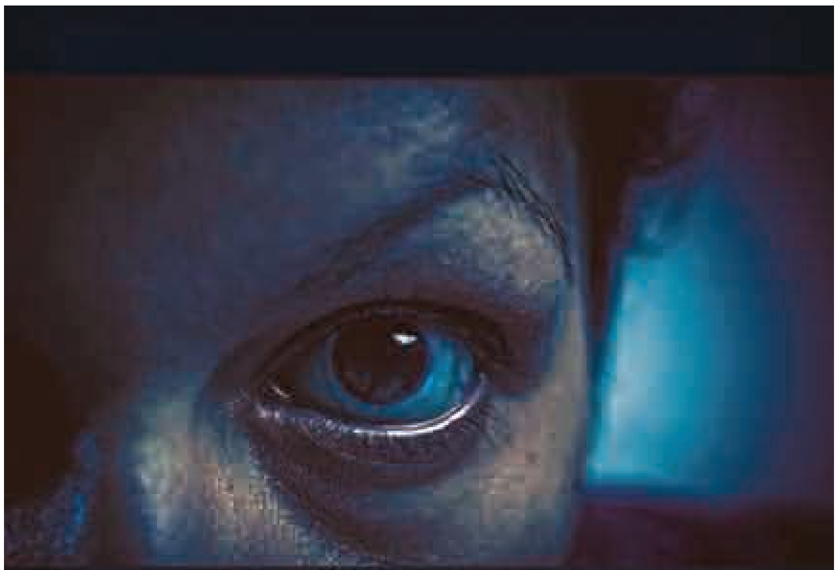
According to reports, Jim's Original Polish, a longtime fixture of Chicago's Maxwell Street Market, sued last month in U.S. District Court in Chicago and alleged that Jim's Original Chicago and Jim's Original of Joliet Inc. have violated its trademark.

The suits reportedly argue that the Jim's Original logo and the slogan "The Original Maxwell Street Polish Sausage Stand" both were copyrighted in Illinois in 2007.

Among other things, the suits contend that the defendants are advertising "Original Maxwell Street Polish" in purveying their encased meat offering.

The suits reportedly demand that the defendants stop using the signs and menu descriptions in question and seek unspecified damages.

However, a co-owner of Jim's Original Chicago reportedly said the case has little merit and that he also received a trademark for his business' name.



Counting the costs of counting sheep

If the bad economy is keeping you up at night, consider this: Insomnia could cost even more.

Lost sleep costs the average U.S. worker about $2,280 in productivity a year, or 11.3 lost workdays, according to a study in the journal Sleep.

An analysis of sleep habits and work performance of 7,428 workers who participated in Harvard Medical School's American Insomnia Study between 2008-2009 found that 23.2% suffered from insomnia—the inability to fall asleep and stay asleep.

Insomnia rates were highest among college graduates, averaging 21.5% vs. 19.9% for high school dropouts, and women, averaging 27.1% vs. 19.7% for men.

Lead author Ronald C. Kessler, a psychiatric epidemiologist at Cambridge, Mass.-based Harvard Medical School, said researchers were "shocked" by the "enormous impact insomnia has on the average person's life." Unfortunately, he said in a press release, employers often overlook the problem and its potential impact on productivity because it often does not result in higher absenteeism or medical costs.

"Americans are not missing work because of insomnia. They are still going to their jobs but accomplishing less because they're tired," Mr. Kessler said in a statement issued by the journal. "In an information-based economy, it's difficult to find a condition that has a greater effect on productivity."

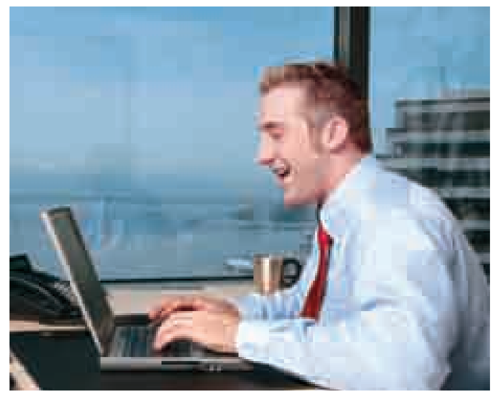
Web surfing helps promote productivity

Workers chastised by their employers for browsing the Internet may be getting a bad rap.

In a paper introduced last month at the Academy of Management's annual conference in San Antonio—"Impact of Cyberloafing on Psychological Engagement"—Don J.Q. Chen and Vivien K.G. Lim of the National University of Singapore proposed that browsing "serves an important restorative function," the Briarcliff Manor, N.Y.-based academy said in a statement.

A study that divided 96 participants into three groups—a control group, a rest-break group and an Internet-browsing group—found the Internet group was significantly more productive than the others. A follow-up study came to a similar conclusion about Internet browsing.

The authors drew the line, though, at personal email. "Personal emailing puts employees in a double bind," according to the analysis. "First the compelling need to reply to a received email impedes employees' psychological engagement by affecting their ability to concentrate. Second, when employees respond to these emails, they experience



resource depletion, negative effect and workflow disruption."

Workers may be cheered, though, that the authors also spoke out against excessive monitoring of workers' Internet usage.

"Rather than reducing cyberloafing, excessive monitoring increases its frequency, as employees invariably view such policies as a form of mistrust that the company has in them.

"In view of this, managers must recognize that blanket policies that prohibit all forms of personal Web usage are ineffective, and excessive monitoring is likely to be counterproductive." Instead, they said, a limited amount of personal Web use should be allowed.

PRIZE INSURER DENIES WINNING GOAL

An 11-year-old boy's miracle hockey shot for a $50,000 prize was all for naught after one important fact was revealed: his first name.

Nate Smith, of Faribault, Minn., made an 89-foot goal from center ice at an Aug. 11 charity hockey event, netting a $50,000 prize from Odds On Promotions a Reno, Nev.-based marketing and promotional contest company. However, the company said it would not hand over the prize because it was Nick Smith, Nate's twin brother, who was supposed to take the shot.

According to a Yahoo! Sports report, Nick was outside the arena and was unaware his raffle ticket number had been called for a chance to win the money.

The boys' father sent Nate in his place and confessed the switch to the contests' organizers the following day.

Last week, the prize insurance firm said it had decided not to award either twin the money, but rather make a $20,000 donation in the boys' names to youth hockey in Minnesota.

"We greatly respect the eventual honesty of the Smith family," Mark Gilmartin, president of Odds On Promotions, said in a statement. "Although we're unable to the pay the claim on Nate's incredible shot, we are confident our donation will help foster a positive environment for present and future youth hockey in Minnesota."

Pat Smith, the boy's father, lauded the donation to the Owatonna Youth Hockey Assn., in which his sons compete, and the Faribault Youth Hockey Assn. "This reinforces our belief that at the end of the day, we, as a family, made the right decision and demonstrates to our sons that, in the end, honesty is the best policy," he said.

Nate Smith celebrates making an 87-foot goal, but the prize was withheld because his twin was supposed to take the shot.

AP PHOTO

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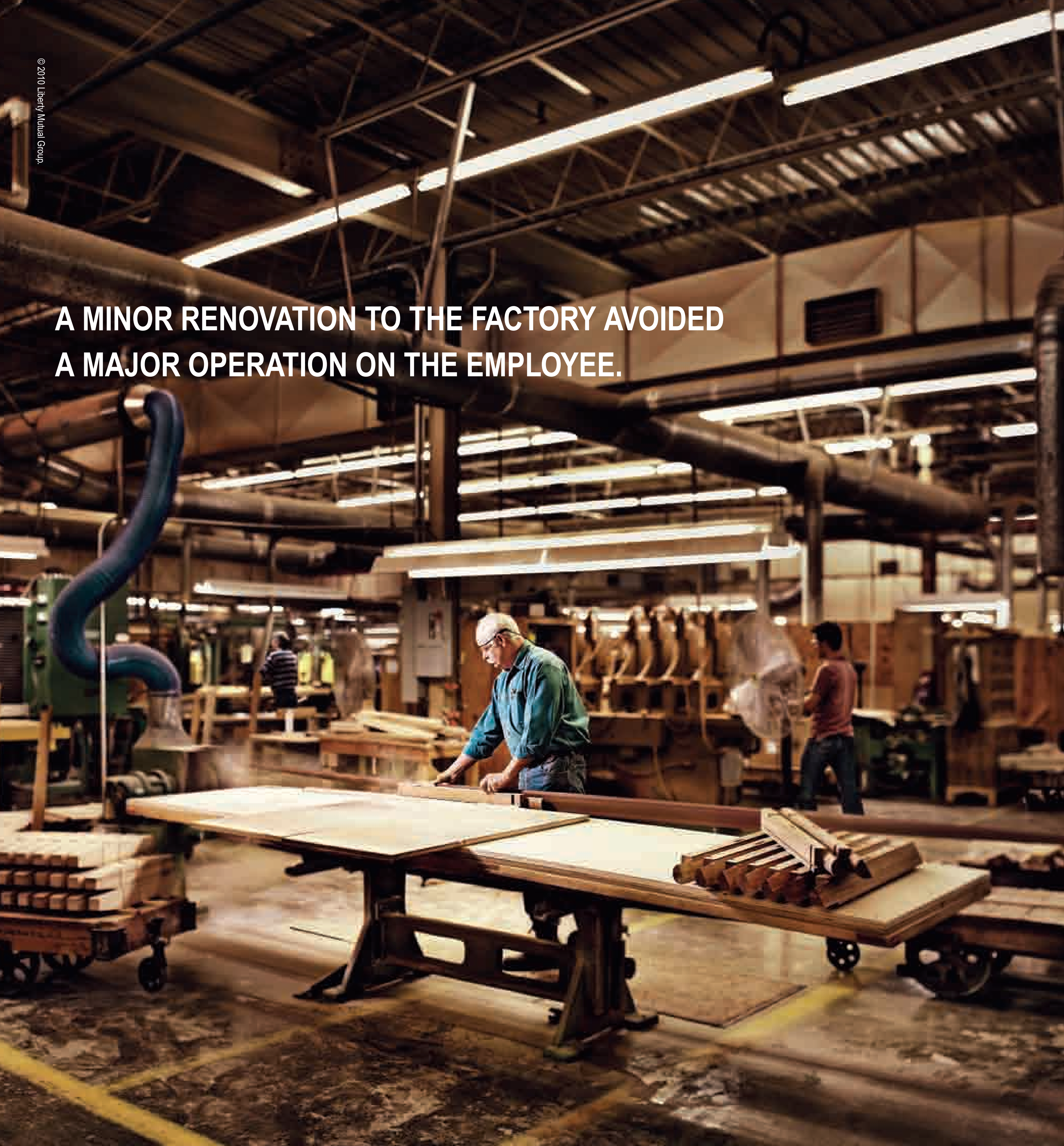

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