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September 13, 2010

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In Brief

PG&E says it has cover of nearly $1B for blast

Pacific Gas & Electric Co. has about $992 million in liability insurance in excess of a $10 million deductible for damages caused by last week's explosion and fire in San Bruno, Calif., the utility said in a filing with the Securities and Exchange Commissions. Last Thursday's massive blast and fire destroyed dozens of homes in the town near San Francisco and killed at least four people. "Although the exact cause of the explosion has not been determined, a 30-inch steel gas transmission pipeline owned and operated by the utility in this area was ruptured," PG&E said.

A.M. Best boosts SCOR rating to A

A.M. Best Europe Ratings Services Ltd. upgraded the

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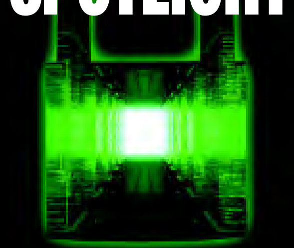
SPOTLIGHT



CYBER RISK MANAGEMENT

Insurance market for Internet risks evolves; security breaches fall in number, rise in costs; companies often unprepared for social media risks; main business exposures posed by use of social media sites.

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DISABILITY MANAGEMENT

Economy putting squeeze on restricted-duty efforts

In productivity push, line managers fight transitional programs

By ROBERTO CENICEROS

The recession has created obstacles for transitional duty programs that reduce employers' costs for workers compensation and nonoccupational disability claims.

Tight employer budgets, fewer jobs to which workers can return and laid-off employees competing for tasks with co-workers on restricted duty are reducing return-to-work opportunities, experts say.

Additionally, some line supervisors—particularly those operating with a reduced head count—more often are pushing back against the modified duty or transitional work programs that employers have established to close claims and return injured or temporarily disabled workers to employment as soon as medically possible, several sources said.

Employer indemnity costs could rise because companies have fewer jobs to accommodate injured workers and less flexibility to reserve light-duty jobs just for employees with work restrictions, sources said.

Medical expenses also could increase, as ample workers comp industry evidence has established that that the longer injured employees are away from normal activities, the more medical care they will require, said Tom Pfingstag, director of program management for Sedgwick Claims Services Inc. in Memphis, Tenn.

While it is too early to say whether a detrimental financial

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Industry veteran Bob Clements dies

By JUDY GREENWALD

STAMFORD, Conn.—Insurance industry veteran Robert Clements, who died Sept. 4, was a former Marsh & McLennan Cos. Inc. executive who many say played a key role in developing the Bermuda market and was a visionary who helped shape today's industry.

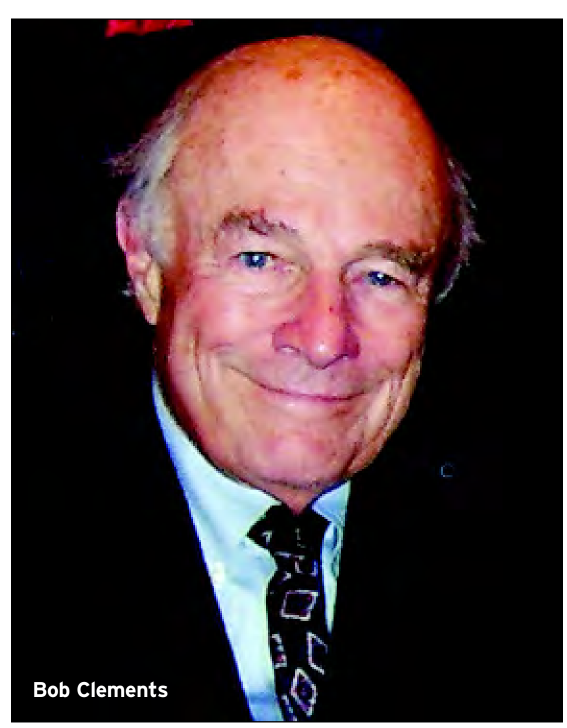
Mr. Clements died of esophageal cancer at his home in Stamford, Conn., according to his family. He was 77.

Mr. Clements most recently co-founded and was a director of Hamilton, Bermuda-based specialty insurer Ironshore Ltd.

He also founded Integro Insurance Brokers Ltd. in 2005 and Bermuda-based Arch Capital Group Ltd. in 1995, as well as helping set up ACE Ltd., XL Capital Ltd. and Mid-Ocean Reinsurance Ltd. in Bermuda.

Prior to those ventures, Mr. Clements had a long career at New York-based MMC, where he was president and a member of the board of directors.

Mr. Clements was a nonexecutive director of several companies. He also was chairman emeritus of the College of Insurance and former chairman of the board of overseers of the School of Risk Management at St. John's University.



Bob Clements

Mr. Clements began his career at Royal Insurance Co. in 1957, according to the Insurance Hall of Fame, into which he was inducted in 2007. He joined MMC in Toronto in 1959, where he worked until he moved to its New York headquarters in 1975 and held several senior positions. He was elected vice chairman and president of the publicly

See **CLEMENTS** page 18

P/C INSURERS

Several working groups are exploring the creation of another New York Insurance Exchange.

N.Y. exchange revival plans move ahead

Recommendations shed light on design

By ZACK PHILLIPS

NEW YORK—Officials seeking to revive the New York Insurance Exchange may be moving away from earlier discussions of favorable tax treatment for participants, according to preliminary recommendations that indicate what shape the facility may take.

Observers say officials from the industry and New York State Insurance Department have begun to work on a business plan for the potential revival of the exchange.

The exchange would be a Lloyd's of London-style marketplace for insurance buyers and capital providers. The original New York Insurance Exchange operated from 1980 to 1987, when it closed due to inadequate capital, poor claims experience, soft market conditions and other factors.

In 2008, former New York Insurance Superintendent Eric Dinallo proposed reviving the exchange, and his successor, James J. Wrynn, has expressed enthusiastic support for the plan since taking office last year.

Seven working groups consulting the New York State Insurance Department issued a set of preliminary recommendations, which were

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Business Insurance

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Mr. Wrobel

Ms. Meyers

WEBCAST TO EXPLORE REFORM, MED MAL

Register for *Business Insurance*'s webcast "Urgent Care: Managing Medical Liability Risks After Health Reform," which takes place Sept. 15. The speakers are Aon Risk Solutions' Kathryn A. Meyers and Towers Watson & Co.'s Edward M. Wrobel. Go to the Multimedia tab and click through Webcasts/Webinars.

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2. FSA can't reimburse OTC drugs without prescription: IRS
3. Property/casualty insurance rates fall again: Analysis
4. Insurance industry veteran Robert Clements dies
5. U.S. Marines storm ship seized by pirates, rescue crew
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10. Fitness staves off heart risk linked to long work hours: Study

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HEALTH CARE BENEFITS

IRS limits FSA reimbursements of OTC medications

HHS guidance allows three-year waivers for 'mini-med' plans

By JERRY GEISEL

WASHINGTON—Over-the-counter medications will require a prescription to buy them with flexible spending account funds next year under new health care reform regulations, while guidance gives sponsors an opportunity to offer "mini-med" plans for another three years.

Internal Revenue Service rules, released earlier this month, are the latest in implementing the Patient Protection and Affordable Care Act.

The IRS rules say that employees who want to pay for OTC medications using their health care FSA will need a prescription to do so effective Jan. 1, 2011. The health care reform law sharply restricts FSA reimbursements for OTC purchases such as nonprescription pain relievers, cold medicines, antacids and allergy medications.

What was not previously clear, however, was whether a doctor's note was enough or whether a formal prescription was required for an FSA to reimburse OTC purchases, said Sharon Cohen, an attorney with Towers Watson & Co. in Arlington, Va.

In the notice, the IRS says OTC reimbursements require a prescription, which it defines as a "written or electronic order for a medicine or drug that meets the legal requirements of a prescription in the state in which a medical expense is incurred and that is issued by an individual who is legally authorized to issue a prescription in that state."

The health care reform law sharply restricts FSA reimbursements for OTC purchases such as nonprescription pain relievers, cold medicines, antacids and allergy medications.

The IRS also resolved uncertainty about the new OTC restriction on what are known as "grace period" FSAs. Under rules the IRS issued in 2005, unused contributions made to FSAs could be rolled over to pay expenses incurred during the first 2½ months in the next year. However, the new rules ban OTC reimbursements for all FSAs, including those with grace periods, effective Jan. 1, 2011, said Mark Berggren, benefits outsourcing counsel with Hewitt Associates Inc. in Lincolnshire, Ill.

It isn't known how much current

See **FSA** page 17

CATASTROPHES

REUTERS/LANDOV

While a major earthquake caused extensive damage in Christchurch, New Zealand, experts say a strong building codes helped limit the losses.

Strict building codes limit New Zealand quake damage

Still, insured losses may reach $4.5 billion and push rates higher

By MICHAEL BRADFORD

CHRISTCHURCH, New Zealand—Reinsurers will cover the bulk of private-market losses that experts say could have been worse if strict building codes had not been in place when an earthquake struck New Zealand's South Island.

Catastrophe modeling companies say insured losses could range as high as $4.5 billion from the 7.0 quake that rattled the Canterbury region that includes Christchurch, a city of around 350,000. No fatalities were caused by the quake on Sept. 4, another benefit of building codes designed to protect property and lives in the seismically active region, sources said.

"Building codes are created to save lives," said Imelda Powers, a Philadelphia-based manager in Towers Watson & Co.'s catastrophe management group and a senior consultant in its reinsurance business. "That's their primary objective, and they achieved their objective wonderfully," she said of the New Zealand codes.

Other experts agreed that the stringent codes saved lives and prevented quake damage from being worse.

"The existence of strict building codes was absolutely the No. 1 factor in limiting damage in this earthquake," said Kate Stillwell, earthquake product manager at EQECAT Inc. in Oakland, Calif.

"In some ways, they exceed the codes in California," Jayanta Guin, senior vp of research and modeling at AIR Worldwide Corp. in Boston, said of the New Zealand's codes. "That's how good they are."

Most of the quake claims from homeowners will be paid by New Zealand's government-sponsored Earthquake Commission. The com-

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AGENTS & BROKERS

Willis taps ex-AIG CEO for new large-client unit

Martin J. Sullivan leads multinational arm

By SARAH VEYSEY

NEW YORK—Willis Group Holdings P.L.C. has appointed former American International Group Inc. CEO Martin J. Sullivan to lead a new business unit that oversees Willis' brokerage and risk management advisory services for multinational clients.

Mr. Sullivan, who is chairman and CEO of the unit, Willis Global Solutions, also was named deputy chairman of Willis Group Holdings P.L.C.

Willis Global Solutions, based in New York, will aim to "develop and manage a differentiated service proposition in the large-account sector," Willis said in a statement.

"This new unit will distinguish the company as a significant player in the global marketplace positioned to serve the world's largest clients and challenge entrenched brokers who have significant share of multinational business," according to Willis.

Willis Global Solutions will become a unit of Willis Global, which is headed by Chairman and CEO Grahame Millwater. Mr. Millwater also serves as president of Willis Group Holdings.

Mr. Sullivan, who succeeded Maurice R. Greenberg as AIG's CEO in 2005, was ousted in 2008 amid mounting pressure from AIG shareholders.

AP PHOTO

Martin J. Sullivan has been named chairman and CEO of Willis Global Solutions.

Willis CEO Joseph J. Plumeri welcomed Mr. Sullivan's appointment.

"Across the length and breadth of the insurance industry, a client

See **SULLIVAN** page 21

HEALTH CARE BENEFITS

Cost tops employers' concerns: Survey

By JERRY GEISEL

Forty-seven percent of U.S. employers expect one or more of their health care plans to lose grandfathered status in 2011 because of design and other changes they will make to help avoid double-digit cost increases, according to a survey.

Without making design and other changes, employers said they expect plan costs to increase an average of 10.1% next year, fueled in part by benefit improvements, such as extending coverage to employees' adult children until age 26, mandated by the new health care reform law, according to the survey by Mercer L.L.C.

But an increase of that magnitude is not an option, concludes the Mercer survey of more than 1,000 employers. Instead, employers say they are going to make plan changes, such as raising deductibles and coinsurance, to hold cost increases to an average of 5.9%, which is in line with annual cost hikes during the past few years.

10.1%

Without making design and other changes, employers said they expect plan costs to increase an average of 10.1% next year.

"Six percent seems to be employers' collective comfort level," Beth Umland, Mercer's research director for health and benefits in New York, said in a statement.

To hold down cost increases, many plans will have to make design changes resulting in loss of grandfathered status. That would happen, for example, if an employer raised coinsurance requirements or boosted the employee's share of the premium by more than five percentage points.

Plans that lose grandfathered status forgo their exemption from meeting certain reform law requirements, such as providing full coverage of preventive services.

However, that is a price many employers are willing to pay, Mercer said, noting that 47% of respondents expect at least one plan to lose its grandfathered status next

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P/C INSURERS

Most P/C insurers review domicile choice: Survey

Access to markets, capital requirements top considerations

By SARAH VEYSEY

The question of domicile is now a regular board-level discussion for 80% of the world's property/casualty insurers, a study concludes.

The recent research by Grant Thornton U.K. L.L.P. in London found that where to locate an insurance company domicile has become increasingly important since the market-turning Sept. 11, 2001, U.S. terrorist attacks.

Grant Thornton, which surveyed 30 property/casualty insurers from a range of jurisdictions during the summer, found that while 30% of the respondents had moved domicile at some point, they were smaller insurers that represented just 10% of the gross written premiums of the entire group.

Insurers that moved their domicile did so in two waves, according to the study: immediately after the 2001 attacks and again about 18 months ago.

While most of the participating insurers had not yet moved their domicile, 80% said the issue now is discussed regularly by their board, said Peter Allen, head of financial services at Grant Thornton in London.

"Clearly, (domicile) is a major corporate issue," Mr. Allen said. While only 30% had changed their domicile, that still is a "significant number," he said.

In recent weeks, Lloyd's of London insurer Chaucer Holdings P.L.C. said that, after a strategic review, it decided for now to remain based in the United Kingdom. The decision, based on tax and legal advice Chaucer had received, was based in part on the U.K. government's June announcement that corporate taxes would be reduced to 24% from 28%.

In a separate briefing on the global reinsurance market, Mark Cole-

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DOMICILE CONSIDERATIONS

Criteria that insurers view as most important when choosing a domicile, ranked 1 to 5 with 1 being the most important.

CRITERIA	RANKING
Easy access to markets	1.6
Realistic capital-adequacy requirements	1.6
Respected, credible regulator	1.7
Low corporate taxation	1.8
Plentiful talent pool	1.9
Attractive living conditions	2.5
Simple, light-touch regulator	2.5
Low personal taxation	3.0

Source: Grant Thornton U.K. L.L.P.

LIABILITY & LITIGATION

AP PHOTO

Demolition of Rocky Flats in Colorado began in July 2004. The former nuclear weapons plant is the subject of a recent ruling in a public nuisance suit.

Will weapons plant ruling influence climate cases?

10th Circuit overturns $926 million verdict in public nuisance suit

By JOANNE WOJCIK

DENVER—A federal appeals court decision overturning a $926 million verdict against the operators of the Rocky Flats nuclear weapons plant is likely to affect climate change lawsuits that allege defendants created a "public nuisance," legal experts say.

In the Sept. 3 decision in *Merilyn Cook et al. vs. Rockwell International Corp. and Dow Chemical Co.*, the 10th U.S. Circuit Court of Appeals found that federal law grants the nuclear industry certain protections from tort liability and plaintiffs cannot seek damages under more lenient state laws.

Specifically, a three-judge panel of the Denver appeals court said the district court erred in instructing the jury that the plaintiffs were not required to establish actual injury to their properties or a loss of use of their properties. Under the federal Price-Anderson Act, which established specific tort liability protections for the nuclear industry, plaintiffs must show that a "nuclear incident" occurred by demonstrating "loss of or damage to property or loss of use of property," the court said.

Plaintiffs in the case have filed a motion seeking an en banc hearing.

Several environmental attorneys unaffiliated with the *Rockwell* case say the 10th Circuit's ruling likely would have some influence on public nuisance torts on greenhouse gas emitters' contributions to global warming. So far, two appeals courts have allowed public nuisance climate change cases to proceed absent a federal law prohibiting them.

The Obama administration intervened last month in one of the cases, *American Electric Power Co. Inc. et*

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INTERNATIONAL

European regulatory proposal advances

Insurance, banking would be overseen by separate entities

By SARAH VEYSEY

LONDON—European finance ministers last week agreed to endorse the consensus reached between the European Commission and European Parliament to establish new supervisory bodies to oversee the insurance, banking and investment industries.

The Council of Economic and Finance Ministers of the 27 European Union member states endorsed plans to set up a European Systemic Risk Board and three European supervisory authorities, one of which is to be the European Insurance and Occupational Pensions Authority.

The European Union has been studying the issue of supervision of financial services since the 2008 banking crisis that furthered the worldwide recession.

THE COUNCIL OF THE EUROPEAN UNION

The European Union has been studying financial services supervision since 2008.

While national regulators will retain supervisory control of financial services in their home state, each supervisory authority will monitor how national regulators implement E.U. law. Supervisory authorities also can impose mediation when there are disagreements between national supervisors and can intervene at their discretion.

Europe's Systemic Risk Board will develop a set of indicators to rate the risk of cross-border financial institutions.

"Financial companies and markets operate mostly at a European level, and we'll now have four solid authorities to monitor macroeconomic financial risks and to supervise financial markets, banks and insurance companies," E.U. Internal Market Commissioner Michel Barnier said last week in a statement.

Peter Skinner, who represents the United Kingdom in the European Parliament and worked on the proposals, described the negotiations as a "hard slog," but he also said that all parties came out of the negotiations

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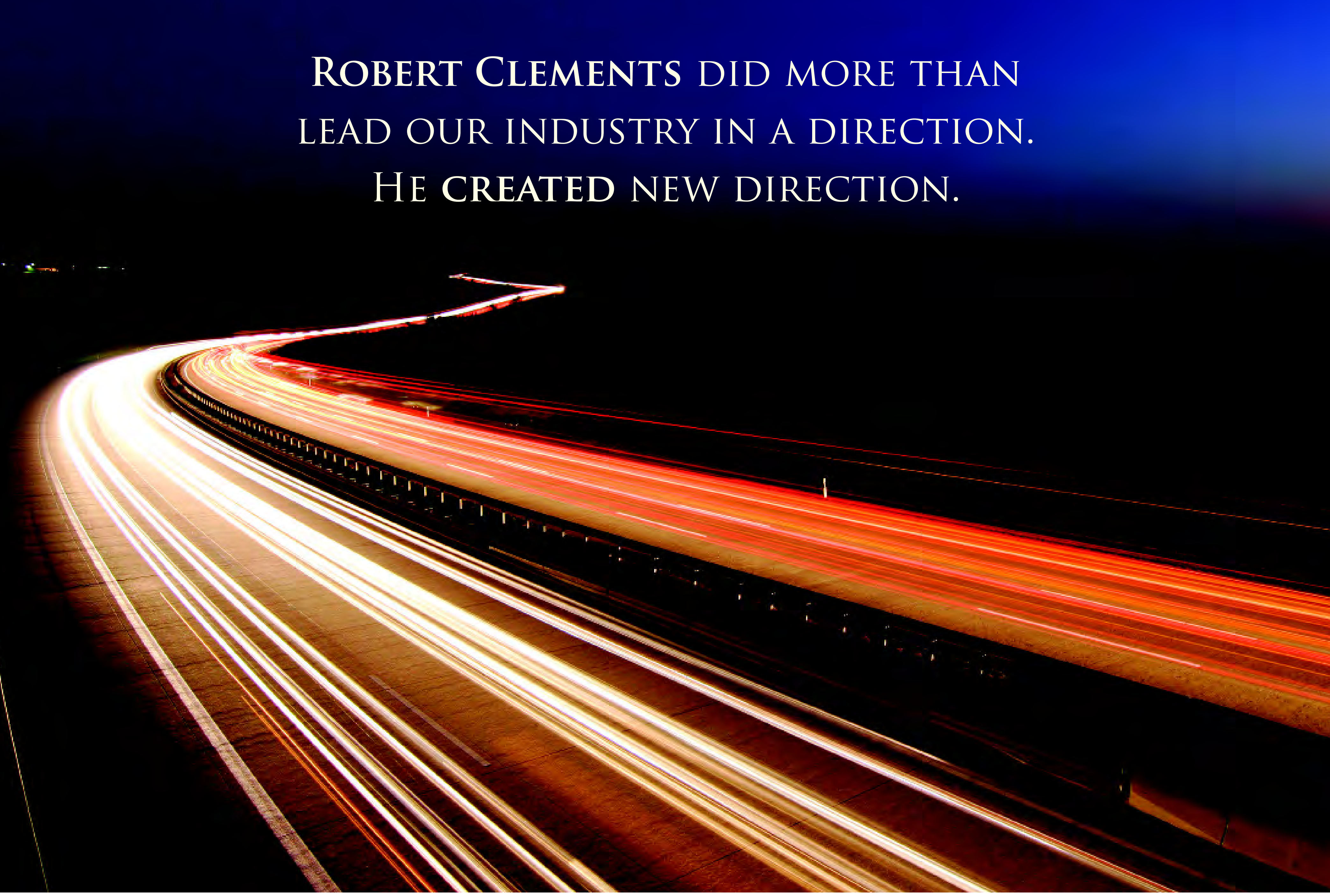

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Exchange: Revival plans move ahead in New York

CONTINUED FROM PAGE 1

presented to the department in June.

Members of the working group on taxes said they were "not sold" on favorable tax treatment being critical to the exchange. Previously, department officials have said the exchange might need tax advantages to compete with offshore reinsurers in Bermuda, Ireland and elsewhere.

"The NYIE is unlikely to differentiate itself from its competitors through a more favorable tax regime," the working group wrote in a presentation document. "Bermuda already has a very favorable tax regime and is still losing business to Ireland....The example of Ireland demonstrates how important an attractive regulatory and market access value proposition can be."

The picture painted by the working groups' preliminary recommendations is of a virtual marketplace with advanced technology to facilitate transactions and a minimal bricks-and-mortar operation. The exchange would focus on commercial insurance, including casualty and excess and surplus lines coverage, as well as reinsurance, according to the preliminary recommendations of the working group on markets.

The working groups' recommendations describe a self-regulating marketplace made up of well-capitalized syndicates. The value to insurers and capital providers would be cost and regulatory efficiencies along with access to a 50-state marketplace. A one-stop shop with access to all 50 states could reduce insurers' frictional costs, eliminate regulatory redundancies and simplify tax allocations, the preliminary recommendations contend.

> **'Bermuda already has a very favorable tax regime and is still losing business to Ireland....The example of Ireland demonstrates how important an attractive regulatory and market access value proposition can be.'**
>
> New York Insurance Exchange working group on taxes

"Key competitors—Bermuda (and) Lloyd's of London—have a structural disadvantage relative to a U.S.-based location," the presentation says.

The presentation also listed disadvantages a revived New York Insurance Exchange would have, such as the stringent capital requirements in some states, which could discourage participation. The presentation also recommended that department leaders consider seeking expansions in New York state law authorizing the exchange.

The preliminary recommendations stress the importance of stringent capital requirements and outline potential procedures for careful and frequent monitoring and regulation of the exchange's syndicates. Many observers believe the last exchange failed because it was undercapitalized.

Francine L. Semaya, a Middletown, N.J.-based legal consultant and a member of the regulatory working group, said syndicates would have to comply with relevant state laws, but also said she thought the exchange would allow insurers to operate with fewer rate- and form-filing requirements.

"They're going to make it user friendly," she said.

Industry participation is crucial, said Peter H. Bickford, a New York-based attorney and insurance consultant who was general counsel for the original exchange and is advising the department on the new exchange.

The working groups recommended that the department develop a business plan for the exchange, as well as develop cost savings estimates and determine the feasibility of gaining access to all states. Observers said the department could release more information by October.

"There's definitely progress being made," Mr. Bickford said.

Commentary

Standard procedure also 'warfarin roulette'

JOANNE **WOJCIK**

Senior Editor Joanne Wojcik can be reached at: jwojcik@businessinsurance.com

When reporting on the inherent dangers of the blood-thinning drug warfarin in February and how genetic testing was helping physicians determine the proper dosage, I never thought I would need that knowledge.

But after a freak accident in my garage led to a trip to the emergency room and prescribing of Coumadin to treat a blood clot in my leg, I found myself searching the *Business Insurance* archives, hoping the information I supplied to our readers would also be helpful to me.

My story described a pilot "personalized medicine" project spearheaded by Medco Health Solutions Inc. that involved genetic testing to determine the rate at which certain individuals metabolize warfarin, the generic version of the drug. The objective was to determine warfarin sensitivity to help doctors know how much of the drug to prescribe. After a successful trial period, the program was extended to all of Medco's customers.

At the hospital, the treating physician and nurse said they had never heard of such genetic testing. Instead, they used my height and weight to determine how much warfarin I should take. My discharge instructions said to take 5mg of warfarin daily in addition to heparin injections twice a day, until my PT-INR—the acronym for the prothrombin time-international normalized ratio test to determine my blood's viscosity level—was between 2 and 3.

> **The treating physician and nurse said they had never heard of genetic testing.**

After a little over a week, my INR jumped from 1.1, normal for a healthy individual, to 7, which is nearly "toxic," according to the on-call physician who called in a panic at 5:30 p.m. that Saturday.

His questions reminded me of the need for another health care innovation that I have reported on but never needed: a personal health record.

"Why are you taking Coumadin?" he queried.

"Because I have a blood clot," I replied.

His apparent ignorance of my condition, and the fact that he was calling from a cell phone, made me apprehensive.

"Wait a minute," I said. "Who did you say you were, and why are you calling me?"

After he reiterated his credentials, I answered his questions and he advised me to cut my dose in half and get follow-up testing in three days.

The U.S. Food and Drug Administration estimates that if genetic testing were integrated into routine warfarin therapy, approximately 85,000 serious bleeding events and 17,000 strokes could be prevented annually. A recent study from the American College of Cardiology found that individuals genetically tested prior to taking warfarin were 31% less likely to be hospitalized for any reason, and 29% less likely to be hospitalized for bleeding or blood clots over a six-month period.

The test, which involves a blood sample or a cheek swab, looks for two genes that indicate sensitivity to warfarin. It costs somewhere between $250 and $400—far less than a single day in the hospital.

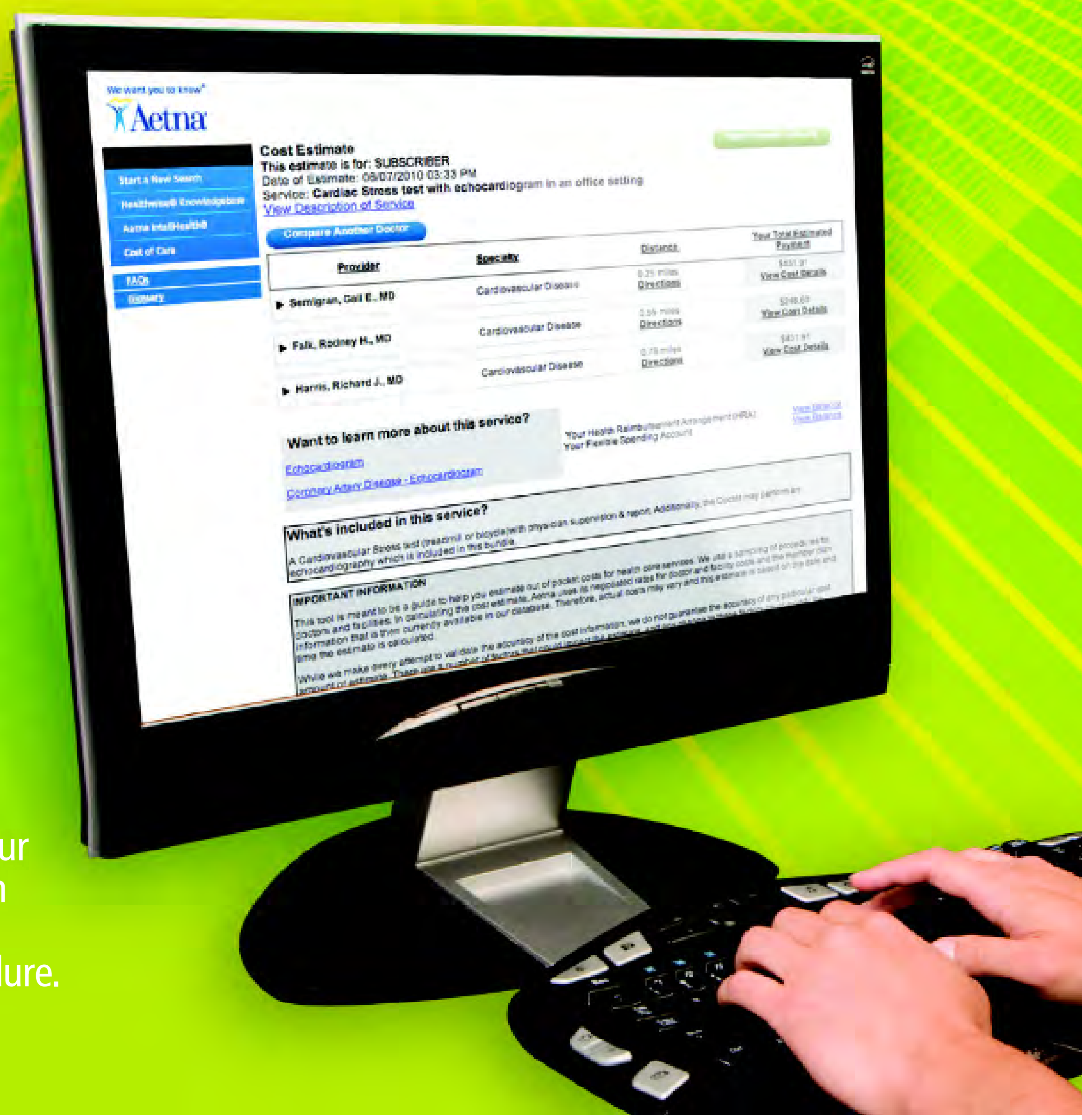
Concerned about the on-call physician's reaction, at my next appointment I asked my doctor to order the genetic tests. I said I would pay for them myself if my insurance didn't cover it. Unfortunately, she said the lab could only perform a test for one of the two genetic markers. We agreed that she would order the first test anyway, but there was another hitch: The results wouldn't be available for "a couple of weeks," she said.

I still haven't gotten the results.

So again I had to play the warfarin roulette that my doctor admitted was "archaic," even though she said it is standard procedure. That is, except for Medco patients, of course.

But based on the eruption of bruises and broken capillaries on my arms and legs triggered by my warfarin overdose, as well as the anxiety I suffered after receiving that foreboding phone call, I have decided the standard treatment regimen would be more aptly described as "barbaric."

HEALTH COSTS – KNOW BEFORE YOU GO.



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Business Insurance OPINIONS

Industry loses an icon whose legacy will last

ONE OF THE truths about insurance is that it's a people-oriented industry. That fact was reaffirmed with the recent passing of Robert Clements, an iconic leader who helped shape the modern commercial lines industry.

As we report on page 1, Mr. Clements, 77, touched many lives through the companies he helped create, his contributions to insurance education and his personal friendships. His record of professional achievement is impressive, dating back to 1957, when he joined the insurance industry.

Mr. Clements touched many lives through the companies he helped create, his contributions to insurance education and his personal friendships.

Among his many roles, he served as president of Marsh & McLennan Cos. Inc., and he established a string of successful companies, including Ironshore Ltd., Integro Insurance Brokers Ltd. and Arch Capital Group Ltd. He was instrumental in helping form ACE Ltd., XL Capital Ltd. and Mid-Ocean Reinsurance Ltd.

Mr. Clements was inducted into the Insurance Hall of Fame in 2007. Perhaps more than any other person, he put Bermuda on the map as a center for insurance capital, where insurers and reinsurers could be formed quickly to respond to market needs.

His work with the College of Insurance, which merged with St. John's University and became the School of Risk Management, Insurance & Actuarial Science, will help mold the future leadership of the insurance industry.

His many friends say he was a man of few words, but those he spoke possessed great insight. Mr. Clements clearly was a doer, and his actions will speak loudly for a very long time. The industry can be truly proud of the enduring legacy he created.

Quake shows benefit of good building codes

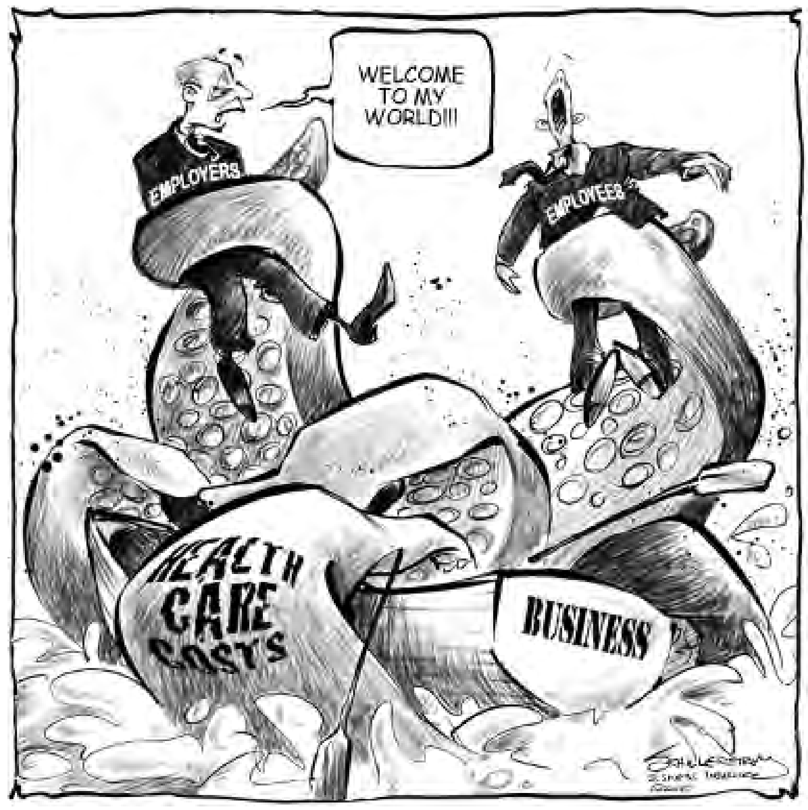
THE NEW ZEALAND earthquake sends a strong yet very simple message: Strong building codes save lives and property.

As we report on page 3, observers agree that losses could have been far higher had the country not promulgated stringent building codes. The fact that no one died as a result of the quake testifies to the codes' effectiveness.

In the United States, insurer-supported groups such as the Institute for Business and Home Safety promote the adoption of up-to-date building codes to protect properties against earthquakes and other events such as hurricanes and tornadoes.

Of course, no code is perfect. For practical reasons, codes must often grandfather in older buildings that do not meet current standards but that would be extremely expensive to retrofit. Although New Zealand's regulations call for retrofitting historical buildings, some Christchurch landmarks had not yet been brought into compliance, and sustained such damage that they will have to be demolished.

With sound codes and active enforcement, authorities have the tools with which to help prevent disasters from becoming tragedies. That was the message from New Zealand, and it is a message that should be heeded throughout the world.



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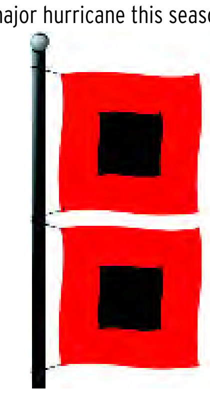
THIS WEEK'S RESULTS

Q How well-prepared is your organization for a major hurricane this season?



Very prepared 55%

Mostly ready 29%

Need to do more 14%

NEXT WEEK'S QUESTION

Q: Will the revival of the New York Insurance Exchange help risk managers?

READ

Perspectives and expert analysis online at *www.businessinsurance.com/section/perspectives*

Next asbestos could be in air

Could radio frequency-producing antennas that are essential for the wireless world be the next asbestos for the insurance industry? They could, writes Gloria Vogel, managing director of New York-based Vogel Capital Management. The insurance industry must reassess its risk management tools and beef up loss control operations—especially its application of risk management to worker safety within the wireless ecosystem to avoid potentially huge claims in the future, she says.

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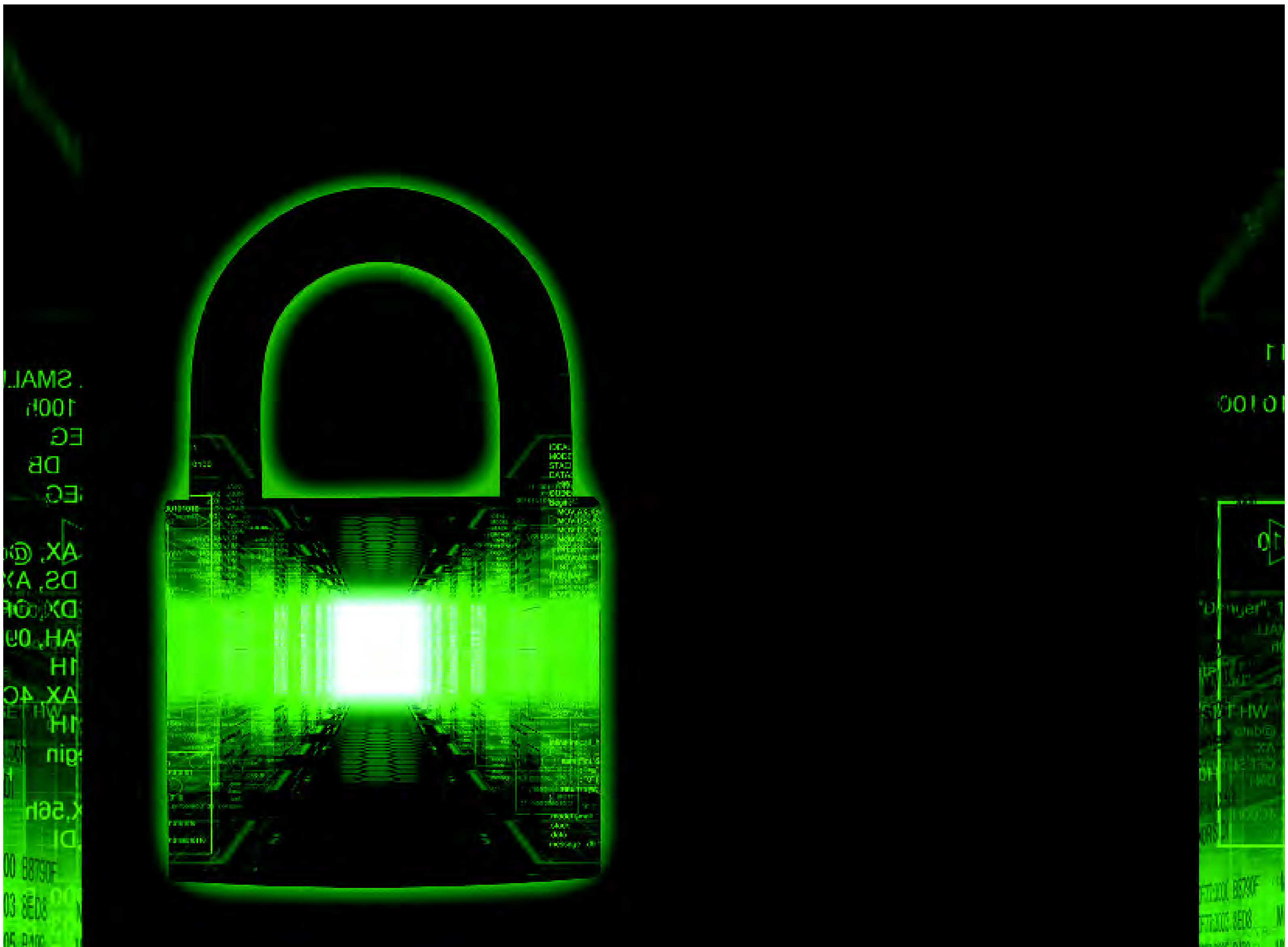


VIRTUAL MARKET EVOLUTION

As use of online sites rises, so grow the risks to businesses

By JEFF CASALE

The insurance market for cyber liability, like the Internet itself, has evolved as it's firmed its niche in the marketplace, industry experts say.

Several high-profile breaches in recent years have given businesses such as retailers, financial institutions, health care providers, and colleges and universities reason to secure coverage should they or raiders expose sensitive data.

State laws that require companies to report that they've had a breach also have spurred growth in the cyber insurance market, to which experts say insurers have responded by offering more comprehensive standard coverage.

"The risk has changed over the last 10 years," said Ben Beeson, London-based executive director of Lockton Cos. L.L.C.'s technology risks unit. "In 2003 when California introduced the first state data breach security law, making it mandatory for companies to report a breach, it suddenly became a privacy and data risk and (companies) saw they had an exposure."

See CYBER next page

Cyber Risk Management

SPOTLIGHT

NEXT SPOTLIGHT Sept. 20: Health Care Reform

Cyber: Liability insurance options expand

CONTINUED FROM PREVIOUS PAGE

The market for cyber liability insurance started with banks and financial institutions. Soon, though, insurance experts said, other industries such as health care and higher education saw the need for coverage after major data breach events, including Heartland Payment Systems Inc. in 2008, TJX Cos. Inc. in 2007 and BlueCross BlueShield of Tennessee Inc. in 2009.

In each instance, the breach reportedly was costly. Princeton, N.J.-based Heartland paid $5 million to settle claims; Framingham, Mass.-based TJX agreed to pay $9.75 million to settle claims; and the Chattanooga, Tenn.-based Blues shelled out $7 million for the investigation of its breach.

The average cost of a data breach in 2009 was $6.75 million compared with $6.65 million in 2008, according to the fifth annual "U.S. Cost of a Data Breach Study" by Ponemon Institute L.L.C. and PGP Corp. The study also found that data breaches cost U.S. companies $204 per compromised customer record in 2009 compared with $202 in 2008 (see story, page 11).

Insurers offer cyber liability limits as high as $300 million contingent on a company's revenue, brokers said.

For example, companies with revenue of at least $1 million usually buy a cyber liability policy with limits between $1 million and $5 million, while companies with $10 billion in revenue typically would buy a policy with $100 million in limits, brokers said. Companies often buy excess coverage above the limits, brokers said.

"The evolution in purchasing limits is identifying the amount or types of records a company is responsible for and how much personal data they hold," said Kevin Kalinich, co-national managing director of professional risk solutions for Aon Risk Solutions, a unit of Chicago-based Aon Corp. "Those who harbor a lot of personal information, such as credit card information, will usually buy a policy with higher limits because canceling and reissuing credit cards can be a huge cost."

While the cyber liability market has mainstays such as Chartis Inc. and Chubb Corp., specialty insurers such as Hiscox Ltd., Kiln Group Ltd. and Allied World Assurance Co. Holdings Ltd.—which recently acquired Darwin National Assurance Co.—have entered the market with new products.

"We've seen a lot of new insurance entrants in the U.S. and London markets," said Mr. Beeson. "I think it's driven by the need to capture business without rate increases…I also think that insurers are seeing huge growth opportunity in this market with (their) existing client base with those who don't typically buy the coverage."

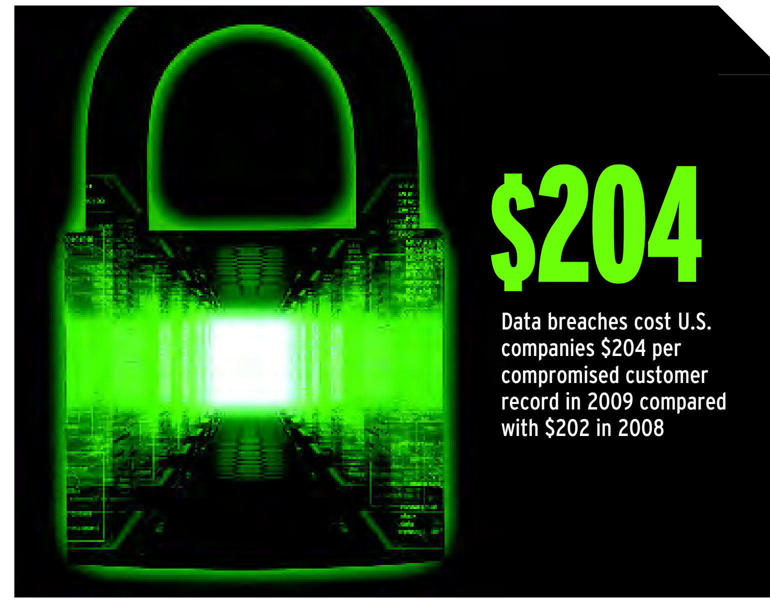
Robert Parisi, senior vp and national practice leader for Marsh Inc.'s New York-based FINPRO unit, which deals with network technology risks and telecommunications, said some insurers have expanded beyond their initial comfort zones. Part of this is due to coverage evolving from basic "hacker insurance" to information loss, liability and property damage, he said.

"Some insurers have really stepped up and have been aggressive to sell the coverage," Mr. Parisi said, adding that some insurers are now offering added services to assist a company when a breach occurs, such as referrals to attorneys, public relations groups and forensic computer firms.

Despite plenty of insurers willing to underwrite the risk and the underwriting process becoming more streamlined, insurance should be a company's "last line of expense" when dealing with the risk of cyber liability, said Lawrence Racioppo, Stamford, Conn.-based leader of Towers Watson & Co.'s executive liability practice.

Insured retention levels can be as high as $50,000 for some companies, while others hover between $10,000 and $20,000, Mr. Racioppo said. Further, he said it's not just a company's money, trade secrets or data that's at stake when protecting against a breach: It's about the company's brand and integrity.

"This type of an exposure needs to be an organizational commitment," Mr. Racioppo said. "It can't just be the risk manager's responsibility and it should become part of the company's overall enterprise risk management process because it's about protecting the company and the brand."



Data breaches cost U.S. companies $204 per compromised customer record in 2009 compared with $202 in 2008

Number of data breaches falls, but average cost increases slightly

By JEFF CASALE

The average data breach in the United States can cost a company nearly $7 million per incident, according to the latest study by Ponemon Institute L.L.C. and PGP Corp.

Traverse City, Mich.-based PGP and Menlo Park, Calif.-based Ponemon, which specialize in data protection and privacy and information management, respectively, found that while the number of reported breaches dropped from 657 in 2008 to 498 in 2009, the cost did not.

According to the study, the average data breach cost $6.75 million in 2009 compared with $6.65 million in 2008. The cost associated with a data breach has highlighted the need for some companies to get adequate insurance coverage, experts say.

Most standard cyber liability policies contain the following coverages:

- Network security and privacy: This typically is a third-party liability insurance that covers the cost to notify those affected by the breach, including clients and shareholders. It also would cover any regulatory or civil fines as well as defense costs associated with the breach.
- First-party protection: This protects a company from a loss resulting from an external or internal attack resulting in a data breach.
- Crisis management: This typically would cover forensic computer work needed after a breach, attorney fees and public relations costs incurred as the company works to restore its brand.
- Network interruption: This would be triggered if a company's network were down for an extended period of time and sensitive data could have been exposed to an outside party. Typically, a network must be down 12 hours or longer to trigger the coverage.

Experts noted that insurance should be the "last line of expense" when protecting sensitive information and said companies should remain vigilant in making sure their networks are secure, which includes using up-to-date software, firewalls and monitoring.

"More people are buying this coverage," said Ben Beeson, London-based executive director of Lockton Cos. L.L.C.'s technology risks unit. "First it was the banks and financial institutions and then retailers started to buy and now health care is an area that is peaking interest."

"When you inform the public of a data breach, it's not good for the image of that company. It affects the share price of the stock, the brand and it raises the risk to do business with that company," he said.

Companies often unprepared for risks social media pose

Greater embrace of business tool also requires vigilance

By LOUISE ESOLA

Companies tapping social media outlets such as Facebook, Twitter and blogs to market their brand may not be prepared for the risks that come with lightning-fast communications, experts warn.

"A fair number of companies are jumping into social media waters unprepared," said Art Hall, Atlanta-based director of customer relations with Alvarez & Marsal Business Consulting L.L.C. "A lot of companies feel they need to have a presence on Facebook or Twitter and don't really think about what that really means for their business."

The greatest risks fall into two categories: information technology and reputation, experts warn. Areas of concern range from legal—from defamation and libel to copyright risks—to workplace productivity—when employees spend too much time on the job using social networking sites (see box, page 13).

'Customers don't call your customer service line anymore when they aren't happy with your product. They Tweet about it.'

Paul Dunay, Avaya Inc.

John Bronti, Boston-based president of IP Architects L.L.C., a management technology consulting firm, and an adviser for the Rolling Meadows, Ill.-based Information Systems Audit & Control Assn., said social media are fast becoming a necessary business tool, and that companies are slowly becoming aware of the risks.

"I don't think we're in a situation where people put their head in the sand, but (social media risk management) is not being embraced…as it should," Mr. Bronti said.

Lawrence Racioppo, Stanford, Conn.-based executive liability practice leader with Towers Watson & Co., said one major pitfall is putting social media risk management solely in the hands of one employee and not engaging an entire organization.

"Companies need to start at the top and recognize the potential exposures," Mr. Racioppo said. "There needs to be an organizational commitment, from the CEO down. It's too big of an issue."

People use social media sites to meet, interact and share information. People use Twitter to post messages up to 140 characters long. The sites also allow users to create detailed profiles, which experts say pose a major risk.

Justin Searle, a Salt Lake City-based security analyst with Washington-based consultant InGuardians Inc., conducts "penetration tests" for clients that want to gauge their network security. He said he's been able to break into company databases—gaining access to Social Security numbers, credit card information and more—from a remote site just by using public information posted on social media websites.

In one instance, he said he used a search engine on a social networking site to locate employees of a specific company and obtain personal information that his company, as part of a test, used to reset passwords and gain access to company information from an external link.

"We dug through profiles and were able to gather enough information to go on a company's website and gain access," Mr. Searle said. "The information is buried, but it's there."

Similarly, security management firm Facetime Communications Inc. used Facebook to gather names of some 13,000 Department of Homeland Security personnel and their personal information.

"Employees of any company can be targeted by anyone from the outside," said Sarah Carter, chief strategy officer in Belmont, Calif., at Facetime.

"Educating on the risk goes a long way," Ms. Carter said. "We've been telling people how to be safe with e-mail and now we just have to teach them about social media."

"If people are aware of the information and the threat, they are likely to change their behavior," Mr. Searle said.

Companies also can revamp their network security so personal information is not used. "For example, a lot of companies use their last name as a login," he said. "That could change."

Among other dangers, social media sites could transmit viruses that could harm systems or gain access, experts warn.

Gradually, companies and organizations have begun to see social media as a marketing tool to advertise products and services and foster brand loyalty.

Continued on next page

SOCIAL MEDIA EXPOSURES

Risks that businesses face from internal and external use of social media

NETWORK SECURITY: Outsiders gathering information on employees to gain access to networks and valuable information.

PROPRIETARY INFORMATION: Employees engaging in social media could disclose valuable corporate information to the general public.

VIRUSES: Social media sites could transmit harmful computer viruses or malware, or malicious software that could jeopardize valuable information on company networks.

REPUTATION: Bad publicity, such as negative comments and photographs, from employees, customers, competitors and the general public could lead to fewer sales and clients.

PRODUCTIVITY: Employees may spend too much time on social media sites while at work.

LEGAL: Companies using social media could face advertising, copyright, libel, defamation and slander exposures.

Source: Consultants

Continued from previous page

Good in many ways for business, social media have unrealized drawbacks for some, said Mr. Hall. Companies were “shocked when they established a social media presence and the group started talking back to them,” he said.

“Customers don’t call your customer service line anymore when they aren’t happy with your product,” said Paul Dunay, co-author of the book “Facebook Marketing for Dummies” and a communications consultant with Basking Ridge, N.J.-based Avaya Inc. “They Tweet about it.”

“Mainstream companies are learning that they can’t avoid (social media),” said Robert Stroud, New York-based international vp for the Information Systems Audit & Control Assn. Companies and brands can get roped in whether or not they want to participate, he said.

“Every company has the exposure for a reputation explosion,” Mr. Dunay said. “Companies who ignore social media need a little wake-up call.”

Companies face the threat of bad publicity not only from consumers but from competitors, said Kevin Kalinich, co-national managing director of professional risk solutions of Aon Risk Solutions, a unit of Chicago-based Aon Corp. “People are going to Twitter, they are going to Facebook. If you are not there and you ignore it, you could be letting somebody control your brand.”

Best practices

Mr. Stroud said a best practice for companies is to regularly search the Web for mention of their brand. Harmful information can be addressed on social media forums.

“Companies that don’t monitor what’s being said about them may get a surprise one day,” Mr. Stroud added.

Experts recommend that companies set up alerts to be notified when their brands are named online. A response plan also is necessary, said Kelly Dempski, Sophia Antipolis, France-based director of research for Accenture Technology Labs.

A speedy reaction to bad publicity is what helped Domino’s Pizza Inc., for example, clear its name after employees posted a video on YouTube of workers performing unsanitary acts on a pizza, said Mr. Dempski. “They had YouTube pull the video off the site,” he said. According to news reports, the employees were fired and subsequently charged with “delivering prohibited food” in the 2009 incident.

Domino’s, meanwhile, issued public statements on the matter.

“Having a plan in place to deal with something like this is key,” said Mr. Dempski. “You have to be able to react very quickly.”

Mr. Kalinich said social media have made virtually any person or company a potential publisher.

“Not everybody wants to be in publishing (because of the risk), but that’s where we are,” Mr. Kalinich said. This is where issues such as libel, plagiarism and defamation come into play, he said.

Products & Services

Fireman's Fund expands green coverage to schools

NOVATO, Calif.—Fireman's Fund Insurance Co. has expanded its commercial green insurance coverage to include public and private schools.

The Green-Gard endorsement allows colleges, universities, trade and vocational schools to replace standard building systems and materials with environmentally friendly alternatives after a loss, the Novato, Calif.-based insurer said in a statement.

The coverage will pay the cost to rebuild the facility as a green-certified building in the event of a total loss. If the building incurs a loss and already is a certified green structure, policyholders will receive a 5% premium discount on its primary insurance coverage, among other coverages.

The increase in green insurance appetite aims to address the sustainability needs of schools, Fireman's Fund said.

For more information, contact Stephen Bushnell, senior director of emerging industries, at 415-899-4308 or *stephen.bushnell@ffic.com*.

XL Insurance launches product recall policy

HAMILTON, Bermuda—XL Insurance (Bermuda) Ltd. has launched product recall coverage for the food and beverage industry.

The product contamination policy aims to address the food safety regulations that North American food and beverage companies face with catastrophes such as the August recall of 500 million eggs tainted by salmonella, the Hamilton, Bermuda-based unit of XL Group P.L.C. said in a statement.

The coverage offers clients up to $50 million in excess of a $10 million minimum attachment point and includes accidental contamination, malicious contamination, product extortion, forced and/or government recall, and adverse publicity, among others.

To coincide with the launch of the product contamination policy for food and beverage companies, XL Insurance (Bermuda) hosted a seminar last week at its home offices in Hamilton that addressed regulatory and food safety issues in North America.

For more information, contact Beth Piggott, chief casualty underwriter, at *beth.piggott@xlgroup.com*. For worldwide inquiries regarding product recalls, contact Edward Mitchell, global recall manager, at *edward.mitchell@xlgroup.com*.

Travelers updates cranes, derricks training

HARTFORD, Conn.—Travelers Cos. Inc. has updated its training courses in accordance to the Occupational Safety and Health Administration's recently revised standards on the use of cranes and derricks in construction.

Travelers' cranes and derricks safety course is a complementary service that assists its policyholders pass nationally accredited programs and highlights hazards on construction work sites, the Hartford, Conn.-based insurer said in a statement.

The OSHA standards include pre-erection inspection of tower crane parts, use of synthetic slings, assessment of ground conditions and procedures for working near power lines.

For more information, Travelers customers can log in and register for "An Overview of OSHA's New Construction Standard for Crane and Derricks" webinar on Sept. 27 at *http://www.travelers.com/riskcontrol.*

TargetSafety launches risk pool Web program

SAN DIEGO—Enterprise risk management technology provider TargetSafety Inc. has launched an online application for public entity risk pools.

PreventionLink Exposure Manager is a portal hosted by TargetSafety that automates exposure data collection in real time for public entity risk pools and its members, San Diego-based TargetSaftey said in a statement.

The application is an add-on to PreventionLink Connect, the company's online platform for risk pools to increase member communication.

The program is customizable based upon the risk pool's insurance coverage and data collection needs. It aims to help risk pools manage membership, renewal processes and reporting by centralizing the data in one platform that is accessible to members.

A spokesperson for TargetSafety said PreventionLink soon will feature more applications for risk pools, such as the automation of policy ratings and printing and tracking of payments, among others.

For more information, contact Nikki Snowhite, marketing specialist, at 858-926-5994 or *nikki@targetsafety.com.*

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UP CLOSE Comings & Goings

RON KOESTER

NEW JOB TITLE: Cameron, Mo.-based chief financial officer of Cameron Insurance Co.

PREVIOUS POSITION: Manhattan, Kan.-based director of accounting services at the Kansas State University Foundation

INDUSTRY CHALLENGES: The economy is a concern for everybody with the lack of jobs out there. The rate environment is challenge for property/casualty (insurers). One issue that has been facing the industry for a long time is the regulatory issue, whether we are looking at state or federal regulations.

INDUSTRY OUTLOOK: Barring any major catastrophe, I think there are good opportunities out there. I think the ratings will eventually force us all back into good old underwriting and reviewing, and not just looking at investments. As the economy improves, investments will look better.

FIRST MARKET EXPERIENCE: I started as a management trainee for an insurance company, where I got to spend about six months (each) in underwriting, claims and accounting. It was a great, great learning experience for understanding the business and understanding how operations work.

CAREER HIGHLIGHT: There have been a lot of highlights. Being on the board of directors for an insurance company and being a senior vp at another institution. The real highlight is the opportunity to provide leadership and guidance for two companies and helping them along in their path.

WHAT YOU WANTED TO BE WHEN YOU GREW UP: I wanted to be a farmer. I grew up on a farm. I had five brothers and sisters. It was hard but it was simple times. It was going back to nature. I still garden and do stuff like that. They say you can't take the farm out of the boy but you can take the boy out of the farm.

OUTSIDE THE INDUSTRY, A DREAM JOB: Ideally, I'd love to be a professional golfer. I just enjoy the game. I am not that great at it, but I love it. You get to be outdoors and meet a lot of great people. It's something different than sitting behind a desk.

Comings & Goings ONLINE

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Court reinstates man's workplace sexual harassment suit

Appeals court says women's advances not always welcome

By JUDY GREENWALD

SAN FRANCISCO—A male pursued relentlessly by an amorous female colleague despite his repeated rejections and whose complaints were essentially ignored by his employer can proceed with a sexual harassment claim, a federal appeals court has ruled.

According to the Sept. 3 decision by the 9th U.S. Circuit Court of Appeals in San Francisco in *Equal Employment Opportunity Commission vs. Prospect Airport Services Inc.*, Rudolpho Lamas, whose wife died in 2001, began working for Prospect Airport Services in April 2002 as an aide for passengers who needed wheelchairs at McCarran International Airport in Las Vegas.

That fall, a married co-worker, Sylvia Munoz, began a series of sexual overtures that included notes, a suggestive photograph and a comment made in front of a passenger. She also enlisted co-workers in her campaign to begin a relationship with Mr. Lamas; when he continued to reject her, co-workers began to spread reports he was gay. Although he made several complaints to several supervisors, none acted on them except for one, according to court papers.

Although Mr. Lamas previously did his job well, the stress of the situation affected his job performance and he was fired in June 2003. The EEOC filed suit on Mr. Lamas' behalf.

A district court granted Prospect's motion for summary judgment, concluding Mrs. Munoz's conduct "was not severe and pervasive enough to amount to sexual harassment objectively for a reasonable man."

However, the appeals court disagreed.

"It cannot be assumed that because a man receives sexual advances from a woman that those advances are welcome," a three-judge panel ruled unanimously.

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

Mr. Lamas "unquestionably established a genuine issue of fact regarding whether the conduct was welcome," the appeals court said. Ms. Munoz's continued advances "created an environment that Lamas reasonably perceived as hostile and abusive. Lamas' emotional testimony about his reaction to Munoz's letters and gestures, his co-workers' statements about Munoz's interest in him, his complaints to his supervisors and Prospect managers, as well as his complaints to the EEOC and state of Nevada all evidence pervasiveness amounting to an abusive work environment," the court ruled.

A jury "could reasonably find Prospect knew about the harassment and its response was inadequate."

"Men as well as women are entitled under Title VII (of the Civil Rights Act of 1964) to protection from a sexually abusive work environment," the appeals court said in reinstating the case.

According to the EEOC, men accounted for 16% of these total sexual harassment charges filed in fiscal 2009, up from 8% in 1990.

BlackBerry use can create FLSA issues

By MATTHEW J. HELLER

40 hours

Under the FLSA, nonexempt employees are entitled to overtime compensation for "time spent working" beyond a 40-hour workweek. An employee does not even need to be required by the employer to work overtime but must merely do so for the employer's benefit.

For the past three years, the Chicago Police Department has handed powerful new tools to officers in the field—BlackBerry smartphones. But the BlackBerry may have backfired on the department, which is now being sued by a sergeant in the gang investigations unit for the overtime he claims he earned while using his smartphone off the clock.

The department "has willfully violated the (Fair Labor Standards Act) by intentionally failing and refusing to pay Plaintiff and other similarly situated employees all compensation due them under the FLSA" for their after-hours Blackberry use, Sgt. Jeffrey Allen said in a suit filed in May as a proposed class action. A judge has to certify the case as a class action for it to proceed.

The case is one of a handful nationwide in which employees have claimed overtime pay for smartphone use—and apparently the first involving public employees. But lawyers say such cases are a clear warning to employers to put a smartphone usage policy in place before they end up in potentially costly litigation. Smartphones "are very dangerous and risky for nonexempt employees to have if you're worried about overtime," says Jeremy A. Roth, a partner at San Diego law firm Littler Mendelson.

"Clearly there's a tremendous benefit to being able to access work remotely," says Howard S. Lavin, an attorney at the law firm Stroock & Stroock & Lavin in New York. "It's a fabulous tool. The problem is when you take technology and apply it to longstanding laws, there are unintended consequences."

Employers can minimize the risk of litigation by restricting smartphone use to exempt employees or by instructing nonexempt employees to take calls from customers or clients only during regular work hours.

Under the FLSA, nonexempt employees are entitled to overtime compensation for "time spent working" beyond a 40-hour workweek. An employee does not even need to be required by the employer to work overtime but must merely do so for the employer's benefit.

'Clearly there's a tremendous benefit to being able to access work remotely...The problem is when you take technology and apply it to longstanding laws, there are unintended consequences.'

Howard S. Lavin,
Stroock & Stroock & Lavin

Allen said the police department provided him with a BlackBerry so he could "access work-related e-mails, voice mails, and text message work orders regardless of their location. Chicago Police Department work was routinely accomplished through" using his BlackBerry. An attorney for the Chicago Police Department could not be reached for comment.

In a class action suit filed last year in Wisconsin, a former CB Richard Ellis Group Inc. employee said the Los Angeles-based real estate brokerage required him to answer messages and calls on his smart phone within 15 minutes "regardless of and without receiving compensation for the time spent doing so." CB Richard Ellis did not return calls seeking comment.

While an employee's off-the-clock smartphone use may amount to only a few minutes here or there—and the FLSA provides an exception for "de minimis" overtime—legal experts say an employer's liability can mount up in a class action.

Moreover, the electronic records stored on smartphones may give an employee solid evidence on which to base an overtime claim.

None of the suits has reached an adjudication on the merits. Bellevue, Wash.-based T-Mobile USA Inc. recently settled a case filed by sales representatives who claimed they were entitled to overtime pay because they were required to monitor their smartphones "at all hours of the day." As part of the settlement, the parties agreed not to disclose the terms.

Matthew J. Heller is a contributing writer to Workforce Management, a sister publication of Business Insurance.

New Zealand: Codes limit quake losses

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mission provides coverage of up to $100,000 New Zealand ($72,000) for dwellings and a maximum of $20,000 New Zealand ($14,420) for personal belongings.

As of late last week, the commission said it had received around 39,000 claims and estimates that it will pay around $1 billion New Zealand ($720.9 million) in claims from around 100,000 policyholders. Moody's Investors Service said the commission has $5.6 billion New Zealand ($4.04 billion) to cover claims.

The remaining insured losses are covered by private insurers and reinsured heavily in the global reinsurance market.

Australian insurers are well-protected by reinsurance and should see little impact from quake losses, according to Fitch Australia Pty. Ltd., a Sydney-based unit of Fitch Ratings in New York.

Fitch pointed out that claims are expected to be significant for Insurance Australia Group Ltd. and Suncorp-Metway Ltd., insurers based in Australia that combined hold about 60% of the New Zealand property market. The insurers' net exposures, though, are low, Fitch pointed out.

Suncorp said in a statement that its losses above $60 million New Zealand ($43.3 million) will be covered by reinsurance. Insurance Australia said "the entire event will be covered by our reinsurance arrangements."

Moody's Investors Service said "although a major event, the impact of the Christchurch quake on the bottom lines of IAG and Suncorp is easily manageable."

The two largest global reinsurers, Swiss Reinsurance Co. and Munich Reinsurance Co., last week said it was too soon to estimate their losses from the quake or comment on how those claims could affect rates.

However, sources said the cost of reinsurance on New Zealand property risks is expected to rise, which means insurers will be passing their costs along to policyholders.

REUTERS/LANDOV

New Zealand Prime Minister John Key (right) and Christchurch Mayor Bob Parker (center) survey earthquake damage in the nation's second-largest city.

> **'If reinsurance costs increase, they will be passed along to property owners.'**
>
> Imelda Powers, Towers Watson & Co.

"I would emphasize that, from our view, because this damage is from an earthquake along a previously unknown fault, it will likely cause an increase in costs for insuring quakes in New Zealand," Ms. Powers said. "If reinsurance costs increase, they will be passed along to property owners."

The earthquake in New Zealand, which comes after the Chilean earthquake this year and the Haiti earthquake that caused widespread death but very low insured losses, are reminders of the earthquake peril, said Dominic Christian, deputy CEO of Aon Benfield in London. Together, these events will cause insurers to re-examine the exposure, he said.

"I don't think the earthquake policy form will be reconsidered (as a result of the New Zealand earthquake), but quake risk will get more attention" from underwriters as a result of so much recent seismic activity, Mr. Christian said.

Aon Benfield is the reinsurance broker for the Earthquake Commission.

Catastrophe modeling company Risk Management Solutions Inc. said it expects as much as 70% of the insured loss will come from personal lines policyholders, with the rest from commercial and industrial policyholders.

Christchurch's port is among the commercial operations with damage from the quake. Lyttelton Port Co. Ltd., which operates the port, said the port sustained "significant damage" from the quake but shipping operations were fully operational two days later.

"The cost to repair the damage to the port is likely to be tens of millions of dollars," Peter Davie, chief executive of the port company, said in a statement.

Some of Christchurch's historic buildings were constructed well before the region's stringent business codes were put in place, which left them more vulnerable to damage.

The Christchurch City Council said the seven-story 104-year-old New Zealand Express Co. building and the 133-year-old Cecil House were so badly damaged by the quake that they would have to be demolished.

Mr. Guin pointed out that New Zealand's building codes call for retrofitting historic buildings to withstand seismic activity, but the requirements are not always enforced. "That's why older buildings are often not upgraded," he said.

While strong building codes helped save lives, the early hour of the earthquake also was a factor, Mr. Guin said. Residences in the area are mostly wood-frame construction, he said, which withstood the quake better than the old masonry buildings housing retail operations and small businesses in Christchurch.

Had the quake occurred during the day when the city was busy with shoppers, the outcome could have been very different, Mr. Guin said.

Sarah Veysey contributed to this report.

FSA: OTC reimbursements curbed; mini-med plans can get waivers

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FSA spending is for OTC medications.

In 2010, an average of 20% of eligible employees made FSA contributions, according to Hewitt Associates. In 2009, FSA contributions averaged $1,535 per employee among employers with at least 500 workers, according to Mercer L.L.C.

The health care law's restriction on OTC expenses is the first of two major provisions affecting FSAs. The other will cap pretax contributions to FSAs at $2,500 effective Jan. 1, 2013.

Under prior law, there was no annual limit on FSA contributions, though employers typically imposed annual limits ranging from $4,000 to $5,000.

Congress imposed the $2,500 limit to raise revenue to help pay for reform law provisions that will expand coverage, such as new federal insurance premium subsidies for the lower-income uninsured, beginning in 2014.

Meanwhile, a Department of Health and Human Services bulletin tells plan sponsors how they can continue using what are known as mini-med plans for the next three years.

Such plans provide limited benefits—such as a $25,000 or $50,000 annual limit on covered expenses. Only a small percentage of large employers offer them. They also are found in the academic community where colleges and universities provide them to students.

The plans, though, run afoul of previous federal rules that set a minimum annual dollar limit on essential benefits that health care plans must provide between 2011 through 2013. The minimum limit is $750,000 in 2011, $1.25 million in 2012 and $2 million in 2013. Starting in 2014, plans may not have annual limits for essential benefits.

In the case of mini-med plans, the HHS bulletin says plan sponsors can seek a waiver from those limits for 2011 through 2013.

In applying for a waiver, a plan sponsor must detail terms of the plan, the number of covered individuals and the plan's annual limits.

Also required is a statement by the plan administrator or CEO of the issuer of the coverage that says the plan existed prior to Sept. 23, 2010, and that meeting the minimum annual limits would result in a significant decrease in access or a significant increase in premiums for the plan.

HHS says it will act on waiver requests within 30 days of receipt.

Waiver requests can be mailed to the Department of Health and Human Services, Office of Consumer Information and Insurance Oversight, Office of Oversight, Attention James Mayhew, Room 737-F-04, 200 Independence Ave., S.W. Washington, D.C. 20201. Waiver requests also can be e-mailed to *healthinsurance@hhs.gov*, with the word "waiver" in the subject line.

ROBERT CLEMENTS: CAREER MILESTONES

1957
Begins insurance career at Royal Insurance Co. in Toronto.

1959
Joins Marsh & McLennan Cos. Inc. in Toronto.

1975
Moves to MMC's headquarters in New York.

1985
Instrumental in establishing ACE Insurance Co. Ltd. in the Cayman Islands in response to liability insurance crisis. ACE evolves and grows into a global insurer.

1986
Helps form excess liability insurer X.L. Insurance Co. Ltd. in Bermuda, creating additional capacity for corporate buyers. X.L. later becomes global insurer and reinsurer XL Capital Ltd.

1991
Began advising The College of Insurance, a role that expanded to become chairman of the board of overseers.

1992
Elected vice chairman and president of MMC.

1995
Founded Arch Capital Group Ltd.

1996
Retired from MMC.

1999
Named Insurance Leader of the Year.

2001
Under his leadership, The College of Insurance merged with St. John's University to create the School of Risk Management, Insurance & Actuarial Science.

2005
Founded Integro Insurance Brokers Ltd.

2006
Launched Ironshore Ltd. in Bermuda to provide property capacity after hurricanes Katrina, Rita and Wilma. Ironshore later expands internationally and builds diverse portfolio of property and casualty lines.

2007
Inducted into Insurance Hall of Fame.

Clements: Industry veteran dies

CONTINUED FROM PAGE 1

held holding company in 1992.

He founded and served as CEO of MMC Capital Inc. before retiring from MMC in 1996.

Industry veterans lauded Mr. Clements' contributions to the insurance business.

"I would call him probably one of the most influential figures in the insurance industry in the past 30 years," said Robert Hartwig, president of the New York-based Insurance Information Institute.

Mr. Clements established businesses and "thousands of jobs in the industry, both in the U.S. and in Bermuda, and is very substantively responsible for the shape of the global insurance and reinsurance business as it stands today in 2010," said Mr. Hartwig.

"He had an uncanny ability to see and sense opportunities, how to gather people and orchestrate that was unique," said Kevin Kelley, CEO of Ironshore Inc.

Brian O'Hara, who served as chairman and as CEO of XL, said in forming XL, "He really filled a critical need at a time when nobody else was able to do so" by convincing senior executives of Fortune 500 companies that "it was in their best interest to put up the capital" and then go offshore and quickly set up a business, "which was needed."

"He was a terrific leader and visionary, always looking to make sure that the industry was responding to the needs of the customer, and that's what drove him to create" several different insurance enterprises, said Dinos Iordanou, chairman and CEO of Arch Capital Group Ltd.

Mr. Iordanou said he knew Mr. Clements for 30 years and "we have always had very professional interactions. He was extremely intelligent and straightforward in his approach to the business and it was a pleasure doing business with him. That's why I chose to be part of his team" at Arch.

"His vision will be sorely missed. He was an individual who never really set boundaries in his thought processes about what the next step should be in the insurance world, and he did it extremely well," Mr. Iordanou said.

"He is a legend," said Charles A. Davis, CEO of Greenwich, Conn.-based Stone Point Capital L.L.C., which the former principals of MMC Capital formed in 2005 after MMC's divestment of the private equity subsidiary.

In addition to MMC Capital, Mr. Clements "was instrumental in all the private capital formation in the insurance industry over the past 20 to 30 years," Mr. Davis said. "He'll be missed by everybody in the business."

Maurice R. Greenberg, former chairman and CEO of American International Group Inc. and chairman and CEO of C.V. Starr & Co., said: "Bob was a towering figure in the insurance industry. He had a brilliant career and I think left pretty big tracks."

"He was a visionary," Mr. Greenberg said. "He understood the insurance industry thoroughly and he was a good friend to many of us in the industry and will be very much missed."

One of Mr. Clements' most significant achievements was his leadership of the board of overseers at the former College of Insurance, now the School of Risk Management, Insurance and Actuarial Science at St. John's University, said Ellen Thrower, executive director of the School of Risk Management.

"The Bob Clements era will go down as the best and most important in our history. It really has assured our next 100 years," Ms. Thrower said. His key initiatives included a plan to merge with a top-tier university and assemble a diverse group of board members, resulting in "a great team that bought into the vision and work of the school."

"So often Bob's mission was making the industry better, creating markets where they didn't exist, and asking, 'How do I advance the insurance profession?'" Ms. Thrower said. "He was an amazing man, a great friend, a wonderful mentor. We will miss him greatly."

Mr. Clements "was a well-respected competitor as well as a creative thinker who found ways to bring capital to the marketplace when his clients needed it the most," J. Patrick Gallagher Jr., chairman, president and CEO of Itasca, Ill.-based Arthur & Gallagher & Co., said in a statement. "Our industry has lost a true innovator."

"Our industry, and our clients, owe him a huge debt of gratitude," Brian Duperreault, president and CEO of MMC, said in a statement.

Joe Plumeri, chairman and CEO of Willis Group Holdings P.L.C., said in a statement that Mr. Clements "leaves an enduring legacy" in the insurance industry.

"He was a pioneer in every respect," James H. Veghte, chief executive of XL Group's reinsurance operations, said in a statement.

"Our industry has lost a great leader," said Eric Andersen, CEO of Aon Risk Solutions-U.S., in a statement.

According to his family, Mr. Clements was born in 1932 in Chicago, the oldest son of John Clements and Mildred Chapman Clements. After his graduation from Evanston High School in 1950, Mr. Clements attended Dartmouth College, where he majored in government.

After graduating from Dartmouth in 1954, Mr. Clements served in the U.S. Army and was stationed at Fort Bliss in El Paso, Texas. Mr. Clements and his family later established the Robert Clements Professorship of Democracy and Politics at Dartmouth College.

Mr. Clements is survived by his wife of 55 years, Marilyn; four children; and 12 grandchildren.

A memorial service will be scheduled soon, his family said. In lieu of flowers, donations may be made to environmental group Soundkeeper Inc. at *www.soundkeeper.org* or Partners in Health, which provides health care services to poor nations, at *https://donate.pih.org/page/contribute/donate.*

Sarah Veysey and Regis Coccia contributed to this story.

Clements remembered for warm personality

STAMFORD, Conn.—Robert Clements, the former Marsh & McLennan Cos. Inc. executive who died three days shy of his 78th birthday, combined a sharp intellect with a warm personality, say those who knew him.

"He had a very unique perspective," said Peter Garvey, president and CEO of New York-based Integro Insurance Brokers Ltd. "He always seemed to come up with an observation that nobody else quite saw. He liked to think deeply about things and, because he was so intelligent, that was very valuable to all of us around him."

Mr. Garvey said Mr. Clements "had a style of speaking slowly and choosing his words carefully. He liked to tell me that that was a device to buy him extra time to think about the answer, which was an indication of his great sense of humor. But I always thought that, more than most people, Bob knew the power of words and wanted to be certain that people understood him."

> **'He always seemed to come up with an observation that nobody else quite saw.'**
> Peter Garvey,
> Integro Insurance Brokers Ltd.

"Everybody who knew him knew what a really caring individual he was," said Mr. Garvey. "In spite of his great success in the business, he cared about everybody that he came to know. That was a very endearing quality."

Brian O'Hara, who served as chairman and as CEO of XL, said, Mr. Clements was "an out-of-the-box thinker before the term was invented" while also being a thoughtful, kind and soft-spoken person.

"He had a very, very strong sense of loyalty, more than anyone else I ever met," Mr. O'Hara said. "Anybody who helped him or was on his team, he would do anything for (them), just anything." He expected the same in return, Mr. O'Hara said. "He obviously meant a huge amount to me. I'm forever indebted that he took a chance on a 38-year-old underwriter to help lead his new venture as the first XL president, and I've got just such a strong, deep sense of affection and now sadness at his passing."

"He's the single most important mentor in my life," said Ellen Thrower, executive director of the School of Risk Management at St. John's University. "He made you want to work really hard not to let him down, because you knew he wouldn't let you down."

Charles A. Davis, CEO of Greenwich, Conn.-based Stone Point Capital L.L.C., described Mr. Clements as "very warm, very engaging, very creative, a real family man—just a special guy on a whole bunch of levels."

Maurice R. Greenberg, former chairman and CEO of American International Group Inc. and chairman and CEO of C.V. Starr & Co., said Mr. Clements "was a warm individual, interested in people, very candid, a very likable person."

Kevin Kelley, CEO of Ironshore Inc., said, "Bob was a very thoughtful guy on many levels. He was truly a multidimensional individual. He understood business and he understood family, and he was very charitable with his time."

According to his family, Mr. Clements spent many hours in canoes and kayaks on New England rivers, Long Island Sound and in the Caribbean. He also enjoyed playing tennis, loved jazz and played the piano. He kept a signed photograph of Louis Armstrong, with whom he once shared a meal in the 1950s, along with family pictures in his office.

—By Judy Greenwald

Survey: Cost tops concerns

CONTINUED FROM PAGE 3

year because of the changes.

The biggest factor motivating employers is cost. Sixty-three percent of respondents said it would be more cost-effective to make such changes than retain a plan's grandfathered status.

As employers "start to get a clearer picture of projected costs for 2011, many are finding they need more flexibility to get cost increases down to a level they can handle," Tracy Watts, a Mercer partner in Washington, said in a statement.

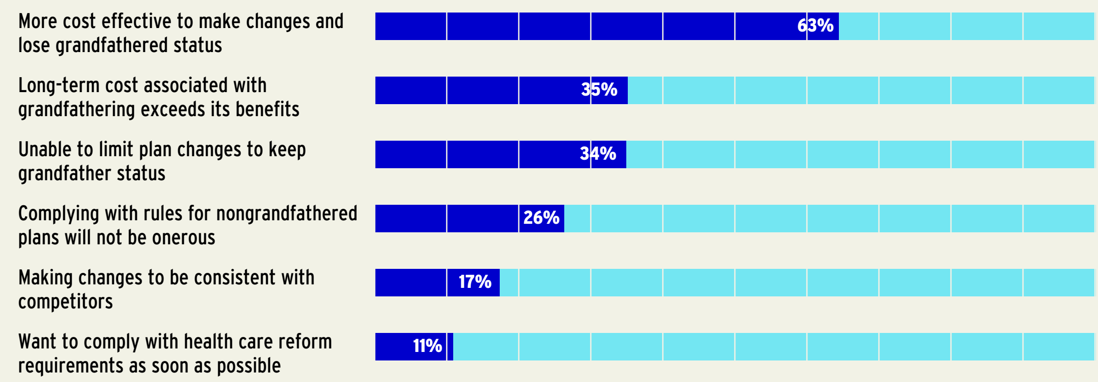
Among employers whose plans will lose grandfathered status next year, 35% said that will happen because they intend to boost deductibles or out-of-pocket maximums by more than the permitted amount, while 31% intend to increase coinsurance, and 23% intend to raise copayments or more than the allowed amount.

Aside from shifting costs, 44% of employers also plan to add health management or wellness programs, 31% intend to conduct audits to determine if dependents are eligible for coverage, and 27% plan to put their plan out to bid to hold down health care costs.

Copies of the survey are available at *www.mercer.com*.

COST TOP REASON TO GIVE UP STATUS

Why employers are giving up grandfathered status for their health care plans



Source: Mercer L.L.C.

Willis joint venture runs afoul of India's regulator

By MARK A. HOFMANN

MUMBAI, India—Willis Group Holdings P.L.C. will appeal a decision by India's Insurance Regulatory & Development Authority that it is "not inclined to accept" the license renewal application of the broker's joint venture in India, Willis India Insurance Brokers Pvt. Ltd.

Willis owns a 26% stake in Mumbai-based Willis India, with the rest owned by Mumbai-based Bhaichand Amoluk Consultancy Services Pvt. Ltd.

In its Sept. 1 decision, India's regulator cited several problems with Bhaichand Amoluk, including a financial dispute related to reinsurance treaties and its failure "to maintain the 'insurance bank account' properly."

In a statement, Willis said it is "extremely concerned" about IRDA's findings against Bhaichand Amoluk. Willis also said it is "in the process of terminating its current relationship with Bhaichand Amoluk as a result of a series of management differences." Willis added that it is taking "decisive action" to find a new joint venture partner in India.

Willis established the joint venture in 2003.

"Willis has been in India for nearly two decades and in that time has established a reputation for excellence, integrity and transparency," Andrew Hicks, managing director of Willis India, said in the statement.

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Nuisance: Weapons plant ruling

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al. vs. State of Connecticut et al., which is on appeal to the U.S. Supreme Court, asserting that the U.S. Environmental Protection Agency, rather than the courts, should address whether plaintiffs can sue emitters of greenhouse gases. In that case, the 2nd U.S. Circuit Court of Appeals allowed a suit filed by a coalition of states, environmental groups and New York City to proceed against several of the nation's largest coal-burning utilities.

The 10th Circuit "is now one of several federal circuit courts that have evaluated the question of whether state court nuisance claims are precluded by federal regulations," said William F. Stewart, a partner at Nelson Levine de Luca & Horst L.L.C. in Blue Bell, Pa., who specializes in climate change litigation.

He said it adds to the 4th U.S. Circuit Court of Appeals' decision in *State of North Carolina vs. Tennessee Valley Authority*, the 5th Circuit's decision in *Ned Comer et al. vs. Murphy Oil USA Inc. et al.* as well as *Native Village of Kivalina vs. Exxon Mobil Corp.*, which is pending before the 9th Circuit.

Though not specifically a global warming case, plaintiffs in *North Carolina vs. TVA* successfully argued that emissions from the TVA's power plants reach North Carolina airspace, where they damage human health and the environment, creating a "public nuisance" under the state's common law.

After failing to assemble a quorum of judges for an en banc hearing, the 5th Circuit recently reinstated *Comer*, which was filed by a group of Gulf Coast property owners who allege that oil and electric power companies' emissions "added to the ferocity of Hurricane Katrina" by contributing to global warming (*BI*, March 2 and March 8).

In *Kivalina*, a group of Eskimo villagers allege that 24 oil, energy and utility companies' greenhouse gas emissions have caused Arctic sea ice to diminish, threatening native fisheries.

In an e-mail, Richard Faulk, a partner at Gardere Wynne Sewell L.L.P. in Houston, who represents several chemical, refining, manufacturing and insurer organizations in *AEP*, said the 10th Circuit's decision "underlines the importance of traditional public nuisance principles in all contexts of nuisance litigation, including climate change litigation. Most importantly, the court stresses that, to be actionable, the interference with one's enjoyment of property must be 'substantial' and 'unreasonable.' The court also noted that the fact-finder 'must weigh the gravity of the harm and the utility of the conduct causing that harm.'"

"This is a far cry from the 2nd Circuit's decision in *Connecticut vs. AEP*, which held that claims could proceed even if the interference was 'trifling.' The standard applied by the 10th Circuit properly notes that a defendant's contribution to creating the nuisance must be significant, and that the interference must be more than speculative; it must be supported by scientific proof, not irrational fears and concerns about risks to health, safety or welfare," Mr. Faulk wrote.

AP PHOTO

The cooling tower of the operating reactor at the Watts Bar Nuclear Plant in Spring City, Tenn. Plaintiffs in *North Carolina vs. Tennessee Valley Authority* successfully argued that emissions from the TVA's power plants reach North Carolina airspace, where they damage human health and the environment, creating a "public nuisance."

Supervision: Plan moves

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"fairly happy with the outcome."

The Brussels-based Comité Européen des Assurances, which represents insurers and reinsurers in Europe, said it welcomed the Council of Economic and Finance Ministers' approval of the proposed supervisory bodies.

The CEA also said it believed that establishing the European Insurance & Occupational Pensions Authority "will help to ensure that insurers' distinct business model is recognized and understood."

The CEA said it believed that establishing the Authority 'will help to ensure that insurers' distinct business model is recognized and understood.'

The CEA said it would comment more fully once more details of the bodies are made public, but also said it welcomed Mr. Barneir's stated aim to have the bodies operational as soon as possible—most likely Jan. 1, 2011.

The CEA expressed its "support for the current proposal that the supervisory authorities will contribute to the functioning of supervisory colleges for cross-border institutions, to the monitoring of systemic risks, and to the development and coordination of recovery plans in coordination with national supervisors."

Domiciles: P/C insurers eye moves

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man, a credit analyst at Standard & Poor's Corp. in London, said many major insurers had examined their structures and domiciles in recent years to ensure they maintain their competitive advantage.

While taxation is a consideration when choosing to redomicile, it was not insurers' top concern, Mr. Allen said.

When asked to rank key factors affecting any domicile decision, "easy access to markets," and "realistic capital adequacy requirements" tied as the top factors among respondents. The existence of a respected and credible regulator in the domicile was the No. 3 in importance while "low corporate taxation" was No. 4.

Companies were asked to rank the criteria on a scale of one to five, with one being the most important (see chart, page 4).

"Access to markets is clearly important," Mr. Allen said. Companies are looking to expand into areas where there is underwriting expertise, he said, citing the purchase of Lloyd's underwriting platforms by some U.S. and Bermudian companies and the expansion of some Lloyd's companies into Europe, the United States and Asia as examples of this trend.

It is also interesting to note that "light-touch regulation" placed seventh of the eight criteria that respondents were asked to rank when choosing a domicile, said Mr. Allen.

"There is no big call for light-touch regulation," he said.

Rather, insurers appear motivated to choose a domicile where there is an internationally respected regulatory regime, Mr. Allen said.

The upcoming E.U. risk-based capital regulatory regime, Solvency II, which is slated for introduction at the end of 2012, will "level the playing field" between regulation in jurisdictions within the European Union and may therefore make moving a company's domicile within Europe—or to other areas, such as Switzerland or Bermuda which are seeking equivalence with Solvency II—less likely, said Mr. Allen.

Companies likely will continue to review their domicile arrangements on a regular basis, he said.

In addition, "accretive moves" such as those made by Lloyd's-based companies opening branches overseas, likely will continue, Mr. Allen said.

Bermuda, Europe vie for top reinsurer domicile: Analysis

Europe is challenging Bermuda among reinsurers considering startups or changing their domicile, a rating agency said in a report released Wednesday.

While the United States continues to be a vitally important market for reinsurance, Bermuda and Europe are vying "for the top spot among reinsurers that are launching their businesses or considering a change of address," Standard & Poor's Corp. said.

"From the mid- to late 1990s through 2007, Bermuda was the location of choice for reinsurers that were setting up new businesses," Laline Carvalho, a credit analyst at S&P in New York, said in a statement accompanying the report.

"Startup activity on the island was particularly strong in 2001 to 2002 following the Sept. 11, 2001, terrorist attacks, as well as in 2005 to 2006 after hurricanes Katrina, Rita, and Wilma," Ms. Carvalho said.

'From the mid- to late 1990s through 2007, Bermuda was the location of choice for reinsurers that were setting up new businesses.'

Laline Carvalho, Standard & Poor's Corp.

Bermuda was attractive for reinsurance startups with its relatively quick regulatory approval process, favorable taxes and proximity to the United States. But in recent years, there has been a significant shift of reinsurers moving to Europe—especially those offering insurance and reinsurance, according to the report.

Changes in taxation and regulations elsewhere in the world are prompting renewed interest in Europe as a domicile, with particular interest in Switzerland and Ireland, according to the report.

Historically, Europe has had a large reinsurance company presence. Today, five of the world's six largest reinsurers are based in the region.

In 2009, Europe accounted for 60% of global net reinsurance premiums written.

The report is available to subscribers at *www.globalcreditportal.com* and *www.ratingsdirect.com*.

—By Sarah Veysey

News In Brief

CONTINUED FROM PAGE 1

financial-strength rating of SCOR S.E. and its subsidiaries to A from A-. Best also revised its outlook of the insurer to stable from positive, citing SCOR's risk-adjusted capitalization, consistent operating performance and enterprise risk management as factors. "SCOR's risk-adjusted capitalization has improved beyond A.M. Best's expectations, reflecting the strengths of its highly diversified underwriting exposure, which reflects an even balance between nonlife and life/health business, as well as the company's relatively low risk investment exposure," Best Europe said in a statement. The rating agency said it expects SCOR's underwriting performance to remain strong despite the effects of natural catastrophes and that the company will benefit from "a more favorable investment margin."

Reinsurance sector stable, well-capitalized

The reinsurance industry has weathered the global financial crisis well and the outlook for the worldwide sector is stable, Standard & Poor's Corp. said in a report. In "2009's Perfect Calm Breeds Stormier Climate for Global Reinsurance in 2010," S&P said the industry is well-capitalized, but negative factors could affect the sector's financial strength in the coming years. One concern S&P cited is a reliance on prior-year reserve releases to bolster profits, which the rating agency said is not sustainable over the long term. In addition, reinsurance rates are likely to soften or remain flat in all but loss-affected lines, unless there are major losses, Mark Coleman, a credit analyst at S&P in London and one of the report's authors, said in an interview.

Firm seeks to fund benefits via captive

Freight carrier R+L Carriers Shared Services L.L.C. has asked the Labor Department for authorization to fund employee benefit risks through a captive insurer. Under its proposal, which was filed last week, R+L would use Royal Assurance Inc., a captive licensed in 2008 in Arizona, to reinsure life, long-term disability and short-term disability risks insured by a Unum Group unit. Royal Assurance is owned by members of the family that founded R+L, which has about 9,000 employees and a fleet of about 13,000 tractors and trailers.

Endurance buys renewal rights

Endurance Specialty Holdings Ltd. has bought the renewal rights to a portion of the U.S. property catastrophe and global specialty reinsurance business of Glacier Reinsurance A.G., which went into runoff last month. Effective immediately, specialty insurer and reinsurer Endurance will reinsure, on a quota-share basis, select treaties within Glacier Re's portfolio, the firms said. Going forward, Endurance will pay a commission to Glacier Re for any accounts it renews from the Glacier Re portfolio it reinsures. Endurance will not assume prior Glacier Re loss reserve liabilities and anticipates the transaction will generate $25 million to $30 million of gross written premiums a year. The agreement is Endurance's fifth renewal rights deal, a company official said.

P/C rates fall again: Analysis

Commercial U.S. property/casualty insurance rates dropped an average of 4% in August compared with the same period last year, MarketScout said. General liability experienced the largest rate decrease at 6%, the electronic insurance exchange said. Crime, fiduciary and professional liability coverages registered the smallest decrease at 1%. "Beginning in August of 2009, the composite P/C rate has been drifting between minus 5% and minus 3%, a very narrow range as compared to the wide swings during the last several years," MarketScout CEO Richard Kerr said in a statement announcing the results.

Age affects Roth 401(k) contributions: Analysis

Only a small percentage of employees contribute to Roth 401(k) plans, with participation related directly to their age, according to an analysis. In an examination of 20 Roth 401(k) plans with just over 500,000 eligible participants, Hewitt Associates Inc. found that 16.6% of employees age 20 through 29 made contributions, as did 9.4% of employees age 30 through 39. By contrast, only 6% of employees age 40 through 49 made contributions as did 4.2% of those age 50 through 59, and 2.6% of employees age 60 and older. That finding, Hewitt Associates noted, "is consistent with the premise that younger workers will benefit more from Roth contributions." Unlike traditional 401(k) contributions, which are made with pretax dollars and then taxed when withdrawn, Roth 401(k) contributions are made with after-tax dollars and investment earnings can be withdrawn tax-free.

Indiana insurance commissioner dies

Indiana Insurance Commissioner Carol Cutter has died at the age of 67. Ms. Cutter, who died last week, was appointed commissioner by Gov. Mitch Daniels in 2009. She previously served as the department's chief deputy commissioner of health and legislative affairs. Stephen W. Robertson was appointed acting insurance commissioner and executive director earlier this year. No permanent commissioner has been named.

Return: Economy hits transitional duty

CONTINUED FROM PAGE 1

impact is developing, Mr. Pfingstag said he anticipates it will.

"Obviously, where you are not able to get people back to work as quickly as you would have before, that is going to have a negative impact on your overall costs," Mr. Pfingstag said

The impact, however, is uneven with industries and companies hit hardest by the weak economy experiencing the greatest challenges.

In contrast, the temporary hiring industry has experienced improvements in workers comp return-to-work program results as demand for temporary worker services has increased, said Danielle Lisenbey, chief operating officer of medical management services at third-party administrator Broadspire Services Inc. in Sunrise, Fla.

But creative programs that, for example, assign factory floor workers to temporary office duties while they recuperate from an injury face the greatest challenges while programs that return workers to their normal duties are less affected.

Before the economy slowed, larger budgets afforded employers greater ability to accommodate temporarily injured workers by assigning them to "nice to have," not necessarily "need to have," projects, Ms. Lisenbey said.

Several sources said there are increasing incidents of line supervisors resisting corporate efforts to temporarily accommodate employees with work restrictions.

To meet bottom-line goals, supervisors increasingly want their limited number of employees to be fully capable of meeting normal or increased workloads. Under such circumstances, any work available may go to skilled workers who are not injured or disabled, but have been laid off, sources said.

"I have seen instances where the preference is being given to the more able-bodied individuals," Mr. Pfingstag said.

The problem has been more widespread among smaller employers with payroll constraints and at small, specialized units of larger employers where managers are under pressure to produce more with less, said Mark Noonan, a managing principal at Integro Insurance Brokers Ltd. in Boston.

To help overcome line manager resistance, Mr. Noonan advises clients to allow them to exclude return-to-work cases from their overall head count.

> **'Obviously, where you are not able to get people back to work as quickly as you would have before, that is going to have a negative impact on your overall costs.'**
>
> Tom Pfingstag,
> Sedgwick Claims Management Services Inc.

"You are getting some production (from the injured or temporarily disabled) person and your line supervisor is encouraged to think about bringing people back to work because it benefits them," Mr. Noonan said.

Some companies have encouraged business unit managers to accommodate injured or disabled employees by tying their annual bonuses to corporate return-to-work goals, said Ritza Vaughn, senior strategic client consultant in San Ramon, Calif., for Aon eSolutions, a unit of Aon Corp.

"It gets their involvement," Ms. Vaughn said. "It's not just corporate saying, 'Do it,' and leaving it up to the facilities. They are putting incentives in place."

While data does not exist to prove that the ongoing recession is affecting employer return-to-work efforts, similar experiences have occurred during past recessions, observers said.

NCCI Holdings Inc. research into temporary total disability claims found the duration of workers comp injuries increased during the 2001 recession, said Harry Shuford, the Boca Raton, Fla.-based rating and research organization's chief economist in Boca Raton, Fla.

Preliminary data for the current recession indicates that may be happening again, Mr. Shuford said. While he can't definitively say that reduced return-to-work opportunities are helping to increase the duration of claims, that could help explain why that may be occurring.

"A lot of return to work is return to light duty," Mr. Shuford said. "In a period when employment is constrained, intuitively one might believe that that reduces opportunities for light work. We don't have any direct evidence of that, but our data is consistent with that."

Meanwhile, the recession may have an even greater effect on similar programs for nonoccupational disabilities, said Mary Tavarozzi, North American practice leader for absence and disability management consulting at Towers Watson & Co. in Tampa, Fla.

With fewer jobs available to accommodate injured and disabled workers, employers typically give available modified duty tasks to workers comp claimants over nonoccupational disability claimants because of the potential for litigation expenses associated with work-related injuries, Ms. Tavarozzi said.

"It's a double whammy how the nonoccupational disabled workforce gets squeezed in these recessionary times," Ms. Tavarozzi said.

Sullivan: Ex-AIG CEO to lead Willis unit

CONTINUED FROM PAGE 3

would be hard pressed to find a more experience or skilled expert than Martin Sullivan," Mr. Plumeri said in a statement. "Martin's deep, strong and lasting connections to all segments of the insurance industry will be an enormous asset to Willis, working for our current and future clients in the type of role that has earned him well-deserved recognition over many decades in our business," the Willis CEO added.

"Marty has a lot to offer a global firm like Willis," said John L. Ward, CEO of Cincinnatus Partners L.L.C. in Cincinnati. "He has a global experience that is unique, and I think this role will be a better fit for him than some of the financial stress he was taking on at AIG."

"He's got a long career with a lot of relations that are going to be valuable," said Bill Bergman, an analyst with Morningstar Inc. in Chicago.

Mr. Sullivan began his career with AIU, the non-life U.K. unit of AIG, in 1970. In 1993 he became president of AIU's U.K. & Ireland division and managing director of AIG Europe (U.K.) Ltd.

He was named senior vp for foreign and general insurance in 1996 and executive vp of that division in 1998. In 1996, Mr. Sullivan also was appointed chief operating officer of AIU in New York and named president of that unit in 1997. He was elected to AIG's board in 2002.

> **'Marty has a lot to offer a global firm like Willis.'**
>
> John L. Ward,
> CEO of Cincinnatus Partners L.L.C.

Mr. Millwater said during a conference call that Willis had always had a "fantastic" global business, encompassing such specialties as marine and energy and aviation, as well as more specialized lines such as bloodstock insurance.

The establishment of the new unit will enable Willis to bring its capabilities more seamlessly to large, global clients around the world, he explained.

Mr. Millwater said Mr. Sullivan "has a huge knowledge" of the industry and "connections around the world."

Willis Global also will comprise Willis Re, Willis Global Specialties, Willis Global Markets, Willis Global Placement, Willis Facultative Reinsurance, Willis Capital Markets & Advisory, Willis Analytics and Faber & Dumas. Those units will continue to be run by their current management teams, Willis said.

In 2009, Willis' global accounts segment made up 26% of its annual revenue, according to information posted on the broker's website. Willis declined to comment on revenue targets for the unit.

Mark A. Hofmann contributed to this report.

Business Insurance END PAGE

Contributing: Jeff Casale, Mark A. Hofmann, Sarah Veysey

Pop star in trouble one more time

Even nontraditional employers face sexual harassment suits.

Last week, Fernando Flores—who once was employed as Britney Spears' bodyguard—sued the singer.

According to published reports, the suit alleges Ms. Spears sexually harassed him, exposed herself to him and intentionally inflicted emotional distress upon him.

The suit, which seeks unspecified damages, also alleges that Ms. Spears struck her children using his belt.

A posting on Ms. Spears' website dismisses the allegations in the suit filed in Los Angeles County Superior Court.

"This lawsuit is another unfortunate situation where someone is trying to take advantage of the Spears family and make a name for himself," reads the posting, which said that authorities had conducted a "proper investigation" into the allegations and closed the case.

"Ms. Spears and her attorneys have every expectation that this matter will be dismissed by the courts," according to the website posting.

AP PHOTO

Singer Britney Spears' former bodyguard has filed a lawsuit claiming she sexually harassed him, among other allegations.

Insurance scam masked as prize

Insurance is designed to help people protect their assets, but authorities in Clovis, Calif., are warning residents about an unusual insurance scam.

Last week, two Clovis residents contacted their insurance agents to ask about checks they had received.

The checks, for more than $4,800 each, came with instructions to use them to claim a sweepstakes prize. The catch? Neither had entered a sweepstakes.

In fact, according to the Fresno, Calif.-based Pacific Publishing Group Inc.'s Business Journal, the checks were a bit strange. Both listed the payer as State Farm Mutual Automobile Insurance Company, US BANK NA, Jacksonville, FL 32232-2746, EAST GRAND FORKS MN.

The recipients were told to contact an "assigned claim agent" or a "prize award administrator" to collect their prizes of $145,000 or $150,000. Both letters bore Canadian phone numbers.

The city issued a warning about the scam they said may have allowed the perpetrators to gain access to the victims' bank accounts. People who receive the notice should call police, their insurance agent or simply destroy the check, according to the city.

Hence the adage, if it looks too good to be true, it probably is.

LLOYD'S OF LONDON

Lloyd's turns new page with iPad integration

The familiar sight of Lloyd's of London insurance brokers hurrying from meeting to meeting with huge bundles of paper under their arms soon could be a thing of the past.

The "slips," or pieces of paper on which risks are underwritten at Lloyd's, are the stuff of insurance folklore, but three brokerages have signed up for a three-month test of iPads in the underwriting room.

Marsh Inc., R.K. Harrison Insurance Brokers Ltd. and Cooper Gay Swett & Crawford Group will be the first brokerages to take part in the iPad trial at Lloyd's that began this month.

The iPads effectively will serve as electronic slip cases, according to Lloyd's. Each brokerage will decide on an underwriting area in which to use the electronic devices.

Lloyd's said it hopes other brokers will join the pilot project during the coming months.

"This is a small, simple pilot—literally an iPad 'out of the box.' By simply replacing the paper with something easier to carry, but which allows amendments and links to other services, we continue to support the face-to-face negotiation that makes Lloyd's unique," Sue Langley, director of market operations at Lloyd's, said in a statement.

Johnson wins 'Bridges' suit

After playing a cop on TV, Don Johnson knows a thing or two about justice.

A Los Angeles judge recently sided with Mr. Johnson—most notable for his portrayal of flashy Detective James "Sonny" Crockett in "Miami Vice," and later as Inspector Nash Bridges in the 1990s series "Nash Bridges"—awarding him $51 million in a lawsuit against the makers of the latter program.

According to reports, the judge ruled that Mr. Johnson is owed $28 million in interest for his work on the police drama, which more than doubles the $23.2 million that a jury awarded him.

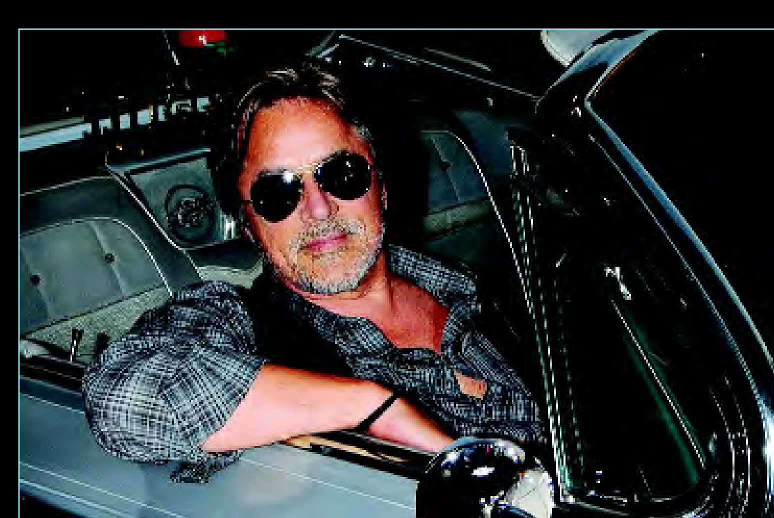
Mr. Johnson reportedly owned half the copyright to "Nash Bridges" and sued Santa Monica, Calif.-based Rysher Entertainment Inc. and three other firms in 2009 over distribution profits from the show.

Rysher Entertainment, which is owned by New York-based Qualia Capital L.L.C., argued that "Nash Bridges" was expensive to produce, leaving little profit to split with Mr. Johnson. Mr. Johnson's attorneys argued that irresponsible accounting denied the actor his share of the profits.

In July, a jury ruled that Mr. Johnson should receive his half of all future earnings of the show.

"'Nash Bridges' was my project, and I poured my heart into it," Mr. Johnson said in a statement. "I feel a sense of vindication and sincere gratitude that both the jury and Judge (Michael) Stern continue to agree with me."

Rysher said it would appeal, saying it is "confident" the award will be reversed.



AP IMAGES

A Los Angeles judge recently sided with actor Don Johnson, awarding him $51 million in a lawsuit against the makers of "Nash Bridges."

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