

Business Insurance

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WITH REVISED N.Y. RULE
ON BROKER DISCLOSURE / PAGE 3**

In Brief

Sen. Dodd to remain
Banking chairman

Sen. Christopher Dodd, D-Conn., said he will stay on as chairman of the Senate Banking, Housing and Urban Affairs Committee, which has limited jurisdiction over insurance. The death of Sen. Edward Kennedy, D-Mass., put Sen. Dodd in the position of deciding whether to remain at the helm of the Banking Committee or assume the chairmanship of the Senate Health, Education, Labor and Pensions Committee. Sen. Dodd was the second-ranking Democrat on that committee. Instead, Sen. Tom Harkin, D-Iowa, will take over as chairman the HELP Committee.

IRS ruling eases 401(k)
automatic enrollment

An Internal Revenue Service ruling will allow employers that use model IRS language to add

See **IN BRIEF** page 22

BENEFITS MANAGEMENT

EMPLOYEE WELLNESS BENEFITS

Employers use wireless technology to enhance wellness programs; companies attempt to strike a balance between disease management, wellness efforts; communications programs adapted to diverse workforce; community wellness initiatives aid corporate plans. **PAGE 9**



Obama sets agenda on health reform

Urges lawmakers to come together to pass measure

By **JERRY GEISEL**

WASHINGTON—President Barack Obama's address to a joint session of Congress last week could restore momentum in the drive to enact sweeping health care reform legislation this year.

In a 47-minute address, President Obama laid out—as much for the public as for members of Congress—the case for enactment of reform legislation, including the need to ensure security and stability for those with coverage, provide coverage to those without it and to slow cost increases.

"The time for games has passed. Now is the season for action. Now is when we must bring the best ideas of both parties together and show the American people that we can still do what we were sent to do. Now is the time to deliver on health care," he said.

In his speech, for the first time, President Obama suggested that he is not wedded to a so-called public option, a provision in bills approved by several congressional



WASHINGTON TIMES/LANDOV

President Obama last week addressed a joint session of Congress on health reform plans.

panels that would create a government-run health insurer to compete with private insurers. That proposal has aroused enormous opposition among Republicans and some Democrats in Congress, who argue it will damage the private health insurance market and ultimately lead to a single-payer system.

"He made it clear that a public option is not a deal-breaker," said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

The president said he is willing to consider other alternatives to a public option, such as nonprofit cooperatives, while also calling for

See **REFORM** page 20

Ex-convicts in workforce pose liability problems

By **JUDY GREENWALD**

California employers would be wise to take another look at their criminal background check policies in light of the possibility the state may be forced to release many prisoners early because of jail overcrowding, say some observers.

Many employers, particularly large corporations, already have such policies in place. Nationally, all employers must contend, though, with myriad state laws limiting how they may use this information as well as concern by the Equal Employment Opportunity Commission that these checks have a disparate impact on minorities.

In California, a three-judge federal panel has refused to delay a plan to release more than 40,000 inmates from the state's overcrowded prison system. Gov. Arnold Schwarzenegger's administration is appealing the decision to the U.S. Supreme Court, and the Legislature is considering the issue, but its ultimate resolution remains uncertain.

In light of the possible releases, "I think it's a good idea to review company policies and decide what's appropriate under the circum-

See **CONVICTS** page 21

Reinsurance rates expected to be flat at renewal

By **REGIS COCCIA**

MONTE CARLO, Monaco—If heavy losses do not reduce available capital in the reinsurance industry, ceding insurers can expect a relatively flat renewal season across most lines, reinsurance market experts say.

World financial markets began recovering in the latter part of this year, which has helped boost reinsurers' balance sheets. Given that improvement and light catastrophe loss experience so far, there is little pressure to raise reinsurance rates, market sources said last week at the



Reinsurance executives gathered last week in Monte Carlo, Monaco, for the Rendez-Vous de Septembre.

"Looking ahead, pricing levels will remain stable" on North American property risks, agreed David Priebe, chairman of global client development for Guy Carpenter. "We don't see upward movement, nor do we see a precipitous drop." He said that "prices should be stable in Europe" and that demand would grow for protection on specific catastrophe risks.

Aon Benfield also forecasts a stable renewal season for most lines of reinsurance.

A heavy catastrophe season, resulting in a 10% to 20% loss of the

See **RENDEZ-VOUS** page 21

Rendez-Vous de Septembre reinsurance gathering in Monte Carlo, Monaco. "Absent another major shock, all signs point to a flat renewal," said Richard Booth, vice chairman of New York-based Guy Carpenter & Co. L.L.C. "If there is no market-changing event, reinsurance pricing will be based on available capital."

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On the Web

BI BLOGS

D.C. Benefits & Risks blog debuts

Combining 50 years of Washington, D.C., reporting experience, *Business Insurance* Editor-at-Large Jerry Geisel and Senior Editor Mark A. Hofmann blog about what's happening inside the Beltway for benefits and risk managers. Go to www.BusinessInsurance.com/blogs.

BI VIDEO

Captive experts weigh in on Solvency II

In this new segment of the 2009 Captive Markets video series, industry leaders in Europe discuss how Solvency II will affect their captive insurance programs. Go to www.BusinessInsurance.com/video.

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Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Big backdating settlement hits D&O insurers

By ZACK PHILLIPS

The more than \$100 million settlement of an options backdating lawsuit could be a harbinger of more frequent and costly claims for directors and officers liability insurers writing excess Side A coverage, observers say.

On Aug. 28, Broadcom Corp. and its D&O insurers agreed to a \$118 million settlement of a shareholder derivative lawsuit alleging illegal stock options backdating by former company executives. The settlement, which still must be approved by a U.S. District Court judge, would be funded entirely by the company's D&O insurers.

Attorneys, brokers and other observers say the settlement is noteworthy because it is unusual for derivative lawsuits and stock

'Most of the backdating cases have settled out with not a lot of insurance money.'

Dan Bailey,
Bailey Cavaleri L.L.C.

options backdating cases to generate claims that large.

"Most of the backdating cases have settled out with not a lot of insurance money," said Dan Bailey, a partner at Bailey Cavaleri L.L.C. in Columbus, Ohio.

In addition, observers say the Broadcom case is notable because of the unusually large contributions of

excess Side A insurers. Side A policies cover directors and officers for claims for which their company cannot or will not indemnify them. Typically, this arises when the company is insolvent or legally prohibited from indemnifying the executives, which is often the case in derivative lawsuits.

According to court records, Broadcom had \$100 million in traditional ABC D&O coverage—primary and excess—which includes Side A, Side B and Side C coverage (see box, page 17). In addition, the Irvine, Calif.-based technology company had an additional \$100 million in excess Side A-only coverage. Excess Side A insurers funded \$40 million of the settlement.

Observers say derivative lawsuits rarely produce settlements or judgments large enough to exhaust the

traditional ABC tower of coverage.

"If it wasn't for the size of this, it would have been paid out in the first \$100 million of limits," said Paul Sparks, an Atlanta-based senior executive vp with McGriff, Seibels & Williams Inc., a subsidiary of broker BB&T Insurance Services Inc. "When carriers underwrite this (excess Side A coverage), certainly the expectation is that, outside financial insolvency, they're not likely to get hit."

But Broadcom's is one of several big settlements of derivative lawsuits against solvent companies in recent years, including United-Health Group Inc.'s \$895 million settlement of backdating charges and American International Group Inc.'s \$115 million settlement of a

See **BACKDATE** page 17

House OKs bill to ease access to surplus lines

Backers of reforms optimistic measure will be enacted

By MARK A. HOFMANN

WASHINGTON—Supporters of a measure that would reform the regulation of surplus lines think they may have their best chance ever to see the bill become law.

That assessment came after the House of Representatives approved the Nonadmitted and Reinsurance Reform Act last week. The bill enjoys broad support among risk managers, insurers and producers. Among other things, the bill would make accessing the surplus lines market easier for risk managers and set a uniform system of surplus lines premium tax allocation and remit-

tance. The measure provides a liberal definition of what criteria a risk manager must meet to be regarded as a "qualified risk manager" entitled to bypass the admitted market when seeking coverage. The bill also would ease regulatory burdens on reinsurers (see box, page 22).

The bill also would simplify reinsurance regulation by eliminating extraterritorial application of state reinsurance laws and make the domiciliary state the single regulator for financial solvency.

The House had previously approved two earlier versions, neither of which was taken up by the Senate. One of the bill's sponsors—Rep. Dennis Moore, D-Kan.—told his colleagues shortly before the vote that he believed "the third time will be the charm."

Companion legislation has been introduced in the Senate but has yet



AP PHOTO

Rep. Dennis Moore, D-Kan., said he hopes "the third time will be the charm" for the Nonadmitted and Reinsurance Reform Act.

to be the subject of a hearing or committee vote.

Advocates of the measure, however, say that changes in the political atmosphere may make enactment of the bill easier to achieve.

"We are very hopeful that we will see Senate action soon," said Maria Berthoud, a partner at B&D

Consulting in Washington, which represents the Kansas City, Mo.-based National Assn. of Professional Surplus Lines Offices.

She noted that the Senate measure is being co-sponsored by Sen. Evan Bayh, D-Ind., who sits on the

See **SURPLUS** page 22

New York revises producer compensation rule

By JOANNE WOJCIK

ALBANY, N.Y.—New York insurance regulators have submitted a revised agent and broker pay disclosure rule to the New York State Governor's Office of Regulatory Reform for review, but a key provision of the proposed rule that drew the ire of risk managers remains intact.

The proposed regulation, the Producer Compensation Transparency Regulation, would require insurance producers operating in the state to notify insurance buyers of their right to request information on the compensation they receive from insurers in connection with their insurance placements.

Now in its third iteration, the latest version of the rule was altered slightly since the previous version that was released July 8, according

to Matthew J. Gaul, special counsel with the New York State Insurance Department. In particular, the department removed a blanket exemption for renewals and added a requirement that oral disclosures be followed up with written disclosures, he said.

READ the revised proposal and other public documents at www.BusinessInsurance.com

However, the rule still requires insurance buyers to ask for compensation information before producers must disclose it, rather than mandating automatic disclosure, he said.

The Risk & Insurance Management Society Inc. previously has criticized this provision as a "significant retreat from the regulation's premise of protecting the rights of

insurance consumers," (*BI*, July 20).

The Independent Insurance Agents & Brokers of New York Inc. met with the Governor's Office of Regulatory Reform last week over concerns about portions of the revised rule, according to a spokesman for the industry trade group, who declined to be more specific about those concerns.

The spokesman said the IABNY hopes the governor's staff will make additional changes before the rule is published in the *New York Register*. After the date of publication, which has not yet been determined, concerned parties will have 45 days to comment on the proposed rule.

The Council of Insurance Agents and Brokers also had some reservations.

"The one question we had was renewals. It states it only excludes

renewals where producers don't have sales or solicitor contact with clients. We're not sure what that means," said Nicole Allen, vp of industry affairs in Washington, adding that the CIAB will be requesting clarification during the comment period.

Terry Fleming, vp of New York-based RIMS and director of risk management for Montgomery County, Md., said the society will express its opinion during the comment period. "Obviously, we're disappointed at not getting mandatory disclosure without having to ask," he said.

The rule was precipitated by the bid-rigging and contingent commission scandal that erupted in 2004, resulting in various officials' 2005 and 2006 settlements with several brokers and insurers.

Financial crisis prompts rethink of ratings in Germany

Some see need for government agency to assess solvency

By RICHARD MILLER
and ADRIAN LADBURY

MUNICH, Germany—A leading German insurance manager last week called for the creation of a state-backed credit ratings service to help buyers assess insurer strength.

During a panel discussion on insurer security at the Deutscher Versicherungs-Schutzverband e.V. 2009 Symposium last week in Munich, Germany, speakers agreed that before the financial crisis, commercial insurance buyers were complacent and relied too much on the analysis of credit rating agencies.

One solution would be for Germany's financial regulator—the Bundesanstalt für Finanzdienstleistungsaufsicht, or BaFin—to step in to provide the information buyers need, said panelist Jurand Honisch, senior vp-corporate risk management and insurance at Bertelsmann A.G. in Gütersloh, Germany.

"Personally, I believe that state authorities have to bring themselves much deeper into the process, so the (U.S. Securities and Exchange Commission) or Germany's BaFin should take this chance and create a government-owned, independent rating agency," he said in interview following his presentation.

Stefan Materne, chair of reinsurance at Cologne University of Applied Sciences, supported Mr. Honisch's suggestion.



RICHARD COOKE

Jurand Honisch of Bertelsmann A.G. says that governments should set up independent rating agencies.

If rating agencies are reluctant to stand behind their ratings, then buyers will need other alternatives, said Mr. Materne, who moderated

the panel.

"If it gets really difficult for the buyers, then the regulators—if they feel it's necessary to support them—might go that route," he said of the state-run option.

During the discussion, Mr. Materne asked for a show of hands on insurance buyers' reliance on rating agencies in their decision making before the financial crisis. Most who raised their hand said they relied predominantly on ratings.

Mr. Honisch said he believes at least 50% of risk managers relied only on ratings.

"We were simply relying too much on ratings...as the one and sole reference point," he said. The rating agencies "just provided us with the estimation of what the financial strength was, and we took it."

One lesson from the financial crisis is that insurance buyers may need to further diversify their insurance programs. For instance, Bertelsmann may increase the number of insurers in its global property program to 15 from seven, Mr. Honisch said. More research will also be necessary, he added.

Representing rating agencies on the panel, Karin Clemens, senior director at Standard & Poor's Financial Institutions Ratings in Frankfurt, Germany, answered criticism that S&P had made ratings errors leading up to the financial crisis.

She said the performance of rating agencies cannot be judged on an individual rating. Ratings, she explained, give an independent

See **DVS** page 22



Software giant Microsoft Corp. wants to use its captive insurance operations to reinsure long-term disability policies covering many U.S. employees.

Window of opportunity for Microsoft captive?

By JERRY GEISEL

WASHINGTON—Microsoft Corp. has asked the Labor Department for authorization to fund benefit risks through the Vermont branch of its Bermuda-based captive insurance company.

Redmond, Wash.-based computer software giant Microsoft wants to use the Vermont branch of Orcas Ltd., its 11-year-old property and liability captive, to reinsure long-term disability policies covering about 55,000 U.S. employees written by Prudential Insurance Co. of America, according to the application filed by Aon Consulting.

If the captive benefits funding application is approved, Microsoft, which reported \$60.4 billion in revenues last year, would be the fourth Fortune 50 company to get Labor Department permission for such arrangements. Previously authorized Fortune 50 companies are jet engine manufacturer United Technologies Corp. in Hartford, Conn.; Wells Fargo & Co. in San Francisco; and Archer Daniels Midland Co. in Decatur, Ill.

Microsoft is the fourth corporation to file a captive benefits funding application this year with the

See **MICROSOFT** page 6

Errors & Omissions

■ A story in the Aug. 24 edition, "Greenberg Settles Suit, Which Still Targets AIG," misstated charges filed by the Securities and Exchange Commission against Maurice R. Greenberg. The SEC charged Mr. Greenberg with being a "control person" allegedly aware of transactions that enabled AIG to create the false impression that it consistently met or exceeded certain financial expectations. Mr. Greenberg did not admit or deny the claim.

■ A story in the Sept. 7 edition, "Bill Targets Iran Oil Dealings," incorrectly spelled the last name of attorney Pieter Van Tol.

9th Circuit OKs pilot's sex bias suit

Fired female flier says not offered retraining made available to men

By JUDY GREENWALD

SAN FRANCISCO—A federal appellate court has ruled that a female pilot who alleged sexual discrimination in connection with her termination can proceed with her case.

Tiffany Anne Nicholson, who acknowledged having had a sexual relationship with a fellow pilot, said she was allegedly dismissed for her poor communication skills but not given the same opportunity for retraining given to male pilots who had the same issues, according to the decision by the 9th U.S. Circuit Court of Appeals in *Nicholson vs. Hyannis Air Service Inc.*

According to the decision, Hyannis, Mass.-based Hyannis Air Service, a small regional airline, selected Ms. Nicholson as one of eight pilots to launch its new service pro-

viding flights between Guam and neighboring Micronesian islands. The group included a captain with whom Ms. Nicholson had had a year-long sexual relationship, court papers say.

According to the decision, Ms. Nicholson's supervisors and other

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

pilots reported she "exhibited problems with her communication and cooperation skills," and she was subsequently terminated. She sued, claiming sex discrimination in violation of Title VII of the Civil Rights Act of 1964.

Ms. Nicholson claimed the airline's "actual purpose in disciplining her was to remove an object of

sexual competition from its Guam service," and that she was not "provided the same retraining opportunity provided to the male pilots who failed portions of their training."

In overturning a lower court ruling granting summary judgment dismissing the case, the three-judge appellate panel ruled the evidence "taken in the light most favorable to Nicholson, is sufficient to raise a genuine issue of material fact as to whether she was qualified and whether similarly situated male pilots were treated favorably."

Ms. Nicholson also "introduced the minimal evidence required to raise a factual issue regarding whether (the airline's) actions were taken because of her sex," said the court, which remanded the case for further proceedings.

Program set for World Captive Forum

By PAUL D. WINSTON

BONITA SPRINGS, Fla.—The entire spectrum of operating a captive insurance company—from forming a new captive, to increasing an existing captive's effectiveness, to shutting down a captive—will be addressed by sessions and speakers at the 2009 World Captive Forum.

The 19th annual forum, scheduled for Nov. 9-11 at the Hyatt Regency Coconut Point in Bonita Springs, Fla., will feature numerous educational workshops and presentations by captive experts organized around the theme "Risk: The Time is Now." Sessions follow three tracks: introductory topics, advanced topics and benefits topics.

The forum will also include an exhibit hall to showcase the offerings of captive industry service providers, as well as networking



The Hyatt Regency Coconut Point in Bonita Springs, Fla., will host the 2009 World Captive Forum.

opportunities for attendees.

The World Captive Forum is produced by *Business Insurance*, the Quest Group of Cos. and Towers Perrin.

Two workshops open the forum on Monday, Nov. 9, from 4 p.m. to 6 p.m. One panel, "Creating a Suc-

cessful Captive Program," covers the basics of captive formations and gives an overview of the latest developments affecting captives.

A new session, "Captive Owners Solution Sharing," will run concurrently, open only to captive owners and members. The closed-door moderated discussion will allow participants to share their experiences and best practices.

Also on Monday, participants can schedule one-on-one 30-minute meetings with representatives of participating captive domiciles from 2 p.m. to 6 p.m. Meetings can be arranged by e-mailing info@worldcaptiveforum.com.

The World Captive Forum will present its WCF Award of Excellence, honoring a single-parent captive that has contributed signifi-

See **WCF** page 6



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WCF: Program set for captive meeting

CONTINUED FROM PAGE 4

cantly to the operations of its owner, in a general session on Tuesday at 9 a.m.

The award presentation will be followed by a keynote speech by Mario Vitale, chief executive officer of Zurich Global Corporate. Mr. Vitale will review global challenges and opportunities facing the industry and its customers, as well as insights into broader risk financing trends and developments.

Breakout sessions

Following the keynote, breakout sessions will be held in each of the forum's three tracks: introductory, advanced and benefits.

FROM 10:45 A.M. TO 12 NOON, "Making Your Captive More Effective" is a companion session to Monday's "Creating a Successful Captive Program" and will explore the principles of risk retention in captives, key challenges in captive operations and changing application requirements. Running concurrently, another session, "Advanced Captives and Benefits," will present the case studies of employers that are funding benefit programs with captives.

FROM 1:30 TO 3 P.M., three concurrent sessions are scheduled. "Preparing for More Regulatory Risks" will present the impact on captives from U.S. European regulatory changes and proposals. "Cells: From the Simple to the Complex" will examine the strong growth of cell captives, the benefits of new structures and potential pitfalls. "Fronting for Benefits Insurance" will examine market conditions for fronting benefit programs.

FROM 3:30 TO 4:30 P.M., another three sessions will run. "Finding Reinsurance and Fronting Capacity" will offer insights into where capacity can be found and how to access it, while "New Value in Risk Modeling" will explore the use of risk modeling in captive programs, as well as the lessons learned by insurers with inadequate risk man-

agement. "Captives and Medical Benefits" will discuss the potential for using captives to finance health care benefits and control costs.

Tuesday's agenda will conclude with a networking reception.

Wednesday agenda

Wednesday commences with a keynote address from Michael Gasior, an analyst and commentator on investment and financial issues. Mr. Gasior will share his insights into the causes of the recent financial meltdown and where the economy and markets go from here.

FROM 10:15 TO 11:15 A.M., the annual "Hot Topics in Captive Insurance" session will address the most pressing issues facing the market. This year, some topics already identified for discussion include: the real or illusory benefits of cells, the mounting burdens of regulation, the counterparty risk crisis that is raising collateral requirements, and the regulatory dangers posed by demand for higher tax revenue.

AT THE SAME TIME, "New Developments in Captive Benefits" will provide the latest developments in regulation, structures and strategies for using captives to fund employee benefit programs.

FROM 11:30 A.M. TO 12:30 P.M., forum attendees can choose from "Captive Tax Update: Everything You Need to Know" and "Winning Investment Strategies in Troubled Times."

AT 1:30 P.M., the World Captive Forum's specialty, "WCF Captive Case Studies," will present captive owners sharing their real-world experiences and lessons, including a presentation by the captive honored with the WCF Award of Excellence.

FROM 3:15 TO 4:45 P.M., "Risk Mitigation in Health Care Captives" will look at the unique challenges and opportunities in captives providing liability coverage for health care providers. At the same time, "Endings and Windups" will present examples and issues arising from the need to exit a captive.

THE LAST SESSION OF THE DAY, at 5 p.m., is "Fourth and Goal: Closing Session with Jeffrey Triplette." As a frequent speaker and long-time participant at the World Captive Forum, Mr. Triplette brings a wealth of experience in managing risks and captives to the speaker's lectern. But he also serves as an NFL referee and is a retired colonel with the Army Reserve and North Carolina National Guard. He will explore how the challenges of being an NFL official are no different from the challenges audience members face in their business and personal lives.

Wednesday's events will be capped by a closing reception, enabling attendees to network with peers, expert speakers and service providers.

Early-bird discount

Full registration provides more than two full days of education, networking breaks and events, access to an array of captive service providers in the exhibit hall, and reference information and materials on captives to bring home.

An early-bird discount of \$100 off normal registration rates applies until Sept. 25: for risk managers or benefit managers, the full rate is \$975, \$1,350 for others, unchanged from previous years. For second and subsequent registrants from the same company, the fee is \$975. Captive regulators pay \$495 to attend. All those rates increase on Sept. 25.

In addition, there is a \$200 fee for those who choose to participate in Monday's golf tournament. One complimentary registration is included for all exhibitors, and subsequent exhibitors pay \$750, which provides full access to the forum events and sessions.

For full conference details, including speakers for each session, or to register for the conference and hotel, go to www.worldcaptiveforum.com. Also on the Website is a link to the 2009 World Captive Forum Preview, a special online webcast discussing conference highlights and key issues, along with downloadable slides.

For more information on the forum, including exhibiting and sponsorship opportunities, please contact Lisa Ferrier at 952-928-4659 or lferrier@harringtoncompany.com.



Mario Vitale, chief executive officer of Zurich Global Corporate, will deliver a keynote speech at the World Captive Forum.

Microsoft: Window of opportunity?

CONTINUED FROM PAGE 4

Labor Department. Dow Corning Corp., a joint venture of Dow Chemical Corp. and Corning Inc., and R+L Carriers Shared Services L.L.C. filed applications last month.

Midland, Mich.-based Dow Corning wants to use Devonshire Ltd., its Washington-based captive, to reinsure life insurance policies written by Minnesota Life Insurance Co. and LTD policies written by Aetna Life Insurance Co. R+L, a Wilmington, Ohio-based freight carrier, has proposed using Arizona captive Royal Assurance Inc. to fund life, LTD and short-term disability risks insured by a Unum Group unit.

YKK Corp. of America, the Mariet-

ta, Ga.-based U.S. subsidiary of Japanese zipper manufacturer YKK Corp., wants to expand benefit risks funded through its Vermont captive and use it to reinsure supplemental life insurance and LTD policies. The life insurance policies would be written by Minnesota Life, and the LTD policies would be written by Liberty Mutual Insurance Co. Last week, the Labor Department gave tentative authorization to the arrangements.

Coca-Cola Co. is seeking to fund retiree health care risks through its South Carolina captive, Red Re Inc. However, in April, the Labor Department tentatively denied approval, saying Coca-Cola needed to address issues such as how the arrangement would enhance retirees' benefits.

Discussions between Labor and Atlanta-based Coca-Cola continue.

More applications are likely, experts say. "A lot more are in the wings," said George O'Donnell, an Aon Consulting senior vp in Somerset, N.J. Experts say captive benefit funding can cut benefit costs about 2% to 10% a year compared with buying coverage directly in the commercial market. Such savings are possible because underwriting gains go to the captive and not a commercial insurer, Mr. O'Donnell notes.

While the savings aren't huge, during tough economic times, "employers are looking under every rock to save money," said Karin Landry, a managing partner with Spring Consulting Group L.L.C. in Boston.

Commentary

Lessons to be learned from financial crisis

One year ago this week, the financial crisis stemming from subprime loan defaults reached global proportions, as several major financial institutions went bust and the world's then-largest insurer nearly collapsed.

What a difference a year makes. While investment banks Bear Stearns & Co. and Lehman Bros. have disappeared, the Treasury Department came to the rescue of insurer American International Group Inc., and AIG has made plans to sell assets and spin off its core global commercial lines property/casualty business. After two name changes, that business is now known as Chartis Inc.

The name, derived from the Greek word for map, is fitting. We are operating in new territory, with an expanded sense of risk in the global financial system.

Analysis of the subprime loan crisis shows that one of the root causes that almost felled AIG was the failure to monitor aggregate exposure to credit derivative losses. AIG Financial Products for years made lots of money for its holding company parent, and its appetite for writing credit default swaps mushroomed. As the underlying assets on the swaps it wrote plummeted in value, its largely unrealized losses spiraled. The series of massive writedowns triggered calls for increasing amounts of collateral, quickly burning through the company's liquid assets. Investors, spooked by the spiraling losses, sent the share price almost through the floor, eventually settling well below \$1. Unable to halt the freefall, AIG momentarily looked headed for bankruptcy. But a few rounds of federal govern-

ment financing, the sale of several assets and one reverse stock split later, AIG shares have, to some degree, stabilized.

Through it all, however, and something that remains difficult for some people to understand, AIG's insurance operations have remained well capitalized and in fact performed in line with their peers. AIG's woes largely were confined to its Financial Products unit.

In hindsight, few people envisioned the subprime mortgages that backed enormous volumes of securities defaulting on the massive scale they did. Had that risk been considered, perhaps the damage could have been mitigated.

Some observers have ques-



REGIS COCCIA

Editor Regis Coccia's commentary appears periodically. He can be reached at: rcoccia@businessinsurance.com

tioned whether enterprise risk management was to blame for the financial crisis, as the industry where ERM is most widely practiced is financial services. Others say ERM was not the problem; the real culprit was companies' failure to use ERM.

I agree with the latter view. Enterprise risk management makes both theoretical and practical sense, but what many peo-

In hindsight, few people envisioned the subprime mortgages that backed enormous volumes of securities defaulting on the massive scale they did. Had that risk been considered, perhaps the damage could have been mitigated.

ple misunderstand is that there is no one-size-fits-all approach to managing risks, be they hazard risks or business risks.

Traditional risk management is concerned with hazard risk—that is, the effects of accidental loss. ERM encompasses hazard risk as well as business risk, which holds the possibility of loss, no loss or gain. ERM also is about maximizing organizational value, which requires viewing risk as both possibility of loss and opportunity.

One of the lessons from the financial crisis is that companies must take a strategic view of risk and manage it so that they can avoid disaster and position themselves to create opportunities, or at least take advantage of ones that arise.

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Business Insurance OPINIONS

Honest debate needed on health care reform

If there was a part of President Obama's health care reform address last week to a joint session of Congress that we'd unequivocally endorse it was his denunciation of the scare tactics used by some reform opponents.

One such piece of misinformation cited by President Obama is that the reform legislation would set up panels comprised of bureaucrats, who'd have the power to "kill off senior citizens." It isn't just talk show hosts circulating that unfounded claim, but "prominent politicians" as well, President Obama said, no doubt referring to comments made on the issue by, among others, former Alaska Gov. Sarah Palin.

There have been plenty of other spurious claims, including a widely circulated rumor that employers would be forced to enroll employees in a public plan rather than a plan chosen by employees.

Of course, there will be disagreement over some of the reform proposals pending in Congress and those outlined by the president. And certainly some question even whether the current system needs to be overhauled.

Indeed, we have criticized provisions in the House bill that could take from employers the ability to design their own plans.

But what there should be—and what there has not been enough of—is an honest debate. Without that, the opportunity to try to solve a huge national problem—the continued escalation of health care costs and the rising number of uninsured—may be lost.

So, we hope what comes out of President Obama's address is an intellectually honest debate on what health care reform should and should not do, without the distortion and exaggeration that have become part of the debate.

Reform that truly is in the national interest is possible, and the best way to accomplish that is to stick to the facts. Those exposed as being dishonest—whether they are for or against reform legislation—ultimately lose their ability to influence the debate.

Now's the right time to pass surplus lines bill

REP. DENNIS MOORE, D-Kan., said last week that he hoped the third time would indeed be the charm for the Nonadmitted and Reinsurance Reform Act.

We couldn't agree more.

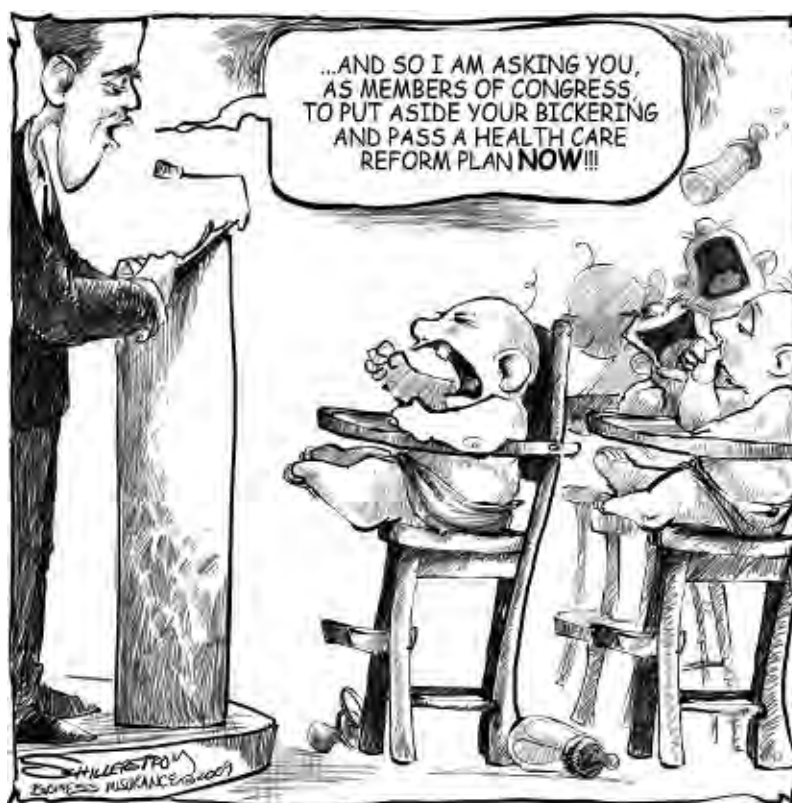
For the third time, the House of Representatives has approved a measure that would streamline regulation of, and ease access to, the nonadmitted property/casualty market for qualified risk managers. The measure faces no significant opposition—the insurance industry and risk managers alike have rallied behind it—and for good reason: The bill is the epitome of common sense.

But the measure has never made it to the Senate floor. Last year, the economic meltdown of mid-September pushed the measure aside. But this year, things should be different. For example, as we report on Page 3, prominent members of the Senate Banking, Housing and Urban Affairs Committee sponsor this year's Senate version of the bill. That alone should give it an extra push.

Also working in the measure's favor is that both houses of Congress will have to deal with some sort of financial services regulatory reform in the coming months. No one can predict how comprehensive the changes will ultimately prove to be, but even the most modest reforms should include the NRRA.

The House has approved this common-sense reform for the third time. The Senate should waste no time following suit.

What there should be is an honest debate.



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



NEXT WEEK'S QUESTION

What impact will President Obama's speech have on health care reform efforts?

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EMPLOYEE WELLNESS BENEFITS

Employers strive to overcome cultural issues / [Page 12](#)

Firms seek to balance disease management, wellness / [Page 14](#)

Community links help build wellness programs / [Page 16](#)

BENEFITS MANAGEMENT

Firms go wireless with wellness apps

Smartphones help workers keep track of health, fitness info

By **KAREN PALLARITO**

As more employees rely on iPhones, BlackBerrys and other smartphones to communicate at work and at home, some employers are launching pilot projects to help workers use the devices to better manage their health.

At Baptist Health in Little Rock, Ark., many employees who had trouble managing chronic conditions weren't signing up for the employee wellness program, said Paula Suter, director of Baptist's Center of Excellence for Chronic Care Management. So the health system began testing a new model of care targeting workers with frequent hospitalizations or emergency room visits for poor management of diabetes, heart failure, asthma or chronic obstructive pulmonary disease.

Baptist offered incentives for signing up, including reduced medication costs, a fitness center membership and free glucose meters and strips. Each of the 43 participants was given access to either a BlackBerry or a Bluetooth-enabled MedApps mobile wireless health monitoring system for transmitting blood pressure, blood glucose readings or other health data to a central network for nurse health coaches to assess.

Each device has its pros and cons, although younger employees loved getting feedback on their phone via Raleigh, N.C.-based Confidant Inc.'s diabetes management application, Ms. Suter said. With either technology, preliminary findings suggest diabetic employees are getting better control of their blood sugar, hemoglobin A1c and cholesterol levels.

"I think that the biggest benefit is that the nurse gets to see information in real time, and then usually if there's an issue, she's going to call them and do a more in-depth assessment over the phone," Ms.

Suter said.

Participation in workplace wellness and disease management programs traditionally has been limited, and sustaining participants' interest over time is a challenge. Some experts believe the growing popularity of mobile applications may energize those efforts.

"The benefit is, you have a feedback loop and it's interactive, so you're not just kind of writing stuff in a journal and hoping for the best," said Fraser Edward, manager of market development for health care at Waterloo, Ontario-based Research In Motion Ltd., a develop-

'Some of us are optimistic that we are going to be able to actually crack the toughest part of disease management, and that is to influence people's behavior.'

Robert McCray,
Wireless-Life Sciences Alliance

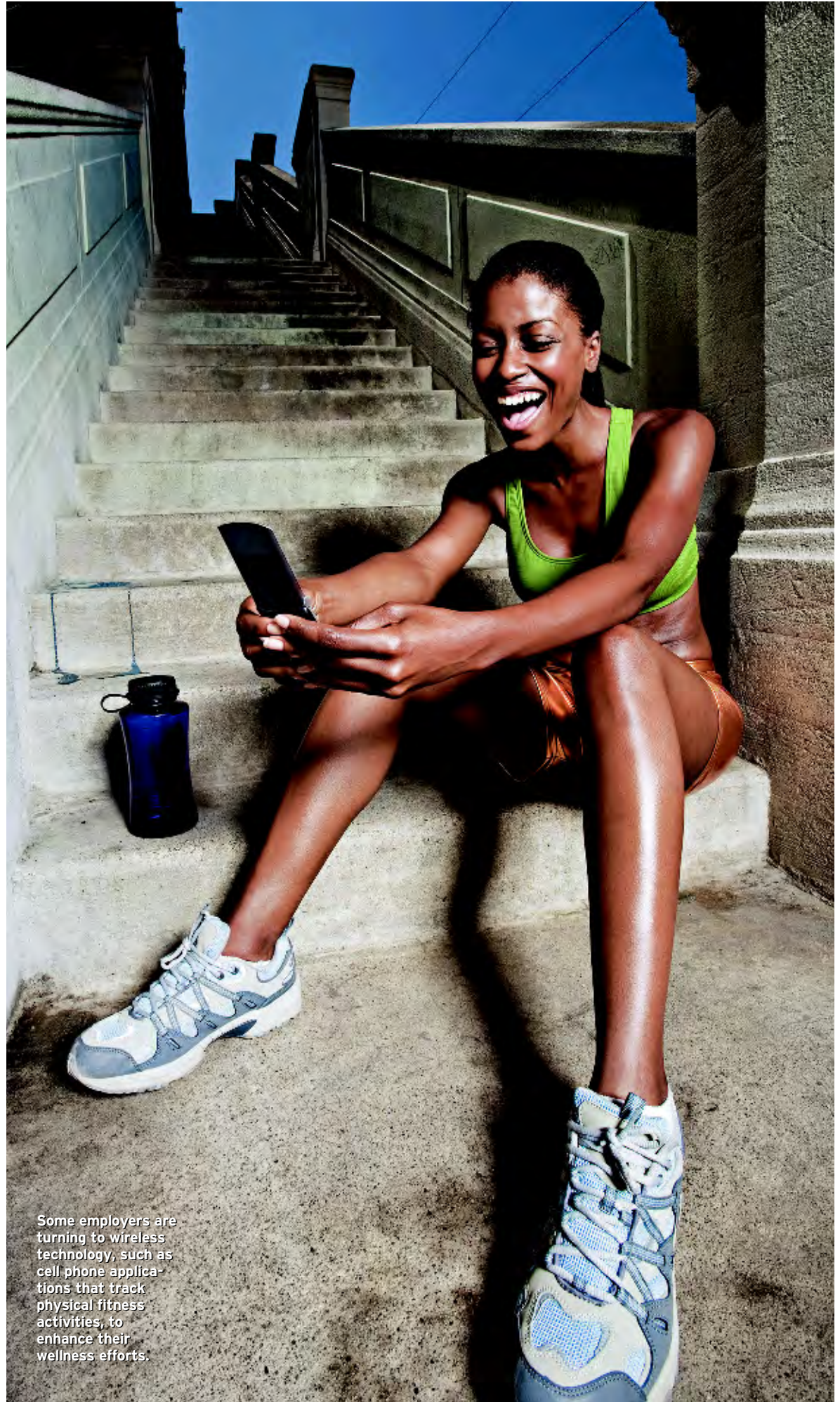
er of wireless solutions for BlackBerrys. "You're actively getting feedback from some kind of health coach in the background."

Robert McCray, chairman of the Wireless-Life Sciences Alliance in San Diego, credits the ubiquity of cell phones, their power to compute and communicate, and the emergence of small, inexpensive, remote sensors that can synchronize with cell phones with creating the perfect environment for the programs.

"Out of all that, some of us are optimistic that we are going to be able to actually crack the toughest part of disease management, and that is to influence people's behavior," he said.

The cell phone has "considerable

Continued on next page



Some employers are turning to wireless technology, such as cell phone applications that track physical fitness activities, to enhance their wellness efforts.

Wireless: Employers offer wellness tools

CONTINUED FROM PREVIOUS PAGE

potential value" to employer wellness programs, said LuAnn Heinen, vp of the Institute on the Costs and Health Effects of Obesity at the Washington-based National Business Group on Health, although she doesn't believe the technology will motivate people who lack the desire to change. "I think it will make it easier for someone who is motivated," she said.

The most visible health and fitness applications, or "apps," are those that phone manufacturers and service providers are offering for individual download. Apple

Inc.'s iPhone App Store, for example, lists dozens of apps, including programs that track calories consumed and burned, act as a personal fitness trainer, and help smokers quit.

"There's no filter on the quality of those apps," cautioned Vivian Distler, research manager with the Institute for the Future's Health Horizons Program in Palo Alto, Calif. But many are free or relatively inexpensive, starting at \$1 or \$2, "so it is not a big deal to try an app out, see if it works for you and, if not, move on to the next one," she said.

Some disease management and

wellness vendors are building wireless applications into their programs, with no additional fee for mobile access.

Sensei Inc., a Humana Inc. company based in Boca Raton, Fla., has developed a weight-loss program that works like a virtual dietician and weight-loss coach. Users plug in their dietary preferences and receive customized menus, shopping lists and tailored advice by cell phone and desktop. Robert Schwarzberg, Sensei's president and chief executive officer, said the program encourages individuals to make healthier choices "one meal at a time."

A 2008 pilot with Humana's workforce led to numerous system updates, and now three employers are testing the revamped program.

Being able to offer the program on a wide range of cell phones is a distinct advantage, he said, because not every employee has access to a desktop computer, and that's particularly true for truck drivers, sales people and employees in other types of distributed workforces.

"It's very hard to get them engaged in a health and wellness program of any kind," Dr. Schwarzberg said.

At RedBrick Health Corp., a Minneapolis-based health services company that develops tools to assist members of consumer-driven health plans, an activity-tracker

application is in the works. Members will be able to track calories burned, steps taken and miles logged while engaged in physical activity like gardening, walking or riding a bike, said Abir Sen, the company's co-founder and chief strategy officer. The app is slated for rollout in early 2010 and initially will be available only on the iPhone.

OptumHealth Inc., a United-Health Group Inc. company that provides services to improve health quality and lower benefit costs, is eyeing mobile applications as a way to interact and set goals with consumers, said Karl Ulfers, vp of OptumHealth Care Solutions in Golden Valley, Minn. The company is looking to capture individuals' day-to-day weight and activity levels, for example.

Medical device and technology companies are developing systems that link a biometric device to a cell phone.

WellDoc Inc., a Baltimore-based health care company that develops technology-based health solutions, is testing applications that provide real-time feedback on patients' blood glucose readings via most cell phones.

A randomized clinical trial of the system involving 225 members of CareFirst BlueCross BlueShield is in the works.

Results aren't in yet, but in an earlier pilot involving 30 patients, those in the intervention group achieved, on average, a two-point drop in their hemoglobin A1c within 90 days, noted WellDoc CEO Ryan Sisko.

It's estimated that every percentage-point drop in A1c blood test results reduces the risk of diabetic-related complications, including eye, kidney and nerve damage, by 40%, according to the National Institute of Diabetes and Digestive and Kidney Diseases.

SymCare Personalized Health Solutions Inc., a Johnson & Johnson affiliate, is taking a more conservative approach with the use of wireless technology. Its inTouch diabetes management system, cleared by the U.S. Food and Drug Administration in April, wirelessly transmits a patient's blood glucose readings from a meter to a secure Web site.

Using proprietary algorithms to identify trends, the company shares the results with the patient, the patient's doctor and his or her nurse coach. To protect patient privacy, the cell phone never retains sensitive medical data, said Eric Compton, general manager at SymCare in West Chester, Pa.

People leave their phones in planes and taxis, he reasoned, and they wouldn't want a stranger or co-worker accessing that information. Patients, however, may elect to receive feedback from their caregivers by text message if they wish, he added.

So far, few employers are interested in wireless, two-way connectivity, noted Michael Canning, a principal in Deloitte Consulting L.L.P.'s Health Plans Practice in Boston. But that easily could change as results of pilot projects roll in.

"I just think it's going to take more time to see if you can actually affect behavior change," he said.



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Communications efforts adapted for diverse workforce

Audio, video tools employed to bridge cultural divides

By JEFF CASALE

As employers strive to cut health care costs by using wellness programs to promote healthier lifestyles, many firms are adapting communications efforts to reflect cultural and language differences among their increasingly diverse workforces, experts say.

With more people entering the workforce with only rudimentary English skills and, in some cases, poor literacy levels in their native languages, employers must adapt their wellness communications strategies, they say.

More than 24 million people in the United States speak English less than "very well," according to 2007 U.S. Census Bureau statistics, and the percentage of those in this category is expected to increase in double-digit increments over the next several years. Of the more than 278 million people who live in the United States, 33.7 million speak Spanish, while more than 10.2 million speak another European language and more than 8.1 million speak a language of Asian origin.

With this in mind, most employers are making strides to better communicate their wellness benefits not only through translated materials, but also through the use of video and audio materials. But making sure they frame the message in a way that all members of their workforce can understand can be challenging.

Brenda Schmidt, president of Phoenix-based Diversity Wellness, a wellness vendor that specializes in cross-cultural benefit communications, said when urging health-related changes at a company or organization, incorporating the differences in cultures in the messaging is very important.

"Employees are more comfortable to discuss health issues in their native language," she said. "If they're only doing it in English, employees are not aware and not using the benefits to their advantage and, therefore, companies are not getting a return on their investment."

She added that employers need to be aware that some employees have low reading and comprehension levels in their native language and that sometimes the best way to make sure the message is well-received is through images.

Audrietta Izlar, benefits manager at New York-based Verizon Communications Inc., said the communications firm places a high priority on communicating wellness information to all employees.

"We've been working with our health care plans to get a better understanding of what groups face what issues," Ms. Izlar said in an e-mail. "We dig for data, analyze that data and continuously tweak our data searches to dig deeper and get a clearer view of cultural issues. This includes gathering information on employee interest and participation in health and wellness offerings such as mammography screenings, flu shots and wellness screenings," she said.

Communicating wellness benefits across cultural barriers effectively is something that employers are still working on, said Helen Darling, president of Washington-based National Business Group on Health. She added that how an employer handles wellness and health literacy levels is key to overcoming barriers within employee communities.

Further, "cultural sensitivity is important, and how you begin a conversation about a health issue—say obesity, for example—needs to be done without offending," Ms. Darling said. "You need to try to let them know it's not about cosmetic reasons, but about health."

Communicating the message and understanding health literacy levels is another challenge. To combat low levels of reading and understanding, more employers are using video, said Valerie Wedin, Minneapolis-based communications consultant for Watson Wyatt Worldwide.

"Health literacy is a problem with all employees," Ms. Wedin said. "People assume people can read English better than they actually can. Employers need to think more seriously about how they communicate to their employees."

Some employees rely on colleagues to help translate reading materials, while others may rely on a family member. Some employers provide video and audio tapes with wellness and benefits information that employees can take home.

"We realized that with some of our clients some of their employees were illiterate and don't want to rely on colleagues to translate or read the materials to them because they are embarrassed," said William Griffin, principal at BeneCom Associates L.L.C., an employee benefits communication company based in Avon, Conn.

"We realized this and changed some of our written literature into audio tapes. We really had no idea that there were so many people out there that could still not read or write, and that's not just in English, that's their own native language as well," he said.

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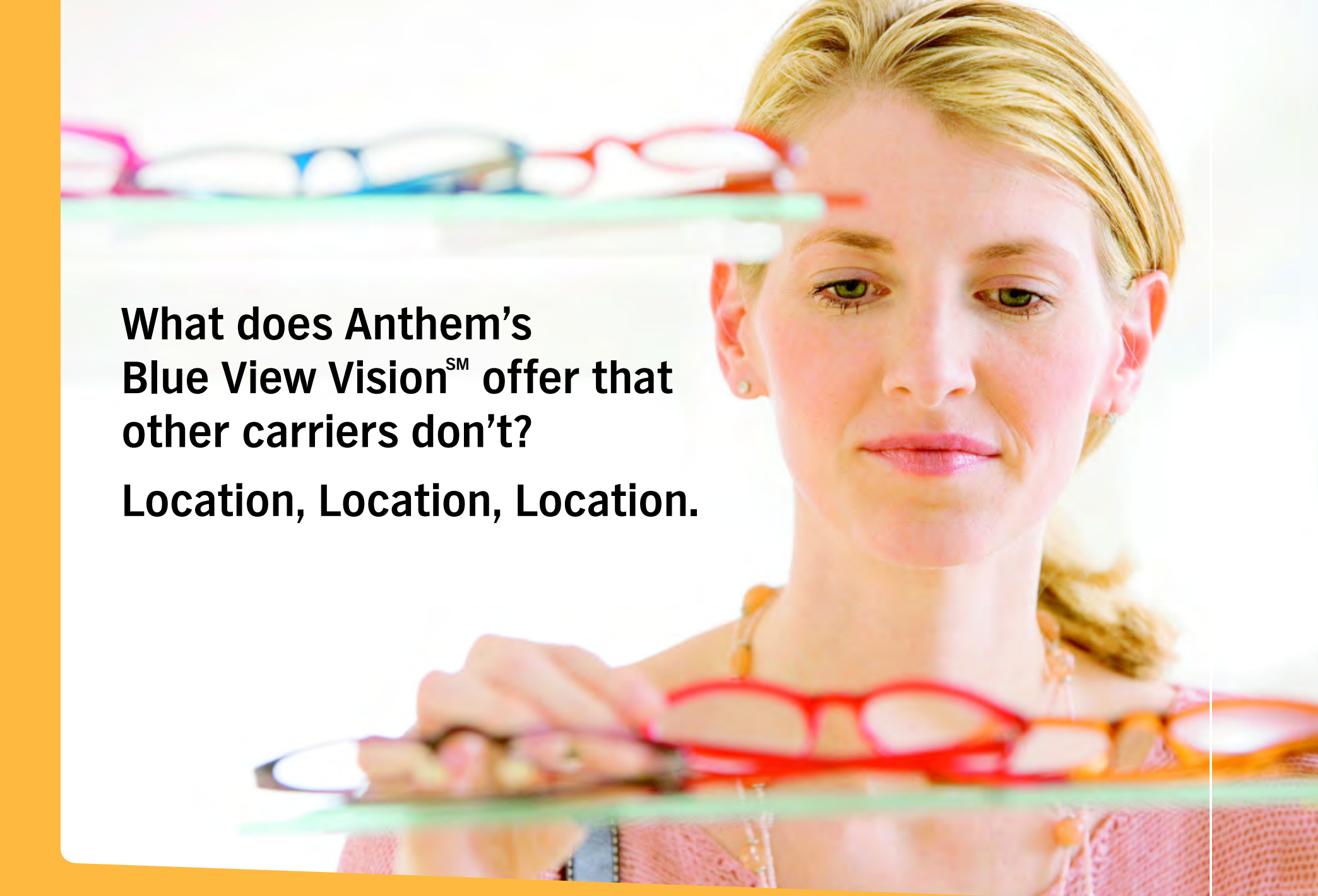
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Consumer-driven health plans are not simply health insurance benefits. They are integrated bundles consisting of some key components:

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- Wellness and decision support programs for employees.

Designed to give employees an incentive to become smarter health care shoppers, these plans do not reduce the value of employee health benefits. Instead, they rearrange the way health care dollars are spent, and they lower premiums when moving from a traditional plan.

Are your clients ready to make the move?

There is, however, one important consideration that will help guide your clients' decision to opt for a consumer-driven health plan:

Are you willing to offer a health plan that requires frequent users to pay a little more so the majority of the employees can realize savings? Or do your clients prefer that all employees share the burden equally?

The reality is that while many employees will come out ahead with consumer-driven health plans, some may have out-of-pocket expenses that exceed the premium savings and the reimbursement account – particularly if they have chronic conditions.

Keys to success.

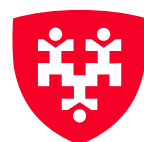
If your clients are comfortable with the idea that the majority of employees will benefit, they should consider the keys to success we at Harvard Pilgrim experienced firsthand, and found to be essential:

- **A three-to-five-year plan.** Turning employees into engaged health care consumers takes time. Start with small steps and gradually expand.
- **Commitment from company leadership.** Employees will be more likely to buy into the idea of consumer-driven health plans if senior leaders take part as well.
- **Employee and family education and communication.** These must be strong from the outset and continue as employees use and experience consumer-driven plans.
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** *Business Insurance Magazine*, December 12, 2008

Employers balance disease management, wellness efforts

Dual approach seen as way to aid more employees

By **LOUISE KERTESZ**

One key to getting the most value from money spent on health care is using a balanced combination of disease management and wellness programs tailored to the specific needs of an employer's workforce, experts say.

"Even in this financial meltdown,

employers have not stopped doing what they are doing," said Helen Darling, president of the Washington-based National Business Group on Health. "They haven't pulled back on (investing) in general wellness, in supporting a culture of health. They really got the message that if you want to control costs in any way, you've got to keep people healthier."

If employers focus only on employees with chronic conditions, "they will get some savings a bit faster, but what they will not be addressing is that people who have those conditions in two to five years

are people who have lifestyle problems today," said Bruce Kelley, national leader of data services at Watson Wyatt Worldwide in Minneapolis.

"We have seen some tendency to put more emphasis on the short-term (savings), but I can't think of a client who has abandoned the longer-term strategy" of fostering employee wellness, he said.

Watson Wyatt data show that just 5% of the workforce—those with complex chronic conditions and catastrophic cases—spend about 50% of the health care dollars

(see box, next page).

"The lifestyle behavior change literature studies show that right around 50% of (chronic medical) problems are theoretically preventable," Mr. Kelley added. "We generally recommend a solution that has a short-term cost impact such as disease management, and that (clients) also consider implementing at least one program with a longer-term but more sizable impact like lifestyle behavior change."

Studies cited by a spokesman for the Disease Management Assn. of America showed reduced hospital-

izations for patients in disease management programs.

However, not all disease management programs result in a positive return on employers' investment.

"There's a lot of analysis being done right now to assess whether returns are materializing for disease management programs. Sometimes they do; oftentimes, not," said Michael Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York. It's important for employers to "figure out how to make it work or say it's not for my population," he said. "Disease management programs are only as good as how employees engage and change their behavior," he added.

"It comes back to a broader cultural change, an alignment of incentives, providing a system of support personalized to what people need given their situation," which requires a wellness approach, Mr. Thompson said.

"It's hard to only engage people with chronic conditions. Disease management programs tend to be received better when they're part of

'Disease management programs are only as good as how employees engage and change their behavior.'

Michael Thompson, PricewaterhouseCoopers L.L.P.

a broader approach to the entire population. You can't sell them on disease management unless you educate them on taking better care of themselves, and that's a wellness concept," Mr. Thompson said.

"You can't just focus on the 20% of employees who are sickest," said Michael Puck, director of human resources at Ordnance Systems in Kingsport, Tenn., a unit of BAE Systems Inc. "Statistics have demonstrated that after they have had a bad year healthwise, then the next two years are not that bad. That 20% is a moving target, and age is contributing to the onset of diseases that can lead to catastrophic claims. Wellness programs can have a significant role in preventing those claims."

Bart Halling, Minneapolis-based vp of product management for consumer-driven and emerging markets at UMR, a unit of UnitedHealth Group Inc., said he is seeing more employers question the value of wellness programs.

"It's becoming more evident through tangible studies that there is a 1.5 to 4 times return on investment for disease management over one to three years, but I think you've got to have a holistic approach," Mr. Halling said. "If you go all disease management or all wellness, it's not going to work. It's like squeezing a water balloon," he said.

Continued on next page



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"It really depends on an employer's unique situation," said Mike Miele, president of Healthcare Analytics, a division of Gallagher Benefit Services Inc.

"If you have an older population with virtually no turnover, I can guarantee you that disease management would be much more valuable. If I have a young, healthy population with low turnover, that's where I probably want to spend more wellness dollars because they haven't been diagnosed yet with what they're going to get," he said.

"You see a lot of diversity in how wellness and care management programs are structured" in preferred provider organization plans, said a spokeswoman for the American Assn. of Preferred Provider Organizations.

Employers should "really hold the vendor's feet to the fire in terms of performance," Mr. Miele said. "Disease management is often measured on activity rather than results," he said in citing the example of an insurer that guaranteed it would enroll 20% of the population in a disease management program in a set period. However, it turned out enrollment did not mean actively managing care for those employees, he said.

Wellness benefits

"The problem with the disease management focus is...people with diabetes may benefit from wellness programs. Getting someone to cook for themselves and eat well is sometimes more important than someone calling them up and reading their lab test results," said Rich Williams, chief executive officer of Advanced Plan for Health in Irving, Texas.

"Disease management vendors not only invite the chronically ill who are having significant problems they can do something about, but also a large number of people who would be much better served by a lifestyle program," Mr. Kelley said.

Jim Smith, president of the Catholic Employee Benefits Group, which serves Roman Catholic dioceses in Texas, said Advanced Plan for Health identified a high percentage of priests in the Tyler, Texas, diocese who had diabetes, so their disease is monitored. In addition, Catholic Employee Benefits Group mandates that all priests undergo an annual physical and made available weight management, nutrition centers and support groups "to help us mitigate that problem and avoid it running out into the future," he said.

A combined approach can help improve employee health, said Sean McNattin, vp of product management for care solutions at Golden Valley, Minn.-based OptumHealth.

"We've tried to focus only on the 20% of sickest employees; and it has helped curb the (medical cost) trend a bit, but it hasn't wiped it out. So we tried to get ahead of the trend by helping employees stay well or become well," he said.

"We believe that services along the entire continuum that help a member maintain health and wellness are all important," said Sherry Brodeur, head of program design

and sales support at Aetna Inc. in Fairfax, Va. "A wellness program that successfully works with a member who is obese and has a history of diabetes, if successful in helping manage weight, can also help manage the precondition for diabetes. He won't get it or will get it later in life."

Wellness and lifestyle management programs are projected to grow at about 20% annually during the next five years, Mr. McNattin said.

For example, OptumHealth Behavioral Solutions recently introduced a Web-based tool to help people map their brain functioning to improve resilience and better manage stress.

"Studies show that chronic stress has a high correlation to the onset

of illness" and affects employee productivity and disability, said Dr. Rhonda Robinson Beale, chief medical officer in Los Angeles. Several employers have incorporated the My Brain Solutions tool into their wellness offerings, she said.

The NBGH's Ms. Darling said it at times is difficult to get the sickest employees to participate in disease management and wellness programs.

"If I were sitting where I used to sit (as benefits manager at Xerox Corp.), I would want a very tightly designed, very aggressive program targeting those with serious problems who are likely to be hospitalized in the next year. The only way to save money is to keep them out of the hospital."

DIVIDING HEALTH CARE SPENDING

Billions of dollars in claims filed by several million individuals show that small segments of an employer's workforce are responsible for much of its health care expenditures.

Condition	% of workforce	% of health spending
Healthy or minor problems	70%	10%
Significant acute illnesses and mild conditions	25%	40%
Moderate to complex chronic conditions	less than 5%	30%
Catastrophic cases	0.5-1%	20%

Source: Watson Wyatt Worldwide analysis of client data



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Community wellness programs bolster employer efforts

By JOANNE WOJCIK

Some employers are getting involved in community health promotion initiatives to reinforce their own employment-based health improvement goals.

To encourage such efforts, the American Recovery and Reinvestment Act of 2009 established a \$1 billion prevention and wellness fund, of which \$650 million has been designated for efforts to address chronic disease through evidence-based clinical and community-based prevention and wellness.

While employers 'are spending a lot on health management efforts within the worksite, they've only typically got that employee eight to 10 hours a day.'

Sara Palermo, Mid-America Coalition on Health Care

In addition, House and Senate health care reform proposals include funding for community transformation grants designed to set up a nationwide infrastructure for active living, such as bike paths, recreation

centers and good nutrition, while seeking to eliminate health disparities.

"What we're looking at is, how can we bring the public and private sectors together to build a system that

will support healthy choices in the community, in the worksites, in the schools, and align what the different partners are doing and the types of messages that we're putting out to the employee, who is also the community member," said Sara Palermo, vp of the Mid-America Coalition on Health Care in Kansas City, Mo.

While employers "are spending a lot on health management efforts within the worksite, they've only typically got that employee eight to 10 hours a day, and there's a lot of things they can influence in the community that will make those

healthier choices the default option," Ms. Palermo said.

As part of this effort, the coalition this month is launching Building a Healthier Heartland, a program spearheaded by former Health and Human Services Secretary Michael Leavitt that began as a pilot led by the Midwest Business Group on Health in Chicago. The Kansas City and Chicago health care coalitions plan to merge their HHS-affiliated programs with their ongoing value-based insurance design initiatives with the help of some ARRA grant funding.

"It's a perfect fit for what we're looking to do," Ms. Palermo said.

Michael Thompson, a principal at PricewaterhouseCoopers L.L.P. in New York, compares mounting national awareness of health promotion and disease prevention to the anti-smoking campaign that began in the 1960s with the U.S. surgeon general's health warning on cigarette packages. That effort eventually led to worksite, community and, in some cases, statewide bans on smoking in public places, he said.

"This represents a recognition that employer wellness programs need to fit into a broader community framework," Mr. Thompson said. "It really requires a more holistic effort to change the course of society and employers are playing a major role in getting it started, but they can't accomplish it without a lot more support from their communities. We need to have the oars pulling in the same direction."

Minneapolis-based Target Corp. recently announced innovative partnerships and wellness resources designed to support the company's focus on health and wellness among its employees. Target partnered with RedBrick Health Corp., also in Minneapolis, to pilot a wellness program among its employees while becoming a founding member of the Alliance to Make US Healthiest, a Washington-based coalition of more than 1,000 employers that strives to help U.S. residents become more physically and emotionally healthy.

The alliance evolved from Target's relationship with the Centers for Disease Control and Prevention in Atlanta, said Steve Lafferty, Target's director of benefits.

About 18 months ago, "we started talking to them about health improvement metrics. We wanted to leverage their science," he said.

For the past year, Gary Earl, senior vp at CIGNA Corp. in Las Vegas, has been speaking to employer groups nationwide about how social and environmental influences can affect employees' health and productivity, drawing from his experience as head of benefits at Caesars Entertainment Inc. in Las Vegas.

For example, he found many employees lived in areas without neighborhood grocery stores, limiting their access to fresh produce. Moreover, they often discouraged their children from playing outside because many of the city's parks were inundated with drug dealers and users.

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Backdate: D&O settlement

CONTINUED FROM PAGE 3

lawsuit over commissions paid to companies controlled by former AIG officials, both in September 2008. Observers say these settlements could portend further large losses from pending options backdating suits.

"The trend toward larger derivative settlements has been set," said Kevin LaCroix, a Beachwood, Ohio-based partner with executive liability intermediary OakBridge Insurance Services L.L.C., who has blogged about the Broadcom case. "I don't think those (recent settlements) are just anomalies. I think

there are a lot of things coming together in those very large settlements.

"And I think if that is the case then there is a danger for insurers that have issued excess Side A (coverage) that they may be called upon to contribute in a way they might not have been in the past," he said.

The prospect of increased claim activity could prompt excess Side A insurers to consider firmer pricing or conditions, observers say.

"You start looking at some of these stock options backdating claims out there (and) it's going to give people some real concern," Mr. Sparks said. "Has the landscape

BROADCOM'S SIDE A COVERAGE

Broadcom had two towers of D&O insurance that contributed a combined \$118 million to a settlement over options backdating charges. Source: US District Court, Central District of California, Western Division.

ABC TOWER		EXCESS SIDE A TOWER (EXCESS OF \$100M)	
National Union Fire Insurance Co.	\$8.8 million (primary)	Federal Insurance Co.	\$8.3m
Twin City Fire Insurance Co.	\$7.7m	AIG Cat Excess	\$7.5m
XL Specialty Insurance Co.	\$11.6m	XL Bermuda	\$6.0m
Axis Reinsurance Co.	\$7.7m	Allied World Assurance Co. Ltd.	\$5.3m
National Union	\$5.0m	Arch Insurance Co.	\$3.3m
Continental Casualty Co.	\$7.7m	National Union	\$3.1m
XL Insurance (Bermuda) Ltd.	\$11.6m	Federal	\$2.8m
Arch Insurance Co.	\$7.4m	Great American E&S Insurance Co.	\$2.1m
AIG Excess Liability Insurance International Ltd. (aka AIG Cat Excess)	\$10.4m	XL Specialty	\$1.8m

changed? Are we still underwriting to the same model we were underwriting to six months ago? It's no longer so much of a one-case anomaly; we're starting to see this is

more of a trend," he said.

Mr. Sparks and others say that D&O capacity remains abundant, so pricing and conditions may not firm for some time. Still, Mr.

LaCroix and other observers say that Side A losses related to the recent spate of bankruptcies have not yet begun to hit underwriters. Public, major company bankruptcies increased 61% in the first half of 2009 compared with the first half of 2008, according to Bankruptcy-Data.com., a Web site that tracks bankruptcy filings.

Meanwhile, buying separate Side A-only coverage is becoming more common, said Victor Mustelie, a New York-based attorney at Mintz, Levin, Cohn, Ferris, Glovsky & Popeo P.C.

A survey released Sept. 9 by Towers Perrin reported a 33% increase in the purchase of Side A-only coverage among participating companies.

HEALTH CARE-RELATED GRANT OPPORTUNITIES

Wellness rewards offered under health care reform legislation

- The American Recovery and Reinvestment Act of 2009 allocated \$1 billion to the Prevention and Wellness Fund, of which \$650 million is to be spent on clinical and community-based prevention and wellness strategies that deliver specific, measurable health outcomes and address chronic disease.

- Community Transformation Grants are included in the Kennedy HELP bill and H.R. 3200, the House health reform bill. The funds would be granted to state or local government agencies or to national networks of community-based organizations. The goal is to develop and implement a holistic plan for community health; focus on healthier school environments; build infrastructure for active living; develop programs on nutrition, physical activity and smoking cessation; create programs addressing health disparities, among other things.

Source: HHS; H.R. 3200

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Mr. Earl's work is part of a larger project spearheaded by CIGNA called Communities of Health, which is guiding community leaders through an evaluation process "so they can determine what the community needs and then collectively determine how to meet those needs."

"For example, it may start with something as simple as availability of transportation or income levels, overlapping with safety scores in playgrounds, the number of liquor stores, etc.," Mr. Earl said.

The Partnership for Prevention, a Washington-based group of business, nonprofit and government organizations, was instrumental in getting funding for health promotion added to the proposed federal health reform legislation.

"We have been very engaged in the health reform debate and trying to ensure that prevention is included," said Dr. Corinne Husten, executive vp and chief policy and program officer of Partnership for Prevention. "Businesses can do a great job within walls...but if the community isn't healthy, it's working against what employers are trying to do," she said.

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3. Interested insurance and/or reinsurance brokerage firms or joint ventures must originate from one of the Bank's member countries consultable on the AFDB's website (www.afdb.org), be established under the laws of a member country, whose the majority of the capital is owned by nationals of member countries, and which are settled in one of the member countries.

4. Interested bidders may obtain further information, and should confirm their interest, by contacting: tender@afdb.org. The expression of interest shall include the reference of the tender and contact address. Starting from **October 2, 2009**, the Bank will send the Request for Proposals (RFP) documents to all potential bidders who registered their interest at tender@afdb.org.

5. Technical and financial proposals in response to the RFP shall be submitted to the following address by the due date indicated in the RFP document:

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Institutional Procurement & Logistics Division, CGSP.2
EPI Block B -Office 2A2
Angle des trois rues: Avenue du Ghana, Rue Pierre de Coubertin, Rue Hédi Nouria
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UP Comings & Goings CLOSE



OLIVER OSTLANDER

NEW JOB TITLE: San Jose, Calif.-based vp of operations and business development for EK Health Services Inc.

PREVIOUS POSITION: Sacramento-based executive director of service center operations at Bethesda, Md.-based Coventry Health Care Inc.

GOALS FOR NEW POSITION: I come from a very technical background. I've been in workers comp for quite a few years and I've spent about half of my time on the information technology side and the other half on the business side. I am one of those guys who brings technical solutions to everyday claims and workers comp issues. ... Some of the things I am trying to do is bring together medical bill review and evidence-based medicine. That's typically been a challenge because with medical bill review it's transaction based and with evidence-based medicine you have doctors and nurses assisting in decisions around what is medically necessary for a case. I am really trying to utilize technology to bring these two together.

FIRST EXPERIENCE IN JOB MARKET:

I was a techie guy. In the late '90s I really got involved with workers comp at Cedars Sinai (Medical Center). I was building clinical information systems for Cedars Sinai.

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TO SUBMIT ITEMS

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

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- Integro Ltd.
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- Willis HRH

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- Liberty International Underwriters
- Zurich Canada

REINSURANCE:

- Validus Holdings Ltd.

OTHER PROVIDERS:

- Mercer L.L.C.
- NewOak Capital L.L.C.

Market Moves

Wolters Kluwer acquires AXENTIS Inc.

CLEVELAND—River Woods, Ill.-based information services firm Wolters Kluwer Tax & Accounting has acquired risk management solutions provider AXENTIS Inc.

Cleveland-based AXENTIS Inc. offers a governance, risk management and compliance computer platform that helps organize and manage policies, procedures, incident management, reporting and security, the company said in a statement. Wolters Kluwer provides accounting, audit, risk and compliance software solutions.

Cooper Gay completes stake in Brazil firm

RIO DE JANEIRO, Brazil—Cooper Gay (Holdings) Ltd., a London-based insurance and reinsurance broker, has acquired the 49% it did not own of Cooper Gay do Brasil Corretora De Resseguros Ltda. from the company's managing shareholders.

Cooper Gay do Brasil was established as a reinsurance broker in 2003 and operates from offices in Rio de Janeiro and Sao Paulo. It will continue to be managed by its founder Fabio Basilone and other current executives, Cooper Gay said in a statement.

Ironshore sets up energy property unit

HAMILTON, Bermuda—Specialty insurer Ironshore Inc. has established a dedicated Global Energy Property unit.

The unit, which will underwrite comprehensive coverages on nearly all energy classes and for pulp/paper, basic metals and glass companies, is an extension of the Hamilton, Bermuda-based company's global property division. Ironshore will provide up to \$10 million in capacity aimed at primary and lower buffer layers, the company said in a statement.

Ironshore has provided energy property coverage through its Bermuda operations since the firm

was established more than two years ago, the statement said.

Healthsystems opens Arizona office

SCOTTSDALE, Ariz.—Healthsystems L.L.C. has opened an office in Scottsdale, Ariz.

Tampa, Fla.-based Healthsystems provides medical management solutions for the workers compensation industry, such as pharmacy benefits and clinical management programs.

The new office, at which up to 50 employees will provide customer support services for pharmacies, claims adjusters, nurse case managers and others, began operations July 20. The company's other customer service center is in Tampa.

The new office is located at 15300 N. 90th Street, Suite 600, Scottsdale, Ariz. 85260. The phone number is 800-921-1880.

Markel launches equine, livestock unit

LONDON—Specialty insurer Markel International Ltd. has launched an equine and livestock insurance division.

The four-person team in London hopes to build significant business in the market for bloodstock and livestock coverage, which generates about \$165 million in annual premiums in the Lloyd's of London market, Markel said in a statement. On the equine side, the company will cover mortality, theft, infertility

and other specified equine perils, the statement said.

Markel can offer limited or specifically tailored coverage to racehorse owners looking to cut costs, the statement said.

International TPA granted U.S. license

MIAMI—International third-party administrator Olympus Managed Health Care Inc. has been licensed to write business for U.S. clients.

The Florida Department of Insurance has issued the Miami-based company a license to provide TPA services to health plans and providers in Florida, the company said. Previously, the company offered claims management, cost

containment, case management, customer service and other services to organizations outside the U.S.

TO SUBMIT ITEMS

BI's Market Moves column reports on activities by insurance industry companies and related entities. Please send news of Market Moves to Zack Phillips, 711 Third Ave., New York, N.Y. 10017 or e-mail zphillips@businessinsurance.com.

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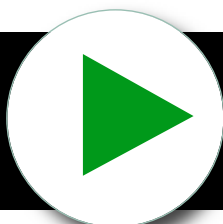
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Reform: Agenda set

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reform of the personal lines market. Those reforms, he said, should include changes such as the elimination of pre-existing medical condition exclusions, a limit on annual out-of-pocket expenses, as well as the creation of exchanges where individuals could compare and purchase coverage from participating insurers.

He also endorsed a requirement that individuals have health insurance coverage, and in a position paper released after the address called for mandating that employers with more than 50 employees either provide coverage or pay a fee that would help to defray premium costs of employees buying coverage in exchanges.

And President Obama pledged to take a leadership role to ensure that a reform bill is passed. "I am not the first president to take up this cause, but I am determined to be the last."

The president's speech comes at a critical time for the reform push. During the August recess, opponents of health reform legislation took the offensive, with congressional supporters roundly booed and denounced at numerous town hall meetings, while opinion polls showed increased public concerns about the impact of reform.

But some believe the president's speech will boost the reform drive.

"He was masterful, moving, eloquent. He confronted the critics like a statesman. He may have changed the momentum," said Helen Darling, president of the National Business Group on Health in Washington.

"It was a very skillful speech. He showed flexibility and a willingness to compromise. And he showed no hard lines," said Paul Dennett, senior vp for health care reform at

the American Benefits Council in Washington.

Still, there are plenty of doubters in Congress, especially among Republicans. In at least one point in his speech, President Obama was booed, and one lawmaker—Rep. Joe Wilson, R-S.C.—shouted, "You lie!" when President Obama said the reforms would not apply to illegal immigrants. Rep. Wilson later apologized for his outburst.

President Obama's willingness to compromise stands in contrast to President Clinton, who 16 years ago unveiled his health care reform bill in an address to Congress, pledging to veto any measure that didn't meet his objectives. Legislators quickly junked the bill and failed to reach an agreement on other proposals.

The tenor of the speech also showed that President Obama will get more involved in trying to reach an agreement on a compromise bill and that his interest in the issue won't flag, some say.

"This is something he will fight for, and that is what could make a difference. This is an issue where you have to have presidential leadership," said Steve Raetzman, a consultant with Watson Wyatt Worldwide in Arlington, Va.

Others, though, are less certain about the impact of the speech.

"I think things still are very much up in the air," said Mark Ugoretz, president of the ERISA Industry Committee in Washington.

"While he did a very good job of speaking his thoughts and trying to find a middle ground on certain issues, I don't think he picked up any votes. People have become so entrenched in their own views," said Chantel Sheaks, a principal in the Washington office of Buck Consultants L.L.C.

Med mal remarks draw tepid response

Comments made by President Obama last week touching on medical malpractice reform yielded a lukewarm response from tort reform advocates and the plaintiffs bar.

While tort reformers praised the president for mentioning the issue in his speech to Congress on health care reform, they say that he didn't go nearly far enough.

And a trial lawyer group said that any reforms should concentrate on reducing medical errors.

In his speech last Wednesday, President Obama said that while medical malpractice reform is not a "silver bullet," doctors practicing "defensive medicine may be contributing to unnecessary costs." He then proposed "that we move forward on a range of ideas about how to put patient safety first and let doctors focus on practicing medicine."

He called the Bush administration's consideration of demonstration projects in individual states to test such ideas a "good idea" and said he was directing the secretary of Health and Human Services to pursue that initiative.

Jim Copland, director of the Manhattan Institute's Center for Legal Policy in New York, welcomed the comments.

"I don't think that those of us who support legal reform should understate the importance of a Democratic president of the United States in a major address to both houses of Congress acknowledging the import of the litigation system on the health care system," he said, noting that he continues to oppose the current health reform proposals.

"The positive is that he recognized that defensive medicine is costly and that medical liability is a problem," said Victor Schwartz, general counsel of the American Tort Reform Assn. in Washington. "The trial lawyers deny that. But his approach is really of no use because he is delegating to an agency what amounts to a study," he said. "It was kind of an olive branch with no olive."

For its part, the American Assn. for Justice, which represents the trial bar, issued a statement saying: "The pilot programs outlined by President Obama will require more detail. But the focus must be on reducing medical errors and improving patient safety. Over 98,000 people are killed every year by preventable medical errors. Reducing accountability won't improve health care."

—Mark A. Hofmann

Bill expected in Senate Finance panel

WASHINGTON—Nearly two months after the last major congressional action on health care reform legislation, the focus is now shifting to the Senate Finance Committee.

Finance Committee Chairman Max Baucus, D-Mont., said he will unveil a reform bill at the end of this week, with his panel set to begin formal deliberations the following week.

The Finance Committee is the only one of the five congressional panels with jurisdiction not to have taken up and passed a reform measure this session. Earlier, the House Education and Labor, Energy and Commerce, and Ways and Means committees approved reform measures, as did the Senate Health, Education, Labor and Pensions Committee.

The Finance Committee has moved at a much slower pace in large part because Sen. Baucus has tried—apparently unsuccessfully—to obtain support from several Republican panel members before introducing health reform legislation. All of the Republicans on the other congressional panels that approved reform bills voted against the measures.

But Sen. Baucus said last week that his committee must act now if there is to be any chance for Congress to approve health reform legislation this year.

"The time for action has come, and we will act," he said.

"All eyes will be on the Finance Committee during the next two weeks," said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

Benefits experts expect the Baucus plan to be sharply different in several respects from the bills approved by the other congressional panels. Certain provisions, such as the so-called public option and a new surtax on higher-income individuals, are not expected to be included in the Baucus bill.

Although the public plan option and surtax are not mentioned in an 18-page "framework discussion paper" Sen. Baucus circulated last week, the Montana Democrat did outline other ideas he is considering.

One would be to tax insurance companies and administrators of self-funded plans whose premiums or claims costs exceed a certain level. Under the proposal, a 35% excise tax would apply to health insurance premiums or claims costs that exceed \$8,000 a year for individual coverage and \$21,000 for family coverage.

Few plans currently are that costly. Benefit consultant Mercer L.L.C. estimates that for plans sponsored by large employers, individual coverage cost an average of \$4,600 per employee in 2008, while family coverage cost an average of \$12,200 per employee.

Other proposals outlined by Sen. Baucus include placing a \$2,000 annual cap on pretax contributions to health care flexible spending accounts and taxing federal subsidies provided to employers whose retiree prescription drug benefit coverage is actuarially equivalent to Medicare Part D.

—By Jerry Geisel

Census Bureau reports rise in uninsured

WASHINGTON—The number of people in the United States without health insurance grew slightly in 2008 as an increase in coverage through government programs did not quite offset the decline in employment-based coverage, according to the U.S. Census Bureau.

The number of people without health insurance last year increased to 46.3 million, up from 45.7 million in 2007. Though the percentage of the U.S. population without coverage reached 15.4% in 2008, it was not statistically different from the 2007 uninsured rate of 15.3%.

The increase in the number of uninsured is solely attributable to the decline in employment-based coverage, which continued its free-fall. Last year, 58.5% of the population had employment-based coverage, down from 59.3% in 2007 and 59.7% in 2006. As recently as 2000, 64.2% of the U.S. population had employment-based health insurance coverage, and since then the percentage of the population in employer-provided plans has fallen each year.

On the other hand, the percentage of the population receiving health care coverage through government programs rose to 29.0% in 2008 from 27.8% in 2007.

The decline in employment-based coverage has coincided with the escalation in group health care costs as more employers, largely smaller ones, can't afford to purchase coverage. In 2008, for example, group health care costs averaged \$8,492 per employee, according to an annual Mercer L.L.C. survey. In recent years, group health care plan costs have been increasing by just over 6% annually, a far bigger rise than the overall inflation rate. And in 2010, according to preliminary Mercer estimates, group health care plans cost increases are expected to average 5.9%.

Still, one state—Massachusetts—made a huge leap in reducing the number of people without health insurance. Its uninsured rate—averaged over 2007 and 2008—was 5.4%, down from 9.8% averaged over 2005 and 2006.

That big drop in the state's uninsured rate is a direct result of its 2006 law intended to move Massachusetts close to universal coverage. To try to meet that objective, the Massachusetts law created a program in which the state subsidizes health

REVERSING COURSE

The number of people without health insurance is rising again

Year	Number of uninsured [MILLIONS]	Uninsured as a % of the population
2004	43.5	14.9%
2005	44.8	15.3%
2006	47.0	15.8%
2007	45.7	15.3%
2008	46.3	15.4%

Source: Census Bureau

insurance premiums of the low-income uninsured, imposes a \$295 per employee assessment on employers not offering coverage, and assesses state residents without health insurance—except those who can prove that affordable coverage is not available or who receive special waivers—financial penalties of up to \$1,000 a year.

On the other hand, Texas retained its longstanding position as the state with the highest uninsured rate. From 2007 through 2008, an average of 25.1% of Texans lacked health insurance coverage, up from an uninsured rate of 24.1% from 2005 to 2006.

Other survey findings include:

By age bracket, those aged 18 to 24 and 25 to 34 had the highest uninsured rate. In 2008, 28.6% of individuals between 18 and 24 were uninsured, while 26.5% of those between 25 and 34 lacked coverage. By contrast, only 1.7% of those aged 65 and older, who are typically eligible for Medicare, lacked health insurance coverage.

Those with annual household incomes below \$25,000 had the highest uninsured rate at 26.9%, while only 6.8% of those with at least \$75,000 in household income lacked health insurance coverage.

The U.S. Census Bureau report, "Income, Poverty and Health Insurance Coverage in the United States: 2008," is available at www.census.gov.

—By Jerry Geisel

Convicts: Former prisoners present liability problems

CONTINUED FROM PAGE 1

stances if it hasn't already been done," said Christopher W. Olmsted, an attorney with Barker Olmsted & Barnier P.L.C. in San Diego, who said he does not expect violent felons to be released.

Anthony J. Oncidi, a partner with law firm Proskauer Rose L.L.P. in Los Angeles, said, "the more reasonable employer should be more vigilant than ever about doing employment screening and background checks on applicants, because there's going to be a number of unemployed, former convicted criminals dumped on the street who presumably will, among other things, be looking for a job."

But firms should take care when constructing or amending background check policies, experts say.

One major concern of the EEOC is criminal background checks' disparate impact on minorities, experts note. According to the Department of Justice's Bureau of Justice Statistics, as of June 2008, with more than 2.3 million inmates held in custody in prison or jails, black males were incarcerated at 6.6 times the rate of white males.

"Studies reveal that some employers make selection decisions based on names, arrest and conviction records...all of which may disparately impact people of color," says the EEOC in discussing its E-RACE initiative, which is intended to "identify issues, criteria and barriers that contribute to race and color discrimination."

"You need to make sure there is a justifiable business need, a bona fide need, to screen people out" if hiring large numbers of people within a population in which there are likely to be those convicted of criminal offenses, said Brian T. Ashe, a partner with Seyfarth Shaw L.L.P. in San Francisco.

"The bottom line is, the government doesn't want to see people with criminal records uniformly denied any job," said Mr. Olmsted.

Employers must also comply with the federal Fair Credit Reporting Act and parallel state laws, which require firms first to get applicants' approval of background checks and to notify applicants if the information uncovered can result in a negative employment decision. FCRA requirements are "rather specific, and many employers run afoul of those obligations," said Mr. Oncidi.

Meanwhile, each state has its own laws with regard to how criminal background checks may be used. In Pennsylvania, for example, applicants can generally be denied a position only when the job is related to their crime, said Carrie B. Rosen, a member of law firm Cozen O'Connor in Philadelphia. An employer is "going to have a hard time arguing" a secretarial job applicant should be rejected because of a drunk driving conviction, she said.

Other states, such as New York, have a multifactor test, said Ms. Rosen.

New York's law, which took effect

in February, generally prohibits discrimination on the basis of criminal offenses, and says factors including job responsibilities, the time elapsed since the crime was committed, the applicant's age at the time, and the seriousness of the offense must be taken into account.

Most states also say you cannot exclude applicants merely on the basis of an arrest, as opposed to a conviction, said Ms. Rosen.

In California, an employer cannot take adverse action against an applicant if a person is arrested, but not convicted; if the criminal offense is more than seven years old; or if the person was put into a community-service type program, said Mr. Ashe. The state also forbids employers from even asking about marijuana-related convictions that are more than two years old.

Observers note there are certain sectors where criminal background checks may be required, such as hospitals and schools.

There is no blanket rule on conducting background checks, said Mr. Olmsted. "The employer needs to exercise good judgment."

"An employer, I think, in most instances, it is going to be safe in excluding those convicted of a felony, even if not specifically related to the job in question," said Mr. Oncidi.

"If the employer says, 'I just don't want a convicted felon working for me,' there's no law that says the employer must hire that person. It's that simple," he said.

"There is the potential for a disparate impact lawsuit," although "I haven't seen a lot of cases like that," he said.

However, Paul E. Starkman, a partner with law firm Arnstein & Lehr L.L.P. in Chicago, said, "You don't want to have a blanket written policy that says felons will not be hired." A more nuanced approach is called for, he said.

But firms could face legal challenges if they do not guard against hiring certain former prisoners.

For example, an employer might be accused of "negligent hiring" should an employee with a criminal background subsequently be charged with a crime. Thirty-six states hold employers liable for the negligent hiring of individuals with violent backgrounds, according to the Minneapolis-based Minnesota Second Chance Coalition. A Minnesota law that took effect Aug. 1 prohibits arrests that did not lead to convictions from being entered as evidence in such cases.

However, although "alleged quite frequently," negligent hiring is "a fairly difficult theory to prove," said Mr. Oncidi. "Very few of them even actually get to trial," he added.

Mr. Ashe said this is because "you have to show that it's reasonably foreseeable that a person of this individual's background" would harm someone. "That is a pretty difficult way to connect the dots."

Still, Mr. Starkman said, although these cases "don't come about very often," when they do, "they can be a big number" in damages awarded.

Rendez-Vous: Flat renewal rates expected

CONTINUED FROM PAGE 1

industry's capital, would be needed to trigger significant rate hikes, said Bryon Ehrhart, chief executive officer of Aon Benfield Analytics in Chicago. Under lighter loss conditions, the pricing environment would be stable overall, he said. But Mr. Ehrhart cautioned that "it's too early to tell what will happen in the hurricane season."

Leading global reinsurance companies, for their part, see rates firming somewhat.

Ulrich Wallin, chief executive officer of Hannover Reinsurance Co. of Hannover, Germany, said that reinsurance prices are rising in capital-intensive classes as buyers recognize the value of the coverage after the financial downturn. Those classes include credit, surety and aviation.

Other areas of the reinsurance market also may see hardening rates, said Mr. Wallin. Among them, casualty lines in the United States remain soft and need meaningful rate increases, he said.

"As far as property catastrophe business is concerned, while in general we saw a hardening in 2009 in that market, the acceleration (of pricing) throughout the year, which some observers had hoped for, did not take place," said Mr. Wallin. "The reason for that is largely that there was sufficient capacity available, so the pricing trends that started at the beginning of the year pretty much prevailed throughout the entire year."

Hannover Re's position is that property catastrophe rates, absent a major event or further turmoil in the capital markets, will remain stable.

Overall, Mr. Wallin said Hannover Re expects "stable to increasing" reinsurance rates in the coming year. "We think 2010 for the reinsurance market as a whole could be a relatively good year."

SCOR S.E. expects reinsurance market conditions to be favorable into 2010, said Denis Kessler, CEO of the Paris-based reinsurer.

'In the absence of a very large event, I'm not sure the market is ready for a correction in long-tail lines. We won't see dramatic change in rates in long-tail lines.'

Jamie Veghte, XL Capital Ltd.

"We believe the positive reinsurance outlook will continue," he said. "The January, April and July 2009 renewals confirm that rates are firming. We look at 2010 with a positive view."

Jamie Veghte, CEO of the reinsurance operations of XL Capital Ltd., said that reinsurance rates for short-tail lines and catastrophe-exposed risks "are in a good place. We're fairly comfortable with short-tail markets, but I'm very concerned about the long-tail markets."

He said rates have been "creeping down" over the past few years on

casualty risks, a trend he believes cannot continue without hurting reinsurers' balance sheets.

Mr. Veghte also suggested that Jan. 1 renewals are too difficult to predict accurately.

"In the absence of a very large event, I'm not sure the market is ready for a correction in long-tail lines. We won't see dramatic change in rates in long-tail lines."

Rating agencies, meanwhile, have a mixed outlook on the reinsurance industry.

"We have a stable outlook on global, nonlife property/casualty reinsurers," said John Andre, group vp-property and casualty ratings, at Oldwick, N.J.-based A.M. Best Co. Inc. He said reinsurer capital remains sound and underwriting discipline is being emphasized. "We don't expect underwriting discipline to fade," he said.

Fitch Ratings and Moody's Investors Service both have a negative outlook, however.

With "many reinsurers currently trading below book value, you have to ask how much investor support there is for the reinsurance industry broadly," said Ted Collins, group managing director of New York-based Moody's. That sentiment could preclude weaker reinsurers, or those with deficiencies in risk management, from attracting capital after a big catastrophe, he said.

Michael Bradford and Colleen McCarthy contributed to this report.

MORE COVERAGE: Read full coverage of the Rendez-Vous de Septembre in *BI's* Sept. 21 issue.

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News In Brief

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an automatic enrollment feature to their 401(k) plans without the need for specific IRS approval. Another new IRS rule makes it clear that cash payments that would otherwise be given to terminated employees can be used by those employees to contribute to their 401(k) plans. The IRS also said that a 401(k) plan design in which employees' salary deferrals increase by the greater of a certain percentage of their salary—such as 1%—or a portion of a salary increase will pass muster.

Allstate pays \$4.5M to settle bias suit

Allstate Insurance Co. has agreed to pay \$4.5 million to about 90 former employees to settle an age discrimination class action lawsuit. The litigation with the U.S. Equal Employment Opportunity Commission, which was filed in 2004, stems from the insurer's efforts in 2000 to convert its 15,000-member agent workforce to independent contractors from regular employees. The EEOC said Allstate had adopted a hiring moratorium for a period of one year, or while severance benefits were being received, that had a disproportionate impact on workers over age 40 because more than 90% of the agents subjected to it were in that age group. An Allstate spokesman said in a statement that "while confident that we acted appropriately," the insurer decided to settle "to avoid the burden and considerable expense of continued litigation for everyone involved."

HRH loses dispute over client's cover

Broker Hilb Rogal & Hobbs Insurance Services of California Inc. was negligent for failing to include workers compensation coverage in an coverage package obtained for a new business venture, a California appeals court has ruled. The business owners discovered their lack of workers comp coverage when an employee suffered severe burn injuries in a 2001 fire, according to court papers. The business owners operated a dealership that installed spray-on linings in pickup truck beds. The injured employee sued the

business owners and a company that helps set up the dealerships. He won an \$11.3 million judgment against both, leaving the business owners with a \$5.8 million share of the liability. The business owners sued the unit of Hilb Rogal & Hobbs Co., charging negligence. A trial court determined that an HRH broker acted as more than an ordinary agent and represented herself as an expert on the insurance needs of such dealerships. HRH argued on appeal that the trial court erred by refusing to find comparative negligence on the part of the owners for failing to read their policies, among other things, but the appeals court upheld the lower court's ruling.

Massachusetts regulator to leave for academic job

Nonnie S. Burnes is resigning from her post as Massachusetts Insurance Commissioner at the end of the month to take a fellowship position at Northeastern University in Boston. Ms. Burnes has led Massachusetts Division of Insurance since February 2007. Joseph Murphy, currently first deputy to the commissioner, will serve as acting commissioner in Ms. Burnes' absence. Ms. Burnes will teach a course on regulatory reform.

AmWINS acquires benefits wholesaler

AmWINS Group Inc. has acquired The Managing Agency Group Employee Benefits, a division of Willis Group Holdings Ltd. MAG-EB is a wholesale broker and administrator of employee benefit plans for small and midsized employer groups of 2 to 300 employees. Terms of the deal were not disclosed. MAG-EB has a portfolio of group benefits products, including dental, vision, life and short-term and long-term disability benefits, and serves as a wholesaler of employee benefit plans.

P/C rate declines moderate: Report

Annual commercial property/casualty insurance rates fell by an average 5% in August, compared with a 6% decline in July and a 10% decline one year ago, MarketScout reported. But the Dallas-based electronic insurance exchange found that after nearly three years of declines, directors and officers liability insurance rates were flat. Pricing declines in other lines will likely moderate this year, but rate increases likely won't materialize in most lines until 2010, according to a MarketScout statement accompanying the report.

Surplus: House OKs market access bill

CONTINUED FROM PAGE 3

Senate Banking, Housing and Urban Affairs Committee.

"This year, the leadership of Sen. Evan Bayh has given new momentum and more possibility to the NRRRA becoming law," she said.

Ben McKay, a senior vp in the Property Casualty Insurers Assn. of America's Washington office, noted that the measure has bipartisan support in the Banking Committee, with Sen. Mike Crapo, R-Idaho, serving as cosponsor with Sen. Bayh.

The chances of enactment are "better, because we have a bill introduced in the Senate, we have excellent cosponsors of that bill, both parties are represented and members of the most relevant committee are on the bill," said Mr. McKay. "I think the chances are much better this year than before."

Joel Wood, senior vp of the Council of Insurance Agents & Brokers in Washington, pointed out that the National Assn. of Insurance Commissioners had been involved in the legislative process this time around.

"The No. 1 factor is that the NAIC has been very constructively engaged in this process, and so I think there is a much stronger comfort zone between the industry and the regulators about the need for the NRRRA as the impetus for the creation of an interstate compact to govern access to multistate surplus lines policies," he said.

Mr. Wood added that last year, "just when we were getting the requisite oxygen within the Senate Banking Committee, the broader financial meltdown occurred. That was an understandable diversion."

SURPLUS LINES REFORM

Highlights of H.R. 2571, the Nonadmitted and Reinsurance Reform Act of 2009:

- Prohibits any state other than the home state of an insured from requiring a premium tax payment for nonadmitted insurance.
- Prohibits states from requiring a surplus lines broker seeking to arrange nonadmitted insurance for an "exempt commercial purchaser" to satisfy any state requirement to make a due diligence search to determine whether admitted coverage is available if:
 - (1) the broker arranging the coverage has disclosed to the buyer that coverage may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and
 - (2) the buyer has subsequently requested in writing that the broker arrange nonadmitted coverage.
- Provides a liberal definition of a "qualified risk manager" entitled to negotiate on behalf of an exempt commercial purchaser.
- Makes the placement of nonadmitted insurance subject solely to the statutory and regulatory requirements of the policyholder's home state.
- Reserves to a reinsurer's state of domicile the sole responsibility for regulating the reinsurer's financial solvency if such state is either accredited by the National Assn. of Insurance Commissioners, or has financial solvency requirements substantially similar to the NAIC.

Source: Thomas.gov

In terms of regulatory reform spurred by the financial crisis, Mr. Wood said that whether "very big or much more incremental, there will be regulatory reform that will be enacted in this session of Congress." He said while he didn't know what the details would be, "I do know there is going to be regulatory reform, and shame on us if we can't make this a part of it."

Enactment of a surplus lines reform law has long been a priority for the New York-based Risk & Insurance Management Society

Inc., said Deborah Luthi, RIMS director-external affairs and director-enterprise risk management at Matheson Inc. in Sacramento.

"We're very pleased to see its passage in the House, but we view this as a critical juncture, so we urge Senate action and view the surplus lines industry as central to the nation's economic health," she said. "We are very glad that it's going forward with the broader definition of qualified risk manager. We are optimistic that it can go through."

DVS: Rethink on ratings in Germany

CONTINUED FROM PAGE 4

opinion on a relative default probability. To properly judge the performance of a rating agency, one must look at the default statistics over time for a company.

"We believe that in making investment decisions or in making the decision to buy a long-term policy, the creditworthiness will remain important, but clearly the users of ratings have to be aware that the rating is an independent opinion and it is not a recommendation to buy or sell something."

Ratings, she said, "can't replace the analysis that the investor or

insurance buyer has to make. It is an additional and useful information tool, but it can't replace one's own analysis."

Another panelist, Jürgen Kurth, chief executive officer of AXA Cor-



porate Solutions Deutschland in Cologne, said requirements under Solvency II, the upcoming solvency regime in the European Union, will provide additional information for buyers.

"Solvency II will play a very

important part in this debate, as it will ensure that clients will have access to another means of assessing the security of an insurance company. Solvency II will make it a more complete picture," Mr. Kurth said.

Panelist Felix Hufeld, chief executive of Marsh Germany, said that the assessment of insurer security "is the responsibility of all parties, not just credit rating agencies. It is the responsibility of the client to gather and analyze the information properly and make a judgment. They cannot come to a mechanical 'yes' or 'no' answer. This was the No. 1 lesson from the financial crisis."



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Contributing: Jeff Casale, Roberto Ceniceris, Mark A. Hofmann



UPI/LANDOV

Fantasy football managers can get real-life cover against QB Tom Brady being hurt again.

INSURANCE COVERS FANTASY NIGHTMARES

It is a common fear of fantasy football players: If my No. 1 pick goes down with an injury in the first game, the whole season—and my \$50 entry fee—could be lost.

Not to worry—there's insurance for that.

Intermarket Insurance recently launched its Fantasy Sports Insurance, allowing fantasy football players to insure up to three top players against the risk of injury. FSI is a player disability coverage that will protect your fantasy league investment, said Anthony Giaccone, president of Huntington, N.Y.-based Intermarket.

In fantasy football, players draft a team of real National Football League players, whose stats determine the success of the fantasy teams.

The insurance policy allows injury-plagued fantasy owners to recoup their league investment and continue with the season, while cushioning the blow of losing the team's top performer. The idea, Mr. Giaccone said, stemmed from one of his co-workers last football season losing All-Pro New England Patriots quarterback Tom Brady for the year in the first game.

Intermarket offers a policy with an average of \$150 coverage limits for a premium of \$16, he said. In the event of a season-ending injury, FSI will reimburse the policyholder for the his or her league entry and for products such as draft guides.

This year, Mr. Giaccone said, Tom Brady is the most insured player.

"Coming back from knee surgery, and he tweaked his shoulder in the preseason. You bet a lot of people out there are concerned," he said.



AP PHOTO

James Tyree, CEO of the company that owns insurance brokerage Mesirow Insurance Services Inc., has agreed to buy the Chicago Sun-Times.

Mesirow presses ahead with deal

Can the head of a financial services firm save a troubled Chicago institution?

James Tyree, chief executive officer of Mesirow Financial Inc., parent company of Mesirow Insurance Services Inc., the 26th largest insurance brokerage of U.S. business, is willing to find out.

According to reports, Mr. Tyree has bid \$5 million to buy Sun-Times Media Group Inc., which publishes the Chicago Sun-Times and its 58 suburban affiliates. Under the proposed deal, the investor group led by Mr. Tyree would also assume \$22 million in Sun-Times liabilities. If the deal goes through, the new owners would not, however, assume the Sun-Times' tax and pension liabilities.

Sun-Times Media Group filed for bankruptcy on March 31. Like many other newspapers, including hometown rival Chicago Tribune, the Sun-Times has suffered from declining revenue as advertisers and readers alike have migrated to Internet news sources.

Under the agreement to buy the media group, other would-be owners can make bids for the company during an auction, but so far no one has brokered a better deal.



Insurance broker by day, John Tinseth blogs about fashion on "The Trad."

Aviation broker fashions blog in spare time

In an industry not renowned for bold fashion statements, it may surprise some that the author of the blog "The Trad" is an insurance broker.

John Tinseth, an aviation insurance broker for Lance Toland Associates of Atlanta, was outed last week as a sartorial blogger when the New York Observer quoted him in a story about traditional fashions. The result has been mixed he says, adding that being identified as the blog's author was "not planned, but I'm OK with it."

His blog, at <http://thetrad.blogspot.com>, focuses on classic apparel, accessories and haberdasheries—think 'old school,' as in Ivy League—as well as food and drink (mostly drink) and the occasional flashback to life in the 1950s and 1960s.

"It's about things that are soulful—things that have depth and guts...and what's real. It's a real thin slice of life," said Mr. Tinseth, 52, who resides in New York.

The broker, who grew up as an "army brat" moving from base to base with his family, said the idea of the blog evolved from his interest in writing and from working in a Brooks Bros. store in New York when he was younger. He noted that he began to be a "clotheshorse" during those days when he learned what to look for in buying a suit and casual attire.

"I don't play golf, so this is sort of a hobby for me," Mr. Tinseth said. "It's just something fun that I do...I think the only reason people read what I write is because of the abysmal state of culture today."

Movie fans will return to Middle-earth

The Hobbit Bilbo Baggins will go there and back again after all.

Following the settlement last week of a dispute between Warner Bros. unit New Line Cinema and trustees for J.R.R. Tolkien's estate over profits from the "Lord of the Rings" films, New Line can proceed with plans to produce a two-part film adaptation of "The Hobbit," a prequel to the earlier films.

The dispute followed New Line's release of three "Lord of the Rings" films between 2001 and 2003. The

films, DVDs and other products based on Tolkien's famed books reportedly earned about \$6 billion.

Last year the estate sued, claiming New Line owed it more than \$150 million in profits. The lawsuit alleged breach of contract and fraud, claiming that Tolkien heirs were cheated out of money from a licensing agreement guaranteeing them 7.5% of gross receipts from the films.

In addition to seeking the \$150 million, the lawsuit sought to end New

Line's rights to Tolkien's works, which would have blocked the making of "Hobbit" films.

Parties to the lawsuit announced last week that they settled their dispute, but did not disclose the terms of their agreement.

Trial was set for October, and production is supposed to start next year on the "Hobbit" films with Guillermo del Toro directing. Mr. del Toro has directed films such as "Pan's Labyrinth" and "Hellboy."

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