

Business Insurance

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SENATE OKS PROPOSAL TO ALLOW ROTH 401(K) ROLLOVERS / PAGE 3



VENEZUELA CRASH COVERAGE LED BY CHARTIS / PAGE 3

In Brief

Apollo, CVC Capital sweeten Brit offer

Private equity firms Apollo Management VII L.P. and CVC Capital Partners Ltd. made an offer to acquire Brit Insurance Holdings N.V., the Lloyd's of London and U.K. insurance and reinsurance group, for £10.75 (\$16.51) per share and an additional 25 pence (38 cents) per share, depending on the value of its shares by year-end. Apollo by itself made a £10.75 offer in July after two previous offers were rejected. Observers value the latest deal at about £871 million (\$1.34 billion). Brit said its directors expect to recommend the proposal provided other terms and conditions are acceptable.

P/C reserve releases a concern: Analysis

The U.S. property/casualty insurance industry's reserves are

See **IN BRIEF** page 26



SPOTLIGHT

HEALTH CARE REFORM

Rules raise questions; health care reform law expected to survive court challenges; Q&A with consultant on new opportunities; employers assess financial impact of reform; ranking of largest case management providers. **PAGE 11**

EMPLOYMENT PRACTICES



AP PHOTO

Efforts to construct a Muslim community center near the former World Trade Center site have sparked controversy.

Anti-Muslim bias expected to rise

Employers urged to use training, strict policies to limit discrimination

By **JUDY GREENWALD**

Tension created by a plan to build a Muslim community center two blocks from New York's ground zero is spilling over to the workplace, observers say.

Charges of anti-Muslim discrimination filed with the U.S. Equal Employment Opportunity Commission already were increasing (see box, page 24). However, such complaints are expected to rise further because of the conflict created by the widely publicized plan to build an Islamic community center just blocks from the terrorist-destroyed World Trade Center. Plans reportedly call for a prayer

room within the facility.

A Florida pastor's recent threat to burn a Quran added fuel to the debate for and against the center near the Sept. 11, 2001, site.

Experts say the key for employers to avoid problems include a zero-tolerance policy on discrimination and employee training.

Workplace discrimination can include hiring, firing and promotions as well as hostile work environments and religious accommodation.

Two sources of EEOC charges, for instance, are conflicts over hijabs, the headscarves worn by Muslim women, and Ramadan, the Muslim holy month that requires fasting from sunrise to sunset (see story, page 24).

While not everyone has seen it, many say anti-Muslim discrimina-

See **MUSLIM** page 24

WORKERS COMPENSATION

Comp fraudsters working while collecting benefits

Investigators report rise in such activity amid down economy

By **ROBERTO CENICEROS**

As tough economic conditions continue, workers compensation fraud investigators say claimants increasingly are taking on jobs while collecting disability benefits for injuries they claimed left them unable to work.

Various forms of workers comp cheating—from employers falsifying worker classifications to several types of claimant fraud—have increased because of the recession, investigators across the country agree.

But some say they also are noticing an unusual rise in workers comp claimants illegally earning income—many at home-based businesses—while supposedly injured.

"The days of people filing a work comp claim and sitting at home watching 'Jerry Springer' are over," said Howard Schneider, president of

Schneider Associates, a private investigative agency in Thousand Oaks, Calif. "People are now filing claims and taking on jobs under the table" more often than was typical in the past.

Louis Rubio, general manager in Parkland, Fla., for DigiStream Inc., an investigation and surveillance company, said the number of cases in which investigators he knows have found claimants working while collecting disability from a previous job has increased roughly 25% during the past year.

"When they are supposed to be resting at home, they are going out in the morning to do another job," Mr. Rubio said. "When they go to their doctors, they say they are still injured and recuperating."

Fraud committed by claimants who say they are unable to work is an age-old problem. But DigiStream colleagues in other states also have noticed an increase recently, Mr. Rubio said.

Burbank, Calif.-based Frasco Inc., an investigative services company

See **CHEATS** page 26

REINSURANCE

Reinsurers eye ways to boost oil rig capacity

By **REGIS COCCIA and SARAH VEYSEY**

MONTE CARLO, Monaco—Proposals to increase capacity for offshore energy risks, including up to \$20 billion in liability limits for oil-drilling projects, found support in principle among reinsurance executives last week during the annual Rendez-Vous de Septembre.

Munich Reinsurance Co. proposed a plan to provide up to \$20 billion in limits for oil-drilling projects. Also during the Monte Carlo, Monaco, gathering, Bermuda-based Torus Insurance Holdings Ltd. said it planned to offer \$1 billion in limits for drilling projects, using \$100



ENERGY RISKS: Several reinsurers and brokers are seeking to build capacity for offshore energy risks. **PAGE 23**

million in capacity from energy investment company First Reserve Corp., which helped fund Torus' 2008 startup, and others (see story, page 23).

The impetus behind both ideas was the Deepwater Horizon oil rig

See **ENERGY** page 23

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UNITED IN INSIGHT

The challenging combination of health care reform and today's difficult economy is enough to make anyone feel sick.

Aon is uniquely positioned to diagnose your risks as we place more premium than any other firm, resulting in unrivaled insight into market conditions, rates and best practices in program design. **Aon's 2010 Mid-Year Health Care Industry Market Overview** looks at pricing, limits, deductibles and retentions for Medical Professional Liability, Managed Care HMO Reinsurance, Excess-of-Loss, Provider Excess and Managed Care Errors & Omissions.



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WEBCAST: HOW TO MANAGE PERILS OF E-DISCOVERY

"Dangerous Data: Perils of eDiscovery and How to Manage Them" features experts Ann Longmore of Willis Group Holdings P.L.C. and John McCarrick of White & Williams L.L.P. The webcast takes place at 2 p.m. Eastern Sept. 29. Sign up online at www.BusinessInsurance.com/webinars.



STOCK INDEX

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MOST POPULAR STORIES Week of September 13, 2010

1. Hurricane Igor heading for Bermuda: Modeler
2. Smaller brokers ripe for consolidation, Ryan says
3. Facebook job boast leads to workers comp fraud charges
4. Marsh bolsters mergers practice with ex-Aon execs
5. Senate passes Roth 401(k) rollover provision
6. Property/casualty reserve releases a concern: Analysis
7. Commercial insurance pricing falls slightly: Survey
8. Liberty Mutual Agency IPO may raise \$1.41 billion
9. More Aon Benfield staff join Willis Re analytics operations
10. IRS proposes rules to govern cell captive insurers

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P/C INSURERS

AIG may accelerate government loan repayments

Parent's speedier exit from debt programs could benefit insurer units, observers say

By MARK A. HOFMANN

NEW YORK—Reports that American International Group Inc. may try to speed up the repayment of the nearly \$50 billion it owes the U.S. Treasury could be good news for the company if the transition is done correctly, according to market observers.

The Wall Street Journal, citing unnamed sources, reported last week that AIG and the Treasury Department are discussing a plan whereby the preferred AIG stock

held by the Treasury would be converted into common stock. Although that would temporarily increase the government's stake in AIG to about 90% from the 79.9% it initially assumed in 2008, the Treasury could sell the common stock to private investors.

When asked for comment on the report, an AIG spokesman responded with an e-mail citing a section of AIG's second quarter 10-Q filing with the Securities & Exchange Commission headed "Progress on Management's Plans for Stabiliza-

'We've seen some incremental progress in market appreciation for the progress that the company has made in extricating itself from depths of the problems it dug for itself in the financial crisis.'

Bill Bergman, Morningstar Inc.

tion of AIG and Repayment of AIG's Obligations as They Come Due."

"In accordance with its long-

standing commitment to repay its obligations to the U.S. government, AIG has commenced discussions with the (Federal Reserve Bank of New York), the Department of the Treasury and the trustees of the AIG Credit Facility Trust, a trust established for the sole benefit of the United States Treasury (together with its trustees, the trust), with respect to a proposed strategy to repay the (Federal Reserve Bank of New York) credit facility and allow the government to exit its ownership relationship with AIG," the section read in part.

The spokesman also noted that AIG must repay the Federal Reserve Bank of New York before it can

repay the Treasury. AIG owes the New York Fed about \$21 billion in principal and interest. At June 30, AIG's total obligation to the federal government was about \$101 billion, according to AIG.

Market analysts, while stressing that they had no details of any proposed early exit by AIG, generally welcomed the idea.

"It looks like another step in the right direction," said Bill Bergman, an analyst with Morningstar Inc. in Chicago. "We've seen some incremental progress in market appreciation for the progress that the company has made in extricating itself

See **AIG** page 22

RETIREMENT BENEFITS

Roth 401(k) rollover bill wins Senate approval

By JERRY GEISEL

WASHINGTON—Employers would be allowed to amend their 401(k) plans immediately to allow participants to roll over account balances into Roth 401(k) plan accounts under a bill the U.S. Senate passed last week.

Effective next year, the measure also would allow participants in Section 457(b) defined contribution plans—the public sector's rough equivalent of 401(k) plans—to contribute to Roth accounts.

The Roth provisions, tucked in a small-business jobs bill that the Senate cleared on a 61-38 vote, would broaden the appeal of 401(k) plans by potentially reducing taxes that participants pay when they receive a distribution from the plan.

Under current law, employees make pretax contributions to 401(k) plans. Employee contributions, employer matching contributions and investment income are taxed when the participant receives a distribution, such as at retirement.

In a Roth 401(k), contributions are made after taxes have been taken out and distributions are not taxed.

Under the Senate-passed H.R. 5297, participants eligible for a 401(k) plan distribution could roll over all or part of their account balance into a Roth 401(k) plan offered by their employers. If the rollover is made this year, the participant could elect to pay the tax on the money in equal parts in 2011 and 2012.

Once rolled over into the Roth 401(k) plan, the money would earn tax-free investment income and participants would not be taxed when they receive a distribution.

Depending on participants' current and future tax bracket, the measure could reduce their tax liability. For example, if tax rates increase in the future, participants who rolled over funds from a 401(k) plan to a Roth 401(k) and paid taxes now on the transferred amount would pay less in taxes than if they kept the money in the regular 401(k) plan and took a distribution later.

"We think this is very exciting," said Marina Edwards, a senior consultant with Towers Watson & Co. in Chicago. This would allow "tax diversification," she said, noting that

401(k) plan participants who are unsure about future tax rates and their future tax bracket could roll some of the money into a Roth 401(k) and keep the rest in the traditional 401(k) plan.

While 401(k) plan participants can roll over distributions into Roth individual retirement accounts under current law, the fees charged by mutual funds offering

Roth IRAs usually are higher than fees on funds offered in 401(k) plans sponsored by employers.

"In large plans sponsored by employers, the fees are likely to be lower," said Alan Vorchheimer, a principal with Buck Consultants L.L.C. in New York.

"This is a big step forward in leveling the playing field between employer-sponsored plans and IRAs when it comes to Roth conversions, and helps employees enjoy lower fees for their converted Roth balances," said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

The House could act on the proposal as soon as this week.

'In large plans sponsored by employers, the fees are likely to be lower.'

Alan Vorchheimer, Buck Consultants L.L.C.

AVIATION



REUTERS/LANDOV

Rescue workers evaluate the site where a plane crashed in Venezuela last week, killing 17 passengers.

Chartis leads plane crash cover

GUAYANA, Venezuela—An American International Group Inc. unit leads the coverage for an airliner that crashed in southeastern Venezuela on Sept. 13, according to an aviation market source.

The government-owned Conviasa flight crashed 12 minutes after takeoff near the town of Guayana.

Seventeen of the plane's 51 passengers were killed in the crash, and many others were hospitalized, according to press reports.

A market source said AIG unit Chartis led the coverage for the ATR42 twin-turboprop.

The source said the hull likely was valued at about \$9 million.

—By Zack Phillips

Liability impact of health reforms eyed

It is not yet known how the health care reform law will affect health care providers' malpractice costs, but the total cost of health care liability risks likely will be affected, participants in a *Business Insurance* webcast said last week.

Because many provisions of the law will not take effect until 2014, estimates of the potential professional liability costs are only speculative, said Edward M. Wrobel, director at Towers Watson & Co., during the *BI* webcast "Urgent Care: Medical Liability Risks After Health Reform."

"Many of the elements...have the potential to decrease patient harm, increase patient safety, which could lead to improvement in malpractice costs," Mr. Wrobel said. "Paradoxically, some of these same elements could lead to increased costs—it's really difficult to conclude where this nets out, positive or negative."

He described the law's positive and negative implications regarding expanded coverage, reduced reimbursements to hospitals and physicians, pay-for-performance programs, and the patient safety and medical liability initiative.

"We know there is great deal of uncertainty, but the most effective health care organizations and the most



Ms. Meyers



Mr. Wrobel

successful med mal insurers will monitor these possible effects, see where trends are developing and try to implement programs to mitigate the risks," Mr. Wrobel said.

While the law includes pilot projects to address medical malpractice, the projects' design is unclear and funding may be limited, said Kathryn A. Meyers, director of

broking for Aon Risk Solutions' health care practice in Chicago.

"We don't view an immediate impact on malpractice rates as a result of health care reform," Ms. Meyers said. "Total cost of risk is likely to be affected by reform changes in the longer-term delivery of health care."

Ms. Meyers noted that providers should position their risk management programs in response to the changing health care delivery environment, detailing cost-effective risk financing options, such as stop-loss programs, risk-control measures, and using quality data for benchmarking and loss metrics.

BI Senior Editor Roberto Cenicerros moderated the webcast, which is available online at www.BusinessInsurance.com/section/webinars.

—By Mike Tsikoudakis

RISK MANAGEMENT

Risk managers urged to question service providers

Guard against forging close personal bonds with brokers: Panelist

By MICHAEL BRADFORD

DALLAS—Don't believe everything your service providers say, and pick a best friend who isn't your broker, two experts advised during MarketScout's "Entrepreneurial Insurance Symposium" in Dallas last week.

Whether it's a broker, insurer, third-party administrator or other service provider, "don't believe everything they tell you," warned Lance J. Ewing, Memphis, Tenn.-



based vp of national accounts at Chartis Insurance Inc.

Lots of risk managers 'blindly believe everything their service providers tell them. If they are selling Kool-Aid, these risk management folks sometimes are drinking it.'

Lance J. Ewing, Chartis Insurance Inc.

Lots of risk managers "blindly believe everything their service

providers tell them," Mr. Ewing said. "If they are selling Kool-Aid, these risk management folks sometimes are drinking it."

Speaking during the symposium sponsored by MarketScout, a Dallas-based electronic insurance exchange, Mr. Ewing told risk managers they have to "question, then verify," what their brokers and other business partners tell them to ensure all sides are clear about the services that will be provided.

Service providers have to be watched closely, said Mr. Ewing, a former risk manager and former president of the Risk & Insurance Management Society Inc.

"I had a broker one time who was handling our captive...and they

inadvertently took \$1.2 million of my money and gave it to another company," Mr. Ewing said. "It was a very honest mistake. What I didn't like was that I had to catch it...When I have to catch it, that's a problem from the risk management side of things."

Henry Good, a former risk manager who works as a risk management consultant for Wells Fargo Insurance Services Inc., a San Francisco-based broker, said there is a danger in forming personal bonds that are too tight between service providers and clients.

"You become real close to your broker," Mr. Good said. When the

See **SYMPOSIUM** page 21

PENSION BENEFITS

PENSION PLAN FREEZES

The percentage of Fortune 1000 companies that have frozen their defined benefit pension plans has soared since 2004.

Year*	Sponsors that have a DB plan	At least one plan frozen
2010	586	35.5%
2009	607	31.3%
2008	624	27.1%
2007	638	21.6%
2006	627	18.0%
2005	627	11.3%
2004	633	7.1%

*Year company was on Fortune 1000 list.
Source: Towers Watson & Co.

More large employers freeze DB plans: Report

By JERRY GEISEL

Some 35.5% of Fortune 1000 companies that have defined benefit pension plans have frozen at least one such plan, according to a new analysis.

There are 586 employers on this year's Fortune 1000 list that sponsor defined benefit plans and 208 have frozen at least one plan, according to New York-based benefit consultant Towers Watson & Co.'s analysis of Securities & Exchange Commission filings.

That 35.5% is up from 2009, when 31.3% of 607 Fortune 1000 companies had frozen at least one defined benefit plan.

In 2004, as the corporate drive to freeze defined benefit plans was gathering speed, only 45, or 7.1% of 633 Fortune 1000 companies with defined benefit plans, had frozen at least one plan.

In a freeze, a company continues

its defined benefit plan, but future accruals for some or all participants stop.

Employers have taken the step for a variety of reasons, including cutting retirement plan costs and reducing the volatility of required contributions, which can fluctuate significantly due to changes in interest rates and investment results.

The most recent Fortune 1000 company to announce a pension plan freeze was Caterpillar Inc. The Peoria, Ill.-based construction equipment manufacturer last month said that nonunion employees hired on or after Jan. 1, 2011, will not be eligible for the defined benefit plan. In addition, the effective date of the freeze for current employees will vary based on their age and when they were hired.

The analysis is available at <http://www.towerswatson.com/united-states/newsletters/insider/2761>.

Errors & Omissions

A photograph and caption on page 20 of the Sept. 13 edition provided misleading information. The photograph showed a nuclear power reactor in Spring City, Tenn., and accompanied an article about a lawsuit alleging that power plant emissions cause a "public nuisance." The power plants named in the suit were coal- and gas-fired power plants.

PROPERTY/CASUALTY INSURERS

Investments push insurer profits higher

By JEFF CASALE

Private U.S. property/casualty insurers posted net income of \$16.5 billion for the first half of this year, up sharply from \$6 billion in the prior year period, as investment gains more than doubled, according to the Insurance Services Office Inc. and the Property Casualty Insurers Assn. of America.

The investment gains offset an increase in first-half net underwriting losses, which climbed to \$5.1 billion from \$2.1 billion in the first half of last year, according to the report from ISO and PCI. As a result, the insurers' aggregate combined ratio deteriorated to 101.7% in the first half from 100.8% for the prior-year period.

The groups found that the industry's overall profitability, as measured by the first-half policyholder surplus, rose 3.7% to \$530.5 billion

\$5.1B

Property/casualty insurers' underwriting losses climbed to \$5.1 billion in the first half of 2010, compared with \$2.1 billion a year earlier.

as of June 30 compared with the first half in 2009.

First-half net investment gains rose to \$25.8 billion from \$12.5 billion a year earlier, which "powered the increases in the insurance industry's net income, overall rate of return and policyholders' surplus," the Jersey City, N.J.-based ISO and Des Plaines, Ill.-based PCI said in a statement.

Net written premiums were essen-

tially unchanged at \$212.5 billion in both first-half periods, though net earned premiums fell 1.9% to \$207.1 billion, ISO and PCI reported.

ISO's Property Claim Services unit reported that U.S. catastrophes during the first half of this year caused \$7.9 billion in direct insured losses—prior to reinsurance recoveries—for all insurers. This is up from \$7.7 billion during the first half of 2009 and nearly \$2 billion more than the \$6 billion average for first-half direct catastrophe losses during the past 10 years.

"Property/casualty insurers' positive results for first-half 2010 are yet another testament to the conservative investment strategies and superior risk management that enabled insurers to emerge from the financial crisis and great recession essentially unscathed," David Sampson, PCI's president and CEO, said in the statement.

HEALTH CARE BENEFITS

Uninsured tally hits record in 2009

By JERRY GEISEL

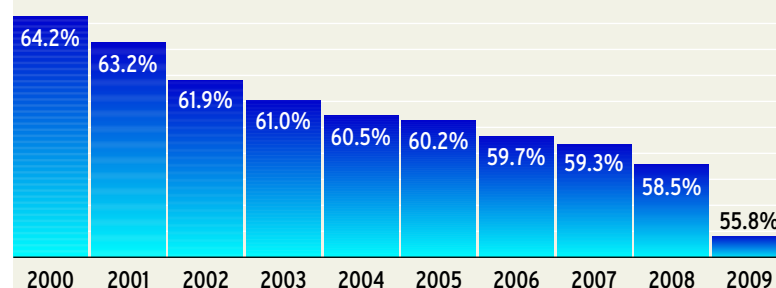
The number of U.S. residents without health insurance soared to a record high last year as employment-based coverage plummeted, the U.S. Census Bureau reported last week.

The number of uninsured in 2009 hit a record 50.7 million, up from 46.3 million in 2008, while the percentage of U.S. residents without coverage climbed to 16.7% in 2009 from 15.4% a year earlier, the Census Bureau said.

Correspondingly, the number of people with health coverage dropped to 253.6 million last year from 255.1 million the previous year, which the Census Bureau said is the first time the number of insured declined since it began

HEALTH COVERAGE DECLINES

The percentage of the U.S. population covered by employment-based health insurance plans has fallen steadily since 2000.



Source: U.S. Census Bureau

tracking health insurance coverage in 1987.

The percentage of people covered

through employer-sponsored plans

See **CENSUS** page 22

A MINOR RENOVATION TO THE FACTORY AVOIDED A MAJOR OPERATION ON THE EMPLOYEE.

When an employee from a large furniture manufacturer developed recurring wrist pain, our Workers Compensation experts teamed with his doctor to quickly assess the situation. We discovered that changing the layout of his workspace would avoid painful surgery and allow him to continue working while he healed. Our regional medical directors, 24-hour claim response teams and loss control experts work together with you and your broker to develop effective solutions that help you keep employees safer and get them back to work. That's our policy. For more information, contact your broker or agent or visit libertymutualgroup.com/workerscomp.

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Commentary

Offshore proposals need industry buy-in

At last week's annual reinsurance gathering in Monte Carlo, Monaco, the major point of discussion at the Rendez-Vous de Septembre was a proposed liability insurance program for offshore oil drilling risks.

Munich Reinsurance Co., the world's largest reinsurer, outlined a plan under which the global insurance industry could provide up to \$20 billion in limits for drilling projects. Munich Re itself would provide up to \$2 billion of this capacity annually for each project. It's an ambitious plan, offering limits far higher than anything available in the market.

Drafted in response to the Deepwater Horizon oil rig disaster in the Gulf of Mexico, Munich Re's proposal drew supporters and skeptics in Monte Carlo. Competitors Hannover Re Group and Swiss Re Group said the idea has merit and they could support it, if the coverage could be properly structured.

All three reinsurers and others noted that the program cannot succeed without the participation of many industry players and, most importantly, the oil industry. If there are few purchasers of the coverage, the insurance program can't be sustained. It simply will not generate enough premiums to pay claims.

The Deepwater Horizon catastrophe—the worst oil spill in U.S. history, which is expected to generate tens of billions of dollars in third-party liability claims from affected businesses—is a low-frequency, high-severity event.

By nature, that is the kind of risk for which insurance is most attractive. BP P.L.C., which owns the well, is self-insured, so it bears the bulk of the claims generated by the loss. Many observers view the Deepwater Horizon spill as a failure of risk management, and certainly there are lots of lessons to be gained with the benefit of hindsight.

Why BP self-insured its risks is a decision likely to be debated for some time. A simple answer is that, weighing its huge balance sheet and the relatively low insurance limits available for the risks it takes, BP saw little value in trading dollars with the insurance industry. BP has a captive, Jupiter Insurance Ltd., but it does not access the insurance or reinsurance markets. Jupiter is there to finance BP's risk retention.

All risk managers must consider when it makes sense to retain risk and when to transfer it. If the cost to retain and manage a risk is less than it costs to buy insurance for it, that's an easy



**REGIS
COCCIA**

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

decision. But it's not always clear how big a risk is, or ultimately how much it will cost, so removing uncertainty by purchasing insurance is a good solution. That only works, obviously, when coverage is available.

For enormous risks such as the Deepwater Horizon, the global insurance industry until now has not been eager to provide a lot of coverage. A billion dollars

If the cost to retain and manage a risk is less than it costs to buy insurance for it, that's an easy decision.

of limits is a lot for any program, and that has not been easy to find for energy risks. Oil Casualty Insurance Ltd., a Bermuda energy mutual, provides up to \$100 million in limits. At Monte Carlo, Torus Insurance Holdings Ltd. announced a program to provide up to \$1 billion in limits for offshore energy projects, in which it will offer up to \$100 million in capacity for a single project. A program 20 times that size is going to be challenging to pull off.

Many in Monte Carlo last week applauded the attempts by the industry to offer solutions to problems. Indeed, that's a positive thing. But insurers and reinsurers need to remember that offering coverage is one thing; not digging in their heels when claims arise is important, too.

If Munich Re, Torus and others can put together a successful program for offshore energy risks, and the energy industry responds by managing its risks better, both sides will be winners. Those efforts also will go a long way toward helping sustain global economic growth. That's smart business.



**“This is our first tunnel project
in the US. Zurich had both
the local and global insurance
expertise we needed to win
the bid.”**

**Henri Lebossé, Bouygues Construction,
Head of Risk and Insurance Department**

Zurich HelpPoint

Global insurance solutions for wherever you expand next.

For the construction of Miami’s first underwater tunnel, Zurich helped Bouygues Construction obtain the project, by pulling together a global team of specialists already familiar with Bouygues Construction. Zurich solved the complex, local insurance requirements of the lenders, the State of Florida and the company’s management. It’s an example of how Zurich HelpPoint delivers the help businesses need when it matters most. To learn more about this case, visit www.zurichna.com/ipz



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Business Insurance OPINIONS

Increase in uninsured shows need for change

ANYONE WHO THINKS the nation's health care system was in tiptop shape before Congress passed reform legislation in March should take a look at the latest figures from the U.S. Census Bureau.

As we report on page 4, the numbers are disturbing. The number of uninsured and the percentage of the population without health insurance coverage set record highs, while the percent covered by employment-based plans fell to a record low.

The overriding reason for the sharp jump in the number of uninsured was, of course, the slump in the economy. Millions of employees and their families lost coverage as employers laid off workers or went out of business.

Even before the recession hit, coverage numbers were going south.

A temporary 65% federal COBRA premium subsidy that Congress passed last year helped many who lost their jobs retain coverage from their former employers. But not all who were let go could afford their 35% share of the COBRA premium, while those working for companies that closed their doors for good got no help.

But even before the recession hit, coverage numbers were going south. Indeed, the percentage of the population covered through employment-based plans has declined each year since 2000.

It is much too soon to say whether the health care reform law will be an improvement over the current system. That said, it should expand coverage through changes such as providing federal premium subsidies to the lower-income uninsured.

But as the Census Bureau figures make clear, relying exclusively on the status quo was not an acceptable course of action.

Federal Insurance Office requires Treasury action

THE EXPECTED formal announcement this week that Missouri's top insurance regulator will serve on the new Financial Stability Oversight Council represents progress in implementing massive financial regulatory reform that President Barack Obama signed into law this summer.

We'd like to see progress on another provision of the law as well—getting the Treasury Department's new Federal Insurance Office up and running.

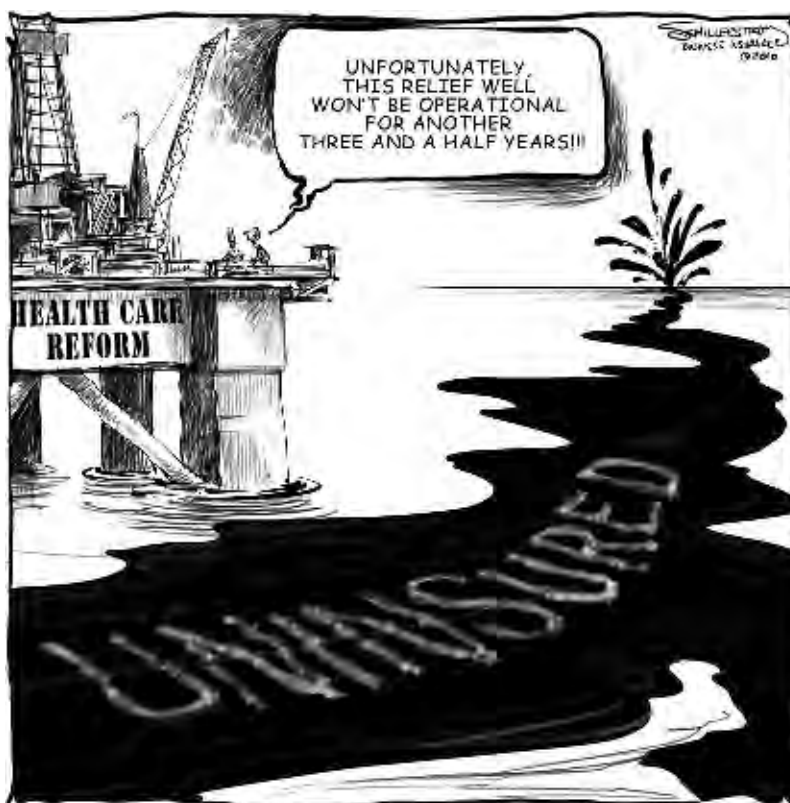
After all, the law holds that the FIO director will submit two reports to Congress—one on pre-emption of state laws, the other on the state of the insurance industry—beginning Sept. 30, 2011.

That's barely a year away, yet the FIO has no director.

We'd like to see that change, and change quickly. The FIO has a variety of critical roles to play on the domestic and international fronts, not the least of which is developing federal policy on international insurance issues.

This is the first time an office with such powers has existed within the federal government.

We know implementing the entire reform package will take years. But given the time frame set by the law, there isn't a lot of time left in which to get things into place. Naming a director and getting FIO kicked into high gear ought to be a priority for the Treasury secretary.



WRITE

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

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THIS WEEK'S RESULTS

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



YES

26%

NO

53%

TOO EARLY TO SAY

20%

NEXT WEEK'S QUESTION

Q: Will health care reform be repealed or struck down before it is fully implemented?

LETTERS

Embrace innovation to improve services

TO THE EDITOR: Read with interest your commentary in this week's *Business Insurance* ("Standard Procedure Also 'Warfarin Roulette,'" Sept. 13). It should be a cautionary tale for those who use reform as code for cost-cutting and view innovation as a profit ploy by medical marketers.

One of the challenges we in the medical marketing business face is the demonization of disseminating information about breakthroughs such as the genetic testing you describe.

The pain, suffering and even life-threatening risk caused by physician ignorance of the latest therapies and techniques is all too often left out of the equation.

Adoption of new technologies in medicine is slow. Medicine, unbeknownst to most patients, is a relatively tradition-bound profession, slow to adopt innovative therapies. Medical marketers seek to overcome this inertia, which often benefits

See **LETTERS** page 21

PERSPECTIVES

Business Insurance accepts articles from experts in commercial insurance, risk management and employee benefits management for publication in its Perspectives section.

All articles for the Perspectives page should address the concerns of the corporate buyer of insurance; i.e., the risk management or employee benefits manager. Material written for only the concerns of brokers or underwriters is not appropriate.

All authors must assign the copyright on the article to Business Insurance.

Because of the volume of Perspective submissions we receive, we cannot guarantee a date in which an article will appear. To submit a Perspective article query or for more information, send a note to gsouter@businessinsurance.com.

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Feb 15	Published	Benefits for a Diverse Workforce <i>Bonus Distribution: NBGH</i>
Mar 15	Published	Value-Based Plan Design <i>Ranking/Directory: Consumer-Driven Health Care Plan Providers</i> <i>Bonus Distribution: IHPM</i>
Apr 19	Published	Benefits Communications & Technology <i>Ranking/Directory: Employee Benefits Software</i>
May 17	Published	Benefit Consulting <i>Ranking/Directory: Benefits Consultants/Outsourcing Providers</i> <i>Bonus Distribution: AHIP, World at Work</i>
Jun 21	Published	Supplemental Benefits: Life, Disability, Dental & Vision <i>Ranking/Directory: Dental Plan Providers</i>
Jul 19	Published	Pensions & Savings Plans <i>Ranking/Directory: 401(k) Plan Providers</i>
Aug 23	Published	Prescription Drug Benefits <i>Ranking/Directory: PBMs</i>
Sep 20	Published	Health Care Reform
Oct 18	Oct 6	Alternative Benefit Financing
Nov 15	Nov 3	Wellness Benefits <i>Ranking/Directory: Wellness Providers</i> <i>Bonus Distribution: NBCH</i>
Dec 13	Dec 1	Behavioral Health & Work/Life Benefits <i>Ranking/Directory: EAPs</i>

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Market Moves

Wholesale brokerage co-op established

SAN FRANCISCO—Wholesale Trading Co-Op Insurance Services L.L.C. said it will begin operations on Oct. 1.

The wholesale brokerage will serve nearly 30 privately held U.S. retail brokers and is jointly owned by its broker members, select private investors and its employees,

San Francisco-based Wholesale Trading said in a statement.

Initial investors and broker members include investment firm Islington Holdings L.P. and Edgewood Partners Insurance Center Inc.

"The wholesale brokerage industry as we know it today is plagued by fragmentation, a low retention of business and resulting high transaction and acquisition costs," said John Hahn, co-founder and president of EPIC. "The WTC approach aligns the financial and business interests of the retailer, wholesaler and specialty market in a manner that gives the client the best market alternative and reduces the frictional costs."

Wholesale Trading's goals include developing proprietary programs

and binding authority facilities.

Wholesale Trading, which is licensed in all states, will commence operations Oct. 1 with offices in San Francisco, Atlanta and New York. Its headquarters is at 123 Mission St., 26th Floor, San Francisco, Calif. 94195.

For more information, contact Les Ross, managing partner, at 1-888-WTC-3343 or lross@wholesale-tradingins.com.

Greenlight Capital opens Ireland unit

DUBLIN—Greenlight Capital Re Ltd. said it has formed a Dublin-based subsidiary to expand its international reach and capitalize on European market opportunities.

Greenlight Reinsurance Ireland Ltd. provides multiline reinsurance mainly to the European broker market and will concentrate on partnerships with niche specialist clients, the Grand Cayman, Cayman Islands-based reinsurer said in a statement.

David Maguire, previously product manager at Traveler Cos. Inc., has been named general manager of Greenlight Reinsurance Ireland, based in Dublin.

Formed in 2004, Greenlight Re had shareholders' equity of \$735 million as of June 30, it said.

Greenlight Reinsurance Ireland's offices are located in the International Financial Services Centre in Dublin. Further office details are pending.

QBE unit buys Seattle Specialty

EVERETT, Wash.—Sterling National Corp., the insurance technology provider unit of QBE Insurance Group Ltd., has acquired Seattle Specialty Insurance Services Inc.

The acquisition, for which terms were not disclosed, expands QBE Insurance Group's insurance outsourcing and risk mitigation support to U.S. middle-market financial institutions, the Sydney-based insurer said in a statement.

As part of the acquisition, Seattle Specialty will operate as a wholly owned subsidiary of Atlanta-based Sterling National Corp. under its current management, led by President and CEO Rick Pedack.

Everett, Wash.-based Seattle Specialty specializes in lender placed, commercial and residential property, auto, and hazard and flood risk services to financial institutions since 1992.

Gallagher acquires N.Y. broker, consultant

NEW YORK—Arthur J. Gallagher & Co. has expanded its employee benefits team with the acquisition of New York-based insurance brokerage and consultant Old Greenwich Consulting Group L.L.C.

As part of the acquisition, Old Greenwich Consulting Group Managing Partner and CEO Michael Johnson and his team will continue to operate in New York under the direction of David Ziegler, eastern regional executive vp of Gallagher's employee benefits practice, the Itasca, Ill.-based insurance brokerage said in a statement.

Old Greenwich Consulting Group offers middle-market clients employee benefits and consulting services, including life insurance and group benefits.

Financial terms of the acquisition were not disclosed.

Insurance staffing firm makes \$6.2M acquisition

DALLAS—New York-based Corporate Resource Services Inc. has acquired Tri-Overload Staffing Inc., which does business as Insurance Overload Staffing Inc., for \$6.2 million.

The New York company acquired the Dallas-based insurance staffing company from affiliate Tri-State Employment Services Inc. by issuing approximately 8.59 million shares of stock, Corporate Resource Services said in a statement.

With the completion of the acquisition, Corporate Resources said it aims to grow its presence in the insurance industry, Corporate Resource Services CEO Jay Schecter said in the statement.



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TO SUBMIT ITEMS

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Health Care Reform

SPOTLIGHT

Reform law rules raise questions

Future revisions expected to clarify several issues

By **JERRY GEISEL**

WASHINGTON—Regulations to implement sweeping health care reform legislation that Congress passed and the president signed into law in March have been issued at a torrid pace.

"Regulators have really worked at warp speed to get rules out prior to the effective date of provisions. Even regulators would probably admit that the speed has been unusual," said Michael Thompson, a principal at PricewaterhouseCoopers L.L.P. in New York.

"They have worked around the clock. They have been extraordinarily diligent," concurred Frank McArdle, a consultant in the Washington office of Hewitt Associates Inc.

While the Departments of Labor, Health

and Human Services and Internal Revenue Service have issued rules to implement the Patient Protection and Affordable Care Act at a speedy pace, the rules (see timeline, page 12) fall short of answering all compliance-related questions.

"There are some things that are not so clear," Mr. Thompson said.

In some cases, that lack of clarity involves basic provisions. For example, the law requires employers to extend group coverage to employees' adult children up to age 26 for plan years that begin on or after Sept. 23. Previously, employers typically covered employees' dependent children up to age 18 or 19 or, if a full-time college student, until age 23 or 24.

However, regulations issued in May do not definitively define a child. For example, it isn't clear if covering children up to age 26 would apply in situations where employer plans allow coverage of employees' grandchildren who reside in the same household as the employee.

"Who is considered a child is not directly

addressed," said Amy Bergner, a partner in the Washington office of Mercer L.L.C.

Other adult child coverage-related issues also need clarification, experts say. For example, the regulations are not clear on whether the extension of coverage applies to retiree-only health care plans, Hewitt Associates Inc. said in a letter to the Labor Department.

Yet another issue involves the relationship of the adult child coverage requirement to a provision that exempts grandfathered plans from complying with all of the law's coverage requirements. To be grandfathered, a health care plan can't increase employee cost-sharing requirements beyond certain set amounts.

On the adult child coverage extension, grandfathered plans are exempt until Jan. 1, 2014, in situations where the adult child has coverage through his or her own employer.

Not clear, said Hewitt Associates, is whether a grandfathered plan covering the adult child's parent would have to extend

See **REFORM** next page

'Regulators have really worked at warp speed to get rules out prior to the effective date of provisions.'

Michael Thompson, PricewaterhouseCoopers L.L.P.

HEALTH REFORM LAW EXPECTED TO SURVIVE COURT CHALLENGES

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EMPLOYERS ASSESS FINANCIAL IMPACT OF REFORM LAW

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Webcast explores med mal risks

In a new *Business Insurance* webcast, Kathryn A. Meyers, director of broking at Aon Risk Solutions' Health Care Practice, and Edward M. Wrobel, director at Towers Watson & Co., examine the potential medical liability implications of the Patient Protection and Affordable Care Act.

The webcast, "Urgent Care: Managing Medical Liability Risks After Health Reform," can be viewed at www.businessinsurance.com/section/webinars.

Reform: Health care regulations raise several questions

CONTINUED FROM PREVIOUS PAGE

coverage to the child if the child were laid off and became eligible for COBRA through his or her employer.

"The rules do not address the situation where an adult child under age 26 is eligible for COBRA through his/her own former employer," Hewitt said in its letter to the Labor Department.

Yet another issue in need of clarification involves provisions affecting plans with annual and lifetime dollar limits. Under the law, health care plans cannot impose lifetime dollar limits generally as of Jan. 1,

2011, while annual limits will be phased out over the next three years under previous regulations.

The ban on dollar limits applies only to "essential benefits," a term that the regulations define very broadly. It isn't clear whether the ban applies to certain health care services, such as infertility treatments, for which employers often have imposed separate dollar limits.

In addition, the regulations aren't clear if the dollar limits still can be imposed on coverage delivered by out-of-network providers. Such limits should be explicitly allowed, consultants argue.

"Prohibiting employers from

imposing limits on out-of-network coverage would constrain the ability of group health plans and health insurance issuers to contain costs, would result in higher premiums, and could reduce provider incentive to participate in insurer networks, thereby decreasing participant access," Hewitt said in its letter to the Department of Labor.

Experts say it isn't surprising that the regulatory agencies have not clearly addressed every issue.

"These are not issues that are easy to address in such a short time frame," said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

"In many cases, regulators have had to interpret legislative language that was not well-drafted," Mr. McArdle said.

Undoubtedly, though, there will be clarification of these and other issues in the coming months. The regulations have been issued as "final interim rules." While that means employers are expected to comply, it also gives the agencies flexibility to revamp the rules in the future.

"The agencies will accept comments and they could change the regulations. In the meantime, you have to act in good faith" to avoid any potential penalties, Mr. Thompson said.

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PATIENT PROTECTION AND AFFORDABLE CARE ACT

Key health care reform law provisions and regulatory status

PROVISION: Coverage extended to employees' adult children to age 26

EFFECTIVE DATE: Plan years beginning on or after Sept. 23, 2010

RULES ISSUED: May 2010

PROVISION: Partial federal reimbursement of employers for claims incurred by early retirees and their dependents

EFFECTIVE DATE: June 1, 2010

RULES ISSUED: June 2010

PROVISION: Lifetime dollar limits eliminated

EFFECTIVE DATE: Plan years beginning on or after Sept. 23, 2010

RULES ISSUED: June 2010

PROVISION: Annual dollar limits eliminated*

EFFECTIVE DATE: Jan. 1, 2014

RULES ISSUED: June 2010

PROVISION: Exemption of grandfathered plans from certain requirements

EFFECTIVE DATE: Jan. 1, 2011

RULES ISSUED: June 2010

PROVISION: Full coverage of preventive services

EFFECTIVE DATE: Plan years beginning on or after Sept. 23, 2010

RULES ISSUED: July 2010

PROVISION: External review of disputed claims

EFFECTIVE DATE: Jan. 1, 2011

RULES ISSUED: July 2010

PROVISION: Flexible spending accounts banned from reimbursing over-the-counter medications without a prescription

EFFECTIVE DATE: Jan. 1, 2011

RULES ISSUED: September 2010

*Annual limit can be no less than \$750,000 per enrollee in 2011, \$1.25 million in 2012 and \$2 million in 2013.



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All three Republican attorney general candidates in Florida, including GOP primary winner Pam Bondi, vowed to continue the legal fight against the federal health care reform law.

AP PHOTO

Critics fight reform measures

By DAVE LENCKUS

Some critics of the landmark Patient Protection and Affordable Care Act doubt that opponents of the health care reform law will prevail in court.

Pointing to legal precedents on congressional powers, several legal experts critical of the law expect it to go into full effect in 2014, unless Republicans regain control of Congress and repeal the law.

Legal experts predict the law will survive even if opponents win some lower court battles, as Virginia's attorney general did in August,

when a federal judge refused to dismiss Virginia's lawsuit challenging the federal law as infringing on states' sovereign rights.

Many observers expect the issue to end up before the U.S. Supreme Court.

If it survives, the law would reduce the number of uninsured individuals by two-thirds, or 32.5 million, the Congressional Budget Office has estimated. The law would accomplish that by requiring most individuals to purchase health insurance and most businesses to offer health care plans to workers.

PPACA also broadens coverage eligibility by barring exclusions of pre-existing conditions and lifetime coverage caps.

Various states, individuals and organizations have challenged the law in federal court.

But observers are most closely watching the lawsuits filed in federal district courts in Richmond, Va., and Pensacola, Fla. Virginia filed suit the day that President Barack Obama signed the law in March. Florida's lawsuit has expanded to include the attorneys general of 16 additional states, governors of four more states, the National Federation of Independent Business and two individuals. Judges in both cases have scheduled additional hearings this year, when the Florida judge could rule on the government's motion to dismiss that case, legal experts said.

State officials are "all sincerely committed to these lawsuits," said Ilya Shapiro, a senior fellow in constitutional studies at the Cato Institute, a Washington-based libertarian think tank. "They're happy to make political hay out of it, but it's not a political stand," he said.

The suits challenge the constitutionality of several PPACA provisions. The most controversial is the

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Ilya Shapiro, Cato Institute

individual coverage mandate. The law also imposes monetary penalties on individuals and businesses that don't comply with the law. It also requires states to beef up Medicaid benefits and broaden eligibility.

The plaintiffs argue that Congress has exceeded its authority to regulate commerce and levy taxes and that the law violates individual and state rights.

Mr. Shapiro agreed with those criticisms, but he also noted that courts traditionally have relied on the U.S. Constitution's "necessary and proper" clause to extend broad powers to Congress to regulate commerce.

The odds of striking down the law by focusing on the commerce clause is "a long shot," agreed Neil Trautwein, a vp and the employee benefits counsel at the National Retail Federation in Washington.

Grace-Marie Turner, president of the Alexandria, Va.-based Galen Institute, a conservative health care consumer advocacy group, predicted only that the Supreme Court will decide the law's fate. She did, however, say that the commerce clause has been "stretched beyond

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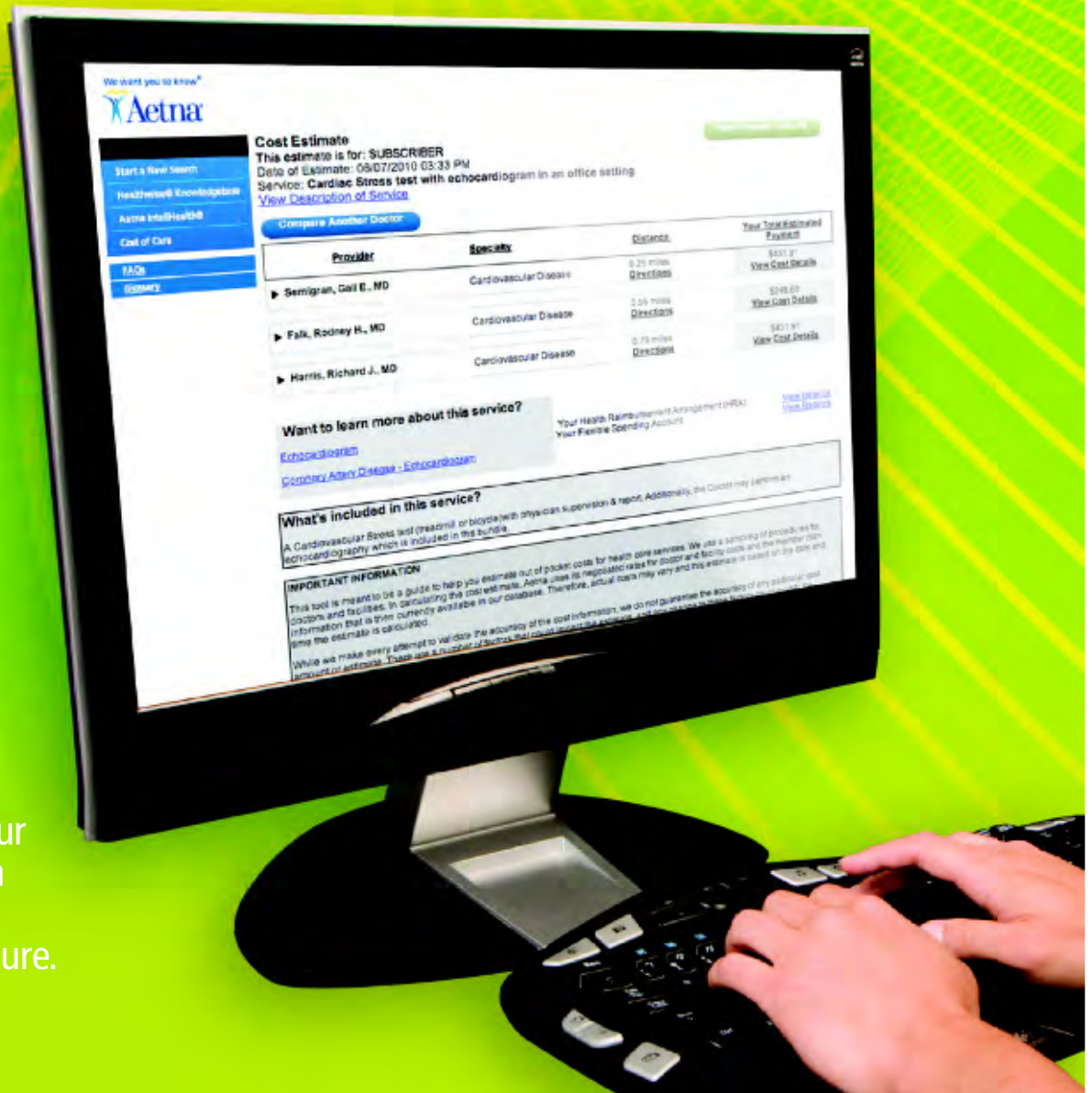
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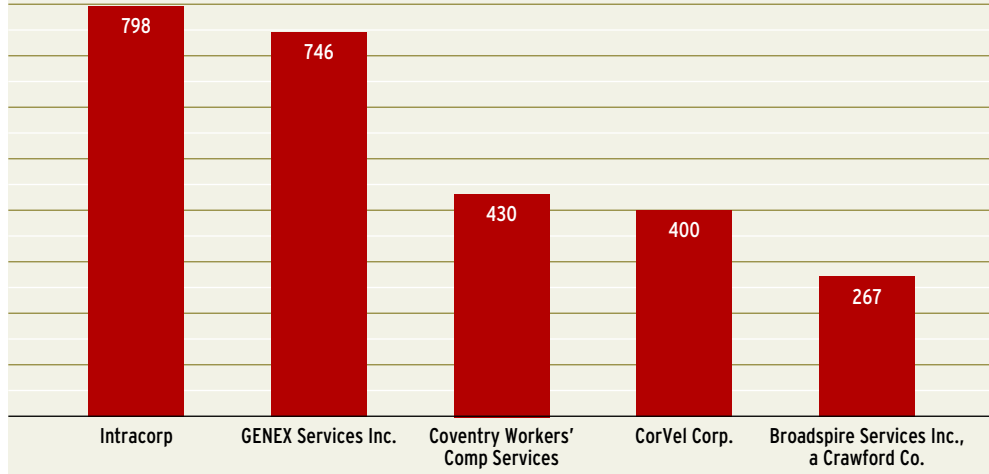
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CERTIFIED CASE MANAGERS

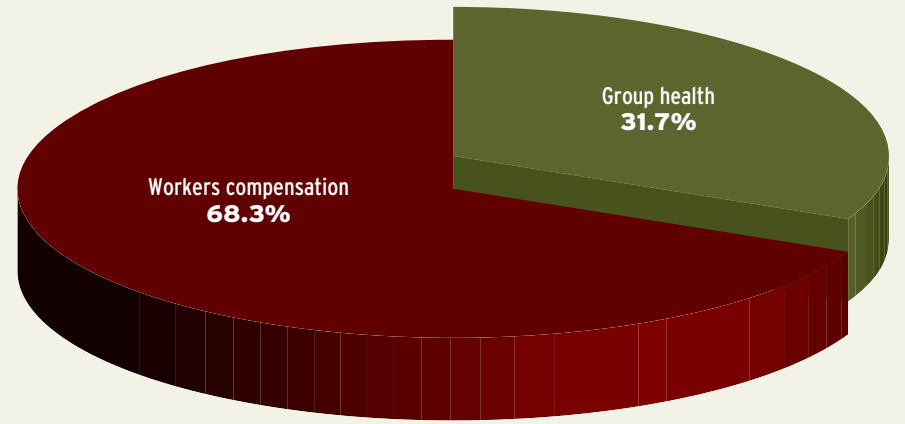
Case management providers ranked by number of full-time certified case managers on staff



Source: BI survey

TYPES OF CLAIMS MANAGED

Percentage of total cases managed, all respondents



Source: BI survey

Largest case management providers

Ranked by 2009 gross revenues from case management services

Rank	Company/Address	Phone/Web site	Case management revenues	Total employees assigned to case management	Total cases managed	Principal officer
1	Intracorp 2 Liberty Place, 1601 Chestnut St., Philadelphia, Pa. 19192	800-345-1075 www.intracorp.com	\$306,580,223	2,338	1,537,564	Mark Farrell, president
2	Coventry Workers' Comp Services 720 Cool Springs Blvd., Suite 300, Franklin, Tenn. 37067	858-547-2528 www.coventrywcs.com	\$189,000,000	1,200	250,000	Karen Austin, vp-field case management
3	GENEX Services Inc. 440 E. Swedesford Road, Suite 1000, Wayne, Pa. 19087	610-964-5100 www.genexservices.com	\$175,000,000	1,215	178,000	Peter C. Madeja, president/CEO
4	CorVel Corp. 2010 Main St., Suite 600, Irvine, Calif. 92614	949-851-1473 www.corvel.com	\$110,000,000	850	80,000	Daniel Starck, CEO
5	Broadspire Services Inc., a Crawford Co. 1001 Summit Blvd., Atlanta, Ga. 30319	866-625-1662 www.choosebroadspire.com	\$86,202,000	580	76,947	Ken Martino, president/CEO
6	Paradigm Management Services L.L.C. 1001 Galaxy Way, Suite 300, Concord, Calif. 94520	800-676-6777 www.paradigmcorp.com	\$37,500,000	60	950	Kevin Fleming, CEO
7	American Health Holding Inc. 100 W. Old Wilson Bridge Road, Worthington, Ohio 43085	866-614-4244 www.americanhealthholding.com	\$21,000,000	126	6,558	Ron Gibb, executive vp/COO
8	M Hayes 225 International Circle, Suite 201, Hunt Valley, Md. 21030	410-628-4050 www.mhayes.com	\$13,500,000	124	6,505	Melinda Hayes, president/CEO
9	MedInsights Inc. 206 Gothic Court, Suite 308, Franklin, Tenn. 37067	615-778-5000 www.medinsights.com	\$13,000,000	54	14,336	Paula Woolworth, executive vp
10	MCMC L.L.C. 88 Black Falcon Ave., Suite 353, Boston, Mass. 02210	800-227-1464 www.mcmcllc.com	\$4,800,000	39	9,500	Brenda B. Calia, senior vp-integrated services
10	TRISTAR Managed Care 203 N. Golden Circle Drive, Suite 310, Santa Ana, Calif. 92705	714-571-1800 www.tristarmc.com	\$4,800,000	35	10,165	Tom Veale, president

Source: BI survey
Researched by Karen Tucker

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Battle: Reform law critics to fight measure in court

CONTINUED FROM PAGE 14

recognition" and "there's a real risk" courts could "stretch it further to say the government can regulate health activities."

Even so, requiring individuals to participate in economic activity pushes the commerce clause to its "extreme borderline," Mr. Trautwein said.

The nonpartisan Congressional Research Service and the judge hearing Virginia's challenge also noted they are unsure whether the clause permits the mandate.

If it survives, "there's really nothing the government couldn't require people to do," which could trouble courts, Mr. Shapiro said.

But Ernest A. Young, a law professor at Duke University in Durham, N.C., disputed that assessment. "It is clear Congress is trying to make a market work," not impose extreme controls on individuals, he said.

Ron Pollack, vp and executive director of consumer health care advocacy group Families USA and a former dean of the Antioch School of Law, both in Washington, said full participation in the health insurance market is necessary to keep coverage affordable. Therefore, it is "a valid area for Congress to legislate," he said.

Some opponents of the law also argue that while the commerce clause allows Congress to tax what it cannot regulate, Congress cannot regulate through taxation.

But a group of constitutional law professors from Yale Law School and Columbia Law School, who filed an amicus brief in the Virginia case, argue the law is within Congress' taxing authority. Because the individual penalty does not tax property and is escapable by purchasing insurance, the law is not a direct tax, the brief argues. Under the Constitution, a direct tax would necessitate apportionment among

The Supreme Court 'never has relied on the Ninth Amendment solely to strike anything down. And it won't do it here.'

Ernest A. Young, Duke University

the states by population.

Instead, the law would impose an indirect tax, which is allowable because it meets various constitutional tests, including serving the general welfare, the brief contends.

In addition, the Supreme Court ruled in 1937 and 1950 that a tax is valid even if it regulates or deters activity that Congress is not authorized to regulate, the government noted in its Virginia and Florida court briefs.

Plaintiffs also contend the man-

date violates the Constitution's Ninth Amendment, which protects individual rights not enumerated elsewhere in the document.

But the Supreme Court "never has relied on the Ninth Amendment solely to strike anything down," Duke's Mr. Young said. "And it won't do it here."

Opponents and supporters also clash over whether the law violates states' rights.

By expanding Medicaid benefits and broadening program eligibility, the government is changing Medicaid from a voluntary program to "something more coercive" in violation of the 10th Amendment, the Cato Institute's Mr. Shapiro said. That amendment protects states' rights by limiting federal powers to those the Constitution enumerates.

Mr. Pollack described the coercion argument as "nonsense." States' current share of Medicaid costs averages 44% of total program costs, he said. After 2016, states would cover a "miniscule" 5% of the additional Medicaid costs that the new law adds, he said.

Critics and supporters agree, however, that political realities influence courts, so predicting rulings is difficult.

Aon Consulting anticipates that the dispute will be resolved politically rather than judicially, said Crystal Hover, a Los Angeles-based vp and senior manager in the health and benefits practice at the Aon Corp. unit. After seeing how lower courts rule, Congress may modify the law, perhaps even dramatically, to improve its chances of survival, she said.

But, "we don't believe this is going away," Ms. Hover said.

Questions & Answers

How will the Patient Protection and Affordable Care Act affect employers? How much will it cost? Will employers continue to offer coverage in the post-reform era? Those and many other issues were discussed by Randy Abbott, a senior consultant in the Wellesley Hills, Mass., office of Towers Watson & Co., who spoke recently with Business Insurance Editor-at-Large Jerry Geisel.



Preparing for change

Q: How far along are employers in making the changes needed to bring their health care plans into compliance with the reform law?

It depends on whether employers have elected to have their plans grandfathered or not. If they have elected to forgo grandfathered status, they are faced with a more complex set of challenges. Those employers are really scrambling to be prepared.

My impression is that within our client base, employers are working overtime to keep abreast of everything.

Q: How expensive will it be for employers to upgrade their plans to meet the requirements laid down by the reform law?

For most employers with grandfathered plans, the cost impact is varying from perhaps half a percentage point increase to a one percentage point increase. For nongrandfathered plans, the cost increase typically will range anywhere from a point to a two percentage point increase in 2011. The actual cost increase for an individual employer will vary depending on their starting point. The employer with a \$1 million lifetime dollar limit will, for example, have a different cost impact than the employer with a \$5 million limit.

Q: Because employers will be required to expand coverage in certain areas, like the elimination of lifetime dollar limits, will they be shifting more costs to employees to offset the added expense?

We are not seeing major cutbacks at this point. Most plan sponsors we are working with now plan to nominally increase employee premium contributions and nominally increase point-of-care cost-sharing. But over the long term, employers will be focusing more aggressively on how to mitigate cost growth.

Q: In theory, as more people gain coverage, shouldn't there be less provider cost-shifting to employer-sponsored plans?

I don't think employers are that optimistic. The concern right

now is how are we going to cope with 30 (million) or 35 million newly insured Americans going into a system that is already wildly overburdened.

That is going to be a real challenge for employers. It is a concern manifested by the fact (that) if appointment wait times are longer, people will be less productive and may be unable to return to work as quickly as we would like.

As a result, we are seeing a growing number of employers considering whether to provide primary care services on-site.

Q: Is there anything in the health care reform law that will benefit employers?

Once we get through the initial rash of compliance-oriented activity, there will be a focus on whether it makes sense for employers to offer core health benefits for employees and retirees.

If the state insurance exchanges are up and running and are viable, that will give employers the opportunity to step back and rethink their role. Some may well decide to get out of the health insurance business. Others may decide to stay in, but doing so in a very different way compared to what they have done in the past. We are beginning to see, in fact, that health care reform as a real opportunity for employers to rethink their positions.

Q: What is the likelihood that efforts to repeal the law will succeed?

Right now, we have the law. It has been passed. Regulations are being released. There is the potential that there could be changes around the edges, especially if there is a change in who controls the Congress, but outright repeal seems very unlikely.

Our view is to hope for the best and plan for the worst. So, pragmatic employers are going to be thinking through the various options, allowing themselves enough flexibility in their future views to be able to change as the environment changes around them.

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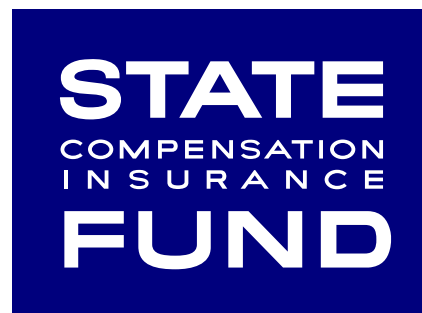
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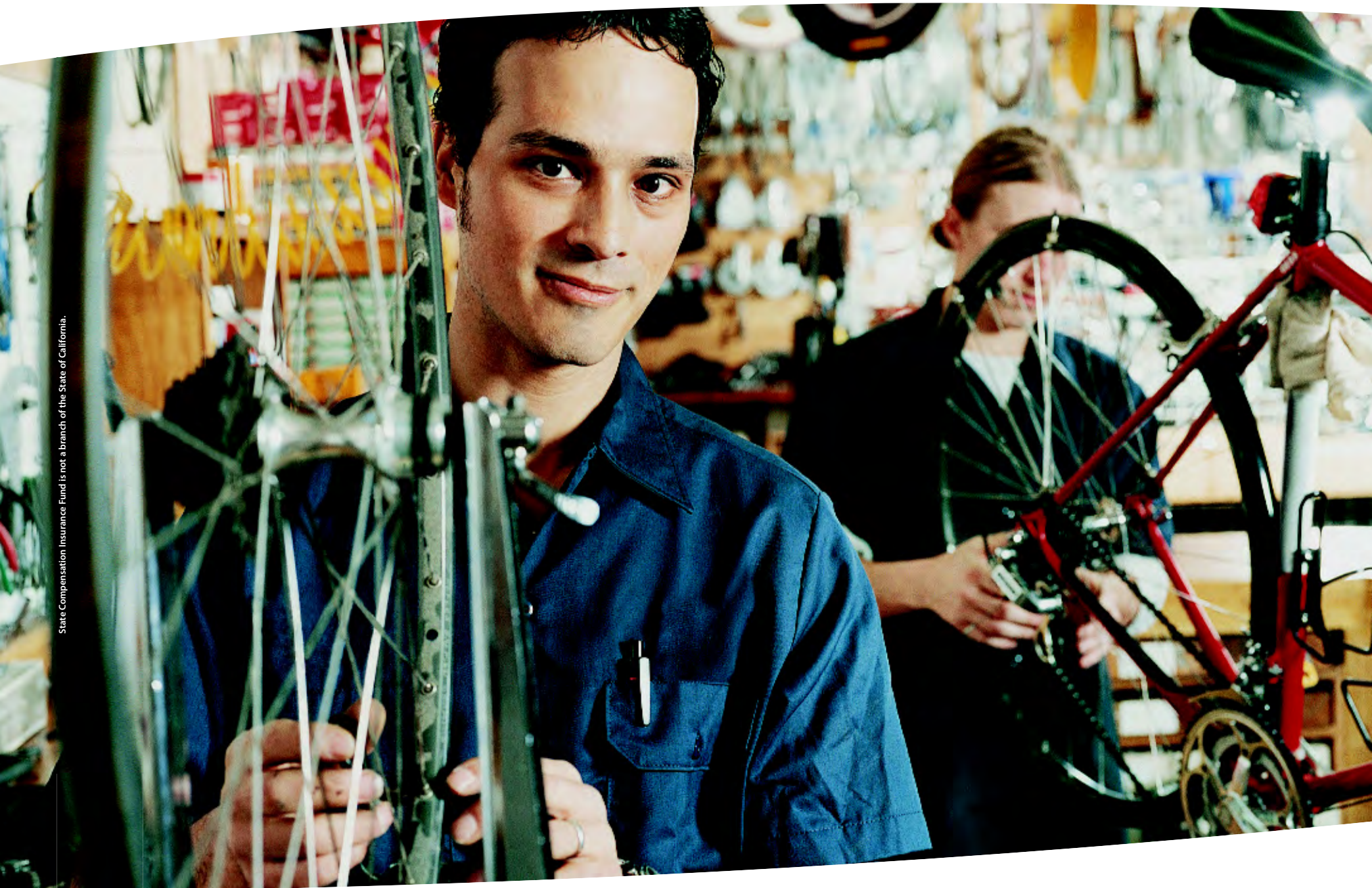
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Employers strive to minimize 2011 increases

Additional costs of health care reform law fall more heavily on smaller companies

By JOANNE WOJCIK

Employers say they expect compliance with the health care reform law to account for nearly one-third of the projected 10% average increase in 2011 health benefit costs, but most are taking steps to keep that increase at or below 6%—a move that will cause many to lose grandfathered status.

Small employers will feel the pinch more than large employers, according to a survey by Mercer L.L.C., which found that companies with fewer than 500 employees expect that Patient Protection and Affordable Care Act requirements will add about 3% to their 2011 health care tab, pushing their annual rate of increase up to 11.7%.

By contrast, employers with 5,000 or more employees expect PPACA compliance will add only about 1.9% to their annual increase, which is expected to crest at 9.1%; employers with 500 to 4,999 employees project that health care reform will add 2.2% to their 9.7% projected cost increase next year.

Towers Watson consultants predict a 1% to 2% cost increase resulting from the addition of preventive services alone.

The projections are significantly higher than the 1% average added cost that members of the National Business Group on Health projected in a survey conducted this summer,

perhaps reflecting the fact that many of the employers responding to that poll hadn't yet calculated precisely how much the mandated plan design changes will cost them, benefit experts say.

In fact, that's why Chris Whipple, executive director of the Pittsburgh Business Group on Health, this month is conducting a follow-up member survey, just before annual open enrollment begins.

"We did a survey of our members two weeks after reform passed, and 100% said they expected an increase in premiums, claim costs and administrative fees," but at the time they didn't know how much the increase was likely to be, Ms. Whipple said.

"In the follow-up survey, we will be asking whether they are seeing that increase and how much it actually worked out to be," she said, adding that she expects to have results this month.

The PPACA provision costing employers the most is extending coverage to employees' adult children up to age 26, said Beth Umland, Mercer's research director for health and benefits in New York.

"Our actuaries have done the analysis, and extending dependent eligibility was the biggest-ticket item," Ms. Umland said.

The No. 2 cost driver is eliminating lifetime limits on benefits, according to the survey. Seventy

32%

A survey found that 32% of employers expect to lose grandfathered status for all plans, while 15% expect to lose it for at least one plan.

48%

Another survey found 48% are focusing on redesigning their health plans so they remain under the threshold of \$10,200 for individual coverage and \$27,500 for family coverage when the reform law's excise tax on high-value plans starts.

percent of employers traditionally have imposed such caps on benefits in preferred provider organization plans, Ms. Umland said.

In Dallas, "everyone expects health care costs to increase because of pre-existing conditions being covered," said Marianne Fazen, executive director of the Dallas-Fort Worth Business Group on Health. "Both health plans and self-insured employers are going to take a hit,"

she said, adding that members also expect significant added expense for covering adult children.

Interstate Battery System of America Inc., a member of the Dallas group, may be one of the few exceptions because it offered a generous plan before PPACA passed, said Janie Britton, human resources business partner at the Dallas-based wholesale and retail battery distributor.

"We had a fairly rich plan, so we had a fair amount of the things already in place, including covering preventive care at 100%," Ms. Britton said. "We also were already covering dependents up to age 25, so adding another year won't affect our costs very much."

Because it won't have to make significant changes to meet the new requirements, Interstate Battery's plan will retain grandfathered status for 2011, Ms. Britton said. But she would not predict whether that will be the case in 2012.

To help defray some of the extra costs attributed to regular medical inflation and increasing utilization, Interstate Battery is boosting employee contributions for dependent coverage by 10%, she said.

"So we're estimating that we're looking at a 2% to 3% increase for 2011," Ms. Britton said.

In New York state, where community rating laws prevent wide fluctuations in annual health insurance premiums, most employers expect the cost of PPACA compliance to be more than the projected annual increase in the cost of care, said Shawn Nowicki, director of health policy at the New York Business Group on Health.

"In New York, we have a market such that the costs don't really increase that much as a result of prevailing market forces," Mr. Nowicki said. "Yet most employers expect some kind of cost increase as a result of complying with the additional administrative requirements" of the federal law.

This added cost, estimated between 3% and 7%, will further strain many companies that already are financially strapped, Mr. Nowicki said.

"Human resource departments are not expanding. They will have to become even more efficient than they already have been," he said.

Many employers that already planned to change their benefit plans in 2011 to address rising costs also are finding that will cause them to lose their grandfathered status, according to the Mercer survey.

If employers do not make certain changes to their health care plans, such as raising deductibles or out-of-pocket limits by more than 15 percentage points beyond the increase in medical inflation, their plans will be "grandfathered" and thus exempt from certain PPACA mandates.

However, for many employers, the cost advantages of making changes to their plans outweigh those of avoiding some of the reform provisions, Ms. Umland said.

Mercer's survey found that 32% of employers expect to lose grandfathered status for all plans, while 15% expect to lose it for at least one plan.

Increasing deductibles and/or out-of-pocket maximums by more than the allowed amount is the most prevalent action being taken by employers that will result in the loss of grandfathered status, the Mercer survey found. While 35% of employers plan to make that change, 31% will increase the percentage of employee coinsurance and 23% will increase copayments by more than the allowed amount of either \$5 or less than 15 percentage points above rate of medical inflation.

"The rules (issued by the Departments of Labor, Health and Human Services and Internal Revenue Service) for maintaining grandfathered status were tougher than many employers expected," said Tracy Watts, a Mercer partner based in Washington, who worked with Ms. Umland on the survey.

At the same time that employers are addressing near-term cost increases, they also are preparing for the possibility that their health care plans will trigger PPACA's excise tax on high-value plans. A survey conducted this summer by the International Foundation of Employee Benefit plans found that 48% of respondents are focusing on redesigning their health plans so they remain under the threshold of \$10,200 for individual coverage and \$27,500 for family coverage in 2018, when the tax begins.

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Symposium: Risk managers urged to query providers

CONTINUED FROM PAGE 4

relationship becomes too cozy, it is difficult in some cases to make decisions that are best for the risk manager's company, he said.

"The pressure is on the risk manager and the broker" to determine how friendly they can become without endangering their professional relationship, Mr. Good said. Risk managers must be comfortable telling the broker that changes are needed when the broker is doing a poor job.

"It can be a friendship, but make sure you keep that friendship and

'It can be a friendship, but make sure you keep that friendship and the business side separate because they really need to be.'

Henry Good, Wells Fargo Insurance Services Inc.

the business side separate because they really need to be," he said.

"Sometimes you can get too close for comfort," Mr. Ewing said. "That business relationship molds into a friendship relationship" that can become deeply ingrained, which

risk managers' bosses could see as a conflict of interest. "I've seen some of my risk management colleagues get too comfortable in that relationship...and it didn't go well for them in the long run," he said.

Risk managers need to make sure

their brokers have their clients' best interests, not their own commissions, as the top priority in placing coverage, the speakers agreed.

"Let's be very honest," Mr. Ewing said. "I think a lot of brokers, especially in today's tough economy and the soft insurance market, want what is best for you. Having said that, I also think that they are worried about their own situation because we are so flat right now."

While brokers want to do what is best for their clients, but they also want their own companies to perform well, Mr. Ewing said. "Sometimes that marriage doesn't

always line up."

Mr. Good told insurance buyers they should press their brokers for the names of underwriters who were given a chance to quote coverage and those who were not approached.

But no law requires a broker to "tell you who he did not take your risk to," Mr. Good said.

As a risk manager, an insurer once asked why he did not want to purchase coverage from the company, Mr. Good said. "I said that, 'I was always told you don't want to sell insurance to me.' And what we found out was that that insurer was not paying contingent commissions to the broker, so they never got an opportunity to see the risk."

LETTERS

CONTINUED FROM PAGE 8

patients. And when it comes to costs, preventing catastrophic side effects such as those you experienced can only help to make medicine more cost-effective.

Thanks for your piece, which sheds welcome light on the subject. Hopefully it will come to the attention of the government officials responsible for implementing reform.

Terry Nugent
Vp Marketing
Medical Marketing Service Inc.
Wood Dale, Ill.

Analyze those reams of health care data

TO THE EDITOR: This past week's editorial posited that "employers have it within their power to do more to hold down increases in health care costs" ("Health Plan Design a Way to Control Costs," *BI*, Sept. 6). That's absolutely right. But they need not rely on tired strategies like shifting costs to employees or switching to high-deductible plans.

Instead, employers should turn to technology to reduce health care costs. Company leaders have access to reams of data on how employees use their health plans.

By analyzing these data, executives can identify where they're spending the most—and work to rein in those costs.

For example, managers could consult the data to find out whether their employee populations have been getting their annual check-ups—and then correlate those figures with treatment data to ensure that their workers are following doctors' orders.

If it turns out that folks aren't taking their meds, then the employer could launch an incentive program to improve prescription-drug adherence.

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AIG: Insurer may try to speed repayment

CONTINUED FROM PAGE 3

from depths of the problems it dug for itself in the financial crisis.”

But Mr. Bergman said exchanging preferred stock for common stock raised some issues. “What does that mean for the value of the government’s stake? And whether or not the taxpayers are getting their money’s worth is worth thinking about,” he said. “There’s still a lot of uncertainty as to whether the company can continue to make progress in repaying the government.”

“We don’t know the details yet,” said Kevin Ahern, a senior director at Standard & Poor’s Corp. in New York. But an early repayment could have a positive impact on the

overall insurance operations of AIG, he said.

“I think it’s important for AIG to disentangle itself from the government and get out on a stand-alone basis sooner rather than later,” said Mr. Bergman.

Clark Troy, a senior analyst at Aite Group L.L.C. in Chapel Hill, N.C., called the development “unquestionably good.”

“They’re in a position to have these conversations and the government is regarding them as credible. Right now, (General Motors Corp.) is trying to generate excitement for its exit as well as (Citigroup Inc.) has considerably decreased its government footprint,” he said. “AIG is the last of the big three quasi wards

of the state that’s in a position to accelerate its exit.”

Bruce Ballentine, a vp at Moody’s Investors Service in New York, said Moody’s ratings on AIG incorporate “significant government support, so the government funding is providing uplift to our ratings and is a benefit to creditors.”

Moody’s expects the support to remain in place “until AIG further strengthens its core operations, substantially exits its noncore operations, and achieves a capital structure that is consistent with the current ratings. If the Treasury were to sell down or otherwise dispose of its ownership before these objectives are met, that could lead to downgrades of AIG’s ratings.”

Census: Uninsured tally hits record in '09

CONTINUED FROM PAGE 4

fell to 55.8% in 2009 from 58.5% in 2008, also a record low.

Conversely, the percentage of people covered through government programs increased, though that did not offset the decline in employment-based coverage.

For example, the percentage of the population covered by Medicaid—the federal-state program for the poor—rose to 15.7% in 2009, up from 14.1% the previous year; and the number of people enrolled in Medicaid jumped to 47.8 million from 42.6 million. Those figures also are records.

On the other hand, the percentage and number of people enrolled in Medicare remained nearly steady in 2009 vs. 2008. In 2009, 43.4 million people were enrolled in Medicare. That was 14.3% of the population, about the same as 2008.

The decline in employment-based coverage came amid the worst economic downturn since the Great Depression. The unemployment rate topped 10% in 2009, with millions of employees losing their health insurance coverage. While Congress last year passed legislation in which the government paid 65% of COBRA health insurance premiums for laid-off employees, not

everyone could afford to pay 35% of the premium.

If the health care reform legislation Congress passed in March is successful, the uninsured rate could tumble. Federal researchers estimate that the law will bring coverage to more than 30 million uninsured U.S. residents, chiefly through an expansion of Medicaid and the establishment in 2014 of federal premium subsidies to the lower-income uninsured.

The Census Bureau’s report, “Income, Poverty and Health Insurance Coverage in the United States: 2009,” is available at www.census.gov.

UP Comings & Goings CLOSE



DENISE DIANA

NEW JOB TITLE: Simsbury, Conn.-based vp of middle-market sales for Hartford Retirement Plans Group, a unit of Hartford Financial Services Group Inc.

PREVIOUS POSITION: Manchester, Conn.-based vp of business development for Los Angeles-based Transamerica Corp.

GOALS FOR NEW POSITION: We currently serve quite a bit of midsized corporations, so my goal is to expand market share and to become known as a top-tier provider in the middle market with a focus on participant education and flexible service models for plan sponsors.

INDUSTRY CHALLENGES: I believe that participant communication education is going to be a major issue moving forward. A lot of participants have changed their behavior during the economic downturn, so we need to focus now on participant education and getting out there, getting people back on track.

INDUSTRY OUTLOOK: I think that we as an industry are well aware

of what we need to do from a participant standpoint. I think that we are in tune to the regulatory changes. As an industry, we are going to be there to support plan sponsors. They are going to need the support in the next few years. The outlook is good, as long as we don’t see another economic downturn.

ADVICE: Work hard and stay focused on things that make a difference.

WHAT YOU WANTED TO BE WHEN YOU GREW UP: I wanted to be an interior decorator. I always liked aesthetic things. I am a visual person and good with space and organizing.

HOBBIES: My hobbies are centered around what my kids are doing. They are in sports at school; so if I have free time, that’s where I am spending it.

CAN’T-MISS TV SHOW: Lately, it’s been “Glee.” I think it’s just a fun show.

E-MAIL OR PHONE, AND WHY: I prefer phone. I love talking to people instead of reading long e-mails.

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Energy: Plan would boost oil rig cover

CONTINUED FROM PAGE 1

disaster in April, the largest oil spill in U.S. history. BP P.L.C., which owns the drilling rights to the well, is self-insured and set aside more than \$20 billion to pay spill-related claims.

Munich Re's program calls for annual aggregate limits of \$10 billion to \$20 billion for offshore oil exploration and production companies, many times more than the available limits under individual liability policies, said Torsten Jeworrek, a member of the reinsurer's management board.

This approach would require multiple insurers and reinsurers and would hinge on improved risk management, Mr. Jeworrek said.

Munich Re envisions three possible structures. One would be a consortium of insurers and reinsurers, each providing uniform prices and conditions and fixed capacity. Another would be traditional insurance or reinsurance on a subscription basis, with flexible pricing, conditions and limits. The third could be a pool, with contributions reflecting market share, he said.

Mr. Jeworrek said two developments are necessary to implement Munich Re's concept: the liability cap under the U.S. Oil Pollution Act must be raised from \$75 million, and oil companies must agree to or be required to purchase liability insurance. Coverage would attach above a \$1 billion to \$1.5 billion retention, he said.

The coverage would be limited to cleanup and removal costs, impairment of natural resources and third-party property damage, as well as loss of earnings for businesses such as fishing and tourism, as happened in the Gulf of Mexico, Munich Re said in a statement.

Two Bermuda energy industry mutual insurers, Oil Insurance Ltd. and Oil Casualty Insurance Ltd., already provide some of the coverage above deductibles for their members. Mr. Jeworrek could not say whether Munich Re's concept might involve either OIL or OCIL.

Competitors endorse idea

Other reinsurance executives said they could support Munich Re's plan.

Jurgen Graber, a member of the executive board of Germany's Hannover Re Group, who oversees worldwide nonlife reinsurance, said at least 100 oil rig projects would have to purchase the coverage for the program to work. He said Hannover Re would be willing to supply capacity, "but whatever we would provide would be within our risk tolerances."

The Hannover Re executives noted that the liability losses against BP are the highest seen so far from an offshore energy incident.

"The Deepwater Horizon physical damage loss was straightforward; the unknown is the liability loss," said Mr. Graber. "Many parties have contributed to the platform—the

Reinsurers, brokers team on \$1B excess coverage facility

Reinsurers and brokers have united to form a facility providing up to \$1 billion in excess casualty and pollution capacity for offshore energy companies, observers say.

Hamilton, Bermuda-based Torus Insurance Holdings Ltd. said it plans to offer up to \$1 billion in limits through "excEED," backed by \$100 million in capacity from First Reserve Corp., a London-based energy investment firm. The facility will provide excess coverage for control of well, pollution, and directors and officers liability through a variety of reinsurers.

Brokers Aon Benfield Inc. and Guy Carpenter & Co. L.L.C. helped create the facility, although it will be open to all brokers, said Tim Fillingham, Torus' chief operating officer in the United Kingdom.

Bryon Ehrhart, chairman of Aon Benfield Analytics and Aon Benfield Securities, said the facility would provide market-coordinated coinsurance. There would be one policy form, and various reinsurers would sign up for their share of each account, such as 10%

of an energy company's \$1 billion in limits, he said. All reinsurers would have the same attachment point, which Mr. Fillingham said likely would be at least \$500 million for control of well, and at least \$250 million for pollution.

The move comes five months after the sinking of the Deepwater Horizon oil rig, resulting in the largest oil spill in U.S. history and exposing BP P.L.C. to unprecedented levels of potential liability.

Mr. Ehrhart said the big question is whether buyers will come to the market for that excess coverage; energy companies tend to view the value of insurance less favorably, he said.

"Most often, the oil industry views itself as larger than any single insurer," Mr. Ehrhart said. "If that attitude changes post-Deepwater Horizon, because they see this liability exposure can be vastly greater than it has been before, then we'll have an opportunity to do some business."

He said the five or so largest energy com-

panies likely would not worry about excess casualty liability coverage because their profits are large enough to pay for such costs. But as a result of the Gulf of Mexico oil spill, he said he thought middle-market energy companies would consider the solution because they might not be able to absorb a \$1 billion loss without excess layers of cover.

"Our retail brokers who are working with clients continue to tell me daily that the attitude of the risk manager at the oil company has changed from one that thought there was a quite limited value from insurance to one that's open-minded," Mr. Ehrhart said. "That doesn't mean he's going to buy; it means he wants to explore what's (available). That's movement."

The facility is set to begin in October, but Torus already has received several inquiries, Mr. Fillingham said.

More than 100 potential buyers have been identified, said Edward Sweeney, executive vp at Guy Carpenter.

—By Zack Phillips

rig operator, the owner, those who worked on the blowout preventer. Who has to take responsibility? As a consequence, we like the idea of Munich Re suggesting one kind of cover that would lead to a clear liability picture," he said.

"There are other attempts to set up similar schemes," Mr. Graber said. "We hope these ideas get merged."

"The risk of a significant blowout or sudden event in the Gulf of Mexico is insurable," said Brian Gray, chief underwriting officer for Zurich-based Swiss Re Group. "Swiss Re, as long as the coverages are well-structured, would be willing to put up capacity for it."

"We can offer whatever we like," said Stefan Lippe, CEO of Swiss Re. "We have to see what the client side is saying to that."

Munich Re said it would provide up to \$2 billion in annual aggregate limits for each drilling project, but neither of its competitors would specify the amount of capacity they might provide.

Jerry Rivers, senior vp and chief operating officer of OCIL, applauded the efforts to provide "much-needed liability capacity for the offshore energy sector," but also said "there needs to be a convergence of the various initiatives under way for there to be a sustainable long-term solution."

He said capital market participation seems "critical" to make limits of \$10 billion or more available long term. "From personal experience, liability exposures and capital market solutions have been rare. However, given the type of risk, there may be an effective solution," Mr. Rivers said.

"The traditional insurance industry has had the reputation of having knee-jerk reactions to events by exiting a market, curtailing coverage or severely reducing limits after an event," Mr. Rivers said. "An offshore energy program with \$10 billion to \$20 billion in limits requires long-term commitments by all parties "to ensure that a facility can sur-

vive over many years, even in the face of non-energy liability events" such as hurricanes, earthquakes and investment losses, he said. "OCIL is certainly doing our share in assisting the energy sector with available limits of up to \$100 million."

Other reinsurance executives gathered in Monte Carlo said more clarity is needed about what liability cap the U.S. Senate might set for oil accidents.

If the industry could win U.S. Senate support of an insurance/

reinsurance solution for buyers' needs, then SCOR S.E. would take part, said Victor Peignet, CEO of the Paris-based reinsurer's property/casualty operations.

The U.S. House of Representatives has approved legislation to raise the Oil Pollution Act liability cap from \$75 million to \$10 billion, but the U.S. Senate has yet to act on the proposal.

Mr. Peignet said the first step must be to examine ways to manage the risks of deepwater drilling

projects and then consider indemnification ideas.

Grahame Chilton, chairman of Aon Benfield, the reinsurance unit of Aon Corp. that worked with Torus and others to develop its planned solution, echoed the call for improved risk management of deepwater drilling projects.

"There is a need, but we don't know what it is yet," he said, adding that it was not known how the U.S. Senate would act on raising the Oil Pollution Act's liability limit.

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AP PHOTO

Imane Boudlal, shown leaving a Walt Disney Co.-owned facility in August, has sued Disney for sending her home without pay for refusing to remove her headscarf while working as a restaurant hostess.

Muslims turn more often to the EEOC to resolve workplace discrimination

By JUDY GREENWALD

Discrimination claims filed by Muslims with the U.S. Equal Employment Opportunity Commission were increasing before controversy erupted over a planned Islamic community center blocks from New York's ground zero.

The number of claims filed with the EEOC more than doubled to 1,490 in fiscal year 2009, which ended Sept. 30, from 697 in fiscal year 2004, according to the agency. These claims resulted in 803 EEOC charges, which can include more than one claim.

Of the 10,005 claims concerning discrimination against Muslims in the past 10 years, the most frequent was discharge (2,722), followed by harassment (1,861), and terms and conditions of employment (1,419).

Of the 803 charges filed in fiscal year 2009, the most were filed in Georgia (142), followed by Minnesota (64), and California and Colorado (58 each).

The charges filed by Muslims also outweigh those filed by individuals of other identified religious groups.

The EEOC has been actively pursuing cases in which Muslims are discriminated against since Sept. 11, 2001, said Mary Jo O'Neill, regional attorney for the EEOC's Phoenix District Office.

"These are communities that we have done outreach for ever since 9/11," Ms. O'Neill said. "We worried about a backlash after the tragedy of 9/11 and we've continued our relationship with the community to make sure they know" there are resources available if its members experience discrimination.

The cases include two lawsuits filed Aug. 31 by the EEOC against Greeley, Colo.-based meat-packing company JBS Swift & Co., which charged the company with creating a hostile work environment for its Somali and Muslim employees and with engaging in religious discrimination when it failed to reasonably accommodate Muslim employees by refusing to allow them to pray according to their religious beliefs.

The EEOC also accused Swift of retaliation against the workers by terminating their employ-

ment when they asked that their evening break be moved so they could pray at sundown during Ramadan, the Islamic holy month that requires daily fasting from sunrise to sunset, and break their fast. A Swift spokesman could not be reached for comment.

Also in August, the EEOC and Electrolux Group settled a discrimination charge by a Muslim production employee at the appliance manufacturer's St. Cloud, Minn., plant concerning breaking the Ramadan fast. The issue arose as a result of a new Electrolux health and safety policy that prohibits food in production areas of the plant.

Electrolux agreed to further modify its break time schedule during Ramadan so Muslim employees could pray and break their fasts after sundown safely outside the production area, according to the EEOC.

In a statement, Electrolux St. Cloud plant manager John Valence said the adjustment "accommodates the needs of our Muslim employees without compromising an important health and safety policy."

Another subject of dispute has been the hijab, the headscarf worn by Muslim women. Earlier this month, the EEOC filed a workplace discrimination lawsuit against New Albany, Ohio-based clothing manufacturer Abercrombie & Fitch, alleging it violated federal law when it refused to hire a Muslim applicant for a job stocking merchandise because she wore a hijab. The EEOC filed a lawsuit about the same issue in September 2009. A company spokesman could not be reached.

In a highly publicized case, a Muslim employee in Disney's Grand Californian Hotel & Spa in Anaheim, Calif., filed a religious discrimination claim in August against Walt Disney Co. with the EEOC after it sent her home for refusing to take off her hijab while working as a hostess at one of the hotel's restaurants. She was told the hijab did not comply with the "Disney look," according to a statement by her union, New York-based Unite Here. A Disney spokesman could not be reached for comment.

803

The number of claims filed with the EEOC more than doubled to 1,490 in fiscal year 2009, which ended Sept. 30, from 697 in fiscal year 2004, according to the agency. These claims resulted in 803 EEOC charges, which can include more than one claim.

Muslim: Bias allegations expected to keep rising

CONTINUED FROM PAGE 1

tion has become more of an issue in recent weeks.

"We're seeing a big increase in charges filed on behalf of Muslims who are being harassed at work," said Mary Jo O'Neill, regional attorney for the EEOC's Phoenix District Office. The causes are a "mixture of things," including the economy, the country's anti-immigration mood as well as the community center controversy. "When we're in harder economic times, people's racism and bigotry towards people of other religions does show more," she said.

Tensions inflamed

Many observers say the community center controversy is a major factor.

"Anytime people take positions on these very passionate issues, invariably it spills into the workplace," said John D. Horowitz, a partner with law firm Fox Rothschild L.L.P. in New York.

"The controversy over the ground zero center has gotten to the forefront of people's minds and inflamed tensions, there's no doubt about that," said Gregg M. Lemley, a shareholder with Ogletree, Deakins, Nash, Smoak & Stewart P.C. in St. Louis.

"Companies are having issues with harassment of Muslim employees in terms of offensive comments" and similar issues, said Jonathan T. Hyman, a partner with law firm Kohrman Jackson & Krantz P.L.L. in Cleveland. "It would be naïve" to think there is no connection between those and the Muslim community center controversy, he said.

The community center has attracted a lot of public attention and therefore is "showing up in the workplace," said C.R. Wright, a partner with law firm Fisher & Phillips L.L.P. in Atlanta. "We do see an increase in calls from clients seeking advice about how to handle" these issues, including those arising when an employee is

"vocal" about his or her beliefs, he said.

Peter J. Petesch, a shareholder with law firm Littler Mendelson P.C. in Washington, said calls he has received focus mainly on the issue of religious accommodation, and "we're certainly seeing just garden-variety charges claiming disparate treatment on the basis of religion," he said. "Certainly, you can have instances of a hostile work environment based on religion, and some of that will come from a series of comments that perhaps in and of themselves may not be actionable, but these things tend to build up."

Employers must address the issue, observers say.

The first thing employers must do, Ms. O'Neill said, is know their obligations to make reasonable accommodations. Then, they need to figure out solutions and introduce a zero-tolerance discrimination policy.

When "horrible words" are spoken, discipline must be exercised "strongly and quickly to stop that kind of behavior," Ms. O'Neill said.

Mr. Lemley said such a situation "always presents a good opportunity for employers to look at their anti-discrimination policies and their anti-harassment policies to make sure they are updated and as comprehensive as they should be."

"Certainly, religious tolerance needs to be part of a comprehensive training program, just as an employer would be expected to train employees on appropriate and inappropriate behavior on the basis of sex or race," Mr. Petesch said.

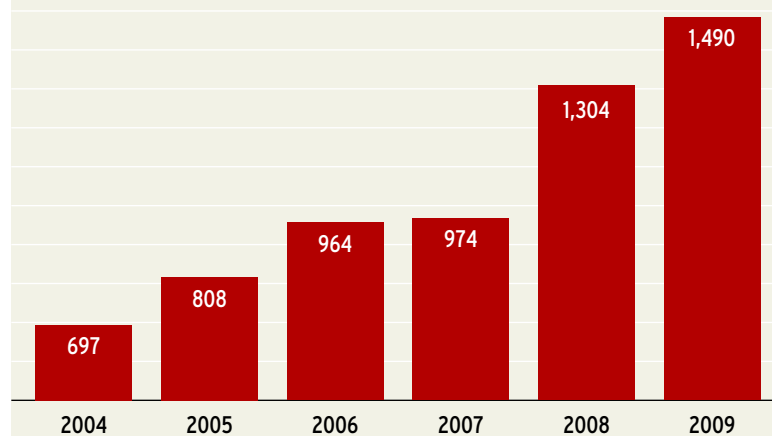
To a large extent, discrimination against those of the Muslim faith has been accepted in this country, said Mr. Hyman, pointing to controversy over the pastor who threatened to burn the Quran but eventually backed down.

Managers and supervisors "have to take a long, hard look at themselves and their own inner prejudices to understand and overcome those prejudices, and understand

Continued on next page

DISCRIMINATION AGAINST MUSLIMS

Claims of religious discrimination filed by Muslims*



*Numbers are greater than total charges filed, which can include more than one claim.

Source: Equal Employment Opportunity Commission

Continued from previous page

you've got to treat discrimination and harassment of Muslims the same as you would" other minorities and religions, which can be a challenge because of the prevailing atmosphere, Mr. Hyman said.

Mr. Wright said, in his law firm's case, "What we've done is try to get advance information out to our clients so they can be prepared for, and sensitive to, and able to educate their employees about the proper way of handling concerns that come up."

"Always try to maintain control, and get information to be able to intelligently analyze and respond to what actually is going on," said Mr. Wright. "Sometimes, individual employees don't understand that the employer is required, in many respects, to accommodate all of the different religious beliefs, national origin customs and other things particular to a broad range of employees. It's a matter of educating the workforce and clearing up misconceptions," he said.

"There is sometimes a limit on how much an employer can share about what's being done to deal with other peoples' personnel issues, but there's also a certain amount of general things an employer can point out to make an employee understand that...all the rights of all those involved are always taken into account," Mr. Wright said.

"I can't stress enough" the importance of taking all complaints seriously, said Martha J. Zackin, of counsel with law firm Mintz, Levin, Cohn, Ferris, Glovsky & Popeo P.C. in Boston. Often, a complaint first arises while a poor performer is being counseled on his or her performance. While an employer may discount the complaint, "his performance may have nothing to do with the legitimacy of the complaint," she said.

Lawrence Z. Lorber, a partner with law firm Proskauer Rose L.L.P. in Washington, said employers should make it clear there are avenues to express grievances, that they will be investigated and "they will not punish people for complaining, so the atmosphere is one of tolerance as well as some degree of security for people."

ADDRESSING DISCRIMINATION

Steps that employers should take to address religious discrimination include:

- Make reasonable accommodations to workers' religious requirements.
- Review, update and communicate anti-discrimination policies.
- Introduce a zero-tolerance policy for violations.
- Exercise strong and swift discipline when rules are violated.
- Take all complaints seriously, even those from poor performers.
- Educate workers on company grievance procedures.
- Assure workers there will be no retaliation for filing complaints.

IRS proposes regulations governing cell captives

WASHINGTON—The Internal Revenue Service has published proposed regulations for the tax treatment of cell captives under which individual cells would be treated as individual corporations to determine premium deductibility and for IRS testing to establish whether a cell's business qualifies as insurance.

The proposed rules published last week in the Federal Register hold no surprises, said Charles J. Lavelle, chair of the federal tax and insurance industry teams at law firm

Greenebaum Doll & McDonald P.L.L.C. in Louisville, Ky.

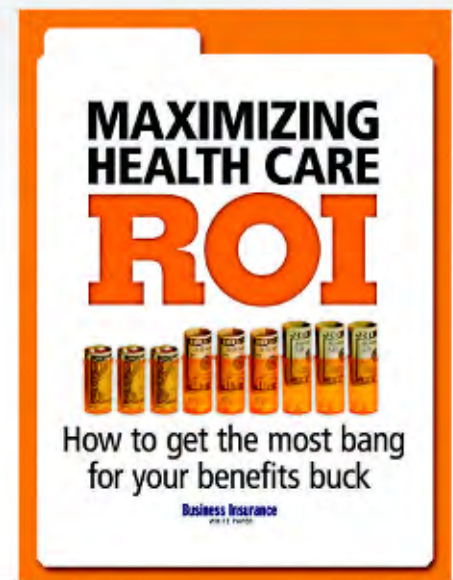
Instead, the IRS is "in the process of formalizing what the IRS said it was going to do" with regard to cell captive treatment, Mr. Lavelle said. "I think the industry will generally view these as a good set of rules to advance the understanding of how to tax cells," he said.

The regulations will become effective when finalized after the 90-day comment period.

—By Rodd Zolkos

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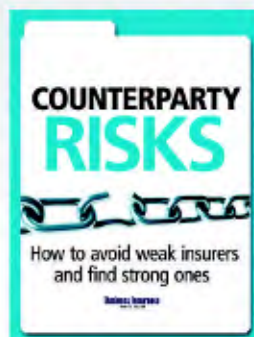


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News In Brief

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slightly redundant, but expected continued reserve releases are a concern, A.M. Best Co. Inc. said in a report. The special report says the industry's core, undiscounted reserves were slightly redundant by \$1.9 billion at year-end 2009, after removing a \$13.7 billion asbestos and environmental deficiency and a \$22.5 billion statutory discount. However, the industry is expected to continue to release reserves this year and next, albeit at a declining rate, Best said in the report last week.

Marsh bolsters practice with ex-Aon execs

Marsh Inc. has added four executives from rival brokerage Aon Corp. to its private equity and mergers and acquisitions practice within its financial and professional-or FINPRO-operations, Marsh said. James O'Brien, who headed Aon's private equity and transactions group, joined Marsh as a managing director. Jason Hawkins, who had been a senior adviser in Aon's private equity group, also was named a managing director, as was Craig Warnke, most recently a transactional adviser in the Aon unit. In addition, Marsh named Jim Beatty, who previously was a client adviser at Aon, as senior vp. Marsh also named Machua Millett as a senior vp. Previously, he was with Edwards Angell Palmer & Dodge L.L.P., where he was coverage and defense counsel for directors and officers, general partners, financial institutions, insurers and corporations in a wide variety of industries. The four former Aon executives will be based in New York, while Mr. Millett will be based in Boston.

Quinn can't resume commercial business

Ireland's financial regulator has rejected a request by Irish insurer Quinn Insurance Ltd. to resume underwriting commercial lines business, deciding that Quinn has insufficient capital to re-enter the market. The Central Bank and Financial Regulator placed the Cavan, Ireland-based property/casualty insurer under administration this year after it was determined that Quinn had overstated its financial strength by €450 million (\$607.3 million). In a statement, the regulator said Quinn Insurance "would require additional capital in order to recommence writing business" in the commercial lines market. "This capital is currently unavailable to Quinn."

Byrne elected Integro chairman

John Byrne has been elected chairman of Integro Insurance Brokers Ltd., replacing founder Robert Clements, who died earlier

this month. Mr. Byrne, who joined Integro's board in 2005, has served as chairman of White Mountains Insurance Group Ltd. and previously led Fireman's Fund Corp. in the 1980s and GEICO Corp. in the 1970s. Mr. Clements' son, John, who has served on Integro's board since the company's founding, was elected vice chairman.

Latest tax bill keeps punitive damages

The chairman of the Senate Finance Committee has retained a provision that would end the federal tax deductibility of punitive damages in the latest version of a tax bill. The American Jobs and Closing Tax Loopholes Act, proposed by Sen. Max Baucus, D-Mont., would deny a tax deduction for any punitive damage payments. If the punitive damages are covered by insurance, as some state laws allow, the amount paid by insurance would be included in the taxpayer's gross income. The provision would apply to damages paid or incurred after Dec. 31, 2011.

ACE pays \$1.1B for crop insurer

ACE Ltd. last week agreed to pay \$1.1 billion in cash to acquire Rain & Hail Insurance Service Inc. ACE previously owned approximately 20% of the outstanding common stock of Rain & Hail, which will continue to operate as a separate franchise within the ACE Westchester division and North American operations. In addition, ACE said it has received approval to acquire Jerneh Insurance Berhad, a Malaysia-based general insurance company, for approximately \$200 million.

PBGC takes over hospital pension plan

The Pension Benefit Guaranty Corp. is taking over the underfunded pension plan sponsored by St. Vincent Catholic Medical Centers, a hospital and health care system in New York that filed for bankruptcy in April and is selling off its assets. The hospital system's pension plan, which has about 9,500 participants, is 55% funded, the PBGC said. With \$622 million in liabilities and \$345 million in assets, the federal corporation said it expects to cover about \$267 million of the \$277 million funding shortfall.

Noted

The **National Assn. of Insurance Commissioners** has chosen John M. Huff, director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, to be a nonvoting member of the new Financial Stability Oversight Council.... **Hartford Financial Services Group Inc.** has launched a division in its Southwest regional office in Dallas to provide property/casualty insurance and services to the renewable energy industry. James Gardiner, formerly assistant vp of industry markets, will lead the Hartford Renewable Energy unit as assistant vp and director of Hartford's national renewable energy practice.

Cheats: Fraud cases on the rise

CONTINUED FROM PAGE 1

with offices across the United States, has seen a slight increase in disability claimants working a job.

The still-high nationwide unemployment rate probably is limiting disability claimants from taking traditional jobs, said Frasco Vp Richard Smith. As a result, "what we have seen is a lot of people engage in self-employment, trying to get income while collecting disability benefits," he said.

Often the work is Internet-based and conducted from home, which is harder for investigators to uncover, he said.

"That's the trend we have seen. You still get the folks working under the table in a liquor store, a bar or running a transportation service, but you are getting more of these home-based businesses," Mr. Smith said.

"One of the most common cases we have (today is) people secretly working second jobs" while collecting disability income, said Steven Nachman, deputy superintendent for fraud and consumer services at the New York State Insurance Department. "It's an opportunity to double dip and earn two incomes."

New York saw arrests for workers comp claimant fraud increase 21% from 2008 to 2009, the latest year for which data is available, Mr. Nachman said. Total arrests for all types of workers comp fraud rose to 184 in 2009, up 16% from 2008, which was up 7% from 2007.

The Texas Department of Insurance, meanwhile, saw a roughly 10% jump in reports of suspected workers comp fraud for fiscal year 2010, which ended Aug. 31, a spokesman said. "Most of them were working another job while drawing benefits," he said.

"There is an inverse relation between the economy and fraud," said Tim Barry, assistant vp and special investigations unit director for Specialty Risk Services L.L.C., a Hartford, Conn.-based third-party

Facebook posting prompts workers comp fraud charge

The sentencing last week of a woman whose Facebook posting revealed workers compensation fraud indicates an increasingly familiar crime trend, according to the New York State Insurance Department.

More than usual, workers comp disability claimants also are earning income from side jobs, investigators say.

Alexis Muniz, 28, of Accord, N.Y., received probation and was ordered to pay restitution after she pleaded guilty to stealing \$8,975 in workers compensation benefits, the New York agency said.

Investigators say they discovered a Facebook posting in which Ms. Muniz boasted about her salary as an apartment complex manager. However, she had testified during a New York State Workers' Compensation Board hearing that she was not employed in any capacity while collecting bene-

fits for an injury received while working for a previous employer.

Social media postings have increasingly provided investigators with better tips on claimants cheating the comp system by earning income while they are supposedly disabled, said John J. O'Shaughnessy, managing partner at Terrier Claims Services in Albany, N.Y.

But much of the increase in such activity is driven by claimants launching home-based Internet businesses, added Richard Smith, vp at Burbank, Calif.-based investigator Frasco Inc.

That type of fraud is harder to detect than when claimants work outside the home, Mr. Smith said. To uncover such activity, his investigators search business license filings and other government records as well as social media.

—By Roberto Cenicerros

'You still get the folks working under the table in a liquor store, a bar or running a transportation service, but you are getting more of these home-based businesses.'

Richard Smith, Frasco Inc.

administrator and unit of Hartford Financial Services Group Inc. "As the economy goes down, fraud rises."

So far this year, Specialty Risk Services has seen a 6% increase in

client referrals to investigate potential fraudulent claims stemming from various lines of insurance, Mr. Barry said.

While the total number of work comp claims filed is down at Pinnacle Assurance because of constricted employer payrolls, adjuster requests for help investigating questionable claims has increased, said Mark Johnson, director of the special investigations unit at the Denver-based company.

Elsewhere, Washington state's Department of Labor and Industries reported that between July 1, 2009, and June 30, 2010, public tips to a hotline increased to 1,300 cases of potential worker fraud and abuse. That is up from 500 the previous year. Tips about possible employer premium cheating increased to 800 during the same period, up more than 200 from the prior year.

Commercial prices dip further: Analysis

By JEFF CASALE

Commercial insurance prices declined slightly in the second quarter of this year compared with the same period last year, which Towers Watson & Co. said last week is the sixth straight quarter of relatively flat prices.

In aggregate, commercial insurance prices declined 1% during the period. Most lines were flat while commercial property, directors and officers liability, and employment practices liability lines showed slight reductions, according to the "Commercial Lines Pricing Survey."

Towers Watson said the survey also found that insurers that use

predictive modeling to price and tier their risks reported a slight increase in average prices compared with insurers that don't use predictive modeling.

"The commercial lines insurers that are taking advantage of predictive modeling are finding new rating variables and sources of data, and are applying the results in new and innovative ways," Bruce Fell, practice leader of Towers Watson's risk consulting and reinsurance brokerage services to the property/casualty industry in the Americas, said in a statement.

The survey was based on new and renewal business figures obtained from U.S. property/casualty insur-

ers. The survey included several top 10 commercial insurance lines companies, as well as some of the top 25 insurance groups, comparing prices charged on policies underwritten during the second quarter of 2010 to the prices charged for the same coverage during the same quarter in 2009.

Survey results also indicated that preliminary accident loss ratios for the first six months of this year deteriorated 4% relative to the same period last year, which Towers said is consistent with an estimated deterioration of 4% for accident year 2009 over 2008.

A summary of the survey is at www.towerswatson.com/press/2787.

CLUBS STRIP DANCERS OF WORKER RIGHTS

Dancers and so-called massage therapists have sued Massachusetts strip clubs that classify them as independent contractors rather than as employees.

In Massachusetts, employees are entitled to a minimum wage, Social Security benefits, workers compensation protections and overtime pay.

About 50 women reportedly have asked to share in one of the latest settlements of such lawsuits that alleged they were owed pay and benefits.

The settlement, with Club Alex's in Stoughton, Mass., set aside \$400,000 for the women and \$200,000 more for attorneys who litigated on their behalf, according to the Enterpriseneews.com, the online unit of Brockton, Mass., newspaper The Enterprise.

Up to 100 more women that worked at the club between December 2006 and September 2009

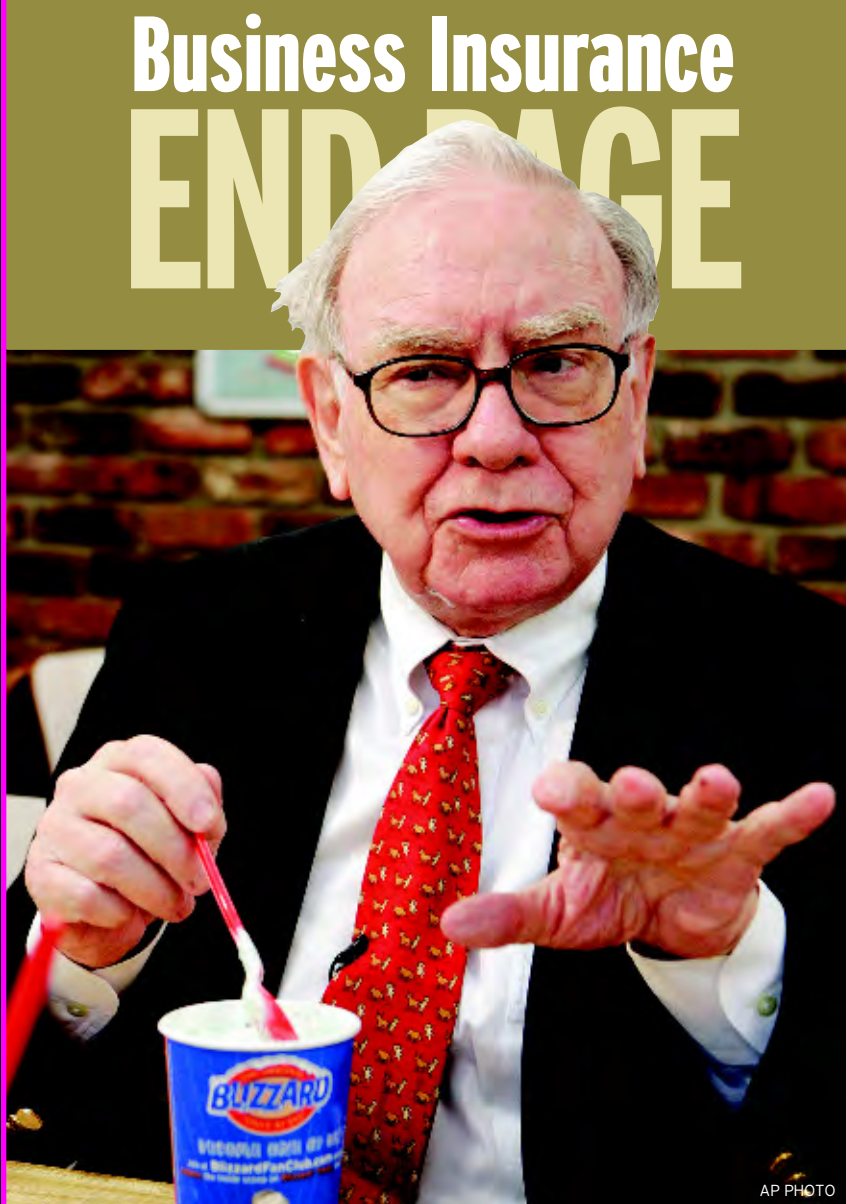
reportedly may be eligible to share in the settlement.

Six or seven other clubs have been sued or are being sued after a Suffolk

County judge reportedly ruled last year that plaintiffs could seek damages from King Arthur's Lounge in Chelsea, Mass., a case that is headed for trial.

Since the litigation began, some Massachusetts clubs have classified dancers and massage therapists as employees and paid them minimum wage, including Club Alex's, according to the website.

While the club allegedly classified the women as independent contractors, it also reportedly told them how to do their work, when to work and other details of the job. In fact, the club reportedly required them to pay daily fees ranging from \$32 to \$75 to perform.



AP PHOTO

Dairy Queen lawsuit gets frosty reception

The latest in what seems like a blizzard of trademark infringement lawsuits involves just that—a blizzard.

Or actually, the Blizzard, a soft-serve ice cream product sold by International Dairy Queen Inc., a unit of Warren Buffett's Berkshire Hathaway Inc.

Dairy Queen recently sought a preliminary injunction against Downey, Calif.-based Yogubliz Inc. According to published reports, Dairy Queen asked a Los Angeles federal judge to block Yogubliz Inc. from selling its Blizz Frozen Yogurt and Blizzberry products.

Dairy Queen argued that Yogubliz's products' names were too similar to the Blizzard and could confuse customers.

However, U.S. District R. Gary Klausner disagreed. While Blizz and

Blizzard "do sound alike," Dairy Queen is unlikely to prevail over its rival on the merits of any claims, including trademark infringement and unfair competition, the judge ruled.

"Products often are marketed under names that are nonsense or invented words," Reuters quoted Judge Klausner as writing. "Thus, like Pez, Pringles or a host of other brand names, it is unclear that Blizz has any independent meaning aside from the product it is attached to."

Sweet words, no doubt, to Yogubliz, but certainly cold comfort to Dairy Queen. In an e-mail, a Dairy Queen spokesman said, "We certainly don't agree with Judge Klausner's decision" and "will continue to take steps to protect our valued trademarks."



Contributing: Roberto Cenicerros, Mark A. Hofmann, Sarah Veysey

Schools cry foul over air sniffers

Talk about poor timing.

On the eve of the ninth anniversary of the Sept. 11, 2001, terrorist attacks on New York and elsewhere, school officials in Romeoville, Ill., discovered strange objects duct-taped to light poles. No one knew what they were, so authorities closed one school and locked down six others as a precaution.

"To find these cylinders that looked like bombs taped to light poles in a school yard—it waves all sorts of flags in your face," a Valley View School District spokesman told the Chicago Sun-Times. "We have a school emergency and crisis response plan, and we put it into place right away."

But it turned out that rather than being instruments of destruction, Houston-based Enbridge Energy Partners L.L.C. installed the cylinders to monitor air quality because an underground pipeline had ruptured nearby, which the company said spilled about 6,100 gallons of crude oil.

"You tell me why they would choose the eve of 9/11 to tape devices by duct tape to poles in schools without telling anybody," the school spokesman told the newspaper. "It's crazy. For seven hours, we and the Romeoville Police Department have been running ourselves ragged."

Early last week, however, Enbridge said the source of the leak had been found, the flow had been stopped and it had recaptured all but about 50 gallons of the heavy crude.

It's not the first time Enbridge has scared Midwest residents. In late July, it had a 30-inch pipeline burst near Marshall, Mich., dumping more than 800,000 gallons of crude into a creek that feeds the Kalamazoo River.

On the bright side, the school system's crisis response plan apparently performed as planned, even if the timing left quite a bit to be desired.



U.S. ENVIRONMENTAL PROTECTION AGENCY

Cylinders that Romeoville, Ill., school officials initially feared were bombs turned out to be monitors to test air quality from a nearby oil pipeline leak.



LLOYD'S OF LONDON

LLOYD'S 'BOXES' A HIT IN DUBLIN

Representatives of Lloyd's of London headed to Ireland this month to give the market a taste of its famous underwriting room.

Lloyd's underwriters recreated the room by setting up 49 "boxes"—the desks at which Lloyd's underwriters receive brokers—in the Dublin Convention Center.

The event was intended to allow representatives of Lloyd's and members of the insurance market in Ireland to discuss existing insurance arrangements and future opportunities.

About 800 people attended the gathering,

according to Lloyd's.

The event also raised €25,000 (\$31,775) for Insurance Charities U.K. & Ireland, a fund for past and present employees of the insurance industry and their dependents who have fallen on hard times.

Adrienne O'Sullivan, president of the London-based charitable group that has been in operation since 1902, called the donation "simply overwhelming."

Lloyd's opened Lloyd's Ireland last year and the Irish insurance market is Lloyd's 13th-largest source of revenue.

Lloyd's of London set up a temporary underwriting room in Dublin.

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