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In Brief

RIMS Canada honors B.C.'s Glen Frederick

Glen Frederick, director of risk management client services-core government and crowns in the risk management branch of the government of British Columbia, was named the recipient of the 2011 Donald M. Stuart Award last week at the annual RIMS Canada Conference in Ottawa, Ontario.

N.Y. Port Authority not liable in bombing

The Port Authority of New York and New Jersey cannot be held liable for failing to deter the 1993 bombing of the World Trade Center, the state's highest court ruled. The New York Court of Appeals ruled 4-3 last week that the agency is immune from liability tied to its efforts to provide security for the complex because it acted as an agent of the government. "Governmental entities cannot be expected to be absolute, infallible guarantors of public

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SPOTLIGHT

GLOBAL PROGRAMS REINSURANCE: RENDEZ-VOUS REPORT

Renewal talks eye disasters; property pricing mixed; market dodges Irene bullet; Solvency II could change buying; Data Snapshot.

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EMPLOYMENT PRACTICES LIABILITY

Wal-Mart ruling having impact

9th Circuit rejects class action status for Costco bias suit

By JUDY GREENWALD

SAN FRANCISCO—A federal appeals court's rejection of class action status in a gender discrimination case against Costco Wholesale Corp., which is based on a landmark U.S. Supreme Court ruling, is a victory for employers, but only a partial one, legal experts say.

The ruling by the 9th U.S. Circuit Court of Appeals is the first major class action case to be decided since the Supreme Court's June decision in *Wal-Mart Stores Inc. vs. Betty Dukes et al.*, where the high court ruled against a proposed class of some 1.5 million members.

Employers had hoped that in light of *Wal-Mart*, the 9th Circuit would dismiss *Shirley "Rae" Ellis et al. vs. Costco Wholesale Corp.* While it did reverse the lower court's grant of class certification, the appeals court remanded the case for further consideration, thus keeping it alive, observers say.

Kevin M. McGinty, a member of law firm Mintz Levin Cohn Ferris Glovsky & Popeo P.C. in Boston, said the ruling in *Ellis* "is typical, I think, of what you'll be seeing in a lot of circumstances, where cases that were certified (as class actions) prior to the Wal-Mart decision are sent back down" to the dis-

Ms. Ellis is the lead plaintiff in a bias suit against Costco.

AP PHOTO

See **COSTCO** page 21

LIABILITY & LITIGATION

AP PHOTO

Demonstrators protested the environmental effects of a natural gas drilling process known as fracking during an April rally in Albany, N.Y.

'Fracking' lawsuits build up

Gas drilling fuels environmental concerns

By MICHAEL BRADFORD

Energy companies are fighting on a new litigation front as lawsuits mount and controversy swells over the natural gas drilling practice of hydraulic fracturing.

The process, commonly called "fracking" or "hydrofracking," is a method of extracting natural gas from shale that uses water and chemicals during the drilling process.

It has been in use for decades, but has gained notoriety in recent years as some environmentalists and property owners have alleged that companies involved in fracking are contaminating groundwater or causing other environmental problems.

Others, including drillers and insurance brokers, say such claims are overblown and there is little chance of groundwater pollution from fracking.

So far, litigation has not produced significant awards or settle-

See **FRACKING** page 20

HEALTH CARE REFORM

Employers await word on rules for dependent cover

By JERRY GEISEL

WASHINGTON—Employers will not face health care reform law penalties if they do not offer affordable coverage to employees' dependents and they may not even have to extend coverage to dependents, depending on the outcome of regulatory guidance.

Under the Patient Protection and Affordable Care Act, employers will be assessed an annual $3,000 per employee penalty starting in 2014 if the health care coverage they provide is not affordable.

The penalty would apply in cases where an employee's health insurance premium contribution exceeds 9.5% of household income, making them eligible for federal premium subsidies to buy coverage through state insurance exchanges.

A safe harbor provision that the Internal Revenue Service unveiled this month for public comment to pass this health care reform law requirement affirmed what benefit experts had thought for some time: that the affordability test only will apply to employee or self-only coverage.

Group health care plans would be able to qualify for the safe harbor—shielding them from the $3,000 per employee affordability penalty—so long as the premiums employees are required to pay for self-only coverage in the least costly plan available to them does not exceed 9.5% of their wages.

Excluding dependent coverage from the affordability test in the IRS safe harbor was deliberate because the affordability requirement applies only to coverage of employees, experts say.

"That is the way we read the statute," said Ed Fensholt, senior vp and director of compliance services for Lockton Benefit Group in Kansas City, Mo.

"What problem was Congress trying to address? The focus was on trying to get affordable coverage to the employee," said Paul Dennett, senior-vp health care reform with the American Benefits

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video

WATCH: The first video in the 2011 *Business Insurance* Insurance Broker Insights series, sponsored by Liberty Mutual, features senior brokerage executives discussing the key global insurance markets they are targeting for growth, including some you might not expect.

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5. Lloyd's of London set for $2.4 billion loss: Mazars
6. Ship insurers backing armed guards as piracy grows
7. Michigan governor signs health care claims tax into law
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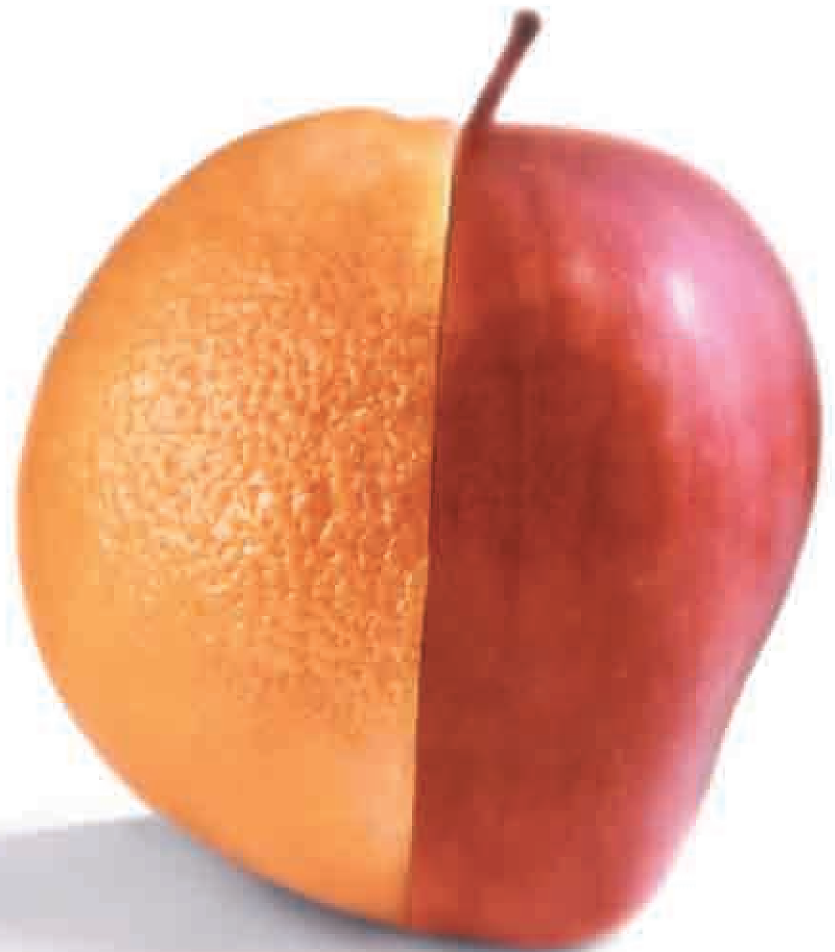

AON BENFIELD

LIABILITY & LITIGATION

No duty to defend in climate case

Ruling may affect climate change suits in other jurisdictions

By MIKE TSIKOUDAKIS

RICHMOND, Va.—A Virginia Supreme Court ruling that an insurer does not owe a defense to a company accused of climate change-related damage is based on commonly used commercial general liability language and could affect similar litigation elsewhere, legal experts say.

In the Sept. 16 ruling, the state high court upheld a lower court decision that Steadfast Insurance Co. has no obligation to indemnify AES Corp. in climate change litigation, saying there was no "occurrence" under the CGL policy Steadfast wrote.

The underlying suit, *Native Village of Kivalina et al. vs. ExxonMobil Corp. et al.*, was brought in 2008 by residents of an Alaskan barrier island, alleging AES and other companies damaged the village by causing global warming.

"As a result of the decision having gone the insurer's way, that could potentially affect others as to whether they want to even try to go forward with a coverage claim in this area," said Joanne L. Zimolzak, partner at McKenna Long & Aldridge L.L.P. in Washington, who represents insurers.

Going forward, the decision may chill future climate change coverage litigation, she said.

"In large part, it'll depend on what happens with these climate change cases generally," Ms. Zimolzak said. "I wouldn't predict that this is the last coverage case we're going to see in this area. But nonetheless, if you're the insurance industry, certainly it's better to have a win in your hip pocket than the reverse."

> 'I wouldn't predict that this is the last coverage case we're going to see in this area.'
>
> Joanne L. Zimolzak, McKenna Long & Aldridge L.L.P.

Laura Foggan, partner at Wiley Rein L.L.P. and leader of the law firm's insurance appellate group in Washington, said policyholders face a significant hurdle if they decide to litigate climate change coverage issues.

"Though, obviously, this is one case involving one policy, the decision was made based on widely used policy language in general liability policies; and it was premised on the occurrence requirement of commercial general liability policies," Ms. Foggan said. "That's a fundamental point that goes to all CGL policies."

Writing for the unanimous court, Virginia Supreme Court Justice S. Bernard Goodwyn said "*Kivalina* alleges its damages were the natural and probable consequences of AES's intentional actions. Therefore, *Kivalina* does not allege that its property damage was the result of a fortuitous event or accident, and such loss is not covered under the relevant CGL policies," the justice wrote.

"Because the court ruled on the occurrence issue, it mooted the need to address the pollution exclusion question at all," Ms. Foggan said.

Pollution exclusions are routinely included in newer policies, but older policies that may be implicated in global warming or climate change-related cases might not have included pollution exclusions, she said.

"The occurrence ruling is broader because it sweeps in the earlier time frame prior to the introduction of pollution exclusions," Ms. Foggan said.

However, J. Wylie Donald, partner at McCarter & English L.L.P. in Wilmington, Del., and chair of the law firm's climate change and renewable energy specialty group, said the decision won't influence coverage claims because it's specific to Virginia, which is "insurer-friendly."

"It's one decision in one jurisdiction on one policy against one complaint. It doesn't really tell us a lot about how things will evolve. It tells us what happened in Virginia," said Mr. Donald, who represents policyholders.

Businesses should consider buying a specific environmental liability policy for their operations as a result of the ruling in *AES Corp. vs. Steadfast Insurance Co.*, said Matthew J. Pateidl, vp of environmental risk for Lockton Cos. L.L.C. in Kansas City, Mo.

Risk managers should review their exposure to climate change-related litigation; their internal controls; their compliance with local, state and federal regulations; and what risk-transfer tool could mitigate those exposures,

See **CLIMATE** page 21

AP PHOTO

Sandbags have been put in place to protect Kivalina, Alaska. Residents of the barrier island allege several companies are liable for causing global warming that, they say, threatens the island.

WORKERS COMPENSATION

Comp payers tackle problem of opioid abuse

By ROBERTO CENICEROS

As the workers compensation system comes under increasing strain from the nation's opioid epidemic, some workers comp payers are taking aggressive steps to try to combat the problem.

The opioid problem began with about 20 states relaxing laws that had discouraged doctors from treating "chronic, noncancer pain" with these prescription pain medications, an occupational medicine expert said.

The trend, which began in the late 1990s, allowed "extreme permissiveness" in increasing opioid doses prescribed to injured workers, said Dr. Gary M. Franklin, medical director for the Washington State Department of Labor and Industries and a research professor in the departments of Environmental and Occupational Health Sciences and Medicine at the University of Washington in Seattle.

Dr. Franklin made his remarks at last week's *Business Insurance* Workers Comp Cost Control Strategies virtual conference, which is available on demand at *www.businessinsurance.com/compcosts*.

"Within a year or two of the laws…becoming more permissive, we began to notice deaths in the Washington workers compensation system," Dr. Franklin said. "These deaths (from prescribed opioids) were unintentional poisoning deaths. They were not suicides."

While Washington state eventually introduced measures to curb doctors' prescription of the pain drugs in noncancer cases, some workers comp payers also have taken measures to discourage overprescribing of opioids.

Oklahoma City-based Hobby Lobby Stores Inc., for example, adopted prescription protocols for flagging and scrutinizing claims involving opioids, said Becky Robinson, the company's assistant vp-risk management.

Hobby Lobby's aggressive efforts have included bringing in pharmacy benefit manager experts to help educate the employer's in-house claims management staff, Ms. Robinson said.

The company also coordinates with its third-party administrator to prevent drug abuse, identify claim problems before they escalate, and hold injured workers and doctors accountable.

Also offering best practices were Julie A. Fortune, senior vp and chief claims officer for Arrowpoint Capital in Charlotte, N.C.; and Michael J. Shor, managing director of Best Doctors Occupational Health Institute in Boston.

See **CONFERENCE** page 18

EMPLOYMENT PRACTICES LIABILITY

Tyson sex bias case signals tough stance by DOL

By JUDY GREENWALD

WASHINGTON—A settlement of sex discrimination charges against units of Tyson Foods Inc. reflects a more aggressive stance by the U.S. Department of Labor's Office of Federal Contract Compliance Programs, some observers say.

Tyson said the charges were based on statistical analyses, not complaints.

Under two consent orders, Dakota Dunes, S.D.-based Tyson Fresh Meats Inc. will pay $2.25 million in back wages, interest and benefits to more than 1,650 female job applicants who were rejected for employment at four facilities in Joslin, Ill.; West Point, Neb.; and Waterloo and Denison, Iowa.

The DOL said that during scheduled compliance reviews of the four facilities, the OFCCP determined that Tyson Fresh Meats violated an executive order that prohibits federal contractors from discriminating on the basis of sex.

> **$2.25M**
>
> Tyson Fresh Meats Inc. agreed to pay $2.25 million to settle sex discrimination allegations at four of its plants.

Under terms of the consent decrees, Tyson also agreed to offer jobs to at least 200 of the affected women as positions become available in the Illinois and Iowa locations; the Nebraska facility closed in 2006. Tyson also will "undertake extensive self-monitoring and corrective measures to ensure that its employment practices fully comply with the law," the DOL said in its statement.

The federal agency said the consent decrees resolve the latest in a string of cases brought by OFCCP against Tyson Foods subsidiaries. In 2008, a law department administrative law judge ruled that Green Bay, Wis.-based TNT Crust had systemically discriminated against Latino applicants in its entry-level position hiring.

Last year, the OFCCP settled a case against Vernon, Texas-based Tyson Refrigerated Processed Meats after the agency said it found evidence the company had discriminated against 157 African-American and 375 Caucasian job applicants, who allegedly were less likely to be hired than Hispanic applicants.

"At $2.25 million, the Tyson settlement is one of the largest in the history of OFCCP."

See **TYSON** page 19

PROPERTY/CASUALTY INSURERS

First-half cat losses push Lloyd's into the red

By SARAH VEYSEY

LONDON—A record level of catastrophe claims this year pushed Lloyd's of London into a marketwide loss for the first half.

Lloyd's last week posted a £697 million ($1.1 billion) first-half loss, compared with a profit of £628 million ($991.5 million) for the comparable period last year.

The loss compares favorably with the prediction last week from accountancy firm Mazars Group that Lloyd's likely would post a £1.5 billion ($2.37 billion) loss for the first half.

Despite the loss, Lloyd's is "well-positioned" to handle the tough conditions for underwriters, says CEO Richard Ward, who notes that Lloyd's has net assets of £57 billion ($89.99 billion).

Mr. Ward said the result was "not surprising" given the high volume of natural catastrophe claims that already rank 2011 as Lloyd's third-costliest year ever for catastrophes, after 2001 and 2005.

Lloyd's said its combined ratio for the first half of 2011 was 113.3% compared with 98.7% for the first half of 2010.

Natural catastrophes cost Lloyd's about £2.8 billion ($4.42 billion) in the first half of 2010, said Mr. Ward. Total claims in the first half were £6.7 billion ($10.58 billion), he said.

Tornadoes in the United States caused the market about $600 million in claims, he said.

Losses from flooding in Australia, and the earthquakes in New Zealand and Japan cost the market about $3.8 billion, Mr. Ward said.

Other large losses included about $250 million from the February loss of Maersk Oil's Gryphon North Sea oil and gas installation, which is estimated to have caused industrywide losses of about $1 billion, said Luke Savage, director of finance, risk management and operations at Lloyd's.

£697M

Lloyd's last week posted a £697 million ($1.1 billion) loss for the first half of 2011, down from a profit of £628 million ($991.5 million) for the comparable period last year.

Mr. Ward said that while rates were increasing for catastrophe-exposed business, other lines of business, particularly casualty lines, still were softening in some cases, partly because of the amount of surplus capital in the industry.

He said catastrophe excess-of-loss rates had increased by about 100%, while some international catastrophe rates had increased by about 50%, and U.S. catastrophe-exposed business was seeing rate increases of about 5% to 10%.

The market posted investment income of £548 million ($865.2 million) for the first half of 2011 compared with £597 million ($942.5 million) for the first half of 2010.

Lloyd's said its gross written premiums for the first half of 2011 were £13.53 billion ($21.36 billion) compared with £13.50 billion ($21.31 billion) for the first six months of 2010.

This slight increase largely was caused by several Lloyd's businesses transferring books of business they previously had underwritten outside the market into Lloyd's, said Mr. Savage.

Lloyd's, with support from the Assn. of British Insurers, is lobbying the U.K. insurance regulator—the Financial Services Authority—to be allowed to use Solvency II beginning Jan. 1, 2013, despite the likely delay to full implementation of the new risk-based capital rules.

BENEFITS MANAGEMENT

Aon-Hewitt CEOs discuss plans for firm

Kristi Savacool and Baljit Dail, CEOs of Aon Hewitt Inc.

One year ago, Aon Corp. completed its $4.9 billion acquisition of Hewitt Associates Inc., creating Lincolnshire, Ill.-based Aon Hewitt Inc. Coinciding with the one-year anniversary of the completion of the deal, Baljit Dail and Kristi Savacool, CEOs of Aon Hewitt, discussed the merger and other issues with Business Insurance Editor-at-Large Jerry Geisel.

How is Aon Hewitt different as a consultant compared with Aon Consulting and Hewitt Associates?

MR. DAIL: Collectively, we are incredibly excited by the combination. We have real capability in advice and delivery on a global basis. We believe we have industry-leading capabilities to serve our clients. Before, the two firms were somewhat global in nature, but now we are truly global and we are globally consistent.

When you think of the two firms, they were very complementary in nature. When you think of Hewitt Associates, you think of it as being very strong in outsourcing, with immense consulting capability. Legacy Aon was very strong in brokerage and health and benefits business. When you think of the clients they served, Hewitt was more large-market. Legacy Aon was more middle-market. When you pull this all together from a client perspective, it is an enormous win, a huge win. I think that is why we are so bullish.

How has the merger benefited clients?

MR. DAIL: We believe we are uniquely positioned to help clients. We now are the biggest (benefit consultant). Being the biggest is not the be all and end all. But being the biggest allows us to invest back into the firm to drive innovation. We are investing heavily in the firm to develop new solutions to address our clients' needs. Think about some of the areas we work in: retirement, health and talent. I would argue that those are three of the top seven issues in the world. We work on three of the biggest issues in the world. The issues are getting more complex and we think we are uniquely positioned to provide advice and delivery of solutions.

MS. SAVACOOL: We have a large company with over 200,000

See **AON HEWITT** page 20

Errors & Omissions

As a result of information Provided by UnitedHealth Group Inc., unbundled pharmacy benefit manager revenues were incorrect for Prescription Solutions Inc. in the largest pharmacy benefit managers chart in the Sept. 19 issue. The correct 2010 revenue is $16.8 billion.

RISK MANAGEMENT

Making a common ERM mistake?

Panel discussion at RIMS Canada covers typical errors

By RODD ZOLKOS

The annual RIMS Canada Conference was held last week in Ottawa, Ontario.

OTTAWA, Ontario—There are various approaches to enterprise risk management, but speakers at the annual RIMS Canada Conference outlined common elements of successful programs and pitfalls to avoid.

Moderating an ERM presentation at last week's conference in Ottawa, Ontario, Nowell R. Seaman, manager of risk management and insurance services at the University of Saskatchewan in Saskatoon, said, "Typically we talk about two perspectives on ERM."

One, he said, is strategic risk management focused on managing uncertainty around strategic objectives and ensuring the long-term viability of the organization. The other is operational risk management, centered on risks in the day-to-day process of executing the organization's strategy.

Despite the differences in organizations' approaches to ERM, "Where you manage these and how you define them is not nearly as important as applying the process," Mr. Seaman said.

Speaking about the most common errors in ERM programs, Diana Del Bel Belluz, president of Risk Wise Inc. in Toronto, said she's learned that ERM is not only about reducing risk, but also about thinking about risk in achieving the organization's objectives. "With ERM, the focus is always on getting that balance right," she said.

Among the mistakes Ms. Belluz outlined were complacency, not understanding risk exposures, relying on gut instinct, overlooking available information and focusing on the wrong risks.

Others common mistakes are failure to link the ERM process to the organization's performance management, build resilience into the program, acknowledge and learn from "near misses," seek out and listen to constructive feedback and cultivate relationships with external stakeholders.

To tackle complacency, the ERM consultant recommended cultivating "a mindset of questioning." She said she sees the mistake of not understanding exposures most often in organizations that don't "filter" risks against their objectives.

"At its heart, this is really about the failure to link risk and strategy," Ms. Belluz said.

While there are occasions that require making judgments based on instinct, she said such problems can be reduced by rating the quality of risk estimates and finding information to help gauge the accuracy of gut instincts.

A major element involves determining the organization's risk appetite. "If you don't articulate it, what you do is you leave people to infer what the level or appetite for risk is, and I guarantee you'll have some differences," Ms. Belluz said.

Regarding the failure to build resilience into the program, Ms. Belluz noted, "Risk management is very much about change management." As for the mistake of failing to seek out and listen to constructive criticism, Ms. Belluz said that, beyond good communications skills, the solution is "humility in management" and

See **RIMS** page 19

NOBODY WANTS TO TAKE THE FALL FOR A FICTITIOUS CLAIM.

When a patron claimed to take a bad fall outside the entrance of a major retail establishment, the manager first went to her aid, and then came to us. Risk management planning had ensured there were anti-slip mats at the entrance and a surveillance camera, which captured the staged accident. The fraudulent claim was then denied and referred to the local authorities, protecting the customer from unwarranted losses and potential litigation. Whether it's responding quickly, keeping you informed, or helping to mitigate potential losses, our general liability experts are committed to helping you protect your business. That's our policy. For more information, contact your broker or agent or visit libertymutualgroup.com/gl.

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

How to better manage your TPA

Don't be too heavy-handed or too laid back with claims

By MATT DUNNING

Mid-market executives and managers must walk a fine line when interacting with their workers compensation claims adjusters or third-party administrators, experts say.

Without clear and consistent communication with the adjusting agent and oversight of their performance, employers could face greater costs as a result of low prioritization or mismanagement of their workers comp claims, as well as an increased risk of litigation brought by an injured worker. However, mid-market companies also must refrain from excessive scrutinizing of their adjuster's services, as it could negatively affect the speed and quality of that service.

Thin personnel resources or a lack of expertise when it comes to workers comp issues cannot be an excuse for adopting a laissez-faire attitude toward the responsibilities assigned to a claims adjuster or TPA, according to Charles F. Martin, the Norwalk, Conn.-based national claims consulting practice leader at Marsh Risk Consulting, a unit of Marsh Inc.

Too often, executives and managers—particularly at the smaller end of the middle market, where more companies are fully insured—grant an unhealthy autonomy to their claims adjuster, whose services usually are bundled together with the company's workers comp insurance coverage, Mr. Martin said.

By doing so, companies usually fail to monitor the adjuster's performance over the lifespan of the claim, missing the chance to provide instructions on important decisions like selection of medical care providers and legal counsel or correct potentially costly statutory filing and reporting mistakes, he said.

"In that kind of guaranteed-cost program, the client's probably not monitoring it," Mr. Martin said. "To some extent, a lot of them decide that the claims aren't their issue, but the claims are always your issue, because you always wind up paying for them in the end."

Larger mid-market companies might be more likely to self-insure their workers compensation program, in which case their claims adjustment services typically would be handled by a third-party administrator. Despite enjoying the freedom of selecting their own TPA, self-insured firms risk litigation, prolonged open claims and ultimately higher losses by not establishing clearly defined service parameters and monitoring the performance of that service.

"There seems to be less of an inclination to get involved when we talk about mid-market companies," Mr. Martin said, noting that workers comp, benefits management and property and liability risk often are managed by the same small work group, if not by a single employee, at midsize employers.

"You get into situations where you've got a lot duties bundled together, and that's problematic because there aren't a lot of people that are going to be experts in all those fields," Mr. Martin said.

While overreliance on the services of an adjuster or TPA is the more common mistake among mid-market companies, executives and managers also must be careful not to strain the relationship by micromanaging adjuster and TPA decisions, forcefully imposing their own conclusions regarding a claim, or taking on too much responsibility to compensate for lagging service, experts said.

'An employer remains somewhat of an unidentified client that will be serviced as such until a personality and a relationship develop.'

Zachary Sacks, Sacks & Zolonz L.L.P.

"You don't want a situation where the adjuster is afraid to make a decision without contacting the client first, which is going to cause delays," said Paul Brandel, risk manager for the Rockford Mass Transit District in Rockford, Ill.

If mid-market managers are overly forceful with their adjuster or TPA, it usually is when they suspect a claim is fraudulent, according to Zachary Sacks, managing partner at the Culver City, Calif.-based Sacks & Zolonz L.L.P. Mid-market companies often are unclear on exactly how much evidence is necessary to deny a claim or to prove fraud, he said.

"If there is a big area of abrasion between smaller employers and their carrier or TPA, that's it," Mr. Sacks said. "When an employer thinks it's a fraud, they are loud, vocal and outraged. But the carrier adjuster or the TPA knows what it takes to successfully bring forward a fraud defense, and the employer very often does not. They just have a general sense that the guy is faking it."

Wendy Ademy, risk manager for the city of Roswell, Ga., said her department recently replaced its TPA in July after seven years of steadily declining service. Ms. Ademy said the department had assumed too many of its former TPA's tasks—like scheduling treatment, coordinating with counsel and fielding questions from employees—when service began to lag. That ultimately pulled valuable resources away from the department's other responsibilities.

"We found with our last TPA that the assigned adjuster got very busy with other claims and additional states. We took on more and more of what they were responsible for until we did everything but cut the checks to pay the medical bills," Ms. Ademy said. "That took a chunk out of our schedule that could have been used for a more proactive approach in employee safety."

A successful relationship with an adjuster or TPA should consist of a degree of trust that the adjuster possesses the expertise to act in the best interests of the client, balanced with performance oversight and clear communication of the employer's goals and expectations, experts said.

"Being self-insured and having a little more say in the claims handling, we found our (former) TPA asking us what we wanted to do with a claim when we were looking to their expertise for direction," Ms. Ademy said. "With our new TPA, we relayed our needs to them and have held them to their service agreement."

Mr. Sacks said mid-market managers must make an effort to develop a rapport with their adjuster or risk being lost in a crowd of other clients.

"An employer remains somewhat of an unidentified client that will be serviced as such until a personality and a relationship develop," Mr. Sacks said. "The more active an employer can be in establishing a relationship with the adjuster, the better the result is going to be."

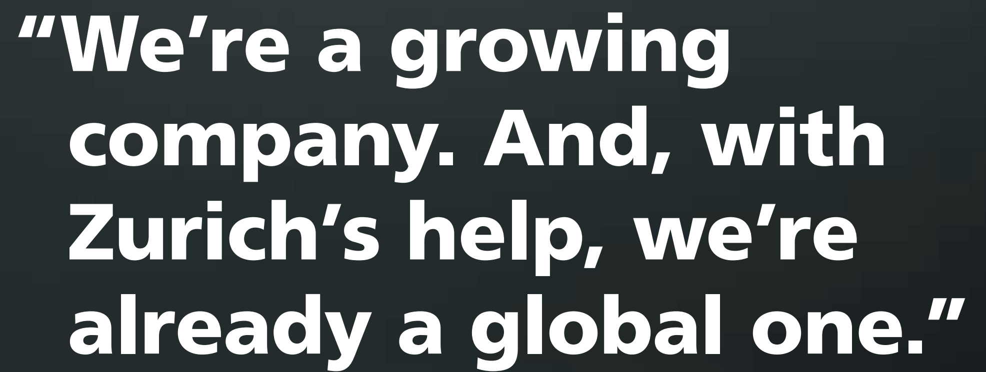
"It's so simplistic," he added. "You just have to pick up the telephone."

Get the most out of claims management

To successfully manage a relationship with workers compensation claims adjusters or third-party administrators, middle-market employers should remain involved in the claims process but recognize when to let the experts do the work for which they were hired. Below are some tips from experts in the workers comp field on getting the most out of the claims management services:

- Smaller firms should consider using regional or local TPAs to prevent getting "lost in a file cabinet."
- Employers should ask for on-site visits from claims adjusters to facilitate familiarity with the organization's business model and risk profile.
- Employers should establish a clear set of service expectations with the adjuster and conduct regular evaluations of their performance in meeting those expectations.
- To ensure the employer is perceived as a client, employers should develop a personal rapport with the claims adjuster.
- Employers should treat the adjuster or TPA as a part of an in-house risk management team, instead of an external agent.
- Employers shouldn't take it personally when an adjuster or TPA advises against their preferred course of action.
- Employers should provide their adjusters with as much accurate information about the claimant and the nature of the injury as soon as a claim arises.
- If an employer suspects that an employee has submitted a fraudulent claim, it should inform its adjuster or TPA but be prepared to provide hard evidence to support the allegation.
- Employers should keep abreast of law changes and developments the workers comp arena; continuing education courses and industry seminars can be useful.

—By Matt Dunning



Chip Bottone, President and CEO
FuelCell Energy, Inc.
Connecticut, USA

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Opinions

EDITORIAL

Bias case offers hope for firms

The 9th U.S. Circuit Court of Appeals' ruling in *Shirley "Rae" Ellis et al. vs. Costco Wholesale Corp.* brought some good news to employers this month, but celebration would be premature.

In its Sept. 16 ruling, the appellate court reversed a lower court ruling that gave class action status to plaintiffs in the gender discrimination case brought by plaintiffs against the warehouse store chain. Plaintiffs had contended that Costco's promotional practices discriminated against women.

The 9th Circuit took a look at the 2007 district court ruling in light of the U.S. Supreme Court's decision this year in *Wal-Mart Stores Inc. vs. Betty Dukes et al.*, in which the court ruled against a proposed class of some 1.5 million members.

While the 9th Circuit conceivably could have found some way to circumvent the Supreme Court's decision, to employers' relief it did not do so.

Instead, the 9th Circuit was receptive to the message conveyed in the *Wal-Mart* decision. It held that the district court had "abused its discretion by applying the wrong legal standard" in considering the issues of whether there were questions of law common to the class, and whether the claims of the representative parties are typical of the class as a whole.

This was the good news. The not-so-good news is that the appellate court did not dismiss the case altogether. Instead, it remanded the case to the district court "for application of the correct standard," and there is no way of knowing for sure how the court ultimately will rule.

And so the case drags on. Employers can only hope the district court recognizes the clear signals sent by the Supreme Court as to the nonviability of proposed class actions such as *Costco* and *Wal-Mart*. At least now, as one observer noted, the district court has been directed to conduct the type of rigorous analysis called for within the parameters set by the Supreme Court.

Meanwhile, employers still can take heart that, based on the *Wal-Mart* decision, it is likely to be more difficult in the future for plaintiffs to successfully pursue class action litigation.

LETTERS

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SCHILLERSTROM

COMMENTARY

Unnecessary uproar over fracking

The debate around the business of hydraulic fracturing, or fracking—a method of drilling that extracts natural gas from shale—is producing some of the best hype since global warming.

Nothing gets the hackles up quicker than a good old back-and-forth over an environmental issue. And fracking's got all the necessary ingredients to ignite the debate: chemicals, emissions, drilling, drinking water, big companies, angry environmentalists, wild allegations and the juicy irony of people you would expect to be in favor of clean energy demanding that companies stop drilling for natural gas in the United States.

MICHAEL **BRADFORD**
SENIOR EDITOR

Interestingly, the two sides have largely squared off according to geography. In parts of the northern U.S., where energy exploration is not as big a pursuit as in some of the oil-producing states down south, disagreements are extremely heated.

"It makes a difference if you're in a state that's drilling-oriented," an association executive told me. "Up in New York," he added, "there are a lot of environmental activists, a lot of people who raise a lot of hell."

It may not be the Ultimate Fighting Championship, but the battle over fracking has nonetheless developed into a brawl.

Launch an Internet search for the term "fracking," and you will find a litany of disagreements and lawsuits. Oddly, given all the outcry over the potential for catastrophe that could come from drilling, you won't find any notable fracking-related insurance claims. Look for an insurer who's worried about covering risks related to fracking, and you likely will be searching for a long time.

And that may be a reliable indicator that a lot of the hysteria around fracking is misguided. It's a risk that insurers are comfortable with, given that fracking has been around for decades, and underwriters have worked out the exposures pretty well throughout the years.

In fact, one industry source told me that insurers are quite happy with the controversy, as it has caused energy companies to make sure they are covered for any sort of fracking eventualities that might arise. That could mean buying more insurance, which leads to smiles on underwriters' faces.

Does the insurance industry's comfort level mean there will never be a groundwater pollution claim or environmental problems? Of course not. Already there have been instances of fracking chemicals leaking from above-ground operations and contaminating surface water.

What's certain is that the hysteria that's erupted around fracking is not doing any good for the efforts to responsibly extract clean energy sources from the ground. Too much of the hysteria, especially in the blogosphere, is overblown. No one wants dirty water. Not even the energy companies, given that they have to drink it, too.

It's not unreasonable to assume that a driller is going to do everything possible to avoid polluting groundwater. Anything less could lead to litigation, defense costs, insurance claims—and a nasty glass of tap water.

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MarketMoves

Willis expands in Poland with specialty purchase

WARSAW, Poland—Willis Europe B.V. has acquired a specialty insurance lines brokerage in Poland.

The acquisition of Brokerskie Centrum Ubezpieczeniowe (AMA) Sp. z o. o. is intended to strengthen Willis' presence in the country in the employee benefits and construction sectors, the unit of London-based Willis Group Holdings P.L.C. said in a statement.

Willis said major civil engineering projects in the country will increase the growth of the Polish construction market by 11%, along with employment growth driven by the services industry, according to the statement.

"As the Polish economy continues to grow at a rate of around 3.8%, the expansion of the employee benefits and construction markets, along with other industries, will need to be accompanied by robust risk management," said Jacek Cichy, CEO of Warsaw, Poland-based Willis Polska, in the statement.

Founded in 1998, Warsaw-based BCU AMA focused on the employee benefits and construction industries.

BCU AMA has taken the Willis name and its offices have moved to Willis Polska's location, along with all of BCU AMA's staff members, according to a Willis spokeswoman.

Terms of the deal were not disclosed.

Bennett Bricklin & Saltzburg opens office in Pittsburgh

PITTSBURGH—Insurance defense and subrogation law firm Bennett Bricklin & Saltzburg L.L.C. has opened an office in Pittsburgh.

With locations in Blue Bell, Pa., Lancaster, Pa., Philadelphia and Cherry Hill, N.J., the new office in Pittsburgh aims to expand the law firm's services in western Pennsylvania, Bennett Bricklin & Saltzburg said in a statement.

Michael Weiner heads the Pittsburgh office as managing attorney, focusing on first- and third-party matters under automobile, homeowners, business and commercial insurance policies, including premises liability and business litigation.

The Philadelphia-based law firm provides insurance coverage services such as construction litigation, products liability, employment law and aviation law.

The new office is located at 310 Grant St., Suite 3210, Pittsburgh, Pa. 15219. The telephone number is 412-894-4100.

Hartford Steam Boiler adopts Munich Re brand

HARTFORD, Conn.—Hartford Steam Boiler Inspection & Insurance Co. has adopted the brand of its parent company, Munich Reinsurance Co.

The rebrand is part of a "dual brand strategy" where HSB's locomotive symbol and name will appear in the context of the Munich Re brand, the Hartford, Conn.-based and specialty insurer said in a statement.

In 2009, HSB and its subsidiaries were acquired from American International Group Inc. by the Munich-based reinsurer for $739 million.

After the acquisition, Munich Re is "taking the next step by launching a new dual brand that highlights HSB's position as a valued member of Munich Re, while maintaining the proud heritage of HSB," said Tony Kuczinski, CEO of Munich Reinsurance America Inc. and chairman of HSB, in the statement.

HSB also has joined Munich Re's risk solutions portfolio, a distinction from Munich Re's traditional reinsurance businesses for subsidiaries that specialize in complex risks, according to the statement.

Assurance buys employee benefits brokerage

ST. LOUIS—Assurance Agency Ltd. has acquired a St. Louis-based employee benefits insurance brokerage.

The acquisition of Lilley & Associates Inc., for which deal terms were not disclosed, aims to bolster the Schaumburg, Ill.-based brokerage's presence in the region, Assurance said in a statement.

Lilley & Associates specialized in the design, placement, financing and administration of employee benefit programs. It has provided insurance services to numerous hospital, medical and dental associations in Illinois, Minnesota and Missouri, according to the statement.

Lilley & Associates has adopted the Assurance name, and all of its employees have moved to Assurance's Chesterfield, Mo., location, according to the statement.

TO SUBMIT ITEMS

BI's Market Moves column reports on activities by insurance industry companies and related entities. Please send news of Market Moves to Mike Tsikoudakis, 360 N. Michigan Ave., Chicago, Ill. 60601 or email *mtsikoudakis@businessinsurance.com.*

Reinsurance experts from around the world gathered at the Rendez-Vous de Septembre in Monte Carlo, Monaco, this month.

Eyes on catastrophes as renewal talks start

Stable rates likely for most; loss-hit accounts may see increases

By SARAH VEYSEY and MARK A. HOFMANN

MONTE CARLO, Monaco—Ample capital means that—barring major losses by year-end—most reinsurance buyers will see stable rates when they renew their programs in January, experts said during the Rendez-Vous de Septembre reinsurance meeting.

Buyers with catastrophe-exposed business likely will see rate increases at the Jan. 1, 2012, renewals, especially if they suffered losses during a series of natural catastrophes around the world this year, but other lines of business are likely to remain stable, experts say.

Catastrophe-exposed U.S. accounts that already saw higher rates when they renewed in April, June and July are most likely to see higher rates at their next renewal. Risk Management Solutions Inc.'s updated hurricane model also is affecting rates. Still, loss-free accounts may see flat to only slightly higher rates, reinsurers said at the Sept. 10-15 gathering in Monte Carlo, Monaco.

Despite major catastrophe losses that have totaled at least $70 billion in the first half of this year, low interest rates that are holding back investment returns for many insurers, the threat of inflation and macroeconomic stresses that include the eurozone crisis, the abundance of capital in the industry and the continued ability of reinsurers to release prior-year reserves mean there is unlikely to be an overall market turn in the near future, experts said.

"It is kind of a spotty market," said James H. Veghte, president and CEO of Hamilton, Bermuda-based XL Group P.L.C.'s reinsurance operations.

While rates for U.S. windstorm-exposed business increased about 7% to 12% at the June and July renewals, "short-tail events rarely turn long-tail markets," he said.

Mr. Veghte said the industry is benefiting from prior-year reserve releases that are boosting profits, but the reserves will dwindle; that means a market turn will happen, but it is not imminent, he said.

"Positive signs for a firming market" exist, said Jon Andre, global head of reinsurance for Oldwick, N.J.-based A.M. Best Co. Inc. during a media briefing.

He said he expects most of Best's ratings in the next year to be affirmations, but also warned that higher pricing "might go away very quickly" in 2012.

The market likely will not change greatly at the January renewals unless there is a large catastrophe, said Toby Esser, CEO of London-based brokerage Cooper Gay Swett & Crawford Ltd.

If there are no large catastrophes in the next year, there likely would be no major market movement until about 2013, he said.

> 'The marketplace is on the cusp of change, but probably needs a catalytic push to bring consensus about change in rates.'
>
> W. Marston Becker, Alterra Capital Holdings Ltd.

David Flandro, global head of intelligence at Guy Carpenter & Co. L.L.C. in London, said despite rate increases on some catastrophe-exposed business, there is unlikely to be a "thumping hard market" at the start of the year. And if there are no large losses by year-end, rates could start to "drift" downwards again.

But reinsurers said rates likely will hold firm.

"I can promise you we will not see price decreases" at the January renewals, said Torsten Jeworrek, Germany-based reinsurance CEO of Munich Reinsurance Co., during a media briefing.

Market conditions are "definitely improving (for reinsurers), but a broad market turn is yet to come," said Stefan Lippe, Zurich-based CEO of Swiss Reinsurance Co., during a media briefing at the Rendez-Vous.

Record low interest rates have been "the most significant shock" to the industry during the past three years, said Brian Gray, chief underwriting officer of Swiss Re, during the briefing. "We face at least the possibility" of a longer period of low rates, he said.

The market will experience a "modest but also broader upswing in the next 15 months, said Swiss Re's Mr. Gray.

"We're all agreed. We're very close" to a market turn, said Charles Dupplin, CEO of Hamilton, Bermuda-based Hiscox Bermuda, a unit of Hiscox Ltd. "We're in the tinderbox period—a spark could set it all off."

He said the market could undergo a "localized hardening of different things." He added, however, that a "tinderbox can stay dry for a long time."

"We are not likely to see a hard market tomorrow, but there are some positive signs" for reinsurers, said Victor Peignet, CEO of the property/casualty operations of Paris-based SCOR S.E.

Uncertainties on the asset side of the balance sheet, coupled with the series of natural catastrophes during the first half of 2011, mean that primary insurers and reinsurers have renewed their focus on maintaining good combined ratios, he said.

And while the reinsurance industry is well-capitalized, that capital will only remain if it is "remunerated properly," Mr. Peignet said.

Reinsurers no longer can rely on the asset side of the balance sheet to boost results, said Jean-Jacques Henchoz, Zurich-based head of the Europe, Middle East and Africa division of Swiss Re. "There is nowhere to hide. So we need to ensure there is underwriting discipline both in the primary and reinsurance markets," he said.

"The marketplace is on the cusp of change, but probably needs a catalytic push to bring consensus about change in rates," said W. Marston Becker, president and CEO of Hamilton, Bermuda-based Alterra Capital Holdings Ltd. Catastrophe losses and low investment returns create pricing stress, he said.

Reinsurers' ability to continue boosting results by releasing reserves from prior years means that "although many of the conditions are there for hardening, we don't expect great hardening anytime soon," said Bryon Ehrhart, chairman of Chicago-based brokerage Aon Corp.'s Aon Benfield Analytics and Aon Benfield Investment Banking Group.

There are areas where rates are increasing, said Dominic Christian, London-based deputy chairman of Aon Benfield, the reinsurance arm of Aon Corp. He cited the U.K. auto market and the retrocessional market as two that have seen "dislocation and difficulty."

"Each line of business has its own cycle," said Stephen Catlin, London-based CEO of Catlin Group Ltd. "We would certainly expect property catastrophe rates to increase at year-end."

If there were a large loss by the end of the year, rate increases could be significant, he said.

An additional $50 billion industrywide insured loss by year-end probably would be a "capital event" for about half of the market, he said, and impairment of capital likely would lead to rate increases.

Rates are beginning to move upwards for catastrophe-exposed business in Europe, but they are "not big moves," said Peter Schmidt, CEO of European reinsurance at Catlin Group Ltd.

There are still competitive pressures in the facultative reinsurance market that are preventing large rate increases there, said Swiss Re's Mr. Henchoz.

Global Programs Reinsurance: Rendez-Vous Report

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NEXT SPOTLIGHT Oct. 3: Middle-Market Risks

DATA snapshot

TOP REINSURERS

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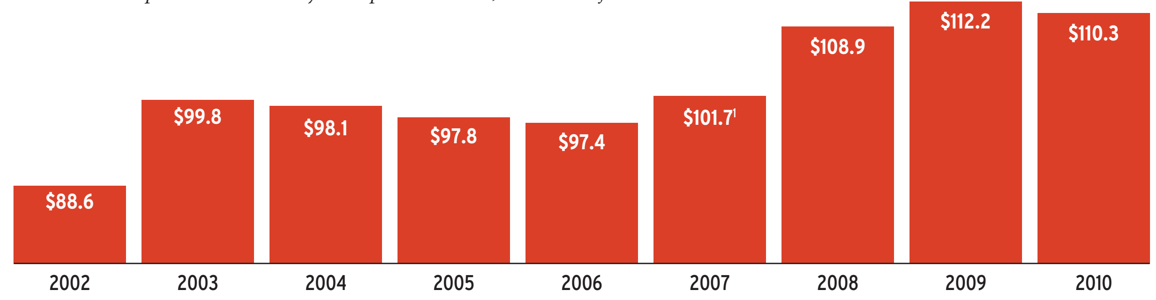
PREMIUM GROWTH

Net reinsurance premiums written by the top 10 reinsurers, in billions of dollars



1 Restated

WORLD'S LARGEST REINSURERS*

Ranked by 2010 net premiums written

RANK	Company/address	Phone/website	2010 net premiums written	% change	2010 combined ratio	2010 employees	Principal officer
1	Munich Reinsurance Co. Koeniginstrasse 107, Munich, D-80802 Germany	49-89-3891-0 *www.munichre.com*	$29,149,859,435[1,2]	1.7%	100.5%[3]	46,915	Nikolaus von Bomhard, chairman-board of management
2	Swiss Re Ltd. Mythenquai 50/60, Zurich, 8022 Switzerland	41-43-285-2121 *www.swissre.com*	$19,433,000,000[4]	-10.7%	93.9%	10,362	Stefan Lippe, CEO
3	Berkshire Hathaway Reinsurance Group 100 First Stamford Place, Stamford, Conn. 06902-6745; General Re Corp. 120 Long Ridge Road, Stamford, Conn. 06902	203-363-5200 *www.berkshirehathaway.com* 203-328-5000 *www.genre.com*	$14,669,000,000[5]	17.0%	N/A	2,916[5]	Ajit Jain, president-Berkshire Hathaway Reinsurance Group; Franklin Montross IV,chairman/CEO/ president-Gen Re Group
4	Hannover Re Group Karl-Wiechert-Allee 50, Hanover, 30625 Germany	49-511-5604-0 *www.hannover-re.com*	$14,034,105,614[1,2]	5.8%	98.8%	2,200	Ulrich Wallin, chairman-executive board
5	Lloyd's of London 1 Lime St., London, EC3M 7HA England	44-207-327-1000 *www.lloyds.com*	$9,728,579,200[6]	2.8%	90.3%	749	Richard Ward, CEO
6	SCOR S.E. 1 Ave. du Général de Gaulle, Paris La Defense, 92074 France	33-1-46-98-7000 *www.scor.com*	$8,146,232,300[2]	0.8%	98.9%[3]	1,665	Denis Kessler, chairman/CEO
7	PartnerRe Ltd. 90 Pitts Bay Road, Pembroke, HM 08 Bermuda	441-292-0888 *www.partnerre.com*	$4,705,116,000	19.2%	95.0%	1,379	Costas Miranthis, president/CEO
8	Everest Re Group Ltd. Wessex House, 45 Reid St., Second Floor, P.O. Box HM 845, Hamilton, HM DX Bermuda	441-295-0006 *www.everestre.com*	$3,945,600,000	0.4%	102.8%	973	Joseph V. Taranto, chairman/CEO
9	Transatlantic Holdings Inc. 80 Pine St., New York, N.Y. 10005	212-365-2200 *www.transre.com*	$3,881,693,000	-2.6%	98.2%	640	Robert F. Orlich, president/CEO
10	Korean Reinsurance Co. 80 Susong-dong, Chongno-gu, Seoul, 110-733 South Korea	82-2-3702-6000 *www.koreanre.co.kr*	$2,653,783,000[7]	12.1%	98.5%	278	Jong-won Park, CEO

**100% life reinsurers are not included. 1 BI estimate. 2 Euro=$1.3261 Fiscal year ending Dec. 31. 3 Nonlife business only. 4 Swiss franc=$0.9586 Fiscal year ending Dec. 31. 5 Combined figures of Berkshire Hathaway Reinsurance Group and General Re Group. 6 British pound=$1.5452 Fiscal year ending Dec. 31. 7 Fiscal year ending March 31.*

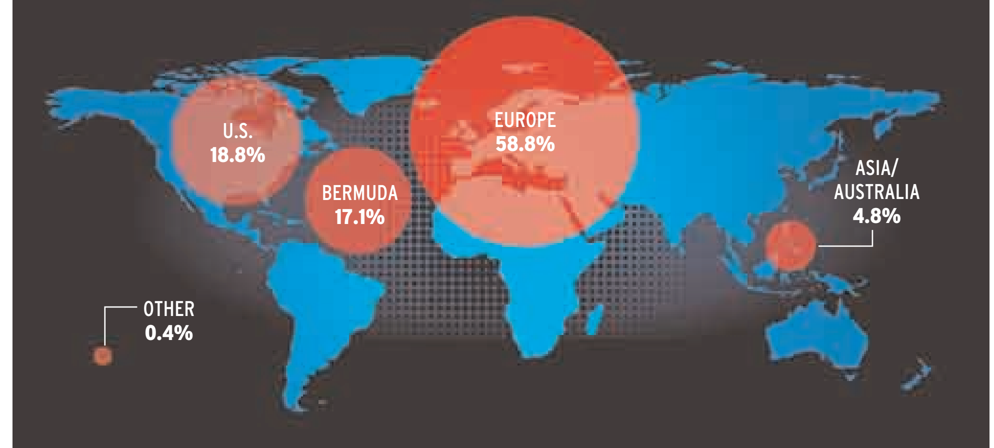
OVER & UNDER *Ranked by combined ratio in 2010**

HIGHEST	2010 COMBINED RATIO
AMERICAN AGRICULTURAL INSURANCE CO.	105.5%
ARAB INSURANCE GROUP B.S.C.	104.1%
EVEREST RE GROUP LTD.	102.8%
GREENLIGHT CAPITAL RE LTD.	102.8%
MUNICH REINSURANCE CO.	100.5%
LOWEST	**2010 COMBINED RATIO**
RENAISSANCERE HOLDINGS LTD.	38.4%
ACE TEMPEST RE GROUP	72.5%[1]
ARGO RE	72.8%
ARIEL REINSURANCE CO. LTD.	73.4%
ARCH REINSURANCE LTD.	74.3%

** Includes all participating reinsurers. 1 Includes all reinsurance business performed by subsidiaries of ACE Ltd.*
Source: BI Survey. Researched by Kevin Edison

LEADING REINSURANCE CENTERS*

Percentage of net written premiums by headquarters location



** Total does not equal 100% due to rounding.*

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New normal in reinsurance?

Willis chairman warns industry soft market may continue

By MARK A. HOFMANN

MONTE CARLO, Monaco—The continuing soft reinsurance market may be the norm, according to Martin Sullivan, deputy chairman of Willis Group Holdings P.L.C.

Speaking at a breakfast event at the Rendez-Vous de Septembre in Monte Carlo, Monaco, this month, Mr. Sullivan said that, barring a "financial Armageddon," reinsurers may have to deal with a marketplace where hardening occurs only in certain geographic areas or in certain lines of business.

Mr. Sullivan

"We all have a tendency when thinking about the market cycle to look at previous market cycles and presume that the same patterns will emerge again," he said. "I am not so convinced that the historic market cycle movements will be repeated again—in fact, I suspect that the 'market cycle' has actually broken down into a number of subcycles."

He noted that previous hard markets occurred when there were reductions in industry capitalization and short-term problems in rebuilding and accessing new capital. But improved actuarial and catastrophe modeling have attracted longer-term capital to the market, he said in the keynote speech at the PricewaterhouseCoopers L.L.P. breakfast.

Mr. Sullivan said the current levels of overcapitalization in the industry could be reduced by poor investment returns and losses.

For example, the industry can expect to pay out $50 billion in catastrophe claims during the next two years, he said. In addition, he said that it is hard to believe that investment returns this year "will be anywhere near those" of 2009 and 2010.

"2012 is going to be a very, very interesting year," Mr. Sullivan said. If reinsurers continue to operate in a soft market, the question is where they can find growth. He predicted that next year would feature more merger and acquisition activity.

Mr. Sullivan warned his audience that "we should not underestimate the potential" for another financial crisis.

"Globalization and technology have linked markets and economies throughout the world," he said. "The insurance and reinsurance markets do not stand in splendid isolation—they are interconnected and heavily affected by the global financial markets. The growing sophistication of modeling techniques and capital markets products may have kept the spigots open in some markets while closing them in others. But the combination of abundant natural catastrophes with, for example, a significant debt crisis and inflation would still have the power to dramatically shrink capacity, resulting in an insurance crisis."

He said if reinsurers face inflation and sovereign debt default together, "all bets are off," as these events still could trigger a global hard market that would affect all lines of insurance and reinsurance.

"But barring this type of financial Armageddon, the current levels of overcapitalization may be reduced by losses or poor investment returns, but that should not return us to the bouts of capital starvation that drove market behavior in some of the earlier hard markets," he said.

During a question-and-answer session after the speech, Mr. Sullivan was asked what the next big liability issue might be.

He responded by noting that "rarely" does he go down a street anywhere in the world without "seeing somebody with something in their ears," and that the next big liability issue could involve hearing.

"I worry about the number of things that go into ears these days," Mr. Sullivan said.

New hurricane model may hit Jan. 1 renewals

By SARAH VEYSEY and MARK A. HOFMANN

MONTE CARLO, Monaco—A new hurricane risk model likely will have some impact on Jan. 1 catastrophe reinsurance renewals, predict participants at the Rendez-Vous de Septembre reinsurance meeting in Monaco this month.

At the center of the discussion is Newark, Calif.-based Risk Management Solutions Inc.'s Version 11 model for U.S. hurricanes. The new model, which puts more weight on the impact hurricanes can have inland, could give rise to increased exposures for some cedents, say observers.

The RMS model revision was a big topic of discussion at this year's Rendez-Vous. Several cedents are in discussions with RMS about the appropriateness of the new model to their portfolios, according to Patrick Hartigan, team leader for reinsurance at Dublin-based Beazley Group P.L.C.

The effects of the model change combined with the series of natural catastrophe losses this year likely will result in rate increases in the single digits for catastrophe-exposed business at Jan. 1, he said.

"To our pleasure and surprise here in Monte Carlo, the market seems to have moved from being distracted at the level of change to being constructive about considering the new model on its own merits," said Peter Nakada, managing director in RMS' Hackensack, N.J., office. He said people are now talking about "integrating the new model with their decision-making processes."

The president of an RMS competitor stressed that it took a different approach to model release, favoring what he called "model stability and frequent updates."

"As we get a deep understanding of the risk, we get it into the model-development process and get it to our clients" as soon as possible, said William Keogh, the Hackensack-based president of Oakland, Calif.-based EQECAT Inc. He said doing a "big-bang" approach to model release potentially means dramatic changes.

The release of RMS' new model was expected but its impact was not, said Mark Coleman, a director at Standard & Poor's Corp. in London.

Some insurers' exposures have greatly increased under the new model, he said. "As a result, some companies have bought more reinsurance, some have written less business," but for the most part, insurers "are still digesting the model changes," he said.

S&P tends to view a slavish adherence to any one model negatively, he said.

"We recommend that models are used as tools and that clients use a 'blended' approach," said David Flandro, global head of business intelligence at Guy Carpenter & Co. L.L.P. in London.

Another modeler noted that a trend toward the use of multiple models is under way. Clients are not using them "blindly," said Uday Virkud, executive vp of Boston-based AIR Worldwide. "Clients are getting more sophisticated."

The revisions to models cannot be ignored, said Martin Davies, CEO of Towers Watson Capital Markets Ltd. in London.

"Models necessarily are under constant reappraisal," he said.

At the June and July renewals, many clients still were using a blended approach of older and newer versions of the models, he said, but at Jan. 1, many will use the latest versions. There are areas where the new model versions show a greater potential for loss than previously, he said. This may lead to clients buying more coverages for those areas or buying specialty coverages such as industry loss warranties, he said.

"By definition, the revisions to models have an effect on the rate-on-line," said Mr. Flandro. The new RMS model will increase cedents' exposures in some cases, and there was an effect on rates at midyear renewals, he said.

The new RMS model is going to be a significant driver for Jan. 1 renewals in the United States, said Stephen Young, senior vp at Pembroke, Bermuda-based Endurance Specialty Insurance Ltd.

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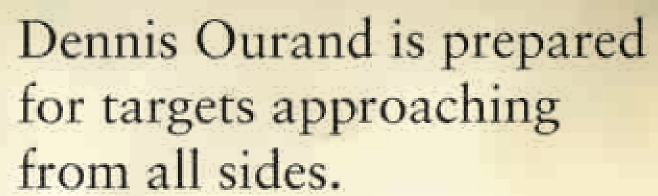

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Casualty insurers spared from rate increases

Market likely to remain soft as cedents buy less reinsurance, but some expect rate cuts to end soon

By SARAH VEYSEY and MARK A. HOFMANN

MONTE CARLO, Monaco—Rate increases experienced by the catastrophe property reinsurance market in recent months have yet to appear on the casualty side, attendees said during the Rendez-Vous de Septembre this month.

Part of the reason is that casualty insurers simply aren't buying reinsurance coverage at the levels they once did, instead preferring to retain the risk, industry observers said.

Others pointed to a falling frequency of casualty losses in the United States.

Cessions to casualty reinsurers have been falling in recent years and many buyers now are comfortable with their retention levels, meaning cessions are unlikely to increase greatly, said Bryon Ehrhart, chairman of Chicago-based brokerage Aon Corp.'s Aon Benfield Analytics and Aon Benfield Investment Banking Group.

This may mean casualty reinsurance underwriters will need to reassess the coverage they provide, Mr. Ehrhart said.

"One of the reasons casualty reinsurance rates have been depressed is insurers are buying less of it," said Kevin Lee, vp, senior credit officer at Moody's Investors Service in New York.

In addition, Mr. Ehrhart said, the frequency of U.S. casualty losses has fallen since 2004. "It will be interesting to see what happens if the loss frequency increases," particularly given the low interest rate environment, he said.

Some observers, however, see an end to softening, if not a hardening beginning in the marketplace.

The U.S. casualty market no longer is softening, said Michael Pickel, a member of the executive board of Hanover, Germany-based Hannover Re Group. Primary insurers are ceding less business to reinsurers and prices have "bottomed out," he said.

For the current accident year, combined ratios for casualty business are, on average, more than 100% and the ability of reinsurers to release reserves is slowing, said Ulrich Wallin, chairman of the executive board of Hannover Re. So Hannover Re is "cautiously optimistic" that conditions will improve for reinsurers in the casualty market in the coming year, he said.

> **The casualty market is 'so soft. We are starting to see an uptick (in rates), but there is still plenty of capacity and capital,' in the industry.**
>
> Theresa Schugel, BMS Group Ltd.

The casualty market is "so soft," said Theresa Schugel, executive vp and leader of the specialty casualty practice of BMS Group Ltd. in Minneapolis.

"We are starting to see an uptick (in rates), but there is still plenty of capacity and capital," in the industry, she said.

The casualty market is very soft, but low interest rates' effect on investment yields suggest that the market will turn "at some point," said Toby Esser, CEO of London-based brokerage Cooper Gay Swett & Crawford Ltd.

Right now, the market is stuck in neutral at best, Rendez-Vous observers said.

"It's starting to flatten, but it's not going up the other side," said W. Marston Becker, president and CEO of Hamilton, Bermuda-based Alterra Capital Holdings Ltd.

Casualty reinsurance "has not yet moved," said Brian Gray, chief underwriting officer of Swiss Re, during a media briefing.

Paris-based SCOR S.E. has put on hold its plans for expansion in casualty business because "market conditions are not right," said Denis Kessler, CEO of SCOR. He said the reinsurer would expand its casualty offering but not until there is a change in the market.

The casualty market still needs "a lot of fundamental improvement," said Peter Schmidt, Zurich-based European CEO of reinsurance for Catlin Group Ltd.

Observers say the market will have to feel pain before casualty insurers see a gain.

Rates for U.S. casualty business have not, on average, increased, said Mark Coleman, a director at Standard & Poor's Corp. in London. It may take a large loss or a "reserving event" to turn that market, he said.

"We don't see any signs yet and before that market turns, we're going to have to see some real balance sheet pain," said Bill Pollett, president of Hamilton, Bermuda-based Montpelier Re Holdings Ltd.

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COMPANIES (WINDING-UP)
1993: No. 535
IN THE MATTER OF THE COMPANIES ACT, 1981
AND IN THE MATTER OF
BRISTOL REINSURANCE LTD
IN LIQUIDATION
NOTICE TO CREDITORS AND CONTRIBUTORIES OF LIQUIDATOR'S INTENTION TO APPLY FOR RELEASE

NOTICE IS HEREBY GIVEN that the Liquidator of the above-named Company, intends to apply to the Court for his release and the Company's Dissolution, and further take notice that any objection you may have to the granting of the release must be notified to the Court within twenty-one days of the date hereof.

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LEGAL NOTICE

IN THE MATTER OF THE LIQUIDATION OF ASPEN U.S. INSURANCE COMPANY
New York Supreme Court, Index No.: 401644/11
Notice is Hereby Given:

I. James J. Wrynn, Superintendent of Insurance of the State of New York, has been appointed by an order of the Supreme Court of the State of New York, New York County, filed on August 24, 2011 ("Liquidation Order"), as the liquidator ("Liquidator") of Aspen U.S. Insurance Company ("Aspen") and, as such, has been: (i) vested with all powers and authority expressed or implied under New York Insurance Law ("Insurance Law") Article 74, in addition to the powers and authority set forth the Liquidation Order; (ii) authorized and directed to immediately take possession of Aspen's property, liquidate the Aspen's business and affairs, and dissolve Aspen's corporate charter in accordance with Insurance Law Article 74, (iii) vested with title to Aspen's respective property, contracts, rights of action; (iv) authorized and directed to take possession of Aspen's books, files, records and other property, wherever located, as of the date of entry of the Liquidation Order; and (v) authorized and directed, without further notice of this Court, to destroy or otherwise dispose of any and all of Aspen's books, files, records and other property in the Liquidator's possession when he deems them to be no longer required in connection with the dissolution of Aspen.

II. In accordance with Insurance Law Section 7432(b), all claims against Aspen must be presented to the Liquidator by December 26, 2011. Claims presented after December 26, 2011, will not share in the distribution of assets until all allowed claims that were filed on or before December 26, 2011 have been paid in full with interest. All claimants who appear on Aspen's books and records as of the date of entry of the Liquidation Order are deemed to have duly filed proofs of claim prior to December 26, 2011.

III. The officers, directors, shareholders, members, depositories, trustees, policyholders, agents, servants, employees, attorneys, managers and affiliates of Aspen and all other persons other than the Liquidator and his agents are permanently enjoined and restrained from: (i) wasting or permitting to be done any act or thing that might waste Aspen's property; (ii) transacting Aspen's business or disposing of Aspen's property, except as authorized by the Liquidator; (iii) interfering with the Liquidator in the possession, control or management of Aspen's property or in the discharge of his duties, and (iv) disclosing any information that is proprietary to Aspen or not in the public domain, except as authorized by the Liquidator.

IV. All persons are enjoined and restrained from commencing or prosecuting any actions or proceedings against Aspen, the Liquidator or the New York Liquidation Bureau, their present or former employees, attorneys or agents with respect to any claims against Aspen.

V. All persons are enjoined and restrained from obtaining preferences, judgments, attachments or other liens, or making any levy against Aspen's assets or any part thereof.

VI. The Liquidator is authorized, permitted and allowed to sell, assign or transfer any and stocks, bonds or securities, and any real or other property of Aspen at market price or better, or if there is no market price, at the best price obtainable at private sale at such times and upon such terms and conditions as, in his discretion, he deems is in the best interest of the creditors of Aspen, and he is further authorized to take such steps and to make and execute such agreements and other papers as may be necessary to effect and carry out such sales, transfers and assignments.

VII. In accordance with Insurance Law Section 7405, all in-force contracts, leases, tax sharing agreements, employment contracts, and obligations of Aspen, however described, shall terminate and all liability thereunder shall cease and be fixed as of the date of entry of this Order unless expressly ratified in writing by the Liquidator.

VIII. Aspen, its officers, directors, shareholders, members, depositories, policyholders, trustees, agents, servants, employees, attorneys, managers and affiliates, and all firms, corporations, associations, and other persons or entities having any property and/or information, including, but not limited to, business records, insurance policies, claims files (electronic or paper), software programs, bank records and/or any tangible or intangible items of value, belonging or relating to Aspen, shall preserve such property and/or information and immediately, upon the Liquidator's request and direction, assign, transfer, turn over and deliver such property and/or information to the Liquidator or his designees.

IX. Any person or entity providing claims processing services, data processing services, electronic records retention services or other information technology services to Aspen shall maintain and preserve all information in its possession relating in any way to Aspen, wherever located, including but not limited to all documents, data, electronic files and records, computer equipment (i.e., servers and printers), software programs and software licenses owned by Aspen, and are directed, upon the Liquidator's request, to promptly submit all such information to the Liquidator or his designees.

X. Any bank, savings and loan association, other financial institution or any other entity or person, which has on deposit or in its possession, custody or control of any of Aspen's funds, accounts or assets shall immediately, upon the Liquidator's request and direction: (i) turn over custody and control of such funds, accounts or assets to the Liquidator; (ii) transfer title of such funds, accounts or assets to the Liquidator; (iii) change the name of such accounts to the name of the Liquidator; (iv) transfer funds from such bank, savings and loan association or other financial institution; or (v) take any other action necessary for the proper conduct of the liquidation proceeding.

XI. Any distribution of assets shall be in accordance with the priorities set forth in Insurance Law Article 74.

XII. The corporate charter of Aspen is relinquished, forfeited, surrendered and annulled, and Aspen is dissolved.

XIII. All communications relating to Aspen and to the liquidation thereof should be addressed to: New York Liquidation Bureau, 110 William Street, New York, New York 10038, (212) 341-6218.

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AP PHOTO

Hurricane Irene caused severe flooding damage after it made landfall on the U.S. east coast last month, but the storm did not pack winds as high as initially predicted.

Reinsurers don't view Irene as major event

By MARK A. HOFMANN

MONTE CARLO, Monaco—The global catastrophe reinsurance industry may have dodged the proverbial bullet when Hurricane Irene failed to generate the magnitude of losses many observers had feared.

Although the late August storm's heavy rains caused severe flooding throughout much of the U.S. East Coast, Irene did not end up packing winds as high as initially predicted.

According to catastrophe modelers, the storm ultimately may cause as much as $6.6 billion in insured property damage. Flood damage to homes is not covered by most homeowners' insurance; rather, it is available through the U.S. government's National Flood Insurance Program.

Flood damage, however, is covered under some commercial property insurance policies.

> 'It will be a loss for us but not a major loss.'
>
> Ulrich Wallin, Hannover Re Group

Reinsurers already were battered by $70 billion or so in losses from a spate of catastrophes such as the Japanese earthquake and tsunami: the earthquake that destroyed a significant portion of downtown Christchurch, New Zealand; and bad weather across much of the United States during the first half of the year. But they may be spared significant losses from Irene.

Irene will be more of an insurance event than a reinsurance event, said W. Marston Becker, president and CEO of Hamilton, Bermuda-based Alterra Capital Holdings Ltd.

A loss of up to $10 billion is more of an insurer loss than a reinsurance event because of insurer retentions, said Bill Pollett, senior vp of Hamilton, Bermuda-based Montpelier Re.

Irene weakened to a tropical storm by the time it reached New York, lessening the damage it caused, said Ulrich Wallin, chairman of the executive board of Hanover, Germany-based Hannover Re Group.

"It will be a loss for us but not a major loss," Mr. Wallin said. "We expect a low double-digit figure, but it is too early to give a precise figure."

Interest in securitized cover rises

After lull following disasters, investors look again at ILS

By SARAH VEYSEY

MONTE CARLO, Monaco—Despite largely competitive rates for traditional reinsurance, buyers and issuers have shown keen interest in several forms of insurance-linked securities this year, experts said during the 55th annual Rendez-Vous de Septembre reinsurance meeting.

During the past year, there have been several sidecar formations to give access to retrocessional coverage, said Paul Schultz, Chicago-based president of Aon Capital Markets Inc. and Aon Benfield Securities Inc.

After a major loss, capital likely will flow into the market in the form of sidecars or similar vehicles that provide investors with a simple and swift exit strategy, he said during the Sept. 10-15 meeting in Monte Carlo, Monaco.

Catastrophe bond issuance stalled somewhat as the industry was "digesting the effects" of the Japanese earthquake and tsunami as well as the revisions to Risk Management Solutions Inc.'s Version 11 U.S. hurricane model, but interest is again increasing in cat bonds, said Dennis Sugrue, a director at Standard & Poor's Corp. in London.

"It has been a turbulent year" for the ILS market, largely because of the Japanese earthquake and tsunami, said Mark Coleman, a director at S&P in London.

S&P downgraded its rating of four natural catastrophe bonds in the wake of the Japanese earthquake and tsunami and 11 more after the release of RMS' new model, he said.

After the March disaster in Japan, demand increased for industry loss warranties, with buyers looking for U.S. windstorm and earthquake coverage, said Stefano Nicolini, senior vp at BMS Intermediaries Inc. in Westfield, N.J.

But after the Japanese earthquake, many buyers felt they needed to "reload," partly because the loss came relatively early in the year and partly because they also were digesting implications of the revised RMS model, he said.

As demand for ILWs increased, so did the price. Between July and August, before Hurricane Irene, demand slowed somewhat, he said. Prices for ILWs likely will remain flat or increase slightly during the coming months, Mr. Nicolini said.

After the Japan earthquake, some of the prices being quoted were deemed high by buyers; then there was a period of quiet until a flurry of interest just before July 1, when prices fell somewhat, said Martin Davies, CEO of Towers Watson Capital Markets Ltd. in London.

Demand for ILWs picked up particularly around the time of Hurricane Irene, which made landfall in the United States last month and threatened New York, said S&P's Mr. Sugrue.

There also is increased interest in investing in ILS from pension funds, which view such mechanisms as uncorrelated risks, said S&P's Mr. Coleman.

"We believe ILS is a good asset class for pension funds because it is uncorrelated," said Towers Watson's Mr. Davies, "and it has come of age as an asset class."

Issuers have been doing deals to test their ability to do so and to establish a track record, he said. Most large European reinsurers have "dipped their toes in the water" in issuing some form of ILS, he said. "For some, it is an integral part of their strategy."

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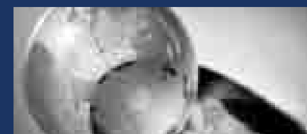

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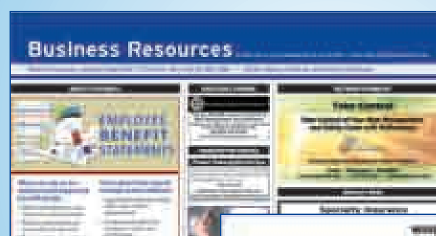

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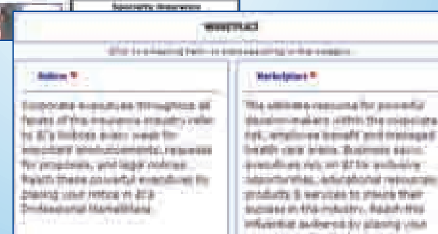

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Solvency II seen boosting demand for reinsurance

Regulatory changes to increase need for capital support

By SARAH VEYSEY and MARK A. HOFMANN

MONTE CARLO, Monaco—Buyers have begun discussions with brokers and underwriters about changes in their reinsurance buying patterns once Solvency II and equivalent regulations come into force.

But firm decisions about reinsurance buying strategies and any uptick in demand are not expected until those rules have been finalized, experts said during the Rendez-Vous de Septembre gathering of the reinsurance industry.

Solvency II is slated to go into effect in 2013 with a gradual implementation over several years, but could be delayed until 2014.

Solvency II is "for the most part, good news for global reinsurers," said Stefan Holzberger, London-based managing director of analytics at A.M. Best Europe.

Among other things, Solvency II will create greater demand for reinsurance, he said.

"We expect more demand for reinsurance," said Torsten Jeworrek, reinsurance CEO of Munich Reinsurance Co., during a media briefing at the Monte Carlo, Monaco, meeting.

Peter Schmidt, Zurich-based CEO of European reinsurance for Catlin Group Ltd., agreed that Solvency II likely will increase demand for reinsurance. "People will need to spread their exposures and diversify and will start buying (reinsurance) more consciously," he said.

While full implementation of Solvency II is still some way off, many cedent insurers, as well as reinsurers, already are operating under Solvency II rules to an extent, said Martin Davies, CEO of Towers Watson Capital Markets Ltd. in London.

For example, in formal written tenders, some cedents are asking their brokers to demonstrate the capital benefits of reinsurance coverage as if Solvency II were in effect, he said.

While some buyers still buy reinsurance tactically on the basis of price, Solvency II is getting buyers to think more strategically about their reinsurance purchases, Mr. Davies said.

Discussions are happening about different reinsurance buying patterns because of Solvency II, said James H. Veghte, president and CEO of the reinsurance arm of Hamilton, Bermuda-based XL Group P.L.C.

"We are working with the big brokers to discuss the types of products" cedents will require, he said.

> **'People will need to spread their exposures and diversify and will start buying (reinsurance) more consciously.'**
>
> Peter Schmidt, Catlin Group Ltd.

There is no question that there will be increased demand for reinsurance, especially from the middle tier of insurers, he said.

It is possible demand will increase for proportional reinsurance once Solvency II comes into force, as this could help lower cedents' capital requirements, said Marc Bekkers, head of analytics for the Europe, Middle East and Africa region at Aon Benfield Analytics.

While some smaller and midsize insurers are beginning to hold discussions with brokers and reinsurers about how they will buy reinsurance under the new rules, those discussions have not yet translated into increased demand, he noted.

Rob Jones, a managing director at Standard & Poor's Corp. in London, agreed. Buyers are waiting for the rules to be finalized, he said, and then reinsurance can be put into place swiftly.

The likely delay of full implementation of Solvency II until 2014 or beyond means that primary insurers are still "waiting to see" how the new rules will affect their capital needs, said Denis Kessler, chairman and CEO of Paris-based SCOR S.E.

Even so, he said, primary insurers' need to increase their capital likely will happen before demand rises for reinsurance.

Solvency II ultimately will become "somewhat of a global standard," said W. Marston Becker, president and CEO of Hamilton, Bermuda-based Alterra Capital Holdings Ltd.

U.S. insurers doing business in Europe will have to implement Solvency II, which may pressure the United States' new Federal Insurance Office to become a "leader" of the states on how the country will deal with Solvency II, he said.

In Bermuda, where regulators are aiming for equivalence with the Solvency II regime, the industry is well-prepared for the changes ahead, experts said.

One of the attractions of the Bermuda market for reinsurance startups has been the "speed to market" at which companies can be set up, noted Arthur Wightman, a partner at PricewaterhouseCoopers L.L.P.

Achieving Solvency II equivalence on the island may mean that startups have some "additional hoops to jump through," but the industry and Bermuda's regulator are confident that it would not negatively affect the ability of companies to set up swiftly, he said.

Conference: Comp focus

CONTINUED FROM PAGE 3

The virtual conference also featured:

- A keynote presentation by NCCI Holdings Inc. President Harry Shuford, who spoke about the prospects for the U.S. economy and workers comp market;
- A session on strategies for improving medical outcomes, including quality-focused care, presented by Sedgwick Claims Management Services Inc. President and CEO David A. North and Kimberly George, managed care practice lead for Sedgwick CMS;
- A panel discussion on hot topics in workers comp, such as the impact of the mobile workforce and lagging claim closure rates, featuring several prominent workers comp experts: Mark Walls, assistant vp of claims for Safety National in St. Louis; Thomas Lynch, founder and president of Lynch, Ryan & Associates Inc. in Wellesley, Mass; Joseph Paduda, a principal at Health Strategy Associates in Madison, Conn.; and *Business Insurance* Senior Editor Roberto Ceniceros, author of the Comp Time blog.

All conference webinars and materials are available on demand at *www.businessinsurance.com/compcosts*.

Business Insurance Associate Editor Matt Dunning contributed to this article.

UP CLOSE
Comings & Goings

DAVID BARDELLI

NEW JOB TITLE: Boston-based senior vp and casualty practice leader at William Gallagher Associates Insurance Brokers Inc.

PREVIOUS POSITION: Boston-based senior underwriter, global casualty at Zurich North America.

LOOKING FORWARD TO: Acting as a resource and a mentor with respect to casualty programs offered by William Gallagher.

INDUSTRY CHALLENGES: State diversification of workers compensation. As the global scene changes, are we keeping up with the needed coverage that industries demand to properly cover risk?

INDUSTRY OUTLOOK: More accountability by insurance companies and brokers to deliver promised services.

BEST THING ABOUT A BAD ECONOMY: Product knowledge and experience come to the forefront.

FIRST MARKET EXPERIENCE: My first job was an entry-level underwriter at American Mutual Insurance Co. in Wakefield, Mass.

ADVICE: Learn your craft and network.

SOMEONE ONCE TOLD ME: An old quote: "I've learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel," by Maya Angelou. After all, insurance is a person-to-person relationship.

OUTSIDE THE INDUSTRY, A DREAM JOB: Landscape architect.

HOBBIES: Gardening, fishing, Red Sox.

MOST PASSIONATE ABOUT: The gym, personal health and exercise.

FAVORITE BOOK: "The Five People You Meet In Heaven," by Mitch Albom, and "The Da Vinci Code," by Dan Brown.

FAVORITE MEAL: Anything my wife cooks. She is a fabulous cook and baker.

ON A SATURDAY AFTERNOON: Doing anything outdoors.

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Tyson: Bias case signals tough DOL

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Violations of federal nondiscrimination laws "are, unfortunately, not rare. But such extensive serial violations are much less common," the OFCCP said in a statement.

Responding to a request for comment on the latest litigation, Tyson said in a statement that its officials have denied the claims, stating that there were legitimate, nondiscriminatory reasons for not hiring the applicants.

"We believe this was really about documentation, not discrimination," Ken Kimbro, Tyson Foods senior vp and chief human resources officer, said in a statement. "The OFCCP's charges were strictly based on a statistical analysis of job applications at the plant, not on complaints by any applicants, the types of jobs involved or the applicants' qualifications."

"We remain committed to treating all job applicants fairly," he said. "Tyson has a very diverse workforce and strict policies prohibiting discrimination in the workplace. We also communicate our position against discrimination through our core values and team member bill of rights.

"It's our policy to provide a work environment free of unlawful harassment and discrimination," Mr. Kimbro said. "This position is also reinforced by the company's code of conduct, which all our people are required to follow."

> 'We believe this was really about documentation, not discrimination.'
>
> Ken Kimbro, Tyson Foods

Tyson also said that since the OFCCP audits, it has put procedures in place to ensure it retains documentation to support its hiring decisions. The company said it also routinely audits its hiring practices to ensure there is not any disparity among female or minority job applicants.

Tyson said the Joslin and Waterloo plants each employ 2,400 people, while the Denison plant has a staff of 380. During the audit periods covered by the OFCCP reviews, minorities represented 52% of the combined workforce at the four plants, while women represented 31%, according to Tyson.

Tyson also said that nearly 400 of the 1,650 female applicants who did not initially receive Tyson job offers were hired subsequently by the company before the OFCCP complaints were filed, and the OFCCP is giving the company credit for these hires.

Patrick Nooren, a partner with Folsom, Calif.-based Biddle Consulting Group Inc., said the OFCCP has been "incredibly aggressive lately." OFCCP Director Patricia A. Shiu has "made it very clear" that the OFCCP is "first and foremost an enforcement agency," he said.

The OFCCP's involvement with the DOL's solicitor general's office is "stronger in the current administration than it's ever been in the past," said Debra Milstein Gardner, president of Owings Mills, Md.-based Workplace Dynamics L.L.P. Previously, the agency may have settled sooner or the OFCCP may not have pursued companies legally, she said.

Neil Dickinson, managing partner at Mount Pleasant, N.C.-based consultant HudsonMann Inc., said it is important that firms have good documentation to support their employment decisions. Many times, the absence of documentation leads to "an assumption of guilt," he said.

RIMS: Making a common ERM error?

CONTINUED FROM PAGE 4

the "ability to admit we don't know it all."

In another session, John Ebsary, director, enterprise risk management at Canada Mortgage & Housing Corp. in Ottawa, said crafting and implementing a risk appetite statement is a critical component of an ERM program. Top management should approve such a statement, which provides specifics about levels of risk that are acceptable.

A risk appetite statement provides clear indications of what risks must be mitigated or eliminated, and can be useful in an organization's strategic planning, he said. A risk manager can initiate the process by surveying the board and senior management for quantitative and qualitative descriptions of what the organization's risk appetite should be, Mr. Ebsary said.

Factors shaping the statement might include key business drivers, strategic plans and goals, significant risks, stakeholder expectations, and the senior management's or board's focus.

"Every organization's risk appetite statement will be unique," Mr. Ebsary said.

The board should approve the statement as part of the organization's ERM policy, Mr. Ebsary said. "You should reapprove it every year just to be comfortable with it," he said. "But it shouldn't have to change constantly."

Reform: Awaiting rules

CONTINUED FROM PAGE 1

Council in Washington.

And it's possible—depending on how regulators interpret a murky provision of the law imposing a $2,000 per-employee penalty on employers that do not offer coverage—that the penalty only would be imposed if coverage is not extended to employees.

"Our reading of the statute is that employers are required to offer coverage only to full-time employees," consultant Aon Hewitt Inc. wrote in a letter to the IRS.

Some say, though, that the law is not clear on that point and cries out for clarification. The law says penalties apply for employers that do not offer coverage to their full-time employees, but puts parentheses around the succeeding words "and their dependents."

While the law's wording is not a "model of clarity" and is open to "multiple interpretations, we believe the best reading of the language is that an employer would not be liable for the penalty…so long as any full-time employee is offered either self-only coverage or coverage that includes 'their dependents,'" the American Benefits Council said in its letter to the IRS.

"What the parentheses mean is the million-dollar question," said Gretchen Young, senior vp-health care policy with the ERISA Industry Committee in Washington.

Others say it will take the IRS to resolve the issue.

"What do the parentheses mean? Why did lawmakers decide to put the words 'and their dependents' in parentheses? Like so many provisions in the law, we will not know for sure until there is official guidance," said Amy Bergner, a partner with Mercer L.L.C. in Washington.

Just because the health care reform law affordability penalties may not apply to dependent coverage or—depending on future guidance—whether penalties only are imposed when employee-only coverage is offered, does not automatically open the door for employers to dramatically increase employee premium contributions for dependent coverage or drop the coverage.

"You can't view this in a vacuum. There are other elements to consider" such as competition, said Andy Anderson, a partner with law firm Morgan, Lewis & Bockius L.L.P. in Chicago.

"Employees expect this coverage to be offered," said Michael Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York.

If an employer shifted the entire cost of dependent coverage to employees, dependents would not be eligible for federal premium subsidies so long as employee or self-only coverage premium contributions met the affordability test, the IRS said in regulations it proposed in August largely relating to insurance exchanges.

However, experts interpret the rules as allowing dependents in families whose incomes are below certain levels set by the reform law to receive the premium subsidies if they are not eligible for employer-provided coverage.

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Fracking: Lawsuits build up

CONTINUED FROM PAGE 1

ments, sources say, and insurers have yet to pay claims directly related to fracking. Still, lawsuits are being filed by plaintiffs alleging pollution or attempting to stop fracking activities citing potential environmental damage.

Even without large judgments, defendants are racking up huge defense costs, sources say, which has prompted development of at least one specialty insurance product to ensure that such expenses are covered.

There also are concerns that fracking exposures will expand to include directors and officers and others connected to the projects.

Fracking has become popular as large reserves of natural gas in the United States are increasingly tapped to provide fuel. Drilling has increased as technology has improved, sources say, and rising prices for crude oil and imported natural gas make the domestic source even more attractive.

As fracking activity has picked up, so has litigation.

"Litigation is heating up," said plaintiff attorney Marc J. Bern, a senior partner at Napoli Bern Ripka Shkolnik L.L.P. in New York. "Clearly a component of that is the fracking, but that is not the only risk to the environment."

There also is a risk of failed well casings, chemical spills above ground, negligent use of drilling equipment and other actions that can harm individuals and the environment during drilling, Mr. Bern said.

"The fact that the risk is real can be seen in efforts that plaintiffs attorneys have put in to forming groups and websites seeking regulatory relief," said Laura Foggan, a partner with law firm Wiley Rein L.L.P. in Washington. "There is so much activity that we know the landscape is primed for litigation."

Gregory S. Hoffnagle, an associate with Edwards Angell Palmer & Dodge L.L.P. in New York, said fracking is spawning exposures beyond pollution.

"We are now seeing different types of risks starting to develop," he said. Directors and officers, for example, could become targets of claims if things go bad on a drilling site and shareholders or investors feel proper due diligence was ignored or too much risk was undertaken, he said.

Mr. Hoffnagle said in a report he recently completed on hydrofracking that Houston-based Cabot Oil & Gas Corp. has been named in several groundwater contamination suits related to its fracking operations in Pennsylvania and could face shareholder derivative suits as a result.

The likelihood of a D&O claim related to a fracking incident probably would boil down to the size of the loss, said John Keely, managing director and global upstream sector leader in the Houston office of Aon Risk Solutions' energy practice. Problems at a single well might not cause damage that is significant enough to trigger an action against directors and officers, he said, although such a sizeable loss cannot be completely ruled out.

He said that even though there have been no significant claims paid in fracking cases, defendants are spending millions of dollars to defend themselves in court against pollution allegations.

Aon has worked with an insurer to develop coverage that specifically covers a well operator's defense costs in a case that alleges damage from fracking activities, Mr. Keely said.

And, if a case proves that pollution occurred because of fracking, the policy will respond whether the contamination is sudden and accidental or gradual, and includes the fluids used in fracking as covered contaminants, he said.

Contractors, suppliers, site operators and others taking part in a fracking operation should make sure they have coverage that would respond to pollution claims, Ms. Foggan said.

Some sources say the risk is well-managed—as evidenced by the lack of claims—and drilling operators are being unfairly maligned.

"Fracking has been going on for 50 years," said Brian T. Petty, executive vp of government affairs at the International Assn. of Drilling Contractors in Washington.

"Fracking takes place thousands of feet below the water table," Mr. Petty said. "The wastewater that comes up is contained and reprocessed; it doesn't go into the streams or rivers and kill fish. People are making these claims without substantiation."

"A whole lot of noise from different environmental groups" claiming fracking has polluted drinking water "just hasn't been proven," Mr. Keely said.

It's a good idea for policyholders to sort out what coverage they have that might respond to contamination or other damage from fracking, sources said.

"Most oil and gas companies have pollution coverage, usually for sudden and accidental pollution," said Bertil Olsson, U.S. energy, mining and power practice leader with Marsh Inc. in Houston. "If there is groundwater contamination, that is probably not sudden and accidental, so they may not have coverage. They can buy environmental coverage for it, and some do."

Ms. Foggan said drilling contractors and well operators may find they have commercial general liability insurance that excludes pollution claims that could arise from conditions caused by fracking.

"I think we are talking about the need for specialty policies" in such cases, Ms. Foggan said.

In the case of a well blowout during a fracking operation, operators extra expense insurance would pay the cost of bringing the well under control, along with costs related to any pollution cleanup, Mr. Olsson said. While a CGL policy would not cover the cleanup, it would pay for third-party damages, he said.

"Property is usually less of an issue" because, apart from the well equipment, there "usually is not a lot of property at the site," he said.

Property exposures are well-defined, said Craig Sutton, senior vp, marine, energy and engineering at Liberty International Underwriters in Dallas.

"Fracking is an integral part of onshore drilling" and has been for decades, he said. As with other drilling operations, equipment and structures used in the process are covered for damage that results from an accident at the site, he said.

Energy companies fight back in battle over hydrofracking

WASHINGTON—Energy companies are battling the backlash over fracking with advertising and public relations efforts touting the clean image of the controversial drilling practice as they expand their efforts to extract natural gas and other energy sources from shale.

An outcry over fracking has erupted as some environmentalists and property owners have sued and demanded regulations that would halt the process over fears that it could contaminate groundwater or cause other environmental problems.

In response to what they feel are erroneous claims, energy companies are fighting back.

"We have a campaign to push back whenever we see nonsense or lies," said Brian Petty, executive vp of government affairs at the International Assn. of Drilling Contractors in Washington.

A consortium of energy trade associations formed Energy in Depth, a Web-based resource at *www.energyindepth.org* that aims to debunk what it sees as erroneous claims about fracking.

"If there is one thing that ties together opponents of responsible energy development, it's the liberal use of exaggeration," EID says in one online response to an anti-fracking group.

In a separate effort, the American Petroleum Institute has hired a firm to develop an ad campaign for the API's Energy from Shale initiative, which promotes the benefits of extracting energy resources from fracking. Advertising Age, a sister publication of *Business Insurance*, reported the size of the campaign at about $20 million.

Exxon Mobil Corp. also has been running a television ad campaign promoting the safety of fracking and the need for natural gas.

—By Michael Bradford

Aon Hewitt: CEOs' plans

CONTINUED FROM PAGE 4

employees, which previously was a risk client of Aon and a Hewitt outsourcing client. The client is expanding strategically outside the Unites States in a big way. They expect to double the size of the company in short order. We sat down with them for three hours to help them craft how they could expand the business with manageable risk and cover that risk. We helped them with their talent strategy, how to attract and retain people for that business expansion. We helped them with their pension and health care plan design. We also looked at how they could scale up their HR operations including their benefits operations and delivery, of which we are a piece. That would not have been possible with either company before the merger.

How have the total number of clients changed? Have you lost clients?

MS. SAVACOOL: The two firms have more clients than the two firms had individually. At the same time, client satisfaction went up significantly. Not only did we retain clients, but the level of satisfaction grew materially.

MR. DAIL: Because of the combined capabilities that we have, we are able to develop solutions to meet a broader range of our clients' needs. It is not that we just have more clients than the two separate firms had, but it means we are consulting on a broader range of topics for clients.

We have a client where we are going to serve them on a topic in 100 countries around the world. Previously, each firm might have gotten part of the work, but they would not have gotten everything. The power of the combination allows us to do that.

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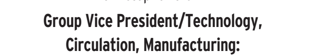

News In Brief

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safety," Judge Theodore Jones Jr. wrote for the majority.

5.4% rise expected in health plan costs

Employers project that their group health care plan costs will increase an average of 5.4% in 2012, a somewhat smaller increase compared with recent years, according to a Mercer L.L.C. survey. That compares with previous Mercer surveys that showed a 6.9% average cost increase in 2010, 5.5% in 2009 and 6.3% in 2008.

Investment returns affect workers comp premiums

Increases in workers compensation premiums are linked to lower insurer investment returns rather than to rising claims costs, conclude researchers from the University of California, Davis. The researchers examined employer costs and benefits paid to workers as well as medical provider expenses from 1973 through 2007. The researchers then compared that information with the Dow Jones Industrial Average and Treasury bond interest rates.

Noted

Torus Insurance Holdings Ltd. has acquired Lloyd's of London syndicate 1301 and its corporate members Broadgate Underwriting Ltd. and Broadgate Underwriting 2010 Ltd. from Clal Insurance Enterprises Holdings Ltd....Jorge Luzzi, group risk management director for Pirelli S.p.A.'s worldwide operations, has been elected the next president of the **Federation of European Risk Management Assns....Ryan Specialty Group L.L.C.** has completed its acquisition of Lloyd's of London insurer Jubilee Group Holdings Ltd....Insured losses from Typhoon Roke could reach $600 million, according to catastrophe modeler **AIR Worldwide Corp....Montpelier Re Holdings Ltd.** has agreed to sell its U.S. excess and surplus lines insurance business to Selective Insurance Group Inc. for about $55 million cash.

Major points in class action decision

Major points in the 9th U.S. Circuit Court of Appeal's ruling in *Shirley "Rae" Ellis et al. vs. Costco Wholesale Corp.*, which overturned a lower court ruling granting class certification to plaintiffs, included:

■ The district court "abused its discretion by applying the wrong legal standards" in determining whether there were questions of law common to the class and whether the representative parties' claims were typical of the class as a whole. The issues were remanded to the district court.

■ The 9th Circuit vacated the district court's certification of the class under Rule 23(b)(2) of the Federal Rules of Civil Procedure, which primarily is limited to classes seeking injunctive relief. It said the district court must consider certifying the class under Rule 23(b)(3), which is not limited to injunctive relief, but is a tougher standard, because plaintiffs must prove that class issues predominate in the case and that class action is the superior way of handling it.

■ The 9th Circuit ruled that plaintiff Elaine Sasaki, a current employee, is an adequate class representative as a current employee who continues to be denied promotion. But it said two plaintiffs who have left the company—Ms. Ellis and Leah Horstman—were not, because they had no incentive to pursue injunctive relief. The issue in their case was remanded.

—By Judy Greenwald

Costco: *Wal-Mart* having impact

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trict court to apply the principles set by the Supreme Court.

Not just from an employment law perspective, but from "a class action standpoint, it's an interesting and potentially significant case as the lower courts try to flesh out and apply what the Supreme Court tried to do," said Sean P. Wajert, a partner with Dechert L.L.P. in Philadelphia.

The plaintiffs accused Issaquah, Wash.-based Costco of promotional practices that discriminated against women. The district court issued its decision in the case in 2007, before the Supreme Court ruled in *Wal-Mart*.

"This complicated case requires us to consider a number of issues relating to class verification," the three-judge 9th Circuit panel said in its unanimous Sept. 16 ruling. "Several of these issues have recently been clarified by the Supreme Court's decision" in *Wal-Mart*.

Under Rule 23(a) of the Federal Rules of Civil Procedure, standards that are required for cases to become certified as class actions include whether there are questions of law common to the class, and whether the claims of the representative parties are typical of the class as a whole.

In its ruling in *Ellis*, the appeals court said the district court "abused its discretion by applying the wrong legal standard in its analyses of commonality and typicality" under Rule 23(a). "Accordingly, we vacate the district court's findings on those issues and remand for application of the correct standard," it ruled (see related story).

"The most significant takeaway is that the Wal-Mart decision is going to make it very difficult of for nationwide class actions in employment law to proceed," said D. Gregory Valenza, a partner with San Francisco-based Shaw Valenza L.L.P. "It's quite clear that the nationwide promotion practices of Costco are not going to be able to be litigated in a single class action."

Anthony J. Oncidi, a partner with Proskauer Rose L.L.P. in Los Angeles, said he was pleased "that the 9th Circuit heard the Supreme Court loud and clear and applied across the board the most important aspects of the Wal-Mart decision in the similarly situated Costco litigation, so we now have an important holding from the 9th Circuit" on the issues of typicality and commonality in class action suits.

"It's comforting to see that the 9th Circuit does accept that the Supreme Court has fundamentally changed the analysis that the district courts have to go through in California in the 9th Circuit," said Marcia E. Goodman, a partner with Mayer Brown L.L.P. in Chicago.

However, Rae T. Vann, general counsel for the Washington-based Equal Employment Advisory Council, which submitted an amicus brief on behalf of Costco, said she is "somewhat disappointed" by the decision.

"I still think that the case should have been decertified altogether. I don't see how the *Costco* plaintiffs can establish common issues of fact or law that are subject to single, class-wide remedy, which is now the standard post-*Dukes*," she said.

However, "I think it's good that the court clearly now has directed the district court to conduct the type of rigorous analysis that's always been called for, within the parameters set by the Supreme Court," Ms. Vann said.

While his overall reaction is positive, Gregory V. Mersol, a partner with Baker & Hostetler L.L.P. in Cleveland, said the downside is "they remanded the case to the trial court for a second bite at the apple."

Brad Seligman, executive director of the Berkeley, Calif.,-based Impact Fund, represented the *Ellis* and *Wal-Mart* plaintiffs. The plaintiffs knew that *Ellis* would have to be reconsidered "because the (Supreme Court) changed the rules" and asked that the case be remanded "for consideration in light of *Dukes*." He said he is "quite confident" that *Ellis* will meet the standards needed to establish a class action.

However, Costco attorney Gerald L. Maatman Jr., a partner with Seyfarth Shaw L.L.P. in Chicago, said, "Plaintiffs' theory met with a horrendous loss at the 9th Circuit." While the 9th Circuit had no choice but remand the case, the Supreme Court's guidelines in Wal-Mart "essentially doom any chances the plaintiffs would have of moving forward on the theories both as to the facts and as to the new legal standards," he said.

Climate: No duty to defend

CONTINUED FROM PAGE 3

Mr. Pateidl said.

Several utility companies that Lockton represents are reviewing their exposures related to global warming and climate change to determine if an environmental liability product would protect their operations, he said.

"To date, no carrier that I've discussed with is looking at a greenhouse gas exclusion on their environmental policy," he said.

Policyholders with potential climate change-related liabilities should expect this ruling to have a significant impact on the way they secure coverage for this exposure, said John Nevius, shareholder at Anderson Kill & Olick P.C. in New York and chair of the firm's environmental law group.

"Climate change is on a lot of people's minds from the standpoint of business interruption, defending against lawsuits, and potential directors and officers liability involving business decisions," he said.

"It puts risk managers in a difficult position because no one can tell us yet whether climate change is going to be the next tobacco, asbestos or millennium bug," Mr. Nevius said

"I've spoken to some brokers who say that under certain existing pollution legal liability policy forms, there should be coverage for global warming-related litigation," Mr. Nevius said. "I know for a fact that some of the defendants in these recent global warming cases…are getting a defense now."

He said insurers are likely to cite the Virginia ruling in asserting that there is no duty to defend similar claims.

"Coverage for environmental liabilities has always been a controversial area rife with litigation. This decision is only the first round in what likely will be a long fight over policyholder rights," Mr. Nevius said.

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End Page

Contributing: Matt Dunning, Judy Greenwald, Mike Tsikoudakis, Joanne Wojcik

Stripped-down worker loses privacy case

A fast food worker who volunteered to take off her clothes to prove she had not stolen money cannot sue for invasion of privacy, says an Ohio court.

According to last week's decision by the appellate court in Columbus, Ohio, in *Kathleen Turner vs. Shahed Enterprises*, Ms. Turner, who had prior drug-related convictions, was hired at a Popeye's restaurant in Columbus in late May 2007 after she passed a drug test.

According to the ruling, $50 went missing on June 17, 2007, from the manager's desk at the restaurant, and one of the workers told assistant manager Tierra Scales that he had seen Ms. Turner take the money and put it in her pants.

When Ms. Scales approached Ms. Turner with this information, Ms. Turner offered to undress to prove she did not have the money. Ms. Scales took Ms. Turner into the restroom, where she undressed, and no money was found.

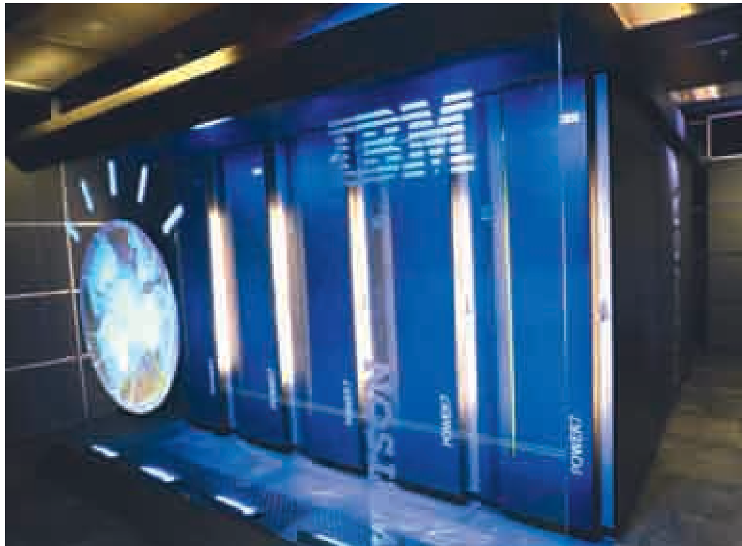
"Later that day, the missing money was found behind a microwave in the food prep area," said the ruling. Ms. Turner "and one other employee were working in the food prep area when the money went missing. However, all other employees had access to the food prep area."

The next day, Ms. Turner was told she was terminated, said the ruling, which said the franchise owner, Hasan Shahed, fired her because he believed she had been involved in the attempted theft.

Ms. Turner sued for invasion of privacy and disability discrimination. A lower court granted the restaurant summary judgment dismissing the case.

The appellate court ruled against Ms. Turner on the privacy issue, saying, "Based upon the undisputed evidence," Ms. Turner "voluntarily undressed in front of an assistant manager, while in a private bathroom, in order to show she did not have the missing money on her person. Nobody asked her to undress."

Rather, Ms. Turner "was instructed that she did not have to undress, and she insisted in an attempt to exonerate herself. The expectation of privacy appellant now seeks to protect was lost when she undressed on her own volition," said the court, which also upheld the lower court's ruling that she could not sue for disability discrimination.



AP PHOTO

WellPoint Inc. plans to integrate IBM Corp.'s supercomputer Watson into its patient databases.

WellPoint to use Watson's wits

Playtime is over for the IBM Corp. supercomputer system known as Watson.

After Watson proved its mental might on "Jeopardy"—besting two of the show's most successful contestants—Indianapolis-based WellPoint Inc. this month said it plans to integrate the hyperintuitive computer system into its existing patient databases.

The intent is to improve medical care by delivering up-to-date, evidence-based diagnostics and treatment solutions, the companies said in a statement.

"Imagine having the ability to take in all the information around a patient's medical care—symptoms, findings, patient interviews and diagnostic studies. Then, imagine using Watson's analytic capabilities to consider all of the prior cases, the state-of-the-art clinical knowledge in the medical literature and clinical best practices to help a physician advance a diagnosis and guide a course of treatment," Dr. Sam Nussbaum, WellPoint's chief medical officer, said in the Sept. 12 statement.

Named for IBM founder Thomas J. Watson, Watson's computing system was designed to mimic a human's ability to answer questions posed in natural language—accounting for meaning and context as well as factual information—with speed, accuracy and confidence.

"With medical information doubling every five years and health care costs increasing, Watson has tremendous potential for applications that improve the efficiency of care and reduce wait times for diagnosis and treatment," Manoj Saxena, general manager of Watson Solutions, IBM Software Group, said in the statement.

WellPoint anticipates integrating the Watson technology early next year.

Oprah's buddy singled out by matchmaker

A world-renowned professional matchmaker is suing one of Oprah Winfrey's gal pals for breach of contract after she failed to deliver on her promise of securing her a spot on Oprah's talk show before it went off the air.

The promise was an "oral contract" that Orly Hadida, a.k.a. "Orly the Matchmaker," allegedly entered into with Gayle King as payment for Ms. Hadida providing introductions to "at least five...attractive, fit and wealthy men" over a two-year period.

Ms. Hadida, whose matchmaking service caters to an exclusively wealthy clientele, normally charges $500,000 or more for her services, according to the lawsuit, which was filed Sept. 20 in Los Angeles Superior Court.

In fact, the suit asserts that the work Ms. Hadida performed for Ms. King actually exceeded one of her packages labeled Orly's Celebrity of Fortune 500 Search, in which clients receive a two-year membership to introductions to the "most sought-after bachelors in the world," as well as access to two other programs: Orly's Multi-Millionaire U.S.A. Search and Orly's High-Profile Billionaire Worldwide Search.

Altogether, Ms. Hadida said she spent "hundreds of hours" finding men to introduce to Ms. King, organizing dates, providing advice and counsel by telephone and following up with conversations after each introduction with Ms. King and the men she met. For one of the introductions, Ms. Hadida said she flew from Los Angeles to New York to interview a man she eventually introduced to Ms. King.

Ms. Hadida claims Ms. King owes her $500,000 because she did not arrange for her to appear on "The Oprah Winfrey Show" before it ended in May.

But perhaps Ms. King is reneging on her quid pro quo for another reason. Ms. King apparently is still single despite this extensive—and expensive—search process.

AP PHOTO

Ms. King

AP PHOTO

In a game against the Cleveland Indians on Sept. 14, Josh Hamilton hit a fourth-inning grand slam and triggered the Grand Slam Payout promotion.

HAMILTON'S $500,000 GRAND SLAM

A Texas flooring company estimates it will pay out about a half-million dollars after losing a bet against a Major League Baseball slugger who hit a grand slam.

Steve Fitzgerald, owner of CC Carpet Flooring & Design Center in Dallas, estimates his company will pay more than $500,000 to customers after its Grand Slam Payout promotion, according to news reports.

The deal was simple: Anyone who purchased flooring or countertops in September would get a full refund if Texas Rangers outfielder Josh Hamilton hits a grand slam by Sept. 28.

In a game against the Cleveland Indians on Sept. 14, Mr. Hamilton hit a fourth-inning grand slam and triggered the promotion, according to news reports.

Shortly after Mr. Hamilton's hit, CC Carpet's website overloaded and was down for a period of time, reports said.

"My IT guy is working on it," Mr. Fitzgerald said in news reports. "We're so excited. We only wish he had done it right at the end of the promotion so we could have saved folks even more money."

Luckily, Mr. Fitzgerald's company purchased an insurance policy for the promotion, according to reports.

While the promotion cost Mr. Fitzgerald in terms of premium and deductible, the amounts of which were not immediately disclosed, the promotion created awareness for his company.

"Maybe the next time we do something, people will think twice and do it," Mr. Fitzgerald said in news reports. "I knew he'd do it. I told a buddy when he came up with the bases loaded that he was going to do it then. It was exciting."

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