

SEVERAL BENEFITS MEASURES GET CONGRESSIONAL APPROVAL IN LATEST SESSION / PAGE 3

FEMA, LOUISIANA OFFICIALS AGREE ON RULES FOR AID TO PUBLIC ENTITIES / PAGE 3

WELLS FARGO TO PROCEED WITH WACHOVIA PURCHASE; BROKER UNIT TO GROW / PAGE 3

In Brief

Xchanging to acquire Cambridge Solutions

U.K. outsourcing group Xchanging P.L.C. plans to acquire India's Cambridge Solutions Ltd. for \$147 million in stock and cash in a deal that is expected to produce combined revenues of \$1.2 billion, the company said. Bangalore, India-based Cambridge Solutions is the parent company of Greenwich, Conn.-based third-party administrator Cambridge Integrated Services Group Inc., where operations are expected to remain unchanged, the company said.

High Court won't review cash balance ruling

The U.S. Supreme Court last week declined to review a federal appeals court ruling that cash balance pension plans do not discriminate against older employees. Without comment, the justices let stand an August

See **IN BRIEF** page 33

BENEFITS MANAGEMENT

INTEGRATED BENEFITS AND DISABILITY

More employers interested in integrating their disability and health management efforts; aging workforce complicates companies' disability programs; litigation targets insurers' Social Security 'offsets.' **Page 13**

Investment woes widen for insurers

More companies reveal big credit market losses

By **DOUGLAS McLEOD**

NEW YORK—Credit market turmoil spread to more insurers last week as several companies warned of expected large investment losses for the third quarter and some moved to raise capital.

Life insurers, including the life operations of Hartford Financial Services Inc., were hit the hardest, though XL Capital Ltd. also said it will book up to \$1.2 billion in investment losses for the quarter (see story, page 32).

The losses stem from insurers' holdings of mortgage- and asset-backed securities as well as investments in such "failed or bailed" companies as Lehman Bros. Inc., American International Group Inc., Washington Mutual Inc. and mortgage giants Fannie Mae and Freddie Mac.

Hartford said last week that it will report about \$2.2 billion in realized investment losses and simultane-

ously said it would receive a \$2.5 billion capital infusion from Allianz S.E. of Munich, Germany. The deal sparked speculation that Allianz might eventually acquire Hartford, though terms of the agreement bar Allianz from buying more than a 25% stake in Hartford for 10 years.

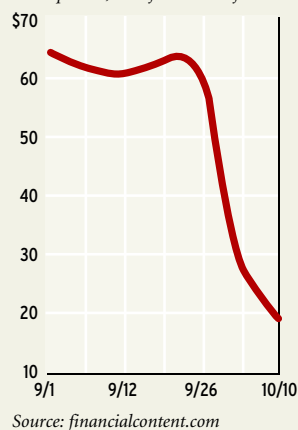
Several life insurers, meanwhile, warned of sharply lower third-quarter earnings and disclosed sizable investment losses, including MetLife Inc., Prudential Financial Inc. and Lincoln National Corp. MetLife also raised \$2 billion in new capital through a stock offering last week.

Life insurers are being squeezed not only by mortgage-related and financial institution investments—which they own more of than property/casualty insurers—but also by the plummet-

See **HARTFORD** page 32

HARTFORD'S STOCK DIVES

Warning of investment losses in the third quarter, Hartford's stock fell.



Former AIG chiefs Robert Willumstad, left, and Martin Sullivan testified last week before House lawmakers

NYTIMES

Pressure builds on AIG

Borrowing spree grows, as does federal scrutiny

By **MARK A. HOFMANN**

WASHINGTON—American International Group Inc. came under increasing pressure last week, when it was forced to answer questions before Congress and to seek additional federal funds to prop up its ailing finances.

The new \$37.8 billion credit agreement, which AIG obtained last Wednesday, takes its total available bailout funding to \$122.8 billion, of which it had already borrowed \$70.3 billion late last week.

In addition to grappling with its financial problems, the New York-

based insurer faced scathing criticism of its business practices, including a more than \$400,000 event at a luxury resort that it staged shortly after winning its initial government bailout.

The hearing by House Committee on Oversight and Government Reform, which included testimony from former AIG executives, was held to investigate how AIG's problems arose, who was to blame and how the problems should be addressed, said a committee spokeswoman.

See **AIG** page 31

Financial crisis, cat losses fail to move rates

Soft market for P/C risks expected to last through year-end as insurer capital remains strong

By **COLLEEN MCCARTHY**

NEW YORK—The soft market for commercial property/casualty insurance won't be ending anytime

soon, despite the widening financial crisis, increased catastrophe losses and deteriorating underwriting results, experts say.

While current conditions may

slow the rate of price declines, most rates will remain relatively unchanged through the end of the year, they say.

Only in pockets where American International Group Inc. covers harder-to-place risks, in which a few other insurers have expressed interest in competing, might there be a firmer resistance to rate cuts, market sources say.

The various factors affecting the insurance market "are a concern, but we don't think they will turn the market in a major way, and we don't expect prices to go up in the

short term," said Mark Lane, an analyst with William Blair & Co. in Chicago.

Recent renewal negotiations showed rate reductions in the 7% to 10% range, brokers say.

"Everyone would like to think the market is firming, but there is absolutely no evidence of it," said Martin P. Hughes,

chairman and chief executive officer of Hub International Ltd. in Chicago. "It may just be wishful thinking," he said.

See **MARKETS** page 33

PENSIONS: The huge drop in asset values will likely threaten the funded status of some defined benefit plans. **Page 32**

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On the Web

BI VIDEO

Two additions to Issues in Risk Management

In the latest Issues in Risk Management video segment, "Staying Current," a trio of leading risk managers discusses how they keep their knowledge current and build the skills they need to manage risks effectively. Also in the Issues in Risk Management series, leading Canadian risk managers discuss the challenges they and their organizations face in "Risks in Canada." Access both at www.BusinessInsurance.com/video.

BI AUDIO

Listen to expanded Mitchell interview online

Business Insurance adds to its series of in-depth interviews of industry leaders with a Q & A with Hilary Mitchell, director of direct delivery employee medical service operations at Pitney Bowes Inc. An expanded version of Ms. Mitchell's Page 16 interview is available online at www.BusinessInsurance.com/audio.

BI KNOWLEDGE CENTER

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At the *Business Insurance* Knowledge Center, you can find a collection of contributed content, from Perspective articles by industry experts to sponsored content, such as white papers. There is also a section of court filings and public documents. Go to www.BusinessInsurance.com/knowledgecenter.

THIS WEEK IN BI

Podcast takes you behind the BI headlines

"This Week in *Business Insurance*" is a weekly podcast that reviews the headlines in each new issue of *Business Insurance* and interviews reporters for insights to the top stories of the week. Listen at www.BusinessInsurance.com/thisweek or subscribe to this free podcast on iTunes.

Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

Business Insurance (ISSN 0007-6864) Vol. 42, No. 41, is published weekly by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to *Business Insurance* Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912. \$5 a copy and \$97 a year in the U.S. \$130 in Canada and Mexico (includes GST). All other countries, \$230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in U.S.A. Copyright © 2008 by Crain Communications Inc.

Congressional session sees benefits bills pass

Mental health parity, bills to help reservists among key successes

By JERRY GEISEL

WASHINGTON—The passage of mental health care benefits parity legislation earlier this month came at the end of a congressional session that defied early predictions of gridlock on benefit issues.

While enactment of the parity legislation crowned Congress' achievements on the benefits front, the parity measure was just one of several benefit proposals enacted during the 110th Congress.

Other benefit measures receiving congressional approval included: expanding Family and Medical

Leave Act benefits for military families; allowing reservists to cash-out flexible spending accounts balances; exempting activated reservists from the 10% penalty tax that applies on most pre-retirement distributions taken from defined contribution plans; and allowing ill college students to retain their parents' health insurance coverage while on a leave of absence from their academic institutions.

Many other benefit proposals failed, but few employers regretted the demise of some of them, including a House-passed bill that would have required health savings account administrators to substantiate what HSA distributions were being used for. Such a change, experts said, that would have



AP PHOTOS

Congress acted on a variety of legislation relating to employee benefits in the run-up to its fall break before the general election. Among the major pieces enacted was mental health care benefits parity.

See **CONGRESS** page 30

FEMA, Louisiana officials strike disaster aid deal

Public entities stand to get less help than hoped

By DAVE LENCKUS

BATON ROUGE, La.—Louisiana insurance regulators and federal officials have reached an agreement under which public entities that sustain damage in multiple national disasters could obtain federal aid to cover some uninsured damage in every loss, according to state officials.

But the agreement reached last week on a Louisiana Insurance Department program designed to maximize federal assistance after national disasters guarantees less assistance than state officials had anticipated and had been assured by a senior official of the Federal Emergency Management Agency.

The Louisiana Insurance Department created its unique program—which is allowed by the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act—last year after FEMA announced it would follow that law more strictly and, therefore, reduce aid to public entities beset by multiple disasters of the same nature. FEMA then retracted its plan last year but reinstated it this year with minor changes.

Public entity broker Nancy Sylvester said the continual changes in the amount of FEMA aid that public entities can expect after a disaster is "upsetting."

Every time the issue arises, "there's a new change" that puts public entity risk managers "in a box," complained Ms. Sylvester, a Baton Rouge, La.-based managing director in the Public Entity &

Scholastic Division at Gallagher Risk Management Services Inc., a unit of Arthur J. Gallagher & Co.

Under FEMA's retooled financial assistance plan, any public entity that seeks first-time federal aid to cover uninsured losses after a national disaster first must purchase adequate insurance to cover it against losses in future disasters of the same nature.

If the public entity later sustains damage to the same properties in a similar disaster, it would be eligible for federal assistance only to the extent that the entity's insurance deductible for the second loss exceeds the entity's total damage in the first disaster (*BI*, Aug. 4).

But for some perils, such as flood, wind and earthquake, many public entity risk managers have trouble finding affordable coverage, and the coverage typically carries high deductibles, brokers say.

Under Louisiana's program, public entities that cannot find enough insurance to meet FEMA's coverage requirements can apply for a waiver.

The Insurance Department will certify that a public entity is eligible for the waiver if the entity can show it has spent a department-prescribed percentage of its budget on insurance and still has not met FEMA's requirements.

But under the agreement reached last week, public entities that obtain the state certification would be eligible for only partial FEMA aid in a subsequent disaster. FEMA would reduce its aid to cover uninsured damage by the amount of the insur-

PARTIAL

AID for national disasters is all that Louisiana's public entities can expect from FEMA, under a new agreement reached with the federal agency.

See **FEMA** page 6

Wells Fargo, Wachovia to proceed with merger

Combined brokerage could rise in rankings

By JEFF CASALE

SAN FRANCISCO—Wells Fargo & Co.'s merger with Wachovia Corp. is moving forward after fellow suitor Citigroup Inc. pulled out of negotiations, but the ultimate cost of the deal remains unclear because of a legal threat from Citigroup.

After a week of stalemates, which included two litigation standstills among the three parties, San Francisco-based Wells Fargo and Charlotte, N.C.-based Wachovia are proceeding with their merger. The deal, initially announced between Wells Fargo and Wachovia Oct. 3, will combine the two company's various operations, including their insurance brokerage units.

The roughly \$12 billion, all-stock deal could make Wells Fargo Insurance Services the world's fourth-largest insurance broker, with more than \$1.7 billion in 2007 brokerage revenues, based on *Business Insurance*'s latest ranking. The current No. 4, Arthur J. Gallagher & Co., had \$1.46 billion in 2007 brokerage revenues.

Wells Fargo Insurance Services currently is the world's fifth-largest brokerage, based on 2007 brokerage revenues of \$1.28 billion, according to *BI*'s ranking. Wachovia Insurance Services—now the 12th-largest broker of U.S. business—recorded brokerage revenues of \$422.5 in 2007.

Analysts previously said the deal would expand Wells Fargo Insurance Services' footprint (*BI*, Oct. 6). Citigroup had preliminarily agreed to purchase Wachovia banking assets for \$2.2 billion prior to Wells Fargo's offer. But talks ended last week after significant differences in the parties' transaction

structures and their views of the risks involved made it impossible to reach an agreement, New York-based Citigroup said in a statement.

Details of the transaction include Wells Fargo acquiring all of Wachovia and its businesses and obligations, including its preferred equity and indebtedness, and all its banking deposits. The two companies have a firm, binding merger agreement that Wells Fargo's Chairman Dick Kovacevich said a statement he was confident will be completed.

Still, Citigroup said it has strong legal claims against Wachovia and Wells Fargo as well as their officers, directors, advisors and others for breach of contract and for tortious interference with contract.

In a statement, Citigroup said it plans to pursue these damage claims in court but decided against seeking to block the Wells Fargo/Wachovia deal.

Citigroup filed its lawsuit in New York State Supreme Court and in U.S. District Court in Manhattan. On Friday, a U.S. judge said that it is possible that a hearing in the federal case may be heard today.

Citigroup is seeking as much as \$60 billion in damages, which includes \$20 billion in compensatory damages and \$40 billion in punitive damages. In its complaint, Citigroup states that Wachovia "agreed not to negotiate or enter into any competing acquisition agreement during the exclusivity period," which was negotiated on Sept. 29 and extended through Oct. 6.

A call seeking comment from Wachovia was not returned. Wells Fargo and Citigroup would not comment beyond their respective statements.

\$12B

ALL STOCK DEAL would give Wells Fargo a larger brokerage operation.

Supreme Court to hear risk management-related cases

Punitive damages, federal pre-emption among those on docket

By MARK A. HOFMANN

WASHINGTON—The U.S. Supreme Court opened its new term last week with relatively few risk management-related cases on its docket.

The docket in general “is a little light in blockbuster cases,” former U.S. Attorney General Richard Thornburgh noted in a Supreme Court preview at the Washington Legal Foundation last month. The handful of cases that involve risk management concerns touch on familiar issues—punitive damages, federal pre-emption of state tort

laws and employment rights cases.

Among cases the Supreme Court has agreed to hear, one involves Superfund liability. The case, *Shell Oil Co. vs. United States*, will be heard along with a similar case involving Burlington Northern Santa Fe Corp. and Union Pacific Corp. Both cases center on responsibility for cleaning up chemicals at a Superfund site in Arvin, Calif.

The oil company and railroads say they should not have to pay for the entire cleanup of chemicals leaking into the groundwater at a facility owned by the now-defunct Brown & Bryant Inc. The facility stored and distributed toxic chemicals, some of which had been delivered by Shell. The two railroads owned part of the land on which the facility stood.

State and federal authorities sued Shell, Burlington Northern and Union Pacific to recover cleanup costs, but a federal court ruled they could be held responsible only for their portion of liability. However, the 9th U.S. Circuit Court of Appeals last year ruled that the three could be held jointly and severally liable for the cleanup.

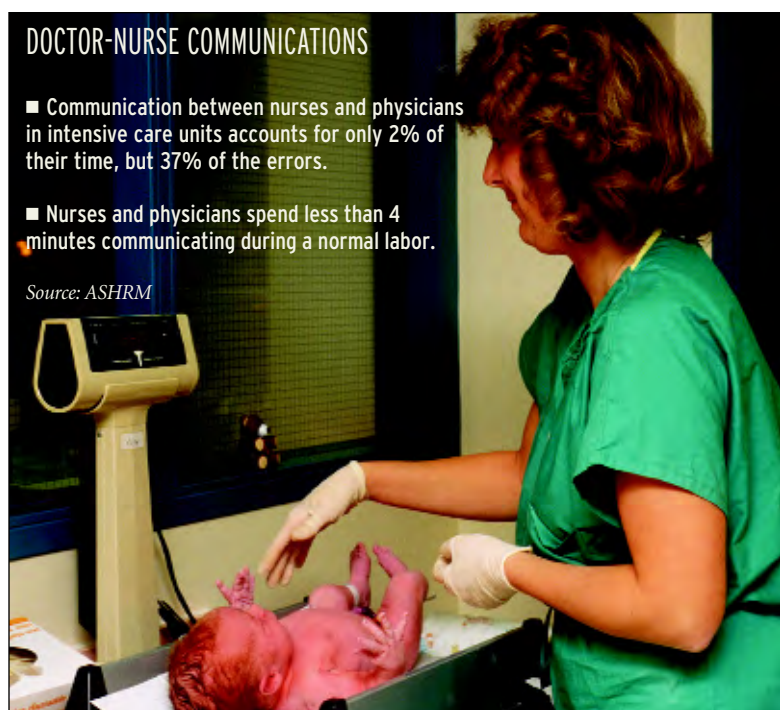
What may be this term’s biggest case in terms of risk management implications—*Philip Morris USA Inc. vs. Mayola Williams*—is slated to have its third hearing before the high court as justices on Dec. 3 again tackle the question, albeit indirectly, of when punitive damages are so disproportionate to compensatory damages that they

See **HIGH COURT** page 6



GETTY

A case before the Supreme Court centers on liability issues for cigarette makers and the relationship between punitive and compensatory damages.



NEWS.COM

DOCTOR-NURSE COMMUNICATIONS

■ Communication between nurses and physicians in intensive care units accounts for only 2% of their time, but 37% of the errors.

■ Nurses and physicians spend less than 4 minutes communicating during a normal labor.

Source: ASHRM

Expert calls for action to cut medical disputes

Doctor-nurse conflicts increase hospital risks

By ZACK PHILLIPS

Hospital risk managers should take steps to ensure that obstetric nurses do not feel obligated to follow physician instructions that are incorrect, says the author of a study of clinical conflict during labor and childbirth.

The online survey asked more than 100 obstetrics nurses in St. Louis about the five most common doctor-nurse conflicts during labor and childbirth. In four of the five scenarios, a majority of the nurses correctly identified the appropriate response—according to textbooks, professional associations and the consensus among nursing experts—but also said that in practice, they would not take that action. Three scenarios involved physician errors and two involved a doctor’s refusal to take certain actions.

Kathleen R. Simpson, a perinatal clinical nurse specialist at St. John’s Mercy Medical Center in St. Louis and a clinical professor at St. Louis University School of Nursing, presented the findings at the American Society for Healthcare Risk Management’s annual conference Oct. 2-5 in Boston. Audrey Lyndon, an assistant professor in the Family Health Care Nursing department at University of California, San Francisco, co-wrote the study.

Ms. Simpson said the results are important because lawsuits against hospitals often hold nurses to the standard of what a “reasonably prudent” nurse would do, but there is no published data indicating what specific actions such a nurse would take during common, clinical conflict scenarios. She said the respon-

See **DISPUTES** page 29

Ruling on arbitration favors Lloyd’s

Appeals panel rules workers comp dispute can be decided outside court

By JEFF CASALE

NEW ORLEANS—A 5th U.S. Circuit Court of Appeals ruling that treaties are not an “Act of Congress” within the meaning of the McCarran-Ferguson Act allows state laws to trump federal laws pertaining to international arbitration.

The impact of last month’s decision on arbitration agreements between insurers and reinsurers, however, is still unknown.

The case, *Safety National Casualty Corp. and Louisiana Safety Assn. of Timbermen-Self Insurers Fund vs. Certain Underwriters at Lloyd’s of London et al.*, began about six years ago. LSAT, a Louisiana workers compensation insurer, was reinsured by Lloyd’s

underwriters. A rift between the two companies arose when Lloyd’s refused to recognize LSAT’s assignment of rights to Safety National



under the reinsurance agreements, which prompted LSAT to sue Lloyd’s in U.S. District Court for the Middle District of Louisiana.

Lloyd’s moved to begin arbitration hearings, but that motion broke down when neither side could agree on an arbitration board. Fur-

ther, LSAT and Safety National argued that arbitration violates Louisiana state law.

The case was appealed after District Court Judge John V. Parker ruled that because of the McCarran-Ferguson Act, which allows state law to regulate the business of insurance without federal government interference, was not applicable. Judge Parker ruled that an international arbitration agreement—the Convention on Recognition and Enforcement of Foreign Arbitral Awards—and federal laws enforcing it, override Louisiana’s law against arbitration.

The question facing the 5th Circuit

See **ARBITRATION** page 10

Risk Manager of the Year 2009

New cooperation between RIMS and Business Insurance

Business Insurance is accepting nominations for the 2009 Risk Manager of the Year award, which will feature collaboration with the Risk & Insurance Management Society Inc.

The award, which *Business Insurance* has presented annually since 1978, recognizes excellence in risk management. The magazine created the award program to commemorate *BI*’s 10th anniversary of publication. In 1981, *BI* added the Risk Management Honor Roll, to honor other outstanding risk managers in categories not represented by the Risk Manager of the Year.

As part of the ongoing collaboration with New York-based RIMS, the society for professional risk managers will work with



The 2008 RMOY winner
Scott H. Beckman

Business Insurance annually to promote the award, RIMS’ current president will join the independent panel of judges who select the winner, and RIMS and *BI* will jointly present the award.

“*Business Insurance* is delighted to join forces with RIMS to help celebrate and advance the profession of risk management,” said *BI* Editor Regis Coccia. “RIMS has always served as an important resource for *BI* in understanding risk managers’ needs, so it makes great sense for us to collaborate on this award program going forward.”

Anyone involved in risk management for a corporation, financial institution, nonprofit or governmental entity can be nominated for the award.

For information or to download a nomination form, please visit www.BusinessInsurance.com/RMOY. The deadline for submitting Part I nominations is Dec. 1.



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FEMA: La. reaches public entity accord

CONTINUED FROM PAGE 3

ance deductible that the public entity faced at the time of the previous disaster, said Dan Jilek, a Baton Rouge-based insurance specialist with James Lee Witt Associates who consults with the Louisiana Governor's Office of Homeland Security and Emergency Preparedness. Mr. Jilek conducts the first reviews of waiver applications and then sends them to the Insurance Department for separate reviews.

Gallagher's Ms. Sylvester said the agreement could leave public entities short millions of dollars.

One question, two answers

Ms. Sylvester also asserted that the agreement "doesn't fit" statements made by FEMA official James Walke.

In an Aug. 6 e-mail to him, Ms.

Sylvester asked, "If the entity or nonprofit obtains a waiver prior to each cat loss from the state (Department of Insurance), will FEMA then reimburse the deductible the 2nd (or 3rd or 4th, etc.) time around?"

"YES," replied Mr. Walke, the Washington-based director of FEMA's Public Assistance Division.

On Aug. 14, *Business Insurance* e-mailed Mr. Walke a similarly worded question.

Mr. Walke replied, "If the Insurance Commissioner certifies that insurance is not reasonably available for a damage (sic) facility and the facility is damaged in a subsequent disaster, FEMA would fund the repairs in the second disaster."

Mr. Walke was not available last week to explain why the agency's agreement with Louisiana officials guarantees less aid to public entities than he said the state's certification

program would provide.

The state does not agree with FEMA's latest interpretation, Mr. Jilek said. It will look for support for its position in numerous rulings issued by FEMA on appeals filed by various public entities that have disagreed with agency aid determinations after earlier disasters, Mr. Jilek said. State officials hope any support for its position would convince FEMA officials to cover all uninsured costs for public entities that obtained a state waiver, he said.

While the state and FEMA do not have an adversarial relationship, the state would ask Congress for help if FEMA eventually does not modify its position, Mr. Jilek said.

The agreement also dealt with how the Louisiana Insurance Department would track which facilities were covered by the state's insurance certification program.

High court: Risk management on docket

CONTINUED FROM PAGE 4

should be overturned (*BI*, June 16).

"It's truly déjà vu all over again in the area of punitive damages," said Robin Conrad, executive vp of the Washington-based National Chamber Litigation Center, which handles litigation for the U.S. Chamber of Commerce.

Earlier, the justices sent *Philip Morris* back to the Oregon Supreme Court with instructions that the state court apply the correct constitutional standard in the case, which involved a state court award of punitive damages 97 times the underlying compensatory damages to the widow of a longtime smoker. The U.S. Supreme Court had ruled several times that punitive damages can be so disproportionate to compensatory damages as to violate the Constitution, but never drew a line as to where unconstitutional punishment began. The court did, however, strongly suggest that punitive damages that approached 10 times compensatory damages were constitutionally suspect.

The Oregon Supreme Court ignored that admonition and upheld the award on the basis of a state procedural rule involving allegedly erroneous jury instructions, and Philip Morris again sought high court review. The court agreed to review Oregon's consideration of jury instructions in upholding the award, but declined to take up the question of excessiveness.

The Oregon Supreme Court "thumbed its nose at the Supreme Court" by its actions, said Ms. Conrad during a preview of the new court session at the U.S. Chamber of Commerce late last month. "Rogue state courts like Oregon's Supreme Court continue to look for loopholes," she said, adding that she hoped the U.S. Supreme Court would use its *Philip Morris* review to "finally flex its muscles" and rein in state courts that ignore it.

Another closely watched case—*Wyeth vs. Diana Levine*—involves the issue of federal pre-emption of



AP PHOTOS

The U.S. Supreme Court will hear drugmaker Wyeth's challenge of an award to Diana Levine, who lost part of her right arm to a medical error.

state tort laws. The case focuses on whether on whether the Food and Drug Administration's approval of a warning label on an anti-nausea drug pre-empts a state product liability lawsuit (*BI*, June 30).

According to court records, Ms. Levine in 2000 was injected intravenously with an anti-nausea drug, Phenergan, in a method known as "IV push," while she was suffering from migraine-induced nausea. While the FDA-approved label on the drug warned that extreme care must be taken to avoid introducing the medicine into the patient's arteries to prevent serious injuries, including gangrene, it did not foreclose push injections entirely. Unfortunately, the drug was injected inadvertently into an artery, which became gangrenous, and Ms. Levine ultimately lost part of her arm.

Ms. Levine sued, contending the label's inadequate warning caused her injuries. Madison, N.J.-based Wyeth, however, argued that the FDA's approval of the label pre-empted the lawsuit. Both a jury and the Vermont Supreme Court sided with Ms. Levine, who was awarded \$6.8 million. Wyeth sought Supreme Court review. The high court is scheduled to hear oral argu-

ments in the case on Nov. 3.

Earlier this year, the U.S. Supreme Court ruled in *Donna S. Riegel vs. Medtronic Inc.* that the Medical Device Amendments of 1976 to the federal Food, Drug and Cosmetic Act expressly pre-empt state court product liability claims challenging the safety and effectiveness of an FDA-approved medical device (*BI*, Feb. 25). "It's hard to think about the *Wyeth* case without thinking about the *Riegel* case," said former U.S. Solicitor General Paul Clement during a Supreme Court preview at the U.S. Chamber of Commerce. The high court rendered a "lopsided pro-pre-emption result" in its decision, he said.

A handful of employment-related cases also appear on the high court's docket. In *Vicky Crawford vs. Metropolitan Government of Nashville and Davidson County, Tenn.*, the justices will determine whether employees who cooperate with an internal investigation of sexual harassment charges are protected from retaliation under the Title VII of the Civil Rights Act of 1964. The case was brought by a school system employee who alleges she was terminated because she agreed to be interviewed about allegations of sexual harassment made by several employees against a director.

The court will also determine whether employees who received less credited service time while on pregnancy leave than disabled workers can regain that lost time retroactively to determine the scope of employee benefits. The case, *Noreen Hulteen et al. vs. AT&T Corp.*, applies only to women who became pregnant before the Pregnancy Discrimination Act took effect nearly 30 years ago. The 9th U.S. Circuit Court of Appeals last August ruled that four current and former AT&T Corp. employees, who took partially uncredited pregnancy leave before the Pregnancy Discrimination Act's 1979 effective date, were entitled to regain the lost time retroactively. The Supreme Court will hear arguments Dec. 10 in the case.

Questions & Answers

Disability is a significant risk for workers, but relatively few are insured for it. The Hartford Financial Services Group Inc. in Hartford, Conn., is a major provider of life, disability and property/casualty coverages through employers and groups, such as associations. Ron Gendreau, executive vp of The Hartford's group benefits business, spoke recently with Business Insurance about trends in disability.



Protect that paycheck

Q: What are some of the trends in group life and disability benefits?

What we're seeing as a trend that's racing is companies are really being challenged and forced to do a lot more with fewer people on the HR side. They're looking for carriers and producers to help them. To the extent that we can relieve them, provide simpler, easier processes, we're doing them a service.

The group marketplace has operated pretty much the same way for years. The model for group life and disability is not very different from the health care model. Essentially, companies have put business out to bid or have the option to go out to bid, and there's been a fair amount of churn in the marketplace. When you look at the group marketplace, there aren't a lot of new Coca-Cola Co.'s being started every week or every other week. So the marketplace has been growing at about a 5% to 7% clip for quite a while.

In order for us to grow at double the rate of the industry, we have to start thinking of ourselves as a different player. We see The Hartford as being able to help employers and their HR heads with total absence management. Trying to keep up with all of the laws, federal and state laws, is very, very demanding. It's tough for carriers to keep up with it, let alone people in a small HR department. From The Hartford, we want to be more than just an insurance provider. We want to be someone that can help the employer satisfy their total absence management needs, in a very cost-effective way, in a very compliant way. The compliance risk is probably the biggest risk that employers need to be paying attention to. From our perspective, we want to be that solution. We have been providing a total absence management solution. We see that ultimately extending all the way to workers comp as well. It could be work-related or nonwork-related. It could be short-term. It could be long-term. The employer doesn't have to look at five different programs and say, "Do these tie together or not?" The fact is, a lot of times they do.

Most disabilities occur because of sickness. Most people think they occur because of accidents. Regardless of the source, whether it's sickness or accident, what we see on the disability side, the employer will also be seeing on the medical side. They're much more aligned than people think.

Q: How big is the risk of disability for workers?

As a society, we have too many people who are vulnerable. None of us believes that there is a likelihood of being disabled. We did a survey six months ago of people making between \$50,000 and \$100,000 a year. That's a representative sample of America. Ninety-five percent of consumers surveyed said they'd have to change their lifestyle if they lost part of their family's income for three to six months. Seventy per-

THE FULL TEXT of this abridged *BI* interview is at www.BusinessInsurance.com/Qanda.

cent said they're meeting their expenses with little or nothing left over after bills are paid. Twenty-five percent of those people surveyed thought there was a greater chance of them winning the lottery than of their becoming disabled. Let me give you a statistic on disability. One in seven people, during their working lifetime, will have a disability that runs for about a five-year period. That's staggering. That's very inconsistent with what the perceptions are.

Q: Why do people not see the whole risk?

To me it's a combination of just being low-incidence and that people don't want to believe it could happen to them, and they don't understand how big of a risk it is. You own a home. Do you have home insurance? The chance of your house burning down is fairly remote, right? But you buy it. The same with car insurance. We protect those assets more so than we protect the paycheck. The paycheck, if you think about it, is actually a more substantial loss.

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Business Insurance OPINIONS

Congressional action a praiseworthy model

WITH THE CONGRESSIONAL session now over, we want to commend federal legislators for the actions they took on several benefit issues.

Chiefly, recognition is due not just on the passage of mental health care benefits parity legislation, whose time had come, but also on the process that led to enactment.

This wasn't another all-too-common situation in which a handful of legislators and their staffs developed proposals and shut out most everyone else, with the result—not surprisingly—being legislation that was poorly drafted and needing almost immediate revision after enactment.

Instead, the business community—at least those members who chose to be part of the process—along with insurers and mental health providers all worked together to come up with a reasonable and balanced piece of legislation. The path to enactment of the parity legislation should be a model for legislators to follow when they turn—perhaps as soon as next year—to comprehensive health care reform legislation.

The path to enactment of the parity legislation should be a model for legislators to follow when they turn to comprehensive health care reform legislation.

Lawmakers also deserve praise for other benefits legislation that passed this year.

For example, Congress over the summer approved a measure that allows employees called to active duty in the military reserves to cash in unused health care flexible spending account balances. Reservists often are unable to use up an FSA while deployed in, for example, Iraq, and that problem finally has been addressed fairly.

Another military-employee benefits issue Congress resolved was expanding the Family and Medical Leave Act in several ways, such as allowing close family members to take up to 26 weeks of leave under the FMLA to take care of an injured or ill service member. Given the sacrifices military families make when a member is called up from the reserves, such an expansion of FMLA benefits strikes us as more than reasonable and in the national interest.

Risk managers' agenda deserves swift decision

RISK MANAGERS owe the now-adjourned Congress thanks for approving the most important risk management legislation of the past two years—an extension of the federal terrorism insurance backstop before the program expired. But that was nearly a year ago, and Congress left some significant risk management-related issues unresolved.

Hopes had been high that lawmakers would be able to pass legislation streamlining the regulation of reinsurers and surplus lines insurers and perhaps approve a measure creating a new Office of Insurance Information within the Treasury Department as well.

Both measures enjoyed widespread support from risk managers, insurers and brokers, and the surplus lines and reinsurance reform measure passed the House with ease. But the snowballing financial market crisis shoved both matters off the legislative stage during the final days of this Congress.

The enactment of the seven-year extension of the federal terrorism insurance program was a signal achievement and one that makes it easier for risk managers and insurers to sleep at night. We hope that the new Congress that convenes in January will move swiftly and decisively on those items on the risk management agenda that fell by the wayside as the credit crisis took center stage.



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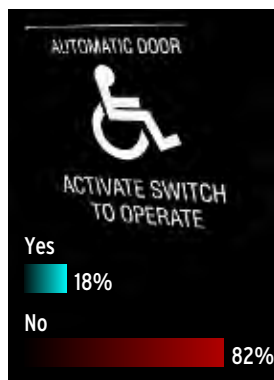
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THIS WEEK'S RESULTS

Q Has your company begun reviewing its job descriptions and reasonable accommodation protocols to assure compliance with the new ADA Amendments Act?



NEXT WEEK'S QUESTION

Q: Has the fall in the equities markets resulted in your pension plan going from overfunded to underfunded?

BI Online Poll tool is sponsored by Wausau Insurance Cos.

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'Green' energy needs a boost from insurers

As industry strives to develop ways to produce cleaner energy, the insurance industry must play a role in supporting those efforts, says Philip J. Edmundson, chairman and chief executive officer of brokerage William Gallagher Associates in Boston. While several insurers have introduced products that offer protection to companies producing more environmentally-friendly products and resources, more innovation is needed to ensure that those firms are adequately protected, he says.



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ADVERTISING: Boston: 617-292-4856; Chicago: 312-649-5276; Los Angeles 323-370-2405; New York: 212-210-0133

SUBSCRIPTIONS: Detroit: 888-446-1422

Business Insurance is published by

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Published weekly at 360 N. Michigan Ave., Chicago, Ill.

60601-3806, Fax: 312-280-3174, biweb@crain.com. Offices:

711 Third Ave., New York, N.Y. 10017-5806, Fax: 212-210-0704;

Suite 814, National Press Building, Washington, D.C. 20045-

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809, Boston, Mass. 02110-1510; Fax: 212-210-0704, \$5 a copy

and \$97 a year in the U.S., \$130 in Canada and Mexico

(includes GST). All other countries, \$230 a year (includes

expedited air delivery). Four weeks' notice required for

change of address. Send subscription correspondence to

Circulation Department, *Business Insurance*, 711 Third

Avenue, New York, N.Y. 10017-5806. Microfilm copies

available: University Microfilms, 300 Zeeb Road, Ann

Arbor, Mich. 48013. Microfiche copies: Bell & Howell, Micro

Photo Division, Old Mansfield Road, Wooster, Ohio 44691.

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Arbitration: State law trumps McCarran concerning international treaties

CONTINUED FROM PAGE 4

was whether the international arbitration convention, or treaty, was self-executing. A self-executing treaty between nations is effective without supporting legislation. The judges therefore had to determine if the treaty was an "Act of Congress."

The 5th Circuit decided that it was not.

"There is no apparent reason why Congress would have chosen to distinguish in the McCarran-Ferguson Act between treaties that are self-executing and those that are not," 5th Circuit Judge Priscilla R. Owen wrote in the court's decision. "It is undis-

puted that if the provisions in the Convention on Recognition and Enforcement of Foreign Arbitral Awards directing courts to enforce international arbitration agreements were self-executing, then the McCarran-Ferguson Act would have no pre-emptive effect because self-executing treaties are not an 'Act of Congress.'"

Julius Rousseau, an attorney who specializes in insurance and reinsurance with New York-based Herrick Feinstein L.L.P., said the Louisiana law against arbitration is ultimately trumped by the convention treaty in this instance as it was determined that the international convention was not an Act of Congress.

'The decision raises an important issue, especially in regards to federal regulation of insurance, which is something that is looming right now.'

Francine Semaya,
Cozen O'Connor

Thus, state laws barring arbitration in insurance matters are superseded by the international arbitration agreement. The McCarran-Ferguson Act does not apply in this situation as it only applies to a treaty that is supported by federal legislation, according to the 5th Circuit.

"The reasons Louisiana prohibits arbitration are not clear based on its provisions," Mr. Rousseau said. "There may be a different clause in the reinsurance agreement for LSAT and Safety National if they were reinsured with a U.S.-domiciled reinsurer. This ruling raises the question if Lloyd's and other offshore insurers are aware of individual state laws

when it comes to arbitration."

Francine Semaya, member chair of New York-based law firm Cozen O'Connor's corporate and insurance regulatory practice, said that the 5th Circuit decision won't change the way business is done between international reinsurers and their clients, but it might spur some of them to tighten their language in arbitration clauses.

"The decision raises an important issue, especially in regards to federal regulation of insurance, which is something that is looming right now," Ms. Semaya said.

Jeff Stempel, professor at the William S. Boyd School of Law at the University of Nevada Las Vegas, said that he was persuaded by the court's ruling and thought the court may be trying to "evolve the law" surrounding the McCarran-Ferguson Act in regards to arbitration between insurers.

"I think it's a form of judicial activism that says we are trying to read the laws as narrowly as we can," Mr. Stempel said. "It doesn't draw the distinction between self-executing treaties and treaty treaties. There should be a clearer statement in the law or a modification to McCarran-Ferguson."

The case has been remanded to the district court, where the judge will have to decide whether to proceed with arbitration of the LSAT case.



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9:15–9:30am	Networking Break
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INTEGRATED BENEFITS & DISABILITY

Q&A with Pitney Bowes leader on integrating disability benefits / Page 16

Employers try to gauge disability costs of an aging workforce / Page 18

Lawsuits challenge insurers' practices on Social Security 'offsets' / Page 22

BENEFITS MANAGEMENT

Disability battle taps integration

Strategy ups effectiveness

By SALLY ROBERTS

More employers are looking to integrate their disability and leave programs with various health management efforts to reduce health care costs and create a healthier, more productive workforce, experts say.

By closely connecting short- and long-term disability, family medical and other leave programs with medical, behavioral health, disease management and wellness programs, employers are better able to identify at-risk employees before they file a disability claim, advocates say. They also are better able to intervene with programs designed to assist employees in improving their health and returning to work.

Disability and medical programs that are integrated have been shown to result in shorter-duration leaves, quicker return-to-work rates and fewer employees on short-term disability moving to long-term disability (see story, page 14).

The efforts are not merely about reducing health and disability costs. Employers also are looking to integration as a way to reel in lost productivity due to absenteeism and presenteeism, which studies show cost employers billions of dollars a year.

"Employers have come to realize that having a healthy and productive workforce is part and parcel to their business strategy and business success, whereas for so long employers just saw benefits as a cost of doing business or an attraction and retention strategy," said Tom Parry, president of the Integrated Benefits Institute, a San Francisco-based nonprofit health and productivity research firm.

"The mindset has really become: If we invest in employee health, not only will employees be healthier but they won't be absent from work and they will be more productive while at work. That's the magic of this whole thing," Mr. Parry said of integrated programs.

For their part, health insurers have responded by offering employers single-source solutions for their disability and health management needs that also

See **INTEGRATION** next page

Integration: Strategy weds worker health and corporate productivity

CONTINUED FROM PREVIOUS PAGE

include valuable integrated data. Such data, experts say, give employers a better picture of where their health care and lost productivity costs are coming from in addition to the ability to evaluate various programs' strengths and weaknesses.

While such solutions have become available, many employers, especially larger ones, continue to use a multiple-vendor approach and outsource their data to integrated data warehouses, experts say (see story, page 16).

Several years ago, the focus of integrated disability management

was on coordinating workers compensation with short- and long-term disability programs. But the difficulties of integrating a national disability program with a state-based workers comp program proved too difficult, experts say.

Employers then realized that they had sick leave, family medical leave and disability programs that were consistent nationally and asked, "Why can't we integrate that with a consistent national medical benefit and leave workers comp alone after once being burned there?" said Dr. Miles Snowden, executive vp-clinical strategy for UnitedHealth Group Inc. in Atlanta, referring to the prior

integration difficulties.

Integrating disability and health

'If we invest in employee health, not only will employees be healthier but they won't be absent from work and they will be more productive while at work. That's the magic of this whole thing.'

Tom Parry,
Integrated Benefits Institute

management, experts say, makes more sense and drives results.

Having both a disability and health plan with one insurer allows the insurer "to proactively manage health and productivity issues that face an employer, because we address the employees' needs holistically," said Adele Spallone, head of clinical services for disability and absence management at Aetna in Plantation, Fla.

Such disability and health integration, which Aetna describes as a "process," starts with identifying and then proactively reaching out to members with medical conditions that could potentially lead to

disability claims, Ms. Spallone said. "If the employee goes out on disability, we proactively engage the medical clinicians we have...to make sure that that employee is receiving the right care and identify potential disease management triggers," she said.

Last year, Aetna launched a new Integrated Health Solution product, which combines medical, behavioral health, long- and short-term disability, disease management and wellness programs. By integrating clinical and system capabilities across products, health care management professionals can work together to provide health and wellness services tailored to specific conditions, Aetna said.

"There's a lot of value and obvious connection between integrating health care and disability, because every disability is a medical event," said Katie Dunnington, assistant vp of CIGNA Group's wellness, absence and productivity program in Bloomfield, Conn.

A 2007 internal analysis of CIGNA's medical and disability claims, for example, found that employees with disability claims

See **INTEGRATION** page 16

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Approaches sped workers' jobsite return

Employees out on short-term disability are likely to miss less work and have a higher return-to-work rate when their employers have integrated medical and disability programs, according to internal studies conducted by two health insurers.

In 2005, Aetna Inc. analyzed claims incurred between April 2003 and January 2005 and compared short-term disability durations of evenly split groups of members, one with only an Aetna disability policy and the other with an integrated Aetna medical and disability program. Aetna found that the duration of short-term disabilities for members with an integrated program were 4.5 days less than those with only a disability policy. Additionally, the study showed that while 5% of disability-only members moved from short- to long-term disability, only 2.2% of members with an integrated plan did so.

Likewise, a 2007 CIGNA HealthCare analysis of individuals covered by the insurer's integrated medical and disability programs showed that those who took short-term disability leave were 37% more likely to return to work compared with members in nonintegrated disability-only plans.

—By Sally Roberts



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Location: Chicago, Illinois USA

Integration: Improves worker return rates

CONTINUED FROM PAGE 14

made up only 5% of the employee population yet represented 37% of employee medical costs.

"We're not just focused on medical costs, but very much are looking at how to minimize unscheduled time away from work," Ms. Dunnington said.

Employees that are on intermittent family leave, for example, are five times more likely to file a short-term disability claim than employees not on family leave, she said. So when an employee asks to take time off under the Family and Medical Leave Act, that employee is "waving a big white flag" that they may be having trouble, and that's when he or she can be referred to the employee assistance plan, she said.

CIGNA began offering its single-source integrated solution, called Disability & HealthCare Connect, in 2003. Offerings differ depending on the additional programs an employer has with CIGNA, such as an EAP, disease management and FMLA administration, but the program includes disability and medical leave at minimum.

Technology systems are linked, enabling each program to share information, and data is pooled for further analysis, Ms. Dunnington said.

In addition to linked technology, integration also can take the form of a common contact point and intake process for absences and disabilities, integrated claims data and integrated care management, experts say.

There is not, however, a single

integrated claims administration system for all of the programs offered today, said Tom Klett, senior consultant in Watson Wyatt Worldwide's Stamford, Conn., office. "There's a lot of toggling back and forth" between systems, he said.

But to effectively manage a complex illness from the time an employee takes a leave until the worker returns to the job, "physical co-location" is needed, Dr. Snow-

'The outcome we want is for (employees) to be happy and healthy at work.'

Adrienne Paler,
Providence Health & Services

den said. At UnitedHealth, "the nurses and physician leaders who manage medical illness are literally sitting beside the disability and sick leave management nurses," he said. Such an approach not only allows for better corroboration among clinicians but also is a more effective way to get that employee back to work sooner, Dr. Snowden said.

The Minnetonka, Minn.-based health insurer teamed with Sedgwick CMS earlier this year to launch an advanced integrated medical and disability program for large employers. Under the program, UnitedHealth provides medical, wellness and EAP services, while Sedgwick CMS provides administra-

tion of workers comp, disability and absence management services.

The program offers employees a single point of contact for all absence-related needs in addition to integrated data reports so employers can better manage employee health and productivity.

Coordinating disability, absence management and health management has caught the attention of Providence Health & Services, a Seattle-based nonprofit health care system. Over the past year, Providence's Oregon region has attempted to reduce the number of unscheduled leaves of absence within its hospitals.

"Ultimately when we look at disability management and the integration that we have to date, it's really centered on what's occurred. What we want to move to is a model that eases the way for our employees and helps prevent the progression of a medical issue from having an impact on the workplace and workforce," said Adrienne Paler, regional manager disability and ADA for Providence in Portland, Ore.

"There really are 30 different flavors of IDM, so we're not looking for one to pull off the shelf and implement," said Judy Samples, regional director of human resources at Providence. "We're in the early stages of developing what the new model will look like."

"We do know...we want it to have a positive impact on the workplace with regards to outcomes," Ms. Paler noted. "And the outcome we want is for (employees) to be healthy and happy at work."

Single- and multiple-vendor administration approaches have advantages, disadvantages

There are two approaches employers can take when they integrate disability and health management: use one vendor to administer all of their programs or use multiple vendors for specific services.

Several health insurers recently launched integrated offerings, often partnering with other vendors, to give employers a single-source solution.

Such an approach can be more cost-effective and seamless, experts say, but a single vendor may not excel in each of the various programs.

As such, some employers favor a multiple "best in class" vendor approach, experts say. While such an approach is appealing, it can be more cumbersome as employers are responsible for making sure each vendor is willing to work with other vendors and share data to have a truly integrated program, experts say.

When it comes to vendors, it generally "depends on the size of the employer," said George Faulkner, a principal specializing

in absence management for Mercer L.L.C. in Princeton, N.J. "Smaller employers are more interested in the administrative ease and are more likely to go with a single vendor, whereas larger employers tend to want best in class and may have more clout with vendors to tell them to cooperate and work with each other," he said.

"We still see a lot of interest in best-in-class purchasing strategy," said Dr. Miles Snowden, executive vp-clinical strategy at UnitedHealth Group Inc. in Atlanta. Part of the reason few employees are using a single-source provider is that the decision has to come from two different sources, human resources, which oversees health care, and disability, which tends to be overseen by finance, he said. One has to sell to two different parties at the same time in order to get uptake on this product, he said.

While Aetna Inc. will work with other providers on request, "the beauty of having several programs with Aetna is that we

have a shared platform—a common clinical system that the clinicians in disability and clinicians in medial use," said Adele Spallone, head of clinical services for disability and absence management at Aetna in Plantation, Fla.

That shared platform allows clinicians to see medical information, lab results and pharmaceutical records in real time and provide integrated reports for employers, "which we would not be able to do if it was through an external vendor," Ms. Spallone said. Those outside vendors must be willing to release information and share data, which she said is a lot more challenging.

Experts pointed out that while a single-source vendor can provide integrated data, employers utilizing multiple vendors often engage outside data warehouse firms such as Eden Prairie, Minn.-based Ingenix Inc., which is a UnitedHealth-owned data warehouse, and Medstat at unit of Ann Arbor, Mich.-based Thomson Reuters.

—By Sally Roberts

Questions Answers

Hilary Mitchell is director of direct delivery employee medical service operations at Pitney Bowes Inc. in Stamford, Conn. In that position, she has direct responsibility for managing short- and long-term disability and family medical leave for 23,000 U.S. employees. Ms. Mitchell also is in charge of employee clinics at Pitney Bowes' locations in Connecticut; Appleton, Wis.; Spokane, Wash.; and Lanham, Md.



Integrating disability

Q: Why did Pitney Bowes decide to incorporate behavioral health into its disability management program?

Pitney Bowes has always had a philosophy that our mental health benefits are equal to our other medical benefits. We have never treated them differently. So it was a natural step to treat mental health equally in our disability program.

Q: What are some of the psychological barriers that typically inhibit employees from returning to work after an illness or injury?

The No. 1 barrier we see is anxiety, and the longer an employee is out of work, the higher the anxiety level becomes. We could have an employee who is uncooperative or not compliant with their treatment plan. Sometimes, albeit rarely, we could have a provider who is uncooperative and not supporting the return-to-work initiative.

Other barriers could be work-specific, such as stress on the worksite or issues involving relationships with co-workers or managers prior to going out on disability. Finally—we don't see this one a lot, but I have to list it—there could be medication side effects that could pose potential safety issues. If someone is operating machinery or driving a car, we could not return them to work if there is any sort of medication side effect.

Q: Why did Pitney Bowes decide to partner with an outside vendor rather than use its internal disability management program? (Its in-house disability management department in Shelton, Conn., is staffed with registered nurses and a full-time medical doctor.)

At the inception of the unit, psychiatric and substance abuse treatment was fully managed in-house. We had a nurse on our staff who was a former psychiatric supervisor, so she had that level of expertise. However, it was not a perfect model because if that nurse was on vacation or out ill, we did not have the backup. And, as good as our nurse was, there were delays in getting referrals. We elected to partner with an external vendor.

Q: How many people are generally on disability at the same time?

On an annual basis, we run about 2,500 claims companywide in the United States.

Q: What vendor did Pitney Bowes choose and why was that particular vendor selected?

We chose a very well-regarded vendor, ValueOptions (based in Norfolk, Va.) One of the key reasons we chose ValueOptions was we had a very successful existing relationship with them. ValueOptions provides our (employee assistance plan) services, and they

LISTEN to the full podcast of the interview at www.BusinessInsurance.com/Audio.

also provide our mental health and substance abuse network. We wanted a vendor for continuity of care, that if someone was already seeing a mental health provider and went out on disability, they could continue to treat with that same provider.

Q: What were the results of this partnership?

It was very, very interesting. Our reasons for entering the partnership were not financial. We were really looking at quality of care. We recognized we only had one nurse doing the service, we were vulnerable to the loss of key personnel and we had the lack of immediate psychiatric oversight. Well, we not only resolved those problems, but we also decreased claim duration by 40%. And that was really a secondary gain. The key driver behind that was getting the patient immediately evaluated, getting a care plan immediately in place and just greatly increasing access to services.

Q: What would you advise other employers that are considering incorporating behavioral health into their disability management and return-to-work programs?

I would highly recommend it. The feedback we receive from our managers, our HR professionals and our own employees is that this is just a very, very valuable service.

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2008248

As workforce ages, employers can expect higher disability costs

Median number of days off to recover from an injury increases as workers get older, BLS study finds

By **LOUISE ESOLA**

Falling on an icy sidewalk while shoveling snow could result in bruises and a day or two off work for an employee in his or her 20s, experts say those same events could result in major injuries and signifi-

cant sick leave for older workers.

"The fact of the matter is older workers have higher incidence (of injuries) and slower recovery," said Carol Tavella, Devon, Pa.-based senior manager with SMART Business Advisory & Consulting L.L.C.

For employers, that means more

time until that worker returns to the job, less productivity and, eventually, higher disability costs, experts say.

In a 2006 study, the U.S. Bureau of Labor Statistics found that the median number of days off work for all workers suffering injuries or ill-

nesses was seven; for workers age 55-64, the figure jumped to 12 days; for workers 65 and older, the median time off was 15 days.

For the most part, such absences would fall under short-term disability, which generally picks up where paid sick leave expires and can typ-

ically cover workers for three to six months.

Tom Klett, a Stamford, Conn.-based senior consultant with Watson Wyatt Worldwide, said despite concerns from companies regarding absenteeism among older workers, most of these experienced employees will avoid short-term leave whenever possible for fear of losing their job.

"People want to hold onto their jobs, especially in this economy" Mr. Klett said.

This, in turn, keeps workers on the job when they haven't fully recovered from minor injuries and may result in major injuries later on, he said.

"Here's where the concerns are manifesting, in longer-term disability," Mr. Klett said.

As for long-term disability, or disability that lasts anywhere from a year to until an employee reaches retirement age, statistics show spikes in those figures for older workers.

For example, the Social Security Administration said 67% of Social Security Disability Insurance

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'The fact of the matter is older workers have higher incidence (of injuries) and slower recovery.'

Carol Tavella, SMART Business Advisory & Consulting L.L.C.

awardees in December 2007 were 50 or older. The government's SSDI program is available to those who have been deemed disabled for at least a year or who have been diagnosed as permanently disabled. This program, often tapped by disabled workers to supplement their long-term disability income, is notorious for its backlog of applicants and its tough standards. Nevertheless, the demand for SSDI is growing, said Dan Allsup, a director with Allsup Inc., a Belleville, Ill.-based private firm that assists disabled workers in collecting benefits.

Experts say employer-based disability, a benefit to which the Social Security Administration estimates about 30% of workers have access, is also expected to grow considerably as the workforce ages.

"I can see how employers are looking at this when dealing with older generations of workers," said SMART'S Ms. Tavella. "Individuals are staying in the workforce longer."

However, not everyone believes an increase in disability claims is an issue about aging. Helen Darling, president of the Washington-based National Business Group on Health, said an increasing number of workers, regardless of age, are becoming more susceptible to injuries because of the health of

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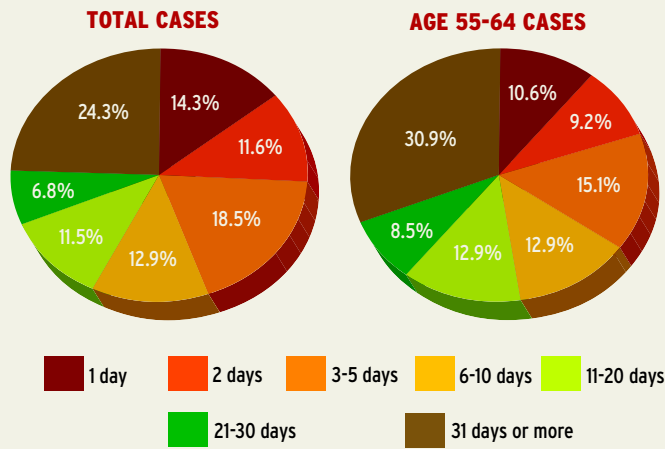
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DAYS AWAY FROM WORK

Distribution of days away from work involving nonfatal occupational injuries and illnesses in 2006.



Source: U.S. Bureau of Labor Statistics

Disability: Costs increase as workers age

CONTINUED FROM PAGE 18

the current population.

“This is much more a function of health than age,” said Ms. Darling, who cited the example of a healthy 55-year-old worker vs. an obese 25-year-old employee. “We cannot assume that older workers are less productive and more prone to injury than younger workers.”

For employers that are trying to gauge their potential exposures, Paul Botkin, a Dallas-based senior vp at Aon Consulting, points to predictive data analytics. These programs aim to collect data from an employer’s workforce, such as



‘This is much more a function of health than age. We cannot assume that older workers are less productive and more prone to injury than younger workers.’

Helen Darling, National Business Group on Health

health assessments and risk factors, and use that same data to create programs to keep the company’s workforce strong and healthy.

“Employers want to predict which population (of employees)

that is likely to suffer injuries,” Mr. Botkin said. “Employers want to look at the data and see what they can do to encourage employees to be more proactive.”

While many employers already gather data about their employees, by way of health assessments and questionnaires, and may even have wellness programs, older workers in particular might benefit from gym memberships to keep them fit and strong. Companies could pay all or part of the gym membership cost, he said.

“What you can do is say to people that there are some things you can do to avoid injuries, like stretching, strength training and physical therapy,” Mr. Botkin said. “What you want is an employer to help promote a physically healthy population,” regardless of age.

Watson Wyatt’s Mr. Klett said companies see wellness as the ticket to not only maintaining a healthy workforce but also zeroing in on their own disabled workers.

“When employers reach the point where (a worker) is out (on long-term disability), companies often do everything they can and give employees all the services they need to get them back,” Mr. Klett said.

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Suits challenge Social Security disability practices

Insurers' handling of so-called 'offsets' called into question

By ZACK PHILLIPS

A lawsuit attacking disability insurers' practice of requiring claimants to seek Social Security benefits could result in higher premiums for employers offering disability coverage, observers say.

In *United States of America, ex rel. Patrick J. Loughren vs. UnumProvident Corp. and GENEX Services Inc.*, the plaintiffs accuse Chattanooga, Tenn.-based Unum Group of illegally pushing many claimants to seek disability benefits from the Social Security Administration even though they did not meet the agency's stringent qualifications.

Unum officials say the case has no merit. The trial, which began Sept. 22 in U.S. District Court in Boston, is ongoing.

The suit has called into question a nearly universal practice in the long-term disability insurance industry: Most long-term disability policies require claimants to request Social Security disability benefits and reduce the insurer's payout by a commensurate amount. The suit argues that Unum's practice amounted to filing false claims because the company helped claimants who it knew did not meet Social Security's more restrictive definition of disability to apply and, in some cases, receive the benefits.

In 2007, 7.1 million disabled U.S. workers received Social Security payments, according to the Council for Disability Awareness in Washington.

Disability insurers point out that Social Security offers benefits that private disability policies do not, so it makes sense to encourage claimants to apply.

Industry observers warn that the Social Security "offset," as the reduction/reimbursement provision is known, is what allows disability insurers to keep their pricing low. Group long-term disability insurance costs on average between \$212 and \$224 a year per worker, according to the Windsor, Conn.-based consultant LIMRA International Inc.

Regulatory or legal changes affecting disability insurers' ability

to help claimants seek Social Security benefits likely would boost premium levels, the observers say.

"Premiums are based on what insurance companies expect to pay and, unfortunately, if they're going to end up paying a lot more, insurance companies are no different: They're going to pass on that cost to the people buying those policies," said Andrew J. Bernstein, vp law at Disability Risk Management Services Inc., a Westbrook, Maine-based provider of turnkey disability risk management products.

About 40 million U.S. residents have employer-sponsored long-term disability insurance, according to America's Health Insurance Plans, a Washington-based association that represents insurers. About 30% of private-sector employees have such income protection.

Long-term disability insurers receive about 200,000 new claims annually, according to AHIP. Unum, one of the largest such insurers, said it receives about 50,000 new long-term disability claims each year.

In the Boston case challenging the actions of Unum, which changed its name from UnumProvident to Unum Group in early 2007, and its former GENEX unit, which it sold in March 2007 to a unit of private equity firm Stone Point Capital L.L.C., Unum is accused of forcing claimants to apply for Social Security disability when the insurer knew many were ineligible. The suit alleges violations of the federal False Claims Act.

While private disability insurance policies typically cover an injury that doctors expect to prevent a claimant from performing his or her current occupation, Social Security requires that the injured or ill claimant be unable to perform any job.

The Social Security Administration encourages all applicants who think they may be permanently disabled to apply, but insurance industry critics say the allegation that Unum directed unqualified applicants to the Social Security Administration is significant because investigating applicants costs an

average of about \$1,300 per claim, according to the complaint. And the Social Security Administration has a lengthy backlog of claims. The agency says it now takes an average of 82 days to review a new claim—down from 88 in 2006—and an average of nearly 18 months to rule on a claimant's hearing request.

Critics say insurers' method of convincing sometimes reluctant claimants to seek Social Security benefits—reducing their benefits by the amount of the expected offset, if claimants do not apply—proves insurers know what they are doing is wrong.

"This wasn't an accident; this was a business plan," said Patrick Burns, director of communications at the Washington-based Taxpayers Against Fraud, who has followed the case. "Someone at Unum had sat down and figured out the odds: 'We'll put in 100 (Social Security claims) and maybe they'll grant 50....Anything they let through is just money to us,'" Mr. Burns suggested.

The Department of Justice declined to join the suit and Unum declined comment.

Congressional attention

The allegation, and a report in the New York Times, prompted Sen. Charles Grassley, R-Iowa, to write a July letter to Unum, Philadelphia-based CIGNA Corp.—the subject of a similar, ongoing lawsuit also in U.S. District Court in Boston—and seven other disability insurers to express concern and request information about their Social Security disability practices. A hearing on a motion to dismiss the CIGNA case is scheduled for Dec. 18.

In a response letter, America's Health Insurance Plans noted that even if private disability insurers forwarded all claimants to the Social Security Administration, they would comprise only 8% of the 2.5 million claims it receives annually.

AHIP also noted that in many discussions of the processing backlog, Social Security Administration Commissioner Michael Astrue has never attributed the disability claim

backlog to private disability insurers' practices; Mr. Astrue has blamed the backlog on budget cuts, a shrinking workforce and escalating claims as baby boomers retire, the industry response letter said.

Many industry observers regard the allegations as specious. Waiting to apply for Social Security disability benefits until certain an injury will cause a year's worth of disability would be foolish, given the processing backlog and the unpredictable nature of many injuries and illnesses, said Barbara Mountain, director of marketing and client relations at Jefferson City, Mo.-based Integrated Benefits Inc., which specializes in Social Security advocacy.

"You don't know what's going to happen," Ms. Mountain said. "You don't know where the claim is going."

Ms. Mountain, whose experience includes seven years as an insurance specialist at the Social Security Administration, said the federal disability benefits also include Medicare and likely would boost a claimant's future retirement benefits because of how those benefits are calculated. "So insurance companies that help claimants apply for Social Security disability, I think, are doing the right thing," Ms. Mountain said.

Other observers also are skeptical about the allegations.

Tom Klett worked in the long-term disability industry for seven years, including at Unum. He said flat growth in recent years may be pressuring disability insurers to cut costs. But he also said he doesn't believe insurers would spend the time and effort, often paying subcontractors, to seek Social Security benefits for unqualified applicants.

"Having worked at a carrier, they have limited resources to pursue lots of things, including Social Security offsets," said Mr. Klett, now a senior consultant in Watson Wyatt Worldwide's Stamford, Conn., office. "To devote resources where you don't think there'll be any return, that doesn't make sense to me. They're resource-strapped like any business."

Mr. Klett works with employers to manage and audit their disability

DISABILITY CRITERIA

The Social Security Administration's disability program has more stringent qualification criteria than most private income protection programs.

- Individuals must have worked a minimum amount of years, depending on their age. For example, 30-year-olds need two years of work experience.
- Individuals must have been employed recently—holding a job for about half the time since turning 21 for younger workers, or five of the past 10 years for older workers.
- Individuals must be currently earning less than a certain amount or not working at all.
- A medical condition must be severe enough to significantly reduce a person's ability to perform basic work activities—such as walking, sitting and remembering—for at least one year.
- An injury or illness must prevent an individual from doing his or her current job and any other job that he or she could perform, based on age, experience and skills.

Source: Social Security Administration

insurance programs. Usually, his team concludes that disability insurers' choice of claimants to seek Social Security benefits is prudent and, in some cases, not aggressive enough.

"Regulatory or legal changes affecting disability insurers' ability to seek Social Security offsets could have dire consequences," Mr. Klett said. "Social Security offsets are the single-biggest risk management tool that (disability) carriers use."

Mr. Klett, Ms. Mountain and Disability RMS' Mr. Bernstein agreed that new restrictions could raise premiums and decrease the number of employers that offers such coverage.

"If the result of this is that you have a bar or prohibition passed by a state legislature or by Congress prohibiting insurance companies from having this offset in their disability policies, premiums will go up," Mr. Bernstein said. "If disability insurance starts costing whatever percentage more, (employers) are going to have to start thinking long and hard about that."

Market Moves

Wortham back in action despite damage from Ike

HOUSTON—Wortham Insurance & Risk Management is operational despite damage from Hurricane Ike, the Houston-based firm said last week.

The independent insurance broker headquartered in Texas said two floors of its office building were "devastated" by wind and rain after the Category 2 storm hit Sept. 13. The firm said it was up and running by 10:30 a.m. on Sept. 15, using a

trailer staged in the parking lot that was designed to serve as the firm's headquarters in a disaster. Diesel generators and satellite communications allowed its 43 work stations to connect with the company's phone and computer systems.

The firm procured temporary office equipment and furniture and leased vacant office space, where employees will move Oct. 6. The firm expects rebuilding its two damaged floors to take about six months, according to a release.

VIST Insurance buys benefit firm

POTTSTOWN, Pa.—Employee benefit consultant Fisher Benefits Consulting has been purchased by Wyomissing, Pa.-based VIST Insurance L.L.C., a division of VIST Financial Corp. The transaction

closed in September.

VIST officials said the acquisition will add \$1 million in annual revenue to its insurance business. According to a statement, the company expects no major staffing changes at Fisher Benefits, although the name of the purchased firm will include "VIST" within six months.

N.J. Blues plan drops hospitals from its network

PHILADELPHIA—Horizon Blue Cross and Blue Shield of New Jersey has terminated its contract with the Children's Hospital of Philadelphia and the University of Pennsylvania Health System, saying their reimbursement rates were "too high and unsustainable" compared with competitors in New Jersey.

Children's Hospital of Philadelphia includes the hospital in

Philadelphia and specialty care facilities in New Jersey; the University of Pennsylvania Health System includes Pennsylvania Hospital, Penn Presbyterian Medical Center and the Hospital of the University of Pennsylvania.

After March 11, 2009, many Horizon members using Children's Hospital facilities will face the higher out-of-pocket costs associated with out-of-network providers, depending on individual membership plans. The effective date for UPHS facilities is April 11, 2009. Medicare members should not use either facility, the insurer said.

In a notice to employers, the insurer said it was aware that having local hospitals in-network is an important benefit and it would explore options to address the issue and help control costs.

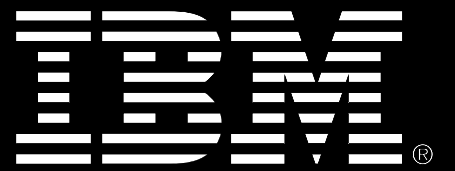
The Children's Hospital of

Philadelphia also said it will drop its physicians from Horizon's professional network in September 2009. The insurer said it will "facilitate a transition" to new primary care physicians and policy holders do not need to select a new primary care physician yet.

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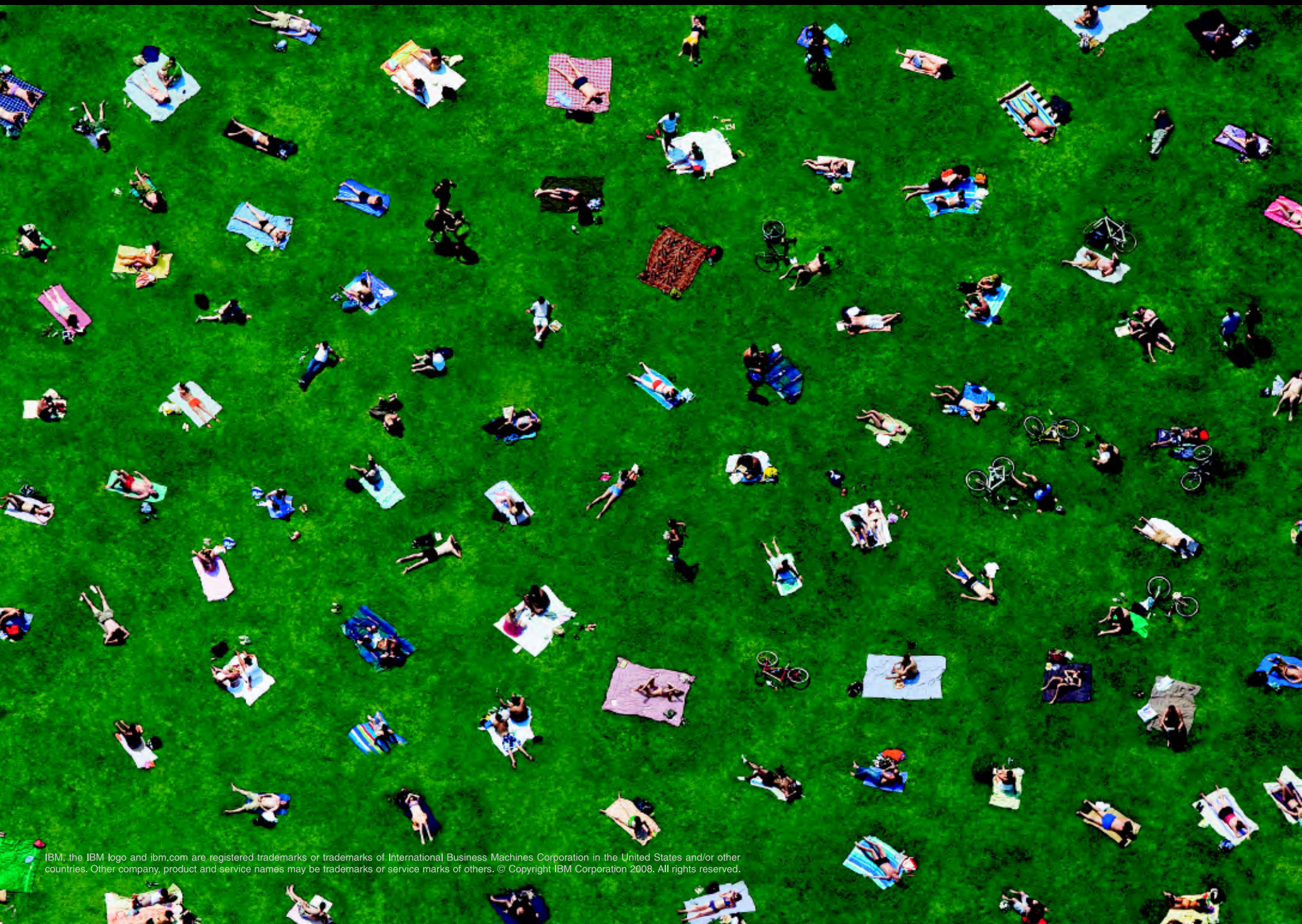
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Tainted products from China boost Canada liability exposures

RIMS Canada speaker focuses on contract language

By **MATT SCROGGINS**

TORONTO—As concerns about tainted Chinese products grow amid several high-profile product recalls, Canadian companies using suppliers in China need to take steps to address their exposures, an attorney says.

Canadian retail companies must ensure that their contracts with suppliers are structured in ways that will help the retailers overcome traditional barriers to successfully suing Chinese companies, the attorney said.

"It's always been very difficult to pursue legal claims against manufacturers in foreign jurisdictions. Chinese manufacturers have been particularly protected from liability, largely because of distance, language and an underdeveloped legal system in China," said Paul

McCague, a partner with Toronto-based law firm McCague Peacock Borlack McInnis & Lloyd L.L.P.

But since China opened its markets and joined the World Trade Organization earlier this decade, "the expectations of international purchasers have begun to develop," he said. As a result, companies in Canada increasingly are unwilling to accept "being burdened with the full burden of liability of made-in-China products," Mr. McCague said during a plenary session at the recent RIMS Canada Conference in Toronto.

When there have been problems in Canada with products or components made in China, plaintiffs alleging harm typically have sued only the Canadian retailers, often because they didn't know the identity of the Chinese suppliers or because it was impractical to sue a foreign company, he said. When Chinese manufacturers were included in litigation, plaintiffs often got no response or faced difficulties having judgments enforced, Mr. McCague said.

Due to the combined effects of increased trade with Canada—China's share of Canada's imports has tripled since 2002—and the rise in product recalls and related liability litigation, the risks for companies in Canada have "increased dramatically," and companies should be seeking ways to reduce their exposure, he said.

One key step is to make sure liability issues are addressed in contracts with Chinese companies, Mr. McCague said.

The attorney said all contracts should include information on the identity of the manufacturer—including location and the name of a contact person—and the names of any component part suppliers.

In addition, contracts should include a proof-of-insurance clause, perhaps even specifying desired policy wordings, limits needed and types of coverage required. "Make sure that you've got everything in there that you need," Mr. McCague said.

See **CHINA** page 26

Data breaches often lack coverage

Specialty insurance may be needed, RIMS Canada attendees told

By **MATT SCROGGINS**

TORONTO—As breaches of personal information increase, Canadian risk managers need to understand both the legal landscape for such risks and what they can do to protect their organizations, experts say.

While such incidents, whether malicious or accidental, can be costly for organizations, the expenses may not be covered under traditional insurance policies, two speakers told the recent RIMS Canada Conference in Toronto.

A key consideration for risk managers is that many of the reported breaches of personal information are inadvertent, with nearly half resulting from a lost laptop or other computer equipment, said Jon Ashall, senior vp-corporate development for Executive Risk Insurance Services Ltd. in Toronto.

At the same time, criminal efforts to obtain personal information stored in organizations' computer

systems are changing, with perpetrators now taking such steps as tricking employees into revealing passwords and digging through garbage cans in search of information, he said. In addition, employees themselves are sometimes complicit in the schemes, he said.

"It's no longer a 12-year-old hacking into your system. It's now sophisticated criminals," Mr. Ashall said.

When a breach occurs, Canadian organizations need to understand both their legal duties and the expectations of their customers and other third parties, he said. Although Canada has no law requiring organizations to inform individuals potentially affected by a breach of personal information, such individuals still may expect such notification, Mr. Ashall said.

"Consumers' expectations have changed. People expect to be notified where there has been a breach, where personal information has

been disclosed" without their consent, he said, citing research that found that about three-quarters of Canadians believe they should be notified if their personal information has been compromised.

Thomas Srail, vp-executive risks for Willis Group Ltd. in Cleveland, said Canadian companies still may have a legal notification duty if they have customers or employees in countries that have mandatory breach notification laws.

Mr. Srail said California enacted a law in 2004 that requires any organization that has customers or employees in the state to inform all potentially affected individuals of any incident in which personal information is disclosed or could be disclosed.

"That single law alone took us from...about one (breach) a month to about one a day" the next year, he said.

See **SECURITY** page 26

International NEWS



AP PHOTOS

A burned-out truck, which caught fire in September aboard a shuttle train traveling the 30-mile Channel Tunnel from England to France, was removed Oct. 1 in France. The blaze injured 14 and closed the tunnel for 30 hours.

Tunnel blaze losses covered up to \$1.24B

By **SARAH VEYSEY**

PARIS—Groupe Eurotunnel S.A., which operates the infrastructure of the channel tunnel link between France and the United Kingdom, said lost revenue and rebuilding costs from a fire last month would be covered by insurance.

In announcing its third-quarter results, Groupe Eurotunnel said it had insurance for property damage and business interruption of up to a limit of €900 million (\$1.24 billion),

above a deductible of €10 million (\$13.75 million).

The fire on Sept. 11 closed the tunnel for 30 hours before it was partially reopened.

Jacques Gounon, executive chairman of Groupe Eurotunnel, said that repairs to the tunnel might cost about €120 million (\$165.2 million).

The company said €22 million (\$30.3 million) of revenue was lost as a result of the fire and resulting disruption of services.

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Security: Breaches often require specialty coverage

CONTINUED FROM PAGE 24

Now, 44 states have breach notification requirements similar to California's, "although they're all just different enough to make it very difficult to figure out what you need to do in which state," Mr. Srail said.

As privacy breaches increase, the related costs to Canadian organizations are growing.

Those costs, Mr. Srail said, include expenses related to liability litigation and regulatory action, loss of income stemming from downtime, and costs associated with computer system maintenance and crisis management efforts. But unless Canadi-

an organizations have the right policies in place, their insurance programs may not cover such costs, and risk managers seeking to transfer that risk may need specific privacy-related policies, he said.

"A vast majority of the breaches that we see on a daily basis aren't being covered by traditional insurance," Mr. Srail said.

Property policies, he said, typically require "physical damage to tangible property," while crime policies generally are designed to respond to theft of money or securities, "not theft of information," he said.

General liability insurance, meanwhile, is designed primarily to

cover bodily injury or property damage to third parties, and while advertising injury insurance could provide coverage of information breaches, questions over what constitutes "publication" of personal information can complicate claims, Mr. Srail said.

Other steps organizations can take to address the risks associated with privacy breaches include encrypting data and training employees in ways to prevent incidents and to recognize them when they occur.

Encrypting any personally identifiable information can "get you out of notification" requirements in

many jurisdictions, Mr. Srail said.

Mr. Ashall noted that some of the leading organizations in Canada are exploring mandatory training of all employees—including senior management—to help them understand "what the issues are and hopefully curb some of the behaviors that lead to these breaches."

"The weakest point of any of these systems are the people who program, run, configure or use them," Mr. Srail said.

The session at the Sept. 21-24 RIMS Canada Conference was moderated by Grant Williamson, manager-risk analysis for Canadian Tire Corp. Ltd. in Toronto.

China: Risks rising from supply chain

CONTINUED FROM PAGE 24

Contracts also should contain a forum-selection clause stating where litigation is to take place. In the absence of such a clause, a Canadian court may not be able to grant jurisdiction if the manufacturer or witnesses are located elsewhere, Mr. McCague said. If a contract contains a forum-selection clause, though, a court will enforce the provision unless the other side can demonstrate that it should not.

Also vital is a choice-of-law clause that states which jurisdiction's laws apply in a dispute. Regardless of the jurisdiction, "if you get the law of China to apply, you're going to end up in trouble in that lawsuit," he said.

Risk managers also need to monitor supply chains. Some companies, Mr. McCague said, are even doing their own investigations, realizing that they can't rely on their supply chain partners or foreign agencies "to protect their interests."

The emergence of risk management plans "has already resulted in changes to a lot of attitudes in China. The Chinese insurance industry and the manufacturing industry are really hungry now to learn about North American ways, because they are beginning to understand that they may become involved in litigation in North America," he said.

Other panelists were Bernard Fung, chairman and chief executive officer of Aon Corp. unit Aon Asia Pacific Ltd.; Sarah Kutulakos, executive director of the Canada China Business Council; and Timothy C. Violet, executive director of the Harmonie Group.

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RIMS Canada draws 750

TORONTO—Nearly 750 people attended the 33rd RIMS Canada Conference, which was held Sept. 21-24 in Toronto.

The annual conference is sponsored by the Canadian arm of the Risk & Insurance Management Society Inc.

At the conference, the Ontario Chapter of RIMS presented George Simpson with the Donald M. Stuart Award. Mr. Simpson, a senior manager of risk management and insurance with Edmonton, Alberta-based EPCOR Utilities Inc., was honored for his contributions to the field of risk management.

Next year's conference will be held Sept. 13-16, 2009, in St. John's, Newfoundland.

—By Matt Scroggins

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Disputes: Medical conflicts create risks

CONTINUED FROM PAGE 4

dents are highly educated and experienced nurses.

"This is a group you would expect (to be called) reasonably prudent nurses," she said. "And yet, (in) four out of five of these clinical case scenarios, they did not say that they would have done what was in the (text)book."

When faced with mistaken instructions from a physician, many nurses correctly identified refusing the doctor's order as the appropriate action—in theory and according to professional associations and textbooks. Rather than refuse the order, however, many nurses said they would deceive the physician, find another way to work around the conflict, or obey the instructions and hope no harm to the baby or mother results.

One scenario involved a physician ordering an increase in the dosage of contraction-inducing hormone oxytocin, even though the patient was already having too many contractions. Only 23% of surveyed nurses said they would refuse the order, the appropriate reaction. Another 23% said they would verbally agree to the increase but not actually do it. More than half said they would increase the hormone, carefully monitor the fetal heart rate and decrease the dosage if necessary.

Another scenario involved a physician using a vacuum longer than is safe for the fetus during an assisted delivery. More than half the nurses said they would take no immediate action and hope the

baby was born soon. About 47% said they would discreetly alert the physician and notify the charge nurse if vacuum use continued.

The lone scenario in which most nurses said they would take the consensus appropriate action was cases in which a physician refuses to visit a patient with a fetal heart rate that could indicate problems. About 65% said they would notify the charge nurse.

'Who wants to be asked to talk to their risk manager?...They're not calling for the employee of the year award.'

Kathleen R. Simpson,
St. John's Mercy Medical Center

The risk of liability exposure and patient harm in labor and delivery typically is tied to these types of issues, Ms. Simpson said.

A complicating factor in such conflicts is that mistakes in obstetrics seldom lead to adverse outcomes, Ms. Simpson said, because most fetuses and mothers in labor are healthy. The lack of consequences reinforces irresponsible behavior, she said.

"If you're up in the critical care unit and you give the wrong med or you give an overdose of medication, you could kill somebody," Ms. Simpson said. "In labor (and) delivery, we give overdoses of oxytocin

every single day and multiple times, the (excessive contractions don't) lead to any adverse outcomes."

In explaining their actions, nurses cited the hospital hierarchy between doctors and nurses, fears of reprisal, belief that the hospital administration would not support a nurse who reported inappropriate behavior and a general desire to avoid conflict.

"Who wants to be asked to talk to their risk manager? I mean that's like the kiss of death," Ms. Simpson said, to laughter from the ASHRM attendees. "You know it can't be a good call. They're not calling for the employee of the year award."

Ms. Simpson said to avoid adverse outcomes, risk managers should encourage reporting of inappropriate behavior by acting on complaints instead of waiting for several similar complaints to accrue. She said risk managers should emphasize to nurses that they will have support in clinical conflicts, focus on the process of care and not just the outcome, outline clear standards for professional behavior and develop standardized policies—such as limits on dosages and timing of oxytocin.

Nurses responding to the survey said educational programs, meetings and social gatherings of nurses, physicians and other care providers could help.

Ms. Simpson acknowledged the limitations of the pilot study in which only 20% of nurses sent the survey responded, but she also said she said she thinks the findings are reflective of many hospitals she has visited around the United States.

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Congress: Mental parity crowns benefit achievements

CONTINUED FROM PAGE 3

increased costs for HSA enrollees, while reducing the number of financial institutions willing to administer the accounts.

Still, the volume of measures that passed defied those who predicted that little would be accomplished on benefits issues with a Congress controlled by Democrats and a Republican in the White House.

"There were those who said nothing would get done, due to partisanship and then the focus on the elections. In fact, a significant amount of legislation was passed, perhaps more than many had expected," said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

Parity approved

Perhaps the biggest surprise, after years of unsuccessful efforts, came at the end of the session when Congress approved parity legislation that will require group health care plans, starting Jan. 1, 2010, to provide the same coverage for mental disorders and they do for treatment of other medical problems.

The measure was approved on the last day of the session when, in a strange twist, it was used as the vehicle to bring the \$700 billion rescue bill for the financial services industry to the Senate and House floors for final votes.

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The parity law will end widespread health plan designs that impose limits on the number of annual outpatient visits for treatment of mental disorders with no comparable limit for treatment of other medical ailments.

While most employers will have to amend their health care plans to upgrade mental health care coverage and communicate those changes to employees, the cost should be modest. A Congressional Budget Office analysis last year of a similar parity measure estimated that annual insurance premium

increases will average about 0.2%.

One factor that led to the passage of the parity legislation, Mr. McArdle said, goes back to the 2006 congressional elections when the Democrats regained control of the House. With that change in party control, House Republican leaders who had previously blocked parity legislation no longer were in position to do so.

Another important factor was an agreement by several business groups, insurers and mental health care organizations to work together to develop a compromise bill that the interest groups could support.

"That willingness to compromise is what did it," said James Gelfand, senior health policy manager at the U.S. Chamber of Commerce in Washington, referring to passage of the parity legislation.

Reservists benefits

Other benefit bills that passed were directly related to the large numbers of reservists called up for active military service and a legislative effort to ease the financial effect of those activations on employees and their families. As of late last month, 118,000 reservists were deployed on active duty, according to the Department of Defense.

"Many, who are serving our country, had their lives disrupted. Legislation that eases the disruption, however small, resonates well among legislators," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Arlington, Va.

For example, in January, as part of a broader Department of Defense spending measure, Congress expanded the FMLA to allow employees to take up to 12 weeks of leave when a spouse, child or parent is on active duty or is called to active duty. Leave can be for any "exigency," as defined by regulations to be drafted by the Labor Department, the federal agency that enforces the FMLA. Those regulations have not yet been published.

The law also gives employees who are the spouses, children, parents or other next of kin of a service member up to 26 weeks of leave under the FMLA to care for the service member who incurred an injury during military service when that injury results in the service member being unable to perform his or her duties.

In addition, the Heroes Earnings Assistance and Relief Tax Act of 2008, which was approved in June, will allow employees called to the reserves for at least six months of active duty to cash in unused FSA balances, so long as their employers make the necessary plan amendments.

That revision of FSA rules was in response to situations in which activated employees forfeited FSA balances when they were deployed in a part of the world, such as Iraq, where there is no or little opportunity to spend the balances within the time limit.

The HEART Act provides financial help to reservists in another way: It made permanent a law that allows those called to active duty for

BENEFIT SCORECARD

How employee benefit legislation fared in the current Congress

MEASURES APPROVED BY CONGRESS AND SIGNED INTO LAW

- Group health care plans required to provide the same coverage for mental disorders as other medical conditions.
- Family and Medical Leave Act benefits expanded for military families.
- Reservists called to active duty allowed to cash in unused flexible spending account balances.
- Reservists called to active duty exempted from 10% penalty tax on preretirement distributions taken from 401(k) and other defined contribution plans.
- Differential pay provided to employees called to active military duty recognized as compensation in calculating pension benefits.
- Ill college students allowed continuing coverage under parents' health insurance.

MEASURES NOT PASSED BY CONGRESS

- Health savings account administrators required to substantiate distributions. House approved, but Senate did not take up proposal.
- Greater disclosure of 401(k) plan fees. House Education and Labor Committee approved, but no further action.
- Increase in federal health insurance premium subsidies for employees who lose their jobs to foreign competition. House approved, but Senate took no action.

at least six months to withdraw funds from their 401(k) and other defined contribution plans without paying the 10% penalty tax that applies on most distributions taken before age 59½.

College students

Finally, in the closing weeks of the session, legislators, without opposition, approved a measure that allows seriously ill college students to continue coverage under their parents' health insurance plans even if they can't maintain their status as full-time students.

That measure, which generally goes into effect on Jan. 1, 2010, is modeled after a 2006 New Hampshire law that legislators in that state approved after widespread publicity about a Manchester, N.H., college student who continued her studies while battling colon cancer so she could maintain health insurance coverage. The student, Michelle Morse, later died.

"A very compelling case was made" for the legislation, Mr. McArdle said.

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1. Publication Title: Business Insurance
2. Publication No.: 532-590.
3. Filing Date: 9-29-08.
4. Issue Frequency: Weekly.
5. No. of Issues Published Annually: 52.
6. Annual Subscription Price: \$97.00
7. Complete Mailing Address of Known Office of Publication: Crain Communications Inc., 360 N. Michigan Ave., Chicago, Cook County, IL 60601-3806. Contact Person: James Cantley, Phone: 313-446-1615.
8. Complete Mailing Address of Headquarters or General Business Office of Publisher: 360 N. Michigan Ave., Chicago, Cook County, IL 60601-3806.
9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor: Publisher, Martin J. Ross III, Crain Communications Inc., 711 Third Avenue, New York, NY 10017-4036; Editor, Regis J. Coccia, Crain Communications Inc., 360 N. Michigan Ave., Chicago, IL 60601-3806; Managing Editor, Gavin Souter, Crain Communications Inc., 360 N. Michigan Ave., Chicago, IL 60601-3806.
10. Owner (Do not leave blank. If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock. If not owned by a corporation, give the names and address of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. If the publication is published by a nonprofit organization, give its name and address.) Crain Communications Inc. 1155 Gratiot Ave., Detroit, MI 48207-3187; K. E. Crain, 1155 Gratiot Ave., Detroit, MI 48207-3187. R. E. Crain, 711 Third Avenue, New York, NY 10017-4036.
11. Known bondholders, mortgagees and other security holders owning or holding 1 percent or more of total amount of bonds, mortgages or other securities: None.
12. (Must be completed if the publication title shown in item 1 is a publication published and owned by a nonprofit organization.) The purpose, function, and nonprofit status of this organization and the exempt status for Federal income tax purposes: (Check one)
 - ☐ Has Not Changed During Preceding 12 Months
 - ☑ Has Changed During Preceding 12 Months.
 (If changed, publisher must submit explanation of change with this statement)
13. Publication Name: Business Insurance
14. Issue Date for Circulation Data Below: September 29, 2008
- 15.

Extent and Nature of Circulation	Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies (Net press run)	47,854	47,682
b. Legitimate Paid and/or Requested Distribution (By Mail and Outside the Mail)		
(1) Outside County Paid/Requested Mail Subscriptions Stated on PS Form 3541 (Include direct written request from recipient, telemarketing and Internet requests for recipient, paid subscriptions including nominal rate subscriptions, advertiser's proof copies, and exchange copies)	24,339	25,003
(2) In-County Paid/Requested Mail Subscriptions Stated on PS Form 3541 (Include direct written request from recipient, telemarketing and Internet requests for recipient, paid subscriptions including nominal rate subscriptions, advertiser's proof copies, and exchange copies)	0	0
(3) Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid or Requested Distribution Outside USPS®	6,206	5,847
(4) Requested Copies Distributed by Other Mail Classes Through the USPS (e.g. First-Class Mail®)	8	8
c. Total Paid and/or Requested Circulation (Sum of 15b. (1), (2), (3), and (4))	30,553	30,858
d. Nonrequested Distribution (By Mail and Outside Mail)		
(1) Outside County Nonrequested Copies Stated on PS Form 3541 (include Sample copies, Requests Over 3 years old, Requests induced by a Premium, Bulk Sales and Requests including Association Requests, Names obtained from Business Directories, Lists and other sources)	13,727	13,810
(2) In-County Nonrequested Copies Distributed Through the USPS by Other Classes of Mail (include Sample copies, Requests Over 3 years old, Requests induced by a Premium, Bulk Sales and Requests including Association Requests, Names obtained from Business Directories, Lists and other sources)	0	0
(3) Nonrequested Copies Distributed Outside the Mail (e.g. First-Class Mail, Nonrequestor Copies mailed in excess of 10% Limit mailed at Standard Mail® or Package Services Rates)	0	0
(4) Nonrequested Copies Distributed Through the USPS by other Classes of Mail (include Pickup Stands, Trade Shows, Showrooms and Other Sources)	1,951	1,453
e. Total Nonrequested Distribution (Sum of 15d. (1), (2), and (3))	15,678	15,263
f. Total Distribution (Sum of 15c. and e)	46,231	46,121
g. Copies not Distributed (See Instructions to Publishers #4, (page #3))	1,623	1,561
h. Total (Sum of 15f and g)	47,854	47,682
i. Percent Paid and/or Requested Circulation (15c divided by 15f times 100)	66.09%	66.91%

16. This Statement of Ownership will be printed in the 10-13-08 issue of this publication.

17. I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).

Martin J. Ross III, Publisher
9-29-08

Financial woes push some issues to the back burner

WASHINGTON—Although the 110th Congress marked its most significant risk management achievement less than a year after it convened, it left several other risk management-related issues to be dealt with by its successor next year.

Both houses of Congress approved the extension of the federal terrorism insurance backstop less than two weeks before the program was slated to expire on Dec. 31, 2007.

The compromise legislation extended the program for seven years and expanded its coverage to acts of domestically originated terrorism as well as those that originated overseas. President Bush, who had resisted any expansion of the program, signed the extension into law without ceremony late last year.

The House also moved swiftly to approve the Nonadmitted and Reinsurance Reform Act. The measure, which would streamline the regulation of reinsurer and surplus lines insurers, generated little controversy in either house. But despite the intention of Senate Banking Committee Chairman Christopher Dodd, D-Conn., to move the bill forward before Congress adjourned this fall,

the financial services turmoil moved the issue to the Senate's back burner for the current session.

A similar fate befell legislation that would have created an Office of Insurance Information within the Treasury Department. Rep. Paul Kanjorski, D-Pa., introduced a bill that would have created such an office—which was supported by the Bush administration—but the bill never made it even to the House floor before the financial market crisis focused attention elsewhere.

Congress did manage to extend the National Flood Insurance Program beyond its Sept. 30 sunset, but only through early March 2009. The House extension bill would have required the program to offer windstorm as well as flood coverage, a move opposed by much of the insurance industry.

The Senate bill did not contain the wind provision, but negotiators for both houses failed to reach an agreement on that and other issues, leaving it to the next Congress to determine the program's future shape.

—By Mark A. Hofmann

AIG: Ex-exec face congressional grilling; Fed makes second infusion

CONTINUED FROM PAGE 1

While the hearing fueled more political criticism of AIG and how it should conduct its business in the future, it was securities lending agreements that caused the insurer more immediate problems last week.

The Federal Reserve Board of New York last week agreed to lend life insurance units of AIG up to \$37.8 billion under a securities lending agreement. Under the agreement, the New York Fed will borrow, on an overnight basis, investment-grade, fixed-income securities from the AIG subsidiaries in return for cash collateral, AIG said in a statement.

The additional federal funds will allow AIG to meet clients' requests

impact the second federal cash infusion would have for AIG.

"Cash is something that's valuable these days," said Bill Bergman, an analyst with Morningstar Inc. in Chicago. "It's going to help—whether or not that's good for America is another question."

The latest government action, while not technically a loan of cash, still results in additional liquidity for AIG, he said. "It helps insulate them from liquidity concerns and effectively helps them liquefy assets with a longer time horizon. It gives them a chance to shop assets."

That AIG needed additional funds indicates that it remains unclear how badly AIG was affected by its involvement in the credit default swap market, which was the wider cause of its problems, said John Wicher, principal of John Wicher & Associates Inc. in San Francisco.

"I don't think anybody's smart enough to really understand what the underlying value of these swaps really is," he said.

"It's not a good sign for AIG that they need more liq-

uidity, but I think the break-up value of AIG is well in excess of where the loans will end up and, therefore, I don't think it changes the likely outcome of all this," said John L. Ward, chief executive officer of Cincinnatus Partners L.L.P. in Cincinnati. "It definitely gives them more liquidity, which it looks like they will need."

AIG's shares closed last Friday at \$2.33, down more than 40% for the week.

Hearing

The day before AIG was granted the additional federal funds, the House committee held its hearing into the crisis surrounding the insurer.

At the hearing, two former AIG chief executives—Martin Sullivan and Robert Willumstad—came

under repeated fire for the company's practices regarding executive compensation and the decision to keep the former head of the AIG Financial Products unit on a \$1 million monthly retainer. Problems at that unit are blamed for nearly driving the company into bankruptcy last month.

Testifying at the hearing, Mr. Sullivan blamed the company's woes on what he called the "unintended consequences" of accounting practices, notably market valuations of its swap contracts. He said as credit markets seized up, "we were forced to mark out swap positions at fire sale prices as if we owned the underlying bonds, even though we believed that our swap positions had value if held to maturity. The company nevertheless began reporting billions of dollars of unrealized losses on the basis of then-current market valuations."

Mr. Willumstad—who took over for Mr. Sullivan earlier this year and who was replaced by current CEO Edward Liddy last month—said in testimony that there was little that he could have done during his few months at the helm of AIG to avoid the crisis.

"Looking back on my time as CEO, I don't believe AIG could have done anything differently," he said. "There was no private market solution to AIG's situation."

While attention focused on the two former executives, the absence of two other former AIG executives did not go unnoticed.

Maurice R. Greenberg, AIG's former longtime chief, had been slated to testify but excused himself due to illness. Mr. Greenberg did, however, submit a written statement denying culpability for the insurer's fall.

"How did this happen? I was not there, so I cannot answer that question with precision," said Mr. Greenberg in his statement. "But reports indicate that the risk controls my team and I put in place were weakened or eliminated after my retirement."

Members of the committee expressed outrage that another absent executive—AIG Financial

Products chief Joseph Cassano, who was asked to testify—remained on the AIG payroll as an adviser. AIG announced after the hearing that Mr. Cassano and the company had "mutually" terminated their relationship the day before the hearing.

The matter that drew the most congressional ire was AIG's decision to go ahead with an event that Committee Chairman Henry Waxman, D-Calif., called a "weeklong retreat for company executives at

Myron Picoult, a New York-based independent insurance consultant, characterized the event as "a rewards gig for life and annuity agents" and said it was no different from practices used by other insurers.

"It's a sales incentive tool," but AIG should have explained the practice better, he said.

Mr. Lehrer said "there's no doubt" that government oversight of AIG's business practices could

put it at a competitive disadvantage if it cannot use incentives its counterparts can. "But it's what they have to do. They have decided to play with the government and as such they are subject to political oversight."

"AIG will be a competitive disadvantage for its quasi-(government sponsored enterprise) status for a few reasons, and compensation can be adjusted to add money in place of parties," said Mr. Bergman of Morningstar. "But consider the alternative: What if they went under? They are better off than they would have been."

The hearing also stirred a minor tempest concerning AIG's relationship with Goldman Sachs Group Inc. Mr. Willumstad asserted that Goldman Sachs was an AIG counterparty to about \$20 billion in credit-default and that raised questions about the investment firm's exposure to AIG's troubles.

Goldman Sachs denied Mr. Willumstad's claim. "At no point did Goldman Sachs have meaningful exposure to AIG after taking into account collateral and hedging," said a Goldman Sachs spokesman. "Goldman Sachs is very focused on managing risk prudently and we are aggressive in marking our positions and insisting on additional collateral, which is our right under margin agreements."



NYTIMES

'We were forced to mark out swap positions at fire sale prices as if we owned the underlying bonds.'

Martin Sullivan, Former AIG president, CEO



NYTIMES

'Looking back on my time as CEO, I don't believe AIG could have done anything differently.'

Robert Willumstad, Former AIG chairman, CEO

the exclusive St. Regis Resort in Monarch Beach, Calif." Several other members of the committee picked up the theme and hammered the company for holding the event, which reportedly cost more than \$400,000, only days after AIG had accepted the \$85 billion loan.

AIG later stated that the event was not an executive retreat but rather a recognition for independent insurance agents who sold policies underwritten by AIG's American General life insurance unit. AIG said that of the 100 or so participants, only about 10 were AIG employees. AIG said last week that it had decided to cancel another resort meeting scheduled for its private client group.

Still, the damage was done, say observers.

The event "was outrageous and terrible PR for AIG," said Eli Lehrer, a senior fellow at the Competitive Enterprise Institute in Washington. "What were they thinking? Even if it were to have cost them more to cancel the event, they should have done so. It doesn't matter—it just looks so bad."

Most brokers, buyers remain confident in AIG: Surveys

By MARK A. HOFMANN

Most brokers remain confident in the financial strength of American International Group Inc.'s insurance subsidiaries, according to a survey released last week by Advisen Ltd.

Advisen, a New York-based insurance industry analyst, found that 75% of the 611 respondents said they were "very confident" or "somewhat confident" of the AIG insurance units' financial security. Another 21% said they were "somewhat concerned," and only 3% said they were "very concerned" about the insurance subsidiaries' strength.

An earlier Advisen survey of risk managers, taken several days

before the broker survey, showed that 68% of insurance buyers remained confident of AIG insurance units' strength.

Ninety-eight percent of the brokers said they had contacted clients regarding AIG's situation since Sept. 15. "None recommended that their clients should replace AIG, even if it meant higher premiums," the survey found. But 72% of the broker respondents characterized their clients' attitude toward AIG's financial condition as "wary," although only one respondent called his firm's clients "panicked," said the report.

Brokers' comfort level with AIG's security appeared the same at last week's Council of Insur-

ance Agents & Brokers' Leadership Forum in Las Vegas, Thomas P. Ruggieri, Advisen's chief executive officer, said in a statement accompanying the report.

"In conversations with brokerage firm executives attending (the) CIAB Insurance Leadership Forum, the story lines are the same as when we surveyed brokers a week ago," said Mr. Ruggieri.

"Execution risk of the asset sales has been cited as a common concern among brokers. They also worry about the potential of breaking up the commercial P/C units. While brokers are watching ratings actions carefully, they are comfortable with the present security of AIG's property and

casualty subsidiaries," Mr. Ruggieri said.

"AIG Commercial Insurance continues to receive tremendous support from brokers and clients who know that our competitive advantages—our capacity, financial strength, underwriting discipline and claims capabilities—continue to be of value to them," an AIG spokesman said.

"We continue to retain clients, write new business and respond to submissions," the AIG spokesman said.

New York-based policyholder law firm Anderson Kill & Olick P.C. sponsored the survey. The survey results are available at <https://www.advisen.com/downloads/BrokersSpeakOutonAIG.pdf>.

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Market losses threaten funded status of some pension plans

Asset losses reach \$2 trillion over past 18 months

By **MARK BRUNO**

Less than a year after most major companies found themselves operating with comfortable pension surpluses, many are now staring at the likelihood of ending 2008 with their defined-benefit plans well in the red—an outcome that would require corporations to cough up big chunks of cash, seemingly at the worst possible time, to plug holes in their pension funding levels.

In some worst-case scenarios, the losses could trigger forced freezes of defined benefit plans because of pension law changes in 2006.

Large corporate pension plans have taken an astounding blow so

far this month, losing an estimated \$100 billion off of their combined funded status over the course of just five days. It's a hit that could drive the already deteriorating funding levels of corporate pensions even deeper into deficit, as 2008 has hardly been a kind year to defined-benefit plans even prior to this month's carnage.

In the past 18 months, employer-sponsored retirement assets lost about \$2 trillion in value, the Congressional Budget Office estimated last week.

The 1,500 largest U.S. corporations collectively held \$1.66 trillion in defined-benefit assets at the end of last year to cover \$1.6 trillion in pension liabilities, an ideal balance that allowed the group to boast a surplus of \$60 billion and an overfunded status of 104%, according to data from pension consultants at Mercer L.L.C.

But these plans have about two-thirds of their assets invested in the equity markets, on average, and by the end of last month their collective surplus had vanished. They were only 97% funded at the end of September, with their total funded status dropping by \$100 billion over nine months.

90%

FUNDED IN DEFINED-BENEFIT ASSETS: Pension plan funding for the 1,500 largest U.S. corporations was 104% of expected liabilities at the end of 2007 but is lower now.

The figure could have been far worse if yields on corporate bonds, which companies use as the basis for calculating their pension liabilities, hadn't spiked in the third quarter.

That nine-month hit pales in comparison with the most recent losses these plans appear to have sustained, courtesy of one extremely Red October. As equity markets everywhere were slammed over the first five days of the month—the Dow Jones Wilshire 5000 index declined more than 15%, its worst five-day return since October 1987—corporate pension funds' assets shriveled, while their liabilities remained largely unchanged, said Adrian Hartshorn, a consultant in Mercer's financial strategies group.

That combo likely translated into another \$100 billion in funding declines at the 1,500 biggest corporate pensions, he added, meaning the group is now only about 90% funded.

Put another way: Large corporate pension plans appear to have lost as much in the first five days of October as they did in all of 2008.

"It's staggering, really," said Mr. Hartshorn. "And it's created a situation in which there's a strong likelihood that corporations' pension expenses could be significantly higher next year."

When companies do their required annual actuarial evaluations at the end of this year, it appears almost certain that a good number of major corporate names will close their books with underfunded pension plans, said John Ehrhardt, principal and consulting actuary at Milliman Inc.

Companies have operated with pension deficits before, of course. But there are some relatively new funding rules in play that could force companies to make significantly larger contributions to their underfunded plans than before.

As part of the Pension Protection

See **PENSIONS** next page

Hartford: Losses on investment side prompt insurer to raise capital

CONTINUED FROM PAGE 1

ing stock market's effects on profitability and statutory capital required for their variable annuity business, analysts noted.

Asset impairments are "a material issue for the industry when combined with the declining equity market," said Scott Robinson, vp with Moody's Investors Service in New York. "It certainly is placing stress overall on the life industry."

That stress could lead to consolidation in the industry, though "the question is, Who's got the capital to consolidate?" he added.

"Not many companies have excess capital at this point," said Jeffrey S. Berg, a Moody's senior vp.

A risk for life insurers is a cycle in which capital losses trigger down-

grades by rating agencies that, in turn, lead to lost business and demands for collateral from counterparties, said John L. Ward, chief executive officer of Cincinnati Partners L.L.P. in Cincinnati.

"One bad thing potentially leads to another bad thing, so the question is when the domino effect is going to see its last domino," Mr. Ward said.

Still, he said he was encouraged by the ability of Hartford and MetLife to raise capital: "It's a sign that these companies are digging in. They're fighting," Mr. Ward said.

Moody's, while maintaining a negative outlook for the industry, also noted that it is healthier than others in the financial services sector and that life insurers are "well-positioned to move through this

credit crisis and the economic downturn with a strong financial profile."

Standard & Poor's Corp. also adopted a negative outlook for the life industry last week, citing "higher-than-normal credit losses, lower fee-based revenues and reduced financial flexibility."

Hartford was among the first to estimate its third-quarter investment losses in an announcement last week. The insurer warned that it will report a net loss for the quarter, including net realized investment losses of \$2.1 billion to \$2.2 billion. It also estimated its net unrealized losses at \$3.4 billion to \$4.2 billion.

A large part of the realized losses stem from impairments to its holdings in the financial services sector,

Hartford said.

In September, the insurer disclosed that it holds various combinations of debt, preferred stock and other instruments totaling \$252 million from Lehman, \$182 million from AIG, \$126 million from Washington Mutual, and \$520 million from Fannie Mae and Freddie Mac.

Hartford also reported last week that Allianz will invest \$2.5 billion in the insurer, buying \$750 million in convertible preferred stock and \$1.75 billion in subordinated notes that are convertible to common stock over seven years.

The investment will potentially give Allianz a 23% stake in Hartford, according to a research note by Citigroup Global Markets.

The added capital will also leave Hartford with a margin of about \$3.5 billion over the capital level required to maintain its ratings, the insurer said.

Ratings outlook

S&P and Moody's affirmed their respective AA- and Aa3 financial strength ratings of Hartford's property/casualty and life units. S&P adopted a negative outlook on Hartford, though, and Moody's placed its debt rating of the holding company under review for possible downgrade, citing its exposure to mortgage-backed securities and financial institution investments.

A.M. Best Co. Inc. placed the A+ ratings of Hartford's operating units under review with negative implications.

The Allianz deal prompted Citigroup analysts to speculate that the German insurer may eventually acquire Hartford: "With Allianz having the equivalent of a 23% stake in the company, the idea of a buyout at some time seems more likely," the research note said.

Such a deal would face roadblocks, including Allianz's ability to raise enough cash for the transaction and the provisions limiting Allianz to a 25% investment

through 2018, though "it seems likely that this threshold could be increased by mutual agreement," the Citigroup analysts wrote.

A Hartford spokeswoman said the insurers "will continue to operate as two separate companies."

Hartford's shares, which rose to nearly \$33 after the announcement, plummeted to just above \$20 last Thursday amid broader concerns about life insurer investment losses. The shares closed at \$19.23 on Friday.

The developments also rattled some policyholders, prompting Connecticut Insurance Commissioner Thomas R. Sullivan to issue a statement assuring consumers of Hartford's stability: The insurer's "financial strength remains solid and (it) will continue to meet policyholder obligations," Mr. Sullivan's statement said.

Meanwhile, MetLife and Prudential followed Hartford in warning of third-quarter investment losses.

MetLife's realized credit-related losses of \$490 million will be offset by other gains, the company said, but it will report \$17 billion in unrealized losses on its \$324 billion portfolio, up from \$10 billion as of June 30. Unrealized losses include \$1.7 billion for securities trading down 20% or more for six months, an increase from \$400 million of such securities at June 30.

Prudential said it expects to report \$325 million to \$375 million in realized losses on impaired securities, including those of Lehman, AIG and Washington Mutual. The insurer did not estimate unrealized investment losses.

Other life insurers may need to follow the leads of Hartford and MetLife and raise capital, a task made more difficult by credit and equity market turmoil, observers said.

"If they haven't started on this already, they are a little late to the game," said Prakash Shimpi, a managing principal with Towers Perrin in New York.

XL shares plunge on investment loss news

HAMILTON, Bermuda—XL Capital Ltd. said last Friday that it expects to report investment losses of up to \$1.2 billion in the third quarter, an announcement that came a day after its stock price plummeted by 54% amid investor concerns about insurer asset valuations.

XL's shares fell from \$8.68 to \$4.01 last Thursday before rising to close at \$5.43 on Friday, though the stock remains far off its 52-week high of \$81.60. Market analysts attributed Thursday's drop to worries over XL's exposure to mortgage- and asset-backed bonds, which they say is higher than average for property/casualty insurers.

The Bermuda insurer's \$34.3 billion fixed-income portfolio included \$10.9 billion of structured finance products as of June 30, including mortgage-related securities and collateralized debt

obligations, according to an XL statement.

XL has also reported holding \$115 million in equity and debt of bankrupt Lehman Bros. Inc., Washington Mutual Inc. and Fannie Mae and Freddie Mac.

Last Thursday, Paul Newsome, a managing director with Sandler O'Neill & Partners in Chicago, cut his estimate of XL's book value per share to \$21.09 from \$25.10, citing mainly "reduced fixed income and equity investment values on XL's balance sheet."

He also cited other XL troubles—including its costly unwinding of its ties to former financial guarantee affiliate Security Capital Assurance Ltd.—as holding down the valuation of its shares.

"The investment portfolio is more exposed than other carriers" to mortgage-related securi-

ties, said Steven Ader, an analyst with Standard & Poor's Corp. in New York.

On the other hand, XL successfully raised \$3.38 billion in new capital in August and resolved the SCA situation, he pointed out.

In its announcement Friday, XL said it would report \$1 billion to \$1.2 billion in investment losses as of Sept. 30, including realized and unrealized losses and other-than-temporary impairments.

XL plans to announce its third-quarter results Oct. 14.

Separately, ACE Ltd. said Friday that it will report about \$1.5 billion in losses on its fixed income and equity investment for the third quarter. ACE shares dropped about 16% to \$38.25 last Thursday before closing up on Friday at \$40.75.

—By Douglas McLeod

News In Brief

CONTINUED FROM PAGE 1

2007 ruling by the 6th U.S. Circuit Court of Appeals that a cash balance plan sponsored by printing firm World Color Press Inc. is not age-discriminatory. World Color later merged with another company to become Quebecor World Inc., which is based in Montreal. It was the second time the high court declined to review a lower court ruling in a cash balance plan age discrimination

case. The first time was in January 2007, when the U.S. Supreme Court declined to review a 7th U.S. Circuit Court of Appeals decision that IBM Corp.'s cash balance plan did not discriminate against older employees.

ConAgra gets approval for benefits in captive

ConAgra Foods Inc. has received final approval from the Labor Department to fund employee benefit risks through its Arizona-domiciled captive insurance company. ConAgra will use its captive, Risk Resources Ltd., to reinsure life insurance and accidental death and dismemberment policies covering about 22,800 employees

written by Prudential Insurance Co. of America. ConAgra, which last year had revenues of \$12 billion, now uses Risk Resources to fund workers compensation risks. The captive was redomesticated to Arizona late last year from Bermuda.

Broker groups name leaders

The two major associations of commercial lines agents and brokers have announced new leaders. The Council of Insurance Agents & Brokers named Markham R. McKnight as chairman. Mr. McKnight is president of BancorpSouth Insurance Services Inc. In addition, the Independent Insurance Agents & Brokers of America named C. Brett

Nilsson chairman of the group and David Daniel as chairman-elect. Mr. Nilsson is senior vp for Buckner Co., and Mr. Daniel is president of Daniel & Eustis Insurance.

Travelers unit to sell Unionamerica Holdings

Travelers Cos. Inc. subsidiary St. Paul Fire & Marine Insurance Co. agreed to sell Unionamerica Holdings Ltd. to a subsidiary of Enstar Group Ltd. for \$343.4 million. Unionamerica Holdings, which handles runoffs for Travelers' U.K.-based London company market insurance and reinsurance businesses, was sold to Royston Run-Off Ltd. Unionamerica has gross liabilities of approximately \$1 billion.

Pensions: Financial crisis jeopardizes funding levels

CONTINUED FROM PREVIOUS PAGE

Act of 2006, companies with underfunded plans now are forced to make more aggressive contributions to get their pensions 100% fully funded, as opposed to targets of 90% under previous laws. The rules also assigned a specific timetable—seven years—in which a company must amortize payments to make up for the shortfall, and it essentially closed loopholes in pension laws that permitted companies with underfunded plans to skip out on making pension contributions.

"Now, if you have a hole, you are forced to fill it," said Cecil Hemingway, executive vp and head of the U.S. retirement practice at Aon Consulting. "Strategically, it's becoming a bigger factor when companies consider their future cash flows."

There's an even more dire consequence of the decline in funding status—a provision of the PPA that triggers an automatic freeze of a defined benefit plan when its funding level falls below 60%, pointed out Mr. Hemingway. And with cash being so scarce these days, he said, companies with severely underfunded plans may find it to be extremely challenging to keep their pensions above this level.

It's apparently causing some companies to dip into their coffers already. Mr. Ehrhardt said he observed a number of large corporations making a "flurry" of contributions to their pension plans last month to shore up funding levels and avoid falling further behind. Contributions made before Sept. 15, he noted, fell under the old funding rules.

Mr. Ehrhardt said he could not quantify the recent activity, but he estimates that the 100 largest corporate pension plans will end up making between \$90 billion to \$100 billion in combined contributions to their pensions this year.

By comparison, these 100 companies made \$27 billion in collective contributions in 2007, \$36 billion in 2006, \$45 billion in 2005 and \$44 billion in 2004. "I wouldn't be surprised if this turned out to be a record year for contributions," he

added.

The extent of any damage to pension funds will depend, of course, on the way their assets are invested. Some corporations, such as General Motors Corp., have made major moves in recent years to trim their exposure to equities and insulate portfolios from volatility. GM, the country's largest corporate pension plan, had 30% of its \$117 billion in assets invested in equities at the end of last year and the remainder in fixed income and alternative investments. In 2005, almost half of GM's pension assets were invested in the equity markets.

Other companies, however, appear to be more vulnerable to the recent dramatic swings in stocks. According to Milliman data, 16 of the 100 largest corporate pension plans had more than 70% of their assets invested in equities last year, including the \$19 billion plan at Bank of America, the \$11.5 billion plan at Federal Express Corp. and the \$10.5 billion plan at Johnson & Johnson.

Pension experts emphasized that a lot can still happen before year-end to influence pension funding levels—good or bad. And while declines in equity markets have had a major impact on corporate pension assets, it's critical to pay attention to the liability side of the pension equation as well.

Companies use high-quality corporate bond yields to measure the value of their pension liabilities. When these yields are up—as they were in the third quarter—a plan's calculated liabilities go down.

But if credit spreads manage to return this year to the levels they were at several years ago, and equity values don't improve significantly by year's end, then the big corporate pension deficit could widen by another \$400 billion, Mr. Hartshorn estimated. Such a scenario would force the funded status of the 1,500 largest corporate pension plans to dip below 80%.

"That," he warned, "would be the double whammy."

Mark Bruno is a reporter with *Financial Week*, a sister publication of *Business Insurance*.

Markets: Property/casualty prices still favor buyers

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"It's still very much a buyers market, there's still new capacity coming into play," said Pam Ferrandino, executive vp and casualty practice leader with Willis HRH, a unit of Willis Group Holdings Ltd. in New York. In addition to price reductions, buyers are still able to secure coverage enhancements, she said.

In its monthly market survey, Dallas-based insurance exchange MarketScout said property/casualty rates fell 10% on average in September.

As rates continue to fall, insurers' results will likely deteriorate, according to revised projections by A.M. Best Co. Inc. Last week, the Oldwick, N.J.-based rating agency forecast that the U.S. property/casualty industry's combined ratio for 2008 will be 103.2% compared with the 98.6% it had projected in January. Best said its revision factors in the soft market, unusually high catastrophe losses in the first half of 2008, and significant underwriting losses for mortgage and financial guarantee companies.

Combined ratio 'not so bad'

The high combined ratio will not result in sharp rate increases, but decreases may slow, said Edward Keane, senior financial analyst with Best. "We expect prices to stabilize in the second half of the year."

Combined ratios for the industry would need to be above 110% before prices increased significantly, said Clifford Gallant, managing director of equity research with Keefe, Bruyette & Woods in New York.

A combined ratio of "103% to 104% isn't so bad, considering we have had a few hurricanes," he said. The combined ratio expresses an insurer's underwriting losses and expenses relative to its earned premium, and a ratio of 100% is generally considered break-even.

In addition, insurers' underlying results are still good, analysts say. "Even though profitability has deteriorated in 2007 and 2008, the absolute margins are still good from a historical perspective" Mr.

Lane said.

We won't see pricing turn, "until we see profitability really disappoint, or until insurers start to miss their target earnings," Mr. Lane said.

And although insured losses from Hurricane Ike are still being calculated, catastrophe losses for the year have been "manageable," observers say. "If the estimate for catastrophe losses is approximately \$20 billion, that moves the needle a little bit, but we still estimate roughly \$50 billion to \$100 billion of excess capital in the market," Mr. Gallant said.

But the full impact of the turmoil in the U.S. financial markets is still unknown, and may take time to fully play out, observers warn.

"The wildcard for prices will be the insurers' investment portfolio," Mr. Gallant said, noting that the industry could see significant write-downs in the next two quarters.

"We do expect third-quarter (financial) losses, but we'll just have to see how bad they are," said Warren Mula, chairman of Aon Corp.'s U.S. retail brokerage operations in New York. "We expect prices to remain unchanged through January renewals, but after that it's crystal ball gazing," he said.

Problems in the financial markets and ensuing litigation will likely drive up directors and officers liability rates, said William Blair's Mr. Lane, who noted there has already been some firming in D&O rates.

In addition, there may be slight rate increases for certain buyers, due to lack of competition in some "tougher classes of business" that might leave AIG for another insurer, said Willis HRH's Ms. Ferrandino. "If clients switch carriers for those hard-to-place risks, they may see an uptick."

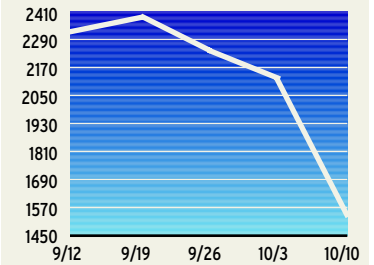
Others note that any sentiment from insurers indicating they intend to "hold the line" may be a message to the industry. "It may be more about setting the expectation, they want to say that if they write any" accounts of clients that choose to move their business from AIG, "they're not going to write it as a reduction," Aon's Mr. Mula said.

Stock Index

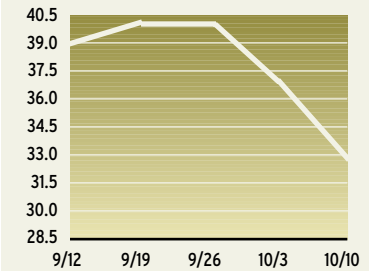
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.IndustryFocus.com.

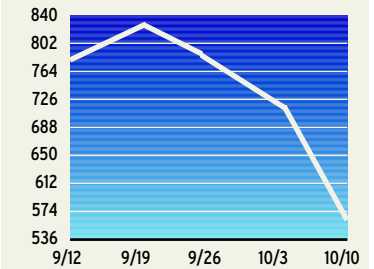
BI STOCK INDEX



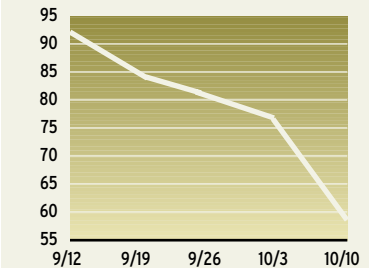
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

BI STOCK INDEX	1570.90	↓ -24.22%
DOW JONES	8451.19	↓ -18.15%
S&P 500	899.22	↓ -18.20%

LARGEST GAINS

Gallagher & Co.	9.79%
UNICO American Corp.	4.77%

LARGEST LOSSES

XL Capital Ltd.	-63.78%
Ambac Financial Group Inc.	-48.01%
MBIA Inc.	-43.19%
CNA Financial Corp.	-42.35%
American Financial Group	-41.44%

Source: Financial Content Inc. <http://financialcontent.com>



Color this suit dismissed

A Connecticut woman took the film classic "Gentlemen Prefer Blondes" seriously.

So seriously, in fact, that when Charlotte Feeney inadvertently dyed her "naturally blond" hair brunette, she said it put a dent in her social life and forced her to use anti-depressants.

She blamed L'Oreal Inc. for putting a different shade of hair coloring in the box than was shown on the outside, and sued the hair color maker in Bridgeport, Conn., claiming negligence.

However, Connecticut Superior Court Judge Richard Gilardi last week dismissed Ms. Feeney's suit, reportedly saying she presented no evidence to support her negligence claim.

According to the suit, Ms. Feeney purchased L'Oreal permanent hair color in August 2003 to touch up her naturally blond hair. But during the application, she realized her hair was turning brown. Further, she said, additional dying failed to restore her blond tresses.

"I was mentally and physically in shock," Ms. Feeney stated in court documents. "I was sick to my stomach, I had headaches, I don't like myself, I stay home more than even in my life, I wear hats most of the time."

In addition, "blondes do get more attention than brunettes, of course, emotionally, I miss that," she said.

Attorneys for L'Oreal reportedly denied that the company was responsible for the hair color mix-up, and argued that the whole thing could have been avoided had a strand test been performed as instructed on the hair color packaging.

The latest in roadway hazards: 'Podestrians'

It's been just a decade since the first MP3 music player was introduced to the world, but a Manchester, England, brokerage is blaming it and its competitors for a 10% jump in car crashes.

Pedestrians who listen to MP3s or iPods, which were introduced seven years ago this month, have come to be known as "podestrians." That group, also distracted by cell phone text messaging, accounts for about one 10 minor car accidents, according to Swinton Group Ltd.

"In many accounts of minor accidents on insurance claim forms, we have seen a significant increase in drivers citing such individuals as having been a factor in the incident," Swinton said in a statement.

Wearing earplugs that block outside

noise, the musically absorbed pedestrians walk onto streets unaware of oncoming traffic. Text messaging also takes pedestrians' eyes off the road. Vehicles consequently brake or swerve suddenly, causing rear-end collisions.

Such accidents have gotten so bad that New York state Sen. Carl Kruger, D-Brooklyn, last year proposed banning pedestrians from using iPods, MP3s, BlackBerrys and cell phones as they walk the streets of Manhattan.

"People have enjoyed listening to music on foot ever since the first Walkmans were introduced in the late 1970s," said Steve Chelton, insurer development manager for Swinton, "but 30 years on there seems to be a rising number of pedestrians who are isolated from traffic noise."



NEWSCOM

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ABC describes "Wipeout," a show that has sparked copycat allegations, as a "painfully funny" reality show in which contestants tackle an obstacle course intended to provide "spills, face plants and wipeouts."

'Wipeout' a rip-off, broadcaster says

ABC has a new obstacle to overcome in its programming.

Last week, Japanese broadcaster Tokyo Broadcasting System sued ABC, alleging that the American network's show "Wipeout" is "a blatant copycat" of Tokyo Broadcasting's competition shows.

Tokyo Broadcasting filed its copyright infringement lawsuit in the U.S. District Court in Los Angeles last Monday, charging that "Wipeout" mimics the Japanese obstacle course show "Takeshi's Castle." Tokyo Broadcasting also owns the copyright to another similar competition show, "Sasuke,"

dubbed episodes of which air on U.S. cable network G4 under the name "Ninja Warrior."

"From the moment ABC revealed 'Wipeout' to the public, that program has been routinely described as a 'rip-off' and 'knockoff' of plaintiff's shows," according to the complaint.

"ABC's willful and wrongful use of plaintiff's shows to create 'Wipeout' is egregious, inexcusable and not to be tolerated."

Tokyo Broadcasting claims that "Wipeout's" premise, scene setups, narration and dialogue are all rip-offs of their shows.

Contributing: Jeff Casale, Mike Tsikoudakis



Grannies, gramps can be highway stars

Allstate Corp. apparently believes you can teach old dogs new tricks.

The Northbrook, Ill.-based insurer is launching a computer-based cognitive training program, starting in Pennsylvania, aimed at sharpening the brains of drivers 50 and older to help them avoid crashes.

The test will use InSight software, developed by San Francisco-based Posit Science Corp., which has been shown in research by National Institutes of Health-funded studies to reduce dangerous driving

maneuvers by up to 40% and crash risks by up to 50%, Allstate said.

There were 30 million people age 65 and older on the roads in 2006, an

18% increase from 1996, according to the National Highway Traffic Safety Administration.

Baby boomer retirements will only increase that number, Allstate said.

"With this revolutionary program, we're offering people an innovative solution in hopes of improving their personal safety and quality of life," Tom Warden, assistant vp at the Allstate Research and Planning Center, said in a statement.

If successful, Allstate said it hopes to offer drivers discounts for the use of the computer-based brain exercises to improve cognitive skills and visual alertness.



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