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BUZZ FROM PCI MEETING: RMS CAT MODEL CHANGE, POLITICAL UNKNOWNNS / PAGE 4

HEALTH PLAN SELF-FUNDING BY MID-MARKET COMPANIES CHALLENGED IN N.J. / PAGE 6

In Brief

S&P upgrades Swiss Re on improved profile

Standard & Poor's Ratings Services raised its long-term counterparty credit and insurer financial strength ratings on Swiss Reinsurance Co. Ltd., and its core subsidiaries to AA- from A+ last week, with a stable outlook. "The upgrade to AA- reflects our view that Swiss Re has met our expectations for an upgrade since our last full review, namely by improving its financial profile, repaying the convertible perpetual capital instrument with Berkshire Hathaway, and continuing to generate strong operating performance characterized by strong underlying performance and improved net income," said S&P in a statement announcing the move.

See **IN BRIEF** page 21

EMPLOYMENT PRACTICES

Wal-Mart bias suit narrowed

After Supreme Court defeat, plaintiffs limit class to Calif.

By **JUDY GREENWALD**

SAN FRANCISCO—Plaintiffs in the gender discrimination case against Wal-Mart Stores Inc., which was refiled last week on behalf of an estimated 90,000 current and former female workers only in California, may be no more successful this time around, observers say.

The U.S. Supreme Court in June ruled against a proposed class of some 1.5 million members nationwide in *Betty Dukes et. al. vs. Wal-Mart Stores Inc.* The majority ruled that the "respondents have not identified a common mode of exercising discretion that pervades the entire company."

Observers say the latest litigation runs up against this same issue, albeit on a statewide rather than a national basis.



AP PHOTO

Lead plaintiff Betty Dukes sits at a witness table on Capitol Hill in Washington in June.

The suit, originally filed in 2001, alleged that Bentonville, Ark.-based Wal-Mart promoted and paid female employees less than men despite female workers' higher performance

ratings and seniority.

The San Francisco federal court, where the revamped case was filed last week, is the same court that granted national case class action status in 2004 to the original suit.

"The Supreme Court did not rule on the merits of the action, but only ruled that the class as certified could not proceed," according to the revised suit. "It did not preclude prosecution of a class that was consistent with its newly announced guidelines and standards."

Accordingly, it said, the revised complaint alleges claims on behalf of current and former female employees "who have been subjected to gender discrimination as a result of specific policies and practices in Wal-Mart's regions located in whole or in part in California."

The suit alleges that "Wal-Mart has had a significantly lower percentage of female managers in its California regions compared to its largest

See **WAL-MART** page 18

CATASTROPHES

Massive Thai flooding disrupts supply chains

Industrial facilities especially hard hit; long closures feared

By **RODD ZOLKOS**

BANGKOK—The worst flooding in Thailand in more than 50 years left nearly 400 dead late last week and caused widespread supply chain disruptions as floodwaters threatened to inundate central Bangkok at Saturday's high tide.

The Thai Finance Ministry estimated the total economic cost of flood damage could exceed \$6 billion, with an analysis by Guy Car-

penter & Co. L.L.C. noting last week that the catastrophe had resulted in \$3.3 billion in insurance claims thus far.

Floodwaters affected 61 of Thailand's 77 provinces, according to Guy Carpenter, leaving numerous manufacturing facilities flooded and forcing closure of several industrial parks, with a supply chain impact that seemed to take many by surprise.

"I think it's going to be surprising to people what a big deal this is," said John Ellison, a partner at law firm Reed Smith L.L.P. in New York and Philadelphia. "We're already kind of working behind the scenes with clients. Supply



REUTERS

Thai soldiers stand at the gates of the Western Digital factory in Ayutthaya province on Oct. 15. Many industrial sites are affected by the country's worst flooding in 50 years.

chain issues arising out of this, I think, are going to be gigantic."

"The thing that's interesting about Thailand, it's a midsized country—but it's really outsized in terms of its importance to the supply chain," said Linda Conrad, director of strategic business risk management at Zurich Financial Services Ltd. in New York.

"I'm hearing some crazy numbers. Things like 1,500 industrial facilities are actually flooded," said Mr. Ellison. "And these aren't mom-and-pop businesses."

Companies such as Honda Motor Co. Ltd., Nissan Motor Co. Ltd. and Toyota Motor Corp. announced that they expect Thai facilities to be closed for more than a month.

Electronics and high tech firms also were hit hard. Toshiba Corp. announced that the flooding forced it to halt production at nine Thai plants, with production not expected to resume before January. Flooding closed two Western Digital Corp. plants in

See **THAILAND** page 20

SPOTLIGHT

PROFESSIONAL LIABILITY

Soft outlook for hard-to-place risks; cover for some attorneys more problematic; financial crisis creates pressure for real estate E&O; architects, engineers exposure a challenge for underwriters. **PAGE 9**

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gallery

THAILAND UNDER WATER: The worst flooding in 50 years in Thailand has a greater potential than the Japan earthquake to disrupt supply chains worldwide. It has already prompted \$3.3 billion in insurance claims. Go to www.BusinessInsurance.com/photos.

MOST POPULAR STORIES Week of October 24, 2011

1. Accident Fund gives workers comp benefits to Joplin, Mo., hero
2. Condition exacerbated by light duty can be claimed new injury
3. *BI* directory ranks largest reinsurance brokers
4. Willis North America names new construction insurance execs
5. Steve Cohen's fund to get into reinsurance business
6. \$3.3 billion in insurance claims filed in Thailand floods
7. Ruling in Hannaford data breach case could signal new approach
8. Lockton expands unit, appoints Derek Lakin as senior vp
9. Reputational damage tops digital risks for businesses
10. Cyber attack threat worrisome: former Joint Chiefs of Staff Chair

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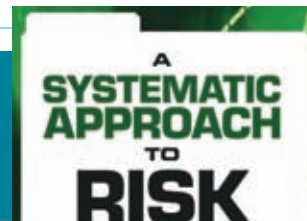


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LRRA TURNS 25: President Reagan's expansion of risk retention groups' underwriting authority expanded coverage options available to all commercial casualty lines. www.BusinessInsurance.com/photos.



D&O DIRECTORY: 2011 D&O Liability Insurance Providers Directory at www.BusinessInsurance.com/directories.



RMIS WHITE PAPER: Get help selecting the right RMIS at www.BusinessInsurance.com/whitepapers.



WEBINAR: "International Expansion Risks for Mid-Market Firms," Nov. 9. www.BusinessInsurance.com/webinars.

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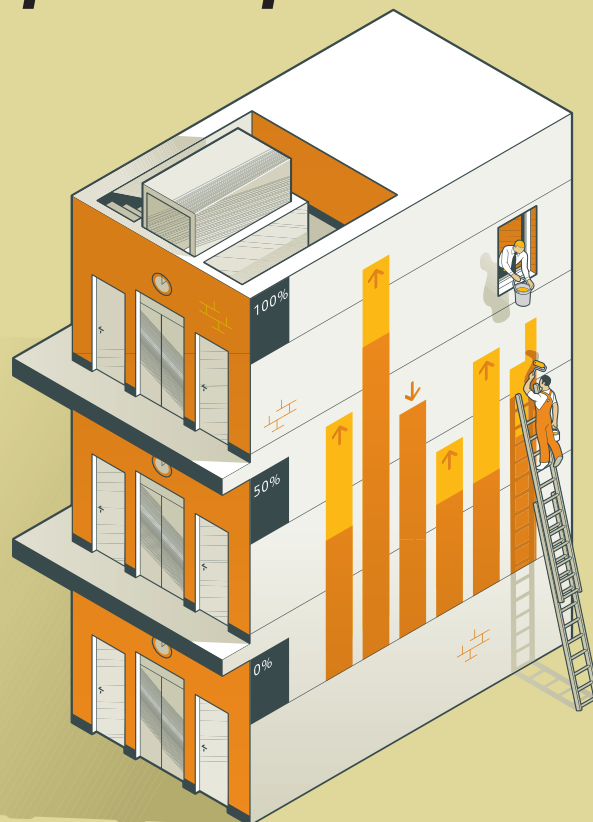
Aon Risk Solutions

Planning or prepared?

This is the 8th year of declining pricing and broadening coverage for executive liability and the P&C industry continues its historically high surplus levels, although additional economic indicators are less than positive. Now is the time to prepare.

Aon Risk Solutions will host the risk management community **Wed., Nov. 2 at 8:30 AM CT** for a discussion regarding D&O litigation and claims trends, current underwriting appetite, suggested renewal approaches and pricing and coverage expectations.

To register for "The D&O Soft Market: The Beginning of the End?" contact your Aon representative or visit aon.com/speakerseries



Risk. Reinsurance. Human Resources.

WORKERS COMPENSATION

Wellness tactics adapted for workers comp

Health benefits tool helps cut employers' overall medical costs

By **ROBERTO CENICEROS**

Large, cutting-edge employers are introducing their workers compensation and nonoccupational disability claimants to wellness programs originally launched through their standard health care plans.

The trend represents a form of benefits integration aimed at reducing employers' overall medical spending, reducing accidents, improving productivity, and improving return-to-work out-

comes by engaging employees with wellness programs and chronic disease management offerings, several sources said.

Employers also want to optimize employee use of established wellness offerings, such as weight-loss or smoking-cessation programs that otherwise may be underutilized, said Kimberly Mashburn, vp of Chicago-based Pacific Resources Special Risk Insurance Services Inc., a benefits consulting firm serving large employers.

The integration practice, however, requires employers to transcend traditional corporate silos that typically separate risk management and workers compensation departments from those

administering health benefits and nonoccupational disability plans.

"We worked closely with our risk management team and made a concerted effort to combine our risks on the workers comp side and getting (disability and workers compensation claimants) engaged, and communicating to them about the resources available on the health care side," said a benefits manager for a global manufacturing company who declined to be identified.

The global manufacturer implemented a health care wellness program in 2002. Then about two years ago, its disability claims administrators began referring claimants to the wellness offerings. Now, workers comp

claimants also are referred to programs such as those to manage lower back pain and other chronic conditions, she said.

The integration approach requires coordinating providers that do not typically work together, such as health insurers, workers compensation third-party administrators and nonoccupational disability insurers, several sources said.

About 10 months ago, TPA Broadspire Services Inc. helped a large employer launch a program to refer its workers comp claimants to a wellness program originally established under the employer's group health plan.

That required several meetings between the self-insured employ-

er's health plan administrator, Broadspire, and the employer's short-term disability administrator so that STD and workers comp claimants also could be referred to the company's wellness offerings, said Gary Anderberg, director of business development for the Atlanta-based TPA.

The providers had to coordinate how they would communicate, the protocols for determining when it would be appropriate for workers comp adjusters or nurse case managers to telephonically introduce claimants to a nurse on the group health side, who then would help them access the company's wellness options,

See **COMP** page 18

PENSION BENEFITS

Proposed pension rules raise concerns in Europe

Applying Solvency II to occupational plans may lead to closures

By **SARAH VEYSEY**

FRANKFURT, Germany—Adoption of new rules for pensions based on Solvency II could dramatically increase funding requirements for employers that operate defined benefit pension plans across Europe, experts say.

Some groups argue that the stricter rules eventually could result in the closure of more pension plans.

The Frankfurt, Germany-based European Insurance and Occupational Pensions Authority, the regulator for insurance and pensions in the European Union, last week published its second consultation paper on harmonizing pension rules across the European Union. It includes adopting some articles of Solvency II, the risk-based capital regulatory regime for insurers and reinsurers that is slated for gradual introduction starting Jan. 1, 2013.

Among other things, EIOPA asked interested parties to give their views on whether the assets of pension providers should be valued on a market-consistent basis, and whether the solvency capital requirement and minimum capital requirement under Solvency II should be applied to European pension plans.

According to the consultation document, the risk-based approach to calculating the solvency capital requirement under Solvency II can

be applied to pension funding.

"The promises made by Institutions for Occupational Retirement Provision and/or employers are comparable to those made by life insurance companies to policyholders," EIOPA said in the document. "The same holds true for the risks IORPs are exposed to. IORPs invest in the same asset classes as insurance companies. The risks on the liability side resemble those of annuities offered by life insurers."

However, because of the specific nature of pension providers, some amendments likely will be necessary, EIOPA added.

Interested parties have until Jan. 2, 2012, to comment on the plan.

The Brussels-based Comité Européen des Assurances, which represents insurers and reinsurers in Europe, supports a "level playing field" for occupational pension providers in the European Union, a spokeswoman said.

Experts say that the effects of any move to Solvency II-based regulation for pensions will be of particular relevance to Ireland, the Netherlands and the United Kingdom, where employer-sponsored pensions are the most common.

Any increase in funding requirements resulting from the regulation will be felt most in the United Kingdom, where employers are unable to cut benefits as a way to mitigate increased funding requirements due to U.K. law.

The London-based National Assn. of Pension Funds, which represents pension plans in the

See **SOLVENCY** page 21

CATASTROPHES



Rescue workers looked for survivors last week in Ercis, Turkey, near the epicenter of a magnitude 7.2 earthquake that rocked the region and caused hundreds of deaths.

REUTERS

Quake losses could reach \$200M

By **SARAH VEYSEY**

VAN, Turkey—The earthquake that hit eastern Turkey last week could result in insured losses of up to \$200 million, according to catastrophe modeling firms.

While Turkey operates an earthquake insurance pool, take-up of that coverage is low in the areas hit by the Oct. 23 temblor, they say.

More than 500 people perished in the quake and, officials said, hundreds more were feared dead. Still, a 2-week-old baby reportedly was pulled alive from the rubble two days after the quake and a man was rescued four days after the 7.2 magnitude earthquake struck.

The quake, which had its epicenter in the city of Van, was followed by a series of aftershocks. Oakland, Calif.-based catastro-

phe modeler EQECAT Inc. estimated insured losses at \$100 million to \$200 million.

Total economic damage caused by the quake is likely to be in the "low single-digit billions" of dollars, EQECAT said, or about one-tenth of the economic damage that was caused by the devastating 1999 Izmit earthquake in western Turkey in which nearly 20,000 people were killed.

Boston-based AIR Worldwide Corp. estimated insured losses at \$55 million to \$170 million.

In 2000, the Turkish government set up a catastrophe fund, the Turkish Catastrophe Insurance Pool, which is funded by mandatory cessions from local insurers and reinsurers. It is backed by the Turkish government and the World Bank, and covers residential property for

earthquake damage.

The pool retains losses of up to \$80 million and transfers losses above that level to international reinsurance markets.

The pool offers policy limits of about \$30,000, normally with a 2% deductible.

In the areas affected by the recent quake, however, only about 8% of dwellings have such coverage, according to AIR.

After the 1999 Izmit earthquake, the Turkish government introduced new construction codes that were updated in 2006, according to AIR Worldwide. But many buildings in Van likely were built before the code was introduced, AIR noted.

And building codes are not rigorously enforced in areas of eastern Turkey, noted Newark, Calif.-based modeler Risk Management Solutions Inc.

INTERNATIONAL

Insurer buys automotive firm's pension assets

U.K. deal may result in higher payments for plan members

By JERRY GEISEL

LONDON—Insurer Legal & General Assurance Society Ltd. is taking on the pension plan liabilities of a defunct British automotive parts producer in what is described as the largest pension plan buyout ever in the United Kingdom.

Under the arrangement, Legal & General, which competed with several other insurers to win the business, will assume control of £1.1 billion (\$1.76 billion) in plan assets.

In turn, Legal & General will pay benefits to the 30,000 partici-

pants in the Turner & Newall plan. Those benefits will at least equal, and in some cases exceed, what participants would have received had the plan been taken over and administered by the U.K. Pension Protection Fund.

The U.K. fund, which is loosely modeled on the U.S. Pension Benefit Guaranty Corp., was set up in 2005 to meet the unfunded pension benefit obligations of insolvent employers with underfunded pension plans.

"This is the largest transaction to date," said David Ellis, a principal with Mercer Ltd. in London, which was retained by plan trustee Alexander Forbes Trustee Services Ltd. to obtain bids from annuity providers.

Even with the annuity deal, however, plan participants will

\$1.76B

Insurer Legal & General Assurance Society Ltd. will assume control of £1.1 billion (\$1.76 billion) in plan assets, taking on the pension plan liabilities of a defunct British automotive parts producer in what is described as the largest-ever pension plan buyout in the U.K.

not receive all of their promised benefits, such as certain benefit increases to reflect rises in the cost of living.

Such pension plan buyout

arrangements are required under British law, where trustees of an underfunded pension plan sponsored by a failed company are required to seek bids from insurers.

"Because the scheme's financial strength exceeds the threshold below which the PPF would automatically step in, the trustee must by law prepare to wind up the scheme outside the PPF," Legal & General said in a statement.

The transaction comes as U.K. employers, like their counterparts in the United States, continue to move away from defined benefit plans, typically by closing the plans to new employees or halting benefit accruals for current participants.

In fact, a 2010 report, known as The Purple Book and jointly published by the Pension Protection

Fund and the Pensions Regulator, found that less than 20% of defined benefit plans were still open to new employees.

"An enormous percentage of plans are closed to entrants," said Phil Waldeck, a senior vp in Hartford, Conn., with Prudential Retirement, a unit of Prudential Financial Inc.

Concerns about the volatility of required contributions due to interest rate fluctuations and uncertainty about future costs due to greater longevity are driving the move away from defined benefit plans, U.K. pension plan experts say.

In addition, to a much greater extent compared with the United States, British plan sponsors are

See **ANNUITY** page 21

PROPERTY/CASUALTY INSURERS



MICHAEL MARCOTTE

Insurance executives discussed decision-making during a time of crisis at the Property Casualty Insurers Assn. of America meeting in New Orleans.

New cat model, economy big concerns for insurers

Brokers, reinsurers urge insurer cedents to broaden analytics

By MARK A. HOFMANN

NEW ORLEANS—The update of Risk Management Solutions Inc.'s U.S. hurricane model was among the top concerns for insurers attending this year's annual meeting of the Property Casualty Insurers Assn. of America.

The state of the economy and how to recruit talented people to the insurance business also received an airing at last week's conference, which carried the theme "decision-making in an era of uncertainty," in New Orleans.

The revised RMS model, which expanded some insurers' expo-

sure, has stirred controversy since the Newark, Calif.-based company announced that it would introduce the model, which it did in February.

Among other things, the RiskLink Version 11 U.S. Hurricane Model includes higher inland wind speeds and greater building vulnerability, as well as changes in some secondary factors. As a result, reinsurers and reinsurance intermediaries are encouraging their clients to use multiple models to assess their exposures.

"I hate" the new model, said Parker Rush, president and CEO of Dallas-based The Republic Group, as a panel of industry executives discussed decision-making in a time of crisis. He said he thought

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REINSURANCE

Florida cat fund faces shortfall

Official advocates reduction of fund's reinsurance role

By SONJA RYST

TALLAHASSEE, Fla.—A senior official at Florida's catastrophe fund is urging lawmakers to reduce the fund's role as a reinsurer in the state after a report estimated that the fund could face a \$3.2 billion shortfall if a major storm were to hit.

While the report emphasized that it used conservative guidelines to estimate the Florida Hurricane Catastrophe Fund's ability to raise funds to pay claims after a major hurricane, the fund's

capacity should still be reduced by about \$5 billion, according to the official.

Insurance industry observers echoed concerns of some state lawmakers that the FHCF may be exposed beyond its ability to raise money to pay claims.

The FHCF was established in 1993 to provide reinsurance capacity for Florida insurers after losses from Hurricane Andrew led to a sharp reduction in capacity in the state. The FHCF is funded through premiums from Florida insurers. Participation in the fund is mandatory for nearly all property insurers writing residential business Florida.

Based on its current exposures, the fund could face claims of \$18.39 billion if a major hurri-

cane were to hit this year, according to the Oct. 18 report prepared by St. Petersburg, Fla.-based Raymond James & Associates Inc.

The fund is projected to have a year-end balance of \$7.17 billion. However, the basis for calculating the FHCF's ability to meet its obligations also factors in the state's ability to raise money through municipal bonds after a catastrophe.

According to the report, taking an average estimate from a panel of leading international investment banks, the fund would be able to raise \$8 billion through bond issues in the 12 months after the event, leaving a potential

See **FUND** page 20

WOMEN TO WATCH

Steinem to present keynote at BI event

NEW YORK—Award-winning journalist and feminist activist Gloria Steinem will present the opening keynote address at *Business Insurance's* 2011 Women to Watch Leadership Workshop and Awards Luncheon.

Among her many achievements, Ms. Steinem co-founded Ms. magazine, made a documentary on child abuse, a feature film on the death penalty and is a best-selling author.

In addition, she has played key roles in various pro-equality and educational organizations.

The *Business Insurance* Women to Watch program recognizes individuals doing exceptional work in risk management, bene-

fits management, commercial insurance and related fields.

Each year, a panel of *Business Insurance* editors reviews hundreds of nominations and selects 25 honorees.

Honorees will be profiled in the Dec. 5 edition of the magazine and recognized at the awards luncheon on Dec. 6 in New York. The event will include a series of panel discussions on the outlook for the insurance sector and the advancement of women in the insurance industry.

For more information about attending the workshop and awards luncheon, contact Events Manager Rebecca Briggs at rbriggs@BusinessInsurance.com.



Ms. Steinem



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Self-funding of health plans under attack in New Jersey

Advocates rush to defend use by small businesses

By JOANNE WOJCIC

TRENTON, N.J.—Advocates of self-funding health benefits are fighting an attempt by New Jersey regulators to crack down on the practice among small businesses, saying it is part of a broader attack on self-insurance at the state and national levels.

In an Oct. 25 letter to Thomas Considine, commissioner of the New Jersey Department of Banking and Insurance, the Self-Insurance Institute of America Inc. asked the department to rescind a bulletin it issued this month that alleges stop-loss insurers are “cherry-picking” employer groups with good claims experience.

The Oct. 3 bulletin alleges that the insurers, which write excess coverage for self-funded group benefit plans, are “selectively marketing coverage to small employers on the basis of health history of that employer’s employees, and denying coverage to employers based on employee health status. The result of this selective underwriting is to ‘cherry-pick’ groups less likely to incur claims, leaving the groups more likely to incur claims to the state’s guaranteed-issue insured market. This, in turn, drives premiums up for small employers purchasing insured plans.”

Because stop-loss insurance is excluded from the state’s definition of a health benefit plan, it is not subject to the same regulations as fully insured health coverage, the bulletin states. Therefore, the department has invoked New Jersey’s unfair trade practice law, asserting that “the selective marketing and underwriting described herein constitutes an unfair trade practice.”

Simpsonville, S.C.-based SIIA asserts that the department’s contention is “inflammatory and without merit. Stop-loss insurance is a completely different product than commercial health insurance, so it is misguided to conclude that ‘unfair competition’ exists,” SIIA said in its letter.

SIIA also suggested that any attempt to restrict self-funding actually would result in higher health care costs for New Jersey employers because the commercial market is “largely monopolistic” because it is controlled by a handful of health insurers.

SIIA also has filed an Open Public Records Act request to obtain the documentation New Jersey regulators are using to conclude that stop-loss insurers have engaged in unfair trade practices.

Mike Ferguson, SIIA’s chief operating officer, said New Jersey’s action is part of a larger effort at the state and federal levels to prohibit benefits self-funding by employers that would be eligible to purchase coverage through insurance exchanges that will be set up eventually under the federal Patient Protection and Affordable Care Act.

Employers opt for lower cost coverage

Because self-funded health care plans are governed by the federal Employee Retirement Income Security Act, they are exempt from state premium taxes and state laws that mandate minimum coverage requirements.

In many cases, such exemptions make self-funding a less expensive option for employers than traditional commercial health insurance, benefit experts say.

Currently, 82.1% of employers with 500 or more employees self-insure their health benefits, according to a recent report to Congress by the U.S. Department of Health and Human Services. By contrast, just 25.7% of firms with 100 to 499 employees do so, and only 13.5% of those with fewer than 100 employees self-fund.

However, that same HHS report noted that if attractively priced stop-loss coverage were available to small and midsize employers at lower attachment points, more would choose to self-insure.

A recent survey by Wilton, Conn.-based D.W. Van Dyke & Co. showing a more than 10% jump in the sales of stop-loss coverage this year over last year indicates that already may be happening. It was the largest jump in medical stop-loss purchases since DWVD & Co. began tracking them in 2002.

While larger employers may have the financial wherewithal to cover large health care claims, most small and midsize employers purchase stop-loss coverage to reimburse them for claims above a specified dollar level. This is an insurance contract between the insurer and the employer and is not deemed to be a health insurance policy covering individual plan members.

The Kaiser Family Foundation estimates that 58% of workers in self-funded health care plans are in plans covered by stop-loss insurance.

—By Joanne Wojcik

“It’s an entirely new line of attack on self-insurance,” Mr. Ferguson said. “There is concern that growth of the small-employer self-insured marketplace will contribute to adverse selection in the group health care marketplace, particularly when the exchanges come online in 2014.”

The National Assn. of Insurance Commissioners “is very much focused on this. What they’ve been looking at is restricting stop-loss in various ways, perhaps by restricting

‘It’s an entirely new line of attack on self insurance.’

Mike Ferguson,
Self-Insurance Institute of America Inc.

the sale to smaller groups altogether or by restricting terms, making attachment points higher,” Mr. Ferguson said.

A committee of the Kansas City, Mo.-based NAIC is considering a formal recommendation that it adopt a model act discouraging self-insurance among smaller employers by either prohibiting the sale of stop-loss insurance to small groups or by setting minimum specific stop-loss

deductibles, which limit an employer’s exposure to a single catastrophic claim, at \$40,000, and aggregate attachment points, which protect against excessively high claims for the entire plan, at 120% of expected claim costs.

The Employee Retirement Income Security Act’s “regulatory exemption for self-insured (self-funded) plans is a persistent thorn in the side of state insurance regulators,” according to a September statement by Timothy Stoltzfus Jost, a law professor from Washington and Lee University School of Law in Lexington, Va., to the NAIC’s ERISA (B) Subgroup.

“This may be acceptable for large employer groups, which have the bargaining power and expertise to protect their employees. But when small-employer packages purchase ‘self-insured’ packages from insurers, including stop-loss coverage with very low attachment points and administrative services, they are essentially purchasing conventional health insurance, except that it is free from state regulation,” Mr. Jost said.

Moreover, he said “insurers have always had an incentive to market ‘self-insurance’ to healthy groups, and small businesses with healthy enrollees have always had an incentive to purchase it. The Affordable Care Act, however, increases these incen-

tives...Insurers understand this and are very actively marketing ‘self-insured’ products to small groups.”

A spokesman for the NAIC confirmed that the organization is looking at stop-loss issues.

Although most large employers self-insure their health benefits, there is no prohibition under federal law barring small employers from self-funding, benefits experts said (see related story).

According to a spokesman for the New Jersey agency, the stop-loss issue came to the state’s attention after it received “reports that some writers of stop-loss coverage were selectively marketing coverage to small employers based on employee health status.” He defined small employers as those with up to 50 employees that are eligible to purchase coverage through the state’s Small Employer Health Benefits Program, which was established under reforms passed in 1994.

Insurers that sell health plans via New Jersey’s small-employer program must cover all employers regardless of their health status, but insurers are allowed to impose waiting periods on individual plan members with pre-existing conditions, the department spokesman said. The plans also are subject to minimum coverage requirements set by the state, he added.

“There are a number of stop-loss insurers that have been sniffing at that small-group market,” said Robert Melillo, national vp of risk financing solutions at USI Insurance Services L.L.C. in Meriden, Conn.

“Self-funding is definitely coming down-market,” said Craig Hasday, president of Frenkel Benefits L.L.C. in New York.

But to price stop-loss coverage, insurers typically medically underwrite it based on information collected from past claims or, when that is not available, on medical questionnaires completed by employees, benefits experts said.

The process is similar to an employer seeking a quote from a health insurer, said Ken Olson, division president of The Horton Group Inc., a broker based in Orland Park, Ill. “If an employer wants to shop their group health insurance, they fill out the medical questions application and then a rate comes back from the competing carrier,” he said. “Why is that different than shopping for stop-loss coverage?”

David Wilson, a partner at insurance industry consultant Windsor Strategy Partners L.L.C. in Princeton Junction, N.J., said the state is erroneously targeting stop-loss insurers when the decision whether to self-insure ultimately rests with the employer.

“The department is hanging it on the stop-loss carriers. That’s an unfair stretch,” Mr. Wilson said. “Any employer that decides to self-insure, regardless of their size, does it because it’s a cheaper option and they have more control.”

The New Jersey Department of Banking and Insurance spokesman said the state will take administrative action against any insurers it determines are cherry-picking employers, but would not describe potential sanctions.

In the meantime, the department’s statement said it intends to promulgate regulations “in the near future” to prohibit the consideration of health status in the offering or pricing of stop-loss insurance offered to employers with 50 or fewer employees.



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Opinions

EDITORIAL

RRGs thrive over 25 years

ANNIVERSARIES ARE AN APPROPRIATE time for reflection, and last week's 25th anniversary of the Liability Risk Retention Act being signed into law is no exception.

Our first reflection is that, by any measure, the law has been a huge success. Consider the experience of the 1981 law—the Product Liability Risk Retention Act—that the LRRR amended.

A grand total of one risk retention group was set up in the United States under the 1981 law. That shouldn't have been a surprise, as it allowed RRGs to provide only product liability and completed operations coverage. Few organizations had any interest in setting up RRGs for such a narrow purpose.

The 1986 law provided the key appeal of RRGs—the ability to issue policies to member owners nationwide after meeting the licensing and capitalization requirements of one state—not just for product liability risks, but for all commercial casualty coverage except workers compensation.

With that underwriting expansion, RRGs became popular and widely accepted risk financing vehicles. Today, more than 250 RRGs provide a stable, secure source of coverage to thousands of organizations spread across numerous industries.

The best measure of RRGs' success is whether policyholders have remained in the programs. And some RRGs have exact statistics illustrating the loyalty of policyholders. For example, National Catholic Risk Retention Group Inc., a 23-year-old Vermont-domiciled RRG, has enjoyed a whopping 99.1% annual policyholder retention rate.

There have been other successes, too. The large-scale petty harassment or improper interference with RRGs by out-of-state regulators that followed in the wake of the 1986 law, while not gone, certainly has eased as regulators have learned what they can and cannot do.

There have been failures, though, the biggest perhaps being the inability of the RRG industry to develop much support in Congress for legislation to allow RRGs to provide property coverage to policyholders.

The failure to generate support for such an expansion doesn't rest solely with RRG advocates. Regrettably, it has become extraordinarily difficult during the past few years for federal lawmakers to agree on anything.

When the day comes when lawmakers again understand that their role is to find a common ground on important issues, we believe they will see the wisdom of expanding the LRRR.

LETTERS

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

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SCHILLERSTROM



COMMENTARY

Rush to reform adds clunkers

The reason a federal long-term care program was incorporated in the health care reform law is a disturbing example of the seedy side of the legislative process.

This month, Health and Human Services Secretary Kathleen Sebelius pulled the plug on the Community Living Assistance Services and Support, or CLASS, Act.

Under the program, participants would have paid a monthly premium for five years, after which they would have become eligible for a cash benefit of at least \$50 a day that could be used to offset the cost of long-term care services. The program was not expected to begin until next year.

Because the program was voluntary, critics correctly said it would have resulted in adverse selection, a point Ms. Sebelius acknowledged.

"This could have led to a vicious cycle where premiums would have to be set higher and higher to cover the likely costs of the benefits, leading fewer and fewer healthier people to sign up for the program," she said.

If the program, as designed, was doomed to fail, why then was it incorporated in the health care reform law?

The answer to that, regrettably, is obvious: Since no benefits would have been paid out for five years, the premiums paid in would have been counted as revenue used to offset the cost of the health care reform law.

That feature made it attractive to health care reform law advocates anxious to show the law

would not add to the federal deficit and explains a good part of the reason why it was embedded in the law.

Of course, the reality is that the long-term care program—because of adverse selection—eventually would have required a big taxpayer-funded bailout to remain solvent.

Ms. Sebelius, to her credit, saw the inevitable fate of the program and killed it.

Still, one wonders how many clunkers like the CLASS program remain in a law that didn't get the intense scrutiny it deserved—as opposed to meaningless sound bites by members on both sides of the aisle—as it moved through the House of Representatives and Senate.

There are some obvious ones, like a provision in the law that appears to impose a \$2,000-per-employee penalty on employers for all their full-time employees even if only one lower-paid employee was not offered coverage, was

eligible for a premium subsidy and used the subsidy to purchase coverage in a state insurance exchange.

This type of sledgehammer approach is hardly the way to encourage employers to offer coverage.

We hope the Obama administration and lawmakers can work together to identify and strip those clunkers from the law before they can do real damage, as would have been the case with the long-term care program.

Contact: jgeisel@businessinsurance.com



**JERRY
GEISEL**
SENIOR EDITOR

Professional
Liability

SPOTLIGHT

SOFT OUTLOOK FOR HARD TO FIT RISKS

Ample capacity available for most exposures

By **JUDY GREENWALD**

Errors and omissions risks once characterized as hard to place now are merely challenging due to ongoing soft pricing, many observers say.

With capacity at least adequate, and in some cases still increasing, even relatively problematic E&O lines, such as financial institutions, real estate, attorneys intellectual property business, and certain architects and engineers segments, generally can find coverage (see stories, pages 12, 13 and 15).

"Right now, there's a lot more opportunities for lines that, in a hard market, would be considered hard to place," said Jim Donovan, New York-based senior vp in the professional liability unit at Liberty International Underwriters.

See **PROBLEMATIC** next page

**PLACING COVERAGE
FOR SOME ATTORNEYS
MORE PROBLEMATIC
PAGE 12**

**FINANCIAL CRISIS
CREATES PRESSURE
FOR REAL ESTATE E&O
PAGE 13**

**ARCHITECTS, ENGINEERS
EXPOSURE A CHALLENGE
FOR UNDERWRITERS
PAGE 15**

Problematic: Soft outlook for professional liability exposures

CONTINUED FROM PREVIOUS PAGE

If an account is not being renewed by an insurer, it has to be because of a "pretty horrific claim, because the market is so soft a lot of people are willing to step in as an underwriting market," Mr. Donovan said.

With the exception of "very esoteric" types of exposures, such as nuclear power plants or offshore drilling, "I would imagine brokers can place most risks in the E&O area," said Lyle S. Hitt, New York-based executive vp of Arch Insurance Group Inc.'s professional liability practice.

"It's difficult to define what is hard to place in this marketplace, as there is capacity seemingly ready to jump into just about everything," said James L. Rhyner, Warren, N.J.-based worldwide manager for lawyers professional liability and miscellaneous professional liability at Chubb Group of Insurance Cos.

"If you look at accounts with claims, we've seen accounts that we've paid claims on that other carriers come in and offer proposals that are less than our expiring price, so there's no penalty for claims experience," Mr. Rhyner said.

However, "That's beginning to change, and I do see there will be more prudence in the underwriting going forward," he said.

Tracie Grella, New York-based president of professional liability for Chartis Inc., said she would characterize E&O business as "more challenging rather than hard to place." There are "some markets that are being more cautious about certain areas of the market" but most risks can be placed, she said.

Phil Norton, president of the professional liability division for Arthur J. Gallagher & Co. in Chicago, said, "It's kind of

strange." The market is firming and, at the same time, capacity "is actually increasing a bit." In a typical renewal, the insurer asks for a 5% to 7% increase, then settles for a flat renewal, he said.

Robert Rogers, assistant vp at Boston-based Lexington Insurance Co., a unit of Chartis Inc., said there are five or six insurers in the architects and engineers sector who are long-term underwriters, but there are about "40 plus" others whose impact has been to continue soft pricing.

"It's still a very soft market," said Lori Bailey, Boston-based senior vp of professional liability

for Zurich North America Commercial, a unit of Zurich Financial Services Group. "There's still a lot of capacity." While certain professional liability lines "have seen perhaps a little bit of hardening, and that's where you see rates going up a little bit," she said. "A lot of that is going to be driven by severity events," such as in the area of security and privacy, she said.

"Everything is, of course, relative," said Gerard Guterl, New York-based CEO of professional services specialty at Aon Risk Solutions, a unit of Aon Corp. "We continue to see new capacity coming into the market, so the only firms that are finding themselves in a somewhat difficult position are typically those that have both recent frequency and severity of loss."

But there are certain classes "underwriters are looking at a little more closely, and have more issues than others," said Mr. Guterl. Regional accounting firms,

'We continue to see new capacity coming into the market, so the only firms that are finding themselves in a somewhat difficult position are typically those that have both recent frequency and severity of loss.'

Gerard Guterl, Aon Risk Solutions

for instance, "are starting to see a potential tightening of the market," which also is true for certain classes of architects and engineers. "One of the tougher classes over the past 10 years" has been actuarial consulting firms or actuaries.

Mr. Guterl said another trend he is starting to see is "across-the-board increases in the cost of defense." Generally, defense costs are included within policy limits. "We're seeing significant increases, particularly in the law firm business" in defense costs, which is "putting pressure on retentions," he said.

Mr. Norton had a more general view: "I would say, surprisingly, the news in my opinion is quite good, given where the economy is right now. We have seen a little bit of an uptick in claims, but it's not translating into a lot of extra premium.

"Across the book, things loom pretty flat at this year's renewal. Now, that could change" with big claims that ripple into several E&O categories. "But with a lot of claims undetermined, a lot of claims relatively small," as well as new capacity, "I think this puts us in that holding pattern where we can remain cautious but temporarily comfortable," he said.

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Straight Answers

Lawyers face tough market in several practice areas

Intellectual property, class actions, real estate pose E&O challenges

By JUDY GREENWALD

Attorneys active in intellectual property, plaintiff class actions and real estate are among the more problematic areas for errors and omissions underwriters,

although the situation has been helped by the soft market's ample capacity, observers say.

Intellectual property "is always about severity," said Kim Quarles, New York-based senior vp at Willis North America Inc.

"When it comes to (intellectual property) law firms, you can have a firm profitable for years and years," she said. For insurers, because intellectual property claims are "so expensive to defend, you can wipe out 20

years of profit with one claim."

The reason these claims are so severe is because of their complexity, said Ms. Quarles. An attorney who misfiles a patent that fails to protect its investors could mean the loss of millions of dollars. Furthermore, defending these claims requires expert testimony, which is expensive.

One challenge in handling patent business is that mistakes such as filling in a wrong date "are easy to make," said James L. Rhyner, Warren, N.J.-based worldwide manager for lawyers professional liability insurance and miscellaneous professional liability insurance at the Chubb Group of Insurance Cos.

Mr. Rhyner said this also is a

"very high-risk area" because "it's not just the U.S. If you're an investor, you want to secure your rights to your invention worldwide, and that's a pretty tricky path to navigate."

Greg Leffard Simsbury, Conn.-based vp of professional liability for The Hartford Financial Services Group Inc., said policyholders are "fortunate in one respect: that there's a lot of competition out there," so brokers can place the business.

Gerard Guterl, New York-based CEO for professional services specialty at Aon Risk Solutions, agreed. He said patent business is "an area that's concerned underwriters for over 10 years now." Law firms with a significant exposure in this area may pay higher rates but the business is "certainly insurable," he said.

Law firms that specialize in real estate comprise another challenging area.

This includes any firm that has been involved with credit

'You have to keep in mind the market varies in size; and so you have what I call gradations, if you will, for hardness or softness depending on the size of the firms. I would say the market is not as soft as it is for the smaller firms.'

Kim Quarles,
Willis North America Inc.

default options and "robo-signing" of mortgage foreclosure documents, said Ms. Quarles. "What we're hearing from underwriters is that they expected more than has played out," but claims could increase in the future once the federal government has picked the "low-hanging fruit," she said.

Plaintiff class action firms are another E&O coverage challenge, experts say.

Mr. Leffard said plaintiff class actions "have always been a challenge. I would say probably more recently it's more loss-experience-driven," he said. "It's basically a severity issue" because of the thousands of claimants potentially involved.

Peter Taffae, an E&O liability insurance expert at Los Angeles-based wholesale brokerage Executive Perils Inc. said, "We've got a couple of plaintiff firms coming up in the next 60 days and it's not going to be a pleasant renewal.

"You have to keep in mind the market varies in size; and so you have what I call gradations, if you will, for hardness or softness

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depending on the size of the firms," Mr. Quarles said. For the largest law firms, for instance, "I would say the market is not as soft as it is for the smaller firms."

Attorneys can enhance their coverage opportunities during the application process, said Mr. Lefard.

"It really starts with the application. To the extent they can fully complete an application and put their firm in the best light possible, that absolutely goes a long way," he said.

Answering questions

Another significant factor is responding to the underwriter's questions, he said. "A lot of accounts don't have the opportunity to meet face-to-face" with the underwriter, who is making his decisions based "on what the firm looks like on paper," so they "need to present themselves in the best light possible," he said.

In addition, said Mr. Lefard, "We really like to see what they've learned from their past experiences." When a law firm does have a claim, "any preventative action taken to prevent that type of loss from happening again goes a long way in our minds."

"Law firms should position themselves as favorably as they can in the marketplace," said Mr. Guterl. They want to distinguish themselves with better risk management procedures and client intake policies, and a "real fundamental understanding of the risk issues and how they're managing them and how to communicate those effectively to the marketplace," he said.

Risk management practices differ based on the size of the law firm, with sophistication increasing with the size of the firm, said Ms. Quarles. A 200-attorney firm, for instance, is "likely to have a general counsel" as well as someone dedicated to the ethical issues involved, she said.

Larger law firms "should be meeting with underwriters, if not on an annual basis, certainly every other year" to communicate developments, said Mr. Guterl. There also is greater emphasis on managing claims, managing outside counsel and on how firms communicate with insurers. "The more transparency that a firm is willing to provide to its insurers generally, the better terms and conditions they're going to get," he said.

"A lot of this just boils down to basic practice standards," including client screening, said Ms. Quarles. "You have the processes and procedures to ensure you're accepting the type of business you want to accept and not getting entangled in business you don't want to get entangled in," she said.

In addition, the value of the various products can vary dramatically, so policyholders "need to have broker adviser who understands those substantive and subtle differences in coverage," Mr. Guterl said. "Too many customers focus on price and not on expanding the quality of coverage."

Financial crisis leads to large E&O claims

Bank clients seek damages for real estate-related losses

By JUDY GREENWALD

The financial crisis' effect on real estate-related business is being felt in errors and omissions liability coverage.

Banking and diversified financial firms that told their clients to invest in risky credit default swaps or subprime mortgages now face some big claims "and a lot

of them are still open," said Phil Norton, Chicago-based president of the professional liability division at Arthur J. Gallagher & Co. In many cases, defense costs have already hit \$10 million, he said.

Any risks with direct exposure to the financial crisis are typically harder to place, said Gene Mason, senior vp and head of professional lines for Endurance Specialty Holdings Ltd.'s U.S. wholesale insurance operations. This includes title agents, appraisers, escrow agents and some property managers.

Title agents, for instance, "historically did not have a lot of claim activity," Mr. Mason said. But during the recent real estate crisis, they may have run into problems by failing to go beyond checking online to see if there were any liens on the property and local officials may have been backed up in inputting this information.

James L. Rhyner, Warren, N.J.-based worldwide manager for lawyers professional liability insurance and miscellaneous

See **FINANCIAL** next page

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Financial: Real estate-related risks get more scrutiny

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professional liability insurance at the Chubb Group of Insurance Cos., said what title agents, as well as collection agents and related professions, have in common is "the volume of work that they had during the boom time and with refinancing. There was a tremendous amount of work and it needed to be done quickly; and oftentimes, protocols weren't in place for there to be proper oversight to make sure everything was compliant."

Other difficult risks within the financial segment include banks,

'There was a tremendous amount of work and it needed to be done quickly; and oftentimes, protocols weren't in place for there to be proper oversight to make sure everything was compliant.'

James L. Rhyner, Chubb Group of Insurance Cos.

security broker dealers, investment advisers and mortgage brokers, Mr. Mason said.

Also affected have been "accounting firms and law firms who have clients that are directly

tied to the crisis," Mr. Mason said. "Whether it's subprime, whether it's the economics, they still have exposure."

Mitigating these risks is a "question of management control and

oversight," said Mr. Mason.

For instance, he recommends that consulting firms bill monthly rather than quarterly. A monthly bill is "really going to be your first line of defense when the client comes back and says, 'Hey, I didn't know you were doing' certain work, he said. "It's hard to argue you didn't know what was going on if you get a bill once a month."

Firms should also have a "clear, well-defined" engagement letter "that defines the actual services that you will perform on behalf of the client," the time frame and when to start billing the client, Mr. Mason said.

"What we're seeing is, on a lot of renewal business, E&O underwriters are asking more questions." Standard applications "don't necessarily cover a lot of the issues that are out there that they want to address," he said.

Getting the best coverage is a matter of entities "being able to demonstrate to the underwriters that they have protocols in place to ensure that all of the work product is being reviewed and handled appropriately," Mr. Rhyner said.

"It's important that those entities in the underwriting process demonstrate to the carriers that they have particularly good protocols in place, and that will help differentiate them from their peers," he said.

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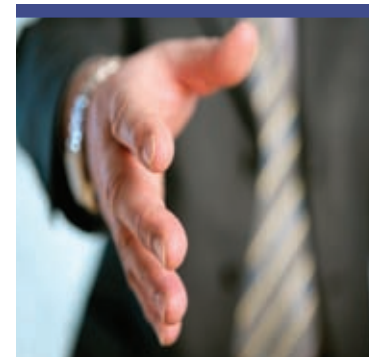
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Insurers seek more detail on specialty E&O

By JUDY GREENWALD

Geotechnical engineers and multi-residential architects and engineers are among sectors that can present particular challenges to underwriters who provide errors and omissions coverage.

The primary responsibility of geotechnical engineers, also known as soil engineers, is to take samples of soil at proposed construction sites, determine whether the characteristics are suitable for the proposed building and then prepare a report, said Richard Hartman, vp, architects and engineers professional liability for the Arch Insurance Group Inc. in New York.

But "it's a very inexact science," said Mr. Hartman. A building with a huge footprint, for instance, may involve just five or six soil samples or borings.

"It's an extremely difficult proposition because the soil's condition can vary from one foot to the next, so "coming up with an exact classification of soils in one site is challenging," he said.

Problems stemming from an incorrect report can require significant repair or a "total teardown" or even abandonment.

Compounding the problem, Mr. Hartman said, is that the fees charged for these services are very low "and as an underwriter, that's what we base our premiums on. So therefore we really can't generate a premium that's truly commensurate with the exposure."

This disproportionate fee-to-exposure ratio creates an "underwriting challenge for most insurance companies," he said.

On the plus side, geotechnical engineers "are very prudent in reporting potential problems."

Insurers also stress to geotechnical engineers that the sooner insurers become involved, "the better opportunity we have to come out with a successful resolution and mitigation" of the problem, Mr. Hartman said.

Also challenging is coverage for architects and heating, ventilation and air-conditioning engineers in multi-residential facilities, which also generate low-frequency, high-severity claims and have a disproportionate fee-to-exposure ratio, he said.

Because designers often repeat three or four models throughout a major project, a design flaw can result in a catastrophic, "or certainly very severe claim, because the error's going to be repeated in each...those models," he said.

Mr. Hartman said the best approach for these professionals is to explain to their insurers "why they are better than their peer firms," what they do differently from a risk management perspective, how they select clients and the risk mitigation in their contracts including how they ensure their clients' financial viability.

Data breach ruling may signal change in approach

By JUDY GREENWALD

BOSTON—An appeals court's decision to permit negligence and contract putative class action litigation to proceed in a grocery store chain data breach because of the alleged damages incurred could signal a change in courts' approach to this issue, says an expert.

According to the decision by the 1st U.S. Circuit Court of Appeals in Boston in *John Anderson et al. vs. Hannaford Bros. Co. et al.*, the electronic payment processing system of the Scarborough, Maine-based grocery chain was breached on Dec. 7, 2007.

Hannaford first learned of the breach in February 2008. Its first public announcement was in March, saying the breach affected as

many as 4.2 million debit and credit card numbers belonging to individuals who had made purchases at more than 270 of its stores.

Twenty-six separate suits were filed against Hannaford arising from the breach and were consolidated into one suit. Plaintiffs said they experienced more than 1,800 unauthorized charges to their accounts and suffered several categories of losses as a result of the breach.

"Plaintiffs' claims for identify theft insurance and replacement card fees involve actual financial losses from credit and debit card misuse," a three-judge appeals court panel said in its Oct. 20 ruling. "Under Maine contract law, these financial losses are recoverable as mitigation damages as long as they are reasonable," the court ruled in partly affirming

and partly reversing a lower court ruling.

A Hannaford spokesman declined comment.

Discussing the decision, Scott L. Vernick, a partner with law firm Fox Rothschild L.L.P. in Philadelphia, said until the ruling, potential class actions relating to data breaches generally have been dismissed early on, either because the plaintiffs did not have standing to sue or there was no threat of actual injury.

Mr. Vernick, who was not involved with the case, said he believes this may be the first federal appeals court to allow such a case to proceed on the basis of alleged damages sustained.

"The real question," Mr. Vernick said, is "does this begin to signal a turn, and if it does, why does it and what does it mean?"

SEPTEMBER 5TH, 1:45 A.M.

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Pfizer settles whistle-blower suit

Agreement resolves last of 10 related claims filed against drugs firm

By JUDY GREENWALD

WASHINGTON—Pharmaceutical firm Pfizer Inc. has agreed to pay \$14.5 million to resolve whistle-blower claims related to its alleged improper marketing of the drug Detrol, according to the U.S. Justice Department.

The settlement with the New York-based pharmaceutical firm, which was announced this month, resolves the last of 10 whistle-blower suits that date back to 2003.

The other nine suits were settled or dismissed in 2009 as part of a combined civil and criminal resolution of claims against Pfizer.

As part of those settlements, the pharmaceutical firm agreed to pay \$2.3 billion to resolve civil claims as well as criminal charges regarding multiple drugs, according to the Justice Department.

\$14.5M

Of the \$14.5 million settlement, \$11.8 million will be recovered by the federal government and \$2.6 million recovered by the Massachusetts Medicaid program.

The latest settlement involves charges that Pfizer illegally marketed Detrol, a drug that is used to treat overactive bladders in male patients suffering from an enlarged prostate and several allied conditions—notably lower

urinary tract symptoms and bladder outlet obstruction.

None of the uses had received Food and Drug Administration approval.

“Whistle-blowers play an important role in protecting taxpayer funds from fraud and abuse,” Tony West, assistant attorney general of the Justice Department’s civil division. “Settlements like this one help maintain the integrity of FDA’s drug approval process and support important federal and state health care programs.”

Of the \$14.5 million settlement, \$11.8 million will be recovered by the federal government and \$2.6 million recovered by the Massachusetts Medicaid program.

Whistle-blowers will receive a share of the federal recovery totaling \$3.2 million, according to the U.S. attorney’s office.

A Pfizer spokesman could not be reached for comment.

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LEGAL NOTICE

IN THE MATTER OF THE CONSERVATION OF THE TRUST FUND OF HIGHLANDS INSURANCE COMPANY (U.K.) LIMITED.
New York Supreme Court, Index No.: 402246/11

Notice is Hereby Given:

I. Pursuant to an order of the Supreme Court of the State of New York, County of New York (the “Court”), entered September 29, 2011 (“Conservation Order”), the then-Superintendent of Insurance of the State of New York and his successors in office were appointed as conservator (“Conservator”) of Highlands Insurance Company (U.K.) Limited (“Highlands”) and, as such, has been directed forthwith to take possession of the trust fund (the “Trust Fund”) established by Highlands as security for its United States policyholders, under 11 NYCRR 27 (“Regulation 41”), specifically §§27.13 and 27.14, with Citibank N.A. (“Citibank”) as trustee, pursuant to a trust agreement, effective as of January 1, 1992 (“Trust Agreement”), and to conserve the Trust Fund pursuant to Article 74 of the New York Insurance Law (“Insurance Law”) and Regulation 41, subject to the further direction of the Court. Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York, has now succeeded the Superintendent of Insurance as Conservator of Highlands. The Conservator has, pursuant to Insurance Law Article 74, appointed Jonathan L. Bing, Special Deputy Superintendent (“Special Deputy”), as his agent to take possession and to conserve the Trust Fund pursuant to Article 74 of the Insurance Law and Regulation 41, subject to the further direction of the Court. The Special Deputy carries out his duties through the New York Liquidation Bureau (“Bureau”), 110 William Street, New York, New York 10038.

II. The Superintendent as Conservator is directed to take such other and further steps as may be required to protect the policyholders and beneficiaries of Highlands in the United States pursuant to the Insurance Law and subject to the further order of this Court.

III. All persons are enjoined and restrained from wasting the Trust Fund or any other assets of Highlands and enjoined and restrained, except as authorized by the Conservator, from disposing of the assets of the Trust Fund.

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

V. All persons are enjoined and restrained from interfering with the Conservator or this proceeding, obtaining any preferences, judgments, attachments or other liens, or making any levy against Highlands, Citibank, the Trust Fund, their assets or any part thereof.

VI. Highlands, its officers, directors, stockholders, depositories, trustees, attorneys, managers, agents, servants, employees, policyholders and creditors, and all other persons having any property or records relating to the Trust Fund and any other Regulation 41 trust funds of Highlands are hereby directed to assign, transfer and deliver to the Conservator, and his successors in office, all of such property in whose ever name the same may be, and that any persons, firms or corporations having any books, papers or records relating to the Trust Fund and all other Regulation 41 trust funds shall preserve the same and submit them to the Conservator, or his agents, for examination at all reasonable times.

VII. The Conservator, and his successors in office, be and they are hereby authorized, permitted and allowed to sell, assign and transfer any and all of the stocks, bonds and securities that constitute the Trust Fund or other Regulation 41 trust funds, in his possession or which may hereafter come into his possession belonging to Highlands, at market price or better, or when there is no market price, at the best price obtainable, at private sale and at such times and upon such terms and conditions as, in his discretion, he deems for the best interest of the policyholders, and creditors of Highlands, and in furtherance of the conservation of the Trust Fund and all other Regulation 41 trust funds, and that he be authorized, permitted and allowed to take such steps and to make and execute such agreements and other papers as may be necessary to effect and carry out such sales, transfers and assignments.

VIII. The Order of Conservation can be viewed on the internet web page maintained by the New York Liquidation Bureau at <http://www.nylb.org>.

IX. All communications relating to Highlands and to the conservation of the Trust Fund should be addressed to:

Jack A. Franceschetti, Esq.
New York Liquidation Bureau
110 William Street
New York, New York 10038
(212) 341-6700

Benjamin M. Lawsky
Superintendent of Financial Services of the State of New York as Conservator of
Highlands Insurance Company (U.K.) Limited

Jonathan L. Bing
Special Deputy Superintendent of Financial Services of the State of New York as
Conservator of Highlands Insurance Company (U.K.) Limited

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Contact Monique at 212-210-0129

UP Comings & Goings CLOSE



JOHN FLEMING

NEW JOB TITLE: Atlanta-based executive vp for insurance services for Paul Davis National, the large loss specialty practice under Paul Davis Restoration Inc.

PREVIOUS POSITION: Atlanta-based vp and director of business development and marketing for Cunningham Lindsey USA Inc.

LOOKING FORWARD TO: I’ve known the Paul Davis organization for a long time in my previous roles in the industry. I’ve always thought very highly of them. I look forward to this opportunity to help Paul Davis National to grow their business through my contacts in the industry.

GOALS FOR NEW POSITION: Immediate goals are to re-contact a lot of friends and clients I’ve met over the years and introducing them to the difference at Paul Davis National.

CHALLENGES FACING INDUSTRY: Everyone who is involved in the insurance industry right now is

tremendously affected by the impacts of this soft market. (A) soft market...requires insurers to be cost-conscious while maintaining their high level of customer service.

HOBBIES: I am an avid reader. I play the acoustic guitar when I have time. I’m also an avid fly fisherman.

MOST PASSIONATE ABOUT: My family has always come first to me. They are my cornerstone and my support in my career. You have to have that support at home.

FAVORITE BOOK: I’m a great fan of a South Florida mystery writer named James W. Hall. He and I correspond a lot.

CAN’T-MISS TELEVISION SHOW: I love “Burn Notice.” It takes place in Miami, which is where I grew up.

EMAIL OR PHONE, AND WHY: I might have said phone a few years ago. But now I find that most of the people I do business with are so busy. Email is convenient for their schedules, and I’m not as invasive with their time.

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Products & Services

Chartis covers specialty contractors

NEW YORK—Chartis Inc. has expanded its environmental coverage to include specialty trade contractors.

The Contractors Pollution Liability Specialty Trade Protect policy, part of the NextGen Protection suite of environmental policies offered through Chartis' environmental division, is intended to address exposures faced by artisans during a construction project, the New York-based insurance unit of American International Group Inc. said in a statement.

Such risks include indoor air contaminants, waste handling, silt and sediment runoff, and equipment staging areas.

Chartis said the coverage is an enhancement to its contractors pollution liability policy, which covers third-party claims for bodily injury, property damage and environmental damage resulting from pollution conditions caused by the performance of covered operations.

For more information, contact Kristen Sebesky Holmes, assistant vp in Chartis' environmental division, at 212-458-2956 or kristen.holmes@chartisinsurance.com.

Arch introduces stand-alone EPL

NEW YORK—Arch Insurance Group Inc. has introduced a stand-alone employment practices liability policy, Arch Essential EPL, which offers up to \$25 million in coverage on a primary and excess basis.

Features of the policy, which is intended for employers of all sizes and industries, include an Equal Employment Opportunity Commission "charge and written demand continuity protection;" Internet and social media harassment and discrimination coverage, with coverage for individual defendants; a loss definition that includes an explicit defense cost carve-back; an emotional distress and mental anguish carve-back to a bodily injury exclusion; no exclusion for intentional conduct; and a nonrescindable policy, the New York-based insurer said in a statement.

The policy also includes a broadened definition of an employment practices wrongful act that includes discrimination based on military, veteran status or political affiliation; bullying; and retaliation, including negative treatment of an employee.

For more information, contact Michael Price, senior vp of the executive assurance division for Arch Insurance, at 646-563-6322 or miprice@archinsurance.com.

Willis liability cover protects fund directors

LONDON—Willis Group Holdings P.L.C. has introduced coverage designed to protect the liability of fund directors, including cases in which a financial collapse exposes them to significant financial costs.

"The ongoing crisis bedeviling the financial services sector, combined with new stricter regulatory regimes, highlights the important role of insurance as a safety net for when operational and governance controls fail," Paul Richards, executive director of Willis' financial and professional risk services arm, FINEX National, said in a statement.

Mr. Richards referred to an August ruling by the Grand Court of the Cayman Islands against two independent directors of Weaving Macro Fixed Income Fund Ltd., which was listed on the Irish Stock Exchange and collapsed in 2009. The judge in the case found the directors guilty of

"willful neglect or default of at least \$111 million."

"The Weaving case has caused independent directors to reflect on their functions at the board level and what is required to fulfill them," said Mr. Richards. "It is a reminder that personal liabilities may be incurred."

Willis said features of its Fund Protect coverage include an additional nonexecutive director limit above existing liability policy terms, emergency costs of up to 20% over the liability limit, high limits of additional public relations cover, a difference-in-conditions clause to ensure there are no gaps within the current coverage and coverage for the director aris-

ing from acts of any service company appointed by the fund.

For more information, contact Mr. Richards at +44-207-558-9240 or prichards@willis.com.

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BI's Products & Services column reports on new product offerings. Please send Product & Services news to Mike Tsikoudakis, 360 N. Michigan Ave., Chicago, Ill. 60601 or email mtsikoudakis@businessinsurance.com.

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Wal-Mart: Bias litigation narrowed to California

CONTINUED FROM PAGE 1

competitors" and that female employees "have been much less likely than their male counterparts to receive promotion to management-track positions."

The suit also states that "senior management officials, senior people division officials and outside consultants have warned Wal-Mart that women are not sufficiently represented in management positions, that women are paid less than male employees in the same jobs, and that Wal-Mart lags" competitors "in the promotion of women to management positions."

The suit alleges that managers "rely on discriminatory stereotypes and biased views about women in making pay and promotion decisions" in California.

Among other things, it seeks class certification; unspecified damages including back pay, lost compensation and job benefits; punitive damages; and an injunction against engaging in unlawful practices.

Commenting on the litigation, co-lead counsel Joseph M. Sellers, a partner with Cohen Milstein Sellers & Toll P.L.C. in Washington, said the case relies on evidence that was not part of the original action.

"This California case relies upon new information and statistical

analyses, not before the Supreme Court, that show a consistent pattern of discrimination in pay and promotions throughout the Wal-Mart regions in California," he said.

A Wal-Mart spokesman said the company has long held that the plaintiffs' claims are unsuitable for class action treatment "because the situations of each of the individuals are so different." The latest proposed class is "no more appropriate than the class that the Supreme Court rejected," he said.

While Wal-Mart "continues to believe anyone treated unfairly should have their day in court," it is a "great place to work" and the retailer is ready to defend its record, the spokesman said.

Theodore J. Boutros Jr., a partner with Gibson, Dunn & Crutcher L.L.P. in Los Angeles, who represents Wal-Mart, said in a statement, "The Supreme Court rejected these very same class action theories when it reversed the plaintiffs lawyers' last effort in June. The plaintiffs' lawyers do not come close to meeting the standards for obtaining class certification and their arguments still rely on the same incorrect and discredited theories that the Supreme Court repudiated. These lawyers seem more intent on alleging classes for their publicity value than their legal virtue."

Mark W. Batten, a partner with



AP PHOTO

Betty Dukes, right, again is the lead plaintiff in a lawsuit alleging sex discrimination by Wal-Mart Stores Inc. in California. The revised suit, filed last week, responds to the Supreme Court's rejection of a nationwide class.

Proskauer Rose L.L.P. in Boston who is not involved in the case, said he doubts this litigation will be more successful than the previous suit.

"One of the things the Supreme Court really keyed in on in its decision originally is that the decision-making that the plaintiffs

want to challenge is so decentralized that each store manager was making his or her own decisions for reasons that would have to be evaluated individually," Mr. Batten said.

While the original litigation encompassed the entire country, "the same kinds of problems"

arise by focusing only on California, Mr. Batten said. Store managers' motivations "may have varied from totally permissible to totally illegal, and there's just no way to evaluate that on a group basis. So I think the plaintiffs have not really improved their chance" of success.

Kevin M. McGinty, a member of law firm Mintz Levin Cohn Ferris Glovsky & Popeo P.C. in Boston, also said he is not sure how the filing "gets them around the Supreme Court" decision. Reducing the class to just California "doesn't eliminate the problem that arises from being unable to look at individual qualification and performance issues, and use those to make judgments about whether someone was fairly or unfairly treated."

Richard Samp, chief counsel of the Washington Legal Foundation, said, "They would still have the obligation of demonstrating that there are common issues of fact and law, and it's not realistic to think that there was any statewide policy of discrimination" that would apply on a class-wide basis.

Gerald L. Maatman Jr., a partner with Seyfarth Shaw L.L.P. in Chicago, said it is difficult to estimate the chances of this new litigation's success.

"It depends on statistical proof, which people who aren't parties to the case haven't seen," he said. "There's going to be kind of a different playing field on which the parties are going to battle," with a different set of numbers, he said.

Comp: Wellness tactics adapted to workers comp risks

CONTINUED FROM PAGE 3

Mr. Anderberg said.

It also required training Broadspire's employees about the questions they need to ask injured employees to learn whether they might benefit from the employer's programs for chronic illnesses such as back pain, respiratory problems or diabetes.

"The concept is simple, but the

mechanics are not as simple," Mr. Anderberg said. "We had a lot of meetings together."

While some large employers are undertaking the approach, only a relative few have already done so, said Dr. Teresa Bartlett, medical director and senior vp in Troy, Mich., for Sedgwick Claims Management Services Inc.

Employers that have undertaken the process typically rely on

'We ask about height and weight or about any co-morbid.' The questions are asked during the TPA's first contact with an injured employee 'because you don't want to find out about an important co-morbid (condition) two months after the claim has started.'

Gary Anderberg, Broadspire Services Inc.

employees of their vendors, such as nurse case managers employed by their workers comp TPAs, who speak to injured workers on the telephone to question the workers about co-morbid conditions, excess weight concerns or mental health issues, several sources said.

"We ask about height and weight or about any co-morbid," Mr. Anderberg said. The questions are asked during the TPA's first contact with an injured employee "because you don't want to find out about an important co-morbid (condition) two months after the claim has started."

Then, if deemed appropriate, the nurse case manager, while still on the telephone with the employee, typically calls a nurse or health coach with the wellness program to make a "warm transfer" introduction.

Other arrangements are possible, however.

The benefits manager who asked not to be identified, for instance, said that while a warm transfer to a health care coach occurs for her company's STD and long-term disability claimants, a more passive, educational approach is used to engage injured employees who have made a workers comp claim.

Her employer's human resource personnel contact workers comp claimants to remind them of the wellness offerings that are available, she said.

But "I believe the warm transfer is much more effective," Sedgwick's Ms. Bartlett added.

Employers that have this integrated treatment approach see it as a means to reduce their overall medical expenses and productivity losses regardless of whether an

employee needs assistance because of a workplace accident or a nonoccupational-related leave.

"For us, in getting people back to work and getting them feeling better about themselves and getting their condition solved, it doesn't really matter if (they are helped) on the health care side or the workers comp side," the benefits manager said. "We just want to make sure people realize the resources they have available to them."

While relatively few employers have implemented the approach so far, the "tide is shifting," Ms. Bartlett said. That is evident because some employers that do not already offer wellness assistance have asked Sedgwick to use its case management and managed care services to develop wellness programs just for workers comp and disability cases, she said.

Attracting employees to use health care wellness programs has proved a challenge for employers, several sources said. But employees are much more likely to be ready to make changes and use the programs when they have suffered an injury or are absent from work because of physical or mental health issues, they added.

"Trying to get an employee to engage in those programs usually takes an event such as filing (a Family and Medical Leave Act) leave claim...or a disability claim," Pacific Resources' Ms. Mashburn said.

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PCI: New cat model concerns insurers

CONTINUED FROM PAGE 4

the new model used too small an amount of loss data in making the changes.

Not surprisingly, concerns about the model arose in meetings between insurers and reinsurers, observers said.

The model came up "in every meeting," said Michael Finnegan, chief operating officer of Liberty Mutual Group Inc.'s Stamford, Conn.-based Liberty Mutual Reinsurance unit. He said he encouraged clients to use multiple models when they could.

John Faustman, executive vp of BMS Intermediaries Inc. in Philadelphia, said he "absolutely" encourages clients to use multiple models. He said they need to look at exposure aggregations, not just modeled possibilities.

But William H. Eyre Jr., managing director-brokerage for Towers Watson & Co. in Philadelphia, said he thought the greater reaction occurred last year when the model was announced but not yet released. "Much of the hysteria is over," he said.

The overall concern at the PCI conference was economic recovery, which Mr. Eyre called "anemic at best."

"The greatest uncertainty we face is the economic outlook," said PCI President David Sampson in his opening address. Companies are "immobilized" because of uncertainty over fiscal and regulatory policy. In addition, insurers are facing "growing regulatory burdens," he said.

He said he believes any change was "not likely" before next year's elections.

In fact, the run-up to the election already is driving discussion in Washington, said Mr. Sampson. He said that while some people are making a decision "to make no big decisions," leaders have to make decisions without complete information.

That theme was repeated several times during the industry executive panel discussion, with panelists agreeing that the top manager should consult with senior people but realize that making a decision rests with the top executive.

"When you're wrong, course-correct," said The Republic

Group's Mr. Rush.

One challenge facing the industry is attracting potential employees, the panelists agreed.

"It's like we skipped a generation," said Mr. Rush. As baby boomers retire, there's a loss of institutional knowledge, he said. Under a program the insurer launched three years ago, trainees learn "at the feet of some really experienced underwriters," he said.

Mr. Rush also said that uncertain economic times mean that "you can get some of the best, most thoughtful college grads" to enter the insurance industry.

Robert Jarratt, president and CEO of the Ridgeland, Miss.-based Southern Farm Bureau, agreed that hiring new talent has become easier, in part because more colleges have insurance education programs.

"Try to get them in diapers and grow them in the operation," he said, noting that his company has its own training programs for adjusters and underwriters.

Daryl Bradley, president of Liberty Park, N.J.-based Everest National Insurance Co., said his company has a small hiring program at colleges as well, concentrated primarily on claims adjusting.

PCI conference draws 1,100 to New Orleans

NEW ORLEANS—About 1,100 people attended this year's Property Casualty Insurers Assn. of America's conference, held last week in New Orleans.

The conference featured addresses by retired Marine Gen. Peter Pace, former chairman of the Joints Chiefs of Staff, and Donald Kohn, former vice chairman of the Federal Reserve System, as well as political analyses by Politico Executive Editor Jim VandeHei and University of Virginia Professor Larry J. Sabato.

Donald G. Southwell, chairman, president and CEO of Chicago-based Kemper Corp., was installed as chair of the PCI Board of Governors, succeeding Robert A. DiMuccio, chairman, president and CEO of Lincoln, R.I.-based Amica Mutual Group.

Next year's meeting will take place Oct. 28-31, in Dana Point, Calif.

—By Mark A. Hofmann



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Thailand: Flooding disruptions

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Thailand responsible for approximately 60% of the company's hard drive production.

Sony Corp. closed two of three facilities in Thailand, forcing it to delay the launch of some new models, while Nikon Corp. said it's unsure when it will be able to reopen a facility reported to account for 90% of the company's single-lens reflex camera production.

Canon Inc. closed production at two Thai facilities, and was considering relocating its inkjet printer production to Vietnam, according to reports.

While the impact of the March earthquake and tsunami that hit Japan has heightened businesses' awareness of supply chain exposures, concerns being voiced about the impact of the Thai flooding seemed greater than those after the Japan event, experts said.

"I'm finding there's a lot more noise around this particular situation in Thailand than there was after the situation in Japan," said Gary S. Lynch, managing director at Marsh Risk Consulting in Morristown, N.J.

"As concerned as everybody was about what happened in Japan, I think what's happening in Thailand has the potential to be an even greater economic hit for a wider range of businesses," said Mr. Ellison.

As affected companies sort out potential insurance coverage for their supply chain interruptions, "we're going to see some of the same sort of recurring issues that are coming out of the Japan claims," Mr. Ellison said. One is the scope of contingent business



REUTERS

A man controlled water pumps at a factory in Pathum Thani province in Thailand on Oct. 14. Experts say the impact of the flooding in Thailand on supply chains could be worse than after this year's earthquake in Japan.

ONLINE PHOTO GALLERY

View a photo gallery of the worst flooding Thailand has seen in 50 years. Floodwater has caused massive property damage and raised supply chain concerns. Go to www.BusinessInsurance.com/photos

interruption coverage for suppliers' production being interrupted, raising the question of "What is the proof required to establish loss in a causation chain?" he said.

There also might be territorial scope-of-coverage questions, he said, such as whether a U.S. company's insurance clearly states that it covers losses arising from a supplier's interruption in Thailand. "That issue is actually surfacing a lot in Japan, so I'm sure it's going to come up in some of the Thailand claims," Mr. Ellison said.

Policyholders also may face

issues from "bucketing" claims—determining where they fit under policy sublimits. "Where you bucket the claim can often have a substantial impact on what your recoveries are," Mr. Ellison said.

The fact that many of the flooded Thai facilities represent "middle-of-the-chain" suppliers also can have an impact as businesses seek coverage for supply chain interruptions, Mr. Lynch said, with those suppliers often unnamed in coverages. As a result, going forward, "I think one of the things you're going to see is a great deal more

diligence around the coverages."

Zurich's Ms. Conrad said her company's data shows more than 50% of supply chain losses are caused by "sub-tier" suppliers, and that businesses tend to underestimate the length and frequency of disruptions.

She agreed that this latest supply chain disruption should further companies' interest in evaluating and managing their supply chain risks.

"Japan was a bit of a wake-up call, and I think what we're seeing is people are really interested in taking a deeper look at some of the risks in their supply chain," she said. "There's increased interest in doing supply chain analysis and perhaps insuring part of it," she said. "Doing a broader analysis to see where you're exposures lie is really important, because it's not just natural disasters that can take you down."

Fund: Florida catastrophe backstop may face shortfall

CONTINUED FROM PAGE 4

shortfall of about \$3.2 billion. The report noted that the banks estimate that the FHCF could raise another \$6 billion over a 24-month period, but "based on a desire for conservatism and guidance from FHCF staff about potential payout timing," the 12-month time frame was used to estimate the fund's financial resources.

"We have a situation where if we had an event, we might not have enough money to pay for all the coverage purchased from the fund," said FHCF Chief Operating Officer Jack Nicholson. He said depending on the size of the event, some insurers might not be able to wait two years to receive reinsurance claims payments.

Mr. Nicholson has proposed that Florida lawmakers limit the FHCF's capacity to \$12 billion by 2016, down from the current \$17 billion. Some insurers also buy

additional optional coverage from the FHCF, though that option is being phased out.

At a Sept. 21 Florida Senate Banking and Insurance Committee meeting, state Sen. Mike Fasano, R-New Port Richey, asked Mr. Nicholson if reducing the fund's capacity ultimately would result in higher rates for consumers who buy insurance in Florida.

Mr. Nicholson said yes, "absolutely."

"Your conclusion was that we need to right-size the cat fund," said Sen. Don Gaetz, R-Niceville. "By my reckoning as an amateur that means either reducing risk...or we have to increase the cash reserves on hand."

The fund is in better financial shape now than three years ago. The projected fund balance was only \$2.80 billion in October 2008, after the financial crisis sparked worries about the FHCF's ability to raise additional money

in the debt markets, according to an FHCF annual report.

"It's gotten better over the years," said Richard Attanasio, vp of property/casualty ratings at the Oldwick, N.J.-based rating agency A.M. Best Co. Inc. "They've been able to build up cash because there haven't been significant events" in Florida. He added that Best has "some skepticism" about the fund's ability to meet claims in the event of a major catastrophe.

Using its most recent model released in July, EQECAT Inc. estimated a 5% chance that a loss of at least \$17 billion might occur in Florida in any given year. The last storm that produced losses of that magnitude was Hurricane Andrew 19 years ago. According to the Insurance Information Institute's most recent estimate, in 2010 dollars, Hurricane Andrew resulted in \$22.4 billion in insured losses.

Some insurance industry organizations voiced concerns over the

FHCF's funding.

"The Florida Insurance Council's position is that the fund should be structured so it can every year deliver the reinsurance that it sells," said Sam Miller, the Tallahassee trade group's executive vp.

"There are insurers that are concerned that the FHCF is promising more than it can deliver," said Bryon Ehrhart, chief strategy officer and chairman of the analytics and investment banking group for Aon Benfield Inc. in Chicago.

It's remains unclear, though, whether reforms will be passed.

"The political environment in the past has been to ignore the problem," said R.J. Lehmann, deputy director of the center on finance and real estate in Washington at The Heartland Institute. "But insurance in Florida is always among the top issues and we're hopeful that something can move forward."

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News in Brief

CONTINUED FROM PAGE 1

Microsoft to expand captive-funded benefits

Microsoft Corp. is seeking Labor Department approval to expand the benefit risks funded through its captive. Microsoft wants to use the Vermont branch of its captive, Orcas Ltd., to reinsure life insurance and accidental death and dismemberment policies written by Prudential Insurance Co. of America Inc.

Base PGBC premium unchanged for 2012

The base annual premium that employers with defined benefit plans pay the Pension Benefit Guaranty Corp. will remain at \$35 per plan participant in 2012, the same as this year. By law, premium rates are adjusted to reflect changes in the national average weekly wage during the prior year. Because wages were flat this year, there was no premium adjustment for 2012.

AIR Worldwide updates U.S. terrorism model

AIR Worldwide Corp. has updated its U.S. terrorism model to reflect less frequent and lower-severity attacks, the catastrophe modeler said. The enhancements to version 13.0 of AIR's U.S. terrorism model, which assesses potential property and workers compensation losses, is based on reassessments by a team of terrorism experts.

Workers comp reform bill advances in Mich.

The Michigan House Commerce Committee has approved a comprehensive workers compensation reform bill, a move praised by the Michigan Chamber of Commerce. The bill now goes to the full House.

San Francisco mayor vetoes HRA measure

San Francisco Mayor Edwin Lee has vetoed a measure that would curb the appeal of health reimbursement arrangements, one

way employers can satisfy a law that requires them to spend a certain amount of money on employees' health care coverage. While Mayor Lee had described the HRA approach in which unused funds are forfeited at year-end as a "loophole," he vetoed the proposal. Mayor Lee has said he would work with business and labor groups to develop an alternative proposal.

Fla. approves 8.9% comp rate hike

Florida Insurance Commissioner Kevin McCarty approved an 8.9% workers compensation rate increase. The increase, requested by NCCI Holdings Inc., is effective Jan. 1, 2012.

Flagstone to sell units to improve profitability

Flagstone Reinsurance Holdings S.A. said it plans to sell its Lloyd's of London and Island Heritage Insurance Co. Ltd. operations in an effort to improve profitability by focusing on its property and property catastrophe businesses. The reinsurer and insurer said its planned divestitures will lower its gross written premiums by about \$300 million per year, produce savings and create excess capital.

Colo. workers comp loss cost rate to rise 3.7%

Colorado employers will see a 3.7% workers compensation loss cost rate increase in 2012, the Colorado Division of Insurance announced. The 2012 increase comes after a 3.4% increase in 2011 after nearly a decade of decreases.

Noted

Willis Group Holdings P.L.C. has appointed Daniel Wilkinson as CEO of its United Kingdom and Ireland division, effective immediately. Willis also has named Brendan McCafferty to the newly created role of president of the division...**Former Nevada Insurance Commissioner** Scott Kipper has resumed his former position. Mr. Kipper previously served as Nevada insurance commissioner from December 2008 to June 2010.

Solvency: Pension plan rules proposed

CONTINUED FROM PAGE 3

United Kingdom, has argued that applying Solvency II rules to pensions likely would increase the cost of providing pensions and may result in the closure of some of the defined benefit plans.

"We have now reached an extremely important stage in the E.U.'s review of the directive covering occupational pensions," Darren Philp, director of policy at the NAPF, said in an email.

"The NAPF and its members will be playing a leading role in explaining why Solvency II is not appropriate for U.K. pension schemes and that its introduction would seriously undermine defined benefit pensions," he said. "We hope that EIOPA will realize the unsuitability of these rules and that it will make this clear to the European Commission."

A move to Solvency II-style regulation for pension plans could increase the liabilities of U.K.-based defined benefit plans by as much as £500 billion (\$797.65 billion) and even drive some sponsoring employers to

insolvency, Jonathan Camfield, a partner at actuarial firm Lane, Clark & Peacock L.L.P. in London, said in a statement.

While it is clear that EIOPA is set to introduce a Solvency II-like regime for pensions, the regulator has "recognized there are important differences between pension schemes and insurance companies, and has suggested that one way forward might be to have a two-tier approach to funding pension schemes across Europe," Mr. Camfield said.

This implies that the United Kingdom might be able to continue using elements of its current approach for a limited period of time, though other countries may resist such an approach, he said.

Even if countries are allowed to continue their current funding requirements for pensions, EIOPA likely would require a "holistic balance sheet" to be produced for each plan showing the difference between the funding approach used and the Solvency II approach, Mr. Camfield said. For U.K. plans, this would require that a value be put on

such things as the employers' covenant, which is seen as a guarantee of the plan's financial health.

It is complicated to put a value on that employer covenant and there is political pressure on EIOPA to find a consistent way of regulating pension plans in Europe, said Deborah Cooper, head of the retirement resource group at Mercer L.L.C. in London.

So while Solvency II may not be applied to pension plans "lock, stock and barrel," there is likely to be a move to a more consistent funding approach for defined benefit pension plans across Europe, she said.

There is a plan-specific approach to pension funding in the United Kingdom, she said. If that were to change, the funding requirements for some employers could be dramatically increased.

Ms. Cooper said, however, that introduction of any Solvency II-type regime for pension funding may take so long that by the time it comes into force, many existing defined benefit plans may already be closed.

Annuity: Record buyout of U.K. pension assets

CONTINUED FROM PAGE 4

adopting a "derisking" strategy—known as pension buy-ins—in which the employer turns over a fixed amount of plan assets to an insurer, which takes on the liabilities for certain plan participants, such as current retirees.

"Derisking is a natural thing to

do as many plan sponsors do not see their pension plans as part of their core business," said Martin Bird, a managing principal with Aon Hewitt Ltd. in London.

The only U.S. employer that has completed a pension buy-in arrangement is Hickory Springs Manufacturing Co., which this year purchased a buy-in policy

from Prudential Retirement. That effectively transferred to Prudential the liability for about \$75 million in pension benefits earned by about 1,000 retirees in the plan offered by the diverse Hickory, N.C.-based company.

Under the arrangement, Hickory Springs transferred just less than \$75 million from its pension plan to Prudential Insurance Co. of America, which holds the assets in a separate account. Under pension rules, the value of the account is counted as an asset in Hickory Springs' pension plan.

Out-of-pocket Medicare costs rise 2.1%

WASHINGTON—Medicare beneficiaries will face out-of-pocket expenses that are 2.1% higher next year, the Department of Health and Human Services announced last week.

Next year, the deductible for the first 60 days of a hospital

stay will rise to \$1,156, which is up from \$1,132 this year.

In addition, the daily copayment for days 61 through 90 will increase to \$289 from \$283, while the daily payment for stays exceeding 90 days will increase to \$578 from \$566.

The increases also will affect employers whose retiree health care plans are coordinated with Medicare to pick up the costs that Medicare does not cover.

The 2.1% increases are based on a formula set in law.

—By Jerry Geisel

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Turnabout insurer fraud?

A former judge serving prison time for bilking two insurers alleges that he has been the victim of the insurers' fraud and not the other way around.

In his lawsuit filed in March alleging fraud and other charges, former Pennsylvania Superior Court Judge Michael T. Joyce asserts that one of the insurers settled his auto accident injury claim for more than he expected so he would find in favor of the insurer, Pennsylvania-based Erie Insurance Group, in future cases.

He alleges that the events that cost him his career and reputation and landed him in prison were part of Erie's plan to entrap him in a "nefarious scheme," the Erie Times-News reported.

The insurers denied Mr. Joyce's allegations.

Mr. Joyce reportedly is serving 46 months in a federal prison for money laundering and mail fraud. He also forfeited a house purchased with \$440,000 in settlements obtained from Erie and Bloomington, Ill.-based State Farm Mutual Automobile Insurance Co., was stripped of his annual pension and had his law license suspended.

A 2007 indictment reportedly charged that Mr. Joyce obtained the insurance settlements by falsely claiming he was disabled in a 2001 rear-end auto collision.

A criminal investigation of Mr. Joyce's claims came after an ex-girlfriend's tip that he committed insurance fraud and a federal jury eventually found that he cheated the insurers out of the \$440,000.

During the trial, prosecutors presented evidence that Mr. Joyce was golfing, scuba diving and learning how to fly a plane when he allegedly told insurers he could not hold a cup of coffee steady.



End Page



Mini-moguls learn from 'toon Buffett

Investor billionaire and Berkshire Hathaway Inc. Chairman and CEO Warren Buffett has children hanging on his every word of financial advice, in animated form.

A cartoon television program starring Mr. Buffett premiered Oct. 23 on children's cable network Hub Television Networks L.L.C. The program aims to provide children the fundamentals of business, economics, personal finance and investing, according to news reports.

The show, "The Secret Millionaires Club," centers around four 14-year-old students who form a club, under the tutelage of Mr. Buffett, to give financial advice to people around the world while getting into adventures and learning lessons along the way.

At no cost to or investment in the program, Mr. Buffett reportedly lends his

voice, persona and likeness to it.

In the first episode, "Empire State of Mind," Mr. Buffett mentors the students on how to raise money for their school, which is facing budget cuts.

The youths end up raising the money, saving many of the school's programs and go to New York to meet hip-hop artist and rapper Jay-Z.

Each episode reportedly features a guest star, with Shaquille O'Neal and Serena Williams slated to appear in the future.

In addition, children can ask Mr. Buffett for advice on the show's website, www.smckids.com, and earn Buffet Bucks through various games.

It would be interesting to see the students' take on endorsements, captives and sidecars in the insurance world.

40-some actress sues IMDb

While it may be considered rude to ask a woman her age, an actress is seeking more than an apology for publishing her age without her consent.

The unidentified actress has sued Amazon.com Inc. and subsidiary IMDb.com Inc. in federal court in Seattle, seeking \$75,000 in compensatory damages and \$1 million in punitive damages.

She accuses Internet Movie Database of breach of contract, fraud, and violation of privacy and consumer protection laws.

The actress, who is said to be "around 40" and also uses a stage name, alleges the website illegally obtained her date of birth by cross-referencing her credit card with public records when she subscribed to its "pro" service in 2008.

According to the suit, IMDb refused to remove her date of birth from her profile and claims that the actress' age was provided by her agent.

The lawsuit calls into question whether IMDb will be offered protection under the Communications Decency Act, which ensures that interactive computer services cannot be held liable for publishing defamatory content provided by a third party.

The actress says she has kept her real age a secret because she claims she looks to be much younger than she really is. According to the suit, she has been denied roles portraying younger women since her age was made public, and cannot find work for characters closer to her own age.

"The plaintiff has experienced rejection in the industry for each '40-year-old' role for which she has interviewed because she does not and cannot physically portray the role of a 40-year-old woman," the suit states.

Amazon and IMDb declined to comment on the case.

'Hangover' gets legal headaches

Apparently not content with the millions of dollars at the box office and the gleeful chuckles of moviegoers it accumulated while in theaters, "The Hangover II" seems to be amassing a tidy collection of something else: lawsuits.

A California man has sued the makers of the film for allegedly stealing elements of its plot from a script he wrote detailing the misadventures of his honeymoon in Southeast Asia.

Los Angeles-based Warner Bros. Entertainment Inc. and the film's production staff had previously been slapped with a now-settled intellectual property infringement suit over alleged illegal use of boxer Mike Tyson's facial tattoo, as well as a negligence complaint in August by a stunt actor who was severely



injured on set.

This latest suit, filed by Michael Allen Rubin in a Los Angeles federal court on Oct. 12, alleges that "The Hangover II"—in which four friends bungle their way through Thailand in search of a missing relative—follows too closely to the plot of a script Mr. Rubin wrote and submitted to the Writers Guild of America

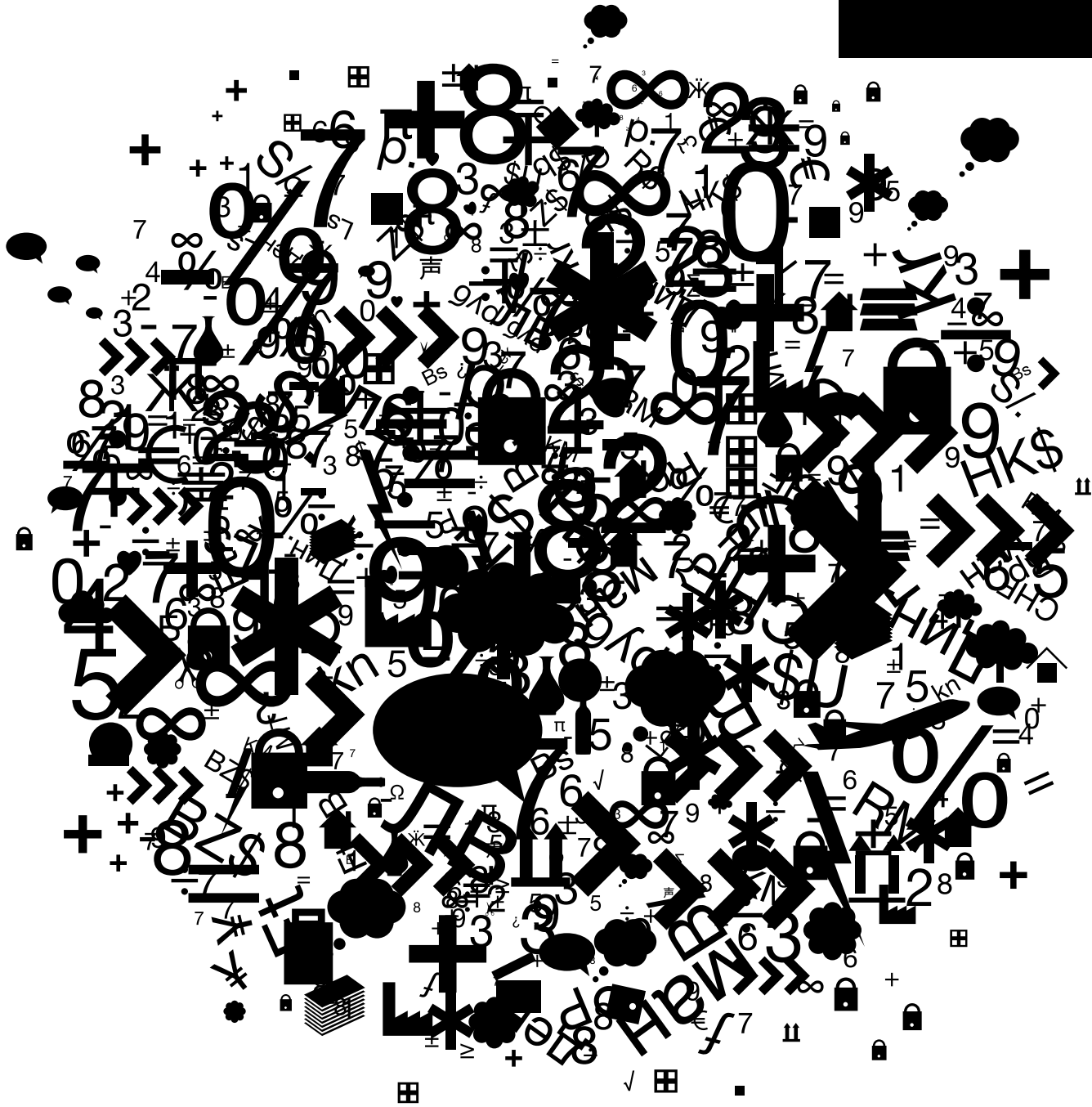
in 2009, according to court documents. Mr. Rubin claims his script, titled "Mickey and Kirin," was based on his disastrous real-life wedding and honeymoon in Japan and Thailand.

In both scripts, Mr. Rubin claims, the main character travels to Asia for his wedding, is humiliated by his in-laws, and ultimately

separated from his bride in Thailand. Those similarities, he claims, constitute copyright infringement and misappropriation of his right of publicity, in that Mr. Rubin's script was based on his real and private life, according to the complaint.

A spokesman for Warner Bros. declined to comment on the case.

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