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# Business Insurance

November 15, 2010

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**POIZNER SUES TO BAN INSURER INVESTMENTS IN IRAN / PAGE 3**

**NEW LLOYD'S SYNDICATES UNLIKELY TO SIGNAL LARGER TREND / PAGE 4**

## In Brief

### Aon COO Appel resigns from broker

Aon Corp. said Andrew Appel, the brokerage's chief operating officer, will leave the company at the end of the year and that there are no plans to fill the position. Mr. Appel, who was named CEO of Aon Benfield in November 2008, shortly after Aon acquired Benfield Group Ltd., was promoted to COO in April. As CEO of Aon Benfield, he led the integration of Aon Re Global and Benfield, Aon said in a statement. As COO, he played a key role in the pursuit of Aon's acquisition of Hewitt Associates Inc. No further details were given on Mr. Appel's future plans.

### AIG names chief risk officer

American International Group Inc. said Sid Sankaran has been named senior vp and chief risk officer. Mr. Sankaran succeeds Robert Lewis, who last month said he would retire from AIG

See **IN BRIEF** page 29

## SPOTLIGHT

**SLOWLY GOING GREEN**

More insurers offer green coverage, buyer interest in new products limited; E&O exposures for architects expected to rise; climate change suits await action by Supreme Court. **PAGE 11**

EMPLOYMENT PRACTICES

# Regulations inflate genetic bias risks

*Water-cooler talk may be viewed as too probing*

By JUDY GREENWALD

**WASHINGTON**—Final regulations issued last week by the Equal Employment Opportunity Commission for the Genetic Information Nondiscrimination Act leave firms potentially liable in cases where managers ask innocent questions about workers' welfare, many observers warn.

On the positive side, the regulations, which go into effect Jan. 10, 2011, essentially permit employers to continue offering financial incentives for participating in wellness programs, observers say.

The regulations on the 2008 law that bars workplace discrimination based on genetic information were long-awaited by employers. The EEOC proposed regulations under Title II of GINA on March 2, 2009, followed by a period of public comment.

The long delay from the proposal to last week's final regulations was due to the EEOC carefully vetting the proposal at every stage and consulting with all concerned stakeholders, according to an EEOC spokeswoman.

Regulations in connection with Title I of GINA, which addresses using genetic information in health insurance, went into effect in October (*BI*, Oct. 12).

Observers said of particular interest in the Title II rules are provisions that provide an exception to the general prohibition against soliciting genetic information from employees. The regulations state the law does not apply when such information is requested or obtained inadvertently.

An EEOC analysis accompanying the regulations, for instance,

See **GINA** page 28

RISK MANAGEMENT

# Facebook suit highlights policies on social media

By JEFF CASALE

**HARTFORD, Conn.**—The outcome of a lawsuit filed on behalf of a union-represented employee who was fired for criticizing her supervisor on Facebook could affect employers nationwide, including those with nonunion workforces, experts say.

In what some labor law attorneys call a "shot across the bow," a regional office of the National Labor Relations Board sued medical transportation firm American Medical Response of Connecticut Inc., alleging it illegally terminated and illegally denied union representation to the employee during an investigatory interview.

See **FACEBOOK** page 29

LIABILITY & LITIGATION

# Far-flung claimants complicate BP oil spill fund

*Claims asserting loss far away from Gulf tougher to assess*

By MICHAEL BRADFORD

Worries are mounting that the volume of claims from the Deepwater Horizon oil spill, some of which allege damages hundreds of miles from the Gulf Coast beaches where oil washed ashore, will bog down the facility created to administer payments on behalf of BP P.L.C.

The Gulf Coast Claims Facility will have enough money to pay legitimate losses, but there is a danger that the volume of claims could create logjams that will slow payments, according to Kenneth Feinberg, the facility's administrator.

THE TIMES-PICAYUNE/LANDOV

**Oil seeps out of a tar patty on a beach in Louisiana in September.**

"There is great concern that there will be so many claims that it will be difficult to efficiently process the claims," Mr. Feinberg said. "But BP has made it clear that there will be adequate funding to pay claims."

Meanwhile, while the fund has limited the insurance claims stemming from the spill, insurers may see claims if some are rejected by the GCCF, experts said. Whether rejected claimants will be able to recover losses from insurers will depend on circumstances around their losses and the type of coverage they have in place, sources said.

The GCCF was created in August to take over claims administration after BP had paid around $399 million on 127,000 claims. As of Nov. 5, the BP-funded facility had paid $3.42 billion on an unstated number of claims.

BP said this month that its latest

See **BP** page 26

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NEWSPAPER

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John Nevius and William Stewart speak at "An Inconvenient Risk: Climate Change Liability and Coverage," a webcast set for 2 p.m. EST Dec. 1. Sign up at *www.BusinessInsurance.com/webcasts.*

Mr. Nevius Mr. Stewart

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## COMINGS & GOINGS

Search industry executive changes alphabetically by a person's name or company, as well as by date. Click on the Comings & Goings tab.

## MOST POPULAR STORIES

Week of November 8, 2010

1. Aon COO Andrew Appel resigns
2. Employer's Facebook, blogging policy challenged in federal suit
3. U.S. Supreme Court rejects health care reform case
4. New waiver requirements for mini-med plan sponsors
5. AIG names new chief risk officer
6. Don't go backward on health overhaul: Aetna exec
7. Few plan to drop coverage after health reform: Survey
8. ACE exec warns about potential health care reform pitfalls
9. Health insurers shake up model after U.S. overhaul
10. IIS Insurance Hall of Fame candidates announced

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FEDERAL LEGISLATION & REGULATION

# Insurers unite to oppose stricter rules

## *Industry argues sector doesn't pose same risk as banks*

By MARK A. HOFMANN

**WASHINGTON**—Property/casualty insurance trade groups may not agree on everything, but they're unanimous in arguing that they should not be subject to heightened supervision by the Federal Reserve under the new financial services regulatory reform law.

In comments filed this month with the Treasury Department in response to the Financial Stability Oversight Council's notice of proposed rulemaking, property/casualty trade groups argue that property/casualty insurers do not present a systemic risk to U.S. financial stability.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, a nonbank financial company must be found by the Financial Stability Oversight Council to pose a threat to the stability of the United States through either financial stress or ongoing activities for the nonbank company to be subject to heightened regulation and supervision by the Federal Reserve Board.

In addition, trade groups filed comments regarding how the Volcker Rule contained in the Dodd-Frank Act should be applied to property/casualty insurers. The rule prohibits banks from engaging in proprietary trading and from making certain investments. But Congress specifically excluded investments of a state-regulated insurance company and its insurance affiliates from the rule in order to avoid duplicate regulation. Insurers wish to remain excluded from the Volcker Rule.

In a filing dated Nov. 5, the American Insurance Assn. urged the council to conduct a two-stage analysis to determine whether a company could present a systemic risk. The council first would determine whether a company could generate systemic financial instability.

"If, as a result of the council's external impact analysis, a nonbank financial company comes under closer scrutiny, the council should next evaluate those factors that go to the internal financial structure of the institution to determine the potential for material financial distress that could

See **SYSTEMIC** page 26

HEALTH CARE REFORM

# Most firms won't drop health plans: Surveys

## *Despite low fines, few savings seen from cutting cover*

By JERRY GEISEL

Only a small percentage of employers intend to drop their health care plans despite potential financial incentives that the health care reform law gives to fold their plans, according to two surveys released last week.

Just 6% of employers with at least 500 employees and only 3% of employers with at least 10,000 employees said they are likely to drop their plans once key provisions of the law take effect in 2014, according to Mercer L.L.C.

Some 20% of small employers—those with between 10 and 499 employees—say they likely will drop coverage in 2014.

However, consultants at Mercer, which conducted the survey of more than 2,800 employers, said fewer small employers may decide to drop coverage than the survey indicates.

In addition, just 5% of employers surveyed by New York-based Willis Human Capital Practice and Diamond Management & Technology Consultants Inc., said that it is "not at all likely" and 7% said it was somewhat unlikely that they would continue their plans in 2014.

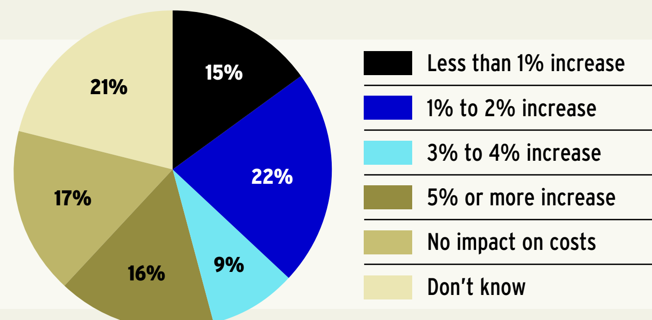
By contrast, 55% said it was very or somewhat likely they would continue their plans and 33% were not sure.

The appeal of terminating coverage is obvious. Employers who do so in 2014 will face an annual $2,000 penalty for each employee working at least 30 hours a week. With annual health insurance costs averaging about $9,000 per employee, the savings would dwarf the penalties paid.

See **HEALTH CARE** page 27

HEALTH CARE REFORM COST

*Employers' estimates of the health care plan cost increases they will face in 2011 to comply with the Patient Protection and Affordable Care Act.**




**increase in per employee cost*

*Source: Mercer L.L.C.*

STATE REGULATION

# Poizner fights to ban insurers from investing in Iran

By JUDY GREENWALD

**SACRAMENTO, Calif.**—California Insurance Commissioner Steve Poizner filed a lawsuit Tuesday challenging a determination by the California Office of Administrative Law that he improperly tried to stop insurers from investing in Iran.

Last month the OAL, in a nonbinding ruling, agreed with a group of insurance organizations that Mr. Poizner did not follow proper procedure in calling for insurers to divest themselves of investments in 50 companies that conduct business in Iran. In February, Mr. Poizner released a list of the companies he said do business in the Iranian oil, natural gas, nuclear and defense sectors.

"I intend to ensure that any insurance company licensed in California is not doing business, in any way, with the Iranian regime," Mr. Poizner said in a statement. "Insurance premium dollars that Californians pay should not end up supporting a regime that has shown time and time again its disregard for the concerns of the global community."

ZUMA PRESS/NEWSCOM

**California Insurance Commissioner Steve Poizner last week sued the state's Office of Administrative Law.**

The lawsuit, which was filed in state Superior Court in Los Angeles, calls for the OAL to determine that the actions taken by the commissioner and the insurance department did not constitute impermissible "underground" regulations.

The organizations that asked the OAL to rule on the issue said in a statement last week in response to Mr. Poizner's lawsuit: "Our associations do not support or defend any insurer that makes investments that violate state or federal law, which prohibit investments in Iran and other terrorist regimes. We asked the OAL for a determination simply to resolve the issue of the Department of Insurance's compliance with (California's Administrative Procedure Act)."

The five organizations are the Assn. of California Life and Health Insurance Cos., the Assn. of California Insurance Cos., the American Insurance Assn., the American Council of Life Insurers and the Personal Insurance Federation of California.

OAL Director Susan Lapsley said in a statement Tuesday: "No state agency, including the Department of Insurance, is exempt from the APA's requirements absent an express statutory exemption." The statement said the commissioner did not follow the required process, "but rather simply imposed new rules unilaterally without any public input or comment. This is exactly the type of action the APA is designed to prevent."

Mr. Szot Mr. Casey

# Construction defect cases raise concern

The best way contractors, risk managers and insurers can prevent increasingly complex construction defect claims and litigation is to use loss prevention practices and integrated insurance programs, participants said during a *Business Insurance* webcast last week.

Experts say recent litigation has policyholders and insurers worried about the potential for liability to expand in construction defect cases.

Construction defects can be "bodily injury and/or property damage resulting from deficiencies in subsurface conditions, design, materials or construction," Michael R. Szot, executive vp and managing director of Aon Risk Solution's construction services group in Los Angeles, said during the *BI* webcast "Blueprint for Construction Defects: Managing the Risks and Coverage."

Mr. Szot said following best practices can mitigate potential claims.

"It all begins with selecting a quality team," he said, which includes experienced individuals, such as design consultants, general contractors, subcontractors and other services providers who must work well together.

"We believe the greater effort should be put on making sure we don't have claims to begin with," said Brian Casey, senior vp and head of insurance and risk management for Bovis Lend Lease Holdings Inc. in New York.

Loss prevention practices include peer review during preconstruction, third-party audits during construction, and an established warranty process and complaint hot line once construction is completed, Mr. Casey said. "Most of the residential litigation was really spawned from an inability to respond and inactivity that drove claimants to seek legal counsel," he said.

Both webcast participants agreed that properly integrating general liability coverage with professional liability coverage, along with structuring owner-controlled or contractor-controlled insurance programs, can help secure compensation if a loss occurs.

*BI* Senior Editor Michael Bradford moderated the webcast, which is available at *www.BusinessInsurance.com/Webcasts.*

*—By Mike Tsikoudakis*

INTERNATIONAL

# New Lloyd's syndicates unlikely to signal trend

By SARAH VEYSEY

**LONDON**—Despite a French reinsurer and a Norwegian protection and indemnity club recently setting up turnkey syndicates, ample competition and capacity mean Lloyd's of London is unlikely to approve a large number of new syndicates before the end of the year, experts say.

Turnkey syndicates, which are managed by third parties on behalf of capacity providers, are a useful tool for investors looking to gain a presence at Lloyd's, experts say.

Managing agents have little or no financial stake in the syndicate but provide specific expertise, such as dealing with Lloyd's reporting requirements, that an outside investor may lack. Companies that set up a turnkey syndicate do not incur the costs of running a stand-alone managing agency, but they can take over that role at a later date.

SCOR S.E.'s syndicate 2015 will have capacity of £75 million ($121.4 million) for 2011 with an initial focus on short-tail lines in markets outside the United States. The syndicate will not underwrite reinsurance treaty business.

London-based Whittington Capital Management Ltd. is the managing agency for syndicate 2015.

In a statement, Paris-based SCOR said forming the syndicate, the first time it has been the exclusive capital provider for a Lloyd's syndicate, reflected its intent to "further develop an insurance platform."

Victor Peignet, CEO of SCOR's global property/casualty operations, said in the statement that Lloyd's is an efficient underwriting platform and the syndicate "represents a complementary route for SCOR by which to optimize the group's access to business that is not currently being underwritten."

The other turnkey syndicate set up recently—Assuranceforeningen Skuld's syndicate 1897, which is named for the year Oslo-based Skuld was established—will underwrite marine and offshore

See **LLOYD'S** page 10

**Competition among insurers and ample capacity likely will limit the number of turnkey Lloyd's of London operations that form this year, experts say.**

RISK MANAGEMENT

# Elections pose challenges for risk managers

*Several key posts to change hands*

By JERRY GEISEL

**SCOTTSDALE, Ariz.**—The outcome of the November elections could open up new risk management opportunities, but have no impact on others, a top industry lobbyist says.

While much attention has been focused on congressional races, state elections also could result in changes affecting the risk management profession, said Patricia Henry, executive vp and deputy general counsel for ACE Group Holdings Inc. in Philadelphia.

Delivering a keynote address last week at the 20th annual World Captive Forum in Scottsdale, Ariz., Ms. Henry said John Kasich, a Republican who won the Ohio gubernatorial race by narrowly defeating incumbent Ted Strickland, pledged during his campaign to open the state's monopoly workers compensation system to private insurers.

The results in other gubernatorial races also could affect the industry, though the changes would not necessarily be positive for insurers and employers, Ms. Henry said.

For example, former Iowa Gov. Terry Branstad, a Republican, defeated first-term Democratic incumbent Chet Culver. That could mean Mr. Branstad might replace Iowa Insurance Commissioner Susan Voss, who also is the president of the National Assn. of Insurance Commissioners.

**ACE Group's Patricia Henry told the World Captive Forum that the recent elections could affect risk management.**

The fate of Ms. Voss, as well as other insurance commissioners in states where governors decide such appointments, is not yet known.

But Ms. Henry said she worries that the NAIC leadership ranks could be "decimated" as a result of the election and retirements. For example, Oklahoma Insurance Commissioner Kim Holland, who also is an NAIC vp, was defeated by Republican challenger John Doak. In Virginia, Alfred Gross, the state insurance commissioner since 1996 who has held numerous NAIC leadership positions, will retire next month.

In addition, several congressmen experienced in insurance issues also will not be coming back. They include Rep. Earl Pomeroy, D-N.D., a former insurance commissioner and NAIC president, who lost his reelection bid, and Rep. Paul Kanjorski, D-Pa., a key backer of the federal insurance terrorism backstop, who also was defeated.

"We lost a lot of people in

See **WCF** page 25

# Hundreds honor industry veteran

*Memorial event focuses on accomplishments of Robert Clements*

By SONJA RYST

**NEW YORK**—About 300 people gathered last week to honor Robert Clements, an insurance industry veteran who died in September at the age of 77.

Various heavy hitters spoke during the memorial at New York's Waldorf=Astoria Hotel about how Mr. Clements influenced them since he joined the industry in 1957.

**Robert Clements joined the insurance industry in 1957.**

The group included son John Clements and leaders of companies in which the elder Mr. Clements was involved: Peter Garvey of Integro Insurance Brokers Ltd., Dinos Iordanou of Arch Capital Group Ltd., Kevin Kelley and Mitch Blaser of Ironshore Inc., Brian Duperreault of Marsh & McLennan Cos. Inc., Evan G. Greenberg of ACE Ltd. and former XL Capital Ltd. executive Brian O'Hara.

Mr. Duperreault, president and CEO of MMC, described how Mr. Clements helped set up companies such as ACE in Bermuda, transforming not only the island but also the industry.

"I wouldn't have been chairman and CEO of ACE without Bob's genius," Mr. Duperreault said. "When I think about what I need to do at and for Marsh, I'm inspired by Bob. His influence will carry on for years."

Mr. O'Hara, former chairman and CEO of XL, another Bermuda company that Mr. Clements helped set up, said Mr. Clements taught him that the most important rule was the strength of the value proposition with the customer. "If you're living up to your promises better than the competition, your customers will see you through large losses in difficult times," Mr. O'Hara said.

Mr. Iordanou, chairman, president and CEO of Arch Capital Group, described Mr. Clements as a "college professor" type who rarely wore a tie and favored a sports coat, corduroy pants and comfortable shoes.

Mr. Clements was a lifelong Democrat and Mr. Iordanou has been a lifelong Republican. When Mr. Iordonou said to his friend one day that they'd agree on almost everything if it weren't for politics, Mr. Clements gave him a penetrating look before responding calmly. Mr. Iordanou was

See **CLEMENTS** page 25

HEALTH CARE BENEFITS

# Mini-med plans face stricter reporting

*HHS requires enrollees be notified in writing of waivers, terms*

By JERRY GEISEL

**WASHINGTON**—Sponsors of "mini-med" plans that receive waivers from federal regulators to allow them to temporarily continue to offer the arrangements face new reporting requirements.

The waivers are needed because most, if not all, mini-med plans run afoul of federal rules—mandated by the health care reform law—that set a minimum annual dollar limit on essential benefits that health care plans must provide. The minimum limit, under regulations released earlier this year, is $750,000 in 2011, $1.25 million in 2012 and $2 million in 2013.

**$750,000**

The minimum limit, under regulations released earlier this year, on essential benefits that health care plans must provide in 2011.

Starting in 2014, the law bars annual limits for essential benefits.

The minimum limits allowed for the next three years, though, are far more than the maximum benefits provided through mini-med plans, which typically are offered to low-wage, part-time or seasonal employees who, in many cases, could not afford coverage in other group plans offered to full-time employees.

Until 2014, mini-med plan

See **MINI-MED** page 6

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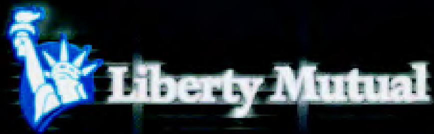

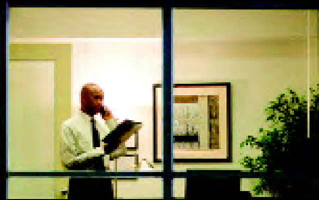

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# London broker's poaching suit dismissed

By MARK A. HOFMANN

**LONDON**—A British High Court judge has dismissed a claim for £2.5 million ($4.1 million) against each of three former employees of Lonmar Global Risks Ltd. and their new employer for breach of contract and other alleged wrongdoing.

London-based independent insurance and reinsurance broker Lonmar, formerly SBJ Global Risks Ltd., alleged it suffered losses when Barrie West, Laurence Niel Mee and Stephen Karpus went to competitor Tyser & Co. Ltd. after leaving brokerage Global Risks in mid-2009.

Global Risks in its lawsuit alleged that each former employee breached his contract and fiduciary duty.

It also alleged that each man and Tyser induced breaches of contract and engaged in a conspiracy, according to the court documents.

The damages figure sought "represents the net value of the work allegedly lost by Global Risks as a result of the unlawful acts alleged," according to last week's judgment.

"Although most of the defendants accept some wrongdoing on their part, all deny that any wrongdoing admitted or found against them caused Global Risks any loss at all," the documents state.

The court dismissed the breach of contract claims against the defendants, saying that while Messrs. West, Niel and Mee had committed some breaches of contract, their acts did not result in a loss to Lonmar.

The court also dismissed the breach of fiduciary duty and conspiracy counts and held that Lonmar had not proved that it suffered a loss owing to the alleged misconduct of the defendants.

A spokeswoman for Lonmar responded via e-mail.

"The fact that the judgment on this case recognizes that Messrs, Niel, Mee and West acted in breach of their contracts with this company justifies our decision to pursue this action," the spokeswoman said.

"However we are, of course, disappointed and indeed perplexed by the conclusions the judge has reached in respect of quantum. We will be reviewing the judgment in conjunction with our legal advisers and considering the merits and potential for mounting an appeal," the spokeswoman added.

Tyser did not respond to a request for comment late last week.

# Mini-med: Plans face stricter reporting

CONTINUED FROM PAGE 4

providers can obtain waivers from the required minimum annual benefit in situations where meeting those requirements would result in a significant decrease in access to benefits or significantly increase premiums, the Department of Health and Human Services had said in guidance issued in September. Several dozen organizations have received the waivers.

In a supplemental guidance issued this month, HHS regulators said as a condition of receiving waivers, mini-med sponsors will have to provide written notification to enrollees that the plan does not meet the annual limit requirements and that a waiver has been approved.

The notice also will have to give the dollar amount of the annual limit requirements and state that the waiver will be for only one year. HHS said it intends to soon provide a model waiver notice that sponsors could provide to enrollees.

As of Nov. 1, HHS had approved waiver requests from 117 mini-med plan sponsors.

The supplemental bulletin is available at *http://www.hhs.gov*.


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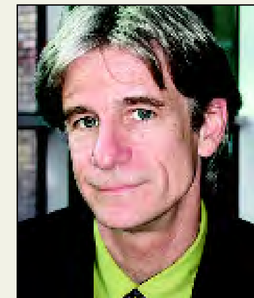
Commentary

# Pack common sense for safe, savvy traveling



MICHAEL **BRADFORD**

*Senior Editor Michael Bradford can be reached at: mbradford@businessinsurance.com*

The summer travel season officially has come to a close with warnings from the U.S. State Department that may make some believe it is better for your health to sit at home this fall than to go somewhere as potentially dangerous as Europe.

So much for that autumn drop in airfares you were looking forward to.

The government's move last month to alert travelers of the potential for terrorist attacks in Europe may have caused vacationers and businesspeople to think twice about their travel plans. At the same time, though, the State Department—in its role as protector of the traveling public—suggests on its website ways you can lower the odds of being a terrorist target, wherever in the world you are headed.

The government suggests first that you register the details of your trip "so the State Department can better assist you in an emergency."

During decades of international travel, I have never come across a fellow wanderer who said, "Hey, before I left home, I gave all my personal details to the government so they could keep up with me while I'm out of the country!"

Travel advice that is a little more helpful comes from insurers, seeing as how they will see more claims should things go badly.

**The government's advice seems to be aimed at people lacking common sense.**

A report prepared by The Ackerman Group L.L.C. is posted on the website of Chubb Group of Insurance Cos. The 40-page report's table of contents lists a host of security topics covered in the document, including travel to Muslim countries, hostile countries, unstable countries and those with severe terrorism or crime.

Assuming you still have an appetite for travel after reading it, the Ackerman report provides some good advice to help ensure you have a safe trip abroad. For example, did you realize that it's a bad idea to have a corporate name on your airline ticket or company luggage tags dangling from your carryon bags because both could serve as flags to ransom-seeking troublemakers?

The government and insurers are among lots of sources that provide advice on travel safety. Most are helpful to a degree, although the government's advice seems to be aimed at people lacking common sense.

After traveling internationally for many years, though, I can say with some confidence that there are a few lesser-publicized ways to keep yourself from getting singled out by a kidnapper or petty opportunistic looking to swipe your wallet. Add the following to any list you carry with you when traveling abroad:

- Upper management types on international flights are too easy to spot. They're the guys leaning against the wall near the rope across the business class boarding lane. They will be wearing crisp jeans and blue blazers, dressed down for the flight home. They will bolt for the jetway at the first crackle of an announcement.
- A traveler who brings a pillow from the bed at home, even if they have a bad back, might as well stamp "rob me" on his or her forehead, as thieves will figure that they don't know that hotels in foreign climes come equipped with comfortable supports.
- Tracksuits? Ditto. International travelers who wear them usually do so only once, after realizing that they are no more comfortable for long trips than other kinds of clothes. Crooks know this.
- If, after settling in at your destination, you complain about anything not being the way it is at home, you will risk trouble from nefarious types within earshot. Why bother traveling if you expect things to be the same everywhere?

Now, don't you feel safer? I'll see you in the boarding line. Just leave the pillow at home, please.

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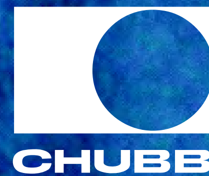


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# Business Insurance OPINIONS

## P/C insurers do not present systemic risk

AS THEY PREPARE to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act, federal regulators are considering exactly which nonbank financial institutions should be subject to heightened regulation because they could present systemic risk to the nation's financial system.

As we report on page 3, property/casualty insurers argue that they don't fall into that category. We believe they're right, and risk managers should hope their arguments fall on receptive ears.

Determining which nonbank financial institutions present a systemic risk that demands tighter regulation is no easy job. Making the size of the entity the critical factor in deciding what does and doesn't present a systemic risk could be tempting, but is something that regulators should avoid.

> *AIG's property/casualty operations didn't cause its near-collapse.*

Despite the experience of American International Group Inc. in 2008, it's worth remembering that AIG's property/casualty operations didn't cause its near-collapse. Still, given the economic turmoil of the past two years, it's easy to understand why regulators might try to include more entities than necessary under a systemic risk regulatory regime in an effort to assure that nothing slips through the cracks.

Subjecting property/casualty insurers to heightened systemic risk regulation when they present no systemic risk would be bad news for risk managers. Overregulation drives up prices and stifles innovation, both of which would be detrimental to the interests of risk managers.

We're not opposed to nonbank financial institutions that present a systemic being required to meet heightened regulation, but property/casualty insurers don't fall in that category. This is a case where sound regulation would mean keeping them out of a systemic risk regulatory framework.

## EEOC takes step too far in genetic testing guide

AS IF EMPLOYERS didn't have enough on their plate already, now they have to worry about how even natural remarks of concern about the health of their workers or their family members could cause legal problems.

Under final regulations by the Equal Employment Opportunity Commission under Title II of the Genetic Information Nondiscrimination Act, employers can ask casual questions about employee health issues. But any follow-up questions that could be considered probing in nature could be considered an attempt to acquire genetic information, which GINA forbids.

Conceivably, a question as innocuous as, "Sorry about your sister. Does breast cancer run in your family?" could be problematic.

It is unfortunate that at the very least, this absurd situation is likely to lead to a reduction in the basic civility all businesses need to run smoothly.

Ironically, employers almost never use genetic information in making employment decisions. Now, in trying to set parameters as to what managers can and cannot say, the EEOC has gone too far.

One can only hope that when the inevitable lawsuits arise over this issue, the courts will use at least a modicum of common sense.

It is not all bad news, though. The final GINA regulations also clarify that employers can continue to offer financial incentives for participating in wellness programs.

Employers had been worried whether wellness programs that provided these incentives still could be considered voluntary. Fortunately, that question has been answered in the affirmative. It is only unfortunate this good news is counterbalanced by the bad.

## WRITE

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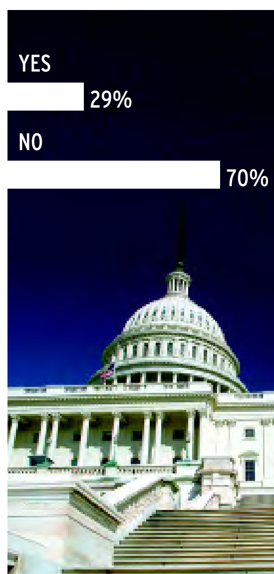
**Q** Should major changes be made to the health care reform law?




**NEXT WEEK'S QUESTION**

**Q:** Does your company have a policy regarding social media use?

## READ

Perspectives and expert analysis online at *www.businessinsurance.com/section/perspectives*

### Tips for building successful wellness plans

Employers need to have a clear plan in place if they want wellness plans to work in their organization, say Hamilton Mears, wellness plan administrator at Scripps Health, and Tom Underwood, CEO of Alere Health. They point out ways to make wellness programs successful, how to create specific goals and how to achieve them while overcoming a significant segment of employees that continue to refuse to participate in employer wellness programs.

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# Lloyd's: New syndicates won't set trend

CONTINUED FROM PAGE 4

energy risks.

The syndicate has capacity of £60 million ($97.1 million) for 2011 and will begin underwriting this month with risks attaching from Jan. 1, 2011.

London-based R&Q Managing Agency Ltd. is managing syndicate 1897 on a turnkey basis with capacity provided by Skuld, Randall & Quilter Investment Holdings P.L.C. and SCOR Underwriting Ltd., a unit of SCOR.

The syndicate plans to derive about 90% of its income from business not currently written at Lloyd's, R&Q CEO Robin McCoy said in a statement.

"This is a key strategic development for Skuld, enabling us to offer a wider range of covers to our P&I club members and also to new clients," Skuld CEO Douglas Jacobson said in a statement.

"For global insurance businesses, a syndicate on the Lloyd's platform is becoming de rigueur, offering as it does the licensing and rating that take time to build independently," said Andrew Holderness, global head of corporate insurance at London law firm Clyde & Co., which advised Skuld on its deal.

But it is vital that turnkey syndicates demonstrate in their business plans to the Lloyd's Performance Management Directorate that they are bringing in business that otherwise would not come to the Lloyd's market, he said.

In the wake of the financial crisis of 2008 and 2009, Lloyd's was very attractive to capital providers and there was a large degree of interest from companies in setting up Lloyd's operations, said Catherine Thomas, a managing senior financial analyst at A.M. Best Co. Inc. in London.

The Lloyd's platform remains attractive for companies offering access to global licenses, strong financial-strength ratings and a sound capital structure, Ms. Thomas said.

The turnkey route is one that Lloyd's has encouraged outside investors to use, with strong interest in the mechanism from corporate capital providers.

More managing agencies—three or four in the past two years—have set up turnkey management operations, she added.

But the competitive insurance market means Lloyd's Performance Management Directorate's entrance requirements are very stringent, Ms. Thomas said.

"Any new entrants would have to demonstrate that they have something different to add to the market" as there is no shortage of capacity, she said.

The turnkey route of entry into Lloyd's ensures that entrants are up to speed with U.K. Financial Services Authority regulation and prepared for Solvency II, said Mark Coleman, a director in Standard & Poor's Corp.'s insurance practice in London.

There likely are sound strategic reasons behind SCOR's and Skuld's decisions to set up turnkey syndicates, said Robert Smith, a director at Moody's Analytics in London.

For SCOR, the stamp capacity of the syndicate represents a relatively small percentage—about 1.4%—of its gross written premiums, but the syndicate gives SCOR the option to grow its Lloyd's presence in future, he said.

For Skuld, the syndicate will enable the P&I club to offer additional coverage to existing clients and likely would bring new business into Lloyd's.

Turnkey syndicates offer capacity providers access to Lloyd's licenses and financial-strength ratings and a "ready-made" managing agent, Mr. Smith said. Often, after two or three years of operating under the turnkey structure,

> **'Any new entrants would have to demonstrate that they have something different to add to the market' as there is no shortage of capacity.**
>
> Catherine Thomas, A.M. Best Co. Inc.

capacity providers set up their own managing agencies, he said.

The move into Lloyd's could offer some benefits to Skuld under Solvency II, the forthcoming E.U. risk-based capital regulatory regime, said Martyn Street, an associate director in the insurance team at Fitch Ratings Ltd. in London.

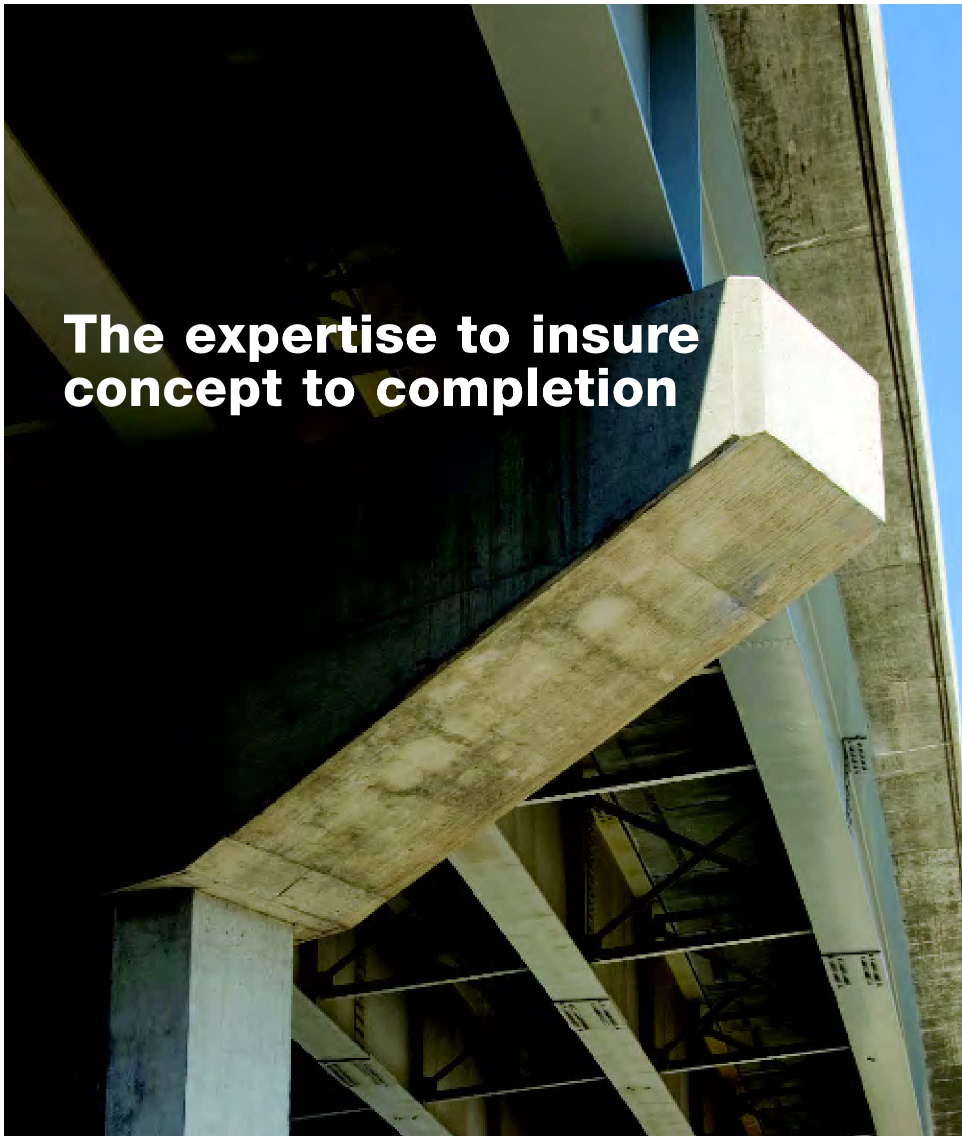
Under Solvency II, which is slated for introduction in December 2012, companies will be rewarded for diversifying by having lower regulatory capital requirements.

Specialist insurers, such as P&I clubs, therefore might see diversification into Lloyd's as a good option, Mr. Street said.

While there was talk of one or two more turnkey syndicates in the pipeline, experts said it is unlikely a raft of syndicates would be set up before year-end.

Market conditions mean there is unlikely to be a "minitrend" for companies setting up via the turnkey route, said Fitch's Mr. Street.

There always is a "strong pipeline" of entrants keen to set up operations at Lloyd's, but Lloyd's oversight of applicants is very stringent, Mr. Coleman said. Once applications are accepted, newcomers are subject to tight application of regulations, and strict capital requirements for their first three years of operation, he added.

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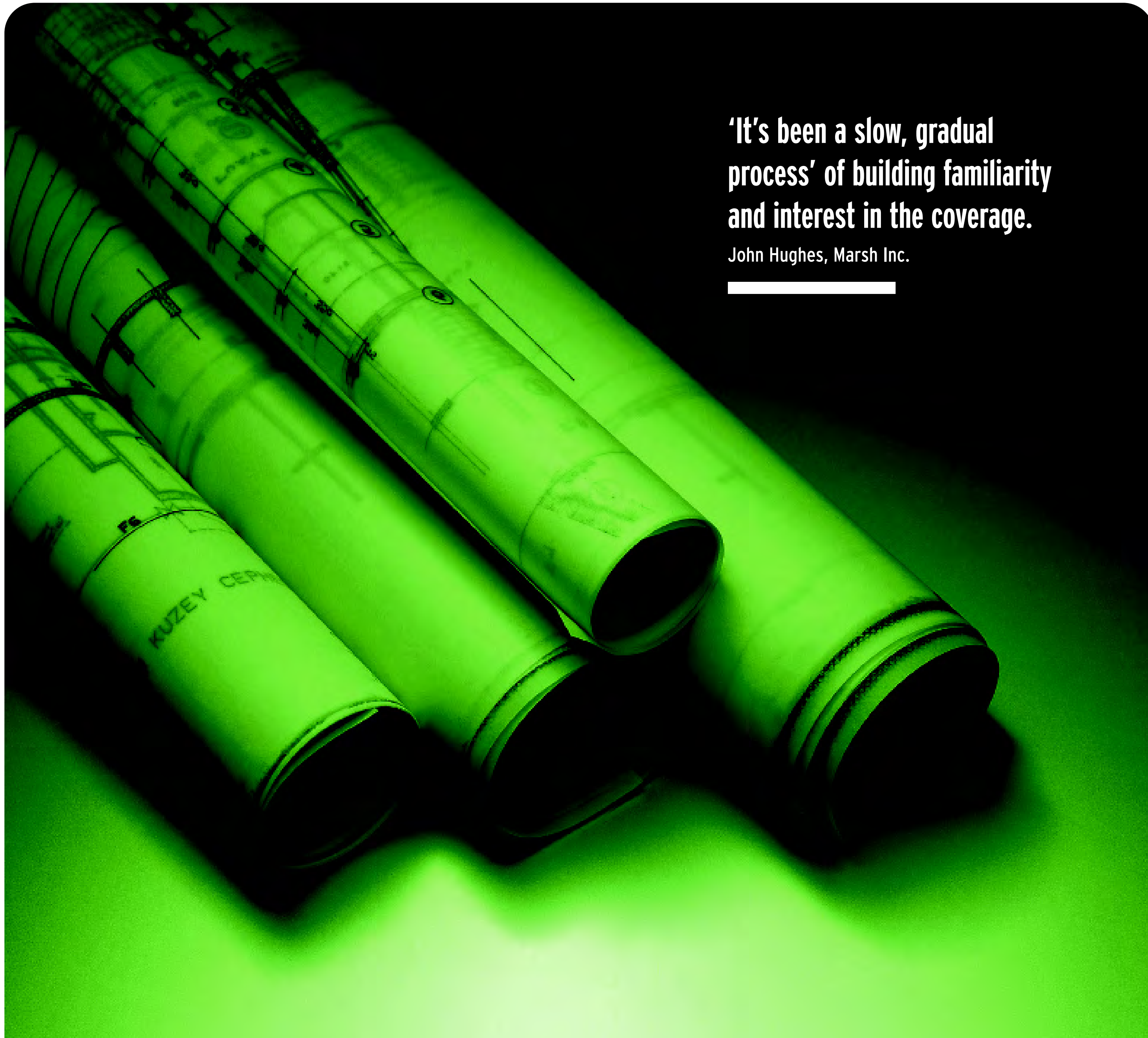

> 'It's been a slow, gradual process' of building familiarity and interest in the coverage.
> John Hughes, Marsh Inc.

# SLOWLY GROWING GREEN

*More insurers offer green cover, but buyer interest still limited*

By SONJA RYST

Soon after Stephen Bushnell joined the real estate industry team at Fireman's Fund Insurance Co. in Novato, Calif., in 2004, he noticed growing excitement at conventions about earth-friendly building.

He picked up scary facts, such as that residential and commercial buildings account for 40% of U.S. energy consumption. "For me, personally, that resonated," said Mr. Bushnell, senior director of emerging industries at Fireman's Fund. "But would our insureds care? The hard-boiled businessmen who are in real estate to make money?"

He pulled together arguments about how considering the environment can help the bottom line. For example, green buildings cut costs in areas such as energy use. Mr. Bushnell also found research, including the 2003 report "The Cost and Financial Benefits of Green Buildings," that cited improved indoor air quality and other factors as leading to reduced absenteeism.

See GREEN page 14

Global Risks: Climate Change

SPOTLIGHT

E&O EXPOSURES FOR ARCHITECTS EXPECTED TO RISE
PAGE 16

CLIMATE CHANGE SUITS AWAIT ACTION BY SUPREME COURT
PAGE 19

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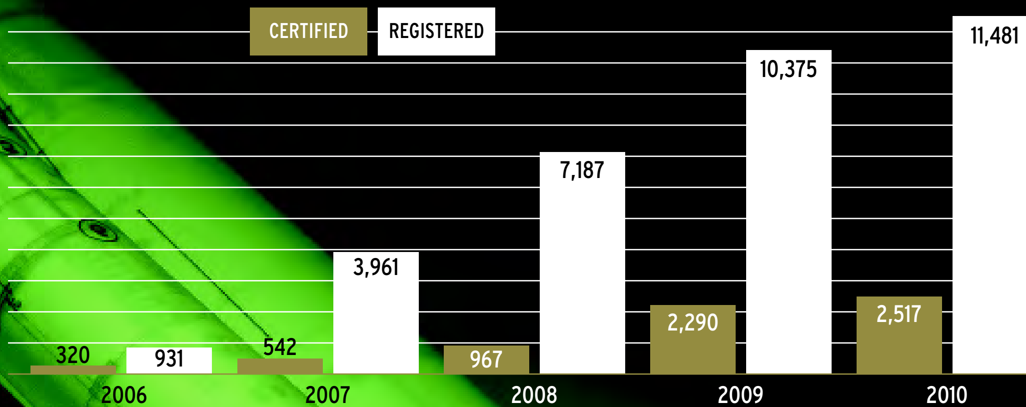


# **Green:** Few buyers add coverage

CONTINUED FROM PAGE 11

Armed with such information, Fireman's Fund rolled out a green building endorsement in 2006 that customers could add to policies that otherwise would replace losses only with similar quality. In the event of a total loss, for example, Fireman's Fund promised to pay the cost to rebuild as a green-certified building.

At first, the hard-boiled businessmen called Mr. Bushnell's team "a bunch of tree-hugging hippies from California,'" he said. However, "this isn't the case now as it was earlier."

### *Offerings increase*

In late 2006, Travelers Cos. Inc. began offering green insurance for commercial buildings. When *Business Insurance* wrote about such products in 2008 (*BI*, Sept. 21, 2008), only about five insurers offered it, including American International Group Inc. through its Lexington Insurance Co. subsidiary, but now brokers say many insurers offer green coverage.

CNA Financial Corp. began offering green building insurance in March 2009 and Factory Mutual Insurance Co., which does business as FM Global, came out with its version about a year ago. In September 2009, the Insurance Services Office Inc. released standard language for the green coverage option.

However, not many customers are biting, brokers and insurers say. That is the situation despite a green nonresidential building market that jumped from $3 billion in 2005 to $29 billion in 2008, according to McGraw-Hill Construction, which projected it would rise to between $43 and $54 billion in 2010.

Fireman's Fund said that around 1,500 of its commercial insurance policyholders had Green-Gard, the name of its green building coverage, at the end of 2009. While that's up from 1,350 in 2008, it's a fraction of the company's 9,000 commercial property insurance policyholders.

Brian Ruane, national real estate and hotel practice leader for New York-based brokerage Willis Group Holdings P.L.C., said companies that had been planning green buildings after 2008 might have gotten slammed by the real estate market downturn. "Many companies are in survival mode," he said, but added that they still recognize that going green is smart in the long run.

David Cammarata, director of property/casualty risk management at Verizon Communications Inc. in Basking Ridge, N.J., added green building coverage to his policy a couple of years ago.

His broker, Aon Corp., told him that Verizon needed the addition-

See **GREEN** page 14

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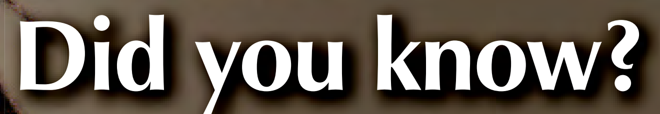


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# Green: Buyer interest in cover remains limited

> **'When you get a green policy, you need to assess it against what you already have and see what the policy will specifically pay for.'**
>
> J. Wylie Donald,
> McCarter & English L.L.P.

CONTINUED FROM PAGE 12

al coverage. It was an additional coverage Verizon didn't have previously that could be added. "It was like a bonus to our present property insurance," he said.

John Hughes, head of property forms and coverages for brokerage Marsh Inc. in New York, said he usually has to educate his clients about how the insurance works. Only one customer in the past year has approached him about the coverage, he said.

"It's been a slow, gradual process" of building familiarity and interest in the coverage, said Mr. Hughes, who added that he expects interest in the coverage to grow as familiarity with it increases.

It's tough to generalize about the specifics of green building insurance for commercial customers because the terms are subject to negotiation and vary greatly, but insurers typically limit the amount they will cover.

Lexington, for example, typically pays the "reasonable and necessary" cost to upgrade the property to green coverage, an increase of the policy's overall limit by 25% or $5 million, whichever is the smallest.

Regardless of provider, customers should read the details in their policies carefully, since green insurance doesn't necessarily cover everything needed to go green.

For example, if there has been a total loss for a property with green coverage, the policyholder might have to hire an accredited engineer or architect to assist in drafting plans to rebuild to a green-building standard. Some underwriters put in sublimits for such costs.

Buyers also might have to ask for additional coverage to upgrade their green building to their preferred level. In the United States, the Green Building Certification Institute's Leadership in Energy & Environmental Design standard comes as certified, silver, gold or platinum.

"When you get a green policy, you need to assess it against what you already have and see what the policy will specifically pay for," said J. Wylie Donald, a partner at McCarter & English L.L.P., who represents policyholders.

For example, suppose a policyholder had a $1 million property policy for a building with a green roof. Then a storm hits and causes $25,000 in damage to the landscaping. If the property policy had a landscaping sublimit of $10,000, the buyer might regret not having a green roof endorsement with a $25,000 maximum. Alternatively, if the landscaping sublimit was $50,000, the green roof endorsement would not have been necessary.

### Few legal disputes so far

So few clients have green building insurance at this point that there haven't been many disputes involving the coverage yet, experts said.

Some providers are making small improvements to their offerings.

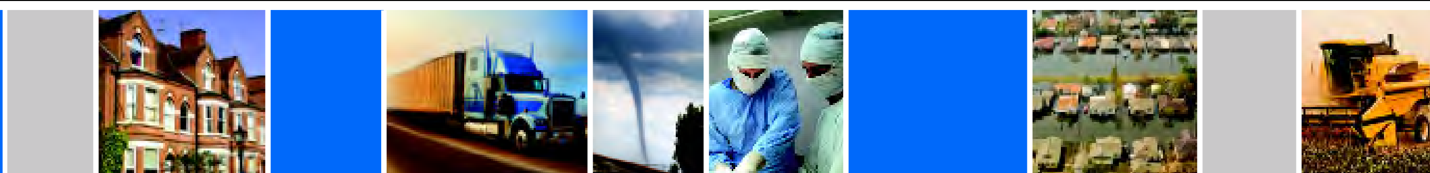
In June, Fireman's Fund introduced coverage to protect incentives affecting things such as taxes, utilities and loans related to green building installations or upgrades.

Lexington is in the process of going through international green building standards to consider bringing them into the current endorsement.

Different green ratings standards exist in other countries, such as the Green Globes system, which is used in the United States and Canada.

Demand for the insurance coverage will get a boost if more buildings go green during the coming years. In the United States, 13,998 buildings were either registered for certification or already certified with LEED this year—significantly more than the 893 in 2005.

"These issues aren't going to go away," said Paul Primavera, senior vp-claims based in the Washington office of Lockton Construction Services Group, a unit of Lockton Cos. L.L.C. "It's only going to get larger."



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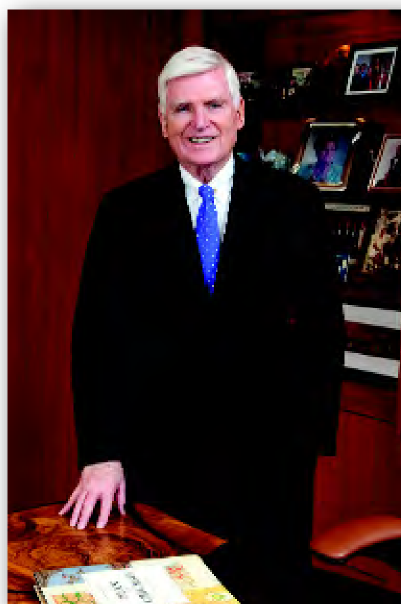

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AP PHOTO

**A green roof in New York completed by Turner Construction Co. The value of green building projects increased 12% in 2009, according to Turner.**

# E&O claims expected to rise as green construction surges

*Contract guarantees on LEED compliance may trigger lawsuits*

By **DAVE LENCKUS**

Professional liability claims concerning green construction have not dogged architects as that specialized building design has grown, but the future looks more troubling, insurance experts and construction attorneys say.

Public entities have embraced green building design, according to figures from the U.S. Green Building Council, which issues the Leadership in Energy and Environmental Design certification to buildings that meet green construction and energy efficiency standards (see box page 17).

"Various LEED initiatives including legislation, executive orders, resolutions, ordinances, policies and incentives" have been adopted in 45 states by 35 state governments; 442 municipal or county governments; and scores of public schools, colleges and universities. In addition, 14 federal agencies and departments have adopted LEED initiatives. Government-owned or -occupied buildings account for 29% of LEED projects, according to the Green Building Council's website.

Spurred by potential tax credits and lower energy costs, green building design also is growing in popularity with private project owners, though it has not overtaken standard construction design.

Nonresidential green buildings could be as much as 25% of the U.S. construction market by 2013, according to McGraw-Hill Construction (see box page 18).

For example, green construction "exploded" for New York contractor Turner Construction Co. in 2009, said Michael Deane, vp-chief sustainability officer. For Turner, the value of green building projects increased about 12% to $3.58 billion in 2009 compared with 2008 even though the total value of its work in place fell nearly 25% to less than $8 billion, he said.

But insurance and legal experts note that some green-designed buildings—even if they have attained LEED certification—do not consume energy efficiently. In some cases, buildings do not achieve LEED certification or the level of certification the project owner desires. Neither problem is necessarily the architect's fault, experts say. Building management could be poor and certain factors unrelated to building design—such as being too far away from public transportation—could sink LEED certification, they said.

So, despite the growth in green construction for specific purposes, the errors and omissions claim environment for architects has been stable for years, experts said.

In addition, the nature of claims has not changed since green construction became popular, said Kevin J. Collins, a senior vp with managing general agent Victor O. Schinnerer & Co. Inc. in Chevy Chase, Md. Schinnerer writes architects and engineers E&O coverage for Continental Casualty Co., a CNA Financial Corp. subsidiary. Typical allegations include that the architect erred in a design specification or increased overall costs by delaying the project, Mr. Collins said.

But that does not mean the claims environment will remain steady during the next five years, he said. One factor that could

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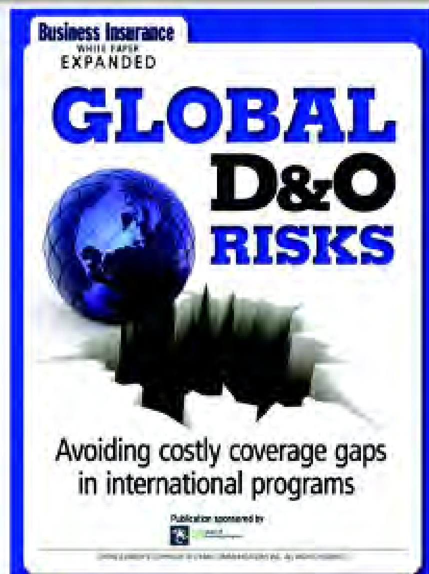


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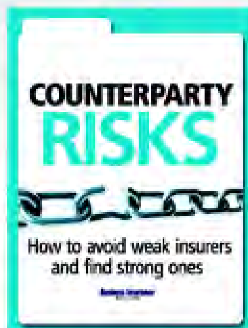


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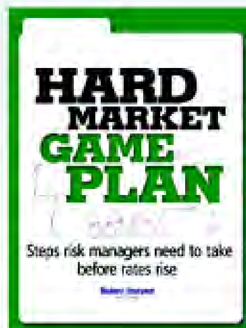


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AP PHOTO

A green roof in New York completed by Turner Construction Co. The value of green building projects increased 12% in 2009, according to Turner.

# E&O claims expected to rise as green construction surges

*Contract guarantees on LEED compliance may trigger lawsuits*

By DAVE LENCKUS

Professional liability claims concerning green construction have not dogged architects as that specialized building design has grown, but the future looks more troubling, insurance experts and construction attorneys say.

Public entities have embraced green building design, according to figures from the U.S. Green Building Council, which issues the Leadership in Energy and Environmental Design certification to buildings that meet green construction and energy efficiency standards (see box page 17).

"Various LEED initiatives including legislation, executive orders, resolutions, ordinances, policies and incentives" have been adopted in 45 states by 35 state governments; 442 municipal or county governments; and scores of public schools, colleges and universities. In addition, 14 federal agencies and departments have adopted LEED initiatives. Government-owned or -occupied buildings account for 29% of LEED projects, according to the Green Building Council's website.

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Continued from previous page

increase claim frequency and severity is the municipal green construction code being devised by the Washington-based International Code Council. The council wants to finalize the code by January 2012.

The council's code "may not change the types of claims we'll see, but it will increase the standard of care, or the minimal performance, required of architects and engineers," Mr. Collins said.

California is one place where the claim environment could get tougher sooner because of the state's new Green Building Standards Code, known as CalGreen. Architects' standard of care will be stricter when the nation's first mandatory green building code goes into effect in January 2011 and buildings have to meet prescribed energy efficiencies, Mr. Collins said.

However, even if a building complies with the CalGreen code, it might not earn LEED certification, Mr. Collins said.

Under both codes, failing to meet a standard of care amounts to negligence, he said.

Mr. Collins says he does not foresee new policy exclusions in answer to the new codes, but he said coverage costs could increase if the International Code Council imposes significant additional liabilities on architects.

For now, E&O underwriters have modified some policy language to assure architects that they are covered for failing to meet a professional standard during a green construction project said Rod Taylor, managing director at Aon Environmental Services Group, a Windermere, Fla., unit of Aon Corp. That could include failing to submit drawings in time to obtain LEED certification, he said.

That "affirmative language" modification is welcome, because E&O policies previously did not directly address green construction-related issues, Mr. Taylor said, but it is not a broad coverage enhancement. "I think it's a clarification of what was already covered," he said.

Meanwhile, E&O policies still exclude coverage of losses arising from claims that an architect failed to deliver on a guarantee that a project would meet prescribed energy-efficiency levels or attain and maintain LEED certification, Mr. Taylor said.

Many architects are careful to avoid making such guarantees, but some do use that ill-advised practice due to economic pressures, experts said.

"We still are seeing (architects') contracts coming perilously close to creating that coverage problem," said David Grigg, New York-based executive vp-professional liability for Willis Group Holdings P.L.C.

Contract templates from the American Institute of Architects avoid any warranty and guarantee language, but most building owners insist on using manuscripted contracts to obtain stronger contractual protection for themselves than an AIA contract would provide, Mr. Grigg said.

"When times are tough, people's guard is lower," Mr. Grigg said. Developers can more easily secure tougher contract terms, because architects "hungry for work" are reluctant to bypass a lucrative deal.

Schinnerer's Mr. Collins agreed. "In a tough economy, with so much competition, anybody is willing to sign anything."

Instead, Mr. Grigg said contracts should state clearly that the architect does not guarantee a building will meet prescribed energy-efficiency levels or achieve or retain its LEED certification.

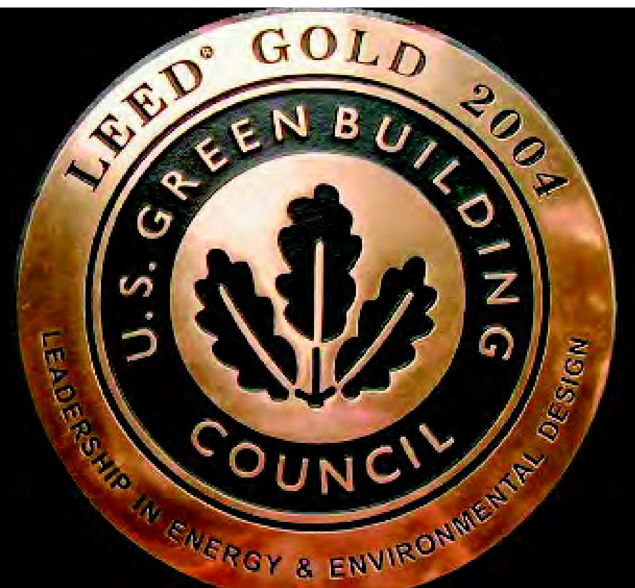
That does not handcuff architects from vowing to work closely

Continued on next page

## WHAT MAKES A BUILDING GREEN?

Leadership in Energy and Environmental Design is an internationally recognized green building certification system, providing third-party verification that a building or community was designed and built using strategies aimed at improving performance across several metrics: energy savings, water efficiency, carbon dioxide emissions reduction, improved indoor environmental quality, and stewardship of resources and sensitivity to their impacts.

*Source: U.S. Green Building Council*

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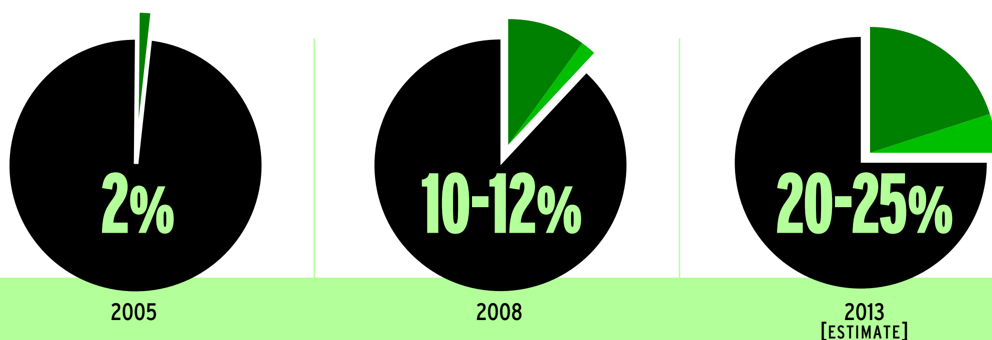
## MORE GREEN BUILDINGS EXPECTED TO SPROUT

*The green construction market as a percentage of nonresidential construction starts*




*Source: "Green Outlook 2009: Trends Driving Change," McGraw-Hill Construction.*

# LEED: E&O claims may increase

CONTINUED FROM PREVIOUS PAGE

with building owners to help them achieve LEED certification, Mr. Collins said.

With no claim problems, a lot of architects and attorneys are asking why they should pay attention now to potential future risks, said construction attorney Scott Wolfe who, as a partner with the Wolfe Law Group P.C., works in Seattle and New Orleans.

Eventually, green construction "will seem like it's everywhere," Mr. Wolfe said. E&O losses will occur and plaintiffs will seek damages, but there is no certainty how courts will rule or how insurers might treat this risk differently than they do now, he said.

"Some people will be prepared for it; some people won't be prepared." Those who will be prepared are paying attention now to potential liabilities in the future, said Mr. Wolfe, who spoke last month in New Orleans at the inaugural Green Matters Conference on what going green means for cities and businesses nationwide.

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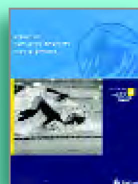

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# Climate change suits await U.S. Supreme Court action

By JEFF CASALE

About a year ago, some legal experts thought there would be a wave of global warming-related cases moving through the courts as U.S. appeals court rulings opened the door for lawsuits against greenhouse gas emitters, yet that hasn't been the case.

Instead, rulings by the 2nd U.S. Circuit Court of Appeals and the 5th U.S. Circuit Court of Appeals have gone to the U.S. Supreme Court, where they are waiting for the court to decide whether to hear them. While some cases involving global warming are proceeding at the state level, legal experts say all eyes are focused on how the Supreme Court will handle the issue and activity on nearly all climate change litigation has cooled.

At issue in the 5th Circuit case of *Ned Comer et al. vs. Murphy Oil USA et al.*, the court dismissed the defendant's appeal due to recusals of eight of 16 judges on the court's panel. This caused the court to lose its quorum and it no longer could entertain the appeal, thus falling back on the district court's opinion to dismiss the plaintiffs' lawsuit on the basis that global warming nuisance suits raised political questions that were not appropriate for judicial review.

In *Comer*, Mississippi property owners allege that greenhouse gas emissions of Murphy Oil USA—through several oil, coal and chemical companies—contributed to climate change and furthered the property damage caused by Hurricane Katrina in 2005.

In the 2nd Circuit case—*State of Connecticut et al. vs. American Electric Power Co. Inc.*—the plaintiffs, a coalition of states, environmental groups and New York City, allege that AEP's coal-burning power plants are "the five largest emitters of carbon dioxide in the U.S." According to the lawsuit, the state government is asking the Supreme Court to order AEP to reduce its emissions each year during the next 10 years.

The 2nd Circuit overturned the lower court ruling that the global warming nuisance suits raised political questions not appropriate for judicial review. AEP recently filed a brief with the Supreme Court to review the 2nd Circuit's ruling.

In August, the Obama administration filed a brief asserting that the U.S. Environmental Protection Agency, rather than the courts, should address whether plaintiffs can sue emitters of greenhouse gases.

"These are big developments with the 2nd and 5th Circuits," said Laura A. Foggan, a partner at Wiley Rein L.L.P. in Washington. "With these cases under review (by the Supreme Court), others will sit back and wait to see how they decide and gain a road map on how to proceed (in future cases)."

A June article on the climate change cases by New York-based law firm Chadbourne & Parke L.L.P. pointed out that the 5th Circuit's dismissal of *Comer* "created a conflict between the 5th and 2nd Circuits on the political question doctrine and standing in climate change cases." The article added that "if the U.S. Supreme Court were inclined to view *Comer* as representing a split with (the *AEP*) case, the Supreme Court would only have the district court's opinion to work with, which would essentially be tantamount to a direct review of the lower court's ruling."

Alex Hardiman, New York-based attorney with Anderson Kill & Olick P.C., said the challenge in both cases is that the plaintiffs will have a difficult time providing proof of the damages alleged and that the cases were sparked by the 2007 ruling in *Massachusetts et al. vs. Environmental Protection Agency et al.*, in which the Supreme Court said greenhouse gases constitute pollution and threaten public health.

"Both sides (plaintiffs and defense attorneys) are watching where these cases go," said Mr. Hardiman, adding that both could be heard by the Supreme Court within the next year. "If the Supreme Court takes them, they will likely deal with the principle defenses of climate change litigation."

See **LITIGATION** next page

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Alex Hardiman,
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# Litigation: Climate change lawsuit rulings

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Aside from cases already filed, climate change also can spawn coverage disputes as well as directors and officers litigation. The Securities and Exchange Commission issued guidelines in January that require companies to disclose global warming exposures, which could spur shareholder lawsuits, attorneys said. Such lawsuits would hinge on a company's failure to disclose financial risk to global warming or liability.

Policyholders could run into coverage issues on their general liability and D&O policies, and insurers could argue that the pollution exclusion in both instances would deny coverage in climate change disputes, Mr. Hardiman said. While there is yet to be a D&O case on the subject, a coverage case emerged in 2008 in Virginia—*Steadfast Insurance Co. vs. AES Corp.*—that gained national attention.

Steadfast, a Schaumburg, Ill.-based unit of Zurich Financial Services Group, filed a motion asking a Virginia state court to rule that the commercial general liability policy it issued AES did not provide coverage of global warming claims against the power provider.

Arlington, Va.-based AES is among 24 oil, energy and utility companies tangled in a public nuisance suit brought by the Native Village of Kivalina, a governing body of an Inupiat Eskimo village in Alaska, over alleged damage to the village caused by global warming.

Steadfast has argued that it has no duty to defend or indemnify AES because global warming damage alleged in the underlying suit, *Native Village of Kivalina vs. Exxon Mobil Corp.*, was not caused by an accident, which is needed to trigger liability coverage for AES.

Also at issue, said Ms. Foggan, is Steadfast's application of the pollution exclusion and whether the court rules that greenhouse gases are "pollutants."

The U.S. District Court for the Northern District of California dismissed the underlying case in *Kivalina* on the political question doctrine grounds, but plaintiffs have appealed to the 9th U.S. Circuit Court of Appeals, where it is pending.

"What you have are two U.S. courts of appeals arguing that these cases are not viable and that (global warming) is not an issue that the law can decide, which is why so many people are interested in seeing what the 9th Circuit and the Supreme Court are going to do," Ms. Foggan said.


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# Market Moves

## Florida OKs reducing reinsurers' collateral

**TALLAHASSEE, Fla.**—The Florida Office of Insurance Regulation has reached an agreement with three Bermuda-based reinsurers that allows them to reduce their collateral requirements.

The modified state regulatory terms allow ACE Tempest Reinsurance Ltd., Hiscox Insurance Co. (Bermuda) Ltd. and Partner Reinsurance Co. Ltd. to offer coverage without posting 100% collateral for the risk transferred, which is required when insurers seek reinsurance from unaccredited or foreign carriers, the Tallahassee, Fla.-based state office said in a statement.

Florida lawmakers passed legislation in 2007 that enabled the office to lower collateral requirements for reinsurers that are "highly rated and financially sound," the office said.

Prior to the 2007 law, U.S. insurers posted no collateral while foreign reinsurers posted 100% collateral for the risk transferred.

"Florida has played a key role in modernizing the U.S. reinsurance market," Insurance Commissioner Kevin McCarty said in the statement. "These collateral agreements are intended to encourage additional investment in Florida's property insurance marketplace."

This agreement brings to six the number of reinsurers that are operating in Florida under reduced collateral requirements, with Hannover Reinsurance Co., Hannover Re (Bermuda) Ltd. and XL Re Ltd. approved earlier in the year.

## Broker First Niagara adds Summit Insurance

**BROOMALL, Pa.**—Insurance brokerage First Niagara Risk Management has acquired Summit Insurance Group Inc. and subsidiary Summit Benefits L.L.C. for an undisclosed amount.

The acquisition aims to strengthen the brokerage's overall presence in the Pennsylvania personal and business insurance market, the insurance brokerage unit of Buffalo, N.Y.-based First Niagara Financial Group Inc. said in a statement.

The deal comes after the acquisition of RTI Insurance Services Inc. and Three Rivers Financial Services Inc. in Western Pennsylvania in August.

As part of the deal, Broomall, Pa.-based Summit Insurance Group and Summit Benefits L.L.C. have adopted the First Niagara Risk Management brand with a combined workforce of 350 employees.

According to the statement, First Niagara Risk Management, which offers personal and commercial insurance, including surety bonds, risk management and employee benefits administration services, among others, generated $43.9 million in 2009 brokerage revenues.

## Zurich, AmWINS partner on accident, health

**CHARLOTTE, N.C.**—Zurich North America Commercial has formed a partnership with AmWINS Group Inc. to expand its accident and health products.

The partnership with the Charlotte, N.C.-based wholesale brokerage's AmWINS Group Benefits unit aims to further Zurich's strategic growth plan in the program accident and health space, the Schaumburg, Ill.-based insurer said in a statement.

As part of the partnership, for which terms were not disclosed, accident and health insurance underwritten by Zurich American Insurance Co. is sold through AmWINS Group Benefits' network of agents and brokers.

"Zurich wants to work with more top-tier program administrators," Craig Fundum, president of programs and direct markets for Zurich North America Commercial, said in the statement. "The strong relationships AmWINS has established in the affinity market make them one of the largest and most diversified wholesale insurance distributors in the country."

Zurich said it has written accident and health coverage using corporate markets and other approaches, but recently has established a mass consumer market group, which focuses on affinity business for its programs.

## Brown & Brown buys Rogers & Norman

**SEATTLE**—Brown & Brown of Washington Inc., a unit of Daytona Beach, Fla.-based Brown & Brown Inc., has acquired insurance brokerage Rogers & Norman Inc.

The acquisition aims to grow Brown & Brown of Washington's footprint in Seattle and the Pacific Northwest, the Seattle-based brokerage said in a statement.

Founded in 1956, Seattle-based Rogers & Norman, with annual revenues of nearly $3.2 million, will remain at its current offices for now. Eventually, it will join Brown & Brown of Washington's office, which is led by Executive Vp Eric Anderson, the brokerage said.

Financial terms of the acquisition were not disclosed.

## XL, Chandler Insurance target professional liability

**CHANDLER, Okla.**—XL Insurance has entered into an underwriting agreement with managing general underwriter Chandler Insurance Managers Inc.

As part of the agreement, CIMI Professional, Chandler Insurance Managers' professional liability underwriting unit, will offer professional liability and general liability insurance to long-term care

Continued on next page

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# Market Moves

Continued from previous page

organizations, such as skilled nursing, assisted living and independent living facilities, the insurance unit of XL Group P.L.C. said in a statement.

"CIMI Pro's expertise in long-term care underwriting attracted XL Insurance's interest in this unique program," XL Insurance Chief Underwriting Officer John Hartman said in the statement. "They have an in-depth understanding of their market and the risks they evaluate."

Chandler, Okla.-based CIMI Professional will offer coverage though one of the XL Insurance companies with professional and general liability limits up to $5 million.

Financial terms of the underwriting agreement were not disclosed.

## Engle Martin opens offices in Texas, Va.

**EDINBURG, Texas and ARLINGTON, Va.**—Commercial loss adjusting and claims management firm Engle Martin & Associates Inc. has opened offices in Edinburg, Texas, and Arlington, Va.

The locations are part of Engle Martin's plan to expand its services to Maryland and surrounding areas in Virginia as well as Texas, the Atlanta-based firm said in a statement.

With the addition of the offices, Engle Martin has 32 offices nationwide.

General Adjuster Mike Fink leads the Arlington office, relocating from Los Angeles.

Lee Evans, senior property adjuster, has relocated from the firm's Houston office to open the Edinburg location.

The Edinburg office's address is P.O. Box 2909, Edinburg, Texas, 78540. The phone number is 956-381-9026.

The Arlington office's address is P.O. Box 101774, Arlington, Va., 22210. The phone number is 323-513-4686.

## Aon Benfield Fac expands in Singapore

**SINGAPORE**—Aon Benfield Fac has launched a life reinsurance unit for the Asia-Pacific region.

Based in Aon Benfield's existing offices in Singapore, the life reinsurance hub provides broking services and analytical risk management tools for the Asia-Pacific life reinsurance market, the reinsurance brokerage arm of Aon Corp. said in a statement.

With established teams in the Americas, the United Kingdom and continental Europe, "this new APAC team expands our life reinsurance capabilities into the region, where we anticipate there being many growth opportunities for this line of business," Malcolm Steingold, CEO of the Asia-Pacific region for Aon Benfield, said in the statement.

The team is led by Angela Koechli, head of life reinsurance of Asia-Pacific for Aon Benfield in Singapore.

## Starkweather & Shepley acquires benefit consultant

**NORTH KINGSTOWN, R.I.**—Starkweather & Shepley Insurance Brokerage Inc. has acquired benefits consulting firm Moniz Benefits Group Inc.

The acquisition, for which terms were not disclosed, is in response to the potential risks posed by increasing health care costs faced by companies due to the federal health care reform law, the East Providence, R.I.-based insurance agency said in a statement.

North Kingstown, R.I.-based Moniz Benefit Group advises large and midsize organizations on their employee benefits programs.

As part of the acquisition, James Moniz, founder and previously president of Moniz Benefits Group, has been named senior vp and employee benefits leader of Starkweather & Shepley Insurance Brokerage.

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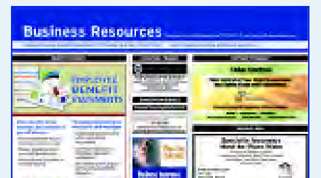


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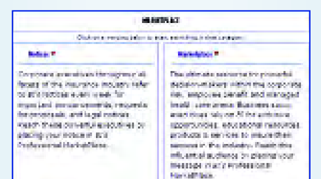

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Michael T. McRaith, Director of the Illinois Department of Insurance, announces that Illinois' high risk pool, the Comprehensive Health Insurance Plan (CHIP), is beginning a competitive bid process for actuarial services.

CHIP is releasing a Request for Proposal (RFP) that solicits proposals for actuarial services from 3/1/11 to 2/28/12. Actuarial organizations interested in participating in this process, and wishing to receive a copy of the RFP, should send an e-mail to:

Tim_Sullivan@chip.state.il.us

## LEGAL NOTICE

**Transfer Non-life Insurance Business**

**Transfer of rights and obligations pursuant to section 3.5.1a of the Dutch Financial Supervision Act**

1. Nationale-Nederlanden Schadeverzekering Maatschappij N.V. (NNS), with its registered office at Prinses Beatrixlaan 35, 2595 AK The Hague, the Netherlands hereby notifies to the parties involved that with the approval of the Dutch National Bank having its registered office at Amsterdam, granted by decision of 28 October 2010, it has transferred its rights and obligations under the non-life insurance business described below with effect from 15 November 2010 to Nationale-Nederlanden Internationale Schadeverzekering N.V. (NNIS) having its registered office at Amstelveenseweg 500, 1081 KL Amsterdam, the Netherlands.
2. The transfer referred to in paragraph 1 relates to the following non-life insurance business which is or was part of the portfolio of NNS:
   i. all direct and indirect aviation insurance contracts relating to the participation of NNS in the pool of insurers formerly known as De Nederlandsche Luchtvaartpool and now managed by DAP Holding N.V. and
   ii. all non-life insurance business accepted between 1974 and 1978 in the "Home Foreign" account and administered by the (former) "Underwriting Department International Division" (UDID) and
   iii. all non-life indirect insurance contracts of the (former) Eerste Rotterdamsche Maatschappij van Verzekering N.V. which were transferred to NNS on 1 May 1970.
3. The transfer shall become effective to all parties as from the second day after announcement thereof in the Dutch Government Gazette (Staatscourant). This announcement was made on 12 November 2010.
4. Pursuant to article 3:120 sub 7 of the Dutch Financial Supervision Act (Wet op het financieel toezicht), the relevant policy holders are entitled to terminate their direct non-life insurance by written notice to NNIS during three months after the date of this Dutch Government Gazette with effect as per the day of expiry of this three months term.
5. In case of such termination, NNIS shall make a pro rata premium refund on the basis of the gross premium, and a refund insurance tax, pursuant to statutory provision of the Dutch Financial Supervision Act as referred to in paragraph 4 above.

Need to Publish a Legal Notice, Announcement or RFP

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## Comings & Goings

## JIM ENGEL

**NEW JOB TITLE:** New York-based senior vp and chief claims officer of U.S. and Latin American operations for Liberty International Underwriters, the global specialty lines division of Liberty Mutual Group Inc.

**PREVIOUS POSITION:** Schaumburg, Ill.-based executive vp and chief claims officer of Zurich North America

**GOALS FOR NEW POSITION:** To make LIU one of the top specialty claim companies in terms of our technical excellence and customer service.

**INDUSTRY CHALLENGES:** There is a societal shift taking place, moving accountability from those responsible to those with deep pockets. Understanding this challenge and dealing successfully with it is a challenge.

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**MOST PASSIONATE ABOUT:** Keeping this great country full of opportunity for everyone who tries to be successful.

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**CAN'T-MISS TV SHOW:** National and international news.

**ON A SATURDAY AFTERNOON:** It's personal time for me or to share with my family and friends.

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## Comings & Goings ONLINE

**VISIT** ***www.businessinsurance.com/ComingsandGoings*** for a full list of this week's personnel moves and promotions. Check our Web site daily for additional postings and sign up for the weekly e-mail.

### TO SUBMIT ITEMS

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

Mike Tsikoudakis
*Business Insurance*
360 N. Michigan Ave.
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*mtsikoudakis@businessinsurance.com*

### POSTING THIS WEEK

**BROKERS:**
- Alper Services L.L.C.
- Harleysville Insurance Group Inc.
- IMA of Texas Inc.

**INSURERS:**
- Alterra Insurance USA Inc.
- Lancashire Holdings Ltd.
- Torus Insurance Holdings Ltd.

**OTHER PROVIDERS:**
- Cunningham Lindsey Group Ltd.
- EQECAT Inc.

**REINSURANCE:**
- Guy Carpenter & Co. L.L.C.

# WCF: Key posts set to change

CONTINUED FROM PAGE 4

Congress who understood insurance issues," Ms. Henry said, adding that the industry will have to educate congressional newcomers, as well as those who will assume leadership positions without much background in insurance issues.

But the election is not likely to affect the chances of the risk retention group industry winning passage of legislation to allow RRGs to write property coverage. Under current law, the groups can write all types of casualty coverage except workers compensation, and the RRG industry has been pressing legislators to expand that underwriting authority.

But Ms. Henry said she doubts that the incoming Congress will have much interest in expanding RRG underwriting authority. The last expansion occurred in 1986 when rates for many casualty lines soared, a major contrast with the current soft market.

Big battles will be fought over the health care reform law, Ms. Henry said. House Republicans likely will try to pass a bill to repeal the law, but she said she views such a vote as "symbolic," because the Democratic-controlled Senate is unlikely to go along.

Harder to predict, she said, is the outcome of other GOP moves to derail the reform law, such as stripping from the measure a contentious provision, effective in 2014, that will require U.S. residents to either enroll in a qualified health care plan or be fined.

John Kasich, a Republican who won the Ohio gubernatorial race by narrowly defeating incumbent Ted Strickland, pledged during his campaign to open the state's monopoly workers compensation system to private insurers.

AP PHOTO

AP PHOTO

**Rep. Earl Pomeroy, D-N.D. (left), a former insurance commissioner and president of the NAIC, lost his bid for re-election to the U.S. House of Representatives.**

While the battle over that provision has yet to be fought, Ms. Henry said if the individual mandate were removed and other provisions remain, such as banning denial of coverage for pre-existing conditions, "it would be a disaster."

Ms. Henry likened such action to allowing people to buy homeowners insurance while their house was burning down.

With restrictions in place such as the ban on pre-existing condition exclusions, healthy people in some cases would wait until they were sick to buy coverage, resulting in adverse selection and ultimately forcing insurers to significantly boost premiums, she warned.

Ms. Henry predicted more gridlock in the next congressional session.

But she said it is likely Congress would repeal a provision, opposed vehemently by the small-business community, that will require employers to furnish 1099 reporting statements whenever they do more than $600 in business with a corporate vendor. Many Republicans and some Democrats want the provision repealed, and President Barack Obama said last week he is open to considering changes to the provision.

# Hospitals' liability exposures expected to increase

**SCOTTSDALE, Ariz.**—The health care reform law could "exponentially" increase the liability exposures of health care systems, a hospital risk management executive warned during the 20th Annual World Captive Forum.

Through expanding Medicaid and extending federal health insurance premium subsidies to the lower- and middle-income uninsured and certain other changes, the new law is projected to extend coverage to more than 30 million uninsured U.S. residents.

But without a massive education effort, many of the newly insured will continue to flood hospital emergency rooms, putting more pressure on already overwhelmed ER staff and give them less time to make decisions, said Janeanne Lubin-Szafranski, vp and general counsel with New Haven, Conn.-based St. Raphael Healthcare System Inc.

Speaking last week at the Scottsdale, Ariz., WCF, Ms. Lubin-Szafranski said without tort reform, the addition of 32 million insured will "exponentially" increase professional risk exposures of health care facilities due to their increased workload.

While health care reform advocates have asserted that expanding coverage should alleviate pressure on hospital ER facilities as the newly insured stop using ER to provide all their medical care and start using more cost-efficient settings, such as doctors' offices, Ms. Lubin-Szafranski expressed skepticism.

Just because those individuals will have insurance does not mean they will stop using ER facilities to receive primary and other care, she said.

Nor does it mean that the newly insured will follow up emergency room treatment with regular visits to doctors and, thus, reduce the likelihood that they won't again end up in hospital ERs, she said.

**READ** more coverage from the 20th Annual World Captive Forum in next week's issue of *Business Insurance.*

Ultimately, hospital ER facilities will become even more crowded and "increasingly frightening places," she said.

To prevent that scenario from developing, Ms. Lubin-Szafranski said a massive education effort will be necessary so that the newly insured seek regular medical care—not on an "episodic basis"—to detect problems before they become more complicated and expensive to treat.

Even so, implementation of the health care reform law could further splinter the nation's health care delivery system between the haves and the have-nots, she said.

Those who can afford to do so increasingly may seek "concierge" medical care, she said. That is a term for doctors who, for extra fees, make house calls and provide services on an expedited basis, leading to fewer, more overworked providers for those who cannot afford the cost of concierge providers.

Ms. Lubin-Szafranski described herself as one of those "strange people who has read every one" of the more than 2,000 pages of the Patient Protection and Affordable Care Act, but said there is much she does not understand.

Rather than reform, she said she worries there will be a massive influx of newly insured into an already overburdened system with the potential of toppling the health care system, with pressure then mounting to move to a single-payer system.

She acknowledged that the current system has many problems, including the nation's inability to afford the current rate of increases in health care costs.

In addition, Ms. Lubin-Szafranski said tort reform is needed, noting that some plaintiffs attorneys are seeking personal assets of doctors, such as homes and bank accounts, as a way to boost recoveries in medical malpractice suits.

*—By Jerry Geisel*

# Clements: Veteran honored

CONTINUED FROM PAGE 4

looking at it the wrong way, he recounted Mr. Clements saying: The world isn't flat—it's round; it just happened that Mr. Iordanou was standing at immediately before noon and Mr. Clements at a minute past noon. Technically, they were close to each other and holding hands.

"I didn't quite know what he meant and I never had the courage to ask," Mr. Iordanou said. "But it tells you as to how he thought about issues."

Mr. Garvey, Integro's president and CEO, was among those who remembered Mr. Clements' habit of pausing in the middle of his conversation. Like many people, Mr. Garvey couldn't restrain himself from finishing Mr. Clements' sentences, only to discover in embarrassment that he had no idea what Mr. Clements intended to say.

**'As a leader, Bob knew how to grab your attention.'**

Peter Garvey,
Integro Insurance Brokers Ltd.

"Bob loved words and knew the power of picking the correct ones. He wanted to make sure you were listening closely. As a leader, Bob knew how to grab your attention," Mr. Garvey said.

Mr. Greenberg, CEO of ACE, said his company owed its growth from a single employee out of a hotel room in Bermuda to a 25-year-old global company to Mr. Clements. "It wouldn't have been possible if Bob hadn't thought outside the box," Mr. Greenberg said.

Mr. Kelley, CEO of Ironshore, pointed out that Mr. Clements left a "powerful impact" on the lives of many people.

"The last I looked, Bermuda was still overloaded with those that follow Bob—a sure sign of flattery," said Mr. Blaser, chief operating officer and chief financial officer of Ironshore Inc. and CEO of Ironshore's Bermuda office. He said that the last time they met, Mr. Clements asked him when he thought the market would turn.

John Clements, managing partner of Tara Partners Ltd., a private investment partnership that co-founded Integro Ltd. and Ironshore, recalled that his father once considered giving up insurance to open his own restaurant and become a chef.

"Fortunately, that's a venture that never got off the ground," he said.

# BP: Far-flung claimants complicate oil spill fund

CONTINUED FROM PAGE 1

estimate was around $40 billion for the cost of cleanup and claims payments related to the spill.

A Nov. 23 deadline is looming for claimants to file for emergency advance payments from the fund. Beyond that date, claims will be handled under a new protocol that is expected to be released soon.

The GCCF is charged not only with sorting out legitimate claims from the tens of thousands that are filed from Gulf Coast residents and businesses that were directly impacted by the spill, but also those that are lodged by claimants who are far from the beaches where oil washed ashore after the April 20 explosion on the Deepwater Horizon rig.

The facility has received, for example, claims from restaurants and fishing equipment companies located hundreds of miles from the coastal area where the oil washed up. Such claimants are saying they suffered losses because of the impact of the spill on their businesses, regardless of the distance of those operations from the region where the accident occurred.

Those claims have to be held to a high standard of proof so there is no danger that they could deplete the funds available for "unquestionable" claims, said Patrick A. Juneau, an attorney with the Lafayette, La., law firm of Juneau David A.P.L.C. Mr. Juneau serves as the liaison between the state of Louisiana and the GCCF on matters related to processing Louisiana claims.

"In Louisiana, we believe proximity should be a factor," Mr. Juneau said, and claims that come from distant claimants, while they should not be automatically denied, should have to show "without question that there is a causal connection with the accident."

Sources say insurance coverage could come into play if the GCCF decides not to pay some claims.

Policyholders with pollution insurance that have suffered property damage as a result of the spill will have "the potential for coverage," depending on the nature of coverage and circumstances around the claim, said Chris Smy, Atlanta-based global environmental practice leader with Marsh Inc. "There is the potential for business interruption as well, but it would have to be the result of pollution damage," under such coverage, he said.

An attorney with experience in business interruption claims said there could be the potential for recovery from insurers for those losses if the facility rejects such claims.

The GCCF protocol will spell out what sorts of claims will be accepted, the attorney pointed out. If, for whatever reason, it decides some claims will be rejected, rejected claimants might well be able to turn to their insurers, he said.

"I'm sure they have put their insurers on notice," he said of commercial operations waiting to see how their claims will be handled by the GCCF.

Mr. Smy said he is aware of some pollution claims having been filed with insurers, but the volume of such claims is not expected to be substantial.

**'I have thousands of clients, and I don't take anything that's more than 2,000 feet from the beach.'**

Daniel E. Becnel Jr.,
The Law Offices of Daniel E. Becnel Jr.

AP PHOTO

**Paula Konig, left, head cook at Lil G's Kajun Restaurant in Belle Chasse, La., looks over an order in the kitchen with owner Therese Creppel. Ms. Creppel has filed a claim for lost business in the wake of the Gulf of Mexico oil spill.**

Claimants in Louisiana and other parts of the coast where the oil directly affected businesses do not have a lot of difficulty in proving their losses to the GCCF, Mr. Juneau said. "The proof is in the pudding" for claimants along the shores where oil washed up, he said.

Mr. Juneau added, though, that faraway claimants should have to "come forward with a true connection; it has to be a very indisputable, provable claim."

Gulf Coast claimants "don't have any difficulty with that test," he said. "Our concern is that we don't deplete the funds that are used for unquestionable claims."

Mr. Feinberg said claims filed by distant claimants will be considered by the facility and will get close scrutiny. "It's one thing to say a claimant far from the beach is able to file," he said, but that doesn't mean the legitimacy of such claims won't be carefully considered before payments are granted.

The burden of proof for claims outside the region is too much trouble for some attorneys.

"I have thousands of clients, and I don't take anything that's more than 2,000 feet from the beach," said Daniel E. Becnel Jr., a plaintiffs attorney with The Law Offices of Daniel E. Becnel Jr. in Reserve, La. "I'm not saying that those claims aren't viable," he said. "It's just that they're harder to prove."

Mr. Becnel said he has found the GCCF to be cooperative in handling emergency advance payments. The facility paid a $4 million claim he filed on behalf of a Florida resort. "I don't find them being unreasonable," he said of the GCCF.

Ervin Gonzalez, an attorney with Colson, Hicks, Eidson in Coral Gables, Fla., said it's clear that some claims filed by businesses outside the Gulf Coast region are entitled to damages from the GCCF.

A fishing equipment manufacturer client of his has filed a claim for losses because the manufacturer can't sell his goods to buyers who previously purchased them, Mr. Gonzalez said. "If a manufacturer of fishing equipment used in the Gulf is not selling to his customers" who can't fish in those waters because of the spill, "that's a legitimate claim," he said.

The spill provides an interesting lesson as to how policyholders might consider protecting themselves from such losses in the future, said Mr. Smy.

"Most don't buy pollution cover," Mr. Smy said. The spill "may cause them to rethink that strategy," he said.

# Systemic: Insurers unite against rules

CONTINUED FROM PAGE 3

pose a threat to U.S. financial stability," the AIA wrote.

"Under our two-step analysis, the first stage is really critical," J. Stephen Zielezienski, AIA senior vp and general counsel, said in an interview last week. "AIA believes the council must consider the sector-specific context of any nonbank financial company, including the nature of its financial activities, the business model that's utilized in that sector, the relationship between firms in that sector, and the larger financial system and the extent of regulatory supervision applied to that sector's market participants.

"It's our view that if you conduct that analysis and you look at property/casualty companies that are engaged in traditional insurance activities, that the council will conclude that none of those companies could generate financial instability," he said.

In its filing, the Property Casualty Insurers Assn. of America said the council should avoid being "overly inclusive" in any designations concerning systemic risk. "Incorrect designations will lead to impaired market efficiency and resource allocation and increased moral hazard," PCI wrote.

**'There's been a tendency to resort to size as a potential measurement for systemic risks. Particularly in the property/casualty industry, you can have relatively large companies with no significant indicia of systemic risk.'**

Robert Gordon, Property Casualty Insurers Assn. of America

"We had a lot of discussions with the federal regulators and Treasury throughout this debate," said Robert Gordon, PCI senior vp-policy and research development, in an interview. "The regulators prefer to be overinclusive rather than underinclusive."

"There's been a tendency to resort to size as a potential measurement for systemic risks," Mr. Gordon said. "Particularly in the property/casualty industry, you can have relatively large companies with no significant indicia of systemic risk. For example, we have demonstrated early that even a very large auto insurer would not have any systemic impact if it failed."

The Reinsurance Assn. of America also argued that reinsurance does not present a systemic risk for a variety of reasons. These include the relative smallness of reinsurers compared with other financial institutions; that reinsurers—like insurers but unlike banks—pay out claims over a long period of time; and the fact that "following any major event in which reinsurers suffer heavy losses, capital flows into the industry."

Regarding applying the Volcker Rule to property/casualty insurers, the National Assn. of Mutual Insurance Cos. wrote that it would increase insurance prices.

Eliminating insurers' ability to invest premiums in anything other than low-yield government securities would mean higher prices for consumers, NAMIC said in its filing. "Core insurance investment practices" did not present a significant risk to the U.S. economy during the economic crisis "and are not considered to be a contributing factor to systemic risk" in the future.

Comments on both provisions of the Dodd-Frank Act can be found at *www.regulations.gov*.

# Health care: Most firms won't close health plans, surveys conclude

CONTINUED FROM PAGE 3

In some cases, employees could financially benefit from health care plan terminations. Lower-paid employees will be entitled to federal health insurance premium subsidies to buy coverage through state insurance exchanges, which are to be set up by 2014. Those subsidies could result in some employees paying less for coverage than they would under their employer's plan.

But the $2,000 penalty is not the only cost employers would incur for dropping coverage. To prevent a huge reduction in compensation, many would have to increase the salaries of middle- and upper-income employees, who would not be eligible for subsidies and would have to pay the entire cost of their coverage.

That added cost, plus the penalty, could exceed the premium savings from dropping coverage.

"Once you consider the penalty, the loss of tax savings and grossing up employee income so they can purchase comparable coverage through an exchange, for many employers, dropping coverage may not equate to savings," Tracy Watts, a partner in Mercer's Washington office, said in a statement.

For smaller employers, the dynamics could be different. Small employers, which are more likely to fully insure their plans and have less purchasing power, are vulnerable to big rate increases, Mercer noted.

"You can see why the idea of dropping employee health plans would be attractive to small employers," said Beth Umland, Mercer's director of research for health and benefits in New York.

Still, in Massachusetts, where state-subsidized coverage is available to the lower-income uninsured through an exchange, small employers have not dropped their plans despite a $295 per employee annual penalty if they do not offer qualified coverage, Ms. Umland said. In fact, between 2007 and 2009, the percentage of Massachusetts employers with 11 to 50 employees offering coverage rose to 92% from 88%, according to a report issued earlier this year by the Massachusetts Division of Health Care Finance and Policy.

## *Other findings*

The findings are included in Mercer's annual survey of employer health care costs that will be released later this month. Other findings include:

- Twenty-two percent of respondents estimated that health care reform requirements that begin next year, which include extending coverage to employees' adult children up to age 26 and eliminating lifetime dollar limits, will boost costs by 1% to 2%, while 15% estimated that compliance will increase costs by less than 1%. On the other hand, 16% estimated that their health plan costs will increase by at least 5%, while 9% estimated cost increases of 3% to 4%. The remainder of respondents either didn't know how much their costs would increase or didn't think compliance would increase their costs.
- Thirty-seven percent of respondents didn't believe their plans ever will be affected by a provision in the law—due to take effect in 2018—that imposes a 40% excise tax on health insurance premiums that exceed $10,200 for individual coverage and $27,500 for family coverage. The same percentage said they will attempt to bring plan costs below the threshold triggering the tax, but said that may not be possible. Twenty-three percent said they will do whatever is necessary to bring plan costs below the excise tax threshold amounts, and 3% said they would not take special steps to reduce costs below the threshold amounts.
- Forty-one percent of employers said they intend to verify that employees' adult children up to age 26 are not eligible for coverage from another employer, while 18% intend to boost the percentage of the premium employees pay for dependent coverage. In addition, 18% say they will make changes to their premium rate tiers.

The survey results are available online at *www.mercer.com* and *www.willis.com.*


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# IIS Insurance Hall of Fame candidates announced

By JEFF CASALE

**NEW YORK**—The International Insurance Society Inc. last week announced candidates for the 2011 Insurance Hall of Fame Awards.

The candidates will be recognized at the IIS' 47th Annual Seminar on June 20, 2011. They are:

- Brian Duperreault, president and CEO of Marsh & McLennan Cos. Inc.
- J. Barry Griswell, former chairman, president and CEO of Principal Financial Group Inc.
- Donald Kramer, chairman and former CEO of Ariel Holdings Ltd.
- Harold Skipper, former chairman of the Department of Risk Management and Insurance and professor emeritus at Georgia State University.

"The 2011 candidates for the Insurance Hall of Fame are true giants in our industry," Norman Sorensen, IIS chairman, said in a statement.

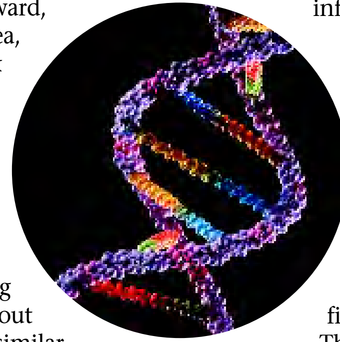
Though the winner will be announced in January, the award will be presented during the gala dinner during the seminar, which takes place at the Fairmont Royal York Hotel in Toronto June 19-22, 2011.

The Insurance Hall of Fame was created in 1957 by the New York-based IIS and has more than 100 laureates from around the world.

# Training key to GINA rule compliance

Appropriate personnel training is critical for employers to avoid liability in complying with the regulations that were issued last week under the Genetic Information Nondiscrimination Act of 2008, observers say.

"Managers and supervisors will need to be trained on buttoning their lips" when the issue of genetic information "comes up in casual conversations, and formulating some kind of polite response that won't sound socially awkward, but also won't violate GINA," said Robin E. Shea, an employer attorney with Constangy, Brooks & Smith L.L.P. in Winston-Salem, N.C.



Employers should train supervisors, recruiters and hiring managers "on what questions they should or should not ask," which is already the case with the Americans with Disabilities Act with respect to disability issues, said Paul E. Starkman, a partner with law firm Arnstein & Lehr L.L.P. in Chicago. That is "now going to have to be expanded to making inquiries about family history and genetic tests" as well as similar issues, he said.

Emily S. Borna, a partner with law firm Jackson Lewis L.L.P. in Atlanta, said employers also should train anyone who makes employment decisions, including management, human resource personnel and recruiters, to "revise and update policies to prevent discrimination based on genetic information."

Confidentiality is a critical issue, observers say. Employers should be sure that genetic information "is not included in personnel files and, instead, included in separate and confidential medical files, the same way they treat medical information under the ADA," said Steven J. Pearlman, a partner with law firm Seyfarth Shaw L.L.P. in Chicago.

Employers also should take advantage of safe harbor language suggested in the regulations that stipulates that genetic information is not being solicited, observers say.

"Employers would do well" to copy this language verbatim, and to be sure it is included in all requests for medical information they solicit "for whatever purposes," said David Gevertz, a shareholder with law firm Baker, Donelson, Bearman, Caldwell & Berkowitz P.C. in Atlanta.

Employers also should tell their medical providers not to ask for family history information, said Dennis Westlind, a partner with law firm Stoel & Rives L.L.P. in Portland, Ore.

The biggest risk is for employers that do not routinely use medical information and "don't realize they need to change their processes," he said.

In addition, employers with wellness programs should be sure it is easily understood that workers can receive financial incentives for participating even if they choose not to provide genetic information, said Mr. Gevertz.

*—By Judy Greenwald*

# GINA: Rules add to genetic bias risk

CONTINUED FROM PAGE 1

says employers do not violate GINA when a manager inadvertently overhears genetic information or when a casual question is asked, such as, "How's your son feeling today?"

However, employers cannot ask follow-up questions that are "probing in nature, such as whether other family members also have the condition, or whether the individual has been tested for the condition" because they "are likely to result in the acquisition of genetic information," according to the EEOC analysis.

### *Unrealistic rules*

Some observers believe these limits are unrealistic and could create liability in cases where supervisors ask innocent questions.

David Gevertz, a shareholder with law firm Baker, Donelson, Bearman, Caldwell & Berkowitz P.C. in Atlanta, said he is concerned that the rules are "attempting to monitor normal workplace conversations that occur routinely between and among employees and supervisors."

The regulations unsuccessfully attempt to "designate more bright lines" insofar as the inadvertent acquisition of information is concerned, said Lawrence Z. Lorber, a partner with law firm Proskauer Rose L.L.P. in Washington.

Paul E. Starkman, a partner with law firm Arnstein & Lehr L.L.P. in Chicago, said the rules could result in workplace problems "where people are working such long hours and often have worked together for years and maybe are pretty close and actually care about each other."

"It's one more thing that makes the workplace a little colder and just a little more adversarial," said Mr. Starkman. While no one can argue in favor of genetic discrimination "how (GINA) plays out in the workplace may be different from what people may have thought when they drafted this law and drafted these regulations."

However, Wendy Lazerson, a partner with law firm Bingham McCutchen L.L.P. in East Palo Alto, Calif., said the regulations were "designed with common sense in mind."

"They're not trying to catch people in a 'gotcha' kind of moment, but they're really trying to say they don't want people to go after this information purposefully and then use it improperly," Ms. Lazerson said.

> **'They're not trying to catch people in a "gotcha" kind of moment, but they're really trying to say they don't want people to go after this information purposefully and then use it improperly.'**
>
> Wendy Lazerson, Bingham McCutchen L.L.P.

The rules also provide that information inadvertently learned through social networking sites would not be considered a violation of GINA. However, there is some ambiguity in language concerning websites such as Facebook that require registration, with language in two different places that appears contradictory, said Steven J. Pearlman, a partner with law firm Seyfarth Shaw L.L.P. in Chicago.

The regulations prohibit employers from seeking out such information, such as going on the Internet and typing in a worker's or applicant's name and the term "breast cancer" while doing an online search, observers say.

It also includes safe harbor language that employers can use in their requests for medical information to stipulate that workers are not being asked to provide any genetic information (see related story).

Observers say GINA is more likely be a "tacked-on" charge to a suit brought under the Americans with Disabilities Act or Family and Medical Leave Act rather than a primary complaint. In fact, about three-quarters of the more than 200 complaints already filed alleging GINA violations also raise ADA allegations, according to the EEOC.

"Employers almost never use genetic information anyway in making employment decisions," said Robin E. Shea, an employer attorney with Constangy, Brooks & Smith L.L.P. in Winston-Salem, N.C.

### *Financial incentives OK*

Meanwhile, a provision involving wellness programs in the final regulations is an improvement over the original proposed rule for employers, observers said.

Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J., said the initial proposal would have allowed employers to use genetic information in connection with voluntary wellness programs, but it did not define such programs. That prompted employer concern as to whether wellness programs that provided financial incentives still could be considered voluntary.

That has now been answered in the affirmative in the final regulations, said Mr. Stover.

"The positive news is, you can have a financial incentive," he said. It "would largely kill" wellness programs if employers could not offer workers incentives for their participation, he said.

The regulations also clarify that employers should ask health care providers not to elicit genetic information, which was an issue of concern to some employers, Mr. Pearlman said.

The regulations are available at *http://edocket.access.gpo.gov/2010/pdf/2010-28011.pdf*.

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# News In Brief

CONTINUED FROM PAGE 1

after a transition period. Mr. Sankaran joins the insurer from Oliver Wyman Financial Services, where he was a partner in the finance and risk practice and headed the firm's Toronto office. He also was a member of Oliver Wyman's global management committee, working the past five years with financial services executives on risk management issues.

## Insurance industry loses jobs: III

The U.S. insurance industry shed 6,000 jobs in September compared with August, according to an Insurance Information Institute report based on data by the U.S. Bureau of Labor Statistics. Despite upticks in insurance industry employment in June and August of this year, the III said seasonally unadjusted insurance industry employment dropped to 2.17 million in September, its lowest point in 20 years. Property/casualty insurers' employment was down 3,200 from August and down 2.9% from September 2009. Insurance agents and brokers shed 3,200 jobs compared with August and declining 2.8% since September 2009. Meanwhile, reinsurance industry employment rose 1.1% in September compared with August.

## Aerospace rates fell in October: Aon

Rates for aerospace insurance fell an average of 8% in terms of U.S. dollars, or 4% in companies' own reporting currencies, in October, according to analysis by Aon Corp. For 2010 to date, rates for lead coverage have fallen an average of 3%, following average rate decreases of 2% in 2009, Aon said in its aerospace insurance market news analysis. According to Aon, more than 70% of aerospace programs, representing about 65% of the market's total premium, have been placed. Rates are falling at a slower rate in North America than in other markets, Aon said in the analysis. This likely is because of the perceived risk of high levels of awards granted by the U.S. legal system, Aon noted.

## Micron to restore, enhance 401(k) match

Micron Technology Inc. is restoring and enhancing its 401(k) plan matching contribution. Effective Jan. 1, 2011, Micron will match 100% of employees' contributions up to the first 5% of pay. Prior to its March 2009 suspension, the semiconductor manufacturer had been matching 100% of salary deferrals up to the first 4% of pay. For fiscal 2010, which ended on Sept. 2, Micron reported $1.9 billion in net income, a huge turnaround from the prior fiscal year when it reported a nearly $2 billion net loss.

## Marsh partnership targets Iraq business

Marsh Inc. has entered into an agreement with Anglo Arab Insurance Brokers to cooperate on risk management, insurance coverage and handling claims for companies in the energy, power and aviation sectors with operations in Iraq. Anglo Arab Insurance Brokers was founded in 2005 by William Wakeham, a former member of the British army, and is based in Amman, Jordan. It has offices in Baghdad, Basra and Erbil, Iraq. Simon Boxall, managing director in Marsh's global energy practice in London, said an influx of investment into Iraq means there is a great need for insurance coverage and risk management expertise.

## Alterra rebrands unit, appoints executives

Alterra Capital Holdings Ltd. said it has rebranded its excess and surplus lines managing general underwriting unit and made three executive appointments. Alterra Managers USA Ltd. has changed its name to Alterra Insurance USA Inc., underwriting the excess and professional liability insurance business of Alterra Excess & Surplus Insurance Co. and other third-party insurers, the insurer said in a statement. Doug Worman, executive vp of Alterra Capital Holdings, has been named president and CEO of Alterra Insurance USA. Additionally, Michael S. Morgan, previously senior vp of underwriting services for Alterra Capital Services USA L.L.C., has been named chief operating officer of Alterra Insurance USA. James Tait, previously executive vp of Alterra Capital Services BDA Ltd., has been named chief financial officer.

# Facebook: Media policies

CONTINUED FROM PAGE 1

The suit also alleges that the company maintained and enforced an "overly broad" blogging and Internet posting policy.

The complaint, which the NLRB brought in late October, challenges not only the grounds on which the employee was fired but also is an effort to clarify that employer social media policies should not be designed to prohibit employees from using social media and do not infringe on protected "concerted" activity under the National Labor Relations Act.

### *Friction was building*

Dawnmarie Souza, a union worker for AMR's New Haven office, was fired in December 2009 after disagreements between her and her supervisor. The friction that lasted about a month culminated when Ms. Souza was asked by her supervisor, Frank Filardo, to prepare an incident report and take part in an interview about a client's complaint about Ms. Souza's work, according to the NLRB complaint.

Ms. Souza asked that a Teamsters Local 443 representative be present during the interview, which management denied and threatened disciplinary action because of her request, according to the complaint.

Later that day, Ms. Souza went on her personal Facebook page at her home computer and posted a negative remark about her supervisor, which drew supportive responses from her co-workers and more negative comments by Ms. Souza, according the NLRB investigation. It was reported that Ms. Souza questioned "how the company allows a 17 to be a supervisor" in her posts. The reference to 17 is AMR's jargon for a psychiatric patient, according to reports.

The NLRA safeguards the rights of employees to organize into a union, said Irving M. Geslewitz, a principal and labor and employment attorney at Much Shelist Denenberg Ament & Rubenstein P.C. in Chicago, but it also protects employees who want to band together for mutual aid or protection even if they are not in a union.

"In this case, there was a union in the picture, but that was just incidental," Mr. Geslewitz said. "This employee was talking with other employees (using social media) about a supervisor that she thought was being unfair and other employees chimed in. A lot of people don't know that the NLRA protects that type of 'concerted mutual aid or protection' activity even if it does not involve a union."

Greenwood Village, Colo.-based AMR terminated Ms. Souza, saying she had violated the company's Internet policies with her postings. The NLRB's Hartford, Conn., regional office, however, argues in the suit that her Facebook postings were a "protected and concerted activity" and that AMR's blogging and Internet posting policy contained "unlawful provisions, including one that prohibited employees from making disparaging remarks when discussing the company" and another that "prohibited employees from depicting the company in any way over the Internet without company permission."

In a statement, the NLRB said such provisions interfere with employees' right to engage in concerted activity.

The fact that it occurred on Facebook and not in the office break room doesn't change the rights employees have when discussing the terms and conditions of their employment, said Seth Borden, New York-based partner in McKenna Long & Aldridge L.L.P.'s labor practice.

"It doesn't matter where the employees are talking together about their terms and conditions of employment," Mr. Borden said. "They have that right under the NLRA. Whether it's done in the break room or on Facebook, the right doesn't change, only the medium has."

Mr. Borden said the NLRB's decision to file a complaint "is the clearest example by the board that they intend to make sure the law is responsive to new technology" and that "this is just a shot across the bow" for employers.

In a statement, AMR rejected the NLRB's assertions and said it believes "the facts will show that they are without merit" and that Ms. Souza "was discharged based on multiple, serious complaints about her behavior."

Further, AMR said Ms. Souza was being held accountable for negative personal attacks on Facebook, and that "the offensive statements made against (Mr. Filardo) were not a concerted activity protected under federal law."

What's not clear in the NLRB's complaint is how AMR gained access to Ms. Souza's Facebook postings.

If the supervisor had access to Ms. Souza's profile, it would be assumed that he had access to her posts and that would not constitute unlawful surveillance, Mr. Borden said. Unlawful surveillance of someone's profile activity on social media sites could occur if a supervisor presses other employees to "friend" or "follow" a coworker to report their activities.

Labor and employment law attorneys said employers should have a social media policy that complies with the NLRA. Employers also should have a uniform way of monitoring social media networks, said Eric B. Meyer, Philadelphia-based employment law attorney and associate with Dilworth Paxon L.L.P., as to not void their social media policy.

"Employers who have a social media policy reserve the right to monitor social media activity of all employees, but this doesn't mean that they do so," Mr. Meyer said. "If employers choose to monitor social media activity of their employees, they should be uniform across the board. They should not just monitor certain individuals unless they have reason to do so, such as disseminating proprietary information or unlawful harassment of other employees."

### *Comments could go too far*

But had Ms. Souza's comments about her boss gone too far? Mr. Geslewitz said that while most speech by employees is protected, even in social media forums there are times when they can go too far.

"She was really bad-mouthing (her supervisor) and the other employees were jumping in and adding disparaging comments in a public forum," he said. "It will be a contested issue as to whether she may have gone too far and, therefore, it was unprotected (by the NLRA)."

The case will go before an NLRB administrative judge and a hearing is set for Jan. 25, 2011.

According to an NLRB spokeswoman, if the case is appealed and reaches the board level of the Washington-based federal agency, that decision will set a precedent for all companies' blogging and Internet posting policies nationwide.

"I'm not surprised by the attention this case is getting," said Philip L. Gordon, Denver-based shareholder and labor law attorney for Littler Mendelson P.C. "I think employers have been putting in social media policies over the years, but there isn't a lot of guidance on how they should be interpreted or how they should be put together."


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# Business Insurance END PAGE

The founders of the Lamebook website are seeking contributions to fund a legal battle with Facebook.

## Parody site doesn't tickle Facebook

The creators of Lamebook are learning that Facebook is no pushover as they try to protect their right to parody the famous social networking venue.

Lamebook L.L.C., established in April 2009 at *www.lamebook.com* by Austin, Texas, graphic designers Jonathan Standefer and Matthew Genitempo, highlights the funny, absurd and often "lame" content posted on Facebook. Each weekday, the Lamebook website is updated with new "lame" Facebook content for its users to view and comment on, such as "the People of Wal-Mart," featuring unflattering photos of shoppers at the Bentonville, Ark.-based retailer's discount stores.

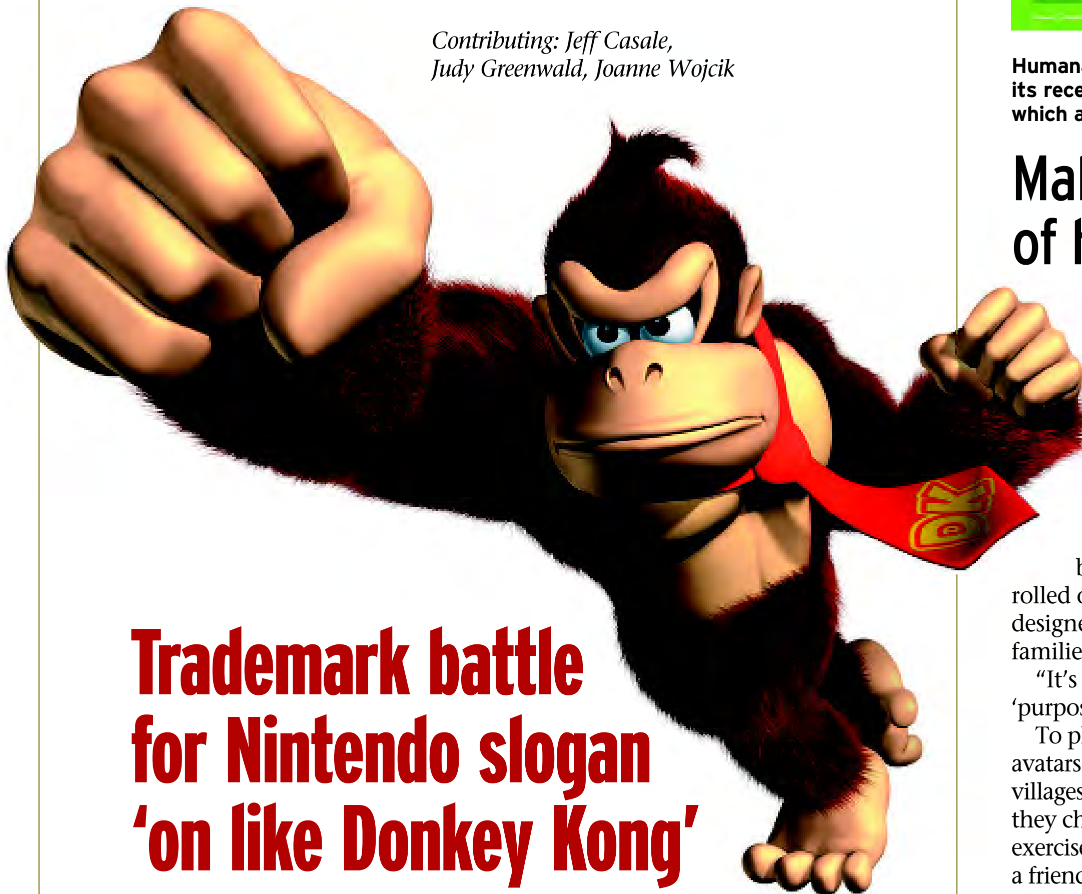
Unlike Facebook, Lamebook does not offer social networking services or functionality to users, so it does not compete with Facebook, Lamebook's creators said in a lawsuit responding to a July cease-and-desist letter asserting that the parody site infringes on Facebook's trademark.

In a statement, Palo Alto, Calif.-based Facebook said it is disappointed that Lamebook has resorted to litigation.

Meanwhile, Lamebook's founders are using the website to raise funds to fight the social networking giant.

"Facebook didn't get the joke," states a posting on the Lamebook site. "They've decided to pick on the little guys: small business owners who seem to be no match for a multibillion-dollar behemoth. But this is one website that's not going down without a fight. With our First Amendment rights under fire, we've made a daring legal move that we believe will help us defend ourselves under the law and keep this site up, allowing us to keep bringing you, your friends, your parents and your creepy uncle the insanity that's had us in stitches since we started. Thing is, we need your support."

*Contributing: Jeff Casale, Judy Greenwald, Joanne Wojcik*



## Trademark battle for Nintendo slogan 'on like Donkey Kong'

With its latest "Donkey Kong" video game scheduled to debut later this month, Nintendo of America Inc. isn't monkeying around with the phrase, "it's on like Donkey Kong."

The Redmond, Wash.-based video game company has filed a request with the U.S. Patent and Trademark office to trademark the pop-culture phrase, arguing that it's "an old, popular Nintendo phrase that has a number of possible interpretations depending on how it's used."

"Donkey Kong," a classic video-game franchise that debuted in 1981, is one of Nintendo's more well-known titles and characters.

The latest installment, "Donkey Kong Country Returns," is to hit stores Nov. 21 and Nintendo said it would like to own the rights to the phrase by then.

Nintendo's statement about the trademark filing and the upcoming game release reads, "On Nov. 21, it's on like Donkey Kong!"

The phrase tends to be used when things are about to go down or, as Urban Dictionary defines it, "a phrase to denote it's time to throw down or compete at a high level."

"In addition to Nintendo's use, (the phrase) has been used in popular music, television and film over the years, pointing to Donkey Kong's status as an enduring pop culture icon and video game superstar," Nintendo said in a statement.

Because the phrase has been so freely used by the public until now, some critics and media outlets are skeptical that Nintendo will actually gain the rights to the phrase, but for right now, "It's on!"

Humana encourages healthier living through its recently released "FamScape" game, which awards points for achieving goals.

## Making a game of healthy living

How does social networking affect well-being?

Apparently, making new friends and hanging out with them—even if it's only online—can enhance a person's health, says Paul Puopolo, director of consumer innovation at Louisville, Ky.-based Humana Inc., which has rolled out an Internet-based game that's designed to motivate individuals and families to achieve healthy-living goals.

"It's part of the whole 'belonging' and 'purpose' aspect of well-being," he said.

To play "FamScape," individuals select avatars to represent themselves and create villages where they live, work or play. Then they choose challenges such as increasing exercise, eating healthier or doing favors for a friend, receiving points for winning those challenges and self-reporting the results.

In the basic version of the game, points can be used to enhance the member's village, such as purchasing a building or a pet. In the premium version, members can earn very real gift certificates and discounts on popular household items.

"It's really about connecting the family around certain healthy activities. When I check in, I can see my son who's in college running track or my parents in Boston who are ice skating today. Or you can create challenges to encourage your kids to brush their teeth every day," Mr. Puopolo said.

The game is free to play for virtual rewards, but players pay a fee to earn the real-world rewards. Humana also plans to sell pedometers online via "FamScape" and partner with other device makers that encourage healthy living, such as digital scales and heart monitors. The game is available at *www.myFamScape.com* and in select Best Buy stores.

## GETTING TO THE HEART OF RESTAURANT SAFETY

Are restaurants legally obligated to educate their customers about potentially dangerous vegetables?

That is the contention of a customer of a Florida restaurant, who argues that Houston's Restaurant in Miami should have taught him about the right way to eat an artichoke.

According to his Oct. 25 lawsuit filed in circuit court in Miami-Dade County against Hillstone Restaurant Group Inc., Arturo Carvajal said he was a customer in May 2009 when he was offered a house special of grilled artichokes, which was not on the menu.

Mr. Carvajal said he had neither seen nor heard of the dish previously, and his waiter never told him that the outside portion of the leaf is indigestible.

As a result, Mr. Carvajal began "experiencing severe abdominal pain and discomfort," according to the suit. An exploratory procedure revealed artichoke leaves lodged in his small bowel.

Mr. Carvajal alleges that the restaurant and its manager were negligent in failing to train table servers to tell patrons about "the proper method of consuming an artichoke."

He is seeking nonspecified damages for bodily injury, pain and suffering, disability, disfigurement, aggravation of pre-existing conditions as well as medical expenses, among other charges.

Glenn Viers, the restaurant chain's vp and general counsel, said while it is difficult to make light of a situation where a guest ends up in the hospital, "It's just kind of a silly notion" that the company has a duty to post warnings against someone eating an entire artichoke. "What's next? Are we going to have to post warnings on our menu they shouldn't eat the bones in our barbeque ribs?"

Mr. Viers said also the firm will defend the lawsuit "vigorously."

**Topics to be discussed include:**

- Best practices in workplace safety and loss prevention
- Cost-control strategies for workers comp service providers
- Workers comp insurance and alternative risk financing trends
- Successful workers comp reform tactics
- The impact of health care reform on workers comp claims

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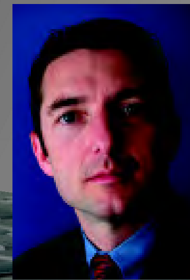

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- Carla Wynn, Assistant VP, Strategic Claims Management, ARAMARK
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