

GROUP HEALTH COSTS RISE 6.9% IN 2010, RESEARCH FINDS / PAGE 3

APPEALS COURT OVERTURNS DAMAGES RULING AGAINST EX-CRC BROKER / PAGE 3



SEN. REID, DEMOCRATS SEE PAY BIAS BILL DIE IN SENATE / PAGE 3

In Brief

P/C insurer premiums fall slightly: Analysis

Property/casualty insurers reported \$258.09 billion in net premiums written for the first nine months of the year, a 0.2% decline, according to an analysis by SNL Financial L.C. The statutory data, which is based on information from 76.7% of expected individual property/casualty insurers filing reports with state insurance departments, excludes mortgage and bond and accident and health insurers, but includes personal lines insurers, SNL said. The insurers reported a 100.9% combined ratio for the nine-month period this year vs. 100.3% for the same period last year. For the quarter, the insurers reported a 2.2% increase in net premiums written, which rose to \$88.75 billion.

Most WTC cleanup workers OK settlement

Most workers who were injured or became ill after cleaning up the World Trade Center site have approved a settlement worth at least \$625 million in compensation, WTC Captive Insurance Co. and attorneys said. Approximately 10,000 plaintiffs—including firefighters, police officers, construction workers and others—had filed suit against New York and its contractors for injuries and illnesses they suffered during the rescue, recovery and/or cleanup after the Sept. 11, 2001, terrorist attack. Their lawyers and WTC Captive, a federally financed insurance fund, had agreed to settle the suit in June, but the agreement required that 95% of the

See **IN BRIEF** page 23

REINSURANCE



AP PHOTOS

Attorneys argued to overturn the convictions of Ronald E. Ferguson, left, Elizabeth Monrad and others in a sham finite reinsurance deal.

Appeals heard in Gen Re fraud case

By **SONJA RYST**

NEW YORK—Former executives of General Re Corp. and American International Group Inc. told a federal appeals court panel last week that their convictions in a sham finite reinsurance deal should be overturned.

Defense attorneys and prosecutors argued matters that ranged from the assumptions made about AIG's stock price to not calling Gen Re's former general counsel

to testify during the trial.

During a hearing before the 2nd U.S. Circuit Court of Appeals in New York, lawyers made their arguments on behalf of Ronald E. Ferguson, former Gen Re CEO; Christopher P. Garand, former Gen Re senior vp in charge of U.S. finite underwriting; Robert Graham, former Gen Re senior vp and assistant general counsel; Elizabeth Monrad, former Gen Re chief

See **FINITE** page 22

D&O/E&O

D&O battle brewing amid bank failures

FDIC, shareholders forced to compete for policy proceeds

By **ROBERTO CENICEROS**

As litigation continues against failed banks, the Federal Deposit Insurance Corp. and shareholders of the banks will be fighting over the proceeds of directors and officers liability insurance policies, observers say.

The dynamics already are in play in a few instances, including the case of Heritage Community Bank, which recently drew national attention when the FDIC, as receiver for the failed bank, sued its former directors and officers (*BI*, Nov. 8).

Before the FDIC filed suit, however, shareholders of Heritage Community Bancorporation Inc., a holding company that has Glenwood, Ill.-based Heritage Community Bank as its sole asset, already had sued the holding company's directors and officers, blaming them for the bank's loan losses, court documents show.

More such suits are expected because many recently failed banks are publicly traded or, if pri-

vately held, had outside investors with significant ownership interests who are motivated to sue, said Kevin LaCroix, a Beachwood, Ohio-based partner with executive liability intermediary Oak Bridge Insurance Services L.L.C.

"I do expect to see more of these situations where the investors and the FDIC are competing for policy proceeds," Mr. LaCroix said.

The situation highlights that directors and officers whose liability coverage could be sought by shareholders and regulators should evaluate whether they have enough limits to address both instances, said Steve Shappell, managing director in Denver for Aon Financial Services Group.

Costs quickly mushroom when multiple plaintiffs are involved, Mr. Shappell said.

Many community banks that have failed this year, and are under examination by the FDIC as a prelude to possible lawsuits against directors and officers, engaged in aggressive commercial real estate practices that led to their failure, observers said.

That was the situation with Heritage Bank, they said.

See **BANKS** page 22

STATE REGULATION

NAIC surplus lines reform proposal draws fire

By **MARK A. HOFMANN**

Groups representing risk managers and property/casualty insurers say insurance regulators' proposal to implement a surplus lines reform law falls well short of Congress' intent.

A key concern, they say, is that a pact drafted by a task force of the National Assn. of Insurance Commissioners focuses on addressing some tax matters but would fail to create a uniform process for licensing and other matters.

Six groups, including the Risk & Insurance Management Society Inc., sent a letter last week to

Louisiana Insurance Commissioner James J. Donelon, who chairs of the National Assn. of Insurance Commissioners' Surplus Lines Implementation Task Force, saying that the NAIC proposal "frustrates the spirit and letter" of the surplus lines reforms. The reform provisions are contained in the Nonadmitted and Reinsurance Reform Act, which became law this year as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Among other things, the law calls for the home state of a surplus lines policyholder to collect all premium taxes associated with

the policy, with the states devising a formula to allocate the taxes. It also allows surplus lines brokers representing exempt commercial insurance buyers to access the nonadmitted market directly without having to approach the admitted market first.

In their letter, the groups assert that NIMA fails to create uniform requirements, forms and procedures to collect taxes and continues to "perpetuate unnecessary, bureaucratic data reporting" that NIRA sought to eliminate. The letter also charges that the proposal, called the Nonadmitted Insurance Multi-State Agreement, vio-

lates the Dodd-Frank provision that only the home state of a policyholder may require premium tax payments. In addition, they hold that NIMA would subject brokers to burdensome data reporting and would fail to create a multistate tax clearinghouse.

In addition to RIMS, other groups signing the letter included the American Assn. of Managing General Agents, the American Insurance Assn., the Excess Line Assn. of New York, the National Assn. of Mutual Insurance Cos. and the National Assn. of Profes-

See **SURPLUS** page 21

INDEX

Advertiser Index19
Business Resources18
Commentary6
End Page24
Opinions8
Products & Services10
Professional MarketPlace20
Up Close20

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VIDEO: BENEFITS OF GOING GREEN

Business Insurance visits Mesirow Financial's new LEED Gold-certified building in a new "Risks of Going Green" video to find out that going green is not just for reducing a firm's carbon footprint—it also can benefit employees' health. Click through the Multimedia tab.

CONFERENCE EXTRA: WCF

See the complete lineup of all the stories from this year's World Captive Forum in Scottsdale, Ariz., including web exclusives, online. Go to the News & Opinion tab and click through Current Issue.

READERS CHOICE AWARDS 2010

See this year's Readers Choice honorees, along with a slide show of the awards ceremony, online at www.BusinessInsurance.com/ReadersChoice.

MOST POPULAR STORIES

Week of November 15, 2010

1. Grandfathered health plans can change insurers: Agencies
2. Insurance industry lost 6,000 jobs in a month
3. Long-term care insurance struggling to survive
4. Former Gen Re, AIG execs try to overturn finite convictions
5. RIMS, P/C groups blast NAIC plan on surplus lines reforms
6. Ex-CRC broker wins appeal in sales fraud, harassment case
7. QBE buys RenaissanceRe's U.S. property/casualty business
8. Commercial insurance market still soft: Marsh
9. Insurance, reinsurance rates continue decline: Amlin
10. States advised to act quickly on surplus lines reform

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WEBINARS AND WEBCASTS

John Nevius and William Stewart will be the featured experts for "An Inconvenient Risk: Climate Change Liability and Coverage," a webcast set for 2 p.m. EST on Dec. 1. For more information and to register for this live event, go to www.BusinessInsurance.com/webcasts.



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HEALTH CARE BENEFITS

Group health costs see biggest jump since '04

Higher medical fees, increased utilization cited as main causes

By JERRY GEISEL

Group health care plan costs this year jumped an average of 6.9%, the largest increase since 2004, according to a survey of more than 2,800 employers released last week by New York-based Mercer L.L.C.

That increase brought annual costs to an average of \$9,562 per employee compared with \$8,945 in 2009, according to the survey.

By contrast, group health plan costs rose an average of 5.5% in 2009, the smallest increase in

more than a decade, and 6.3% in 2008.

Mercer consultants said the spike may be the result of two factors: medical providers boosting their fees and charges and increased utilization.

"Higher prices for health care services seem to be part of the equation, but if the recession caused a slowdown in utilization last year, we may also be seeing the effect of employees getting care they've been putting off," Susan Connolly, a partner in Mercer's Boston office, said in a statement.

To prevent even bigger cost increases in 2011—caused in part by meeting requirements set by the health care reform law passed earlier this year—many employers

intend to change their plan design, such as shifting costs to employees or changing insurers.

Without health plan changes, employers predicted cost increases of about 10% next year. With such changes, employers expect to hold their actual cost increase in 2011 to an average of 6.4%, according to the survey.

Employers are taking action to try to hold down the increases.

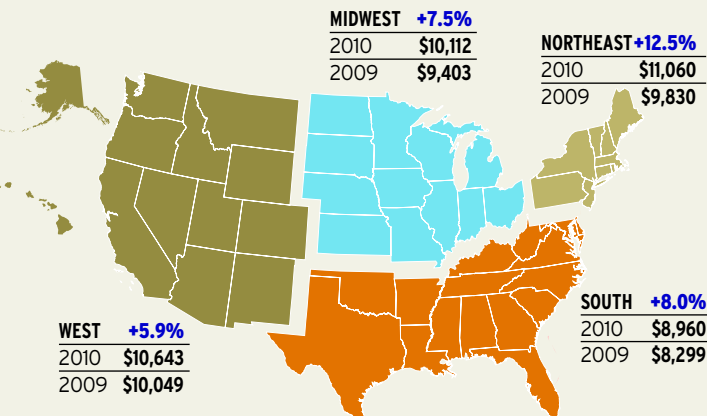
For example, among preferred provider organization plans imposing a deductible, the average individual deductible for in-network providers jumped more than \$100 this year, rising to an average of \$1,200.

For PPO sponsors, the percent-

See **COSTS** page 6

REGIONAL COSTS

Average annual health plan costs per employee for employers with at least 500 employees, by region.



Source: Mercer L.L.C.

FEDERAL LEGISLATION & REGULATION

Sex bias bill fails to beat GOP filibuster

Measure proposed unlimited damages

By JUDY GREENWALD

WASHINGTON—Backers of the Paycheck Fairness Act failed to win enough support last week to proceed to a vote, but observers say employers, which staunchly opposed the bill, still may encounter the issue of equal pay discrimination through litigation and regulatory actions.

Democrats' inability to overcome a Republican filibuster in the U.S. Senate means the Obama administration has won approval of only one significant employment-related bill, the 2009 Lilly Ledbetter Fair Pay Act, observers said.

Among other provisions objected to by employers, the Paycheck Fairness Act would have allowed unlimited punitive and compensatory damages, and made it easier to file large class action lawsuits, observers said.

Supporters of the bill have cited data that shows women still earn only 70% of what men earn.

But with votes cast primarily along party lines, 58 senators voted to end last week's debate and vote on the measure, two votes short of the total needed to end the filibuster.

The House passed a version of the legislation in January. However, Republicans will be the majority in the House during the next session of Congress.



EPA/LANDOV

Sen. Harry Reid, D-Nev. introduced the Paycheck Fairness Act.

"Democrats are eager to work with Republicans to address our shared challenges," Senate Majority Leader Harry Reid, D-Nev., who introduced the bill, S. 3772, said in a statement. "But compromise is a two-way street. I am hopeful that moving forward, Republicans put partisanship aside and focus on doing what's right and fair for the American people."

In addition, U.S. Department of Labor Secretary Hilda L. Solis said in a statement that the agency "will redouble its efforts to ensure America's women are not treated as second-class citizens by employers who refuse to compensate them in a fair and equitable manner."

Provisions of the bill that concerned business and employer groups included one that would have made employers that discriminate based on sex liable in civil actions for unlimited compensatory or punitive damages, unlike other employment law that caps such awards.

Unlike the current procedure for class action lawsuits, which requires that employees "opt in"

See **PAYCHECK** page 22

EMPLOYMENT PRACTICES

Ex-broker wins appeal in fraud case

By MIKE TSIKOUKAKIS

LOS ANGELES—A California appeals court has overturned a damage award against a former CRC Insurance Services Inc. broker for allegedly fabricating sales figures.

The broker, Constance D. Callan, had previously sued CRC alleging sexual harassment by executives at the Birmingham, Ala.-based wholesaler.

The California Court of Appeal 2nd Appellate District in Los Angeles on Nov. 12 reversed the judgment and orders in favor of CRC, including damages against Ms. Callan of more than \$2 million.

The case, *Constance Callan vs. CRC Insurance Services Inc., Tom Curtin et al.*, dates back to May 2006 when Ms. Callan, who worked in CRC's Glendale, Calif., office, filed a complaint against CRC, CEO Tom Curtin and Managing Director Chris Houska alleging that her employment was suspended and her accounts audited in retaliation for complaints about sexual harassment and other misconduct by CRC staff, according to court documents.

In August 2006, CRC filed a cross-complaint alleging that Ms. Callan, and an assistant, fabricated sales figures to win CRC's Broker of the Year award, along with

other unethical conduct.

Due to alleged compliance failure with court orders and discovery requests, Los Angeles County Superior Court Judge Soussan Bruguera dismissed Ms. Callan's case in 2008 and awarded CRC \$582,775 in compensatory damages, \$1.7 million in punitive damages and nearly \$1.9 million in attorney fees, according to court documents. Ms. Callan appealed the judgment.

"We conclude that (Ms.) Callan did not fail to comply with an order compelling her attendance and testimony," the court said in its order reversing the judgment.

Attorneys for Ms. Callan and for CRC could not be reached.

Mark Stach named new *BI* publisher

CHICAGO—Mark Stach has been named publisher and general manager, strategic business media, *Business Insurance*.

In his new role, effective today, Mr. Stach will oversee all print, digital and event operations for *Business Insurance*, based in Chicago. He replaces as publisher Martin J. Ross III, who in August was named to the new position of vp/managing director of events and business development.

Mr. Stach, 42, previously was global chief operating officer consulting at Hewitt Associates Inc. in Lincolnshire, Ill., a leading human resources consulting and outsourcing organization that Aon Corp. acquired last month. Before that post, Mr. Stach served as global chief financial officer consulting for Hewitt.

From 2004 to 2007, he was vp of complex travel and vp of business planning at the online travel company Orbitz Worldwide Inc., based in Chicago.



Mr. Stach

"Mark led content management at Hewitt and an online business at Orbitz. As a leader of a global business, he has walked in the shoes of many of our subscribers," said Christopher Crain, vp and group publisher for Crain Communications Inc. "These talents, combined with his strategic experience and fresh thinking, will

help make him a strong leader of the valued *Business Insurance* brand and its award-winning staff."

Prior to Orbitz, Mr. Stach worked at uBid Inc., where he helped evolve the online retail auction site. In addition, he was a management consultant with Diamond Management & Technology Consultants Inc., focusing on digital strategies for clients in insurance and retail. He was also a consultant for William M. Mercer Cos. L.L.C., serving as a national specialist in interactive communication media.

Mr. Stach earned a master's degree in business administration at the University of Chicago's Graduate School of Business and a bachelor of arts degree in economics from Northwestern University in Evanston, Ill. He lives in Lake Forest, Ill., with his wife and two daughters.

Mr. Stach can be reached at mstach@businessinsurance.com and 312-649-5347.

RISK MANAGEMENT

Risk managers give insights into own programs

World Captive Forum participants outline views on risk transfer

By **RODD ZOLKOS**

SCOTTSDALE, Ariz.—Case studies presented to a captive insurance group by a pair of award-winning risk managers and a mutual insurance company executive might have lacked a captive role in some of the programs, but offered insights into various risk manage-

ment and risk transfer issues.

Speaking at this month's 20th Annual World Captive Forum in Scottsdale, Ariz., Debra L. Rodgers, vp-global risk management at ARAMARK Corp. in Philadelphia; Christine L. Eick, executive director, risk management and safety at Auburn University in Auburn, Ala.; and Stuart E. Olson, executive vp and chief financial officer of CAMICO Mutual Insurance Co. in Phoenix; described some of the factors that shape their programs.

Ms. Rodgers, the 2010 *Business Insurance* Risk Manager of the

Year, noted that the nature of her organization drives a different approach to risk financing than those of most World Captive Forum attendees.

"Our risk financing strategy is probably different from most people in this room as we are very, very reliant on insurance," Ms. Rodgers said. The reason is that the company does business in so many different locations—10,000 around the world—many of them small. "We do very little self-insurance," she said.

ARAMARK takes very low reten-

tions, she said. "In the United States, we have a huge primary casualty program; and if we were to take the size of deductible a company of our size would typically take, the collateral requirements would be unruly," Ms. Rodgers said.

She noted that ARAMARK was one of the first companies to have a captive, forming one in the 1970s. The company also was among the first to write third-party risks through its captive, "and that didn't work out particularly well," Ms. Rodgers said. The captive has

been in runoff since the 1990s.

The company's broker strategy employs the three largest brokers, with Aon Corp. handling property coverage, Willis Group Holdings P.L.C. handling the traditional casualty portion of the program and Marsh Inc. handling the remaining coverage. With a 65-member risk management staff, ARAMARK performs many of the consulting services that brokers would offer on an in-house basis.

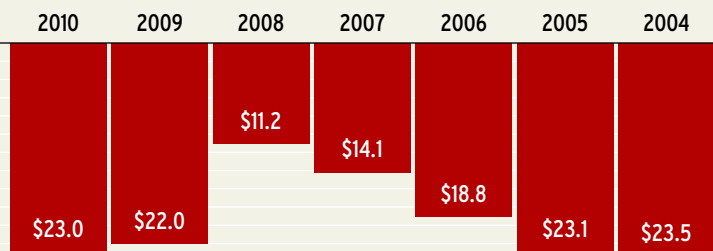
Auburn's Ms. Eick, a member of

See **WCF** page 23

PENSION BENEFITS

PBGC DEFICIT GROWS

The Pension Benefit Guaranty Corp.'s deficit* in fiscal 2010 was just shy of its record 2004 deficit, in billions of dollars.



*for single-employer and multiemployer insurance programs
Source: Pension Benefit Guaranty Corp.

PBGC sees deficit widen to \$23 billion in 2010

By **JERRY GEISEL**

WASHINGTON—The Pension Benefit Guaranty Corp.'s deficit in fiscal 2010 rose slightly to \$23 billion from \$22 billion the prior year, near its all-time high.

The fiscal 2010 deficit in the PBGC's insurance program for single-employer plans climbed to \$21.6 billion, up from \$21.1 billion in fiscal 2009. The deficit in the agency's insurance program covering multiemployer pension plans climbed to \$1.4 billion, up from \$869 million.

In fiscal 2009, the agency was hammered by several large losses, including its second-biggest ever: its takeover of massively underfunded pension plans sponsored by bankrupt auto parts manufacturer Delphi Corp., which the PBGC estimates will cost nearly \$6.3 billion.

By contrast, the single biggest loss the PBGC incurred in fiscal 2010 was its September takeover of a pension plan sponsored by St. Vincent Catholic Medical Centers in New York.

The plan sponsored by the health care system, which filed for bankruptcy in April and shut down in May, had \$267 million in unfunded guaranteed benefits, the PBGC said.

Still, the PBGC's fiscal 2010

deficit is just shy of its all-time high \$23.5 billion deficit set in fiscal 2004.

"In part, this financial position is the result of inadequate plan funding and misfortunes that have befallen plan sponsors. In part, it is a result of the fact that the premiums PBGC charges are insufficient to pay for all the benefits that PBGC insures and other factors," PBGC Director Joshua Gotbaum said in a statement.

While the PBGC has more than enough funds to pay guaranteed benefits, "we cannot ignore PBGC's future financial condition any more than we would that of the pension plans we insure," Mr. Gotbaum added.

In addition, the agency could be hit with more big losses. It says its potential exposure to future losses from financially weak companies was about \$170 billion in fiscal 2010, which ended Sept. 30, up from \$168 billion the prior year.

During fiscal 2010, the PBGC took over 147 plans from financially ailing or failed employers, up from 144 the prior year. Since 1974, the PBGC has taken over 4,150 plans. In fiscal 2010, the agency paid \$5.67 billion to participants in failed single-employer plans, up from \$4.48 billion in 2009.

RISK MANAGEMENT

Unfamiliar jobs boost builders' risks

By **MICHAEL BRADFORD**

ORLANDO, Fla.—Contractors that are taking on projects to keep busy during the economic downturn are moving into unfamiliar areas that are fraught with new risks, experts say.

"With limited amounts of work, contractors have been forced to change up their operations," said William Sullivan, Hartford, Conn.-based vp of Hartford Financial Services Group Inc.'s construction group. "So they're going into new territories and working on new types of projects, which can really increase risk."

Speaking during a panel discussion last week at the International Risk Management Institute Inc.'s 30th IRMI Construction Risk Conference, Mr. Sullivan said contractors taking projects in unfamiliar areas involve themselves in new relationships with subcontractors that have employees "who might not be fully trained. They also are working in territories that have a different claim legal environment."



Contractors working in unfamiliar areas take on increased risk.

are looking further afield for new jobs or moving into different types of construction locally. For both, contractors are encountering risks they are not practiced at managing, he said in an interview.

Contractor mergers and acquisitions are occurring more frequently during the weak economy, which add unfamiliar risks, sources at the Orlando, Fla., conference said.

"There have been a fair amount of mergers over the past 18 months," Scott Rasor, Schaumburg, Ill.-based president of Zurich North America's construction group, said. When contractors combine, an insurer's underwriters and engineers need to be involved to help the new entity and the insurer understand the risks the new operation faces, he said.

Work that previously might have drawn four or five bidders now is attracting 15 to 20, some of which are unfamiliar with the work they hope to win.

See **IRMI** page 23

There is danger in "going out of your sweet spot" into unfamiliar territory, agreed James E. Conroy, vp and chief underwriting officer in Liberty Mutual Group's construction commercial markets operation in Boston.

"It's one of the classic textbook temptations that people tell you to avoid," Mr. Conroy said. Builders

Nominate leading risk managers

Business Insurance invites readers to nominate candidates for the annual Risk Manager of the Year® award and Risk Management Honor Roll®.

The award to recognize outstanding risk managers involves a two-part nominating process. Part I requires a nominating statement that summarizes the achievements or qualities that make the individual worthy of consideration for the award. An independent panel of former honorees will screen the nominations, which are due Dec. 31.

Nominees advanced by the screening panel are then asked to prepare a more detailed nomination form in Part II of the process. Those nominations will be judged and scored by a panel of independent judges representing the 2010 honorees; as well as executives from leading risk management providers, including brokers, insurers and consultants; and a risk management educator.

The risk manager with the highest score is selected as the Risk Manager of the Year by a panel of 10 independent

judges. Up to five other nominees can be named to the Risk Management Honor Roll.

"Many people do not realize that anyone can nominate a colleague, client or friend they admire," said *Business Insurance* Associate Publisher Paul Winston. "Although the nomination does eventually require detailed information and often the input of the nominee, the two-part process is designed to make it relatively easy to throw a worthy risk manager's hat in the ring."

Anyone involved in managing the risk of their organization, anywhere in the world, is eligible for consideration. For complete information about the process, please download a copy of the Part I nomination form at www.BusinessInsurance.com/RMOY.

The 2011 winners will be profiled in the May 2, 2011, issue of *Business Insurance* and recognized in an award recognition ceremony during the annual Risk & Insurance Management Society Inc. conference and exhibition in Vancouver, British Columbia, May 1-5, 2011.

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Costs: Plans post largest rise since '04

CONTINUED FROM PAGE 3

age that do not require a deductible for individual coverage for in-network services fell to 16% this year, down from 22% last year.

In addition, more employers stopped offering health maintenance organization plans—the most expensive plan design (see chart), where costs for all employees this year averaged \$8,892 per employee; while more employers added consumer-driven health care plans, where costs averaged \$6,759 per employee for CDHPs linked to health savings accounts.

“Employers did a little bit of everything to hold down cost increases in 2010,” said Beth Umland, Mercer’s director of health and benefits research in New York.

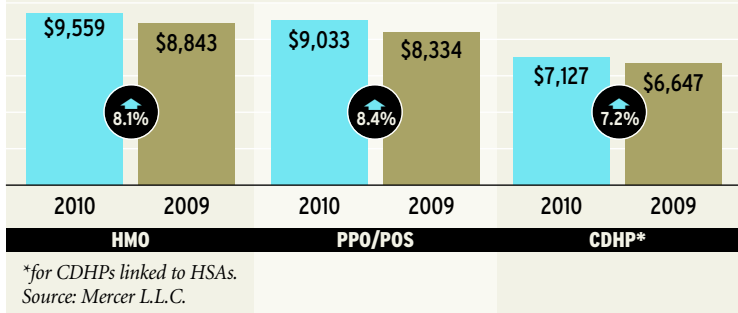
In 2010, 26% of employers offered an HMO, down from 28% in 2009. As recently as 2005, about one-third of employers offered an HMO.

Correspondingly, HMO enrollment has been sliding, with 19% of employees enrolled in HMOs this year, down from 21% in 2009, and a huge drop from 2001, when one-third of employees were enrolled in the plans.

On the other hand, 17% of employers offered a CDHP linked to HSAs or health reimbursement

COSTS VARY BY PLAN DESIGN

For employers that have at least 500 employees, health care plan costs are the highest for health maintenance organizations, followed by preferred provider organizations/point of service plans and consumer-driven health plans.



arrangements this year, up from 15% last year. In 2005, just 2% of employers offered a CDHP.

The nation’s biggest employers have especially embraced CDHPs. This year, 51% of employers with at least 20,000 employees offered a CDHP linked to an HSA or HRA, up from 43% in 2009.

Among those jumbo employers, 15% of employees enrolled in CDHPs this year, up from 9% last year.

Incentives gain ground

In a bid to hold down costs that vary by U.S. region (see chart, page 3), more employers are giving employees incentives or imposing penalties to take steps, such as completing health risk assessments or halting unhealthy habits, leading to better health.

For example, 27% of employers of large employers—those with at least 500 employees—provided incentives for employees to boost employee participation in wellness and other health manage-

ment programs. That’s up from 21% a year ago.

In addition, incentives are becoming more substantial. A token gift was the most common incentive for participating in a health risk assessment three years ago. Today, it is cash—typically \$75—or a reduction in the premium employees pay for coverage, Mercer said.

The survey also found that employers continue to drop retiree health care plans. This year, just 19% of large employers offered health care coverage to Medicare-eligible retirees, down from 21% in 2009. In 1999, 28% of large employers offered the coverage, while 40% did so in 1993.

Copies of the “National Survey of Employer-Sponsored Health Plans” will be published in March. The report alone is \$600; the report with tables is \$1,200. More information is available at www.Mercer.com/ushealthplan survey or from Tara Lewis at 212-345-2451.

Commentary

Cover options sprout for marijuana growers

Risk management and commercial insurance are going to pot—literally.

London markets and some domestic insurers are underwriting products for businesses that cultivate and sell medical marijuana, specialty brokers who distribute the policies tell me.

Like brokers serving other industries, these medical marijuana insurance specialists also provide their clients with traditional risk management expertise to reduce losses and make their exposures easier to place.

In 1996 when California voters approved marijuana use for medical purposes, some *Business Insurance* colleagues jokingly asked when group health insurers would have to pay for someone’s pot use.

Instead, I am hearing that risk management and loss control are popular topics at conferences serving the medical cannabis industry.

Studies estimate that the industry’s revenues range from \$10 billion to \$100 billion, while observers say the business is in its early, budding stage.

Insurance brokers say the businesses could grow to need in-house risk management departments, like large liquor or cigarette manufacturers. Currently, though, most buyers of cannabis-related commercial insurance are far from Fortune 500-size businesses.

Still, some are “extremely large indoor grow operations,” with 20,000-square-foot buildings needing insurance, says Derek Ross, founder of 420 Insurance, a Woodland Hills, Calif.-based niche broker that places coverage in several states that allow pot for medicinal use.

The number 420 is a counter-culture reference to cannabis.

Insurance available for medical marijuana and hemp businesses range from theft coverage for valuable crops to workers compensation policies for retail dispensary employees, says Michael Aberle, national director of MMD Insurance Services, a wholesaler and unit of Statewide Insurance Services Inc. in Rancho Cordova, Calif.

Property and general liability policies can be customized for industry businesses along with auto liability for operations delivering medical marijuana to patients’ doorsteps, Mr. Aberle says. The auto liability policies resemble those sold to pizza delivery businesses, he explains.

“If you remove the element of marijuana, you literally have the same services (and insurance policies) any other industry needs,” Mr. Aberle says.



ROBERTO CENICERROS

Senior Editor Roberto Cenicerros can be reached at: rceniceros@businessinsurance.com

Other insurance includes product liability policies protecting kitchens baking the “edibles” that dispensaries sell and professional liability coverage for doctors writing prescriptions and attorneys advising marijuana establishments.

The medical marijuana industry is highly data driven, so available data breach policies would pay should hackers

Observers say the business is in its early, budding stage.

steal a dispensary’s client information, Mr. Aberle says.

Regardless of industry, specialty brokers often won’t disclose their insurance markets for fear of tipping off potential competitors. The medical marijuana brokers similarly declined to name insurers that manuscript policies for their clients, although they say the insurers are rated A.

But some insurers have declined to underwrite medical marijuana risks, Mr. Ross says. One problem is that pot is illegal under federal law, despite state medical marijuana laws.

But it appears that the marijuana industry will continue to grow, which could cause headaches for employers that are not prepared. It also means it will need more insurance and risk management services, especially if recreational use of pot becomes legal.

Consider that only 54% of California voters recently rejected legalizing recreational marijuana use. But voters under age 25, by a 2-to-1 margin, voted to legalize it. Legalization supporters expect the outcome could be different in the 2012 election because more young voters turn out to help choose a president than during midterm elections.

Business Insurance Webcasts & Webinars

Business Insurance’s Webcasts are developed by BI editors to discuss the latest and most pressing issues facing our readers. *Business Insurance’s* Webinars are educational and informative presentations by leading companies serving the risk management, employee benefits and commercial insurance communities. Both formats are presented live online and afterward are accessible on demand.

An Inconvenient Risk: Climate Change Liability and Coverage

Live Online: Dec. 1, 2010 | 2 p.m. Eastern | Free Of Charge

Climate change is a significant emerging risk for companies, as individuals, corporations and government entities use the tort system to try to recover damages for alleged contributions to global warming. For example, the 5th U.S. Circuit Court of Appeals recently reinstated a case filed by a group of property owners who claim that oil and electric power companies’ emissions worsened Hurricane Katrina by contributing to global warming. And some legal experts predict climate change-related insurance coverage battles will be as lengthy and hard-fought as the fights over coverage for environmental and asbestos claims.

A free *Business Insurance* webcast on Dec. 1 will explore these and other climate change issues. Presenting will be William F. Stewart, partner in the National Insurance Coverage Group of Nelson Levine de Luca & Horst L.L.C., and John G. Nevius is a partner and chair of the Environmental Law Group at Anderson Kill & Olick P.C. *Business Insurance* Senior Editor Joanne Wojcik will moderate.

A *Business Insurance* Webcast, sponsored by:



For details, visit BusinessInsurance.com/Webinars



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Business Insurance OPINIONS

Broader view needed on surplus lines rules

MOST OF THE surplus lines provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act are supposed to be implemented by July 21, 2011, and we're happy to see that a task force of the National Assn. of Insurance Commission has begun tackling that issue.

But as we report on page 1, the task force appears to be taking a narrow view of the task at hand. Rather than addressing broad aspects of the measure, the task force has focused on questions such as collecting and allocating surplus lines premium taxes among the states at the expense of implementing a streamlined tax system that involves uniform requirements, forms and procedures, with only the home state of the policyholder requiring any premium taxes.

The home-state provision was designed to simplify an unwieldy and expensive process, and is crucial to implementing the law successfully.

The focus on premium taxes is understandable—states facing budget shortfalls will look for revenue wherever they can find it—but it's far from enough. Buyers need certainty, and failure to address all provisions of the Dodd-Frank Act's surplus lines section can only breed uncertainty.

Buyers, brokers and insurers deserve better. They fought hard to win legislative approval of the reforms, and they should not have their victory diminished by regulators' restricted approach to implementation.

With the deadline less than a year away, it's imperative that insurance regulators take a comprehensive approach to implementation and that they do so as soon as possible, if the law is to accomplish what Congress intended.

Failure to address all provisions of the Dodd-Frank Act's surplus lines section can only breed uncertainty.

Employers wield power on health care reform

THE HEALTH CARE REFORM rule that allowed self-insured employers to change health plan administrators and keep their plans' grandfathered status while not giving the same flexibility to employers with fully insured plans that changed insurers was illogical.

Fortunately, regulators recognized that disparity and the adverse consequences and amended the rule last week so that changing insurers will have no impact on a health care plan's grandfathered status.

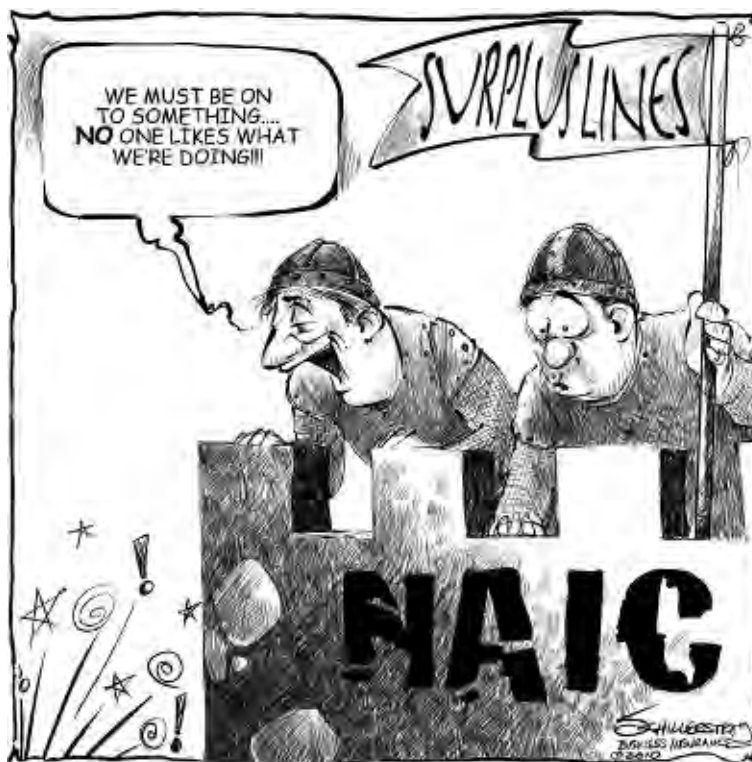
Imposing such a condition to retain grandfathered status—which exempts plans from meeting certain requirements imposed by the health care reform law—would have given an employer's current insurers an unfair advantage in negotiating renewal premiums, regulators said.

It would have been even better had regulators never proposed a rule so lacking in common sense.

However, it is encouraging to note that regulators do pay attention and consider the comments of employers and others, as the revamped grandfathered rule illustrates.

That should be kept in mind by employers the next time health care reform regulators propose a rule that clearly needs revision.

Given the scrutiny that the overall law is expected to receive in the next session of Congress, in which Republicans will take control of the House of Representatives, we have a strong hunch that regulators will pay extra attention to suggestions about changing rules that do not work.



WRITE

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

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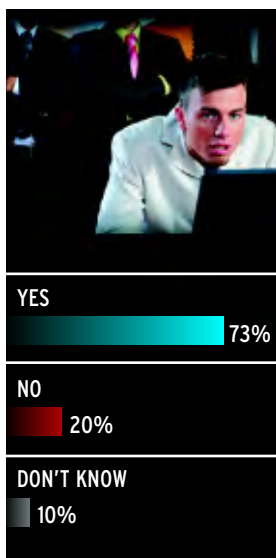
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in the *BI* Online Poll at
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THIS WEEK'S RESULTS

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



NEXT WEEK'S QUESTION

Q: Are brokers disclosing more information about compensation?

LETTERS

Reform law will spur risk management

TO THE EDITOR: Jerry Geisel's Nov. 8 article "Future Murky for Health Care Reform Law" was on the money relative to the challenges ahead for health care reform in the next Congress with the new Republican majority in the House.

There is a story within the story here, however, and that is that some predict real growth in three key areas related to the health care liability insurance marketplace as a result of what will probably not change with the expected Republican challenge to Patient Protection and Affordable Care Act.

While the new House Republican majority is one thing, and while we can expect legislative as well as legal challenges to the entire health care reform law, what is also clear is that we can expect tremendous growth and resurgence in health care risk management, insurance and reinsurance capacity—and most notably, captive insurance companies—as a

See **LETTERS** page 21

PERSPECTIVES

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

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

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

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

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Products & Services

Hanover expands health care portfolio

WORCESTER, Mass.—Hanover Insurance Group Inc. has introduced specialized programs for three growing segments of the health care industry.

Building on its existing human services insurance program, Hanover is offering specialized coverage of companies that pro-

vide durable medical equipment, diagnostic services and in-home services, the Worcester, Mass.-based insurer said in a statement.

Hanover Medical Equipment Advantage, Hanover Diagnostic Services Advantage and Hanover Homecare Advantage cover businesses with annual revenues up to \$15 million, Hanover said in the statement.

"The combination of innovative medical technologies and equipment, and a shift toward more in-home care, are driving dramatic growth in the health care marketplace," Marita Zuraitis, president of Hanover's property/casualty unit, said in the statement. "This is creating more opportunities for our agent partners in these special-

ized areas of the business."

For more information, contact Dennis R. Santoli, president of Hanover Healthcare, at 800-831-9506, ext. 821 or dsantoli@hanover.com.

Liberty International adds E&O endorsement

BOSTON—Liberty International Underwriters has added a manufacturer's errors and omissions endorsement to its product recall policy.

Typically purchased as a stand-alone policy, LIU's E&O coverage for manufacturers can be included in a product recall insurance program and aims to help manage supply chain risks by closing the

gap that exists between the two policies, the Boston-based specialty insurance unit of Liberty Mutual Group Inc. said in a statement.

"By providing claims-made financial loss coverage for the insured's manufacturing processes, this policy covers a larger portion of a company's manufacturing operations," said Louis Lubrano, senior vp of LIU's U.S. crisis management unit.

With up to \$5 million in limits, the endorsement covers claims made by a third party that suffers loss of profit and additional advertising, shipping and restocking expenses, among others related to a product recall.

For information, contact Mr. Lubrano at louis.lubrano@libertyiu.com or 212-208-9543 or Philip Rorty, assistant vp of global crisis management, at philip.rorty@libertyiu.com or 212-208-9509.

Beazley enhances data breach protection

LONDON—Beazley Group P.L.C. has increased the number of individuals eligible for data breach notification and credit monitoring protection.

Originally launched in 2009 for companies handling large volumes of sensitive customer information, Beazley Breach Response has doubled notification and credit protection services to include up to 4 million people affected by a policyholder's data breach, the London-based insurer said in a statement.

The increased protection aims to mitigate costs associated with cyber liability.

"Most insurance for data breaches offers too little, too late," Mike Donovan, underwriter in Beazley's technology, media and business services unit, said in the statement. "By working closely with brokers who knew exactly what their clients needed, we were able to develop a solution that mitigates the brand damage a breach can cause."

The enhanced coverage is for health care, higher education, retail and hospitality organizations with revenues from \$20 million to \$3 billion.

For more information, contact Mr. Donovan at 415-263-4050 or mike.donovan@beazley.com.

Zurich offers retailers a holiday risk guide

SCHAUMBURG, Ill.—Zurich North America Commercial has launched an online risk guide for retailers and supply chain professionals to mitigate risks this holiday season.

Zurich HelpPoint for the Holidays is a free-of-charge online presentation to prepare traditional retailers, online retailers and supply chain professionals for increased risks associated with Black Friday and Cyber Monday—the Friday after Thanksgiving that traditionally kicks off the holiday shopping season and the Monday after Thanksgiving that is considered one of the busiest days for online retailers—the Schaumburg, Ill.-based unit of Zurich Financial Services Group said in a statement.

Zurich said many organizations recorded at least one supply chain disruption this year, with nearly half listing adverse weather as the cause.

The insurer's loss prevention team developed Zurich HelpPoint for the Holidays.

To view the presentation, go to www.brainshark.com/zurich/HolidayHelpPoint.

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THE WINNERS: PROPERTY INSURER FACTORY MUTUAL INSURANCE CO. PAGE 12 | LIABILITY INSURER CHARTIS INC. PAGE 12 | WORKERS COMPENSATION INSURER LIBERTY MUTUAL GROUP INC. PAGE 14 | HEALTH PLAN PROVIDER UNITEDHEALTHCARE PAGE 14 | SURPLUS LINES INSURER LEXINGTON INSURANCE CO. PAGE 15 | PROPERTY/CASUALTY REINSURER LLOYD'S OF LONDON PAGE 15 | REINSURANCE INTERMEDIARY AON BENFIELD PAGE 16 | RETAIL AGENT/BROKER, REVENUES > \$250 MILLION AON RISK SOLUTIONS PAGE 16 | RETAIL AGENT/BROKER, REVENUES \$50 MILLION to \$250 MILLION BEECHER CARLSON HOLDINGS INC. PAGE 16 | RETAIL AGENT/BROKER, REVENUES \$25 MILLION to \$50 MILLION WILLIAM GALLAGHER ASSOCIATES INSURANCE BROKERS INC. PAGE 16 | RETAIL AGENT/BROKER, REVENUES < \$25 MILLION ALPER SERVICES L.L.C. PAGE 16 | THIRD-PARTY CLAIMS ADMINISTRATOR - PROPERTY/CASUALTY GALLAGHER BASSET SERVICES INC. PAGE 17 | THIRD-PARTY CLAIMS ADMINISTRATOR - EMPLOYEE BENEFITS PRINCIPAL FINANCIAL GROUP INC. PAGE 17 | INSURANCE WHOLESALER/MGA SWETT & CRAWFORD GROUP INC. PAGE 18 | CAPTIVE MANAGER AON GLOBAL INSURANCE MANAGERS PAGE 18 | EMPLOYEE ASSISTANCE PROGRAM PROVIDER CIGNA BEHAVIORAL HEALTH INC. PAGE 18 | EMPLOYEE BENEFIT CONSULTANT GALLAGHER BENEFIT SERVICES INC. PAGE 19 | RISK MANAGEMENT CONSULTANT RMI CONSULTING INC. PAGE 19

Readers Choice Awards™

SPOTLIGHT

ON THE WEB

PROFILES of the winning companies in the *Business Insurance* 2010 Readers Choice Awards, as well as previous winners, can be viewed online at: www.businessinsurance.com/readerschoice

Readers of *Business Insurance* have voted to recognize the best overall commercial insurance industry companies in 18 different categories, reflecting key partners and service providers for risk managers, benefit managers and insurers.

2010 is the sixth year of this annual award program. *BI* launched the Readers Choice Awards in 2005 with readers voting for the companies that they believe offer the best combination of service, value, quality and innovation.

The categories are:

- Best admitted commercial property insurer.
- Best admitted liability insurer, including professional liability and general liability lines.
- Best workers compensation insurer.
- Best health plan provider.
- Best surplus lines insurer.
- Best property/casualty reinsurer.
- Best reinsurance intermediary.
- Best retail brokerage, in four different revenue subcategories.
- Best third-party administrator of employee benefit claims.
- Best third-party administrator of property/casualty claims.
- Best insurance wholesaler/MGA.
- Best captive manager.
- Best employee assistance program provider.
- Best employee benefit consultant.
- Best risk management consulting firm.

Business Insurance invited readers of the newsmagazine as well as *Business Insurance.com* to cast their votes through confidential electronic ballots. Balloting closed Sept. 24 and the results were tabulated and analyzed to determine the winners as well as members of the Silver Circle for runners-up.

Profiles of the winning companies begin on page 12.

NEXT SPOTLIGHT Dec. 6: Women to Watch

PROPERTY INSURER

READERS CHOICE

FACTORY MUTUAL INSURANCE CO.

www.fmglobal.com

Factory Mutual Insurance Co. reached what Jon Hall, executive vp of the Johnston, R.I.-based property insurer, called a "huge milestone" this year—its 175th anniversary.

While that allows the insurer, which does business as FM Global, to recognize its accomplishments, "it challenges us to keep the bar high," Mr. Hall said.

Keeping the bar high helped FM

Global, which stresses the importance of loss control to its policyholders, win recognition as best overall commercial property insurer in *Business Insurance's* 2010 Readers Choice Awards.

As a global property insurer, Mr. Hall said FM Global faced several challenges during the past year including natural catastrophes.

The past year has featured "very high loss activity," he said. "Nothing super severe, but a lot of activity that creates a lot of moments of truth with your clients, with so many different



Mr. Hall

clients having losses," he said. "We feel good about that because we continue to stand up" and pay clients and work with them to mitigate losses, said Mr. Hall. The year also marked completion of expanding the FM Global Research Campus in West Glocester, R.I., said Mr. Hall. The facility, which opened in 2003 to replace an older one, is where FM Global tests building materials and analyzes the effects of hazards ranging from wind to fire to hail to earthquake.

Another milestone this year was

the declaration of FM Global's membership credit for clients renewing their policies.

It is the fifth credit since the company was founded by the merger of Allendale Mutual Insurance Co., Arkwright Mutual Insurance Co. and Protection Mutual Insurance Co. in 1999.

Mr. Hall said the credit—the largest in the company's history and the first to be declared on a midyear basis—amounted to about \$400 million for FM Global's clients.

He said membership credits, based on the tenure of a client being an FM Global policyholder, have totaled nearly \$1.7 billion since the merger.

—By Mark A. Hofmann

SILVER CIRCLE

CHARTIS INC.

CHUBB GROUP OF INSURANCE COS.

LIABILITY INSURER

READERS CHOICE

CHARTIS INC.

www.chartisinsurance.com

Chartis Inc.'s focus on delivering innovative products for liability coverage has led to the release of 27 products in the United States during the past year, said Russell Johnston, executive vp and chief operating officer of Chartis U.S.

Chartis' appetite to write liability business is broad, "as our brokers and customers have come to know," Mr. Johnston said.

Business Insurance readers voted New York-based Chartis, a unit of

American International Group Inc., as the best liability insurer in the 2010 Readers Choice Awards.



Mr. Johnston

This month, Chartis expanded industries addressed by NextGen Protection, a suite of environmental insurance solutions developed by its environmental division. PLL MuniProtect for municipalities and PLL REAL Protect for commercial real estate join eight other industry segments covered by NextGen Protection.

Other recent introductions include Executive Edge, a policy to address risks faced by directors and officers of public firms, which provides protection when insured companies refuse or otherwise fail to indemnify their executives.

In addition, Lexington Insurance Co., a Chartis company, has introduced CarbonCover Design & Confirm, which broadens its architects and engineers professional liability coverage to respond to claims arising from greenhouse gas consulting and emission-reduction verification services.

"Some of the innovations that we have come out with from a product perspective are because we listen to our customers very well," Mr. Johnston said. "As their needs change, we will continue to innovate products that help them in their business every day."

—By Judy Greenwald

SILVER CIRCLE

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WORKERS COMPENSATION INSURER

READERS CHOICE

LIBERTY MUTUAL GROUP INC.
www.libertymutual.com

Liberty Mutual Group Inc.'s ability to help customers control their risk costs is likely why *Business Insurance* readers appreciate the insurer's workers compensation offerings, said George Neale, Liberty's executive vp and general claims manager in Boston.

From helping companies with safety programs that minimize workplace accidents to managing claims to ensure superior medical outcomes, Boston-based Liberty

Mutual has programs that wow brokers and buyers, he said.

The company's metrics show its medical expenses to treat worker injuries run about 5% less than the industry average while it also closes claims faster than competitors.

Liberty Mutual's products and services made it No. 1 among workers comp insurers in the *Business Insurance* 2010 Readers Choice Awards.

Its innovations include a Medical Loss Data Mart that utilizes more than 2.5 million claims and



Mr. Neale

32 million medical bills and other data to help policyholders identify cost drivers and meet their goals, including managing workers comp partners, assessing regulatory changes and meeting benchmarks.

One of its challenges is helping employers overcome injured employee "psycho-social" issues driven by the "stalled" economy that can challenge return-to-work outcomes, Mr. Neale said.

Because of the economy, employers may want employees that are

able to produce at maximum capacity rather than bringing back an employee who needs modified duty.

"We really have to be a lot more disciplined in how we approach that (issue) with our customers and how we relate to the injured workers and the treating physician," Mr. Neale said.

—By Roberto Cenicerros

SILVER CIRCLE

CHARTIS INC.

ZURICH FINANCIAL SERVICES GROUP

HEALTH PLAN PROVIDER

READERS CHOICE

UNITEDHEALTHCARE
www.uhc.com

Despite the new federal health care reform law, Edina, Minn.-based UnitedHealthcare continues to experiment with innovations to lower health care costs and improve employee health.

Perhaps that is why the health plan provider subsidiary of Minnetonka, Minn.-based UnitedHealth Group Inc. has been selected the best health plan provider in the *Business Insurance* Readers Choice Awards, the second consecutive year the company has been so honored.

"We are bringing employers fresh new ideas, and are trying things in specific marketplaces," said Austin Pittman, UnitedHealthcare's chief growth officer.

For example, UnitedHealthcare introduced a core health plan in the Chicago metropolitan area that provides lower-cost coverage to employers willing to contract with a narrower network of health

care providers, according to Mr. Pittman.

UnitedHealthcare also has collaborated with IBM Corp. in Armonk, N.Y. to



Mr. Pittman

test the patient-centered medical home concept, a care coordination and reimbursement model advocated by the Patient Protection and Affordable Care Act, which was passed by Congress earlier this year.

"We are committed to testing and finding solutions, oftentimes on our own employees before rolling it out to employers," Mr. Pittman said.

UnitedHealthcare's own corporate wellness program provides tailored incentives to plan members who participate in certain activities such as biometric screenings.

Perhaps the biggest challenge UnitedHealthcare faces as an employer and health plan provider is the escalating costs of health care.

"We continue to hear from our employers and their employees about costs," he said.

"How do you really bend that cost trend back in the other direction and improve quality? We must continue to work collaboratively with employers and providers and engage employees to make healthier choices," Mr. Pittman said.

—By Joanne Wojcik

SILVER CIRCLE

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SURPLUS LINES INSURER

READERS CHOICE

LEXINGTON INSURANCE CO.
www.lexingtoninsurance.com

Lexington Insurance Co. is a surplus lines insurer that prides itself on being flexible, innovative and run by people who made it that way.

A subsidiary of Chartis Inc. and ultimately American International Group Inc., Boston-based Lexington has needed those attributes to succeed in a tough marketplace, said President and CEO Peter J. Eastwood.

"Our biggest challenge is more competition in the business than we have seen in a long time," he said.

That's not to say competition has kept Lexington from performing up to par, according to Mr. Eastwood.

"From my perspective, competition is a good thing," because it drives the surplus lines insurer to differentiate itself from its competition by providing high levels of customer service, relevant products and services, and an appetite for appropriate risks, he said.

The insurer appears to be succeeding in meeting many of the challenges of performing in the tough market for commercial insurance risks as Lexington has been voted the best overall surplus lines insurer in the *Business Insurance* 2010 Readers Choice Awards. This is the sixth consecutive year that the surplus lines insurer has received the honor.

Lexington operates in the property/casualty, health care, personal lines and programs markets. The insurer specializes in several different areas including real estate, higher education, transportation and public entities.

"Our people and our culture are our strengths," said Mr. Eastwood, who has led the insurer since December 2008. "Our people are what truly set us apart," he said, noting that "relationship capital" is a big part of why the insurer thrives despite market cycles.

Lexington employees are empowered to be innovators and they have built a company that is large and nimble, he said.

As competition continues, "look for us to be pretty adaptable," Mr. Eastwood.

—By Michael Bradford



Mr. Eastwood

PROPERTY/CASUALTY REINSURER

READERS CHOICE

LLOYD'S OF LONDON
www.lloyds.com

In a year where managing the reinsurance cycle has been one of its biggest challenges, Lloyd's of London has retained its position as best property/casualty reinsurer as voted in the *Business Insurance* 2010 Readers Choice Awards.

Tom Bolt, director of performance management at the more than 300-year-old insurance and reinsurance market, said Lloyd's has focused on "underwriter discipline and risk management to

ensure that we maintain market attractiveness."

The year posed major challenges, notably the February earthquake in Chile and the April Deepwater Horizon oil rig disaster in the Gulf of Mexico, Mr. Bolt said.

When the market announced its six-month results in late September, Lloyd's said it expected net claims of about \$1.4 billion from the Chilean earthquake, which struck in late February, and \$300 million to \$600 million from the loss of the Deepwater Horizon rig, which exploded in



Mr. Bolt

the Gulf of Mexico in April killing 11 workers and injuring numerous others.

About 36% of the business underwritten at Lloyd's is reinsurance. About 60% of its reinsurance business is property; 17%, casualty; 8%, marine; 7%, energy; 4%, auto; and 4%, aviation.

Lloyd's is the fifth largest reinsurer in the world, according to *Business Insurance's* latest rankings. Mr. Bolt said Lloyd's nature as a marketplace rather than a company differentiates it from its peers, he said.

"Our subscription model makes us unique," Mr. Bolt said.

"We have a breadth and depth of knowledge in one building which no one else can offer. We're the center of the London market with a reputation for paying out on valid claims quickly," which he said makes Lloyd's a very strong brand and "the market of choice."

—By Sarah Veysey

SILVER CIRCLE

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SWISS REINSURANCE CO.

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REINSURANCE INTERMEDIARY

READERS CHOICE

AON BENFIELD

www.AonBenfield.com

The challenges facing Aon Benfield stem from one cause: the difficulty of growing in the current market environment, said Michael D. O'Halleran, the reinsurance intermediary's executive chairman.

Aon Benfield, a unit of the

Chicago-based Aon Corp., was named best reinsurance intermediary in the *Business Insurance* 2010 Readers Choice Awards, a repeat of last year. Predecessor Aon Re Global was named the best in the three years prior to its merger with Benfield Group Ltd.

"Growth is extremely hard to come by" because of the overall marketplace, as insurers reduce their reinsurance portfolios signif-



Mr. O'Halleran

icantly and because of competition from other intermediaries, Mr. O'Halleran said. Furthermore, many reinsurance buyers "have chosen to buy less reinsurance so that they can meet their own financial expectations."

Aon Benfield is addressing these challenges by "trying to run a very efficient organization," Mr. O'Halleran said.

"We've invested a lot of money in our platforms and our technologies. We're reaping the benefit of being well-viewed as the most efficient organization in our space" and by trying to be paid for the value Aon Benfield brings its clients.

At the same time, he said, "we're trying to attract the best and the brightest in the industry, so it's kind of a multitiered approach to attack the cycle that we're in and then be prepared for the eventuality when the market turns," Mr. O'Halleran said.

"That's why we have the financial backing of a big corporation like Aon Corp. to continually invest in the business, so we can be ready for the needs of our clients when they need it most," he said.

—By Judy Greenwald

SILVER CIRCLE

GUY CARPENTER & CO. L.L.C.

WILLIS RE INC.

RETAIL AGENT/BROKER

REVENUES OF GREATER THAN \$250 MILLION

READERS CHOICE

AON RISK SOLUTIONS

www.aon.com

A high-profile professional soccer team sponsorship and a high-profile acquisition made 2010 a memorable year for Aon Risk Solutions.

It also has been another year of investment on behalf of Chicago-based Aon Corp.'s clients, said Stephen P. McGill, chairman and CEO of Aon Risk Solutions, Aon's global platform for advising clients and placing their risks.

Attention to client needs helped win Aon the *Business Insurance* 2010 Readers



Mr. McGill

Choice Award for retail agent/broker with revenue greater than \$250 million. It is the fourth consecutive year the Aon unit has been honored.

2010 has "continued to

be a tough year," with a difficult economy conditions around the world and insurance rates continuing their decline, he said. That is "obviously great news for our clients," but also a challenge when serving clients through commissions, Mr. McGill said.

He said clients also have focused on limiting discretionary spending, which means they've been concerned about buying risk consulting.

But with challenges also come achievements.

Aon's acquisition of Lincolnshire, Ill.-based human resources consultant Hewitt Associates Inc. has provided a "fantastic opportunity" to cross-sell products and services, he said.

One of the key achievements in the area of customer service has been expanding Aon's Global Risk Insight Platform, a broking information platform that provides information about insurance placements by industry, geography and local insurance market. Since its inception in 2008, about 700,000 trades have been entered into GRIP, which reflects about \$50 billion in premiums.

—By Mark A. Hofmann

RETAIL AGENT/BROKER

REVENUES OF \$50 MILLION TO \$250 MILLION

READERS CHOICE

BEECHER CARLSON HOLDINGS INC.

www.beechercarlson.com

Tom Golub, president and CEO of Atlanta-based broker Beecher Carlson Holdings Inc., tried to help his customers struggle through the uncertain economy this year.

Many company officials wanted to reduce their costs while simultaneously figuring out how to do more work with fewer employees. Many of the companies saw their insurance costs decrease along with their payrolls.

"We've seen the last couple years as a



Mr. Golub

real opportunity to help customers in ways that most of our competitors wouldn't," Mr. Golub said.

The strategy has helped the broker earn the *Business Insurance* 2010 Readers Choice

Award for best agent/broker with revenues of \$50 million to \$250 million.

Mr. Golub said Beecher Carlson organizes around customer business and industries, such as energy, health care and real estate. He said this business model allows the broker to dig deeper into customer needs.

For example, a couple of years ago, an automaker asked Beecher Carlson for ideas on slashing insurance claims costs. Beecher Carlson first measured the company's performance in areas such as claims frequency and the number of work days employees lost. Then the broker advised the automaker how to bid for an administrative service provider and choose the one that fit the best.

Beecher Carlson also worked on the company's claims auditing process and helped close claims that hadn't yet settled. The automaker has seen a 40% decrease in claims frequency and a 45% decrease in claim severity since it started working with the broker in 2008.

What will happen in 2011? Mr. Golub said he sees nothing to change the insurance market, which has more providers than buyers at the moment.

—By Sonja Ryst

RETAIL AGENT/BROKER

REVENUES OF \$25 MILLION TO \$50 MILLION

READERS CHOICE

WILLIAM GALLAGHER ASSOCIATES INSURANCE BROKERS INC.

www.wgains.com

William Gallagher Associates Insurance Brokers Inc. is like many companies today, learning the ropes of social media and how they can enhance the company's ability to interact with clients as well as employees.

The strategy appears to be working.

For the third consecutive year, WGA was voted the best retail agent/broker among firms with revenues between \$25 million and \$50 million for *Business*



Mr. Edmundson

Insurance's Readers Choice Awards.

The Boston-based broker has achieved this through a combination of product innovation and strengthening its relationships with

clients online and in person, said Philip Edmundson, chairman and CEO.

Last year, Mr. Edmundson said WGA began a blog on its website as a means of connecting with clients and providing opinions on industry news. To his surprise, the move was a hit with clients as well as employees.

"We found that the blog had other benefits," Mr. Edmundson said. "Not only have we found it as a way of mass communicating with our clients and giving them fresh and timely material, but we also found that it is increasing the sharing of knowledge within our own company."

WGA still is learning about ways to reach clients through social media, Mr. Edmundson said, as the retail broker attempts to stay atop the competition.

Product innovation and a focus on working with growing industries such as renewable energy, data security and health care also have contributed to the company's success.

"Our types of clients are demanding and we have to be innovative in our product offerings as well as our service," Mr. Edmundson said.

—By Jeff Casale

RETAIL AGENT/BROKER

REVENUES OF LESS THAN \$25 MILLION

READERS CHOICE

ALPER SERVICES L.L.C.

www.alperservices.com

Alper Services L.L.C.'s mantra this year has been "to do whatever the client needed," said Bobette Puckett, president and chief operating officer of the Chicago-based insurance brokerage.

Established in 1966, the firm offers property/casualty, employee benefit and financial services to businesses with 100 to 1,000 employees in various industries with an eye to reduce the total cost of risk.

With many clients' businesses hit by the economy, doing what it could to help



Ms. Puckett

has been Alper Services' priority. This year's strategies have included loss-control measures, developing financing options for specialized insurance programs and establishing a financial

services division focused on 401(k) and defined benefit plans, annuities and deferred compensation programs.

One initiative embraced by employers was a wellness program where Alper Services demonstrated a return on investment by using its own successful program as the example when pitching to prospective clients.

"Anything that can be done as a preventive measure, (where) they can see a return on the dollar, makes sense," said Ms. Puckett.

Ms. Puckett said Alper Services' most difficult challenge has been maintaining staffing levels. "We were very proud of the fact that we did not have a reduction in workforce," she said.

Its full-service, "can-do" approach plus value-added services such as claims management, risk management and loss-prevention tools allowed the brokerage to win new business.

Those services also led to Alper Services' selection as the best retail agent/broker with less than \$25 million in revenue in the *Business Insurance* 2010 Readers Choice Awards. This is the second consecutive year the brokerage received the honor.

—By Mike Tsikoudakis

SILVER CIRCLE

ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES INC.

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SILVER CIRCLE

MID AMERICAN GROUP INC.

R.C. KNOX & CO. INC.

THIRD-PARTY ADMINISTRATOR

PROPERTY/CASUALTY

READERS CHOICE

GALLAGHER BASSETT SERVICES INC.

www.gallagherbassett.com

When Scott R. Hudson joined Gallagher Bassett Services Inc. as president and CEO in January, he already knew that he didn't have to make many changes to an already well-run company.

"I didn't come in with an agenda of change," Mr. Hudson said.

"I knew it was a strong and stable organization and already had

great leadership in place and was well-respected in the industry," he said.

For the second consecutive year, Itasca, Ill.-based Gallagher Bassett Services was voted best property/casualty third-party claims administrator in the *Business Insurance* 2010 Readers Choice Awards.

Instead of looking to shake things up, Mr. Hudson said he has spent his first year with Gallagher Bassett meeting with the firm's clients around the globe to get ideas about how the proper-



Mr. Hudson

ty/casualty TPA can do an even better job as a business partner.

The core of Gallagher Bassett's business is handling claims, and one way to improve the way adjusters do their job involves making sure they have the right tools, according to Mr. Hudson.

Updated claims-handling software, enhanced managed care services and better interaction with clients were just a few steps the company took to ensure better outcomes.

Gallagher Bassett also is using

different ways of communicating with its clients, Mr. Hudson said, knowing that each is different in the way they want to receive updates on their claims.

He said Gallagher Bassett also has increased its use of mobile technology as it looks to implement more efficient ways to communicate with claimants as well as employers.

In September, Gallagher Bassett expanded its reach with its acquisition of GAB Robins North America Inc.

As Gallagher Bassett moves forward into 2011, Mr. Hudson said the challenge will be where to take the organization in the longer term to continue to stay in the

strong position it is in within the industry.

One step to doing that was the acquisition of GAB Robins, which he said was "a huge win for (Gallagher Bassett) and reinforces the company's commitment to continue to invest in and improve Gallagher Bassett."

—By Jeff Casale

SILVER CIRCLE

SEDGWICK CLAIMS MANAGEMENT SERVICES INC.

SPECIALTY RISK SERVICES L.L.C.

THIRD-PARTY ADMINISTRATOR

EMPLOYEE BENEFITS

READERS CHOICE

PRINCIPAL FINANCIAL GROUP INC.

www.principal.com

Business Insurance readers have a fondness for Principal Financial Group Inc.'s Des Moines, Iowa-based third-party administrator services for employee benefits.

They voted the company the No. 1 choice among employee benefits TPAs in the 2010 Readers Choice Awards, based on quality, value, service and innovation.

However, in September, Principal said it will exit the medical insurance business for insured and self-insured employers. A spokeswoman said the exit includes its TPA services for medical benefits.

In a statement, Principal said its transition, expected to occur within 36 months, will not affect its other offerings, such as those that focus on retirement, asset management, life insurance, wellness, disability, and dental and vision.

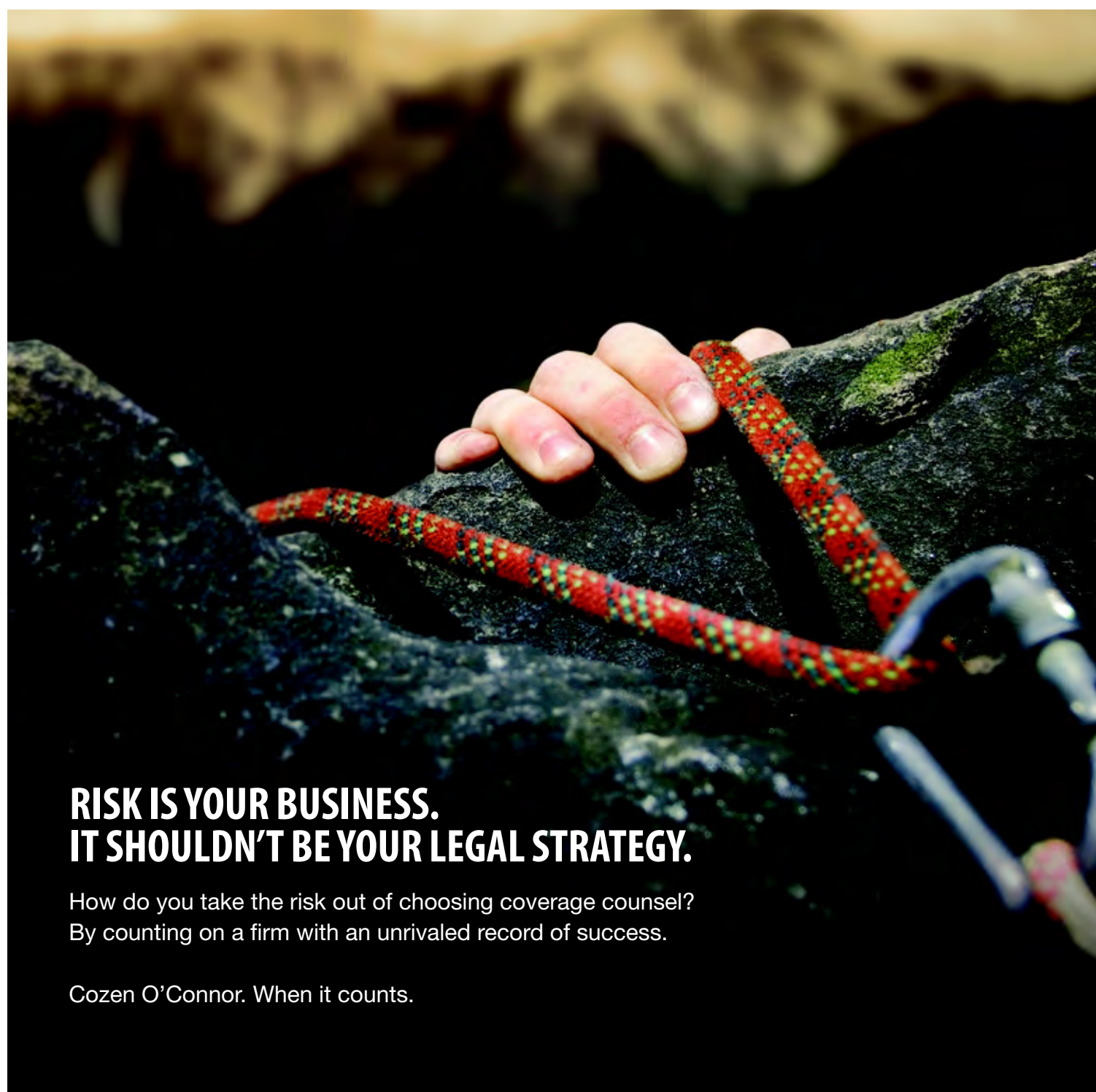
The company also said that that it had entered an agreement with UnitedHealth Group Inc. to renew medical coverage for its current customers, and its decision to exit medical insurance was strategic as its share of that business had been declining throughout the years.

—By Roberto Cenicerros

SILVER CIRCLE

CORESOURCE INC.

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INSURANCE WHOLESALER/MGA
READERS CHOICE

SWETT & CRAWFORD GROUP INC.
www.swett.com

Swett & Crawford Group Inc. isn't interested in sitting still during the global economic downturn and difficult market and is emerging as an organization with greater strengths and capabilities, the insurance wholesaler's president and CEO said.

That's not a simple task, but it is made easier with the help of the company's exceptional staff and loyal clients, J. Neal Abernathy said. "Without both, we would not be who we are," he said.

Business Insurance readers have given Swett their stamp of approval, voting the firm the best in the in the insurance wholesaler/MGA category for the 2010 Readers Choice Awards, the sixth consecutive year.

"Our biggest challenge over the past year has been the continuation of the economic issues, in addition to those in the marketplace," Mr. Abernathy said. "We can deal with the insurance marketplace. We can bob and weave our way through the marketplace, but the economy's continued softening is the biggest problem we've faced."

Even with such difficulties, Swett has strengthened its capabilities, he said.

The wholesaler expanded with this year's merger with London-based Cooper Gay

(Holdings) Ltd., a deal that for the first time gives the wholesaler reinsurance and international capabilities, Mr. Abernathy said. "That strengthens us tremendously."

What sets Swett apart from its competitors, though, is the quality of its staff, he said. "From the receptionist in every office to the top producer, it's the people who make Swett operate."

Mr. Abernathy said he sent a note to everyone on the company's staff when he learned Swett had won this year's Readers Choice Award, telling them that it has been their hard work that has built the company into one that is valued by its clients. "Obviously it's our people, and the quality of the people in our firm," that differentiates Swett, he said.

"We focus all the time on service and being in front of the clients," Mr. Abernathy said.

"It is critical that we are out and engaged with the clients, talking about what they need in the marketplace," he said.

Swett says it has access to more than 200 standard and specialty insurers, domestic and foreign. It also says it has an exceptional depth of expertise in its nearly 850 brokers, underwriters and support professionals.

—By Michael Bradford



Mr. Abernathy

SILVER CIRCLE

AMWINS

C.V. STARR & CO. INC.



CAPTIVE MANAGER

READERS CHOICE

AON GLOBAL INSURANCE MANAGERS
www.aon.com/risk-services/captive-management.jsp

Aon Global Insurance Managers has helped clients do more with less as the distressed economy prompted its captive insurance company clients to seek ways to consolidate or close operations, said Nancy Gray, Burlington, Vt.-based regional managing director at AGIM.



Ms. Gray

AGIM's response to this and other client needs led to a second

consecutive selection as best captive manager in the *Business Insurance* 2010 Readers Choice Awards.

"Being recognized for the second year is an accomplishment and recognition from our clients" is appreciated, Ms. Gray said.

As the captive management division of Chicago-based Aon Corp.,

AGIM has found itself busy helping clients become more efficient since the financial crisis took hold.

"We put together a runoff strategy team that looked for ways to maximize efficiencies" in winding down some captives and consolidating others, Ms. Gray said.

While the trend of consolidating or winding down captives seemed to peak in 2009, it has carried into 2010, she said. "It will continue into 2011, but there has been some easing off," Ms. Gray said.

AGIM relies on its global scope to give it an advantage in the marketplace, helping it meet client needs wherever they are located, Ms. Gray said. She praised AGIM's "united team" as one of its biggest strengths in the marketplace. "We wouldn't be able to do it without the team," she said.

AGIM will continue building on its global approach in 2011, helping clients worldwide take advantage of the benefits provided by captive insurers, Ms. Gray said.

"There's a lot on the horizon—Solvency II issues in Europe and potentially in Bermuda" among them, Ms. Gray said. To help guide captives and their owners through it all, "we're staying at the forefront of the issues," she said.

—By Michael Bradford

EMPLOYEE ASSISTANCE PROGRAM PROVIDER

READERS CHOICE

CIGNA BEHAVIORAL HEALTH INC.
www.cigna.com

Jodi Prohofsky has spent the past year helping employers help their workers, whose worries included potential layoffs and managing their finances despite an ailing economy.

As senior vp of health management operations at CIGNA Behavioral Health Inc., the employee assistance program Ms. Prohofsky oversees provides a 24-hour phone service for questions about things ranging from depression to financial planning. Employees who call the EAP get information about their benefits, short-term counseling and other services.

Those efforts have resulted in CIGNA Behavioral Health being named the best EAP provider in the *Business Insur-*



Ms. Prohofsky

ance 2010 Readers Choice Awards, marking the sixth straight year the unit has been so honored.

The CIGNA Corp. unit has more than 1,000 corporate clients and 8.3 million lives in its EAP program, a number that has held steady since 2009. About 6% of that population has used EAP services this year, up from 4% the previous year.

"I'm seeing a greater understanding for what (an EAP) is and a greater desire to continue with it," said Ms. Prohofsky, who is a licensed marriage and family therapist.

She and her team say keeping workers emotionally healthy improves productivity. Ms. Prohofsky said the EAP provides free counseling to employees in contrast with other mental health benefits that require copayments or deductibles.

According to CIGNA, its program saves people an average of 10.5 hours when they use the EAP to find services, such as child care or elder care, compared with finding those services on their own.

—By Sonja Ryst

SILVER CIRCLE

MARSH CAPTIVE SOLUTIONS

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EMPLOYEE BENEFIT CONSULTANT

READERS CHOICE

GALLAGHER BENEFIT SERVICES INC.
www.gallagherbenefits.com

Gallagher Benefit Services Inc.'s employees are dedicated to helping employers address the rising cost of benefits, especially since passage of the federal health care reform law. "We're not as big as a lot of the other companies that were competing for this award. It really says a lot about our people, the passion they bring to the business," said Jim Durkin, president of the Itasca, Ill.-based benefit consulting unit of broker Arthur



Mr. Durkin

J. Gallagher & Co., after the firm finished top in the employee benefit consulting category in the *Business Insurance* 2010 Readers Choice Awards.

"We have, in a relatively short period of time through the acquisition process, been able to build a network of very capable people that we didn't have 10 years ago," Mr. Durkin said.

In addition, "we've found partners who are excited about the business," he added.

This network was especially important to respond to clients' needs when the Patient Protection and Affordable Care Act was approved this year, he said.

"Health care reform overshadowed everything," Mr. Durkin said. "Not that we have all the answers, but I think we have been able to build the tools and resources so our consultants can help our customers work their way through."

—By Joanne Wojcik

SILVER CIRCLE

AON HEWITT

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ADVERTISER

INDEX

Issue of November 22

ADVERTISER	PAGE #
About Your Benefits	18
Ace	7
Allianz	19
Aon Corporation	2
Business Insurance	.6, 12, 23, Cover 3
Catlin	14
Chartis	Cover 4
Cozen O' Connor	17
C.V. Starr	5
Florida State University	18
FM Global	10
Arthur J. Gallagher & Co.	13
Health Alliance Plan	12R
St. John's University	Cover 2
Sweet & Crawford	15
Zurich North America	9

RISK MANAGEMENT CONSULTANT

READERS CHOICE

RMI CONSULTING INC.
www.rmiconsulting.com

Port Washington, N.Y.-based RMI Consulting Inc. sticks to what it does best: listening to the client.

Because most risk management consulting firms use similar risk transfer and insurance purchasing tools to build a client's program, "What we really do...is truly listen to our clients," said MaryAnn Sackman, president of RMI. "Then we can build the insurance program around their needs."

RMI's basic principal is a key reason it was voted best risk man-

agement consulting firm in the *Business Insurance* 2010 Readers Choice Awards, its fifth consecutive year.

"I have to say that client satisfaction is what keeps us on top of these awards," Ms. Sackman said.

The privately held firm acts as an in-house risk manager and offers fee-based services to mainly middle-market clients with annual insurance premiums of \$100,000 to several million dollars.

RMI this year has worked closely with clients adversely affected by the economy by helping them move to higher deductibles and



Ms. Sackman

self-insured retentions to maintain existing programs and coverage. The firm also coordinated outsourced safety loss control programs, disaster planning and crisis management services through brokers and insurers by negotiating the services as part of the insurance program.

RMI said its biggest challenge was holding onto its client base.

"We're paid right from the bottom line of a company. So if they're cutting expense, we're one of the places they like to cut," Ms. Sackman said.

RMI sustained its market share by ramping up its service with more face-to-face time with clients and developing an in-depth understanding of their business, Ms. Sackman said.

RMI is set to expand its program-based business to compete outside the New York metropolitan area.

—By Mike Tsikoudakis

SILVER CIRCLE

NORTH AMERICAN RISK MANAGEMENT INC.

RISK INTERNATIONAL SERVICES INC.

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www.agcs.allianz.com

Surplus: Risk managers, insurers criticize NAIC plan

CONTINUED FROM PAGE 1

sional Surplus Lines Offices Ltd.

The NAIC did not immediately respond to a request for comment.

The proposal must be approved by the task force before it can be passed on for further approval at the executive and plenary levels.

In a separate letter sent to Mr. Donelon this month, the Property Casualty Insurers Assn. of America also opposed the NAIC proposal.

"For years, (the) industry educated Congress on the need and benefit of NRRA to create a streamlined tax system that involved uniform requirements, forms and procedures," the PCI wrote. "NIMA not only fails to address that uniformity standard, but it creates an uncertain taxing arrangement via an 'agreement' between insurance commissioners with questionable binding authority."

NIMA "only addresses tax collection, allocation and disbursement," said Nicole Allen, a senior

vp at the Council of Insurance Agents & Brokers in Washington. "While it strives to get a uniform regime for those states that adopt the agreement, it still only addresses the tax issue. It doesn't address eligibility standards, it doesn't address licensing." Ms. Allen noted that the CIAB, in supporting the NRRA's enactment, had called for a more uniform regulatory regime.

"We believe the task force is thwarting congressional intent when they passed the NRRA, which was to promote uniformity among the states," a RIMS spokeswoman said. "The NRRA provisions address issues much broader than just the allocation of premium taxes. We would like the task force to address state law governing policy terms, regulation of placement of surplus lines insurance and the licensing of surplus lines brokers."

"We think the NAIC is missing an opportunity by not going further and addressing uniformity in

all aspects of surplus lines regulation," said Ms. Allen.

"I do believe that the task force has gone off in a direction that is not very good," said Richard Bouhan, executive director of NAPSLO. "What the NAIC will do with it, I have no idea. We do not think particularly highly of it."

"What may be just as important is what the legislators think of it—ultimately, it will take legislative action to put anything into effect," he said.

Meanwhile, the National Conference of Insurance Legislators has unveiled its own surplus lines reform implementation proposal.

According to NCOIL, the proposal—known as SLIMPACT-Lite—would authorize a governing commission to create allocation formulas to help states share premium tax dollars, uniform payment methods and reporting requirements for policyholders and surplus lines brokers, national eligibility standards, and a single policy-

holder notice to replace the various forms used across the country. "To streamline taxation, it would require a state to create a single tax rate for surplus lines insurance, allow states to charge their own rates and set uniform payment due dates, among other things," NCOIL said in a statement.

NAPSLO's Mr. Bouhan said NAPSLO supports the SLIMPACT-Lite proposal. "It is consistent with the NRRA," he said. "It provides some uniformity both in tax collection and allocation and provides uniformity in some essential regulatory areas."

The CIAB said in a statement issued before the NCOIL meeting that it "appreciates" the organization's two proposals.

The proposal, as well as a resolution urging states to bring their surplus lines laws into compliance with the Dodd-Frank Act, was under consideration late last week at NCOIL's annual meeting, which was held in Austin, Texas.

KEY PROVISIONS

Highlights of the surplus lines provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act include:

- Only the home state of a policyholder can require payment of premium taxes for nonadmitted insurance.
- States may enter into a compact to allocate premium taxes among themselves.
- Under most circumstances, placing nonadmitted insurance is subject only to the laws and regulations of the policyholder's home state.
- No state other than the policyholder's home state may require a surplus lines broker to be licensed to sell, solicit or negotiate with the policyholder.
- Brokers representing exempt commercial insurance buyers can approach the nonadmitted market directly without first being declined in the admitted market.

Source: Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173

Court reinstates lawsuit over promotion decision

Suit says company gave job to younger, less qualified worker

By JUDY GREENWALD

CINCINNATI—A federal appeals court last week reinstated an age and sex discrimination lawsuit filed by an individual who said he was passed over for promotion despite being better qualified than the successful candidate.

According to the Nov. 15 decision in *Barry L. Bartlett vs. Robert M. Gates* by the 6th U.S. Circuit Court of Appeals in Cincinnati, Mr. Bartlett, 58, who had 34 years of work experience at the Department of Defense Contract Management Agency in Cincinnati, applied for a promotion to a GS-12 contracting officer position from his job as a GS-11 contract administrator in 2005.

The job, though, was given to Angela Lucas, 39, who had eight years experience and, unlike Mr. Bartlett, no college degree. Mr. Bartlett sued the agency for age and sex discrimination.

According to his lawsuit, supervisors made comments to him including, "You have had 34 years, and that is enough." Mr. Bartlett said between 2003 and 2005, employees 55 or older had received only one agency promotion, despite making up 36% of the agency's workforce.

He also said female employees were promoted "in a series of personnel decisions that involved the manipulation of agency procedures," including one case in which a female employee obtained a promotion for a job that was never advertised, which prevented

Mr. Bartlett from applying.

As further evidence of discrimination, Mr. Bartlett pointed to another applicant with a 27-year tenure at the agency and a doctoral degree who also was not promoted.

The appeals court overturned a lower court decision granting the agency summary judgment dismissing the case. The plaintiff "has presented direct evidence of age discrimination in the form of the ageist remarks" of the supervisors, three-judge panel ruled unanimously.

The decision also says the defendant justified Ms. Lucas' promotion on the grounds that she was "highly motivated" while Mr. Bartlett was an "average employee who lacked sufficient background in contract negotiations and a strong writing ability." However, the court concluded Mr. Bartlett "was qualified, if not more qualified than (Ms.) Lucas." Furthermore, said the court, despite the assertion that Ms. Lucas was the best qualified candidate, the supervisor "was unable to describe the candidates' credentials," which suggests "the actual basis" for the promotion decision was a pretext for sex and age discrimination.

Commenting on the decision, Jonathan T. Hyman, a partner with law firm Kohrman Jackson & Krantz P.L.L. in Cleveland, said, the decision is a lesson in "making sure all your i's are dotted and t's crossed, not just with who you hire, but whom you don't hire."

"You don't want to hire someone who is, on paper, objectively less qualified, especially if they are outside the protected class," he said. The decision is a "good risk manager road map for people who make hiring decisions to look at," he said.

LETTERS

CONTINUED FROM PAGE 8

direct result of the issues addressed in the health care reform law.

What I'm speaking about is the fact that most hospital systems and larger community hospitals are quickly acquiring independent community physician practices as part of an already deeply defined alignment strategy that simply will not change regardless of what happens legislatively.

Most hospital CEOs with whom I've spoken are not going to change this strategy anytime soon. They're going to be employing or aligning with (through joint ventures, for example) the community physicians who already have an admitting relationship with the hospital institution.

What this means is that in the next couple of years, your primary care physician is more apt than not to be a hospital employee, even though you will be making an appointment with your physician in what, for all intents and purposes, still looks like an independent private practice.

These practices will be acquired and integrated into your local community hospital for economic reasons and, just as importantly, for many reasons related to quality improvement and the measurement of outcomes. We are moving into a "pay for performance" mentality in health care, whether all aspects of the health care reform law are changed or not. Nothing will stop this.

But here is the story within the story—a story of enormous importance in the health care professional liability risk management and insurance community.

Most hospital risk managers

have all they can do to cope with the daily clinical, quality and related risk management concerns within the four walls of the institution. Many hospital risk managers would tell you, candidly, that they have little training relative to the management of outpatient physician risk in what amounts to a private practice setting. All the hospital risk managers I know are adept at change, but managing a large influx of newly employed physicians and their support staffs will be a challenge, and I predict that hospital risk management will be one of the key growth industries in the insurance sector in the next three to five years.

Additionally, in the midst of this continuing soft professional liability casualty insurance and reinsurance market, I see some possible good news on the horizon for underwriters as well. With these physician acquisitions come real and definable increases in exposure at the community hospital and larger hospital system level. Physician retroactive dates will have to be absorbed. Stress will be placed on retained aggregates. In short, underwriters will perhaps have the first opportunity they've had in a long time to increase the rate on line for the capacity they provide. Whether or not underwriters can charge more for their product remains to be seen, but nonetheless the reinsurance and insurance of health care systems with closely aligned physician practices drawn from the community is definitely a growth industry and one worth watching.

Lastly, the plain vanilla single-parent captive insurance companies domiciled in Vermont, South Carolina, Bermuda, Cayman Islands and elsewhere are the captives that our industry pays the least attention to; that is

to say, those single-parent captives owned by tax-exempt health care systems and local community hospitals. Of necessity, under physician alignment strategies, these captives will get larger over time and require more services from a greater array of service providers as these physician alignment strategies play themselves out.

I am predicting an enormous renaissance in the growth of single-parent captives for health care providers. Those captives that already exist will get larger. There will be a larger number of new captives in formation as a direct result of the absorption of physician practices and the liability issues associated with private attending physicians now insured in the commercial marketplace.

This will be a wholesale transfer of balance sheet risk from commercial carriers to the captive market. I am not speaking of some future strategy that we'll be writing about for years to come; I'm speaking of the employment of thousands of physicians across the country in the next 24 months and the impact that this will have on everything to do with the risk management, risk financing and capacity issues associated with health care liability insurance.

So with regard to health care reform and its "murky future," I predict one thing that is clear: Health care risk management, insurance and reinsurance capacity and single-parent captives for health care providers constitute a growth industry of enormous importance and one worth watching and planning for in the days ahead.

Michael Maglaras,
Principal
Michael Maglaras & Co.
Ashford, Conn.

Finite: Appeals heard in fraud convictions of ex-Gen Re, AIG execs

CONTINUED FROM PAGE 1

financial officer; and Christian M. Milton, former AIG vp for reinsurance.

The five were convicted in February 2008 on charges of conspiracy, securities and mail fraud, and making false statements to the U.S. Securities and Exchange Commission. All were sentenced to prison and fined, but appealed their convictions.

Prosecutors alleged that the executives engineered a bogus loss portfolio reinsurance transaction that helped AIG inflate its loss reserves by \$500 million in 2000 and 2001. The deal, aimed at countering stock analyst concerns about AIG's reserves, transferred no risk to AIG and included an unwritten side agreement that AIG would refund Gen Re's \$10 million premium and pay it a \$5 million fee.

However, defense attorneys argued last week that the trial court took AIG's multibillion stock price drop in 2005 as proof that the finite reinsurance deal was "material," requiring AIG to inform investors, but that prose-

cutors lacked evidence on what really hurt the stock price.

"There was a great deal of other bad news about AIG at the time," the defense said in Ms. Monrad's brief, without specifying. The defense also said prosecutors redacted mention of alternate explanations for the stock drop, interfering with the trial's fairness.

But the defense could have presented evidence in the trial to show that the stock price was irrelevant and it didn't, said assistant U.S. Attorney Raymond Patricco. He also the defense raised no other reasons for the drop in AIG's stock price and that AIG's insurance reserves mattered to investors.

Mr. Ferguson's lawyer, Paul A. Engelmayer, a partner at Wilmer Cutler Pickering Hale & Dorr L.L.P., said evidence about events such as conversations that took place between Oct. 31, 2000, and Nov. 13, 2000, shouldn't have

been included in the case. He said the alleged conspiracy didn't take place before Nov. 13.

But prosecutors said the evidence showed the alleged conspiracy began before Nov. 13, such as testimony about AIG's desire to address stock market criticism by doing the unusually structured deal.

The defense also argued that the prosecution's use of recorded phone calls conveyed to the jury that AIG routinely engaged in accounting fraud. As the sole AIG defendant, such evidence portrayed Mr. Milton as guilty by association and prejudiced the jury against him, argued said Kannon K. Shan-

mugam, a lawyer a partner at Williams & Connolly L.L.P. and Mr. Milton's attorney.

Meanwhile Mr. Graham's lawyer, Alan Vinegrad, a partner at Covington & Burling L.L.P., said the jurors should have heard testimony from Mr. Graham's boss,

Timothy McCaffrey, who then was Gen Re's general counsel.

Mr. Vinegrad said Mr. McCaffrey would have shed light on important matters. For example, a Dec. 22, 2000, e-mail that Mr. Graham sent to Mr. McCaffrey said that how AIG books the deal "is between them, their accountants and God; there is no undertaking by them to have the transaction reviewed by their regulators." While Mr. McCaffrey had been named as a possible witness, he never was called to testify.

"The government scared (Mr. McCaffrey) off," Mr. Vinegrad said last week. "They realized they didn't want him on the stand in Mr. Graham's defense." Testimony from Mr. McCaffrey would have provided character evidence about Mr. Graham, Mr. Vinegrad said.

Prosecutors criticized "conjecture" about what Mr. Graham might or might not have done, and cited Mr. McCaffrey's "self-interest in minimizing the fraudulent nature" of the AIG deal. They also said evidence of Mr. Graham's role in the scheme included taped phone calls, hundreds of pages of e-mails and documents,

and testimony from cooperating co-conspirators.

The appeals court took the case under advisement and will issue a ruling at a later date.

Although not familiar with the specifics of the appeals, attorneys said defendants such as the five former executives typically have an uphill battle in overturning their convictions.

Robert A. Mintz, a former federal prosecutor who heads the white-collar criminal defense group at McCarter & English L.L.P., said that for the appeals court to overturn the convictions, it would have to find not only that mistakes were made but that they were material errors. "It's hard to assess the likelihood of their success without having sat through the trial, but generally speaking, appealing a criminal case is a battle," he said.

Generally speaking, said Peter J. Henning, a professor at Wayne State University Law School in Detroit, the appeals court will favor preserving the convictions. "It's not impossible" to overturn them, Mr. Henning said. "But it's not easy."



Paycheck: Sex bias bill fails to beat GOP filibuster

CONTINUED FROM PAGE 3

to participate, the Paycheck Fairness Act would have automatically included employees in class actions except those who opt out of the litigation.

Another provision to which employers objected would have required them to show that a pay disparity was based on a "bona fide factor other than sex," such as education, training or experience. However, this defense would not apply if the employee demonstrated that there was an alternative employment practice that served the same business purpose without producing a disparity in pay.

The bill was "such a significant expansion of the law, there's nothing common sense or moderate about it," said Michael Eastman, executive director-labor law policy for the U.S. Chamber of Commerce in Washington, discussing the issue before the Senate vote.

"We're relieved that today is behind us," said Michael Layman, manager of labor and employment policy at the Alexandria, Va.-based Society for Human Resource Management, which also opposed the legislation.

Observers say the bill is unlikely to win passage, at least in the next Congress. Even if it were reintroduced, "I would be surprised if it passed the House," said Jeffrey L. Braff, a member of law firm Cozen O'Connor P.C. in Philadelphia.

"Legislatively, certainly, it's in a deep freeze for two years," said Lawrence Z. Lorber, a partner with law firm Proskauer Rose L.L.P. in Washington.

"Republicans are not going to vote for anything that's going to apply new penalties for employers because the whole mandate now is jobs, jobs, jobs," said Andrez Carberry, an associate with law firm Fox Rothschild L.L.P. in New York.

Jonathan T. Hyman, a partner with law firm Kohrman Jackson & Krantz P.L.L. in Cleveland, said after the 2008 election, there "was a lot of prognosticating" about employment laws that were expected to be passed under the Obama administration.

Under President George W. Bush, Congress passed the Genetic Information Nondiscrimination Act of 2008 and the ADA Amendments Act of 2008, but the only significant employment legislation to become law during President Barack Obama's administration has been the Lilly Ledbetter Fair Pay Act (BI, Feb.9), Mr. Hyman said.

"For all the bluster of how this was going to be the Golden Age of new employment laws, it kind of fell flat," Mr. Hyman said.

For instance, the administration-supported Employment Nondiscrimination Act, which would extend employment anti-discrimination laws to include sexual orientation and gender identity, has not yet been voted on by either house.

But employers still face significant litigation under current laws. "There's still a lot of gender discrimination class actions," including the unequal pay case brought by Walmart Stores Inc.'s female workers (BI, May 3). Compensation is an issue that "is not going to go away by a long shot," Mr. Lorber said.

Banks: D&O battle brews amid bank failures

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Heritage is a typical case among community banks that were "ill-equipped" for the commercial real estate lending strategies they pursued, Floyd Robinson, the FDIC's senior counsel for the professional liability and financial crimes unit in Arlington, Va., told the Professional Liability Underwriting Society's 23rd annual PLUS International Conference that met Nov. 10-12 in San Antonio.

"What you see in Heritage is what you are going to see in a number of cases the FDIC has (before it)," Mr. Robinson said. "Unfortunately, a number of community banks in the country got caught up in the (commercial real estate) lending frenzy."

More litigation expected

Speakers who also addressed the PLUS conference said they expect more litigation over D&O policy proceeds because FDIC investigations of many failed banks are just getting under way while shareholder or investor suits involving the same banks already have begun.

"I do think that we are likely to see more cases like this," said Diane M. Parker, assistant vp for professional liability claims at Allied World Assurance Co. (U.S.) Inc. in Irving, Texas.

But LaVonda Alleman, vp and senior account executive at Lockton Cos. L.L.C. in Kansas City, Mo., said several underwriters have told her that they have not seen such situations arise. Instead, the underwriters tell her they are

seeing cases where regulators, rather than shareholders, are tapping existing D&O policy limits, said Ms. Alleman, who was not a PLUS conference speaker.

For shareholders to assert a right to D&O policy proceeds in cases where the FDIC is demanding the same insurance proceeds, they must convince courts that

'I don't think these are slam-dunk questions for anybody. These are complicated issues and everyone is trying to pursue what they believe is a remedy available to them.'

James F. Smith, Butler Pappas Weihmuller Katz Craig L.L.P.

they are bringing a direct claim and not a derivative claim, said Susan N.K. Gummow, a D&O expert at Butler Pappas Weihmuller Katz Craig L.L.P. in Chicago, who spoke at the PLUS conference.

By federal law, a bank's available D&O policy limits in derivative claims cases belong to the FDIC, PLUS conference speakers said.

Derivative claims are those that allege injury to a bank ultimately

harmed its shareholders. Examples of derivative claims include allegations of mismanagement, failure to comply with regulatory requirements or poor lending practices.

To establish a direct claim, however, a shareholder must plead that they suffered a direct loss that is different from any injury to the bank or to all shareholders as a group, Ms. Gummow said.

The line between the two types of claims often is blurred, though, and courts must sort out such litigation case-by-case, speakers told the PLUS conference.

The FDIC's Mr. Robinson said that "a lot of these pending shareholder actions (in instances such as the Heritage case) really are not direct claims, they are derivative claims."

In fact, shareholders suing Heritage bank state that they are asserting a derivative claim, court documents show. But they are essentially alleging that officers of the holding company, and not the bank, failed to advise them of the bank's precarious financial condition.

Laws stating that a bank's D&O policy limits belong to the FDIC may not apply when shareholders are suing the directors and officers of the bank's holding company, said James F. Smith, a partner in the Chicago office of Butler Pappas. But that issue remains to be settled, said Mr. Smith, who filed the shareholder lawsuit in the Heritage case when he was employed at another law firm.

"I don't think these are slam-dunk questions for anybody," said Mr. Smith, who no longer represents the shareholder plaintiffs in the Heritage case. "These are complicated issues and everyone is trying to pursue what they believe is a remedy available to them."

News In Brief

CONTINUED FROM PAGE 1

plaintiffs accept the deal for it to go into effect. More than 98% of the plaintiffs who alleged the most severe injuries resulting from their work at the site have agreed to the settlement, WTC Captive and attorneys said. In addition, more than 95% of the plaintiffs with less severe injuries also agreed to the settlement.

Chartis lays off 500 employees

Chartis Inc. has laid off about 500 employees, saying in a statement that, as part of a year-end review, it conducted "a resizing of our staffing levels across the organization to reflect our business objectives." The insurer continues "to hire across the board where we see the best potential for growth. Overall, the reductions amount to less than 2% of Chartis' employees." A spokeswoman did not elaborate. Chartis' parent company, American International Group Inc., reported a \$2.4 billion third-quarter loss.

Grandfathered plans can change insurers: Agencies

Employers are allowed to change insurers without their health care plans automatically losing grandfathered status under the health care reform law, federal regulators said. In a reversal of their previous position, the Departments of Labor, Treasury and Health and Human Services said forcing an employer to stay with an insurer to keep a health plan's grandfathered status would give that insurer an unfair advantage.

QBE buys Ren Re's U.S. P/C business

QBE Insurance Group Ltd. has entered into an agreement to acquire RenaissanceRe Holdings Ltd.'s U.S. property/casualty business for \$275 million, QBE said. The acquisition includes the reinsurer's commercial property operations, property/casualty business underwritten by various managing general agents and its U.S. crop insurance business

underwritten by Argo National Inc., RenaissanceRe said in a statement.

CMS delays reporting of liability claims

The Centers for Medicare and Medicaid Services said it will delay by one year the mandatory reporting of certain liability claims data. The submission of initial liability claims reports necessary to meet Medicare Secondary Payer requirements has been delayed to Jan. 1, 2012, from Jan. 1, 2011, for claims that do not involve ongoing medical responsibility.

Hardy rejects Beazley's sweetened offer

Hardy Underwriting Bermuda Ltd. has rejected a slightly sweetened buyout offer from Beazley P.L.C., Beazley said. The insurer and reinsurer said it had increased its offer for Hardy to £3.30 (\$5.33) per share, up from the £3 (\$4.84) per share offer it made in October. That would increase the offer's value from £158.4 million (\$255.6 million) in October to £174 million (\$280.77). In its interim management statement, Beazley said it made the revised offer on Nov. 4. However, Beazley said it was informed that Hardy's board would not recommend the offer to shareholders and was not willing to meet with Beazley to discuss a potential deal.

Federal jury rules against BankAtlantic in investor suit

A federal jury has decided that BankAtlantic Bancorp Inc. executives misled investors about risks in the bank's real estate loan portfolio in 2007. The jury found that misleading statements from bank executives led investors to overpay by \$2.41 per share for BankAtlantic's stock between April 26, 2007, and Oct. 25, 2007.

Noted

A.M. Best Co. Inc. has upgraded the financial strength ratings of **Zurich Insurance Co.**'s U.S. subsidiaries to A+ (superior) from A (excellent), the rating agency said. Included in the ratings upgrade were the U.S. group's lead company, Zurich American Insurance Co., and its rated property/casualty pooling affiliates....This year's fourth quarter has shaped up to be much like the rest of the year as U.S. commercial insurance market conditions remain soft, according to preliminary rate information released by **Marsh Inc.**

IRMI: Contractors add risk

CONTINUED FROM PAGE 4

"They might say, 'Hey, I always built buildings. I'm going to build a road now. I'm going to get into infrastructure'" said Paul R. Becker, president of the construction division of Willis North America Inc. in Nashville, Tenn. "That may as well be building cars and building airplanes. It's two completely different outcomes. It feels like contracting and it looks like it," he said, but they have "nothing to do with each other."

Exposures get even more complicated when contractors move into states where they have not operated previously, experts said. Apart from unfamiliar legalities and regulations, the nuts and bolts of construction can change drastically from region to region, they said.

"There are the things that go into everyday contracting, so there's different soil conditions, different predictability in what it's going to cost to hire subs," said Jeffrey A. Segall, senior vp with Willis of Florida Inc. in Tampa, Fla.

Moving to a new geographic location puts contractors into a "different selection pool of subcontractors, so you don't necessarily know who's good and who might be problematic from a quality

IRMI draws 1,000 to conference

ORLANDO, Fla.—The 30th IRMI Construction Risk Conference in Orlando, Fla., sponsored by the Dallas-based International Risk Management Institute Inc., attracted about 1,000 risk managers, brokers, underwriters and others specializing in managing or insuring construction risks.

Next year's conference is scheduled for Nov. 13-17, 2011, in San Diego.

More information is available at www.irmi.com.

—By Michael Bradford

standpoint," said Liberty Mutual's Mr. Conroy. "And if you start doing work that you haven't done before, there's a huge risk in it from a business standpoint for the contractor and, in a derivative fashion, for the insurance company."

Contractors need to keep "their eyes open and keep their insurance companies advised" so insurers don't find out about a new

venture when a claim is filed, Mr. Conroy said.

Contractors already familiar with the type of building "obviously understand the risks and exposures in that area and price their jobs accordingly," said Timothy R. Kania, senior vp of energy and construction at Liberty International Underwriters in New York.

"If you're winning those bids, it means you are undercutting the specialists who probably understand the risks associated with it and what's required to do the job on a quality basis," said Mr. Kania. "You're beating out the people who really understand that business and you're trying to learn it as you go."

When contractors move into a new specialty area, "the No. 1 issue is whether they have the expertise to complete the job successfully," said Zurich's Mr. Rasor. The goal is "to put together a project that functions as it was intended, without defects," while managing the construction site "in a manner that sends people home at the end of the day and doesn't cause damage to the environment and the neighbors. If that is not already in their core skills set, the question is, how do they obtain it?"

That happens, he said, either by "joint venturing with someone who has that expertise or integrating into that business by merger or acquisition."

WCF: Experts offer insight

CONTINUED FROM PAGE 4

the 2010 *Business Insurance* Risk Management Honor Roll, noted that while some colleges and universities use captives, a major component of Auburn's risk financing program is a self-insured retention fund for general liability and auto liability. "We were able to develop this self-insured retention fund with a trust for very little money," she said. "Over time, it has done very well."

A portion of the retention fund's assets are invested through the university's endowment, with the earnings earmarked for the university's risk management operations.

The university gets involved in the alternative risk transfer market through the excess liability coverage it obtains through United Educators Insurance, a Reciprocal Risk Retention Group.

Formed in 1986 as a group captive to meet the insurance needs of certified public accountant firms, CAMICO has managed to retain

200 attend WCF in Arizona

SCOTTSDALE, Ariz.—The 20th Annual World Captive Forum drew more than 200 attendees to the Hyatt Regency Scottsdale Resort & Spa at Gainey Ranch in Scottsdale, Ariz.

For information on the 2011 World Captive Forum, visit www.worldcaptiveforum.com.

—By Rodd Zolkos



members despite changing markets and large losses through the value-added services it provides, Mr. Olson said.

The insurer has an intense focus

on risk management and loss control, and offers members services such as advice hot lines and continuing education.

Even though policyholders could get coverage at lower prices elsewhere, CAMICO has been able to keep its policyholder retention rate above 90% because of its value-added services, Mr. Olson said.

The financial crisis has affected the company, Mr. Olson said, noting that when times are bad, "people sue accountants." CAMICO lost \$15 million in surplus in 2008, much of that in the fourth quarter, he said. As a result, the company entered into a quota share reinsurance arrangement in 2009 that reduced its retentions by 47.5%.

In 2010, the company reduced its retention per risk to \$500,000 from \$1 million and reduced policy limits to \$2 million or less. Now the insurer is seeing a return to historical loss patterns.

In 2011, the company plans to introduce new products that complement its other products and services, and might look to create a captive to provide a deductible funding plan for CPA firms.

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Diners quick to file claim after snail explosion

Just judging by the litigation, it looks like restaurants are becoming an increasingly dangerous place for diners.

While a restaurant patron complained recently that he should have been told how to eat an artichoke (*BI*, Nov. 15), two other plaintiffs reportedly are suing a restaurant for a plate of escargot that allegedly exploded.

Chadwick T. St.-O'Hara and Steve Righetti are suing the Seafood Peddler Restaurant & Fish Market in San Rafael, Calif., over an alleged incident in June in which an escargot burst from their plate when a fork was put to the snail, resulting in a spray of hot garlic butter on their faces and clothing.

Mr. St.-O'Hara alleges that the butter got into one of his tear ducts, causing temporary vision impairment, while Mr. Righetti said he felt humiliated during his birthday meal.

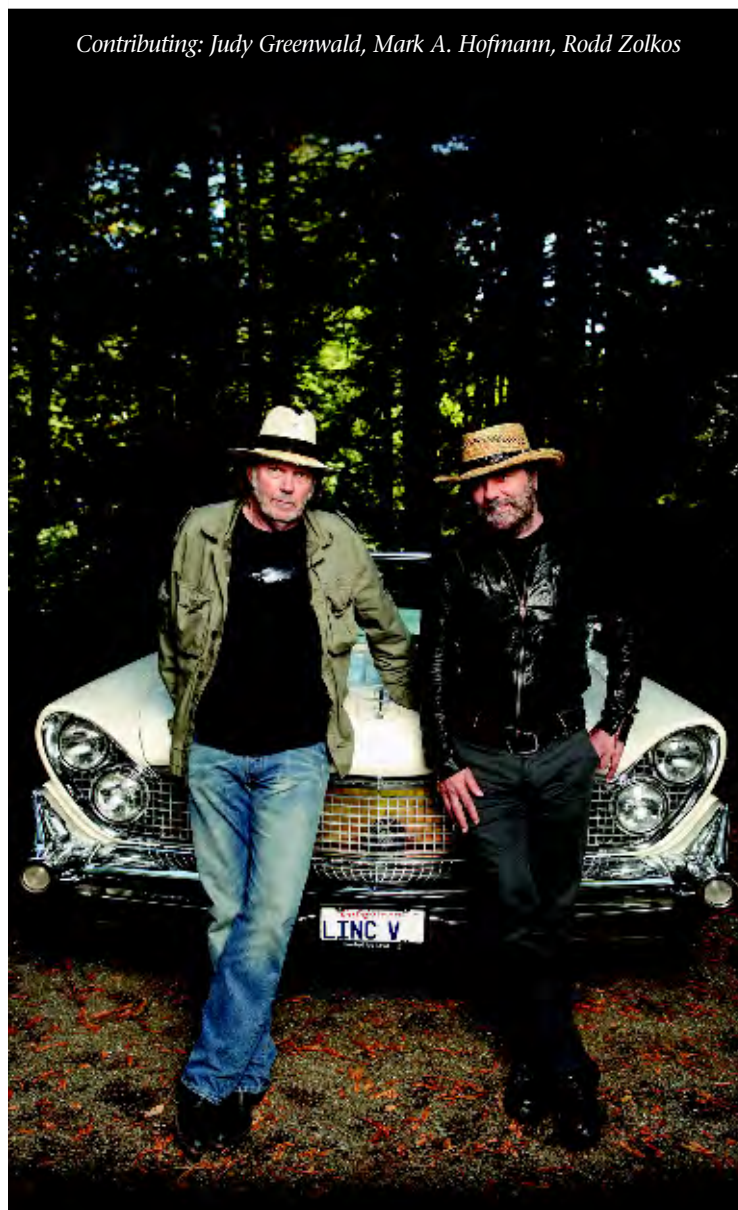
But both men continued eating the meal, according to the Marin Independent Journal.

The article said the men decided to pursue their case in small claims court after Farmers Insurance Group refused their claim filed with the restaurant. A Farmers spokesman could not be reached for comment.

It was the restaurant staff's "indifference" and "rudeness" that prompted the legal action, Mr. St.-O'Hara told the newspaper.

Business Insurance END PAGE

Contributing: Judy Greenwald, Mark A. Hofmann, Rodd Zolkos



Neil Young, left, with musician Daniel Lanois and Mr. Young's 1959 Lincoln Continental hybrid, which was damaged in a fire.

Neil Young's car burned in fire

Neil's Garage, Neil Young's virtual storehouse for information about his activities, career and interests, is open for business as usual.

Sadly, Mr. Young's warehouse, a very real space in San Carlos, Calif., in which the rocker stored equipment, memorabilia and a hybrid car he's been developing, was the site of a recent fire that caused an estimated \$1.1 million in damage to the building and contents.

Adding to the sting is that the fire appears to have started in a 1959 Lincoln Continental that Mr. Young had converted to run on batteries and a biodiesel-powered generator as part of an effort to demonstrate alternative energy technologies. In a statement, Mr. Young said the fire appeared to have been caused by a wall charging system for the LincVolt that had not been fully tested and should not have been left unattended.

The fire, which broke out early in the morning of Nov. 9, caused an estimated \$850,000 in damage to the contents of the warehouse, including extensive damage to the LincVolt. Damage to the building was estimated at \$250,000.

Firefighters reportedly saved at least 70% of the contents of the warehouse, including five other classic cars.

In the statement, Mr. Young thanked the Belmont-San Carlos Fire Department and said efforts to rebuild the LincVolt were under way. He also waxed philosophical, quoting the Japanese poet and samurai Masahide: "Barn's burnt down. Now I can see the moon."



Philip K. Howard and Jon Stewart met last week on "The Daily Show."

STEWART SHOWS LOVE FOR COMMON GOOD

Resisting a stated desire to hug one another, Common Good Chair Philip K. Howard and Jon Stewart, host of television's "The Daily Show," engaged in a largely serious, if brief, discussion of Mr. Howard's views on the failings of U.S. government last week.

Likening existing government bureaucracy to "sediment in the harbor," Mr. Howard, a lawyer, writer and legal reform proponent, said during the Thursday show that "no one can use their common sense" in the current system.

While saying Americans have "never needed government more" than they do now, Mr. Howard suggested that politics continually interfere with the government truly serving the common good.

"The current political system has almost a conspiracy to argue about things that aren't relevant," he said, adding that because of the existing political climate, "We've completely lost sight of the common good playing this partisan game."

Mr. Stewart told the Common Good chair that he'd "been reading and admiring your books for many years now." Still, Mr. Howard's time was cut short, due largely to the host's extended riff on arch nemesis Glenn Beck of Fox News that filled much of the episode.

The complete interview is available online, however, at www.thedailyshow.com.



Mr. Buffett

REUTERS/LANDOV

WARREN BUFFETT WINS HIGHEST HONOR

What do you give the man who has everything, including a spot on every list of the world's richest people?

How about the 2010 Medal of Freedom?

Warren Buffett, chairman and CEO of Omaha, Neb.-based Berkshire Hathaway Inc., is one of 15 winners of this year's Medal of Freedom, a White House official said.

The medal is the nation's highest civilian honor. The White House said the award is given to individuals who have made "especially meritorious contributions to the security or national interests of the United States, to world peace, or to cultural or other significant public or private endeavors."

Mr. Buffett is a savvy investor and a longtime contributor to Democratic Party causes. But he also is known for his philanthropy and modesty, living in a house he bought decades ago, driving himself to the office and eating at local steakhouses.

That modesty also was evident in an op-ed column written by Mr. Buffett that appeared in the New York Times last week.

The column, written in the form of a thank-you note to Uncle Sam, praised the government for taking decisive action during the 2008 financial crisis.

"America's dominoes were lined up, ready to topple at lightning speed," Mr. Buffett wrote. "My own company, Berkshire Hathaway, might have been the last to fall, but that distinction provided little solace."

Fortunately, that didn't happen. For Mr. Buffett, a Medal of Freedom is a distinction well deserved.

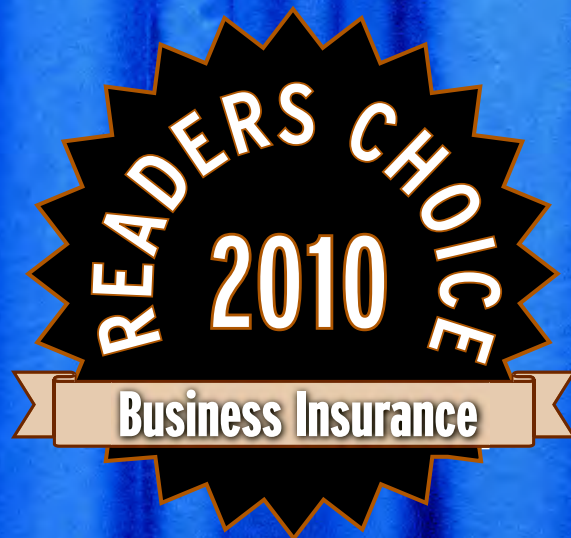
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Business Insurance readers pick the top service providers in the commercial insurance industry. Profiles of the Readers Choice Award winners start on page 12.

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