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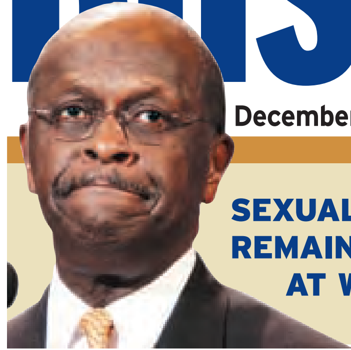

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TRUCKER CELLPHONE BAN EXPECTED TO IMPROVE SAFETY / PAGE 4

OWNING UP TO ERRORS HELPS DOCS REDUCE CLAIMS, COSTS / PAGE 9

In Brief

P/C rates post first rise since '05

Commercial U.S. property/casualty insurance rates rose an average of 1% in November compared with the same period a year earlier, the first across-the-board increase in more than six years, according to MarketScout. No class of coverage registered a rate decrease. Rates for commercial property, business owner policies and workers compensation all increased 2%, while business interruption, general liability, commercial automobile and employment practices liability insurance all increased 1%.

U.S. broker industry stable: Fitch Ratings

The 2011 outlook for the U.S. insurance brokerage industry remains "stable," according to an analysis by Fitch Ratings Inc. "Prospects for revenue and

See **IN BRIEF** page 21

year in review 2011

From catastrophes to health care reform, 2011 presented fresh challenges for risk managers and benefit managers. *Business Insurance* editors identified the top issues of the year as well as the top newsmakers. Also, find out what were the best and worst developments of the year. PAGE 12

SAFETY

Game changer for mine safety?

Record settlement in mine explosion signals new focus

By ROBERTO CENICEROS

AP PHOTO

Twenty-nine workers were killed in an explosion at the Upper Big Branch mine in West Virginia in April 2010.

MONTCOAL, W.Va.—Last week's record $209 million settlement in the West Virginia explosion that killed 29 miners is a safety game changer for the U.S. coal industry, insurance and mine safety experts said.

The "nonprosecution" agreement between the U.S. government and Alpha Natural Resources Inc. is the "largest-ever resolution in a criminal investigation in a mine disaster," the U.S. Attorney's Office said in a statement. It addresses Massey Energy Co.'s corporate criminal liability in the 2010 Upper Big Branch mine explosion in Montcoal, W.Va., but not potential criminal charges against individuals.

Abingdon, Va.-based Alpha acquired Massey, the mine's former owner, on June 1.

Investigators found evidence that Massey enforced a workplace culture valuing production over safety, "including practices calculated to allow it to operate in violation of the law," according to a Mine Safety and Health Administration report also released last week. The investigation revealed aggressive efforts to avoid safety and health compliance, thwart regulators from detecting noncompliance and management intimidation of miners to keep them from raising safety concerns.

MSHA concluded that preventable methane accumulation and a massive coal dust explosion caused the miners' deaths and injured two other workers.

But Alpha has a good reputation for mine safety practices, and the settlement signals Alpha's effort to put Massey's liabilities behind it, sources said.

"I think Alpha is saying, 'When we bought Massey, we bought a whole lot of problems and we bought their reputation,' so they are trying to say, 'OK, let's get this settled and start off by doing it right,'" said Bruce E. Dial, a mine safety consultant at Dial Mine Safety in Pineville, N.C. He also worked 25 years as an inspector for MSHA and previously was an instructor at the National Mine Health and Safety Academy.

The largest previous mine disaster settlement involving similar accusations was about $4.5 million, Mr. Dial said. The MSHA could not be reached for comment.

But the size of last week's settlement will encourage mine operators to spend on accident prevention measures, despite a tendency to cut back on such spending in a tough economy, Mr. Dial said.

The settlement's size sends a message that ignoring safety will not be tolerated, said Roger Fries, president and CEO of Lexington, Ky.-based workers compensation underwriter Kentucky Employers' Mutual Insurance, which also covers mine operators.

"There are lessons to be learned here; and I honestly believe the safety-conscious coal operators believed in (safety measures) before, and I will say they believe in it even more now (due to the 29

See **MINES** page 20

RISK MANAGEMENT

Criminal flash mobs pop up as new risk

By MIKE TSIKOUDAKIS

Risk managers at retail organizations are focusing on safety and loss prevention protocols to address the recent trend of criminal flash mobs during the holiday season.

While estimated losses from criminal flash mob and flash rob events are relatively low, there is a concern among risk mangers for safety around their operations and about public relations issues that ensue after an attack, experts say.

Not to be confused with flash mobs—groups that assemble in public spaces for entertainment and are thought to be relatively harmless—flash robs consist of groups that organize through social media to suddenly assemble in a public space to plunder stores, an activity that sometimes escalates to a level that can't be controlled by loss prevention, mall security or police, experts say.

The National Retail Federation said criminal flash mob events are an increasing trend and warned retailers of potential risks, according to an August statement.

Ten percent of the 106 retailers surveyed by the federation in July reported being victimized by at least one criminal flash mob event over the previous 12 months, with occurrences often resulting in injuries to customers or employees, theft and property damage.

See **MOBS** page 21

MOB MENTALITY

Steps to consider to prepare for the risk of a criminal flash mob attack

- Establish policies and procedures to protect employees and customers from injury.
- Establish local and corporate communication guidelines to field questions from the media.
- Monitor social media to assess criminal flash mob threats.
- Determine apprehension guidelines to protect employees from injury.
- Establish "observe and report" protocols and documentation.
- After an event, secure surveillance recordings and preserve areas touched by theft suspects.

Source: Zurich Services Corp., the risk engineering unit of Zurich North America Commercial

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NEWSPAPER

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Business Insurance

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2011 WOMEN TO WATCH

profiles

VIEW FULL PROFILES ONLINE: *Business Insurance*'s annual Women to Watch feature recognizes women doing outstanding work in risk and benefits management, insurance and related fields. Full versions of the profiles of this year's honorees are at *www.BusinessInsurance.com/women2011.*

MOST POPULAR STORIES
Week of December 5, 2011

1. Injury caused by dog compensable: Tenn. high court
2. Former Marsh exec alleges malicious prosecution
3. U.S. P/C composite rates post first rise since 2005
4. Travelers units sued over discounting comp medical fees
5. Catastrophes cost U.S. P/C industry $38.6B in nine months
6. Injured worker's opioid overdose death compensable
7. Chubb adds cyber security to private-company liability cover
8. OSHA sues Whole Foods over firing of whistle-blower
9. Foreign insurers miss the China party
10. Chartis obtains $575M in cat reinsurance with Compass Re

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EMPLOYMENT PRACTICES

Harassment remains major workplace problem

Informal environments, social media fuel problems

By JUDY GREENWALD

While it may seem that sexual harassment in the workplace should be a relic of the past, observers say the problem persists.

Greater informality in today's workplace, widespread use of social media and basic human nature all contribute to keeping sexual harassment a major issue in the workplace.

Experts say employers should use a strong policy, training and an accessible complaint program to discourage and address sexual harassment (see story, page 20).

The issue has gained fresh attention with Herman Cain's decision to suspend his presidential campaign amid allegations that included disclosure of two confidential agreements that settled sexual harassment charges while he was president of the Washington-based National Restaurant Assn. Observers say these claims generally are settled with confidential agreements.

While the number of sexual harassment complaints filed with the U.S. Equal Employment Opportunity Commission fell 7.7% in fiscal 2010 vs. the previous year, sexual harassment remains a significant problem. According to the EEOC, there were 11,717 sexual harassment charges filed in fiscal 2010.

But according to an April 2010 survey by the Alexandria, Va.-based Society for Human Resource Management, 64% of organizations received at least one sexual harassment claim in the previous two years, with 57% saying there had been no change in the number and 25% reporting an increase.

"You would think it would be old news, but it isn't, and it keeps coming up," said Paul E. Starkman, an employment defense attorney and partner with law firm Pedersen & Houpt in Chicago, who estimates that sexual harassment accounts for "a good 20% to 25% of my practice."

"It continues to be one of the most frequently asserted employment claims that we get in the workplace," said Gregg M. Lemley, a shareholder with Ogletree, Deakins, Nash, Smoak & Stewart P.C. in St. Louis.

It is a problem that extends "all the way up to the C-suite," said Nigel F. Telman, a partner with law firm Proskauer Rose L.L.P. in Chicago.

However, the type of sexual harassment has changed over the past 20 or 30 years, said Joseph R. Harkins, a partner with Littler Mendelson P.C. in Washington.

Where previously "it was more common to see quid pro quo," where women were asked for "sexual favors in exchange for some employment benefit, now I think the vast majority are hostile environment theories," Mr. Harkins said.

AP PHOTO

Former presidential candidate Herman Cain suspended his campaign after several issues arose, including allegations that he sexually harassed former coworkers.

Several factors explain why sexual harassment remains a workplace issue.

The harassers "are not thinking with their brains, they're thinking with other parts of their bodies," said Mr. Starkman. Particularly on the executive level, this "has a lot to do with arrogance and people not thinking that the rules apply to them."

While the means may be different, with today's use of text messages, emails, Facebook posts and tweets, "As long as we have males and females in the workplace," this sort of activity will continue, Mr. Lemley said.

"We spend so much of our lives in the workplace," which has "become less and less formal," like much of society, said Diana L. Hoover, a partner with Hoover Kernel L.L.P. in Houston.

"In the old days, there was delineation between when you go to work and what you do outside of work," Mr. Telman said. At work, "you conducted yourself in a certain way." But with longer work days and more casual dress codes, particularly among young people, there has been a "blurring of the lines between what happens at work and what happens in your social life," he said.

The proliferation of email and other social media has contributed to the issue, said Mr. Telman. People feel more

See **HARASS** page 20

HEALTH CARE REFORM

Health reform rule draws brokers' fire

Commissions not carved out

By MARK A. HOFMANN

WASHINGTON—Capitol Hill is the key battlefield as insurance producers attempt to have their commissions excluded from minimum medical loss ratio calculations under the Patient Protection and Affordable Care Act.

PPACA requires health insurers to spend at least 85 cents of every premium dollar collected on health care in the large-group market and 80 cents in the individual and small-group markets.

Agent and broker groups sought to have their commissions excluded from the requirement and hoped that a recent National Assn. of Insurance Commissioners' recommendation backing their stance would bolster their cause.

However, the Department of Health and Human Services dashed those hopes this month when HHS promulgated a final rule that does not carve commissions out of the formula. That leaves Capitol Hill as the best chance to change the MLR calculation.

Rep. Mike Rogers, R-Mich., introduced the Access to Professional Health Insurance Advisors Act of 2011 in March. H.R. 1206, which has 140 co-sponsors, would amend the Public Health Service Act to exclude remuneration paid to licensed independent insurance producers from administrative cost calculations for purposes of calculating the medical loss ratio of a health insurance plan.

The proposal would define an "independent insurance producer" as an "insurance agent or broker, insurance consultant, benefit specialist, limited insurance representative and any other person required to be licensed under the laws of the particular state to sell, solicit, negotiate, service, effect, procure, renew or bind policies of insurance coverage or offer advice, counsel, opinions or services related to insurance," according to a summary of the bill prepared by the Congressional Research Service.

Insurance producers want Capitol Hill to exclude their commissions from minimum medical loss ratio calculations.

Although hearings have been held on the issue, the measure has yet to come to a vote and no companion legislation has been introduced in the Senate.

The HHS rule was not unexpected, but nonetheless was dismaying for agents and brokers.

The Washington-based Council of Insurance Agents & Brokers was "disappointed but not altogether surprised" by the HHS announcement, said Joel Wood, senior vp at the council. He said that throughout the NAIC's lengthy debate over whether to support the agent commission carve-out, HHS had indicated an "open-mindedness on flexibility on the issue," which supporters doubted the department would be flexible on the issue.

He said the council will continue to work with its partners in other producer groups to win passage of the House bill.

"We're going to focus our resources" on H.R. 1206, which has strong bipartisan support in the House," said Charles Symington, senior vp at the Alexandria, Va.-based Independent Insurance

See **MLR** page 20

LIABILITY & LITIGATION

Ex-Marsh exec sues broker over Spitzer investigation

McBurnie says firm made him scapegoat, damaging his career

By MARK A. HOFMANN

TRENTON, N.J.—Another former Marsh Inc. executive has filed suit against the New York-based broker, alleging that Marsh set him up for malicious prosecution during former New York Attorney General Eliot Spitzer's investigation of alleged misconduct in the brokerage industry.

Former Marsh Senior Vp William L. McBurnie filed the suit in U.S. District Court for New Jersey in Trenton late last month.

Mr. McBurnie was indicted in 2005 on a variety of counts, including second-degree larceny in connection with the alleged bid-rigging. He denied any wrongdoing, and all charges against him were dismissed in 2009.

Among his allegations in the suit against Marsh Inc., parent company Marsh & McLennan Cos. Inc. and three other Marsh units, Mr. McBurnie alleges that Marsh set him up as a scapegoat and violated his constitutional rights against malicious prosecution, rendered him unemployable in the insurance industry, and failed to pay his legal costs in a timely manner. The suit seeks "in excess of $150,000."

Marsh denied the allegations and promised to "vigorously defend" itself.

"The decision to prosecute William McBurnie was made by the former New York attorney general and a grand jury of the state of New York—not by Marsh," said a spokeswoman for Marsh.

"The company met its obligations to Mr. McBurnie by paying him benefits under its severance pay plan and approximately $5.4 million in legal expenses for the costs of his defense in his criminal case," the spokeswoman said. "These defense costs, which were paid notwithstanding that Mr. McBurnie never went to trial, were acknowledged by his defense counsel to constitute 'fair consideration' and the 'maximum reasonable amount' of fees and expenses for which Mr. McBurnie could possibly be entitled to be reimbursed.

"Marsh long ago addressed and moved beyond the issues that were the subject of the 2004 investigation," the spokeswoman said. "The company intends to vigorously defend against this lawsuit."

This is not the first time Marsh has been hit with a suit by former executives who lost their

See **MARSH** page 21

WOMEN TO WATCH

Gender gaps in pay, roles

Improvements seen, but obstacles persist for women executives

By MATT DUNNING

NEW YORK—While access to positions of corporate leadership in the United States has improved gradually, female executives still face significant disparity in salary, workplace double standards and other obstacles, experts said during the *Business Insurance* 2011 Women to Watch Awards workshop and ceremony last week.

The ratio of women to men in chief executive positions has remained largely flat, and median salaries for female CEOs have increased approximately 13% since 2005, but the gulf between their pay and that of their male counterparts has widened, according to data from the U.S. Bureau of Labor Statistics. Female CEO salaries were equal to about 72% of those paid to men in 2010, down from 74% in 2005.

WOMEN 2011 TO WATCH

"The data tell a pretty compelling story," author and workplace equality consultant Lynn Cronin said in a keynote address at the Dec. 6 awards ceremony. Though women are substantially represented in virtually all fields of labor, she said the BLS data shows strong evidence of a systemic undervaluation of women employees in the workplace, particularly in the corporate sector.

Even for executive positions in which women are the majority, men consistently are paid more. Women made up 52% of financial managers in 2010 and 71% of human resource managers, yet were paid only 66% and 80%, respectively, of what their male counterparts earned, according to BLS data.

Of the 574 job categories and subcategories studied in 2010, fewer than 40 showed women earning within 10% of their male counterparts, and only four had women earning as much or more than men.

"We've moved from an access problem to a success problem," Ms. Cronin said. "Women today have not been as successful at moving through the system of business as their male peers."

The reasons for that inequity vary significantly among industries and individual companies, but one universal factor Ms. Cronin said is likely to blame is the set of "invisible rules of business" that apply to many corporate cultures.

"There are certain basic rules of business that appear to be the same for men and women, but they don't work as well for women," Ms. Cronin said, adding that even well-intentioned core business values can result in difficult, even paradoxical situations for female employees.

For example, most companies encourage their employees to be "team players" by taking pride in group success rather than seeking individual recognition. However, Ms. Cronin's research suggests that women who adhere to a team-player mentality are more likely to be overlooked when accolades and rewards are doled out to individuals.

Conversely, if a woman seeks out recognition for herself, she is more likely to be viewed as being selfish or greedy than would a man in the same position, Ms. Cronin said.

In addition to the institutionalized external issues facing female executives, panelists at the conference said women also must overcome more nebulous challenges within their own culture to achieve greater equality in corporate America. Primarily, panelists said, it has become increasingly important for women in corporate leadership roles to extend themselves as mentors and sponsors to younger generations of women workers, particularly in industries still heavily dominated by men (see story, page 21).

"There's a pipeline that's broken, or leaky at best,

See **WOMEN** page 21

Deadline nears for Innovation Awards entries

The deadline is drawing near for nominations for *Business Insurance*'s 2012 Innovation Awards.

The awards recognize innovation and leadership in products, services and technologies designed for risk managers. Eligible for nomination are products or services that are designed for and made available to professional risk managers that address one or more of the following risk management functions: risk identification, risk assessment/analysis, risk control and risk financing.

To be considered for the 2012 *Business Insurance* Innovation Awards, the submitted product or service must have been rolled out to risk managers or entered the marketplace between Jan. 1, 2011, and Dec. 15, 2011.

Products that are intended for general business or administrative functions and not specifically meant to support the role of risk management are not eligible and will not be considered. A company may submit more than one entry.

An independent panel of risk managers will select the award winners, to be honored during the 2012 Risk Management Summit, which will be held Feb. 29-March 1, 2012, in New York.

Entries must be completed by Dec. 15, 2011, using the official submission form, which can be downloaded at *www.businessinsurance.com/innovation2012*. Entry forms also are available for download at the Awards and Events page at *www.businessinsurance.com*.

Errors and omissions

- The teaching status of Marcia Benshoof, president of benefits at IMA Financial Group Inc. in Denver and one of *Business Insurance's* 2011 Women to Watch, was incorrectly stated in the Dec. 5 issue. She formerly held a faculty position at the University of Colorado's Health Sciences Center.
- Due to incorrect information provided to *Business Insurance,* a Dec. 5 story, "Firms Seek Medical Second Opinions," misstated the per employee per month charge by Best Doctors Inc. for its medical second-opinion service. The correct charge is $2 to $3 per employee per month.
- In the Nov. 14 issue, the first name of Jack Probolus, wrap-up marketing director for commercial markets for Liberty Mutual Group Inc., was misstated in the story "Construction Wrap-Up Cover Evolves."

CATASTROPHES

AP PHOTO

Manhattan flooded Aug. 28 after Tropical Storm Irene hit the East Coast of the United States. Catastrophe losses for U.S. insurers soared in 2011.

2011 catastrophe losses hit U.S. insurers hard

Nine-month losses almost double total for all of last year

By MARK A. HOFMANN

Catastrophe losses continue to mount for insurers and reinsurers across the globe, according to several reports released in the past week.

For example, in a report issued last week, A.M. Best Co. Inc. said catastrophes cost the U.S. property/casualty insurance industry an estimated $38.6 billion in losses during the first nine months of the year.

That is an increase of 140% from the amount of catastrophe losses suffered by U.S. insurers during the same period in 2010, according to the Oldwick, N.J.-based rating agency. This year's nine-month estimated total is nearly double the $19.6 billion in catastrophe losses sustained by U.S. insurers during all of last year.

Best said the "vast majority" of the losses were associated with tornadoes and hailstorms that struck the Midwest and Southeast during the spring, as well as Hurricane Irene in September and blizzards in the Midwest.

In addition, some U.S. insurers suffered losses in catastrophes outside the United States, including the March earthquake and tsunami in Japan.

In an analysis, Best said that while the natural catastrophes will have a material impact on the property/casualty insurance industry from an earnings perspective, Best "believes the overall industry's capital will effectively absorb these catastrophe-related losses."

An Aon Benfield Analytics report released last week that concerns the global reinsurance market noted the impact of catastrophes on that sector but said reinsurers maintain "robust capital positions."

Aon Benfield, a unit of Chicago-based Aon Corp., said global reinsurer capital declined 4% to $450 billion as of Sept. 30 compared with the end of last year. The report, "Aon Benfield Aggregate: Nine Months Ended September 30, 2011," which tracks the financial performance of 28 leading reinsurers, said the drop reflects a decline of 6% in the first quarter of the year. That was followed by growth of 1% in the second and third quarters, according to the report.

"Despite the elevated level of catastrophe losses over the last two years, ABA financial strength ratings have remained broadly unchanged, reflecting continued robust capital positions," according to the report.

The report also said the combined ratio for the 28 companies deteriorated 14.3 percentage points to 110.5% during the first nine months of the year compared with the same period a year earlier, with $20.7 billion of pretax natural catastrophe losses representing 25% of net premiums earned. That translated into a property/casualty underwriting loss of $8.7 billion, according to the report.

"Overall, the ABA reported a pretax profit of $8.2 billion for the first nine months of 2011, a 64% reduction relative to the prior-year period," said the report. The companies in the aggregate posted net income of $7 billion for the first nine months of the year.

Meanwhile, insured losses from months of flooding in Thailand continued to mount, according to several reports last week. Aon Benfield said the floods could cost insurers more than $10 billion, while Swiss Re Ltd. said insured losses could range from $8 billion to $11 billion.

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Rule forces truckers to hang up

Insurers welcome commercial driver cellphone ban; trucking groups wary

By MATT DUNNING

Underwriters, trucking companies and industry groups have mixed opinions on the merits and potential impact of a new federal rule prohibiting commercial truckers and bus drivers from using hand-held cellphones while driving.

The new rule, announced jointly on Nov. 23 by the Federal Motor Carrier Safety Administration and the Pipeline and Hazardous Materials Safety Administration, will impose civil fines of up to $2,750 for interstate truck drivers and bus drivers caught using hand-held cellphones, and $11,000 for employers that do not require their drivers to use hands-free devices.

Additionally, drivers can face disqualification from commercial driving for up to four months for multiple offenses in a given three-year period.

The ban, which goes into effect on Jan. 3, 2012, also applies to intrastate drivers transporting hazardous materials.

An estimated 4 million drivers nationwide will be affected by the new rule, according to the U.S. Department of Transportation.

Some experts believe the law will prove to be a win for drivers and their employers, significantly reducing the number of distracted-driver accidents nationwide and ultimately leading to lower insurance costs for commercial trucking and busing companies. However, others said they worry the rule could have unintended economic and safety consequences, will be difficult for employers and police to enforce and will have little to no effect on distraction-related accident rates in the long term.

"It's probably going to be a game changer for the industry if it can be enforced," said Craig O'Connell, vehicular division vp at Boston-based Lexington Insurance Co.

Mr. O'Connell said while trucking and bus companies likely would not see an immediate reduction in their commercial auto insurance premium rates once the law takes effect, a sustained drop in the frequency and severity of traffic accidents caused by commercial truck and bus drivers would result in premium savings for insurance buyers over time.

"We'll have to wait and see on that," Mr. O'Connell said. "I can't predict profitability, but (the law) can't hurt. It can really only help our loss picture."

In particular, the attachment of compliance liability to the employer or contractor, not just the driver, has found support among underwriters, as it gives them a new metric by which to score a client's risk management program.

"Now that it's a regulation, those companies that are operating under the jurisdiction of the rule will have to talk to their insurers about their program regarding cellphones as part of the insurer's loss control assessment," said Mike Heembrock, vp and commercial auto specialist for Chubb Corp. in Warren, N.J. "It will certainly become a part of what we look at when we evaluate how a company recognizes their hazards and establishes controls that would make them a better-than-average performer."

The new rule also found moderate support among trucking companies and industry groups, though some of its provisions were less popular than others. In a brief filed during the rule's public comment period in February, the American Trucking Assn. said it generally supported the ban on hand-held cellphones and encouraged federal regulators to pass a similar rule outlawing hand-held cellphone use for noncommercial drivers as well. However, the association "strenuously objected" to the employer liability provision, calling it an "unrealistic and inappropriate shifting of the law enforcement burden to motor carrier management."

"Drivers are not always under direct supervision, and it would be extremely difficult and, in fact, unrealistic for a carrier to enforce such a requirement," the association said in its brief. "This is especially true when drivers use their own phones that are neither provided by nor paid for by their motor carrier employers."

Dan Smith, safety and security director for Van Buren, Ark.-based USA Truck Inc., agreed that the rule is a net gain for the industry, but lamented that it does not address noncommercial drivers.

"We're only hitting a small population of drivers that are already the most heavily trained and heavily regulated drivers on the road," Mr. Smith said. "Until we use the same common sense that we're using with the commercial vehicles, I think we're probably barking up the wrong tree."

Approval of the rule was far from universal in the trucking community. The Grain Valley, Mo.-based Owner-Operated Independent Drivers Assn., which represents some 152,000 independent drivers, repeatedly has opposed the ban, arguing in its February public comment brief that "cell phone use is no more distracting than other types of communications and electronic equipment used regularly by truckers."

The rule outlaws the use of push-to-talk functions, but does not affect citizens band radios.

"This is politics trumping reason and common sense," said Joe Rajkovacz, director of regulatory affairs for OOIDA. Mr. Rajkovacz said FMCSA unfairly characterized statistics on distracted-driver accidents as attributable solely to commercial drivers to build support for the rule. Echoing his organization's brief, Mr. Rajkovacz said it is unlikely that the ban would, in and of itself, produce any measureable effect on the frequency or severity of distracted-driving accidents.

"It's throwing truckers under the bus," he said. "It's regulating for pure posture and no net effect."

Experts also warned that while the law may be a long-term boon for the trucking industry, some negative safety and economic effects were possible. The language of the new regulation, Mr. Smith said, only instructs drivers to pull over and park their trucks to use their hand-held phones. The law should have required drivers to find a rest stop or other designated parking area, he said, but instead likely will cause drivers to merely park on the shoulder of a highway.

"It's a potentially dangerous situation where you'll have truckers trying to re-enter highway traffic at 30 or 40 mph under the speed limit," Mr. Smith said. "What concerns me is that in order to not break one law, you'll have drivers breaking two others, and there's no less danger involved."

Additionally, the law could have some negative short-term effects on the finances of some trucking companies and insurers. With a black-and-white rule on the books holding employers accountable for their drivers' actions, it likely will be easier for parties injured in a distracted-driver accident to attach negligence liability to any company that does not implement a documentable compliance program for its drivers, said Lentz Merisier, a Boston-based senior vp of strategic marketing for Chartis U.S. Casualty, a division of Chartis Inc.

"Considering the negligence and punitive damages usually associated with that kind of a claim, now that it's a law and now that training manuals need to be updated, you could see severity spike in the short term," said Mr. Merisier. "But once you get the first couple of judicial rulings of that nature, it'll send ripple effects and awareness throughout the industry."

NEW RULES

A breakdown of the provisions contained in the Federal Motor Carrier Safety Administration's new ban on hand-held cellphones:

- Prohibits interstate commercial truck and bus drivers, as well as intrastate drivers carrying hazardous materials, from holding, dialing or reaching for a hand-held cellphone, as defined by the Federal Communications Commission, while driving. This includes all push-to-talk phones, but does not extend to citizens band radios, GPS or fleet management devices.
- Permits drivers to use hands-free devices, provided that the operation of that device entails pushing no more than one button and does not require the driver to look away from the road.
- Fines drivers up to $2,750 for each violation of the rule. Drivers convicted of more than one violation in a three-year period will be disqualified from commercial driving for 60 days. More than two violations in a three-year span will result in a 120-day disqualification.
- Makes employers liable for their drivers' actions while on duty, regardless of whether those actions are sanctioned by the company. Employers that permit or require drivers to use hand-held devices, or fail to prevent them from doing so, will face a maximum $11,000 fine for each offense.
- Requires state transportation departments to include the new rules in their regulations by 2015 in order to qualify for funding via the Motor Carrier Safety Assistance Program. States also must set rules applying to intrastate drivers carrying nonhazardous materials.

—By Matt Dunning

'It's throwing truckers under the bus. It's regulating for pure posture and no net effect.'

Joe Rajkovacz
Owner-Operated Independent Drivers Assn.

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1 Zurich energy insurance policy."

Ron Walton, Executive Director, Risk Management
NuStar Energy L.P.

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Opinions

EDITORIAL

Good and bad news in 2011

2011 WAS A YEAR of positives and negatives for risk and benefit managers. For risk managers looking for certainty, the year definitely was a positive one with coverage in most commercial lines available at limits that employers needed and without dramatic price swings, though the wave of natural disasters has started to put pressure on rates.

In the alternative risk market, a positive was New Jersey's passage of legislation to allow the formation of captives in the Garden State, giving captive sponsors yet another domicile choice.

On the negative side, there was no progress in moving legislation to expand the Liability Risk Retention Act so risk retention groups can be used to fund property risks. We have yet to hear of a single credible argument against such an expansion, so the congressional inaction is disappointing.

A positive development was naming Michael McRaith, the highly regarded director of the Illinois Department of Insurance, to head the Federal Insurance Office. His experience and good judgment will be invaluable for an office that advises federal authorities on insurance issues.

Another solid appointment was naming S. Roy Woodall, a respected insurance regulator, to serve as a voting member on the Financial Stability Oversight Council, which oversees the regulation of financial services institutions.

But back on the negative side, we were disappointed that Congress couldn't agree on a long-term extension of the National Flood Insurance Program, creating uncertainty on the future of that program.

On the benefits side, much of the news—generally positive—involved the health care reform law. For example, we welcomed the congressional axing of a provision that would have required employers, in certain situations, to provide lower-wage employees with company-paid vouchers to buy health insurance coverage in state insurance exchanges. The administrative complexity far outweighed any potential good.

Certainly welcome news was last month's decision by the U.S. Supreme Court to review the constitutionality of the individual mandate and possibly the entire law.

However one feels about the law, few would disagree that it is in the national interest to know whether the law passes constitutional muster before key provisions kick in.

LETTERS

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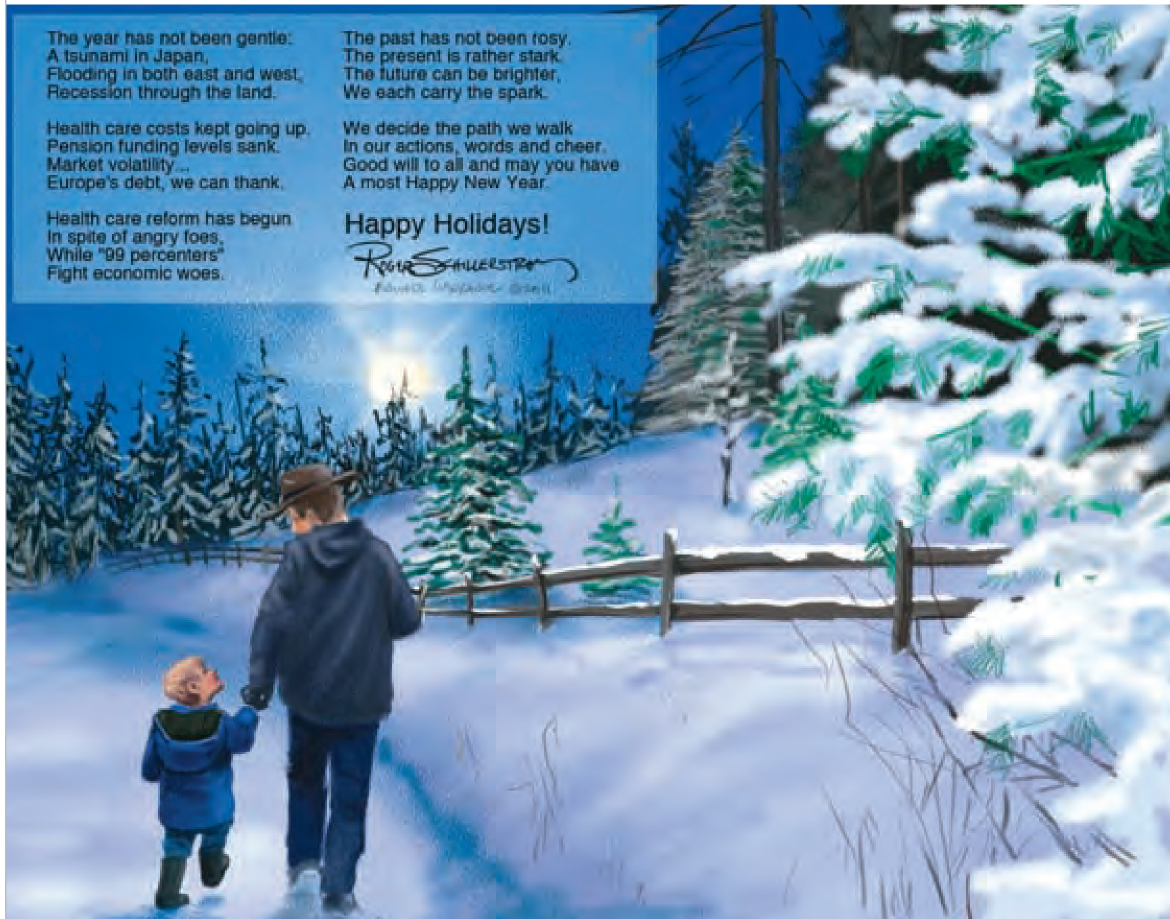

COMMENTARY

Bad policy leads to bad outcome

For some time, I've wondered how long it would be before American Airlines Inc. terminates its pension plans and shifts the massive unfunded liability to the Pension Benefit Guaranty Corp.

This year alone, parent company AMR Corp. paid more than $500 million into the plans to meet federal funding requirements, an expense that major competitors, such as United Airlines Inc. and US Airways Group Inc., don't have because those airlines folded their plans years ago as part of bankruptcy reorganization.

JERRY **GEISEL**
EDITOR-AT-LARGE

In the highly competitive airline industry, it is hard to imagine that American, whose parent company filed for Chapter 11 bankruptcy reorganization last month, will retain all four of its pension plans in their current form. At minimum, American will freeze the plans, meaning participants will not earn benefits for future service and new employees will not be covered in the plans. But I think termination of the plans, and the big cost savings that would result, is the more likely scenario.

It isn't surprising that American's plans, which the PBGC estimates have about $8.3 billion in assets to pay $18.5 billion in promised benefits, are so underfunded. Virtually every pension plan has seen funding levels fall in recent years due to the slump in the equities market and decline in interest rates.

But in American's case, funding levels were weakened further by special interest provisions in legislation Congress passed in 2006 and 2007. Those provisions applied only to commercial airlines, giving them more time than other employers to fund liabilities and allowing them to use higher interest rate assumptions in valuing liabilities. This resulted in American contributing less to the plans than otherwise would have been required.

To me, that was terrible policy by federal lawmakers. By easing funding requirements, the day of reckoning was merely delayed, not avoided. American, like its competitors, no longer can afford to offer and pay for very generous pension benefits, especially those provided to pilots.

Now, the plans are more underfunded than ever. If American, as part of bankruptcy reorganization, folds the plans and shifts the liabilities to the PBGC, the result will be higher premiums that other employers with defined benefit plans pay the agency to fund its insurance programs.

Escalating PBGC premiums will give employers yet another disincentive to offer pension plans—something lawmakers should have considered when they eased funding requirements for American.

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Business Insurance

CASE STUDY

ERRORS & OMISSIONS [BEST PRACTICES]

Doctors owning up to mistakes

By LOUISE KERTESZ

Doctors who make an error but then acknowledge the mistake and correct it are getting a positive prognosis in return: fewer patient claims filed against them and reduced liability costs, research shows.

Hospitals on the leading edge of this strategy are implementing the medical error best practice, which involves immediate reporting to designated staff of an error in care.

Supported by the institution, physicians apologize to the patient if an error has caused harm and, where appropriate, fair compensation is offered. Timely analysis of the error takes place, which leads to improved care, experts say.

The practice was developed as a new risk management function—patient safety officer or specialist—was established at some health care facilities (see related story, page 10).

The Washington-based National Quality Forum's safe practice guideline has advanced such disclosure by linking it to high-quality care. But the best practice is not driven primarily by the various state mandates requiring disclosure of medical errors, industry experts said.

"Public reporting is not the motivation behind this at all. We do it for two reasons: It's the right thing to do and it makes good business sense," said Jeffrey Driver, chief risk officer of Stanford University Medical Center and executive vp of the Stanford University Medical Indemnity and Trust in Stanford, Calif. Stanford implemented its version of the model, called the Process for Early Assessment and Resolution of Loss, or PEARL, in 2007.

The best practice grew out of widespread recognition that attempting to keep medical errors secret "doesn't work for patients or providers" because it fuels costly litigation and fails to improve patient safety, said Dr. Alan Woodward, past president of the Massachusetts Medical Society and chair of its committee on professional liability.

Pioneered at the Veterans Administration hospital in Lexington, Ky., the model is in place primarily at academic hospitals and relatively few others. Several malpractice insurers also support the effort and provide disclosure training for physicians.

The Agency for Healthcare Research and Quality, a Rockville, Md.-based unit of the U.S. Department of Health and Human Services, has awarded grants to projects testing various components of the practice.

"We're likely to see even broader expansions of these programs once the results about how generalizable they are become available," said Dr. Thomas Gallagher, associate professor of medicine at the University of Washington in Seattle.

The best risk management practice goes against the traditional "deny and defend" approach, which is based on fear that the patient will sue if an error is disclosed. But hospitals that have adopted the model say it results in reduced claims against the hospital and fewer lawsuits.

At the University of Michigan Health System in Ann Arbor, Chief Risk Officer Richard Boothman said the hospital system implemented its program of full disclosure and compensation for medical errors 10 years ago.

Previously, the approach was, "Don't talk about it," which created "a cone of silence" around an adverse event, he said.

"We were denying and defending everything without thought of whether it was a

See ERRORS next page

'Public reporting is not the motivation behind this at all. We do it for two reasons: It's the right thing to do and it makes good business sense.'

Jeffrey Driver,
Stanford University
Medical Center

CASE STUDY

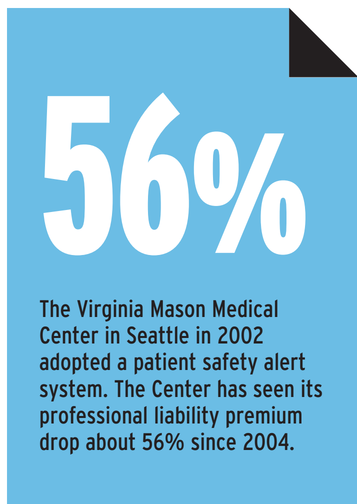
Errors: Doctors owning up to mistakes

CONTINUED FROM PREVIOUS PAGE

good idea, cutting off patient improvement, settling the lion's share of suits without going to trial. That ramped up defense costs," Mr. Boothman said. "It's the general model in the hospital industry."

But with the new system in place, the hospital system found the approach resulted in "a decrease in new legal claims (including the number of new lawsuits per month), time to claim resolution and total liability costs" in 2007 compared with 1995, according to a 2010 study published in the Annals of Internal Medicine.

"We found a 61% decrease in spending at the UMHS on legal defense costs, and this supports the possibility that patients may be less likely to file lawsuits when given prompt transparency and



an offer of compensation," said Dr. Allen Kachalia, a co-author of the study, in a statement.

At Stanford, claim frequency also dropped, falling 36% after PEARL was implemented, and its medical trust is saving $3.2 million a year, Stanford reported.

Experts point to the importance of quickly reporting an error that may result in a claim. An Aon Corp. study found that "the more time passes, the more severe a claim gets on average," said Erik Johnson, health care practice leader for Aon Risk Solutions' actuarial and analysis practice in Raleigh, N.C.

The Virginia Mason Medical Center in Seattle also, in 2002, adopted a patient safety alert system that requires all staff to immediately report any activity that has harmed or may harm a patient, and cease that activity until the problem is corrected.

"We get 450 patient safety alerts a month. We want at least 800," said Cathie Furman, senior vp of quality and compliance. "Most of those cause no harm," she said. But when there is harm to a patient, "we have trained all of our physicians to disclose the error and say, 'I'm sorry'" and explain what's being done to prevent the problem from recurring. "We apologize to the family" and cover any extra expenses, including travel, she said.

The effort has paid off. Virginia Mason's hospital professional liability premium "has gone down about 56% since 2004. We've been able to negotiate double-digit decreases every year, because many insurance carriers want to get on our profile since we're pretty low-risk," Ms. Furman said.

At Beth Israel Deaconess Medical Center, the Boston facility and the Massachusetts Medical Society received a planning grant from the AHRQ to develop a roadmap "to take what's been done in closed systems and implement it in hospitals and health systems across the state," Dr. Woodward said.

Beth Israel, two other Massachusetts hospitals, the Massachusetts Hospital Assn. and the Massachusetts Medical Society, among other stakeholders, have applied for a demonstration grant to provide resources and information to other hospitals interested in implementing the approach, "and many are," said Dr. Woodward.

The University of Washington also received an AHRQ grant to test if the approach can work outside of a self-insured system. The test involves promoting collaboration across the state among different parties, including doctors and multiple insurers, Dr. Gallagher said.

"The partnerships are all in place and there is widespread agreement that this approach has merit. But creating those relationships and understanding how the process will work is complex. The question is, rather than pointing the finger, can we work together on analyzing the (adverse) event, communicate with the patient and provide compensation when appropriate," Dr. Gallagher said.

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Patient safety officers develop new role for risk management

One milestone in the new approach to hospital error reporting has been "the advent of the patient safety officer, a new profession created only in the last 10 years," said Roberta Carroll, senior vp at Aon Risk Solutions national health care practice in Tampa, Fla.

"In some instances, the risk manager is the patient safety officer," she said.

For example, Seattle-based Virginia Mason Medical Center "blended the two departments" when it established its patient safety alert system, which requires immediate reporting of any medical error or near-miss, according to Cathie Furman, senior vp of quality and compliance. "As a result, a culture of safety and reporting has emerged" at the hospital, she said.

"The patient is the main consideration" in the new culture, said Jana Deen, vp and patient safety officer at Catholic Health Partners in Cincinnati.

"It's a transition from the traditional risk management model, which is to protect the organization. These goals are not mutually exclusive, but they are often perceived to be in conflict. And that's the barrier you have to get over and believe that in focusing on the patient, you are also protecting the organization," said Ms. Deen, who also is the George W. Merck fellow at the Institute for Healthcare Improvement in Boston.

"Ultimately, these programs succeed not because they are risk management programs, but because they are patient safety programs. In the long run, the savings will be through improving the quality of care," said Dr. Thomas Gallagher, associate professor of medicine at the University of Washington in Seattle.

Hospitals considering the approach "have to have a culture where they want to be transparent" and encourage staff to speak out about errors and potential harm to patients, Ms. Carrol said.

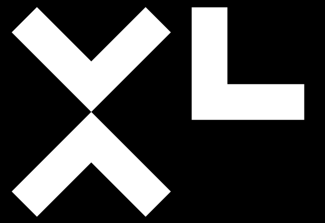
The biggest obstacle is "the (traditional) culture and the fear of being sued," she added.

To provide practical guidance to hospitals seeking to adopt the new model, the IHI issued "Respectful Management of Serious Clinical Adverse Events," an acclaimed white paper the IHI said is in use around the world.

The paper was developed in response to requests from organizations that were seeking assistance only after an adverse event occurred.

The document, available for free at *www.ihi.org*, is a step-by-step guide to help health care executives develop their own plans for responding to a crisis involving a medical error with "empathy, honesty and urgency," according to IHI.

—By Louise Kertesz



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year in review 2011

the year in RISK MANAGEMENT

TOP STORIES

1. Catastrophe losses soar, ranking 2011 among costliest years.
2. Supply chains worldwide hit by earthquake, floods.
3. Catastrophes cause flattening in P/C market.
4. Wal-Mart faces revised class action discrimination lawsuit.
5. Cyber risks become increasingly harder to manage.

Quakes, hurricanes drive cat losses

This year will enter the record books as one of the most costly in terms of natural catastrophe losses.

According to an analysis issued in September by Swiss Re Ltd., insured catastrophe losses for the first half of the year alone totaled more than $70 billion. Only 2005—during which a string of hurricanes including Hurricane Katrina battered the United States—had a larger full-year total, at $120 billion.

Among the major catastrophes affecting the global insurance markets during the first half of the year were the earthquake that devastated downtown Christchurch, New Zealand, in February, March's earthquake and tsunami in Japan, and a series of tornado and other weather-related losses in the United States.

Although the second half of the year did not suffer nearly as many losses, September's Hurricane Irene added at least $4 billion to the insured-loss total for the year, and floods in Thailand added as-of-yet-undetermined billions more. The fact that this year's hurricane season, despite Irene, was relatively benign in terms of insured losses may play a key role in keeping 2011 from becoming the costliest catastrophe year in history.

Continued on page 14

Cats, economy shaped the year

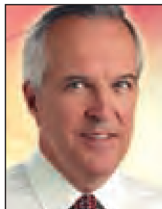
From being one of the costliest years on record for natural catastrophes to being the year employers began amending their health care plans to comply with the health care reform law deadlines, 2011 presented challenges—including a sputtering economy—that tested risk managers' and benefits managers' ingenuity and flexibility. *Business Insurance* editors identified the top 10 issues that risk managers and benefits managers faced in 2011. In addition, we take a look at the best and worst events that affected employers over the past year.

Best (and worst) of 2011

WORKERS COMP

Workers compensation legislation in Illinois highlighted a year that saw a spate of reforms nationwide.

Illinois—considered to have one of the nation's most expensive workers comp systems—was one of several states that revised their workers comp laws in 2011.



According to said William Zachry, vp-risk management at Safeway Inc. in Pleasanton, Calif., observers are waiting to see whether Illinois' reforms—which include preferred provider networks for workers comp care and a 30% reduction in the state's medical fee schedule—will lower workers comp costs. "It has an opportunity, I think, to create significant savings for employers and not really reduce any of the benefits for injured workers," he said.

NCCI Holdings Inc. chief economist Harry Shuford said a reported increase in workers comp claim frequency was one of 2011's worst developments.

In August, Boca Raton, Fla.-based NCCI reported that claims frequency climbed 3% between 2009 and 2010—the first such increase since 1997. The rating and research organization attributed the increase in part to modest employment growth last year, since recent hires tend to file more workers comp claims than their more established counterparts.

> 'The bad news is there are not any great stories. The good news is there don't seem to be any bad stories.'
>
> Harry Shuford, NCCI Holdings Inc.

Mr. Shuford said the frequency increase was indicative of a "lackluster" year in workers comp.

"The bad news is there are not any great stories," Mr. Shuford said. "The good news is there don't seem to be any bad stories."

—By Sheena Harrison

Continued on page 17

the year in BENEFIT MANAGEMENT

TOP STORIES

1. Employers make moves to implement health care reform law.
2. Regulators develop guidance related to PPACA.
3. Falling stocks take a toll on pension plan funding.
4. More employers using CDHPs to offset rising cost of health care.
5. Coca-Cola Co. gets approval to fund benefits through captive.

Employers implement health care changes

2011 was the year in which employers began to amend their plans to comply with the health care reform law.

The initial changes were modest and relatively simple to put into place. For example, few employers had difficulty amending their plans to extend coverage—as the law requires—to employees' adult children up to age 26; previously, employers typically ended coverage at age 18 or 19, or 23 or 24 in the case of full-time college students.

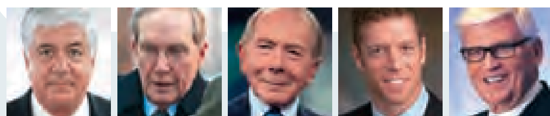
The cost impact of the coverage expansion was modest, typically ranging from 0.5% to 1.5%. But the change also meant that about 1 million young adults gained coverage in the first quarter of 2011, the Department of Health and Human Services found.

Other design changes employers had to make this year included eliminating lifetime dollar limits and requiring employees to get a prescription to obtain reimbursement from their flexible spending accounts for over-the-counter medications.

At the same time, employers had to deal with a law whose requirements—thanks to congressional actions this year—continued to change.

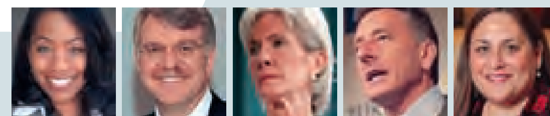
Continued on page 16

2011 NEWSMAKERS



PEOPLE WHO MADE HEADLINES IN RISK MANAGEMENT AND INSURANCE / PAGE 14

2011 NEWSMAKERS



PEOPLE WHO MADE HEADLINES IN BENEFIT MANAGEMENT / PAGE 16

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year in review 2011

the year in
RISK MANAGEMENT

TOP STORIES

Japan quake disrupts supply chains worldwide

RISK MANAGEMENT 2

The magnitude-9.0 earthquake and subsequent tsunami that hit Japan March 11 resulted in nearly 16,000 deaths and thousands of people missing and injured, and ultimately will likely result in insured losses in the range of $30 billion.

The earthquake, which struck near the city of Sendai, was the largest known quake to ever hit Japan, and the tsunami it triggered reached heights of more than 130 feet.

Adding to the costs of the catastrophe was damage to the nuclear power plant at Fukushima. While officials said the plant survived the earthquake without damage, the tsunami caused a cooling-system failure that resulted in reactors' nuclear fuel melting down and subsequent releases of radiation.

The nuclear disaster forced authorities to evacuate a 12-mile exclusion zone around the stricken plant, which remains in place.

Together with damage to transportation systems and reduced electrical supplies resulting from the Fukushima plant disaster and the need to take other plants offline for inspection and repairs, the March earthquake led to massive supply chain disruptions, prompting heightened concern about supply chain risk at businesses around the world.

P/C pricing flattens on catastrophe activity

RISK MANAGEMENT 3

Buyers of insurance this year may have witnessed an end to eight years of decreasing commercial property/casualty insurance prices, but no major market turn is expected despite increases across several lines.

The first quarter of the year saw commercial property rates decrease slightly. But catastrophes so far have stemmed the decrease and have caused a definite flattening of rates, experts say.

While three of four lines tracked in a November benchmark survey for the Risk & Insurance Management Society Inc. for the third quarter saw premium increases, only directors and officers liability showed a premium decrease, at 1.9%. Average premium increases were 1.2% at renewal for general liability, 1.6% for property and 2.1% for workers compensation, RIMS said in a statement.

"Indications have been strong over the past couple of quarters that the market was near bottom, so it's not surprising to see premiums drifting upward a bit now," David Bradford, president of Advisen Ltd.'s research and editorial division and editor-in-chief of the survey conducted for New York-based RIMS, said in the statement.

The market remains "quite competitive," Mr. Bradford said. "Sharply higher rates like we saw in 2001 are nowhere in sight," he said, referring to the market tightening after the 2001 terrorist attacks on New York's World Trade Center and elsewhere.

Throughout most of the year, some buyers of primary and excess casualty insurance saw moderate declines for renewals, and flat renewals were the norm, while high-hazard industries such as energy and automobile manufactures saw some firming, experts say.

"The majority of renewals are flat," Pamela F. Ferrandino, executive vp of the North American casualty practice at Willis North America in New York, said in July. National accounts saw renewals ranging from flat to down 5%, Ms. Ferrandino said. "What we've stopped seeing in the GL space is the reduction of 5% to 10% in the primary" coverage.

"Basically what we've seen is certainly somewhat of a change in the market, although it is continuing its downward trend albeit at a slower pace," Anthony DeFelice, managing director in the national casualty practice at Aon Risk Solutions in New York, said in July.

Pricing changes are being driven primarily by certain higher-hazard risk classes such as energy, some life sciences, generic pharmaceuticals and some rail and auto parts manufacturing, Mr. DeFelice said.

During beginning-of-year renewals for 2011, property insurance coverage rates declined, according to experts.

"Rates continue to head downward, mostly in the single-digit range," Tim Rose, senior vp and chief underwriting officer at Liberty Mutual Group Inc.'s national property accounts unit in Weston, Mass., said in January. Some "larger, really good accounts" experienced double-digit decreases, he said.

The lack of major U.S. catastrophe losses in 2010 helped continue current soft market conditions, said Sanjay Godhwani, executive vp and property division executive at Lexington Insurance Co. in Boston.

"Given that 2009 was pretty benign from a cat standpoint, there's been downward pressure on rates," he said in January.

But during mid-year renewals, underwriters took a closer look at catastrophe-exposed property as they grappled with increased losses and a revised U.S. hurricane model.

With major catastrophes this year in the United States and abroad, commercial property catastrophe "rates in general have bottomed out and are starting to move into a positive rate environment," said Jon Hall, executive vp at Factory Mutual Insurance Co., which does business as FM Global, in Johnston, R.I., in July.

He noted that reinsurers also are looking for tighter terms and conditions and are increasing their rates, which insurers will pass on to buyers. "So we're looking at flat

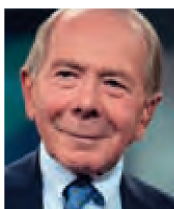
Continued on next page

2011 NEWSMAKERS

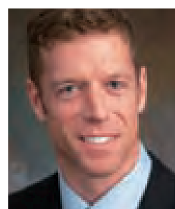
PEOPLE WHO MADE HEADLINES IN RISK MANAGEMENT AND INSURANCE

It may be an understatement to say 2011 has been an eventful year for American International Group Inc. CEO **Robert Benmosche**. Mr. Benmosche began 2011 by announcing that, after consulting with doctors who had been treating him for cancer, he intended to remain in his position until 2012. Shortly thereafter, he presided over AIG's first earnings call since 2009, which occurred after the federal government assumed nearly 80% ownership of the company after its near-collapse in September 2008. One of Mr. Benmosche's goals has been to repay the government in full and re-establish AIG as a truly independent entity. In late May, AIG and Treasury participated in a stock offering of AIG common shares, which reduced the Treasury's ownership of AIG. Meanwhile, AIG's Chartis Inc. unit underwent a management shakeup and revamping as AIG Executive Vp Peter D. Hancock replaced Kristian P. Moor as the unit's CEO. Throughout the year, AIG continued to pay back the government for its financial assistance. And it continued this fall despite suffering a $4.11 billion loss in the third quarter. Yet Mr. Benmosche remained optimistic about AIG's outlook. "Despite the difficult external environment, we are encouraged by the progress we've made and the underlying strength of our core insurance businesses," Mr. Benmosche said in a statement discussing AIG's third quarter performance in early November.

One of the top insurance stories of the century to date took a new turn in August when a three-judge panel of the 2nd U.S. Circuit Court of Appeals in New York overturned the convictions of **four former executives of General Re Corp.** and one former executive of American International Group Inc. convicted in 2008 in connection with a bogus finite reinsurance deal. The appeals court judges ruled in part that the jury that originally heard the case had been improperly instructed. The defendants in the case—Ronald E. Ferguson (pictured above), 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 financial officer; and Christian M. Milton, former AIG vp for reinsurance—were convicted on various counts, including conspiracy, fraud and making false statements to the U.S. Securities and Exchange Commission. All of the defendants received prison sentences, but all appealed. In early August, the appeals panel ruled that U.S. District Court Judge Christopher Droney in Hartford, Conn., had erred in his failure to instruct his jury to determine whether the company executives directly caused the improper accounting of the sham reinsurance deal. The panel also said Judge Droney admitted inappropriate evidence about the deal's impact on the New York insurer's market performance. The panel ordered a new trial, for which a date has not yet been set.



The usually outspoken **Maurice R. Greenberg**, former chairman and CEO of American International Group Inc. and now head of C.V. Starr & Co., was true to form this year. He started off the year by criticizing his former company for selling off assets such as Nan Shan Life Insurance Co., charging that it is making itself weaker. He subsequently predicted the U.S. Treasury will be an AIG shareholder for "a very long time," then sued the government for $25 billion, claiming its AIG takeover was unconstitutional. His legal travails also continued. While many allegations were dropped after AIG's 2006 agreement to pay $1.6 billion in damages and penalties in a case involving the New York-based insurer's accounting, some charges remain, including that Mr. Greenberg and former AIG Chief Financial Officer Howard I. Smith were involved in arranging a bogus 2001 loss portfolio transaction with General Re Corp. Attorneys for Messrs. Greenberg and Smith filed a motion in March seeking to remove the presiding judge in the case, Charles Ramos, claiming he was biased. And in May, he said he was set to appeal decisions Judge Ramos had made in the case. Meanwhile, Messrs. Greenberg and Smith received $60 million in insurance proceeds to reimburse them for legal costs. Mr. Greenberg also was active in his latest position. Starr formed a strategic partnership with a Chinese insurer Dazhong Insurance Co. Ltd. and was among the bidders, with Enstar Group Ltd., for Transatlantic Holdings Inc.



Michael McRaith won considerable praise from the insurance industry when the Obama administration named him as the first director of the new Federal Insurance Office. Mr. McRaith, previously Illinois' insurance director, drew plaudits for his industry knowledge and fairness. His expertise was deemed particularly critical for his new job, which includes representing the United States in international insurance regulatory forums and overseeing the federal government's terrorism insurance backstop program. The office was created by the Dodd-Frank Wall Street Reform and Consumer Protection Act. But contrary to the hopes of some in the insurance industry who favor greater federal regulation of insurance, FIO will serve primarily as an advisory body that issues reports on various aspects of insurance. Its power to trump state regulation extends only to some areas of international insurance arrangements. Since his appointment in March, Mr. McRaith has maintained a relatively low profile, and didn't even appear before a congressional committee until months after he had assumed his new job. But as the first federal insurance regulator, limited as his regulatory powers may be, Mr. McRaith seems certain to shape the job and office in ways that will affect the federal government's approach to insurance matters for years to come.

Patrick G. Ryan, chairman and CEO of Ryan Specialty Group L.L.C., achieved his ambition of entering the Lloyd's of London market when Ryan Specialty acquired Jubilee Group Holdings Ltd. this year. Making use of a rule change that once again allows brokers to own managing agencies at Lloyd's, Ryan Specialty bought Jubilee in May and installed former Lloyd's Chairman Max Taylor as Jubilee's nonexecutive chairman and well-known Lloyd's underwriter Johnny Rowell as its CEO. Mr. Ryan described the acquisition as a "major event" and said he believed the buy would allow Ryan Specialty to introduce and support new products and programs in global markets "in a meaningful way." It has been a busy year for Mr. Ryan, an industry veteran who returned to the insurance field to found Ryan Specialty in 2010 after taking time out to head Chicago's bid to host the 2016 Olympic Games. His new venture has grown through acquisitions and by launching new operations. In January, Ryan Specialty launched Technical Risk Underwriters, a specialty managing general underwriter focused on complex construction and property risks. It then acquired American E&S Insurance Brokers from Wells Fargo Insurance Services Inc. In July, the firm launched a managing general underwriter, PER Se, specializing in renewable energy risks. Ryan Specialty also was named one of just two wholesalers to which Aon Corp., founded by Mr. Ryan, would show business before showing it to other wholesalers if neither could provide the coverage.

PHOTOS: ROBERT BENMOSCHE, RONALD FERGUSON, MAURICE GREENBERG: BLOOMBERG; PATRICK RYAN: MICHAEL MARCOTTE

CONTINUED FROM PREVIOUS PAGE

to plus 5% to 10% going forward," Mr. Hall said.

Dan Hurley, senior director of risk management and safety for Norfolk Public Schools in Norfolk, Va., said in July that he was aware that the earthquake and tsunami in Japan and a series of U.S. storms had resulted in increasing rates for catastrophe-exposed commercial property. "Particularly on the Atlantic seaboard, my understanding is that local cities are feeling increases. I've heard between 5% to 10%," he said.

Also affecting commercial property rates is Risk Management Solutions Inc.'s version 11 Atlantic hurricane model, released this year. The Newark, Calif.-based firm's updated model includes assumptions of greater inland wind damage, which experts say caused several underwriters to rethink their pricing. The model has had a significant impact on insurers' risk accumulation in catastrophe-prone areas, said. "The industry, as it currently stands, would be susceptible to a significant hurricane that makes landfall on the United States," Charlotte Stone, managing director of the worldwide property practice for Arthur J. Gallagher & Co. in Los Angeles, said in July. "If that happens, we could see some major shifts in the market."

As insurers continue to deal with extensive catastrophe losses and disappointing investment returns, any market turn is likely to be more of a stabilization than a true market hardening, experts say. Moving into 2012, "there doesn't seem to any kind of a hard market in the historical sense—it's more of a gradual process," said Alan Murray, vp and senior credit officer at Moody's Investors Service Inc. in New York, in November.

Revised class action filed against Wal-Mart

Employers scored what was described as a major victory in June when the U.S. Supreme Court ruled in *Wal-Mart Stores Inc. vs. Betty Dukes et al.* against a proposed nationwide class of some 1.5 million members.

The majority ruled that the "respondents have not identified a common mode of exercising discretion that pervades the entire company."

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

But while employers may have breathed a collective sigh of relief as a result of the decision, that was not the end of the case. In October, plaintiffs refiled the case on behalf of an estimated 90,000 current and former female workers only in California.

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

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

In addition, a lawsuit accusing Wal-Mart of gender discrimination in Texas, which is parallel to the litigation in California, also has been filed.

Plaintiff attorneys said more suits are planned.

Evolving cyber risks defy easy solutions

Cyber risks continued to grow this year with no overall solution in sight.

While the problem is universal, health care institutions have been identified as being particularly vulnerable to data breaches because of factors that include stringent federal and state regulations, widespread dissemination of patient data and a growing black market for patient medical information.

Another worry is the growing use of cloud computing.

While the use of cloud computing may result in significant savings in companies' hardware and software costs, experts say the remote storage of sensitive data raises a series of liability risks, including the problem of keeping personally identifiable information private and safe from data breaches.

On an even larger scale, a white paper issued by Santa Clara, Calif.-based MacAfee Inc. this year identified massive state-backed advanced persistent threat attacks against dozens of governments and organizations, including businesses.

Meanwhile, many company executives remain unaware of the cyber threats they face, experts said during a presentation this year at the *Business Insurance* Risk Management Summit in New York.

For instance, Scott Schleicher, assistant vp of technology products at XL Insurance said, companies are not doing all they can to control the exposures.

Mr. Schleicher said that most cyber attacks aren't sophisticated, and that the vast majority of data breaches can be avoided by measures as simple as large companies requiring their employees to have password protection on their iPhones.

SEPTEMBER 5TH, 1:45 A.M.

A DEADLINE AND A BUSINESS LIFELINE

IN AN INSTANT,
DOUG HOLT
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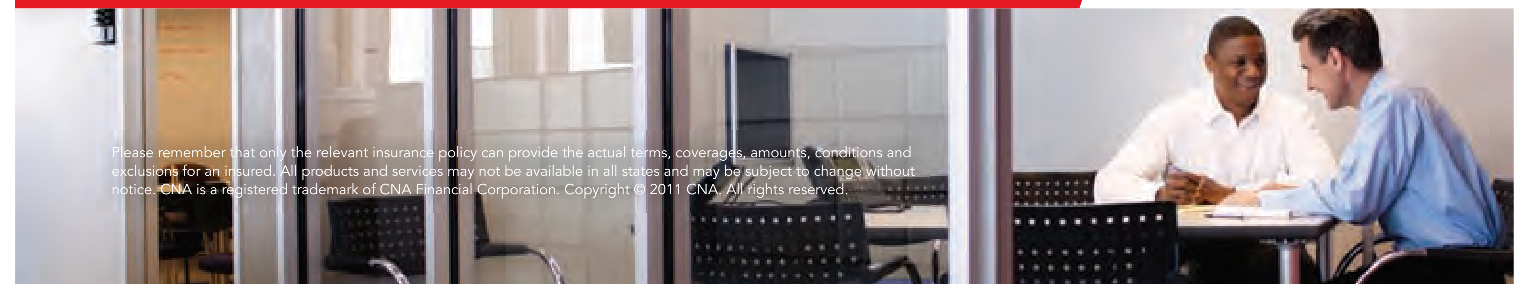


the year in
BENEFIT MANAGEMENT
TOP STORIES

CONTINUED FROM PAGE 12

For example, Congress, with Obama administration support, repealed a reform law provision that would have required employers to furnish 1099 statements when they did more than $600 in business with a corporate vendor starting in 2012. Small employers, in particular, complained of the administrative burden of complying with the requirement.

But the biggest health care reform law development of the year—the decision of the U.S. Supreme Court to review the constitutionality of the law's individual mandate—will not be decided until 2012 at the earliest.

Reform law generates guidance, tweaks

BENEFIT MANAGEMENT 2

The second round of the health care reform law—developing guidance and regulations to implement the Patient Protection and Affordable Care Act—provided a steady stream of rules and guidance this year.

Some information was straightforward and welcomed by employers. One example: April Internal Revenue Service guidance clarified that certain health care costs, such as dental and vision care, do not have to be included when employers comply with a requirement to report the cost of health care coverage on employees' W-2 wage and income statements.

Other rules dealt with narrow issues, such as a class exemption issued in August by the Department of Health and Human Services waiving through 2013 the requirement that sponsors of health reimbursement arrangements would have to seek exemptions from health care reform rules that restrict annual dollar limits on coverage of essential benefits.

In some cases, federal agencies signaled that rules being developed would ease employer concerns. For example, the IRS sought comment on a provision that suggests employers could be liable for a financial penalty if just one full-time employee were not offered coverage and the employee used a federal premium subsidy to get coverage through a state insurance exchange. The IRS said it wanted to know of "situations where application of the…assessable payment may not be appropriate."

In the face of widespread criticism, agencies did an about-face in other situations. For example, three months after proposing that employers comply with health care plan benefit communication rules by March 23, 2012, regulators put off compliance indefinitely.

Pension plan funding hit by stocks' slump

BENEFIT MANAGEMENT 3

When 2011 began, employers had good reason to be optimistic about their pension plans' funding levels.

At the end of 2010, pension plans sponsored by employers in the S&P 1500 were on average 81% funded, thanks to a rally in the equities market, according to a Mercer L.L.C. analysis.

Pension funding continued to improve in 2011, hitting its high point in April, when plans on average were 88% funded.

But then the stock market slumped and interest rates declined. At the end of September, the average pension plan funding level had dropped to 72%, while the average funding level was 78% as of Nov. 30.

The result is that employers will have to put a lot more money into their pension plans next year. "We are talking about record contributions," said John Ehrhardt, a principal with Milliman Inc. in New York.

In turn, that could lead more employers to freeze their defined benefit plans, a trend that began to pick up steam in 2003 and has accelerated sharply during the past several years.

Employers using CDHPs to battle health costs

BENEFIT MANAGEMENT 4

On the health care cost front, 2011 was a year of bad news and good news.

The bad news was that health plan costs continued to rise, increasing 6.1% this year as average costs surpassed the $10,000-per-employee mark, according to a Mercer L.L.C. survey.

But there was good news, too. More employers added consumer-driven health care plans, which, many experts say, have much greater potential to hold down cost increases than other plan designs. Nearly one-third of large employers now offer CDHPs vs. virtually none a decade ago, Mercer found.

And nearly 90% of large employers, according to the Mercer survey, say they will add or strengthen programs to encourage employees to engage in more cost-conscious behavior, which, if successful, could mean smaller cost increases in the future.

Coca-Cola's benefits funded through captive

BENEFIT MANAGEMENT 5

For The Coca-Cola Co., innovation and captive employee benefit plan funding go hand in hand.

In March, the Atlanta-based nonalcoholic beverage giant unveiled a program in which it is using a Dublin-based captive insurer to fund benefits earned by pension plan participants in the United Kingdom, Ireland and Germany. Coca-Cola is using Coca-Cola Reinsurance Services Ltd. to reinsure group annuity products written by a top-rated European-based insurer—and purchased by its pension plans in the United Kingdom, Ireland and Germany.

Coca-Cola executives said the program, which has been in the planning stage for nearly two years, will generate significant operational efficiencies and potential financial advantages. Instead of dealing with a diverse group of pension plan trustees and investment managers for each plan in different countries, Coca-Cola can consolidate asset management through the captive.

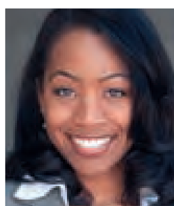
In addition, if investment results are strong, the surplus generated would accrue to the captive and could be used by Coca-Cola rather than having to remain in the plan.

That approach follows a trail-blazing arrangement—given Labor Department approval last year—for Coca-Cola to use its South Carolina-domiciled captive, Red Re Inc., and a special trust to fund health care obligations of retired U.S. employees and their dependents.

Coca-Cola is waiting for an Internal Revenue Service private letter ruling, which company executives expect in 2012, before proceeding.

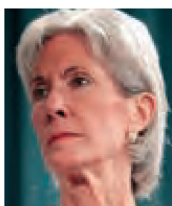
2011 NEWSMAKERS

PEOPLE WHO MADE HEADLINES IN BENEFITS MANAGEMENT

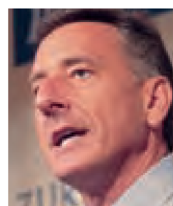


When the San Francisco Office of Labor Standards issued a report in June showing that only 20% of the contributions employers allocated to health reimbursement arrangements were used to reimburse employees for health care expenses, top city officials were outraged. The HRA approach to satisfy the city's 2006 health care spending law that requires all but very small employers to spend a certain amount of money on employees' health care was called a "loophole" by San Francisco Mayor Edwin Lee. Some members of the San Francisco Board of Supervisors had very definite ideas on how to close that loophole. Supervisor David Campos introduced a proposal that would have required unused HRA contributions to be indefinitely rolled over rather than revert back to employers, as the spending law allowed. The business community rallied against that proposal, warning lawmakers that loss of unused HRA contributions could cost jobs. Mayor Lee accepted that argument, noting in his veto message that the proposal was "overly broad." **Supervisor Malia Cohen** then crafted a new proposal that the business community and Mayor Lee accepted: Funds employers contribute to HRAs to satisfy the health care spending law would be required to be available for 24 months after the contribution, or for 90 days after terminating employees leave. The Board of Supervisors gave the bill final approval on Nov. 22, and that same day Mayor Lee signed the measure, which goes into effect Jan. 1.

For more than two decades, the Pension Benefit Guaranty Corp.'s premium structure has not changed. Employers with defined benefit plans pay the agency an annual flat rate premium—$35 per plan participant—and employers with underfunded plans pay an additional $9 per $1,000 of plan underfunding. This revenue helps to fund agency insurance programs that guarantee benefits in failed plans the PBGC takes over. But with those insurance programs a record $26 billion in the red, more revenue will be needed. Rather than a simple across-the-board premium increase, however, **PBGC Director Joshua Gotbaum** pushed for a different approach: linking premiums to the risk a plan poses to the PBGC, measured, for example, by the plan sponsor's credit rating. The business community has yet to buy into the concept. More than 80 major employers, consultants and trade associations opposed any premium increase, which they said would drive more employers out of the defined benefit plan system. They were more supportive of regulatory relief announced by Mr. Gotbaum that ends assessment of penalties for late premium payments, as long as the as the premiums are paid within seven days of the due date. In the year ahead, though, the PBGC chief could face his biggest challenge since joining the agency last year: dealing with the possible termination of American Airlines' massively underfunded pension plans, the likelihood of which increased with the Chapter 11 bankruptcy filing of parent company AMR Corp.



The word omnipresent would be an apt one to describe **Kathleen Sebelius** in 2011. Nearly every week, the Department of Health and Human Services secretary held a news briefing or was out on the speech-making trail. Her topic, nearly without exception, was related to the 2010 health care reform law. Many of the briefings were to discuss the successes of the law. For example, Ms. Sebelius extolled the virtues of a provision in the law that requires employers to extend coverage to employees' adult children up to age 26. Thanks to the Patient Protection and Affordable Care Act, "hundreds of thousands more young people have the health care coverage they need," Ms. Sebelius said after the release of a report in September finding that about 1 million young adults gained coverage in the first quarter of 2011 due to the age 26 provision. On other occasions, though, Ms. Sebelius took a lower profile. She quietly pulled the plug when the administration decided to ax a voluntary long-term care program authorized by the health care reform law. With no fanfare, Ms. Sebelius issued a statement saying HHS had not found a way to make the program work. With a spate of new regulations expected in the coming year, Ms. Sebelius is expected to be no less active on the health care reform law front in 2012 than she was in 2011.



When **Peter Shumlin** was inaugurated as Vermont's governor in January, he pledged to win enactment of legislation to establish a single-payer health care system. "I call upon Vermonters to join together with the common purpose of our state once again leading where others dare not go: universal, affordable, quality health care that follows the individual and is not tied to employment," Gov. Shumlin said in his inaugural speech. Just five months later, he achieved that goal when Vermont lawmakers approved a single-payer bill. In signing the measure into law, Gov. Shumlin conceded that many questions had been asked about the measure, and he pledged to answer them. "I realize that people have legitimate questions about how a single-payer (system) will be financed and operated, and we will answer those questions before the Legislature takes the next step," he said. In fact, the Vermont law created a five-member board on vital issues such as premium subsidies, benefits to be covered, the role of employers and private insurers, and, above all, financing. Many decisions made by that board will have to be ratified by the state's lawmakers. No matter how Vermont decides to achieve universal coverage, it ultimately will need permission from the federal government to implement it. The federal health care reform law has a mechanism in which states can seek waivers to institute reform measures that differ from the federal statute. Such waivers, though, are not available until 2017.

It is fitting that **Laurie Solomon**, director of risk management at The Coca-Cola Co., has developed innovative programs for a company that is legendary for its marketing brilliance. Her latest innovation came this year, when the world's largest nonalcoholic beverage company tapped its Dublin captive, Coca-Cola Reinsurance Services Ltd., to reinsure group annuity products written by a top-rated European-based insurer and purchased by its pension plans in the United Kingdom, Ireland and Germany. "This is a fantastic opportunity to bring value to Coca-Cola by expanding the use of a great tool we already had in place," Ms. Solomon said after she announced the new program at *Business Insurance*'s Risk Management Summit in March. Yet another innovation, approved by Labor Department regulators last year, is Coca-Cola's plan to fund retiree health care benefits through its South Carolina captive, Red Re Inc., and a special trust. Ms. Solomon said she expects the Internal Revenue Service to issue a ruling on the arrangement in 2012. Ms. Solomon's accomplishments extend beyond the captive benefits funding arena, however. She also has won corporate approval to take on higher levels of risk through captives—which, along with improving loss-control programs, helped shave Coca-Cola's risk costs by 25%, or $20 million, over the past five years.

PHOTOS: KATHLEEN SEBELIUS: BLOOMBERG; PETER SHUMLIN, LORI SOLOMON: MICHAEL MARCOTTE

Best (and worst) of 2011

COVERAGE DISPUTES

Among the best insurance coverage dispute decisions of 2011 was *Park Electrochemical Corp. vs. Continental Casualty Co.*, according to John N. Ellison, partner at Reed Smith L.L.P. in New York and Philadelphia.

In that decision, the United States District Court for the Eastern District of New York "correctly concluded that general territorial limitations in property policies do not apply to contingent business income losses suffered by U.S. companies," he said.

Mr. Ellison

"The importance of this case is that many companies impacted by the events in Japan and Thailand may face similar arguments raised by property insurers, and this decision should go a long way to dispelling that argument," Mr. Ellison said.

Among the cases he singled out as the year's worst coverage decisions was *Cracker Barrel vs. Cincinnati Insurance Co.* In that case, the United States District Court of the Middle District of Tennessee ruled that employment practices liability insurance does not apply to claims brought by the Equal Employment Opportunities Commission because such actions don't qualify as "claims" within the meaning of such policies, he said. "I think this is just plainly a wrong decision, and is the first of its kind," Mr. Ellison said. "If it stands, it largely defeats the purpose of purchasing EPLI coverage."

Another decision Mr. Ellison included in the year's "best" category was *SunTrust Mortgage Inc. vs. United Guaranty Residential Insurance Co. of North Carolina Inc.* That case in the United States District Court for the Eastern District of Virginia involved United Guaranty seeking to deny claims on certain loans that had not been underwritten using Fannie Mae's Desktop Underwriter system.

"The court held earlier in the case that UG breached its mortgage insurance policy by failing to pay claims merely because they had not been underwritten using Desktop Underwriting, but that SunTrust was required to pay annual premiums to UG for the life of the insured loans notwithstanding that UG's maximum cumulative liability had been reached," Mr. Ellison said.

However, the court then considered SunTrust's first material breach defense that UG materially breached the insurance policy by failing to refund premiums on performing loans when it knew it wouldn't pay claims on those loans and therefore couldn't demand continued payment of premiums, he said.

"These decisions are significant because of the enormous number of disputes and lawsuits pending between lenders and mortgage insurance companies and guaranty insurers whereby the insurers are attempting to avoid the coverage obligations for the thousands and thousands of defaulted loans around the country," Mr. Ellison said.

Another case on the "worst" side of the year's ledger was *Maxine Furs Inc. vs. Auto-Owners Insurance Co.* This case in the 11th Circuit U.S. Court of Appeals held that the smell of curry is a pollutant that triggers a pollution exclusion. Essentially, curry aroma traveled through an air duct from an Indian restaurant to a furrier, leaving fur coats smelling like curry and in need of cleaning.

"The decision dramatically expands the scope and application of the 'pollution exclusion' to something most normal people would not consider pollution," he said.

—By Rodd Zolkos

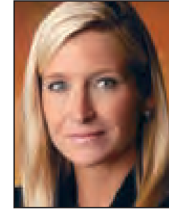
LEGISLATION

Even in a gridlocked year on Capitol Hill, Washington observers found legislative and regulatory developments they liked in 2011.

The House Financial Services Committee's ability to work in a bipartisan manner in reporting "the five-year National Flood Insurance reauthorization, which was passed overwhelmingly by the House" was one of the highlights of the year, said Kathy Doddridge, director of government affairs for the Risk & Insurance Management Society Inc. "Unfortunately it hasn't passed the Senate."

Ms. Doddridge

For the American Insurance Assn., the best development was congressional approval of the free trade agreement, said AIA President and CEO Leigh Ann Pusey. "It will help insurers price and sell insurance in those countries."


Ms. Pusey

Joel Wood, senior vp of the Council of Insurance Agents & Brokers, cited an aspect of the ongoing implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2011 as the best development.

Mr. Wood

"The most encouraging development is the effectuation of the Federal Insurance Office," he said. We believe that (FIO Director) Mike McRaith is perhaps singularly suited for the job...He's not only going to be a strong presence on international issues, but I think he's going to effectively use the bully pulpit to actively encourage modernization of insurance regulation."

But ironically, the two events cited as the worst legislative developments also stem from the enactment of the Dodd-Frank Act, one of the biggest legislative events of last year.

"The most disappointing is that states have had such a difficult time getting their act together on surplus lines reform implementation," said Mr. Wood. "For many years, the (National Assn. of Insurance Commissioners) has attempted to standardize surplus lines regulation. For five years, this legislation had been in the works, and with the one-year grace period from its enactment, one would have thought there would be some momentum behind a regime of harmonized law."

AIA's Ms. Pusey also cited the implementation of Dodd-Frank as the worst development. "We're still a year out without any clarity for many of the regulations," she said.

—By Mark A. Hofmann

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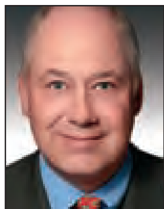
year in review

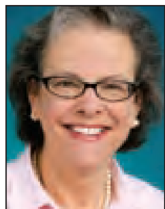
Best (and worst) of 2011

EMPLOYMENT

The U.S. Supreme Court's June decision in *Betty Dukes et al. vs. Wal-Mart Stores Inc.* was the best development of the year in employment law for employers, one expert says.

In that decision, the court ruled against a proposed class of some 1.5 million members, with the majority holding that "respondents have not identified a common mode of exercising discretion that pervades the entire company."


Mr. Maatman


Ms. Shea

Gerald L. Maatman Jr., a partner with Seyfarth Shaw L.L.P. in Chicago, said the decision is "probably being cited more than any other Supreme Court decision this year, and it is a defining standard insofar as almost every lawsuit involving class action issues has to account for" how *Dukes* impacts the case.

"It's a win for employers," said Mr. Maatman. "It's armed employers with arguments they didn't have before."

Robin E. Shea, a partner with Constangy Brooks & Smith L.L.P. in Winston-Salem, N.C., said the best development was a June ruling by the 10th U.S. Circuit Court of Appeals in Denver in *George Powell vs. Laborers Union #1271*, in which the union was sued for passing over Mr. Powell's name on a hiring hall list after it received "no-rehire" letters from employers. The court upheld the union's move.

"I admire the courage of those employers who actually provided negative references on a bad employee so that future employers wouldn't get burned," she said.

Ms. Shea said the worst development was Verizon Communications Inc.'s "unfortunate decision" to agree to pay $20 million to resolve a nationwide class disability discrimination lawsuit involving the company's "no fault" attendance plans with the Equal Employment Opportunity Commission in July. "I would have loved to see them force the EEOC to prove their case," she said.

Mr. Maatman said the worst development was a July 6 case in federal district court in Columbus, Ohio, in *EEOC vs. JPMorgan Chase Bank N.A.* in which, he said, the judge gave a "free pass, so to speak, to the EEOC's litigation tactics." Mr. Maatman said the EEOC's lawsuit had exceeded the scope of its investigation.

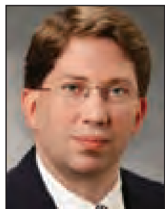
—By Judy Greenwald

CYBER RISK

Experts disagree on whether U.S. Securities and Exchange Commission guidelines, issued in October, that for the first time formally ask public companies to disclose cyber attacks against them, is the best or worst development in the cyber risk area this year.

But they agree it is highly significant.

Mr. Bortnick


Mr. Parisi

Richard J. Bortnick, a member of law firm Cozen O'Connor P.C. in West Conshohocken, Pa., who classifies it as the "worst" development, said, the guidance "will increase the need for insurance. It will cause public companies, if not private companies, to take a much harder look at their cyber security, and its practices and procedures, and it will force insurance brokers to get their arms around what this insurance product really is." Alternatively, said Mr. Bortnick, "it will engender lots and lots" of directors and officers liability cases.

Robert Parisi, senior vp at Marsh Inc.'s FINPRO practice in New York, who categorized it as the best development, said the guidance is particularly important in recognizing and establishing "that computer technology information security is really an operational risk, corporate governance issue that "is as important an issue as any other piece of a company's operations," including merger and acquisition activity, for instance. While the guidance "didn't change any real rules," it "is making it clear that we all need to be aware of this," said Mr. Parisi.

Mr. Bortnick's choice for the best development is that "the incidence and magnitude of cyber risk have finally put the exposures and risks on companies' radars. It's forced insurance brokers to accept the reality that they've got to start learning and marketing such coverages."

Mr. Parisi said the worst development has been plaintiffs attorneys' aggressive activity in this area. Whenever there is a breach, "that's a pool of potential plaintiffs they can create a class around, and they're bringing class actions literally within a day, two days" after a breach has occurred, he said.

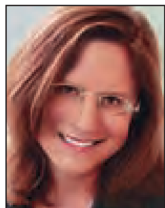
—By Judy Greenwald

HEALTH CARE REFORM

The best and the worst development of 2011 concerning health care reform, two benefit experts say, involved the same issue: a reform law requirement that employers provide to employees a summary of their benefits and coverage.

Among other things, the summary of benefits and coverage was to include the portion of expenses that a health plan would cover in three situations: having a baby, treating breast cancer and managing diabetes. Benefit experts said they never had heard of such an approach.

Ms. Young


Ms. Sheaks

Federal regulators proposed that the new benefit statement be made available to health care plan participants by March 23, 2012, drawing an angry response from the business community and its advisers.

"It was the worst regulatory development, hands down," said Gretchen Young, senior vp-health policy at the ERISA Industry Committee in Washington. "The regulation—inappropriate for large, self-funded plans—is the worst sort of example of high added costs with no corresponding benefit. In fact, the additional information to be sent to participants is redundant at best and misleading and confusing at worst."

The good news, said Chantel Sheaks, a principal in the Washington office of Buck Consultants L.L.C., was federal regulators' decision to indefinitely delay compliance with the new requirement.

On the legislative side, the best health care reform law development was passage of legislation to strip a provision that would have required employers, in certain situations, to offer low-wage employees company-paid vouchers to purchase coverage in state health insurance exchanges.

"It would have been a nightmarishly complicated provision for employers to administer and pay for with little offsetting societal benefit," Ms. Young said.

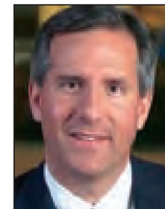
Repeal "was the best thing that could have happened to the voucher provision," Ms. Sheaks said.

—By Jerry Geisel

D&O

Experts agreed that coverage of investigation costs was among the hottest topics in directors and officers insurance in 2011, but their opinions diverged as to whether insuring those expenses ultimately would help or harm the market.

The introduction of investigative cost coverage for whole companies—as opposed to individual executives—was the industry's best and worst development in 2011, according to Doug Miller, executive liability practice vp for the Hylant Group Inc. in Ann Arbor, Mich. The coverage is intended to mitigate expensive and often unforeseen costs associated with complying with the investigative requests of regulators worldwide.


Mr. Miller

Mr. Bailey

Mr. Miller said the products—offered primarily as a stand-alone policy by only a small number of carriers—could be very valuable given increased enforcement efforts by a number of U.S. and foreign agencies.

However, Mr. Miller said the product may yet prove to be unsustainable due to the unpredictable nature of the underlying risk.

"It seems like it's going to be very difficult to actually underwrite those products on a consistently profitable basis," Mr. Miller said, adding that the volatility of commercial regulation likely will cause underwriters to favor larger premiums and deductibles and conservative retention levels. "If you do that, you run the risk of scaring off the initial buyers," he said. "It's sort of a catch-22 in terms of introducing it into the marketplace."

In the legal world, experts said a federal appeals court's July ruling forcing Federal Insurance Co. and ACE American Insurance Co. to pay out $30 million for D&O claims made by MBIA Inc., an Armonk, N.Y.-based financial guarantee insurer, was among the most significant legal decisions made regarding executive liability. Joseph Monteleone, a New York-based partner with the Tressler L.L.P. law firm, said the decision was a significant, high-profile win for policyholders, noting that it likely will help protect businesses and keep them from being blindsided by pre-litigation costs.

Dan Bailey, chair of Columbus, Ohio-based Bailey Cavalieri L.L.C.'s D&O liability practice, saw it differently.

"(The ruling) could expose insurers to potentially very large company costs which most insurers have not intended to cover and could significantly dilute policy limits available to the insured directors and officers," Mr. Bailey said.

—By Matt Dunning

ECONOMY

A turbulent year for the global economy has had positive and negative effects on the property/ casualty insurance market, experts say.

Mr. Karl

Mr. Hartwig

For Kurt Karl, chief economist at Swiss Re Ltd., the best and worst aspects of the economy's impact on the industry are the same thing—"sovereign debt."

It has been a great year for insurers holding German or U.S. bonds, he said, but not such a good year for those invested heavily in Italian bonds or the sovereign debt of any other troubled eurozone economy.

The global property/casualty industry demonstrated its "extraordinary resilience in the face of near-record global catastrophe losses," said Bob Hartwig, president of the New York-based Insurance Information Institute Inc.

The year is likely to go down as the second-costliest ever for insurers with catastrophe losses likely to exceed $75 billion, but a positive sign for insurers has been the halt of the seven-year soft market for U.S. commercial lines business.

It has been a year of slow growth in the economy, resulting in slow premium growth for insurers, said Mr. Karl.

The worst aspect of the economy for insurers in 2011 was low interest rates, a situation expected to last until at least 2013, he said.

"Because approximately 70% of the U.S. P/C insurance industry's invested assets are in bonds, the impact on insurers' ability to earn investment income is significant and long-lasting, forcing a rethinking of how property/casualty insurance products are priced, especially long-tailed lines, such as workers compensation or medical professional liability," he said.

—By Sarah Veysey

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Market Moves

Markel agrees to buy program administrator

KENNESAW, Ga.—Markel Corp. said it has entered into a definitive agreement to acquire Thompson Insurance Enterprises L.L.C., a privately held program administrator underwriting multiline, industry-focused insurance programs.

The programs include medical transportation, senior living, child care centers, pest control operators, tanning salons and fitness centers.

Although terms of the deal were not disclosed, a statement from Richmond, Va.-based Markel said that Kennesaw, Ga.-based THOMCO expects to underwrite more than $170 million in gross premiums in 2011.

THOMCO will continue to operate as a separate business with Greg Thompson and Bob Heaphey, THOMCO's current chairman and president, respectively, leading the operation, according to the statement. The operation will become part of Markel Specialty.

The transaction is expected to be closed in the first quarter of 2012.

USI buys D.C.-area benefits brokerage

RESTON, Va.—USI Insurance Services L.L.C. is acquiring Barros International Ltd., a Reston, Va.-based employee benefits brokerage firm specializing in diplomatic organizations and middle-market businesses.

Terms of the transaction were not disclosed.

"Barros is a great addition to our rapidly expanding employee benefit practice in the greater (Washington) area," said Steven C. Deal, USI's regional CEO for the Mid-Atlantic, in a statement. "This acquisition strengthens our position as one of the leading insurance brokerage firms in Virginia and one of the largest benefit insurance brokerage firms in the United States."

The Barros acquisition is USI's third acquisition this year. USI previously acquired de la Parte & Associates, a Tampa, Fla.-based employee benefits and insurance consulting firm, and First Place Insurance Agency Ltd., a mid-market broker in Youngstown, Ohio.

USI is the nation's eighth-largest insurance broker based on 2010 revenue of $632.2 million, according to *Business Insurance*'s annual rankings.

Torus acquires rights to syndicate's renewals

LONDON—Torus syndicate 2243 has acquired the renewal rights to C.V. Starr syndicate 1919's continental European marine, casualty, financial lines and general property business, effective Jan. 1, 2012, Torus Insurance Holdings Ltd. and Starr Underwriting Agents Ltd. said in a statement.

The transaction and syndicate 2243's business plan for next year have been approved by Lloyd's of London. Torus syndicate 2243 and C.V. Starr syndicate 1919 are managed by Starr Managing Agents Ltd.

"The agreement enables Starr to focus on expanding our operations in rapidly growing marketplaces around the world," Steve Blakey, head of Starr's international insurance operations, said in a statement. "While Europe remains important to Starr, Latin America and Asia are expanding significantly." There are opportunities for Starr to leverage its "relationships and expertise," he said.

"Today's announcement further underlines Torus' commitment to becoming a leading specialty insurer through strategic growth in key markets worldwide, as well as our stated commitment to the development of our Lloyd's platforms," Clive Tobin, Torus group chief executive, said in the statement.

UP CLOSE
COMINGS & GOINGS

JON SPERRIN

NEW JOB TITLE: London-based general insurance partner at Grant Thornton U.K. L.L.P.

PREVIOUS POSITION: London-based general insurance director at Grant Thornton U.K. L.L.P.

INDUSTRY CHALLENGES: Balancing the challenges of the current regulator in the United Kingdom with the transition to the new one, against the backdrop of existing demands.

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OUTSIDE THE INDUSTRY, A DREAM JOB: I cannot imagine doing anything else.

HOBBIES: Spending as much time as possible with my family.

MOST PASSIONATE ABOUT: My wife and two young sons.

FAVORITE BOOK: The "Harry Potter" series, which I am currently reading to my boys.

CAN'T-MISS TV SHOW: "Fringe."

FAVORITE MEAL: Cauliflower with cheese.

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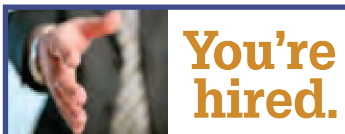

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Mines: Focus on safety grows

CONTINUED FROM PAGE 1

deaths and size of the settlement). It touched the industry," Mr. Fries said.

Because the agreement forces Alpha to invest heavily in health and safety research, experts said they expect resulting technology advancements and safety training improvements will spread to other mining operations.

"I think this is going to be a game changer for the coal mining industry" because of the technology research investments Alpha must make, said Ken Sloan, U.S. mining practice leader for Marsh Inc. in Knoxville, Tenn. "It signifies a renewed, if not new, commitment of mine management to focus on safety, and that compliance is a necessity regardless of the impact on productivity."

The settlement and the tragic disaster that led to it also are reminders that coal mining has grown more hazardous, requiring greater safety protocols, Mr. Sloan said.

Feeding the nation's coal appetite has forced miners deeper into the earth, Mr. Dial agreed.

"You used to go in 1,000 or 2,000 feet at the most," he said. "But now they are going two or three miles to get the coal and that means mines are spread out more."

The settlement requires Alpha to pay $46.5 million to the two injured workers and the families of the workers who were killed, plus $34.8 million to resolve citations and violations.

Alpha also will invest $80 million in safety measures for its mines, including those acquired from Massey, and will establish a $48 million trust to fund research to improve overall mine safety.

Such funding will speed development of safety technology. If mine operators don't voluntarily purchase the resulting safety products, the MSHA is likely to force them to do so, Mr. Dial said.

Typically, when the government settles such a case, mine operators pay the fine and move on with their business, said Tom Morelli, president of the global energy casualty unit for New York-based Chartis Inc., which provides casualty insurance for Alpha. But he also sees this case as a "game changer."

Under the settlement, Alpha will develop a safety curriculum and state-of-the-art training facility, which will be available to train miners at Alpha and other mining companies, according to the U.S. Attorney's office.

"Alpha is taking a leadership role to make coal mining safer," Mr. Morelli said.

But Chartis declined to say whether insurance will pay any part of Alpha's settlement or for any liabilities resulting from lawsuits brought by the miners' families.

A criminal sanctions settlement will not affect the insurance market, Marsh's Mr. Sloan said. It does, however, "send a message to underwriters that they need to be more aware of the quality of mine management," Mr. Sloan said. "The quality of mine management has always been on the minds of underwriters, but this event will bring that element of underwriting more to the forefront."

Alpha issued a statement saying it is pleased that a substantial portion of the settlement will further miner safety and that it is mindful that the investigation arose from the death of 29 miners.

But some of the deceased miners' families reportedly still want criminal prosecution of individuals.

Similarly, the United Steelworkers said in a statement that the settlement does not limit civil penalties that families may seek and does not protect individual Massey managers from criminal charges.

"The criminal investigation of individuals associated with Massey remains ongoing," according to U.S. Attorney's Office.

MLR: Brokers disappointed

CONTINUED FROM PAGE 3

Agents & Brokers of America.

"We're going to continue to work towards adding to that already very long co-sponsor list, and make the case to the leadership of the House that the bill should be moved," Mr. Symington said. "In the Senate, we're having discussions with Senate offices on potential introduction of either a companion to the House bill or legislation that could differ but could still tackle the problem."

Mr. Symington said the group will work with HHS in an effort to try to deal with this problem, "but we are very disappointed with their action."

In a statement issued shortly after HHS' announcement of the final rule on Dec. 2, Mr. Symington said, "HHS completely ignored the NAIC's recently passed resolution in which the commissioners urged HHS to provide agents and brokers with relief from the MLR calculation. This relief is essential in order for consumers to have continued access to the professional services of agents and brokers."

Meanwhile, a group of consumer groups, labor unions and other organizations sent a joint letter to members of Congress, urging them "to reject legislation that would undermine the critical consumer benefits of the minimum medical loss ratio." The groups wrote that "these proposals could cost consumers more than $1 billion in lost premium rebates and greatly diminish the ability of the MLR to reduce the growth of health insurance rates."

The AFL-CIO, Consumers Union and National Education Assn. were among the more 70 signatories of the letter.

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Harass: Problem persists

CONTINUED FROM PAGE 3

comfortable sending inappropriate material via an email or text message than they would in person, he said.

"Now you can harass (someone) without seeing them or touching" them, he said. "You can create a sexually hostile work environment via email from the floor below or the office next door."

There also are instances where people "may not intend for something to be harassment, but it may very well be perceived that way; and sometimes people just don't think," said Martha J. Zackin, of counsel at Boston-based Mintz Levin Cohn Ferris Glovsky & Popeo P.C. in Boston.

Linda E. Shostak, a partner with Morrison Foerster L.L.P. in San Francisco, said, "There are some people who don't get it and think (sexual harassment) doesn't apply to them, meaning what they're doing is friendly, consensual; and it never occurs to them it wouldn't be welcome." It is "certainly a personality type you still find in the workplace."

Best practices for confronting harassment

By JUDY GREENWALD

A strong policy, training, a readily accessible complaint procedure, responsive investigations and a corporate culture that discourages sexual harassment are factors that will help employers address this problem, experts say.

Employers should be sure they have updated, sophisticated social media policies that address the role social media may play in sexual harassment, said Gregg M. Lemley, a shareholder with Ogletree Deakins Nash Smoak & Stewart P.C. in St. Louis. Anti-sexual harassment policies should be updated to reflect today's social media, and social media policies should address its potential role in sexual harassment, Mr. Lemley said.

"I think one thing that surprises people in training, particularly supervisors, is that they can be held personally liable" for sexual harassment, said Linda E. Shostak, a partner with Morrison Foerster L.L.P. in San Francisco. Even if the company has insurance or provides a defense, "the company cannot provide them with coverage for punitive damages" because that would be contrary to public policy, she said.

But training alone may not be enough, said Paul E. Starkman, a partner with law firm Pedersen & Houpt in Chicago.

Executives in particular still may not believe the issue applies to them, so "you've got to develop the culture where people feel they don't need to put up" with sexual harassment, where employees "can let someone know and something actually will be done about it," he said.

Diana L. Hoover, a partner with Hoover Kernel L.L.P. in Houston, said there should be "frequent and regular communications with the employees, and I don't mean standing up" in front of a room and lecturing employees about it. Instead, this requires "truly being out on the floor, in offices and branches...and understanding what the culture is and understanding what happens outside of your training room," she said. Senior managers should take "an active role and responsibility to make sure that what is modeled in the classroom is reflected in the workplace."

An easily accessible complaint and investigation procedure also should be in place. Many companies below the Fortune 200 level "do not make the complaint procedures as robust as they should," so employers "don't get the reports" of sexual harassment, said Mr. Starkman. He added that workers should be able to make complaints anonymously.

Many sexual harassment claims "can be resolved short of termination, and that pretty much requires a good investigation in terms of who was involved: Were people really offended? Was it relatively minor? Was it relatively major?" said Joseph R. Harkins, a partner with Littler Mendelson P.C. in Washington.

"I think those are the key steps to let employees know that their complaints were taken seriously, and that has really sort of a twofold benefit: One is prevention and two is resolving things before they get out of hand," he said.

Mobs: New holiday risk

CONTINUED FROM PAGE 1

James Stenstrom, director of risk management at Roundy's Supermarkets Inc. in Milwaukee, said that while he hasn't seen any kind of intelligence that his particular business is exposed to this threat, "there is a flash mob mentality that we are aware of."

The issue was brought to his attention by Roundy's CEO, Mr. Stenstrom said.

"We talked about it at one of our budget meetings coming up for the year, and whether or not it's something we're addressing. We're looking at it from a negligence standpoint as a very small exposure," he said, noting that it may be a greater concern for retailers that carry electronic and other consumable goods that may be targeted by thieves.

Flash rob risks are trending upward as social media use has increased, said George Jehlen, senior vp and director of risk control services for Wells Fargo Insurance Services Inc. in Atlanta. "It has been increasing over the last three years in particular. We've seen a number of incidents, both from a flash mob standpoint and a rob" standpoint he said, noting that some national retailers have experienced multiple hits.

Typically crime, general liability and property insurance policies will respond to criminal flash mob losses, insurance industry experts say.

"Currently there are no exclusions that I've seen in the marketplace on it," Mr. Jehlen of WFIS said.

"It's not a focus on loss control as much as it's a focus on how to manage the situation from a safety standpoint," said a risk manager of a national big-box chain retailer who wished not to be named for this report.

"We haven't had any incidents, but our loss prevention area has a protocol in place as a proactive measure. It appears this is more prevalent in a convenience store setting, so the exposure is greater with our gas stations than our main store," the risk manager said.

Criminal flash mob events are a year-round threat, said Mac Nadel, Marsh Inc.'s retail, wholesale and food and beverage practice leader in Norwalk, Conn. But the risks may be exacerbated by the holiday season, which is so critical for retailers' profits.

"The actual losses themselves are not necessarily high dollar amounts. It's more the concern around safety in the stores and local public relations concerns," Mr. Nadel said. As criminal flash mob events typically attract media coverage, shoppers may not come back to the retailer due to a tarnished brand reputation, he said.

It is important for a large retailer to evaluate its high-risk locations and perform an annual assessment of its security program, according to Kelly Brown, retail and wholesale industry practice leader for Zurich North America Commercial in Philadelphia.

"The worst thing that could happen would be to have an employee seriously injured or a fatality," Mr. Brown said.

Establishing communication protocols to be used during an attack, such as a coordinated public relations response to media reports and inquiries, also is critical, along with vetted apprehension procedures to ensure the safety of employees and customers, he said (see box, page 1).

David Johnston, director of business development for loss prevention services provider LP Innovations Inc. in Milford, Mass., said that focus is all about safety.

"Dealing with a flash rob situation, I can't stress enough the training and awareness of the employees," Mr. Johnston said, noting that one or two employees cannot stop 25 to 30 individuals participating in the rob.

During an attack, retailers should stress to employees to never grab, stop, prevent, or lock in multiple offenders. "There are instances that people are doing that and all it's resulting in is unnecessary violence," Mr. Johnston said.

Women execs urged to become sponsors

By MATT DUNNING

NEW YORK—If women hope to grow their share of senior executive positions in the corporate sector, a greater emphasis on individualized sponsorships of young female employees will be critical to their success, a panel of experts said last week at the 2011 Women to Watch Leadership Workshop in New York.

Women in upper management should strongly consider extending themselves beyond the scope of traditional mentoring relationships and develop more formal sponsorship arrangements with high-potential female recruits, several former Women to Watch honorees said at the conference.

"It's a step beyond mentoring," said Carol Murphy, a managing director at Aon Brokerage Group in Chicago. Effective sponsorship, Ms. Murphy said, should entail a high measure of one-on-one outreach, career guidance and, when appropriate, endorsement for promotion or other opportunities.

"To be a sponsor, you have to have power, whether it's the power to promote people or just steer them to the right opportunities," Ms. Murphy said. "Sponsorship is a more powerful advocacy of someone's career and of their skills."

These relationships can be mutually beneficial, panelists said, particularly in industries that have seen comparatively low hiring of college graduate-aged women entering the workforce. Sponsorship programs can be an effective means of generating initial interest in the company and boosting retention of those employees over the long term, panelists said.

"Especially from a retention perspective regarding our employees, we think this is going to be imperative," said LoriAnn Lowery-Biggers, the Dallas-based field operations president at the Navigators Group Inc. "The fight for talent, just in our industry alone, is absolutely massive. To be able to entice young women, it's incredibly important that they see there's a path for them to succeed, and there's someone to support them and help them along their career path."

Ms. Murphy said while sponsorship for women is increasing in some industries, many young female employees still find it harder to obtain that form of specialized guidance than their male counterparts.

"The belief is that, typically, these types of relationships exist in greater number and more informally for male employees," Ms. Murphy said. "It's very important to make those kinds of special initiatives available in order to break through that problem."

Women: Gender gaps in roles, pay

CONTINUED FROM PAGE 4

of women finding senior management roles," said Carol Murphy, a managing director at Aon Corp. in Chicago. "That's something that we're fighting, and it's multifactorial; it's not a simple problem with a simple solution."

Effecting change in corporate cultures will help level the playing field for women at their own companies, but many at the conference said women will only realize equality at work when traditional gender roles outside the workplace are abandoned. In her opening keynote address, feminist activist Gloria Steinem said a fundamental change in what men and women are taught to understand are appropriate behaviors and aspirations based on their gender is likely the hardest, but certainly most important, challenge facing the women's equality movement.

Marsh: Former exec files suit

CONTINUED FROM PAGE 3

jobs during the Spitzer investigation.

Last year, two former Marsh Inc. executives whose bid-rigging convictions have been overturned have accused their former employer of violating federal law and breach of contract.

In a lawsuit filed in October 2010 in the U.S. District Court for the Southern District of New York against Marsh, MMC and two other of its units, William M. Gilman and Edward J. McNenney Jr. said Marsh fired them without cause in late 2004, shortly after then-New York Attorney General Eliot Spitzer filed a complaint against Marsh regarding contingent commissions.

Both men served as managing directors of Marsh.

The men allege Marsh did not pay them the severance to which they were contractually entitled. They also allege they were not paid stock bonuses to which they were entitled under the parent company's stock award plan.

They allege the brokerage's actions in regard to the severance pay and the stock bonuses violated the federal Employee Retirement Income Security Act.

Both men were indicted in 2005 on 37 counts regarding alleged bid-rigging. Before that, MMC settled New York state's civil suit regarding contingent commissions for $850 million.

Messrs. Gilman and McNenney each were found guilty in February 2008 on a single count of restraint of trade and competition. But in 2010, New York County Supreme Court Judge James A. Yates overturned the convictions of both men, citing new evidence that "undermines the court's confidence in the verdict."

inBrief

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earnings growth for U.S. insurance brokers in 2012 will likely match or exceed levels reported for the first nine months of 2011," Fitch said. But, it added, "competitive fundamentals" of the property/casualty insurance market and the slow pace of global economic recovery continue to pose challenges.

Buffett eyes son to succeed him

Berkshire Hathaway Inc. Chairman Warren Buffett would like son Howard to succeed him at the helm of Berkshire Hathaway as nonexecutive chairman, the elder Mr. Buffett told CBS' "60 Minutes." Mr. Buffett said his son, who is a farmer and a director of Berkshire Hathaway, understands the values of Berkshire. Howard Buffett would not make day-to-day decisions at Berkshire, should the board approve him as his father's successor.

CMS sets deadline for retiree claims

The Centers for Medicare and Medicaid Services will not accept claims incurred after Dec. 31 under a $5 billion program established by the health care reform law that partially reimburses employers and other organizations that sponsor early retiree health care plans. CMS disclosed the filing cutoff Friday as the $5 billion Early Retiree Reinsurance Program fund is running out of money to pay such claims.

Thai flood-related losses top $10B

Months of flooding in Thailand could cost insurers more than $10 billion, according to an analysis by Aon Benfield. The report said total economic damage wrought by the Thai flooding amounts to $45 billion, with insured damage possibly exceeding $10 billion.

Texas wildfire losses increase to $325M

Insured losses from the September Bastrop wildfire in Texas are projected to reach $325 million, the Insurance Council of Texas said. The Bastrop fire has become the costliest wildfire in Texas history. This year is the costliest year for wildfires in the state with insured losses at $500 million, easily surpassing 2009, which previously was the costliest year with $115 million in insured losses. The group said 1,673 houses were destroyed by the fire. It also said more than half of the homeowner insurance claims arising from the fire have been settled.

CONTRIBUTING: Roberto Ceniceros, Matt Dunning, Judy Greenwald, Mike Tsikoudakis

End Page

Fight between dueling yogis gets heated

The term "yoga war" might seem to be an oxymoron in light of yoga's emphasis on meditative poses, but that appears to be what's going on in a legal battle between two yoga studios in New York.

The Bikram Yoga NYC studio in New York's Flatiron District offers sessions costing as much as $25 each for workouts in 105-degree heat, according to the New York Times.

Meanwhile, just a few blocks away, Yoga to the People offers what it describes as "traditional hot yoga" in 103-degree heat for just $8.

Bikram Choudhury, Bikram Yoga's founder, has copyrighted Bikram Yoga and is suing Yoga to the People for copyright infringement. He is seeking monetary damages and has asked a federal judge to block Yoga to the People from offering hot yoga.

Mr. Choudhury's attorney, Robert Gilchrest, a partner with law firm Silverman Sclar Shin & Byrne L.L.P. in Los Angeles, who has represented Mr. Choudhury in at least one other comparable lawsuit, said an investigator was sent to take the classes at Yoga to the People and that the two studios' classes are "virtually mirror images and the dialog was consistently the same" as Bikram yoga.

Yoga to the People founder Greg Gumucio says, however, that Mr. Choudhury "enlightened him" by saying, "You are your own teacher. You are responsible for your own experience."

Presumably, that means he ultimately may find himself responsible for his own legal costs as well.

AP PHOTO

While Angelina Jolie says she came up with the idea for the movie 'In The Land of Blood and Honey' on her own, a journalist says the script bears too close a similarity to his book.

Jolie's wartime love story launches copyright battle

A journalist has accused Angelina Jolie and producers of "In the Land of Blood and Honey" of copyright infringement.

Josip J. Knezevic, a Zagreb, Croatia-based journalist, filed a lawsuit last week against Ms. Jolie, producer Edin Sarkic and the studios that will release the film, accusing them of pilfering key elements from his 2007 book "The Soul Shattering," according to documents filed in federal court in Chicago.

Ms. Jolie said the story in the movie was her idea. "I sat down one day frustrated, having met so many people in post-traumatic stress situations, and wrote a story reflecting on it," Ms. Jolie said. "I didn't plan on writing a script or a movie. I wanted to put my thoughts on paper regarding a situation not discussed enough. This was my story."

But Mr. Knezevic said he met Mr. Sarkic on several occasions in 2008 and discussed having the book made into a motion picture.

In 2010, Mr. Knezevic learned through media outlets that Ms. Jolie and Mr. Sarkic were filming a movie in Bosnia bearing striking similarities to his work.

Both works detail a love story in Bosnia-Herzegovina in the 1990s.

"The similarities between the subject work and the motion picture are obvious: The motion picture copies key plot elements, themes, characters, events, sequences and settings of the subject work," according to the lawsuit.

Mr. Knezevic seeks damages in excess of $100,000.

Real housewife gets real sentence in work comp scam

A woman seeking to appear on the Bravo TV series "The Real Housewives of Orange County" instead will spend 10 years on probation for one of the largest workers compensation scams in California history.

Devon Lynn Kile, 46, already has spent two years in jail while her case was pending, according to the Orange County District Attorney's Office. She recently was sentenced for joining her husband, Michael Vincent Petronella, 52, in committing $30 million in workers comp insurance premium fraud.

The couple gained notoriety in 2010 after fraud investigators raided several properties they owned and found luxury cars including a Bentley, two Ferraris, $500,000 in jewelry and $51,000 in cash. They also found an application for Ms. Kile to appear on the television show.

In April, Ms. Kile pleaded guilty to 36 felony counts, including misrepresenting facts to the State Compensation Insurance Fund and tax evasion charges. She was sentenced to 10 years probation last week. Mr. Petronella, also known as Michael Constantine, last year was sentenced to 10 years in prison.

The couple co-owned three roofing contractor businesses.Their arrests came after a two-year investigation that began after an employee fell from a roof in 2006 and submitted a payroll stub to SCIF. But SCIF did not insure the company listed on the pay stub and notified authorities.

Investigators found the couple submitted 42 fraudulent claims and underreported tens of millions of dollars in payroll to avoid paying workers comp premiums.

Meanwhile, they charged more than $2.1 million on one credit card and spent thousands of dollars "on jewelry, shoes, clothes and other personal items" at high-end designer stores, prosecutors said.

Ms. Kile was also ordered to pay at least $2.8 million in restitution.

AUTHOR SAYS IDEA FOR 'COWBOYS & ALIENS' WAS ABDUCTED

A comic book author claims the producers of the 2011 sci-fi western "Cowboys & Aliens" stole the film's concept from him more than 15 years before it was released.

Steven John Busti, author of the "Bizarre Fantasy" series of comic books, first published his "Cowboys and Aliens" story in 1995, according to a lawsuit filed in an Austin, Texas, federal district court.

Mr. Busti's comic book and the film tell a similar story about extraterrestrials invading the Old West and battling with a band of cowboys.

Mr. Busti claims his story was previewed in a 1995 issue of Comic Shop News. Not coincidentally, he claims, an article about Malibu Studios and Scott Mitchell Rosenberg, one of the film's producers, appeared on the same page.

In May 1997, Mr. Rosenberg and Platinum Studios Inc. produced a one-sheet pitch form featuring a cowboy chased by an alien spaceship titled "Cowboys & Aliens," according to the suit. Based on that one-sheet, the suit claims Universal Studios and Dreamworks II Distribution Co. L.L.C. bought the film rights to Mr. Rosenberg's "Cowboys & Aliens" from Platinum Studios.

In 2006, Mr. Rosenberg and Platinum Studios published their own "Cowboys & Aliens" graphic novel, which Mr. Busti claims bears several similarities to his work.

Mr. Busti is suing the film's production studios and producers for copyright infringement, and is seeking damages and additional profits from the film's DVD and Blu-Ray sales.

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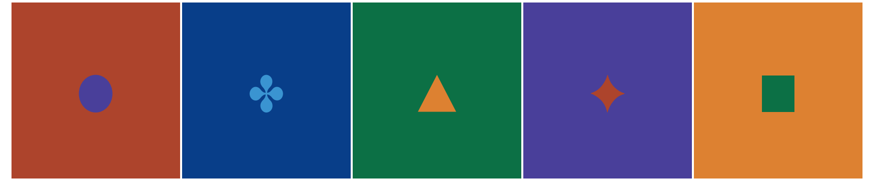

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Industry Deep Dive: Manufacturing	Feb. 6	Jan. 25
Benefit Management & Communications Technology	Feb. 13	Feb.1
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