

Business Insurance

December 14, 2009

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ALLIED ACQUISITION ADDS TO CONSTRUCTION BUSINESS AT AON RISK SERVICES / PAGE 3

OBAMA CALLS FOR COBRA SUBSIDY EXTENSION / PAGE 3



CRM FACES LITIGATION OVER MANAGEMENT OF N.Y. COMP TRUSTS / PAGE 3

In Brief

House lawmakers pass financial regulation bill

The House of Representatives on Friday passed a measure, H.R. 4173, that would increase government regulation of the financial services industry. The Wall Street Reform and Consumer Protection Act of 2009, which passed on a 223-202 vote, also would establish a Federal Office of Insurance within the Treasury Department and ease requirements for buyers purchasing surplus lines coverage. The bill would provide federal regulators with broad authority to identify and respond to systemic risks, including breaking up firms that pose a large-scale financial threat. The bill also would establish a Consumer Financial Protection Agency, though the agency would not have jurisdiction over the property/casualty insurance industry. The bill includes

See **IN BRIEF** page 21

2009 YEAR IN REVIEW

Business Insurance looks back on 2009—a tumultuous year for many, including risk and benefit managers. Top stories include more change at AIG; contingent broker pay makes a comeback; soft market persists; fights over health care reforms; COBRA subsidies cause confusion; and PBGC deficit doubles. **PAGE 9**

HEALTH CARE REFORM

Reforms reshaped to win more votes

With clock ticking, Senate measure proposals in flux

By **JERRY GEISEL**

WASHINGTON—Health care reform legislation is inching its way to a Senate floor vote as Democratic leaders continue to wheel and deal to get the support needed to assure passage.

Last week, Senate Majority Leader Harry Reid, D-Nev., tried to end a long-running controversy holding up Senate consideration of the legislation.

That controversy involves a provision in the measure—opposed by all Senate Republicans and some moderate Democrats—that would establish a government-run health insurance plan for individuals purchasing coverage through state health insurance exchanges that the legislation would authorize.

Public option supporters say it is needed to give commercial insurers

more competition, especially in the personal lines market.

But the public option in its current form has so much opposition that Sen. Reid would be unable to get the 60 votes needed to bring the legislation to a vote unless he jettisons the provision, observers say. Several senators, such as Sen. Joseph Lieberman, I-Conn., said they will not vote for the legislation if it includes a public option.

As a result, Sen. Reid has been working with a group of Democratic senators to develop alternatives.

“Clearly, things are in flux,” said Paul Dennett, senior vp-health care

reform with the American Benefits Council in Washington.

“Big ideas are being plotted out in small circles,” added Helen Darling, president of the National Business Group on Health in Washington.

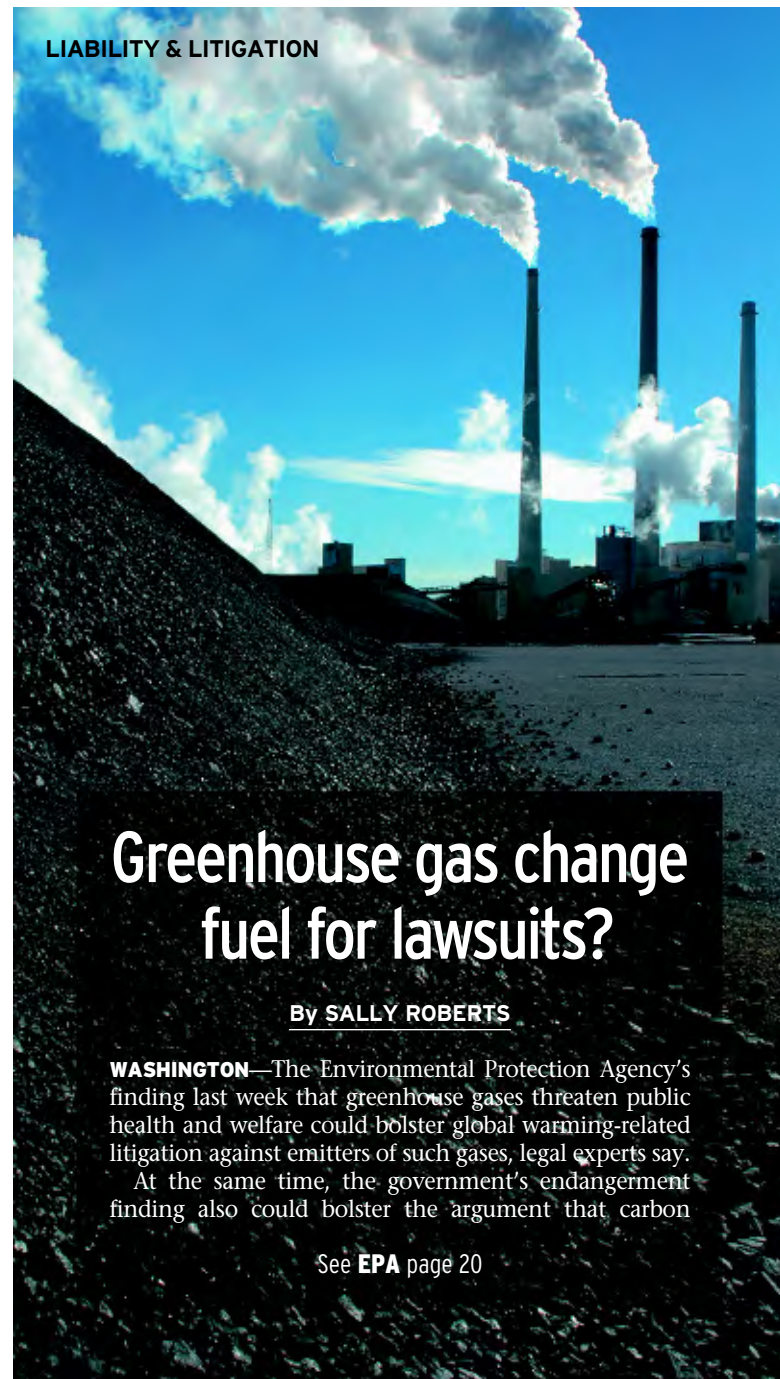
One idea floated as an alternative to a public option is establishing a Medicare buy-in program starting at

See **REFORM** page 21



Senate Majority Leader Harry Reid, D-Nev., is working to gain enough support to bring health care reform legislation to a vote.

LIABILITY & LITIGATION



Greenhouse gas change fuel for lawsuits?

By **SALLY ROBERTS**

WASHINGTON—The Environmental Protection Agency’s finding last week that greenhouse gases threaten public health and welfare could bolster global warming-related litigation against emitters of such gases, legal experts say.

At the same time, the government’s endangerment finding also could bolster the argument that carbon

See **EPA** page 20

SAFETY

Employers wary of changes in approach, focus at OSHA

By **ROBERTO CENICEROS**

WASHINGTON—Employers are concerned about changes at the Occupational Safety and Health Administration, including a shift to more

aggressive enforcement and increased attention to musculoskeletal disorders.

Fueling some concerns was a proposal last week by the Department of Labor and OSHA to require that

employers report worker musculoskeletal disorders, known as MSDs, as part of their Form 300 injury logs.

Employer organizations said they fear that the increased MSD reporting could set the stage for mandatory workplace ergonomics standards.

“While the department has indicated that they do not intend to pursue regulatory actions on an ergonomics standard, we see (that) the development and request for this data would definitely be part of those efforts to develop such,” said Keith Smith, director of employment and labor policy for



Mr. Michaels

the National Assn. of Manufacturers in Washington.

“The only reason why OSHA would want to capture that data is to build a case for doing something on ergonomics,” said Marc Freedman, executive director for labor law policy at the U.S. Chamber of Commerce in Washington. “Whether it’s a full-blown regulation or some other approach, we don’t know. But it’s abundantly clear they want that data for the purpose of moving forward on some

See **OSHA** page 18

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HEALTH CARE REFORM

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Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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HEALTH CARE BENEFITS

Obama endorses extension of COBRA subsidy

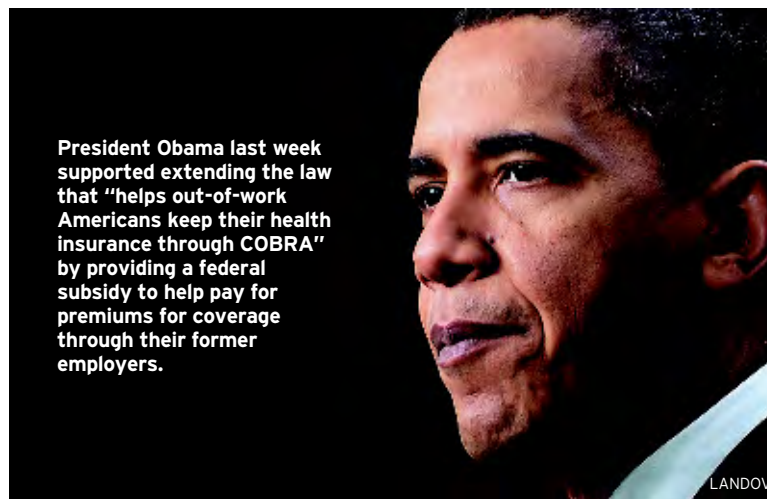
Move seen boosting legislative effort, but time is short

By JERRY GEISEL

WASHINGTON—President Obama's call last week for extending the COBRA premium subsidy increases the likelihood that Congress will renew the program, experts say.

In a speech at the Brookings Institution in Washington, President Obama said last week that the COBRA subsidy for laid-off employees is one of several economic relief provisions that lawmakers should extend.

"The administration will be work-



President Obama last week supported extending the law that "helps out-of-work Americans keep their health insurance through COBRA" by providing a federal subsidy to help pay for premiums for coverage through their former employers.

ing with Congress to ensure that those hit hardest by this economic crisis continue to receive the sup-

port they need....This includes the Recovery Act provision that helps out-of-work Americans keep their

health insurance through COBRA," President Obama said.

The subsidy, embedded in a massive economic stimulus bill President Obama signed in February, has paid 65% of COBRA premiums for employees involuntarily terminated from Sept. 1, 2008, through Dec. 31, 2009, for up to nine months.

"The chances of an extension were already high and administration support makes it even more likely," said Chantel Sheaks, a principal with Buck Consultants L.L.C. in Washington.

Without an extension, employees laid off starting Jan. 1, 2010, will be ineligible for the subsidy, as would current beneficiaries who

See **COBRA** page 18



New York Attorney General Andrew Cuomo has threatened to sue CRM Holdings Ltd. unless there is quick resolution of fraudulent practices allegations.

WORKERS COMPENSATION

CRM faces litigation in N.Y. over workers comp trusts

Comp board faults firm for underfunding; Cuomo suit expected

By JEFF CASALE

NEW YORK—The New York State Workers' Compensation Board last week filed a lawsuit against embattled company CRM Holdings Ltd., accusing CRM and some of its directors and officers of fraud, while another suit by the state's attorney general could be filed this week.

The WCB alleges in its lawsuit that certain directors and officers breached fiduciary duties owed to the trusts operated by Hamilton, Bermuda-based CRM, causing damages to the trusts exceeding \$405 million.

The WCB's lawsuit against CRM may not be the only one the company faces. New York Attorney General Andrew Cuomo said last week that he intends to file civil

claims against CRM, some of its subsidiaries, and directors and officers to address alleged fraudulent practices. Mr. Cuomo told CRM in a "notice of imminent enforcement action" that he will file the lawsuit unless a settlement could be reached within five days.

The notice, sent Dec. 8, gave CRM five days to reach a settlement with Mr. Cuomo. If no settlement is made, the attorney general can file a lawsuit at any time after the deadline.

The WCB and Mr. Cuomo allege that CRM underestimated workers compensation liabilities of the companies it represented, which allowed them to charge lower premiums and left the companies with insufficient reserves to cover liabilities.

CRM has been under scrutiny from New York and the WCB since it was revealed in June 2008 that several workers compensation trusts in New York faced a

See **CRM** page 21

AGENTS AND BROKERS

Allied purchase builds out Aon construction business

Deal lays groundwork for global expansion, Aon Risk Services says

By SALLY ROBERTS

JERICHO, N.Y.—Aon Risk Services Inc.'s acquisition of Allied North America will strengthen the Chicago-based brokerage's domestic construction capabilities as it moves to expand its business around the world, executives said.

The deal, announced last week, is expected to close by year-end. While financial terms were not disclosed, one analyst estimated the purchase price at roughly \$154 million.

Jericho, N.Y.-based Allied North America, which specializes in construction and surety business, is the 27th-largest broker of U.S. business, based on \$88.1 million in 2008 U.S. brokerage revenues, according to *Business Insurance's* ranking. It has roughly 450 employees in 16 offices throughout the United States.

Upon completion of the deal, Allied Chairman Bill Marino will assume the role of president of Aon's global construction business and vice chairman of Aon Construction Services Group based in New York, Aon said.

"From our perspective, this was the best acquisition in (the construction) sector that we could have found," said Peter Arkley, Los Angeles-based chairman and chief executive officer of Aon's global construction business and Aon Construction Services Group.

Allied not only has "a tremendous depth of talent" and "strong leadership," but it also shares the same global expansion mission as Aon, Mr. Arkley said.

He noted, however, that in order for the brokerage unit to expand

globally, it needed to have the "right kind of depth in the United States to grow and protect our core business."

With Allied, "essentially what we've built is the largest domestic brokerage firm for construction with a lot of talent and 30 offices coast to coast," Mr. Arkley said. "And Bill (Marino) and I are going to take responsibility for driving the global strategy for Aon for expansion around the world."

ALLIED NORTH AMERICA
Jericho, N.Y.

2008 premium volume:
\$855.0 million

2008 brokerage revenues:
\$88.1 million

'From our perspective, this was the best acquisition in (the construction) sector that we could have found.'

Peter Arkley,
Aon Construction Services Group

sion around the world."

Analysts like the deal.

"The addition of Allied North America will not fundamentally change operations for Aon, however, we view the bolt-on acquisition as another positive example of management's strategy to opportunistically add strength," Keith F.

See **ALLIED** page 18

RISK MANAGEMENT

Workplace IT risks getting personal

Letting employees use own laptops for work invites new exposures

By JUDY GREENWALD

More employees are using their own laptop computers at work, a trend that employers should approach with considerable caution, observers warn.

Concerns about establishing boundaries between personal and company information, protecting company networks against viruses and malware that may infect workers' computers, and retrieving vital company data when the employee

leaves the firm are just a few issues with which employers must contend, observers say.

"There is an incredible range of issues that would be hugely problematic" in using employees' personal computers, said Michael R. Overly, a partner with law firm Foley & Lardner L.L.P. in Los Angeles.

A survey by Stamford, Conn.-based Gartner Inc. found that the average number of workers using their own laptops as their primary work computer is expected to increase to 14% in mid-2010 from 10% this year, and many believe this trend will continue.

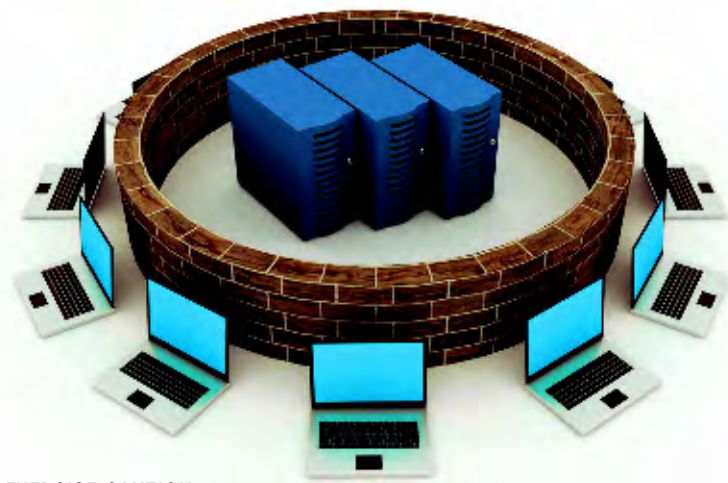
Cost is one factor. Gartner Research Director Annette Jump said company acceptance of such

an arrangement varies greatly. "In the current climate of cost containment, large enterprises are exploring all possibilities offered by alternative client computing architectures and device solutions, and that includes employee-owned PCs," she said in a statement.

Some employees also prefer to use their own computers because they have better hardware specifications and a newer design, according to the second-quarter survey of 528 information technology managers in the United States, United Kingdom and Germany.

"You need to consider what the risks are associated with (employee

See **PERSONAL** page 19



EXERCISE CAUTION

Employers who permit employees to use their own computers at work should follow these guidelines:

- Be sure their network is protected against viruses and malware that may be on the computers.
- Determine who should service the computers when needed, and how, so company data is secure.
- Establish boundaries so workers' private information is protected.
- Develop measures to retrieve company data when the employee leaves the company.

Source: Legal experts



U.S.-flagged Maersk Alabama arrives at the Kenyan port of Mombasa. An armed security team on the ship fended off pirates in November.

MARINE

Pirate attacks trigger armed guard coverage

Programs protect shipowners against increased liability risk

By ZACK PHILLIPS

Insurers and brokers have begun to offer products that cover or facilitate the use of armed security guards onboard ships to defend against piracy.

But despite the persistence of pirate attacks, the shipping industry remains largely reluctant to put firearms on vessels, observers say.

Shipowners and their underwriters typically have been wary of arming merchant ships, due to a host of potential legal, logistical and safety problems. But in recent months, as

pirates off the coast of Somalia have hijacked several ships and attacked scores of others, some insurance products have emerged that would cover the use of armed security personnel to ward off pirates.

"The attitude has changed but they never had this type of scenario before," said Lars Gustafson, a New York-based senior vp at Marsh Inc.

Despite an international flotilla of naval ships shepherding merchant ships through safe-travel corridors, pirates off the coast of Somalia have hijacked 31 ships in 2009 and attacked 172, compared with 42 hijackings and 111 attacks in 2008, according to figures from the International Maritime Bureau's Piracy Reporting Center in Kuala

See **GUNS** page 19

P/C INSURERS

Bonuses OK'd for 'critical' AIG executives

Pay czar outlines compensation rules for insurer's top employees

By COLLEEN MCCARTHY

WASHINGTON—American International Group Inc. will be permitted to pay retention bonuses to top executives deemed "particularly critical" to its long-term financial success under new rules announced Friday by the U.S. pay czar.

The awards, which AIG called "legally binding contracts," were outlined in a broader report by Kenneth Feinberg, the Treasury Department's special master for executive compensation.

"Due to the unique financial circumstances currently found to exist at AIG," restructuring the 2009 contracts would not be consistent with the public interest, the report said.

The report also outlined compensation rules on the 26th to 100th highest-paid employees at AIG and three other companies that received bailout funds. Mr. Feinberg previ-



Kenneth Feinberg on Friday released a report outlining compensation rules for four bailed-out companies.

ously ruled on compensation for the 25 highest-paid employees.

Under the rules, cash salaries are

largely limited to \$500,000, except in "exceptional cases." Overall cash is limited to 45% of an employee's total compensation, and all other pay must be in the form of company stock. Stock that is salary will vest immediately, but it must be held for one year.

Incentive stock, meanwhile, cannot be transferred for at least three years.

Mr. Feinberg identified 12 "exceptional cases" as being exempt from the salary cap because the individuals were necessary to help their companies "thrive and compete." However, it was unclear how many exceptions were granted to AIG, which declined comment.

The rules apply for the rest of 2009 but are expected to be applied toward pay structures for 2010,

See **AIG** page 20

Deadline extended for risk management award

Business Insurance invites its readers to nominate candidates for the magazine's annual Risk Manager of the Year award and Risk Management Honor Roll by the extended deadline of Dec. 18.

BI and the Risk & Insurance Management Society Inc. are partnering on the annual honors.

Anyone involved in risk management for a corporation, financial institution, nonprofit organization or governmental entity can be nominated. Candidates need not practice risk management full time but must be a full-time employee of the organization for which he or she manages risk.

A simplified, two-part process for nominating candidates has been implemented for the awards.

Part I of the process requires a summary, not more than 600 words in length, of a candidate's most recent accomplishments and factors that

make him or her worthy of the award.

An independent panel of former award winners and risk management professionals will screen the Part I nominations.

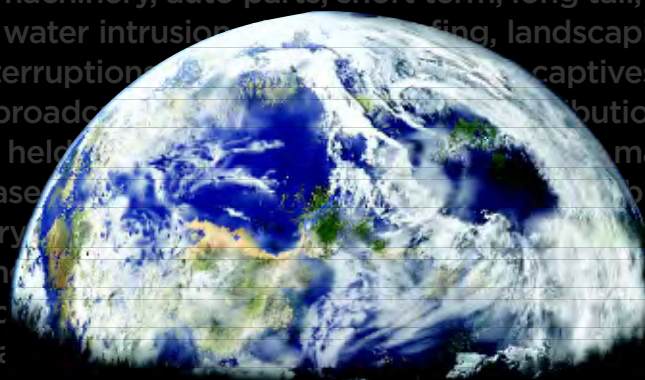
If selected as a finalist, the more detailed Part II Risk Manager of the Year nomination form will be required and reviewed by a panel of independent judges, including executives from leading industry companies, the president of RIMS as well as the immediate past winners of the awards.

Winners will be profiled in the April 26, 2010, issue of *Business Insurance*, and the 2010 Risk Manager of the Year will be the 33rd person so honored.

To download nomination forms as well as instructions for completing the forms, please visit www.BusinessInsurance.com/RMOY.

Errors & Omissions

A profile in the Dec. 7 "Women to Watch" report contained an error. Ellen R. Kerr of Factory Mutual Insurance Co., which does business as FM Global, is the insurer's first female division engineering manager, not FM Global's first female vp.



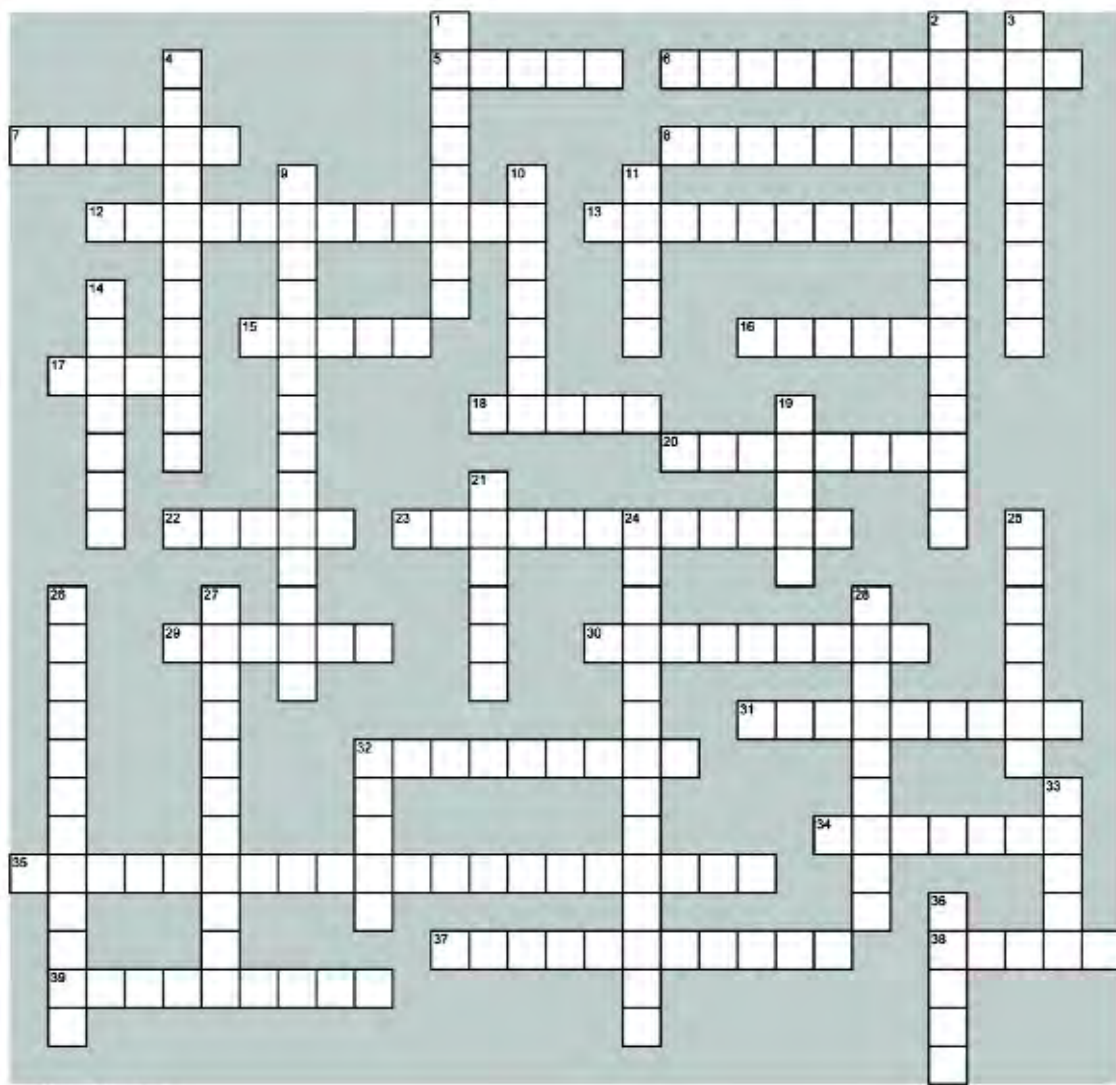
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An Insurance Holiday Puzzle

In the past at this time of year, Santa and I have summarized his thoughts about the property/casualty industry. Well, Santa is not a happy camper this year given the outlook for the business and a floundering perspective on forward thinking. Yes, there are some exceptions to the rule, but they are just that...exceptions. My thoughts were noted in a Dec. 12, 2009, column. Hence, Santa wanted to get away from it all this time and he came up with the idea to do a crossword puzzle that probes current and past events in the industry and some legends. Santa and I hope you have some fun. By the way, don't cheat...tough it out!

—By Myron Picoult

ACROSS

- 5 Represented by a famous duck
- 6 Bermuda-born CEO who took ACE global
- 7 Unique investor relations exec at Transamerica
- 8 A "Manley" insurance attorney
- 12 A large "attorney-in-fact" for insurance exchange
- 13 Shortest CEO tenure at AIG
- 15 Another of Spitzer's targets
- 16 Western acquisition by Liberty Mutual
- 17 Primerica creator who sold to Sandy
- 18 MBIA's savior CEO Jay
- 20 Renowned company builder
- 22 Avid beachgoer, formerly of Chubb
- 23 San Francisco pyramid builder
- 29 Bermuda CEO formerly with St. Paul
- 30 Insurer's founding family put Hamilton, Ohio, on the map
- 31 A metaphysical art
- 32 First elected California commissioner
- 34 Connecticut company bears his name
- 35 Big Bermuda debacle
- 37 Name looks like McDonald's symbol
- 38 Led Aetna's '90s transformation
- 39 Kramer's teapot

DOWN

- 1 A company that "staggered" last year
- 2 Dingell's tome
- 3 Shares plaza with ACE in Hamilton
- 4 Aptly named direct-writing insurer
- 9 Copied out of existence
- 10 Hank's nemesis
- 11 Sandy's sidekick for a while
- 14 CEO who's carrying the umbrella now?
- 19 Mutual known for great customer service
- 21 National Re CEO prior to acquisition
- 24 Acquired by Munich Re in 2008
- 25 Infamous for AIG's derivative debacle
- 26 Also purchased by Liberty Mutual
- 27 Acquired by Trenwick in 1999
- 28 Bermuda's ACE in the hole
- 32 GEICO's little PR representative
- 33 Took White Mountains to pink sands
- 36 Known for its "Masterpiece" policies



ONLINE

Read the solution to the holiday insurance puzzle online at

www.BusinessInsurance.com

Commentary

A not-so-fond farewell to a tough, testing year

Charged with writing a column as the year winds down, in most years an obvious tack is identifying events from the previous 12 months that one expects to be the future's fond memories.

I suspect that for most of us, though, 2009 wasn't a year likely to produce many fond recollections, and instead will be a year gladly left behind. As this year draws to a close, we probably all hope 2010 brings far better things.

As is customary in this, the year's final regular issue of *Business Insurance*, we look at the year's top events and newsmakers in risk management and employee benefits.

As rough a year as 2009 has been, looking over the lists and thinking back over other developments, as surprising as it seems, it appears 2009 wasn't all bad.

For insurance buyers, certainly a positive in 2009 was that the expectations many held early in the year of a market hardening in this year's fourth quarter were either wildly inaccurate assessments of market forces or simply wishful thinking by those on the seller side of the market.

In recent days, I've heard of some buyers looking at double-digit premium reductions in their 2010 renewals and, while that's not good news for insurers and brokers, it's certainly brightening some insurance buyers' holiday seasons a bit.

Of course, the flip side is that part of the reason premiums are down is decreased business activity and reduced property values, but we can all hope that the new year brings a change in that regard.

For seasonal warmth, how can you overlook the story of American International Group Inc. and Maurice R. Greenberg putting aside their differences in late November and settling their legal disputes? The agreement was widely acknowledged as a "win-win" for all involved and, while it might be naïve to hope that bygones truly are bygones, in this magical time of year who wouldn't want to believe that the principal players' holiday card lists just got a little bit longer?

Also on the AIG front, though Edward M. Liddy might not have many pleasant memories from his time with the company, someday he might look fondly on his decision this year



RODD ZOLKOS

Special Projects Editor Rodd Zolkos can be reached at: rzolkos@businessinsurance.com

to take off the congressional bull's-eye jacket he'd donned as AIG chairman and CEO. I mean, just how much abuse is someone supposed to take for \$1?

Another item on the plus side of this year's ledger was the mild hurricane season, the calmest in 12 years, according to the Insurance Information Institute.

Only nine named storms developed in the Atlantic basin between June 1 and Nov. 30,

For seasonal warmth, how can you overlook the story of American International Group Inc. and Maurice R. Greenberg putting aside their differences in late November and settling their legal disputes?

with only three becoming hurricanes.

The 2009 hurricane season certainly was good news to coastal property owners. Given that every storm season can't be expected to be so benign (in their first 2010 projections, Colorado State University's forecasters last week predicted an above-average Atlantic basin tropical cyclone season in 2010 and an above-average probability of a major U.S. and Caribbean hurricane landfall), the 2009 hurricane season may well be a fond memory for many somewhere down the road.

So I guess, all in all, 2009 had its bright spots.

Hopefully, though, for all of us, 2010's will be far more numerous and significantly brighter.

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Business Insurance OPINIONS

Proceed with caution on workplace safety

EMPLOYER GROUPS are rightly concerned about signals coming out of the Occupational Safety and Health Administration that regulators may be set to take a more confrontational approach to workplace safety.

As we report on page 1, recent statements from OSHA officials seem to indicate that they will put more emphasis on enforcement actions, in contrast with the more cooperative stance OSHA took under the Bush administration.

In addition, OSHA appears to be preparing the ground for the possible introduction of ergonomics regulation related to musculoskeletal injuries.

While it should not come as a surprise to employers that a change in political power brings with it a change in approach to workplace issues, we hope that OSHA, under its new chief, will take a nuanced approach rather than try to apply broad principles regardless of differences in working environments.

In particular, the issue of musculoskeletal injuries or disease needs to be approached with caution. As many employers are aware, it is extremely difficult to determine the cause of many soft tissue injuries and problems that manifest themselves at work may have several different causes—some or all of which may have nothing to do with the workplace.

As a result, a one-size-fits-all approach, which could very well arise out of attempts to formulate a common ergonomics standard, would do little to provide a real answer to the problem of employment-related soft tissue injuries, such as repetitive strain injuries.

We realize that musculoskeletal injuries are a serious and complex problem for employers and workers, but regulators should consider the huge differences in working environments when trying to tackle the issue. Complex problems seldom have simple solutions.

The issue of musculoskeletal injuries or disease needs to be approached with caution.

Prospects for change as another year closes

EACH NEW YEAR brings with it hope for improved conditions, more opportunities and better results than the prior year. With that in mind, we list some of our hopes for 2010.

Specifically, we would like to see in the coming year:

- Enactment of health care reform legislation that addresses costs, improves access to coverage and encourages improvement in the quality of care.
- Wider participation in wellness programs, to make positive changes in the lives of more enrollees.
- Economic recovery that enables businesses to reduce unemployment and to continue to offer generous benefit programs.
- Financial services reform that balances the need for strong regulation with the ongoing need for innovation and a level playing field.
- Stable market conditions that enable insurance companies to rate appropriately the risks they assume and that help buyers to set accurate budgets.
- A renewed focus by the insurance industry on transparency, particularly toward achieving automatic disclosure of compensation.
- Greater commitment by the insurance industry to improving its quality and service, putting its customers' interests first.
- Risk managers and benefit managers thinking strategically, for the long-term benefit of the organizations and people they serve.



READ

Secondary payer law creates challenges

Failure to comply with the Medicare, Medicaid and SCHIP Extension Act of 2007 and the Medicare Secondary Payer Act could be costly for all parties involved in litigation or claims filed by Medicare beneficiaries, says Iman Soliman, an attorney with law firm Bowman and Brooke L.L.P. in Phoenix. Those potentially affected should see the Centers for Medicare & Medicaid Services' Web site and get legal advice to put a system in place that complies with the law, she says.



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YEAR IN REVIEW 2009

RISK MANAGEMENT

Financial crisis tops risk managers' list

By **MARK A. HOFMANN**

As 2009 winds to a conclusion, some of the top stories and issues in the eyes of risk managers are familiar, but others are not so familiar.

As expected, the economy in general and the state of American International Group Inc. in particular continued to draw quite a bit of risk managers' attention, just as those issues did in 2008. Yet risk managers also cited new issues, such as the H1N1 influenza pandemic and health care reform, as top stories and major concerns of the year. For other risk managers, the issues were less the headlines than ongoing industry practices, such as the timeliness of receiving binding coverage from insurers.

But some risk managers also cited events that didn't happen—such as a significant market turn or an active hurricane season—as top stories of 2009.

"For me, the top stories have been, No. 1, the continuation of the financial crisis and the AIG bailout," said Gary Langsdale, risk

officer for Pennsylvania State University in State College, Pa. "Another one is the very recent news about AIG and Maurice Greenberg burying the hatchet. The other has been the continued soft market."

The "emergence of Chartis, which I still continue to believe is going to be a strong and viable market for those of us in the risk management community," ranks as one of the year's important stories, said Lance Ewing, vp of risk management for Harrah's Entertainment Inc. in Las Vegas. Chartis Inc. is the new brand for AIG's commercial property/casualty insurance operations.

"Also, XL began to right its financial ship that had been taking water on for a while," said Mr. Ewing, who added that he was "glad to see them back as a viable candidate for various markets."

Yet, the economy "for all of us has taken a toll," he said. "Each risk management department I'm familiar with has taken some hit," in per-

See **RISK MANAGEMENT** next page



TOP STORIES OF 2009

1. AIG trims debt to government and hires new CEO, but questions remain.
2. Broker compensation sparks N.Y. rule; contingents return for Gallagher.
3. Soft market persists despite projections that pricing would harden.
4. Gen Re finite reinsurance trial results in convictions of five.
5. Bermuda loses another insurer, attempts to remove tax-haven label.

EMPLOYEE BENEFITS

From COBRA to GINA, challenges abound

By **JOANNE WOJCIK**

For many benefit managers, the economic downturn resulted in a domino effect of events this year.

Perhaps the single biggest benefits event came early, when Congress enacted the American Recovery and Reinvestment Act of 2009, which provided a 65% subsidy to laid-off workers who purchased COBRA coverage from their employers.

Then in March, ongoing financial market woes threatened the solvency of defined benefit plans while deterring many employees from continuing to invest in their 401(k) plans.

Implementation of laws requiring mental health benefits parity and precluding employers from asking questions related to family medical history on health risk assessments added to benefit managers' challenges during 2009.

"The thing that made the COBRA subsidy so impactful as a benefits event was, first of all, it happened really fast," said Mike Vittoria, director of human resources at Spe-

rian Protection Inc. in Smithfield, R.I. "It was something that came out of nowhere. It's not like health reform, where you can see it marching toward you. Second, it was retroactive; we had to go back to people who were laid off at the last quarter of 2008. Third, it was rolled out with almost no guidance."

Moreover, many self-insured employers still were awaiting figures from their plan administrators as to the cost of this coverage extension, which many benefit managers and consultants predict will exceed that of the premiums collected.

"Because the subsidy was so great, the takeup rate among employees was much higher than what you normally see, and the cost impact to employers hasn't been fully felt yet," Mr. Vittoria noted.

Scott Clark, risk and benefits officer at Miami-Dade County Public Schools, also said "the COBRA subsidy was significant because of the fact that it hit us right at a time

See **EMPLOYEE BENEFITS** page 13



TOP STORIES OF 2009

1. Health care reform drive picks up steam in Congress.
2. COBRA subsidy ups enrollment rates—and employers' burden.
3. 401(k) plan contribution suspensions grow amid ailing economy.
4. PBGC deficit doubles and some call for taxpayer-funded bailout.
5. Defined benefit plan freezes surge among financially ailing companies.

NO. 1
RISK MANAGEMENT
TOP STORIES 2009

1

AIG hires new CEO and settles battle with Greenberg

It was yet another tumultuous year for American International Group Inc., as the insurer rebranded its units, hired yet another chief executive officer and settled its differences with its former chairman, but still faced problems over the issue of executive compensation.

Still lingering over the insurer is the question of how long it will remain 80% owned by the federal government, whose total financial commitment to the insurer totals \$182 billion.

AIG moved in late 2009 to separate its commercial insurance operations into a special-purpose vehicle and give it a new brand name,

Chartis Inc., to establish an identity distinct from its parent. No date, though, has been set for a Chartis spinoff, which many expect to be through an initial public offering.

At the same time, AIG has been gradually selling off some of its assets. There was concern, though, that AIG's announcement in October that it would report a \$1.4 billion loss in the \$2.15 billion sale of its Taiwanese life operations may mean it will report losses on sales of other assets in the future. The assets, which include its aircraft leasing business, International Lease Finance Corp., remain unsold in a difficult market.

Meanwhile, debt-for-equity transactions with the Federal Reserve Bank of New York involving its two New York based life insurance units, American International Assurance Co. Ltd. and American Life Insurance Co., reduced AIG's government debt by \$25 billion late in the year.

At the same time, things appear to have settled down in the CEO's office. Former MetLife Inc. leader Robert Benmosche was named in August to succeed Edward Liddy as AIG's new president and CEO. A multimillion-dollar pay package is

expected to keep the 65-year-old in the role for the next five years.

Observers hailed as good news a decision by AIG and former Chairman and Chief Executive Officer Maurice R. Greenberg and former Chief Financial Officer Howard I. Smith to settle all pending legal disputes. They said, at minimum, the late November settlement relieves all parties of crushing legal costs, while also removing a major distraction for AIG.

But executive compensation remains an issue. On Dec. 1, according to a report, five AIG executives told the insurer they may quit by year-end if their pay is cut on orders of the federal government, although two later said they would stay with AIG. There were reports last week, though, that some AIG executives may be exempted from a \$500,000 salary cap.

Earlier in the year, the insurer endured scorn from President Obama on down when it was learned that \$165 million in bonuses were being paid to employees of AIG Financial Products Corp., the unit held largely responsible or the insurer's financial struggles, with millions more slated to be paid.

—By Judy Greenwald

Risk management: Tough economy, AIG top concerns

CONTINUED FROM PREVIOUS PAGE

sonnel, travel or expenses, he said.

"The recession and its lingering effects" ranks among the top stories, said Wayne Salen, director of risk management for Labor Finders International Inc. in Palm Beach Gardens, Fla.

Another story is the Obama administration and "the pro-worker movement which includes health care and other employment-related issues that we expect will continue to be more liberalized as time goes on," Mr. Salen said. He also cited resuscitation of the financial markets, regulatory governance issues and the push to create a federal insurance office as major stories of the year.

Budgetary woes were the big story for the University of California, which faces two big issues, said Grace M. Crickette, chief risk officer for the university in Oakland. "No. 1 is the budget crisis for the state of California. It's our biggest risk because it has impacted every aspect of the university's operations because the state has not been able to meet its commitments."

"No. 2 that we've felt the most in our office is H1N1," said Ms. Crickette. She noted that the university has five medical centers and additional hospitals, as well as 220,000 students and 170,000 employees. "Keeping the same level of service for patients and students with a shortage of vaccines and a shortage of supplies, such as masks and hand sanitizers, has been very challenging."

While the continuing saga of AIG "has to be the main story" of the year in general, "for me personally, my concern is about the Medicare set-aside," said Carol Arendall, vp-risk management for Rosemont, Ill.-based U.S. Foodservice Inc. To ensure that workers compensation-related medical expenses won't be pushed onto Medicare once an employee reaches retirement age, insurers and employers are supposed to finance workers compensation Medicare set-aside arrangements.

Employers already have the set-aside on workers comp cases, and are "near to getting the same thing" for general liability and auto liability, Ms. Arendall said. "There's no way for us to gauge how that's

going to affect our claims costs. From a micro standpoint, that's going to have a direct impact on my claim costs, but you can't really gauge on what that's going to be."

Health care reform also is of concern.

"It's really difficult to find a risk, from my seat as an enterprise risk manager for a large health insurance company, that is more significant than health care reform," said John Phelps, director-business risk solutions for Blue Cross and Blue Shield of Florida Inc. in Jacksonville. "Depending upon one's prediction of the outcome of health care reform, there will be significant transformation within the health insurance industry and unprecedented change. This, in turn, generates a great deal of uncertainties that make enterprise risk management more relevant in my industry than it ever has been."

For one risk manager, the top 2009 issue was an ongoing one: customer service. "My major issue continues to be the timely and accurate receipt of policies following renewal," said George M. Gogola, director-risk management for the College of American Pathologists in Northfield, Ill. "Considering the amount of information that underwriters expect from companies during the application process, (and that it be) timely and accurate of course, quick turnaround on the back end would be appreciated. I'm confident that my broker and carrier representatives are doing their best. It's past time that carriers had systems in place to provide contract certainty promptly after binding coverage."

Carolyn Snow, director-insurance risk management for Humana Inc. in Louisville, Ky., had a different take on the major stories of the year.

"I think one of the big stories for 2009 was...the hurricanes that did not occur or other major catastrophe that might have affected the domestic market," Ms. Snow said. "While there were tragedies and catastrophes in other countries, they did not have a major impact on our market."

Mr. Ewing agreed. "I think that part of it is the year that wasn't," he said. "Predictions for the hard market fizzled real fast," he said, adding that "the hurricane predictions were wrong, to say the least."

NO. 2
RISK MANAGEMENT
TOP STORIES 2009

2

New York, Illinois act on broker compensation

Broker compensation issues dominated the headlines once again in 2009.

In January, the New York State Insurance Department issued proposed rules that would require agents and brokers operating in the state to disclose to clients the nature and amount of compensation they receive from insurers on insurance transactions.

After three revisions, however, the NYSID in early December published a rule in the New York State

Register that would, among other things, require producers to disclose their compensation only upon client request.

The NYSID said it plans to act quickly to adopt the rule once the 45-day comment period is over in January.

The Independent Insurance Agents & Brokers of New York Inc. has taken exception to the regulation and threatened to sue the NYSID if it does not withdraw its proposal.

Aside from compensation disclosure, contingent commissions also made headlines during 2009.

After convincing Illinois authorities that it was operating at a competitive disadvantage, Arthur J. Gallagher & Co. received the green light in July to again accept contingent commissions from insurers effective Oct. 1 as long as they are fully disclosed to clients.

Gallagher agreed to pay millions of dollars in client restitution and to forgo contingents four years ago to settle concerns raised by Illinois' attorney general and director of

insurance that it steered business to insurers that paid the highest contingents.

The move came after larger rivals Marsh Inc., Aon Corp. and Willis Group Holdings Ltd. agreed to similar concessions in settlements with New York and other state authorities.

The world's three largest brokers are said to be negotiating similar revisions to their settlements with various state regulators and attorneys general, who appear sympathetic to their plight.

Executives from Marsh and Aon say lifting the ban is more about leveling the playing field than it is about collecting the extra fees, while Willis Chairman and Chief Executive Officer Joe Plumeri has said repeatedly that, even if allowed, Willis would not accept the payments as they represent an inherent conflict of interest with clients. However, he has said he expects Willis to be paid by insurers commensurately with other brokers that accept contingents.

—By Sally Roberts

NO. 3
RISK MANAGEMENT
TOP STORIES 2009

3

Hard market predictions fizzle

Insurance buyers continued to enjoy a soft market throughout 2009 in virtually all lines of business.

Despite periodic predictions of a hardening market, there was no major turn.

"We have not seen the hard market materialize," James B. Auden, Chicago-based senior director at Fitch Ratings, said in March. "We think '09 will be worse than '08 from an underwriting standpoint." Despite a "lot of cheerleading," rates are still declining. While they may be doing so at a slower rate, "things haven't turned upward on most lines," he said.

A RIMS Benchmark Survey of second-quarter results, produced by New York-based Advisen Ltd. for the Risk & Insurance Management Society Inc., found that average commercial premiums continued to fall in the second quarter compared with the same period in 2008. The only exception was directors and

officers liability rates for financial services companies.

The trend continued into the third quarter, with property/casualty renewal rates either flat or lower in all the major sectors, according to the survey.

"Under normal circumstances, premiums should be rising by now," Daniel H. Kugler, a member of RIMS' board of directors, said in a statement. "But many companies are buying less insurance and underwriters feel pressured to keep prices low to hold on to the remaining premium dollars."

"Typically, insurers go out of business in this type of market, but they aren't this time around," Tim Larocca, Chicago-based chairman

of the casualty unit at Colemont Insurance Brokers, an excess and specialty lines insurance broker and underwriter, said in October. "There have been three increases in capacity in this market—9/11 and the Bermuda market, Hurricane Katrina and American International Group's near-collapse—and you can't make the market turn without some players going out of the market."

Advisen said in an October report that average general liability premiums were at levels not seen since 2000, while average workers compensation premiums were at 2001 levels.

"The recession may have ended, but recovery has not yet begun in

any meaningful way," said Advisen Executive Vp Dave Bradford, who wrote the report. "Because of the economic slowdown, there is less to insure, and written premiums are taking a beating as a result," he said in a statement.

In November, P/C rates dropped an average 5% compared with a year earlier, Dallas-based electronic insurance exchange MarketScout said in December.

MarketScout reported that all lines of business experienced rate decreases, except D&O, which was flat. General liability coverage posted the largest drop at 6% in November compared with the previous year.

—By Judy Greenwald

NO. 4
RISK MANAGEMENT
TOP STORIES 2009

Light sentences in reinsurance fraud

Five former reinsurance executives convicted in a scheme involving General Re Corp. and American International Group Inc. were sentenced to prison early in 2009 for their role in the fraud.

U.S. District Judge Christopher

Droney handed down the sentences after determining that AIG shareholders lost more than \$500 million because of the bogus reinsurance deal—a figure that, under recommended sentencing guidelines, could have resulted in life sentences.

Prosecutors had argued for “substantial” jail time for the high-profile former executives—all of whom were convicted in 2008 of conspiracy, mail and securities fraud, and making false statements to the U.S. Securities and Exchange Commission.

Judge Droney, however, imposed sentences far below federal sentencing guidelines. The five who were sentenced are:

- Ronald E. Ferguson, former Gen Re chief executive officer: two years in prison and a \$200,000 fine.

- Christian M. Milton, former AIG vp of reinsurance: four years in prison and a \$200,000 fine.

- Christopher Garand, formerly Gen Re’s senior vp in charge of U.S. finite underwriting: 366 days in prison and a \$150,000 fine.

- Elizabeth Monrad, Gen Re’s former chief financial officer: 18 months in prison and a \$250,000 fine.

- Robert Graham, former Gen Re senior vp and assistant general counsel: 366 days in prison and a \$100,000 fine.

Sentencing hearings in U.S. District Court in Hartford, Conn., fea-

tured emotional pleas for leniency from the defendants, their family members and former colleagues. Ms. Monrad, for example, begged the judge for mercy, saying “my life is in your hands.”

At sentencing, Judge Droney noted that each individual played a critical role in the bogus transaction and said the executives knew their actions would cause harm. However, Judge Droney noted that, unlike many other white-collar criminals, the executives were not motivated by personal gain.

The five are free on bail pending appeals. Legal experts, however, said it is unlikely the convictions would be overturned.

—By Colleen McCarthy



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NO. 5
RISK MANAGEMENT
TOP STORIES 2009

Insurers, brokers leave Bermuda

Insurance broker Willis Group Holdings Ltd. in September said it was redomesticating from Bermuda to Ireland, becoming the latest Bermuda-based insurance-related entity to exit the island in the past year for tax and other reasons.

Willis said Dublin provided “a more stable environment” and would improve its ability to “maintain a competitive worldwide effective corporate tax rate.”

The move came after similar moves last year by Bermuda-based insurers ACE Ltd. and Flagstone Reinsurance Holdings Ltd. to Switzerland. About 10 multinational companies also announced a move away from Bermuda since President Obama proposed widespread U.S. tax code changes that include a crackdown on tax havens, stoking fears that others may follow suit.

Willis also cited its ability to take advantage of Ireland’s tax treaties with the United States and European Union members with which it does business as a primary motivator for relocating.

ACE and Flagstone cited accessing a network of tax treaties as a primary reason for their moves.

Unlike Ireland, Bermuda does not have a tax treaty with the U.S. and some observers say the absence of such a treaty may be partially driving the redomestication trend.

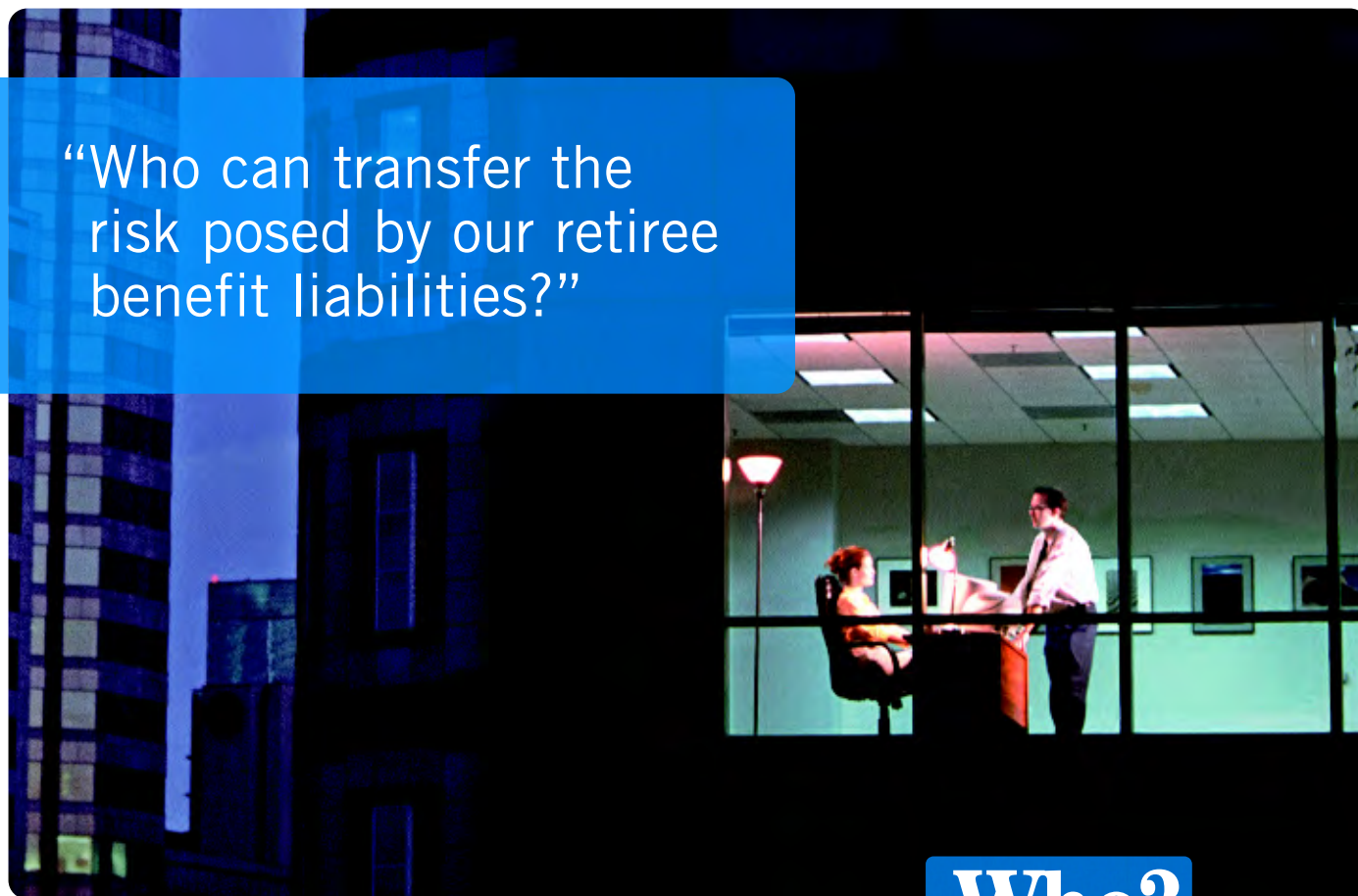
Although the exact tax treatment for offshore jurisdictions still is unclear, analysts say Bermuda-based insurers are watching the issue closely.

Meanwhile, Bermuda stepped up efforts to combat the stigma, signing a series of tax information exchange agreements with other countries during 2009 in an effort to remove itself from a list of jurisdictions labeled as tax havens.

In addition, Bermuda opened an office in Washington to establish a permanent presence on Capitol Hill,” said Paula Cox, Bermuda’s minister of finance.

—By Colleen McCarthy

“Who can transfer the risk posed by our retiree benefit liabilities?”



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TOP NEWSMAKERS: RISK MANAGEMENT 2009



Robert H. Benmosche—the longtime industry executive who became American International Group Inc.'s third chief executive officer since its 2008 bailout—continues to

demonstrate his bold and brash style as he attempts to simultaneously streamline and rebuild the company. Since taking over in August as president and CEO, the former MetLife Inc. CEO has clashed with state and federal regulators and waged a battle over pay curbs imposed on AIG by the U.S. government. Mr. Benmosche sent shock waves through the industry in November when he reportedly threatened to quit over the pay policies, which he argues are hurting his ability to retain top executives. Although he subsequently pledged his commitment to the bailed-out insurer, he continues to fight for an easing of the restrictions. Since Mr. Benmosche took the helm at AIG, the company has shown signs of stability and posted two consecutive quarterly profits. In addition, he slowed the pace of asset sales to try to generate more money and rebranded AIG's property/casualty business, formerly AIU Holdings, as Chartist Inc. in an attempt to separate and ultimately spin off the unit.



Time will tell what **Warren Buffett** may have in mind with his 3 billion Swiss francs (\$2.6 billion) investment in Swiss Reinsurance Co. The investment earlier this year by Mr. Buffett's

Omaha, Neb.-based Berkshire Hathaway Inc. generated speculation that it ultimately may lead to a takeover of the European reinsurance giant. The investment is in the form of convertible notes with a 12% interest rate. At Berkshire Hathaway's option, that is convertible after three years into Swiss Re shares. That could leave Mr. Buffett with a stake of about 25% in the reinsurer as well as a solid base for a potential takeover, some observers say. In 2008, Berkshire Hathaway took a 3% stake in Swiss Re and assumed a 20% share of its property/casualty business under a proportional reinsurance treaty. Meanwhile, things may be looking up for Swiss Re. Bolstered by a lack of catastrophe claims, it reported third-quarter 2009 net income of 334 million Swiss francs (\$325.6 million) compared with a loss of 304 million Swiss francs (\$296.3 million) for the same period in 2008.



Peter den Dekker brought his brand of leadership to center stage just a few months after his June election as president of the Federation of European Risk Management Assns. He

used the spotlight at FERMA's Risk Management Forum in Prague in October to lay out the group's concerns over Solvency II, the risk-based capital framework scheduled for implementation in 2012, and broker pay, an issue he hoped would be resolved by the time he took office. Mr. den Dekker, who is corporate risk manager at Stork B.V. in Naarden, Netherlands, took over the FERMA presidency from Marie-Gemma Dequae, who had served four years. Even before the meeting in Prague, Mr. den Dekker pledged to ensure that the Committee of European Insurance and Occupational Pensions Supervisors and the European Commission are fully aware of insurance buyers' concerns over Solvency II. Broker remuneration was a hot topic in 2007 at FERMA's forum in Geneva. Mr. den Dekker has pledged FERMA's cooperation with the European Federation of Insurance Intermediaries to work on solving concerns about broker pay.



Eric Dinallo resigned as New York insurance superintendent in July, but the initiatives he helped champion continue to progress. On Dec. 2, the New York State Insurance Department published

a new regulation on broker compensation disclosure, which the department can adopt after a 45-day comment period. It also was Mr. Dinallo who in 2008 proposed reviving the New York Insurance Exchange, a Lloyd's of London-style marketplace that closed in 1987 due to unfavorable losses, a soft market, and other factors. The near-collapse of American International Group Inc. in fall 2008 prompted Mr. Dinallo and department officials to shelve the NYIE idea in favor of more pressing priorities; Mr. Dinallo perhaps is known best for working with federal regulators to help devise a plan to rescue AIG. After Mr. Dinallo's departure from the department last summer, his successor, James T. Wrynn, began a push to make the NYIE revival a reality. Mr. Dinallo is a visiting professor at New York State University's School of Business and is considering a run for New York attorney general.



U.S. District Court Judge **Christopher Droney** handed down prison sentences early this year to five former insurance executives from General Re Corp. and American International

Group Inc. for their roles in a sham reinsurance transaction, saying "we must send a message to the business community that this kind of behavior will not be tolerated." The Hartford, Conn.-based judge had presided over the high-profile trial of the executives—all whom were convicted by a jury in late 2008 on charges of conspiracy, securities fraud and making false statements to the Securities and Exchange Commission. Judge Droney later determined that the bogus transaction, which was aimed at making AIG look financially stronger than it really was, resulted in shareholder losses of more than \$500 million which, under federal sentencing guidelines, could have resulted in sentences of life in prison. Judge Droney, however, rejected the federal sentencing guidelines, calling them "too severe." Instead, he imposed prison sentences ranging from one to four years. The five are appealing their convictions.



It is probably safe to say that pay czar **Kenneth Feinberg** will not receive season's greetings from American International Group Inc. President and Chief Executive Officer Robert H.

Benmosche or other top AIG executives. Reports circulated last month that Mr. Benmosche said he was "done" with the job because of executive compensation constraints imposed by the U.S. government, and particularly the most recent review by Mr. Feinberg, who is the Treasury Department's special master for Troubled Asset Relief Program executive compensation. Meanwhile, there were reports other AIG executives are unhappy with their pay restraints. Mr. Feinberg may, however, decide to exempt some AIG executives from a \$500,000 salary cap, according to a Bloomberg news service report last week. In October, Mr. Feinberg had ordered 2009 pay cuts averaging 50% for the top 25 executives at seven companies that received Treasury funding, including AIG, among other changes. These were expected to be the basis for 2010 compensation.



As point man for the administration's financial services regulatory reform efforts, Treasury Secretary **Timothy F. Geithner** stayed in the headlines throughout 2009.

The former president of the Federal Reserve Bank of New York pushed the administration's financial services regulatory reform plan, which included establishing a new federal National Office of Insurance within Treasury during appearances on Capitol Hill and elsewhere. The proposed office would have the power to trump state insurance regulation in certain international matters. But it was Mr. Geithner's previous position as head of the Federal Reserve Bank of New York that brought him under increased congressional scrutiny as the year drew to an end. Lawmakers accused him of failing to wring enough concessions from the counterparties in credit default swap transactions with American International Group Inc., as he played a key role in crafting the federal bailout of the insurance holding company in late 2008. By November, several congressmen called for his resignation for his handling of the bailout.



Maurice R. Greenberg ended a multiyear battle and made peace in 2009 with the company he once led, New York-based American International Group Inc. AIG and Mr. Greenberg, the

company's former chairman and chief executive officer, and former Chief Financial Officer Howard I. Smith agreed in November to settle all pending legal disputes. The agreement also encompasses disputes involving C.V. Starr & Co. Inc. and Starr International Inc., former AIG affiliates now controlled by Mr. Greenberg. Under terms of the settlement, the parties agreed to release each other from all claims, including any made by Messrs. Greenberg and Smith for indemnification of future legal fees and expenses or settlement costs. The disputes covered by the agreement included a \$1 billion derivative lawsuit AIG filed in 2005 against Messrs. Greenberg and Smith. Mr. Greenberg, who had been highly critical of the company he had led for more than 35 years, said in a statement about the settlement that he looks forward to helping AIG "in trying to preserve and restore as much value as possible for all of AIG's stakeholders."



Rep. Paul Kanjorski, D-Pa., is nothing if not persistent. The chairman of the House Financial Services Committee's Subcommittee on Capital Markets, Insurance and

Government Sponsored Enterprises first offered legislation that would establish a new national insurance office within the Treasury Department in 2008. The office would be charged with providing federal officials with insurance information and to deal with international insurance matters. Although the bill never made it to the House floor, he wasted little time in reintroducing a similar measure in spring 2009. Maybe the second time was the charm. The Obama administration endorsed the idea in its package of proposed regulatory reforms and an amended version of Rep. Kanjorski's measure won easy approval in December from the full committee. Given that similar legislation is being taken up by the Senate Banking, Housing and Urban Affairs Committee, the chances for Rep. Kanjorski's concept becoming reality probably never have been better.



Edward M. Liddy, former chairman and chief executive officer of American International Group Inc., made headlines in May 2009 when he said he would step down from the

government-rescued insurer less than a year after he took the role. The U.S. Treasury Department tapped the retired CEO of Allstate Corp. in September 2008 to lead AIG back from the brink of bankruptcy. Under the terms of his agreement, he was paid a salary of \$1 a year. Mr. Liddy faced intense scrutiny and angry critics during his short tenure. He twice testified before Congress, and was subject to multiple public scoldings from lawmakers over bonuses paid to executives of AIG's financial products unit blamed for causing AIG's near-meltdown. During his reign, Mr. Liddy oversaw AIG asset sales of about \$5 billion, as the company sought to sell off noncore units to repay federal assistance. Mr. Liddy also made the decision to repack and prepare to spin off AIG's commercial property/casualty unit, now known as Chartist Inc. Mr. Liddy returned to retirement in August, when Robert H. Benmosche was named president and CEO of AIG.

TIMELINE OF EVENTS: RISK MANAGEMENT 2009

JANUARY

- Winter Storm Klaus causes more than \$1 billion in insured property damage to parts of Western Europe.

FEBRUARY

- New York insurance regulators release a proposed plan to require insurance agents and brokers to disclose all compensation to clients.
- The U.S. Supreme Court rules in *Vicky S. Crawford vs. Metropolitan Government of Nashville and Davidson County, Tenn.*, that Title VII protection of the Civil Rights Act of 1964 extends to employees who merely cooperate in an employer's discrimination investigation.
- Stefan Lippe takes over as chief executive officer of Swiss Reinsurance Co. after former CEO Jacques Aigrain resigns in the wake of the reinsurer's loss of an estimated 1 billion Swiss francs (\$870 million) in 2008.

MARCH

- AIG says it plans to spin off its

property/casualty operation into a separate holding company, AIU Holdings Inc. Meanwhile, the House of Representatives, its members angered by reports that AIG paid retention bonuses to employees of its AIG Financial Products Corp. unit, votes to impose a 90% surcharge on bonuses received by employees of companies that have received at least \$5 billion in federal financial assistance.

APRIL

- In his first appearance before Congress since AIG's federal bailout, former AIG CEO Maurice Greenberg calls for a revamped bailout of the company he once headed. He said the government's ownership stake in AIG should be reduced to 15% from the nearly 80% assumed in 2008.
- Early forecasts call for an "average" hurricane season. The season ends on Nov. 30 as one of the mildest in more than a decade.
- AIG sells its personal lines automobile business to Zurich Financial Services Group Inc.'s Farmers Group Inc. for \$2 billion.

- Risk managers gear up for a possible H1N1 influenza pandemic.

MAY

- The Supreme Court limits the federal government's ability to recoup hazardous waste cleanup costs from potentially responsible parties under the federal Superfund law in its ruling in *Burlington Northern & Santa Fe Railway Co. et al. vs. United States*.
- AIG says Edward M. Liddy will step down as CEO as soon as a replacement is found.

JUNE

- Hartford Financial Services Group Inc. Chairman and CEO Ramani Ayer says he intends to retire before year-end.
- Shareholders of IPC Holdings Ltd. vote against merging with Max Capital Group Ltd., opening the way for a takeover by Validus Holdings Ltd. Validus and IPC announce their merger agreement in July.

JULY

- The Supreme Court rules in *Frank Ricci et*

al. vs. John DeStefano et al. that the New Haven, Conn., Civil Service Board was not justified in refusing to certify the results of two fire department promotion examinations on the grounds that the tests might have had a disparate effect on black firefighters.

AUGUST

- Former MetLife Inc. Chairman and CEO Robert H. Benmosche is named president and CEO of AIG. AIG also says it is moving commercial insurance operations into a new special-purpose vehicle and brand Chartist Inc.
- Zurich Financial Services Group appoints Chief Investment Officer Martin Senn to succeed James J. Schiro as CEO at year-end.

SEPTEMBER

- The final trial involving a 2001 sham reinsurance deal between General Re Corp. and AIG ends with the sentence of probation for a former Gen Re executive who cooperated with authorities. Another cooperative witness received similar treatment while four others were sentenced

prison, as former Gen Re CEO Ronald Ferguson was in 2008. Appeals are pending.

- Willis Group Holdings Ltd. says it plans to redomesticate to Ireland from Bermuda.
- Liam McGee is named chairman and CEO of Hartford Financial Services Group Inc.

OCTOBER

- The federal government limits pay for certain AIG executives.
- Three former Marsh Inc. executives are acquitted of charges of engaging in a bid-rigging and price-fixing scheme.

NOVEMBER

- AIG and former executives Maurice R. Greenberg and Howard I. Smith agree to settle all pending legal disputes, ending several years of litigation.

DECEMBER

- The House Financial Services Committee approves legislation that would establish a Federal Insurance Office within the Treasury Department.

NO. 1
EMPLOYEE BENEFITS
TOP STORIES 2009

Health care reform gains momentum

The outcome of the top employee benefits story of 2009—the drive to pass comprehensive health care reform legislation—almost certainly won't be decided until 2010.

But the reform drive—intended to move the United States much closer to universal health care coverage—made some legislative

progress in backers' desire to make sweeping changes to the nation's health care delivery and financing system.

The drive took off in earnest in July when three House committees and one Senate panel approved reform measures. But the reform drive didn't kick into high gear until the Senate Finance Committee passed a bill in October, assuring that the legislation would be taken up by the full Senate. In November, the House approved its own bill.

While the bills differ in their details, they share certain features.

All the measures would have a big impact on employers. For example, the House bill would impose an 8% payroll tax on employers that don't offer health care coverage, except the smallest firms. Under the Senate

bill, employers not offering "affordable" coverage would face annual penalties up to \$3,000 for each employee receiving subsidized coverage.

But employers also could benefit from the legislation. If the number of uninsured is vastly reduced, the amount of uncompensated care also would be slashed. That could reduce group health plan costs because providers, where possible, shift uncompensated costs to insured patients.

The final outcome of the reform drive, though, is far from decided.

If all those hurdles are cleared, a bill then would be sent to President Obama, allowing the nation's chief executive to achieve his signature domestic initiative.

—By Jerry Geisel

NO. 2
EMPLOYEE BENEFITS
TOP STORIES 2009

Employers rush for COBRA compliance

Employers have long complained about federal lawmakers' propensity to pass employee benefits legislation that gave them little time to comply, and 2009 was no exception.

Congress early in the year passed an economic stimulus bill including a provision in which the federal government would pay 65% of

COBRA health care premiums for up to nine months for involuntarily terminated employees.

The subsidy was available not just to individuals laid off after President Obama signed the legislation into law on Feb. 17, but also to employees let go as early as Sept. 1, 2008.

That meant employers and their health care plan administrators had to locate former employees who had declined COBRA and inform them of their new right to receive federally subsidized coverage—all by April 18. They also had to figure out—in the absence of definitions in the law—what constituted involuntary termination.

The Internal Revenue Service later issued guidance on numerous situations in which laid-off employees would be entitled to the subsidy

and when they would not.

While the law boosted hassles for employers, it unquestionably was a boon for those who lost their jobs and otherwise would have been unable to afford the coverage.

In all, the congressional Joint Committee on Taxation estimates that as many as 7 million jobless individuals and their families will take advantage of the subsidy at an estimated cost to the government of about \$25 billion.

Those numbers could swell if Congress decides to extend the subsidy, as is widely expected. Last week, President Obama endorsed a subsidy extension. In the absence of an extension, those laid off starting Jan. 1, 2010, will be ineligible for the subsidy.

—By Jerry Geisel

NO. 3
EMPLOYEE BENEFITS
TOP STORIES 2009

Firms suspend 401(k) matches

Strapped for cash during the continuing economic downturn, more U.S. employers suspended their 401(k) matching contributions during 2009, while many others considered doing so.

According to a survey of 175 large companies that Watson Wyatt

Worldwide conducted in August, 11% of employers suspended their 401(k) matches this year; another 17% were contemplating such a move.

Despite the recession, the vast majority of employers—more than 75%—continued to contribute to 401(k) plans this year, according to the Chicago-based Profit Sharing/401(k) Council of America.

According to the August survey by Watson Wyatt, 24% of employers that suspended their matches said they planned to partially or fully restore matching contributions within six months, compared with just 5% in June. Another 24% said they expect partial or full restoration of contributions in the next year.

Throughout 2009, the percentage of employers instituting automatic 401(k) enrollment continued to grow, to encourage employees to save for retirement regardless of economic conditions. Under automatic enrollment, employees are enrolled unless they actively opt out. Once enrolled, few employees later opt out.

According to Watson Wyatt, 47% of employers now use automatic enrollment for their defined contribution plans.

Unfortunately, companies that suspended their matching contributions saw plan participation fall to a much greater degree than those that did not change their matches, according to PSCA.

—By Joanne Wojcik

NO. 4
EMPLOYEE BENEFITS
TOP STORIES 2009

PBGC deficit soars amid big losses

A sea of red ink in 2009 rekindled fears that a federal bailout will be needed to rescue the nation's pension plan insurer.

Huge losses and lower interest rate assumptions halted four years of improving finances for the Pen-

sion Benefit Guaranty Corp., which guarantees benefits for participants in defined benefit plans.

Aided by a strong economy and the lack of blockbuster plan terminations, the PBGC's deficit had fallen to \$10.7 billion in fiscal 2008 from the record deficit of \$23.3 billion in 2004.

But in 2009, the PBGC's run of good fortune came to an abrupt end with the deficit in its single-employer program nearly doubling in just a year to \$21.1 billion.

A key reason for the agency's sharply declining financial position was obvious: It got hit with big losses as recession-battered companies no longer could afford to fund their pension plans, forcing the PBGC to

assume responsibility for paying benefits to participants.

Indeed, the PBGC was hit with its second-biggest loss ever—about \$6.3 billion—when it took over the massively underfunded pension plans sponsored by financially ailing auto parts manufacturer Delphi Corp. in July.

More large losses could be on the way. The PBGC said its potential exposure from financially weak companies was about \$168 billion in fiscal 2009, up from \$47 billion the prior year.

Federal legislators worried that if the agency's financial position continues to deteriorate, a taxpayer-funded bailout might be necessary.

—By Jerry Geisel

Employee benefits: Many challenges for employers

CONTINUED FROM PAGE 9

when we were facing significant budget shortfalls."

Because self-insured employers must apply for the subsidy and wait to receive federal reimbursement, they must front all medical costs incurred by former employees who signed up for COBRA coverage, Mr. Clark said.

In March, there was a flurry of employer activity to provide financial education to employees, said Bob Queyrouze, coordinator of compensation and benefits at the Federal Reserve Bank of Dallas.

"There's been a renewed interest in retirement planning and phased retirement," Mr. Queyrouze said. In some cases, "baby boomers have put retirement on hold."

But defined contribution plan members were not the only ones hit by the market downturn, said Raymond Brusca, vp of benefits at Black & Decker Corp. in Towson, Md.

"For employers offering defined benefit plans, the drop in the market was probably the last nail in the coffin," said Mr. Brusca, who adding that he expects an increase in defined benefit plan freezes as a result.

"It heightens the necessity of (automatic) enrollment and to encourage plan members to adopt a sound retirement strategy in terms of the investment elections they make," Mr. Brusca said. Unfortunately, "we still see people making conservative, long-term investments. But that's not a good idea for younger employees."

He also saw employees scale back their 401(k) contributions after the company instituted a 5% across-the-board pay freeze. "If pay was cut 5% and their 401(k) contribution

was 6%, they dropped it to 1%," he said.

Fortunately, 2009 also saw the emergence of "behavioral economics" as a benefit communication and education strategy, which helped some employers combat this tendency among employees.

In fact, throughout the market downturn, employees at Columbus, Ohio-based Nationwide Mutual Insurance Co. increased their 401(k) contributions, largely as a result of automatic enrollment and automatic escalation, which occurred even though many of them did not receive raises this year, said Jack Towarnicky, associate vp of benefits planning.

Implementation of mental health parity proved challenging for many benefit managers at companies that did not provide coverage for mental health care at the same level as medical care.

Then there was the Genetic Information Nondiscrimination Act of 2008, which "snuck up on everyone," said Mr. Vittoria. "It exploded in the one area where employers have been trying to make inroads with employees, and that's the whole wellness area."

"Every employer that does (a health reimbursement arrangement) asks some sort of genetic question: Do you have a family history of heart disease, for example. And, almost every time, an employer offers some form of financial incentive to encourage employees to complete it. And they all became GINA violations in December," Mr. Vittoria said.

Amid COBRA, the market downturn, mental health parity and GINA implementation, benefit managers in 2009 also faced the H1N1 pandemic.

plan system and simply converted traditional final pay plans to cash balance plans, which they believed were a better fit for a more mobile workforce.

Other employers, concerned about the cost of and volatility of required contributions and increased life expectancies, froze their pension plans and beefed up their 401(k) or other defined contribution plans.

But increasingly this year, employers froze their defined benefit plans and did not sweeten their 401(k) plans, such as San Francisco-based banking giant Wells Fargo & Co. and Denver-based phone and Internet service provider Qwest Communications International Inc.

Some companies, due to severe financial pressures, went even further and froze their defined benefit plans and suspended their 401(k) plan match, such as Sacramento, Calif.-based newspaper publisher McClatchy Co., whose advertising revenues have declined sharply.

Some employers bucked the trend. When health insurer CIGNA Corp. said in May that it would freeze its cash balance plan effective July 1, it also said it would enhance its 401(k) plan.

—By Jerry Geisel

NO. 5
EMPLOYEE BENEFITS
TOP STORIES 2009

Defined benefit plans on decline

The one-time trickle of employers freezing their defined benefit pension plans turned into a flood in 2009.

Nearly, one-third of Fortune 1000 companies with defined benefit plans have frozen at least one of those plans, up from 7% five years ago, according to a Watson Wyatt Worldwide analysis.

Among the nation's biggest companies, defined benefit plans' decline has been even greater. Only 45% of Fortune 100 companies still offer a defined benefit plan to new, salaried employees, Watson Wyatt found.

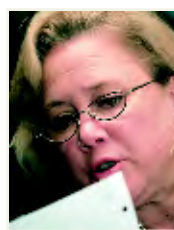
While the decline of defined benefit plans has been going on for some time, this year has been different.

In prior years, some employers remained in the defined benefit

TOP NEWSMAKERS: EMPLOYEE BENEFITS 2009



It wouldn't be surprising if Senate Finance Committee Chairman **Max Baucus**, D-Mont., felt like the proverbial man in the middle in assembling health care reform legislation this year. If he went too far in one direction, he risked alienating senators whose support he would need. If he didn't go far enough in other areas, he also ran the risk of loss of support. Looking for that elusive middle ground, Sen. Baucus included an employer mandate in his bill. However, the mandate was less onerous and exempted more employers than a House-passed bill, which eased business opposition. Responding to widespread concerns, Sen. Baucus also softened a tax on costly health insurance plans. Perhaps his toughest decision was on whether to include a government-run health insurance plan in his bill. While supportive of a public option, Sen. Baucus decided against including a public option, maintaining it would kill any chance of the measure winning Senate approval. Sen. Baucus' cautious approach enabled him to win support of all panel Democrats for his bill and the vote of the only Republican to vote for health care reform legislation in this reform drive.



In 1803, the United States signed a treaty with France that became known as the Louisiana Purchase and paid \$15 million to secure a territory that roughly doubled the size of the new nation.

To win the support of **Sen. Mary Landrieu**, D-La., to allow debate on health care reform legislation, Senate Majority Leader Harry Reid, D-Nev., agreed to include another \$300 million in Medicaid funding for Louisiana. Washington wags dubbed the provision the new Louisiana Purchase. Sen. Landrieu, who had been mum in the days preceding the Senate floor vote on whether to proceed to debate the bill, was unapologetic. "I am not going to be defensive about asking for help in this situation," she said on the Senate floor. But Sen. Landrieu said the inclusion of the special-interest provision was not the reason she supported moving the legislation to floor debate. The real reason, Sen. Landrieu told her Senate colleagues, is that the "cost of health care is bankrupting families and is bankrupting our government. We cannot afford the status quo."



A few months after the Senate in July confirmed her as President Obama's choice as assistant secretary of the Employee Benefits Security Administration, **Phyllis C.**

Borzi already is having an impact at the unit of the Labor Department. Ms. Borzi pulled a Bush administration regulation that would have allowed advisers affiliated with mutual funds, brokerage firms and other companies that sell investments to provide investment advice to 401(k) and other defined contribution plan participants. Speaking in September to a pension trade group, Ms. Borzi said the Labor Department would take a fresh look at the issue, adding that employees would benefit from quality investment advice. However, she also said that the advice must be "affordable and unbiased." And more items are on the agenda of the longtime congressional benefits staffer who was involved in drafting several pension and health care measures. Last week, the EBSA said it would seek public comment on steps that could be taken to reduce the likelihood that defined contribution plan participants don't exhaust their account balances during their retirement years.



In trying to win passage of reform of the nation's health care delivery and finance system, it was clear **President Obama** had learned from the past. The previous effort by a

U.S. president to achieve reform of the nation's health care system ended in failure. Experts attributed then-President Clinton's failure in large part to his administration's micromanagement, including writing the legislation. By contrast, President Obama has left the legislating to Congress, laying out instead only broad reform principles, such as moving the nation closer to universal coverage. But President Obama on a few occasions waded into the battle. After support for the reform effort seemed to be waning, he spoke during a joint session of Congress in September and attempted to rebut what he termed as distortions of the legislation. The president's largely hands-off approach appears to be working, with the House passing reform legislation and the Senate poised for action. And many believe final passage could occur as soon as next month.



New York Attorney General **Andrew Cuomo** continued his assault on health insurers' use of databases used to determine out-of-network reimbursement rates

throughout 2009, forcing UnitedHealth Group Inc. to spin off the database products of its Ingenix Inc. unit under a settlement reached in January after an industrywide investigation launched in 2008. In place of the Prevailing Health Charges System and Medical Data Research databases, the agreement Mr. Cuomo secured will set up a nonprofit entity, Fair Health Inc., to develop a new independent database and a Web site where consumers can compare prices before they choose doctors. It is being funded by health insurers that contributed to the settlement. Mr. Cuomo's probe also prompted the U.S. Senate Committee on Commerce, Science and Transportation to hold a hearing in March, at which Ingenix Chief Executive Officer Andy Slavitt acknowledged UnitedHealth's ownership of his company may have created a perception of a conflict of interest, but he denied that the databases were flawed and understated charges for out-of-network providers.



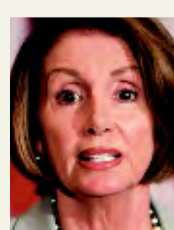
Former Alaska **Gov. Sarah Palin's** comments on health care reform legislation were controversial, attention-grabbing and wrong. In an August Facebook posting, Ms. Palin maintained that

the legislation would create "death panels" comprised of government "bureaucrats" who would decide, based on "a subjective judgment of their level of productivity in society," which individuals would deserve health care services. Such a system, Ms. Palin wrote, "is downright evil." Her assertion often was cited by health care reform opponents as the reason the legislation should be defeated. In fact, none of the bills have such a provision and it took a September speech by President Obama to a joint session of Congress to put the assertion to rest. Such a charge, the president said, was made not just by radio and cable television talk show hosts, but also by prominent politicians—no doubt a reference to Ms. Palin. Such an assertion "would be laughable if it weren't so cynical and irresponsible. It is a lie, plain and simple," President Obama said. Since then, the former governor and 2008 Republican vice presidential candidate has moved on to other issues.



It may have seemed an odd turn of events when the top officer of a company targeted by organized labor for its "stingy" health care benefits endorsed an employer health care mandate. But that is

exactly what **Mike Duke**, Wal-Mart Stores Inc.'s chief executive officer and president, did. In a letter to President Obama, Mr. Duke wrote that the huge retailer is in favor of an employer mandate that is "fair and broad in its coverage." While not every business can make the same contribution, "everyone must make some contribution," Mr. Duke wrote. That endorsement came from a company that was the target of AFL-CIO-supported legislation requiring employers to spend a certain amount of payroll on health care or pay the difference to state programs providing coverage to the uninsured. The bills were written in such a way as to apply only to Wal-Mart. While the anti-Wal-Mart measures later were ruled illegal by federal courts, company officials said the negative publicity was unpleasant. Since then, Wal-Mart has enhanced its health care benefits plans and decided to take active steps in trying to shape health care reform legislation.



Even as debate over health care reform legislation dragged on longer than many expected this year, House Speaker **Nancy Pelosi**, D-Calif., maintained her enthusiasm. She

described, for example, a House floor vote on the legislation as a "historic moment," pledging the House would pass a bill that "would deliver on the promise of making affordable, quality health care available for all Americans." But for those whom the House Democratic leader saw as standing in the way of the legislation, Rep. Pelosi took off the kid gloves. She used the word "discredited" to describe an insurance industry report contending that the legislation would raise insurance costs. She also said industry criticism of a provision in the bill that would establish a public option—or government-run health insurance plan—was a sign that insurers fear competition and illustrates why a public option is necessary. Rep. Pelosi savored the excitement when the House overwhelmingly passed a reform measure in November. But the biggest battle for Rep. Pelosi is yet to come: trying to fashion a compromise bill that resolves differences between the House measure and one the Senate is expected to pass soon.



Brain cancer deprived **Sen. Edward Kennedy** from playing a role in the newest drive to pass sweeping health care reform legislation. But in a nearly 47-year Senate career, no legislator

accomplished more to expand and improve health insurance coverage than the Massachusetts Democrat who died this year. Sen. Kennedy played a key role in the late 1970s passage of legislation that led to more health insurance coverage for childbirth. In 1996, he brokered a deal that led to passage of legislation that curbed group health care plans' denial of coverage for new employees' pre-existing medical conditions. A year later, he won passage of legislation that approved funding for a program that provides health coverage for children in lower-income families. Last year, he helped forge a compromise that resulted in enactment of legislation mandating equitable coverage of mental disorders. There were several reasons for his successes. He had a desire to help the disadvantaged as well as keen political instincts. His sharp negotiating skills allowed him to cut deals with opponents. He also was a pragmatist in working to achieve small yet significant health care reforms.



Senate Majority Leader **Harry Reid**, D-Nev., probably would be the first to admit there are many members of Congress whose knowledge of health care issues is greater than his own.

On the other hand, Sen. Reid is adept at getting bills passed, which is why Senate Democrats selected him as majority leader. That skill came through in a big way as the Senate prepared to debate health care reform legislation. With Republicans certain to try to block progression of the bill, Sen. Reid needed 60 votes to allow the discussion and amendment process to begin. That included all 58 Senate Democrats and the chamber's two independents. When one Democrat—Mary Landrieu of Louisiana—refused to say how she would vote, Sen. Reid found a way to assure her support of moving the legislation to the floor by agreeing to amend the bill to provide another \$300 million in Medicare funds for Louisiana. Agreement in hand, Sen. Landrieu provided the pivotal vote to allow debate to begin. While \$300 million may seem like a lot to win the support of one senator, it's small change compared with the bill's overall price tag of about \$900 billion over 10 years.

TIMELINE OF EVENTS: EMPLOYEE BENEFITS 2009

JANUARY

- Coca-Cola Co. asks for Labor Department approval to fund retiree health care benefits through a special trust and its South Carolina-domiciled captive insurance company. Under the arrangement, Coca-Cola would use assets from a voluntary employees' beneficiary association to purchase medical stop-loss policies from Prudential Insurance Co. of America to pay some claims. Prudential then would use the premium it receives from Coca-Cola to reinsure the risk with the Coca-Cola captive, Red Re Inc. Later, though, the Labor Department tentatively decides not to approve the application, adding that it wants the beverage company to address certain issues. Coca-Cola continues its efforts to win approval on what would be a groundbreaking approach to fund retiree health care benefits.

FEBRUARY

- At a cost of about \$25 billion, Congress includes a provision in a massive economic stimulus bill it passes in February to establish

a nine-month federal COBRA premium subsidy for employees involuntarily terminated from Sept. 1, 2008, through Dec. 31, 2009. The subsidy reduces the cost of coverage for millions of laid-off workers, but creates administrative hassles for employers trying to locate former employees to inform them of the new subsidy and set up new systems to handle the subsidy program.

MARCH

- Pension plan funding levels were battered by the equities market slump, a study finds. The Milliman Inc. analysis of financial statements filed by sponsors of the 100 largest pension plans found that the plans' average funding level at the end of 2008 was 79.3%, a steep fall from a year earlier when plans were funded 106% on average.

APRIL

- Express Scripts Inc.'s purchase of WellPoint Inc.'s NextRx pharmacy benefit manager unit is likely to fuel more

competition in the PBM market and give the merged firm more clout in negotiating with pharmaceutical makers, experts say. The combined PBM is the nation's largest, controlling prescriptions for more than 117 million covered lives and putting it ahead of CVS/Caremark Rx Inc., with 82 million covered lives.

MAY

- Wells Fargo & Co. freezes its cash balance pension plan for all employees as the corporate move away from defined benefit plans shows no sign of slowing. For the first time, a minority of Fortune 100 companies now only offer a defined benefit plan to new salaried employees, according to Watson Wyatt Worldwide. Wells Fargo, No. 41 on the Fortune 100 list of largest companies, said the freeze is necessary to ensure its long-term financial health.

JULY

- The board of directors of Towers Perrin

and Watson Wyatt Worldwide approve merging the two firms, which would result in the world's largest employee benefit consulting firm. Experts say the merged firm will be a formidable competitor, with Towers Perrin having a much bigger health care consulting practice and Watson Wyatt a much larger retirement practice and geographic footprint.

AUGUST

- Sen. Edward Kennedy, who played a key role in the enactment of many employee benefit measures, dies after a battle with brain cancer. The Massachusetts Democrat was instrumental in passage of measures that banned health care plan design discrimination for mental disorders, created a program to provide health insurance coverage for children in lower-income families and curbed employers' ability to deny coverage for new employees' pre-existing medical conditions.

OCTOBER

- The Senate Finance Committee approves

health care reform legislation. Like measures previously approved by several House panels, the Senate Finance plan would provide federal subsidies to the lower-income uninsured. It also would impose penalties on employers that don't offer health insurance coverage and individuals that don't enroll in a health care plan. Unlike other proposals, the Finance measure would impose a tax on costly group health care plans. Later, the full House passes a reform bill and reform legislation debate begins on the Senate floor.

NOVEMBER

- IBM Corp., at a time when many employers are asking their employees to pay a greater share of health care costs, is going in a different direction: In 2010, it says it will pay for 100% of the cost of in-network primary care. Experts applaud the design change, saying that it could be very cost-effective if it results in more care delivered through lower-cost primary care physicians than higher-priced specialists.

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UP Comings & Goings CLOSE



LOUIS KOZLOFF

NEW JOB TITLE: Vp, associate general counsel and chief litigation counsel for Harleysville, Pa.-based Harleysville Insurance Group Inc.

PREVIOUS POSITION: Partner at Philadelphia-based Blank Rome L.L.P.

GOALS FOR NEW POSITION: As chief litigation counsel, my main goal is to identify and hire attorneys who view Harleysville as a business partner and will serve the interests of Harleysville and our insurance through creative, diligent and quality legal problem-solving.

WHY WORK IN INSURANCE: Early on, I had the opportunity to work with the insurance industry with coverage litigation. I sort of found that this fit my interest and my skills really well. I enjoyed the intellectual and academic challenge of figuring the complex coverage issues. I like the advocacy part of it as well.

FIRST EXPERIENCE IN THE MARKET: My first professional job as a lawyer out of law school was in a law firm in Washington (McKenna, Long & Aldridge

L.L.P.), a litigation practice focusing on commercial litigation and insurance coverage litigation.

ADVICE: It was something a football coach of mine once said: "Control the controllable." That means two different things: One, take care of what you can take care of and be diligent and thorough in what you can control; and two, recognize what you can't control and let it play out as it will.

WHAT YOU WANTED TO BE WHILE GROWING UP: I would have to say a lawyer. I grew up with lawyers. My father was a lawyer. My mom went to law school.

OUTSIDE THE INDUSTRY, A DREAM JOB: A high school English teacher and football coach.

MOST PASSIONATE ABOUT: Professionally, it's tackling my new role at Harleysville. Personally, my wife, my three kids and running. I just finished my first marathon last month.

HOBBIES: Running and golfing, but I don't get much time to golf (because I have) kids.

CAN'T-MISS TV SHOW: I would say (Philadelphia) Phillies games and "Entourage" on HBO.

Comings & Goings

ONLINE

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

TO SUBMIT ITEMS

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

Mike Tsikoudakis
Business Insurance
360 N. Michigan Ave.
Chicago, Ill. 60601-3806
mtsikoudakis@businessinsurance.com

POSTING THIS WEEK

BROKERS:

- Aon Risk Services
- Bliss & Glennon Inc.
- Marsh Inc.

INSURERS:

- ACE Group
- Harleysville Insurance Group Inc.

REGULATORS:

- Missouri Department of Insurance, Financial Institutions & Professional Registration

OTHER PROVIDERS:

- Aon Consulting
- Hewitt Associates L.L.C.

Products & Services

Ironshore offers crisis management enhancement

HAMILTON, Bermuda—Ironshore Specialty Casualty has added a crisis management enhancement to its specialty commercial property/casualty coverage.

The program, Crisis ThreeSixty, offers a crisis management assessment once a policy is written. Coverage includes pre-event consultation to help clients understand and anticipate risk should there be a crisis. Policyholders also can consult with crisis management professionals or access crisis support.

The precrisis assessment and postcrisis support are available through an existing agency or a party of the client's choosing, the unit of Hamilton, Bermuda-based Ironshore Inc. said in a statement.

The increased coverage is available to policyholders underwritten on an occurrence, integrated occurrence and claims-made basis.

For more information, contact Tim McAuliffe, president of Ironshore Specialty Casualty, at 646-826-6754 or Tim.McAuliffe@ironshore.com.

Lexington offers new casualty cover options

NEW YORK—Lexington Insurance Co. said it has developed claims-made casualty coverage to help policyholders stretch their insurance dollars.

The policy, LexTransForm, provides an optional extended reporting period that is sold on a preset sliding scale. The coverage allows policyholders to pay up to 50% less for claims-made casualty coverage without resulting coverage gaps or increasing retentions, the Boston-based unit of Chartis Inc. said in a statement.

"With insurance budgets under extraordinary pressure in this difficult economic climate, our renewal clients need premium options unaccompanied by undue risk from a new carrier," David Bresnahan, executive vp of casualty, programs and health care, said in the statement.

The coverage, which remains in effect for up to six claims, is avail-

able to Lexington policyholders carrying occurrence-based general liability or product liability insurance with a premium in excess of \$100,000.

For more information, contact Thomas McLaughlin, senior vp of casualty, at 617-330-8555 or Thomas.McLaughlin@chartisinsurance.com.

Hartford develops cover for septic system contractors

HARTFORD, Conn.—Hartford Financial Services Group Inc. said it has developed an insurance program specifically for septic contractors.

The program offers comprehensive property, general liability, commercial auto, workers compensa-

tion and umbrella coverage for septic contractors of all sizes. Hartford estimates there are 26 million septic systems in the United States.

The policy is intended as an all-lines business insurance solution covering exposures from the design, installation, inspection, service and repair, pumping, and rental of portable toilets.

The Hartford, Conn.-based insurer said the program will be underwritten through its captive and specialty programs unit.

"These contractors need an insurance program that addresses the specific exposures they face, such as errors and omissions coverage for the various services they provide," Deborah Bibbins, vp of Hartford's captive and specialty programs, said

in a statement.

For more information, contact Brendan Rooney, director of captive and specialty programs, at 860-547-7237 or brendan.rooney@thehartford.com.

PERILS rolls out windstorm service

ZURICH—PERILS A.G., a Zurich-based subscription service founded by eight major insurers early this year to provide catastrophe-related data for Europe, this month rolled out its Index Loss Index Service for windstorms.

The service will provide index values that are useful in insurance-linked security and industry loss warranty transactions.

The data is processed from participating insurers to estimate industrywide insured losses within six weeks of a catastrophic event, with updates after three, six and 12 months.

For more information on the subscription service, contact Catherine Weber, head of operations, at +41-44-256-8100 or contact@perils.org.

TO SUBMIT ITEMS

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

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ADVERTISER

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For information, please contact Becky Briggs,
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*Nominations for
the 2010 Awards
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Proposals cover range of safety rule changes

The Department of Labor's semiannual regulatory agenda, published Dec. 7 in the Federal Register, lists all regulations that the department and its various agencies, including the Occupational Safety and Health Administration, expect to consider during the coming year.

The agenda lists 29 items that range from developing a standard to mitigate combustible dust fires and explosions to improving an existing construction cranes-and-derricks safety standard to developing a proposed rule concerning work-related musculoskeletal disorders.

The proposed rule would define musculoskeletal disorders and establish a column on OSHA Form 300 logs on which employers would have to report them.

In 2002, OSHA under the Bush administration withdrew a rule that would have required similar reporting of musculoskeletal injuries.

Under the Obama administration, OSHA officials have reconsidered the issue and OSHA believes employers and workers could benefit from additional data on the injuries. The officials also have said improved information on musculoskeletal injuries could assist OSHA in safety and health policymaking.

—By Roberto Cenicerros

OSHA: Employers worried about changes in approach

CONTINUED FROM PAGE 1

approach regarding ergonomics."

Employers fought an ergonomics rule adopted during the Clinton administration. Among other measures, the Clinton plan would have required employer payments for employees who could not work due to MSDs (*BI*, April 15, 2002).

However, a Republican-led Congress rescinded the mandatory ergonomics standards rule during the Bush administration.

Complicated problem

Last week, during a Web chat to discuss OSHA's new agenda, acting Assistant Secretary of Labor Jordan Barab said "musculoskeletal injuries are one of the biggest worker health and safety problem in this country" and "a complicated regulatory and political issue, which this agency is considering."

Placing an MSD column on the mandatory OSHA injury log would be valuable to assess safety conditions nationally and at individual workplaces, Mr. Barab said.

However, he also said OSHA's plan "is not a prelude for a broader ergonomics standard." He said at this time, OSHA has no plans to pursue ergonomics regulation, although addressing the musculoskeletal issue remains a high priority.

Reporting injuries does not necessarily mean there would be an ergonomics standard and OSHA probably has not yet determined its regulatory approach to address the issue, said Bradford T. Hammock, an attorney who represents employ-

ers and specializes in workplace safety compliance and government relations at Jackson Lewis L.L.P. in Reston, Va.

"On the other hand, there are going to be a number of people, in the employer community in particular, that believe this is the first step towards revisiting ergonomics from a regulatory perspective," Mr. Hammock said.

Just attempting to define MSDs can be controversial and determining whether a repetitive stress injury is work-related remains a very difficult challenge for employers, he said.

New leadership

OSHA released its new agenda last week, the same week David Michaels started on the job as the Obama administration's new assistant secretary of labor (see box).

Several OSHA observers in Washington said they expect Mr. Michaels to maintain the course already laid out by Mr. Barab and Labor Secretary Hilda Solis. The U.S. Senate on Dec. 3 confirmed Mr. Michaels' appointment without a public hearing, a hearing NAM requested to assess his views on OSHA's possible stance on issues such as ergonomics.

"Unfortunately, the response came in the form of a confirmation without a hearing," said Keith Smith, director of employment labor for NAM. "While we (did not) oppose his nomination...we see, with the direction OSHA appears to be going, a lot of questions that should have been raised in a public forum."

One employer concern is that

New OSHA leader takes the helm

David Michaels started on the job last week as the new leader of the U.S. Occupational Safety and Health Administration.

President Obama during the summer nominated Mr. Michaels, who holds a doctorate in epidemiology, while he was working as a research professor at the Department of Environmental and Occupational Health at the George Washington University School of Public Health and Health Services.

The White House said he has conducted numerous studies on the health effects of occupational exposure to chemicals including asbestos, metals and solvents. He also has written extensively on science and regulatory policy.

From 1998 to 2001, Mr. Michaels served as assistant secretary for environment, safety and health at the U.S. Department of Energy. In that role, he was responsible for the safety of workers at and communities surrounding nuclear weapons facilities.

—By Roberto Cenicerros

OSHA could emphasize enforcement to the detriment of programs that have stressed improving workplace safety through volunteer efforts and cooperation between

OSHA and employers.

That concern stems directly from OSHA's statements.

Last summer, for example, Mr. Barab told the American Society of Safety Engineers that the labor secretary had said "that we will turn our energies from voluntary programs to enforcement."

But Mr. Barab also said OSHA was not eliminating its voluntary programs and partnerships with employers.

"But the days of signing companies into (voluntary programs) just to fill arbitrary goals...are over," Mr. Barab said. He also said the days of delayed rulemaking and of "starving" OSHA's budget are over.

In fact, OSHA's 2010 budget has been increased to hire 130 new inspectors, he said.

"The messaging has been very strong that they will be ramping up enforcement" the Chamber's Mr. Freedman said.

"They have essentially said they don't believe the cooperative relationships and partnerships...were productive and they want to rely on enforcement," he said.

Enforcement plays an important role, but helping employers and providing resources to improve safety practices also is vital, he said.

Under the current administration, OSHA is likely to take a tougher stance on egregious cases, settling them less often while placing less emphasis on cooperative programs, said Dave Heidorn, manager of government affairs and policy for the American Society of Safety Engineers in Des Plaines, Ill.

But it's unlikely that the cooperative programs would be eliminated, and many large employers' safety programs often are driven by reducing costly losses, not just concerns about OSHA enforcement actions, Mr. Heidorn said.

COBRA: Extension gets support

CONTINUED FROM PAGE 3

have hit the nine-month limit.

While presidential support boosts its chances, some said the odds already favored an extension of the COBRA subsidy.

"Presidential support may not even be needed. There is a high level of congressional interest in an extension," said James Gelfand, senior health care policy manager at the U.S. Chamber of Commerce in Washington.

"While business is not excited about an extension, we are pretty much resigned to it," said Neil Trautwein, vp and employee benefits counsel with the National Retail Federation in Washington.

It isn't clear, though, whether Congress has enough time to approve extension legislation yet this month and, if it does, what form it will take. Some observers say the provision could be attached to a "must-pass" bill that would continue funding for the Defense Department.

Also not known yet is the length of the extension and whether it would be retroactive for beneficiaries whose eligibility for the subsidy has expired or been exhausted.

Under bills already introduced in the Senate and House, current beneficiaries could receive the subsidy for an additional six months, while employees who lose their jobs from Jan. 1, 2010, through June 30, 2010, would be eligible for subsidized COBRA premiums for up to 15 months.



Allied: Aon builds unit

CONTINUED FROM PAGE 3

Walsh, an analyst with Citi Investment Research in New York, wrote in a client note.

Mr. Walsh estimated that Aon paid approximately \$154 million in cash for Allied.

Meyer Shields, an analyst with Stifel, Nicolaus & Co. Inc. in Baltimore, said he also likes the deal.

"We think bigger buyers are attractive to sellers currently struggling for growth because more extensive internal resources and stronger insurer relationships can help selling brokers to get their clients better prices, terms and conditions than they could as smaller independent brokers," Mr. Shields wrote in a client brief.

Additionally, Aon had nearly \$1.2 billion in cash at the end of September earning "painfully low returns," so "the opportunity cost of acquisitions, in terms of foregone investment income, is minimal," Mr. Shields wrote.

Guns: Pirates trigger armed guard cover

CONTINUED FROM PAGE 4

Lumpur, Malaysia.

Senior officers in the U.S. and British navies separately have encouraged ship owners to consider the use of armed security personnel on board. The Danish shipping giant Clipper Group announced in November it was carrying up to six Russian marines aboard some of its ships transiting the Gulf of Aden near Somalia.

In April, an Israeli security team aboard the MSC Melody helped the Italian-flagged cruise ship evade a pirate attack in part by firing warning shots in the air. In November, the Maersk Alabama fended off a pirate attack when a security team on board fired back at approaching pirates. U.S. Navy officials said that security team was a private contractor.

The U.S. House of Representatives has passed a bill with a provision that would limit the liability of anyone using force to defend a U.S.-flagged vessel against piracy in accordance with guidelines established by the U.S. Coast Guard.

In October, broker Marsh Inc. began offering shipowners an anti-piracy package in cooperation with REDfour (Maritime Security Solutions) Ltd., a London-based maritime security firm. Under the arrangement, shipowners that employ REDfour for anti-piracy security can purchase kidnap and ransom insurance through Marsh, potentially with premium reductions of between 5% and 50% from Hamilton, Bermuda-based Hiscox Ltd. The security consultant can fortify a vessel before its voyage, install



Trainees costumed as pirates climb a ladder during an anti-piracy training drill in Haifa, Israel. More firms are increasing ship security as pirate attacks increase.

REUTERS

unarmed security personnel on board, or place an armed security team of former British military officers on the vessel.

Earlier this year, Daytona Beach, Fla.-based Brown & Brown Inc. began

offering a general liability "wrap" policy that would cover shipowners for any liability connected to armed security personnel on board, in addition to covering the armed security officers' own liability. Katey Noonan,

Brown & Brown's Seattle-based marine division manager, said the policy covers shipowners as named insureds for liability associated with armed security escorts.

Protection and indemnity clubs generally have been ambiguous about whether they would cover armed security and the general liability wrap policy is intended to cover the gap that would be created if P&I clubs denied coverage, Ms. Noonan said. One club seemed content with the idea of a general liability wrap policy on an account Brown & Brown almost wrote recently, she said.

"The (P&I) club was amenable to exclude the liability related to the guards so we could cover it on our end," Ms. Noonan said. "A lot of clubs we work with have been amenable to do that and they're kind of happy that they can exclude that liability."

Ms. Noonan and Mr. Gustafson said they thought shipowners' interest in armed security escorts was growing and that the main impediment is the cost.

"These people don't come cheap," said Mike Ackerman, president and chief executive officer of the Ackerman Group L.L.C., a Miami-based security firm that works with Warren, N.J.-based Chubb Group of Insurance Cos. Mr. Ackerman said he will not put unarmed security personnel on vessels.

But other observers say reluctance to put arms on ships still is widespread.

"I would suggest there's still very much an underlying nervousness amongst both shipowners and their underwriters about employing armed security on vessels," said Tony Pryce, London-based chair-

man and managing director of broker BMS Harris & Dixon Marine Ltd.

Critics say armed security creates more problems than it solves, escalating the violence of encounters with pirates, increasing the likelihood of injury to crew members and damage to cargo, and creating third-party liability if security officers harm innocent mariners or vessels. Even if the flag state permits firearms aboard merchant vessels, it often is difficult to get firearms through the ports where security personnel could board a ship, observers said. In addition, some private security contractors have questionable reputations, they said.

"It's difficult to assess in an efficient manner the skill and background and accountability of the people that you're entrusting with the safety and security of your ship," said James Christodoulou, president and chief executive officer of Stamford, Conn.-based Industrial Shipping Enterprises L.L.C., whose ship, the MV Biscaglia, was hijacked by Somali pirates in November 2008.

Meanwhile, Somali pirates continue to venture farther offshore—a Greek-flagged supertanker was seized near the Seychelles, 800 miles off the Somali coast, in late November—expanding the piracy-prone area of the Indian Ocean. That means hired security officers must stay onboard merchant vessels for longer stretches, further increasing the cost to shipowners.

Mr. Christodoulou said his company employs unarmed security officers onboard their ships.

"Everybody's taking security precautions now that maybe a year ago they wouldn't have because it was just not perceived to be as great a risk as it is now," he said.

Personal: Workplace IT exposures rise as employees use own laptops

CONTINUED FROM PAGE 4

ownership of work computers) and weigh that with the cost savings," said Lisa J. Sotto, a partner with law firm Hunton & Williams L.L.P. in New York.

It is critical that employers establish policies on this issue, observers say.

Unregulated computer usage "is an invitation to all manner of mischief," said Brian T. Ashe, a partner with law firm Seyfarth Shaw L.L.P. in San Francisco.

Before permitting employees to bring in their own computers, firms must have in place "a very sound written policy and some mechanisms of enforcing that policy through their IT department" to adequately manage security issues, Mr. Ashe said.

One major security concern is viruses and malware.

"It's a tough task for any network to keep its system clean from that kind of malware," said Randy Gainer, a partner with law firm Davis Wright Tremaine L.L.P. in Seattle. Personal computers can be used "for a lot of different things, including surfing the Web and sites embedded with viruses and Trojan horses intended to steal personal data," that can infect the company network.

Scott L. Vernick, a partner with law firm Fox Rothschild L.L.P. in Philadelphia, said, "It's not that you don't have some of the same issues when your employees use laptops, as opposed to semifixed work stations, but at least presumably the employer has an auditing protocol" or other measures so the firm knows when it is under attack by a virus or malware.

Software is available to help the employer's network defend itself, but firms also must educate their employees to exercise good "security hygiene," Mr. Gainer said.

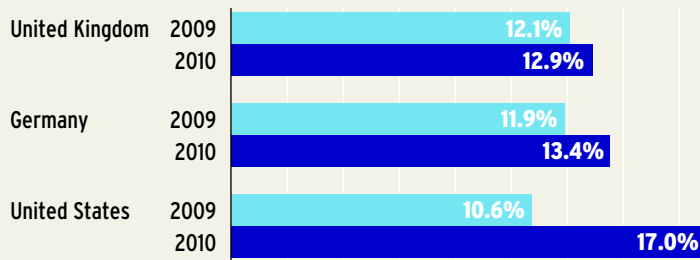
Other issues that must be addressed include what happens if the computer needs servicing, said Foley & Lardner's Mr. Overly. There must be controls in place "so very sensitive (company) data is protected," he said of cases where employees handle their own servicing and repairs.

Supervision is another issue. Some companies like to monitor their employees' computer use to evaluate their productivity, said David Gevertz, a shareholder with law firm Baker, Donelson, Bearman, Caldwell & Berkowitz P.C. in Atlanta.

This gets a "little more complicated" if the employer does not own the computer, and may require installation of software "that may

EMPLOYEE-OWNED COMPUTERS

Percentage of employee-owned laptop computers used as primary work computers in 2009 and projected for mid-2010



Source: Gartner Inc.

or may not be compatible with the company's server or mainframe," said Mr. Gevertz. "It's also a little bit easier for the employee to temporarily disable that kind of software, if they can take it home and do what they will with it."

Protection of the employee's personal data also is an issue.

"You have the problem of what happens if you have a disruption or corruption of an employee's own data by the company," which could include tax and bank records, said Mr. Overly.

While companies "are very good at protecting their own information," they are "generally not good at worrying about other informa-

tion they don't want and don't need and yet is now on their premises," he said.

Litigation is another concern, said Mr. Ashe. If the home computer is sought in discovery, "the hard drive would have to be produced in the litigation," which means the employee's private data "would be snooped through and looked at by third parties," including the employer, judges and forensic computer experts. "That's a danger for employees that many don't consider until they are stuck in the litigation scenario," he said.

Mr. Vernick said employees have "got to understand they've got to give up, potentially, some degree of

privacy because...what was once private may not be private" when they use their personal computers at work.

Mr. Gevertz said one solution would be to give the employee funds to purchase the computer but require that it is dedicated solely to work.

Another possible issue is if the computer does not conform to nationally recognized ergonomic standards and a workplace injury results, said Mr. Overly. "Who's responsible? The employer hasn't made a specific decision about the hardware," yet could face a work-related claim.

Employers also must plan for when an employee leaves the company.

If there is company data on the employee-owned PC, "what is the process for removing that information at the time of separation?" said Katharine H. Parker, a partner with law firm Proskauer Rose L.L.P. in New York.

Firms "that allow employees to use their own computers should really be thinking about changing their policies to make sure when employees depart, all the company and client data comes back to the company, and it's securely wiped," said Gabriel M. Helmer, an associate with law firm Foley Hoag L.L.P. in Boston.

EPA: Greenhouse gas endangerment finding raises litigation fears

CONTINUED FROM PAGE 1

dioxide and other greenhouse gases are pollutants and that pollution exclusions contained in various commercial insurance policies should apply in coverage disputes, some say.

The EPA finding, which was widely expected after it issued preliminary findings in April, stems from the 2007 Supreme Court decision in *Massachusetts et al. vs. Environmental Protection Agency et al.* In that ruling, the high court ruled that greenhouse gases fall within the definition of pollutants under the Clean Air Act. It then ordered the EPA to determine whether greenhouse gases emitted by new motor vehicles cause or contribute to air pollution and endanger public health. Such a determination is a prerequisite for regulating those emissions under the Clean Air Act.

The EPA endangerment finding came on the eve of the U.N. Climate Change Conference in Copenhagen, where delegates from 192 countries, including the United States, are gathered to try to reach a consensus on how to prepare for an international treaty to limit global warming. The conference continues this week.

Many said they believe the Obama administration will use the EPA move to spur Congress to enact climate change legislation, which could create federal pre-emption complications for common law global warming suits.

The American Clean Energy and Security Act of 2009, which would cap greenhouse gas emissions, among other things, passed the House in June, but the Senate has not taken up the measure.

Although legal experts noted that the EPA's finding, in and of itself, may not give rise to climate change litigation, experts said it is likely that plaintiffs attorneys will use it to bolster existing suits against greenhouse gas emitters accused of creating a public nuisance.

Recent decisions by federal appeals courts in the 2nd and 5th Circuits giving "the green light" for two such suits to proceed provide the main impetus for plaintiffs to



The Environmental Protection Agency's finding that greenhouse gases pose a threat could trigger pollution exclusions in the insurance coverage of companies that emit such gases but are not an across-the-board bar, attorneys say.

continue pursuing climate change litigation, said Deborah L. Stein, an associate with Simpson Thacher & Bartlett L.L.C. in Los Angeles.

In *State of Connecticut et al. vs. American Electric Power Co. Inc.* and *Ned Comer et al. vs. Murphy Oil USA et al.*, the 2nd and 5th Circuits, respectively, overturned lower court rulings that the global warming suits brought under nuisance law raised political questions that were inappropriate for judicial review (*BI*, Nov. 22).

Last week's EPA endangerment finding, however, "certainly will be viewed by plaintiff lawyers as additional fodder for those lawsuits," Ms. Stein said.

Coupled with the recent appeals court developments, "you now have the federal government talking about the level of endangerment. It just provides support for the causation arm of those allega-

'I would speculate that when the EPA comes out with regulations...that would strengthen a nuisance case—that your emissions of an air pollutant is remediable under common law tort.'

J. Wylie Donald,
McCarter & English L.L.P.

tions," said John G. Nevius, a shareholder at policyholder firm Anderson Kill & Olick P.C. in New York.

"My view is common law nuisance (litigation) was strengthened by the statutory enactment of Superfund, so I would speculate that when the EPA comes out with regulations...that would strengthen a nuisance case—that your emissions of an air pollutant is remediable under common law tort," said J. Wylie Donald, a policyholder attorney in the Wilmington, Del., office of McCarter & English L.L.P. and co-chair of the firm's climate change and renewable energy practice.

While the EPA endangerment finding "may add to the plaintiffs attorneys' perception that these types of cases can succeed...there still remain very serious causation and damages issues, including the need to show a nexus between a targeted defendant's conduct and the harm alleged by a particular plaintiff or group of plaintiffs," said Lau-

ra A. Foggan, a partner at Wiley Rein L.L.P. in Washington. The EPA's finding "does nothing to alleviate the difficulty of plaintiffs' proof on the causation and damages issues, which are very high hurdles."

A more direct effect of the EPA finding, Ms. Foggan said, has to do with pollution exclusions. The finding reinforces "that claims made in climate change litigation are pollution-related claims and, thus, helping make clear that these are matters to which pollution exclusions are applicable."

While Mr. Nevius acknowledged that the endangerment finding could indeed "bring some of these pollution exclusion-related issues to the fore," he said that viewing a pollution exclusion as an "across-the-board bar" in insurance coverage is "inappropriate."

"You have to look at the allegations of the complaint and the language of the insurance policy" on a case-by-case basis, he said.

Legal experts noted, however, that such coverage disputes and climate change litigation in general ultimately could become moot should Congress pass a federal greenhouse gas emission regulatory regime that expressly pre-empts all state and local rules as well as common law lawsuits.

"We may see an effort by Congress to provide for a more express pre-emption to head off global warming private lawsuits so global warming doesn't turn into the next asbestos," Mr. Nevius said.

The scope of that pre-emption is an issue Congress "has to be wrestling with," noted Mike Bloomquist, of counsel with Wiley Rein. Some argue that those alleging harm from greenhouse gas emissions should be allowed to sue for damages, while others say the issue needs to be settled now because "we can't have all these lawsuits going on," he said.

Overall, "nobody wants EPA or the courts to unilaterally act under current law. In fact, a rallying cry from those that support congressional action has been, 'We can't let the courts and EPA regulate this,'" Mr. Bloomquist said.

AIG: Pay czar approves bonuses for 'critical' execs

CONTINUED FROM PAGE 4

observers say.

The move came after a firestorm of controversy surrounding executive pay curbs at the bailed-out insurer. The battle over pay curbs escalated last month when AIG President and Chief Executive Officer Robert H. Benmosche reportedly threatened to quit due to his frustration with the constraints. Mr. Benmosche, who later changed his mind, had argued the pay policies hurt his ability to retain top executives.

In addition, five AIG executives

reportedly threatened last week to leave over the pay cuts. At least three of the managers retracted their threats, according to the Wall Street Journal.

Meanwhile, AIG General Counsel Anastasia D. Kelly reportedly has resigned due to the pay curbs, according to the New York Times.

AIG is working to sell assets, streamline its operations and improve profitability in an effort to repay the government after it received a 2008 bailout package of about \$180 billion, in which the government took a roughly 80% stake in the company.

Welch Foods seeks defense costs from insurers

By JUDY GREENWALD

BOSTON—Welch Foods Inc. is suing Zurich American Insurance Co. and National Union Fire Insurance Co. of Pittsburgh, Pa., a unit of Chartis Inc., seeking defense costs in connection with two wrongful advertising lawsuits filed against it over the ingredients in one of its juice products.

The wrongful advertising lawsuits claim that Concord, Mass.-based Welch misrepresents on its labeling and other advertisements the primary ingredients of its Welch's 100% Juice White Grape Flavored 3 Juice Blend juice as being white grape and pomegranate juice when

in fact they are white grape and apple juice, with little or no pomegranate juice.

Los Angeles-based juice producer POM Wonderful L.L.C. filed its suit Jan. 23 in federal court in Los Angeles. Maryam Burcham filed a consumer class action suit in the same court on Aug. 14, claiming consumers overpaid for the juice because the labeling led them to believe they were buying pomegranate juice.

According to the Welch lawsuit, which was filed last week in federal court in Boston, defense costs so far have totaled more than \$75,000 for each lawsuit.

Welch attorney Richard D.

Milone, a partner with law firm Kelley Drye & Warren L.L.P. in Washington, said that both insurers said the lawsuits fall within policy exclusions when denying coverage.

"We read the exclusions very differently and believe they don't apply," Mr. Milone said.

The lawsuit seeks declaratory judgments saying the insurers are obligated to defend and indemnify Welch in connection with the lawsuits, compensatory damages and attorneys' fees and costs.

A spokesman for Schaumburg, Ill.-based Zurich American had no comment. A Chartis spokeswoman also had no comment.

News In Brief

CONTINUED FROM PAGE 1

provisions—similar to those in the previously passed Nonadmitted and Reinsurance Reform Act—under which surplus lines coverage would be governed by the tax policies, licensing and other requirements of the buyer's home state.

Hurricane forecasters see above-average 2010

Next year's Atlantic hurricane season should feature above-average activity, researchers at Colorado State University's Tropical Meteorology Project said. Based on information gathered through November, "we estimate that activity will return to levels more typical of years during an active era, such as we have experienced since 1995," the team wrote in forecasting 11 to 16 named storms, six to eight hurricanes and three to five major hurricanes for 2010. "At this point, there is too much uncertainty in what large-scale parameters will be in August-October of next year to issue a forecast for specific numbers."

High court won't hear workers comp case

The U.S. Supreme Court has declined to review a controversial appeals court decision that allows workers compensation claimants to sue an employer and its third-party administrator under federal racketeering law. The move lets stand an October ruling by the 6th U.S. Circuit Court of Appeals in *Paul Brown et al. vs. Cassens Transport Co. et al.* that several employees could pursue their lawsuit alleging mail and wire fraud violations of the federal Racketeer Influenced and Corrupt Organizations Act against their employer and its third-party administrator. Their allegations against self-insured Cassens Transport stemmed from the denial of their claims. The group alleges that Cassens Transport and Crawford & Co. used unqualified doctors to give fraudulent medical opinions supporting denial of their workers compensation claims. The workers also allege the company, the TPA and doctors committed mail and wire fraud in their communications. The case now returns to a lower court for trial.

West Virginia's Cline elected NAIC president

West Virginia Insurance Commissioner Jane Cline has been elected president of the National Assn. of Insurance Commissioners for 2010. Ms. Cline, who has served as West Virginia's top insurance regulator since 2001, was elected last week at the Kansas City, Mo.-based NAIC's winter national meeting in San Francisco. In addition, Iowa Insurance Commissioner Susan Voss was chosen as president-elect of the insurance regulators group, Florida Insurance Commissioner Kevin McCarty was elected vp and Oklahoma Insurance Commissioner Kim Holland was elected secretary-treasurer.

Willis shareholders OK Bermuda-to-Ireland move

Willis Group Holdings Ltd.'s shareholders have approved changing the domicile of the broker's parent company from Bermuda to Ireland. The reorganization would establish a new public limited company in Dublin, Willis Group Holdings P.L.C., to replace Willis Group Holdings Ltd. as the ultimate parent of London-based Willis' operations. If the Supreme Court of Bermuda approves the change at a Dec. 18 hearing, Willis said it expects the reorganization of the company to be completed by year-end. Willis has said it wants to move for a more stable tax environment.

California comp rates to see 4% average hike

California Insurance Commissioner Steve Poizner said workers compensation insurance rates will increase an average of 4% for 2010 coverage in the state. Mr. Poizner said the rate increase is based on recent rate filings by insurers that write 97% of the workers comp coverage in California. Insurers that have filed to adjust their rates in 2010 include four companies that plan to reduce their workers comp rates by 1% to 8.4% and 42 companies that plan to increase their rates by 0.6% to 12%. A month ago, the commissioner rejected as "unwarranted" a Workers Compensation Insurance Rating Bureau of California request for a 22.8% increase.

Noted

Commercial property/casualty rates increased by 0.3% during the third quarter of 2009, compared with the same period last year, according to Towers Perrin.

Reform: Measure reshaped to win votes

CONTINUED FROM PAGE 1

55 years old. Eligibility would end at age 65, when entitlement to the regular Medicare program begins. Few details were available on the plan.

In the absence of publicly available explanations, there are many questions about the proposal. For example, it wasn't clear how much beneficiaries would pay in premiums and how much of their Medicare buy-in premiums, if any, would be subsidized by the federal government.

Even in its rough form, some business groups oppose the idea. They note that provider Medicare reimbursement rates already are inadequate in some cases, which leads to providers passing charges to patients covered by employer plans.

If Medicare were expanded, the problem of provider cost-shifting to help offset undercompensated care would be exacerbated, Ms. Darling said.

Gretchen Young, vp-health policy at the ERISA Industry Committee in Washington, agreed. "We are very concerned about the potential for cost-shifting," she said.

Others worry that the premiums would not come close to covering costs, meaning lawmakers would have to bolster funding for the new program, such as imposing higher taxes.

"We think it would be a terrible idea to add more Medicare benefi-

40%

Democrats have been discussing changing a provision—strongly opposed by employers and organized labor—that would impose a new excise tax on the costliest group health plans.

Under that provision, a 40% excise tax would be imposed on health insurance premiums exceeding \$8,500 for single coverage and \$23,000 for family coverage starting in 2013.

ciaries" when Medicare already can't meet future obligations, said Neil Trautwein, vp and employee benefits counsel with the National Retail Federation in Washington.

Aside from revamping, if not eliminating, a public option, Washington observers say Senate Democrats have been discussing changing a provision—strongly opposed by employers and organized labor—that would impose a new excise tax on the costliest group health plans.

Under that provision, a 40% excise tax would be imposed on health insurance premiums exceeding \$8,500 for single coverage and

\$23,000 for family coverage starting in 2013. The threshold triggering the tax would be higher for plans covering early retirees and employees in certain high-risk industries.

One alternative that was being floated would impose a tax on increases in health insurance premium that exceed a certain percentage, such as the annual increase in the gross domestic product plus an additional percentage.

Benefit experts expect the wheeling and dealing to continue until Sen. Reid has put together a package that will attract the needed 60 votes.

"The legislation is moving in fits and starts. You think it is down and then it comes back up," said ABC's Mr. Dennett.

Still, time is ticking away. If Sen. Reid doesn't produce a package soon that has 60 votes, his goal of passing a bill by the end of the year could be in jeopardy, something the majority leader does not want to happen.

"He will do everything he can to bring a bill to a vote before Christmas," Mr. Dennett said.

The heart of the legislation remains the same—moving the nation closer to universal coverage by providing federal health insurance premiums to the lower-income uninsured. It also would impose financial penalties on employers not offering affordable coverage, as well as on individuals who do not enroll in a health insurance plan.

CRM: Firm faces litigation over trusts

CONTINUED FROM PAGE 3

total of \$363 million in unpaid liabilities. The WCB said a majority of those trusts were managed by CRM.

Mr. Cuomo began his investigation into CRM 19 months ago, according to the attorney general's office. During that time, CRM settled charges of mismanagement made by the WCB and surrendered its license to manage self-insured trusts.

CRM denies wrongdoing

The WCB claimed the trusts were underfunded, which led to several lawsuits.

In November 2008, of the 65 self-insured workers compensation

trusts authorized by the WCB, 32 were insolvent or underfunded, while 13 had been voluntarily terminated, according to the WCB. About 20 of the trusts were operating with no financial issues or regulatory restriction.

CRM said it was managing eight of the 65 trusts.

In a statement, CRM said it denied "each and every one" of the WCB's allegations and said the company managed the trusts in compliance with its contractual obligations and in a manner consistent with applicable law and the rules and regulations of the WCB.

Amid the turmoil, Daniel G. Hickey Jr. stepped down as CRM's chairman and chief executive officer in March.

His resignation came shortly after CRM reported its nine-month profits for 2008 were down nearly 72% compared with its results in 2007. James J. Scardino, CRM's chief financial officer, was appointed interim CEO in March.

In a statement, CRM said it was "disappointed" by Mr. Cuomo's decision to file a lawsuit and "dismayed" that he chose to disclose the notice before the company's window for discussion expired. CRM said it denies Mr. Cuomo's allegations "and believes that its business and management practices in connection with the New York trusts were proper and that all material information was disclosed during its initial public offering."

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Land where AIG leaders are born

Was it something in the water? American International Group Inc.'s current chief executive officer and its former longtime leader grew up less than 10 miles apart in upstate New York.

The home town of Robert Benmosche, 65, AIG's current president and CEO, is Monticello, N.Y. Former chairman and CEO Maurice R. Greenberg, 84, grew up in Swan Lake. State Route 17 runs by both towns and both are in the Catskill Mountains, which once was a flourishing resort area.

Their lives, at least initially, took different directions. Mr. Greenberg grew up on a farm in Swan Lake during the Depression, before leaving at age 17 to join the U.S. Army and serve in

Normandy during World War II.

He also served in the Korean War, rising to the rank of captain and winning a Bronze Star. Between the wars, he completed college and graduated from New York Law School.

After a stint at Continental Casualty Co., AIG founder Cornelius Vander Starr in 1960 recruited Mr. Greenberg, who began his rise in the organization.

As for Mr. Benmosche, his father died when he was 10, leaving behind a hotel and restaurant that the family continued to run, according to reports.

Mr. Benmosche attended Alfred University in upstate New York and paid his tuition by driving a Coca-Cola delivery truck. During the Vietnam War, he served in Korea in the U.S. Signal Corps.

Mr. Benmosche worked as a computer consultant before joining Chase Manhattan Bank and then MetLife Inc., where he rose to chairman and CEO. He was named AIG's president and CEO earlier this year.

The men reportedly have known each other for only about a decade. But perhaps their common background eased the way for the November détente between Mr. Greenberg and AIG, under which the parties agreed to settle all their legal disputes dating back to Mr. Greenberg's departure from AIG in 2005.

Business Insurance END PAGE

Contributing: Jeff Casale, Judy Greenwald, Mark A. Hofmann

Cow lick causes moo-diness

Is property damage caused by cow a covered peril in a homeowner insurance policy?

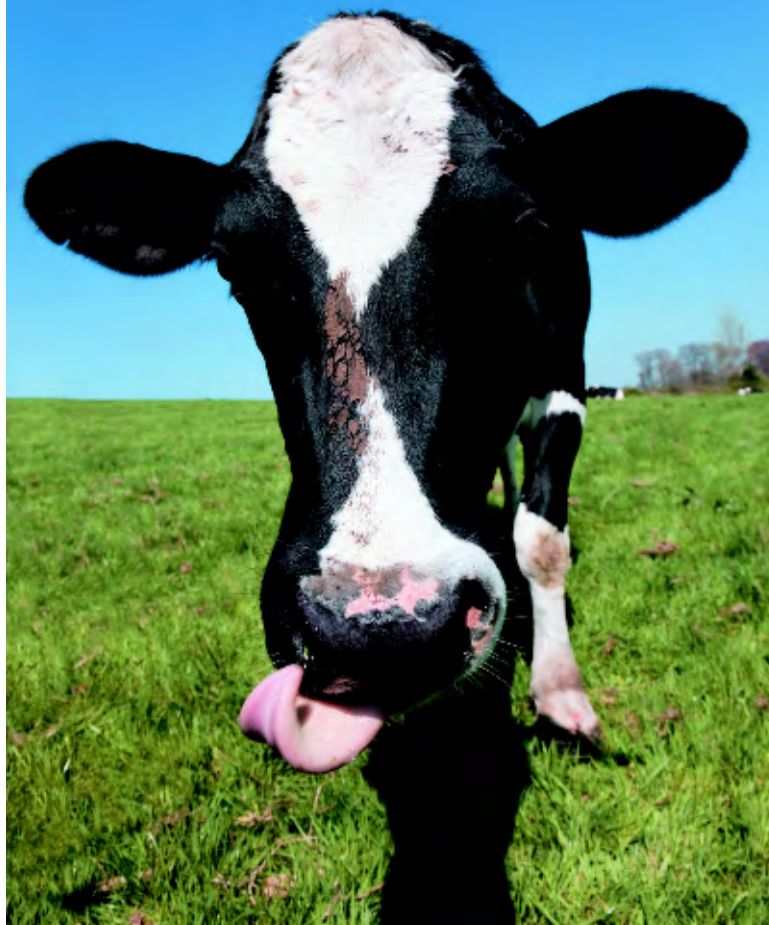
Jerry Lynn Davis of Rogersville, Tenn., may have wondered about that earlier this month when he called the sheriff's office to complain of cows causing damage to his house.

According to a report in the Kingsport, Tenn., Times News, Mr. Davis said "cattle had damaged his home by ripping off a screen window, cracking the glass, and pulling down a gutter," causing damage estimated at about \$100.

The report said Mr. Davis told Hawkins County, Tenn., Deputy Chris Funk that the fence is "approximately two feet from his home and cattle have been 'poking their heads through and licking the side of the house.'"

Mr. Funk contacted the owner of the cattle, who said he uses the pasture adjacent to the home only every few years. He said he'd take care of the problem.

Still, even though a cowlick usually refers to a flaw in hair styling, it might be worth combing the fine print of a homeowner policy to make sure that cow licks of a more destructive kind are a covered peril under Tennessee insurance law.



FACEBOOK IS, LIKE, TOTALLY IMPORTANT



A job's a job, but Facebook—that's pretty important, teens say. Fifty-eight percent of teens would consider their ability to access social networking Web sites at work when considering a job offer, according to the seventh annual Junior Achievement/Deloitte Teen Ethics survey, which focused on the ethical implications of the popularity of social networking.

The September telephone survey by New York-based Deloitte Touche Tohmatsu International and Colorado

Springs, Colo.-based nonprofit Junior Achievement examined the opinions of 1,000 U.S. teens ages 12-17.

Among other survey results, 88% of the teens surveyed said they use social networks every day, with 70% saying they participate in social networking an hour or more daily.

Eighty-two percent of the teens surveyed said they feel prepared to make ethical decisions at work, while 83% said they do not behave unethically while using social networks.

But 16% admitted to behavior that included posting content embarrassing to others, spreading rumors, and pretending to be someone other than themselves, although more than half who did so said they later regretted it.

Based on the survey's results, "From an employer's perspective, it's clear that organizations need enhanced training and communication relative to social networking," Ainar D. Aijala, global managing partner of consulting for Deloitte, said in a statement.

Some training in setting priorities also might be in order.

SLIPPERY WEINER NETS FRAUD CHARGES

Usually it's the banana peel that has the reputation of being slippery, not the hot dog.

But for Phoenix residents Tommy Masterson and Lesa Bonilla, the hot dog was a key prop in their allegedly staged slip-and-fall accidents, authorities say of the pair accused last week of insurance fraud.

The two were spotted on a shopping mall security camera, with Mr. Masterson purchasing a hot dog at a snack bar and then walking over to a store, where he met up with Ms. Bonilla, the Arizona Department of Insurance Fraud Unit said in a statement.

The video shows Mr. Masterson placing the wiener on the floor. Then Ms. Bonilla, along with a small child, walks around a rack of clothes and conspicuously "slips" on the hot dog.

After being treated by Mesa, Ariz., paramedics and taken by ambulance to a medical center, Ms. Bonilla filed a claim against the store and sought a quick settlement for her alleged injuries, authorities said.

The insurance office, which dubbed Mr. Masterson a "bad cat" in reference to the tattoo seen on his arm on the video, said the man has been linked to other alleged slip-and-fall scams in retail stores in Arizona which also involved a hot dog.





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And finally something new from the insurance industry: Good News

8/09 - Ironshore completed \$300 million equity capital raise



8/09 - Launched Ironshore Energy unit



3/09 - Launched MGA Program unit



7/09 - In partnership with Rockwood Programs, acquired majority stake in Wright & Co. MGA



1/09 - Launched Ironshore Environmental unit
- Created Excess Liability unit
- Launched Iron-Starr Excess, a joint venture with C.V. Starr



2009

Berkshire Hathaway Group™

2/09 - Formed exclusive MGU arrangement with Berkshire Hathaway Group™ for Environmental unit

12/08 - Acquired Marine Re to expand expertise in North American Marine Reinsurance



12/08 - Kevin Kelley appointed CEO
Shaun Kelly appointed CEO U.S. Operations

7/08 - Entered Lloyd's market with purchase of Pembroke Syndicate 4000



4/08 - A.M. Best assigned A- rating to Ironshore's U.S. companies



3/08 - Launched IronHealth (Healthcare Liability)



2008



1/08 - Established Ironshore Specialty Insurance Co.

12/07 - Ended first year with \$317 million in GWP



11/07 - Established Ironshore Indemnity Inc.

10/07 - Launched IronBuilt (Specialty Construction)



5/07 - Launched IronPro (Professional Liability)



2/07 - Ironshore Bermuda received "A-" A.M. Best rating

12/06 - Initial funding of \$1 billion in equity



2007

2006



1/07 - Commenced writing property insurance

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