

**BOEHNER LEADS ATTACK ON HEALTH CARE REFORM IN CONGRESS / PAGE 3**

**AIG SETTLES DISPUTE OVER COMP PREMIUMS WITH SOME RIVALS / PAGE 3**

**U.S. FOOD SAFETY LAW MAY BOOST DEMAND FOR RECALL COVER / PAGE 3**

## In Brief

### N.J. Legislature OKs captives bill

New Jersey Gov. Chris Christie is expected to sign into law this month a bill making New Jersey a captive domicile, say supporters of the bill. The bill, which passed unanimously in the Assembly and the Senate, moved to the governor's desk as New Jersey legislators considered various economic development measures. When signed into law, the bill will permit the New Jersey Department of Banking and Insurance to license pure, association, sponsored and industrial insured captive insurance companies.

### Cat losses total \$37 billion in 2010

Natural catastrophes cost insurers \$37 billion in 2010, a year that saw above-average

See **IN BRIEF** page 21

## SPOTLIGHT

### PROPERTY/CASUALTY INSURANCE MARKET REPORT

Buyers hold winning hand; casualty still competitive; only tough D&O lines see increases; claims, players drive E&O pricing; Gulf an exception in marine; reinsurers show discipline; some comp insurers opt to walk away. **PAGE 9**

## RISK MANAGEMENT

# Risk managers feel the squeeze

*Amid tough times, focus on loss control sees other areas cut*

By **MARK A. HOFMANN**

Even as risk management budgets continue to feel the pinch of lingering economic malaise, risk managers are resisting cutting back on loss control and safety efforts.

Instead, many contend with staff reductions. Expenses deemed nonessential, such as travel, have gone by the wayside. Doing more with less, while eased somewhat by a soft property/casualty insurance market, has become standard operating procedure.

Debra Rodgers, vp-global risk management for Philadelphia-based ARAMARK Corp., had to reduce staff when the company said in October that cuts would have to be implemented in November.

"We had corporatewide cuts, and risk management was part of the corporatewide cuts," she

said. As a result, the department had to cut several open positions and "a couple of existing positions," Ms. Rodgers said.

"We redistributed work and there are just some things we won't do this year, particularly on the professional services side," said Ms. Rodgers, who declined to elaborate.

She stressed, however, that "we really preserved the loss control staff" by eliminating only two positions "because we wanted that staff for the long haul."

"The soft market has accommodated the demands on many risk managers to reduce their budgets; but when the market hardens, risk managers will have some tough choices," said Joe Underwood, a senior consultant at Needham, Mass.-based Albert Risk Management Consultants. He said some clients with a difficult loss experience have faced increased premiums.

Loss control is "not the place you really want to cut, but you do want to prioritize," Mr.

See **BUDGETS** page 20

## RISK-LINKED SECURITIES



Smoke billows from the Deepwater Horizon after an explosion set the oil rig on fire, leading to the worst oil spill in U.S. history.

AP PHOTO

# Capacity still flowing into energy market

*Berkshire, Willis launch \$250 million facility*

By **MICHAEL BRADFORD**

New broker-led facilities are adding capacity to the energy insurance market while other operations that would offer billions of dollars in high-layer limits are gauging buyer demand before offering their coverage.

But some question the level of buyer interest in participating in the high-layer facilities backed by

Munich Reinsurance Co. and Torus Insurance Holdings Ltd.

Willis Group Holdings P.L.C. said last week that it will provide up to \$250 million in coverage backed by Berkshire Hathaway International Insurance Ltd. for oil and gas companies. The broker said buyer demand for additional capacity, sparked in part by rising

See **OIL** page 18

## HEALTH CARE BENEFITS

# Will broker pay change empower group health buyers?

*Aetna excludes commissions from premiums; other insurers expected to copy move*

By **JOANNE WOJCIK**

Aetna Inc.'s decision to exclude broker commissions from health insurance premiums in the fully

insured large-group market beginning Feb. 1 could give employers greater leverage in determining how much their producers are paid and what services they must

provide to earn that compensation.

Other health insurers are expected to follow Hartford, Conn.-based Aetna's move, which was triggered by new minimum medical loss ratio requirements established under the Patient Protection and Affordable Care Act.

Under the minimum MLR rules that took effect Jan. 1, insurers must spend at least 85 cents of every premium dollar in the large-group market on medical expenses, leaving just 15% to cover overhead including claims administration, customer service and sales

expenses, including broker commissions.

Because broker commissions comprise as much as 5% of health insurers' sales expenses, it was inevitable they would be cut, sources say. These same sources said they were wondering which insurer would be first to do so, and now that Aetna has taken the step, other insurers are expected to follow suit.

In an e-mail, a spokesman for Minnetonka, Minn.-based United-Health Group Inc. confirmed, "We are in the process of commu-

See **PAY** page 20

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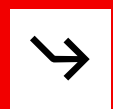
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### MOST POPULAR STORIES Week of January 3, 2011

1. **IG settles workers comp case with insurers except Liberty**
2. **P/C rates down, but end of soft market in sight: MarketScout**
3. **Employers expect health reform to raise costs: Survey**
4. **Suit against co-worker not barred by workers comp law**
5. **Former IG employee sues PwC, board over audits**
6. **Employment discrimination settlements surge: Analysis**
7. **Insurance oversight office to move from HHS to CMS**
8. **Alliant buys property/casualty and benefits brokerage**
9. **White paper details cyber risk exposures**
10. **Motorola to add \$100 million to pension plan**

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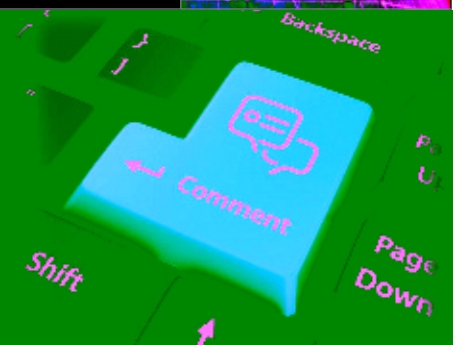
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## HEALTH CARE REFORM

# Business groups seek health reform changes

*Lobbying efforts to focus on employer mandate, taxes*

By **JERRY GEISEL**

**WASHINGTON**—Republican-backed legislation to repeal the health care reform law that is headed for the House floor this week will fail to win final congressional approval, but it could set the stage for changes supported by employers, experts say.

With Republicans enjoying a wide majority in the House, that chamber on Wednesday is expected to approve the repeal measure, H.R. 2, introduced by House Majority Leader Eric Cantor, R-Va., and co-sponsored by 162 House GOP members.

The only suspense is whether any House Democrats will join Republicans in voting for the repeal measure, said Paul Dennett, senior vp-health care reform with the American Benefits Council in Washington.

But experts say the measure has virtually

no chance of winning approval in the Senate still controlled by Democrats.

"No doubt, it will be deep-sixed in the Senate," said Gretchen Young, senior vp-health policy at the ERISA Industry Committee in Washington.

"The bill is probably dead on arrival in the Senate and President Obama certainly will veto it if it did pass," said Frank McArdle, a principal in the Washington office of Aon Hewitt Inc.

The president vowed to do just that late last week.

"If the president were presented with H.R. 2, he would veto it," the Office of Management and Budget said in a policy statement. The legislation "would explode the deficit, raise costs for the American people and business, deny an estimated 32 million people health insurance and take us back to the days when insurers could deny, limit or drop coverage for any American," according to the statement.

Washington observers say the repeal



AP PHOTO

**House Republicans, including Speaker John Boehner, are expected to approve a measure to repeal the health care reform law.**

drive has more to do with public relations than GOP leaders' belief that they could repeal the law.

"This is about campaign pledge fulfillment, to show they are listening to their constituents," Mr. McArdle said.

Afterward, however, legislators are expected to approve a measure that died as time ran out during the last congressional session. That would strip a provision from the Patient Protection and Affordable Care Act that requires employers to furnish 1099 reporting statements if they do more than \$600 of business with a corporate vendor starting in 2012. Small employers in particular complained that the reporting burden is too great.

Business lobbyists say the only reason the 1099 repeal measure failed to win approval during the prior congressional session is that GOP leaders wanted to get full credit this session when they control the House.

The drive to amend the law is expected to go far beyond noncontroversial provisions such as 1099 reporting, and legislators and

See **REPEAL** page 17

## REGULATION



## New food safety law adds to recall risks

By **JEFF CASALE**

**WASHINGTON**—A new law designed to increase the safety of U.S. food products will add to the compliance duties of food processing and manufacturing companies and may boost interest in product recall insurance coverage at such companies, experts say.

See **FOOD** page 17

## WORKERS COMPENSATION

## AIG pays \$450M to settle with rivals

*But Liberty units continue fight over premium reporting*

By **JUDY GREENWALD**

**NEW YORK**—American International Group Inc. took another big step toward resolving long-running concerns arising from its workers compensation premium reporting, but one key rival isn't letting AIG off the hook.

AIG said last week that it reached a \$450 million settlement with seven insurers involved in litigation over alleged under-reporting of workers comp premiums by AIG. However, the pact does not include

units of Boston-based Liberty Mutual Group Inc., which has sought class action status and plans to continue pursuing the lawsuit.

The legal fight began in 2007, when the National Workers Compensation Reinsurance Pool operated by Boca Raton, Fla.-based NCCI Holdings Inc. first sued New York-based AIG.

The pool had argued it was excluded from a 2006 settlement with then-New York Attorney General Eliot Spitzer in which AIG agreed to pay states more than \$343 million to settle allegations that it underreported workers comp premiums over several decades to avoid paying its full share of residual market assessments to the states.

Since then, U.S. District Court Judge Robert Gettleman, who has been presiding over the case, dismissed the pool as a plaintiff, based on AIG's objection, but the litigation continued. AIG also sued competitors, arguing they underreported workers comp premiums.

While the insurers involved in the settlement had been sued by AIG, they had never actually sued the insurer, but instead the Liberty Mutual units had in effect sued on their behalf as "litigation class representatives."

Under the proposed settlement dated Jan. 5, AIG will pay \$450 million, but that would be decreased by the amount put in

See **AIG** page 20

## WORKERS COMPENSATION

## Insurers settle with N.Y. over comp overcharges

By **MIKE TSIKOUKAKIS**

**NEW YORK**—Four insurance groups last week agreed to pay New York state nearly \$120 million to settle workers compensation fee discrepancies.

ACE Ltd., Zurich Financial Services Group, CNA Financial Corp. and Pennsylvania Manufacturers' Assn. Insurance Co. agreed to the settlement to resolve allegations that they collected too much in workers compensation fees, the New York state attorney general's office said in a statement.

The New York State Workers' Compensation Board charges an

annual fee of insurers that place workers comp business in the state, and insurers cover those fees with premium surcharges passed on to policyholders.

In 2000, the WCB adopted a new calculation method to determine the policyholder premium surcharges. As a result, some insurers collected too much from policyholders while others collected too little, according to the statement.

Former New York Attorney General Andrew Cuomo, who became governor Jan. 1, led the investigation after the state passed legislation in 2009 and 2010 to

### WORKERS COMP SETTLEMENTS

*Amounts that four insurers have agreed to pay to settle claims by New York state for excess fund collections of workers compensation fees.*

**\$70.0 MILLION** ACE Ltd.

**\$37.5 MILLION** Zurich Financial Services Group

**\$5.9 MILLION** Pennsylvania Manufacturers' Assn. Insurance Co.

**\$5.8 MILLION** CNA Financial Corp.

*Source: New York state attorney general*

forbid such overcharging and recover the money from insurers.

Insurers said the discrepancy was ongoing since the 2000 shift, which created discord over how

See **FEES** page 18

## EMPLOYMENT PRACTICES

# In 2010, bias cases dominate employment legal landscape

Huge increase seen in total value of top 10 settlements

By JUDY GREENWALD

Settlements of the 10 largest private plaintiff employment discrimination class actions paid or entered into in 2010 totaled \$346.4 million, more than four times the amount in 2009, according to an analysis released last week.

Looking ahead, decisions in three cases that the U.S. Supreme Court has agreed to consider could dramatically change the legal landscape for employers, according to the to the "Annual

Workplace Class Action Litigation Report."

The largest of the group last year was the \$175 million settlement in *Amy Velez et al. vs. Novartis Pharmaceuticals Corp.*, according to the report by Chicago-based law firm Seyfarth Shaw L.L.P.

The 664-page report analyzes 848 decisions rendered against employers in state and federal courts, including private plaintiff and government enforcement actions. The \$346.4 million, after rounding, for the top 10 in 2010 compares with \$84.4 million for the top 10 in 2009.

*Velez*, which received final approval Nov. 30, 2010, involved allegations that Basel, Switzerland-based Novartis discriminated

against 5,600 current and former female sales representatives in pay and promotions. A jury originally granted the plaintiffs \$250 million and the settlement was reached subsequently (*BI*, May 24, 2010).

Seyfarth Shaw Partner Gerald L. Maatman Jr., who wrote the report, said employment discrimination lawsuits "were in the headlines more than any other type of workplace challenge for a company" during 2010, unlike previous years when wage-and-hour settlements broke records.

The issue is on employees' minds "and so the manner with which you comply with the law, your internal systems and the way

See **WORKPLACE** page 19

## LARGEST SETTLEMENTS

The 10 largest settlements of private plaintiff employment discrimination class action lawsuits, all of which have received approval, totaled \$346.4 million in 2010 (some amounts have been rounded). The largest cases settled were:

**SETTLEMENT AMOUNT:** \$175 million  
**CASE NAME:** *Amy Velez et al. vs. Novartis Pharmaceuticals Corp.*

**ALLEGATIONS:** 5,600 current and former female sales reps alleged discrimination in pay and promotions.

**SETTLEMENT AMOUNT:** \$70 million  
**CASE NAME:** *In Re TV Writers*  
**ALLEGATIONS:** Writers 40 and older alleged age discrimination by TV networks, studios and talent agencies.

**SETTLEMENT AMOUNT:** \$44 million  
**CASE NAME:** *John Mansfield Jr. et al. vs. Airline Pilots Assn. International*  
**ALLEGATIONS:** Pilots alleged discrimination and breach of duty of fair representation under the Railway Labor Act.

**SETTLEMENT AMOUNT:** \$21.4 million  
**CASE NAME:** *Courtney Davis et al. vs. Eastman Kodak Co.*

**ALLEGATIONS:** Black employees alleged race discrimination in pay and promotions.

**SETTLEMENT AMOUNT:** \$15.4 million  
**CASE NAME:** *Karen Bellifemine et al. vs. Sanofi-Aventis U.S. L.L.C.*

**ALLEGATIONS:** 5,200 current and former female sales reps alleged gender bias in pay and promotions.

**SETTLEMENT AMOUNT:** \$8.6 million  
**CASE NAME:** *Marlin Shopbell et al. vs. Spansion Inc.*

**ALLEGATIONS:** Former employees alleged violations of the California and federal Worker Adjustment and Retraining Notification Acts in layoffs.

**SETTLEMENT AMOUNT:** \$6 million  
**CASE NAME:** *John Doe et al. vs. Mulcahy Inc. et al.*

**ALLEGATIONS:** Latino workers alleged the drywall contractor discriminated against them based on their race and national origin.

**SETTLEMENT AMOUNT:** \$5 million  
**CASE NAME:** *Harrison-Gray et al. vs. U.S. Department of Veteran Affairs*

**ALLEGATIONS:** Allegations of racial discrimination at VA hospitals.

**SETTLEMENT AMOUNT:** \$2 million  
**CASE NAME:** *In Re Heller Ehrman L.L.P.*  
**ALLEGATIONS:** Former shareholders alleged retirement claims were not paid.

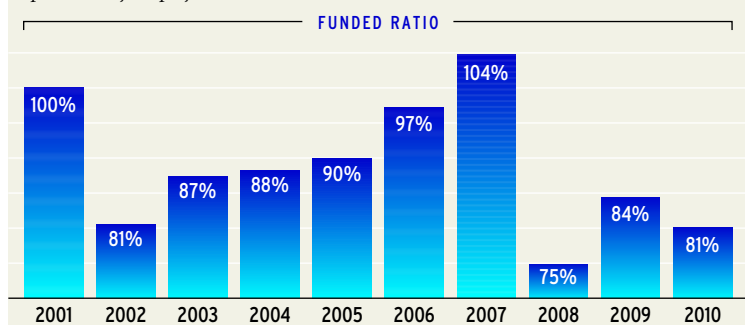
**SETTLEMENT AMOUNT:** \$1.1 million  
**CASE NAME:** *Derrick Reed et al. vs. Waukesha Engines and Dresser Inc.*  
**ALLEGATIONS:** Black applicants alleged racial discrimination in hiring.

Source: "Annual Workplace Class Action Litigation Report," Seyfarth Shaw L.L.P.

## PENSION BENEFITS

## FUNDING SWINGS

Changes in funded ratio (assets to liabilities) of defined benefit pension plans sponsored by employers in the S&P 1500



\*As of 12/31

Source: Mercer L.L.C.

## Pension funding levels down from '09: Mercer

By JERRY GEISEL

Aided by a strong rebound in the equities markets, the funded status of pension plans sponsored by large employers has rebounded from a few months ago but remains lower than a year ago, according to an analysis released last week.

On average, pension plans sponsored by companies in the S&P 1500 were 81% funded at year-end 2010, with a deficit of \$315 billion. That's down from year-end 2009, when plans were an average of 84% funded with a shortfall of \$229 billion, New York-based Mercer L.L.C. estimated.

While funding levels are lower due to a slight decline in interest rates compared with year-end 2009, plan funding levels have surged in recent months.

As recently as Aug. 31, plans on average were just 71% funded,

their lowest point in 2010. But due largely to a rebounding stock market, funding levels have improved steadily since then.

"We certainly saw a marked improvement in funded status over the last quarter, as equity returns and discount rates both moved favorably for plan sponsors," Jonathan Barry, a Mercer partner in Boston, said in a statement.

While plan funding levels are improving, they have a long way to go to reach levels of just a few years ago.

At year-end 2007, plans were 104% funded on average. One year later, the average funding level sank to 75% due to the 2008 equities markets crash.

The Mercer study is based on the 729 companies in the S&P 1500 that sponsor defined benefit plans with enough data for analysis.

## AGENTS &amp; BROKERS

# T&H Group purchase boosts Alliant

Former Tanenbaum-Harber adds business from Eastern U.S.

By MARK A. HOFMANN

**NEWPORT BEACH, Calif.**—Alliant Insurance Services Inc. last week said that it has acquired T&H Group Inc.

T&H, a New York-based regional property/casualty and benefits brokerage, is the 33rd largest broker of U.S. business, according to *Business Insurance's* 2010 ranking, based on 2009 brokerage revenues from U.S. clients of \$63.9 million. Alliant is the 11th largest, with \$352.0 million in such revenues.

Terms of the deal were not disclosed.

In a statement announcing the acquisition, Alliant said T&H—previously Tanenbaum-Harber Co. Inc. until changing its name last year—primarily targets upper middle-market clients in the Eastern United States. It has 242 employees in

nine states.

T&H Group is headed by Chairman and CEO Walter Harris, who will serve as vice chairman of Alliant and become a member of Alliant's senior management team, Alliant said in the statement.

"T&H and Alliant are great strategic, operational, and philosophical matches for each other on nearly every level of business, from diversity of services to the specialized industries we serve, to the size and type of clients we target, to our respective commitments to providing highly responsive, personalized service," Alliant Chairman and CEO Tom Corbett said in the statement. "T&H has strong client relationships with an average client retention rate of more than 95%, which is solid evidence of the company's ability

to meet or exceed client needs and expectations."

The T&H acquisition was Alliant's second major purchase in less than a month. In late December, it said it had acquired ArlenGroup, an employee benefits firm with offices in San Francisco and Walnut Creek, Calif.



Mr. Corbett

## Deadline nearing for 2011 Innovation Awards

Business Insurance 2011

**INNOVATION AWARDS**

*Business Insurance* is seeking nominations for its 2011 Innovation Awards.

The awards recognize innovation in products, services and technologies designed for risk managers. Eligible are products or services that are designed for and made available to professional risk managers that address key risk management functions.

To be considered for the 2011 *Business Insurance* Innovation

Awards, the submitted product or service must have been rolled out to risk managers or entered the marketplace between Jan. 1, 2010, and Dec. 31, 2010.

Products that are intended for general business or administrative functions and are not specifically intended to support the role of risk management in a public or private organization are not eligible.

A company may submit more than one entry but may only receive

one award as an organization.

An independent panel of risk managers will select the award winners, which will be honored at a special dinner during the 2011 Risk Management Summit, to be held March 14 in New York.

Entries must be completed by Jan. 14, using the official *Business Insurance* submission form. For information and to enter, please visit [www.BusinessInsurance.com/Innovation](http://www.BusinessInsurance.com/Innovation).

# Aviation losses outstrip premiums: Analysis

## Rates increase despite glut of capacity

By SARAH VEYSEY

Estimated 2010 aviation hull and liability losses topped \$2 billion for the second consecutive year, and most programs that renewed during the final quarter saw moderate rate increases, experts say.

Insured aviation hull and liability losses for 2010 were an estimated \$2.15 billion, according to London-based consultant Ascend Worldwide Ltd.

While less than the \$2.52 billion in losses incurred during 2009, the 2010 losses exceeded the estimated \$2.1 billion of aviation insurance premiums written during the year, according to research Ascend released last week.

There were 28 fatal accidents during 2010, up from 23 during 2009, according to Ascend's special bulletin. While that exceeded the annual average of 27.2 fatal accidents the past decade, it was better than the average of 37.6 fatal accidents per year during the 1990s, according to Ascend.

Western-built jets, which carry more than 90% of the world's air traffic, suffered eight fatal accidents that resulted in the deaths of 554 passengers and crew during 2010. In 2009, there were nine fatal accidents involving Western-built jets that resulted in the deaths of 414 passengers and crew, according to Ascend.

There were 18 airline insured losses of Western-built jets in 2010, the same as 2009, according to the consultant.

As for major hull claims, the estimated cost is \$1.14 billion, making 2010 the costliest year ever for such claims on Western-built jets, according to Ascend. That compares with major hull claims of \$732 million for 2009.

Ascend's estimate of incurred passenger and third-party liability costs, including minor liability losses, stands at \$831 million for 2010, less than the \$1.28 billion for 2009.

### Premiums on the rise

Typically, the aviation insurance market cycle tends to be about nine years in duration, according to Ascend. After the terrorist events of 2001, the market hardened immediately and premium volume dropped; since 2007, premium volume has begun to increase again, Ascend noted.

Most major airlines renew their coverage during the final quarter of the year.

The second consecutive year of aviation and hull liability losses topping \$2 billion means insurers will maintain their focus on the aviation market during 2011, said Magnus Allan, a senior analyst in Aon Risk Solutions' aviation team in London.

Aviation hull and liability

capacity remains plentiful, so rates are likely to remain stable during 2011 absent any major events, Mr. Allan said.

Rates for lead hull and liability aviation coverage rose fairly consistently throughout the year, he said.

Typically, average rate increases for lead coverage were just less than 5% last year, said Mr. Allan. This was due in part to a recovery in fleet sizes and passenger numbers after the global economic problems that began in late 2007, experts said.

Mr. Allan said rate increases for lead coverage slowed somewhat in December because, in part, some loss-affected business was removed from underwriters' books of business.

But while rate increases for lead coverage have been moderate, "the following markets have been far more willing to walk away from risk that doesn't fit their pricing strategy," said Mr. Allan.

Therefore, there is less competition in the following market and prices have risen more sharply in

some cases, he said.

In its latest airline insurance market overview, published late last year, Willis Group Holdings P.L.C. noted that there was distortion in pricing on some programs.

Overall, Willis said airlines typically were seeing an average 2% increase in rates compared with a 7% increase in their fleet size and an 11% increase in passenger numbers.

The Ascend report is available to subscribers at [www.ascendworldwide.com](http://www.ascendworldwide.com).

## \$1.14B

The estimated cost for major hull claims is in 2010, the costliest year ever for such claims on Western-built jets.



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# State workers comp changes proposed

Governor details plan to reduce costs for Washington

By **ROBERTO CENICEROS**

**OLYMPIA, Wash.**—Washington Gov. Chris Gregoire says she will introduce workers compensation legislation to set up a network of credentialed health care providers for the state and self-insured employers.

The governor says several workers compensation system changes she plans to introduce could save Washington state \$720 million over four years.

Under the governor's health care provider network proposal, workers would be able to choose their doctor while state and self-insured employers would "be able to encourage providers to follow best practices to help workers remain productive and healthy,"



AP PHOTO

Gov. Chris Gregoire

the governor said last week in a statement.

That proposal alone would save an estimated \$160 million over four years, Gov. Gregoire said.

The governor also proposes reducing lifetime pensions under

the workers comp system by offering lump-sum benefits to older employees unlikely to re-enter the workforce and adjusting pensions of totally disabled workers who also earn income through limited employment.

She also said the package would include wage subsidies for employers that offer "light-duty" return-to-work programs.

"Common-sense changes to workers compensation will free up money that workers and businesses can use to support their families and improve their companies," the governor said in the statement. "By offering businesses and workers these tools, the state is laying a stronger foundation that businesses and workers can use to grow and succeed in the 21st century."

Apart from workers comp, the governor also said she will introduce legislation to reduce businesses' unemployment taxes by \$300 million.

# Maine licenses first captive since 2003

By **RODD ZOLKOS**

**AUGUSTA, Maine**—Maine has licensed the first captive domiciled in the state since 2003, with state officials attributing the formation to changes in state captive law.

First Maine Captive Inc. was formed by three Maine self-insured workers compensation

groups, according to the Maine Bureau of Insurance.

The captive will be managed by R.A. Peterson Associates L.L.C. of York, Maine.

While Maine has had a captive law since 1997, it's had no captives since 2003, a fact that state officials attributed to the original law being overly restrictive.

Among other things, changes to Maine's captive law enacted in 2009 eliminated the captive premium tax, expanded the definition of association captives, and allowed formation of sponsored and branch captives. The modernization legislation also eased restrictions on the investment of captive assets by pure captives.

## Commentary

# Wave of older workers set to flood employers



**RODD ZOLKOS**

Special Projects Editor Rodd Zolkos can be reached at: [rzolkos@businessinsurance.com](mailto:rzolkos@businessinsurance.com)

Listening to the radio New Year's Day while driving back from Indiana where we'd been visiting friends, a news story that caught my attention addressed this year's arrival of the "Silver Tsunami."

That's right, this is the year that the first baby boomers turn 65.

On New Year's Eve, our group had a decidedly baby boomer tilt, a factor, no doubt, in the duration of our revelry. We welcomed the new year in the Eastern time zone, and toasted it again an hour later for the benefit of those of us native to Central time. Pretty soon thereafter, though, we unanimously agreed to call it a night, making plans to reconvene for breakfast at a reasonable hour.

Some might call that old age. I prefer to think of it as the wisdom of experience, which gets to the point of some current thinking regarding baby boomers in the workplace in the coming years.

In recent years, there's been concern about the impact baby boomer retirements will have on the workplace, particularly the risks facing organizations that need to replace the volume of talent and expertise those retiring employees represent.

As it turns out, now that retirement time is arriving, many of those boomers are hoping to remain on the job, some because they're not financially prepared to retire, but others because they simply aren't ready to give up the role that their work plays in their lives.

And, some who study the workplace and business suggest, this is a good thing for the companies with a chance to employ those boomers choosing to defer retirement.

In a Knowledge@Wharton article from the Wharton School of Business at the University of Pennsylvania published last month, several Wharton professors make the case that despite data that show those older than 55 have a more difficult time finding work than younger job seekers, those older workers can be valuable assets to the organizations employing them.

"Some far-sighted companies around the world are working to recruit, retrain and otherwise engage older workers," the article notes.

The Wharton professors noted that while older workers can

be highly productive employees who bring "a lifetime of skills" to the job, certain stereotypes keep some employers from benefiting from those older workers. But beliefs, such as older workers cost more than younger employees, that they're less productive or that they keep younger people from getting jobs—"are merely myths," the Wharton professors suggest.

**Many boomers are hoping to remain on the job because they simply aren't ready to give up the role that their work plays in their lives.**

Of course, there are some issues, particularly changes in the workplace, that might be needed to make the job site safe for older workers or to accommodate some of the inevitable physical changes as we age. About a year ago, my colleague, Roberto Cenicerros, wrote in his column (*BI*, Feb. 8, 2010) about this issue and the need for more research in this regard.

But the Knowledge@Wharton piece notes examples like the automaker known as BMW, which has been experimenting with assembly line modifications for older workers that include larger computer screens with bigger type, special shoes that are easier on older feet and adding chairs in some spots along the line so certain tasks can be performed while seated.

So it appears there are some companies looking to ride the "Silver Tsunami," rather than seeing it as a potential calamity.

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# Business Insurance OPINIONS

## Health reform repeal unrealistic, misguided

REPUBLICAN CONGRESSIONAL LEADERS have said they intend to try to repeal the health care reform law, and it is very likely that such an effort will succeed in the House of Representatives, perhaps as soon as this week.

But we wonder about the point of that legislative initiative. One doesn't have to be a Washington insider to know that a repeal measure has virtually no chance of passage in the Senate, where Democrats still hold the majority.

Even if a repeal measure—overcoming what we conservatively think are 100-1 odds—cleared the Senate, President Barack Obama has vowed to veto the bill and that veto, given the political makeup of Congress, would be sustained.

Given that outcome, we think the repeal drive is no more than a stunt, and a misguided one at that.

It is unlikely that anyone believes the entire piece of legislation is so bad that it should be junked. In fact, there is widespread support among Republicans and Democrats for provisions such as expanding coverage of preventive services, banning pre-existing medical condition exclusions and extending coverage to employees' young adult children.

Republican lawmakers would be wise to refine their approach. Reaching out to a wide range of interest groups, Republicans should find out which reform law provisions should be revamped and then work to build a consensus—something neither party has been good at in recent years—to build support for those changes.

That strikes us as a road map to success and one that would serve Republicans well and, more importantly, the nation.

*We think the repeal drive is no more than a stunt, and a misguided one at that.*

## Court rulings best hope for change in bias trend

RISK MANAGERS PROBABLY are justifiably happy that the midterm elections have made Congress more business-friendly, but a recently issued report says any celebration likely is premature.

As we report on page 4, Seyfarth Shaw L.L.P.'s 2011 "Annual Workplace Class Action Litigation Report" points out that Republican gains in Congress actually increased workplace litigation exposures for employers.

That's because as the Democratic legislative initiatives for labor and employment reform stalled, the Obama administration intensified its enforcement efforts through the U.S. Equal Opportunity Commission and the U.S. Department of Labor.

The administration's emphasis on regulation and administrative enforcement also generated more government-initiated litigation over workplace issues. Furthermore, the report says, the administration may expand its regulation and enforcement to avoid having its policy goals thwarted by Congress, according to the report.

On the other hand, employers may be able to pin some hope on the U.S. Supreme Court, which of late has tended to be business-friendly. The court has accepted three cases for review that Seyfarth says could dramatically change the legal landscape for employers.

They include *Wal-Mart Stores Inc. vs. Betty Dukes et al.*, in which an appeals court certified a 1.5 million member class in a gender discrimination case.

Many observers expect the high court to either completely overturn that decision or significantly reduce the class' size, which certainly would be a major relief for risk managers and employers.



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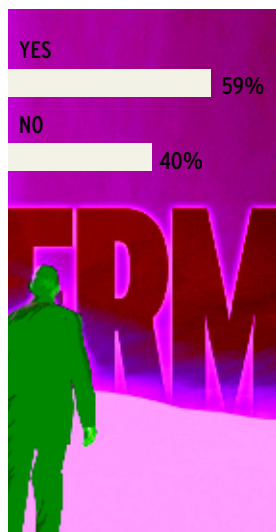
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Q Do you expect organizations to boost their enterprise risk management efforts in 2011?



#### NEXT WEEK'S QUESTION

Q: Will there be significant amendments to the health care reform law this year?

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# Buyers hold winning hand in soft insurance market

*Property coverage rates expected to decline further in 2011*

By **MARK A. HOFMANN**

The commercial property insurance market remains buyer-friendly as rates during the renewal season have dropped slightly from a year ago, observers say.

However, some observers say there are signs that the rate of decrease may be narrowing. Despite the favorable property insurance market, observers say buyers can make their accounts even more attractive as they attempt to place them.

"Rates have dropped slightly from a year ago," said Jon Hall, executive vp of Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global. He said that across the industry, domestic property rates have declined about 4% compared with a year ago.

Mr. Hall said pricing is set "pretty much account by account." While the commercial property insurance market is soft across the board, that could change, he said.

"I think the market will begin to turn," Mr. Hall said. "We've seen a down market for about five years; but over the last 12 months, that 4% has been

steady," he said.

"Capacity continues to outstrip demand by far, creating significant competition between carriers to maintain market share," said Duncan Ellis, managing director and leader of Marsh Inc.'s global property practice in New York.

He said renewals had rates that ranged from flat to decreases of 10% on average, although the rate of decrease generally is slowing.

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

Risk managers aren't complaining about the situation.

"The market was kind to us," said Carolyn Snow, director-insurance risk management at Humana Inc. in Louisville, Ky. She said Humana's renewal with

## PROPERTY

See **PROPERTY** next page

**'Capacity continues to outstrip demand by far, creating significant competition between carriers to maintain market share.'**

Duncan Ellis, Marsh Inc.

Property/Casualty  
Insurance  
Market Report

# SPOTLIGHT

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**SOME COMP INSURERS  
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# Primary, excess casualty rates slip

*Despite general liability pricing declines, higher-hazard industries see some firming*

By MIKE TSIKOUidakis

Buyers of primary and excess casualty insurance continued to enjoy competitive pricing this renewal season, but insurers expect a modest firming of rates in certain segments, observers say.

The general liability exposure base decreased dramatically in 2009 during the recession while exposures flattened in 2010, but brokers and insurers say premiums may increase this year due to increased exposures, but only slightly.

Late last year, New York-based Marsh Inc. said overall soft commercial pricing included a 6.7% rate decline for general liability coverage during the third quarter of 2010. Separately, New York-based Advisen Inc. said general liability pricing was about 3.5% less during the third quarter of 2010 vs. the year-earlier period.

Depending on their programs, some risk managers are seeing a decrease in insurance pricing for 2011.

Dan Hurley, risk manager at Norfolk Public Schools in Virginia, said he's seen decreases across his liability programs. In particular, fleet liability insurance rates dropped.

With approximately 410 school buses and service vehicles, fleet insurance is the second-largest premium cost after property insurance because of the large student exposure, urban driving condi-

tions and weather, said Mr. Hurley, who manages insurance programs for the school system.

"It's been good," said Tom Fangmann, corporate director of risk management and insurance at Sara Lee Corp. in Downers Grove, Ill.

"We've seen some changes and drops in our (general liability) programs," said Mr. Fangmann, who oversees the executive risk and insurance programs for Sara Lee. "I've seen double-digit (percentage) drops. It's really our long-term commitment with our trading partners that (has) yielded the most significant savings, plus our proactive approach to closing claims."

"For the most part, it's still a competitive marketplace in terms of gaining capacity for...liability protection as well as the price for the coverage," said Paul Kobyr, senior vp and casualty practice leader for Lockton Cos. L.L.C. in New York.

Lockton clients that include manufacturers, retailers, and food and beverage makers may be seeing improved rates, Mr. Kobyr said. However, higher-hazard industries such as construction, energy, homebuilders and auto manufacturers may be seeing firming or slightly higher rates, he said.

Observers agree that the most difficult capacity to find is catastrophic liability for the pharma-

ceutical sector. Such coverage also is difficult to find for the chemical and energy industries, many say.

"This is a different marketplace than it was last year at this time," said Tony DeFelice, managing director of Aon Risk Solutions' national casualty practice in New York, a unit of Chicago-based Aon Corp. "Last year what we saw was basically, in a broad brush-type of statement, a softening across all segments and all industries. This year, we're starting to see some firming in certain segment lines."

Pricing is industry- and segment-driven when it comes to casualty insurance, more so than any other line of coverage, Mr. DeFelice said. The energy segment, for example, has seen a 10% to 15% increase in premium rates, he said.

The reason, Mr. DeFelice said, is that "there's been some notable losses over the last year," such as the Pacific Gas & Electric Co. explosion and fire in San Bruno, Calif.; the explosion and sinking of the Deepwater Horizon oil rig; Massey Energy Co.'s mine loss in West Virginia; and several pipeline losses.

"As a consequence of that, what we're seeing is underwriters either wishing to reduce capacity or, if you want that capacity, similar to what you had last year: You're going to have to pay for it," Mr.

DeFelice said.

While the rate of decline is starting to flatten for other high-hazard risk classes, such as automobile manufacturers, "there's still an abundance of capacity for the general casualty book, the nonhazard type of classes, and we're seeing certainly some reductions in the excess layers in the order of around 10%," Mr. DeFelice said.

When it comes to forecasting general liability prices, "unfortunately, it's not as simple," said Roger Brunner, head of casualty and property for specialty products for Zurich North America Commercial in New York, a unit of Zurich Financial Services Group.

"It's a very...heterogeneous market," he said, with some buyers experiencing rate increases, others experiencing decreases and still others experiencing flat rates.

With no meaningful investment returns on premiums due to low interest rates, greater precision is needed to predict casualty rates, Mr. Brunner said.

Still, some insurers expect premium growth to recover, especially after three to four years of declines, said Gary Delbuono, senior vp of commercial markets and general liability, product management, for Liberty Mutual Group Inc. in Boston.

"When you look at what the market is doing today, it's an interesting dynamic," Mr. Delbuono said. Additional capacity in

the marketplace—coupled with an increase in frequency and severity expectations and rising expense ratios—may be a factor in the modest increases in general liability rates that some industries are experiencing.

"I think starting in 2011, if the economy picks up at all at a growing speed, we should start seeing a bit of a firming of pricing, although I wouldn't expect it to be dramatic," said Brad Dickler, executive underwriting officer of Markel Corp. in Richmond, Va.

Pricing during the first half of the year will be "a little dodgy" and mostly will remain flat, Mr. Dickler said. "I would be hopeful that we'll start to see some rise in the second half of the year. Assuming we don't have any really meaningfully exterior market activity force on it, I would say 5% to 10%" increase.

In the casualty space, "we're probably in the seventh or eighth year of a continuously declining marketplace," Mr. DeFelice said. "It doesn't make sense to me that these prices can continue to go down."

He noted that many industry analysts are questioning how long insurance companies can release reserves.

"Primarily, the reserve releases are all on the casualty side and that's really what's pumping up a lot of the numbers," Mr. DeFelice said.

"I think our general failure to recognize or acknowledge, either as an industry or as individual companies, that the cupboard which once was fairly well-stocked with redundant reserves is going to be bare in the not-too-distant future for a sizeable number of carriers," Mr. Dickler said.



## Property: Buyers hold winning hand

CONTINUED FROM PREVIOUS PAGE

Chubb Inc. "went really well. We had a flat renewal, which was good." Humana also added its recent acquisition—Addison, Texas-based Concentra Inc.—to its property program and "we got nice savings over their renewal proposal."

Ms. Snow said Humana "had to address some issues around flood values." She said flood is an area where the market "is continuing to underwrite closely," with underwriters looking at their total exposure. "With the combination of our values and Concentra's values, our statement of values is pretty large," she said.

"We got done early," said Wayne L. Salen, director of risk management at Palm Beach Gardens, Fla.-based Labor Finders International Inc.

Mr. Salen said Labor Finders stayed with its incumbent property insurer—Chartis Inc.—and experienced a "slight reduction, not double-digit," in rates. He noted that as the economy has improved, Labor Finders "actually needed to add some values" rather than shut down some worksites. He added that there are a limited number of insurers willing to entertain Florida

windstorm exposures.

"We stayed with Chartis, and that turned out OK," he said.

"The year's going to end up with single-digit reductions on average," said Alfred P. Tobin, managing director and national property leader for Aon Risk Solutions in New York.

He predicted that insurers, which are getting "no interest rate help" on their investments, will try "to stop the slide in every product line" this year, but also said he doubted they would be successful.

"It's a customer's market in 2011 unless there's a California earthquake or terrorism event," Mr. Tobin said.

"2010 was much ado about nothing," said Alexandra Glickman, area vice chairman of Arthur J. Gallagher Risk Management Services Inc. in Glendale, Calif. "Everyone was holding their breath about the wind, and fortunately the wind didn't blow and, at the same time, the capital markets improved from a premium pressure standpoint." Clients without major unfavorable loss experience enjoyed rate decreases of 5% to 25% depending on exposure, she said.

**'I'm beginning to feel that risks that shop every year for rate decreases are beginning to be viewed negatively by the underwriting community. We're doing that and we've seen some evidence of others doing that, too.'**

Tim Rose,  
Liberty Mutual Insurance Group

An exception was apartments. "Apartments continue to attract weather- and fire-related losses and so the stability that we did see from a pricing standpoint came in that specific asset class, but everybody else generally saw a meaningful rate decrease, but it wasn't an off-the-cliff event," she said.

The lack of major U.S. catastrophe losses in 2010 helped continue current soft market conditions,

said Sanjay Godhwani, executive vp and property division executive at Lexington Insurance Co. in Boston.

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

Liberty Mutual's Mr. Rose made much the same point.

"It's just a soft market," he said. Another mild hurricane season in 2010 affected windstorm deductibles, "with some pressure to move them down," he said.

The "overall rate level in the industry is thin," Mr. Rose said. "We see some recklessness, but it's not across the board. It's more on a case-by-case basis."

Lexington's Mr. Godhwani said the continued competition is not necessarily being driven by new entrants. "It's less about new entrants; it's more about some underwriters having more appetite," he said.

Mr. Rose said despite the competition, underwriters still are scrutinizing potential policyholders.

"I'm beginning to feel that risks that shop every year for rate decreases are beginning to be viewed negatively by the underwriting community," Mr. Rose said. "We're doing that and we've seen some evidence of others doing that, too."

Underwriters and brokers said buyers can take steps to further ease placing their program in the current market.

"Lead time is important," Mr. Rose said. "We have seen a lot of short deadlines. Risk information is king."

Mr. Godhwani also cited the importance of thorough risk information, including catastrophe modeling, in placing accounts.

"Even though catastrophe modeling isn't the basis of their price, it's a piece of their price," he said. Spending the time to make sure that the information submitted is complete, including the type of construction of a property and the year it was built, is important, he said.

The quality of data—including addresses converted to the geocoding level of latitude and longitude—is critical in placing an account, said Marsh's Mr. Ellis. Data includes primary attributes such as construction type based on applied technology codes, number of stories and year built, he said.

Then risk managers should provide the unique factors of a building, such as type of roof construction, its shape, bracings and tie-downs.

"If you don't have information, the model defaults to a less-than-desirable outcome," Mr. Ellis said.

# D&O rates fall as insurers wait for market to hit bottom

By SONJA RYST

Insurer competition and plentiful capacity are the main factors experts cite for generally lower directors and officers insurance pricing.

"There are a couple sectors that are still difficult as a result of the financial turmoil," said Kevin M. LaCroix, executive vp in Beachwood, Ohio, at insurance intermediary OakBridge Insurance Services L.L.C. "Troubled commercial banks are one example, and smaller financial companies involved in mortgage financial lending," he said.

"But outside those sectors, which for obvious reasons are more difficult, the market is generally characterized by a lot of competitors with the willingness to write business," Mr. LaCroix said.

In terms of pricing, the Advisen Premium Index found that the average cost of D&O coverage had declined 2.2% for accounts renewing during the third quarter of 2010 vs. the third quarter of 2009. New York-based analytics and research firm Advisen Ltd. compiles the index by collecting policy renewal data from retail and wholesale insurance brokers and risk managers.

In October, New York-based brokerage Marsh Inc. said D&O rates had declined an average of

8.7% during the third quarter of 2010 compared with the third quarter of 2009, based on "intense competition and an overabundance of capacity."

Renewal rates varied.

Dave Hennes, director of risk management at Bloomington, Minn.-based Toro Co., said the lawn care product manufacturer had a "minor—not dramatic" decline in its D&O rates when it renewed in April.

Toro's D&O rates declined "probably between zero and 5%," depending on the risk exposure base, Mr. Hennes said.

Aside from competition and capacity, experts said financial institutions had higher D&O claims during the

year, but there was no market-moving catastrophe. As a result, insurers sought to expand their business.

Meanwhile, companies such as Bermuda-based Torus Insurance Holdings Ltd. added capacity last year to the already crowded playing field.

"Insurers desperately want the market to bottom (out), but there are probably in the neighborhood of 50 D&O insurers now," said Tripp Sheehan, Boston-based managing director and D&O practice leader at Marsh Inc.'s FINPRO U.S. practice.

Many insurers are publicly traded and must meet profit growth

targets, which they try to achieve by writing more business. "They try to...be selective about risks, but there are a lot of mouths to feed and the competition creates pressure on rates," Mr. Sheehan said.

Ann M. Longmore, a New York-based New York-based executive vp and D&O product leader with the executive risk practice at Willis North America, said insurers used to tell her what products they were offering and how much they would cost. Now she meets with clients to find out what's important to them and then tells the insurer the type of insurance agreement the buyer would like.

"Generally speaking, one expects to pay less and get more" in a contract renewal, she said.

For companies seeing reduced D&O premiums, many are using that savings to buy additional limits, experts say. Such coverage would help battle litigation costs, which appear to be on the rise.

In mid-December, NERA Economic Consulting said federal securities class action filings had risen during the second half of 2010 and were on track to total 239, up from 220 in 2009. Financial services companies remained the top target. While the pace of credit crisis-related filings declined, other types increased, such as breach of fiduciary duties and improper accounting, according to New York-based NERA.

In addition, the average settlement hit a record \$109 million,

according to NERA.

The year also brought new laws such as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which includes a provision rewarding whistle-blowers with up to 30% of recovered funds.

Despite the uncertainties in the marketplace, few policyholders are conducting special program reviews. The New York consulting firm Towers Watson & Co. surveyed hundreds of corporate officials between mid-October and early November 2010. When asked whether they'd conducted

an independent review of their D&O liability policies during the past two years by someone other than their current insurance brokers, more than half the respondents said they had not.

As for Toro, Mr. Hennes said he isn't counting on reduced D&O rates during the company's next renewal. He said it's hard to say what it would take to prevent the current scenario from continuing, barring a market-pressuring event.

"I keep hearing this is the new normal, and I'm skeptical," he said. "I've seen the cycles of the past."



## Claims drive pricing of E&O coverage

By SONJA RYST

Rates dropped in 2010 for most lines of errors and omissions coverage, though industries coping with financial crisis fallout spent more on E&O insurance.

Rates were already headed down going into the year-end renewal season. The Advisen Premium Index found the average cost of miscellaneous professional liabilities coverage declined nearly 3.1% for accounts renewing during the third quarter of 2010 vs. the third quarter of 2009. Other forms of E&O also sank during this time period: Real estate E&O, for example, dropped nearly 2.6%.

E&O covers errors or omissions in professional services for industries as diverse as real estate and mortician services.

Brian J. Kovack, president of the investment advisory firm Kovack Securities Inc. in Fort Lauderdale, Fla., said rates on the contract he renewed Jan. 1 rose around 15%. Because Kovack Securities hasn't filed any claims yet for litigation against its financial advisers, it pays \$2,400 per 100 representatives annually in contrast with the \$2,500 to \$3,500 industry average, he said.

"Claims are driving the pricing in our industry," Mr. Kovack said.

Professionals tied to areas that face ongoing litigation, such as real estate, aren't seeing rates fall yet, said Mickey Estey, E&O practice leader at the wholesale broker OakBridge Insurance Services L.L.C. in Walnut Creek, Calif. Still, E&O rates generally have been "trending down slightly, but not drastically," he said, citing "a lot" of capacity and competition.

In March, for example, Chicago-based Starr Surplus Lines Insurance Co. Inc. announced the introduction of a product for architects, engineers and contractors. In February, several former Aon Corp. executives,

including Aon founder Patrick G. Ryan, started Kansas City, Mo.-based ThinkRisk Underwriting Agency L.L.C., which offers media, advertising, technology, privacy and network security E&O.

Some moved where they saw space. In September, for example, Hartford, Conn.-based Hartford Financial Services Group Inc. said it partnered with Elite MGA L.L.C. to offer E&O for residential home inspectors.

"We saw an opportunity there. There's not very much admitted capacity in the market at all," said Greg Leffard, vp of professional liability at Hartford Financial Products.

Even in the highly differentiated world of E&O, buyers often can afford to play hardball due to competition.

Sandy Codding, Boston-based leader in the U.S. commercial E&O advisory practice of Marsh Inc.'s FINPRO unit, said it generally doesn't make sense to put a deal out for bid year after year, because it takes work for insurers to write customized proposals. "You want to be selective, but we feel that this is a year where it makes sense

for most clients to put (a deal) out to bid unless they've done that repeatedly for the last few years."

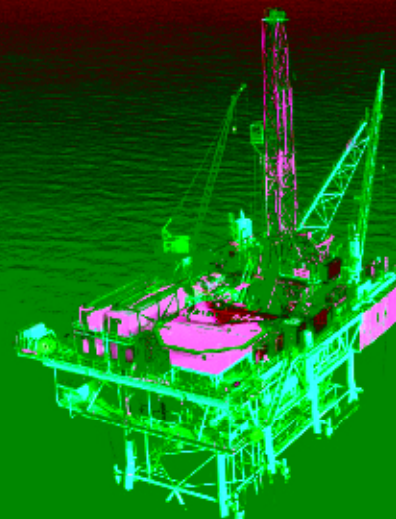
Janice Ochenkowski, managing director of global risk management at Jones Lang LaSalle Inc. in Chicago, said insurers had plentiful capacity when the real estate services firm renewed its E&O contract in April. "The pricing was reasonable," she said, adding that it wasn't increasing in her case, although she declined to state specifics. "Underwriters were trying to look at the risk as much as possible, while still bearing in mind the competitive nature of the marketplace."

As for 2011 renewals, Marsh's Mr. Codding said "as long as buyers are willing to put their policies out for bid, there'll be people that want to compete and that'll continue to push pricing down."



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# Capacity expands in marine market

*Gulf of Mexico rates rise after Deepwater, other areas stay soft*

By MICHAEL BRADFORD

New insurers continue to join the marine market and existing underwriters are adding capacity, pushing pricing generally lower, sources say.

Energy risks in the Gulf of Mexico are the only ones seeing price increases of any heft; accounts with good loss records are seeing little, if any, increases, experts say.

Insurers have jacked up liability rates as much as 100% on deepwater drilling risks in the Gulf of Mexico since the Deepwater Horizon disaster last April (*BI*, Sept. 10, 2010), but experts say fallout from that accident has had little effect on pricing across the market.

"Obviously, accounts that have losses are the ones that are going to get some kind of increase," said Gary Moore, managing principal at Integro Insurance Brokers Ltd. in New York. "Depending on their losses, they may see an increase in their deductibles."

Even though prices are flat in many cases, that doesn't mean

underwriters are acting recklessly, said Mr. Moore. "The lead markets are being very responsible. One or two markets in Europe are doing things that are not so responsible," but the market in general is not throwing underwriting standards overboard, he said.

Pricing has been dampened by tepid demand for cargo coverage as world trade has slowed. More laid-up vessels and declining hull values are other factors that have contributed to weak premium volume for insurers.

The market is seeing a gradual turnaround in all of those indicators, according to Willis Group Holdings P.L.C. in its annual "Marine Market Review." In the November review, the broker said the market remains competitive as players pump capacity into what they see as a safe bet to diversify their portfolios.

Conditions are ripe for buyers to find good coverage deals, but insurers are "defying logic" by entering a market already saturated with capacity, according to the report.

Experts say insurance costs for cargo risks have seemed illogical for years.

"There are a number of companies focusing on cargo," which has led to an oversupply of capac-



Sources say energy risks in the Gulf of Mexico are seeing significant price increases, but elsewhere accounts with good loss records are seeing little movement.

REUTERS

ity, said Nigel Fitzgerald, senior vp and global product line leader at Liberty International Underwriters in Houston.

## Fierce competition

"The cargo market remains fiercely competitive, even despite deteriorating results," said Sean Dalton, New York-based head of North American marine operations at Zurich North America. Rates have remained flat or risen only slightly at year-end renewals, he said.

The volume of cargo being shipped is beginning to increase, but any additional premiums that are being written are spread among competitors that are flood-

ing the market with capacity, Integro's Mr. Moore said.

"There is so much competition and capacity in the cargo market. They are still giving rate reductions. I don't understand how they can continue to do that," Mr. Moore said.

Hull and liability lines are "seeing some corrective actions," Mr. Dalton said, but accounts with a good loss experience are seeing renewal pricing that is "flat to slightly negative."

"The Gulf of Mexico has seen increases in prices" on liability risks, "but that is very specific and narrow. Beyond that, liability is competitive," according to Mr. Fitzgerald.

Willis noted in its review that at least 11 insurers entered the hull market in 2010 despite its lack of profitability.

The marine market in 2011 is likely to be much like 2010, sources said.

"We're preparing for a continued competitive market," said Mr. Fitzgerald. Any change in the marine market will be in lockstep with the broader property/casualty marketplace, he said. "We would need to see a general market correction for marine to follow," he said.

"Unless something drastic happens, we'll see the same for 2011," Mr. Moore said of the marine insurance market.

# Reinsurance rates ease as buyers push for price cuts

*Reinsurers strive to hold line on rates despite capacity glut*

By JUDY GREENWALD

January renewals have been seeing flat to modestly lower rates as the reinsurance industry remains overcapitalized in the absence of a market-changing catastrophe, observers say.

"There was a continued slight reduction in pricing, nothing dramatic, but just an overall easing in pricing of between 5% and 10% on anything that was basically loss-free or profitable," said Steven K. Bolland, president of New York-based reinsurance intermediary Gill & Roeser Inc.

Reinsurer discipline has kept the market "from any sort of a free fall," said Pina Albo, president of Princeton, N.J.-based Munich Reinsurance America Inc.'s reinsurance division.

Matters did not necessarily

"pan out" for the more aggressive cedents because the more aggressive the proposed deal, "the less support it got from the market," Ms. Albo said. In some cases, their placements have not been completed, she said.

"There were times when clients' expectations were a little bit greater than the economic reality of the accounts, so it was challenging," said Karen Schmitt, president of Mount Laurel, N.J.-based Maiden Reinsurance Co.

However, rate decreases generally have prevailed.

"The reinsurance market has held its ground slightly better than I would have thought, but buyers by and large have managed to push through rate reductions," for reasons that include the lack of a major insured catastrophe loss, said James Vickers, London-based chairman, Willis Re International & Specialty, a

unit of New York-based Willis Group Holdings P.L.C.

The reality is, the industry is overcapitalized "at a time when, in the major, mature markets, there's not much growth, so the buyers have been able to push

quite hard" for rate reductions, Mr. Vickers said. "Reinsurers have probably done a better job managing the rates than down on the primary side. They've had to give ground a bit here and there," but the gap between reinsurance and primary pricing "is as wide as ever."

It has been a "relatively straightforward renewal season," said Hugo Crawley, chairman of London-based BMS Group Ltd. Because of low insured catastrophe losses, North American clients have "had another good year under their belts."

"Clients are able to drive a harder bargain" and achieve premium rate reductions of 5% to

10%, "sometimes more," Mr. Crawley said.

There have been "no strong reasons why the marketplace should not remain reasonably competitive and somewhat soft," said Joseph M. Fedor, executive vp and director at Pearl River, N.Y.-based U.S. Re Corp.

James H. Veghte, executive vp and chief executive of reinsurance operations for XL Capital Ltd. in Stamford, Conn., said reinsurance "pricing was weak, but pretty much as we expected it to be."

Despite "plenty of capacity around the market, that doesn't mean that bad deals got done. I think there was some discipline in the reinsurance market," but once pricing consensus was reached among lead reinsurers, "there was no trouble placing even large programs," Mr. Veghte said. "I would describe the market overall as orderly, weak and boring."

Property catastrophe rates on line have declined 2.5% to 10%, similar to the property-per-risk side, where limits and retentions

are applied per risk rather than per accident, said William H. Eyre Jr., Philadelphia-based managing director of Towers Watson & Co.'s reinsurance brokerage business.

"Casualty has been fairly consistent there in terms of not having a big swing, with declines flat to 5% down," Mr. Eyre said.

"Terms and conditions held up pretty well," said Mr. Veghte. "The casualty market has been weak from a pricing perspective for a while, but if terms and condition were really weak, then deals didn't get done."

"There have been some improvements in terms and conditions, but it's not universal," said Mr. Crawley. "It tends to be more dispersed" and depends on the particular client, he said.

Gill & Roeser's Mr. Bolland said there has been little change in reinsurance terms and conditions.

"I've seen a few reinsurers trying to impose different wordings and different conditions, but if

Continued on next page



# Comp competitive, but big insurers disciplined

*Renewals largely flat, with some slight hikes*

By **ROBERTO CENICEROS**

Some workers compensation underwriters are walking away from accounts rather than agreeing to unprofitable pricing to win renewal business, insurers and brokers say.

Still, plenty of competitors, especially at the regional level, are providing the coverage at prices below those of insurers that are exercising underwriting discipline, experts say.

"We have seen that some of the larger, national carriers will walk away from certain premium thresholds rather than knowingly write something they believe is below the appropriate pricing level if it is an account with some loss frequency," said Pamela F. Ferrandino, executive vp and casualty practice leader for global placement at Willis North America Inc. in New York.

The situation has led to an overall flattening of renewal prices, Ms. Ferrandino said.

In some cases, insurers said they have gotten slight increases. However, observers say overall workers comp pricing has stabilized compared with decreases six months earlier.

Rates began to stabilize in early October, Ms. Ferrandino said.

While the workers compensation insurance market has not changed dramatically from a year ago, some "slow firming" is occurring "ever so slightly," said David Sandler, New York-based

president of general casualty and chief operating officer of Chartis Inc.'s commercial casualty unit.

There is "some upward movement in pricing, but it's pretty tempered," Mr. Sandler said.

With a limited number of insurers capable of writing large accounts, those risks are being priced "deal by deal" based on their individual characteristics, Mr. Sandler said. "Whereas when you get into the smaller, middle market, it's more of a book-of-business pricing play."

But for large and middle-market clients, prices are increasing about 2% to 3%, and more if they have substantial losses, Mr. Sandler said.

While some larger insurers are walking away from some business, "we haven't been in any situations where we are stuck without an insurer willing to bid," said Jonathan M. Zaffino, managing director/U.S. casualty leader for Marsh Inc. in New York.

Large employers with January renewals have found a competitive market, although individual risk characteristics are a factor, Mr. Zaffino said. But insurers are competing, especially for new accounts; accounts with favorable loss histories may see renewal pricing run anywhere from flat to a 5% decrease, he added. In some cases, a 10% decrease may be possible.

To make themselves competitive, insurers have somewhat loosened stringent collateral requirements put in place

during the past couple of years for large-deductible accounts, several sources said.

San Diego-based Cubic Corp. obtained a 5% price reduction when it renewed its workers comp coverage in October with CNA Financial Corp., said Dominic Zullo, the defense and transportation contractor's director of risk management.

For his Defense Base Act renewal, Mr. Zullo said he received a reduction closer to 10%. "We went out and tested the market and we had one quote that was fairly close, but it wasn't enough to move the business," Mr. Zullo said. "We went back to the incumbent and said, 'We don't think you guys are quite up to the market,' and we got a little bit more" of a reduction.

For the second year in a row, his insurer also reduced its collateral requirement, Mr. Zullo said, but Cubic's balance sheet is solid and "we are very aggressive at getting our claims closed early."

While some larger, national carriers are refusing to reduce pricing, some regional insurers are agreeing to lower rates, several sources said.

But other regional insurers are attempting to hold the line, said Bobbi Amero, chief underwriting officer at Westbrook, Maine-based Acadia Insurance Co., a unit of W.R. Berkley Corp.

The market appears to be in transition and it remains difficult to increase pricing because of ample competition coupled with employers still facing tight budgets, Ms. Amero said.

In contrast with six months ago, pricing now is "relatively flat for good-performing business" said Al Gileczek, vp of business development for Accident Fund Insurance Co. of America in Lansing, Mich.

Increasingly, Accident Fund has held the line on workers comp prices and obtained increases for accounts with poor loss histories.

"That doesn't mean there hasn't been a renewal where we have had to go in and say, 'OK. We are going to nudge it down a little bit,' but I am not seeing that a lot right now," Mr. Gileczek said.

In states where regulators have allowed rate increases, competition is making it hard for insurers to actually obtain them, several sources said.

Insurers that have been holding the pricing line say doing so is critical because combined ratios are on the rise industrywide while interest rates remain low and premium volumes that contracted with the recession have not yet returned.

"Of the primary casualty lines...in my opinion, comp is the most problematic from a current pricing profitability standpoint, said Chartis' Mr. Sandler.

Payrolls—the exposure base for workers compensation coverage—which shrank with the recession have leveled off, but they have not begun to grow again, several sources said.

The Accident Fund's Mr. Gileczek said conditions are less than healthy for workers comp insurers.

"I don't think healthy is a word any of us would use right now for workers comp," Mr. Gileczek said.



Continued from previous page

there was push back from the clients, they would sort of fold," Mr. Bolland said.

As for retentions, David Flandro, London-based global head of business intelligence for reinsurance intermediary Guy Carpenter & Co. L.L.C., said: "People, from our point of view, seemed to buy similar retentions as last year. The pricing was just lower, basically."

However, Ms. Albo said she saw a general trend of increased retentions, which "we've seen over the last two renewals."

## Few long-term deals

Although more clients are seeking multiyear deals, reinsurers tended to resist agreeing to them, observers said.

Although "there was some talk early on," few multiyear deals were completed, particularly because "they didn't get that much of a warm welcome" from reinsurers, Ms. Albo said.

Mr. Bolland also has seen few multiyear deals during this renewal season.

"Most people believe that over the next couple of years, reinsurance pricing will probably trend



Despite the Deepwater Horizon disaster, buyer interest in capacity-driven casualty products has not grown significantly.

REUTERS

upward. Therefore, very few (reinsurers) would want to look at these prices long term," Mr. Bol-

land said. In "an uncertain climate, you probably want to have as much flexibility as you can."

Another trend, said Ms. Albo, is there has been little business turnover. Anything that comes to a reinsurer as new business is being looked at "more critically, and you wouldn't get the benefit" of already having a partnership with a reinsurer, she said.

"Ceding companies continue to be focused on security, and that's a byproduct of the financial crisis," said Steve McElhiney, president of Dallas-based intermediary EWI Inc. "So there's a very high level of scrutiny of the financial security of reinsurers."

Steven Mildenhall, CEO of Aon Benfield Analytics in Chicago, said one unexpected development is, "We had sort of thought there might be more interest in some casualty products, especially for the more capacity-driven (products) in light of Deepwater Horizon," in which the oil rig exploded and later sank last April, setting off an oil spill that fouled the Gulf of Mexico. However, that interest did not seem to materialize.

Mr. Mildenhall said the reason could be that "when you get into high-diversity, low-frequency lines of business, understanding the cost/benefit equation

becomes more difficult." The general acceptance of the catastrophe models "separates those markets from other markets where people can have a feeling there could be a loss, but feel they've got it under control."

## Surplus capital

Capital continues to be the major factor in the soft market, observers said.

"As you might expect, there continues to be way too much capacity chasing too little premium," said Richard DiClemente, president and CEO of New York-based THB Intermediaries Inc.

"We think the most important factor driving everything right now is the excess capital, both in the insurance industry and in the reinsurance sector," said Guy Carpenter's Mr. Flandro. "Over the last few months, we've seen insurance companies and reinsurance companies buying back shares in large amounts" because of this excess capital.

As companies calculate the benefits of share repurchases vs. writing business, repurchasing shares to deploy capital is becoming "increasingly attractive," Mr. Mildenhall said.

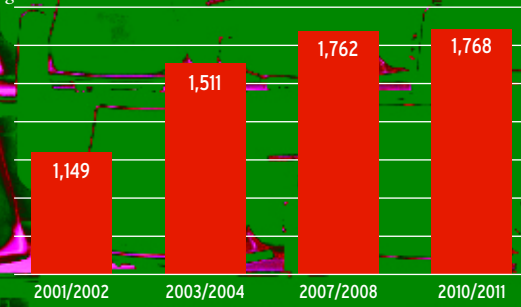
# DATA snapshot

## RISK MANAGEMENT SCHOOLS

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### ENROLLMENT GROWS

Enrollment in risk management and insurance programs has grown during the past decade, where the number of students in major programs at the top 10 risk management and insurance schools has grown 54% since 2001/2002.



Source: BI survey

## LARGEST RISK MANAGEMENT AND INSURANCE SCHOOLS

Ranked by number of students in RMI major program

RANK	University	Undergraduate department/website	Students in undergraduate RMI major program <sup>1</sup>	Graduates with major in RMI <sup>2</sup>	Number of courses <sup>1</sup>
1	Temple University	Fox School of Business, Department of Risk, Insurance and Healthcare Management <a href="http://sbm.temple.edu/dept/rihm/">http://sbm.temple.edu/dept/rihm/</a>	450	100	9
2	University of Georgia	Terry College of Business, Department of Insurance, Legal Studies and Real Estate <a href="http://www.terry.uga.edu/insurance">www.terry.uga.edu/insurance</a>	299	129	9
3	University of Wisconsin-Madison	Wisconsin School of Business, Actuarial Science, Risk Management and Insurance Department <a href="http://www.bus.wisc.edu/asrmi/">www.bus.wisc.edu/asrmi/</a>	183	91	11
4	Illinois State University	Katie School of Insurance and Financial Services, Finance, Insurance and Law Department <a href="http://www.katieschool.org">www.katieschool.org</a>	152	65	11
5	Florida State University	College of Business, Risk Management/Insurance, Real Estate and Legal Studies <a href="http://www.cob.fsu.edu/rmi">www.cob.fsu.edu/rmi</a>	142	53	9
6	Georgia State University	Department of Risk Management and Insurance <a href="http://www.rmi.gsu.edu">www.rmi.gsu.edu</a>	127	44	10
7	Appalachian State University	Walker College of Business, Department of Finance, Banking and Insurance <a href="http://www.insurance.appstate.edu">www.insurance.appstate.edu</a>	111	55	10
8	University of Mississippi	School of Business Administration, Department of Finance <a href="http://www.olemissbusiness.com/insurance">www.olemissbusiness.com/insurance</a>	103	51	5
8	Mississippi State University	College of Business and Industry, Department of Finance and Economics. <a href="http://www.business.msstate.edu/finance_and_economics/insurance.php">http://www.business.msstate.edu/finance_and_economics/insurance.php</a>	103	74	7
10	St. John's University	Peter J. Tobin College of Business, School of Risk Management, Insurance and Actuarial Science <a href="http://www.stjohns.edu/srm">www.stjohns.edu/srm</a>	98	16	9

1 School year 2010/2011. 2 School year 2009/2010.

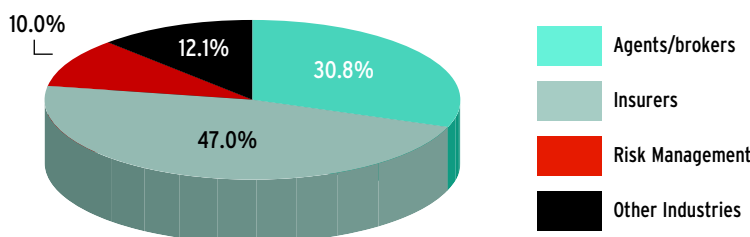
### UNDERGRADUATES' JOB PATH

The majority of risk management and insurance undergraduates enter the industry after graduation, according to all colleges listed in the 2011 directory. Colleges were asked to report what percentage of undergraduates entered the industry:

Less than 40%	10.0%
40% to 60%	6.7%
60% to 80%	16.7%
More than 80%	66.6%

### POST-GRADUATE JOBS

Sectors entered by graduates of RMI school undergraduate programs, for all schools listed in the 2011 directory



Source: BI Survey. Researched by Kevin Edison

## LARGEST GRADUATE RISK MANAGEMENT AND INSURANCE SCHOOLS

Ranked by number of students enrolled in graduate studies during the 2010/2011 school year\*

<b>RANK 1</b>	ST. JOHN'S UNIVERSITY Peter J. Tobin College of Business, School of Risk Management, Insurance and Actuarial Science	Students enrolled: 98
<b>RANK 2</b>	FLORIDA STATE UNIVERSITY College of Business, Risk Management/Insurance, Real Estate and Legal Studies	Students enrolled: 64
<b>RANK 3</b>	GEORGIA STATE UNIVERSITY Department of Risk Management and Insurance	Students enrolled: 59
<b>RANK 4</b>	UNIVERSITY OF PENNSYLVANIA Wharton School, Insurance and Risk Management Department	Students enrolled: 38
<b>RANK 5</b>	TEMPLE UNIVERSITY Fox School of Business, Department of Risk, Insurance and Healthcare Management	Students enrolled: 25

\*Includes both master's and Ph.D. programs

## GRADUATES OF RMI MASTER'S PROGRAMS

Ranked by number of graduates at the master's level for the 2009/2010 school year.

<b>RANK 1</b>	ST. JOHN'S UNIVERSITY Peter J. Tobin College of Business, School of Risk Management, Insurance and Actuarial Science	Graduates at master's level: 44
<b>RANK 2</b>	FLORIDA STATE UNIVERSITY College of Business, Risk Management/Insurance, Real Estate and Legal Studies	Graduates at master's level: 18
<b>RANK 3</b>	GEORGIA STATE UNIVERSITY Department of Risk Management and Insurance	Graduates at master's level: 16
<b>RANK 4</b>	UNIVERSITY OF GEORGIA Terry College of Business, Department of Insurance, Legal Studies and Real Estate	Graduates at master's level: 12
<b>RANK 5</b>	TEMPLE UNIVERSITY Fox School of Business, Department of Risk, Insurance and Healthcare Management	Graduates at master's level: 5

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## Products & Services

### Ironshore adds capacity for public entities

**NEW YORK**—Ironshore Specialty Casualty has increased the capacity it offers for public entities.

Available limits for public entity coverage have increased from \$10 million to \$25 million, the New York-based unit of Ironshore Inc. said in a statement.

Ironshore said it also has introduced a proprietary public entity policy, available on an occurrence basis, that includes enhancements such as expanded definitions of insureds, incidental medical malpractice and third-party discrimination coverage.

"Since Ironshore's public entity product and services were introduced over a year ago, the demand for broad insurance protection in response to heightened litigation has grown significantly," Susan Kostro, senior vp of Ironshore Specialty Casualty, said in the statement.

For more information, contact Ms. Kostro at 617-391-6546 or [susan.kostro@ironshore.com](mailto:susan.kostro@ironshore.com).

### General Star teams with R-T Specialty

**CHICAGO**—R-T Specialty L.L.C. has been appointed as exclusive administrator of General Star Indemnity Co. enhanced nutraceutical liability coverage.

NutraAdvantage offers specialty liability coverage for the natural and organic supplement industry, which includes manufacturers, wholesalers, distributors, marketers and others, the Chicago-

based wholesale brokerage unit of Ryan Specialty Group L.L.C. said in a statement.

The program, underwritten by General Reinsurance Corp. subsidiaries General Star Indemnity Co. or General Star National Insurance Co., is available on a nonadmitted basis in all states.

Originally launched by General Star in 2007, NutraAdvantage has been enhanced to offer general liability insurance as well as product liability, premises liability, vendor legal liability, employee benefits liability and legal defense costs.

An additional endorsement provides coverage of various insureds, such as primary and noncontributory coverage for vendors, and offers product recall expense coverage among others, according to the statement.

For more information, contact Denise Pepin, exclusive program administrator senior vp of R-T Specialty, at 312-651-6000 or [dpepin@rtspecialty.com](mailto:dpepin@rtspecialty.com).

### Hartford expands comp billing services

**HARTFORD, Conn.**—Hartford Financial Services Group Inc. has expanded its workers compensation payroll premium payment services to midsize and large commercial customers.

Hartford's XactPAY program, previously offered to smaller businesses that used supported outside payroll providers, calculates workers compensation insurance premiums based on payroll during the policy period, rather than paying for the coverage for an entire year, the Hartford, Conn.-based insurer said in a statement.

Hartford said it also has launched XactPAY Xpress, which offers self-reported billing options, for businesses that manage their own payroll.

"Effective cash flow management is a priority for all businesses

regardless of size or method of payroll management," said Mike Cannon, executive vp of sales and distribution at Hartford. "Whether a company uses a full-service payroll provider, submits payroll using desktop software or manages payroll in-house, these billing options provide businesses with added value and capital flexibility."

For more information, contact Donato Monaco, vp of payroll alliances, at 860-757-1846 or [donato.monaco@thehartford.com](mailto:donato.monaco@thehartford.com).

### PowerGuard launches broker Web portal

**IRVINE, Calif.**—PowerGuard Specialty Insurance Services has launched a Web portal for retail insurance brokers.

The Broker's Corner Web portal allows brokers to access value-added sales, marketing and business development resources, the Irvine, Calif.-based managing general agency and Lloyd's of London coverholder said in a statement.

Resources available through the login- and password-protected site include customizable brochures and marketing materials, product literature, and applications and underwriting forms.

PowerGuard specializes in the design and underwriting of insurance for wind, solar and other alternative and renewable energy companies.

For more information, contact Mike McMullen, managing principal, at 877-556-0090 or [mmcmullen@powerguardins.com](mailto:mmcmullen@powerguardins.com).

#### TO SUBMIT ITEMS

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

## UP Comings & Goings CLOSE



### KIM EASTERLE MATTES

**NEW JOB TITLE:** Vp of insurance with Southfield, Mich.-based Meadowbrook Insurance Agency, a division of Meadowbrook Insurance Group Inc.

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**INDUSTRY OUTLOOK:** Even though the economic climate has looked grim, there has never been a greater opportunity to prospect business based on hard work. This is an excellent opportunity to position yourself to be at the forefront of the economic turnaround.

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**MOST PASSIONATE ABOUT:** Life, family, children and work.

**FAVORITE BOOK:** "Gift from the Sea," by Anne Morrow Lindbergh, because it shows the challenges we all face on our relationships.

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**ON A SATURDAY AFTERNOON:** Watching my alma mater, the University of Michigan, play college football and spending time with my children.

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- Ironshore Inc.
- Harleysville Insurance
- XL Insurance

##### OTHER PROVIDERS:

- KPMG L.L.P.
- USI Consulting Group

# Food: Demand for product recall coverage could be on the rise

CONTINUED FROM PAGE 3

President Obama last week signed the Food Safety Modernization Act, which gives the federal government more control over the nation's food supply and makes the food industry more accountable for its products. Under the law, such companies must evaluate potential hazards in their operations, monitor measures to prevent contamination, and have a plan in place to respond when contamination occurs.

Further, the law authorizes the Food and Drug Administration to mandate recalls, a power it did not have except in the case of baby formula. Previously, the FDA could only advise that a company recall a food product.

The law also seeks to protect the nation's food supply against deliberate contamination.

"This law is all about prevention. There will be new responsibilities for food companies and new safety laws that will require them to take responsibility for their food supply chain security," said Rick Shanks, national managing director of Aon Risk Solutions' food system, agribusiness and beverage practice in Kansas City, Mo.

Massive recalls of spinach in 2006, peanut products in 2009 and eggs in 2010—both involving deadly contamination of products—most likely helped win passage of the bill, experts said.

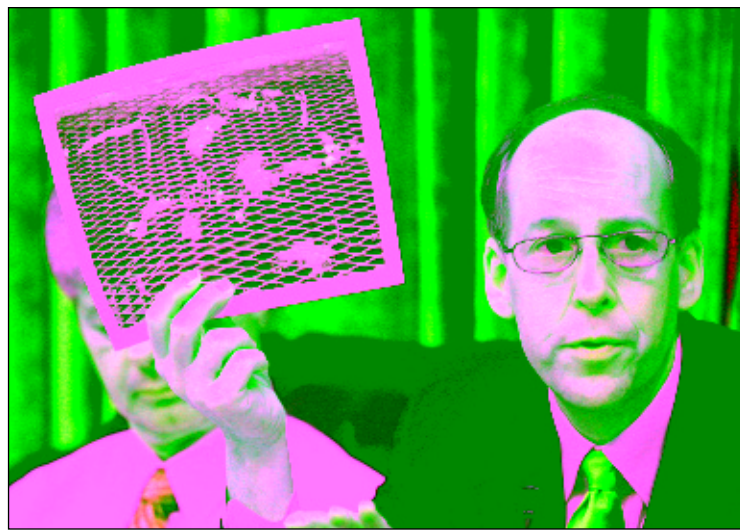
The measure mandates inspections of food processing facilities and farms by the FDA. According to the food safety law, those facilities deemed to be "high risk" are to be inspected within five years of the enactment of the law and no less than three years thereafter. Facilities deemed as high risk based on the type of products they make, the ingredients they use or their history of recalls.

Domestic facilities not deemed to be high risk are to be inspected within seven years of the bill's enactment and five years thereafter.

"You're basically going to see a lot more policing by the FDA and it's going to force food producers



Cage-free eggs on sale at a grocery store in Illinois in December. After the massive recall of eggs in 2010, some consumers say they have started buying organic and cage-free eggs.



House Oversight and Investigations subcommittee member Rep. Greg Walden, R-Ore., holds a photo of dead rodents at Peanut Corp. of America during a salmonella outbreak in March 2009.

to be on their 'A game' if they're not already," said Katherine Cahill, global managing director in Marsh Inc.'s global product risk practice in New York.

Food producers will be required to keep detailed records on their

food safety and security protocols, as well as the process in which food is made and how it is packaged and distributed, Ms. Cahill said, noting that the detailed records will allow the FDA to trace a food product or ingredient to its

origin. She added that most of the larger food producers already have such protocols and likely will undergo "tweaking and tightening" of those procedures.

"What this legislation will do is raise a lot of awareness and a level

of uncertainty within the food and beverage industry," said Bernie Steves, a managing director of Aon Risk Solutions' crisis management practice in Chicago. "The FDA will have the ability to issue a recall and conduct inspections, but what will the results be: more recalls?"

With new policy and procedures in place, it's likely there will be a surge in demand for product recall and contamination insurance, several brokers said.

Most large food producers carry comprehensive product recall coverage, said William Harrison, managing director of Marsh Inc.'s global product recall practice in Princeton, N.J., but they may want to clarify the terms and coverage types that their contractual manufacturers and ingredient suppliers carry.

Specialty policies that cover product recall, contamination and accidental contamination also often come with pre- and post-crisis management assistance, said Joseph Bermudez, Denver-based partner at Nelson Levine de Luca & Horst L.L.C., adding that those are the types of policies that food producers should seek to "help avoid any coverage gaps offered under general liability and umbrella policies, which have specific product recall exclusions."

A surge in demand for product recall insurance is expected to come from growers, packagers and manufacturers, said Greg Benefield, senior vp and national practice leader of Willis Group Holdings P.L.C.'s food and beverage unit in Nashville, Tenn. Most of those groups in the food industry typically do not carry any type of product recall coverage, "because they believed they didn't have any risk or see the expense," he said.

"As companies become more accustomed to the rules and acquainted with the act, I believe you will see more companies put insurance in place," Mr. Benefield said. "With the FDA now having the authority to mandate a recall, I think you will see a rise in new capital in the market, but also a rise in claims."

# 224

The number of voluntary recalls the Food and Drug Administration reported in 2010 that involved food including spices, pet food and animal feed.

Source: FDA

# Repeal: Business groups seek health care reform law changes

CONTINUED FROM PAGE 3

lobbying groups are drawing up their proposals.

"We have a lot of things we want changed," said James Gelfand, senior health care policy manager at the U.S. Chamber of Commerce in Washington.

The No. 1 item on the chamber's list of changes is the \$2,000 per year per employee penalty on employers with more than 50 employees that do not offer qualified coverage to employees working at least 30 hours per week. This is set to go into effect in 2014.

Ideally, the chamber would like to see the mandate, which Mr. Gelfand said would discourage

employers from hiring new employees, stripped from the law. Failing that, he said, the group wants more employers exempted, which could be accomplished by

**'We have a lot of things we want changed.'**

James Gelfand,  
U.S. Chamber of Commerce

making the mandate apply only to employers with more than 100 employees, he said.

Other provisions the chamber

will lobby to repeal are those that impose new taxes on health insurers, a cost that will be passed on to employers that do provide health coverage to their employees, Mr. Gelfand said.

Meanwhile, other business groups are examining their stance. "We are looking now at what our positions will be on individual provisions," the ERISA Industry Committee's Ms. Young said.

Another provision that business groups are expected to target for revision, if not repeal, will impose a 40% excise tax on the costliest group health plans. The tax—paid by insurers and, in the case of self-insured employers, by third-party claims administra-

tors—would be assessed on health care premiums that exceed \$10,200 for single coverage and \$27,500 for family coverage starting 2018.

That provision drew employers' ire. Employers argue that its application will depend more on plan demographics, such as the average workforce age, than on the richness of the benefits, said Michael Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York.

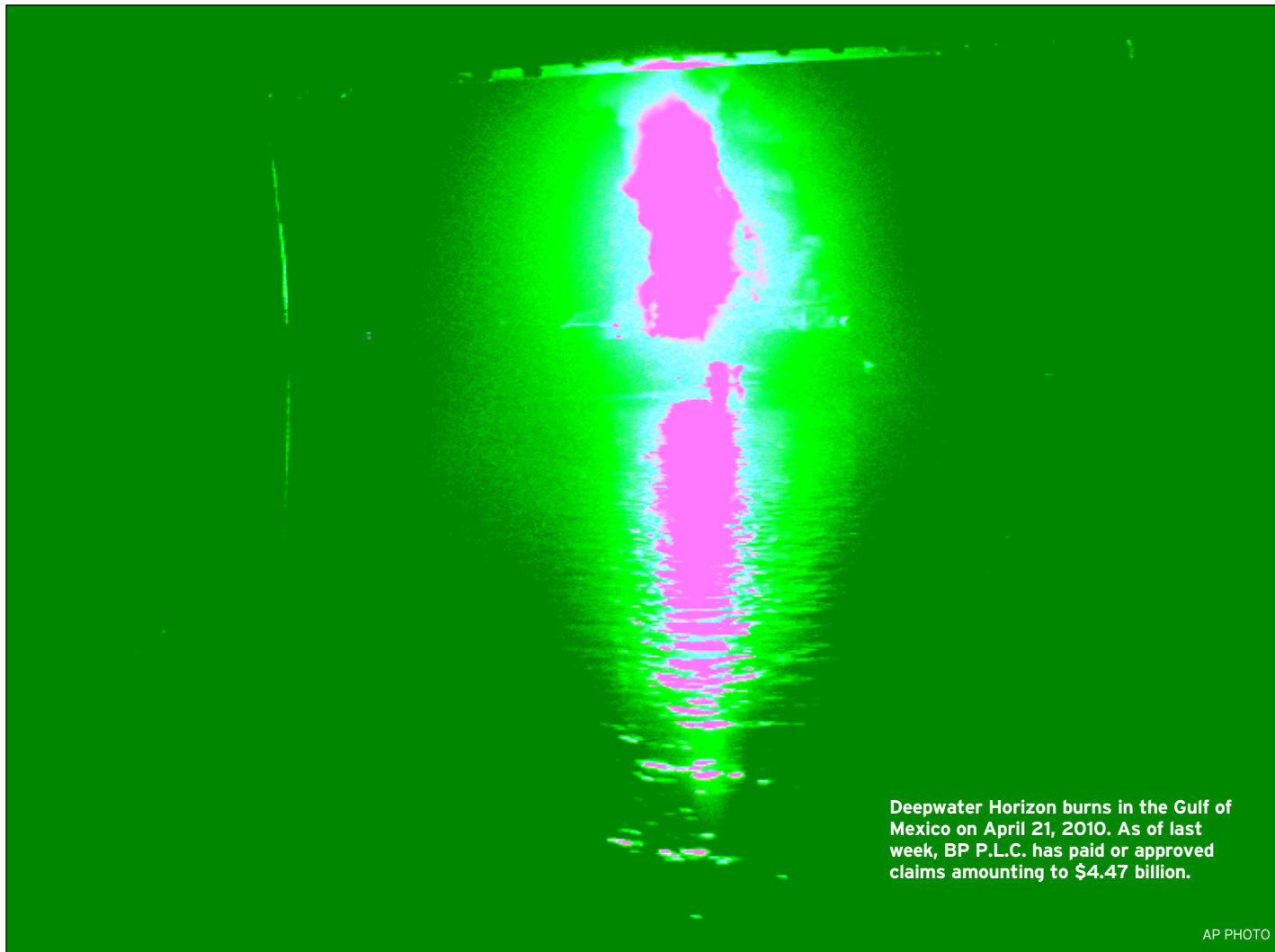
Republicans also may try to stall implementation of the law, such as denying funding to regulatory agencies in charge of developing rules.

Anticipating such an attempt,

the administration last week moved to make such a strategy more difficult.

Health and Human Services Secretary Kathleen Sebelius said she intends to move a regulatory unit that has been pivotal in developing reform regulations out of HHS and into the Centers for Medicare & Medicaid Services.

By embedding the Office of Consumer Information and Insurance Oversight within CMS, which administers the massive Medicare and Medicaid programs, the administration should have greater ease in finding funds to enable OCIO to operate within CMS than as part of HHS, observers said.



Deepwater Horizon burns in the Gulf of Mexico on April 21, 2010. As of last week, BP P.L.C. has paid or approved claims amounting to \$4.47 billion.

AP PHOTO

## Oil: Capacity still flowing into energy market

CONTINUED FROM PAGE 1

oil prices, prompted establishment of the facility.

The Willis offering follows a similar arrangement that Marsh Inc. made with Berkshire Hathaway in January 2010. This year, Marsh is putting in place the same arrangement with several unnamed Lloyd's of London underwriters.

Both brokers' facilities will place 10% of a single insured's risk, up to \$250 million for that portion of the risk. The coverage attaches at levels agreed to in policy terms.

The facilities provide property damage, business interruption, operators extra expense and third-party liability for oil and gas upstream and construction risks. Property damage and business interruption is written for downstream operations.

Jim Pierce, global chairman of Marsh Inc.'s energy practice in Houston, said Marsh is pleased with the way its facility

performed last year and is "actively working on year two of its implementation."

"We are in the process of engaging some Lloyd's underwriters to provide coverage on a basis that virtually mirrors the Berkshire Hathaway facility," Mr. Pierce said.

In a statement, Willis said its facility was established in response to buyer demand for access to additional capital. A Willis spokeswoman said rising oil prices are contributing to demand for more sources of coverage.

Mr. Pierce said it normally takes up to 12 months for oil prices to rise sufficiently to affect asset values and coverage prices.

Meanwhile, two previously announced facilities to provide high limits to energy risks after the Deepwater Horizon oil rig accident in the Gulf of Mexico still are sorting out the level of demand for their products before writing any coverage.

Munich Re is moving forward with its facility, called SOSCover, that aims to pro-

vide as much as \$10 billion in excess casualty limits written by a consortium of reinsurers and insurers to cover sudden oil spill pollution on deepwater drilling risks in the United States.

The facility is being developed with brokers Guy Carpenter & Co. L.L.C., a unit of Marsh & McLennan Cos. Inc.; Willis Re, the reinsurance broker unit of Willis Group; and Aon Benfield Inc., a unit of Aon Corp.

Separately, Guy Carpenter and Aon Benfield are developing a facility called excEED, for Excess Energy Exploration and Development, that is backed by Torus. The plan is to offer \$1 billion in excess casualty and pollution capacity in tranches of \$250 million through an insurer and reinsurer consortium.

The facilities are not intended to compete with each other and are being developed so their coverage attaches at different excess levels, said Edward A. Sweeney Jr., executive vp at Guy Carpenter in New York.

When Munich Re announced its plans for the facility in September, the reinsurer said its launch would hinge partly on whether U.S. lawmakers increase the \$75 million cap set by the Oil Pollution Act. While that hasn't happened, Munich Re and the brokers are proceeding with plans to launch SOSCover.

The Deepwater Horizon disaster proved that there is a need for the facility, regardless of the cap, Mr. Sweeney said.

"If we have learned anything from the Deepwater Horizon, it is that these events can take on a magnitude not contemplated in the past," Mr. Sweeney said.

BP P.L.C., which is largely self-insured, has taken responsibility for claims from the rig disaster and established a facility to pay those claims. As of last week, it had paid or approved claims amounting to \$4.47 billion.

"It's more of an education process," Mr. Sweeney said of efforts to get the word out to potential buyers about the products and services the facilities plan to offer. "It's now down to generating insured interest," he said.

That could be difficult, some experts say.

"I don't think we've seen enough demand to know how they will price (coverage) or if it will fly in the marketplace," said Mark Coleman, London-based director in Standard & Poor's Corp.'s insurance practice.

Demand also is uncertain because of a muddled U.S. regulatory picture, sources said.

Since the Deepwater Horizon, "people are waiting to see the implications from a regulatory perspective and how liability would change," Mr. Coleman said. "There is a lot of uncertainty around that," and until it is removed, there will be questions as to what sort of coverage energy companies will need in the Gulf, he said.

A brokerage executive who is not involved in developing the Munich Re or Torus operations said there is a danger that buyer interest is waning with the delay in launching them. "You need to strike while the iron is hot. I think some of the emotions have died down" since the Deepwater Horizon accident, said the executive, who asked not to be named.

There is a danger that Munich Re's facility, if it does provide high-limit coverage, could influence U.S. lawmakers to raise the pollution liability cap if they feel energy companies have access to sufficient insurance.

"The idea of an insurance product which appears to be conceived to enable legislators to enact legislation with higher limits of financial responsibility is a slippery slope," the broker said. "Insurance products that drive regulation may be ill-conceived."

## Fees: Insurers settle with N.Y. over workers comp overcharges

CONTINUED FROM PAGE 3

the annual surcharges were to be collected.

In a statement, Zurich-based ACE said it was "pleased to resolve this issue, which has impacted all insurers that wrote workers compensation coverage in New York since 2000."

ACE, which agreed to pay \$70 million under the settlement (see chart, page 3), said "the issue was caused by two conflicting state rules that created a discrepancy between the surcharge and assessment formulas that support the operation of the New York workers compensation system. This

**'I am pleased these members of the insurance industry and the state were able to reach an accord and hope that the spirit continues for the betterment of all New Yorkers.'**

Robert Beloten, New York State Workers' Compensation Board

discrepancy resulted in the accumulation of funds over many years."

ACE said the company fully complied with the state to collect specific premium surcharge amounts from policyholders and "made numerous attempts to address this issue with the state."

In an e-mail, a spokesperson for

Zurich said the insurer entered into an agreement with the WCB and New York attorney general to pay \$37.5 million, which "resolves a difference of opinion as to the proper legal interpretation of laws enacted in 2009 and 2010 that imposed one-time assessments on certain insurers writing workers compensation

insurance in New York."

A spokesperson for Chicago-based CNA said the \$5.75 million payment of excess funds to the state is neither a fine nor a penalty and that policyholders were not overcharged as far as premiums were concerned. The discrepancy was between how the surcharges were calculated by the WCB after 2000, the spokesperson said.

"The settlement resolved the issue created by a discrepancy in the definition of premium issued by the New York Compensation Insurance Rating Board and the New York workers compensation law," Blue Bell, Pa.-based PMA Insurance Group said in a state-

ment. PMA also said the state did not allege that policyholders were overcharged.

"I am pleased these members of the insurance industry and the state were able to reach an accord and hope that the spirit continues for the betterment of all New Yorkers," WCB Chair Robert Beloten said in a statement.

The New York attorney general's office said the four insurers cooperated fully with the investigation. Other insurers that collected too much in surcharges should follow their lead "or they will be brought to justice," Mr. Cuomo said in a statement issued before he became governor.

# Workplace: Employee bias settlements surge: Analysis

CONTINUED FROM PAGE 4

in which you react in the workplace to complaints of discrimination are very important," Mr. Maatman said.

Wage-and-hour class actions were the most frequent type of workplace class action, according to the report. "This trend also was manifest in more wage-and-hour class action and collective action decisions by federal and state court judges than any other area of workplace litigation," according to the report.

"That's the No. 1 exposure area in corporate America as far as the plaintiffs class action bar is concerned," Mr. Maatman said. Employees who visit plaintiffs lawyers are "more likely than not" to be asked what they are paid and probed for potential wage-and-hour claims, he said.

The top 10 private wage-and-hour settlements in 2010 totaled \$336.5 million, a 7.4% decline from 2009.

Among other trends discussed in the report were:

- The weak economy and low hiring rates last year fueled more class action and collective action litigation as the plaintiffs bar increased the pace of collective action filings under the Fair Labor Standards Act.

- With Democratic legislative initiatives for labor and employment reform stalled because of the midterm elections, the Obama administration continued to ramp up its enforcement efforts through the U.S. Equal Employment Opportunity Commission and the U.S. Department of Labor.

- The Class Action Fairness Act of 2005, which was intended to curb abusive class actions, continued to significantly affect workplace litigation, most significantly wage-and-hour class actions filed in state court. "As the plaintiffs bar continues to devise techniques to adapt to the CAFA, rulings on the scope, meaning, and application of the law are already numerous for a statute of such recent vintage," said the report.

- The plaintiffs bar "has been able to cultivate new strategies in response to fast-paced developments" in Rule 23, which governs class actions in federal courts, and 29 U.S.C. § 216(b), which governs multiplaintiff lawsuits under the Age Discrimination in Employment Act and the FLSA.

- Financial stakes in workplace

**Employees who visit plaintiffs lawyers are 'more likely than not' to be asked what they are paid and probed for potential wage-and-hour claims.**

Gerald L. Maatman Jr.,  
Seyfarth Shaw L.L.P.

class action litigation increased in 2010. "Plaintiffs lawyers have con-

tinued to push the envelope in crafting damages theories to expand the size of classes and the scope of recoveries," the report concludes.

Meanwhile, the settlement in *Velez* came shortly before the U.S. Supreme Court agreed to hear *Wal-Mart Stores Inc. vs. Betty Dukes et al.* (BI, Dec. 13, 2010).

The 9th Circuit Court of Appeals in San Francisco had approved a class estimated at 1.5 million members in the case.

The Supreme Court's grant of certiorari puts the appeals court's decision "in flux and other decisions on hold, while the class

action bar awaits the next chapter in the litigation," says the report, which notes that the Supreme Court's ruling "is apt to be a bellwether decision."

The Supreme Court's acceptance of *Dukes* as well as *AT&T Mobility L.L.C. vs. Vincent and Liza Concepcion et al.*, and *In Re Baycol* "may signal a coming transformation of Rule 23 law in 2011," according to the report. *Concepcion* concerns state law limits on class action waivers, while *Baycol* involves the question of whether, if a case is certified in state court under the same theories previously rejected by a federal district

court, it is precluded under federal common law, according to the report.

Another issue facing employers this year is that the EEOC continues to follow a 2006 plan of bringing more systemic discrimination cases affecting large numbers of workers.

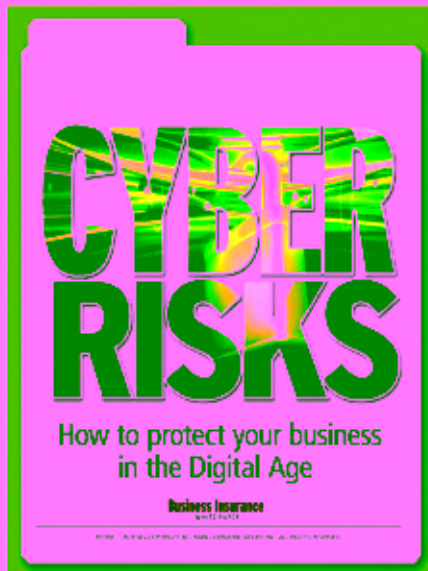
Class action litigation under the Employee Retirement Income Security Act of 1974 also is expected to accelerate in 2011, while the "ever increasing number" of FLSA collective actions and state law wage-and-hour class actions is expected to increase again in 2011, according to the report.

Copies of the report can be obtained by going to <http://www.workplaceclassaction.com>.

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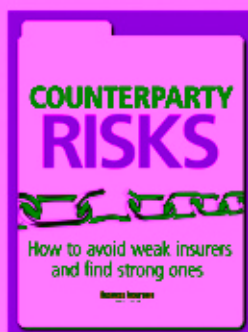


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# Pay: Will broker commission change empower buyers?

CONTINUED FROM PAGE 1

nicating with our producers about our intent to remove commissions from fully insured large-group business. As part of that process, we have been collecting their feedback on building an infrastructure that will assist them in making it as easy as possible to collect any service or consulting fee they may negotiate with the mutual clients we serve."

Several other major insurers also have communicated to producers that they, too, will be excluding commissions from premiums in the large-group market, but they did not respond to *Business Insurance's* requests for confirmation.

Fee-based compensation for brokers and consultants has been a longstanding practice in the self-insured market where employers pay an administrative-services-only fee to insurers to manage their plans and negotiate compensation for their insurance advisers separately.

## Disclosure more obvious

While many large employers that purchase fully insured products also have asked insurers to exclude commissions from premiums so they can pay negotiated fees directly to their brokers, for the most part, employers in the small and middle markets, defined as those with 51 to 1,000 lives, generally have paid their brokers via commissions embed-

ded in health insurance premiums.

Although commissions have been disclosed previously on the Form 5500 filings that employers with 100 or more health plan members are required to submit to the U.S. Department of Labor, they have not been obvious, industry sources note.

**'It's a moment of truth. The brokerage community will be faced with justifying what they do and what they've been charging.'**

Peter Gruenberg,  
Willis Group Holdings P.L.C.

Many health insurance experts expect that when employers see just how much those fees add to their health care costs, they will either try to negotiate a lower rate with their brokers or demand that additional services be provided to justify the compensation.

"I see a very strong analogy to what happened to travel agents in the travel industry," said Paul Ginsburg, president of the Center for Studying Health System Change in Washington. When

travel agents' commissions were excluded from airfares, "the airline market became more competitive."

He added that large brokers that "have a lot more to offer besides just showing you different health plans" will have an advantage over smaller brokers that traditionally have focused primarily on the procurement process.

"This gives employers the opportunity to value each of the services their brokers provide and decide which to invest in," said Vince Ashton, executive director of HealthPass, a partnership between the Northeast Business Group on Health, New York and the health insurance industry. "Some employers may decide to just use their broker for procurement and pay the fee for that service and then contract with another vendor for ongoing support services," he said.

Making the portion of premiums attributable to commissions more visible "is a good thing for employers, especially in the small and middle market," where they largely have been opaque, said Sherri Bockhorst, a principal at Buck Consultants L.L.C. in St. Louis. "If they have to add those dollars to their budgets, they'll definitely demand greater value."

"It's a moment of truth. The brokerage community will be faced with justifying what they do and what they've been charging," said Peter Gruenberg, chief place-

ment officer for Willis Group Holdings P.L.C.'s human capital practice in Cranford, N.J.

Some health insurance industry experts suggested that many brokers, having been squeezed by employers not wanting to pay high fees for health benefits, will start pushing ancillary and voluntary benefits because those lines of coverage pay much higher commissions and are not subject to the MLR limitations set by the health care reform law.

"If you look at life, accident and health, those commissions are closer to 20% vs. what is paid in group health," said Greg Arms, global employee benefits practice leader at Marsh Inc. in New York.

## More scrutiny foreseen

Others, however, forecast that full transparency of producer commissions in health care will increase employer scrutiny of other sources of compensation for employee benefit brokers.

"It's going to permeate every product and/or service offering, so the voluntary benefits commissions will also face scrutiny," said John Zern, executive vp and Americas practice director at Aon Hewitt Inc. in Lincolnshire, Ill.

"The domino effect will be employers will be asking their advisers not only about health care, but about all other forms of compensation they're earning on other lines of business," Mr. Zern added.

# AIG: Comp case settled

CONTINUED FROM PAGE 3

escrow under the Spitzer settlement plus any interest earned in the meantime.

The proposed settlement stipulates that the agreement would not be affected even if Liberty Mutual units Safeco Insurance Co. of America and Ohio Casualty Insurance Co. opt out.

Court papers state that "it has become clear" that Safeco and Ohio Casualty "cannot adequately represent the absent class members in settling this matter with AIG on fair and reasonable terms at this time due to very different business judgments about the wisdom of continued litigation as opposed to settlement."

The insurers "therefore respectfully request that they be permitted to intervene...in order to represent their own interests and to serve as settlement class representatives, in order to effectuate a global settlement of these claims with AIG," according to court documents.

The attorney for Safeco and Ohio Casualty, Gary Elden of Chicago-based Grippo & Elden L.L.C., said in a statement that the settlement agreement is an "act of self-interest" by AIG and the settling insurers "and is detrimental to the 600-member class because it fails to consider previously undisclosed documented evidence of underreporting that extends the scope and duration of the classes' claim.

"The current discovery process, which will be completed in stages within the next 60 and 150 days, should be allowed to proceed uninterrupted so AIG's held to account for the true extent of its underreporting," Mr. Elden said in the statement. "Ohio Casualty and Safeco, class representatives, stepped forward 20 months ago to make certain that AIG adequately addresses the systemic practice of underreporting of workers compensation premium when no one else would, and they remain in the best position to adequately represent the class and prosecute" the litigation.

The insurers who agreed to the settlement are ACE INA Holdings Inc., Auto-Owners Insurance Co., Companion Property & Casualty Insurance Co., Firstcomp Insurance Co., Hartford Financial Services Group Inc., Technology Insurance Co. and Travelers Indemnity Co. The insurers' attorney declined comment.

In a statement, an AIG spokesman said, "It is unfortunate that Liberty is refusing to participate in this fair and reasonable settlement. As the seven other settling insurers have recognized in seeking to intervene in the action, Liberty's preference to continue litigating is not in the best interests of the class members."

In December, AIG reached a \$100 million settlement with state insurance regulators on the same issue. That settlement was contingent in part on AIG settling the litigation with its rivals.

# Budgets: Risk managers feel the squeeze on resources

CONTINUED FROM PAGE 1

Underwood said. "Property carriers can provide good insight in the potential reduction of probable maximum loss, but risk managers need to take that analysis further," he said.

"Over the last two or three years, there have been plenty of examples where we've seen either an elimination of the risk management function or a reduction in staff," said Neil Metzheiser, executive vp at Lockton Southeast in Atlanta. But generally speaking, clients recognize that they need to maintain their safety program, he said.

The Norfolk, Va., public school system's risk management budget was cut last year, said Dan Hurley, senior director-risk management and safety of Norfolk Public Schools. "Obviously, we're not going to lose our insurance programs," such as property, he said.

With personnel cuts, the department lost one position, he said. As a result, "we're all a little more clerical now, and we're all a little more claims managers."

One of the biggest challenges is maintaining property. "A roof on a middle school could cost you more than \$1 million if it's a sizable middle school," Mr. Hurley said, necessitating continued emphasis on loss control and safe-

ty regardless of budgetary constraints.

"Our safety activities certainly are well-protected," said Mr. Hurley. "We consider it an investment."

"When you're cutting safety, you're cutting your own throat," said Theodore G. Jeske, a former risk manager who is president and CEO of Right Path Consulting L.L.C., a Milan, Mich.-based risk

**'When you're cutting safety, you're cutting your own throat.'**

Theodore G. Jeske,  
Right Path Consulting L.L.C.

management consulting firm. Safety has to be part of a long-term strategy, he said.

In an exception to the personnel reduction trend facing many risk managers, Carol Arendall, vp-risk management at Rosemont, Ill.-based U.S. Foodservice Inc., was able to increase her staff because of a corporate emphasis on safety.

"We think we're kind of counter-culture here," Ms. Arendall said. "We invested in our safety program. We hired eight regional

safety program managers in September and we expect to hire some additional claims management personnel, probably two or three more people, to assist us with that. We figured the opportunity is in reducing the claims numbers because what we spend on the insurance premium is nothing compared to that."

John R. Phelps, director of business risk solutions at Blue Cross and Blue Shield of Florida Inc. in Jacksonville, also added to his staff despite the economy.

"We've been able to increase staff by one person this year, which we hadn't been able to do for five or six years," Mr. Phelps said. The added staffer will focus entirely on enterprise risk management within the organization.

Mr. Phelps said the reason for the increase is that "from a health insurer's view, we see an extremely difficult business environment, raising the levels of financial operating legal and reputational risk. In spite of the difficult environment, we must take risk to succeed and we need staff to help the company do that."

In some cases, risk managers have led the way in cutting costs.

Pennsylvania State University's risk management program hasn't seen any "belt tightening that hasn't been of our own volition," said Gary Langsdale, risk officer at Penn

State in State College, Pa. He said his risk management budget has remained pretty stable and that his department has marketed insurance programs to achieve the most efficient deal. "That's been at our initiative, not because we have a gun at our head," he said.

Mr. Langsdale said his department had undergone a staff restructuring that eliminated one position, but "we found a home for that person, so no one was laid off. Other than that, we're watching our pennies."

Looking ahead, one veteran risk manager sees continued challenges, particularly in the public sector.

"We're cutting travel and all other discretionary spending including education," said Terry Fleming, director-division of risk management for Montgomery County in Rockville, Md. He said his department has been asked to recommend other savings and cuts in its upcoming budget.

The county already has furloughed workers and "we expect there will be other pay cuts or furloughs," said Mr. Fleming. Because the county is self-insured and must have money to pay claims, "it's going to be tough to cut that portion of the budget," he said. "Cuts have to be in the area of payroll or discretionary spending, which is very tough."

## News In Brief

CONTINUED FROM PAGE 1

devastation and loss of life from severe earthquakes, storms and record high temperatures, Munich Reinsurance Co. said. Overall losses amounted to \$130 billion, slightly above average for the past 10 years, Munich Re said in a statement. Some 950 natural catastrophes were recorded last year, the second-highest number since 1980 and far higher than the annual average of 785 during the past 10 years, the reinsurer said. The February 2010 earthquake in Chile was the year's most expensive natural catastrophe, resulting in economic damages of \$30 billion and insured losses of \$8 billion, Munich Re said. The earthquake that hit Haiti the previous month caused significant damage and loss of life, but generated only negligible insured losses.

### Retiree health program has already paid \$1 billion

In just two months, federal regulators have paid out about \$1 billion to partially reimburse employers and others for claims incurred by early retirees and their dependents. If this pace is sustained, it will result in the exhaustion of the \$5 billion fund created by the health care reform law long before its scheduled expiration at the end of 2013. The government began accepting claims for reimbursement on Oct. 25 and began sending out claims checks shortly afterward. After a participant incurs \$15,000 in health care claims in a plan year, the government will reimburse plan sponsors for 80% of claims up to \$90,000.

### Most insurers to meet Solvency II deadline

Most insurers are confident that they will meet the 2012 deadline to implement Solvency II, the risk-based capital regulatory regime for insurers and reinsurers in Europe, according to research by PricewaterhouseCoopers L.L.P. A survey of 115 companies in 22 countries last fall found that 74% of insurers are confident they will meet the 2012 deadline, PwC said, although 40% are still only in the preparatory stages or have yet to

launch their implementation projects.

### Doctor-dispensed comp drugs rise sharply: NCCI

The volume of prescription drugs dispensed by doctors to injured employees is rising sharply nationwide, driving up workers compensation costs, NCCI Holdings Inc. said. Specifically, Boca Raton, Fla.-based NCCI's "Workers Compensation Prescription Drug Study, 2010 Update" found a "dramatic increase in the portion of drug dollars associated with drugs dispensed by physicians." The percentage of workers comp prescription dollars dispensed by physicians increased to more than 20% in 2008, up from more than 15% the prior year, according to the study that examined injuries that occurred between 1994 and 2008.

### Ironshore launches Europe operation

Ironshore Inc. said it has formed Ironshore Europe Ltd., which will be domiciled in Dublin and led by Fiona Marry, who has been appointed CEO of the new insurer unit. Ironshore Europe expands Ironshore's international platform and will "augment" the insurer's existing presence in the United States, United Kingdom, Canada and Bermuda, Ironshore said in a statement.

### Wisconsin, Minnesota get new regulators

Wisconsin Gov. Scott Walker has appointed former insurance executive Ted Nickel as the state's insurance commissioner, a spokesman said. Mr. Nickel worked nearly 18 years in areas such as governmental and regulatory affairs for Merrill, Wis.-based Church Mutual Insurance Co., which specializes in insurance for religious organizations. In Minnesota, Gov. Mark Dayton named Mike Rothman commissioner of commerce, which is the state's top insurance regulatory post. Mr. Rothman most recently was an attorney at Winthrop & Weinstine P.A., focusing on insurance and financial services.

### Noted

Mike Geeslin, commissioner of the **Texas Department of Insurance**, said he plans to step down next month....**Commercial property/casualty insurance rates** dropped an average of 5% in December 2010 compared with a year earlier, MarketScout said.

# Assault suit not barred by comp rule

By **ROBERTO CENICEROS**

**LAS VEGAS**—Workers compensation law doesn't bar lawsuits against co-workers alleging intentional injury, Nevada's Supreme Court ruled in the case of a casino employee alleging her employer's security guards assaulted her.

*Juana Fanders vs. Riverside Resort & Casino* stems from alleged injuries Juana Fanders suffered when security guards were instructed by a human resources director to "86" her, or remove her from the premises, after a dispute over her conduct at work, court records show.

During the procedure, security guards tried to photograph Ms. Fanders and she resisted by climbing under a table. Ms. Fanders alleges a guard grabbed her by her hair and pulled her out from under the table while calling her a

derogatory name.

She then was handcuffed and placed in a holding cell at the casino security office until a police officer arrived and cited her for battery against a guard, court records state.

Ms. Fanders sued, alleging assault and battery, vicarious liability, wrongful imprisonment and negligence. A district court granted summary judgment to her employer and the security guards, finding that Nevada's workers compensation law provided Ms. Fanders with an exclusive remedy because her injuries arose out of her employment.

On appeal, Nevada's Supreme Court ruled Dec. 30 that the district court erred in granting summary judgment because several questions of fact remained regarding whether Ms. Fanders' injuries arose out of her employment.

The high court acknowledged it had not previously addressed whether an employee "can maintain an action outside of the workers compensation statute against a co-employee who purportedly commits an intentional tort against the employee."

It found that "when a plaintiff states a viable intentional tort claim against a co-employee," that claim is not barred by workers comp exclusivity provisions.

The high court also said that "even if the district court concludes that Fanders' claims arose out of and in the course of her employment with Riverside, she may still pursue her assault and battery and wrongful imprisonment claims against the security guards."

It remanded the case to the district court for proceedings consistent with its opinion.

# Cat bond activity jumps in 2010

By **JUDY GREENWALD**

Catastrophe bond issuance followed its historical pattern of having an active fourth quarter, concludes a report by Willis Capital Markets & Advisory.

The report issued last week said there were 10 new nonlife cat bond issues totaling \$2 billion in the final quarter of last year, a 25% increase over the \$1.6 billion issued in the final quarter of 2009.

Total nonlife capacity issued in 2010 was \$4.8 billion, a 41.2% increase over 2009's \$3.4 billion. That makes 2010 the second-largest for issuing cat bonds since

the \$7.2 billion issued in 2007, according to the report by the New York-based unit of Willis Group Holdings P.L.C.

"The quarter was notable not only for the number and volume of issuances, but also the welcome return to the market of diversifying (i.e., non-U.S. peak cat) risks, including new cat perils and life-and health-related risks," according to the report.

Insurance-linked security investors have "long been hungry for diversification and it is particularly interesting to observe how the market has responded to these issues," the Willis report said. "Of

the 10 nonlife issues that were brought to market during the quarter, no fewer than five are exclusively diversifiers and another two included diversifying elements."

"Alongside these, three life- and health-related programs also arrived on the scene, of which two presented new risks to the market," according to the report, "ILS Market Update, Q4 2010: Strong Issuance Activity to Close out the Year."

Observers have noted that catastrophe bonds are becoming an integral part of insurers' reinsurance protection.

# MMA buys Minnesota firm RJF Agencies

By **MARK A. HOFMANN**

**MINNEAPOLIS**—Marsh Inc.'s Marsh & McLennan Agency L.L.C. has acquired RJF Agencies Inc., Marsh said last week.

Minneapolis-based RJF has annual revenues of about \$25 million and about 150 employees, according to Marsh. The company, which ranked 89th on *Business Insurance's* list of the 100 largest brokers of U.S. business, provides property/casualty insurance and employee benefits to middle-mar-

ket companies and has specialty practices in manufacturing, condominium and townhome associations, management liability and other fields. In a statement announcing the acquisition, Marsh said all of RJF's employees and leadership team would join MMA and that RJF would serve as MMA's upper Midwest hub.

Terms of the transaction were not disclosed.

The RJF transaction is the latest in a series of acquisitions made by MMA since it launched its strategy

in November 2009 to build a nationwide platform of property/casualty and employee benefit services. The most recent large acquisition was Conshohocken, Pa.-based Trion Group Inc., a privately held employee benefits company with annual revenues of about \$74 million, which MMA acquired late last month. MMA also announced last week that it had acquired Alpharetta, Ga.-based Strategic Benefit Solutions Inc., a \$4 million benefits brokerage and consulting firm.

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## Dream comes true for jewelry shoppers

The owner of a jewelry store made a wager with his customers: If it snowed more than 3 inches in Asheville, N.C., on Christmas, purchases made at his store between Thanksgiving week and Dec. 11 would be refunded.

In all, 6 inches of snow blanketed the city during the holiday, putting Alan Perry, owner of Perry's Emporium in Wilmington, N.C., some 300 miles away, on the hook for about \$400,000.

Mr. Perry chose Asheville because "it rarely ever snows in December there," he told CNN. Fortunately, he was insured.

Mr. Perry paid \$10,000 to purchase an insurance policy triggered by weather from East Setauket, N.Y.-based Global Weather Insurance Agency Inc. that will pay some \$400,000 to more than 300 customers, according to published reports.

The gamble seems to have paid off.

"My sales jumped 34% (during the period) vs. last year after I ran the snow promotion," Mr. Perry told CNN.

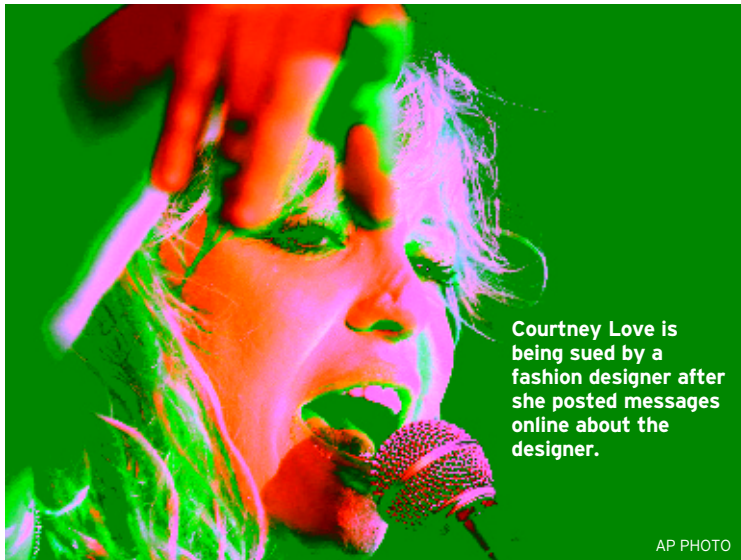
Patricia Sleicher, president of Global Weather Insurance, told CNN that the weather policy is an increasingly popular type of promotion with merchants nationwide—usually costing between 1.5% and 5.5% of total sales—and triggered by weather such as rain or snow.

Mr. Perry, who has had such promotions previously and is working on another one for Valentine's Day, reportedly said customers should receive their refunds by February.



# Business Insurance END PAGE

Contributing: Jeff Casale, Judy Greenwald, Mike Tsikoudakis



Courtney Love is being sued by a fashion designer after she posted messages online about the designer.

AP PHOTO

## Fashion designer shows no love for Courtney

A fashion designer who alleges that rocker and actress Courtney Love has called her a drug addict and prostitute among other things on Twitter, MySpace and elsewhere is to get her day in court next week.

Dawn Simorangkir was seeking payment for several thousand dollars in clothing from Ms. Love when the postings began in March 2009, according to the lawsuit filed the same month in Los Angeles Superior Court.

"She has received a VAST amount of money from me over 40,000 dollars and I do not make people famous and get raped TOO!" Ms. Love said in one MySpace entry, according to Ms. Simorangkir's lawsuit.

Another one of Ms. Love's MySpace entries claims Ms. Simorangkir committed "...assault, stole, sold drugs, beat up, ripped off underpaid, drank three bottles of vodka (hey I saw that too!) bullied....she is seriously a danger to society and orange will look good on her."

A Tweet also says "shes (sic) an

assault addict herself theres (sic) apparently prostitution in her record too," the suit states.

The designer, whose work is marketed under the Boudoir Queen brand, accuses Ms. Love of libel, invasion of privacy, breach of contract and other charges, alleging Ms. Love's false statements destroyed the designer's business and irreparably damaged her reputation.

"Whether caused by a drug-induced psychosis, a warped understanding of reality, or the belief that her money and fame allow her to disregard the law, Love has embarked on what is nothing short of an obsessive and delusional crusade to terrorize and destroy Simorangkir," according to the lawsuit.

The trial that is to begin Jan. 18 reportedly could explore the issue of the use of Twitter, MySpace and other social media platforms by public figures.

It's a sure bet that attorneys for both sides will have more than 140 characters to make their opening statements.



Characters on "30 Rock" participate in activities likely inappropriate for the workplace.

## Workplace rules down the tube on hit shows

Employers in network TV workplaces let things happen that real companies would never dream of allowing, according to an analysis that says the shows set a bad example.

An examination of popular TV programs by Charlotte, N.C.-based Global Compliance Services Inc. found numerous ethics and compliance violations in top-rated shows in a report that the company, which provides integrated ethics and compliance solutions, issued last month.

The most egregious violator was "30 Rock," which generated 11 average violations per episode, according to the analysis. A sample violation was one character asking about a co-worker: "Is it that chick lawyer who does the sexual harassment presentation? Because she's asking for it."

For nine shows, the analysis found 92 violations, or an average of five per episode. Other shows viewed were "The Office," "Grey's Anatomy," "Glee," "NCIS," "Ugly Betty," "White Collar," "CSI" and "House."

The incidents portrayed involved diversity, equal opportunity and respect in the workplace; employee relations; environmental, health and safety violations; financial issues; misuse or misappropriation of assets or information; policy and process integrity; and campus relations.

"We need to find ways of keeping the laughs and the drama on TV while minimizing the impact of overexposing the real-life workforce to ethics and compliance violations that are acceptable and funny only on the small screen," according to the analysis, "Does Hollywood Need a Prime Time Hotline? Project Tube: Observations of Ethics and Compliance on the Small Screen."

It is available at <http://www.globalcompliance.com/pdf/does-hollywood-need-a-primetime-hotline-summary-global-compliance-december-2010.pdf>.

## LAWYER GOES FOR SACK IN 'SPYGATE' CASE

A New York Jets fan and season ticket-holder just won't take no for an answer.

Lawyer Carl Mayer is a big proponent of the National Football League team and, according to a Associated Press report, he's still irked about the 2007 "Spygate" scandal, where the rival New England Patriots were found guilty of secretly videotaping Jets coaches' signals during games.

Mr. Mayer and two other lawyers filed a class action lawsuit in late December, and said they had filed a petition asking the U.S. Supreme court to review

dismissals of the case, according to the report.

The lawsuit seeks millions of dollars from the Patriots and the team's coach, Bill Belichick.

It alleges that the Patriots bamboozled fans by secretly taping the Jets coaches' signals during the games, thus robbing the fans of an honest contest between the two teams, according to the report.

The lawsuit already has been dismissed by a federal judge and a federal appeals court.

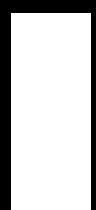
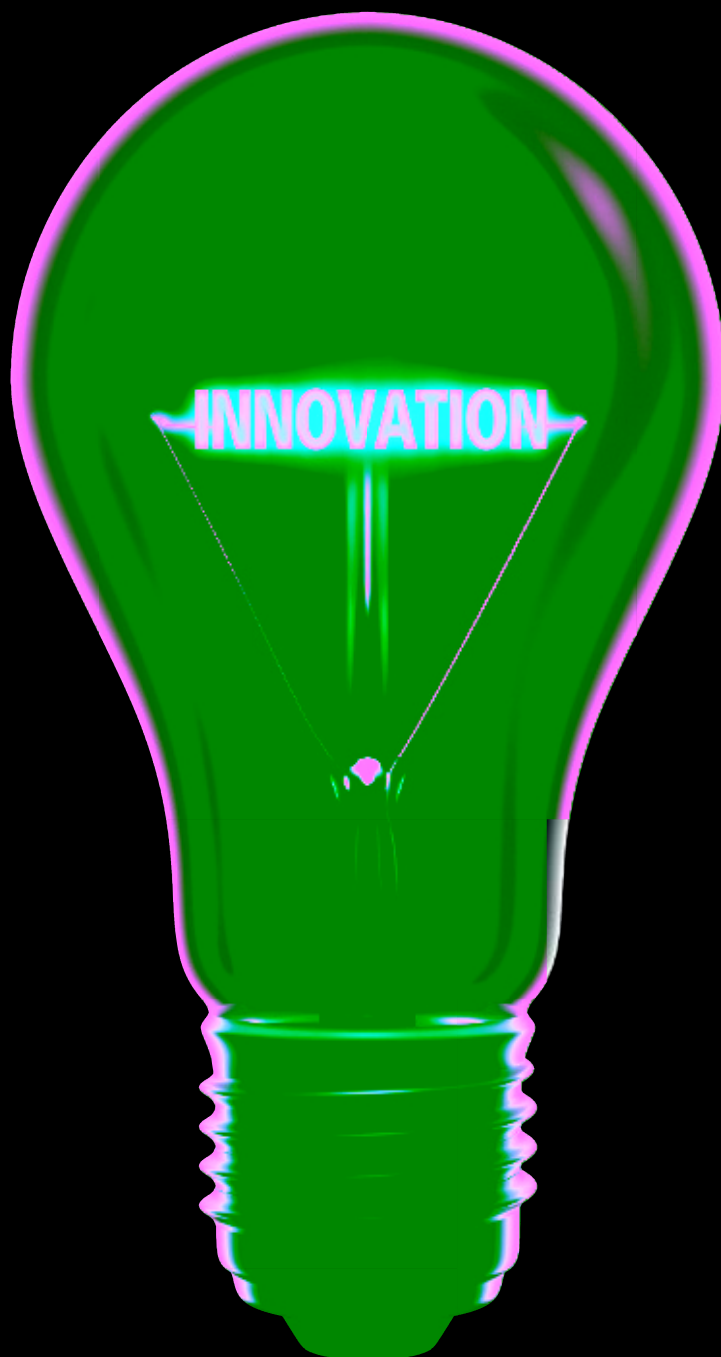
The NFL has, however, taken some action, fining Mr. Belichick \$750,000.

A team of lawyers is seeking millions of dollars from the New England Patriots and Coach Bill Belichick.



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