

# Business Insurance

January 11, 2010

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## In Brief

Lawmakers seek health reform compromise

U.S. Senate and House negotiators are expected this week to begin work to come up with a final version of health care reform legislation. President Barack Obama met with House Democratic leaders twice last week to discuss how to bridge differences in the measures passed by the House and Senate. House Speaker Nancy Pelosi, D-Calif., described the meetings as "very intense." While a final agreement is nearly certain, it may not be reached until mid-February, due to the complexity of the legislation and differences between the two bills, Washington observers say. Numerous House Democrats last week, for example, said they strongly opposed a key provision in the Senate bill that would impose a stiff excise tax on costly health insurance plans. Negotiations to come up with a

See **IN BRIEF** page 22

## P/C INSURERS

# New York to revive insurance exchange

*Revamped market seen as way to stem offshore capital flow*

By **ZACK PHILLIPS**

**NEW YORK**—New York insurance officials' proposed plan to revive the New York Insurance Exchange has generated interest from the insurance industry, observers say.

In announcing their intent to reconstitute the exchange, state officials last week said the exchange would attract new capital to New York and the insurance market, offer efficiencies to buyers and serve large and complex risks. Gov. David Paterson announced the initiative in his Jan. 6 state of the state address and officials later framed the exchange as a way to enhance New York's image as a world financial center and retain business going offshore.

"We have this within our own power to do," said New York State Insurance Department Superinten-

dent James J. Wrynn. "We're now going to make every effort to see if we can do it."

The exchange would be a Lloyd's of London-style marketplace through which buyers could purchase insurance and reinsurance, and where capital providers and others who want to take on risk could form syndicates.

State officials said they had no specific timetable when the exchange would be up and running, but said they intended to hold their first work committee meeting, in which industry officials and regulators will discuss operational details and challenges, within two weeks.

The department will proceed in an "expedient" manner, although its goal is to make sure the exchange works, not to start operations quickly, Mr. Wrynn said. "It's something we're working on daily."

Mr. Wrynn stressed that the exchange ideally would attract not only insurance companies but other capital providers, such as invest-



ZUMA/NEWS.COM

**Gov. Paterson said the exchange will enhance New York's status as a financial center.**

See **EXCHANGE** page 18



Sen. Christopher J. Dodd, D-Conn., plans to retire from the Senate.

## Dodd's looming departure may speed reform efforts

By **MARK A. HOFMANN**

**WASHINGTON**—Sen. Christopher J. Dodd's decision to forgo reelection is a blow to the insurance industry, but it should not derail efforts to enact financial services regulatory reform, insurance industry observers say.

The Connecticut Democrat, who chairs the Senate Banking, Housing and Urban Affairs Committee, said last week that he will retire from the Senate at the end of his term early next year.

See **DODD** page 20

## SPOTLIGHT

**PROPERTY/CASUALTY  
MARKET REPORT &  
LEGISLATIVE ROUNDUP**

Flat renewals predominate for property risks at Jan. 1; some general liability programs see steep price decreases in competitive market; D&O rates likely to



remain soft; workers comp renewal negotiations focus on collateral; some see signs of stabilization in E&O market; reinsurance rates move downward. **PAGE 9**

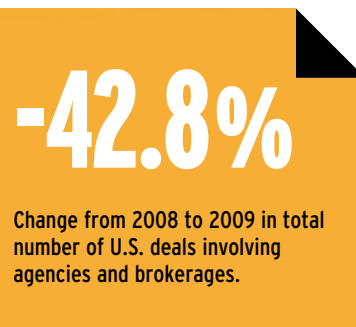
## AGENTS & BROKERS

# Economic recovery, push for growth may drive M&A deals

By **SALLY ROBERTS**

The insurance brokerage industry is gearing up for what many anticipate will be a more active year on the merger and acquisition front.

Uncertainty about the economy, insurance pricing and the political environment, coupled with tight credit markets during 2009, resulted in buyers lowering their valuations and sellers opting to wait rather



At the same time, nearly nonexistent organic growth and concerns about rising capital gains taxes also are helping buyers and sellers adjust their pricing expectations, experts say (see story, page 21).

No one, however, is predicting there will be a flood of acquisitions in 2010.

2009 was one of the slowest years of brokerage M&A activity in the past 10 years, said Audra Szollosy, a Harrisburg, Pa.-based senior vp with M&A adviser Hales & Co.

"I do think (the number of deals) will increase in 2010, but more so in the second half of the year," Ms.

See **M&A** page 21

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than sell for a lower price, experts say.

While many of those factors remain in play, growing optimism that recovery is near should translate into more deals being completed in 2010, they say.

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## On the Web

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### BI VIDEO

#### A consultant's view on industry M&A

In a new "Insurance Broker Insights" video, *BI* talks about M&A activity with Tim Cunningham of OPTIS Partners, which provides financial and management consulting services to agents, brokers and insurance industry companies. See [www.BusinessInsurance.com/Video](http://www.BusinessInsurance.com/Video).

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One view of the Burj Khalifa, the world's tallest building, which officially opened in Dubai, United Arab Emirates, last week.

REUTERS

# TOWERING COVER

## Big limits in place for Burj Khalifa

By MICHAEL BRADFORD

**DUBAI, United Arab Emirates**—The world's tallest building, which opened last week, is a marvel of engineering and risk management covered by massive insurance limits mainly from international reinsurers.

The Burj Khalifa, a more than 160-story tower that stands

2,717 feet high, officially opened Jan. 4 in an extravagant ceremony of fireworks and sound as the latest jewel of the glittering skyline of Dubai, United Arab Emirates.

Originally named the Burj Dubai, it was renamed just before the opening to honor Abu

See **BURJ** page 18

### RISK MANAGEMENT

# Connecting RIMS members tops new president's agenda

By MARK A. HOFMANN

**ROCKVILLE, Md.**—The tag line to the Risk & Insurance Management Society Inc.'s theme for 2010 sums up a big reason why RIMS' new president belongs to the society.

This year's theme is "Think forward, think risk." And the tag line that follows—"connect, engage, inspire"—sums up "the leading reason I'm a member of RIMS," said President Terry Fleming. "That is, the relationships I've made over the years and the chance I've had to connect, engage and be inspired by fellow risk man-

agers, vendors and other people who are associated with RIMS," said Mr. Fleming, who is director of the division of risk management at Montgomery County, Md., in Rockville.

Mr. Fleming succeeded Joseph Restoule, leader of risk management at Calgary, Alberta-based NOVA Chemical Corp., at the start of the year. Mr. Fleming pointed out this year marks RIMS' 60th anniversary.

Encouraging peer-to-peer benchmarking and dialogue, particularly given today's economic conditions,

See **RIMS** page 18

### P/C INSURERS

# AIG makes key hires, sells more assets

*But challenges remain as company faces more federal scrutiny*

By COLLEEN MCCARTHY

**NEW YORK**—American International Group Inc. last week made several high-level appointments and agreed to sell some assets, but experts say recruiting talent and repaying government debt will remain a challenge.

Also last week, a report said the Federal Reserve Bank of New York ordered AIG to withhold certain financial details. Separately, a judge ruled that one of its subsidiaries must pay more than \$500 million in a coverage dispute.

Among the executive-level appointments, AIG filled the long-vacant head of human resources and brought in a Wall Street veteran as its chief administrative officer.

The new hires are a positive sign that the insurer is making progress in rebuilding its management ranks, but recruiting and retaining talent will remain a challenge for AIG as long as it remains government-owned and subject to executive compensation restrictions, observers said.

Separately, AIG reached agreements to sell its Canadian and Israeli mortgage insurance businesses as it disposes of noncore assets to repay bailout fund. As of December 2009, AIG owed about \$97 billion to the government.

Meanwhile, AIG's 2008 bailout attracted fresh scrutiny last week based on a report that said the Federal Reserve Bank of New York told AIG to limit public disclosures about payments the insurer made to counterparties in the months

after its bailout (see story, page 22).

In an internal memo last week AIG President and CEO Robert Benmosche said Jeff Hurd, chief administrative officer at the New York-based insurer, was named senior vp and head of human resources. He succeeded Andrew Kaslow, the human resources chief who departed last fall.

Also according to the memo, Michael Cowan, a longtime executive at Merrill Lynch & Co., was



REUTERS/LANDOV

DISCLOSURE: A House panel investigates advice that the New York Fed under Timothy Geithner gave AIG. PAGE 22.

named chief administrative officer. Mr. Cowan, who was senior vp of global corporate services at Merrill Lynch, will oversee AIG's operations, systems, corporate administration as well as the "separation office" focusing on units to be sold, an AIG spokeswoman said.

Mr. Benmosche, who has been working to replace executives who have departed after the company's bailout, said the organizational changes will "help increase our momentum and strengthen our organization." He also told employees to remain focused on "core priorities," including "repaying taxpayers, strengthening our business

See **AIG** page 22



## TERRY FLEMING

- President
- Risk & Insurance Management Society Inc.
- Member of RIMS board of directors since 2004
- Director-division of risk management at Montgomery County, Md., in Rockville, since 1988.

## D&amp;O LIABILITY

# Securities class action litigation declines in 2009: Study

*Decrease in suits expected to prolong soft D&O market*

By **ROBERTO CENICEROS**

A report on securities litigation cases filed in 2009 contains good news for directors and officers liability insurance purchasers, observers say.

The number of securities fraud lawsuits filed in 2009 fell 24% from 2008, Cornerstone Research and the Stanford University Law School Securities Class Action Clearinghouse said last week in the annual review of filings. Claimants filed 169 federal class action suits last year vs. 223 in 2008.

Securities litigation filed in 2009 also was 14% lower than the average of 197 cases between 1997 and 2008, the report states. The decrease reflects a drop in stock market volatility and winding down of the subprime and credit crises, leaving plaintiffs fewer financial entities to sue, the researchers said.

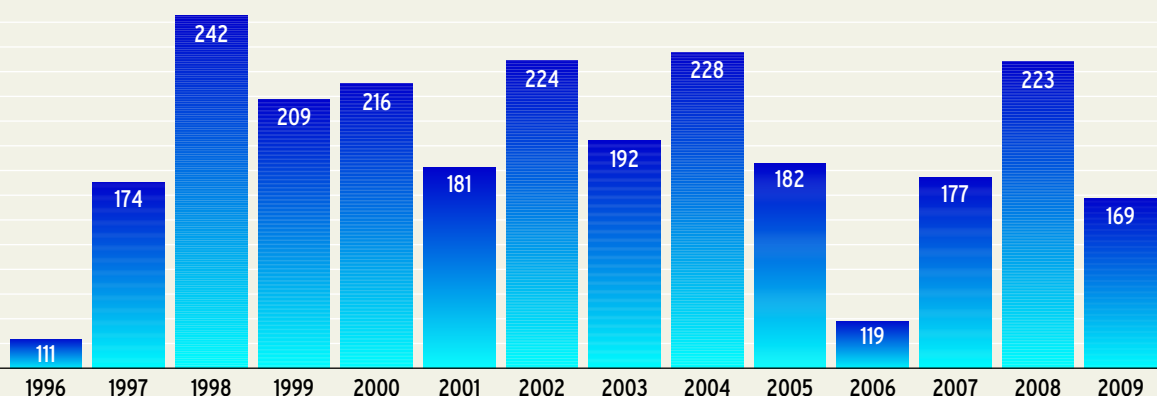
Many directors and officers liability insurance observers have been looking for a market turn to set off an increase in insurance pricing, said Kevin LaCroix, a Beachwood, Ohio-based partner with executive liability intermediary OakBridge Insurance Services L.L.C.

However, "there is certainly nothing in the 2009 filing numbers

See **SECURITIES** page 7

## SECURITIES LITIGATION

Annual number of class action filings 1996-2009



Source: Cornerstone Research



Rome-based UniCredit S.p.A. is one of two banks in Italy being sued under the nation's revised class action law.

## INTERNATIONAL

## Italian consumer group uses new legal tool to sue firms

*Limit on law's reach may restrict impact on corporations*

By **MICHAEL BRADFORD**

**ROME**—A consumer rights organization is seeking up to €6.25 billion (\$8.95 billion) from two banks under a new class action law in Italy that some experts say lacks teeth to pose much of a threat to businesses.

The Rome-based consumer rights group Coordinamento delle Associazioni per la Difesa dell'Ambiente e dei Diritti degli Utenti e dei Consumatori, known as Codacons, said its class actions are the first to be brought under the legislation that went into effect Jan. 1.

The suits name UniCredit S.p.A. and Intesa Sanpaolo S.p.A., accusing the banks of charging up to 25 million customers illegally high overdraft fees.

In a Jan. 2 statement, Codacons President Carlo Rienzi said each class member in the suits could be entitled to €250 (\$358).

Codacons said it also has filed a class action against Voden Medical Instruments S.p.A., which makes H1N1 flu home testing kits the consumer group calls ineffective.

A spokeswoman for Intesa Sanpaolo would not comment on Codacons' charges. UniCredit and Voden Medical Instruments could not be reached.

The new law also has prompted another consumer group, Associazione per i Diritti degli Utenti e Consumatori, or Aduc, to take legal action against Microsoft Corp. The group said late last week that it planned to file a class action seeking reimbursement of the cost of Windows for consumers who bought computers with the operating system installed.

See **ITALY** page 6

## LIABILITY &amp; LITIGATION

## Insurers sued over Chinese drywall

*Builder seeks damages against 14 companies in denial of coverage*

By **JEFF CASALE**

**NEW ORLEANS**—The trustee for homebuilder WCI Communities L.L.C. has sued 14 insurance companies, seeking indemnification for more than \$200 million in losses related to claims from homes allegedly containing contaminated Chinese drywall.

The suit, filed in U.S. District Court for the Eastern District of Louisiana, accuses the group of insurance companies (see box) of improperly denying coverage, reserving their rights, failing to reply to WCI or failing to acknowledge coverage of claims that WCI made concerning the defective drywall.

Bonita Springs, Fla.-based WCI formed the WCI Drywall Trust in July 2009 after homebuilder WCI Communities and its subsidiaries entered bankruptcy to assume lia-

### INSURER DEFENDANTS

WCI Drywall Trust sued 14 insurers seeking indemnification for damages related to defective drywall. They are:

- American International Specialty Lines Insurance Co.
- American Guarantee and Liability Insurance Co.
- Amerisure Insurance Co.
- Amerisure Mutual Insurance Co.
- Auto-Owners Insurance Co.
- FCCI Commercial Insurance Co.
- Hermitage Insurance Co.
- Illinois Union Insurance Co.
- Landmark American Insurance Co.
- Lexington Insurance Co.
- Mid-Continent Casualty Co.
- National Union Fire Insurance Co. of Pittsburgh, Pa.
- Old Republic Insurance Co.
- Steadfast Insurance Co.

Source: Court documents

bility for claims alleging property damage or bodily injury from

exposure to drywall made in China that was installed in homes built by WCI.

According to the lawsuit, WCI started receiving homeowner complaints in 2006 in areas of Florida including Fort Lauderdale, Fort Myers and Bradenton. Homeowner damage claims included corrosion of soft metal materials in air conditioners and appliances as well as health issues.

Nearly 700 homeowners may seek recovery through the WCI Trust.

In the New Orleans lawsuit, WCI Communities is seeking declaratory judgment to cover the claims and damages for breach of contract.

"A prompt and thorough insurance recovery is vital to enabling homeowners suffering from the effects of defective wallboard to remediate their homes and recover their losses," Robert M. Horkovitch of New York-based Anderson Kill & Olick P.C. and lead counsel to Robert C. Pate, the trustee for the WCI Chinese Drywall Trust, said in a statement.

## Risk Management Summit to feature Innovation Awards

Top risk management professionals at the largest U.S. and European companies will gather March 8-9 in New York City to attend the first *Business Insurance* Risk Management Summit.

The invitation-only conference will feature networking, timely general sessions as well as strategic discussions with peers and insurance industry leaders.

Topics and format for the summit were developed with the assistance of an advisory board comprising senior risk management professionals at some of the world's largest companies.

Also featured during the Risk Management Summit is a dinner for recipients of *BI*'s inaugural Inno-

vation Awards, a new program that recognizes leadership and innovation in products and services designed for professional risk managers. The deadline for the Innovation Awards has been extended to Jan. 21.

Sponsors of the inaugural Risk Management Summit include Zurich Financial Services Group, Aon Corp., Chartist Inc., Dempsey Partners L.L.C., Liberty Mutual Group Inc., Lloyd's, Marsh Inc. and Sedgwick Claims Management Services Inc.

For information on the summit, the Innovation Awards or sponsorship opportunities, please visit [www.BusinessInsurance.com/RMSummit](http://www.BusinessInsurance.com/RMSummit).





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## Italy: Consumer groups use new law to sue firms

CONTINUED FROM PAGE 4

Despite the size of the suits against the banks, some say the revised law is weak and unlikely to greatly expand liability among Italian businesses.

"This law has many problems," said Paolo Landi, secretary general of Associazione Difesa Consumatori e Ambiente, a 130,000-member Rome-based consumer group known as Adiconsum. "To start a class action is very risky."

### More plaintiffs

The law, which was approved as an amendment to Italy's budget, was meant to broaden the kinds of plaintiffs who could bring class actions in Italy. Under the previous system, only state-recognized consumer organizations were permitted to bring the suits.

Now, individual consumer groups can bring class actions in Italy.

However, Mr. Landi said, unlike the United States, Italy's law requires all plaintiffs in a class to have an "identical interest." That means each plaintiff's losses and the reasons for those losses must be identical, he said.

"It is very difficult to find a problem with identical interests," which he said could pose a problem for Codacons' suits against the banks unless all class members lost identical amounts in overdraft fees.

Bringing a class action also is



**'I don't think it will affect insurance prices. Liability insurance should not really be affected.'**

Paolo Rubini  
Associazione Nazionale dei  
Risk Manager e Responsabili  
Assicurazioni Aziendali

risky, because a judge can refuse to allow a case and then levy fines against the parties filing the action. If a suit is allowed, the judge has the power to force the class to pay for publicity about the suit and who

may participate, he said.

"This law created a lot of hope," said Mr. Landi. "But how it was organized is not useful."

Risk managers are not particularly worried about an expansion of liability under the revised law because it does not appear to allow "true class actions," said Paolo Rubini, chairman of the Associazione Nazionale dei Risk Manager e Responsabili Assicurazioni Aziendali, Italy's Milan-based risk management association. The potential remedies against defendants do not seem to be particularly threatening, he said.

### No punitives

Unlike laws in some other countries that allow punitive damages to be awarded in class-action lawsuits, the Italian law permits only compensatory awards.

Though he had not closely studied the legislation, Mr. Rubini, who also is director of risk management at Telecom Italia S.p.A. in Milan, said he doesn't expect it to have a significant effect on the insurance market.

"I don't think it will affect insurance prices," Mr. Rubini said. "Liability insurance should not really be affected."

Mr. Landi said Adiconsum had considered filing suit against an Italian telephone company that he said was applying inappropriate charges of €1 (\$1.43) to consumers' bills each month.

"We had the identical interest," Mr. Landi said, but the suit was scrapped when the group found language in the Italian law that exempts telephone companies from class action suits.

## Commentary

# Saving another's life can be a simple act

The holiday season just past is synonymous with gift giving, but what better gift could one person give to another than a chance to live?

The gift of life can come in a variety of ways, but some of the most dramatic are donations of blood, body organs or tissues. Bone marrow transplants have saved many lives, and often such transplants are the only treatment options for patients with deadly cancers.

Such is the case with Jennifer Jones Austin, an active mother of two young children. Ms. Austin unexpectedly developed acute myeloid leukemia, a particularly aggressive form of cancer, and now needs a bone marrow transplant to save her life.

Coincidentally, Ms. Austin's husband, Shawn Austin, is an executive in the accident & health division of New York-based Chartis Inc., a subsidiary of American International Group Inc. The division's Medical Excess L.L.C. unit writes coverage for employers with self-funded health care benefit plans for catastrophic cases—namely, organ and tissue transplants.

While the Austin family's situation is dire, there is hope if a bone marrow donor can be found in time.

How? The critical thing is to find a donor whose bone marrow is a match for the patient. Bone marrow registries are crucial to helping organizations find matching donors, but that is only possible if people volunteer to register.

Minority groups and people with rare blood types are, unfortunately, underrepresented in national bone marrow registries, so the more people who sign up as potential donors, the better the chances that the lives of patients such as Ms. Austin can be saved.

I have some experience with bone marrow transplants, as I have a nephew who required one as a child. No one in our family, including me, was a perfect match for him, but fortunately an anonymous donor was found. I'm happy to report that, after a difficult recovery, my nephew is now a healthy adolescent and an inspiration to all who know him.

Some people get squeamish at the thought of giving blood or imagine that harvesting bone marrow is an excruciating procedure. In fact, those actions in most cases cause little, if any, pain. At a minimum, the reality is these procedures are far less



**REGIS  
COCCIA**

Editor Regis Coccia's commentary appears periodically. He can be reached at: [rcoccia@businessinsurance.com](mailto:rcoccia@businessinsurance.com)

painful than the everyday challenges suffered by patients in need of a blood or bone marrow donation.

Another valuable source of stem cells is umbilical cord blood. This blood can be banked and used for autologous transfusions or donated to others, but it must be harvested at the time of a baby's delivery. Arrangements for cord blood donation must be

**The simple act of signing up to be a potential donor could mean the difference between life and death for patients in need of a bone marrow donation.**

made in advance. There is no pain whatsoever involved in umbilical cord blood harvesting, for either the mother or her baby.

I have been a regular blood donor for years, and really the issue for me is not the needle stick—which is usually no worse than a simple blood draw your doctor might order—but finding the hour or so needed to donate every few months. Joining a bone marrow registry can be as simple as a cheek swab.

The simple act of signing up to be a potential donor carries no obligation. If you are found to be a match, it could mean the difference between life and death for people such as Ms. Austin and those she loves.

To learn more and to help Ms. Austin, please visit [www.savejenaustin.com](http://www.savejenaustin.com). For more information on bone marrow donation and cord blood donation, visit [www.marow.org](http://www.marow.org) or [parents-guidecordblood.org](http://parents-guidecordblood.org).

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# Securities: Soft market set to continue as class action litigation falls

CONTINUED FROM PAGE 4

that would trigger the turn," Mr. Lacroix said.

"This is great news for consumers of D&O insurance," said Steve Shappell, managing director in Denver for Aon Financial Services Group. "There is not enough (evidence) here for the market to harden. If anything, it's for the market to continue to be soft."

Not only did the number of filings tracked by the report fall, but several filings that Stanford and Cornerstone researchers counted are not actually against directors and officers, Mr. Shappell said.

The report, for example, includes several auction rate securities lawsuits.

Although such suits are securities class actions, they are against the sellers of auction rate securities and not directors and officers, Mr. Shappell said.

The losses alleged, measured in disclosure dollar losses, also fell dramatically in 2009, dropping 62% from the prior year to \$83 billion, Mr. Shappell said.

Disclosure dollar loss is the dollar value change in the defendant firm's market capitalization between the trading day immediately before the end of the class period and the trading day immediately after the end of the class period.

The overall decline in D&O legal action will help insurers price aggressively in a bid for greater market share, Mr. Shappell said. "The numbers support that behavior," he said.

For now, there are no foreseeable trends that would cause a reversal in the falloff of filed securities cases, said Joseph Grundfest, director of the Stanford Law School Securities Class Action Clearinghouse.

But spikes in securities litigation typically are unpredictable.

**'There tend to be shocks that are unpredictable. If I knew what the next shock was going to be, I would be a much richer man than I am now. That is why there is insurance.'**

Joseph Grundfest,  
Stanford Law School Securities Class Action Clearinghouse

"There tend to be shocks that are unpredictable" Mr. Grundfest said. "If I knew what the next shock was going to be, I would be a much richer man than I am now. That is why

there is insurance."

Credit crisis-related litigation fell 47% in 2009, according to the report, Securities Class Action Filings 2009: A Year in Review.

There were 53 credit-related cases in 2009 and only 17 during the second half of the year. In contrast, plaintiffs filed 100 credit crisis-related filings in 2008.

While credit crisis-related filings fell off during the second half of 2009, there was a simultaneous increase in the number of lawsuits filed long after the alleged wrongdoing.

The median filing lag during the second half of 2009 reached 100 days, which is more than three times the historical average, the report states.

That suggests that plaintiff law firms are attempting to fill the liti-

gation pipeline with older, lower-quality lawsuits that weren't attractive enough to file when they were busy suing financial firms, researchers said.

Historically, the more time between an event and the class action filing, the higher the rate of dismissal.

The report specifically mentioned the law firm of Coughlin Stoia Geller Rudman & Robbins L.L.P. for its prominence in filing delayed class actions.

The report is available online at: [http://securities.stanford.edu/clearinghouse\\_research/2009\\_YIR/Cornerstone\\_Research\\_Filings\\_2009\\_YIR.pdf](http://securities.stanford.edu/clearinghouse_research/2009_YIR/Cornerstone_Research_Filings_2009_YIR.pdf).



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# Business Insurance OPINIONS

## Dodd will be missed by insurance industry

ONE THING'S CERTAIN about the decision of Senate Banking, Housing and Urban Affairs Committee Chairman Christopher Dodd, D-Conn., not to seek re-election: He definitely will be missed.

If for no other reason, that's because Sen. Dodd took a leading role in one of the most important risk management and insurance issues of the decade—establishing a federal terrorism insurance backstop. Three times he pushed legislation that provided certainty in a terrorism-shaken economy.

While he is no shill for the insurance industry, he understands its issues. The comprehensive financial services reform act he has drafted contains two provisions of considerable interest to risk managers, brokers and insurers.

The first, which had been approved several times by the House on a stand-alone basis, would streamline the regulation of surplus lines insurers and make it easier for qualified risk managers to access that critical market.

The second would establish a federal insurance office within the U.S. Treasury Department. This would provide expertise as federal authorities tackle insurance issues, particularly on the international level.

Sen. Dodd also played a key role in the Senate health care reform bill, taking temporary leadership of the Senate Health, Education, Labor and Pensions Committee in the stead of his terminally ill friend, Sen. Edward Kennedy, D-Mass.

But when given the choice of whether to chair the HELP or banking committee, he chose to remain at the helm of the latter.

Sen. Dodd still has nearly a year left in office. If he can achieve enactment of the surplus lines and federal insurance office provisions, he will leave office with an even more solid legacy on risk management issues than he already built with terrorism insurance.

*While he is no shill for the insurance industry, he understands its issues.*

## Lawmakers need to find cure for health reform

SHOULD EMPLOYERS be hopeful or fearful as the prospect of Congress passing sweeping health care reform legislation draws near?

The answer to that question depends on several factors, including the final shape of the legislation, which is uncertain.

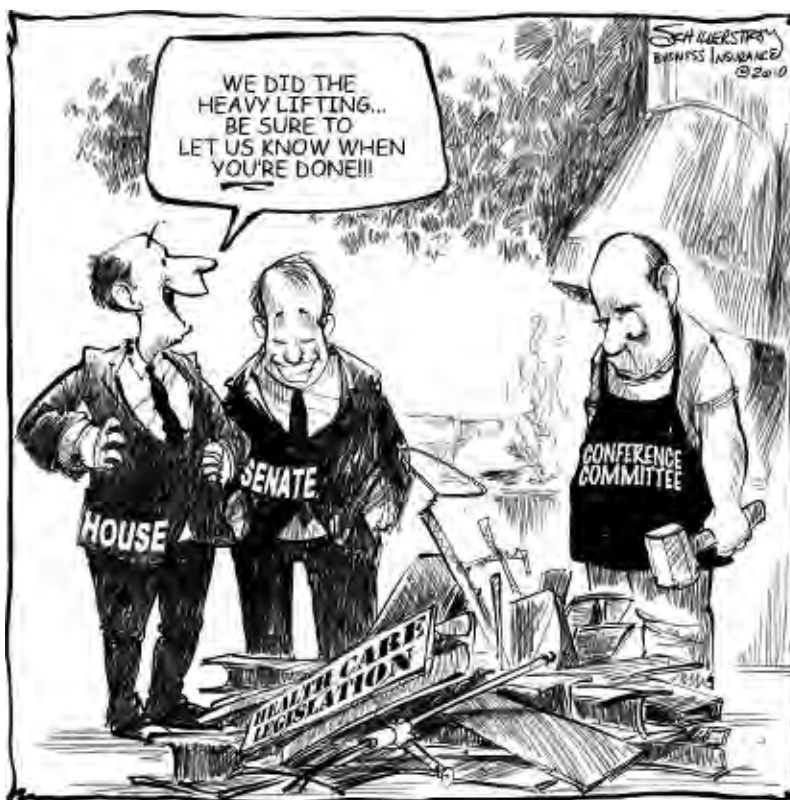
In the weeks ahead, congressional negotiators will have to resolve numerous significant differences between the bills passed by the House and the Senate.

While big-picture provisions—such as the excise tax on the costliest plans—have gotten the bulk of the attention, there are perhaps dozens more in the more than 2,000-page bills that have not.

Some of those little-noted provisions could cause major problems. One, which is the brainchild of Sen. Ron Wyden, D-Ore., would allow, in certain situations, lower-income employees to opt out of their employer's plan, get a voucher representing what their employer would have paid for their coverage, and use it to buy a policy through new state health insurance exchanges. If the policy costs less than the voucher, the employee could pocket the difference.

It isn't hard to envision a scenario in which young, healthy employees take the vouchers, leaving older, less-healthy employees in the employer plan. That would inflate costs for employers and employees.

We would hope that congressional negotiators carefully study the bills in the weeks ahead to weed out provisions like the voucher that have nothing to do with health reform and do more harm than good.



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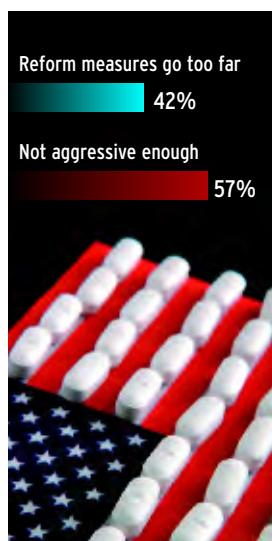
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Q What's your view of the health care reform legislation now awaiting reconciliation?



#### NEXT WEEK'S QUESTION

Q: Will Chris Dodd achieve financial services reform before he leaves the Senate?

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# RATES CYCLE



# DOWN

## Property buyers steer downhill track

By **MARK A. HOFMANN**

Call it the pancake market.

Risk managers and insurers say the best way to describe the U.S. commercial property market during 2010 renewals is "flat." Price increases that insurers were able to impose a year ago on some accounts simply didn't stick. A sluggish economy and an unusually benign catastrophe year in 2009 helped flatten and, in some cases, decrease rates for some accounts.

Observers say commercial property rates most likely will head downward in the months ahead.

"This year is in marked contrast from last year," said Alexandra Glickman, area vice chairman for Arthur J. Gallagher Risk Management Services Inc. in Glendale, Calif. "A year ago, the worldwide economy was falling off a sharp cliff and insurers were suffering the same fate as everyone with a 401(k). The surpluses were eroding and we were coming off a particularly insidious 2008. Looking at 2010, we have the benefit of no natural disasters, a relatively improving economy, and a sense of optimism which I think is leading insurers to recognize that their knee-jerk reaction during the first six months of 2009 was just that—a knee-jerk reaction."

"For the last quarter of 2009 and for the foreseeable future, we anticipate rates to decline in all sectors for all perils," Ms. Glickman said. "And we have increased capacity coming in, which should lead to

more realistic pricing."

"The way it's played out, the losses have been lower than normal in 2009," said Randy Schreitmueller, vp and manager-global services and market relationships at Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global. "Most insurers have had a good year; most buyers didn't experience price increases that they might have expected early last year."

"We're in a market that still hasn't found itself. It never got as hard as it needed to in 2009," said Joe Tocco, executive vp of Zurich Global Corporate in North America in New York.

"Terms and conditions are competitive" in the commercial property market, Mr. Schreitmueller said. "They're competitive right now and they'll probably remain that way until something changes the equation."

"I'm expecting things to stabilize somewhat in 2010," said Zurich's Mr. Tocco. "I still think the fundamentals in the industry are not what they need to be."

For risk managers, the renewal season was generally benign.

Pennsylvania State University renewed its long-term property program with Factory Mutual in November, said Gary Langsdale, risk officer for the university system in State College, Pa. He said the

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Property/Casualty  
Market Report &  
Legislative Roundup

# SPOTLIGHT

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# Bargains abound during liability renewals

By SALLY ROBERTS

Buyers of general liability and excess casualty insurance continued to find bargains this renewal season as competition and excess capacity continued to influence underwriting decisions.

While liability insurers say they are attempting to stay firm on rates, accounts with good loss histories continued to see substantial rate decreases, especially if the incumbent was competing to keep the business, brokers and insurers say.

In cases where underwriters succeeded in increasing rates, lower exposure values more often than not offset premium increases, they say.

Competition, especially in the excess casualty market, remains the name of the game and, absent some unforeseen catastrophe, rates are not expected to increase substantially in 2010, brokers and insurers say.

Overall, it continues to be a buyer's market.

"The numbers came back pretty good," said Wayne L. Salen, director of risk management for Labor Finders International Inc. in Palm Beach Gardens, Fla., who renewed about 60% of the temporary staffing company's general liability and umbrella programs effective Jan. 1. Premiums "dropped double digits" he said, noting that he also negotiated better terms and conditions.

Mr. Salen said his Jan. 1 liability renewals are his "toughest" because they include the company's corporate site in hurricane-prone South Florida. But given the result, he said he's "optimistic" about remaining liability renewals in 2010. "It sounds like we're going to have some more comfortable discussions."

While insurers are trying to hold and increase rates, competitive forces remain at play, especially in the excess casualty market, insurers and brokers say.

"Incumbent markets are trying to hold the line on rate, but we have found in many cases that a marketing effort still results in rate reductions," said Tom Martin, managing director in Marsh Inc.'s excess casualty placement group in New York.

Compounding the issue is hun-



dreds of millions of dollars in excess liability capacity that has come into the market since September 2008.

"As this capacity filters its way through the market, it's had a softening impact on pricing for many clients," Mr. Martin said.

In the "few instances" where rates have increased, premiums still were lower due to the decrease in exposure, he said.

"We've heard a lot of the noise in the marketplace that carriers are

getting concerned with rate inadequacy and they hope to see some firming in 2010, but that remains to be seen because we're not seeing it now," Mr. Martin said.

Compared with six months ago, the larger-account umbrella and excess market "has further deteriorated," said Daniel Vetter, head of North American casualty for Swiss Re's Industrial Risk Insurer in New York. "We're trying to hold rate where we can, but that's been very challenging, to say the least, as competitors became more aggressive in their pricing approach the

later the year progressed."

Rather than "chasing top-line dollars," IRI has focused on the bottom line and "we are parting ways with accounts deemed to be uneconomical for us," Mr. Vetter said.

"Absent a cataclysmic event, 2010 from a liability perspective will likely not bring a substantial hardening of rates," he said. "What we are seeing right now is a widespread underpriced casualty market, and what we're concerned about is that insufficient pricing will lead to insufficient reserves available for claims that the market

will have to pay in the future."

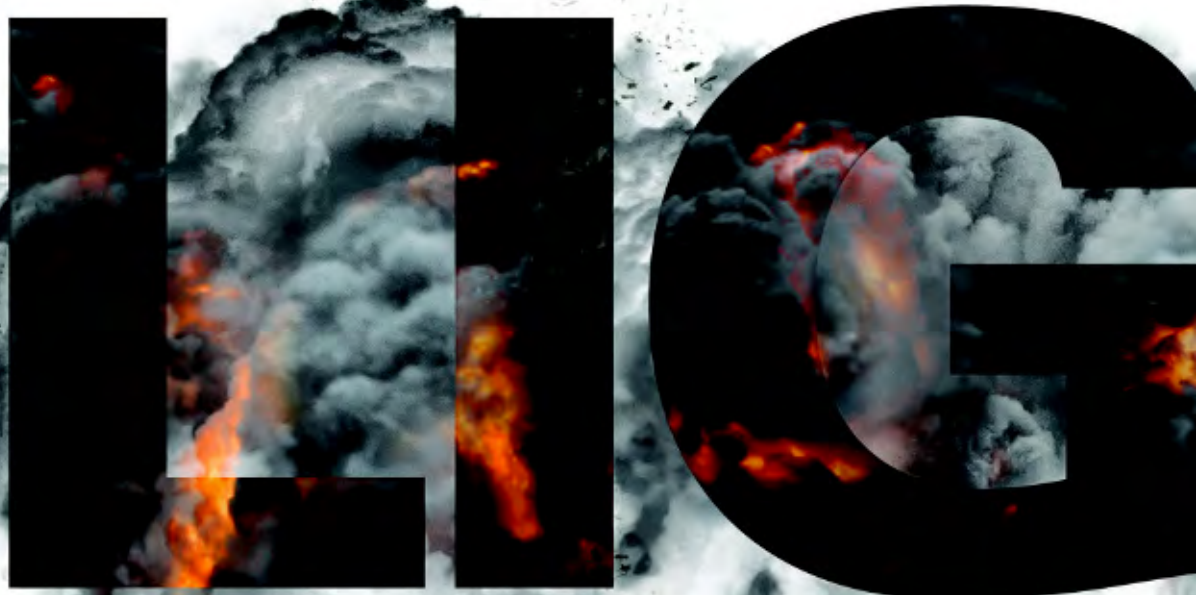
However, underwriters were more upbeat concerning primary general liability coverage.

"From what we've seen out there, it appears that rate decreases are less than what they were before, but it's inconsistent month to month," said David Blessing, chief underwriting officer for middle-market accounts at Liberty Mutual Group Inc. in Boston.

Although the market has not turned, "to the extent that we see the amount of rate decreases declining and an occasional month where you're flipping the dial past zero...it's a slow-emerging trend," Mr. Blessing said.

Continued on next page

## UNDERSTANDING HOW FM GLOBAL IS DIFFERENT IS AKIN



### UMBRELLA AND EXCESS LIABILITY

Typical rate change at renewal  
(average/good risk profile)

#### EXCESS CASUALTY

##### LARGE ORGANIZATIONS

Lead umbrella rate change

- Q4 2009 flat to -5%
- Q4 2008 -5% to -10%

Excess layers rate change

- Q4 2009 flat to -5%
- Q4 2008 -5% to -10%

##### MIDSIZE ORGANIZATIONS

Lead umbrella rate change

- Q4 2009 flat to -5%
- Q4 2008 flat to -10%

Excess layers rate change

- Q4 2009 flat to -5%
- Q4 2008 flat to -10%

Source: Marsh Inc.

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CONTINUED FROM PREVIOUS PAGE

"We're seeing positive rate coming out of Jan. 1 renewals and...we're meeting our (client) retention goals," said Paul Horgan, chief underwriting officer, global corporate in North America for Zurich Financial Services Group in New York. However, "we still have had some customers go out to market who haven't been out for a while who have great risk profiles and they've gotten rate decreases" from Zurich.

"We definitely have a price that we're going for and, if we can't get one that we think is sustainable, we're holding firm and our customers are having to make a choice whether to stay with us or not," Mr. Horgan said.

Brokers describe the primary liability market as soft and competitive.

"I think it's a continuation of soft to stable conditions," said Anthony DeFelice, managing director of Aon Corp.'s national casualty division in New York. There is "so much capacity that's available out there that underwriters have become very competitive in terms of chasing after the business."

While there may be rate increases, Mr. DeFelice described them as "illusory."

Companies are not seeing their premiums decline commensurate with their exposure base decline, so "it looks like rates are actually increasing, but the fact of the matter is we're still in a very soft market," Mr. DeFelice said.

## Property: Buyers steer downhill track

CONTINUED FROM PAGE 9

two parties had an agreement that "as long as our loss ratio remained acceptable, there would be no changes to the rate. They stuck to their part and we did to ours."

"Renewals are pretty flat," said Wayne Salen, director of risk management for Labor Finders International Inc. in Palm Beach Gardens, Fla. He said one change has been a greater emphasis on customer service by his property insurer, Chartis Inc.

"I like what they're doing," said Mr. Salen. "For the first time in my 32 years in risk management, I've gotten more unsolicited calls from

Chartis" to make sure he was satisfied with the service by the unit of American International Group Inc.

For Carolyn Snow, director-insurance risk management for Humana Inc. in Louisville, Ky., the renewal process was complicated, but not because of market conditions.

"We had a major property claim involving extra-expense costs that was very complicated and is only now winding down," Ms. Snow said. "It has been a challenge to work through the renewal after a difficult loss. The lesson learned, or reinforced, has been the value of enduring relationships. Chubb has been our property carrier for several

years and we feel that the longtime partnership helped with the loss and with the renewal. My sense is that the overall market continues to be stable."

The lack of major catastrophes last year played a key role in the year-end market, observers say.

"Most people had a very good year, losswise," said John Murphy, Boston-based executive vp in charge of worldwide property at Ironshore Inc.

"Being that the Atlantic storm season didn't develop to the extent I think underwriters were hoping it would...I think you have a lot of carriers out there with unused capacity," said Duncan Ellis, managing director and leader of Marsh Inc.'s global property practice in New York.

"With the benign cat season, it's going to be a very profitable year for certain insurers," said Al Tobin, national property practice leader for Aon Risk Services in New York. "We think that's going to translate into competitive pricing."

Competitive pricing is happening, said Kevin Westrope, president and CEO of Westrope, a commercial wholesale brokerage based in Kansas City, Mo.

"We've seen an erosion of underwriting on the standard side," said Mr. Westrope. Standard lines underwriters "are obviously looking for additional premium, looking in areas that had traditionally been specialty and surplus lines," he said. "They're writing it at prices and terms and conditions that don't make a lot of sense and won't make them money in the long term."

Rates for the general commercial property market for catastrophic risks peaked in April 2009 and have been scaling back since then, said Aon's Mr. Tobin.

"We've seen rate reductions in December," with some catastrophe-exposed accounts experiencing double-digit reductions, he said. That has been driven by reinsurance, a more robust catastrophe bond market, and changes in exposure models, he said.

But extreme reductions are the exception rather than rule, said Gallagher's Ms. Glickman, reiterating that renewals tended to come in flat and decreases tended to run in the "maybe 5% to 6%" range.

Even with improved conditions, risk managers can improve the attractiveness of their accounts to underwriters.

Marsh's Mr. Ellis said it is very important for clients to provide underwriters with "primary attributes" of a property—the year the structure was built, its construction, the number of stories, occupancy and, "even better, if one can get the secondary attributes." Secondary attributes include whether the building has earthquake bracing, roof tie-downs and the shape of the roof, he said.

FM Global's Mr. Schreitmueller said buyers can insulate themselves from uncertainty by improving their risk profile, supply chain management and financial savvy by looking closely at program architecture and the quality of capacity being accessed, he said.

## TO SEEING THE



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Insurance Evolved



# Glut of capacity expected to keep D&O market soft

By ZACK PHILLIPS

The market for directors and officers liability insurance remains mostly soft and is unlikely to harden for some time, due to a glut of capacity, market observers say.

Financial institutions continue to face price increases, but even those appear to be leveling off, underwriters and brokers say. 2010 could be a pivotal year because many insurers will be forced to pay and reserve for losses from the 2007 and 2008 policy years, experts say.

The soft market conditions come at an inauspicious time for D&O liability underwriters, who face a bevy of unfavorable circumstances. Bankruptcies have increased dramatically, plaintiffs attorneys appear to have a backlog of litigation to file, and federal and state regulators have increased prosecutions and enforcement actions, observers say.

The only good news for underwriters is that securities litigation appears to be slowing from its earlier manic pace. Plaintiffs filed 24% fewer federal securities class action lawsuits in 2009 than in 2008, according to a Jan. 5 report from Menlo, Calif.-based Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse.

Rates remain relatively soft. On average, companies renewing D&O liability policies in the third quarter of 2009 saw prices decrease 2.63% compared with the third quarter of 2008, according to a pricing index from Chicago-based brokerage Aon



Corp. Third-quarter prices decreased nearly 5% excluding financial institutions, which have faced extended hard market conditions due to heavy litigation tied to the credit crisis.

But even financial institutions may encounter some market softening; finance firms in the third quarter saw average price increases of 3.16% over the previous year, the first time that figure has been in single digits in more than a year, according to Aon's report. A January report from broker Marsh Inc. also indicated hard pricing for financial institutions may be moderating.

The soft pricing has been driven mostly by new insurers entering the D&O liability market during the past two years, many sparked by revelations last fall of financial troubles at American International Group Inc., XL Capital Ltd. and Hartford Financial Services Group Inc., observers say. The three companies have fared better than some had anticipated, and the period of market dislocation during which other insurers lured away their policyholders mostly has ended, those observers say, leaving more insurers than ever offering D&O liability cover.

John Rafferty, executive vp of executive assurance at Arch Insurance Group in New York, estimated that \$150 million in new or reinvigorated capacity has entered the market in the past two years.

Another underwriter estimated there are 35 to 40 insurers writing D&O liability cover.

At the same time, rising bankruptcies have shrunk the pool of policyholders, while cost consciousness and reduced merger activity have lessened demand for D&O liability insurance.

"More of that abundant capacity is focused on less," said Michael Karmilowicz, who heads Zurich North America's management solutions group in New York. Policyholders "are looking for any way possible to get cost savings. The way they're doing that is they're putting their programs up to bid."

Peter Trunfio, a New York-based senior vp at Aon, said insurers may be competing more on price now than last year, when fears over insurer solvency sparked competition on the basis of creditworthiness. All this has contributed to softening, even in the financial sector. Mr. Trunfio said insurers are distinguishing between financial institutions with favorable and unfavorable loss histories more than they did in the third quarter of 2008.

Legal observers say plaintiffs are focusing less on financial institutions and more on commercial firms than in the past. About 41% of the securities class action filings in the second half of 2009 targeted financial institutions compared with 73% in the first half of the year, according to Kevin LaCroix, a Beachwood, Ohio-based partner with executive liability intermediary OakBridge

Insurance Services L.L.C., who blogs about D&O issues.

Still, Mr. LaCroix said that in recent months underwriters have become much more restrictive for commercial banks with unfavorable circumstances. Many insurers are pushing for regulatory exclusions, which bar claims brought by regulatory agencies, and for prior acts exclusions that prohibit coverage for events that occurred prior to the inception date of the policy, he said. For other policyholders, there remains ample capacity, he said.

Experts say much of the surplus D&O liability capacity is for excess layers—policies that are easier and

safer for new market entrants to write than primary layers—in particular, excess Side A-only policies. Side A-only policies cover individual directors and officers for claims the company cannot or will not indemnify. Typically, such policies have been priced inexpensively and have become more generous to policyholders in recent years, observers say.

But bankruptcies and derivative litigation—the two primary generators of Side A claims—have been increasing dramatically. There were 207 public company bankruptcy filings in 2009, compared with 138 in 2008 and 78 in 2007, according to Web site Bankruptcydata.com.

## Capacity, competition help lower E&O pricing

By ZACK PHILLIPS

Ample capacity and competition have kept pricing soft in the U.S. errors and omissions liability market, although some observers see signs that rates are leveling off.

"We're definitely finding that there is more capacity chasing a typical deal than there is demand from that buyer," said Sandy Codding, the Boston-based managing director and co-leader of the professional liability practice at broker Marsh Inc.

The E&O liability market typically lags the similar directors and officers liability market in claims experience, experts say. Lyle S. Hitt, New York-based executive vp of Arch Insurance Group's professional liability practice, said the E&O liability market still is in the early stages of working through credit crisis-related litigation.

As in the D&O liability market, a flood of new capacity has entered the E&O liability market, due to a period of favorable claims experience and the financial troubles of several large insurers in 2008, which sparked competition for their business. Those recent entrants have created surplus capacity, which has depressed rates as insurers compete for business.

Bruce Eisler, a New York-based senior vp at Liberty International Underwriters, said there are more than two dozen insurers offering E&O liability coverage in each sector other than financial institutions and medical malpractice. In 2001, there were less than a dozen, he said.

A Marsh report said total U.S. E&O capacity likely will remain at more than \$450 million in 2010 and most buyers should be able to find the capacity they want. On average, E&O liability rates were flat to down 5% through the first three quarters of 2009 compared with decreases of 5% to 15% for the same period in 2008, according to the report.

While insurers compete to win business, price-conscious buyers have driven rates further downward.

Mr. Eisler said some policyholders are willing to forgo various ser-

vices, such as specialized claims operations and risk management services, in exchange for lower prices. "Price (is) more of a determining factor than it has been in quite some time," he said.

Lower pricing could cause problems for insurers, beyond just reducing premium income. Underwriters typically rate professional services firms based on their revenue, which in many cases has fallen significant-

ly because of the financial crisis. But some underwriters say E&O exposure is based mostly on acts committed during previous years when firms enjoyed much higher revenues, so the coverage should be priced accordingly.

"As underwriters, we need to price for prior acts exposure," Mr. Eisler said. "Some of the new carriers are coming in and saying we'll just rate it on your current or projected (revenues) and that's a short-term strategy. That's something that is not sustainable."

But there are signs the market is moderating, some observers say.

"Our sense is that the rate reductions and some of the more aggressive (competition) are slowing down a bit," said Paul Romano, Avon, Conn.-based president of OneBeacon Professional Insurance. "The environment is doing exactly what it does near the end of a soft market....It's open to question whether that will last another 12 or 18 months."

Mr. Codding said he doubted the market would change significantly in 2010, given surplus supply, although he said rate decreases slowed in 2009.

Some sectors have experienced rate increases, such as large law, accounting and real estate firms. Underwriters report they have been walking away from accounts on which they cannot achieve the rating level they feel they need.

One area on which underwriters are increasingly focused is information security, Marsh said in its report.



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# Fast-growing capacity helps lower P/C reinsurance rates

By COLLEEN MCCARTHY

Reinsurance rates for January renewals declined across most property/casualty lines as capacity grew faster than demand, resulting in what many observers called a “disciplined softening” of the U.S. market.

“This is a very functional market. Clients have been able to enter the market, find the capacity that they need, at terms and conditions that are even more attractive than they were last year,” said Bryon G. Ehrhart, CEO of Aon Benfield Analytics at Aon Benfield in Chicago, who estimated rates for U.S. peak-peril zone capacity fell 5% to 15%.

“Reinsurers are giving back a very good portion of the rate increases they were able to achieve last year,” Mr. Ehrhart said.

However, reinsurers “are desperately trying to hold the line. I see very few quotes showing a reduced absolute cost, but ultimately people will accept final terms which are lower than their quoted terms,” said Steven K. Bolland, president of New York-based intermediary Gill & Roeser Inc., who estimated rates declined 5% to 7% overall.

Light catastrophe losses in 2009 and improved conditions in the capital markets have enabled reinsurers to swiftly recapitalize, observers say.

Aon Benfield said global catastrophe reinsurance capacity is near its all-time peak—\$411 billion in December 2007—and is “meaningfully higher” than a year ago.

At the same time, “we are still seeing lingering recessionary effects on demand,” said Chris Klein, London-based global head of the business intelligence group for Guy Carpenter & Co. L.L.C.

He said a “slow renewal” process in which “many contracts closed very late in the season as buyers sought to gain maximum advantage” reflected the competitive conditions.

Global property catastrophe reinsurance rates declined an average of 6% for policies that renewed Jan. 1, reversing increases reported last year. Higher property cat reinsurance rates in 2009 “proved to be a temporary interruption to the downward trend that started in 2007,” Mr. Klein said.

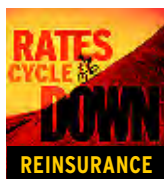
U.S. property reinsurance rates fell 6% on average for the most recent renewals, however rates declined as much as 11% when factoring in recent modeling adjustments, Mr. Klein said.

North Atlantic storm activity in 2009 was lighter than forecast and the United States escaped hurricane damage, with only two tropical storms, Ida and Claudette, making landfall.

However, property rates in the tornado- and hail-prone Midwest proved an exception during 2010 renewals.

Pina Albo, president of Princeton, N.J.-based Munich Re America’s reinsurance division, said Midwest treaties that experienced weather-related losses saw rates rise by double digits.

In continental Europe, property



rates were flat to 5% lower. In the United Kingdom, prices dropped 5% to 10%, according to Guy Carpenter.

Exceptions included programs with first layers penetrated by Windstorm Klaus in France, which saw rates increase an average 10%. In Austria, hailstorms produced a fourth consecutive year of frequency losses that resulted in restricted capacity and rate hikes up 30% on some accounts, according to Guy Carpenter.

Most observers described limits

and deductibles as “fairly stable” and said primary insurer retention levels are largely unchanged, although there were some exceptions.

“On the property side where insured exposures are down due to recessionary factors, we are seeing some cedents restructure their programs a little and seek less capacity in the higher layers because they have lower exposures,” said Jim Hinchley, chief operating officer for Liberty Mutual Reinsurance, a unit of Liberty Mutual Insurance Co. in Boston.

Meanwhile, Aon Benfield’s Mr.

Ehrhart noted that budget concerns have led some primary insurers to raise retentions slightly and place less coverage in lower layers “because they are watching their reinsurance spend very closely.”

Rates for U.S. casualty lines were flat to down 10%, although there were some pockets of resistance such as financial institutions professional indemnity, particularly in London, that had single-digit increases, according to Guy Carpenter.

Rate changes for aviation risks were essentially flat, and increases depended largely on the size of losses, exposure changes and overall

program size, observers said.

Marine rates were down an average of 5% with additional price cuts for non-Gulf of Mexico business, Mr. Klein said.

Some risks continue to be difficult to place, particularly on the casualty side, Ms. Albo said.

For example, “portfolios with certain product exposures that are more subject to systemic risk problems were a little harder to get done,” Ms. Albo said.

Several observers said inflation also could become an issue over the longer term, particularly for multi-year coverage.

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# Collateral for workers comp cover as important as rates

By **ROBERTO CENICEROS**

Brokers say abundant insurer competition for a shrinking premium volume has pressured prices for workers compensation renewals, but insurers say prices are stabilizing.

Risk managers, brokers and insurers agree on one point: Negotiations over collateral arrangements for large-deductible programs are as important as prices during workers comp renewal discussions.

The ultimate price for 2010 renewal coverage, though, will be determined by whether layoffs have forced policyholders' payrolls to shrink, price decreases they may have obtained during past renewals, policyholders' loss history and competition among insurers.

Insurer competition is particularly robust for smaller guaranteed-cost programs with annual premiums of about \$250,000 or less, said David Sandler, president of general casualty and chief operating officer in New York for Chartist Inc.'s commercial casualty unit.

"A number of carriers are interested in that business," Mr. Sandler said.

But pricing is stable for larger "risk management" accounts that share in the risk through large deductibles or other arrangements, Mr. Sandler added. In general, they have seen prices range from 5% decreases to 5% increases, he said.

Other observers say underwriters may try to hold pricing steady, but mainly shrinking payrolls have insurers vying to shore up their gross written premiums.



"It's a dogfight out there," said Pam Ferrandino, executive vp and casualty practice leader for Willis HRH in New York.

At the start of negotiations, incumbent insurers generally are seeking a single-digit increase for larger accounts, said Len Churnetski, chief operating officer in New York for the national casualty practice of Aon Corp. But the final price may be flat if the client does not seek competitive bids or their payroll exposure shrinks.

Buyers that seek competitive bids or those with rising payrolls may see rate reductions from insurers that are happy to have accounts with a growing exposure base, Mr. Churnetski said.

Growth in payroll and profit margin, as well as losses kept within a large deductible, helped San Diego-based Cubic Corp. obtain favorable pricing and collateral arrangements for an Oct. 1 renewal for about 7,500 lives, said Dominic Zullo, the defense and transportation contractor's director of risk management.

He sought bids and found plenty of competition, but Mr. Zullo said he ultimately renewed with incumbent Chicago-based insurer CNA Financial Corp., which provided a rate decrease of about 5% for domestic workers comp and Defense Base Act coverage.

CNA won the renewal, in part, because its Defense Base Act quote was very competitive and even allowed Cubic to arrange a large

## CASUALTY

Typical rate change at renewal with an average to good risk profile

### WORKERS COMPENSATION

#### LARGE ORGANIZATIONS

Guaranteed-cost program	
■ Q4 2009	flat to -5%
■ Q4 2008	flat to -10%
Loss-sensitive program	
■ Q4 2009	flat to -5%
■ Q4 2008	flat to -10%

#### MIDSIZE ORGANIZATIONS

Guaranteed-cost program	
■ Q4 2009	flat to -5%
■ Q4 2008	-5% to -10%
Loss-sensitive program	
■ Q4 2009	flat to -5%
■ Q4 2008	flat to -10%

Source: Marsh Inc.

deductible for that business—something many insurers resist because the coverage requires them to pay workers comp claims for the covered Department of Defense contractors and then seek reimbursement from the government.

Mr. Zullo said CNA also was aggressive in estimating Cubic Corp.'s loss development, which reduced its collateral requirements. He said his practice of aggressively closing claims early helped in the collateral negotiations.

Because of ongoing credit market constriction and the cost of capital, many risk managers are very focused on negotiating collateral

levels that insurers require to guarantee the payment of claims within large deductibles, sources said.

Collateral always has been significant in renewal discussions, but customers are looking to free up capital, said Kathy Langner, senior vp and global workers comp practice leader in Whitehouse Station, N.J., for Chubb Group of Insurance Cos.

"Do we get pushed on (collateral discussions)? Of course we do in this economic environment," Ms. Langner said.

As for renewal pricing, Ms. Langner said she saw rates stabilize during the fourth quarter of 2009.

"Even good risks, depending on what market segment they are in and what their 'economic environment' is, can drive pricing down maybe a little bit," Ms. Langner said. "But if they have been enjoying decreases for the last two years, I think those decreases are bottoming out."

Observers who see rates bottoming out say it is happening, in part, because insurers still must pay their fixed costs despite shrinking payrolls. So in cases where a buyer's payroll has decreased, insurers may not be reducing the price by an equal amount.

"We are renewing the risks the majority of the time at (the) expiring (rate). It's just the exposure base (that) is changing," said Jennifer Tomilin, senior vp for commercial markets at Zurich North America Commercial in Schaumburg, Ill., a unit of Zurich Financial Services Group.

Ms. Tomilin said she has not seen the market turn aggressive.

"For the renewals that we retain, we are holding our rates stable," she said. "On new business, we are able to get the rate we need for the exposure on that risk."

But Eric Silverstein, casualty practice leader in Atlanta for broker Beecher Carlson Holdings Inc., said he has seen prices soften as insurers rely on recent investment earnings to gain a competitive advantage.

However, price decreases experienced during past renewals are affecting renewal negotiations, Mr. Silverstein said.

In general, he has seen a 5% discount for large accounts, but also said pricing is "very spotty," varying from account to account.

With competition a factor, some buyers have found that moving their workers comp business from longtime insurers has resulted in a better price, said Willis HRH's Ms. Ferrandino.

But policyholders considering that strategy also have to weigh collateral considerations, she and others agreed.

Incumbent insurers may have an advantage in retaining customers because they may hold "excess collateral" from past years that they can apply to a current year, several sources said.

In contrast, insurers that are new to an account generally require greater amounts of collateral.

"You have to look at that," Mr. Zullo said. That, as well as CNA's willingness to allow him to unbundle claims administration services, also was a factor shaping his decision to stay with CNA.

# Underwriters compete for marine buyers' shrinking business

By **MICHAEL BRADFORD**

Marine underwriters are battling for business that is showing little, if any, growth at a time when capacity is plentiful and many policyholders are struggling in a weak economy.

That could spark some unhealthy competition, experts say.

This year "has the potential to be one of the toughest years I've seen for marine insurance unless we maintain discipline," said Nigel Fitzgerald, senior vp and global product line leader at Liberty International Underwriters in Houston. "I'm fearful that some of our competition wants growth at all costs; that has led to some undisciplined underwriting."

The marine market is "very, very competitive" for all risks except those exposed to natural catastrophes, Mr. Fitzgerald said.

Other market experts say underwriters are not getting too carried away, at least so far.

Cedric Charpentier, chief underwriting officer of cargo at AXA Corporate Solutions in Paris, said cargo insurers' premium income is directly linked to the value of world trade, which has declined. "A 27% decline in world trade values is expected for 2009," which would mean a decrease in cargo premiums last year,



he said.

"That was a bit worrying," Mr. Charpentier said of the possibility that some cargo insurers might under-

write recklessly to generate income. "But this is not what I see; the market is behaving well and we are seeing sensible underwriting."

As for rates during 2010 renewals, pricing for most types of coverage are little changed from 2009.

Hull insurance buyers likely will see prices much the same as last year, said Fritz Stabinger, general secretary of the Zurich-based International Union of Marine Insurance. "We will probably see a more or less flat renewal," although insurers will look closely at individual accounts and set prices based on factors such as fleet condition and where the ships travel.

Denis Devey, Paris-based chief underwriting officer of hull at AXA, said AXA's hull rates increased an average of 4% worldwide in 2009 and are seeing even smaller increases in early 2010.

Cargo rates are not expected to see big swings during renewals, Mr. Charpentier said. "In my opinion, the cargo market is quite stable in terms of rates," he said. The market had been

## MARINE

Hull and machinery rates and blue water hull renewal experience over the past six months. Rate changes are based on loss ratios ranging from excellent to poor.

MARKETPLACE	EXCELLENT	GOOD	POOR	THEORETICAL CAPACITY (in millions of U.S. dollars)
North America	flat	flat to +2.5%	+10% to +20%	65
United Kingdom	flat	flat to +2.5%	at least +15%	1,000
Scandinavia	flat	flat to +2.5%	at least +15%	250
Continental Europe	flat to +2.5%	+2.5% to +20%	at least +20%	225
Asia	flat	flat to +5%	at least +7.5%	250

Source: Marsh Inc.

very profitable for around six years until it softened in 2009, which he termed a "break-even" year.

Protection and indemnity rates are expected to renew in February at far lower levels than 2009. P&I clubs earlier this year in 2009 increased rates an average of 16.5%, according to Willis Group Holdings Ltd.'s Marine Market Review published in November.

The Willis report said P&I claims had declined and most clubs are expected to reflect that trend with premium increases of 5% or less in 2010.

Shipowners and hull insurers face a new exposure from European Commission regulations that are to

go into effect early in 2010 requiring vessels to use low-sulfur fuel to reduce emissions, Mr. Devey said.

The requirement means many shipowners have to adapt engines to operate with the fuel, which could cause machinery claims to rise, he said.

"There are various possibilities for claims," said Mr. Devey. For example, the new fuel also requires that a special type of oil be used in engines, he said. Overlooking that requirement can cause engine damage.

Hull insurers also worry that the number of idle ships as the global financial crisis lingers could mean an increase in claims.

"Some are laid-up in places where

they are exposed to typhoons or other natural catastrophes," said Mr. Devey. "That accumulation of risk is a concern."

Aside from catastrophes, marine insurers and shipowners continue to face piracy threats that make underwriting difficult.

"The piracy situation is still unresolved," Mr. Stabinger said. "The threat exists, and not just in the Gulf of Aden."

In its report, Willis said pirates are attacking farther out to sea and new hot spots have arisen off the coasts of Brazil, Nigeria, Thailand and Vietnam.

The piracy threat makes it difficult to generalize about the direction of hull rates, Mr. Stabinger said. "You can't say something that holds true across the board for the whole line of business."

Cargo insurers have been affected by piracy, Mr. Charpentier said, but claims have not been heavy.

In most cases, cargo is released undamaged by pirates after ransoms are paid, he said. Cargo insurers, though, are responsible for a portion of the ransom payment. "But the claims amounts related to ransom have been limited so far when it comes to the cargo market," said Mr. Charpentier.

# Insurance back on legislative agenda

*Financial services regulation, surplus lines, flood coverage all expected to be addressed*

By MARK A. HOFMANN

**WASHINGTON**—If you want to know the risk management and insurance legislative agenda for 2010, take a look at what's left over from 2009, industry observers say.

Financial services regulatory reform passed the House of Representatives, but still must be taken up by the Senate Banking, Housing and Urban Affairs Committee. The chairman of that committee—Sen. Christopher Dodd, D-Conn.—is taking a considerably different approach to financial services reform than that of his counterpart in the House—Financial Services Committee Chairman Barney Frank, D-Mass., particularly in regard to the Federal Reserve Board. Both, however, support establishing a federal insurance office within the Treasury Department as well as streamlining regulation of surplus lines insurers.

In addition to ironing out differences in financial services regulatory reform and assuming the Senate passes its own legislation, lawmakers will have to continue to deal with reform of the National Flood Insurance Program that has been kept alive through a series of short-term extensions.

In addition, lawmakers have to consider their own political futures as they approach the 2010 midyear elections. If history repeats itself, Republicans probably will diminish Democrats' majorities, most notably in the House.

## Unfinished business

And the electoral outlook became even murkier last week when Sen. Dodd announced that he would not seek re-election, thus guaranteeing a new chairman and agenda no matter which party controls the Senate.

But "first of all, we're going to have a carry-over from 2009," said Charles M. Chamness, president and CEO of the National Assn. of Mutual Insurance Cos. in Indianapolis. "We'll be working with Congress and the administration to finish up the '09 agenda. For our industry, that starts with the financial services regulatory reform package."

"Much of RIMS' legislative agenda is incorporat-

ed into the House and Senate regulatory modernization bills," said Deborah M. Luthi, vp for the New York-based Risk & Insurance Management Society Inc. and director-enterprise risk management at Matheson Inc. in Sacramento, Calif.

"The House of Representatives passed its version last month," Ms. Luthi said. "Because we are still waiting for the Senate Banking Committee to move its legislative package...that places much of RIMS' 2009 agenda in play" in 2010.

"In respect to the regulatory reform, it's more of the same and, quite frankly, in respect to the National Flood Insurance Program, it's more of the same. We'll have to extend that again," said Benjamin McKay, senior vp-federal government relations for the Property Casualty Insurers Assn. of America in Washington. "Then it will be fending off attacks on underwriting in general. I suspect that going into an election year, some of those issues are sort of juicy for headlines."

"We are certainly expecting to continue to work on a financial services reform bill," said Leigh Ann Pusey, president and CEO of the American Insurance Assn. in Washington. "I think key for the insurance industry is to educate the lawmakers on the nature of the business in terms of the risk profile of property/casualty insurers. Our primary focus will be on the systemic risk and resolution authority. Other priorities include (the Obama administration's proposed) Consumer Financial Protection Agency, the office of national insurance and corporate governance issues."

"We will obviously finish up (regulatory) reform and we are fairly pleased with the progress we made on that and the fact the federal insurance office is not a federal regulator," said NAMIC's Mr. Chamness. "It's a dangerous environment, so we have to work to being sure whether it's the final stages of (regulatory) reform or the health insurance deliberations that we don't get swept up in something that hurts our industry or hurts the consumer."

Joel Wood, senior vp-government affairs for the Council of Insurance Agents & Brokers in Washington, agreed that there could be some fallout from health care reform efforts.

"Much of the year might be consumed with trying to incrementally repair whatever might occur there," Mr. Wood said. "I believe there inevitably will be unintended consequences that will impact employers."

Regarding the reform of regulating financial services, "we would like to achieve more of what

the House did, keeping any negative consequences of financial re-regulation away from our members and passing the surplus lines legislation at long last," Mr. Wood said.

## State reforms

RIMS also is watching state actions, said Ms. Luthi.

"We have spent the better part of 2009 working on the New York state producer compensation regulation and we expect the first thing out of the box in 2010 to be the final enacted version," Ms. Luthi said. "RIMS has been following the developments of this issue very closely for some time, and we are still hopeful improvements will be made to the regulation. Once the regulation becomes final, we will be watching very closely to see if certain brokers are permitted to resume the practice of receiving contingent fees. That has been one of our fears throughout this process, because we feel that if contingent fees are allowed, then we will end up with the same problems we faced several years ago."

The CIAB also is keeping an eye on New York.

"Probably the most consequential matter that has not received a lot of publicity is the New York circular letter on contract certainty," Mr. Wood said. "Basically, it's all about the World Trade Center, so the New York (Insurance) Department is attempting to impose a much higher standard for battenning down policy terms, but we're urging them to do it in a manner that is not disruptive and does not create new rights of action. When New York sneezes, the rest of the country gets a cold."

Looking to the midterm congressional elections, many observers expect significant Republican gains. The only question is how significant they will be.

"I'm going to go out on a limb and predict a flip of 30 to 35 seats in the House and a net of two to three Senate seats for Republicans," said Mr. Wood.

"The change in control could occur if Republicans won every competitive election and there were further Democratic retirements," said NAMIC's Mr. Chamness. "However, it's unlikely."

"If the trends are right now in the polls, Republicans stand to gain a significant number of seats (in the House) and, I think, become more competitive in the Senate," said AIA's Ms. Pusey. "I think the bottom line translates to tighter margins in both bodies and the possibility of flip in control."



'We'll be working with Congress and the administration to finish up the '09 agenda. For our industry, that starts with the financial services regulatory reform package.'

Charles M. Chamness,  
National Assn. of Mutual  
Insurance Cos.



'Because we are still waiting for the Senate Banking Committee to move its legislative package...that places much of RIMS' 2009 agenda in play' in 2010.

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Risk & Insurance Management  
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'In respect to the regulatory reform, it's more of the same and, quite frankly, in respect to the National Flood Insurance Program, it's more of the same.'

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Joel Wood,  
Council of Insurance  
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## LEGAL NOTICE

### IN THE MATTER OF THE REHABILITATION OF THE INSURANCE CORPORATION OF NEW YORK New York Supreme Court, Index No.: 401477/09 NOTICE

By order of the Supreme Court of the State of New York, County of New York (the "Court"), entered June 30, 2009 (the "Rehabilitation Order"), the Insurance Corporation of New York ("INSCORP") was placed into rehabilitation and the then-Superintendent of Insurance of the State of New York was appointed Rehabilitator (the "Rehabilitator"). The Rehabilitator hereby gives notice that he has applied to the Court by order to show cause for an order: (1) converting INSCORP's rehabilitation proceeding to a liquidation proceeding; (2) appointing the Superintendent and his successors in office as liquidator of INSCORP; (3) vesting title to all INSCORP's property, contracts and rights of action with the Superintendent as liquidator; (4) continuing the permanent injunctions provided for in Insurance Law Section 7419, including enjoining and restraining all persons from transacting INSCORP's business, wasting or disposing of its property, interfering with the Superintendent or the proceeding, or commencing or prosecuting any actions, obtaining any preferences, judgments, attachments or other liens, or making any levy against INSCORP, its assets or any part thereof; (5) granting injunctions enjoining and restraining: (a) all parties from commencing or prosecuting any actions or proceedings against INSCORP, the Liquidator or the New York Liquidation Bureau, its employees, attorneys or agents with respect to any claims against INSCORP; (b) all parties to actions, lawsuits and special or other proceedings in which INSCORP is obligated to defend a party pursuant to an insurance policy, bond, contract or otherwise, from proceeding with any discovery, court proceedings or other litigation tasks or procedures, including but not limited to conferences, trials, applications for judgment or proceedings on settlement or judgment, for a period of 180 days, and (c) all persons who have first party or New York Comprehensive Automobile Insurance Reparations Act (No Fault) policyholder loss claims, from presenting and filing claims with the Superintendent as liquidator for a period of 90 days; (6) authorizing, permitting and allowing the Liquidator to sell, assign, transfer any and all stocks, bonds, or securities of INSCORP at market price or at the best price obtainable at private sale; (7) terminating all contracts and agreements, unless otherwise expressly assumed by the Liquidator, and fixing liability thereunder as of the date of entry of the Liquidation Order; (8) requiring all persons or entities having property, including, but not limited to, insurance policies, claims files (electronic or paper), software programs and/or bank records belonging or relating to INSCORP shall preserve such information and immediately, upon the Liquidator's request and direction, assign, transfer, turn over and deliver such information to the Liquidator; (9) extending judicial immunity to the Superintendent in his capacity as liquidator of INSCORP and his successors in office and their agents and employees and extending such immunity to them for any cause of action of any nature against them, individually or jointly, for any action or omission of any one or more of them when acting in good faith, in accordance with the orders of this Court, or in the performance of their duties pursuant to Article 74 of the Insurance Law; and (10) granting such other relief as is just; \

The order to show cause further provides that the injunctions provided for in the Rehabilitation Order, that were extended by the Court's order entered September 29, 2009, remain in effect pending a hearing on the Rehabilitator's application.

A hearing is scheduled on the order to show cause on the 23rd day of February 2010 (the "Return Date") at 9:30 a.m., at the Courthouse, 80 Centre Street, New York, New York, at IAS Part 8. If you wish to object to the petition, you must serve your objections and all supporting documentation ("Answering Papers") upon the Superintendent so as to be received by the Superintendent at least seven business days prior to the Return Date, and by submitting copies of the Answering Papers, with affidavits of service on the Superintendent, to the Court at IAS Part 8, at the Courthouse located at 80 Centre Street, New York, New York, on or before the Return Date. Service of Answering Papers on the Superintendent shall be made by first class mail at the following address:

Superintendent of Insurance of the State of New York  
as Rehabilitator of The Insurance Corporation  
of New York  
123 William Street  
New York, New York 10038-3889  
Attention: John Pearson Kelly, Esq.  
General Counsel

The order to show cause and supporting papers are available for inspection at office of the New York Liquidation Bureau at 123 William Street, New York, New York.

Requests for further information should be directed to Bernadette Colbert at 212-341-6521.

Dated: New York, New York  
December 24, 2009

James J. Wrynn  
Superintendent of Insurance  
of the State of New York as  
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Gamma Iota Sigma Grand Chapter, Oct. 18, 2008

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## KERWIN WILLIAMS

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**FIRST JOB MARKET EXPERIENCE:** I

was a liability claims rep in California handling national accounts. It was actually a lot of fun. I worked in the Los Angeles area, so I handled claims for stars. I have some funny stories, but nothing I can share.

**OUTSIDE THE INDUSTRY, A DREAM JOB:** It would be in the nonprofit arena. My wife has actually started a part of our dream. It's called the Action, Not Words Project. She just came back from feeding homeless kids in the Dominican Republic last month. We got a friend working in the (insurance) industry to pay the rent on that mortgage for the next 12 months. Over the last 30 years, I have been involved in nonprofits. While in (Los Angeles), we worked on a program called the Real Men Project where we helped 28 at-risk kids from single-mom households. We just learned that 24 of them now have completed college degrees, either B.A.s or advanced-level degrees.

**ADVICE:** The phrase "I don't know" is your friend. Simply admitting when you don't know something opens a great many doors. We work in an industry where help is readily available.

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

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

Mike Tsikoudakis  
Business Insurance  
360 N. Michigan Ave.  
Chicago, Ill. 60601-3806

[mtsikoudakis@businessinsurance.com](mailto:mtsikoudakis@businessinsurance.com)

### POSTING THIS WEEK

#### BROKERS:

- Aon Corp.
- Dawson Cos.
- William Gallagher Associates Insurance Brokers Inc.

#### INSURERS:

- ACE Group of Cos.
- Global Aerospace Inc.
- Markel International Ltd.
- Minnesota Life Insurance Co.
- Philadelphia Insurance Cos.
- Torus Insurance Holdings Ltd.
- XL Insurance

#### REINSURANCE:

- Max Capital Group Ltd.

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Former President of IFRIMA

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REUTERS/LANDOV

It took some 12,000 workers to build the world's tallest building, the Burj Khalifa, which opened last week in Dubai, United Arab Emirates.

## Burj: Interior construction being watched closely

CONTINUED FROM PAGE 3

Dhabi's sheik Khalifa Bin Zayed Al Nahyan, who in December helped bail out Dubai's debt incurred during the global financial crisis.

Residents of more than 1,000 apartments in the mixed-use tower designed by Chicago-based architects Skidmore, Owings & Merrill L.L.P. are expected to begin moving in in February.

A construction all-risk insurance program written by Oman Insurance Co. P.S.C. for property developer Emaar Properties P.J.S.C. in Dubai covered the \$1.5 billion project from its inception and remains in place until the coverage expires in July, confirmed Abdul Muttalib al-Jaidi, the Dubai-based insurer's CEO. Mr. al-Jaidi said Oman Insurance retained 15%, or about \$225 million, of the approximately \$1.5 billion exposure and reinsured the rest through the international markets.

Munich Reinsurance Co. is the lead reinsurer.

Mr. al-Jaidi said London-based Heath Lambert Group Ltd. was the lead broker on the coverage written for Emaar. The program covers construction risks, workers compensation and liability exposures, he said, and extends to all contractors and subcontractors.

In addition, the coverage includes professional indemnity insurance for consultants and engineers who worked on the design and building of the Burj Khalifa, Mr. al-Jaidi said.

Despite the lavish opening, construction at the tower is incomplete. In fact, the structure is at a delicate phase in which risk management is especially important, said Christian Bendel, a Munich-based senior underwriter and civil engineer with Munich Re.

As the lead reinsurer, Munich Re provided risk management services to the project and worked closely with contractors during the entire construction phase that began more than four years ago.

"The exposure to fire is very high at the moment," Mr. Bendel said, because a great deal of combustible material is inside the building waiting to be installed to complete the interior.

"Many of the apartments need to

be finished and the material is not in place yet," Mr. Bendel said. "Risk management has to be increased now" to ensure there is no chance for inflammable materials to ignite, he said.

The project's height presented some of the most challenging risk management and engineering issues, he said. Among them were how to safely get building materials to the top floors of the world's tallest structure.

"Pumping tons of concrete to 800 meters is not easy," he said. The builders devised a system to deliver

**'The engineers said it was the best risk management they had ever seen; everything was well-managed and in place.'**

Abdul Muttalib al-Jaidi,  
Oman Insurance Co. P.S.C.

the material to the upper reaches "and set a world record for pumping concrete to that height," Mr. Bendel said.

Mr. Bendel declared the massive project a risk management success, pointing out that there were no major losses during the construction. There was some slight water damage when sprinkler systems were pressurized, he said, but that often happens during that process.

Mr. al-Jaidi agreed that the construction was blessed by attentive risk management. "The engineers said it was the best risk management they had ever seen; everything was well-managed and in place," he said.

As the tower nears completion, responsibility for some of the insurance coverage will shift to those who will own some of the most spectacular views on earth.

Insurance purchased by "Emaar covers the structure, but the contents are left to the owners of the flats," Mr. al-Jaidi said of the occupants of the apartments, retail outlets, offices and hotel at the Burj Khalifa.

## Exchange: New York plan draws interest

CONTINUED FROM PAGE 1

ment banks, private equity firms and hedge funds looking for investments uncorrelated with the rest of their portfolio.

"Now for the most part, opportunities for these nontraditional sources of capital to invest their equity in insurance and reinsurance risks do not exist in New York," Mr. Wrynn said. "That's why they go offshore to London, Bermuda or Dublin. This shouldn't be the case."

Peter H. Bickford, a New York-based attorney and insurance consultant who was general counsel for the original exchange, said he thought Mr. Wrynn was emphasizing nontraditional sources to ensure the exchange attracts new capital to the insurance market.

"Most of the capital in the original exchange was definitely from the (insurance) industry, and that was one of the issues," Mr. Bickford said. "Was (the exchange) really drawing new capital to the insurance industry or was it just recirculating existing capital?"

In touting the exchange, Mr. Wrynn said it could make insurance buying more efficient, offering standardized forms, providing contract certainty and simplifying multistate transactions. He said the exchange would look to complement Lloyd's, and would be ideal for large and complex risks such as cyber security, terrorism, supply chain integrity, reputational risks,

climate change, professional indemnity, marine, catastrophe and aviation.

David Pagoumian, CEO of Iselin, N.J.-based wholesale broker NAPCO L.L.C., agreed the exchange could make insurance buying more efficient, if organized properly.

"Obviously, the spirit of an insurance exchange market in New York already exists. You have all the major insurance carriers here," Mr. Pagoumian said. "If you put together a program with a couple different companies, they all want their binder, they all want their different exclusions. Having an exchange could perhaps bring more consistency in the product."

The Independent Insurance Agents & Brokers of New York Inc. supports the idea, Research and External Communications Director Tim Dodge said.

"It's got to be for more complicated-type risks," he said. "I think we're talking high-hazard accounts and accounts with very high property values."

Mr. Wrynn also said the exchange would create "thousands" of jobs in New York and in upstate New York, along with "significant" revenues, although he declined to share exact figures from a preliminary analysis performed by department officials. He said the exchange likely would be physically located in Manhattan, but said state officials expect much of the back-office jobs and infrastructure to be located

in upstate New York.

The original NYIE opened in 1980 but closed in 1987 because of inadequate capital, poor claims experience, soft market conditions and other factors.

Some industry observers have expressed skepticism that the exchange would fare better this time around, citing the large amount of capital needed by reinsurers, the tax advantages of offshore facilities and the current soft insurance market.

"It may be soft now, but we're not getting up and running tomorrow," Mr. Wrynn said. "Ideally, when we are ready to get this up and running and have a ceremonial ribbon-cutting, there is a hard market. But we're proceeding along because we want this to be something that serves a need of the industry, notwithstanding the condition of the market at the time."

Mr. Wrynn said the department continues to seek "competitive tax treatment" for the exchange, but also said such an arrangement would not be a prerequisite for success.

Then-Superintendent Eric Dinallo first suggested the idea of reviving the exchange in early 2008, but the financial crisis sidetracked that effort, department officials said. The idea has gained momentum since the September confirmation of Mr. Wrynn, who made the project a top departmental priority, officials said.

## RIMS: New president lays out top priorities

CONTINUED FROM PAGE 3

is one of four major priorities for Mr. Fleming and RIMS.

"We have a wealth of talent and knowledge in our membership, and with the economy the way it is with a lack of resources, we can turn to each other for a lot of help that we can't afford to purchase on the outside," he said.

He cited as an example his experience dealing with insurance coverage for Montgomery County's new courthouse. He said the project required an architects errors and omissions policy, for which the developer wanted to charge the county \$1.3 million. Mr. Fleming said a risk manager with "a huge property program" gave him some ideas that resulted in his being able to buy the cover for \$300,000. "I saved my employer a million simply by being a member of RIMS."

Mr. Fleming's other priorities include legislative and regulatory matters, an international strategy for RIMS, and student outreach.

"We want to continue to lobby for regulatory and legislative changes," he said. This includes supporting legislation that would require some publicly traded companies to establish board-level risk committees, as well as bills to reform surplus lines regulation and establish a federal insurance office, he said. In addition, "we are going to continue to lobby for the optional federal charter" for insurers.

On the state level, RIMS would like

to see broker contingent fees banned, said Mr. Fleming. "RIMS' position has always been to support a prohibition of contingent commissions because of the inherent conflict of interest when a broker receives payment from both buyer and seller in an insurance transaction."

He noted that the New York State Insurance Department has proposed a regulation that would provide more transparency regarding fees. The proposal "does not ban the payment of contingent commissions, but does provide some level of transparency by requiring brokers to notify buyers who the broker represents in the transaction and that they will receive a payment from the insurer," he said.

"The broker also must advise the buyer that additional information on compensation is available if requested," said Mr. Fleming. He said RIMS has provided comments to the NYSID expressing its concern that the proposal does not go far enough, and calling for mandatory full transparency on compensation without the buyer having to ask for it.

On the international front, RIMS' continuing effort to develop a strategy is two-pronged, Mr. Fleming said. One focus is on offering RIMS products and services to U.S. companies with international operations, while the other is on offering educational services and risk management conferences in parts of the world "where there is a developing economy and a lack of risk manage-

ment opportunities," he said. Such efforts could even include setting up chapters, he said.

The fourth priority is student outreach. "We want to lower our demographic. I think the average age of a risk manager is around 44," said Mr. Fleming.

He noted that risk management and insurance students typically start out working for insurance companies and brokers. "We are reaching out to Gamma Iota Sigma (the fraternity for risk management, insurance and actuarial science majors), and to professors and instructors in risk management, trying to develop a mentoring program where we can get these kids directly into risk management programs."

In the area of professional education, RIMS will work with the Center for the Advancement of Risk Management Education and the American Institute for Chartered Property Casualty Underwriters on the new enterprise risk management course within the curriculum that leads to the associate in risk management designation, Mr. Fleming said. RIMS also will continue to offer webinars and has developed "coursecasts"—fee-based online training—that can lead to the RIMS Fellow designation.

He said there has been a slight drop in RIMS membership due to the economy. "Risk managers are losing jobs" and have to make cuts, he said. "That's a real challenge to continue to provide value to our employers with fewer resources."

## Products & Services

### Business Risk Partners launches combo coverage

**WINDSOR, Conn.**—Specialty underwriter Business Risk Partners is offering combined coverage for technology firms.

The Windsor, Conn.-based company will offer general liability coverage for technology firms that purchase errors and omissions liability policies, the company said.

"Today, a service firm without GL and E&O coverage runs serious risks," Lisa Doherty, president of Business Risk Partners, said in a statement. "By using one underwriting team for both their GL and E&O coverage, companies can minimize these sticky situations and make sure their bases are covered."

The policies are underwritten by Lloyd's of London. The combined coverage is available for tech firms with up to \$10 million in revenue with a cap of \$1 million per claim and \$2 million in aggregate.

For more information, contact Tom Rea, underwriting manager, at 860-903-0017 or [tre@businessriskpartners.com](mailto:tre@businessriskpartners.com).

### AlwaysCare rolls out hearing devices plan

**BATON ROUGE, La.**—Group benefits provider AlwaysCare Benefits Inc. has partnered with Ear Professional International Corp. to offer cost reductions on hearing instruments and accessories to its members.

"Hearing instruments and accessories can be very expensive when shopping on your own," Mike Reha, director of sales and marketing at Industry, Calif.-based EPIC, said in a statement.

Baton Rouge, La.-based AlwaysCare said the program offers 30% to 60% discounts on hearing-related materials that medical insurance plans traditionally do not cover.

For example, AlwaysCare said the average out-of-pocket cost for a hearing aid rose 16.9% in 2009 to \$1,601.

Members of AlwaysCare, a unit of Starmount Life Insurance Co., also gain access to telephone support and a battery replacement program. The hearing plan is offered as a rider to dental and vision plans.

For more information, contact

Deborah Sternberg, vp for Starmount Life Insurance Co., at 225-400-9240 or [Deborah@starmountlife.com](mailto:Deborah@starmountlife.com).

### Willis expands LawyerGuard program

**PORTSMOUTH, N.H.**—Willis Programs, a Portsmouth, N.H.-based unit of Willis Group Holdings P.L.C., has launched a professional liability program for law firms with up to 20 attorneys in general practice.

The coverage is offered through Willis' LawyerGuard unit. Unless deemed uninsurable in certain jurisdictions, it includes punitive damages, deductible reductions for claims settled through mediation,

loss earnings coverage, and—in some instances—crisis event coverage to supplement the cost of a public relations firm in the event of reputation damage.

The program is one of two LawyerGuard programs; the other is designed for defense attorneys.

More than three dozen states have approved the form and rate filings for the program that is underwritten by Catlin Insurance Co. Inc.

For more information, contact Stephen van Wert, program manager, at 813-712-7032 or [steve.vanwert@willis.com](mailto:steve.vanwert@willis.com).

### Glatfelter integrates water, municipal programs

**YORK, Pa.**—Glatfelter Public Prac-

tice, the York, Pa.-based public entity program manager unit of Glatfelter Insurance Group, said it has integrated its water and municipal programs into one program.

The combined program aims to provide greater flexibility for clients, the company said.

"Brokers and agents can now provide broader coverage, increased flexibility and an enhanced platform to better serve their water, irrigation, special-district and municipal niche customers throughout the country," Stephanie Dew, regional vp for Glatfelter Public Practice West in Austin, Texas, said in a statement.

The integrated program offered initially in 15 states will be available nationwide by year-end, Glatfelter said.

For more information, contact Ms. Dew at 888-855-4782 or [sdew@glatfelters.com](mailto:sdew@glatfelters.com).

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# Endurance must cover defense costs: Court

By SALLY ROBERTS

**HOUSTON**—A unit of Bermuda-based Endurance Specialty Holdings Ltd. must cover defense costs of a brokerage that placed coverage and provided other services to the bank at the center of the notorious Stanford Financial Group fraud, a federal court judge has ruled.

New York-based Endurance American Specialty Insurance Co. owes a duty to defend broker Brown, Miclette & Britt Inc. and one of its employees in connection with claims arising out of the alleged Ponzi scheme, ruled U.S. District Court Judge Nancy F. Atlas of the Southern District of Texas in Houston.

Houston-based BMB, one of Stanford's brokers, and BMB employee Robert Winter are defendants in three lawsuits filed by victims of the alleged \$8 billion fraud.

The victims, who include citizens of Mexico, Venezuela and several other countries, allege that BMB and Mr. Winter provided Stanford International Bank with "safety and soundness letters" and failed to ensure the letters properly described Stanford's insurance coverages.

Willis Group Holdings P.L.C. also is named as a defendant in two of the suits.

BMB's and Mr. Winter's professional liability insurer, Endurance American, denied coverage for the claims, arguing that the underlying lawsuits are not based on "professional services" as required by the policy, but were based on securities violations, which are excluded.

Ruling Jan. 4 in *Endurance American Specialty Insurance Co. vs. Brown, Miclette & Britt Inc.*, Judge Atlas said BMB was acting as an insurance agent, broker or insurance consultant in regards to the underlying claims.

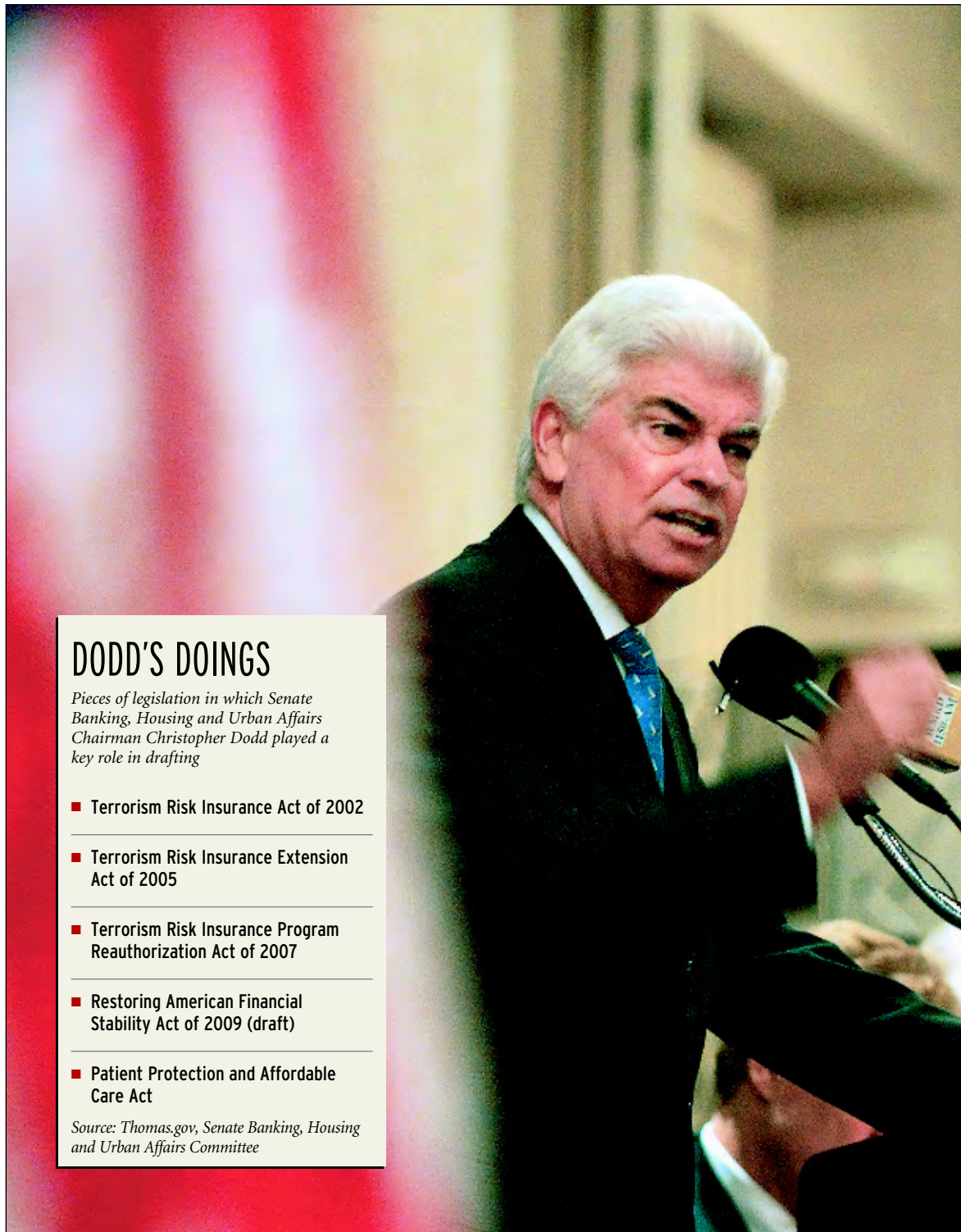
While it is undisputed that the plaintiffs in the underlying lawsuits assert securities claims against BMB, in each case the plaintiffs also assert common law negligence claims, the judge said.

"Under clearly established legal authority, if one claim is potentially covered and not excluded, the duty to defend extends to all claims in the underlying litigation," Judge Atlas wrote.

Endurance American also must defend Mr. Winter, the BMB employee who allegedly signed the safety and soundness letter, Judge Atlas said.

Endurance said in a statement that it "respectfully disagrees with the court's decision and believes the controlling law on the issues decided by the court holds otherwise. That said, Endurance does not believe that this pending litigation will have any material adverse financial impact on the company."

A representative of BMB could not be reached.



AP PHOTO

**U.S. Sen. Chris Dodd, D-Conn., plans to retire from the Senate at the end of his term, he announced last week. Sen. Dodd has been influential in health care reform and insurance legislation.**

## DODD'S DOINGS

*Pieces of legislation in which Senate Banking, Housing and Urban Affairs Chairman Christopher Dodd played a key role in drafting*

- Terrorism Risk Insurance Act of 2002
- Terrorism Risk Insurance Extension Act of 2005
- Terrorism Risk Insurance Program Reauthorization Act of 2007
- Restoring American Financial Stability Act of 2009 (draft)
- Patient Protection and Affordable Care Act

*Source: Thomas.gov, Senate Banking, Housing and Urban Affairs Committee*

## Dodd: Departure may move reform along

CONTINUED FROM PAGE 1

Sen. Dodd, who became chairman of the committee after Democrats gained control of the Senate as a result of the 2006 elections, had been under political fire at home for a variety of reasons, including how his panel oversaw financial institutions as well as for temporarily moving to Iowa during his short-lived 2008 campaign for the Democratic presidential nomination.

Insurance industry experts say Sen. Dodd's retirement will be a loss for the industry, and understandably so.

Sen. Dodd was one of the initial backers of the federal government's terrorism insurance backstop and repeatedly backed the program's extension. As chairman of the Banking Committee, he has been involved in numerous other insurance issues, and backs the streamlining of surplus lines regulation and establishing a federal insurance office within the U.S. Treasury Department.

Both initiatives are part of a comprehensive financial services regulatory reform act drafted by Sen. Dodd. The committee is expected to begin consideration of the measure later this month. The House already has passed its own version of financial services reform.

Sen. Dodd's influence has been felt in the health care reform arena as well. As the late Sen. Edward Kennedy, D-Mass., the chairman of the Health, Education, Labor and Pensions Committee, struggled with terminal cancer last year, Sen. Dodd headed the committee on an interim basis and helped guide the panel's consideration and passage of comprehensive health care reform legislation. In fact, Sen. Dodd was next in line to succeed Sen. Kennedy as HELP chairman, but turned it down to retain the chairmanship of the Banking Committee.

"He's been involved in every major piece of financial services reform legislation since 1981," said Ken Crerar, president of the Council of Insurance Agents & Brokers in

Washington and a former member of Sen. Dodd's staff. "He was Mr. Insurance on the Senate floor."

"Sen. Dodd will be missed," said Ben McKay, senior vp in the Property Casualty Insurers Assn. of America's Washington office. "We certainly look forward to working with him for the next 11 months."

"He understands the business of insurance as well as anybody in Washington," said Jimi Grande, senior vp in the National Assn. of Mutual Insurance Cos.' Washington office.

"Sen. Dodd's leadership in the Senate has been instrumental to our industry over the years," Leigh Ann Pusey, president of the American Insurance Assn. in Washington, said in a statement. "He has consistently delivered for the people of Connecticut and skillfully navigated numerous important issues affecting the property/casualty industry, including those companies anchored in his home state, with a sense of commitment, objectivity and fairness."

The retirement of Sen. Dodd probably means Sen. Tim Johnson, D-S.D., would become Banking Committee chairman if Democrats retain control of the Senate after the November elections. Sen. Johnson has co-sponsored legislation that would allow insurers and producers to choose federal rather than state regulation. If Republicans win control of the Senate, Sen. Richard Shelby, R-Ala., is the likely chairman.

But for the time being, Sen. Dodd remains at the panel's helm and is likely to push forward with financial services regulatory reform, observers say.

"He's made it very clear that he's got one year left and that the biggest item on his agenda right now will be financial services reform," said Mr. Crerar. "I anticipate a busy year working with the chairman on the financial services reform bill. Senate tradition says to me that there will be a financial services reform bill and Sen. Dodd will shepherd that through the Senate in an appropriate way."

"I understand he looks at this as his legacy and I know that he has a desire to get something passed," said Terry Fleming, president of the New York-based Risk & Insurance Management Society Inc. and director of the division of risk management in Montgomery County, Md., in Rockville.

John Prible, vp of the Alexandria, Va.-based Independent Insurance Agents & Brokers of America, also predicted Sen. Dodd would continue to push for financial services regulatory reform, although he said there was another possibility.

"There are two possible impacts," said Mr. Prible. "I think the more likely impact is that he will take this up with even more vigor and possibly see this as one of his last legacy pieces of legislation he wants to push. There's also the possibility that with his departure, he's certainly been focusing a lot on health care reform, he may possibly have a little less interest in pushing forth controversial legislation and focusing more on health care reform, pushing it over the finish line."

"We've seen statements by Sen. Johnson that he is ready to take over as chairman," Mr. Prible said. "We think he will be even more involved in the financial service restructuring this year. For the next year, we could see Sens. Dodd, Johnson and Shelby all play primary roles at the negotiating table."

PCI's Mr. McKay, however, said the senator's decision could lead to reflection on the nature of regulatory reform.

"This announcement may provide an opportunity for reflection," said Mr. McKay. "The consequences of the regulatory reform legislation are so vast and potentially detrimental to the economy and job creation that slowing down and taking a more measured approach may be a very good idea."

"As an old Dodd staffer, it's hard for me to imagine Connecticut not having Dodd as a senator," said Mr. Crerar. "I think this industry has benefited from the 30 years he's been there. He learned our business early on in his career so that he could both help us and take us to task when we needed to be taken to task."

## DOWNWARD TREND

Total number of U.S. deals involving the sale of an agency or brokerage

	2008	2009	% change
Bank or thrift buyer	41	21	-48.8%
Public broker*	78	34	-56.4%
Independent agency	71	54	-23.9%
Insurance company	39	12	-69.2%
Other buyer	35	30	-14.3%
<b>Total</b>	<b>264</b>	<b>151</b>	<b>-42.8%</b>

\*Including HUB International and USI Holdings  
Source: Marsh, Berry & Co. Inc.

## M&A: Buyers expected to ease off brakes this year

CONTINUED FROM PAGE 1

Szollosy said. "I think people need to get some confidence back and need to see some proof that things are getting better."

While there are signs of recovery, "it's a slow go," she said.

"From the discussions we're having with prospective buyers and sellers, there is going to be more activity in 2010...but it's not going to be a banner M&A year," said Bobby Reagan, president and CEO of Reagan Consulting Inc. in Atlanta.

"A lot of things that were affecting transactions in 2009 are still there," Mr. Reagan said. But there also appear to be signs of improvement, "so I think buyers and sellers can be a little more optimistic about the future and, if they are, it's easier to come to pricing terms that can get a deal done."

"We'll see the momentum come back in 2010, but it's not going to come back like gangbusters," agreed Timothy J. Cunningham, a partner with OPTIS Partners L.L.C. in Chicago.

There are some sellers that, for a variety of reasons, sat on the sidelines in 2009 that need to sell and

David Eslick, chairman and CEO of the New York-based Marsh & McLennan Agency, has been very vocal that those transactions are part of a series of strategic acquisitions that the agency will make in 2010 as it builds out its national platform.

Hub International also has ambitious acquisition plans for 2010. In November, the Chicago-based brokerage secured a \$200 million incremental senior secured term loan, which it said it intends to use for general corporate purposes that include acquisitions.

"At Hub, we are continually seeking to grow our organization through acquisitions. We expect that 2010 will present many opportunities for us to select partners who share a similar vision and bring additional expertise to our company," said Richard Gulliver, president of Hub.

Toward that end, the broker last week announced the acquisitions of Ogilvy, Gilbert, Norris & Hill, a brokerage based in Santa Barbara, Calif., with \$7 million in annualized revenue, and the commercial lines and life and health books of business of Wescom Insurance Services L.L.C., an Anaheim, Calif.-based brokerage.

M&A advisers said they also expect to see increased activity from traditional acquirers Arthur J. Gallagher & Co., Brown & Brown Inc., USI Holdings Corp. and BB&T Insurance Services Inc.

H. Wade Reece, chairman and CEO of Raleigh, N.C.-based BB&T, for one, said he's looking forward to a "good acquisition year" in 2010.

After making 11 deals in 2008 worth \$212 million in annualized revenue, BB&T completed only one deal in 2009—the Florida operations of Oswald Trippe & Co. Inc., which will bring in about \$23 million in annualized revenue, Mr. Reece said.

While economic conditions haven't improved much, "I think it's going to be a materially better and there's going to be more people with more reasons to want to sell their agencies and combine than there was in 2009," Mr. Reece said. "I don't think we'll do 11 deals, but it would tickle me to death if we could."



## Tax fears may spur more brokerage M&As

The glut of brokerage transactions in the fourth quarter of 2009 was more a reflection of concern over possible increases in capital gains tax than an indication of future merger and acquisition activity, experts say.

After a lackluster year of deal-making in the brokerage market, several significant transactions closed at the end of 2009.

Among the deals announced: Raleigh, N.C.-based BB&T Insurance Services Inc.'s acquired the Florida operations of Oswald Trippe & Co. Inc.; Hub International Ltd. acquired Canadian broker Mones & Associates Insurance Brokers Inc.; Arthur J. Gallagher & Co. acquired Shuford Insurance Agency Inc. in Concord, N.C.; Marsh & McLennan Agency L.L.C. acquired Houston-based Insurance Alliance and Paramus, N.J.-based agency NIA Group L.L.C.; and Aon Risk Services acquired Jericho N.Y.-based broker Allied North America and FCC Global Insurance Services, the in-house captive brokerage subsidiary of Madrid-based construction group Fomento de Construcciones y Contratas S.A.

Marsh Inc. also announced it would pay \$219.3 million to acquire London-based broker HSBC Insurance Brokers Inc., but that deal is expected to close in the first quarter of 2010.

M&A experts say that while there was a flurry of activity at the end of the year, the pace is

not likely to continue into 2010. Instead, they attribute it to concerns over rising capital gains taxes.

The tax cuts instituted by President George W. Bush in 2003 are set to expire at the end of 2010 and if President Barack Obama does not act by then, the federal capital gains tax rate will rise to 20% in 2011 from 15%.

For sellers of a \$10 million agency, that could mean the difference of taking home an additional \$500,000 if they sell in 2010 vs. 2011.

John Wepler, president of Marsh, Berry & Co. Inc., said concerns that the Obama administration might push through even higher capital gains tax increases that could be retroactive to Jan. 1, 2010, "prompted a very strong motivation to push everything into 2009 if at all possible."

"Even though transactions numerically may not have gone up dramatically in 2009, I think transaction activity did go up dramatically in the second half of the year and that was driven by capital gains," said Kevin P. Donoghue, a managing director at Mystic Capital Advisors Group L.L.C. in New York. Given the continued uncertainty, "anyone thinking of selling in the next three years will probably see if they can get a deal done in 2010," he said.

—By Sally Roberts

Cory Walker, chief financial officer of Brown & Brown Inc., said he is "very optimistic" about the 2010 acquisition market.

After closing 45 acquisitions that generated about \$120 million in revenue in 2008, the Daytona

Beach, Fla.-based agency completed only 11 deals in 2009 worth about \$27 million annualized revenue.

"I think most agency owners probably see a...light at the end of the tunnel in terms of doing a two-to-three-year earn-out" deal and

getting back the value they had a few years ago, Mr. Walker said.

In addition, with capital gains taxes expected to rise in 2011, agency owners may see 2010 as a better opportunity to sell than next year, Mr. Walker said.

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there are some buyers struggling with organic growth that need to make acquisitions, Mr. Cunningham said. While that will create more deal flow, the soft insurance market and troubled economy will continue to hamper activity overall, he said.

Two firms expected to be big acquirers this year are Marsh & McLennan Agency L.L.C. and Hub International Ltd.

After taking most of 2009 to seal a deal, Marsh & McLennan Agency said in November that it had acquired Insurance Alliance, an agency based in Houston with \$15 million in annualized revenue.

The next month, it acquired Paramus, N.J.-based agency NIA Group L.L.C. for an undisclosed sum. NIA ranked as the 34th-largest brokerage of U.S. business in 2009, based on brokerage revenues of \$69.7 million.

## News In Brief

CONTINUED FROM PAGE 1

compromise bills are expected to be conducted by House and Senate Democratic leaders rather than by a conference committee.

### Bias claims down slightly from record 2008 level

The U.S. Equal Employment Opportunity Commission received 93,277 workplace discrimination claims in 2009, down 2.2% from the previous year, the agency said last week. The number of claims filed in 2009 was the second-highest after 2008, the EEOC said, and monetary relief obtained for victims totaled more than \$376 million, slightly lower than 2008's \$376.6 million. The number of charges of age-based discrimination in 2009 reached 22,772, the second-highest ever after 2008. In 2009, monetary benefits awarded to victims from those charges reached \$72 million, compared with nearly \$83 million in 2008. The most frequently filed discrimination allegations in 2009 were based on race (36%), retaliation (36%) and gender (30%), which the EEOC said followed recent trends.

### Pension plans improve funded status: Analysis

The funded status of pension plans sponsored by large companies improved to 85% with a deficit of \$225 billion at the end of 2009, compared with a funded status of 75% and a deficit of \$409 billion at the end of 2008, according to a Mercer L.L.C. analysis. Adrian Hartshorn, a New York-based member of Mercer's Financial Strategy Group, said in a statement that the improved funding statement status will help pension fund earnings and reduce the need for future cash contributions. "However, in 2010, some companies may see increased cash contribution requirements or higher (Financial Accounting Standards Board) pension expenses because of smoothing methods, which deferred 2008 losses," Mr. Hartshorn said. He said one reason for the improvement in funding in 2009 is higher corporate bond yields, which have reduced pension plans' liabilities. A second is the rise in stock market values during the past 12 months.

### Court upholds law on pleural plaques

A Scottish court upheld a law that allows monetary compensation for sufferers of asbestos-related pleural plaques, a ruling that insurers say they may appeal. The Court of Session decision is a blow to insurers' efforts to invalidate the Damages (Asbestos Related Conditions) (Scotland) Act that was enacted in June 2009. Insurers challenged the law that allows sufferers of pleural plaques, a scarring of the lungs, to seek compensation for their injuries. The court's decision invalidated a House of Lords ruling that said damages could not be claimed for the asbestos-related illness.

### Hartford CEO McGee adds role of president

Hartford Financial Services Group Inc. said its board of directors has named Liam E. McGee as president of the company in addition to his role as chairman and CEO. Mr. McGee, a former Bank of America Corp. executive, took over in October as chairman and CEO from Ramani Ayer, who announced last June that he planned to retire.

### CIGNA COO Cordani elevated to CEO

David M. Cordani has taken over as president and CEO of CIGNA Corp., the Philadelphia-based health insurer said. Mr. Cordani succeeded H. Edward Hanway, who announced last summer that he would retire as CIGNA's chairman and CEO at the end of 2009. In addition, CIGNA named Isaiah Harris Jr. chairman of the insurer. Mr. Harris previously served as vice chairman. Mr. Cordani has served as CIGNA's president and chief operating officer since June 2008.

### Noted

Hanover Insurance Group Inc. named **Steven J. Bensinger**, a former American International Group Inc. executive, as executive vp and senior financial officer.... **Vermont** licensed 39 new captives in 2009, the sixth-largest number of new formations in the 29-year history of the domicile.... **Property/casualty insurance rates** dropped an average of 4% in December compared with the same period a year earlier, MarketScout reported.... **Willis Group Holdings** began 2010 as a public limited company incorporated in Ireland. The broker, headquartered in London, said it received the required approvals to change its domicile to Ireland from Bermuda. The broker's parent company is now known as Willis Group Holdings P.L.C.

## New York Fed advice to AIG sparks questions

**WASHINGTON**—The House Oversight and Government Reform Committee plans to hold a hearing later this month concerning financial disclosure advice the Federal Reserve Bank of New York gave to American International Group Inc. during the height of the financial crisis.

"In question are e-mail exchanges that emerged (last) week between lawyers at FRBNY and AIG which indicate that AIG was advised to withhold key details from the public about the terms of the insurer's federal bailout," the committee said in a statement announcing the hearing, which is slated to occur sometime during the week of Jan. 18.

E-mails obtained by the government and disclosed by Rep. Darrell Issa, R-Calif., showed AIG was

instructed by the Federal Reserve Bank of New York to withhold information in a December 2008 regulatory filing about more than \$62 billion it paid to counterparties. At the time, Mr. Geithner, now U.S. Treasury secretary, was head of the Federal Reserve Bank of New York.

In a draft of the regulatory filing, AIG said it paid the banks 100 cents on the dollar to liquidate credit default swaps it had sold them. However, attorneys for the Federal Reserve Bank crossed out the reference, and an e-mail exchange showed that officials told AIG to delay disclosing the information publicly, officials said.

When AIG's filing was made Dec. 24, 2008, with the Securities and Exchange Commission, it

made no reference to the counterparty payments. The counterparty payments were disclosed in a March 2009 regulatory filing.

The payments are controversial because the banks were paid 100 cents on the dollar during a period when many similar obligations were being negotiated at a deep discount.

Mr. Geithner will be invited to testify, the Oversight panel's statement said.

Rep. Spencer Bachus, R-Ala., the top Republican on the House Financial Services Committee, also wrote to that committee's chairman—Rep. Barney Frank, D-Mass.—also asking for a hearing.

AIG declined to comment.

—By Colleen McCarthy and Mark A. Hofmann

## AIG: Executive hires, asset sales progress

CONTINUED FROM PAGE 3

and serving clients."

Observers said filling the key positions should add stability to AIG, but they also warned that the situation remains fluid.

The appointments followed the recent resignation of Anastasia Kelly, AIG's general counsel and vice chairman for legal, human resources and corporate affairs. Ms. Kelly left due to federal salary caps imposed on executives of companies that took government bailout funds. In addition, Suzanne Folsom, chief compliance and regulatory officer, also left. AIG last week said it is looking for successors for both posts.

Nick Ashooh, AIG's senior vp of communications since September 2006, also resigned. Christina Pretto, who prior to the promotion was vp of corporate media relations, succeeded Mr. Ashooh, according to the memo.

Observers say the high-profile departures underscore the ongoing pressure that AIG faces because of government restrictions imposed as part of its ownership stake in the insurer.

"When you have a revolving door at the top, it makes it very difficult to gain traction and move the company forward," said John Challenger, CEO of executive recruiter Challenger, Gray & Christmas Inc.

in Chicago.

Richard V. Smith, senior vp at Sibson Consulting in New York, said AIG likely will struggle to equal Ms. Kelly's caliber in the top legal job because the insurer is "unable to pay market prices."

Ms. Kelly, who joined AIG in 2006, helped the insurer recover from regulatory investigations that led to the 2005 departure of former AIG leader Maurice R. Greenberg and oversaw the 2009 legal settlements between AIG and Mr. Greenberg.

With Ms. Kelly's departure, "they lost a very talented individual," said John L. Ward, CEO of Cincinnati Partners L.L.C. in Cincinnati. "This is a prime example of when the pay curbs can be counterproductive."

The talent problem may last several more years, observers say.

Mr. Benmosche, who has slowed the pace of asset sales since taking the reins at AIG last August, told the Financial Times in December that it may take two years for AIG to repay the government.

AIG's reportedly recent decision to hold off on an initial public offering of property/casualty unit Chartist Inc. also may result in additional departures, observers said.

"There would be more incentive for (a Chartist employee) to stay given the potential financial benefit of participating in an IPO," said Mark Lane, a research analyst with

William Blair & Co. in Chicago.

Meanwhile, AIG last week entered into an agreement, terms of which were not disclosed, to sell its Canadian mortgage insurance business to a private investor group headed by the Ontario Teacher's Pension Plan, the group said in a statement. Toronto-based AIG United Guaranty Mortgage Insurance Co. Canada has about \$264 million in assets.

The move followed Harel Insurance Investments & Financial Services of Israel's announcement last month that it agreed to acquire AIG's Israel-based mortgage insurance business, EMI Ltd., for \$35.5 million, according to Dow Jones. EMI unit Ezer Mortgage Insurance Co. Ltd. currently is held by AIG's Guaranty Corp. unit.

AIG declined to comment on the sales.

Also last week, a federal appeals court upheld a lower court ruling that could cost U.S. Life Insurance Co., an AIG unit, more than \$517 million, California Insurance Commissioner Steve Poizner said.

In *U.S. Life Insurance Co. vs. Superior National Insurance Co.*, the 9th U.S. Circuit Court of Appeals upheld a 2007 arbitration award that called for U.S. Life to pay on its reinsurance coverage for five California workers compensation insurance companies that were liquidated in 2000.

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## NORTH FACE SUES AFTER BECOMING BUTT OF JOKE



North Face Apparel Corp. apparently does not like being the butt of a joke.

The outdoor apparel giant is waging legal war with an ambitious 19-year-old college freshman who decided to poke fun at the people wearing polar fleeces and ski jackets

while lounging or running errands by launching his own clothing line, the South Butt L.L.C.

The joke for James A. Winklemann Jr., a student at the University of Missouri at Columbia, who goes by Jimmy, was that North Face uses the motto "Never Stop Exploring," though the people wearing the clothing don't seem to be exploring much of anything.

In contrast, Mr. Winklemann's South Butt uses "Never Stop Relaxing."

San Leandro, Calif.-based North Face was not amused by Mr. Winklemann's idea and filed suit against him in December. North Face argued that the South Butt, which uses a similar logo and motto, would cause consumers to confuse the two brands.

At first, Mr. Winklemann ignored North Face's anger, but on Jan. 4 filed a response to the complaint in U.S. District Court for the Eastern District of Missouri as he aims to protect his brand and marketing idea.

In his response, Mr. Winklemann argued that South Butt is a parody of North Face and that the logos, clothing and motto are not confusing to consumers. Further, he said he posts a disclaimer on the South Butt's Web site that states: "We are not in any fashion related to nor do we want to be confused with the North Face Apparel Corp. or its products sold under 'the North Face' brand. If you are unable to discern the difference between a face and a butt, we encourage you to buy North Face products."

According to Mr. Winklemann's response, North Face can't take a joke.

# Business Insurance END PAGE

Contributing: Jeff Casale, Roberto Cenicerros, Mark A. Hofmann



AP PHOTO

Skiers wait to board the gondola at Stowe Mountain Resort in Vermont. Chartis has acquired the resort from parent American International Group.

## Ski resort deal all downhill for Chartis

It looks like a case of keeping it all in the family, at least for the time being.

Chartis Inc., the property/casualty unit that American International Group Inc. is attempting to spin off as an independent entity, last week said it had acquired Stowe Mountain Resort.

From whom did Chartis acquire the resort? Its parent company, AIG.

"We are pleased to announce that Chartis has acquired ownership of Stowe Mountain Resort from AIG, effective immediately," Chartis said in a statement.

"We believe this investment is beneficial to the resort's employees and the Stowe community at large, as it provides stability and clarity on the ownership of one of the finest resorts in

the U.S. Stowe Mountain Resort represents an attractive investment for Chartis, a world-leading property/casualty and general insurance organization with over \$130 billion in assets worldwide," Chartis said in the statement.

AIG announced its intentions to sell Stowe Mountain Resort to cut debt.

"Stowe Mountain Resort is a well-run business with which we share strong historical roots and cultural ties," Chartis said of the purchase, terms of which were not made public.

The Burlington Free Press estimated last year that Stowe's worth was about equal to another Vermont ski resort, Killington, which sold for about \$85 million in 2007.

## Woman suits up after falling off stripper pole

Professional strippers depicted in movies and on television make pole dancing look easy.

But the hot, new trend in physical fitness can be dangerous when approached improperly, several pole-dancing Web sites warn.

Now a customer at a Crunch L.L.C. is suing the New York-based gym chain, claiming she injured both shoulders when she crashed to the floor after a pole-dancing instructor ignored her calls for help and left her hanging, according to news reports.

Sue Ann Wee reportedly was upside down, attached to the pole with her legs, when she asked for help. The nasty tumble caused her to miss work for six months and she claims the Crunch gym where the accident occurred didn't properly supervise the pole-dancing class.

Ms. Wee, who is seeking unspecified damages in a lawsuit filed in Manhattan Supreme Court, had signed up for a free class at the fitness center and it was her first attempt at the upside-down move, reports say.

Along with the new fitness craze have come several videos, Web sites, and blog postings addressing pole dancing. Some advise to start off slowly and leave the complicated moves for more advanced practitioners because there are risks involved.

Some also advise making sure the instructor has the appropriate liability insurance by asking to see a copy of the policy.



CBS/LANDOV

Hartford Financial Services Group Inc. group benefits representative Tom Westman, center, appears on "Survivor: Palau" in 2004. He will return to the "Survivor" series in February.

## HARTFORD'S HERO IS A 'SURVIVOR' AGAIN

Tom Westman of Hartford Financial Services Group Inc. has survived "Survivor" once already and said he's prepared to do it again.

The television show is kicking off its 20th season by bringing back 20 former castaways to compete in "Survivor: Heroes vs. Villains." Mr. Westman, who won "Survivor: Palau" five years ago, has been selected to return as a "hero" for the show, which premieres Feb. 11.

In this latest "Survivor" series, heroes and villains from seasons past will face off to try to win the title of Sole Survivor.

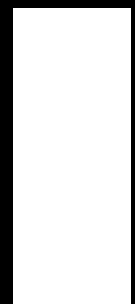
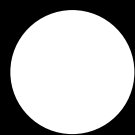
This season's setting is in the South Pacific on the island of Samoa. Two tribes of 10 will be comprised of the best heroes and biggest villains to ever play the game.

Heroes were chosen for their decisions of

integrity, courage and honor. Villains were chosen for their skills in deception, manipulation and duplicity.

"Tom is probably the greatest overall winner we've ever had," said Jeff Probst, host of "Survivor," in a recent interview about the cast. "Everybody liked him across the board. I don't think anyone who watched Palau said, 'I wish Tom wouldn't have won.'"

Mr. Westman, who is probably known best for his ability to catch a shark during a fishing challenge during "Survivor: Palau," took a leave of absence from his job with Hartford to tape the newest show. When he is on the job, Mr. Westman works out of Hartford's New York offices as a group benefits representative.



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