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COBRA SUBSIDY SET TO PASS, SAYS SEN. BAUCUS / PAGE 3

DUO FROM AIG ENVIRONMENTAL JOIN FORMER COLLEAGUES AT IRONSHORE / PAGE 3



FEDERAL WAR RISK COVER FOR AIRLINES EXTENDED / PAGE 3

In Brief

Marsh taps Eslick to chair agency unit

David L. Eslick, a former top executive at USI Holdings Ltd., has been named chairman of the soon-to-be launched Marsh & McLennan Agency L.L.C. The agency, which will serve U.S. companies with less than \$75 million in revenues, will begin operating soon in select U.S. cities, Marsh Inc. said. At USI, Mr. Eslick completed more than 50 acquisitions. He joined USI in January 1997 and became chairman, president and CEO in January 2002 when founder Bernard H. Mizel retired. Mr. Eslick took the brokerage public in 2002 and oversaw its \$1.4 billion private equity acquisition by GS Capital Partners in early 2007, and left the firm later that year. Mr. Eslick said the new agency will grow by acquisition and become a significant business unit of Marsh.

See **IN BRIEF** page 26



The Stringfellow site in Glen Avon, Calif., was a hazardous waste disposal facility from 1956 to 1972. A state appeals court decision last week allows policyholders to stack coverage limits over multiple policy years.

Cleanup coverage win may aid many buyers

By **ROBERTO CENICEROS**

RIVERSIDE, Calif.—A California appellate court ruling that allows policyholders to “stack” coverage limits over multiple policy years will affect insurance recovery cases beyond the environmental liability issues reviewed by the court, several attorneys said.

The ruling in *State of California vs. Continental Insurance Co. et al.* regarding commercial general liability policies purchased by California

from several insurers over several years also runs counter to a 1998 California appellate court finding that insurers have used since then to limit insurance awards and settlements, several policyholder attorneys said.

Last week’s decision by the 4th District Court of Appeal stems from California’s supervision over several years, beginning in 1956, of the infamous Stringfellow hazardous

See **STACKING** page 23

FMLA rule tweaks help ease concerns

Questions remain over sporadic leave, medical definitions

By **JUDY GREENWALD**

WASHINGTON—Recent regulations governing the Family and Medical Leave Act, which take effect this week, will help ease employers’ administrative burden in some respects, say observers.

But the regulations fail to substantively address two major issues for employers: the permitted use of frequent, short periods of intermittent leave and the definition of serious medical conditions, according to observers.

“It was a missed opportunity to narrow and clarify things because the two issues that employers struggle with most under the FMLA are the broad definition of serious health conditions and the difficulty of managing intermittent leave,” said Thomas M. Wilde, an attorney with Vedder Price P.C. in Chicago.

But overall, many observers say they are pleased with the new regulations.

Janice Dragotta, senior consultant-health and productivity with

Watson Wyatt Worldwide in San Francisco, said the new regulations represent “a fairly balanced response to both employee issues that have been raised as well as employer concerns.”

“Employers have been asking for a long time for more direction in how to manage FMLA claims,” said Julie Norville, Atlanta-based senior

‘Employers have been asking for a long time for more direction in how to manage FMLA claims.’

Julie Norville, Aon Consulting

vp at Aon Consulting. The final regulations “are much more detailed in terms of the various components in managing an FMLA claim.”

The 1993 FMLA, which is regulated by the Labor Department, requires employers to provide up to 12 weeks of unpaid, job-protected leave after the birth or adoption of a child; to care for a sick child, parent

See **FMLA** page 24

SPOTLIGHT

PROPERTY/CASUALTY MARKET REPORT

Risk managers test market for general liability cover amid security concerns;

property insurance rates may bottom out; professional liability rates vary widely by sector;

workers compensation market in transition; energy coverage costs rise sharply in wake of catastrophe losses; marine rates edge higher. **PAGE 11**

U.K. regulator fines Aon for lax bribery controls

Record penalty follows warning to brokers to guard against graft

By **SARAH VEYSEY**

LONDON—The Financial Services Authority’s record fine on Aon Ltd. for lax anti-bribery and corruption controls should sound an alarm for

all insurance intermediaries, experts say.

The U.K. financial regulator, which wrote to the chief executive officers of all U.K. commercial insurance brokers in November

2007 asking them to review their practices, is conducting a study of the adequacy of systems and controls to prevent illicit payments and inducements in place at U.K. brokers.

The results of that study will be made public sometime this year and will include examples of good and bad practices, a spokeswoman for the regulator said. The FSA cannot comment on whether further fines or regulatory actions may follow, she added.

Aon Ltd., the London-based arm of Aon Corp., last week was fined £5.25 million (\$7.9 million), the

30%

FACT: Amount Aon Ltd.’s fine was discounted due to the firm’s cooperation.

largest financial crime-related fine ever imposed by the FSA.

The fine, which was reduced from £7.5 million (\$11.3 million) because Aon settled swiftly, was imposed because the brokerage “failed to properly assess the risks involved in its dealings with overseas firms and individuals who helped it

win business, and failed to implement effective controls to mitigate those risks,” the FSA said.

As a result of these weak controls, between Jan. 14, 2005, and Sept. 30, 2007, Aon Ltd. made “suspicious payments” amounting to about \$7

See **AON** page 24

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On the Web

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Ironshore lures top AIG Environmental execs

AIG's bench still deep, despite string of hires by Bermuda insurer

By SALLY ROBERTS

NEW YORK—Two-year-old specialty insurer Ironshore Inc. continues to expand its operations at the expense of a struggling American International Group Inc.

One month after hiring the top two executives of AIG's Lexington Insurance Co., the Bermuda-based insurer last week said it was launching an environmental insurance unit—tentatively called Ironshore Environmental—and had hired Joseph Boren, AIG Environmental's well-known chairman and chief

executive officer, to run it.

Mr. Boren, a highly respected environmental insurance expert, helped establish the world's largest environmental insurance underwriter during his 13 years at AIG Environmental.

In addition, John O'Brien has joined Mr. Boren at Ironshore as president of the new unit, which will be based in New York and write a variety of environmental and casualty products that focus on middle-market risks, Ironshore said in a statement. Mr. O'Brien had been president and chief operating officer of AIG Environmental.

Messrs. Boren and O'Brien are "two of the best that there are to bring aboard and we look forward to building that practice," said Shaun Kelly, CEO of Ironshore's

U.S. operations in Boston.

Mr. Kelly, former president of Lexington, joined Ironshore in December with Kevin H. Kelley, the longtime Lexington CEO who also resigned to become Ironshore's CEO (*BI*, Dec. 15, 2008). The departures of Messrs. Boren and O'Brien came are the latest executives who have left AIG for Ironshore (see chart, page 22).

Executive challenge

Observers noted that while the most recent departures continue to underscore one of the many challenges facing AIG today, the insurance giant is able to fill key executive positions quickly due to its deep talent base.

Indeed, a day before Ironshore announced the hiring of Mr. Boren,

AIG announced that it had named 19-year AIG veteran Russell Johnston as president and CEO of AIG Environmental to replace Mr. Boren. Most recently, Mr. Johnston was president of AIG Risk Management.

Additionally, AIG named Kimberly Hanna, a 13-year AIG veteran and former senior vp and chief underwriting officer of AIG Environmental, as executive vp and COO.

"Russ Johnston has over 20 years of underwriting and management experience in the property/casualty industry, which will be a significant advantage for AIG Environmental as it moves forward," John Doyle, president and CEO of AIG Commercial Insurance, said in a statement. "I am excited about Russ and Kim leading

See **IRONSHORE** page 22



REUTERS

More than 60 U.S.-based airline companies purchase aviation war risk insurance through the Federal Aviation Administration.

FAA extends war risk coverage for airlines

Commercial-market alternative authorized through end of August

By ZACK PHILLIPS

President Bush has authorized the Department of Transportation to continue a program to write war risk insurance for U.S. airlines, extending a government program that has become the sole avenue by which major U.S.-based air carriers place terrorism coverage.

The program allows the Federal Aviation Administration to offer aviation war risk insurance if the secretary of transportation concludes that an airline cannot purchase the cover at reasonable rates through the commercial market. All major U.S. commercial airline companies use the program to buy war risk insurance at a cheaper rate than would be available through the commercial market.

The federal law that created the program requires a determination

by the president that the transportation secretary can move forward with the program. The last determination from President Bush expired on Dec. 31, 2008. The White House determined on Jan. 1 that the program can be continued until Aug. 31, according to an FAA spokesman.

Terror attacks boosted rates

The program was enacted in the aftermath of the Sept. 11, 2001, terrorist attacks, when rates for aviation war risk insurance—which covers several perils, including terrorist attacks—escalated dramatically.

Before the 2001 attacks, aviation insurers typically offered airlines war risk cover as an add-on to general hull and liability policies for little, if any, additional premium, according to Dave Baker, Atlanta-based senior vp for major aviation risks at American International Group Inc.

Mr. Baker said many war risk

See **AVIATION** page 25

COBRA subsidy proposal has support in Congress

By JERRY GEISEL

WASHINGTON—Congressional negotiators trying to assemble a mammoth economic stimulus bill are considering including a provision to have the federal government subsidize COBRA health care continuation premiums for employees who lose their jobs, business lobbyists say.

Few details of the proposals are known, though lobbyists say their understanding is that the government would pay between 50% and 60% of the premium, while the length of the subsidy would be 18 months, the maximum period of time employees can obtain COBRA coverage from their former employers. In other situations, such as divorce, death and marital separation, beneficiaries are eligible for up to 36 months of COBRA.

A federal COBRA subsidy "has been pretty much agreed to," said Sen. Max Baucus, D-Mont., who chairs the Senate Finance Committee.

President-elect Barack Obama also appears to back the idea. In a speech last week at George Mason University in Fairfax, Va., the incoming president said his economic recovery plan would provide extensions of coverage for those who have lost their jobs and can't find new ones.

Lobbyists said they didn't know what criteria—such as income below a certain level—beneficiaries would have to meet to be eligible for the government subsidy.

The proposal, which business lobbyists say has not yet been agreed to, comes at a time when the nation's unemployment rate, according to Labor Department statistics released Friday, hit 7.2% in December, a 16-year high. Employers slashed

524,000 jobs, with most losing their jobs also losing their health insurance coverage and becoming eligible for COBRA. With the loss of employment income, though, many beneficiaries will have difficulty affording the premium.

There is precedent for federal COBRA premium subsidies. Under a 2002 trade law, the government grants a tax credit to pay 65% of premiums for those who lose their jobs due to foreign competition or for individuals age 55 through 64 who are enrolled in pension plans taken over by the Pension Benefit Guaranty Corp. The tax credit also can be used to offset premiums from health insurance available from other sources, including state pools.

According to statistics provided by Hewitt Associates Inc., about 20% of those eligible for COBRA coverage actually opt for coverage. That percentage, though, could rise as the economy slumps and fewer beneficiaries line up for new jobs.

By law, employers can set the COBRA premium at 102% of the cost of coverage offered to employees. However, because beneficiaries who opt for COBRA are more likely to use medical services than employees, the premiums for beneficiaries typically do not come close to covering their costs. Experts say that for every \$1 of COBRA premiums, employers pay about \$1.50 in claims.

If the government subsidizes premiums, more people likely will opt for coverage and increase employers' costs due to COBRA's inherent adverse risk selection, consultants say.

"The cost to the employer goes up," said Chantel Sheaks, a principal with Buck Consultants L.L.C. in Washington.



Sen. Baucus
REUTERS

Chinese regulatory group frames insurance rating system

CIRC to classify insurers, brokers to increase openness

By MEG FLETCHER

BEIJING—Chinese insurance regulators last week outlined frameworks for evaluating and rating the financial and operational stability of all insurers and insurance intermediaries operating in China.

In statements, the Chinese Insurance Regulatory Commission said in its daily supervision of insurers and intermediaries it will use existing regulations to assign regulatory categories. The CIRC will place insurers in categories labeled A, B, C or D—with D insurers being those facing serious prob-

lems and receiving the most regulatory oversight, including a possible regulatory takeover. Brokers and agents will be placed in one of three categories.

Chinese regulators said individual ratings will not be disclosed publicly.

Observers say the CIRC's latest statement, though still lacking in several details, is a sign of China's progress in increasing the transparency of its insurance regulatory system.

More regulation

Because the CIRC classification framework is built on existing regulations, "there is basically no change in regulatory compliance required from insurance companies," a Hong Kong-based spokesman for Swiss Reinsurance Co. said

in an e-mail.

This is the first time, though, that the CIRC has formally categorized insurers into such groups, said Brad Smith, chief international officer for the Washington-based American Council of Life Insurers.

The CIRC "is in the process of bringing its regulation into compliance with (World Trade Organization) commitments" to increase the openness of its markets to foreign companies, he said.

"The main objectives of the CIRC's newly established classification system are to promote more effective regulation of insurers and to prevent and mitigate risks," said the Swiss Re spokesman. "Companies demonstrating solvency or corporate governance difficulties will

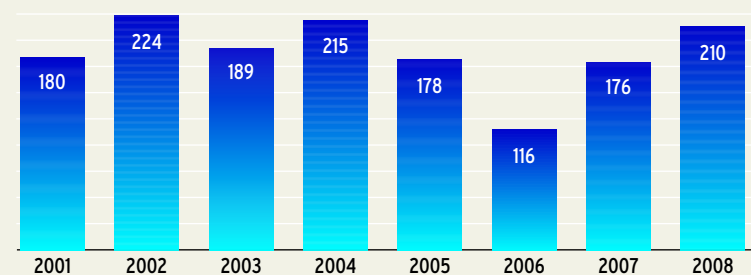
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The Chinese Insurance Regulatory Commission has announced a system for evaluating and rating insurers and insurance intermediaries in China.

CLASS ACTION SUITS ON THE RISE

Number of class action filings, 2003-2008



Source: "Securities Class Action Filings, 2008: A Year in Review"

Class action suits surge in wake of credit crisis

By MARK A. HOFMANN

The subprime mortgage crisis helped push the number of federal securities class actions up 19% in 2008 from a year earlier, according to a report last week by the Stanford Law School Securities Class Action Clearinghouse.

The 210 securities class actions was the highest number since 2004's 215 filings and considerably above the 1997-2007 average of 192. Nearly half of the filings against the publicly traded companies involved financial services companies, according to the study.

"Evidently, litigation against the firms closest to the ongoing subprime/liquidity crisis was the dominant force in federal class action securities litigation in 2008," according to the report. The "level of litigation against firms in a specific sector is unprecedented" since enactment of the Private Securities Litigation Reform Act of 1995, the report said.

But it also noted that overall secu-

rities litigation fell during the second half of 2008 "despite a dramatic drop in stock market value and an unprecedented spike in market volatility."

Noting that "high volatility has historically been correlated with an increased level of litigation activity," the report suggested that market unpredictability has been "so large that plaintiffs found it difficult to isolate company-specific stock movements that could be alleged to be the result of fraudulent activity from the broader noise generated by a market that could swing 5% in a single day."

One of the study's co-authors said the intensity of the litigation came as somewhat of a surprise.

"I think there's a sense that everybody understood that here was great deal of litigation against the financial services industry, but no one has previously documented that the intensity of this litigation was unprecedented," said Joseph Grund-

See **CLASS ACTION** page 25

Errors & Omissions

An agent and broker firm listing in the 2009 Market Sourcebook contained incorrect information. Connor Strong Cos. Inc., ranked No. 35, has 346 employees. Its principal officer is Michael Tiagwad, president/CEO.

New Vermont captives to get tax break

By JERRY GEISEL

MONTPELIER, Vt.—Organizations that set up captives in Vermont this year and next would receive a one-time \$7,500 credit to offset their premium taxes and sponsors of smaller captives would receive a one-time exemption from the \$7,500 minimum tax under soon-to-be-introduced legislation.

The legislation, backed by Gov. Jim Douglas, would increase to 12% from 10% the percentage of premium tax revenue that can be used for regulation and promotion.

Captive regulators and managers said the proposed tax break would be small but would send a message to prospective captive sponsors that state appreciates their business.

"This is a, 'Thank you and a welcome aboard,'" said Dave Provost, deputy commissioner and head of the Vermont Captive Insurance Division in Montpelier.



Gov. Douglas

DETROIT FREE PRESS

In addition, increasing the proportion of premium tax dollars used for regulation and promotion would ensure that the industry continues to get support, said Julie Boucher, a managing director at Marsh Management Services Inc. in Burlington, the state's biggest captive manager.

"Even during these tough economic times, Vermont recognizes the importance of the captive insur-

ance industry to our state and the need to continue investing in our infrastructure and innovating in our industry," Gov. Douglas said.

The measure is expected to win passage and comes as captive formations have slowed in major U.S. domiciles. Vermont, which had 557 captives at year-end 2008, licensed 16 new captives last year, compared with 32 formations in 2007.

Mr. Provost attributed the slowdown to several factors, including the overall economic slump and concerns about an Internal Revenue Service rule, which was proposed but later withdrawn, that would have stripped tax advantages for sponsors that use domestic captives to fund risks of corporate affiliates and that file a consolidated tax return covering the affiliates and the captive.

Mr. Provost said he expects an uptick in formations, especially if conditions continue to harden in the traditional insurance market.

RIMS keeps legislative aims in focus despite power shifts in Washington

By MARK A. HOFMANN

NEW YORK—Changes in the White House and on Capitol Hill have not changed the Risk & Insurance Management Society Inc.'s federal legislative approach.

"RIMS has always had a tradition of working in a bipartisan manner on a whole host of issues," said Deborah Luthi, RIMS' new director of external affairs. RIMS' issues this year involve risk retention, the federal terrorism insurance backstop, surplus lines and insurance regulatory reform.

She said the organization's agenda on these issues—all of which have come up in previous Congresses—"will remain constant" in the 111th Congress that convened this month.

RIMS also said it would fight congressional efforts to change the tax treatment of certain reinsurance transactions, said Ms. Luthi, who also is director-enterprise risk management for Matheson Trucking Inc. in Sacramento, Calif. The measure calls for altering the tax code to disallow deductions for a portion of reinsurance premiums ceded to affiliated insurance companies not subject to U.S. taxation (*BI*, Nov. 10, 2007). The property/casualty insurance industry itself is divided on the issue, with some domestic insurers saying current law discriminates against U.S. companies.

"As a part of our agenda, we really will marshal our forces in conjunc-



Deborah Luthi, a risk management director in San Francisco, is RIMS' new director of external affairs.

RIMS

See **RIMS** page 6



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—Louis Lubrano, Senior Vice President
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RIMS: Group has legislative aims in focus

CONTINUED FROM PAGE 4

tion with other groups" in opposition to the tax change, she said. "We feel that is anti-consumer and bad for the economy. That is really a concern for our membership."

On other issues, RIMS supports allowing risk retention groups to offer property as well as liability coverage to their members. RIMS wants the government to find a long-term solution to nuclear, biological, chemical and radiological terrorism risks. In addition, RIMS supports legislation that would ease access by brokers representing qualified risk managers to the surplus lines insurance market.

Ms. Luthi said RIMS members hope lawmakers will consider insurance regulatory reform as Congress considers broader financial services reform as part of the legislative response to the economic crisis.

She noted that the Senate Banking, Housing and Urban Affairs and the House Financial Services committees will look at changing the financial regulatory system as the first item on their agendas.

'As a part of this process, RIMS believes the insurance regulatory structure should be modernized and included in any financial regulatory restructuring package.'

Deborah Luthi
Risk & Insurance Management
Society Inc.

"As a part of this process, RIMS believes the insurance regulatory structure should be modernized and included in any financial regulatory restructuring package," Ms. Luthi said. "We question the effectiveness of current state-based system," she said.

She RIMS would support "a vehicle" that would allow the federal government to develop a national

base of insurance expertise, such as creating an office of insurance information within the Treasury Department. The ultimate goal would be establishing an optional federal charter system rather than state charters for insurers and producers.

RIMS members will gather in early June in Washington to pursue their legislative agenda at the annual RIMS on the Hill meeting. But RIMS also is following some state matters as well, said Ms. Luthi.

She said RIMS is watching how New York regulators implement a policy on contract certainty that would require producers and insurers to develop and implement practices in one year to assure that documentation is delivered to policyholders within 30 days of inception in most circumstances. Ms. Luthi said RIMS believes "other states may look very closely" at what happens in New York.

In addition, California RIMS chapters will gather for a "RIMS on the Mall" lobbying event in Sacramento later this month to press state legislative issues.

Commentary

Autistic kids need help in getting care covered



**REGIS
COCCIA**

Editor Regis Coccia's commentary appears periodically. He can be reached at: rccoccia@businessinsurance.com

As economic turmoil grips the nation and increases the ranks of those without health care insurance, making coverage more affordable is certain to occupy Congress and the Obama administration. One group, however, has largely struggled to get coverage: children with autism.

Autism, also called autism spectrum disorder, is a pervasive developmental disability, typically characterized by delayed speech, impairments in social interaction and certain repetitive behaviors. Autism is the most prevalent disorder afflicting children; the Centers for Disease Control & Prevention estimate that one in every 150 U.S. children has an autism spectrum disorder. The cause of autism is not clear, but scientific and anecdotal evidence show that early and aggressive intervention leads to the best outcomes—sometimes to the point where an autistic individual is not easily distinguished from neurotypical peers.

Some states have enacted coverage mandates for autism treatments, which include speech therapy, occupational therapy and behavioral therapies. Requirements vary, but at least eight states have mandated such coverage, including Illinois in late 2008. Others, such as Mississippi, are considering autism coverage legislation.

But a state mandate applies only to insurers; it can't require employer-sponsored benefit plans to cover autism treatment, due to provisions of the Employee Retirement Income Security Act that pre-empt state laws relating to benefit plans. That means many families of children with autism can still have no coverage of treatment, which lawmakers sponsoring mandates note can cost tens of thousands of dollars per year.

Opponents of coverage mandates usually suggest that requiring insurers to cover such treatments raises the cost of health care coverage for everyone. Does it? Well, yes and no.

Costs of covering conditions such as autism may increase overall insurance costs, but that's the nature of group insurance, where healthier insureds subsidize those who aren't as healthy. Adverse selection, which concentrates poor risks in an insurance program, is a bigger driver of claim costs. With autism so prevalent, leaving it untreated will eventually result in adverse selection—and higher costs—for larger groups of

health plan members.

As a parent of an autistic child, I can attest to the financial burden, as well as the often unseen physical and emotional burdens, of having a loved one with the diagnosis. Autism is a disorder that kids can't outgrow, but it does respond to some treatments, especially Applied Behavior Analysis. ABA was developed by a psychologist at

Families need help to afford autism treatments, especially in these difficult times.

the University of California at Los Angeles in the 1960s, and it uses positive reinforcement to teach skills and unlearn inappropriate behaviors. A vocal proponent of ABA as a scientifically proven therapy is Ron Leaf, a psychologist at the Seal Beach, Calif.-based Autism Partnership, which provides ABA training and therapy services to children around the world. CNN is scheduled to air a program this week about an unusual intervention developed by the Partnership.

Families need help to afford autism treatments such as ABA, especially in these difficult times. Fortunately, some insurers in states without mandates are voluntarily expanding coverage of autism treatments. One such insurer is Blue Cross and Blue Shield of Oklahoma, which announced it would raise coverage limits on various therapies.

Insurers and benefit plan sponsors should look closely at the costs of covering autism therapies and weigh those against the costs to society. As is often the case, pennies spent early on treatment can save many dollars later on.

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Business Insurance OPINIONS

Transparency lowers risk for risk advisers

AON CORP.'S multimillion-dollar fine by the U.K. Financial Services Authority over past placement practices reminds us of the aphorism, "Physician, heal thyself."

As we report on page 1, the FSA is investigating U.K. brokers' trading practices to ensure they have adequate controls to prevent corrupt activity. In essence, the U.K. regulator is saying that risk advisers first must control their own risks—especially the loss of clients' trust.

Last week's fine and Aon's announcement of strengthened internal controls against corruption and bribery call to mind the industry scandal uncovered four years ago by the attorney general of New York. Is this a sign of more skeletons or is the closet cleaning finally complete?

Four years after Eliot Spitzer, the large brokerage firms today are particularly sensitive to staying transparent. Despite the shocking abuses that led to guilty verdicts for a few, no one has proven that the wrongdoing was pervasive.

We hope that all brokers, regardless of size, embrace transparency and root out the potential for wrongdoing. Their clients deserve no less, and brokers' reputations depend on it.

We hope that all brokers, regardless of size, embrace transparency and root out the potential for wrongdoing.

RIMS lobbying efforts remain on right course

IF THE RISK & INSURANCE Management Society Inc.'s legislative agenda for the new Congress looks familiar, that's just what it should be.

As we report on page 4, RIMS plans to continue pushing for a series of reforms it has lobbied for in previous Congresses. One of those reforms, a streamlining of surplus lines insurance regulation, came tantalizingly close to realization in the last Congress. But like so many other things, it took a back seat to issues dealing with the larger economic crisis.

In a twist of fate, RIMS' most difficult long-term goal, the creation of a federal insurance regulatory system, may have gotten a boost from the same economic crisis that sidetracked surplus lines reform.

The Senate Banking, Housing and Urban Affairs and House Financial Services committees are expected to take up the broad question of financial services industry regulatory reform early. Insurance regulatory reform, including the creation of a system of optional federal charters for those insurers and producers who prefer federal rather than state regulation, could and should be part of larger reform.

RIMS' legislative agenda is ambitious and we're under no illusions that it will be easy to complete in its entirety. But even the darkest cloud—the unsettled economy—eventually could prove to have the silver lining of enhancing the chances for meaningful federal insurance regulatory reform, a familiar goal well worthy of pursuit.



WRITE

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More risk managers test liability market

Buyers question financial stability of existing insurers

By SALLY ROBERTS



Most risk managers are shopping their programs during the latest renewals, often out of concern about the financial stability of their incumbent insurer, experts say.

Although many buyers stuck with their existing insurers, nearly all renewed their general and excess liability policies for less than they paid a year earlier—but not necessarily because of lower rates, underwriters and brokers say.

Premium reductions were more a reflection of an insured's decreased exposures rather than rate cuts, although accounts with good loss histories did get single-digit rate

decreases, they note.

After nearly four years of declining rates, the general and excess liability market is bottoming out and rates likely will rise throughout 2009, they say.

While the financial crisis—including the near-collapse of American International Group Inc., a leading general liability and excess casualty underwriter—may have hastened firmer rates, its biggest effect has been more buyers marketing their programs, brokers say. Collateral issues also have been a central theme of renewal discussions, brokers and insurers say (see story, page 12).

"We are experiencing a time in our discipline right now that we've never experienced before," said Marty Gould, managing director and head of Marsh Inc.'s national excess casualty group based in New York. "We've never experienced a period where the financial ability of a carrier to pay has been questioned or challenged the way it's been challenged over recent months.

See **LIABILITY** next page



Property/Casualty
Market Report

SPOTLIGHT

Property coverage rates reach the basement

By MARK A. HOFMANN

The lengthy free fall of commercial property rates may be coming to an end.

Although rates in general still are lower than they were a year ago, risk managers, brokers and underwriters see some signs of firming as the market enters the new year. Battered by wretched investment performance, insurers have little choice but to try to make a profit on underwriting. But continued abundant capacity and a shrinking economy make it difficult to hike prices.

Still, underwriters are seeking more detailed information on renewals to learn how the economic downturn will affect individual risks (see box).

This year's property renewal "has taken much longer to pull it all together than in previous years," said Carolyn Snow, director-insurance risk management for Humana Inc. in Louisville, Ky.

"Usually we are finished no later than mid-October, but we are still working out some of the smaller details," she said.

Ms. Snow said insurers are "paying a lot more attention to detail."

This renewal, "rates are flat compared with getting rate reductions over at least the past three years,"

Insurers seek more details on risk changes

Information is king as risk managers renew property insurance programs, particularly as the tough economy results in more vacant properties, underwriters and brokers say.

The economic downturn means policyholders may be looking for a way to reduce costs, but cutting them at the expense of controlling losses isn't any way to win friends and influence people among underwriters. Explaining the risk in detail, including what steps are under consideration, is a far better approach.

In fact, it may be the only approach.

Given that there is going to be more pressure on underwriting to turn a profit, "there's going to be more analysis of risk," said Tim Rose, president of Liberty Mutual Group's Liberty Mutual Property unit in Weston, Mass. He advised risk managers to "get information out early, provide detailed information," including issues involving vacant buildings and how the risk manager plans to address those issues. "Be proactive regarding some of these issues: What is your plan to maintain safety and loss control measures?"

"When you look at various industries or risks, the underwriters will be looking at their financial conditions," said Mr. Rose. "From a property standpoint, vacant locations, unoccupied locations, plant closings, plant idlings—these kinds of things

in a recession become a real concern."

Managers need to continue to invest in and emphasize safety and loss prevention, such as maintaining sprinkler and alarm systems at vacant locations to avoid crime such as copper thefts, he said.

"Data is a big piece of it," said Dan Loris, senior vp-property for Zurich North America Commercial in Schaumburg, Ill. "They need to provide as much data as possible and as complete as possible. There is more focus on things like valuation."

Insurance companies are going through their own flight to quality, said Al Tobin, managing director and leader of Aon Risk Services' national property practice in New York.

"If you think your sales will be down 25% or 30% in '09, how you communicate that intelligently to underwriters is going to be critical for your pricing," Mr. Tobin said.

Randy Schreitmueller, vp at Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global, said risk managers can take relatively simple steps to cut costs and control losses. Straightforward precautions such as making sure valves are closed can prevent major losses.

"Judicious physical risk improvement will pay dividends as well," said Mr. Schreitmueller.

—By Mark A. Hofmann

Ms. Snow said. There's "no problem with overall capacity, but we have a lot of Florida exposure, so we have some coverage scheduling specific

to some geographic locations. There has been a lot more underwriting attention paid to flood exposure than in past renewals...not just in

the primary markets but also in the excess flood market, not just in

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REINSURERS SEEK HIGHER RATES
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Liability: Buyers test market

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Most clients are asking us to conduct an aggressive marketing effort on first-layer umbrellas in particular. We've been successful in putting viable alternatives on the table. Some clients have moved, but not the majority."

If general liability accounts were not marketed in October, November or December, "the majority...are being marketed right now," said Tony Tam, managing director of Marsh Inc.'s U.S. casualty practice. "Clients are being asked by senior management whether they are overexposed with one carrier on all insurance programs. It's a prudent risk manager's response to say: 'We haven't taken it to market in a while...things have changed. We should see what's out there.'"

"I don't think it would surprise anybody that brokers are being required by some customers, not all, to consider alternatives, and so they're doing that," said Russ Johnston, president of AIG Risk Management in New York, declining to discuss retention levels. Last week, Mr. Johnston was named president and CEO of AIG Environmental.

Wayne L. Salen, director of risk management for Labor Finders International Inc. in Palm Beach Gardens, Fla., opted to stay with AIG after shopping Labor Finders' general liability and excess casualty Jan. 1 renewal.

"In watching AIG specifically—whom we've got almost everything with—it was my recommendation that we...look into the market a little deeper than normal," Mr. Salen

said. He said his options are limited, but there are a few niche players willing to look at industrial temporary staffing companies. In the end, though, Labor Finders opted to stay with AIG.

"I feel pretty confident they'll be around for the long-term," Mr. Salen said, noting AIG's commitment to Labor Finders' niche and its open and honest communication.

For the renewal, Mr. Salen said Labor Finders' general liability premiums declined 12% and umbrella premiums dropped 15%, despite rates being flat. One reason was reduced exposure as a result of consolidation, Mr. Salen said.

While rates may have stabilized, many buyers still are seeing significantly lower premiums, several brokers say.

"The reality is when it comes to premiums, there are a lot of clients with large premium reductions because they've started to close locations and lay off staff and are projecting sales receipts down," said Bruce Guthart, chief operating officer of Hub International Ltd. in New York. "So from the standpoint of premiums, it looks more like a soft market because premiums are going down because their exposures are going down."

Overall, market sources say after nearly four years of declining rates, the casualty market abruptly took a new path.

"It's funny how quickly things change," Marsh's Mr. Tam said. In July, general liability policies were renewing at double-digit rate decreases. Then "all of a sudden September and October hit and the

Economic crisis increases collateral concerns

Firming rates and heavy marketing of accounts had company during the Jan. 1 general liability renewals. Collateral discussions also took center stage, brokers and insurers say.

While insurers have not necessarily changed collateral requirements, they are keeping a closer eye on their credit risks and accumulation of risk; in some cases, they are asking policyholders to diversify their collateral sources, brokers say.

That, in addition to having to obtain more letters of credit as a result of deteriorating balance sheets is putting risk managers in a precarious situation, they say.

Insurers require collateral to guarantee that losses within a large deductible program are paid by the policyholder.

"Collateral discussions are, quite honestly, more challenging than rate discussions are this year," said Paul Horgan, chief underwriting officer of Zurich

North America Global Corporate in New York, a unit of Zurich Financial Services Group.

"We have not changed our appetite for credit risk to support a program, but the challenge has been that a number of our customers' balance sheets have deteriorated, so what they qualified for in prior years they no longer qualify for at these renewals," Mr. Horgan said. "Because of that, more letters of credit are needed to support their programs and a lot are having trouble getting LOCs and, therefore, are suddenly having to come up with cash to back their programs that they have historically not had to do."

"We continue to be very disciplined in our approach to credit," said Russ Johnston, former president of AIG Risk Management in New York. Last week, he was named president and CEO of AIG Environmental.

"With the economic environment being what it is, we're find-

ing, in some circumstances, we're having to be more conservative in our collateral approach," Mr. Johnston said.

In some cases, insurers are asking clients to diversify their collateral sources if the insurer feels overexposed to one or financial institution, noted Tony Tam, a managing director in Marsh Inc.'s U.S. casualty practice.

But insurers understand that the letters of credit may cost more and are willing to help out good clients where they can, Mr. Tam said. "Not to say that surety bonds are back as a popular alternative to LOCs, but some carriers are willing to accept a portion of security as a surety bond if the client's finances are pristine."

Mr. Tam noted that while LOCs might have been secured after coverage was bound in the past, collateral now is being discussed upfront. "We don't want it to be an afterthought," he said.

—By Sally Roberts

purchase strings have tightened from a marketplace standpoint."

While some accounts are seeing 2% to 3% rate decreases, "come first and second quarter (of 2009), I don't think those will be available," Mr. Tam said.

"Rates are certainly still declining in the market, but the trajectory of that is beginning to flatten vs. what we saw in the first half of this year," AIG's Mr. Johnston said. "Underwriters are looking at successive years of

rate reductions and there's a point in time where rates can't go down any more. I think many of the underwriting companies are beginning to see that threshold is upon us."

"We've definitely seen a firming of the market in the liability area. It had been firming all year; and once the fourth quarter happened, it got a lot firmer and we're seeing definite increases as we head into the (Jan. 1) season," said Paul Horgan, chief underwriting officer of Zurich

North America Global Corporate in New York, a unit of Zurich Financial Services Group.

"A lot of liability lines are long tail lines and very interest rate-sensitive and interest rates are down to historic lows, which means that really puts the pressure on underwriting profit a lot more than I've ever seen it before," Mr. Horgan said.

At the same time, "we're all out there getting our treaty renewals right now and they're not going well. So, that's going to start bleeding through," Mr. Horgan said.

Excess casualty renewals are seeing much the same, market sources say.

"Our book of business is still seeing cost reductions, albeit at a moderate single-digit percentage basis," said Jim Mathewson, senior vp-risk management services for Lockton Cos. L.L.C. in Kansas City, Mo.

Mr. Mathewson noted that "relatively high" decreases are occurring in the mid- and upper-excess layers, while smaller changes are occurring in the lead umbrella and low-excess layers. "So the larger the placement and the more market participants and higher limits, the more likely you'll see a more significant overall decrease," Mr. Mathewson said.

"From my perspective, rates have stabilized. The amount of decreases we've been asked to give has been moderated somewhat going into (Jan. 1) as compared to what we saw in July" 2008, said Tim McAuliffe, president of AIG Excess Casualty in New York, which predominately writes lead umbrella coverage.

Much of that, Mr. McAuliffe said, is due to several years of increased claim severity. For instance, he said AIG paid nine times more claims and settlements that were \$10 million or more in 2007 than it did in 1995.

"We've had four years of rate give-backs, and lay that across what we've seen on the claims side and it's just not sustainable," he said. "At the end of the day, that's our goal—to be a consistent, sustainable market. We're getting toward a place where we will be flat to up on rate going into '09."

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ENSURING INSURANCE

Property: Coverage rates reach basement

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Florida but also in the Midwest," she said.

"There seems to be some logic in the market," said Wayne Salen, director-risk management for Labor Finders International Inc. in Palm Beach Gardens, Fla.

He said the first couple of property renewals after the company built a new headquarters that could withstand winds up to 150 mph didn't take into account the physical improvement. "I didn't think we were being treated appropriately," Mr. Salen said.

"This is the first renewal I've been somewhat more comfortable that it was taken into account," he said.

This year, Labor Finders experienced an 11% premium decrease on an exposure that decreased 9% in aggregate value. "I'm not impressed, but I'm not depressed," Mr. Salen said.

Brokers say there still is some softness in property rates.

"The market is still soft," said James H. Costner, senior vp and senior property resource consultant for Willis HRH Property Practice in Nashville, Tenn. "There is a very visible campaign to talk up the market" by underwriters, but "I'm not seeing any evidence at all that they are achieving any traction yet."

He said he saw two Dec. 1 renewals with price increases, "but both were driven by characteristics of the risk. Everything else I saw had price decrease." Nevertheless, "the decreases are less than they were a year ago, probably closer to 5% to 10%," he said.

"Anybody who does not have a coastal windstorm or New Madrid earthquake or California earthquake exposure is probably seeing competition for the business," said Willis' Mr. Costner. He said the windstorm market in New Jersey and New York is "tightening up to the point that it's very similar" to Southeastern U.S. and Gulf exposures.

For customers with catastrophe exposures, "carriers are really trying to get rates at a flat level, maybe a modest increase—under 5%," said Al Tobin, national property practice leader for Aon Risk Services in New York. "In actuality, for Dec. 1 in particular, rates were still down. They had not won that battle."

Alexandra Glickman, area vice chairman for Arthur J. Gallagher Risk Management Services Inc. in Glendale, Calif., said seven major renewals since November have experienced decreases. "Decreases have been between 3% and 12%. Some carriers are trying to drive an increase in rate, but there's so much capacity that it's not happening," she said.

Underwriters tell a slightly different story.

"We're seeing rate increases in many, many areas," particularly catastrophe-exposed areas, said Bob Deutsch, president of Bermuda-based Ironshore Inc. He said these included "meaningful rate increases—north of 10% in problem areas."

"We're not accepting rate decreases for anything," Mr. Deutsch said.

"I think we've turned the corner on the soft market," said Dan Loris, senior vp-property for Zurich North America Commercial in Schaumburg, Ill. "I think it's fair to say we're getting no less than flat" rates, particularly on catastrophe-driven accounts.

"It's becoming more consistent by the day," but the market is "still highly competitive" because insurers aren't disposed to give up market share, particularly for high-quality accounts, Mr. Loris said.

"The better the quality (of the account), the greater the competition," he said.

"Through most of the year, rates

were down. Now we're seeing them start to level off," said Tim Rose, president of Liberty Mutual Group's Liberty Mutual Property unit in Weston, Mass. He called 2008 a "tough year," with hurricanes and other large losses.

"The indications are reinsurance prices will be increasing. Investment income opportunities will be down in 2009. That puts a lot of pressure on the underwriting side to turn a profit," Mr. Rose said.

"I think it's safe to say, given all that's going on with the investments, insurers need to be prepared to live or die on their underwriting results," said Randy Schreitmueller,

vp at Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global. "We are seeing some firming of rates and we think that will intensify during 2009."

The degree of firming varies "account by account by account," Mr. Schreitmueller said. "From most carriers' perspective, losses certainly were more severe in 2008. Insurer profitability is certainly down. We're already seeing reinsurance rates starting to rise. All of these signs point to the fact that rates are getting more solid."

Risk managers also are paying close attention to the financial stability of their insurers, observers say.

Willis' Mr. Costner said while a "small minority" of risk managers

have moved their accounts, "there are lots and lots of people who are talking about it. A lot of time it's driven by the lenders. If you have a business that has large mortgage debt, the lenders are going to take an interest in selecting the insurance company."

Despite the uncertainty, risk managers may not be facing an overly bleak 2009, said Gallagher's Ms. Glickman.

"I am optimistic on behalf of the clients, barring some absolute unforeseen catastrophe, that 2009 will be a relatively stable year," Ms. Glickman said. "And each risk really will be underwritten on the basis of its own value. There will still be rate relief for those accounts that deserve it."



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Financial crisis pushes some D&O rates sharply higher

But many buyers outside of finance see prices fall further

By **DAVE LENCKUS**

The financial crisis has driven up the frequency and severity of securities fraud claims, but directors and officers liability insurers were taking a measured response at year-end renewals, market executives and risk managers said.

D&O insurance rates have ballooned as capacity has shriveled for financial institutions, the litigation targets that securities fraud plaintiffs have focused on so far, according to market experts. Companies with large market capitalizations also faced tightening market conditions.

But most other risks, including some traditionally tough-to-place buyers, were negotiating lower or flat rates and obtaining as much capacity as they wanted, experts said.

"There are two separate areas" of the D&O insurance market—"financial institutions and everyone else," said Lou Ann Layton, a managing director with Marsh Inc. in New York.

"The market as a whole is still fairly soft," said broker Karen Kutger, a Philadelphia-based vp for Professional Risk Solutions L.L.C.

"There are rate decreases, but this is a transition from a soft market environment to a hardening market environment," said Nikolaj Beck, the Zurich, Switzerland-based head of Industrial Risk Insurer, a division of Swiss Reinsurance Co.

The overall market to date has not tightened even with securities fraud claims spiking since mid-2007.

Plaintiffs last year filed 210 securities class actions compared with 176 in 2007, according to the Stanford Law School Securities Class Action Clearinghouse in Palo Alto, Calif., in cooperation with Cornerstone Research of Boston.

The final 2008 tally is the biggest total since plaintiffs filed 215 securities class actions in 2004, according to the clearinghouse.

Subprime-related allegations are having an increasing impact on securities claims, the report says.

D&O underwriters understand that the financial institutions sector is driving up claims and have responded in a measured way so far, insurers and brokers say.

"The D&O underwriting community is very good at reacting to circumstances, but not anticipating circumstances," said Carl Pursiano, a New York-based senior vp with Liberty International Underwriters, a unit of Liberty Mutual Group Inc.

That response amounts to boosting financial institutions' D&O insurance rates 20% to 100% while halving their limits, according to market experts.

In addition, "anything related to leverage," or debt-financed investments, has "become very difficult" to underwrite and, therefore, the

coverage is increasingly expensive, said Greg Flood, the New York-based president of IronPro, a division of Bermuda-based Ironshore Insurance Ltd.

Those risks include real estate and asset management operations, Mr. Flood said.

Insurers also are reducing capacity offered to hedge funds and private equity firms, he said.

"The list keeps getting longer," Mr. Flood added.

However, midsize financial institutions have faced smaller rate hikes and generally can obtain as much



capacity as they need, Marsh's Ms. Layton said.

"I think carriers are acting fairly regarding the financial institutions sector," said Mike Rice, the Denver-based chief executive officer of Aon Financial Services Group, a unit of Aon Corp.

Despite the drastically tightening D&O market for financial institutions, their rates remain less than

half of what they were at the end of 2003, Mr. Rice said.

Large market cap companies and smaller companies that have seen their market cap shrink also face rate hikes ranging from 5% to 20%, Mr. Pursiano said. Insurers are wary of those risks, too, because they traditionally are prime targets of securities fraud plaintiffs, he said.

Meanwhile, "it's still competitive elsewhere" for most risks, according to Mr. Rice.

D&O buyers were able to negotiate rate cuts throughout the fourth quarter, though reductions were

"narrowing a bit" from the 11.3% cuts on average that insurers offered during the third quarter, Mr. Rice said.

Mr. Pursiano estimated that underwriters were cutting rates 5% to 15% for attractive risks.

Privately held companies could more easily negotiate a 10% reduction, while publicly traded companies could expect 5% decreases, Professional Risk's Ms. Kutger said.

Insurers are "trying to hold as much rate as they can, because of

Continued on next page

A VICIOUS TORNADO. AN UPCOMING RACE. YET THE ATLANTA



CONTINUED FROM PREVIOUS PAGE

the financial institution claims that they know they'll have to pay," she said.

Ultimately, insurers have to engage in "cash-flow underwriting to get premium on the books to pay those claims," Ms. Kutger said.

Meanwhile, "there's every bit as much capacity as there was a year ago," Mr. Rice said. "In fact, I might say you could get more" limits now than a year or so ago, he said.

Liberty International's Mr. Purisano agreed but also said he has seen some buyers who are troubled about how potential claims would be handled voluntarily limit their capacity options to steer clear of insurers if they or their parent com-

'There's every bit as much capacity as there was a year ago. In fact, I might say you could get more' limits now than a year or so ago.

Mike Rice
Aon Financial Services Group

panies are financially stressed.

Marsh's Ms. Layton agreed. She also noted that those buyers pay more for their coverage.

For nonfinancial risks, insurers also are not pushing tougher terms and conditions, market experts said.

But some D&O buyers opted for larger deductibles in exchange for bigger rate cuts, Aon's Mr. Rice said.

Even traditionally tough risks—including pharmaceutical, biotechnology, health care and telecommunications companies—negotiated rate cuts at year-end renewals, Aon's Mr. Rice said. Their rates, however, still are higher than those for other nonfinancial sector risks, he noted.

Rates for energy and consumer staples companies, however, also were headed up, generally tracking their respective 10% and nearly 5% increases during the third quarter, Mr. Rice said.

While the D&O market is not as

soft as it has been in recent years, some risk managers have higher priority concerns than their rates.

"I see people focusing on the global aspect of D&O," said Leslie Lamb, manager-global risk management at Cisco Systems Inc. in San Jose, Calif.

D&O coverage for management in foreign countries "needs to become more efficient" in managing claims and issuing policies, Ms. Lamb said.

For the first half of 2009, several experts predicted continued stabilization of rates, but with some risks able to negotiate small decreases.

But Swiss Re's Mr. Beck said he expects that most risks will face rate hikes during 2009 as insurers' loss experience deteriorates.

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E&O prices begin to firm during year-end renewals

By **DAVE LENCKUS**

Brokers and insurers disagree over whether professionals could negotiate rate cuts during year-end renewals, but they concur that the errors and omissions liability insurance market is not as soft as it was a year ago.

Brokers say good risks were able to negotiate flat rates to 10% reductions. Insurers say rates for those buyers ranged from flat to 20% higher.

The estimates exclude financial institutions, which faced steep rate hikes and were the only type of

E&O insurance buyer that could not purchase adequate capacity, market experts said.

Rate reductions during year-end renewals ranged from 5% to 10% compared with 10% to 15% a year ago, said broker Sandy Codding, a managing director and the co-leader of the U.S. E&O practice at Marsh Inc. in New York.

Unlike previous renewal periods, there was little difference in rates among different classes of professionals, Mr. Codding said.

Broker Karen Kutger, a Philadelphia-based vp for Professional Risk



Solutions L.L.C., said, "The E&O market is still definitely soft."

But she noted that incumbent insurers were trying to hold on to as much premium as they could.

"Underwriters definitely are holding on to the flat premium mode longer, until you show them you have another offer," Ms. Kutger said. "They're definitely asking for proof" of a competing offer, "so

there's no more bluffing" by insurance buyers, she said.

When an account moves to a different insurer, a 10% rate decrease typically can be negotiated, she said.

Bruce Eisler, a senior vp in New York with Liberty International Underwriters, a unit of Liberty Mutual Group Inc., said rates began stabilizing rapidly late in the third quarter or early in the fourth quarter of 2008. At that point, most risks outside the financial institutions sector could negotiate flat rates to 5% increases, he said.

The only rate decreases Mr. Eisler

said he has seen are some "modest" reductions for excess capacity for lawyers with good claims history.

Mr. Eisler said many lawyers have purchased additional capacity because of their exposure to claims related to the declining economy. Those attorneys had advised investors that fared poorly or companies that reported huge losses, he said.

To date, Mr. Eisler said he has not seen a meaningful increase in claims against attorneys, but there is "a strong possibility for it."

For most professional risks, "the market is hardening and must harden," said Nikolaj Beck, the Zurich, Switzerland-based head of Industrial Risk Insurer, a division of Swiss Reinsurance Co.

Technology and construction firms requested up to 20% rate cuts, but Swiss Re typically offered them flat rates—which put those risks in a better position compared with most other professional liability risks, Mr. Beck said.

Health care accounts also sought reduced rates, but Swiss Re would not "entertain that," Mr. Beck said.

Accountants were able to negotiate flat rates if they were small but faced a 20% increase if they were large, he said.

Liberty International's Mr. Eisler noted that architectural and engineering firms with international operations also faced large premium increases because their revenues had grown significantly.

But no professional risk faced a tougher renewal than financial institutions, market experts agreed.

Incumbent insurers often refused to renew their coverage, Professional Risk's Ms. Kutger said. When those accounts found coverage, they typically had to settle for a 10% premium increase and half the limits they had, she said.

Mr. Beck said he expects rates to rise "modestly" during the first half of 2009. Mr. Eisler projects increases of 5% to 10%, but he said rates could stabilize by year-end if losses do not accumulate as expected.

But Ms. Kutger said insurance buyers should brace themselves for a potentially rough year. "The big thing for people to understand is that it could go into a hard market overnight," especially if a major E&O insurer were to go under.

For insurance buyers, "it's important to anticipate what effect the economic and credit situation will have on their business and exposures," Marsh's Mr. Codding said.

If buyers can give underwriters "a clear answer on that, it will help them get the best quote," Mr. Codding said.

He also advised buyers to provide insurers detailed information on controls in place "to prevent anything from undermining their business models and risk controls."

"For example, when times get tough and companies are desperate to make sales, there may be an inclination by salespeople to circumvent some controls to close a deal," Mr. Codding said. "So underwriters need information on how that would be prevented."



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Insurers vie for big comp accounts despite other pressures

By **ROBERTO CENICEROS**

Workers compensation insurance buyers are witnessing a market in transition. Some still are seeing lower prices, although the declines are far less than in recent years.

The poor economy, meanwhile, is pressuring insurers' flexibility on pricing and making letters of credit for large deductibles more expensive or difficult to secure just as guaranteed-cost programs are tougher to obtain, sources said.

Yet healthy insurer competition for large accounts continues exerting some downward pressure on pricing, said Mark Moreland, executive vp and head of the risk management group at Lockton Cos. L.L.C. in Kansas City, Mo.

For 2009 renewals completed in the third and fourth quarters of 2008, buyers saw large, single-digit price decreases, although insurers are increasingly assessing their pricing deal-by-deal, Mr. Moreland said.

But renewal pricing is nowhere near the double-digit decreases that were possible just six months ago, said Tony Tam, managing director in the national casualty practice for Marsh Inc. in New York.

"That has certainly changed," Mr. Tam said. "We can still see certain opportunities where clients will get rate reductions. However, we are talking under 5%, low single-digit decreases to flat."

Some clients, however, have seen prices rise, Mr. Tam said. "It runs the gamut," he added.

For its January renewal with incumbent insurer Hartford Financial Services Group Inc., First Niagara Financial Group Inc. experienced about a 5% price decrease despite a slight loss increase, said Robert J. Brewer Jr., vp of First Niagara Risk Management Inc., the regional bank brokerage unit that places workers comp coverage for its parent's operations.

The small-account market written nationwide by Meadowbrook Insurance Group Inc. has been "fairly stable" with "fairly modest" statutory rate decreases nationwide averaging around 7.5%, said Robert S. Cubbin, the Southfield, Mich.-based insurer's president and chief executive officer.

Pricing generally has followed rate decreases driven by declining claims frequency, Mr. Cubbin said, except in a few states.

In October, for instance, the California Department of Insurance approved a 5% average pure premium rate increase effective for 2009, the first rate increase since 2003.

Excess workers compensation coverage underwritten by Meadowbrook for nonprofit health care operations, public entities, pools and other accounts recently renewed with single-digit price decreases typically accompanied by increased policyholder retentions, Mr. Cubbin said.

But he expects to see "incremental" price increases soon because of insurer investment losses.

"I think you are going to see more rate adequacy coming back into that market," Mr. Cubbin said. "But not in a huge way."

The nation's economic climate leaves insurers unable to offset rising combined ratios with investment income, Mr. Moreland said. So he expects insurers to work harder to stabilize pricing during 2009, although competition might work against that.

Shrinking payrolls also are affecting renewal talks. For an April 1, renewal, Fleetwood Enterprises Inc. is considering moving from a large-deductible program to "dollar-one" coverage, said Bill McMahon, the Riverside, Calif.-based company's risk manager.

With demand down for its recre-



ational vehicles, Fleetwood is closing plants and its payroll is expected to shrink by renewal time.

But "the exposure is going to be down so far that I don't think the underwriters are going to...make a profit from a large-deductible" program, Mr. McMahon said. "The payroll is going to be down so far."

An account's loss history, decreases in past renewals and an insurer's dependence on reinsurance also are

factors in renewal pricing, observers said. Insurers less dependent on reinsurance have greater pricing flexibility because reinsurance prices are firming, they added.

In today's market, though, insurers are increasingly able to set the tone of negotiations, several experts said.

"Those days are gone when you can go to the incumbent carrier and say, 'I won't market this account if you give me a 10% rate reduction,'" Marsh's Mr. Tam said. "I don't know if you would get a 5% reduction with that strategy. You might get the 5%, but you would have to market the account."

With the market "turning a bit," insurers are able to sustain the pricing they need and brokers "are generally accepting the terms and conditions that we are putting out now," said Jennifer Tomilin, senior vp in Schaumburg, Ill., for commercial markets at Zurich North America Commercial, a division of Zurich Financial Services Group.

"That is not (happening in) all cases, but I am seeing that more and more," which is a shift from six months ago when renewals were more challenging for insurers, Ms. Tomilin said.

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Large losses jump-start hardening in energy market

Gulf of Mexico risks likely to be hit with highest rate increases

By ZACK PHILLIPS

Substantial losses in 2008 and other factors mean offshore and onshore energy insurance buyers are facing a firming market, insurers and market observers say.

Onshore and offshore rates are rising by 10% or more, with offshore prices hardening more dramatically than onshore. The market turn is driven largely by catastrophe losses in 2008, and interests in the Gulf of Mexico—hit hard by hurricanes last year—face much higher rate escalation than the rest of the world, observers said.

"I'd say as a general rule we're not seeing any rate decreases," said Michael Garrison, senior vp at New York-based Starr Technical Risks Agency Inc. "There's always the odd exception, but we are really not seeing it, and we certainly don't plan on giving any rate reductions on oil and gas."

For refineries and other onshore energy facilities, most observers say policyholders are facing double-digit rate increases.

Robert Haller, senior vp for the property line of business at Zurich Global Energy in Houston, said he expects a 9% to 10% increase in rates across the market, with 25% increases for Gulf of Mexico risks. Anthony Carroll, chief underwriting officer of global energy for Boston-based Liberty International Underwriters, said he expects onshore rates to rise 25% to 30% in the global market, while Mr. Garrison said he expects a 10% to 15% rate increase, if not more, globally.

"The North American energy market really needs a 30% to 35% rate increase to get it back to what a lot of the onshore energy underwriters would consider technical pricing," he said. "Whether we're going to get that or not remains to be seen."

Several factors are combining to harden the market. For one, 2008 saw hundreds of millions of dollars in onshore energy losses: floods in January closed an Australian coal mine for months; a February explosion at an oil refinery near Dallas was a \$400 million loss; and an explosion rocked the Imperial Sugar Co. refinery, a type of facility written by many onshore energy underwriters, near Savannah, Ga., in February. Because of those and other incidents, observers said, the market already was firming before hurricanes Gustav

and Ike caused nearly \$20 billion in damages and an October fire closed the ISAB Energy Services S.R.L. power generation plant in Italy, one of the costliest power generation losses in history.

The losses "are going to make people look twice, I think, at what they do with their (onshore energy) capacity in North America going forward," Mr. Garrison said.

And these events have helped to harden rates and shrink capacity in the reinsurance market, which helps shape the market for onshore insurance. "The reinsurance market is going to be nonexistent" for cat risks, Mr. Carroll said.

Other forces working against buyers and possibly eroding capacity include the increasing value of energy facilities, the recession and the increasingly poor performance of underwriters in the energy sector, insurers and brokers say.

In addition to rising prices, observers predict lower limits and higher deductibles for policyholders, particularly for business interruption policies in the power generation sector.

Mr. Garrison said revenues for

businesses in that sector have increased with rising commodity prices, while repair times have slowed due to a shortage of skilled labor and replacement parts for newer equipment. That means business interruption claims that formerly cost \$500,000 to \$2.5 million, which generally fell within deductibles, now cost \$5 million to \$20 million, he said. Loss ratios in the sector are between 150% and 200%, he said.

For offshore oil and gas production facilities, the market is likely to harden even more dramatically than for onshore risks, with more restrictive coverage, less capacity and higher prices, observers said.

"I would have said three months ago that the average increase across the (offshore) portfolio for the Gulf of Mexico in 2009 would have been about 50%; now I believe it's going to be higher," Mr. Garrison said.

Outside the Gulf of Mexico, he said he now expects rate increases of between 10% and 20%. Mr. Carroll said he expected a 30% to 50% rise in rates worldwide.

Mr. Carroll also said he expects as much as a 50% decrease this year in offshore capacity for the Gulf of Mexico, and others agreed.

"The biggest concern of buyers will be...enough (wind) capacity," said Frank Costa, president of New York-

based Berkley Offshore Underwriting Managers L.L.C. and chairman of the energy and offshore committee for the International Union of Marine Insurance. "The Gulf of Mexico wind capacity will be in scarce supply and will be significantly more expensive than it was a year ago."

The market turn is largely loss-driven, observers say. Offshore facilities in the Gulf of Mexico suffered some construction losses in 2008, but hurricanes Gustav and Ike wrought most of the damage.

"The Gulf of Mexico over the last five years has produced losses far in excess of the premiums brought in," Mr. Costa said. "While Katrina and Rita were devastating storms in their own right, Ike was unique in its scope, in size if not strength. Underwriters are taking a hard look at how they're providing coverage in the Gulf of Mexico now."

Though its size did not approach the level of hurricanes Katrina and Rita, Mr. Costa said Ike demonstrated that even a mid-strength hurricane can produce a large loss if the storm is wide enough.

"It was thought you needed a (Category) 4 or 5 (storm) to produce a loss of the magnitude of Ike," he said. "It changes the way we look at storms."

"Underwriters are going back to the drawing board," Mr. Costa said.



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Rising tide of higher rates seeps through marine sector

By ZACK PHILLIPS

Large losses and higher reinsurance rates have begun to harden marine insurance pricing, market observers say.

The firming market comes at an inauspicious time for shippers, as the shipping boom recedes in the face of worldwide economic difficulty. However, buyers renewing their marine coverage still are far from the hard market of the 1990s, observers say.

It's the "small things (that) you notice. Underwriters start to say, 'I'm just going to walk away from this account. I'm not going to give a reduction;' or 'I can't give a reduction,'" said Shawn F. Kucharski, vp at Willis Marine of London-based Willis Group Holdings Ltd. "Over the last year, you see more and more of no one's giving a reduction."

He and others say the marine market was poised to firm after several years of abundant capacity and soft pricing. The turn, they say, is driven by losses and higher reinsurance prices.

"Any upward movement in price won't be the result of restricted capacity; it will be the result of poor (claims) experience," said Richard Decker, president of AIG Global Marine. "There has been rate erosion over the last few years. It needs to come back into balance."

The economy's effects on the shipping industry also may have played a role in the market turn. During the recent shipping boom, owners typically kept ships running as long as possible as freight rates and commodity prices soared. But freight rates have plummeted in the past year. A so-called capesize bulk carrier, or giant bulk cargo ship, carrying iron ore that earned about \$200,000 a day at the beginning of 2008 now earns about \$6,000 a day, said Henric Gard, director of the Swedish Club, a Göteborg, Sweden-based mutual insurer.

That means shipowners will idle and scrap more ships, which often saddles underwriters with more claims because owners discover damage to docked ships more easily than vessels in constant transit. As vessel values fall, owners may begin to insure less, possibly chasing away some of the marine market's capacity, said Willis' Mr. Kucharski.

For the hull sector, rates are rising 5% to 35%, Mr. Gard said.

"During the last three or four years, you've had fabulous claims inflation with high commodity prices going up, and basically rates really haven't followed," Mr. Gard said. "Claims that previously cost \$100,000 to repair might cost \$300,000 to repair."

Members of protection and indemnity clubs are seeing double-digit rate increases. Mr. Gard and others say the average increase is about 15%.

Joseph E.M. Hughes, chairman and chief executive officer of the American Steamship Owners Mutual P&I Assn. Inc. in New York, said the majority of international shippers are seeing rate increases from 12.5% to 25% driven in part by

poor claims experience.

2006 was the worst year on record for large-pool claims with more than \$7 million, which P&I clubs cover through a pool, Messrs. Gard and Hughes said. 2007 also had high large-pool claims, although only five such claims were reported in 2008, Mr. Gard said.

P&I underwriters also may react to the "churn effect" in which the scrapping of older vessels erodes a club's premium base because older vessels command higher premiums than newer vessels.

The market even has firmed for



cases, according to Michael Davies, the Singapore-based managing director of AXA Corporate Solutions' marine division in Asia Pacific and chairman of the International Union of Marine Insurance's

the traditionally lucrative and competitive cargo market.

Cargo insurance policyholders face average rate increases of 10% to 20% and as much as 100% in some

cargo committee.

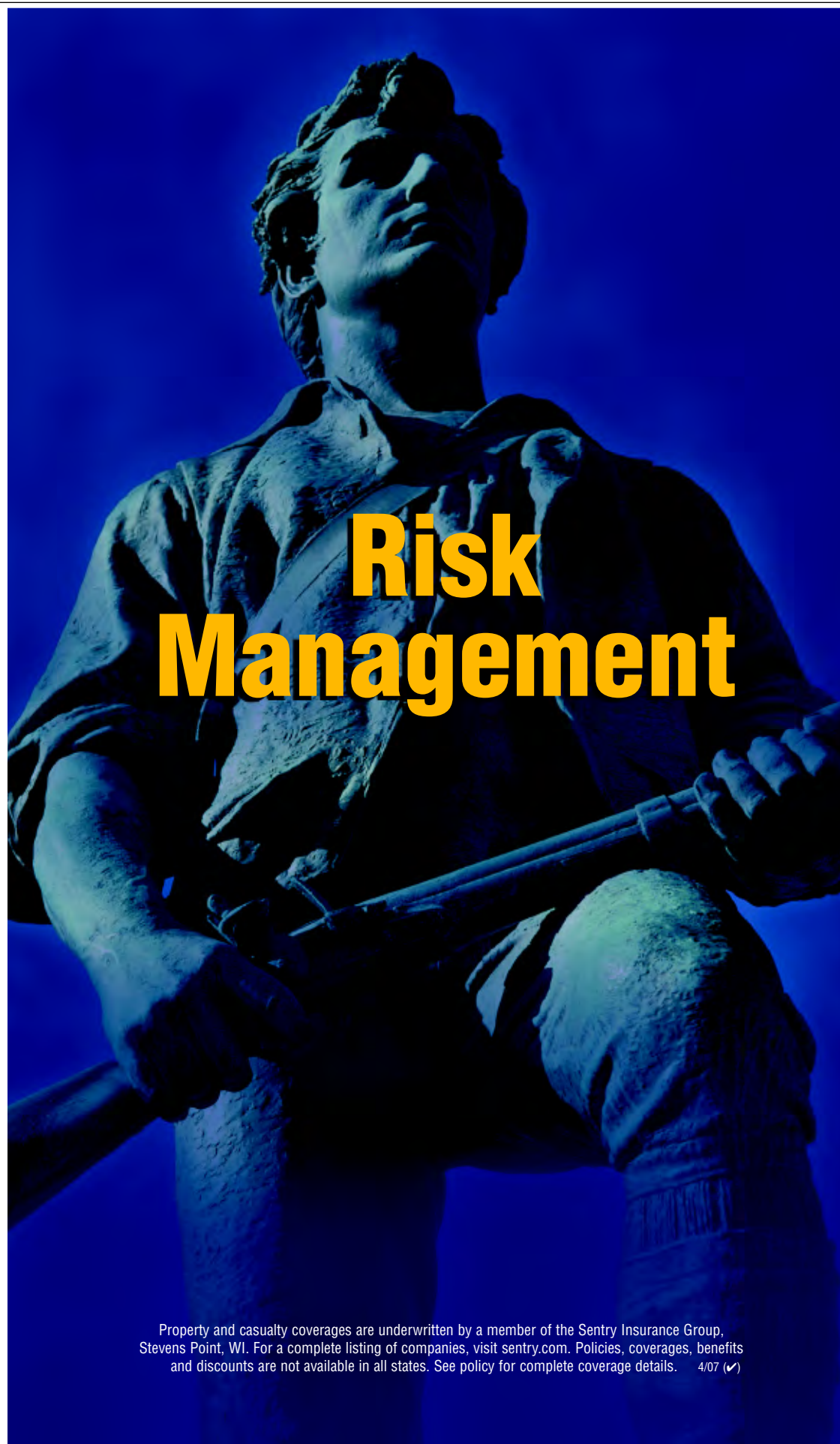
Mr. Davies said firming rates have been driven largely by plummeting commodity prices. For example, oil is now worth one-third the value it had in mid-2008, he said. That substantially cuts the cargo insurance premium on the oil even if rates hold steady. Meanwhile, cargo underwriters are only now receiving claims from last year, when the value of the cargo was much higher.

"We're having to pay claims at the higher value because that's when the loss occurred," Mr. Davies said. "What we're not prepared to

do is significantly reduce our premiums because we won't have enough premium to pay for the losses coming in."

Mr. Davies estimated that cargo limits would decline 20% to 25%, and 50% for crude oil. Still, he said he expected increased capacity in the cargo market.

"2007 will be the worst year for profits since 2002 (and) it still is not bad," he said, noting the loss ratio of about 70%. "The cargo market is hardening (and) I think (insurers) realize 2009 is probably a good year to step into cargo."



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LEGAL NOTICE

IN THE MATTER OF THE LIQUIDATION OF
**MEDICAL MALPRACTICE
INSURANCE ASSOCIATION**
Supreme Court County of New York
Index No.: 401879/01

NOTICE

On May 14, 2001, Medical Malpractice Insurance Association ("MMIA") was placed into liquidation (the "Liquidation Proceeding") and the then-Superintendent of Insurance of the State of New York, Neil D. Levin (and his successors in office), was appointed liquidator ("Liquidator") of MMIA ("Liquidation Order"). Pursuant to the New York Insurance Law ("Insurance Law") and the Liquidation Order, the Liquidator was given the responsibility of, among other things, marshalling MMIA's assets and adjudicating claims consistent with Article 74 of the Insurance Law. The Liquidator has submitted to the Court supervising MMIA's liquidation proceeding a petition ("Petition") seeking an order: (1) approving the final accounting and report on the Liquidation Proceeding (the "Final Report") and the financial transactions delineated therein; (2) terminating and closing the Liquidation Proceeding; (3) releasing and discharging the Liquidator, his predecessors and successors in office, their agents, attorneys and employees, from any and all liability arising from their acts or omissions in connection with the Liquidation Proceeding; (4) authorizing the New York Liquidation Bureau, to receive and disburse without further application to the Court, any further receipts that are received, postdating the termination of the Liquidation Proceeding, to the miscellaneous special revenue fund, the New York State fund authorized pursuant to New York State Finance Law Section 71, that is used to account for the proceeds of special sources that are specifically restricted by law from being deposited in the general funds of the state; and (5) authorizing and directing the Liquidator to destroy or otherwise dispose of any and all of the books, files, records and other property of MMIA without further order of the Court.

A hearing is scheduled on the petition on February 16, 2009 at 9:30 a.m. before the Supreme Court of the State of New York, County of New York at the Courthouse, IAS Part 54, Room 1227, 111 Centre Street, New York, New York ("Hearing"). If you wish to object to the petition, you must serve a written statement setting forth your objections and all supporting documentation upon the Liquidator and Clerk of the Court, at least fifteen business days prior to the Hearing. Service on the Liquidator shall be made by first class mail at the following address:

The Superintendent of Insurance of the State of New York as Liquidator of
Medical Malpractice Insurance Association
123 William Street
New York, New York 10038-3889
Attention: Jack A. Franceschetti, Esq.

By filing the Petition, the Liquidator is seeking permission from the Court to terminate this Liquidation Proceeding. For this reason, all policyholders, creditors and claimants with allowed claims and all those interested in MMIA's affairs are advised to review all available information and to protect their rights accordingly.

The Petition and Final Report are available for inspection at the above stated address. In the event of any discrepancy between this notice and the documents submitted to Court, the documents control.

Requests for further information should be directed to the New York Liquidation Bureau, Creditor Claims Department at (212) 341-6814.

ERIC R. DINALLO
Superintendent of Insurance
of the State of New York as
Liquidator of Medical Malpractice
Insurance Association

LEGAL NOTICE

THE SCOTTISH LION INSURANCE COMPANY LIMITED

Registered in Scotland Number SC025905

NOTICE OF MEETINGS OF SCHEME CREDITORS

NOTICE IS HEREBY GIVEN THAT by an Order pronounced on 15 December 2008 the Court of Session in Edinburgh, Scotland has ordered that two separate meetings (the "First Meeting" and the "Second Meeting") of Scheme Creditors (as defined in the scheme of arrangement mentioned below) be convened for the purpose of considering and, if thought fit, agreeing (with or without modification) a scheme of arrangement dated 8 December 2008 (the "Scheme") pursuant to section 895 Companies Act 2006 (the "Act") proposed to be made between the Company and its Scheme Creditors AND THAT accordingly two separate meetings of Scheme Creditors will be held at the offices of PricewaterhouseCoopers LLP, 1 Embankment Place, London WC2N 6RH, United Kingdom. The First Meeting will be held at 11 a.m. (London time) on 2 March 2009 and the Second Meeting will be held at 11.30 a.m. (London time) or as soon thereafter as the first meeting has concluded or been adjourned, on the same date.

The Scheme Creditors entitled to attend and vote at the First Meeting (or any adjournment of it) are Scheme Creditors having Notified Outstanding Claims (as defined in the Scheme) and they may attend and vote at that meeting only in respect of their Notified Outstanding Claims.

The Scheme Creditors entitled to attend and vote at the Second of the Meeting (or any adjournment of it) are Scheme Creditors having IBNR Claims (as defined in the Scheme) and they may attend and vote at the meeting only in respect of their IBNR Claims. Scheme Creditors having both Notified Outstanding Claims and IBNR Claims are entitled to attend and vote at both of the meetings.

All Scheme Creditors will be required to register their attendance before the commencement of the first of the meetings. Registration will commence at 10.30 a.m. (London time).

Copies of the Scheme and of the Company's explanatory statement required to be furnished pursuant to section 897 of the Act can be downloaded from the Company's website at www.scottishlionsolventscheme.com (the "Website").

Alternatively, hard copies can be obtained, free of charge, by contacting the Company in the manner set out below.

Any Scheme Creditor entitled to attend and vote at either or both of the meetings may do so in person (which, if a corporation, it may do by a duly authorised representative) or may appoint another person, whether a Scheme Creditor or not, as a proxy to attend and vote in its place. A Form of Proxy and a Voting Table for use at the Scheme Creditors' Meetings may be downloaded from the Website or obtained from the Company in the manner set out below.

Whether they intend to attend and vote at either or both of the meetings, Scheme Creditors are requested to complete the Form of Proxy and Voting Table in accordance with the General Notes and Instructions for Completion and return them (together with Supporting Information as defined in the Scheme) to the Company as soon as possible at the address below and, in any event, so as to be received by 5.00 p.m. (London time) on 27 February 2009. Forms of Proxy and Voting Tables may also be handed in at the registration desk prior to the commencement of the first of the meetings. The Company will accept Forms of Proxy and Voting Tables by fax or by email (but in the latter case only in portable document format (pdf)) provided that the originals are delivered to the Company within seven days of the Scheme Creditors' Meetings.

In order to be approved, the Scheme must be agreed by a majority in number representing 75% in value of the Scheme Creditors present and voting either in person or by proxy the First Meeting and also by a majority in number representing 75% in value of the Scheme Creditors present and voting in person or by proxy at the Second Meeting. If agreed by the requisite majority of Scheme Creditors at both of the meetings, the Scheme will be subject to the subsequent sanction of the Court.

Any Scheme Creditor that has any questions concerning the action it is required to take should contact the Company in the manner set out below.

The Scottish Lion Insurance Company Limited, The Company

The Scottish Lion Insurance Company Limited, 1st Floor, 22 Bevis Marks, London EC3A 7JB, United Kingdom. Contact: Steve Crawley or Vanessa Magee, Tel: 020 7626 4266. Fax: 020 7621 0961. Email: solventscheme@scottishlion.co.uk

Solicitors to the Company

Mayer Brown International LLP, 31st Floor, 30 St Mary Axe, London EC3A 8EP, United Kingdom. Contact: Ian McKenna or Sarah Russell, Tel: +44 (0) 20 7398 4611 or +44 (0) 20 7782 8587. Fax: +44 (0) 20 7623 7965. Email: imckenna@mayerbrown.com or rsrussell@mayerbrown.com

LEGAL NOTICE

Reinsurers push hard for increased prices

Some cat insurers see rates hikes as much as 50%

By COLLEEN MCCARTHY

Reinsurance rates for January renewals have risen as much as 50% due to catastrophe losses and the financial crisis, but prices vary widely depending on geography and lines of business, observers say.

"Overall, the market is hardening," said Steven K. Bolland, president of New York-based intermediary Gill & Roeser Inc. "We saw roughly 8% to 10% increases, but prices were particularly steep for clients who had experienced losses, in some cases 20% to 30% higher."

Mr. Bolland described the Jan. 1 renewal process as "very difficult," saying reinsurers sought higher prices than they ultimately achieved as the "market kicked back."

With the financial crisis hitting the United States particularly hard, "some people were expecting a bit of a bonanza, but I would describe (pricing) as patchy depending on the geographic region and the specific peril," said Chris Klein, London-based global head of the business intelligence group for Guy Carpenter & Co. L.L.C.

Global property catastrophe reinsurance rates rose an average of 8% on the year, led by the United States, where they increased 15%, according to Guy Carpenter.

However, some property cat programs with Gulf of Mexico exposures experienced rate hikes of as much as 40% for reinsurance, Mr. Klein said.

However, other areas saw flat rates or modest increases, particularly regional accounts with favorable loss histories.

"January renewals were relatively flat. We had a lot of reinsurance appetite on the (multiline) accounts and no real cutbacks in capacity," said Steve McElhiney, president of Dallas-based reinsurance intermediary EWI Inc. However, he said he expects "some pretty sharp increases" when his accounts with Gulf Coast exposures go to market later this year.

The most difficult reinsurance renewals were for lines directly affected by the credit crisis, such as errors and omissions and directors and officers liability coverage. Reinsurers sought increases as much as 20% for professional liability programs, Mr. Klein said.

"The Madoff scandal spooked the market quite significantly," he said.

The fear of potential Madoff exposure factored into the higher D&O prices, he said. "Reinsurers are looking at policies that might be exposed to that cover" and pushing up rates

to hedge against possible losses.

Prices for casualty reinsurance renewals ranged from flat to 10% higher, said William H. Eyre Jr., managing director and chief executive officer of Philadelphia-based Towers Perrin Reinsurance.

In addition, marine rates rose 10% to 15% on average and offshore energy reinsurance, particularly for the Gulf of Mexico, jumped as much as 50%, said Guy Carpenter's Mr. Klein.

While the rate hikes have been tempered by reinsurers' large capital positions at the beginning of 2008, observers said the market has become more volatile with traditional capital sources constrained by tighter credit that could further harden reinsurance pricing.

"Reinsurers are very concerned about their ability to replenish their balance sheets," Mr. Klein said.

"There is just a lot of uncertainty right now," said Gill & Roeser's Mr. Bolland. "An inability to raise capital means reinsurers will consider their capital to be more valuable and, in turn, they will want to charge more for it."

Primary insurer retention levels are largely unchanged, observers say.

"There were a handful of buyers who raised retentions, but in this environment, buyers are thinking carefully before they decide to take more risk," said Eric Brosius, senior vp and manager of reinsurance for Liberty Mutual Insurance Co. in Boston.

As for terms and conditions, fears that reinsurance renewals might include restrictions "didn't really play out," Mr. Eyre said.

Many cedents have more closely

'There were a handful of buyers who raised retentions, but in this environment, buyers are thinking carefully before they decide to take more risk.'

Eric Brosius,
Liberty Mutual Insurance Co.

examined reinsurers' financial strength, Mr. Eyre said. "Some buyers are reducing their shares with those reinsurers they have concerns with," he said.

There also is uncertainty concerning the size of the Florida Hurricane Catastrophe Fund, which observers say could affect reinsurance capacity later this year.

While much of the reinsurance sector is boosting rates, experts say it is difficult to say how soon that will affect the primary insurance market.

"There's quite a disconnect right now. Primary clients are still seeing rate reductions, and yet the reinsurers are asking for rate increases. (Primary insurers) are getting squeezed from both sides," Mr. Bolland said.

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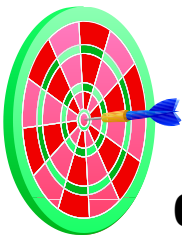
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Market Moves

Swett unit switches to Darwin from Lexington

FARMINGTON, Conn.—Managed Care Services, a division of Atlanta, Ga.-based Swett & Crawford Group, has changed underwriters after 35 years with Lexington Insurance Co.

Effective Feb. 15, Managed Care will use the services of Darwin Professional Underwriters Inc., a Farmington, Conn.-based member company of Allied World Assurance Holdings Ltd.

Lexington, a unit of American International Group, lost its two longtime top executives in December when they resigned to accept leadership positions at Bermuda-based Ironshore Inc. (BI, Dec. 15).

Managed Care Services will continue to service its current book of business, worth about \$18 million in gross premiums for 2008, according to a statement from Swett & Crawford. The company also will become the exclusive underwriter for Darwin's 365Complete, which offers multiple professional liability coverages in one product, according to a statement.

Edgewood expands with private broker acquisition

IRVINE, Calif.—California brokerage Edgewood Partners Insurance Center has acquired the privately owned broker Complete Insurance Inc.

The acquisition expands the Orange County operations of San Mateo, Calif.-based Edgewood, a retail property/casualty and employee benefits insurance broker, to more than 250 employees, according to a statement. The firm now has offices in Folsom, Irvine, Los Angeles, Orange, Sacramento, San Francisco, San Mateo and San Ramon, Calif.

Anthony J. D'Asaro, president

and chief executive officer of Irvine-based Complete Insurance, will manage the new Irvine office.

Edgewood Partners was created in 2007 by Dan Francis, the former president and chief executive officer of ABD Insurance & Financial Services Inc., and John Hahn, former president of BISYS Commercial Insurance Services Inc.

BB&T buys broker J. Rolfe Davis

MAITLAND, Fla.—BB&T Insurance Services Inc. has acquired privately held broker J. Rolfe Davis Insurance of Maitland, Fla., the Branch Banking & Trust Co. subsidiary said in a statement.

The purchase, completed Dec. 31, expands the Orlando, Fla., operations of the nation's sixth-largest insurance broker, according to *Business Insurance*. BB&T acquired Burkey Risk Services of Maitland and Boynton Beach in March 2008. The Raleigh, N.C.-based company also operates divisions in St. Petersburg, Bradenton and Tallahassee, Fla.

Business Insurance ranked J. Rolfe Davis as the 96th largest insurance broker in 2008.

Terms of the deal were not disclosed. The name of the J. Rolfe Davis office still is being worked out, a company spokeswoman said.

Watson Wyatt Worldwide purchases Vietnam firm

HO CHI MINH CITY, Vietnam—Watson Wyatt Worldwide has acquired human resources consulting services firm SMART Human Resource Vietnam Co. Ltd.

The 25-employee company, which has offices in Ho Chi Minh City and Hanoi, Vietnam, consults clients on training and development, talent management, compensation management and salary surveys. Jessica Lu, chief executive officer of SMART HR, will lead Watson Wyatt's Vietnam operations.

Washington-based Watson Wyatt operates offices in Australia, China, Hong Kong, India, Indonesia, Japan, Malaysia, Philippines, Singapore, South Korea, Taiwan

and Thailand.

CRC Insurance acquires TAPCO Underwriters

BURLINGTON, N.C.—CRC Insurance Services Inc., the wholesale insurance subsidiary of Branch Banking & Trust Co., acquired Burlington, N.C.-based TAPCO Underwriters Inc. Terms of the deal, which finalized Dec. 31, were not disclosed.

TAPCO specializes in middle-market excess and surplus lines. It also operates offices in Clearwater, Fla., and Manassas, Va.

Birmingham-based CRC, the largest wholesale property/casualty insurance broker in the nation according to *Business Insurance*, acquired Jackson, Miss.-based Southern Cross Underwriters Inc. in 2003.

Arthur J. Gallagher buys Stanton Group

MINNEAPOLIS—Itasca, Ill.-based broker Arthur J. Gallagher & Co. has acquired Minneapolis-based Stanton Group L.L.C. and Stanton Group Risk Management Services L.L.C. Terms of the transactions were not disclosed.

Stanton Group is an employee benefit broker that provides benefit analysis, planning and design, compensation consulting, training and development, actuarial and retirement consulting and employee communications support. Stanton Group Risk Management is a retail insurance broker specializing in directors and officers liability, professional and fiduciary liability, errors and omissions and kidnap and ransom coverages. Both offices will continue to operate from Minneapolis.

TO SUBMIT ITEMS

BI's Market Moves column reports on activities by insurance industry companies and related entities. Please send news of Market Moves to: Zack Phillips, 711 Third Ave., New York, N.Y. 10017 or e-mail zphillips@businessinsurance.com.

China: Insurers, brokers evaluated

CONTINUED FROM PAGE 4

need to boost capital or scale back business growth," which may increase demand for reinsurance or consolidations, he said.

In prior statements, CIRC has urged insurers "to focus much more on sustainable underwriting profits and less on volatile investment income," he said.

Chinese regulators will evaluate insurers on five sets of risk-based indicators, according to information provided by ACLI.

Those indicators are: solvency; corporate governance, internal controls and regulatory compliance; funds utilization; business operations; and financial risk.

No definitions of those were available.

Chinese regulators will base their evaluations on a company's prior

'In 2007, data showed foreign property/casualty insurers wrote about 1.2% of China's nonlife market in terms of premium volume.'

Stephen W. Broadie
Property Casualty Insurers
Assn. of America

year's data and use it to calculate key ratios, which will be detailed later. A company's classification also will be determined by information gathered in ongoing supervision.

The framework for intermediaries—such as brokers, agents and loss adjusters—includes three classifications, according to an e-mail from Howard Tsang, the Hong Kong-based director of Asian operations for Willis International, a unit of Willis Group Holdings Ltd. "China is one of the most important markets," with about 25 ACLI members having life insurance operations there, Mr. Smith said.

Property/casualty insurers would like to expand opportunities there, too.

"In 2007, data showed foreign property/casualty insurers wrote about 1.2% of China's nonlife market in terms of premium volume," said Stephen W. Broadie, vp-financial legislation and regulation for the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America.

UP Comings & Goings CLOSE



BRIAN KUHLMAN

NEW JOB TITLE: Senior vp, Aon Risk Services Inc., Tampa, Fla.

PREVIOUS POSITION: Senior vp, Wachovia Corp., Tampa.

VITAL STATISTICS: I've been in the industry for 21 years.

CHALLENGES FACING THE INDUSTRY:

The big challenge right now is the current state of the economy. Many companies are going to reduce expenses by any means possible—probably with some employee cutbacks, reduced insurance purchases and possibly even self-insuring some of their exposures, which unfortunately means some companies won't survive, including some of our fellow insurance providers and agents.

FIRST EXPERIENCE IN THE INDUSTRY JOB MARKET:

I was hired as a casualty underwriter for Liberty Mutual in Atlanta. I didn't really know anything about insurance, but I came in and I guess I said the right words; they hired me and put me at a desk covering the Virginia and Tennessee territories and working with the Liberty Mutual sales representatives there. It was

definitely a good starting point for me.

WHAT WOULD YOU CHANGE ABOUT THE INDUSTRY:

I would get rid of all the state regulation departments—licensing, etc., and make everything more national. I understand where it made a lot of sense when folks were writing business intrastate, but because so many of us do business across the U.S., all these different states with their different forms and different regulations certainly make it more cost-prohibitive to do business. It seems to me our industry should be one that is more nationally regulated, where everybody is really held to the same standard for the coverages they provide and who is able to provide them.

ROLE MODEL:

I think my role model would have to be my dad. My father was a pilot in the U.S. Air Force, so he tended to be gone for long stretches of time, yet I never felt that loss. Whenever he was home, he always made me feel like I was the most important person. He was a good-hearted man who always was trying to help others. He instilled in me to always try to be the best person you can be and always help others as much as you can, even if that means sacrificing things for yourself.

Comings & Goings

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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:

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- Catlin Canada Inc.
- Nippon Life Insurance Co. of America

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- Willis International
- Beecher Carlson
- Aon Consulting Worldwide
- Willis Group Holdings Inc.
- Andreini & Co.

OTHER PROVIDERS

- Locke Lord Bissell & Liddell L.L.P.
- Schiff Hardin L.L.P.
- Dempsey Partners L.L.C.

IRONSHORE HISTORY

Major events since the specialty insurer formed after Hurricane Katrina

JANUARY 2007

Ironshore Inc. launches in Bermuda with more than \$1 billion in capital from private equity investors as a global property catastrophe underwriter.

MAY 2007

Ironshore enters the professional liability market with the launch of New York-based IronPro.

OCTOBER 2007

Ironshore enters the specialty construction sector with the launch of Boston-based IronBuilt.

MARCH 2008

Ironshore enters the health care liability sector with the launch of Simsbury, Conn.-based IronHealth

JULY 2008

Ironshore enters the excess casualty market with the launch of New York-based IronSelect

JANUARY 2009

Ironshore enters the environmental liability market with the launch of a New York-based unit tentatively called Ironshore Environmental.

EXECUTIVE SWITCH

Members of Ironshore Inc.'s senior management team who came from American International Group Inc.

JOSEPH BOREN

- Chief executive officer of Ironshore's environmental division
- Former chairman and CEO of AIG Environmental

SCOTT FITZMAURICE

- Assistant vp and Southeast regional manager of Ironshore
- Former regional manager for the Southeast in the national accounts division of AIG Executive Liability

GREG FLOOD

- President of IronPro, Ironshore's professional liability arm
- Former executive vp and chief operating officer of National Union Fire Insurance Co. of Pittsburgh, Pa.

JEREMY FRUMKIN

- Assistant vp and Western regional manager of Ironshore
- Former branch manager for the San Francisco region in the national accounts division of AIG Executive Liability

KEVIN H. KELLEY

- CEO of Ironshore
- Former chairman and CEO of Lexington Insurance Co.

SHAUN KELLY

- CEO of Ironshore's U.S. operations
- Former president and COO of Lexington

TOM LEAHY

- Senior vp of IronPro
- Former executive vp of the national accounts division of AIG Executive Liability

MIKE MITROVIC

- President of IronPro Claims
- Former vp-claims for AIG and president of AIG Worldwide Financial Lines Claims

JOHN O'BRIEN

- President of Ironshore's environmental division
- Former president and COO of AIG Environmental

Ironshore: Can AIG hold on to top execs?

CONTINUED FROM PAGE 3

AIG Environmental's senior team and expect continued strong performance from that organization."

Analysts said while AIG may be able to fill positions quickly, concerns remain about the company's ability to retain key executives.

"AIG is facing unusual challenges regarding its future ownership, its future capital structure, its future mix of business and, in a time of challenges, it's not helpful to have senior folks move away," said Bruce Ballentine, vp and senior credit officer at Moody's Investors Service in New York. One mitigating factor, however, is that AIG "typically has highly experienced and qualified people to move into positions that happen to open up," he said.

But Joyce Sharaf, assistant vp at A.M. Best Co. Inc. in Oldwick, N.J., said: "That's all well and good for now with regards to the number of people who have left. The concern remains whether the departures will continue and at what speed and number."

"When you look at the lines of business where people are moving, the damaging thing to (AIG) is that these tend to be lines of business where relationships matter," said

Joseph Boren is 'probably the highest-profile individual in the environmental insurance industry. He helped shape AIG Environmental.'

David J. Dybdahl
American Risk Management
Resources Network L.L.C.

Cathy Seifert, an AIG equity analyst for Standard & Poor's Corp. in New York. So there is the risk of those relationships moving with the executives, she said.

Mr. Kelly said Ironshore plans to expand to other specialty practices to provide "alternatives to the marketplace where there are risk management and insurance needs."

Cliff Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York, said there's going to be "a lot of market share shifting hands over the next several years," given AIG's situation. In particular,

he noted that Ironshore "seems to be anticipating that and (is) positioning for it."

Indeed, observers agree that the hiring of Messrs. Boren and O'Brien is another coup for the Bermuda start-up, which launched in early 2007 with the help of longtime industry executive Robert Clements to provide a property catastrophe capacity in the wake of Hurricane Katrina. Since then, the insurer has been expanding its casualty operations by hiring key executives from various competitors—most notably AIG and OneBeacon Professional Partners.

Mr. Boren is "probably the highest-profile individual in the environmental insurance industry," said David J. Dybdahl, president of American Risk Management Resources Network L.L.C., a Middleton, Wis.-based environmental wholesaler. "He helped shape AIG Environmental" and grew the unit "multiple folds."

Rather than a "huge blow" to AIG, however, Mr. Dybdahl said he views the hiring of Messrs. Boren and O'Brien as "more of a statement about (Ironshore) being very serious about getting into this market."

"It's a major coup for Ironshore," Mr. Dybdahl said.

Congress forces AIG to delay deferred compensation

NEW YORK—At the request of key congressional leaders, American International Group Inc. won't immediately pay out \$93.3 million in employee compensation to former employees and agents and certain executives.

"AIG took this action in response to concerns expressed by several members of Congress," said a spokeswoman for AIG. "We believe this is a positive outcome that still allows AIG to address concerns some employees have about accessing pay that they had earned but deferred."

In a joint statement issued last Wednesday evening, Rep. Paul E. Kanjorski, D-Pa., who is chairman of the House Financial Services Subcommittee on Capital Markets, Insurance and Government-Sponsored Enterprises, and Rep. Joseph Crowley, D-N.Y., who serves on the Ways and Means Committee, said that as a result of congressional inquiries, AIG decided to change a previously announced plan to terminate several deferred compensation plans and accelerate the payout of \$367 million to several thousand AIG employees and agents.

AIG had said such actions were necessary to retain key employees.

Some members of Congress have been critical of what they regard as AIG being overly generous in compensating past and current employees after the company received federal backing of up to \$152 billion to avoid collapse.

The decision "is encouraging evidence of AIG's willingness to work openly and cooperatively when reminded of its indebtedness to American taxpayers," the congressmen said in the statement.

"By cooperating with the congressmen's request, AIG realized that more than \$90 million of the payouts would have gone to former employees and agents, and therefore would have no impact on retaining key personnel," said the statement. "AIG volunteered to revise its payout plan so that it no longer applies to former employees and agents."

The total includes \$3 million in deferred compensation that would have been paid to certain executives in April.

—By Mark A. Hofmann



Rep. Kanjorski

Greenberg wants answers in sale of HSB to Munich Re

NEW YORK—Former American International Group Inc. chairman Maurice R. Greenberg said he wants answers to questions about the announced deal to sell AIG subsidiary HSB Group Inc. to Munich Reinsurance Co. for \$742 million.

In a letter sent to the AIG board of directors dated last Monday, Mr. Greenberg said the \$742 million to be paid by Munich Re "can only be viewed as a distressed sale price. Indeed, Joerg Schneider, the chief financial officer of Munich Re, has been quoted as stating: 'The sale price is, considering the profitability of the acquired company, very low.'"

In 2000, AIG paid \$1.2 billion for HSB, which includes Hartford Steam Boiler Inspection & Insurance Co.

Mr. Greenberg's letter, which

was filed with the SEC last Tuesday, asks that the board provide a more complete explanation of the sales process, including what led to the approval of the "sale of such a major asset at such a low value."

The letter continues: "Among other things, we would like to know what specifically did the board do to ensure that the company was sold for the highest available price? For example, who were the other interested bidders?...What, if any,

market checks were conducted to ensure the highest price was received?...Certainly, selling major assets at fire sale prices is not a viable strategy for reviving the company or even repaying the government."

An AIG spokesman had no comment.

—By Judy Greenwald



Mr. Greenberg

Stacking: Pro-policyholder case seen heading to Calif. Supreme Court

CONTINUED FROM PAGE 1

waste site near Glen Avon, Calif. The case involved six insurers, or their predecessors, that sold excess corporate general liability policies to the state.

The unanimous three-judge ruling affects insurance recovery for asbestos cases, toxic torts and construction defect claims where multiple policy years often are at stake, said David B. Goodwin, a policyholder attorney at Covington & Burling L.L.P. in San Francisco.

California's 4th District Court of Appeal ruled that when a continuous pollution loss spans multiple policy periods, each liability insurer covering any policy period is liable for the entire loss up to their policy limits.

More importantly, policyholder attorneys agree, the ruling allows policyholders to stack coverage limits purchased over multiple years.

"If an occurrence happens entirely within one policy period, the insured has paid one premium and can recover up to one policy limit; however, if an occurrence is continuous across two policy periods, the insured has paid two premiums, and can recover up to the combined total of two policy limits," the court ruled. "We see nothing unfair or unexpected in this."

That finding overturned a 2004 state trial court's "no-stacking" rul-

ing that said the state, as a policyholder, had to choose one policy period and could recover only the policy limits in effect for that period.

To reach that decision, the trial court relied on a 1998 6th District Court of Appeal decision in *FMC Corp vs. Plaisted & Cos.*, which held that an insured cannot stack across policy periods.

State supreme and appellate courts nationwide have split on the issue, said Roger W. Simpson, an attorney in the Los Angeles office of Cotkin & Collins, who represented California.

The nationwide controversy over stacking—although not always referred to by that term—began in the 1970s and was prevalent initially in asbestos cases before expanding to other insurance coverage areas, Mr. Simpson said.

In California, insurers have relied on the 1998 *FMC* ruling to limit recovery, especially in settlement negotiations, said Drew Gardiner, an attorney in the San Diego office of Latham & Watkins L.L.P., which filed an amicus on behalf of Montrose Chemical Corp. in the appellate court case decided last week.

In the 1998 *FMC* case, California's 6th District Court of Appeal said a policyholder's largest potential recovery is restricted to the highest occurrence limit for any one policy period.

'STACKING' RULING HIGHLIGHTS

- Commercial general liability policyholders can "stack" coverage limits purchased over multiple years, meaning they are not limited to recovering policy limits from only one year.
- When a continuous pollution loss spans multiple policy periods, each liability insurer covering any policy period is liable for "all sums," or the entire loss up to their policy limits.
- Each insurer that sold policies to the policyholder covered the total amount of liability for property damage, subject to their respective policy limits, including property damage that actually occurred before or after their policy periods.
- The policyholder is not under a duty to mitigate losses through remediation or other measures.

READ documents from this case online at *BI's* Knowledge Center www.BusinessInsurance.com

That decision "really limited our ability to recover for major losses spanning over multiple years because insurers always insisted that *FMC* is gospel," Mr. Gardiner said.

Now with the 4th District's decision, "policyholders have an argu-

ment that *FMC* is not good law," said Robert Horkovich, a partner in the New York office of Anderson Kill & Olick P.C., who also represents California.

In its decision, the 4th District extensively analyzed *FMC* and concluded that the 6th District failed to follow other California cases and based its decision "on reasoning that we find to be flawed and unconvincing," the court ruled.

The 4th District also said that, based on policy language and California authority, stacking "is exactly what the insured bargained and paid for."

The ruling is an important one for policyholders, agreed Paul Killion, an insurer defense attorney in the San Francisco office of Duane Morris L.L.P. But the anti-stacking ruling in *FMC* mitigated the onerous aspects of holding insurers responsible for "all sums."

In addition to allowing policyholders to stack limits, the 4th District held that insurers are responsible for all sums. That requires insurers to pay under occurrence-based liability policies up to their policy limits of the insured's liability, and not just liability specifically allocable to damage during the policy period.

With a split among California appellate courts over stacking, review by the California Supreme Court is likely, several attorneys said. The

amount of dollars at stake—as well as the interest the issue has drawn from policyholders, insurers, public interest groups and local governments—makes a state Supreme Court review especially likely, they added.

Numerous corporate and government entity policyholders in California ensnared in decades of litigation over pollution coverage are affected, said Scott P. DeVries, an insurance recovery attorney in the San Francisco office of Winston & Strawn L.L.P., which filed an amicus brief for the League of California Cities in the case decided last week.

Liabilities yet to emerge under policies purchased decades ago also would be affected, Mr. DeVries said.

In 1998, a federal court found California liable for environmental damage and responsible for past and future remediation costs, which California said could reach \$700 million, court records indicate.

In a separate case stemming from contamination at the Stringfellow site, California's Supreme Court heard arguments last week on whether a pollution exclusion under CGL policies begins when waste material is discharged from a site or when waste is deposited into it.

State of California vs. Continental Insurance Co. et al., California Court of Appeal, 4th District; No. E041425; Jan 5, 2009.



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FMLA: Changes ease employers' burden

CONTINUED FROM PAGE 1

or spouse; or when an employee has a serious illness.

The broad range of FMLA issues covered by the regulations also includes employer and employee notice requirements; medical and fitness-for-duty certifications, light-duty work, attendance bonuses; release of FMLA claims and substitution of paid leave for FMLA leave (see box).

The regulations, which were issued in November, also cover the FMLA expansion signed into law by President Bush last January that is applicable to military families (*BI*, Feb. 11, 2008).

"The changes are pretty broad and pervasive in that they cover almost all of the prior previous sections under the regulations," said Matt Morris, a consultant with Hewitt Associates Inc. in Lincolnshire, Ill.

"That said, I don't know that any of the changes are...earth shattering," Mr. Morris said. "I think there were lots of different tweaks, (but no) wholesale changes in how the law is administered, and that's to be expected," considering they are intended to provide only guidance as to how the law is to be administered as opposed to being the law itself.

But Erin J. McLaughlin, an attorney with Buchanan Ingersoll & Rooney P.C. in Pittsburgh, said the regulations overall are "going to materially change the way the FMLA works, so it's going to be really important that employers review and update their FMLA policies to comply with the regulations."

Among the changes is a provision that permits employers to deny perfect attendance awards to employees who do not have perfect attendance because they have taken FMLA leave, so long as they treat employees taking non-FMLA leave the same.

Being able to exclude FMLA leave in granting attendance awards is more fair, said Linda Lulli, associate vp of human resources at Bryant University in Smithfield, R.I.

Another change is the law no longer requires that a company employ a physician to contact an employee's health care provider for

information. This can now be done by other employees, so long as it is not the worker's direct supervisor.

The DOL anticipates employers will "show the correct amount of restraint, and information obtained by management officials is not going to be shared with the immediate supervisor," which risks violating the employee's privacy, said Paul Mallos, a Baltimore-based principal with Mercer L.L.C.

The regulation also mandates that employees needing FMLA leave follow the employer's usual call-in procedures for reporting an absence, assuming there are no unusual circumstances.

Under the current regulation,

Intermittent leave 'was the elephant in the room, and it's still standing there.'

Marc L. Fleischauer,
Porter Wright Morris & Arthur L.L.P.

"employees could provide notice to employers of their need for FMLA up to two days after they're actually absent, even if there wasn't a legitimate reason for the delay in notice," Mr. Mallos said.

Employers often cite this lack of notice as "one of the biggest disruptions they suffer in the workplace related to FMLA. The new regulation "brings a lot more certainty as to how they manage their work force," Mr. Mallos said.

Also welcome is a provision that employees may voluntarily settle or release their retroactive FMLA claims without court or Department of Labor approval. This has been required since a 2007 federal appellate court decision interpreted FMLA regulations to prohibit both prospective and retroactive waivers (*BI*, June 23, 2008). Prospective waivers remain prohibited.

Dorian Smith, a technical consultant with Towers Perrin in Valhalla, N.Y., also pointed to a provision on the substitution of paid leave for FMLA's unpaid leave. Under the

final rule, all forms of paid leave offered by employers will be treated the same, regardless of the type of leave substituted. Under the prior rules, "employers were rather limited in how they could substitute paid leave," said Mr. Smith. Now, they can "enforce their own notice and procedural rules," he said.

But intermittent leave remains an issue for employers. "I think it's really hard to really identify what constitutes intermittent leave," said Ms. Lulli.

Intermittent leave "was the elephant in the room, and it's still standing there," said Marc L. Fleischauer, an attorney with Porter Wright Morris & Arthur L.L.P. in Columbus, Ohio.

Observers say that some employees have been taking as little as a few minutes of FMLA leave at a time. Employers had been hoping the new regulations would require workers to take at least a half day off in FMLA leave at any one time, if not entire days.

David S. Mohl, a senior employment attorney with Willis HRH National Employee Benefits Practice in Atlanta, said intermittent leave is "the one big frustration" employers have with the FMLA. It "can be tough to track and tough to enforce," he said.

The new FMLA regulations also say workers with chronic serious health conditions must make at least two visits to a health care provider per year, among other provisions.

But observers say the regulation still fails to provide a more precise definition of serious health condition. "It may be something beyond (the DOL's) capacity to define with some clarity," said Arthur F. Silbergeld, an attorney with Proskauer Rose L.L.P. in Los Angeles. "The employer and the health care provider are all left to guess whether or not the time being taken is being taken for a serious health condition or not."

"I think employers were hoping the DOL would raise the bar and provide for a stricter, fleshed out definition of serious health conditions, and they didn't do that" despite introducing "some minor tweaks," Mr. Smith said.

FMLA REGULATION UPDATES

Changes in Labor Department regulations governing the Family and Medical Leave Act, which take effect Friday, include:

- **MILITARY CAREGIVER LEAVE.** Eligible employees who are family members of covered service members will be able to take up to 26 work weeks of leave in a single 12-month period.
- **QUALIFYING EXIGENCY LEAVE.** Eligible employees with a covered military member serving in the National Guard or Reserves have 12 work weeks of FMLA-job protected leave to use for "any qualifying exigency" arising out of the military members' active duty or call to active duty.
- **PENALTIES.** The employer may be liable when an employee suffers harm because the employer failed to follow notification rules.
- **LIGHT DUTY.** Time spent on performing light duty work does not count against an employee's FMLA leave.
- **WAIVER OF RIGHTS.** Employees may voluntarily release their FMLA claims without court or Department of Labor approval.
- **SERIOUS HEALTH CONDITIONS.** The final rule retains six individual definitions of serious health conditions, while adding guidance on three regulatory matters.
- **SUBSTITUTION OF PAID LEAVE.** All forms of paid leave offered by an employer will be treated the same in substituting paid leave for unpaid FMLA leave.
- **PERFECT ATTENDANCE AWARDS.** Employers can deny perfect attendance awards to employees who have taken FMLA leave so long as it identically treats employees taking non-FMLA leave.
- **EMPLOYER NOTICE OBLIGATIONS.** Employer notice requirements are consolidated into one section of the regulations, and employer requirements are clarified.
- **EMPLOYEE NOTICE.** Employees needing FMLA leave must follow the employer's usual procedures, absent unusual circumstances.
- **MEDICAL CERTIFICATION PROCESS.** Others besides a company-employed physician can ask the employee's health care provider for information, excluding a worker's direct supervisor.
- **MEDICAL CERTIFICATION PROCESS.** Employers may request a new medical certification each year for conditions that last longer than one year.
- **FITNESS-FOR-DUTY CERTIFICATION.** Employers may require that the certification specifically address the employee's ability to perform his or her essential job functions.

Source: U.S. Department of Labor

Aon: Broker fined record \$7.9M for lax anti-bribery, corruption controls

CONTINUED FROM PAGE 1

million to several overseas firms and individuals, the FSA found.

Aon, which has since overhauled its global systems and controls on bribery and corruption, was praised by the FSA for its "proactive determination" to identify past issues and improve its systems and controls. Aon's actions were described by the FSA as "a model of best practice that other firms may wish to adopt."

Ali Sallaway, a lawyer who worked with Aon during the FSA investigation, said all intermediaries in the insurance and reinsurance sector will have to look closely at the adequacy of their anti-bribery

systems and controls.

Any firm that has operations in jurisdictions that are at high-risk of bribery exposures will have to examine their systems and ensure individual employees are aware of the potential risks, noted Ms. Sallaway, who is a dispute resolution partner specializing in insurance and reinsurance at Freshfields Bruckhaus Deringer L.L.P. in London.

And the system by which insurance and reinsurance is placed can be especially vulnerable to bribery and corruption risks, which are not always easy to spot, she noted.

It is likely that there will be more regulatory action against other

'Corruption, of which bribery is just one facet, is sadly not an uncommon human failing.'

Gavin Robertson, Robertson & Co.

insurance or reinsurance brokerages, Ms. Sallaway said.

Peter Harmer, chief executive officer of Aon U.K., said that while he did not wish to comment on other brokerages, the issue would now be firmly on companies' radar screens because of the FSA's "Dear

CEO" letter and subsequent review.

The insurance industry—particularly the London market, where business has frequently been sourced using third parties—needs to address this issue, Mr. Harmer said.

Other sources said it was too early to tell whether the regulator may fine or discipline other insurance brokerages as a result of the review.

"Corruption, of which bribery is just one facet, is sadly not an uncommon human failing," said Gavin Robertson, senior partner at Ongar, England-based surveillance, claim validation and fraud investigation company Robertson & Co. "Because of its insidious nature, it can often be very, very difficult to

detect until it is too late and the damage has been done," he said.

The Assn. of Insurance & Risk Managers said that while it would not comment on the specifics of the Aon case, "the broader issue will be of concern to risk managers."

"It highlights the exposure that all international organizations face when seeking to ensure that their businesses are operating in a totally compliant and ethical manner, irrespective of local trading conditions," said John Hurrell, chief executive of London-based AIRMIC.

"This is an issue that is of interest to regulators, particularly in relation to competition policy, and to AIRMIC members from a risk and compliance perspective," he said.

Aviation: Government-provided war risk coverage extended to Aug. 31

CONTINUED FROM PAGE 3

insurance policies, reacting to the terrorist attacks, changed to a per-passenger charge that dramatically increased the cost. The charge at one point reached \$1.25 per passenger, he said.

"If you take a look at how many passengers an airline is carrying, you can quickly get a sense of what the premium was," he said.

About 2 million passengers fly on U.S. airlines daily, according to the Air Transport Assn.

Mr. Baker said current aviation war risk policies typically contain a provision allowing the underwriter

to cancel the policy with a seven-day notice. After a terrorist attack or other event that may affect planes, insurers typically cancel coverage and adjust rates upwards to cover the new exposures, he said.

More than 60 major airlines use the FAA program for war risk cover, said Eric Nelson, an FAA examiner. That figure includes smaller carriers that used the FAA program before June 2002, which were grandfathered in the program by the Homeland Security Act of 2002.

The FAA periodically assesses the market for war risk insurance and will provide insurance only to air carriers that the agency determines

cannot buy the cover at reasonable rates, Mr. Nelson said. If an airline can buy war risk insurance on the same terms as other carriers and according to a standardized rate schedule, then the price is reasonable, even if it is very expensive, he said.

Billions of dollars needed

But unlike charter services and small carriers, major airlines require billions of dollars of war risk cover. Insurers are reluctant to write that much coverage and only offer it at prices that are "multitudes" above the rate for other carriers, Mr. Nelson said.

Extensions of the program—the latest being one of several since 2001—seem to indicate the belief by Congress and the administration that commercial rates for war risk insurance remain unreasonably expensive.

The FAA has written policies through March 31, the department spokesman said. He would not say whether the program would continue past March or August, noting that a new transportation secretary has not yet been confirmed.

Mr. Baker, who said AIG sells war risk cover to international carriers and noncommercial airline companies in the United States, said there

has been some discussion in the market about what the FAA might do in the future.

"I haven't heard the FAA say they're looking to get into the insurance business for the long-term," Mr. Baker said. "It wouldn't surprise me if the FAA at some point in time either reduced their participation (in insurance underwriting) or got out of it."

The FAA has written war risk cover for civilian aircraft used by the government or military since shortly after World War II under an indemnity agreement with the Department of Defense, Mr. Nelson said.

Class action: Filings surge

CONTINUED FROM PAGE 4

fest, professor of law and business at Stanford Law School and co-director of the Palo Alto, Calif.-based Rock Center for Corporate Governance at Stanford, in an interview.

The number of new class action suits against large financial services companies could wane, though, said Mr. Grundfest, a former commissioner of the Securities and Exchange Commission.

"So many financial services companies have been sued already that there are few major firms left to sue," Mr. Grundfest said. "Even if the credit crunch gets worse," it's unlikely that many additional major financial services companies will be named in suits "because they're simply not there. Complaints will be amended and damage claims may grow, but the list of major defendants is already set," he said.

"If there's going to be an expansion, it's going to be among the mid-size or smaller cap firms," he said.

Securities Class Action Filings, 2008: A Year in Review was prepared by the Stanford Law School in cooperation with Boston-based Cornerstone Research.

The full report is available at <http://securities.stanford.edu>.

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News In Brief

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House OKs bill to extend bias reporting period

The House of Representatives last week passed a bill aimed at overturning a 2007 U.S. Supreme Court decision that limits workers' time to file wage discrimination claims. The Lilly Ledbetter Fair Pay Act passed on a 247-171 vote. The bill provides that every paycheck resulting from an earlier discriminatory pay decision constitutes a violation of the Civil Rights Act. As long as workers file charges within 180 days of a discriminatory paycheck, their charges would be considered timely. The bill passed the House in 2007, but the Senate did not approve it. The bill was a response to the high court's decision in *Ledbetter vs. Goodyear Tire & Rubber Co.*, which limited individuals' ability to press bias claims under Title VII of the Civil Rights Act of 1964.

Anderson Kill merges with California law firm

Insurance recovery law firm Anderson Kill & Olick P.C. has merged with Wood & Bender L.L.P. The Jan. 1 merger adds the 14 attorneys from San Buenaventura, Calif.-based Wood & Bender to Anderson Kill's 79 attorneys, New York-based Anderson Kill said.

Marsh settles more state bid-rig probes

Four years after its \$850 million nationwide bid-rigging settlement with New York authorities, Marsh Inc. on Monday agreed to pay an additional \$7 million to nine states to resolve similar probes. Participating are the attorneys general of Hawaii, Maryland, Massachusetts, Michigan, Oregon, Pennsylvania, Texas and West Virginia and the Florida Office of Insurance Regulation. Securities and Exchange Commission filings show two outstanding bid-rigging suits against MMC, one from the state of Connecticut and one from the state of Ohio.

Big pension plans lose \$469B in 2008

Hammered by the crash in the

equities markets, pension plans sponsored by large companies suffered a dramatic reversal of fortune in 2008, with the average funding level sinking to 75% at year-end, down from 104% a year earlier, according to an analysis released Wednesday. That unprecedented drop was the result of a huge decline in the value of assets held in pension plans sponsored by the 772 companies in the S&P 1500 that offer defined benefit plans. New York-based Mercer L.L.C. estimates that the pension plans lost \$469 billion in 2008, converting a \$60 billion surplus at the end of 2007 to a \$409 billion shortfall at the end of last year.

Aon sells Cananwill to BB&T unit

BB&T Corp.'s AFCO Credit Corp. is acquiring the U.S. assets and operations of premium financing firm Cananwill Inc. Glenview, Ill.-based Cananwill is a unit of Chicago-based Aon Corp. and serves the commercial property/casualty industry. Pittsburgh-based AFCO is a subsidiary of Branch Banking & Trust Co., the principal subsidiary of Winston-Salem, N.C.-based BB&T. Terms of the deal were not disclosed.

Noted

CIGNA Corp., citing economic pressures, said it plans to cut approximately 1,100 jobs—representing about 4% percent of the company's total workforce—and expects to record related charges of \$30 million to \$40 million in the fourth quarter of 2008....**Data breaches in the United States** increased dramatically in 2008 with 656 breaches reported, a 47% increase over 2007, according to research from the Identity Theft Resource Center....**Insurance runoff specialist Randall & Quilter Investment Holdings P.L.C.** has acquired the **Quest Group of Cos.** for \$6.9 million. The cash deal includes a further payment related to the captive manager's performance over the next year....**Former Oregon insurance administrator Scott J. Kipper** has been appointed insurance commissioner in **Nevada**, replacing Alice Molasky-Arman, who retired in September....**Arkansas Deomcratic Gov. Mike Beebe** will appoint local insurance veteran Jay Bradford to a four-year term as commissioner of the **Arkansas Insurance Department**, effective Jan. 15. He succeeds Julie Benafield Bowman, who resigned effective Dec. 31, shortly before the end of her first four-year term. She was appointed in 2005 by then-Gov. Mike Huckabee, a Republican.

Gallagher settles suit against Edgewood

Dozens of employees left Gallagher for California startup

By SALLY ROBERTS

ITASCA, Ill.—Arthur J. Gallagher & Co. said last week that it reached a “mutually agreeable and confidential resolution” to a conspiracy lawsuit it filed against a start-up broker that recruited dozens of Gallagher employees.

Itasca, Ill.-based Gallagher sued Edgewood Partners Insurance Center last year after the departure of roughly 50 employees from its San Ramon, Calif., office who resigned to join San Mateo, Calif.-based Edgewood.

Gallagher contended in its lawsuit that Edgewood co-founders Dan F. Francis and John G. Hahn

and nearly two dozen former Gallagher employees engaged in a conspiracy in which the former Gallagher employees left and solicited other Gallagher employees to leave with them.

It further alleged that the defendants misappropriated Gallagher's confidential and proprietary data and used the information to solicit Gallagher's clients for Edgewood.

Last year, a California federal judge denied Gallagher's request for a temporary restraining order against Edgewood in the matter (*BI*, Jan. 25, 2008).

Mr. Francis, former president and chief executive officer of ABD Insurance & Financial Services Inc., and Mr. Hahn, former president of BISYS Commercial Insurance Services Inc., launched Edgewood in 2007 to serve the upper middle market.

Sears suspends match for 401(k) contributions

Makes third change to retirement program

By JERRY GEISEL

HOFFMAN ESTATES, Ill.—Sears Holdings Corp. is suspending its 401(k) plan match as the giant retailer continues to cut back on its retirement plan benefits.

In a memo to employees, Sears Interim Chief Executive Officer Bruce Johnson said the declining economy has forced the company to make “many tough business decisions.”

Currently, Sears matches 100% of employees' salary deferrals up to the first 3% of pay and 50% of employees' pretax contributions on the next 2% of pay.

The suspension of the 401(k) plan match, which takes effect Jan. 31, is the third major change Sears has made to its retirement savings program in recent years.

In 2005, Sears stopped offering its defined benefit plan to new employees and employees under age 40. Employees age 40 and older

were given the choice of continuing to earn benefits in the defined benefit plan or opting into a newly enhanced 401(k) plan.

In 2006, the defined benefit plan was completely frozen, with all future retirement savings benefits provided through the 401(k) plan.

The suspension of Sears' 401(k) plan match comes at a time of declining earnings. For the 13-week period ending Nov. 1, Sears reported a net loss of \$146 million on \$10.7 billion in revenues. For the comparable period a year earlier, Hoffman Estates, Ill.-based Sears reported \$4 million in net income on revenues of \$11.6 billion.

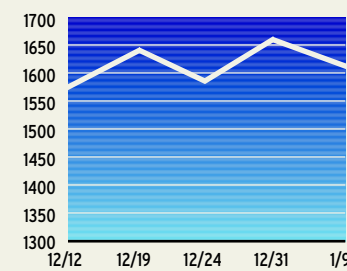
Sears joins a growing list of major corporations—including FedEx Corp. of Memphis, Tenn.; GenCorp Inc. of Sacramento, Calif.; Media-News Group Inc. of Denver; and Motorola Inc. of Schaumburg, Ill.—that in recent weeks have announced suspensions of 401(k) plan matching contributions.

Stock Index

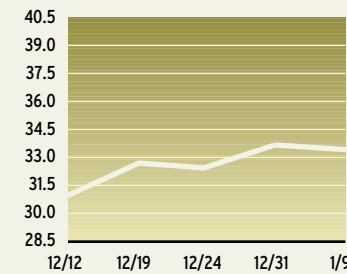
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.IndustryFocus.com.

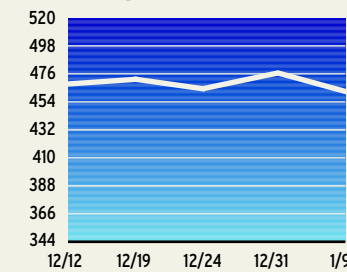
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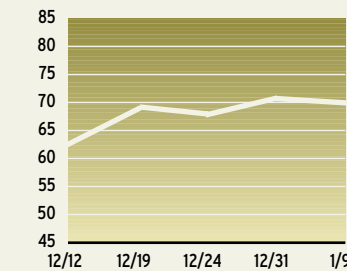
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

BI STOCK INDEX 1605.02	↓ -5.67%
DOW JONES 8599.18	↓ -4.82%
S&P 500 890.35	↓ -4.45%

LARGEST GAINS

Health Net Inc.	22.75%
Allmerica Financial Corp.	13.41%
MBIA Inc.	12.22%
XL Capital Ltd.	10.54%
AEGON N.V.	10.00%

LARGEST LOSSES

NYMAGIC Inc.	-22.47%
AXA	-13.14%
CNA Surety Corp.	-11.63%
MetLife Inc.	-11.40%
United Fire & Casualty	-11.24%

Source: Financial Content Inc. <http://financialcontent.com>



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Coverage product for golf lands firm in rough

Does what constitutes insurance, like beauty, lie in the eyes of the beholder?

That question is the center of a dispute between the Connecticut Insurance Department and Kevin Kolenda, the one-time proprietor of Hole-in-Won Worldwide and Golf Marketing Worldwide. The department accused Mr. Kolenda of operating an illegal insurance company, and last week levied a \$5.9 million fine against him.

Mr. Kolenda's companies provided cover for sponsors of events that promised big prizes to people who make holes-in-one in golf tournaments or who perform other unusual feats. According to the Hartford Courant, Mr. Kolenda has denied that he engaged in the business of insurance. The Connecticut Insurance Department held that not only did Mr. Kolenda operate an insurance company, but that on several occasions his companies failed to pay up.

In an interview with the Courant, Mr. Kolenda called the department's action "insane" and added that he was no longer affiliated with either company.

According to the department, Mr. Kolenda failed to respond to a formal complaint issued Oct. 31, 2008, that accused him of engaging in the business of insurance without a license, falsely representing that he was authorized to engage in the business of insurance and "engaging in various unfair insurance practices."

Mr. Kolenda said during his interview with the Courant that he had never received the complaint.

"Operating an illegal insurance company cannot be tolerated," Connecticut Insurance Commissioner Thomas R. Sullivan said in a statement announcing the fine.

Mr. Kolenda was given 60 days to request that the department reopen its order. Given the size of the fine and the insurance department's evident displeasure him, Mr. Kolenda—who was fined previously for similar issues—may find that reversing this penalty will require the legal equivalent of considerably more than a single hole-in-one, insured or otherwise.



Business Insurance END PAGE

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



Rocker Iggy Pop is featured in a new advertising campaign for British online insurer Swiftcover.com.

Got a lust for life? Buy insurance online

The auto insurance advertising war has gotten a bit more punk.

U.K.-based Swiftcover.com, an online-only insurance company, launched an ad campaign last week featuring a shirtless Iggy Pop, former frontman for the band The Stooges.

The television spot features the punk rock icon, whose real name is James Newell Osterberg, plugging the importance of saving time and money by purchasing auto insurance online, thus allowing consumers to "get a life." The spot also highlights the convenience of safely storing documents online through Swiftcover.com's site.

Though Iggy seems an unlikely pitchman for

insurance, Swiftcover.com is spending around \$38 million for the campaign, which likely means the guy famous for songs such as "The Passenger" and "Lust for Life" got a serious chunk of change.

With pitchman competition that includes the Geico gecko and Allstate's Dennis Haysbert, Swiftcover.com definitely hopes to catch the viewer's attention.

"The insurance market is not known for great advertising, and we took the opportunity to change that," Tim Mortimer, managing director of London-based Mortimer Whittaker O'Sullivan Advertising, said in a statement.

Hack attack is such tweet sorrow for Twitter

An 18-year-old hacker calling himself GMZ gained access into 33 Twitter accounts last week, including those used by Barack Obama, Britney Spears, CNN's Rick Sanchez (see posted image below) and Fox News, news reports said.

According to the reports, the hacker gained access to the account of an employee of the San Francisco-based Twitter Inc., parent company of the social networking site.

The hacker reportedly used a "dictionary attack" program, which is an automated program that attempts to find login passwords. Because the employee had access to administrative tools, the hacker was able to access any Twitter member's account by resetting his or her password.

Then a number of bogus status messages, called "tweets," were sent from the Twitter accounts.

And what was the Twitter employee's password?



According to news reports, it was "happiness."

It's probably safe to say the hacker's pursuit of "happiness" did not create much of that for the folks at Twitter.

New TSA uniforms prompt rash of complaints

Transportation Security Administration employees could be itching their way toward workers comp claims, given rashes they blame on new uniforms.

The agency responsible for U.S. airport security recently switched from white shirts to blue shirts as part of a new uniform designed to give its workers a more professional look.

But the union representing TSA workers, the Washington-based American Federation of Government Employees, alleges the new shirts caused several members to suffer from rashes and other problems such as lightheadedness.

The union accused managers of hindering some workers from filing workers comp claims related to formaldehyde used in making the shirts, but the TSA said it would not hinder filing comp claims and it is concerned about workers' safety.



The union called on Nashville, Tenn.-based VF Solutions to replace the uniforms and said it had filed a complaint with the Department of

The Transportation Security Administration's new blue uniforms have led some TSA employees to complain they caused rashes.

Labor.

The TSA said it was testing the shirts for irritants including formaldehyde but said independent tests found no problems.

The TSA also said it made all-cotton replacements available for the cotton-blend uniforms in question.

"Only 20 of our 45,000 (employees) have complained so far. So...there's no need to replace all of the uniforms," the TSA said in its blog.

While manufacturers use formaldehyde to make clothes permanent press, the chemical has added a wrinkle to the employer-employee relationship.

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Incheon Grand Bridge, Seoul, South Korea
Photo: AMEC/Incheon Bridge Company.

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