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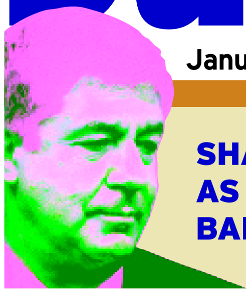

SHARE SALE PLANNED AS AIG SEEKS TO END BAILOUT SAGA / PAGE 3

FEDERAL CONTRACTOR BACKGROUND CHECKS OK'D BY HIGH COURT / PAGE 3

INSURED LOSSES MOUNT AS AUSTRALIA COPES WITH FLOODING / PAGE 3

In Brief

House backs repeal of health reform law

The House of Representatives last week approved legislation backed by the GOP leadership to repeal last year's health care reform law. The measure, which is likely to fail in the Senate, passed on a near-party line 245-189 vote, with just three Democrats voting in favor. Separately, the House approved a nonbinding resolution directing four House committees to begin drafting a new reform measure, which is intended to lower health care premiums through increased competition and choice, increase the number of insured, and not "accelerate the insolvency of entitlement programs or increase the tax burden on Americans," among other things.

See **IN BRIEF** page 2

CASE STUDY

EMPLOYMENT PRACTICES LIABILITY: BEST PRACTICES

Select Staffing Inc. tackles the increase in questionable claims, while stringent hiring practices–through testing and background checks–help the company avoid problems with new hires in the first place. **PAGE 9**

MARINE

REUTERS/LANDOV

Last week, South Korean naval forces stormed a ship held by Somali pirates, rescuing all 21 crew members. Last year, the average ransom paid to Somali pirates was $5.4 million compared with $150,000 in 2005.

JLT plans launch of private navy

Armed escort ships seek to deter pirates in Gulf of Aden

By MICHAEL BRADFORD

Ships transiting the pirate-infested waters off the coast of Somalia will have firepower at their sides later this year if an escort patrol developed by an insurance broker is able to navigate a few more legal and financial obstacles.

Jardine Lloyd Thompson Group P.L.C. has spent the past two years developing the Convoy Escort Program, a separate, nonprofit company that will operate 16 armed patrol boats in the Gulf of Aden with crews consisting mainly of ex-military personnel who are trained to intercept pirates before they can hijack merchant ships.

JLT expects funding for the company to be in place by the end of February, a spokesman for the London-based broker confirmed. Flag states that regulate vessels

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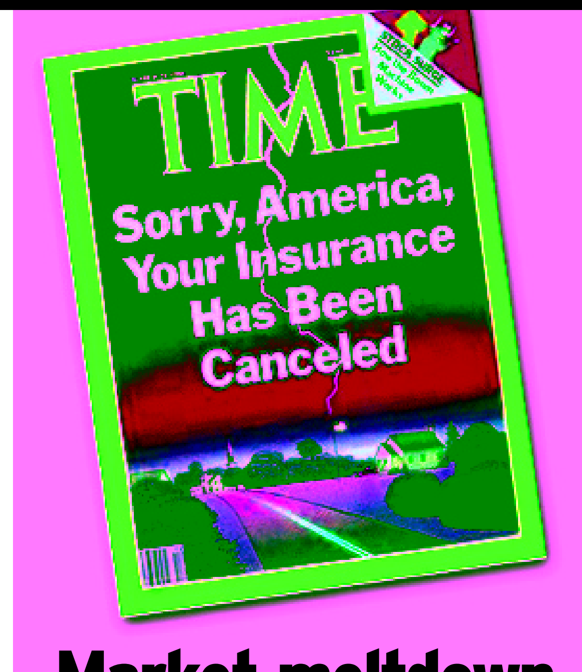
LIABILITY INSURANCE CRISIS: 25 YEARS LATER



Market meltdown reshapes industry

By JUDY GREENWALD

On a wall at the Chevy Chase, Md., headquarters of reciprocal risk retention group United Educators Insurance is the framed March 24, 1986, cover of Time magazine with the headline, "Sorry America, Your Insurance Has Been Canceled."

Janice Abraham, United Educators' president and CEO, said the magazine is there "to remind everyone that the commercial market just abandoned education."

See **CRISIS** page 11

DIRECTORS & OFFICERS LIABILITY

Sick execs create dilemma for companies

By JOANNE WOJCIK

If a key executive falls ill, how much should the company disclose to the public and investors?

Apple Inc. faced that question again recently, revealing that iconic CEO Steve Jobs would be taking another medical leave for undisclosed reasons.

While a more candid disclosure of Mr. Jobs' leave may have calmed jittery stockholders whose brief sell-off temporarily depressed Apple's share price, the company did all that is required of it to meet securities laws and avoid liability, legal experts say.

A shareholder suit is highly unlikely to be triggered unless there is a sizable loss or there are violations of Securities & Exchange Commission regulations, neither of which occurred, legal experts say.

Apple's stock price fluctuated last week. The stock had closed at an all-time high of $348.46 on Jan. 14, but slumped 5% after Mr. Jobs announced his leave, closing at $333.87 on Jan. 18. But Apple's

REUTERS/LANDOV

Apple CEO Steve Jobs announced he would take another medical leave.

See **EXECUTIVE** page 18

NEWSPAPER

INDEX

News In Brief

CONTINUED FROM PAGE 1

Ex-AIG leader Greenberg's trial set

Former American International Group Inc. leader Maurice R. Greenberg could go on trial in May over his role in a sham reinsurance deal that prosecutors said was designed to hide AIG's losses and inflate the insurer's reserves. At a hearing last week, New York Supreme Court Justice Charles E. Ramos set a trial date of May 2, pending resolution of any scheduling conflicts, said Robert Morvillo, an attorney for Mr. Greenberg and a principal with Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer P.C. in New York. Mr. Morvillo said he plans to ask a state appellate court to delay the trial until appeals in the case are resolved.

Bill would bar comp for illegals

Montana's House of Representatives has approved legislation that would ban illegal immigrants from receiving workers compensation benefits. In a 69-31 vote, the Montana House approved H.B. 71, sponsored by Rep. Gordon Vance, R-Bozeman, and sent the bill to the state Senate, state records show. Supporters of the legislation reportedly have said it will help reduce workers comp rates, but Democratic opponents argued it could encourage unscrupulous employers to hire illegal immigrants because they would not have to purchase workers comp coverage for them.

OSHA drops noise plan, cites employer costs

The U.S. Department of Labor's Occupational and Safety Health Administration said it is withdrawing its proposed change to workplace noise standards. OSHA withdrew its workplace noise standard proposal that would have toughened employers' requirements to protect workers' hearing in loud workplaces by clarifying the term "feasible administrative or engineering controls" within its rule. David Michaels, assistant secretary of labor for OSHA, said in a statement that while hearing loss is a serious occupational health problem in the United States, more work needs to be done to determine how employers can address the problem without incurring excessive costs.

Disability claims decline during recession: Survey

The incidence of short- and long-term disability claims declined while long-term disability costs surged during the recession, employers said in a National Business Group on Health survey. The survey found that the incidence of STD claims declined 17.3%, dropping from 8.1 claims per 100 covered employees in 2008 to 6.7 claims per 100 covered employees in 2009. Meanwhile, LTD claims dropped 26%, from 4.6 claims per 1,000 employees in 2008 to 3.4 in 2009. The survey also found that STD costs fell 15.9%, from $343 per employee in 2008 to $296 per employee in 2009. However, LTD costs increased more than 25%, from $10,507 per claim in 2008 to $13,226 per claim in 2009.

Ryan Specialty launches MGU

Ryan Specialty Group L.L.C. has launched Technical Risk Underwriters, a specialty managing general underwriter focusing on complex construction and property risks. The new MGU, based in Austin, Texas, is offering coverage for named windstorms, storm surge, earth movement and flooding as part of a difference-in-conditions and deductible buy-down program written by insurers on terms of up to 36 months, Ryan Specialty said in a statement. TRU is developing other products for clients that range from small projects to large engineered risks.

Court rejects overtime for uniform changes

The Minnesota Court of Appeals has ruled that hourly workers are not eligible for additional compensation for time spent putting on and removing uniforms and safety equipment. The ruling affirmed a lower court's dismissal of a suit seeking overtime pay under the Minnesota Fair Labor Standards Act. The appeals court's decision is an important victory for Minnesota employers with hourly workers, attorneys for the Minnesota Chamber of Commerce said in a statement. A contrary ruling could have made grooming or time spent commuting compensable, they said.

Penn., S.C. get new insurance commissioners

Michael F. Consedine took over the role of Pennsylvania insurance commissioner with the swearing in of the state's new governor. Mr. Consedine takes over from interim Insurance Commissioner Robert L. Pratter, who stepped in after Joel Ario resigned to become director of the federal Office of Insurance Exchanges. Also, the new governor of South Carolina named insurance executive David Black to be the state's next insurance commissioner.

'Horseplay doctrine' entitles worker to comp

Under the "horseplay doctrine" a restaurant server injured by co-workers who threw ice at him is entitled to workers compensation benefits, Virginia's Supreme Court has ruled. The ruling in *Matthew Edward Simms vs. Ruby Tuesday Inc. et al.* is the first time Virginia's high court has addressed the horseplay doctrine, which says an innocent victim of on-the-job horseplay is entitled to workers comp benefits, court records show. Mr. Simms suffered a dislocated shoulder when he lifted his left arm to protect himself from pieces of ice thrown by co-workers.

Noted

XL Insurance has appointed Joseph A. Tocco as executive vp and head of its North America property and XL global asset protection services effective Feb. 1. He will be based in New York....**Marsh Inc.** has appointed Anthony Mastrolia as construction risk management leader of the broker's U.S. construction practice. Mr. Mastrolia, will be based in Morristown, N.J....**Aon Risk Solutions** said that Ron Calhoun has joined the firm's health care practice as the national health care leader to help clients adjust to the changes posed by federal regulations and health care reform....**Catlin Group Ltd.** has purchased Blue Ridge Insurance Co. as a shell company from QBE Insurance Group Ltd. Terms of the deal were not disclosed. Blue Ridge, an admitted insurer domiciled in Wisconsin, is a subsidiary of General Casualty Co. of Wisconsin.

Business Insurance

Online features & highlights www.businessinsurance.com

VIDEO: D&O IN FOCUS: DISCLOSURE PROTECTION

In this latest D&O In Focus video, *Business Insurance* talks with experts on why disclosure policies are crucial for public companies to avoid D&O claims.

STOCK INDEX

The *BI* Stock Index offers comprehensive stock and financial information on all companies within the index. Find it under the Research Center tab.

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MOST POPULAR STORIES
Week of January 17, 2011

1. Suit filed against Aon over fatal D.C. Metro crash
2. U.S. appeals ruling striking down Obama's health reform law
3. Ex-AIG leader Greenberg's trial set for May
4. 'Horseplay doctrine' entitles worker to comp: Va. court
5. House passes repeal of health care reform law
6. AIG warrants to be issued next week
7. Republicans move to dismantle Obama's health care law
8. XL taps Zurich exec to lead N. America groups
9. Ryan Specialty launches managing general underwriter
10. GE closes defined benefit plan for salaried employees

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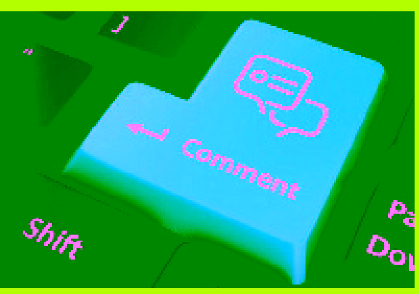

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PROPERTY/CASUALTY INSURERS

AIG takes key step toward ending bailout saga

After recapitalization deal, all eyes on sale of shares

By SONJA RYST

NEW YORK—Experts say American International Group Inc. is making solid progress in recovering from its government bailout, resulting in increased confidence among corporate policyholders.

Among the New York-based company's recent efforts was its repayment earlier this month of roughly $21 billion, the final piece of an $85 billion credit line that the Federal Reserve Bank of New York extended in 2008 during the financial crisis.

AIG also exchanged various forms of government support into common shares, leaving the U.S. Treasury Department with 92% ownership of AIG's common stock. That brought Treasury's total cash investment in AIG to $68 billion. In a statement, Treasury said it expects to sell the stock over time, subject to market conditions, to recoup taxpayer funds.

AP PHOTO

Under CEO Robert Benmosche, AIG has made strides in its bailout repayment efforts.

Bank of America Corp., Deutsche Bank A.G., Goldman Sachs Group Inc. and JPMorgan Chase & Co. will manage the sale of the government's AIG stake, according to reports last week.

AIG declined comment.

As another part of its recapitalization plan, AIG last week issued 75 million warrants granting shareholders the right to buy stock at $45 per share within the next 10 years. AIG's stock closed Friday at $43 per share.

Bruce Ballentine, an analyst at Moody's Investors Service in New York, recognized the efforts AIG has made.

"The recapitalization is a sign of significant progress in AIG," Mr. Ballentine said. He noted that AIG's ability to pay down government funding and arrange alternative funding is a sign that it can "stand on its own."

In an indication that Moody's expects AIG to be able to repay all of its debt and policy claims on time, the agency had maintained its insurer financial-strength rating for Chartis Inc., AIG's property/casualty unit, at Aa3 since May 2008, Mr. Ballentine said.

However, Moody's earlier this month did downgrade the IFS ratings of AIG's "core" insurance operations, including Chartis, noting that "while its core insurance operations have stabilized over the past year, they have not yet improved sufficiently to justify the previous ratings in the absence of continued government support."

Moody's downgraded Chartis' IFS rating from Aa3 to A1. Moody's also revised its rating outlook for AIG and core operations from negative to stable.

Mr. Ballentine said he views Treasury's 92% ownership as "temporary and potentially going away relatively quickly, if market conditions permit."

See **AIG** page 20

EMPLOYMENT PRACTICES

NASA background checks upheld

Supreme Court allows questioning of federal contractors

By JUDY GREENWALD

WASHINGTON—A U.S. Supreme Court decision upholding the federal government's right to ask contract workers about illegal drugs and ask open-ended questions about their honesty in reference checks leaves significant unanswered questions about employees' privacy rights, legal experts say.

But private employers and the federal contractors to which the decision directly applies also should be encouraged that the court's decision last week in *National Aeronautics and Space Administration et al. vs. Robert M. Nelson et al.* supports their right to conduct thorough background checks, observers say.

The decision concerned federal contract employees at NASA's Jet Propulsion Laboratory in Pasadena, Calif., which is operated by the California Institute of Technology.

Following a recommendation by the 9/11 Commission, the U.S. Department of Commerce in 2007 implemented a directive mandating that contract employees with long-term access to federal facilities complete a standard background check. JPL management told workers that anyone who failed to meet an October 2007 deadline to participate in the process would be terminated.

Twenty-eight employees filed suit, objecting to questions concerning whether they had been involved with illegal drugs in the past year, as well as to a questionnaire that asked their references whether they had any reason to question the employee's "honesty or trustworthiness." The workers argued the procedure violated their constitutional right to privacy.

In unanimously overturning a January 2008 ruling by the 9th U.S. Circuit Court of Appeals in San Francisco, the U.S. Supreme Court said in an opinion written by Justice Samuel A. Alito Jr. that

See **NASA** page 19

RISK MANAGEMENT

Soft market to continue, Marsh says

By RODD ZOLKOS

For the North American commercial insurance market, 2010 was very much a repeat of 2009 and, according to a report to be released this week by Marsh Inc., there's every reason to expect 2011 to bring more of the same.

The Marsh report cites intense competition among insurers, abundant capacity and relatively few insured catastrophe losses as key factors shaping the North American insurance market in 2010.

Those same conditions should contribute to market stability in 2011, according to the report, "Approach Your Risk with Clear Direction: North American Insurance Market Report 2011," scheduled to be released Wednesday.

The report notes that nearly two-thirds of the broker's U.S. property insurance clients experienced a premium rate decrease at renewal, with 29% experiencing a reduction of at least 10%.

See **MARSH** page 18

TYPICAL PROPERTY RATE CHANGES

At renewal, with an average to good risk profile

SEGMENT	RATE CHANGE, Q4 2010
Noncatastrophe-exposed	Flat to 5% decrease
Moderately catastrophe-exposed (10% to 30% of value in cat zones)	Flat to 5% decrease
Largely catastrophe-exposed (more than 30% of value in cat zones)	Flat to 10% increase

Source: Marsh Inc.

CATASTROPHES

REUTERS

High water submerged cranes and other equipment in an industrial area of Brisbane, Australia, earlier this month.

Insured losses swelling in flood-stricken Australia

Nature of flooding may complicate reinsurance claims

By SARAH VEYSEY

BRISBANE, Australia—Insured losses from devastating flooding in the Australian state of Queensland are expected to top $6 billion and experts say the floods likely will be treated as multiple events for reinsurance coverage.

Meanwhile, the flooding that spread earlier this month to the heavily populated state of Victoria means that insured losses may increase further, though experts say it is too early to estimate the final tally.

Twenty people are known to have died and thousands were evacuated as floods swept through Queensland in December and January. At one point, flooding in Brisbane, the state's largest city and the third-largest city in Australia, forced about 95% of businesses in its central business district to close.

The mining industry was hit hard by the floods, with an estimated $2.3 billion Australian ($2.28 billion) in lost sales caused by the wet weather, according to the Queensland Resources Council.

By last week, about 15% of the state's coal mines were operating at full capacity, with 60% operating with restrictions and 25% yet to resume normal operations, according to the council.

Tourism, another major industry in Queensland, was identified as one area that the government-backed Flood Recovery Taskforce would assist.

See **FLOODS** page 21

RISK MANAGEMENT

Cargo theft activity still rising in United States

Nearly 900 incidents reported for 2010, but average loss drops

By JEFF CASALE

The number of cargo thefts in the United States rose again in 2010 and thieves are showing no signs of letup, FreightWatch International (USA) Inc. said in an analysis.

There were 899 recorded cargo thefts last year, the highest on record since FreightWatch began tracking U.S. cargo thefts in 2006.

Of reported incidents, 81% involved a full truckload or container theft, 3.4% were warehouse burglaries and 1.3% involved violence, including 10 hijackings and two warehouse robberies.

While the 4.1% increase in the number of cargo thefts in 2010 vs. 2009 was not as severe as the 13% increase in 2009 vs. 2008, a spokesman for Austin, Texas-based FreightWatch said some alarming trends during the past year show that the threat of cargo theft from gangs and thieves remains a significant problem.

FreightWatch said there were 46 instances in which cargo thieves stole multiple trailers in the same incident. Though it's not a new occurrence, the rate at which it occurs should be a concern to companies shipping cargo, said Dan Burges, corporate director of global intelligence at FreightWatch.

"Some companies might accept losing one high-value load, but when it starts to be getting three or four high-value loads at one time, that can get expensive," Mr. Burges said.

In its report, FreightWatch said an average of 75 incidents occurred per month in 2010, up from 72 per month in 2009. The global cargo theft watchdog company also found that the supply chain industry sustained a full truckload or container loss at a rate of 2.5 per day.

The average loss per incident was $471,200 in 2010, a 17% decrease from 2009's $572,800 loss per incident, FreightWatch said. The decline could be attributed to companies better securing their high-value loads, Mr. Burges said.

He also said companies are more apt to insure high-value cargo today than they were in the past.

Thefts of pharmaceuticals repeated as the highest per-inci-

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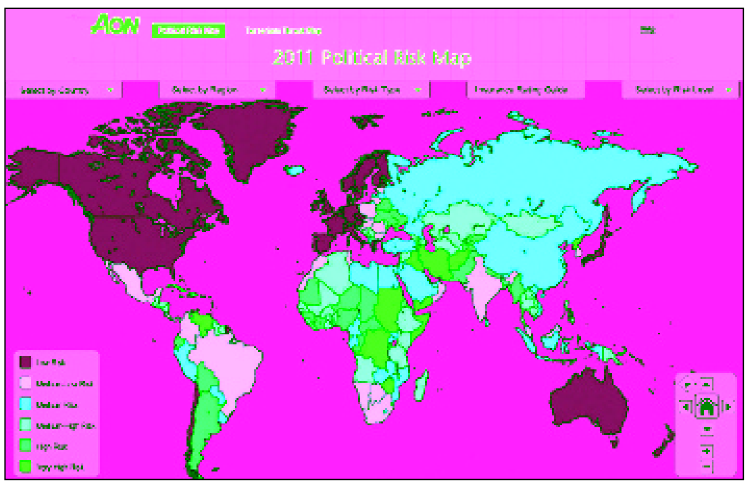
RISK MANAGEMENT



AON RISK SOLUTIONS

Aon's "2011 Political Risk Map" measures political risks of 211 countries and territories based on their level of exposures to various risks.

Overall political risk level rises for 2011: Analysis

By MARK A. HOFMANN

The level of political risk is rising in more countries than it is declining, according to an analysis released last week by Aon Risk Solutions.

Aon's "2011 Political Risk Map" measures political risks of 211 countries and territories based on the level of exposures such as currency inconvertibility and transfer; strikes, riots and civil commotion; war; sovereign nonpayment; political interference; supply chain interruption; and legal and regulatory risk.

The annual map ranks political risk on a six-point scale from low risk to very high risk.

In the 2011 map, Aon found that political risk has increased in 19 countries and declined in 11 (see box).

"The perceived or actual risk of

See **POLITICAL** page 6

SHIFTING POLITICAL RISKS

Aon identified countries where the political risk climate has worsened or improved for 2011.

WORSE	BETTER
Algeria	Georgia
Antigua and Barbuda	India
Antilles	Indonesia
Bahrain	Kenya
Benin	Malaysia
Bahamas	Mozambique
Barbados	Panama
Bermuda	Rwanda
Cayman Islands	Uganda
Comoros	Uzbekistan
Dominica	Zambia
Grenada	
Haiti	
Iceland	
Myanmar	
St. Kitts and Nevis	
St. Lucia	
St. Vincent	
Trinidad	

DIRECTORS & OFFICERS LIABILITY

M&As contribute to spike in lawsuits

2010 a record year for number of securities suits filed

By ROBERTO CENICEROS

Mergers and acquisitions were a major factor in boosting the number of securities lawsuits that were filed during 2010, separate reports concluded last week.

A spike in filings against Chinese companies also contributed to the increase, according to an analysis by the Stanford Law School Securities Class Action Clearinghouse and Boston-based Cornerstone Research Inc.

1,196

A record 1,196 securities lawsuits were filed in 2010, up from 1,171 in 2009, which also was a record year, Advisen said.

In addition, "headline-grabbing occurrences," such as the Deepwater Horizon oil spill, contributed to 2010's securities litigation tally, according to Advisen Ltd.'s "2010 a Record Year for Securities Litigation: An Advisen Quarterly Report."

"No one event accounted for the record level of securities suits filed in 2010," Advisen report author John W. Molka III said in a statement. "To the contrary, the year was characterized by diversity," the senior industry analyst said.

A record 1,196 securities lawsuits were filed in 2010, up from 1,171 in 2009, which also was a record year, Advisen said.

The most significant trend was the continued growth of suits in federal and state courts alleging

See **SECURITIES** page 17

AGENTS & BROKERS

Aon sued over coverage for D.C. Metro

By MARK A. HOFMANN

WASHINGTON—The Washington Metropolitan Area Transit Authority has sued Aon Corp. and several subsidiaries for alleged breach of contract and breach of fiduciary and agency duty concerning insurance coverage for a 2009 crash that killed nine people.

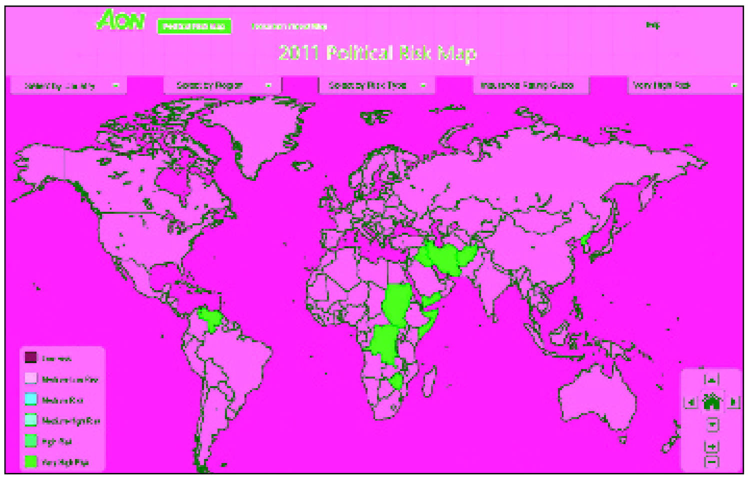
The suit, initially filed in District of Columbia Superior Court, was moved last week to federal court. WMATA, which runs the Metro mass transit system in the Washington area, alleges Aon did not inform it of potential coverage gaps.

Chicago-based Aon said the

See **SUIT** page 17

AP PHOTO

A June 2009 rush-hour Metro crash at the Fort Totten station northeast of downtown Washington killed nine people and injured more than 70.



AON RISK SOLUTIONS

According to Aon, countries in red have a "very high risk" level. They are Afghanistan, Congo, Haiti, Iran, Iraq, North Korea, Somalia, Sudan, Venezuela, Yemen and Zimbabwe.

Political: Risk level rises in several regions in 2011

CONTINUED FROM PAGE 4

sovereign nonpayment continues to be an issue in countries across the globe," Beverly Marsden, associate director of Aon Risk Solutions' crisis management team, said in a statement accompanying the report. She noted that many island nations moved into a high risk category "because of the effect of a decline in tourism on their economy and the subsequent possibility of sovereign default."

She also noted that the global financial crisis affected economies of countries with traditionally low levels of risk, such as Iceland.

34

War, including civil war, was among the specific political risks that grew between 2010 and 2011, with 34 countries now facing this exposure, compared with 29 a year earlier.

"This year's map also highlights the continued emergence of several markets in Africa, such as Ghana, Gabon and Nigeria, where more international trade and investment is occurring, leading to a greater need for political risk insurance cover," she said.

War, including civil war, was among the specific political risks that grew between 2010 and 2011, with 34 countries now facing this exposure, compared with 29 a year earlier. The number of countries facing a sabotage, riot, civil commotion and terrorism exposure also increased to 111 in the current report from 100 in the 2010 report.

Ms. Marsden also said globalization has been blamed for some incidents of economic volatility, but it has had a positive impact on global political and economic stability. Countries that previously had been designated as being at higher political risk "have taken advantage of global trade links and have seen political risk levels decrease," she said. She cited Brazil, Colombia and Mexico as examples of countries where such improvement has occurred during the past five years.

Ms. Marsden said the "magnitude, scope and complexity of political risk" will continue to influence businesses looking for new opportunities abroad this year. "We believe that the magnitude of political risk will remain elevated while the markets are unstable, but will return to traditional levels as the world economy improves," she said.

The "2011 Political Risk Map" is available at *www.aon.com/2011politicalriskmap.*

Commentary

Doctor works to send back pain packing

JOANNE **WOJCIK**

Senior Editor Joanne Wojcik can be reached at: jwojcik@businessinsurance.com

Back injuries often are cited as the most common reason for absenteeism in the general workforce after the common cold.

In fact, back disorders account for nearly one-quarter of all occupational injuries and illnesses involving lost time from work, according to the National Institute for Occupational Safety and Health.

Acknowledging this risk, human resource executives, risk managers and workers compensation managers often implement back injury prevention programs that teach their workers how to lift and recognize their limitations so they don't injure themselves by carrying too heavy a load.

Unfortunately, similar training is not directed toward school children, who are experiencing a rise in back injuries and musculoskeletal disorders caused by the weight of their book-laden backpacks. Among the injuries increasingly being diagnosed are herniated discs, degenerative osteoarthritis, migraine headaches and scoliosis.

Experts recommend that a child carry no more than 15% of his or her body weight. That means anything more than 7 pounds is too heavy for the average 7-year-old, who averages 50 pounds. Even a 130-pound student should shoulder no more than 19 pounds, experts say.

Even a 130-pound student should shoulder no more than 19 pounds, experts say.

Dr. Winn Sams, a chiropractic and homeopathic physician who practices near Charlotte, N.C., has begun a crusade to address childhood backpack injuries after witnessing firsthand this burgeoning phenomenon.

"From a chiropractic standpoint, we see 16-year-olds with herniated discs and all kinds of postures you don't usually see until much later in life," she says. In addition, scoliosis is becoming rampant, and degenerative conditions that usually are found in older adults routinely are being diagnosed in young children and teenagers.

Dr. Sams has created a website, *www.bacsupport.com*, to bring this issue to the forefront and is lobbying her state's lawmakers to enact legislation that would encourage the use of digital textbooks, which can be downloaded onto lightweight tablet computers like Kindle or iPad. Not only would this reduce back strain among children and teens, it also could save school districts money. Digital editions are cheaper than print copies of books and are more environmentally friendly, lowering disposal and recycling costs.

"Digital textbooks are a far more efficient and far-reaching alternative choice," Dr. Sams says. "Some schools are already using digital textbooks and are having phenomenal results."

California introduced an initiative last fall to replace high school math and science textbooks with digital editions.

In addition to lifting this weight from California students' shoulders, the move could improve the quality of their education. With electronic textbooks, updates can be downloaded as they occur.

The move to digital textbooks should save the cash-strapped Golden State hundreds of millions in tax dollars, too. While the average printed textbook costs between $70 and $100, digital textbooks cost only a fraction of that amount. Some are even free.

In signing the legislation, former Gov. Arnold Schwarzenegger estimated that California schools would save between $300 million and $400 million this school year by switching from print to digital textbooks.

Aside from education, imagine the potential reduction in health care costs if only our nation's future workforce had access to this simple—and logical—loss prevention strategy.

As Dr. Sams warns: "You're opening our kids up to a lot of irreversible damage unless you take the insult away from the injury and take the backpack away."

Business Insurance OPINIONS

1980s liability crisis forged better market

THE CONSENSUS among a wide range of experts is that a repeat of the mid-1980s liability insurance crisis is unlikely.

We agree and, as we report in a special package that begins on page 1, there are several reasons that make the commercial insurance market very different than 25 years ago, when rates soared and coverage was impossible to obtain at any price in some cases.

For starters, badly burned insurers and reinsurers increased their scrutiny of the risks they underwrite. Less prevalent are practices such as cash-flow underwriting in which rates charged had little, if any, correlation to the risk being insured. Such insurers focused solely on how much investment income could be generated from premiums.

The crisis truly led to vital, long-lasting market reforms.

The folly became obvious when investment income earned on rock-bottom premiums didn't come close to covering losses. Buyers subsequently paid for insurers' irresponsibility in the form of huge rate hikes. Some insurers paid an even higher price: They failed.

Buyers also learned some lessons. Many formed policyholder-owned insurers, with the aid of brokers. These insurers relied less on reinsurance and concentrated on their own underwriting practices.

Buyers used their collective muscle to win changes in law, making it easier for them to launch captive insurers, injecting more competition and capital into the market. In some markets, such alternatives have grown so large and command such a significant share of the market that they no longer can be considered alternatives.

For those badly burned 25 years ago, there is consolation that the crisis truly led to vital, long-lasting market reforms.

Privacy rights should not block risk management

WHILE A SUPREME COURT decision concerning employee privacy rights is far from the last word on the subject, it should help employers reduce some liability exposures by affirming their right to conduct background checks.

As we report on page 3, the high court's decision last week in *National Aeronautics and Space Administration et al. vs. Robert M. Nelson et al.* supports employers' rights to conduct thorough background checks, some legal observers say. The decision balances workplace privacy concerns with the legitimate needs of employers, even though the justices bypassed the direct issue of privacy rights by focusing on the government's role as an employer. While the decision was narrowly focused, and raises issues as to its applicability, it does provide some encouragement to employers with respect to conducting background checks.

In recent years, privacy rights have been bolstered by a series of laws and court rulings. But employers—governmental or not—also must have the right to conduct reasonable background checks on potential or current employees. After all, in many cases they would bear at least partial responsibility if their employee's actions harm another.

There will always be tension between employee privacy expectations and the rights of employers. Employers don't—and shouldn't—have a free rein to gather all the information that they might want to see. Affirming the right to gather reasonable information about employees' backgrounds and activities doesn't give employers carte blanche to nose through all aspects of an employee's personal life. But the high court's affirmation of the right to conduct background checks does provide a welcome balance between an employee's expectation of privacy and an employer's right to know.

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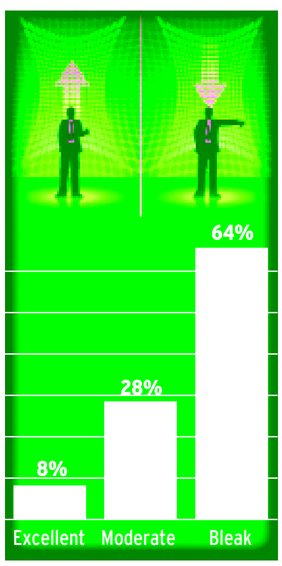

NEXT WEEK'S QUESTION

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Business Insurance

CASE STUDY

EMPLOYMENT PRACTICES LIABILITY [BEST PRACTICES]

'As we're investigating these matters, as we interview the people that work with these people (who file claims), what's coming back is, there hasn't been any apparent dysfunction or any complaints made in the past. A lot of it's unsupported, if you will.'

Fred O. Pachón is vp of risk management and insurance for Santa Barbara, Calif.-based Select Staffing Inc. Mr. Pachón was *Business Insurance*'s 2009 Risk Manager of the Year.

Tackling rise in questionable claims

By JUDY GREENWALD

For some employers, the difficult economy has brought an increase in bogus or thinly supported claims alleging discrimination, harassment and other adverse employment practices.

One company taking aggressive steps to confront that problem is Select Staffing Inc., says Fred O. Pachón, vp of risk management and insurance for the Santa Barbara, Calif.-based firm.

Even before the impact of the economy was felt, more than half of the staffing agency's EPL claims were "highly questionable," Mr. Pachón said.

But with today's economic climate, and people either going on unemployment "or not feeling very good about their job stability," they are considering "what other avenues are there to secure some sort of income," said Mr. Pachón, who was *Business Insurance*'s 2009 Risk Manager of the Year.

As a result, claims have increased some 30% from a year ago, although the staffing agency's employee count has remained stable, with about 150,000 personnel on assignment on any given day. The firm has about 7,000 clients, he said.

Select Staffing is discovering the "vast majority" of its increased EPL claims are "very superficial" with "little or no merit," he said.

"As we're investigating these matters, as we interview the people that work with these people (who file claims), what's coming back is, there hasn't been any apparent dysfunction or any complaints made in the past. A lot of it's unsupported, if you will.

"In some cases they're saying, 'My supervisor was abusive,' or whatever, and as we do our investigation what's coming out is, nothing like that had occurred," Mr. Pachón said. As a result, he said, Select Staffing has been successful in either having these matters settled for a "very low amount," although the volume of settlements has increased, or dismissed by the courts altogether.

See **CLAIMS** next page

Stringent hiring practices help Select Staffing avoid problems [PAGE 10]

Business Insurance

CASE STUDY

EMPLOYMENT PRACTICES LIABILITY [BEST PRACTICES]

Stringent hiring helps Select Staffing avoid EPL problems

By JUDY GREENWALD

Select Staffing Inc. works to avoid employment practices liability problems by taking particular care in whom it hires in the first place, says its risk manager.

This is accomplished by testing job applicants and performing particularly thorough background checks, said Fred O. Pachón, vp of risk management and insurance for the Santa Barbara, Calif.-based firm.

But even after the hiring process, the company keeps close tabs on its workers to avoid potential claims, Mr. Pachón said.

The company focuses "quite a bit" on training and audits in its 400 nationwide branches with respect to recruitment, Mr. Pachón said.

Applicants take a "character profiling" test, developed by Salem, Ore.-based Insight Worldwide Inc., in which applicants answer 60 questions that capture "the likelihood of the individual to file a fraudulent claim," including a fraudulent workers comp claim, or to have attendance problems, among other issues, he said. It provides the front office recruiter with an idea of "at least the likelihood" of an applicant creating such problems, Mr. Pachón said.

In addition, he said, Select Staffing recruiters will carefully check references and conduct a national background search, including an actual court records search, in an effort to "create a profile for the individual," said Mr. Pachón. This is "more stringent than your typical database" background search, he said.

KEY STEPS

Some EPL strategies that may help lower losses

- Press insurers to thoroughly investigate all claims
- Review document retention needs
- Consider consolidating policies to avoid potential gaps in coverage
- Perform aggressive background checks
- Be mindful of privacy

Discussing the firm's background check procedures, Mr. Pachón said, "we have a pretty tight program."

"We make sure we have the proper waiver internally. We have a solid system to make sure the backgrounds are seen by qualified people, and sensitive information is not disclosed by anyone else," he said. "We just follow the privacy laws pretty closely," he said. "There could be a risk for a company that is not doing that."

There are some cases, he said, where the unsuccessful job applicant suspects he or she was not hired because of a background check. Sometimes, he said, people "have a sense of entitlement. They feel, 'Well, I applied for a job, why didn't you call me?'" and suspect it is because of being overweight, or some other factor. "We typically don't tell them why" they have not been hired, he said, noting Select Staffing is not obligated to do so because it is an at-will employer.

However, "many times they don't take that very well," and a lawyer will suggest it is because of the background check or medical issues, and go on a "fishing expedition" on the issue.

In those cases, the company typically will reveal the reasons "just to avoid litigation and prolonged expense," Mr. Pachón said. Generally, it turns out the individual did not pass the test Select Staffing gives its applicants, where "we're trying to match the job to the individual." For instance, an applicant for a job that requires him to lift 50 pounds will be rejected if he says he cannot lift more than 10, Mr. Pachón said.

Once on the job, the work can be "fast and furious" and "that alone tends to create quite a bit of issues and claims, especially if it is a blue-collar environment," said Mr. Pachón.

As a staffing company, Select Staffing is the employer of record, and if employees feel they are being pressured and harassed by a client's supervisor, Select Staffing cannot "simply ignore the complaint," Mr. Pachón said.

To avoid problems in this area, the firm takes steps including conducting performance reviews with its clients to discuss the issues. In addition, Select Staffing has safety managers "on the ground" who talk with clients to make sure there are no unaddressed issues, Mr. Pachón said.

The company also has safety officers whose job is to talk to their colleagues and co-workers to learn of any potential problems, said Mr. Pachón, noting that when asked, a supervisor often will "say everything is fine."

"The real cure to this is having enough people on the ground to really get a good lead from your employees," Mr. Pachón said.

Claims: Strategies for tackling questionable EPL complaints

CONTINUED FROM PREVIOUS PAGE

"You need to be on top of the insurance company as these claims are coming in," said Mr. Pachón. Companies must make sure their insurers thoroughly review and investigate these claims, and interview "everyone involved" such as coworkers, supervisors and managers, as to the allegations that are being made. "And if the facts are not well supported, then push for a denial of the claim rather than simply accepting the claim," he said.

Many insurance companies, he said, will "just be superficial about it." They "may not conduct due diligence, and as a result may end up accepting claims which perhaps should not have been accepted," and "at the end, all of these claims will be counted against the insured via increased premium renewals," Mr. Pachón said.

He believes more bogus claims will be filed for the time being, but that the total will decline once the economy improves. "People will go back to working and not be in a precarious position trying to make ends meet," he said.

On the other hand, he said, he also believes there are cases where the opposite has occurred, and there are people still working at their jobs who "are being a little more accepting, and almost living with conditions that are perhaps not the best only because they're fearful the employer may retaliate or fire them," Mr. Pachón said.

Mr. Pachón said the types of EPL claims often received by Select Staffing include discrimination, sexual harassment, wrongful termination and improper hiring practices, including cases where the individual charges he was not hired because he was discriminated against. There are also cases, he said, "where the client may allege the individual was not properly screened."

Although the issue has received much publicity of late, bullying claims are "pretty rare," said Mr. Pachón. There are plenty of cases where the worker "just feels the supervisor is unfair, but as far as the bullying…we have probably had no more than five where (workers have) specifically alleged" they have been bullied, he said.

In the event there is litigation, Mr. Pachón said unlike some other firms, Select Staffing's policy is to keep its e-mails and other electronic-based material only for up to a year, depending on the particular employee's management level.

Although some would disagree and keep such materials longer, Mr. Pachón said he believes that having on hand five or 10 years' worth of material to turn over to plaintiffs attorneys provides them with "lots of opportunity to find other issues" beyond those they were originally investigating and "allows them to develop their claims further."

Then, he said there is the risk that "before you know it," you find there are 30 people being deposed in the case, he said. "I've seen that happen, where they just depose everybody because their names show up on an e-mail," said Mr. Pachón, who joined Select Staffing almost 10 years ago. But with relatively few e-mails to turn over, "it may be a very short process."

Addressing coverage gaps also can enhance protection.

Select Staffing switched its coverage from Zurich American Insurance Co., a unit of Zurich Financial Services Group, to Philadelphia-based ACE USA, a unit of ACE Ltd., at the June renewals because ACE already was providing the company with coverage for several other lines of insurance, said Mr. Pachón.

This helps avoid potential gaps in coverage, he said; the issue of which of two policies covers a particular claim becomes moot when one insurer is handling both lines. Select has a $1 million deductible and a "pretty high limit" of $10 million for its coverage, Mr. Pachón said.

Reckless underwriting, large losses brought on crisis

Glut of reinsurance, focus on cash flow led to big problems

By JUDY GREENWALD

Several intertwining factors led to the mid-1980s liability crisis that changed the face of the insurance market.

The primary causes were cash flow underwriting, as insurers put greater focus on investments than on underwriting; unexpected claims, particularly in asbestos and environment losses stemming from broadly worded occurrence-based policy forms; inadequate reserving; a proliferation of poorly capitalized reinsurers; and large jury awards, observers say.

Cash flow underwriting—where a focus on generating investment returns essentially replaced writing profitable business—led to unanticipated losses and a sudden withdrawal of capacity, say observers.

"As the management of the insurers became more conscious of the investment value of money, I would say they demanded more and higher and more predictable returns, and all of that essentially took the decisionmaking out of the underwriters' hands" and into the hands of the chief financial officer or chief investment officer, who were focused on cash flow, said Joseph M. Fedor, executive vp and director of Pearl River, N.Y.-based U.S. Re Corp. That "created the losses," he said.

Brian O'Hara, former chairman and CEO of XL Group P.L.C., said cash flow underwriting "was exacerbated by a proliferation of reinsured capacity in the London market."

At one point, "there were literally 1,000 reinsurers in the world, because you didn't need a credit rating to get into the reinsurance business back then," Mr. O'Hara said.

"When you added it all up, it led to tremendous overcapacity, so insurers bought more and more reinsurance to leverage their balance sheets unhealthily." With all that reinsurance available, insurers "started practicing risk arbitrage, thinking they could reinsure out all of their risk," he said.

"What happened is, rates got so low that when losses did come in, they were much higher than this naïve reinsurance capacity ever expected," Mr. O'Hara said. Then the reinsurance capacity disappeared with big losses such as the

See CAUSES next page

Crisis: 1980s offer major risk lessons

CONTINUED FROM PAGE 1

The Time cover refers to the liability insurance crisis of the mid-1980s. Risk managers, insurers, reinsurers, brokers, reinsurance intermediaries and consultants who were in the business then remember it as a time of frantic efforts to obtain insurance that, at best, was available only in limited amounts with high retentions at exorbitant rates (see story, page 12).

While that period is marking its 25th anniversary, its legacy still is reflected in the marketplace of today.

That legacy includes United Educators and other risk retention groups, insurers such as ACE Ltd. and XL Group P.L.C., captives, pools and other mutual associations—all established to meet the then-dire need for reasonably priced capacity (see story, page 14).

Observers say the factors that led to the 1980s hard market included cash flow underwriting, as insurers wrote business to take advantage of high interest rates.

The period also produced higher-than-expected claims—particularly in asbestos and environmental lines because of broadly worded occurrence policy forms—and generous jury awards (see related story).

Factors that that helped end that hard market included the cyclicality of the business, as opportunistic capital attracted by the high rates eventually moved into the sector and led to the soft market of the 1990s (see story, page 13).

Many observers said even though there always will be hard markets, the severity of the 1980s liability crisis is unlikely to be repeated in part because of the industry's greater sophistication and improved data collection.

However, others warn that a return to that situation is possible given the right combination of factors (see story, page 14).

Buyers scramble amid insurance shortage

When available, coverage costly and restrictive

By JUDY GREENWALD

Risk managers, brokers and others who lived through the mid-1980s liability insurance crisis remember it as a frantic time as everyone engaged in often futile efforts to obtain insurance coverage that frequently was not available at any price.

It was "probably the most difficult time I've had in the 30 years I've been broking in terms of pricing business," said Anthony DeFelice, New York-based managing director of Aon Risk Solutions' national casualty practice, who then was a broker at New York-based Alexander & Alexander Services Inc.

"Obviously, the casualty market at that point in time was in absolute shambles. We saw premiums increasing by 500%, retentions going up, restrictions in coverage—the whole panoply of difficult issues were coming to the surface," Mr. DeFelice said.

"A lot of our clients' programs were never completed. Their programs looked more or less like Swiss cheese. Holes in these programs still exist to this day, because obviously most of the placements we did in those days were on an occurrence basis," he said.

Stephen Wilder, vp of risk management for Burbank, Calif.-based Walt Disney Co. who was risk manager at Whittaker Corp. in 1986, said, "I remember having to tell our board that we weren't going to buy (directors and officers liability) insurance."

It "was very stressful," Mr. Wilder said.

Janice Abraham, now president and CEO of Chevy Chase, Md.-based United Educators Insurance, a Reciprocal Risk Retention Group, was an administrator at two colleges during the 1980s. "It was an absolute crisis" because college trustees, who are volunteers, were "faced with the prospect of their campuses and themselves being bare, exposed, uncovered because the commercial insurance companies of the country walked away from educational institutions."

She noted that a college administrator was among those who spoke before a congressional committee urging passage of what eventually became the Liability Risk Retention Act of 1986.

William R. Powell, now manager of the risk management department at the Tempe, Ariz.-based Salt River Project who at the time was in a safety and loss control position at Salt River, said, "I remember the guy in this position that I'm in today running around and working unbelievable hours and scrambling around behind closed doors, on telephones, trying to get a deal, trying to get some coverage in place."

'It was an absolute crisis' because college trustees, who are volunteers, were 'faced with the prospect of their campuses and themselves being bare, exposed, uncovered because the commercial insurance companies of the country walked away from educational institutions.'

Janice Abraham, United Educators Insurance

Particularly for municipalities, there was a "complete dearth of insurance since the industry just decided not to write public entities as a class of business," said Tom Vance, longtime risk manager of the city of Anaheim, Calif.

Mr. Vance said he still does not completely understand what happened. "I never thought the public entity losses were that bad," he said.

Carolyn Snow, now director-risk management at Humana Inc. in Louisville, Ky., was a territorial manager for CIGNA Corp.'s property/casualty business and manager of an underwriting team in the 1980s. "It was really hard for agents, but it wasn't easy for company people either," Ms. Snow said. "You built a book of business and then, all of a sudden, you're cutting back."

Ms. Snow said she had established good relationships with the agents with whom she worked, but the 1980s liability crisis was "very damaging to those kinds of business relationships."

For brokers trying to place business, "it was just panic time," said John R. Berger, CEO of reinsurance at Bermuda-based Alterra Capital Holdings Ltd., who during the liability market crisis was an executive at F&G Re Inc., the reinsurance unit of USF&G Corp. "It was like, if you had $50 million in capital and you were on the moon, brokers would find you to

See **LOOKING BACK** next page

Causes: Underwriting, large losses drove crisis

CONTINUED FROM PREVIOUS PAGE

December 1984 gas leak at the Union Carbide Corp. plant in Bhopal, India, that led to more than 15,000 deaths.

"It was hard for people to believe these small reinsurance subsidiaries went out of business either voluntarily or involuntarily, and it left the insurance industry with this huge uncollectible reinsurance problem which was unquantifiable," Mr. O'Hara said.

Because of this, "they couldn't get the public equity markets to get more capital, so it really killed the entire industry," he said. As a result, there were perhaps only four or five major reinsurers that continued to write business.

"The insurance companies had so little equity capital left on their balance sheets, and they couldn't raise new money, so they couldn't take much risk," Mr. O'Hara said. "They couldn't put out much more than $2 (million) or $3 million lines of coverage. So even when you combined the entire industry capacity, what was left, because there were a lot of failures going on," was about $25 million of capacity, "where before you could get $300 million or $400 million."

Another factor was large, unexpected jury awards, particularly in the asbestos and environmental areas. In many cases, insurers and reinsurers were faced with claims from policies that may have been written decades before, observers said.

It was "the American legal system, combined with issues around the asbestos and environmental issues, that really turned this industry upside down," said Hugo Crawley, chairman of London-based BMS Group Ltd.

James Vickers, London-based chairman of Willis Re International & Specialty, a unit of New York-based Willis Group Holdings P.L.C., said, "You have to really put your mind back to what life was like then.

"There was this explosion of claims, particularly in the casualty side in the U.S.—not just from the immediate past, but from business that had been loosely written on occurrence forms in previous years," he said. "People had been willy-nilly writing this (casualty) business, and against a background where there wasn't a lot of modeling, where people could actually sit down and see the market," Mr. Vickers said.

The occurrence form was an opened-ended contract that the courts defined "as open-ended blank checks," said Mr. O'Hara.

In addition, Congress and the White House were controlled by Democrats who were "very friendly to trial lawyers and they appointed a score of very liberal federal judges" before the liability crisis, which resulted in "ever-broadening definitions of liability" under the occurrence form for pollution and asbestos coverage. That meant "insurers were stuck for coverages without limits," Mr. O'Hara said.

AP PHOTO

Losses related to the 1984 disaster at a Union Carbide plant in Bhopal, India, helped create the liability insurance crisis.

Looking back: Sudden shortage spurs scramble

CONTINUED FROM PREVIOUS PAGE

write the business."

In 1984, there were 27 markets for architects and engineers professional liability coverage; by 1986, there were three because the others had gone out of business, said Mr. Berger. Overall losses at the time were "horrifically bad," he said.

Gary Langer, senior vp at Willis Group Holdings P.L.C. unit Willis of New York Inc., who then worked for Corroon & Black Corp., said he still remembers the atmosphere just before the January 1986 renewals when he was a young broker.

"It really was crazy," Mr. Langer said. "Brokers were running around the office with just a few days left to go trying to fill up holes on the excess placements," he said. "We never had a hard market as tough as that one."

Jeanne Griffith, San Francisco-based casualty practice leader for Marsh Inc., who joined the broker in 1986 as a client representative from an underwriting position said, "I went from underwriting, where all we had to do was say 'No,' to come into a broker position, where we had to figure out every way to say, 'Yes,' " to clients in search of coverage.

"I remember reinsurers coming out and saying, 'There is no price for casualty,' " because they didn't know what the courts were going to do in response to problems such as asbestos, said Steven K. Bolland, president of New York-based reinsurance intermediary Gill & Roeser Inc., who also was an intermediary in the 1980s. They would say, "How can we, in 1985, set a price for anything that will be settled in a court somewhere maybe in 1995?" he recalled.

Many observers remarked on the suddenness with which the market hardened.

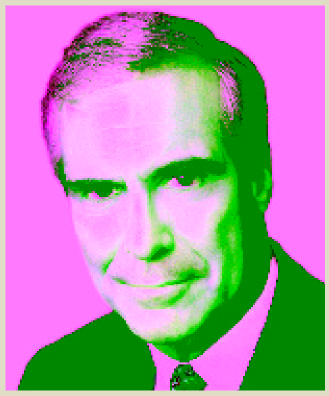
"The capacity just seemed to dry up overnight," said Ms. Snow.

"It was a dramatic change," said Richard Inserra, president of Ridgefield, Conn.-based consulting firm Insurance Strategies Ltd., who was a risk manager at Minneapolis-based Triangle Industries Inc. in 1986. The market, which had been soft for a couple of years, suddenly "turned on a dime" with "not a whole lot of warning."

Capital from new players helps recovery

The market's inherent cyclicality was the major factor that helped it emerge from the liability crisis of the 1980s, with capital provided by formation of entities including ACE Ltd. and XL Group P.L.C. among factors that helped engineer the turn, observers say.

ACE and XL could be considered "at the vanguard of a lot of the additional new capital that did come in over the course of that decade that essentially encouraged the marketplace to become significantly more competitive," said Joseph M. Fedor, executive vp and director at Pearl River, N.Y.-based U.S. Re Corp.



'Pricing power at the time was as hard as at any time in the history of the industry because of no capacity, so ACE and XL were able to charge strong premiums.'

Brian O'Hara,
former chairman and
CEO of XL Group P.L.C.

Brian O'Hara, former chairman and CEO of XL, said the "pricing power at the time was as hard as at any time in the history of the industry because of no capacity, so ACE and XL were able to charge strong premiums." That "allowed ACE and XL to build up a lot of retained earnings over that hard market period from 1986 through 1991."

Meanwhile, Mr. O'Hara said, the rest of the insurance industry was "able to finally go and get new public equity in the late '80s and early '90s, as they were able to quantify their balance sheets by that time, and so the combination of the capacity of ACE and XL and the rebuilt capacity by mainstream insurers," plus appointment of more conservative judges by a Republican administration and tort reform, helped end the hard market.

Rees Fletcher, president and CEO of ACE Bermuda Ltd., a unit of ACE Ltd., said there was a recognition that the "pendulum had swung too far from a tort liability perspective," which led to tort reform.

"Money poured in. ACE was formed. XL was formed. Things stabilized. People raised capital," said John R. Berger, CEO of reinsurance at Bermuda-based Alterra Capital Holdings Ltd. "Rates came down because they were just so outrageously high."

Jeanne Griffith, San Francisco-based casualty practice leader for Marsh Inc., said a "knee-jerk reaction" caused the crisis.

It "had to take time to smooth out," she said.

—By Judy Greenwald

Crisis boosts risk management practices, profile

By JUDY GREENWALD

Legacies of the 1980s hard liability insurance market include the formations of ACE Ltd. and XL Group P.L.C., risk retention groups, captives and pools, as well as buyers increasing their self-insured retentions, experts say.

In fact, they say much of the premiums that left the market never returned, permanently transforming the industry.

Other outgrowths of the period included greater recognition of the risk management profession's value by corporate executives and improved professionalism across all segments of the industry, experts say.

"The creation of ACE and XL was a direct result of the hard market of the mid-'80s," said Hugo Crawley, chairman of London-based BMS Group Ltd. "Lots of the excess liability business that used to be placed historically in London—not just Lloyd's—went to ACE and XL and left the London market."

"The growth of the (catastrophe) reinsurers in Bermuda was a direct consequence of ACE and XL," said Steven K. Bolland, president of New York-based reinsurance intermediary Gill & Roeser Inc. "Investors said, 'Wow, maybe we could take the problem in the casualty market and apply it to the cat market,' and it worked very well."

Observers also point to the growth of self-insurance—whether through self-insured retentions, captives, mutual insurers or risk retention groups, which were authorized by the Liability Risk Retention Act of 1986—as another result of the 1980s hard market.

The liability crisis "was a huge boon to the alternative markets, and many companies never came back," said Albert J. Beer, assistant professor at the School of Risk Management and Actuarial Science at St. John's University in New York. They discovered they could manage their own loss exposures, and "the effect on their bottom line was much better than if they were just buying insurance."

According to some estimates, about half of the commercial market is self-insured today, compared with "less than 20%" in the 1970s, Mr. Beer said.

"The commercial casualty market has forever lost a large segment of the market," said Tom Vance, risk manager for the city of Anaheim, Calif., who in 1986 helped form the San Francisco-based Authority for California Cities Excess Liability pool, which still operates today.

Municipal pools, although in existence previously, really developed during that period to replace commercial insurance as a result of the dearth of capacity during the liability crisis, Mr. Vance said.

"It really marked a sea change through the country in the way particularly local governments financed their risk, and it was a monumental change." Today, "the vast majority of public entities are in some form of pool," Mr. Vance said.

Risk retention groups, which got their start with LRRA in 1986, were another outgrowth of the period. Today, more than 250 RRGs, which provide a wide range of liability coverages to policyholder owners, are operating. Unlike traditional captives, RRGs can operate in any state after meeting the licensing requirements of one state.

> **'It created much-needed visibility' for the risk management profession and 'really changed it.'**
>
> Rick Betterley, Betterley Risk Consultants Inc.

Another legacy of the liability crisis was the Fairfax, Va.-based Public Entity Risk Institute. Antitrust litigation filed in 1988 by 20 state attorneys general against 32 industry defendants, which was spurred by the liability crisis, finally settled in 1994. The settlement called for less industry influence on the Insurance Services Office Inc. and provided funding for PERI.

The liability crisis also increased the industry's professionalism, experts said.

Rees Fletcher, president and CEO of ACE Bermuda Insurance Ltd., a unit of ACE Ltd., said among other effects, underwriting discipline generally has improved since then.

No U.S. broker at the time had an actuary on staff, whereas today, they have "armies" of them, said John R. Berger, CEO of reinsurance at Bermuda-based Alterra Capital Holdings Ltd.

"It was a real watershed time for us in the risk management world," said Rick Betterley, president of Betterley Risk Consultants Inc. in Sterling, Mass. "It created much-needed visibility" for the risk management profession and "really changed it," he said. There also was recognition of the "importance of the risk management role in an organization, and an understanding that the insurance industry was a less reliable source of balance sheet protection than many senior executives had thought" in terms of availability and stability, he said.

Furthermore, "I think that the brokers became significantly more professional following that event," at least in part because of the liability crisis, Mr. Betterley said. For big risks today, brokers will buy multiple policies, with each "taking some percentage share" of the account, he said.

Mark Charron, a principal and national actuarial and insurance solutions leader for Deloitte Consulting L.L.P. in Hartford, Conn., said: "The combination of huge costs and lack of availability propelled the whole risk management topic" to corporate board rooms, which "previously hadn't really focused on this part of their operations. So to me it was a silver lining that came out of the mid-'80s crisis, frankly," he said.

"It improved the risk management industry both at the buyer level, the risk manager level and also at the broker level." Furthermore, skills learned at the time "became embedded in the day-to-day workings of risk managers and continue to this day," Mr. Charron said.

Before the liability insurance crisis, corporate buyers "were just going about the business of buying insurance," said Jeanne Griffith, San Francisco-based casualty practice leader for Marsh Inc. Now, they look much closer at what risk "really means to them and specifically how to finance it."

Will lessons learned avoid a repeat of 1980s hard market?

By JUDY GREENWALD

It is unlikely there will be a repeat of the liability insurance crisis of 25 years ago because of better data collection, higher professional standards and more capital willing to enter the market quickly, many observers say.

But others warn against complacency and say that the right combination of catastrophes, economic factors and other issues could produce a comparable hard market in the future.

Steve McElhiney, president of Dallas-based intermediary EWI Inc., said the 1980s hard market "was something of an anomaly" that resulted from a confluence of events. "I think a hard market like this is maybe a once-in-a-generation event, and I don't think we'll see the magnitude of a hard market like '86, '87 again."

Instead of sudden, large increases in insurance rates, "we're going to see more gradual increases and decreases, in the absence of a major catalyst," he said.

Gary Langer, senior vp at Willis of New York Inc., a unit of Willis Group Holdings P.L.C., said insurers "are more sophisticated, I would hope, today, regarding reserving and pricing and trying to monitor tort issues, and I think actuaries play an active role in the underwriting process now."

"We have sophisticated insurance buyers today," but in the 1980s "there was a great deal more naiveté and lack of understanding of the policies that were being issued," said Hugo Crawley, chairman of London-based BMS Group Ltd.

In addition, today's underwriters are more knowledgeable and the industry as a whole is better educated than 25 years ago, he said.

"Capital is smarter. There's a lot more technical analysis that's done, and people know there's money to be made when the cycle turns," said James Vickers, London-based chairman of Willis Re International & Specialty. Some of extremes of a hard market "will be smoothed off" today because new capital will come in through sidecars and other means, he said.

John R. Berger, CEO of reinsurance at Bermuda-based Alterra Capital Holdings Ltd., said that today, "capital comes into our business in a second, which didn't happen in the '80s." In addition, the analytical value that today's brokers and intermediaries provide, which is "really out of this world, was nonexistent back then."

William M. Jewett, president of Pembroke, Bermuda-based Endurance Specialty Holdings Ltd., said, "capital is so much more fluid now, and there are so many different forms to take insurance risk."

In the 1980s, insurance was "a much smaller industry, much less financially sophisticated, more predicated on relationships, more broker-driven, with probably less information, less technology, less-sophisticated management," Mr. Jewett said.

William H. Eyre Jr., Philadelphia-based managing director of Towers Watson & Co.'s reinsurance brokerage business, said factors mitigating a return to a comparable hard market are a "much more stable reinsurance community" and much stricter insurer reserving policies, as well as closer regulatory oversight and the pressure on companies exerted by the Sarbanes-Oxley Act.

"I don't think we'll ever see the size correction" that happened back then, said Albert J. Beer, assistant professor at the School of Risk Management and Actuarial Science at St. John's University in New York, who then was a partner at Tillinghast. "I don't think we'll ever fall victim to the lunacy" of that time.

Underwriters are "more aware of potential latent problems and are actively looking for them in their underwriting reviews," said John N. Gilbert Jr., chairman of reinsurance intermediary Holborn Corp. in New York. If such problems emerge, it will not "catch underwriters unaware to the same extent as was the case with environmental and asbestos claims."

"People often say we don't learn from history, but I do believe we do learn something from history, and I don't see that occurring again," said Carolyn Snow, director-risk management at Humana Inc. in Louisville, Ky. "Obviously, the market will tighten up again at some point in time," but the ability to accumulate and use data that is available is improved today, she said.

Furthermore, said Ms. Snow, many who were young underwriters in the 1980s are now in senior management. Those who went through that hard market "learned something from it" and they "would work hard not to repeat that, and manage their firms and their organizations in a way so that it wouldn't hopefully happen again."

However, "it's theoretically possible the same thing could happen again," said Steven K. Bolland, president of New York-based reinsurance intermediary Gill & Roeser Inc. "Something could pop up in the courts and be this huge casualty loss issue that we're unaware of currently, and suddenly everybody's assumptions have gone out the window."

Furthermore, if the capital markets come to see reinsurance as no longer "being an area of high potential (of return on their investment), then they'll move to other industries where they see the potential as being greater," said Mr. Bolland.

Mark Charron, a principal and national actuarial and insurance solutions leader for Deloitte Consulting L.L.P. in Hartford, Conn., said, "we certainly are in a world of bigger insurance companies than we had back then." If "you have a significant player in today's marketplace disappear, you could probably withstand it." But if a handful were to disappear, "that might push into a situation where you had a severe market reaction."

Products & Services

Lexington offers aviation coverage for hospitals

NEW YORK—Lexington Insurance Co. has launched primary aviation coverage for hospital aviation operations.

LexAir Transport Rx aims to mitigate hospitals' aviation risks, providing primary and excess nonowned aircraft and aviation premises liability coverage, the Boston-based surplus lines unit of Chartis Inc. said in a statement.

Coverage also includes bodily injury and property damage from using nonowned aircraft or the aviation premises, such as helipads, and can be extended to include hospital affiliates and hospital directors, officers and employees.

The policy is available as part of Lexington's hospital professional liability and commercial umbrella liability coverage. It provides up to $50 million primary coverage and $25 million on an excess/umbrella basis, the insurer said.

For more information, contact Brian Dudek, vp at Lexington, at 617-330-8330 or *brian.dudek@chartisinsurance.com*.

XL Insurance launches fine art coverage

ZURICH—XL Insurance has introduced combined fine art, property and liability insurance coverage in Austria, Germany and Switzerland.

XL Mosaic is a combined policy aimed at private and corporate collectors, museums, watchmakers and jewelers, the insurance unit of XL Group P.L.C. said in a statement.

The program provides a single insurance policy for fine art, artifacts, jewelry, buildings and fixtures, among others, as well as business interruption, transport and general liability coverage worldwide, XL said in the statement.

"With this combined policy, we are responding to the specific needs of the fine art community who value the opportunity of receiving a single all-risks policy from their specialist underwriter," Peter Meili, Zurich-based senior underwriter of fine art and specie for XL, said in the statement.

The policy is available for buyers with headquarters in Austria, Germany and Switzerland. Limits are established independently, with combined limits of up to €300 million ($401.3 million), XL said.

For more information, contact Mr. Meili at +41-43-555-4730 or *peter.meili@xlgroup.com*.

Zurich program targets habitational property

SCHAUMBURG, Ill.—Zurich North America Commercial has launched an insurance program for habitational property owners offered through a program administrator.

Warren, N.J., managing general agency Walnut Advisory Corp. has signed on as Zurich's administrator for the habitational program, selling noncatastrophe property and general liability insurance to owners of apartment buildings and garden-style cooperatives and condominiums, the Schaumburg, Ill.-based unit of Zurich Financial Services Group said in a statement.

The program—available in U.S. states except Alaska, Florida and Hawaii—allows Walnut Advisory to provide property general liability and property enhancement endorsements as core products, according to the statement.

Walnut Advisory also sells other insurance programs from Zurich.

For more information, contact Sigmar Hessing, president of Walnut Advisory, at 908-755-9580 or *sigmar@walnutgroup.com*.

ScripNet workers comp pharmacy portal debuts

LAS VEGAS—ScripNet Inc. has launched a Web portal for pharmacy claims for workers compensation providers.

ScripNet Access Point provides Web-based workers compensation pharmacy claims data, including real-time access to approve pending claims authorizations, the ability to search and analyze historical data, and generate and view reports, the Las Vegas-based firm said in a statement.

Client adjusters had been notified of pending claims by e-mail, but SNAP gives adjusters "the ability to see those pending authorizations online in real time, and have the option to make an immediate determination and online notation themselves," ScripNet said in a statement.

That allows the adjusters to chat online with its help desk or "continue to use the e-mail adjudication process on a case-by-case and minute-by-minute basis," ScripNet said.

The portal also supports searches for prior authorizations by the adjuster and information about prescription drugs, physicians and pharmacy locations.

For more information, contact Gary T. Daly, vp of ScripNet, at 303-888-9595 or *gdaly@scripnet.com*.

TO SUBMIT ITEMS

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

UP CLOSE Comings & Goings

DAVID KAPLAN

NEW JOB TITLE: San Francisco-based global leader of clinical solutions, Mercer L.L.C.

PREVIOUS POSITION: San Francisco-based care management service line lead for Towers Watson & Co.

GOALS FOR NEW POSITION: I am looking to provide cutting-edge solutions utilizing data and technology to help employers partner with their employees across the globe to achieve better health.

INDUSTRY CHALLENGES: The two biggest challenges are 1) engaging employees to improve their health and 2) impending access issues in the U.S. stemming from primary care shortages exacerbated by the addition of many formerly uninsured to the newly insured.

INDUSTRY OUTLOOK: Health care is an amazingly complex issue that looms large. The complexity only increases as employers become increasingly global and have to interact with each country's health system. We will all be working on this for a long time.

CAREER HIGHLIGHT: Working with employers to develop on-site health care facilities that deliver health care that is truly patient-centered.

ADVICE: No good deed goes unpunished, but do them anyway.

WHAT YOU WANTED TO BE WHEN YOU GREW UP: I always wanted to be a doctor.

OUTSIDE THE INDUSTRY, A DREAM JOB: Being a grandparent. My children, are you listening?

MOST PASSIONATE ABOUT: Justice and doing the right thing.

FAVORITE BOOK: "Cutting for Stone" by Abraham Verghese. That doctor can write.

CAN'T-MISS TV SHOW: "Treme." Great acting and great music...what more can you ask?

ON A SATURDAY AFTERNOON: I am cooking up my haul from Saturday morning's farmer's market.

E-MAIL OR PHONE, AND WHY: Phone, because I talk a lot faster than I type.

Comings & Goings ONLINE

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

TO SUBMIT ITEMS

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

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Business Insurance
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Chicago, Ill. 60601-3806

mgillikin@businessinsurance.com

POSTING THIS WEEK

INSURERS:
- Liberty Mutual Group
- QBE Insurance Group Ltd.
- Beazley Group P.L.C.

REINSURANCE:
- CNA Financial Corp.
- FINEX Global
- ACE Overseas General

BROKERS:
- Willis Group Holdings P.L.C.
- Al Futtaim Willis Middle East
- BMS Group Ltd.

OTHER PROVIDERS:
- Mercer L.L.C.
- Dewey & LeBoeuf L.L.P.

Cargo: Theft activity still rises in U.S.

CONTINUED FROM PAGE 4

dent value, averaging $3.78 million. Tobacco was No. 2 at $1.26 million, followed by electronics at $512,000.

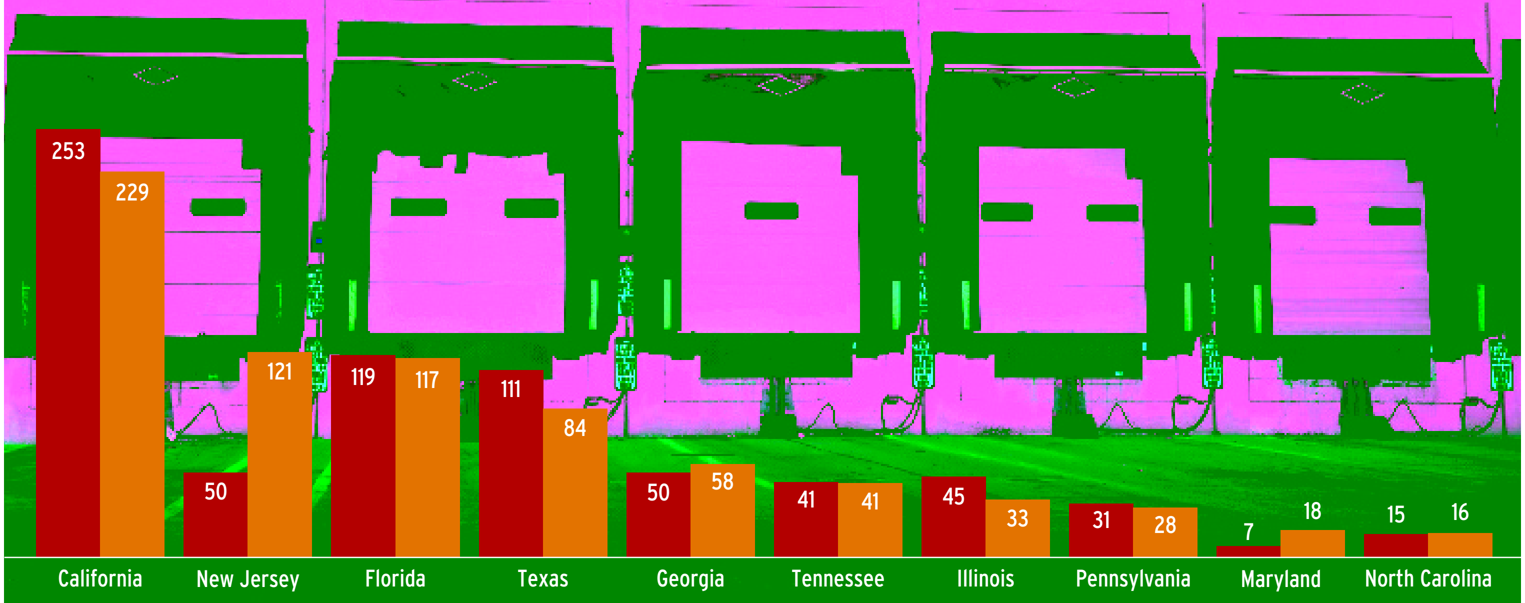
Meanwhile, food and drink was the most popular target of cargo thieves, accounting for 21% of all incidents and surpassing electronics, which constituted 19% of all U.S. cargo thefts.

Building and industrial materials were 10% of all U.S. cargo thefts, rising to 86 in 2010 from 76 in 2009. FreightWatch said the biggest increase in theft was precious metals, with thieves targeting full truckloads of copper, aluminum and other metals due to their high value in the marketplace.

The locations of the thefts vary, according to the report, with more than 300 occurring in unsecured parking areas, including truck stops.

CARGO THEFT BY STATE

There were 899 cargo thefts reported in the United States in 2010. Despite a decline in its numbers, California reported the most thefts while New Jersey saw a 142% increase from a year earlier.



Source: FreightWatch International (USA) Inc.

California, New Jersey and Florida were the top three states in cargo theft incidents. New Jersey had 121 thefts in 2010, up from 50 in 2009 (see chart).

"I think cargo thefts are being better reported in New Jersey than they have been in the past," Mr. Burges said. "The (numbers) also show that theft gangs in New York and New Jersey are not going as far away from home to steal the products they want. They're staying closer to the ports."

Like the nation as a whole, food and drinks were the most popular target commodities in New Jersey, at 37%, with clothing and consumer care products at 13% and 12%, respectively.

While cargo theft in the United States typically is not as violent as it is in Mexico, there has been talk at the federal level about developing legislation to try to help curtail it, he said.

Still, Mr. Burges said it's likely that even if some sort of action is taken at the federal level, the proposals offered might not be a solution and industries that ship cargo need to take it upon themselves to find ways to combat thieves.

The FreightWatch report, "U.S. Cargo Theft: 2010," is available at *www.freightwatchintl.com.*

Suit: Aon sued over cover placed for D.C. Metro

CONTINUED FROM PAGE 4

allegations are "without merit."

"We believe that Aon failed to advise us to exercise an option that would have reduced our financial exposure" after an unrelated 2008 claim was settled, a WMATA spokeswoman said in an e-mail. "We believe that we should have been able to avoid $9 million in expenses had Aon met its contractual obligations.

"The excess liability insurance program brokered by Aon included an option to reinstate aggregate limits, which it failed to advise us to exercise, leaving Metro to pay $9 million in claims arising out of the 2009 collision at Fort Totten," the spokeswoman said.

The June 2009 crash occurred when two Metro trains collided at the Fort Totten station northeast of downtown Washington during the evening rush hour. Nine people died in what was the deadliest crash in the system's history. More than 70 others suffered injuries.

Nine months earlier, but during the same policy year, one person died and another was seriously injured in a bus accident. WMATA ultimately paid more than its $5 million self-insured liability limit to pay claims arising from that incident.

According to the suit, WMATA's general liability program for the policy year from July 1, 2008, through June 30, 2009, consisted of a three-layer excess liability program with aggregate limits of $95 million above a self-insured retention of $5 million for each claim.

The first layer had a $5 million limit; the second, $15 million; and the third, $75 million. The second and third layers' limits "are subject to payments (formally known as retentions) equal to the limits of the immediately preceding layers," said WMATA.

The first and second layer excess policies included an aggregate limits reinstatement provision. Separately, WMATA could

> **'WMATA especially relied on Aon because, as Aon knew, WMATA did not maintain internally a risk management and insurance department that was market-savvy, market-experienced and sophisticated as was Aon.'**
>
> Washington Metropolitan Area Transit Authority

have bought drop-down coverage that would have maintained its maximum $5 million retention for each accident in the same policy year, the transit agency said. But the program Aon designed for WMATA did not contain such coverage, WMATA said in its suit.

WMATA alleges that Aon failed to advise it of the availability of and the need for reinstatement of policy limits and of drop-down coverage during the 2008-2009 policy year. WMATA also said Aon failed to advise it that the program included accidental death and dismemberment coverage that would have covered nearly $259,000 in claims arising from the rail crash.

"WMATA especially relied on Aon because, as Aon knew, WMATA did not maintain internally a risk management and insurance department that was market-savvy, market-experienced and sophisticated as was Aon," WMATA said in the suit.

The Metro spokeswoman said the suit is not about paying claims, because "we have been and will continue to meet our responsibility and obligations to the victims and families of that terrible tragedy." But "if Aon had not failed in its duties," the claims would have come from insurance rather than Metro's operating funds, she said.

"We filed this suit like any responsible corporation would do—in a businesslike manner to hold an insurance brokerage accountable for expertise it was paid for, but failed to provide," the spokeswoman said.

"We feel the claims are without merit and we look forward to defending ourselves in court," said a Chicago-based spokesman for the brokerage.

Several insurers, including American International Underwriters Inc., XL Capital Ltd. and underwriters at Lloyd's of London, participated in Metro's insurance program.

In addition to Aon Corp., the suit names Baltimore-based Aon Risk Services Inc. of Maryland, Aon Risk Services Inc. of Washington, D.C., and Aon Consulting Inc. of West Trenton, N.J., as defendants.

Securities: M&As contribute to spike

CONTINUED FROM PAGE 4

that company directors breached their fiduciary duty, Mr. Molka said. "This type of suit typically is filed as a result of a merger or acquisition. We expect to see even more of these suits as M&A activity picks up," he said.

Meanwhile, the Stanford and Cornerstone researchers counted 104 federal securities class actions during the last six months of 2010, compared with 72 filings during the first half of the year.

For all of 2010, they counted 176 filings, a 4.8% increase from 168 in 2009. Still, the 2010 number is 9.7% less than the annual average of 195 filings between 1997 and 2009, the Stanford and Cornerstone researchers said.

The Stanford and Cornerstone figures may differ from other research because they count multiple filings against the same defendants as one action, while other reports may count each complaint filed against the same defendants before they are consolidated, said Kevin M. LaCroix, a Beachwood, Ohio-based partner with intermediary OakBridge Insurance Services L.L.C.

The Stanford and Cornerstone researchers found there were 40 federal filings during 2010 that alleged disclosure violations in M&As. That's a nearly sixfold increase in federal M&A filings while M&As increased only 20% in 2010 compared with 2009, the researchers found.

That suggests a strategy change by plaintiffs law firms, the researchers said.

"The sharp increase in federal litigation alleging disclosure violations in M&A transactions suggests that plaintiff lawyers are scrambling for new business as traditional fraud cases seem to be on the decline," said Joseph Grundfest, a professor and director of the Securities Class Action Clearinghouse. "There is little reason to believe that this trend will reverse or slow down."

Both studies found that credit crisis-related filings fell during 2010. According to the Stanford and Cornerstone study, they decreased to 13, down from 55 in 2009.

The Stanford and Cornerstone researchers also found a spike in filings against Chinese companies, with 12 such filings in 2010. That constituted nearly 43% of all filings against foreign issuers.

Filings against foreign issuers accounted for nearly 16% of all 2010 filings, among the highest rate ever observed, the researchers said.

"The spike in litigation against Chinese issuers presents an interesting challenge for investors and regulators alike," Mr. Grundfest said. "It's impossible to deny China's ascending importance as a global market force, but tensions may well arise as some Chinese issuers struggle to conform to Western market norms and others might engage in outright fraud."

Marsh: Soft market to continue in 2011

CONTINUED FROM PAGE 3

Marsh clients' fourth-quarter renewals saw average premium decreases of 4.5%, according to the report.

"I don't think you'll find anything earth-shattering necessarily in the report," said Dean Klisura, U.S. risk practices leader for New York-based Marsh. "We see '11 very much as we saw 2010: another very favorable environment for buyers in nearly every product line."

"You'll find clients that have had litigation or adverse development or otherwise complicated risk portfolios, and those clients are coming up with flat renewals," Mr. Klisura said.

With capacity continuing to exceed demand, commercial property insurers are forced to compete on pricing, terms and conditions to keep accounts or win new business, Marsh said, while relatively low losses maintained downward pressure on rates.

The terrorism insurance market largely was stable in 2010, according to the Marsh report, with nearly 75% of Marsh clients purchasing terrorism insurance last year.

Marsh cautioned property insurance buyers on the importance of data quality to insurers, and advised buyers that upcoming changes in the way risk models assess related wind exposures may change how underwriters review and price windstorm and hurricane risks.

The report says insurers' initial response to the changes indicates they shouldn't lead to premium changes, though Marsh suggests the updated models likely will prompt insurers to seek higher wind deductibles in some areas.

While saying that the property insurance market should remain competitive "for the foreseeable future," the Marsh report notes that ongoing global economic weakness could put added pressure on insurers to produce underwriting profits, tempering their ability to offer large premium reductions. Also, a significant catastrophe "has the potential to influence the market," the report said.

On the casualty side, the North American market was much the same in 2010 as in 2009 and likely will remain stable in 2011 "barring a market-changing event," according to the Marsh report.

"Insurers typically experienced consistent and steady rate reductions across all primary casualty lines, with the magnitude depending on risk-specific factors such as class of business, insureds' financial condition, loss history and the aggressiveness of marketing efforts," Marsh said.

TYPICAL CASUALTY RATE CHANGES

At renewal, for large organizations with an average-to-good risk profile

COVERAGE TYPE	SEGMENT	RATE CHANGE, Q4 2010
Workers compensation	Guaranteed cost	Flat to 5% decrease
	Loss-sensitive	Flat to 5% decrease
General liability	Guaranteed cost	Flat to 5% decrease
	Loss-sensitive	Flat to 5% decrease
Automobile liability	Guaranteed cost	Flat to 5% decrease
	Loss-sensitive	Flat to 5% decrease
Umbrella, excess liability	Lead	5% decrease to 2% increase
	Excess layers	5% decrease to 2% increase

At renewal, for midsize organizations with an average-to-good risk profile

COVERAGE TYPE	SEGMENT	RATE CHANGE, Q4 2010
Workers compensation	Guaranteed cost	Flat to 5% decrease
	Loss-sensitive	Flat to 5% decrease
General liability	Guaranteed cost	Flat to 5% decrease
	Loss-sensitive	Flat to 5% decrease
Automobile liability	Guaranteed cost	Flat to 5% decrease
	Loss-sensitive	Flat to 5% decrease
Umbrella, excess liability	Lead	5% decrease to 2% increase
	Excess layers	5% decrease to 2% increase

Source: Marsh Inc.

Competition among insurers and ample capacity should remain in the primary casualty area in 2011, Marsh said, though "there will likely be a renewed push for rate increases from several carriers along with a very close scrutiny of loss experience." The market began to demonstrate that push toward the end of 2010, "particularly for those insureds with more challenging loss profiles," the report said.

Still, "Overall, the vast majority of firms will find a competitive primary casualty market in 2011," Marsh said.

Workers compensation was "a buyers' market" in 2010, Marsh said, and "absent any industry-wide catastrophic events or other issues creating a dramatic reduction to surplus," the market environment should be similar in 2011.

Likewise, "barring a market-changing event or events, the umbrella and excess markets are likely to remain stable in early 2011," the report said. Incumbent lead insurers likely will look for rate increases in some cases, Marsh said, possibly succeeding if there is limited competition for the class of risk or the attachment point.

Among financial and professional lines, the Marsh report noted that as 2011 began, rates in the directors and officers liability market were declining in all market areas amid high competition. Marsh employment practices liability clients saw average reductions of 5%, according to the report, though those with ongoing layoffs, significant pending claims or other risk-producing activities may have seen their rates ranging from flat to up 5% to 10%, depending on exposure.

Fidelity capacity is expected to increase slightly in 2011, the Marsh report said, with premiums likely to remain flat or decrease slightly during the coming year.

In general, the Marsh report sees a broadening interest in clients' use of analytical tools to help them better manage exposures.

"One development which we're helping our clients think through a lot more is there is a deepening of analytical thought that goes into the decision making around risk transfer," said Brian C. Elowe, managing director in Marsh's Global Risk Management division. Information generated through those analytical efforts is also helping those buyers get better pricing and terms in the insurance market, Mr. Elowe said.

The new Marsh market report will be available at *www.marsh.com.*

Executive: Sick leave creates dilemma for firms

CONTINUED FROM PAGE 1

share price bounced back Jan. 19 after the company reported a 78% surge in quarterly profits and issued a strong forecast going forward. By early afternoon trading, Apple shares were up to $342.85, restoring most of the prior day's loss. However, Apple's stock closed Friday at $326.72 per share.

Under SEC rules, only "material information" that "would influence an investor's decision to buy or sell securities" is required to be disclosed to shareholders, and CEO health is not among the examples provided in the SEC's definition of "material." In fact, the SEC has a "Compliance and Disclosure Interpretation" that says even the death of a director is not a triggering event requiring the filing of a Form 8-K.

And while the SEC requires a publicly traded company to file a Form 8-K when a principal financial officer temporarily turns over his or her duties to another person, no interim CEO was named in Apple's case, though Mr. Jobs said Chief Operating Officer Tim Cook will be responsible for Apple's day-to-day operations.

In a statement released by Apple on Jan. 17, Mr. Jobs said he was taking a medical leave to focus on his health. He said he will continue as CEO and be involved in major strategic decisions for the company. No date was given for when Mr. Jobs will return to his post, and he did not elaborate on his health condition except to say "I love Apple so much and hope to be back as soon as I can. In the meantime, my family and I would deeply appreciate respect of our privacy."

Mr. Jobs, who co-founded Apple in 1976, has taken two previous medical leaves—one for cancer surgery in 2004 and another for a liver transplant in 2009.

Peter Henning, a law professor at Wayne State University Law

School in Detroit, said: "I understand investors want more information. I've never heard investors say, 'Tell us less.' They are voracious. But there's no obligation under the law to tell investors every piece of material information a company might have until it's required to do so. I think they did enough, if that's all they know at this point. No health issue is crystal-clear."

However, "I do have a problem with how Apple handled it last time. What they did differently this time is, they've controlled the disclosure. You can't deny, deny, deny and then turn 180 degrees and say, 'Yes.' Here they said he's sick and on a leave. I don't know what more they can be required to disclose. He hasn't resigned. They don't have to tell you everything about their future plans. There's no obligation to do that."

Apple could not be reached for comment.

Two other recent CEO illnesses prompted a similar debate.

Sara Lee CEO Brenda Barnes stepped down from the company in August after revealing she had suffered a stroke in May. The company previously had announced that she was on a leave of absence, providing few details.

By contrast, when American International Group Inc. CEO Robert Benmosche was diagnosed with cancer in October, he was more forthcoming, announcing a succession plan in the event that he would become unable to effectively serve in his current role. Mr. Benmosche has not disclosed what type of cancer he has.

No securities suits were filed in either case.

Lawsuit threat

There are two scenarios that might give rise to shareholder litigation in such cases, said Dan A. Bailey, a partner at Bailey Cavalieri L.L.C. in Columbus, Ohio.

Shareholders could assert that the announcement of a CEO's illness came at the end of a period of misrepresentation, arguing that the company had hid the truth about the CEO's condition for a long time. But to prevail in that type of claim, plaintiffs would have to prove that the company had a duty to disclose this new health information sooner and that the information was material, which would be difficult, Mr. Bailey said.

But in the case of Mr. Jobs, his prior health issues eventually came to light during his prior two leaves, said Ann Longmore, New York-based executive vp and D&O product leader with the executive risk practice at Willis North America.

"Here being the second time he's gone out on medical leave, and knowing the surrounding circumstances on his health, the reasonable person realizes" that this leave most likely is related.

"There was more uncertainty last time," she said. "Now we know more about his medical problems. You can read between the lines."

Mr. Bailey outlined a possible second scenario that might give rise to shareholder litigation.

"Say the CEO dies in a week or a month. The plaintiffs could come and say they should have disclosed more" prior to the leave. "They might say, 'if you had told us the full impact, the stock might have dropped further, but by delaying the news, it artificially inflated the stock price,'" he said.

But "either scenario would be contingent on whether the stock price drops precipitously. You've got to have a drop in stock price after the corrective disclosure," he said.

Kevin M. LaCroix, executive vp at OakBridge Insurance Services, a wholesale brokerage in Bloomfield, Conn., that specializes in executive liability, said "it would be very difficult for a claimant to even think about filing a lawsuit" because "they would have to show that there was loss causation attributable to the 'material' disclosure requirement" and an "intent to deceive."

"The problem is, it is very hard to have a bright line test of what is materiality," said Mr. LaCroix, who also is a lawyer. "What makes something material?"

"Then there's always the issue of privacy. I don't know how that intersects with disclosure requirements. When has it reached the point where there needs to be a disclosure?" Mr. LaCroix asked.

Securities law experts maintain that even a high-profile CEO like Mr. Jobs has a right to privacy. The Health Insurance Portability and Accountability Act, which regulates the use and disclosure of personal medical information by health care providers and health insurers, has no separate rules for information about elected officials, public figures or celebrities.

"Individuals should be entitled to keep their health information somewhat private, even if you are a CEO or a public figure," said Mr. Bailey.

NASA: Background checks upheld

CONTINUED FROM PAGE 3

"the questions challenged by respondents are part of a standard employment background check of the sort used by millions of private employers."

The government "has an interest in conducting basic employment-related background checks," the high court said. "We reject the argument that the government, when it requests job-related personal information in an employment background check, has a constitutional burden to demonstrate that its questions are 'necessary' or the least restrictive means of furthering its interests."

Justice Alito, in the opinion for six of the justices, said, "We assume, without deciding, that the Constitution protects a privacy right of the sort mentioned" in two 1977 Supreme Court decisions, *Whalen vs. Roe* and *Nixon vs. Administrator of General Services*.

In a concurring opinion, Justice Antonin Scalia said the court should have ruled that the workers have no right to "informational privacy," which relates to the collection and maintenance of private information. "Whatever the virtues of judicial minimalism, it cannot justify judicial incoherence," Justice Scalia said in the concurring opinion with which Justice Clarence Thomas agreed.

Justice Elena Kagan, who had worked on the case as solicitor general, recused herself.

Megan C. Winter, an associate with law firm Fisher & Phillips L.L.P. in San Diego, who was not involved in the case, said the court "ducked the issue" of the plaintiffs' informational privacy rights, which many had hoped it would address. Instead, it focused on the government's role as an employer.

Dan Stormer, a partner with Pasadena, Calif.-based Hadsell, Stormer, Keeny, Richardson & Renick L.L.P., who represented plaintiffs in the case, said while he was disappointed in the decision, it is "essentially a victory" for those who believe in the right to informational privacy, because the majority opinion assumed its existence.

"They did not address the central question, but I did not expect them to," said Jesse M. Jauregui, a partner with law firm Alston & Bird L.L.P. in Los Angeles, who was not involved in the case. Instead, as it did in *City of Ontario, Calif., et al. vs. Jeff Quon et al.*, which also concerned privacy, the court "issued a very fact-specific decision" rather than "making any sweeping pronouncements," he said.

It is "significant in the sense that it still leaves employers with a lot of gray areas" concerning privacy, Mr. Jauregui said. For instance, he said, the opinion stresses that the JPL plaintiffs were conducting "very serious, high-level work," which "begs the question" of whether, for example, a custodian should be subject to the same level of inquiry.

Colin J. Zick, a partner with law firm Foley Hoag L.L.P. in Boston, said, "I would think it's a different calculus if you're talking about someone who does not have access or interaction with high technology, or shooting things that can hurt people."

Mr. Zick said a footnote in the opinion that says the petitioners "did not ask us to hold that there is no constitutional right to informational privacy" can be interpreted as an invitation to submit cases to the court on the issue.

Meanwhile, legal experts say, the court's ruling in favor of the application and questionnaire is positive for private employers as well as federal contractors conducting employee background checks.


AP PHOTO

NASA can ask contract workers about their habits and background, the U.S. Supreme Court ruled.

Andrew J. Jaramillo, a shareholder with law firm Ogletree Deakins Nash Smoak & Stewart P.C. in Costa Mesa, Calif., said employers can "point to some good language in the court's decision which seems to suggest that they generally have a compelling interest in conducting background checks on their employees."

Robert R. Bohn, an associate with law firm McKenna, Long & Aldridge L.L.P. in Los Angeles, said while companies have increased their background checks since the Sept. 11, 2001, terrorist attacks, there has been "sort of an inherent nervousness" about the issue of privacy.

This decision "establishes employers do have the right" to make inquiries into personal matters, Mr. Bohn said.

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Navy: JLT plans armed escort program

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passing through the region need to approve the escort program before it can begin, he said. Once those tasks are completed, the first patrols could be in the Gulf of Aden within six months.

The Convoy Escort Program will have its main office in London and a regional operation in an undisclosed location.

"JLT is facilitating establishment of this program for the shipping industry," the spokesman said. "As far as we are aware, there aren't any proactive solutions" such as the escort program to protect ships from pirates, he said.

The program will be led by a CEO and an executive board chaired by a shipping company executive, none of which have yet been named. Its profits derived from fees for services provided will be donated to the International Trust Fund established by the Contact Group on Piracy off the Coast of Somalia, which was set up to combat the problem through more rigorous prosecution of pirates and by improving conditions in the country which foster piracy. The fund is managed by the United Nations Office on Drugs and Crime.

The piracy problem is bad and getting worse, sources say.

The average ransom paid to Somali pirates last year was $5.4 million compared with $150,000 in 2005, according to One Earth Future, a nongovernmental foundation based in Louisville, Colo.

Paying ransoms and insurance premiums, the costs of rerouting ships, purchasing security equipment and providing naval forces totals $7 billion to $12 billion per year, One Earth said.

Ole Wikborg, president of the Zurich-based International Union of Marine Insurance and director of the Bergen, Norway-based Norwegian Hull Club, said the piracy situation is worsening as the geographic area where pirates operate has expanded to include "almost every part of the Indian Ocean."

"Anything that reduces the risk, we would encourage," Mr. Wikborg said of the proposed convoy escort arrangement.

A record number of ships and crew were hijacked in 2010, most off the coast of Somalia, according to the London-based International Maritime Bureau. There were 53 vessels with 1,181 crew members taken last year, the highest number the IMB said it has seen.

Of the hijackings, 49 were off the coast of Somalia, the IMB said. At the end of 2010, 28 vessels and 638 hostages still were being held by Somali pirates.

As of mid-January, there had been at least four hijackings this year off the coast of Somalia with 83 crew members taken, according to the IMB.

Last week, South Korean naval forces stormed a ship held by Somali pirates, rescuing all 21 crew members. Eight of the pirates were killed and five were captured in the raid. The captain of the South Korean chemical tanker was wounded by the pirates, according to published reports.

While incidents off the coast of Somalia remain high, the number of attacks in the Gulf of Aden fell by more than half last year, to 53 from 117 in 2009. The IMB attributed the decline to the presence of navies that have been patrolling the area since 2008 and by better self-protection measures adopted by shipowners.

"The naval units in the seas off the Horn of Africa should be applauded for preventing a huge number of piracy attacks in the region," Pottengal Mukundan, director of the IMB's Piracy Reporting Center, said in a statement. "The continued presence of international navies is vital in protecting merchant ships along these important trade routes."

The Baltic & International Maritime Council, a Bagsværd, Denmark, shipowner association, is analyzing the Convoy Escort Program, said Giles Noakes, the group's London-based chief maritime security officer. It intends to support the effort as long as it is cost-neutral to shipowners, can provide funds to battle the piracy problem onshore in Somalia through the International Trust Fund, and it enhances existing military efforts in the Gulf of Aden, all of which appears to be the case, he said.

If the program is implemented, the presence of armed escorts off the coast of Somalia could free military resources there to patrol other waters, Mr. Noakes said.

"The aim is for the CEP to take over escorts in the Gulf of Aden so that naval warships can be relieved to move to the north Indian Ocean," Mr. Noakes said.

Under the escort program, a patrol boat outfitted with weapons and carrying armed crew members will escort up to three merchant vessels through the Gulf of Aden. The JLT spokesman would not elaborate on the firepower that will be in place except to say that it will be "fit for purpose."

"There will be plenty of warning before they engage anybody with firepower," the spokesman said. "Training for the teams will be intensive and the rules of engagement will be made very clear by our legal team."

JLT is structuring the program so it includes war risk insurance written by Lloyd's of London insurer Ascot Underwriting Ltd. to provide protection for a three-day transit through the gulf. The cost of the service for shipowners is expected to offset the expense of additional war-risk coverage and security that they incur, the spokesman said.

Any broker could access the program, he said.

JLT is working with Dobson Fleet Management Ltd., a Limassol, Cyprus-based company that will provide crews and a range of management services for the program. "They will operate the marine side," the JLT spokesman said.

The program is being developed amid a longstanding debate over how much force should be used against pirates. Opponents of merchant vessels arming themselves argue that doing so increases the danger that someone will be killed or injured, but some ships have taken to carrying armed crews and insurers have begun providing coverage that will pay for liability connected to onboard armed security personnel.

An armed escort service should serve to cool the debate by removing the need for merchant ship crews to be armed, said Mr. Noakes. "It is reducing the risk of collateral damage."

Some ships, though, may not see the need for a convoy if they are armed themselves, said Joseph J. Cox, president and CEO of the Chamber of Shippers of America in Washington. Some shipowners likely will weigh the cost of arming their own vessels against that of using the escort, he said.

"Will this idea go?" Mr. Cox asked. "Maybe. It depends on cost."

That's not to say a private-industry effort to battle piracy is a bad idea, Mr. Cox said. "The industry has to start talking about what we can do for ourselves because the government can't do it all."

Establishing the escort program has not been without opposition from many sides, the JLT spokesman said. "People opposed what they perceived as a commercial venture" in the role of a navy, he said, and expressed concerns about armed crews, rules of engagement and other aspects of the program.

Mr. Noakes said the escort program will be a far cry from a "private navy" as some had worried. "It's an international effort to help reduce the pirate problem," he said.

Even if the program is implemented, substantial piracy risk will remain, sources agreed.

It is impossible to patrol the entire Indian Ocean, the JLT spokesman said. "So what we are hoping for is to at least help with the three days it takes to get through the Gulf of Aden."

"It's too vast," Mr. Wikborg said of the area where pirates operate. "It's my personal opinion that the whole problem emanates from the failed state of Somalia, and they need to sort that out before anything else."

AIG: Insurer makes progress in repayment

CONTINUED FROM PAGE 3

It remains to be seen what happens when Treasury unloads that stake.

While it's difficult to predict what storms might be ahead for the insurer, "right now it's moving along," said Clark Troy, research director at Aite Group L.L.C. in Chapel Hill, N.C. "It's been some time since we've seen a strongly negative indicator for AIG, so I think the wind is at its back."

Large equity offerings, such as the 92% Treasury stake, typically are sold to institutional investors such as hedge funds, mutual funds or pension funds. The government plans to exit its investments in AIG in a methodical way and sell its stock in chunks during the next 12 to 18 months, experts say.

Jonathan Hatcher, a credit strategist at the securities and investment banking group Jefferies & Co. Inc. in New York, said he thinks "virtually every major investment firm" will buy the stock." The recapitalization "is clearly a good sign," he said. "It's a reaffirmation of an impressive turnaround from the beginning."

Even when AIG's stock languished at less than $2 a share in 2008, New York-based brokerage Marsh Inc. advised its policyholder clients that AIG's property/casualty group remains one of the largest commercial insurers in the world, said Robert F. Howe, managing director at Marsh in New York.

AIG RESCUE

For more on AIG's struggles, go to www.businessinsurance.com.

Mr. Howe said previous concerns among clients that the insurer's pricing and loss reserves might be deficient have proven unfounded. In 2008, Marsh held conference calls to reassure more than 15,000 clients about the situation; now their clients' level of concern has abated significantly, he said.

"If you look at where they started in September 2008 and what they've accomplished through 2011, it's very impressive," Mr. Howe said.

Pete Fahrenthold, managing director of risk management at Continental Airlines Inc. in Houston, said AIG is on several company insurance programs.

"We've felt comfortable enough with them to stay with them," Mr. Fahrenthold said. He said the insurance operations seemed to be isolated from other problems AIG was having, and policyholders weren't affected even when the insurer was in turmoil.

Now, he's glad to see that the stock sale is moving forward and that taxpayers probably will get their money back. "Unless some other adverse news comes out—and I wouldn't think there would be any at this point—we'll continue to use" AIG, Mr. Fahrenthold said.

AIG's financial condition stable, improving

WASHINGTON—American International Group Inc.'s financial condition generally either has remained relatively stable or has shown signs of improvement since April, said the U.S. General Accounting Office in a third-quarter 2010 report issued last week.

The report said that as of Sept. 30, the outstanding balance of the Federal Reserve and Treasury Department assistance to AIG was $123.7 billion, a 4.2% decline from $129.1 billion in December 2009. "Overall, federal assistance appears to be facilitating a more orderly restructuring of the company," said the GAO study.

The report said AIG's property/casualty companies "have remained stabilized." It said for the property/casualty commercial companies, "dollar volumes of premiums written trended downward throughout 2007 and 2008, but started to stabilize in the first quarter of 2009, and this trend has continued through the first three quarters of AIG."

For the nine months ended Sept. 30, AIG's property/casualty unit, Chartis Inc., reported a 1.3% increase in net premiums written vs. the comparable period in 2009, to $24.03 billion.

AIG Financial Products has continued to unwind its credit swap positions and portfolio of super senior credit default swaps, according to the GAO report.

The report also said that while AIG has repaid some of its federal debt, a large volume of activity involved exchanging its debt on the revolving credit facility with the Federal Reserve Bank of New York for federally preferred interest in AIG and AIA Group Ltd. and American Life Insurance Co. special-purpose vehicles.

The report, "Troubled Asset Relief Program, Third Quarter 2010 Update of Government Assistance Provided to AIG and Description of Recent Execution of Recapitalization Plan," updates the GAO's April 2010 report. It can be downloaded at *http://www.gao.gov/new.items/d1146.pdf.*

—By Judy Greenwald

REUTERS/LANDOV

During cleanup operations last week in flood-ravaged Brisbane, Australia, heavy equipment was used to clear away destroyed produce and other debris left by flooding.

Floods: Losses swelling in Australia

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The Australian Chamber of Commerce & Industry welcomed formation of the recovery task force, which includes several business leaders.

Queensland Premier Anna Bligh also said last week that a royal commission is to investigate the state's flood preparedness and disaster response, among other things. An interim report is to be published in August with a full report next year.

Estimates of insured losses from the floods have increased.

The Insurance Council of Australia said it had been notified of losses of about $365 million Australian ($361.2 million) from the Queensland flooding as of mid-January, up from its previous estimate of $150 million Australian ($148.5 million).

Catastrophe modeler AIR Worldwide Corp. estimated that insured losses from the floods could reach $6 billion Australian ($5.94 billion).

And last week, Barclays Capital said insured losses could top $6 billion and could affect the earnings of Bermudian reinsurers, among others.

The floods that first hit Queensland in December likely will cost insurers about $2 billion and affect 2010 accounts, according to Barclays' analysis. The second stage of the flooding, which occurred during January, likely will cost $4 billion, it said.

Reinsurance losses from the first phase of the flooding are likely to be about $1 billion, according to analysis by Keefe, Bruyette & Woods Inc. in London.

KBW Analyst Christopher Hitchings said the second phase of flooding could be a "much worse" reinsurance loss, but will affect 2011 catastrophe accounts. Lloyd's of London companies likely will have about a $50 million share of reinsurance losses from the 2010 floods, he added.

Joanna Parsons, an insurance analyst at Royal Bank of Scotland P.L.C., also said Lloyd's companies could face losses, particularly from business interruption claims and flooded mines.

Wing Chew, a senior analyst at Moody's Investors Service Inc. in Sydney, said that while Australian insurers' profits will be hit by the floods, they will not be a "material credit event" because insurers have extensive reinsurance programs and the majority of claims will be on personal lines policies, among other things.

The largest insurer in Queensland, Suncorp Group Ltd., said its losses would be limited thanks to its "comprehensive reinsurance program."

Brisbane-based Suncorp said the December flooding likely would result in pretax losses of $130 million Australian ($128.7 million) to $150 million Australian ($148.5 million) for the company.

Suncorp said the January flooding likely would result in losses of $70 million Australian ($69.3 million) to $90 million Australian ($89.1 million).

Suncorp, which operates on a financial year that ends June 30, also said it likely would incur additional reinsurance costs of about $120 million Australian ($118.8 million) "to reinstate multiple covers for the remainder of the financial year."

Insurance Australia Group Ltd., which also has a large exposure in Queensland, said claims from heavy rain and flooding in December likely would be from $10 million ($9.9 million) Australian to $30 million Australian ($29.7 million).

It is too early to estimate the cost of the January flooding, IAG noted, which will be included in the company's results for the second six months of its financial year, which also ends June 30.

In a statement, IAG CEO Mike Wilkins said the company's catastrophe reinsurance program for 2011, which renewed Jan. 1, was structured similarly to 2010. Under that program, he said, the group's maximum-event retention for a first event in 2011 is $150 million Australian.

As of last week, QBE Insurance Group Ltd. had not released a flood loss estimate.

Australian insurers expect the floods to be classed as two or more events, which will have an impact on the retentions insurers will take, said John Birch, a director in the financial institutions arm of Fitch Ratings Ltd. in Sydney.

He said that while Fitch believes the floods will be treated as multiple events, "confirmation won't be made until discussions and claims are finalized between the primary insurers and their reinsurers."

In addition, he said, flooding in Victoria adds to the uncertainty.

If the floods are classed as multiple events, then primary insurers will take more retention and incur a larger share of the gross loss than if the floods were deemed to be a single event, he said.

While the number of properties affected by flooding in Victoria was low, situations can change quickly as the floods in Brisbane and nearby Ipswich demonstrated, Mr. Birch said.

Underwriters in London expect the floods to be classed as two or more separate events, said one London-based source who asked not to be named.

The floods likely will not become a "capital event" for reinsurers in the London market, he added.

Heavy commercial losses, such as business interruption and claims from mines, likely will fall into 2010 coverage, he added.

Multiple forces converge to heighten loss severity

BRISBANE, Australia—While Queensland, Australia, has been susceptible to flooding in the past, experts say a series of events have conspired to increase the severity of the current floods.

It is not unusual for Queensland to have heavy rain during Australia's summer—especially when there is a La Niña event, said Neena Saith, senior manager for catastrophe response and Americas models at Risk Management Solutions Inc. in London.

La Niña, the counterpart to the phenomenon known as El Niño, results in abnormally cold ocean temperatures in the equatorial Pacific and alters typical weather patterns, according to the National Oceanic and Atmospheric Administration.

The rainfall accumulation in the Queensland area is a lot more severe than normal, Ms. Saith said.

December flooding was caused in part by Cyclone Tasha, which hit Dec. 25, 2010, and led to a large amount of rainfall in eastern Australia, according to commentary by Aon Benfield, a unit of Chicago-based Aon Corp., in London.

The extent and magnitude of the floods was unprecedented in many places, "setting new water level records in some instances," Aon Benfield said. "The duration of the floods are also linked to the very flat topography of Queensland, limiting effective drainage from the flooded catchments."

The extreme rainfall—about 10 inches in 24 hours, which is very unusual for Australia—was exacerbated by it occurring when ground already was saturated, said Milan Simic, managing director of AIR Worldwide Corp.'s office in London.

The period of September through November was the wettest in that part of Australia since records began 111 years ago, he said.

While Australia has a sophisticated insurance market, and flooding is one of the known perils for the region, there will be severe economic losses from lost agricultural production, among other things, Mr. Simic said.

Crops typically are not insured in Australia, Mr. Simic said.

In addition, some mining industry losses likely will be uninsured and the tourism industry will likely suffer severe economic losses, he said.

—By Sarah Veysey

Business Insurance END PAGE

Contributing: Jeff Casale, Mark A. Hofmann, Mike Tsikoudakis, Rodd Zolkos

Match.com users question number of fish in the sea

It's love on the rocks for online dating service Match.com and a group of former subscribers who allege that more than half of the profiles on the website are bogus.

The suit, filed last month in U.S. District Court in Dallas, alleges that the roster of profiles on the dating site is bolstered with profiles that are either fake or ex-members whose information has not been deleted.

The plaintiffs reportedly argue that the Dallas-based matchmaker's alleged actions constitute breach of contract, breach of implied faith and fair dealing, and negligent misrepresentation.

In addition, the five men and women who are seeking unspecified damages and repayment of subscription fees also are seeking class action status for their lawsuit.

Match.com said it would contest

the suit and described the claims as being without merit. The company has been the target of similar suits in the past, which subsequently were dropped.

Perhaps the online dating dispute makes a case for the old-fashioned way of meeting that special someone. You'd never see that sort of alleged deception in a bar.

Libel case payout no model: Court

The European Court of Human Rights has ruled that some libel damages that a British tabloid had to pay supermodel Naomi Campbell were too much.

In 2004, the Daily Mirror reportedly faced £850,000 ($1.3 million) in damages for invasion of privacy for a 2001 article and photographs detailing Ms. Campbell's drug abuse treatment.

But the Strasbourg, France-based court said the requirement to pay her attorneys £365,000 ($579,401) in success fees was "disproportionate" and breached the European Convention on Human Rights, according to reports. London law firm Schillings represented Ms. Campbell in a conditional fee arrangement, giving it a 95% success fee and 100% of base costs.

In its judgment, however, the court reportedly said the success fee "was disproportionate having regard to the legitimate aims sought to be achieved and exceeded even the broad margin of appreciation accorded to the government in such matters."

"This judgment should increase pressure on the coalition government to abolish the recovery of such fees from defendants and we look forward to that happening in the near future," Mirror Group Newspapers Ltd. said in a statement.

The ruling has spurred the British government to consider amending its libel laws to ensure that plaintiffs can control legal costs in their case.

LANDOV

Ms. Campbell

Fraudsters earn dubious honor from coalition

It's a list on which no one wants to be included, but once again the Washington-based Coalition Against Insurance Fraud has found a sufficient number of miscreants to populate its annual Insurance Fraud Hall of Shame.

Those so dishonored range from perpetrators of truly horrific crimes to those who thought they could get away with almost unbelievably brazen cons.

In the brazen category, according to the coalition, fall a couple of California con artists, James Kalfsbeek and Donna Jean Rowe, who for eight years sold bogus automobile insurance "under the guise of membership in a 'Christian' insurer. The two claimed they were "sovereign citizens" who operated a "low-cost Christian membership society" that wasn't subject to state fraud laws.

They were wrong and both now are serving time for mail fraud and other crimes.

The American Trade Assn. Inc. also made the list. The Springfield, Tenn.-based outfit sold what it alleged was decent health coverage but, according to authorities, the policyholders didn't get much for their dollars.

According to the coalition, ATA collected as much as $14 million in premiums but left medical bills unpaid. Responding to consumer complaints, state authorities investigated the operation, and a Tennessee judge ordered it liquidated last April.

In its list, the coalition notes that its research indicates that consumer tolerance of insurance fraud has risen in recent years, and that many consumers view it as "victimless white-collar prank."

Holders of bogus car and health insurance no doubt would think otherwise.

Plaintiff opens WikiLeaks fight

Poor spelling isn't preventing a Florida man from suing WikiLeaks founder Julian Assange, alleging Mr. Assange "indangered" him as well as "every person in the United States; and the entire planet."

David Pitchford of Key West, Fla., filed a $150 million lawsuit against WikiLeaks and Mr. Assange, alleging intentional infliction of emotional distress by releasing documents that put the United States, its people and "the entire planet" in harm's way.

In a complaint rife with spelling errors filed in federal court in Miami, Mr. Pitchford outlined how the controversial cables caused him great harm, according to media reports, including assertions that he "suffered serious personan injury," a "worsening" of his "hyper tention," "depression" and "stress," and that he had been living in "constant fear of being stricken by another heart attack or stroke as a result of the foregoing" and "fear of being on the brink of Nucliar WAR."

Mr. Pitchford is seeking $100 million "dollors" in compensatory damages, $50 million in punitive damages, and that WikiLeaks and Mr. Assange be held accountable for the costs of his legal battle, according to the complaint.

According to some media reports, Mr. Pitchford previously filed lawsuits against Osama bin Laden and Barry Goldwater, both of which were dismissed.

AP PHOTO

WikiLeaks and its founder, Julian Assange, face a $150 million lawsuit from a concerned citizen.