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EMPLOYERS URGED TO PREPARE FOR RISE IN RETALIATION RISKS AS LAYOFFS GROW / PAGE 3

LIBERTY MUTUAL OVERHAULS MIDDLE-MARKET BUSINESS, DROPS WAUSAU BRAND / PAGE 3

LEDBETTER BILL MAY INCREASE BIAS SUITS / PAGE 3

In Brief

U.S. insurer cat losses total $25.2B in 2008

Catastrophes cost U.S. property/casualty insurers about $25.2 billion in insured property losses last year, the Insurance Services Office Inc.'s Property Claim Services unit reported. PCS said insurers paid 3.9 million claims for damage in 40 states from 2008's 37 catastrophes. Hurricanes caused the greatest losses at $13.3 billion.

P/C premiums down, but reversal expected

Insurance premiums for property, general liability and professional liability segments all dropped during the fourth quarter of 2008, according to a survey by the Risk & Insurance Management Society Inc. and Advisen Ltd. The decrease in rates during the fourth quarter continued a five-year trend, but RIMS and Advisen, both based in New York, said that the data collected for the RIMS Benchmark Survey suggests that a reversal of that trend may be under way. Advisen, a firm that analyzes market data for the commercial insurance industry, said that the soft insurance market cycle is nearing an end and that insurance prices could start increasing by the fourth quarter of this year or the first quarter of 2010. According to the benchmark survey, the average general liability premium fell 5.9% in the fourth quarter, compared with a 9.6% decline in the third quarter. Property premiums fell 3.8% in the fourth quarter, compared with an 8.5% decline in the third quarter. Directors and officers premiums fell 1.2% in the fourth quarter after falling 2.1% in the third quarter.

See **IN BRIEF** page 22

AP

President Obama supports extending health care coverage to the unemployed, though he has not yet taken a position on the COBRA provisions in bills before House and Senate committees.

COBRA expansion worries employers

Stimulus bill item would greatly extend coverage requirement

By JERRY GEISEL

WASHINGTON—Employers would be required to offer COBRA health care coverage for at least a decade to many former employees and retirees under legislation likely headed for a vote by the full House this week.

The COBRA provisions, embedded in the $825 billion economic stimulus package that cleared by the Ways and Means Committee last week, would be a huge expansion of the COBRA law and saddle employers with health care costs few could have imagined when Congress enacted the health care continuation law in 1986.

Under H.R. 598, employees who stop working as young as age 55 could retain COBRA coverage until becoming eligible for Medicare at 65, regardless of how long they worked for the employer.

In addition, any employee who worked at least 10 years for a company could keep COBRA until eligible for Medicare, an entitlement that could stretch for decades in the case of younger workers.

Current law limits to 18 months the amount of time that individuals can continue health insurance from their former employers by paying a premium that is 102% of the cost of coverage provided to employees.

The House bill also would provide a 65% federal COBRA premium subsidy for individuals who are laid off from Sept. 1, 2008, through Dec. 31, 2009—a provision that has not drawn significant opposition from business groups because it would be only temporary. Beneficiaries' premiums would be subsidized up to 12 months.

The Senate, though, may take a more limited approach. Under a stimulus package to be taken up this week by the Senate Finance Com-

See **COBRA** page 18

Credit crisis increases comp collateral costs

Some self-insurers scramble to secure alternatives to LOCs

By ROBERTO CENICEROS

The volatile economy and a constricted credit market are squeezing employers' collateral arrangements to self-insure workers compensation risks from a new direction, experts say.

Typically, state regulators require employers to post bonds, letters of credit, securities or cash as collateral to self-insure their workers comp obligations.

But now bond insurers are asking some employers to post more collateral just to secure the bonds, insurers and brokers said. Surety contracts often allow insurers to call for additional collateral to secure their bonds during the contract term.

Bond insurers are seeking additional collateral from employers in industries facing financial challenges in today's economic environment, said Theodore Sevier, managing director and national commercial surety practice leader in Chicago for Marsh Inc.

Self-insured companies in industries facing liquidity shortages are seeing an increase in calls for more collateral, agreed Pam Ferrandino, executive vp and casualty practice leader for Willis HRH in New York.

Retail operations, hotel chains and mining companies are facing such calls as bond insurers grow nervous that they might have to pay an employer's workers comp obligations, sources said.

In contrast, some large employers with healthy credit ratings are scrambling to replace letters of credit provided by banks with surety bonds provided by insurers, Mr. Sevier and other experts said.

LOCs have become scarcer as banks have tightened their credit

See **CREDIT** page 20

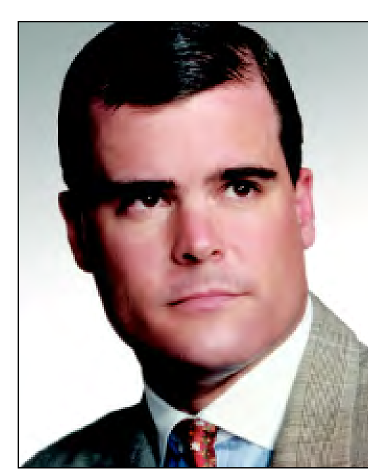
New wholesaler targets private equity accounts

By SALLY ROBERTS

NEW YORK—The former chief executive officer of Marsh Inc.'s Americas operations is getting back to his roots—organizing insurance for private equity clients.

But rather than working for another large brokerage, Philip V. Moyles Jr. has launched a boutique wholesale operation to aggregate the insurance purchasing of the private equity sector.

New York-based Sharebridge Holdings Inc., which was formed last month with the help of a $25 million investment by from New York-based private equity firm Stone Point Capital L.L.C., is now primarily owned by 20 private equity firms, with another 10 expected to join by the end of the first quarter. Retail brokers Aon Corp., Integro Ltd. and Krauter & Co. also have taken small equity stakes in the firm, in addition to Sharebridge's management.



Former Marsh executive Philip V. Moyles Jr. is leading the launch of wholesale brokerage Sharebridge.

By leveraging the buying power of the private equity stakeholders and their several hundred portfolio companies, Sharebridge expects to command better coverage and rates

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On the Web

***BI* VIDEO**

Program trains veterans for jobs in insurance

Finding and keeping talent is an ongoing challenge for the insurance industry. *Business Insurance* explores that and more in a new video report on the "Wounded Warrior" project, which helps veterans find jobs in insurance and risk management. Go to *www.Business Insurance.com/video*.

***BI* AUDIO**

New RIMS leader discusses future

Joseph Restoule, leader of risk management at Canada-based NOVA Chemicals and the new president of the Risk & Insurance Management Society Inc., discusses his agenda in an podcast interview with *Business Insurance* Associate Editor Colleen McCarthy. Listen to it at *www.BusinessInsurance.com/ audio*.

AIG RECOVERY FIGHT

Online coverage includes asset sale updates

Business Insurance continues its online coverage of global insurer American International Group Inc. The package includes up-to-date coverage of AIG's ongoing asset sale, along with regular daily updates, weekly coverage from the magazine and a timeline of events leading up to the company's financial troubles. Go to *www.BusinessInsurance .com/AIG*.

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Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Wage bias bill will burden employers: Experts

Increased litigation, higher admin costs expected to follow

By JUDY GREENWALD

WASHINGTON—A measure that would ease time limits on wage discrimination claims, which passed the Senate last week and is supported by President Obama, could lead to increased litigation and administrative headaches for many employers, observers say.

The Lilly Ledbetter Fair Pay Act of 2009, which would reverse a 2007 Supreme Court decision, was approved by the Senate in a 61-36 vote last week.

The U.S. House of Representatives, which passed an identical version of the Ledbetter bill earlier this month, also tacked onto it the Paycheck Fairness Act, which provides for stricter enforcement provisions than those now under the Equal Pay Act of 1963. The Senate did not vote on that bill last week.

As a result, the differences between the bills will have to be reconciled before going to President Obama. The House also could decide to accept the Senate's version of the bill.

The Ledbetter bill provides that every paycheck resulting from an earlier discriminatory pay decision constitutes a violation of Title VII of the Civil Rights Act of 1964 as well as the Age Discrimination in Employment Act, the Americans with Disabilities Act and the Rehabilitation Act.

The Supreme Court had ruled in *Ledbetter vs. Goodyear Tire & Rubber Co.* that plaintiffs alleging illegal pay discrimination under Title VII must file a complaint within 180 days of receiving the first discriminatory paycheck.

Under the bill, as long as workers file charges within 300 or 180 days of a discriminatory paycheck, depending on the state where they live, their charges would be considered timely. If enacted, the measure would be retroactively effective as of May 28, 2007, which is the day before the Ledbetter decision.

NYT PHOTOS

Lilly Ledbetter, shown this month at her Alabama home, filed a wage-bias suit that gained national attention and was heard by the U.S. Supreme Court.

Thomas H. Christopher, an attorney with Kilpatrick Stockton L.L.P. in Atlanta, said, "Employers are going to have to look carefully at their compensation decisions and make sure that they are not affected by some past discriminatory histo-

See **BIAS** page 17

With layoffs on the rise, retaliation risks grow

Security experts urge employers to prepare for rise in attacks

By JUDY GREENWALD

On Nov. 14, 2008, Jing Wu, who had been terminated from his engineering job at software startup SiPort Inc. a few hours earlier, returned to the company's Santa Clara, Calif., headquarters and requested a meeting with three executives.

They agreed, and the four went into a conference room. At some point, Mr. Wu allegedly pulled out a gun and shot all three to death. He was captured the next day and now faces murder charges.

While Mr. Wu was reportedly terminated for performance reasons, many observers fear similar scenarios during the next several months because the number of layoffs at companies nationwide is expected to rise.

There is no ironclad guarantee someone will not become violent after being laid off or fired, experts say. But there are steps companies can take to significantly mitigate the risk, thus ensuring the safety of their employees and protecting their firms from potential liability.

Many experts say they expect more such incidents. "We know that's going to be happening more and more as the economy worsens," said Michael Tabman, president of Kansas City, Mo.-based SPIRIT Asset Protection L.L.C.

See **LAYOFFS** page 10

Liberty Mutual retools middle-market business

Drops Wausau brand, moves to broker-based model for whole sector

By REGIS COCCIA

BOSTON—Liberty Mutual Group Inc. is overhauling its $2.5 billion middle-market operations, selling the renewal rights to its direct business to a trio of brokers and forming a unit to write business sold through agents and brokers.

As part of the change, Boston-based Liberty Mutual will retire its Wausau Insurance Cos. brand and discontinue business written through the company's Business Market midsize direct commercial insurance unit. Wausau, which Liberty Mutual bought in 1999, wrote producer-generated business.

The new unit, Liberty Mutual Middle Market, is headed by Chief Operating Officer Mark A. Butler, former executive vp and general manager of field operations for Liberty Mutual's National Market division.

Liberty Mutual Middle Market will provide property/casualty products to midsize businesses, including commercial auto, property, general liability, umbrella and workers compensation, according to the company. The new unit will serve accounts generating between $150,000 and $1.5 million annually in premiums in all lines, a Liberty Mutual spokesman said.

In addition, Liberty Mutual announced it has agreed to sell the renewal rights from its direct business to three brokerages: Itasca, Ill.-based Arthur J. Gallagher & Co.; Chicago-based Hub International Ltd.; and Briarcliff Manor, N.Y.-based USI Holdings Inc.

Liberty Mutual Middle Market is headed by Chief Operating Officer Mark A. Butler, former executive vp and general manager of field operations for Liberty Mutual's National Market division.

Each of the brokerages has offered to employ Wausau sales and service staff, Liberty Mutual said in a statement. The sale of the renewal rights is expected to close on or around March 1.

Gallagher said in a statement that it is acquiring the renewal rights to Liberty Mutual's middle-market commercial property/casualty business in the insurer's Midwest and Southeast regions and that the brokerage expects to hire around 75 Liberty Mutual producers in those areas. In addition, Gallagher said it is acquiring renewal rights and hiring the national producer group from Wausau Signature Agency.

See **LIBERTY** page 20

Cat bond market shows signs of revival after sharp drop

New structures used to allay concerns of cedents, investors

By COLLEEN McCARTHY

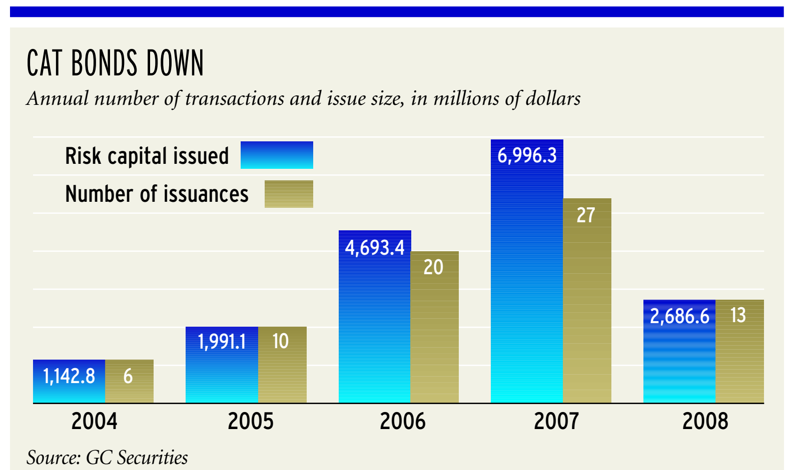
NEW YORK—A handful of catastrophe bonds are expected to be introduced to market in the first quarter of 2009, raising hopes that the struggling insurance-linked securities sector is poised for a comeback, experts say.

According to market sources, one transaction is being marketed to investors, and several other deals are expected to follow in the next few months.

"There is a robust pipeline of deals," said Judy Klugman, managing director for Swiss Re Capital Markets in New York. "We remain very bullish that the (cat bond) market will re-open in the first or second quarter (of 2009)" she said.

The market came under pressure in the second half of 2008 as soft reinsurance prices and concerns over credit risks brought new cat bond issuance to a halt. The dollar volume of cat bond transactions in 2008 totaled $2.7 billion, compared with the nearly $7 billion record issuance in 2007, according to the New York-based GC Securities affiliate of Guy Carpenter & Co. L.L.C.

Investor concerns mounted after rating agencies downgraded four cat bonds backed by Lehman Bros. when the New York-based investment bank filed for bankruptcy in September (*BI*, Oct. 27, 2008). Lehman Bros. Special Financing Inc. was the swap counterparty in each of the bonds, providing $584.5 million in catastrophe capacity, according to Standard & Poor's Corp.



Cat bonds use collateral accounts in which investor money is deposited to pay losses triggered by the contract. The collateral could be exposed if the accounts also contain mortgage-related securities diminishing the value of the collateral, experts say.

For the Lehman-backed bonds, the absence of a return swap counterparty after Lehman's bankruptcy, combined with losses on the value of assets in the account, means the investors are likely to suffer losses, said Gary Mantucci, director, financial institutions ratings at S&P in New York.

In addition, the cedents also are at risk because they would not have sufficient coverage in the event of a catastrophe loss triggering the bonds, he said.

In wake of the Lehman fallout, the market has been working to shake off investor fears by creating revised structures to address the issues of collateral management and

See **CAT BONDS** page 6

Blues plans halt merger opposed by regulators

Competition concerns scuppered chances of deal's approval

By JOANNE WOJCIK

HARRISBURG, Pa.—Pittsburgh-based Highmark Inc. and Philadelphia-based Independence Blue Cross have abandoned their plan to merge, acknowledging that the state regulator would not have approved the deal.

The deal's demise could deter other health insurers seeking to consolidate their operations, a consultant says.

In a joint statement last week, officers of the Blues affiliates said, "It became clear to us that despite the well-documented advantages of the consolidation for our customers and our communities, the insurance department would not approve the transaction because of its belief that there would be an adverse impact on competition."

Sen. Don White, R-Indiana, chairman of Pennsylvania's Senate Banking and Insurance Committee, said the panel rejected the merger after an exhaustive review.

"We fundamentally disagree," said the statement from Dr. Kenneth R. Melani, president and chief executive officer of Highmark, and Joseph A. Frick, Independence Blue Cross' president and CEO. "We have shown that the combination would not lessen competition in our markets. In fact, the U.S. Department of Justice examined the competitive effects of the proposed combination on two separate occasions and cleared the transaction each time."

The Justice Department reviewed and cleared the proposal in May 2007. Because that clearance expired after 12 months, the companies resubmitted their request for federal approval last spring, which they received in July 2008. Highmark and Independence Blue Cross submitted their merger application to the Pennsylvania Insurance Department in April 2007.

During Insurance Department hearings, executives of both companies said the merger would have created operating efficiencies needed for them to compete with national publicly traded health insurance companies that were encroaching on their market.

However, Pennsylvania Insurance Commissioner Joel Ario said the department was prepared to disapprove the transaction "because it would have lessened competition and disadvantaged providers to the detriment of the insurance-buying public."

"Bigger is not always better and, in this case, bigger would have been bad for consumers," Mr. Ario said at a press conference one day after Highmark and Independence Blue Cross withdrew their proposal. "Pennsylvania consumers already face one of the least competitive health insurance marketplaces in the country, and this consolidation would have made it worse, resulting in fewer choices for

See **HIGHMARK** page 20

Errors & Omissions

In a Jan. 19 story, "N.Y. Physician Pay Deal May Hike Costs: Experts," American Medical Assn. President Dr. Nancy Nielsen was misidentified.

2 AIG units get rating downgrades; sale of 2 businesses announced

S&P cites uncertainty in lower ratings for Transatlantic, ILFC

By JUDY GREENWALD

NEW YORK—Two American International Group Inc. units' ratings were downgraded last week, while an agreement to sell the insurer's commodity index business to a Swiss bank, and the sale of an AIG Philippines-based unit was announced.

Standard & Poor's Corp. lowered the financial strength ratings of Transatlantic Holdings Inc.'s core operating companies to A+ from AA-. Transatlantic Holdings is majority owned by AIG.

The New York-based rating agency also lowered Transatlantic Holdings' counterparty credit rating to BBB+ from A-.

S&P said partially offsetting the reinsurer's strengths is its "inability to translate its strong competitive position into stronger, peer-leading operating performance over time, as well as potentially constrained financial flexibility as a result of the uncertainty surrounding the AIG ownership stake."

S&P also lowered the long- and short-term corporate credit ratings of AIG's aircraft leasing unit, International Lease Finance Corp., to A-2 from A-1. The ratings remain under review pending the unit's planned sale by AIG.

Analysts noted during an S&P teleconference that there have been reports ILFC may be purchased by private equity capital.

S&P credit analyst Philip Baggaley said the lower credit ratings could affect the unit's sale price. To the extent ratings are lower, "that would raise (a buyer's) cost of capital somewhat and thereby reduce the value somewhat," he said.

"There are a lot of different factors that will influence the eventual price paid, including prospects for the aircraft leasing market and the company's ability to line up financing for its future operations," Mr. Baggaley said.

Meanwhile, Swiss bank UBS A.G. said it has entered into a binding

See **AON** page 22

Rules freeze affects risk, benefits

By ROBERTO CENICEROS

WASHINGTON—A memo issued to federal agencies shortly after President Obama took office last Tuesday freezes implementation of all pending and recently issued regulations, some with risk management and employee benefit implications.

A vast array of proposed rules and regulations that have not been officially adopted or have been recently adopted but not implemented, are now subject to White House review before further action.

For example, the memo signed by President Obama's chief of staff, Rahm Emanuel, halts implementation of a proposed rule mandating how the U.S. Occupational Safety and Health Administration and the U.S. Mine Safety and Health Administration conduct risk assessments of toxic substances and hazardous chemicals in the workplace.

AP

The memo signed by President Obama's chief of staff, Rahm Emanuel, halts proposed regulations, some with risk management and employee benefit implications.

Democrats and labor charge the rule would weaken worksite regulation and they claim President Bush's administration hurried to implement it before he vacated the White House (*BI*, Dec. 15, 2008).

The U.S. Chamber of Commerce supports the measure, which was posted in the Aug. 29 Federal Register. The Chamber argues it would improve safety by standardizing analysis of risks posed by chemicals and toxins.

Another proposed regulation that could be affected would require that contracts between employee benefit plans and plan service providers disclose any conflicts of interest the service providers may have and the reasonableness of their fees. It appeared in the Dec. 13, 2007, Federal Register, but a final rule was never implemented.

An interim Coast Guard rule that would have been effective March 17 also could be affected. It seeks to prevent pollution from ships by amending regulations for equipment used to reduce oil discharges. It was posted in the Jan. 16 Federal Register.

Oil platform injury justifies maritime workers comp benefits, panel rules

'Every square inch' need not be used for marine purposes

By ZACK PHILLIPS

NEW ORLEANS—A man injured while living and working on an oil production platform qualifies for workers compensation benefits designed for maritime employees even though most of his work was not for marine purposes, a U.S. federal appeals court has ruled.

The finding by the 5th U.S. Circuit Court of Appeals affirms the ruling of an administrative law judge and benefits review panel that Terry Hudson is entitled to benefits under the Longshore and Harbor Workers' Compensation Act. Mr. Hudson was injured in 2001 by a saltwater pump explosion while working on the Saturday Island production platform and several connected facilities along the Louisiana coast.

He applied for benefits under the Longshore law, which covers land-based maritime employees injured on a site customarily used for maritime purposes, such as loading ships. Coastal Production Services Inc., Forest Oil Corp. and ACE American Insurance Co. contested his claim, arguing he didn't qualify for the benefits because he was injured while on the Saturday Island platform, which is used to store and separate oil and gas pumped from the ground, and also for living quarters, but not for maritime purposes. A nearby and connected barge serves the maritime purpose of loading cargo—oil, in this case—onto ships.

However, the administrative law judge, benefits review panel and the appeals court all ruled that the nearby barge and the Saturday Island platform are part of one "overall area" for the purposes of this law. To qualify for benefits under the statute, the employee must work on a site normally used—but not exclusively used—for maritime purposes.

The appeals court found that if even if the specific site of the injury is not used for loading cargo, the worker still qualifies for benefits if that location is associated with items used as part of the loading process. The law does not require "every square inch" of a location to be used for marine purposes for a worker to qualify for benefits, the court wrote.

"If it did, we would have a game of hopscotch," Circuit Judge Jacques L. Wiener Jr. wrote. "The bathrooms in a (marine location) would not be covered, nor would be pavement that, although clearly within the area, had not been walked on by stevedores loading and unloading a vessel."

In a dissenting opinion, Circuit Judge Harold R. DeMoss Jr. said the court should have divided the different functional areas of the facility into covered and uncovered areas.

Cat bonds: Investor interest uncertain

CONTINUED FROM PAGE 4

transparency, observers say. For the new deals to be successful, there will have to be an improvement in the quality of collateral backing the catastrophe bonds, said Emmanuel Modu, managing director and global head of structured finance at Oldwick, N.J.-based A.M. Best Co. Inc. "I think we will see a more moderate approach to the type of risk being undertaken in the collateral accounts," he said.

Other structural changes are likely to include more frequent mark-to-market accounting on the collateral accounts to try to minimize risk and cushion losses, said Mr. Mantucci. While several deals used this feature last year, Mr. Mantucci said he expects this practice to increase.

The market has been eagerly awaiting the first issues to see whether the revised structures will be able to strike a balance between cedent and investor needs.

"It will take a few deals to clear the hurdle in order to see how investors respond," said Chi H. Hum, global head of distribution at GC Securities Ltd. in New York, a unit of the MMC Securities Corp. division of Marsh & McLennan Cos. Inc.

"If investors can get comfortable, then the market may pick up," said Mr. Mantucci, but he noted "our expectation is that it will still be a difficult year" for cat bonds.

However, Ms. Klugman remains optimistic that the sector will be able to ease investor fears. She noted that despite the issues surrounding the Lehman uncertainty, cat bonds still performed better than most other asset classes. She noted that from January 2007 through December 2008, the Swiss Re BB cat bond index total return was 7.6%, according to Swiss Re's Cat Bond Total Return Index, a benchmark for insurance-linked securities investors.

> **'I think we will see a more moderate approach to the type of risk being undertaken in the collateral accounts.'**
>
> Emmanuel Modu, A.M. Best Co. Inc.

Other factors may influence growth in the market and jump-start new issuance, including the hardening of reinsurance prices and cedents' desire to spread their risks, observers say. In addition, the multiyear structure of catastrophe bonds helps cedents overcome fluctuations in reinsurance capacity and price by allowing them to purchase capacity at set prices for longer periods than under traditional reinsurance deals, said Mr. Modu.

Reinsurance brokerages Chicago-based Aon Benfield and New York-based Willis Re predicted an increase in cat bond issuance for 2009 in their market outlook reports.

Observers say primary insurance companies have started incorporating capital market components into their overall programs to broaden their options for transferring risks.

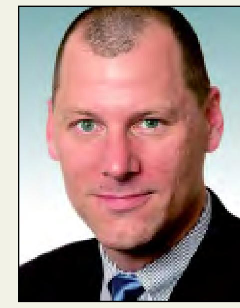
"There is a fairly high degree of interest from sponsors at this point," as traditional sources of capacity become restrained, said Mr. Hum.

Swiss Re's Ms. Klugman said she believes the basic principles that make the market attractive still exist. "Sponsors still need that multiyear, fully collateralized protection," she said.

But possible sponsors of cat bonds will be weighing the costs "to determine if it makes sense economically to issue bonds," instead of going the traditional reinsurance route, Mr. Mantucci said.

Commentary

Hardening market news hard to swallow



PAUL WINSTON

Associate Publisher and Editorial Director
Paul Winston's commentary appears monthly. E-mail: pwinston@crain.com

A month ago, I wrote that "the global property/casualty insurance market is hardening at the very time that many of its commercial customers can least afford it."

That view was based on my belief that at year-end and continuing into 2009, a confluence of factors was putting property/casualty insurers in a position where they could no longer afford to hold rates level or continue cutting the cost of coverage. I still believe that to be the case, but my view that the market "is hardening"—note that I did not say it is already hard—appears to have alarmed a few readers who felt that my words were premature.

"My only question would be why you think there is a hard market?" one reader wrote. "I am in the commercial property and casualty insurance business and would benefit from a harder market. We are not seeing it and would guess that your article is about one year too early. The industry has gone from doing great to doing OK. The market usually turns at the worst time for the buyers (to your point), but it usually is fine until it is not. We will need to experience an overnight 'crisis' before we can announce a 'hard' market. There is too much capital that still needs to be worked out of the system."

> **My view that the market "is hardening"...appears to have alarmed a few readers who felt that my words were premature.**

Another reader suggests that the very conditions that are creating such a terrible economic situation also are reducing the demand for coverage, and reducing pressure for the market to firm up.

"When global demand for insurance is at an historical low—decreases in sales, revenue, payroll, selling off of insurable exposures, etc.—and the supply of insurance still high, supply outweighs demand. So how can you determine that the so-called hard market is upon us?" this reader asked.

Both ask reasonable questions, but I believe that both also presume that we are in a typical or normal environment. I would suggest that we are not in Kansas anymore and what will trigger an end to the soft market today may be quite different from what triggered previous turns in the cycle.

What are some of the unusual factors that create uncertainty in the cycle?

- **Declining premiums:** According to the Insurance Information Institute, 2007 was the first year since 1943 that net premiums written declined in the U.S. property/casualty industry. "It appears likely that 2007-2008 will become the first consecutive years of negative premium growth since the Great Depression," the III wrote.
- **Financial market turmoil:** From the unprecedented collapses of some of the country's largest financial institutions to the federal bailout of surviving companies, to the weakened credit markets, the impaired financial health of the capital markets impacts the insurance industry in many ways. Among other things, the collapse of investment returns means underwriting discipline—generally incompatible with soft pricing—is more important than ever. And the long-term solvency of liability insurers is being questioned by buyers like never before.
- **Large catastrophe losses**: After relatively light catastrophe losses following 2005's record storms, 2008 saw increased frequency and severity of hurricanes and tornadoes, resulting in $25 billion in insured losses, according to the Insurance Services Office Inc.'s Property Claim Services unit.
- **Reinsurance hardening**: The reinsurance market is already firming pricing and reducing capacity for commercial lines risks, according to renewal reports by the largest reinsurance intermediaries. That's bound to be passed along, especially as primary insurers are taking larger retentions to blunt the impact of higher reinsurance costs.

Regardless of the timing, I think most will agree recent softening is coming to an end, which I hope helps buyers prepare for the inevitable.

Business Insurance OPINIONS

Is COBRA proposal fair and reasonable?

IN JUDGING LEGISLATION, we like to use the fair and reasonable test.

In applying that test to COBRA health care continuation provisions included in a massive economic stimulus bill approved by the House Ways and Means Committee last week, part passes muster, while the other clearly does not.

We think, given the dire straits of the economy and the real financial hardships millions of Americans are in, it is not unreasonable, as the committee has approved, for the federal government to provide a COBRA premium subsidy. The subsidy—in which the government would essentially pay 65% of the premium for up to 12 months—would be temporary, limited to those who are laid off from Sept. 1, 2008, through Dec. 31, 2009.

Through that subsidy, more people would purchase coverage and thus would be more likely to receive medical treatment, reducing the likelihood of minor problems mushrooming into expensive medical complications.

It is not unreasonable for the federal government to provide a COBRA premium subsidy.

On the other hand, the other part of COBRA package has no business in an economic stimulus bill. That part would allow employees age 55 and older—regardless of how long they were with a company—as well as employees who worked for a company at least 10 years to retain COBRA coverage until eligible for Medicare.

Why that COBRA extension is part of an economic stimulus bill is beyond us. It would be a fundamental and ill-advised change in health care policy. It certainly is anything but fair and reasonable to require employers to extend health insurance—at considerable cost to themselves—to former employees for such long periods of time. It is just the sort of thing that would discourage employers, especially smaller firms, from offering coverage, and that can't be what any responsible member of Congress would want.

That proposal likely was on the wish list of a Ways and Means Committee member who saw the opportunity to sneak it into the stimulus bill. We hope wisdom prevails and federal legislators discard it.

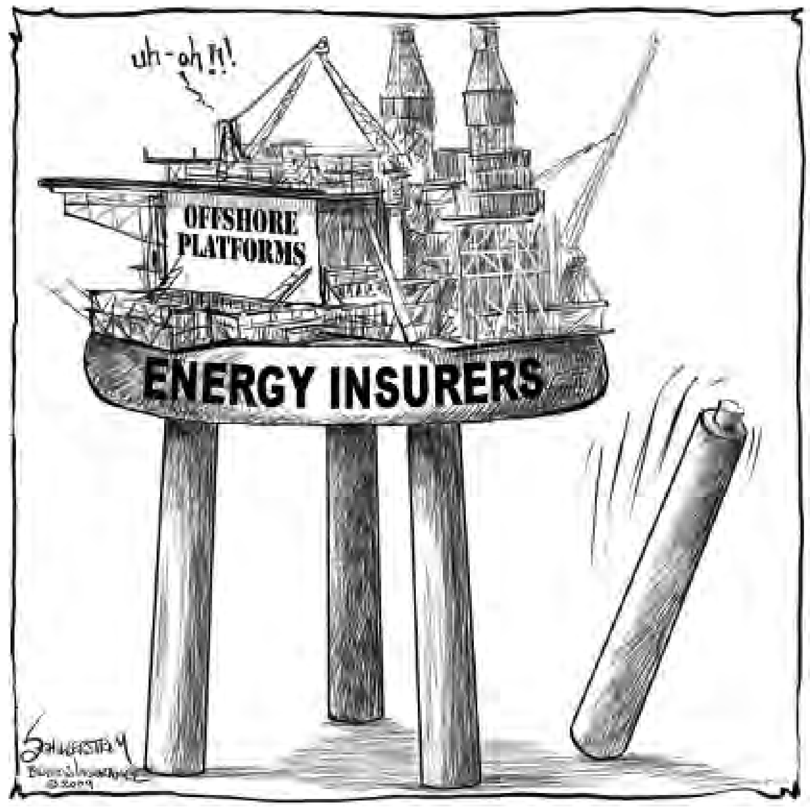
Financial rules reform must include insurance

BROAD FINANCIAL SERVICES regulatory reform crafted by Congress and the new administration appears to be a certainty. What is not yet certain is whether the larger package also will embrace insurance regulatory reform.

We believe any reform must include insurance. Recent reports from Government Accountability Office and respected private organization the Group of 30 declared the financial services regulatory framework broken and in need of urgent reform. The Group of 30 took the issue a step further and called for "national-level consolidated prudential regulation and supervision over large, internationally active insurance companies."

That strikes us as quite reasonable. The financial services marketplace, as the world has been painfully reminded, is complex and inexorably intertwined. A bipartisan group of members of Congress noted as much in a letter to Treasury Secretary-designate Timothy F. Geithner last week.

Creating such an office would be major step in the right direction—a direction we hope leads to optional federal charters for insurers that want them. For now, insurance must be included within larger financial services regulatory reform. To ignore insurance is simply to invite even more serious problems in the future.



WRITE

Business Insurance welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters.

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VOTE

in the *BI* Online Poll at *www.businessinsurance.com*

THIS WEEK'S RESULTS

Q Should the federal government subsidize COBRA payments for laid-off workers?

YES, it is good policy in the economic downturn. 51%

NO, it sets a bad precedent. 49%

NEXT WEEK'S QUESTION

Q: What are the chances that Congress will act this year to close tax loopholes for companies with offshore operations?

BI Online Poll tool is sponsored by Wausau Insurance Cos.

LETTERS

Greenberg profile missed some facts

TO THE EDITOR: The profile of Maurice R. "Hank" Greenberg in the People to Watch feature of your Jan. 5 issue contains a number of inaccuracies.

First, the article mischaracterizes the circumstances surrounding Mr. Greenberg's departure from AIG in 2005. Mr. Greenberg left the company over a dispute with the AIG board regarding the company's response to threats from then-New York Attorney General Eliot Spitzer.

Later, AIG's board and new management—in an effort to justify their disagreements with Mr. Greenberg and to absolve themselves of responsibility for any alleged wrongdoing—issued a restatement which, in material respects, improperly and unnecessarily criticized AIG's prior accounting and blamed AIG's "former management" for such accounting.

In February 2006, AIG's board and new management paid $1.64 billion to settle claims and litigation that

See **LETTERS** page 20

PERSPECTIVES

Business Insurance accepts articles from experts in commercial insurance, risk management and employee benefits management for publication in its Perspectives section.

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All authors must assign the copyright on the article to Business Insurance.

Because of the volume of Perspective submissions we receive, we cannot guarantee a date in which an article will appear. To submit a Perspective article query or for more information, send a note to biweb@crain.com.

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Layoffs: Retaliation risks rise as firms make cutbacks

CONTINUED FROM PAGE 3

Observers recommend having a layoff security plan in place. "The critical thing is to have a plan, have an established method for releasing people," said Paul French, senior director at Threat Management & Protection Inc. in Huntington Beach, Calif. "When the numbers don't look good, you have to have a planning meeting, and you have to have a strategy already in place" to handle layoffs, he said.

Employers should give as much warning as possible of an impending layoff, observers say. "The tendency of many employers is to keep everything as secret as possible," so when the news finally does break, people feel taken aback, and believe the employer has acted treacherously, said Richard Denenberg, director of Red Hook, N.Y.-based Workplace Solutions Inc.

"The temperate approach would be to try to share with the employees whatever the fortunes of the company are," and warn them it may become necessary at some point to downsize the organization, he said.

Be sure to give employees the reasons for the layoffs, making it clear individuals are not being singled out, experts say. "Let them know as fully and completely as possible," why they are being selected for the layoff, said Mr. Denenberg.

If you know, for instance, they have worked very hard, tell them, "You've done a great job, but the particular product that your team is making is one that we're going to have to discontinue."

Treat employees with dignity, say observers. "You've just got to treat employees with the same dignity and respect as you did to hire them, which is being professional about it, but also being empathetic and sympathetic," said Deborah Manning, former director, recruiting and affirmative action program manager at Houston-based energy company Dynegy Inc.

Avoid the "walk of shame," said Gregory Bangs, vp and worldwide crime, kidnap, ransom and workplace violence product manager at Warren, N.J.-based Chubb & Son Inc. "Give them the courtesy of not marching out with a security person."

At Dynegy Inc., laid-off employees would be accompanied by a manager when they went back to their desk to remove their personal belongings, said Ms. Manning. Layoffs also were scheduled for the lunch hour, or when other employees were not around, while another manager might be posted by the door to divert anyone from coming in, said Ms. Manning, who is now an executive recruiter. Experts also advise giving laid-off employees as much help as possible including, for instance, outplacement services.

At Dynegy, the company would verbally explain issues such as severance and unemployment when workers are being laid off, but also give them a letter outlining those issues, recognizing people often do not really hear what is being said when they are upset, said Ms. Manning.

Be alert to what line supervisors and managers say about particular employees to identify those who may become violent, then take appropriate security measures, experts say.

"You have to look at whom you're releasing and why," said Mr. French. "What do we know about these people? What do we know about their lifestyle? What other influences are there in their worlds? Do they have four kids in college? Is one of their relatives critically ill? Are they going through a messy divorce? All of these things are additional pressures."

"We all have our tipping point," said Mr. Tabman. "If you know your people, and you keep your ears open, you'll know how dangerous an environment you're entering" and can approach it with the caution that may be called for.

J.R. Roberts, of Savannah, Ga.-based J.R. Roberts Security Strategies, said if somebody is a known hothead, "then typically you'll have a security presence" to deal with the situation.

"You have to have some sort of security there to maintain peace," either somewhere they can monitor the situation or in the room "in the guise of being an individual from corporate," said Mr. French.

In addition, "We always tell people, 'Never, ever, put your key people together in a meeting" with employees being terminated, said

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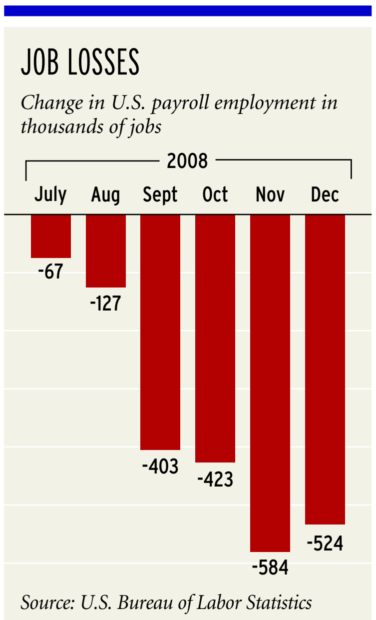

Source: U.S. Bureau of Labor Statistics

AP

Jing Wu, a former SiPort Inc. employee, was charged with murder after allegedly killing three executives after he was fired last November.

Employers should be diligent to protect against discrimination suits in layoffs

By JUDY GREENWALD

Massive layoffs are sure to lead to increased employment discrimination lawsuits, but employers can take measures to minimize their number and the degree to which they are successful, observers say.

These include conducting a study to determine whether planned layoffs would have a disparate effect on particular groups, using objective criteria to determine layoffs and offering generous severance in return for covenants that promise not to sue.

Some observers say they already have seen an uptick in discrimination suit filings, while others anticipate they will increase.

With mass layoffs, "the odds are higher there will be claims of unlawful discrimination. I think it's inevitable those claims will go up," said Diana L. Hoover, an attorney with law firm Mayer Brown L.L.P. in Houston.

"The tidal wave of litigation is definitely out there, and it's coming," agreed Ron Chapman Jr., an attorney with law firm Ogletree, Deakins, Nash, Smoak & Stewart P.C. in Dallas.

"Not only is there going to be an increase in litigation, but I think it's going to be harder to get cases dismissed easily," Mr. Chapman said. "If someone files a lawsuit and gets a new job, he or she is much more willing to settle their lawsuit and move on with their life. But if they're unemployed and don't see an end to their unemployment, they are more desperate and likely to pursue that litigation much further."

Laid-off workers generally have up to 300 days to file employment discrimination claims, "so you're just starting to see those claims getting filed with the (Equal Employment Opportunity Commission) or the state," said Michael A. Moore, an attorney with law firm McNees Wallace & Nurick L.L.C. in Lancaster, Pa.

Before layoffs, employers should conduct a disparate impact study to make sure workers in protected categories are not disproportionately affected.

While the decision to lay off particular employees "may seem neutral on its face, if it has had a disproportionate impact on one group over another, it can be discriminatory under U.S. labor laws," said Jay P. Krupin, an attorney with law firm Epstein Becker & Green P.C. in Washington. Make sure layoffs don't "unnecessarily trend towards people who are over 40 or of a certain sex or a certain race," he said. "That is the most prevalent type of cases that we're finding."

This approach minimizes the chances of inadvertent discrimination, observers say.

For a workforce where women have the least seniority, seniority-based layoffs will disproportionately affect women, Ms. Hoover said. If the workforce has historically attracted men, for instance, if layoffs are seniority based, "you end up firing all the women you just hired—and that's not uncommon," she said.

Companies often make the mistake of saying they need a 10% workforce reduction, then leave the decision to lower-level managers "without giving directives as to what criteria should be used to select those employees," Ms. Hoover said. "If the employer has clear criteria that are used, and applies those criteria fairly and consistently, then they have a much better defense in place if a claim of discrimination is made," she said.

"If you go on merit, that's where you get the most scrutiny as to what criteria you apply in making the selection," said D. Gregory Valenza, an attorney with law firm Valenza Shaw L.L.P. in San Francisco.

But observers say if the criteria used are unavoidably subjective, the layoff decision should be well-documented, such as performance reviews that indicate the selected employees are unproductive or incompetent.

Employers also should be prepared to "make the business case of why a particular person is let go," whether because a whole business is being closed or the company has decided not to pursue a particular line of business, said Robert Millman, an attorney with law firm Littler Mendelson P.C. in Los Angeles.

Generous severance payments, in exchange for a signed agreement not to sue, also can help avoid litigation, observers say. If the worker refuses to sign the release, then the employer is warned it needs to prepare for potential litigation, said Ms. Hoover.

Employers also should follow requirements of the Worker Adjustment and Retraining Notification Act, which requires U.S. employers to provide 60 days' notice of covered plant closings and mass layoffs, as well as any parallel state laws.

Elise M. Bloom, an attorney at Proskauer Rose L.L.P. in New York, said sensitivity also helps. "The way that you communicate, and the way that you treat your employees in connection with reductions, goes a long way to avoiding claims and litigation," she said.

CONTINUED FROM PREVIOUS PAGE

Mr. French. "It puts you in a position of negotiating something that's already happened."

There also should be security measures in place after the layoff, say observers. "Ramp up the security during the 'golden week' after a firing," said Judd N. Green, president of the Indianapolis-based Green Consulting Group Inc. Hire additional security guards and change access codes, he said.

If a person comes back with a gun and cannot get in, "chances are they're just going to go away," said Mr. Bangs.

Richard F. Kane, an attorney with Moore & Van Allen P.L.L.C. in Charlottesville, N.C., said, "If you identify any particular individual that you think is prone to violence, then I would have security pay particular attention" to that person's movement, including knowing their car's make and model and calling for reinforcement if he or she shows up in the parking lot.

At Dynegy, workers are warned against lending their building access badges to laid-off workers, or inviting them back into the workplace, said Ms. Manning. If they do come back, they are subject to the same security measures as other visitors, including a metal detector, she said.

'If you identify any particular individual that you think is prone to violence, then I would have security pay particular attention' to that person's movement.

Richard F. Kane
Moore & Van Allen P.L.L.C.

Most observers recommend employers refuse requests for meetings after an employee has been laid off, because there is little to be gained, and it could put employees at risk. "What's the point of bringing them back into the workplace and rehashing things?" asked Greg S. Labate, an attorney with Sheppard Mullin Richter & L.L.P. in Costa Mesa, Calif. "That leads to further problems."

Most observers recommend against laying people off on a Friday. Historically, laid-off people who are subsequently violent were let go on a Friday, said Mr. French. "They have two days to sit at home and basically brood about what happened," he said.

But not everyone agrees. Human resource professionals recommend layoffs be conducted on a Friday "because the thinking is a weekend at home with the family will help calm things down," Mr. Kane said.

Experts say many problems can be avoided much earlier, if companies conduct careful pre-hiring background checks. "The biggest measure I think people fail to pay attention to is pre-employment screening," said Mr. French.

Market Moves

Victoria Insurance Co. gets a new name

FARMINGTON HILLS, Mich.—Victoria Insurance Co., a subsidiary of USF Insurance Co., has changed its name to Cranbrook Insurance Co.

The name change, which was effective Jan. 1, is aimed at better differentiating the insurer in the market, a spokeswoman said.

USF, which is incorporated in Texas but headquartered in Farmington Hills, Mich., is a property/casualty insurer that specializes in professional lines.

Tech firm name change reflects equity fund

BROOKFIELD, Wis.—Insurance industry technology solutions firm Fiserv Insurance Solutions, a unit of Fiserv Inc., said it will change its name to reflect the equity fund that holds a controlling share of the company.

Wisconsin-based Fiserv Insurance Solutions Group will become StoneRiver effective March 2, the company said.

Trident IV L.P. a private equity fund managed by Stone Point Capital L.L.C., last July acquired a 51% interest in the insurance businesses of Fiserv Inc.

Fiserv, which administers claims, policies and other services, said it will roll out a new logo and Web site later this year.

Mealey's becomes HB Litigation Conferences

BERWYN, Pa.—Mealey's Litigation Conferences has become HB Litigation Conferences L.L.C., the firm said.

Former Mealey Publications Publisher Tom Hagy acquired the business in December from Business Valuation Resources L.L.C., which had acquired Mealey's from LexisNexis last July.

The Berwyn, Pa.-based company provides conferences on insurance, reinsurance and other issues.

Some Arch employees moving to New Jersey

JERSEY CITY, N.J.—Arch Insurance Group Inc. is moving 300 employees from New York to Jersey City, N.J.

Arch, a division of Arch Capital Group Ltd., provides property/casualty and specialty insurance for corporations, professional firms and financial institutions.

The firm has leased more than 100,000 square feet of office space for 15 years at Plaza 3 of the Harborside Financial Center in Jersey City. New Jersey approved a Business Employment Incentive Program grant of about $9.6 million over 10 years as part of the relocation, according to the New Jersey Economic Development Authority.

The firm announced plans last summer to move 300 jobs from its New York corporate office, leaving 100 in New York.

American Pinnacle Partners buys, renames Consolidated

SAN RAFAEL, Calif.—Consolidated Specialty Risk Managers Inc., a California-based managing general underwriter, has a new name.

Seal Beach, Calif.-based American Pinnacle Partners Inc. acquired Consolidated from Aspen Reinsurance Group Inc. in November and has renamed the specialty managing general underwriter Consolidated Program Insurance Services Inc.

Insurance Services Office acquires D2Hawkeye

WALTHAM, Mass.—Jersey City, N.J.-based Insurance Services Office Inc. has acquired information solutions firm D2Hawkeye Inc.

Massachusetts-based D2Hawkeye manages databases, mines data and provides other risk analysis tools to clients in the health care industry. Terms of the deal were not disclosed.

The company will be combined with ISO's other health care businesses as a new subsidiary under Verisk Health Inc.

Chris Kryder will lead the new subsidiary as chief executive officer.

LTC insurer network to offer Genworth products

RICHMOND, Va.—Genworth Financial Inc.'s Long Term Care Insurance business has entered into a marketing partnership with the National LTC Network.

The move means the National LTC Network, an Overland Park, Kan.-based coalition of 25 long-term care insurance distributors, will offer Genworth's products.

Genworth is a financial security company with $100 billion in assets.

TO SUBMIT ITEMS

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Reform group maps out overhaul plan for London market

Organization seeks more efficiency, competitiveness

By SIMON CHALLIS

LONDON—The Market Reform Group, the organization tasked with making the London insurance industry more efficient, has laid out its blueprint to further overhaul the market in the next three years and sharpen its competitiveness to meet the threat from rival insurance centers such as Bermuda.

The first part of its strategy is "finishing what we have started," said MRG Chairman Peter Harmer, chief executive officer of Aon Corp.'s U.K. division, to modernize the market's practices, which evolved slowly during the past three centuries.

The MRG, which was set up by Lloyd's of London and companies in the London insurance market, plans to ensure that London brokers place all new claims on its Electronic Claims File system by mid-2010 and all legacy claims by the end of 2010, allowing insurers to view all information relating to every claim online by the end of next year, thereby speeding up the process of settling and paying claims.

> **'What we want to do next is start to have a more fundamental look at the transaction process.'**
>
> David Hough, London & International Insurance Brokers Assn.

This year, the MRG aims to have all policy submissions made electronically by the end of the first quarter and wants 90% of policies to be signed electronically by year-end.

It also wants companies to move entirely to electronic accounting for all insurance transactions by the end of 2010.

The MRG aims to streamline the process of transacting business in London, effectively using a single, electronic system rather than the current mixture of electronic and paper-based systems, experts say.

If it realizes its ambition, then the MRG will have brought the London market into line with other major markets around the world in how it processes and settles business, sources note.

The cost savings are impossible to quantify across the market, but the plan ultimately will make London a cheaper and easier place for clients to do business, said David Hough, chief executive of the London & International Insurance Brokers Assn.

"Everyone will acknowledge the opportunities for savings are significant. It is one of the two key reasons for doing all this—to reduce the transactional costs of doing business in the London market and to improve client service at the same time," said Mr. Hough.

The London market has been under pressure from rival insurance bases, such as Bermuda, which, because of its lower taxes, lighter regulatory regime and greater ease of doing business, has seen an increasing number of insurers set up there, experts say.

The MRG said it plans to seek the views of market players about what it should focus on after its electronic initiative has been achieved.

John Hobbs, director of market services at the International Underwriting Assn., said his organization would play a full part in discussing what the market may look like in five years and what issues it will face that can be addressed through cross-market collaboration.

LIIBA's Mr. Hough said MRG should review whether all the parts of the insurance process remain relevant in the 21st century.

"What we want to do next is start to have a more fundamental look at the transaction process….That is the discussion we will be kicking off in the MRG," said Mr. Hough.

"Essentially we would take the key building blocks of the insurance process, ask whether we need to do them and, if we do, which party is best placed to do it." Mr. Hough said. "Considering the process has evolved over 300 years, has the technology developed to such a point that it allows the process to be further streamlined?"

But David Gittings, chief executive of the Lloyd's Market Assn., said he was wary of getting involved in a discussion on where reform should go next when so much remains to be done.

"We have already some way to go before we finish what we have started, so I think we should concentrate on those" goals, said Mr. Gittings.

"If the MRG can get those done, then that would be the time to decide whether or not to do anything else or whether in fact we've achieved what we set out to do," said Mr. Gittings.

"My personal view is that I think you could foresee a time when the MRG has fulfilled its purpose," he said.

The MRG began by pushing through contract certainty after the U.K. Financial Services Authority threatened insurers with regulatory action.

LLOYD'S OF LONDON

Funds provided by traditional members of Lloyd's of London have been used to fund sidecar syndicates. Sidecars are often used as short-term vehicles to write business when rates are high.

Individual investors line up to back new sidecar syndicates at Lloyd's

Limits on liability help attract wealthy back to the market

By SIMON CHALLIS

LONDON—Wealthy individuals are set to back other new sidecar syndicates at Lloyd's of London—of the kind which saw Amlin P.L.C. receive Lloyd's names' backing for a £50 million ($74.2 million) vehicle in December, said the head of an agency that invests names' cash.

"We have other deals that are imminent," said Nigel Hanbury, chairman of London-based Hampden Agencies Ltd. "We are also in the early stages of other deals which I wouldn't say are imminent, but which may come in the first half of this year."

Names' capital controlled by Hampden could back other syndicates to write catastrophe-exposed business—up to another £50 million ($74.2 million), if the deal were attractive enough, while for a broader spread of business Hampden could provide capital of up to £100 million ($148.4 million) on a whole-account basis, Mr. Hanbury said.

Funds available

Amlin's fundraising to form a syndicate to write U.S. and international catastrophe reinsurance was heavily oversubscribed, and wealthy individuals are keen to return to the Lloyd's market, said Mr. Hanbury, whose firm provided £27 million ($40 million) of the sum raised.

Hamilton, Bermuda-based Hiscox Ltd. and London-based Managing Agency Partners Ltd. also have in the past tapped names to provide them with finance new syndicates during periods of attractive market conditions.

'We have other deals that are imminent. We are also in the early stages of other deals which I wouldn't say are imminent, but which may come in the first half of this year.'

Nigel Hanbury, Hampden Agencies Ltd.

The number of names slid to 907 in 2008 from 1,124 in 2007, according to Lloyd's, but Mr. Hanbury said he is seeing strong interest from individuals to enter the 300-year-old market. "I have not seen as much interest in my 30 years at Lloyd's," he said.

Attractive tax breaks and the ability to effectively use their capital twice always have made Lloyd's a magnet for the rich, but the risk of losing their entire fortunes if hit by big claims has deterred many.

Rule changes

Recent rule changes that allow individuals to invest on a limited liability basis means names will not have to endure the financial nightmare experienced by previous investors, sources say.

For Lloyd's businesses, the use of names' capital has the attraction of being quick and straightforward—it took Amlin three weeks to raise its cash—and involves a fraction of the costs involved in raising money from institutional investors, at a time when turbulent capital markets have made new capital hard to find, experts note.

"These names sidecars are a good source of capacity for peak zones—like sidecars from other sources. They are typically short-term and do not come with any rights to tenure or renewal," said Bronek Masojada, chief executive of Hiscox.

Surviving financial crisis requires fresh ideas from insurers

P/C market needs innovative approaches to best serve customers

By Myron M. Picoult

The financial crisis engulfing the financial infrastructure of the United States and other countries did not happen overnight. The underpinnings have been percolating for some time.

The severity and the breadth of the maelstrom, however, underscore the fact that the crisis was generated by the financial system itself. Focusing on the property/casualty industry, here are some thoughts about the blame game, implications for risk management, the prospect of tougher financial regulation and the implications of the social tsunami that is gaining speed.

There is plenty of blame to go around. Congress clearly has its share.

The Glass-Steagall Act was passed in 1933 to prohibit banks and investment banks from joining together. The law was repealed by Congress in 1999. In response to a push from Congress to increase home ownership, mortgage companies and banks provided mortgage loans to many borrowers without appropriate verification of incomes and creditworthiness. When interest rates increased, defaults and foreclosures rose as borrowers were unable to meet their monthly payments. Banks ultimately had to write off bad loans and were forced to sell foreclosed properties below appraised values as home prices declined in response to the rising inventory of unsold properties. Wall Street investment houses packaged the original loans into various instruments (some synthetic) and ultimately sold them to investors—many of whom did not fully understand what they had purchased. In response to the upheaval in mortgage loans, many of these instruments lost value and/or became unmarketable. Hence, the meltdown.

Next in line are Fannie Mae and Freddie Mac. These government-sponsored entities borrowed record amounts of money at rates below the comparable cost for their competitors. The loans also were packaged and sold with the help of Wall Street investment banks. The house of cards collapsed as default rates escalated. It should be noted that, in the case of these two government-sponsored entities and the Wall Street investment banks, unconscionable levels of leverage were employed.

The Federal Reserve Board also has a spot in line, as it created an enormous amount of liquidity that ultimately led to the housing bubble and its bursting. The Fed had the authority to regulate the formation of the synthetic instruments, which could have helped moderate the crisis, but that path never was followed. The Securities and Exchange Commission also was complicit due to a lack of appropriate regulatory oversight, which enabled the use of excessive leverage.

Finally, homeowners have to share some of the blame. They were lulled into a false sense of complacency by various teaser rates that had material interest-rate reset provisions. Many homeowners made some very poor decisions on the mortgages they accepted, which also included stretching their credit dynamics.

Taking STOCK

Myron M. Picoult is an independent insurance consultant. An archive of Mr. Picoult's columns is available at www.businessinsurance.com. He can be reached at mpicoult@aol.com.

When one looks at the carnage in banking, Wall Street investment houses and several very visible insurance entities, including American International Group Inc. and financial guarantors, several salient questions have yet to be answered. Where were the risk management procedures that were supposedly in place? Who was watching the bouncing ball? Where were the respective boards of directors?

Some pundits call AIG the poster child for tougher insurance regulation. But it should be noted that AIG was brought to its knees by credit default swaps that were outside of its insurance operations.

Clearly, effective risk management in the financial services industry was missing. Risk modeling, like other control methods, can be used to mask, as well as reveal, reality. Risk modeling is subject to the fundamental principle of information technology: garbage in, garbage out. Those in control were blinded by greed and power until the combination of defaulted mortgages and high leverage ended the magic show. All of this raises a very simple question: What happened to good old simple common sense? Adhering to that standard prevented many financial purveyors from getting heavily involved or not involved at all in the toxic instruments.

Yes, self-regulation (which rarely works) was amiss, and greed was involved. But there was a material failure of risk management procedures that were either dismantled or cast aside. Hence, new government regulation that formally enforces enterprise risk management is likely to be implemented. This will have fundamental ramifications for regulators and managements and how companies are likely to be governed in the future. Part and parcel to this is the need for stronger enforcement of risk-based capital models, which are designed to recognize the differences and nuances in insurers' risk characteristics as well as those of other types of enterprises. With respect to the insurance business, the rating agencies are going a step further, to an approach called economic capital modeling. This methodology attempts to quantify risks through an ERM process and determine how much capital is needed to support those risks. It is critical to realize that effective regulation that is built around meaningful capital standards should limit leverage and hence risk—at least until the regulations are watered down, removed or somehow ignored.

What does all of this mean for the property/casualty industry? It is interesting that, for an industry that supposedly understands ERM, the appointment of a risk czar has been slow to come at most insurers. Clearly, this job is not going to win the popularity contest in any business operation. Nonetheless, the sooner more insurers address this situation, the stronger the industry's position to fend off some unwanted regulation.

Finally, I sense a social tsunami wave that is gathering with some substantive implications related to disposable incomes. If disposable incomes shrink, consumers most likely will seek greater transparency in their purchase transactions, an upgrade in product quality and greater simplicity in dealing with the vendor. I have been critical of the speed with which the industry is attempting to meet the changes of the 21st century. I recognize that most companies are in a bunker-mentality mode, meaning that short-term financial constraints are trumping longer-term business objectives. There is a pool of professionals in the marketplace, many of whom could be considered "out-of-the-box thinkers" who could help this industry start to think differently. While this nomenclature is anathema to many in the executive suite, this industry no longer can afford to make decisions about tomorrow's customers based on yesterday's methodologies.

Problems loom for life insurers despite stock rebounds

By DARLA MERCADO

A recent spike in the price of life insurance company shares and bonds may seem to herald better days for the beleaguered sector, but experts warn that spring hasn't quite arrived.

"I would be careful in taking great solace in the late thawing of the market," said Sean Egan, managing director of Egan-Jones Ratings Co. in Haverford, Pa.

Insurers are likely to face problems later this year as their real estate and corporate bond assets come under pressure, Mr. Egan said.

"This harkens back to what exactly is the value of the assets and whether the insurers can raise additional capital to support their overall credit quality," Mr. Egan said. "Unfortunately, it may be harder and more expensive for carriers to raise capital" as the economic crunch continues.

Although insurers' debt securities are trading nowhere near their pre-crash levels, the Federal Reserve Board's monetary creation helped narrow spreads between treasury bonds and life insurance company bonds in late December. That improvement drove insurers' shares higher, Mr. Egan said.

Among insurers benefiting from the share price run-up was Connecticut-based Hartford Financial Services Group Inc., which rebounded from a low of $4.95 in November. Its stock closed at $12.18 on Jan 22. Shares of New York-based MetLife Inc., which dipped to $16.48 in November, closed at $25.50 on Jan. 22.

> **'I would be careful in taking great solace in the late thawing of the market.'**
>
> Sean Egan, Egan-Jones Ratings Co.

In the meantime, New York-based Standard & Poor's Corp. said in mid-January that its outlook for the entire life insurance sector was negative.

Stocks declined to "extreme valuation levels" in November, said Steven D. Schwartz, a Chicago-based senior vp-equity research at Raymond James & Associates Inc. At the time, yawning corporate bond spreads and reports of reserves insufficient to back insurers' guarantees drove share prices lower, he said.

A second wave of lower prices may be coming.

In its Jan. 12 report, S&P forecast negative ratings or outlook actions on several life insurers during the next six months, based on higher risk profiles in investments and liabilities.

Such news may not bode well for the insurers' shares or their bonds, which will experience wider spreads and become unattractive to investors, analysts said.

The value of the assets in insurers' portfolios, which have been behind their financial woes during the past 18 months, continue to be a focus at S&P, which has tried to assess their holdings of mortgage-backed securities.

The value of the insurers' holdings of corporate bonds and commercial real estate assets also is rising to a level of concern, said Kevin Ahern, a director in the S&P financial services ratings group. "Our observation is that unrealized losses have grown significantly."

Market concerns about these possible losses make this a difficult time for even highly rated life insurers to issue debt securities at reasonable prices, Mr. Ahern said.

Andres Kligerman, an analyst with UBS Investment Bank in New York, said life insurers will feel pressure from their variable annuity guarantees and their levels of credit exposure, but said he believes a handful are well-positioned from an excess capital and hedging standpoint. These include New York-based Metropolitan Life Insurance Co., Newark, N.J.-based Prudential Financial Inc. and Minneapolis-based Ameriprise Financial Inc.

"On the flip side, you have companies that are great business operators, like the Principal Financial Group (in Des Moines, Iowa), but have heavy weightings in commercial mortgage-backed securities, which could put pressure on them in coming months," Mr. Kligerman said.

Investment firms express mixed feelings about insurance company securities. While they like well-run insurers that are well-capitalized and don't hold bad debt in their portfolios, they worry about the risk of insuring an aging population, said Laura Digan, vp-JVB Financial Group L.L.C. in Boca Raton, Fla.

"It has been a long time since I would touch any financial bond," said John Sullivan, a certified financial planner at World Equity Group Inc. The Arlington Heights, Ill.-based firm manages about $1 billion.

Mr. Sullivan screens for securities rated A and higher, but noted that it is hard to hold a company with bonds that are A-rated but that has a share price that has dropped sharply. Recently, he recommended that a client sell off bonds from a major insurer. The company hadn't defaulted on its debt securities, but its share price fell more sharply than that of its peers.

Darla Mercado is a reporter at Investment News, a sister publication of Business Insurance.

UP CLOSE
Comings & Goings

EDWARD STANCO

NEW JOB TITLE: Chief executive officer of Morristown, N.J.-based Toa Reinsurance Co. of America

PREVIOUS POSITION: President and CEO of New York-based Folksamerica Reinsurance Co., now White Mountains Reinsurance Co. of America

VITAL STATISTICS: I am a member of the Academy of Actuaries and have been in the industry (for) 37 years.

GOALS FOR NEW POSITION: Toa has a great reputation, great client relationships and a great track record in the industry, and I hope to continue that.

CHALLENGES FACING THE INDUSTRY: The first one is...when speaking about reinsurance, maintaining underwriting discipline throughout the underwriting cycle; and the goal there is to thoroughly understand your clients' needs and operations in order to provide reinsurance. That's mutually beneficial to both parties.

The second big challenge for the industry is prudent stewardship of capital in an ever-increasing volatile economic and fiscal environment.

Third one is, I think, companies must do a better job of understanding risk to their enterprise from natural catastrophes to asset risk to inflation.

And the fourth one is the industry has to be prepared to respond to overregulation.

OUTSIDE THE INDUSTRY, A DREAM JOB: I would train thoroughbred horses for racing.

Comings & Goings ONLINE

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- Medical Mutual of Ohio
- Capital District Physicians' Health Plan Inc.

OTHER PROVIDERS:
- Craford Benefit Consultants
- Towers Perrin

Sharebridge: Wholesaler aims to serve the private equity industry

CONTINUED FROM PAGE 1

in the marketplace.

Joining Mr. Moyles as co-CEO of Sharebridge Holdings is fellow former Marsh executive Christopher M. Treanor, CEO of wholesaler Mercator Risk Services Inc. Mercator, which Mr. Treanor launched in January 2006, became part of Sharebridge Holdings last month and provides infrastructure for Sharebridge's wholesale and managing general agency divisions that serve the private equity industry. Other well-known insurance industry executives also have joined the entity (see sidebar).

Mr. Moyles said that the idea of creating an insurance placement vehicle for the private equity industry had been brewing in his mind for some time. Prior to being named executive vp of Marsh and then CEO of the Americas, Mr. Moyles built Marsh's private equity and mergers and acquisition services business.

"I have great relationships with private equity firms, and I had an idea of how can we help them invest in this insurance industry in a more systematic way and better leverage their buying power," he said.

After several management shakeups at Marsh, Mr. Moyles left in early 2008 (*BI*, Jan. 7, 2008) to join Stone Point as a senior adviser and pursue his idea.

"Some people think I'm insane" to be setting up Sharebridge now, given current economic conditions, Mr. Moyles said. "But the fact that I'm probably going to end up with 25 to 30 firms joining this in the end means they must believe in it."

"Timing is everything," he said. "I think the private equity industry has evolved to the point where it wants to control its own destiny more. The reality is they are becoming institutionalized and not deal shops. They have a fiduciary obligation to their investors to look at everything their portfolio companies do."

While he said the portfolio companies have no obligation to use Sharebridge to place their business, "it's easy for private equity firms to say (to them), 'You can keep your retailer, but we'd like your retailer to consider, with your help, aggregating through Sharebridge.'"

Mr. Moyles said that Sharebridge is not looking to cut out retail brokers. "Our model is to collaborate with retail brokers. Retailers have the relationships with the portfolio companies. We want to partner with them. We're not trying to supplant them."

But given the opportunity to quote the business, Mr. Moyles said he thinks Sharebridge will be able to offer private equity clients better deals than they currently get, due to what he said is a more efficient distribution platform.

As part of its model, Sharebridge plans to segment its private-equity owned premium by industry or product and bring a volume of select risks to insurers, to match their underwriting appetite. For example, an insurer just interested in underwriting manufacturers would have the opportunity to quote on a block of private equity-owned manufacturer business. Bringing insurers business they will likely want to quote on will result in a more efficient process by avoiding numerous declinations and ultimately result in better deals, he said.

Several retail brokers not involved in the project declined to comment or could not be immediately reached.

But retail brokers invested in Sharebridge say they wanted to participate in what they see as a potentially changing landscape for how the private equity business is transacted, but say they view Sharebridge as one of several options for their private equity clients' placements.

"Like in many situations, this is a different business model to serve certain (private equity) clients who choose to use this approach to manage their risk," said Ted T. Devine, president of Aon Risk Services in Chicago. "If a client thinks it helps them deliver value to their firms, then clearly we'll be part of it. But it's the client's choice," he said.

Mr. Devine noted that Aon's investment in Sharebridge is consistent with the firm's philosophy of bringing "unique capabilities and approaches to serve our clients better."

"We're definitely going to look" at Sharebridge when renewals come up, said Neil Krauter, chairman and CEO of Krauter & Co., a New York-based brokerage that specializes in the private equity industry. "Any decent broker should always look at options for their clients. These guys are a new option. It's got to be tried, but they've got an opportunity to prove themselves," he said.

Peter Garvey, CEO of Integro, said he was "intrigued by the concept" of Sharebridge. The New York-based firm brokers a small book of private equity business.

"I do think it has the potential to neutralize the clout argument put forward by the big brokers," Mr. Garvey said.

Startup turns to veterans of the insurance industry

A number of well-known insurance executives have joined Philip V. Moyles Jr. to launch Sharebridge Holdings Inc.

In addition to Christopher M. Treanor, chief executive officer of Mercator Risk Services Inc., who also serves as co-CEO with Mr. Moyles at Sharebridge Holdings, Jack T. Sinnott, former vice chairman of Marsh & McLennan Cos. Inc., has been named non-executive chairman.

Douglas M. Worman, former president of American International Group Inc.'s excess casualty group, joined Sharebridge last month as executive vp to help run its managing general agency operations. The MGA is expected to start underwriting within the next six weeks, initially focusing on financial lines for private equity companies and their portfolio companies.

Mr. Moyles is president and CEO of Sharebridge's wholesale and MGA operations, while Mr. Treanor will continue to run Mercator's existing specialty business.

Sharebridge's wholesale operations will place the standard risks of private equity companies and their portfolio companies and will turn to Mercator and Sharebridge's MGA to place specialty risks.

Sharebridge plans to start writing employee benefit business and expand into Europe and Asia in 2010.

Under the right market conditions, Sharebridge may form its own reinsurance company to provide treaty and facultative reinsurance to its divisions. Private equity stakeholders will have the opportunity, but not the obligation, to invest in the reinsurer, Mr. Moyles said.

In the meantime, he has assembled a team of veteran insurance professionals to help serve the private equity market.

Among them is Gary Marchitello, former property practice leader of Integro Ltd., who joined Sharebridge as a managing director in charge of the company's property practice; Daniel E. Aronson, former managing director and private equity and industry placement leader for Marsh's casualty practice, now is a managing director in charge of Sharebridge's national casualty practice; and Jonathan S. Legge, former managing director and leader of Marsh's private equity and mergers and acquisition services group, has been named a managing director in charge of Sharebridge's management liability practice.

—By Sally Roberts

Bias: Fair pay legislation would increase administrative, legal burdens

CONTINUED FROM PAGE 3

ry, because the new law would give employees considerably greater leeway to look back on what has happened in the past."

Advocates of the bill say it will only return matters to where they were before the Supreme Court ruling. The bill is "a modest fix for changing back the law to what it was before the Supreme Court decision," said Sharyn Tejani, senior political adviser with the Washington-based National Partnership for Women & Families.

"That's a common refrain," responded Michael Layman, manager of employment and labor policy at the Alexandria, Va.-based Society for Human Resource Management. But, he added, "There were circuit disputes prior to the *Ledbetter* decision" on the issue of when discriminatory compensation claims can be filed, "which is one of the reasons the Supreme Court granted cert to the case."

Many observers say the bill would mean increased litigation and administrative problems for employers if it becomes law. Richard Gisonny, a principal with Towers Perrin in Valhalla, N.Y., said, "It will lead to an increase in costly litigation, and that would come in the midst of a difficult economic climate" where many companies are laying off employees "and trying to stay in business."

Lawrence Z. Lorber, an attorney with Proskauer Rose L.L.P. in Washington, agreed that litigation is likely to increase. "They're removing the statute of limitations and adopting a very liberal paycheck policy," he said.

There is "no question the *Ledbetter* decision cut off not just pay cases, but basically any type of discrimination cases" in which plaintiffs felt they were suffering from alleged discriminatory actions that occurred more than two years in the past, said Christopher J. McKinney of the McKinney Law Firm in San Antonio.

"Plaintiffs now have every incentive to dredge up old pay disputes and to label them discriminatory," said Marc L. Fleischauer, an attorney with Porter Wright Morris & Arthur L.L.P. in Columbus, Ohio.

The bill increases the potential for old claims with long look-back periods that employers may find difficult to defend if people involved in the decisions have either moved on or don't recall the details, said Richard I. Greenberg, an attorney with Jackson Lewis L.L.P. in New York.

Amy Kohn, a consultant with Hewitt Associates Inc. in Lincolnshire, Ill., said another concern is that the bill says it is applicable "when an individual is affected" by a discriminatory compensatory decision.

This "suggests someone like a family member would have the right to file a claim, which seems counterintuitive, because family members are not subject to the discriminatory decision in the first place," said Ms. Kohn. "That would extend the reach of the law."

The bill also would create administrative headaches, observers say.

Jonathan T. Hyman, an employer attorney with Kohrman Jackson & Krantz P.L.L. in Cleveland, said from a records retention standpoint, employers will not "know when a decision can't be challenged," nor when they can get rid of documents. "It's really going to create a huge administrative burden on companies," he said.

Meanwhile, the Washington-based American Benefits Council is concerned because, while language in the findings section of the bill says it is not intended to affect pension distributions, there is nothing in the statute itself to that effect.

"We don't have a clear sense of how the legislation could impact retirement plans," said Diane Howland, the council's vp-legislative affairs.

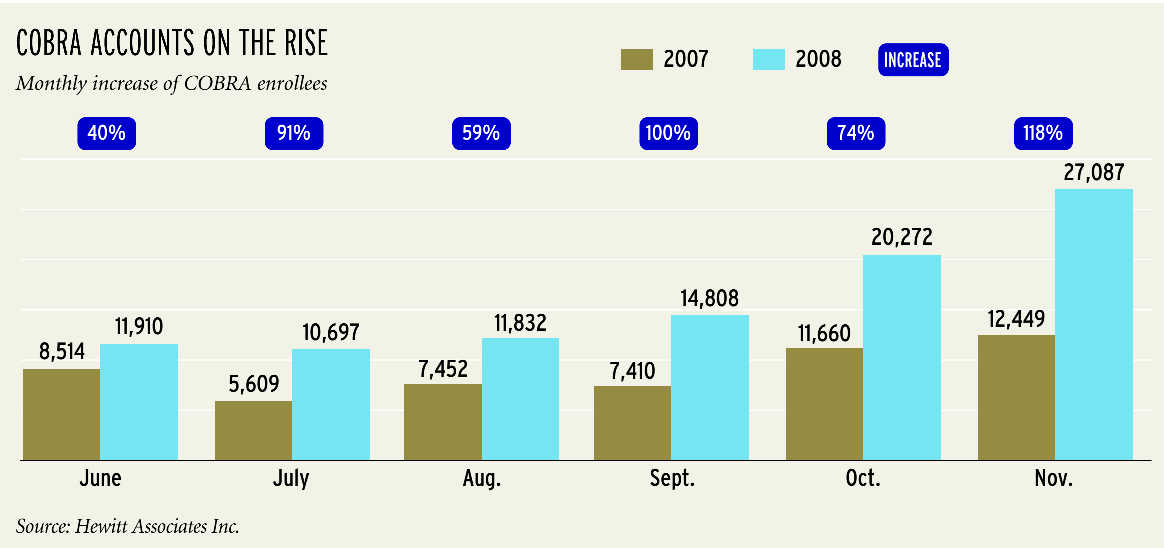
The Lilly Ledbetter Fair Pay Act of 2009

Major provisions of the legislation passed by the U.S. Senate

- The period to file charges would begin with issuing a paycheck affected by a discriminatory compensation decision rather than the date of the initial discriminatory decision.
- The provisions would apply to compensatory discrimination claims under the Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act and the Rehabilitation Act.
- The changes would take effect retroactively on May 28, 2007, the day before the U.S. Supreme Court ruled that such claims must be filed with 180 days of the discriminatory compensation decision.

Lilly Ledbetter was the plaintiff in a wage discrimination suit that has prompted federal legislation.

AP



Source: Hewitt Associates Inc.

Employers face COBRA cover issues as severed workers stay connected

By JOANNE WOJCIK

As layoffs continue, benefit departments at companies making significant staff cuts should brace for the COBRA compliance challenge that is certain to accompany corporate downsizing, experts say.

Although fewer than 20% of terminated employees typically enroll in COBRA continuation coverage, benefits departments still are responsible for making sure all employees given pink slips receive a total of six COBRA letters, some of which have specific deadlines. Companies that do not comply can be fined, even if they outsource this function to a vendor or consultant.

Self-insured employers also need to be prepared for the likelihood of adverse selection. Even though federal law permits employers to charge COBRA beneficiaries up to 102% of the premium-equivalent, these plan members generate loss ratios averaging 150% or more, benefit consultants note. This is because employees with ongoing health care needs are more likely to sign up for coverage, they say. And healthier employees are likely to use their time off from work to take care of any health care needs they may have been putting off while they were employed, they note.

A long recession could exacerbate the situation by forcing COBRA beneficiaries unable to find new employment to remain on their former employer's health plan for a longer period of time, benefits experts add. COBRA beneficiaries usually are enrolled for about three months.

If a provision in the economic stimulus bill pending before Congress that would provide federal subsidies to COBRA beneficiaries becomes law, it likely will prompt even more employees to sign up for COBRA continuation coverage, benefits experts predict.

The primary reason more potential COBRA beneficiaries do not sign up for the coverage is cost. A new study by nonprofit advocacy group Families USA found that COBRA premiums average $388 per month for individuals and $1,069 for family coverage. That's equivalent to 30% of the average unemployment benefits for individuals and 84% for families.

"This is going to be one of the biggest influxes of COBRA enrollees that we've seen," said Randy Abbott, senior consultant at Watson Wyatt Worldwide in Wellesley Hills, Mass. "This is not a recession that's going to have an easy resolution. There are going to be a lot of people out of work for long periods of time."

If ex-employees sign up at the rate expected by some benefits experts, it will pose significant challenges for employers, Mr. Abbott pointed out.

First, there's the communications effort.

"There's a generation of people in the workforce who may not be familiar with COBRA," Mr. Abbott said.

Second is the administrative burden.

"The vast majority of large employers outsource this function, but they still have to go through internal paperwork to make sure the COBRA administrator knows who to send notices to," he said.

"There is a significant expense of getting COBRA notices in the hands of everybody who is eligible, taking the phone calls, etc.," said Karen Frost, health and welfare outsourcing practice leader at Lincolnshire, Ill.-based Hewitt Associates Inc., which provides COBRA administration services to 125 employers nationwide.

Employers that outsource COBRA administration typically pay two fees: one for each COBRA event and another for ongoing administration. The charge for sending the initial COBRA notice to a potential plan member ranges from $20 to $30 per employee. The second fee averages $4 to $6 per month per enrollee.

Another key problem stemming from COBRA is claims costs, benefits experts point out.

Even though COBRA beneficiaries are charged 102% of the premium, or premium-equivalent in the case of self-insured employers, they generate claims averaging 150% of that amount, according Ed Kaplan, health practice leader at the Segal Co. in New York.

"For every 1% in COBRA beneficiaries added to the plan, you'll have a claim loss ratio of 1.5%," he said.

"What you see is a group of people who realize they have a window of time to get everything done," said Mr. Abbott.

COBRA coverage is available for 18 months for those terminating employment, while events such as death or divorce can extend the coverage period for up to 36 months.

"We are telling our clients they should budget for higher-than-usual COBRA expenses," said Todd Swim, a worldwide partner at Mercer L.L.C. in Chicago, who recalls a situation several years ago where one of his employer clients had an unexpectedly high COBRA enrollment after the employer terminated a large number of workers.

"The costs were significantly higher than they had budgeted for," he said, declining to identify the company.

During the economic downturn, Mr. Swim predicts more employees are likely to enroll in COBRA and will stay enrolled longer.

Hewitt already is experiencing a COBRA enrollment surge, according to Ms. Frost.

The number of people signing up for COBRA in June 2008 was 40% higher than that of June 2007, she said. Enrollment grew even further in September 2008, doubling the number enrolled in September 2007 (see chart).

"I was shocked," Ms. Frost said.

Dave Guillmette, managing director-health and welfare practice at Towers Perrin in Parsippany, N.J., said Hewitt's experience is consistent with his hypothesis.

"The economic downturn really didn't take hold until year-end," which is when the enrollment rate started to climb, he said. "We do expect there will be an uptick in COBRA take-up rates," as the recession continues, he added.

But there is a bright side, Mr. Guillmette pointed out. A higher COBRA enrollment rate could temper the adverse selection that typically occurs, he said.

In a stable job market, "we see some pretty nasty loss ratios," he said. But "we are expecting to see improved loss ratios conditions on more workers taking COBRA coverage."

Still "the aggregate spend for employers is still going to go way up," Mr. Guillmette said, projecting loss ratios averaging around 130% vs. the usual 150%.

"The other dimension to consider is the kind of COBRA enrollment" that employers will be experiencing during this economic downturn, he said. For example, "those who are in good health may find some reasonably priced individual coverage for themselves and then enroll their children in COBRA," Mr. Guillmette said.

COBRA: Changes could cost employers, observers say

CONTINUED FROM PAGE 1

mittee, the 65% federal COBRA premium subsidy would be capped at nine months. The bill would keep in place the current 18-month limit on COBRA eligibility.

President Obama has endorsed extending health insurance coverage to the unemployed, though he has not yet taken a position on the COBRA provisions in the Ways and Means Committee and Senate Finance Committee bills.

House Ways and Means Committee members, who discussed the COBRA changes briefly, approved the broader bill on a partisan 24-13 vote. However, committee member Ginny Brown-Waite, R-Fla., opposed the change and warned that costs of older beneficiaries could be nearly double the premium they pay and saddle employers with thousands of dollars in claims per beneficiary.

"It is an immediate backdoor tax increase on employers," said Andy Anderson, of counsel with Morgan, Lewis & Bockius L.L.P. in Chicago.

"I envision this to be very costly to employers, especially those who self-fund, whose plans are totally dependent on loss experience," said Kathy Dupree, benefits manager at Houston-based Core Laboratories Inc., a Houston company that provides services to petroleum producers to enhance recovery from oil fields.

Lobbyists and others say the effects of the change would extend to active employees as their employers pass on, in the form of higher premiums, the costs of greatly expanding the length of time former employees are eligible for COBRA.

"It is a highway to disaster," said Mark Ugoretz, president of the ERISA Industry Committee in Washington.

Aside from the costs, experts question why the provision is in legislation intended to stimulate the economy and provide temporary financial relief to laid-off employees.

"This has nothing to do with stimulating the economy, while it would erode the purpose of COBRA, which is to provide temporary coverage bridge," said Chantel Sheaks, a principal with Buck Consultants L.L.C. in Washington.

"You are no longer talking about a bridge," said Rich Stover, a Buck consultant in Secaucus, N.J.

The provision appears to be a dusted-off version of legislation introduced more than a decade ago by Ways and Means Committee member Rep. Pete Stark, D-Calif., who authored the original COBRA legislation. In 1996, Rep. Stark proposed that former employees age 55 and older be allowed to retain COBRA until Medicare-eligible. Beneficiaries would have paid a premium of 110% of the group rate. No action was taken on the proposal.

There is less business opposition to the provision in the stimulus bill that would allow laid-off workers to receive a 65% federal COBRA premium subsidy. Employer groups noted it may be appropriate, given the severity of the economic slump, to provide temporary health insurance premium assistance to those who lose their jobs.

Still, the provision likely would significantly increase the percentage of beneficiaries opting for coverage, while their claims' experience likely would outstrip premiums paid.

"You still would have fairly high adverse-risk selection," said Steve Raetzman, a senior consultant with Watson Wyatt Worldwide in Arlington, Va.

In addition, employers would face significant administrative changes as they would have to adjust systems so a certain pool of beneficiaries would pay a different percentage of the premium than others, said Paul Dennett, senior vp of the American Benefits Council in Washington.

COBRA PROPOSALS

How economic stimulus legislation considered by the Senate Finance Committee and House Ways and Means Committee differ in extending COBRA health care coverage to former employees.

Provision	Ways and Means*	Finance**
COBRA premium subsidy for those laid off from Sept. 1, 2008, through Dec. 31, 2009	65% federal premium subsidy	65% federal premium subsidy
Subsidy length	Up to 12 months	Up to nine months
Expanded COBRA eligibility	COBRA beneficiaries 55 and older and workers with 10 years at a company could keep COBRA until eligible for Medicare	No provision

**As passed **As introduced*

Credit: Comp collateral costs increase

CONTINUED FROM PAGE 1

offerings. The cost of LOCs also has increased substantially, although companies seeking to replace them with bonds are doing so because of difficulties obtaining LOCs more so than pricing concerns, Mr. Sevier said.

About 10 years ago, companies shifted from bonds to lower-cost LOCs, but now some companies are shifting back to bonds, said Theodore Martinez, senior vp with Zurich North America's surety credit and political risk unit in Baltimore.

But bond underwriters have tightened their requirements while the cost of surety bonds also increased, driven by shrinking capital availability and surety underwriter concerns about an overall deterioration in company credit profiles, several sources said.

"In general, you see a whole credit environment that is a bit volatile and is impacting the price of the product," Mr. Martinez said.

"You are seeing the same type of shift in the surety market that you are seeing in what banks do…in terms of pullback," said Mark Moreland, executive vp and head of the risk management group at Lockton Cos. L.L.C. in Kansas City, Mo. "On the surety side, it's pretty safe to say (underwriters) have taken a much more conservative approach in terms of what they are willing to extend and who they are willing to extend it to."

But one client, an "investment-grade company," is replacing $250 million, and possibly an additional $250 million, in LOCs with surety bonds, Mr. Sevier said. The cost for the surety bonds is three times what it cost previously for the LOCs, he said.

So far though, bond pricing has not risen as much as LOC costs, sources said.

Some clients have moved to bonds because of the scarcity of LOCs and more competitive bond pricing, added Richard Moore, regional director of surety for Aon Risk Services, a unit of Aon Corp. in Chicago.

While wholesale migration to bonds from LOCs has yet to occur, the movement is likely to accelerate as LOC contracts reach their renewal date.

"I expect certainly over the next 12 months we will continue to see a trend where in many cases bonds will be more attractive, especially if the bank credit facilities renew at a lower level of LOC capacity for certain clients," Mr. Moore said.

> **'On the surety side, it's pretty safe to say (underwriters) have taken a much more conservative approach in terms of what they are willing to extend and who they are willing to extend it to.'**
>
> Mark Moreland, Lockton Cos. L.L.C.

Other clients are investigating similar arrangements, Mr. Sevier added.

Until recently, LOCs provided a "reasonably priced" source of collateral, said Ellen Vinck, director of risk management and benefits for BAE Systems Ship Repair Inc. in San Diego. Because LOCs previously were readily available and affordable, her department's use of LOCs to self-insure workers comp risks did not draw corporate attention, Ms. Vinck said. That, however, has changed.

"I never got calls (from corporate) saying, 'Can you reduce your collateral?'" Ms. Vinck said. "It was no big deal. I now do get calls from corporate about letters of credit…because the rates are skyrocketing and now it is on the radar screen."

Internal discussions about the rising cost of collateral have joined discussions about the cost of purchasing insurance when companies weigh whether to self-insure workers comp and some are holding off on doing so, said Willis HRH's Ms. Ferrandino.

"These decisions always occur, but…now with the financial instability in the markets and the interest rate environment, this thought process is occurring much more frequently," Ms. Ferrandino said.

In California, a spokesman for Compensation Risk Managers of California L.L.C., a unit of Bermuda-based workers comp insurer CRM Holdings Ltd. said that Preferred Auto Dealers Self Insurance Program Inc., a 70-member self-insured group it manages, will wind down its operations. The SIG was established using uncollateralized surety bonds, but the insurer no longer will make them available because of market conditions, the spokesman said.

Without the bonds, the SIG cannot grow so it decided to shut down. Another CRM-managed California SIG, the Vintners and Independent Producers Self Insurance Program, recently closed for the same reason, the spokesman said.

Other California SIG managers said they have not encountered similar problems, but their participants post cash or LOCs rather than bonds as collateral with the state.

So far, neither individual employers nor groups have held off self-insuring their California workers comp exposures because they could not secure collateral, said Jim Ware, chief of California's Office of Self Insurance Plans.

But Mr. Ware said he has seen more employers posting cash rather than other forms of collateral for securing their workers comp obligations.

Liberty: Insurer retools middle-market business

CONTINUED FROM PAGE 3

Gallagher noted the deal includes an initial cash-and-stock payment of about $44 million and up to $120 million in additional payments for two years after the deal closes.

Hub said it is acquiring renewal rights for Liberty Mutual's Western region, which encompasses Arizona, Arkansas, California, Colorado, Hawaii, Kansas, Louisiana, Nebraska, Oklahoma, Utah and Texas. Terms were not disclosed.

USI, meanwhile, is buying the renewal rights for business in the Northeast, USI said, adding it intends to hire about 76 staff from the acquired business. The brokerage did not disclose terms.

Liberty Mutual's "announcement reinforces our commitment to being a leader in commercial insurance. The agreements…speak to the quality of our business and desire to form strong, mutually beneficial relationships with agents and brokers who have earned outstanding reputations among middle-market buyers," Edmund F. Kelly, chairman, president and chief executive officer of Liberty Mutual, said in a statement.

Wausau, founded in Wausau, Wis., in 1911, was one of the earliest writers of workers comp coverage. It has built a brand that has become widely recognized.

Matt Scroggins contributed to this report.

LETTERS

CONTINUED FROM PAGE 8

regulators had brought, and issued a formal "apology" to appease Mr. Spitzer.

Significantly, the allegations brought against Mr. Greenberg were subsequently dismissed, with the exception of three remaining issues that had only a minimal impact on AIG's financial statements and are insignificant compared to the claims voluntarily dismissed.

Second, the article mischaracterizes pending litigation involving Starr International Co. Inc. by failing to mention that a federal judge dismissed the bulk of AIG's claims in this case last year.

As to the claims that remain, the judge has ruled that AIG must prove them at trial by "unequivocal evidence" and "beyond a reasonable doubt"—an extremely high bar for AIG to have to clear at trial.

Finally, as the title of your feature suggests, there is ample reason to "watch" C.V. Starr & Co. Inc., the company that Mr. Greenberg now heads, for reasons other than litigation.

Through its wholly owned insurance agencies, C.V. Starr should produce in excess of $2 billion of comprehensive insurance coverage in 2009 among several specialty lines covering aviation, marine, energy, excess casualty and property, accident and health, including risks with international exposures. Since 2005, C.V. Starr and Starr International have continued to expand, with new operations in Toronto, London and Switzerland, in addition to Hong Kong, Beijing, Shanghai and Moscow, among other places.

Nicholas A. Gravante Jr.
Boies, Schiller & Flexner L.L.P.
(Editor's note: New York law firm Boies, Schiller & Flexner L.L.P. represents Mr. Greenberg.)

Highmark: Blues plans halt merger opposed for competition concerns

CONTINUED FROM PAGE 4

consumers and weaker provider networks for consumers who depend on those networks for access to quality health care."

The Blues plan executives also objected to the state regulator's condition that they divest either the Blue Cross or Blue Shield brand and work with the national Blues association to have the trademark awarded to a qualified competitor. Currently, four Blues affiliates operate on a regional basis in Pennsylvania. Only Highmark has a statewide license.

Reacting to withdrawal of the proposed merger, state Sen. Don White, R-Indiana, who is chairman of Pennsylvania's Senate Banking and Insurance Committee, said the panel voted 10-4 against the merger after an exhaustive review.

"The preponderance of testimony and facts presented over the last two years showed the merger would have substantial and serious negative consequences on both the availability and affordability of health care insurance for consumers across Pennsylvania," Sen. White said in a statement.

Had the merger been approved, the combined insurer would have controlled 70% of the state's commercial health insurance market, said Joe Pittman, the senator's chief of staff.

Mike Taylor, a principal at consultant Towers Perrin's Boston office, said the merger's failure could deter other health insurers' consolidation attempts. Not only would such proposals face heightened scrutiny by regulators, they likely would face greater opposition from providers that were instrumental in defeating the Highmark-Independence Blue Cross deal, he said.

"It will give people pause before they think about merging in markets in which one company is dominant," said Mr. Taylor, referring Highmark holding the lion's share of the Pittsburgh market. "It's been hard to get competition in there."

> **'It will give people pause before they think about merging in markets in which one company is dominant.'**
>
> Mike Taylor, Towers Perrin

"The state insurance commissioner's opposition is a reflection of more intense concern about insurer consolidation, which has increased in recent years mostly as a result of erosion of market share of smaller insurers," said Paul Ginsberg, president of the Center for Studying Health System Change in Washington.

"It is no secret that market dominance can be hazardous to the health of purchasers," said Dennis White, senior vp of value-based purchasing at the National Business Coalition on Health in Washington.

Dr. Joseph M. Heyman, chairman of the Chicago-based American Medical Assn.'s board, said the physician group strongly opposed the merger. "The AMA has long cautioned that the alarming consolidation trend among health insurers is responsible for the growing market imbalance where patients and physicians are left vulnerable to the demands of a few giant health insurers," he said in a statement, noting that more than 500 mergers occurred in the health insurance industry in past 12 years.

"This merger of Pennsylvania's two dominant health insurers would have created a stranglehold on the Pennsylvania health insurance market, reducing competition and hurting patients," he said.

Highmark's health care benefits business provides coverage to 4.6 million people. Independence Blue Cross and its subsidiaries comprise the Philadelphia region's largest health insurer with 3.4 million members.

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News In Brief

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House lawmakers urge federal insurance office

A bipartisan group of House Financial Services Committee members is urging Treasury Secretary-designate Timothy F. Geithner to establish an office within the Treasury Department to "fill a void on insurance oversight and expertise at the federal level," according to a letter sent last week to Mr. Geithner. "We all share the belief that we must take steps to ensure that a similar situation does not occur in the future, and we believe that an important first step ought to be the establishment of an office within Treasury which would have a knowledge base and understanding of insurance operations," the letter said.

Another ex-AIG exec leaves for Ironshore

Ironshore Inc. added another former American International Group Inc. executive to its ranks last week, as the specialty commercial insurer appointed Steven England to lead its new U.S. property/casualty unit. Mr. England, most recently president of AIG Landmark, has been tapped as executive vp of the new unit, Ironshore National Branch, which will act as a U.S. underwriting office for certain Ironshore property/casualty operations. The St. Louis-based branch will expand Ironshore's capability for national distribution of its insurance products through a wholesale brokerage, the Hamilton, Bermuda-based insurer said in a statement. Ironshore has added several former AIG executives in the last two months, including Kevin Kelley, former Lexington Insurance Co. chief executive officer now serving as Ironshore's CEO; and Joseph Boren, formerly AIG's environmental unit chairman and CEO, who now leads Ironshore's environmental business.

Great American drops effort to bar fire cover

Great American Insurance Co. has ended its court fight to bar coverage on the basis of a pollution exclusion for damages sought by families of three people killed in an office building fire. The insurer said it would no longer ask a Houston federal judge to find that its pollution exclusion should be applied in cases where deaths are caused by smoke, fumes and soot. The case stems from a fatal 2007 fire in a commercial building in Houston.

Calif. regulator seeks repeal of disability rule

California Insurance Commissioner Steve Poizner has proposed repealing regulations that prohibit group disability insurers from offsetting benefits paid under their policies by amounts claimants receive from pensions and workers compensation claims. Insurers support repealing the regulations. Former Insurance Commissioner John Garamendi, who is currently California's lieutenant governor and is running for governor, put the regulations in place and has said repealing them will harm consumers.

Hannover Re taps Wallin as chief

Germany's Hannover Re A.G. has named Ulrich Wallin to replace Wilhelm Zeller as chief executive officer in July. Mr. Zeller, who has led Hannover Re for more than 13 years, will retire at the end of June. Since 2001, Mr. Wallin, has been a member of the executive board of Hannover Rueckversicherung A.G. and E+S Rueckversicherung A.G., the German market reinsurer of Hannover Re.

Noted

The **California Supreme Court** last week denied petitions to review an appellate court decision that held name-brand prescription drug manufacturers liable for injuries caused by the generic version of the drug made by another manufacturer. The Nov. 7, 2008, ruling by the 1st District Court of Appeal in San Francisco in *Elizabeth Ann Conte vs. Wyeth Inc.* allowed a lawsuit against Madison, N.J.-based Wyeth Inc. to go to trial....**Catlin Group Ltd.** will begin underwriting casualty facultative reinsurance in the United States later this year, the Hamilton, Bermuda-based insurer and reinsurer said. The business will be underwritten by Catlin U.S. in Atlanta and the facultative unit will be headed by Scott Beall, who recently joined Catlin after six years with Markel Corp....**Arch Capital Group Ltd.** has received regulatory approval to establish a managing agent and syndicate at Lloyd's of London.

Insurers to get portion of Vioxx settlement

By JOANNE WOJCIK

NEW YORK—Insurers that had been trying to tap into payments to Vioxx claimants participating in a $4.85 billion global settlement reached in 2007 with Merck & Co. have agreed to settle their claims for less than they originally were seeking.

Insurers and other health plan administrators representing more than 100 self-funded employers had been trying to recoup medical payments made on behalf of Vioxx users who suffered injuries from the drug, which was removed from the market in 2004 after it was determined it could cause heart attacks and strokes in long-term users.

Under a settlement approved Thursday by U.S. District Judge Eldon Fallon in New Orleans, the amount that the insurers can recover from liens will be reduced, according to a statement from Christopher A. Seeger, a partner at Seeger Weiss L.L.P. in New York, who negotiated the pact. Mr. Seeger said the agreement maximizes compensation to patients while allowing some recovery for those insurers and plan administrators that incurred medical treatment expenses for the claimants' injuries.

The settlement follows a Nov. 17, 2008, ruling by the 5th U.S. Circuit Court of Appeals that stymied insurers' attempts to place liens on claimants' recoveries.

Although the court recognized that the health plans have legitimate rights of subrogation and reimbursement for medical expenses paid to participants who suffered health issues after taking Vioxx, it questioned whether the settlement funds belonged to the plans and indicated that technical problems in mass tort multidistrict litigation make it difficult for plans to exercise their subrogation rights.

AIG: Uncertainty cited as reason for downgrades

CONTINUED FROM PAGE 4

agreement to purchase AIG Financial Products Corp.'s commodity index business.

The deal calls for a $15 million payment upon closing, then additional payments of up to $135 million during the next 18 months, based upon the purchased business' future earnings.

The transaction, which is expected to close by May 2009, is subject to regulatory approval and other conditions, according to Zurich-based UBS.

In addition, Makati City, Philippines-based East West Banking Corp. said it will acquire AIG Phil-Am Savings Bank Inc. and two related companies for an undisclosed amount.

Meanwhile, former AIG chairman and chief executive officer Maurice R. Greenberg said in a letter to AIG chairman and CEO Edward Liddy that the insurer should stop asset sales until the Obama administration can assess what is best for AIG.

In the Jan. 22 letter to Mr. Liddy, Mr. Greenberg criticized AIG's plans to sell a stake in American International Assurance Co. Ltd., its flagship Asian life insurance business. "To dispose of AIA in whole or part could seriously damage the future potential of AIG," Mr. Greenberg said.

"AIA is one of the crown jewels of AIG and the only foreign life insurance company in China that is wholly owned and as such, does not require a local partner," he said.

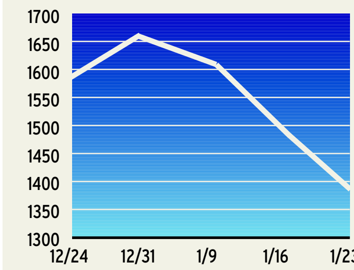
> 'AIA is one of the crown jewels of AIG and the only foreign life insurance company in China that is wholly owned and as such, does not require a local partner.'
>
> Maurice R. Greenberg, former chairman and CEO of American International Group Inc.

Stock Index

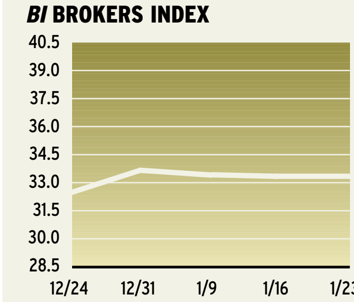
[1/20-1/23]

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

BI STOCK INDEX



BI BROKERS INDEX



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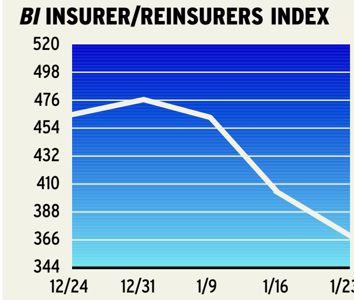

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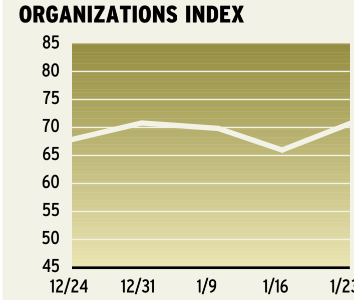


Percentage change of BI Stock Index vs. key indicators

BI STOCK INDEX 1395.28	-6.53%
DOW JONES 8077.56	-2.46%
S&P 500 831.95	-2.14%

LARGEST GAINS

Humana Inc.	11.63%
UnitedHealth Group Inc.	9.96%
Aetna Inc.	8.08%
WellPoint Health Networks	5.91%
Health Net Inc.	5.16%

LARGEST LOSSES

Gainsco Inc.	-40.58%
AFLAC Inc.	-38.47%
ING Groep N.V.	-24.54%
AEGON N.V.	-19.17%
Torchmark Corp.	-15.81%

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

Business Insurance END PAGE

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

Janitor may be wiped out, but court allows him to again wipe up

There's nothing unusual about a court decision causing a buzz, but a decision by Peru's Constitutional Tribunal dealt with getting buzzed in a way not every employer appreciated.

The South American nation's highest court has ordered the municipal government of Chorrillos to reinstate Pablo Cayo Mendoza to his janitorial job. The court did so despite the fact that Mr. Cayo had been drunk on the job, according to Reuters.

The court did not question the intoxication issue, but said firing him in 2004 was excessive given the fact that he neither offended nor hurt anyone, Fernando Calle, one of the tribunal's justices, said earlier this month.

The governments of Chorrillos, which is a suburb of Lima, and Peru criticized the decision.

"We've fired four workers for showing up drunk, and two of them were drivers," Reuters quoted Chorrillos Administrative Chief Celso Becerra as saying. "How can we allow a drunk to work who might run somebody over?"

"It's not a good idea to relax rules at workplaces," Labor Minister Jorge Villasante reportedly said.

Justice Calle said the court would not reverse itself despite the criticism.

So for the time being, it looks like Peruvian employers could face a potentially staggering challenge of accommodating workers who've had one too many for the road. It's a sobering thought.

REUTERS

Manchester United's John O'Shea (right) celebrates after scoring against English Premier League soccer opponent Derby County earlier this month.

AIG gives the boot to U.K. sponsorship

The marriage of English and European soccer champion Manchester United and financially troubled American International Group Inc. is coming to an end.

AIG's sponsorship of the 17-time English champion soccer club will conclude in May 2010 as the New York-based insurer has decided not to renew its sponsorship.

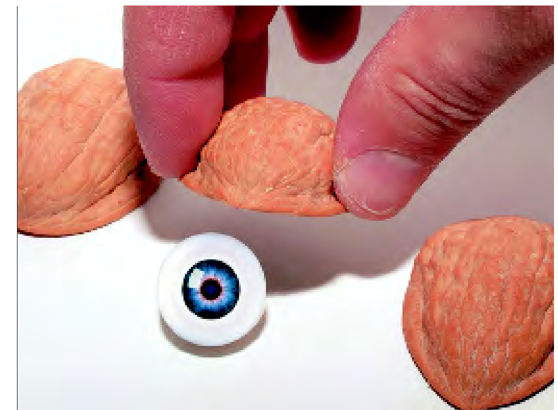
According to Reuters, AIG told Manchester United Football Club Ltd. in October that it would not extend its agreement.

In 2006, AIG and Manchester United reached a £56.5 million ($83.8 million) deal for the sponsorship, which at the time was the richest contract in English soccer. Since then, AIG's logo has adorned Manchester United's red jerseys.

In September, the insurer fell on hard financial times and required an $85 billion lifeline from the U.S. government. That number since has ballooned to $152 billion, thus the need to cut costs.

According to Reuters, AIG said it was reviewing all sponsorships after the federal bailout and already was eliminating marketing, advertising and hospitality costs related to the existing Manchester United deal. Manchester United officials said they were actively seeking new sponsors.

In October, AIG also pulled its sponsorship of the U.S. Davis Cup tennis team.



New York eyes fraud charges in workers comp shell game

An Elmira, N.Y., man who tried to substitute one eye for another in a workers compensation case got an inside view of the legal system when police arrested him on fraud charges.

The New York State Insurance Fund alleges that Clyde Stroman, 53, tried to hoodwink the workers comp insurer and his employer by providing sworn, detailed statements that an initial treating doctor's report identified the wrong eye as the one he injured at work.

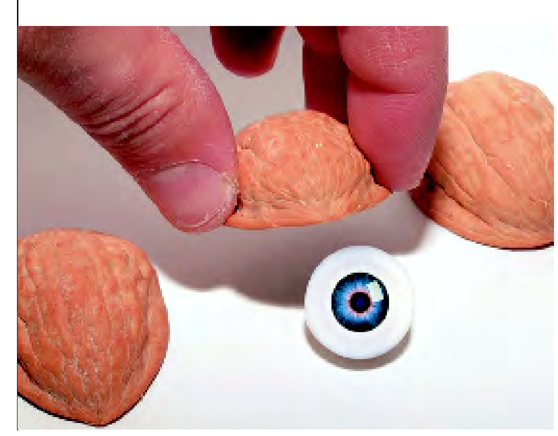
Mr. Stroman, who worked as an aide at a state youth facility, injured his right eye last August while trying to restrain a "client," NSIF said. The injury was not serious enough to result in lost time from work.

But during a subsequent exam, Mr. Stroman learned he had unrelated damage to his left eye. So "he allegedly tried to change the injured body part on his claim to his left eye in an attempt to gain workers compensation coverage," according to NSIF.

He received nearly $3,000 in comp benefits and was in line to receive another $100,000, the state agency said, but investigators saw through his alleged plot.

In a recent arrest, he was accused of gaining benefits illegally, falsifying business records and violating workers comp laws.

He hasn't been found guilty of any of the charges, NSIF points out. But if he is, Mr. Stroman could be viewing the world through prison bars.



Hooters wannabe resists girls-only policy

To be a Hooters Girl, one must be female, a federal judge ruled in the 1990s.

But Nikolai Grushevski said he merely wants to be a waiter. In fact, the Corpus Christi, Texas, man has sued Atlanta-based Hooters of America Inc. alleging hiring discrimination at the restaurant chain.

In a suit filed earlier this month in Corpus Christi federal court, Mr. Grushevski said he is a well-qualified waiter, but was told by a local Hooters manager that the company "would not hire males for waiter's positions," according to the complaint.

"Hooters attempts to buffer itself against litigation since there would be little or no record of males who wanted to apply for a job but were dissuaded from doing so" because Hooters informs male applicants orally and online that males need not apply for a waiter position.

The suit seeks damages and to overturn a 1997 settlement of a suit brought in Chicago federal court that paid damages to seven men and opened kitchen and bartender jobs to males, but allowed the chain to continue hiring only females as Hooters Girls.

"This move of course begs the question, Why would a man want to be a Hooters Girl?" Mike McNeal, vp-marketing for Hooters, said in a statement. "In our opinion, he doesn't and he is simply looking for an opportunity to be the lead plaintiff in a class action lawsuit so he can try to make some money without working for it."

Experience You Can Trust

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