

**JUDGE CANCELS CHARGES AGAINST COOPERATORS IN BID-RIGGING CASE / PAGE 3**

**HUGE RECALL PUTS TOYOTA'S REPUTATION AT RISK / PAGE 3**



**REGULATIONS CLARIFY MENTAL HEALTH CARE PARITY LAW / PAGE 4**

## In Brief

**Court ruling allows Scottish Lion wind-up**

A ruling that allows Scottish Lion Insurance Co.'s solvent scheme of arrangement to move forward is a blow to policyholders who argued the decision will erase decades of coverage. U.S. policyholders won a victory last fall when the court rejected Scottish Lion's proposed scheme of arrangement. Scottish Lion has been in runoff since 1994 and asked the Scottish court to sanction a plan that would allow it to shed liabilities and wind up the company. In its ruling, the court last week overturned the previous rejection of the runoff.

**Hospital liability case settles**

A closely watched wrongful-death case against Pendleton Memorial Methodist Hospital in New Orleans, which called

See **IN BRIEF** page 22

### P/C INSURERS



Treasury Secretary Timothy F. Geithner testified before Congress last week about the federal government's bailout of American International Group Inc.

## Officials under fire over bailout of AIG

By **MARK A. HOFMANN**

**WASHINGTON**—Congressional ire over the federal government's rescue of American International Group Inc. remains hot.

But, as was evident last week at a hearing on the matter before the House Committee on Oversight and Government Reform, the chief

target of the anger no longer is AIG. Instead, lawmakers directed their fire at government officials who oversaw the bailout.

Of particular concern to committee members and other lawmakers is why counterparties to AIG's credit default swaps were paid off 100%,

See **AIG** page 22

### HEALTH CARE REFORM

## Reform drive put on hold as jobs take center stage

*Election defeat forces Democrats to rethink strategy*

By **JERRY GEISEL**

**WASHINGTON**—Stunned by the outcome of a special election in Massachusetts that ended their filibuster-proof majority in the U.S. Senate and a wide-open road to pass health care reform legislation, top congressional Democrats are regrouping to develop new legislative strategies.

But amid clearly diminished congressional interest in the issue—as well as a shift in focus to reducing unemployment—it isn't clear whether a strategy will be developed, much less whether it will be successful, benefit observers say.

While President Barack Obama remains committed to enacting health care reform, the issue made up only a small portion of last week's State of the Union address, which was dominated by economic issues.

Until Jan. 19, it seemed almost certain that legislators would come to a final agreement on a health



AP PHOTO

House Speaker Nancy Pelosi and other congressional Democrats are expected to work on pared-down health care reform measures.

care reform bill that would extend coverage to many uninsured U.S. residents and make other sweeping changes.

But that widespread optimism ended when Republican Scott Brown came from behind to capture the Senate seat held by Sen.

See **REFORM** page 20

### CAPTIVES

## Cash-strapped owners mull closing captives to tap capital

*Economy, soft market hit alternative risk sector*

By **RODD ZOLKOS**

Economic problems coupled with a continued soft traditional insurance market are tempting some captive owners to shut down the facilities to access cash tied up in capital, sev-

eral captive experts say.

In other cases, captive and risk retention group owners are ratcheting down the operations as they take advantage of bargain prices offered by insurers for traditional coverage, they say.

**+39 -36**

Number of captives that formed and shut down in Vermont in 2009, many due to mergers.

eight new formations last year.

In 2009, "We formed 39 (captives), we closed down 36," said David F. Provost, deputy commissioner of captive insurance in the Vermont Department of Banking, Insurance, Securities and Health Care Administration in Montpelier.

"About a third of those were due to mergers or acquisitions one way or another and a lot of them were banks," Mr. Provost said. For "about a third, the business purpose of the captive no longer made sense."

In that latter group, in some cases captive parents sought access to the capital that was committed to the captive. "Some of those that dissolved, it was just that: It was a grab for the cash," Mr. Provost said.

See **CAPTIVES** page 19

## SPOTLIGHT D&O RISK REPORT



Stand-alone Side A policies grow in popularity as individual directors seek more insurance protection; European companies buy higher D&O limits in competitive market; increased exposure for excess insurers, litigation trends behind rise in early settlements; shaved-limit endorsements become more common in soft market. **PAGE 11**

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## On the Web



### BI VIDEO

#### Magic Johnson teams with Aon Cornerstone

In a new video, NBA great and entrepreneur Magic Johnson and Leonard McLaughlin of Aon Cornerstone Innovative Solutions discuss a new initiative to promote opportunities for minority-owned businesses. Go to [www.BusinessInsurance.com/video](http://www.BusinessInsurance.com/video).

### HEALTH CARE REFORM

#### Updated FAQ addresses new questions

The balance of power has shifted in the Senate, and health care reform efforts face an uphill battle. *Business Insurance* has updated its Health Care Reform FAQ in light of these developments. Go to [www.BusinessInsurance.com/HealthCareReform](http://www.BusinessInsurance.com/HealthCareReform).

### BI SPECIAL REPORTS

#### New research report on Solvency II

The introduction of the Solvency II risk-based capital rules will have far-reaching implications, and risk managers trying to assess the security of their insurance programs need to understand how the new regulatory regime will affect insurers inside and outside the European Union. To preview and purchase *BI's* new guide to Solvency II, go to [www.BusinessInsurance.com/Reports](http://www.BusinessInsurance.com/Reports).

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### AGENTS & BROKERS

# More charges canceled in bid-rigging case

*Some guilty pleas undone by judge; others downgraded*

By COLLEEN MCCARTHY

**NEW YORK**—A New York state judge Friday dismissed criminal charges against more former insurance executives who had pleaded guilty to charges in connection with New York's bid-rigging investigation involving Marsh Inc.

Meanwhile, the judge reduced or modified criminal charges against other cooperators in the case, but rejected dismissing charges against one former broker after ruling that he violated the terms of his

**'Considering the related cases, and the results that were obtained with respect to the other individuals... this is the most just and appropriate thing to do at this time.'**

Judge James Yates,  
New York County Supreme Court

plea agreement.

The action, which came at the request of the New York attorney

general's office, followed a similar motion the previous week involving several individuals who cooperated with the state's investigation.

At a hearing Friday in New York County Supreme Court, Judge James Yates dismissed outright the misdemeanor charges against two individuals who in 2004 and 2005 had pleaded guilty to criminal charges that they participated in a Marsh Inc. scheme to rig bids on client insurance placements.

They are:

- Carlos Coello, a former underwriter for American Home Assurance Co., a unit of American International Group Inc.
- Nicole Michaels, a former Marsh broker.

In addition, Judge Yates reduced

eight other individuals' felony guilty pleas to misdemeanors. Five will have the downgraded charges dropped entirely in six months, through a legal mechanism called adjournment in contemplation of dismissal, the judge said.

They are:

- Regina Hatton, a former Marsh broker.
- Mark Manzi, the former head of global placement specialties-North America for Marsh.
- John Mohs, a former American Home manager.
- Karen Radke-Jacobson, a former American Home senior vp.
- Jean-Baptist Tateossian, a former manager of national accounts

See **MARSH** page 19

### AVIATION

## ACE leads cover for Ethiopian crash

By ZACK PHILLIPS

**BEIRUT**—ACE Global Markets leads the hull and liability coverage of an Ethiopian Airlines flight that crashed in the Mediterranean Sea shortly after takeoff last Monday, market sources said.

Ethiopian Airlines Flight 409 crashed in stormy weather shortly after takeoff from Beirut International Airport. All 90 people on board were believed to have died in the accident, reports said.

The flight was heading toward Addis Ababa, Ethiopia, when it disappeared from radar about 2.1 miles off the coast of the Lebanese city of Na'ameh. Lebanese authorities said terrorism was not suspected.

The Boeing 737-8AS was insured for \$39 million, one source said. The plane was built in 2002, according to London-based Ascend Worldwide Ltd., which tracks aviation accident data.

The accident is the fourth fatal accident for Boeing's newest generation of 737 jets, according to Ascend.

Aon Ltd., a unit of Chicago-based Aon Corp., is the broker for the airline's coverage, sources said.

Ethiopian Airlines' last fatal accident occurred in November 1996, when a hijacked plane attempted to ditch in the ocean off the Comoros Islands, Ascend said.

London-based ACE Global Markets is a unit of ACE European Group Ltd.



Lebanese soldiers gather parts of an Ethiopian Airlines plane that crashed into the Mediterranean Sea last week. Reports say there were 90 people on board; no survivors have been found.

REUTERS/LANDOV

### RISK MANAGEMENT

## Toyota's vehicle recall puts reputation at risk

*Experts urge action to limit damage*

By MICHAEL BRADFORD

While the financial losses from Toyota Motor Corp.'s recent recalls aren't yet clear, experts say the company must work hard to protect a vital asset—its reputation.

Toyota announced on Jan. 21 that it was recalling around 2.3 million vehicles because of accelerator pedals that are at risk of becoming stuck, a recall separate from one initiated last November for around 4.2 million Toyota and Lexus models to reduce the risk of the pedals being trapped by floor mats.

Five days later, the Tokyo-based carmaker decided to suspend sales of eight models in the United States and added more than 1 million vehicles to the recall related to potential problems with floor mats. Recall insurance capacity of around \$100 million is available for carmakers and their suppliers, sources said, but whether Toyota purchased coverage is unclear. A Toyota spokeswoman said in an

See **TOYOTA** page 18

AP PHOTO

## BENEFITS LEGISLATION &amp; REGULATION

# Regulations clarify mental health parity act

*Proposed federal rules would aid employers in implementing law*

By JOANNE WOJCIK

**WASHINGTON**—Employers would no longer be permitted to require separate deductibles for mental health and medical treatment under new proposed parity rules issued last week by the departments of Health and Human Services, Labor and the Treasury.

Mental health and substance abuse treatment also must be equivalent to that provided for medical and surgical care within benefit classifications and coverage tiers, such as in- and out-of-network care, emergency care and prescription

drugs, according to the rules, which implement the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act. That 2008 law requires group health care plans offered by employers with more than 50 employees to provide the same coverage for mental health care services as for other medical, surgical and substance abuse services.

In addition, employee assistance programs cannot serve as gatekeepers, restricting or directing mental health care, unless a similar form of medical management is applied to medical and surgical benefits, according to benefit consultants' preliminary interpretations of the new regulations.

"If you don't have to jump through those hoops for medical/surgical, these regulations

would prohibit this requirement for mental health and substance abuse treatment," said Sharon Cohen, an attorney with Towers Watson in Arlington, Va.

Employers also cannot require employees to exhaust EAP benefits before they can access mental

**READ** the proposed regulations and other public documents at [www.BusinessInsurance.com](http://www.BusinessInsurance.com)

health care if a similar requirement does not exist for accessing medical care.

The regulations also appear to prohibit charging higher "specialist" copayments for mental health providers.

"Our interpretation is that mental health care providers are specialists, but that does not seem to be

the case in these regulations," said Kathy Mahieu, a senior consultant in Hewitt Associates Inc.'s health management consulting practice based in Norwalk, Conn.

The new regulations give employers until the first plan year beginning on or after July 1, 2010, to meet the requirements. The law took effect Oct. 3, 2009.

The extended effective date also could give plan administrators time to develop systems for tallying up the value of mental health/substance abuse and medical/surgical treatment, something that is not always done when the two benefit programs are administered separately.

"There are issues around the timeliness of sharing information. If

See **PARITY** page 19

## DIRECTORS &amp; OFFICERS LIABILITY

# Stanford D&O insurers must pay defense costs



AP PHOTO

**R. Allen Stanford arrives in Houston in September. A federal judge last week ruled insurers must pay defense costs related to the case.**

*Judge rejects effort to withhold funds on fraud grounds*

By ZACK PHILLIPS

**HOUSTON**—Insurers for directors and officers accused by federal authorities of operating a \$7 billion Ponzi scheme must pay defense costs for the criminal defendants, a federal judge has ruled.

Last February, the Securities and Exchange Commission charged R. Allen Stanford and four other executives at Stanford Financial Group Co. of securities fraud and various other charges, alleging they operated the Houston-based company as a Ponzi scheme that bilked investors out of more than \$7 billion through fake certificates of deposit from a subsidiary bank in Antigua.

On Nov. 16, the company's D&O underwriters—syndicates at Lloyd's of London and Arch Specialty Insurance Co.—denied coverage for the former executives' criminal defense costs because of a policy exclusion for money laundering. The defendants filed suit, asking the U.S. District Court for the Southern District of Texas to force the insurers to pay defense costs.

In a Jan. 26 ruling, Judge David Hittner sided with the defendants and ordered the insurers to pay all submitted legal expenses for the defendants within 10 days.

D&O policies have exclusions for deliberate fraud, but most such exclusions are triggered by a "final adjudication," which courts have interpreted to mean a judicial verdict of guilt or liability. Most cases settle before that stage, which in effect means that D&O insurers must advance defense costs even in

cases where directors are accused of deliberate fraud.

But Stanford's insurers denied coverage based on a separate money laundering exclusion, which would be triggered by a determination that money laundering "did in fact occur." The policy does not say who would make that determination. The underwriters argued that they had made such a determination based on evidence in the SEC's case and the guilty plea of another former executive, and therefore denied coverage.

Judge Hittner ruled that the underwriters' conclusion that money laundering occurred was based on "mere allegations" and allowing underwriters to deny coverage based on those kinds of facts would mean insurers' obligation "to pay defense costs could change on a

See **D&O** page 19

## MARINE

# U.K. P&I Club covers tanker involved in Texas oil spill

By ZACK PHILLIPS

**PORT ARTHUR, Texas**—The U.K. Protection & Indemnity Club provides liability coverage for an oil tanker that recently spilled about 462,000 gallons of oil into an inland waterway near Houston.

The Singapore-flagged Eagle Otome, a double-hulled oil tanker, collided on Jan. 23 with a barge while transiting the Sabine-Neches Waterway off Port Arthur, Texas. The waterway serves four refineries that process about 6% of total

U.S. oil capacity.

Authorities closed the waterway to clean up the spill—the worst oil spill in Texas since 1994, they said.

Third-party liabilities for collisions and oil spills are covered by P&I policies. The policy for the Eagle Otome, which was built in 1994, was written by the U.K. P&I Club, the mutual insurer's CEO, Hugo Wynn-Williams, confirmed Wednesday.

The tanker and the barge reportedly were chartered by subsidiaries of Exxon Mobil Corp.



REUTERS/LANDOV

**The Eagle Otome and a barge collided late last month in the Sabine-Neches Waterway off Port Arthur, Texas, causing the worst oil spill in Texas since 1994.**

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## BI looking for top workplaces in insurance

Again this year, *Business Insurance* will identify outstanding workplaces in the U.S. commercial insurance industry through the *Business Insurance* Best Places to Work in Insurance program.

The second year of *BI's* Best Places to Work in Insurance will see an expanded program, with employers to be recognized in five categories: agents/brokers, property/casualty insurers, group life/health insurers, reinsurers and third-party administrators.

Each category will be broken down into three groups by size: companies with 25-249 employees, companies with 250-999 employees, and companies with 1,000 or more employees.

For participating insurance industry employers, the Best Places to Work in Insurance program gives those that have created high-quality workplaces an opportunity to be recognized for their efforts.

The program also will give companies a chance to see how they measure up against others in the industry as employers of choice, and will provide valuable insight into how employees view the companies they work for in numerous critical areas.

Companies selected for recognition in the 2010 *Business Insurance* Best Places to Work in Insurance program will be revealed in the July 19 issue of *BI* and will be the focus of a special report Oct. 4. Companies chosen as this year's Best Places to Work in Insurance also will be honored at a special *BI* event Sept. 21 in New York.

Interested companies can register for the program or obtain further information online by visiting [www.best-places-to-work-ins.com](http://www.best-places-to-work-ins.com). The registration deadline is April 30.

*Business Insurance's* Best Places to Work in Insurance program is managed by Best Companies Group, specialists in identifying best employers within regions or industries.

For additional information, contact *BI* Special Projects Editor Rodd Zolkos at 312-649-7784 or [rzolkos@businessinsurance.com](mailto:rzolkos@businessinsurance.com).

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# Risks rise in 18 nations: Analysis

By MICHAEL BRADFORD

Rising credit and political risks are increasing the danger of doing business in 18 countries, an analysis by Chicago-based Aon Risk Services concludes.

"The risk factors that we think are the ones to watch in 2010 are sovereign nonpayment, exchange transfer and political interference risk," Miles Johnstone, director of Aon Crisis Management, a division of Aon Risk Services, said during a webcast last week. "They are all on the rise as the fallout from the global financial crisis continues to be felt."

Aon identified 18 countries that were downgraded on its 2010 political risk map to riskier categories, largely because of credit and political risk claims.

Of the 18 downgrades, Aon highlighted four—Ghana, Latvia, Ukraine and Yemen—as particularly representative of this year's analysis, where credit and political risk claims have been heavy. The four nations' economies have been thrown into turmoil that sparked discontent like political uprisings among their populations, Aon said of downgrading the countries.

Aon downgraded three countries—Sudan, Venezuela and Yemen—into the "very high" risk category.

"One of the major findings from our analysis this year is really the continuation of a trend we identified in 2009—namely, that the fallout from the global financial crisis



AON RISK SERVICES

of late 2008 and early 2009 continues to manifest itself in increased levels of political instability," Mr. Johnstone said during the webcast. "The initial impact has shifted from being an economic problem to a political problem."

Aon upgraded nine countries to a less risky status: Albania, Columbia, East Timor, Hong Kong, Myanmar, South Africa, Sri Lanka, Vanuatu and Vietnam.

A new feature of this year's map is an index that ranks countries at the greatest risk of having their food and water supplies disrupted. At the top of the index is Mauritania, a country where the Aon Corp. unit said it believes agriculture will suffer from the effects of global warming.

A surprising entry in the index is the Netherlands, Mr. Johnstone said. He said the analysis concluded

that potential sea level rises could threaten the country's supply of fresh water.

In this year's report, Aon also analyzed potential disruption of agricultural commodities and nations most at risk of having such problems. Cocoa topped the list, with Indonesia, Ivory Coast and Nigeria most likely to suffer the greatest problems.

Aon has produced the risk map for 17 years, using an analysis by Oxford, England-based consulting firm Oxford Analytica Ltd.

Information is gathered from analysts and insurance underwriters on the dangers of terrorism, war, strikes or riots, the nonpayment of sovereign debt and other perils.

To download the 2010 map, visit [www.aon.com/risk-services/political-risk-map2/index.html](http://www.aon.com/risk-services/political-risk-map2/index.html)

## Commentary

# Haiti's problems need long-term solutions

Why do disasters seem to strike most often in the poorest areas of the world?

In the past five years, more than half a million lives were lost to earthquakes, tsunamis and cyclones. These occurred in places where insurance has little reach—Haiti, Banda Aceh in western Indonesia, Sri Lanka, Bangladesh. As a result, funds for recovery seldom come from insurance coverage.

But the insurance industry and other businesses respond when catastrophes cause misery and loss of life.

The recent devastating earthquake in Haiti is a prime example. Hundreds of millions of dollars in relief aid are being sent to help care for the injured and homeless and rebuild a nation with a troubled history. Significant contributions are coming from insurance industry foundations and other industry-supported charities.

A similar outpouring of generosity happened after the December 2004 earthquake and tsunami in the Indian Ocean, which claimed at least 200,000 lives.

An age-old theological question is, "Why does God permit bad things to happen?" Whether or not one believes in a supreme being, it's human nature to question why catastrophes such as the Haiti earthquake occur.

I can't divine the cause, but the effect is clear: Disasters provoke a charitable response in most of us. Out of the worst events often comes good.

Heroic rescues, personal sacrifices and surprising generosity are some of the deeds that we typically hear about when there is loss of life amid a cataclysm.

But what about the disasters that occur slowly? Starvation, malnutrition, migration of oppressed peoples seeking refuge in neighboring countries, genocide, a lack of access to clean water, and outbreaks of treatable diseases that devastate populations because they have primitive or no health care all come to mind. Where is the charitable response for these dire events?

It's easy to dismiss such suffering as the fault of corrupt and weak governments, militants or longstanding ethnic strife. Rightly, one should be reluctant to send monetary aid to a country whose leaders will divert it from those most in need. Direct aid is preferable, but there are limits to what can be achieved



**REGIS COCCIA**

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

amid political and economic chaos.

There is a saying that if you give a man a fish, you feed him for a day; but if you teach him to fish, you feed him for a lifetime. Some of the most pressing needs in impoverished nations such as Haiti require long-term solutions.

Eventually, homes will be rebuilt, hunger will be better

**'Even the strongest construction might not have withstood the recent temblor. But that's a risk worth taking in an effort to prevent the loss of life.'**

quenched, and life will appear to return to normal. But the cycle is doomed to repeat itself unless serious work is done to repair the social and economic infrastructure.

For example, building codes might have prevented some collapses and deaths in Haiti, but the relatively shallow depth of the quake meant there was little dissipation of the seismic shocks.

In other words, even the strongest construction might not have withstood the recent temblor. But that's a risk worth taking in an effort to prevent the loss of life. If another large quake rattles a Port-au-Prince reconstructed as before, more lives will be lost.

I think the only thing sadder than the massive loss of life and resulting misery from natural and unnatural disasters is our usual collective habit of not learning from the experience.



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4. practicing: involved in the actual work of a profession
5. suitable for everyday use: plain, functional

Source: Encarta© World English Dictionary [North American Edition]

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# Business Insurance OPINIONS

## AIG bailout debate must focus on future

CONGRESSIONAL ANGER about the federal government's rescue of American International Group Inc. shows no sign of abating.

As we report on page 1, the nature of the Federal Reserve Bank of New York's dealings with AIG's counterparties in credit default swaps and the secrecy surrounding those transactions has become a particular point of contention between lawmakers and Treasury Secretary Timothy F. Geithner. Mr. Geithner headed the New York Fed during the early days of the AIG rescue, and some lawmakers believe he should lose his current job for his performance with his previous job.

While the anger about the lack of disclosure of who got how much taxpayer money in the counterparty settlements is more than understandable, we believe it needs to be tempered. As former Treasury Secretary Henry Paulson told the House Committee on Oversight and Government Reform last week, policymakers feared that allowing AIG to collapse would have had a disastrous impact on the economy, potentially raising the unemployment rate to levels not seen since the Great Depression.

Doing nothing was out of the question. Could the counterparty negotiations have been handled better? In hindsight, it seems they certainly could have. The lack of transparency—to the point of not even identifying the counterparties until months after the fact—is certainly troubling and needs to be explained more fully.

But at this point in the process, the purpose of investigating what happened and why should not be recrimination. Rather, the purpose should be to determine what went wrong and how it can be corrected so the nation never has to go through an economic nightmare of this proportion again.

*Could the counterparty negotiations have been handled better? In hindsight, it seems they certainly could have.*

## Captive cash grabs ignore risk control

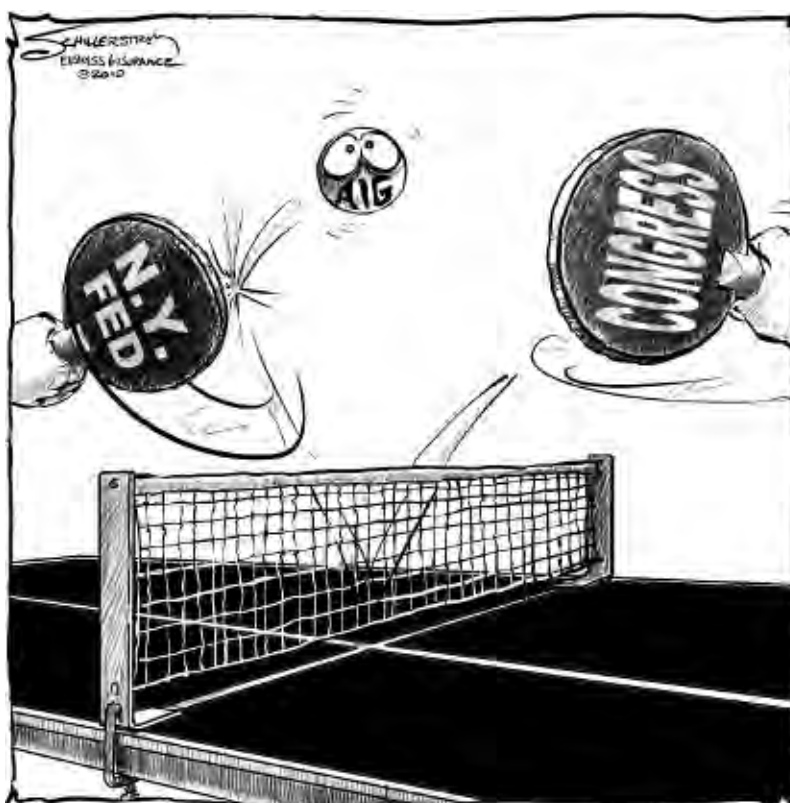
SOME CAPTIVE INSURANCE COMPANIES, it appears, may have fallen victim to the captive industry's success in maturing into a sophisticated market with efficient regulators and skilled service providers.

At least that's one conclusion to be drawn from some of the captives that shut down in recent months.

While decisions to close some captives resulted from programs simply outliving their business purpose, groups unable to find or keep members in the face of a soft traditional market or mergers of captive parents, some decisions came down to cash-strapped parents looking to grab capital in the captive.

In at least some of those cases, the decisions ran counter to previous conventional wisdom, with parents deciding they'd close their captive today and simply form another down the road should conditions warrant. The industry, it seems, has evolved to the point that it's easy enough to form a new captive that the expense and effort involved in doing so aren't sufficient motivation to hold on to existing licenses.

Such efficiency probably is a healthy development. Still, captive parents considering the step should remember that a captive's role is providing greater control over a risk management program, and that there are reasons why captives historically have been considered long-term commitments.



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#### THIS WEEK'S RESULTS

Q How should Democrats proceed on health care reform?



(Left to right) Rep. Charlie Rangel (D-N.Y.), House Speaker Nancy Pelosi (D-Calif.), Rep. George Miller (D-Calif.).

Forget about it  
47%

Pass the Senate bill  
12%

Work out a compromise  
40%

#### NEXT WEEK'S QUESTION

Q: How should the government address the problem of financial institutions deemed "too big to fail?"

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## D&amp;O Risk Report

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# SIDE A STANDS ALONE

**'On the commercial side, there have been a couple high-profile (claims), but there's not enough of them right now to give us carriers an argument that we need to start firming up rates on the A Side.'**

William Kelly,  
Hartford Financial Products

*Rising bankruptcies, derivative lawsuits prompt demand for individual coverage*

By **ZACK PHILLIPS**

Heated competition among insurers offering directors and officers stand-alone Side A liability coverage means a hard market likely is a long way off, despite increased claims activity, market observers say.

Companies typically buy D&O coverage in the form of an ABC policy, which covers Side A claims, or claims the company cannot or will not indemnify; Side B, or claims the company does indemnify; and Side C, or claims against the company.

Increasingly in recent years, buyers also have purchased stand-alone Side A-only coverage as additional protection for its individual directors and officers. Unlike ABC coverage, stand-alone Side A coverage cannot be exhausted by non-Side A claims.

Side A rates have hardened for some financial institutions, due to heavy losses. Since about 2007, bankruptcies and shareholder derivative lawsuits—the two most common triggers of a Side A claim—have increased in frequency and severity, respectively, observers say. Those increases

have occurred for nonfinancial firms as well.

Still, brokers and underwriters say fierce competition and abundant capacity likely will keep commercial Side A prices from increasing for some time.

"I'd love to tell you that it's going to correct (itself) because I would benefit from that; but quite honestly for prices to harden, you need to see claims activity," said William Kelly, New York-based vp-commercial risks at Hartford Financial Products. "On the commercial side, there have been a couple high-profile (claims), but there's not enough of them right now to give us carriers an argument that we need to start firming up rates on the A Side."

Gary Phillips, a New York-based senior vp with Lockton Cos. L.L.C., said some smaller buyers can purchase \$1 million of Side A coverage for \$4,000 to \$6,000, although larger financially troubled companies could pay \$20,000 for the same coverage.

Mr. Kelly said many underwriters are trying to draw the line at \$7,000 or \$8,000 per \$1 million of

See **SIDE A** page 13



# European risk managers assess increased executive exposures

By **STUART COLLINS**

Greater awareness among directors of their liabilities has driven demand for increased limits of directors and officers liability coverage in Europe, but most buyers have purchased broad coverage at stable or even reduced rates due to healthy competition, brokers and underwriters say.

Directors and officers of European businesses have been reviewing their levels and limits of coverage, said Julian Martin, executive director of Willis Group Holdings P.L.C.'s financial and executive risks division in London.

Their liability awareness has increased as the number of claims against European companies—especially those filed in the United States—have risen. In addition, some European jurisdictions have added new forms of collective redress, he said.

The number of large securities suit filings against non-U.S. companies, filed in courts worldwide, is on a long term growth path, according to research by Advisen Ltd. In its "Quarterly Report—2009 Review: Securities Suits Abound in a Harsh 2009," New York-based Advisen found that large filings against non-US companies were just under 120 in 2009, more than double the 50 filed in 2005.

As a result, many have bought higher limits of Side A cover, which pays legal and other costs that are not recoverable from their company because, for example, it is insolvent or because local law prohibits

the indemnification of directors.

Companies also are buying traditional ABC cover, which includes Side A, Side B and Side C coverage, but ABC coverage is more restrictive than that available for directors'

Liabilities for European directors and officers are increasing gradually, as tougher corporate governance laws are introduced in Germany and the United Kingdom, insurers say.

Many risk managers outside of Germany are unaware of changes in German law that go in to effect in July that require directors to carry a personal deductible, even if the policy covering them is underwritten outside of Germany, underwriters say.

Germany's Gesetz zur Angemessenheit der Vorstandsvergütung law, which translates to Adequacy of Managerial Salaries, makes individual deductibles mandatory for German board members of publicly traded companies, said Hartmut Mai, global head of financial lines at Allianz Global Corporate & Specialty in Munich.

The law, which goes into effect July 10,

personal liabilities under Side A alone, Mr. Martin said. For example, coverage for outside directors, fraud and pollution likely are limited or excluded entirely under ABC cover, he added.

Directors are buying higher limits of Side A to act as excess cover, or to respond as primary insurance in cases where ABC coverage does not respond, Mr. Martin said.

There is a trend for European directors to insist that their companies purchase higher limits of excess coverage because they perceive higher exposures, said Giles Stockton, D&O underwriter at Brit Insurance Holdings N.V. in London.

While the financial crisis may have been a catalyst for this trend, European directors also are seeing a steady rise in claims, he said.

There also has been a steady increase in regulatory actions against companies in France, Germany, Italy, the Netherlands and Switzerland, said Doug Robare, London-based D&O insurance manager at Zurich Global Corporate U.K. in London, a unit of Zurich Financial Services Group. The regulatory actions (see related story) have involved a range of issues such as environmental liability, nonpayment of taxes and regulatory investigations, he said.

As demand from directors has risen, more insurers have entered the market to offer Side A coverage, Mr. Martin said.

The number of insurers offering full D&O coverage also has risen. For example, the number of D&O liability insurers in London is approaching 40 and up to five more are expected to begin underwriting in 2010, said Chris Newell, vp of retail placements and distressed risks at Marsh Ltd. in London.

The competition has pressured rates. Other than buyers at financial institutions, D&O buyers should expect average decreases of 10% to 20% at renewal and up to 40% for remarketed accounts, he said.

While capacity and competition are driving rates downwards, the softening is selective, said Paul Hopkin, technical director at the London-based Assn. of Insurance and

Risk Managers. D&O rates remain high and capacity is limited for some sectors, such as financial institutions and retailers, he said.

For commercial D&O buyers with strong balance sheets for non-loss-affected business, rates are flat or lower, said Willis' Mr. Martin.

"Depending on the company's risk profile and its financial performance, it is still possible to get double-digit reductions. And for financial institutions, where rate increases last year were 40% to 50%, we are now seeing rate increases on average of 10% to 15%," Mr. Hopkin of AIRMIC said.

With more competition in the European D&O market, insurers are looking to differentiate themselves, Mr. Newell said. In the past year, several insurers have broadened the coverage of their primary D&O product, he said.

Careful policy wording is critical for D&O insurance, Mr. Hopkin said. So risk managers should push their brokers to negotiate the broadest coverage possible. "Price is often the primary driver for risk managers, but they should be proactive and ask for additional (D&O) cover as well as rate reductions. They are both available," he said.

While some extensions and sublimits have been expanded, "the D&O product has not changed hugely and the changes have been more for window dressing," Mr. Stockton said.

Insurers have dropped exclusions, such as those for pollution, from their off-the-shelf products, said Mr. Martin. And broad coverage for costs associated with regulatory investigations also is available.

"But as far as insurers offering significant add-ons, D&O cover is likely to now be as broad as it will get," Mr. Martin said.

Hartmut Mai, global head of financial lines at Allianz Global Corporate & Specialty in Munich, agreed about the breadth of coverage, given nearly six years of softer commercial D&O pricing.

"I will be surprised if insurers can find new points to offer broader cover. We are at the peak of the soft cycle," Mr. Mai said.

## Germany, U.K. strengthen corporate governance laws

imposes a deductible of 10% per loss, capped at 1.5 times the individual's fixed annual compensation, for claims made, Mr. Mai said.

"There has been a lot of discussion over the deductible in Germany, but I expect that the majority of U.S. risk managers will not be aware of the requirement," he said. "If German board members are covered by a U.S. policy, they have to make sure that there is a deductible, and this may come as a surprise to some directors."

German insurers, including Allianz, are offering a policy to cover directors' individual deductibles, said Mr. Mai.

But the policy is not cost-effective for insurers, and usually is offered only by the lead insurer on a program, he added.

The U.K.'s Bribery and Corruption Bill, which is expected to become law later this year, also will increase liabilities for directors

and officers, said Doug Robare, London-based D&O insurance manager at Zurich Global Corporate U.K., a unit of Zurich Financial Services Group.

The legislation, which is akin to the U.S. Foreign Corrupt Practices Act, will codify directors' responsibilities and require them to show that adequate controls are in place to prevent bribery and corruption, Mr. Robare said.

In addition, the U.K.'s Companies Act 2006, which went into effect on Oct. 1, 2009, has expanded directors and officers liabilities, said Mr. Robare. The law lowered the bar for bringing shareholder derivative actions in the United Kingdom and created ambiguous responsibilities—for example, to shareholders, customers and employees—for directors, but these are often conflicting interests, he said.

—By Stuart Collins

# Early settlement trend seen in D&O litigation

*Increased exposures for excess insurers help fuel negotiations*

By ROBERTO CENICEROS

More securities lawsuits are settling before courts rule on motions to dismiss, say directors and officers liability experts who have noticed an uptick in early settlements.

Several factors could be driving the trend over the past six to nine months, including heightened public disdain for corporate financial scandals and court decisions that have gone against plaintiffs, experts say.

But recent years' expanded use of shaved-limits endorsements in D&O policies by excess insurers is the most frequent reason experts cite for the increase in settlements before courts rule on motions to dismiss securities suits.

Shaved-limits endorsements obligate excess insurers to recognize a policyholder's contribution to a set-

**'Traditionally, the primary insurer is not interested in settling before the motion to dismiss has been resolved, because if we win the motion to dismiss, then the primary (insurer) doesn't have to pay anything.'**

Mia Mazza, Morrison & Foerster L.L.P.

tlement as satisfying the underlying limits provided by a primary insurance policy, thus triggering excess insurance layers (see story, page 15).

Before shaved-limits endorsements became common a few years ago, excess insurers typically required that payments by a primary insurer—not an insured—were the only way to exhaust underlying limits of D&O coverage before excess insurers would pay a claim.

Observers cite anecdotal observations for the increase in the number of settlements in the past six to nine months.

"There has been an increase in people pursuing settlements before rulings on the motion to dismiss," said Dan Bailey, a partner at Bailey Cavaliere L.L.C. in Columbus, Ohio. "Some of those efforts have been successful. The reason for that is up to conjecture, but in my view a big reason for it is the shaving-of-limits endorsement that is now common in most excess policies."

The shaved-limits endorsement allows a primary insurer to participate in a settlement without having to commit its entire limits. The opportunity to preserve some of

their limits, or avoid a 100% payout, provides an incentive for a primary insurer to help settle a case rather than continue to fight and hope a judge dismisses the suit.

"Traditionally, the primary insurer is not interested in settling before the motion to dismiss has been resolved, because if we win the motion to dismiss, then the primary (insurer) doesn't have to pay anything," said Mia Mazza, a defense attorney and securities litigator at Morrison & Foerster L.L.P. in San Francisco. "Or if it does have to pay something, it's just legal fees beyond whatever the (policyholder's) retention was."

Generally, only a small percentage of claims settle prior to a ruling on a motion to dismiss, said John Patterson, vp of specialty casualty claims in New York for Liberty International Underwriters. But there has been a slight increase recently in cases settling early and shaved-limits endorsements are a contributing factor, Mr. Patterson agreed.

However, settlements usually happen when plaintiffs have a strong case, perhaps because company management revealed financial statement fraud or authorities are conducting a criminal investigation, Mr. Patterson said. "So in those types of cases we will see an earlier resolution than in run-of-the-mill, typical securities litigation cases," he said.

Defense attorneys in cases with strong evidence against their clients could lose credibility in the eyes of the judge by arguing for dismissal, Mr. Patterson said.

Other sources, however, say different forces are driving more early settlements.

A push by plaintiffs attorneys also could be at play, said Jim Seymour, head of the U.S. management liability team for Beazley Group P.L.C. in Chicago.

"The motion to dismiss is really the seminal event in a securities claim," Mr. Seymour said. "The minute (a judge rules against a motion to dismiss, the plaintiffs) have basically won the case. Now they are just going to settlement because very rarely do any (securities cases) go to jury trial."

But court decisions in recent years have made it harder for plaintiffs to defeat defense motions to dismiss and the number of dismissals has grown. Therefore, plaintiffs attorneys are apt to be more motivated to push for early settlements, Mr. Seymour said.

A nationwide intolerance of corporate financial improprieties also could be contributing to case settlements before rulings on motions to dismiss, said Peter Taffae, a directors and officers liability insurance expert at Los Angeles-based wholesale brokerage Executive Perils Insurance Services.

More jurors are likely to decide "while they are finding their seat in

## Side A: Demand rises for individual cover

CONTINUED FROM PAGE 11

coverage. "Five, six years ago, people probably thought the floor on A Side pricing was probably \$10,000" per \$1 million in coverage, he said.

Observers said stand-alone Side A policies often were seen as "free money" for underwriters because there were so few claims. But the dearth of claims also made it difficult to persuade policyholders they actually needed Side A protection. Lori Marino, New York-based senior vp for Valiant Insurance Group Inc., said until about 2005, buyers mainly purchased stand-alone Side A policies from just three sources: American International Group Inc., XL Capital Ltd. and ACE Bermuda Insurance Ltd.'s Corporate Officers & Directors Assurance Ltd., which introduced the product in the 1980s.

But the lack of claims attracted more insurers to offer Side A-only products, which pushed capacity up and pricing down. The soft pricing attracted more buyers, as did an increase in claims, observers said.

In 2009, 207 public U.S. companies filed for bankruptcy compared with 138 in 2008 and 78 in 2007, according to Web site Bankruptcy-data.com. Meanwhile, several derivative suits have resulted in significant Side A claims, most notably Irvine, Calif.-based technology firm Broadcom Corp.'s \$118 million settlement in August 2009, which included \$40 million from Side A-only underwriters.

Some underwriters estimate that 47 insurers now offer Side A-only policies, compared with about a



dozen insurers five years ago. Because the coverage has few if any exclusions, stand-alone Side A policies often are perceived as relatively easy to write and almost all insurers in the D&O space, including new entrants to the market, offer it.

"Even if the new carriers aren't getting on programs, they're quoting aggressively, which forces prices down," Lockton's Mr. Phillips said.

Some buyers are reluctant to trust the primary layer of their Side A coverage to a new market entrant, and brokers said the ratings of Side

A insurers on the primary layer are scrutinized closely. But observers said the excess layers of Side A towers have become commoditized, so insurers new to the Side A market often can secure a spot covering one of the excess layers if they are highly rated.

Insurers new to Side A coverage "don't all get the placements because they don't all necessarily have the experience or history," Valiant's Ms. Marino said. "But by quoting for the primary (layer), they often earn a spot on the excess A Side tower."

Abundant capacity has driven down overall D&O prices outside the financial sector. Many buyers are using savings from their traditional D&O program to purchase additional Side A limits, Mr. Kelly said.

Observers said the price of Side A policies cannot fall much further, but they don't see the market changing anytime soon because of the capacity glut.

Ms. Marino said underwriters still see Side A policies as benign risks, because there have been few major claims and because most insurers have not yet had to make payments in connection with Side A claims.

"Unfortunately, while we are seeing the claim activity increase, because cash payouts from carriers haven't really escalated yet, I don't think we've seen any tangible increase in the pricing," Ms. Marino said. "It's probably three or four years out before we will really know how A Side portfolios have been running during the financial melt-down."



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<b>2</b>	<b>Executive Liability Division, Chartis</b> 175 Water St., New York, N.Y. 10038	800-867-3783 <a href="http://www.chartisinsurance.com">www.chartisinsurance.com</a>	\$800,000,000	96%	4%	13,200	Michael Smith, president
<b>3</b>	<b>Liberty International Underwriters</b> 175 Berkeley St., Boston, Mass. 02116	617-357-9500 <a href="http://www.libertyiu.com">www.libertyiu.com</a>	\$325,000,000	99%	1%	7,859	Gordon McBurney president/chief underwriting officer
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	<b>Chubb Corp.</b> 15 Mountain View Road, Warren, N.J. 07059	908-903-2000 <a href="http://www.chubb.com">www.chubb.com</a>	N/R	N/R	N/R	N/R	Robert C. Cox, executive vp-Chubb & Son/ COO-Chubb Specialty Insurance
	<b>Crum &amp; Forster Holdings Corp.</b> 305 Madison Ave., Morristown, N.J. 07962	973-490-6453 <a href="http://www.cfins.com">www.cfins.com</a>	N/R	99%	1%	N/R	Don Fischer, senior vp
	<b>Hartford Financial Services Group Inc.</b> 2 Park Ave., New York, N.Y. 10016	212-277-0490 <a href="http://www.hfpinsurance.com">www.hfpinsurance.com</a>	N/R	95%	5%	N/R	Stephen Whelan, William Kelly, Steven Boughal, vps
	<b>RLI Corp.</b> 9025 N. Lindbergh Drive, Peoria, Ill. 61615	309-692-1000 <a href="http://www.rlicorp.com">www.rlicorp.com</a>	N/R	N/R	N/R	N/R	A.Q. Orza II, vp-Executive Product Group
	<b>Starr Indemnity &amp; Liability Co.</b> 399 Park Ave., Eighth Floor, New York, N.Y. 10022	646-227-6573 <a href="http://www.cvstarr.com">www.cvstarr.com</a>	N/R	75%	25%	75	Jim Pittinger, Pat Barrett, vps-financial lines manager
	<b>Travelers Cos. Inc.</b> 485 Lexington Ave., New York, N.Y. 10017	800-238-6225 <a href="http://www.travelers.com">www.travelers.com</a>	N/R	N/R	N/R	N/R	Jeff Klenk, senior vp-bond and financial products
	<b>Zurich Specialties</b> 1 Liberty Plaza, New York, N.Y. 10006	212-553-5446 <a href="http://www.zurich.com">www.zurich.com</a>	N/R	N/R	N/R	N/R	Seraina Maag, president

<sup>1</sup> BI estimate. Company provided a range of premium. N/R= Not reported

Source: BI survey

Researched by Kevin Edison

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## Shaved-limit wordings grow more popular

Although shaved-limit endorsements have become common in excess directors and officers liability insurance policies, they still are not standard, observers say.

It was only a few years ago that the endorsements started appearing as common offerings, so each insurer's contract wording differs and not all policies contain them, they say.

Neil B. Posner, chair of the policyholders' insurance coverage group at Much Shelist Denenberg Ament & Rubenstein P.C. in Chicago, recalled negotiating with excess insurers on behalf of policyholders to include the shaved-limit coverage in their policies about 10 years ago.

Insurers began offering the coverage after the market started to soften, Mr. Posner said.

But whether excess insurers continue to provide shaved-limit endorsements when market conditions do

harden remains to be seen, said John Patterson, vp of specialty casualty claims in New York for Liberty International Underwriters.

"They weren't such a factor years ago when there was a harder D&O market," Mr. Patterson said. "So it's not something that is necessarily here to stay."

While wording differs among policies and buyers need to be aware of those differences, the important point is that shaved-limit endorsements cause excess insurers to recognize settlement payments by the insured as satisfying payment of the underlying limits of a primary policy for purposes of triggering excess coverage, observers said.

"From the policyholder's point of view, the more flexibility we have to fashion a settlement structure the better," Mr. Posner said. "Not having the tools in our tool kit is not helpful."

—By Roberto Cenicerros

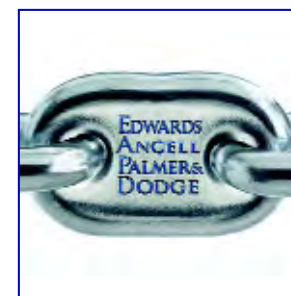
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## Suits: Early settlements

CONTINUED FROM PAGE 13

the jury box" that defendants in a securities case are guilty, Mr. Taffae said. That bias could be motivating some defense parties to settle rather than endure a trial, especially when the defense has a weak case.

Mr. Taffae said he participated in recent discussions in which an insurer agreed to contribute toward the insured's retention, essentially reducing the policyholder's deductible. The insurer was eager to settle because of defense weaknesses and facing an "upside exposure" totaling several million dollars in a case that the policyholder was not motivated to settle, he said.

Mr. Taffae said he also believes insurers may be more willing to settle lesser-valued cases now because of the flood of financial-related securities lawsuits filed in recent years. Settling the lesser-valued cases allows insurers to focus more attention on larger-value cases.

But not everyone agrees that insurers are more motivated to participate in settling securities lawsuits to lighten their case load.

Defendants settle when a better outcome can be achieved than is possible by remaining in litigation, LIU's Mr. Patterson said.

"It's not as if you can settle them cheaply," Mr. Patterson said. "It's still millions of dollars, typically."

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## Market Moves

### White Mountains Re buying insurer in runoff

**OMAHA, Neb.**—White Mountains Re Global Ltd. said it plans to acquire a Nebraska insurer, which is in runoff, for approximately \$5 million.

Central National Insurance Co. of Omaha has been in runoff since 1998 and under a Nebraska order of rehabilitation since 1990.

White Mountains Re Solutions, an insurer and reinsurer acquisition unit, entered a definitive agreement to purchase the unit of Drum Financial Corp. for approximately \$5 million, White Mountains said in a statement.

The agreement is contingent on "the termination of the rehabilitation proceedings by the court and the approval of the Nebraska Department of Insurance," White Mountains said in a statement.

White Mountains Re said it expects the transaction to be completed in the first quarter of this year, subject to regulatory approval and customary closing conditions.

White Mountain Re Global, a unit of White Mountains Insurance Group Ltd., is based in Hamilton, Bermuda.

### Lockton buys holding in Korean brokerage

**LONDON**—Lockton Cos. International Ltd. has purchased a "significant" equity holding in Seoul, South Korea-based brokerage IMI, the company said.

In 2006, Lockton acquired Alexander Forbes International Risk Services, which had a partnership

with IMI since 1995. Lockton and IMI have worked together since then, serving risk management clients in areas such as credit, financial institutions and construction, Lockton said in a statement.

Lockton said it will change IMI's name to Lockton Cos. (Korea) Inc. and has the option to buy more of the brokerage in the future. Terms of the deal were not disclosed.

Lockton Cos. International is the London unit of Kansas City, Mo.-based Lockton Cos. L.L.C.

### CBIZ acquires National Benefit Alliance

**CLEVELAND**—CBIZ Inc. said it has acquired Midvale, Utah-based National Benefit Alliance L.L.C.

CBIZ, a Cleveland-based provider of business services that include insurance and benefits, said the acquisition is intended to expand its reach in the government contracting industry.

Terms were not disclosed about the deal that CBIZ Chairman and CEO Steven L. Gerard described as "an ideal strategic acquisition."

National Benefit Alliance, an employee benefit plans administrator for the commercial market specializing in government contractors, reported \$2 million in revenue for 2009.

While management will remain intact, National Benefit Alliance will change its name to CBIZ NBA and be integrated into CBIZ Employee Services, company officials said in a statement.

### Tanenbaum-Harber Co. becomes T&H Brokers

**NEW YORK**—Tanenbaum-Harber Co. Inc. has changed its name to T&H Brokers Inc.

The name change is "to encompass, under one name, all of the different businesses in which we are engaged," Walter L. Harris, chair-

man of the board, said in an e-mail to clients and partners.

T&H Brokers; T&H Benefits Inc., formerly Thesco Benefits L.L.C.; Riff & Associates Inc.; Construction Insurance Corp.; and Surety Associates Inc. form T&H Group Inc.

The New York-based broker said neither management nor staff would change under the new moniker.

### Qatar company becomes takaful insurer

**DOHA, Qatar**—A Doha, Qatar-based insurer has converted its operations to become a takaful insurer operating under Shariah law.

The 32-year-old Alkhaleej Insurance & Reinsurance Co. changed its name effective Jan. 1 to Alkhaleej Takaful Insurance & Reinsurance Co. as part of its adoption of Islamic insurance practices.

In a statement, Alkhaleej said its transformation recognizes "the power of the Islamic insurance method," which includes a focus on humanitarian issues and not just profits.

Alkhaleej writes general insurance and reinsurance business including marine, hull and aviation, energy and other coverages.

#### TO SUBMIT ITEMS

##### MARKET MOVES

*BI's Market Moves column reports on activities by insurance industry companies and related entities.*

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*BI's Products & Services column reports on new product offerings.*

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## UP Comings & Goings CLOSE



### EDWARD CHA

**NEW JOB TITLE:** Chicago-based insurance practice leader for Wells Fargo Insurance Services Inc.'s international employee benefits practice.

**PREVIOUS POSITION:** Chicago-based client management partner for Mercer Group Inc.

**GOALS FOR NEW POSITION:** Wells Fargo Insurance Services is one of the largest insurance broker firms in the world. Our goal with the international insurance services practice is to provide the highest level of customer satisfaction for our multinational employees.

#### INDUSTRY CHALLENGES:

Multinational employers are increasingly assessing the impact of their employee benefits around the globe and what that does to their business. Included in the areas of their concerns are cost management, governance, compliance, risk mitigation, new startups, attraction and retention of qualified employees. There is also an increase in the complexity of the amount of resources needed to operate a business across multiple jurisdictions.

**FIRST MARKET EXPERIENCE:** My first job was in the international group with Mercer.

**CAREER HIGHLIGHT:** Being able to work with global businesses and being in the international market.

**ADVICE:** Just really understand what the customer needs. That sounds really simple, but sometimes you have to dig really deep to find out what they are asking and what they really want.

**WHAT DID YOU WANT TO BE WHEN YOU GREW UP:** I wanted to be a medical doctor. It was something I always wanted to do.

**OUTSIDE THE INDUSTRY, A DREAM JOB:** I'd probably be a physician for the (Chicago) Bears.

**HOBBIES:** I like working out. I like detailing my car. I also enjoy playing tennis. I also love spending time with my wife.

**CAN'T-MISS TV SHOW:** "24." I love the suspense.

**FAVORITE BOOK AND WHY:** I don't have a favorite book per se, but I read a periodical every week: The Week. It gives me a glimpse of what is going on in the world.

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## Comings & Goings

# ONLINE

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#### TO SUBMIT ITEMS

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

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#### POSTING THIS WEEK

##### BROKERS:

■ BB&T Insurance Services of California Inc.

##### INSURERS:

■ Liberty International Underwriters  
■ Beazley P.L.C.  
■ Zurich Global Corporate in North America  
■ Torus Insurance Holdings Ltd.

##### ASSOCIATIONS:

■ American Institute for CPCU and Insurance Institute of America

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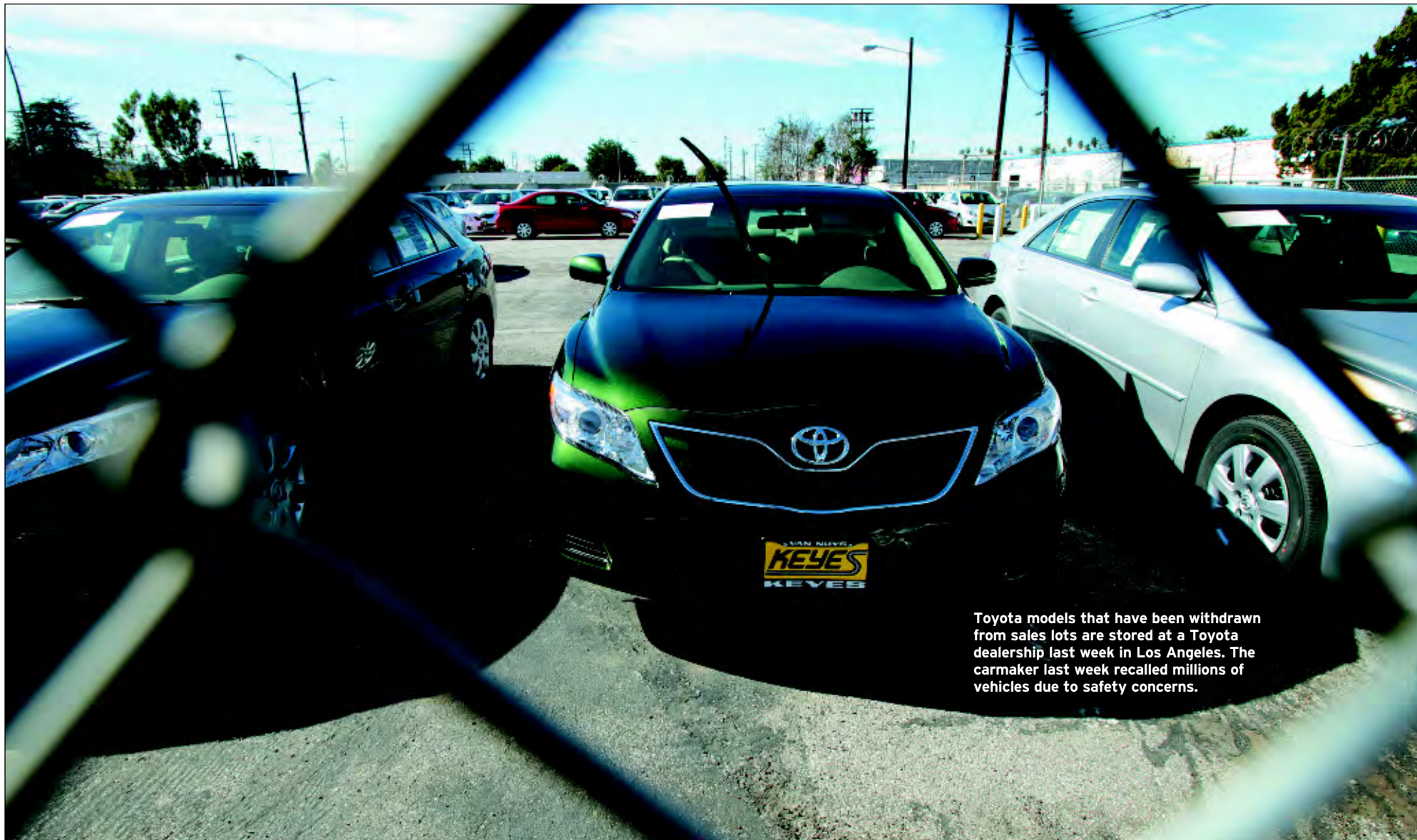
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Toyota models that have been withdrawn from sales lots are stored at a Toyota dealership last week in Los Angeles. The carmaker last week recalled millions of vehicles due to safety concerns.

AP PHOTO

## Toyota: Widespread vehicle recall puts automaker's reputation at risk

CONTINUED FROM PAGE 3

e-mail that information on whether the company has recall insurance is not "readily available."

"I don't know of a case like this that would be covered by insurance," said Daniel Schwarz, an analyst with Commerzbank A.G. in Frankfurt. Such costs generally are accounted for when automakers price their cars and the warranties that go with them, he said, and those costs are "built into the balance sheet by the company."

Accelerator pedals and floor mats are not expensive parts to replace, said Mr. Schwarz. "What is expensive is stopping the sale of eight models in the U.S."

But that might be the least of Toyota's worries, Mr. Schwarz said. "What could be more expensive in the long run is the damage to their reputation for quality."

Matthew Sharp, managing director at Media & Crisis Management Ltd. in Norwich, England, said companies that find themselves in such situations must "be open and honest, and move swiftly" to limit reputational damage, he said.

That advice is particularly important for Toyota, a company that has built its image around quality, Mr. Sharp noted. "They have always come out incredibly well in quality surveys," he said.

"Their key asset is their quality reputation," Mr. Schwarz reiterated. "In my view, you are not buying a Toyota because the brand is fascinating, but because of the reputation for quality."

Other observers agreed Toyota will need to work to keep its reputation.

"They need to focus both on the cause and root of the crisis. They need to clearly define their action steps to solve the problem," said Grace Burley, a vp at Crisis Management International Inc., an Atlanta-based crisis management consultant. "Communicating these actions and addressing the reputation side effectively is critical. I do think that they're taking it extremely seriously by their actions they are taking."

### Damage control

"Crisis management in these situations is always absolutely critical," said Justin Whitehead, a director at R.K. Harrison Insurance Brokers Ltd. in London. "The key is getting to the public early, managing the situation, and getting crisis management experts from outside" to help limit the damage, he said.

As Toyota has come under fire in the press for its handling of the recall, "one might think it could have been handled a little better from a crisis management perspective," Mr. Whitehead said. Some reports have said the company took too long to react after problems surfaced.

"Toyota's obviously off to a difficult start," said Gene Grabowski, senior vp with Levick Strategic Communications L.L.C. in Washington. "In order to mitigate risk here, the company has to do...a better job of communicating with its dealers to make sure the dealers have the information they need so that they're not

antagonizing or turning off consumers looking for reassurance about Toyota automobiles."

"For Toyota, this is their Tylenol moment," said Mr. Grabowski, referring to New Brunswick, N.J.-based Johnson & Johnson's response to the 1982's deaths of seven people who'd ingested cyanide-laced Extra-Strength Tylenol capsules. "What they do next is so important. They took a big gamble—I think it was forced by the U.S. Department of Transportation to halt production of those eight vehicles. Now that that's done, they have no choice but to communicate clearly and transparently and come back strongly when they do go back into production, and probably add a safety feature or two that they can tout for these cars. So they will have something more than their competitors don't have."

He noted that when Tylenol came back on the shelves after the 1982 tragedy, the bottles had tamper-resistant caps, which differentiated the drug from similar products. "They seized an opportunity from the crisis." He said the key for Toyota is that "they have to be a lot more transparent and clear in their communications because they're creating confusion in the marketplace now and perhaps inviting some litigation that they might be able to mitigate if they act quickly and clearly."

### Covered loss?

Michael Horner, a product recall specialist with Miller Insurance Services Ltd. in London, said an automaker of Toyota's size may

have "some element of recall coverage" as part of its global program, rather than its stand-alone coverage.

Mr. Whitehead said Toyota likely has at least some recall insurance in the international market. "One would guess there is some form of coverage for this," but he noted that the coverage typically covers only actual recall costs, such as those for repairs and parts replacements.

Experts say Toyota's suppliers would do well to check their own recall policies, if they have them.

"Normally in a major recall like this, everybody gets drawn in," said Mr. Whitehead. "I'm sure Toyota is talking to everybody who had anything to do with the accelerator pedal."

Toyota issued a statement on Jan. 27 noting that the manufacturer of the pedal, CTS Corp. of Elkhart, Ind., is working diligently to develop a new design that will remedy the sticking problem. "Meanwhile, we are also working with them to test effective modifications to existing pedals in the field that will be rolled out as quickly as possible," Toyota said.

A spokesman for CTS could not be reached.

Automotive suppliers have a small and expensive market from which to purchase recall insurance, Mr. Horner said.

"There is a limited amount of capacity at Lloyd's for that type of cover," he said, noting that Miller generally places limits of \$5 million to \$10 million for its automotive supply clients.

Meanwhile, the House Energy

and Commerce Committee's Subcommittee on Oversight and Investigations announced it would hold a Feb. 25 hearing to examine complaints surrounding the sudden acceleration issue. "Like many consumers, I am concerned by the seriousness and scope of Toyota's recent recall announcements," said the committee's chairman—Rep. Henry Waxman, D-Calif.—in a statement announcing the hearing. "Our hearing will help us better understand how quickly and effectively Toyota and the National Highway Traffic Safety Administration responded to consumer complaints about the safety of the recalled Toyota vehicles."

Rep. Waxman and the subcommittee's chairman—Bart Stupak, D-Mich.—also sent a letter to Toyota Motor North America President Yoshimi Inaba and NHTSA Administrator David Strickland requesting additional information and documents related to Toyota vehicles sold in the United States. The letters request documentation from Toyota and NHTSA regarding when they first learned about potential safety defects related to sudden unintended acceleration and what actions they have taken to investigate and resolve the hazards. In addition, committee leaders requested information concerning NHTSA's investigation of consumer complaints and Toyota's response to these complaints, according to the committee.

Mark A. Hofmann contributed to this report.

# Captives: Owners mull closing captives to tap capital

CONTINUED FROM PAGE 1

In the past, captive owners often kept captives open even when they were not using them as an alternative to insurance markets in the belief that they would need the facility in the future. But now, some companies are closing captives on the understanding that they can easily establish a new captive if they need to, Vermont's Mr. Provost acknowledged.

"What I heard this year is, 'It's so easy to start a new captive now, if we have to, we'll be back. Today we need the cash,'" Mr. Provost said.

For those who've formed a captive once, with the increased experience and sophistication of captive regulators and service providers, it probably is easier to obtain a new license than it was several years ago, Mr. Provost said.

"It only takes a couple weeks," he said. "I wouldn't call it a commodity, but it's a lot easier to start a captive today than it was 20 years ago."

Among single-parent captives managed by Strategic Risk Solutions, several parents are looking to tap the captive's capital, said Brady Young, managing director and president at the Concord, Mass.-based captive manager. But, in some cases, he said, parents essentially suspend operations instead of closing the captive.

"They leave the minimum amount of capital in it," Mr. Young said, and seek a waiver of audit requirements from regulators if possible, allowing them to cut expenses in the captive operation.

Mr. Young said he's also seen some groups take the same

## CAPTIVES COME AND GO

2009 captive formations and losses in selected domiciles

DOMICILE	FORMATIONS	LOSSES
Bermuda	23	21
Cayman	40	37
Vermont	39	36
Hawaii	4	7
South Carolina	13	9
Utah	33	7
Arizona	7	14
Washington, D.C.	19	11
Kentucky	46	3
Delaware	8	2
Montana	16	4

Source: Strategic Risk Solutions

approach. "They're saying, 'If the members really don't need us right now, let's keep this thing alive and ratchet down expenses,'" he said. "Instead of following the market into the ground...why not let members take advantage of the soft market."

The poor economy is also affecting captive formations, experts say.

Delaware licensed eight new captives in 2009 and dissolved two sin-

gle-parent captives, which contrasts with its net gain of 22 captives in 2008. "It is indicative of the economy," said Steve Kinion, director of captive and financial insurance products in the Delaware Department of Insurance. "Also, we haven't seen commercial insurance rates really rise."

Gary Osborne, president of USA Risk Group in Montpelier, Vt., said the pressure some captives are feeling is a fairly recent development. "Six months ago I didn't really see it, but in the last couple of months we've been seeing more," he said.

Captives and risk retention groups linked to the most hard-hit industries are finding the economic environment particularly difficult.

For example, in December, two Arizona-domiciled trucking industry captives managed by USA Risk Group—Thureus Insurance Group Inc. and Astraea Risk Retention Group Inc.—were placed into receivership. The captives were part of a group of companies owned by holding company Piel Corp. providing coverage to Piel unit Arrow Trucking Co. and its affiliates.

Mr. Osborne said USA Risk contacted the Arizona Department of Insurance after hearing from claimants unable to reach Arrow, which apparently had ceased operations.

"Arizona...jumped right in and took possession," Mr. Osborne said. Christina Urias, Arizona's insurance director, has been named receiver of the two companies, and Mr. Osborne said at this point it appears there should be an orderly runoff.

"We've got a couple others that

are struggling," Mr. Osborne said, though adding, "I don't think there's any ticking time bombs."

"I've got a couple we're watching closely with regulators," he said, with those captives reviewing their positions and trying to decide whether to go into runoff.

The economy's impact on its members is forcing Washington-domiciled ProBuilders Specialty Insurance Co. RRG to wind up its business, according to its manager.

"Obviously, the revenue of our insureds, which are builders, is decreasing," said Bill Tepe, chief financial officer at NationsBuilders Insurance Services Inc. in Atlanta, which manages the ProBuilders RRG. "And that's the biggest impact on our premiums."

With the downturn in construction activity, the decline in the RRG's premiums was "pretty amazing," Mr. Tepe said. "With the decline in premiums, we thought it would be better to place the company in runoff," he said.

Mr. Young of SRS noted that the economic downturn and soft market conditions are hitting group captives in multiple ways.

Many potential group members can't or don't want to commit the necessary capital to the captive, he said. Meanwhile, traditional market insurers "are fighting tooth and nail to keep them...cutting prices to the bone, even below what it should be, to keep them out of the groups," Mr. Young said.

In addition, as with ProBuilders, the exposure base on which groups generate premiums is down. "In some cases, premiums are down 50% or more," Mr. Young said.

# D&O: Judge says insurers must pay

CONTINUED FROM PAGE 4

daily basis as additional 'facts' are developed."

"Essentially, coverage that directors and officers relied upon and expected when the policies were purchased on their behalf could be withdrawn at the insurer's whim," he wrote in his ruling. "If, as underwriters suggest, the policies afford underwriters absolute discretion to withhold payments whenever charges of intentional dishonesty are leveled against directors and officers, then insurers will be able to withhold payment in virtually every case at their sole discretion. That would leave directors and officers in an extremely vulnerable position, as any allegations of dishonesty, no matter how groundless, could bring financial ruin."

"Essentially, an insurer could act as judge and jury and convict its own insureds, thus avoiding any further financial responsibility for the insureds' defenses," he added.

Previously, the trustee overseeing the insolvent company's assets had asked a judge to prevent the insurers from paying defense costs for the former executives, so that he could tap the D&O policy proceeds to compensate bilked investors and defend the company against lawsuits. The judge ruled it was permissible for D&O underwriters to pay defense costs for individual defendants.

According to Judge Hittner's decision, the primary D&O policy had a \$5 million limit. The decision said that the limit of the excess policy was "unclear," but that insurers maintained they faced an exposure of nearly \$100 million in the case.

The former executives each face up to 375 years in prison.

# Marsh: Judge dismisses charges in bid-rigging case

CONTINUED FROM PAGE 3

for American Home.

However, at prosecutors' request, the judge did not apply the ACD ruling to three individuals whose charges were reduced. Instead, the judge imposed sentences.

They are:

- Joshua Bewlay, former managing director, global broking at Marsh.

- Peter Anderson, a former local broking coordinator at Marsh.

- Edward Keane Jr., a former assistant vp at Marsh.

Judge Yates sentenced Messrs. Bewlay and Anderson to unconditional discharge, which essentially is a conviction without punishment such as a jail sentence, fine or parole. "Over the period of the last five years, I believe you have suffered enough," the judge said.

Mr. Keane's sentencing hearing was scheduled for March 2.

## One ruled ineligible

A final cooperator in the case—Todd Murphy, a former senior vp at Marsh who pleaded guilty to misdemeanor charges in 2005—was deemed ineligible for a "plea modification" by prosecutors because he violated the terms of his plea agree-

**'Over the period of the last five years, I believe you have suffered enough.'**

Judge James Yates,  
New York County Supreme Court

ment when he reapplied for his insurance license one year after it had been revoked.

In addition, Assistant Attorney General Yu Jin Hong argued that Mr. Murphy did not provide "credible" testimony during one of the trials.

Judge Yates, who ruled that Mr. Murphy violated the terms of his plea agreement by seeking to reinstate his insurance license, said Mr. Murphy's misdemeanor charges will remain and imposed a sentence of unconditional discharge.

Another former insurance executive, Edward Coughlin, a former senior underwriter with the excess casualty division of Zurich American Insurance Co., pleaded guilty in 2004 to misdemeanor charges. A

spokesman for the attorney general's office confirmed that Mr. Coughlin already served a sentence of six months of probation.

A week earlier, Judge Yates dismissed or reduced similar criminal charges against nine other individuals in the case. The charges were brought originally by former New York Attorney General Eliot Spitzer, who had secured 21 guilty pleas as part of his probe into contingent commission practices in the insurance industry. The individuals had accepted plea agreements with prosecutors and cooperated in the state's investigation. Eight other executives were indicted in 2005 and later faced trial.

## 'Just and appropriate'

Prosecutors from New York Attorney General Andrew Cuomo's office, which inherited the case, asked the judge to grant the dismissals "in the interest of justice."

"Considering the related cases, and the results that were obtained with respect to the other individuals in this case, this is the most just and appropriate thing to do at this time," the judge said in granting the motions.

Last October, Judge Yates acquit-

ted three former Marsh executives of all charges in the case after a nearly 11-month trial. They are Joseph Peiser, former managing director and head of Marsh's global broking excess casualty unit; Greg J. Doherty, former Marsh senior vp and ACE USA local broking coordinator team leader; and Kathleen M. Drake, former Marsh managing director and local broking coordinator team leader.

In November, the judge dismissed criminal charges against three remaining defendants before their trial began. They are former Marsh Senior Vps Thomas T. Green Jr. and William L. McBurnie; and Geri Mandel, former senior vp at Zurich American Insurance Co.

In February 2008, former Marsh Managing Directors William Gilman and Edward J. McNenney were found guilty of an antitrust charge but acquitted of other charges.

They were sentenced to 16 weeks in jail, which has been stayed pending appeal.

Marsh itself did not face any criminal charges in the case, but paid \$850 million in January 2005 to end officials' bid-rigging and fraud probes.

# Parity: Rules clarify law

CONTINUED FROM PAGE 4

someone gets an (explanation of benefits) that says they haven't met their deductible because it doesn't include the mental health care used," then the plan would not be in compliance, according to Ms. Cohen.

Although the parity rules were developed based on the three departments' review of more than 400 public comments received, additional comments still are being sought on such areas as "nonquantitative" treatment limits, such as precertification and utilization review; and how coverage for prescription drugs is determined, such as whether step therapy can be required for prescription drugs used to treat mental health conditions.

Comments are due May 3, 2010.

## Obama urges new financial regulations

President Barack Obama's comments on financial services regulatory reform during his State of the Union address may do little to push the issue forward, some insurance industry observers say.

In his call for tightening regulation of financial institutions, the president last week said he didn't want to punish banks but rather wants to protect the economy.

"A strong, healthy financial market makes it possible for businesses to access credit and create new jobs," he said. "It channels the savings of families into investments that raise incomes. But that can only happen if we guard against the same recklessness that nearly brought down our entire economy."

He noted that the House already has passed its version of financial services reform.

"The lobbyists are trying to kill it," President Obama said. "But we cannot let them win this fight. And if the bill that ends up on my desk does not meet the test of real reform, I will send it back until we get it right. We've got to get it right."

Insurance industry observers greeted the call with some skepticism.

"Will this push reg reform forward? It might," said Ben McKay, senior vp in the Property Casualty Insurers Assn. of America's Washington office. But he noted that the president emphasized health care reform and other matters with which key senators will have to deal, which he said could delay financial services reform.

Those issues, coupled with recent testimony by Treasury Secretary Timothy F. Geithner that "seems indicate that they really have no idea what systemic risk means or how to determine system risk," probably will mean "a lot more hearings before we start plowing ahead with a bill that's going to do potentially more harm than good," Mr. McKay said.

"I don't think his speech greatly impacts the debate one way or the other," said Jimi Grande, senior vp in the National Assn. of Mutual Insurance Cos.' Washington office. "The Senate does not typically acquiesce very easily following the speech. As an aside, to lump all lobbying and all special interests together on the side of evil is ridiculous. Many of us see ourselves as defending Main Street and protecting consumers."

—By Mark A. Hofmann

## Reform: Health care drive on hold as focus shifts to jobs

CONTINUED FROM PAGE 1

Edward Kennedy for 47 years until the Massachusetts Democrat's death last August.

The immediate reaction to the change in the balance of political power by top congressional Democrats, who previously had been racing to win final approval of the reform legislation, was to stop the reform drive, at least temporarily.

After the Massachusetts election, Senate Majority Leader Harry Reid, D-Nev., who had kept the chamber in session in until Christmas Eve to ensure passage of the reform bill before year-end, said there no longer was a rush to act on health care.

"Clearly, the pause button has been hit," said Paul Dennett, senior vp-health care reform with the American Benefits Council in Washington. "Clearly, Sen. Reid is not throwing in the towel, but he also no longer is setting a deadline," Mr. Dennett added.

"Right now, there is a cooling-off period," added Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

That pause, Mr. McArdle and others said, is deliberate as top congressional Democrats try to gauge how much interest remains in Congress for trying to pass comprehensive health care reform legislation.

Already, though, there are signs that other issues, such as boosting the economy and reducing the unemployment rate, is where congressional and presidential legislative interest will be focused in the coming months, with health care reform moving down as a priority.

For example, Sen. Charles Schumer, D-N.Y., said at a news briefing last week that the "three top issues" on the Democratic Party's agenda "are jobs, jobs, jobs." He did not mention health care reform.

Indeed, Senate Democrats this week are expected to unveil and push—for fast action—a jobs bill. The only health care piece expected to be included in the bill would



AP PHOTO

**In last week's State of the Union address, President Barack Obama said he remains committed to reforming the nation's health care system, but the president spent most of the speech concentrating on economic issues.**

extend the federal COBRA premium subsidy for the unemployed and possibly lengthen COBRA eligibility for those who lose their jobs.

Still, observers say it is premature to declare health care reform dead. "While health care reform has been clearly surpassed by the need to get the economy going again, that does not mean it is time to write the obituary for health care reform," Mr. Dennett said.

If fact, observers say top Democrats soon will convene to discuss potential strategies to try to move health care reform legislation forward.

One strategy under discussion by top Democrats is to seek passage of a series of smaller, relatively non-controversial bills that would, among other things, require group plans to continue coverage for employees' adult children living at

home, eliminate annual and lifetime dollar coverage limits, and remove health insurers' limited immunity from antitrust law.

While such measures would be a far cry from the sweeping reform bills previously approved by the House and Senate, they would make "good sound bites" for Democrats to show the public that they scored some victories on health care reform, said Chantel Sheaks, a principal with Buck Consultants L.L.C. in Washington.

"An agreement on a smaller bill is definitely possible," added Mark Ugoretz, president of the ERISA Industry Committee in Washington.

Yet another strategy—mentioned by House Speaker Nancy Pelosi, D-Calif.—would be for the House to pass the Senate reform bill. Then, the Senate would make changes to the Senate bill that House members are seeking, such as a liberalization of a proposed excise tax on the costliest health insurance plans, through a budget reconciliation bill. The appeal of this approach is that only a simple majority is needed to approve such bills.

But there is skepticism on whether such a strategy would be successful. Ms. Sheaks noted that the House barely passed its own reform bill, raising questions whether there would be enough votes to pass the Senate bill.

In addition, observers say it is uncertain whether enough Senate Democrats would favor such an approach.

The bills previously passed by the House and Senate would make huge changes to the nation's health care financing and delivery system. Among other things, the federal government would subsidize health insurance premiums for the lower-income uninsured while employers would be hit with penalties if they did not offer coverage.

In all, the legislation could enable about 30 million of the nation's 46 million uninsured to obtain coverage, according to congressional estimates.

## Health care lull may open way for pension funding relief

**WASHINGTON**—As congressional interest in passing comprehensive health care reform wanes in favor of measures to boost the economy and reduce the unemployment rate, one beneficiary could be legislation to temporarily ease pension plan funding rules.

Lobbyists say legislators are becoming more receptive to easing pension funding requirements. It is likely there will be such relief included in a jobs bill that members of the Senate Finance Committee are developing and could be introduced as soon as this week.

"Pension funding is likely to be in it," said Lynn Dudley, senior vp-policy with the American Benefits Council in Washington, referring to the jobs bill.

"There now is significant interest" in pension funding relief, said Kathryn Ricard, vp-retirement policy with the ERISA Industry Committee in Washington.

That interest, pension lobbyists say, is driv-

en by new congressional understanding of the tie between funding relief and jobs.

"Pension funding relief is the ultimate economic stimulus. It helps to preserve and create jobs," Ms. Dudley said. If employers don't have to contribute as much as current law requires to pension plans battered by the equities markets slump, the money could be used to hire employees, she said.

Provisions that could be included in the jobs bill aren't known yet, but likely would, among other things, give employers more time to make required contributions to their plans. A 2006 law, which is being phased in, requires employers to fund liabilities over a seven-year period.

Meanwhile, the Obama administration has made several recommendations to boost retirement plan coverage and participation. For example, last week it renewed its support of requiring employers that do not offer retire-

ment plans to provide individual retirement accounts to employees who would be automatically enrolled unless they opt out.

Additionally, the administration proposed liberalizing what is known as the savers credit, in which the government provides a tax credit on the first \$2,000 of contributions made by lower-income employees to 401(k) and certain other retirement plans.

Under the proposal, the tax credit would be refundable, meaning that individuals who don't owe taxes could take the amount of the credit in cash.

Experts say the proposal might have difficulty winning approval at a time of huge federal budget deficits. "This would be a significant cost to the government and that would be a real problem," said Mark Warshawsky, director of retirement research at Towers Watson & Co. in Arlington, Va.

—By Jerry Geisel

# 'Tomboyish' worker can pursue bias claim over firing: Court

By **JUDY GREENWALD**

**ST. LOUIS**—A front desk hotel clerk fired allegedly because of her “tomboyish” appearance can pursue employment discrimination and retaliation claims against her former employer, a federal appeals court has ruled.

According to the Jan. 21 decision by the 8th U.S. Circuit Court of Appeals in St. Louis in *Brenna Lewis vs. Heartland Inns of America L.L.C.*, Ms. Lewis was promoted from

nights to days at a hotel operated by Waterloo, Iowa-based Heartland Inns in December 2006.

The hotel’s director of operations first saw her after her promotion and said Ms. Lewis lacked the “Mid-western girl look,” according to court records.

“Lewis prefers to wear loose-fitting clothing, including men’s button-down shirts and slacks,” the appeals court said in its ruling. “She avoids makeup and wore her hair short at the time. Lewis has been

mistaken for a male and referred to as ‘tomboyish.’”

At a January 2007 meeting, Heartland Inn Director of Operations Barbara Cullinan told Ms. Lewis she



would need a second interview to confirm her new post. Ms. Lewis protested that other staff members were not required to have a second interview for the job. She was fired

three days later. She then filed suit, charging sex discrimination and retaliation.

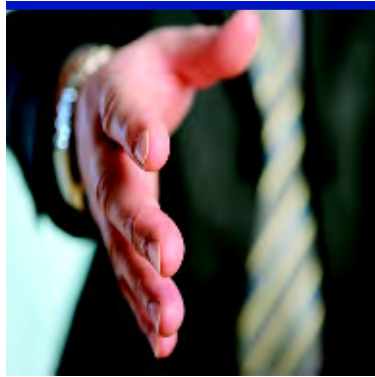
A district court granted summary judgment in Heartland Inn’s favor, but a panel of the appeals court overturned the lower court in a 2-1 ruling.

The appeals court cited the 1989 U.S. Supreme Court decision in *Price Waterhouse vs. Ann Hopkins*, in which it ruled a gender stereotyping claim could be filed under Title VII of the Civil Rights Act of 1964 for

the woman allegedly denied a partnership because she did not act feminine.

Subsequently, other federal appeals courts have upheld Title VII claims based on sex stereotyping, according to the 8th Circuit ruling.

“Cullinan’s criticism of Lewis for lack of ‘prettiness’ and the ‘Mid-western girl look’ before terminating her may also be found by a reasonable fact finder to be evidence of wrongful sex stereotyping,” the appeals court said.



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## News In Brief

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attention to hospital preparedness in catastrophic situations, was settled last week before the case went to a jury. *Althea LaCoste vs. Pendleton Memorial Methodist* was resolved with a confidential agreement. Ms. LaCoste, 73, died hours after Hurricane Katrina struck New Orleans and knocked out power at the hospital, causing life-support machines to stop working. Pendleton Memorial Methodist, which is owned by United Health Services Inc., had two emergency generators, with one on the hospital's roof with a fuel tank. However, flood waters disabled the generator's ground-level fuel pump. Insurance industry professionals and risk managers watched the case closely as it could have increased a hospital's potential liability if it were decided in the LaCoste family's favor. Previously, the Louisiana Supreme Court ruled that the facts of the case were based on general negligence and could not be tried under the state's medical malpractice laws, which would have capped damages at \$500,000.

### SEC encourages climate change disclosures

Public companies should consider disclosing to investors how climate change and related legislation, regulations and treaties may affect their business, the Securities and Exchange Commission recommended. The SEC's "interpretative guidance" does not change existing regulations, but advises that climate change may trigger disclosure requirements.

### Buffett holds option to boost Munich Re stake

Warren Buffett's increased investment in Munich Reinsurance Co. includes options that could push his stake in the German reinsurer past 5%. Munich Re said Mr. Buffett, who controls Berkshire Hathaway Inc., increased his direct and indirect stake in Munich Re. In a statement, Munich Re said Berkshire's stake in the reinsurer is 3.084%, slightly higher than previously announced.

### TV networks settle age bias suits

Seventeen television networks and production studios and seven talent

agencies reached a \$70 million settlement in 19 age discrimination cases brought by 165 TV writers. About two-thirds will be paid by insurers, both sides in the dispute said in a statement. The settlement affecting TV writers 40 and older is subject to approval by the California Superior Court in Los Angeles.

### Hartford increases cat bond to \$180M

A catastrophe bond placed by Hartford Fire Insurance Co., a unit of Hartford Financial Services Group Inc., has been increased to \$180 million due to strong investor demand, market sources confirmed last week. The bond, Foundation Re III Ltd., originally was marketed to investors with a target size of \$100 million. The bond uses a state-weighted Property Claims Services index-based industry loss trigger, according to Standard & Poor's Corp., which rated the notes BB+.

### China's reports rise in insurance revenues

China's insurance premiums grew 13.8% in 2009, to 1.11 trillion yuan (\$163 billion), the China Insurance Regulatory Commission's Web site reported. 2009 was the first time that insurance premiums reached the 1 trillion yuan mark, CIRC said.

### England flood claims top \$330 million

Deadly floods that hit in northern England in November have cost insurers about £206 million (\$331.9 million), the Assn. of British Insurers said. The London-based ABI said about 60% was paid on commercial claims.

### Hannover Re ups natural cat issue

Hannover Reinsurance Co. has boosted to \$329 million the amount of protection against natural catastrophe losses provided by its K6 transaction. Institutional investor demand easily outstripped supply, which shows that the market for alternative risk transfer has recovered after contracting during the financial crisis, the reinsurer said in a statement. The K6 securitization portfolio consists of nonproportional reinsurance treaties in the property catastrophe, aviation and marine lines.

### Noted

Leslie Nylund, former national partner and chief placement officer of Willis North America, has joined rival brokerage **Insurance Office of America Inc.** as president of its newly established Northeast division in New York.



AP PHOTO

Circumstances surrounding payments by AIG to counterparties "created an air of suspicion and distrust," Rep. Edolphus Towns, D-N.Y., said last week.

## AIG: Congress focuses ire on officials aiding bailout

CONTINUED FROM PAGE 1

while other financial institutions and individuals suffered the fallout from the financial meltdown without aid. Compounding the anger was federal officials' refusal to disclose the identities of the counterparties until long after the government had taken virtual control of AIG and bolstered it with billions of taxpayer dollars.

"In effect, the taxpayers were propping up the hollow shell of AIG by stuffing it with money, and the rest of Wall Street came by and looted the corpse," said panel chairman Rep. Edolphus Towns, D-N.Y. "The circumstances surrounding the payments to the counterparties has created an air of suspicion and distrust among the American people, starting with the New York Fed's initial refusal to name the counterparties," he said, referring to the Federal Reserve Bank of New York.

"The New York Fed argued that disclosing the counterparties would somehow injure AIG," Rep. Towns said. "In fact, when the information was finally released under pressure from Congress, nothing happened. It had absolutely no effect on AIG's business or financial condition."

Treasury Secretary Timothy F. Geithner served as the president of the New York Fed at the time of the 2008 rescue. He repeatedly told lawmakers that he felt he had no choice other than to take the steps he did.

"The American people would not have been better off if we had let AIG default," Mr. Geithner said. But by not letting AIG default, the government lost leverage with AIG's counterparties, he said.

Throughout his oral and prepared testimony, Mr. Geithner con-

**'The decision to rescue AIG was correct and I strongly supported it. An AIG failure would have been devastating to the financial system and the economy.'**

Former Treasury Secretary Henry Paulson

tinually stressed his belief that AIG had not been subject to adequate regulation. As the holding company's liquidity problems became clear in September 2008, "neither AIG's management nor any of AIG's principal supervisors—including the state insurance commissioners and (the Office of Thrift Supervision)—understood the magnitude of risks AIG had taken or the threat that AIG posed to the entire financial system," he said.

He called the decision to rescue AIG "exceptionally difficult and

enormously consequential."

But he also repeatedly told the committee members that he played no role in determining what would be disclosed about AIG's counterparties and what they received. He said he recused himself from the matter as soon as President Barack Obama nominated him as Treasury secretary in November 2008.

That did not impress all members of the committee. "We're not getting the whole story—we're getting a lame story," said Rep. John Mica, R-Fla. He called Mr. Geithner "incompetent" and asked, "Why shouldn't you resign?"

Mr. Geithner came under fire from members of the president's political party as well.

Rep. Stephen Lynch, D-Mass., said Mr. Geithner "had enough opportunity" to force a better deal for taxpayers with the counterparties. "It just stinks to high heaven what happened here," he said.

But Mr. Geithner received some cover from his predecessor, former Treasury Secretary Henry Paulson.

"The decision to rescue AIG was correct and I strongly supported it," Mr. Paulson said. "An AIG failure would have been devastating to the financial system and the economy."

Had AIG been permitted to fail, "I believe it would have taken down our whole financial system," Mr. Paulson said. The result could have been a 25% unemployment rate, he said.

He stressed that he played no role in decisions made about the counterparty payments or public disclosures of them. Like Mr. Geithner, he called for more comprehensive financial services regulation.

"The fundamental problem lies in not how we intervened, but in why we needed to intervene," Mr. Paulson said. "We need to modernize our regulatory system by creating a system risk regulator and resolution authority, so any large firm that fails can be liquidated without destabilizing the system."

Another witness, Neil Barofsky, the special inspector general for the Troubled Asset Relief Program, made it quite clear that the counterparty disclosure issue is not going away. He said his office is investigating the possibility of misconduct regarding disclosure of the counterparty payments and is conducting a separate investigation on the extent of the New York Fed's cooperation with his office in a previous audit of the factors involved in the counterparty payments.

In a late development, AIG on Friday made public details of its counterparty contracts in a Securities and Exchange Commission filing, at <http://www.sec.gov/Archives/edgar/data/5272/000095012310006481/y81800bexv10w1.htm>.

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## JUDGE CALLS TIMEOUT AS SAINTSMANIA TAKES HOLD

Just how seriously do the people of New Orleans take their beloved Saints' first trip to the Super Bowl to face the Indianapolis Colts?

An action last week by Civil District Court Judge Michael G. Bagneris gives a pretty good indication.

The jury trial in *Dano Paul Becnel vs. Northrop Grumman Ship Systems Inc. et al.*—a lawsuit involving asbestos exposure—had been slated to begin Feb. 1. But Judge Bagneris delayed the start of the trial until Tuesday, Feb. 9—two days after Super Bowl XLIV.

"Considering the historic victory of the New Orleans Saints, the court finds that the trial will not be able to proceed as originally scheduled," Judge Bagneris wrote in his order delaying the start of the trial.

"The court takes judicial notice that Saintsmania permeates the City of New Orleans. Many prospective jurors for the Parish of Orleans, several attorneys involved in this litigation and court personnel plan on traveling to the promised land—the Super Bowl in Miami, Florida. The court recognizes that this pilgrimage enhances the chances of the Who Dat Nation to acquire the long sought-after Holy Grail—the Vince Lombardi trophy," the judge wrote.

It's hard to argue with Judge Bagneris' action. After all, if the Saints had to wait 43 years since their founding to reach Super Bowl, waiting eight days on a judicial proceeding no doubt can be justified on many grounds.

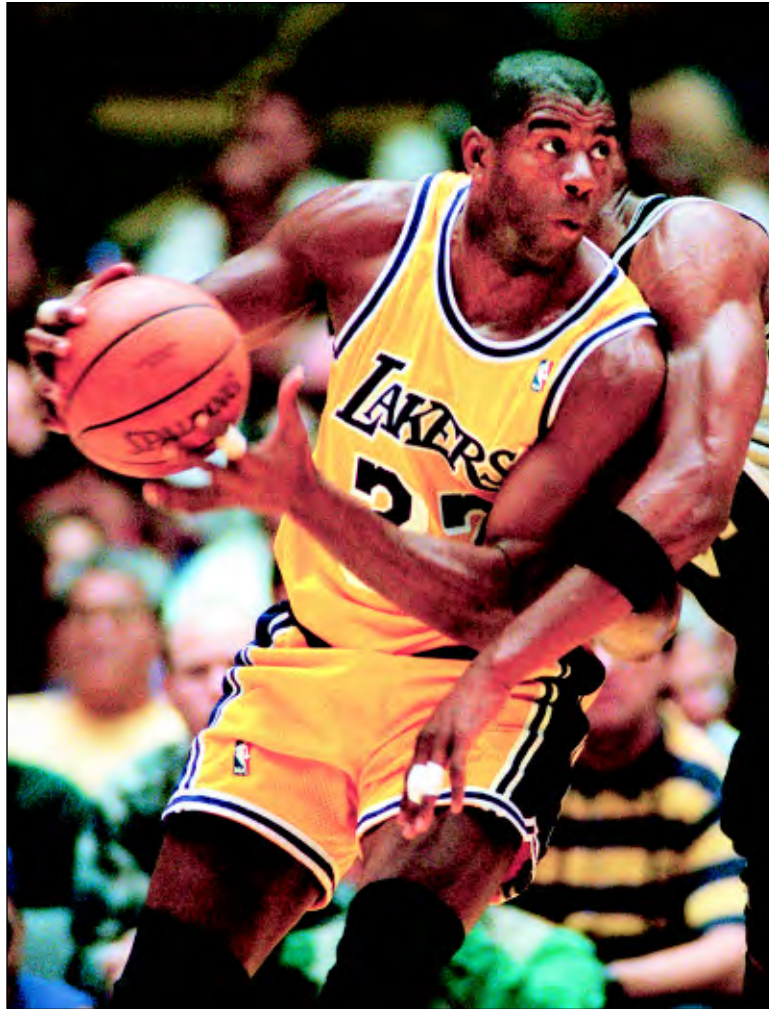


AP PHOTO

An avid Saints fan girded for battle earlier this month when New Orleans advanced to the Super Bowl. The distraction of the event prompted a judge to delay an asbestos trial.

# Business Insurance END PAGE

Contributing: Roberto Cenicerros, Mark A. Hofmann, Matt Scroggins



AP PHOTO

NBA great Magic Johnson is teaming up with Aon Cornerstone Innovative Solutions to help promote the development of minority-owned businesses.

## Aon Cornerstone believes in Magic

The greatest point guard in NBA history is now providing another kind of assist.

Magic Johnson Enterprises, a company headed by Los Angeles Lakers legend Earvin "Magic" Johnson, is teaming with Aon Corp. unit Aon Cornerstone Innovative Solutions to help promote the development of minority-owned businesses, including educating large companies about the value of partnering with such businesses.

"As we help clients achieve their supplier diversity goals by providing them with solutions to a wide range of business challenges, we also create growth opportunities for our (minority business enterprise) associates to enable them to create jobs and improve their profitability and sustainability," Leonard McLaughlin, Chicago-based president of Aon Cornerstone Innovative Solutions, said in a statement.

Through the partnership, the two organizations also will be able to help small, minority-owned businesses grow, offering them access to Aon's full range of expertise.

"The last component that we really have got to bring to urban America is...how to build wealth, how to grow your business," Mr. Johnson, who is chairman and CEO of MJE, said during a press briefing last week in Chicago.

Mr. McLaughlin said the relationship will "be a game-changer in the financial services industry," which traditionally hasn't done "a good job" in partnering with minority-owned businesses. "We're going to change the way Fortune 2000 companies look at such partnerships," eliminating the perception that MBEs lack the scope and scale to deliver needed services. "We're opening doors."

Mr. Johnson emphasized the need for minority businesses to "overdeliver." The Aon Cornerstone/MJE partnership, he said, will help minority-owned businesses answer the question, "How can I bring added value?" to their business relationships.

A video of the presentation is available online at [www.businessinsurance.com](http://www.businessinsurance.com).



The US Airways jet that crashed into the Hudson River last year is up for sale.

NYT PHOTOS

## BIDDING OPENS TO OWN PIECE OF THE 'MIRACLE'

Interested in owning a one-of-a-kind piece of aviation history? If so, there's an item that Chartis Inc. plans to auction off as salvage.

The item in question is the Airbus A320 flown by Captain Chesley "Sully" Sullenberger II when he made an emergency landing in the Hudson River on Jan. 15, 2009, in which all survived and came to be known as the "Miracle on the Hudson."

Chartis' parent—American International Group Inc.—was the lead insurer on US Airways Flight 1549, *Business Insurance* reported following the crash caused when the plane struck a flock of birds shortly after takeoff from New York's La Guardia Airport.

Market sources told *BI* the hull was worth about \$40 million and a water landing likely rendered the accident a total loss. A spokeswoman for Chartis confirmed the plan to auction the plane, but declined to give further details.

The online auction must be popular. "Due to the volume of interest...we will provide additional and necessary information in the near future so that all interested parties can be accommodated," Chartis' Web site said last week. How much the plane brings won't be known until the bidding wraps, but for a deep-pocketed aviation buff, even millions of dollars for the symbol of a miraculous landing and rescue might seem a bargain.

## INSURERS WEED OUT BOGUS Rx CLAIMS

A couple of workers comp claimants looking for insurance payouts to fund medical marijuana prescriptions have found it hard to score.

An independent medical evaluator ruled against providing medical marijuana for one California claimant, according to the State Compensation Insurance Fund, the insurer on the claim.

San Francisco-based SCIF declined to provide details about the claim, but a spokeswoman said the judge hearing the case suggested an independent medical evaluator determine whether the insurer should pay for pot.

Both sides agreed. But SCIF avoided taking a hit when the evaluator ruled against providing marijuana.

The spokeswoman asked around SCIF whether any other marijuana cases had cropped up. The insurer's utilization review department and others hadn't heard of any instances.

It was an unusual case, the spokeswoman said. Normally, such a request would go through the utilization review department, which tends to make decisions by considering evidence-based medicine.

Canadian Robin Hove also reportedly tried to get his pot paid for, saying it was necessary to treat the traumatic stress he suffers ever since he fought a thief while working as a security guard.

But his claim went up in smoke when a Saskatchewan agency ruled there's not enough research into medical benefits from marijuana.



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