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REINSURANCE, FRONTING COSTS MAY INCREASE FOR CAPTIVES / PAGE 4

AGENT AND BROKER M&A DEALS PICK UP AFTER LULL / PAGE 4

inBrief

Judge OKs \$725M AIG securities settlement

A federal judge on Friday approved a \$725 million settlement of a securities class action lawsuit that the state of Ohio brought against American International Group Inc. The settlement of the suit led by the Ohio Public Employees Retirement System, the State Teachers Retirement System of Ohio, and the Ohio Police and Fire Pension Fund originally was announced in 2010. The plaintiffs had alleged that anti-competitive market division, accounting violations and stock price manipulation misled them about AIG's stock value.

House votes to repeal health reform measure

The U.S. House of Representatives has approved legislation

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SPOTLIGHT

INDUSTRY DEEP DIVE: MANUFACTURING

Business interruption losses boost global supply chain concerns; factory closures expand risks; quality control helps improve safety records; new laws boost product liability exposures. **PAGE 9**

PROPERTY/CASUALTY INSURANCE

Prices rising—but will it last?

Despite rate hikes, no hard market seen

By **MARK A. HOFMANN**

Signs are increasing that the commercial property/casualty insurance market is definitely turning, but it's by no means a hard market yet, according to industry observers.

Prices have been rising for several commercial insurance lines in recent months, and insurers and reinsurers alike have reported that they received higher prices during last year's fourth quarter.

Composite market reports issued by Dallas-based electronic insurance exchange MarketScout, the Washington-based Council of Insurance Agents & Brokers and brokerages all indicate a pricing change in the market.

For example, MarketScout reported that commercial insurance rates increased an average of

1% in November and December 2011 compared with a year earlier. The council reported that commercial insurance rates rose 2.8% during the fourth quarter. In addition, among other broker reports, New York-based Marsh Inc. projected rates would continue increasing this year.

But questions remain, such as how much insurance pricing will harden and whether the price increases can be sustained.

"We called it back in November basically flat and starting to turn, and every indication we see is that is continuing," said Richard Kerr, CEO of MarketScout.

"It is not going to be a really fast, sharp turn,"

Mr. Kerr said.

"We saw in the fourth quarter certainly an indication that the market is inching up into positive territory," said Coletta Kemper, vp-industry affairs for the council.

See **TURN** page 19

2.8%

CIAB reported that commercial insurance rates rose 2.8% during the fourth quarter of 2011.

PENSION BENEFITS



The termination of American Airlines' pension plans could increase the PBGC's \$26 billion deficit by nearly one-third.

PBGC opposes termination of American Airlines plans

Loss could boost other employers' premiums

By **JERRY GEISEL**

FORT WORTH, Texas—American Airlines Inc.'s move to terminate its pension plans could launch a legal battle over the airline's plan to shift billions in unfunded benefits to the financially ailing Pension Benefit Guaranty Corp. and could affect the premiums that employers pay to

the PBGC.

Ending months of speculation triggered in November by the Chapter 11 bankruptcy reorganization filing of parent AMR Corp., American Airlines said last week that it will seek bankruptcy court approval to terminate its massively under-

See **AMERICAN** page 17

CLIMATE CHANGE

Virginia high court to rehear climate coverage case

By **RODD ZOLKOS** and **JOANNE WOJCIK**

RICHMOND, Va.—The Virginia Supreme Court's decision to rehear a climate change suit has cast uncertainty on what little

judicial guidance exists on the issue of insurance coverage in climate change cases.

The Virginia Supreme Court said last week that it will reconsider its earlier decision to uphold a lower court's ruling that Steadfast

climate change suit.

The court decided last month to set aside its September judgment upholding the lower court verdict and said it would hear oral arguments on the rehearing when its next session begins Feb. 27.

The case is seen as significant, as it is the first involving insurance coverage for a climate change liability suit.

Attorneys representing AES and Steadfast declined to comment.

However, lawyers familiar with climate change litigation were somewhat surprised by the court's decision to revisit the case, having assumed it was concluded when

WHAT HAPPENED

- In a rare move, the Virginia Supreme Court will reconsider its ruling in *AES vs. Steadfast*.

WHAT'S NEXT

- The court is expected to overturn or at least modify its earlier decision.

Insurance Co. has no obligation to indemnify Arlington, Va.-based energy company AES Corp. in a

See **AES** page 21

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1. Brown & Brown CEO J. Powell Brown takes leave of absence
2. American Airlines wants to terminate pension plans
3. Temporary employees can't be excluded from comp policy
4. ACE's net income falls 49% in 2011
5. Top 5 workplace injuries cause 72% of direct comp costs
6. Liability rates for health care organizations could rise in 2012
7. EEOC sues utility company in firing of Jehovah's Witness
8. Hylant announces corporate restructuring strategy
9. U.S. commercial insurance rates expected to rise: Marsh
10. ILW market to grow by as much as 25% in 2012: Willis Re

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Business Insurance (ISSN 0007-6864) Vol. 46, No. 6, is published weekly, except for combined issues the first and second week of July, the fourth and fifth week of August and no issue the last week of December, by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Email address change to customerservice@businessinsurance.com or mail to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912, \$5 a copy and \$125 a year in the U.S. \$130 in Canada and Mexico (includes GST). All other countries, \$230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in U.S.A. Copyright © 2011 by Crain Communications Inc.

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AGENTS & BROKERS

Broker BB&T to buy Crump operations

\$570M deal would boost wholesale business

By JUDY GREENWALD
and MARK A. HOFMANN

ROSELAND, N.J.—BB&T Corp.'s planned acquisition of the life and property/casualty operating divisions of Roseland, N.J.-based Crump Group Inc. for \$570 million is a solid strategic move that will strengthen BB&T's wholesale operations significantly, analysts say.

The Winston-Salem, N.C.-based financial services firm said it expects the deal to add about \$300 million in annual revenue to its Raleigh, N.C.-based BB&T Insurance Services Inc. unit. The acquisition, which requires regulatory approval, is expected to close during the first quarter, BB&T said last week in a statement.

The \$570 million purchase does not include Ascensus Inc., Crump's retirement services business. Crump was No. 4 in *Business Insurance's* 2011 ranking of the top property/casualty insurance wholesalers. BB&T was No. 7 in *Business Insurance's* 2011 ranking of the world's largest brokers.

"We've known and respected Crump for years and consider them an industry leader," H. Wade Reece, BB&T Insur-

ance chairman and CEO, said in a statement. "This is an opportunity for BB&T to become a significant and strategic player in the high-growth, high-margin life insurance distribution business and expand our property and casualty business."

John Howard, president and CEO of Crump, will join BB&T Insurance in a senior leadership position and report to Mr. Reece, BB&T said. BB&T's wholesale insurance operations include property/casualty broker CRC Insurance Services, managing general agent Southern Cross TAPCO Underwriters and managing general underwriter AmRisc L.L.P.

According to information distributed to investors when the deal was announced last Friday, BB&T's 2011 commercial insurance business would decrease to 30% of its total business, from 38%, had it been combined with Crump's pro forma revenues. Its 2011 wholesale broker business would increase to 14% from 12%, and total insurance revenue would increase to \$1.33 billion on a pro forma basis from \$1.04 billion.

Commenting on the deal, analyst Meyer Shields, director at Stifel Nicolaus & Co. Inc. in Baltimore, said, "There's a lot of pressure" on the wholesale business because "the bigger brokers are expanding, and they're not making much business available." By



Mr. Reece

consolidating the remaining wholesale brokers, "they have more leverage in the future wholesale market."

Jim Campbell, a principal with Atlanta-based Reagan Consulting Inc., said the deal "makes a lot of strategic sense." Among the reasons, said Mr. Campbell, is it "broadens or expands (BB&T's) wholesaling capabilities."

The acquisition will "add to their (property/casualty) wholesaling capabilities, but of course also give them a pretty good wholesaling capability on the life side," which makes the acquisition a "meaningful diversification for them," Mr. Campbell said.

Erik Oja, equity banking analyst at Standard & Poor's Corp. in New York, said the deal is "in line with BB&T's long-stated aim of building up its insurance revenues."

"They're focusing on insurance as a growth driver," he said.

S&P said Friday it is maintaining a hold recommendation on BB&T Corp. shares.

INTERNATIONAL

Will Europe woes hit U.S. insurers?

Impact of eurozone debt crisis hinges on where problems spread

By MARK A. HOFMANN

Observers on both sides of the Atlantic say the eurozone sovereign debt problems are not likely to have a direct effect on U.S. insurers, at least not immediately.

But the fact that a direct impact is unlikely doesn't mean U.S. insurers should not be concerned about the developments. For example, a flight from European government bonds could increase demand for U.S. Treasury bonds and drive already-low interest rates even lower, thus reducing returns on U.S. insurers' investment portfolios. And insurers could come under greater regulatory scrutiny if they suffer investment losses.

Ratings agencies such as A.M. Best Co. Inc. have lowered their ratings on some European insurers as a result of the eurozone's financial crises. But U.S. insurers have been spared such negative impacts.

"There's not a lot of direct investment, so there's not a lot of direct exposure," said Howard Mills, director and chief adviser of Deloitte Services L.P.'s insurance industry group in New York. "But there is a lot of concern, because if the eurozone crisis deepens, that could have an impact on the global economy."

Mr. Mills said if insurers suffer investment losses as a result of the continuing eurozone crisis, they could finally start to deplete their capital—and with an enhanced regulatory focus on capital, "that could bring some regulatory scrutiny."

Graham Fulcher, a managing director of Towers Watson & Co. in London, said he thought any impact would be indirect. He noted that there have been ratings downgrades on some European insurers, but "so far they've not particularly impacted the reinsurance industry." He also said last year's unusually heavy catastrophe activity has had a "much bigger impact" on reinsurers. But if the sovereign debt crisis spreads to France and Italy, "you could see some impact on some of the reinsurers."

Mr. Fulcher said a bigger impact would occur if people worried about eurozone sovereign debt seek a safe haven by investing in U.S. Treasury instruments. That would drive down yields, further cutting into U.S. insurers' investment income. "Realistically, property/casualty insurers will have to make underwriting profits," he said.

"We don't see U.S. companies investing heavily in European bonds, so we don't see the impact from an investment standpoint on the U.S. companies from what they hold," said John Andre, group vp at Best in Oldwick, N.J.

"I don't believe that the eurozone woes will have a meaningful impact on U.S. insurance markets," Robert Hartwig, president of the New York-based Insurance Information Institute Inc., said in an email.

"By meaningful, I mean that I don't believe there will be a discernible impact on capacity, price, competition or terms/conditions of coverage," said Mr. Hartwig. "I include the U.S. subsidiaries of major European companies that operate in the U.S. in this assessment."

But he said there could be some impact. For example, U.S. insurers and reinsurers that operate in Europe "could well see revenues fall as much of the eurozone descends into recession."

Mr. Hartwig noted that U.S. insurers hold very little European sovereign debt and even less from countries such as Greece. "Most would hold none at all," he said.

Some insurers could be indirectly exposed through holdings of shares in banks that are exposed to the problems in Europe, but this exposure would not be worrisome, said Mr. Hartwig. "Other considerations—a falling euro—could diminish the dollar value of profits repatriated to the U.S., but that risk is manageable via hedging strategies."

WORKERS COMPENSATION

Comp covers temporary worker: Court

By SHEENA HARRISON

AUSTIN, Texas—A temporary employee who died on the job can't be excluded from an employer's workers compensation policy, the Texas Supreme Court ruled in reversing a \$2.7 million liability judgment for the worker's family.

In a unanimous decision, the state's high court said companies that provide workers comp coverage generally cannot "split (their) workforce" by excluding different classes of workers from their policies.

Therefore, workers comp was the exclusive remedy in the death of Rafael Casados, who was killed in 2005 while working at a grain storage facility owned by Port Elevator-Brownsville L.L.C., the court said.

"Because Port Elevator had a workers compensation policy, Casados was an employee, he suffered a work-related injury, and (a) jury failed to find Port Elevator grossly negligent, the Texas Workers' Compensation Act provides that the exclusive remedy is against the employer's insurer—not the employer," the ruling reads.

Mr. Casados worked for staffing agency Staff Force Inc., which placed him in a job with Port Elevator. He suffered a fatal work injury during his

WHAT HAPPENED

- The Texas high court overturned a \$2.7 million liability judgment, ruling a temporary employee is covered by workers comp.

WHAT'S NEXT

- Texas Mutual is required to cover temporary Port Elevator workers even if the company did not pay premiums specifically for temporary employees.

third day at work, court records show.

Staff Force's workers comp insurer, Dallas Fire Insurance Co., covered burial expenses for Mr. Casados. But Port Elevator's insurer, Texas Mutual Insurance Co., denied workers comp coverage for Mr. Casados because of his employment with Staff Force. Soon after, his family sued Port Elevator for negligence and gross negligence.

Port Elevator argued that workers comp should be the exclusive remedy for Mr. Casados' family, according to court records. The family contended that Port Elevator did not pay workers

comp premiums for temporary workers, and noted that Texas Mutual denied coverage for Mr. Casados.

A jury awarded \$2.7 million to his family and the man's estate after finding that Port Elevator was negligent in his death, but not grossly negligent. A Texas Court of Appeals upheld that decision in 2010. However, the Texas Supreme Court reversed the ruling. It said Mr. Casados was considered a covered employee of Port Elevator, despite his temporary employment status.

Further, the high court said that Texas Mutual was required to cover Port Elevator workers, even if the company didn't pay workers comp premiums specifically for temporary hires.

"If Port Elevator's policy had set out certain premiums solely for temporary workers and Port Elevator had not paid those premiums, Casados would still have been covered under the policy and the failure to pay premiums would be an issue between Port Elevator and Texas Mutual," the decision said.

The court noted that Texas' exclusive remedy provision can be exempt only when an employer is found grossly negligent for a worker's death. However, the previous jury ruling showed that Port Elevator was not grossly negligent in Mr. Casados' case, the ruling said.

CAPTIVES

Captive owners may face increased costs in 2012

Reinsurers expected to demand rate hikes after tough year

By **RODD ZOLKOS**

MIAMI—A changing insurance and reinsurance market means captive insurance company owners should be prepared for higher prices for fronting and reinsurance coverage as well as the possibility of capacity becoming harder to find.

Meanwhile, buyers will need to step up their own games in seeking the most favorable contracts possible and closely scrutinizing the security of fronting and reinsurance coverage providers, according to two speakers providing a fronting and reinsurance market update at the World Captive Forum, held last week at the Doral Golf Resort & Spa in Miami.

Brian First, executive vp and chief underwriting officer at SPAR-TA Insurance Co. in Hartford, Conn., noted that 2011 was marked by considerable discussion of pressure on insurance industry fundamentals fueled by such factors as an ongoing soft market, poor investment returns and a weak economy depressing insurance demand.

On top of that, prior-year reserve releases that had bolstered many insurers' results in recent years are now largely tapped out.

Meanwhile, there were \$100 bil-

lion to \$120 billion in insured catastrophe losses in 2011. "More importantly," Mr. First said, the average number of catastrophes was up 30% over the past three years compared with the 30-year average, while average losses over the past three years were three times the 30-year trend.

The outlook for 2012, he said, shows more of the same.

"The cookie jar is basically empty. The well is dry on reserve

30%

The average number of catastrophes in 2011 was up 30% over the past three years compared with the 30-year average, while average losses over the past three years were three times the 30-year trend.

releases," Mr. First said. "The warning signs in the industry from 2011 have become emergency flashers."

The result is that, in 2012, insurers and reinsurers are likely to demonstrate an increased focus on underwriting profitability and risk selection, as well as opportunistic rate increases and book management, Mr. First said. Insurers will be willing to walk away from business where they can't get adequate price, he said, while

noncore business units and products will be closely scrutinized.

There also are likely to be attempts by insurers and reinsurers to limit capacity and address concentrations of risk and tighten terms and conditions, and there will be less creativity and customization of products.

Mr. First noted that the market is generally firming now with increases of zero to 5%, and 2012 events could lead to broader market hardening with rates increasing 10% or more and a lack of available coverage.

"If you're a good account and you're flat, that's probably as good as you can expect as we go through 2012," he said.

He suggested that captives, as well as other insureds, prepare for market disruption, with price increases in primary and excess layers and revised terms and conditions. In addition to price increases, fronting customers also are likely to see more restrictive collateral terms and collateral releases.

With the market changing, companies without captives should consider forming them, he said. "It's the time to dust off your captive proposal if you already have one," Mr. First said. Companies that already have captives, he said, "should be insulated from a lot of the factors I talked about, but you won't be isolated from them."

Discussing some of 2011's

See **OUTLOOK** page 20

Plumeri stresses value of captives

MIAMI—Captive insurance is an important tool for companies seeking business resilience, perhaps the most important attribute for success in today's environment, Joseph J. Plumeri, chairman and CEO of Willis Group Holdings P.L.C., said last week.

Giving Tuesday's keynote presentation at the 2012 World Captive Forum at the Doral Golf Resort & Spa in Miami, Mr. Plumeri said, "I believe the whole world today is about anticipation vs. resilience," adding that he considers resilience the more valuable attribute because "I don't believe anything is predictable."

"Resilience acknowledges that the future is unknowable," Mr. Plumeri said. Resilience also relies on decentralized decision-making, and builds organizations and allows them to bounce back from adversity, he said.

Captives, Mr. Plumeri said, are an example of anticipation and resilience, beginning as an exercise in anticipation as risk managers looked for an alternative to traditional insurance markets, then creating business resilience as they became a tool for their parent companies to manage an unreliable insurance market and respond to changing exposures.



Mr. Plumeri

The Willis chairman said captives are more important than ever in today's business environment, because the risks businesses face are changing not only in severity and frequency but also in kind. In a world of unknowable emerging risks, a captive allows companies to control their own destiny and deal with changing market forces, Mr. Plumeri said.

Saying that "resiliency is about managing extreme events," Mr. Plumeri noted that it's a more essential attribute than ever to succeed in an "age of black swans." Citing exposures such as loss of customers, regulatory investigations, reputational risk, and talent and skill shortages, he noted those risks are "all difficult or impossible to insure, which demands that you be resilient."

In Wednesday's keynote, Clyde Wardle, senior emerging markets foreign exchange strategist at HSBC Securities (USA) Inc. in New York, offered economic observations.

In Europe, he predicted a solution to the euro crisis. "We do think that, ultimately, Europe will find a solution," Mr. Wardle said. "History has shown the will to solve such crises and there's a recognition that the alternative is worse."

In the U.S., "Since October we've seen generally upside surprises with U.S. data," he said. "That being said, we haven't really seen any improved expectations in terms of growth for this year."

Geopolitical risks remain "important to monitor," he said. And while emerging market countries aren't immune to economic stresses, "Their fiscal balances are in much better shape, so they have room to pump prime their economies," Mr. Wardle said.

—By Rodd Zolkos

MERGERS & ACQUISITIONS

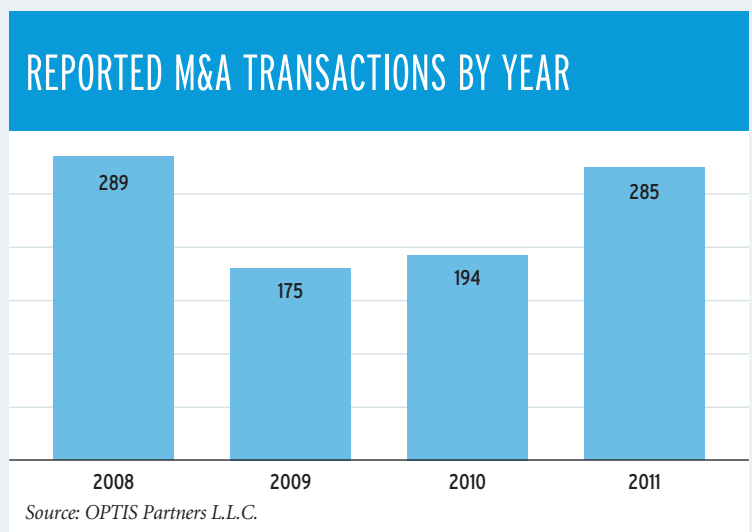
Broker acquisitions pick up after lull as economy improves

By **Timothy J. Cunningham**

Merger and acquisition activity among insurance agents and brokers regained momentum in 2011 with 285 announced transactions.

That is nearly identical to the 290 announced agent-broker M&As in 2008 and an increase of approximately 100 compared with 2009 and 2010 (see related chart).

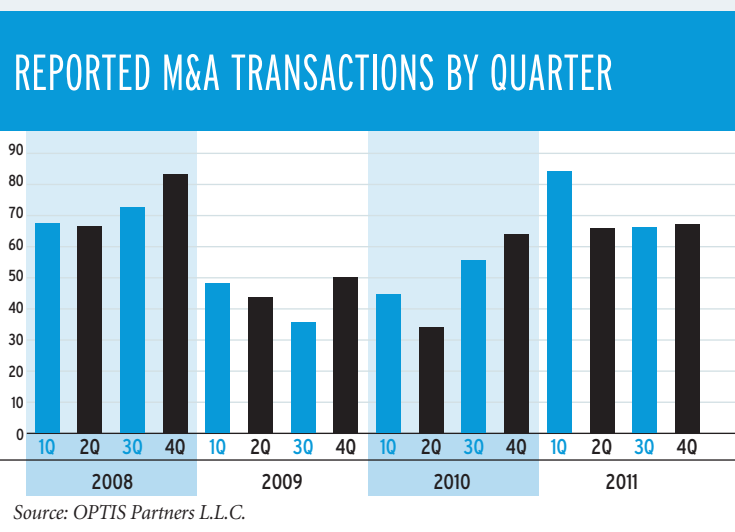
The perfect storm of events—the collapse of the economy coupled with the prolonged soft property/casualty market—had a profound effect in reducing the number of transactions in 2009 and 2010. The previously active buyer group saw an uncertain landscape and had a need to preserve its capital and other resources while many sellers were reluctant to enter into a transaction in a climate that depressed broker and



agent net values.

Despite the overall increase, trends differed among the respective groups buying agents and brokers, such as:

- The private broker buyer group maintained a relatively steady pace year over year and quarter over quarter over the past several years, albeit with some



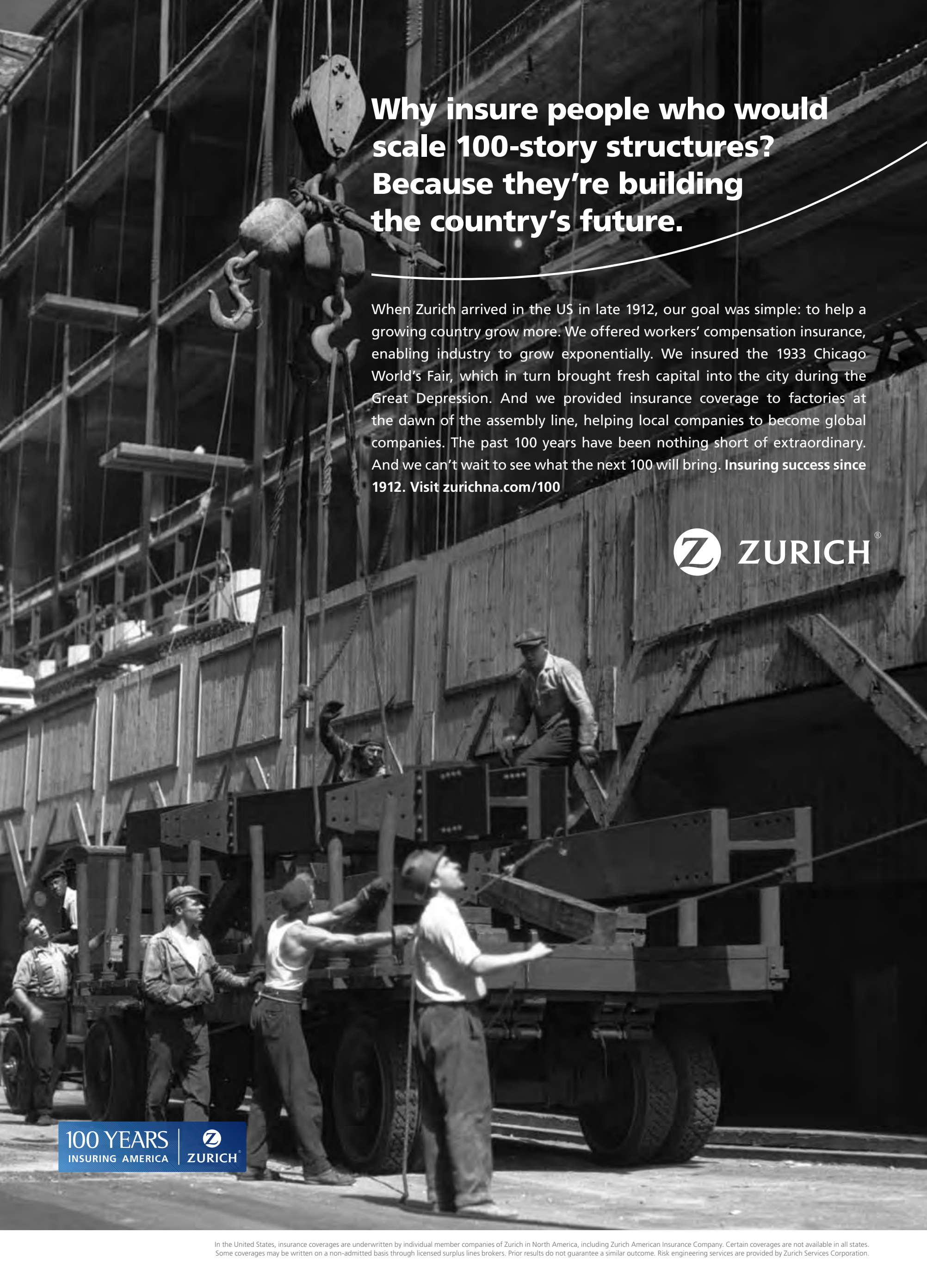
modest pullback in 2009 and 2010 (see chart page 18).

- The public broker group pulled back significantly in 2009 and remained somewhat cautious

in early 2010.

- Bank-owned agents or brokers broadly mimicked the public

See **TRANSACTIONS** page 18



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Turning patients into care consumers

High-tech tools allow comparison of treatment costs

By JOANNE WOJCIK

Although more midsize employers are encouraging their employees to become more conscientious health care consumers, very little information about the price of medical services was publicly available until recently.

But thanks to entrepreneurial endeavors involving large employers, online tools that provide price information about medical services ranging from simple blood tests to complex elective surgical procedures are now available to employees of middle-market companies with the click of a mouse.

While most of these new tools are accessible online, Lexington, Ky.-based IF Technologies Inc. in January introduced an iPhone application that enables users to compare prices of medical procedures while they are sitting in their doctors' offices.

The lack of price information in health care has been a major driver of ballooning health care costs in this country, medical cost containment experts say. Managed care had made pricing of individual medical services unknown to health care consumers. Providers participating in health maintenance organizations had historically been paid on a "capitated"—or per-head-per-month—basis, while insurers' negotiated discounts off fees charged by doctors participating in their preferred provider networks were rarely disclosed to insureds. Moreover, because health insurance has been heavily subsidized by employers, employees have had little incentive to shop around for medical care.

But as many employers switch to health plans that require patients to pay more out of their own pockets, demand for medical pricing information is increasing. In response, a new crop of entrepreneurial companies is sprouting up to provide price transparency tools to self-insured employers.

"The consumerism movement is finally getting wired," said Cyndy Nayer, president, CEO and founder of the Center for Health Value Innovation in St. Louis, who believes pricing transparency

in health care will lower costs by fostering competition. "This is one of the best disruptive technologies."

Castlight Health Inc., a San Francisco start-up launched in 2008, offers Internet-based tools that enable comparison shopping for health care in much the same way consumers can shop for airline tickets on travel websites.

Since its successful trial run

'The consumerism movement is finally getting wired.'

Cyndy Nayer,
Center for Health Value Innovation

with Oakland, Calif.-based Safeway Inc., whose 200,000 employees served as a test sample, Castlight is now marketing its medical price transparency tools to self-funded employers of all sizes, most recently initiating a push into the middle market, according to Dr. Dena Bravata, chief medical officer.

"We see enormous price variation across geographic (areas),

across health plans and by procedure," she said. For example, a standard colonoscopy in the San Francisco Bay area ranges from \$400 to \$4,700, while a lipid panel can range from \$10 to \$140, she said.

In addition to pricing information, Castlight and IF Technologies provide external links to nationally recognized, industry-accepted sources of quality information, such as the Medicare Hospital Compare site for hospitals and state medical licensure boards for physicians.

"In the absence of quality information, there is a notion that price is a proxy for quality," Dr. Bravata said. "But when both cost and quality information are provided, patients see that there is no correlation between high- and low-cost providers and their perceived quality." After patients see the price and quality variants, they often opt for lower-cost providers, yielding savings for themselves and for their employers, she said.

"We're seeing a 3% to 7% decrease in overall medical spending," she said.

Unlike Castlight, which initially focused on the large-employer market, IF Technologies intro-

duced HealtheReports specifically as a solution for midsize employers, according to Jim Freedman, IF Technologies co-founder and CEO. HealtheReports is available to self-funded employers with 1,000 or fewer employees via their preferred provider organizations and health insurers, which provide the claims data that IF Technologies uses to obtain pricing information on common procedures.

"There's not that many employers in the United States with 200,000 employees like Safeway. So our customer is the PPO network or the insurance carrier," Mr. Freedman said.

While most employees will choose in-network providers for which their out-of-pocket costs are lower, many employees don't know there is still "a 300% to 400% price discrepancy for the same procedure among in-network providers," Mr. Freedman said. "This is relevant information to the plan member. When an employee acts on that information and selects a lower-cost provider, they save and their employer saves."

In addition to pricing and quality information, HealtheReports also offers users the opportunity

to provide feedback. Among other things, plan members can grade providers based on wait times, facility cleanliness and effectiveness of care, using a five-star rating system.

"Health care costs are going up, and employers can't absorb it, so they're shifting it to employees through higher coinsurance and higher deductibles," he said. HealtheReports enables plan members to "reduce their out-of-pocket costs as well as lower the claims costs of their health plan," he said. "And with our mobile app, the information is accessible anywhere, including in the physician's office."

While HealtheReports' pricing information is provided on an "episode-of-care" basis to give users an idea of how much it will cost to treat a specific condition, Castlight provides pricing on an individual procedure or on a bundled basis, according to Dr. Bravata.

"We support all the major outpatient and, increasingly, elective inpatient procedures including everything from office visits to 500 lab tests, hundreds of imaging tests including MRIs, X-rays, CT scans, endoscopy, lung function test, chiropractor (and) acupuncture," she said.

In addition, "we calculate episode costs for things like pregnancy, where common bundled payments include prenatal visits, delivery and a post-natal visit," Dr. Bravata said. Similarly, if an individual were to use the tool to compare the cost of treating a urinary tract infection, the tool would bundle the cost of the office visit and lab test together, she said.

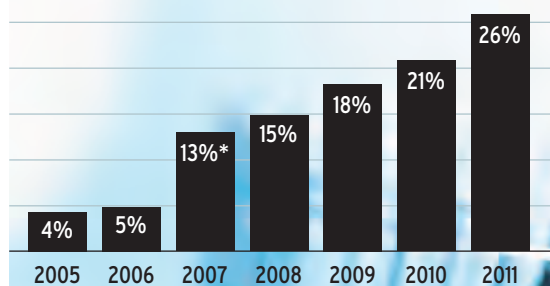
While IF Technologies and Castlight are selling their transparency tools to self-funded employers, New York-based PriceCare.com L.L.C. is directing its marketing efforts at individuals, providing pricing information on 45 procedures at six hospitals in four states free of charge, according to CEO Andrew Simon. He said employers can simply direct their employees to use the website or, for a fee, PriceCare.com will develop a customized Web portal to serve as the initial point of access.

PriceCare.com was founded in 2008 by Dr. George Neuman, a New York anesthesiologist, to assist patients in locating affordable health care providers and help hospitals to compete for business, Mr. Simon said.

HIGH-Deductible HEALTH PLANS

Among firms with 200 to 999 workers, the percentage offering a high-deductible health plan to their employees has increased significantly since 2005.

PERCENTAGE OF MID-MARKET FIRMS OFFERING HDHPs



*Estimate is statistically different from estimate for previous year shown ($p < .05$).

Source: Kaiser Family Foundation/Heath Research & Educational Trust Survey of Employer-Sponsored Health Benefits, 2005-2011.



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Opinions

EDITORIAL

American saga full of lessons

THE PROSPECT OF American Airlines Inc. terminating its hugely underfunded pension plans and shifting billions of dollars in promised but unfunded benefits to the Pension Benefit Guaranty Corp. is drawing closer.

This potential debacle offers lessons for American, its unions and federal lawmakers.

As we report on page 1, American announced last week that it will seek bankruptcy court approval to unload the plans—with an estimated \$8.7 billion in unfunded guaranteed benefits—onto the PBGC, whose insurance programs already are in the hole to the tune of \$26 billion.

If that \$8.7 billion estimate proves accurate, the termination of American's plans will be the biggest loss in the history of the PBGC, whose revenues are in part derived from premiums paid by employers that offer defined benefit pension plans.

But this loss need not have been as big as it is likely to be. American's financial problems—like those of the other long-established commercial airlines—didn't happen overnight. American has been losing lots of money for many years, due to high fuel prices and competition from airlines with a lower cost structure.

It should have become apparent to its top executives years ago that benefit programs—created when economic conditions were much better—had to be cut back.

Similarly, American's unions needed to be much more open to benefit concessions. For example, if American's pension plans had been frozen years ago, some employees, such as pilots, would not be facing the massive cuts to their pension benefits that will occur if the plans are terminated.

There is a lesson for federal lawmakers as well. Several years ago, Congress passed special-interest legislation that gave American more time to fund its pension obligations and use a higher interest rate assumption—compared with other employers—in valuing its liabilities.

That special treatment allowed American to put a lot less money into its plans than otherwise would have been required, meaning an even bigger potential loss for the PBGC and smaller benefits for some plan participants had Congress not acted.

Congress didn't do anyone any favors—especially the PBGC or American's pension plan participants—with that special treatment, and only put off the day when American would fold the plans.

LETTERS

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SCHILLERSTROM



COMMENTARY

Guns play big role in work violence

Two days before Gabrielle Giffords resigned from her job as a U.S. representative on Jan. 25, NCCI Holdings Inc. released a research report on workplace violence.

Although unrelated, the two events shed light on the role of guns in workplace attacks and killings.

Nearly 2 million American workers annually report having been victims of workplace violence, which includes threats, physical assaults and homicides, according to the U.S. Department of Labor.

Meanwhile, Bureau of Labor Statistics data shows that of 4,547 fatal workplace injuries that occurred in the United States during 2010, 506 were homicides.

That makes homicide the nation's fourth-leading cause of fatal occupational injuries. For women, homicide is the leading cause of death in the workplace.

Most news stories about NCCI's "Violence in the Workplace" report focused on the research finding that a large majority of at-work homicides stems from robberies rather than from disgruntled employees.

That finding is important to help workers compensation experts distinguish between what the media chooses to report and where most workplace violence risk actually lies.

NCCI said in its report that homicides make up 11% of workplace fatalities.

"Despite the headlines, the share of workplace homicides due to co-workers has remained steady at about 12%, and the actual number of such homicides has been in the 50 to 60 range (annually) in recent years," NCCI stated.

In contrast, homicides involving robbers and other crime perpetrators accounted for 69% of all workplace killings in 2009, NCCI reported.

But 50 to 60 crime-of-passion killings occurring in U.S. workplaces each year is still an obscene number.

Just 10 days before NCCI released its workplace violence report, a North Carolina worker carrying a shotgun sought out specific lumber company co-workers, killing three people and injuring another.

In January 2011, the nation was stunned when accused gunman Jared Loughner shot Rep. Giffords and 18 other people, killing six, outside an Arizona Safeway grocery store in January 2011. Rep. Gifford's courageous recovery efforts and her resignation as a U.S. representative from Arizona continue to draw national interest.

Her shooting was a work-related incident, as reports say her medical care has been paid for by a workers compensation program for federal workers.

That brings me back to the NCCI report.

One finding in NCCI's research that news stories didn't mention is that 80% of workplace homicides result from shootings, far more than the 10% caused by stabbings or the remainder caused by other types of violence, such as kicking and beatings.

So guns are a huge contributor to workplace violence, whether they are used by disgruntled co-workers, patrons, spouses or robbers.

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ROBERTO CENICEROS
SENIOR EDITOR



REUTERS

Factory workers at Thai Sumilox Co. Ltd. resume production in Ayutthaya, Thailand, after the plant was shut down due to massive flooding in October. The company estimates its losses from the shutdown at more than \$15 million.

GETTING **BACK** IN GEAR

*Business interruption losses generate concerns
over rising global supply chain exposures*

By **MIKE TSIKOUDAKIS**

A series of natural catastrophes that disrupted supply chains around the world in the past year have shown that business interruption is an ongoing risk for manufacturers.

"Supply chain management is one of our key priorities," said Scott P. Borup, director of corporate risk management for Johnson & Johnson in New Brunswick, N.J.

Johnson & Johnson operates more than 250 companies in more than 50 countries with approximately 100 manufacturing plants, he said.

"The reliable delivery of the highest-quality medicines, medical devices, diagnostic products and consumer health care products to our patients and

customers is absolutely one of (Johnson & Johnson's) highest priorities," Mr. Borup said.

The multinational manufacturer has established an organization that is exclusively responsible for managing supply chain issues, with a subgroup focused solely on supply chain risk management, in which Mr. Borup's staff participates.

"We look at supply chain risk holistically at an enterprise level," he said.

"But more from a business interruption insurance perspective, it's certainly an area of major focus of my group, the risk management group," Mr. Borup said, using the key toolkit of risk management: identify, assess and mitigate the risks, then make informed

See **INTERRUPTION** next page

Industry
Deep Dive:
Manufacturing

SPOTLIGHT

**FACTORY CLOSURES
CREATE NEW RISKS
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PRODUCT LIABILITY
EXPOSURES**

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Interruption: Concerns over supply chain losses

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decisions about a risk management strategy.

In its insurance market outlook for 2012, New York-based Marsh Inc. estimated that insured catastrophe-related losses in 2011 exceeded a "record-setting" \$105 billion.

Commercial property insurance policies—which often include business interruption coverage with the ability to add endorsements and increase limit amounts—are trending upward in pricing, notably for catastrophe-exposed accounts, due to significant catastrophe modeling changes in the past year, industry experts say.

Rick Vassar, general manager of risk for Volkswagen Group of America Inc. in Herndon, Va., said the automaker's first challenge when working with business interruption exposures is to quantify the risk.

The "biggest challenge is trying to determine, if we did have a catastrophic loss that brought our manufacturing plant in Chattanooga offline...based on past losses throughout the Volkswagen global system, what the impact would be and try to insure for the maximum financial loss that may occur should there be a covered event," Mr. Vassar said.

As manufacturers consider business interruption risks, "the challenge is visualizing how events can impact their business," said Jeffrey Beaman, Factory Mutual Insurance Co.'s Johnston, R.I.-based vp and manager of all-risk underwriting. The insurer does business as FM Global.

"Measuring business interruption losses can often lead to some surprises," he said. These can include exposing the company to risks they weren't aware of and the difficulty in quantifying financial losses due to interruption of business operations.

It's not uncommon that an insurance company can change its loss reserves on a particular claim, Mr. Beaman said.

For example, an adjuster examining the loss at a client's manufacturing facility can see exactly what equipment was burned or flooded, get information on upcoming sales and what the product mix is for the quarter, Mr. Beaman said.

"Yet at the time of that event, when they're standing in the rubble, they still aren't able to estimate what the final business interruption may be by the time that plant has been rebuilt," Mr. Beaman said. "If you can't predict that when you're standing amid the rubble, if you're a buyer of business interruption insurance, how can you predict that at the time that you're trying to negotiate your coverage?"

For Volkswagen, the company decided to have its own fire department as part of its sprawling 2 million square foot manufactur-

ing plant in Chattanooga, Tenn., that opened last year, Mr. Vassar said.

When putting together the insurance program with an unnamed insurer, Volkswagen estimated that if the plant went offline for one day due to business interruption, it would cost the carmaker at least \$5 million to \$7 million per day in lost revenue, Mr. Vassar said.

The second business interruption challenge is trying to fit the risk within the framework of an insurance budget that is provided at a competitive price, Mr. Vassar said.

"Our particular insurance program is a global property program, of which business interruption is a component. We have that coverage and use the economies of scale to be able to leverage the coverage that we can receive for business interruption and also to reflect a lower premium," he said.

However, a series of natural disasters in Japan, New Zealand, Thailand and the United States last year compounded manufacturers' contingent business interruption exposures and their accumulation of risk, or a single-loss event that could involve multiple perils and types of coverage.

"The deep dive isn't business interruption, but more pronouncedly in contingent business interruption. And that is the huge bugaboo," said Jim Rubel, executive vp at Lockton Cos. L.L.C. in New York.

"Insurance companies are petrified of an earthquake and it hitting multiple clients at the same time—one event triggering business interruption coverage and property damage coverage on a plethora of policies all at once," Mr. Rubel said.

Regarding earthquake and wind-exposed property, insurers' big fear is that they have contingent exposures with many more contingent receivers or suppliers of those goods, Mr. Rubel said.

If there were to be an earthquake, insurers "fear is that all these sublimits will trigger and it's an unknown commodity to the carriers, so they will further sublimit contingent business interruption—especially after the disasters in Japan where a lot of American manufacturers are obviously getting their goods," he said.

Risk managers who see the need to clearly define and quantify their supply chain exposures for insurers to try to take advantage of better coverage pricing can find that a difficult task, experts say (see related story).

Lance Becker, area president for New York and global risk management co-director at Arthur J. Gallagher & Co. in New York, said the brokerage has devised questionnaires to be sent to a manufacturer's suppliers to assess various risks.

"The biggest challenge manufacturing companies are having is getting information on the second-tier and third-tier (suppliers)



Be aware of who your key suppliers are

Risk managers who recognize the need to clearly define and quantify their supply chain risks for insurers to try to take advantage of better coverage pricing can find that a difficult task, experts say.

"What we try to do is to provide a list of suppliers to the insurers and what the insurers try to do is try to hold us to that list, even though that is kind of a fluid situation," Rick Vassar, general manager of risk for Volkswagen Group of America Inc. in Herndon, Va., said of supply chain risks.

"While we have a very good handle on our own manufacturing facilities, identifying and assessing all of the risks

associated with our external partners is an area where we are focusing much more attention," said Scott P. Borup, director of corporate risk management for Johnson & Johnson in New Brunswick, N.J.

Johnson & Johnson is addressing this challenge by working very closely with its operating units to understand who and where key suppliers are in efforts to better understand the risk. Part of the process includes working with its lead insurer to conduct on-site supplier inspections and use any recommendations from the inspections to mitigate risk, either through physical improvements or contingency

planning, Mr. Borup said.

"If the insurance companies can better understand and underwrite the risk, they're going to be more willing to provide enhanced terms," he said.

Johnson & Johnson purchases contingent time element extended coverage from unnamed multiple carriers, which protects it from interruptions caused by suppliers that cannot be easily identified down the supply chain, Mr. Borup said.

"I think the losses in Japan recently and in Thailand, with the floods recently, are perfect examples of why that coverage is essential," he said.

—By Mike Tsikoudakis

and making sure they understand the risks that are ahead," he said.

Once data of a manufacturer's supply chain has been collected, manufacturers need a system to work closely with second- and third-tier suppliers to spread the supply risk geographically, Mr. Becker said.

Some risk managers have tak-

en alternative approaches in efforts to avoid the high cost of contingent business interruption coverage.

For example, some clients are candidates for stock through-put insurance, which is "a cargo-type policy that insures stock from where it's manufactured," Lockton's Mr. Rubel said, noting that

the coverage is not a solution for everyone, as it covers a single loss and not a continuous exposure.

Manufacturers can insure a specific type or amount of inventory, especially if that inventory is in a cat-exposed area, with a low earthquake deductible at a cheaper rate than it can through conventional property insurance, Mr. Rubel said.

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Factory closures create new risks for plant owners

Vandalism, theft become big problems for property owners

By **RUSS BANHAM**

The tally is sobering: 6 million jobs lost and nearly 42,000 factories closed in the past decade.

And despite optimism in some manufacturing quarters, continuing economic uncertainty may encourage additional plant shutdowns in 2012.

For risk managers of the entities that own these vacant buildings, the challenges are complicated. Not only are abandoned structures subject to vandalism and arson, they are magnets for thieves because of the high prices paid for copper and other metals used in flashing, wiring and pipes (see related story).

These risks make the abandoned buildings difficult to insure. Depending on the schedule or number of buildings owned by an entity, coverage may be available only in the excess and surplus lines market, and full coverage is not guaranteed.

How worrisome is a vacant building from a risk management standpoint? The problem was exacerbated with nearly 42,000 manufacturing facilities closing and nearly 6 million workers losing their jobs during the decade that ended in 2010, according to an April 2011 study by the Washington-based Information Technology & Innovation Foundation.

Sara Sirotzky, managing director and Midwest manufacturing practice leader at Marsh Inc. in Chicago, cites a December 2010 event in the Windy City that points up the threat.

"A laundromat in a blighted area was closed by the owner, who had no money to upgrade it and no one to buy it," she said. "In effect, his hands were tied."

Then, a group of area homeless people battered by the city's frigid winter conditions tore down the vacant building's boarded-up windows and burned the wood inside it for warmth. The building erupted in flames that soon engulfed adjacent structures.

"As firefighters fought the blaze, the roof collapsed and killed two of them," Ms. Sirotzky said. "The owners now confront both criminal and civil liability."

Additionally, the shuttering of factories fosters the closure of neighboring businesses in urban and rural areas across the country. Selling a building or even renting it becomes difficult as the area

becomes deserted, a sad collection of hulking ruins. The problem was exacerbated with nearly 42,000 manufacturing facilities closing and nearly 6 million workers losing their jobs during the decade that ended in 2010, according to an April 2011 study by the Washington-based Information Technology & Innovation Foundation.

Even giving a building away is problematic.

"Some owners will offer the structure to the local municipality or city, but not many want it," said John P. Wood, senior vp and senior property client adviser in Marsh's Chicago office. "The costs—in this economy—of upgrading it are deemed too high."

Retained liabilities

If an owner can't sell or even give away an abandoned building, it nonetheless retains the title, along with the liabilities and potential litigation exposures that ownership may bring. There are three recourses to limiting these exposures: demolition, security and insurance. Demolition doesn't absolve liability entirely, however. As Mr. Wood explained, "You still have title."

That leaves security and insurance, neither worry-free.

"Some owners have vacant buildings that show a replacement cost of \$3 million on the 'Statement of Value,' but it is currently worth nowhere near that amount," said Jay Little, vp of commercial insurance at Kansas City, Mo.-based broker Lockton Cos. L.L.C. "Meanwhile, they're paying premiums and taxes based on this value. And they're still vulnerable to a wide array of risks. I've got 60 accounts dealing with

KEEP BUILDINGS SAFE

Experts recommend these steps for mitigating risks in a vacant building.

- Board up the vacant building and install fencing around it.
- Hire security guards.
- Install surveillance cameras and alarm systems.
- Maintain proper temperatures to prevent freezing in water pipes and sprinkler systems.
- Check smoke detectors routinely.
- Remove hazardous chemicals and other regulated substances.



Precious metal theft creates costly problems

When a building is boarded up to protect against intrusion, it ironically alerts criminals that a potential treasure trove—copper, aluminum and precious metals—may be there for the taking.

Although copper prices have fallen from their \$4.6-per-pound peak a year ago, at roughly \$3.80 per pound the metal remains valuable.

Once a thief breaks into a building, it opens the door to other risks, such as water damage, mold and vandalism.

"We've seen situations where the building owner has left the heat on and the water running so the pipes won't freeze, and when the

copper piping is stolen it results in significant damage," said Jay Little, vp of commercial insurance at Kansas City, Mo.-based broker Lockton Cos. L.L.C.

To limit prospects for thieves and extract some value from a soon-to-be-vacant structure, Frank Westfall, vp of Philadelphia-based ESIS Inc., the environmental, health and safety unit of ACE Ltd., recommends the removal of copper, aluminum and precious metals from the building, if the company indeed has no plans to restore it to use.

—By Russ Banham

these problems right now."

Even if the owner has property insurance, this does not guarantee full coverage. The Insurance Services Office Inc. property form restricts coverage for vandalism, theft, water damage and other losses for a building that has been vacant for more than 60 consecutive days, so negotiations with carriers to assure coverage after 60 days must start during this period.

"Standard markets will still write vacant buildings, but it's getting tiresome for them," said Mr. Little. "If you (own numerous buildings), you can get away with a couple vacant structures. If you don't, carriers will try to restrict certain perils like vandalism or theft."

Mr. Wood agreed: "It all depends on the underwriting guidelines—where the building is located, the type of property and what it's made of, the percentage the building represents in the total schedule, and so on. In some cases you can get coverage; in others you can't, in which case you need an excess and surplus lines approach."

Even this can become knotty. "The E&S market may slap on coverage restrictions—actual cash value rather than replacement coverage, or replacement costs minus physical depreciation," Mr. Wood said.

Consequently, the most secure

way to limit liability and loss appears to be prudent risk management. Cal Beyer, head of commercial manufacturing for Zurich North America in Edina, Minn., recommends that risk managers "establish first your plans for the property—are you just mothballing it until operations can resume, or fully prepared to shut it down?" he said. "Each has different considerations from a loss prevention standpoint, and both are subject to an array of different (building) ordinances."

Vulnerability analysis

Once this question has been answered, Mr. Beyer advises developing a vulnerability analysis—a checklist of potential losses and related mitigation strategies, prioritized according to the frequency and severity of each risk. Mitigation runs the gamut and begins with contacting the local police and fire departments about the anticipated abandonment of a building.

"In many municipalities, firefighters will provide a risk assessment free of charge and even board up the vacant building for you," said Thomas LaCorte, assistant vp and senior property specialist for the Eastern territory at Chubb Corp. in Warren, N.J. "They will also hang a 'Keep Out' sign on the building, warning firefighters that it is vacant. This way,

if a fire breaks out, they'll know to attack it from the exterior and not the interior, which is much safer."

Other best practices include fencing the building, hiring a security guard to patrol it, and installing surveillance cameras and alarm systems. If the related expense is considered onerous, however, sources recommend routine surveillance by company personnel to check on the building's condition and status, in addition to having neighbors alert the owner regarding suspicious activity at the site.

It is also advisable to maintain proper temperatures in the facility to keep pipes from freezing and prevent mold from forming in air conditioning systems; ensure the smoke detection system is operable; and keep the water on if the building has a sprinkler system to contain a possible fire.

Frank Westfall, vp of Philadelphia-based ESIS Inc., the environmental, health and safety unit of ACE Ltd., recommends a final best practice: "If you have hazardous chemicals or other regulated substances in the vacant building, they should be inventoried and moved to another operating location of the business, or removed and disposed of properly. Tanks and process lines also should be purged of fuels or chemicals and disposed of properly. It's just one less thing to worry about."

Quality control helps improve safety records

Manufacturers finding production standards help reduce injuries too

By SHEENA HARRISON

Manufacturers are using quality control and efficiency standards to improve their safety track records—a method that has contributed to fewer accidents in recent years at U.S. manufacturing plants, experts say.

The International Organization for Standardization's ISO 9001 quality standard and the Six Sigma quality management protocol, among other programs, traditionally have been used by manufacturers to improve production processes.

However, many companies have realized in the past decade that such programs can be used to standardize their safety initiatives and reduce risks on plant floors, said Theodore Braun, industry director of manufacturing for Liberty Mutual Group Inc. in Boston.

"Once they understood how to...manage quality, they realized that there was a clear relationship to safety and have moved forward in that direction as well," Mr. Braun said.

Christopher Iovino, New York-based managing director of Aon Global Risk Consulting, said ISO and other manufacturing standards have helped companies create comprehensive safety programs that go beyond rules from the U.S. Occupational Safety and Health Administration.

"From an executive position, safety should be viewed to be as critical as productivity and quality," Mr. Iovino said. "Those three elements need to be of equal weight and importance within an organization."

Barbara Wisniewski, vp of health and safety for Birmingham, Ala.-based McWane Inc., said the company adopted ISO standards for its safety program in 2003. The maker of pipes, valves and plumbing also has worked to certify its 25 plants in OSHA's Voluntary Protection Program, which recognizes employers that create comprehensive safety standards and keep injury and illness rates below national industry averages.

Ms. Wisniewski said McWane has reduced employee injuries by 60% since 2003 by adopting such programs.

"By using a systematic approach, we...have the availability to sustain the programs, allow transparency throughout the organization and also drive continuous improvement," said Ms. Wisniewski, whose company has 5,300 employees nationwide.

Program-based safety procedures are effective because they rely on various employees to adopt and employ safety standards, rather than leaving the job solely to safety professionals, said Edward Zabinski, area senior vp for the casualty practice of Itasca, Ill.-based broker Arthur J. Gallagher & Co.

"When you open it up to a much larger business population such as management, and we engage the employees in that solution development, they have greater ownership and a part in developing it," Mr. Zabinski said. "They're more apt to attain that goal."

According to the Bureau of Labor Statistics, 4.4 out of every 100 full-time manufacturing workers suffered a workplace injury or illness in 2010. That's up slightly from 4.3 workers in 2009, but down from 5 workers in 2008 and 5.6 in 2007 (see chart).

There were 324 fatalities among manufacturing workers in 2010, up from 319 in

2009 but down from 413 in 2008, according to the BLS.

Experts note that cuts in manufacturing employment have contributed to workplace injury declines because there are fewer workers to face workplace hazards.

There were 11.8 million manufacturing employees in December 2011, according to the BLS. That's up slightly from 11.6 million in December 2010, but down from 13.7 million in December 2007—the beginning of the Great Recession.

In many cases, employees who directed manufacturing safety programs were among the workers who lost jobs during the downturn, said Jim Collins, senior vp and enterprise team leader at Lockton Cos. L.L.C. in Kansas City, Mo.

Manufacturers tended to outsource their risk management practices to companies such as Lockton during that time, Mr. Collins said.

"They're now looking to (Lockton) to provide that safety director instruction, where they had somebody in-house to do it

before," Mr. Collins said.

As manufacturing employment increased slightly last year, many of the newer jobs have included openings for safety professionals, said Annamarie Gibbs, Kansas City-based senior vp and manager of risk control services for Lockton.

"They understand that there has to be somebody within their organization to own this," Ms. Gibbs said. "The broker can be an extension of their risk management team, but they cannot run it day to day because they're not there day to day."

While many companies have been able to improve their safety records in the past several years, Liberty Mutual's Mr. Braun said some manufacturers have had difficulty with safety improvements as they try to balance other economic and operational pressures.

"You still have a number of organizations who...just don't get it and are still simply concerned with OSHA conformance," Mr. Braun said.

In order to motivate such manufacturers,

many companies must be shown how a safer workplace can boost their bottom line, Aon's Mr. Iovino said.

For instance, Aon often shows manufacturing clients how safety improvements also can make their production cycles more efficient—which sometimes translates into "hundreds of thousands of dollars" in savings for a company, Mr. Iovino said.

"The discretionary spend they have is limited," Mr. Iovino said. "Therefore, their internal safety teams, consultants, insurance companies or brokers need to demonstrate that spending money in the safety arena will ultimately save them money, both from a retained loss and an operating efficiency perspective."

Mr. Iovino believes safety will take on an increasing focus with manufacturers as they work to rebound from the recession.

"If these U.S. manufacturers have global operations, or they choose to grow globally, these safety management system protocols need to be considered 'Best Practices' for them going forward," Mr. Iovino said.

4.4/100

According to the Bureau of Labor Statistics, 4.4 out of every 100 full-time manufacturing workers suffered a workplace injury or illness in 2010. That's up slightly from 4.3 workers in 2009, but down from 5 workers in 2008 and 5.6 in 2007.

WORK-RELATED INJURIES AND FATALITIES

The rate of workplace injuries and/or illnesses and the number of workplace fatalities in the manufacturing sector leveled in 2010, with both categories significantly lower than 2003. Reductions in manufacturing employment have contributed to the workplace injury declines, experts say.

YEAR	INJURIES/ILLNESSES (PER 100 FULL-TIME WORKERS)	TOTAL FATALITIES
2003	6.8	422
2004	6.6	463
2005	6.3	394
2006	6.0	457
2007	5.6	401
2008	5.0	413
2009	4.3	319
2010	4.4	324*

*Preliminary data
Source: U.S. Bureau of Labor Statistics

New laws lead to more product liability claims

Insurance capacity still available to cover most manufacturers

By LOUISE KERTESZ

Manufacturers in the consumer products and food industries are facing increased liability claims and product recalls as a result of new laws and growing consumer awareness of safety and quality.

Product liability insurance, a greater focus on quality control, and contract negotiations that transfer risk to suppliers are all part of a company's defense against product liability losses, experts say.

Since the passage of the FDA Food Safety and Modernization Act, signed into law in January 2011, and the Consumer Product Safety Improvement Act of 2008, product liability and recalls have become special concerns in the consumer products and food industries, said Katherine Cahill, global product risk practice leader for the Marsh Risk Consulting unit of Marsh Inc. in New York.

Product liability insurance prices are "very competitive" for manufacturers across all industries with a focus on quality control, and there is ample capacity, said Tony Hardy, partner and global casualty practice leader at Lockton Cos. L.L.C. in London. However, insurers "will obviously pay due regard to where manufacturers' raw materials are coming from," he added (see related story).



AP PHOTO

A truckload of live turkeys arrives at the Cargill turkey processing plant in Springdale, Ark., in August. Since the passage of various safety laws, product liability and recalls have become concerns in the food industry.

"We consumers like cheap products, and manufacturers are trying to provide them by sourcing cheaper components offshore, but that creates liability risks," said Ian Harrison, partner and global recall practice leader at Lockton in London. The manufacturer can face product liability claims as well as economic risk from recalls and damage to its

brand, he said.

The FDA now has statutory authority to conduct product recalls on food, whereas before they could only request a recall, Ms. Cahill said. As a result, food producers are pushing liability down to raw materials suppliers, more of which are obtaining product liability insurance and product recall insurance, she said.

"A large number of food-related companies buy product recall insurance, also called product contamination insurance," said Louis Lubrano, senior vp of global crisis management for Liberty International Underwriters, the global specialty lines division of Liberty Mutual Group Inc., in New York. About 10 carriers sell it, including LIU, Houston Casualty

Co., American International Group Inc., Crum & Forster, C.V. Starr & Co. Inc. and five or six Lloyd's of London syndicates, he said.

As part of the underwriting process, "We develop an application geared toward identifying the risk of contamination during the production process. We also ask what you do in the event of a recall. Most large companies have that plan in place," Mr. Lubrano said.

A network of food safety consultants provided by global security specialists red24 "makes valuable recommendations," he said. "Buying (product recall insurance) forces you as a company in the food business to look at your controls," he said.

The Consumer Product Safety Improvement Act, which applies to all companies manufacturing or distributing consumer goods, steps up reporting requirements and recall obligations if they have a potential to cause harm, Ms. Cahill said.

For companies in general manufacturing, such as Boston-based Cabot Corp., a fine particle manufacturer, "our focus is not as much on the insurance piece but on the loss prevention piece," said William Milaschewski, the company's director of risk management.

Cabot manufactures particles including carbon black, a reinforcing agent, for tire manufacturers. Cabot has had "a small handful of product liability claims, of very

Continued on next page

U.S. manufacturers step up efforts to manage Chinese supplier risks

By LOUISE KERTESZ

American manufacturers buying products from Chinese suppliers are taking steps to protect themselves from product liability claims and ensure the quality and safety of their goods.

In the past, U.S. manufacturers buying products from contract manufacturers in China "would keep their fingers crossed that those manufacturers had some product liability coverage," said Claude Gallelo, international practice leader at Willis North America in New York, a unit of Willis Group Holdings P.L.C.

Now Willis works with ACE Ltd. and Chartis Inc. to issue a product liability policy to a Chinese manufacturer that names the American manufacturer as an additional insured. The U.S. company's excess policy would respond after that, Mr. Gallelo said.

"My advice to risk managers who have international exposure is to figure out where the loss resides in terms of the policy," he said. Mr. Gallelo has developed a product liability matrix to help risk managers understand which of their policies covers a loss depending on where the product is made, where it is

CHINESE SUPPLIES

Tips on managing product liability risks

- Ensure suppliers have product liability insurance.
- Use insurer with global capabilities.
- Detail exact product specifications to supplier.
- Put formal quality control measures in place.

sold, where the occurrence takes place and where a suit is brought.

It's also important to "work with an underwriter who has the capability of investigating claims anywhere in the world," he said. In the case of the loss of an eye, or a death, "usually the first 48 hours are very important because you need to investigate if it's a manufacturing negligence or if the individual is responsible," Mr. Gallelo said.

Any Chinese supplier to Morristown, N.J.-based Honeywell International Inc.

"is required to have product liability insurance. We're encountering a lot of suppliers that don't have insurance. We have had pushback, and we try to select the best suppliers that have insurance," said corporate risk manager Paul B. Piazza.

Honeywell also is "in the early stages of discussing setting up a vehicle that can provide (product liability) insurance to mostly Chinese suppliers that can't get insurance," Mr. Piazza said. If an insurer is chosen for this vehicle, "the underwriters would be familiar with the product. We're also exploring using our captive in Bermuda; the Chinese suppliers would pay premium to our captive," he said.

Rockford, Ill.-based Mega Fabrication Inc., a metal fabrication manufacturer, buys components from vendors all over the world, including China, said Chief Financial Officer John P. Claxton. The company also pays a Chinese manufacturer to assemble its smallest product line, he said. A U.S. insurer provides product liability coverage for Mega Fabrication's Chinese and U.S. operations, he said.

"What we found is that when you outsource, you've got to know something well to teach it. Outsourcing to China

forced us to get that down on paper and make sure our (blue)prints were 100% accurate. What we found is that when we did that, we actually got better parts" with fewer reworks needed in-house, Mr. Claxton said.

"The other part of that strategy is when we decided to go to China, we embraced it fully. We designed roles for two people from our own machine shop to become global sourcing individuals. They spent time with our vendors—we embraced that sourcing channel and built a very strong support supply chain. We spent a lot of time traveling, working with our vendor, helping them be successful. A lot of U.S. companies may miss that. We're really living it—diving in," he said.

In addition, he said, quality control was formalized when the company became an outsourcer. "We realized we really have to focus on a quality and inspection process."

The company recently engaged a global engineering consulting firm that is able to discuss technical matters in Chinese with the vendor and inspects components in China to make sure they're "in spec" before they leave the factory, Mr. Claxton said.

CONTINUED FROM PREVIOUS PAGE

low frequency and severity, and it shows that our risk is small and that we have a very good process to ensure the safety of our products," Mr. Milaschewski said.

In the case of a recall, "the issue is never with our product, because it's used by our customers along with other additives," he said.

Primary insurance is written through Cabot's captive, and the manufacturer purchases excess coverage through "longtime partners" including Chartis Inc., XL Group P.L.C., Iron-Starr Excess Agency Ltd. and Catlin Group Ltd.

"Our real focus is on new and emerging products, such as nanomaterials, to make sure they are safe to work with and that they're well-studied," he said.

Cynthiana, Ky.-based E.D. Bullard Co., which makes personal protective equipment such as hard hats, has not had a recall in 15 years, said Roger Andrews, director of risk management. Mr. Andrews attributes the company's "really good claims experience" to "aggressive quality control and rigorous testing in our own labs."

While experiencing "a lot of litigation," the company has a "litigation management philosophy" of "not paying nuisance settlements," which has resulted in most cases being dismissed, Mr. Andrews said.

For auto manufacturers, "one of the biggest risks from a financial standpoint is the punitive damage award," said Mike Stankard, managing director of Aon Risk Solutions' industrial and materials practice and automotive practice in Southfield, Mich. "A lot of the legal strategy is around settling with the plaintiff out of court," because a sympathetic jury might award not only compensatory damages including loss of income, but "they want to send a message that the company ought to be punished because they didn't make it safe," he said.

"Auto product recall insurance is sought by auto component manufacturers, and there's a much more restricted capacity" than for product liability insurance, said Bernie Steves, managing director of Aon Risk Solutions' crisis management practice in Chicago. "Generally, the liability gets pushed to component parts manufacturers, (although) a minority of auto suppliers buy recall coverage. It's a function of availability, and it can be expensive," he said.

As more new technologies are introduced into automobiles, "this may create a whole new set of product liability claims because consumer expectation has been heightened," Mr. Stankard said. Another risk in the future may be driver distraction. A plaintiff attorney could claim, "My client was injured because you overloaded the vehicle with electronics," he said.

"The first line of defense is quality control upfront," but the pace of technology makes it difficult to keep pace with quality control technology, said Mr. Steves. The second is "being able to respond when an incident occurs" in order to do an accurate recall.

That's followed by effectively communicating the message "before the media has gone wild with it," he said.

Morristown, N.J.-based Honeywell International Inc., which manufactures a range of products, "has minimal exposure from the consumer side," said the company's corporate risk manager, Paul B. Piazza. But as the largest manufacturer of auto turbochargers, Honeywell has a fully insured "product recall front" with Swiss Re Ltd., which provides a certificate of insurance to an auto manufacturer that requests it. Honeywell reimburses Swiss Re for any losses; however, it has not had any insured losses with its current line of products for auto manufac-

turers, Mr. Piazza said.

Chubb Corp., which covers auto parts manufacturers, is finding that Tier 3 suppliers, such as metalworking job shops, are asking for guidance in demonstrating that they understand products liability law and loss prevention, said Ann Minzner Conley, vp and executive liability loss control specialist in Whitehouse Station, N.J.

Chubb offers "a one-hour webcast introduction to product liability loss prevention—knowing the law, how product liability can affect your specific sector, and what kinds of losses there have been in products similar to those you make," such as components implicated in auto accidents, she said.



AP PHOTO

Toyota recalled about 51,000 of its Tundra trucks in April to inspect the rear drive shafts that may include a component that can break. A minority of auto manufacturers buy recall coverage.

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Products & Services

Liberty Mutual offers crisis management cover

BOSTON—Liberty Mutual Insurance Co. is offering a crisis management endorsement that would help firms pay for public relations support when a problem arises.

The endorsement, which is being offered in conjunction with its commercial lead umbrella policy form, pays up to \$50,000 in public relations support from New York-based public relations firm Weber Shandwick.

The endorsement allows insured businesses up to 72 hours from the onset of the crisis to file a claim, whereas many crisis management policies require notification within 24 hours, Boston-based Liberty Mutual said.

“Our endorsement gives policyholders the flexibility to respond to the two broad types of crises faced by most midsize companies: immediate and emerging,” Danya Kazakavich, chief underwriting officer at Liberty Mutual, said in a statement.

“Sometimes a situation is clearly a crisis that needs immediate action. Other times, it can take days for a situation to rise to the level of a full-blown crisis. Giving policyholders 72 hours to identify a crisis and file a claim lets them

effectively manage both types,” he said.

While the policy’s standard limit is \$50,000, additional coverage up to \$250,000 is available, Liberty Mutual said.

Milliman risk institute focuses on ERM solutions

SEATTLE—Milliman Inc. has formed a risk institute to provide scientific-based thought leadership on enterprise risk management for senior-level executives to help them better manage their risks.

The Milliman Risk Institute consists of an advisory board of eight risk management professionals to provide experience- and data-driven expertise, the Seattle-based insurance and risk management consulting firm said.

ERM “means different things to different people and organizations,” Mark Stephens, director of risk advisory services at Milliman and executive director of the risk institute, said in a statement. “Every ERM strategy has a different level of maturity and is influenced by regulation, industry, company size and countless unique business characteristics.”

The advisory board, which includes four Milliman executives, is to publish market

research, case studies, best practices and perspectives from other chief risk officers.

For more information, contact Mr. Stephens at 312-499-5765 or markstephens@milliman.com.

Excess liability coverage for builders, contractors

DALLAS—Umbrella/liability insurance for the residential building and contractor markets is being introduced in Texas by Builder Agent Network, the managing general agency for Builders Insurance Group Inc.

According to a statement by the Dallas-based MGA, Builder Agent Network’s product provides customizable excess liability coverage options depending on a client’s specific risk profile and includes coverage for subsidence and injury to a subcontractor’s employees.

“Our goal is to meet the needs of the building community by providing insurance to work alongside the best practices of risk management, as taught by the Texas Assn. of Builders,” Anne Sheahen, Builder Agent Network vp, said in the statement.

For more information, contact Ms. Sheahen at 972-512-7728, or Becky Walker, an underwriter at Builder Agent Network, at 972-512-7770.

P/C insurance guide expanded with new risks

AUSTIN, Texas—The National Alliance Research Academy has published the eighth edition of “Property & Casualty Insurance Essentials.”

At 500 pages, the book offers new sections on a variety of liability—cyber, liquor, directors and officers, and personal liability—as well as equipment breakdown-residential, floater policies, in-home business and flood insurance, among others.

Expanding the book’s offerings makes it more useful for those beginning in the field, said Jim Cuprisin, research director at the Austin, Texas-based National Alliance Research Academy.

“It’s also a good reference source for people who’ve been in the industry for a while,” he added.

For more information, contact Mr. Cuprisin at 512-349-6114 or jcuprisin@scic.com. A print edition is \$65 and an electronic version is \$55.

UP COMINGS & GOINGS CLOSE

JOHN SULLIVAN



NEW JOB TITLE: London-based director of reinsurance, Cooper Gay & Co. Ltd.

PREVIOUS POSITION: London-based director of Global Re Specialty Marine, Aon Benfield

INDUSTRY CHALLENGES: Maintaining a symbiotic alliance with commercial partners and keeping pace with ever-changing requirements through innovative and competitive products.

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FIRST MARKET EXPERIENCE: Filing clerk with marine reinsurance brokers Bell Nicholson Henderson Ltd. in 1975 before advancing through the company to holdings board director.

ADVICE: We all endure pressure and tension from time to time. The better we can control this, the less we are likely to suffer. Whether we miss a train, are stuck in a traffic jam, drop our sandwich ‘sunny side down’ or lose an insurance deal, we should try to stand back and look at ourselves across the room and ask if this will be an issue in five years’ time. In 99% of cases this is not the case, and we are worrying about nothing. The sooner this can be recognized, the healthier we feel.

OUTSIDE THE INDUSTRY, A DREAM JOB: I love sports and think my ideal occupation would be a professional tennis player, traveling the world, following the sun, earning an enviable income, enjoying an adoring fan club, staying fit and enjoying what I do. If only I had the ability!

HOBBIES: Running, cricket, rugby, music and fine wine.

MOST PASSIONATE ABOUT: My family.

FAVORITE BOOK: The Holy Bible.

CAN’T-MISS TV SHOW: “Dexter.”

FAVORITE MEAL: Foie gras with Sauternes, medium steak with Barolo, banoffee pie with orange muscat, and cheese and biscuits with a vintage port.

ON A SATURDAY AFTERNOON: Pub lunch, taking the kids to the park and watching a top game of rugby.

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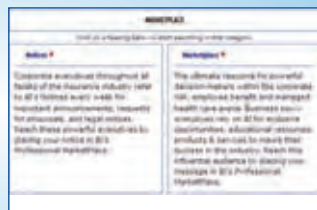
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Comings & Goings

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

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

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POSTING THIS WEEK

- INSURERS**
 - Liberty Mutual Insurance Co.
- BROKERS**
 - Willis Group Holdings P.L.C.
 - Marsh Inc.
 - Buck Consultants L.L.C.
- REINSURANCE**
 - Presidio Reinsurance Management Ltd.
- OTHER**
 - Wilson Elser Moskowitz Edelman & Dicker L.L.P.
 - Origami Risk L.L.C.
 - Squire Sanders L.L.P.

American: PBGC opposes termination

CONTINUED FROM PAGE 1

funded pension plans.

"American's pension plans are very expensive—we spend more on them than our competitors spend on their retirement plans. We simply do not see a way we can secure the company's future without terminating our defined benefit plans," the Fort Worth, Texas-based airline said in a statement, which also detailed extensive job cuts American intends to make.

"If this liability is not eliminated, we will need to have more than \$800 million each year in additional savings to service the unfunded liabilities," said the airline, which had net losses of nearly \$4 billion from 2008 through 2010. 2011 results are not yet available.

If the four plans, which have about 130,000 participants, are taken over by the PBGC, it would be the largest loss in the agency's history.

According to preliminary PBGC estimates, the plans have about \$8.3 billion in assets and about \$18.5 billion in promised benefits. If they fold, the PBGC would be liable for about \$17 billion in benefits, resulting in an \$8.7 billion loss to the agency.

That would eclipse the previous PBGC record loss, \$7.4 billion in its 2005 takeover of five United Airlines' pension plans.

PBGC Director Joshua Gotbaum says the agency will oppose the termination, noting that the airline has yet to prove it no longer can afford the plans.

"Before American takes such a drastic action as killing the pension plans of 130,000 employees and retirees, it needs to show there is no better alternative. Thus far, they have declined to provide even the most basic information to decide that," Mr. Gotbaum said in a statement.

Pension observers, though, say the PBGC faces long odds in convincing the bankruptcy court that American Airlines can afford the plans.

"Usually, judges rule in favor of the debtor," a Washington pension attorney said, noting that bankruptcy courts want to ensure a successful reorganization and the debtor's exit from bankruptcy.

Still, the PBGC has had successes. The agency cited Visteon Corp., a former Ford

PBGC faces \$17 billion in pension liabilities if AA terminates plans

FORT WORTH, Texas—If American Airlines Inc. terminates its four hugely underfunded pension plans, the responsibility for paying billions of dollars in benefits to plan participants will shift from the airline to the Pension Benefit Guaranty Corp.

This year, American Airlines estimates plan participants will receive just over \$600 million in benefits if it doesn't terminate its pension plans. Benefit payments would increase to \$678 million in 2013 and \$738 million in 2014, according to a 2010 10-K report—the latest available—filed by parent company AMR Corp. of Fort Worth, Texas.

From 2015 through 2019, plan participants would receive \$4.63 billion in payments from the airline's plans.

If the plans are terminated, the PBGC would be responsible for paying the bulk of those promised benefits.

The PBGC says that according to its preliminary estimates, it would be liable for a total of about \$17 billion in benefits earned by American Airlines employees, retirees and dependents.

The PBGC does not have a breakout of the benefit payments it would have to make over the next seven years.

The PBGC, though, would not be liable for all pension benefits earned by the airline's employees and retirees. The maximum annual benefit—payable at age 65—guaranteed by the PBGC is

Motor Co. parts unit that intended in 2009 to terminate three of its pension plans as part of bankruptcy reorganization.

"We showed Visteon they could reorganize successfully without terminating their employees' plans. Today, the company's 23,000 workers and retirees continue to receive the benefits they've earned," Mr. Gotbaum said in a statement last month.

In some situations, though, the PBGC dropped opposition to plan termination—an example being United's pension plans—after evidence showed the plan sponsor could not successfully emerge from bankruptcy and still fund the plans.



AP PHOTO

The Pension Benefit Guaranty Corp. would be responsible for paying American Airlines Inc. employees' pension benefits if four underfunded plans are terminated.

\$54,000 for plans that terminated in 2011, and nearly \$56,000 for plans terminating this year.

Some veteran American Airlines

pilots, for example, have earned bigger benefits, which they would lose if the plans are terminated.

—By Jerry Geisel

DEEP DESCENT

What has happened to commercial airlines' pension plans?

AIRLINE	NUMBER OF PLANS	YEAR OF TERMINATION	VESTED PARTICIPANTS	PBGC LOSS
American Airlines Inc.	4	2012*	130,000	\$8.7 billion**
United Airlines Inc.	4	2005	123,957	\$7.35 billion
US Airways Group Inc.	4	2003, 2005	49,337	\$2.75 billion
Delta Air Lines Inc.***	1	2006	13,291	\$1.72 billion
Pan American World Airways Inc.	3	1991, 1992	31,199	\$841.1 million
Trans World Airlines Inc.	2	2001	32,263	\$640.5 million

*American announced intent to terminate plans on Feb. 1.

**Preliminary estimate.

***Delta also sponsors a frozen plan for nonpilot employees and retirees and three frozen plans covering employees and retirees of Northwest Airlines Corp., which Delta acquired in 2008.

Source: Pension Benefit Guaranty Corp.

"We opposed termination for as long as there was an economic case to be made that one or more of the plans were affordable. As UAL's financial condition continued to worsen, we could no longer make the case of plan affordability," the PBGC said in a statement.

If the PBGC were to take over American Airlines' plans, the agency's record 2011 deficit of \$26 billion could jump nearly one-third, putting more pressure on Congress to take action to prevent the agency from eventually running out of cash to pay guaranteed benefits to participants in the nearly 4,300 failed plans the agency has taken over.

All of the options before lawmakers to prevent that from happening are unattractive, said Bradley Belt, a former PBGC executive director and now senior managing director with think tank Milken Institute in Washington. Those options are raising premiums that all employers with defined benefit plans pay the PBGC, cutting benefit guarantees or seeking a taxpayer-funded bailout.

"There are no easy choices, but at the end of the day, the hole has to be filled," Mr. Belt said.

"There will have to be some kind of adjustment," said John Ehrhardt, a principal with Milliman Inc. in New York.

Currently, employers pay a base annual premium of \$35 per plan participant, while

underfunded plan sponsors pay an additional \$9 per \$1,000 of plan underfunding.

Even before American Airlines announced its intent to terminate its plans, the PBGC in September asked Congress for a substantial hike in premiums as well as authority to set future premium levels. No congressional action has been taken yet on that proposal.

While it's difficult to project if other big underfunded pension plan terminations will be on the horizon, a key variable will be the future health of the economy, said Jonathan Barry, a partner in the Boston office of Mercer L.L.C.

What is encouraging, though, is that some large companies are increasing plan contributions significantly, Mr. Ehrhardt said.

For example, Ford recently said it is contributing about \$3.5 billion to its plans this year, up from about \$1.1 billion last year.

A simple rise in investment interest rates could reduce required contributions by pension plan sponsors, experts say.

"If, as many expect, today's extraordinarily low interest rates return to historical levels, many of the pension liability challenges facing the PBGC and employers alike will be significantly eased," said Jim Keightley, a former PBGC general counsel and now a partner with Keightley & Ashner L.L.P. in Washington.



'Before American takes such a drastic action as killing the pension plans of 130,000 employees and retirees, it needs to show there is no better alternative.'

Joshua Gotbaum,
Pension Benefit
Guaranty Corp.

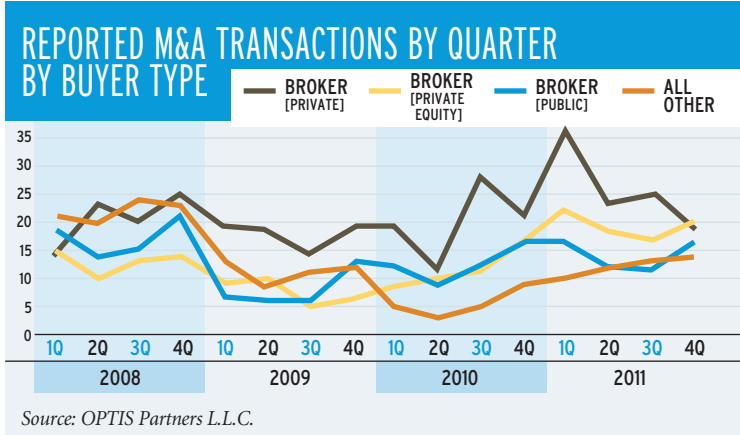
Transactions: Broker M&As increasing

CONTINUED FROM PAGE 4

broker group—a major decrease in 2009 and 2010, with a modest uptick in 2011.

Conversely, private equity-backed firms were very active and picked up the slack in late 2010 and throughout 2011, recording the second-largest number of deals after the private broker group.

Of some note is the meteoric rise of Lake Mary, Fla.-based AssuredPartners Inc., backed by Chicago-based private equity firm GTCR L.L.C. AssuredPartners closed three significant deals in



the final four months of 2011, representing approximately \$130 million in revenue, and wrapped another deal in January for a total

of about \$164 million, in the realm of a top 20-size firm.

In 2010, there were four top 100 traditional agency sales in the United States. In 2011, there were eight similar sales. Already through one month of 2012, two large transactions have taken place.

The totals do not include large international transactions or acquisitions of nonbrokerage or non-U.S. sellers. Marsh Inc., through its Marsh & McLennan Agency L.L.C. vehicle, has been the most prevalent buyer with a total of five of the large transactions as they continue to build their middle-market retail platform.

AssuredPartners and Brown &

Brown Inc. both have picked up two of these large agents/brokers, while the rest are scattered among other private equity and publicly traded buyers.

Whether this trend continues or buyers slow down to integrate these large acquisitions, only time will tell.



Timothy J. Cunningham is a partner at Chicago-based OPTIS Partners L.L.C., a financial and management consulting firm serving the insurance distribution industry.

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LEGAL NOTICE

IN THE MATTER OF THE LIQUIDATION OF THE NEW YORK SURETY COMPANY Supreme Court County of Nassau Index No.: 17005/98 NOTICE

Pursuant to an order of the Supreme Court of the State of New York, County of Nassau ("Court"), entered on September 21, 1998 ("Liquidation Order"), the then Superintendent of Insurance of the State of New York and his successors in office were appointed as liquidator ("Liquidator") of New York Surety Insurance Company ("NYSICO") and, as such, has been directed to take possession of NYSCO's property, liquidate its business and affairs, and dissolve its corporate charter pursuant to Article 74 of the New York Insurance Law ("Insurance Law"). The Superintendent of Financial Services of the State of New York has now succeeded the Superintendent of Insurance as Liquidator of NYSCO. The Liquidator has, pursuant to Insurance Law Article 74, appointed Jonathan L. Bing, Special Deputy Superintendent of Financial Services ("Special Deputy"), as his agent to liquidate the business of NYSCO. The Special Deputy carries out his duties through the New York Liquidation Bureau, 110 William Street, New York, New York 10038. The Liquidator has submitted to the Court a verified petition ("Verified Petition") seeking an order: (i) approving the Liquidator's initial report on the status of the liquidation of NYSCO ("Initial Report") and the financial transactions delineated therein; (ii) establishing March 31, 2012 as the bar date ("Bar Date") for presentation of all claims other than claims for administrative costs and expenses; (iii) authorizing and directing the Liquidator to consider only those claims for actual losses arising under policies issued by NYSCO that are presented to the Liquidator on or before the Bar Date; (iv) barring and discharging all claims for losses reported after the Bar Date; (v) authorizing the continued payment of administrative costs and expenses; (vi) authorizing the Liquidator to distribute NYSCO's assets, consistent with this Court's orders and the priorities set forth in Insurance Law Section 7434, to those creditors of NYSCO with allowed claims, to the extent that, in the Liquidator's discretion, sufficient funds are available; (vii) extending judicial immunity to the Superintendent in his capacity as Liquidator of NYSCO, his successors in office and their agents and employees, for any cause of action of any nature against them, individually or jointly, for any act or omission when acting in good faith, in accordance with the orders of this Court, or in the performance of their duties pursuant to Insurance Law Article 74; and (viii) granting such other and further relief as this Court deems appropriate and just.

A hearing is scheduled on the Verified Petition on the 16th day of March, 2012, at 9:30 a.m., before the Honorable Thomas P. Phelan, JSC, New York Supreme Court at the Courthouse, IAS Part 2, 100 Supreme Court Drive, Mineola, New York 11501. If you wish to object to the Verified Petition, you must serve a written statement setting forth your objections and all supporting documentation upon the Liquidator and Clerk of the Court, at least seven business days prior to the hearing. Service on the Liquidator shall be made by first class mail at the following address:

Superintendent of Financial Services
of the State of New York as
Liquidator of New York Surety Company
110 William Street
New York, New York 10038
Attention: John Pearson Kelly
General Counsel

In order to participate in NYSCO's liquidation proceeding, all claims, with all supporting documentation, must be presented to the Liquidator on or before the Bar Date, which is the last date set by the Court to present claims in NYSCO's liquidation proceeding.

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

Requests for further information should be directed to the New York Liquidation Bureau, Creditor and Ancillary Operations Division, at (212) 341-6665.

Dated: January 18, 2012
Benjamin M. Lawsky
Superintendent of Financial Services of the State of New York as Liquidator of New York Surety Company

LEGAL NOTICE

IN THE MATTER OF THE CONSERVATION OF THE TRUST FUNDS OF RELIANCE INSURANCE COMPANY AS SUCCESSOR IN INTEREST OF RELIANCE INSURANCE COMPANY OF ILLINOIS Supreme Court of the State of New York County of New York - Index No.: 403409/02 NOTICE

Pursuant to an order of the Supreme Court of the State of New York, County of New York ("Court"), entered November 18, 2002, the then Superintendent of Insurance of the State of New York and his successors in office were appointed as conservator ("Conservator") of a certain trust fund ("Trust Fund") of Reliance Insurance Company of Illinois ("RICI") and, as such, has been directed to conserve funds in the Trust Fund pursuant to Article 74 of the New York Insurance Law ("Insurance Law"). The Superintendent of Financial Services of the State of New York has now succeeded the Superintendent of Insurance as Conservator of RICI. The Conservator has, pursuant to Insurance Law Article 74, appointed Jonathan L. Bing, Special Deputy Superintendent ("Special Deputy"), as his agent to carry out the responsibilities of the Conservator, through the New York Liquidation Bureau ("Bureau"), 110 William Street, New York, New York 10038. The Conservator, by the Special Deputy, has submitted to the Court a verified petition ("Verified Petition") seeking an order: (a) approving the conservation agreement ("Conservation Agreement") executed on October 14, 2011, a copy of which is annexed to the Verified Petition as Exhibit 1, by and between Michael F. Considine, Insurance Commissioner of the Commonwealth of Pennsylvania as liquidator ("Liquidator") of the Reliance Insurance Company entities, including RICI, and the Conservator; (b) authorizing the Conservator to distribute the Trust Fund to the Liquidator in accordance with the terms of the Conservation Agreement; (c) releasing and discharging, upon distribution of the assets in accordance with the terms of the Conservation Agreement and the filing of a final report, the Conservator, his predecessors and successors in office, their agents, attorneys and employees, from any and all liability arising from their acts or omissions in connection with this proceeding; (d) authorizing the Conservator to take further actions which he, in his discretion, deems advisable for the protection of creditors and of the assets in his possession and for the termination of this proceeding; and (e) providing for such other and further relief as this Court.

The matter is scheduled for submission on the 9th day of April, 2012 ("Return Day"), at 9:30 a.m., before the Court, at the Motion Submission Part, Room 130, at the courthouse located at 60 Centre Street, New York, New York 10007. If you wish to object to the Verified Petition, you must serve a written statement setting forth your objections and all supporting documentation upon the Conservator and Clerk of the Court, at least fifteen business days prior to the Return Day. Service on the Conservator shall be made by first class mail at the following address:

Superintendent of Financial Services of the State of New York as Conservator of Reliance Insurance Company of Illinois
110 William Street
New York, New York 10038
Attention: John Pearson Kelly
General Counsel

By filing the Verified Petition, the Conservator is seeking the approval of the Conservation Agreement from the Court. The Verified Petition and supporting papers are available for inspection at the above address. In the event of any discrepancy between this notice and the documents submitted to Court, the documents control. Requests for further information should be directed to the Bureau's Legal Division at (212) 341-6755.

Dated: January 24, 2012
Benjamin M. Lawsky
Superintendent of Financial Services of the State of New York as Conservator of Reliance Insurance Company of Illinois

LEGAL NOTICE

IN THE MATTER OF THE REHABILITATION OF FRONTIER INSURANCE COMPANY SUPREME COURT, ALBANY COUNTY INDEX NO. 97/06 NOTICE OF FILING OF PROPOSED REHABILITATION PLAN

BENJAMIN M. LAWSKY, the Superintendent of Financial Services of the State of New York, in his capacity as Rehabilitator (the "Rehabilitator") of Frontier Insurance Company ("Frontier") hereby gives you notice that the Supreme Court of the State of New York, County of Albany, has issued an Order to Show Cause dated January 13, 2012, requiring that any interested person or his, her or their attorneys, show cause before the Court at the Albany County Courthouse, 16 Eagle Street, Albany, New York, on the 6th day of April, 2012, at 9:30 in the forenoon of that day, or as soon thereafter as counsel can be heard, why an Order should not be made (i) granting the Verified Petition of the Rehabilitator for an Order approving his Plan of Rehabilitation for Frontier; and (ii) allowing the Rehabilitator such other and further relief as the Court may deem just and proper.

Please take notice:
1. That the Order to Show Cause and the papers upon which it is granted are posted on the website maintained by the New York Liquidation Bureau at <http://nylb.org>.
2. That the proposed Plan would authorize the Rehabilitator to continue to settle and pay claims under policies in his sole discretion;
3. That, because of Frontier's limited funds, the proposed Plan would require the Rehabilitator to obtain Court approval as a condition to settlement and payment of any surety or other claim against Frontier;
4. That objections to the Order to Show Cause and relief sought by the Rehabilitator therein shall be served on or before March 16, 2012; and
5. That the Rehabilitator may reply to any objection or other submission by papers served on or before March 30, 2012.

All objections should be served to the following addresses:
Frontier Insurance Company in Rehabilitation
Attn: Al Escobar, Chief Executive Officer
195 Lake Louise Marie Road
Rock Hill, New York 12775
aescobar@frtins.com
and
William F. Costigan, Esq.
Dornbush Schaeffer Strongin & Venaglia, LLP
747 Third Avenue
New York, New York 10017
costigan@dssvllaw.com

Requests for further information or questions should be directed to Frontier Insurance Company in Rehabilitation at (845) 807-5250. Copies of the Order to Show Cause, the Verified Petition on which it was granted and the proposed Plan of Rehabilitation have been posted on the internet site maintained by the New York Liquidation Bureau at <http://nylb.org>.

BENJAMIN M. LAWSKY
Superintendent of Financial Services of the State of New York, as Rehabilitator of Frontier Insurance Company



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M&As BY AGENTS AND BROKERS

Mergers and acquisitions by the most active insurance agents and brokers

PRIVATELY HELD	2011	2010	2009	2008
Digital Insurance Inc.	11	2	0	0
Acentria Inc.	5	0	0	0
Ryan Specialty Group L.L.C.	3	4	0	0
Dawson Cos.	1	4	0	0
TOTAL*	102	80	70	82

PUBLICLY HELD	2011	2010	2009	2008
Arthur J. Gallagher & Co.	24	20	11	26
Brown & Brown Inc.	17	21	8	35
Marsh & McLennan Agency L.L.C.	10	4	7	1
CBIZ Inc.	3	2	2	1
Aon Corp.	0	1	3	3
TOTAL*	57	49	32	68

PRIVATE EQUITY-OWNED	2011	2010	2009	2008
Hub International Ltd.	32	14	8	16
Confie Seguros Insurance Services	8	3	0	3
USI Holdings Corp.	8	4	1	7
Bollinger Inc.	5	3	2	4
Ascension Insurance Inc.	4	2	6	4
AmWINS Group Inc.	4	2	4	1
Integro Ltd.	2	4	1	1
Higginbotham & Associates Inc.	1	3	2	1
Alliant Insurance Services Inc.	1	3	0	1
Edgewood Partners Insurance Center	0	1	2	2
TOTAL*	77	46	30	52

BANK-OWNED	2011	2010	2009	2008
Western Financial Group	7	0	2	0
Wells Fargo & Co.	5	4	6	8
BB&T Corp.	3	1	1	10
TOTAL*	37	18	24	42

INSURER-OWNED	2011	2010	2009	2008
TOTAL*	6	3	14	38

OTHER	2011	2010	2009	2008
TOTAL*	6	1	7	8

TOTAL ALL CATEGORIES	285	197	177	290
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*Includes all agent/broker M&As

Source: OPTIS Partners L.L.C.

Turn: Signs mount that rates on the rise

CONTINUED FROM PAGE 1

“Certainly a lot of people talk about the catastrophe-driven part of the market, but the trend seems to be going up across the small, medium and large accounts.

“We can’t predict the future, but from what we saw in the fourth quarter, it’s definitely going up,” Ms. Kemper said.

“There’s definitely something going on with pricing,” said J. Paul Newsome, managing partner at Sandler O’Neill Partners L.P. in Chicago. “We’ve seen consistent price increases from many public insurers in the fourth quarter.”

But Mr. Newsome said the “bigger question is how great those price increases can be and how long they will last. We just don’t know yet. Exactly why we’re seeing price increases is not clear yet, and that makes it hard to determine whether or not we’re going to have sustained price increases.”

Continued low interest rates will “definitely put more pressure” on insurers to improve their combined ratios, he said.

Alfred Tobin, managing principal of Aon Risk Solutions’ property practice in New York, said the market for noncatastrophe-exposed property is experiencing price stabilization and, in some cases, flexibility. “It’s a healthy marketplace; carriers are making money. I don’t see anything dramatic happening,” he said. “The No. 1 factor is supply and we don’t have a supply problem.”

A report issued recently by Willis Group Holdings P.L.C. noted the impact of last year’s catastrophes and low interest rates on insurers.

“Hopefully, 2012 will be a much quieter year on the loss side and, if so, we can see the insurers return an underwriting profit on the property side,” Dave Finnis, national property practice leader, said in the Willis report. “That would help put a halt to the continuing rise in rates.”

Mr. Kerr said in many segments of commercial insurance, it’s helpful to view the United States as many “micromarkets.” The situation varies in different states. For example, prices for earthquake-exposed property in California are not being as severely affected as hurricane-exposed property in Florida, he said.

But overall economic problems also are affecting insurers, who are pulling back from underwriting some risks. For example, rates for

workers compensation insurance in almost every state are going up, Mr. Kerr said. Major insurers are reducing their capacity for the lines, thus driving rates up.

Two factors are affecting the marketplace, said John Wicher, principal at John Wicher & Associates Inc. in San Francisco. Poor underwriting results and a pickup in economic activity that has been going on at least 12 months are driving up prices, he said.

“The (insurance) industry is a lagging indicator and it takes time for that to be reflected in premiums,” Mr. Wicher said. “Now, it’s revealing itself.”

Mr. Wicher also said excess and surplus lines volume appears to be picking up, which he called a “real indicator” of a market turn. “Business that was finding its way into standard market is going into the surplus market, which is an indicator of scarcity,” he said.

“I definitely expect to see some cycle turning and hardening in commercial lines in the next 12 to 18 months,” said John L. Ward, CEO of Cincinnati Partners L.L.C. in Loveland, Ohio. He said underwriting profitability is deteriorating, and some signs indicate that

cash flow and investment income are declining.

“I think what we’re seeing is a ‘market correction,’” Robert P. Hartwig, president of the New

York-based Insurance Information Institute, said in an email. “In other words, soft market conditions persisted for so long that markets ‘overshot’ the fundamental price of insurance—perhaps ‘undershot’ is more appropriate in this case.”

“Insurers have now recognized the general inadequacy of the rates they charge and are working to bring the price of insurance to a level that is consistent with fundamentals—i.e., claim frequency and severity trends,” Mr. Hartwig wrote.

“Such a correction does not require a ‘hard market’ in the traditional sense of the term, but rather a recognition that pricing undershot its fundamental price and sufficient willingness and discipline to return prices to a level that is sustainable from a cost of capital perspective,” he said.

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Tough exposures placed in captives

Alternative vehicles cover medical costs, reputational risks

By MIKE TSIKOUKAKIS

MIAMI—Companies and organizations are looking at their captive insurance structures to address difficult coverages and risks, such as rising medical costs for employee benefits and reputational risks.

Emerging uses of captives for such exposures were highlighted during the 21st annual World Captive Forum, held last week at the Doral Golf Resort & Spa in Miami.

Reputational risks have risen to the forefront after recent scandals at Pennsylvania State University, News Corp. and MF Global Holdings Ltd., among others, panelists said during a session on reputational risks. Several corporations are covering such exposures through their captives, panelists said.

Most reputational risk insurance in the marketplace provides crisis management services and does not indemnify loss of revenue tied to potential reputational damage, experts say.

Henry Good, previously a risk manager at Rohm & Haas Co., a unit of Dow Chemical Co., and now a principal at Global SIRC L.L.C. in Naples, Fla., said he knows of "several companies that have transferred (reputational risk exposures) to the captive."

The advantage of a captive insurance company is that "you can do whatever you want—you can issue a policy from your captive for whatever you want," Mr. Good said, noting that capping such coverage at the captive level might be necessary to limit the exposure.

The common denominator linking the companies and organizations was the perception that "nothing could go wrong," said

Jeffrey Triplette, past risk manager at Duke Energy Corp. and now a principal at Triplette Advisors L.L.C. in Oxford, Miss.

"They were all riding the crest very high. Then something happened," Mr. Triplette said, noting that many variables—from regulatory violations to confidentiality agreements—might expose companies to reputational risks.

"It's all over the board, what might drive that disaster," he said.

As companies consider writing reputational risks through their captives, there are some regulatory and tax issues to consider, said Bruce Wright, partner in the tax department of law firm Dewey & LeBoeuf L.L.P. in New York.

Quantifying and covering any financial loss resulting from reputational damage may affect tax deductions for premiums paid to the captive if the value is tied to a company's stock price, he said.

Also, moral hazard concerns may arise when trying to insure such exposures, Mr. Wright said.

Panelists weighed different funding mechanisms to write reputational risks through a captive, such as the use of catastrophe bonds and business interruption coverage.

"We don't have all the answers," Mr. Good said, noting that risk managers need to identify, anticipate and prepare for events that may never happen.

Seating U.S. employee benefits programs within a captive was another innovative use of the captive structure to address rising medical costs, panelists said during a session on managing global medical risks.

Medical and prescription medication costs are rising due to early onset of chronic diseases, lifestyle-related issues such as an increasingly sedentary lifestyle, and the rise of chronic diseases, among others, Bill Fitzpatrick, vp of corporate risk benefits, insurance and risk management in London with Deutsche Post DHL, a unit of Ger-

World Captive Forum draws 230 to Miami

MIAMI—The 21st annual World Captive Forum, held Jan. 30-Feb. 1, drew more than 230 attendees to the Doral Golf Resort & Spa in Miami.

Subjects covered during the conference sessions included using employee benefits captives to manage global medical risk, captive governance, differentiators between onshore and off-shore captive formations, and U.S. regulatory and Solvency II updates.

The conference included a session of roundtable discussions, with topics including emerging issues, tax concerns, and investments and asset management.

The WCF also honored Michael Lusk, vp of insurance and risk management at Decatur, Ill.-based Archer Daniels Midland Co., with the Award of Excellence for thought leadership in the global use of a captive, contributions to the enterprise's strategy and businesses in the field, and contributions to the risk and insurance profession with regard to captive insurance.

For information on the 2013 World Captive Forum, visit www.worldcaptiveforum.com.

—By Mike Tsikoudakis

many-based Deutsche Post A.G., said during the session.

DHL has had an employee benefits captive program for over 16 years, with €80.9 million (\$106.9 million) of gross written premium written through the captive, which includes group life, group disability and group medical coverages.

In a strengths, weaknesses, opportunities and threats—or SWOT—analysis, DHL found that its opportunities and threats were related to employee health and wellness.

One of the advantages of running an employee benefits program through a captive is the collection of defined wellness data, which provides a wealth of information regarding medical claims and exposures, panelists said during the session.

Mr. Fitzpatrick said that DHL, which has 225,000 employees in more than 100 countries, collected the top five diagnoses per country and applied proactive measures to deal with particular exposures.

In line with its corporate strategy, controlling employee benefits costs makes DHL more competitive in the marketplace, Mr. Fitzpatrick said during the session, which was moderated by Kathleen Waslov, senior vp of captive consulting and multinational employee benefits in Boston for Willis Group Holdings P.L.C.

For companies looking to fund employee benefits through their captives to slow down rising medical costs, the process can smooth operations, diversify holdings by adding third-party business, and allow for plan flexibility that the insurance market cannot offer, said Peter Bandarenko, advanced markets sales director in Silver Spring, Md., with Prudential Insurance Co. of America, during a session on fronting and reinsurance.

"Clearly the potential of lower benefits costs is a motivator, along with frictional costs as well," he said.

"Overarching all of this...is the ability to align corporate goals" by providing governance structure and bringing together the human resource, risk management and finance departments, Mr. Bandarenko said during the session, which was moderated by Mitchell Cole, director in Stamford, Conn., with Towers Watson & Co.

But for prospective captives looking to add employee benefits to their program, important considerations include the regulatory requirements by the Labor Department, a feasibility analysis by a third-party consultant and fees associated with A-rated fronting insurers, he said.

"It clearly continues to become an accepted practice, but not for everyone," Mr. Bandarenko said, in terms of costs and organizational attitude.

Outlook: Captive owners may face increases in costs

CONTINUED FROM PAGE 4

major losses, Michael Woodroffe, president of intermediary Kirkway International Ltd. in Pembroke, Bermuda, said that as bad as losses were from the March 2011 earthquake and tsunami that hit Japan, reinsurers had priced appropriately for those catastrophes.

"The good news about Japan is, yes, they had a bad earthquake, but they pay a lot" for the coverage, he said.

Reinsurers' experience with flooding in Thailand was a different case, however, as final costs are still being tallied and it's

becoming apparent the reinsurance market was taken by surprise by the scale of the loss, Mr. Woodroffe said. "I would imagine the Thai renewal season will be fairly bloody."

In the current environment, Mr. Woodroffe advised captives buying reinsurance to "buy long" and purchase multiyear reinsurance contracts. "What's amazing is (the) reinsurance (market) is still willing to sell you this," he said.

He also advised captive owners to lock in aggregate reinsurance protection, where possible, to protect against adverse developments from rising loss ratios across all

lines of coverage.

And he told the owners to stick to flat-rated contracts and avoid swing-rated deals where premium is dependent on loss experience in order to avoid a "double-whammy" of experiencing deteriorating loss results while being hit with additional reinsurance premiums.

Swing-rated deals are "a real con trick in the classic way," Mr. Woodroffe said. "The maximum rate will take you down. You can't afford to pay the maximum rate."

Mr. Woodroffe said captives should insist on purchasing reinsurance separately rather than buying bundled services. "The

whole point of having a captive is to have control of your destiny," he said. "Divide and conquer. The reinsurance guys will police the front guys."

And he stressed the importance of fronting insurers' and reinsurers' security. Captives must carefully review fronting insurers' security, he said. With reinsurers, "security's everything," he said, advising buyers to avoid weak balance sheets, legacy issues and companies with no long-term capital commitment. And he advised captive owners to stick with trusted reinsurers with whom they have built a "bank" of premium.

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AES: Virginia high court to rehear climate lawsuit

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the court decided in September that there was no coverage.

"If we were AES, we would be somewhat optimistic," J. Wylie Donald, a Wilmington, Del.-based partner at McCarter & English L.L.P. who represents insurers, said in his blog, ClimateLawyers.com.

Since the case seeks defense cost coverage, "there's something good that's going to come out of this for policyholders," Mr. Donald said in an interview.

Mr. Donald, who attended oral arguments when the Virginia high court heard the case last April, said it has been his experience that whenever a court grants a rehearing, it usually revises its original opinion.

"It means you either overlooked an authority or you got an authority wrong," he said. "There are three possible outcomes: The court could uphold its decision that there was no occurrence, or it could conclude there was an occurrence, or it could say more discovery is needed."

Joanne L. Zimolzak, a partner in the Washington office of McKenna Long & Aldridge L.L.P. who has been following the case, noted that it's unusual for the Virginia Supreme Court to grant a rehearing.

The number of cases the Virginia high court has agreed to rehear is "generally between 3% and 6% in any given year," Ms. Zimolzak said. When it has done so in the past 10 years, "it does appear the court revised its decision some way when rehearing," she said.

Ms. Zimolzak said it's possible the court will uphold last year's ruling but narrow its scope.

Policyholder lawyers are apprehensive about how the court might rule.

"While I'm cautiously optimistic...I worry that the Virginia Supreme Court won't get it right the second time either, and the insurance industry will be able to use this decision more broadly in the future," said John Nevius, a policyholder attorney with Anderson Kill & Olick P.C. in New York. "It might have been a better call (by AES' attorneys) to leave it alone and live to fight another day in another jurisdiction."

However, AES is fortunate that the case is continuing, Mr. Nevius said, because the underlying suit, *Native Village of Kivalina et al. vs. ExxonMobil Corp. et al.*, also is ongoing, "so they're still incurring defense costs."

In its September ruling, the Virginia high court upheld a summary judgment by an Arlington County, Va., circuit court judge, who held that a civil complaint filed against AES did not constitute an occurrence under the Steadfast commercial general liability policy the insurer had written for AES.

The underlying 2008 suit was brought by the native community of an Alaskan barrier island, alleging AES and other compa-

'It's a very significant decision that a lot of people are watching. Obviously, it would be significant potentially if the decision comes out the other way.'

Joanne L. Zimolzak,
McKenna Long & Aldridge L.L.P.

nies damaged the village by causing global warming. *AES-Steadfast* was considered by many to be the first insurance coverage case involving climate change litigation.

In the September opinion, Virginia Supreme Court Justice S. Bernard Goodwyn noted that the Steadfast CGL policy's definition of occurrence was "an accident, including continuous or repeated exposure to substantially the same general harmful condition."

The Kivalina community had alleged that AES intentionally released carbon dioxide and greenhouse gases into the atmosphere in the course of generating electricity.

"Kivalina alleges its damages were the natural and probable consequences of AES' intentional actions," Justice Goodwyn wrote. "Therefore, Kivalina does not

Greenhouse gas lawsuit dismissed in Minnesota

ST. PAUL, Minn.—A district court judge in Minnesota last week dismissed a lawsuit seeking to force the state of Minnesota to reduce the state's greenhouse gas emissions.

The suit, *Reed Aronow vs. State of Minnesota, Minnesota Department of Pollution Control and Mark Dayton*, was one of 50 filed by Our Children's Trust, a nonprofit based in Eugene, Ore., that is asking courts nationwide to compel states to develop climate recovery plans to reverse the effects of global warming on the atmosphere.

The Minnesota suit, filed in 2011, asserted claims under the public trust doctrine and the Minnesota Environmental Rights Act, asking that the court order defendants "to take the necessary steps to reduce the state's carbon dioxide output by at least 6% per year from 2013 to 2050 in order to help stabilize and eventually reduce the amount of carbon dioxide in the atmosphere."

In his Jan. 30 opinion, Minnesota District Court Judge John H. Guthmann dismissed the suit on numerous grounds including the fact that Gov. Dayton, one of the named defendants, did not have the authority to create law.

"The remedies plaintiff seeks in his complaint require passage of new laws and standards by the Legislature. In addition, the remedies sought by plaintiff require a legislative appropriation. The governor is not vested with any legislative power, and no such power can be conferred upon him by the legislature. As governor, he can enforce the laws but cannot change or suspend them."

Moreover, Minnesota courts have thus far only applied the public trust doctrine to navigable waters, the judge said.

Though the suit was unsuccessful, Our Children's Trust is continuing its crusade, according to a spokeswoman for the organization.

J. Wylie Donald, a partner at McCarter & English L.L.P. in Wilmington, Del., and author of the blog ClimateLawyers.com, likened the suits to those filed by plaintiffs seeking damages from the tobacco industry that at first were unsuccessful but eventually gained traction.

"Under current theory of law, the cases have little merit, but they will continue to be brought," he said.

—By Joanne Wojcik

allege that its property damage was the result of a fortuitous event or accident, and such loss is not covered under the relevant CGL policies."

In seeking a rehearing, AES argued that none of the authorities cited by the court in its September ruling supported that finding. Instead, they hold that the duty to defend is excused only when the complaint alleges a defendant "should have known to a substantial probability" that its conduct would cause the alleged harm, AES argued.

In omitting the words "substantial probability" from the

duty-to-defend test, AES argued, the court "radically redefined 'accident' to exclude coverage in virtually all negligence cases."

Ms. Zimolzak noted that the September ruling essentially was the only judicial guidance involving insurance for climate change suits, but the Virginia court decision to rehear the case now means the "guidance is in flux."

"It's a very significant decision that a lot of people are watching," she said. "Obviously, it would be significant potentially if the decision comes out the other way."

inBrief

CONTINUED FROM PAGE 1

to repeal a long-term care program established by the health care reform law. The House voted to kill the Community Living Assistance Services and Supports Act. The repeal bill is likely to have an uphill battle winning approval in the Senate.

500 female Wal-Mart workers file charges

In an effort to protect their right to pursue individual and class action pay and promotion claims, more than 500 current and former Wal-Mart Stores Inc. female employees who had been part of a national class action lawsuit have filed discrimination charges against the retailer with the federal Equal Employment Opportunity Commission as of Jan. 27.

Settlement reached on Iran investments

The California Department of Insurance and five insurer trade groups have settled litigation concerning efforts to curtail insurer investments in companies doing business in Iran. According to a statement by the Insurance Department, the settlement permits the insurance commissioner to maintain a public list of businesses involved in volatile sectors of the Iranian economy.

Noted

Sabrina Hart has been promoted by **Zurich Financial Services Ltd.** to chief underwriting officer for global corporate in North America. Ms. Hart succeeds Paul Horgan, who has been named global head of group reinsurance in Switzerland....**Brown & Brown Inc.** President and CEO J. Powell Brown, 44, has taken a temporary leave of absence for health reasons. Mr. Brown's father, J. Hyatt Brown, will assume the younger Mr. Brown's duties....Andrew Boron has been appointed director of the **Illinois Department of Insurance**. Mr. Boron previously was vp and counsel-state government and industry affairs at ACE Ltd.



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Court mulls return of the living dead

Do First Amendment rights extend to zombies?

Probably not, but a federal lawsuit filed against the Tennessee Valley Authority by a group of protesters contends that dressing like the living dead is a constitutionally protected act, according to a report by the Associated Press.

In July, protesters in Chattanooga, Tenn., showed up to a TVA board meeting dressed as zombies in the hopes of convincing the utility's board members not to resume a nuclear power plant construction project in Alabama that had been dormant since 1988.

Soon after the meeting, the TVA announced it no longer would allow costumes to be worn to its board meetings. A month later, four costumed protesters were turned away from a board meeting in Knoxville, Tenn., and a fifth was booted from the meeting for mimicking a zombie, according to the AP.

Six protesters have jointly asked a judge in the U.S. District Court for the Eastern District of Tennessee to strike down the TVA's "no costumes" rule, as well as \$300,000 in damages to be split among them.



MORE CATS THAN KIDS INSURED

Cats fare better than kids when it comes to insurance for serious illnesses, according to Surrey, England-based insurer Ageas Protect Ltd.

A recent Ageas survey showed that 9% of British consumers, or 4.5 million, have critical illness insurance that would cover their children. However, 12% of British consumers, or 5.9 million, have purchased such coverage for their pets.

About 9.5 million parents have no financial protection or

sick leave available if they needed to care for a seriously ill child, the survey showed.

Ageas said 42% of those surveyed would be willing to buy critical illness insurance if the premium was £20 (\$31) or less per month.

"It's clear that parents are willing to pay to protect themselves and their children for a reasonable monthly amount," said Andy Milburn, head of marketing for Ageas Protect, in a statement.

CONTRIBUTING: Matt Dunning, Judy Greenwald, Sheena Harrison

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AP PHOTO



Musician Frankie Sullivan is suing Newt Gingrich for using his hit song, "Eye of the Tiger" during his presidential campaign appearances.

Rocky foundation for Newt's campaign

It's not just for the thrill of the fight that former Survivor guitarist Frankie Sullivan is suing Newt Gingrich.

In a federal court lawsuit filed last week in Chicago, Mr. Sullivan alleges that the former U.S. House Speaker has been illegally using his band's signature song, "Eye of the Tiger," as his entrance music at campaign events as he vies for the Republican presidential nomination.

The song, made famous during Rocky Balboa's training montages in "Rocky III," has been a favorite of Mr. Gingrich's campaign since 2009, the lawsuit alleges.

Palatine, Ill.-based Rude Music Inc., a music publishing company owned by Mr. Sullivan, is seeking

damages and an injunction barring Mr. Gingrich's campaign from using the song at public appearances.

Mr. Gingrich's campaign did not immediately return calls seeking comment.

Mr. Gingrich is the latest presidential candidate to run afoul of a recording artist for music used at campaign events.

Last year, U.S. Rep. Michele Bachman, R-Minn., received a cease-and-desist letter from Tom Petty ordering her to quit using his song "American Girl."

In 1984, Bruce Springsteen struggled to keep himself and his hit "Born in the U.S.A." from being associated with either the Democratic or Republican presidential bids.

Court flushes lawsuit over bathroom prank

An employee who may have expected to be locked in a cruise ship lavatory in a prank by his fellow employees cannot sue for false imprisonment, an appeals court has ruled in upholding a jury's finding in the case.

According to last week's decision by the 6th U.S. Circuit Court of Appeals in Cincinnati in *Steven A. Slasinski and Karen L. Slasinski vs. Confirma Inc. and Dan Bickford, Ward Sparacio and Dave Wolfe*, Mr. Slasinski, a regional sales manager for Bellevue, Wash.-based Confirma Inc. attended a work-related dinner on a cruise ship in Bellevue on July 25, 2007.

Near the end of the cruise but before the boat docked, Mr. Slasinski saw a colleague, Kris Daw, enter the lavatory and get locked in by another employee, Dan Bickford. Mr. Daw was released a few minutes later "to the laughter of those standing nearby," according to the ruling.

Mr. Slasinski then entered the lavatory himself and also was locked inside. He was trapped inside for 20 to 25 minutes and finally was released by the boat's crew. In 2008, a jury ruled against Mr. Slasinski's false imprisonment charge and his wife's charge of loss of consortium. The district court subsequently denied the Slasinskis' motion for a new trial.

In affirming the district court



ruling, the appeals court said that while the evidence could support Mr. Slasinski's assertion that he was confined against his will, it "does not necessarily mean, however, that conclusions to the contrary are unreasonable."

A jury "could easily have found that Mr. Slasinski entered the lavatory knowing he would be locked inside as part of the prank and thus initially consented to the confinement," the appeals court panel ruled unanimously.

Moreover, said the court, Mr. Slasinski did not seek help initially. "A reasonable jury could conclude, therefore, that any confinement Mr. Slasinski experienced began with his consent, and only after the passage of time became against his will," the appeals court said.



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