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Business Insurance

February 23, 2009

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BROKERS FACED TOUGH MARKET LAST YEAR, AND CHALLENGES PERSIST IN 2009 / PAGE 3

COCA-COLA LATEST FIRM TO ADOPT CASH-BALANCE PENSION PLAN / PAGE 3

PITCHER'S INJURY SPARKS DISPUTE OVER COVER / PAGE 4

In Brief

Automakers, union in talks over VEBA

The Big Three automakers and the United Auto Workers are negotiating over changes to special trusts agreed to in 2007 contracts in which Ford Motor Co., General Motors Corp. and Chrysler L.L.C. agreed to contribute tens of billions of dollars to voluntary employees' beneficiaries associations controlled by the UAW in exchange for offloading retiree health care obligations. Obama administration officials, in exchange for new financial support, want the automakers to contribute more in stock and less in cash to the trusts, raising UAW objections.

S&P cuts rating on Swiss Re to A+

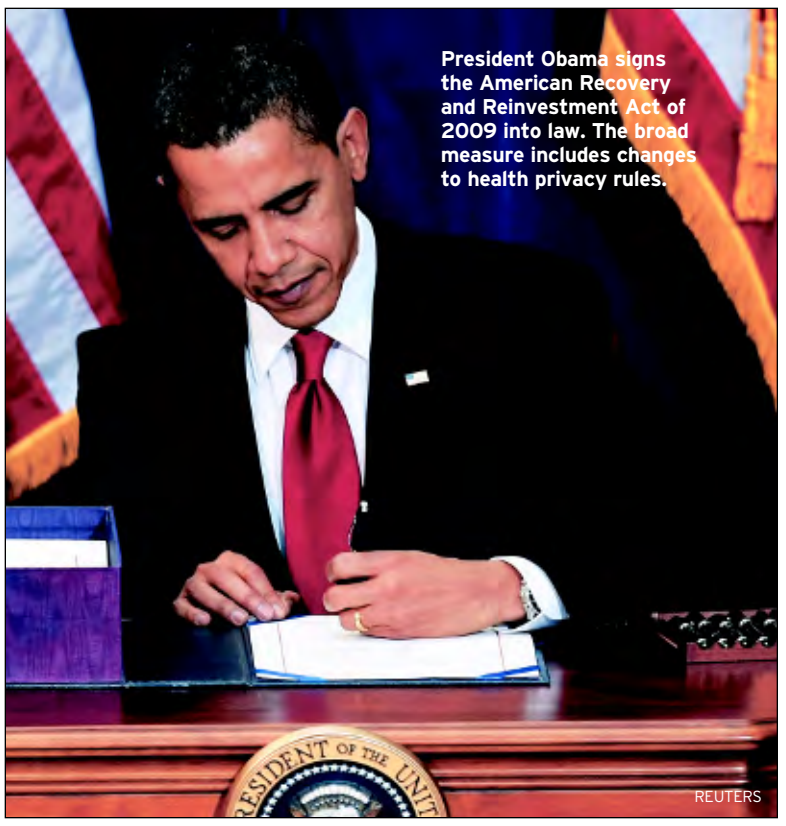
Standard & Poor's Corp. last week lowered Swiss Reinsurance

See **IN BRIEF** page 21

SPOTLIGHT

DIRECTORS & OFFICERS RISK

Some financial firms are looking to the alternative markets to cover their D&O risks; lawsuits stemming from subprime mortgage crisis creating new category of defendants; Europeans are facing more scrutiny from D&O insurers; unpaid premium taxes in Europe put policyholders at risk. **PAGE 11**



President Obama signs the American Recovery and Reinvestment Act of 2009 into law. The broad measure includes changes to health privacy rules.

REUTERS

Stimulus law boosts health privacy rules

Notification duty, wider scope among changes

By JOANNE WOJCIK

WASHINGTON—Economic stimulus legislation that President Barack Obama signed into law last week makes sweeping changes to the Health Insurance Privacy and Portability Act that could be onerous for employers and their health care plan partners.

The American Recovery and Reinvestment Act of 2009 requires "covered entities," which typically are employers or insurers who sponsor health plans, to notify individuals in writing if their personal health information is compromised. The notice must be within 60 days of discovering the privacy breach; if it involves 500 or more individuals, plan sponsors also must notify the Department of Health and Human Services and "prominent media outlets serving a state or jurisdiction."

For the first time, ARRA extends direct HIPAA enforcement to "business associates," such as benefit consultants, third-party administrators, and disease management and wellness program providers.

In addition, the legislation gives state attorneys general the authority to bring lawsuits seeking statutory damages and attorneys fees for

See **PRIVACY** page 20

Firms weigh impact of obesity on comp

Early data shows link to higher costs; efforts face hurdles

By ROBERTO CENICEROS

As the link between obesity and health problems becomes clearer, employers and workers compensation vendors are increasingly assessing the impact that the rising prevalence of obesity is having on workers comp claims and safety efforts.

That effort comes as new preliminary research suggests that workers comp claims involving obese claimants are more costly than those involving healthier individuals.

"As the claims industry (and employers) begin analysis of their data and adverse claims, they are beginning to realize that you can't ignore (issues) that historically have been ignored," including obesity, said Tammy Bradly, director of case management product development for Intracorp in Birmingham, Ala.

Historically, several factors have hampered collection of workers comp data on obesity.

The workers comp industry traditionally focuses on treating specific injured body parts while overlooking so-called co-morbidity factors, such as obesity, that increase claims duration and costs, observers said.

In addition, concerns that inquiries into obesity could spur lawsuits alleging privacy violations have slowed workers comp claims research, said Joe Picone, national director of regional operations in the strategic outcomes practice for Willis HRH in Glen Allen, Va. Because of litigation fears, some predictive models for workers comp claims omitted obesity data, Mr. Picone noted.

The stigma associated with obesity has also been a roadblock.

"It's a very sensitive issue (for consultants) to have to tell employers their workforce is overweight," Mr. Picone said.

Indeed, embarrassment issues

See **OBESITY** page 20

Proposal would ease unionization efforts

Equitable pay, benefits suggested to prevent worker dissatisfaction

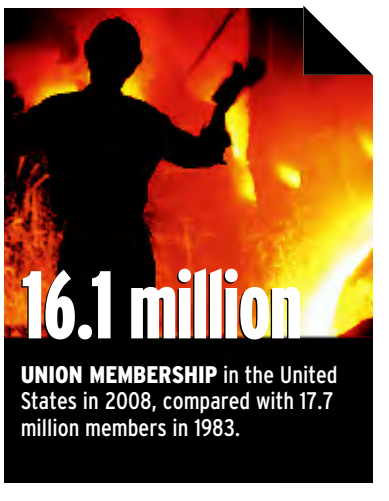
By MEG FLETCHER

Despite economic pressures, some employers may want to increase their benefits offerings to discourage workers from organizing if proposed legislation that would make it easier to unionize workplaces becomes law, experts say.

The legislation, the Employee Free Choice Act, would substantially change existing law by allowing workers to organize when a majority signs cards opting to unionize. Currently, employers can insist on secret ballots being used before they must recognize a union.

While workers would still be able to use secret ballots, the ease of using the so-called card check method would likely result in increased unionization, experts say.

In addition, if negotiations with a company stall, the measure allows



UNION MEMBERSHIP in the United States in 2008, compared with 17.7 million members in 1983.

See **UNIONS** page 6

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Soft market, economy dampen broker results

Cost-cutting expected as options for growth remain limited

By SALLY ROBERTS

Falling rates and the deteriorating economy battered some publicly held insurance brokers' financial results in 2008, though some reported better-than-expected revenue growth and operating margins.

Brokers likely will face severe head winds throughout 2009, as any price increases will likely be offset by other economic factors, such as fewer or decreased insurable exposures, observers say.

As a result, acquisitions and tightening expenses will remain key growth strategies for the brokers going forward, they say.

Middle market brokers Arthur J. Gallagher & Co. and Brown & Brown Inc. took the biggest hit from the tough operating environment in 2008, reporting zero organic growth and a 5.5% decline, respectively. Both brokers, however, reported single-digit increases in brokerage revenues fueled by near-record numbers of acquisitions made throughout the year.

In contrast, Marsh & McLennan Cos. Inc., Aon Corp. and Willis Group Holdings Ltd. surprised many analysts by reporting better-than-expected 2008 results that were buoyed by growth from international operations based in economies stronger than the United States' (see chart, page 21).

London-based Willis reported the best revenue growth of all the publicly held brokers with an acquisition-fueled 10.9% jump to $2.75 billion. Organic revenues rose 4% in 2008 with 11% of that growth coming from Willis International.

Chicago-based Aon reported 2% organic growth for the year in its risk and insurance services unit, with 4% organic growth coming from its Europe, Middle East and Africa division. New York-based Marsh Inc. also reported 2% organic growth for the year aided by its Asia/Pacific and Latin America operations, which reported 8% and 6% organic growth, respectively.

It was more than positive organic growth that had analysts optimistic about Marsh going forward. Parent MMC, which reported a $73 million loss for 2008 after taking an impairment charge, also reported improved operating margins at its risk and insurance services unit, which comprises Marsh and Guy Carpenter & Co. L.L.C. The unit reported adjusted operating margins of 13.3% in 2008, compared with 8.8% in 2007, aided by $75 million of cost reductions at Marsh.

In a note to investors, Meyer Shields, a principal at Stifel, Nicolaus & Co. Inc. in Baltimore, said he thinks Marsh should be able to sustain positive organic growth this year "as efforts to extract higher commissions and fees from clients and insurance companies should continue to pay off." He also said he expects continued margin expansion at the brokerage due to ongoing expense control initiatives.

However, analysts point to Aon as the best-positioned publicly held

See **BROKERS** page 21

Coca-Cola makes move to cash balance plan

By JERRY GEISEL

ATLANTA—The Coca-Cola Co. is adopting a cash balance pension plan for current and future employees.

Under the cash balance plan design, employees will receive annual age-weighted credits equal to a percentage of pay, starting at 3%. In addition, employees' cash balance plan accounts will be credited with interest. Coca-Cola has yet to decide on the interest rate formula it will use.

The plan will be offered to most U.S. salaried and hourly employees hired as of Jan. 1, 2010. Employees now in Coca-Cola's traditional $1.5 billion final average pay plan also will begin earning future benefits in the new plan at that time.

Coca-Cola's move to a cash balance plan comes at a time when many major employers are phasing out their defined benefit plans to offer only defined contribution plans.

But Coca-Cola executives rejected such an approach. "Offering a secure and risk-free benefit to employees is very important to us," said Sue Fleming, director of global benefits at Atlanta-based Coca-Cola.

"It is refreshing to see a company understand the value of its defined benefit plan, which, at least in Coca-Cola's situation, brings great value to both the company and its employees," said Kevin Wagner, a senior retirement consultant in the Atlanta office of Watson Wyatt Worldwide, which worked with Coca-Cola in designing the cash balance plan.

The appeal of a cash balance plan for a mobile workforce is that benefits, which are based on career average pay, accrue faster than they do in traditional plans, in which employees have to work many years before accruing significant benefits, Ms. Fleming said.

Coca-Cola, which last year reported $31.9 billion in operating revenues, up from $28.9 billion in 2007, is the third major employer to adopt a cash balance plan since 2006 when Congress passed the Pension Protection Act, a broad pension funding reform law that included provisions giving employers the go-ahead to set up new cash balance plans without fear of facing litigation. Several dozen employers that established cash balance plans years ago later were sued for age discrimination. Five federal appeals courts since have ruled that the plans do not violate age discrimination law.

"The PPA took off the handcuffs of employers that wanted to use the plans," Ms. Fleming said.

Other big employers that adopted cash balance since the enactment of PPA are: MeadWestvaco Corp., a Richmond, Va.-based paper packaging and office products company; SunTrust Banks Inc. of Atlanta; and Dow Chemical Co. of Midland, Mich.

In addition, package delivery giant FedEx Corp. of Memphis, Tenn., last year expanded a cash balance plan it had established in 2003 to cover employees who elected to remain in the company's traditional pension plan at the time the new plan was established.

CASH BALANCE

The details on The Coca-Cola Co.'s new cash balance pension plan

- Employees will receive annual credits equal to a percentage of pay.
- Credits start at 3% of pay and increase with age.
- Plan will be offered to most U.S. salaried and hourly employees hired as of Jan. 1, 2010.
- Current employees will earn future benefits through the plan.

AFP

Continental Connection Flight 3407 crashed earlier this month near New York's Buffalo Niagara International Airport.

Continental plane crash adds pressure to rates

Aviation market started firming last year: Brokers

By ZACK PHILLIPS

The crash of a regional turboprop near Buffalo, N.Y., could accelerate an already firming aviation insurance market, brokers and other experts say.

Continental Connection Flight 3407 crashed Feb. 12 in suburban Buffalo, killing all 49 people aboard and one person on the ground. Manassas, Va.-based Colgan Air Inc., a partner of Continental Airlines Inc., operated the flight.

Market sources said London-based Global Aerospace Underwriting Managers Ltd. is the claims lead. Global Aerospace also is the claims lead for Bombardier Inc., the Montreal-based manufacturer of the Dash 8 Q400 turboprop involved in the deadliest U.S. crash since American Airlines Flight 587 crashed in New York City in November 2001, killing 265 people.

The accident came less than a month after US Airways Flight 1549 ditched in the Hudson River. A jet from an airline in the Philippines also crashed on Jan. 11. Neither accident had fatalities.

That is not an unusually high number of accidents for 2009, said Paul Hayes, director at London-based Ascend Worldwide Ltd., an aviation consultant that tracks global accident data.

Still, broker reports indicate the insurance market for commercial aviation already was firming in December, when most major U.S. airlines renew their hull and liability policies. The accident near Buffalo could accelerate that hardening, brokers and other observers say.

"The trend line on premiums is going to be pointing up," said Bob Altemus, area senior vp and managing director of the aviation group at Itasca, Ill.-based brokerage Arthur J.

See **AVIATION** page 19

Wellpoint, CIGNA settle over use of Ingenix database

Insurers have agreed to contribute to fund for new database

By JOANNE WOJCIK

NEW YORK—Two more insurers have joined the list of health plans settling with New York Attorney General Andrew Cuomo over use of an allegedly faulty database to determine reimbursement rates for out-of-network medical providers.

Indianapolis-based WellPoint Inc. and Philadelphia-based CIGNA Corp. reached agreements last week with the state agency to cease using the database established by Ingenix Inc., a subsidiary of Minnetonka, Minn.-based UnitedHealth Group Inc., and contribute to a fund to finance setting up an alternative, independent database.

WellPoint subsidiary Empire Blue Cross Blue Shield is the largest health insurer in New York state with approximately 5 million members.

The settlements came after a year-long investigation by the New York attorney general's office that found the Ingenix database unfairly suppressed "usual and customary" rates for out-of-network medical care. It also concluded that UnitedHealth's ownership of the database, which is used by the vast majority of the nation's health insurers, was a conflict of interest. "Health insurers…have an incentive to manipulate the data" to reduce UCR rates in the database, the attorney general said.

Under the agreements, WellPoint and CIGNA each will contribute $10 million to fund development of the new database and discontinue using the Ingenix database. Earlier, Mr. Cuomo reached settlements with UnitedHealth and Hartford, Conn.-based Aetna Inc., which agreed to pay $50 million and $20 million, respectively, toward the new database.

Mr. Cuomo also secured similar agreements with other New York providers to pay various amounts over five years. They include Schenectady-based MVP Health Care Inc./Preferred Care, Buffalo-based Independent Health Corp., and Buffalo-based HealthNow New York Inc.

In addition, the attorney general's office has filed notices of intent to sue two upstate New York insurers—Capital District Physicians' Health Plan Inc. and Excellus Health Plan Inc., which does business as Excellus Blue Cross Blue Shield—for continuing to use the Ingenix database.

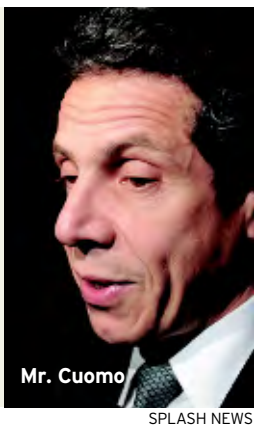
Altogether, Mr. Cuomo has collected more than $90 million in pledges from insurers to fund development of a replacement database that will be owned and operated by a nonprofit organization that has yet to be selected. The nonprofit also will develop a Web site where consumers nationwide can find out how much their doctors will be reimbursed for common out-of-network medical services in their specific geographic areas.

DATABASE SETTLEMENTS

Insurers that have settled with New York's attorney general over use of Ingenix Inc.'s database of usual and customary out-of-network provider reimbursements, and their contributions to develop a replacement database.

UnitedHealth Group Inc.	$50 million
Aetna Inc.	$20 million
WellPoint Inc.	$10 million
CIGNA Corp.	$10 million
MVP Health Care Inc./Preferred Care	$535,000
Independent Health Corp.	$475,000
HealthNow New York Inc.	$212,500

Source: New York attorney general's office


Mr. Cuomo

SPLASH NEWS

Questions & Answers

Neil C. Krauter is chairman and chief executive officer of the Krauter Group, a New York-based boutique brokerage with eight U.S. offices specializing in clients with complex risks, particularly those involved in private equity firms and mergers and acquisitions. Mr. Krauter has served private equity clients for 25 years, most recently as vice chairman of Aon Risk Services in New York and global practice leader of Aon Mergers & Acquisitions Group. Mr. Krauter, who launched the Krauter Group in late 2004, spoke recently with Business Insurance Senior Editor Sally Roberts about the challenges facing private equity firms today.

Private equity placements

Q: How would you describe the state of the private equity market today?

The best way to describe it would be busy but not in a traditional way. The volume of business is not based upon hundreds of transactions we would look to see closing every quarter, but more…from our distressed-debt clients and our distressed-fund clients. There's quite a bit of prepackaged bankruptcy work where bondholders are taking over companies and requiring different layers of due diligence.

LISTEN to a podcast of this interview and many more at **www.BusinessInsurance.com**

Q: Rather than making new deals, are private equity firms taking a more hands-on approach to their existing portfolio companies?

Absolutely, without a doubt, we're seeing this across the board. Driving down costs, keeping companies from violating their loan covenants and just watching them continue to take costs out of the business is absolutely what's going on. There's a lot of (private equity) firms that are doing their best to keep their companies afloat and not have them be taken over by their bondholders.

Q: Is this hands-on approach going on with insurance purchasing as well? I know traditionally, portfolio companies have been responsible for their own insurance purchasing.

It is. And to my way of thinking, this is what should have been happening all along…If I'm a limited partner in a private equity firm, I don't necessarily care if portfolio company No. 1 has a property loss.

What I care is, is how losses across all the portfolio companies impact my rate of return. So having private equity firms buy insurance traditionally…in little bits and pieces is absolutely the wrong way for a private equity firm to buy insurance.

See **KRAUTER** page 19

Judge OKs Marsh RICO settlement

Policyholder suit alleged broker stifled fair competition

By SALLY ROBERTS

TRENTON, N.J.—A federal judge in New Jersey last Wednesday approved a $69 million settlement Marsh & McLennan Cos. Inc. reached with a class of policyholders last summer related to industry practices that were uncovered by former New York Attorney General Eliot Spitzer in his 2004 bid-rigging suit against the broker.

The class of property/casualty insurance policyholders sued MMC and several dozen insurers and brokers in consolidated litigation in New Jersey, alleging they engaged in a conspiracy to stifle competition by steering clients and rigging bids in violation of the Racketeer Influenced and Corrupt Organizations Act and the Sherman Antitrust Act.

In separate actions in 2007, U.S. District Court Judge Garrett Brown Jr. dismissed the claims, citing lack of factual evidence (*BI*, Oct. 1, 2007; Sept. 10, 2007)

The judge's dismissals "opened the door to a settlement" with the plaintiffs that "utilizes the funds left over from Marsh's prior settlement with the New York Attorney General and New York Insurance Department," said MMC attorney Mitchell J. Auslander of Willkie, Farr & Gallagher in New York.

As part of that settlement, MMC established an $850 million compensation fund. Roughly half of the 140,000 eligible policyholder clients accepted approximately $750 million from the fund (*BI*, Oct. 3, 2005).

In a statement, Marsh said it was pleased to bring an end to the litigation. "We are moving forward with our business and are focused on the future."

The remaining appeal involving the class of plaintiffs and other insurers and brokers that are part of the consolidated litigation is pending.

MLB team files suit against Hartford

By JEFF CASALE

ATLANTA—The Atlanta Braves have filed a lawsuit against Hartford Life Insurance Co., alleging breach of contract on a disability insurance policy the team had on former Braves pitcher Mike Hampton.

The Braves are seeking $4.82 million in the suit, which charges that Hartford Life owes the team benefits for a period in 2008 during which Mr. Hampton was injured and unable to pitch.

According to court documents filed Feb. 13 in U.S. District Court for the Northern District of Georgia in Atlanta, Hartford Life issued a disability policy to the Colorado Rockies in December 2000 when Mr. Hampton signed with the team. The policy was assigned to the Braves when they acquired Mr. Hampton in November 2002. The policy's expiration date was Oct. 1, 2005.


CSM

Major leaguer Mike Hampton injured his pectoral muscle while warming up after coming back from injury.

According to court documents, a provision within the policy states that if Mr. Hampton was "totally disabled" before the expiration date, the policy would remain in effect. Further, the policy states that "benefits will remain in effect after the expiration date of coverage if (Mr. Hampton's) total disability commenced during the coverage period."

Mr. Hampton was injured in 2005 and missed all of the 2006 and 2007 seasons after two elbow surgeries. During those two seasons, Hartford, Conn.-based Hartford Life made "daily benefit" payments under the policy.

The Braves are also seeking payment for the days Mr. Hampton was unable to pitch during the 2008 season, but Hartford Life contends that Mr. Hampton was not "totally disabled" before or during the season.

Mr. Hampton injured his pectoral muscle while warming up for his first game back from injury in April 2008, forcing him to miss 117 days of the season. The Braves claim that they are owed $41,208.79 per day from Hartford Life for those days.

Hartford Life declined to comment on the pending litigation. A representative from the Braves could not immediately be reached for comment.

Errors & Omissions

A story in the Feb. 16 issue, "Employers Prepare for Surge in COBRA enrollees," misstated the projected cost of the recently enacted COBRA premium subsidy legislation at $25 billion a year. The total cost is expected to be about $25 billion.

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Unions: Proposal would boost numbers

CONTINUED FROM PAGE 1

federal arbitrators to impose wage, benefit and operating rules for the first two years of a contract period.

While several employer groups are lobbying against the proposal which is expected to be introduced soon, benefits managers should prepare now as the legislation has a reasonable chance of being approved by Congress, experts say.

"This is a very big deal on (Capitol) Hill…and it is ultimately inevitable that the bill in some form will be introduced," said Paul Mallos, a Bethesda, Md.-based principal in the Washington Resource Group of employee benefit consultant Mercer L.L.C.

In 2007, an earlier version of the bill passed the House of Representatives by a wide margin, but failed to garner enough votes in the Senate to invoke cloture.

Bill Samuel, the AFL-CIO's director of government affairs, in Washington, said the measure has a better chance now as Democrats have increased their control of Congress and President Obama supports the proposal.

The measure would increase the number of unions and help workers get better benefits and better pay, Mr. Samuel said.

"Human resource managers and benefit managers need to educate themselves about the statute" and consider getting help to develop "union avoidance strategies" now, said Laurence E. Stuart, an employer attorney with Legge, Farrow, Kimmitt, McGrath & Brown L.L.P. in Houston.

The best strategy employers can apply is to provide fair and equitable benefits, pay and working conditions to prevent worker dissatisfaction, sources say.

"If an employer is proactive and deals with those issues, it will avoid the situation where unionization occurs," said Bernie Ruesgen, Sports Authority Inc.'s group manger of human resources for the training and logistics units in Englewood, Colo.

Specifically, benefit managers also should "analyze the equity of benefits throughout their employee ranks" and externally to determine "if there is any inequity that might cause employees' concern," said Brenda Cossette, human resource director for the City of Fergus Falls, Minn. For example, if a pay rate lags behind the market, it might leave the employer vulnerable to union inroads, she said.

REUTERS

A General Motors Corp. worker at a union rally in December. Experts say more workers will join unions if a proposed bill makes it into law.

Benefit managers also should seek to resolve any outstanding benefit-related issues "which might make employees think that management doesn't care," like a limited wellness benefit or a high copay on prescription drugs, said Ms. Cossette.

"Employers need to turn their eyes inward and take a look (at operations) from an employee's perspective," Mr. Mallos said.

Another strategy is for employers to keep full-time employees, with whom employers are likely to have established relationships, and cut temporary hires, Mr. Ruesgen said. There are a significant number of employers who recruit many of their full-time employees from previously temporary employees. "Temporary employees may get to vote if the employer sources their applicants for full time through temporary services."

The proposed measure also compresses the timetable for negotiations so once a union is certified, it can demand that an employer begin negotiating within 10 days. If the union and employer can't agree within 90 days, either party can request federal mediation. If no agreement is reached within 30 days with federal mediation, then binding arbitration will determine the terms of the agreement.

"We think that would impose unwanted workplace terms and conditions," said Michael Layman, manager of labor and employment policy for the Society of Human Resource Management, in Alexandria, Va., which opposes the measure.

Imposition of any union contract reduces an employer's flexibility to respond to challenging economic conditions, said Ms. Cossette of Fergus Falls. For example, an employer without unionized workers could pass on some or all of the increased costs of employees' health insurance coverage by increasing workers' copayments at least annually; employers with a unionized workforce would have to wait to negotiate the copayment until a typical multiyear contract expires.

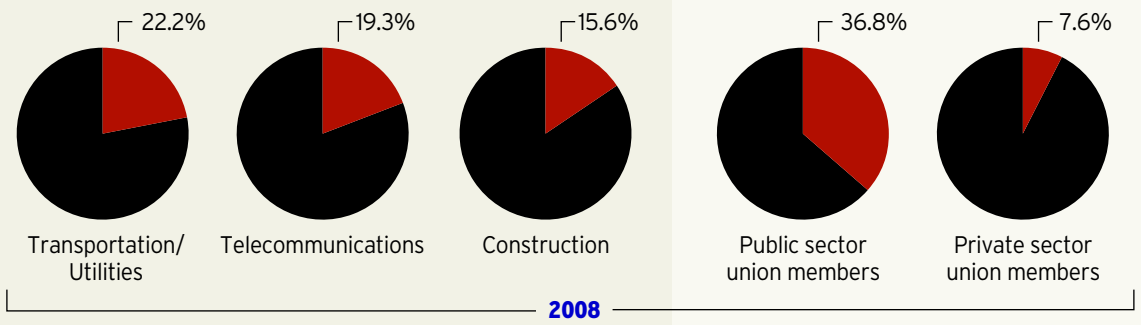
Large companies might find themselves faced with different contracts for the same level of workers in different locations, said Richard A. Epstein, a law professor at the University of Chicago in an analysis paid for by bill opponents.

The measure also provides for significant penalties if employers willfully or repeatedly engage in unfair labor practices during union-organizing drives.

The AFL-CIO said such measures are needed to protect pro-union workers from employer tactics including mandatory anti-union meetings, "one-on-one pressure sessions," predictions of shutting down, endless delays and illegal firings, according to statements.

UNIONIZED WORKFORCE

Union membership in the United States



Source: U.S. Department of Labor's Bureau of Labor Statistics

Commentary

Blue screen of death makes inevitable return

PAUL WINSTON

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

Have you ever encountered the "blue screen of death?"

It's a term coined to describe an error message screen in Windows operating systems when a critical error is encountered. I've experienced it many times over the years, possibly with each iteration of Windows, from 3.1 to 95 to 98 to XP and now Vista. Although it's a rather pretty shade of blue, it is typically a harbinger of the useful end of the computer or of critical components such as the hard drive or the operating system.

Sometimes it goes away (for a while) by simply rebooting the PC. In fact, if you call a tech support line, you'll often be prompted to try that sort of high-tech maneuver yourself. Or, if you have a working computer and can search the Internet for solutions, you will find all sorts of links to helpful advice on repairing flaws in your computer's inner workings, such as improper registry files. I liken this sort of advice to encouraging people to attempt brain surgery on themselves: one mistake can be fatal.

As you may have guessed by now, my home PC is dying. It is unresponsive to treatment and the family is huddling right now and trying to decide whether to pull the plug or to perform some of that amateur brain surgery (or in this case, a home kidney transplant in which we remove the hard drive and see if we can get it to work in another setting). The kids have already buried the machine in their minds and are jumping up and down and chanting "Get a Mac! Get a Mac! Get a Mac!"

This is after rebooting the computer about three dozen times over the course of the day in the hope it would magically resume working long enough for us to download all those things we have not backed up recently: family photos, about 30 gigabytes of music, recipe files, bank account records, my high score in solitaire and so on.

Rebooting repeatedly is not as hopeless as it sounds: Occasionally it does generate a different response. Sometimes, for example, we get a "system repair" message that warns it could take hours; it never takes more than 10 minutes and always reports finding nothing. It also offers me the option to send a report to Microsoft, as if Bill Gates himself would pick up this urgent e-mail and come to my rescue.

It was while looking at the details of one of those repair sessions that I found the problem actually described as a "blue screen" error, which is like finding the term "broken thingamajig" in a car repair manual. Oh, and the screen is no longer blue. It's now black. There isn't a funny term for this, so I take it as a sign the situation is grave. (So help me, I just tried rebooting again…to no avail.)

The frustrating thing is that I've been here before. I'm sure many of you reading this have been here before. And in all likelihood we'll be here again.

> I liken this sort of advice to encouraging people to attempt brain surgery on themselves: one mistake can be fatal.

There are certainly basic preventive measures one can take to minimize the risk that a PC will have a catastrophic breakdown, but my experience has been that they only delay the inevitable. It raises the question of why so many of us tolerate such a fragile and flawed product. I can only assume that we are willing to forgive these flaws because we so value the benefits—information, entertainment, education, etc.—that a computer provides (or maybe we're enthralled by the blue screen of death).

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If it's February, then St. Baldrick's Day must be fast approaching. Join the many industry professionals who are raising funds to research a cure for children's cancer by shaving their heads on behalf of the St. Baldrick's Foundation.

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Business Insurance OPINIONS

HIPAA requirements will increase costs

THE NEW ECONOMIC STIMULUS law intended to help the country recover from the deepening recession includes new notification requirements and penalties for violating the Health Insurance Portability and Accountability Act.

Is this attempt to tighten medical privacy a good thing for employers? Yes and no.

HIPAA was enacted in 1996, and its medical records privacy provisions went into effect in 2003. The law made sensitive health information more difficult to access, but it also added unforeseen hassles to the provision of medical care and implemented penalties for unauthorized release of medical data.

Compliance costs are never negligible, and they must be paid for somehow.

It was a step on the road toward broader health care reform, which overall was a positive move.

But compliance costs are never negligible, and they must be paid for somehow. The recent law not only expands enforcement of HIPAA rules but also requires employers and health care payers to notify plan members of data security breaches, something that HIPAA originally did not mandate.

We think better safeguarding of medical records certainly is necessary, but additional administrative burdens on employers and their health care partners do not help reduce the cost of or access to health care.

Insurance reform bill merits swift passage

NOBODY CAN ARGUE that Congress isn't carrying a full legislative load, particularly given that this Congress is less than two months old. But we hope something that can and should be dealt with quickly soon is added to the pile.

That something is the Nonadmitted and Reinsurance Reform Act, a piece of legislation that already has passed the House twice. As we reported last week, Reps. Dennis Moore, D-Kan., and Scott Garrett, R-N.J., plan to reintroduce the measure soon, perhaps as early as this week.

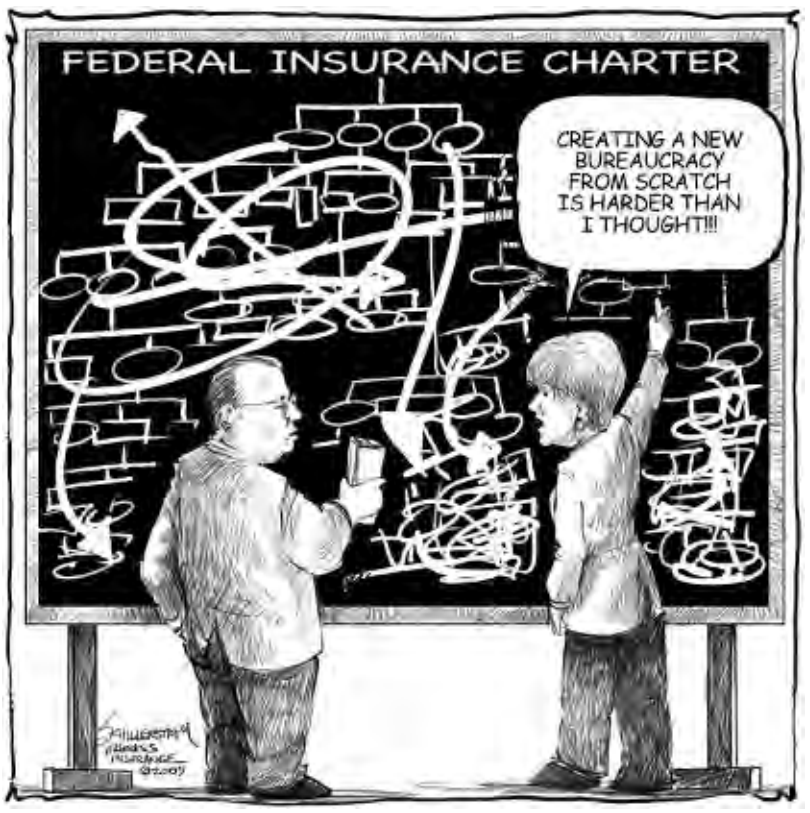
The bill would streamline the regulation of surplus lines insurers and should make it easier for risk managers to access nonadmitted markets without first having to prove that they had exhausted all possibilities in the admitted market. .

We stress the "should," because an earlier measure of the bill defined a "qualified risk manager" who would be able to take advantage of liberalized access so narrowly that only a handful of risk managers would have qualified. Fortunately, lawmakers relaxed the language, and we hope the less restrictive definition appears again in the new bill.

The Nonadmitted and Reinsurance Reform Act traditionally has enjoyed support across the insurance industry. It's a noncontroversial piece of legislation that failed to win Senate approval simply because of the economic crisis that blew up last fall.

Given the breadth of support for the measure and provided that it contains the liberalized definition of who is a qualified risk manager, the bill deserves the approval of both houses as soon as possible after its reintroduction.

We hope the third time indeed will be the charm.



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in the *BI* Online Poll at
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THIS WEEK'S RESULTS

Q Should COBRA be expanded even if it raises employers' health care costs?

YES, it is good policy to help the unemployed. **41%**

YES, but only if the cost to employers can be minimized. **22%**

NO, it is just too expensive for employers. **19%**

NO, it is bad public policy. **19%**

NEXT WEEK'S QUESTION

Q: How will economic conditions affect broker service levels?

READ

Perspectives and expert analysis online at
www.businessinsurance.com/knowledgecenter

Subprime woes shift claim focus to aggregation

The issue of claims aggregation has moved to the forefront of policyholders' and insurers' minds due to numerous lawsuits related to the subprime mortgage and credit crisis, say John F. McCarrick, Maurice Pesso and Daniel H. Simnowitz of Edwards Angell Palmer & Dodge L.L.P. in New York. Whether such lawsuits are related or unrelated can determine how much of the cost companies and insurers must pay, and whether it is worthwhile for policyholders to pay multiple retentions to access multiple coverage limits.

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Straight Answers

Finance firms weigh D&O cover options

With rates surging, some buyers look to alternative markets

By DAVE LENCKUS

U.S. financial institutions hit by subprime mortgage-related losses could turn to several alternative risk-financing options in response to the tight executive management insurance market, but no option is a clear choice, risk management experts say.

Pay-as-you-go risk financing, single-parent captives, group captives and trusts all have advantages, experts say. But with each posing knotty problems, some financial institution risk managers are pondering whether to pay the 30% to 300% additional premium their directors and officers liability insurers want for vastly reduced limits and then search worldwide for capacity to fill out their programs, experts say.

"A lot of financial institutions certainly are asking themselves these kinds of questions," said Michael White, a New York-based senior vp and the national financial services industry leader for executive risk at Willis HRH Inc., a unit of Willis Group Holdings Ltd.

The D&O market, however, is tough for only financial institutions—large or small—that have been hit hard by subprime mortgage-related problems, experts note.

But even difficult D&O risks can find some new capacity from recent market entrants, said John Bayeux, a New York-based executive vp and industry leader-financial institutions for Willis HRH.

While rates have soared for poor risks, they still have not hit the 2003 peak in D&O pricing, said Michael O'Connell, a New York-based managing director and the financial institutions practice leader at Aon Risk Services Inc.

"One option is not doing anything" different, he said.

For the largest 15 to 20 financial institutions, that means buying only Side A coverage, as they have the past five years, Mr. O'Connell said.

Side A losses are those that insurers must cover directly, because corporate bylaws and state statutes bar the companies from indemnifying executives and then seeking reimbursement under Side B of their policies. Side C losses are the liabilities imposed against the corporate entity.

Regardless how much coverage is available in the commercial market, a handful of buyers already have decided not to pursue all of it. Instead, they have begun filling in portions of their excess D&O coverage with coverage written by their existing captives, experts say.

But a single-parent captive typically cannot provide a large portion of desired limits, and a large loss would pose a significant insolvency risk for the facility, said Linda Kaiser Conley, a partner with Cozen O'Connor P.C. in Philadelphia. "It could be a dangerous route to take," she said.

Manhattan's financial district is home to many of the world's largest financial institutions, which are grappling with D&O liability risk-financing options.

As a safeguard, some owners protect their captives with reinsurance, Willis' Mr. White said. "But then why not just buy insurance" and forgo the risky captive coverage?

Another problem would be developing a rate for the captive, experts say. While infrequent, D&O losses can be severe. Even relatively small losses can generate substantial legal fees, they said.

Another hurdle most experts cite is that single-parent captives cannot cover Side A claims, except possibly in New Jersey (see related story).

Running Side A coverage through a corporate captive "would be seen as trying an end run around the nonindemnification statutes," Mr. White said.

However, Charles W. Soucy, a principal and the financial institutions practice leader at Albert Risk Management Consultants in Needham, Mass., and colleague Don Riggin, practice leader-risk financing, said a pure captive could write Side A coverage if it were properly structured and if it and its reinsurers used appropriate accounting.

Unlike a pure captive, a group facility can cover Sides A, B and C losses for D&O coverage, experts noted.

"Group captives historically have been the best vehicle when you have a specific industry that runs into problems," said James W. Barber, a senior consultant at RMI Consulting Inc. in Port Washington, N.Y.

The option is a proven solution for financial institutions, as such facilities already exist to cover mutual funds' and life insurers' D&O risks.

But pulling together a group facility for other sectors of the financial services industry would be difficult because the demand for alternative risk financing is insufficient, Mr. Riggin said.

In addition, financial institutions are wary of each other's financial strength and risk exposure, so many likely would be hesitant to put up capital with others, experts say.

Bermuda-based Bankers Insurance Co. Ltd. was the first industry captive for commercial banks when it was established during the 1980s. At one time, it had more than two dozen banks of diverse sizes and risks as members. With its membership trimmed to seven largely because of industry consolidation, however, BICL has been winding down for years.

Many risk managers did not want to discuss the concept of an industry captive.

K.C. Kidder, Minneapolis-based vp and risk manager for Wells Fargo & Co., one of the few remaining BICL members, would say only that the bank "would not be interested in being a member of a group captive again."

But considering that financial institutions' problem risks already have been identified, RMI's Mr. Barber asked: "Wouldn't that be an ideal time to self-insure?"

For those searching for alternative Side A coverage aside from group captives, an irrevocable trust is a possibility, said Tom Orrico, managing director and financial institutions practice leader at FINPRO, a division of Marsh Inc. in New York.

Long-term assets would have to be committed to pay claims, which would include Side A losses if allowed by state law, Mr. Orrico said. However, state laws vary on whether trusts can cover Side A and derivative losses, he said.

A trust's main disadvantage is that capital cannot be withdrawn, Mr. Orrico said.

While the D&O market is not at a crisis stage, experts advise risk managers to explore alternative risk-financing options because of the nine- to 12-month lead time needed to set them up.

"I think, in this market, people need to keep their eyes open and be aware of alternatives and be able to gauge whether they're proper solutions for you," Ms. Kaiser Conley said.

N.J. law permits captives to fund Side A coverage

While most risk management experts agree that single-parent captives cannot be used to finance executive management liability Side A losses, one large company has found a way under New Jersey law, a broker says.

Insurers respond with Side A coverage when corporate bylaws and state statutes preclude a company from directly indemnifying directors and officers for their losses and then seeking Side B reimbursement from directors and officers insurers.

Pure captives, however, "apparently" can cover Side A risks under Chapter 3-5 of Section 14A of New Jersey's general powers statute for corporations, said John Kerns, managing director of Beecher Carlson Holdings Inc. in New York.

And at least one large company, though not a financial institution, is using the law with its New Jersey-domiciled single-parent captive, Mr. Kerns said.

The statute specifically allows a corporation to buy insurance for losses, including those the corporation cannot directly indemnify, from an insurer "owned by or otherwise affiliated with the corporation, whether or not such insurer does business with other insureds."

—By Dave Lenckus

Directors & Officers Risks

SPOTLIGHT

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Subprime-related D&O suits expanding to new categories

By ROSEANNE WHITE GEISEL

Lawsuits stemming from the subprime mortgage crisis and subsequent tightening of credit continue to increase as new categories of defendants are targeted, experts say.

As those suits generate claims against directors and officers insurance policies, insurers' losses will increase on top of several years of slow growth in premium volume and downward pressure on rates.

The challenges that lie ahead for directors and officers and their insurers are hard to forecast, experts say.

"The types of cases have changed," said Faten Sabry, vp in the securities practice of NERA Economic Consulting in New York.

Originally, suits were predominantly against U.S. lenders who approved mortgages without regard to a borrower's creditworthiness, leading to defaults and foreclosures that have had a domino effect on economies around the world. More recent suits challenge entities involved with securitized mortgages.

It is a "peel-the-onion" situation, said John Rafferty, vp of Hartford Financial Products and D&O underwriting manager for Hartford Insurance Co. in New York.

'There is a very big question about the ultimate impact of credit crisis claims covered by D&O insurers.'

Carl Pursiano,
Liberty International Underwriters

Those deeper layers, Ms. Sabry said, include pitting investors vs. issuers of mortgage-backed securities, bond insurers vs. bond issuers and hedge funds vs. banks. "We are going to see more cases along those lines," she said.

Another set of disputes "will involve values of distressed assets as bankruptcies increase and disputes arise over mergers and acquisitions that will not take place," Ms. Sabry said.

Litigation related to subprime mortgages began in 2007, when 40 of 195 securities class actions filed nationwide resulted from the subprime fallout, according to a December 2008 report by NERA Economic Consulting, a unit of Marsh & McLennan Cos. Inc.

Excluding initial public offerings, cases against analysts and others, class action securities lawsuits in 2007 jumped 40% from 2006, according to the report. In 2008, the number of subprime-related lawsuits grew to 110 of 255 securities class actions filed through mid-December, the report said.

To slow this trend, the Mortgage Bankers Assn. in Washington is advocating, among other initiatives, uniform standards for mortgage lenders.

"We think uniform standards with clear remedies and clear penalties are the best way to cut down on a lot of litigation and protect consumers," said Ken Markison, associate vp and regulatory counsel for the Mortgage Bankers Assn. "Standards would lead to uniformity in case law and how people apply remedies."

"I would say 2009 has the potential for being a banner year for securities litigation," said Carl Pursiano, senior vp-management liability for Liberty International Underwriters in New York.

"It doesn't bode well for carriers that not only have a lot of claims, but big claims" that have been filed, Mr. Pursiano said. "There is a very big question about the ultimate impact of credit crisis claims covered by D&O insurers."

While the amount of litigation that would trigger D&O cover was low for several years before the subprime crisis, the past two years have brought a "meaningful uptick," Mr. Rafferty said.

The number of class action lawsuits against Fortune 500 companies has "almost tripled in two short years," Mr. Rafferty said.

When directors and officers of a Fortune 500 company are sued, that may involve as many as 12 insurers that have taken different layers of the coverage, Mr. Rafferty said. In contrast, a suit against an emerging company could be limited to two or three insurers, he said.

"With suits against Fortune 500 companies, there's much more potential for breadth of exposure, bigger claims and bigger damages. Instead of being your suit or my suit, it becomes the industry's suit," Mr. Rafferty said.

Beyond the litigation exposure, insurers that provide Side A coverage of corporate executives and board members may not yet have that exposure on their radar screens, he said.

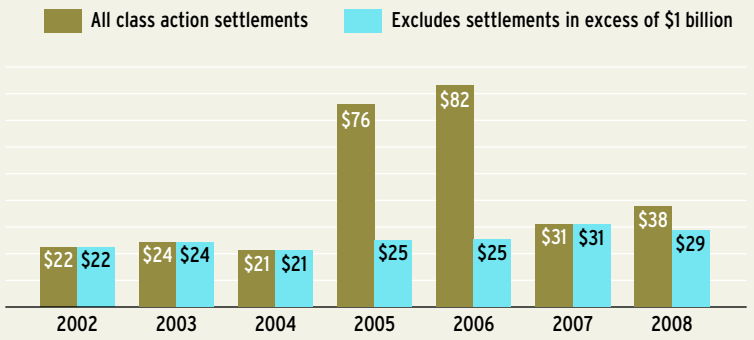
"D&O insurers are more exposed to Side A policies than they ever have been," he said. If a company has been trying to settle a claim for three to five years and moves into bankruptcy, then Side A coverage responds, Mr. Rafferty said.

"D&O underwriters are learning hard lessons again, like they did in

Continued on next page

CLASS ACTION SETTLEMENT VALUES

The average value of class action settlements for 2003 through 2008, after implementation of the Sarbanes-Oxley Act, rose to $45 million compared with an average $17 million before the financial disclosure law went into effect. Average settlement values by year were, in millions of dollars:



Source: NERA Economic Consulting

CONTINUED FROM PREVIOUS PAGE

the dot-com era and during Enron and WorldCom," LIU's Mr. Pursiano said. There's no rapid growth in D&O without risks. Short-term thinking can be hazardous."

Mr. Pursiano said LIU has taken a long-term view that emphasizes managing overall D&O risk for the financial services industry.

D&O "is a line of business where you occasionally get claims because of systemic events that are just not predictable," said W. Dolson Smith, senior financial analyst with A.M. Best Co. Inc. in Oldwick, N.J. A December A.M. Best special report on D&O insurance stated: "While D&O insurance is written on a claims-made basis, A.M. Best believes substantial reserve strengthening likely will occur in 2009 and 2010 as the frequency of D&O claims remains high and—likely of greater consequence—the severity of claims escalates."

Robert M. Horkovich, co-chair of the insurance recovery practice at law firm Anderson Kill & Olick P.C. in New York, said, as part of trying to resolve such claims, he anticipates there will be lawsuits by policyholders seeking recovery from insurers. He recommends that executives proactively evaluate their D&O coverage and quickly notify insurers of any claims.

The median class action settlement in 2008 through Dec. 14 was $7.5 million, compared with $9.4 million in 2007, according to the NERA report. The average settlement in 2008 rose to $38 million. Excluding settlements in excess of $1 billion, the average settlement value in 2008 was $29 million (see chart).

Economic events since 2007 have been anything but predictable.

"I personally say that when the subprime crisis started, I don't know that many people expected a worldwide credit and liquidity crisis," said NERA's Ms. Sabry. "First, the subprime mortgage problem became evident. Then it became a credit and liquidity crisis, and banks started to fail and the government interfered in an unprecedented way. I don't think that's something in the summer of '07 I would have thought of."

"What's the next shoe to drop?" Mr. Pursiano asked.

Financial institution rates jump in Europe

Current split in D&O pricing seen moving to general price hikes

By STUART COLLINS

European buyers of directors and officers insurance have faced more insurer scrutiny during their latest renewals, with rates, terms and conditions that are largely unchanged.

However, rising costs for insurers and signs of increasing claims are likely to push rates higher in the second half of this year, market sources say.

While rates for European D&O insurance were largely flat for recent renewals, brokers and insurers say there is a major exception.

"It is important to make the distinction between commercial directors and officers and financial institutions," said Hedley Blane, senior vp at Marsh Ltd.'s financial and professional practice in London.

"D&O rates for (nonfinancial) commercial clients were still reducing last year and, in some cases, even at the start of this year. (But) financial institutions experienced dramatic change during the second half of last year, and we have seen quite substantial increases for financial institutions across Europe," Mr. Blane said.

There has been a clear difference in rates for commercial companies compared with financial institutions, and U.S.-traded vs. non-U.S.-traded companies, said Richard Green, London-based underwriting manager at HCC Global Financial Products, a unit of HCC Insurance Holdings Inc.

"There are still rate reductions out there for commercial non-U.S.-traded clients, but U.S-traded financial institutions are getting signifi-

See **EUROPE** page 15

Directors and officers liability insurance providers

Ranked by 2008 estimated premiums

Rank	Company/Address	Phone/Web site	Premiums	Admitted business	Nonadmitted business	Policyholders	Principal officer(s)
1	**AIG Executive Liability** 175 Water St., New York, N.Y. 10038	877-638-4244 *www.aig.com/aigexecutiveliability*	$1,000,000,000	95%	5%	14,300	Michael Smith, president-AIG Executive Liability
1	**XL Insurance** 100 Constitution Plaza, Hartford, Conn. 06013	860-246-1863 *www.xlinsurance.com*	$1,000,000,000	85%	15%	7,000	John Burrows, chief underwriting officer-U.S. Operations (Greenwich Insurance Co., Indian Harbor Insurance Co., XL Specialty Insurance Co.).
3	**Hartford Financial Services Group Inc.** 2 Park Ave., New York, N.Y. 10016	212-277-0457 *www.hfpinsurance.com*	$500,000,000	95%	5%	N/A	John Rafferty, Michael Karmilowicz, Michael Price, vps
4	**Liberty Mutual Insurance Co.** 175 Berkeley St., Boston, Mass. 02116	617-357-9500 *www.libertymutual.com*	$323,787,337	99%	1%	6,353	Gordon McBurney, president/chief underwriting officer-Liberty International Underwriters
5	**Arch Insurance Group Inc.** 1 Liberty Plaza, New York, N.Y. 10006	212-651-6500 *www.archinsurance.com*	$250,000,000*	92%	8%	4,000	Dan Gamble, executive vp
6	**RSUI Group Inc.** 945 E. Paces Ferry Road, Suite 1800, Atlanta, Ga. 30326-1125	404-231-2366 *www.rsui.com*	$140,000,000	94%	6%	4,000	Greg Buonocore, senior vp
7	**Navigators Insurance Co.** 6 International Drive, Rye Brook, N.Y. 10573	914-934-8999 *www.navg.com*	$110,000,000	90%	10%	1,900	Chris Duca, president
8	**RLI Corp.** 9025 N. Lindbergh Drive Peoria, Ill. 61615	908-598-8375 *www.rlicorp.com*	$70,000,000	95%	5%	700	A.Q. Orza II, vp-Executive Product Group
N/A	**ACE Ltd.** 436 Walnut St., Philadelphia, Pa. 19106	215-640-1000 *www.acelimited.com*	N/R	N/R	N/R	N/R	Scott Meyer, executive vp-ACE Professional Risk (ACE USA); Joseph Casey, senior vp-professional risk-ACE Westchester; Patrick Tannock, executive vp-ACE Bermuda
N/A	**W.R. Berkley Corp.** 475 Steamboat Road, Greenwich, Conn. 06830	203-629-3000 *www.wrberkley.com*	N/R	80%	20%	8,200	Douglas Powers, CEO/president-Monitor Liability Managers Inc.; John Benedetto, president-Berkley Professional Liability L.L.C.
N/A	**CNA Financial Corp.** 333 S. Wabash, Chicago, Ill. 60604	312-822-2000 *www.cna.com* *www.cnapro.com*	N/R	N/R	N/R	N/R	Thor Beveridge, Thomas Kocaj, Dan Auslander, John Taylor, vps
N/A	**Chicago Underwriting Group Inc.** 191 N. Wacker Drive, Suite 1000, Chicago, Ill. 60606-1905	312-750-8800 *www.cug.com*	N/R	99%	1%	N/R	Marty Perry, president
N/A	**Chubb Corp.** 15 Mountain View Road, Warren, N.J. 07059	908-902-2000 *www.chubb.com*	N/R	N/R	N/R	N/R	Robert C.Cox, executive vp-Chubb & Son/ COO-Chubb Specialty Insurance
N/A	**Crum & Forster Holdings Corp.** 305 Madison Ave., Morristown, N.J. 07962	973-490-6641 *www.cfins.com*	N/R	99%	1%	N/R	Don Fischer, senior vp
N/A	**Great American Insurance Group-Executive Liability Division** 1515 Woodfield Road, Suite 500, Schaumburg, Ill. 60173	847-330-6750 *www.greatamericaneld.com*	N/R	N/R	N/R	N/R	Bruce Smith, divisional president
N/A	**IronPro** 1 Exchange Plaza, 12th Floor, New York, N.Y. 10006	646-826-6600 *www.ironshore.com*	N/R	N/R	N/R	N/R	Greg Flood, president
N/A	**C.V. Starr & Co.** 90 Park Ave., New York, N.Y. 10016	646-227-6335 *www.cvstarrco.com*	N/R	40%	60%	N/R	Laurie Banez, senior vp
N/A	**Travelers Cos. Inc.** 385 Washington St., Saint Paul, Minn. 55102	800-238-6225 *www.travelers.com*	N/R	95%	5%	N/R	Jeff Klenk, senior vp-bond and financial products

**BI* estimate. Company provided a range of premium. N/A=Not available N/R=Not reported
Source: *BI survey*
Researched by Kevin Edison and Karen Tucker

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Europe: Scrutiny of corporate risks by D&O insurers growing

CONTINUED FROM PAGE 13

cant increases," Mr. Green said, adding that he even has seen increases in excess of 50% for D&O coverage for some European financial institutions.

Capacity in the U.S. and London markets has been withdrawing from writing U.S. financial lines, said Chris Hewitt, London-based executive director at Lockton International Holdings Ltd., a unit of Lockton Cos. L.L.C.

"There has been a reduction in appetite and key players have reduced their capacity. And there are risks where the pricing has challenged institutions to the extent that some clients have questioned the viability of buying the cover," Mr. Hewitt said.

D&O underwriters also have sought "substantive increases" in emerging markets such as China and India, where "precipitous rate decreases" had been case during the past three years, said Douglas Robare, London-based D&O manager at Zurich Global Corporate U.K., a unit of Zurich Financial Services Group.

'Our expectation is that rates will go up this year, although maybe not in the first quarter. The second half of the year will be more telling.'

Douglas Robare
Zurich Global Corporate U.K.

While most European D&O buyers saw flat rates during their latest renewals, insurers are scrutinizing companies' financials more closely, brokers and insurers say.

"Underwriters are now being more selective when it comes to commercial clients, taking a more detailed approach to a company's financials in order to establish if it has any debt issues," Mr. Hewitt said. "While some clients have seen reductions, this has been selective. With any company that may be distressed, underwriters have taken a more pragmatic approach."

"There are certain specific issues and sectors that need more attention when underwriting because there are issues linked to the wider economy," said Zurich's Mr. Robare. "When you have a financial crisis, you can see the knock-on effects on certain sectors, such as construction and retail."

Even as recently as six months ago, there was little differentiation between individual risks within broad categories, said Andre Basile, vp of commercial D&O at AIG U.K. Ltd., a London unit of American International Group Inc.

"That is clearly changing, and insurers now differentiate between companies with aggressive accounting policies, high debt or liquidity issues, subordinated debt that could be called on, competition issues, and companies that are specifically tied to the economic downturn such as real estate, event planners, retail and construction," Mr. Basile said.

Some D&O underwriters expect price increases later this year.

"Our expectation is that rates will go up this year, although maybe not in the first quarter," said Mr. Robare, adding that many insurers have reinsurance treaties that renew in April. "The second half of the year will be more telling," he said.

Many issues will drive rate increases, Mr. Robare said. While claims volume in recent years had been low, it is now increasing, he said.

"There needs to be a re-evaluation of these risks, as Europe is not a wonderland without problems. The industry must respond responsibly because it does not want a situation where there are systemic losses that can lead to decisions to withdraw capacity," Mr. Robare said.

AIG's Mr. Basile said he expects an increase in company disclosures to investors about fraud or misrepresentation. "It is not necessarily the case that we expect there to be issues for all companies, but that certain companies won't be able to hide their issues any longer," he said.

He noted that regulators outside the United States are becoming more active. For example, the U.K. Financial Services Authority has said it will focus on disclosure issues of companies traded in the United Kingdom, he said.

Rates also are likely to rise because insurers' return on investments is much reduced in today's economic climate, said John Taylor, commercial financial lines manager at CNA Insurance Co. Ltd. in London. "A lot of companies rely on investment returns for their profits. If they are not going to get that, it needs to be reflected in the price," he said.

"We would expect to pay more claims in the current economic market," Mr. Basile said. "So rates will go up, claims will go up and companies that rely on their investment portfolios for profit will reduce their risk appetite," he added.

While some underwriters predict rate increases, buyers are likely to resist such efforts, said Paul Hopkin, technical director at the London-based Assn. of Insurance & Risk Managers.

"Risk managers and their companies are likely to look more carefully at policy limits and the scope of coverage they purchase. So if rates do go up, there could be a response from risk managers to buy less coverage, or purchase Side A coverage only, " Mr. Hopkin said.

Unpaid premium taxes in Europe put policyholders at risk

D&O claims denials and fines among adverse possibilities

By DAVE LENCKUS

U.S. corporations with operations and executives in Europe may face costly ramifications for failing to comply with European Union premium tax laws despite a 2001 court decision that underscores those obligations, experts say.

"The policyholder has to be concerned about whether its (global D&O) policy is enforceable" as a result, said Tripp Sheehan, the Boston-based U.S. D&O practice leader at Marsh Inc.

The European Union's Court of Justice issued its premium tax ruling, which applies to all nonlife insurance, in 2001 in *Kvaerner P.L.C. vs. Staatssecretaris van Financien.* The case centered on whether London-based Kvaerner—now TH Global Ltd.—was obligated to pay a premium tax on part of its global professional liability insurance program that covered a subsidiary in the Netherlands.

The court ruled against Kvaerner and said a tax liability exists regardless of whether a subsidiary or covered individual paid the parent company for the coverage. The ruling also applies to European Economic Area nations.

Kvaerner had not purchased admitted coverage in the Netherlands, which is among the few E.U. and EEA countries that allow nonadmitted insurance.

Still, experts said, the ruling underscores that most E.U. and EEA countries require admitted insurance and that all impose premium taxes.

The potential ramifications for failing to comply are income tax assessments against insurance payments and stiff fines, both of which would drastically reduce net insurance proceeds. Enforcement likely will ratchet up as financially strapped countries search for new revenue, at the same time D&O liability overseas is expanding, experts said.

Meanwhile, experts pointed out, tax authorities in many countries outside of Europe essentially have adopted the *Kvaerner* decision.

Brokers and insurers blame each other as well as risk managers and their legal departments for the situation. Several experts said most insurers do not have systems in place to remit premium taxes overseas.

Many buyers have attempted to pay premium taxes, "but it became so difficult, they decided not to do it," noted Lee Lindsay, a Denver-based senior vp at Aon Financial Services Group, a unit of Aon Risk Services Inc.

"Clients want to comply, but in some countries only an insurer can pay the taxes, and many insurers are not ready to," said Ann Longmore, the New York-based executive vp-D&O practice leader for Willis HRH, a unit of Willis Group Holdings Ltd.

> **'Clients want to comply, but in some countries only an insurer can pay the taxes, and many insurers are not ready to.'**
>
> Ann Longmore, Willis HRH

But in a foreign country, there is no process for a nonadmitted insurer to remit premium taxes, many experts acknowledged.

Other experts said many risk managers are unaware of the issue. Policyholder attorney William G. Passannante, a partner with Anderson Kill & Olick P.C. in New York, blamed brokers for failing to advise their clients appropriately.

Paul Schiavone, the London-based chief underwriting officer for D&O insurance at Zurich Global Corporate, a division of Zurich Financial Services Group, agreed. "It's just a matter that they have to be advised about it—by their brokers or their legal departments," he said.

Attorney Richard Bortnick, a partner at Cozen O'Connor P.C. in Philadelphia, said some retail and wholesale brokers without global operations have sought his advice about premium tax requirements. "These brokers are trying to keep on top of insurers and trying to protect policyholders," he said.

Still, other risk managers have decided not to pay premium taxes, experts said. One reason is that their organizations are focusing on pressing economy-related problems.

Some risk managers also question whether their organizations would have to pay years of back taxes and fines if they began paying taxes now.

"That's a tough question and a smart one," Willis' Ms. Longmore said.

Zurich's Mr. Schiavone and Aon's Ms. Lindsay advised risk managers to pay the taxes and ask for leniency. Many countries are willing to work with insurance buyers on this problem, Ms. Lindsay said.

As insurance buyers sort out the premium tax issue, they also must contend with attendant insurance recovery problems.

A global insurer with a unit that is licensed in the foreign country where a policyholder's subsidiary is based likely would refuse to remit insurance proceeds to the subsidiary if it sustained a loss but did not buy admitted coverage, experts noted. Otherwise, the local insurer would risk losing its license and exposing some of its officials to jail time, they said.

Another potential problem is a D&O insurer could deny an otherwise valid claim by contending indemnification would violate policy terms because the policyholder breached local regulations, Marsh's Mr. Sheehan said.

Perry Granof, an independent consultant in Chicago and former insurance executive, agreed.

An insurance buyer could insist on a provision in its global policy requiring its insurer to remit insurance proceeds to the parent company when a foreign subsidiary sus-

See TAXES next page

Market Moves

Meritain Health buys Indiana TPA

EVANSVILLE, Ind.—Meritain Health Inc. said it has acquired U.S. Healthcare Holdings L.L.C., the Evansville, Ind.-based third-party administrator of Welborn Health Plans.

The combination of Amherst, N.Y.-based Meritain, a TPA for self-funded plans, and USHH, a TPA for commercial insurance and Medicare, will affect 420 clients and 78,000 members, Meritain said in a statement.

Meritain said it did not purchase Welborn, only USHH, which provides Welborn's management and employee infrastructure.

Joint effort focuses on insurance alternatives

MAYFIELD HEIGHTS, Ohio—Ironshore Environmental said it has formed an affiliation to write surety business with Ohio-based United Nations Insurance Agency Inc.

"Bonding capacity is very important to many of our clients and this arrangement provides another highly desired service to our industry segment," Ironshore Environmental Chief Executive Officer Joe Boren said in a statement.

The effort also will give skilled contractors "alternatives in today's changing insurance market," said Julie Bowers, underwriting manager for United National Insurance Agency.

Ironshore Environmental is a unit of Hamilton, Bermuda-based insurer Ironshore Inc.

United Nations Insurance is the underwriting administrator for Evergreen National Indemnity Co.

NIF Group merges with HDR Insurance

SACRAMENTO, Calif.—Managing general agent NIF Group Inc. said it has merged with HDR Insurance Services L.L.C.

Manhasset, N.Y.-based NIF offers insurance agents capabilities in wholesale brokerage, general agency, professional liability and personal lines. Sacramento, Calif.-based HDR provides programs to independent agents.

NIF, which did not disclose terms of the deal, said HDR would continue operating in Sacramento.

EAPs join forces in Russian operation

MOSCOW—Two U.S. firms have formed an equity joint venture to set up an employee assistance program company, Corporate Health L.L.C., in Moscow.

Bloomington, Ill.-based Chestnut Global Partners L.L.C. and New York-based Harris, Rothenberg International L.L.C. said the joint venture will provide employee assistance and other workplace services to Russian companies and Russian employees of multinational corporations.

Corporate Health also is a partnership with Dr. Alexander Shtoulman, who managed EAP services for Harris, Rothenberg in Russia, and Dr. Konstantin von Vietinghoff-Scheel, owner of Luxembourg-based Corporate Counseling Services Sarl.

Chestnut Global, a unit of Chestnut Health Systems Inc., said in a statement that it is exploring opportunities in India.

Travelers merges two surety units

HARTFORD, Conn.—Travelers Cos. Inc. has merged two subsidiaries of the St. Paul, Minn.-based insurer.

Seaboard Surety Co., a New York-based indirect property/casualty subsidiary of Travelers, has merged into Hartford, Conn.-based Travelers Casualty and Surety Co. of America.

The merger was effective Jan. 2 after approvals from the New York and Connecticut insurance departments.

TO SUBMIT ITEMS

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

Taxes: E.U. uncertainty

CONTINUED FROM PREVIOUS PAGE

tains a loss, said insurer attorney Dan A. Bailey, a partner at Bailey Cavalieri L.L.C. in Columbus, Ohio.

The parent then would filter the proceeds to its subsidiary, he said.

"Some risk managers say, 'You pay us and we'll find a way to get to the subsidiary,'" said Mr. Granof, a former Chubb Corp. executive.

But such a provision would not work for Side A losses, for which a D&O insurer must directly compensate a covered executive, because corporate bylaws and local statutes bar corporate indemnification of such losses, Mr. Bailey said. Many foreign jurisdictions outside of Europe, however, do not have well-developed law on Side A losses, he said.

But any insurer effort to move a Side A payment to a director through the executive's parent company also could be tripped up by a foreign country's central bank, many of which require detailed information on transactions of certain amounts, said Praveen Sharma, London-based leader of Marsh Ltd.'s insurance regulatory and tax consulting practice.

Several risk managers, the Risk & Insurance Management Society Inc. and the Property Casualty Insurers Assn. of America declined comment.

Professional MarketPlace

HELP WANTED

President, Northern States Agency

We are looking for a leader with a desire to manage our general agency business located in the Twin Cities.

Northern States Agency is a property-casualty wholesale insurance broker and managing general agency offering coverage for a wide variety of transportation and excess and surplus lines business. This business is a wholly owned subsidiary of Berkshire Hathaway Inc.

It conducts business on a brokerage basis and also has binding authority to place insurance business with affiliated and non-affiliated insurance companies.

The successful candidate will be an insurance professional with experience managing professional and support staff, knowledge of the property and casualty business, excellent communication and interpersonal skills as well as strong analytical skills. Prior general agency experience and an active agent license are strongly preferred. A Chartered Property Casualty Underwriter designation will be considered a plus. A Bachelor's degree is required.

We offer a competitive salary and benefits package. Please submit your resume to:

Karen Rainwater,
National Indemnity Company,
3024 Harney Street, Omaha, NE 68131.
Email: **careers@nationalindemnity.com**
Fax: 402-536-3495

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION OF DAN YORAM SCHWARZMANN AND MARK CHARLES BATTEN, AS PROVISIONAL LIQUIDATORS OF INDEPENDENT INSURANCE COMPANY LIMITED, DEBTOR IN A FOREIGN PROCEEDING
CASE NO. 01-13899 (SMB)

NOTICE IS HEREBY GIVEN THAT ON FEBRUARY 10, 2009, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") CONTINUING THE PRELIMINARY INJUNCTION ORDER PURSUANT TO 11 U.S.C. §304 ORIGINALLY ENTERED IN THIS CASE ON JULY 31, 2001. THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING SCHEDULED TO BE HELD ON FEBRUARY 25, 2010 AT 10:00 A.M. (THE "RETURN DATE") BEFORE THE HONORABLE STUART M. BERNSTEIN, CHIEF UNITED STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT LOCATED AT ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING THE CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE STUART M. BERNSTEIN AND SERVED ON COUNSEL FOR THE PETITIONERS LISTED BELOW, SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE. ANY PERSON WISHING TO OBTAIN A COPY OF THE ORDER SHOULD CONTACT COUNSEL TO THE PETITIONERS.

CHADBOURNE & PARKE LLP
ATTORNEYS FOR THE PETITIONERS
30 ROCKEFELLER PLAZA
NEW YORK, NEW YORK 10112
(212) 408-5100
ATTN: HOWARD SEIFE, ESQ.
FRANCISCO VAZQUEZ, ESQ.

LEGAL NOTICE

IN THE MATTER OF THE CONSERVATION OF HIH CASUALTY & GENERAL INSURANCE LIMITED
Supreme Court County of New York Index No.: 403776/01

NOTICE

On June 25, 2001, HIH Casualty & General Insurance Limited ("HIH") was placed into conservation (the "Conservation Proceeding") and the then-Superintendent of Insurance of the State of New York, Neil D. Levin (and his successors in office), was appointed conservator ("Conservator") of HIH ("Conservation Order"). Pursuant to the New York Insurance Law ("Insurance Law") and the Conservation Order, the Conservator was given the responsibility of, among other things, conserving trust assets provided in connection with HIH's authorization to write business in the US ("Trust Assets") consistent with Article 74 of the Insurance Law. The Conservator has submitted to the Court supervising HIH's conservation proceeding (the "Conservation Court") a petition ("Petition") seeking an order: (a) approving a conservation agreement dated March 31, 2008 (the "Conservation Agreement"), entered into between the Conservator and Anthony Gregory McGrath and Christopher John Honey ("Office Holders") as scheme administrators of HIH's scheme of arrangement (the "Scheme of Arrangement"); (b) authorizing the Conservator to distribute the Trust Assets to the Office Holders in accordance with the Conservation Agreement; (c) discharging and releasing the Conservator, his predecessors and successors in office, agents, attorneys and employees from all further liability arising out of this conservation proceeding upon distribution of the Trust Assets to the Office Holders, in accordance with the Conservation Agreement, and the filing of a final report; and (d) terminating this conservation proceeding.

A hearing is scheduled on the Petition on April 1, 2009 at 2:30 p.m. before the Supreme Court of the State of New York, County of New York at the Courthouse, IAS Part 46, Room 325, 60 Centre Street, New York, New York ("Hearing"). If you wish to object to the Petition, you must serve a written statement setting forth your objections and all supporting documentation upon the Conservator, Allen & Overy LLP and Clerk of the Court, within 30 days of notice. Service on the Conservator and Allen & Overy shall be made by first class mail at the following addresses:

The Superintendent of Insurance of the State of New York as Conservator of HIH Casualty & General Insurance Limited
123 William Street
New York, New York 10038-3889
Attention: Jack A. Franceschetti, Esq.

And a copy to:
Allen & Overy LLP
1221 Avenue of the Americas, New York, New York 10020, Attention: Stephen Doody, Esq.

By filing the Petition, the Conservator is seeking permission from the Court to approve the Conservation Agreement. The Petition further provides that:

Pursuant to an order of the Conservation Court, the Conservator is conserving the Trust Assets pursuant to insurance regulations and law of the State of New York for the benefit of those persons protected by the Trust Assets ("American Policyholders").

Subject to the Conservation Court's approval, the Conservator and the Office Holders have, for the purpose of avoiding duplication of effort and expense, entered into the Conservation Agreement by which the Conservator will transfer the Trust Assets to the Office Holders for distribution to the American Policyholders through the Scheme of Arrangement.

The Conservation Agreement provides that the Office Holders will maintain the Trust Assets for distribution to American Policyholders through the Scheme of Arrangement so that they will receive a greater benefit than if distributed through a separate conservation proceeding.

The Conservation Agreement provides that the values of all American Policyholders' claims will be determined in accordance with the Scheme of Arrangement and such determinations will be binding on the Conservator.

The Conservation Proceeding will be terminated pursuant to the Conservator's application to the Conservation Court following the distribution of the Trust Assets to the Office Holders and the filing of a final report.

For this reason, all policyholders, creditors, claimants and other interested parties in respect of HIH are advised to review all available information and to protect their rights accordingly.

The Petition is available for inspection at the above stated addresses. In the event of any discrepancy between this notice and the documents submitted to Conservation Court, the documents control.

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

ERIC R. DINALLO
Superintendent of Insurance of the State of New York as Conservator of HIH Casualty & General Insurance Limited

LEGAL NOTICE

IN THE MATTER OF THE CONSERVATION OF FAI GENERAL INSURANCE COMPANY LIMITED
Supreme Court County of New York Index No.: 403776/01

NOTICE

On July 31, 2001, FAI General Insurance Company Limited ("FAI") was placed into conservation (the "Conservation Proceeding") and the then-Superintendent of Insurance of the State of New York, Neil D. Levin (and his successors in office), was appointed conservator ("Conservator") of FAI ("Conservation Order"). Pursuant to the New York Insurance Law ("Insurance Law") and the Conservation Order, the Conservator was given the responsibility of, among other things, conserving trust assets provided in connection with FAI's authorization to write business in the US ("Trust Assets") consistent with Article 74 of the Insurance Law. The Conservator has submitted to the court supervising FAI's conservation proceeding (the "Conservation Court") a petition ("Petition") seeking an order: (a) approving a conservation agreement dated March 31, 2008 (the "Conservation Agreement"), entered into between the Conservator, and Anthony Gregory McGrath and Christopher John Honey ("Office Holders") as scheme administrators of FAI's scheme of arrangement (the "Scheme of Arrangement"); (b) authorizing the Conservator to distribute the Trust Assets to the Office Holders in accordance with the Conservation Agreement; (c) discharging and releasing the Conservator, his predecessors and successors in office, agents, attorneys and employees from all further liability arising out of this conservation proceeding upon distribution of the Trust Assets to the Office Holders, in accordance with the Conservation Agreement, and the filing of a final report; and (d) terminating this conservation proceeding.

A hearing is scheduled on the Petition on April 15, 2009 at 9:30 a.m. before the Supreme Court of the State of New York, County of New York at the Courthouse, IAS Part 50B, Room 677, 111 Centre Street, New York, New York ("Hearing"). If you wish to object to the Petition, you must serve a written statement setting forth your objections and all supporting documentation upon the Conservator, Allen & Overy LLP and the Clerk of the Court, within 30 days of notice. Service on the Conservator and Allen & Overy shall be made by first class mail at the following address:

The Superintendent of Insurance of the State of New York as Conservator of FAI General Insurance Company Limited
123 William Street
New York, New York 10038-3889
Attention: Jack A. Franceschetti, Esq.

And a copy to:
Allen & Overy LLP
1221 Avenue of the Americas, New York, New York 10020, Attention: Stephen Doody, Esq.

By filing the Petition, the Conservator is seeking permission from the Conservation Court to approve the Conservation Agreement. The Petition further states that:

Pursuant to an order of the Conservation Court, the Conservator is conserving the Trust Assets pursuant to insurance regulations and law of the State of New York for the benefit of those persons protected by the Trust Assets ("American Policyholders").

Subject to the Conservation Court's approval, the Conservator and the Office Holders have, for the purpose of avoiding duplication effort and expense, entered into the Conservation Agreement by which the Conservator will transfer the Trust Assets to the Office Holders for distribution to the American Policyholders through the Scheme of Arrangement.

The Conservation Agreement provides that the Office Holders will maintain the Trust Assets for distribution to American Policyholders through the Scheme of Arrangement so that they will receive greater benefit than if distributed through a separate conservation proceeding.

The Conservation Agreement provides that the values of all American Policyholders' claims will be determined in accordance with the Scheme of Arrangement and such determinations will be binding on the Conservator.

The Conservation Proceeding will be terminated pursuant to the Conservator's application to the Conservation Court following the distribution of the Trust Assets to the Office Holders and the filing of a final report.

For this reason, all policyholders, creditors, claimants and other interested parties in respect of FAI are advised to review all available information and to protect their rights accordingly.

The Petition is available for inspection at the above stated addresses. In the event of any discrepancy between this notice and the documents submitted to Conservation Court, the documents control.

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

ERIC R. DINALLO
Superintendent of Insurance of the State of New York as Conservator of FAI General Insurance Company Limited

LEGAL NOTICE

THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
IN THE MATTER OF THE LIQUIDATION
OF ALPINE INSURANCE COMPANY
NO. 99 CH 267

NOTICE TO INSUREDS OF ALPINE INSURANCE COMPANY AND TRANSCO SYNDICATE #1, LTD., PERSONS HAVING CLAIMS AGAINST INSUREDS, INSURANCE COMPANIES POSSESSING CLAIMS FOR CONTRIBUTION OR RIGHTS OF SUBROGATION, AND OTHER GENERAL CREDITORS OF NEW CLAIM FILING DEADLINE AND PROCEDURES

Pursuant to an order entered by the Circuit Court of Cook County, Illinois (the "Supervisory Court"), the Liquidator of Alpine Insurance Company ("Alpine") recently paid in full all claims filed on or before the original claim filing deadline of May 6, 2002 (the "Original Claim Filing Deadline") that were allowed at priority levels (a) through (g) of Illinois' statutory distribution schedule, 215 ILCS 5/205(1)(a)-(g).

Subsequent to paying these claims in full, the Liquidator determined that a surplus of estate assets exists. Acting upon the petition of the Liquidator, on January 21, 2009 the Supervisory Court entered an order setting a **new claim filing deadline of May 26, 2009** for purposes of affording claimants who may still have claims, or who already have a late-filed proof of claim pending with the Liquidator, an opportunity to share in any distribution of Alpine's assets that may be made on allowed claims filed on or before May 26, 2009. Potential claimants include, but may not be limited to: insureds, persons having claims against insureds, insurance companies possessing claims for contribution or rights of subrogation, and other general creditors. Potential claimants also include claimants and creditors of Transco Syndicate #1, Ltd. ("Transco"), all of whom had the liability for their claims assumed by Alpine.

Claimants, who filed claims on or before the Original Claim Filing Deadline that have already been evaluated by the Liquidator and fixed in amount and paid by the estate by order of the Supervisory Court, and/or paid by a state insurance guaranty fund, can not re-file the same claim unless they have evidence of additional losses that were not submitted to the Liquidator for consideration as part of his previous evaluation of the claim. Any claimant whose proof of claim was filed after the Original Claim Filing Deadline (late-filed claims) need not re-file their claim, unless they have evidence of additional losses that were not previously submitted to the Liquidator for consideration.

If you believe you have a valid unsatisfied claim against Alpine, including claims against Transco, and wish to file a claim, a proof of claim form may be requested either: (1) by a written request sent to the following address: Alpine Insurance Company, In Liquidation c/o the Office of the Special Deputy Receiver, located at 222 Merchandise Mart Plaza, Suite 1450, Chicago, Illinois 60654; or (2) a request submitted through the Liquidator's web site using the following URL: www.osdchi.com/select_proof_of_claim.htm. For administrative purposes, a request for a proof of claim form should include the following information: your name and address, the claimant's name (if different), the Alpine or Transco policy number, the date of the loss or accident, and, if available to you, the Alpine or Transco claim number.

Proper proofs of claim, including claims for additional losses that were not previously submitted to the Liquidator for consideration, shall consist of a notarized statement, by letter or otherwise, signed under oath, setting forth the specific claim. Whenever a claim is based on a document, the document, unless lost or destroyed, must be filed with the proof of claim. If the document has been lost or destroyed, a statement of that fact and of the circumstances of the loss or destruction must be included in the proof of claim. The Liquidator reserves the right to require such additional information with respect to any claim filed with him as he may deem necessary.

Your proof of claim must be filed with the Liquidator on or before May 26, 2009. A proof of claim shall be treated as filed as of the date it is actually received by the Liquidator. A proof of claim shall also be deemed to have been filed as of the United States Postal Service's postmark date if it is mailed, or the date of delivery to a private mail courier for delivery to the Liquidator, as evidenced by a validly issued receipt from that courier. Subject to the provisions of Section 208(3) of the Illinois Insurance Code, proofs of claim not filed by May 26, 2009 shall not be eligible to participate in any distribution of Alpine's assets that may be made in the liquidation proceedings on allowed claims filed on or before May 26, 2009.

Patrick D. Hughes • Special Deputy Receiver

Comings & Goings UP CLOSE

PAUL C. BLUME JR.

NEW JOB TITLE: Senior vp of state government relations for the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America.

PREVIOUS POSITION: Chicago-based assistant general counsel for American International Group Inc.

GOALS FOR NEW POSITION: My goals are to get to know the staff with whom I am going to work. My goal is to get the message out on our key issues with the states and to work with the membership of PCI. I want to get to know what's important to the members.

CHALLENGES FACING INDUSTRY: Economic is number one. I think you also have regulatory and legislative challenges given the change in the makeup of the (Congress). When you couple that with some of the issues that are economy-driven, such as the price of automobile insurance...homeowners insurance...commercial insurance and then you flip over and you look at workers comp insurance, there are some challenges. I think that history would indicate that workers comp costs would increase because there will be more claims filed. The economy affects property/casualty like it affects most other industries.

IF I COULD CHANGE ONE THING ABOUT THE INDUSTRY: I was in a meeting last week with a lawmaker and I kept hearing how we need to protect the consumer, consumer protection this, consumer protection that. I had to remind them that we are an industry that protects the consumer. I would like to see us do a better job of communicating that we care about our consumers and the price of the products.

FIRST EXPERIENCE IN INDUSTRY JOB MARKET: My first job in this arena was as an assistant counsel with the American Insurance Assn. in Chicago in 1988.

ADVICE: I think the most important thing for people that do what we do is to have high integrity and show those with whom we deal that we are honest and we are there to respond to questions. In this field, trust is critical for success.

OUTSIDE THE INDUSTRY, A DREAM JOB: I would love to work in Major League Baseball. Anything. I could be a batboy or the lobbyist on the Hill.

Business Resources

SPECIALTY RISKS

Aviation: Series of recent plane crashes may accelerate rate increases

CONTINUED FROM PAGE 3

Gallagher & Co. "It was already starting to. This is (an) accelerating" factor.

Before the October crash of a Continental Airlines flight in Denver, U.S. airlines had experienced an unusually low number of crashes in recent years and only one large accident since 2001. During such tranquil periods, it is difficult for underwriters to convince airlines of the need for more premium, but one accident involving a large commercial aircraft or multiple deaths can help convince policyholders to accept a rate increase, said Sean Kallsen, vp at Waterford, Mich.-based insurance agency LL Johns & Associates Inc.

"My gut feeling is that (the accident near Buffalo) has a potential to be the impetus for the hardening of the market that people have been talking about," Mr. Kallsen said.

Recent accidents also remind underwriters of how quickly a catastrophic loss can change their margin from black to red, observers say.

Wayne Wignes, Chicago-based vice chairman of JLT Aerospace (North America) Inc., a division of JLT Reinsurance Brokers Ltd., said , underwriting for U.S. airlines had only a thin margin of profit before the New York crash. "When you have a big loss…that's clearly going to turn (the margin) red," he said.

Mr. Altemus and others cautioned that it is too early to know for certain how the recent crash will affect the market. Factors that could moderate the firming of commercial airline rates include capacity. Mr. Wignes estimated that 20% of the market is not participating, saving the capacity for higher rates. And if the manufacturer were found largely culpable for the Feb. 12 crash, that could would lessen the push to boost airlines' rates.

National Transportation Safety Board investigators were studying whether pilot behavior, ice buildup on the wings and possible equipment problems at Buffalo Niagara International Airport were involved in the crash, according to reports.

Whether experts attribute the crash to pilot error, which would shift the burden more to the airline's insurer, or another cause or causes would influence what portion of liability damages each insurer pays, but likely would not affect the overall amount of damages plaintiffs eventually receive, observers say.

Casey Schaden Cassinis, a pilot and aviation attorney at Broomfield, Colo.-based Schaden Katzman Lampert & McClune, said all or parts of the NTSB report can be inadmissible in court, depending on the rules of different jurisdictions. She said the liability costs from the Colgan Air crash will depend on many factors, such as the jurisdiction and the occupations of the passengers, and would be impossible to predict at this early stage.

"Whether an insurance company is going to pay 'X' or 'Y' on the spectrum really comes down to, yes, some of the facts in the NTSB report," Ms. Schaden Cassinis said, "but a lot of it really comes down to the strength of the plaintiffs' experts" compared with the insurers' experts.

Krauter: Equity firms taking charge

CONTINUED FROM PAGE 4

Q: So are private equity clients now aggregating their risks?

Most definitely. They're not doing individual deals the way they were, so they've got time to focus on things; and portfolio aggregation is certainly what they're looking at.

Q: Switching gears a bit, private equity firms made a big splash in the insurance industry a few years ago, especially in the retail brokerage space. Are they still interested in the insurance industry or has their appetite waned?

I think interest in investing in the insurance industry remains strong, particularly in the brokerage and services portion.

The industry is overbrokered; so for the private equity firms to acquire private firms or take firms private, or do some aggregation of other firms and then exit to a public multiple buyer—that is (a proven success strategy) for the industry to continue.

Q: Speaking of that, what about the existing private equity-owned firms such as Hub International, USI Holdings and Alliant Insurance Services? Are their private equity parents likely to hold on to the brokers until the market turns or might they be looking to sell now?

By being privately held, (these brokers) can weather these storms. They don't have to go through the public scrutiny that, obviously, the larger public brokers have to go through. So they can ride out these tough times.

The private equity investors—these are generally pretty smart people—they can hold on to a great deal of their drive power and look to expand now at lower multiples and then, when the inevitable hard market comes, that's when you're going to see a bit more flipping out of these firms because that's when they're going to have the opportunity to maximize their own returns.

Privacy: Stimulus law boosts HIPAA requirements

CONTINUED FROM PAGE 1

HIPAA violations on behalf of affected state residents. Previously, the HHS' Office of Civil rights handled HIPAA enforcement solely.

When HIPAA was enacted in 1996, it did not require notification of individuals affected by privacy breeches, said Jessica Bernanke, an associate at Morgan, Lewis & Bockius L.L.P. in Washington. "It only required employers to protect the personal health information. It was up to the employer" to decide whether to notify plan members, she said.

The requirement in the new law is the first time the U.S. government has addressed the issue of notification in the event of personal information security breaches, said Lisa Sotto, a partner who heads the privacy and information management practice at Hunton & Williams L.L.P. in New York. While more than 40 states have security breech notification laws, only two—Arkansas and California—govern notification of unauthorized disclosure of personal health information.

"Now we're seeing the first federal breach law, and it covers health data only," Ms. Sotto said. "It's as if the gauntlet has been laid to serve as precedent for the passage of a general security breach notification law" at the federal level.

Prior to ARRA, only the health plan sponsor, which generally was either an employer or insurer, was considered the "covered entity" subject to HIPAA's requirements. All associated providers were obligated only by contract to follow HIPAA, said Ms. Bernanke. "This puts more burden on the vendors," she said.

"This will affect employers' relationships with (pharmacy benefit managers), disease management vendors and others that previously flew under the radar," said Frances Wiet, chief privacy officer at Lincolnshire, Ill.-based Hewitt Associates Inc. "Employers will need to review their business associate agreements."

KEY PROVISIONS

Changes concerning the Health Insurance Portability & Accountability Act signed into law as part of economic stimulus legislation.

- Requires notification within 60 days of a privacy breach involving an individual's HIPAA-covered personal health information.
- Requires business associates to meet most security requirements that previously applied only to covered entities.
- Requires notification of the Department of Health & Human Services and the media in privacy breaches involving 500 or more individuals.
- Authorizes state attorneys general to bring suit for HIPAA violations.

LISTEN to a podcast on how the stimulus changes COBRA at *www.BusinessInsurance.com*

Risk, benefits management affected by stimulus law

WASHINGTON—The economic stimulus law contains other provisions of interest to benefits and risk managers.

Under one provision, employees enrolled in employer-provided commuter benefits programs can reduce their salaries up to $230 a month to pay mass-transit expenses on a pretax basis. That's up from the current monthly maximum of $120. The new maximum pretax contribution goes into effect March 1 and is scheduled to end after Dec. 31, 2010.

The law also eliminates a federal mandate that recreational marine service and repair businesses protect their employees with coverage purchased under the Longshore and Harbor Workers' Compensation Act. Instead, they may purchase state-regulated workers comp coverage, which tends to be less expensive, with the spread between the two types of insurance varying from state to state, said Ian Greenway, president of St. Petersburg, Fla.-based LIG Marine Managers.

The law also extends whistleblower protection to state and local government and contractor whistle-blowers, although not to federal employees. Among its provisions, the section prohibits reprisals against employees who report gross mismanagement and law violations and provides for compensatory and other damages.

It also creates a 65% federal subsidy of COBRA premiums for employees laid off from Sept. 1, 2008, through Dec. 31, 2009 (*BI, Feb. 16*).

—By Jerry Geisel, Roberto Ceniceros and Judy Greenwald

It was unclear last week whether the new HIPAA provisions apply to the creators of personal health records, although some sources said that is likely.

Ray Brusca, vp of benefits at Black & Decker Corp. in Towson, Md., said he was not "overly concerned" about the HIPAA changes because Black & Decker has no direct access to its employees' personal health information.

"I would be concerned if I were the keeper of this information, but most of the real information is held by insurers and TPAs," Mr. Brusca said.

"This is creating more risk, especially on the health plan side," concurred Ed Jones, president of HIPAA L.L.C., the Atlanta consulting firm that set up HIPAA.com. "I've worked with a lot of TPAs and a lot didn't have these security provisions in place."

However, a spokesman for America's Health Insurance Plans, the Washington-based health insurer trade group, said most of its members already adhere to the HIPAA privacy and security rules as "covered entities" regarding their group and individual health plan business. Members apply the same security protection standards when they serve only as TPAs, he said.

The provision granting state attorneys general HIPAA enforcement authority almost certainly will lead to increased litigation over violations, Ms. Sotto predicted.

To illustrate her point, she said the New York Attorney General's Office responded in less than 24 hours to a case she is handling involving a security breech of one person's personal banking information.

"It tells you the extent to which AGs are focused on security breaches," Ms. Sotto said.

ARRA also increases maximum civil penalties for HIPAA violations and allows plan members to seek a portion of any damages awarded in litigation, Ms. Bernanke said.

"There is some potential for abuse of litigation," said Hewitt's Ms. Wiet. "It sort of creates a private cause of action."

The increased penalties went into effect with the signing of the bill last week. In 60 days, the HHS secretary is required to issue guidance on what constitutes unsecured health information subject to HIPAA rules. Most of the other provisions take effect a year from the law's Feb. 17 signing.

Obesity: Firms weigh impact of overweight workers on comp costs

CONTINUED FROM PAGE 1

have stifled safety efforts that prevent claims, said Linda Tapp, president of Crown Safety L.L.C., a safety consulting firm in Cherry Hill, N.J. Workers and employers avoid mentioning when larger-size personal protection equipment is needed to function properly or larger office chairs are needed for an appropriate ergonomic fit, she said.

"They don't want to say, 'That might not fit you because you are too large,'" said Ms. Tapp, who also is a member of the Des Plaines, Ill.-based American Society of Safety Engineers.

When it comes to medical treatment, addressing obesity often has been pushed onto employer's health care plans or wellness programs, even though it may also affect workers comp claims, said Jacqueline Cox, president and chief executive officer of Reno, Nev.-based Specialty Health McO Inc.

But that is starting to change, observers say.

Already, workers comp nurse case managers incorporate an injured employee's obesity into case planning and look for resources to help them address the problem, especially when it affects return-to-work outcomes.

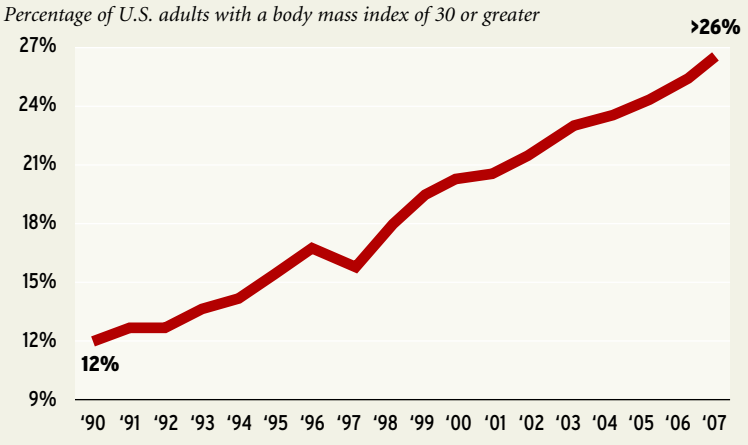
Claims managers are increasingly looking to address obesity, said Martin Wolf, an economist with NCCI Holdings Inc. in Hoboken, N.J.

"One thing we have been seeing a little bit is that when a claim is filed, insurers are gathering additional information on body mass index and weight and height to see if people who show up as obese need additional medical treatment to more effectively address their injury," Mr. Wolf said.

In addition, some employers even have begun collecting obesity data to help fend off future claims that may not be work-related, particularly those involving police and firefighters who must take preemployment physicals and whose heart attacks and other ailments often are presumed to be work-related, said Glenn Backus, senior vp for Alternative Service Concepts L.L.C., a Reno, Nev.- based claims administrator.

GAINING WEIGHT

Percentage of U.S. adults with a body mass index of 30 or greater



Source: Centers for Disease Control and Prevention

Claims and obesity

In a recent newsletter, NCCI said preliminary findings from a study that it will release next year show that workers comp medical claims open for a year cost three times more when claimants are obese.

In addition, the Boca Raton, Fla.-based rate-making and data organization found that obese individuals' claims that are open for five years are five times more expensive than claims by nonobese individuals. For some "smaller claims," added treatments related to obesity can balloon cost differences 30 times or more.

The NCCI said its study relied on claims filed over a nine-year period in 36 states. Additional NCCI findings fall in line with a 2007 study by Duke University researchers who examined the records of nearly 12,000 employees of the university.

They found that workers who are morbidly obese, defined as having a BMI of 40 and above, filed 45% more claims, missed eight times the number of workdays and experienced medical costs that were more than five times higher when compared with nonobese workers. They also incurred indemnity costs that were eight times greater, researchers concluded.

Workers classified as overweight in the Duke study—those with a BMI of 25.0 to 29.9, filed 9% more claims, missed 3.5 times as many workdays and their medical claims costs were 1.5 times their counterparts with "normal" weight, a BMI of 18.5 to 24.9. They also incurred nearly twice the indemnity costs.

The study by NCCI will help underwriters more precisely understand how much obesity is increasing workers comp costs, said Joe Treacy, assistant vp-worker comp product development for Hartford Financial Services Group Inc.

"We know it's a problem, but how big a problem?" Mr. Treacy asked rhetorically. "Is it increasing cost by 10% or is it increasing cost by 15%? That is the work NCCI is doing on our behalf so we can understand better."

ADVERTISER INDEX

Issue of February 23

News In Brief

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Co. and its units' insurer financial strength and long-term counterparty credit ratings to A+ from AA-, a day before the reinsurer reported a loss of 864 million Swiss francs ($735.8 million) for 2008. That was lower than the 1 billion Swiss franc ($861 million) loss Swiss Re had projected earlier in the month, when it also announced that Berkshire Hathaway Inc. would invest 3 billion Swiss francs ($2.58 billion) in Swiss Re in the form of convertible notes with a 12% interest rate. S&P said it expects the Berkshire Hathaway investment, as well as an adverse reserve development coverage provided by Berkshire Hathaway, to be sufficient to restore Swiss Re's capital adequacy "to a level in keeping with our 'AA' level target."

SCOR, Chubb close cat bond deals

SCOR S.E. said last week it closed a $200 million catastrophe bond that provides it with three years of protection for exposures to U.S. and Puerto Rico earthquakes and hurricanes. The trigger on the Atlas V bond is an industry loss warranty that is based on state-level insured industry loss estimates by Property Claims Services, which is further distributed to the county level by modeling firm AIR Worldwide Corp. in Boston. The bond provides coverage from Feb. 20, 2008, to Feb. 19, 2012. In addition, Chubb Corp. placed a $150 million cat bond to protect it against losses from Florida hurricanes. The bond provides three years of reinsurance protection to Chubb and its subsidiaries.

GM U.S. pension plans underfunded

General Motors Corp.'s U.S. pension assets plunged to $84.2 billion as of Dec. 31, making its two plans a combined 87% funded, vs. 124% funded a year earlier, according to a preliminary estimate the Detroit-based company filed with the Securities and Exchange Commission. The plans had total assets of $104.1 billion as of Dec. 31, 2007. GM "may need to make significant contributions to the U.S. hourly pension plan in the 2013-14 time frame," the filing stated. It estimated the amount at $5.9 billion in 2013 and $12.3 billion in 2014.

Diabetes a disability under ADA: Court

Being an insulin-dependent diabetic can be considered a disability under the Americans with Disabilities Act, a federal appeals court ruled in *Larry Rohr vs. Salt River Project Agricultural Improvement and Power District*. The three-judge panel of the 9th U.S. Circuit Court of Appeals, however, declined to rule whether the ADA Amendments Act of 2008 would apply retroactively to the case of the diabetic who sued his former employer under ADA. The San Francisco-based panel ruled last week that a district court was wrong to grant summary judgment to the former employer. Mr. Rohr "presented a genuine issue of material fact that his diabetes substantially limited his major life activity of eating and thus raised a genuine issue as to whether he was 'disabled' within the meaning of the ADA," the court ruled.

Vermont Senate OKs captive tax break

Organizations that set up captives in Vermont this year and next would receive a one-time $7,500 credit to offset their premium taxes and sponsors of smaller captives would receive a one-time exemption from the $7,500 minimum tax under legislation approved by the Vermont Senate. Regulators have said the small tax break sends a message to prospective captive sponsors of the appreciation the state has for their business. The legislation, S. 42, also would increase to 12% the percentage of premium tax revenue that can be used for captive regulation and promotion. Gov. Jim Douglas backs the legislation now before the Vermont House.

Utah court rejects firm's exclusive remedy defense

A refinery worker can sue Chevron U.S.A. Inc. for a permanent seizure disorder that resulted when supervisors directed her to neutralize toxic sludge, Utah's Supreme Court ruled. The ruling in *Jenna R. Helf vs. Chevron* overturned a trial court's dismissal of the case in which Chevron argued that the exclusive remedy provision of Utah's Workers Compensation Act bars a civil lawsuit. But the court said Ms. Helf's complaint could convince a jury of an "intent to injure" by showing her supervisors "knew or expected" that she would be injured by gases emitted during the neutralization process.

2008 BROKER RESULTS

Results for the world's largest publicly held brokers, in millions of dollars

BROKER	BROKERAGE REVENUE*	% CHANGE FROM 2007	NET INCOME	% CHANGE FROM 2007
Marsh & McLennan Cos. Inc.	$11,448.0	4.1	($73.0)	NM
Aon Corp.	7,366.0	4.2	1,478.0	71.1
Willis Group Holdings Ltd.	2,753.0	10.9	303.0	-25.9
Arthur J. Gallagher & Co.	1,611.2	5.8	77.3	-44.3
Brown & Brown Inc.	971.5	4.6	166.1	-13.0

**Brokerage revenues comprise commissions and fees from insurance brokerage and consulting services and other income and exclude investment or fiduciary income.*

Source: Company reports

Brokers: Soft market, recession batter results

CONTINUED FROM PAGE 3

broker to weather the storm.

"Aon continues to show the best consistency given some of the investments they've made and growth initiatives of the past few years," said Mark Lane, a principal and research analyst with William Blair & Co. in Chicago.

"Aon is the best-positioned broker to push through the severe economic downturn and will likely increase their relative positioning as we look for an inevitable flight to quality by clients," wrote Keith F. Walsh, an analyst with Citi Investment Research in New York, in a research note.

But 2008 was a tough year for many brokers, particularly those that rely heavily on U.S. business and premium-tied commission revenues.

"In my 35-year career, I believe these are the toughest head winds I can ever, ever remember," J. Patrick Gallagher, chairman, president and chief executive officer of Itasca, Ill.-based Arthur J. Gallagher, said during an analyst call. "I think it is fair to say when you look across all of our stated niche markets, even the public sector, (they all) are feeling the negative effects of the global financial slowdown."

'In my 35-year career, I believe these are the toughest head winds I can ever, ever remember.'

J. Patrick Gallagher, Arthur J. Gallagher & Co.

The broker completed several measures to cut costs in 2008, including eliminating 400 positions, and said more reductions will be necessary if the economy and pricing environment decline further.

Despite the head winds, Gallagher posted a 5.8% increase in brokerage revenues in 2008, fueled by 37 acquisitions with $165.6 million in annual revenues.

Daytona Beach, Fla.-based Brown & Brown also relied on acquisitions for growth in 2008. The broker acquired 45 agencies with estimated annualized revenues of $115.4 million—the most transactions it's ever completed in a year, it said.

Executives described the broker's top-line growth as "tolerable" at this time and said in a statement that Brown & Brown will continue to look for acquisition targets.

Analysts say 2009 will be another challenging year for brokers.

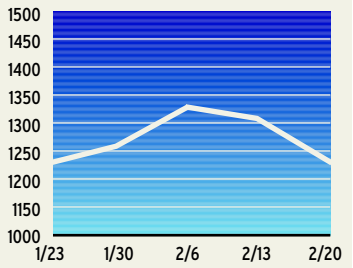
For many brokers, this year will be about "keeping their heads above water," said Cliff Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York. "But that's not a bad thing in today's world. If you can manage to do that, it's an achievement."

Stock Index

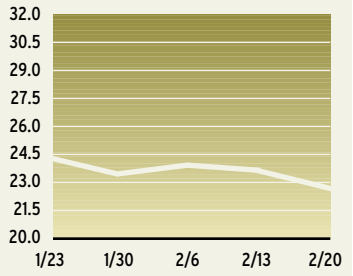
[2/17-2/20]

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

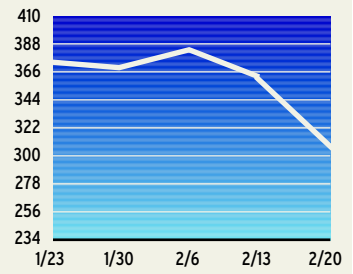
BI STOCK INDEX



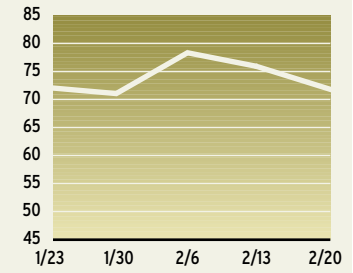
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI *Stock Index vs. key indicators*

BI STOCK INDEX	1230.82	-12.67%
DOW JONES	7339.63	-6.51%
S&P 500	766.50	-7.30%

LARGEST GAINS

UNICO American Corp.	2.33%
IPC Holdings Ltd.	1.71%

LARGEST LOSSES

Hartford Financial Services.	-46.15%
Citigroup Inc.	-44.41%
AIG	-39.41%
AXA	-32.77%
ING Groep N.V.	-32.02%

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

Business Insurance END PAGE

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

Ill. lawmaker wants guns locked, loaded and insured

State Rep. Kenneth Dunkin may go down in history as an Illinois lawmaker who redefined liability—at least for gun owners—in the Land of Lincoln.

Rep. Dunkin, D-Chicago, recently introduced legislation that would amend the state Firearm Owners Identification Card Act to require Illinois gun owners to carry personal liability insurance of at least $1 million.

According to the state's official synopsis of H.B. 687, the insurance policy would specifically cover "any damages resulting from negligent or willful acts involving the use of such firearm when it is owned by such person."

The synopsis adds that the proposed legislation "provides that a person shall be deemed the owner of a firearm after the firearm is lost or stolen until such loss or theft is reported to the police department or sheriff of the jurisdiction in which the owner resides."

In addition, Illinois State Police would be authorized to seize a firearm owner's ID card if the owner can't provide proof of insurance of at least $1 million.

Judging from postings on the Internet, gun owners' rights groups already are up in arms over the proposal, which they view as a means to restrict gun ownership in Illinois to the wealthy because of the cost of insurance.

By making gun owners financially responsible for the actions of unknown parties who obtain guns through illegal acts, the measure would give a whole new meaning to third-party liability.

ELECTRIC HENDRIX L.L.C./WENN

Electric Hendrix Spirits L.L.C. must pay $3.2 million to the estate of Jimi Hendrix, a judge ruled in a trademark infringement case.

Vodka firm has bad court experience

How about a Purple Haze martini? Such drinks likely will be much harder to find since a federal judge has ordered Electric Hendrix Spirits L.L.C. to pay millions in damages to the late rock star's estate.

The judge last week awarded $3.2 million to Seattle-based Experience Hendrix L.L.C. and Authentic Hendrix L.L.C., which own Jimi Hendrix's music, trademark and licensing rights. This trademark infringement ruling was the latest in a bitter legal battle between Hendrix's estate and Seattle businessman Craig Dieffenbach and Electric Hendrix Spirits L.L.C., which began marketing Electric Hendrix Vodka in 2005.

The complaint alleged that the "unauthorized" and "tasteless" effort also backed by Leon Hendrix, the half brother of the guitarist, intended to deceive consumers that Experience Hendrix backed the vodka. The frosted bottles, often tinted purple, also showed a vintage image of Hendrix.

Aside from damages, Seattle federal Judge Thomas Zilly also ordered the vodka company to have Electric Hendrix Vodka pulled from store shelves and end all marketing.

"We are gratified that justice has been served," Janie Hendrix, CEO of Experience Hendrix and the guitarist's stepsister, said in a statement.

When the suit was filed in 2007, Mr. Dieffenbach argued that drinking the vodka was an honorable way to celebrate the essence of Jimi Hendrix.

Ms. Hendrix countered that it was a "sick joke." His death reportedly involved drugs and alcohol.

In online postings, collectible enthusiasts said the ruling made the bottles already in circulation more valuable.

Fraudster's dumb luck runs out

A U.S. Marine has found out the Internet can be a dangerous place.

Earlier this month, Khris Robert Figurelli of Stafford, Va., pleaded guilty to ripping off the United Services Automobile Assn., a San Antonio-based insurer that serves members of the U.S. military and their families.

According to the Fredericksburg Free Lance-Star, camera equipment was stolen from Mr. Figurelli's truck in May 2008.

He filed a claim with USAA, which subsequently paid Mr. Figurelli $3,271, according to the report.

Afterward, however, the Marine reportedly bragged online about inflating the value of the stolen equipment to collect more from the insurer than it was worth.

Instead of walking away with the cash, Mr. Figurelli pleaded guilty in Stafford Circuit Court earlier this month to a misdemeanor charge of obtaining money under false pretenses and was ordered to repay USAA, the newspaper reported.

What Mr. Figurelli didn't know was USAA has software that alerts it when a policyholder's name pops up on the Internet, leading the insurer's fraud investigators to his door.

"He ended up with nothing for his loss other than a conviction," prosecutor Michael Hardiman reportedly said.

N.Y. diners free to count calories

New York City has won another round in a battle of the bulge of sorts, at least for the time being.

That's because a three-judge panel of the 2nd U.S. Circuit Court of Appeals in New York ruled last week that the city was within its rights to require restaurant chains to post calorie information on menus or menu boards.

The city first had adopted a calorie information requirement in late 2006 "to combat rising rates of obesity and associated health problems," according to the appellate court decision. The requirement was subsequently revised, and affected about 10% of the restaurants in New York City. The New York State Restaurant Assn. challenged first at the district court level and then at the appellate level. In its appellate level filing, the trade group claimed the city's labeling requirement violated the constitutional right of free speech guaranteed under the First Amendment.

The court found the arguments less than compelling and held for the city in a Feb. 17 decision stating that the law "mandates a simple factual disclosure of caloric information and is reasonably related to New York City's goal of combating obesity."

The president of the restaurant association reportedly said his lawyers were reviewing the decision and hadn't yet decided whether to appeal. Given the calorie content of some restaurant foods, perhaps an appeal based on the Fifth Amendment guarantee against self incrimination might be in order.

AP

A New York City law forcing certain restaurants to publish calorie information on menus does not violate the restaurant owners' rights to freedom of speech under the First Amendment, an appeals court ruled.

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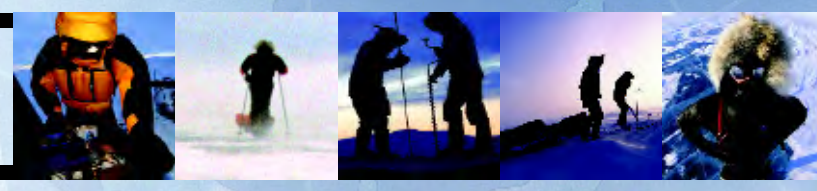

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