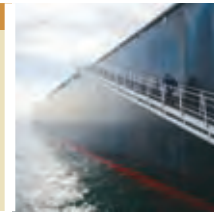


**WILL SEC CRACKDOWN ON INSIDER TRADING HIT INSURERS? / PAGE 3**

**BROKER DISCLOSURE LAW NOT RETROACTIVE, N.Y. COURT SAYS / PAGE 3**



**SHIPOWNERS SEE FLAT RENEWALS FOR P&I / PAGE 3**

## In Brief

**IG reports \$7.79B in 2010 net income**

American International Group Inc. reported \$7.79 billion in net income for 2010 vs. a \$10.95 billion loss for 2009. This reflects \$4.2 billion of previously reported reserve strengthening. Its property/casualty insurance unit Chartis Inc. reported a decline in net written premiums of 2.6% to \$29.87 billion for the year. Chartis reported a 116.8% combined ratio for 2010 vs. 108% for 2009. "Net premiums written remain healthy at Chartis, and we continue to hold the line on pricing," said AIG President and CEO Robert H. Benmosche

**Insurance veteran Ayer joins XL's board**

Former Hartford Financial Services Group Inc. Chairman and CEO Ramani Ayer has joined XL Group P.L.C.'s board

See **IN BRIEF** page 21

## SPOTLIGHT

### WORKERS COMP RISK FINANCING

Workers compensation buyers mull changes before rates rise; captives prove to be a natural fit for workers comp; teamwork among entities helps trucking firm retool program. **PAGE 9**

## CATASTROPHES



REUTERS/KYODO

**Rescue workers search for trapped victims of last week's 6.3 magnitude earthquake in Christchurch, New Zealand. More than 100 people were killed by the quake.**

# New Zealand shaken

*Quake losses may near \$9B but won't roil reinsurance market*

By **MARK A. HOFMANN** and **JUDY GREENWALD**

**CHRISTCHURCH, New Zealand**—Despite causing up to nearly \$9 billion in insured damage, a deadly earthquake last week in New Zealand's second largest city is unlikely to affect the global catastrophe reinsurance market, observers say.

The 6.3 magnitude quake, which devastated

downtown Christchurch, killed more than 100 people.

It was the second quake to strike the Christchurch region in less than six months. A magnitude 7 quake in September, which resulted in no fatalities, caused insured damage as high as \$4.5 billion, according to catastrophe modelers (*BI*, Sept. 13, 2010).

See **QUAKE** page 18

## P/C INSURERS

# Insurance buyers swindled in scam, prosecutors charge

*Feds say defendants sold bogus liability coverage*

By **DOUGLAS McLEOD**

**HOUSTON**—Federal prosecutors have charged six men in an alleged multiyear scheme to sell fake commercial liability policies using a series of fraudulent offshore insurers.

The defendants—including an accountant in St. Kitts, West Indies, and brokers in Texas and Quebec—issued policies to nursing homes, apartment complexes and other businesses across the country, providing bogus financial and reinsurance information to policyholders, according to an indictment brought this month in U.S. District Court in Houston.

One of the policyholders was the operator of the Ethan Allen, a tour boat that capsized and sank in Lake George, N.Y., killing 20 elderly tourists in October 2005. The defendants later denied claims for the accident, backdating documents to make it appear that the coverage never was placed, the indictment alleges.

Charged in the case are M. Irvin Boncamper, the St. Kitts accountant; Christopher Purser of Houston and Robert Steve Mills of Dallas, brokers who operated a pair of affinity groups that funneled business to

See **FRAUD** page 6

## EMPLOYMENT PRACTICES

# New type of hiring discrimination claim in works

By **JUDY GREENWALD**

**WASHINGTON**—The Equal Employment Opportunity Commission is expected to take action that could range from a policy state-

ment to test litigation that would challenge employers that hire only people who are employed, say observers.

With some speakers at the EEOC's recent hearing claiming

### WHAT HAPPENED

■ Speakers at an EEOC hearing claim some employers hire only the employed, resulting in a disparate impact on protected groups.

### WHAT'S NEXT

■ The EEOC is expected to take action that could range from a policy statement to test litigation.

there are employers that hire only the employed, which results in a disparate impact on protected

groups, some observers say the EEOC's interest in the issue could also spark litigation by plaintiffs attorneys, who may seek class action status.

But observers say few employers have such policies, and they question the likely success of litigation.

Experts say employers can best protect themselves by eliminating these policies if they have them (see story, page 20).

At the Feb. 15 hearing, the EEOC heard conflicting testimony as to whether employers consider only the employed for job vacancies, with employer representa-

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**MOST POPULAR STORIES**  
 Week of February 21, 2011

1. N.Z. quake may be costliest insured disaster since 2008
2. AIG resolves Duke University's lacrosse-stripper lawsuit
3. AIG may post big loss, remaining units key
4. Reinsurers to see large claims from New Zealand quake
5. Supreme Court to hear case of worker killed offshore
6. AIG drops as Chartis, ILFC questions loom
7. Gallagher to buy London underwriting agency
8. Quake damages Marsh's Christchurch offices
9. Willis names new global markets CEO
10. Firm fined for refusing patient access to health records

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## PROFESSIONAL LIABILITY

# Insider trading crackdown may trigger claims

*Whether insurance covers SEC targets remains unclear*

By **SONJA RYST**

**NEW YORK**—The government is cracking down on insider trading, and some firms are turning to their management liability insurers to pay the costs associated with such investigations.

The success rate for those claims, though, varies, experts say.

Regulators have announced more insider trading investigations in the past two years.

For example, Raj Rajaratnam, who founded the now-defunct Galleon Group hedge fund, is fighting claims made in late 2009



Galleon Group founder Raj Rajaratnam, who was accused of running an insider trading ring, leaves a February 2010 court appearance in New York.

that he ran an insider trading ring that racked up tens of millions of dollars in illegal investment gains.

The Securities and Exchange Commission also alleged in February that six technology company

employees sold insider information as consultants to expert network firm Primary Global Research L.L.C.

These developments have taken place as the Wall Street regulator extends its insider trading crackdown.

In recent months, a New York judge reportedly ruled that the SEC can use wiretap evidence in Mr. Rajaratnam's case. Assistant U.S. Attorney General Lanny Breuer said during a Senate committee hearing last September that the Justice Department had tripled the number of people who review wiretaps.

How insurance coverage would respond to claims from targets of SEC investigations is unclear.

James O'Brien, managing director at Marsh FINPRO-PEMA in

New York, a unit of Marsh & McLennan Cos. Inc., said professional liability policies could cover people such as Mr. Rajaratnam for legal expenses related to insider trading allegations, unless it's proven that the hedge fund manager committed fraud, which is excluded from coverage.

If an insured settles without admitting guilt—as often happens in such matters—then the settlement costs could be covered.

If the investment firm had insurance for employees, they typically also would be covered under the same policy, Mr. O'Brien said.

Mr. Rajaratnam's spokesman did not provide information about the hedge fund manager's insurance.

See **INSIDER** page 17

## MARINE

## Smooth sailing at renewals for marine liability buyers

*Improved results keep P&I rates flat*

By **SARAH VEYSEY**

Overall improvements in claims trends and investment performance for protection and indemnity clubs have resulted in shipowners seeing flat to slightly higher rates when they renewed their coverage with the marine mutuals.

Of the 13 members of the International Group of P&I Clubs, four had no general premium increase this year. The average general increase for International Group members was 3.07%, according to Aon Corp. research.

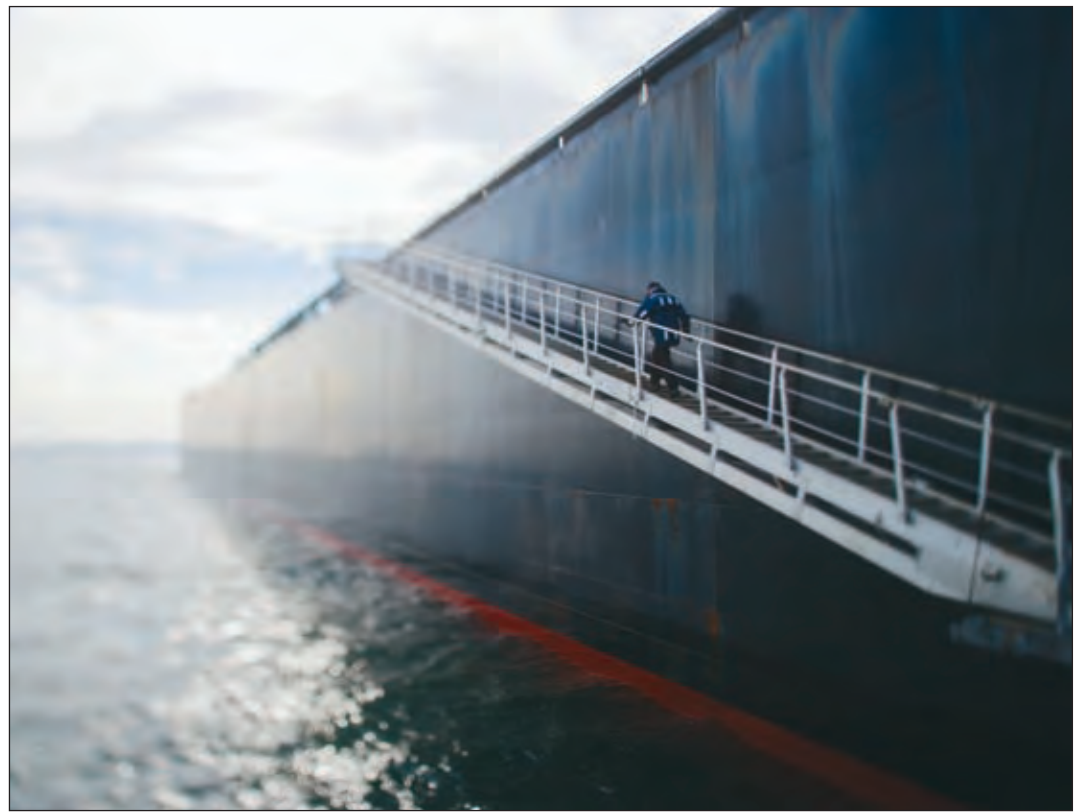
General increases, which are announced in advance of the renew-

al season, typically are the starting point of renewal negotiations between shipowners and their clubs. Renewals take place on Feb. 20, historically the date on which the Baltic Sea could be expected to be free of ice and shipping could resume.

The International Group, which is made up of the largest P&I mutuals, negotiates excess-of-loss reinsurance on behalf of its members and retains some reinsurance risk within the group's captive, Hydra Insurance Co. Ltd.

For 2011, the reinsurance contract was renewed with an attachment point per claim of \$60 million, up from the previous \$50 million. That resulted in a modest rate reduction in the reinsurance contract, which

See **P&I** page 16



Protection and indemnity clubs have seen renewal rates that are flat to slightly higher due to improvements in claims trends as well as better performing investments, experts say.

## AGENTS &amp; BROKERS

## New York's broker pay disclosure law not retroactive, court says

By **MARK A. HOFMANN**

**ALBANY, N.Y.**—Insurance brokers do not have to disclose incentive arrangements with insurers that were entered into before New York state's disclosure regulation took effect Jan. 1, the New York Court of Appeals has ruled.

The case was brought by the New York attorney general's office against Wells Fargo Insurance Services Inc. The state's complaint contained four causes of action that alleged Wells Fargo engaged in "repeated fraudulent or illegal acts" in violation of state law, was

**'This ruling underscores the need for the recently implemented Insurance Department's regulation that states these fees be disclosed upon consumer request.'**

John R. Phelps, Risk & Insurance Management Society Inc.

unjustly enriched, committed common law fraud and breached its fiduciary duties.

The court, which is New York's highest, said in its Feb. 17 ruling in *People vs. Wells Fargo Insurance Services Inc. et al.* that while the

complaint relied on various legal theories, "they can all be boiled down to a claim for breach of fiduciary duty." The decision noted that the state did not allege that Wells Fargo made any "affirmative misrepresentations or that

any customer suffered demonstrable harm" from the incentive arrangements.

The state also did not allege that any customer was "persuaded to buy inferior, or overpriced, insurance" to help the broker win an incentive, the court ruled.

A lower court dismissed the original complaint, although it said the state could replead its case. Instead, the state appealed directly to the state's highest court.

The New York high court rejected the argument that Wells Fargo had breached its fiduciary duties. And the court noted that the state

did not allege that "anything Wells Fargo did was contrary to industry custom." In fact, said the court, the parties involved "seem to agree that arrangements such as that cited by the state were commonplace and had not generally been disclosed.

"This nondisclosure may be a bad practice," the court said. "Indeed it is prohibited by a recently adopted regulation of the Insurance Department, but that regulation did not exist at the time of the conduct at issue here."

See **DISCLOSURE** page 17

INTERNATIONAL

# U.K. spells out changes in oversight for Lloyd's

*Market participants wary of complicated regulatory system*

By SARAH VEYSEY

**LONDON**—The U.K. government has clarified how its proposed dual regulatory system would affect Lloyd's of London, saying Lloyd's would have one lead regulator but also would be subject to another regulatory body.

While Lloyd's cautiously welcomed the proposals, the trade group that represents managing agents in the market cautioned that the change could result in a complicated three-part regulatory system for such entities.

In a second consultation document on its proposals to replace the FSA, which has regulated insurance, the U.K. Treasury this month said the FSA would be replaced by two new bodies. One would be the Prudential Regulation Authority, while the other

would be the Financial Conduct Authority, which previously was named the Consumer Protection and Markets Authority.

The PRA will regulate financial institutions that carry significant risk on their balance sheets, while the FCA will regulate business conduct, according to the government's proposals, which were formulated in response to the global banking crisis.

The public can comment on the

See **LLOYD'S** page 20



The U.K. Treasury has proposed a dual regulatory system that would affect Lloyd's of London.

TRANSPORTATION



**316** Of the 497 U.S. cargo thefts in 2010 that were reported with locations, 316 occurred in parking areas. Of those 316, 149 were at truck stops.

## Violence rarely features in U.S. cargo thefts: Study

*Volume of incidents increases in 2010, but values fall*

By JEFF CASALE

The major difference between cargo thefts in the United States and many other countries is the level of violence, according to FreightWatch International (USA) Inc.

While violence is a common theme in cargo thefts in Mexico, Dan Burges, Austin, Texas-based corporate director of global intelligence with FreightWatch, said it's nearly nonexistent in U.S. and Canadian cargo thefts.

He said this is due primarily to the hostile political and social environment in Mexico as well as cargo theft not being a "high priority" for law enforcement.

"In places like Mexico and South Africa where things are

unsettled, hijackings occur all the time," Mr. Burges said. "In a place like Brazil, it's almost businesslike." He added that cargo thefts are a market-driven crime and that cargo theft gangs in those countries are looking to seize an opportunity to sell goods not available in other areas of the country.

Violence was involved in less than 2% of U.S. cargo thefts, FreightWatch said in its report, "Global Threat Assessment" in examining 2010 activity. In contrast, 71% of cargo thefts in Mexico were violent.

Mexico, Brazil, South Africa, the United States, Russia, India and the United Kingdom are at greatest risk of cargo thefts, FreightWatch said in the report. Drug cartel-related violence in Mexico last year has worsened this year, FreightWatch said.

In the United States, 899 car-

See **CARGO** page 21

EMERGING LIABILITIES

## Firms urged to address global risks

*Geopolitical changes, climate change issues add to exposures*

By JEFF CASALE

**EVANSTON, Ill.**—The world is a "risky place and it's only getting riskier," according to Zurich North America Commercial CEO Mike Foley said

Mr. Foley made the remark after presenting a video montage of natural and man-made catastrophes and stressing their impacts around the globe. He was one of three speakers at Northwestern University's Kellogg School of Management's Managing Global

Risk summit last week, addressing the global impacts of risk ranging from catastrophic, political, economic and environmental issues and how they interrelate as companies expand their footprints and work globally.

"The world continues to be a busy place and it's very interconnected," Mr. Foley told the audience of roughly 120 local risk managers, economists, brokers, insurers and students. "There are not many discrete risks," he said. "Many of them are interconnected and you have to account for that when considering their impact."

At the center of the summit's discussion was the World Economic Forum's 2011 report high-

lighting established and emerging risks, such as climate change, economic disparity, financial crisis, geopolitical conflict, extreme energy pricing conflicts and government failures.

Risk categories to keep an eye on during the next decade include cybersecurity, demographic challenges, resource security, retrenchment of globalization and weapons of mass destruction, Mr. Foley said, citing the report.

Brian C. Elowe, Boston-based managing director of global risk management for Marsh Inc., said it's important to know not only about the risks, but to try to understand how they apply to a

See **SUMMIT** page 19

RETIREMENT BENEFITS

## 401(k) balances 11% higher in 2010

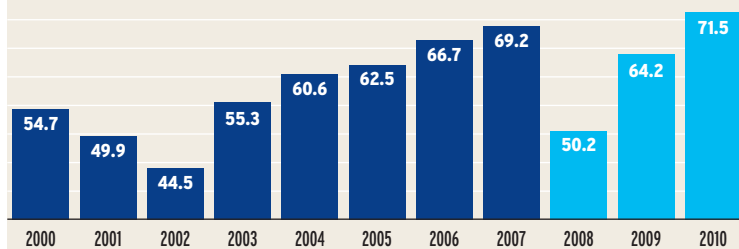
By JERRY GEISEL

Employees' 401(k) account balances in 2010 continued to climb and are higher than they were before the fall in the equities markets, according to an analysis released Wednesday.

The average 401(k) account balance was \$71,500 last year, up 11.4% from \$64,200 at year-end 2009, according to Fidelity Investments, a Boston-based mutual fund provider and 401(k) plan administrator. At year-end 2008, the average account balance, battered by that year's plunge in the equities markets, fell to \$50,200, a huge drop from 2007 when the average account balance was \$69,200.

MAKING A COMEBACK

Employees' 401(k) plan account balances have bounced back since the beginning of the Great Recession. Average account balance by year in thousands of dollars.



Source: Fidelity Investments

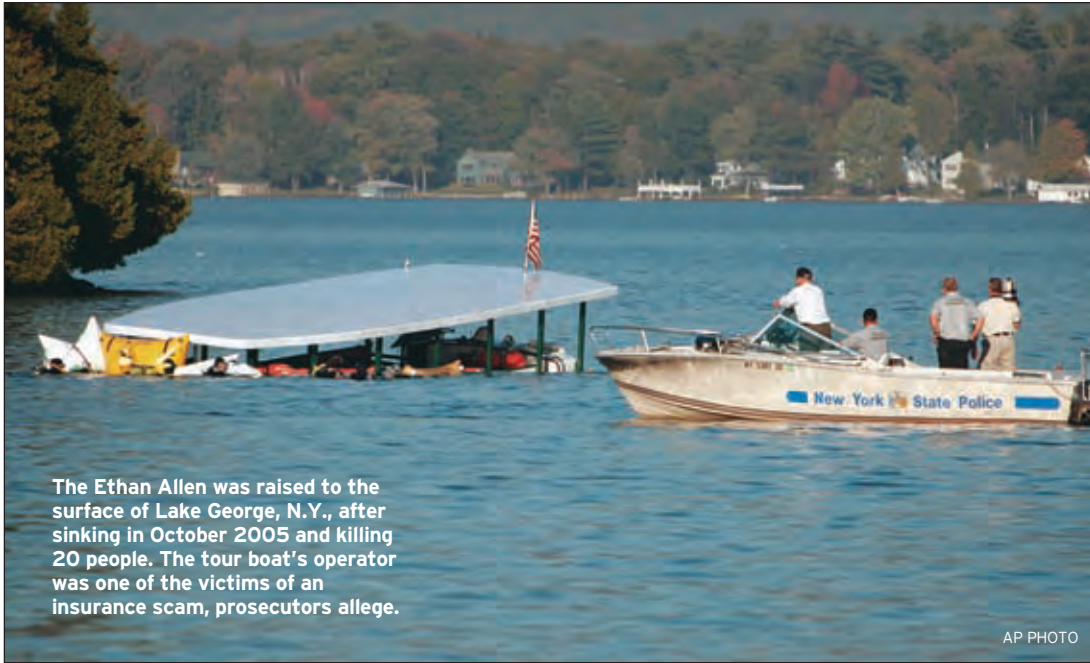
"You can't underestimate the fact that the markets were very favorable last year," said Beth McHugh, Fidelity's vp-market insights.

Even with the resurgence of the equities' markets, 401(k) plan participants are more cautious about

See **401(k)** page 19

## A MINOR RENOVATION TO THE FACTORY AVOIDED A MAJOR OPERATION ON THE EMPLOYEE.

When an employee from a large furniture manufacturer developed recurring wrist pain, our Workers Compensation experts teamed with his doctor to quickly assess the situation. We discovered that changing the layout of his workspace would avoid painful surgery and allow him to continue working while he healed. Our regional medical directors, 24-hour claim response teams and loss control experts work together with you and your broker to develop effective solutions that help you keep employees safer and get them back to work. That's our policy. For more information, contact your broker or agent or visit [libertymutualgroup.com/workerscomp](http://libertymutualgroup.com/workerscomp).



The Ethan Allen was raised to the surface of Lake George, N.Y., after sinking in October 2005 and killing 20 people. The tour boat's operator was one of the victims of an insurance scam, prosecutors allege.

AP PHOTO

## Fraud: Prosecutors allege scam by offshore group

CONTINUED FROM PAGE 1

the insurers; Edmund Hugh Benton, who allegedly helped run Tri-Continental Exchange Ltd., a pool of offshore insurers; William Ballachey, a purported reinsurance intermediary in Brossard, Quebec; and Marc-Thibaut Duchesne, a U.K. citizen whose company, Morganbank P.L.C., provided bogus eurobonds that were reported as "assets" by the insurers, according to the indictment.

Mr. Boncamper was arrested at Miami International Airport in January after arriving on a flight from St. Kitts, according to the U.S. attorney's office in Houston. He was being held without bail.

Mr. Mills was arrested in Bonita Springs, Fla., in January and Mr. Purser was taken into custody in Houston this month.

None had yet entered a plea.

A lawyer for Mr. Boncamper declined to comment on the charges; lawyers for the other two men could not be reached.

### Search launched

The whereabouts of Messrs. Duchesne, Ballachey and Benton were unknown, said federal prosecutors, who have asked for help in locating them.

Mr. Duchesne—who also has used the names Marc Spinks, Carl Von Wasserman and Otto Von Rittner, court records show—escaped this year from a minimum security prison in the United Kingdom, where he was serving a 4½-year sentence for swindling hedge fund investors of £15 million (\$24.2 million). At the time, he was awaiting extradition to the U.S. to face charges in an unrelated penny stock fraud case.

Mr. Ballachey also has run afoul of the law previously. He pleaded guilty in a Quebec court to 297 counts of forging premium finance loan applications and was sentenced to eight months of house arrest in 2006. The previous year, he and two other men were charged in U.S. District Court in New York with

collecting fees for bogus financial guarantee bonds supposedly written by an Indonesian unit of Allianz A.G. Mr. Ballachey was never extradited from Canada or tried on the charges; the two other men were convicted of wire fraud in 2008.

The scheme alleged in the Houston indictment began with Mr. Purser issuing fake policies in the names of actual U.S. insurers, prosecutors allege. Through his Houston brokerage, Monarch Insurance Services, he allegedly sold liability coverage in 2000 and 2001 in the names of Maryland Casualty Co., a unit of Zurich Insurance Co., and ACE Ltd.'s Westchester Surplus Lines Insurance Co.

Mr. Ballachey purportedly arranged reinsurance with a pair of Indonesian companies, PT ING Insurance Indonesia and PT Assuransi Allianz Utama Indonesia. The insurance and reinsurance coverages were phony, prosecutors allege. Westchester later sued Monarch, ING denied writing the reinsurance and Allianz said the signature of one of its employees on coverage documents was forged.

Messrs. Purser and Mills went on to form two affinity groups, International Property Owners Assn. and Global Property Owners Assn., the latter after the Texas Insurance Department revoked Mr. Purser's and Monarch's broker licenses and issued a cease-and-desist order to IPOA in 2003.

The affinity groups sold worthless policies on behalf of a string of bogus Caribbean insurers during the next several years, prosecutors allege. The companies included Commercial Acceptance Indemnity Ltd., Heritage Mutual Surety Ltd., United Re-Insurance Group Ltd., Polaris International Ltd. and Brentwood Re Ltd., all based in Nevis; and Builders & Contractors Assurance Co. Ltd. of the Bahamas.

Mr. Duchesne supplied millions of dollars of fraudulent eurobonds that several insurers reported as capital, and Mr. Bon-

camper prepared phony financial statements and audit opinions, prosecutors allege.

Polaris, for example, reported assets of €174 million (\$238 million), virtually all of which were fraudulent Morganbank eurobonds, in a 2003 statement that featured an audit opinion signed by "Dr. Carl Von Wasserman"—Mr. Duchesne's alias—as an officer of a bogus Swiss company called Bankhaus Schweizer Bundnisses A.G. Mr. Boncamper later wrote a letter saying he had reviewed the "audited" statement and found it in accord with generally accepted auditing standards.

### Backdating documents

Shoreline Cruises Inc., the Ethan Allen's operator, bought liability coverage from Mr. Purser through the affinity group GPOA in 2004. The policy was issued by United Re-Insurance and reinsured by Commercial Acceptance, Brentwood Re and Polaris, according to the indictment. Mr. Purser renewed Shoreline's coverage in 2005.

After the Ethan Allen sank later that year, Messrs. Mills and Purser scrambled to avoid the ensuing claims, the indictment alleges. Mr. Purser prepared a letter to Shoreline, backdated to a year before the accident, purporting to warn the company against going uninsured. A United Re letter to Shoreline's lawyer later cited the fake document in an effort to make it appear that Shoreline never actually bought the coverage, prosecutors charge.

Along with the other charges, prosecutors also allege that Mr. Mills tried to pressure his daughter into lying to a grand jury investigating the case. The daughter's name had been forged as "claims manager" for United Re. Shortly before her grand jury appearance, Mr. Mills wrote her a four-page note advising her how to answer questions, the indictment alleges.

If convicted, the defendants face statutory maximum sentences of 20 years per count on one count each of conspiracy and money laundering and nine counts of wire fraud.

Separately, Mr. Mills faces 20 years on an obstruction of justice charge.

## Commentary

# Are greenhouse gases an excluded pollutant?

When temperatures in Denver recently dipped to a record 20 degrees below zero, it made it hard for me to believe in the theory of global warming.

In fact, at the time, most of the country—even parts of the Deep South—was in the grip of an Arctic blast.

But new research by scientists at the University of Arizona's Institute of the Environment predicts that by 2100, the world's average temperature will have risen 2 to 10 degrees, causing sea levels to crest from 3.5 feet to nearly 20 feet above where they are now and threatening 180 coastal U.S. cities.

Sea levels that rise 10 feet could submerge more than 20% of land mass in those cities, the report states. At least nine large cities, including Boston and New York, could lose more than 10% of their land area. And if sea levels rise by about 20 feet, about one-third of the land area in all U.S. coastal cities could be affected, according to the report, "Implications of Recent Sea Level Rise Science for Low-Elevation Areas in Coastal Cities of the Conterminous USA," which was published online last month in *Climatic Change Letters*.

Another study, published in the Feb. 16 issue of the journal *Nature*, found that the increasing amount of heat-trapping atmospheric gases, such as carbon dioxide, have contributed to heavier rainfall, leading to the devastating floods that recently ravaged parts of the Southern Hemisphere.

That means regardless of whether you believe climate change is being caused by human intervention—the emission of greenhouse gases—or is part of the Earth's natural warming cycle, it is something the risk management and insurance communities need to acknowledge and address.

Already, a handful of lawsuits have been filed over the effect of climatic shifts, such as the widespread destruction caused by Hurricane Katrina and the shrinking native fisheries off the coast of Alaska.

Although the former suit, *Ned Comer et al. vs. Murphy Oil USA et al.*, has been stymied by a procedural mishap in the 5th U.S. Circuit Court of Appeals in New Orleans, the latter case, *Native Village of Kivalina et al. vs. ExxonMobil Corp. et al.*, is pending before the 9th U.S. Circuit Court of Appeals in San Francisco. In addition, *Kivalina*, filed against a host of utili-



## JOANNE WOJCİK

Senior Editor Joanne Wojcik can be reached at: [jwojcik@businessinsurance.com](mailto:jwojcik@businessinsurance.com)

ties, has spawned insurance coverage litigation over whether one of those defendants—AES Corp.—has liability coverage to defend itself.


This coverage suit could be influenced by a 2007 decision in *Massachusetts et al. vs. Environmental Protection Agency et al.*, the U.S. Supreme Court ruled that the EPA must regulate greenhouse gases as pollutants under the Clean Air Act.

But if greenhouse gases are

**If sea levels rise by about 20 feet, about one-third of the land area in all U.S. coastal cities could be affected.**

considered pollutants, it is questionable whether U.S. companies sued for alleged contributions to global warming would have insurance to defend themselves or indemnify plaintiffs.

Whether we see more litigation over contributions to global warming will depend largely on how the Supreme Court rules in *American Electric Power Co. Inc. et al. vs. State of Connecticut et al.*, a case that will decide whether plaintiffs can use the common law tort of "nuisance" to file such suits. A decision is likely this spring, and you can bet defense and plaintiff attorneys are anxiously waiting for the outcome. In the meantime, it would be wise for risk managers to closely examine their commercial general liability insurance policies to see if they contain the absolute pollution exclusion and, if so, how "pollution" is defined. If it does not specifically list "greenhouse gases" or "carbon dioxide" as a pollutant, such CGL policies may offer some defense coverage, but risk managers may have to litigate to get it.



**“By truly getting to know  
our business, Zurich  
helped us reduce workers’  
compensation claims.”**

**Brian McInerney, President & Chief Executive Officer,  
Glacier Water Services, Inc.**

## Zurich HelpPoint

**Underwriting & risk management expertise  
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*Because change happenz*

# Business Insurance OPINIONS

## Best broker practice: Disclose fees upfront

A RECENT DECISION by New York's highest court underscores what should have been obvious: Risk managers must insist on full disclosure of broker compensation arrangements before placing coverage.

As we report on page 3, the New York State Court of Appeals this month rejected an effort by the state attorney general to charge Wells Fargo Insurance Services Inc. for alleged breach of fiduciary duty for not disclosing certain incentive arrangements with insurers.

The court noted that, although nondisclosure now is prohibited by state law, Wells Fargo's actions were legal when they occurred.

Although such nondisclosure no longer should happen in New York, full disclosure of contingent commissions or other incentives offered to brokers by insurers has to occur before any insurance program is placed. That's true regardless of whether full disclosure is required by law.

The Risk & Insurance Management Society Inc. is right in considering it an inherent conflict of interest when a broker receives compensation from a source other than the client. If disclosure isn't required by law, it's certainly required morally and ethically.

It's incumbent upon risk managers to demand nothing less—and brokers to provide nothing less.

*If disclosure isn't required by law, it's certainly required morally and ethically.*

## Public pension plans must face up to reality

ONE OF THE HOTTEST issues state legislators are debating is whether and how to reduce the costs of public employee benefit plans.

What is surprising to us is not the intense scrutiny now being given to the programs, but that it took lawmakers so long to get involved. Many public pension and retiree health plans have been ticking time bombs whose costs, if not addressed, will overwhelm taxpayers' ability to pay them.

Just last week, Illinois floated a \$3.7 billion bond issue—at an average interest rate of 5.6%—to make its 2011 contributions to its pension plan, which is massively underfunded. Having to borrow the money illustrates the severity of the state's financial problems.

Then there is Wisconsin, where the new governor's attempt to curb collective bargaining rights for state employees has pre-empted, at least for now, a more constructive approach: working with unions to reduce the state's benefit costs.

There are many reasons for the tardy focus on benefit costs, perhaps the biggest being that it wasn't until recent years that they exploded as more employees retired, which came on top of continuing health care cost inflation. When the economy soured, that severely hampered public entities' ability to pay for the benefits they have promised their employees and retirees.

What is important now is to bring public sector benefit costs under control. Obvious changes include eliminating full pensions for early retirees and reducing, if not eliminating, their health care coverage—a benefit that is rapidly disappearing in the private sector due to its enormous cost.

That said, the challenge facing lawmakers is to find that elusive middle ground and redesign plans that will enable them to attract the talent they need but keep their costs at a level that the taxpayers can afford.



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## Supply chain risks expanding

Pharmaceutical firms now outsource much of their manufacturing to countries outside the United States, which has led to several supply chain disruptions. That trend will likely continue, says John E. DeWitt, an executive underwriter in the pharmaceutical group at Allianz Global Corporate & Specialty Americas in Chicago. In an examination of the ongoing problem, Mr. DeWitt describes the situation and strategies that manufacturers can use to mitigate their supply chain risks.

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**'Lock in to a good deal by taking on a little more risk now and blunting the market move when it happens.'**

Dan Tropp, Arthur J. Gallagher & Co.

## Comp buyers mull changes before rates rise

By ROSEANNE WHITE GEISEL

**W**hile no one can say when the workers compensation insurance market will harden, now may be the time for employers to revise their program to get the best prices when rates rise.

Middle-market employers have been taking advantage of affordable guaranteed-cost coverage during the soft market of the past few years. With many observers saying signs point to rate hikes and less flexibility among insurers perhaps by 2012 or 2013, experts say employers can save money by assuming more of their workers comp risk.

"You benefit by virtue of controlled losses in a risk-sensitive program (because) you're not being held hostage by a higher experience modification," said Greg Donovan, vp-field operations for United Heartland Insurance Co. in New Berlin, Wis.

A "loss-sensitive (program) is probably the best bet," said Jamie Luce, Boston-based chief underwriting officer, middle markets for Liberty Mutual Insurance Co. However, "if you have no risk management under it, you may end up not liking the result," he cautioned.

Some brokers already have examples of programs they have negotiated to position their clients for a turn in the workers comp market.

See **MIDDLE** next page

Workers Comp  
Risk Financing

SPOTLIGHT

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**TEAMWORK HELPS  
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## Middle: Workers comp buyers mull changes

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Kevin Brogan, Chicago-based head of casualty programs for Wells Fargo Insurance Services USA Inc., said buyers should try to get an early commitment from their insurer, approximately 90 days before their existing contract terminates. He said that enables the customer "to make an educated decision and not do things in an emotional state."

Dan Tropp, area chief operating officer of Arthur J. Gallagher & Co. in Itasca, Ill., said, "The employer will be in a much stronger position to negotiate favorable credit guarantees and other program terms while the market is still soft. Lock in to a good deal by taking on a little more risk now and blunting the market move when it happens," he said.

Mr. Tropp said Gallagher negotiated a March renewal with a three-year rate guarantee and a lock on how fixed costs will be calculated. The policy is a bilateral agreement, meaning that if the buyer goes out to bid after the first year, the insurer is not bound by the original rate structure.

While Mr. Tropp described workers comp as a buyers' market, Mr. Brogan called it "an underwriting market."

Insurers are interested in the policyholder's specific claims experience, not the industry as a whole, Mr. Brogan said. Underwriters also are studying the policyholder's financial condition as well as the legislative and regulatory climate of states where the policyholder operates.

"We work with incumbents more closely but don't close the door to alternatives" when reviewing a workers comp program, said Tracey Caffrey Ant, U.S. primary casualty leader for Marsh Inc. in New York.

One strategy is for a policyholder to partner with an insurer that offers guaranteed-cost and loss-sensitive programs. Rather

than shifting between insurers, "shifting between plans with the same insurer can often yield a better rate," said Mark Zwickel, Los Angeles-based executive vp of Lockton Insurance Brokers L.L.C.

Loss-sensitive program alternatives include large-deductible policies, self-insuring with excess coverage, retrospectively rated policies and group captives. All of the options can be customized to suit the policyholder.

Under a guaranteed-cost policy, the insurer assumes responsibility for all losses. Under a large-



**For most midsize employers, the biggest challenge is 'credit, credit, credit. It's at the forefront of every negotiation.'**

Mark Zwickel,  
Lockton Insurance Brokers L.L.C.

deductible policy, the employer retains a portion of the risk and the insurer requires a letter of credit or similar financial guarantee to prove that the liability is funded. Additionally, either the policyholder hires a third-party administrator to handle claims or pays a fee to the insurer for the service.

Safety and loss data "become critical" when the market turns, Ms. Caffrey Ant said.

"Policyholders should have cost-containment objectives," said Liberty's Mr. Luce.

Lockton's Mr. Zwickel said employers should know the recent history of their workforce and payroll and plans for the future.

Becky Robinson, assistant vp of risk management for Hobby

Lobby Stores Inc. in Oklahoma City, negotiates workers comp coverage for 21,000 employees in 39 states.

"You need to communicate the goals of your program and the details of your losses," Ms. Robinson said. "Give insurers the opportunity to learn more about you."

Aside from losses, an employer should be aware of the company's specific needs, challenges and risk tolerance.

For most midsize employers, the biggest challenge is "credit, credit, credit," said Mr. Zwickel. "It's at the forefront of every negotiation."

Wells Fargo's Mr. Brogan agreed. "The cost of (letters of credit) has increased so much, it's just as important as the cost of the transfer of risk."

Ms. Robinson said Hobby Lobby changed workers comp insurers this year after a long partnership because of the cost of letters of credit. The new insurer agreed to a step-up letter of credit, she said, which allows quarterly payments of the costs rather than the entire amount up front.

"It's very critical that you consider the cost of LOCs and your total cost of risk analysis when you comparison shop." There are additional fees for placing the credit instrument, she said.

If there are problems getting a letter of credit, "lock in a deal with a multiplier," said Gallagher's Mr. Tropp.

United Heartland introduced a large-deductible policy one year ago. Mr. Donovan said employers generally take deductibles of \$500,000 to \$700,000. Minimum premiums are \$300,000 to \$350,000. The insurer also offers a paid-loss retrospectively rated program.

### Easier transition

Experts say there are ways to ease the shift from a guaranteed-cost program to a large-deductible plan.

Hartford Financial Services Group offers a lower retention for clients with up to 2,000 lives, said Kevin Finn, vp national accounts. "Especially if they are

in the Hartford family with a guaranteed-cost (policy), we will grow with them" and start with a \$150,000 or \$100,000 retention, he said.

Another option that could lower the cost of a loss-sensitive program is to opt for a prefunded deductible secured with cash, Mr. Finn said.

Employers with a larger risk appetite can self-insure and purchase excess coverage. That requires employers to fulfill individual state requirements to become qualified self-insureds.

"At the end of the day, a self-insured excess policy with unbundled (claims handling) is the most effective way to fund workers comp risk," said Steve Luebbert, executive vp for Safety National Casualty Corp., a workers compensation excess writer in St. Louis. "There's a tremendous cash-flow advantage."

Mr. Luebbert said employers must "consider size, geographic footprint and loss experience" before deciding whether to self-insure.

Employers can choose specific excess insurance, which covers individual claims above a retention, or aggregate excess, which features stop-loss coverage that attaches at a certain percent of premium, Mr. Luebbert said.

Another alternative is a group captive.

"Group captives take a lot of chop out of the ocean," said Wells Fargo's Mr. Brogan, calling the option "a baby step" from guaranteed-cost coverage. "You can live a little more on the results of (your company) and those in the group. You could get a \$25,000 deductible instead of \$100,000. The downside, he said, is that once in a group captive, you're likely to remain. "You have a lot more flexibility in changing insurers if you go to a large-deductible" program, Mr. Brogan said.

Wells Fargo placed five clients that wanted cost-savings and stable, predictable pricing into a group captive program this year, Mr. Brogan said.

Retrospectively rated programs are the loss-sensitive option that generates the widest range of opinion.

"If a client is going to take a top-side risk, there should be a better bottom-side benefit," said Gallagher's Mr. Tropp.

But Lockton's Mr. Zwickel said a retrospectively rated policy with a small deductible "might be a sufficient stepping stone into a large-deductible" program.

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# Captives prove a natural fit for workers comp coverage

*Key benefits include identifying risks, controlling costs*

By **RODD ZOLKOS**

Workers compensation is a line of coverage that has long been at the heart of many captive insurance programs.

It's also a line that lends itself

particularly well to what are seen as some of the key advantages of captives—the ability to better understand and control losses and a heightened ability to identify safety and risk issues and allocate costs to various areas of an organi-

zation based on their loss performance.

“There are some new captives doing this and also some of them that had workers comp in them that still have it in there,” said Andrew Sargeant, chief operating

officer of USA Risk Group Inc. in Montpelier, Vt.

“Over the years, some of the retentions went up when markets got hard and then came down when markets softened,” Mr. Sargeant said. “Some of it is fronted; and others, it's just a high deductible, and others, it's just a high (self-insured retention) and corporate is putting it in the captive.”

“Probably one out of three (captive) programs involves workers comp,” said Derick White, president of Strategic Risk Solutions (Vermont) Ltd. in Burlington, Vt. “Lately what I've seen is it's just been deductible reimbursement,” he said, with the parent company using the captive to finance its

workers compensation deductible.

Involving a captive in its workers comp program has worked well for White Plains, N.Y.-based Starwood Hotels & Resorts Worldwide Inc., which has a high-deductible program.

Starwood, which operates hotels under brands that include Sheraton, Westin and W Hotels Worldwide, takes \$900,000 in excess of a hotel deductible of \$100,000 per claim at its California hotels, and \$950,000 in excess of \$50,000 per claim for hotels in other states, said Stephen Truono, vp of global risk management at Starwood.

“Our insurance transfer risk deductible is \$1 million, so obviously the captive is taking the difference,” Mr. Truono said.

## *Captive enhances flexibility*

As it introduced the large deductibles in 2004, Starwood also provided hotel managers with safety training and tools to help reduce losses.

Perhaps the greatest benefit in involving a captive in a workers comp program is in being able to better control exposures, identify problem areas and ultimately reduce losses, Mr. Sargeant said.

“That's what a captive enables you to do because each of the

**‘Probably one out of three (captive) programs involves workers comp. Lately what I've seen is it's just been deductible reimbursement.’**

Derick White,  
Strategic Risk Solutions (Vermont) Ltd.

(subsidiaries) gets their own policy and you can see what their loss experience is,” he said. “It also helps you focus on problem areas.”

At Starwood, involving the company's Vermont-domiciled captive in the workers comp program in that fashion “gives us a lot of flexibility in instituting various safety and risk control and claims and injury management programs,” Mr. Truono said.

“It gives us access to manage the risk within the burning layer, if you will, which is where the majority of the claims come in,” he said.

For many organizations, said Mr. Sargeant, involving a captive in the workers compensation program serves as a “cornerstone” of their workplace safety efforts. “You look across subsidiaries and what some subsidiaries are doing and what works, and it's a good way to compare,” he said.

“It's one of the easiest lines to focus on trends or problems and then go after them and fix them,” said Mr. White.

Placing the captive at the heart of the workers comp program can



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CONTINUED FROM PREVIOUS PAGE

offer other advantages as well.

"It enables us to also manage the cash flow associated with those premiums that would otherwise be paid to an insurer," Mr. Truono said. "And obviously, it enables us to benefit from the better-than-expected experience if we should realize such, so that the monies we save are saved directly to the bottom line and not going to an insurance company."

"We also get to utilize some of the funds that we would otherwise pay as risk transfer toward the funding of safety and claims programs," he said. "We also have better access and control over the allocation of what we charge each

of the participating hotels." The captive also can provide a way to get the benefit of investment income, said USA Risk's Mr. Sargeant. If the company can qualify for favorable tax treatment, that can be another plus, he said, but added that tax treatment isn't at the forefront of factors driving decisions to put workers compensation in a captive.

"I've got a number of captives that are nonprofits, 501(c)s and they're putting workers comp in the captive as well," Mr. Sargeant said.

For some companies, the captive also can be used as a tool to ensure that subcontractors meet their workers compensation responsibilities.

"We formed three construction company captives last year and all three involve bringing the sub-

contractors into the contractor's captive," said Strategic Risk Solutions' Mr. White. "That way, they know that the subcontractor has workers comp; and secondly, they know that it's being paid for because they're charging the subcontractors the money."

**Smaller businesses pool risks**

For smaller companies or organizations that might not have the scale to create a stand-alone captive, group captives can provide a solution to tapping an alternative risk transfer approach in a workers comp program. "It works if they can get together through an association or something like that," Mr. Sargeant said.

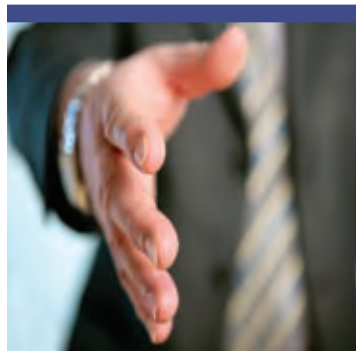
Through a group, companies

can get the benefits of group purchasing and put themselves in a position to be able to retain more risk, he said. "It helps with the pooling of risk, to spread the risk around."

At Starwood, involving the captive in the workers compensation program has been highly successful, Mr. Truono said. "We've been doing this for a number of years and it's been a very positive venture for us and we envision continuing doing it," he said.

And in general, workers compensation likely will continue to occupy a significant place in the U.S. captive market, Mr. White said.

"It will always be a mainstay in captives," he said.



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# Teamwork helps firm survive credit downgrade

*Employer works with security fund, officials to develop plan*

By **ROBERTO CENICEROS**

When recession-driven financial turmoil forced YRC Worldwide Inc. out of a workers compensation security fund for self-insureds with healthy credit ratings, it enlisted the help of state regulators and the security fund.

The Fortune 500 company also launched a program to accelerate closure of workers comp claims and has sought help from the Teamsters union.

Its efforts helped convince California's Office of Self Insurance Plans in 2009 to allow YRC to structure payment of security or collateral that is required of self-insured companies in a way that would be less financially challenging for the cash-strapped transportation services provider.

Since then, Overland Park, Kan.-based YRC has reached somewhat similar agreements with self-insurance regulators in other states, in part by convincing them that freeing up the company's capital allows it to keep workers employed, said Debbi Webber, YRC's vp of risk and assurance.

Its strategy could help other employers suffering from the weak economy and struggling to post the amount of security normally demanded by state self-insurance regulators, said James R. Woods, a partner at Dewey & LeBoeuf L.L.P. in Palo Alto, Calif., who represents YRC.

YRC "has really set a model for other employers to follow," Mr. Woods said.

The state regulators often seek additional security when a company's financial rating suffers and it can least afford it, Mr. Woods said.

But during the past 18 months, YRC's program applied across several states has saved the company \$120 million in security expenses and saved more than 30,000 jobs, Mr. Woods said. YRC must generate about \$2 million in revenue to afford each \$100,000 in security that states require self-insured companies to post as collateral to tap should the company fail to pay its workers comp claims.

YRC is a holding company for one of the world's largest trucking and logistics entities that emerged from the combination of Yellow Corp. and Roadway Corp., among other holdings. It has 32,000 employees in the United States, Canada, Mexico and Asia.

Yellow and Roadway were self-insured companies and generated the legacy workers comp claims in California that require YRC to continue posting security even though it no longer is self-insured for current claims in that state.

Although Yellow and Roadway had been approved to self-insure their California workers comp claims, YRC is a separate legal entity that would have had to obtain its own approval to self-insure.

Instead, YRC purchased insurance in Cal-

After the recession set in, YRC's credit rating dropped, disqualifying it from participation in California's Alternative Security Program.



AP PHOTO

ifornia. In other states, it either purchases insurance or remains self-insured.

Yellow and Roadway also participated in California's Alternative Security Program, which continued to back YRC after it merged Yellow and Roadway, said Jeffrey W. Pettegrew, executive director of the Walnut Creek, Calif.-based Self Insurers' Security Fund, which manages the alternative program.

Companies with at least a B- credit rating

participation in California's Alternative Security Program.

No longer eligible for the program that allowed it to forgo posting collateral, regulators suddenly demanded a large amount of security in 2009.

"In California, we had a multimillion-dollar collateral demand from the state when our credit rating dipped," Ms. Webber said.

YRC had to tell California regulators, "Sorry, we don't have that many millions of dollars, but we can preserve (about 5,000) jobs in the state of California if you will work with us" to restructure the collateral requirement, Ms. Webber said.

In July 2009, YRC and the regulators agreed the company first would post \$2 million in deposits, rather than the nearly \$20 million the state had wanted. It also committed to making claims payments totaling \$2.5 million each quarter, Mr. Woods said.

YRC also agreed that if didn't meet its quarterly claim payment goal, it would "top off" the security deposit, Mr. Woods said.

California's Self Insurance Fund also agreed that YRC could continue participating as a "partial member" of the Alternative Security Program, Mr. Pettegrew said.

But Ms. Webber must meet quarterly with the security fund to review all of YRC's legacy claims in California as well as discuss claims it closed and those nearing closure.

The meeting's purpose is to make "the security fund comfortable that we have adequate case reserve on every claim," Ms. Webber said. The meetings also provide the security fund with unusual access to review every aspect of YRC's open claims, Mr. Pettegrew said.

The arrangement would not work without the help of YRC's third-party administrator, Itasca, Ill.-based Gallagher Bassett Services Inc., which also attends the meet-

ings, Ms. Webber said.

Since YRC began the process, it has closed at least 45% of the 400 legacy claims with which it began and it has doubled its state security deposit as its agreement with the state calls for increasing it incrementally, Mr. Pettegrew said.

YRC was No. 1 on his "worry list" in 2009 because the company could have walked away from its obligations and defaulted, leaving the security fund to pay the outstanding claims, Mr. Pettegrew said. "Now, (they) are significantly less of a worry to us because of the achievements that have been made," he said.

Since reaching its California agreement, Ms. Webber and Mr. Woods have traveled the country meeting with state self-insurance regulators to negotiate lowering their collateral or to convince the regulators to return old collateral that no longer is necessary because claims have been closed.

Sometimes, Teamsters representatives join them and help argue YRC's case because the union also wants to save jobs and preserve the company's capital to pay injured-worker claims, Mr. Woods said.

However, arrangements for posting security vary by state, Mr. Woods said.

But regulators often have been flexible in adjusting their collateral demands once they learn of YRC's track record of paying claims and the relationship between its ability to post collateral and preserve jobs, Mr. Woods said.

Jobs factored into California's decision to help YRC structure its collateral posting, said James A. Ware, chief of the state's Office of Self Insurance Plans.

The "mission to improve working conditions for California's wage earners, and to advance opportunities for profitable employment in California is always a factor of great import," Mr. Ware said.

**\$120M**

During the past 18 months, YRC's program applied across several states has saved the company \$120 million in security expenses and saved more than 30,000 jobs,

**30,000**

can participate in the Alternative Security Program. It essentially is a security fund that allows them to waive posting collateral that California, like other states, normally requires to secure the payment of workers comp claims should a self-insured company fail to do so.

But after the recession set in, YRC's credit rating dropped, disqualifying it from par-

**'In California, we had a multimillion-dollar collateral demand from the state when our credit rating dipped.'**

Debbi Webber, YRC Worldwide Inc.

## Market Moves

### Willis Networks adds members

**LONDON**—Six independent insurance brokerages have joined Willis Networks, a broker association owned by London-based Willis Group Holdings P.L.C.

Willis Networks offers sales support, training and resources to further develop and expand members' businesses, Willis said in a statement.

Willis Networks is comprised of Willis N2, which is for local brokers placing approximately £4 million (\$6.5 million) in annual premiums, and Willis Commercial Network, which is for larger brokers with annual premiums of about £5 million to £25 million (\$8.1 million to \$40.6 million).

Liverpool, England-based Powell Bateson Ltd., Tunbridge Wells-based Portcullis Insurance Brokers Ltd. and Shrewsbury-based Kingsland Robart & Co. have joined Willis Commercial Network.

Northwich-based Britannia Consultants Services Ltd., Solihull-based ASJ Insurance Services Ltd. and Edinburgh, Scotland-based Ifaeye Ltd. have joined Willis N2.

### FARA opens office in New Jersey

**PRINCETON, N.J.**—F.A. Richard & Associates Inc. has expanded its claims administration and risk management services in the Northeast with a new office.

The office, located in Princeton, N.J., responds to increased business that requires a local office and is part of its strategic geographic expansion, the Mandeville, La.-based claims management company said in a statement.

The office will handle complex liability claims initially and expand its offerings at a later date, FARA said.

The office is located at 100 Overlook Center, Suite 2132, Princeton, N.J., 08540. The telephone number is 855-355-3272.

### McGowan Cos. rebrands three units

**FAIRVIEW PARK, Ohio**—McGowan Cos. Inc. has rebranded three of its operations.

The rebrand is an effort "to eliminate any confusion in the marketplace and to make it easier for brokers to access all McGowan product offerings," Fairview Park, Ohio-based McGowan Cos. said in a statement.

McGowan & Co. Inc. has been renamed McGowan Program Administrators. Based in Fairview Park, it handles the design and administration of insurance programs.

Subsidiaries Statehouse Casualty Managers Inc. and Windward Group Inc. have merged to form managing general underwriter

McGowan Excess & Casualty, which is based in Eatontown, N.J.

However, the Austin, Texas-based wholesale insurance brokerage unit McGowan, Donnelly & Oberheu L.L.C. keeps its current name, the company said.

### Connor Strong partners with Onlife Health

**BRENTWOOD, Tenn.**—Insurance brokerage Connor Strong Cos. Inc. has partnered with Brentwood, Tenn.-based health and wellness provider Onlife Health Inc.

The partnership, for which terms were not disclosed, will offer Onlife Health's products and services to Connor Strong's clients, the Marlton, N.J.-based brokerage

said in a statement.

Onlife Health offers health assessments, health coaching and online tools for employers to improve the health of their workforce and reduce health benefit costs.

The health services will be available first to New Jersey's Joint Insurance Funds, which include governmental entities and school districts providing employee benefits for 35,000 people across the state, Conner Strong said in the statement.

Conner Strong places about \$1 billion in annual premiums and focuses on aviation, construction, construction wrap-ups, education, health care, among others, according to the statement.

### Total Medical Solutions moves headquarters

**LAKE MARY, Fla.**—Total Medical Solutions Inc. has moved its headquarters from Sanford, Fla., to a 10,000-square-foot complex in Lake Mary.

The data infrastructure of the new office complex—underground power lines, generators in the building, a secure data center and the capability to implement Voice over Internet Protocol—attracted the workers compensation services provider to the location, TMS said in a statement.

The new site also allows TMS to produce video conferences and webinars. "We also have room to grow," said Cara Barde, president

of TMS, noting the space is 3,000 square feet larger than TMS' Sanford office.

The new address is 1000 Primera Blvd., Suite 3160, Lake Mary, Fla., 32746. The phone numbers, which have not changed, are 800-700-9393 or 407-831-7331.

#### 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 Mike Tsikoudakis, 360 N. Michigan Ave., Chicago, Ill. 60601 or e-mail [mtsikoudakis@businessinsurance.com](mailto:mtsikoudakis@businessinsurance.com).

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## P&I: Marine liability rates hold steady at renewals

CONTINUED FROM PAGE 3

many International Group members passed on to their members, Aon said.

Generally, the Feb. 20 renewal was fairly flat and underwriters did not impose large rate increases on shipowners, said Mike Riddick, an executive director in the marine hull division of Lockton Cos. L.L.P. in London.

"The latter part of the last decade was a very trying time for the P&I clubs, with the implications of placing an ever-increasing emphasis on investment returns coming home to roost at renewal time," said Steve Griffiths, a director at Aon Risk Solutions' marine team in London.

"It does seem, however, that the 2011 renewal is the calm after the storm, with improved claims trends helping many clubs to achieve a relatively flat renewal," he said in a statement.

GARD A.S. is in a strong financial position and can make long-term decisions on investments and reinsurance, among other things, said Rolf Thore Roppestad, senior vp and joint head of underwriting at the Arendal, Norway-based P&I club.

This, along with the quality of its membership, enabled GARD to keep its general rates flat at the recent renewal, he said.

He said the International Group's reinsurance negotiations meant decreased reinsurance rates were passed on to GARD members.

The London-based Standard P&I Club is in a "balanced underwriting position" and asked shipowners for a 3.5% general increase for the 2011 renewal, said John Reily, director of underwriting at the club.

Mr. Reily said the weak economy led to reduced attritional claims against P&I clubs as shipping traffic slowed. But he also said larger claims now are costing more and that environmental and liability claims in particular are becoming more expensive for P&I clubs.

As the global economy picks up, cargo claims also are likely to increase, experts said.

There has been a small rise in the frequency of claims over the past few months, Mr. Roppestad said. He said P&I cargo claims typically are higher when the shipping market is booming.

"People claims" for illness or personal injury are becoming more expensive for P&I clubs as awards rise and claimants are becoming more aware of their ability to bring such claims, said Lockton's Mr. Riddick.

Liability claims tend to track the freight market, and typically there is about an 18-month lag before such claims filter through to the P&I market, he said.

The Deepwater Horizon oil rig disaster in April has not had a direct impact on the P&I market, but the long-term political consequences of the oil spill and its aftermath likely will have an effect, Mr. Roppestad said, as

tighter environmental legislation and tougher sanctions against polluters are introduced.

In addition, the ongoing European Commission investigation into the International Group of P&I Clubs' exemption from E.U. competition rules likely will become more of an issue when the commission announces its findings, likely next month, experts say.

The investigation, which began in August, is examining, among other things, the clubs' practice of imposing what are known as "release calls," or premiums that shipowners are charged when they withdraw from a P&I club.

The European Commission investigation is a bigger concern at the moment for the clubs themselves than for their members, Mr. Roppestad said. He said he believed shipowners have been very supportive of the International Group. If its agreements change, this could lead to a more volatile market and pricing and, in the long term, more costly insurance

**'It does seem, however, that the 2011 renewal is the calm after the storm, with improved claims trends helping many clubs to achieve a relatively flat renewal.'**

Steve Griffiths, Aon Risk Services

coverage for shipowners, he said.

Overall, Mr. Reily said, P&I clubs believe that shipowners consider the system to be effective and they would like to see it retained.

"In our opinion, the outcome may well involve some concessions on the part of the International Group, with a likely candidate for such concessions being some form of amendment to the practice of release calls," Standard & Poor's Corp. said in a February report on the P&I sector.

"Given that the existing arrangements appear to act in favor of the consumer/shipowner, we believe that the European Commission investigation is unlikely to lead to wholesale changes to the International Group agreement," S&P said.

Preparation for Solvency II also will be a big focus during the next year, the Standard Club's Mr. Reily said. The risk-based capital regulatory regime is slated for introduction in the European Union at the end of 2012.

Another area of uncertainty concerns rules for those clubs that have Bermuda-based affiliates or offshoots, said S&P, as Bermuda strives for regulatory equivalence with Solvency II.

## UP Comings & Goings CLOSE



### CHRISTOPHER BOUSCHET

**NEW JOB TITLE:** Account director at McGraw Wentworth, a Troy, Mich.-based brokerage and group benefit consultant.

**PREVIOUS POSITION:** Troy, Mich.-based new business sales consultant in Blue Cross Blue Shield of Michigan's key and large-group sales division.

**INDUSTRY CHALLENGES:** The perpetual theme of rising health care costs, and the interpretation and implementation of health care reform.

**INDUSTRY OUTLOOK:** Currently there's a substantial amount of uncertainty in the industry. The impact of the near-term reform mandates (is) just starting to be observed, and the long-term future of the (health care reform) act is in question. Unfortunately, the remaining industry constant in the equation is health care inflation.

**CAREER HIGHLIGHT:** I'm living my career highlight right now. Prior to coming aboard, I was fortunate enough to partner on several occasions with the McGraw Wentworth team, and I can confidently state that this

group is among the brightest and best in the industry. I truly feel privileged to be a part of such a dynamic and talented roster.

**WHAT YOU WANTED TO BE GROWING UP:** My dad. Even today, he still represents all that I aspire to be as a husband and a father.

**HOBBIES:** Golf. With age I've grown evermore passionate about the game. Unfortunately, I've discovered that there's absolutely no correlation between my handicap and my tireless commitment to improve.

**MOST PASSIONATE ABOUT:** Exercising sound judgment in the workplace, and setting the right example for my children at home.

**FAVORITE BOOK:** "The Art of War" by Sun Tzu.

**CAN'T-MISS TV SHOW:** HBO's "Curb Your Enthusiasm."

**E-MAIL OR PHONE, AND WHY:** Phone. If you've ever inadvertently and regretfully clicked "Reply all," then I needn't say any more.

## Comings & Goings

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### POSTING THIS WEEK

#### BROKERS

- Willis North America
- Crump Insurance Services Inc.

#### INSURERS

- American International Group Inc.
- Mitsui Sumitomo Insurance Underwriting at Lloyd's Ltd.
- Equinox Global Ltd.

#### REINSURANCE

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## Insider: Market eyes crackdown

CONTINUED FROM PAGE 3

Although coverage may be available under professional liability policies, few policyholders are successfully making claims for legal expenses related to insider trading investigations, experts say.

Insurer attorney Dan Bailey, a member of Bailey Cavaleri L.L.C. in Columbus, Ohio, said he's seen "some uptick" but not "a huge one" in claims related to insider trading during recent months. "We haven't seen a huge amount of losses being paid out, and (the issue) hasn't affected pricing or the market," he said.

John McKenna, a broker with ARC Excess & Surplus L.L.C. in Garden City, N.Y., said he hasn't seen "a lot" of cases similar to Galleon's among his financial services clients. He estimated that possibly 15% of his clients had claims in the past year, about half of which included insider trading allegations.

Mr. O'Brien said Marsh has seen a "significant number of claims" from clients receiving subpoenas, and those related to investigations of insider trading are up around 100% compared with last year.

The claims process can be complicated.

"A lot of the insider trading charges involve acting for personal gain as opposed to the employer's, so when people do things outside the scope of their employment, the insurance policy doesn't cover it," said Robert Heim, a partner at Meyers & Heim L.L.P. in New York and a former SEC prosecutor. When the SEC settles with an individual defendant, it often includes a condition not to seek reimbursement from insurance policies that might apply, he said.

Mr. O'Brien said insurers sometimes can argue that someone acted outside of professional capacity, but it would depend on the specifics of the case. If a complaint is against an officer, "the insurance company would have a difficult argument to say he's not operating in that capacity," Mr. O'Brien said. In addition, he said he has not seen instances with his clients in which the SEC imposed settlement conditions that limit reimbursement.

### Coverage expanding

Court rulings on the issue of claims for insider trading investigations have already taken place. Adding fodder for new battles, insurers introduced coverage last year for informal inquiries. For example, a director might have asked lawyers for advice on responding to investigator questions about an insider trading case.

American International Group Inc.'s property/casualty unit Chartis Inc. and many others now provide policies offering to pay such

## Local D&O cover becoming more common

More companies with international operations are buying insurance overseas to cover the risk of lawsuits against their company executives, according to a Towers Watson & Co. survey released last week.

For example, Bloomington, Minn.-based Toro Co. generates about one-third of its sales outside of North America. Dave Hennes, its director of risk management, said the lawn care product manufacturer expects to finish building a plant in Romania this year. Although Toro already has insurance that covers its directors and officers from job-related lawsuits worldwide, Romania requires the company to also buy a local policy.

The cost for the local policy is "minimal," Mr. Hennes said. "The risk hasn't increased per se. It's just that administratively now you have another policy that has to be issued."

Other companies are taking a similar approach.

Towers Watson surveyed 496 D&O buyers late last year on everything from insurance policy limits to claims (see story, below). Out of the 53% of respondents who said their companies have international operations, 47% bought a local policy in a foreign jurisdiction. That compared with only 2% that bought a local D&O policy in 2008, the last time the survey was conducted.

"We've seen an increase in foreign D&O suits over the past few years, and trying to have a one-size-fits-all approach to D&O is a dangerous

game," said Larry Racioppo, Stamford, Conn.-based leader of the executive liability group in Towers Watson's brokerage business.

The survey found that as a general rule, the larger the company, the more likely it was to purchase local coverage. As such, 68% of companies with \$10 billion or more in assets said they bought local policies, while 23% of companies with less than \$250 million in assets did so.

Trevor Howard, New York-based senior vp with Liberty International Underwriters, a division of Boston-based Liberty Mutual Group, said the U.S. plaintiffs bar has recently tried to export class action lawsuits to foreign jurisdictions. This is "another factor that could come into play," he said.

He pointed out that in *Robert Morrison vs. National Australia Bank Ltd. et al.*, the U.S. Supreme Court last June limited foreign shareholders of foreign companies with shares traded on foreign exchanges from suing in U.S. courts.

In the wake of that ruling, Stichting Investor Claims Against Fortis, a specially formed foundation that represents investors in the U.S., Europe, the Middle East and Australia, filed suit in Utrecht Civil Court in the Netherlands, according to a January statement from the investors' law firm, Barroway Topaz Kessler Meltzer & Check L.L.P. The foundation alleged that Belgium-based financial services company Fortis N.V. defrauded investors in connection with its collapse during the financial crisis.

—By Sonja Ryst

costs, depending on the circumstances.

In June 2007, a Dow Jones Newswires article reported that Office Depot Inc. may have improperly disclosed material information to financial analysts. An SEC investigation ensued, which Office Depot settled last October.

When Office Depot claimed more than \$23 million from National Union Fire Insurance Co. of Pittsburgh, Pa., under its D&O policy, the Chartis unit acknowledged its obligation to pay the defense costs for SEC subpoenas and Wells Notices served to officers and directors, and for costs incurred in defending the various securities lawsuits, but not for an earlier internal investigation and audit costs.

Last October in West Palm Beach, Fla., U.S. District Court Judge Kenneth A. Marra ruled that the policy's definition of loss didn't cover those claims, according to court documents.

Brian J. Kovack, president of the investment advisory firm Kovack Securities Inc. in Fort Lauderdale, Fla., said he doesn't expect his insurance to protect against fraud.

Insurance is for accidents, not intentional actions, he said. His team uses computer models and programs that provide exception reports so their compliance department can determine whether any employees were involved in insider trading.

"To buy coverage for which you can go out and commit fraud and essentially double-dip defies logic," said Mr. Kovack, whose firm has never been subject to insider trading allegations.

## More up D&O limits: Survey

More companies are increasing the amount of directors and officers liability coverage they purchase, although most companies kept their limits the same in 2010, according to research from Towers Watson & Co.

For the report, "Directors and Officers Liability: 2010 Survey of Insurance Purchasing Trends," the New York-based professional services company last fall surveyed 496 organizations that buy D&O insurance.

Twenty-one percent of respondents said they'd increased their D&O limits compared with their prior D&O policy vs. 12% who did so in 2008, the last time the survey was done.

"Directors and officers have increased concern over the potential for litigation from a broader array of claimants," said Larry Racioppo, leader of the executive liability group in Towers Watson's brokerage business.

Still, 75% of respondents said their limits had stayed the same, down from 86% in 2008, according to the report, which was released last week.

Mr. Racioppo also noted that some of the growth in increased limits may stem from competition in the

D&O market, which leads to reduced pricing. Insurance buyers, he said, may use part of the savings to boost their limits. "It's a buyer's market," Mr. Racioppo said.

In addition, nearly one-third of respondents said they made a claim against a D&O liability policy during the past 10 years. Nearly half of those respondents said they had made claims for the legal costs of investor lawsuits, 30% for employment-related lawsuits, 21% for fiduciary lawsuits, 16% for regulatory matters and 15% for other issues.

More than half said they were satisfied with the way their insurers handled the claims, while 20% were unsatisfied and nearly a quarter were neutral.

Dave Hennes, director of risk management at Bloomington, Minn.-based Toro Co., said the lawn care product company did not boost its D&O limits last year.

"If I were to prognosticate, I'd expect we'd keep (the limits) the same again" when the policy renews in April, he said.

Mr. Hennes said when he made a presentation to his board of directors, they seemed to feel comfortable with their current limits.

The full survey is available at [www.towerswatson.com](http://www.towerswatson.com).

—By Sonja Ryst

## Disclosure: Rule not retroactive

CONTINUED FROM PAGE 3

A prospective regulation is a superior way to end a "questionable but common practice than what the attorney general asks us to do here: in substance to outlaw the practice retroactively by creating a common law rule," the court said in upholding the lower court's dismissal.

"This ruling underscores the need for the recently implemented Insurance Department's regulation that states these fees be disclosed upon consumer request," John R. Phelps, secretary and board liaison to the external affairs committee of the New York-based Risk & Insurance Management Society Inc., which

**'What was surprising was that the highest court took the case, because normally they take the cases to change the law or to make new law.'**

Scott Sinder,  
Council of Insurance  
Agents & Brokers

was not involved in the case but does advocate full disclosure of broker compensation, said in an e-mail.

"RIMS continues to believe that there is an inherent conflict of interest from broker compensation sources other than the insured," said Mr. Phelps. "At the very least, full compensation disclosure should be made to the consumer prior to placement of coverage."

"It maintains the status quo and it gives meaning to the new Insurance Department disclosure regulation, which will now dictate disclosure obligations going forward," said Scott Sinder, general counsel for the Washington-based Council of Insurance Agents & Brokers, which filed a brief supporting Wells Fargo.

"What was surprising was that the highest court took the case, because normally they take the cases to change the law or to make new law," said Mr. Sinder, who also is chair of Steptoe & Johnson L.L.P.'s government affairs and public policy practice in Washington. "Here, they ended up saying that the existing law is right."

# Quake: Big insured losses seen in New Zealand

CONTINUED FROM PAGE 1

The nature and location of last week's quake added to its destructiveness.

"New Zealand is located in the Pacific Ring of Fire," said Arash Nasser, an engineer with AIR Worldwide Corp. in Boston. "After last year's earthquake, the region has been continuously experiencing aftershocks. The main reason for the significant loss and damage is the fact that the earthquake was very close to the main population center and was shallow."

"It's not surprising to see lots of damage in that area," said Mr. Nasser. "Most of the construction in that area was masonry, and unreinforced masonry is very susceptible to earthquakes."

He called the building code in New Zealand "very stringent," but added that many of the buildings in Christchurch are old, and not many had been retrofitted.

"The extra challenge that we have is trying to back out damage that we've already attributed to the earlier event," said Tom Larsen, senior vp at Oakland, Calif.-based catastrophe modeler EQECAT Inc. He said an example might be a structure that sustained \$35,000 in damage in the September event but was destroyed by last week's temblor. That raises the issue of a second insurance deductible.

Mr. Larsen noted that although last week's earthquake was a smaller event than September's, it was nearly a "direct hit" on downtown Christchurch.

AIR estimated that insured damage could range from \$5 billion New Zealand (\$3.81 billion) to \$11.5 billion New Zealand (\$8.76 billion).

In an analysis accompanying its estimate, AIR pointed out that the New Zealand Earthquake Commission, a government-sponsored plan that offers insurance to homeowners, likely will bear the brunt of primary losses.

The Earthquake Commission provides up to \$100,000 New Zealand (\$76,100) in coverage of

residential dwellings and up to \$20,000 New Zealand (\$15,300) for personal belongings.

The commission said it was treating last week's event as a separate quake and not an aftershock of the September quake.

"From EQC's perspective, for insurance and reinsurance purposes, this is a new event even though scientists have advised it is an aftershock" of September's earthquake, the commission said last week in a statement on its website. "All new damage and worsened existing damage is being treated as a new claim. Except for emergency repairs, we will be matching new claims with existing claims and, when we can, start assessing and reassessing again."

But even two earthquakes resulting in multibillion-dollar losses probably will not shake the international reinsurance market, experts say. Reinsurance intermediaries said the quake will affect only local reinsurance rates.

David Flandro, London-based global head of business intelligence for reinsurance intermediary Guy Carpenter & Co. L.L.C., said the quake "is going to impact lines of business that are written in the New Zealand area specifically for quake. We don't believe it will impact the cost of British motor insurance or Florida property reinsurance; and globally, the reinsurance sector is still overcapitalized."

John DeMartini, Stamford, Conn.-based leader of Towers Watson & Co.'s catastrophe risk management practice and its U.S. property reinsurance specialty practice, said much like last year's Chilean earthquake, "the market doesn't react by sort of spreading the pain" to catastrophe exposures elsewhere.

Mr. DeMartini said reinsurance rates for New Zealand catastrophe business could increase by double digits. It will increase by "what the market will bear," he said.

Mark Dwelle, an insurance analyst with RBC Capital Markets, a unit of RBC Dominion Securities Inc. in Richmond, Va., also said



REUTERS

A rescue worker looks through the rubble at the Cathedral of Blessed Sacrament in Christchurch, New Zealand, last week. The earthquake was the second to hit region in less than six months.

the catastrophe was not large enough to affect the overall market.

"The industry is designed to absorb a set amount of losses," although it has "already absorbed quite a bit, and there is that much less gas in the tank" when the next catastrophe occurs, Mr. Dwelle said.

"There is a likelihood of a hardening in global property catastrophe reinsurance pricing, though that is likely to be focused on Southern Hemisphere earthquake—remember the Chilean quake a year ago—and flood risks," Robert Hartwig, president of the New York-based Insurance Information Institute, said in an e-mail.

He said he was "more skeptical" that a global hardening in property catastrophe pricing would occur.

"There is ample capacity on a

global scale, including reinsurance, and other major catastrophe risks such as wind risk in the U.S. and Europe are sufficiently 'siloeed,'" so events such as earthquakes in New Zealand or Chile have little effect on pricing for these distinct risks, in terms of geography and the nature of the risk, said Mr. Hartwig.

Australian insurers said they did not expect to suffer major losses from the New Zealand quake.

"While still far too early to determine the extent of damage from this latest event, our reinsurance covers mean that the maximum financial impact on the group would be \$40 million Australian (\$40.6 million)," Insurance Australia Group Ltd. Managing Director and CEO Mike Wilkins said in a statement posted on the Sydney-based insurer's website.

Brisbane, Australia-based insurer Suncorp Group Ltd. said it was

too early to estimate the cost of last week's quake or the reinsurance treatment of the event.

Suncorp said in a statement that its reinsurance program contains separate "drop-down" cover that limits its New Zealand exposures to \$60 million New Zealand (\$45.7 million).

The insurer, which released its half-year financial results last week, said the total cost of reinsurance premiums for the year to date was \$223 million Australian (\$226.3 million). Suncorp's financial year runs to June.

Among the buildings that collapsed in the earthquake was the Pyne Gould building in downtown Christchurch. The building housed Marsh's New Zealand's operations, and at least one employee died.

Sarah Veysey contributed to this report.



REUTERS

Thermal imaging cameras were used to search for survivors after the magnitude 6.3 earthquake.

# Summit: Firms urged to address global risk management issues

CONTINUED FROM PAGE 4

company's business or risk model.

"You can't solve all the problems of the world, but you can learn how they might manifest for you," Mr. Elowe said. "Companies need to think about theory analysis...business leaders need to come together and discuss these issues and how it relates to their business strategy."

The financial crisis was one of those risk events that sent ripples through the global economy, said Brian S. Wesbury, a keynote speaker and chief economist for Wheaton, Ill.-based First Trust Advisors L.P. "The level of fear about the direction the world was headed in general has never been higher," he said.

However, Mr. Wesbury said he "respectfully disagreed" with Mr. Foley's comment that the world is becoming riskier, saying it is the exact opposite. The "world is get-

**'You can't solve all the problems of the world, but you can learn how they might manifest for you.'**

Brian C. Elowe, Marsh Inc.

ting better and safer," Mr. Westbury said.

"We are getting better and safer," he said. "That is the history of the world. We're not getting out of control and riskier...technology is making us safer. There are always risks to life—economics, growth, wealth creation—it's all

about risks, but we've learned to manage those risks."

Mr. Westbury dismissed the idea that the financial crisis was a "black swan" event, saying there were clear precursors to the market's decline, primarily mark-to-market accounting and the Federal Reserve's decision to keep low-

ering interest rates.

Although events such as the financial crisis usually have a negative impact, it produced a greater focus on enterprise risk management and transparency, Messrs. Foley and Elowe acknowledged. They said there needs to be a greater understanding of ERM among corporate leaders, which is why it's necessary for them to communicate with their risk managers.

Mr. Elowe told risk managers in the audience to take the information provided in the WEF report and present it to their company

executives as a way of getting the discussion going about specific risks or issues and ask how the company would react to those situations.

"It's taking a proactive approach to risk management," Mr. Elowe said, adding that it's often tough for companies to put a value on risks that have been avoided.

"Risk management is too much of an audited approach," he said. "Not everything has to be modeled out. There can just be a conversation about making people more aware of the risks...but you have to have that conversation."

## 401(k): 2010 balances 11% higher

CONTINUED FROM PAGE 4

fully investing their account balances in stock. Thirteen percent of active participants held all of their 401(k) account balances in equities last year, down from 14% in 2009 and 20% in 2007.

Loan activity increased slightly last year. Just over 11% of participants took out a loan from their 401(k) plan last year, compared with 10.6% in 2009.

Fidelity also found that 21% of plan sponsors offer a Roth 401(k) feature, up from just 10% in 2007. In a Roth 401(k) plan, participants make after-tax contributions, but those contributions and investment income can be withdrawn tax-free if certain requirements are met.

The study analyzed the account balances of about 11 million participants in nearly 17,000 corporate plans serviced by Fidelity.

A summary is available at <http://www.fidelity.com/inside-fidelity/employer-services/q4-2011-401k-update>.

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## Hiring: EEOC expected to challenge employers

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tives asserting that few firms do so.

Many employment attorneys say they have never encountered such a blanket policy among clients, and that they make little business sense because they eliminate potentially attractive candidates.

However, Paul C. Evans, a partner with law firm Morgan Lewis & Bockius L.L.P. in Philadelphia, said while he has never had a client with such a policy, nor has he advised a client to implement one, "I do think the EEOC will look to see whether or not employers are de facto, even without an explicit policy, precluding or eliminating from consideration" those who have been out of work for long periods of time when filling jobs.

The EEOC commissioners are "going to take a very close look at all the information that came out of the meeting, and we'll see if and how the commission proceeds," an EEOC spokeswoman said. "At this point, there's been no talk of doing anything. There are a number of possibilities, including putting out guidance" on the issue, she said.

Mike Aamodt, principal consultant with Washington-based DCI Consulting Group Inc., said when the EEOC holds open meetings on such a subject, typically "it's kind

of a signal they think something is going on, and I would not be surprised if a couple of test cases are filed."

As an example, observers noted that the EEOC held a hearing in October on using credit checks in vetting job applicants. Two months later, it sued Chicago-based Kaplan Higher Education, alleging it refused to hire a class of black job applicants nationwide because of their credit history.

Laura Sack, a shareholder with law firm Vedder Price P.C. in New York, said because of the EEOC's interest in the hiring issue, it will be "easier to go forward, to get the EEOC's attention with this kind of a claim, than it would have been in the past." Bringing a class action suit "would certainly make it more worth their while," she said.

While acknowledging unemployment has a disparate impact on protected groups, many observers say it would be difficult if not impossible to establish the next step—that employer hiring of only the employed disparately impacts protected groups.

"It can be hard to isolate what factor or factors lead to an employer's decision not to hire someone," said Ms. Sack. "It can be difficult to prove that the person that was hired wasn't more qualified."

"Many people are looking at it as the EEOC pushing the envelope

**'It can be hard to isolate what factor or factors lead to an employer's decision not to hire someone.'**

Laura Sack, Vedder Price P.C.

## Focus on employment status could create liability issues

Employers with policies against hiring the unemployed would be wise to reconsider them in light of the Equal Employment Opportunity Commission's interest in the area, many observers say.

The advice comes in the wake of an EEOC hearing this month in which the commission explored whether employers are hiring only the employed, and if this has a disparate impact on protected groups.

Laura Sack, a shareholder with law firm Vedder Price P.C. in New York, said employers that do not have these policies "don't need to do anything" other than document their decisionmaking process with respect to hiring applicants.

Employers that have such a policy "would be well-advised to reconsider such a practice," Ms. Sack said.

"The smartest thing to do if a business wants to be totally risk-averse is don't take employment status into consideration" when hiring or don't make it a qualifying factor in job decisions, said Jonathan T. Hyman, a partner with law firm Kohrman Jackson & Krantz P.L.L. in

Cleveland.

Companies that have a policy against hiring the unemployed should document their employment decisions "with the understanding the EEOC is taking a look at this issue," Mr. Hyman said.

While "it's appropriate for employers to scrutinize job history," employers should make sure they are "not making assumptions about people simply because they are unemployed," said Paul C. Evans, a partner with law firm Morgan Lewis & Bockius L.L.P. in Philadelphia.

Michael W. Fox, a shareholder with law firm Ogletree, Deakins, Nash, Smoak & Stewart P.C. in Austin, Texas, said the recent meeting reflects the EEOC's increased focus on systemic issues.

"You also have to step back" and look at the overall policies and the systems that are in place "and raise questions for yourself," Mr. Fox said. "Is there something about this policy or this system that someone from the outside could look at and say, 'That's unfair to this particular protected class?'"

—By Judy Greenwald

as far as it could possibly be pushed" in how broad the nation's law is in this area, said Gerald L. Maatman Jr., a partner with Seyfarth Shaw L.L.P. in

Chicago. "It's not going to be received very well in a court." The EEOC's theory that employers are not hiring the unemployed, which is having a disparate

impact on protected groups "just doesn't hold water," he said.

Jerrold F. Goldberg, a shareholder with law firm Greenberg Traurig L.L.P. in New York, said, "I think the problem for the plaintiffs bar is going to be putting together these statistics" to establish their case.

"Demonstrating that there is a statistically significant difference in hiring between a protected group and a nonprotected group, and putting together that kind of data for this kind of discrimination, would be pretty difficult to do," Mr. Goldberg said.

James S. Urban, a partner with law firm Jones Day in Pittsburgh, who testified at the EEOC hearing on employers' behalf, said plaintiffs "are going to have to show—and it'll be very fact-intensive—that a particular employer had this screening mechanism in place" and it caused a disparate impact on protected classes, whether it was blacks, Hispanics or females. Employers will "be able to come back pretty hard" to defend themselves against statistical evidence, he said.

Experts say the EEOC also could issue a policy statement on the issue, perhaps in addition to filing litigation.

"What will likely come out of it will be some kind of either enforcement guidance or some sort of policy statement from the EEOC that the use of employment statutes in hiring is presumed to have a disparate impact," said Jonathan T. Hyman, a partner with law firm Kohrman Jackson & Krantz P.L.L. in Cleveland.

Fernan R. Cepero, human resources vp at the YMCA of Greater Rochester in Rochester, N.Y., who spoke at the hearing on behalf of the Alexandria, Va.-based Society for Human Resource Management, said he hopes the EEOC will work with SHRM in developing best practices in this area.

## Lloyd's: U.K. spells out changes to regulatory regime

CONTINUED FROM PAGE 4

proposals through April 14 and draft legislation is slated for spring.

The government proposes that, given the importance "of prudential supervision in ensuring that the claims of Lloyd's policyholders are met," the PRA should be the lead regulator for Lloyd's as a whole.

"However, the FCA will also play a significant role by regulating conduct in relation to certain activities of Lloyd's, its members and other participants in the Lloyd's market including the dealings with policyholders, customers and investors," according to the statement.

The government proposes that the Society of Lloyd's, which regulates businesses that operate in the Lloyd's market, and Lloyd's managing agents should be "dual-regulated firms" under the new system.

Members' agents and advisers

and Lloyd's brokers would be regulated by the FCA, according to the proposals.

The proposals say that the two regulatory bodies would be required to coordinate their regulation and a memorandum of understanding would be issued to set the areas that should be coordinated.

The proposals also state that clear areas of responsibility for each regulator will be set out to ensure that there is no duplication of regulation.

While Lloyd's welcomed the proposed "twin peaks" regulation, it also said more clarity is needed to ensure there is no duplication of regulation.

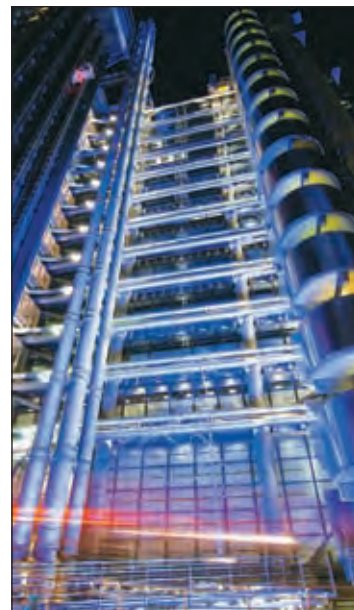
"The move to twin peaks regulation means it is inevitable that we will be subject to oversight by both the PRA and the FCA," Lloyd's General Counsel Sean McGovern said in a statement. "We welcome the acknowledgement that the unique nature of Lloyd's will be recognized in the

practical implementation of the new regime and that the PRA will be our lead authority. We hope this will minimize the risk of supervisory duplication," he added.

David Gittings, CEO of the Lloyd's Market Assn., which represents managing agencies at Lloyd's, said, however, that he fears the new regime would mean managing agents would effectively be subject to three sets of regulation.

Currently, there is a memorandum of understanding to try to minimize regulatory overlap between the FSA and the Society of Lloyd's, Mr. Gittings said.

While the government proposals outline how the PRA and the FCA would coordinate, no mention is made of how they would coordinate with the Society of Lloyd's, which will continue to have regulatory oversight of managing agencies, he said. A memorandum of understanding is needed to explain how three bodies



**Lloyd's of London cautiously welcomed the U.K. government's proposal to replace one regulatory body with two new agencies.**

would avoid duplication of regulation, he said.

Some Lloyd's managing agencies are small businesses and regulatory oversight by three bodies "seems disproportionate," he said.

In addition, Mr. Gittings said, the regulatory burden is increased by the fact that insurers are preparing for Solvency II, the risk-based capital regulatory regime that goes into effect for E.U. insurers and reinsurers at the end of 2012.

Another part of the government's proposal would allow regulators to make public details of any investigation into regulated companies before those investigations are complete, which drew criticism from legal circles.

Law firm Reynolds Porter Chamberlain L.L.P. said the proposal "is contrary to the principles of natural justice and makes nonsense of the existing statutory requirement of confidentiality."

In a statement, Steven Francis, a regulatory partner at the London-based law firm, said the proposal runs the risk that a company's reputation could be severely damaged even if an investigation found no wrongdoing.

## News In Brief

CONTINUED FROM PAGE 1

of directors. Mr. Ayer retired from Hartford in 2009 after more than 12 years leading the insurer. Mr. Ayer's "vast knowledge and industry experience complement the existing expertise of the board and will benefit the company as XL continues to build on its solid foundation, global platform and depth of underwriting talent," Robert Glauber, chairman of XL, said in a statement.

### Supreme Court rules in product liability cases

The U.S. Supreme Court expanded liability for automakers and restricted it for vaccine manufacturers in separate decisions last week dealing with product liability. In *Delbert Williamson et al. vs. Mazda of America Inc.*, the high court ruled that federal safety regulations do not pre-empt lawsuits brought against car makers that installed lap-only seatbelts. But in *Russell Bruesewitz et al. vs. Wyeth L.L.C.*, the court held that the National Childhood Vaccine Injury Act of 1986 pre-empts all design-defect claims against vaccine makers by claimants seeking compensation for injury or death caused by side effects of the vaccines.

### Firm fined for refusing access to health records

The first-ever civil fine for violating the privacy rule of the Health Insurance Portability and Accountability Act of 1996 has been assessed against Cignet Health of Prince George's County. The U.S. Department of Health and Human Services imposed the \$1.3 million fine after determining that Cignet violated 41 patients' rights by denying their requests to access their medical records. The patients filed individual complaints with the Office of Civil Rights under the HIPAA privacy rule that requires covered entities to provide patients with copies of their medical records within 30 days and no later than 60 days after a patient's request. During the investigations, Cignet refused to respond to OCR's demands to produce the records, HHS said. Also, Cignet failed to

cooperate with OCR's investigations of the complaints and produce the records in response to OCR's subpoena. In response, OCR filed a petition to enforce its subpoena in court and obtained a default judgment against Cignet on March 30, 2010. On April 7, 2010, Cignet produced the medical records, but otherwise made no efforts to resolve the complaints through informal means, according to HHS.

### Gallagher to acquire Woodbrook in London

Arthur J. Gallagher & Co. will acquire London-based Woodbrook Underwriting Agencies, Gallagher announced. Terms of the deal were not disclosed. Woodbrook will merge with OIM Underwriting, Gallagher's London-based managing general agency, the brokerage said. Gallagher also announced that Andrew Agnew has been named chairman of the international executive board of Arthur J. Gallagher & Co. Mr. Agnew, who previously was chairman of JLT Ltd. and a member of the executive committee of Jardine Lloyd Thompson Group P.L.C., takes the Gallagher post effective May 1.

### Fewer Bermuda captives underwrite more premiums

The number of captive insurance companies in Bermuda dropped slightly in 2010, but their gross written premiums increased 66% to \$32.6 billion, according to the Bermuda Monetary Authority. There were 845 captives in Bermuda at the end of 2010, compared with 885 at the end of 2009, the BMA said.

### GAO finds variations in target-date fund mix

Target-date retirement funds vary widely in their asset allocations, according to an analysis by the Government Accountability Office. Target-date retirement funds, a popular investment option offered in many 401(k) plans, are a mix of equities and fixed-income investments that are adjusted to reflect an employee's age. In its examination, the GAO found that fund managers vary in how much they reduce the portion of a participant's account balance in equities in favor of fixed-income investments as a participant nears retirement. Among eight target-date fund managers it analyzed, one manager had an asset allocation of about 65% at the target date, while another had an equity asset allocation of 35%.

## Cargo: U.S. theft usually not violent

CONTINUED FROM PAGE 4

go thefts were recorded last year.

The U.S. saw a 4.1% rise in cargo theft volume in 2010 compared with 2009, while the overall value of stolen loads decreased 17% from 2009's record average of \$572,800.

Not all cargo theft reports include the location, but of the 497 that were reported with locations, 316 occurred in parking areas. Of those 316, 149 were at truck stops; 106 were at unsecured lots or terminals; 36, public access parking lots; and 25, roadside areas.

FreightWatch also found that 124 cargo thefts took place in secured parking lots and terminals.

Food and drink products were the most targeted in the United States with 185 incidents, or 21% of all cargo thefts, while electronics were No. 2 with 19% of all cargo thefts.

New Jersey saw its rate of cargo thefts jump 142% in 2010 from 2009 with food and drink accounting for 37% of all recorded incidents in the state, and shoes and clothing (13%) and consumer care products (12%) coming in a distant No. 2 and No. 3, respectively.

"Cargo criminals are getting more determined in the types of products they want and are now likely to go directly to where the product is being shipped from," Mr. Burges said, adding that cargo thieves are going so far as posing as inventory-tracking employees to gain access to warehouses, or attempting to gain shipping information from employees with bribes.

Though most property insurance would cover stolen property, FreightWatch noted that there is no "catch-all" coverage for companies shipping globally and said that gathering intelligence and adapting anti-theft programs to address local threats is important.

"A lot of different elements go into cargo theft," Mr. Burges said. "What's true in one region is not true for another. There are different methods used in different parts of the world, and we look at influences and style in how these thefts are committed."



### AVERAGE LOSS PER CARGO THEFT DROPS

According to FreightWatch International (USA) Inc., the average loss per cargo theft incident in the United States in 2010 was valued at \$471,200, a 17% decrease from 2009.

Pharmaceuticals recorded the highest per-incident value, averaging \$3.78 million, while tobacco was second at \$1.26 million per incident and electronics was third at \$512,000.

Last year, FreightWatch recorded 28 losses valued at more than \$1 million each, a decrease from 2009, when 43 losses were valued at more than \$1 million.

Of the multimillion-dollar U.S. losses in 2010, three exceeded \$10 million, with a pharmaceuticals warehouse burglary in March 2010 valued at \$76 million—the largest loss on record in the four years that FreightWatch has been tracking the data.

—By Jeff Casale

The purpose of FreightWatch's report is to outline risk of cargo theft on a global level and help industry decisionmakers determine their supply-chain risk and security needs based on where a product is being shipped and where it is warehoused.

To prevent these types of actions, Mr. Burges said companies can use surveillance, with or

without on-site security. Further, companies can keep shipping areas out of public view and limit the time trucks are unattended.

On the road, drivers are encouraged to drive 200 miles before their first stop, Mr. Burges said, which not only can deter thieves from trying to hijack the load, it also gives drivers plenty of time to find out if they are being followed.



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## Bill may end state's beef with lawsuits

Fast-food outlets in Minnesota soon may not have to worry about facing legal liability if that order of fries ends up as extra poundage on patrons.

That's because the Gopher State is the latest state to consider a "cheeseburger law," which would prohibit plaintiffs from suing restaurants and others for weight gain, obesity and health problems allegedly caused by long-term consumption of fattening foods.

According to the Associated Press, the Minnesota House of Representatives' Civil Law Committee recently approved the Personal Responsibility in Food Consumption Act, introduced by Rep. Dean Urdahl, R-Grove City.

The bill would absolve producers, growers, manufacturers and a host of others involved with food and nonalcoholic beverages "intended for human consumption from civil liability" from allegations that "long-term purchase consumption" of a food product caused weight gain, obesity or health problems. The bill is similar to "cheeseburger laws" enacted by other 23 other states, according to Rep. Urdahl's website.

Rep. Urdahl says the measure is needed to cut down on frivolous lawsuits. "If you eat too many cheeseburgers and get fat, don't sue food retailers," Rep. Urdahl said on his website.

And if it becomes law, the measure also may promote healthier eating.

# Business Insurance END PAGE

Contributing: Jeff Casale, Mark A. Hofmann, Sarah Veysey, Rodd Zolkos



SOUTH CREEK GLOBAL/ZUMAPRESS

Rivers Cuomo and his band, Weezer, have recorded a song and music video for State Farm Insurance Co.'s jingle.

## Weezer officially goes commercial

Alternative rock band Weezer's career is making the rounds, from writing what some music critics called one of the greatest albums of all time to playing jingles for State Farm Insurance Co.

This month, Weezer cut a version of the Bloomington, Ill.-based insurer's catchy "Like a Good Neighbor" jingle, which Barry Manilow reportedly penned in 1971.

While some media outlets panned Weezer's decision to turn the jingle into a full-length song, the band itself seems comfortable with the project.

"The good people at State Farm asked the band, 'Would you sing our jingle for us?'" the band, led

by Rivers Cuomo, told AOL Inc. music website Spinner.com in an interview.

According to reports, once Mr. Cuomo found out that the jingle had been written by Mr. Manilow, the band pushed forward with recording the song and video, which can be found on State Farm's YouTube page at [www.youtube.com/user/statefarm](http://www.youtube.com/user/statefarm).

"Rivers looked over the sheet music and said, 'This is a great song; we should record the whole thing,'" the band told Spinner.com. "So (we) went into the studio and had a lot of fun rocking out with Mr. Manilow's tune, hoping he would be proud of the results."



## Suit rolled out in fight over sushi promo

What would Kobayashi do?

He'd likely have little sympathy for a man suing a Los Angeles area sushi restaurant after being told that to qualify for a \$28 all-you-can-eat sushi deal, he had to eat the rice as well as the fish.

According to reports, David Martin alleged that he was unable to eat the rice because of his diabetes, so he left it behind but ate the fish.

Restaurant owner Jay Oh reportedly told Mr. Martin that A Ca-Shi Sushi's all-you-can eat price was based on eating the rice and the fish, and offered to prepare sashimi for the customer. However, Mr. Martin declined the offer and left after being charged an a la carte price for the sushi he'd eaten and a cup of green tea.

Mr. Martin later sued the restaurant, seeking at least \$4,000 in damages for humiliation, embarrassment and mental anguish the diner said he suffered after being discriminated against on the basis of his disability. Mr. Oh reportedly said he will fight the suit.

And Kobayashi? Well, for the unfamiliar, Takeru Kobayashi is the world-renowned Japanese competitive eater, someone with a keen understanding of what's meant by "all you can eat" and that a hot dog-eating contest involves eating the wiener as well as the bun. One would imagine that all-you-can-eat sushi includes the rice as well as the raw fish.



London Mayor Boris Johnson introduced the Boris bikes, which are nominated for the Brit Insurance Designs of the Year contest.

PA PHOTOS/LANDOV

## INSURER HONORS BEST DESIGNS



While Hollywood is abuzz with talk of the 83rd Academy Awards, visitors to London's Design Museum have been viewing entries for what are known as the "Oscars of the design world."

The design honors are sponsored by Amsterdam-based insurer Brit Insurance Holdings N.V.

The entries in seven categories—architecture, fashion, furniture, graphics, interactive, product and transport—include the Angry Birds iPhone application, a clock, a fire extinguisher and a fan.

Other nominees include Boris bikes—rental bicycles that Mayor Boris Johnson introduced to London.

The winners of each category in the Brit Insurance Designs of the Year contest will be announced today and the overall winner will be crowned at a ceremony to be held March 15 at the Design Museum on London's South Bank.

Visitors to the exhibition have been able to post their thoughts about and nominate their favorite designs in a blog on the Design Museum's website, [www.designsoftheyear](http://www.designsoftheyear).

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