



SEN. REID CALLS FOR EXTENSION OF COBRA SUBSIDY PROGRAM / PAGE 3

INSURERS, REINSURERS UNDER PRESSURE OVER IRAN BUSINESS TIES / PAGE 3

OSHA PROBES SEAWORLD AFTER TRAINER ATTACKED BY KILLER WHALE / PAGE 3

In Brief

CMS shakes up definition of RREs

The Centers for Medicare & Medicaid Services has substantially shifted its definition of a responsible reporting entity to comply with Section 111 of the Medicare, Medicaid and SCHIP Extension Act. Insureds with deductible policies for liability and workers compensation risks no longer will meet the definition of an RRE, CMS said. For liability and workers comp policies with deductibles, insurers now are responsible for reporting Medicare-eligible claims, with some exceptions, sources said. CMS also changed certain reporting dates: Data collection of Total Payment Obligation Claims must begin Oct. 1, a delay from Jan. 1, and the date for reporting Ongoing Responsibility for Medical data was adjusted from last July to Jan. 1.

See **IN BRIEF** page 26

HEALTH CARE REFORM

Democrats renew health reform push

After regrouping, lawmakers seek new path to passage

By **JERRY GEISEL**

WASHINGTON—President Barack Obama and top congressional Democrats are preparing to mount a new and perhaps final drive to pass health care reform legislation.

Last week, the president signaled that he has not given up on the reform drive and is prepared to play



President Obama last week laid out his plan for health care reform.

a commanding role as Democrats recovered from losing a filibuster-proof majority in the Senate.

For the first time since the reform drive began a year ago, President Obama last week moved beyond endorsement of broad reform principles. Instead, he presented an 11-page package that bridges some of the key differences between House- and Senate-passed reform bills and perhaps lays out a blueprint for a final measure.

“He is taking the best of the two bills and pulling more to the center to make reform more palatable” to more legislators, said Helen Darling, president of the National Business Group on Health in Washington.

President Obama dominated an unprecedented seven-hour nationally televised health care summit in Washington, where congressional Democrats and Republicans again expressed their different views on the direction of health care reform legislation.

His participation in the summit was “really an important step. He is asserting his influence as a leader on this issue,” Ms. Darling said.

Meanwhile, congressional Democrats appear poised to resume

See **REFORM** page 22

P/C INSURERS

AIG pumps \$2.3 billion into reserves at Chartis

Some analysts wary after adjustment for long-tail business

By **JUDY GREENWALD**

NEW YORK—One component of American International Group Inc.’s nearly \$9 billion fourth-quarter 2009 loss—a \$2.3 billion pretax reserve boost for its commercial insurance operations—raised some concerns with analysts last week.

New York-based AIG last Friday reported an \$8.87 billion fourth-quarter loss, compared with a \$61.66 billion loss for the comparable period a year ago. For the year, it posted a \$10.95 billion loss vs. 2008’s \$99.29 billion loss. AIG said that in addition to reflecting the

reserve strengthening, the \$8.87 billion loss included several other factors (see story, page 25).

Despite the loss, “Our team made great progress during the year in executing our strategic restructuring plan, by stabilizing and strengthening AIG’s insurance businesses, reducing AIG’s Financial Products Corp. exposures, and positioning certain businesses for sale,” AIG President and CEO Robert H. Benmosche said in a statement accompanying the results.

Due in large part to the reserve boost, Chartis Inc., AIG’s property/casualty unit, reported a 132.5% combined ratio for the quarter, compared with 120.8% for the comparable period in 2008.

Chartis Chief Financial Officer

See **AIG** page 25

FACTORS that led to American International Group’s fourth-quarter 2009 loss
PAGE 25



Toyota Motor Corp. President and CEO Akio Toyoda struck an apologetic tone in congressional testimony about defects that led to the automaker’s recall.

PROFESSIONAL LIABILITY

As Toyota saga continues, shareholders ready case

By **ROBERTO CENICEROS**

WASHINGTON—Congressional hearings and investigations into Toyota Motor Corp.’s knowledge of accelerator problems could help plaintiffs suing the automaker and potentially endanger directors and officers insurance coverage that Toyota likely has in place, observers say.

One day before the start of congressional hearings last week, Toyota announced it had received a voluntary subpoena from the U.S. Securities and Exchange Commission seeking documents related to unintended acceleration of Toyota vehicles and the company’s disclo-

sure practices.

Toyota also said a federal grand jury in New York had issued a subpoena for related documents.

Those events came after litigation seeking class action status on behalf of Toyota stockholders. The securities lawsuit filed Feb. 8 in U.S. District Court for the Central District of California alleges Toyota’s officers and directors defrauded investors by failing to disclose defects that could have led to unintended acceleration. Shareholders have lost tens of billions of dollars, plaintiffs allege.

See **TOYOTA** page 24



SPOTLIGHT

SPRING BROKER REPORT

Agents and brokers make their voices heard in Congress when it comes to financial services and health care reform; despite a U.K. reform plan, access to Lloyd’s of London has changed little; collaboration is the top goal of proposed online exchange. **PAGE 11**

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The week of February 22, 2010

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2. Stopgap COBRA subsidy extension bill expected
3. House approves stopgap COBRA subsidy extension
4. Berkshire Hathaway to cover part of Marsh energy book
5. Employers rethinking health care offerings: Survey
6. White House releases health reform proposal
7. Kentucky court upholds workers comp for Wal-Mart employee
8. Calif. clinic's owners plead no contest to workers comp fraud
9. Former AIG Financial Products execs allege age, gender bias
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INTERNATIONAL

Insurers, reinsurers cut business ties to Iran

Pressure mounts from regulators as concerns grow

By ZACK PHILLIPS

International insurers and reinsurers are halting coverage of and investments in companies that do business in Iran, as U.S. regulators and lawmakers seek harsher penalties against companies that have contacts with what they fear may soon be a nuclear-armed nation.

In late February, Allianz S.E. and Munich Reinsurance Co. announced they would voluntarily suspend business in Iran, which has



built a nuclear enrichment program that the International Atomic Energy Agency says could be used to create nuclear weapons. Various international officials have called for

more stringent sanctions against the country. As a result of the decision to forgo business in Iran, Allianz said it would lose a negligible amount of premiums, and Munich Re said it would lose about €10 million (\$13.6 million).

"Due to the political situation in Iran, Munich Re has decided to not renew existing business or write any new business with insurance companies there," the company said in the statement.

Many of the calls for more stringent sanctions against Iran have come from the U.S., where federal lawmakers and state regulators have increased the pressure on insurers and reinsurers to drop indirect investments in Iran. It already is

illegal for U.S. companies to invest directly in Iran, but the proposed Iran Refined Petroleum Sanctions Act of 2009 would impose tougher economic sanctions on U.S. or foreign companies that conduct business with companies that do business with Iran's energy sector.

The legislation, which has passed the House and Senate in different forms and now must be reconciled in conference, would apply to an insurer that, for example, covers a shipowner's entire fleet for worldwide transits, if one of the ships brought refined petroleum to Iran. Despite being the world's fourth largest oil producer, Iran reportedly

See **IRAN** page 26



Rep. Scott Garrett, R-N.J., will be a luncheon keynote speaker at the Risk Management Summit.

Key lawmaker to address BI Summit

NEW YORK—A congressman who has a prominent role in shaping insurance legislation will serve as a keynote luncheon speaker at the inaugural *Business Insurance* Risk Management Summit next week in New York.

Rep. Scott Garrett, R-N.J., serves as the ranking Republican member of the House Financial Services Committee's Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises.

Rep. Garrett co-sponsored the Nonadmitted and Reinsurance Reform Act, which passed the House last year. He also was one of the few lawmakers to vote against the Health Insurance Industry Fair Competition Act, which would strip health insurers of the limited antitrust exemption they enjoy under the McCarran-Ferguson Act.

The Risk Management Summit will be held March 8-9 at the Waldorf=Astoria Hotel in New York. The invitation-only event is expressly designed for the senior risk managers of dozens of the largest U.S. and European companies.

Zurich Insurance is the keynote sponsor for the Summit. In addition to Zurich, industry partners include Aon Corp., Chartist Inc., Dempsey Partners L.L.C., Liberty Mutual Group Inc., Lloyd's of London, March Inc., Sedgwick Claims Management Services Inc. and XL Insurance.

The Risk Management Summit is structured to explore critical issues from multiple perspectives. For risk managers, key issues and take-aways will be:

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To apply for an invitation or register for the event, please contact Rebecca Briggs, *BI* event manager, at rbriggs@businessinsurance.com with your full contact information.

For more information about the Risk Management Summit, visit www.businessinsurance.com/RMSummit.

SAFETY

OSHA, others investigate fatal SeaWorld accident

Park is reviewing safety, training protocols

By SALLY ROBERTS

ORLANDO, Fla.—The Occupational Safety and Health Administration is investigating whether any workplace standards were violated by SeaWorld Orlando when one of its veteran killer whale trainers was killed by an orca whale implicated in two previous deaths.

In addition, the U.S. Agriculture Department's Animal and Plant Health Inspection Service also was inspecting the Florida theme park to see if any violations of the U.S. Animal Welfare Act contributed to the incident and warrant a full investigation.

Meanwhile, Jim Atchison, president of SeaWorld Parks & Entertainment, said during a news conference last week that the company is reviewing the safety and training

protocols it has in place for interacting with all killer whales at each of its three SeaWorld parks.

SeaWorld immediately suspended its Believe shows and Dine with Shamu experiences at its parks after Tilikum, a 22-foot, 12,000-pound orca whale, grabbed trainer Dawn Brancheau's ponytail, dragged her underwater and killed her in front of about 50 onlookers last week in Orlando. The spectators reportedly had stayed after the Believe show to watch trainers feed the whales.

The killer whale shows were expected to resume last Friday, but the trainers will not enter the water with the whales until SeaWorld's investigation and any subsequent protocol changes are complete, Mr. Atchison said in the news conference.

See **SEAWORLD** page 25



Tilikum, an orca whale involved in the death of SeaWorld Orlando trainer Dawn Brancheau last week, performs during the Believe show at the park last September.

HEALTH CARE BENEFITS



A jobs bill circulated last week by Senate Majority Harry Reid, D-Nev., may be the base for a measure that would extend COBRA premium subsidies for another 10 months. The House last week passed a stopgap measure that would extend the subsidy by 31 days.

Measures would extend COBRA subsidy program

Stopgap extension bill approved by House; Senate eyes longer fix

By JERRY GEISEL

WASHINGTON—Federal legislators are taking steps to again extend the duration of the 65% COBRA health insurance premium subsidy.

The U.S. House late last week approved a stopgap measure, H.R. 4681, that would extend the subsidy by 31 days to enable employees laid off through March 31 to receive the 15-month premium subsidy.

Without an extension, employees laid off after Feb. 28 would be ineligible for the subsidy.

Meanwhile, the Senate this week is expected to consider legislation to extend the subsidy even longer. The Senate measure may be based on a draft jobs creation bill that Senate

Majority Leader Harry Reid, D-Nev., circulated last week.

"There are people who are losing their jobs and they need the ability to buy insurance. Statutorily, now they can do that, but this is going to expire," Sen. Reid said on the Senate floor of the need to extend the COBRA premium subsidy.

The draft Reid jobs bill, known as the American Workers, State and Business Relief Act of 2010, includes a provision that would extend the COBRA premium subsidy another 10 months. That would allow employees laid off through year-end to receive the 65%, 15-month subsidy.

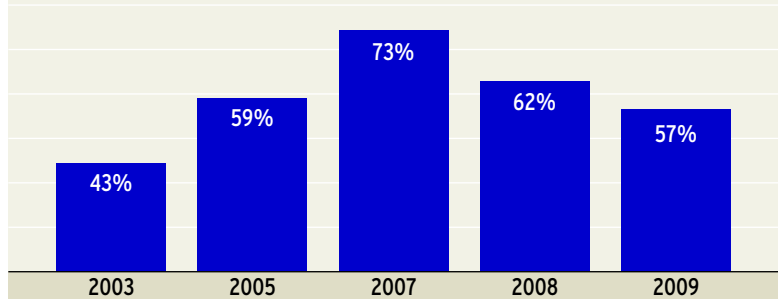
A previous jobs proposal assembled by top Democrats on the Senate Finance Committee would have extended the subsidy through May 31, but Sen. Reid stripped the extension and numerous other provi-

See **COBRA** page 21

HEALTH CARE BENEFITS

DECLINING CONFIDENCE

Only 57% of employers are very confident that they will offer health care benefits to employees 10 years from now, a confidence level lower than past years when health care cost increases were greater.



Source: 15th Annual Employer Survey on Purchase Value in Health Care by the National Business Group on Health and Towers Watson & Co.

Will employers offer health care in future?

Economy, rising costs raise concerns about future affordability

By JOANNE WOJCIC

Employers' inability to control health care costs and uncertainty about the effects of federal health reform have many rethinking their commitment to providing health care benefits, a survey concludes.

Forty-three percent of employers responding to the National Business Group on Health and Towers Watson & Co. survey released last week say they have lost confidence in their ability to provide affordable health benefits to their employees 10 years from now, up from 38% in 2009 and 27% in 2008 (see box).

"There is a correlation between where health care cost trends have been his-

torically and the level of confidence of employers" in their ability to continue to provide health benefits, said Ron Fontanetta, a principal in the New York office of Towers Watson and one of the survey's authors.

"In the last couple of years, (the health care cost increase) trend has been running around 6% a year. The cumulative effect of these cost increases and uncertainty about what's likely to come out of Washington, both its direct and indirect impact, has employers concerned that their costs could grow even further," Mr. Fontanetta said (see box, page 23).

For example, if reform legislation includes a tax on employer-provided health care benefits with a value that exceeds a certain threshold, employers would have the added expense of performing financial calculations, Mr. Fontanetta said.

In addition, "if there's a mandate, they may have to account for employees who don't enroll in employer plans but instead choose

to buy coverage through an (insurance) exchange," he said.

"There also likely will be additional communication explaining to employees what their options are," which will add to employers' administration costs, he added.

A separate NBGH/Towers Watson survey of employers found that a significant majority believe health care reform, if enacted, would lead to higher costs for employer-sponsored benefit programs and health care services overall. In addition, a Towers Watson survey of U.S. employees found that a majority of workers think health care reform will lead not only to higher costs but decrease the quality of care and reduce benefits available to them.

Helen Darling, president of the Washington-based NBGH, said employers' waning confidence in their ability to continue providing affordable health benefits

to employees in the future "is partly a reflection of the uncertainty of the world we live in. These are very difficult and uncertain times."

Sharing his interpretations of the survey's findings via e-mail, Ray Brusca, vp of benefits at Black & Decker Corp. in Towson, Md., said he believes most employers still will provide health benefits 10 years from now, regardless of cost increases or health reform.

"While I can understand that fewer employers are feeling confident that there will be employer-based health insurance system 10 years from now, the drop...is not significant and likely can be attributed to a small number of employers feeling overwhelmed by the cost of coverage as well as some employers favoring a government-run system where employers do not play the same role as today," Mr. Brusca said in the e-mail.

"A majority of employers, 57%,

See **NBGH** page 23

LIABILITY & LITIGATION

Applicants allege bias in hiring test

By JUDY GREENWALD

WASHINGTON—Employers could be vulnerable to discrimination charges indefinitely if the U.S. Supreme Court rules in favor of black Chicago firefighter applicants, observers say.

Even if the plaintiffs win, though, legal experts say much will depend on how the court frames its ruling in *Arthur L. Lewis Jr. et al. vs. City of Chicago*, on which the court heard oral arguments last week.

The focus of the litigation is a 1995 written test administered

to more than 26,000 Chicago Fire Department applicants. After grading the tests, applicants were placed in three categories—"well-qualified," "qualified" and "not qualified"—based on their scores, according to court records.

Applicants were told those in the qualified category were unlikely to be hired because of the large number who scored in the well-qualified category, but that they would remain on the eligibility list for as long as the list was used. The plaintiffs are black applicants who scored in

WHAT HAPPENED

- Supreme Court heard arguments in a suit by black firefighter applicants.
- Chicago argued that the complaint was not filed in a timely fashion.

WHAT'S NEXT

- The court is to decide when the statute of limitations began running.
- Unique circumstances could lead to a narrowly worded ruling.

the qualified category.

The lawsuit alleges that the test had a disparate effect on the black applicants because it disproportionately classified

See **BIAS** page 21

Venue ruling seen as win for business

By MARK A. HOFMANN

WASHINGTON—The Supreme Court's ruling that a company's principal place of business is where its officers "direct, control and coordinate" its activities—not where it has its largest volume of business—is a significant victory for companies, legal observers say.

That's because it provides clarity regarding the proper venue to hear cases involving parties that are residents of different states. The court's unanimous decision last week in

Hertz Corp. vs. Melinda Friend et al. will make it easier for parties in such disputes to move the action to federal court from state court, legal experts say.

The federal Class Action Fairness Act of 2005, which was backed by businesses that held they had a better chance of getting a fair hearing in federal rather than state court if they were not a resident of a state, allows such a move under most circumstances.

The case involves a group of Hertz Corp. employees based in California. The employees

WHAT HAPPENED

- The court said a company's "nerve center" generally is its headquarters.
- Courts are to determine a company's principal place of business.

WHAT'S NEXT

- The court remanded the Hertz employee suit for further action.
- Workers must bring employment law allegations to a federal judge.

brought a class action suit against Park Ridge, N.J.-based Hertz in California state court that alleged violations of state employment law. Hertz held that because it is based in New

See **VENUE** page 21

DIRECTORS & OFFICERS LIABILITY

Banks face tough market for D&O risks

Price swings volatile, though rate hikes show signs of easing

By COLLEEN MCCARTHY

NAPLES, Fla.—When Buffalo, N.Y.-based M&T Bank Corp. renewed its directors and officers liability insurance program in November, it achieved favorable conditions in a difficult market thanks to carefully cultivated relationships with underwriters in its multicarrier program, according to its risk manager.

"We did pretty well in terms of pricing and coverage compared to some of our peers, but we had to differentiate ourselves. We had to

tell our story and get the underwriters to feel comfortable," M. Christopher O'Donnell, administrative vp and director of corporate insurance and risk at M&T, said during an interview at the American Bankers Assn. Insurance Risk Management conference in Naples, Fla.

For M&T, which has total assets of about \$69 billion and is the 29th-largest U.S. bank holding company according to the Federal Reserve System, a series of detailed financial presentations and other meetings between bank executives and underwriters throughout the year meant "come renewal, there were no surprises," Mr. O'Donnell said. Like most banks, M&T relies on roughly one dozen insurers for its program.

Ultimately, M&T experienced a roughly 30% increase for its D&O coverage, but much of the spike was due to its purchase of \$40 million in additional limits for its Side A D&O program, Mr. O'Donnell said.

Still, bank executives' ongoing and open communication with the markets "helped to keep us at the low end of the price increases," he said.

While the overall market for D&O coverage remains largely soft, financial institutions have faced extended hard market conditions due to heavy litigation tied to the subprime mortgage credit crisis, which saw some banks' D&O premiums rise 30% to 300% in late

See **ABA** page 18

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Insurer, reinsurer core activities pose no systemic risk: Report

Potential threat seen if noncore activities poorly controlled

By MICHAEL BRADFORD

The core activities of insurers and reinsurers do not pose systemic economic risk, but there are steps that could be taken to better monitor insurers' noncore activities, a Geneva Assn. report concluded last week.

The planned 2012 implementation of Solvency II and regulations already in place worldwide "adequately address" and ensure that insurers' and reinsurers' core business does not pose the kind of systemic risk that led to widespread banking problems and global financial woes, the Geneva think tank concluded.

But given the slight chance that insurers' noncore investment activities could pose systemic problems, there are measures that could be taken, according to the 119-page report, Systemic Risk in Insurance, which the Geneva Assn. released Friday.

Only two noncore activities of insurers have the "potential for systemic relevance" and only if "they are conducted on a huge scale and

'The way systemic risks are addressed must, however, take account of precisely the specific differences and characteristics of the business models and particular activities carried out by institutions.'

Nikolaus von Bomhard,
Munich Reinsurance Co.

using poor risk control frameworks," according to the report.

The report said those two are derivatives trading on noninsurance balance sheets and mismanagement of short-term funding from commercial paper or securities lending.

The report recommends five measures to ensure that such noncore activities by insurers do not lead to systemic problems. They are:

- Implementing principle-based supervision of insurance groups to capture, among other things, excessive derivative activities.

- Strengthening liquidity risk management to address potential mismanagement of short-term funding.

- Enhancing regulation of financial guarantee insurance, which has a different business model than traditional insurance.

- Establishing macroprudential monitoring, with appropriate insurance representation.

- Bolstering industry risk management practices to build on the lessons learned from the financial crisis.

Commenting on the report, Nikolaus von Bomhard, chairman of the Geneva Assn. and CEO of Munich Reinsurance Co., said the business models of insurers and banks generally have not been demarcated clearly in the public debate.

"The way systemic risks are addressed must, however, take account of precisely the specific differences and characteristics of the business models and particular activities carried out by institutions," Mr. Von Bomhard said in a statement. "Just looking at the obvious differences, the conclusion can only be that the insurance industry in its core activities does not pose systemic risks for the economy."

The report is available online at www.genevaassociation.org.

Commentary

No dollars and sense in terror cover reform



MARK A. HOFMANN

Senior Editor Mark A. Hofmann can be reached at: mhofmann@businessinsurance.com

Anyone who wants to understand how Washington really works need look no further than the Obama administration's proposal to scale back the federal terrorism insurance backstop originally established by the Terrorism Risk Insurance Act in 2002.

The administration has proposed eliminating what it called "\$250 million in federal subsidies to insurance companies for terrorism insurance." Why? According to the proposal, the private terrorism insurance market has grown "robust." In addition, the proposal would eliminate coverage for losses caused by acts of domestic terrorism.

Sounds reasonable, doesn't it? The catch is, the "subsidies" don't exist in the sense that, say, agricultural subsidies exist in which somebody gets a check from the government. Other than the small administrative costs of having someone in Treasury oversee the program, the backstop doesn't cost the taxpayers anything.

That's because the backstop wouldn't begin backing up insurers until they had to start paying for a catastrophic terrorist act. Any alleged savings from increasing participating insurers' deductibles would be fictional. It's an accounting trick made necessary by the budget-scoring process. In short, we are not talking real money.

We have been fortunate that the no terrorist outrage has occurred that generated enough loss to trigger the backstop. The backstop hasn't paid out a dime to private insurers, and if we continue to be so fortunate, it never will. But we could face some real losses if the proposal becomes reality.

I recently had a chat with Ron Robinson, who fought long and hard for a government terrorism backstop as chair of the Chicago-based Defense Research Institute's TRIA subcommittee. Mr. Robinson, who also is a partner in the Los Angeles law firm of Berkes Crane Robinson & Seal L.L.P., pointed out a couple of practical problems with the proposal.

First, increasing deductibles could drive smaller players out of the market because they couldn't afford the higher potential costs, he said. That would concentrate losses in a shrunken pool of insurers.

Second, eliminating coverage for acts of domestically originated terrorism could politicize the investigative process after a major terrorist attack occurred, he said. In addition, the cost of investigation would increase significantly to determine responsibility.

After all, terrorist attacks in Europe and elsewhere have com-

bined domestic and international characteristics. Determining the ultimate source would be difficult and no doubt controversial—not to mention time-consuming—when determining whether the government backstopped claims.

And all this for what are, at best, paper savings. The truth of the matter is that the program in its current form has worked, and worked well, at minimal taxpayer expense.

The reason there is a "robust"

Terrorism defines uncertainty, and if there is one thing insurers hate, it is uncertainty.

private terrorism insurance market is because the backstop exists. Acts of terrorism cannot be predicted. As far as potentially insurable events go, terrorism defines uncertainty, and if there is one thing insurers hate, it is uncertainty.

Scaling back the backstop in the name of illusory savings would have one certain effect—insurers would be less willing to underwrite the peril. In fact, before Congress approved the backstop, insurers understandably didn't want to touch terrorism coverage. Who wants to accept an open-ended liability?

As a deficit hawk, I feel a certain sympathy for those charged with crunching the numbers. As far as I'm concerned, very little should be off the table if we're going to tackle deficits realistically. But doing so means the savings involved have to be real money—i.e. money that was going to be spent and now won't. In the case of the backstop, any current savings would be an illusion. Unfortunately, the administration's proposal to achieve paper savings now could carry some very real costs if it becomes reality.

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Business Insurance OPINIONS

Would reform resolve latest rate hike debate?

IT'S HARD TO SAY whether it is fair or excessive for Anthem Blue Cross to increase health insurance premium rates by as much as 39% for California customers with individual policies.

Eye-popping rate hikes for individual policyholders by Anthem and other insurers have attracted national interest. Last week, Angela Braly, president and CEO of Anthem's parent company WellPoint Inc., defended the increase before a congressional subcommittee.

Not surprisingly, insurers and medical providers have blamed each other. Ms. Braly, for example, told a House Energy and Commerce subcommittee that premium increases are driven by higher prices charged by medical providers, such as hospitals.

Meanwhile, the American Medical Assn. released a study last week finding a "near-total collapse" of competitive insurance markets in many parts of the country, resulting in soaring premiums.

We think the huge rate increases reflect an increasingly dysfunctional individual lines market. As premiums climb, the cost of coverage becomes less affordable. Those opting for coverage increasingly are major users of medical services, which leads to even more increases—a spiral that eventually could lead to the collapse of that market.

One benefit of health care reform legislation could be expanding and improving the risk pool with millions of lower-income individuals receiving premium subsidies, thus making coverage more affordable. But even if that happens, costs and premiums still could rise sharply. We wonder if the many mergers among health insurers and health care providers so concentrated their clout that neither now has much incentive to hold down costs.

We don't have the answer to that question, but it is one that clearly needs to be reviewed by lawmakers and regulators.

Court ruling on venue helps clear murky area

ALTHOUGH DETERMINING the location of a company's "principal place of business" might seem simple, even the simplest matters can grow complicated when the law's involved.

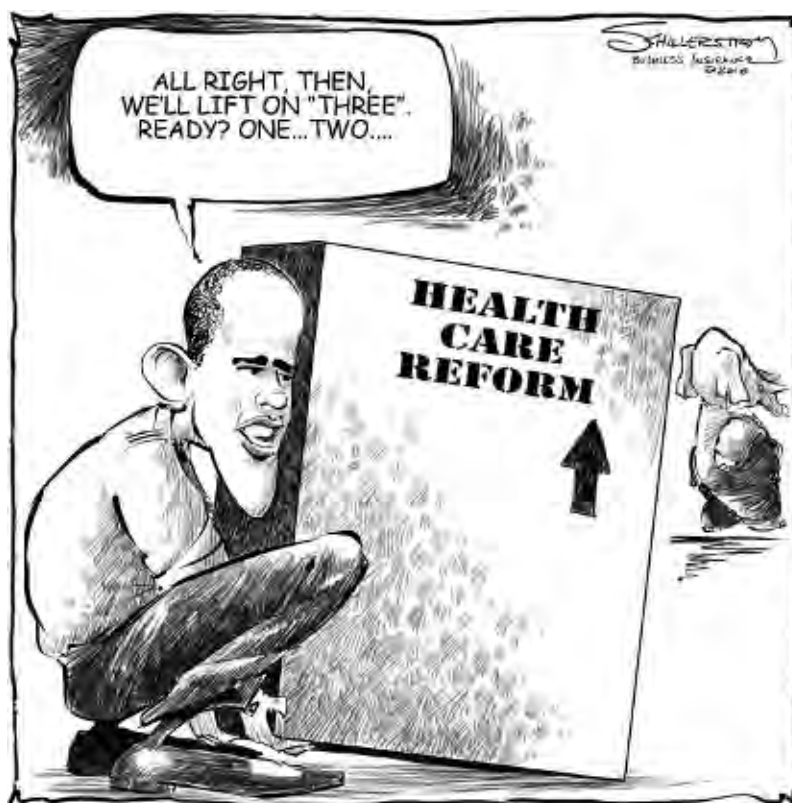
That's why we welcome the Supreme Court's decision in *Hertz Corp. vs. Melinda Friend et al.* As we report on page 3, the court held unanimously that the principal place of business is where the company's "nerve center" is located, which generally would mean its headquarters.

The decision, common-sense as it may seem, is important to employers that face class action suits. The 9th U.S. Circuit Court of Appeals had upheld a lower court's analysis that a principal place of business was where the preponderance of a company's business was conducted—in this case, California. That meant that a suit brought by California citizens against Hertz, which is based in New Jersey, could be brought in state court. Hertz had argued that because it is based in New Jersey, the case should be heard in federal court.

The high court agreed and rightly so. Cases where there is a diversity of citizenship belong in federal court. Out-of-state corporate defendants have complained, with some justification, that they don't get the fairest of shakes when tried in the plaintiffs' state court system. That concern led to the enactment of the Class Action Fairness Act, which allows either party in such a case to move the action to federal court under most circumstances.

In its decision, the high court has brought clarity and certainty to a murky area. For that alone, the decision is a welcome one.

The huge rate increases reflect an increasingly dysfunctional individual lines market.



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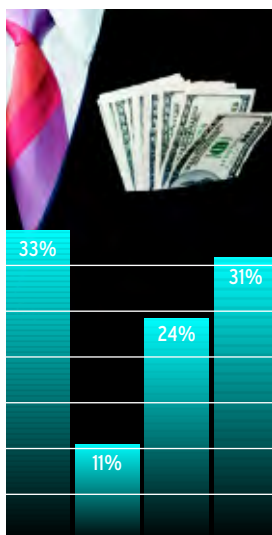
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From a risk management perspective, how would you rate Toyota's recall efforts?

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Employers need to re-engage employees

As organizations have reduced staff to cope with the recession, it's more important than ever for employers to re-engage their workers and keep talent in place, writes Kathryn Hayley, CEO of Aon Consulting. Communicating a clear mission and purpose, ensuring workers feel valued, coaching middle managers, and providing rewards and benefits help engage workers on their contributions to organizational success, she writes.

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Market Moves

Best withdraws ratings on two Liberty Mutual units

OLDWICK, N.J.—A.M. Best Co. Inc. has withdrawn ratings of two subsidiaries of Liberty Mutual Group Inc. after an internal merger.

Financial strength ratings of A and issuer credit ratings of a for Itasca, Ill.-based American Ambassador Casualty Co. and Loveland, Ohio-based Globe American Casu-

alty Co. have been withdrawn. The ratings of NR-5 and nr have been assigned as the respective financial strength ratings and issuer credit ratings, Best said in a statement.

The Oldwick, N.J.-based rating agency said the adjustments reflect the entities' merger into subsidiaries of Liberty Mutual Group.

According to the statement, effective Oct. 21, 2009, American Ambassador Casualty was merged into Peerless Indemnity Insurance Co., a Keene, N.H.-based regional insurance unit.

Globe American Casualty was merged into Loveland-based Midwestern Indemnity Co. Inc., an underwriting member company, effective Dec. 30, 2009.

Zurich to underwrite golf, country club program

SCHAUMBURG, Ill.—Zurich North America Commercial, a unit of Zurich-based Zurich Financial Services Group Inc., is underwriting programs for Venture Insurance Programs.

Zurich will underwrite the West Chester, Pa.-based insurance program administrator's Preferred Club Program, which offers coverage for private and semiprivate golf and country clubs, golf resorts, daily-fee courses, communities and golf management companies, the Schaumburg, Ill.-based insurer said in a statement.

With Zurich underwriting the program, Venture's agents also can

offer liability coverage such as liquor, pollution, auto, and directors and officers, along with other enhanced coverage designed for clubs and resorts.

The program is available in 45 states with expansion expected later this year.

Torus opens office in San Francisco

SAN FRANCISCO—Hamilton, Bermuda-based specialty insurer Torus Insurance Holdings Ltd. has opened an office in San Francisco.

The office will focus primarily on property/casualty lines as Torus aims to strengthen its presence in the Western region, the company said in a statement.

Torus also said it has appointed two sector specialists to lead the property/casualty business at the office.

Kim Kihara has been named vp of general property and Eleanor Howell as vp of casualty. Previously, Ms. Kihara was senior vp and team leader in the risk management property unit for Marsh Inc. Most recently, Ms. Howell was senior vp and account executive at Willis Group Holdings P.L.C.

The Torus office is at One Market Spear Tower, Office 3550, San Francisco, Calif. 94105. Contact Ms. Kihara at 415-293-8361 or Ms. Howell at 415-806-8170.

Catlin opens second office in Australia

MELBOURNE, Australia—Catlin Group Ltd. has expanded its operations in Australia by opening a Melbourne office, the Hamilton, Bermuda-based property/casualty insurer and reinsurer said in a statement.

The office is Catlin's second in Australia in addition to Sydney.

Rory Morison, who relocated from Catlin's London office, heads the Melbourne-based team. Previously, he was a casualty underwriter.

Catlin said the team will focus primarily on general liability and general aviation insurance "as well as acting as a contact point for other classes of business Catlin currently underwrites in Australia from its existing office in Sydney."

Catlin Australia is a unit of Catlin Group's Asia-Pacific underwriting operations.

The office is at Level 27, 101 Collins St., Melbourne, Victoria 3000, Australia. The phone number is +61 (2) 9653 9269.

UL unit teams with Swedish institute

WARRINGTON, England—UL International (U.K.) Ltd., a unit of Northbrook, Ill.-based product safety certification company Underwriters Laboratories Inc., said it has expanded its European operations by signing an agreement with SP Technical Research Institute of Sweden.

The alliance with SP allows UL U.K. and its companies to broaden its testing capabilities in Europe to certify a wider range of construction standards, the company said in a statement.

According to the statement, UL U.K. will test fire resistance and fire alarm and detection in Europe. UL U.K. will have access to SP's facilities for the tests.

"Following successful testing...UL U.K. can issue" the Conformité Européenne certificate of compliance, "needed by manufacturers for their products to bear the CE marking," the company said.

SP is a Borås, Sweden-based international research firm.



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Senate Banking Committee Chairman Chris Dodd, D-Conn., (left) said he is optimistic that his committee can draft a bipartisan financial services reform bill despite a recent impasse with the committee's top GOP member, Sen. Richard Shelby, R-Ala., (right).

AP PHOTO

Spring Broker Report

SPOTLIGHT

FRONT & CENTER

Agents and brokers make their voices heard in Congress

By **SALLY ROBERTS**

Efforts to reform the financial services and health care industries are front and center on this year's political agendas of agent and broker associations.

Although comprehensive health care reform legislation remains doubtful with the recent addition of Sen. Scott Brown, R-Mass., to the formerly filibuster-proof Senate, the issue remains very much in play. And representatives of insurance agents and brokers say they want to make sure that any health care reform, regardless of size and scope, has a role for health care producers.

At the same time, financial services reform also remains up in the air. The House of Representatives passed a comprehensive reform bill in December, but the Senate Banking, Housing and Urban Affairs Committee has yet to begin debate on a bill.

Of particular interest to agents and brokers is establishing a federal insurance office within the Treasury Department and surplus lines regulatory reform, both of which are included in the House bill.

Senate Banking Chairman Chris Dodd, D-Conn., who also supports a federal office of insurance and surplus lines reform, said he is optimistic that his committee can draft a bipartisan financial services reform bill

'There are fundamental decisions being made right now in Washington on financial services reform, everything from the too-big-to-fail doctrine to systemic risk regulation.'

Robert A. Rusbuldt, Independent Insurance Agents & Brokers of America

despite a recent impasse with the committee's top GOP member, Sen. Richard Shelby, R-Ala.

As members of Congress work to iron out their differences and come up with health care and financial services reform legislation, agent/broker groups are making sure their voices are heard.

"No. 1 on the hit parade would be insurance regulatory reform," said Robert A. Rusbuldt, president and CEO of the Alexandria, Va.-based Independent Insurance Agents & Brokers of America, whose members are meeting in Washington this week for the Big I's annual legislative conference and convention.

"There are fundamental decisions being made right now in Washington on financial

services reform, everything from the too-big-to-fail doctrine to systemic risk regulation," he said.

Within that context, the question becomes: How does this affect agents and brokers? he said. "Where will we be regulated; how will we be regulated; and who will be regulating us? These are very basic questions that will have a profound impact on the independent agency system," Mr. Rusbuldt said.

Financial regulatory reform is "obviously critical right now," said Joel Wood, senior vp-governmental affairs for the Council of Insurance Agents and Brokers in Washington. "Even though Sen. Dodd and Sen. Shelby have reached an impasse, there's plenty of time left" to pass a reform measure.

For the CIAB, inclusion of surplus lines reform in any financial regulatory reform measure that gets passed remains paramount, he said.

"I think this might be now-or-never time," Mr. Wood said of the Nonadmitted and Reinsurance Reform Act, which passed the House in September for the fourth time. The act later was included in the more comprehensive financial services reform bill passed by the House in December.

Maria Berthoud, a partner at B&D Consult-

See **AGENDA** next page

**LLOYD'S MARKET
ACCESS LITTLE
AFFECTED BY REFORM**
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**COLLABORATION TOPS
GOALS OF PROPOSED
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PAGE 16

Agenda: Agent and broker associations make their case to Congress

CONTINUED FROM PREVIOUS PAGE

ing Inc. in Washington, which represents the Kansas City, Mo.-based National Assn. of Professional Surplus Lines Offices Ltd., said she is optimistic that a bipartisan reform bill that includes surplus lines reform will be passed this year.

Sen. Bob Corker, R-Tenn., who last month stepped up to replace Sen. Shelby in negotiating a reform bill with Sen. Dodd, will be "instrumental in determining if this bill gets to the Senate floor or not," Ms. Berthoud said. "I am optimistic that Mr. Corker's involvement will bring other Republicans to the table and

that there are a majority in the Senate who want to see a package that they can support on the floor."

In addition to financial services reform, agent and broker groups will continue to lend their voices to the ongoing health care reform debate in 2010.

Although Congress may not pass a sweeping reform measure as congressional Democrats and the Obama administration had hoped, the administration did unveil a health care reform proposal late last month intended to bridge differences between reform bills previously passed by the House and Senate.

Agent and broker groups are pay-

ing particular attention to a provision that would allow states to establish insurance exchanges for lower-income uninsured individuals to obtain coverage.

The groups want to make sure that any reform measure passed includes language allowing agents and brokers to play a role in selling products in the exchanges.

Intermediary role

Original language contained in both reform bills previously passed by the House and Senate specifically excluded intermediaries from playing any role. Both bills subsequently were changed and the Obama pro-

posal is based on the Senate-passed bill, which has a single sentence affirming an intermediary role.

"One of (our) top concerns is ensuring that agents and brokers are not excluded from any program proposed or program that comes out" of any health care reform measure, said Mike Becker, national director of federal affairs for the National Assn. of Professional Insurance Agents based in Alexandria, Va. "Some previous health care bills on both the House and Senate side specifically excluded agents and brokers from participating, which from the PIA's perspective is inexcusable," Mr. Becker said.

Although agent/broker groups were successful in having language inserted in the House and Senate bills that would allow agents to sell services in the exchange structure, more definition is needed, the IIA-BA's Mr. Rusbult said.

"There's a whole host of issues that we're still concerned about that go beyond the public option," Mr. Rusbult said, referring to the controversial government-run health insurance plan. Such a provision was included in the House-passed bill, but not in the Senate version and is not included in the administration's most recent proposal. "It may have garnered all the attention, but if we were successful in getting the public option killed but there was no role for agents and brokers in the exchanges, then we really haven't accomplished much."

In addition to ensuring a role for benefits brokers in any reform effort, the CIAB also is concerned about preserving the employer-sponsored health insurance marketplace.

"The overwhelming sentiment that I hear from our member firms is not so much the broker role but about the impact on clients, and we think there are way too many open invitations in both House and Senate bills for employers to ultimately dump their plans," Mr. Wood said.

Also on the health care front, agent/broker groups are keeping close tabs on the Health Insurance Industry Fair Competition Act, a new bill introduced last month that would strip health insurers of the limited antitrust exemption granted to them by the McCarran-Ferguson Act. The Obama administration said it strongly supports removing the exemption.

A previous version of the measure would have included medical malpractice insurers, which agent/broker groups worked to get eliminated.

"The inclusion of medical malpractice insurance, a property/casualty product, was particularly inappropriate in that it did not relate directly to health insurance," said the PIA's Mr. Becker. "A reduction in medical malpractice insurance rates is best achieved through separate legislation addressing tort reform."

Mr. Becker noted that there is a misconception that McCarran-Ferguson allows the insurance industry to engage in anti-competitive activity. "That's just not true," he said. "The McCarran-Ferguson Act assigns the regulation of insurance to the states, providing them with the authority to enforce laws that prohibit anti-competitive activities such as price-fixing or market allocation."

The primary purpose of the act is to foster competition in the marketplace by allowing the sharing of historical loss data to underwrite policies. "This enables small and mid-sized insurers to offer consumers competitively priced insurance products," he said.

"If the purpose of the attempted repeal is to control health care costs, this would have a completely adverse affect and actually increase the cost of insurance," Mr. Becker said.

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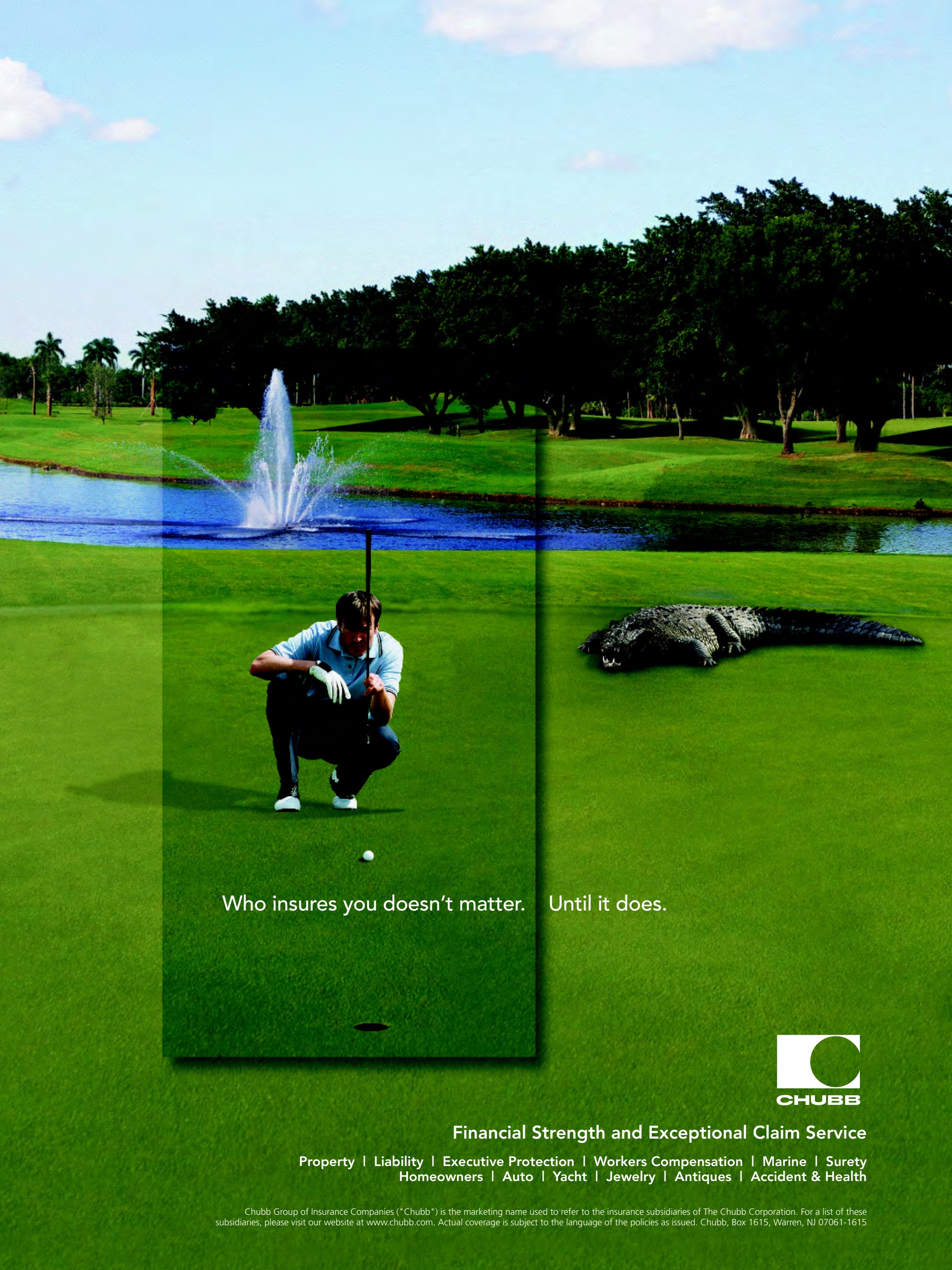


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LLOYD'S OF LONDON

Sean McGovern, director, general counsel at Lloyd's, says barriers still exist at the marketplace.

Lloyd's reforms have little effect on access

By MICHAEL BRADFORD

LONDON—Reform legislation that sought to open Lloyd's of London to a broader range of intermediaries has had little impact on the way business finds its way to the marketplace.

The United Kingdom's Legislative Reform Order, which went into effect in November 2008, updated provisions in the Lloyd's Act 1982—the legislation that governs the Lloyd's insurance market. Among changes was the removal of restrictions that require Lloyd's managing

agents to accept business only from a Lloyd's-registered broker.

Since the legislation was enacted, Lloyd's operation has changed little. That's partly because, even though non-Lloyd's brokers are now allowed access, they find it daunting to deal with some of the barriers that still exist, Lloyd's acknowledges.

"The challenge around access is the complexity of back-office processing," said Sean McGovern, director, general counsel at Lloyd's. The marketplace hasn't seen a lot of interest in non-Lloyd's brokers seek-

ing access because of that hurdle, he said.

"We always knew a barrier was the back-office process," Mr. McGovern said, referring to the processes around business placement, accounting and claims administration.

Insurance buyers are not clamoring for increased broker access at Lloyd's.

The Assn. of Insurance and Risk Managers is content with the way the marketplace operates, a spokesman for the London-based group said in an e-mail. "As far as

most AIRMIC members are concerned, we are not aware that the (reform) has had any significant effect on the way they gain access to the Lloyd's market."

Insurance buyers still are required to use a broker to access Lloyd's, and that's not a problem for AIRMIC. "Access to the Lloyd's market is likely to remain broker-driven for the foreseeable future and there's been no call from AIRMIC members for any change," the spokesman said.

David Hough, chief executive of the London & International Insurance Brokers Assn. in London, said it's not difficult for buyers to purchase coverage from Lloyd's without dealing directly with insurers. "It's very easy for risk managers to access this marketplace through any broker," he said.

"Much of the business with risk managers tends to be on the larger end, which demands more than one insurer," Mr. Hough said. Chances are, a broker will be needed to access the subscription market at Lloyd's to cobble together the proper insurers to take on the risk, he said.

Lloyd's is taking a proactive approach to attracting more brokers, especially those in the local market, said Catherine Thomas, senior managing financial analyst at A.M. Best Co. Inc. in London.

"About half their business comes from the big three brokers," Ms. Thomas said, referring to Aon Corp., Marsh Inc. and Willis Group Holdings P.L.C. "That's very important to them and they will continue to work closely with those brokers, but they will be investing more time in their relationships with local brokers and smaller brokers."

That effort is borne out by the recent release of Lloyd's Strategy 2010-2012, the three-year plan that outlines Lloyd's goals for making the marketplace more attractive and competitive. The plan says Lloyd's priorities include working closely with small brokers and making it easier for them to gain access, while finding ways to raise Lloyd's profile in the regional U.K. market.

Mr. McGovern said simplifying the back-office processes as a way to ease access to the marketplace also is among the key strategic priorities at Lloyd's.

Reaching that goal means increasing participation in the Exchange, a utility launched last year that allows risk-related information to be distributed among market participants using a common data standard. The strategic review says the aim is to have 70% of Lloyd's managing agents and half its brokers sending and receiving endorsement messages through the system by year-end.

Lloyd's also has initiatives in place aimed at untangling back-office processes by streamlining and standardizing information related to taxes and regulatory reporting, and improving the quality of claims information and the speed at which claims are settled.

"We're trying to make Lloyd's as easy to deal with as any market in the world," Mr. McGovern said.

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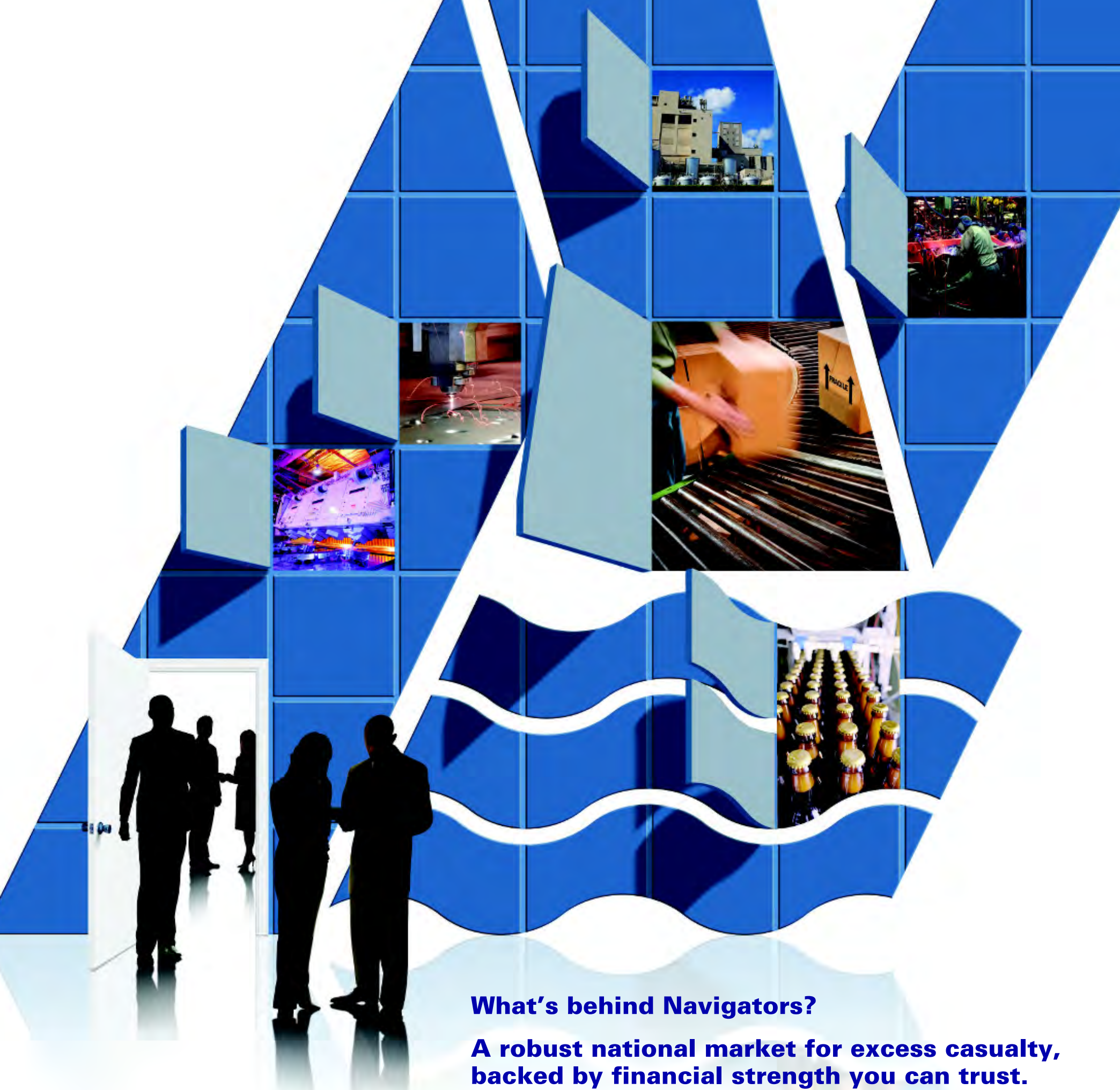


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Electronic exchange aims to enhance placement process

Backers say platform will create efficiencies for brokers, insurers

By **RODD ZOLKOS**

Proponents of a planned online insurance exchange say the platform isn't meant to be a new way of conducting insurance business, but rather an up-to-date tool to conduct insurance business more effectively.

"This is not an effort to change distribution. This is an effort to

enhance distribution," said Ken A. Crerar, president of the Washington-based Council of Insurance Agents & Brokers, which is partnering with LexisNexis Risk Solutions to create the Web-based exchange.

The exchange will serve as "a platform that helps facilitate the workflow and efficiency" of business between agents and brokers and insurers, said Peter Lynch, senior vp at LexisNexis.

Mr. Crerar said the move comes from an industry need to move data more effectively, efficiently and accurately. "The need's been there

for years," he said. He acknowledged, though, that the CIAB/LexisNexis effort isn't the first attempt to create such a vehicle.

"There have been numerous attempts over the last 15 years to sort of look at an exchange system, which is nothing more than streamlining the existing business process," Mr. Crerar said.

Much of that technology will be provided by Bedford, Mass.-based insurance software solutions provider FirstBest Systems Inc. "At the heart of what we'll be bringing to the story is bringing the collabo-

rative approach to this entire process," said FirstBest CEO John Belizaire.

Among the exchange's key principles are neutrality—that it be open to all participants—transparency and a commitment to using Assn. for Cooperative Operations Research and Development standards. A new Insurance Exchange Trust will be charged with holding the exchange to its core principles and protecting its data.

"The Insurance Exchange Trust is really what will make this all happen," Mr. Crerar said, noting that

trustees will be "representative of the industry" and include broker and insurer representatives, as well as outside members.

Mr. Lynch said the exchange's developers are meeting with insurers and brokers as they gather requirements and develop software. "We've gotten tremendous interest from them," he said.

"We don't view this as just a broker benefit. There's significant benefit to the carrier," Mr. Lynch said, citing improved submission efficiency and accuracy as well as the market and exposure data that can be gathered.

"That type of data isn't available anywhere right now," Mr. Lynch said. "By putting this type of workflow through an exchange, we'll be able to capture a lot of that data."

"This is an effort that has been a collaborative effort in the industry," Mr. Crerar said. "We want the involvement of all the players in the industry and we would think they would be supportive."

'There have been numerous attempts over the last 15 years to sort of look at an exchange system, which is nothing more than streamlining the existing business process.'

Ken A. Crerar,
Council of Insurance Agents & Brokers

The effort is intended to reduce the amount of time agents and brokers must devote to executing insurance transactions. "What this effort will do is make brokers better brokers. It will let them spend more of their time doing what brokers should do," Mr. Crerar said.

"I think it will make the carriers better carriers" by giving them better information, he added. "And ultimately, the customer is better covered."

Eric Andersen, CEO U.S. retail at Aon Risk Services in New York, said efficiency will be critical to the exchange's success.

Though large companies' insurance programs often involve heavily manuscripted contracts, such an exchange could appeal to small- and middle-market business, he said. "An ability to drive more consistency, the ability to use single applications, more standardized language I think is a big benefit," Mr. Andersen said.

"Anything that makes the transaction more efficient we are hugely in favor of," he said. "The more efficient you could make it, the more we can invest in data and the things we're really providing."

Mr. Andersen noted that several

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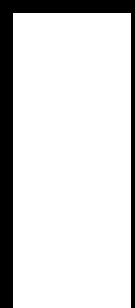


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ABA: Banks face tough market for D&O

CONTINUED FROM PAGE 4

2008, experts say.

But after two years of sharp increases, pricing has begun to ease as the sector emerges from the financial crisis, experts say. In addition, new market entrants have added excess layer capacity, creating more competition even though primary layer capacity remains somewhat constrained, experts say.

In the fourth quarter of 2009, D&O rates for financial institutions fell 1.5% on average compared with the same period in 2008, said Eugene "Tripp" Sheehan, D&O practice leader for Marsh Inc.'s FIN-

PRO U.S. division in Boston. Mr. Sheehan spoke as part of a panel presentation on D&O trends at the Washington-based ABA's annual conference.

However, fourth-quarter pricing varied dramatically—from a 29% decrease to a 55% increase for all banks—indicating that the market remains volatile, Mr. Sheehan said. In addition, there is a sharp divide between the D&O market for healthy banks and those that are experiencing financial distress, experts say.

According Federal Deposit Insurance Corp. data, 142 banks failed in 2009 and 28 so far in 2010. But

some experts point to the 552 banks listed on the FDIC "watch list" as the more troubling figure.

For commercial banks with unfavorable circumstances, "the market response has not been favorable," with many facing capacity restrictions, higher premiums, and tighter terms and conditions, said Warren, N.J.-based Richard Edsall, vp for the department of financial institutions at Chubb Group of Insurance Cos. who participated in another panel at the conference.

In addition, some underwriters have become much more restrictive with distressed banks and regulatory exclusions are on the rise, Mr. Edsall said. Such an exclusion bars claims brought by regulatory agencies and is being driven by growing concerns that the FDIC might bring charges, such as breach of fiduciary duty, against directors and officers of failed institutions, similar to the savings and loan crisis in the 1980s, experts say.

So far, the FDIC has not filed any bank-related suits, but insurers are trying to limit claims through the exclusion, Mr. Sheehan said, noting that the regulatory exclusions are "account-specific."

But protecting directors and officers remains a key concern and many banks have enhanced their programs to address the issue, experts say. Financial institutions typically buy D&O coverage in the form of an ABC policy which covers Side A claims, or claims the company cannot or will not indemnify; Side B, or claims the company does indemnify; and Side C, or claims against the company.

Many banks have also come to rely on a stand-alone Side A-only policy for additional protection. In recent years, these buyers have sought to significantly increase their Side A limits, Mr. Sheehan said.

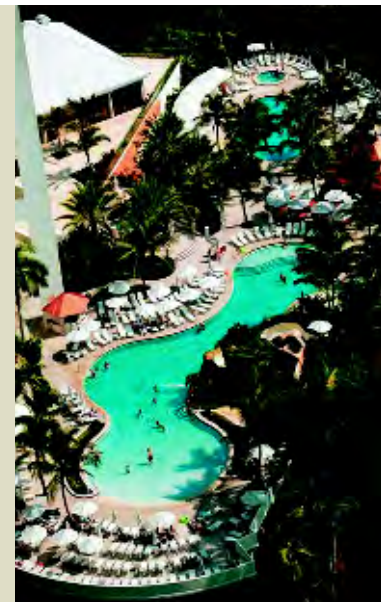
"This is what I describe as the Armageddon cover. If something goes horribly wrong and an institu-

ABA risk forum attracts 325

NAPLES, Fla.—About 325 participants attended the American Bankers Assn.'s Insurance Risk Management Forum for the financial services industry at the Naples Grand Beach Resort in Naples, Fla.

The Feb. 7-10 conference featured Jeff Thredgold, president of Thredgold Economic Associates based in Clearfield, Utah, and former chief economist with KeyCorp, the parent company of KeyBank National Assn., as the keynote speaker. He offered his view of what the business landscape may look like after the recession.

Conference session topics included a regulatory and legislative update, risk managers' best practices, directors and officers liability trends, mergers and acquisitions, and bankruptcy-related risks.



The ABA met at the Naples Grand Beach resort.

Next year's session is set for Jan. 30-Feb. 2, 2011, at the Arizona Biltmore in Phoenix.

For more information, contact the association at 800-226-5377 or visit www.aba.com.

—By Colleen McCarthy

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According Federal Deposit Insurance Corp. data, 142 banks failed in 2009 and 28 so far in 2010. But some experts point to the 552 banks listed on the FDIC "watch list" as the more troubling figure.

tion fails, the ABC program can actually become part of the bankruptcy estate. So the Side A coverage is the only protection directors and officers have left," he said.

Mr. Sheehan estimated that large capitalized institutions are buying

roughly \$25 million to \$50 million in additional Side A coverage.

Unlike ABC coverage, stand-alone Side A coverage cannot be exhausted by non-Side A claims, which makes the protection appealing, experts say.

Mr. O'Donnell said although M&T considers itself to be in good financial health, the decision to significantly increase limits for its Side A program was "very prudent" and came following extensive discussions with directors about the bank's D&O program.

"We had a lot of questions about the extent of our coverage and possible scenarios that might give rise to Side A coverage," Mr. O'Donnell said. "You walk a fine line of not overbuying but still achieving a layer of security that our directors feel comfortable with."

Exchange: Platform aims to ease process

CONTINUED FROM PAGE 16

insurers already are creating their own online platforms, though that has its own issues for brokers. "The reality is, many of the markets are trying to build out online access," he said. "But they don't necessarily talk. So if you're a broker, you have to go through five platforms." An exchange potentially could address that issue.

Greg Ricker, chief information officer of Strickland Insurance Group in Goldsboro, N.C., and co-chair of the American Assn. of Managing General Agents' automation and technology committee, said his group is trying to learn more about the CIAB/LexisNexis plan.

He noted the AAMGA has been working with the National Assn. of Professional Surplus Lines Offices Ltd. and the Agents Council for Technology of the Independent Insurance Agents & Brokers of America on their automation

'Many of the markets are trying to build out online access. But they don't necessarily talk. So if you're a broker, you have to go through five platforms.'

Eric Andersen, Aon Risk Services

efforts. "Several years ago, we all decided let's not splinter our efforts," Mr. Ricker said.

The AAMGA's annual Automation Conference this month will include a presentation on the CIAB/LexisNexis exchange so both sides can learn whether and how they might work together.

"They're looking forward to learning about what we're doing, what some of our goals are and

what some of our deliverables are; and, at the same time, we're looking forward to hearing the same thing from them," Mr. Ricker said. "It ought to be some good discussion."

He said the CIAB has offered to include NAPSLO, the Big I and the AAMGA on the Insurance Exchange Trust board.

LexisNexis' Mr. Lynch described the timeline for the insurance exchange as "pretty aggressive," with plans for an "early adapter" program running by October, with a full launch by January 2011.

FirstBest's Mr. Belizaire noted that pilot efforts will focus on lines of business and types of customers "that we really feel will get the most return. We don't want to throw a lot at them all at once."

"We'll be coming out with the midmarket commercial lines out of the gate," Mr. Lynch said. "But we're targeting all the commercial lines, even personal lines and benefits, ultimately."

Mindsets are split on financial services industry reform

Proposals could be 'most important in 70 years,' ABA vp says

By COLLEEN MCCARTHY

NAPLES, Fla.—With the federal government looking to overhaul regulatory oversight of the financial services industry, banking and legal experts remain split on what measures are necessary to avoid another financial crisis.

While there still is uncertainty about the exact shape reforms will take, the proposals put forth so far "are vast in scope and promise to be the most important form of legislation the industry has faced in 70 years," Mark Tenhundfeld, senior vp, office of regulatory policy for the American Bankers Assn., said during a panel discussion at the ABA's Risk Management conference Insurance Risk Management Forum held Feb. 7-10 in Naples, Fla.

While the U.S. House approved a comprehensive financial services reform bill last year, efforts to craft a bipartisan reform bill have stalled in the Senate. Sen. Chris Dodd, D-Conn., the chairman of the Senate Banking, Housing and Urban Affairs Committee, recently expressed optimism, however, that his committee can draft a consensus financial services reform bill based on reaching an agreement with Sen. Bob Corker, R-Tenn., to negotiate a bill.

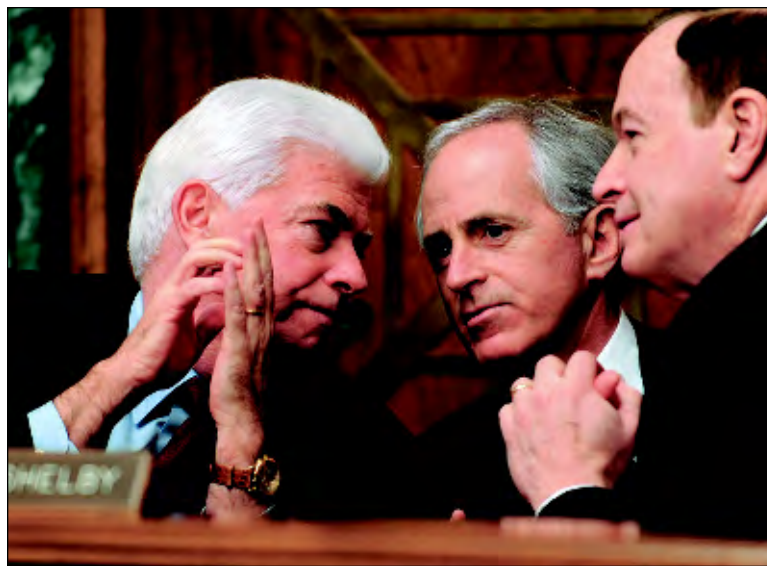
The Washington-based ABA—whose members primarily are banks

with less than \$125 billion in assets—supports broad regulatory reform to address the financial crisis, including creation of a systemic risk oversight council, ending the too-big-to-fail mentality and closing gaps in the regulation of nonbanks, Mr. Tenhundfeld said.

However, the ABA opposes Sen. Dodd's regulatory reform proposal, arguing that it "tears apart the existing structure only to create a new one that would create conflicts among regulators," undermine the state-chartered banking system and impose heavy burdens on banks that had nothing to do with creating the financial crisis, Mr. Tenhundfeld said.

In particular, the ABA strongly opposes establishing a new Consumer Financial Protection Agency, which is included in Sen. Dodd's proposal. The agency would be authorized to design financial products and mandate that banks offer them, he said. "We believe there is a need to improve consumer protection, but the focus should be on the banks that primarily caused the problem," Mr. Tenhundfeld said. "Creating another agency will only set in motion a train wreck," he said.

Other panelists discussed the need for transparency and the issue of being "too big to fail." While there are valid arguments to prevent institutions from being too large, the concept also "raises some questions about the ability of U.S.-based banks to compete on a global scale," said Lloyd M. Winans, a



Sen. Chris Dodd, D-Conn., left, says he has reached an agreement with Sen. Bob Corker, R-Tenn., center, on financial services industry reform. Also pictured is Sen. Richard Shelby, R-Ala.

AP PHOTO

partner at law firm Alston & Bird L.L.P. in New York.

"What will happen if you prevent the orderly growth of large financial institutions? I'm not sure anyone has a good answer for that," Mr. Winans said.

One of the critical issues for community banks "is a lack of access to capital. So far, the government's investments have left many community banks on the sidelines," Mr. Tenhundfeld said.

In addition, Mr. Tenhundfeld also criticized President Barack Obama's proposed new tax on the nation's largest banks as way to recoup bailout funds as a "disingen-

uous attempt on the administration's part to raise revenue."

One area of Sen. Dodd's financial services reform plan that some insurance industry observers are watching closely is an "aiding and abetting" liability provision that could significantly affect the directors and officers liability market. If adopted, the measure would allow private litigation against a person or firm that provides "substantial assistance" in violating securities laws. Sen. Arlen Specter, D-Pa., introduced a bill with similar language last year.

"This could be a game changer overnight," said Eugene "Tripp"

Sheehan, D&O practice leader for Marsh's Inc.'s FINPRO U.S. division in Boston. Mr. Sheehan, who spoke as part of a panel on D&O trends, said "it really opens up a lot of companies, including financial institutions and advisers, to potential liability."

Meanwhile, the U.S. Securities and Exchange Commission's risk management disclosure rules that went into effect Feb. 28 touched off a wave of concern about other potential exposures for financial institutions.

The new requirements—adopted as part of a broader corporate governance document that the SEC approved in December—require public companies to disclose in their financial statements details about a variety of risk management practices, including the relationship of a company's compensation policies and practices to risk management, and the board's role in risk oversight.

While there still is some uncertainty as to how the disclosures will play out, "it could become a very interesting area for plaintiffs attorneys to focus on," Mr. Sheehan said.

Several recent rules by the SEC "illustrate just how active and aggressive they have become," and "there is a very strong emphasis on creating more responsibility for directors," said Mr. Sheehan. "Underwriters are looking at these issues very closely and it is certainly something that should be on financial institutions' radar screen," he said.



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Lloyd's advising on exchange revival

By ZACK PHILLIPS

NEW YORK—Lloyd's of London officials are advising New York regulators attempting to revive the New York Insurance Exchange, New York Insurance Superintendent James J. Wrynn said last week.

Speaking Tuesday at a Manhattan luncheon sponsored by the Assn. of Professional Insurance Women, Mr. Wrynn discussed possible characteristics of the New York Insurance Exchange that the New York State Insurance Department is working to revive. The exchange would be a Lloyd's-style marketplace for insurance buyers and capital providers.

"We'd be a very small Lloyd's," Mr. Wrynn said. "I don't want to misspeak to say that we're going to get a Lloyd's of London up and running tomorrow. We would start very incrementally."

Mr. Wrynn said Lloyd's officials are helping the NYSID in its efforts to revive the exchange—which operated from 1980 to 1987—and are serving on working groups to investigate various aspects of the exchange. Mr. Wrynn, who met with officials at Lloyd's last week, said the NYIE could be the most technologically advanced platform anywhere for insurance buyers.

"I came back feeling much more confident that even just the technological part of this will provide something for the industry that they don't have anywhere else," Mr. Wrynn said. "I think if we make (the NYIE) the most technologically advanced platform, we'd provide something to (the) industry that is not provided right now in Lloyd's."

Mr. Wrynn stated several times



'I think if we make (the NYIE) the most technologically advanced platform, we'd provide something to (the) industry that is not provided right now in Lloyd's.'

New York Insurance Superintendent James J. Wrynn

that the NYIE would not compete with Lloyd's and noted several aspects of Lloyd's that the new exchange could emulate, such as having a franchise performance director who would allow new risks only if they are deemed likely to be profitable.

"I think that's a very important position," Mr. Wrynn said. "We didn't have anything like that last time."

He also suggested that the exchange could provide coverage of emerging risks—such as climate

change, nanotechnology, pandemics and cyber security—because New York is home to many experts in those evolving fields.

Another potential niche for the exchange would be to become a port of entry for certain types of reinsurance risk and other excess and surplus lines risks in the United States, Mr. Wrynn said.

That would "be a tremendous advantage to the industry," he said. "That would be something that Lloyd's of London doesn't necessarily provide."

In addition to the Lloyd's officials, Mr. Wrynn said 75 insurance industry executives, including more than 50 CEOs, have responded to the department's invitation to sit on the working groups.

"I wanted it to be industry-driven," he said.

Mr. Wrynn also said New York Mayor Michael Bloomberg's enthusiasm for the exchange has helped attract interest from executives at large private equity firms, investment banks and hedge funds.

Separately, Mr. Wrynn defended the department's recently released regulation on broker compensation disclosures.

"Some people love it; some people hate it, which says to me we struck just the right balance," Mr. Wrynn said.

The superintendent also said he believes New York must begin taking steps to fund a captive, insurance pool or some other facility to help pay for the losses from a natural catastrophe in New York.

"All the models show that if a catastrophe does occur here in New York, it will be one of the biggest ever," Mr. Wrynn said.

UP Comings & Goings CLOSE



DANIEL W. RIORDAN

NEW JOB TITLE: New York-based president of specialty products, Zurich North America Commercial

PREVIOUS POSITION: Washington-based president of surety credit and political risk for Zurich North America, a unit of Zurich Financial Services Group.

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INDUSTRY OUTLOOK: I do see the situation stabilizing. I see business stabilizing. We do see a

continuous need to generate appropriate rates for businesses. We call that, at Zurich, achieving our technical price.

FIRST EXPERIENCE IN JOB MARKET: My first job was as an underwriter of political risk insurance with the U.S. government. I worked at a company that oversees private investment corporations in Washington. I learned underwriting there. I've always had a career in specialized insurance products.

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Bias: Black applicants challenge firefighter exam

CONTINUED FROM PAGE 4

them as qualified rather than well-qualified, and that it was not a valid test of their firefighting aptitude.

To file suit under Title VII of the Civil Rights Act of 1964, plaintiffs first must file a charge with the Equal Employment Opportunity Commission. Depending on the state, the allegation must be filed with the EEOC within 180 or 300 days after the alleged unlawful employment practice.

Attorneys for Chicago argued that the EEOC charge was “untimely” because it was filed March 21, 1997, or 420 days after notice of the test results was sent. Plaintiffs argued the EEOC charge was valid because it was filed within 300 days after Chicago began hiring applicants from the well-qualified list, in May 1996. A district court judge ruled in the plaintiffs’ favor, but the 7th U.S. Circuit Court of Appeals overturned the ruling in 2008.

The question facing the Supreme Court justices is whether the statute of limitations for filing a charge of discrimination with the EEOC began to run when the exam’s results were announced or when applicants were hired.

The issue is whether there was a “separate and discrete act that sets the clock running again” on the statute of limitations each time the city drew from the list of well-qualified applicants, said Grace E. Speights, a partner with Morgan, Lewis & Bockius L.L.P. in Washington.

Observers note that the case resembles other recent U.S. Supreme Court cases. In June 2009, the court in *Frank Ricci et al. vs. John DeStefano et al.* ruled in favor of 17 firefighters who sued New Haven,

Conn., because the city rejected 2003 captain and lieutenant promotion exams out of fear it would be sued for discrimination by minority candidates.

In 2007’s *Lilly Ledbetter vs. Goodyear Tire & Rubber Co.*, the court upheld a time limit under which a person could file an unlawful employment practices claim under Title VII. The ruling was reversed by the subsequent Lilly Ledbetter Fair Pay Act of 2009.

Some observers say comments made during oral arguments by conservative and liberal justices indicate the court may overturn the appeals court ruling, which held

The issue is whether there was a ‘separate and discrete act that sets the clock running again’ on the statute of limitations each time the city drew from the list of well-qualified applicants.’

Grace E. Speights,
Morgan, Lewis & Bockius L.L.P.

that the “plaintiffs were injured and their claim accrued when they were placed on the ‘qualified’ category of the hiring list.”

The court seemed to be leaning toward a finding that “the time for them to file their charges begins to run when the impact is felt, even though they may have known



AP PHOTO

A bias case involving firefighter applicants in Chicago resembles other recent U.S. Supreme Court cases. In June 2009, the court ruled in favor of 17 firefighters, including Gary Tinney (above), who sued New Haven, Conn.

about the possibility” they would not be hired previously, said C.R. Wright, a partner with law firm Fisher & Phillips L.L.P. in Atlanta.

Observers say a broadly worded court decision in the plaintiffs’ favor could affect employers who use seemingly neutral procedures for hiring or promotions by indefinitely extending the period during which charges of disparate treatment could be filed.

It would “permit an individual to file a claim, to some degree, in perpetuity if there’s a deficient or adverse effect that’s based on that initial decision,” said Phillip M. Berkowitz, a partner with law firm Nixon Peabody L.L.P. in New York.

Even if the court rules in plaintiffs’ favor, observers say this case’s unique circumstances could lead to a narrow decision that has little general impact.

Ron Chapman Jr., a shareholder with law firm Ogletree, Deakins, Nash, Smoak & Stewart P.C. in Dallas, said Chicago’s decision on how it would hire applicants was

announced “but not actually acted upon for some time, and normally that’s not the case.”

Robert G. Lian Jr., a partner with law firm Akin Gump Strauss Hauer & Feld L.L.P. in Washington, said, “If the trend of where this court has gone in recent years holds true,” it is likely to issue a more narrow decision.

The court also could take more of a middle ground and rule the statute of limitations started when the first round of firefighters were hired based on the test results. This would clarify “when the statute of limitations begins to run, but doesn’t open up the floodgates” of litigation, said Martha J. Zackin, of counsel with law firm Mintz Levin Cohen Ferris Glovsky and Popeo P.C. in Boston.

However, based on precedents including its *Ledbetter* ruling, the court also could uphold the 7th Circuit’s decision and rule against plaintiffs, said Paul J. Siegel, a partner with law firm Jackson Lewis L.L.P. in Melville, N.Y.

COBRA: Bills may extend subsidies

CONTINUED FROM PAGE 3

sions from the bill before it was introduced.

At the time, Sen. Reid said he wanted the Senate first to act on a more narrowly focused jobs measure, which the Senate passed last week. Then, Sen. Reid said, some provisions, such as the COBRA subsidy, would be reinserted in a series of bills he would introduce later.

“There was virtually no doubt that a longer extension would follow,” said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

Aside from the 10-month COBRA premium extension, Sen. Reid’s draft bill includes a provision concerning workers whose hours first were reduced, making them ineligible for employer-paid health insurance but making them eligible for regular, unsubsidized COBRA coverage. Later, they were terminated involuntarily.

In that situation and under Internal Revenue Service guidance, such individuals would not be entitled to the COBRA premium subsidy. The IRS said the initial event has to be involuntary termination of employment for former employees to qualify for the 65% subsidy.

Sen. Reid’s latest COBRA proposal would effectively overturn that IRS position and make such former employees eligible for the subsidy, as long as certain conditions were met.

To qualify for the subsidy under the proposal, the individual would have to have had their hours reduced between Sept. 1, 2008, and Dec. 31, 2010, that resulted in a loss of employer-paid coverage. The provision also would require that the individual be involuntarily terminated after the jobs bill is signed into law.

The length of time in which a former employee would be entitled to COBRA coverage and the 15-month COBRA premium subsidy would be tied to when their hours were reduced, not when they were terminated.

Benefit experts have said the provision could be challenging to implement, with employers having to identify individuals whose hours were reduced as far back as September 2008 and then communicating that they have a new right to opt for COBRA and receive subsidized coverage.

Aside from the COBRA provisions, Sen. Reid’s proposal would, like the Senate Finance Committee draft jobs bill, give employers more time to fund their pension plan obligations, something business groups have sought for more than a year.

Without such relief, employers will face huge increases in contributions to their plans, which have been battered by the plunge in the equities markets and low interest rates that inflate the value of plan liabilities.

Venue: Supreme Court ruling seen as win for business

CONTINUED FROM PAGE 4

Jersey, the matter should be heard in a federal court.

A federal judge held that the case should be heard in state court because Hertz’s business activity “substantially predominates in one state”—California. Hertz appealed to the 9th U.S. Circuit Court of Appeals, which affirmed the lower court’s decision.

However, the U.S. Supreme Court ruled last week that a company’s “nerve center,” where its officers “direct, control and coordinate” the company’s activities, should be deemed the principal place of business in such venue disputes.

Typically, that would be the company’s headquarters, Associate Justice Stephen Breyer wrote for the court. But if a court finds that a company’s “nerve center” is nothing more than a mailbox or an empty office, the courts should determine the location of its actual principal place of business.

The Supreme Court remanded

‘I think it is a big deal. Certainly, the 9th Circuit’s test was complicated, and clearly we got a good common-sense decision from the court with what I call the “home is where your headquarters are” test.’

Robin Conrad, National Chamber Litigation Center Inc.

the case for further consideration.

Attorneys who represent employers hailed the unanimous decision.

“I think it is a big deal,” said Robin Conrad, executive vp of the Washington-based National Chamber Litigation Center Inc., which handles litigation for the U.S. Chamber of Commerce. The NCLC joined in an amicus brief supporting Hertz. “Certainly, the 9th Circuit’s test was complicated, and clearly we got a good common-sense decision from the court with what I call the ‘home is where your headquarters are’ test,” she said.

Reacting to the ruling, C.R. Wright, a partner at Fisher & Phillips L.L.P. in Atlanta, said the issue is “very important to businesses. Hertz was in the position in a



fairly large class action case and, under the 9th Circuit’s precedent, Hertz would have been left to litigate in California state court instead of being able to remove the case to federal court,” said Mr. Wright, who represents employers but was not

involved in the case.

“It is a big win for business,” Mr. Wright said. “It allows companies to follow the rules and more clearly establish where their principal place of business” is located.

“We were not involved in the case, but it’s helpful to have the court clarify the rules for determining citizenship for corporations,” said Quentin Riegel, vp-litigation for the National Assn. of Manufacturers in Washington. “The rule they adopted will allow more cases to be heard in federal court rather than certain state courts that may pose problems for out-of-state manufacturers.”

“It’s a procedural question where you go to court, so it’s not a bottom-line factor for corporations, but it could have a significant impact on a few companies that might otherwise have to appear in state courts,” Mr. Riegel said.

Hertz Corp. vs. Melinda Friend et al.; U.S. Supreme Court No. 08-1107; Feb. 23, 2010.

Clout of health care providers drives costs: Study

Some laud findings; medical groups criticize data behind assertions

By JOANNE WOJCIK

Insurers have been targeted throughout the health care reform debate, but an underlying driver of escalating insurance premiums—the growing market power of hospitals and physicians to negotiate higher reimbursement rates—also needs to be addressed, according to a report by the Center for Studying Health System Change.

The report, to be published in the April edition of policy and research journal *Health Affairs*, traces how consolidation of hospitals and formation of independent physician practice associations in California during the past decade have strengthened providers' bargaining power with health plans, leading to higher premiums in that state.

The report, "Unchecked Provider Clout in California Foreshadows Challenges to Health Reform," also warns that many of the proposed payment reforms and new organizational delivery models, particularly what is called "accountable care organizations," in several of the health reform proposals could result in the same consequences nationally.

The report was released last week, the same day the U.S. House of Representatives passed H.R. 4626, the Health Insurance Industry Fair Competition Act, which would amend the McCarran-Ferguson Act to eliminate health insurers' limited exemption from federal antitrust law. The legislation, sponsored by Reps. Tom Perriello, D-Va., and Betsy Markey, D-Colo., was precipitated by consumer complaints about predatory pricing in states where consolidation has given a handful of health insurers control of the market.

Also on Thursday, California Attorney General Jerry Brown subpoenaed financial records and other documents from the state's seven largest health insurance companies as part of a widening investigation of the industry.

But health insurers are not to blame for rising health care premiums, the report suggests.

Rather, "the trends in California suggest an urgent need for policymakers to address the issue of growing provider market strength. In our judgment, more active antitrust enforcement will not do the job. Rather, more direct regulatory approaches, including all-payer rate-setting, need to be actively considered," according to the report by the Washington-based nonpartisan policy research organization.

Angela Braly, president and CEO of the

nation's largest health insurer, WellPoint Inc., echoed the report's sentiments in defending recent premium rises up to 39% for some California residents during a congressional hearing last week. Ms. Braly said the premium hikes reflect higher costs from hospitals, doctors and drugmakers, and she criticized lawmakers for doing little to tackle these issues.

The Center for Studying Health System Change report is "spot-on," said Arnold Milstein, medical director to the Pacific Business Group on Health and a health care thought leader in the San Francisco office of Mercer L.L.C.

Andrew Webber, president and CEO of the National Business Coalition on Health in Washington, agreed that "in the current market, too often the impetus for provider consolidation is to maximize contracting and pricing leverage rather than to establish integrated systems of care for the benefit of patient care. The provider community needs to understand that these market trends will invite a growing demand for antitrust scrutiny, full price transparency and even renewed interest in price controls to combat ever-rising health care costs."

But the Sacramento-based California Hospital Assn. and the California Medical Assn. criticized the report as relying mostly on anecdotal evidence and lacking solid data.

"To make the assertion that it's all the fault of hospitals and physicians really ignores the market dynamics in California," said a spokeswoman for the CHA. "Forty percent of the hospitals in California are in the red" due to delivering more than \$12 billion in uncompensated care, nearly one-third of which is attributable to Medicare and Medicaid reimbursement rates that in some cases are as much as 30% lower than that paid by commercial insurers, she said.

"This is what's creating the cost-shift. Those of us with private health insurance are paying more in premiums because the government isn't paying its fair share," the CHA spokeswoman said.

A spokesman for the California Medical Assn. disagreed with the conclusion that providers have as much clout as the report suggests.

"We have five insurers in California that control 86% of the private market," he said. By contrast, "46% of the physicians in California practice either by themselves or are in practices with four or less physicians."

He also pointed to another report, published last week in the *Journal of the American Medical Assn.*, which concluded that doctor fees across the country declined 25%, adjusting for inflation, between 1995 and 2006. The Center for Studying Health System Change's report covered a period from 1999 to 2005.

Reform: Democrats renew push to pass health care reform legislation

CONTINUED FROM PAGE 1

the reform drive.

Following the summit, Senate Majority Leader Harry Reid, D-Nev., said, "It is time to do something and we're going to do it."

Democrats' interest in reviving the reform drive is obvious, observers say.

"Clearly, the Democrats are not done. They will give it one more push," said Steve Raetzman, a senior consultant with Towers Watson & Co. in Arlington, Va.

"We have been advising employers that health care reform is not dead," said Frank McArdle, a consultant in the Washington office of Hewitt Associates Inc.

The renewed reform push, especially by the Obama administration, is a political necessity, some say.

"When you make health care reform your No. 1 campaign issue, to then throw in the towel would have been a political disaster," said Chantel Sheaks, a principal with Buck Consultants L.L.C. in Washington.

"Politically, the Democrats could not let this drop," Mr. Raetzman said.

While the reform drive has resumed, the legislative road map congressional Democrats and the administration may use to try to win passage of a reform measure is likely to change.

There is widespread expectation

POINTS OF DIFFERENCE

The Obama administration's health care reform plan draws heavily from the Senate-passed bill, but key differences for employers include:

PROVISION	ADMINISTRATION	SENATE
Penalty for not offering coverage for firms with at least 50 employees	\$2,000 per employee per year, excluding the first 30 employees	\$750 per employee per year with no exclusions
Excise tax on costliest health plans	40% on health premiums of more than \$10,200 for single coverage and \$27,500 for families starting in 2018, excluding dental and vision premiums	40% on health premiums more than \$8,500 for singles and \$23,000 for families starting in 2013, including dental and vision premiums
Employee waiting periods before employer penalties apply	90 days	60 days

that congressional Democrats will try to use a budget reconciliation measure to pass reform legislation. The advantage of that procedure is that only a simple majority of senators is required to win approval. By contrast, other bills can be blocked unless 60 Senate members agreed to halt debate.

With 57 Democrats, plus two independents who typically vote Democratic, and 41 Republicans in the Senate, reconciliation may be the only politically feasible way to win passage of a reform bill, observers say.

"Unless some Senate Republicans

support the legislation, budget reconciliation is the most likely procedure," Mr. McArdle said.

Still, there are problems with including health care reform in budget reconciliation bill. Such bills can include only items that affect the federal budget, making it uncertain which reform elements could be included in such a bill.

"There is an issue of exactly how far you can go with reconciliation," Ms. Sheaks said.

Another issue that remains is whether there are enough votes, especially in the House, to win passage of reform legislation.

"Senate Democrats seem comfortable that they can get 51 votes. But whether there are enough votes in the House is not clear yet. The House may well get there, but at this point we don't know," Mr. McArdle said.

As for last week's summit, experts say it is unlikely the gathering changed legislators' opinions.

"While President Obama gave a spellbinding performance, he may not have changed any votes," said Gretchen Young, vp-health policy with the ERISA Industry Committee in Washington.

Meanwhile, benefit observers

describe the administration's health care reform plan as politically savvy, especially a provision that would impose a 40% excise tax on group health insurance premiums that exceed a certain threshold (see box).

The Senate bill includes such a provision and attempts to later modify it ignited a political firestorm. Under the Senate bill, the excise tax would begin in 2013 and apply to health insurance premiums exceeding \$8,500 for single coverage and \$23,000 for family coverage. The House bill lacks a comparable provision.

Unions assailed the provision and fought hard to remove or modify it. Their efforts bore fruit when the White House brokered a deal in early January in which the thresholds would be set slightly higher, while health care plans provided under collective bargaining agreements would be exempt until 2018, five years after the effective date for nonunion plans.

That special treatment triggered a wave of protest in Congress and in the business community. Seeking to defuse that anger, President Obama's plan would increase the thresholds to \$10,200 for single coverage and \$27,000 for family coverage, with a 2018 effective date for all plans.

By delaying the effective date to 2018, "Obama has taken the health care plan tax off the table," Ms. Darling said.

NBGH: Will employers offer health care coverage ten years from now?

CONTINUED FROM PAGE 4

are still confident that today's system will survive and be the cornerstone of private health insurance in the United States. I am in agreement with the majority that believes today's system will continue," Mr. Brusca added.

But Michael Vittoria, director of human resources at Sperian Protection USA Inc. in Smithfield, R.I., and president of the Rhode Island Business Group on Health, a coalition representing approximately 75 employers, said, "The deterioration in employer confidence levels reported by the survey mirrors a trend that we are seeing in the Rhode Island market. Over

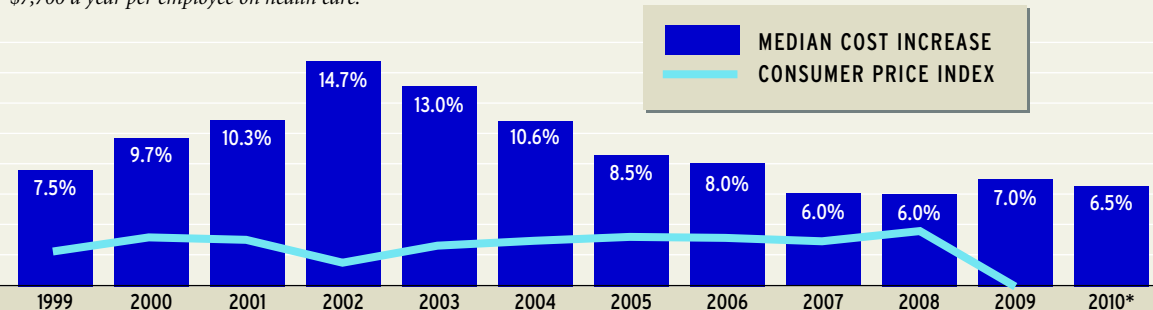
Americans obtain health insurance in the future, the current health care system needs to undergo significant reform in order to stay affordable. To me, that is what the employers in the survey are really trying to tell us," Mr. Vittoria said.

The NBGH/Towers Watson Employer Survey on Purchasing Value in Health Care, conducted between November and January, included responses from 507 employers that collectively employ 11.5 million workers.

The full report will be released at the NBGH's annual Business Health Agenda meeting, which begins March 10 in Washington.

HEALTH CARE COSTS VS. CONSUMER PRICE INDEX

Annual median health care cost increases have outpaced overall consumer prices for at least a decade. Employers spend an average of \$7,700 a year per employee on health care.



Source: 5th Annual Employer Survey on Purchase Value in Health Care by the National Business Group on Health and Towers Watson & Co.
*Expected

'Larger employers are passing more of these cost increases along to their employees, who are finding it harder to absorb that cost in their own family budgets.'

Michael Vittoria
Sperian Protection USA Inc.

the past year, there has been some reduction in the number of employers offering health insurance in the private market, as well as a reduction in the number of employees choosing to enroll in coverage when it is offered by their employer."

Mr. Vittoria attributed this to two factors: "Smaller employers are finding it more difficult to absorb double-digit increases in annual insurance premiums and are more likely to drop coverage entirely," and "larger employers are passing more of these cost increases along to their employees, who are finding it harder to absorb that cost in their own family budgets."

"While we still expect that the private employer-funded health insurance system will continue to be the primary way that most working



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Toyota's liabilities from massive recalls taking shape

Executives testify before Congress on safety issues

By MARK A. HOFMANN

WASHINGTON—Toyota Motor Corp. executives faced tough questions from Congress last week, but the impact of their testimony on the company's legal liabilities remains unclear, observers said.

Observers generally agreed that the testimony of James Lentz, the president and chief operating officer of Toyota Motor Sales U.S.A. Inc., and Akio Toyoda, Toyota Motor Corp.'s president and CEO, gave plaintiffs legal ammunition. But how much harm that ammunition will inflict on Toyota remains unclear.

In his testimony before the House Energy and Commerce Committee's Subcommittee on Oversight and Investigations, Mr. Lentz apologized for Toyota's response to customer complaints about malfunctioning accelerator pedals and other problems.

"In recent months, we have not lived up to the high standards our customers and the public have come to expect from Toyota," he said. "Put simply, it has taken us too long to come to grips with a rare but serious set of safety issues, despite all of our good-faith efforts. The problem has also been compounded by poor communications both within our company and with regulators and consumers."

Mr. Lentz came under rapid-fire questioning from Rep. John Dingell, D-Mich., who sought answers



James Lentz, president and chief operating officer of Toyota Motor Sales U.S.A., leaves a House hearing on Toyota's recent vehicle recalls.

to a series of questions about when Toyota informed U.S. regulators of problems with accelerators and whether safety decisions were made in Japan rather than the United States. Mr. Lentz answered, "I don't know," but said safety decisions regarding cars sold in the United States were made in Japan.

The next day, Mr. Toyoda appeared before the House Oversight and Government Reform Committee. The opening statement of the committee's chairman—Rep. Edolphus Towns, D-N.Y.—underscored the panel's skeptical view of Toyota's response to consumer complaints.

"Similarly, Toyota either ignored or minimized reports of sudden acceleration. Toyota first blamed the problem on 'improper installation of floor mats.' Nevermind that many reports of sudden acceleration involved vehicles that didn't

even have floor mats. Now they blame it on sticky gas pedals," Rep. Towns said.

Mr. Toyoda struck an apologetic tone.

"In the past few months, our customers have started to feel uncertain about the safety of Toyota's vehicles, and I take full responsibility for that," said Mr. Toyoda, who also said the company had grown too quickly. "I regret that this has resulted in the safety issues described in the recalls we face today, and I am deeply sorry for any accidents that Toyota drivers have experienced."

Legal experts disagree on what effect the executives' comments may have on Toyota's liabilities.

"Both Lentz and Toyoda admitted they hadn't solved the problem," said Tim Howard, who is coordinating the Attorneys Toyota

Action Consortium, which is seeking class action status for suits filed against Toyota. "This hearing harmed them legally and harmed them in the public," added Mr. Howard, who is a professor of law and policy at Northeastern University and an attorney at Howard & Associates P.A. in Tallahassee, Fla.

He added that he believes "there is a good chance there will be violations of criminal law."

An attorney who has defended automakers had a different take.

Mr. Toyoda is "not taking full responsibility for a lack of safety; he's taking responsibility for the fact that customers feel uneasy," said Michael Hoenig, a member of New York-based law firm Herzfeld & Ruben P.C. He said such customer uncertainty could be based on a whole variety of factors, including headlines, lawsuits filed or the fact that Congress is getting involved in the issue, among other things.

"When you have a corporation like Toyota, the president cannot know what everybody is saying or doing in the far reaches of the company," Mr. Hoenig said. "You have to look very carefully at what he's admitting. What has he taken responsibility for? The legal process will play out case by case."

A crisis management expert said the public's increasing technological savvy could play a role in the testimony's impact.

"I've seen this movie before," said Gene Grabowski, a senior vp at Washington-based Levick Strategic Communications L.L.C. "Plaintiffs' attorneys were watching the testimony and every utterance from Lentz and Toyoda very carefully, and I have no doubt that they will

try to introduce some of the statements that have been made into their pleadings."

But, he added, "We live in an age where every juror is Tweeting and blogging and has a Facebook account, so they tend to put the public statements of plaintiffs and defendants in a far more forgiving context than they would have" 10 or 20 years ago.

The admissions might have little impact on the company either way, says an academic who specializes in product liability issues.

"I tend to see it as kind of a wash. It certainly hurts in the sense that it's essentially an admission of liability," said Martin A. Kotler, professor of law at Widener University School of Law in Wilmington, Del. "But it really doesn't add much to what people already knew about what Toyota was doing. Now, it's really a question of whether they can salvage the good-will aspects of the company."

Another expert in product liability law pointed out that ultimately, the company's liability will rest with a jury.

The statements made before Congress "are likely to be admissible because they come within the admissions exceptions to the rule against hearsay," said Victor Schwartz, a partner in the Washington office of Shook, Hardy & Bacon L.L.P. and former chair of the federal government's Inter-Agency Task Force on Product Liability.

"You can be certain that plaintiffs' lawyers will try to make the most of them before a jury," Mr. Schwartz said, but added, "It helps them, but it doesn't get them all the way there."

Toyota: Shareholders prepare their case

CONTINUED FROM PAGE 1

On Friday, Toyota's stock closed at \$74.83 per share.

Toyota securities traded at an artificially inflated price during the class period from Aug. 4, 2009, to Feb. 2, 2010, reaching \$91.78 on Jan. 19, according to the lawsuit. As a result of recalls and related sales declines, the stock closed at \$73.49 per share on Feb. 3, plaintiffs allege in their complaint.

Federal law governing securities litigation stays discovery in such lawsuits until after a court has ruled on motions to dismiss, which is a significant hurdle for plaintiffs, legal experts say.

Therefore, hearings and government investigations can help securities plaintiffs overcome that hurdle by producing information earlier than is normally obtained through discovery, defense and plaintiffs attorneys said.

"We have our hands tied behind our back more so than plaintiffs (in other types of litigation) as a result of that discovery stay," said Hamilton Lindley, a shareholder attorney at Kendall Law Group L.L.P., a Dal-

las firm seeking to become the lead attorneys by representing institutional investors in the securities litigation against Toyota.

"The more information (investigations) can reveal about what Toyota knew and when they knew about these problems with the gas pedals would be beneficial to our case," Mr. Lindley said.

Others agree the investigations could help plaintiffs, especially if they uncover evidence that Toyota's directors and/or officers knew of unintended acceleration problems but kept quiet about them.

That is part of what congressional leaders overseeing last week's hearings said they hoped to uncover.

During a House subcommittee hearing last week, Rep. John D. Dingell, D-Mich., questioned James E. Lentz, president and chief operating officer of Toyota Motor Sales U.S.A. Inc., about when Toyota first learned of sudden acceleration incidents, when it began its recall and the number of consumer complaints it has received since 2001.

Mr. Lentz had no answers, but observers say establishing a timeline

is critical for plaintiffs.

Already, the lawsuit filed in California contains statements that Mr. Lentz made on NBC's Feb. 1 "Today Show," when he allegedly contradicted previous Toyota statements about when it knew of possible defects.

Now ongoing investigations could hand plaintiffs a smoking gun should they turn up harmful e-mails and internal documents, observers say.

"What is beautiful for the plaintiffs lawyers is there is a congressional investigation and SEC investigation, (so) the government is going to do all the work," said Greg Flood, president in New York of IronPro, a professional liability division of Bermuda-based Ironshore Insurance Ltd. Plaintiffs attorneys could "take the results of those investigations and have a field day."

While results of congressional investigations typically are made early on, SEC investigation results, if there are any, may not emerge until much later, said Ronald L. Marmer, co-chair of the securities litigation practice at Jenner & Block L.L.P. in Chicago.



Either way, plaintiffs can use the media attention drawn by investigations to persuade a court that they have a case that deserves to be heard, Mr. Marmer said. "Judges who see newspaper stories and congressional investigations and acknowledgements by the company that they are being investigated...those always add a certain quality of 'where there is smoke there is fire,'" he said.

But fraud and misrepresentation allegations without facts to support

them commonly are thrown around, said Carl E. Metzger partner and member of the securities litigation and SEC enforcement practice at Goodwin Procter L.L.P. in Boston.

If investigations establish fraud, however, that could affect D&O insurance recovery. Policies typically exclude coverage when fraud or willful misconduct occurs, although personal misconduct exclusions generally do not trigger until final adjudication of wrongdoing, Mr. Metzger said.

With most D&O cases settling before a final adjudication, though, insurers often are on the hook, unless the fraud allegations are substantiated.

Company officials' public statements generally can be used by plaintiffs as well as insurers citing exclusions, said Ken Ross, executive vp in the executive risk practice of Willis North America's New York office.

"Whenever senior officials make comments, they always run the risk that somehow those statements can perhaps be used against them—not only by plaintiffs, but (they can) be a basis for some defense a D&O insurance carrier may raise whether an exclusion applies," Mr. Ross said.

AIG: \$2.3 billion pumped into Chartis

CONTINUED FROM PAGE 1

Rob Schimek said the reserve addition amounts to 3.6% of Chartis' carried reserves of about \$63 billion and came after internal and independent actuarial studies.

The reserve boost was for long-tail casualty business, particularly excess workers compensation, he said. "The vast majority relates to accident years 2002 and prior, long-tail classes of business that by definition are very complex to reserve for," Mr. Schimek said.

Fitch Ratings Inc. placed the financial strength ratings of AIG's domestic property/casualty subsidiaries under review because of concerns about the reserve increase, although its other ratings are unchanged, said Chicago-based senior director Mark Rouck.

Fitch views "the magnitude of the (reserve) development as kind of an outlier relative to industry trends and peers. That said, I think we view it more of an operating issue than a capital issue," Mr. Rouck said.

Bill Bergman, an analyst with Morningstar Inc. in Chicago, said, "You look at trends around the industry, and things are largely favorable on that score, with pretty consistent reserve development in the right direction." He said he is concerned more reserve additions may be needed.

John L. Ward, CEO of Cincinnati-based Cincinnati Partners L.L.C. said, "I'm concerned there may be more (reserve strengthening) in quarters to come. It seldom is taken care of in one quarter worth of strengthening."

Noting that the loss reserve increases are for 2002 and earlier years, John Wicher of John Wicher & Associates Inc., said that typically, "the losses don't begin to realize themselves on excess layers until the book is maturing and you've burnt through the primary layers, so there's always a concern when an excess book begins to move.

"I'm a little surprised that the book from 2002 and prior is still moving, and that's a concern," said

Mr. Wicher, who is based in San Francisco. He noted there is an industry adage that "the smallest reserve increase is the first," meaning there could be more.

Mr. Wicher added, though, that the reserve strengthening could reflect a conservative management philosophy, so that as the insurer moves into 2010 and 2011, "hopefully with the economy and rates improving, that you only need to look forward."

Moody's Investors Service affirmed Chartis' Aa3 insurance financial strength ratings. Bruce Ballentine, an analyst with Moody's in New York, said, "Commercial insurers that write long-tail lines or large accounts or complex accounts have a challenge in estimating reserves, and those reserves can be volatile over the years. And since Chartis, among the peer group, writes more large and complex accounts than anybody, Chartis is probably a bit more exposed to reserve volatility over time than the norm for commercial writers."

"This is a common element of commercial business, particularly long-tail and large-account business," Mr. Ballentine added.

He said he could not predict whether there will be more reserve increases. However, he said, offsetting the volatility is that "writers of long-tail business generally have more investment income than writers of short-tail business to contribute to earnings over time."

Sean Egan, president of Wynnewood, Pa.-based Egan-Jones Ratings Co., rating agency, said the \$2.3 billion is "relatively small in the whole scheme of things."

Meanwhile, AIG remains a formidable competitor, observers say.

"They have a very strong competitive position still," said Mr. Rouck. "That said, just from an underwriting profitability perspective, I think they've lagged in some respects, and in some cases the reserves on these long-tail lines have been a drag on their earnings."

Chartis' net premiums written for

the fourth quarter 2009 were \$6.93 billion, down 2.2% from the year-earlier period. For the full year, Chartis' net premiums written were \$30.66 billion, down 13.9% from 2008. Its underwriting loss for the fourth quarter widened to \$2.61 billion from \$1.8 billion. For the year, the underwriting loss was \$2.6 billion.

Pretax operating income for the year was \$169 million vs. a loss of \$2.45 billion for 2008. The full-year combined ratio deteriorated slightly to 108% from 101.9%.

Referring to the 2.2% fourth quarter decline in premiums, Mr. Bergman said, "They appear to have stopped the bleeding" insofar as premiums are concerned. However, he added, "We don't know at what price they're attracting incoming business—and at what quality—and they may be buying market share with long-term consequences if they're underpricing their business. But it's hard to know what's happening here for sure."

Improvements seen

"We've made a lot of progress strengthening the balance sheet of our organization," said Mr. Schimek.

Chartis expects to report that its U.S. policyholder surplus for 2009 grew from \$26.1 billion to approximately \$27 billion, he said. In addition, Chartis' statutory risk-based capital ratios for last year rose significantly from the levels reported in the prior year of approximately 400%, well above state regulators' requirement to maintain a minimum 200% solvency ratio, he said.

After the global financial crisis in late 2008, AIG spent much of the past year under extreme financial pressure, and its property/casualty units were consolidated and rebranded as Chartis.

"Our clients made a commitment to us a year ago" during that difficult period, said Kristian P. Moor, president and CEO of Chartis. "It's with a lot of pride that we have been able to go back to them at renewal and say we're a stronger company. We've strengthened our

Four factors contributed to AIG's \$8.9 billion loss

American International Group Inc.'s \$8.87 billion fourth-quarter 2009 loss was primarily the result of four factors, according to the insurer:

- A total of \$6.2 billion, or \$4 billion after taxes, of interest and amortization expenses, which includes \$5.2 billion of accelerated amortization expenses related to its Federal Reserve Bank of New York Credit Facility.

- A \$2.8 billion loss, or \$1.5 billion after taxes, on the pending sale of its Taiwan-based Nan Shan Life Insurance Co.

- Loss reserve strengthening of \$2.3 billion, or \$1.5 billion after taxes, for its commercial insurance operation.

- A valuation allowance, which relates to deferred income tax assets, charge of \$2.7 billion for tax benefits not now recognizable, including the above factors.

Explaining the \$5.2 billion of accelerated amortization, AIG President and CEO Robert H. Benmosche said in a statement that in exchange for government financial support in

September 2008, AIG turned over a 79.9% ownership stake in the company to a trust established for the U.S. Treasury's sole benefit.

The ownership stake was valued at \$23 billion. As the credit line has been paid down and the value of the asset reduced, AIG said it has taken charges against it.

In 2009's fourth quarter, AIG accelerated the amortization of \$5.2 billion pretax of the asset in connection with reducing the amount it could borrow from the Federal Reserve Bank of New York by \$25 billion.

"This is the second time we have reduced the amount we could borrow," said Mr. Benmosche.

"Last year, we reduced the original \$85 billion commitment to \$60 billion when the terms of the FRBNY Credit Facility were amended and recorded a similar accelerated amortization amount of \$6.6 billion," he said.

Total government aid to AIG was estimated at \$182 billion.

—By Judy Greenwald

balance sheet, our account retentions are strong, new business is up. Also, we've attracted new talent to the management team, and our employee retentions are very, very strong," he said.

Chartis so far in 2010 has named a new general counsel, a chief risk officer and will announce a new chief investment officer in a few weeks, Mr. Moor said.

"The first priority for our organization is maintaining our business. The second piece is making sure we're a world-class organization from a management, risk-taking, financial and legal standpoint.

That's all about having financial flexibility and independent ratings," he said. Chartis expects to have the past three years of audited worldwide financial statements by the end of the first quarter, Mr. Moor said.

Mr. Bergman said, "Maintaining the confidence of the brokerage community and the buyer is partly a function of things they can control and can't control."

However, "it looks like the leadership there is going in the right direction and the prospects are favorable."

Regis Coccia contributed to this report.

SeaWorld: OSHA, others investigate fatal accident

CONTINUED FROM PAGE 3

Although Tilikum was one of three orcas blamed for killing a trainer in 1991 in Victoria, British Columbia, and also was involved in the 1999 death of a man who sneaked into SeaWorld Orlando, Mr. Atchison said Tilikum will remain at SeaWorld. However, procedures for interacting with the male, which are unique given Tilikum's size, will change, Mr. Atchison said. He declined to elaborate.

Bill Avery, a safety consultant based in Maitland, Fla., who specializes in amusement parks, said while companies like SeaWorld have some of the best safety procedures in place, "there's always that one

element—it's still an animal. You can do everything by the book...you can follow all the rules and on any one given day you can die," he said.

He noted that any potential liability for SeaWorld would arise from information found in the various investigations.

SeaWorld's Mr. Atchison said the company has made every effort to contact and reach out to all of the spectators who witnessed the attack.

"We feel awful about it...it's not something we want to avoid," he said.

Attempts to reach SeaWorld for comment about its insurance coverage were unsuccessful.

Beecher Carlson settles pay charges

Undisclosed payments by insurers to broker at center of allegations

By SALLY ROBERTS

BOSTON—Beecher Carlson Holdings Inc. has agreed to pay \$115,000 to settle allegations by Massachusetts that it accepted undisclosed commissions from insurers after negotiating fee-based compensation with clients.

The settlement comes after Massachusetts Attorney General Martha Coakley's 2007 settlement with Boston-based broker William Gallagher Associates Insurance Brokers Inc., her office said.

William Gallagher agreed to pay

more than \$3 million to clients and more than \$1 million to the state to settle allegations that it billed clients undisclosed fees by misrepresenting them as insurance premiums, and that it double-billed certain customers by charging brokerage fees while simultaneously charging undisclosed standard commissions (BI, Dec. 20, 2007).

Ms. Coakley's office said it began its review of Beecher Carlson after some former William Gallagher employees, who had been involved in the allegations alleged in its 2007 lawsuit, joined the Atlanta-based broker.

Under terms of the settlement, Beecher Carlson agreed to refund \$92,000 to seven customers and pay \$25,000 to the state. Additionally, Beecher agreed to revise its fee and

commission practices to provide written disclosure of all compensation to its fee-based customers, Ms. Coakley's office said.

In an e-mailed statement, Beecher Carlson President and Chief Operating Officer Steve Denton said the broker voluntarily audited 1,200 client transactions over a three-year period in Massachusetts and uncovered "instances for seven clients where our documentation did not match our high standards."

"We remain fully committed to our operating principals of integrity, transparency and accountability, which include complete and precise written disclosure around compensation for work understood to be outside the scope of initial fee agreements," Mr. Denton said.

News In Brief

CONTINUED FROM PAGE 1

Berkshire, Marsh team on energy business

Berkshire Hathaway Inc. will take 10% of Marsh Inc.'s London energy portfolio through a facility that will offer up to \$2.5 billion in aggregate limits, a source confirmed last week. The Project Blue facility, which is awaiting regulatory approval, is to include onshore and offshore risks written on a quota share basis.

Senate adjourns without voting on flood program

The U.S. Senate adjourned last week without approving a measure that would extend the National Flood Insurance Program through March 28. That means the NFIP expired, if only temporarily, on Sunday. The NFIP extension provision was part of a measure that would extend temporarily a variety of other federal programs, including federal subsidies of COBRA health care premiums for laid-off workers.

High court declines to hear retirement age case

The U.S. Supreme Court declined to review, and thus let stand, lower-court rulings that a cash balance pension plan that defined "normal" retirement age as completion of five years of service is legal. In a unanimous decision last year, a three-judge panel of the 7th U.S. Circuit Court of Appeals in Chicago affirmed a lower court's ruling that the cash balance plan established in 2002 by utility company Exelon Corp. is legal. The ruling rejected a suit by Thomas Fry, who received a lump-sum payment from the plan after he left the company in 2003. Mr. Fry argued that Exelon's definition of normal retirement age as completion of five years of service was a way to evade an Internal Revenue Service methodology used to calculate the value of lump-sum payments made by cash-balance plans. In the appeals court's ruling, Chief Judge Frank Easterbrook said the Employee Retirement Income Security Act gives employers considerable discretion in defining their pension plans' normal retirement age.

Former AIG executives allege age, gender bias

Two former AIG Financial Products Corp. vps have filed suit against the unit and American International Group Inc., charging age and gender discrimination and retaliation. The plaintiffs in the case are Susan Potter, who was 56 when she was terminated in July 2009, and Deonna Taylor, who was 60 when she was terminated in October 2008 from the Financial Products unit. The women, who were terminated after they filed charges with the Connecticut Commission on Human Rights and Opportunities and the U.S. Equal Employment Opportunity Commission in October 2008, said they were told there was a \$100,000 salary cap, when younger male employees at the unit were paid more. They also charge in the complaint that Joseph Cassano, the unit's former president and CEO, "generally promoted a 'boys club' atmosphere and frequently made discriminatory statements about the staff." AIG denies the claims.

Colorado governor signs pension changes into law

Colorado Gov. Bill Ritter has signed legislation designed to shore up the finances of the state Public Employee Retirement Assn. by raising the retirement age, increasing employee and employer contributions, and reducing cost-of-living increases. In response, a group of retirees filed a lawsuit last week seeking to block the cut in annual cost-of-living increases from the current 3.5% to 2% beginning 2011. The legislation suspends the increase for 2010. A July 2009 report to the Legislative Audit Committee found PERA faces \$27.5 billion in unfunded liabilities.

Noted

Associated Electric & Gas Insurance Services Ltd. is moving into the treaty reinsurance business through its AEGIS London unit....**Torus Insurance Holdings Ltd.** said it plans to add \$185 million in equity investments to support expansion of its specialty insurance and reinsurance businesses....A catastrophe risk pool for 16 Caribbean nations and a research organization launched a regional rainfall model to better manage the risks of extreme rainfall. The **Caribbean Catastrophe Risk Insurance Facility** and the **Caribbean Institute of Meteorology and Hydrology** said the rainfall model is intended to help reduce the consequences of major rainfall events in the region.



Some insurers and reinsurers are taking steps to avoid covering or investing in companies that do business in Iran, as U.S. officials and lawmakers seek to penalize companies with links to the country.

Iran: Insurers sever ties to avoid threat of penalties

CONTINUED FROM PAGE 3

imports 40% of its gasoline because of problems with its oil industry infrastructure.

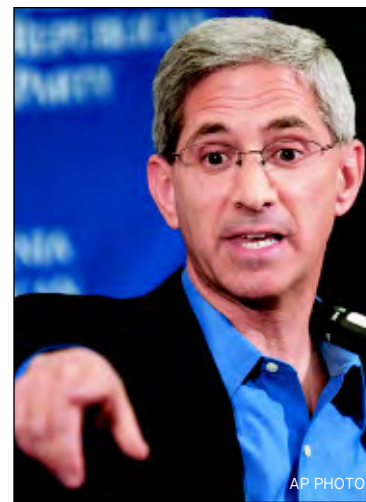
Meanwhile, California Insurance Commissioner Steve Poizner has asked 340 insurers licensed in that state to divest from companies that do business with sensitive business sectors in Iran. Mr. Poizner, who is running for governor, also has declared that California will not count investments in such companies toward reserve requirements. The insurance department has identified 50 companies that do business in Iran, including Siemens A.G., Royal Dutch Shell P.L.C. and Hyundai E&C Co. Ltd., and says California-licensed insurers have invested about \$6 billion in those companies.

All these actions are prompting many insurers to stop renewing or writing new business in Iran, observers say.

"The big players in the field are getting out or (are) in the process of getting out," said Pieter Van Tol, a New York-based partner with law firm Lovells L.L.P.

Jon Biasetti, a Chicago-based partner at Locke Lord Bissell & Liddell L.L.P., said insurers and reinsurers licensed in California but domiciled elsewhere are "befuddled" by demands for data and actions that their home state regulators do not require.

"But clearly it's something they're paying attention to," he said.



California Insurance Commissioner Steve Poizner wants insurers to divest from firms with Iranian links.

"Because no one wants to suffer the reputational damage of being called out by any regulator, be it federal or the California Commissioner of Insurance, for not complying with disclosure requirements or requirements to divest" from companies doing business in Iran.

Pennsylvania Insurance Commissioner Joel Ario and Florida Insurance Commissioner Kevin McCarty have expressed support for Mr. Poizner's actions. Mr. McCarty, who is vp of the Kansas City, Mo.-based National Assn. of Insurance Commissioners, said he has talked to other state commissioners and is evaluating the feasibility of developing a national divestment initiative modeled on California's.

California's efforts likely will spread to other states and prompt many insurers and reinsurers to divest voluntarily, Mr. Biasetti said.

"People responsible for investment portfolios of insurance companies may voluntarily take a look at permitted investments they had and say, 'We don't want to be called out and have it said we're supporting companies in Iran, regardless of whether their state of domicile adopts similar regulations,'" Mr. Biasetti said. "Fear of reputational damage in this area is something not to be toyed with."

Mr. Biasetti said the federal legislation is important because the Senate version would permit state regulators to impose penalties on companies for these kinds of investments, a role traditionally reserved for the federal government.

Legal dilemma

Even if an insurer or reinsurer opts not to renew or write new business with companies that do business in Iran, it is unclear whether long-tail insurance policies written in previous years would be subject to the new economic sanctions proposed in federal legislation, legal observers say. If they did apply, an insurer or reinsurer could encounter a dilemma: continue to cover a ship traveling to Iran and risk becoming the target of U.S. sanctions, or discontinue coverage and risk being sued for breach of contract, said Hal Eren, a Washington-based partner in Eren Law Firm who formerly worked in the Treasury Department office that enforces U.S. trade sanctions.

The argument that providing insurance would break an applicable law often is an acceptable defense for an insurer accused of breach of contract with a policyholder, Mr. Eren said. But he said the proposed legislation would create sanctions, which penalize a company, and not an applicable law, which prohibits a company's behavior. Sanctions would not necessarily hold up as legal justification if the insurer discontinued coverage with a company involved in business in Iran, he said.

Messrs. Eren and Van Tol said some insurers and reinsurers have begun to insert exclusions into policies and treaties that excuse the insurer from covering any business transaction that would be subject to trade sanctions.

Mr. Eren said he did not expect the federal legislation to be reconciled and signed into law soon, because the Obama administration is working to achieve multilateral sanctions against Iran through the United Nations.

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HOSPITAL YELPS OVER REVIEW SITE'S DEMANDS

A Long Beach, Calif., veterinary hospital is accusing an online business review Web site owner of unfair business practices in a federal lawsuit filed in California.

Cats and Dogs Animal Hospital Inc. said it asked San Francisco-based Yelp Inc. to remove a "false and defamatory review" of the hospital from its Web site *yelp.com*, and was refused. Instead, the business said a Yelp sales representative contacted it repeatedly and demanded roughly \$300 per month, guised as an advertising contract, in exchange for hiding or removing the negative review.

The lawsuit, which seeks class action status, was filed Feb. 23 in U.S. District Court for the Central District of California.

According to a statement by the two law firms bringing the suit, similar examples of Yelp's "unscrupulous sales practices" have been widely documented in the media.

"We believe that Yelp's sales tactics amount to high-tech extortion," Jared H. Beck, co-managing partner of Miami-based Beck & Lee Business Trial Lawyers, said in the statement. "The victims tend to be small businesses, such as our client, who often have no choice but to pay Yelp exorbitant sums in order to prevent further harm to their livelihoods."

A Yelp spokesman reportedly called the allegations "demonstrably false," noting that many businesses that advertise on Yelp have negative and positive reviews.

"These businesses realize that both kinds of feedback provide authenticity and value," the spokesman said. "Running a good business is hard; filing a lawsuit is easy."



Business Insurance END PAGE

Contributing: Jeff Casale, Sally Roberts



Head's up! Kansas City Royals mascot, Sluggerrr, throws hot dogs to fans in the stands at a game last August.

AP PHOTO

Airborne hot dogs a Royal pain in the eye

It's not often that someone is injured at a baseball game by a flying hot dog, but that's exactly what a fan said happened last season in Kansas City, Mo.

According to reports, John Coomer filed a lawsuit against the Kansas City Royals seeking more than \$25,000 for injuries he sustained during a Sept. 8, 2009, game at Kauffman Stadium when he was struck in the eye by a hot dog thrown by the team's mascot, Sluggerrr.

According to a report in the Kansas City Star, Sluggerrr was on top of a dugout shooting hot dogs into the stands with an air gun. Then Sluggerrr began throwing the hot dogs into the stands with his paws.

"While doing so, (Sluggerrr) attempted to throw a hot dog into the

stands with a throw behind his back," according to court documents in the Jackson County Circuit Court suit. "Instead of throwing the hot dog at an arch high into the stands, (Sluggerrr) lost control of his throw, or was reckless with his throw, and threw the hot dog directly into the plaintiff, who was sitting a few feet away."

Mr. Coomer alleged the wildly thrown wiener resulted in a detached retina, two surgeries and permanent vision impairment in his left eye.

Incidentally, the Royals are looking for a new mascot, but the Major League Baseball team would not say if the search is due to the suit nor would it comment on the legal action, according to reports.

POLICE SNATCH JEWELERS FOR CLAIMS FRAUD

Two New York Diamond District jewelers were busted by police last week on charges they staged a 2008 heist Hollywood-style.

According to reports, Atul Shah and Mahaveer Kankariya had an insurance policy with Lloyd's of London and alleged that robbers dressed in Hasidic attire—replete with fake beards, black coats and black hats—robbed them of millions of dollars in diamonds, emeralds, sapphires and other jewelry.

However, police reportedly said, the men in their 40s set up the robbery at Dialite Imports that was nearly a match for the 2001 movie "Snatch," in which gunmen led by actor Benicio del Toro's character rob a diamond shop dressed like Hasidic Jews.

While the men reportedly concocted a good story, complete with Mr. Shah and an employee being tied up with duct tape, police last week accused them of insurance fraud, grand larceny and falsifying business records in the New Year's Eve 2008 robbery.

The value of the jewelry reportedly ranged from \$4 million to more than \$9 million, but police said cameras at the store reportedly caught the owners removing the jewels before the fake thieves arrived.



COLUMBIA PICTURES

Two New York jewelers apparently copied this scene from "Snatch," by dressing in Hasidic attire and robbing their own store.



Catlin Group Ltd. sponsored an international team of scientists who recently investigated the potential effects of carbon dioxide on the Arctic Ocean.

COURTESY OF CATLIN GROUP LTD.

Catlin heading back out in the cold

Catlin Group Ltd. is about to be on thin ice again, as the international specialty insurer and reinsurer ventures into the Arctic Circle to study the potential effects of carbon dioxide on the Arctic Ocean.

Led by Pen Hadow, director of the Catlin Arctic Survey team, researchers will start work early this month to study the potential effects of increased acidification in some of the coldest ocean water on the planet.

The team will camp at Catlin's Ice Base, just 750 miles from the North Pole.

London-based Catlin is sponsoring the Arctic Survey team, a group of scientists who will work to obtain data that can be used to forecast risks posed by changes in the environment. In addition to the survey team of scientists, an explorer team will take measurements of sea ice

thickness and samples of water to measure the levels of carbon dioxide.

"I've been to the Arctic before...and it's a challenging place to carry out science," Helen Findlay, a scientist with Plymouth Marine Laboratory in England and member of the Arctic Survey team, said in a statement. "But, it is worth the effort to get firsthand, unique and important data that will help us understand changes in the Arctic seas and how they may link to global systems."

Stephen Catlin, CEO of Catlin Group Ltd., said in the statement that the insurer's purpose in sponsoring such an expedition is "to ensure that researchers can obtain scientific facts about these changes (in the climate) so they can make more reliable conclusions about our future."

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