

EX-AIG HEAD GREENBERG SEEKS TO REMOVE JUDGE IN CIVIL CASE / PAGE 3

HEALTH REFORM RULES DIFFICULT TO CRAFT, LABOR OFFICIAL SAYS / PAGE 3

INVESTOR SUIT SETTLEMENTS DECLINE IN NUMBER, VALUE, RESEARCH SHOWS / PAGE 4

In Brief

U.S. reinsurers' premiums slip: RAA

U.S. reinsurers reported a 95.4% combined ratio for 2010 vs. 93.5% for 2009, according to a survey of 19 U.S. firms by the Reinsurance Assn. of America. The combined ratio for 2010 reflects a 64.2% loss ratio and a 31.3% expense ratio, the RAA said. Net premiums written for the group totaled \$23.31 billion in 2010, a 2.5% decline from 2009. Policyholder surplus increased 40.1% to \$108.34 billion. Net income increased 112.2% to \$9.11 billion.

Kane Group to buy HSBC captive units

Kane Group Ltd. said it will acquire the insurance management operations of HSBC Group, a unit of HSBC Holdings P.L.C., for \$27.5 million. Under the agreement

See **IN BRIEF** page 21

SPOTLIGHT

CAPTIVES & SELF-INSURANCE

Captives grow despite soft traditional market, led by 831(b) captives and middle markets in *BI*'s rankings; self-funded plans under scrutiny; Q&A with new S.C. insurance director. **PAGE 9**

CATASTROPHES

Earthquake, tsunami hit Japan

Big insured losses expected, but global impact unclear

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

SENDAI, Japan—The devastating earthquake and tsunami that hit Japan on Friday likely will generate significant insured losses, but observers differ on what impact the losses will have on global insurance markets.

Various factors, including government reinsurance of earthquake damage to homes as well as low quake coverage penetration in the commercial market, are expected to keep insured losses low relative to the overall destruction. Still, another large catastrophe loss in an already costly year for property catastrophe markets could pressure rates.

The quake, measured as magnitude 8.9 by the U.S. Geological Survey, rocked Japan at 2:46 p.m. Friday, near the east coast of Honshu, about 230 miles from Tokyo. Several strong aftershocks came after the initial quake,

8.9

The magnitude of last week's massive quake in Japan.



A powerful earthquake and aftershocks rocked Japan late last week, flattening houses and sparking widespread fires in Iwaki (above) and elsewhere.

according to the USGS.

In addition, the temblor unleashed a massive tsunami that hit parts of the Japanese coast with 30-foot-high waves that swept up trains, boats and debris and submerged villages. Land-

slides and avalanches were reported northwest of Tokyo on Saturday morning.

Hundreds were reported dead and, as of late

See **QUAKE** page 20

SAFETY

Triangle Shirtwaist fire brought safety changes

1911 tragedy spurred laws to protect workers

By **JUDY GREENWALD**

The Triangle Shirtwaist Co. factory fire is a catalyst credited with saving numerous lives since the March 25, 1911, fire that killed 146 workers, many of them young immigrant girls, experts say.

This is because the tragedy,

which happened 100 years ago (see story, page 18), was the major impetus that led to developing occupational health and safety measures, fire prevention efforts and the state-based workers compensation system.

But observers also warn that fires, both in the workplace and



AP PHOTO

The Triangle Shirtwaist Co. fire in 1911 changed U.S. safety laws.

elsewhere, continue to unnecessarily claim lives both in the workplace and elsewhere (see story, page 19).

"We consider it the beginning of the modern safety movement. Unfortunately, 146 people had to die," said a spokeswoman for the Des Plaines, Ill.-based American Society of Safety Engineers, which

See **FIRE** page 18

CAPTIVES

South Carolina hopes project lures captives

By **MICHAEL BRADFORD**

COLUMBIA, S.C.—A unique collaboration between South Carolina's captive insurance market and the state's economic development authority has established an alternate funding source to attract captive insurers that are finding it tough to access capital markets for traditional securitization deals.

The South Carolina Insurance Funding Program has been established to facilitate the state's Jobs-Economic Development Authority to issue to be used as a source of

See **SOUTH CAROLINA** page 6

INDEX

Advertiser Index19
Commentary6
End Page22
Market Moves17
Opinions8
Professional MarketPlace16
Up Close16

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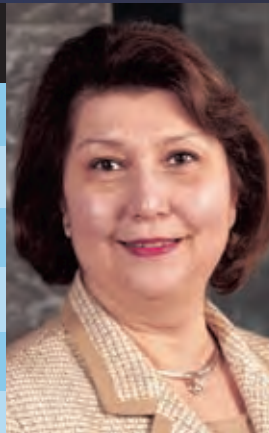
events

RISK MANAGEMENT SUMMIT: *Business Insurance's* Risk Management Summit targeting industry innovations begins March 15 in New York. Follow events from the summit as they happen on Twitter at <http://twitter.com/BusInsMagazine>, and look for breaking news on the *BusinessInsurance.com* home page.

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 Week of March 7, 2011

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2. Japan quake could turn market: Hannover Re
3. Analysis sees hardening property/casualty rates
4. XL Insurance adds former Lexington executives
5. High hurdles for insurance industry in 2011: Analysis
6. Zurich names global corporate CEO as Vitale leaves for Aspen
7. Former Travelers execs to head Aspen's new surety unit
8. Property/casualty rates fall 5%: MarketScout
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SEE WHO'S WHERE: Search industry executive changes alphabetically by name or company, or by date.



DIRECTORY: Updated for 2011, *BI's* captive managers and captive domiciles directories are available in the Research Center.

Business Insurance (ISSN 0007-6864) Vol. 45, No. 11, is published weekly, except combined issues the second and third week of August, the fourth and fifth week of November, and no issue the last week of December, by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: E-mail address change to customerservice@businessinsurance.com or mail to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912, \$5 a copy and \$125 a year in the U.S. \$130 in Canada and Mexico (includes GST). All other countries, \$230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in U.S.A. Copyright © 2011 by Crain Communications Inc.

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DIRECTORS & OFFICERS LIABILITY

Class action settlements fall in number, value

By **ROBERTO CENICEROS**

The number of court-approved securities class action settlements declined in 2010, sinking to the lowest number in more than 10 years, Cornerstone Research Inc. said in an annual report released last week.

There were 86 court-approved settlements during 2010, a 15% decline from 2009. Since 2001, the number of cases settled peaked at 119 during 2005, according to "Securities Class Action Settlements 2010 Review and Analysis."

Cornerstone also found that the dollar value of all 2010 settlements dropped to \$3.1 billion, down 17% from 2009.

The decline likely won't continue, however, and a difficult economy may have helped reduce the number of approved settlements in 2010, Cornerstone said.

"However, the more likely cause for this decline is a combination of the substantial drop in the number of cases filed during 2006...and the fact that to date, credit crisis cases have generally taken longer to settle," the report states. "Since the number of case filings has been increasing since 2006 and credit crisis cases are now becoming a much smaller population of filed cases, the decline in the number of cases settled in 2010 is not expected to persist."

The average dollar value of a settlement dropped slightly in 2010 to \$36.3 million from \$37.2 million the prior year. That was due to fewer "megasettlements," Cornerstone said.

But the median amount for cases settled in 2010 rose to \$11.3 million, up 40% from \$8 million in 2009. The increase represents the "largest percentage increase in

the median settlement amount in the last 10 years and is the first time during that same period that the median settlement amount, even when adjusted for inflation, exceeded \$10 million," the report states.

Cornerstone also found that:

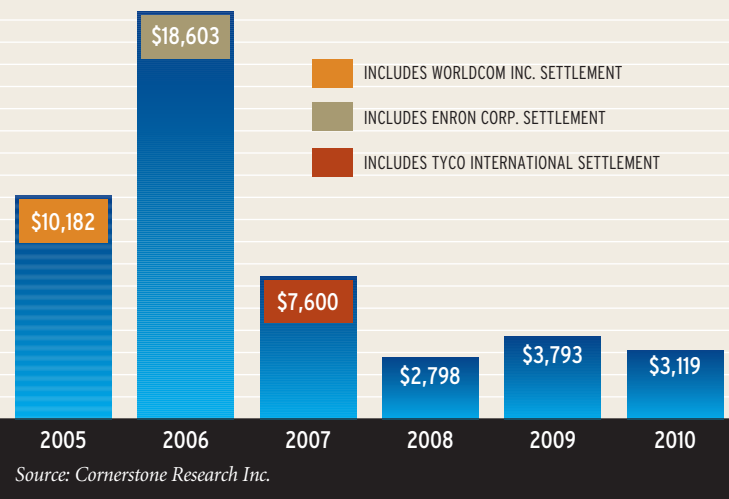
- The percentage of settled cases involving remedy of a corresponding Securities and Exchange Commission action prior to the class action settlement increased to 30% in 2010 compared with 20% for cases settled through 2009.

- Institutional investors again increased their participation as lead plaintiffs, doing so in more than 67% of the 2010 settlements.

- Allegations related to violations of generally accepted accounting principles were included in about 70% of cases that settled during 2010, up from 65% in 2009.

SECURITIES SETTLEMENTS CONTINUE TO FALL

The number of Private Securities Litigation Reform Act settlements approved in 2010 decreased by approximately 15% compared with 2009. Total settlement dollars, in millions.



P/C INSURERS

Greenberg files for new judge for trial

Previous comments by judge show bias, says ex-AIG chief

By **SONJA RYST**

NEW YORK—Lawyers for former American International Group Inc. Chairman and CEO Maurice R. Greenberg and Chief Financial Officer Howard I. Smith are seeking to remove the presiding judge in a civil case against them, arguing that the judge is biased.

The case, which is scheduled to go to trial in May, stems from former New York Attorney General Eliot Spitzer's 2005 lawsuit arising out of an investigation into the insurer's accounting practices. After AIG agreed the next year to pay \$1.6 billion in damages and penalties, some allegations in the case were dropped.

But prosecutors pushed ahead with charges that Messrs. Greenberg and Smith had roles in the alleged improper use of a Barbados-based shell company, Capco Reinsurance Co. Ltd., and in inflating AIG's reserves using a sham finite insurance deal with General Re Corp.

In October, Justice Charles E. Ramos ruled in a summary judgment that the executives were liable for the Capco fraud, but he also said the question of how much they owe in damages



REUTERS/LANDOV

Maurice R. Greenberg's defense lawyers argued that Judge Charles E. Ramos should recuse himself from the civil case because of bias.

should be resolved at a separate hearing. In addition, he allowed for a trial on the Gen Re matter.

The defense is appealing the Capco ruling.

But in their motions submitted to the judge last week, defense lawyers argued that Judge Ramos should recuse himself because of bias. For example, they cited comments the judge made expressing premature conclusions, such as his describing the New York attorney general's case as "devastating," even though the defense said it is based on "overwhelmingly" inadmissible evidence. The defense also argues that the court improperly relied on findings from the trial of former Gen Re CEO Ronald Ferguson and other executives, whose criminal convictions in connection with the Gen Re-AIG deal are being appealed.

Messrs. Greenberg and Smith

also have requested a jury trial, but prosecutors asked that the judge decide the case. However, the "mere possibility" that Judge Ramos might be responsible for evaluating the facts of Messrs. Greenberg and Smith's case makes his removal "even more critical," defense lawyers said.

David Ellenhorn, senior trial counsel in New York Attorney General Eric Schneiderman's office, noted in court documents that the defense never said the court was biased during previous motions and hearings in a case that has been pending for nearly six years.

In addition, he said the defense is trying to delay the case and noted that the court "bent over backwards to avoid entering a decision holding defendants personally liable for the Gen Re matter even though there was...indeed devastating evidence."

HEALTH CARE REFORM

Health care reform law likely to stand: Official

By **JERRY GEISEL**

WASHINGTON—Republican-led efforts to strip funding to implement the health care reform law will fail, the Labor Department's top benefit regulator says.

If a defunding bill were to clear Congress, "It is hard for me to imagine that the president would sign something that would undermine his signature" domestic policy issue, said Phyllis Borzi, assistant secretary of labor at the Employee Benefits Security Administration.

Speaking last week at a National Business Group on Health conference in Washington, Ms. Borzi said she is puzzled by the drive to defund the law, which, among other things, would delay regulatory guidance.

"I'm not sure in whose interest it would be to stop guidance," Ms. Borzi said.

The Patient Protection and Affordable Care Act also faces legal challenges, with numerous suits focusing on the reform provision that will require most individuals to enroll in a quali-

fied plan starting in 2014 or be fined.

Ms. Borzi said she doubts the legal challenges will stand. "Ultimately, the law will be upheld," she told the NBGH audience.

But she criticized as hyped the reporting of some of those decisions. Ms. Borzi cited pervasive coverage of the January ruling by a federal judge in Pensacola, Fla., who found the entire law to be unconstitutional.

From the way the media reported the decision, "You would have thought the law had been repealed," Ms. Borzi said.

In fact, Judge Roger Vinson's ruling has the weight of law only in his Florida district. In contrast, a ruling several weeks later by a federal judge in the District of Columbia that affirmed the law received scant media coverage, Ms. Borzi said.

As the legal battles continue, regulators will work on developing rules to implement the law, she said. "Until someone in authority tells us to stop, we will keep going," she said.

See **NBGH** page 21



U.S. DEPARTMENT OF LABOR

Phyllis Borzi, Employee Benefits Security Administration

Keeping up with rising costs

Employers making plan design changes to keep costs at bay. **PAGE 4**

CATASTROPHES

Australia weighs backstop for catastrophic flood risks

By SARAH VEYSEY

CANBERRA, Australia—Industry representatives have cautiously welcomed the government's review of disaster insurance in Australia, including a possible insurance backstop and subsidizing premiums in high-risk areas.

After catastrophic flooding in portions of Australia in December and again in January, Bill Shorten, Australia's assistant treasurer, this month said the government would examine issues concerning flood insurance.

Issues to be examined, Mr. Shorten said, include whether there is a need for the government to provide an insurance or reinsurance backstop and how such a program would work; how government intervention would affect the insurance market; the extent of, and reasons for, being underinsured for floods and other natural catastrophes; the insurance markets' ability to provide flood coverage; and whether there is a case for the government to subsidize flood insurance premiums in high-risk areas.

A three-member panel headed by John Trowbridge, formerly an executive at the Australian Prudential Regulation Authority, which regulates insurance, will conduct the review and report its findings by the end of the year.

"The review process will not detract from the government's ongoing work with the insurance industry about a standard definition of flood" in insurance contracts, Mr. Shorten said. "In fact, the review will complement those ongoing discussions and provide a better understanding of exactly



REUTERS/LANDOV

After catastrophic flooding in portions of Australia in December and again in January, Bill Shorten, Australia's assistant treasurer, said the government will examine several issues concerning flood insurance.

who should bear and manage risk in such tragic events," he added.

The Insurance Council of Australia, which represents insur-

ance companies that lost an estimated \$2.67 billion Australian

See **AUSTRALIA** page 21

LIABILITY & LITIGATION

Damage caused by faulty work triggers cover

Georgia high court rules against insurer in construction case

By MICHAEL BRADFORD

ATLANTA—A ruling by the Georgia Supreme Court that negligent construction resulting in damage to surrounding property constitutes an occurrence under a commercial general liability policy is the latest in a string of such decisions, with courts divided on the issue.

In a 6-1 opinion March 7 in *American Empire Surplus Lines Insurance Co. Inc. vs. Hathaway Development Co. Inc.*, the Georgia high court upheld a lower court ruling that the general contractor's claim for damage caused by a subcontractor's faulty plumbing work was covered.

The ruling on construction defects follows a number of such cases across the United States that have ended in decisions that in



AP PHOTO

In a separate case, Hawaii's Supreme Court ruled last year that construction defects while building a Hilton hotel did not constitute an occurrence under a commercial general liability policy.

was reached in *Group Builders Inc. and Tradewind Insurance Co. Ltd. vs. Admiral Insurance Co.*, upholding a lower court ruling that Admiral had no obligation under a CGL policy to indemnify the builder for mold damage from its own shoddy work installing insulation at the Hilton Hawaiian Village's Kalia Tower in 2001.

Hilton sued Group Builders, which was a subcontractor on the project, and other defendants, alleging, among other things, that the subcontractor's shoddy work caused defects that led to property damage.

As a result of the Hawaii ruling and others, some insurers and reinsurers have modified policy language to clarify that while they do not consider poor workman-

BENEFITS MANAGEMENT

More employers to offer CDHPs

By JOANNE WOJCIK

Employers are making plan design changes in response to unabated health care cost inflation and changes from the health care reform law, a study reveals.

Employers surveyed expect costs for employee health care benefits to increase 7% this year, bringing average plan costs to \$11,176 per employee. The health care reform law, the Patient Protection and Affordable Care Act, likely will exacerbate that cost trend, according to the survey, "16th Annual Towers Watson/National Business Group on Health Employer Survey on Purchasing Value in Health Care," which was released last week.

In fact, 81% of employers reported that PPACA already has increased the administrative burden on their human resource departments, while 80% expect to see some impact from an excise tax imposed on the most costly plans, unless they make design changes.

Beginning in 2018, a 40% nondeductible tax, known as the "Cadillac tax," will be levied on health plan premiums that exceed \$10,200 for single coverage and \$27,500 for family coverage.

To curb health plan costs, employers are turning to consumer-driven plans and financial incentives to encourage greater participation in wellness programs, the survey found.

Although 53% of employers already had CDHPs in place in 2011, roughly the same percentage as last year, another 27% plan to begin offering them in 2012, according to the survey. CDHPs cost \$930 less on average than traditional preferred provider plans for employee-only coverage and \$2,868 less for family coverage, according

to the survey.

Employers also are trying to improve CDHP takeup rates by offering employees significant reductions in premium contributions. In 2011, 56% of employers set their employees' CDHP premium contributions at least 20% lower than those for PPO plans, and 26% of employers more than halved employee contributions compared with other plan types.

The Towers Watson/NBGH survey also identified a more than twofold increase in the use of outcomes-based financial incentives as another cost-management strategy used by employers. Such incentives are paid based on achievement of certain biometric outcomes, such as targeted weight control or cholesterol levels. Employee health habits are the top health care cost challenge facing employers, cited by 66% of the 588 employers responding to the survey.

While only 6% of employers offered outcome-based financial incentives in 2010, an additional 7% introduced such programs this year, and 33% plan to add such incentives next year, the survey found.

"One of the critical changes we're seeing is the movement away from engagement and participation to outcomes-based incentives," said Julie Stone, a senior consultant at Towers Watson, based in Parsippany, N.J. "Employers are saying they need evidence that an employee has quit smoking, or that they've enrolled in an exercise program," before they will pay an incentive.

The PPACA provision that allows employers to pay an incentive valued at up to 30% of the cost of single coverage will provide even greater opportunity for employers to use financial incentives as a way to manage health care costs, she added.

\$11,176

Employers expect costs for employee health care benefits to increase 7% this year, bringing average plan costs to \$11,176 per employee.

WEBCAST 'Blueprint for Construction Defects' at www.BusinessInsurance.com

some cases have defined defects as covered occurrences and in others decided they do not trigger coverage under CGL policies.

In one notable case, Hawaii's high court decided in May of last year that damage from construction defects does not constitute an occurrence triggering coverage under a CGL policy. The decision

See **DEFECT** page 21



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South Carolina: Program designed to lure captives

CONTINUED FROM PAGE 1

financing by special-purpose captives.

The first captives to be set up under the program will be sponsored by life insurers that need the financing to meet reserve requirements; subsequently, insurers and large businesses are expected to establish captives to fund property catastrophe and other significant exposures, said C. Kenneth Johnson, president of SCIF Advisors L.L.C., the company set up to facilitate transactions under the insurance industry program.

"We are working on a business model now that could include catastrophic coverage," he said.

The program is believed to be the first financing arrangement of its kind and is expected to bring captive insurers, jobs and revenue to South Carolina, sources said.

South Carolina is the fourth-largest U.S. captive domicile and 12th-largest worldwide, according to *Business Insurance's* latest rankings (see Captives & Self-Insurance report, starting on page 9).

Under the program, a special-purpose captive will be established and issue surplus notes that are used to provide collateral to JEDA. Then the development authority will execute the bond issue, which will raise funds to be used by the life insurance captive to meet statutory redundant reserve requirements.

The funds will be placed in a trust controlled by the South Carolina Insurance Department.

Robert Johnson, president of the South Carolina Captive Insurance Assn. and managing director

of Marsh Inc.'s captive solutions group in Charleston, said he is unaware of a similar arrangement in any other captive domicile.

"We believe it is the first type of funding mechanism joint venture between a state agency and commercial life insurer," he said.

While captives have been established previously to fund reserves through bond issues, they were done through securitization arrangements using capital markets that have all but dried up for those kinds of transactions, said SCIF Advisors' Mr. Johnson. "This replaces that market," he said of the South Carolina arrangement.

"We're doing the transactions from Main Street instead of Wall Street," said Jeff Kehler, program manager of alternative risk transfer services at the South Carolina Department of Insurance in Columbia. "Let's face it, since the (economic) downturn, Wall Street has been blamed for being the bogeyman for a lot of things. We're not relying on Wall Street to do this."

"In the end, it will function much like the securitization programs of old," said Marsh's Mr. Johnson, except that it will be handled at local level and produce benefits for South Carolina in the form of revenue and jobs.

A handful of insurers have already expressed interest in setting up captives under the program, SCIF Advisors' Mr. Johnson said, with one needing to raise about \$1 billion. But first, the program is concentrating on a smaller captive—one that needs to raise about \$200 million to \$250 million, he said.

"We want to crawl before we walk," SCIF Advisors' Mr. Johnson said. "We need to see what the market will be for the bonds, first of all."

Mr. Kehler said he expects the program will spur the creation of life captives owned by insurers that were considered too small to go through traditional securitization routes. "It opens it up for the medium-sized company that doesn't have \$500 million in redundant reserves, but has \$50 million and is of a size that generates a stress on the balance sheet," he said.

The cost of capital has been high for middle-market life companies, Marsh's Mr. Johnson said, and the South Carolina program could provide access to those insurers that, because of their size, haven't had access to securitization transactions in the capital markets.

The first captive could be in place under the program by the end of June, SCIF Advisors' Mr. Johnson said.

Experts said the program is well-suited for captives other than those set up for life risks.

"This may open up a way to address some very, very difficult risks to manage and do it in an efficient and cost-effective manner," said Mr. Kehler.

"Looking down the road, there may be opportunities to capitalize captives not specifically in the business of securitization," he said. "There are lots of different iterations that we think could come from this."

"To make it attractive, it would have to involve a big risk," said Marsh's Mr. Johnson. Catastrophe exposures or post-retiree medical obligations might fit the bill, he said.

Mr. Kehler said he expects other domiciles to catch on to the significance of South Carolina's program and adopt versions of their own.

Commentary

Love buzzwords? Shift your paradigm

If there's one thing that actor Charlie Sheen's recent and rapid descent has taught us, it's that repeating a buzzword, particularly one that makes no sense in the context that it's used, gets old very fast.

"Winning!"

How could anyone define "winning" as losing their children to state authorities, being accused of abusing women and being fired from one of the most popular shows on television?

There is, though, a lesson in Charlie's downfall and his insistence on taking the word "winning" with him: Buzzwords are dangerous. Overuse them and you could lose your audience, and maybe even some of your credibility.

Years ago, I interviewed a risk manager who was so obsessed with filling his answers with buzzwords that I had difficulty paying attention. I found myself bracing for his next cliché so often that my mind wandered off-topic. Thankfully, I was recording the interview, but it was painful to replay.

He went on a tear at one point, assailing me with everything from "think out of the box," which should be banished forever from all languages, to "paradigm shift," a phrase so shopworn that it now invokes suspicion rather than respect.

Given time, the risk manager may have drained the entire well of buzzwords, along with the blood in my brain.

Eventually, I was able to steer him to lunch, a tactic I have used often when interviews go bad.

In homage to that risk manager, I offer a few suggestions to anyone giving a speech, presentation or interview: In your remarks, try to avoid the following words and phrases.

"We empower our employees." It's a cringe-worthy remark from the 1980s. Besides, who doesn't empower their employees? All it means is you give them some responsibility.

"Our employees are our associates." How exactly does that make them different from everybody else's employees?

"Communication is key" or "buy-in from top management is key." We know that already, having heard it 800 million times to describe enterprise risk management or a crisis management plan.

"C-Suite." This one is actual-



MICHAEL BRADFORD

Senior Editor Michael Bradford can be reached at: mbradford@businessinsurance.com

ly kind of a clever timesaver, but it's really annoying.

"24/7." If I had a nickel for every time this one has been used, I could afford the property taxes on that slopeside chalet in Verbier I've been eyeing. (Now I'm slipping into clichés myself.)

"Game changer." See "paradigm shift," above.

"Houston, we have a prob-

I found myself bracing for his next cliché so often that my mind wandered off-topic.

lem." Just don't say that. Please.

As exasperating as it is to sit helplessly through a cliché-ridden presentation, listening to buzzwords in everyday conversation can be just as frustrating.

Relief from buzzwords can come only when you stumble upon a word that seems so oddly appropriate that you wish you had thought of it yourself.

One of my favorites, and I hesitate to give this away for fear that it will become widely used, is the word "chopfallen."

I came across it while reading books by the late S.J. Perelman, who was one of the funniest travel writers ever to hold a pen and someone I strongly recommend to anyone who appreciates a masterful touch in using language.

I'll leave it to you to discover the meaning of "chopfallen," but here's a hint: It never will be used to describe Charlie Sheen, who may yet become the biggest cliché of all.

ADVERTISEMENT

Greg Lang Named President of Universal Risk Intermediaries

NEW YORK, NY (February 7, 2011) - Greg Lang has been named president of Universal Risk Intermediaries, Inc. (UniRisk), an insurance and financial firm that designs, organizes, and implements alternative risk transfer solutions. UniRisk works closely with major insurance carriers to develop profitable partnerships for their clients who are companies, groups, and associations that seek alternatives to the standard insurance marketplace. Lang brings over 25 years of industry experience to his new position as president, most of which was spent in the alternative market. Prior positions include a broker/consultant for a multinational broker; risk manager in a Fortune 10 company; president of an Insurer owned managing general agency (MGA); and underwriter of Fortune 1000 and program MGA accounts. Most recently he was head of business development for a multinational reinsurer focused on primary MGA business, reinsurance of group captives and public entity business. In addition, he has worked for some of the biggest names in the industry including AIG, AT&T, Munich Re and Sedgwick. During this time he has accumulated an impressive list of industry contacts in all phases of the business.

According to UniRisk CEO, Steven C. Nordstrom, Lang will be expanding the breadth and depth of the UniRisk services and products. "Aside from our continued work in the Alternative Risk arena—with our Bermuda affiliates—we will be looking at providing back office services and management expertise to program managers, as well as arranging financing, for those that have such needs," said Nordstrom. About UniRisk:

Universal Risk was launched in 1994, as part of Universal

Holdings in Bermuda. The firm conducts its Bermuda operations, with its affiliated insurance/reinsurance company Capital Security Ltd, through R & Q Quest Management Service Limited (Quest). Quest has been operating in Bermuda since 1979 and is one of the leading independent captive and rent-a-captive services companies in Bermuda. Clients include major companies from the United States, Europe, and the Pacific Rim, as well as a number of groups and associations.




Mr. Lang

UniRisk's production sources are typically regional agents/brokers, second tier national brokers, wholesale and MGA operations, reinsurance intermediaries, independent risk management firms, and issuing carriers. Combined with the capabilities offered in the Bermuda insurance and financial community, UniRisk is unique in that there is virtually no program or individual placement involving risk sharing that UniRisk cannot undertake.

UniRisk currently offers services including rent-a-captive programs, deductible reimbursement policies, collateral alternative (LOC) plans, captive formation and management, international reinsurance placement, pure fronting arrangements, broking to Bermuda insurers, funding arrangements, programs for all classes of insurance, direct policies and certificates, new product lines and consulting, and accounting, financial and banking.



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Zurich’s help, we’re
already a global one.”**

**Joseph G. Mahler, Chief Financial Officer
FuelCell Energy, Inc.
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Business Insurance OPINIONS

Mr. President: It's time to make appointments

THE OBAMA ADMINISTRATION has taken its time to fill the two key insurance-related positions created under the Dodd-Frank Wall Street Reform and Consumer Protection Act—the director of the new Federal Insurance Office and an independent voting member of the Financial Stability Oversight Council, who by law must have “insurance expertise.”

The law has been in effect nearly nine months, yet the positions remain unfilled.

We sincerely hope the administration has been using this time to carefully vet the best possible candidates for the jobs. Despite the whirring of the Washington rumor mill, the administration really hasn't tipped its hand as to who should represent it in insurance matters. Even though we don't know who ultimately will be nominated, we've got some suggestions as to the qualities they will need to demonstrate in their new jobs.

The FIO director will have limited regulatory powers—too limited in our opinion—and will serve an advisory rather than voting role on the Financial Stability Oversight Council. Nonetheless, this is an important job and will be the first time the federal government will be able to draw on formal internal insurance expertise.

While the position could be filled by a state insurance regulator—there has been talk that Illinois Insurance Director Mike McRaith is a front-runner for the job—we'd expect any nominee to be able to transcend the often parochial world view of state regulation.

This is critical because the director will be the voice of the United States in international insurance matters. A successful director will need to have experience dealing with international insurance regulation and the workings of international insurance markets.

The director also will be responsible for overseeing the federal government's terrorism insurance backstop program. Once again, this would call for deep understanding of a sometimes arcane marketplace that would exist only in the most rudimentary form if there weren't a backstop.

One big qualification for a candidate with the insurance expertise needed to fill the FSOC slot is a thorough understanding of the concept of systemic risk, because that's the issue with which the council deals.

Insurers and their customers have legitimate fears that they'll be unjustly lumped in with other less risk-averse financial institutions as presenting a systemic risk, subjecting them to heightened scrutiny and higher compliance costs.

As far as understanding systemic risk goes, an academic might fit the bill, but that academic would have to be able to play by Washington rules. The council member would have to be a strong advocate for insurers on issues of importance to them and their customers. Given that the other voting members all head federal agencies, the insurance expert's job might best be filled by someone as expert in the ways of Washington as in the intricacies of systemic risk. This is one slot we believe should not go to a current state insurance regulator, because regulators already are represented by a nonvoting member.

The positions should have been filled long ago while the FSOC already has begun considering issues that will affect insurers. The administration will have no excuse for not putting forth the best possible candidates when it finally does get around to doing so.

This is an important job and will be the first time the federal government will be able to draw on formal internal insurance expertise.



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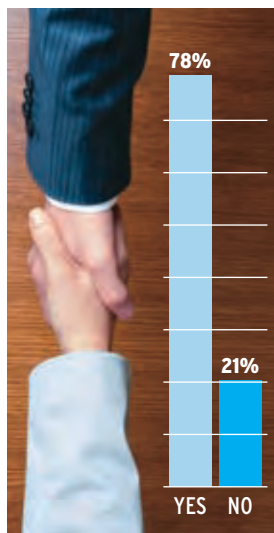
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THIS WEEK'S RESULTS

Q Will there be a significant increase in mergers and acquisitions among brokers this year?



NEXT WEEK'S QUESTION

Q: Will the soft commercial insurance market end this year?

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Insurance policy in the (e-)mail

As insurance companies look to increase their presence internationally, they may want



to provide insurance policies to buyers electronically, say John P. Dearie Jr., a partner, and Mia Finnsness and Amber Mills, associates, at international law firm Edwards Angell Palmer & Dodge L.L.P. While a growing number of countries allow e-delivery of policies, some still do not and the authors suggest that insurers should investigate the laws of each country before attempting to issue policies electronically.



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SUBSCRIPTIONS: Detroit: 888-446-1422

Business Insurance is published by

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COUNTING CAPTIVES

Ranked by number of captives in 2010

DOMICILE	2010	2009
Bermuda	845	885
Cayman Islands	738	780
Vermont	572	560
Guernsey	341	355
Anguilla	252	209
Luxembourg	244	251
Barbados	242	230
British Virgin Islands	219	285
Turks & Caicos Islands	211 ¹	203 ¹
Utah	188	148
Hawaii	168	162
South Carolina	160	156 ²
Isle of Man	143	145
District of Columbia	139	124 ²
Kentucky	127	105
Nevada	124	125 ²
Nevis	108	63
Arizona	96	99
Delaware	95	49
Dublin	82	114
Montana	67	47
Singapore	60	63
Sweden	50 ³	50 ³
New York	47	47
Switzerland	35	42
Labuan	33 ⁴	34
British Columbia	29	18
New Zealand	24	22
Gibraltar	17 ⁵	15 ^{2,5}
Bahamas	16	15 ³
Georgia	15	15
Netherlands Antilles	13 ³	14 ³
Malta	11	9
Missouri	11	6
Norway	11	12
Alabama	10	5
Vanuatu	10	10
Denmark	8 ³	8 ³
Finland	8 ³	8 ³
Panama	7 ³	5 ³
Puerto Rico	7	6
U.S. Virgin Islands	7	3
Colorado	5	6
Michigan	4	2
Tennessee	4	4
Jersey	3	3
Micronesia	3	1
Hong Kong	2	2
Arkansas	1	1
Illinois	1	1
Kansas	1	1
Maine	1	0
Oklahoma	1	1
South Dakota	1	1

¹ Excludes credit life insurers. ² Restated. ³ BI estimate. ⁴ Number of captives as of Sept. 20. ⁵ Pure captives only.

Researched by Kevin Edison and Karen Tucker

'Whenever you see formations in a soft market, you're seeing it for the right reasons.'

Dave Provost, Vermont Banking, Insurance, Securities and Health Care Administration

soft track STEADY CLIMB

Captive numbers keep growing despite soft traditional market

By MICHAEL BRADFORD

Captive insurance companies, long touted as valuable risk management tools but often formed to save money when traditional insurance costs climb, continue to be set up at a time when commercial coverage pricing is soft.

That's proof, experts say, that owners see the alternative funding vehicles as long-term risk management solutions rather than a quick fix for expensive insurance.

"Whenever you see formations in a soft market, you're seeing it for the right reasons," said Dave Provost, deputy commissioner of the captive insurance division of the Vermont Banking, Insurance, Securities and Health Care Administration in Montpelier. "It's really about risk management and risk financing, knowing that eventually pricing will change, but that's not a driver."

"We're seeing continued steady growth in spite of the prolonged soft market," said Nancy Gray, regional managing director-Americas at Aon Global Insurance Man-

agers in Burlington, Vt. "Captives are still forming for the useful purpose as a risk management tool to lower the total cost of risk."

Vermont and other captive domiciles showed gains last year in captive formations despite a soft commercial market.

In Vermont, there were 33 new captive formations. Montana licensed a record 26 captives last year, while Hawaii saw 12 new captives locate there.

New formations soared by 54 in Utah. Most of the captives, though, were set up to qualify for favorable tax treatment under Section 831(b) of the Internal Revenue Code, an arrangement that has sparked debate on whether they are formed more often as a wealth-transfer vehicle than as a risk management tool (see story, page 14).

In all, there were 5,617 captives worldwide in 2010 compared with 5,525 in 2009 (see chart, page 10).

Some regulators are taking a cautious approach to the formation of Section

See **CAPTIVES** page 12

Captives & Self-Insurance

SPOTLIGHT

BI RANKS CAPTIVE DOMICILES, MANAGERS AND MORE
PAGE 10

Q&A WITH NEW INSURANCE DIRECTOR OF SOUTH CAROLINA
PAGE 12

831(b) CAPTIVES DRIVE MUCH OF TOTAL MARKET'S GROWTH
PAGE 14

MIDDLE-MARKET COMPANIES EMBRACE CAPTIVE ADVANTAGES
PAGE 15

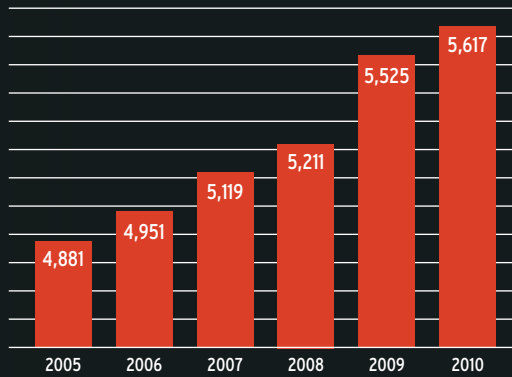
SELF-FUNDED PLANS UNDER SCRUTINY AFTER REFORM LAW
PAGE 16

DATA snapshot

CAPTIVE MANAGEMENT

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TOTAL CAPTIVES WORLDWIDE



LARGEST CAPTIVE MANAGERS

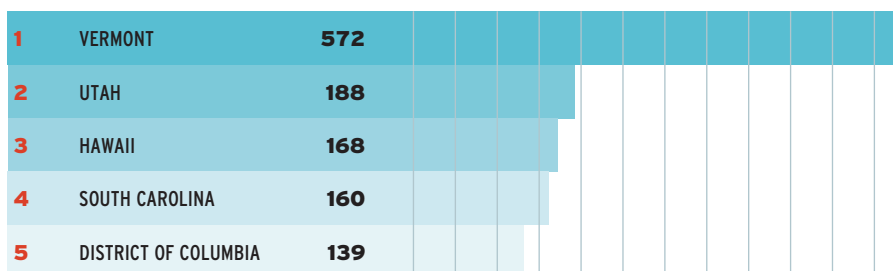
Ranked by captives managed worldwide in 2010*

RANK	Company/address	Phone/website	2010 total captives	2010 captive premium volume	Domiciles	Captives formed in 2010	Total staff	Principal officers
1	Marsh Captive Solutions 1166 Ave. of the Americas, 37th Floor, New York, N.Y. 10036	212-345-7769 www.marsh.com	1,263	\$45,324,750,000	29	N/A	495	Jill Husbands, Julie Boucher, Ian Clancy, managing directors
2	Aon Captive & Insurance Management St. George Court, Upper Church St., Third Floor, Douglas, 1M1 1EE Isle of Man	44-1624-692-400 www.aon.com	1,218	\$20,719,848,958	31	49	500	Nancy Gray, John English, Vic Pannuzzo, regional managing directors
3	Willis Global Captive Management The Willis Building, 13th floor, 51 Lime St., London, EC3M 7DQ England	44- 203-124 6000 www.williscaptives.com	318	N/A	22	N/A	145	Tom Coughlin, CEO-Willis Global Captive Practice
4	USA Risk Group ¹ P.O. Box 306, Montpelier Vt. 05601	800-872-7475 www.usarisk.com	197	\$2,249,259,733	16	25	73	Gary Osborne, president
5	HSBC Insurance Management 8 Canada Square, London, E14 5HQ England	44-132-389-6632 www.insurancemanagement.hsbc.com/1/2/3/	196	N/A	10	27	101	Roy Fellowes, CEO
6	Strategic Risk Solutions Inc. 2352 Main St., Concord, Mass. 01742	781-487-9800 www.strategicrisks.com	120	\$1,501,986,000	11	18	42	Brady Young, president
7	Beecher Carlson Insurance Services L.L.C. 1655 Lafayette St., Suite 200, Denver, Colo. 80111	303-388-5688 www.beechercarlson.com	87	\$3,411,085,000	11	6	30	Jason Flaxbeard, senior managing director
8	Chartis Insurance Management Services 30 Main St., Suite 330, Burlington, Vt. 05401	802-658-9405 www.chartisinsurance.com	81	\$900,000,000	17	4	40	Robert Gagliardi, senior vp/worldwide director
9	R&Q Quest Management Services Ltd. F.B. Perry Building, 40 Church St., P.O. Box HM 2062, Hamilton, HM HX Bermuda	441-295-2185 www.rqih.com	80	N/A	3	N/A	17	Nicholas S. Dove, president
10	JLT Insurance Management P.O. Box 155, Mill Court, St. Peter Port, GY1 4ET Guernsey	44-148-173-7120 www.jlfcaptives.com	78	\$1,200,000,000	5	5	40	Nick Wild, executive chairman-Ex Americas, Steve Arrowsmith, executive chairman-Americas

*Captives electing to operate under Section 831(b) of Internal Revenue Code are not included. 1 Includes Cedar Management Ltd. N/A=not available

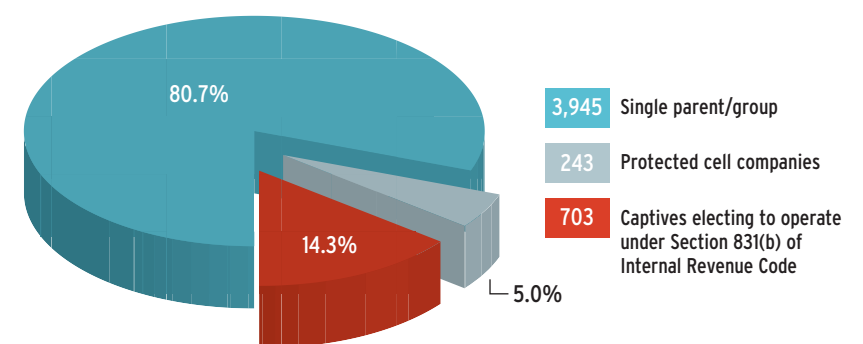
LARGEST U.S. CAPTIVE DOMICILES

Ranked by number of captives in 2010



Source: BI surveys. Researched by Kevin Edison and Karen Tucker

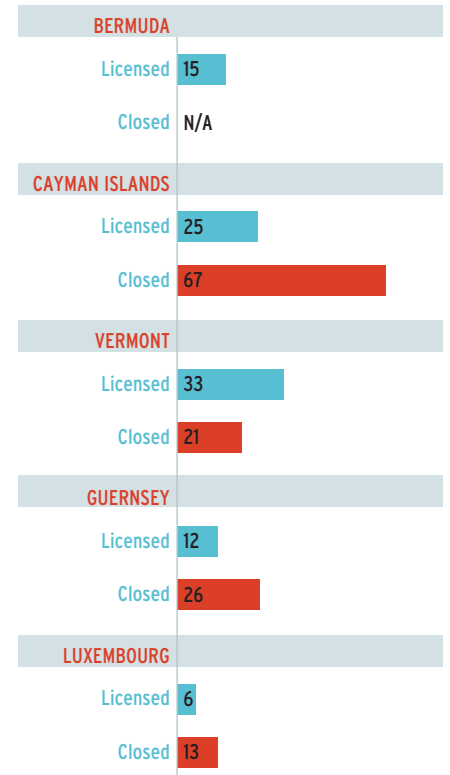
TYPE OF CAPTIVES MANAGED*



*Captive managers listed in directory

OPENED AND CLOSED

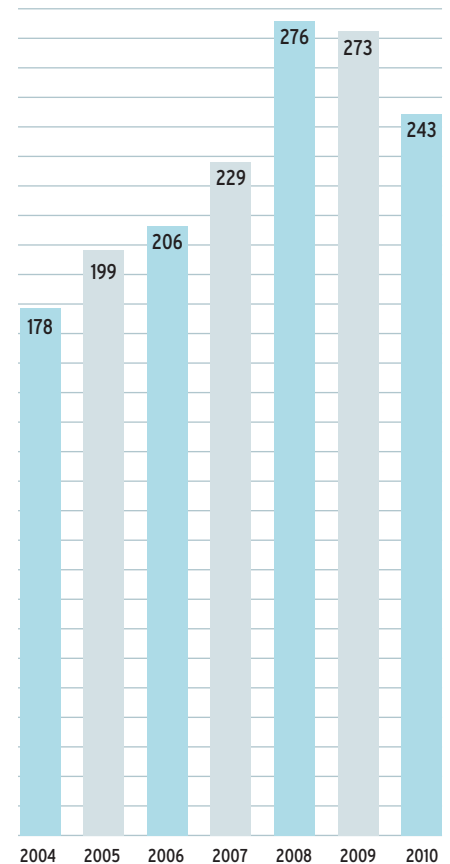
Of the five largest captive domiciles, Vermont had the largest number captive formations during 2010 and opened more captives than it closed.*



*Anguilla did not provide data and was excluded.

PROTECTED CELL COMPANIES

Number of protected cell companies worldwide.



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Captives: Numbers keep rising

CONTINUED FROM PAGE 9

831(b) captives, or those captives that receive less than \$1.2 million in premiums a year and pay federal taxes only on their investment income.

"We don't want to drive them away, but we want to make sure there's a reason for doing them" other than purely for investment purposes, said George Sumner, captive administrator and deputy insurance commissioner of the Hawaii Insurance Division in Honolulu.

The rush of new captives formed under Section 831(b) inflated the growth numbers for 2010, but plenty of interest remains in establishing new captives or expanding existing company-owned insurers to better manage the total cost of risk, sources said.

"If you eliminate the 831(b) captives and just look at the larger single-parent captives, it's probably pretty flat" in terms of the total number of captives, said Michael Cormier, New York-based CEO of Marsh Inc.'s global captive solutions group. New formations, though, are offsetting the number of captives that have been placed in runoff, he said.

Recent years have seen closure of captives that have run their course or those with little reason to be reactivated sit dormant. In some cases, captives were eliminated when parent companies that merged found some to be unnecessary, and other owners have taken needed capital from the companies before closing them.

For example, 302 captives closed their doors worldwide in 2010, about the same as 2009.

"Due to cash and liquidity issues, some companies needed the money for their core business," said Conor Jennings, managing director at Caledonian Insurance Services (Cayman) Ltd. and a member of the executive committee of the Insurance Managers Assn. of Cayman.

As a result, quite a few dormant captives were closed, he said.

"The economy had an effect in accelerating plans to dissolve captives," Ms. Gray said.

Even so, captive activity is bucking historical trends, said Jeff Kehler, program manager of alternative risk transfer services at the South Carolina Department of Insurance in Columbia.

"We're probably in unprecedented times," Mr. Kehler said. Historically, when premiums are low, interest rates are high, he said. "But we're in a time when not only are interest rates low, but premiums are low. I can't remember when that's happened."

"When you see what's going on in the (insurance) market, the economy and conditions in the financial markets, new captive formations should be zero," Mr. Kehler said. Instead, formations have surged since 2009, he said.

"Some industries got absolutely hammered by the recession, and they are still forming captives," Mr. Kehler said. "Homebuilders, real estate firms, even transportation companies; these areas took serious hits in the last few years. But those companies with foresight to manage their risks have stepped up to form captives."

"The companies that are forming captives today are the ones that will be around for a long, long time," Mr. Kehler said. "Companies are forming captives for the right reasons. It's not, 'Gee, whiz, can you

save us a couple of bucks?' It's about risk management, to manage risk long term in order to improve profitability and the image of the company" while establishing a safer place for employees to work, he said.

Although captives remain a popular alternative to traditional risk financing, they are not free of challenges, sources said.

Michael Bemis, Lisle, Ill.-based president and CEO of the Vermont-domiciled National Catholic Risk Retention Group Inc., said the temptation for shareholders in his RRG to defect to lower-priced coverage in the traditional market is a persistent thorn in the captive's side.

While shareholders have been loyal to the 22-year-old RRG, Mr. Bemis said they sometimes find it difficult to walk away from "ridiculous quotes from naïve markets" that are trying to sell them traditional coverage without firm knowledge of the risks they are attempting to attract.

"The single operating challenge that we have had is the persistent soft market," Mr. Bemis said.

Regulatory issues also are looming for captives, sources said.

"We're in an environment of increased regulation on a global basis," said Ms. Gray.

Solvency II, the risk-based capital framework to be implemented in Europe in 2012, will affect captives globally, said John Lochner, director of consulting services at Towers Watson & Co. in Weatogue, Conn.

"On the regulatory front, the biggest thing is Solvency II and the implications it could have on captives, particularly in this hemisphere," Mr. Lochner said. The concern for captives, he said, is whether non-European domiciles will respond to the regulations in a way that raises capital requirements for captives.

Bermuda, for example, is seeking mutual recognition status under Solvency II, which could mean changing solvency requirements for captives based there.

"Solvency II is very important to us," said Marsh's Mr. Cormier, whose captive clients are working out the potential impact of the regulations on their capital and surplus.

"Certainly there will be instances, if the regulations stay the way they are, where there will be an increase in capital" required of captives, Mr. Cormier said.

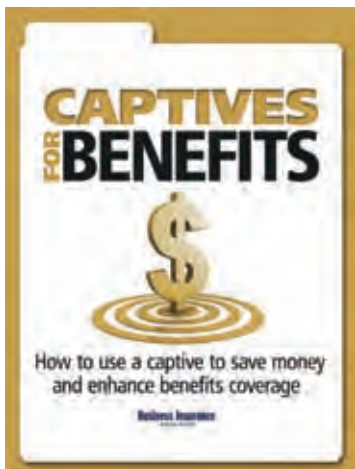
In the United States, the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act that go into effect in July raise some questions for captives, sources said.

The law, which calls for premium taxes on nonadmitted insurance to be paid only in the policyholder's home state, is expected to affect captives that pay self-procurement taxes, sources said. Self-procurement taxes apply when a buyer purchases coverage directly from a nonadmitted insurer without participation of an intermediary.

The legislation has left it to states to design ways to collect and allocate the taxes. Until states can agree on a multistate compact for that task, there is uncertainty around how such taxes will be handled.

Regardless of where captives sit, they are bound to feel some regulatory changes soon, sources said.

"There is pending regulation in all our markets that will affect captives," Mr. Cormier said.



READ the BI white paper "Captives for Benefits" at www.BusinessInsurance.com

Questions & Answers

David Black was named director of the South Carolina Department of Insurance by Gov. Nikki R. Haley on Jan. 20. Prior to joining the department, Mr. Black spent six years as president and CEO of Greenville, S.C.-based Liberty Life Insurance Co., the U.S. insurance subsidiary of the Royal Bank of Canada. He also served on RBC's corporate governance committee and was counsel for parent company Liberty Corp. for more than 20 years. He spoke recently with Business Insurance Special Projects Editor Rodd Zolkos on the future direction of the state agency.



Looking beyond regulation

Q: Looking at some of the things I've read and some of the things you've indicated to some of the local press in South Carolina, I get the sense that beyond industry regulation and consumer protection, it seems that you've been pointing out the economic development role that an insurance department can play in a state. Is that correct?

That's correct. You know, I think a lot of times you can sort of underthink it and you can sort of think about insurance as sort of the means (to an) end. But when I really think about it...those of us in the industry realize that what we really do is we provide a means for economic development. Without stable insurance markets, a lot of small businesses wouldn't get started, midsize businesses wouldn't stay in business. And so I think we're a vital part of the supply chain, if you will, for what it takes to drive economic growth in the state and in the region.

Q: Looking at the economic development role that the insurance department can play in a state, in a state like South Carolina, obviously, part of that involves captive insurance.

I think we've got some real opportunities for growth. I think we've created an attractive infrastructure in the last 10 years, so I think an attractive infrastructure has been put in place. And so I look forward to working to sort of increase our commitment to it because I think we've done some things on the technology side and we've done some things in terms of adding staff resources to add to our existing infrastructure. I think there's a lot of opportunity here.

Q: Moving on in that line specific to captive insurance, what are some of the things you would like to see South Carolina do to make itself more attractive or a more competitive domicile?

I think we're going to continue to do a lot of what we have done. We're going to continue to reach out to captive managers and to companies that are interested in creating pure captives or special-purpose captives and also (risk retention groups) as we go down the road. But I think you'll see more of an emphasis on getting out and trying to explain the benefits of captives, not only to small, but to midsize companies, so that we can generate more business here in the state.

Q: In trying to achieve those goals, do you see any regulatory changes on the horizon that you might like to see enacted to achieve any of your goals related to captive insurance?

There's a piece of legislation pending right now, and I think that's one of the ongoing efforts we have to make sure that we've got the legislative and regulatory framework that gives us the flexibility to be innovative in what we're doing. So we'll continue to track those closely and see what other states are doing and see what we can do here to make sure that we're as innovative as possible on the legislative side and on the regulatory side.

Q: Kind of by its nature as alternative risk transfer, it seems that kind of flexibility is something that people really look for in the captive insurance side.

I think so. This is a business that changes daily and so you've got to keep up to date. You've got to do it in a way that's prudent and that's sensible, but you've also got to be open to new ideas and open to new ways of doing things.

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Q: Looking at your role as director of insurance and looking at captives and the traditional insurers that you regulate, are there differences in regulating captives and traditional insurers?

I see a lot of similarities. We start with the premise that our job here is to make sure that we have stable and available markets in the state, whether it's self-insured or insured. And I think that these type of activities that help us broaden the market in South Carolina, that help us increase competition in South Carolina, does a lot to really be one more stabilizer on pricing here in the state. So, I think to me, while there may be structures that make them look a little different, and certainly there are particular things you have to become aware of, in a lot of respects a well-run captive and a well-run insurer take on a lot of the same characteristics. You always need a strong balance sheet. You always need a good matching of assets and liabilities in terms of duration, and you always need a good business plan.



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831(b) captives push overall growth

By **RODD ZOLKOS**

One of the most noteworthy factors in the captive markets in recent years is the rapid increase in the number of small companies called 831(b) captives.

The reference is to Internal Revenue Code Section 831(b), under which insurance companies with less than \$1.2 million in annual premiums can elect to be taxed by the federal government only on their investment income (see box).

The growth in 831(b) captives has driven rapid growth of some captive managers and captive domiciles. In fact, 2010 831(b) formations catapulted Utah past South Carolina and Hawaii to become the second-largest U.S. captive domicile behind Vermont.

But some in the captive industry worry that the growing number of captives qualifying for the 831(b) tax treatment might draw Internal Revenue Service scrutiny as well as changes in the way the IRS treats the small companies.

Some managers are promoting formation of the small captives as wealth-transfer vehicles, a situation some suggest eventually will draw IRS attention. IRS scrutiny of one area of the captive industry might draw undesired attention to other areas of captive business as well, some say they fear.

The number of 831(b) captives in the market is uncertain, though some industry experts estimate there may be more than 1,000. This year, *Business Insurance* asked

Reagan-era tax reform law boosts captive formations

Under Section 831(b) of the Internal Revenue Code, insurance companies, including captives, may elect to be taxed only on their investment income if the company receives less than \$1.2 million in annual premiums.

Companies that choose that approach file for it along with their first tax return. The election can't be revoked without the consent of the secretary of the Treasury.

Congress included the measure in the Tax Reform Act of 1986 to encourage formation of new insurance companies and to simplify business for small companies. Legislation has been introduced in Congress in

recent years to increase the premium limit for 831(b) eligibility, but those efforts have been unsuccessful thus far.

The election has no effect on the deductibility of otherwise deductible premiums paid into the captive by insureds.

While an insurer electing 831(b) treatment pays no taxes on its underwriting profit, the company's owners are taxed on any dividends or other compensation received from the 831(b) company.

In addition, when an 831(b) company is sold or liquidated, its owners pay taxes on any gains in the value in their stock in the company.

—By Rodd Zolkos

managers to indicate how many captives they managed that elected 831(b) treatment. Those responses totaled 703 831(b) captives, with Artex Risk Solutions Inc. (145), Active Captive Management L.L.C. (141) and Alta Holdings L.L.C. (93) the largest 831(b) managers (see chart).

In addition to Utah, 831(b) captives are seen as key factors in driving the growth of the number of

captives in Montana and Kentucky. Utah licensed 54 new captives in 2010, most reportedly small enough to qualify as 831(b)s.

"We have some captive managers that are active in that market that are pursuing these among middle-market-type companies," said Ross C. Elliott, Utah's captive insurance director, in assessing the reasons for rapid growth in several small captive companies.

LARGEST MANAGERS OF 831(B) CAPTIVES

*Largest managers of captives electing to operate under Section 831(b) of the Internal Revenue Code**

COMPANY	831(b) CAPTIVES
Artex Risk Solutions Inc.	145
Active Captive Management	141
Alta Holdings	93
AMS Insurance Management Services Ltd.	84
Atlas Insurance Management	53
USA Risk Group	50
Pro Group Captive Management Services Inc.	29
Willis Global Captive Management	18
Strategic Risk Solutions Inc.	17
Marsh Captive Solutions	14

**An 831(b) captive is a captive that elects to operate under Internal Revenue Code Section 831(b) that allows captives writing less than \$1.2 million in annual premiums to be taxed only on investment income. Source: BI Survey*

transfer "has become much more mainstream" during the past several years. At the same time, "service providers have figured out how to provide their services to the closely held market in a way that is more cost-efficient."

He noted that an insurance company qualifying for an 831(b) election must meet the same tests as a larger company to be considered an insurance company by the IRS. "First and foremost, a company that meets Section 831(b) is an insurance company," he said.

"The reason Congress put this in is just to simplify things for companies that are smaller, and the simplification is you only pay tax on your investment income," Mr. Lavelle said. But an insurance company that elects that approach can't take deductions for its losses, he said. "So it's really a trade-off."

"Nobody forms a captive without considering the tax, do they?" asked Frederick E. Turner, founding principal at Active Captive Management in Irvine, Calif. But for an 831(b) captive, "it doesn't work taxwise unless you have the risk management, the business purpose," he said. "All the 831(b)s, they report, they've got to pay tax on their investment income and pay tax on the money when they take it out."

David F. Provost, deputy commissioner in the Captive Insurance Division of the Vermont Department of Banking, Insurance, Securities & Health Care administration in Montpelier, acknowledged the concern that IRS scrutiny of 831(b) captives might draw unwanted attention to the broader industry. "It's the nose under the tent thing," he said. "If they're looking at one thing, they're bound to look at another."

Part of the problem, according to the Vermont regulator, is referring to the small companies as 831(b) captives. "If people call these things 831(b) captives, that's got to be the wrong approach," he said. "If you name the captive after the tax statute you're working with, that just raises a big flag that you're doing this for tax purposes."

"I try to avoid having anyone call them 831(b) captives just for that reason," said Mr. Provost. "It's a small insurance company and your taxes are your taxes."

He said he thinks the IRS eventually will look at the 831(b) captive issue. "I've got to think the original intent was to encourage the formation of small insurance companies. I doubt the original intent was to encourage the formation of small captives," Mr. Provost said. "If there are that many companies applying for that exemption, it's just got to come up."

Asked whether suggestions that the IRS might crack down on 831(b) captives is a concern, Utah's Mr. Elliott said, "I think it has to be." He likened it to a portfolio of insurance risks with too great a concentration in a single area, saying a change in captive tax treatment could be a problem for a domicile that has "a larger-than-appropriate grouping of a certain type of captive structure."

"There's risk inherent in that," Mr. Elliott said. "So we're looking to diversify into other areas."

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Mid-sized firms turn to captives

By MIKE TSIKOUDAKIS

Despite soft insurance pricing, middle-market companies appear to be a major factor in the growing number of captive formations, industry experts say.

Middle-market companies continue to look for ways to reduce their insurance costs by seeking programs that can be customized for and respond to their specific risk management initiatives, experts say.

"Although the market is soft, the economy is to a point where people are still looking at their expenses," said Rick Stasi, chief operating officer of Avizent Alternative Risk, a unit of Avizent, in Lexington, Ky. "That's still been driving people to look at other ways to turn premium into profits."

"We're seeing the largest growth in captive formations in middle-market companies," said Mark Morris, senior vp in the risk finance group for Lockton Cos. L.L.C. in Kansas City, Mo. "It's really actually been a very busy last 12 to 18 months."

According to *Business Insurance* research, the total number of licensed captives worldwide has grown from 5,617 in 2009 to 5,525 in 2010. The definition of what constitutes a middle-market company varies.

U.S. jurisdictions that have passed or updated their captive legislation have resulted in the domiciles experiencing "significant growth in captives, almost exclusively with middle-market companies," Mr. Morris said.

"I suspect you'll see Utah, Kentucky and Vermont all with significant growth in 2010, and a lot of that would be due to middle-market companies," Mr. Morris said.

Utah added 54 captives in 2010, Vermont added 33 and Kentucky added 25, according to *BI* research.

The growth is due in part to middle-market companies' greater knowledge and acceptance of captive programs, something that once was thought to be a way for larger corporations to cover their property/casualty exposures, observers say.

"The middle market was a little bit untapped as far as they just hadn't gone through the formations and had done the review that maybe some of the larger companies had already been through," Mr. Morris said.

Group captives in particular have gained momentum as opportunities to join existing programs are readily available rather than starting a new program, said Mr. Stasi.

Growth in middle-market captives also can be attributed to significant growth of services providers, such as audit firms, third-party administrators and captive managers, Mr. Morris said. Insurers also have shown more acceptance of receiving collateral from the captives as opposed to requiring collateral from the insured, he said.

Internal Revenue Code Section 831(b), which states a captive collecting no more than \$1.2 million

in annual premiums can elect to have underwriting income be tax-exempt, has contributed much to the growth middle-market captives have experienced, experts say.

Peter Mullen, executive vp at Artex Risk Solutions Inc. in Hamilton, Bermuda, said that while captive growth generally has been flat the past two years amid soft pricing, the area "that we're seeing of interest to middle-market companies are small captive insurance companies," he said. "We've been calling them microcaptives," he said in referring to 831(b) captives.

"We're seeing growth in the middle market when it comes to setting up captives for wealth management purposes, but not for risk management purposes," Mr. Mullen. "It's more of a wealth management sale than a risk management sale."

From a risk management perspective, 831(b) captives can be used by middle-market companies for lines of business that are high in severity but low in frequency, such as funding wind deductibles and product recall coverage, Mr. Mullen said.

In Europe, there has been a steady increase in interest by small to medium-size enterprises, "mainly driven through interest in cell structures and often focused more on the commercial opportunities available through revenue enhancement and customer-related products rather than pure risk financing, but also risk financing as well," said Dominic Wheatley, chief marketing officer of Willis Group Holdings P.L.C.'s international's captive practice in St. Peter Port, Guernsey.

That interest has been responsible for sustaining Guernsey's and the Isle of Man's captive industry with new cell businesses during the past few years, Mr. Wheatley said.

While cell structures historically have been offshore with limited access to European markets because the domicile is not a member of the European Union, "there is a latent demand for structures on the shore because some of the opportunities are restricted by being offshore as opposed to being within the European Union," he said.

As the implementation of Europe's Solvency II rules for insurers and reinsurers nears, companies need to better understand their risks, said Malcolm Cutts-Watson, chairman of Willis' international captive practice in St. Peter Port.

"What a captive brings is a formalized, regulated risk-financing vehicle," he said.

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Self-funded health plans under scrutiny

By **JERRY GEISEL**

WASHINGTON—The health care reform law could threaten the ability of employers that self-fund their health care plans to design those plans, benefit experts say.

The level of some of those threats could be known in just a few weeks, while resolution of other possible challenges may take much longer.

At issue is the decades-old freedom—established by the 1974 Employee Retirement Income Security Act—of self-funded employers to decide the health care conditions, procedures and treatments they will cover as well as the extent of that coverage.

ERISA exempts self-funded plans from hundreds of state laws that set benefit requirements on health care plans offered by insurers.

Seventy percent of employers self-fund preferred provider organization plans, the most common plan design that employers offer, according to a Mercer L.L.C. survey.

While self-funded plans, like fully insured plans, must comply with federal benefit laws, those laws, which include mandates to provide equitable coverage for maternity and mental health care expenses, are relatively few in number.

There are no federal requirements on the size that an employer must be to self-insure or reserves they must hold to assure that employees' claims are paid if the employer has financial difficulty.

Employers' freedom to design and fund self-insured plans with few impediments is being reviewed by federal regulators, who are mandated by a provision in the 2010 Patient Protection and Affordable Care Act to deliver

their conclusions to Congress by the end of this month.

The Department of Health and Human Services is completing one of those reports. HHS is required by the law to analyze the extent to which self-insured plans can offer less costly coverage than fully insured plans and, if so, whether the lower costs are "due to more efficient plan administration and lower overhead or to the denial of claims and the offering (of) very limited benefit packages."

Whether lawmakers will act on the report's findings and impose new requirements on self-funded employers is not known. In fact, many Republicans would like to see the law repealed, so Congress' appetite for expanding the law appears limited, experts said.

Still, congressional sentiment is not static, observers said.

"This is a report whose findings could result in greater scrutiny of self-funded plans. Ultimately, it could lead to changes," said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

Another investigation that could affect self-funded employer plans involves what are known as essential benefits. By 2014 under the law, health care plans, including self-funded plans, will be barred from imposing annual limits on essential benefits.

HHS, which is working with the Institute of Medicine, an independent health care adviser based in Washington, is charged with determining what benefits are essential, experts said.

Depending on the scope of the HHS essential benefit rules, self-funded plans may have to broaden the coverage they offer. It is unknown when the rules will be released.

"What may be a limited benefit

in a plan could become an unrestricted benefit," said Paul Dennett, senior vp-health care reform with the American Benefits Council in Washington.

"A rich base of benefits could become even richer," said Helen Darling, president of the National Business Group on Health in Washington, referring to the future HHS rules defining essential benefits.

What HHS proposes could raise the stakes on employer decisions on whether to continue to offer health care coverage, Mr. Dennett said.

Potential threats to self-funded plans also are coming from lawmakers.

Last month, Sen. Ron Wyden, D-Ore., introduced S. 248, which would move up to 2014 from 2017 when states could receive waivers from certain health care reform law requirements—such as the individual and employer mandates—in favor of their own reform measures. President Barack Obama endorsed the bill, saying states should have the flexibility to design their own reform plans while still "guaranteeing the American people reform."

Benefit experts said they worry that the measure could be amended to weaken the exemption from state requirements that self-funded plans enjoy, saddling employers operating in multiple states with tracking state rules and then amending their plans to comply with those rules.

"Multistate employers cannot provide health care plans efficiently if they have to keep track and comply with a multitude of state rules," said Gretchen Young, senior vp-health care with the ERISA Industry Committee in Washington.

UP Comings & Goings CLOSE



JEFFREY LUNT

NEW JOB TITLE: Cherry Hill, N.J.-based vp of professional liability for home office product management at Admiral Insurance Co.

PREVIOUS POSITION: Roslyn, N.Y.-based vp and chief underwriting officer of Physicians Reciprocal Insurers.

GOALS FOR NEW POSITION: I want to help Admiral become the premier professional liability insurer in (the) excess and surplus lines market by providing competitive products and top service.

INDUSTRY CHALLENGES: Increased competition in the market and a lack of meaningful tort reform in many states.

FIRST MARKET EXPERIENCE: After I graduated from New York State University at Binghamton, my first job was at PRI as an entry-level medical professional liability underwriter. I was there for 24 years.

CAREER HIGHLIGHT: Being able to work with a department of 30

people and basically help develop their careers in the insurance business.

WHAT YOU WANTED TO BE GROWING UP: I wanted to be a weatherman. I was into the science part of it and the forecasting. It was a hobby of mine (when I was a little boy), working with thermometers.

HOBBIES: I am an avid jogger. I still maintain a part-time hobby of following the weather. I have equipment and a weather station at home.

MOST PASSIONATE ABOUT: I am passionate about being hard-working and doing a good job, both with my family and my career. I enjoy working hard and reaping the rewards of working hard.

ON A SATURDAY AFTERNOON: Very busy with my daughters and their activities.

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 - RISK CONTROL CONSULTANT

The New York City Housing Authority ("NYCHA") requests proposals from qualified **INSURANCE BROKERS, RISK MANAGEMENT CONSULTANTS, AUDITORS, AND RISK CONTROL CONSULTANTS** for providing insurance placement, consulting, loss control and auditing services in support of NYCHA's Risk Management Program.

Proposals must be made in the format outlined in the RFP packet containing instructions, specifications and detailed submission requirements. Packets may be obtained beginning **March 21, 2011** from NYCHA's Coordinator for this RFP: Maria Manfredi, New York City Housing Authority, General Services Department, 90 Church Street, 12th Floor, New York, NY 10007-2919. Interested firms will be subject to a \$100.00 non-refundable fee; payable to NYCHA by USPS-Money Order/ Certified Check only for each set of RFP packets requested. Remit payment to NYCHA Finance Department @ 90 Church Street/6th Floor; obtain receipt and present it to 12th Floor/ General Services Procurement Group.

Completed proposals must be received by NYCHA's Coordinator by **4:00 PM on Monday, April 25, 2011**.

All inquiries concerning the scope of work for this RFP are to be directed in writing to NYCHA's Coordinator: Maria Manfredi, General Services Department, 90 Church Street, 12th Floor, New York, NY 10007-2919 or e-mail to Maria.Manfredi@nycha.nyc.gov no later than 4:00 PM on April 4, 2011.

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Mark your Calendar...

Industry Financials: Year-end Results

Publishing: March 21
Classified Ad Close: March 15
Ranking: Case Managers

Claims Management

Publishing: March 28
Classified Ad Close: March 22
Ranking: Third Party Administrators

Contact Monique Murray
at 212-210-0129
For Details

Comings & Goings

ONLINE

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

TO SUBMIT ITEMS

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

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- Willis North America
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- McGraw Wentworth
- Aon eSolutions

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- Utica Mutual Insurance Co.
- MOC Insurance Services Inc.
- Brit Insurance Holdings N.V.
- Starr International USA Inc.

OTHER PROVIDERS

- Willkie Farr & Gallagher L.L.P.
- Crawford & Co.
- Clyde & Co.

Market Moves

MGU's automotive unit offers Chubb coverage

OVERLAND PARK, Kan.—Preferred Concepts L.L.C. has launched an automotive industry underwriting unit.

SeaFire Insurance Services is a managing general underwriter that provides insurance products from Chubb Group of Insurance Cos. for national automotive industry customers, the New York-based program administrator said in a statement.

Based in Overland Park, Kan., SeaFire specializes in six target markets: franchised automotive dealers, independent automotive dealers, franchised recreational vehicle dealers, franchised motorcycle dealers, collision repair facilities and mechanical repair facilities.

"We seek to provide a stable, long-term option to meet the demanding and unique needs of auto dealers and provide them with competent underwriting and competitive alternatives," said Dennis Kane, president of SeaFire Insurance Services, in the statement.

Additional brokerage services are available through Mercator Risk Services Inc., which Preferred Concepts purchased last summer.

All Risks acquires Florida brokerage

FORT LAUDERDALE, Fla.—All Risks Ltd. said it has acquired Coconut Creek, Fla.-based insurance brokerage Champion Special Risk Brokers L.L.C.

The acquisition, for which financial terms were not disclosed, aims to expand the wholesale brokerage's presence in the Southeast, Hunt Valley, Md.-based All Risks said in a statement.

Champion Special Risk Brokers has focused on providing specialty excess and surplus line products through independent agents since 2006.

Steven H. Kass, president of Champion Special Risk Brokers, and his staff of nearly 50 will join the existing staff at All Risks' Fort Lauderdale, Fla., office.

Along with the name change to All Risks, e-mail addresses for the former Champion Special Risks Brokers employees have changed to the following format: first initial, last name @allrisks.com.

Crawford office opens in Panama City

PANAMA CITY—Crawford & Co. has opened an office in Panama City and named Miguel Stempel as manager of operations.

The office is intended to serve a growing insurance market in Panama and will handle property/casualty, marine and transportation claims along with coordinating large claims with Crawford's adjusting unit, the Atlanta-

based claims management company said in a statement.

"The Panamanian insurance market is expected to show significant growth in 2011 and beyond," Mauricio Alonso, senior vp of Crawford and regional managing director for Latin America, said in the statement.

Based in Panama City, Mr. Stempel, who has 18 years of experience as a catastrophe adjuster and managing property/casualty claims for local and regional underwriters, is responsible for Crawford's claim operations and business development in Panama.

The office is at Edificio Torre Universal Piso 8, Ave. Federico Boyd, Bella Vista, Ciudad de Panamá, Republica de Panamá.

The telephone number is 011-507-203-1953.

Marine insurer renames, consolidates units

WESTBROOK, Conn.—Maritime General Agency Inc. has united its subsidiaries under a single brand, Maritime Program Group.

Maritime General Agency, Marine MGA Inc. and Windward Marine Underwriters have consolidated under the Maritime Program Group name to offer insurance products, underwriting and other maritime services through one company, the Westbrook, Conn.-based managing general agency said in statement.

The company said its focus will

remain on core segments of recreational, inland and ocean marine insurance and client services.

Marine MGA was founded in 1990 as a specialty marine MGA. Maritime General Agency was formed in 1992 as an MGA with a focus on the marine recreational industry. Windward Marine Underwriters was formed in 2002 as an underwriter for yachts valued at less than \$1 million.

Maritime Program Group has developed a new website at www.maritimegeneral.com with updated forms and applications. It also has launched a new marketing tagline, "coverage in motion," which will appear on all promotional materials.

For more information, contact

Christopher L. Pesce, president of Maritime Program Group, at 860-399-3656 or cpesce@maritimepg.com.

TO SUBMIT ITEMS

MARKET MOVES

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

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Fire: Triangle factory fire brought safety changes

CONTINUED FROM PAGE 1

was formed just months after the 1911 blaze. The blaze was the deadliest U.S. workplace fire until Sept. 11, 2001, according to the Insurance Information Institute.

The fire "was a catalyst for change" based on the public outcry it created, said ASSE President Darryl Hill, who is vp of safety and health at Auburn Hills, Mich.-based ABB Inc., which provides power and automation products.

It was "watching those women and children, some of them actually holding hands as they jumped from the building from the ninth floor, knowing they were going to die, but preferring not to burn" that led to creation of workplace safety laws, said Mark Oldham, Richmond, Va.-based executive consultant, risk services department, for Allianz S.E.'s Fireman's Fund Insurance Co.

"It started making employers aware of their responsibility to their workforce," Mr. Oldham said. "Employers today understand that no employee should have to sacrifice their life or their health in the course of employment."

"It's actually kind of hard to overstate the impact that it's had," said Barry Franklin, Chicago-based managing consultant and director in Towers Watson & Co.'s corporate risk management practice.

"Just look within the field of risk management and related fields since then," he said, adding

the ASSE was instrumental in achieving passage of the Occupational Health & Safety Act of 1970 and in establishing the National Institute for Occupational Safety and Health. "It was such a catalyst for basically raising the bar with respect to the steps that companies need to take to protect their workers," Mr. Franklin said.

The fire was a pivotal event, said Michael Mowrer, executive vp of HSB Professional Loss Control, a unit of Hartford, Conn.-based Hartford Steam Boiler Inspection & Insurance Co.

"There had been some large loss fires not that long before," but the Triangle fire "happened at a time when you saw more activism on the part of union organizations" that were trying to address employees' working conditions.

More than 30 labor-related laws written by the New York (State) Factory Investigating Commission, which was established in response to the fire and has been credited with developing a new model for worker safety in U.S. mills and workshops, eventually were adopted by the state legislature.

The laws "recast the labor law in New York state," said a spokesman for the Insurance Information Institute in New York. They included requiring automatic sprinklers in high-risk buildings and mandatory fire drills in large shops. The laws also required workplace doors be kept unlocked and that they swing outward to



AP PHOTO

Union members gathered in New York to mourn the March 1911 deaths of 146 workers in the Triangle Shirtwaist Co. factory fire, which the Insurance Information Institute said was the worst workplace fire until Sept. 11, 2001.

prevent people from being trapped inside, two critical factors in the Triangle factory deaths.

Mr. Mowrer said the Quincy, Mass.-based National Fire Prevention Assn., which then was in its infancy, focused on "life safety" concerns as a result of the fire.

Change in thinking

Previously, fire codes generally "focused more on the concerns of conflagrations, of burned-down major parts of large cities," such as the Great Chicago Fire in 1871

and the fire that came after the 1906 San Francisco earthquake, which destroyed more than 10,000 buildings in each city. "The concern was," Mr. Mowrer said, "How do we keep them from destroying multiple buildings?"

The Triangle Shirtwaist factory tragedy "turned the attention to more inside the buildings" and the possibility of a large loss of life within a single structure, he said.

Walter S. Beatty, senior consulting engineer of insurance services with AXA Matrix Risk Consultants Inc. in Pottstown, Pa., said in addition to bringing worker safety to the forefront, the 1911 fire "also gave the fire marshals and the fire commissioners in major cities more ability to require fire protection equipment and improvements."

"It was a slow process" even after the fire, "but the world changed at this time because there was a real push to say, 'We need to have legal requirements, where people have to provide basic safety built into their facilities,'" Mr. Mowrer said.

While insurance companies already were inspecting facilities at that time, the changes in codes meant "they were able to start relying a little bit more on code enforcement as those got developed," Mr. Mowrer said. "You had a higher level of confidence that basic hazards" were being addressed by legal requirements "rather than just some financial incentive."

The NFPA 101 Life Safety Code, in which the NFPA set standards for fire safety, is closely tied to Chubb's underwriting protocols, said Ann Minzner Conley, Whitehouse, N.J.-based vp, loss control, at the Chubb Group.

She said Chubb still checks under tables in New England textile mills to make sure there are no scraps of fabric. The Triangle Shirtwaist factory fire began in a scrap bin, perhaps from a match or cigar butt.

Loss prevention approaches including panic exit bars, which are the push bars installed on exterior doors to allow a quick exit of buildings, existed even before the fire, but the fire helped spur a new movement toward fire safety, said Gary Dombroff, a manager in the field services department of the New York State Insurance Fund, a nonprofit state agency that provides workers compensation and disability benefits.

In addition, the fire encouraged use of sprinkler protection systems that already were in existence, which are "the most reliable way to prevent these kinds of tragedies," said Louis Gritzko, Norwood, Mass.-based vp, and manager of research at Factory Mutual Insurance Co., which does business as FM Global.

While the widespread use of fire drills and high-rise fire equipment did not come immediately after the fire, "it would be hard to argue that it didn't have a significant influence," Towers Watson's Mr. Franklin said.

The fire also was a major impetus for the state-based workers compensation system, observers say.

In general, the fire "helped set the tone nationwide that the workers comp system was something that businesses could adopt," Mr. Dombroff said.

In New York in particular, the fire set up a climate that led businesses to accept workers comp "as a cost of doing business" and the 1914 Workmen's Compensation Law.

"Practical politics" was a factor in this development, Mr. Dombroff said. The "political bosses saw that immigrants and labor groups were going to be large voting blocs" and decided to use the momentum of public outrage due to the Triangle fire to develop the no-fault workers comp system. Previously, employers could turn to a common law defense that workers assumed the risk of their job, he said.

Locked exits, short ladders spelled disaster

The Triangle Shirtwaist Co. factory fire began at about 4:45 p.m. on a Saturday afternoon as workers were preparing to leave for the day, according to historians.

A cutter noticed a fire had started in his scrap bin, apparently from either a match or a cigar. Within minutes, it spread and engulfed the eighth, ninth and 10th floors of the Asch building at Washington Place and Greene Street in New York.

A total of 146 workers, most of them immigrant girls, died in the March 25, 1911, blaze.

"The building had only one fire escape, which collapsed during the rescue effort," according to the U.S. Occupational Safety and Health Administration's website. "Long tables and bulky machines trapped many of the victims. Panicked workers were crushed as they struggled with doors that were locked by managers to prevent theft, or doors that opened the wrong way. Only a few buckets of water were on hand to douse the flames. Outside, firefighters' ladders were too short to reach the top floors and ineffective safety nets ripped like paper."

In his authoritative 2003 book, "Triangle: The Fire That Changed America," author David Von Drehle quotes a United Press news reporter: "Girls were burning to death

before our eyes. There were jams in the windows. No one was lucky enough to be able to jump, it seemed. But one by one the jams broke. Down came bodies in a shower, burning, smoking, lighted bodies, with the disheveled hair of the girls trailing upward." In all, the reporter counted 54 victims who leaped or fell to the sidewalk.

In a 1964 lecture at Cornell University's Industrial Relations School, Frances Perkins, who witnessed the fire and served as U.S. labor secretary from 1933 to 1945, said, "Everybody who jumped, and a good many did jump from the ninth and 10th floors, was killed. The other people who died were all people who were burned or smothered by the smoke in the factory itself." Ms. Perkins played a key role in the various reforms that came after the fire.

Factory owners Max Blanck and Isaac Harris, who were on the 10th floor, escaped by making their way to the roof and then to the building next door. They were indicted, and later acquitted of manslaughter charges in the fire.

The Asch building, now a New York University science building, still stands. A plaque on the building commemorates the tragedy.

—By Judy Greenwald

Repeat of Triangle fire still possible despite changes

Negligence continues as fresh risks require constant monitoring

By JUDY GREENWALD

A catastrophe like the 1911 Triangle Shirtwaist Co. factory fire, in which 146 people perished, could happen again, experts say.

While today's firefighting systems and equipment, building evacuation drills and other loss-control measures have reduced the chances of repeating such a disaster, experts say negligence still causes fires, damage and loss of life in the workplace and elsewhere.

Observers point to 165 deaths in the 1977 Beverly Hills Supper Club fire in Southgate, Ky.; 87 arson-related deaths in the 1990 Happy Land social club in the Bronx; 25 deaths in the 1991 the Imperial Food Products Inc. chicken processing plant fire in Hamlet, N.C.; and 100 deaths in the 2003 Station nightclub fire in Warwick R.I. that was ignited by pyrotechnics.

Internationally, the Kader toy factory fire near Bangkok killed 188 in 1993.

And in December, the Ha-Meen Group garment factory fire in Bangladesh killed 30 and injured more than 100; like the Triangle fire, some of the victims jumped to their deaths.

Inadequate fire prevention methods have been cited as a factor in all these tragedies, including locked doors that prevented victims from escaping, also like the Triangle fire.

"It's not impossible for that kind of a tragedy to happen again," said Terrie Norris, president-elect of the Des Plaines, Ill.-based American Society of Safety Engineers. "I have found exits that are obstructed. I have found stairways that are blocked with stored items," said Ms. Norris, who also is the Long Beach, Calif.-based risk control manager at Bickmore Risk Services & Consulting.

While problems are less likely to occur at large companies, Ms. Norris said she has found obstructed exit doors even at large hotels.

Peter Willse, Hartford, Conn.-based vp and director of research

for XL Global Assets Protection Services L.L.C., said after heavy snow fell this winter, "a lot of people have not been shoveling out their emergency exits," which makes it difficult for people to escape should there be a fire.

Michael Mowrer, executive vp at HSB Professional Loss Control, a unit of Hartford, Conn.-based Hartford Steam Boiler Inspection & Insurance Co., said, "There are many facilities out there that are more than 20 years old, which means they may not be meeting the current requirements, and per-

haps have not been evaluated since they opened." For example, the Imperial plant had not been inspected since it opened several years before the fire, he said.

Many times, he also said, sprinklers are recommended for older facilities, but "those financial decisions are not easy."

New risks

Meanwhile, "new risks are developing at a breakneck pace," said Mark Oldham, Richmond, Va.-based executive consultant, risk services department at Allianz S.E.'s

Fireman's Fund Insurance Co.

"We have the potential for concurrent causation from complex systems in manufacturing. We have changes in demographics, in the workforce. We're dealing with age. We're dealing with language. We're dealing with culture. All of these things have to be considered, and employers have to pay constant attention" to risk assessment, mitigation and monitoring, Mr. Oldham said.

Louis Gritzko, Norwood, Mass.-based vp, and manager of research at Factory Mutual Insurance Co.,

which does business as FM Global, said steps firms should take to prevent a fire include establishing a fire emergency response team; working with local fire departments; installing good protective equipment, including sprinkler systems; training all personnel, not just the emergency response team; conducting fire drills; and periodically reviewing firefighting plans and making revisions as needed.

It is critical to remember that the majority of these losses are preventable and "corrective solutions" are available, Mr. Gritzko said.

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INDEX

Issue of March 14

ADVERTISER	PAGE #
Aetna Corporate	5
Aon Corporation	2
Business Insurance	19, 21, 23
Liberty International Underwriters	11
Liberty Mutual	24
NAPCO	14
Pinnacle Actuarial Resources	15
Travelers	13
UniRisk	6
World Captive Forum	17
Zurich North America	7

Quake: Big insured loss expected

CONTINUED FROM PAGE 1

Friday, was projected to surpass 1,000. Japanese officials expected numbers to rise as emergency responders continued to access areas hit hardest by the quake. Millions of people also were without power late last week, and some nuclear power plants in affected areas were shut down, with states of emergency issued for at least five nuclear reactors.

The insurance industry worked to gauge the extent of losses from the devastation.

"I'm pretty sure it's going to be in the top three of all time in terms of insured damage," said Robert Wood-Muir, chief research officer for Newark, Calif.-based Risk Management Solutions Inc. in London. He said estimating insured damage from the quake is complicated for several reasons, not the least of which is the size of the area affected.

There also is a "whole question about insurance penetration," said Mr. Muir-Wood, whose organization did not release a damage estimate last week.

"Commercial and industrial lines are significantly underinsured, with many large corporations insuring their properties on an indemnity basis only, with no loss of profits or earthquake insurance," RMS said in an analysis. "Many small to medium-sized business are completely uninsured."

"Despite the size of the market...insurance penetration and density is very low when compared to leading western markets, particularly in commercial and industrial lines," RMS wrote.

Japan's building codes may help keep property losses low relative to the size of the event, at least for newer structures.

Building codes in Japan are "very good," said Tom Larsen, senior vp at Oakland, Calif.-based catastrophe modeler EQECAT Inc. He noted that building codes are "evolutionary" and improve over



REUTERS

A destroyed gas station is seen in Oarai, Japan. The country's building codes are considered 'very good,' and are expected to keep property losses low relative to the size of the event, at least for newer structures.



REUTERS/KYODO

A tsunami hit the coast of Iwanuma in northeastern Japan on Friday. Parts of Japan's coast experienced 30-foot-high waves.

time, "but we don't go back and rebuild buildings."

Mr. Larsen said "we're not seeing a lot of loss of life" because of building damage in Japan; rather, it is because of the tsunami's effects.

"The age of the building is very critical," said RMS's Mr. Muir-Wood. "A lot of the older postwar buildings are out there. I expect the new buildings will come through much better than the ones built in the '50s and '60s."

Japan's earthquake coverage pool also will limit the impact on the insurance industry, observers noted.

"Earthquake insurance for dwelling risks in Japan is retained entirely within Japan in the government-backed pooling scheme managed by Japan EQ Re, so for nonlife companies the only losses which are eligible to be reinsured outside of Japan are those arising

from commercial and industrial risks," James Vickers, chairman of Willis Re International & Specialty in London, said in a statement.

Market impact

While noting that it is too early to say what the extent of losses will be, Robert Hartwig, president of the New York-based Insurance Information Institute, said: "There will be a very substantial impact on the Japanese domestic property/casualty insurance business, global reinsurance markets, and potentially on the catastrophe bond markets. There certainly is a Japanese earthquake exposure in the cat bond market."

The earthquake's impact on the reinsurance market likely will be felt beyond Japan, said a spokeswoman for Germany's Hannover Re Group. "It will turn the prices in Japan," she said, "but it seems this earthquake could also have implications on worldwide capacity and spring a market change."

Hannover Re could not immediately estimate its losses in the quake.

Swiss Reinsurance Co. and Munich Reinsurance Co. also said Friday that their losses would not be estimated until the extent of the devastation could be assessed.

Catastrophe reinsurers in Bermuda either had no comment or did not return phone calls.

Paul Kneuer, senior vp and chief reinsurance strategist for reinsurance broker Holborn Corp. in New York, said losses from the quake will be "far more than \$10 billion" and affect every major reinsurance market.

"This by itself will not be enough to kind of tap out reinsurers' capital, but every reinsurer is

losing money this year," he said. "Clearly, in some parts of the world where prices have been very low, they will increase," but the impact on the U.S. market is unclear.

Joseph M. Fedor, executive vp

STRONGEST IN JAPAN

Last week's 8.9 magnitude earthquake was the strongest earthquake on record for Japan, according to the U.S. Geological Survey, with the previous largest occurring in 1896 when an 8.5 magnitude quake struck Sanriku, killing 27,000 and causing an 80-foot tsunami.

The area where the quake occurred is known as the Japan Trench, in which nine earthquakes with a magnitude of 7.0 or higher have occurred since 1973, according to the USGS. Those include a 7.8 magnitude quake in 1994 and a 7.7 magnitude quake in 1978.

—By Jeff Casale

and director at Pearl River, N.Y.-based U.S. Re Corp., said he estimates total quake losses will be "a little bit higher" than \$15 billion.

Mr. Fedor said the losses "will have some impact on the general reinsurance market. The reinsurance industry has lost a fairly sizable amount of earnings so far this year from areas where they're not heavily concentrated" as they are in Europe or the United States.

"Since reinsurance is an international industry, they are likely to spread some of the recoupment of that loss by charging more in other areas, especially if some of those reinsurers have exhausted their available retrocessional protection" and "are now looking to purchase more coverage for the rest of this year."

The degree of hardening "will basically be a function of the size of the actual loss itself and how it filters through the reinsurance markets. The reinsurers that are going to be the most substantially hit will probably be your major directs, like Munich Re and Swiss Re, who have sizeable concentrations of reinsurance arrangements" in Japan, Mr. Fedor said.

Mike Schnur, a Chicago-based partner with TigerRisk Partners L.L.C., said as a result of the losses in Japan and New Zealand, any additional softening is "pretty well done," but it is too soon to tell whether the Japan quake will drive up U.S. rates.

Bryon Ehrhart, chairman of Aon Benfield's analytics and investment banking divisions in Chicago, said he does not expect the quake to have a significant impact on the reinsurance market, noting that government reinsurance of personal lines and the relatively small commercial exposure in the area affected by the quake. "For the industry, it looks like it's something that's not going to be very impactful."

Because catastrophe reinsurance in Japan tends to renew April 1, "whatever impact this will have will be felt very immediately," said EQECAT's Mr. Larsen.

Michael Bradford and Jeff Casale contributed to this article.

News In Brief

CONTINUED FROM PAGE 1

with HSBC Bank Bermuda Ltd., HSBC Bank (Cayman) Ltd. and HSBC Insurance Agency (USA) Inc., Kane will acquire HSBC Insurance Holdings (Bermuda) Ltd., HSBC Insurance SPC Ltd., the insurance management business and assets of HSBC Bank (Cayman) Ltd. and HSBC Insurance Agency (USA) Inc. The deal is backed by private equity firm CBPE Capital L.L.P.

Zurich names exec to succeed Vitale

Zurich Financial Services Group has named Thomas Huerlimann CEO of its global corporate operations. He succeeds Mario Vitale, who was named president of the U.S. insurance operations of Aspen Insurance Holdings Ltd.

AIG repays \$6.9B in bailout funds

American International Group Inc. last week said it repaid about \$6.9 billion to the U.S. Treasury with the close of its sale of all MetLife Inc. equity securities it received when it sold its American Life Insurance Co. to MetLife last year. The aggregate proceeds of the sale, before expenses, were about \$9.6 billion. Under terms of its MetLife agreements, \$3 billion is to be placed into escrow as substitute collateral for the MetLife common equity units sold, AIG said.

Analyst sees signs of P/C market firming

The U.S. commercial property/casualty insurance market is showing signs of hardening, SNL Financial L.C. said. U.S. commercial property/casualty premiums grew last year at their fastest rate since 2006 due to underwriting losses and "unfavorable reserve development." It said the growth in overall premiums could lead to higher rates for insurance buyers. Meanwhile, MarketScout in its monthly "Market Barometer" report last week said that U.S. commercial property/casualty rates dropped an average of 5% in February compared with a year earlier.

Judge OKs class action against McKesson

A federal judge in Massachusetts has certified a nationwide class action lawsuit, *In re McKesson Governmental Entities AWP Litigation*, which claims San Francisco-based pharmaceutical wholesaling giant McKesson Corp. fraudulently added a 5% markup to the average wholesale price of hundreds of brand-name drugs, costing thousands of public entity health plans millions of dollars. McKesson settled similar charges in 2009, agreeing to pay \$350 million as part of a separate class action suit initiated by the New England Carpenters Health Benefits Fund.

Judge halts \$18B ruling against Chevron Corp.

A federal judge in New York sided with Chevron Corp. last week in halting an \$18 billion award to Ecuadorian plaintiffs in a pollution case. Judge Lewis Kaplan extended a temporary order stopping enforcement of the award by an Ecuadorian court. Plaintiffs argued the oil company is responsible for hazardous waste on their land.

Walgreen to sell PBM to Catalyst

Walgreen Co. plans to sell its pharmacy benefit management operations, Walgreen Health Initiatives Inc., to Catalyst Health Solutions Inc. for \$525 million. The cash deal lets Walgreen focus on its drugstore and health care business, it said. The deal also will increase Catalyst Health's membership from 7 million to 18 million, doubling the volume of prescriptions it handles to 165 million annually. The deal, structured as an acquisition of all of the capital stock of Walgreen Health Initiatives, is expected to close by the end of June.

Defined benefit plans outperform 401(k) plans

Defined benefit plans have consistently earned higher rates of return than 401(k) plans, according to an analysis. From 1995 through 2008, the median annual rate of return for defined benefit plans averaged 7.51% compared with 6.48% for 401(k) plans, according to Towers Watson & Co. It attributes the difference to greater investment resources that are available to corporate defined benefit plans compared with 401(k) plan participants.

NBGH: Reforms to withstand attacks

CONTINUED FROM PAGE 3

Developing regulations is challenging, Ms. Borzi said. "People say to me, 'You are putting out too much...stop cranking out this stuff.' Others say, 'We need more guidance.' We have to walk a tightrope," she said.

Developing rules also is difficult because some PPACA provisions were not well crafted, Ms. Borzi said.

For example, under one provision that is due to take effect in 2014, employee insurance premi-

um contributions would not be considered affordable if they exceed 9.5% of household income. In such situations, employers would be liable for substantial financial penalties. In such situations, employers would be liable for a \$3,000 annual penalty for each employee whose premium contribution exceeds 9.5% of household income, receives coverage through a state insurance exchange and is eligible for federal premium subsidies.

But the law does not define household income and it isn't

clear, due to privacy issues, how an employer could obtain information such as income earned by the employee's spouse.

"I just don't know how you (employers) could get this information. We are trying to figure this thing out," Ms. Borzi said.

On a related front, regulators are focusing on setting rules for insurance exchanges that states are required to establish by 2014. The exchanges will be available to individuals and small employers initially and open later to large employers.

Australia: Flood review

CONTINUED FROM PAGE 4

(\$2.71 billion) in the floods, welcomed the review.

"We believe this review provides a great opportunity for the general insurance industry to contribute to the current debate on how Australian communities can be more resilient to extreme weather events," Rob Whelan, CEO of the ICA, said in a statement.

But the association also said it believes that in addition to improving insurance coverage of floods, other steps need to be taken to better mitigate such catastrophes. The ICA also proposed a plan to tackle disasters (see box).

Among its proposals are strengthening building standards, improving flood data and modeling, and devising a standard definition of what constitutes a flood in insurance contracts.

Frank O'Halloran, CEO of Sydney-based QBE Insurance Group Ltd., Australia's largest insurer,

welcomed the review.

He said flooding in the states of Queensland and Victoria, as well as damage from Cyclone Yasi in February, "increased the awareness of governments and the public that the insurance industry is not prepared to provide flood coverage in areas where it cannot assess the risk."

He said he supports the government's review, including exploring whether a state-backed insurance fund is needed.

He said QBE supports the ICA's 10-point plan, saying the insurance industry and the government must work together to improve flood mapping.

"We as an industry, with the government, need to get to grips with this issue, and now it is a high priority," Mr. O'Halloran said.

The opposition Liberal Party argued against the idea of flood insurance subsidies that it said could distort the insurance market, according to a spokeswoman.

10-POINT PLAN

The Insurance Council of Australia has proposed that the government and the insurance industry work together to avoid or mitigate future disasters, particularly floods, by:

- Developing a standard definition of flood for insurance contracts.
- Improving disclosure so insurance buyers better understand their coverage.
- Providing better advice to insurance buyers.
- Compiling adequate flood data, including a digital terrain flood model.
- Improving land-use planning.
- Improving infrastructure.
- Improving building standards.
- Removing insurance taxes.
- Starting an educational and financial literacy campaign about insurers' obligations and resolving disputes.
- Measuring the effectiveness of disaster relief payments.

Defect: Courts divided on CGL rulings

CONTINUED FROM PAGE 4

ship in and of itself to constitute an occurrence, the resulting property damage would be treated as a triggering occurrence.

In the Georgia case, Hathaway sued its plumbing subcontractor, Whisnant Contracting Co. Inc., alleging negligent plumbing work at three job sites. The general contractor sought to recover the costs associated with water damage to properties around the job sites.

After a default judgment against

the plumbing company, Hathaway sought payment from Whisnant's insurer, American Empire Surplus Lines. The insurer denied liability and argued that the damage did not arise out of an occurrence as defined under the policy as "an accident, including continuous or repeated exposure to substantially the same, general harmful conditions."

A trial court agreed with the insurer, but a state appeals court reversed the decision and ruled that because Whisnant's faulty

workmanship caused damage, the plumbing company's acts constituted an occurrence.

In its ruling, the Georgia Supreme Court said: "an occurrence can arise where faulty workmanship causes unforeseen or unexpected damage to other property. In reaching this holding, we reject out of hand the assertion that the acts of Whisnant could not be deemed an occurrence or accident under the CGL policy because they were performed intentionally."



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No laughs after slip on banana peel

They're sometimes the slippery demise of a cartoon character or a slapstick comedian and have been known to cause three-car pile-ups in the video game "Mario Kart."

And a banana peel allegedly was the downfall of a California woman last year.

Ida Valentine, 58, is suing the 99 Cents Only store in Fontana, Calif., where she allegedly slipped on a banana peel in April, resulting in a herniated disk and tissue damage, according to media reports.

Ms. Valentine spent \$9,000 on medical bills and is seeking an unspecified amount in damages, according to reports, which said the Commerce City, Calif.-based chain refused a settlement of \$44,000.

99 Cents Only stores are located in California as well as Arizona, Nevada and Texas.

In an episode of the television show "MythBusters," it was concluded that one could indeed slip and fall on a banana peel.

However, the test included hundreds of individual banana peels on the floor at the same time as part of the "banana peel speed test." The 2009 test on the Discovery Channel show resulted in six falls in less than a minute.



Business Insurance END PAGE

Contributing: Jeff Casale, Roberto Cenicerros, Judy Greenwald



Judge calls for relief in dispute

Two judges have struck out and a third is coming to the plate in the contest between Kosher Sports Inc. and the New York Mets.

In a dispute over the right to sell hot dogs at the Mets' Citi Field stadium, a lawyer for vendor Kosher Sports was concerned that a judge in the dispute showed his true colors before ruling on the issue and the judge withdrew from the case.

According to the New York Daily News, during a late February hearing on the case, the attorney for Englewood, N.J.-based Kosher Foods expressed concern to Judge Andrew Carter about seeing him wearing a Mets cap outside the courthouse, and that he also was wearing a blue-and-

orange tie, the Mets' team colors.

According to the report, the judge reassured the attorney there was "no need for concern about that."

Apparently, though, the judge had second thoughts and withdrew from the case early this month. A source told the paper that the judge wanted to ensure there was no perception that he was rooting for one side or the other.

It was the second time that a judge had withdrawn from the dispute.

Earlier, the litigation, which centered on Kosher Food's right to operate at the stadium on Saturdays, was before Judge Jack B. Weinstein said he could not get involved in interpreting rabbinical law.



Don't ess-may with Exas-Tay

A Texas lawyer and blogger is taking on the Texas Department of Insurance's Division of Workers Compensation over a cease-and-desist letter stemming from a 2005 state law.

The state agency sent the letter in February to Lubbock attorney John E. Gibson, saying state law bars him from using "Texas" along with the term "workers comp" on his blog, the Texas Workers Compensation Law Blog.

The letter says Texas Labor Code prohibits "a person, in connection with any impersonation, advertisement, solicitation, business name, business activity, document, product or service" from using the words "Texas Department of Insurance," "Texas workers compensation" or Texas in conjunction with "workers comp" or "workers compensation."

Violation of the law carries a \$25,000-per-day fine.

But Mr. Gibson has fought back with a suit alleging Texas' commissioner of workers compensation is violating his constitutional rights. He is seeking a declaratory judgment voiding the state's order.

The ABA Journal wrote that advising the lawyer not to use certain words was similar to the government telling the late comedian George Carlin not to swear. It just generated more cussing, and lots of it.

For instance, the lawsuit says the statute would prohibit Texas doctors from advertising they treat workers comp injuries.

Julie Ferguson, a blogger for Lynch Ryan's Workers' Comp Insider, wrote a "Don't mess with Texas" headline that "If you ever use the words 'workers compensation' and 'Texas' in the same sentence, you better think twice."

She suggested that "from here on out we may begin referring to Texas as 'Exas-Tay,'" pig Latin for the state's name.

EMPLOYMENT ATTORNEY TURNS TABLES ON FIRM

A veteran defense employment attorney is suing his own firm on grounds of employment discrimination.

Raymond J. Carey, 57, a partner with Foley & Lardner L.L.P. in Detroit, filed suit in Ann Arbor, Mich., federal court late last month.

Mr. Carey said after he joined Foley in 2000, the law firm was late in fulfilling its promise to make him a full partner. In addition, he has been a "victim of a continuing pattern of discrimination on account of gender, race and age

with respect to compensation and benefits as well as other terms and conditions of employment," according to his suit.

In 2010, he was paid "the lowest rate among all partners of defendant's Detroit office, and at a lower rate than similarly situated female, non-Caucasian and younger partners" who were less qualified, Mr. Carey said in the suit he filed on his own behalf.

The suit, which also alleges breach of contract among other allegations, seeks economic,

compensatory and punitive damages among other redress.

A Foley spokesman did not respond to a request for comment.

Meanwhile, Mr. Carey is still listed on Foley's website, which notes he has more than 20 years of experience working with health care and other employers and "routinely counsels and represents employers concerning labor/management relations issues, collective bargaining and management/labor disputes" as well as proceedings before various agencies.



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