

Business Insurance

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COURT SAYS INSURERS FOR ALLEN STANFORD MUST PAY DEFENSE / PAGE 3

MARSH & McLENNAN AGENCY ACQUIRES RUTHERFOORD IN LATEST DEAL / PAGE 3

GROCERY CHAIN TO EXPORT EXPERTISE IN DESIGNING HEALTH PLANS / PAGE 3

In Brief

Judge delays settlement of WTC responder claims

The judge overseeing litigation stemming from individuals' claims that they were made ill or injured while working on the World Trade Center rescue and recovery efforts delayed a multimillion-dollar settlement reached between WTC Captive Insurance Co. and lawyers representing thousands of New York city and contract workers. In a preliminary fairness hearing on the settlement, U.S. District Judge Alvin Hellerstein in New York criticized the deal as "unfair" and sent both sides back to negotiate further. Among his concerns were that the deal would provide inadequate individual settlement amounts, and that too much money was being set aside for future claims rather than being paid out to current plaintiffs. He also said lawyers'

See **IN BRIEF** page 22



AP PHOTO

President Barack Obama in recent weeks has stepped up efforts to win passage of comprehensive health care reform legislation.

HEALTH CARE REFORM

Employer impact of reforms weighed

By **JERRY GEISEL**

WASHINGTON—As Congress was nearing a final vote on sweeping health care reform, the historic legislation would, if approved, likely have the biggest impact on employers that impose hefty premium contribution requirements on employees and those offering generous retiree prescription drug coverage.

The House of Representatives was poised over the weekend to vote on

a reform package to revamp the nation's health care delivery and financing system, based in large part on a measure passed by the Senate in December and incorporating many of changes that President Barack Obama suggested last month.

With House approval, the Senate this week would take its vote and, if approved, send the bill, H.R. 4872, to President Obama for his signature.

See **REFORM** page 18

FEDERAL LEGISLATION & REGULATION

New rules proposed for financial sector

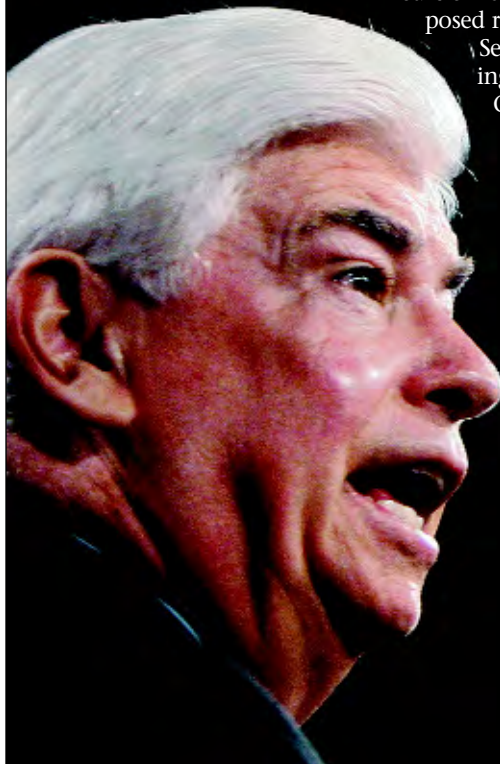
Regulatory reform bill gets mixed review

By **ZACK PHILLIPS**

WASHINGTON—Insurance industry representatives had mixed reactions last week to the latest Senate financial services regulatory overhaul legislation, applauding some changes but vowing to seek further modifications to distance insurers from some of the proposed regulations.

Senate Banking, Housing and Urban Affairs Committee Chairman Christopher Dodd, D-Conn., unveiled his latest version last week and said his committee would begin marking up the financial services regulatory bill this week.

See **BILL** page 20



AP PHOTO

Connecticut Sen. Christopher Dodd last week unveiled a bill to overhaul regulation of the financial services industry.

SPOTLIGHT

INDUSTRY FINANCIALS: YEAR-END RESULTS

Risk managers building relationships directly with insurers and tapping internal resources; many factors figured into recovery of P/C market; brokers performed better than expected; U.S. reinsurers post strong results; prospects are limited for a repeat of health insurer profitability in 2010. **PAGE 11**



P/C INSURERS

Hartford to raise funds to repay government

By **JUDY GREENWALD**

HARTFORD, Conn.—Hartford Financial Services Group Inc.'s plan to repay \$3.4 billion in federal assistance is seen as a good sign for the

insurer, though analysts note that some concerns about Hartford's investment exposure remain.

The insurer said last week that it plans to conduct a \$3.05 billion public offering of equity and debt

securities as part of its plan to repurchase \$3.4 billion of its preferred shares that were issued last year to the U.S. Treasury Department under the Troubled Asset Relief Program.

Liam E. McGee, Hartford's chairman, president and CEO, who assumed his position last year, said in a statement, "The Hartford always viewed this investment as temporary capital and intended to return it as soon as it was prudent."

Observers note that only a year ago, Hartford was struggling with large losses at its life insurance operations that were heavily concentrated

See **HARTFORD** page 19

THE BIG PAYBACK

Hartford Financial Services Group Inc. plans to raise \$3.05 billion in capital.

\$2.38 BILLION will be used to repay funding from the Trouble Asset Relief Program, including:

- \$1.45 billion in common stock*
- \$500 million in mandatory convertible preferred stock*
- \$425 million in senior notes

IN ADDITION, Hartford plans to issue \$675 million in senior notes to fund the repurchase of senior debt maturing in 2010 and 2011.

*Excludes underwriters' options to purchase additional shares

Source: Hartford Financial Services Group Inc.

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Business Insurance
**Risk Manager
OF THE YEAR
2010**

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CELEBRATE AWARD-WINNING RISK MANAGERS

The 2010 Risk Manager of the Year® and Risk Management Honor Roll® honorees will be recognized during an award breakfast April 27 in Boston. Keynote speaker for the event is broker, entrepreneur and industry leader Patrick G. Ryan. Visit www.BusinessInsurance.com/RMOY2010.

COMINGS & GOINGS

Search industry executive changes alphabetically by a person's name or company, as well as by date. Click on the Comings & Goings tab.

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Special Report:
Guide to Solvency II
Available online under Lists & Data

RMS EVENT



Senior risk managers and industry executives gathered in New York this month for the invitation-only *Business Insurance* Risk Management Summit. To view a photo slideshow of images from the event, click on the Multimedia tab.

MOST POPULAR STORIES Week of March 15, 2010

1. Aon unit alleges Marsh stole trade secrets
2. Marsh agency unit buys Rutherford
3. AIG subpoenas workers comp insurers in ongoing dispute
4. Lance Ewing named Chartis vp of national accounts
5. Rating agency downgrades Hartford's financial outlook
6. Obama signs stopgap COBRA subsidy extension
7. Health care reform bill set for House vote
8. More employers penalizing unhealthy behavior: Survey
9. Financial services reform plan includes insurers
10. House passes stopgap COBRA subsidy extension

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Nominate someone you know to be the Benefit Manager of the Year. Enter his or her name for the 2010 competition with a brief description of his or her achievements. Go to the Events & Awards tab.

AON

MERGERS & ACQUISITIONS

Marsh expands middle-market operations

Rutherford deal adds \$81 million to new agency unit

By **RODD ZOLKOS**

ROANOKE, Va.—Marsh & McLennan Agency L.L.C.'s acquisition of Thomas Rutherford Inc. gives Marsh's middle-market-focused operation a solid foothold in the Mid-Atlantic region and could help it attract new agency partners, analysts say.

Last week's deal, which is Marsh & McLennan Agency's largest deal to date, brings the Marsh Inc. subsidiary to \$171 million in revenue, the New York-based unit said.

STEP BY STEP

Marsh & McLennan Agency L.L.C. has made four acquisitions in an effort to build out the middle-market focused operation.

- November 2009
INSURANCE ALLIANCE
Houston
\$15 million in annual revenues
- December 2009
NIA GROUP L.L.C.
Paramus, N.J.
\$62 million in annual revenues

- February 2010
HAAKE COS.
Overland Park, Kan.
\$11 million in annual revenues
- March 2010
THOMAS RUTHERFOOD INC.
Roanoke, Va.
\$81 million in annual revenue

Terms of the transaction, the unit's fourth deal since it launched early last year, were not disclosed.

Rutherford is the 32nd largest broker of U.S. business, according to

Business Insurance's 2009 ranking.

Established in 1916, Roanoke, Va.-based Rutherford has \$81 million in annual revenue, with more than 300 employees operating out

of 10 offices. Its specialty areas include marine, transportation, real estate, construction, environmental and health care.

Marsh said the firm will continue operating under the Rutherford name for now, serving as Marsh & McLennan Agency's lead brokerage operation in the Mid-Atlantic region and Washington.

Rutherford's top executives—Chairman Thomas D. Rutherford Jr., CEO Thomas R. Brown and President and Chief Operating Officer George A. Steadman III—will continue to lead the regional business, and all of Rutherford's employees will remain with the firm.

David L. Eslick, chairman and

See **MARSH** page 18

DIRECTORS & OFFICERS LIABILITY



REUTERS/LANDOV

R. Allen Stanford arrives at federal court in Houston in October. A court has ruled that defense costs in the case must be paid by D&O insurers.

D&O insurers must pay Stanford's costs: Court

Ruling limits funds available to investors bilked in scheme

By **ZACK PHILLIPS**

NEW ORLEANS—Two directors and officers liability insurers must pay the legal expenses of executives accused of operating one of the nation's largest Ponzi schemes—at least until a lower court rules on their coverage dispute, a federal appeals court has ruled.

The 5th U.S. Circuit Court of Appeals in New Orleans ruled last week that Lloyd's of London syndicates and Arch Specialty Insurance Co. are bound contractually to reimburse the defense costs of R. Allen Stanford and three other executives accused by federal authorities of operating the Houston-based Stanford Financial Group Co. as a \$7 billion Ponzi scheme.

The decision, which affirmed a January ruling by U.S. District Court Judge David Hittner, means the

WHAT HAPPENED

- Appeals court affirmed a previous court ruling that two directors and officers liability insurers must pay legal expenses of executives at Stanford Financial Group Co.

WHAT'S NEXT

- Lloyd's and Arch underwriters must seek a separate ruling from another judge on the dispute over defense costs.

underwriters must seek a separate ruling from another judge on the dispute over defense costs.

The ruling is significant because the company's primary and excess D&O policies can be used to pay claims against the company or individual executives. Stanford Financial's court-appointed receiver has argued that the \$100 million D&O tower belongs to the bankrupt company and its funds should be

See **STANFORD** page 21

HEALTH CARE BENEFITS

Grocery chain stocks health plan services

Safeway to market incentive program to other employers

By **JOANNE WOJCIK**

WASHINGTON—Safeway Inc. is attempting to capitalize on the success of its incentive-based health plan by offering to set up similar programs at other employers for a share of the cost savings it generates.

Ken Shachmut, Safeway senior vp and executive vp of Safeway Health, a newly formed subsidiary of the Oakland, Calif.-based grocery store chain, announced its new business venture during a keynote address in Washington at the Business Health Agenda 2010 sponsored by the National Business Group on Health. While it may seem incongruous that a grocery store chain would enter the health plan business, Mr. Shachmut said there are several other examples of innovation coming from outside a traditional business sector.

For example, cell phone company Sprint's origins go back to Southern Pacific Railroad, which built communications technology along the rights of way it controlled.

It also is not the first time that an employer has attempted to commercialize its successful health program elements. Sussex, Wis.-based printer Quad/Graphics Inc. formed QuadMed L.L.C. in 1990 to market its worksite clinic consulting services to other employers (see story, page 19).

Safeway gained recognition for its health plan success in 2008 when CEO Stephen A. Burd published an article in the Wall Street Journal describing how it had basically held its health care costs flat since 2005.

Safeway also takes credit for a provision in one of the health care reform bills pending before Congress that would significantly increase the potential rewards and penalties tied to wellness program participation. Under current law, any incentive paid to plan members is limited to 20% of the cost of single coverage. But under the "Safeway Amendment," that sum would grow to 30%, and employers potentially could increase it to 50% with authorization from the Department of Health and Human Services.

Although Safeway's health plan is administered by Bloomfield, Conn.-based CIGNA Corp., Mr. Shachmut says the incentive plan and other consumerist elements, including greater transparency of provider and drug pricing, were developed in-house "with valuable input from CIGNA" and other firms, including Aetna Inc., United Health Group Inc., Towers Watson & Co., Mercer L.L.C., Hewitt Associates Inc. and others.

The most recent successes of the program include an increase in the number of employees and spouses who passed biometric tests related to tobacco use, cholesterol, body mass index, blood pressure and blood glucose levels, Mr. Shachmut said.

30%

Under the "Safeway Amendment" pending before Congress, the limit on wellness incentives paid to plan members would grow to 30% of the cost of single coverage from 20%, with the potential to increase to 50% with DHHS approval.

See **SAFEWAY** page 19

Business Insurance
Risk Manager
OF THE YEAR
2010

Risk manager
award winners
announced

CHICAGO—Three risk managers will be honored by *Business Insurance* and the Risk & Insurance Management Society Inc. next month as the 2010 recipients of the publication's annual risk management awards.

The 2010 Risk Manager of the Year award will go to Debra L. Rodgers, vp of global risk management at Philadelphia-based ARAMARK Corp. ARAMARK is a global professional services company, with more than 250,000 employees, that provides food service, facilities management and apparel to academic institutions and businesses.

Members of the 2010 Risk Management Honor Roll are:

- Scott Borup, director of corporate risk management for Johnson & Johnson in New Brunswick, N.J. J&J is the world's largest consumer health company, providing medical devices and diagnostics, among other operations. The company employs more than 119,000 people in 57 countries.

- Christine Eick, executive director of risk management and safety at Auburn University in Auburn, Ala. The university is a large research institution, with nearly 25,000 students and more than 10,000 employees.

An independent panel of judges representing prior honorees, insurance industry leaders and the immediate past president of RIMS selected the award winners. Judges for the 2010 Risk Manager of the Year competition are listed online at www.BusinessInsurance.com.

Profiles of all three honorees will appear in the April 26 issue of *Business Insurance* as well as at www.BusinessInsurance.com. An awards breakfast will be held April 27 in Boston during the RIMS annual conference and exhibition, and the honors will be jointly presented by the society in partnership with *BI*. The keynote speaker for the breakfast is Patrick G. Ryan, former chairman of Aon Corp. and recent founder of Chicago-based brokerage Ryan Specialty Group.

For more information, please visit www.BusinessInsurance.com/RMOY.

AGENTS & BROKERS

Aon suit accuses Marsh of stealing trade secrets, clients

Judge tells brokerages to pursue agreement before going to court

By COLLEEN MCCARTHY

NEW YORK—A federal judge last week ordered a unit of Aon Corp. and Marsh & McLennan Cos. Inc. to negotiate before moving forward on a lawsuit alleging Marsh stole Aon trade secrets, employees and clients—a charge MMC denies.

Aon Risk Services Northeast Inc., a New York unit of the Chicago-based broker, filed the suit last week in U.S. District Court in New York. The complaint names MMC, Marsh USA Inc. and three former employees of

Aon's Trade Credit group—Michael Kornblau, Tyler Wendleken and Karryn Angoff—who left Aon in February to join Marsh USA, according to court documents.

Marsh and the employees allegedly stole business “through the patently illegal downloading of Aon proprietary trade secret information, unlawful disclosures of Aon trade secrets, and other unfair and unlawful activities,” according to the suit that alleged that MMC’s goal was to obtain “a prepackaged book of business.”

The complaint describes Aon’s trade credit insurance business as highly specialized and reliant on carefully cultivated relationships. It “can take months and sometimes years of working with a client before

they decide to purchase this type of insurance. It’s also true that those same clients tend to be repeat clients,” Aon said in its complaint, which seeks an injunction and damages.

Aon said it lost business after the former employees conspired with high-level Marsh executives to unlawfully solicit Aon clients to switch to Marsh before the Aon employees moved to Marsh, according to the suit. The dollar amount and clients that Aon alleges it lost are redacted in the suit.

In addition, Aon said the individuals it has sued promised in their employment agreements to protect from disclosure valuable information Aon considered trade secrets, including lists of clients and

prospective clients, contract terms and conditions, copyrighted materials, business plans, compensation, revenues and other data.

However, Aon said, the individuals unlawfully hacked Aon’s computer system to steal proprietary information before they left.

A computer forensic analysis conducted on the employees’ laptops reveals a series of illegal downloads and deletions. For example, in the days prior to Mr. Kornblau’s resignation in February, he attached five portable storage devices and accessed confidential client information including policy details and premium amounts, the complaint said.

Mr. Kornblau also downloaded an “Aon commission grid” that shows Aon’s negotiated commis-

sions for all lines of insurance globally—“highly competitive information,” according to the complaint.

At a meeting last week, U.S. District Court Judge Richard M. Berman in New York ordered the two parties to engage in good faith settlement negotiations, a source familiar with the matter said.

“The allegations in the complaint speak for themselves,” a spokesman for Aon said.

Reacting to the suit, a spokeswoman for MMC said: “We do not believe there is any merit to this litigation and will aggressively defend ourselves against it.”

Through an MMC spokesperson, the three individuals declined comment.

A hearing has not been set.

LIABILITY & LITIGATION

N.Y. attempts to lure more med mal insurers

Wrynn backs plans to help determine rates, fund residual losses

By ZACK PHILLIPS

NEW YORK—Insurance regulators are pushing two major changes intended to make New York state a more attractive market for medical malpractice insurers.

In one initiative, the state would establish an independent body to help set acceptable rates for medical malpractice liability insurance, Insurance Superintendent James J. Wrynn said during a recent speech at a meeting of the Assn. of Professional Insurance Women.

In addition, regulators have reached an agreement with property/casualty insurers on an assessment to fund med mal losses from prior years, Mr. Wrynn said. The assessment would help erase a \$480 million deficit in the state-run residual market for difficult-to-place med mal risks, he said.

The independent rate service organization would help the New York State Insurance Department with the politically charged process of setting rates for the state’s medical malpractice insurers, after a two-year moratorium on rate hikes expires in June.

“Everyone—the doctors, the trial lawyers, the insurance companies, the consumer groups, you name it—felt the (rate-setting) process was too politicized,” Mr. Wrynn told the APIW meeting Feb. 23 in New York. “I agreed and my thought was, ‘What do we do to remove some of the politics from it so it’s a more objective process?’”



‘Everyone—the doctors, the trial lawyers, the insurance companies, the consumer groups, you name it—felt the (rate-setting) process was too politicized.’

James J. Wrynn,
New York State Insurance Department

Mr. Wrynn said he hopes the changes will attract more med mal insurers to New York, a market most departed long ago. It was not clear if formal legislation or regulations would be needed for either initiative and the department declined further comment on the status of the efforts.

In the speech, Mr. Wrynn said the hope is that new med mal insurers would enter the state, increase competition and help soften rates.

Currently, only four insurers are licensed to write med mal coverage for physicians and surgeons in the state: Academic Health Professionals Insurance Assn., Hospitals Insurance Co. Inc., Medical Liability Mutual Insurance Co. and Physicians Reciprocal Insurers. A limited

See **MED MAL** page 22

CAPTIVES

Captive rules becoming global: CICA

By RODD ZOLKOS

ORLANDO, Fla.—Insurance regulatory reform efforts around the world ultimately will affect captive insurance companies regardless of domicile, a panel of speakers told attendees at the Captive Insurance Cos. Assn.’s annual conference.

While the Solvency II regulatory regime in development is a European Union initiative, elements will have an impact worldwide, some speakers suggested. Meanwhile, U.S. regulators have shown clear signs of embracing a more global approach to regulation, another panelist said.

“I believe Solvency II will have a huge impact, not only on European insurance companies but on insurers worldwide,” said Guenter Droese, managing director and global head of group insurance at Deutsche Bank A.G. in Frankfurt.

Solvency II is based on three regulatory “pillars”—the first, quantitative requirements taking a fair-value approach to the balance sheet; the second, qualitative requirements aimed at internal controls and risk management and the supervisory review process; and the third, required reporting.

Pillar 3 is “an area where as a captive we have some problems, because we want to run our business without too many noses in the way,” Mr. Droese said. He suggested that only competitors would be interested in reading about subjects such as captive claims that would be included under the new disclosure requirements.

Mr. Droese said he expects the additional requirements under Solvency II’s first pillar to generate additional actuarial costs. For captives, “We have to make sure that



Deutsche Bank’s Guenter Droese said Solvency II will affect all insurers.

our efforts, our workflows don’t increase dramatically,” he said. Captive parents also must avoid

See **CICA** page 6



At **BI**’s Risk Management Summit, Microsoft Corp.’s Lori Jorgensen said empowerment breeds innovation.

RISK MANAGEMENT

BI summit features focus on innovation

By REGIS COCCIA

NEW YORK—Building a culture of innovation requires not only leadership and communication but also acceptance of failure, attendees of the inaugural Risk Management Summit learned.

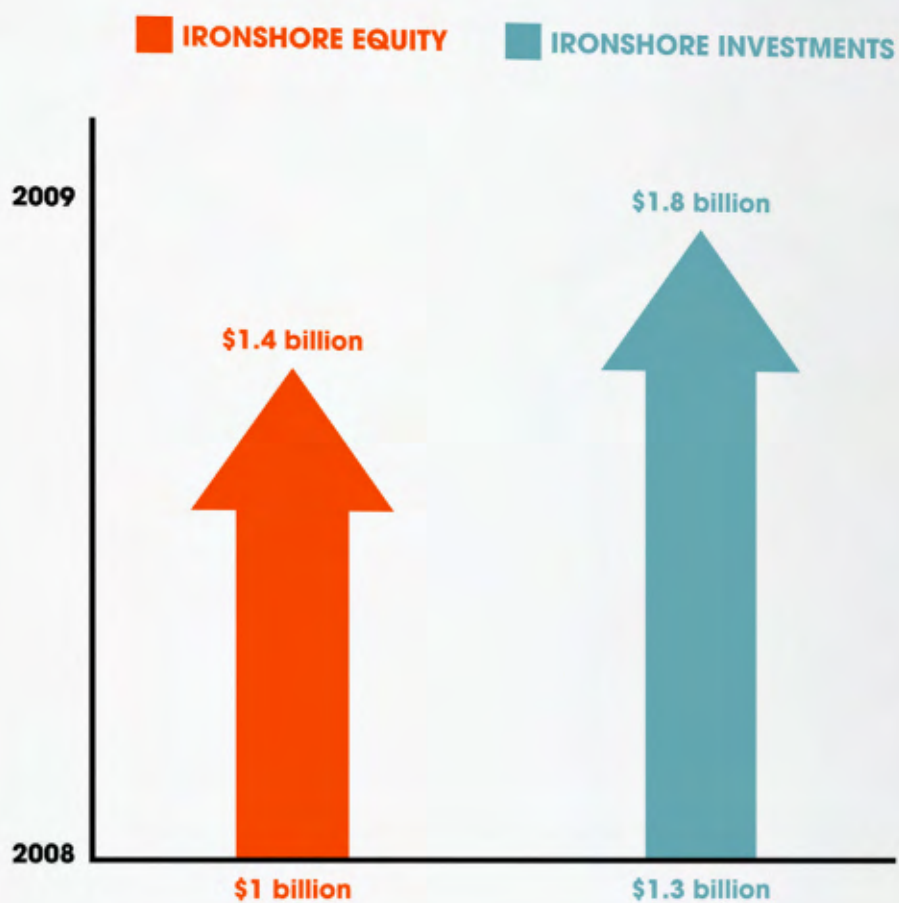
The summit, presented by *Business Insurance* March 8-9 in New York, brought together dozens of risk managers from some of the largest companies in North America and Europe to discuss four core topics: innovations in risk management, global programs and risks, global regulatory and legislative developments, and counterparty risks. The program included expert speakers on each topic, risk managers-only roundtable discussions and panels featuring senior executives from leading insurance industry companies.

Lori Jorgensen, senior director of finance and risk management at Redmond, Wash.-based Microsoft Corp., outlined her risk management department’s approach to innovation.

See **SUMMIT** page 21

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Commentary

A waste of productivity or valuable stress relief?

I suspect life continues as normal at your place of business this week and you're surviving the corporate Armageddon some would have us believe occurs every year about this time—that great scourge, the annual NCAA men's Division I basketball tournament.

The tournament and associated distractions posed to workers by the sirens' songs of office pools and online coverage could have cost U.S. employers up to \$1.8 billion in lost productivity last week, according to the annual prognostications of noted March Madness Cassandra, the Chicago-based outsourcing consultants Challenger, Gray & Christmas Inc.

Of the many threats to business posed by the Big Dance, none is more treacherous, of course, than the live online broadcasts offered by CBS Sports and the NCAA.

I wrote about this subject a few years back when CBS first announced plans to offer game coverage free online. I don't remember March Madness bringing the economy to its knees that year, or in the years since then.

Heck, maybe if some of the financial engineers on Wall Street had spent a little more time following college basketball and a little less time crafting exotic mortgage-backed securities, the economy wouldn't have crashed in fall 2008.

In an item posted this month on Challenger's @Work blog, the firm explains its lost productivity estimate is based on a 2009 Microsoft/MSN survey that found that 45% of Americans planned to enter at least one college basketball pool.

Assuming the same rate this year, Challenger applied that percentage to total payroll employment and average weekly earnings data, along with an assumption that workers would waste (waste???) at least 20 minutes per day last week on tournament-related activities.

Of course, this doesn't take into account the impact of workers remaining at their desks beyond their normal work hours, completing the tasks they were working on as they occasionally checked scores last Thursday or Friday.

And, needless to say, none of this considers the productivity gains attributable to the wonderful impact of technology in allowing employees to conduct work-related tasks on their own time, checking BlackBerrys, log-



RODD ZOLKOS

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ging on to e-mail, etc., from home to take care of business.

There are some among those who analyze and consult on such things who suggest that, in fact, the tournament and pools provide office bonding experiences that many companies might pay consultants thousands of dollars to create.

And even Challenger seems to have softened its view on the tournament.

The tournament and pools provide office bonding experiences that many companies might pay consultants thousands of dollars to create.

In the blog post, John Challenger, the firm's CEO, conceded that portable technology makes his firm's productivity loss estimate "probably about as accurate as the point spreads computed by Las Vegas bookmakers."

He allowed that, ultimately, employers "may or may not see a significant impact." And, going a step further, he acknowledged that given the stress many workers have been experiencing in this economy, the tournament actually might be a workplace tonic. "With worker stress and anxiety heightened, a little distraction could be just what the doctor ordered," Mr. Challenger wrote.

So, again, I hope your company survived last week's onslaught with its productivity intact. And I hope your brackets didn't take too bad a beating last weekend, and that your favorite team is dancing its way to the Sweet 16.

Fronting prices reasonable: Survey

93% of CICA members say required collateral increased since last year

By **RODD ZOLKOS**

ORLANDO, Fla.—A sizable majority of captive owners surveyed in the Captive Insurance Cos. Assn.'s annual fronting survey find fronting premiums "reasonable," though the percentage of those reporting that their fronting insurers require collateral has grown from last year.

Of those surveyed, 89% characterized fronting prices as reasonable, with 11% calling fronting costs expensive. The need for admitted paper was the reason given most often by captive owners for using fronting insurers, cited by 85% of respondents, with regulatory compliance the next most common reason, cited by 46% of respondents.

Most of those surveyed reported no increase or a decrease in fronting costs from the prior year, with 48% reporting no change in costs, 20% reporting a cost decrease and 30% reporting an increase of less than 10%.

Captive owners reporting increased collateral requirements increased to 93% in this year's survey, compared with 85% last year. Letters of credit were the most frequently required type of collateral, cited by 76% of respondents, with 40% mentioning trust accounts, 28% citing cash and 8% mentioning parental guarantees.

All respondents rated fronting as very important or important to their captive program, with 78% saying it was very important to have an A-rated fronting company. And most seem happy with the value of their fronting relationships, with 63% of those surveyed describing that value as excellent and 37% calling it moderate.

The survey also looked at captives' reinsurance buying, with 56.6% of

CICA conference draws 450 attendees to Florida

ORLANDO, Fla.—The Captive Insurance Cos. Assn.'s 38th International Conference March 7-9 drew approximately 450 attendees to Orlando, Fla.

Held at the Omni Orlando Resort at ChampionsGate, the event included sessions on topics ranging from captive best practices to running off captive business, as well as sessions on employee benefits captives, successful claims management and the reinsurance market for captives.

During this year's gathering, the CICA board elected new officers. Karin Landry, managing partner of Spring Consulting Group L.L.C. in Boston, was elected chair. John Svoboda, president of National Home Insurance Co., a Denver-based risk retention group, was elected vice chair; and Dirk Helm, vp of Sierra Land Group Inc. of Glendale, Calif., was elected secretary/treasurer.

Next year's CICA International Conference is scheduled for March 13-15, 2011, in Tucson, Ariz. For more information, visit CICA's Web site at www.cicaworld.com.

—By Rodd Zolkos

those participating indicating they purchase reinsurance. The percentage was smaller among single-parent captives, however, with only 39.3% of pure captives indicating they purchase reinsurance.

Of those buying reinsurance, 24% said they consider the price expensive, with 67% calling it reasonable and 9% calling it inexpensive. Nearly one in five—19%—said their reinsurance costs were the same in 2009 as in 2008, while 43% said their reinsurance costs increased and 38% said their rein-

sureance costs decreased.

Nearly half of those surveyed said economic conditions have had a negative impact on their captive, with 14.5% strongly agreeing with that assessment and 30.9% agreeing. Meanwhile, 25.5% disagreed with that statement, 5.5% strongly disagreed and the remaining 23.6% neither agreed nor disagreed.

Again, the results were somewhat different when the responses of only single-parent captives were considered, with 6.9% strongly agreeing that the economy was having a negative impact on their captive and 24.1% agreeing, while 10.3% strongly disagreed, 27.6% disagreed and 31% neither agreed nor disagreed.

In terms of their captives' investment returns, 53% reported investment yields of 2% to 3%, 13% reporting yields of 4% to 5%, 22% reporting yields of 0% to 1% with the remainder reporting yields in various ranges above 6%. None of the respondents reported negative investment yields.

As was the case in last year's survey, collateral concerns were given as the top challenge facing captive owners, cited by 27% of those surveyed. Regulatory issues were mentioned by 16%; policyholder retention and growth cited by 16%; and tax, fronting and expanded utilization, cited by 7% each.

Of those participating in the survey, 53% were single-parent captives; 18%, risk retention groups; 16%, segregated cell captives; and 13%, association captives. Nearly three-quarters—73%—were domiciled in the United States, with 27% offshore.

Most of those surveyed were well-established captives, with 71% in existence for six or more years, 27% for one to five years and 2% doing business for less than one year.

CICA will publish the full report of the fronting survey results in about three months. It will be available free to CICA members and for purchase by non-members at the CICA Web site, www.cicaworld.com.

CICA: Captive rules becoming global

CONTINUED FROM PAGE 4

incurring excessive costs, he said.

Solvency II also could affect captives involved in fronting arrangements, said Mr. Droese, driving up the costs of unrated captives involved in fronted programs that are reinsured with the captive.

"This will have a huge effect on each and every captive," Mr. Droese said. "The whole captive community will be affected by that."

Solvency II is to take effect Oct. 1, 2012, with full compliance requested by Dec. 31, 2013, but Mr. Droese said it's possible the effective date might change due to industry concerns.

Meanwhile, Tim Byrne, managing director at Willis Management (Dublin) Ltd., said there may be other changes to the proposed regulatory regime as captive owners and

others in the industry voice their concerns. "At the moment, Solvency II is very much a moving target," he said, while warning captive owners to "be aware of what the potential implications might be."

Mr. Byrne suggested that captive owners ask their captive managers and regulators about their positions regarding Solvency II.

In the United States, Damian Sepanik, chief compliance officer at Zurich North America in Schaumburg, Ill., said various forces are leading those involved in the state-based insurance regulatory system to look at reforms that might result in a more global approach to regulation.

With regard to the National Assn. of Insurance Commissioners, Mr. Sepanik said, "I think there is more traction now to make lasting, broad changes to the regulatory scheme

than I've ever seen."

"There have been increased pressures by the federal government to get involved in insurance," he said. "You couple that with the economic issues that we're all facing now."

"We are in fact global, whether we want to admit it or not," Mr. Sepanik said, adding that the NAIC is getting more involved in the International Assn. of Insurance Supervisors. These days, it's hard to find an IAIS committee that doesn't include an NAIC member regulator, he said.

It's essential that CICA members and others involved in captive insurance make sure the industry's concerns are represented, panelists said.

"I think what tends to happen in these forums, unless the captive industry is there at the table, the captive industry is forgotten," said Mr. Sepanik.

Captive group issues guide on utilizing service providers

CICA publication covers four phases of captive life cycle

By **RODD ZOLKOS**

ORLANDO, Fla.—The Captive Insurance Cos. Assn. has produced a set of best practices guidelines aimed at helping captive insurance company owners and prospective owners launch and maintain their captives.

At this year's annual CICA International Conference in Orlando, Fla., the organization released its second volume of guidelines, focused on utilizing service providers.

The guidelines highlight the four phases of a captive's life cycle: prefeasibility, feasibility and formation, management, and closing. The advisory committee that developed the guidelines "tried to outline who played what role in each of the phases," said Karin J. Landry, managing partner of Spring Consulting Group L.L.C. in Boston, who chaired the best practices committee.

"What we wanted to do was have the captive owners be the drivers along with the regulators," Ms. Landry said during a panel dis-

'What we wanted to do was have the captive owners be the drivers along with the regulators.'

Karin J. Landry,
Spring Consulting Group L.L.C.

cussing the guidelines at this year's CICA conference.

The guidelines include a process-and-controls checklist about which service provider—captive manager, actuary/consultant, auditor or attorney—should be involved in providing advice or assistance in each phase of the captive life cycle or with specific tasks.

Another section sets out detailed best practices for all captive service providers covering such areas as managing relationships, servicing guidelines and creating deliverables, followed by service provider-specific guidelines for dealing with actuaries/consultants, attorneys, captive managers and auditors.

Discussing the guidelines, Ryan Ralston, chief operating officer of ERI Solutions Inc. in Colwich, Kan., stressed the importance of strong relationships between service providers and captive owners.

"Relationships are so important," Mr. Ralston said. "We have to go above and beyond and build those relationships because that will hold you through the tough times. And there will be tough times."

He noted the guidelines suggest that service providers should treat each relationship with a captive owner as a long-term commitment, providing innovative input where

appropriate, taking steps to understand when captive owners need advice or services, fairly representing their level of expertise, and setting standards for communications with captive owners and other service providers.

In working with service providers, he said he appreciates "thought leaders pushing the envelope" as well as understandable documentation. "Try to put it in English whenever possible," Mr. Ralston said.

Mr. Ralston noted that the guidelines call for service providers to

meet the "needs and wants" of captive owners "through state-of-the-art technology, including secure electronic methods for managing data."

But, he advised service providers, "I'd be a little bit careful of some of the 'wants' from captive owners. Some of us may want something that doesn't really provide any benefits." It's acceptable, he said, for service providers to evaluate captive owners' "wants" and "push back" on those that offer little or no real benefit.

Though reinsurance collection is the captive manager's responsibili-

ty, Mr. Ralston said captive owners should stay involved in that process. By doing so, reinsurers "will actually see you are somebody they need to service," he said. "Build the relationship."

Looking at the best practices guidelines from a regulator's perspective, David F. Provost, deputy commissioner in the Captive Division of the Vermont Department of Banking, Insurance, Securities & Health Care Administration, also stressed the importance of relationships.

"The key to all this is communi-

cations," Mr. Provost said. "Both directions."

"We expect you to be truthful," Mr. Provost said, adding that service providers must understand their captive clients to provide the best service. "If you don't understand the goals and objectives of your clients, you're not going to come out with the kind of work product that they're after," he said.

"The key with all your service providers, actuaries, consultants, managers and your regulators is constant and open communication," Mr. Provost said.



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Business Insurance OPINIONS

Cutting costs an upside of a down economy

IF THERE IS a silver lining to a prolonged economic downturn, it is that it forces many of us to take a new look at how to control expenses.

Case in point is the recent interest by state executives and legislators in redesigning retirement and other benefit plans for public employees in response to soaring costs and shrinking tax revenues.

For example, New Jersey Gov. Chris Christie last week said the state won't make a required \$3 billion contribution to plans covering public employees, saying that a "broken, out-of-control" system must be reformed before new contributions are made.

Some states already are taking modest steps to reform their benefit programs. In Colorado, for example, a law enacted this year will boost the retirement age to 60 from 55 for most public employees.

Such actions are long overdue. As the private sector has pared benefit plans that became unaffordable, the public sector has been slower to move. Health care plans with little employee cost-sharing, for example, remain common, while lush retiree health care plans continue.

As tax revenues have fallen, states are waking up to the fact that soon their benefit programs no longer will be affordable.

We think it is far better for states and other units of government to start to bring plan costs under control before those costs bankrupt them or result in catastrophic tax increases for residents and businesses that effectively now are funding those programs.

It is far better for states and other units of government to start to bring plan costs under control before those costs bankrupt them.

D&O coverage decision right for due process

THE 5TH U.S. CIRCUIT COURT of Appeals' decision requiring directors and officers liability insurers to provide a defense—at least for now—to Stanford Financial Group Co. is reasonable and serves the interest of due process.

Executives of Stanford Financial, including founder R. Allen Stanford, have been accused by federal authorities of operating a \$7 billion Ponzi scheme. The firm's D&O liability insurers, however, sought to exclude defense coverage retroactively, citing money laundering charges as well as statements and other evidence supplied to the Securities and Exchange Commission.

The 5th Circuit sided with the policyholders in granting a preliminary injunction on the coverage denial and ordered that a judge determine whether there is sufficient support of money laundering charges. We think that was the right call. The fact is, defending litigation is costly, and the real value that liability insurance of any kind provides is a defense against lawsuits.

D&O policies generally exclude coverage for outright fraud, and rightly so. Once a court finds fraud did in fact occur, coverage can—and should—be rescinded. The same should be true for money laundering. Until then, a policyholder should have a right to expect that its insurers will honor their commitments as stated in the policy.



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Should risk retention groups be allowed to cover property risks?



NEXT WEEK'S QUESTION

Will financial services regulatory reform pass this year?

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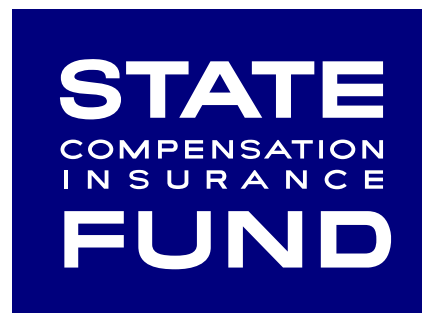
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Products & Services

Lexington covers legacy liability risks

BOSTON—Lexington Insurance Co. has introduced coverage to address legacy liability risks for construction firms.

Lex FollowUP aims to mitigate self-insured retention risks associated with general liability coverage for claims incurred but not reported under certain scheduled policies,

the company said in a statement. The policy also can cover loss portfolio transfers for known losses within the SIR of such policies.

Lexington, a unit of Chartis Inc., said it has created a reverse-form policy that follows the terms and conditions of scheduled policies.

"Recent economic conditions have put added pressure on construction firms and owner/developers to manage legacy liability as part of their overall insurance budget," said Thomas Grandmaison, senior vp for Lexington, in a statement. "They desire options to close out or reduce legacy liability risks that could negatively affect their cash flow today."

Lex FollowUP is available to commercial and residential contractors

or developers and can be applied to up to 10 years of prior policies, as well as to annual, project-specific and wrap-up policies.

For more information, contact Mr. Grandmaison at 617-345-4130 or thomas.grandmaison@chartisinsurance.com.

Liberty Mutual unit introduces learning tool

FAIRFIELD, Ohio—Ohio Casualty, a regional unit of Liberty Mutual Group Inc.'s Liberty Mutual Agency Markets, has introduced an online educational tool for its appointed insurance agencies.

In a statement, the Fairfield, Ohio-based property/casualty insurer said the Agent Learning Center is

an online training and development resource for its partner agencies. It is intended to lessen the time and cost involved with training and developing new producers and staff members.

"An important element in helping our partners grow profitably is providing easily accessible and affordable learning solutions that meet a wide variety of agency needs," said Ohio Casualty President and CEO Michael Winner.

It is accessible by logging on through a Web portal where agents can register for workshops, participate in self-paced programs, and access industry links and a catalog of continuing education courses and credits. Also, an agency manager tool kit is available to assist prin-

cipals in hiring and developing successful new producers, the company said in a statement.

For more information, contact Amy Damron, senior training specialist, at 513-603-4464 or amy.damron@ohiocasualty-ins.com.

iPhone application aimed at agents, brokers



GROESBECK, Texas—Insurance Licensing Services of America Inc. has developed an iPhone application that displays real-time license status information for insurance agents and brokers.

The application allows agents and brokers to access their licensing and compliance information in the field. Licenses can be checked against the National Insurance Producer Registry, the Groesbeck, Texas-based company said in a statement.

"This new app means that insurance pros will never have to write business without knowing their status," said Arleen Taveras, CEO of ILSA.

Agents and brokers can download the application on their iPhones for a one-time fee of \$5.99 and do not have to be members of ILSA.

In an e-mail, ILSA also said a license status application compatible with BlackBerry devices will be available in a few weeks.

For more information, contact Lisa D. Miklojachak, assistant manager of marketing and administration, at 254-729-6143 or lmiklojachak@ilsainc.com.

Aon Construction expands capacity

CHICAGO—Aon Construction Services Group, a unit of Chicago-based Aon Corp., says it has "secured an offering" for additional limits to address existing gaps for contractual liabilities not covered by insurance options.

In a statement, Aon Construction says it will offer up to \$100 million in limits for contractual liabilities such as acts of God, liquidated damages and performance coverage.

"Although contractual liability exposure has remained high, capacity for these coverages had virtually disappeared with the economy's downturn," said Peter Arkley, president and CEO of Aon Construction.

The additional coverage can be placed in the U.S., Bermuda, London and European markets and can be purchased on a pooled or blanket basis for clients with firm knowledge of contractual exposures.

The contractual liabilities capacity is underwritten by 10 insurers.

For more information, contact Todd Rowland, executive vp, at 415-486-7206 or Todd_Rowland@ars.aon.com.

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Buyers scrutinize insurers beyond ratings

Risk managers being more proactive by creating relationships

By **STUART COLLINS**

Awareness of insurers' financial strength has risen among company executives, but buyers are limited in what they can do and many still rely on their brokers for information on insurers' exposures, risk managers say.

But some buyers are building relationships directly with insurers and tapping internal resources to increase their own scrutiny of insurers.

With the 2008 fall of Lehman Bros. Inc. and the U.S. bailout of American International Group Inc., some A-rated insurers—most notably AIG—showed they were less secure than their financial strength ratings indicated.

Those developments made risk managers realize they cannot rely on financial strength ratings alone when assessing insurers' stability, said Julia Graham, chief risk officer at DLA Piper U.K. L.L.P. in London.

The financial crisis was a "wake-up call" for rating agencies, which since have sharpened their own risk management and the caliber of their information and processes, she said.

"I still use financial strength ratings from the likes of A.M. Best Co. Inc. and Standard & Poor's Corp., but I am now much less dependent on them in isolation, and use them more frequently alongside other indicators including the outlook forecasts provided by the same agencies," Ms. Graham said.

Financial strength ratings often give little advance warning of an insurer's financial difficulties, said J. Gary Meggs, director of risk management at energy company Southern Co. in Atlanta.

"Usually, if an insurer falls below A-, it falls fast and precipitously," Mr. Meggs said.

Southern Co. relies on its brokers to assess insurers' financial strength, although it asks brokers to be "more vigilant," Mr. Meggs said. "Because there is little warning with financial strength ratings, we look for trends and early indications of possible difficulties, and the brokers are best positioned to do this," he said.

The financial crisis showed that bad things can happen to highly rated insurers, said Bill Milaschewski, director of risk management for Boston-based global specialty chemical and materials manufacturer Cabot Corp.

"Risk managers have always recognized the importance of insurer financial security, but there is now a greater emphasis on it," Mr. Milaschewski said. "But there is not much more that risk managers can do. There is no magic bullet," he said. "Risk managers can spread their risk between carriers so that



'We have upped the ante. Where in the past there may have been a light touch when it came to information provision and scrutiny, the risk manager now requires the broker to provide more information and scrutiny at every stage of the insurance transaction.'

Colin Campbell, Arcadia Group Ltd.

they do not have too much exposure to one carrier, and they can carry out stringent assessments."

Risk managers have limited resources and must choose information sources that are most appropriate to their business and needs, Ms. Graham said. "You cannot create all the data yourself and you don't need to, but you can stay informed," she said.

The financial crisis has increased concerns, but has generated little additional information to assess insurers' ability to pay claims, said Colin Campbell, head of risk management at London-based clothing retailer Arcadia Group Ltd.

"Risk managers rely on brokers for information and views on carrier security, and for myself and many other risk managers, that has not changed," said Mr. Campbell, who also is past chairman of the London-based Assn. of Insurance and Risk Managers. "But we have upped the ante. Where in the past there may have been a light touch when it came to information provision and scrutiny, the risk manager now requires the broker to provide more information and scrutiny at every stage of the insurance transaction."

It is hard to learn from an event as unexpected as the near failure of a highly rated insurer, said Trygve Imsland, head of insurance at Stavanger, Norway-based energy company Statoil A.S.A.

Statoil continues to rely on its brokers to assess the quality of insurers, but it also examines brokers' security committees, said Mr. Imsland. "In order to trust the broker and its security committee, we need to approve the broker first. Our counterparty credit risk department looks closely into the broker's security committee, its composition, power, frequency of meetings and, not least, the broker's routine for advising their clients should a downgrade occur."

A company's internal risk management or credit risk departments cannot analyze insurers with the hands-on, daily oversight that is required, Mr. Imsland said. While financial strength ratings give comfort, rating agencies often are somewhat formula driven and do not "get under the skin," he added.

"We believe it is the responsibility of the brokers to approve and follow up with underwriters through their security committees, and we have no desire to take that responsibility away from them," Mr. Imsland said. "The security committees are much closer to the market than we will ever be. They have more resources allocated to analyzing the market than us, and their analytic skills have been satisfactory."

Risk managers have to rely on the "experts in the field" because they are not in the business of insurance,

said Brad Wood, senior vp-risk management for Marriott International Inc. in Bethesda, Md. "We have to rely on brokers and rating agencies because we do not have full-time analysts, and (analyzing insurers) is not a core competency of our companies."

While risk managers have long been concerned about insurers' financial security, few would have conducted a personal evaluation until now, said Laurie R. Solomon, director, risk management at Coca-Cola Co. in Atlanta.

Having seen the negative effects of the financial crisis on some insurers, Coca-Cola now asks more questions to establish insurers' true counterparty risks, Ms. Solomon said. For example, the company wants to know how its risk is transferred within the insurer-owned entities and how much is laid off to reinsurers.

In addition, Ms. Solomon now uses the financial risk management expertise in Coca-Cola's treasury management unit, which provides a better understanding of insurers' investments, debt structures, liquidity and ability to raise capital, she said.

Coca-Cola has analyzed its data to measure total aggregation of limits by insurers across all lines, said Ms. Solomon.

"We did a lot ourselves with our own data to generate a report on total aggregation by carrier. This was a complicated task because a lot of the information is not recorded in the same way. So we customized our existing information and added data to create a report on the total aggregate policy limits."

"It would be very helpful if an outside vendor could pull this together as it would be very valuable for my peers," she said.

"We are now able to identify significant relationships across all lines," Ms. Solomon said. "This information gave us a clear view of our top five insurance partners, and some of them were not as visible to us in the past."

In addition to using brokers, some risk managers want a direct relationship with insurers.

"When you personally meet with your insurer's (chief financial officer), you can ask hard questions," said Warren C. Perkins Jr., vp, risk manager at Boh Bros. Construction Co. L.L.C. in New Orleans.

"I make a point of being personally involved in the renewal process with the broker and being part of the decisionmaking, rather than rely on the broker to meet the underwriters and executives," Mr. Perkins said.

It is important to develop a relationship with your insurer, said Arcadia Group's Mr. Campbell said. "It is good to sit down at least once a year with your insurer face to face so you can see the whites of their eyes and hear them talk about their business."

INDUSTRY FINANCIALS:
Year-end Results

SPOTLIGHT

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PAGE 16

PROPERTY/CASUALTY INSURERS' 2009 RESULTS

Largest U.S.-based or U.S.-listed property/casualty insurers that report quarterly results. All amounts are in thousands of dollars.

Company	Net premiums written 2009	Percent increase (decrease) 2009-2008	Net income (loss)	Percent increase (decline) 2009-2008	Consolidated revenues 2009	Combined ratio 2009	Combined ratio 2008
American International Group Inc.	\$30,664,000	(13.9)%	\$(10,949,000)	N/M	\$96,004,000	108.0%	101.9%
Liberty Mutual Insurance Co.	28,258,000	11.0	1,023,000	(8.1)	31,094,000	99.9	100.1
Travelers Cos. Inc.	21,336,000	(1.6)	3,622,000	23.9	24,680,000	89.2	91.9
ACE Ltd.	13,299,000	1.7	2,549,000	112.9	5,075,000	88.3	89.6
Chubb Corp.	11,077,000	(6.0)	2,183,000	21	13,016,000	86.0	88.7
Hartford Financial Services Group Inc.	9,741,000	(4.8)	(887,000)	N/M	24,701,000	90.4	90.7
CNA Financial Corp.	6,132,000	(5.5)	419,000	240.1	8,472,000	96.9	98.0
W.R. Berkley Corp.	3,730,095	(7.5)	309,057	9.9	4,431,178	94.2	93.1
American Financial Group Inc.	2,311,000	(19.9)	519,300	165.2	4,321,000	83.0	88.0
Cincinnati Financial Corp.	2,181,000	(5.6)	432,000	0.7	3,903,000	101.6	97.0
Cumulative	\$128,729,095	(3.7)%	\$(779,643)	N/M	\$215,697,178	96.4%	95.9%

N/M=Not meaningful
Source: Company reports

P/C insurers try to build on 2009 momentum

Intense competition, excess capacity factor in ongoing soft rates

By JUDY GREENWALD

A revived investment environment, reserve releases and relatively low catastrophe losses helped many large U.S. commercial property/casualty insurers overcome weak premium growth and soft rates in 2009.

But insurers' reserve cushion is growing thin and rates continue to be soft with no indication when the market may harden, observers say.

Ten major insurers that release their quarterly results reported a \$779.6 million loss in 2009 vs. a \$94.39 billion loss in 2008. Excluding American International Group Inc., the nine remaining insurers posted a 107.7% increase in net income to \$10.17 billion. Net premiums written for all 10 insurers decreased 3.7%, to \$128.73 billion. The 10 insurers posted a 96.4% combined ratio for 2009 vs. 95.9% for 2008 (see box).

The fourth quarter of 2009 was "another good quarter similar to the first three," with no major catastrophes and good reserve development, said Cliff Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York.

"We still have a soft market that is not really showing improvement; and with the economy, you have

exposures shrinking," so premiums have declined, said James Auden, an analyst with Fitch Ratings in Chicago.

But many large commercial writers "reported pretty good underwriting results for the year, and some of that's fueled by the later cat season and also by quite a bit of favorable reserve development." In the hard-market years, insurers were able to post reserves more conservatively, and "they're taking reserves down from those years," he said.

In addition, Mr. Auden said, "Companies' capital position really rebounded over the course of the year, and a lot of that was due to the recovery in the investment market."

"I see continued improvement economically" in 2010, said Bill Bergman, Chicago-based analyst with Morningstar Inc. There appears to be "some pretty good momentum on that score and that's going to help in terms of demand" for insurance, he said.

However, observers say insurance rates remain soft this year.

Bruce Fell, Stamford, Conn.-based senior consultant for Towers Watson & Co. and leader of its property/casualty insurance practice in the Americas, noted that Towers Watson's most recent Commercial Lines Insurance Pricing survey found that rates were flat in the fourth quarter, with marginal declines for the previous three quarters.

"Price declines seem to be less

severe than they were last year" overall, said Stewart Johnson, a portfolio manager with Stamford, Conn.-based Philo Smith & Co. Looking at specific lines, "umbrella business is still under tremendous pressure, whereas certain segments of (directors and officers) and (errors and omissions) are actually doing OK."

Edward Keane, an analyst with Oldwick N.J.-based A.M. Best Co. Inc., said companies are "still seeing rate decreases for the most part, but they're starting to decelerate. And from what we're hearing from mid-

'I see continued improvement economically' in 2010.

Bill Bergman, Morningstar Inc.

to large commercial carriers," a gradual increase may begin in the second half of this year, he said.

However, "We're somewhat skeptical rates will improve materially in the near term," said Fitch Ratings' Mr. Auden. "From a competitive standpoint, there's a lot of capital in the market looking to write business, so that kind of competitive dynamic really hinders any positive movement in pricing. And it's likely underwriting performance will need to get worse before it gets better, and we don't see capital moving out of the market."

"There are two things I'm looking for: One is improvement in pricing and the other is a pickup in insured units," Philo Smith's Mr. Johnson said. "Companies are beating each other up to cut prices to win new business. If the business environment is expanding," that will lead to an increase in insured units, "which should take some pressure off of pricing," he said.

"There does seem to be a fair amount of excess underwriting capacity" in the market now, said Cathy Seifert, an equities analyst with rating agency Standard & Poor's Corp. in New York. "I'm not sure what the catalyst" will be that will harden rates, she said.

Mr. Auden said that catalyst could be significantly worse underwriting results, such as "a spike in loss costs due to inflation or some other economic change. That could spur activity."

In addition, "A large cat or some big event that drains capital from the market could do it." But it is more likely the market will continue "where rates are broadly inadequate, but not terrible," said Mr. Auden. "We don't see the market reverting to the late '90s period, where accident-year combined ratios were 115%."

Pano Karambelas, vp at Moody's Investors Service in New York, said to the extent that the insurance industry continues to build capital, "you'll probably see a continuation of softening" insurance pricing.

"Any sort of bloodletting in terms of results would tend to have an impact on the underwriting behavior of carriers" in rates, but the competition will be extended if the industry continues to post profits and grow capital, Mr. Karambelas said.

While many insurers benefited in 2009 from reserve redundancies, "we're concerned that the reserve cushion is not nearly as strong as it was a few years ago," Mr. Auden said.

"The outlook is a bit of a concern because, as the redundant reserves are used up, I think these tough economic periods can really wreak havoc on reserving practices," which "could end up being reflected in a deficiency of loss reserves in the next couple of years," said John L. Ward, CEO of Cincinnati-based Cincinnati Partners L.L.C.

Significant negative reserve development means insurers "will probably have to start raising rates," said Paul Newsome, an analyst with Sandler O'Neill & Partners L.P.

Meanwhile, the investment environment has improved but yields are low, observers say. Mr. Ward said about two-thirds of most insurers' invested assets are in fixed income securities and "we're in a period of very low interest rates."

"I think we're going to see a noticeable drop in investment income as those bonds mature and get reinvested" in lower-yielding instruments, Mr. Ward said. Many companies "are taking a very safe and conservative strategy in their investment portfolio and in the business they write, and until that fear of the markets and the unknown gets back to normal, I think we're going to be underperforming overall in the industry."

A.M. Best's Mr. Keane said he expects last year's move into safer fixed income and cash investments will start to stabilize "and in 2010 we might start to see companies go back into equities." However, "I don't think everyone's rushing back to go into equities" and insurers' investments in lower-yielding securities will hold investment yields down.

On the merger and acquisition front, recent activity includes Max Capital Group Ltd.'s planned merger with Harbor Point Ltd. (BI, March 8) and may portend more M&A activity, experts say.

"We'll see more M&A" activity, Mr. Newsome said. "It's pretty natural for this part of the insurance cycle. You get more management teams interested in selling out because they realize that it could be a pretty difficult environment for them to continue in the next couple of years."

While M&A deals may happen, "I don't necessarily think the big deals we saw a decade ago are going to repeat themselves," Moody's Mr. Karambelas said. There was a lot of specialization a decade ago, but since Sept 11, 2001, "a lot of companies have diversified." As a result, "I don't necessarily see the same sort of impulse or dynamic this time around for a major M&A wave."

Mr. Ward said the one impediment to M&As is "the capital markets and the credit markets in particular still have not fully recovered, and it's very difficult to foresee a lot of M&A activity until sources of financing have returned to the markets."

Largest public brokers post a profit

Challenges remain, but economic, M&A headwinds ease

By SALLY ROBERTS

Given one of the toughest operating environments in recent history, many of the world's largest public brokers posted better-than-expected 2009 financial results.

Tight expense controls gave way to better operating margins and profits for some of the largest publicly traded brokerages last year, while Willis Group Holdings P.L.C. even managed to grow its top line organically.

However, 2010 is expected to be another tough year for the brokerage industry as insurance prices remain soft and the economy recovers slowly. But if the fourth quarter of 2009 is any indication, those headwinds are beginning to ease, one brokerage analyst noted.

At the same time, the merger and acquisition market that stagnated last year appears to have thawed and some of the more acquisitive brokers, including Arthur J. Gallagher & Co. and Brown & Brown Inc., expect dealmaking to play a bigger role in their top lines this year. Marsh & McLennan Agency L.L.C., the middle-market agency subsidiary of Marsh Inc., began its aggressive growth-by-acquisition strategy late last year that is expected to continue through 2010.

Also on the positive front, the world's four largest brokers have been given the green light to once again accept high-margin contingent commissions, which should help boost their financial results, although most likely not until 2011. Willis has said repeatedly that it does not intend to collect incentive compensation despite the ability to do so.

Overall, London-based Willis reported the biggest brokerage revenue gains among the largest publicly traded brokers in 2009, a 17% rise to an acquisition-fueled \$3.21 billion. Excluding the gains from its 2008 purchase of Hilb Rogal & Hobbs Co. and other factors, Willis' revenues grew 2% organically in 2009, the best among the group.

The best bottom-line results came from New York-based Marsh & McLennan Cos. Inc., which reported a \$242 million profit in 2009 compared with a \$73 million loss in 2008, while Itasca, Ill.-based Gallagher posted a 66.4% increase in profit, which rose to \$128.6 million in 2009.

Brown & Brown was the only brokerage among the five brokers analyzed by *Business Insurance* to report declines in 2009 revenues and profits, which the Daytona Beach, Fla.-based broker attributed to decreasing insurance rates, adverse economic conditions and a soft M&A environment.

Brown & Brown completed only 11 deals worth about \$27 million in annualized revenue in 2009 compared with 45 deals worth about \$120 million in annualized revenue

in 2008. Organic growth was down 8.3% in the fourth quarter and down 5.1% overall in 2009.

The rest of the world's largest publicly traded brokers fared a bit better financially in 2009.

"The results in 2009 were better than generally feared given the environment," said Mark Lane, a research analyst with William Blair & Co. L.L.C. in Chicago.

"It was a very challenging year," Mr. Lane said. "That said, the large brokers were able to mitigate some of the pressure by taking market share globally and managing

expenses aggressively."

Organic growth, particularly from the three largest brokers, was "better than expected" in 2009, said Cliff Gallant, an analyst at Keefe, Bruyette & Woods Inc. in New York. "Frankly, I kind of scratch my head. I'm not exactly sure how they did that."

"All the brokers were very quick to reduce their costs themselves, so they actually kept their margins up and some saw improvements, particularly at Marsh. So profitability

Continued on next page

2009 BROKER RESULTS

Results for the world's largest publicly held brokers. Amounts are in millions of dollars.

BROKER	BROKERAGE REVENUES*	% CHANGE FROM 2008	NET INCOME	% CHANGE FROM 2008
Marsh & McLennan Cos. Inc.	\$10,507.0	-8.2%	\$242.0	N/M
Aon Corp.	7,521.0	2.2	747.0	-48.9%
Willis Group Holdings P.L.C.	3,213.0	17.0	459.0	41.6
Arthur J. Gallagher & Co.	1,711.7	6.2	128.6	66.4
Brown & Brown Inc.	966.7	-0.5	153.3	-7.7

*Brokerage revenues comprise commissions and fees from placing insurance and reinsurance, wholesale brokerage and consulting services. They do not include investment, fiduciary or noninsurance income. N/M=not meaningful. Source: Company reports

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Reinsurers tap reserves, investments in 2009 gains

Despite 2010 cats, analysts expect rates to remain soft

By JUDY GREENWALD

Catastrophes, including February's earthquake in Chile and Windstorm Xynthia in Europe, likely will have only a minor effect on reinsurance rates this year, which observers expect to remain soft.

Meanwhile, U.S. reinsurers posted strong results in 2009, bolstered by improved investment income and reserve releases despite soft pricing that pressured their premium growth.

Nineteen reinsurers surveyed by the Washington-based Reinsurance Assn. of America reported \$23.91 billion in net premiums written during 2009, virtually identical to the \$23.92 billion written in 2008 (see chart).

However, reinsurers' combined ratio improved last year to 93.5% vs. 101.8% the previous year. Policyholder surplus in 2009 rose 20.1% to \$77.32 billion, the RAA said.

The group reported \$4.29 billion in net income, a 48.7% increase.

Mark Murray, senior analyst with Oldwick, N.J.-based A.M. Best Co. Inc., said the profitable year "was obviously a function of a very light catastrophe year," as well as "rebounding" investment returns.

Also boosting results was favorable prior-year reserve adjustments, similar to the primary market, that improved reinsurers' combined ratios by about seven percentage points, said John L. Ward, CEO of Cincinnati-based Cincinnati Partners L.L.C.

"The combineds are moving in a

TOP U.S. REINSURERS' 2009 RESULTS

Ranked by net reinsurance premiums written. All amounts are in thousands of dollars.

REINSURER	NET WRITTEN REINSURANCE PREMIUMS		NET INCOME (LOSS) 2009	COMBINED RATIO	
	2009	2008		2009	2008
National Indemnity Co. ¹	\$4,364,269	\$4,625,041	\$1,508,030	78.2%	89.6%
TRC/Putnam Reinsurance Co.	3,589,489	3,672,494	448,589	92.8	99.5
Munich Re America Corp. ²	2,803,414	2,366,863	88,388	98.9	114.0
Odyssey America Re/Odyssey Reinsurance ³	1,774,901	1,885,172	374,885	95.9	101.5
Swiss Reinsurance America Corp. ⁴	1,655,266	1,989,503	681,348	102.8	111.3
Everest Reinsurance Co.	1,646,623	838,765	442,735	89.7	115.7
General Re Group ⁵	1,427,617	1,405,077	156,491	93.6	106.8
Berkley Insurance Co.	1,226,019	1,232,305	223,725	92.4	96.3
QBE Reinsurance Group ⁶	825,134	830,286	3,424	99.3	109.2
XL Reinsurance America ⁷	765,564	1,188,387	85,953	111.8	83.5
Totals for Top 10	\$20,078,296	\$20,033,893	\$4,013,568	92.3%	100.7%
Totals for all companies	\$23,906,150	\$23,920,333⁸	\$4,291,775	93.5%	101.8%

(1) Underwriting results exclude assumptions from affiliated General Re Group. (2) Includes the combined results of Munich Reinsurance America Inc., American Alternative Insurance Corp. and Princeton Excess and Surplus Lines Insurance Co. (3) Includes combined results of Odyssey America Reinsurance Corp., Clearwater Insurance Co., Hudson Insurance Co., Hudson Specialty Insurance Co. and Clearwater Select Insurance Co. (4) Includes the combined results of Swiss Reinsurance America Corp., a change from prior quarters when Westport Insurance Corp.'s results were included. SRA is Swiss Re Group's U.S. P/C reinsurer and Westport is focused on primary business. (5) All data presented for the North American P/C segment of General Re Group. Underwriting results exclude certain intercompany transactions, other adjustments and cessions to certain affiliated members of Berkshire Hathaway Group. (6) Includes the combined results of QBE Reinsurance Corp., QBE Insurance Corp. and QBE Specialty Insurance Co. (7) XL Reinsurance America's net underwriting results consist of its net pooled share of the combined underwriting results of the XL America group pool, all wholly owned subsidiaries of XL Reinsurance America. (8) Total net premiums written for December 2008 are those reported in the December 2008 Reinsurance Underwriting Report.

Source: Reinsurance Assn. of America. For further information, contact the RAA at www.reinsurance.org.

good direction, as a general statement," said Bill Bergman, an analyst with Morningstar Inc. in Chicago. Particularly, Bermuda reinsurers formed after Sept. 11, 2001, have been reporting "persistently favorable loss development," including "some of the more rapidly growing firms" about which he had been

concerned.

Rates continue to soften, though, observers say. Reinsurers' strong results and investment gains "led to significant growth in capital in the market, and it's challenging to put that capital to work," Mr. Auden said. "That's putting pressure on pricing," resulting in declining rates

in most areas during January renewals, with the expectation of modest declines going forward, he said.

James Eck, vp and senior analyst with Moody's Investors Service in New York, said casualty rates in particular seemed weak at January renewals, while property catastro-

phe pricing was "probably OK" for regions that had losses. For other regions, he said, "there's probably still pressure" on rates.

To date, the earthquake in Chile and storm in Europe have not dramatically affected rates, observers say.

"We're still kind of getting mixed feedback on how that's going to impact rates, but certainly it's not going to increase them much. If it does anything, it'll hold them steady. Without that, expectations were rates were going to continue to decline," Mr. Murray said.

Mr. Auden said rates may rise in areas affected by the catastrophes, "but I don't know if those are marketwide events that will affect pricing more broadly at this point."

Mr. Ward said the catastrophes could result in a modest hardening, "but I don't see that being a market-moving event in the sense that there will be large, substantial hardening."

Those catastrophes "probably don't enter into the equation too much, yet" and the losses are not significant enough, Mr. Eck said.

Reinsurers generally are exercising discipline, say observers. "Pricing is more technically adequate in reinsurance than primary lines," Mr. Auden said. While it remains competitive, there "may be less aggressive competition in reinsurance" than the primary market, Mr. Auden said.

"Most of the companies in the reinsurance space, at least, are acting very disciplined; and I would estimate a majority of these, if not most of them, are reducing their (revenue) expectations for this year," Mr. Murray said.

See **REINSURERS** page 16

Brokers: Challenges remain, but head winds ease

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wasn't bad either," Mr. Gallant said.

Meyer Shields, an analyst with Stifel, Nicolaus & Co. Inc. in Baltimore, noted that while he views the brokers' 2009 overall revenue growth as a "disappointing example of the industry's exposure to the economy," the fourth quarter saw a "significant improvement in organic growth even in North America. What that suggests is that the combination of the weak economy and insurance rate decreases, while still pressures, are lessening," he said.

"A momentous year" is how Joe Plumeri, chairman and CEO of Willis Group Holdings, described 2009 for the London-based broker in a statement.

"We began in the midst of integrating our...HRH acquisition, facing a difficult global economy and soft insurance market. We responded with 2% organic growth in commissions and fees, disciplined expense management, successful merger integration...and a much stronger balance sheet," he said.

After posting 3% and 8% drops in

organic revenue growth in its North American segment in the third and second quarters, respectively, Willis posted a 1% gain in organic revenue in the fourth quarter, which it attributed to a "renewed focus on top-line growth" after the "substantially complete" integration of HRH.

Willis had company in noting the successes of 2009.

On an analyst conference call, President and CEO Brian Duperreault described MMC's 2009 performance as "outstanding."

"When I joined MMC two years ago, one of our major objectives was to improve both the financial performance and the margins in the risk and insurance services segment," Mr. Duperreault said. "As I said at the time, our segment margin needed to be at a level competitive with other large insurance brokers. Over the past two years, adjusted operating income in risk and insurance services more than doubled to nearly \$1 billion. And the segment's adjusted operating margin increased...to 18.6% in 2009 from 8.6% in 2007. This was done despite the worst economic downturn since

World War II," he said.

Retail broker Marsh Inc. and reinsurance broker Guy Carpenter & Co., which compose MMC's risk and insurance services segment, reported a 1% drop and 8% gain in organic revenue, respectively, in 2009. Revenues from the segment dropped 3.3% for the year to \$5.28 billion.

J. Patrick Gallagher Jr., chairman, president and CEO of Arthur J. Gallagher, told analysts during a conference call that the broker had an "excellent year" given the economic environment.

"We grew (earnings before interest, taxes, depreciation and amortization) over \$60 million or 17%," he said, noting that he'd be happy with 17% EBITDA growth in a better economy.

Gallagher completed a 4% reduction in its workforce in January 2009 and completed another 4% reduction in the first quarter of 2010.

While total revenues were up 6.2% for the year to \$1.71 billion, organic revenues were off 2.5% at the brokerage.

Organic revenues declined 1% at Aon Corp. in 2009, which President

and CEO Greg Case told analysts was a "testament to the strength" of Aon's franchise given the challenging year.

For the first time ever, Aon achieved a 20% adjusted pretax operating margin in its brokerage segment, which Mr. Case attributed to "operational discipline."

Brokerage revenues at the Chicago-based firm increased 2.2% to \$7.52 billion in 2009, buoyed by its 2008 acquisition of London-based reinsurance broker Benfield Group Ltd.

While the market is expected to remain challenging for the brokerage industry in 2010, the public brokers expect to take advantage of a better M&A market.

"Last year the industry was down some 40% in M&A activity," Jim W. Henderson, Brown & Brown's vice chairman and chief operating officer, said during an analyst call. "We think '10 certainly has more promise to it. There's a (federal capital gains) tax rate change sitting out there at the end of 2010. This is a promising discussion by potential sellers: 'Do I do it now or do I pay more next year with respect to taxes?'"

Gallagher also expects its M&A activity to pick up in 2010.

In 2009, "multiples were down, our prospective businesses were suffering and we in turn were very, very cautious," Mr. Gallagher said during the conference call. "Nonetheless, our pipeline is strong. We have many firms we are talking to and we expect activity to ramp up as the year progresses in 2010."

"As the economy gets healthier, I am convinced we will see a return to positive organic growth. In the meantime, our mergers and acquisition activity will help us keep growing our top line," Mr. Gallagher said.

Marsh also should see top-line improvement as it builds out its Marsh & McLennan Agency.

Late last year, the agency embarked on its aggressive acquisition strategy by purchasing Insurance Alliance, a Houston-based agency with about \$15 million in annual revenues. Then it acquired Paramus, N.J.-based agency NIA Group L.L.C., with annual revenues of \$62 million. In January, it acquired Overland Park, Kan.-based agency Haake Cos., with annual revenues of around \$11 million. And in March it acquired Thomas Rutherford Inc., with about \$171 million in annual revenue.

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Ranked by reported revenues

Insurer	2009 revenue	2008 revenue	Percent change (decline)	2009 enrollment	2008 enrollment	Percent change (decline)	2009 net income (loss)	2008 net income (loss)	Percent change (decline)
UnitedHealth Group Inc.	\$87,140,000,000	\$81,190,000,000	7.3%	31,995,000	32,800,000	(2.5)%	\$3,822,000,000	\$2,977,000,000	28.4%
WellPoint Inc.	65,028,100,000	61,251,100,000	6.2	33,700,000	35,337,000	(4.6)	4,745,900,000	2,500,000,000	89.8
Kaiser Permanente	42,100,000,000	40,300,000,000	4.5	8,580,000	8,600,000	(0.2)	2,100,000,000	(794,000,000)	N/M
Aetna Inc.	34,764,100,000	30,950,700,000	10.4	18,900,000	17,668,000	7.0	1,276,500,000	1,384,100,000	(7.7)
Humana Inc.	30,960,414,000	28,946,372,000	7.0	10,283,300	11,559,100	(11.0)	1,039,675,000	647,154,000	60.6
CIGNA Corp.	18,414,000,000	19,101,000,000	(3.6)	11,040,000	11,900,000	(7.2)	1,302,000,000	292,000,000	346.0
Health Care Service Corp.	17,300,000,000	16,000,000,000	8.1	12,400,000	12,384,000	0.1	514,000,000	745,000,000	(31.0)
Health Net Inc.	15,366,589,000	15,713,241,000	(2.2)	6,100,000	6,155,000	(0.8)	(49,000,000)	95,003,000	N/M
Coventry Health Care	13,903,526,000	11,734,227,000	18.5	3,586,000	3,738,000	(4.1)	242,301,000	381,895,000	(36.6)
BCBS of Florida	8,290,000,000	8,390,000,000	(1.2)	4,000,000	4,200,000	(4.8)	137,000,000	132,000,000	3.8

N/M-not meaningful
Source: Company reports

Health: One-time events produced profits that will be difficult to repeat this year

CONTINUED FROM PREVIOUS PAGE

cost settings, according to analysts.

Analysts were split on how health care reform would affect insurers. Some said it could be a drag on insurer profits if Medicaid is expanded and enrolls a greater portion of higher-risk individuals. Others said expanding Medicaid to include higher-income individuals actually could improve the risk pool, making the business more profitable for insurers.

Regardless, any gains are likely to be short-lived if state and federal budget constraints make renewal rate increases difficult to obtain, analysts warn.

"By and large, for what's been going on, I would say performance has been stable," said Bradley Ellis, a director at Fitch Ratings in Chicago.

Joseph Marinucci, primary credit analyst at Standard & Poor's Corp. in New York, said, for the most part, health insurer profits were attributable to "one-time events," such as asset sales and improved investments.

For example, the close of WellPoint's sale of its PBM business last year to St. Louis-based Express Scripts Inc. for about \$4.7 billion yielded about equal net income for the Indianapolis-based health insurer, he noted.

"WellPoint's margins are down," Mr. Marinucci said. "Their profits came from the sale of NextRx."

Meanwhile, "CIGNA Corp.'s profit came from unwinding its runoff reinsurance business," he said.

By contrast, earnings in CIGNA's health care business improved only modestly, by less than 2%, largely as a result of a strong focus on reducing administrative expenses, said a spokesman for the Bloomfield, Conn.-based health insurer.

'By and large, for what's been going on, I would say performance has been stable.'

Bradley Ellis, Fitch Ratings

Although operating income in 2009 at Oakland, Calif.-based Kaiser Foundation Health Plan Inc. was comparable to 2008 performance, investment income last year resulted in net nonoperating income of \$524 million compared with a net nonoperating loss of \$2.3 billion in 2008.

As a result, Kaiser had \$2.1 billion in net income in 2009 compared with a net loss of \$794 million in the prior year.

Improvement in investment returns also helped out Minnetonka,

Minn.-based UnitedHealth Group Inc., which reported net realized capital gains of \$11 million in 2009, compared with net realized capital losses of \$6 million in 2008. Additionally, cost-containment efforts helped the insurer yield net income last year that was 28.4% higher than the prior year, or \$3.82 billion compared with \$2.97 billion. Improved performance by UnitedHealth's noninsurance operations, which include OptumHealth Inc., Prescriptions Solutions and Ingenix Inc., also boosted the insurer, analysts say.

Although revenue was up slightly at Aetna, at \$34.76 billion for 2009 compared with \$30.95 billion in 2008, higher-than-expected medical costs tempered profits, which fell 7.7% to \$1.28 billion in 2009 compared with \$1.38 billion in 2008. The company blamed unexpected costs related to H1N1 flu and extending COBRA benefits for the loss.

Los Angeles-based Health Net Inc. was the only company among the nation's 10 major health insurers to post a loss, taking a \$137.3 million charge against earnings from the sale of its business in Connecticut, New York and New Jersey to UnitedHealth in a deal that closed in December.

Humana Inc. reported a 60% surge in profits, which analysts attributed mainly to growth in its Medicare businesses.

UP Comings & Goings CLOSE



TOM SCHAFFLER

NEW JOB TITLE: Chicago-based president of Lockton Benefits Group.

PREVIOUS POSITION: Chicago-based executive vp and producer for Lockton Benefits.

GOALS FOR NEW POSITION: I've been with Lockton for 10 years and we've had tremendous growth over that time. It's really moved from a mentality about "me and my book of business" to a real focus on the entire practice, our clients, our success and growth. The immediate goal is to continue to instill that vision in this culture that has made Lockton successful over the last 10 years.

INDUSTRY OUTLOOK: We think the outlook is bright and we think it's very opportunistic for those who have the teams and the resources to help their clients. With uncertainty there is opportunity. With an accelerated rise in costs, there are employers out there looking for answers. We think from a consulting standpoint there are a lot of opportunities out there for clients looking for solutions. We are well-equipped to provide those solutions.

FIRST MARKET EXPERIENCE: I was

a group representative for Hartford Financial Services (in Chicago.) I called on brokers and consultants, hoping for them to use Hartford products.

CAREER HIGHLIGHT: The highlight of my career, beyond moving to Lockton, is helping to build Chicago's benefits practice. We had zero people and zero business. That was 10 years ago. Now we have a great practice here in Chicago.

ADVICE: Surround yourself with great people and great resources. Always put the client first. Work hard every day.

WHAT YOU WANTED TO BE WHEN YOU GREW UP: I wanted to be an attorney. I am very persuasive, which works well in sales.

OUTSIDE THE INDUSTRY, A DREAM JOB: A PGA Tour golf player. You have to be disciplined and you have to work hard, but golf is a passion for me.

MOST PASSIONATE ABOUT: Taking care of clients is one of my passions, other than golf. Taking care of clients comes very natural to me.

HOBBIES: Golf, gardening, travel.

Comings & Goings

ONLINE

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Reform: Employer impact of legislation weighed

CONTINUED FROM PAGE 1

While Congress has passed many measures during recent decades to expand health care coverage, none comes close in impact to the current reform legislation. The last major initiative was a 2003 law that added a prescription drug benefit to the Medicare program.

At a cost estimated by the Congressional Budget Office at \$940 billion over 10 years, the plan would extend health insurance coverage to 32 million uninsured U.S. residents, chiefly by expanding Medicaid and establishing federal health insurance premium subsidies to those with moderate incomes.

That expansion of coverage would make a huge dent in the number of uninsured. In 2008—the most recent data available—46 million U.S. residents lacked health insurance coverage, according to the U.S. Census Bureau. That figure looks to rise as the recession led to severe job cuts since 2008.

Expanding coverage should mean a huge reduction over time in the amount of uncompensated care. This cost now is shifted by providers to insured patients when possible.

On the other hand, employers that don't bring health care plan costs under control eventually would be exposed to a new 40% federal excise tax on health insurance premiums that exceed certain levels.

In addition, employers could face assessments of \$3,000 a year per employee if employees' share of health care premiums fails a new affordability test.

Employers most likely to be affected by the health reform changes will be those whose workforces are comprised largely of lower-wage workers paying premiums that exceed what the legislation defines as affordable, experts say.

"Employers with low-paid workforces could have some big costs ahead," said Steve Raetzman, a

senior consultant with Towers Watson & Co. in Arlington, Va.

In addition, starting in 2013 the legislation would erode the value of a tax break for employers that offer prescription drug coverage to their Medicare-eligible retirees, decreasing the likelihood that employers will continue to provide that coverage, consultants say. That tax break, in which employers that provide coverage equal to the value of Medicare Part D receive tax-free federal subsidies that partially offset their drug costs, is worth tens of millions of dollars each year to some major corporations, experts say.

Also in 2013, the value of flexible spending accounts—a program that has made it easier for employers to shift more costs to employees—would be cut when a new \$2,500 annual limit would kick in on the maximum pretax contributions employees can make to the accounts.

Frank McArdle, a consultant with Hewitt Associates Inc. in Washington, said the federal health care reform effort's effect on employers will vary depending on the employer's situation.

"Some will see opportunities and some will see higher costs," Mr. McArdle said. "The impact will be very company-specific."

For the most part, it would be years before many provisions in the legislation go into effect, giving employers time to prepare. For example, the 40% excise tax on the highest-priced plans would not begin until 2018.

On the other hand, some provisions would take effect almost immediately. For example, one late change to the legislation would require employers to extend coverage to employees' adult children up to age 26 so long as those individuals do not have access to other group coverage. The proposal calls for covering adult children within six months of enacting the legislation.

"There are some things you will



Employers who provide prescription plans equal to Medicare Part D would see a tax break erode starting in 2013 under health care reform legislation.

HEALTH REFORM ELEMENTS

Key provisions in health care reform legislation that would affect employers

■ **PENALTY TAX FOR NOT OFFERING COVERAGE:** \$2,000 per employee per year, excluding the first 30 employees. Would affect employers with at least 50 employees. Effective 2014.

■ **EXCISE TAX:** 40% tax on health premiums more than \$10,200 for single coverage and \$27,500 for family coverage, with higher thresholds for plans covering retirees and certain high-risk industries. Excludes dental and vision premiums. Effective 2018.

■ **FLEXIBLE SPENDING ACCOUNTS:** Would cap maximum pretax contributions at \$2,500. Effective 2013.

■ **EMPLOYER RETIREE PRESCRIPTION DRUG PLANS:** Curbs value of federal subsidy to employers who offer retiree prescription drug plans at least equal to Medicare Part D. Effective 2013.

■ **ASSESSMENT FOR NOT OFFERING AFFORDABLE COVERAGE:** \$3,000 per employee, triggered if an individual receives subsidized coverage through a state insurance exchange. Effective 2014.

■ **COVERAGE OF EMPLOYEES' ADULT CHILDREN:** Coverage would have to be offered to adult children without group coverage access up to age 26. Effective six months after enactment.

Source: Legislation

need to do right away," Mr. Raetzman said.

If the legislation wins final passage, not only will President Obama have secured victory for his signature domestic policy issue, he also

will have succeeded where President Bill Clinton, the last Democratic president to battle for sweeping reform legislation, failed dramatically.

Experts say there are several rea-

sons why the latest reform drive may succeed. One reason is that President Obama initially left drafting of the legislation to Congress, giving members ownership in the reform drive. By contrast, the Clinton administration drafted its own bill that lawmakers discarded promptly.

On the other hand, President Obama intervened in the legislative battle at key moments, noted Helen Darling, president of the National Business Group on Health in Washington.

When reform momentum seemed to slip last August, when opponents at numerous town hall meetings denounced the legislation, President Obama spoke before a rare joint session of Congress in September to refute opponents' charges.

"He had a real sense of when to get directly involved," Ms. Darling said.

While not viewed positively at the time in January, the loss of Democrats' filibuster-proof majority in the Senate with the election of Massachusetts Republican Scott Brown may have actually aided the reform drive, some say.

"It forced Democrats to move to a more centrist position. If a Republican could win in Massachusetts, it was a reminder to Democrats that a more centrist direction was necessary. The bill became more centrist and that is why it is likely to pass," Ms. Darling said.

In addition, as congressional Democrats battled internal divisions in trying to iron out a final compromise package, the president presented his own recommendations in February, many of which were incorporated in the final agreement.

"He reached out and personally lobbied. He would not give up," Mr. McArdle said.

Perhaps the most important reason that health care reform may succeed this time around is the ongoing rise in health care costs and growing fears that the system could unravel without dramatic action, Ms. Darling and others said.

"The growing cost burden and the rising number of uninsured" was a big motivator for legislators, Ms. Darling said.

Marsh: Rutherford deal expands brokerage's middle-market reach

CONTINUED FROM PAGE 3

CEO of Marsh & McLennan Agency, said Rutherford's attractions went beyond its volume of business. He cited the "great respect within the industry" Rutherford enjoys, its "phenomenal talent" and "strong capabilities around industry specializations."

"I think it's a fantastic deal for Marsh. Really a blue chip agency, Middle Atlantic. They're hard to come by there," said Kevin Donoghue, managing director at Mystic Capital Advisors Group L.L.C. in New York.

"It's a quality firm with good structure, good deliverables. It's got a nice footprint in the Southeast," said Timothy J. Cunningham, partner at OPTIS Partners L.L.C. in Chicago. "It's an A+ acquisition

'It's a quality firm with good structure, good deliverables. It's got a nice footprint in the Southeast. It's an A+ acquisition for them.'

Timothy J. Cunningham,
OPTIS Partners L.L.C. in Chicago.

for them."

"I clearly think it's a significant acquisition and an opportunity for the Marsh Agency as they try to build out their hub-and-spoke model," said Robert J. Lieblein, managing partner at Hales & Co. in Harrisburg, Pa. "It greatly enhances their opportunity to now do some additional acquisitions on the East Coast."

Mr. Lieblein said he thinks the latest deal by the Marsh unit will

prompt owners of other similarly sized independent agencies "to take a step back and kind of take a look at the landscape."

"It would not surprise me if it would accelerate the consolidation in that segment of the industry," he said, adding that it will cause agency owners to "evaluate what the competitive landscape is going to look like three to five years down the road," in some cases weighing the possibility of

partnering with Marsh & McLennan Agency as a strategic move.

From Rutherford's perspective, the Marsh deal also is a good fit, according to Mr. Brown, the Rutherford CEO, who added that the company was not looking for a buyer.

"We were not out soliciting bids," Mr. Brown said. "The only reason we entertained (the Marsh offer) is because we liked the concept."

"They were interested in us, I think, as a platform for the 10-state region that we were playing in," Mr. Brown said. "From our perspective, it seemed like a pretty interesting concept. We didn't lose one single person."

"It was not as much about a financial transaction as it was about a strategic fit going forward," he said. "We're all staying on board. We're going to remain engaged."

The move allows Rutherford to

better serve its clients, Mr. Brown said, and potentially puts the agency, which has never done acquisitions, in the position to be an acquirer as Marsh & McLennan Agency looks to build out its hub-and-spoke strategy.

"We know people," Mr. Brown said. "Now the thing that's interesting to us is that we can go out and look at some potential acquisitions."

Launched in early 2009, the Marsh unit is "definitely on pace with where we want to be," Mr. Eslick said, adding that the company will make additional acquisitions. "We continue to be very happy about the pipeline and the people we're talking to," he said. "Good, solid organizations are seeing that there's a good partnership opportunity."

Hartford: Insurer to raise funds to repay government

CONTINUED FROM PAGE 1

in equity market-linked variable annuities and with poorly performing investments. At the time, there was speculation it would have to sell its life business to remove a major drag on its earnings (*BI*, March 9, 2009).

Its path from that situation to where it is now is attributable largely to improvement in the equity and credit markets, observers say.

But while Hartford's move to repay the federal debt is a positive sign and would eliminate any stigma associated with the federal assistance, some observers say they remain concerned about potential financial market volatility that could affect the insurer.

Responding to the plan, New York rating agency Standard & Poor's Corp. revised its outlook on Hartford and its subsidiaries to negative from stable. Chicago-based Fitch Ratings maintained its negative outlook and New York-based Moody's Investors Service maintained its stable outlook on Hartford. Oldwick, N.J.-based A.M. Best Co. Inc. made no changes in response to the announcement. None of the rating agencies revised their ratings on Hartford.

In a filing last week with the Securities and Exchange Commission, Hartford said it planned to sell 52.3 million shares of its common stock at \$27.75 per share for a total of \$1.45 billion. An underwriters' option to buy another 7.8 million common shares would generate an additional \$217.5 million.

In addition, Hartford said it is selling 20 million depository shares, which represent an interest in mandatory convertible preferred stock, for \$25 per share, or \$500



'The Hartford always viewed this investment as temporary capital and intended to return it as soon as it was prudent.'

Liam E. McGee,
Hartford Financial Services Group Inc.

million. Underwriters can buy an additional 3 million shares of the securities for \$75 million. Hartford also has a debt offering of \$425 million of senior notes.

The common stock, depository shares and debt offering total \$2.38 billion, excluding the possible underwriters' options.

Any additional money needed to repay the TARP bailout will come from available funds, a Hartford spokesman said.

The U.S. Treasury Department will continue to hold warrants to

purchase about 52 million shares of Hartford's common stock at an initial exercise price of \$9.79 each, for a total value of \$509.1 million.

In addition, Hartford is prefunding the repurchase of its senior debt maturing in 2010 and 2011 by issuing an additional \$675 million of senior notes.

In explaining S&P's switch to a negative outlook, analyst Shellie Stoddard said repaying federal debt is a positive move, but S&P also examined broader issues. S&P is concerned about the "volatility of capital as it relates to credit market exposure and equity market exposures," she said. "Frankly, the investment losses they sustained to date have been high and...they haven't built back some of the capital lost in previous quarters."

Hartford posted \$557 million in net income for the fourth quarter in 2009, but a loss of \$887 million for the full year. Still, that was an improvement over its \$2.75 billion loss in 2008.

While repaying the TARP fund is a positive sign, Chicago-based Fitch analyst Brian Schneider said, "We just felt that the continuing pressure from the unrealized losses continue to be fairly sizeable, particularly for the life company." At the same time, he said, "trading the government money for the capital market funds, I think, is positive in the long term, just to the extent it helps remove any taint they have from participating in TARP."

Paul Bauer, New York-based vp and senior credit officer at Moody's, said Hartford during the past several quarters "has had a fairly large amount of cash sitting at the parent-company level, and that cash has given us a lot of comfort in terms of its ability to support the life

insurance operations, if needed. So by itself, the use of that cash to pay down TARP is negative."

However, once Hartford raises the capital and repays the TARP funds, there still will be "fairly good liquidity at the parent-company level, and that was one of the key reasons" why Moody's affirmed its ratings and outlook.

Bret Howlett, an S&P equities analyst in New York, said the public offerings reflect "management's confidence in its own financial position. I don't think they'd be doing this" otherwise. In addition, the public offerings allow Hartford to "get rid of this overhang of TARP," he said.

It "goes a long way" toward leading to better profitability and growth and "certainly helps" the company's return on equity, Mr. Howlett said. "I think it's good they finally got that out of the way."

Improvements in the credit and equity markets helped Hartford get to this point, observers say.

"Primarily, it was the recovery in the investment markets, which helped them not just in the investment portfolio but also in their obligations under their variable annuity business," Mr. Schneider said.

John L. Ward, CEO of Cincinnati-based Cincinnati Partners L.L.C., also cited improved investment returns.

"While the property/casualty operations have stabilized and they're showing some nice progress in new business and retention...virtually all of the rebound in the balance sheet is attributable to their improvement in the overall capital markets," Mr. Ward said.

Hartford's stock closed at 27.26 on Friday, up from 26.75 the previous week.

Safeway: Health plan services

CONTINUED FROM PAGE 3

"About the middle of last year, we decided to try and commercialize our experience. We believe that what we have is transportable to other employers," Mr. Shachmut said, adding that he felt "existing health care players are not well equipped to deliver the Safeway results."

Safeway Health will provide analytics, plan design or redesign assistance, Mr. Shachmut said. As compensation, Safeway Health receives 25% of the savings generated over a five-year period.

"Under our business model, Safeway gets to share in the savings. We take no consulting fees," he said.

Mr. Shachmut said that he had received "verbal affirmation from four potential clients" and is "in detailed negotiations with two of them."

"It sounds interesting and, given

Printer creates own 'medical home' model

SUSSEX, Wis.—While many U.S. employers are fighting with health insurers over coverage costs, printing company Quad/Graphics Inc. is finding there may be some truth to the old adage, "If you can't beat 'em, join 'em."

"As employers, we can't sit back passively. The costs are too great," said John Neuberger, vp of operations at QuadMed L.L.C., a wholly owned subsidiary of Quad/Graphics, that manages four company-owned clinics in addition to two onsite clinics for Briggs & Stratton Corp. in Wisconsin, two clinics for Northwestern Mutual Life Insurance Co. in Milwaukee, and one clinic for MillerCoors L.L.C. in Milwaukee. It also owns and operates 11 fitness centers and nine rehabilitation centers.

QuadMed was formed in 1990 after several Mil-

waukee-area employers approached Quad/Graphics asking for help addressing the rising cost of health care in their organizations, according to Mr. Neuberger.

With its staff of nearly 300 employees, QuadMed can conduct clinic feasibility studies as well as provide design, setup and management services for worksite clinics, onsite pharmacies, dental offices, even employee assistance programs, according to Mr. Neuberger.

"It's a 'medical home' model" that existed long before the term came in vogue, he said, noting that Quad/Graphics has been providing onsite care to employees and their families for nearly 20 years.

—By Joanne Wojcik

that Safeway is a successful business, I expect they will figure out products and services that will be successful in the marketplace," said Helen Darling, president of the NBGH, about Mr. Shachmut's presentation. "I will follow it with great interest. The more people we have working to stop the obesity epidemic and finding innovative

ways to improve health, the better."

A spokesman for CIGNA said, "Engaging consumers in their own health care is at the core of what CIGNA does as a business. We are committed to improving the health and well-being of the people we serve."

"There is growing frustration

among employers. We don't expect the government or insurers or providers to save us," said John Neuberger, vp of operations at QuadMed. Instead, "we're all experimenting. They found a solution through benefit design, which I thought was very interesting. Some things are going to work, some better than others."

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Cat losses could put reinsurers in the red

Insurers, reinsurers report preliminary losses for quake, storm

By **MATT SCROGGINS**

Reinsurance losses from last month's Chilean earthquake and European windstorm could push some reinsurers into the red for the first quarter of 2010, Moody's Investors Service said in a report.

Sixteen global reinsurers have reported about \$3.5 billion in net losses before tax from the Chilean earthquake and Windstorm Xynthia, according to the Moody's report, which was issued before all companies had reported their estimates last week.

While first-quarter 2010 results "will have many moving pieces, including the possibility of favorable loss reserve development, we would expect a number of reinsurers to post both operating and net losses for the quarter," the report states.

Early estimates

Among the companies issuing preliminary loss estimates last week were:

- ACE Ltd. estimated \$75 million for both events.
- Allied World Assurance Co. Holdings Ltd. put its losses for the Chilean earthquake at between \$55 million and \$75 million and estimated its Xynthia loss at \$2 million.
- AXIS Capital Holdings Ltd. said its loss estimate from the Chilean earthquake ranges from \$60 million to \$125 million, while Xynthia losses would be \$10 million to \$20 million.
- Endurance Specialty Holdings Ltd. said its combined estimate for the Chilean earthquake and Windstorm Xynthia was \$65 million.
- Hiscox Ltd. said it expects its combined loss from both events to hit £100 million (\$152 million), Reuters reported.
- Max Capital Group Ltd. said its preliminary estimate of combined claims ranges from \$10 million to \$20 million.
- Montpelier Re Holdings Ltd. said its preliminary loss estimates from the earthquake in Chile, windstorm in Europe and a hailstorm in Australia range from \$85 million to \$110 million.
- XL Capital Ltd. said losses related to the earthquake in Chile range from \$140 million to \$205 million, while losses from Xynthia will range from \$20 million to \$25 million.

Copies of the Moody's report are available online at www.moody.com.



Senate Banking, Housing and Urban Affairs Committee Chairman Christopher Dodd, D-Conn., last week unveiled his latest proposal to reform regulation of the financial services industry.

AP PHOTO

Bill: New rules proposed for financial services sector

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"We will have financial reform adopted this year in the Congress of the United States," Sen. Dodd said at a press conference last week. "Our regulatory structure, constructed in a piecemeal fashion over many decades, remains hopelessly inadequate."

The Restoring American Financial Stability Act of 2010 would create an Office of National Insurance in the Treasury Department to monitor the insurance industry and coordinate international insurance issues. It would establish a council to monitor systemic risks caused by large, complex financial companies. The legislation also includes language from the Nonadmitted and Reinsurance Reform Act, which would simplify reinsurance regulation across states, establish a common system to allocate surplus lines premium taxes and allow risk managers to access surplus lines markets more directly.

Some industry representatives expressed concern and argued that it is banks—not insurers—whose risks need to be monitored more closely. Others were pleased with aspects of the latest Senate bill compared with Sen. Dodd's previous draft in November.

"We are concerned over many provisions in the bill, such as subjecting state-regulated insurers to a duplicative federal resolution and assessment authority," David A. Sampson, president and CEO of the Property Casualty Insurers Assn. of America, said in a statement.

"A more detailed review suggests there's improvement in lots of areas and we give the committee credit for that," said Leigh Ann Pusey, president and CEO of the Washington-

based American Insurance Assn.

Insurers seemed most concerned with language aimed at mitigating systemic risk. The bill would set up a \$50 billion fund, paid with assessments from the nation's largest financial firms, to be used to liquidate large, interconnected corporations, if needed. Insurers already pay into state guaranty funds, which are used to liquidate insolvent insurers. This system means insurers don't pose systemic risks and should not have to pay for a new system they won't use, representatives said.

"We don't cause systemic risk and we shouldn't be held responsible for other people's bad actions," said Dylan Jones, a Washington-based federal affairs director at the National Assn. of Mutual Insurance Cos.

While the Senate bill excludes insurers from paying into the \$50 billion fund, Ms. Pusey and others are concerned that large insurers would have to pay into the liquidation system should the \$50 billion fund be depleted. Lawmakers argued that such a scenario is unlikely and that, given the uncertainty about the future, they wanted to err on the side of including too many sectors as potentially being responsible to finance the fund, several observers said.

"They clearly recognize (insurers) don't pose a risk and that's been reflected in the front-end funding," by specifically excluding insurers, Ms. Pusey said. "To have that carried out throughout the rest of the bill, we look to continue to work with them on that."

Still, some representatives seemed pleased that the bill largely leaves the state guaranty fund system in place. Under Sen. Dodd's proposal, the Federal Deposit Insurance Corp. could

step into the shoes of a state regulator if it failed to take appropriate action, but the FDIC still would liquidate the insolvent firm under the state-based system, Ms. Pusey said.

Even if a large holding company became insolvent and needed to be liquidated by the \$50 billion fund, its insurance subsidiaries still would be unwound through the state guaranty funds, she said.

The other aspect of the bill's efforts to mitigate systemic risk is the Financial Stability Oversight Council, which would make recommendations to regulators about capital, leverage and other requirements for large, complex financial firms.

Similar to the House-passed legislation and the previous version of his bill, Sen. Dodd's latest proposal would establish the Office of National Insurance to provide a federal clearinghouse for insurance information. Mr. Jones said he is pleased that the legislation prohibits the Office of National Insurance from becoming a federal insurance regulator, thus preserving the state-based regulation system. But he said the office would be granted strong authority to subpoena information from insurers and NAMIC would like to see that authority tempered.

"Most of that information, if not all, is publicly available," Mr. Jones said. "We'd like to see a requirement where the office would have to go through the normal process (to request information) before a subpoena, which is a bit heavy-handed."

However, Ms. Pusey said the AIA wanted the Office of National Insurance to have stronger powers to preempt some state regulations. "For a variety of reasons, I think the language is much milder in the pre-

emption area than we'd like," she said.

But Ms. Pusey and other industry representatives are pleased that the new legislation includes the NRRRA, which industry representatives said would bring much-needed simplicity to the placement of surplus lines coverage for multistate policyholders.

States' regulations vary on how premium taxes are allocated, which surplus lines insurers are eligible and how many quotes from admitted insurers a policyholder must seek, said Joel Wood, senior vp at the Washington-based Council of Insurance Agents & Brokers. For example, if a Michigan-based company were to buy surplus lines cover for a plant in Kentucky, the two states could have competing claims for premium taxes and there is no established way to settle the discrepancy, he said.

"It's an individually negotiated thing that involves a massive amount of lawyering," Mr. Wood said. "It's not that we feel like any of the regulations that govern surplus lines are in and of themselves unworkable. It's just that it breaks down when you have more than one state."

Mr. Wood said the legislation would provide an incentive for states to develop interstate compacts.

Scott Clark, director and secretary for the New York-based Risk & Insurance Management Society Inc., said the legislation also would give qualified risk managers more direct access to nonadmitted markets than current law allows.

"RIMS truly believes we have a much better chance now of (the NRRRA) being passed into law," Mr. Clark said. "It's got a lot of traction."

Stanford: Insurers must pay D&O coverage for defendants: Court

CONTINUED FROM PAGE 3

reserved to reimburse bilked investors. Attorneys for Mr. Stanford and the other accused executives have said they would have to leave the case if they could not secure payment from the underwriters.

The Securities and Exchange Commission filed civil and criminal charges against the Stanford Financial executives early last year. Last August, former Chief Financial Officer James Davis pleaded guilty and stated in court that he and the other executives operated the company as a Ponzi scheme. Subsequently,

the underwriters denied coverage and the executives sought an injunction.

Most D&O policies stipulate that insurers will pay defense costs, except in cases of outright fraud. But the fraud exclusion typically is contingent on a "final adjudication" by a court. Because most such cases settle before a final verdict is reached, D&O underwriters usually end up paying defense costs.

Stanford Financial's policies had that type of fraud exclusion, which Lloyd's and Arch conceded was not applicable. But Stanford Financial's policy had an unusual exclusion for money laundering—defined broad-

ly as the use or possession of criminal property—which was not contingent on a final adjudication. The policy bars coverage if "it is determined" the policyholders "in fact" committed money laundering, but does not specify who makes that determination.

Judge must decide

Lloyd's and Arch argued they were entitled to make that determination and that they had done so based on the various SEC charges and Mr. Davis' admission. The executives, however, argued that a judge would have to make that decision.

The appeals court found that Texas law requires a judge to interpret ambiguities in a policy against an insurer where multiple interpretations are reasonable. The underwriters could have avoided the confusion, the court said, by explicitly stating in the policy that insurers could unilaterally withdraw coverage, but "a policy with such a draconian power (might be) difficult to sell."

Instead, the court said, the "in-fact" determination must be made by a judge in a separate case. It remanded that question to the Southern District of Texas and asked that someone other than

Judge Hittner, who is hearing criminal charges, rule in the coverage dispute. Any decision could be reconsidered if the executives are exonerated, the appeals court said.

"By the bargain, (the underwriters) are not compelled to remain aboard an aircraft that has lost its wings," the court wrote in its decision. "Still...the judicial decision required by this coverage action remains subject to modification."

Laura Pendergest-Holt et al. vs. Certain Underwriters at Lloyd's of London and Arch Specialty Insurance Co.; 5th U.S. Circuit Court of Appeals, No. 10-20069; March 16, 2010

Summit: Culture spurs innovation

CONTINUED FROM PAGE 4

Creating a culture of innovation in risk management calls for leadership, or "tone from the top," she said. Other key elements are organization, or "smart people using tools in a dynamic process," and communication, specifically a systemwide commitment to discuss innovation, Ms. Jorgensen said.

One of the most important elements is "empowerment. Experimentation matters, and you have to allow for failure" along the way to achieving innovative solutions to problems. Another important factor is knowledge management, the process by which an organization captures, maintains and shares findings, she said.

Ms. Jorgensen explained that Microsoft's risk management department employs a "360-degree exposure view," providing a holistic view of risks facing the company's business operations. This approach helped reduce a significant exposure for Microsoft as the financial crisis hit in 2008, Ms. Jorgensen said, when her department applied the view to accounts receivable. That enabled Microsoft to change its relationships with riskier partners, she said.

Additional reporting on the Risk Management Summit will appear in the March 29 and April 5 issues of *Business Insurance*. For additional information, please go online to www.BusinessInsurance.com/RMSummit.



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News In Brief

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fees should be paid by WTC Captive separately and should not be included in the settlement amount. The settlement, which could have been as much as \$675 million, would provide a system to compensate about 10,000 plaintiffs—including police officers, firefighters and construction workers—according to the severity of their illness or injury and the level of their exposure to contaminants at the World Trade Center.

Cats cost insurers \$26B in 2009: Swiss Re

Natural catastrophes and man-made disasters cost insurers \$26 billion worldwide in 2009, Swiss Reinsurance Co. Ltd. said in a sigma study. Natural catastrophes cost insurers \$22 billion last year, man-made disasters cost insurers \$4 billion and, combined, they claimed about 15,000 lives, according to the study. North America was hit hardest by man-made disasters, with insurers paying out more than \$12.7 billion. Asia's catastrophes claimed the most lives—approximately 9,400—while insured losses for the region were about \$2.4 billion, Swiss Re said in the study.

House passes stopgap COBRA subsidy extension

Federal COBRA health insurance premium subsidies would be extended temporarily once again under legislation approved last week by the House of Representatives. Under the bill, H.R. 4851, the 15-month, 65% federal premium subsidy would be extended to employees involuntarily terminated from April 1 through April 30.

State Farm to launch \$400M catastrophe bond

State Farm Mutual Automobile Insurance Co. plans to launch a \$400 million catastrophe bond to cover a portion of its U.S. earthquake exposure, excluding California, market sources confirmed. The bond, Merna Re II, is being marketed to investors and is expected to close in April. Depending on investor

demand, the bond could grow to \$700 million, sources said. The deal is structured to trigger on an indemnity basis.

Stress test finds European insurers are resilient

Large and important European insurance groups would remain resilient even if there were severe stresses to the economic and financial market environment, the Committee of European Insurance and Occupational Pensions Supervisors said in a report presented to members of the European Union Economic and Financial Committee last week. Participating insurance groups were asked to calculate the impact of stresses on their solvency ratios under three scenarios: an adverse scenario, which presumed weak macroeconomic conditions similar to the situation experienced in 2008-2009; a deep recession scenario; and an inflation scenario, which presumed a sudden increase in inflation followed by a sharp rise in interest rates. Twenty-eight larger European insurance groups representing about 60% of gross premiums of the European insurance sector participated, according to CEIOPS.

More employers penalizing unhealthy behavior: Survey

Employers' appetite for penalizing workers for unhealthy behaviors is growing, according to a survey by Hewitt Associates Inc. Hewitt's annual health care trends survey shows that 47% of employers either already use or plan to use financial penalties during the next three to five years for employees who do not participate in certain health improvement programs. Of those companies, 81% say they will penalize employees through higher premium contributions. About 17% said they may increase deductibles, while another 17% said they were considering higher out-of-pocket expenses as penalties.

Noted

Lance Ewing, who recently left his position as vp of risk management at Harrah's Entertainment Inc., is now vp of national accounts for insurer **Chartis Inc....American International Group Inc.** said it raised \$452 million through the sale of its remaining ownership of reinsurer Transatlantic Holdings Inc. The deal closes out AIG's ownership of Transatlantic, which AIG in June 2009 reduced to approximately 13% from a majority stake of roughly 59%.

Med mal: N.Y. regulators try to attract more business

CONTINUED FROM PAGE 4

number of standard insurers provide med mal coverage for other health-related individuals and businesses.

Edward Amsler, a New York-based vp at MLMIC and a board member of the Physician Insurers Assn. of America, said most med mal insurers left New York in 1975 and 1976. He and others say standard med mal insurers avoid the state in large part because the department restricts rates they can charge and is not obligated to base its decision on a reasonable actuarial analysis of loss costs, as is the case with other state insurance departments.

"Throughout the country, in most states med mal is a competitive business like any other line of P/C," Mr. Amsler said. "But (it's) not inside New York state because we have rate control, established by the superintendent, at inadequate rates. So it's almost impossible for a commercial carrier to generate profit inside the state."

Much of the med mal insurance that is written in the state is by captives or risk retention groups, for which rates are not bound by department regulations, observers say.

MLMIC, which Mr. Amsler said has about half of the New York market, is a mutual that is focused on setting rates to guarantee solvency, not a profit. Still, Mr. Amsler said, internal analyses determined the company needed to increase rates 7% last year and 3% the previous year, both years in which the department had frozen rates.

Another significant deterrent is the Medical Malpractice Insurance Plan, the state-run residual market for the most difficult med mal risks. The MMIP is funded with contributions from the few licensed med mal insurers in the state—captives and risk retention groups are exempt—and faces a deficit of about \$480 million, Mr. Wrynn said.

A previous incarnation of the state-run residual market was funded by all property/casualty insurers, not just med mal underwriters, prior to 2000.

During the February speech, Mr. Wrynn said property/casualty insurers—who observers say could be forced ultimately to cover that deficit through several means—have agreed to pay a pass-through assessment that would wipe out the \$480 million liability. But he said that agreement during private discussions was contingent on the depart-

ment putting "something in on the front end so (insurers) have confidence in the rate-setting process."

That "something" would be the rate service organization, and insurers agreed to the RSO and the assessment, as did Gov. David Paterson, Mr. Wrynn said.

"So I'm hoping that going forward we're able to put this rate service organization in place that will give confidence to (med mal) insurance companies that they will be able to charge a proper premium for the risk that's being insured," Mr. Wrynn said. "I don't think the moratorium is the correct strategy going forward. We have to address this straight on."

The RSO presumably would be composed of representatives of insurers, policyholders, the insurance department and others. The body would tabulate med mal loss costs independent of the estimates the insurers submit to the department each spring, observers say. The superintendent uses the loss cost estimates with other information, such as insurers' expense ratios and loss histories, to determine a reasonable rate for insurers to charge.

Industry reaction to establishing an RSO has been mixed. Some observers did not understand how such a body would help, and others said it could help but also said New York still needs to enact a more comprehensive overhaul to slow the accelerating frequency and severity of med mal claims, which are the root of the rate problems.

"It seems to me that a far more intensive look and far more circumspect (look) has to be given to the needs of the med mal field and not lumping under the RSO acronym, because I'm not sure how effective that will be," said Herbert E. Goodfriend, a senior vp at Gill & Roeser Holdings Inc. in New York.

"It probably buys (Mr. Wrynn) some time given the state of disarray at the Assembly and Senate level in this state, and the governor's own problems," Mr. Goodfriend said in an interview. "With no budget agreement in prospect, (med mal reform) is of secondary importance to those in Albany at the moment."

Mr. Amsler said "it's hard to fault" an attempt to add transparency to the rate-setting process, as long as the RSO operates efficiently.

"I don't think (Mr. Wrynn) sees the RSO as a solution to the problem," Mr. Amsler said. "He sees it as one step in disarming the problem."

MED MAL CLAIMS RISING

The number of medical malpractice claims paid in New York state represented about 12% of all U.S. claims, outpacing all other states in 2008, the most recent year for which data is available.

Rank	Total claims paid
United States	11,021
New York	1,373
California	901
Florida	842
Pennsylvania	776
Texas	464
Michigan	446
New Jersey	412
Louisiana	309
Illinois	301
Massachusetts	251
Georgia	222
Ohio	215
Indiana	179
Maryland	170
Arizona	159
North Carolina	146
Oklahoma	143
South Carolina	135
Tennessee	134
Colorado	134
Washington	129
Missouri	129
Kentucky	121
Connecticut	114
Virginia	112
Kansas	100
Oregon	95
Iowa	82
Mississippi	80
West Virginia	77
Utah	76
New Mexico	68
Nevada	66
Wisconsin	63
Minnesota	63
Nebraska	62
Montana	57
Arkansas	46
Rhode Island	44
Alabama	40
New Hampshire	33
South Dakota	31
Maine	29
District of Columbia	26
Delaware	23
Idaho	21
Hawaii	18
Wyoming	13
Vermont	13
North Dakota	12
Alaska	9
Guam	N/A
Puerto Rico	225
U.S. Virgin Islands	N/A
Residence unknown	1,229

Source: Statehealthfacts.org, a Henry J. Kaiser Family Foundation-maintained Web site

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'Take me to your plaintiffs lawyer, earthling'

A commercial that depicts plaintiffs attorneys giving legal advice to space aliens is protected by the First Amendment, a court has ruled.

The ruling this month in *James L. Alexander et al. vs. Thomas J. Cahill et al.* upheld a lower court's decision to overturn a New York state rule that barred certain types of attorney advertising.

The rule barred client testimonials on pending cases, portrayals of judges or fictitious law firms, attention-getting techniques unrelated to attorney competence, and nicknames implying the ability to get results.

Personal injury law firm Alexander & Catalano L.L.C., with offices in Syracuse and Rochester, N.Y., and Washington-based consumer rights group Public Citizen Inc. challenged the rule that was to go into effect Feb. 1, 2007.

According to the 2nd U.S. Circuit Court of Appeals, the firm's spots used jingles and special effects showing Mr. Alexander and his partner "as giants towering above local buildings, running to a client's house so quickly they appear as blurs and providing legal assistance to space aliens."

In primarily upholding the lower court's ruling, the appeals court panel said advertising that is irrelevant is not necessarily misleading.

"Given the prevalence of these and other kinds of special effects in advertising and entertainment, we cannot seriously believe—purely as matter of 'common sense'—that ordinary individuals are likely to be misled into thinking that these advertisements depict true characteristics," the appeals court ruled.

The court, however, upheld one part of the New York rule: a 30-day moratorium on targeted attorney solicitations after a specific incident, saying the rule is "sufficiently narrowly tailored to survive constitutional scrutiny."

Business Insurance END PAGE

Contributing: Jeff Casale, Judy Greenwald

Suit lets Floyd make a stash

Pink Floyd put another brick in the wall between the band and record label EMI Group Ltd. when a judge in London barred EMI from selling individual songs from the band's albums on the Internet.

Pink Floyd, which has been with EMI since the 1960s, last negotiated its contract with the record label in 1998, before digital music downloads were commonplace.

In a hearing this month, High Court Chancellor Sir Andrew Morritt accepted Pink Floyd's argument that its contract with EMI bars the record company from selling individual Pink Floyd songs and that songs must be sold as an album in their predetermined order, according to reports.

Judge Morritt ruled that the contract was written to protect the "artistic integrity of the albums," according to the Financial Times.

While EMI had argued its contract with Pink Floyd referred to selling physical albums and not online music, the judge sided with the band, ordered EMI to pay Pink Floyd's legal expenses and refused to give EMI the right to appeal, according to reports.

When it comes to money, EMI is not lost for words in the Pink Floyd dispute.

"The litigation has been running for well over a year and most of its points have already been settled," EMI said in a statement. "There are further arguments to be heard and the case will go on for some time."

Gold promise not so classy for Web site

A proposed \$9.5 million settlement probably involves the sort of class that Seattle-based social networking site Classmates Online Inc. would rather have cut.

Anthony Michael, who signed up for the free service, paid \$15 to upgrade to a gold membership after receiving an e-mail suggesting that he would then see who had signed his online guestbook, according to reports.

However, after discovering that no one had signed his online guestbook, Mr. Michael sued in November 2008, a suit that later was consolidated with other litigation. The class action alleged violations of Washington state electronic mail and consumer protection laws.

While Classmates denies wrongdoing, the online company agreed this month to pay gold members a \$3 cash payment or a \$2 credit toward future purchase or renewal of a gold membership. In addition, everyone who signed up with the service since Oct. 30, 2004, will receive a \$2 credit, according to court documents. The maximum settlement would be \$9.5 million, according to the proposed settlement that is awaiting a ruling by a federal judge in Seattle.

It's the attorneys in the case, though, who will go to the head of the class. Lawyers representing the class are to receive as much as \$1.3 million in fees, paid by the online networking site.



Video shows a Nissan GT-R after it apparently slammed into a wall during an illegal street race. Authorities say the owner filed a fraudulent claim to pay for the damages to the vehicle.

FAST TRACK TO CLAIM PAYOUT HITS WALL

Jay Xi Chen, 21, and sister Tracy Chen Chen, 29, made a couple of mistakes when they raced to submit an insurance claim for a Nissan GT-R "supercar" last year.

The Diamond Bar, Calif., residents were arrested this month on charges of insurance fraud after the California Department of Insurance said it was discovered that the siblings had filed a false insurance claim with Farmers Insurance Exchange—a unit of Farmers Insurance Group of Cos.

The arrest resulted from a four-month investigation that began with a March 2009 crash that Mr.

Chen reported had happened on Interstate 10 when the vehicle was being driven by his sister, a story Ms. Chen corroborated.

However, Mr. Chen withdrew his claim and said he would pay for the repairs to his car himself. Then in June 2009, Mr. Chen made another claim for the GT-R, saying he was driving when it crashed on California Route 62, according to the state Insurance Department.

However, a joint Insurance Department and California Highway Patrol investigation, with help from Farmers, found that Mr. Chen's car had been sitting at a body shop

unrepaired since March 2009.

Authorities also found a video on YouTube showing a Nissan GT-R—identical to Mr. Chen's—being driven down Glendora Mountain Road in an illegal street race before slamming into a wall and causing identical damage to Mr. Chen's car.

According to the California Insurance Department, the claim could have cost \$76,000. Mr. Chen faces six counts of insurance fraud and Ms. Chen faces one, charges that could result in up to five years in prison and/or \$10,000 in fines if convicted, authorities said.



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