

Business Insurance

May 31, 2010

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FUNDING CUT THREATENS OSHA'S VOLUNTARY PROGRAM FOR COMPANIES / PAGE 3

AIG'S BENMOSCHE SAYS BAILOUT PAYBACK ON TRACK / PAGE 3

NUMBER OF BIG EMPLOYERS OFFERING PENSION PLANS KEEPS SHRINKING / PAGE 3

In Brief

Insufficient evidence in probe of AIG unit

Federal prosecutors reportedly will not bring criminal charges against the former head of AIG Financial Products Corp., Joseph Cassano, in connection with transactions that nearly brought down American International Group Inc. Investigators from the Justice Department found that there was insufficient evidence to charge Mr. Cassano after a two-year investigation, according to Reuters, which cited people familiar with the investigation. Separately, U.K. prosecutors reportedly said they were dropping their investigation into the London-based unit. The move was unrelated to the U.S. investigation.

Tax, jobs bill omits COBRA extension

The House of Representatives passed a broad tax and jobs bill

See **IN BRIEF** page 21

SPOTLIGHT

BERMUDA MARKET REPORT

Bermuda bolstering its reputation for insurance-linked securities; more mergers and acquisitions expected among island companies; Bermuda seeking regulatory equivalence with its European rivals.

PAGE 9



RISK MANAGEMENT



REUTERS/LANDOV

Protesters voice their anger at BP P.L.C., which has taken responsibility for a massive oil spill in the Gulf of Mexico following the explosion of the Deepwater Horizon oil rig in April. The incident is testing BP's crisis management.

BP spill response tars reputation

By **JEFF CASALE**

VENICE, La.—As BP P.L.C. claimed some success last week in its efforts to permanently plug a well spewing oil into the Gulf of Mexico, its wider crisis management strategy continues to be regarded as a failure.

The oil giant has endured a media onslaught since the Deepwater

Horizon rig exploded April 20 killing 11 workers and releasing millions of gallons of oil. Traditional news outlets such as T.V., radio and newspapers have been joined by bloggers, social media groups and individuals using Twitter and Facebook to lambast London-based BP

See **SPILL** page 18

EMPLOYMENT PRACTICES

High court lowers bar on discrimination suits

Ruling on time limits for filing bias claims may spark more suits

By **JUDY GREENWALD**

WASHINGTON—The U.S. Supreme Court's unanimous decision permitting a discrimination case by black Chicago firefighter applicants to proceed could lead to more claims and larger awards against employers, many observers say.

The court's decision last week in *Arthur L. Lewis Jr. et al. vs. City of Chicago* also makes it more difficult for employers to win summary judgment to dismiss such cases, observers say.

While the decision may have a greater effect on public employers, it applies to private employers as well, attorneys say.

The court's ruling focused on the statute of limitations to file claims in disparate impact discrimination cases (see story, page 20). Disparate impact is an employment policy or practice that, while neutral on its face, adversely affects a particular protected group.

Some observers say the unanimous decision may reflect in part the court's recognition of Congress' move to overturn its 2007 ruling in *Lilly Ledbetter vs. Goodyear Tire &*

Rubber Co. by passing the Lilly Ledbetter Fair Pay Act of 2009. In that ruling, the court upheld a time limit to file an unlawful employment practices claim under Title VII of the Civil Rights Act of 1964.

Congress has demonstrated its willingness to "enact laws any time they don't like the Supreme Court's decisions" and the court recognized

Congress has demonstrated its willingness to 'enact laws any time they don't like the Supreme Court's decisions' and the court recognized this.

Martha J. Zackin, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo P.C.

this, said Martha J. Zackin, of counsel with law firm Mintz, Levin, Cohn, Ferris, Glovsky and Popeo P.C. in Boston.

Laura P. Jordan, a Portland, Ore.-based associate with law firm Fisher

See **TEST** page 20

RISK-LINKED SECURITIES

Cat bond market busy in run-up to hurricane season

By **COLLEEN MCCARTHY**

NEW YORK—An active second quarter of catastrophe bond transactions has pushed this year's issuance vol-

ume past \$2 billion, as insurers prepare for this week's start of the Atlantic hurricane season, experts say.

Catastrophe bond sponsors, tak-

ing steps earlier than previous years to secure coverage in advance of what is expected to be an active hurricane season, were rewarded with attractive pricing and ample capacity. However, investor capacity for U.S. peak perils became constrained in recent weeks, a factor that could affect deals brought to market after June 1, experts said.

Ten transactions have closed so far, bringing year-to-date issuance to \$2.35 billion, according to Aon Benfield Securities Inc. (see box, page 21). The pipeline includes at least one U.S. hurricane catastrophe

See **CAT BONDS** page 21

> \$2 billion

THIS YEAR'S issuance volume pushed past \$2 billion, as insurers prepare for this week's start of the Atlantic hurricane season.

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UNITED IN AWARENESS

Terrorism
Crime
Kidnapping
Civil unrest
Regime instability
State impunity
Espionage
State corruptibility
Armed conflict

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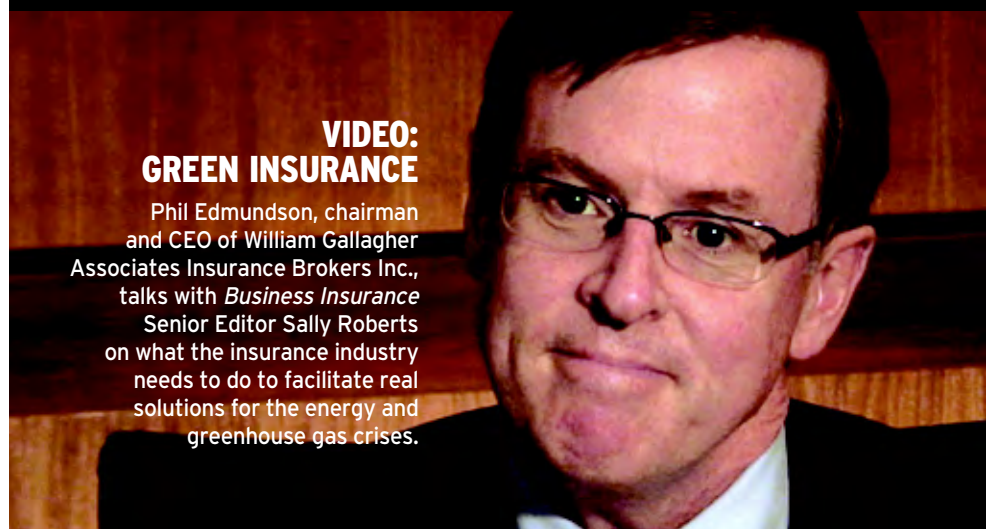
AON

Business Insurance

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VIDEO: GREEN INSURANCE

Phil Edmundson, chairman and CEO of William Gallagher Associates Insurance Brokers Inc., talks with *Business Insurance* Senior Editor Sally Roberts on what the insurance industry needs to do to facilitate real solutions for the energy and greenhouse gas crises.



COBRA SUBSIDY FAQ

Experts say employers should brace for another extension of the federal subsidy of COBRA health insurance premiums for laid-off workers. Editor-at-Large Jerry Geisel answers frequently asked questions about the COBRA provisions online. Go to the Online Features section of the home page.

COMINGS & GOINGS

Comings & Goings highlights the career moves of senior-level industry executives. To submit notices for new hires, promotions, successions and retirements, contact Mike Tsikoudakis at mtsoudakis@businessinsurance.com or 312-649-5398.



INSURANCE BROKER INSIGHTS VIDEO

Jeremy Cox, CEO of the Bermuda Monetary Authority, discusses the strides Bermuda is making on regulatory equivalence with the global market.



MOST POPULAR STORIES Week of May 24, 2010

1. Proposed COBRA subsidy extension cut by one month
2. BP sued by Transocean's excess insurers over spill
3. London-based insurer leads Air India crash cover
4. Employee health cover stays, but retiree may go: Survey
5. Most firms to seek early retiree care subsidy: Survey
6. Health care reform costs shift to cash-strapped states
7. HSA contribution limit stays same for 2011
8. Top U.S. hurricane forecaster sees very active season
9. Twelve U.S. senators named to Wall St. reform panel
10. Offshore reinsurance tax plan alive in Congress: Berkley

WEBINARS AND WEBCASTS

Business Insurance's webcasts and webinars are presented live online and afterward are accessible on demand. Register to attend Northeastern Hurricanes on June 2 and Business Resiliency on June 17, or to view the archived Environmental Risks webcast. Go to the Multimedia tab and click on Webcasts/Webinars.



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SAFETY

Voluntary OSHA program at crossroads

Funding cut, focus on enforcement said to put program at risk

By **ROBERTO CENICEROS**

WASHINGTON—An initiative by the Occupational Safety and Health Administration that encourages employers to establish health and safety programs could fall victim to the federal agency's emphasis on enforcement, say backers of legislation introduced to preserve OSHA's Voluntary Protection Program.

The 18-year-old program encourages cooperation between employers, employees and OSHA by recognizing workplaces that conduct safety risk assessments, mitigate hazards and maintain a record of



THE WASHINGTON TIMES/LANDOV

Sen. Michael B. Enzi, R-Wyo., introduced a bill to make permanent the Voluntary Protection Program within OSHA.

reduced losses, supporters say.

More than 2,300 employers, including many with unionized

worksites, now participate in the program, OSHA documents show.

But President Obama's fiscal 2011 budget includes no funding for the program, said a spokesman for Sen. Michael B. Enzi, R-Wyo., the ranking member of the Senate Health Education, Labor and Pensions Committee.

Sen. Enzi introduced S.B. 3257 in April, which would codify and make permanent the Voluntary Protection Program within OSHA. The bill remains in committee.

Simultaneously, the senator introduced a budget amendment that would restore \$3.1 million of funding in the Senate's fiscal 2011 budget. The amendment has passed out of the Senate Budget Committee, to the Senate floor the spokesman added.

Employer and safety organiza-

tions that fear the funding and OSHA personnel who oversee the program are being shifted to enforcement duties are supporting the senator's efforts.

"We don't want funding for VPP to be cherry-picked for other programs within the department," Sen. Enzi's spokesman said. "The fear is it will be left on the cutting room floor permanently given the detractors that are out there."

Some, but not all, labor representatives are of the opinion that the program's resources could be better spent enforcing OSHA regulations among employers that are likely to flout safety rules than on large employers that are more likely to have safety programs, sources said.

A May 2009 Government

See **VPP** page 6

P/C INSURERS



REUTERS/LANDOV

AIG President and CEO Robert Benmosche testified last week before a panel established by Congress.

Panel hears conflicting views on AIG

CEO among bullish; others warn of future

By **MARK A. HOFMANN**

WASHINGTON—A congressionally created body that monitors the use of federal financial aid to troubled U.S. companies will weigh conflicting outlooks on the future of American International Group Inc.

The Congressional Oversight Panel, which was established to oversee expenditures by the Troubled Asset Relief Program, plans to issue a report next week on "the use of TARP funds to support AIG," said a spokesman for the panel. The report will include information from a day-long hearing last week into what happened at AIG in September 2008 and how the company has fared since then.

AIG is "absolutely" a solvent entity, the insurer's president and CEO assured the panel during the hearing.

"I believe we will pay back all we owe to the U.S. government" with a "suitable profit" for the government, Robert Benmosche told the panel last week.

"Of course, were it not for the commitment of the U.S. government at a time of great uncertainty, AIG would not be on the path it is today," Mr. Benmosche said.

The federal government assumed a nearly 80% ownership stake in AIG in late 2008 after the company neared financial collapse. Jim Millstein, chief restructuring officer in the Treasury Department, told that panel that as of the day of the hearing, Treasury and the Federal Reserve Bank of New York "have extended \$132.3 billion of financial support to AIG in a variety of forms."

Mr. Benmosche was not alone in

See **AIG** page 7

AVIATION



EPA/LANDOV

An Air India jet crashed May 22 after it overshot a runway in Mangalore, India. Seven of the 160 passengers and six crew members aboard survived.

Coverage for fatal air crash placed in London market

By **ZACK PHILLIPS**

MANGALORE, India—Mitsui Sumitomo Insurance (London Management) Ltd. leads insurance coverage of the recent crash of an Air India flight in Mangalore, India, according to market sources.

Air India Express Flight 812 overshot a hilltop runway at Mangalore International Airport on May 22, plummeting into the forest below and catching fire. Seven passengers survived of the 160 passengers and six crew members aboard the Boeing 737-800.

Coverage of the flight was led by London-based Mitsui, market sources said. Marsh Inc. was the broker.

The aircraft was valued at around \$50 million, the sources said.

Mumbai-based General Insurance Corp. of India has a 14% share in the program and will pay about \$6 million for the loss, its CEO told the Economic Times of India.

Air India Express is a subsidiary of state-run Air India Air Transport Services Ltd., based in Mumbai.

After a three-day search, investigators in Mangalore recovered the flight data recorder, which they hope will shed light on what caused the accident. Officials said it was damaged but its main memory was intact.

The Mangalore airport is considered one of the country's most difficult because of the table-top runways, observers said. Initial investigations concluded that Flight 812 landed about 2,000 feet past the usual touch-down point, before crashing through the spillover area and falling down a slope. The runway is about 8,000 feet long.

Several unions representing Air India employees went on strike days after the accident, citing safety concerns and an alleged company order banning workers from talking to the media. The strikes ended later in the week, but two unions called for workers to resume the strike on June 12.

The Flight 812 crash is the third deadliest in Indian history. One other flight previously has overshot a runway at the Mangalore airport. That crash, in 1981, had no fatalities.

PENSION BENEFITS

Fewer employers offer new workers DB plans

Hybrid plan totals still holding steady; DC plans soar

By **JERRY GEISEL**

The number of large U.S. employers that offer a defined benefit pension plan to new salaried employees continues to decline while the number offering only defined contribution plans continues to increase, according to a study released last week.

As of May 12, 42% of Fortune 100 companies offered a defined benefit plan to new salaried workers, according to New York-based Towers Watson & Co. That's down from 45% in 2009, 42% in 2007 and 83% as recently as 2002.

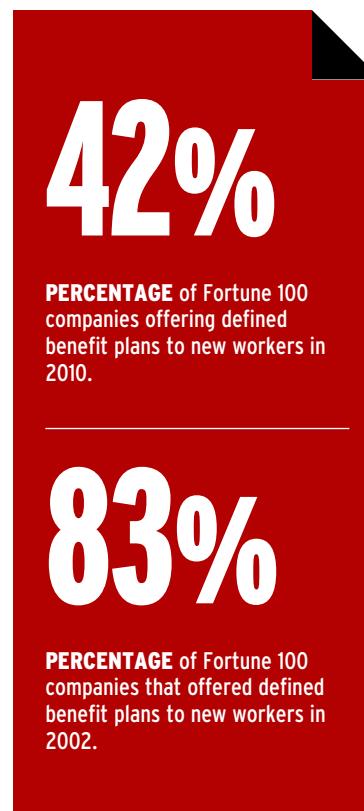
While employers are phasing out traditional defined benefit plans, hybrid plans, which legally are defined benefit plans that combine elements of defined benefit and defined contribution plans, are holding steady.

Seventeen Fortune 100 companies offered a traditional defined benefit plan as of mid-May to new employees, down from 20 in 2009 and 49 in 2002.

On the other hand, 25 Fortune 100 companies offered hybrid plans, mostly cash balance plans—the same as in 2009 and 2008, though down from 34 in 2002.

By contrast, the percentage of Fortune 100 companies offering only defined contribution plans has soared. Fifty-eight of the Fortune 100 offer only that option to new salaried workers. In 2002, the number offering only defined contribution pension plans was 17.

"The movement toward account-



based plans appears to be steady and strong as companies shift away from traditional pension" plans, said Kevin Wagner, a senior Towers Watson retirement consultant in Atlanta, in a statement.

Employer interest in cash balance plans increased in the wake of a 2006 law that created "a more friendly environment" for the plans, Mr. Wagner said.

Among other things, the Pension Protection Act made clear that the basic design of the plans does not discriminate against older employees.

A summary of the analysis is available at www.towerswatson.com.

INTERNATIONAL

Demonstrations in Thai capital leave more than \$1B in damage

Property owners lacking terror cover face claims fights

By J. NILS WRIGHT

BANGKOK—Recent anti-government demonstrations left considerable damage to commercial properties in Bangkok, but companies without terrorism coverage may be unable to tap insurance for their

property losses.

After troops dispersed thousands of protesters from the one square mile area they had occupied in the city center, many fanned out throughout the municipality of 9 million people and torched buildings. The result was an estimated \$1.2 billion in property damage, according to Thailand's National Economic and Social Development Board.

While damage to government buildings and infrastructure was sig-

nificant, the private sector was hit harder as rioters focused on local enterprises owned by wealthy families or companies seen as supporting the government. Foreign operations were not targeted and most are factories in industrial zones outside Bangkok.

The demonstrators, mostly poor individuals from the provinces loyal to former prime minister Thaksin Shinawatra ousted in a 2006 coup,

See **THAILAND** page 17



EPA/LANDOV

A Thai police officer is held hostage by anti-government protesters in Bangkok. Protests over the past several weeks have caused about \$1.2 billion in property damage, according to Thai government estimates.

HEALTH CARE REFORM



76%

Percentage of large employers with early retiree health care plans that intend to seek partial reimbursement of claims' costs under a new federal program.

Most employers plan to take early retiree care subsidy

By JERRY GEISEL

Just more than three-quarters of large employers with early retiree health care plans intend to seek partial reimbursement of claims' costs under a program established by the federal health care reform law, according to a survey released last week.

Under the Early Retiree Reinsurance Program, the government will reimburse employers for a portion of health care claims incurred by retirees who are at least age 55 but not eligible for Medicare, as well as claims incurred for retirees' covered dependents regardless of age.

Following a plan sponsor's application and filing of claim information, reimbursements would begin after a participant in an early retiree plan incurs \$15,000 in health care claims in a plan year. After that, the government will reimburse plan sponsors for 80% of a participant's claims up to \$90,000 during a plan year.

In a survey of 245 large employers released last week, Hewitt Associates Inc. found that 76% with early retiree health care plans intend to seek reimbursement under the program.

Hewitt estimates that the reimbursement could amount to between \$2,000 and \$3,000 per pre-65 adult enrolled in their plans, or about 25% to 35% of total plan costs. Whether employers will collect that much remains to be seen.

That's because only \$5 billion has been authorized for the program and the money could run out fast. Reimbursement will be provided on a first-come, first-served basis.

"Because so many companies plan to apply for the ERRP, employers will need to act quickly to secure a share of the proceeds, since the federal funds earmarked for this program are limited," Milind Desai, a senior consulting actuary in Hewitt's Waltham, Mass., office, said in a statement.

Sixty-six percent of employers said they have not decided how they would use the proceeds as they await regulatory guidance.

"Most employers are still looking for more details about how these funds can and cannot be used," John Grosso, a senior consulting actuary in Hewitt's Norwalk, Conn., office, said in a statement.

In general, the reimbursement must be used to reduce employers' and/or retirees' health care costs.

AGENTS & BROKERS

Broker groups sue over pay disclosure

New York regulation seen as overreaching, unconstitutional

By SALLY ROBERTS

ALBANY, N.Y.—The Independent Insurance Agents & Brokers of New York Inc. and the Council of Insurance Brokers of Greater New York are seeking to annul New York state's insurance producer compensation disclosure regulation set to go into effect Jan. 1.

In a lawsuit filed last Monday in New York State Supreme Court in Albany against the New York State Insurance Department, the two associations, which were joined by three insurance agencies affected by the regulation, challenged the NYSID's authority and rationale in

adopting the regulation as well as its exemption of certain producers.

Under the final regulation, which was published Feb. 10 in the New York State Register, producers operating in New York state must, among other requirements, disclose to clients their role in insurance transactions and whether they will receive compensation from an insurer based on a sale. Further information about the nature, amount and source of compensation must be disclosed to clients upon request.

The disclosure regulation does not apply to reinsurance placements, insurance placements within a captive insurance company, wholesale brokers, managing general agents and on renewals.

According to the legal action, known as an Article 78 proceeding, the agent/broker groups allege,

among other things, that the NYSID does not have authority under state law to mandate disclosure of compensation. The regulation "represents an impermissible attempt to rewrite the insurance law on a subject as to which the (state) legislature has already specifically legislated," the groups allege.

They also say the regulation violates a producer's right to due process under the U.S. and state constitutions and violates their right to equal protection because the regulation exempts "similarly situated" producers that have no direct sales or solicitation contact with insurance buyers.

"Managing general agents and wholesale brokers—who work closely with retail producers in obtaining coverage and who receive the same

See **SUIT** page 6

P/C INSURERS

Commercial rates flat to down: Analysis

Recession, low losses keep pressure on rates for most coverage lines

By ZACK PHILLIPS

Most segments of the U.S. insurance market are soft, Aon Corp. concludes in a report.

In its 2010 U.S. Insurance Market Overview, the Chicago-based broker said buyers can expect flat to decreasing prices in property/casualty, directors and officers liability, and kidnap and ransom insurance. Insurers' financial performance has improved notably since late 2008 and early 2009, the report said.

"The insurance industry has essentially recovered from the impact of the financial crisis," Aon



said in the report. "However, the impact of the recession on the pricing cycle is still being played out."

The recession has diminished claims activity and a benign 2009 U.S. hurricane season helped create an environment favorable to insurance buyers, the report said.

In the property sector, Aon said rates are expected to decrease 5% to 15% this year, due in part to competition and capacity that is expected to grow. The market hardened briefly during the first half of 2009 before rates flattened in the last two quarters of the year. Policyholders who renewed during the harder market could see rate decreases of more than 15% this year, Aon said.

Casualty insurers are aggressively pursuing market share and buyers with favorable loss histories can expect flat to single-digit rate decreases this year, Aon said. Riskier

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Offshore reinsurance tax proposal alive

By COLLEEN MCCARTHY

NEW YORK—A controversial tax proposal targeting offshore reinsurance transactions has a “reasonably good” chance of being considered by Congress before its summer recess, says a key proponent of the effort.

William R. Berkley, chairman of W.R. Berkley Corp., said last week at a press luncheon that a bill introduced by Rep. Richard E. Neal, D-Mass., and supported by the Obama administration in its 2011 budget proposal, is gaining “additional momentum.” Recent lobbying efforts have yielded some success in conveying the “competitive disadvantage” domestic insurers face under the current system, said Mr. Berkley, who leads the Coalition for

a Domestic Insurance Industry.

The proposal aims to limit tax deductions for reinsurers that cede a large portion of their U.S. premiums to offshore affiliates.

Opponents of the proposal, including the Risk & Insurance Management Society Inc.—view the tax as punitive and argue any such measure would dramatically constrict capacity and increase rates.

Rep. Neal introduced a similar measure in 2008, but Congress did not act on that bill.

While the latest proposal is far from enactment, observers say fierce lobbying efforts are under way by domestic and foreign reinsurers, after several recent developments.

According to revenue estimates this month by the Joint Committee

on Taxation, the proposal would raise \$16.9 billion in a decade. As a potential revenue-raiser, the bill could be an easy target for a revenue-hungry Congress, observers say.

Meanwhile, a European Union official this month criticized the proposal as discriminatory and a potential violation of international trade agreements.

“The proposal appears to protect the U.S. insurance and reinsurance industry through a discriminatory treatment of foreign insurers and reinsurers,” Angelos Pangratis, acting head of the E.U. delegation to the United States, wrote in a May 10 letter to Treasury Secretary Timothy Geithner. The letter warns the proposal would be at odds with U.S. trade agreements.

VPP: Program at crossroads

CONTINUED FROM PAGE 3

Accounting Office report concluded OSHA lacks internal controls to assure companies maintain the necessary criteria to qualify for the program.

“As a result, some sites that no longer met the definition of an exemplary worksite remained in the VPP,” the report said.

But supporters say VPP status encourages companies to establish safe workplaces and reduce injuries.

The program has become “a political football” that is “getting kicked around a bit,” said Dave Heidorn, manager of government affairs and policy for the American Society of Safety Engineers in Des Plaines, Ill.

Convincing upper management at large corporations to fund health and safety programs and then maintain that commitment often is a tough sell for safety professionals, particularly with lean budgets, Mr. Heidorn said.

The positive recognition companies garner from achieving OSHA

VPP status often helps ASSE members convince management to maintain the programs in the long run, Mr. Heidorn added.

“In the big picture, it really helps companies focus and keep attention on safety” and go beyond minimum OSHA compliance requirements, Mr. Heidorn said.

In April, Topeka, Kan.-based Westar Energy Inc. said a third power plant that it operates received a “star” designation from OSHA, the agency’s highest VPP compliance recognition.

The electric utility company first pursued the program about eight years ago. Another company then mentored Westar in safety practices and obtaining OSHA VPP status, said Randall Bickford, Westar manager of safety and compliance.

“Frankly, we needed some improvements in safety,” Mr. Bickford said.

Since then, Westar has reduced its workers compensation losses because program participation requires a company to log a “total case incident rate” that is 50%

below the national average for its industry, Mr. Bickford said.

OSHA did not return telephone calls seeking comment.

The Department of Labor’s fiscal 2011 budget seeks \$14 million to hire more OSHA compliance officers on top of 100 new positions funded by the 2010 budget, according to the National Assn. of Manufacturers’ Coalition for Workplace Safety.

Washington-based NAM has said it supports S.B. 3257 because of concerns that OSHA is shifting resources from the Voluntary Workplace Program, which NAM considers a success, to emphasize enforcement.

Continuing the program could result in thousands of additional employers implementing safety programs that exceed minimum OSHA compliance standards, said Michael Hayslip, executive director of the Dayton, Ohio-based Voluntary Protection Program Assn. for Construction.

But employer participation requires they make a financial and time commitment, Mr. Hayslip said.

Those employers may decline to commit their resources if they think the program is “wilting on the vine,” Mr. Hayslip said.

Suit: Brokers sue over pay disclosure

CONTINUED FROM PAGE 4

kind of compensation incentives from insurance companies as retail producers—have as much influence over the selection of the insurance company providing coverage as the producers who are subject to the regulation, even if they do not deal directly with the purchaser of coverage,” the lawsuit states.

Matthew Gaul, former special counsel and now deputy superintendent of life insurance at the NYSID, would not comment on the specifics of the lawsuit, but noted that the department is “surprised” the producer groups elected to take legal action, despite talking of doing so for months.

The IIABNY claims “to be in favor of transparency” since 2004 and said “they’d be willing to give out information about compensation

‘You really have to ask the question, what it is that they’re trying to hide about these compensation structures and what it is they are so fearful of having consumers know about the way they get paid by insurance companies?’

Matthew Gaul, New York State Insurance Department

when they were asked by their customers,” Mr. Gaul said. “Really, this regulation does nothing more than enshrine that policy position...At some point...you really have to ask the question, what it is that they’re trying to hide about these compensation structures and what it is they are so fearful of having consumers know about the way they get paid by insurance companies?”

In a news release, the IIABNY acknowledged that in 2004 it called

on insurance agents and brokers to voluntarily disclose to clients the existence and nature of all their compensation. The association, however, opposes mandatory disclosure as providing “little benefit to consumers” while being “burdensome for producers.”

Mahopac, N.Y.-based Sullivan Financial Group Inc.; Syracuse, N.Y.-based IAAC Inc.; and Albany, N.Y.-based Aurora Inc. joined the two groups in the suit.

Commentary

Appearances don't tell the whole story

If I ever visit Arizona again, I might wear a business suit to make sure police don't think I might be an illegal alien.

I say that in jest and as commentary on Arizona's recently adopted immigration law, considered the nation's toughest anti-illegal immigration measure.

Opponents argue that the law will encourage racial profiling and harassment of all Latinos, including U.S. citizens.

Proponents respond that the law specifically prohibits racial profiling and allows police to ask about immigration status only when stopping someone to investigate an infringement of the law.

The truth probably lies somewhere in the middle.

Securing national borders is vital. I also understand Arizona residents' impatience with Congress' failure to address immigration and border security.

Yet my experiences help me grasp why some people feel uncomfortable with Arizona's new law.

At insurance conferences, one might see me in a business suit or business-casual attire and assume that I am a college-educated professional like many people roaming the halls of the convention center.

Although I earned two degrees some years ago, gardening is a favorite pastime. On weekends I don jeans, T-shirt and baseball cap to upend weeds and spruce up flower beds.

I often break from those chores to visit plant nurseries while still in jeans and a T-shirt, perhaps with some dirt on them.

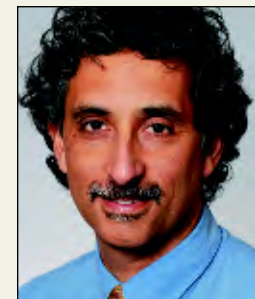
More than once during such errands, I've had women ask if I would load bags of fertilizer and other heavy purchases into their cars. These were high-end nurseries and most nursery laborers in Southern California are Latino immigrants.

So these women assumed I was at the nurseries as an immigrant laborer, there to serve them.

At the time, I lived in a Pasadena neighborhood where property values easily exceed the national average and nearly everyone hires Latino gardeners and nannies.

Neighborhood demographics and income levels assure that neither the homeowners nor their children mow their own lawns.

The residents also depend on immigrants to bus tables at the



ROBERTO CENICERROS

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restaurants where they dine and man the car washes they frequent.

So I always assumed that many of us benefited from not inquiring about the immigration status of the hired help, much like workers compensation insurers benefit from including illegal immigrant workers in the premium volume they insure.

Another time, I went to vote and an elderly, volunteer poll

My experiences help me grasp why some people feel uncomfortable with Arizona's new immigration law.

worker greeted me with Spanish phrases memorized just for the occasion. She assumed I would need instructions in Spanish to vote.

I don't blame the volunteer for her assumptions. She was doing her civic duty while coping with a shifting demographic landscape.

She also lives in a world where we constantly size up people based on their clothes, skin color, apparent financial status, height and many other real and perceived factors.

For the record, my grandparents are from Mexico and my mom wanted me to speak Spanish and English, although I rebelled and opted to speak mainly the latter.

I'm also largely apathetic about Arizona's new law.

But if I ever do any gardening in Arizona, I have a plan: I'm going to wear a business suit while gardening to eliminate any possibility of ever having to explain that “I don't need no stinkin' papers!”

AIG: Leader optimistic; others wary

CONTINUED FROM PAGE 3

his optimism.

"We expect the Federal Reserve will be fully repaid," said Scott G. Alvarez, general counsel of the Federal Reserve Board of Governors.

"I have no expectations they will need additional funds" from the government, Mr. Alvarez responded to a question from the panel.

But another witness took a more skeptical view.

Cliff Gallant, a managing director at Keefe, Bruyette & Woods Inc. in New York, told the panel that AIG's current management deserves a "lot of credit" for what they have accomplished, but added that "I think the government guarantee is intrinsic to (AIG's) ability to conduct business on a day-to-day basis."

Mr. Gallant said he believes AIG's common stock is considerably overvalued.

"We're advising our clients not to buy the stock," he said.

'Broke all the rules'

Elizabeth Warren, a Harvard University Law School professor who chairs the panel, opened the hearing by saying that before the government intervention, AIG "was a corporate Frankenstein."

It was "a conglomeration of banking and insurance and investment interests that defied regulatory oversight and would not have fit easily into the existing bankruptcy structure." Circumstances may have justified AIG's "unique treatment" by the government, "but no matter what the justification, the fact remains that AIG's rescue broke all the rules, and each rule that was broken raises a question that must be answered."

Witnesses who were involved the discussions that led to the government intervention nearly two years ago defended their actions before the panel.

There "were no other realistic options," said Thomas Baxter, executive vp and general counsel of the Federal Reserve Bank of New York.

"An AIG default in this period would have presented unacceptable risks," Mr. Alvarez said. The collapse of Lehman Bros. at the same time "ended any chance of securing a private-sector solution for AIG within the time needed to address its critical funding needs," he said.

Another witness said the federal government should regulate some insurers.

Michael E. Finn, Northeast regional director of the Office of Thrift Supervision, said Congress should consider enhancing the "supervision of holding companies that are predominantly engaged in insurance activities. Such a holding company should be supervised by a federal regulator that concentrates on the core activity and related risks in the primary business of the enterprise."

AIG, Prudential may renegotiate terms for sale of Asian life unit

LONDON—Prudential P.L.C. and American International Group Inc. may change the terms of their \$35.5 billion deal for AIG's Asian life unit amid growing disenchantment among Prudential stockholders over terms of the deal.

Observers praised the deal to sell AIA Group Ltd. to London-based Prudential when it was announced in March as an important step in AIG's efforts to put its troubles behind it (*BI*, March 7).

In a Friday statement, Prudential said discussions "regarding the current status of the transac-

tion have taken place between Prudential and AIG and are continuing. These discussions may or may not lead to a change in the terms of the combination of the AIA Group Ltd. and Prudential."

AIG said in a statement, "We have a signed an agreement with Prudential, and we expect them to use their best efforts to live up to it."

AIG and Prudential reportedly already had agreed to reduce the cash component of the deal by \$2 billion to \$23 billion.

A report last week said the Treasury Department and Federal

Reserve were willing to let AIG reduce the AIA price. AIG and the Federal Reserve had no comment.

But Prudential investor unrest continued to grow.

"There is clearly a building momentum of people who are intending to vote" against the deal, said Robin Geffen, chief investment officer of London-based Neptune Investment Management, in a statement. "Support is accelerating daily."

Mr. Geffen said institutional investors that hold more than 15.1% of Prudential shares "have

already indicated, directly or indirectly, that they intend to vote against the deal" while another group of shareholders accounting for another 4.9% of Prudential's shares has indicated the same. "This deal is very expensively priced," Mr. Geffen said.

In addition, the London-based Assn. of British Insurers warned investors to carefully consider their options insofar as approving the deal is concerned, although the association does not issue voting advice, a spokesman said.

—By Judy Greenwald

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Business Insurance OPINIONS

Voluntary program a worthy safety effort

EMPLOYERS AND WORKERS should support legislation to fund and make permanent the Occupational Safety and Health Administration's Voluntary Protection Program.

The program recognizes outstanding efforts by employers and workers on workplace safety and provides an incentive for companies that want to be seen as leading the way on safety issues.

As we report on page 3, the program is under threat as there is no provision to fund it in the administration's fiscal 2011 budget. However, measures have been introduced to secure funding and codify the program.

Critics of the program say the money used to fund the program would be better spent on safety enforcement rather than on safety encouragement.

While tough decisions have to be made in the current economy, some programs that require funding ultimately result in savings, and we believe the VPP is such a program.

Long term, the improved safety cultures that the VPP encourages result, most importantly, in fewer workplace accidents and savings for employers as they incur fewer expenses for the treatment and compensation of injured workers.

Lauding employers that create safer working environments is, of course, no substitute for punishing employers that have unsafe workplaces. And the voluntary nature of the VPP intrinsically limits its possibilities for improving safety. There is, however, a need for a carrot and a stick in workplace safety policy and the VPP provides an incentive to complement more punitive measures imposed by OSHA.

Some programs that require funding ultimately result in savings, and we believe the VPP is such a program.

Risk management goals move closer to reality

THERE'S A GOOD CHANCE that three items on the risk management legislative wish list soon will become reality, and that's certainly good news.

The three items—establishing an Office of National Insurance within the Treasury Department, reforming surplus lines taxation and regulation, and requiring certain companies to establish risk committees that include risk management experts—all appear in the financial services regulatory reform bill approved by the Senate this month. We believe all also should be part of any final reform bill hammered out by House and Senate negotiators in the coming weeks.

Risk managers can take justified pride in their role in getting Congress to consider such common-sense reforms. Just like the terrorism insurance backstop earlier in the decade, these reforms would represent a significant step forward for the profession of risk management.

In fact, rarely if ever have risk managers enjoyed such a high profile on the Hill. They'll have an opportunity to raise that profile even higher next month when the Risk & Insurance Management Society Inc. holds its annual "RIMS on the Hill" legislative conference in Washington.

Including the risk management legislative initiatives in the financial services regulatory reform bill could only enhance the standing of the risk management profession. Realizing those legislative aims can only enhance risk managers' chances of scoring legislative victories—including the long-term goal of creating a system of optional federal charters for national insurers and brokers—in the future.



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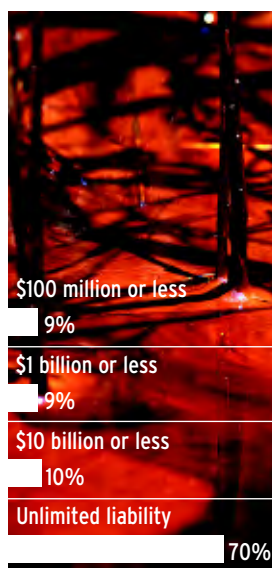
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Q How high a cap should there be for oil spill liabilities?



NEXT WEEK'S QUESTION

Q: How has the Gulf oil spill hurt BP P.L.C.'s reputation?

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Chicago: 312-649-5286; Denver: 303-898-4043;

London: 44-207-457-1412; New York: 212-210-0133

SUBSCRIPTIONS: Detroit: 888-446-1422

Business Insurance is published by
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3806, Fax: 312-280-3174, biweb@crain.com. Offices: 711 Third

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Olathe, Kan. 66062, Fax: 312-280-3174, 77 Franklin St., Suite 809,

Boston, Mass. 02110-1510, Fax: 212-210-0704. \$5 a copy and \$97 a

year in the U.S., \$130 in Canada and Mexico (includes GST). All

other countries, \$230 a year (includes expedited air delivery).

E-mail subscription correspondence and address changes to

customerservice@businessinsurance.com or mail to Business

Insurance Circulation Department, 1155 Gratiot Ave., Detroit, MI

48207-2912. Send subscription correspondence to Circulation

Department, *Business Insurance*, 711 Third Ave., New York, N.Y.

10017-5806. Microfilm copies available: University Microfilms,

300 Zeeb Road, Ann Arbor, Mich. 48103. Microfiche copies: Bell

& Howell, Micro Photo Division, Old Mansfield Road, Wooster,

Ohio 44691. Portions of the editorial content of this issue are

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Revised regulations enhance Bermuda's cat bond appeal

By COLLEEN McCARTHY

Bermuda's efforts to increase its share of the insurance-linked securities market is gaining traction, with two recently launched Bermuda-domiciled catastrophe bonds demonstrating the island's appeal, experts say.

However, the island still faces hurdles as it seeks to become the domicile of choice for cat bonds. Observers say it's unclear if Bermuda can catch up with the Cayman Islands, which has issued the bulk of deals and dominated the cat bond market since its inception in 1997. The market, which peaked in 2007 with roughly \$7 billion in issuance volume worldwide, topped \$3 billion in issuance in 2009 (see chart, next page).

See **MARKET** next page

CAT BOND BEACON

Bermuda
Market Report

SPOTLIGHT

**SOME SEE M&AS
RISING IN BERMUDA;
OTHERS, IMPEDIMENTS**
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**BERMUDA SEEKS
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**SOLVENCY II EXTENDS
BEYOND EUROPE
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Market: New rules lure catastrophe bonds to Bermuda

CONTINUED FROM PREVIOUS PAGE

The momentum is driven largely by the Bermuda Monetary Authority's recently revised regulations, which in late 2009 established a new designation for "special-purpose insurers" as part of its supervisory scheme. The class includes cat bonds, sidecars, industry-loss warranties and other similar vehicles seeking to be licensed in the domicile.

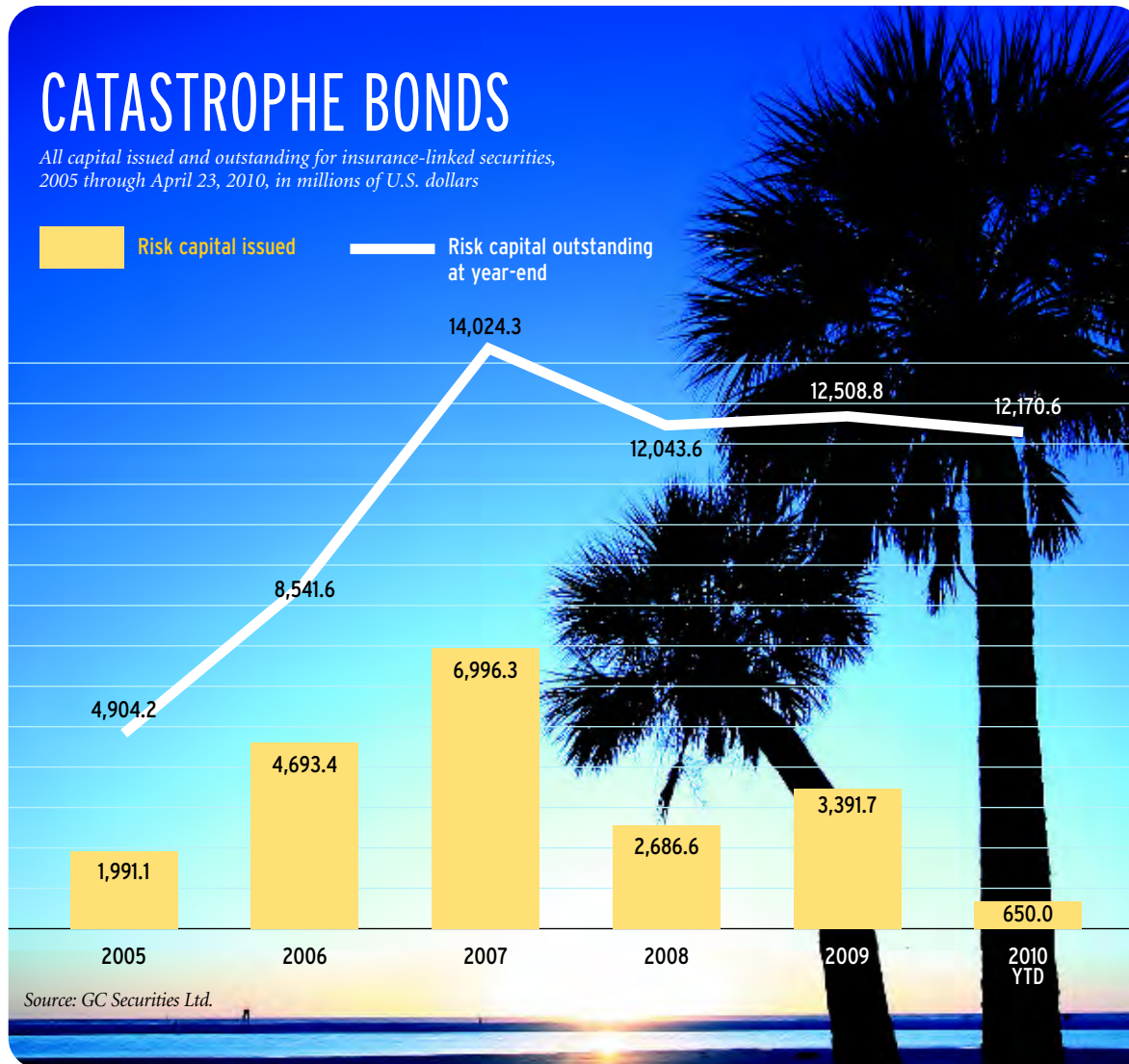
The new framework is "very favorable, and long term it will work to the advantage of Bermuda to have this in place," said Paul Schultz, president of Chicago-based Aon Benfield Securities Inc., which arranged the first two Bermuda-based deals brought to market since Bermuda revamped its rules (see chart).

Under the previous framework, special-purpose insurers would have been treated as a Class 3 reinsurer, and subject to high capital requirements and other regulations that were generally viewed as "burdensome" because the "vehicles are fully collateralized, therefore (they) have a very low risk of insolvency," said Charles Collis, director at the Bermuda-based office of Conyers Dill & Pearman Ltd.

Now, lower capital requirements, which reduce the solvency margin to \$1, and other modifications have made the designation more efficient and attractive for potential sponsors, he said. In addition, the regulation's speed-to-market features also are very appealing and most special-purpose insurers can be formed in less than a week, legal experts say.

According to the BMA, which recognizes that capital market solutions have become increasingly important to the insurance industry, eight special-purpose insurers have been formed since the class became effective, said Gina Smith, assistant director of actuarial services. "We've seen an increase in the number of inquiries, and we expect this to continue as the market becomes aware of this option," said she said.

In addition, experts say if there is a market-changing event, such as a significant catastrophe, the Bermuda market anticipates there will be



'It's great to have an alternative to the Cayman Islands.' However, 'there are many factors that drive the choice of domicile, so it will really depend on the ultimate objective of the sponsor.'

Chi Hum, GC Securities Ltd.

more sidecars and collateralized vehicles launched, as opposed to new company startups.

Jeremy Cox, CEO of the BMA, agreed. If Bermuda is not going to see a lot of the same traditional formations as in the past, then "we wanted to put Bermuda in a position to accept this new breed of reinsurance," which is more likely

to be in the form of 100% collateralized reinsurance, he said.

The most recent Bermuda cat bond transaction, a \$425 million catastrophe bond placed by Chartis Inc., closed in May and was issued by Bermuda-based special-purpose insurer Lodestone Re Ltd. For Chartis, a first-time issuer of cat bonds, "it was the combination of the new

regulations, the (lower) capital requirements and the fact that we already have a strong relationship with the BMA through our existing presence on the island" that led Chartis to Bermuda, said Robert Schimek, the property/casualty insurer's chief financial officer.

From an efficiency perspective, "all of those things add up to a

transaction that made all the sense in the world," Mr. Schimek said. Chartis also benefited from Bermuda's rules regarding "sophisticated users," which allowed the BMA to waive requirements for audited financial statements for the entity, he said.

Several observers said for sponsors like Chartis, which already have a Bermuda presence via subsidiaries and branches, the domicile is very attractive. However, the island still faces hurdles when it comes to legal costs and other factors that could be important in deciding where to domicile, experts say.

"I think the first two deals went very well, for being the first two deals, but some greater efficiencies will be necessary going forward to make sure Bermuda is competitive," said Aon's Mr. Schultz.

Incorporating cat bonds in the Cayman Islands generally is viewed as inexpensive, and the domicile offers ample legal and administrative services to execute a transaction efficiently, observers say.

"Cayman is a very efficient process and people know how to navigate the system. I do think Bermuda will get there, but they're not there yet," Mr. Schultz said.

Observers say as a sophisticated reinsurance market, Bermuda has the necessary legal and administrative infrastructure to support growth, but its high legal costs could deter a cost-conscious sponsor.

"It's great to have an alternative to the Cayman Islands," said Chi Hum, global head of distribution at GC Securities Ltd. in New York. However, "there are many factors that drive the choice of domicile, so it will really depend on the ultimate objective of the sponsor," he said.

In addition to cost considerations, other factors could include the domicile's regulatory environment and the sponsor's origin. For example, several European insurers have created Dublin-based special-purpose vehicles and Dublin likely will continue to take a share of the insurance-linked securities market, Mr. Hum said.

Another development that observers say may help Bermuda play a larger role in the ILS market is the Bermuda Stock Exchange's push to list the transactions on its exchange.

The exchange has nine cat bonds listed with a combined value of roughly \$900 million, including the two Bermuda-based deals that closed this year.

One of the bonds listed is Swiss-based Flagstone Reinsurance Holdings Ltd.'s \$175 million bond Montana Re Ltd. Although Montana Re is domiciled in the Cayman Islands, Flagstone saw several advantages in listing it on the Bermuda exchange, said Brent Slade, chief marketing officer at Flagstone Re in Bermuda.

"It was helpful, and it did bring in a couple of additional investors who may not have been able to participate otherwise" due to their criteria, he said. "Anything you can do to make your issue appeal to a broader set of investors, and ultimately increase your access to capital, I think you have to take that seriously," Mr. Slade said.

BERMUDA-ISSUED CAT BONDS
Catastrophe bonds issued since Bermuda established a special-purpose class of insurers.

DATE	CEDENT	INSURER	SIZE	COVERAGE
May 2010	Chartis Inc.	Lodestone Re Ltd.	\$425 million	3 years, U.S. hurricanes and earthquakes
April 2010	State Farm Mutual Automobile Insurance Co.	Merna Re II Ltd.	\$350 million	3 years, U.S. earthquakes excluding California

Source Standard & Poor's Corp., Fitch Ratings

Bermuda market expected to see more M&As

Low stock values among several factors limiting potential deals

By JUDY GREENWALD

Mergers and acquisitions are expected to rise in the Bermuda insurance market this year due to numerous factors, many observers say.

These factors include excess capital, investors' desire to move their cash, the need to diversify geographically and by line of business, and the intent to increase scale and achieve organic growth in a soft market.

But some observers say there also are factors that could dampen, if not quash, M&A activity in Bermuda, including managements' desire to retain their independence, low stock valuations and the possibility of a high-loss hurricane season that could remove excess capital from the market.

Recent M&A activity includes the Max Capital Group Ltd.-Harbor Point Ltd. merger and the IPC Holdings Ltd.-Validus Holdings Ltd. deal.

The Bermuda environment is ripe for M&As, said Cliff Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York.

"You don't really have much in terms of organic growth" and managements "don't like to stay static. If anything, a prolonged soft market might finally cause both buyers and sellers to be motivated to" move toward a merger or acquisition, Mr. Gallant said.

"The stars are aligned" in favor of Bermuda market consolidation, agreed John Wicher, principal of John Wicher & Associates Inc. in San Francisco. "Rates remain weak with no relief in sight, and internal growth depends on good luck or a reckless pricing policy," with further pressures exerted by global regulation, U.K. tax policy and the cost of collateral, he said.

Smaller insurers and reinsurers are under pressure to bolster their capital base, said Joe Rego, president and chief operating officer of Aon Bermuda Ltd.

"To improve your counterparty credit rating, you need to grow, and M&A is obviously the proper way of doing that. So I think you'll see more pressure on smaller companies" to merge, Mr. Rego said.

"There are many small and medium-sized Bermuda reinsurance companies that would benefit from size and scale and additional capital," said David Simmons, Hartford, Conn.-based leader of insurance M&A services for Deloitte & Touche L.L.P. "Several years ago, a company with \$1 billion was considered a well-capitalized company. Now many are looking at the \$3 billion to \$4 billion range as being really necessary" to be a market player, he said.

Meanwhile, some larger firms have excess capital, observers say.

"A number of firms are sitting on excess capital," said Tony Ursano, New York-based CEO of Willis Capital Markets & Advisory. "The debt markets have been much more

accessible to the insurance community over the last six months, and I think there are ways to structure these deals from a financial perspective that should work."

Some private equity investors still have large stakes in companies "and there might be somewhat of an incentive" to exit those investments, said Mark Rouck, senior director at Fitch Ratings in Chicago.

Private equity is "looking to get out," which is "understandable given the softening market environment," said Robert DeRose, vp at Oldwick, N.J.-based A.M. Best Co.

Inc. "Margins are eroding, investment returns are low. It's just going to be very difficult for companies to sustain double-digit returns on equity, and certainly that isn't sufficient to keep private equity content," he said.

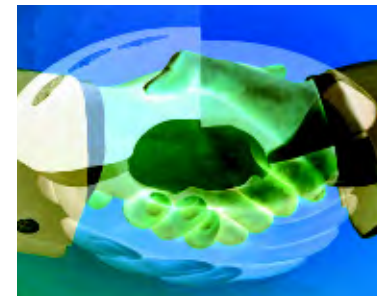
The desire for geographical and line diversity is another factor that will encourage M&As in Bermuda, observers say.

Some of the deals seen recently have been driven partially by companies' desire to diversify and reduce volatility "or overreliance on any particular line," said Laline Car-

valho, a credit analyst with Standard & Poor's Corp. in New York.

For deals that occur, there will be mergers, such as the Max Capital-Harbor Point deal, as well as acquisitions, with larger companies seeking to acquire specialty companies with complementary books of business, Mr. Rego said.

Mr. Wicher said transactions between Bermuda companies are "the logical transactions" that would have the "most synergy and address the fundamental issues," and challenges of doing business in Bermuda.



But, said Mr. Ursano, while there will be an increased level of M&A activity in Bermuda, "the Bermuda guys continue to be very eager to find growth opportunities in other markets," including the U.S. primary market and the London market.

Simon Clutterbuck, a London-

See **M&A** next page

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Bermuda courts equivalence

Regulatory changes aim for equal footing with European rivals

By **STUART COLLINS**

Bermuda has been developing its rules to supervise insurance companies along lines similar to those taken by the European Union in the hope of winning equivalence with European rivals.

The prize is that Bermuda's reinsurers would be treated equally with their counterparts in the European Union, and cross-border groups would face a much lower cost of compliance, experts say.

Bermuda's regulator is confident it is on course to meet the E.U.'s technical requirements for equivalence under Solvency II, but opinions vary on just how significant the commercial consequences would be for Bermuda's reinsurers if it does not reach a formal agreement with the European Commission.

Bermuda has been on the defensive since President Barack Obama last year named Bermuda among "tax havens" on which the United States should crack down, and appointed a presidential commission that recently recommended the United States consider a European-style value-added tax on transactions.

Since then, the island has been on a campaign to sign tax exchange agreements with other countries—signing 16 last year and so far this year, according to the Organization for Economic Co-operation and Development. Also, this year, the OECD added Bermuda to its "white list" of jurisdictions that have implemented the internationally agreed tax standard.

Bermuda also has turned its attention to Europe, where Solvency II, the risk-based regime that goes into force across the European Economic Area on Dec. 31, 2012, still is being hammered out. But the Framework Directive adopted in May 2009 already has set the main principles, including regulatory equivalence with non-E.U. or "third" countries.

E.U. supervisors are required to assess the potential risks to European policyholders from reinsurance purchased from non-E.U. reinsurers and the non-E.U. operations of an international insurance group. Recognizing the equivalence of each other's rules would mean Bermudian reinsurers would not be subject to collateral requirements in Europe. It also would also mean a reduced compliance burden for insurers, reinsurers and their supervisors, experts say (see story, next page).

Countries that want to be recognized as equivalent by the E.U. will have to undergo an assessment by the European Commission. In April, the Committee of European Insurance and Occupational Pensions Supervisors published a consultation paper setting the criteria that the commission would use to evaluate third countries.

According to the paper, third countries would not have to mirror Solvency II rules; rather, they must meet certain "principles and objectives" and show their rules provide policyholder protection similar to Solvency II.

Recognizing the equivalence of each other's rules would mean Bermudian reinsurers would not be subject to collateral requirements in Europe.



The assessment criteria are flexible in that Bermuda could seek equivalence for one, two or all three types foreseen in the directive—reinsurance, group supervision and group solvency. For example, a country may seek equivalence for reinsurance but not group supervision, said Carlos Montalvo Rebuella, secretary general of CEIOPS in Frankfurt.

'Third-country recognition is sensitive because it involves issues of sovereignty. This will be a political decision for both sides.'

Ulrich Zink,
Assn. of British Insurers

Supervisory equivalence between Bermuda and the E.U. most likely will focus large reinsurers' needs, said Marc Beckers, head of Aon Re Services in London. For example, Bermuda's recent regulatory changes to bring it more in line with Solvency II have focused mainly on Class 4 companies—the largest insurers and reinsurers—and are not being implemented for captive insurers. Europe's Solvency II will apply to captives under current

proposals. Countries seeking equivalence will be assessed in waves, and the first wave of nations could be known by the end of the year, said Mr. Montalvo Rebuella. The European Commission will call on CEIOPS to advise which countries should be in that first wave, he said. Bermuda's regulator, the Hamilton-based Bermuda Monetary Authority, has been making substantial changes the past four years in preparation for regulatory equivalence, Jeremy Cox, CEO of the BMA, said during an interview at the Risk & Insurance Management Society Inc.'s April conference. "The BMA currently has some eight to 10 work streams that are linked directly to Solvency II equivalence—probably the most significant being group supervision, for which we have just recently passed legislation," Mr. Cox said. "We are confident that the work we are conducting to enhance our framework will meet the technical requirements of Solvency II; therefore, there should be no technical basis for Bermuda not being granted equivalence," Mr. Cox said in a subsequent e-mail. But not everyone is confident that Bermuda will gain equivalence. "There are no certainties that equivalence will be granted, or on the timing of equivalence should it be achieved," said Jane Portas, director at KPMG L.L.P. in London. "Third-country recognition is sensitive because it involves issues of sovereignty. This will be a political

Continued on next page

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M&A: Several factors boost possible deals

CONTINUED FROM PREVIOUS PAGE

based director of BMS Intermediaries, said it would be most natural for companies seeking growth to reach outside their business area, such as reinsurers acquiring insurers.

Such deals would be most likely to occur in the United States, where most firms' premiums are generated. "I just don't see there being masses of acquisitions within the island itself," Mr. Clutterbuck said.

Deals between catastrophe writers are more likely than those involving casualty writers, some observers say.

Tony Bibbings, senior vp at ARTEX Intermediaries Ltd., a unit of Arthur J. Gallagher & Co., said,

"Assessing reserves from catastrophe business is a lot easier than it is for long-tail casualty business."

However, Kevin Lee, vp at Moody's Investors Service in New York, had a slightly different perspective. "If there is going to be further M&A, I think the more sensible combination would be a property cat company merging with a non-property catastrophe company" because of the greater diversification that would result.

Among factors discouraging such deals are Bermuda company stocks that are trading at a discount to book value, which Mr. Simmons said is "the major impediment to getting deals done in the Bermuda marketplace" and one that will be

"difficult to overcome in negotiating a deal."

"Social issues" could be an impediment as well, observers say.

Managements are "fairly well entrenched and committed to making it on their own," said Mr. DeRose. "Everyone wants to be the winner in the deal, which necessitates being the acquirer."

Charles Dupplin, CEO of Hiscox Bermuda, said a bad catastrophe season also dampens M&A enthusiasm "because it generates tremendous uncertainty about the true position the companies find themselves in." He also noted that, historically, high-loss catastrophe years have led to a hardening market and new entrants.

Solvency II to protect buyers no matter where the insurer calls home

Europe's Solvency II regime introduces several regulatory concepts for insurers, including recognizing rules that offer equivalent policyholder protection.

"Equivalence would go beyond the sharing of information between regulators and will see (European Union) insurance supervisors recognizing the competency and skills of other regulators," said Philippe Brahin, head of group regulatory affairs at Zurich-based Swiss Reinsurance Co. "This is a big step forward and a fantastic opportunity."

Solvency II has three key components:

reinsurance, group supervision and group solvency, which could make European regulators more reliant on the rules of non-E.U. supervisors, said Jane Portas, director at KPMG L.L.P. in London.

If Bermuda is granted equivalence, reinsurers based on the island would be treated equally with European carriers, but nonequivalence could mean insurers would have to post collateral, she said.

Also, E.U. supervisors will want to assess the "group" risk to European policyholders, so Solvency II would subject international insurers and reinsurers with European oper-

ations to its rules, Ms. Portas said.

Equivalence would mean the E.U. supervisor likely would regulate the European business of a Bermudian group under Solvency II up to the highest company level operating in the European Union. But it would rely on the group supervisor's regime—the Bermuda Monetary Authority in the case of a Bermuda-based group—rather than Solvency II to assess the worldwide group risk, she said.

In the absence of equivalence, the E.U. supervisor would have a "toolkit" of options to assess the wider risk of an insur-

ance group to European policyholders, Ms. Portas said. Depending on the company structure and the policyholder risk, the regulator could require a Bermudian holding company to meet group solvency requirements as well as demonstrate comparable levels of transparency, risk management and governance as Solvency II, she said.

However, the toolkit also allows an E.U. regulator to consider other methods that are more appropriate and proportionate to establish the risk posed by the group to E.U. policyholders, she added.

—By Stuart Collins

Continued from previous page

decision for both sides," said Ulrich Zink, policy adviser for wholesale and reinsurance at the London-based Assn. of British Insurers.

In deciding whether to grant Bermuda equivalent supervisory status, the European Commission will question whether the BMA is sufficiently staffed and if its regulation is adequate, said Charles Dupplin, CEO of Hiscox Bermuda and company secretary of Hiscox Ltd. in Hamilton, Bermuda.

"The BMA has been recruiting, and regulation on the island is better than in many E.U. countries," Mr. Dupplin said. "However there is also a political issue of whether countries will give power away and accept a non-E.U. supervisor as the regulator of a Bermudian holding company that has significant interests in the E.U. I am sure the BMA will get there on the technical side, so it remains a political question for the E.U. of whether it is confident to hand (group supervision) over to Bermuda," said Mr. Dupplin.

WATCH a video of Jeremy Cox, CEO of the BMA, online at www.BusinessInsurance.com

The commercial consequences of not gaining supervisory equivalence are difficult to assess, said Mr. Beckers. "But it should not be forgotten that Bermuda is an important market for Europe, and a lot of European catastrophe risk is written on the island."

Bermudian reinsurers could be at a disadvantage in the European market unless they are granted equivalence, said KPMG's Ms. Portas. "E.U. member states could require non-E.U. reinsurers to post collateral, but common sense is likely to prevail because the commission will not want to encourage insurers to overly concentrate their reinsurance on European carriers."

In addition, European cedents buying reinsurance will have to determine their counterparty default risk under Solvency II if they use nonequivalent firms, but this should have little impact on Bermuda's firms because they are highly rated, Mr. Cox said.

"It would be unreasonable for (a European Economic Area) supervisor to impose collateral on A-rated non-EEA reinsurance just because equivalence is not established, as this could lead to less diversification for EEA cedents," he said.

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Various problems limit annuity options in savings plans

DOL poll identifies uncertainty as major deterrent for sponsors

By **ROBERT STEYER**

Participant confusion about annuities, the varying prices and fine print that accompany existing products, and plan executives' worries about legal issues and fiduciary responsibility are impediments to offering lifetime income options in defined contribution plans, responses to the Labor Department show.

Some 700 companies, organizations and individuals responded to the DOL's request to answer 39 questions on how retirement plans can best help participants go from accumulating assets while they're working to guarding against outliving their assets after they retire.

For many major players in the defined contribution business, more government guidance and/or regulation is a remedy for their uncertainty. "We support prudent regulation," Bertram L. Scott, an executive vp at TIAA-CREF, in Charlotte, N.C., said in an interview. "You have to have clarity."

There's no guarantee, however, that the DOL will propose regulations, and there's no timetable for the department to act, a Labor Department spokeswoman said. "We wanted to find out what was going on in the marketplace," she said. "There's no preconceived notion."

The Labor Department's request

for comments was spurred by the movement away from defined benefit plans in favor of defined contribution plans, the DOL said Feb. 2 in the Federal Register.

In addition, "many traditional defined benefit plans have converted to lump-sum-based hybrid plans, such as cash balance or pension equity plans, and many others have simply added lump-sum options," the DOL said. The result is a "trend away from annuities toward lump-sum distributions," placing greater planning responsibility on employees.

The number of lifetime income options offered by defined contribution plans is modest. A review of Towers Watson & Co.'s database of more than 1,400 large employers reveals only 20% to 25% offer the option, William B. Gulliver, managing director of North American retirement business in Stamford, Conn., said in formal comments to the DOL.

He also cited the firm's 2007 survey of 5,000 employees and retirees, which found that 10% of those covered by a defined contribution plan "expected or actually received some portion of their benefit as an annuity."

Reasons for such a response could include lack of participant understanding, poor sponsor communication, mistrust of annuities and expectation of higher returns in other investments, he said.

"Our work with plan sponsors indicates a strong interest to offer lifetime options," Mr. Gulliver said. However, "concerns and barriers

that currently exist...have prevented plan sponsors from doing more in this area."

TIAA-CREF, Towers Watson, the Spark Institute Inc., the American Council of Life Insurers, AARP, the Defined Contribution Institutional Investment Assn., the American Society of Pension Professionals and Actuaries and ING Group were among the respondents. Fiduciary responsibility was a concern of many, including a discussion of distinguishing participant education vs. investment advice.

"There are substantial regulatory constraints under ERISA, federal securities laws and state insurance laws that make it challenging for plan sponsors and providers to communicate effectively in 'plain English' to participants about lifetime income solutions," argued Larry H. Goldbrum, general counsel for the Simsbury, Conn.-based Spark Institute, in his organization's filing with the DOL. "Plan sponsors are also concerned about crossing the line from providing participant education to providing advice and becoming an investment fiduciary."

Mr. Goldbrum's organization wants the Labor Department to provide guidance "specifically stating that providing information about lifetime income options, available both inside and outside of the plan, is not investment advice," he said. Without that, he warned, plan sponsors "will most likely be unwilling to provide" any information that would cause them to add fiduciary responsibility.

ACLI expressed the same concerns. "A number of factors, including the current economic situation and lengthening life spans, have made it more important than ever to encourage employers to provide information about guaranteed lifetime income options and to educate their participants," according to commentary filed by several executives for the Washington-based ACLI, including Walter Welsh, executive vp-taxes and retirement security.

However, "plan sponsors are concerned that providing participants with information outlining the advantages of guaranteed lifetime income options could cross the line" between education and advice, ACLI said.

"There are concerns that the investment education rules do not cover situations in which the plan sponsor provides information regarding the benefits and features of the plan's lifetime income options," ACLI's comments said. ACLI wants this information to be treated as education—in the same manner that discussions about diversification, asset allocation and risk tolerance are treated by regulators as education.

One issue provoking extensive debate was a plan sponsor's responsibility for offering a lifetime income distribution option. Should plans be required to offer a choice, the DOL asked. Should a lifetime-income product be a default distribution option? Respondents' comments reflected subtle differences in supporting choices, requirements and mandates.

TIAA-CREF supports a requirement that defined contribution plans offer participants guaranteed lifetime income annuities "during the accumulation phase and as a distribution option at retirement," Larry M. Chadwick, vp for government relations public policy, said in written comments to the DOL.

However, "we do not believe mandating annuitization or defaulting participants into a lifetime income option is an effective means of encouraging the use of annuities in retirement," he added. "Participants should not be required to annuitize their entire retirement accumulation. All participants should have access to partial annuitization options."

AARP endorses including a lifetime income option choice in defined contribution plans. Although requiring such a choice "would increase administrative costs, we believe that the cost increase would be small," David Certner, legislative counsel and legislative policy director in Washington, said in the association's formal comments. "The disadvantages of a requirement would be outweighed by the advantages of making annuity and other lifetime income options more widely available."

AARP suggests exploring defaulting a portion of a participant's account into a lifetime-income product on a trial basis. This "default trial lifetime income" option would give participants 24

months to decide if they like the annuity. If not, they can "take a lump sum after the trial period or...purchase an alternative product," Mr. Certner wrote.

Although some insurers are examining this idea, "certain design and pricing issues still need to be worked out," and such a product may require changes in ERISA rules, Mr. Certner added.

The Defined Contribution Institutional Investment Assn. believes using defaults in connection to lifetime income products "is critical, if not essential, to creating retirement income adequacy," said Lew Minsky, Jupiter, Fla.-based executive director, in written comments. Although DCIIA wants government agencies to encourage the use of such options, it opposes a formal requirement.

And if a sponsor uses a default for a lifetime income product, it must give participants an escape clause. Participants should "have the opportunity to opt out of the default without penalty, both before the default action occurs as well as for some administratively reasonable period of time after it occurs," Mr. Minsky wrote.

Lifetime income distribution options shouldn't be mandatory, but could be encouraged, according to ASPPA's response to the Labor Department. The Arlington, Va.-based ASPPA cited "administrative cost and complexity," especially for small defined contribution plans, as roadblocks.

"The retirement income needs of participants are unique to each person so a blanket solution is unlikely to meet the needs of all participants," said ASPPA's filing, signed by Executive Director Brian Graff and six other association executives. "Many of the retirement income products available today do not offer the flexibility of transferring to another investment without penalty, so defaulted participants would be at risk of being stuck in an unsuitable investment."

The DOL could reconsider such a mandate if new products and new regulations made lifetime income options "less expensive, easier to administer and more flexible," the association said.

ING supports defined contribution plans having "one or more" lifetime income distribution options, but it "would stop short of requiring their use," said Robert G. Leary, CEO of ING U.S., and Catherine H. Smith, CEO of ING U.S. Retirement Service, in their formal comments to the DOL.

They cited feedback from clients and participants reflecting "a very strong preference for preserving choice and control over plan design and benefit distribution matters." For many plan sponsors, they added, "the burdens of the fiduciary liability and additional administration associated with lifetime income options would be unwelcome."

Robert Steyer is a reporter at Pensions & Investments, a sister publication of Business Insurance.



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Products & Services

IronHealth offering backs physician group practices

HAMILTON, Bermuda—IronHealth, the specialty health care unit of Ironshore Inc., has introduced liability coverage for physician groups.

Physician Group Liability covers groups of 10 or more doctors, including the practice and its staff, the Hamilton, Bermuda-based insurer said.

"The business of health care delivery is evolving in significant and different ways, thereby exposing physician group practices to liability risks that are not covered by traditional physician insurance protection programs," Matt Dolan, IronHealth president, said in a statement. The product was developed "specifically for physician groups to assure the broadest coverage against unforeseen liability risk."

The program combines professional liability coverage to protect group assets, including medical director, clinical research, privacy protection and medical waste civil fines, among others.

IronHealth said liability claims have \$1 million policy limits per claim and \$3 million in combined claims per physician or the entity. Sublimits of \$50,000 apply per coverage.

For more information, contact Randy Oates, chief operating officer, at 860-408-7816 or randy.oates@ironshore.com.

Chartis covers merchants, credit card processors

NEW YORK—Chartis Inc.'s executive liability division has developed cov-

erage of data security risks for credit card processors and their merchants.

The Merchant Data Security policy covers a data breach that threatens the security of credit card information in a merchant's possession, the New York-based unit of American International Group Inc. said in a statement.

"The Merchant Data Security policy provides processors with a valuable enhancement to their core services," said Tracie Grella, president of Chartis' professional liability unit, in the statement. "It also allows a processor's merchants to manage unexpected and potentially large assessments that could affect their ability to accept credit card payments or cause potential bankruptcy."

Chartis said the policy covers various costs incurred from data breaches, such as contractual fines, security assessments, security breach investigations and post-incident expenses.

For more information, contact Ms. Grella at 212-458-1875 or tracie.grella@chartisinsurance.com.

HP automates insurer processing of claims

PALO ALTO, Calif.—Hewlett-Packard Co. has automated claims processing for insurers.

Software platform HP Exstream provides various application and integration services to modernize the claims process for insurers, Palo Alto, Calif.-based HP said in a statement.

The software allows users to create Web portals to access policies and contracts.

"Customer responsiveness is a critical element in claims processing," Jon Firooz, director of HP Exstream product strategy, said in the statement. With the "interactive correspondence solution for creating and processing policyholder communications, claims representatives can help accelerate time

to settlement, improve the customer experience, and achieve (information technology) cost and administration savings."

HP said the program aims to reduce regulatory compliance risks, integrate data from other systems, update templates, and deliver claims through various forms such as PDFs or e-mails.

For more information, contact Tami Webster, marketing manager, enterprise software marketing at HP Exstream, at 859-422-4755 or tami.webster@hp.com.

Aon Benfield develops terrorism risk capacity

CHICAGO—Aon Benfield Fac said it has developed terrorism risk capacity underwritten by Lloyd's of London that is available through its electronic placement platform, FAConnect.

Clients can bind facultative U.S. terrorism risk placements through FAConnect which has capacity up to \$250 million for any one risk, the reinsurance unit of Chicago-based Aon Corp. said in a statement.

Through a Web portal, FAConnect allows clients to submit their facultative risk placements, receive quotes and secure coverage within five minutes, Aon Benfield said.

Several Lloyd's of London syndicates, led by Ascot Underwriting Ltd., are underwriting the coverage.

For more information, contact Dawnmarie E. Black, who is head of global products for Aon Benfield, at 312-316-9079 or dawnmarie.black@aon.com.

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BI's Products & Services column reports on new product offerings. Please send Product & Services news to Mike Tsikoudakis, 360 N. Michigan Ave., Chicago, Ill. or e-mail mtsikoudakis@businessinsurance.com.

UP Comings & Goings CLOSE



RICK KRONBERG

NEW JOB TITLE: Chicago-based director of clinical services for Perspectives Ltd., a workplace resources firm.

PREVIOUS POSITION: Palatine, Ill.-based senior account executive for White Plains, N.Y.-based APS Healthcare Inc.

GOALS FOR NEW POSITION: I think coming in with some of the changes in the (health care) business, I see one of the things I have to do is make sure that I have the right amount of professional staff and have them in the right positions to be able to provide quality products and care in an effective and efficient manner.

INDUSTRY OUTLOOK: I think that employers have come to see and value of the services we offer through our EAP. It's something that is a good value for them; it helps them to deal with employee situations. Because of the (federal Mental Health Parity and Addiction Equity Act of 2010), they need us because we're the specialists in mental health and substance abuse.

FIRST MARKET EXPERIENCE: When I first got out of college and

while I was going to graduate school, I worked at a residential treatment center for disturbed children. It was a very challenging place. These were some tough kids. It really helped give me a background in various treatments and a tremendous education.

ADVICE: My advice for someone in the (EAP) industry would be to make sure you keep up on your knowledge of technology. We're...looking for people now that not only have the clinical skills but also the computer and phone skills. We want people who are familiar with cutting-edge technologies, such as e-counseling over the computer. People really need to be open to new ways of doing things.

WHAT YOU WANTED TO BE WHEN YOU GREW UP: I...always thought I wanted to be competitive in horseback riding.

OUTSIDE THE INDUSTRY, A DREAM JOB: I've always enjoyed getting out in front of people. I would love to act in different venues, either TV or stage.

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

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Thailand: Riots raise questions about coverage

CONTINUED FROM PAGE 4

called for the government to step down and hold new elections.

In March, the protesters moved in and most of the shopping malls, nearby hotels and businesses shut their doors. When some 20,000 troops confronted the protesters on May 15, all businesses in the area were shut down.

The most high-profile structure hit during the riots was Central World, a shopping center that's larger than the Mall of America and the second-largest mall in Asia. The cost of rebuilding the gutted mall is expected to be less than 10 billion Thai baht (\$308.4 million), said Naris Cheyklin, chief financial officer of Central Pattana P.L.C., which owns the property.

Mr. Cheyklin said the industrial risk cover limits on the mall, including business interruption, are \$400 billion. It had another \$100 million in riot and terrorism cover, he said and declined to name the insurer.

The anchor tenant in the mall was the Zen department store, also owned by Central Pattana. The seven-story building was burned and has to be rebuilt at a cost of 10 billion baht, Mr. Cheyklin said. During the expected six-month renovation, he said the store would lose about \$40 million in sales, which he said would be covered by its business interruption policy.

"The damage would have been less if our sprinkler system would have functioned, but the city had turned off all electricity and water in the area before the crackdown," Mr. Cheyklin said.

Several hotels near the epicenter of the protests closed in mid-April, including the Grand Hyatt Erawan Bangkok and Courtyard by Marriott Bangkok, both owned by Erawan Group P.L.C. Kamonwan Wipulakorn, Erawan's CFO in Bangkok, said the facilities sustained only minor property damage during the riots, but she estimated business interruption losses at \$4.6 million.

Ms. Kamonwan said Erawan Group has all-risks coverage up to 15 billion baht (\$4.6 million) for its 12 hotels, five of which are located in Bangkok. The group also has business interruption coverage limits of 5 billion baht



'We are waiting for some kind of indication from the Thai government what to call these events for insurance purposes.'

Andrew Bentley,
Aon Group (Thailand) Ltd.

(\$154.2 million) as well as terrorism coverage up to \$30 million. "We, like many businesses, are waiting for the government to confirm

Anti-government rioting in Bangkok destroyed Central World, Asia's second-largest mall. The company that owns the mall had \$100 million in riot and terrorism cover in addition to industrial risk insurance.

what kind of incident this is. If it's riot, our all-risk policy will cover it. If it's terrorism, we are covered, too," she said.

"When you have a major catastrophic event like this, the insurance market is always sitting on the fence. Nobody wants to make a call on the description of the event. The insurers have their view, the reinsurers have their own view, and regulators have their own view," said Robin Armstrong, CEO of Marsh PB Co. Ltd., the Thai unit of Marsh & McLennan Cos. Inc. "It's not good if one insurer says it's terrorism and another says it's rebellion."

"At this point, we're not quite certain which one it is," said Andrew Bentley, CEO of Aon Group (Thailand) Ltd. in Bangkok. "We are waiting for some kind of indication from the Thai government what to call these events for insurance purposes."

The week after the protests, major property/casualty insurers met with the Thai regulator, the Office of Insurance Commission, to come to a unified conclusion of how to characterize the rioting. But the government already has labeled the riots as acts of terrorism, and has asked that all insurance companies cover any damage claims for the riots.

"But the problem is that if the insurance industry pays for those claims under their all-risks policies, insurers will have difficulty collecting from their reinsurers," said Kevin Norman, general manager of QBE Insurance (Thailand) Co., Ltd. in Bangkok, a division of Australia-based QBE Insurance Group Ltd.

If it is deemed as terrorism, that's not good news for companies that only had property or industrial risk coverage and failed to purchase additional terrorism insurance.

"Most industrial risk policies will extend coverage to include riot and strikes and civil commotion, but will exclude political violence," said Mr. Bentley.

Mr. Armstrong added that a political violence policy "will cover a number of different areas: strikes, riots, civil commotion, war, civil war, terrorism and coups."

While business interruption usually requires damage to be triggered, Mr. Armstrong said there could be exceptions for hotels and malls that closed during the protests because it was difficult for customers to reach them.

"Claims are usually based on denial of access or loss of attraction," he said. "If the property is not damaged but the business can't operate, that can be indemnified usually under the sublimits of the policy."

During the two months of protests, local brokers advised clients to upgrade their coverage to include terrorism and political violence insurance.

"In some instances, we were arranging coverage a week prior to the arson events," Mr. Bentley said. "The week before the lockdown, our office had 40 separate inquiries for terrorism and political violence coverage."

Marsh also advised clients to implement business continuity management and crisis management programs.

Meanwhile, most multinationals were unaffected by the protests, except for FedEx Express Thailand, which was unable to deliver packages during the final week of the protest, said David Carden, managing director.

"We shut down deliveries in the area and held packages at our station," Mr. Carden said. "We called customers and arranged to meet them at other locations or would ask them to come pick them up."

Mr. Carden even personally delivered a parcel to a U.S. Embassy employee who lived near him. "That was the first delivery I've made in the 3 1/2 years I've been in Thailand and the first I've made in 10 years," he said.



REUTERS/LANDOV

A defaced picture of Thai Prime Minister Abhisit Vejjajiva is pulled along a main road to Bangkok, where anti-government protesters demanded elections be held to choose a new government and left widespread damage.

Spill: Reputation damage grows as oil keeps flowing

CONTINUED FROM PAGE 1

for what's been widely regarded as its inadequate response to the environmental crisis.

While the oil company faces paying out billions of dollars during the next several years to clean up the escaped oil, BP's poor response to the crisis may sully the company's reputation for decades, experts say.

Last week, U.S. scientists tabbed the oil spill in the Gulf of Mexico the worst in the country's history, passing the Exxon Valdez spill in Alaska in 1989. Leading up to that declaration, BP scrambled to control the spill as the huge slick quickly spread over the warm waters of the Gulf.

"This could be offshore drilling's Three-Mile Island....It could set the oil industry back decades," said Gene Grabowski, senior vp and chairman of the crisis and litigation practice for Washington-based Levick Strategic Communications L.L.C. In 1979, a partial core meltdown at the Three-Mile Island Nuclear Generating Station in central Pennsylvania resulted in a massive release of radioactive gases and became the U.S.'s worst commercial nuclear power accident. The incident halted the building of nuclear power stations in the United States.

At a news conference last week, President Obama said he is extending a moratorium on new wells for six months and ordered drilling operations in the Gulf of Mexico to stop.

In contrast to organizations involved in previous disasters such as Exxon Valdez and Three-Mile Island, BP has had to contend with numerous new media outlets focusing on the company.

"As a company, the first thing you have to understand is the amount of chatter in the online world," said Scott Marticke, Atlanta-based chief operating officer for Sentiment360, a new-media search and analysis company. "Companies aren't taking enough time to listen in on what people are saying about them...and when it comes to something related to the environment, health or safety, it's something that will not be secret for long. If it's on

the Web and we can find it, it's a good bet that competitors, whistleblowers and consumers can find it."

As the underground well spewed what scientists now believe is 12,000 to 19,000 barrels of oil a day, consumers used social networking sites such as Facebook and Twitter to start groups and feeds boycotting and humiliating BP. The Facebook group Boycott BP had more than 181,600 members as of Friday and the parody Twitter feed BPGlobalPR had more than 75,800 followers, far exceeding the official BP Twitter feed BP_America by more than 68,000 followers.

Amy Littleton, vp at Chicago-based public relations firm Kemper-Lesnik, said BP made "missteps" early in the crisis, such as the underestimation of the amount of barrels leaked per day, the failure of BP CEO Tony Hayward's presence early in the situation, and BP's blame shifting in front of Congress.

Mr. Hayward's absence on-site after the disaster was only the first misstep that BP took in a series, according to Jonathan Bernstein, president of Sierra Madre, Calif.-based Bernstein Crisis Management Inc.

"BP is crisis planning on the fly," Mr. Bernstein said. "It's clear that they didn't have a crisis response plan in place before this happened, even though this is something that is predictable in their line of work and that is inexcusable."

BP has tried several efforts to prevent oil from spreading throughout



President Barack Obama speaks at a news conference last week about the oil spill and cleanup in the Gulf of Mexico.



Oil mixed with dispersant is seen in the Gulf of Mexico last week. Scientists have declared last month's spill the worst in America's history.

the Gulf, with its latest being the "top kill," where heavy drilling fluid known as mud is pumped into the well to clog the flow of oil from the well and sealed with concrete. However, despite these efforts, which also has included oil booms, a controlled burn of surface oil, storage containment, and siphoning the well, crisis and risk assessment experts said BP's planning and execution of those plans clearly underestimated possible catastrophic or

worst-case scenarios.

"The risk assessment (BP) did in support of this project indicates they planned for a small spill as their worst-case-scenario assessment," said Lawrence Heim, director of Atlanta-based Elm Consulting Group International L.L.C., a safety and environmental management consultancy that assists in providing technical advice and services related to health, safety and environmental management and com-

pliance issues for industrial sectors.

"It's a little silly to think that oil booms would be an effective control mechanism in water that experiences 8-inch to a foot-and-a-half waves...the water just goes right over the top of the booms."

Mr. Grabowski added that when the crisis began, BP sent the wrong message by saying they would only pay what was appropriate for "legitimate claims." BP was "already defining what it would pay for before they had an idea of what they were dealing with."

Further, Mr. Hayward was not on the disaster site until several days after the oil rig sunk, which Mr. Grabowski said made it appear he was detached from the situation and from concerns of the people who live and work along the Gulf Coast.

He said too often companies "fail at thinking like consumers" during a crisis situation, meaning companies only focus on what is at stake for them, rather than those affected by the crisis.

"BP has come off as arrogant in their handling of this situation and they're not getting any support from the U.S. government," he said.

Sources agree that BP hasn't done enough to show what it is doing in the Gulf, especially showing photos of BP employees helping with the cleanup. With pictures turning up of oil-covered wildlife and oil-soaked wetlands and beaches, Mr. Grabowski and Ms. Littleton said BP needs to be more active in getting control of the images in the media.

Perhaps further compounding the problem is BP's failure to bring in outside help early on in the process, Mr. Bernstein said, adding that if the company had an adequate crisis plan in place, one of the steps would have been to bring in the top five experts in the field, get them on-site and then "brag" about the fact that they have the top people working on the job.

"That would have served well in the court of public opinion," he said. "Transparency, honesty and humility can go a long way in this situation."

Messrs. Heim and Marticke do not think BP's reputation as an environmentally friendly company will continue.

"BP's reputation will probably not recover," Mr. Heim said. "This (spill) will last far longer and it could end up being BP's legacy."

Lloyd's seeks to be released of obligation to cover costs of oil spill cleanup

HOUSTON—Lloyd's of London, seeking to distance itself from the Gulf of Mexico oil spill, has filed a lawsuit asking a federal judge to declare that Transocean Ltd.'s excess insurance carriers have no obligation to cover BP P.L.C. for cleanup costs or damage claims resulting from the spill.

Lloyd's filed the suit against BP in Houston after BP asked Lloyd's for coverage under insurance policies take out by Zug, Switzerland-based Transocean, owner of the Deepwater Horizon drilling rig that was under contract to BP when it exploded April 20.

Government scientists late last week

declared the Gulf of Mexico spill the worst in U.S. history, surpassing the 1989 Exxon Valdez spill in Alaska.

According to court documents, Lloyd's argues that in its contract with Transocean, BP agreed to hold the rig owner harmless for excess pollution coverage "from and against any loss, damages, expense, claims, fine, penalty, demand or liability for pollution or contamination including control and removal thereof."

Further, Transocean's excess insurers—identified only as "various insurance companies"—asked the court to declare that

they have "no additional insured obligation to BP," according to court documents.

London-based BP is self-insured against losses arising from incidents such as the one that occurred in the Gulf.

According to court filing, Transocean's lowest layer of coverage attaches in excess of \$50 million under a policy issued by Winnipeg, Manitoba-based Ranger Insurance Co.

The aggregate liability limits under the policies is \$700 million.

"Because liabilities BP faces for pollution emanating from BP's well are from below

the surface and from BP's well, those liabilities are not within the scope of the additional insured protection," Lloyd's said in its complaint.

Transocean's excess insurers are seeking a declaratory judgment that they have no additional insured obligation to BP with respect to pollution claims against it for oil leaking from the well.

Lawsuits are mounting against BP, filed by thousands of commercial fishermen, property owners and tourism businesses affected by the spilled oil.

—By Jeff Casale

Iran sanction bill delayed as U.N. negotiations continue

Measure would hit insurers, reinsurers with Iranian links

By ZACK PHILLIPS

WASHINGTON—Federal lawmakers last week delayed a plan to finalize legislation to toughen sanctions against companies—including insurers—that conduct business involving Iran, Democratic leaders said Tuesday.

Citing a draft United Nations resolution introduced last week, the lawmakers said they would take up the sanctions legislation in the “latter half of June.” Previously, House Majority Leader Steny Hoyer, D-Md., said he wanted Congress to complete work on the new sanctions before the Memorial Day recess.

The Obama administration last week introduced a new draft Iran sanctions resolution supported by all five of the United Nations Security Council’s permanent mem-

bers, including Russia and China. In a joint statement Tuesday, Senate Banking Committee Chairman Christopher Dodd, D-Conn., and House Committee on Foreign Affairs Chairman Howard L. Berman, D-Calif., said that before the new draft resolution, they were skeptical that the United Nations would act on Iran sanctions.

“However with the progress in negotiations at the (U.N.) Security Council, we believe that our overriding goal of preventing Iran

from acquiring a nuclear weapons capability is best served by providing a limited amount of time for those efforts—and expected follow-on action by the (European Union) at its mid-June summit—to reach a successful conclusion before we send our bill to the president,” Sen. Dodd and Rep. Berman said in the statement.

The statement continued: “We will use the coming weeks to ensure that our legislation is crafted to complement and augment those other actions as

effectively as possible.”

The legislation would come from joining two similar bills the House and Senate passed last year to toughen sanctions against companies that do business with companies that do business with Iran’s energy sector.

Those proposals would make it easier for the Treasury Department to impose penalties on non-U.S. insurers, brokers and reinsurers—among other potential targets—that underwrite companies that ship refined petroleum to Iran.

Report: Flat commercial cover rates

CONTINUED FROM PAGE 4

accounts may see primary insurance rates increase, although excess coverage may stay soft because of competition, the broker said.

Buyers of D&O cover will continue to see a soft market for the foreseeable future. Even financial institutions, which were hit hard by the credit crisis and saw significant rate increases in 2008 and 2009, are seeing those rate increases level off, Aon said. A major reason is abundant capacity. “Theoretical capacity” for D&O buyers increased 16% in 2009 and more new insurers are expected to enter the market this year, Aon said.

Increasing capacity for K&R cover has stabilized rates, making larger limits more attractively priced, the report said.

Most buyers of employment practices liability insurance also face generally soft rates, although investment banks and other financial institutions will see fairly hard pricing, Aon said. And the market for employers with 10,000 workers or more is volatile because of a shortage of primary insurers.

In the fidelity and crime sector, rates are likely to stabilize or increase slightly for financial institutions this year, Aon said.

The report is available for free with registration at <http://insight.aon.com/?elqPURL-Page=4624>.

Business Insurance Webcasts & Webinars

Business Insurance’s Webcasts are developed by *BI* editors to discuss the latest and most pressing issues facing our readers. *Business Insurance’s* Webinars are educational and informative presentations by leading companies serving the risk management, employee benefits and commercial insurance communities. Both formats are presented live online and afterward are accessible on demand.

Storm Warning: Is the Northeast Prepared for Hurricane Risks?

Live Online: This Wed. June 2, 2010 | 2 p.m. Eastern | Free of Charge

With the 2010 hurricane season officially underway June 1, many risk managers with coastal property are making their annual review of their loss control, catastrophe planning and insurance readiness. But what about in the Northeastern United States, where some of the country’s greatest population density and infrastructure are located? Although hurricanes don’t make landfall in the Northeastern United States as frequently as they do in the Southeast and Gulf Coast, they are potentially very costly. Catastrophe modeler AIR Worldwide estimates that if the “Long Island Express” hurricane of 1938 happened today, it would cause \$33 billion in insured damage.

To help risk managers and loss control professionals prepare for this threat, please join Richard Lafayette, VP and Managing Director of Crawford & Co.’s Global Technical Services Division; Darren R. Perry, Vice President of REI Engineers; Al Tobin, Managing Director and leader of Aon Risk Service’s property practice; and *Business Insurance* Senior Editor, Mark A. Hofmann as they explore this risk and answer audience questions.

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Business Resilience: How to Bounce Back After an Unexpected Loss

Live Online: Thurs. June 17, 2010 | 2 p.m. Eastern | Free of Charge

We all know that while it’s impossible to predict the unexpected, it is possible to plan for it. What if one of your suppliers suffers a loss due to a fire, or your product has to be pulled back through the supply chain due to a found defect? Having the processes in place to help control the activities of such occurrences, while reducing the likelihood of occurrence of unintended effects, is what being resilient is all about.

Join Zurich Insurance in this complimentary webinar to help define the links in your supply chain and help you maintain sustainability and profitability. The webinar will also review how your business continuity management approach and business impact analysis can help increase the chances that a manufacturing business, or any business, will be able to recover faster after an interruption. The webinar will be presented by Cal Beyer, Zurich North America Commercial, Head of Manufacturing, and Linda Conrad, Zurich Services Corporation, Director of Strategic Risk Management. Roberto Cenicerros, Senior Editor of *Business Insurance*, will moderate the webinar.

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Complaint says employment aptitude test was invalid

WASHINGTON—The focus of the U.S. Supreme Court's decision last week in *Arthur L. Lewis Jr. et al. vs. City of Chicago* was a 1995 written test of more than 26,000 Chicago Fire Department applicants.

Based on their test scores, the applicants were placed in three categories: well-qualified, qualified and not qualified, according to the opinion.

Applicants were told those in the qualified category were unlikely to be hired because of the large number who scored as well-qualified, but that they would stay on the eligibility list as long as it was used.

Black applicants who scored in the qualified category brought

the suit, which alleges the test disproportionately classified black applicants as qualified rather than well-qualified, and was an invalid test of their fire-fighting aptitude.

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

Attorneys for Chicago argued the EEOC charge was "untimely" because it was filed March 21, 1997, or 420 days after notice of the test results was sent. Plaintiffs argued the EEOC charge was valid because it was filed within 300 days after Chicago began hiring from the well-qualified list, in May 1996.

A district court judge ruled for the firefighters, but the 7th U.S. Circuit Court of Appeals overturned the ruling in 2008 and sided with the city.

Last week, the U.S. Supreme Court overturned the appeals court. "We consider whether a plaintiff who does not file a timely charge challenging the adoption of a practice—here, an employer's decision to exclude employment applicants who did not achieve a certain score on an examination—may assert a dis-



AP PHOTO

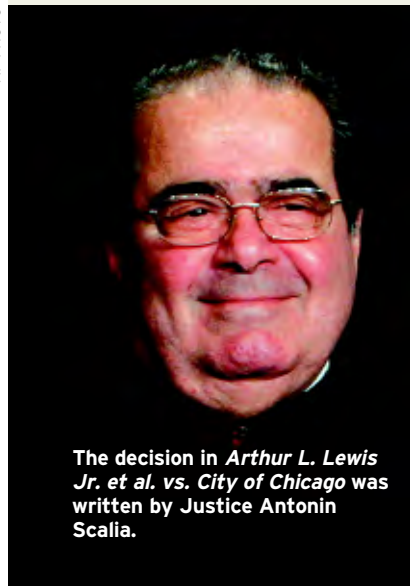
Mara Georges, corporation counsel for the city of Chicago, responds to a Supreme Court ruling last week. The court ruled a group of black firefighters could proceed with a discrimination suit against the city.

parate-impact claim in a timely charge challenging the employer's later application of that practice."

The court held that plaintiffs can. Under Title VII, a plaintiff establishes a prima facie disparate impact claim by showing

that an employer uses a particular employment practice that causes a disparate impact. "Petitioners' claims satisfied that requirement," said the decision written by Justice Antonin Scalia.

—By Judy Greenwald



The decision in *Arthur L. Lewis Jr. et al. vs. City of Chicago* was written by Justice Antonin Scalia.

Test: High court lowers bar on bias suits

CONTINUED FROM PAGE 1

& Phillips L.L.P., said to the extent that employers use tests to hire or promote, the court's ruling means "they can't rest assured that their prior use of those will bar an employee or applicant from later being able to claim" discrimination.

Its impact could be quite significant because "it allows challenges in cases outside the 300-day period where employers may have assumed they were home free," said Todd D. Steenson, a partner with Holland & Knight L.L.P. in Chicago.

"The plaintiffs bar is going to be looking much more closely now at these kinds of tests, at these kinds of standards for job eligibility," said Phillip M. Berkowitz, a partner with law firm Nixon Peabody L.L.P. in New York.

Debra S. Friedman, a member of law firm Cozen O'Connor P.C. in Philadelphia, said disparate impact claims more commonly involve groups of affected individuals compared with disparate treatment cases, in which deliberate discrimina-

tion is alleged, "and could end up being large class actions."

The decision clarifies "that a disparate impact claim can accrue with each use or application of a practice," said Katharine H. Parker, a partner with Proskauer Rose L.L.P. in New York.

Furthermore, "each time an employer uses an employment practice that has an unlawful disparate impact...it's going to increase the potential exposure in multiples," Ms. Friedman said.

Gregory V. Mersol, a partner with Baker & Hostetler L.L.P. in Cleveland, said the ruling means "more and more of these claims are going to survive an easy dismissal on statute of limitations grounds, and you're going to have to defend these cases on the merit."

The decision will affect public more than private employers because they rely more on tests, observers say. However, "every private employer that has in place pre-employment selection criteria, or any kind of objective job measurements that caused them to take adverse actions against employees, is going to be potentially affected by

this," Mr. Berkowitz said.

Philip K. Miles II, an associate with State College, Pa.-based McQuaide Blasko Attorneys at Law, said the ruling "should serve as a

'The plaintiffs bar is going to be looking much more closely now at these kinds of tests, at these kinds of standards for job eligibility.'

Phillip M. Berkowitz,
Nixon Peabody L.L.P.



reminder to employers that they need to look at their practices, even if they've been using them for years, to make sure they're not having a disparate impact now."

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News In Brief

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that includes defined benefit funding relief and defined contribution fee disclosure provisions, but lawmakers stripped a provision that would have extended the COBRA premium subsidy program for laid-off workers. The Senate adjourned without taking up the measure. The House and Senate will return from their recesses the week of June 7 and retroactively could extend the subsidy program, which will lapse June 1.

National Flood Insurance Program to lapse

The National Flood Insurance Program will lapse at least temporarily on June 1. Senate Majority Leader Harry Reid, D-Nev., said the Senate will not consider legislation that would extend the NFIP and other programs until after it returns from its Memorial Day recess. This is the fourth time since December that Congress has allowed the program to lapse before extending it on a short-term basis.

HSA contribution limit stays same for 2011

Maximum contributions that can be made to health savings accounts in 2011 will be the same as this year due to the cost of living remaining flat. The maximum HSA contribution that can be made next year is \$3,050 for employee-only coverage and \$6,150 for family coverage. In addition, the minimum deductible will stay at \$1,200 for single coverage and \$2,400 for family coverage. The maximum out-of-pocket employee expense, including deductibles, will stay at \$5,950 for single coverage and \$11,900 for family coverage.

Marsh did not breach contract: Court

Marsh Inc. did not breach its contract or negligently misrepresent the windstorm coverage it procured for a Florida client that sustained extensive hurricane damage in 2004, a federal appeals court has ruled. Whether the lower court correctly dismissed claims of negligence and breach of fiduciary duties is best answered by the Florida Supreme Court, the 11th U.S. Circuit Court of Appeals in Atlanta ruled. The case,

Tiara Condominium Assn. Inc. vs. Marsh & McLennan Cos. Inc., Marsh Inc. and Marsh USA Inc., centers on Tiara's condominium tower, which was damaged in 2004 by Hurricanes Frances and Jeanne.

Liberty Mutual resolves dispute with Gen Re

Liberty Mutual Insurance Co. has resolved a dispute with General Reinsurance Corp. and no longer is seeking part of Gen Re's multimillion-dollar settlement with the U.S. Securities and Exchange Commission in sham reinsurance deals, according to court documents. A New York federal judge ordered \$12.2 million that had been held in escrow during the dispute to be turned over to the SEC, according to court documents.

Lloyd's estimates Chilean quake, Gulf oil rig claims

Lloyd's of London said it expects net claims of about \$1.4 billion from the Chilean earthquake and \$300 million to \$600 million from the Gulf of Mexico oil rig fire and explosion. In a statement, Lloyd's said the impact of the losses will be negligible on its capital and that its central fund has no exposure to the events. Lloyd's CEO Richard Ward pointed out in the statement that the figures could change.

Worker health cover stays, retiree may go: Survey

The vast majority of employers intend to continue offering health care plans to employees, but many likely will stop covering retirees as a result of the new health care reform law, according to a survey. Eighty-eight percent of employers responding to a Towers Watson & Co. survey said they definitely or likely will continue providing coverage to employees. Just 3% said they are likely to drop coverage and instead pay the annual \$2,000-per-full-time-employee penalty that starts in 2014. On the other hand, 43% of respondents said they are likely to eliminate or reduce retiree medical plans. The survey, "The Impact of Health Care Reform on Employers," is available at www.towerswatson.com.

Xerox unit buys outsourcing unit from Hewlett-Packard

A unit of Xerox Corp. said it is buying a benefits and human resources outsourcing unit from Hewlett-Packard Co. for \$125 million. A spokesman for Affiliated Computer Services Inc. said its purchase of ExcelsiorHRO L.L.P. is expected to close this summer.

Cat bonds: Rates, capacity favor issuing sponsors

CONTINUED FROM PAGE 1

bond that is expected to come to market this week, market sources said.

Experts estimate total 2010 cat bond issuance will reach \$5 billion compared with about \$3.5 billion last year, which they say demonstrates healthy growth after the financial crisis.

"Prices and rates have fallen into line with traditional reinsurance programs. As long as the capital markets continue to offer capacity that is complementary to sponsors' reinsurance programs, we should continue to see a strong interest on behalf of buyers to diversify some of their risks," said Paul Schultz, president of Chicago-based Aon Benfield Securities.

Mr. Schultz said pricing has declined roughly 30% to 40% for U.S. peak perils compared with a year ago.

In addition, strong investor demand, buoyed by roughly \$2 billion in maturing bonds during the first half of this year, also has resulted in size increases for many of the deals, experts said.

Last year's hurricane season resulted in just nine tropical storms, making it one of the quietest in a decade. But the June-November period this year is expected to be more active. Last week, the National Oceanic and Atmospheric Administration forecast 14 to 23 named storms, with eight to 14 developing into hurricanes, which would be one of the most intense seasons since 2005. Three to seven of those could be major hurricanes, with winds of more than 110 mph, NOAA said.

So far this year, the cat bond sector has been dominated by repeat issuers seeking primarily U.S. peak-peril protection, but the market has attracted one new sponsor, Chartis Inc.

The New York-based property/casualty unit of American International Group Inc. secured \$425 million in natural catastrophe protection through its first cat bond program, Lodestone Re Ltd. The bond closed significantly larger than its target of \$250 million.

Lodestone provides three years of fully collateralized coverage against losses from U.S. hurricanes and earthquakes on a per-occurrence basis. For Chartis—which has re-evaluated its risk appetite for natural catastrophe exposures in wake of AIG's restructuring efforts—access-

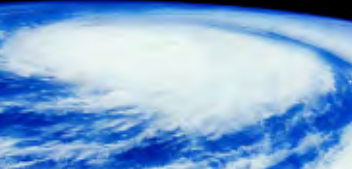
ON THE RISE

Catastrophe bonds issued in advance of the June 1 Atlantic hurricane season

2010 \$2.35 BILLION

2009 \$1.22 BILLION

Source: Aon Benfield Securities



'Pricing was extremely attractive,' and the deal being upsized 'suggests capacity was quite deep, robust and supportive' of the transaction.

David Fields, Chartis Inc.

ing the capital markets had a "strategic" motivation, said David Fields, Chartis' senior vp and chief reinsurance officer.

"We had two clear and obvious places in our traditional program that were not complete, so we feel as though (the bond) puts us in a position to complete our protection," Mr. Fields said. In addition, "pricing was extremely attractive," and the deal being upsized "suggests capacity was quite deep, robust and supportive" of the transaction, he said.

The market continues to see a strong interest from primary insurers, which have outpaced reinsurers in placing deals in the past few quarters, said Chi Hum, global head of distribution at GC Securities Ltd. in New York. "It's a very positive trend and it demonstrates that primary insurers are looking to adopt cat bonds into their overall capacity-planning strategies," he said.

In addition, many deals came to market early in the second quarter, as sponsors were planning their reinsurance purchases. "In the past we were seeing sponsors use cat bonds to fill in a gap after their traditional reinsurance programs were

already in place. Now they're looking to the capital markets early-on in the planning process," Mr. Hum said.

Favorable market conditions also cleared the way for the market to introduce new features to customize deals to more closely match sponsors' needs, Mr. Hum said.

For example, the \$305 million North Carolina state wind pool transaction, Johnston Re Ltd., was tailored to optimize a previous cat bond program the sponsor placed last year, Parkton Re Ltd., Mr. Hum said. Johnston Re offers a unique time-sensitive "drop down" feature that enables the notes to automatically replace the Parkton notes when they mature in 2011. The sponsor benefits from "seamless coverage" and was able to lock in the current pricing levels for the following two years, Mr. Hum said.

While many of this year's deals were upsized, constrained investor capacity for U.S. peak perils prevented several deals from reaching their target goals. They include the latest deal from USAA group, which closed Friday at \$405 million, according to New York-based Standard & Poor's Corp. The multiperil transaction originally was targeted for \$500 million, according to market sources.

Investors, who desire to diversify their portfolios with a variety of perils, still have money to invest but are reaching their capacity limits for U.S. hurricanes, Aon's Mr. Schultz said.

Munich Reinsurance Co.'s \$80 million U.S. hurricane and European windstorm bond, EOS Wind Ltd., closed last week, also below its initial target of \$100 million. The bond could have met its target, but the reinsurer, facing pricing pressure due to capacity constraints, "exercised strict pricing discipline," said Rupert Flatscher, head of Munich Re's risk trading unit.

Mr. Hum said reinsurers like Munich Re, which can expand or contract the amount of business they choose to write, have more flexibility than primary insurers to purchase capital market capacity if they feel the prices do not meet their benchmarks.

Experts said they expect to see sponsors come back to the market in the third and fourth quarters primarily seeking coverage of European windstorm and Japanese earthquake perils.

While the majority of the demand for U.S. hurricane coverage is complete for the year, "the market has some work to do to raise additional capital for U.S. peak perils" ahead of its next cycle, Mr. Schultz said.



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Computer virus rides radio waves

It sounds like something out of a novel by William Gibson, the science fiction author who coined the term "cyberspace," but a researcher says it's real.

According to a report by TechNewsDaily, British researcher Mark Gasson recently became the first person to be infected by a computer virus. This was not just a chance event, rather it was an experiment to find out how radio-frequency identification chips like those used to track animals can host and spread technological infections.

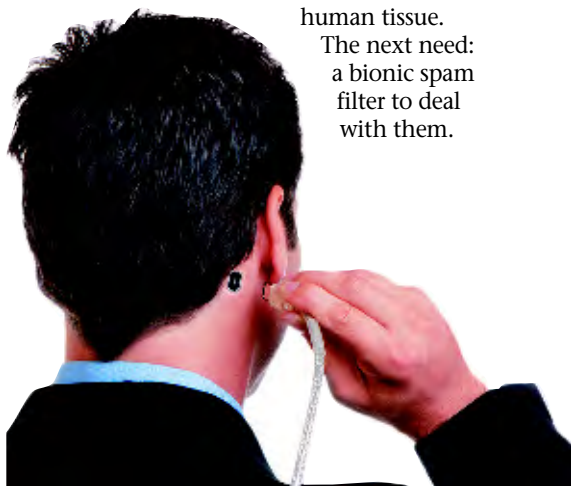
The report says Mr. Gasson, who works at the University of Reading west of London, had a chip implanted in his hand. The chip emits a signal that is read by external sensors. Then Mr. Gasson and his colleagues infected the chip with a malicious code, which the sensors read and inserted into a university database that controls access to the building where Mr. Gasson works.

"The virus replicates itself through the database and potentially could copy itself onto the access cards that people use," Mr. Gasson told the online site that is a unit of Ogden, Utah-based TechMediaNetwork Inc. The report said the experiment showed that implants that communicate wirelessly with other computers can infect them and vice versa.

Mr. Gasson said he doesn't know of any instances of bionic devices such as pacemakers being contaminated by computer viruses. "But the threat will grow with the number and complexity of these devices," the report said.

No doubt similar but different cyber threats will grow as technology meshes software with human tissue.

The next need: a bionic spam filter to deal with them.



Business Insurance END PAGE

Contributing: Jeff Casale, Judy Greenwald, Mark A. Hofmann



Hulk Boulder, the name of a character in a Cocoa Pebbles cereal commercial, was used without wrestler Hulk Hogan's permission, his suit alleges.

The Hulkster engages Post in legal dust-up

First it was his broker and now it's Post Foods L.L.C. that professional wrestler Hulk Hogan is battling in court.

As we previously reported, Mr. Hogan—whose real name is Terry Bollea—sued Wells Fargo Southeast for allegedly not securing enough liability coverage to protect him when his son, Nick Bollea, was involved in a car crash. (BI, April 26).

Mr. Hogan's latest litigation centers on a cartoon character—Hulk Boulder—that appeared in a Cocoa Pebbles commercial.

The character is in a wrestling match with Fred Flintstone and Barney Rubble of the "Flintstones" cartoon series. Barney's son, Bamm-Bamm, grabs Hulk Boulder and beats him. According to Mr. Hogan's complaint filed in the U.S. District Court for the Middle District of Florida in Tampa, "Hulk Boulder is shown

humiliated and cracked into pieces with broken teeth, with the closing banner 'Little Pieces...BIG TASTE!'"

Mr. Hogan's complaint holds that Post used his likeness without his permission, noting that he performed as Terry "The Hulk" Boulder for a short period in the 1970s before taking Hulk Hogan as his nom de ring.

Mr. Hogan, who is also suing a series of John Does involved in devising the commercial, is seeking undisclosed compensatory damages, legal fees, other legal remedies, and reserves the right to seek punitive damages.

Unless this is settled confidentially as was his dispute with Wells Fargo, it will be up to a jury to decide whether Mr. Hogan will be as successful in his newest venue—the legal arena—as he has been in his return to the ring with TNA Wrestling.



Constructively discharged or discharge constructed?

The scales of justice will evaluate a lawsuit filed by a Hooters waitress who alleges management "constructively discharged" her because of her weight.

Cassandra M. Smith says she weighed 145 pounds when she began work in 2008 at a Roseville, Mich., location of the Atlanta-based Hooters of America Inc. chain, according to the suit filed in state court last week.

While she received high marks on performance evaluations and was promoted to shift leader during the two years of her employment, Ms. Smith said she was told during her last evaluation to join a gym and lose weight to better fit into the uniform she was required to wear.

She was also put on 30-day "weight probation" as a condition of keeping her job, said the 5-foot-8-inch woman whose suit says she weighs 132.5 pounds.

Ms. Smith argues she was "constructively discharged" because she was unable to meet Hooters' requirements, which she said violated the Michigan Elliott-Larsen Civil Rights Act, which prohibits weight discrimination. She also alleged intentional infliction of emotional distress.

Mike McNeil, Hooters vp of marketing, said in a statement that Ms. Smith was absent for all her scheduled shifts for a week. "We are now seeing that she claims she was 'discharged,' however no such action has been taken by Hooters," he said.

The statement said the company did not ask any Michigan employee to lose weight and does not enforce a weight requirement.

While the company challenges its 17,000 "Hooters Girls" about their image a few dozen times each year, "this is done in a positive, supportive way."

"We welcome the opportunity to defend ourselves against these baseless and self-serving charges," Hooters said.

No word on when the court will weigh in on the issue.

CAMPAIGN HITS 'ROAD TO NOWHERE' SPEED BUMP

Singer, songwriter and Talking Heads co-founder David Byrne has called "no joy" on Florida Gov. Charlie Crist's choice of music for his campaign for U.S. Senate.

Mr. Byrne filed a \$1 million lawsuit against Mr. Crist last week, alleging the independent and former Florida attorney general has no right to use the Talking Heads song "Road to Nowhere" in a campaign ad.

"It's not about politics," Mr. Byrne told Billboard.com. "It's about copyright and about the fact that it does not imply that I would have licensed it and endorsed him and whatever he stands for."

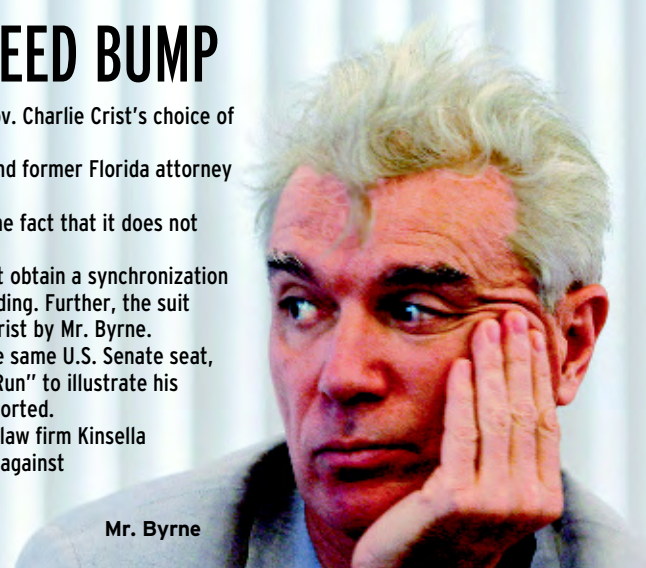
The lawsuit, filed in federal court in Tampa, Fla., alleges that Mr. Crist's campaign did not obtain a synchronization license to use Mr. Byrne's composition or a master use license for the Talking Heads' recording. Further, the suit alleges that Mr. Crist's ad violates the Lanham Act by implying a false endorsement of Mr. Crist by Mr. Byrne.

The challenge came about a week after Marco Rubio, who is the Republican running for the same U.S. Senate seat, was told by Steve Miller of the Steve Miller Band to stop using his song "Take the Money and Run" to illustrate his annoyance with GOP donors who supported Mr. Crist, a former Republican, the Miami Herald reported.

Lawrence Iser, who is representing Mr. Byrne and is a partner with Santa Monica, Calif.-based law firm Kinsella Weitzman Iser Kump & Aldisert L.L.P., also represented Jackson Browne in his successful lawsuit against John McCain using his song "Running on Empty" during the 2008 presidential election campaign.



Florida Gov. Charlie Crist



Mr. Byrne

REUTERS/LANDOV

Strategies to Successfully Manage Your Employee Benefit Plans

June 30, 2010 | Le Parker Meridien | NYC



Hear directly from the 2010 Benefit Manager of the Year® honorees on topics and issues that directly affect you and your employee benefit programs.

Topics to be discussed include:

- How to redesign retirement plans to boost employee participation
- How to manage a benefit program for a global community
- How to decrease health care costs via plan design changes
- How to gather and share health care information with employees

Why attend?

This is a senior-level forum packed with practical and in-depth information on real-life programs in employee benefits. Gain valuable tips from innovative employee benefit programs.

Who should attend?

Senior executives responsible for managing employee benefit plans for public and private organizations, non-profit groups and public entities.

Confirmed Speakers:

- **Keynote Speaker: James Klein, President, American Benefits Council**
"What health care reform will mean to employers"
- Marianne McManus, Director, Global Health Benefits Strategy and Design, IBM
- Gary Eastes, Risk and Benefits Manager, City of Knoxville, TN
- Joseph Molloy, Corporate Director of Benefits, Northshore – LIJ Health System
- Joanne Wojcik, Senior Editor, *Business Insurance*

There is no charge to attend, however places are limited and early registration is recommended.

For further information and to secure your place, please contact Becky Briggs, Event Manager, Telephone: 212-210-0132 E-mail: RBriggs@BusinessInsurance.com

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