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SUPREME COURT TO CLARIFY TIME BAR ON LAWSUITS OVER INVESTOR LOSSES / PAGE 3

TOM DASCHLE SAYS BENEFITS TAX BREAK TO CHANGE / PAGE 4

TORT SYSTEM CHANGES UNDER CONSIDERATION IN UNITED KINGDOM / PAGE 4

In Brief

Dinallo to resign as N.Y. regulator

Eric Dinallo, superintendent of the New York Insurance Department since January 2007, will resign in July to become a visiting professor at New York University's Stern School of Business. Mr. Dinallo is perhaps best known for his work with federal regulators last year in developing plans to rescue American International Group Inc. In addition, he headed a task force that made recommendations—later adopted—to reform New York's workers compensation system. He also began discussions about reviving the New York Insurance Exchange, a Lloyd's of London-style marketplace for reinsurance and other insurance products that shut down in 1987. Mr. Dinallo "has earned the reputation as a national leader in the insurance industry, and I

See **IN BRIEF** page 29

SPOTLIGHT

PUBLIC ENTITY RISK MANAGEMENT

Questions linger over Federal Emergency Management Agency aid for losses from disasters; market remains stable for public entity risks, though rate hikes



may be on the horizon; some in Europe call for greater private insurance for flood losses; U.K. insurers, public entities learn lessons from 2007 floods. **PAGE 11**

Cat bond market making comeback

Many deals protect against hurricane losses

By **COLLEEN MCCARTHY**

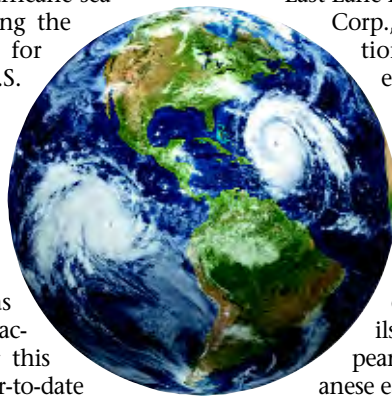
An uptick in catastrophe bond issuance leading up to today's start of the Atlantic hurricane season is underscoring the strong demand for capacity for U.S. risks, experts say.

The catastrophe bond market—which has made a comeback following last year's financial collapse—has seen seven transactions close so far this year, bringing year-to-date issuance to \$1.22 billion, with additional deals being marketed to investors (see box).

Experts estimate that total 2009 cat bond issuance will reach \$3 billion.

The latest deal, a \$250 million cat bond placed by San Antonio-based USAA Group, is one of three cat bonds that recently were increased in size due to investor demand.

Rising issuance of cat bonds ahead of the hurricane season is not unusual, experts say. However, the



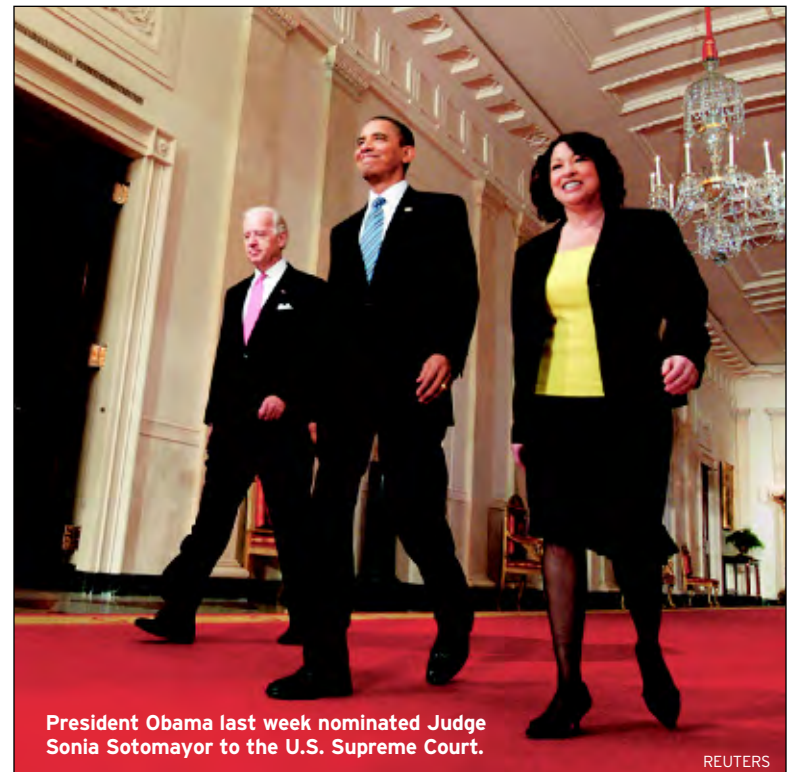
OFFSHORE: As storm season arrives, many energy firms are self-insuring offshore risks. **PAGE 28**

most recent transactions have a greater focus on U.S. perils and primarily feature coverage for U.S. hurricanes and earthquakes. One bond, East Lane III issued by Chubb Corp., provides protection against losses exclusively from Florida hurricanes.

In comparison, roughly \$400 million of newly issued cat bonds in the first quarter of 2008 covered non-U.S. perils, including European windstorm, Japanese earthquake and other worldwide natural catastrophe risks, according to GC Securities, a New York-based affiliate of Guy Carpenter & Co. L.L.C. Observers say current market conditions, in part, are driving the demand for peril protection via cat bonds, including firming reinsurance rates and constricted reinsurance capacity for U.S. peak-zone perils.

"(Reinsurance) capacity is definitely tightening, and there is a

See **CAT BONDS** page 28



President Obama last week nominated Judge Sonia Sotomayor to the U.S. Supreme Court.

REUTERS

High court pick shows no slant on business

By **JUDY GREENWALD**

WASHINGTON—Companies likely would find Sonia Sotomayor an even-handed judge of business issues if she joins the U.S. Supreme Court, observers say.

Judge Sotomayor, whom President Obama nominated last week to fill the vacancy created by the retirement of Justice David Souter, has a reputation as a liberal on social issues. But on business issues,

she is as likely to rule for business as she is against it, observers say.

Judge Sotomayor, who has been both a New York prosecutor and a corporate intellectual property attorney, was appointed in 1992 as a federal judge by President George H. Bush. In 1998, President Bill Clinton elevated her to the 2nd U.S. Circuit Court of Appeals in New York, where she has served since.

See **SOTOMAYOR** page 27

AIG to sell majority stake in reinsurer Transatlantic

By **COLLEEN MCCARTHY**

NEW YORK—American International Group Inc.'s plan to sell most of its stake in reinsurer Transatlantic Holdings Inc. through a public stock offering is expected to be a

positive development for both companies and marks another step in AIG's divestiture plans, analysts say.

AIG, which owns 59% of New York-based Transatlantic Holdings, last week said it plans to sell about two-thirds of its stake in the unit

through a secondary offering. A preliminary prospectus agreement filed by Transatlantic with the U.S. Securities and Exchange Commission calls for the sale of 26 million AIG-owned shares.

Underwriters will have a 30-day option to purchase an additional 15% of the offered amount, AIG said in a statement.

After the offering, AIG and its subsidiaries will own about 19.7% of the outstanding Transatlantic shares, or 13.9% if underwriters fully exercise their option.

"It's not a big surprise," said Cliff Gallant, an analyst at Keefe, Bruyette & Woods Inc. in New

York. "As a major shareholder, this is a relatively easy way for AIG to shore up its capital base."

At current market prices, the sale of its share of Transatlantic could generate about \$1 billion for AIG, analysts say.

"It's one of the areas where AIG is most likely to get fair market value," Mr. Gallant said, referring to other potential AIG asset sales put on hold by the poor economy.

AIG is attempting to sell assets to repay a U.S. government loan package worth up to \$182.5 billion. Cur-

See **TRANSATLANTIC** page 27



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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Workers skimp on care to save money: Study

By JERRY GEISEL

The recession is leading some employees to cut back on their use of health care services, research shows.

The National Business Group on Health surveyed more than 1,500 employees working at large companies and found that 27% recently decided against seeking certain health care services to avoid making copayments or paying coinsurance.

In addition, 20% said they skipped taking a prescription medication and 17% said they split a prescription dosage to make the drug last longer.

While those actions could save money for employers and employees in the short run, they could be costly in the long run. Delaying needed medical treatment could result, for example, in a relatively

CUTTING BACK

How employees are reducing their use of health care services

Services delayed because of copayment/coinsurance **27%**

Skipped taking a prescribed medication **20%**

Split a prescription drug to make it last longer **17%**

Source: National Business Group on Health

minor problem later mushrooming into a condition that is much more expensive to treat.

On the other hand, employees said they are taking other actions that could improve their health, according to the NBGH survey, which was released last week.

For example, 52% of respondents said they are making a healthier lifestyle more of a priority than a year ago. Similarly, 50% of respondents said they are exercising more than a year ago, while 44% said they ate less often at fast-food restaurants.

That move to healthier lifestyles may be triggered, at least in part, by the recession, said Helen Darling, president of the Washington-based NBGH. When the economy was booming, many employees were focused on material issues, such as buying bigger homes, she said.

Now in tough economic times, employees are more focused on the basics, such as their health. "It is a change in focus," Ms. Darling said, adding that employees may reduce their future need for health care services by leading healthier lifestyles.

Perhaps because their ability—

due to declining incomes or feared job loss—to pay for health care is not as great as a year ago, employees are increasingly aware of how much health care services cost.

For example, 72% of respondents said they have become more aware of the total cost of health care over the past year, and 56% said they are more aware of what they are paying for employment-based coverage. Fifty-eight percent of employees said they were surprised at their out-of-pocket costs.

The survey also found that 58% of employees believe smokers should pay higher health care premiums than nonsmokers, while 46% believe obese employees should pay higher premiums.

Copies of "The Recession's Toll on Employees' Health" are available at www.businessgrouphealth.org.

Foreclosures create new risks for banks

By ROBERTO CENICEROS

Many U.S. banks are facing new liabilities as they begin to sell off inventories of foreclosed construction projects taken over from homebuilders who exited the market leaving behind uncompleted housing tracts.

And providing risk management and insurance services for banks that have become the owners of the unfinished residential construction projects may generate business from a battered sector of the economy for insurers and brokers, observers say.

The banks' new activity is occurring as the housing industry sees a glimmer of hope that the extended plunge in building may be close to the bottom, they add.

The U.S. Commerce Department reported that house and

apartment starts fell 12.8% during April compared with March. But a 42.2% decline in multifamily unit construction weighted the report's findings. Single-family home construction, in contrast, rose 2.8% in April compared with March. Overall, housing starts in April still were about one-third the level of when the recession began in late 2007.

Several insurance observers said the single-family unit growth represents a silver lining for the housing industry, which began to decline before the U.S. recession took hold.

"It is a positive sign," said Tom McCall, executive vp and a construction expert in Los Angeles for Lockton Cos. L.L.C. "The sad news is we have gone the last three years without any positive sign. So whenever starts are up,

See **CONSTRUCTION** page 26



REUTERS

A clerk on the floor of the New York Stock Exchange closely watches trading on Sept. 30, 2004, following Merck's withdrawal of Vioxx from the market.

Merck case will clarify investor suit time bar

Supreme Court to resolve conflicting appeals court rulings

By ROBERTO CENICEROS

WASHINGTON—The U.S. Supreme Court's decision to review a ruling against Merck & Co. Inc. will help policyholders and insurers by resolving a split among appeals courts on time limits in bringing securities fraud lawsuits, brokers and attorneys say.

The Supreme Court last week granted a hearing of Merck's challenge of a 3rd U.S. Circuit Court of Appeals finding related to the Whitehouse Station, N.J.-based company's sales of Vioxx, a painkiller Merck withdrew in 2004.

When the high court hears arguments during the October term, it will consider the statute of limitations that applies to many current securities lawsuits, said Ann Longmore, directors & officers liability product leader for Willis Group Holdings Ltd. in New York.

The court will determine what is required to establish a so-called "inquiry notice," said Kevin M. LaCroix a partner in Beachwood, Ohio, for executive liability insurance intermediary OakBridge Insurance Services L.L.C. An inquiry notice refers to the existence of sufficient public information to put shareholders on notice of potential fraud, thus triggering the statute of limitations on timely filing of litigation.

"That is what this case is going to

See **MERCK** page 25

Health care reformers seen revisiting employer tax break

Relief won't go away, but changes likely, experts contend

By JOANNE WOJCIK

COLORADO SPRINGS, Colo.—The tax-favored status of employer-provided health care coverage likely will be scaled back but not eliminated in reform legislation that Congress passes, a former senator and a former federal official said last week.

"They are going to alter the exclusion," former Sen. Tom Daschle, D-S.D., said during a keynote address at the 8th Annual Employee Benefits Leadership Forum sponsored by the Council of Insurance Agents and Brokers. "They won't eliminate it, but it will be altered."

Meanwhile, speaking at the same conference, former Democratic Party head Dr. Howard Dean asserted that the private health insurance market can exist alongside a public health care plan, which may even foster healthy competition.

As health care reform efforts take shape, "The whole idea is to push for greater individual responsibility," Mr. Daschle said at the Colorado Springs, Colo., meeting. "With incentives as well as with a mandate, they will likely recreate the tax incentives as McCain and others have advocated," he said.

During the 2008 presidential campaign, Sen. John McCain, R-Ariz., proposed that all taxpayers receive tax credits to offset the cost of health insurance premiums. The credits would be available to those buying coverage on their own and employ-



Former Sen. Tom Daschle says employers should expect changes in the tax treatment of health coverage.

ees covered under group plans. However, employees would be taxed on employer-provided coverage.

"My guess is you'll see some degree of alteration of the current tax exclusion, perhaps a third of it changing,

maybe even half of it, but some of it will change," Mr. Daschle said.

Michael Leavitt, secretary of U.S. Department of Health and Human Services under the Bush administration, concurred.

"This is a very important part of this discussion. It is simply not defensible for our country to treat one class of citizens who get their insurance through their employer differently than we do others who don't buy it through their employer. You can't defend that," said Mr. Leavitt, who also spoke during the morning keynote.

Moreover, "if you go back over the

See **DASCHLE** page 25



10%

Justice Jackson said approximately 2 million civil lawsuits are filed in the United Kingdom a year, about 10% of which are contested and could result in "significant" costs.

U.K. considers changes to civil litigation system

By SARAH VEYSEY

LONDON—Proposed changes in the way costs are imposed in civil litigation in the United Kingdom could lead to an increase in class action-style lawsuits, some legal experts say.

The proposals also could result in less use of so-called after-the-event insurance and curb conditional fee arrangements, among other changes, other experts say.

In a wide-ranging report, "Review of Civil Litigations Costs: Preliminary Report," Lord Justice of Appeal Rupert Jackson examined whether changes should be made to reduce the costs of civil litigation in the United Kingdom and promote "access to justice."

"The issues in the review are both complex and intractable—there are no simple answers. Nor are the facts

straightforward," Justice Jackson said of approximately 2 million civil lawsuits filed in the United Kingdom a year, about 10% of which are contested and could result in "significant costs," he said in last month's report.

A final report is due later this year.

The 1,000-page report suggests that all areas of allocating civil litigation costs are under review, said Nichola Evans, a London-based partner at law firm Browne Jacobson L.L.P.

In the United Kingdom, group actions are brought on an opt-in basis, whereby claimants must choose to become part of the class rather than automatically being counted as part of the class unless they opt out, as is the norm in some

See **LITIGATION** page 29

Layoffs may spark defamation suits

Liabilities may arise from job references, online comments

By JUDY GREENWALD

Laid-off workers seeking financial relief are likely to increase the number of defamation claims filed against employers, employment law attorneys say.

Attorneys say defamation claims, among other employment-related claims, will rise as unemployment increases. The litigators say defamation claims often are associated with negative job references.

Other factors that could increase these claims are e-mail, online social networking sites such as Facebook and Twitter, and other media through which defamatory information could be sent out without the required forethought, observers say.

A defamation claim was at the

heart of a recent ruling by the 1st U.S. Circuit Court of Appeals in *Alan S. Noonan vs. Staples Inc.* The Boston court held in February that a private individual can recover damages for defamation if the plaintiff can prove the defendant acted with actual malice (*BI*, March 16). The court later refused an en banc rehearing of its decision, which overturned a lower court's dismissal of the claim. There are about a dozen U.S. states with laws similar to Massachusetts'.

The case involved an executive of the Framingham, Mass.-based office supply company who sent an e-mail to 1,500 employees saying Mr. Noonan was fired for failing to comply with company travel and expense policies.

More claims can be expected if only because of rising unemployment and workers' difficulties in finding other work, observers say.

Douglas R. Christensen, who represents only employers as a partner

at Dorsey & Whitney L.L.P. in Minneapolis, said he has received several calls recently from workers mistakenly seeking his representation in defamation cases. He said he anticipates more laid-off workers who are having difficulty finding other work to file suit.

"I think, in part, it's desperation really" and reflects ex-employees' hope that they will either prevail in litigation or be offered more severance pay, Mr. Christensen said.

"The caution about being careful with what you say always applies, but it's particularly appropriate in a bad climate where options are fewer" for laid-off employees, said Jonathan A. Segal, a partner with Duane Morris L.L.P. in Philadelphia.

Anthony J. Oncidi, an employer attorney and partner with Proskauer Rose L.L.P. in Los Angeles, said defamation claims are included in at least one-third of all

See **DEFAMATION** page 26

Is your workplace one of the 'Best?'

Business Insurance invites U.S.-based insurers and brokers to participate in a new project to identify the drivers of workplace excellence and rank the employers of choice in the commercial insurance industry.

The Best Places to Work in Insurance project will recognize employers in two industry categories—insurers and agents/brokers—divided by business size: companies with 25-249 employees and companies with 250 or more employees.

Commercial property/casualty and group life/health insurers, as well as agents and brokers serving the commercial market, are eligible for consideration.

For participating commercial insurance industry employers, the program recognizes those that have established high-quality workplaces, helping

them to compete more effectively for talent.

The program also will give companies a chance to see how they measure up against others in the industry as employers of choice, and will provide valuable insight into how employees view the companies in numerous critical areas.

Interested companies can register for the program or obtain further information online by visiting www.bestplacestoworkins.com.

Business Insurance's Best Places to Work in Insurance program is being managed by Harrisburg, Pa.-based Best Companies Group, specialists in identifying best employers within regions or industries.

For additional information, contact *BI* Special Projects Editor Rodd Zolkos at 312-649-7784 or rzolkos@businessinsurance.com.

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Errors & Omissions

- A story in the May 18 issue, "Vote on Aviation Liability Won't Secure Loss Caps," misstated details of a proposed compensation fund for aviation terrorism claims. Under the proposed structure, airlines would pay the first layer of a loss up to a maximum of about \$1 billion and the fund would pay the next layer of coverage. The fund is expected to reach about \$4.5 billion.
- An End Page photograph caption in the May 25 issue incorrectly identified former NBA star Elgin Baylor. Mr. Baylor is on the right side of the photo.

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Commentary

Tough economy brings the summertime blues

June 1 traditionally marks the start of the Atlantic hurricane season, which each year is monitored closely by the property insurance industry and risk-conscious travelers.

Besides the startling realization that 2009 is nearly half over, this date also reminds me that summer is only three weeks off. That means many families, including mine, will be making vacation plans. In the current recession, however, travel has taken a lower priority for many people. To save money, some are opting for “staycation”—time off at home. I’ve taken those too, though they’re not quite as fun as going somewhere.

Businesses across almost all industries also have cut back on travel, and the insurance industry is among them. Slashed travel budgets were evident in the reduced attendance at April’s RIMS 2009 Annual Conference & Exhibition in Orlando, Fla. The U.S. Bureau of Transportation Statistics tallies domestic and international travel by varying modes. Worldwide airline passenger traffic has fallen to 110 million in the first two months of 2009 from 124 million a year earlier, according to the agency.

Travel cutbacks may continue until the economy rebounds, though at least one industry executive is confident that travel will increase.

Dean Sivley, newly named president and chief executive officer of Travel Guard Group Inc., a division of AIU Holdings Inc., told *Business Insurance* recently that “travel will have an upswing in 2010.”

“Travel is one of the areas where people say, ‘We deserve to get away,’ ” Mr. Sivley said. He should know. Before joining AIU late last month, he was senior vp and chief operating officer for business and alliance marketing at online travel agency Orbitz Worldwide. While travel in the United States is down generally, travel packages combining airfare, hotels and rental cars are actually becoming more popular, Mr. Sivley said. Trips carry risks, and so travel insurance is especially valuable, he said.

Travel Guard offers travel insurance and assistance services through AIU’s operating units, including National Union Fire Insurance Co. of Pittsburgh, Pa. The travel insurer also sells its products through tour operators, travel agencies and credit card companies, Mr. Sivley said. One of the most important services available to travelers today, according to Travel Guard Vp Dan McGinnity, is medical evacuation.



REGIS COCCIA

Editor Regis Coccia's commentary appears periodically. He can be reached at: rcoccia@businessinsurance.com

If a client has a medical emergency overseas the insurer “will evacuate you home to the medical center of your choice,” Mr. McGinnity said.

It’s not hard to see the value of that. For example, if I were in a foreign country and became incapacitated due to sudden illness, having a reliable third party handle the logistics of transporting me to a hospital back home, at a time when I couldn’t

Businesses across almost all industries have cut back on travel, and the insurance industry is among them.

myself, would be comforting. A friend of mine once became gravely ill in Eastern Europe and he was unable to communicate with medical personnel there, which delayed treatment that could have sped his recovery. Instead, it took him more than 30 hours to get back home to the United States—all the while feeling utterly miserable.

Oddly enough, travel insurance is not terrifically popular in North America, Mr. Sivley said. “People are very familiar with travel insurance in Europe and Australia, but people in North America are not as familiar with it,” he said. Travel Guard, therefore, sees a big opportunity to educate travelers about travel risks and their options for mitigating them.

Hurricanes are just one of the perils that can wreck travel plans, and that Atlantic hurricane season lasts from now until Dec. 1. Fortunately, trip cancellation and interruption coverage can respond, if it’s purchased before a storm strikes.

Wherever you might be going this season, may your travels be safe.

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Business Insurance OPINIONS

New AIG chief must hold on to best assets

IF ANYONE is especially looking forward to a change of scenery, it likely is Edward Liddy, who will relinquish his posts as chairman and chief executive officer of American International Group Inc. as soon as successors are found.

We think Mr. Liddy performed extraordinarily well in what essentially was a caretaker role while trying to stabilize the company. Never once did he lose his composure in the face of what were brutal and, at times, unfair attacks.

While there is still much work to be done, it was during Mr. Liddy's tenure that the decision was made to repackage the commercial insurance units of AIG as AIU Holdings Inc. in an effort to retain what is still the jewel of the company as a cohesive whole—a move that we think will benefit the numerous risk managers that remain clients of the insurer.

We hope that the commercial insurance operations of AIG do survive and thrive.

Finding the right person to run AIG will be no small challenge. That individual will have to run not only what still is a huge and complex company and sell off assets, the next leader must have a vision for the future of its commercial insurance operations.

As recent sales of various units have made clear, the financial colossus that AIG once was is history. And that perhaps is not a bad thing.

While diversity has its value—if one line of business is down, another line may help prop up a company—its downside is that some companies may become too diverse to be run effectively. Few CEOs, however gifted, can stay on top of lines of businesses that have so little in common. That said, we hope that the commercial insurance operations of AIG do survive. Its record of innovation in the property/casualty business is one that perhaps no other insurer can match.

With a leader who is able to keep the numerous talented managers still at the company on board and to ensure that AIU remains intact, that unit, whatever its future ownership structure, can still play a vital role for risk managers.

Resurgence of cat bonds expands buyers' options

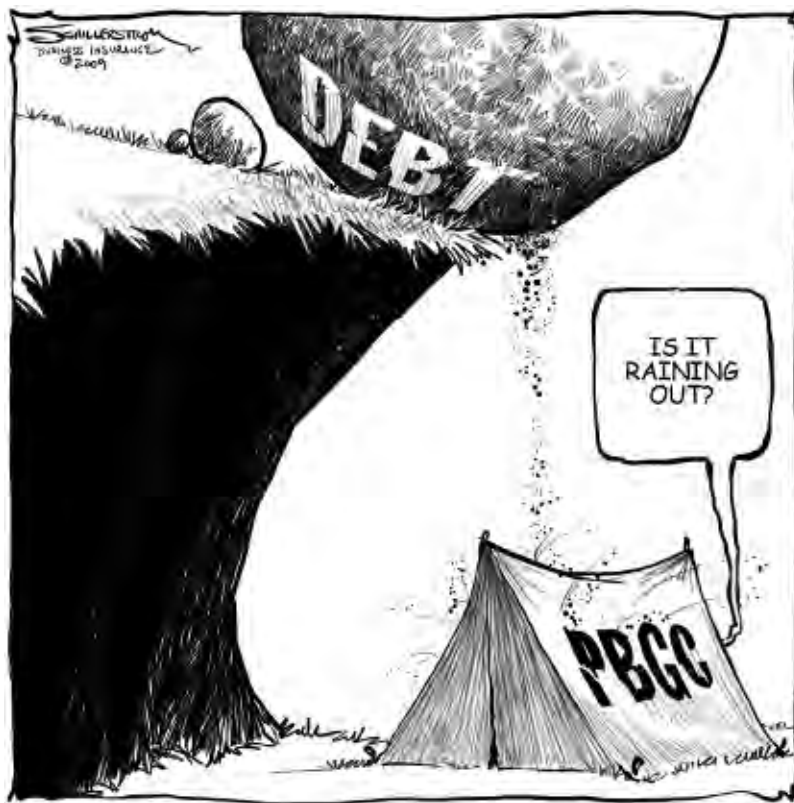
AS THE HURRICANE SEASON begins for 2009, evidence that the fall in issuance of catastrophe bonds last year was more of a hiatus than a market collapse is good news for insurance buyers.

As we report on page 1, cat bond issuance is expected to reach \$3 billion this year. While that is still a big drop from the \$7 billion in 2007, it marks a rapid turnaround from the second half of last year, when the cat bond market dried up as a result of the financial crisis.

Cat bonds, which have been around in various forms for about 15 years, still are not as popular as their early proponents had hoped, but they have become a significant source of capacity for insurers and reinsurers seeking to tap the massive capital available in investment markets as an alternative or complement to traditional reinsurance or retrocessional coverage.

While at first glance cat bonds may seem esoteric investment vehicles that should lose favor during a financial crisis, some parts of their structure make them appear at least as secure as traditional coverages. For example, the bonds provide fully collateralized coverage.

For buyers, additional capacity entering the insurance and reinsurance markets generally should be viewed in a positive light. While insurance rates remain soft, pressure may be building to increase rates later this year and in 2010, and any additional capacity that could offset that pressure should be welcome.



WRITE

Business Insurance welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters.

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THIS WEEK'S RESULTS

From where should the next CEO of American International Group Inc. come?



Inside the insurance industry **71%**

Banking or noninsurance financial services **21%**

Outside financial services **7%**

NEXT WEEK'S QUESTION

Have you limited your use of medical services as a result of the recession?

LETTERS

Keep best workers by communicating

TO THE EDITOR: The May 11 *Business Insurance* editorial, "Think About Future Before Freezing Plans," hits home on several fronts for companies today. Some issues that companies need to address: You may tell yourself that nobody is going to leave your company; after all where are they going to go? Well, they may decide to leave you when the economy recovers and your competition hires them away. The economy will improve and you need to have plans in place to take advantage of the revival.

Recently, one of our larger clients decided that there would be no merit increase or bonuses in 2009 for all employees. Compounding the issue, the company decided to stop matching employee contributions to the 401(k) benefit plan. In the past, the company had never communicated with the staff any concerns regarding the increasing costs of these benefits. After a town hall-style meeting where the announcements were made,

See **LETTERS** page 26

PERSPECTIVES

Business Insurance accepts articles from experts in commercial insurance, risk management and employee benefits management for publication in its *Perspectives* section.

All articles for the *Perspectives* page should address the concerns of the corporate buyer of insurance; i.e., the risk management or employee benefits manager. Material written for only the concerns of brokers or underwriters is not appropriate.

All authors must assign the copyright on the article to *Business Insurance*.

Because of the volume of *Perspective* submissions we receive, we cannot guarantee a date in which an article will appear. To submit a *Perspective* article query or for more information, send a note to biweb@crain.com.

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EDITORIAL: Boise: 208-286-1425;

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Court, Sunnyvale, Calif. 94086-6750, Fax: 408-774-1155; 21

St. Thomas St., London SE1 9RY, U.K. Fax: +44-(0)20-7457-

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European buyers value in-house brokers during recession

Direct market access, revenue generation seen as advantages

By MICHAEL BRADFORD

European insurance buyers with in-house brokers say those operations are particularly important service providers at a time when their parent companies need as few distractions as possible.

In-house brokers, or "captive" brokers, provide their owners with

much the same services as external brokers. In addition, however, they can provide revenue for their parent companies and provide a more direct link to insurers, according to several sources.

And as the global financial turmoil increasingly has demanded the attention of corporate management, a smooth-running brokerage unit that can generate revenue while managing risks is a useful tool, they say.

Captive brokers at some smaller companies, however, are coming under pressure as their parent com-

panies seek to cut costs, some observers say.

Captive brokers are particularly common in Germany, where they have been widely used for decades and especially since the 1960s when federal law made it illegal for brokers and insurers to share commissions or make other payments to insurance buyers. Prior to the passage of the law, to secure a competitive advantage, brokers and insurers were able to make partial reimbursement of commissions to insurance buyers in an effort to win or maintain business. By forming cap-

tive brokers, buyers were able to keep the commission reimbursements in place.

Captive brokers do not appear to be suffering financial distress during the global downturn, sources say.

"The crisis is more or less a problem of financial results; broking is a service business and service is more robust in this form of crisis," said Stefan Sigulla, managing director of insurance at Munich, Germany-based Siemens Financial Services GmbH, a unit of Siemens A.G.

That means companies with in-house brokers have a unit close at

hand to provide critical insurance and risk management help when it is sorely needed, sources say.

In Germany, large commercial policyholders swear by their in-house brokerage operations. "There is no disadvantage," said Guenter Droese, managing director and head of group insurance at Deutsche Bank A.G. in Frankfurt. "It is the best solution for big corporates."

Axel Etzrodt, head of insurance at Deutsche Leasing A.G. in Bad Homburg, Germany, said his company's captive broker was set up two years ago to generate income and that has been a blessing as the economic crisis has taken hold.

The broker handles coverage for Deutsche Leasing and generates income by placing insurance for such exposures as automobile and machinery breakdown risks for the company's clients, he said.

"It's given us a chance to bring in

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'The crisis is more or less a problem of financial results; broking is a service business and service is more robust in this form of crisis.'

Stefan Sigulla,
Siemens Financial Services GmbH

more income through our insurance business," Mr. Etzrodt said.

He acknowledged, though, that his department has faced increasing pressure from the parent to reduce expenses.

The practice of setting up captive brokers is so widespread in Germany that an association is in place to represent the interest of captive brokers in regulatory and legislative matters. The Bundesverband firmenverbundener Versicherungsvermittler und-gesellschaften e.V., or BfV, also holds a conference and provides other member services.

Hans-Otto Geiger, chairman of the Frankenthal, Germany-based BfV, said he believes more than half of the premium volume of large commercial risks in Germany are placed by captive brokers. There are more than 200 in-house brokers in Germany, he said. Seventy-five of those are with very large companies and are members of the BfV.

Mr. Sigulla of Siemens said captive brokers are in good shape to

PUBLIC ENTITY RISK MANAGEMENT

A CHANGE IN

DISASTERS

SPOTLIGHT

Public entities await action on FEMA aid

By **DAVE LENCKUS**

Hurricane season arrives this week with no word from the Federal Emergency Management Agency on how or when it plans to reconcile inconsistent regulations that govern federal disaster relief for public entities that affect their property insurance decisions.

Under current FEMA regulations, public entities that sustain repeated wind-storm damage to their facilities and contents must shoulder a much greater share of subsequent losses than repeated flood losses. FEMA also imposes the higher financial obligation on public entities for repeated losses to the same facilities that are caused by other perils, such as earthquakes and fires.

FEMA retooled its disaster aid stance two years ago, after property insurers significantly reduced the amount of coverage they would provide large property owners and significantly boosted their deductibles.

State insurance officials in Louisiana, meanwhile, are attempting to reach an understanding with FEMA by the end of June on whether the state must modify its unique program to soften FEMA's insurance requirements for public entities that request federal disaster aid.

The state's insurance commissioner first outlined the program, which would eliminate FEMA's insurance requirements for public entities that prove they have spent a specified budget quota on insurance, in an August 2007 letter to

former President Bush.

Referring to FEMA's regulations and how the Louisiana program would work to allow public entities to avoid the federal agency's insurance requirements when adequate insurance is not reasonably available, incoming Public Risk Management Assn. President Ron Hayes said: "It's still confusing. It's still tough to get a definite decision" on how the programs would work in conjunction.

Mr. Hayes also is the risk manager for the Calcasieu Parish School Board in Lake Charles, La.

Mr. Hayes and Tony Abella Jr., a Miami-based area vp and the head of the public entity practice at Arthur J. Gal-

See **FEMA** next page

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RON HAYES ON
RISING CHALLENGES**

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FEMA: Public entities await action on financial aid

CONTINUED FROM PREVIOUS PAGE

lagher Risk Management Services Inc., a unit of Arthur J. Gallagher & Co., said they hope last month's swearing-in of W. Craig Fugate as FEMA administrator will speed resolution of the conflicting regulations. Before President Obama nominated Mr. Fugate to lead FEMA, he was Florida's emergency management director.

In a little-noticed June 2007 bulletin on its Web site, FEMA first announced that it would follow the Robert T. Stafford Disaster Relief and Emergency Assistance Act more strictly and, therefore, reduce disas-

ter recovery aid to public entities in certain cases. Despite not having done so in the past, FEMA said it would reduce aid to public entities when facilities that were damaged or destroyed in a previous national disaster are again hit by another disaster of the same nature.

Following a groundswell of protest from public entity risk managers, FEMA rescinded the bulletin, which an agency official at the time called "confusing at best" and probably misleading (*BI*, Sept. 3 and Aug. 27, 2007).

But FEMA resurrected the issue last year (*BI*, Aug. 4 and Aug. 25, 2008). Under the agency's current

interpretation of the Stafford Act, any public entity that seeks first-time federal aid to cover uninsured losses after a national disaster first must purchase adequate insurance to cover it against losses in future disasters of the same nature.

If a public entity later sustains damage to the same properties from an identical, nonflood peril, it would be eligible for federal assistance only to the extent that its insurance deductible for the second loss exceeds the entity's total damage in the first disaster.

For example, consider that FEMA covered \$5 million of the \$10 million in uninsured losses that a pub-

lic entity sustained after a hurricane caused \$25 million in damage. The public entity would not be eligible for FEMA aid after a subsequent hurricane damaged the same property until the entity had retained \$25 million of losses. Effectively, FEMA would not provide any assistance unless the second loss was larger than the first.

Under an identical scenario that resulted from flooding, the public entity after the second loss would be eligible for federal disaster aid equal to the difference between its previous \$5 million in FEMA aid and its subsequent damage—as long as the entity had purchased



AP PHOTO

W. Craig Fugate was sworn in in May as FEMA administrator. Previously, Mr. Fugate was Florida's emergency management director.

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National Flood Insurance Program coverage. If the entity had not purchased such coverage, FEMA would reduce its aid by the \$500,000 of property limits and \$500,000 in contents coverage that the NFIP program provides.

Last fall, James Walke, the Washington-based director of FEMA's Public Assistance Division, said FEMA recognized the inconsistency of its regulations and that he wanted to reconcile them. He said he wanted FEMA to respond to all national disaster aid requests as it currently does for flooding (*BI*, Oct. 27, 2008.)

At the time, Mr. Walke said he hoped to rectify the conflicting regulations this year.

The discrepancy in FEMA's regulations continues, however. Mr. Walke would not return calls seeking comment on the current status of regulatory changes.

In an e-mail, a FEMA spokeswoman noted: "At this point in time there has been no change, and we continue to develop regulations to address the issue. In accordance with established regulatory procedures, FEMA will issue any changes as a proposed rulemaking, which will include a comment period for stakeholder and public review of the proposed change."

In Louisiana, state insurance officials met with FEMA officials in late May to seek guidance on how the federal agency would respond to the state's program to waive FEMA's insurance requirements, said Warren Byrd, executive counsel for the Louisiana Insurance Department.

Mr. Byrd said more talks are needed before the state will know whether its program can proceed or must be modified to comply with FEMA regulations and the Stafford Act.

The Stafford Act allows states to certify that property insurance is not reasonably available and, therefore, that public entities cannot comply with FEMA's insurance requirements.

But FEMA officials in the past year have given Louisiana officials conflicting information about how the federal agency would treat public entities' repeated natural disaster losses under Louisiana's waiver program.



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LARGEST EMPLOYEE BENEFIT & PROPERTY/CASUALTY PUBLIC ENTITY RISK POOLS <i>Ranked by 2008 member contributions</i>		LARGEST PROPERTY/CASUALTY PUBLIC ENTITY RISK POOLS <i>Ranked by 2008 member contributions</i>		LARGEST EMPLOYEE BENEFIT PUBLIC ENTITY RISK POOLS <i>Ranked by 2008 member contributions</i>	
POOL NAME	2008 MEMBER CONTRIBUTIONS	POOL NAME	2008 MEMBER CONTRIBUTIONS	POOL NAME	2008 MEMBER CONTRIBUTIONS
Self-Insured Schools of California	\$969,310,598	Municipal Excess Liability Joint Insurance Fund	\$181,915,065	Vermont Education Health Initiative	\$190,000,000
California State Assn. of Counties Excess Insurance Authority (CSAC EIA)	\$370,439,419	Protected Insurance Program for Schools (PIPS)	\$174,186,523	Municipal Reinsurance Health Insurance Fund	\$126,504,600
New Hampshire Local Government Center (LGC) HealthTrust L.L.C.	\$343,488,320	Texas Municipal League Intergovernmental Risk Pool	\$152,534,799	Texas Assn. of Counties Health & Employee Benefits Pool	\$124,380,000
Alliance of Schools for Cooperative Insurance Programs (ASCIP)	\$169,606,997	Housing Authority Insurance Group ¹	\$94,927,000	Texas Municipal League Intergovernmental Employee Benefits Pool	\$90,451,583
Southern California Schools Employee Benefits Assn. JPA	\$97,200,000	Texas Assn. of School Boards Risk Management Fund	\$90,400,000	Municipal Insurance Trust of North Carolina	\$49,300,000
<i>Source: BI survey Researched by Karen Tucker</i>		<i>1 Includes Housing Authority Property and Housing Authority Risk Retention Group Source: BI survey Researched by Karen Tucker</i>		<i>Source: BI survey Researched by Karen Tucker</i>	

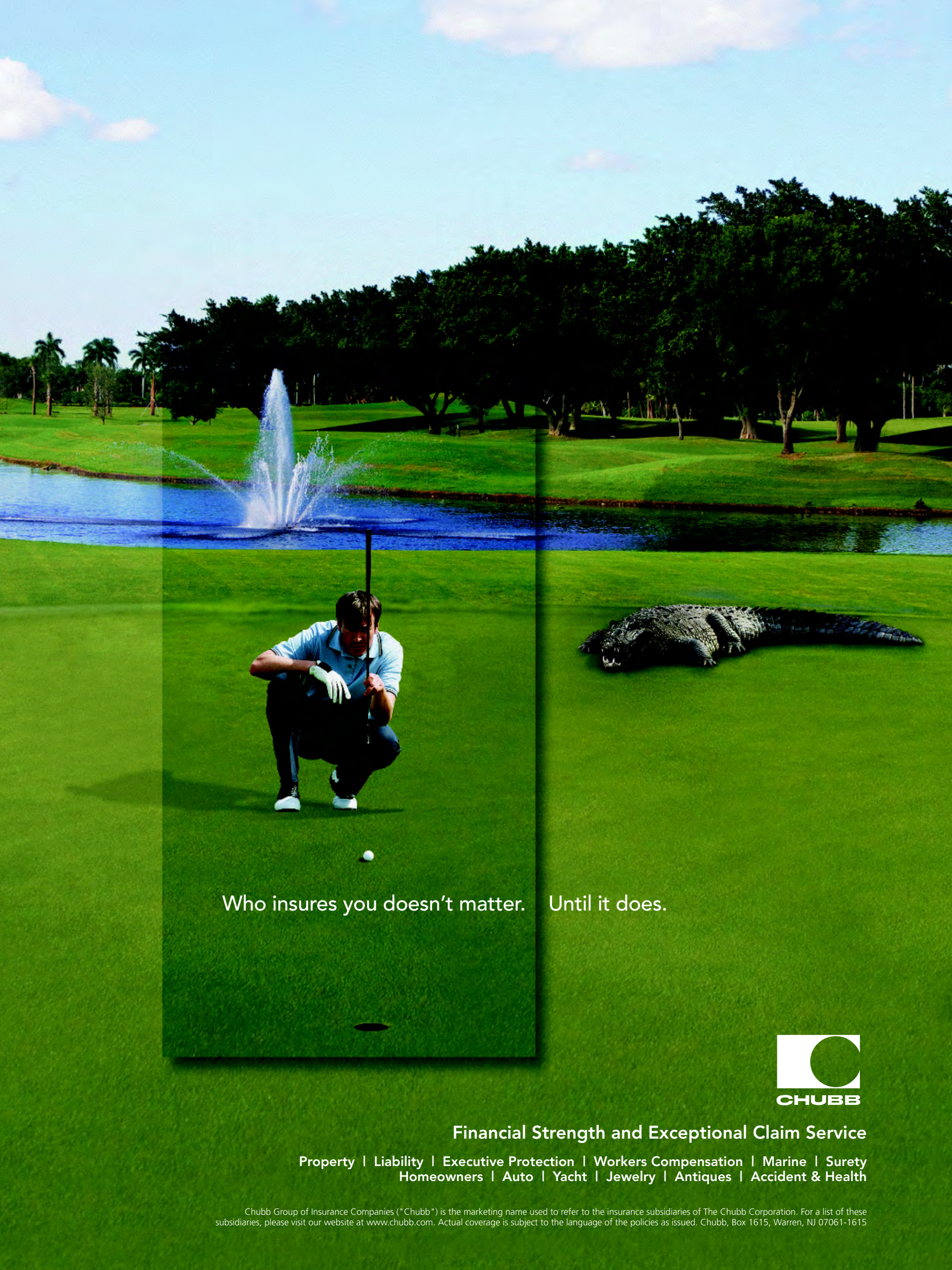
Largest public entity risk pools

Ranked by 2008 member contributions

Rank	Pool name/Address	Phone/Web site	2008 member contributions	2008 pool members	Type of pool	Principal officer
1	Self-Insured Schools of California P.O. Box 1847, Bakersfield, Calif. 93303-1847	661-636-4710 http://sisc.kern.org	\$969,310,598	370	Employee benefits & property/casualty	Russell E. Bigler, CEO
2	California State Assn. of Counties Excess Insurance Authority (CSAC EIA) 3017 Gold Canal Drive, Rancho Cordova, Calif. 95670	916-631-7363 www.csac-eia.org	\$370,439,419	220	Employee benefits & property/casualty	Michael Fleming, CEO
3	New Hampshire Local Government Center (LGC) HealthTrust L.L.C. 25 Triangle Park Drive, P.O. Box 617, Concord, N.H. 03302-0617	603-224-7447 www.nhlgc.org	\$343,488,320	307	Employee benefits & property/casualty	John B. Andrews, executive director/fund administrator
4	Vermont Education Health Initiative 2 Prospect St., Suite 5, Montpeiler, Vt. 05602	802-223-5040 vehi.org	\$190,000,000	270	Employee benefits	Joseph Zimmerman, president
5	Municipal Excess Liability Joint Insurance Fund Park 80 W., Plaza One, Saddle Brook, N.J. 07663	201-587-0555 www.njmel.org	\$181,915,065	19	Property/casualty	David N. Grubb, executive director
6	Protected Insurance Program for Schools (PIPS) P.O. Box 4328, Torrance, Calif. 90510	310-212-0363 www.pipsjpa.org	\$174,186,523	393	Property/casualty	Steve Hovey, president
7	Alliance of Schools for Cooperative Insurance Programs (ASCIP) 16550 Bloomfield Ave., Cerritos, Calif. 90703	562-403-4640 www.ascip.org	\$169,606,997	174	Employee benefits & property/casualty	Paula Tanguay, CEO
8	Texas Municipal League Intergovernmental Risk Pool P.O. Box 149194, Austin, Texas 78714-9194	512-491-2300 www.tmlirp.org	\$152,534,799	2,643	Property/casualty	R. Marvin Townsend, executive director
9	Municipal Reinsurance Health Insurance Fund Park 80 W., Plaza One, Saddle Brook, N.J. 07663	201-587-0555	\$126,504,600	4	Employee benefits	Paul Laracy, executive director
10	Texas Assn. of Counties Health & Employee Benefits Pool P.O. Box 2131, Austin, Texas 78701	512-478-8753 www.county.org	\$124,380,000	174	Employee benefits	Jim Jean, director-program administration

*Source: BI survey
Researched by Karen Tucker*

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Insurance market for public entities still holding steady

Rates remain stable, but hikes may come as insurers struggle

By NICK WHITFIELD

As public entity risk managers try to protect their agencies from losses while reining in costs to comply with tighter budgets, favorable insurance markets and a variety of risk management tools are helping them do both, experts say.

But rate increases may accelerate

as insurers' results deteriorate, some observers say. Should that happen, public risk managers have other options that could help them contain costs, they say.

"We're fortunate, actually, that with all of the other economic challenges, we're not seeing any gigantic increases in premiums," said Sarah Perry, risk manager for the city of Columbia, Mo., and outgoing president of the Public Risk Management Assn.

"I haven't seen anything coming back from the market so far that indicates that the premiums are

going to increase enough that we would look at increasing our (self-insured) retentions.... We are going to see some increases, but nothing drastic," she said.

That favorable pricing is tenuous, however, said John Hayden, executive vp and pooling practice group leader with Willis HRH in Columbus, Ohio.

"The industry is struggling with...the fact that there is a need for a rate increase, with the combined ratio going north, but there is also a decline in demand," he said. "The risk takers need cash, but no

one wants to be the leader in rate increases. Rates could rise after the first of the year, depending on how this year turns out in terms of cat losses."

Public risk managers have other options, less dependent on market movement.

"Clients want options, whether it's raising their deductibles, increasing their self-insurance retention or bringing costs down," said Susan Blankenburg, senior vp and national public enterprise practice leader with Marsh Inc. in San Francisco. "Even if their city council

decides to stay where they are, they still need to see every option and evaluate it themselves."

Many public agencies are already self-insured to some extent, and, as they are already qualified self-insureds, it is relatively simple for them to increase their retentions, she said.

"A lot have increased their self-insurance retention...to the point where they're really just buying catastrophic coverage. It depends, of course, on what kind of money you have for the program," Ms. Blankenburg said. "If you decide you want to save money and go from \$1 million to \$2 million self-insurance retention, you still need to be able to set aside what your actuary says. This would be a bad time to be surprised" by self-insured losses.

The need for adequate funding, however, can make increasing self-insurance retention a difficult task

'The risk takers need cash, but no one wants to be the leader in rate increases. Rates could rise after the first of the year, depending on how this year turns out in terms of cat losses.'

John Hayden, Willis HRH

for many public entities.

"The vast majority of cities and counties are too small to self-insure much at all," Mr. Hayden said. "I haven't seen a great rush to (self-insurance). If you've got a laundry list of things in a public budget and you can hold the line on insurance or take a small increase, that's usually fine."

While the recession puts public entity risk managers under pressure to restrict insurance expenditures, it may also increase the risk of claims costs, both from employees and from the public, experts say.

"Layoffs typically equate to a rise in claims," Ms. Blankenburg said. "When you start laying people off, you may start seeing wrongful termination claims."

Ms. Perry of Columbia, Mo., said third-party claims also increase. "I'm seeing a lot more insistence from people about having their claims covered," she said. "People who normally might not even have made a claim, and people who usually would have accepted a 'no'... we're seeing a lot more people, for relatively minor claims, hiring legal representation.

"It has been a challenge for our risk management department," Ms. Perry said.

Efforts to end the recession could bring a different kind of challenge,

See PUBLIC page 21

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Flood losses in European countries often covered by state programs

Some say bigger role for private insurers may boost loss control

By **STUART COLLINS**

Governments in many of Europe's largest countries continue to pick up the tab for flood damage, but private insurers could take a bigger

role as the trend toward better public sector flood risk management gathers pace, experts say.

In most major European markets, the government provides a backstop for catastrophe insurance, including flood insurance, said Philippe Auzimour, the Paris-based head of the public sector practice in Europe for Marsh Inc. This is through either state-backed pools, such as those in France and Spain,

or government compensation funds that control coverage and rates, as is the case in the Netherlands and Austria, he added.

In many European countries, local authorities buy much of their property insurance cover through regional mutual insurers, Mr. Auzimour said. These pools then buy reinsurance for flooding and other catastrophe exposures from the state-backed pools, he added.



The town of Basauri, Spain, suffered flooding earlier this year.

Such arrangements have stymied demand for flood insurance outside of Italy, Germany and the United Kingdom, where the coverage is

provided mainly by private insurers, Mr. Auzimour said. Such arrangements do not encourage good risk management because some mutual insurers tend to be driven by a need for lower deductibles and high levels of coverage for higher-frequency risks, rather than by an emphasis on greater retention that drives better risk management, he added.

Some experts argue for an increased role for insurers, in the belief that their participation encourages better loss prevention and business continuity planning. Even the European Union has indicated that it would like to see better public sector risk management rewarded with lower catastrophe insurance rates, particularly coverage offered by mutual insurers and

'Insurance stimulates loss prevention measures and disaster planning and is faster at getting investment and rebuilding in the aftermath of a flood.'

Marco Zannone,
COT Institute of Safety, Security and
Crisis Management, Aon Netherlands

state-run pools, Mr. Auzimour said.

In the Netherlands, where as much as 33% of the country is at risk of flooding, the government is looking at ways to develop the flood insurance market, said Marco Zannone, the Hague, Netherlands-based manager of the COT Institute for Safety, Security and Crisis Management, a unit of Aon Netherlands.

There also are moves to improve public sector flood prevention and disaster planning in the Netherlands, and such efforts should encourage insurers to provide flood insurance in the region, Mr. Zannone said. "Insurance stimulates loss prevention measures and disaster planning and is faster at getting investment and rebuilding in the aftermath of a flood," he added.

In the United Kingdom, where private insurers shoulder much of the flood risk, risk management is more advanced and is improving, said Milan Simic, managing director at AIR Worldwide Ltd. U.K. governments have begun to quantify and analyze flood risk using catastrophe models, such as those developed by modeling companies, including AIR, Mr. Simic said.

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U.K. risk managers, insurers learn lessons from 2007 floods

By **STUART COLLINS**

Severe flooding in the United Kingdom in 2007 caused insurers to reassess their exposures and governmental bodies to increase use of risk management strategies, experts say.

Some public sector bodies were hit hard by the 2007 floods and collectively accounted for about £100 million (\$159.1 million) in insured losses, said Larry Stokes, Farnborough, England-based public services property underwriter for the U.K. arm of Zurich Financial Services Group.

The Assn. of British Insurers estimated total 2007 flood losses at £3 billion (\$4.77 billion).

Despite the scale of the 2007 floods, premium rate increases were not widespread, Mr. Stokes said. Today, however, U.K. insurers look more closely at risks presented by the public sector.

There is not such a "broad-brush approach" as there was before 2007, Mr. Stokes said. Zurich, which also has improved its flood modeling capabilities, now applies higher per risk and aggregate deductibles, which can be £1 million (\$1.6 million) or higher for larger flood-exposed local authorities, he added.

But there has been a noticeable improvement in flood risk management by some local authorities in the past two years, Mr. Stokes said.

"We have even worked with some local authorities to improve their risk profile and worked with some authorities to build better flood resilience after a loss as part of the claims process," he said.

Most local authorities affected by the floods two years ago also have increased their spending on flood

prevention and infrastructure protection, according to a spokeswoman for Alarm, the U.K.'s public sector risk management association. But the flooding did not have any significant effect on organizations' coverage or pricing arrangements, she added.

While some individual buying decisions may have changed in recent years, there has not been a

trend of significant numbers of public bodies buying more or less external insurance cover, said Mark Trevor, London-based operations director at Heath Lambert Ltd.'s public sector unit.

One significant change in recent years has been establishing London Authorities' Mutual Ltd., the United Kingdom's only local authority mutual insurer. The insurer pro-

vides coverage, including flood, to a group of London boroughs, said Martin Fone, chief executive of Charles Taylor Consulting Ltd.'s nonmarine mutuals department in London, the mutual's manager.

Flood, alongside terrorism, is one of the biggest catastrophe exposures for the mutual insurer, he said. The consulting firm and reinsurance broker Guy Carpenter & Co. L.L.C.

carried out several cat modeling exercises for the mutual and its supporting reinsurers for various scenarios for flooding, sea surge and windstorms. The model output—and particularly the flood maps—were shared with member authorities, a risk management tool that normally would be prohibitively expensive for individual local authorities, Mr. Fone added.

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Continued from previous page

More U.K. governmental agencies are using catastrophe models in their efforts to improve flood risk management, mainly to influence the development and planning process and to weigh costs vs. benefits of building flood defenses, he said.

As risk management improves generally across Europe, the role of private insurers could increase, but this is unlikely to happen for at least five to 10 years, Mr. Simic said.

"Risk management will play an increased role in the future, and I expect public sector bodies to carry out more risk assessment and flood risk quantification," said Mr. Auzimour, who noted that the European Union is working with the Loire Valley Authority in France, which is prone to flooding, to model flood exposure.

As risk analysis increases, public sector bodies also could issue catastrophe bonds, Mr. Simic said. Blue Wings Ltd., a European flood cat bond issued by Allianz S.E. but later canceled because the underlying data was revised and made the coverage uneconomical, showed the potential for flood risk securitization, he said.

"But the public sector is at an early stage in risk quantification, so it makes more sense for local authorities to explore traditional mitigation like insurance," Mr. Simic said.

Questions & Answers

Public entity risk managers are dealing with several issues as the financial crisis unfolds and the threat of a flu pandemic lingers. Public Risk Management Assn. President-elect Ron Hayes, risk manager for the Calcasieu Parish School Board in Lake Charles, La., recently discussed these challenges with Business Insurance Staff Reporter Jeff Casale and how public risk managers are working to tackle them.



Crisis, flu risks, medicare changes all add challenges to public entities

Q: What are some of the issues facing public risk managers as the financial crisis continues?

Well, there's a variety of things that are challenging the risk managers today in the United States. I think one is because of the economic situation we're in right now. Job security, quite frankly, is a challenge for some risk managers.

It seems as though when cuts come and the ax falls on the budget, oftentimes it's the risk manage-

ment department that gets absorbed into someone else's (role), whether it's a financial officer or an assistant or aide, whatever the case may be, and that's one challenge that we see coming.

Also, a real issue facing risk managers is just being included with the decision-makers when they sit at the table and they plot the course of the corporate or public entity ship for the next year or five years or 10 years, whatever the case may be. A lot of times in the past, the risk man-

agers were kind of an afterthought. They were kind of the person you went to when the disaster occurred. These days, they're coming to risk managers before the loss and saying, "How can we prevent it?"

Then when you're talking about employee benefits, this is one of the real issues facing public risk managers these days because, a lot of time, the employee benefits fall into their department, whether it's shopping for disability insurance, whether it's shopping for health insurance products...it very easily can fall into the risk management department.

Q: What effect has President Obama's economic stimulus plan had on the public risk manager position? Does it change any of the priorities that you had set out? Does it put more emphasis on existing issues?

I think a lot of us are waiting to see exactly how we're going to be impacted, more particularly how our entities are going to be impacted. I work for a school system here in south Louisiana.

Up to this point to my knowledge, we have not received a check or any allocation from the announced economic stimulus plan. So it's a little premature for us to know really how that will impact us. Certainly there's going to be criteria that you're going to have to adhere to before you can spend this money, and whether or not it can be spent on ongoing projects, recurring debt, salaries, that sort of thing. We're still looking for some clarification there.

But I think if we do, in fact, wind up with these funds, I'm sure that it will certainly be beneficial to those existing issues that we're dealing with right now. When you're talking about safety measures and security measures—again I'm talking school primarily because that's what I do—but by the time you do, things as simple as installing cam-

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eras, video cameras in your school or security locks on your doors or fences around your playgrounds or school resource officers at your school, you're talking some significant dollars before all of that is said and done.

Q: With talk of a possible flu pandemic, you've probably had a major role in how the school system is going to prepare for the possibility of that becoming a reality. What are some of the discussions you've had or steps that you have taken?

Really, we have been involved in a task force for the last two years. It initiated when there was the concern about the avian flu pandemic here several years ago.

The regional director of the public health unit here in Calcasieu

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Questions & Answers

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*Based on actual client studies identifying trend was below average.



Continued from previous page

Parish called together different representatives to make up a regional pandemic task force...On this task force were representatives of medical providers, of the first responder community, elected officials, the mayors and police. There also was a spot for school officials.

Basically, they drafted a crisis plan to deal with it in the event that it actually occurred. Initially last fall, even before the swine flu threat developed, we were distributing posters throughout our schools, particularly our elementary schools, and it was a reminder to the little folks to wash their hands before they went to eat lunch and to wash their hands after they went to the bathroom and that sort of thing. Up to this point, we have not had a confirmed case of swine flu here in Calcasieu Parish...but we are on the ground floor with this. We participate in the task force. In fact, they asked the school system to prepare their response plan before they asked the local health care providers, local hospitals, that sort of thing...and we've gone from there; and up to this point, we're just very thankful that we've not had to take further steps.

Q: Aside from natural disasters and the financial crisis, what is the single biggest issue public risk managers are grappling with right now, and do you think they have the resources to handle it?

The Medicare reporting changes that have just been announced, these are going to be discussed at our national PRIMA conference in Dallas the first week in June. In fact, a lot of risk managers are serving entities that have self-insurance products. They're self-insured in certain areas—whether it's workers comp, whether it's health insurance, whether it's general liability—with a huge self-insured retention.

Whatever the case is, there are now some new requirements involving reporting and Medicare claims that are so new we're featuring it in a Hot Topic presentation at our national conference just so we can provide some more tools to our risk manager practitioners as they try and prepare for these challenges that are coming their way.

I think the two big things that you just can't get away from: First, there's the financial situation in the world right now, because if the funds dry up, if the credit dries up, if the bonding markets dry up, it's going to impact what we do. The insurance products that we have may be impacted severely if companies continue to have the financial straits that they're in right now.

I'm being told that from the Hurricane Katrina year—which was the previous high bar in losses, property losses to insurance carriers—this past year is even bigger than that. And that impacts us because it makes it so much tougher for us to go to our brokers and go to our markets and negotiate and come up with a feasible product to protect our entities in the event that we have a loss, simply because the funds are being restricted or tightened.

I think the other part of it, which is a challenge to all risk managers, is

to keep up with the latest developments, the latest technology, the latest directions, that sort of thing. If you're not working to increase either intellectual tools, your knowledge of the products, the challenges that are coming your way; if you're not doing things educationally to make your job more efficient, more intelligent, better prepared for the challenges, then you're falling behind and you just cannot afford to do that. When a risk manager missteps on behalf of the entity that he or she works for, it can be very costly. It can be very financially damaging to the entity. And there's just not a whole lot of margin for error, so we have to be vigilant. We have to be educated. We have to be dedicated, and I think that's a challenge for all of us.

Public: Insurance market holds steady

CONTINUED FROM PAGE 16

as federal stimulus and transportation bills bring large-scale construction projects to many states and cities. While most government agencies still require contractors to carry coverage for such projects until construction ends, that standard may be changing as the costs of claims processing and litigation increase.

A large project sponsor, such as a public entity, can sometimes save by purchasing umbrella coverage for all contractors on a project. If insurance costs are deducted from the contractors' bids, there are sev-

eral ways for a public entity to reap insurance savings from the project.

"It's becoming more common for the entity to sponsor the program, for a couple of reasons," said Jack Probolus, controlled insurance program marketing director with Liberty Mutual Insurance Co. in Boston. "There's the ability to have some premium savings, usually with a deductible, which involves some risk-sharing—the more emphasis you can put on safety and loss protection, the lower your losses are going to be."

Wrap-up coverages, in particular, offer another opportunity for public entities to carry their own coverage

on large stimulus projects involving a number of contractors. "Instead of having each contractor provide their own coverage," Mr. Probolus said, "you can eliminate the expense of redundancies" by having one insurer provide the entire program.

No matter how public entity risk managers decide to handle future claims and projects, they likely will face increased budget scrutiny from elected officials.

"I think we've all had to justify risk management as a necessary project," Ms. Perry said. "Now it's, 'Show us the numbers,' and sometimes it's hard to show, numberwise, the value of what hasn't happened."

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Market Moves

Starr units offer \$100M in marine capacity

NEW YORK—Two subsidiaries of companies linked to insurance veteran Maurice R. Greenberg are partnering to offer \$100 million in marine insurance capacity.

Starr Marine Agency Inc., a unit of New York-based C. V. Starr & Co. Inc., signed an agreement with Starr Indemnity & Liability Co., a unit of

Mr. Greenberg's investment holding company Starr International Co. Inc., the firms said recently.

The agreement with Starr Indemnity will allow Starr Marine to offer \$100 million of commercial underwriting capacity starting July 1, the companies said.

Bollinger adds benefits firm Gail Steinberg

NEW YORK—Insurance brokerage Bollinger Inc. has acquired employee benefits firm Gail Steinberg & Co. Inc., the companies said.

New York-based Gail Steinberg provided employee benefits products and services to small and mid-size companies in the greater New York area.

Its staff has relocated to Bollinger's office in lower Manhattan, and Gail Steinberg, president and chief executive officer, has become a senior vp at Bollinger.

New name reflects umbrella brand, services

WESTBROOK, Conn.—Gowrie, Bardeen & Brett Inc. has changed its name and opened another office.

The Westbrook, Conn.-based insurance, employee benefits and finance company has changed its name to the Gowrie Group to reflect the consolidation of an increasing number of services, it said.

The new name is intended to serve as an umbrella brand for ser-

vices offered by company units that include Gowrie Brett & Young, Fisher & Fisher Associates, Brewer Preferred Insurance, the Burgee Program and Customer One Financial, it said in a statement.

Gowrie Group also opened an office at 449 Thames St., Suite 302, Newport, R.I. 02840. The phone number, 800-262-8911, is the same as the Westbrook, Conn., office.

Safety National opens office in New York

NEW YORK—Safety National Casualty Corp. has opened a regional underwriting office in New York.

The St. Louis-based alternative market insurance provider also hired Sharon Herschlag, formerly a

senior vp at AIU Holdings Inc., and Dennis Zervos, vp of risk management at Zurich North America, as regional underwriting managers in the office.

The office is located at 140 Broadway, 46th floor, New York, N.Y., 10005. The phone number is (212) 858-7622.

The move is part of a plan to get closer to customers by opening more regional offices in major cities across the country, the firm said.

Safety National said it plans to open additional regional offices this year and next year.

Delaware brokers merge operations

CENTERVILLE, Del.—Two insurance brokerages in Delaware have merged.

Centerville, Del.-based Weymouth and Smith Insurance Inc. and Wilmington-based Corroon & Associates Inc. have combined to offer clients a wider range of services and resources, the companies said in a statement.

The new company will operate under the name Weymouth, Swayze & Corroon Insurance Inc. The address of the office is 5710 Kennett Pike, P.O. Box 3939, Centerville, Del., 19807.



Partnership targets wind energy industry

ANDOVER, Mass.—Forecaster Weather Services International Corp. has formed a partnership with GE Energy to launch new forecasting technology for wind farms, the firms said.

In partnership with the Atlanta-based unit of General Electric Co., Andover, Mass.-based WSI said it intends to improve the science of wind forecasting and set up new systems that provide more accurate forecasts for the wind power industry.

GE Energy is a leading U.S. supplier of wind turbines. WSI is a member of the Weather Channel Cos., which is owned by a consortium of NBC Universal, the Blackstone Group and Bain Capital.



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Each of the above-named companies (the "Scheme Companies") intends to propose separate but concurrent solvent schemes of arrangement pursuant to Part 26 of the Companies Act 2006, (collectively known as the "Scheme").

The primary purpose of the Scheme is to finalise the run-off of the Scheme Companies' involvement in the business underwritten for them by Camomile Underwriting Agencies Limited ("CUAL"), (collectively known as CUAL business), in a united and efficient manner.

A copy of the Practice Statement Letter dated 30 April 2009 which contains important information in relation to the Scheme, the composition of the Creditors' Meetings for voting on the Scheme and further information regarding the relevant business is available for download on the Website at www.CUAL-scheme.co.uk. If you are unable to access the Website and would like the Practice Statement Letter to be sent to you, or if you have any queries, please contact Whittington Insurance Services Limited ("Whittington") whose contact details are given below.

The Scheme does not include any non-CUAL business nor, for the avoidance of doubt, any business written by Sovereign Marine & General Insurance Company Limited whether through CUAL or otherwise.

The Scheme Companies intend to apply to the High Court at the Royal Courts of Justice, the Strand, London WC2A 2LL, United Kingdom, not earlier than the third quarter of 2009, for permission to convene the necessary meetings of certain creditors of the Scheme Companies ("Scheme Creditors") to consider and, if thought appropriate approve the Scheme (with or without modification).

Details of the date, time and location of that hearing and other information concerning the Scheme will be posted on the Website at www.CUAL-scheme.co.uk once known.

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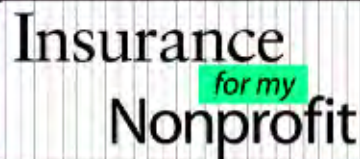
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UP Comings & Goings CLOSE



MARYA PROPIS

NEW JOB TITLE: Boston-based vp of Lexington Insurance Co. and chief operating officer for Risk Specialists Cos. Inc.

PREVIOUS POSITION: New York-based senior vp of AIU Holdings Inc.'s the Commercial Insurance Group's sales and marketing department.

GOALS FOR NEW POSITION: (One of my goals is to) try to maintain a balance in Lexington's portfolio. We offer both property and casualty products, and if you look at what is going on in the industry today and some of the changes the property market is poised for, we've always been a very significant provider of (catastrophe) capacity. We want to make sure we are maintaining a balance in our portfolio and that our products are being given tremendous opportunity and a lot of play with our clients and our brokers. One of my other primary focuses would be...working on some robust distribution strategies, which essentially means supporting our distribution partners in the same fashion that they have supported us.

INDUSTRY CHALLENGES: The

minimum adequacy of reserves combined with diminishing returns for investment income is a financial challenge for insurers. If you look at what's happening in the loss environment, losses are rising right now, especially among D&O and workers comp. I don't want to call it the perfect storm, but you have a variety of factors going on right now that are certainly significant challenges. The capital that is coming into the insurance industry has definitely not generated the returns that we were anticipating. My fear is that the insurance industry is going to be looked at as a less attractive investment vehicle (by) the capital markets.

FIRST MARKET EXPERIENCE: My family is in the insurance industry. My great-uncle and my uncle owned a small (property/casualty) shop in Buffalo (N.Y.) that was primarily personal lines. It was called Propis Agency. The question is what didn't I do...watch the shop so my uncle could play golf? I guess you could say I was an account manager.

OUTSIDE THE INDUSTRY, A DREAM JOB: To do what my dad does. My father is retired from the insurance industry and is now a ski instructor.

Comings & Goings

ONLINE

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

TO SUBMIT ITEMS

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

Allison Martinat
Business Insurance
360 N. Michigan Ave.
Chicago, Ill. 60601-3806
amartinat@businessinsurance.com

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BROKERS:

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- Marsh Inc.

INSURERS:

- Camico Mutual Insurance Co.
- Zurich North America Commercial
- Travel Guard Group Inc.
- AIU Holdings Inc.

REINSURANCE:

- QBE Reinsurance

OTHER PROVIDERS:

- HSBC Holdings P.L.C.

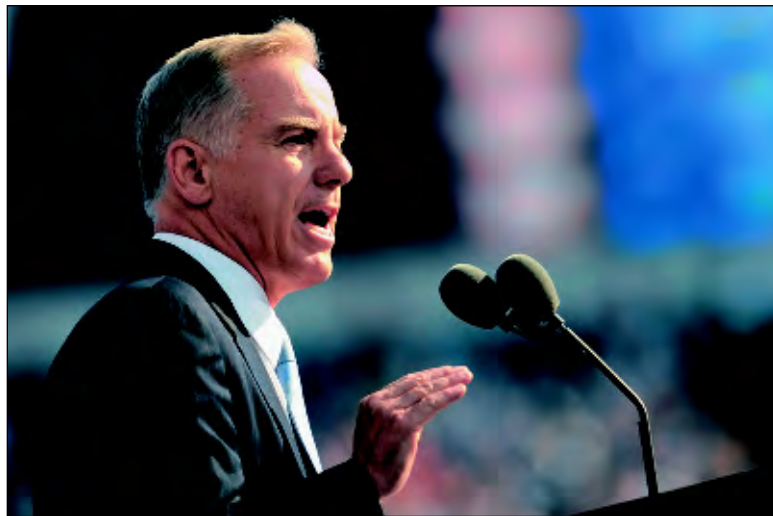
Daschle: Health care reformers seen revisiting employer tax break

CONTINUED FROM PAGE 4

last decade, you will find Democrat and Republican proposals that have contained mechanisms of changing and healing that problem," Mr. Leavitt said. "They bear a startling resemblance to one another. This has become a political issue, not one of tax policy or one of logic."

Mr. Leavitt said he spent considerable time promoting equal health coverage tax treatment on Capitol Hill before the last election. As a result of that experience, he said he has determined "this is an area for common ground, and I personally believe that it is ripe for action."

During another keynote address at last week's Leadership Forum, Dr. Dean said that public and private health insurance systems could successfully work in tandem. In fact, it is possible that individuals who choose to enroll in the proposed government plan will decide to leave it and enroll in a private plan after they discover how restrictive it is, said Dr. Dean, who is also a physician and the former governor of Vermont.



REUTERS

Former Democratic Party head Dr. Howard Dean asserts that the private health insurance market can exist alongside a public health plan.

"What will happen with the public option (is), people will initially choose to go to the public option," Dr. Dean said. "But it works both ways. After they've been there for a while, some of them will decide it's too inflexible, it's too bureaucratic, and they will come back into the private option."

"Meanwhile, I think the fact that a public option is there, it's going to force (private insurance) companies to reassess how they do cost control; it's also going to force them to reassess how they're paying physicians," he said.

"A public/private hybrid can work," said Dr. Dean, comparing a

government-run public plan option, which legislators may include as part of a comprehensive reform likely to be unveiled next month, with the federal program through which Medicare beneficiaries can buy from commercial health insurers and others federally subsidized prescription drug coverage.

"It's come under budget by a substantial amount for all four years of its existence," he said. "I think that there is ample room for the public sector and the private sector to cooperate and coexist. I think it will change the way people do business in the private sector. I think that's a good thing."

"I think the advantage is, we'll still have all the innovation of the private sector that doesn't happen in the public sector, and we will have some downward pressure on costs from the public sector plan," which he said should cost much less to administer.

Drawing from his experience in Vermont where as governor he outsourced Medicaid to the private sector, he said he found that administrative costs were much lower when

the program was state-run. While Medicaid's administrative costs average only about 4%, the administrative overhead of a well-run publicly traded insurer averages around 20%, according to Dr. Dean.

But even as Congress debates whether or not to include a public option in the health reform legislation it soon will consider, it is failing to address the real health care crisis in America, which is the escalation in costs, Dr. Dean asserted.

"I believe the thing that makes America the greatest country on the face of the earth is part of why we spent 60% more of our GNP on health care," he said, comparing U.S. health care spending with that of most other industrialized nations. "Our culture...is imbued with optimism. Cynicism is sort of not allowed in America. We think we can do anything, and unfortunately that also means that we think death is an avoidable consequence of every single illness that there is."

As a result, Americans spend far too much on end-of-life care, and it is bankrupting the nation, Dr. Dean said.

Merck: High court to rule on investor suit time bar

CONTINUED FROM PAGE 3

decide," Mr. LaCroix said.

Plaintiffs suing Merck alleged in their November 2003 class-action suit that misstatements and failure to disclose information about the safety and commercial viability of Vioxx caused the pharmaceutical company's stock price to plunge, resulting in billions of dollars in losses to shareholders.

A federal court in New Jersey agreed with Merck that "storm warnings" constituted an inquiry notice of the alleged fraud more than two years before they filed suit. The trial court ruled the two-year statute of limitations applied and dismissed the suit.

But the appeals court in Philadelphia reinstated the lawsuit last year. It found that "storm warnings" of alleged fraud did not emerge more than two years prior to the suit being filed.

Storm warnings, common terminology in securities suits, refer to information that alerts investors to a gathering storm of problems that could indicate fraud.

In the Merck dispute, they included factors such as U.S. Food and Drug Administration warning letters about Merck promotional practices, media stories about potential health issues associated with Vioxx, consumer fraud lawsuits, and scientific studies of the "blockbuster" pain medication, court records show.

The appeals court's decision, which is viewed as being friendly to plaintiffs, essentially holds that plaintiffs are not on inquiry notice until alerted that the defendants possibly misrepresented facts and may have been aware of that misrepresentation, sources said.

"The 3rd Circuit, in requiring storm warnings that the defendant actually acted with scienter, which is a type of mental state, that is a very high standard for a defendant to meet and a very low standard for the plaintiffs claims to go forward, because it is difficult to obtain direct evidence of a defendant's mental state," said Robert F. Serio, co-chair of Gibson, Dunn & Crutcher L.L.P.'s security litigation practice group in New York.

Other federal appeals courts have rejected the additional requirement that a defendant acted with scienter, or intentional forethought. Until last year, when the San Francisco-based 9th U.S. Circuit Court of Appeals, first applied the additional requirement that the 3rd Circuit later adopted, appeals courts were in general agreement on inquiry notice, according to a Gibson Dunn briefing.

By resolving the split in what determines inquiry notice, the U.S. Supreme Court will provide policyholders and insurers greater certainty over whether "stale issues" could cause them liability losses in the future, Mr. LeCroix said.

"One of the first components of any good risk management exercise is to try and determine what your exposures are, and how far back you have to go in time to determine what your exposures are," Mr. LeCroix said.

Ms. Longmore agreed that by resolving the split among appeals courts, the Supreme Court could help provide greater certainty in risk management analysis. Yet other subjective issues, such as what constitutes sufficient storm warnings, could remain unresolved and the subject of future lawsuits, Ms. Longmore added.

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Defamation: Layoffs may spark suits against firms

CONTINUED FROM PAGE 4

employment litigation he sees and could increase in coming months.

Job recommendations are a major source of defamation claims, observers say. Many experts say the safest course is for employers to confine their statements to basic facts, such as job title and dates of employment.

But some observers say employers too often do not restrain themselves and say more than they should.

"Many employers do make the mistake of saying negative things, or at least non-neutral things, about former employees and it mystifies me why they do that if they're thinking clearly, because there's really nothing to be gained from it," Mr. Oncidi said. "They have already secured the termination of the employee, presumably. But a lot of times, there's some bad blood between the employer and the employee."

Employers should "curb their enthusiasm for retaliating against employees by saying negative things," he added. If a suit is filed, "nobody wins in that situation."

Any satisfaction gained from being negative about an employee "is going to seem pretty stale when you're locked into a defamation lawsuit that's going to cost you \$150,000 to defend," said Joseph G. Schmitt, a shareholder with Halleland Lewis Nilan & Johnson P.A. in Minneapolis.

Mr. Oncidi said the only exception would be cases in which a worker is terminated for violence, in which case the employer has a duty to disclose this information.

Consistency is important, said Jonathan T. Hyman, an employer attorney and partner with Kohnman Jackson & Krantz P.L.L. in Cleveland. If it is your company's policy to give only dates of employment, "don't vary the depth of information you give" because that could become a litigation issue, he said.

Mr. Schmitt recommends that only higher-level human resources officials be permitted to speak to potential employers of ex-workers. Otherwise, "sometimes people who are trying to do the right thing can create problems," he said.

In one case where he represented the employer, Mr. Schmitt said a former employee gave his supervisor's name as a personal reference. "The former supervisor said something to the effect (that) this person overcame struggles with attendance as a result of his medical condition," multiple sclerosis, and did a good job.

Even though the supervisor was listed only as a personal reference, the employer was sued for defamation because of the remark about attendance as well as violating the Americans with Disabilities Act for revealing the MS. The case eventually was settled, Mr. Schmitt said.

The number of people who know the reasons for the termination also should be kept to a minimum, experts say.

"Information should be on a

need-to-know basis," Mr. Hyman said. "You shouldn't be out there babbling to the world about what a horrible employee someone was," he said.

"The information you give out should be in response to specific request, and you shouldn't be looking to smear or trash someone on their way out the door," Mr. Hyman said. "In general, if you're truthful and not discriminatory in how you give this information out," you will be protected by law.

"Get in-house counsel or qualified outside employment counsel directly involved from the beginning of the (layoff) process, so all the deliberations and decisions as to who goes and who stays can be sufficiently cloaked in the attorney-client privilege," recommended Brian T. Ashe, a partner with Seyfarth Shaw L.L.P. in San Francisco.

This means management "can talk honestly...and not fear those comments will come out and be used against them later. It's a much safer way to approach termination decisions generally and (reductions in

'Information should be on a need-to-know basis. You shouldn't be out there babbling to the world about what a horrible employee someone was.'

Jonathan T. Hyman,
Kohnman Jackson & Krantz P.L.L.

force) in particular," Mr. Ashe said.

Care also should be taken to identify callers, Mr. Segal said. If someone calls out of the blue for a reference, get the main number and then return the call to be sure it is not someone acting on the ex-employee's behalf, he said.

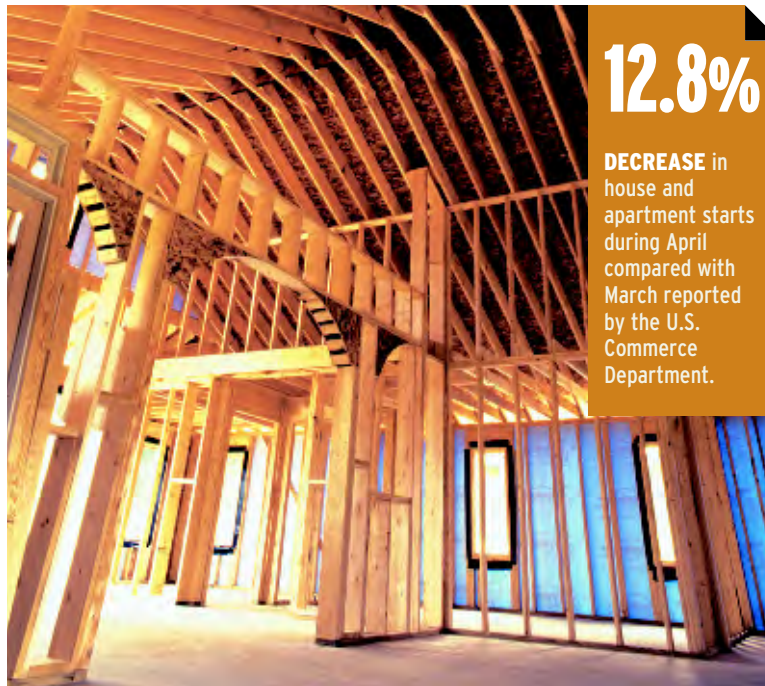
Observers say electronic communications also could spark more defamation suits.

"People tend to be sloppier in electronic communications" than in more formal communications and "slip up and say things in those kinds of media that they wouldn't otherwise say," Mr. Christensen said.

"I often joke that when people hit 'reply all,' there should be a special notice that comes up that says, 'Are you really sure?'" Mr. Schmitt said.

"Everything you write in this world can be found by somebody in a few minutes," and there is even the argument that putting something negative in a personnel file could be considered defamation in certain jurisdictions, said Richard I. Greenberg, a partner with Jackson Lewis L.L.P. in New York.

"Now, because many people write so many things down, e-mail is a happy hunting ground for both plaintiffs and defense lawyers," Mr. Oncidi said.



Construction: Foreclosures bring new risks for banks

CONTINUED FROM PAGE 3

it's major news."

Although the report reveals the plunge in housing starts may be near its bottom, his clients expect building activity to hover near the bottom for an undetermined period, said Bob Gore, executive vp for Willis HRH Residential Construction in Irvine, Calif.

Overall pricing for insurance was already soft before the housing market collapsed, which then crushed demand for general liability and other insurance that homebuilders normally purchase, several experts said.

In some cases, insurers had to return premiums when homebuilders failed to construct the number of units they had expected.

"Premiums (were) going down and along came the falling economy and that killed the whole thing," as many homebuilders suspended operations, said Ken Laderoute, vp of underwriting at Burns & Wilcox Ltd., a Farmington Hills, Mich.-based managing general agency. "Right now we are in a pretty soft market."

Yet even with relatively little demand, underwriters new to homebuilding continue to enter that market today in search of new business during the recession, Mr. Gore added. "They are chasing few-

LETTERS

CONTINUED FROM PAGE 8

many of the best employees gathered informally to discuss what just transpired. Many of the employees were upset and stated that once the economy turned around, they would be looking at other employment opportunities.

In Fortune 500-type companies, the lines of communication have never been nor will ever be open and transparent. In smaller companies, it is critical for the lines of communication be open. When companies communicate with their staff in an honest and frank fashion,

er dollars."

New opportunity for homebuilders and the insurance industry, however, may flow from banks that now need insurance products and services normally sold to builders, said George Dale, president of Los Angeles-based Wrapid Specialty Inc., a risk management consultant specializing in wrap-up construction projects.

Banks have begun hiring contractors to complete abandoned tracts so they can sell off the housing acquired through foreclosures. The properties the banks acquired are referred to as real estate-owned properties.

Banks also are shopping for risk management and insurance for their REO projects.

Wrapid recently "restarted the wrap-up administration" for three construction projects "where we were all of a sudden contacted by the bank, or contacted by a new builder" that was taking over the project for the bank, Mr. Dale said.

Wrap-ups are insurance arrangements that project owners often use to cover contractors in building projects. In this situation, banks are purchasing wrap-up construction coverage rather than allowing contractors and subcontractors to buy their own insurance and include the expense in their bid price.

As the role of banks has shifted

this interaction helps create a team feeling, a sense of unity, of being appreciated for the work performed. The lack of communication breeds mistrust, lack of unity and creates poor morale. In this time of economic stress, companies need to ensure that their best-performing staff remain engaged in their current positions and do not plan to resign when the economic situation improves.

The point is that your current staff is more important today to help companies weather the downturn than any potential future staff.

Walter Haenn
Managing Director
The Corolla Group L.L.C.
Ardmore, Pa.

from housing construction lenders to sellers, banks are now becoming his clients more so than homebuilders, Mr. McCall said.

As lenders, banks and other lending institutions protected themselves from liability stemming from home building and sales by requiring builders to name them as additional insureds on the builders' policies.

But now as sellers, banks are on the hook for general liability and construction defects.

"The banks have never had to look at that liability," Mr. McCall said. "They always transferred that risk off to the building entity. Now the bank is the owner and they have a different liability than they ever did."

Foreclosed units are being sold by newly established real estate-owned property departments within banks. The REO departments typically are handling construction insurance arrangements without the involvement of bank risk managers, Mr. McCall said.

Risk management and liability considerations are substantially more complicated, though, for REO projects than for traditional homebuilding arrangements where a builder starts and completes a project and purchases its own insurance, several sources said.

Unlike new projects built from the ground up, for example, REO properties typically sit uncompleted and vacant, which exposes them to weather and vandalism along with a potential for liability stemming from defects.

The REO projects have therefore created demand for services such as those provided by companies that analyze partially completed housing projects to determine the expense of completing them.

Likewise, brokers say they are helping REO departments manuscript general liability policies to meet their specific needs. In some cases, brokers say they are also helping them transfer coverage from general liability policies originally sold to builders no longer associated with the project.

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Sotomayor: Supreme Court nominee shows no slant on business

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Her most prominent decision may have been her 1995 ruling as a district court judge that effectively ended the 232-day Major League Baseball strike, a ruling President Obama cited when he introduced her (see box).

Also regarded as significant is her role as a member of the three-judge panel that ruled in June 2008 for New Haven, Conn., in *Frank Ricci et al. vs. John DeStefano et al.* in rejecting reverse discrimination charges brought by white firefighters (*BI*, Jan. 19).

Appellate attorney Thomas H. Dupree Jr., a partner with Gibson, Dunn & Crutcher L.L.P. in Washington, said that while the Supreme Court tends to vote along a traditional conservative-liberal split on affirmative action and related constitutional issues, "business cases are different, and I don't think that you can really reliably predict" how Judge Sotomayor is likely to rule.

"There are a lot of cases where she's ruled for business and a lot of cases where she's ruled against business," Mr. Dupree said.

"I think there is reason to believe that she is a moderate on issues that are of concern to the business community," said Lauren Rosenblum Goldman, a partner with law firm Mayer Brown L.L.P. in New York, who is an appellate attorney.

"She has resisted attempts by plaintiffs lawyers...to allow more class actions to be brought against business" and has been a moderate on federal pre-emption issues, Ms. Goldman said.

"She is a careful and thoughtful jurist," said Ms. Goldman.

Mainstream views

Employment law attorney Michael W. Fox, a shareholder with law firm Ogletree, Deakins, Nash, Smoak & Stewart P.C. in Austin, Texas, has reviewed Judge Sotomayor's employment-related decisions. She "looks to me like someone who's pretty traditional in the sense of not far out of the mainstream one way or the other," Mr. Fox said.

Judge Sotomayor has ruled both



UPI/LANDOV

SONIA SOTOMAYOR HAS VARIED RECORD IN BUSINESS CASES

Business-related cases in which U.S. Supreme Court nominee Sonia Sotomayor has been involved as both a federal district court and appeals court judge include:

- In her 1995 opinion as a district court judge in *National Labor Relations Board vs. Major League Baseball Player Relations Committee Inc. and the Constituent Member Clubs of Major League Baseball*, Judge Sotomayor issued a temporary

injunction that restored terms and conditions of employment provided under an expired collective bargaining agreement, which effectively ended the 232-day baseball strike.

- In her 2002 decision in *George and Judy King vs. American Airlines Inc.*, Judge Sotomayor wrote an opinion stating that the Warsaw Convention preempted a lawsuit filed by a black couple contending they had been bumped from an overbooked flight

because of their race.

- In *Shadi Dabit vs. Merrill Lynch*, Judge Sotomayor ruled in 2005 that federal law did not preempt a private securities fraud class action in state court. The U.S. Supreme Court subsequently decided unanimously to overturn the decision.

- In her 2007 *Riverkeeper Inc. vs. U.S. Environmental Protection Agency* decision, which a divided U.S. Supreme Court subsequently overruled, Judge Sotomayor wrote for the majority in saying the Clean Water Act prohibits the EPA from conducting a cost-benefit analysis in establishing the best technology available to preserve aquatic organisms.

- In 2008's *Rajkumar Singh vs. the City of New York*, she ruled that even though fire alarm inspectors are required to carry inspection documents during commutes, they are not entitled to be compensated under the Fair Labor Standards Act for their commuting time.

- In *Frank Ricci vs. John DeStefano*, Judge Sotomayor joined a three-judge panel last year in upholding the decision by New Haven, Conn., to reject fire department promotion tests that failed to pass minority candidates. A U.S. Supreme Court decision in the case is pending.

—By Judy Greenwald

B. Plevan, a partner with Proskauer Rose L.L.P. in New York, said while Judge Sotomayor likely would show empathy for cases involving individuals who oppose big companies, "many of the issues that go before the Supreme Court are one business against another business."

With regard to insurance cases, "She's been extremely favorable to insurers in coverage disputes," said Barry J. Maniloff, an insurer attorney with White & Williams L.L.P. in Philadelphia. "The fact she favors insurers so much, who are typically not a sympathetic bunch, would be further evidence that she's not as liberal on business issues as she might be on social issues," he said.

However, Richard Samp, chief counsel for the Washington Legal Foundation, said he is "tentatively troubled" by Judge Sotomayor's nomination. For instance, her 2005 decision in *Shadi Dabit vs. Merrill Lynch*, which the U.S. Supreme Court overturned in a unanimous ruling, "would have significantly expanded the scope of securities fraud class actions."

Even so, "we certainly want to take a careful look, and we recognize that whoever is going to get confirmed is going to be a Democratic nominee that is probably more liberal than I would choose," Mr. Samp said.

Meanwhile, Judge Sotomayor's tenure on the 2nd U.S. Circuit Court of Appeals, which frequently rules on business issues, will be a positive for businesses, Mr. Dupree said. "As a lawyer, you always want to have a knowledgeable and experienced judge," he said.

for and against employers and is willing to "side with the 'establishment' if she feels they've got the strong argument," Mr. Fox said.

Although Judge Sotomayor is likely to fall on the liberal side of the court's liberal-conservative split, Mr. Fox said, "it strikes me that the business community should not be terribly upset" by her nomination.

"You just don't seem to be able to find any sort of political agenda" in her decisions, said employment law attorney Dennis Westlind, a member of law firm Stoel Rives L.L.P. in Portland, Ore.

Even the *Ricci* ruling was "sensible" in that ruling against New

Haven would have led to filing more class action discrimination lawsuits, said Paul J. Siegel, a partner

with employment law firm Jackson Lewis L.L.P. in Melville, N.Y. Employment law attorney Bettina

Transatlantic: AIG to sell majority stake in reinsurer

CONTINUED FROM PAGE 1

rently, AIG has drawn down about \$80 billion, said a spokesman for AIG.

AIG was forced to scale back plans to sell units amid the financial crisis. As a result AIG has been exploring public stock offerings instead of outright sales, analysts say.

"The goal would have been to sell (Transatlantic) through a private transaction," said John Wicher of John Wicher & Associates in San Francisco. "It's a pretty dramatic statement when they are realizing higher valuations through a public offering, rather than a private

transaction."

For Transatlantic, AIG's plan is "very positive" Mr. Wicher said. "There has been a level of uncertainty around them due to the AIG association, and now that has been resolved," he said.

Transatlantic "has always been a very strong company and they have made use of their relationship with AIG over time, but I think they will remain strong moving forward," said Mr. Gallant.

Separately, AIG said last week that it completed the sale of its prime real estate holding in the Otemachi District in Tokyo to Nippon Life Insurance Co. for \$1.2 billion in cash.

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Hard market for offshore rigs drives firms to self-insure

By ZACK PHILLIPS

Some offshore energy firms renewing their windstorm cover in the Gulf of Mexico have opted to self-insure all or many of their facilities in the face of tough pricing and terms that insurers say are necessary to continue writing the business.

Rates and retentions in the Gulf of Mexico since last summer have increased markedly, while limits and capacity have shrunk substantially, brokers and risk managers say. At the same time, coverage has become more restrictive for older platforms, business interruption and damage to wells, they note. Hurricane Ike caused about \$3 billion in offshore damages last year.

"It is the most difficult renewal market I have ever seen since I started in the business in 1986," said John Keely, a senior vp and the director of exploration and production at Aon Natural Resources Group of Aon Risk Services Southwest Inc. in Houston. "Underwriters were faced with having to come up with basically a new business plan that would convince their capital providers and reinsurers...they could write Gulf of Mexico business, withstand another storm like Ike and still produce an operating profit on the account."

Between 2004 and 2008, offshore energy insurers in the Gulf of Mexico collected \$3.7 billion in premium and paid nearly \$12 billion in losses, experts say. Underwriters say that deficit, coupled with hardening in the reinsurance market and depleted investment income, meant they had to make dramatic changes or risk the collapse of the Gulf of Mexico windstorm market if a major storm hits the area in 2009.

Some insurers have opted to leave the market. Most recently, Marsh & McLennan Cos. Inc. and Berkshire Hathaway Inc. canceled a planned \$500 million windstorm insurance pool, and Zurich Financial Services Group opted in late May to stop writing additional named windstorm cover in the Gulf.

Insurers who stayed in the market have narrowed their coverage and offered less capacity. Market observers say overall capacity is down from about \$12 billion last year to between \$5 billion to \$7 billion in 2009.

Much of the reduction in capacity has manifested in demands that buyers accept dramatically higher

retentions on windstorm cover—five to 10 times higher than in 2008, brokers and underwriters say. Insurers have sought to increase overall retentions from about \$600 million last year to \$1.5 billion this year, Mr. Keely said.

Windstorm limits are about half of what they were last year on average, and rates have doubled or tripled in many cases, observers say.

One offshore risk manager said he'd heard of other risk managers stuck with a 30% rate on line or more. He said that the market conditions had prompted nine of the 28 energy companies he checked on to self-insure or largely self-insure for wind, he said.

Mr. Keely estimated that about one-third of offshore buyers are going without insurance and another third are purchasing less insurance than previously.

Kashe Sambhi, head of energy offshore for Swiss Reinsurance Co.'s Industrial Risk Insurer unit, said about 40% of their renewals have opted not to buy windstorm cover.

Andrew Steptowe, the Houston-based upstream practice leader at Marsh Inc., said that the credit crisis

and fallen commodity prices mean that some energy firms cannot afford to self-insure, in which case many opt to insure only their most critical and profitable facilities.

"A lot of people have come to us and basically said, 'I don't want to spend a lot more than I did last year. What program can you structure for me on that basis?'"

Cover for loss of production income—the offshore equivalent of business interruption—is scarce, expensive and more restrictive, risk managers and brokers say. The deductible for such policies, which is a waiting period before the coverage kicks in after an event, has increased from about 60 or 75 days in the past to around 120 days in 2009, they say.

"That's four months of down time before you can start claiming," Mr. Steptowe said. "Very few companies have either been able to buy LOPI or have actually purchased it....Underwriters have made that a very unattractive product."

Underwriters say that a particular problem stemming from Hurricane Ike in 2008 was policies covering well damage, especially those covering low-producing or obsolete offshore facilities. Because they are of lower value, these platforms and rigs typically generate lower premi-

ums, but when toppled they can damage many wells connected to them, necessitating costly repairs. Mr. Steptowe said that for one company last year, a \$40 million platform toppled by a hurricane cost an additional \$360 million to re-drill 12 wells connected to the facility.

This year, many underwriters have declined to cover the older, so-called sunset properties, or have charged much higher rates to do so, observers say. And whereas underwriters previously generally applied various well intervention coverages as blanket coverage across all of a policyholders' facilities, this year they have applied sublimits on individual facilities, raised rates and demanded more details on each facility, brokers say. That has meant a larger workload for brokers and policyholders, many of whom began renewals early this year in hopes of securing scarce capacity.

Dominick Hoare, joint active underwriter at Watkins syndicate 457 at Lloyd's of London, said that Gulf of Mexico windstorm book of business is sustainable with the new pricing and terms.

"That was our intention and aim: to develop a product that if we have another Ike-style event in 2009, we'd still maintain our target returns," he said.

Cat bonds: Market making a comeback after '08 drop

CONTINUED FROM PAGE 1

concern about peak-zone exposures right now. For the large-capacity buyers, securitization is very appealing," said Edward Hochberg, executive vp at Towers Perrin's reinsurance unit in Philadelphia.

Meanwhile, buyers are not feeling as sharp a contraction for European catastrophe exposures, observers say.

"European wind has not had the same severity of loss as the U.S. wind, so there is a slightly more relaxed attitude about it," said Mark Hvidsten, executive managing director of Willis Capital Markets & Advisory in New York. In addition, "capacity for European catastrophes seems to be holding up very well," he said.

The National Oceanic and Atmospheric Administration has projected that the U.S. hurricane season, beginning June 1, will be near-normal with nine to 14 named storms, four to seven of which may become hurricanes.

Despite the conservative forecast, "it only takes one severe event to trigger losses, and cedents are looking for comfort that the money will be there when they need it," said Gary Martucci, director, financial institutions ratings at Standard & Poor's Corp. in New York.

But sponsors are paying more for the protection, largely because investors are demanding higher returns, experts say.

Insurers are paying as much as 50% higher than a year ago for cat

bond coverage, said Jonathan Spry, senior vp at Guy Carpenter & Co. Ltd. in London. The difference in pricing between cat bonds and the traditional reinsurance market—which saw rate increases of 10% to 25% at April 1 renewals—has dampened the appetite of potential new sponsors, he said.

Others say pricing considerations likely will keep some cat bond issuers on the sidelines for now.

"I'm actually surprised that issuance has been as high as it has been, given the current pricing levels," said Mr. Hvidsten.

The majority of insurance companies that struck deals so far this year have been experienced market participants, including Swiss Re insurance Co., Chubb, Liberty Mutual Group Inc. and Allianz S.E. Though, New York-based Assurant Inc. made its first venture into the market last month by placing a \$150 million cat bond transaction to protect against U.S. hurricanes for three years.

But not all observers are seeing a big difference in pricing between reinsurance and cat bonds.

Eric Brosius, senior vp and manager of reinsurance for Liberty Mutual Insurance Co. in Boston, said, "I'm not seeing that there is a dramatic mismatch between cat bond pricing and traditional reinsurance pricing."

"You have to understand that with cat bond pricing, you are attempting to price for three years vs. an annual reinsurance contract. And with a cat bond, you have a

\$12B
Between 2004 and 2008, offshore energy insurers in the Gulf of Mexico collected \$3.7 billion in premium and paid nearly \$12 billion in losses.

2009 CATASTROPHE BOND DEALS

	SPONSOR	SPV	CAPACITY	COVERAGE
2/09	Chubb Corp.	East Lane Re III	\$150 million	Florida hurricane
2/09	SCOR S.E.	Atlas Re V	\$200 million	U.S. and Puerto Rico hurricane and earthquake
3/09	Liberty Mutual Group Inc.	Mystic Re II	\$225 million	U.S. hurricane and earthquake
4/09	Assurant Inc.	Ibis Re	\$150 million	U.S. hurricane
4/09	Allianz S.E.	Blue Fin Ltd.	\$180 million	U.S. hurricane and earthquake
5/09	USAA	Residential Re 2009	\$250 million	U.S. hurricane, earthquake, severe thunderstorm, winter storm, California wildfire
5/09	Swiss Reinsurance Co.	Successor II	\$60 million	Atlantic hurricane and California earthquake

CURRENTLY BEING MARKETED TO INVESTORS:

	Munich Reinsurance Co.	Ianus Capital	€100 million (\$140 million)	European windstorm and Turkish earthquake
	Swiss Re	Calabash Re III	\$100 million	U.S. hurricane and earthquake

Source: S&P, market sources

contract that is 100% collateralized up front."

In March, Liberty Mutual placed Mystic Re II, a \$225 million bond that provides three-year protection against losses from U.S. hurricanes and earthquakes.

"For us, the No. 1 reason to use cat bonds is to diversify our source of supply for a very important purchase. You can't put all your eggs in one basket," Mr. Brosius said.

Participants recently have returned to cat bonds after the market was restructured following a halt in issuance in the second half of 2008, when the collapse of Lehman Bros. resulted in downgrades on four cat bonds that effectively were

guaranteed by the investment firm. The fallout raised investor fears about credit risk in a sector once touted as uncorrelated with the wider financial markets.

But the new cat bond structures featuring different trigger mechanisms, greater transparency and tighter collateral requirements have revived the market, easing both sponsor and investor fears, experts say (*BI*, March 30). While the pipeline remains strong for additional cat bonds this year, it will be a few more years before the market returns to the record nearly \$7 billion in cat bonds issued in 2007, experts say.

Market experts say a variety of

factors will continue to influence the market moving forward, including the severity of this year's hurricane season and the degree to which reinsurance prices harden.

Cat bonds issued in the next few months likely will trend toward buying protection for European perils, as European storms are largely a fourth-quarter event, experts say.

Munich Reinsurance Co. is marketing a \$100 million cat bond, Ianus Capital, to provide cover against losses from European windstorms and Turkish earthquakes, market sources confirm. If successful, it will be the first catastrophe bond transaction this year based on a non-U.S. peril.

News In Brief

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want to thank him for all he has done at the department to promote a competitive marketplace while also effectively protecting New York consumers," New York Gov. David Paterson said in a statement. A successor has not been named.

GM, union reach pact on retiree benefits

Members of the United Auto Workers have ratified an agreement that will allow financially troubled General Motors Corp. to shave billions of dollars in contributions to a retiree health care trust and cut certain retiree benefits. The agreement modifies a 2007 accord between GM and the UAW that would have capped GM's burgeoning retiree health care liabilities. The latest agreement reduces GM's cash contributions to a new retiree health trust controlled by the UAW and gives the trust a 17.5% ownership in GM after it emerges from bankruptcy. Like an earlier agreement the UAW reached with Chrysler L.L.C., GM's deal will eliminate retiree vision and dental benefits effective July 1.

Injured worker can sue Zurich for bad faith

A Walgreen Co. employee can sue her employer's workers compensation insurer for bad faith, the Oklahoma Supreme Court ruled. The decision in *Nancy R. Summers vs. Zurich American Insurance Co.* overturned lower court findings that barred Ms. Summers from suing Zurich American for the insurer's alleged refusal to authorize medical treatment ordered by the state Workers' Compensation Court. Ms. Summers sued the insurer, but Zurich won a summary judgment by arguing she did not follow a postjudgment certification procedure that allows insurers to show why benefits remain unpaid. The high court found that the lower courts erred and that there was confusion over the role of the certification process in cases involving both medical and indemnity benefits. A lawsuit is a claimant's prerogative for an insurer's alleged failure to authorize ordered medical treatment, the state high court ruled.

Travelers forms group to lobby on P/C issues

Travelers Cos. Inc. has established the Travelers Institute to assist in public policy talks relating to the property/casualty insurance sector. The Washington-based Travelers Institute will draw upon experienced insurance and risk professionals to make recommendations to lawmakers and regulators about public policies that deal with insurance and the financial services industry.

Mich. ends objection to Chrysler sale

Michigan Attorney General Mike Cox said last week a settlement has been reached that will end the state's objection to the sale of Chrysler L.L.C. by protecting injured worker benefits. Mr. Cox, on behalf of the Michigan Workers' Compensation Agency, had filed a motion May 6 in U.S. Bankruptcy Court for the Southern District of New York that objected to an attempt to sell Chrysler assets to Italian automaker Fiat S.p.A. arguing the proposed sale terms could allow a purchasing entity to escape paying workers comp payments and, as a result, the state's guarantee fund for self-insured companies would be exhausted.

California comp fund seeks 15% rate hike

California's State Compensation Insurance Fund has filed for a 15% rate increase for policies incepting on or after July 1. Medical costs that have increased 16% annually over the past three years are the principal driver behind the increase, Jan Frank, chief executive officer and president of the fund, said in a statement. The State Compensation Insurance Fund is California's largest provider of workers comp coverage.

Vermont enacts captive tax break

Organizations that set up captives in Vermont during the remainder of 2009 and through the end of 2010 will receive a one-time \$7,500 credit to offset their premium taxes and sponsors of smaller captives will receive a one-time exemption from the \$7,500 minimum tax under legislation that Gov. Jim Douglas signed into law last week. The tax breaks take effect immediately. In addition, the new law increases to 11% from 10% the percentage of premium tax revenue that can be used for captive regulation and promotion.

Litigation: U.K. weighs civil suit changes

CONTINUED FROM PAGE 4

other jurisdictions.

Typically, U.K. courts impose so-called "cost shifting" in which the unsuccessful party is required to pay the successful party's court costs.

Many see the cost-shifting as a potential barrier to bringing group actions in the United Kingdom, said Neil Mirchandani, a partner in the dispute resolutions practice at law firm Lovells L.L.P. in London. Because Justice Jackson's reason for the review is to examine costs, his report does not fully address other issues that could affect the number of group actions filed, he noted.

In the report, Justice Jackson said several potential changes to the existing cost regime for group actions "merit consideration."

Among them are instituting a no-cost-shifting rule; allowing cost-shifting for only part of the proceedings, for example only after the stage where a class wins certification; implementing a common funds doctrine, such as that used in the United States in which successful lawyers are entitled to have their fees reimbursed from the fund awarded to the class; public interest litigation, whereby the court has power to order that no cost-shifting occur when a group representative brings an action on an issue of public interest; and using a lower-cost scale for collective actions.

Justice Jackson said his "tentative view" to do away with cost-shifting for collective actions merits serious consideration in the second phase of his review and would, among other things, promote access to jus-

tice and be fairer for defendants.

If parties to a class action did not run the risk of having to pay the defendants' costs, there could be "a surge in class actions, as the barriers to entry into the litigation field would be lower," said Liam O'Connell, partner and head of the dispute resolution practice at London-based law firm CMS Cameron McKenna L.L.P.

There also could be an increase in frivolous litigation if cost-shifting were removed, said Mr. Mirchandani.

In the report, Justice Jackson also explored after-the-event insurance,

'After-the-event insurance is now in the firing line.'

Liam O'Connell, CMS Cameron McKenna

which covers a litigant against future liability for the costs of an opposing party.

This type of insurance is most commonly bought in cases in which lawyers use conditional fee—or no-win, no-fee—agreements.

Justice Jackson said for large commercial cases, the premium for after-the-event insurance typically is about 35% to 45% of the sum insured. For group litigation, premiums typically are 30% to 40% and for libel cases, premiums can be up to 50% of the sum insured, he noted.

Justice Jackson said while some consider after-the-event insurance to be prohibitively expensive, insurers contend there are sufficient players to ensure premiums are competitive.

The report also raises the question of whether after-the-event insurance should continue to be recoverable from an unsuccessful defendant.

After-the-event insurers should become involved in the debate about whether premiums are reasonable, "whether the premiums should be recoverable and also whether access to justice can be preserved where there is after-the-event insurance and a success fee," said Browne Jacobson's Ms. Evans.

"After-the-event insurance is now in the firing line," said CMS Cameron McKenna's Mr. O'Connell. "It's seen as an unnecessary cost of litigation that can and should be eliminated."

The removal of after-the-event insurance would have a big effect on law firms that use a no-win, no-fee model, he said.

In his report, Justice Jackson said no-win, no-fee arrangements should exist in some form "to facilitate access to justice." The real issue, he said, is how such arrangements should be structured.

It is possible that U.S.-style contingency fees, whereby a lawyer takes a percentage of damages recovered, may be introduced in the United Kingdom as a result of the Jackson review, Mr. O'Connell said.

Interested parties now have the opportunity to react to the findings before Justice Jackson by year-end produces a final review, which will contain recommendations.

The U.K. Bar Council said its working group will "consider the issues raised in the report" and produce a response.

Brokers: In-house units valued in Europe

CONTINUED FROM PAGE 10

weather the financial crisis, in part, because they are legal entities, not departments within a company, Mr. Sigulla said. "If you have only an insurance department, it may be under pressure to reduce costs," he said, whereas a separate entity can operate independently and generate its business and income without the same sort of pressure from the parent.

Direct access to insurers is another advantage to a captive operation, said Mr. Sigulla.

"I'm convinced it's a very good tool because it allows you, even in specialty markets, access to the underwriter" rather than filtering the placement process through an

outside broker, he said.

Telecom Italia S.p.A., a Milan, Italy-based telecommunications company, places its coverages through Asscom Insurance Brokers S.r.l., a brokerage it owns with Aon Corp. and Milan-based broker Puricelli e Ghezzi S.r.l. Asscom has offices in Milan and Rome.

Paolo Rubini, Telecom Italia's director of risk management, said "a captive broker allows you to deploy your own strategies and manage your relationships with insurers."

That close contact is important during the global economic downturn, Mr. Rubini said, because it means the captive broker has only its parent's interests in mind.

But captive brokers do not always

eliminate the need for the outside intermediaries, sources note. Large companies with international operations often supplement their captive brokerage with help from brokers that can place foreign business.

Funk Gruppe GmbH, a Hamburg, Germany-based broker, works with captive brokers at parent companies that occupy the upper end of the middle market in size, said Leberecht Funk, its chairman. "Most do work with outside brokers," he said of captive brokers. "They need access to international markets."

Some captive brokers serve more of a risk management function than others, said Mr. Funk. Some are set up simply as insurance buying operations that are in place to realize cost savings through direct relationships with insurers, he said. Others are established with an eye toward improving risk management.

"The very, very large companies need to have risk management competence in-house anyway," Mr. Funk said. But captive brokers may suffer if their parents are smaller companies looking to shave expenses during the financial downturn.

"Some of these companies may say they can only afford a certain budget for insurance expenses," said Mr. Funk. "So it would cause a strain on their ability to provide those services."



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Business Insurance END PAGE

Contributing: Jeff Casale, Judy Greenwald



Do you already spend all day on Facebook? Here's a job for you

If your latest Facebook posting is about how much you hate your job, the solution to your problem may be closer than you think.

The online social media group, famous for linking people up with former high school classmates, co-workers and complete strangers, is looking for a risk manager to help fight crime in addition to more typical risk management functions.

According to the job posting at www.facebook.com/careers/positions.php?id=636, Palo Alto, Calif.-based Facebook is looking for someone who will run the operations of its risk management team and be responsible for sniffing out fraud among the site's users. The position is the first of its kind at Facebook, which it said will allow the risk manager to "build and lead" the department.

Successful candidates must be "avid Facebook users," so those hooked on MySpace need not apply. Also, the candidate must "enjoy finding patterns amidst chaos, solving puzzles, making quick decisions, working collaboratively, admitting when they made the wrong decision, and probably have an organized house or at least know where everything is."

Being on Twitter probably isn't a negative, either.

Facebook's corporate Web site provides potential workers with a glimpse of what it's like at the company's headquarters—and it looks like stress wouldn't be a problem. Wide open work spaces, couches, games and endless hours of surfing the Internet—all while getting paid.

Experience is required, though. Facebook says it wants five years of investigative experience in finance, fraud, technical or credit domains.



It can be exotic to be an employee

Employers can't strip exotic dancers of their employee rights by calling them independent contractors and charging them to use a stage and dressing rooms to carry out their work, the Montana Supreme Court ruled.

The court ruled in a case brought by dancers at Great Falls, Mont.-based Playground Lounge and Casino. Dancers who performed onstage also were allowed to perform private, offstage dances for customers, for which the patron and dancer would negotiate a fee.

In addition to this fee, the dancer remained on the clock and received an hourly wage, according to last month's decision in *Wage Claims of Renne L. Smith vs. TYAD Inc.* But beginning in 2003, dancers were required to pay a fee to "rent" the stage and a dressing room.

The dancers kept all the tips and dance fees, but on some nights they didn't earn enough to cover the stage fee they were charged.

A four-judge panel of the Montana court ruled the dancers were employees.

The stage fees were "impermissible kickbacks as well as unreasonable withholdings or deductions from the income earned by the dancers," said the court. Not only did the lounge fail to pay the dancers earned wages, "it demanded payment for providing essential elements of employment to the dancers, i.e., a stage and a dressing room," the panel said in the ruling, which affirmed an award of \$27,000 in wages plus penalties to four dancers.

Airline says pilots wanted to be richer, not poorer

Nine Continental Airlines pilots who apparently thought their pensions were in jeopardy allegedly decided to ditch their wedding vows—sort of.

Houston-based Continental filed a lawsuit in federal court May 20, alleging the pilots and their spouses faked divorces so they could collect the pilots' pensions before retirement. Continental claims the divorces were shams and that the pilots and their families continued to live together.

Once a state court approved the divorces, the pilots signed court-issued documents giving their ex-spouses all rights to a pilots-only pension, according to the Houston Chronicle. The spouses provided Continental with paperwork showing the divorces had been made final and then requested a lump-sum payment worth up to \$900,000 per participant.

Continental said the pilots remarried their spouses after receiving their money, which totaled \$10 million to \$11 million, according to news reports.

Since then, Continental has fired or accepted the resignations of eight pilots, according to reports. One pilot signed a restitution agreement and was reinstated as an employee but has not yet repaid the money, according to the Chronicle.

According to the suit, Continental said the pilots may have been afraid of losing part of their pensions due to the airline industry's financial struggles.



Mighty mouse attempts to save Virginians from storms, taxes

When the Virginia Tax Department needed to draw attention to a sales tax holiday on hurricane preparedness-related items, it turned to viral video and a superhero of sorts.

In a YouTube video at www.youtube.com/watch?v=g12C6Sll0ss, department "spokemouse" Phil Mousepower urges residents to prepare for the hurricane season by stocking up on emergency supplies that the state temporarily exempted from its

5% sales tax between May 25 and May 31.

The video opens with "Star Wars"-style credits as Phil, seated in shopping cart, cruises down the aisles at a hardware store to stock up on supplies—including a first-aid kit, lantern, batteries and duct tape—before heading home to his cozy mouse house. As a hurricane bears down on Virginia, Phil is sitting in a rocking chair, calmly reading and waiting for the storm's arrival.

A R C T I C O C E A N

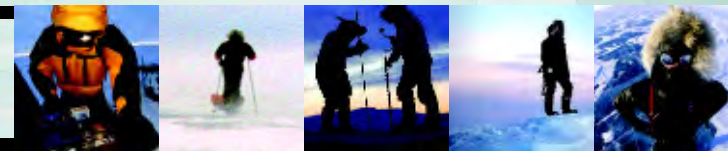
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