

XL BUYS BACKUP COVERAGE FROM BERKSHIRE HATHAWAY FOR SOME D&O POLICIES / PAGE 4

APIW HONORS JANICE TOMLINSON OF CHUBB / PAGE 4

RISK MANAGERS WELCOME AMLIN DEAL TO ACQUIRE DUTCH INSURER / PAGE 6



In Brief

Hartford to raise funds; CEO Ayer will retire

Hartford Financial Services Group Inc. said it plans to raise up to \$750 million by periodically selling shares of its common stock. The insurer also formally announced it would receive \$3.4 billion from the U.S. Treasury Department's Capital Purchase Program under the Troubled Asset Relief Program. Hartford received preliminary approval to accept the funds last month. Meanwhile, Hartford Chairman and Chief Executive Officer Ramani Ayer has said he plans to retire by the end of the year. A replacement has not been named.

Transatlantic share sale earns \$1.14 billion for AIG

American International Group Inc. said last week it has closed its public offering of 29.9 million shares of Transatlantic Holdings Inc. common stock that is owned by AIG and its indirect subsidiary American Home Assurance Co. AIG said that the offering of the reinsurer's shares generated gross proceeds of \$1.14 billion.

Longtime RRG goes into runoff

One of the first risk retention groups formed under the federal Liability Risk Retention Act of 1986 is voluntarily running off its business. Largely due to soft market conditions, the low-domiciled American Feed Industry Insurance Co. Risk Retention Group Inc.—licensed July 1, 1987—stopped renewing policies and writing new business at the start of this year. "It was really the end of a successful run and the ability to only offer general liability was a real challenge when carriers were able to offer commercial package

See **IN BRIEF** page 22

Momentum builds on health reform

Leaders in Congress press for early vote on system overhaul

By **JERRY GEISEL**

WASHINGTON—The drive to enact sweeping health care reform is about to kick into high gear.

This week, at least one congressional panel—the Senate Health, Education, Labor and Pensions Committee—is set to begin debating a reform bill, while other committees also are expected to begin deliberations soon.

If congressional leaders stick to their ambitious timetables, reform legislation could be ready for consideration by the full House and

Senate within about a month.

For employers, the risks and rewards posed by reform legislation are numerous.

More than likely, employers—except the smallest firms—would be required, in order to avoid financial penalties, to offer health care coverage to employees that met legislatively set standards. That could mean coverage might have to be extended to some employees, such as part-timers, who historically have been excluded from employer-sponsored plans.

It also could mean some rapidly growing plans—most notably high-deductible health insurance plans linked to health savings accounts—might not be generous enough to

See **HEALTH CARE** page 20



PUSH BEGINS

Key issues for employers in health care reform legislation

- Will employees be allowed to opt out of employer plans and into a public plan?
- Will employers be mandated to offer health care coverage, and what requirements will employers have to meet to prove they are offering acceptable coverage?
- Will employees be taxed on the value of employer-provided coverage?

AP PHOTO

A health care reform bill proposed by Sens. Edward Kennedy, D-Mass. (above), and Chris Dodd, D-Conn., is due to be taken up by a Senate committee this week. The 615-page bill says an employer mandate is "under discussion."



Brazilian Navy sailors pick up part of the wreckage of Air France Flight 447, which crashed in the Atlantic Ocean on June 1, killing all 228 on board.

REUTERS

Air France crash may drive up rates

Loss adds pressure to already firming aviation market

By **ZACK PHILLIPS**

The fatal June 1 crash of an Air France flight may cause further price increases in the aviation insurance market, although it is too early to say for sure, according to observers.

Air France Flight 447 disappeared from radar amid tumultuous weather about four hours into its flight

from Rio de Janeiro, Brazil, to Paris, killing 216 passengers and 12 crew members.

Paris-based AXA Corporate Solutions led the coverage, and London-based JLT Aerospace Inc. was the broker, market sources said.

Other insurers on the coverage include American International Group Inc., which had 12.5% of the coverage, though its net loss is capped at \$21 million, according to an AIG spokeswoman. Munich, Germany-based Allianz S.E. also participates on Air France's account,

See **CRASH** page 19

Shareholders vote down Max/IPC merger deal

Rejection opens door for Validus, other bidders

By **COLLEEN MCCARTHY**

HAMILTON, Bermuda—Shareholders of IPC Holdings Ltd. last week voted against a planned merger with Max Capital Group Ltd., bucking management's recommendation and opening up the possibility of a hostile takeover by rival bidder Validus Holdings Ltd.

The proposed \$912 million merger agreement between IPC and Max had board approval from both Bermuda-based insurers, who each

had urged shareholders to vote in favor of the combination.

"We have heard the message sent by IPC shareholders regarding the Max transaction," Kenneth L. Hammond, IPC chairman, said in a statement last Friday.

Now, "consistent with our fiduciary duties, the board will review all strategic alternatives to maximize shareholder value, including sale of the company and, as part of

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A new video in *Business Insurance's* Issues in Risk Management series explores cyberliability risks and coverage available to address them. Go to



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COBRA Q&A

More COBRA questions answered in updated FAQ

Business Insurance Editor-at-Large Jerry Geisel answers more questions about the new federal law that provides a subsidy of COBRA health insurance premiums to involuntarily terminated employees. The online COBRA package includes a newly updated Q&A section. www.BusinessInsurance.com/COBRA-FAQ.

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Mixed opinions on XL/Berkshire agreement

Berkshire unit to back XL's Side A D&O liability policies

By ROBERTO CENICEROS

HAMILTON, Bermuda—XL Capital Ltd.'s announcement last week that Berkshire Hathaway Inc. will back its insurance policies protecting corporate boards and executives could fuel further doubts about XL's financial strength, some observers believe.

Others, however, said the agreement between XL and Berkshire's National Indemnity Co. could make XL's Side A directors and officers liability policies more attractive to corporate board members whose personal assets are protected by the coverage.

Under the agreement, National Indemnity Co. will issue endorse-

\$250M

XL will pay National Indemnity as much as \$250 million and must meet certain obligations, such as establishing a trust to hold premiums it collects from D&O liability policies backed by National Indemnity. XL also must provide a letter of credit to back the security trust.

ments guaranteeing Side A D&O policies underwritten by XL Specialty Insurance Co.

The endorsements would entitle policyholders who choose to purchase them the right to present claims directly to National Indem-

nity if "XL Specialty is unable to meet its obligation due to an order of insolvency, liquidation or an injunction that prohibits XL Specialty from paying claims," according to a June 9 8-K filing with the U.S. Securities and Exchange Commission.

In a press statement announcing the agreement, XL said the arrangement combines the two insurers' collective strengths for "enhanced" coverage that "addresses both client and broker need for a program that offers the utmost protection to directors and officers."

The arrangement could help convince company board members that XL's protection is solid and help the insurer retain customers, said a risk manager for a Fortune 500 company who asked not to be named.

But, depending on the endorsement's cost, purchasing it could prove challenging given economic

conditions, the risk manager added. National Indemnity is rated A++ by Oldwick, N.J.-based A.M. Best Co. Inc., while XL Specialty is rated A.

Only one other Side A D&O liability insurer maintains a rating equal to that of National Indemnity, said Ann Longmore, directors and officers liability product leader for Willis Group Holdings Ltd. in New York. And more than any other coverage, buyers pay attention to Side A D&O liability insurer ratings because the coverage provides personal protection for board members.

"So this kind of offering by XL...does away with uncertainty and with that A++ from A.M. Best, it brings them up to Chubb, which has the highest rating from A.M. Best in the industry," Ms. Longmore said. "That has to be good for those

See **XL** page 19

Insurance reform delay not so bad: Observers

Congress' focus on health care reform may mean it can deliberate more thoughtfully

By MARK A. HOFMANN

WASHINGTON—Even though health care reform has emerged as Congress' No. 1 issue over the near term, advocates of insurance regulatory reform aren't overly concerned that their issues will languish on the legislative back burner for long.

In fact, some observers say the delay could be a welcome development, increasing the possibility that targeted reforms will become reality in this Congress. However, there is an unknown factor in the Obama administration's proposed financial services regulatory reform plan, which the administration expects

to unveil this week. The measure is expected to address systemic risk in the financial services sector.

As risk managers gathered at the Risk & Insurance Management Society Inc.'s annual RIMS on the Hill legislative conference in Washington last week, RIMS President Joseph A. Restoule, who also is leader, risk management for NOVA Chemicals Corp. in Calgary, Canada, called the possibility Congress would include an item from RIMS' legislative agenda "exciting." RIMS members discussed four legislative issues during their visit to Capitol Hill offices—support for an optional federal charter for insurers, the



AP PHOTO

Sen. Chris Dodd, D-Conn., the No. 2 Democrat on the Senate Health, Education, Labor and Pensions Committee, also is chairman of the Senate Banking, Housing and Urban Affairs Committee.

creation of an Office of Insurance Information at the federal level, and enactment of the Nonadmitted and Reinsurance Reform Act as well as opposition to the imposition of

new taxes on certain reinsurance transactions.

The chances that any of those

See **RIMS** page 18

Deadline July 2 to see 'best' workplaces

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. The deadline for registering is July 2.

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

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program recognizes those that have established high-quality workplaces, helping them to compete more effectively for talent.

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

Global firms consider additional cover for overseas execs

Local regulations, increase in lawsuits trigger change

By ZACK PHILLIPS

Risk managers for U.S.-based multinational companies with directors and officers in foreign countries increasingly are considering buying D&O liability insurance for individual countries, rather than relying on their global D&O liability policy, say brokers, risk managers and insurers.

The potential change is driven by a variety of factors, as foreign regulators have stiffened their enforcement of local tax and insurance laws and class action lawsuits—once

largely confined to the U.S.—have become more widespread overseas.

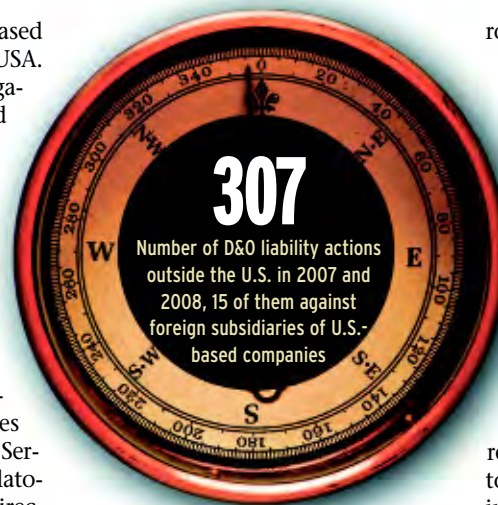
“Over the last few years, there’s been a very clear continuum, which has led U.S. risk managers to pay attention to this issue,” said John Burkhart, a Chicago-based vp and regional sales manager in the specialty risk center of Chubb Group of Insurance Cos.

In the past, U.S.-based corporations often bought single, global D&O liability policies that covered directors and officers worldwide. Over the past few years, however, as more D&O losses have occurred elsewhere in the world and a variety of other trends have affected global corporations, many risk managers are rethinking their strategies, observers say.

“This is really just starting,” said

Carol Zacharias, New York-based counsel and senior vp at ACE USA. “We saw the beginning of litigation where lawsuits were filed against non-U.S. companies. Now we’re starting to see some litigation against subsidiaries of U.S.-based multinational companies.”

There were 307 D&O liability actions outside the U.S. in 2007 and 2008, 15 of them against foreign subsidiaries of U.S.-based companies, according to Aon Financial Services Group, a division of Aon Risk Services. There have been 100 regulatory or criminal actions against directors and officers outside the U.S. so far this year, according to Lee Lindsay, a Denver-based senior vp at Aon.



Observers say the financial crisis could exacerbate these trends, as regulators increase scrutiny of firms to

root out fraud and generate revenue. “That leads people to believe that the door is opening up to traditionally U.S.-style class action suits (overseas),” said Steve Whelan, a New York-based senior regional executive for executive liability at AIU Holdings Inc. “Outside the U.S...regulators and law firms have gotten a lot more active.”

Observers say another catalyst was a 2001 ruling by the European Union’s Court of Justice requiring multinational companies to pay premium tax in all countries in which they operated subsidiaries, even if the firm bought a single, global D&O policy and did not

See **D&O** page 22

APIW honors Chubb leader as role model for women

Janice Tomlinson named ‘Insurance Woman of the Year’

By COLLEEN MCCARTHY

NEW YORK—During a 35-year career at Chubb Corp., Janice Tomlinson has mastered climbing the corporate ladder, but she’s also played a critical role in shaping the insurer into a place where other women can follow her lead.

Ms. Tomlinson, executive vp and international field operations manager for the Warren, N.J.-based Chubb Group of Insurance Cos., said she rose to a top position in the industry by seeking roles that included management responsibility, successfully growing several Chubb branches and key business units, and building strong relationships with colleagues and clients. Along the way, she also has significantly boosted female representation at Chubb’s manager and officer levels worldwide.

“The biggest contribution women make to the insurance industry is diversity of thought. Women bring to the table the opportunity to look at things in a different way,” Ms. Tomlinson said.

Ms. Tomlinson’s career achievements and her commitment to supporting and advancing women are key reasons why she was selected as the Insurance Woman of the Year



Janice Tomlinson, executive vp and international field operations manager, rose through the ranks at Chubb.

by the Assn. of Professional Insurance Women.

“She has been successful in getting Chubb to buy into the idea that diversity will improve their bottom line,” said Maryanne Sherman, immediate past president of the New York-based APIW and chair of the award nominating committee. As a result, “she actually changed the face of a corporation,” said Ms. Sherman,

who is president of Sherman Think Tank, a communications firm in Lawrenceville, N.J.

Ms. Tomlinson is the 33rd recipient of the annual award from the APIW, an organization devoted to the advancement of professional women in the insurance industry. She will be honored at a June 17 ceremony at the Marriott Marquis in New York.

Her career at Chubb started in 1973, when she joined the insurer as a commercial underwriter. In 1986, Ms. Tomlinson was selected as Chubb’s first female managing director, and she remains among its highest-ranking women. Because her career path has been so diverse—with roles ranging from branch manager to head of human resources—Ms. Tomlinson jokes that “she’s had several different

See **TOMLINSON** page 21

U.K. mutual insurer goes into runoff

Appeals court rules local governments can’t join mutuals

By STUART COLLINS

LONDON—London Authorities Mutual Ltd., the United Kingdom’s only mutual insurer for local governments, has gone into runoff after an appeals court ruled its members can’t participate in such a venture under current law.

Lobbying efforts under way to change the law could resurrect LAML, but the appeals court ruling precludes U.K. public sector bodies from taking part in risk retention groups for now, experts say.

Interest in public sector mutual insurers was revived in 2007 with the launch of LAML—the first local

government mutual insurer to be established in the U.K. for more than 100 years—and the creation of the Fire & Rescue Mutual Ltd.

But one insurance provider, concerned insurers would be excluded from the public sector market, challenged the use of such mutual insurers and began legal proceedings in May 2008.

Risk Management Partners—a London-based managing general agency owned by Itasca, Ill.-based Arthur J. Gallagher & Co.—brought two complaints against the London Borough of Brent, with LAML joining as an interested party. The complaint challenged whether Brent, under its statutory powers, had the right to set up and participate in the mutual insurer and whether it should have followed European rules that require public sector entities to put large procurement contracts out to bid.

The U.K. High Court ruled in favor of RMP, and the Court of Appeal in London last week upheld that decision.

The case could go on to further appeals in the House of Lords or even the European Courts of Justice. But on the basis of the Court of Appeal judgment, public sector mutual insurers such as LAML no longer are viable, said Jolyon Patten, partner at the London office of Sedgwick Deter Moran & Arnold L.L.P., the law firm that represented RMP.

“In its judgment, the Court of Appeal said that LAML was a ‘speculative’ venture, and that by opening itself up to very substantial liabilities of other local authorities, Brent’s participation in such a mutual insurance company went beyond government’s intentions”

See **MUTUAL** page 22

Maryland regulator set to consider compulsory broker pay disclosure

New York still mulling similar move one year after public hearings

By SALLY ROBERTS

BALTIMORE—Maryland Insurance Commissioner Ralph S. Tyler last week said he is considering mandating producer compensation disclosure in the state and soon will invite interested parties to discuss the issue with him.

The move comes nearly one year after New York Insurance Superintendent Eric Dinallo and New York Attorney General Andrew Cuomo held three separate hearings on producer compensation issues, including disclosure requirements.



RON SACHS/CNP
New York Insurance Superintendent Eric Dinallo (above) and New York Attorney General Andrew Cuomo held three separate hearings in 2008 on producer compensation issues.

Six months later, Mr. Dinallo issued proposed regulations that

would require all producers doing business in New York to provide written disclosure to clients of all compensation received in a transaction, including contingent commissions, credits, loans, vacations and gifts from insurers.

The proposed rules, which would not apply to reinsurance, captive and wholesale transactions, drew mixed reactions from the industry (*BI*, Feb. 9) and have yet to be formally published.

A spokesman for the New York State Insurance Department last week said the revised rules still are “in process.”

Mr. Tyler said Maryland’s insurance department is not waiting to see what New York is going to do

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IRS issues more guidance on COBRA premium subsidies

Elected officials, military reservists qualify for payments

By JERRY GEISEL

WASHINGTON—New guidance from the Internal Revenue Service answers more questions that have been raised about the federal COBRA premium subsidy.

Under that subsidy, included as part of a broader economic stimulus bill President Obama signed in

February, the federal government pays 65% of COBRA premiums for employees who were involuntarily terminated from Sept. 1, 2008, through Dec. 31, 2009. The subsidy is available for up to nine months.

While the IRS resolved major questions employers and others raised about eligibility for the subsidy in prior guidance, new questions keep popping up. The IRS is answering the additional questions through periodic additions to its guidance.

In all, the guidance “has been very practical and very useful,” said

Andy Anderson, of counsel with Morgan, Lewis & Bockius L.L.P. in Chicago.

For example, employees who are hired for only a limited period of time, such as a teacher hired for only one year, would be eligible for the subsidy, the IRS said.

In addition, employees called up from the reserves for active military service would be considered to have been involuntarily terminated and thus eligible for the subsidy, assuming they opt for COBRA.

“This is the case regardless of whether the civilian employer treats

the employee’s absence as a termination of employment or a leave of absence,” the IRS said.

Even elected officials who lose in their bid for re-election or couldn’t run for re-election because of term limits are entitled to the 65% subsidy, the IRS said.

“It is obvious that the IRS is trying to make the subsidy as widely available as possible,” said Anne Waidmann, a principal with PricewaterhouseCoopers L.L.P. in Washington.

Still, the latest guidance makes clear that there are situations where involuntarily terminated employees

would not be eligible for the subsidy. For example, the subsidy would not apply for former employees who tap balances remaining in health reimbursement arrangements to pay for their 35% share of the COBRA premium.

“COBRA premiums paid on a pre-tax basis from an HRA are treated as paid by the employer and are not taken into account in determining whether an individual has paid his or her 35% share of the premium. Therefore, the individual is not treated as paying the 35% and the subsidy does not apply,” the IRS said.

Proposed Amlin/Fortis acquisition welcomed

Move will help Fortis grow: Risk managers

By ADRIAN LADBURY

AMSTELVEEN, Netherlands—Dutch risk managers last week welcomed the proposed acquisition of Fortis Corporate Insurance N.V. by London-based Amlin P.L.C.

The move will strengthen Amstelveen, Netherlands-based Fortis, which has a significant share of the commercial insurance market in the Netherlands, and allow the insurer to grow its capabilities to serve global companies, they say.

“This is very good news for the market,” said Peter Den Dekker, corporate insurance risk manager with Naarden, Netherlands-based aerospace and technical services firm Stork B.V. and outgoing president of the Netherlands Assn. of Risk & Insurance Managers, which held its annual conference last week.

“Amlin is a very stable and well-managed company, and FCI will no longer be wrapped up into a bigger organization not focused on insurance,” he said.

Amlin announced June 3 that it will pay €350 million (\$488.8 million) to acquire state-owned Fortis. The Netherlands nationalized the insurer last October when the government took over the Dutch entities of financial services giant Fortis S.A./N.V., which suffered severe losses as a result of the financial crisis.

The Fortis insurance units have reported deteriorating results during the past year. Fortis wrote gross written premiums of €763 million (\$1.06 billion) in 2008, broken down into 63% in the Netherlands, 36% in Belgium and 1% in France. In 2006 and 2007 it reported profits with combined ratios of 90% and 94%, respectively. But in 2008 it reported a net loss of €31 million

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Business Insurance OPINIONS

Employers need to be involved with reform

THE RUBBER IS about to hit the road in the drive to enact health care reform legislation.

At least one congressional committee this week will begin debating and soon will vote on a health care reform bill.

If the process seems fast, that's because it is. By comparison, in 1993, the last time an administration and Congress were serious about health care reform, the first measure—put together by a presidential task force headed by then First Lady Hillary Clinton—didn't emerge until September of that year. Congressional committees didn't start to consider the bill until the next year. Ultimately, legislators junked the bill, but couldn't reach an agreement on one to replace it.

All our instincts tell us this time will be different. Unlike in 1993, Congress and the administration are working closely to win passage of legislation. The likelihood of passage also is greatly increased with a Democrat in the White House and with Democrats in control of both branches of Congress.

That presents employers with a dilemma. Clearly, there are going to be provisions, like a mandate that employers must provide coverage meeting certain standards or pay some kind of fee or tax, in the legislation they vehemently dislike.

In light of that, some employers may feel the best course of action is to fight the legislation. But the risk of that approach is employers would lose their ability to influence legislators. But by negotiating, some employers may feel they might increase the chances of legislation they oppose of winning passage.

Employers are in a tough position. Our strong suggestion is to stay involved. Legislators will have little incentive to listen to the concerns of employers if they know employers have no interest in working with them to improve the reform legislation.

Reform of the nation's health care delivery and financing system is too important for the business community to stay on the sidelines.

Employers are in a tough position. Our strong suggestion is to stay involved.

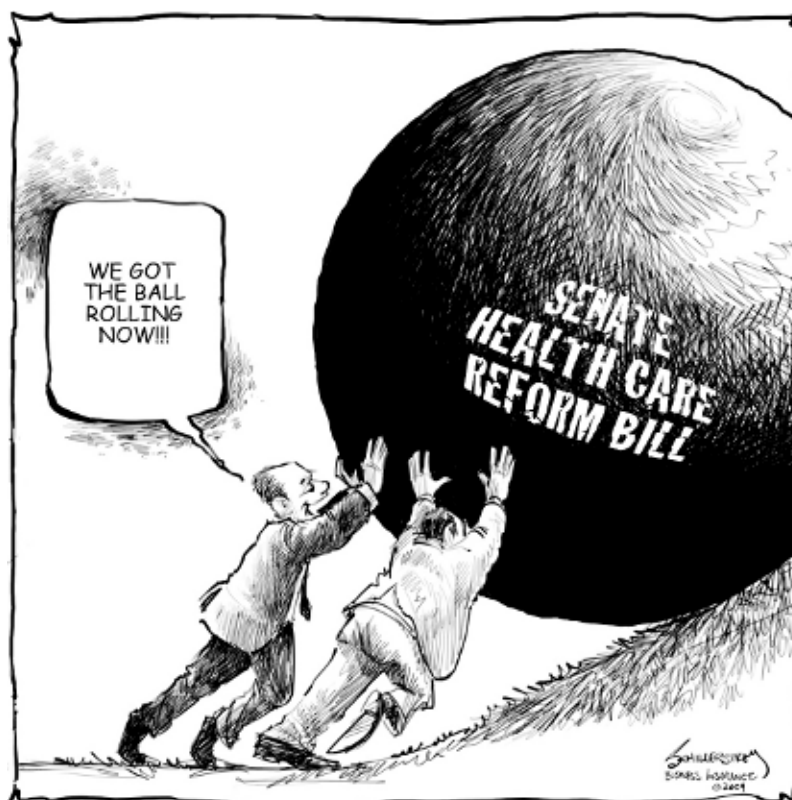
Patience is a virtue for health reform advocates

THE DECISION OF Senate leaders to devote their energies to health care reform for the next few weeks means many other critical issues, notably financial services regulatory reform, will be put on hold in that chamber. While delay on regulatory reform is somewhat disappointing, particularly given the probability that the Obama administration will unveil its financial regulatory reform proposals this week, the focus on health care reform is understandable.

It certainly is no reason for advocates of insurance regulatory reforms, such as creating an Office of Insurance Information and streamlining access to the nonadmitted marketplace, to panic.

The House will continue to consider insurance reforms as the Senate deliberates health care reform issues. In fact, a House Financial Services subcommittee is slated to hold a hearing on systemic risk and insurance this week, and consideration of the insurance information office is likely to be relatively soon as well. The Non-admitted and Reinsurance Reform Act already has won the support of the full House in the past two Congresses, and there's no reason to fear its latest incarnation won't receive the same support this time, and probably sooner rather than later.

While we'd prefer to see such necessary reforms moved on quickly in both houses, in this case patience can be reform advocates' only response. This Congress still has a long time to go—more than long enough to approve insurance regulatory reforms before it recesses for a final time next year.



WRITE

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THIS WEEK'S RESULTS

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



Yes
34%

No
65%

NEXT WEEK'S QUESTION

Q: What effect would a government-run health plan have on the health care system?

LETTERS

Put risk reduction in health reform

TO THE EDITOR: As Congress rolls up its sleeves to tackle health care reform, it would be a shame if it failed to include a risk reduction component as part of its recommended reform package.

One only has to look at the North Carolina League of Municipalities' innovative approach to health promotion (*BI*, May 18) to realize that improved lifestyle may be the most significant factor in reining in stampering medical costs.

G. Gregory Tooker, CPCU
President and Principal Consultant
Risk Probe Inc.
Wrentham, Mass.

PERSPECTIVES

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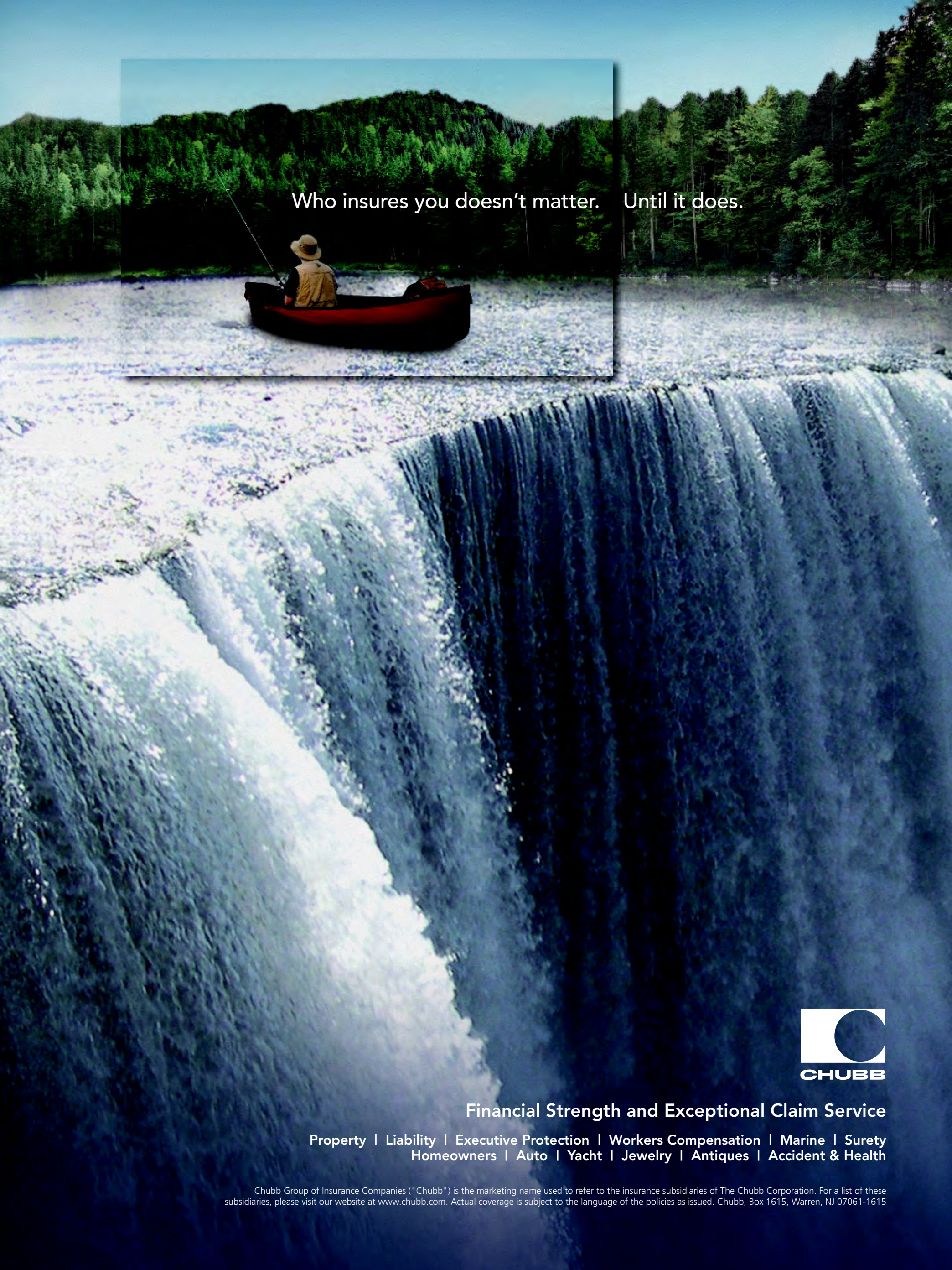
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Commentary

Retail health clinics may be a passing fad

As Joni Mitchell once sang, "You don't know what you've got till it's gone."

I finally got the chance to visit a retail clinic in a neighborhood grocery store and now I'm learning they may be nothing more than a passing fad.

Even though I've been reporting on the growth of the retail clinic market for several years, they've only recently begun sprouting here in Colorado. So when my 19-year-old niece, who has been staying with me, fell ill on a weekend, I jumped at the chance to take her to the Little Clinic, which had just opened in nearby Wheat Ridge.

The Little Clinic is the third-largest U.S. retail clinic vendor, with 96 locations in nine states. The market leaders are Minute-Clinic, which is owned by CVS Corp. and operates 461 clinics in 24 states, and TakeCare, a unit of Walgreen Co. that has 343 clinics in 18 states.

Although this market had been growing rapidly, the expansion slowed last year, and some industry observers say the deceleration may be a sign of a market contraction.

The June issue of *Merchant Medicine News*, an online newsletter that covers the retail clinic market, reported retail clinic vendors are disappointed with their financial performance and, in many cases, are closing them. Altogether, 1,111 retail clinics are operating today, compared with 1,118 in May. Since Jan. 1, 64 retail clinics have been shuttered.

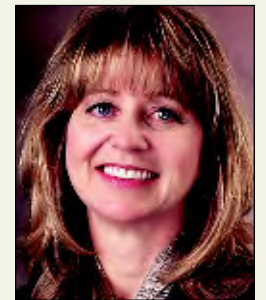
The nurse practitioner at the Little Clinic we visited said she only recently started working there after the previous clinic where she worked closed.

Did they pull the plug too soon? It depends on whom you ask.

Proponents of retail clinics describe them as a "disruptive innovation" that provides a simpler and more affordable alternative to expensive urgent care centers, hospital emergency rooms and many doctors' offices.

The Little Clinic we visited was basically a large cubicle with four walls and a locking door, but no ceiling. Inside, however, it had all the basic medical accoutrements—an examination table, a sink, vials of cotton swabs and tongue depressors, and a desk. Before the exam, we sat in a rudimentary "waiting room" of three straight-back chairs and a folding table situated adjacent to the store pharmacy and across the aisle from cosmetics.

But the exam itself was no dif-



**JOANNE
WOJCIC**

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ferent than a more expensive venue except that it lasted longer—a lot longer. After taking a throat and nasal culture to test for strep and influenza, the nurse spent considerable time describing the possible causes of my niece's illness and alternate cures, the majority of which focused on home care rather than prescription medications. Altogether, the examination and consultation took nearly 45 minutes, compared with the stan-

Did they pull the plug too soon? It depends on whom you ask.

dard doctor's office visit of about 10 minutes.

When I asked my niece her impressions, she said she couldn't recall ever spending that much time in any other doctor's office, and that none had ever explained things so thoroughly. As for the convenience, she said she was happy she didn't have to wait until Monday to see her regular doctor and that the clinic accepted her insurance.

Ay, there's the rub.

Although some experts believe the retail clinic industry wouldn't have gotten as big as quickly had it not been for insurance reimbursement, critics say retail clinics are losing their competitive edge by becoming part of insurer preferred provider networks. They say if retail clinics had remained non-network providers and operated on a cash-only basis, they could charge less, provide more services, and create real competition.

All this may be moot, however, depending on what form of health reform is enacted. Sources close to the debate say lawmakers haven't even considered a role for retail clinics. But I believe clinics could increase access to primary care while keeping health care costs in check.

New law on Medicare reporting is manageable: Attorney

By **DAVE LENCKUS**

DALLAS—A new federal statute that requires self-insured employers and insurers to guarantee Medicare is not the primary insurer for third-party liability claimants and injured workers will be challenging for defendants but is manageable, according to an attorney.

"It's not as dangerous and scary as some people would have you believe," workers compensation attorney Timothy C. Gaarder told risk managers during a session at the Public Risk Management Assn.'s 30th Annual Conference, held in Dallas on May 31-June 3.

The law—the Medicare, Medicaid and SCHIP Extension Act of 2007—requires all self-insurers and insurers with general liability, workers compensation and no-fault exposures to determine whether claimants against them are eligible for any of the three federal and state-administered health insurance programs. Medicare provides health care insurance to the elderly, those on Social Security disability for at least two years, and peo-

'They've given us a big break timewise to get our protocols...up to speed.'

Timothy C. Gaarder,
McAnany, Van Cleave & Phillips P.A.

ple with permanent kidney failure; Medicaid covers the poor; and SCHIP—the State Children's Health Insurance Program—covers uninsured children in low-income families who are ineligible for Medicaid.

If a claimant is eligible for one of the programs, then a self-insurer or insurer that is paying general liability, workers comp or no-fault insurance damages to the claimant must notify the program to ensure that it does not serve as the primary insurer in that case.

The new MMSEA classifies self-insurers and insurers as "required reporting entities" and establishes the conditions under which self-insurers, insured defendants and insurance companies become RREs.

Existing law already establishes that Medicare and Medicaid are secondary payers when claimants are eligible for group health benefits, so the PRIMA session did not cover that situation. The session also focused on RREs' responsibilities for Medicare recipients.

Determining a claimant's Medicare eligibility can be challenging, according to experts, and failing to properly notify the program carries a \$1,000 a day penalty under the new law.

The federal government, however, has delayed enactment of the MMSEA to Jan. 1, 2010; the new law had been set to become effective next month.

"So they've given us a big break timewise to get our protocols and systems up to speed," said Mr. Gaarder, an associate attorney at McAnany, Van Cleave & Phillips

P.A. in Kansas City, Kan.

One headache for RREs will be determining who is a Medicare beneficiary, because a claimant's Social Security number is needed to verify Medicare eligibility. Claimants are not obligated to inform RREs that they receive Medicare benefits or provide their Social Security numbers, Mr. Gaarder noted.

Companies that register as RREs with the Centers for Medicare & Medicaid Services, the federal agency that administers those two programs as well as SCHIP, will have access to a Web-based tool the fed-

eral agency plans to offer later this year to help RREs determine whether a claimant is a Medicare beneficiary, Mr. Gaarder said. But the RRE must have the claimant's Social Security number, he noted.

If Medicare already has made a payment to a claimant for which the RRE is liable, then the program must be reimbursed. The MMSEA establishes a 60-day deadline, after which RREs are subject to a penalty equal to double the payment they owe. But Mr. Gaarder said RREs must begin, not complete, their reimbursement process during that period.

A complicating factor for RREs, however, is the treatment statements they will receive from the CMS, Mr. Gaarder said. In that statement, which accompanies the conditional payment lien the CMS places against an RRE to establish its obligation as the primary insurer for a workers comp claimant, the federal agency lists all of the payments Medicare has made to the claimant without identifying which payments are the RRE's responsibility.

"That's a problem," he said.

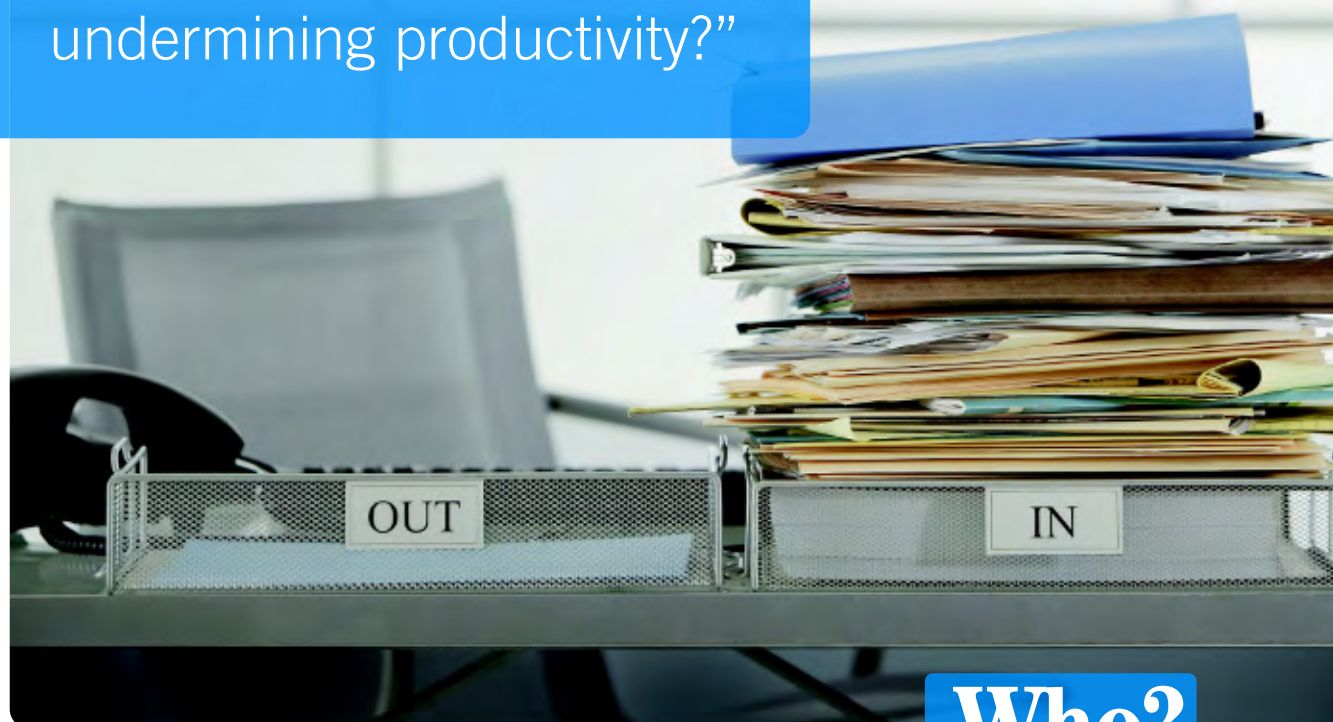
Another problem with the conditional payment lien is that it raises

"huge liability issues" for the RRE that already has settled the claim for a smaller amount, Mr. Gaarder said.

The MMSEA considers a settlement of a claim as an admission of liability, which means the RRE would be responsible for reimbursing the CMS for amounts that exceed the settlement, Mr. Gaarder said. Unclear is whether the settlement and CMS letter would be subject to state laws that shield defendants from liability for unauthorized medical treatments, he said.

See **MEDICARE** page 15

"Who can help us keep absenteeism from undermining productivity?"



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Onsite health clinics can cut, rather than control, costs

Expert panelist says risk managers must cut medical spending

By **DAVE LENCKUS**

DALLAS—Onsite health clinics can deliver such significant savings on workers compensation and group health medical spending that employers can use them to cut costs rather than simply keep costs under control, a panel of experts said.

"There's money to be saved and

losses to be reduced with a clinic," said Joey Page, who persuaded city officials in Plano, Texas, to open an occupational health care clinic and occupational wellness program when he was the city's risk manager.

Mr. Page, a risk manager of another city with a health care clinic for employees and their families and an official with a company that provides turnkey clinics discussed the facilities at the Public Risk Management Assn.'s 30th Annual Conference, held in Dallas on May 31-June 3.

Referring to the debate in Washington on health reform and cover-

ing the uninsured, risk manager Darrell Wells said: "Everyone's making this too hard. This is easy."

Mr. Wells, director of risk management for Odessa, Texas, said the city's health care costs have dropped annually and that it has saved millions of dollars overall since opening a health care clinic for its employees and their families about seven years ago.

The clinic is the centerpiece of the city's Family Health Project. The project also offers city employees and their families the use of a fitness center, a wellness program and

health care premiums of a little more than \$300 annually for family coverage; individual and individual and spousal-only coverage is free.

Mr. Wells stressed that risk managers cannot be satisfied with controlling and managing medical costs.

"What we need to do is cut them," he said. "You not only can do that, it's what you're going to have to do."

Otherwise, employers—especially municipalities—eventually will find their medical costs consuming their entire annual revenue stream, he

said. With medical care cost inflation in double digits and revenues flat or falling, there is no other ultimate outcome, he said.

In Plano, the city's onsite clinic sharply cut the city's cost for injured workers' case management and physical therapy, because the clinic's salaried medical personnel assumed responsibility for providing those services in many cases, said Mr. Page, who recently retired as Plano's risk manager.

"That's what a third party makes a lot of money on," said Mr. Page, now president of consulting firm Essential Risk Solutions L.L.C. of Allen, Texas. But the city clinic's physician's assistant and nurse "have no motivation to keep injured employees coming back and forth" even after the employees have fully recovered, because the medical personnel's compensation is not linked to the number of physical therapy sessions they conduct, he said.

The clinic also saves Plano significant sums by administering various types of inoculations to police, fire, animal control and other at-risk personnel, he said.

For example, a rabies shot would cost the city \$1,500 at an offsite

'We can do any test you can think of' which would be 'a lot more expensive if we sent it out.'

Darrell Wells, director of risk management for Odessa, Texas

clinic. The city's onsite clinic can administer the shot at its cost of \$400, Mr. Page said.

A major element of a clinic's success is providing as many services as possible to encourage high utilization, the panelists said.

"We have a lot of labs and machines to test for problems such as diabetes and hypertension," which the Odessa clinic's medical staff then treats, Mr. Wells said. "We can do any test you can think of," which would be "a lot more expensive if we sent it out," he said.

That level of service benefits employers and workers, said Ed McNamara, a Reston, Va.-based regional sales manager for turnkey clinic provider Comprehensive Health Services Inc.

Mr. McNamara said studies show diabetes and cardiovascular disease account for about 25% of health care costs even though they are preventable diseases.

Part of the reason those diseases account for such a large percentage of employers' costs is that one-third to one-half of employees do not have primary care physicians, who would test for the diseases and provide early treatment, he said.

Onsite clinics would not replace employers' wellness programs, however, he said. Instead, clinics would help increase employee utilization of the programs, he said.

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The reality is that while many employees will come out ahead with consumer-driven health plans, some may have out-of-pocket expenses that exceed the premium savings and the reimbursement account – particularly if they have chronic conditions.

Keys to success.

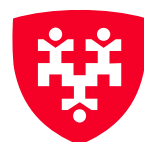
If your clients are comfortable with the idea that the majority of employees will benefit, they should consider the keys to success we at Harvard Pilgrim experienced firsthand, and found to be essential:

- **A three-to-five-year plan.** Turning employees into engaged health care consumers takes time. Start with small steps and gradually expand.
- **Commitment from company leadership.** Employees will be more likely to buy into the idea of consumer-driven health plans if senior leaders take part as well.
- **Employee and family education and communication.** These must be strong from the outset and continue as employees use and experience consumer-driven plans.
- **Wellness programs.** Keep your employees and families healthier, and show them that you're committed to their well-being.
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Understanding is key in school anti-violence programs

Child psychologist explains important group dynamics

By DAVE LENCKUS

DALLAS—School anti-violence programs will not succeed until administrators, teachers and counselors understand the “psychological underbelly” of the risks schools face, according to a child psychologist.

While educators believe they understand children, many are not

aware of children’s psychological drivers, said Steven Dranoff, president of D&D Industrial Consulting Inc. of Clifton, N.J.

As a result, educators’ own behavior in response to various situations can undermine their schools’ anti-violence programs, Mr. Dranoff warned school risk managers during a session at the Public Risk Management Assn.’s 30th Annual Conference, held in Dallas on May 31-June 3.

Numerous elementary schools, high schools and colleges across the country have implemented Mr. Dranoff’s anti-violence program,

“Respect,” which focuses on nurturing empathy among students. But Mr. Dranoff said he was not speaking to promote his program.

He maintained that no school anti-violence program will work if educators do not understand why children respond as they do in various situations.

Understanding these drivers in adolescents is particularly important, because middle school students are at an especially sensitive stage in their psychological development, according to Mr. Dranoff.

“Kids in adolescence just don’t

see things as we do as adults,” Mr. Dranoff said. “To dismiss this does kids a terrible disservice.”

Mr. Dranoff explained where adolescents are in their psychological development and the various roles adolescents assume in peer groups.

“We do things because there are reasons that drive us. Some are above the radar screen. Some are below,” Mr. Dranoff said.

To initiate change, “you have to help people understand what’s going on above and below the radar screen,” he said, referring to changing educators’ as well as adoles-

cents’ behavior.

Adolescents cannot anticipate and process information in the same way as adults, he said.

Mr. Dranoff said various areas of adolescents’ brains have not fully developed and will not until age 21 for females and age 30 for males. Those areas control emotions, the ability to refrain from engaging in problem-creating behavior, and information processing. In fact, the part of the brain that allows a person to hit “the brakes” on some behavior is “asleep” in adolescents, he said.

This development comes into play in social interactions among adolescents. Mr. Dranoff said educators must learn to recognize four prototypical roles among groups of adolescents:

- The instigator, who pushes the group to act, either for good or bad.
- The enabler, who is the brains of the group.
- The dupe, who gives up his or her own autonomy for the good of the group and often does the group’s dirty work.
- The hero, who is “on the hot seat to make a decision” about an action the group is contemplating but often has trouble making that decision.

Educators often cannot discern which role children assume in peer groups, Mr. Dranoff said.

‘We want kids to be the hero to make good decisions.’

Steven Dranoff,
D&D Industrial Consulting Inc.

In addition, educators often form incorrect perceptions of children, he said.

For example, he said, teachers often think that the hero in a peer group knows what he or she wants to do, even though the student often is ambivalent, he said.

Other research shows many administrators view instigators and dupes through “rose-colored glasses,” he said.

“That kind of risk puts the whole school at risk,” Mr. Dranoff warned.

Those incorrect perceptions become “real risk factors,” because they affect discipline, he said. Inappropriate discipline will hurt violence-prevention programs, he said.

“These are risk factors that can promote aggression, let alone reduce it,” he said.

“We want teachers and administrators to be sure who plays what role,” Mr. Dranoff said. “We want kids to be the hero to make good decisions.”

“Risk managers may ask what this has to do with me,” said another panelist and school consultant Dorothy Gjerdrum.

“It’s a terrific opportunity for risk managers to support the implementation of change in a school district,” said Ms. Gjerdrum, the St. Paul, Minn.-based executive director, public entity and scholastic division at Arthur J. Gallagher & Co. Inc.

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Medicare: New reporting law is manageable: Attorney

CONTINUED FROM PAGE 11

Mr. Gaarder advised risk managers to establish systems that would identify Medicare beneficiaries immediately and allow RREs to work out their obligation to CMS before settling with claimants.

The tradeoff, however, is that process could delay settlements with claimants, which could drive

up settlement costs.

The RRE instead could settle with the claimant first but include a settlement provision that requires the claimant to assume responsibility for future conditional payment liens and waive any right he or she might have to sue the RRE in the future over the issue.

If the Medicare beneficiary recovered damages through a general lia-

bility claim, however, CMS will pursue its recovery through the plaintiff's attorney, Mr. Gaarder noted.

Mike Greco, president of Corporate Claims Management Inc. of Chesterfield, Mo., also clarified the conditions under which self-insurers, insurers and even insured defendants are considered RREs. That is important, he said, because the MMSEA requires quarterly

reports from RREs on their payments to Medicare beneficiaries.

Self-insurers that pay claims are RREs, as are insured defendants that directly pay claims that fall within their deductibles. An insurer that pays a claimant also is an RRE, even when the insurer will be reimbursed by its policyholders for payments that fall within the policyholder's deductibles, Mr. Greco said.



PRIMA's 30th Annual Conference in Dallas attracted 890 attendees.

PRIMA names new public risk manager of year

The Public Risk Management Assn. introduced Craig MacDonald, director of risk management, claims and safety for the St. Louis-based Bi-State Development Agency of the Missouri-Illinois Metropolitan District, as the 2009 Public Risk Manager of the Year during PRIMA's 30th Annual Conference in Dallas on May 31-June 3.

Among other accomplishments, Mr. MacDonald reduced the Metro's workers compensation costs by nearly two-thirds over five years and was instrumental in persuading the Missouri Legislature to cap tort liability in auto- and property-related actions, according to PRIMA.

The association also honored several public entities for their achievements.

Prince William County of Prince William, Va., captured first place in the program category for its entry, SLIPS/TRIPS/FALLS-Make a Difference! The National Safety Month Challenge.

In the product category, the Texas Health and Human Services Commission in Austin was awarded first place for its Workplace Violence Awareness & Safety Program.

Among pools, the Michigan Municipal Risk Management Authority of Livonia, Mich., won for its Sudden Death in Custody Training Program.

PRIMA's conference attracted 890 attendees, a 29.2% drop compared with 2008, which association officials said they expected because of the economy.

But the number of exhibitors increased 16% to 115 this year, according to PRIMA.

PRIMA's next annual conference is scheduled for June 6-9, 2010, at the Marriott Orlando World Center Resort in Orlando, Fla.

More information is available at www.primacentral.org.

—Dave Lenckus

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The WTC Captive Insurance Company is seeking proposals for third party bill review services. The Captive is an independent, not-for-profit corporation, created by the City of New York, licensed by the New York State Insurance Department and domiciled in New York State. The Captive received slightly less than \$1 billion from the Federal Emergency Management Agency on December 3, 2004. The Captive is insuring the City and its contractors for claims arising from their FEMA funded work performed at the debris removal site.

The Request for Proposal solicits proposals from firms to provide the following services, among others:

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2. Provide physical and/or electronic payment recommendation letters to service staff that detail appropriate charges recommended for payment and any deductions consistent with general company guidance and insurance industry practice.
3. Provide written communication to service providers reflecting invoice payments and the basis for any deductions.

Please contact clasala@wtccaptive.com or jschoenbeck@wtccaptive.com to request a copy of the Request for Proposal. Proposals are due by Wednesday, July 1, 2009 at 12 noon.

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and

IN THE MATTER OF TRANSPORTATION
TRUCKING INSURANCE COMPANY, INC.

NOTICE IS HEREBY GIVEN that it is proposed that the above named company intends to discontinue in Bermuda as per Section 132(G) of the Companies Act 1981 and continue in the District of Columbia of the United States of America as if the Company had been incorporated under the laws of the District of Columbia of the United States of America.

Dated this 2nd day of June, 2009.

By Order of the Board
Rollis H. Anderson
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UP CLOSE

Comings
& Goings



DANA DRAGO

NEW JOB TITLE: Boston-based senior vp and general distribution manager for Liberty Mutual Insurance Co.'s Middle Market.

PREVIOUS POSITION: Boston-based vice chairman of Consumer and Business Banking for Providence-based Citizens Financial.

GOALS FOR NEW POSITION: Last January, Liberty Mutual established a new operating unit to serve the middle market—companies with annual cost of risk between \$150,000 and \$1.5 million—exclusively through independent agents and brokers. At that time, we eliminated our direct sales force and retired the Wausau brand, which had worked with insurance agents and brokers, in favor of the stronger Liberty Mutual brand. I was hired to manage distribution for that new unit, Liberty Mutual Middle Market. My overarching goal is to help our appointed agents and brokers grow their business. We'll do this by...building strong, deep and mutually beneficial partnerships with our current and new agents and brokers, providing a broad and competitive product set,

delivering responsive service from underwriting to loss prevention.

CHALLENGES FACING THE INDUSTRY: Middle market commercial brokers and buyers face two key challenges. The first is the worst economic downturn since the Great Depression. This is making cost containment even more important for buyers and brokers, who want to manage the total cost of their risk. The second challenge facing our industry is pricing. Despite all the fundamentals calling for hardening commercial insurance markets, we have not seen prices begin to tighten.

FIRST EXPERIENCE IN JOB MARKET: My first job was as an underwriter. While I examined credit, it taught me an important lesson that also serves me well in insurance. While underwriting models are critical, you also have to understand the individual characteristics of each risk when making a final decision.

OUTSIDE THE INDUSTRY, A DREAM JOB: I am so excited about building agent and broker distribution in the middle market that I really can't think of what I'd rather do.

Comings & Goings

ONLINE

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

TO SUBMIT ITEMS

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

Allison Martinat
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POSTING THIS WEEK

BROKERS:

- Lockton Cos. L.L.C.
- Heffernan Insurance Brokers
- IMA Financial Group Inc.

INSURERS:

- Liberty Mutual Group
- Catlin Group Ltd.
- Arch Insurance Group

REINSURANCE:

- DirectFac Inc.

OTHER PROVIDERS:

- Cozen O'Connor P.C.
- MIB Solutions Inc.
- Buck Consultants L.L.C.

Market Moves

Galileo purchased from insurance company

NEW YORK—The founders and principals of Galileo Weather Risk Management Advisors L.L.C. have purchased the company from the Hamilton, Bermuda-based White Mountains Insurance Group Ltd.

As part of the buyout, Galileo's founders have a deal with a new investor group to provide more transactional capacity and a fronting relationship with a "highly rated" insurance company, the firm said in a statement. The firm would not disclose the names of those companies.

New York-based Galileo was formed in 2005 and offers weather-linked financial products—risk management products with payouts linked to weather or its effect on commodity prices. This year, the company will introduce new products in the renewable energy sector, the firm said in the statement.

Hiscox USA expands with new office in Miami

MIAMI—Specialty insurer Hiscox USA has opened a new office in Miami.

The new office is intended to help the insurer expand its operations in the southeastern U.S., the firm said in a statement. The office is located at 801 Brickell Ave., 9th Floor, Suite 930, Miami, Fla. 33131, and can be reached at 305-371-0050.

The Miami office initially will offer three lines of coverage: allied healthcare for health care professionals; architects and engineers for design professionals; and miscellaneous errors and omissions for real estate agents, management consultants and other industries.

Apex Global Partners opens new Texas office

AUSTIN, Texas—Apex Global Partners Inc. has opened an office in Austin, Texas.

Dallas-based AGP offers broker-

age, risk management and employee benefits consulting. Joe Bittner is managing director of the firm's new employee benefits division in Austin, the firm said in a statement.

The new office is located at 7300 FM 2222, Building 1, Suite 210, Austin, Texas 78730.

Charles Taylor Aviation acquires ASG

LONDON—Consultant and adjuster Charles Taylor Aviation has acquired ASG (Aircraft Technical Services) Ltd., an asset management consultant, the firm said in a statement.

ASG manages aircraft leases for owners, lessors and financiers, inspects aircraft and maintenance records before and after leases, and

performs aircraft repossession services. The deal will help London-based Charles Taylor Adjusting Ltd., a subsidiary of Charles Taylor Consulting P.L.C., expand the services it offers to aviation insurers, owners and operators, the firm said in the statement.

Former Charles Taylor Adjusting chairman John McKay will be chairman of ASG and Jeff Solomon will continue as managing director of ASG.

RFIB Holdings establishes subsidiary in Bermuda

HAMILTON, Bermuda—RFIB Holdings Ltd. has established a subsidiary in Bermuda, the firm said in a statement.

RFIB, a Lloyd's of London insurance and reinsurance broker, appointed Nigel Clark as chief executive officer of RFIB (Bermuda) Ltd.

The move is part of a strategy to grow its specialty reinsurance business, the firm said in the statement.

Torus allowed to write surplus lines in 42 states

JERSEY CITY, N.J.—Torus Specialty Insurance Co. has received confirmation of its license to write property/casualty business in Delaware and A.M. Best Co. Inc. has affirmed its A- financial strength rating, the firm announced recently.

Torus now has authority to write surplus lines in 42 states, the company said in a statement.

The company initially focused on energy risks but now will write general property and construction business, in addition to onshore energy lines, the firm said in the statement.

Torus expects to offer new lines of business and open new offices in Atlanta, Chicago, Houston and on the West Coast by year-end.

TO SUBMIT ITEMS

BI's Market Moves column reports on activities by insurance industry companies and related entities. Please send news of Market Moves to Zack Phillips, 711 Third Ave., New York, N.Y. 10017 or e-mail zphillips@businessinsurance.com.

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RIMS: Insurance reform delay may not be so bad

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issues would receive swift action dimmed some last week when Senate Democratic leaders announced health care reform would be their priority during the next couple of months. One of the key players in that debate is Sen. Chris Dodd, D-Conn.—who, as the No. 2 Democrat on the Senate Health, Education, Labor and Pensions Committee, will be covering for the panel's ailing chairman, Sen. Edward Kennedy, D-Mass. But Sen. Dodd also is chairman of the Senate Banking, Housing and Urban Affairs Committee, the panel that has jurisdiction over insurance matters.

That effectively pushes Senate consideration of risk management-related issues to the side for the foreseeable future. But that doesn't worry industry observers, at least for the time being.

"I don't have a high degree of anxiety about it," said Joel Wood, senior vp of the Washington-based Council of Insurance Agents & Brokers.

"Health care will definitely push back financial restructuring," he said. "We know more today where the administration is leaning in the creation of a systemic risk regulator, which appears to be more of an overlay, but we don't have explicit indications from the administration." He said he remains "optimistic that progressive reforms will be attempted."

Mr. Wood said he remains hopeful that the House will be able to



RIMS President Joseph A. Restoule called the possibility Congress would include an item from RIMS' legislative agenda "exciting."

deal with the surplus lines reform and Office of Insurance Information bills, as well as a bill streamlining agent and broker licensing, before the August recess. "I don't assume that those three pieces of legislation are necessarily a part of the broad restructuring."

Ben McKay, senior vp in the Property Casualty Insurers Assn. of America's Washington office, also noted that the surplus lines bill had been approved by the full House twice and that the Office of Insurance Information bill enjoyed widespread support. "If you're a proponent of these bills, this gives them a chance to pass, whereas if you had systemic risk, you probably would have

crowded them out," he said.

Although the administration has made clear that health care is its priority, financial regulatory reform will not be ignored in the wake of the economic crisis, said J. Stephen Zielenzienski, senior vp and general counsel of the American Insurance Assn. in Washington.

But, "given the complexity of these issues and the desire to address reform in a comprehensive manner, it remains to be seen whether legislation will get through Congress by the end of this year," he said.

'Still a primary focus'

Financial services regulatory reform "is still a primary focus for the relevant committees on the Hill and we're expecting to see a draft proposal shortly on how the administration plans to solidify the U.S. financial services structure and address the regulatory gaps in the system," he said. "I could envision a scenario where a comprehensive bill is passed before the end of the year, but whether or not Congress is able to do that remains to be seen."

Congress likely will pass financial services reform legislation, said Jimi Grande, vp in the National Assn. of Mutual Insurance Cos.' Washington office. "The fact that they don't have same burning platform that they had five months ago just means that they can probably legislate at a more deliberative and thoughtful process."

"Trying to do it in the middle of the crisis is kind of hard. That's when you have the risks of overreaction in Washington," he said. "The fact that's slipped behind these other items means maybe they're more likely to get it right."

Renewal, changes likely on block exemption

By MICHAEL BRADFORD

BRUSSELS, Belgium—Europe's Block Exemption Regulation as it applies to insurance pooling arrangements likely will be renewed, but it appears the section allowing cooperation on standard policy conditions will be allowed to expire, insurance market representatives said after a European Commission hearing recently.

If that happens, insurance buyers likely would see coinsurance and reinsurance pooling arrangements thrive, though policyholders that need coverage written by multiple insurers that collaborate on policy clauses could face difficulties, participants said after the meeting.

The E.C. met June 2 in Brussels, Belgium, to discuss a March commission report, which said parts of the block exemption that allow insurers to cooperate in pooling arrangements, joint calculations and joint studies without needing to verify each time whether such cooperation falls afoul of European Union competition law should be retained when the exemption expires in March 2010.

The report further indicated the E.C. is leaning toward removing the exemption as it applies to developing and distributing standard policy conditions for direct insurance. The E.C. also said it would like to remove the exemption covering insurer collaboration on standards for security devices.

The commission is expected to publish a draft regulation this fall.

Insurers in pooling arrangements, which are critical sources of capacity in some lines of coverage, should be

able to interact without fear of running afoul of competition laws, said Marie-Gemma Dequae, president of the Brussels-based Federation of European Risk Management Assns.

"I think that the (Block Exemption Regulation) will be renewed for pools, but the conditions will be redrafted," said Ms. Dequae, who participated in the June 2 hearing.

The E.C. indicated in its March report that it is considering several amendments.

The Brussels-based CEA, the European insurance and reinsurance federation, said in comments submitted during the June 2 hearing that it welcomed the commission's statement that "pools can give rise to such positive effects" as allowing small and medium-size insurers to enter markets and gain experience with unfamiliar risks.

"This leads to an increase in the availability of insurance products on the market," the CEA said, "while cross-border pools help to create a more integrated insurance industry throughout the E.U."

The CEA said while it was pleased with the commission's intent to renew the exemption for pools, it could not say the same about allowing the sections related to standard conditions and security devices lapse. In both cases, the commission has proposed issuing guidance rather than renewing the exemption.

Rob Gillies, head of market processes at Lloyd's Market Assn., which provides services to Lloyd's of London underwriters, agreed that failing to renew the exemption with regard to standard policy conditions could cause problems for insurance buyers.



Ms. Dequae



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Crash: Aviation market could see price increases

CONTINUED FROM PAGE 1

according to the Insurance Information Institute, as does London-based Global Aerospace Underwriting Managers Ltd., according to published reports.

The hull of the Airbus A330-200 was valued at about \$100 million, market sources said.

The aviation market has been firming this year for the first time in five years, with average single-digit rate increases reported by brokers Aon Corp. and Willis Group Holdings Ltd. Brokers and other observers said the Air France accident could further price firming, although they cautioned it is too early to say for sure what the impact will be.

"After a number of losses in the first quarter, the market position had improved and the loss level was slowly coming back into line with recent years," Steve Doyle, London-based executive director at Willis Aviation, said in an e-mail. "If the recent Air France loss proves to be very significant, the market could potentially react strongly with insurers under further pressure to raise premiums higher."

Magnus Allan, a London-based aviation analyst at Aon Aviation & Aerospace, said rates tend to be set by long-term loss history but that losses from the Air France crash could exert upward pressure.

"The Air France loss has certainly led to many underwriters taking a harder stance to airline renewals, but there still appears to be enough latent capacity to hold the increases down at this stage," he said, via e-mail.

Paul Hayes, director at London-based aviation consultant Ascend Worldwide Ltd., said the accident likely won't have a tangible impact on insurance negotiations, although "it certainly wouldn't help."

"With such a bad start to the year, (airlines) certainly haven't given any respite to underwriters," he said.

Legal experts say it is too early to speculate on the likely size of the liability loss because those payments vary widely depending on the personal details of the victims, such as their earning potential and dependents, and which country takes the case. That could be complicated in this case: according to the Insurance Information Institute, the plane was owned by Paris-based Air France, built by European consortium Airbus, with parts supplied from around the world, and crashed in international waters with passengers from residents of 32 countries, including the United States.

The average liability claim for aviation deaths in the United States typically settles for \$1.5 million to \$2 million per victim, and about \$150,000 per victim outside the United States, according to the Insurance Information Institute.

Sean Gates, a senior partner on the aerospace team of London-based law firm Gates and Partners Solicitors, said international and European treaties mandate that for deaths in aviation accidents the airline must pay victims' family members the equivalent of about \$25,000 to cover immediate economic needs within 15 days of



Member of the Brazilian Air Force carry the body of a victim of Air France Flight 447 on June 11. REUTERS

identifying appropriate recipients. Mr. Gates said the airline is strictly liable for damages up to the equivalent of about \$154,000 and is liable without limit unless it can prove the accident was not due to its own negligence or was wholly the fault of another party.

A recent forecast projected passenger demand falling 8% this year. Such a dropoff could exert further pressure on underwriters because liability premium income is based

in part on the number of aviation passengers; if that figure is lower than projected during renewals, underwriters will take in less premium income than they expected. In 2008, liability premium accounted for 65% of underwriters' total premium income—compared with 35% for hull—according to Willis.

Before the Air France accident, there had been \$706 million in airline losses this year, according to Aon.

Amlin: Fortis acquisition welcomed

CONTINUED FROM PAGE 6

(\$43.3 million) and a combined ratio of 102%.

According to press reports, a group of Fortis shareholders plans to sue to stop the sale, arguing the Dutch government does not have legal rights to sell the unit.

Risk managers in the Netherlands say the Amlin deal would benefit buyers.

Otto Bekouw, insurance manager of Phillips International B.V. in Amsterdam, said the deal will guarantee the future of Fortis and likely add capacity to the market.

"And Amlin's backing will enable Fortis to become a genuine international player. Fortis was always a strong player in the Dutch market, especially for mid-market and larger companies but not really global companies, and this acquisition could go some way to address that," he said in an interview at the NARIM conference.

"Customers should be happy with the deal, because Fortis has a good

'Customers should be happy with the deal, because Fortis has a good and skilled team of casualty, property and marine underwriters.'

Frank van Akkerveen,
De Keizer Assurantie B.V.

XL: Mixed opinions on deal with Berkshire Hathaway

CONTINUED FROM PAGE 3

who are utilizing XL, which is a very strong player in the 'A-Side' market."

Other sources say, however, that instead of boosting confidence in XL's product, the announcement could help solidify beliefs that XL is still struggling. Concerns have persisted during the past year or so about XL's financial condition, they added.

"Obviously, everybody has been concerned about XL's financial condition for a while and one way of reading this (announcement) is that it is a positive development that strengthens your capacity to respond to claims," said Rene L. Siemens, a policyholder attorney and D&O liability expert at Proskauer Rose L.L.P. in Los Angeles. "On the other hand, it's hard to tell whether people will take it as further confirmation that XL's balance sheet is a cause for concern."

Mr. Siemens said he is not an expert on XL's balance sheet or its finances. But during the past year or so, brokers—more so than policyholders—have expressed concern, he added.

Other brokers said they wonder

'One way of reading this (announcement) is that it is a positive development that strengthens your capacity to respond to claims.'

Rene L. Siemens,
Proskauer Rose L.L.P.

about XL's future prospects, although several declined to speak for attribution.

For the first quarter of 2009, net income at XL plummeted to \$3.1 million from \$244.4 million during the same quarter in 2008. Net realized losses nearly doubled and net premiums written fell by nearly a third.

But XL also reported a 93% combined ratio and improvements in net premiums written and combined ratio over the fourth quarter of 2008, a year in which it reduced its staff by 10%.

XL said in its 8-K regulatory filing

that National Indemnity will be obligated to provide its endorsements for D&O liability policies issued during an 18-month period that began June 8.

National Indemnity's obligation to issue endorsements will cease, however, if XL Specialty's financial strength rating is downgraded below certain levels, such as below a BBB+ by Standard & Poor's Corp., according to the 8-K report.

Issued endorsements will remain in force for 10 years.

XL will pay National Indemnity as much as \$250 million and must meet certain obligations, such as establishing a trust to hold premiums it collects from D&O liability policies backed by National Indemnity. XL also must provide a letter of credit to back the security trust.

Skeptics question why National Indemnity is only backing XL's Side A policies and not XL's other D&O liability coverages. There have been very few losses paid out under Side A policies during the past few years. So the low loss ratio makes it a highly profitable business, more so than other D&O liability coverages, brokers said.

Side A coverage shields directors' and officers' personal assets when a

corporation fails to indemnify them, for example, as a result of bankruptcy. In contrast, Side B reimburses a corporation for indemnifying directors and officers.

The National Indemnity agreement addresses Side A coverage only because that coverage is most important to directors and officers, said Bernard Horovitz, chief underwriting officer and head of the Global Professional unit for XL Insurance in Hartford, Conn.

The deal also could help boost buyer confidence in XL, he added.

"The confidence we are hoping to gain is (from) the buyers, who have stronger confidence that (they are) supported by two carriers now rather than one," Mr. Horovitz said. "That is certainly a benefit. It's a byproduct, more confidence in XL as a total company."

It is not the first time since the financial crisis that an insurer has turned to Berkshire to help boost buyer confidence in its products.

In September, Boston-based Lexington Insurance Co., a surplus lines unit of AIU Holdings Inc., announced it arranged for a contingent property reinsurance arrangement with Berkshire to help ease policyholder concerns.

and skilled team of casualty, property and marine underwriters, and the casualty department in particular will be a good addition for Amlin and fit well with its expertise," said Frank van Akkerveen, managing director of Rotterdam-based broker De Keizer Assurantie B.V.

The deal will remove uncertainty about the future of Fortis, according to Amlin Chief Executive Charles Phillips.

"There was a huge amount of uncertainty and it was, of course, not easy to be managed by a government. But the Fortis team hung on to the vast majority of the business, and this demonstrates the strength of the franchise," he said.

The deal also will help Amlin diversify its book of business, Mr. Phillips said.

Rating agencies and financial analysts generally were neutral on the deal.

"Fortis is not a bargain and its recent growth poses risks. However, the long-term record suggests a sound franchise, and Amlin seems convinced that its due diligence has unearthed all of the problems," Chris Hitchings, an analyst with investment bank Keefe, Bruyette & Woods Ltd. in London, said in a note.

Health care: Congress gearing up to tackle health care reform

CONTINUED FROM PAGE 1

meet coverage standards, putting an end to an approach many employers believe offer significant potential to control costs.

In addition, legislators could agree on a reform package that includes the establishment of a public plan, which would be offered by newly established state health insurance exchanges.

President Obama stumped for the public plan option last week, arguing it is needed to give private health insurers more competition. While details of the plan are in flux, it could mean new headaches for employers if their employees are allowed to opt out of corporate plans, resulting in employers having to deal with more health plans.

Finally, legislators could agree on a reform package in which employees for the first time would be taxed on at least a portion of employer-paid coverage. For employees, that would mean a reduction in take-home pay and, for employers, it would mean a big increase in their administrative workload as they try to calculate the value of coverage.

"There is no way that your average company could do the necessary calculations on its own," said James Gelfand, senior health care policy manager at the U.S. Chamber of Commerce in Washington.

But if the risks to employers posed by reform legislation are significant, so are the rewards. If legislation is passed and it results in near-universal health coverage, employers could benefit because providers no longer would need to shift costs of uncompensated care delivered to the uninsured to patients in insured plans.

This isn't the first time Congress has taken up comprehensive health reform care legislation.

The last major effort in 1993 collapsed for many reasons, not the least of which was the Clinton



President Obama discusses health care reform with Senate Democrats on June 2. From left, Sen. Tom Harkin, D-Iowa; Sen. Max Baucus, D-Mont.; President Obama; and Sen. Kent Conrad, D-N.D.

AP PHOTO

administration's failure to bring in key legislators in framing the legislation. In contrast, Congress, with support from the Obama administration, now is leading the latest reform drive, increasing the chances of passage.

At the same time, with health care costs much higher today and a smaller percentage of employers offering coverage, there is much greater public interest in revamping the health care system.

Since the last failure, "costs have risen dramatically, so have the number of uninsured. While everyone is struggling with the details,

there is a consensus that there needs to be reform," said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

Nevertheless, the process "will not be a cakewalk," he said. "The reason reform has taken so long is that the issues are so difficult."

But what will be in the final bill is far from certain.

"My sense is that something will pass, but we don't know exactly what it will be," said Michael Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York.

The mood of employers is one of

"nervous tension," said Chantel Sheaks, a principal with Buck Consultants L.L.C. in Washington.

Even as congressional committees are about to act, many of the blanks remain to be filled in. For example, a 615-page bill proposed by Sens. Edward Kennedy, D-Mass., and Chris Dodd, D-Conn., that the HELP Committee will take up this week, simply says an employer mandate is "under discussion."

The shape of any mandate is of crucial importance to employers.

"The key issue is, what would be considered minimum acceptable coverage? Would, for example, an

The process 'will not be a cakewalk. The reason reform has taken so long is that the issues are so difficult.'

Frank McArdle, Hewitt Associates

employer have to provide coverage to part-timers or seasonal employees?" asked Ms. Sheaks.

The answers to those questions will determine the cost impact on some employers.

Another big question is whether legislators will limit the tax-free status of employer-provided coverage, in which premium payments made by employers now are excluded from employees' taxable income.

Senate Finance Committee Chairman Max Baucus, D-Mont., whose panel is expected to unveil a bill this week, said that measure may include a provision where employees in very rich plans would be taxed on costs over a certain level.

Experts, though, worry that if revenues fall short of funding a key part of reform legislation—providing insurance premium subsidies for the low-income uninsured—the so-called benefit tax cap could be lowered, affecting far more employers and employees. Putting aside the issue of whether taxing employees on health care benefits is good policy, experts say there would be difficulties in determining the value of benefits to be taxed, including issues such as whether the costs of service providers such as third-party claims administrators should be included.

"Valuation would be a huge issue," said Gretchen Young, vp-health policy at the ERISA Industry Committee in Washington.

Merger: IPC shareholders turn down Max Capital merger offer

CONTINUED FROM PAGE 1

this review, will give consideration to Validus," he added.

Validus worked for weeks to thwart the IPC/Max deal, launching an initial bid shortly after the Max Capital proposal was announced in March and upping its bid twice since. Last week, in its latest move, Validus boosted the cash component of its offer to \$3.75 per IPC share, which brought the total value of the deal to approximately \$1.72 billion, based on Validus' closing price June 5. IPC again rejected the Validus offer and stood by the prior deal with Max Capital.

Previously, Max Capital and IPC added a cash component for its deal, which included both companies paying cash dividends that delivered a total of \$2.50 a share to IPC shareholders after the closing of the IPC Max merger. Max and Validus continued to argue their proposals provided a superior offer

\$1.72B

Validus boosted the cash component of its offer to \$3.75 per IPC share, which brought the total value of the deal to approximately \$1.72 billion, based on Validus' closing price June 5

to IPC shareholders.

While it's difficult to speculate on shareholder rationale, "the Validus bid certainly confused things," said John Nigh, managing principal with Towers Perrin in New York. "It's possible that fundamentally (the shareholders) just didn't think they were getting sufficient value

with the Max combination," he said.

Three proxy advisory firms last week gave mixed opinions on whether IPC shareholders should support the Max Capital merger, with the largest firm, New York-based RiskMetrics Group, urging IPC shareholders to vote against the proposal.

McLean, Va.-based Proxy Governance Inc. and San Francisco-based Glass, Lewis & Co. supported the combination. Some observers say RiskMetrics is the most influential of the group.

In a statement Friday, Validus urged IPC's board to support its offer, saying cooperation could result in "an expeditious closing of the Validus transaction." But analysts say shareholder rejection of the Max Capital bid won't guarantee IPC support for the Validus offer. Yet, results "do pave the way for Validus to move forward and negotiate with IPC unencumbered

by the Max agreement," Mr. Nigh said.

Under the terms of the initial IPC/Max Capital agreement, a "no-talk" provision prevented IPC's board from talking to suitors other than Max, which led Validus to canvass IPC shareholders directly, and resulted in an increasingly contentious, publicly fought battle over who provided the superior offer.

Some analysts have expressed concern over an IPC/Validus combination, suggesting it would result in too large a concentration of catastrophe business in one reinsurer.

In a June 12 research note, analysts at Keefe, Bruyette & Woods in New York said they expect IPC to return to the drawing board and examine all the options available at this time, including potential amalgamations with other "interested parties" that were involved in IPC's initial search process.

"We would expect IPC's board to exercise full due diligence and again

approach each of these parties to see if they are interested in getting re-involved in the process. At this point, given that Validus' offer provides IPC with nearly 90% of book value, we do not envision seeing any higher offers," the note said.

Max Capital Chairman and Chief Executive Officer W. Marston Becker said the company was disappointed IPC's shareholders did not approve the deal.

"We believed and continue to believe that the combination of Max and IPC would have created significant value for both companies' shareholders," Mr. Becker said in a statement.

Max Capital said in view of the shareholder vote it was terminating the merger agreement.

Meanwhile, more than 90% of Max Capital shareholders voted in favor of the transaction, Max Capital said. According to Validus, 72% of IPC shareholders rejected the Max deal.

Maryland: Regulator set to consider compulsory broker pay disclosure

CONTINUED FROM PAGE 4

before tackling the issue, which he said has "not been closely examined" by the department before.

He said it seemed "worth" increasing the department's knowledge of producer compensation disclosure and to examine what, if any, changes make sense.

The department is collecting information about what other states have done or have considered doing and then "at some point in the not-too-distant future, I expect to invite people in to talk about it," he said.

He would not comment on what direction he might be leaning toward on the issue.

The department has not received any complaints from insurance purchasers about lack of disclosure, but Mr. Tyler said he doesn't view the lack of complaints as an indicator of whether there's a problem in the market.

'Our biggest concern about this is we're going to end up with a lack of uniformity among the states and it will be something completely different when you cross the state border.'

Nicole Allen, Council of Insurance Agents and Brokers

"It's our responsibility to be attentive to what's going on in the marketplace and to propose change when change is appropriate, irrespective of the existence or not of complaints," he said.

Agent and broker trade groups, which have been vocal on the issue in the past, said they don't know what is prompting Maryland to examine the issue now, but are more than willing to discuss their views with the state if invited.

"We are not seeing any sort of national trend in regards to produc-

er compensation disclosure," said Wes Bissett, Washington-based senior counsel of government affairs for the Independent Insurance Agents & Brokers Assn. With the exception of New York, the

issue has been dormant for almost five years.

However, "we are prepared and willing to sit down and meet with any commissioner or legislator who's interested in this issue and might be considering something along these lines and hope to educate them about some of the downsides associated with compensation disclosure mandates," Mr. Bissett said. IIBA favors a system where producer compensation is disclosed when requested by clients and is not mandated.

The Council of Insurance Agents and Brokers supports transparency, said Nicole Allen, the council's vp

industry affairs. "Our biggest concern about this is we're going to end up with a lack of uniformity among the states and it will be something completely different when you cross the state border."

"We'd much rather see something that's uniform," she said.

Mr. Tyler agrees that "as a general proposition for this kind of thing, uniformity is a good thing. It's a value." But individual states may have to take a lead on the issue, he said.

"You can't wait all the time until you can get agreement," he said. "Our responsibility is to regulate in a way that is protective of consumers in Maryland."

Tomlinson: APIW honors retiring Chubb executive

CONTINUED FROM PAGE 4

careers" during her time with the company.

Ms. Tomlinson manages some \$2.9 billion of Chubb's non-U.S. business and is responsible for more than 2,500 employees in 50 offices in 28 countries. Prior to her current role, she was chairman and president of Chubb's Canadian business operations in Toronto from 1995 to 2003. Before that, she spent five years as worldwide director of human resources, where she was responsible for recruiting and

'People really respect Jan, and when she is in the room, everyone raises their game.'

Neil Morrison,
HKMB HUB International

retaining talent.

While head of human resources, Ms. Tomlinson became an early advocate for work/life balance after she recognized greater flexibility was needed to retain talent. In 1993 she developed Chubb's first work-family program, which offered job-sharing and other flexible work arrangements for employees with children.

"It was really groundbreaking at the time," she said, noting that while the program since has evolved, it was important in "sowing the seeds for the direction that the company was going in."

In her various roles, Ms. Tomlinson said she has played a large part in boosting female representation to "healthy levels" companywide.

For example, during her tenure in Canada, female representation for

manager and supervisory roles grew to 56%, and the number of female officers grew to 34%. Ms. Tomlinson said the boost was due, in part, to a recruiting program she launched with Queens University, an achievement that still stands as one of her proudest. "We got such great results and it really helped us to achieve the kind of diversity we wanted."

Ms. Tomlinson said the Canadian office continues to be a symbol of success. In 2008, 57% of the executive appointments in Canada were female.

Also, under her guidance, Chubb has boosted female representation at the manager and officer level globally, including a 14% boost in female officers at its Asian offices and 9% boost in female managers in its European offices since 2003.

But Ms. Tomlinson never has approached recruiting as a numbers game.

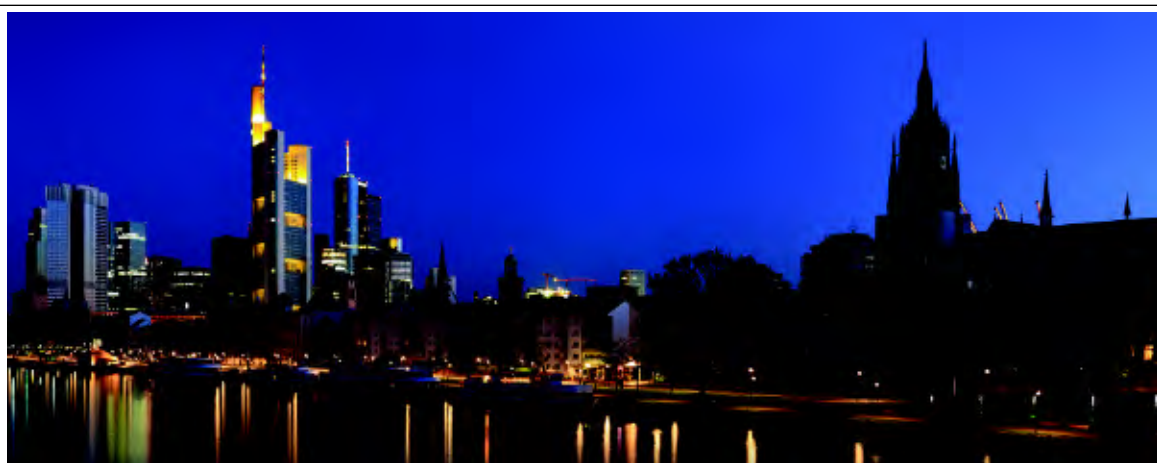
"You can't just look at it as bringing in more women to the organization. That won't get you all the support you need. Instead, if you focus on finding the right talent, it will naturally lead you to the kind of diversity you desire," she said.

Clients say Ms. Tomlinson's relationship-building skills and ability to see the big picture contribute to her outstanding reputation in the industry.

"People really respect Jan, and when she is in the room, everyone raises their game," Neil Morrison, president and CEO of Toronto-based brokerage HKMB HUB International. Mr. Morrison has worked with Ms. Tomlinson since 1995, when she arrived in Canada.

Ms. Tomlinson is looking forward to another change, with a planned retirement on Dec. 31. "There is a time to move on to create opportunities for other people," she said.

The APIW honor is "a wonderful way to end my career," she said.



RISK REGULATION WHAT NEXT?

June 26 2009 | Frankfurt Germany

PROGRAM ▶

- 10:00 am – 10:30 am** Welcome address from Business Insurance, DVS, BfV and MFSA
- 10:30 am – 11:00 am** What is the latest form of Solvency II, what will be its likely final form and what impact will it have upon the industry?
Wolfgang Rief, Director Insurance, Financial Services Group, Standard & Poor's.
- 11:00 am – 11:30 am** What impact will the new rules have upon captive insurance companies and how mustcaptive owners and managers prepare and react for the changes?
Dr. Peter Klatt, Managing Director of BMW's captive broker Bavaria Wirtschaftagentur GmbH and captive reinsurance company Bavaria Reinsurance Malta Ltd and member of the BfV, Bundesverband firmenverbundener Versicherungsvermittler und-gesellschaften e.V.
- 11:30 am – 11:45 am** Refreshments
- 11:45 am – 12:15 pm** What will be the future shape of risk and insurance regulation in the light of the recent economic turmoil and how should risk and insurance managers prepare for the new environment?
Stefan Sigulla, Chief Executive Officer of Insurance at Siemens A.G. and President of the DVS, Deutscher Versicherungs Schutzverband e.V.
- 12:15 pm – 1:00 pm** Roundtable Panel Discussion Participants – Previous speakers will be joined by Marisa Attard, Insurance Regulator at the Maltese Financial Services Authority and Peter Den Dekker, Corporate Insurance Risk Manager at Stork and board member of the Federation of European Risk Management Associations to discuss the key issues raised and in particular the best solutions and strategies available.
- 1:00 pm – 2:30 pm** Lunch & Networking

For additional information about the event please contact Becky Briggs, Event Manager, 212-210-0132, RBriggs@BusinessInsurance.com

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News In Brief

CONTINUED FROM PAGE 1

since the mid-1990s," said Dan Carlisle, president of Des Moines-based AFIC. An Iowa Department of Insurance spokesman said the RRG is in compliance with state regulations and solvency requirements.

den Dekker elected FERMA president

Peter den Dekker, corporate insurance risk manager at Stork B.V. in Naarden, Netherlands, has been elected president of the Federation of European Risk Management Assns. Mr. den Dekker, who was elected during FERMA's general assembly in Brussels, Belgium, last week, takes over the post from Marie-Gemma Dequae, who served as the group's president for the past four years. Ms. Dequae retired earlier this year from her job as group risk and insurance manager at N.V. Bekaert S.A. in Kortrijk, Belgium.

Calif. ADA bias suits need not show intent

Companies can be found liable for discrimination against disabled people under state civil rights law even if the discrimination is unintentional, the California Supreme Court ruled. The case involved a plaintiff whose physical disability requires the use of a wheelchair. He charged that when he visited a restaurant operated by Lake Forest, Calif.-based Del Taco Inc., he "encountered architectural barriers that denied him legally required access to the parking area and rest rooms," according to the opinion. The court found that under the state law, a plaintiff "may obtain statutory damages on proof of an ADA access violation without the need to demonstrate additionally that the discrimination was intentional."

Maine law seeks to boost state's captives industry

Maine Gov. John E. Baldacci has signed a measure modernizing the state's captive insurance statute, which state officials hope will spark development of the captive insurance industry in the state. Maine has had a captive law since 1997, though it has no captives. Among other things, the measure eliminates Maine's captive premium

tax, expands the definition of association captives, and allows the formation of sponsored and branch captives. The modernization legislation also eases restrictions on the investment of captive assets by pure captives. The law, though, increases minimum capital and surplus requirements for various types of captives.

U.K. expands eligibility for trade credit cover

The United Kingdom is backdating business' eligibility to purchase top-up trade credit insurance to Oct. 1, 2008, from April 1, 2009. The U.K. government program allows suppliers to purchase government-backed insurance to either restore cover up to the original level or double the amount they are able to obtain from the private sector up to the value of £1 million (\$1.6 million), whichever is lower.

Willis settles dispute over reinsurance placements

Willis Ltd., a subsidiary of Willis Group Holdings Ltd., said it has agreed to pay \$139 million to settle a dispute with two insurers related to the placement of personal accident reinsurance. According to a U.S. Securities and Exchange Commission filing, Willis agreed to settle with American Reliable Insurance Co. and Assurant General Insurance Ltd. over the brokerage's role in the placement of personal accident reinsurance in the excess of loss market in London and U.S. London-based Willis's agreement comes after a September 2007 ruling by the Commercial Court in London, which required Willis to make the payments to the Assurant subsidiaries. No admission of wrongdoing by any party was part of the agreement, according to the 8-K filing.

Noted

Florida Gov. Charlie Crist has signed into law a measure restoring the surplus lines industry's traditional exemption from rate and form regulation in the state....William White, administrator of the Delaware Department of Insurance's captive insurance unit, will resign when his contract expires at the end of July. Mr. White said he is leaving because of interest in doing consulting work in the commercial insurance and alternative risk transfer markets.... Despite poor investment results and catastrophe losses last year, the U.S. property/casualty insurance market saw rate declines in the first half of 2009 and likely will remain soft during the near term, according to a forecast by Fitch Ratings

D&O: Global firms mull additional cover

CONTINUED FROM PAGE 4

charge local subsidiaries for their portion of the premium. That decision made some insurers and risk managers more concerned about complying with local tax and insurance laws.

In a growing number of countries, local insurance law mandates locally admitted insurance policies, in which case it could be illegal for subsidiary directors and officers to be covered by the global D&O liability program of the parent company. Observers say only a few countries explicitly permit non-admitted insurance, several explicitly prohibit it, and in many other countries the law is unclear and opinions differ as to whether regulators would demand locally admitted insurance.

Regulations on locally admitted policies apply to all lines of insurance, but they pose a particular problem for Side A D&O liability claims. In other insurance lines and in other D&O liability cases, the global insurer can skirt regulations on locally admitted insurance by indemnifying the parent company in the U.S., which in turn reimburses the subsidiary or its directors and officers for the loss. But Side A coverage exists for cases where laws prohibit a company from reimbursing directors' and officers' losses. In those cases, not having a locally admitted policy could force the directors and officers of a foreign subsidiary to pay expensive legal bills and other losses on their own.

For an administrative fee, several D&O liability insurers now offer to

write multinational corporations a locally admitted policy that is tied into the coverage and limits of the global D&O liability program for any country in which the insurer has a local office. ACE, AIU, Chubb and Zurich Financial Services Ltd. say these products give companies a policy that complies with local laws and regulations and is less expensive than buying a separate policy on the local market.

Policyholders also can purchase "friendly fronting" policies, in

'I had never seen an international (D&O) lawsuit; now we're defending suits in India, Argentina, Brazil, etc.'

David Conca, Time Warner Inc.

which they use a local insurer for their primary coverage, which is reinsured by their global D&O liability insurer.

ACE also offers what it calls a "Side E," or parental indemnification, endorsement to a global D&O liability program. The endorsement means the insurer reimburses the parent company in the U.S. if a subsidiary suffers a loss that "rolls up" onto the balance sheet of the parent or if the parent company promises to indemnify the subsidiary. Critics point out the endorsement would not work for Side A claims.

Anecdotally, insurers and brokers report more risk managers are interested in and buying local D&O liability policies tied to global programs. Ms. Lindsay said Aon has placed more than 400 such policies, compared with about 160 such policies two years ago and none five years ago.

Mr. Whelan said that when AIU began offering the tie-in service in October 2006, six companies bought policies in 32 countries; last year, 147 companies bought policies in 565 countries and that figure is on pace to rise in 2009, he said.

Fred Murnane, a senior vp at Zurich North America, estimated his company has doubled its number of such programs since last year.

"I had never seen an international (D&O) lawsuit; now we're defending suits in India, Argentina, Brazil, etc." David Conca, New York-based director of risk management at Time Warner Inc., said earlier this year during a panel at the Risk & Insurance Management Society Inc. conference in Orlando, Fla.

But not all risk managers have bought into the new strategy. A survey that will be released later this summer by consultant Towers Perrin shows less than 2% of global organizations purchased separate D&O liability policies for foreign countries, a 1% drop from last year, said Michael Turk, a Washington-based senior consultant. But Mr. Turk said that may be in part due to the survey's sample population, of which only 25% are public companies and which includes mostly firms with less than \$6 million in assets.

Mutual: U.K.'s LAML goes into runoff

CONTINUED FROM PAGE 4

under the Local Government Act, which limits the activities of public sector bodies, he said.

RMP welcomed the Court of Appeal ruling that local authorities must put their insurance out to bid, even if alternative risk sharing structures are developed in the future, Mr. Patten said.

Martin Fone, chief executive of the nonmarine department at Charles Taylor Consulting Ltd., which manages LAML, said that until there is a change in legislation broadening the powers of local government, it is unlikely any public sector risk retention group, association captive or insurance mutual can be formed in the United Kingdom.

Various local authorities and their representative bodies are urging government to change the law. LAML chairman Nathan Elvery last week sent a letter to the Secretary of State for Communities and Local Government, requesting legislation to allow public sector bodies to par-



ticipate in risk-sharing insurance pools, Mr. Fone said.

A spokesman for LAML said it was considering whether to appeal the latest ruling. He noted the mutual insurer had widened access to the insurance market, which previously was restricted to just three

players, and its creation had been encouraged by government. LAML will continue to lobby for further clarification on the issue, he added.

Legislative changes could resurrect LAML and revive plans for another local authority mutual, Councils Alternative Risk & Insurance Group, Mr. Fone said.

When the eight active members of LAML come to renew, they are likely to approach the market as a collective, said Andrew Jepp, head of local government at Zurich Municipal, a unit of Zurich Financial Services Group. When the Fire & Rescue Mutual went into runoff after the High Court ruling last year, its members approached the insurance market at renewal as a consortium, he said.



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Web site tries to downgrade rating agencies

It's been called a financial crisis, a credit crisis, a meltdown, or just a flat-out mess.

With AAA-rated companies being crippled by debt and some dissolving completely, Jesper Andersen and Toby Segaran thought there had to be a better, more accurate way of discerning a company's credit risk.

Math wizards with business backgrounds, Messrs. Andersen and Segaran decided rating agencies need to be more transparent and explore more complex data sets to provide a better outlook of a company's risk during a financial crisis. Recently, the two were interviewed by Wired magazine, and offered insight on their project, *Freerisk.org*.

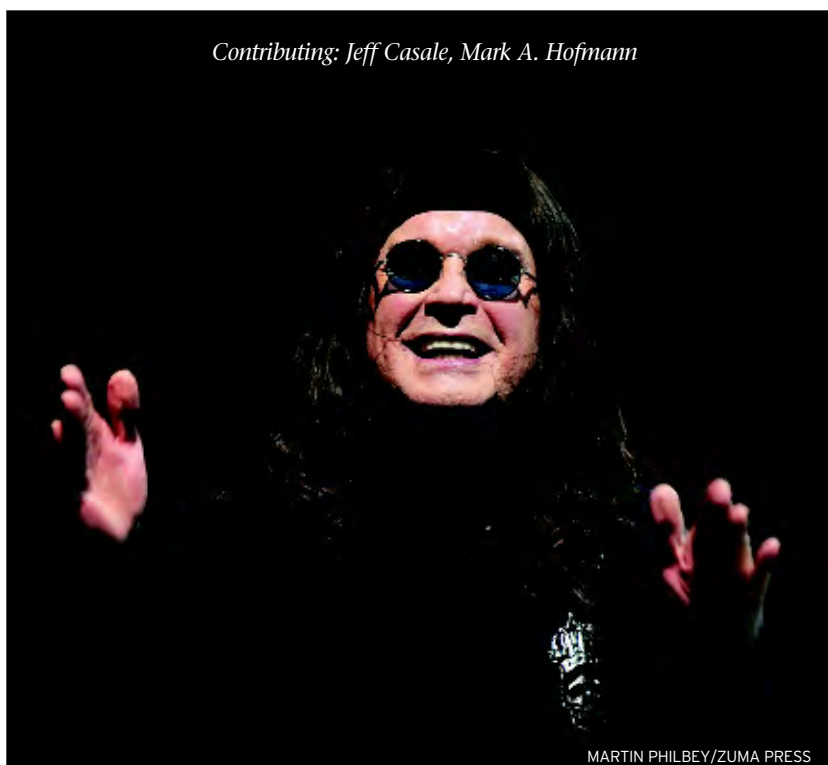
"This problem is too big to leave to private profit centers," Mr. Jensen told Wired.

The idea is an open data-storage system of financial data taken primarily from company filings. To do this, they will need a host of volunteer analysts, finance gurus and assorted number crunchers to rate companies based on the data mined from U.S. Securities and Exchange Commission filings.

According to the Wired interview, *Freerisk.org* will compile data from SEC filings, which will allow for anyone to add footnotes from the filings, and then run those numbers through standard algorithms and publish the results. This essentially will allow users to design their own risk assessment models that not only will identify the health of a company, but how market conditions are threatening it, they say.

Business Insurance END PAGE

Contributing: Jeff Casale, Mark A. Hofmann



MARTIN PHILBEY/ZUMA PRESS

Ozzy bites head off former bandmate

Ozzy Osbourne isn't paranoid, he's just a little worried, or maybe just a little ticked off.

Mr. Osbourne, front man for heavy metal band Black Sabbath and reality television star, sued former Black Sabbath guitarist and band mate Tony Iommi, accusing him of taking wrongful ownership of the band's name and royalties from merchandise sales.

Mr. Osbourne, also known as "The Prince of Darkness," filed the lawsuit in federal court in New York earlier this month, claiming Mr. Iommi was falsely claiming to be the sole owner of the Black Sabbath name. Further, Mr. Osbourne is seeking his share of the interest in the Black Sabbath trademark and a cut of the profits Mr. Iommi raked in while touring under the Black

Sabbath name during the 1990s.

Ever the diplomat, Mr. Osbourne said in a statement issued to the media that he had tried for three years to resolve the dispute with Mr. Iommi amicably, and has asked his former band mate to "do the right thing," but now has had to resort to litigation.

"We've all worked too hard and long in our careers to allow you to sell merchandise that features all of our faces, old Black Sabbath album covers and band logos, and then you tell us that you own the copyright," Mr. Osbourne, 60, said in a statement. "The Black Sabbath legacy should live on long after we all have gone."

"To fans of heavy metal music," the lawsuit reads, "Ozzy has become synonymous with Black Sabbath."

Reality checks: Contestants win benefits

Does participating in a reality show based on seduction grant contestants the right to be treated as employed workers entitled to fringe benefits such as overtime?

According to a recent BBC report, a French court says reality show contestants enjoy such treatment.

The case had been brought by three people who appeared in a show called "L'île de la tentation" or "Temptation Island" in English, according to the BBC story. The program follows couples who are separated from each other on a tropical Mexican island where single people try to seduce them, a plot line that sounds quite familiar to viewers of U.S. reality programming.

Three contestants thought this sounded an awful lot like work, and sued for benefits. A lower court agreed with them, and earlier this



"L'île de la tentation" or "Temptation Island" in English, follows couples who are separated from each other on a tropical Mexican island where single people try to seduce them.

month, France's Cour de Cassation upheld the lower court ruling. The court said each contestant was entitled to €11,000 (\$15,361.50), which the BBC reported consisted of €8,176 (\$11,417.78) in overtime, €817 (\$1,140.94) for being denied a holiday, €500 (\$698.25) for unfair dismissal, and €1,500 (\$2,092.50) for the wrongful termination of their contracts.

The BBC quoted the contestants' attorney as saying, "Temptation Island" constitutes a job and therefore justifies an employment contract," the court said. "Tempting a person of the opposite sex requires concentration and attention."

Nice work if you can get it, n'est-ce pas?

Redbird mad over fake tweets

Twitter has everyone aflutter, particularly for celebrities who can be impersonated on the micro-blogging service.

Tony La Russa, manager for the St. Louis Cardinals, found out firsthand just how easy it is to be impersonated. Someone decided to "tweet" under the manager's name, posting some salty comments now and again that folks easily could have construed to be made by the manager himself.

Mr. La Russa filed a lawsuit against Twitter in California last month. However, earlier this month, he claimed he and the start-up company had reached a settlement. He told reporters Twitter had agreed to pay his legal fees and make a donation to the Animal Rescue Foundation.

Faster than you can post a tweet, San Francisco-based Twitter denied any such settlement. Biz Stone, co-founder of Twitter, said in a blog post that Mr. La Russa's statement was

not true and that "Twitter has not settled, nor do we plan to settle or pay."

Mr. Stone acknowledged the impersonation of La Russa was a violation of Twitter's terms of service, adding that the account has been removed from the service.

"With all due respect to the man and his notable work, Mr. La Russa's lawsuit was an unnecessary waste of judicial resources bordering on frivolous," Mr. Stone wrote.

Mr. La Russa's suit was the first to be filed by a celebrity against Twitter, according to media reports.

Mr. La Russa claims the false tweets were a form of identity theft and damaged his trademark rights to his nationally famous name.



Tony La Russa's lawsuit was the first to be filed by a celebrity against Twitter, according to media reports.

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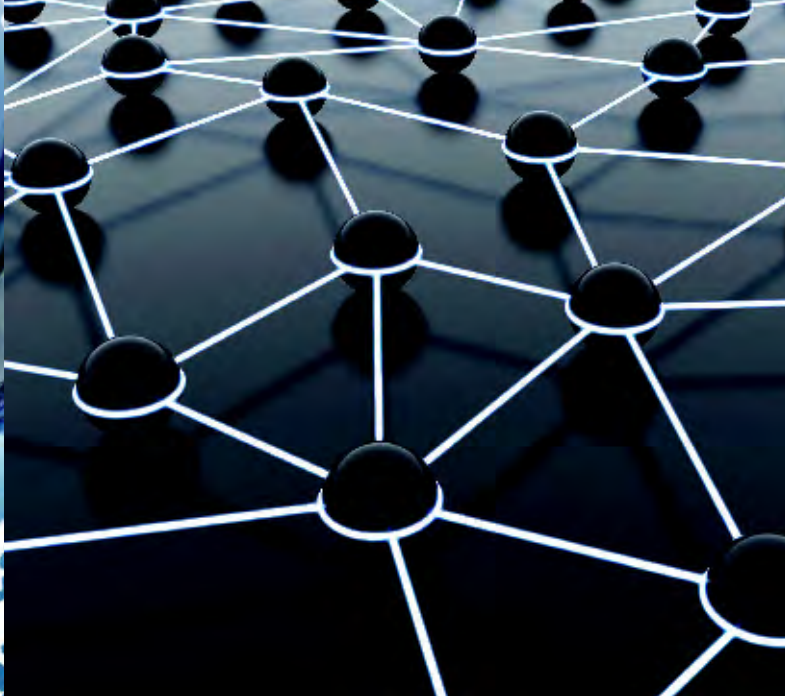
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Survey reveals candid responses

This year's survey of risk and insurance managers with Europe's 100 largest companies was a fascinating exercise. We carried out the interviews just as the full extent of the global economic crisis was becoming clear and many insurance managers had recently completed their main renewals.

Like last year, we conducted the interviews off the record, which helped deliver frank and often hard-hitting comments for *Business Insurance's* Euro 100 survey.

The result was a lively round of interviews that provided unique insights into the challenges and strategies of Europe's top risk and insurance managers as they do their best to help their companies emerge from the downturn.

It is perhaps not surprising that the business risk agenda is topped by risks such as financial market volatility and supply chain interruptions while the key insurance risks are insurance company security, price of coverage, and insurers' willingness to pay claims.

The main point emerging from this year's survey for me was the rising lack of faith in the insurance sector's ability to meet the buying community's needs, whether it be through a lack of innovation or flexibility or an unwillingness to pay claims.

Risk and insurance managers worldwide face ongoing volatility and change amid an array of emerging risks.

But it seems most European risk managers are resigned to the fact that they will have to work out how to deal

with this panoply of challenges without the level of assistance that they would like from their partners in the risk transfer world.

There was evidence of anger and perplexity about the apparent inability of the insurers and, to a lesser extent, brokers to rise to the challenge.

It may suit the risk transfer sector in the short term, as it grapples with its own risks and investor demands, that risk managers accept that the market offers only a limited range of solutions to their problems. But it is clear that insurers and brokers need to think about the services they provide and how they provide them or face an uncertain longer-term future.

This survey works only because so many of the busy Euro 100 risk managers grappling with these risks were willing to discuss them with us.

I thank our sponsor, XL Insurance, for its wholehearted backing.

I look forward to the third part of this year's project—a series of roundtable discussions focused on solutions to the issues raised here—over the next several weeks.

ADRIAN LADBURY
International Editor
Business Insurance



EXECUTIVE SUMMARY



Buyers get back to basics as global crisis continues

The credit crisis and economic downturn have focused the minds of Europe's risk and insurance managers on core issues such as the strength of their insurance carriers, the need to control costs and worries about key suppliers. The following analysis pinpoints the main points to emerge from this year's survey:

- Market outlook
- Renewal pricing change
- Levels of limits
- Coverage
- Captive usage

European insurance buyers expect the market to finally harden in second half, [PAGES 7-10](#)

Europe's leading risk and insurance managers believe European and international insurance markets will harden this year after a prolonged period of benign rates.

Those buyers interviewed for

this year's *Business Insurance Euro 100* survey reported a significant slowdown in rate reductions for property coverage, and saw average prices for liability coverage increase at their last renewal.

Property premium rates for buyers among those surveyed were on average 1.4% lower at renewal, compared with an average 10.4% reduction in last year's survey.

Liability premium rates were 2.2% higher on average at renewal, compared with a 7.4% reduction last year; auto fleet premium rates were 1.4% lower on average, much the same as in last year's survey.

Most of the buyers surveyed were surprised at the relative lack of

upward movement in prices experienced to date, and some took advantage of the soft market by buying more cover or tried to tie themselves into last year's prices with long-term deals.

But the majority stuck with existing levels of coverage at their last renewal.

Only 17% of respondents said they bought more corporate insurance coverage at their most recent renewal, compared with 55% in last year's survey.

Instead, 80% said they had bought the same level of corporate insurance this year as last year, compared with 41% in the 2008 survey. Only 3% (4% in the 2008 survey) purchased lower levels of coverage, despite the deterioration in economic conditions.

Similarly, insurance buyers at Europe's largest companies said they were offered much the same coverage at their recent renewals.

Tighter terms were experienced only in loss-affected classes of coverage, such as financial

institutions and credit insurance.

But most of those surveyed accept that the good times are almost certainly over and expect rates to harden as the year progresses.

But for many buyers, a sharp marketwide rise in premium rates is far from certain and none expect the financial crisis, rising claims and tightening reinsurance to force the kind of dramatic rate increases seen in 2002 and 2003.

The findings are an almost complete reversal of buyer expectations expressed in last year's survey when buyers were interviewed at the height of the soft market. Some buyers expressed their frustration with the difficulty in predicting market cycles.

When insurance markets harden, insurance managers often seek to limit the cost increase by making more use of their captives.

But this time may be different.

Only one-third of risk managers surveyed expect to use their captives more this year while the majority expect to use them the same or less.

Some respondents cited stable or reduced risk exposures because of lower economic activity as a reason for unchanged captive use. Continued availability of cheap coverage was another reason cited.

However, many risk managers said they would consider increasing use of their captives if premium rates harden significantly.

Several companies that expect to use their captives more will do so because they have recently added coverages, notably employee benefits.

■ Insurer and broker service levels

Insurer service levels fail to impress but brokers improved compared with last year, [PAGES 11-13](#)

Risk and insurance managers with Europe's leading companies believe service levels delivered by their insurers have worsened during the past year.

According to those surveyed as part of the *Business Insurance Euro 100* project, insurers are failing to

a redefined vision
of service

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match expectations in key areas, such as, innovation, flexibility and willingness to pay claims.

Overall, 88% of risk managers surveyed said insurers' service levels had not improved during the past year. Twenty-nine percent said that service had deteriorated, while 59% said that service levels were unchanged. Only 12% said it had improved.

This marked a deterioration against last year's survey in which just 11% said insurers' service was worse, 62% said it had stayed the same and 27% said it had improved.

Many respondents to this year's survey said that while service levels were unchanged, they still were not happy with the service provided.

Flexibility was the worst category, as 43% of those surveyed said insurers were less flexible than in the previous year. Only 14% reported an improvement.

Innovation also was an area that had suffered during the past year. Some 36% of respondents said innovation among insurers was worse. Only 4% said they had noticed an improvement.

Brokers received a more positive report, but most risk managers surveyed said they still have room for improvement.

During the past year, brokerage services improved for 29% of respondents to this year's survey, while for 58% they stayed the same, and for just 13% service deteriorated.

Service levels were down slightly compared with last year's survey in which 36% of risk managers said service levels had improved, while 61% said they had stayed the same and just 3% said they had deteriorated.

The assault on the big brokers by former New York Attorney General Eliot Spitzer on the issue of contingent fees is regarded as the chief driver of change and improvement at the brokers among the European risk management community, according to the survey.

Speed of response and flexibility, in particular, improved as a result, the risk managers noted.

Thirty-six percent of risk

managers surveyed by *Business Insurance* said brokers' flexibility had improved during the past year, while only 7% said brokers were less flexible. Speed of response was less clear-cut, with 21% saying service had improved and the same number (21%) saying it had slowed.

Several risk managers acknowledged that brokers had taken steps to improve transparency, but remained cautious.

■ Top risks

Insurer security and financial volatility are top concerns for Europe's risk managers, PAGE 14

Insurer security, price of coverage and willingness of insurers to pay valid claims are the top three insurance risks identified by this year's survey of Europe's leading risk and insurance managers.

Perhaps not surprisingly, given the recent financial and economic turmoil, financial market volatility topped the list of business risks identified by the pan-European group.

Concerns over counterparty risks and supply chain reliability also rose on the list.

The top three insurance risks were unchanged from last year.

The risk and insurance managers surveyed ranked security of coverage as their biggest insurance risk issue. Thirty-eight percent ranked it as their top concern, and 81% at least ranked it in their top two risks. Price was ranked in the top two risks by 58% of respondents.

When asked what will be the key business risks that need to be tackled in 2009, respondents ranked financial risks highest, even though almost all those interviewed have no direct responsibility for financial risk management.

Financial volatility was ranked as the top concern by 42% of respondents, and appeared in the top two risks for 62% of respondents.

Supply chain risks were ranked in the top two by 46% of respondents, while 50% of risk

managers surveyed ranked security of counterparties in their top three.

■ Risk management

Some think more CROs would stop future financial crisis, PAGES 16-17

Most of Europe's leading risk managers believe that the credit crisis and subsequent global economic downturn represents a failure of risk management and regulation.

But only a small majority of risk managers surveyed by *Business Insurance* think that the answer is to hand more power to risk managers and make them chief risk officers.

Seventy-nine percent of risk managers surveyed by *Business Insurance* thought a failure in risk management was behind the credit crunch and 77% thought a failure in regulation played a part.

This was the broadest topic raised during this year's survey and the answers were diverse.

Risk managers who responded said that they thought the financial crisis occurred for a number of reasons including political, economic and human failings.

It was interesting to hear, however, that a large number of risk professionals blame their own profession, albeit primarily the financial risk management arm, for the current problems.

■ Solvency II spells bad news for buyers

Buyers fear Solvency II will raise costs and cut choice, PAGES 18-19

Most risk and insurance managers polled for this year's *Business Insurance* Euro 100 survey do not believe Solvency II, Europe's planned new capital adequacy regime, will be good for insurance buyers.

The large majority expect the new rules, to be implemented in 2012, to raise costs for insurers, encourage consolidation and reduce capacity in certain lines of business.

Those surveyed also fear the regime could make captives less attractive options for corporations because of higher capital

requirements and increased compliance costs.

■ Broker commission disclosure improves

Transparency of broker payments is better, but there is still room for improvement, PAGE 20

The vast majority of European risk managers surveyed by *Business Insurance* said they are satisfied with levels of transparency regarding brokers' compensation.

More than three-quarters (77%) of risk managers at Europe's largest 100 companies surveyed said they are satisfied with the level of transparency that they receive from their brokers.

Most (60%) said transparency has improved since former New York Attorney General Eliot Spitzer completed his investigation into the use of contingent commissions by the large broking firms and forced them to reform their compensation practices. However, a large percentage said room for improvement remains.

■ Buyers step up security watch

Security fears force change in buying habits, PAGE 21

Many risk managers have changed the way they buy corporate insurance after the near-failure of American International Group Inc. and the collapse of other financial institutions over the past year.

Roughly half of the risk managers surveyed said they had made some changes to the way they buy insurance because they are worried about counterparty risks.

These changes included greater scrutiny of insurers' financial strength, a willingness to spread risk among insurers and the wider use of rating triggers in contract wordings.

Some risk managers at Europe's largest companies said they are reviewing their lists of major insurers, and many said they have taken steps to improve their assessment of insurer financial strength.

OUTLOOK

Risk managers brace for hard market

In stark contrast to last year, the majority of European risk managers expect a hard market for commercial insurance in 2009. But many say the degree of hardening is likely to depend on the severity of the financial crisis, claims trends and the reinsurance market.

Almost three-quarters (73%) of the insurance buyers polled by *Business Insurance* from the BI Euro 100 group of Europe's largest listed companies believe commercial insurance rates will harden in 2009. Just less than one quarter (23%) of respondents said they expect a stable market, while only 4% said they believe the market will soften in 2009.

The findings are an almost complete reversal of buyer expectations expressed in last year's survey where 58% believed the market would soften in 2008, while

23% said it would harden, and 19% said it would be stable. The reason given for the soft market outlook in 2008 was the high level of competition between insurers, although many respondents thought the market was close to the bottom of the pricing cycle, and that the credit crunch had yet to have an effect on premium rates.

But since last year's survey, the crisis in the financial sector worldwide has worsened and hit some insurers' balance sheets hard.

"The market will become harder because of the turbulence in financial markets, an increase in claims, and less capacity in the reinsurance market," one Scandinavian respondent said.

"We expect the market to harden during 2009," another buyer said. "There have been substantial claims in the market in 2008 and the financial crisis will have an impact," he added.

But while most risk managers believe rates will harden in 2009, many thought a marketwide adjustment was unlikely.

"It is going to harden, but I am not sure whether we have simply been brow beaten into believing this," said one U.K.-based risk manager. "Everyone says that something is going to happen but it has not so far, and I am not 100% that it will. Some organizations do seem to have believed their own press in this respect and paid for it. Swiss Reinsurance Co...refused to accept our terms so we just went elsewhere."

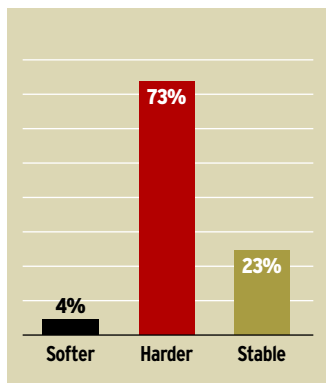
Buyers at some of Europe's largest companies said they were



OUTLOOK

Risk managers expect rates to increase

Q: What do you expect to happen to the market for commercial insurance during 2009— will it be stable, softer or harder?



frustrated by market fluctuations.

"For three years I have told my internal clients that this will be the last year that premiums will be down and prepared them for increases," said a Germany-based risk manager.

"I don't know whether it will happen this year. Maybe we will see a change if there are hurricanes. The most important issue will be the loss record. Remember that economic activity is falling so there will be less marine trade and fewer cars driven, and that will not drive premiums up," he added.

"It has been proven once again that this market is rubbish at predicting the changes in rates," said a U.K.-based buyer. "Six months ago, we all thought it would harden significantly and that is what

“It has been proven once again that this market is rubbish at predicting the changes in rates. Six months ago, we all thought it would harden significantly and that is what everyone said in the market. But apart from a little change in liability rates, for the most part it stayed soft and in some instances even softer than six months ago.”

PRICING

Many buyers reported flat renewals

Q: What percentage change in price did you experience at your last renewal?

	-20 to -11	-10 to -6	-5 to 0	0	0 to 5	6 to 10	11 to 20	21 and above
Property	0	18	15	52	4	11	0	0
Liability	4	15	0	46	19	4	4	8
Fleet	9	14	0	54	9	14	0	0

“For me it is very simple: We have a certain number of things for which we need balance sheet protection, such as property, liability and directors and officers, and what I have is what I need. If I have this coverage then I have done my job correctly.”

everyone said in the market. But apart from a little change in liability rates, for the most part it stayed soft and in some instances even softer than six months ago.”

Several risk managers said any market hardening will be limited to those lines most affected by the financial crisis. “In some areas it certainly will be harder but not in all lines of business. I still think that there is a reasonable amount of competition in most areas,” a U.K.-based risk manager said.

“We expect a market hardening, in particular for financial lines such as directors and officers, and errors and omissions,” said a risk manager with a financial services company. “The main reasons are deteriorating loss developments in these areas, as well as reduced insurance and reinsurance market capacity.”

Some buyers said the direction of the market likely will be linked to the economic situation. “The market will harden, but it depends a lot on the economic situation,” said one Spanish risk manager. “There could be more problems for insurance companies, and some of those in weaker positions could be merged, and there could be less capacity.”

Not all buyers believe the market will harden. One buyer at a Swiss company said he saw two conflicting trends. “The market could become progressively harder because of a reduced number of players, more constraints on carriers (through stricter capital rules such as Solvency II), and a dramatic

decrease of the financial performance of players,” he said. “But it could also soften as a result of clients’ demand for reduced premium because of the economic crisis and the pressure on costs.”

The market will stay soft because of a decrease in the demand for insurance, one French risk manager predicted. “It is classic supply and demand,” he said.

Exactly when the market hardens also will depend on the claims experience, one risk manager said. “If the claims don’t happen, especially in the property area, then I would say the market will remain the same. But if we have further turmoil on financial markets, the market could get harder. But the trend is toward a hard market; sooner or later we will get it.”

BUYERS SAY RATE DECREASES SLOWED

Europe’s commercial insurance buyers reported a significant slowdown in rate reductions for property coverage, and an increase in the average price for liability insurance at their last renewal.

Property premium rates for buyers from Europe’s 100 largest companies surveyed by *Business Insurance* were on average 1.4% lower at renewal, compared with an average 10.4% reduction reported in the 2008 survey.

Liability premium rates were 2.2% higher on average at renewal, compared with a 7.4% reduction last year, and auto fleet premium

rates were 1.4% lower on average, much the same as in the previous survey.

The majority of buyers surveyed by *Business Insurance* reported no change in property (52%) and auto fleet (54%) premiums at renewal, and just under half (46%) reported no change to their liability premiums at renewal. More respondents reported premium reductions (33%) for property coverages than increases (15%), and the largest reported reduction was 10% and the largest increase was 10%.

A higher proportion of respondents reported liability premium rates increases (35%) at renewal than those that reported decreases (19%), and the same number of buyers saw price increases for auto fleet as those that experienced decreases (33%). Liability rates ranged from 20% lower to 25% higher.

MOST BUYERS KEEP EXISTING LIMITS

While a number of risk managers at Europe’s largest companies were tempted to buy more commercial insurance coverage, a large majority kept their existing limits at their last renewal.

Only 17% of respondents said they bought more commercial insurance coverage, compared with 55% last year. In 2009, 80% of respondents said they purchased the same level of coverage insurance at renewal as they did last year, compared with 41% in last year’s

survey. Only 3% (4% in the 2008 survey) purchased lower levels of coverage, despite the deterioration in economic conditions.

Much like last year, risk managers who bought more coverage did so where capacity was available at attractive rates, or because of changes in their risk profile, such as with an acquisition. "We bought more for property because it was so soft, at the bottom of the market, and we also reduced the deductible to expose the insurers' balance sheets rather than our own," said a U.K.-based risk manager.

But most risk managers saw little reason to purchase higher levels of corporate insurance.

"For me it is very simple: We have a certain number of things for which we need balance sheet protection, such as property, liability and directors and officers, and what I have is what I need. If I have this coverage then I have done my job correctly," said a risk

manager with a Netherlands-based company.

"We are satisfied with what we have, and to purchase more coverage is not appropriate at this point in time," said a Germany-based risk manager.

Many buyers said they had purchased the same levels of coverage this year as last year because their needs had not changed, or because they were partly through multi-year contracts.

And many buyers that bought the same levels of coverage reduced their total insurance spend because they received rate reductions. "We have bought the same amount of coverage and we were able to bring down insurance costs," said another Germany-based risk manager who renewed his D&O and casualty program in April. "I was a little surprised because all the insurance companies said that prices would go up and reinsurers too, but the hardening did not happen and it is

still soft," he said.

A few risk managers purchased lower levels of coverage because of higher prices or reduced availability of certain coverages. "For our liability coverage we could not find sufficient coverage to buy the same level as last year to meet the requirements of our credit committee. The problems of American International Group Inc. and XL Capital Ltd. did have an impact in this sense," said another Germany-based risk manager.

"We did not buy as much coverage for difficult coverages, such as D&O and aviation," said another risk manager.

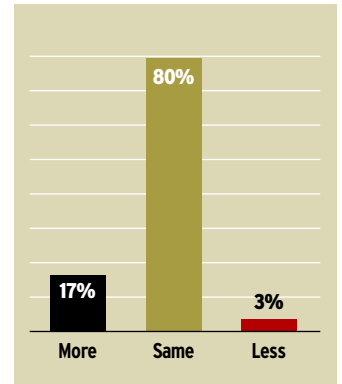
One Spanish risk manager said he will buy less insurance at June 1 renewal because of the cost.

"Insurance premiums are not going down. The insurance industry has to carry certain expenses and must maintain technical reserves and the margins will go down and down and so in the end they will have to act to cover those costs," he said.

LIMITS

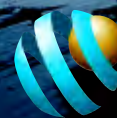
WHY BUY MORE?

Q: Did you buy more, the same or less commercial insurance coverage at your last renewal?

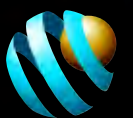


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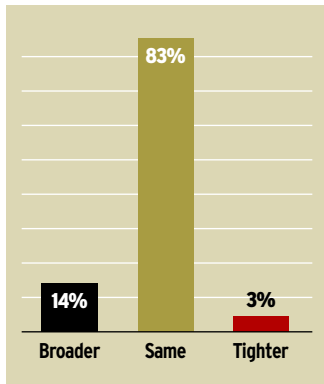
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COVERAGE

Most buyers offered same amount of cover

Q: Were you offered broader, the same or tighter conditions?



“Conditions were more or less the same, but we had some limitations, some exclusions in financial markets, but essentially we had the right premium.”

MAJORITY OFFERED SAME COVERAGE

Buyers at Europe's largest companies were offered much the same coverage at their last renewal, with tightening of terms limited to loss-affected classes such as financial institutions and credit insurance.

The majority (83%) of risk managers who responded to the *Business Insurance* Euro 100 survey said they were offered the same coverage at renewal, which is more than double that of last year's survey (41%). But respondents offered broader coverage at renewal fell to 14% from 55% in 2008. Just 3% of respondents said they had been offered tighter terms and conditions this year.

Coverage offered was on par with expiring policies, said one risk manager. “The market is looking for income and so will not risk tightening terms and conditions currently,” said a Spain-based risk manager.

Though, buyers found coverage for certain lines of business more restrictive than in the past.

“Conditions were more or less the same, but we had some limitations, some exclusions in financial markets, but essentially we had the right premium,” said one risk manager.

Another Spain-based risk manager said there is some concern with directors and officers liability coverage. “I should think all risk managers will have the same concerns, but I do not expect a real problem with capacity for us. Perhaps for financial services companies it will be difficult.”

“It was more difficult to find massive coverages for liability in Europe and so we predominantly bought capacity from the United States and Bermuda,” noted one Germany-based buyer. “Conditions were roughly the same, and the only line of business where there has been a shortage of capacity so far has been in D&O.”

CAPTIVE USE REMAINS STABLE

One-third of risk managers at Europe's largest 100 companies surveyed by *Business Insurance* expect to use their captive

insurers more in the next year, but most expect to use them the same amount or less.

Some 33% of respondents said they expect to use their captive more, but that is down from 50% in 2008.

Fifty-seven percent expect to use their captive to the same degree as previously, compared with 40% last year.

The same proportion (10%) said they expected to use their captive insurer less.

Some respondents cited stable or reduced risk exposures because of lower economic activity as a reason for unchanged captive use. “We have, more or less, the same coverage as in 2008, so we must make the same use of the captive as before,” said one risk manager.

Attractive premium rates also were a reason to maintain levels of captive use. “We are not using our captive as much, and we reduced the level of retention last year because of the lower cost of insurance on the open market,” said a Germany-based risk manager.

Another risk manager with a German company said his company does not intend to use its captive more this year. “We are very careful about how we use the captive because the open market is still very competitive. It depends upon the line of business, but if the rates do not really reflect the exposure, why take the risk in the captive?”

“For property, we used it less because we took advantage of the low rates on the open market,” said one United Kingdom-based buyer. “But overall I would say that the market will harden, and we will continue to use our captive to keep our costs down,” he added.

Many risk managers said they would consider using their captives more if premium rates hardened significantly.

“We will adapt with the market,” said a risk manager with a leading French company. “If the insurance market is competitive, we will not use our captive. If it is inefficient, we will use it.”

Another buyer said captive use was under consideration at his U.K. company. “We could decide to move either way depending on the market pricing/negotiations.”

Several companies that expect to use their captives more will do so because they recently have added

exposures. “We have started to write employee benefits business, which was not in the captive before,” said one United Kingdom-based risk manager. “We will probably use our captive more, largely because we are looking to reduce the cost and in certain areas we are likely to take niche covers out and place them within the captive,” he added.

One risk manager cited lower exposure as a reason for retaining more business. “Because of our significantly reduced business interruption risk, I feel comfortable taking significantly more retention,” he said. But this presents an “interesting conundrum,” he added.

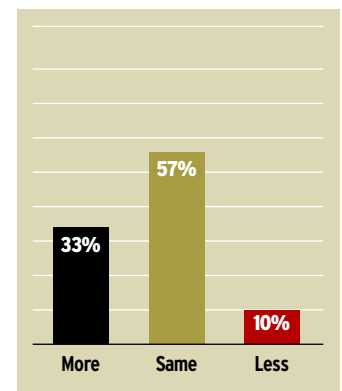
“Earnings before interest, tax and amortization expenses will see a significant reduction if we increase the retention. So at this point, it may seem like a questionable activity because it would mean an even higher increase in retention relative to EBITA. We will have to think a little bit more about that issue, but we are currently increasing the retention through the captive.”

Other considerations, such as changing capital adequacy rules for captives, are a factor, according to one Swiss risk manager. “Generally speaking, companies with captives will have to navigate between the incentive for stronger use of the captive because of a forthcoming hard market on one side, and the fear of pressure that may come from new regulations on the other.”

CAPTIVE USAGE

No net gain

Q: If you have a captive, will you use it more, the same or less in 2009 and if so, why?



SERVICE

Buyers fault insurers on levels of service

Insurers' service levels have worsened during the past year, with a significant number of risk managers surveyed by *Business Insurance* citing innovation, flexibility and willingness to pay claims as areas of poor performance.

Overall, 88% of risk managers at Europe's largest 100 companies surveyed by *Business Insurance* said insurers' service levels had not improved during the past year. Fifty-nine percent said service levels stayed the same, 29% said they had deteriorated, and only 12% said service levels had improved.

Insurers' performance in this year's survey was worse than that identified by risk managers in last year's survey. In 2008, just 11% of participating risk managers said insurers' service had worsened, 62% said it had stayed the same, and 27% said it had improved.

While most respondents to this year's survey said service levels were the same, many expressed discontent with certain areas. One Germany-based risk manager said insurers' service was bad on the whole, so even where service stayed the same, it was bad, he said.

The area where insurers performed worst in this year's survey was flexibility, in which 43% of those surveyed said insurers were less flexible than the previous year and only 14% noted an improvement in this area.

One risk manager who saw no improvement in insurers' flexibility said, "They like to talk about it, but I do not see a big difference." Another risk manager said some insurers were proving to be less flexible than previously.

Insurers' innovation also was an area that suffered during the past year. Some 36% of respondents this year said there was less innovation among insurers, with just 4% saying they had noticed an improvement.

The reversal of insurers' appetite for innovation is likely to reflect the painful experience of banks and some insurers with innovative financial products, such as the securitization of credit risk, risk managers said.

"All innovation has gone from the market because it has all become toxic, and the insurers are ready to dive back into the box," said a U.K. insurance buyer. "They see an opportunity because rates are hardening, capital is scarce, and reinsurance prices are up, so innovation is worse."

One risk manager at a Spain-based company said innovation had suffered from insurers' drive to ensure greater contract certainty after coverage disputes arising from the Sept. 11, 2001, U.S. terrorist attacks. "Innovation has been worse since 2001 as the market has sought standardization of insurance contracts," he said.

Several risk managers said the insurance sector is not an innovative industry. "There is never any innovation in this industry, so it cannot get worse," one risk manager said.

Insurers' willingness to pay also was an area that drew risk manager discontent. While 60% of risk managers said insurers' willingness to pay claims was the same as last year, 29% said it was worse, and only 11% said it had improved.

"In my view, if we have a loss now, it will be more complicated than a year ago," said a risk manager at a Spain-based multinational company. "They will want to appoint adjusters and take other

INSURER SERVICE LEVELS

Dissatisfied customers

Q: Has the service received from insurers improved, stayed the same or worsened?

	Improved	Same	Worse
Speed of response	11%	71%	18%
Flexibility	14%	43%	43%
Innovation	4%	60%	36%
Price	21%	58%	21%
Willingness to pay claims	11%	60%	29%

actions to slow the payment of claims. All insurers will want to delay payments by a few months to help their cash flow," he said.

Another risk manager with a Spain-based company said insurers in the region have shown an increased interest in recent years in negotiating claims. "In my opinion, insurers now consider whether a claim is covered or not. And then when they have determined that the coverage is not complete, they then have to agree to the level of indemnity. In the past, the claim was covered and you just had to discuss the economic value of the cover."

Deterioration in claims service also is linked to troubles at American International Group Inc., a major provider of global programs and fronting services, said a London-based risk manager with a major European multinational. "The problem is that AIG has taken its eye off the ball from September

“All innovation has gone from the market because it has all become toxic, and the insurers are ready to dive back into the box. They see an opportunity because rates are hardening, capital is scarce, and reinsurance prices are up, so innovation is worse.”

BROKER SERVICE LEVELS

Buyers see improvements

Q: Has the service received from brokers improved, stayed the same or worsened?

	Improved	Same	Worse
Speed of response	21%	58%	21%
Flexibility	36%	57%	7%
Innovation	25%	64%	11%
Transparency	32%	57%	11%
Value for money	32%	54%	14%

“Transparency is the same, and that is bad. I cannot see how brokers will adapt the business model. They charge a huge amount of fees for nothing. And the problem with brokers today is that I do not see the value. When I see that they want to charge an extra 2.5% commission, I do not see where the value has been added.”

onwards and so service levels have suffered,” he said.

“Staff have been lost and this is an increased risk to us because of the scale of our global program. We are taking all the risk and they are doing the fronting. And if we want a claim paid, usually they would say, ‘Fine,’ but now they are worried about the regulators and the like, so they are less flexible.”

Of the risk managers that said insurers’ willingness to pay claims had improved, one Germany-based buyer said AIG had been “exceptionally good” at adjusting claims. “AIG has improved tremendously and maybe done the industry a favor because it has shown how much benefit can be drawn from really focusing on what the customer wants and needs. I have not seen claims delayed and...in some respects I think everyone will realize that quick payment of claims is actually cheaper for everyone.”

Perhaps reflecting upward movement in premium rates in some lines, price also was an area where risk managers expressed discontent in the 2009 survey. Twenty-one percent of respondents reported pricing was worse but an equal percentage said it had improved; 58% said it

was unchanged.

Risk managers surveyed by *Business Insurance* said insurers’ speed of response was largely the same as in the past, with just 11% saying it had improved and 18% saying it had slowed compared with 2008.

One Germany-based risk manager said he experienced improvements in insurer speed of response because he had pressured insurers to do so.

“We put pressure on people and if they do not perform, we go elsewhere,” he said. “I have proven that we consistently stick with our partners because they do react when pressure is applied. One of the key things in terms of service is to have partnerships with people, and not so much with companies. I cannot influence companies, but I can influence people.”

But several risk managers were not happy with insurers’ speed of response.

“The market has never been able to respond quickly,” said a risk manager with a large U.K. company. “The whole industry is built around deadlines and there is limited access to the real decision-makers and we are kept away from them as much as possible. In some respects, it becomes a blinking competition up to the wire: You state your position and then wait to see who blinks first.”

BROKERS NEED TO WORK HARDER

Many risk managers say insurance brokers’ efforts to improve service are moving in the right direction but still have a long way to go.

More risk managers at Europe’s 100 largest companies surveyed by *Business Insurance* said they experienced an improvement in their brokers’ overall standard of service than those who said it deteriorated.

During the past year, brokerage services improved for 29% of respondents to this year’s survey. For 58%, they stayed the same; for just 13%, service deteriorated. Service levels were down slightly compared with last year’s survey in

which 36% of risk managers said service levels improved, 61% said they stayed the same and 3% said they had deteriorated.

Large brokerage houses in particular have had a tough time since they settled with then-New York Attorney General Eliot Spitzer and agreed to cease accepting contingent commissions in 2004. The resulting drive for income and increased competition has helped improve service levels, some risk managers say.

“There have been quite a few changes in the broking world recently,” said an insurance buyer with a U.K. company. “There was a lot of movement of teams and the brokers have been challenged to achieve their income levels, which in a way has forced them to improve their service.”

Brokers’ speed of response and flexibility improved as a result, the risk manager noted.

Some 36% of risk managers said brokers’ flexibility improved during the past year, while only 7% said brokers were less flexible. Speed of response was less clear-cut, with 21% saying service had improved and the same percentage saying it had slowed.

“Speed of service has improved,” said a risk manager with a U.K.-based company. “Given all the changes in the broking market, this had to happen.”

But while brokers have shown improvements in areas such as speed of response and flexibility, many risk managers were less than content when it comes to transparency of commissions and fees.

“Transparency is the same, and that is bad,” said a risk manager with a leading France-based company. “I cannot see how brokers will adapt the business model. They charge a huge amount of fees for nothing. And the problem with brokers today is that I do not see the value. When I see that they want to charge an extra 2.5% commission, I do not see where the value has been added,” he said.

Several risk managers acknowledged that brokers had taken steps to improve transparency, but they also

remained cautious.

“Transparency has improved, but brokers had no choice,” said a risk manager with a German company. “You have to ask the question, ‘Is this new transparency here to stay?’ Given the slightest chance to retreat, I am sure they would.”

A risk manager with a Spain-based company also said transparency had improved. “They are doing a little better than in the past, but there are a lot of steps pending. There is pressure from the regulators to take these steps, but not as much pressure as is needed,” he said.

Reflecting the overall levels of service satisfaction, 32% of respondents felt they were getting better value for their money, while just 14% said they received worse value for the money spent than in the past.

Value received for money spent has improved because brokers are working harder for the same fee, a risk manager with a Spanish

company said. “I think we get a better deal from our brokers overall,” said another risk manager.

“Value for money has improved and we have even obtained reduced fees from our brokers in some cases,” a risk manager at a Germany-based company said. “This was achieved through pure negotiation rather than a reduction in service.”

But many risk managers remain dissatisfied with brokers’ value for the money they receive. “Value for money is worse. You receive less and less and they expect more fees all the time,” said a risk manager at a large French company.

“The brokers are trying to generate more revenue from fees, but they are struggling and it is not a convincing story for me,” an insurance buyer with a Germany-based company said. “The large brokers have lessons to learn from the boutiques, because it all comes down to the team that is covering your account. In a boutique, they

have three to four accounts and are told to focus upon servicing them,” he said.

“The key for the brokers is that they need to know how to manage an account and hold onto the best people,” he said.

VALUE FOR MONEY

Q: Which insurance company and broker do you believe offers the best value for money?

Asked which insurer offers the best value for the money spent with the broker, risk managers at Europe’s largest 100 companies drew attention to a wide range of companies, although the response rate was smaller than other sections of the survey.

Insurers noted by risk managers included ACE Ltd.; Allianz S.E.; American International Group Inc.; AXA S.A.; Chubb Group of Insurance Cos.; Factory Mutual Insurance Co., which does business as FM Global; Gjensidige Forsikring

B.A.; HDI-Gerling, Lloyd’s of London; MAPFRE S.A.; Mitsui Sumitomo Insurance Co. Ltd.; Munich Reinsurance Co.; QBE Insurance Group Ltd.; Swiss Reinsurance Co.; TrygVesta Forsikring A.S.; and Zurich Financial Services Group.

Allianz and AXA were cited most often as offering the best value, followed closely by FM Global, Munich Re and Zurich Financial Services.

“For us, it is AXA which makes a difference in terms of flexibility and the variety of additional services they can offer to a corporate client,” said one risk manager.

Buyers most often cited Marsh Inc. and Aon Corp. when asked which broker represents the best value. “Aon and Marsh, the others are far below,” said a risk manager for a German company.

Buyers also cited Howden Insurance Brokers Ltd. and Assurex Global as providing the best value for the money risk managers spend.

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TOP RISKS

Insurer security, costs top concerns for buyers

Traditional risks remain the top issues for European insurance buyers, with security of coverage, price and breadth of coverage, and willingness to pay claims occupying the top three slots.

The top three positions are the same as last year's survey, and show that Europe's insurance buyers remain most concerned with the typical insurance market issues that determine with whom coverage is placed, how much it will cost and whether the product will deliver in terms of claims payment.

Thirty-eight percent of risk managers surveyed by *Business Insurance* ranked security of coverage as their top insurance risk issue, and 81% ranked it in their top two risks. Price was ranked in the top two risks by 58% of

respondents.

The two compliance risks—taxation and transparency—moved up risk managers' list of priorities, from the bottom spots in last year's survey to Nos. 5 and 6 this year.

The risks that can be grouped under the heading of service—global servicing capability and innovation—were of less concern in this year's survey. Global servicing capability moved down from fourth place in last year's survey to seventh place in this year's survey, while innovation moved from sixth last year to last place this year.

INSURANCE RISKS

Security and price top insurance risk list

Q: What will be the key insurance issues for you in 2009?

1. Security of coverage (financial strength of insurers)

2. Price and breadth of coverage

3. Willingness to pay valid claims

4. Contract certainty

5. Transparency

6. Tax and regulatory compliance

7. Global servicing capability

8. Innovation and delivery of solutions

BUSINESS RISKS

Credit crunch risks move up

Q: What will be the key business risks that need to be tackled in 2009?

1. Financial market volatility

2. Supply chain reliability/availability

3. Transparency and security of (counterparties) service providers and partners

4. Brand degradation/reputational risk

5. Contract certainty

6. Catastrophic risk—terror, pandemics, natural catastrophes, etc.

7. Regulation

8. Political risk

9. Product recall/failure

10. Energy supply and price

11. Taxation

12. Labor disputes

Not surprisingly, given the global economy, financial risks again top the list of business risks. But as the fallout of the economic crisis has taken hold, related risks such security of counterparties and supply chain reliability have risen among risk managers' greatest concerns.

Financial risk, while not usually within the direct responsibility of most operational risk managers, was No. 1 among 42% of respondents and among the top two risks of 62% of respondents.

Supply chain reliability moved up four places to the No. 2 business risk concern among risk managers at Europe's 100 largest companies surveyed by *Business Insurance*, while security of counterparties and service providers was elevated from ninth place to No. 3.

Forty-six percent of respondents put supply chain risks among their top two concerns, while 50% of risk managers surveyed ranked security of

counterparties in their top three.

These two risks moving up the ranking likely reflects the failure of major financial institutions during the height of the financial crisis and the increased threat of company insolvencies.

While reputational risks remained high, slipping only one place to No. 4 in this year's survey, the financial crisis displaced regulation and energy supply risks. Regulation moved down to seventh place in this year's survey from third, while energy supply moved to No. 10 from last year's No. 5.

Tax and labor disputes were unchanged and occupied the bottom two slots.

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THE FINANCIAL CRISIS

Poor risk management seen as a cause of crisis

More than three-quarters of European risk managers surveyed by *Business Insurance* say they believe failures in risk management and regulation contributed to the financial crisis, although respondents were split on whether giving more power to chief risk officers would help prevent similar failings in the future.

Seventy-nine percent of risk managers surveyed by *Business Insurance* thought a failure in risk management was behind the credit crunch and 77% thought a failure in regulation played a part.

Risk managers expressed a wide variety of reasons why they thought the financial crisis happened, including political, economic and human failings.

Risk management and regulation failed, said a risk manager with a U.K. company. "Whether you are a financial risk manager or otherwise, you have to work out the value of your assets, your liabilities and your acceptable level of tolerance. Whatever happens, you need highly competent risk managers," he said.

"There has clearly been a failure of risk regulation and a failure of risk management within all financial institutions, not a failure of the clients, but the risk managers within those organizations," said a risk manager with a Spain-based company.

Several risk managers said they believe risk management was culpable in the near-collapse of the global financial system.

"This is a failure of risk management because many of the banks had no idea who was supervising the risks and had not identified, measured and treated the risk," a risk manager with a French company said. "Many banks even failed to identify the risk, and did not know where the exposures were. So it is not relevant to talk

about regulation," he said.

Risk management was to blame, because regulation cannot be expected to be ahead of product innovation, said a risk manager with a Germany-based company. "Regulation comes subsequent to changes in products, so this was a failure of internal risk management."

Other risk managers say regulatory failures played their part in the financial crisis. "It was a failure of regulation in my mind," said a risk manager with a Spain-based company. "This is particularly important for a company like mine that places \$2 billion of risk in the market and no (insurer) can cover that on its own. We need 80% to 90% of the market; it is not like trying to place \$100 million. That



means we have few options and have to trust the market. We did rely on the minimum credit rating system, but that proved inefficient. So it was a failure of regulation, but also the rating system that proved to be very volatile," he said.

Several risk managers said other factors were behind the financial crisis.

Human failings played a part, said a risk manager with a large German multinational company. "It

was a failure of humankind: That is greed. You cannot really blame any party. The banks should not have lent and the borrowers should not have borrowed to that extent. You cannot expect something for nothing, but to try and pick a villain is wrong," he said.

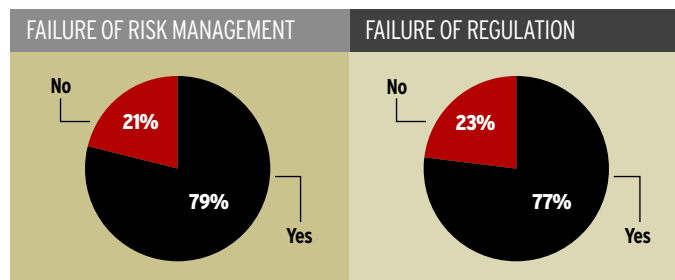
Failures in risk mitigation strategies also contributed to the financial crisis, said a risk manager at a large U.K. company. "Many of the risks were known, but decisions about how to mitigate them were not focused. The increased income opportunities for individuals and companies did not help. A lot of people were given an additional temptation to take risk because of the potential rewards and lost focus," he said.

One risk manager with a large France-based company said the causes of the financial crisis went way beyond traditional risk management. "There was a failure of economic philosophy and a short-term management approach. And that goes much deeper than the remit of the typical risk manager, even in a global company like mine. It is a deep-rooted problem and cannot be solved with traditional thinking," he added.

RISK FAILURE

Lessons learned from the crisis

Q: Do the credit crisis and subsequent global economic downturn represent a failure of risk management and of regulation?



CHIEF RISK OFFICERS IN A TOUGH SPOT

Barely a majority of risk managers surveyed by *Business Insurance* thought that, given more power, chief risk officers could help prevent another financial crisis. Fifty-seven percent thought giving CROs more power would help, but 43% said it would not.

Even though several risk managers would like to see greater representation of risk management at the board level, many did not think this would prevent another financial crisis.

"The position of a CRO is quite difficult," said a risk manager at a U.K. company. "There are so many different areas to deal with like regulation, modeling and technical matters, that it is very difficult to have one person in charge of all those areas. For a company like mine, it is better to have a risk management model that involves all the activities of the group. There are simply too many activities in a group like ours for a CRO to manage on their own," he said.

Whether CROs need more power is a gray area, a Germany-based risk manager said. "More power would help, but I don't want to have a culture of being focused only on risk at the company. There should also be a culture of seeing opportunities in the company. Risk always has a negative connotation, but it also contains the option of a reward."

FROM MODELING TO OPPORTUNITY

Lessons that can be learned from the financial crisis include a better understanding of limitations of models, counterparty exposures, and the need to be more proactive in identifying exposures, risk managers say.

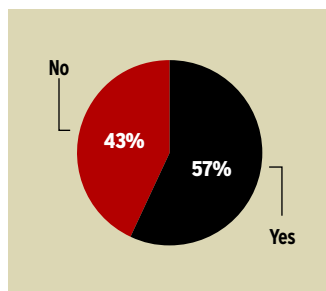
A number of risk managers surveyed by *Business Insurance* said one of the key lessons from the financial crisis is to understand the role of modeling tools in risk management and in making decisions.

The use of, and the belief in, quantitative risk models—which in

POWER TO CROs

How to prevent future financial crises

Q: Do chief risk officers need more power in the board room to prevent it happening again?



most cases did not sufficiently take into account systemic risk—has been overstated, said a risk manager with a large German multinational company. "Common sense would have provided a better risk evaluation in many instances. The challenge for risk managers is really to address systemic risk in their scenarios and to get heard more at board level," he said.

"A key lesson, certainly, is that exposure outcomes from models should not replace good business judgment," said a risk manager at a Switzerland-based company. "The finance industry needs to continue strengthening risk governance, moving away from silo-based to integrated risk management. They should improve and enhance stress testing of single risks, correlations between different risk types, liquidity risk management, and assessment of systemic and correlated risks. They also should move towards risk-based compensation schemes," he said.

Other risk managers identified incentives as a consideration. "You have to link incentives to the risk management philosophy of the company," said a risk manager at a France-based company. "If you are aware of your risks and you introduce incentives, then you need a means of measuring performance against risk. We need to bring some rigor to the management of this."

The financial crisis, and in particular the near-failure of American International Group Inc., is a big lesson for insurance buyers, a U.K. risk manager said. "We have to be prepared to replace providers constantly. If I have a problem with a policy after two months, I cannot wait a year for a replacement and it is necessary to include a subordinate carrier as lead if the carrier has problems or goes into runoff. We are working on this kind of thing because of the position of AIG," he said.

Risk managers need to take a much deeper look at the security of insurance companies because of counterparty exposure, another risk manager said. "We need to talk more face-to-face and we shouldn't rely 100% on rating agencies," he added.

The financial crisis also has shown that contractual conditions in general should be robust, a risk manager with a Belgium-based company said. "It is very important to have a good contract. I think that after this crisis it is more important than ever to be sure about not only premium prices but also contractual conditions," he said.

Several risk managers said the financial crisis represents an opportunity. "The crisis presents a huge amount of opportunities for risk managers to use some of the lessons learned," said a U.K.-based risk manager. "If you can't push

things through now, then you never will," he said.

The profession needs to develop unified standards and a self-governing body to allow the quick evolution of principles and to adjust to a changing market situation, said one risk manager. "Risk management needs to be a certifiable profession, and that should happen fast," he said.

Financial and operational risk managers should try to find more common ground, said a Switzerland-based risk manager. "Considering that financial risk management has a different meaning than technical risk management, efforts should be undertaken first to get to a common language, concept and method to tackle in an interdisciplinary manner the internal and external risks of a company," he said.

Risk managers should be more aware of financial risks, said another risk manager. "This should be part of their responsibilities. I have the impression that risk managers do not get the support they need to perform their jobs professionally. They should protest. Within our company, risk management can make a lot of decisions and can go before the board. If the risk manager says something, it is taken very seriously," he added.

The financial crisis also may make some companies think again about how much risk they transfer to insurers. "For my company, certainly the relevance of insurance is decreasing because we face a lot of risks for which insurance is simply not available," said a risk manager with a German company. "The dynamic of the modern economy is creating risk that the traditional insurance market cannot cope with. There is insufficient innovation and insurers really have to come up to speed," he added.

“The finance industry needs to continue strengthening risk governance, moving away from silo-based to integrated risk management. They should improve and enhance stress testing of single risks, correlations between different risk types, liquidity risk management, and assessment of systemic and correlated risks.”

SOLVENCY II

Solvency rules expected to lead to higher costs

Europe's proposed new capital-adequacy regime for insurers, Solvency II, is not a big hit with risk managers and captive owners.

The vast majority of risk managers, 77%, at Europe's largest 100 companies surveyed by *Business Insurance* said they expect the proposed legislation—which is to be implemented in 2012—to increase the cost of insurance, encourage further consolidation, and reduce the availability of certain lines of business. The standard, which also would apply to captive insurers, could make such retention vehicles less attractive, requiring higher capital levels and adding to risk managers' compliance costs.

When asked in this year's survey whether Solvency II would have a positive or negative effect, risk managers gave some forthright views.

"Not a good thing at all. We really do not need that additional regulation," said a risk manager at a France-based company. "The general market will be hit hard, certainly by the lower number of insurers, the declining capacity on the market, and the willingness to cover long-tail liability risks and natural catastrophe risks," he added.

Solvency II will introduce risk-based capital requirements for Europe's property/casualty insurers with annual premium income above €5 million (\$7.1 million). It introduces stricter levels of corporate governance, encourages the use of modeling techniques, considers investment risks, and will allow insurers to benefit more from risk diversification and mitigation.

A common concern among risk managers is that Solvency II could encourage insurers to move

to lower-risk business at the expense of specialty and difficult-to-place coverage.

"Smaller insurers will probably need more capital, especially if there is recognition of diversification for larger insurers and risk management processes in large companies," said a risk manager with a large German company. "So, we may see a further consolidation of the market and niche players may struggle to survive. As a buyer, I like the niche players because they carry risk and challenge the big ones," he added.

A small number of risk managers said Solvency II is likely to have some positive effects, such as better policyholder security. "Solvency II should lead to better-quality insurance products," said a risk manager with a Switzerland-based company. "It will subject carriers to more stringent conditions that commit them to business activities that are sustainable and solvent. This will have beneficial effects on the products they will distribute," he said.

But many risk managers fear Solvency II will increase the cost of corporate insurance, driving them toward retaining more risk. "It will increase the price and make insurance less available," said one buyer at a France-based company. "So it may convince me to have higher retention, which means higher self-insurance."

A U.K.-based risk manager agreed that overall capacity is likely to decline under Solvency II,



Legislation approved by the European Parliament will create a new capital regime for insurers in the European Union.

resulting in price increases. "The result is that the captive might need to play a bigger role in the retention/cost strategy," he said.

But the majority of risk managers surveyed by *Business Insurance* said Solvency II is likely to have a negative effect on captives, with several risk managers saying a re-evaluation of the role of their captives is likely.

Under the original proposed Solvency II Framework Directive, the legislation would apply equally to all insurers, large and small, including captives. But legislators since have agreed in principle to give captives special treatment under Solvency II, although it is unclear to what extent this will be of benefit.

Many risk managers said they expect the new rules to lead to higher capital requirements for captives, although many said they believe their established captives already are adequately capitalized to meet the new requirements.

"I do not see a capital threat for our captive because it is 20 years old and sufficiently capitalized," said a

risk manager at a Spain-based company. "The solvency margin could be increased, but the minimum level of solvency generally will only be a problem for small captives that have to increase their capital."

But funding higher capital requirements is unlikely to be high on companies' priorities in today's economic climate, risk managers say.

"Capital requirements will be higher (for some captives) and I think that, especially today, it will be very difficult to find finance in an organization to fund an increase in captive capital," said a risk manager with a German company. "Captives are not the prime business of an organization. It is just a side activity and not integral to operations. Therefore, it may be very difficult to prove that it would be a good idea to increase capital for a captive," he added.

Risk managers also are concerned that requirements under Solvency II—such as higher levels of corporate governance and the use of standard formulas or internal

models to calculate solvency margins—will make captives more expensive to run.

Captives will require more audit work and verification to prove compliance, said a risk manager with a French company.

“The biggest insurance groups are already preparing their own risk analysis and specific systems and processes to manage risk within their own balance sheets and loss accounts,” said another risk manager at a Spain-based company.

“For the smaller insurance companies and captives, they do not have enough resources to create their own model for Solvency II and this is a problem. We need the requirements to be commensurate with the scale of the operation,” he added.

“I am hearing concerns from my peers,” said a risk manager with a German company, adding that his organization’s captive is well capitalized and has the systems in place to deal with the new rules. “But others keep telling me that it

will make the operation of captives more costly and I believe that is justified, and it will make the captive concept less attractive and the original concept may be on the way out.”

He said he believes there are concerns about the whole concept of captives. “Financial markets do not like the idea of captives very much. And investors are likely to ask why a company is engaged in something that is not its core business.”

Several risk managers, even those with captives outside the European Union, are paying careful attention to the development of Solvency II. “I have been watching this with interest because I have a captive which is outside the European Union. Therefore the rules will not apply, but they will by proxy and (the non-E.U. regulators) will be looking for equivalence,” said a risk manager with a U.K. company.

“We are looking closely at Solvency II because we have one

captive in the European Union and one outside. Generally speaking, the impact is likely to be low for us, but we are looking at it,” said another risk manager with a large U.K. company.

While dispensations for captives have been agreed on in principle, details have yet to be discussed and could affect captive usage. “We participated in the consultation process and stated clearly that Solvency II has to adapt to captives and it seems that it will do so,” said a risk manager with a Spanish company. “If it does not cater to captives, then I think you will see far fewer formations than in previous years,” he said.

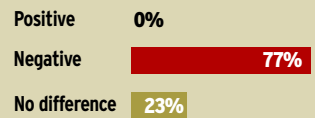
If the Solvency II regime treats captives in much the same way as any other insurer, small captives either will change domicile or be shut down, predicted one risk manager with a Germany-based company. Large captives either will change domicile or try to reduce their reinsurance, he added.

SOLVENCY II

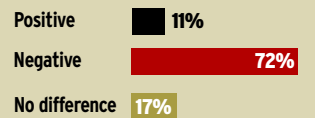
Buyers negative on new capital regime

Q: How do you expect Solvency II to affect the price and availability of insurance coverage you buy, and any self-insurance or captives you own?

CAPTIVES



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TRANSPARENCY

Broker pay disclosure improves since Spitzer

It has been almost five years since then-New York Attorney General Eliot Spitzer completed his investigation into the use of contingent commissions by the largest brokerage firms, and most European risk managers surveyed by *Business Insurance* say they have seen an improvement in the level of transparency by their brokers regarding their commissions and fees.

Some 77% of risk managers at Europe's largest 100 companies surveyed by *Business Insurance* said they are satisfied with the level of compensation transparency they receive from their brokers. And 60% said there had been some improvement in transparency during the past few years.

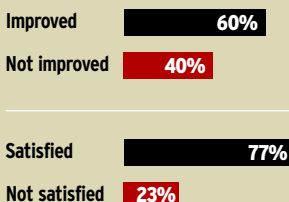
Broker transparency improved after Mr. Spitzer's investigations, said a risk manager with a Scandinavian company. "But it has stayed at that level since," she added.

Overall transparency has improved greatly during the past couple of years, said a risk manager with a Switzerland-based company.

TRANSPARENCY

Brokers are providing buyers with more details on their pay.

Q: Has broker transparency improved during the past year, and are you satisfied with the status quo?



"From this perspective, the status quo can be considered satisfactory,"

"Broker transparency has significantly improved," agreed another Switzerland-based risk manager. "That is for the good and I am satisfied with that. I can't complain, provided that everything that is on the table is really 100% the truth. I can't check this, but I do trust that the information on the table is correct, and so far I have no reason to doubt that."

Several risk managers have found it challenging to get their brokers to disclose their entire remuneration. "Broker transparency is satisfactory, but it only comes with battles," said a risk manager at another Switzerland-based company.

"Transparency improved, but only because we took the initiative," said a risk manager with a Germany-based company. "We asked for higher transparency and they were able to deliver and share the information with us. They were quite happy to do so because it actually strengthens their position as they have another document that shows that they are our broker of choice."

While transparency appears to have improved, many risk managers would like to see further improvements. "There is still a long way to go. For me it is still like pulling teeth," said one U.K. risk manager.

"I think there should be full transparency and I actually get it



without asking for it," said another risk manager with a U.K. company. "But I think a lot of other people find that brokers require some pushing into it, so I think there should be automatic disclosure."

"Yes it is transparent, but I still have my concerns, especially in the small to medium-sized sectors where it is still very unclear for the buyer," said one risk manager with a Netherlands-based company.

Forty percent of risk managers surveyed by *Business Insurance* said they have not experienced improved broker transparency. "I do not think it has improved, and I feel that the situation is not under control," said one risk manager based in Belgium. "I always have the feeling that things are happening behind our backs. It is not a satisfactory situation."

"Transparency is even worse and I see noticeable efforts being made in the direction of forgetting what happened," said another risk manager with a Bulgarian company.

Investigations by former New York Attorney General Eliot Spitzer have led to greater transparency of broker pay.

APPROACH

Problems at insurers shift focus to security

Many risk managers have made changes to the way they buy corporate insurance after the near-failure of American International Group Inc. and the collapse of other financial institutions under the weight of subprime mortgage-related losses and the wider fallout from the financial crisis.

About half of the risk managers surveyed by *Business Insurance* said they had made some changes in the way they buy insurance because of concerns about counterparty risks associated with their insurers. These changes included greater scrutiny of insurers' financial strength, a willingness to spread risk among carriers, and the wider use of rating triggers in contract language.

Some risk managers at Europe's largest companies said they are reviewing their lists of major insurers and many said they have taken steps to improve their assessment of insurers' financial strength.

One buyer at a major German

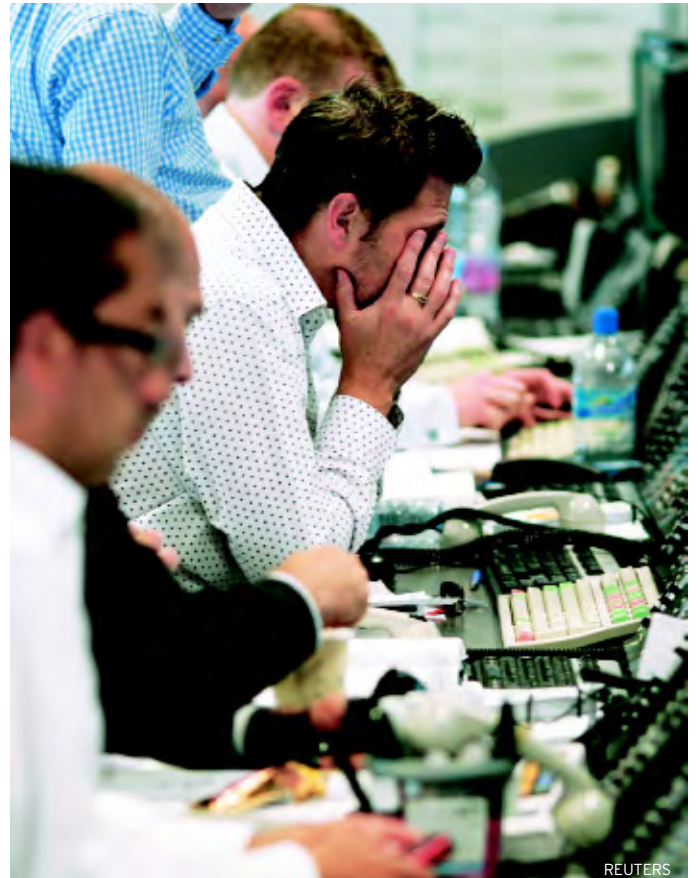
company said the organization now spreads its risks among more insurers to actively deal with counterparty risk. It also takes a closer look at insurers' financial reports, not just their credit ratings, he added.

"I think (the financial crisis) has made us reassess counterparty risk," said a risk manager for a U.K. company. "There are different considerations for short-, medium- and long-term business, and I would also say that people are more willing to spread their risk rather than having lots of concentration with one carrier," he added.

"We now focus even more on the financial security of our carriers, the risk connected with the participants on the slip, who we would accept leading our program, and how much risk each participant could have," said a risk manager with a Scandinavian company.

Many risk managers said they now make more use of rating-trigger clauses in their contracts. "The only change we have made is that we have now got credit rating protection," said another European buyer. "If an insurance company has its rating knocked down by a credit rating agency by more than two notches, we can cancel the policy."

Another risk manager who added contract clauses to respond in the event of insurer credit rating downgrade said she also has put an associated business continuity plan in place. She now places greater emphasis on risk management during the renewal process to



REUTERS

"differentiate and obtain the required insurers at the best price and best coverage," she said.

While risk managers are making more use of rating-triggered contract clauses, they also are relying less on credit ratings when assessing insurers. Several respondents said they are looking more closely at insurers' financials, and at least one has moved to proactive daily monitoring of insurers.

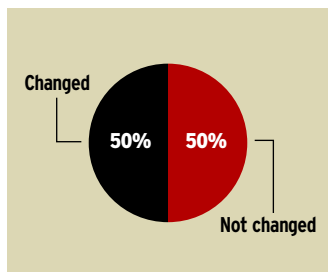
The financial strength of an insurer has become even more important, said a risk manager with a France-based company. "I ask more questions and I require ratings downgrade clauses," he said.

Problems in international financial markets have resulted in more scrutiny of insurer security by buyers.

APPROACH

Buyers step up security watch

Q: With recent financial problems at certain major insurers, has your approach to buying insurance changed in any way?



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CORRECTION: The above chart is a corrected version of a chart that originally ran on page 42 of the first part of the *Business Insurance* Euro 100 project, which was published in April. The earlier chart contained some outdated information regarding risk managers at several companies.

METHODOLOGY

The *Business Insurance* Euro 100 Risk Manager Survey 2009 was completed by 37 of the 100 risk and insurance managers in the Euro 100 group. This year we also included several risk managers who are also senior executives of national risk management associations bringing the total to 42, compared with 32 in 2008. The interviews took place between February and April 2009. All of the Euro 100 were contacted for the survey. The majority of responses came from Germany, France, the United Kingdom, Spain and Italy. We also interviewed risk managers in Belgium, the Netherlands and the Nordic region. This year we shall also hold a series of roundtables with leading risk managers in several countries in June and July to explore the issues raised in the survey. This will form the basis for an analysis of emerging risks and risk management strategies to address them. This analysis will be launched at the FERMA conference in Prague and shared with the full *BI* readership in October.

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