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INSURANCE GROUPS HAIL WHITE HOUSE PICK FOR RISK PANEL / PAGE 3

TEXAS GOV. PERRY SIGNS BIG CHANGES TO TORT LAW / PAGE 3

FORMER MARSH EXECS 'SCAPEGOATED' IN PROBE, LAWSUIT SAYS / PAGE 3

In Brief

Health reform mandate constitutional: Court

A key provision of the health care reform law that requires most U.S. residents to have health insurance starting in 2014 or pay fine is constitutional, a federal appeals court ruled last week. The decision by a three-judge panel of the 6th U.S. Circuit Court of Appeals is the first by an appeals court to rule on the mandate issue, with the Supreme Court almost certain to take it up. The appeals court said imposition of the requirement fell under Congress' constitutional authority to regulate interstate commerce.

Aon settles suit over wage-and-hour claims

A state judge has approved a \$10.5 million class action settlement in a wage-and-hour lawsuit involving Aon Corp. units in California that were

See **IN BRIEF** page 21

MID-YEAR MARKET REPORT

SPOTLIGHT

Catastrophes send some property rates higher; trends in general liability, D&O, E&O, reinsurance, workers comp; Dodd-Frank concerns linger. **PAGE 9**

CYBER RISKS



THREAT SHIFT

More sophisticated hackers seek long-term system access

By **JUDY GREENWALD**

The 15-year-old hacker working in his parents' basement is no longer a company's worst computer-related nightmare.

Instead, it is shadowy groups of independent—or state-sponsored—sophisticated hackers who are managing organized attacks on company's computer systems, which are known as advanced persistent threats.

And the problem is growing, with no simple solution.

That is because any measure to stop the attacks merely will

See **THREATS** page 20

PROPERTY/CASUALTY INSURERS

Insurance exchange back on track in N.Y.

Following delays, drafters nearly ready to take plan public

By **MATT DUNNING**

NEW YORK—Members of a state-commissioned working group say they are close to completing a draft business plan to revive the New York Insurance Exchange as a Lloyd's of London-style operation.

Working group members met twice last month to draft the plan, which they say will be shopped to potential syndicates and investors as well as insurance regulators and other industry stakeholders to build support for the project.

"We're in a good spot right now," said James Wrynn, superintendent of the New York Insurance Department.

The working group, which Mr. Wrynn commissioned in January 2010, had hoped to complete the business proposal by last fall. But the effort was put on hold after newly elected Gov.



New York insurance regulator James Wrynn is leading efforts to create a new insurance exchange in the state.

Andrew Cuomo announced in February that the state's Insurance and Banking departments would be merged to form the Department of Financial Services, with Mr. Cuomo's chief of staff, Benjamin Lawsky, serving as its new superintendent.

Mr. Wrynn, who will stay on as the combined agency's deputy superintendent when the change goes into effect in

See **EXCHANGE** page 18

REGULATION

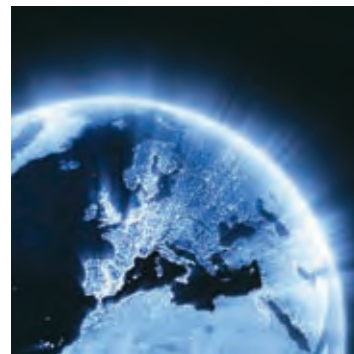
Solvency II implementation likely delayed a year

By **SARAH VEYSEY**

BRUSSELS—It appears likely that full implementation of Solvency II will be delayed a year, but experts say insurers, reinsurers and executives overseeing company-owned captives should continue working to comply with Europe's revamped

risk-based capital rules.

While the most recent deadline to implement Solvency II was Jan. 1, 2013, the Council of the European Union recommended delaying full implementation of the rules until 2014 in a "presidency compromise" that was reached in late June.



Under the council's proposed compromise on the Omnibus II directive, which proposes transitional arrangements to adopting Solvency II, regulators would not have to transpose Solvency II into national laws until March 31, 2013, and the Solvency I rules

would not be repealed until Jan. 1, 2014.

In the compromise plan, the council also recommended that insurers and reinsurers be able to gain formal regulatory approval of tools such as internal models in the latter half of 2013, but with an effective date of Jan. 1, 2014.

Under the plan, regulators would require insurers and reinsurers to provide an implementation plan by July 1, 2013, that includes evidence of the progress they have made toward complying with Solvency II.

The European Parliament is expected to vote this year on Omnibus II and report whether it believes the rules should be

See **SOLVENCY** page 6

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INDEX

Advertiser Index	19
Commentary	6
End Page	22
Opinions	8
Products & Services	19
Up Close	17

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PROPERTY/CASUALTY LEGISLATION & REGULATION

Insurance groups hail FSOC nominee Woodall

Ex-Treasury official had role in creation of TRIA program

By MARK A. HOFMANN
and SONJA RYST

WASHINGTON—President Barack Obama's nomination of S. Roy Woodall to fill a voting position on the Financial Stability Oversight Council has drawn considerable praise from insurance industry observers.

The industry had been concerned that the slot for a voting member representing insurance remained vacant long after other positions on the council—which oversees regulation of financial services institutions—had been filled.

Insurers feared that the council would subject them to additional regulation should it deem insurers to present a systemic risk to the U.S. economy. Insurers have argued that they present no such risk.

The White House's nomination of Mr. Woodall, a former Kentucky insurance commissioner who recently retired as senior insurance policy analyst at the U.S. Treasury Department, has been greeted favorably by insurers and others.

"It's important to have someone with the right insurance expertise in this slot, and Roy Woodall has certainly served as a regulator and in the administration and is well-positioned to add a valuable voice on behalf of the insurance industry," said Leigh

'His wealth of experience can only help to bring the perspective that FSOC needs on insurance issues.'

Dylan Jones, National Assn. of Mutual Insurance Cos.

Ann Pusey, president and CEO of the American Insurance Assn. in Washington.

Previous work lauded

In a statement last week, Ms. Pusey noted Mr. Woodall's involvement in establishing a fed-

eral backstop for terrorism insurance in 2002.

"After the attacks of Sept. 11, 2001, AIA worked very closely with Mr. Woodall and the team at the Treasury Department in designing the Terrorism Risk Insurance Program that provided the necessary financial security to help America recover and built an effective public-private partnership that has benefited U.S. business," she said.

"His wealth of experience can only help to bring the perspective that FSOC needs on insurance issues," said Dylan Jones, director-federal affairs in the Washington office of the Indianapolis-based National Assn. of Mutual Insurance Cos.

Frank Nutter, president of the Washington-based Reinsurance

Assn. of America, noted that Mr. Woodall had been discussed for months in Washington circles as a possible candidate for the FSOC slot.

"He's well-respected and knowledgeable about the insurance market and regulation," Mr. Nutter said.

"We've worked with him for years as a person from the Treasury, and have always had a great respect for his knowledge and constructive attitude," he said.

"Mr. Woodall will play a very important role on the FSOC as regulators implement the Dodd-Frank (Wall Street Reform and Consumer Protection Act) related to nonbank financial institutions," David Sampson, president and

See **FSOC** page 17

TORT REFORM

Tough economy raises outlook for tort reform

Supporters cite legislative success in Texas, other states

By MARK A. HOFMANN

WASHINGTON—Promoting tort reform as a means to foster economic growth may be a winning strategy to win passage of such measures, tort reform advocates say.

They point to Texas, where Gov. Rick Perry—a possible Republican presidential contender—signed a comprehensive tort reform measure aimed at reducing "frivolous" lawsuits. Among other things, the law includes a modified "loser pays" provision in cases where certain settlement offers are rejected (see box).

"This important legislation will help make Texas that much more attractive to employers seeking to expand or relocate from countries all over the world by allowing them to spend less time in court and more time creating jobs," Gov. Perry said Memorial Day as he signed the bill into law.

Texas has some company in advancing tort reform during recent legislative sessions, but there also have been roadblocks and efforts to promote tort reform on the national level have yet to advance, experts say.

The reforms enacted by Texas are perhaps the most significant state actions, according to reform advocates. "The reforms are



AP PHOTO

TEXAS TORT REVAMP

Highlights of Texas' new tort reform law, introduced as H.B. 274, include:

- Instructs the state Supreme Court to write new rules to allow courts to dismiss cases that should not have been filed.
- Instructs the state Supreme Court to write new procedural rules to expedite cases where the amount in dispute is \$100,000 or less.
- Allows some litigation costs to be shifted to the party that rejects a reasonable settlement offer.

Source: Texans for Lawsuit Reform

important in a number of ways," said a spokeswoman for Houston-based lobbying group Texans for Lawsuit Reform.

"We believe that this is the most significant tort reform legislation to pass in Texas since the asbestos litigation reforms in 2005 and the medical liability reforms in 2003," the spokeswoman said. "This bill was bitterly opposed by the Texas Trial Lawyers Assn. until the last minutes of deliberation in the Senate."

Texas Gov. Rick Perry signed a tort reform measure aimed at reducing "frivolous" lawsuits.

A national tort reform leader agreed.

"We were thrilled to see Texas advance reform," said Lisa Rickard, president of the Washington-based U.S. Chamber Institute for Legal Reform, an affiliate of the U.S. Chamber of Commerce. "They've been moving down that path for years."

"The entire country is focused on the subject of job creation and jobs," said Ms. Rickard. The issue of litigation is a drag regardless of the size of business. "The issue that America needs more jobs, not more lawsuits, has been our mantra—it's true and it certainly resonates with people," she said.

Sherman Joyce, president of the American Tort Reform Assn. in Washington, said he does not "think there's any question that Gov. Perry feels" that tort reform will spur economic growth. "I think the record in Texas is pretty conclusive."

"A lot of Gov. Perry's fellow governors are beginning to pick up that mantle," said Mr. Joyce,

See **TORT** page 17

AGENTS & BROKERS

Ex-execos allege Marsh colluded with Spitzer

Gilman, McNenney say firm used them as 'scapegoats'

By MARK A. HOFMANN

NEW YORK—Two former Marsh Inc. executives whose bid-rigging convictions were overturned have accused their former employer of setting them up as "scapegoats" by colluding with former New York Attorney General Eliot Spitzer to avoid criminal prosecution of Marsh.

Former Marsh Managing Directors William Gilman and Edward McNenney first sued Marsh Inc., Marsh & McLennan Cos. and two other Marsh units last October, accusing Marsh of violating federal law and breach of contract.

In an amended suit filed late

last month in U.S. District Court for the Southern District of New York, the two accuse Marsh, MMC, Marsh Global Broking Inc. and former Marsh CEO Michael Cherkasky of colluding with Mr. Spitzer, who later became governor of New York, to avoid prosecution of Marsh.

The "New York attorney general sought to obtain some successful criminal prosecutions of individuals, even if the evidence did not justify such prosecutions," the men allege in the amended complaint.

"Marsh agreed to provide the New York attorney general with assistance in achieving this objective and targeted Messrs. Gilman and McNenney as high-ranking employees for prosecution," according to the complaint. The defendants "improp-

See **MARSH** page 18



BLOOMBERG

Former Marsh Inc. Managing Directors William Gilman (left) and Edward McNenney allege the brokerage help prosecutors build a bid-rigging case against them to avoid criminal prosecution of Marsh.

SAFETY



Risk managers and fleet managers implementing safety programs need to take time to find out exactly who is driving company vehicles, especially when employees are permitted to use the vehicles outside of work.

Safety, ergonomics, cover all drive fleet risk programs

Dual use of company cars complicates some exposures

By **JEFF CASALE**

CHICAGO—Risk management, ergonomics, policy wordings and safety programs all play important roles when managing a company's fleet.

During the American Society of Safety Engineers' Safety 2011 conference in Chicago last month, Peggy Ross, corporate environmental health and safety

manager for Baxter Healthcare Corp., explained that the strength of a company's nonregulated fleet program begins with its insurance policies and how the vehicles are used and who is allowed to drive them.

Nonregulated fleet vehicles usually are cars, trucks, vans and SUVs used for business that are not regulated by the U.S. Department of Transportation. This typically includes vehicles used by salespeople and those leased by employees.

The vehicles often have dual uses—work and pleasure so, Ms. Ross told audience members during an

See **FLEET** page 21

Worker obesity key challenge for employers

As weight-related costs rise, companies look for solutions

By **JEFF CASALE**

CHICAGO—With the exception of Colorado and the District of Columbia, every U.S. state has an obesity rate of at least 20%, and nine have an obesity rate of 30% or more, according to the Centers for Disease Control and Prevention.

Employers can take several measures to address the issue of obesity among their workforces, including reviewing the set up of their workplaces and providing incentives for employees to take care of their health, said a speaker at the annual American Society of Safety Engineers conference.

"We don't need to treat an obese or aging workforce differently," Winnie Ip, director of consulting and ergonomics engineer for Ann Arbor, Mich.-based consultant Humantech Inc. said at the mid-June Safety 2011 conference in Chicago. "We don't need to change their goals, but we need to be more aware and find accommodating work solutions for all populations."

See **OBESITY** page 21



DIRECTORS & OFFICERS LIABILITY

Court says MBIA insurers must cover costs from accounting probes

By **MICHAEL BRADFORD**

NEW YORK—MBIA Inc. is entitled to \$30 million in coverage under two directors and officers liability policies for costs related to federal and state investigations of alleged securities law violations, a federal appeals court ruled last week.

MBIA, an Armonk, N.Y.-based financial guarantee insurer that writes coverage for governmental entities, claimed its D&O coverage written in two, \$15 million policies by Federal Insurance Co. and ACE American Insurance Co. should cover the costs MBIA incurred in responding to inves-

\$30M

The amount a court ruled D&O insurers should pay MBIA for costs related to state and federal investigations.

tigations into the company's accounting practices.

Robert H. Shulman, an attorney with the New York firm Kasowitz, Benson, Torres & Friedman L.L.P. who represented MBIA in the case, said the decision is important because it marks the first time an appeals court has ruled for such broad coverage of securities claims arising out of "investigatory subpoenas."

MBIA was targeted in November 2004 as part of a larger investigation into insurance market accounting practices. Several subpoenas required the company to produce docu-

ments on transactions involving "nontraditional products" and details of its accounting treatment of those products, among other paperwork, according to court documents.

Three MBIA transactions ultimately came under regulatory scrutiny, and regulators told the company in August 2005 that action would be taken for securities violations, according to court documents. The company subsequently agreed to a \$75 million settlement with regulators regarding one transaction and was exonerated of wrongdoing in the other two.

Federal Insurance agreed to pay about \$6.4 million to cover expenses related to the investigation of the transaction that MBIA

agreed to settle, but refused to cover losses related to the other two. ACE's coverage was written above the Federal Insurance policy, so it paid nothing.

However, a lower court ruled that the costs were covered, and the 2nd U.S. Circuit Court of Appeals last week upheld most of that decision. The appeals court did agree with insurers on one point: that costs charged by an independent consultant hired by MBIA were not covered.

Insurers had argued that the investigations are not covered as "securities claims" under the policies. The appeals court noted, though, that a subpoena is "at absolute minimum, a 'similar document' to those listed" as securities claims in MBIA's coverage.



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Solvency: Implementation likely delayed

CONTINUED FROM PAGE 1

delayed.

If the parliament agrees to the council's proposal, which industry experts say they expect to happen, then implementation of Solvency II would be delayed until 2014, with several elements being phased in.

But the one-year delay would not necessarily give lobbyists more time to bring about changes to the rules, experts say. And insurers and reinsurers should not let up in their efforts to be ready for the upcoming rules.

The Brussels-based Comité Européen des Assurances, which represents insurers and reinsurers in Europe, said it still favors a Jan. 1, 2013, implementation for Solvency II. But the CEA also said it sees the merits of a "soft launch" of Solvency II. "This would ensure that regulators and the insurance industry have sufficient time to prepare for the new regime," the CEA said in a statement.

Aon Benfield Inc., the reinsurance arm of Chicago-based brokerage Aon Corp., surveyed attendees at a recent client conference and found that 60% believe that 2014 would be a better start date for Solvency II than 2013.

Of the 100 reinsurance managers and analytics experts surveyed, 61% said they did not believe their national regulator was "up to speed" with internal models that many insurers will use for their Solvency II capital calculations, according to the Aon Benfield survey.

While the delay "may give both companies and supervisors welcome breathing space to design and implement their Solvency II plans, we note any resulting delay to the internal model approval process may be a cause for concern amongst companies already well-advanced in this area," the London-based arm of actuarial and consulting firm Milliman Inc. said in a statement.

"While many in the industry

'There is still a lot of work to do, but people know they need to focus on their risks. That must continue. It is not the time to take your foot off the gas.'

Marc Beckers,
Aon Benfield Analytics

will welcome the delayed implementation, there is a significant proportion that have invested heavily in preparing for the original deadline and would now prefer to move quickly to the new regime," said Phil Smart, U.K. head of Solvency II at KPMG L.L.P. in London.

This is particularly true of companies that have been working to win approval of their internal risk models so they could start seeing a return on that investment, he said.

Any delay "has massive implications for the costs of introducing

Solvency II, both for consultancy and in-house costs, as well as the uncertainty it brings," said John O'Neill, head of the insurance consulting practice at actuarial and consulting firm Barnett Waddingham L.L.P. in London.

The biggest risk of any delay would be insurers and regulators taking their "foot off the pedal" in preparing for Solvency II, Mr. Smart said.

While many insurers are well into preparing for Solvency II, significant uncertainty remains regarding the final rules that will be imposed, said Marc Beckers, head of Aon Benfield Analytics for Europe, the Middle East and Africa. "When it is unclear what the regulatory landscape is going to be like, it is quite difficult for companies to determine what the best strategy will be," he said.

"There is still a lot of work to do, but people know they need to focus on their risks," Mr. Beckers said. "That must continue. It is not the time to take your foot off the gas."

Delaying implementation of Solvency II should give companies time to "do a better job" in preparing, he added.

Solvency II rules have not yet been finalized for several areas said Paul Clarke, global head of Solvency II at PricewaterhouseCoopers L.L.P. in London. While a delay in implementation likely also would help national regulators prepare, there is unlikely to be much extra time for insurers and reinsurers to influence the shape of the directive, he said.

Commentary

System hacks are now a fact of corporate life

You know you're in trouble when an exposure suddenly becomes so widely reported that it turns into comedy fodder on late-night talk shows.

But so it's been during the past month or so with cyber risk, with a seemingly endless string of reports of data breaches and other hacks.

Stunning for many was that many of the companies and organizations being hacked weren't mom-and-pop shops, but instead are major players such as Sony Corp. and Citigroup Inc. and the Central Intelligence Agency—organizations you think would have the resources and technical know-how to run pretty secure information technology operations.

Despite those organizations' heft (and in part, perhaps, due to a certain amount of IT security hubris), however, their systems were bettered by hacker groups with names like LulzSec and Anonymous.

In the midst of the seemingly daily accounts of the hacker teams' exploits came a report of a survey conducted by Ponemon Institute L.L.C. for Sunnyvale, Calif.-based networking company Juniper Networks Inc., which saw 90% of the 583 U.S. companies surveyed indicating that their computers had been breached at least once in the past year.

Of those surveyed, 60% said they'd been breached more than once in that time, and more than half said they had little confidence in their ability to prevent additional attacks in the next year.

The takeaway, of course, is that if you're in business and you're online, you're going to get hacked.

Last month, I attended the NetDiligence Cyber Risk & Privacy Liability Forum in Philadelphia, where approximately 300 attendees discussed the recent events, the law surrounding data breaches and businesses' liability for exposed data and other issues. The number of attendees was up significantly from last year's gathering, according to conference organizers, though my guess is it still largely represented the choir on the topic of cyber risk—they were there because they get it.

Since the gathering, there's been a lively conversation in the Twitterverse among many conference participants and others about cyber exposures



RODD ZOLKOS

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and other related trends. Among the tweets was one from Jon Neiditz, a partner at Nelson Mullins Riley & Scarborough L.L.P. in Atlanta and founder and co-leader of the firm's information management practice, who responded to the Ponemon survey's 90% finding by noting that the remaining 10% are wrong.

If there's a positive to the recent high-profile hacks, I

If your password's still 123456, it might be time to change it.

guess it's that it has made many companies—and individuals—more aware of the risks that are out there and the need to take steps to deal with them.

Speaking at the Cyber Risk Forum, Renee Yozzi, risk manager at Horizon Blue Cross Blue Shield of New Jersey in Newark, described the spate of hacking news as "humbling," adding, "I'm not sure what (chief information officer) would want to put themselves out there anymore and say 'We're invincible.'"

And if your password's still 123456, it might be time to change it.

At this point, I'll make a shameless plug: I mentioned recent conversations on Twitter, and if you happen to be there and are so inclined, please consider following me. My handle's @BusInsRZolkos and many of my *Business Insurance* colleagues are tweeting regularly, too.

There's really some pretty good and useful stuff being tweeted—Twitter's not all Justin Bieber. Of course, if you're looking for Justin Bieber, I'm sure that's there, too.

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Business Insurance OPINIONS

Ruling on reform law needs to come quickly

IS THE HEALTH CARE reform law constitutional?

That's the question courts have faced since Congress passed the Patient Protection and Affordable Care Act and President Barack Obama signed it into law last year.

In the highest-level court decision so far, the 6th U.S. Circuit Court of Appeals ruled last week that a key provision in the law is constitutional. The provision requires U.S. residents to enroll in a qualified health plan starting in 2014 or pay a fine.

Specifically, the appeals court said the mandate is a legitimate exercise of Congress' constitutional authority to regulate interstate commerce.

At the district court level, judges have issued varying rulings on the issue. The 6th Circuit's ruling is just the first appeals court to weigh in on the law, and it will not be the last.

There is no question that the Supreme Court will take up the issue, perhaps as soon as its next term, which starts in October.

There are at least two important messages in last week's ruling.

The first is that critics who predicted the law's demise after a Florida federal judge's ruling this year invalidating the law were premature in rejoicing. The fate of the law won't be known until the Supreme Court rules.

The second is employers should continue to work at full speed to make the necessary health care plan changes to comply with the law and accompanying regulations. The division among the courts is hardly reason to assume that the law won't pass muster ultimately.

Finally, the Supreme Court should take the case and issue a ruling as expeditiously as possible so employers and others can plan accordingly.

Woodall will give voice to insurers concerns

IN A CASE of better late—and very late at that—than never, the Obama administration finally has nominated a voting member with “insurance expertise” as a voting member of the Financial Stability Oversight Council.

We believe nominee S. Roy Woodall, who must be confirmed by the Senate, would do an excellent job.

As we report on page 3, Mr. Woodall has an impressive resume, including stints as Kentucky insurance commissioner and as a Treasury Department official who was involved in devising the federal terrorism insurance backstop in the aftermath of the Sept. 11, 2001, terrorist attacks on New York and Washington. His nomination has won plaudits from the insurance industry, and rightly so.

Although Mr. Woodall has served in the public sector, it's worth noting that he has experience in the private sector as well, with the National Assn. of Life Cos., and later the American Council of Life Insurers, after the two entities merged. We've expressed concern before that the Obama administration's financial reform approach has relied heavily on regulators, thus Mr. Woodall's private-sector experience will be a welcome addition to the FSOC.

The FSOC has been considering regulations that will directly affect insurers without the industry having a voting voice in the process. We have no doubt that Mr. Woodall's voice would be an effective one.

The Supreme Court should take the case and issue a ruling as expeditiously as possible.



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THIS WEEK'S RESULTS

Q Will the Supreme Court's Wal-Mart ruling reduce the number of class actions filed against corporations?



Betty Dukes of Dukes vs. Wal-Mart Stores Inc.

YES



NO



NEXT WEEK'S QUESTION

Q: How frequently do you change your network security password at work?

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Manage claims proactively to reduce costs

Owner-controlled insurance programs combine several types of insurance and each policy has different types of coverage. However, all can result in claims disputes, say Kurt Dettman, principal of Hingham, Mass.-based Constructive Dispute Resolutions, and Peter Scarpato, president of Yardley, Pa.-based Conflict Resolved L.L.C. They propose a program that could establish a more proactive management plan to defend and resolve claims in a cost-effective way.



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STORM BREWING?

Property insurers seek rate increases as catastrophe losses mount

By MIKE TSIKOUDAKIS

Underwriters are taking a closer look at catastrophe-exposed commercial property during renewals, as they grapple with increased losses and a revised U.S. hurricane model, and are imposing rate increases in some cases, experts say.

However, buyers seeking coverage of commercial property without catastrophe exposures can expect a competitive marketplace with plenty of capacity and flat to decreasing rates, experts say.

Weather-related insured losses in the United States already have topped \$15.5 billion this year, three times the annual average of the past 20 years, Aon Benfield Inc., the reinsurance brokerage arm of Chicago-based Aon Corp., said in a report.

Worldwide insured cat losses are estimated at \$33.5 billion to \$55.4 billion so far this year, according to Boston-based AIR Worldwide Corp.

Forecasters have predicted an above-average number of storms during the hurricane season, which began June 1 and runs through Nov. 30.

Another factor affecting commercial property rates is Risk Management Solutions Inc.'s version 11 Atlantic hurricane model released earlier this year. The Newark, Calif.-based firm's updated model includes assumptions of greater inland wind damage, which experts say caused several underwriters to rethink their pricing.

With major catastrophes this year in the United States and abroad, commercial property catastrophe "rates in general have bottomed out and are starting to move into a positive rate environment," said Jon Hall, executive vp at Factory Mutual Insurance Co. in Johnston, R.I., which does business as FM Global.

He noted that reinsurers also are looking for tighter terms and conditions and are increasing their rates, which insurers will pass on to buyers. "So we're looking at flat to plus 5% to 10% going forward," Mr. Hall said.

But some buyers whose renewals took place in April enjoyed flat to decreasing commercial property rates.

Working with his broker, Dan Hurley, senior director of risk management and safety for Norfolk Public Schools in Norfolk, Va., said he is aware that the earthquake and tsunami in Japan and a series of U.S. storms have resulted in increasing rates for catastrophe-exposed commercial property.

"Particularly in the Atlantic seaboard, my understanding is that local cities are feeling increases. I've heard between 5% to 10%," Mr. Hurley said.

But at the time of his commercial property renewals, rates for the school district's property were flat. "We are lucky because we were in an April renewal and most of this movement in increases

came across midyear in June and July," Mr. Hurley said.

East of Mr. Hurley in Virginia Beach, Va., John Grook, risk management administrator for the city, also renewed the city's property coverage in April and saw a decrease of about 5% on nearly \$1 billion in property coverage.

"We were thinking that we were going to get a flat renewal and we were very pleased with having a slight decrease," Mr. Grook said.

But with the heavy catastrophe losses this year, the market "is going to have to harden," Mr. Grook said. "I think (the recent natural disasters) are going to affect all of us whether we are directly affected or not. There's going to be a trickle-down effect and we're just going to

have to see," he said.

The first quarter the year saw commercial property rates decrease slightly, experts say. But catastrophes so far this year have stemmed the decrease and caused a definite flattening of rates, experts say.

Mark Bernacki, head of underwriting performance for Beazley Group P.L.C. in London, said the global property insurance market is firming, but it hasn't hardened yet. "I would probably characterize it...as a market on the tipping point," Mr. Bernacki said. "When we moved into the month of May, I saw all of our global property teams with positive rate changes, and it's the first time that I can say that since 2008."

He noted that as second-quarter insurer results come in, along with "an expected active hurricane season...there's really no doubt in my mind that we'll move into a hard market."

Insurers pressured to loosen terms and conditions during the prolonged soft market have seen them "stabilize," but they "may start to tighten up a little" depending on account type and exposures, said Tim Rose, senior vp and chief underwriting officer of commercial markets national accounts property for Liberty Mutual Group Inc. in Boston.

Also, low interest rates yielding meager investment returns for insurers will keep the march of rates upward, Mr. Rose said.

Charlotte Stone, managing director of the worldwide property practice for Arthur J. Gallagher & Co. in Los Angeles, focused more on the RMS model.

"I don't think the effect of these losses have been captured by the industry yet," Ms. Stone said. "But what is really having an effect on the market is the new model version RMS 11."

The model has a significant impact on insurers' risk accumulation in catastrophe-prone areas, forcing them to either increase their reserves, buy more reinsurance when rates are increasing or reduce how much they underwrite in certain areas, Ms. Stone said.

"The industry, as it currently stands, would be

See **PROPERTY** next page



Mid-Year
Market Report
& Legislative
Roundup

SPOTLIGHT

D&O INSURERS SEE RATE INCREASES AHEAD DESPITE CAPACITY GLUT
PAGE 12

E&O RATES STILL SOFT, BUT FEWER COMPETE FOR TOUGHEST RISKS
PAGE 12

REINSURANCE PRICES RISING ON ACCOUNTS WITH CAT EXPOSURES
PAGE 13

MEDICAL LOSS COSTS DRIVE WORKERS COMP PRICING SHIFT
PAGE 14

WALL ST. REFORM LAW, SHAPE OF FLOOD COVER TOP LEGISLATIVE ISSUES
PAGE 15

LIABILITY

Rate declines moderate for general liability renewals

By RODD ZOLKOS

While many commercial insurance buyers renewing general liability policies at midyear are seeing prices that range from flat to slightly less, there are indications that change might be afoot in the market.

By all indications, flat renewals are the norm and price decreases some buyers are experiencing aren't as deep as in recent quarters.

"We are still seeing a fair amount of flexibility in the market as it relates to liability, which translates into many customers seeing rate reductions, flat renewals," said Tracey Caffrey Ant, primary casualty placement leader at Marsh Inc. in New York.

Marsh's market data suggest that fewer buyers may be seeing reductions than had been the case recently. For "risks that have tougher exposures," rates have been "flat to maybe a little bit of an uptick," Ms. Ant said. "Clean risks are still seeing a little bit of a reduction in the market," while "a tougher risk is tougher now than it was two quarters ago."

"The majority of renewals are flat," said Pamela F. Ferrandino, executive vp of the North American casualty practice at Willis North America in New York. National accounts are seeing renewals ranging from flat to down 5%, Ms. Ferrandino said. "What we've stopped seeing in the

GL space is the reduction of 5% to 10% in the primary" coverage.

Anthony DeFelice, managing director in the national casualty practice at Aon Risk Services in New York, said, "Basically what we've seen is certainly somewhat of a change in the market; although it is continuing its downward trend, albeit at a slower pace," he said.

Pricing changes are being driven primarily by certain higher hazard risk classes such as energy, some life sciences, generic pharmaceuticals, and some rail and auto parts manufacturing, Mr. DeFelice said.

Moving into the second quarter, underwriters were trying to hold the line on rate and get rate

increases where they could, particularly in the lead umbrella layer.

"There's somewhat of a dearth of capacity, particularly for the higher-hazard groups for the lead umbrella," said Mr. DeFelice. "For the first time in a long time, some of our programs have gone uncompleted."

In those cases, he's seen buyers retaining risk in certain layers to keep premiums constant. "Of course, we're talking about some of the larger risks, not the mom-and-pop types," Mr. DeFelice said.

Offshore energy in particular saw a reduction in capacity as underwriters rethink their books

See **LIABILITY** next page

Liability: Declines moderate at renewal

CONTINUED FROM PREVIOUS PAGE

of business, he said. For “the larger vanilla types of risks—the low-hazard profiles—there’s still plenty of competition,” he said.

From an insurer’s perspective, “I think that the rate environment has been improving,” said David Blessing, chief underwriting officer for national accounts in the commercial markets group at Liberty Mutual Group Inc. in Boston.

Renewal rates are flat to slightly negative, he said, with average decreases smaller than in the past. “Obviously, better accounts get better pricing,” Mr. Blessing said.

Among smaller clients, “we’re continuing to see in the multilines side more competitive pricing for packaged accounts,” said Jamie Luce, Boston-based chief underwriting officer for middle markets, at Liberty Mutual’s commercial markets group.

Vincent Tizzio, president of the commercial markets and customer industry segments business unit of Zurich North America Commercial in New York, said he sees GL rates stabilizing or increasing, depending on the class of business.

“GL, because of the differences in performance by industry and, indeed, by state—depending on

the legal environment in the state—requires a very active underwriting posture,” Mr. Tizzio said. “GL is a volatile class. We have seen some rate movement.”

Richard Rabs, vp claims and risk management at Veolia Transportation Inc. in Lombard, Ill., was in the market in June for his company’s GL renewal. “The reality is...on the GL side we are seeing incredibly good results,” he said.

Selective market

“The market is selective, don’t get me wrong,” said Mr. Rabs, who added, however, that he’s seeing no shortage of capacity either for

primary or excess general liability.

At Kansas City, Mo.-based Hallmark Cards Inc., most casualty coverages renew Oct. 1, but William W. Johnson, Hallmark’s risk financing manager, said he’s been meeting with his broker to get market information and plan the company’s renewal strategy.

“Their advice and their commentary on what they’re seeing is clearly—especially in the excess markets—(insurers) are trying to firm up and even get a little bit of an increase” in general liability pricing, he said. “What I’m hearing from them—particularly if you’re a program that’s coming off a series of renewals with reductions...probably the best you can do is hang onto flat.”

Mr. Johnson said that, given the apparent changes under way in the general liability market, he will seek a two-year renewal if possible.

While noting that there’s still considerable capacity, Mr. Johnson said, “there isn’t any question that all of these insurers would love to start raising prices.”

“There’s noise out there. A lot of carriers are talking about they’re going to have to begin to get some rate,” said Marsh’s Ms. Ant.

Willis’ Ms. Ferrandino said she thinks many buyers are growing concerned about the potential for a true turn in the GL market.

“The carriers have grown weary of the soft market conditions,” she said. But with current economic conditions and “with all due respect to the carriers wanting to get additional rate, I don’t think the buyers would be able to bear that additional premium burden,” Ms. Ferrandino said.

Aon’s Mr. DeFelice said that in higher-risk classes, some buyers are concerned as they see some underwriters beginning to reduce general liability capacity.

“There aren’t any classes that we have changed our appetite toward in any particular way,” said Liberty’s Mr. Luce. But, he said, concerns over price adequacy, a poor investment environment and potential inflation for longer-tail lines have led insurers to put a greater emphasis on underwriting return in the general liability area.

Ms. Ant said while there are industry sectors such as manufacturing where many insurers are still competing for market share, pricing generally is responsible.

“I think there’s a fair amount of responsibility,” she said. “You see an occasional one that doesn’t make sense. But there’s some aggressive pricing out there—not by any one particular carrier. Everyone picks their spots.”

Property: Cat losses

CONTINUED FROM PREVIOUS PAGE

susceptible to a significant hurricane that makes landfall on the United States. If that happens, we could see some major shifts in the market,” she said.

Mr. Rose agreed, saying that if a major hurricane makes landfall in the United States, the insurance industry will be “really hurting.”

“Property carriers and the property line of business are not in the best position going into the North American hurricane season,” Mr. Rose said.

Buyers can mitigate costs going forward by focusing on catastrophic exposures and buying adequate limits, said Al Tobin, managing principal and national property practice leader for Aon Risk Solutions in New York, a unit of Aon Corp. “These models are pretty involved these days and the data is key,” he said. “Even some of the more sophisticated customers can improve their data; and when you improve your input, you improve your output.”



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D&O

Insurers predict rate hikes despite excess D&O capacity

Tough to place risks seen as affecting wider market

By JUDY GREENWALD

Directors and officers liability insurance continues to be intensely competitive, many observers say, but some see pockets of rising pricing.

"We are starting to see some pockets where rates are beginning to increase," said Steve Boughal, New York-based vp and chief underwriting officer of Hartford Financial Products, a unit of The Hartford Financial Services Group Inc. But "the market isn't consistent in its approach as of yet."

Some insurers "tend to be more aggressive outliers. I don't think their pricing is sustainable," he said.

Crystal Green, Atlanta-based vp of specialty casualty at Liberty International Underwriters, a unit of Liberty Mutual Group Inc., drew a distinction between pricing for the primary and excess layers. On the primary side, rates generally are flat to down about

5%. On the excess side, rates are flat to "down as much as 15%, and there's broader terms and conditions available in the marketplace as well," she said.

"There's a finite number of buyers, and that pool is shrinking because there's a lot of merger and acquisition activity and fewer business formations" and more bankruptcies, Ms. Green said. While there have been more initial public offerings in the past year, they primarily have been in the technology sector, she said.

In addition, there has not been insurance industry consolidation "that would take out capacity, and I see more firms entering and staffing new business," said Marc London, New York-based D&O underwriter at Beazley P.L.C. "There's so much capacity and new entrants" that on any given insurance deal, "someone may say, 'No,' but someone else is saying, 'No problem,'" said Mr. London.

Chris Torn, Dallas-based risk manager of corporate insurance for Southwest Airlines Co., said that "despite all the catastrophes that we have seen around the world, it's amazing that we still seem to be in a soft market." There

will be excess capacity "as long as there are companies willing to invest in insurance and buy capacity," he said.

Still, fewer new insurers are entering the D&O market, experts say.

"Back in 2008, when the financial crisis happened, there were 18 to 20 new entrants into the market," which tends to have a low barrier to entry, said Michael Karmilowicz, who heads Zurich North America Commercial's management solutions group in New York. "It's slowed down since then. I haven't seen much," he said.

Next year, much will depend on the catastrophe season, said Tripp Sheehan, U.S. D&O practice leader for Marsh Inc. in Boston. While catastrophes do not directly affect D&O rates, an active cat season could have a collateral effect in reducing capacity and slow the slide in D&O rates, he said.

Some already see signs of a harder market.

The market "is trying to harden," said Rick Broderick, director of risk management at Melbourne, Calif.-based communications and information technology company Harris Corp.

"We think there will be a hardening, but not a very hard hardening like we've had in the past," said John Chace, Farmington, Conn.-based senior vp and chief underwriting officer of OneBeacon Professional Insurance, which focuses on nonprofits that are mainly health care organizations.

Peter Taffae, a D&O liability insurance expert at Los Angeles-based wholesale brokerage ExecutivePerils Inc. said, the "tidal wave is gaining momentum and starting to build" toward a hard market, in part because the market has been "so soft for so long that we're down to the bone."

"You can see there are some companies in different parts of the U.S. trying to make some moves and make some changes, so you're seeing the beginning of what I would call a correction," said Jeffrey Klenk, senior vp of management liability at Travelers Bond & Financial Products in Hartford, Conn., a unit of Travelers Cos. Inc. While some insurers "try to hold the line, there are still many others trying to broaden coverage or drive prices down," he said.

John Connolly, Philadelphia-based executive vp, executive risks for Willis North America, a unit of Willis Group Holdings P.L.C., said, "There may be some adjustments in the next 12 to 24 months. Pricing may swing the other way, but should be more in line with appropriate rates that are sustainable over the long term."

One frequently cited difficult-to-place risk is China-based companies that have engineered "reverse mergers" by buying a U.S.-based shell company that trades on a U.S. stock exchange. There are "regulatory investigations into some of the accounting practices and transparency issues" with respect to these firms, said

Mr. Boughal.

Financial institutions, real estate companies, high-tech firms, and businesses in financial difficulty or bankruptcy also are particularly challenging to place, experts say.

However, Colin Daly, managing principal at Aon Financial Services Group, a unit of Aon Corp., said "it might take a little bit more work," but D&O programs can be placed due to plentiful capacity.

Among emerging risks, observers point to the Dodd-Frank Wall Street Reform and Consumer Protection Act.

"There are provisions in Dodd-Frank that basically give the (Securities and Exchange Commission) additional enforcement authority, which is generally a bad thing" from the perspective of directors' and officers' obligations, said Joseph O'Donnell, New York-based executive vp at Endurance Risk Solutions' professional lines practice. Provisions that can give whistle-blowers 30% of recoveries of \$1 million or more is an issue as well, he said.

There also has been concern about coverage for investigation costs due to "the increased focus on the part of many regulators," Mr. Sheehan said.

He also said there has been an increased frequency of low-severity D&O claims, which mainly affect primary insurers. "That's being driven by breach of fiduciary claims" related to M&As, he said.

Settlements of such claims typically are not large, "but you certainly get some decent amount of defense costs, and defense costs in general are escalating" in part due to the cost of discovery involving electronic information, Mr. Sheehan said "You're seeing that activity erode the profitability of the primary insurers," he said.

E&O

Soft renewal period for most E&O risks

By JUDY GREENWALD

The errors and omissions liability market is seeing some flattening of rates, although the market continues to be soft with up to 50 insurers offering the coverage, observers say.

It is difficult to generalize about E&O rates, said Jeffrey Klenk, senior vp of management liability at Travelers Bond & Financial Products, a unit of Travelers Cos. Inc., in Hartford, Conn. E&O rates are rising for some classes of business, they are steady for other classes and remain competitive for others where "you can see people still fighting over the business," he said. But E&O rates have "likely flattened down a bit," he added.

"We haven't seen as many price reductions in 2011 as in 2010," said Mike Smith, principal of

Franklin Lakes, N.J.-based of Axis Insurance Services L.L.C. Most renewals are flat or have increases "which is a significant change from where it was the last two or three years."

Geoffrey K. Allen, senior vp and national E&O and e-risk product leader of the executive risks practice at Willis Group Holdings P.L.C. in New York, said while there is an abundance of capacity, prior-year rate reductions, "which sometimes were 5% to 15% or more, are now very much a thing of the past, and we're entering a phase of, overall, a flat rate environment with some upward bias in certain market segments."

The market is not monolithic, he said. Small companies that are "fairly low-risk" still may find

Continued on next page

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REINSURANCE

Property cat reinsurance rates rise after losses

Expensive first half prompts some hikes; no general turn seen

By **SONJA RYST**

NEW YORK—Prices are rising on catastrophe-exposed global reinsurance contracts as disasters have mounted this year, but there has been no general turn in the overall reinsurance market, experts say.

Catastrophes so far this year include the earthquake and tsunami in Japan; a cyclone and flooding in Australia; earthquakes in Christchurch, New Zealand; and a string of tornado and storm losses in the United States.

Reinsurers have taken unusually hard hits as a result. For example, Aon Benfield, a unit of Aon Corp., said June 22 that insured losses from severe weather events in the United States during April and May alone reached an estimated \$15 billion—nearly three times the annual average for such weather losses between 1990 and 2010.

Meanwhile, Risk Management Solutions Inc.'s release this year of its updated Atlantic hurricane model, in which the risk of U.S. wind damage extends farther inland under version 11, also has factored into the property catastrophe reinsurance picture, experts say.

"The high level of catastrophes we've seen in the first half and the release of RMS Version 11...did create some changes," said David Flandro, London-based global head of business intelligence for

reinsurance intermediary Guy Carpenter & Co. L.L.C. He noted that all those moving parts, plus other, latent catalysts, have affected July 1 contract renewals. But he added that, so far, rates have firmed mainly in property catastrophe lines. "We're not seeing a wholesale (market) turn yet."

Property catastrophe reinsurance rates for loss-free U.S. accounts were up 5% to 15% on average at renewals, while loss plagued accounts were up by 10% to 20%, according to a report by Willis Group Holdings P.L.C. unit Willis Re.

Casualty rates in the United States, meanwhile, were flat to up 5%, although professional liability saw increases of as much as 10%, Willis Re said.

In a June analysis, Keefe, Bruyette & Woods Inc. said Bermuda companies' rates have risen an average of 8% to 12% for global property catastrophe reinsurance renewing at midyear. But the New York investment bank also noted little sign of a broader turn in the market overall.

John DeMartini, Stamford, Conn.-based head of Towers Watson & Co.'s catastrophe risk management practice, said he noticed an unusual degree of inconsistency in the market during July 1 contract renewals.

For example, when nine reinsurers bid on coverage for an insurer exposed to Middle Atlantic region risks, they quoted price increases ranging from 3.2% to 34.6%. "It would be very unusual for two reinsurers to have such a different view of what that program needed from a pricing per-



AP PHOTO

Catastrophes such as a string of tornado and storm losses in the United States have driven up some reinsurance rates, but there has been no general turn in the market overall.

spective," Mr. DeMartini said. He said the reinsurer quoting the highest increase may have done so after reconsidering the insurer's exposure, in large part due to the new RMS model.

Rod Fox, CEO of intermediary TigerRisk Partners L.L.C. in Stamford, Conn., estimated that roughly 30% of the reinsurance market has adopted RMS' updated model for some form of pricing.

"People have suffered losses to different degrees and they have different views on the market," he said.

In KBW's recent analysis based on meetings with senior executives of 12 Bermuda reinsurers and insurers, sentiment varied.

For example, the management of RenaissanceRe Holdings Ltd. was optimistic that pricing would continue to rise into 2012.

Meanwhile, Montpelier Re Holdings Ltd. CEO Chris Harris and Treasurer Bill Pollett said the temporary shift taking place was not enough to drive an overall market increase, according to KBW's research.

"We're seeing different forces pushing the market up," said James Few, Bermuda-based president of Aspen Insurance Holdings Ltd.'s reinsurance business. He said factors other than catastrophes have bolstered prices.

For example, pricing has been soft for years, and insurers' rates in most lines of business have dropped to about where they were in 1999, he said. Meanwhile, particularly for casualty lines of business, accident-year loss results have been masked by reserve releases, which "can't continue forever," Mr. Few said.

In the meantime, some Wall Street players say it's time to get in on the reinsurance industry. Memphis, Tenn.-based investment firm Wunderlich Securities Inc. has had buy ratings on Aspen and the Pembroke, Bermuda, insurer and reinsurer Axis Capital Holdings Ltd. for at least a year.

"We think they're both cheap, and we've been saying we're at a turning point for rates," said Jacob Hughes, a research associate at Wunderlich in Baltimore.

All eyes are on the hurricane season for clues as to what happens to rates.

"Barring some major exits from the business or a major contraction in capacity through sustained catastrophes, I don't see a strong market turn under way," said Steve McElhiney, president of Dallas-based intermediary EWI Inc.

Some reinsurers were making the best of the situation.

"Even if it's only for an isolated period of time where people say the first quarter has looked better than the last couple of months, we've seen improvement," said James M. Hinchley, chief operating officer of Boston-based Liberty Mutual Reinsurance, part of Liberty Mutual Group Inc. "Not enough to say there's a trend, but anecdotally some signs of positive improvement."

Others were more pessimistic.

The market "isn't firming as much as people originally thought," TigerRisk Partners' Mr. Fox said. "The future really depends on U.S. windstorms during the third quarter. That's what's going to determine where things go."

CONTINUED FROM PREVIOUS PAGE

competitive rates, whereas large, complex risks for companies with more than \$1 billion in revenue will be treated differently "and you won't see the competitive dynamic," Mr. Allen said.

Kim Loverich, vp of risk management at Jacksonville, Fla.-based Fidelity National Financial Inc. and Fidelity National Information Services, said the market for financial institutions and services "is starting to show some signs of hardening, particularly if you have claims."

She also said it is becoming more difficult to get claims paid, which "would be the first sign of the market starting to turn."

"Generally, rates are still down on average of between 7% and 8%," said Sandy Codding, Boston-based leader in the U.S. commercial E&O advisory practice of Marsh Inc.'s FINPRO unit, who focuses on miscellaneous professional segments.

"We're seeing plenty of competition; so on any given deal, there's generally more underwrit-

ers interested in writing it than there is demand for capacity on that particular deal. Of course, each submission has its own merits, so we do see a range of premium changes, anywhere from flat to 15% or even 20% reductions on the high end," Ms. Codding said.

"I don't see much changing" until some of the capacity leaves the market, said Jim Donovan,

'I don't see much changing' until some of the capacity leaves the market.

Jim Donovan, Liberty International Underwriters

senior vp in the professional liability unit at Liberty International Underwriters, a unit of Boston-based Liberty Mutual Group Inc.

Meanwhile, Mr. Codding said, "Larger buyers have used their savings to increase their program limits. Retentions have pretty much stayed stable. Underwriters are not requiring any increases"

and typically the savings they offer for increasing retentions are "not significant enough for the buyers to take that up."

Mr. Allen said there have been several new entrants this year offering primary and excess E&O coverage. New entrants often enter at the excess level, where they are particularly competitive, before writing business at the pri-

'I don't see much changing' until some of the capacity leaves the market.

Jim Donovan, Liberty International Underwriters

mary level, which he said "keeps those excess levels very inexpensive."

Steve Boughal, New York-based vp and chief underwriting officer of Hartford Financial Products, a unit of Hartford Financial Services Group Inc., said "you typically need underwriters that understand E&O and understand the

industry-specific loss trends."

Some areas remain relatively difficult to place.

Paul Ablan, Minnetonka, Minn.-based senior vp and managing director of professional liability at OneBeacon Professional Insurance, a unit of Hamilton, Bermuda-based OneBeacon Insurance Group Ltd., said each profession has its own more challenging E&O segment.

In the legal arena, this includes intellectual property, securities law and personal injury; in the design arena, structural engineer accounts are more challenging. These areas probably are finding fewer opportunities and less intense price competition, Mr. Ablan said.

Information technology-related risks also are a concern.

"I think that insurance buyers generally are concerned about the evolution of the computer services they're using," including cloud computing, and about the insurance solutions to deal with those risks that are insurable, Mr. Allen said. "The increasing use of cloud computing is an exposure which

is not completely understood yet, and I don't think we've seen the claims potential" as of yet with respect to cloud services providers and clients that use their services.

"All these technological trends are having an impact on traditional E&O classes," said Gene Mason, senior vp and head of professional lines for Endurance Specialty Holdings Ltd.'s U.S. wholesale insurance operations. If a law firm, accounting firm, broker-dealer, architectural or engineering firm is using a computer to communicate, it creates increased exposure, he said.

Rick Broderick, director, risk management, at Melbourne, Calif.-based communications and IT company Harris Corp., said, "As cyber issues rear their ugly head, that market has a real potential for some losses. I'm just holding my breath that doesn't happen."

Steve Bridges, a Chicago-based senior vp at Aon Corp.'s financial services group, said network risks will continue to be a big issue, but insurers "have done a pretty good job" of offering expanded coverage and paying claims.

WORKERS COMP

Higher losses drive shift in workers comp market

By JEFF CASALE

Buyers are seeing workers compensation rate increases in the middle single digits, and medical costs continue to account for the bulk of loss costs, making the workers comp market competitive but slightly unstable, experts say.

"I think we're beginning to see a little bit of a shift in the market," said Peggy Benton, Philadelphia-based chairman of Marsh Inc.'s workers compensation council

within its casualty practice.

"Insurers are getting back to a little more of some underwriting discipline, so on accounts where the loss experience has been less than favorable, they are definitely looking for price increases," Ms. Benton said.

Underwriters are looking to adjust prices where it's warranted and are looking to "hold the line" on those adjustments, she added.

While some businesses with good loss experience may see a

small reduction or nominal price increase, underwriters are tightening their guidelines to reduce losses, experts say.

"Insurers are hurting in the workers compensation market and you can just look at their combined ratios and see that they're struggling to make money," said Mike Pesch, area chief operating officer for Itasca, Ill.-based Arthur J. Gallagher Risk Management Services Inc., a unit of Arthur J. Gallagher & Co. "The

market pressure is not there yet and capacity is still available, but it's not a question of whether the market will tighten, but when."

Jamie Luce, chief underwriting officer of middle-market accounts for Boston-based Liberty Mutual Insurance Co., said there's been a slight withdrawal of insurers willing to go after new guaranteed-cost accounts in the market. Instead, those insurers are leaning toward retrospective or experience rating plans where the buyer

could be responsible for some of the loss costs.

"I think that (insurers) are handling their renewals as usual, but there has been a pullback within the middle-market competitors that are willing to write new guaranteed-cost workers compensation policies, which is a sign that the market is firming," Mr. Luce said.

Mr. Pesch said that there hasn't been a "strong movement" away from guaranteed-cost contracts. The market seems to be moving that way "naturally," he said.

He added that insurers likely will shy away from quoting a guaranteed-cost contract if a buyer has poor loss history.

Workers comp premiums dropped 14.5% to \$12.3 billion in 2009 vs. 2008, which rating agency A.M. Best Co. Inc. said is the lowest in the past decade. At the same time, workers comp insurers' combined ratio rose to 120%.

In June, the Boca Raton, Fla.-based National Council on Compensation Insurance Inc. reported in its Residual Market Management Summary for 2010 that premiums fell in residual market reinsurance pools for the sixth consecutive year. Estimated written premiums for 2010 were approximately \$432 million, with written premiums in these pools peaking at \$1.5 billion in 2004.

Meanwhile, claim frequency and claim costs continue to drive the marketplace.

In California, which often is viewed as a barometer of the national workers comp market, the Workers' Compensation Insurance Rating Bureau reported that indemnity claim frequency increased 4.5% in 2010 vs. 2009.

The spike in claim activity could be attributed to an improved economy, brokers and insurers say. In recent years, workers may have decided not to file an injury claim for less serious injuries for fear they might lose their job.

"The economy does have an impact on claim activity," said Joseph Wells, New York-based director of workers compensation and accident health division for Zurich Financial Services. "In recent years there were less minor injuries reported into the system" compared with years before the recession.

Mr. Wells also said some employers have struggled to get injured workers back on the job as they have had fewer job options available—even at light duty.

Employers also are seeking ways to get a handle on medical costs, which will account for 60% of total workers comp claims costs during the next year, according to a Marsh report in May on the workers comp market.

"Not only are there concerns about (state) rate changes, but medical costs are also starting to creep into the insurance buyer's mind," said Gary Thompson, Hartford, Conn.-based executive vp and chief underwriting officer for commercial markets at The Hartford Financial Services Group Inc. "Buyers are now thinking, 'What can I do to control our own costs?'...and they are putting greater focus on safety programs in an effort to reduce claims."



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Business Insurance

WORKERS COMP

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Insurance groups are hopeful that legislation to extend the National Flood Insurance Program will be passed before the program expires Sept. 30.

AP PHOTO

Dodd-Frank, flood cover key issues

Uncertainty surrounds implementation of Wall Street reforms, shape of NFIP

By MARK A. HOFMANN

WASHINGTON—A measure that became law nearly a year ago still tops the list of insurance industry legislative and regulatory concerns.

That's because the Dodd-Frank Wall Street Reform and Consumer Protection Act is being implemented by section.

In addition, for insurers in particular, continuing uncertainty over the future of the National Flood Insurance Program remains a concern because the program is slated to expire Sept. 30. Legislation that would mitigate damage stemming from natural disasters also is on the industry's radar.

The main concern over Dodd-Frank remains that the states won't be able to work out a deal to allocate surplus lines premium taxes as required by the law. Insurers also are concerned about whether some of them may be deemed systemically risky and thus subject to heightened regulation under the law.

One bit of uncertainty lifted late last month when the administration finally filled the industry-related voting slot on the Financial Stability Oversight Council by nominating veteran regulator S. Roy Woodall to serve on the board. Insurance industry representatives had expressed concern that the council—dominated by regulators overseeing other types of financial institutions—would take a bank-centric approach to regulating insurers without an insurance representative being part of the council.

The Risk & Insurance Management Society Inc. laid out its agenda during its RIMS on the Hill legislative conference in mid-June.

RIMS' three legislative priorities are enacting legislation that would allow risk retention groups to write commercial property coverage and to create a mechanism to resolve disputes between RRGs and nondomiciliary states, deal with the Medicare secondary payer issue, and block attempts to subject certain reinsurance transactions to new taxes.

Dodd-Frank implementation is a source of "high anxiety," said Joel Wood, senior vp of the Council of Insurance Agents & Brokers in Washington.

"The potentially chaotic implementation

of the new home state surplus lines rules is a real concern," he said of the Dodd-Frank requirement that policyholders pay all premium taxes owed only to their home state. "States have been all over the map in their approach toward complying with the new federal law, with half of them not having done anything on the eve of the July 21 implementation date."

He said the CIAB is working with its members in trying to communicate "how they should comply with each state's law and its intersection with the new federal home state rule, and we are preparing to mount a vigorous offense to assure that the promise of this

'The challenge of distinguishing insurance from banking impacts all of the Dodd-Frank provisions including systemic designation and resolution.'

Leigh Ann Pusey, American Insurance Assn.

new law is fulfilled. For all of the anxiety, we also firmly believe that the new law is going to make the surplus lines space more vibrant."

"The implementation of Dodd-Frank remains a top priority," said Leigh Ann Pusey, president of the American Insurance Assn. in Washington. "The challenge of distinguishing insurance from banking impacts all of the Dodd-Frank provisions including systemic designation and resolution."

Jimi Grande, senior vp of the National Assn. of Mutual Insurance Cos.' Washington office, noted that Congress is concentrating on noninsurance issues.

"Largely, the insurance industry agenda has gotten off to a slow start in Washington as Congress has been more preoccupied with the debt limit and spending," he said.

"Of course, Dodd-Frank implementation

always remains at the top of the insurance agenda," as insurers learn "what type of personality" the new Federal Insurance Office is going to take and how issues such as systemic risk will be addressed.

"But we've had good progress in the house on NFIP reform, and we are optimistic that the Senate, being a reactionary body, might also be responsive to NFIP reform given that historic level of natural disasters and flooding that we're experiencing," said Mr. Grande.

The House Financial Services Committee's passage of a bill that would reform that NFIP "was a big victory," said Ben McKay, senior vp in the Property Casualty Insurers Assn.'s Washington office.

"We're actually on a trajectory to pass an extension before Sept. 30, when the program expires—that's very good news," he said.

Frank Nutter, president of the Washington-based Reinsurance Assn. of America, said reinsurers also are looking for NFIP reform that would include a larger role for the private sector. "We have been promoting a reinsurance role for the NFIP," he said. "Reinsurers want additional market opportunities and this would be one of them." The RAA supports at least partial privatization of the program.

"Perhaps the area of greatest opportunity, the entire insurance industry is really beginning an aggressive educational effort on the importance of pre-disaster mitigation," said NAMIC's Mr. Grande. He said lawmakers must find ways to encourage the construction of stronger residential and commercial properties, noting that a bill that would provide incentives for states to strengthen their building codes was introduced in the House last month.

Regulatory reform in general remains an industry concern regardless of what level of government is involved, said the AIA's Ms. Pusey.

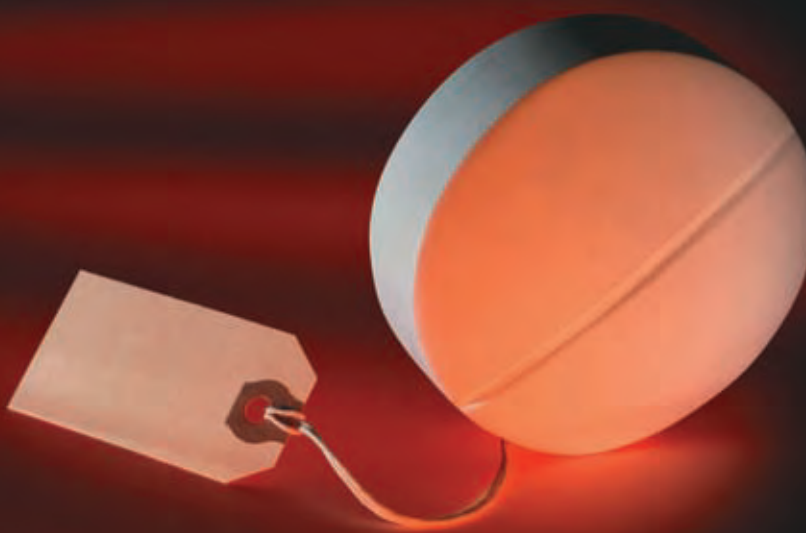
"The intersection of the regulatory reform effort under way at the state, national and international level will continue to demand the attention of regulators and the industry," she said. "These discussions have the potential to impact our regulatory framework for the future, both domestically and globally."

ROUNDTABLE
LEGISLATIVE

DATA snapshot

CONSUMER-DRIVEN HEALTH PLAN PROVIDERS

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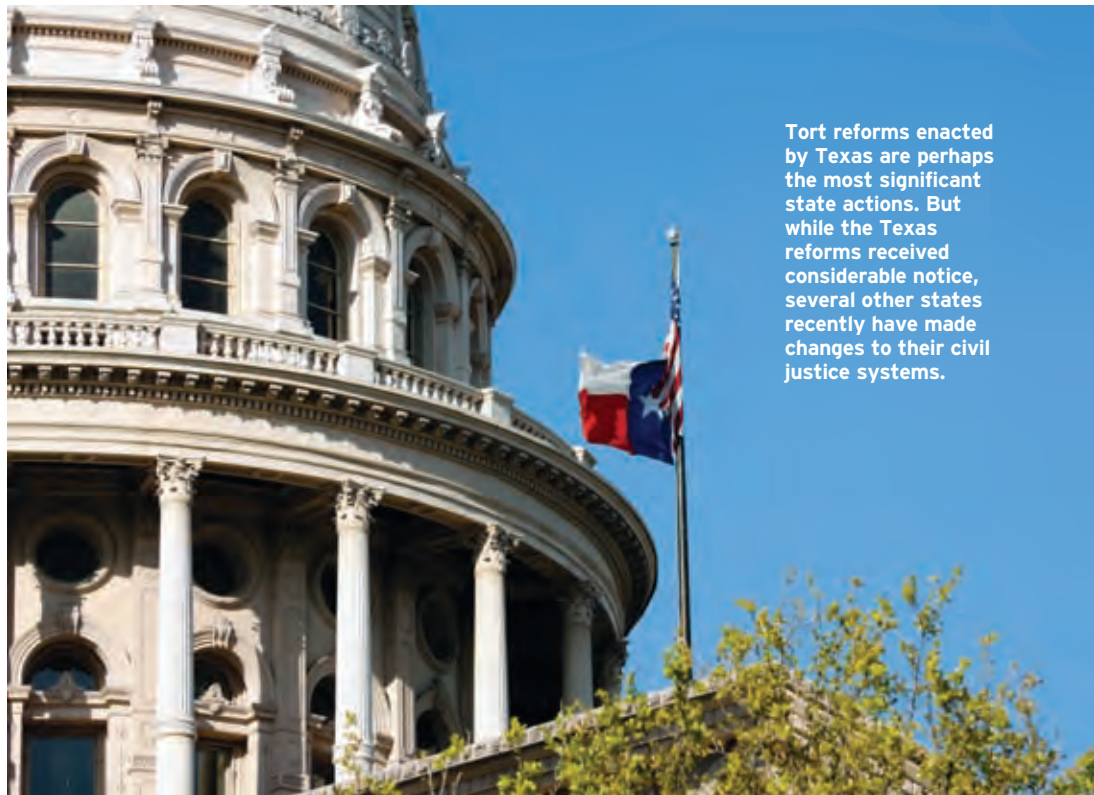


CONSUMER-DRIVEN HEALTH CARE PLAN PROVIDERS

Company/address	Phone/website	Health plan name(s)*	Total covered lives	Employer clients	Plan options	Principal officer
Aetna Inc. 151 Farmington Ave., Hartford, Conn. 06156	860-273-0123 www.aetna.com	Aetna HealthFund HRA, Aetna HealthFund HSA	2,085,672	20,252	Dental, FSA, HMO, HRA, HSA, indemnity, PPO, prescription drugs, vision	Mark T. Bertolini, chairman/CEO/president
Blue Cross Blue Shield of Tennessee 1 Cameron Hill Circle, Chattanooga, Tenn. 37402	423-535-5600 www.bcbst.com	—	272,761	4,435	FSA, HRA, HSA, PPO	Vicky Gregg, CEO
Choice Care Card 76 McNeil Road, Waterbury Center, Vt. 05667	888-244-2000 www.choicecarecard.com	—	220,000	4,858	Dental, FSA, HMO, HRA, HSA, indemnity, PPO, prescription drugs, vision	Jay Hunter, president/CEO
CIGNA HealthCare 900 Cottage Grove Road, Hartford, Conn. 06152	860-226-6000 www.cigna.com	CIGNA Choice Fund	1,464,627	1,391	Dental, FSA, HRA, HSA, indemnity, PPO, prescription drugs, vision	Tom Richards, senior vp-product
Emblem Health Inc. 55 Water St., New York, N.Y. 10041	646-447-4474 www.emblemhealth.com	ConsumerDirect PPO and EPO	51,762	4,257	HMO, HRA, HSA, PPO, prescription drugs	George Babitsch, senior vp-account management
Highmark Inc. 120 Fifth Ave., Pittsburgh, Pa. 15222	412-544-7000 www.highmark.com	BlueAccount	177,289	2,823	Dental, FSA, HMO, HRA, HSA, indemnity, PPO, prescription drugs, vision	Steven Nelson, senior vp-health services product, marketing and strategy
Medica Health Plans 401 Carlson Parkway, Minnetonka, Minn. 55305	952-992-2900 www.medica.com	Definity by Medica	102,754	3,046	Dental, FSA, HMO, HRA, HSA, indemnity, PPO, prescription drugs, vision	David Tilford, president/CEO
Meritain Health 300 Corporate Parkway, Buffalo, N.Y. 14226	800-242-6226 www.meritain.com	—	433,000	142	Dental, FSA, HRA, HSA, indemnity, PPO, prescription drugs, vision	Elliot Cooperstone, CEO
UnitedHealth Group Inc. 9900 Bren Road E., Minnetonka, Minn. 55343	866-799-1331 www.unitedhealthgroup.com	UnitedHealthcare HRA & HSA	3,404,609	33,394	Dental FSA, HRA, HSA, PPO, prescription drugs, vision	Victoria Bogatyrenko, national vp, UnitedHealthcare product and innovation
Vested Health L.L.C. 803 Quarrier St., Suite 600, Charleston, W.Va. 25301	866-347-3640 www.vestedhealth.com	—	27,000	330	Dental, FSA, HMO, HRA, HSA, indemnity, PPO, prescription drugs, vision	Shawn Dobson, president/CEO

*If different than company name

Source: BI Survey. Researched by Karen Tucker



Tort reforms enacted by Texas are perhaps the most significant state actions. But while the Texas reforms received considerable notice, several other states recently have made changes to their civil justice systems.

Tort: Reform advocates point to Texas' success

CONTINUED FROM PAGE 3

who cited Wisconsin's Scott Walker as a governor who has "really embraced reform as part of an economic package."

A consumer advocate sees the Texas reforms very differently.

"This is not about frivolous lawsuits; it's about blocking legitimate lawsuits. So if you or your child is injured as a result of corporate wrongdoing and even if you have a strong case, you probably won't ever bring that case because of the economic devastation you might face if you lose," said Joanne Doroshow, executive director of the Center for Justice & Democracy in New York. "All this is doing is immunizing bad corporate behavior in Texas."

Ms. Doroshow dismissed the argument that such changes are necessary for economic growth. "In order to make that argument, you have to accept the notion that the system is full of frivolous lawsuits, and it's not. There's absolutely no evidence of that."

But while Texas received considerable attention for its reform, it was not the only state to enact changes to its civil justice system.

In fact, 2011 "by contrast to recent years, has been a very suc-

cessful year for us," said ATRA's Mr. Joyce, citing Alabama, Arizona, Oklahoma, South Carolina, Tennessee and Wisconsin.

For example, according to an analysis prepared by ATRA, Oklahoma enacted laws that tightened rules for class actions and capped noneconomic damages

'Introducing a third actor into a two-part play changes all of the dynamics.'

Sherman Joyce,
American Tort Reform Assn.

under some circumstances, among other things.

And last week, Pennsylvania Gov. Tom Corbett signed a bill that limits the financial responsibility of defendants in multi-defendant civil suits generally to only each defendant's share of a judgment.

ILR's Ms. Rickard called state activity a "very proactive trend" that acknowledges "the benefits that legal reform" can bring.

But Mr. Joyce noted that there were disappointments as well, such as in Montana where three tort reform measures dealing with prejudgment interest, appeal bonds and the use of outside counsel by the state attorney general were vetoed.

Looking ahead, Ms. Rickard and Mr. Joyce cited efforts to allow the lawsuit-lending industry to expand as a serious emerging issue. Lawsuit lenders advance money to plaintiffs in return for a portion of any settlement. If there is no award, the unsuccessful plaintiff can be charged a "lending fee" that resembles interest.

"We're very pleased that we've already achieved a very high level of positive activity in the state legislatures," said Mr. Joyce. "The litigation finance question is probably the most significant new issue out there."

Ms. Rickard said "this practice will do nothing but drive up settlement amounts."

"Introducing a third actor into a two-part play changes all of the dynamics," said Mr. Joyce.

One place where the dynamics usually work against tort reform is Capitol Hill. Ms. Rickard said she was "hopeful" that the most recent version of the Lawsuit Abuse Reduction Act would get through the House of Representatives and was glad to see that medical liability reform was being considered by that body as well.

FSOC: Woodall nomination hailed

CONTINUED FROM PAGE 3

CEO of the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America, said in a statement.

"The Dodd-Frank Act appropriately treats insurance very differently than other financial sectors, and it recognizes the strong consumer protections already provided by the state regulatory and guaranty fund system. Property/casualty insurers are not

highly leveraged or interconnected and have a fundamentally different business model than banks, a fact that warrants different regulatory treatment," Mr. Sampson said.

Dodd-Frank requires the White House to appoint a person with "insurance expertise" as a voting member of the FSOC. The FSOC has the power to designate financial institutions as presenting a systemic risk to the econo-

my, making them subject to greater regulation.

Two nonvoting members with insurance backgrounds—John Huff, the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, and former Illinois Insurance Director Michael McRaith, who recently was named head of the new Federal Insurance Office—already serve on the FSOC.

UP Comings & Goings CLOSE



RICK MILES

NEW JOB TITLE: St. Louis-based vp for insurance and financial services agency WFL Inc.

PREVIOUS POSITION: Mount Vernon, Ill.-based risk architect for Tedrick Group.

GOALS FOR NEW POSITION: To build a name for WFL in the medical malpractice industry and to become a key player in that industry.

INDUSTRY OUTLOOK: Medical malpractice is a difficult market regardless of the economy or the industry. It is headed in a different direction with (the use of) electronic medical records and the new stipulations the governments are introducing. A lot of states are going bare and not carrying medical malpractice.

FIRST MARKET EXPERIENCE: My first job was as an account handler for a small brokerage firm outside of London.

ADVICE: Surround yourself with people who are already trusted advisers. Build a team you can network with. Work with referrals among trusted people.

That's key in being successful in this industry.

OUTSIDE THE INDUSTRY, A DREAM JOB: It would be great to travel the world and write travel books. I would like to go to neat, little places no one has ever heard about and write about it.

HOBBIES: I have a little boy and he keeps me busy. I am a huge soccer fan. I was born and raised a Chelsea fan (in London). I like putting on my construction hat and building something around the house for my wife. I like doing home repairs.

FAVORITE BOOK: "Pirate Latitudes" by Michael Crichton.

FAVORITE MEAL: It's breakfast at dinnertime. It kind of makes things different. You have sausage, eggs, bacon and toast for dinner. You have the full works.

EMAIL OR PHONE, AND WHY: I prefer email because I can read everything before I send it. I hate to get off the phone and think about what I said and wish I could have said something else. In email, you have a record of what was said.

Comings & Goings ONLINE

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- Aon Risk Solutions

INSURERS

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- XL Insurance
- Liberty International Underwriters
- Liberty Seguros Compania, de Seguros y Reaseguros, S.A.
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Exchange: New York project back on track after delay

CONTINUED FROM PAGE 1

October, said he is “guardedly optimistic” that the working group will finish its business proposal this year, and that the exchange will come to fruition eventually.

“We didn’t proceed as quickly as we’d have liked, and that was largely due to the fact that we were dealing with sorting out the merger,” Mr. Wrynn said. “A lot of those matters are behind us now, so we’ve been able to refocus a bit on doing this work.”

Mr. Wrynn said the working group has not established a deadline to complete the business proposal.

Last year, the working group presented its preliminary recommendations for the exchange’s business design, funding and operation to industry stakeholders. Those recommendations envisioned a high-tech, nationwide marketplace for insurance buyers, insurers and reinsurers, as well as corporate and noncorporate syndicates, designed to “stem and reverse the flow of insurance capital covering U.S. exposures that is migrating” to similar exchanges in London and Bermuda.

The original New York Insur-

ance Exchange, which was in operation from 1980 to 1987, was shuttered due in part to inadequate financing, poor claims experience and soft market conditions.

In an effort to add insurance marketplace expertise to the project, the working group late last year added former Ariel Holdings

‘The state regulators can provide the support, but it has to be an industry-driven initiative if it’s ever going to work.’

Peter Bickford,
Special adviser to working group

Ltd. Chairman and CEO Don Kramer to lead the business plan’s development.

Peter Bickford, a New York-based attorney, general counsel for the original exchange and state-appointed special adviser on the new exchange, said the project’s success likely depends heavily on the working group’s ability to elicit support from insurers,

reinsurers, analysts and others.

“Ultimately, it will have to be the industry that makes it happen,” Mr. Bickford said. “The state regulators can provide the support, but it has to be an industry-driven initiative if it’s ever going to work.”

Mr. Bickford said a good deal of the working group’s efforts in advance of releasing the final business proposal will be on securing support—and addressing concerns—from other state insurance departments.

Much of that outreach, he said, will be educating regulators on how the Dodd-Frank Wall Street Reform and Consumer Protection Act will affect the exchange’s rules and mechanics.

A provision of the law, the Non-admitted and Reinsurance Reform Act, allows qualified commercial buyers, through a written request to their broker, to opt out of seeking coverage in their state’s admitted market and shop for it directly in the surplus market.

Francine Semaya, a Middletown, N.J.-based attorney and the exchange working group’s point person on the regulatory impact of Dodd-Frank, said the exemption could clear a path to the exchange for commercial buyers

in states outside of New York who are seeking surplus coverage.

“It makes it easier for the insurers and syndicates to start writing policies more quickly and more efficiently,” Ms. Semaya said. “Once the states agree that (the exchange) is viable and that they will allow the syndicates to write business in their states, it gives the excess lines broker that whole new market to go to for their clients.”

Gary Henning, the Albany, N.Y.-based vp of the American Insurance Assn.’s northeastern region, said that while AIA is not fundamentally opposed to the insurance exchange idea, he said he worries that further deregulation at the state level beyond Dodd-Frank would harm admitted insurers.

Mr. Henning said the AIA’s support of the project is contingent on a “properly constructed and well-thought-out” business proposal that “doesn’t create an unlevel playing field.”

“We need to see the details,” Mr. Henning said. “If there’s a business plan that investors like, that can attract capital and provides another outlet for policyholders, that’s fine. I’m a little skeptical as to whether or not it’s needed right now, but I don’t think we’re going to be a roadblock.”

Marsh: Ex-execs allege broker, Spitzer colluded

CONTINUED FROM PAGE 3

erly sought to avoid criminal prosecution themselves and to create public scapegoats for the allegations of the New York attorney general.”

In their initial complaint, the two alleged, among other things, that Marsh did not pay them the severance or stock bonuses to which they were entitled, a violation of the federal Employee Retirement Income Security Act.

Both were indicted in 2005 on 37 counts regarding alleged bid-rigging. Before that, MMC settled New York state’s civil suit regarding contingent commissions for \$850 million.

Messrs. Gilman and McNenney

were found guilty in February 2008 on a single count of restraint of trade and competition. But last July, New York County Supreme Court Judge James A. Yates overturned the convictions of both men, citing new evidence that “undermines the court’s confidence in the verdict.”

The New York attorney general’s office decided early this year to drop any further action against the two.

“The decision to prosecute William Gilman and Edward McNenney was made by the former New York attorney general and a grand jury, not by Marsh,” an MMC spokesman said in response to the amended complaint.



AP PHOTO

William Gilman and Edward McNenney accuse former employer Marsh Inc. of setting them up as “scapegoats” by colluding with former New York Attorney General Eliot Spitzer to avoid criminal prosecution of Marsh.

California Supreme Court clarifies rules on overtime pay

By JUDY GREENWALD

SAN FRANCISCO—California’s Supreme Court has ruled that employees who work in the state for California-based employers are entitled to overtime pay for that work.

However, in a unanimous ruling based on the U.S. Fair Labor Standards Act of 1938, the California Supreme Court also decid-

ed that employees of California-based companies cannot collect overtime for work they perform in other states.

The ruling in *Donald Sullivan et al. vs. Oracle Corp et al.* concerned three employees of Redwood Shores, Calif.-based Oracle who lived in Colorado and Arizona, but spent time working in California.

The state high court’s ruling

followed a 2008 decision by the 9th U.S. Circuit Court of Appeals in San Francisco, which made essentially the same decision. However, it subsequently withdrew its opinion and asked the state Supreme Court to decide the underlying questions of California law.

In its ruling, the state high court held that the labor code’s overtime provisions do apply to

work performed in California by nonresidents. “California’s overtime laws apply by their terms to all employment in the state, without reference to the employees’ place of residence,” the court ruled. “That the overtime laws speak broadly, without distinguishing between residents and nonresidents, does not create ambiguity or uncertainty,” the ruling said.

Products & Services

Navigators launches life sciences program

NEW YORK—Navigators Group Inc. has launched a suite of property/casualty products for the life sciences industry.

The Navigators LS Elite program provides coverage of risks ranging from general liability and professional liability to property, and is available through the insurer's principal underwriting agency, Navigators Management Co. Inc., New York-based Navigators said in a statement.

The coverage is available to companies in North America, Europe and select countries in Central and South America.

Coverage includes enhancements to its product liability and research-related professional liability policies; emerging risks, such as environmental and technology exposures from new research methods; and auto liability, according to the statement.

Policies for U.S.-based companies are underwritten by Navigators Insurance Co. and Navigators Specialty Insurance Co. For international companies, policies are underwritten by syndicate 1221 at Lloyd's of London.

For more information, contact Lyn Rossano, senior vp and head of global life sciences for Navigators, at 267-234-9879 or lrossano@navg.com.

Hanover introduces cover for architects, engineers

WORCESTER, Mass.—Hanover Insurance Group Inc. has rolled out professional liability coverage for architects and engineers.

Hanover Architects & Engineers Advantage is offered on an admitted basis for design professionals in firms with annual gross billings up to \$10 million, the Worcester, Mass.-based insurer said.

Disciplines include architectural, electrical, civil and mechanical engineering, interior design and surveying, Hanover said.

The program offers design/build coverage for professional services, time delays, pollution liability, 30 days of coverage for newly acquired entities and punitive damages unless prohibited by law, among others.

For more information, contact Katherine L. Dimit, vp for Hanover, at 630-760-3045 or kdimit@hanover.com.

PowerGuard offers solar panel warranty

IRVINE, Calif.—Managing general agent PowerGuard Specialty Insurance Services is offering warranty insurance for manufacturers of solar panels.

The program is intended to provide greater business certainty for solar panel manufacturers that depend on bank funding for solar and photovoltaic equipment, the Irvine, Calif.-based MGA and Lloyd's of London coverholder said in a statement.

The program provides manufacturers with a 25-year, noncancelable coverage to guarantee warranty terms, according to the statement.

The program, which is underwritten by PowerGuard, also offers flexible limits with worldwide coverage and meets banks' and lenders' requirements.

For more information, contact Mike Mullen, managing principal of PowerGuard, at 949-224-1325 or mmcmullen@powerguardins.com.

Travelers launches cyber risk coverage

HARTFORD, Conn.—Travelers Bond & Financial Products has launched new coverage to manage risk asso-

ciated with cyber exposures.

The CyberRisk policy was designed for companies of all sizes across all industries and provides first-party and third-party liability coverage, the Hartford, Conn.-based unit of Travelers Cos. Inc. said in a statement.

"Cyber risks leave businesses exposed regardless of size, industry or track record," Jason Glasgow, CyberRisk product manager for Travelers Bond & Financial Products, said in the statement.

Travelers said the policy can be customized based on business needs.

Third-party liability coverage includes information network security liability, communications and media liability, and regulatory

defense expenses.

First-party coverage includes crisis management expenses, security breach remediation, computer fraud and business interruption expenses, according to the statement.

For more information, contact Mr. Glasgow, at 860-277-4231 or jglasgow@travelers.com.

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Is it time to
**CHANGE
BROKERS?**

Picking the right broker
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**Is It Time To Change Brokers?
Picking The Right Broker For Your Business**

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ADVERTISER

INDEX

Issue of July 4

ADVERTISER	PAGE #
Acstar Insurance	10
Allstate Insurance	23
Aon Corporation	2
Arch Insurance	11
Business Insurance	6, 12, 14, 19, 21
The Hartford	5
Health Alliance Plan	14R
Liberty Mutual	24
Zurich North America	7

New attacks require different defense strategy

By JUDY GREENWALD

While hackers may be one or more steps ahead of firms when it comes to advanced persistent threats, companies can make it harder for them to gain access to their data and computer systems, observers say.

"It's incumbent upon us, as members of the risk management community, to update our language skills," said Jennifer Smith, Washington-based vp and technology, media and telecom practice leader at Lockton Cos. L.L.C. "I don't think a risk manager needs to understand everything about their information security," but they do "need to ask more questions," she said.

Evaluate the company's vulnerabilities, said Michael R. Overly, a partner with law firm Foley & Lardner L.L.P. in Los Angeles.

Firms "should have a very layered approach for protecting information," said Alex Ricardo, New York-based director of breach response services at Beazley P.L.C.

Thoroughness is essential, said Larry Collins, New York-based managing director and head of e-solutions at Zurich Services Corp. In the past, security systems were set up with firewalls and the idea that "nobody will get past my

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firewall," he said. Today, however, there must be "protection in depth," which includes firewalls, social engineering policies and access control lists that are reviewed periodically.

Also have the information technology staff review logs of who attempts to get into the system, said Mr. Collins. "You'd be amazed how often they don't," he said. IT directors may say this is like looking for a needle in a haystack, "but at least they should start looking for the haystacks," he said.

"It's very tempting as humans to think you can solve a problem by buying a tool" to "keep the bad guys out," said Brad Gow, Stamford, Conn.-based vp of professional lines insurance at Endurance Specialty Holdings Ltd.

But "they might be in there already or they might be your employees, and so you need to be constantly monitoring your network traffic," he said.

Larry Clinton, president of the Arlington, Va.-based trade association Internet Security Alliance, said, "Most people in the field, when dealing with sophisticated attacks, realize they're going to get in and you can't keep them out, but it doesn't mean you can't defend yourself."

Strategy switch

Simply switch strategies from one of perimeter defense to detection and mitigation, he said. Those who break into your system "have to actually get out," he said. "The truth of the matter is, we



"My biggest concern with software vendors is if they're going to provide a solution for you, be certain they have financial protection behind them" and require that they have insurance, said Peter Foster, senior vp of executive risks at Willis North America in Boston. It's not necessary to "go with the biggest and the strongest financially, because they might not have the best solution for you."

Robert Parisi, senior vp at Marsh Inc.'s FINPRO practice in New York, said companies need to recognize there's no one answer "in terms of technology that can prevent these types of threats," but "understanding the size and nature of the risk and then putting dollar values around it," and potentially seeking insurance coverage, can help.

"Be sure you have cyber terrorism coverage under your cyber insurance policy," said Mr. Foster. If it is a new policy, "you should be asking for retroactive coverage" of at least two years so there is coverage if there has been an occurrence of which the company is unaware.

Most underwriters will say they cover cyber terrorism because they cover hackers, "but I like to see affirmative coverage" for it, Mr. Foster said.

Threats: Sophisticated attacks prompt concerns

CONTINUED FROM PAGE 1

lead to a different approach by the independent or state-sponsored groups. Many experts compare the ongoing battle with the "Whac-A-Mole" arcade game, where firms halt one hacker threat only to have another pop up immediately.

The number of companies and entities affected by APTs seems to grow daily. The list of organizations hit recently includes the International Monetary Fund, Sony Corp., Lockheed Martin Corp., the Church of Scientology and the Arizona Police Department, according to the entities and news reports.

The attacks represent a dangerous threat to computer system security, experts say. While there is no single "silver bullet" to eliminate the danger, firms can minimize it by constant, organized surveillance, experts say (see related story).

APT generally refers to attacks by a highly sophisticated group seeking financial gain or to cause disruption. The hackers surreptitiously enter a firm's computer system, in what is often termed a "low and slow" approach, and steal data from the organization for as long as possible before detection, experts say.

Their purposes vary "from peo-

ple who find it amusing to be able to show you that they breached your system, all the way to people who are trying to steal top-level, state-sensitive defense materials," said Lori S. Nugent, a partner at Wilson Elser Moskowitz Edelman & Dicker L.L.P. in Chicago.

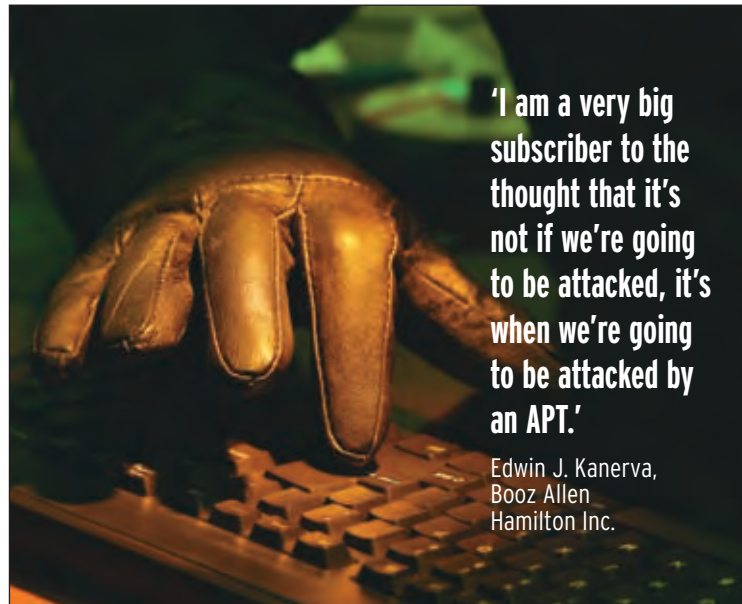
APT "is more of a description rather than a technical" term, said Brad Gow, Stamford, Conn.-based vp of professional lines insurance at Endurance Specialty Holdings Ltd.

"The hallmark is sustained efforts, usually by a well-funded, very patient perpetrator." The goal is to get in "and remain undetected for as long as you possibly can," he said.

Organized teams

"They're precise, they have a specific objective and they're not just a lone individual," said Alex Ricardo, New York-based director of breach response services for Beazley P.L.C. "They tend to be organized teams that are well-funded, well-structured."

Larry Collins, New York-based managing director and head of e-solutions at Zurich Services Corp., said the term is evolving quickly. "Originally, it was a threat by a nation—pick your favorite nation out there—and they would want to hack into a foreign system," usually for some



'I am a very big subscriber to the thought that it's not if we're going to be attacked, it's when we're going to be attacked by an APT.'

Edwin J. Kanerva,
Booz Allen
Hamilton Inc.

type of espionage.

But "the concept is expanding" to include a collection of sophisticated techniques applied consistently over time "to gain inappropriate entry into a system," and more criminals are expected to take part in such attacks, Mr. Collins said.

"We're not aware of how many companies are truly attacked by APTs," in part because firms may not be required to report it if it does not involve the loss of personal information, said Mark Greisiger, president of Gladwynne, Pa.-based NetDiligence, the marketing arm of Network Standard Corp.

In addition, said Ms. Nugent, many companies do not have the technology to determine that they

have had an intrusion. What is apparent to the public "most likely is the tip of the iceberg," she said.

One hallmark of an APT is that the attack is launched on several fronts at once, network security experts say.

"What we see with the attacks is a consistent, multilayered approach to get" what they seek, said Ms. Nugent.

"They will not be deterred by a single roadblock and, depending on the group, they may actually intellectually enjoy breaching more complex systems," she added.

While some observers say the threat has been somewhat overblown, many others strongly disagree.

"I am a very big subscriber to the thought that it's not if we're going to be attacked, it's when we're going to be attacked by an APT," said Edwin J. Kanerva, Linthicum, Md.-based vp with consulting firm Booz Allen Hamilton Inc. "I'm talking about organizations that are nation states and that are developing intelligence plans" to attack "our critical infrastructure."

APTs are "the most severe type of incident" among hacker attacks that Beazley's insureds face, said Mr. Ricardo.

There are limits as to what firms can do to prevent a breach. The traditional network security analogy is to a burglar who checks doorknobs and only breaks into homes that have easy entry, said Mr. Gow.

APTs, though, are more akin to casing your house, learning your schedule and "seeing you take the extra key from under the flower pot," he said.

In the game today between offense and defense with respect to computer security, "offense is winning, there's no doubt about it," said Mr. Collins. In fact, the problem "seems to be escalating," he said.

Firms, though, have to avoid going overboard in their security measures to the point of hobbling their business, experts say. It is a matter of balancing privacy concerns with being able to effectively operate as a business.

"That's going to be a wrestling match for a long time," said Mr. Collins.

News In Brief

CONTINUED FROM PAGE 1

accused of misclassifying more than 500 employees. The class action, which was originally filed in 2007, accused the Aon units of misclassifying as exempt from overtime and meal and rest break requirements employees who held one of several titles: account specialist, senior account specialist, relationship specialist, account manager, client specialist, client services representative and/or customer service representative. As part of the settlement agreement, Aon denied any liability or wrongdoing, according to the settlement agreement.

White House backs health premium subsidy

The Obama administration is backing a temporary boost in federal subsidies of health insurance premiums, such as COBRA coverage, for workers who lose their jobs due to foreign competition and older retirees in failed pension plans. A 2002 law created the subsidy, the Health Coverage Tax Credit, and set a federal tax credit of 65%. In 2009, an economic stimulus law raised the credit to 80% through Dec. 31, 2010. Last year, Congress approved a temporary extension through Feb. 13. However, the subsidy reverted to 65% after lawmakers in February could not agree on another extension. In its announcement last week, the Obama administration said it would back raising the tax credit to 72.5%, but then letting it expire after Dec. 31, 2013, when key provisions under the health care reform law take effect.

China, Taiwan typhoon model introduced by RMS

Catastrophe modeler Risk Management Solutions Inc. has launched a typhoon model for mainland China and Taiwan. The model is based on data from more than 24,500 storms derived from the China Meteorological Administration, RMS said. According to the Chinese agency, about nine typhoons have made landfall per year on average since 1950, RMS said. RMS said the model has been developed to help insurers and reinsurers try to

quantify wind and related flood losses, which typically are covered by fire policies in China.

Comment sought on tax on self-funded plans

The Internal Revenue Service is asking for comments on a health care reform law provision that will impose a small special assessment on employers with self-funded health care plans. Initially, the tax set to begin in 2012 will be \$1 for each health care plan enrollee. It will rise to \$2 per plan enrollee in 2013. The total amount of the tax is based on the "average number of lives" in the plan during a year, according to IRS Notice 2011-35. It also seeks comments on how future regulatory guidance could reduce the administrative burden on employers in computing the average number of lives in their self-funded plans. Comments are due by Sept. 6.

Ascot Underwriting ups capacity at Lloyd's

Ascot Underwriting Ltd. said it has increased the capacity of its Lloyd's of London syndicate 1414 to take advantage of what it described as improved market conditions, particularly the reinsurance sector. In a statement, Ascot said it had increased capacity of the multiline syndicate to £650 million (\$1.04 billion) from £600 million (\$957.5 million). Syndicate 1414 underwrites property, energy, specie and fine art, cargo, terrorism, war and political risks, marine hull/war/liability, natural resources and excess-of-loss reinsurance business.

DOL backs Deutsche Bank using captive to fund LTD

The Labor Department has given tentative authorization to Deutsche Bank Americas Holding Corp. to use its Vermont captive to reinsure long-term disability benefits. Under the arrangement, MHL Reinsurance Ltd., which was licensed in Vermont in 2005, would reinsure 100% of the LTD risk with a unit of Unum Group.

Insurance commissioner named for Colorado

Colorado Gov. John Hickenlooper named state Rep. Jim Riesberg, who also is a veteran of the insurance industry, as the new state insurance commissioner effective July 1. He succeeds John J. Postolowski, who was appointed interim insurance commissioner on Dec. 1, after the departure of Marcy Morrison.

Fleet: Safety, cover drive risk programs

CONTINUED FROM PAGE 4

information session why it is important for risk and fleet managers to get information on who is driving company vehicles and how they use them.

Baxter's nonregulated U.S. fleet has about 900 vehicles used for sales, facilities and technical services, Ms. Ross said. Some potential risks that Baxter identified during an audit included road conditions on which the vehicles are driven as well as mechanical, behavioral, physical and ergonomic impact hazards.

The audit allowed Baxter to identify coverage gaps, and ways and conditions under which the

vehicles were used, she said.

"It was important in identifying root causes of loss, what the risks are, and corrective and preventative measures we can plan for," Ms. Ross said. She added that Baxter refined its policies and training program, enhancing driver recognition and awareness, which reduced its annual accident rate by 3%.

Working with her risk management department was essential in developing a fleet safety program, Ms. Ross said, as the department housed data on losses, workers compensation costs and the type of liability policies in place.

In addition to ensuring that

vehicles are properly maintained and operated, Ms. Ross said making sure that the vehicle fits the driver is just as important to improve safety. For instance, drivers should not have difficulty fitting into the vehicle, nor should they use a vehicle they aren't comfortable driving.

"In our experience, one of the most significant challenges is often the most overlooked—vehicle selection," she said. "We select vehicles based on evaluation of vehicle safety features, cost, fuel efficiency, size, comfort and satisfaction, and their ability to support Baxter's goals to reduce fuel consumption and be a sustainable company."

Obesity: Key challenge

CONTINUED FROM PAGE 4

With average obesity exceeding 30% of the male and female U.S. population, according to the CDC, and medical costs associated with obesity rising 60% since 1991, Ms. Ip painted the picture of a "growing" workforce.

While body mass index based on height and weight long has been the indicator of how overweight a person is, Ms. Ip said it is not always the most accurate measure because it doesn't take into account bone density or muscle mass.

She said the use of BMI as part of a pre-employment screening process is "dicey" because of its simplicity and noted that it is not a complex indicator.

"It can be dangerous because you're not taking into account the person's ability and BMI doesn't distinguish body fat, bone density and muscle mass," she said. Ms. Ip noted that a 6-foot 220-pound person who is in shape can have the same BMI as someone who is not in shape.

Obesity in the workforce largely can be attributed to the fact that the average person spends 14 hours and 39 minutes a day sitting, she said. The average person burns about 720 calories in eight hours of sitting, while a person standing that period can burn up to 3,600 calories, she said, highlighting that a com-



ASSE draws 4,500 to Chicago

CHICAGO—the American Society of Safety Engineers held its 100th anniversary celebration in Chicago at the McCormick Place Convention Center with more than 4,500 in attendance, a record for the expo.

Nearly 40 countries were represented at this year's event, held June 13-15.

The Des Plaines, Ill.-based organization's Safety 2011 event featured 475 exhibitors spread out over 75,000 square feet, as well more than 220 sessions with topics that ranged from workers compensation and building a comprehensive safety culture to a panel discussion on the role of safety and health in organizations.

Next year's event will be held in Denver on June 3-6, 2012. For more information, go to www.asse.org.

—By Jeff Casale

mon trend among employers looking to improve the health and wellness of their workforce is standing work stations.

Other steps some employers are taking to improve employee activity range from providing subsidized gym memberships; providing on-site gyms or wellness facilities; redesigning office space to encourage more walking and standing, including placing

printers far away from work stations; and encouraging face-to-face meetings.

"It's important to find a comfort zone and make sure that equipment is within easy access," Ms. Ip said. "We shouldn't be designing for the obese worker, but instead look at how you can design for your entire (workforce) and encourage a healthy lifestyle."

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Former AIG digs named landmark by N.Y. authority

The New York City Landmarks Preservation Commission has formally designated a building called the Cities Service Building as a city landmark.

But insurance industry observers may know the nearly 80-year-old skyscraper at 70 Pine St. better as the former headquarters of American International Group Inc.

The commission last month granted landmark designation to the building's exterior and its first-floor lobby. When it was completed in 1932, it was the world's third-largest skyscraper behind New York's Chrysler and Empire State buildings, according to the commission.

According to a statement on the commission's website, "an interior landmark is a space that not only meets the requirements for landmark status under the city's landmarks law, but must also be 'customarily' open to the public, which means it was originally intended for use by the public. The lobby of the Woolworth Building, the Grand Central Terminal Concourse and numerous Broadway theaters are examples of interior landmarks."

It was, of course, somewhere other than the lobby that AIG executives and federal officials worked out the landmark September 2008 bailout that brought AIG back from the brink of collapse at the price of having the government taking a nearly 80% ownership stake in the company.

AIG sold the building in spring 2009 as it divested itself of assets to repay a portion of the federal financial assistance.

Business Insurance END PAGE

Contributing: Jeff Casale, Roberto Cenicerros, Matt Dunning, Mark A. Hofmann



Suits raise a stink with hog farmers

The scent emanating from hog farms is not what consumers think of when they bite into crispy bacon or a honey-glazed ham.

But "odor lawsuits" pitting neighbors against large hog producer operations reportedly have led to a law limiting the liability of Missouri livestock producers.

The lawsuits often target large hog barns known as "confined animal feeding operations."

In some cases, Missouri jurors handed plaintiffs multimillion-dollar awards for claims that the odor from hog farms ruined their ability to enjoy their property. One jury, for example, agreed this year that a hog farm operation should pay residents \$2 million.

But in another recent case, a Missouri jury reportedly found for the hog producer in an "odor

lawsuit," denying a plaintiff \$3 million he sought from Princeton, Mo.-based Premium Standard Farms L.L.C., a unit of Smithfield Foods Inc.

Other reports say a St. Louis jury last year awarded \$11 million to residents allegedly harmed by the odor of hog producer waste sprayed as fertilizer on neighboring farm fields.

In light of such lawsuits, some large hog operations threatened to leave Missouri, taking thousands of jobs with them. But Missouri Gov. Jay Nixon signed legislation into law during the spring that limits damages that neighbors of livestock producers can win to compensate for a property's decline in market value.

It might not be hog heaven, but the law might clear the air a bit, at least for Missouri hog producers.

News reporter takes his licks over exposé

The owner of a New York ice cream shop chain is taking a Fox News reporter to court over reports that the frozen desserts are more fattening than the company claims.

According to Reuters, Matthew Prince filed suit in June in Manhattan Supreme Court against Arnold Diaz, a consumer watchdog reporter for Fox 5, the television network's New York affiliate.

Mr. Prince recently opened a batch of D'Lites Emporium ice cream franchises in Long Island, and alleges his business was wrecked by a May report by Mr. Diaz for his recurring segment "Shame, Shame, Shame," which reportedly focuses on businesses engaged in deceptive practices.

Mr. Diaz's report, which remains on Fox 5's website, accuses the company of underreporting the fat and calorie content of its ice cream based on laboratory testing.

Mr. Prince, who was not featured in Mr. Diaz's report, reportedly alleges in the suit that the lab Mr. Diaz consulted for the segment tested unfrozen,

concentrated ice cream,

which has a substantially different makeup than the aerated, frozen product customers receive in D'Lites Emporium stores.

In addition, Mr. Prince said the lab that tested the ice cream produced a supplemental report that supports the company's nutrition information as advertised. The suit accuses Mr. Diaz, Fox 5 and parent News Corp. of knowingly omitting the supplemental tests from the report, Reuters reported.



INSURER ACTS UP OVER STUDIO'S CLAIM

Should a star's minor medical procedure have cut off filming for a big-budget action movie? An insurer says "no."

A suit that the producers of "The Expendables," which came out last summer, filed against St. Paul Fire & Marine Insurance Co. seeks to recoup \$1 million due to a two-week production shutdown caused by actor Jason Statham's medical problems.

According to the Hollywood Reporter, a

growth was discovered in Mr. Statham's throat during filming of the movie in New Orleans.

Alta Vista Productions L.L.C. had to decide between temporarily suspending the production, which would cost \$1 million, or proceed with the movie and risk shutting down later, which sources said would have cost even more.

According to the report, the producer chose to halt the \$80 million film for two weeks, with St. Paul, a

subsidiary of Travelers Cos. Inc., arguing that the shutdown was "voluntary" and it was not responsible for a payout because Mr. Statham could have performed.

Alta Vista filed its lawsuit in federal court in New Orleans, with St. Paul recently filing a request for summary judgment.

However, a judge denied the Minnesota-based insurer's request and said the case would go to a jury trial.



Actor Jason Statham in "The Expendables."

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