

# Business Insurance

July 5, 2010

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**BP SEEKS INSURANCE PAYOUT FROM DEEPWATER RIG OWNER'S EXCESS PROGRAM / PAGE 3**

**FORMER AIG EXEC CASSANO DEFENDS SWAPS DEALS / PAGE 3**

**EMPLOYERS GIVEN MORE TIME ON MENTAL HEALTH PARITY REQUIREMENT / PAGE 3**



## In Brief

**Insured hurricane losses are limited: Modelers**

Insured losses from Hurricane Alex are not expected to exceed \$200 million in Mexico, catastrophe risk modeling firm AIR Worldwide Corp. estimated last week. The firm said the estimate covers possible wind and flood damage to onshore properties. Modeler EQECAT Inc. said it did not expect insured losses to exceed \$100 million in Mexico.

**Aon, JLT settle suit on executive defections**

A dispute over the defection last year of Aon Ltd. aviation executives to Jardine Lloyd Thompson Group P.L.C. has been settled for an undisclosed amount. A spokeswoman for Aon confirmed the settlement but would not disclose how much the brokerage was paid by JLT to end the dispute over the move by at least three Aon aviation brokers to JLT.

See **IN BRIEF** page 21

### SAFETY



Attendees light up at a pro-marijuana group's meeting in San Francisco. In November, a measure to legalize marijuana use goes before California voters.

AP PHOTO

## Push to legalize pot raises safety fears

*State initiatives spark employer concerns*

By **ROBERTO CENICEROS**

A measure on California's November ballot that would legalize marijuana for recreational use gained momentum last week amid warnings of a potential for increased worker injuries and employer third-party liability risks.

Employers can protect them-

selves with pre-employment drug testing and zero-tolerance drug policies, but increased risks are likely as pot could become more accessible, attorneys and employers said.

"We have to assume that if this law passes, more Californians will consume marijuana than currently

See **POT** page 20

### EMPLOYMENT PRACTICES

## Worker retaliation case heads to Supreme Court

*Ruling may determine range of employees protected by bias law*

By **JUDY GREENWALD**

**WASHINGTON**—The U.S. Supreme Court will consider whether someone who is only associated with an employee who engaged in a legally protected activity also should be protected from workplace retaliation.

The court last week agreed to hear an appeal in *Eric L. Thompson vs. North American Stainless L.P.*

A ruling for the plaintiff, the fired fiance of a worker who had filed a sex discrimination complaint against the company, would expand the class of people who can bring retaliation claims under Title VII of the Civil Rights Act of 1964, observers say.

It would "open up quite a universe of claims, particularly for anyone who has a big circle of friends at work," said Diana L. Hoover, a partner with law firm Hoover Kernell L.L.P. in Houston. "It is a little bit of a Pandora's box" that would lead to a "whole new avenue of lawsuits."

According to court papers, Mr. Thompson, a metallurgical engineer, and his then-fiancee and now

### WHAT HAPPENED

- U.S. Supreme Court agrees to hear appeal of *Eric L. Thompson vs. North American Stainless L.P.*
- Appeals court had ruled that a worker's fiance was not protected under bias law from retaliation.

### WHAT'S NEXT

- The court must decide whether or not there can be "associational retaliation."
- Recent Supreme Court ruling and a new justice could affect the outcome of the decision.

wife, Miriam Regalado, both worked for Ghent, Ky.-based North American Stainless.

Ms. Regalado filed a sex discrimination claim against the company with the Equal Employment Opportunity Commission, which notified North American Stainless of the charge in February 2003.

Mr. Thompson, who had worked at the firm since 1997, was terminated three weeks later. He sued and alleged the termination was in retaliation for Ms. Regalado's complaint and violated Title VII of the

See **RETALIATION** page 18

### HEALTH CARE BENEFITS

## HHS clarifies rules of early retiree reimbursement program

By **JERRY GEISEL**

**WASHINGTON**—Employers that feared a \$5 billion federal program to reimburse early retiree health care costs would run out of money before they could even file their

application received good news last week.

Guidance issued by Department of Health and Human Services makes clear that eligibility for reimbursement through the Early Retiree Reinsurance Program will be

**\$5 billion**

The amount of federal funds available to reimburse employers for early retirees' health care costs. Last week, authorities made clear that companies do not need to rush through applications to be eligible to receive the reimbursements.

participate in the program.

The program, part of this year's federal health care reform law, is intended to encourage employers to retain their early retiree health care plans until at least 2014, when federal premium subsidies begin for the lower-income uninsured, among other aspects of the program.

The guidance "should have the effect of calming people down" who thought they had to immediately file an application to have any chance of reimbursement, said Frank McArdle, a consultant in the Washington office of Hewitt Associates Inc.

See **RETIREE** page 17

**SPOTLIGHT**

**MID-YEAR MARKET REPORT & LEGISLATIVE ROUNDUP**

Competition softens property pricing; only high-risk casualty accounts' rates rise; falling premiums drive comp; even financial services D&O rates ease; capacity affects reinsurance; E&O demand weak; oil spill rocks market; cats top legislative agenda. **PAGE 9**

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Video interviews of the honorees of this year's award and the new Benefit Management Honor Roll can be watched online at [www.BusinessInsurance.com/BMOY](http://www.BusinessInsurance.com/BMOY).

## COMP BLOG

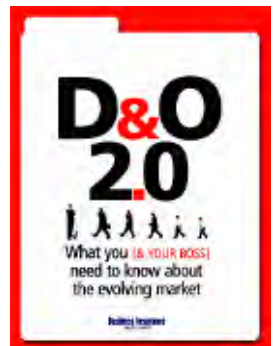
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## MOST POPULAR STORIES

Week of June 28, 2010

1. BP to seek \$708M from Transocean's insurers: Report
2. Work comp claimant cannot sue third party, TPA: Court
3. Unitrin buys rights to Kemper Insurance name
4. Top New Orleans chef sues BP over seafood losses
5. Aon, JLT settle dispute over executives' defection
6. Obama signs pension funding relief bill
7. Aon unit embeds risk consulting in captive management
8. Tennessee law allows English-only workplaces
9. Sarbanes-Oxley audit board unconstitutional: Top court
10. Sullivan says unaware in 2005 of AIG swap risk

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*Business Insurance's* webinars and webcasts are presented live online and afterward are accessible on demand. Register to view the latest archived webcast, "Retaliation Claims: What You Need to Know About This Growing Risk." Go Multimedia and click through Webcasts/Webinars.

## HEALTH CARE REFORM FAQ

*BusinessInsurance.com's* Health Care Reform section includes an updated FAQ that describes key provisions of the new law for employers.

## LOG ON, WEIGH IN

Registered *BusinessInsurance.com* users now have an expanded array of online community tools. Register and log in to customize your personal profile, create blogs, invite friends, join discussions and more.



## P/C INSURERS

# Ex-AIG swaps exec Cassano defends bets on mortgages

By MARK A. HOFMANN

**WASHINGTON**—The former American International Group Inc. executive who headed the division blamed for AIG's woes says he could have reduced the size of the company's federal bailout.

In his first public appearance since AIG nearly collapsed in September 2008, Joseph J. Cassano, former CEO of London-based AIG Financial Products Corp., last week told the Financial Crisis Inquiry Commission that, had he remained involved with the unit dealing with collateralized debt

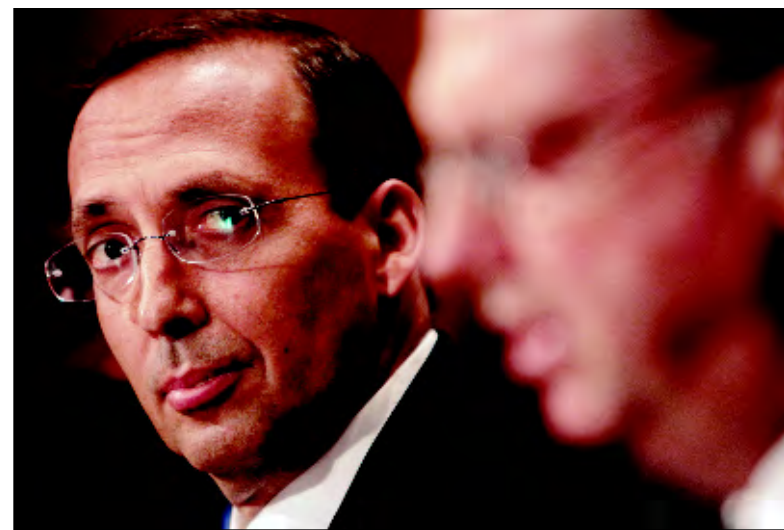
**IN ACCORD:** AIG President and CEO Robert Benmosche and the company's nonexec chairman have reportedly set aside differences. **PAGE 18**



obligations, he would have been able to negotiate better deals with counterparties—notably Goldman Sachs Group Inc. The result would have been a less expensive deal for the government, he said.

The liquidity crisis that resulted when counterparties demanded their collateral nearly destroyed AIG. The U.S. government bailed out the company, but took a nearly 80% ownership stake in return. Federal aid totaled more than \$180 billion, some of which AIG has repaid.

Mr. Cassano defended the quality of the underlying CDOs in the financial products unit's portfolio in his testimony to the commission. He said he and his team had a "firm view that the portfolio would not experience realized losses" as opposed to short-term



AP PHOTO

Former AIG Financial Products Corp. CEO Joseph J. Cassano listened as AIG Chief Risk Officer Robert Lewis testified before a commission last week.

accounting losses after the unit decided to stop writing credit-default swap protection on CDOs exposed to subprime mortgages. That decision was announced in early 2006.

"As I look at the performance of some of these same CDOs in Maiden Lane III, I think there would have been few, if any, realized losses."

See **AIG** page 18

## LIABILITY &amp; LITIGATION



REUTERS

Fire boats battle the blaze aboard the Deepwater Horizon on April 21, a day after it caught fire and a day before it sank, resulting in a massive oil spill.

## BP seeking indemnification from rig owner's insurers

By ZACK PHILLIPS

**HOUSTON**—BP P.L.C. has a month to explain why insurers that wrote excess liability coverage for the owner of the Deepwater Horizon oil rig owe the British oil giant indemnification under the coverage, a federal judge has ruled.

In a court hearing last week, U.S. District Court Melinda Harmon

gave BP until Aug. 6 to respond to a complaint by the excess insurers of Zug, Switzerland-based Transocean Ltd.

BP was leasing the Transocean-owned Deepwater Horizon rig that exploded and killed 11 on April 20 and sank April 22, breaching a sea floor wellhead that continues to

See **BP** page 17

## HEALTH CARE BENEFITS

## Employers get more time to tweak levels of mental health coverage

By JOANNE WOJCIK

**WASHINGTON**—Until final mental health parity rules are issued, federal authorities will offer a temporary reprieve to employers that offer different levels of coverage for certain mental health outpatient services.

Because many employers use copayments for medical office visits and coinsurance for all other outpatient medical services, neither one of those types of cost-sharing would have met the "substantially all" test that had been set in the interim final rules that were issued in January and took effect for plan years beginning on or after July 1.

As a result, many employers would likely not have been permitted to require any cost-sharing of outpatient mental health services, said Rich Stover, principal and consulting actuary at Buck Consultants L.L.C. in Secaucus, N.J.

However, the Labor Department said last week that it will establish an enforcement safe harbor under which authorities will not take any enforcement actions against employers that divide outpatient mental health benefits into two subclassifications—office visits and all other outpatient items and services—as long as that arrangement applies to "substantially all" outpa-

tient medical/surgical benefits as well.

However, employers may not impose any additional financial requirements or treatment limitations on mental health or substance use disorder benefits within those subclassifications beyond those that apply to "substantially all" outpatient medical/surgical benefits, Labor Department officials said. Separate subclassifications are still not permitted for generalists and specialists, the department noted.

The safe harbor, which came last week from the Labor Department in

See **PARITY** page 19

## INTERNATIONAL

## Iran sanctions law shields insurance industry

By ZACK PHILLIPS

**WASHINGTON**—Insurers and reinsurers that conduct due diligence likely would be exempt from new sanctions facing companies that do business with firms involved in Iran's energy sector under legislation President Barack Obama signed into law last week.

The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 applies economic sanctions to U.S. or foreign firms—including insurers, underwriters and reinsurers—doing business with companies that help Iran import petroleum or develop its petroleum refineries.

It already is illegal for U.S. companies to invest directly in Iran's ener-

gy sector.

When first proposed, the legislation sparked industry concern that an insurer or reinsurer could unknowingly violate the law if, for example, it provided reinsurance to a fleet of ships and one of the ships took a shipment to Iran.

But the final law includes a specific exemption for underwriters, insurers and reinsurers exercising due diligence—enforcing official policies and controls to ensure that they do not underwrite or contract with a firm that will run afoul of the law.

How much insurers and reinsurers would have to do to satisfy the due diligence requirement, howev-



Sanctions legislation initially worried insurers should a ship in a covered fleet deliver goods to Iran.

See **IRAN** page 19

## BENEFITS LEGISLATION &amp; REGULATION

# High court won't review city's health law

By JERRY GEISEL

**WASHINGTON**—Benefit experts were disappointed but not surprised that the U.S. Supreme Court declined last week to review a federal appeals court ruling that upheld San Francisco's controversial health care spending law.

The San Francisco law, which took effect in 2008, requires employers with at least 100 employees to spend \$1.96 per hour per covered employee on health care. Employers with between 20 and 99 employees must spend at least \$1.31 an hour on health care. The requirement applies to employees working at

**\$1.96/hour**

**THE SAN FRANCISCO LAW, which took effect in 2008, requires employers with at least 100 employees to spend \$1.96 per hour per covered employee on health care. Employers with between 20 and 99 employees must spend at least \$1.31 an hour on health care.**

least eight hours per week.

Funds generated by the assessment are used to provide medical

services to the uninsured.

That spending requirement can be satisfied in various ways, including paying employees' health insurance premiums and contributions to health savings accounts and health reimbursement arrangements.

The enactment of the San Francisco law—challenged by a local restaurant trade association that said the statute was barred by the Employee Retirement Income Security Act that pre-empts state and local laws that relate to employee benefit plans—attracted national attention from employer groups. They feared the law would lead other cities and states to pass health care spending measures and result

in multistate employers having to comply with a hodgepodge of health care benefit requirements.

But the interest of states and cities in such approaches has cooled since this year's enactment of federal health care reform legislation, which includes new programs to provide subsidized health insurance coverage to the lower-income uninsured, starting in 2014.

Because of the federal health care reform law, "there is no policy reason" for other cities and states to pass San Francisco-type measures, said J.D. Piro, an attorney with Hewitt Associates Inc. in

See **SAN FRAN** page 6

## SAFETY

## Canadian comp authority ups security after attack

*Seeks to strike balance between safety, access after hostage incident*

By JEFF CASALE

**EDMONTON, Alberta**—Alberta's Workers' Compensation Board is ready to significantly upgrade its building security with the goal of avoiding a repeat of staff members being held hostage last October by a claimant.

Patrick Clayton, an injured out-of-work carpenter, is accused of unlawful restraint and weapons violations for allegedly entering the WCB's Edmonton office with a rifle, shooting a round into a wall and holding nine people hostage. According to reports, he felt the WCB unfairly cut off his benefits.

Though the situation ended

peacefully with no injuries to any of the 700 employees in the building, it sent a signal to the WCB that better security is needed to prevent a similar situation from occurring again.

"It was quite a shock when the incident happened," said a spokeswoman for the WCB. "We had to key (in) on what we were doing then vs. what we want to do now in terms of security. We brought in consultants to view the current security of the building and received recommendations from both them and staff on how it could be improved."

In June, the WCB sought bids for security upgrades and interior renovation to its Jarvis office building, Millard health building and its Central building, the site of the hostage incident. The WCB aims to enhance building security and employee and client safety without turning the



AP PHOTO

Officers gather near Alberta's Workers' Compensation Board office in Edmonton on Oct. 21, 2009, after an injured out-of-work carpenter entered the office with a rifle and held nine people hostage.

buildings into "fortresses."

Workplace security experts say improving building security is only one way to minimize the threat of workplace violence. They say a pol-

icy and staff training on handling such situations also are needed.

The WCB's plan calls for several

See **ALBERTA** page 21

## BI accepting nominations for leading women in industry

*Business Insurance* is accepting nominations for the magazine's 2010 Women to Watch feature, with a deadline of July 30.

The Women to Watch list is an annual feature spotlighting 25 women who are doing outstanding work in commercial insurance, reinsurance, risk management, employee benefits and related fields, such as law and consulting. Readers are encouraged to nominate candidates using the nomination form at [www.BusinessInsurance.com](http://www.BusinessInsurance.com).

A panel of senior editors of *Business Insurance* will select this year's honorees. Among the criteria for inclusion are recent profes-

sional achievements, influence on the marketplace and contributions to the advancement of women in business. The list is open

to women worldwide. Prior honorees are not eligible for the 2010 list.

Profiles of the women will appear in the Dec. 6 issue of *Business Insurance*, as well as at [www.BusinessInsurance.com](http://www.BusinessInsurance.com).

In addition, a luncheon honoring the 2010 Women to Watch and alumnae is planned for Dec. 7 in Chicago. For information on attending or partnership opportunities, please contact Events Manager Becky Briggs at [rbriggs@businessinsurance.com](mailto:rbriggs@businessinsurance.com) or 212-210-0132.

To download a nomination form, please visit [www.BusinessInsurance.com](http://www.BusinessInsurance.com) or e-mail BI Editor Regis Coccia at [rcoccia@businessinsurance.com](mailto:rcoccia@businessinsurance.com).



## Retaliation claims covered in BI webcast

By MIKE TSIKOUKAKIS

Workplace retaliation claims appear to be a growing problem after a U.S. Supreme Court ruling made it easier for workers to sue their employer, participants in a *Business Insurance* webcast said last week.

There were 33,613 retaliation charges filed with the U.S. Equal Employment Opportunity Commission in fiscal year 2009, a 2.8% increase from 2008 despite a decline in overall complaints, according to the EEOC. Retaliation claims filed with the EEOC have risen steadily since 2006.

The problem, said Gerald L. Maatman Jr., a partner at Seyfarth Shaw L.L.P. in Chicago, stems from *Burlington Northern & Santa Fe Railway Co. vs. Sheila White*, where the Supreme Court's decision in 2006 eased the burden of proof for an employee alleging workplace retaliation in violation of Title VII of the Civil Rights Act of 1964.

Mr. Maatman offered that assessment during the BI webcast "Retaliation Claims: What You Need to Know About This Growing Risk." "If you stand back from those statistics, I'm a believer that this is a direct cause and effect from the Supreme Court's decision in *Burlington Northern*, and the way in which it interpreted the statute and made things easier for plaintiffs lawyers and for employees to bring claims of retaliation," he said.

Webcast panelists offered a framework for employers to consider and mitigate the risk of retaliation claims before reaching court.

Employers need to take control of the decisionmaking process once a worker voices a complaint and conduct a fair investigation, said Michael R. Buchanan, a shareholder at Ogletree, Deakins, Nash, Smoak & Stewart P.C. in Dallas. "In any retaliation lawsuit, the quality and integrity of your investigation is the foundation of your defense," he said. "It's not only important that you do fairly investigate, it is important that your written product of that investigation reflects the fairness with which you approached your job under the law."

He noted communication regarding the claimant needs to be documented by a neutral third party within the organization. "It's hugely important to take control of the message so that the evidence at trial will properly and faithfully reflect the integrity and sensitivity with which the company responded to the employee's concern," he said.

BI Senior Editor Judy Greenwald moderated the webcast, which is available online at [www.BusinessInsurance.com/section/webinars](http://www.BusinessInsurance.com/section/webinars).

## Errors & Omissions

A June 28 photo misidentified The Naked Cowgirl. The woman pictured is Louisa Holmlund, not Sandy Kane, who is in a dispute with The Naked Cowboy.

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A LOT OF THINGS CAN HAPPEN IN A MAJOR STORM.  
WE MADE SURE THIS DIDN'T.

SWELL'S SEAFOOD RESTAURANT



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the Day:  
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# San Fran: No review

CONTINUED FROM PAGE 4

Norwalk, Conn.

The federal law is a key reason why there was no need to review the San Francisco law, the Obama administration told the Supreme Court.

The brief noted that since the federal appeals court ruling upholding San Francisco's law, federal health care reform "significantly reduces the potential that state or local governments will choose to enact health care programs" like San Francisco's and "may also affect the question whether such programs are pre-empted by federal law."

Just as the Labor Department decided that regulatory action on the pre-emption issue is premature, the Supreme Court's "review of the issue is not warranted at this time," the brief said.

Still, the issue may return one day.

If federal health care reform does not succeed in expanding coverage, the interest of states and cities in finding ways to expand it could return, said Andy Anderson, a partner with Morgan, Lewis & Bockius L.L.P. in Chicago.

"There is no reason not to believe others one day may follow San Francisco's lead. It would have been appropriate for the Supreme Court to take up the case and settle the pre-emption issue once and for all," said Gretchen Young, senior vp-health policy with the ERISA Industry Committee in Washington.

## THE SAN FRANCISCO WAY

*Major events in the history of San Francisco's health care spending law*

**JULY 2006:** San Francisco Board of Supervisors unanimously approves legislation requiring that employers make minimum health care expenditures on behalf of eligible employees.

**NOVEMBER 2006:** Golden Gate Restaurant Assn. files suit, alleging that the Employee Retirement Income Security Act pre-empts the employer spending requirement.

**APRIL 2007:** San Francisco delays the law's implementation until January 2008 for large employers and until April 2008 for smaller employers.

**DECEMBER 2007:** U.S. District Court Judge Jeffrey White rules that ERISA pre-empts San Francisco's law.

**JANUARY 2008:** Three-judge panel of 9th U.S. Circuit Court of Appeals allows implementation of the law while San Francisco appeals Judge White's ruling. The law requires large employers to spend \$1.76 per hour per eligible employee on health care in 2008.

**FEBRUARY 2008:** U.S. Supreme

Court Associate Justice Anthony Kennedy denies a Golden Gate Restaurant Assn. request to block the law while the 9th Circuit considers its appeal.

**APRIL 2008:** 9th Circuit hears oral arguments.

**OCTOBER 2008:** 9th Circuit panel rules unanimously that ERISA does not pre-empt San Francisco's law.

**JUNE 2009:** Golden Gate Restaurant Assn. asks the U.S. Supreme Court to review the appeals court ruling.

**OCTOBER 2009:** Supreme Court asks U.S. solicitor general for its views on whether it should review the 9th Circuit decision.

**MAY 2010:** In a brief submitted to the Supreme Court, the Obama administration says the high court should not review the appeals court ruling, saying the federal health care reform law significantly reduces the likelihood that other states and cities will take actions like San Francisco's.

**JUNE 2010:** Supreme Court declines to review the 9th Circuit decision.

Meanwhile, employers with employees in San Francisco will have to continue to comply with its law, with reporting and other requirements that "are a real pain in the neck," said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

San Francisco Mayor Gavin Newsom, though, said in a statement that the Supreme Court's decision not to take up the 9th Circuit ruling was "a victory for the 53,000 San Franciscans who have health care today through our groundbreaking universal health care program."

## Commentary

# Greenberg dampens already rainy week

After weeks of chilly rain in Zurich, a few days in sunny Madrid at the International Insurance Society's annual seminar seemed like a fine tonic for Switzerland's extended winter blues.

It started well with a bright June afternoon, overflowing sidewalk cafes and the usual crowds. Europe's worrisome "contagion" of shaky sovereign debt and discontent among the population seemed as far away from Spain as the rain in Zurich.

The first day of sessions was a nice warm-up for the main event the next morning.

Maurice R. Greenberg, chairman and CEO of C.V. Starr & Co., was to speak on "The Role of Asia in Emerging Markets," as the brochure described the session. It sounded interesting, but I was hopeful that the former head of American International Group Inc. would stray from the program and provide some juicy color about the government takeover of AIG.

Asia did, in fact, get a relatively short shrift from Mr. Greenberg, who touched on other, far more interesting topics.

I can only hope he was wrong about much of it.

After a quick rundown of how the financial crisis evolved from the zealous and irresponsible lending practices of Fannie Mae and Freddie Mac, Mr. Greenberg moved on to explain how poor regulatory oversight, government involvement in banking, bad investments and indecisiveness by U.S. Treasury Secretary Timothy Geithner gathered into storm clouds that have threatened to drown the U.S. economy.

The problem is, things are likely to get worse, Mr. Greenberg said.

"The belief that the U.S. economy is on the road to recovery is, I think, in grave doubt," he said. "Unemployment remains very, very high. The May (hiring) numbers are really a fiction because virtually all of the jobs created were government jobs."

And, jobs won't reappear as long as money is tight, he said.

"And at the same time, taxes are rising," which means businesses have less funds to invest, Mr. Greenberg said.

Perhaps his most interesting remark of the day came when he said the United States is undergoing a transition "away from a market economy to more and more of a social democracy, which is not what our country is all about."

That got the Europeans' attention.

He took a swipe at European-



**MICHAEL BRADFORD**

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style socialism, saying that "social democracy in Europe and the euro zone" can hardly be held up as a great example of how to operate a society, considering problems brewing in that part of the world.

"You can promise all kinds of things to people, but you've got to pay for it," Mr. Greenberg said. "And sooner or later, there comes a day of reckoning. And that day of reckoning for the euro zone

**Incredibly, at a time of 20% unemployment in the country, public-sector workers were striking over 5% pay cuts.**

essentially has arrived."

Even as Mr. Greenberg spoke, protesters were massing around the city. The contagion was, in fact, beginning its spread into Spain. Incredibly, at a time of 20% unemployment in the country, public-sector workers were striking over 5% pay cuts.

"Taking things away from people that you once had promised and given to them is very difficult," Mr. Greenberg said. "Once you're used to getting a handout," it's not easy to give up.

That afternoon, it rained heavily and the fine Spanish weather turned chilly. Soaked protesters huddled in tapas bars throughout the city. My mood was dark, partly because of the weather, but I couldn't shake what Mr. Greenberg had said before finishing his speech.

A double-dip recession in the U.S. is a possibility, he said. Companies are not expanding and "we're going to lose momentum," he predicted.

"It's not a great time," Mr. Greenberg told IIS attendees.

That said it all. It rained the rest of the week.

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# Business Insurance OPINIONS

## Court should review San Francisco law

WE'RE DISAPPOINTED that the Supreme Court ducked the opportunity to resolve the legality of "play-or-pay" laws once and for all.

As we report on page 4, the court last week declined to review a lower court decision upholding San Francisco's health care spending law.

That law requires employers to spend a certain amount of money on health care for their employees working in San Francisco or write a check for that amount to the city, which uses the money to provide medical services to the uninsured.

While San Francisco's law is unique in its structure, Maryland also passed a play-or-pay measure in 2006 that required employers to pay an amount equal to a certain percentage of their payroll for employees' health care or pay the difference to a state fund. The courts struck down that law.

Employers contend that such statutes violate a provision in the Employee Retirement Income Security Act that pre-empts state and local laws that relate to employee benefit plans.

The Supreme Court, as is customary, did not explain why it denied cert in the San Francisco case. We wouldn't be surprised, though, if the justices were influenced by an Obama administration brief saying—in light of enactment of federal health care reform legislation—that a review would be premature.

We have no doubt that health care reform law has chilled the interest of public entities in passing San Francisco-style health laws. With the federal law's creation of health insurance premium subsidies for the lower-income uninsured, the need for such laws is vastly diminished.

Still, employers that must comply with the San Francisco law have a right to know if that statute is, in fact, legal. Unfortunately, the Supreme Court denied employers that basic right.

*Health care reform law has chilled the interest of public entities in passing San Francisco-style health laws.*

## New laws, history may keep disasters at bay

A HEARING BY the Financial Crisis Inquiry Commission last week provided interesting testimony from the former head of American International Group Inc.'s financial products unit and AIG's chief risk officer.

Joseph Cassano, who was at the helm of AIG Financial Products Corp., the unit that traded derivative contracts and triggered the massive bailout, suggested that AIG's crisis would have been less severe if he had been allowed to negotiate with counterparties that bought credit-default swaps. He further opined that if the swaps were not unwound, the contracts would not have realized losses.

Those are bold, but in hindsight, probably true statements. Much of AIG's massive financial losses came in unrealized losses. It's the same principle as selling a stock with a market value that has declined: It's a loss only on paper until that asset is sold. Then the loss becomes real.

AIG CRO Robert Lewis succinctly described the crisis: "As it turned out, we were wrong about how bad things could get. What ended up happening was so extreme that it was beyond anything we had planned for."

A major problem with AIG's financial products unit was the risks it took were not collateralized with liquid capital. AIG nearly went bust because of collateral calls, and most of the taxpayer bailout went to pay counterparties such as Goldman Sachs Group Inc.

We hope that between AIG's experience and financial services reforms, companies can avoid repeating disasters like this one.



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Q Have you ever taken FMLA leave?



Yes  
33%

No  
66%

#### NEXT WEEK'S QUESTION

Q: Will financial services reform legislation win Senate approval?

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# BUYING POWER

## Plentiful capacity, competition keep property pricing soft

By **JEFF CASALE**

Continued softening in property insurance prices during the first half of this year and abundant capacity are giving insurance buyers the upper hand during midyear renewals, observers say.

For this year's first quarter, property rates decreased about 5%. In the second quarter, property rates continued to fall, with some buyers seeing double-digit rate declines amid plentiful capacity and intense competition, insurers and brokers say.

"In 27 years, I have never seen so much capacity," said Alexandra Glickman, area vice chairman of Arthur J. Gallagher Risk Management Services Inc. in Glendale, Calif. "Everyone is realizing that their budget is not being made. Even with the losses from the earthquake in Chile...it hasn't moved the needle."

While noncatastrophe property coverage remained soft, pricing for catastrophe-exposed property remained firm, brokers and insurers said.

Still, Ms. Glickman said underwriters are scrutinizing proposals for wind coverage in areas such as the Midwest due to the recent uptick in tornadoes and damaging thunderstorms in the region.

According to data compiled by the National

Weather Service, preliminary 2010 data shows there were 197 tornadoes in April; 201 tornadoes in May and 355 tornadoes in June. Actual tornadoes reported in 2009 were 226 in April; 201 in May and 270 in June.

"Some hail and tornado losses in the Midwest used to be pretty benign, but not so much anymore," Ms. Glickman said.

Brad Wood, senior vp-risk management for Marriott International Inc. in Bethesda, Md., renewed Marriott's hotel and time-share insurance programs effective April 1. He said he had no trouble getting coverage placed, but some insurers reduced the amount of their deployed capacity, which forced him to use more insurers for the hotel chain's insurance program.

"It's a more elaborate program than in years past in terms of the number of insurers involved," Mr. Wood said. "We ended up with a patchwork-type quilt of a program, but we got the coverage we needed."

Some questions insurance buyers might have as they shop for commercial property insurance might include sustainability of the programs offered and the insurer's capacity consistency. Mr. Wood said consistency on capacity from year to year allows buyers to get an idea of an insurer's stability.

Further, the sustainability of the insurance pro-

grams offered must be considered when budgeting for renewals in 2011, some insurers said.

"It's important to have your house in order and know your risk locations and values as well as be able to differentiate risks," said Randy Schreitmueller, vp at Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global. "It's kind of like taking that look-before-you-leap mentality. Make sure what the insurer is putting on the table is sustainable and doesn't just last through the market cycle."

One way FM Global is looking to generate renewable business is offering a membership credit, which is a credit that averages 13% for all clients that place business from June 30, 2010, through June 29, 2011. The credit is based on the tenure of the client with a maximum credit of 20%, Mr. Schreitmueller said. New clients could receive a credit of as much as 5% on their programs, he said.

Mark Bernacki, London-based head of Beazley Group P.L.C.'s U.S. property group division, agrees with Mr. Schreitmueller's opinion on sustainability. While this year's property market conditions are "amenable," uncertainty exists as many lines are "approaching levels that can't warrant additional rate decreases," he said.

"This, in conjunction with an unexpected active U.S. hurricane season and earthquake losses from Chile and other large events, will continue to place upward pressure on the future market," Mr. Bernacki said in an e-mail.

Insurer security has become more important than in the past, said Al Tobin, national property practice leader for Aon Risk Services in New York. He said many lenders mandate a certain credit rating level of insurers, especially those that work on a global level, due to credit risks.

Some lenders are even demanding that those applying for a loan drop insurers that have a Standard & Poor's Corp. credit rating that is less than A, Ms. Glickman said.

For Wayne Salen, director of risk management for Labor Finders International Inc. in Palm Beach Gardens, Fla., the relationship with insurers and their ability provide coverage that fits the needs of a business is a key consideration.

Mr. Salen said he recently completed renewals and found insurers willing to offer premium reductions of 10% to 15% with improved terms and conditions. Some of that was caused by a reduction in exposures, but he also attributed the favorable buying experience to his relationships with his insurers and their knowledge of his business.

Mr. Salen said that despite recent scrutiny of American International Group Inc., he continues to place business with Chartis Inc. because the property/casualty insurer knows the temporary staffing industry, particularly the industrial side.

As far as emerging risks, solar, biodiesel and renewable energy technology are generating interest, Mr. Bernacki said.

The risks involved with vacant buildings, particularly on the real estate side, are another growing risk, said Charlotte Stone, Glendale, Calif.-based managing director of worldwide property practice group and executive vp for Gallagher Real Estate & Hospitality Services, a unit of Gallagher Risk Management Services.

"The vacancy rate on property risk is going through the roof right now," Ms. Stone said. "Urban mining losses are up as well, with equipment such as copper wiring, piping and other building materials being stolen off of construction sites."

## Mid-Year Market Report & Legislative Roundup

# SPOTLIGHT

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# Capacity a factor in soft liability rates

*Insurers offer more favorable terms and conditions*

By JUDY GREENWALD

Buyers of primary and excess casualty insurance are finding declining rates, abundant capacity and intense competition in the ongoing soft market, observers say.

Competition remains strong as insurers seek to woo new general liability business while holding onto their existing clients. Some observers also say there has been some broadening of coverage through additional endorsements and lower retentions.

Accounts with a good loss experience are “probably still seeing reductions,” said Stephen Truono, vp, global risk management and insurance for White Plains, N.Y.-based Starwood Hotels & Resorts Worldwide Inc.

“The most significant reductions are typically achieved if the account is put out in a formal competition among insurers” vs. renewing with the incumbent, Mr. Truono said.

“Even risks that have had losses are still getting premium and rate decreases,” said David Rogers, vp and risk manager at AXA Equitable Life Insurance Co. in New York. Overall rates for midyear renewals have been declining “anywhere from 5% to 20%” for loss-free accounts, he said.

Eric Silverstein, managing director and casualty practice leader for Beecher Carlson Holdings Inc. in Atlanta, said six months to a year ago, “the marketplace was starting to

plateau in terms of the percentage reductions.” Now, though, “reductions are starting to increase again.”

There has been “noticeable downward movement in rates and premiums over the last quarter, and it applies broadly over a wide range of risks,” said Jim Mathewson, a senior vp with Lockton Cos. L.L.C. in Kansas City, Mo.

“The soft market continues unabated for most low to moderate risk classes, and that’s the case for both the primary casualty as well as the excess,” said Anthony DeFelice, managing director of Aon Corp.’s national casualty division in New York.

High-risk classes are “seeing some slight rate increases depending on what the client exposure information looks like, but nothing that’s earth shattering,” said Mr. DeFelice.

Jonathan Zaffino, New York-based managing director and U.S. global risk management casualty leader for Marsh Inc., who focuses on larger clients, said primary general liability coverage continues to be “a very competitive market.” Marsh is seeing prices that are flat to midsingle-digit reductions on average, while “terms and conditions are very reasonable,” he said. “Clients are able to achieve what it is they’re looking for.”

Lou Iglesias, New York-based chairman and CEO of Chartis Inc.’s commercial casualty unit, said, “It seems at this point that the (primary large-account) market has pretty much flattened out,” with fairly stable terms and conditions.

“We’ve probably allowed 10% to 15% rate reductions in the last year or so, but we’re not

giving much more this year because we don’t think we have to,” said David Price, executive vp and chief underwriting officer of Burns & Wilcox Ltd. in Farmington Hills, Mich.

Tom Martin, New York-based managing director in Marsh’s excess casualty placement group, said insurers “are having difficulty increasing rates as capacity remains plentiful.” While incumbents are trying to maintain or increase their rates, many insurers are experiencing premium reductions as exposures continue to decline, “but at a slower pace.”

The lead umbrella markets for complex risks, however, may be seeing slight rate increases because there is less competition in that sector, Mr. Martin added. “Excess of the lead, however, rate reductions are still achievable due to the significant capacity available,” he said.

Insurers are working hard to keep their existing accounts, observers say.

Diana Amodeo, New York-based chief underwriter for excess casualty, North America, at XL Insurance, said while retention of existing accounts is strengthening, “it makes (acquiring) new business challenging because incumbents are holding onto accounts” and doing what is necessary to retain the business.

“When accounts do move to a competitor, they’re moving to the tune of even 30% to 40% off expiring premiums. We just had one where we had to walk away because the pricing just tanked,” Ms. Amodeo said.

Paul Horgan, New York-based chief underwriting officer, global corporate in North America for Zurich Financial Services Group, also said “the incumbents are working very hard to maintain their existing portfolios, so we’re not seeing a lot of business moving.” Incumbents “seem to be holding onto their

portfolios,” he said.

“We have seen some requests for broader terms and conditions” in excess casualty lines, but “we’ve kept our discipline,” said Chartis’ Mr. Iglesias.

However, Mike Pesch, area chief operating officer of Itasca, Ill.-based Arthur J. Gallagher Risk Management Services Inc., said “a few national carriers have shown some expanded endorsements that they’re writing to their policies. For little or no additional premium, for example, we’re seeing some manufacturers (errors and omissions)-type coverages added, which are usually not included in a normal package or GL policy.”

In addition, “we’re seeing some product recall expense (coverage) built into some of the package forms that we hadn’t seen. Usually, that was separate cover that you needed,” Mr. Pesch said.

The additional coverage is “another sign that the carriers are trying to differentiate themselves in a bitterly competitive market,” he said.

In another trend, Lockton’s Mr. Mathewson said some insurers are offering lower attachment points “because, in some cases where there is just no more rates or premiums to be gained, we just negotiate more coverage.”

Several observers said a further trend this renewal season is insurers’ willingness to put in a “most favorable venue” policy clause for insuring punitive damages, which provides such coverage in states where it is allowed if the insured has some tie to the jurisdiction. This means risk managers do not have to go offshore to get the coverage, observers say.

In addition, “some buyers are considering claims-made policies for general liability and their excess programs, because it gives you just that one last way to shave a little more premium out of your structure,” Pam Ferrandino, executive vp, national casualty practice leader of Willis North America in New York, said of midyear renewals.



# Falling workers comp premiums spark insurer competition

By ROBERTO CENICEROS

Workers compensation insurance pricing remains very soft with most accounts renewing their coverage at midyear seeing single-digit reductions as insurers attempt to hang on to market share, several sources say.

To increase their competitive stance, some insurers are easing collateral requirements for new accounts in efforts to lure large-deductible buyers away from competitors, brokers and insurers say.

The competition is being driven by ample capacity and insurer attempts to make up for lost premium volume by taking business from rivals, several sources agree.

Nationwide, workers comp premiums shrank nearly 12%, from \$37.6 billion in 2007 to \$29.8 billion in 2009, according to a May “State of the Line” report from Boca Raton, Fla.-based NCCI Holdings Inc.

Workers comp premiums have fallen due to the weak economy and the nationwide slump in payrolls. So insurers are competing intensely to lure new clients from their competitors, but incumbent underwriters are fighting to hold on to the accounts, several sources said.

“Companies are being extremely protective of their customer base, which makes it very hard to try and pry something loose,” said Neal Colman, vp and chief underwriting officer for major accounts at Liberty Mutual Group in Boston. “And when something does go into the marketplace, there is always some carrier that will step up and

offer very, very competitive terms.”

Amid “aggressive dealmaking,” driven in part by pressure on insurers to write new business, renewing workers comp accounts are seeing price decreases averaging 5% to 7%, said Eric Silverstein, casualty practice leader in Atlanta for broker Beecher Carlson Holdings Inc.

Soft market conditions also are being influenced by plentiful capacity, some of it from insurers no longer viewed as less desirable because of financial challenges they faced in the past, Mr. Silverstein said.

“A lot of this is just simply because of the capital that has come back in the marketplace and the fact that companies like Chartis (Inc., a unit of American International Group Inc.) and Hartford (Financial Services Group Inc.) have put some of the difficulties they may have had behind them,” Mr. Silverstein said.

In fact, some accounts that did not obtain adequate price reductions during past renewals have seen double-digit reductions during this year’s midyear renewals, said Mark Moreland, executive vp and head of the risk management group at Lockton Cos. L.L.C. in Kansas City, Mo.

“To obtain that result, it’s important that competition be brought into the fold,” Mr. Moreland said. A good loss history to attract several insurers willing to provide desirable

quotes also is helpful, he said.

Dominic Zullo, director of risk management for San Diego-based defense and transportation contractor Cubic Corp., said he has taken his account to bid for a September workers comp renewal and expects to see a high single-digit premium reduction.

Accounts with significant declines in their exposures, or payrolls, often are seeing flat renewal pricing, which essentially is a price decrease because it’s a smaller deal that is getting the pricing of a larger account, Mr. Moreland said.

That essentially is what occurred when the Port of Oakland recently renewed its excess workers comp coverage, said Betsy Ross, risk manager for the California port.

“In general, the market is still soft,” Ms. Ross said. Even with a smaller payroll because of layoffs and early retirements, the Port of Oakland’s workers comp pricing remained the same as last year.

The Port of Oakland obtained competing bids, but found some reluctance on the part of excess insurers concerned about terrorism risks and its concentration of employees. Still, Ms. Ross said the soft market provided a good outcome for the Port of Oakland’s account.

Barring a storm season that changes the entire property/casualty market, observers see little ahead that would reverse the downward trend in workers comp pricing, sources said.



# Even financial services firms see an easing of D&O rates

By ZACK PHILLIPS

The market for directors and officers liability insurance remains soft in nearly all sectors with no end in sight, observers say.

Plentiful capacity competing for a diminished number of buyers has prices falling just as they were a year ago, brokers and underwriters say.

Most renewals are seeing high single-digit or low double-digit rate decreases, with pricing even more competitive for Side A policies that cover individual directors and officers, underwriters say.

Even the financial services sector, which was the sole portion of the D&O market to see hardening prices during the past few years, appears to have largely flattened. Some financial firms with unfavorable circumstances are seeing flat renewals, while others are seeing rate decreases up to 10%, underwriters say. Some financial services companies that have improved their balance sheets and took significant rate increases in their past two renewals could achieve double-digit rate decreases this year, they said.

"There's so much capacity and so much competition in turn for excess placements that it's just putting huge downward pressure on the prices," said David Conca, New York-based director of risk management at Time Warner Inc.

"That, coupled with weak economic conditions, is putting huge budget pressure on risk managers and companies. So because of all that, it's just not the right environment to raise premiums," Mr. Conca said.

Soft pricing is being buoyed by abundant capacity that has shown no signs of abating. In fact, observers say capacity has increased slightly as several new insurers have joined an already crowded market.

"There's more than 50 markets right now in the D&O market," said Michael Dandini, New York-based senior vp at Hartford Financial Products. Colleague William Kelly, New York-based vp-commercial risks at Hartford Financial Products, said that is at least double the number of insurers writing the business a few years ago.

Mr. Dandini said the competition is so fierce that some participants are venturing into the financial services sector for the first time because they cannot secure the rates they need in the commercial D&O sector. This dynamic is contributing to a flattening market for financial firms, he said.

"A lot of those financial institutions have corrected their balance sheets over the last 18 months, so they're in a much better position," Mr. Dandini said. "So in some sense, there is a warranting of better" pricing.

Competition is especially fierce on the excess layers, where the new market players write more business.

Mr. Kelly and other underwriters said they are starting to see excess rates at 60% of the primary layer, compared with 80% or 90% during the hard market.

This means an even more signifi-

cant rate reduction if the price of an excess layer becomes a smaller portion of the primary layer and the primary layer then falls 10% or more, said Joseph O'Donnell, New York-based executive vp at Endurance Risk Solutions Professional Lines practice. This trend is not sustainable for insurers, given the cost of defending suits and potential increases in claims, he said.

The fierce competition comes as



D&O policyholders face a wide array of potential exposures.

The Deepwater Horizon oil spill in the Gulf of Mexico has provoked several derivative suits against lessee BP P.L.C. and others involved in the drilling operation. And congressional Democrats had assembled a package of significant changes to financial regulation, which observers said could enhance opportunities for plaintiffs to sue.

Underwriters are monitoring those issues but appear more concerned by a slew of persistent and burgeoning exposures, including enforcement of the Sarbanes-Oxley Act; increased enforcement of the Foreign Corrupt Practices Act, an anti-bribery statute; formalizing international corporate laws and regulation; and the continuing potential for litigation to end in big settlements or judgments for plaintiffs.

For example, the 9th U.S. Circuit Court of Appeals last month reinstated a \$277.5 million jury verdict against Apollo Group Inc. for alleged

violations of federal regulations that led to a drop in its stock.

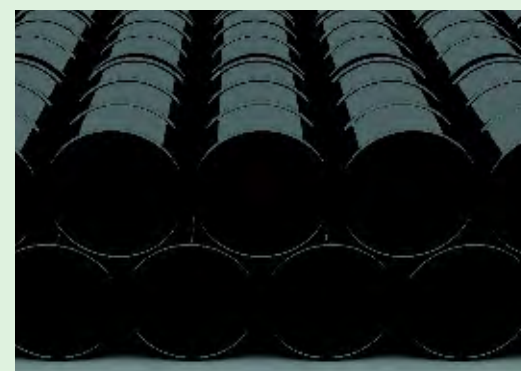
Some D&O market observers say defendants in subprime and credit crisis-related lawsuits have fared better than anticipated on motions to dismiss, but underwriters do not yet appear ready to celebrate.

"There have been a fair number of dismissals, but a fair number of them have been 'without prejudice' and can be refiled," Endurance's Mr. O'Donnell said. "Just because a few of these cases have been dismissed, I

See **D&O** next page



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# Capacity drags on reinsurance rates

Rates for U.S. casualty reinsurance remain soft

By COLLEEN MCCARTHY

Reinsurance rates generally decreased at midyear renewals as record capacity outpaced demand and constrained cedents tried to limit their overall reinsurance spending, brokers and reinsurers say.

Industry experts say reinsurance rates for regional U.S. property catastrophe programs decreased about 10% to 15% while national accounts saw prices drop roughly 7% to 12%.

For non-U.S. programs, where primarily South America and Australia dominate July 1 renewals, property catastrophe reinsurance rates were flat to 7% lower with the exception of earthquake-shattered Chile, brokers say.

Meanwhile, rates for U.S. casualty reinsurance remain "largely soft," several observers say.

"We're seeing reinsurers trying to hold the line, but ultimately we are putting firm orders into the market that are on the bottom end of a quote," said Rod Fox, CEO of TigerRisk Partners L.L.C. in Stamford, Conn.

"Reinsurance capacity is at an all-time high, and right now it's a pretty simple supply-and-demand equation" that is pressuring pricing, said Bryon G. Ehrhart, CEO of Aon Benfield Analytics in Chicago.

Despite significant first-quarter losses that include the quake in Chile and Windstorm Xynthia in Europe, reinsurers' capital worldwide rose 8% to \$434 billion this year, surpassing the 2007 record set before the global financial crisis, according to Aon Benfield Inc.

First-quarter losses of roughly \$16 billion have affected mainly reinsurers' results rather than pricing and capacity, said James Kent, Hamilton, Bermuda-based president of Willis Re North America and managing director of Willis Re Bermuda.

Mr. Kent described midyear renewal nego-

tiations as "pretty orderly."

"Where business is priced adequately, the market is fairly disciplined. However, there is a definite tipping point in this market, and if the business is seen by insurers as underpriced, then the placement will struggle," Mr. Kent said.

Although 2009 was a light catastrophe year, experts expect an active Atlantic hurricane season this year—ammunition that reinsurers are using "as they try to hold the line on price reductions, said Steve McElhiney, president of Dallas-based intermediary EWI Inc.

While terms and conditions remain stable, cedents likely will push for improved terms and conditions if the market continues to soften, brokers said.



While property catastrophe programs have generally declined, there are exceptions based on individual loss experience, observers said. For example, a regional Midwestern account that renewed June 1 saw a roughly 10% rate increase due to heightened reinsurer sensitivity to tornado and hail, Mr. McElhiney said.

Meanwhile in Chile, pricing on reinsurance layers in excess-of-loss programs has increased up to 60%, said Aon Benfield's Mr. Ehrhart. "But even those increases are much less substantial than you would have imagined following an 8.8 magnitude earthquake," he said.

In addition, there is pressure to alter some quota-share programs in Chile, and it remains to be seen what occurrence limits will be booked, he said. Mr. Ehrhart noted that moves to lower occurrence limits likely would drive demand for excess-of-loss cover.

Meanwhile, reinsurance rates for offshore energy-related programs are likely to increase as much as 50% as a result of the BP P.L.C. oil spill in the Gulf of Mexico, observers said.

"Reinsurers who are participating as a percentage of original premium are already starting to share in the price increases, although many of the programs will be renegotiated on Jan. 1, Mr. Ehrhart said of energy-related programs.

Insured losses from the spill are expected to range from \$1.4 billion to \$3.5 billion, according to Moody's Investors Service.

Despite the soft pricing across most reinsurance lines, many primary insurers continue to increase retention levels in an effort to manage their capital, observers said.

"It's ironic and counterintuitive to suggest in a soft market that companies want to retain more of their business, but they do," said James H. Veghte, chief executive of XL Re, a unit of XL Capital Ltd. in Hamilton, Bermuda. The trend is largely a function of insurers trying to grow their bottom line in soft primary market conditions, he said.

Some observers estimate insurers are retaining an average of 10% to 15% more of their programs.

Casualty reinsurance buyers also are increasing their retention levels, "in order to try to maximize profits on the underlying business," Mr. Ehrhart said.

In addition, primary insurers are seeking other ways to restructure their programs and offset costs, observers said.

"As in recent years, we're seeing many buyers drop the lower layers of the program and replace it with similar, or even additional, limits in the higher layers, where they can achieve a lower (rate on line) and reduce their overall premium spend," said Willis Re's Mr. Kent.

"Buyers are trying to protect their top line and are very concerned with the health of their underlying primary business," said Jim Hinchley, chief operating officer of Liberty Mutual Reinsurance, a unit of Liberty Mutual Insurance Co. in Boston. "So when it comes to the reinsurance purchase, they're really trying to get the most bang for their buck."

Meanwhile, TigerRisk's Mr. Fox said some larger insurers are consolidating and centralizing their reinsurance purchasing.

"If they had three different units buying the same umbrella treaty, they're now buying one corporate umbrella, and it's a more efficient purchase for them," Mr. Fox said.

Mr. Hinchley said primary insurers also have stepped up efforts to improve data quality in their submissions to achieve more favorable rates.

# D&O: Financial firms' rates ease

CONTINUED FROM PREVIOUS PAGE

think that carriers still need to carefully evaluate their exposure to ensure that they're adequately reserved."

Some subprime cases have ended with settlements that secured contributions from underwriters of Side A-only policies, which traditionally have avoided most such claims. That trend could spur higher settlements, said Marc London, a New York-based D&O underwriter at Beazley P.L.C.

Previously, "there was a lower expectation on the part of plaintiffs that a settlement would have insurance," he said. "Now that there's insurance available for these settlements, I think plaintiffs may attempt to more proactively construct the deals to access more insurance."

Demand for stand-alone Side A policies has increased significantly in recent years. Mr. London said buyer interest is still there but has leveled off. "I don't think it's going away, but the ramp-up appears to have subsided," Mr. London said. "I think there were enough bankruptcies and enough big, megalosses to get buyers aware of the (Side A) risk for the last three, four years."

In some cases, the exposures are driving changes in terms and conditions. Some markets are offering D&O policies that cover violations of Sarbanes-Oxley provisions and some are covering informal regulatory inquiries, underwriters said.

"You can only compete so long on price," Mr. Kelly said. "Sooner or later, the softness spreads to terms and conditions."

In 2008, when insurance holding companies American International Group Inc., XL Capital Ltd. and Hartford Financial Services Group Inc. faced financial challenges, many buyers tried to diversify their D&O towers among a larger number of insurers.

But Endurance's Mr. O'Donnell said that buying trend has reversed in some cases, in part as companies seek cost savings that can be achieved by concentrating coverage with one insurer.

"Two years ago, risk managers were pulling back the limits they'd place with any one carrier," Mr. O'Donnell said. "Now two years later, we have customers who are willing to place big blocks of capacity with one carrier."

# Soft E&O market continues with buyers seeing more rate decreases

By ZACK PHILLIPS

Professional firms buying errors and omissions liability insurance continue to enjoy a favorable market, with most sectors seeing single- or double-digit rate decreases.

As in the directors and officers liability market, E&O insurance buyers enjoy plentiful capacity from new and legacy insurers whose competition keeps rates low. At the same time, the economic recovery has not been dramatic enough to provoke the kind of rate increases underwriters desire after persistent soft market conditions.

Steve Bridges, a Chicago-based senior vp at broker Aon Corp.'s Financial Services Group, said pricing varies by industry and account but in general the market is soft, as capacity has continued to grow.

"Some clients are seeing 5% to 10% decreases," he said. "Many are flat. Very few are seeing increases, unless they've had big claims."

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 rates are flat to slightly declining on professional liability cover for lawyers, design professionals, real estate agents and the technology, network security, data privacy and media sectors.

Carl Pursiano, a New York-based senior vp of management liability at Liberty International Underwriters, a unit of Boston-based Liberty Mutual Group Inc., said lawyers, law firms and accounting firms can expect 5% to 10% rate decreases. Architects and engineers can expect 10% to 15% decreases on the primary account and 5% to 10% decreases on excess layers, he said.

The rate decreases are driven in part by abundant capacity. Mr. Pursiano said there are 40 to 50 insurers writing E&O coverage, compared with 30 to 40 a few years ago.

The softness also is driven by the pace and nature of the economic recovery. E&O rates

typically are based either on the number of professionals at a firm or on the firm's revenue. Despite some economic recovery, unemployment remains high, and gross domestic product growth remains relatively low, which means "ratables"—revenue or professionals on which underwriters can charge rate—have not grown, Mr. Pursiano said.

"In theory, if you have a recovering economy, you should see higher E&O premiums, frankly, because you get more ratable revenue," he said. "As the number of employees increases, you should see more premium for things like lawyers, broker dealers.... A lot of businesses are not yet showing ratable increase in revenue (and) not yet showing a ratable increase in professionals."

The limited recovery and the large number of corporate bankruptcies also limit demand, Mr. Pursiano said.

"As the economy expands, there should be greater demand for insurance across all



lines, but that doesn't seem to be happening today," he said. "Over the last couple years there are potentially about 100,000 fewer buyers of professional liability insurance."

The continued soft market environment comes at a time when E&O underwriters have suffered some significant losses associated with the subprime credit crisis.

"Generally speaking, in times of economic recession, claims against professionals, particularly those in the business of providing advice on business transactions, (tend) to see an increase in claims," Mr. Ablan said.

He said he has seen firming only in very specific sub-sectors of the market, such as midsize accountants in a particular region of the country, likely in response to a specific loss event.

On the bright side for E&O underwriters and policyholders, concerns over a deluge of litigation related to Bernard Madoff and other Ponzi schemes appear to have abated somewhat. Those concerns were particularly acute among attorneys and accountants.

# Oil spill likely to push energy rates up

By SARAH VEYSEY

The energy insurance market has been rocked by the largest offshore oil spill in U.S. history.

While the catastrophic April sinking of the BP P.L.C.-controlled Deepwater Horizon rig is not a market-turning event on its own, that loss plus attritional losses likely will push energy insurance rates up, experts warn.

The intense media spotlight has made the Deepwater Horizon loss a C-suite issue for all energy companies, said Jim Pierce, Houston-based chairman of Marsh Inc.'s energy practice.

Lloyd's of London Director of Performance Management Tom Bolt has asked that all Lloyd's energy underwriters resubmit their business plans in the wake of the Deepwater Horizon loss. Even before the catastrophe, Mr. Bolt expressed concern in March about the energy insurance market's profitability.

The Deepwater Horizon loss is a "terrible tragedy, but not a catastrophe to the upstream energy market," Mr. Pierce said. However, underwriters have moved to increase rates for the upstream market—which refers to the exploration and production phase—as well as deepwater risks, he said.

Prices in the upstream energy market generally are increasing, said Julian Taylor, head of energy, property and casualty at London-based brokerage Miller Insurance Services Ltd. But for well-managed risks with good claims experience, those rises are modest, he said.

The market has sufficient capacity for all but the very largest wind-related risks, but a catastrophic windstorm loss could change that, Mr. Taylor said.

"While the Deepwater Horizon incident is significant and tragic, the majority of the cleanup costs will fall on the casualty market," he said.

But the Deepwater Horizon plus several other large losses, including the August 2009 West Atlas oil spill off the coast of Australia and the May sinking of the Aban Pearl rig near Venezuela, have "undoubtedly given upstream energy underwriters cause for concern before the 2010 wind season has even begun," Mr. Taylor said.

Before the Gulf of Mexico spill, offshore energy rates were falling an average of about 10%, said Alex Maloney, group underwriting director of Bermuda-based Lancashire Holdings Ltd. Since then, rates have increased about 15% to 20% and some accounts have seen far larger increases, he said.

Bermuda-based Hiscox Ltd., which operates Lloyd's syndicates, said in a statement that offshore energy rates increased 10% to 15% since the Deepwater Horizon, with offshore energy liability rates jumping 25% or more.

Liability claims from the Deepwater Horizon likely will be enormous, said Lancashire's Mr. Maloney.

Before the Deepwater Horizon loss, many clients were expecting reductions in the cost of wind-specific coverage and rate decreases of

about 20% were being seen. But since the Deepwater Horizon, rates for wind coverage generally have remained flat, Mr. Taylor said.

Upstream rates were starting to soften at the beginning of the year, but there has been a fairly sharp hardening of rates since April, said Neil Smith, chief operating officer of the energy unit at Willis Group Holdings P.L.C. in London.

The percentage rate increase,



however, very much depends on the underlying risk, and it is difficult to give an average rate increase, he noted.

Underwriters are much more selective now and are differentiating risks rather than applying across-the-board rate hikes, he said.

On top of that trend, this year's Atlantic hurricane season is expected to be active, Mr. Smith said. If there are hurricane-related losses, the hardening of the market

could become more intense and prolonged, and capacity for energy risks could be reduced, he noted.

Experts say that there is about \$2.5 billion in worldwide capacity for upstream energy risks, a 10-year high, said Anthony Carroll, global chief underwriting officer of Liberty International Underwriters in New York.

Sources said about 85% of energy risks renew before or on July 1, so it likely will not be until energy underwriters begin their renewal discussions with reinsurers in the fall that the full impact of the Deepwater Horizon loss, and any subsequent large losses, will be felt.

If the reinsurance market hardens later this year and if the capital burden for energy underwriters increas-

es under the forthcoming European Union Solvency II regulatory regime, among other factors, then the market could harden significantly, Mr. Smith said.

On the flip side, he noted, a benign hurricane season could result in a softening of energy rates.

For energy, reinsurance rates softened for Jan. 1 renewals and stabilized in June, said Liberty International Underwriters' Mr. Carroll. Much of what happens with reinsurance rates depends on what happens to primary rates, he noted.

Reinsurance rates likely will rise and capacity may decrease, said Lancashire's Mr. Maloney. This likely would result in a hard energy insurance market as buyers likely seek more coverage, he added.



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# Gulf spill may affect legislative agenda

*Capitol Hill expected to focus on environmental, natural catastrophe-related legislation*

By MARK A. HOFMANN

**WASHINGTON**—The political fallout of the Gulf of Mexico oil spill could affect the Capitol Hill agendas of the risk management and property/casualty insurance industries this summer and beyond, Washington observers say.

The oil spill and its aftermath are among environmental issues likely to play out on the Hill this summer.

And even though the House has approved the most far-reaching financial services regulatory reform bill in decades, the Senate must follow suit after its current recess, and passage is by no means assured. If the bill wins Senate approval and is signed into law by President Obama, regulations implementing the measure must be worked out. That process could take years.

Other issues, including subjecting certain reinsurance transactions to new taxes, also are likely to get an airing on the Hill this summer. All of this is a prelude to November's midterm congressional elections, where the question is not whether Republicans will pick up seats but rather how many they will gain.

Right now, environmental and natural catastrophe-related legislation appears likely to be an area of major activity.

Ben McKay, senior vp of the Property Casualty Insurers Assn. of America's Washington office, said three natural catastrophe measures could get an airing. One would reform the National Flood Insurance Program, a second would require the NFIP to offer windstorm coverage and the third would have the federal government backstop state catastrophe insurance programs.

Mr. McKay noted that if predictions of an unusually active hurricane season pan out, an "active legislative season" could result.

He said the industry is tracking bills related to the Gulf oil spill caused by the April destruction of the Deepwater Horizon oil platform, operated by BP P.L.C. The question is how spill-related bills will affect insurance, he said.

Frank Nutter, president of the Washington-based Reinsurance Assn. of America, said he has been meeting with congressional staffs "to make certain that they don't do anything to impair insurance contracts through the use of any retroactive change in the Oil Pollution Act." He said OPA's \$75 million liability cap is "highly likely" to increase.

Mr. Nutter said the RAA has advised congressional staffers not to assume that there would be capacity in the energy insurance market to cover a greatly increased cap. He noted that the Insur-



MCT/LANDOV

Oil from the spill in the Gulf of Mexico laps over a boom in Biloxi Bay last week. The oil spill and its aftermath are among environmental issues likely to play out on Capitol Hill this summer.

**'I think everybody in the business community is looking to the fall elections as a bit of referendum on the role of government in the private marketplace.'**

Leigh Ann Pusey, American Insurance Assn.

ance Information Institute has estimated that total capacity is not much more than \$3 billion, but Congress is considering a \$10 billion cap.

The oil spill issue will continue to dominate discussion; and if congressional moves do not directly affect insurance, they could raise questions of litigation, said Leigh Ann Pusey, president and CEO of the American Insurance Assn. in Washington. "There will be no letting this crisis go to waste by folks who want to revisit old issues" such as Superfund liability, she said. The Obama administration wants to reinstate Superfund taxes, which could reopen the Superfund liability debate.

"All hands are out to BP" to try to collect damages resulting from the spill, said Mr. McKay. If BP can't meet its obligations, "people would be looking for another deep pocket."

"We are certainly concerned about any new revenue raisers as Congress continues to spend and spend," said Jimi Grande, a senior vp in the Washington office of the National Assn. of Mutual Insurance Cos. Eventually, lawmakers will seek new ways to raise revenue "and the insurance industry is always an attractive target."

The "most important thing this term remains the financial reform package and related implementation issues," said the AIA's Ms. Pusey.

"You probably will have 10 times as many pages of regulations as you do of the statute," which is about 2,000 pages, said Mr. McKay. The question of how to implement the

regulations the "right way" is "going to occupy a lot of the industry's time going into the next four or five years," he said.

For the Risk & Insurance Management Society Inc., the biggest issue is a proposed tax on certain reinsurance transactions, said Scott Clark, RIMS secretary and director-external affairs. Imposing a new tax could restrict capacity, particularly in areas with high-risk coverage needs, said Mr. Clark, who also is risk and benefits officer for Miami-Dade Public Schools in Miami.

More expensive reinsurance would increase premium costs as well, he said.

RIMS also plans to submit a comment letter in support of the federal terrorism insurance backstop program to the Treasury Department, which is seeking comments on the program. The program is slated to expire in 2014.

Terrorism insurance also is of interest to the Council of Insurance Agents & Brokers.

"We're giving a considerable amount of our attention to responding to the Treasury request for information on terrorism coverage," said Joel Wood, CIAB senior vp. "It's an exhaustive list of questions, and the brokers certainly have the clearest sense of the marketplace—takeup rates, price and availability."

This fall's congressional elections will determine next year's congressional agenda, some observers say.

The elections could have an "epic impact on the agenda," said Mr. McKay. Republicans could gain the House majority, he said. "The Senate won't switch but should tighten up. If Republicans pick up three Senate seats and 41 House seats, I think that the administration's agenda is dead," he said.

Not only would a switch in power change who sets the agenda, but the makeup of that majority would be different given the Tea Party movement, he said.

"I think everybody in the business community is looking to the fall elections as a bit of referendum on the role of government in the private marketplace," said Ms. Pusey. "If polls are right, there's a bit of backlash to government spending."

Given current conditions, "it seems very likely the elections will produce close margins in both the House and Senate, ensuring balanced and hearty debate over critical issues before Congress," she said.



REUTERS/LANDOV

Rep. Barney Frank, D-Mass., center, Rep. Spencer Bachus, R-Ala., left, and others discuss financial services regulatory reform in Washington last month.

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Business Insurance

## Market Moves

### CNA opens branch office in Washington

**WASHINGTON**—CNA Financial Corp. has opened a branch office in Washington.

The office, the third branch it has opened this year aside from Los Angeles and Birmingham, Ala., is part of CNA's strategy to be more accessible to its agents and brokers, the Chicago-based insurer said in a statement.

The office will focus on key industries in the Washington area, including technology, education, real estate, manufacturing and distribution, and professional services.

George Agyen, Mid-Atlantic zone officer, heads the office located at 2020 K St., N.W., Washington, D.C. 20006. The phone number is 202-416-4740.

### Willis Re expanding presence in Canada

**TORONTO**—Willis Re, the reinsurance unit of London-based Willis Group Holdings P.L.C., will open an office in Toronto.

The office, which opens Sept. 1, aims to strengthen the brokerage's presence in Toronto, a growing sector of the Canadian insurance industry, Willis Re said in a statement.

Willis Re Executive Director Robert M. Wildbore has been named executive vp and head of the new office.

Mr. Wildbore, who will relocate from London to Toronto, has been responsible for Willis' reinsurance business in the English-speaking Caribbean.

The reinsurance office will be located at 145 King St. West, Suite 1200, Toronto, Ontario, M5H 1J8 Canada. The phone number is 416-368-9641.

### HM Insurance buys stop-loss business

**PITTSBURGH**—HM Life Insurance Co. has reached an agreement to acquire Mutual of Omaha Insurance Co.'s stop-loss line of business for self-funded employer health plans.

To move away from health insurance and focus on its core products, Mutual of Omaha said it agreed to sell its stop-loss business for an undisclosed amount.

Michael W. Sullivan, president and chief operating officer of Pittsburgh-based HM Insurance Group, a unit of Highmark Inc., said HM currently has about \$420 million in annual stop-loss premiums and the business being acquired generates nearly \$100 million in annual premiums.

According to a statement, HM Insurance will operate a regional office in Omaha, Neb., with Mutual of Omaha employees moving with the business serv-

ing self-funded employer health plans.

The deal is to be effective July 1, pending regulatory approvals.

### Aon Benfield enhances European windstorm data

**COLOGNE, Germany**—Aon Benfield Fac said it has formed an exclusive partnership with the University of Cologne to bolster European windstorm research.

Through the partnership with the German university known for research into windstorm diagnostics and extreme weather modeling, Aon aims to use such data as an assessment tool to aid insurer and reinsurer purchasing decisions, the facultative reinsurance brokerage unit of Chicago-based Aon Corp. said in a statement.

"Insurers are increasingly requiring approaches that span more than one territory to reflect their portfolios," Adam Podlaha, head of Aon Benfield's Impact Forecasting international team, said in the statement. "As such, we're investing more in this business-critical area, and in particular to strengthen the physical basis of our catastrophe models that assess European weather-related losses."

The partnership focuses on three areas: extending the analysis of global climate models beyond 50 years, studying severe weather in Europe such as windstorms and hail storms, and assessing how losses determine reinsurance capacity.

### PureSafety expands client roster

**FRANKLIN, Tenn.**—Medical training and software firm PureSafety Inc. has signed new customers within the manufacturing industry.

The Franklin, Tenn.-based firm said in a statement that Circor Instrumentation Technologies Inc., Evonik Degussa Corp.'s Tippecanoe Laboratories, Hydratight Ltd., MEGTEC Systems Inc., SKF USA Inc., SNF Holding Co., and Sun Gro Horticulture Inc. have joined as PureSafety's manufacturing clients, using its Learning and Safety Management System and Occupational Health management software.

Clients that have expanded their accounts include International Paper Co., Sauder Woodworking Co. and Ward Manufacturing L.L.C.

### TO SUBMIT ITEMS

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# UP CLOSE

Comings & Goings



### FERDINANDO MARTINO

**NEW JOB TITLE:** Zurich-based global product leader for major aviation risks at Allianz Global Corporate & Specialty.

**PREVIOUS POSITION:** Zurich-based head of center of excellence, aviation, Zurich Insurance Co.

**GOALS FOR NEW POSITION:** First and foremost, I wish to support my colleagues with my work experience in a positive, productive and motivating way. I enjoy getting things done and working in a team of industry experts. Allianz Global Corporate & Specialty has an excellent reputation in the marketplace and I consider myself privileged to work for this organization. I am convinced that with my extensive experience and knowledge in the aviation insurance and reinsurance field, I can further enhance underwriting resources and procedures at Allianz Global Corporate & Specialty.

**INDUSTRY OUTLOOK:** We are operating in an extremely competitive market. The aviation insurance segment is highly cyclical, and all industry participants have to accept that, in order to secure a

viable marketplace, a balanced approach to product pricing and policy coverage issues have to be the goal. We all know that the aviation industry is a high-tech industry—corporations are spending large sums for (research and development) in order to improve technology further. Constant innovation is a key industry ambition. The insurance industry has become an important partner to secure this progress. Many high-profile projects could not have been accomplished without tailor-made insurance products.

**WHAT YOU WANTED TO BE WHEN YOU GREW UP:** A professional soccer player in an Italian soccer team. I was a keen soccer player until 18, when a knee injury forced me to learn a proper trade.

**OUTSIDE THE INDUSTRY, A DREAM JOB:** Philanthropist. Increasing the well-being of humankind should actually be everybody's dream job.

**E-MAIL OR PHONE, AND WHY:** Phone is much more efficient than e-mails, which can get too lengthy. We should all probably use the telephone more often, but I'm happy to talk and write about almost anything.

## Comings & Goings

# ONLINE

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### TO SUBMIT ITEMS

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

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### POSTING THIS WEEK

#### BROKERS:

- Alliant Insurance Services Inc.
- Willis Group Holdings P.L.C.

#### INSURERS:

- Allianz Global Corporate & Specialty
- Amerisure Mutual Insurance Co.
- Unum Group

#### OTHER PROVIDERS:

- Arent Fox L.L.P.
- Catalyst Health Solutions Inc.
- Crawford & Co.

#### REINSURANCE:

- Grinnell Mutual Reinsurance Co.

#### RISK MANAGERS:

- Beaufort County, S.C.

## BP: Seeking excess cover

CONTINUED FROM PAGE 3

gush tens of thousands of gallons of oil into the Gulf of Mexico daily—the worst oil spill in U.S. history.

In their complaint, the 38 excess insurers asked the Houston judge to rule that they have no insurance obligation to BP. BP e-mailed a notice of claim to the insurers on May 14, court documents say.

Under terms of their drilling contract, Transocean assumed BP's liability for any loss or pollution "originating above the surface of the land or water" from spills of materials controlled by Transocean, according to court documents. The contract says BP is an additional insured under Transocean's excess liability policies for such liabilities.

In their complaint, the excess insurers said BP agreed under the drilling contract to assume all other liability, and that the oil spill liability comes from BP's well below the ocean surface and, therefore, is not covered by the excess insurance liability policies.

Transocean's excess liability policies for the 12 months that ended May 1 provided an aggregate of \$700 million in coverage through nine policy forms. The tower includes many syndicates at Lloyd's of London, as well as other U.S. and European insurers, according to court documents.

The first layer, providing \$150 million in coverage excess of a \$50 million self-insured retention, is written by four different groups of insurers, led by AXIS Specialty Europe Ltd., Berkley Insurance Co. and Houston Casualty Insurance Co., according to the documents.

BP self-insured its liability. The New York-based Insurance Information Institute has estimated that Transocean and other firms directly involved in the drilling project will incur insured losses between \$1.4 billion and \$3.5 billion.

Fourteen insurers and reinsurers have released estimates totaling \$611 million in expected losses from the incident, Moody's Investors Service said last month.

Oil patties sit on the shore at Gulf Shores, Ala., last week on Day 73 of the Deepwater Horizon oil spill, now considered the worst oil spill in U.S. history.



## DEEPWATER EXCESS LIABILITY PROGRAM

Transocean Ltd., owner of the rig Deepwater Horizon, had about \$700 million in excess liability insurance:

### \$150 MILLION EXCESS OF \$50 MILLION

Policy form written by:

- AXIS Specialty Europe Ltd.
  - Berkley Insurance Co.
  - Houston Casualty Insurance Co.
- Separate policy form written by:
- National Union Fire Insurance Co. of Pittsburgh, Pa.
  - Navigators Insurance Co.
  - Infrassure Ltd.

Separate policy form written by:

- Lloyd's syndicates 2003, 1084, 4444, 4020, 1414, 958, 2007, 2121, 623, 1183, 2987, 1919, 2623

Separate policy form written by:

- Lloyd's syndicates 1036, 2001, 1225, 510

### \$150 MILLION EXCESS OF \$200 MILLION

- Great American Insurance Co. of New York
- Liberty Mutual Insurance Co.
- National Union
- Navigators Insurance Co.
- New York Marine & General Insurance Co.
- Valiant Insurance Co.
- XL Specialty Insurance Co.
- Zurich American Insurance Co.

### \$200 MILLION EXCESS OF \$350 MILLION

Separate policy form written by:

- Great American
- Max America Insurance Co.
- National Union
- Navigators
- XL Specialty
- Zurich American

Separate policy form written by:

- Lloyd's syndicates 1036, 3000, 1183, 1084, 2001, 2003, 4472, 4444, 1225

### \$200 MILLION EXCESS OF \$550 MILLION

- Arch Insurance Co. (Europe) Ltd.
- Lloyd's syndicates 1036, 1209, 1919, 4020, 2468, 4472, 5000, 2007, 2987, 1225, 1861

### \$200 MILLION EXCESS OF \$550 MILLION

- Lloyd's syndicate 1221

Source: Court records

ZUMA/NEWSCOM

## Retiree: HHS clarifies rules of early retiree reimbursement program

CONTINUED FROM PAGE 1

It isn't clear how the belief that only employers that immediately applied had any chance of receiving reimbursement, though consultants said it is possible that a draft application stipulating that employers project their early retiree health care claims for the next two years triggered the assumption.

The draft application wording led some to believe that HHS would stop processing new applications once the projected reimbursements from those that had filed applications topped \$5 billion, experts said. But the new guidance clarifies the issue.

"The critical step in receiving reimbursement is actually the sub-

mission of the request for claims reimbursement," according to the guidance, which was issued in a question-and-answer format.

"Payments are made based on when claims are submitted, not when the employers' applications for the program were submitted," the guidance said.

The claims form has not been released and federal regulators haven't said when it will be.

While employers do not have to rush as much as once feared, they should file their initial application promptly. That's because government processing and reimbursement of claims will not begin until an employer applies and is accepted to participate in the program.

"You can wait, but don't wait too

long," said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

Federal regulators said they have the authority to stop accepting applications once the \$5 billion is distributed. The Employee Benefit Research Institute in Washington has projected that the \$5 billion would be exhausted next year, long before its scheduled expiration on Dec. 31, 2013.

"There is tremendous employer interest" in the early retiree reimbursement program, said Michael Langan, an attorney with Towers Watson & Co. in Valhalla, N.Y. "It is free government money."

A Hewitt Associates survey released in May found that more than 75% of employers with early

retiree health care plans intended to participate in the program.

In 2009, 28% of employers with at least 500 employees offered health care coverage to pre-Medicare-eligible retirees, according to Mercer L.L.C.

The government program will reimburse employers for a portion of health care claims by retirees who are at least 55 years old but not eligible for Medicare, as well as retirees' covered dependents, regardless of age.

The reimbursement will begin after a participant incurs \$15,000 in claims. After that, the government will reimburse plan sponsors for 80% of a participant's claims, up to \$90,000, during a plan year. The reimbursement applies to claims

incurred since June 1.

The program requires employers to use the reimbursement to offset future cost increases, plan enrollees' costs or a combination of the two.

The guidance also clarifies other issues.

For example, employers that use the reimbursement to reduce participants' costs, such as lowering deductibles or premium contributions, must extend that reduction to all enrollees, not just early retirees.

Employers that use the reimbursement to offset their premium or health benefit costs must abide by a "maintenance of effort" requirement in which they must spend the same amount of money on their early retiree health care plan as they did in the prior year.

## Benmosche, Golub agree to collaborate on AIA plan

**NEW YORK**—American International Group Inc. President and CEO Robert Benmosche and Nonexecutive Chairman Harvey Golub have agreed to try to resolve their differences and work out a plan for AIG's largest overseas life insurance unit, AIA Group Ltd., according to a report last week.

The men, who clashed over last month's failed deal to sell the unit to Prudential P.L.C., are in agreement that AIG should work toward an initial public offering for AIA with the goal of launching an IPO by the end of the year, according to the Wall Street Journal, which cited people familiar with the matter.

Separately, AIG reportedly is reconsidering the sale of Japanese life insurers AIG Star Life Insurance Co. Ltd. and AIG Edison Life Insurance Co. AIG hopes to get roughly \$5 billion for the businesses, according to the newspaper.

Tensions between Messrs. Benmosche and Golub reportedly escalated after the board decided to reject a lower offer from London-based Prudential after its shareholders balked at the \$35.5 billion price. Mr. Benmosche, who supported accepting the lower bid, is said to have told the board at a meeting last month that he wanted Mr. Golub to leave the company and would resign if that did not happen, according to the report.

However, the men have

since resolved their differences and are working together on the insurer's restructuring, the newspaper reported.

Observers say heightened tensions in the boardroom reflect the underlying pressure that still exists at AIG as it works to repay its 2008 government bailout, on which it still owes roughly \$101 billion.

"There are very few assets within AIG that can fetch more than \$30 billion, so there was a lot riding on the AIA deal," said John L. Ward, CEO of Cincinnati Partners L.L.C. in Cincinnati.

"You can understand the frustration on Mr. Benmosche's part. But still, there was no guarantee that Prudential was going to deliver, so you can understand the view of the board, too," Mr. Ward said.

"The sale of major assets is always the decision of the board," said John Wicher, a principal at John Wicher & Associates Inc. in San Francisco. "But strong leadership is critical, too, and it's the job of the chairman to try to manage through that."

In addition, several observers said it would have been very damaging had Mr. Benmosche resigned.

Last year, Mr. Benmosche threatened to resign over federal pay czar Kenneth Feinberg's salary restrictions for AIG employees.

—By Colleen McCarthy



Mr. Benmosche



AP PHOTO

Former AIG President and CEO Martin J. Sullivan last week met with the Financial Crisis Inquiry Commission, where he said he didn't know until 2007 that the financial products unit had tripled its exposure to CDOs in 2005.

## AIG: Former swaps chief defends bets on mortgages

CONTINUED FROM PAGE 3

es on the (credit-default swap) contracts had they not been unwound in the bailout," said Mr. Cassano, who left the AIG unit in early 2008 but remained as an adviser until October 2008.

Maiden Lane III is a special-purpose vehicle backed by the Federal Reserve Bank of New York to purchase CDOs from AIG, canceling the associated credit-default swap contracts.

AIG Chief Risk Officer Robert Lewis also testified and said that after the financial products unit decided not to write new credit-default swaps, it was decided to

**'What ended up happening was so extreme that it was beyond anything we had planned for.'**

AIG Chief Risk Officer Robert Lewis

hold onto swaps already on the books because AIGFP believed "they would continue to perform satisfactorily," in part because the swaps covered mortgages provided when lending practices were

"more conservative."

"As it turned out, we were wrong about how bad things could get," Mr. Lewis said. "What ended up happening was so extreme that it was beyond anything we had planned for."

Mr. Lewis said AIG's liquidity was depleted despite the fact that the credit losses "were not actually occurring and, given more time, the values would have been expected to come back." But when the credit crisis peaked, AIG's "ability to maintain its liquidity declined precipitously as credit markets froze, other liquidity issues developed" and the financial products unit "could not make good on all collateral call demands," he said.

Former AIG President and CEO Martin J. Sullivan did not impress commission members with his assertion that he didn't know until 2007 that the financial products unit had tripled its exposure to CDOs to \$54 billion from \$17 billion in 2005.

Mr. Sullivan could not recall how much compensation he received from the time he took over the AIG helm in March 2005 until leaving in June 2008, months before the company had to be rescued by federal government.

After Mr. Sullivan's testimony, Commission Chairman Phil Angelides said that while the panel may debate many issues as it performs its task, he did not think the "failure of leadership and effective management" at AIG would be a matter of much debate.

The Financial Crisis Inquiry Commission is charged with conducting a comprehensive examination of 22 specific, substantive areas of inquiry related to the financial crisis.

These include derivatives and unregulated financial products and practices, corporate compensation structures, and the legal and regulatory structure governing financial institutions. The report is scheduled to be issued by Dec. 15.

## Retaliation: Worker retaliation case heads to court

CONTINUED FROM PAGE 1

Civil Rights Act of 1964. The company argued the termination was for performance-related reasons.

Last year, the en banc 6th U.S. Circuit Court of Appeals in Cincinnati overturned a decision by a three-judge panel. In its 10-6 ruling, the appeals court held that only those who engaged in protected activity under the law are themselves protected against retaliation (*BI*, June 8, 2009).

"Significantly, Thompson does not claim that he engaged in any statutorily protected activity either on his own behalf or on behalf of Miriam Regalado," the full appeals court said in its decision. "By application of the plain language of the statute, Thompson is not included in the class of persons for whom Congress created a retaliation cause of action."

"I don't think (the appeals court) really seriously questioned that the woman who filed the charge would

have a complaint for retaliation if the fiance was fired," said Paul Mollica, a plaintiff attorney with Meites, Mulder, Mollica & Glink in Chicago. The issue is whether the person

**'I would hope that the court would stick to a fairly strict interpretation of the statute.'**

A. Kevin Troutman, Fisher & Phillips L.L.P.

actually retaliated against "has their own cause of action, and that's really a question for statutory interpretation."

"It's not as though there's no remedy here for the action that's alleged," but the remedy belongs to the charging party, not the person who was terminated, said Bruce R.

Alper, a shareholder with law firm Vedder Price P.C. in Chicago.

Some observers said they are unsure how the Supreme Court is likely to rule on this issue.

"Every circuit court (of appeals) has looked at the issue and said there's no such thing as associational retaliation," said Jonathan T. Hyman, a partner with Kohrman Jackson & Krantz P.L.L. in Cleveland.

"It would have been very easy for the Supreme Court just to deny cert to maintain the status quo everywhere, so I'm concerned" that the Supreme Court decided to hear the case in order to reverse it, Mr. Hyman said.

However, Ms. Hoover said she anticipates the court will say the statute's language "doesn't allow parties not aggrieved by the underlying improper unlawful actions to pursue a retaliation claim."

The court may have decided to take the case "to come down very clearly and send a clear message" on the issue, she said.

"I would hope that the court would stick to a fairly strict interpretation of the statute" and rule in favor of the employer, said A. Kevin Troutman, a partner with Fisher & Phillips L.L.P. in Houston.

However, John D. Horowitz, a partner with Fox Rothschild L.L.P. in New York, said the court instead could choose to uphold "the intent of the statute" and permit Mr. Thompson to sue for retaliation.

"It will be a fractured decision" whichever way the majority ultimately rules, said Gerald L. Maatman Jr., a partner with Seyfarth Shaw L.L.P. in Chicago, noting that the expected approval of Supreme Court nominee Elena Kagan could very well influence its decision.

Some observers say one possible signal of the court's ruling is its decision last year in *Vicky S. Crawford vs. Metropolitan Government of Nashville and Davidson County, Tenn.*, in which the Supreme Court overturned the 6th Circuit and held that civil rights law also protects employees who

merely cooperate with an internal investigation of race or gender discrimination (*BI*, Feb. 8, 2009).

"We have the 6th Circuit being challenged under different circumstances, but dealing with the same legal concept, in terms of the scope of protections for people against retaliation by employers," said plaintiff attorney Frederick M. Gittes of Gittes Law Group L.L.C. in Columbus, Ohio.

However, Christopher W. Olmsted of Barker, Olmsted & Barnier A.P.L.C. in San Diego, said, "I thought in the *Crawford* case it was an obvious extension of the law, but here it would be more of a leap" to say the fiance would have been entitled to protection.

Melanie M. Poturica, a managing partner with Liebert Cassidy Whitmore in Los Angeles, said that while the court could decide "Thompson was in a sense participating in protected activity by virtue of his relationship with his fiancee," she believes it will hold that Mr. Thompson is not protected because he did not personally participate in an investigation.

# Iran: Sanctions law protects insurers

CONTINUED FROM PAGE 3

er, is not defined.

"The Treasury Department will have to issue regulations to implement all this," said Robert D. Kyle, a Washington-based partner at Hogan Lovells L.L.P.

Mr. Kyle said the law appears to grandfather in insurance and reinsurance contracts that were signed before the law was passed, but said he could not be sure until the regulations are issued.

Under the law, a company would violate the law if it provided goods or services that could "directly and significantly" help maintain or expand Iran's refined petroleum sector.

The law applies if the company knew or should have known about the Iranian transactions and if the transactions total more than \$1 million individually or \$5 million in aggregate.

"What do the \$1 million and \$5 million figures mean in insurance—is it premium (or) limits of coverage?" said Pieter Van Tol, a New York-based partner at Hogan Lovells. "In the insurance world, it's

a huge difference."

The president could waive sanctions for a year against a company if he certifies in a report to Congress that the firm's home country is cooperating with U.S. efforts to prevent Iran from acquiring or developing weapons of mass destruction. Mr. Kyle said he thinks many companies will be reluctant to rely on such a waiver.

"I'd have to believe that, one, the president would deem my home country a cooperating country and, two, that the president would also select me as a company that deserved to get the waiver," Mr.

Kyle said. "At the beginning of the process, that may be very speculative. Therefore, companies might not be willing to take that risk."

Several firms stopped doing business with Iran this year because of the threat of tougher sanctions. Lloyd's of London said last week that it would restrict cover for any ships carrying petroleum to Iran, according to the Financial Times.

War risk underwriters in London also are working on a clause that clarifies that they may not be able to provide coverage or pay claims if it is illegal, according to Reuters.



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# Parity: More time given

CONTINUED FROM PAGE 3

response to comments received on the interim final regulations for the Mental Health Parity and Addiction Equity Act that were released in January, is potentially good news for employers, Mr. Stover said.

"Many employers were probably not even aware this was a potential issue," he said, "but it was being brought up more and more by carriers. One estimate was that 58% of large employers were affected by this provision," which "would have required them to either provide 100% mental health benefits or change their medical design, which would have resulted in loss of grandfathering under health reform," Mr. Stover said.

Under health reform legislation, health plans that are not substantially changed since the bill was enacted on March 23 would be "grandfathered" and not be required to meet certain provisions of the new law, such as 100% coverage of preventive services.

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# Pot: Legalization push raises safety concerns

CONTINUED FROM PAGE 1

do...which will mean more employees in California will consume marijuana than currently do," said Anthony J. Oncidi, chair of the labor and employment law group at Proskauer Rose L.L.P. in Los Angeles. "Therefore, there will probably be more work-related injuries and (third-party) liabilities that result. So employers need to be more vigilant than ever, starting the day after the election, if it passes."

A Reuters/Ipsos S.A. poll of 600 registered voters released last week found Californians equally divided on the ballot issue.

Also last week, the American Civil Liberties Union of Michigan sued Wal-Mart Stores Inc. on behalf of a worker and cancer patient who complied with the state's medical marijuana law to consume the drug during his off hours, but was fired after a post-injury drug test in which he tested positive, (see box).

Experts say the Michigan case shares an underlying question with one California employers could face should voters legalize recreational marijuana use: After testing positive, would workers have protections under a state law that allowed them to use the drug during their off hours?

California Secretary of State Debra Bowen said last week that the marijuana legalization measure will be Proposition 19 on the Nov. 2 ballot. If approved by voters, it would allow people 21 and older to possess, cultivate and transport marijuana for personal use.

The National Assn. for the Advancement of Colored People's California chapter last week supported the measure, saying minorities are disproportionately prosecuted under current law. Other supporters include the Communications Workers of America Local 9415. A spokeswoman for the union local said marijuana consumption at home can be kept separate from the workplace similar to

alcohol consumption.

But opponents warn that the measure could cause challenges for employers.

In announcing its opposition last month, the California Chamber of Commerce warned in a statement that the proposition would undercut employers' ability to enforce a drug-free workplace by establishing "a separate and higher standard for marijuana use to a level that requires the employer to prove that the employee is 'actually impaired' from performing his or her job duties as a result of drug use."

Proving impairment—which is different from testing positive for marijuana use—is challenging for employers, sources said.

Unlike established measurements for being under the influence of alcohol while driving, California does not have a "bright line" standard for impairment caused by marijuana, said Teresa R. Tracy, chair of the labor and employment group at Gladstone Michel Weisberg Willner & Sloane A.L.C. in Los Angeles.

That issue eventually may require litigation to be settled.

## Establishing impairment

But establishing impairment already is a problem in workers comp cases, said Fred O. Pachón, vp of risk management for Santa Barbara, Calif.-based Select Staffing Inc.

A worker who recently fell from a ladder and suffered an injury, for example, tested positive for intoxication, Mr. Pachón said. But denying workers comp benefits will require proving his level of intoxication was the "proximate cause" of the injury, which requires establishing he was sufficiently impaired to affect his judgment and balance.

California employers have an absolute defense against workers comp claims in cases involving drugs or alcohol use, said Zachry Sacks, managing partner at Sacks & Zolonz L.L.P., a workers comp defense firm in Los Angeles.

But even if an employer maintains a zero-tolerance drug policy, it



Bishop Ron Allen, president of the International Faith Based Coalition, and law enforcement members protest a plan to legalize, tax and regulate marijuana in California.



Richard Lee is president of Oaksterdam University, an Oakland, Calif., marijuana growing vocational school, and led efforts to put a ballot question to voters on whether to legalize pot in California.

still must prove that alcohol or an illegal substance is the proximate, or primary, cause of an injury to deny a workers comp claim, Mr. Sacks agreed.

Still, employers with zero-tolerance policies and pre-employment drug screening are likely to suffer fewer consequences, sources said.

In cases involving workers with state-sanctioned medical marijuana prescriptions, California courts have relied on federal law—which makes marijuana use illegal—and state laws to rule that employers do not have to tolerate employees under the influence at work or accommodate those that fail a drug test yet have medical marijuana prescriptions authorized under California law, Ms. Tracy said.

Should voters approve Proposition 19, California courts are likely to rule similarly and uphold employer drug screening and zero-tolerance policies in cases involving recreational marijuana use, she said.

"It's certainly going to raise continuing issues and challenges for employers, but I think at the end of the day employers will walk away with the ability to enforce workplace rules that prohibit being under the influence of marijuana, whether it's medical or recreational," Ms. Tracy said.

Proskauer Rose's Mr. Oncidi agrees.

California's Supreme Court ruled in 2008 that an employer could terminate an employee who tested positive for drug use even though he consumed it under California's medical marijuana statute (*BI*, Feb. 15).

Should voters approve Proposition 19, the California Supreme Court ruling likely would be a starting point for any challenges to employer policies prohibiting drug consumption, Mr. Oncidi said.

"I think a fairly strong argument can be made that even if California legalizes marijuana, an employer can say, 'I don't want someone working here who consumes marijuana,'" Mr. Oncidi said.

Los Angeles District Attorney Steve Cooley also weighed in on the issue.

In an April 13 letter to California Attorney General Edmund G. Brown Jr., Mr. Cooley said, under the legalization measure, employers no longer would be able to screen job applicants for marijuana use or regulate employee conduct related to the use of marijuana, unless an employer can prove job impairment or they maintain a drug-free workplace policy that is consistent with federal law.

## Suit tests Wal-Mart medical marijuana firing

**BATTLE CREEK, Mich.**—The American Civil Liberties Union sued Wal-Mart Stores Inc. last week, alleging the retailer wrongfully fired a Michigan employee for legally using medical marijuana.

The suit alleges Wal-Mart violated protections afforded employees under the Michigan Medical Marihuana Act enacted by voters in 2008 when it fired Joseph Casias after he tested positive for marijuana use after a 2009 injury.

While the suit's main contention involves protections the ACLU believes are afforded under the state law, legal marijuana consumption away from the workplace and drug screening are related issues, an ACLU spokeswoman said.

According to the ACLU, Mr. Casias did not use marijuana at work and was not under the influence when he twisted his knee and later tested positive for the drug. But the lawsuit states that the drug test he was given cannot indicate whether a person is

under the influence—only whether they used marijuana "within the previous days or weeks."

Mr. Casias suffers from sinus cancer and was named an Associate of the Year in 2008 at the Wal-Mart store where he worked in Battle Creek for five years, starting as a grocery stocker in 2004 and progressing to an inventory control manager.

He was legally registered to use marijuana under the state law and had suffered more than a decade from cancer and a brain tumor, according to the lawsuit, which also names a store manager.

The suit, *Joseph Casias vs. Wal-Mart Stores Inc. and Troy Estill*, was filed in Michigan's Calhoun County Circuit Court. It seeks a declaration that Mr. Casias' termination was unlawful, and compensatory and exemplary damages.

Wal-Mart did not respond to a request for comment.

—By Roberto Cenicerros

## News In Brief

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### AIG workers comp suit can proceed

American International Group Inc. can proceed with certain allegations in a lawsuit alleging that several competitors underreported workers compensation premiums, a federal judge in Chicago ruled. The judge said AIG has a strong enough case to proceed with allegations that its competitors, as members of a reinsurance pool, violated the Racketeer Influenced and Corrupt Organizations Act, among other assertions.

### Worldwide premiums dipped in '09: Swiss Re

Total premiums for insurance coverage worldwide fell 1.1% last year compared with the previous year, while nonlife premiums declined 0.1%, Swiss Reinsurance Co. Ltd. said in a sigma report. Premiums for all coverage written worldwide dipped to \$4.07 trillion, according to the report.

### Catlin forming Swiss unit with Bermuda branch

Catlin Group Ltd. said it is forming a specialty reinsurer in Switzerland that will operate a branch in Bermuda. Catlin Re Switzerland will be based in Zurich and begin operations with at least \$1 billion in capital from "internal resources." Initially, it will write specialty business including credit reinsurance, political risk reinsurance and surety reinsurance, Catlin said.

### Tennessee law allows English-only workplaces

Tennessee Gov. Phil Bredesen signed into law a bill that permits English-only policies in the workplace. The law says it is not discriminatory for an employer to institute a policy that requires all employees to speak only English "at certain times when the employer has a legitimate business necessity for such a policy, including but not limited to the safe and efficient operation of the employer's business."

### Munich Re opening Dubai reinsurance unit

Munich Reinsurance Co. has received

a license to operate a subsidiary in the Dubai International Financial Center. With approval from the Dubai Financial Services Authority to operate, Munich Re Underwriting Agents (DIFC) Ltd. will focus mainly on health reinsurance business in the region, Munich Re said in a statement.

### Coventry takes \$278M charge in class action

Coventry Health Care Inc. will take a \$278 million nonrecurring pretax charge against second-quarter earnings as a result of a class action lawsuit, the company said. Coventry said the Louisiana 3rd Circuit Court of Appeal had affirmed a lower court's decision to grant summary judgment against Coventry subsidiary First Health Group Corp. Inc. for \$262 million. The suit against First Health involved claims of alleged violations of Louisiana's Any Willing Provider Act in connection with providers giving services to injured workers with workers compensation claims, according to Coventry.

### Google to reimburse tax on domestic partner benefit

Google Inc. is offering to reimburse its gay and lesbian employees for the additional federal tax they pay on the value of company-paid domestic partner benefits. The offer, which is retroactive to Jan. 1, came after a gay employee pointed out the disparity for same-sex couples covered by the technology firm's employee health benefits plan, a spokesman said.

### Automatic enrollment typical at large firms

More than half of large employers automatically enroll employees into their 401(k) plans, according to research released last week. A Towers Watson & Co. survey found that 57% companies with 1,000 or more employees automatically enrolled workers into their 401(k) plans, including 39% that automatically enroll new employees and 18% that automatically enroll all employees.

### Noted

**Hiscox Ltd.** said it will cut the capacity of its Lloyd's of London syndicate 33 by £100 million to £900 million (\$150.6 million to \$1.36 billion) for 2011. Hiscox said the move was driven by market conditions....

**Unitrin Inc.** has bought all rights to the Kemper name from Lumbermens Mutual Casualty Co., including trademarks, logos and Internet domain names, Unitrin said. Terms were not disclosed.



REUTERS/LANDOV

Police surround Alberta's Workers Compensation Board office in Edmonton on Oct. 21, 2009. The WCB is looking to make security improvements to prevent another such event from occurring.

## Alberta: WCB to ramp up office security

CONTINUED FROM PAGE 4

improvements that include a security lockdown system in the main entrances of Jarvis and Millard, card readers on all doors, enhanced security cameras in all locations, new staff entrances with turnstiles at the Central and Jarvis buildings, reconfiguring floors in the Jarvis and Central buildings, and ballistic protection for main security desks and counter areas and specific walls.

The WCB hopes the project will be completed by Dec. 31, if not sooner.

"The goal is to make sure any enhancements we do are balanced and provide security as well as a welcoming environment in the building," the WCB spokeswoman said. "We want to have a friendly customer service feel, but we also want it to be safe. We have to find that balance to avoid becoming a fortress."

Workplace violence is a real threat, according to a 2005 survey by the U.S. Bureau of Labor Statistics and the National Institute for Occupational Safety & Health. It found that about 5% of the 7.1 million private-industry U.S. businesses had an incident of workplace violence in the previous 12 months.

The survey also found that

although one-third of those businesses reported the incident had a negative workforce impact, a majority did not change their workplace violence prevention procedures. Further, the survey found that 70% of all U.S. businesses at that time did not have a formal program or policy that addressed workplace violence.

"You need to have a multilayered approach to workplace safety," said Paul French, chief operating officer of Huntington Beach, Calif.-based security consultant Threat Management & Protection Inc. "You can't just put locks on doors and think that you're going to be safer. You have to have a policy and procedure in place as well."

While adding additional escape routes, bulletproof windows and walls, and security cameras are helpful improvements, Mr. French said those precautions cannot replace the human component of a good workplace security policy and plan. He added that a security guard at the door with a gun—which is typical in many government offices—is intimidating, but the guard is only as good as his or her training.

"It's difficult to have a guy sit and watch security TVs for 12 hours and expect him to pick out the bad guy," Mr. French said. "Especially if

he has no training and is not being paid well."

Teaching employees how to handle difficult clients or fellow staff members also is important, said Richard Denenberg, co-director of Red Hook, N.Y.-based nonprofit Workplace Solutions Inc. and co-author of the book "The Violence-Prone Workplace: A New Approach to Dealing with Hostile, Threatening and Uncivil Behavior."

Mr. Denenberg agrees that worker training is just as important as building security.

"Companies often create programs or policies that are related to the hardware rather than the staff," Mr. Denenberg said. "Staff are seen as the soft side of a security system, which can do right where the hardening of the building went wrong."

Mr. French said teaching employees how to defuse a situation, or identify when someone "doesn't seem right," can be just as valuable as security cameras or guards.

"If you have someone who can empathize with someone, it's likely you will be able to control their behavior," Mr. French said. "Having a security camera is great, but it doesn't have any of the human skills it takes to identify when someone is going to create a possibly violent situation."

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## Missing missive from 'The Mick' riles Yankee fan

By all accounts, Michael Kovalovsky of Ormond Beach, Fla., is a true Yankees fan.

So you can bet it stung when the former New York City police officer found out the Yankees had managed to lose a 1959 letter Mr. Kovalovsky had received from none other than Mickey Mantle. In fact, that's just what Mr. Kovalovsky told the Daytona Beach News-Journal late last month. "It hurts," he said during an interview concerning the lost letter and the lawsuit Mr. Kovalovsky has filed against the Yankees.

Mr. Kovalovsky sent Mr. Mantle a letter of advice after the slugger hit a little slump. He received a signed letter in return that reads: "This will acknowledge receipt of your recent communication. It is a pleasure to receive such encouraging mail. Thank you for your interest in the Yankees, which you have demonstrated by taking time to write. Sincerely yours, Mickey Mantle."

Mr. Kovalovsky thought it only fitting to offer the Yankees the letter and some other memorabilia in 2007 for display at a museum in the team's new home.

"They never said they would use them, but they accepted them," he told the paper. But when he found out later that the organization would not use fans' personal items in the displays, he asked that the letter be returned. The Yankees said they couldn't find it.

So Mr. Kovalovsky responded with something as American as baseball and apple pie—he sued for negligence and bad faith. But losing faith with the way the Yankees organization allegedly mishandled his gift doesn't mean he's lost his larger faith in the team itself.

"I'll be a Yankees fan till the day I die," he told the paper.

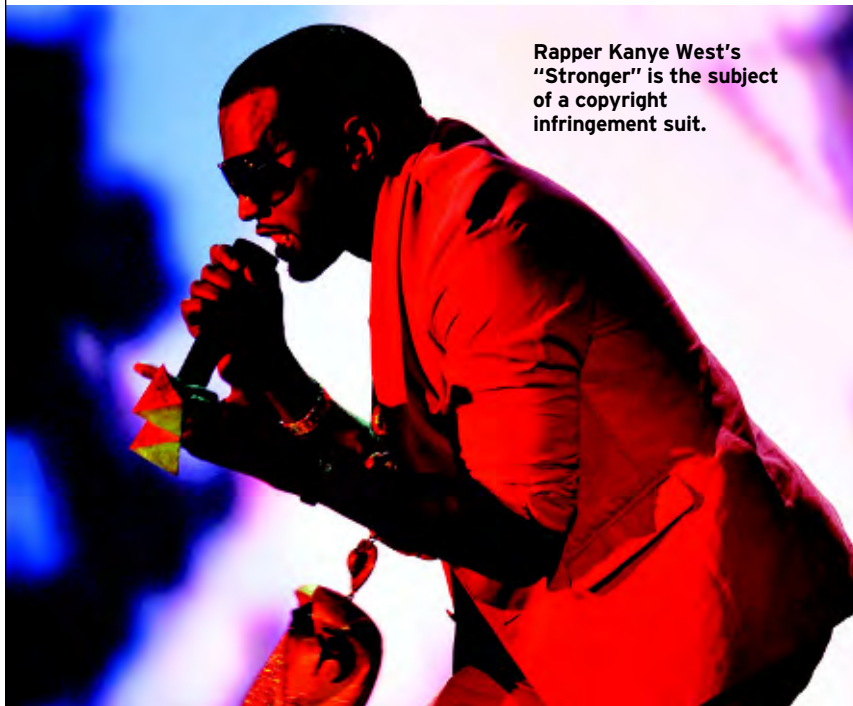


NY DAILY NEWS/GETTY IMAGES

Mickey Mantle, always a fan favorite, wrote a letter to at least one fan thanking him for his advice.

# Business Insurance END PAGE

Contributing: Jeff Casale, Mark A. Hofmann, Joanne Wojcik



AP PHOTO

Rapper Kanye West's "Stronger" is the subject of a copyright infringement suit.

## Same line, different tune

A Virginia rapper known as Vince P. alleges that fellow rapper Kanye West stole his song.

In a June complaint filed in Chicago federal court, Vincent Peters alleges that Mr. West's 2007 Grammy award-winning tune "Stronger" ripped off his identically named 2006 song.

According to the suit that alleges copyright infringement, Mr. Peters says Mr. West's song "copies significant and important parts of Peters' lyrics identically or almost identically."

For example, Mr. Peters' song includes the lyric "what don't kill me make me stronger" while Mr. West's version says "that don't kill me can only make me stronger."

Further, Mr. Peters' song has a line that says he "couldn't wait no longer" while Mr. West's version says "I can't wait much longer," according to the lawsuit,

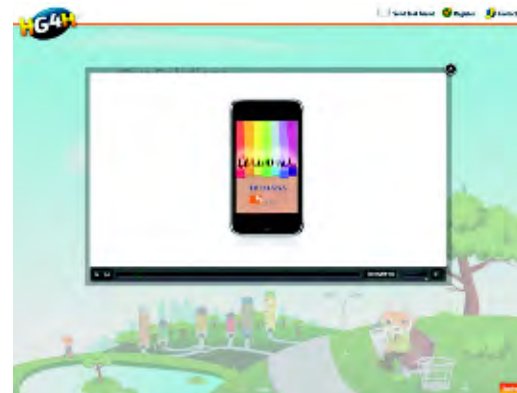
which also noted that both used the word "wronger."

Mr. Peters alleges he contacted John Monopoly, a longtime friend and business manager of Mr. West, to see if he would be interested in working as Mr. Peters' executive producer. Mr. Peters gave a copy of his "Stronger" to Mr. Monopoly in November 2006.

Mr. West's version released seven months later shot to the top of at least two Billboard charts.

Mr. Peters asks that Mr. West be stopped from reproducing, selling, distributing and performing the song. It also asks that Mr. West and his record label destroy all copies of the record and give up profits from the tune.

It perhaps is fortunate that a judge will decide the issue, on which Mr. West could not be reached for comment, rather than a panel of grammar teachers.



HUMANA

Humana says its Colorfall iPhone application promotes cognitive health and physical activity.

## Let your fingers do the walking in new exercise

Want to exercise your mind and your body simultaneously?

There's an app for that.

Louisville, Ky.-based Humana Inc. is launching the first of several iPhone applications that are designed to promote cognitive health and physical activity.

Available at the iPhone App Store for \$2.99, Colorfall requires players to arrange cascading colored tokens in the order of the colors of the rainbow. Players can rack up higher scores by walking around and snapping pictures with their iPhone cameras and incorporating them into the game.

The game, which is part of Humana's Games for Health program, was produced in partnership with Persuasive Games L.L.C., an Atlanta-based company that designs computer games for social change, instruction and persuasion.

"We're excited to be the first health insurance company to offer people fun, healthy mobile games that challenge their minds and bodies while encouraging healthy behaviors," Paul Puopolo, Humana's director of consumer innovation, said in a statement.

In addition to its healthy iPhone games series, Humana offers a host of free mobile services and smartphone applications for health plan members. They include an application that enhances a person's ability to make health care decisions at the point of service, such as finding urgent care centers; check their health care account balances; and get instant access to the information found on their member identification cards.

Additional mobile applications are in the works and will be released throughout the summer.

## 'TWILIGHT' FAN ALLEGES BLOODIED REPUTATION

An Illinois woman, apparently unfamiliar with laws that prohibit bootlegging and the "Seinfeld" episode where Cosmo Kramer is caught videotaping a movie in a theater, has sued a movie theater for her arrest after recording part of "The Twilight Saga: New Moon."

Samantha Tumpach, 22, filed a lawsuit in Cook County Circuit Court that alleges wrongdoing by Muvico Entertainment L.L.C. for her November 2009 arrest in recording the vampire movie with a personal camera, according to a Chicago Tribune report last week.

Ms. Tumpach seeks more than \$50,000 from the Fort

Lauderdale, Fla.-based chain for malicious prosecution, emotional distress, negligence and defamation. "She has suffered great public ridicule, embarrassment, humiliation, inconvenience, damages to her reputation and other damages," according to the report.

Ms. Tumpach said she was celebrating her sister's birthday, that they were using digital cameras to take photos and videos of themselves, and she recorded the start of the film "hoping to capture the title and beginning as a memory of this exciting event," according to the newspaper.

The film went on to set the record for biggest single-day domestic gross at \$72.7 million, according to Variety magazine.

While charges were dropped against Ms. Tumpach a month later, she says employees at the Rosemont, Ill., theater could have just told her she couldn't record the film rather than having her arrested.

The 2005 Family Entertainment and Copyright Act stipulates that any person who uses an "audiovisual recording device" to tape a movie in a theater can be fined up to \$250,000 and imprisoned for up to three years.



AP PHOTO

At a Los Angeles showing of "The Twilight Saga: New Moon," one fan teared up while snapping some images of the film.

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