

**GAO PROBE SOUGHT OF STATES' EFFORTS TO REGULATE RISK RETENTION GROUPS / PAGE 3**



**CATLIN GROUP LEADS COVERAGE OF PAKISTAN JET CRASH / PAGE 3**

**CLASS ACTION SECURITIES FILINGS FALL BUT SETTLEMENT VALUES SURGE / PAGE 3**

## In Brief

**Contingents a conflict of interest: ACE CEO**  
Contingent commissions "by their very nature create a conflict of interest," ACE Ltd. CEO Evan Greenberg said last week during a conference call with investors. He said if he had his way, buyers rather than insurers would compensate brokers, "but that's just not reality." Mr. Greenberg said he had "no doubt" that contingent fees would become more prevalent if customers tolerate them.

**9/11 responders bill falls short in House**  
The U.S. House failed to approve legislation that would have reopened a victims compensation fund for emergency responders, cleanup workers and others sickened by



See **IN BRIEF** page 22

**SPOTLIGHT**  
**GLOBAL RISKS: BUSINESS CONTINUITY**  
Outsourcing raises risks; more insurance options for supply chain disruptions; carefully evaluate potential partners; preparation key in avoiding kidnappings; largest property loss control specialists, listing of forensic accounting firms. **PAGE 11**

### FEDERAL LEGISLATION & REGULATION

## Firms still adapting to disability laws

*20 years after ADA, changes to statute raise fresh questions*

By **JUDY GREENWALD**

The Americans with Disabilities Act has generated administrative headaches and litigation for employers since it was enacted 20 years ago, but many observers say the benefits of welcoming a new segment of the population to the workplace outweigh the drawbacks.

The ADA, which guarantees equal opportunity for disabled individuals in public accommodations, employment, transportation, state and local government services, and telecommunications, was signed into law by President George H.W. Bush on July 26, 1990 (see timeline, page 20).

While last week marked the 20th anniversary of that law, experts say it still is too early to clearly evaluate how the Americans with Disabilities Act Amendments Act of 2008 will affect the workplace. That law, which took effect in January 2009, was passed in response to U.S. Supreme Court decisions that narrowed the definition of who is disabled (see story, page 20).



Eleven federal agencies have various responsibilities under the ADA. The Equal Employment Opportunity Commission is responsible for enforcing ADA's Title I, which covers employer-related issues.

Another federal agency with ADA responsibilities is the U.S. Department of Justice's civil rights division, which last week published notices of proposed rulemaking regarding accessibility requirements for websites, movies, equipment and furniture, and 911 call-taking technologies (see story, page 20). These proposals affect Title II of the

act, which applies to state and local government entities, and Title III, which applies to issues of public accommodation. In the workplace, the law prohibits discrimination in all employment practices for qualified individuals who have disabilities. Qualified individuals are defined as those who can perform the essential functions of their position with or without reasonable accommodation.

Observers say in addition to increasing awareness of, and sensitivity to, the disabled in society overall, the law has had a particularly significant impact in the employment arena.

See **ADA** page 20

### RISK MANAGEMENT



REUTERS

**A memorial in Duisburg, Germany, near the site of the deadly Love Parade stampede. The organizer has \$9.7 million in liability coverage from AXA.**

## Probe begins of deadly stampede at music fest

By **MICHAEL BRADFORD**

**DUISBURG, Germany**—Public officials and organizers of the Love Parade music festival are subjects of a criminal investigation for allegedly ignoring concerns that could have prevented a stampede that left 21 people dead and hundreds injured.

Last month's festival in Duisburg, Germany, which by some estimates drew as many as 1.5 million music

fans to a former rail freight yard, was marred by tragedy when panic broke out in a narrow entrance tunnel. The deaths and injuries occurred when the crowd stampeded toward the entrance.

The organizer of the techno music festival, Lopavent GmbH, had liability insurance of €7.5 million (\$9.7 million) written by AXA Konzern A.G. A spokesman for the

See **LOVE PARADE** page 6

### PENSION BENEFITS

## Employers slow to restore 401(k) plan matching contributions

By **JOANNE WOJCIK**

Economists heralded FedEx Corp.'s decision to restore its matching

contribution to employees' 401(k) plans as a sign that the recession is ending, but surveys show that less than half of firms that reduced or

**44%**  
Since the financial crisis came to a head in September 2008, between 8% and 18% of employers either reduced or suspended their match of 401(k) plan contributions. Approximately 44% of employers have reinstated their matching contributions.

suspended plan matches in recent years have restored them.

Citing an improved earnings outlook, Memphis, Tenn.-based FedEx

last week said it would fully restore its 401(k) plan matching contribution effective Jan. 1, 2011. FedEx, which in 2008 had sweetened its match to 100% of employee deferrals on the first 1% of pay and 50% on deferrals up to 5% of pay in conjunction with a plan redesign, cited an earnings slump amid an ailing economy in suspending the match effective Feb. 1, 2009.

FedEx had company among major firms reducing or suspending their 401(k) plan matching contributions in 2009. Less than half

See **401(k)** page 22

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# UNITED IN ACTION

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**NEW VIDEO SERIES: GOING GREEN**  
*BI* visits the Menomonee Valley brownfield sites in Wisconsin to find out about the redevelopment project. Click on the Multimedia tab.



### How to manage insurer risks

*Business Insurance's* newest white paper helps risk managers look beyond insurers' financial strength ratings to assess the security behind their programs. [www.BusinessInsurance.com/whitepapers](http://www.BusinessInsurance.com/whitepapers).

**Property Loss Control Directory**  
Available online under Lists & Data

## COMINGS & GOINGS

Search industry executive changes alphabetically by a person's name or company, as well as by date. Click on the Comings & Goings tab.



### Nominate a woman to watch

The deadline to submit nominations for *Business Insurance's* 2010

Women to Watch feature has been extended to Aug. 20. Forms are online at [www.BusinessInsurance.com/section/women-to-watch](http://www.BusinessInsurance.com/section/women-to-watch).



### MOST POPULAR STORIES

Week of July 26, 2010

1. ACE CEO calls broker fees a 'conflict of interest'
2. Marsh names multinational client services director
3. Marsh & McLennan names independent chairman
4. SEC asks Hartford why worst holdings not marked down
5. Worker must prove injuries not result of horseplay: Court
6. New ACE Westchester president named
7. Appeal notice filed in dismissal of Marsh convictions
8. Chipotle's disabled customer policy violates ADA: Court
9. XL Group board loses director
10. UnitedHealth said near \$1.5B purchase of services firm

## WEBINARS AND WEBCASTS

*Business Insurance's* webinars and webcasts are presented live online and afterward are accessible on demand. Register to attend "Energy Security" on Aug. 4 and "Bad Buzz," covering social media and blogging, on Aug. 18. Go to the Multimedia tab and click through Webcasts/Webinars.

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## ALTERNATIVE RISK TRANSFER

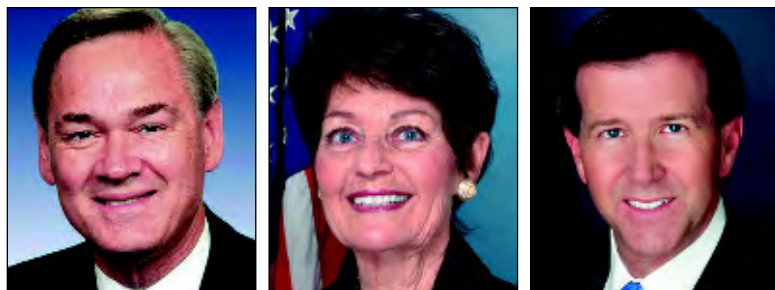
# Lawmakers seek probe of states' efforts to regulate RRGs

*GAO may examine ways to strengthen federal RRG law*

By **MARK A. HOFMANN**

**WASHINGTON**—Supporters of risk retention groups hope a planned federal study will lead to a halt in state authorities attempting to regulate RRGs domiciled outside their jurisdictions.

The move to examine the reach of state authorities coincides with an effort by Nevada to stop a Vermont-domiciled RRG from offering automobile liability coverage in the state.



Reps. Dennis Moore, Suzanne Kosmas and John Campbell.

Three federal lawmakers—Reps. Dennis Moore, D-Kan.; Suzanne Kosmas, D-Fla.; and John Campbell, R-Calif.—called on the Government Accountability Office, which is the investigative arm of Congress, to prepare a report examining whether

nondomiciliary states are attempting to regulate RRGs directly or indirectly through, among other things, filing requirements, fees and waiting periods before the groups can operate.

While the GAO has not yet indi-

cated whether it will conduct the examination, usually it complies with lawmakers' requests for investigations.

The representatives also asked in a letter sent to the GAO late last month that the office examine whether there are legislative solutions to "underscore the foundation" of the Liability Risk Retention Act, which limits the ability of non-domiciliary states to interfere with RRGs.

There are about 250 RRGs, which were authorized under measures Congress passed in 1981 and 1986, according to the Risk Retention Reporter, a Pasadena, Calif.-based newsletter that tracks the industry. RRGs, which are specialized multi-

ple-owner captive insurance companies, can directly write all commercial casualty coverage except workers compensation for policyholder owners. They must meet the licensing requirements of the state in which they are domiciled.

They are banned from writing property coverage, although the Risk Retention Modernization Act of 2010 introduced by Rep. Moore, who is chairman of the House Financial Services Committee's Oversight and Investigations Subcommittee, would permit them to do so. The measure also directs the U.S. comptroller general to study and report to Congress on actions

See **RRGs** page 19

## Famed policyholder lawyer Eugene Anderson, 82, dies

**NEW YORK**—Eugene R. Anderson, a founding member of New York-based insurance recovery firm Anderson Kill & Olick P.C., died Friday morning after a long illness.

Described by many of his peers as the "dean of policyholder attorneys," Mr. Anderson, 82, was a frequent speaker at the Risk & Insurance Management Society Inc. annual conference and other insurance industry events. He also wrote numerous articles about insurance coverage issues and is the co-author of a two-volume treatise titled "Insurance Coverage Litigation."

Admitted to the bar in 1953, Mr. Anderson once served as an assistant U.S. attorney. He



Mr. Anderson

also was a member of the New York City Mayor's Task Force on Automobile Insurance, chairman of the Amicus Committee of United Policyholders, director of Citizens Against Unfair Insurance Practices and a director of the Police Athletic League.

Mr. Anderson was a graduate of the University of California at Los Angeles, Harvard Law School and New York University School of Law.

Mr. Anderson often used insurance coverage as a mechanism for social reform, taking insurers to court to fund environmental cleanups, medical treatment for asbestos cancers,

See **ANDERSON** page 19

## DIRECTORS &amp; OFFICERS LIABILITY

## Class action lawsuit filings decline

By **ROBERTO CENICEROS**

The number of new federal class action securities lawsuits continued to decline during the first half of this year, according to separate reports released last week, but the dollar value of settlements rose substantially.

With overall claims volume continuing a downward trend throughout several years and expanding insurer competition, underwriters are reducing pricing and expanding their policy forms for buyers of directors and officers liability insurance, said Susanne Murray, executive vp of executive risk at broker Alliant Insurance Services Inc. in New York.

"Even people with claims are seeing premium decreases," Ms. Mur-

71

Plaintiffs filed 71 federal securities class action complaints during the first half of 2010, Boston-based Cornerstone Research reported last week. That is a 15.5% decrease from the 84 filed during each half of 2009.

ray said. "The breadth of coverage is really the broadest it has ever been," with insurers introducing new forms that have standardized coverage that previously required separate negotiations.

The new reports indicate that trend is unlikely to change,

observers said.

Plaintiffs filed 71 federal securities class action complaints during the first half of 2010, Boston-based Cornerstone Research reported last week in "Securities Class Action Filings, 2010 Mid-Year Assessment."

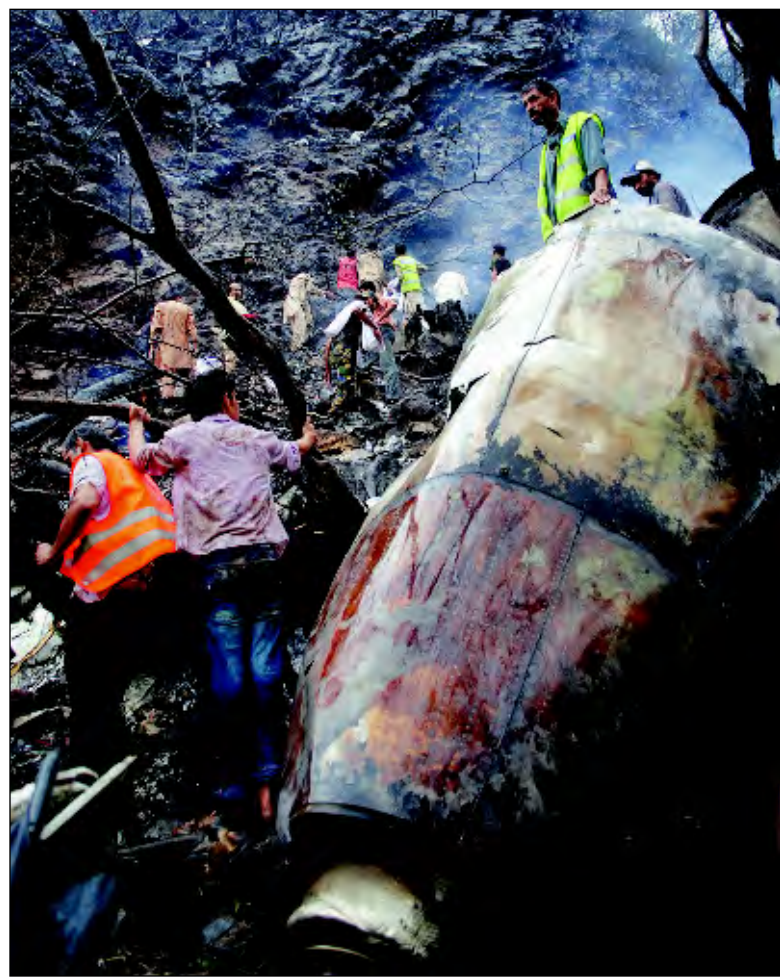
That is a 15.5% decrease from the 84 filed during each half of 2009 and the lowest semiannual number since the first half of 2007, according to the report.

Separately, New York-based NERA Economic Research, a unit of Marsh & McLennan Cos. Inc., reported in its "Trends 2010 Mid-Year Study" that it counted 101 securities class actions filed during the first half of the year.

"If the pace of filings to date con-

See **CLASS** page 21

## AVIATION



REUTERS/LANDOV

Rescue workers at the crash site of an Airblue operated Airbus 321, which crashed in heavy rain last week near Islamabad, Pakistan, killing 152 passengers and crew.

## Catlin leads coverage of fatal Pakistan air crash

By **MICHAEL BRADFORD**

**ISLAMABAD**—Catlin Group Ltd. is the lead insurer of the Airblue Ltd. jet that crashed last Wednesday in Pakistan, killing all aboard.

The Airbus A321 passenger jet, carrying 152 passengers and crew, went down in rain and fog in Islamabad. Flight ED 202 was en route from Karachi, Pakistan, to Islamabad.

Published reports quoted a government official, who said no one

survived the crash.

Airblue said on its website that the cause of the crash was under investigation.

A spokesman in London for Bermuda-based Catlin confirmed that the insurer is the lead underwriter, but he would not say what percentage of the risk that the insurer covers.

Sources said Willis Group Holdings P.L.C. placed the coverage for the airline.

## INTERNATIONAL

# Plan to cap backstop for failed U.K. life insurer slammed

*Independent report says limit on payouts 'unsafe and unsound'*

By SARAH VEYSEY

**LONDON**—An independent investigator has criticized a U.K. Treasury Department proposal to limit government-paid compensation to policyholders of a failed life insurance company as “unsafe and unsound.”

Parliamentary Ombudsman Ann Abraham made the assertion last week in a letter to members of Parliament.

Policyholders of the Equitable Life Assurance Society also criticized the U.K. Treasury Department proposal by former High Court Judge Sir John Chadwick to limit policy-



**Ann Abraham opposes a plan to limit compensation of Equitable Life policyholders.**

holder payments to between £400 million (\$609.7 million) and £500 million (\$771.2 million). The Equitable Life Members Support Group called the Treasury proposal “an

insult to both policyholders and the parliamentary ombudsman.”

Equitable Life was forced to close its doors to new business in 2000 as a result of a court ruling that it used an improper rate in calculating annuity payouts and that it must pay about £1.5 billion (\$3 billion) to certain policyholders.

In a 2008 report, Ms. Abraham said the Department of Trade & Industry, the Government Actuary's Department and the Financial Services Authority all failed in part in regulating Equitable Life before Dec. 1, 2001. She cited 10 counts of maladministration and recommended that everyone affected by the company's collapse be compensated to “put those people who have suffered a relative loss back into the position they would have been in had malad-

ministration not occurred.”

In July, Sir John's report cited provisional figures from consultant Towers Watson & Co. that said policyholders and annuitants in Equitable Life sustained losses of about £4 billion (\$6.17 billion) to £4.8 billion (\$7.4 billion). However, he accepted only seven of Ms. Abraham's findings of maladministration in their entirety, partially accepted two others and rejected one.

Sir John proposed limiting government-paid compensation for the 1.5 million policyholders only to those “disproportionately affected” by Equitable Life's collapse. The report he prepared for the Treasury Department recommended limiting payouts to £400 million to £500 million.

In her letter of response last week, Ms. Abraham said she believed the proposals are “unsafe and unsound” and

doubted payments made under the plan would be fair and transparent.

Also reacting to the Treasury report, Chris Wiscarson, CEO of Equitable Life, said the estimated losses of £4.8 billion should be the basis of compensation calculations. “We cannot support the conclusions of a report which has objectives which appear to us quite different from what was anticipated by the parliamentary ombudsman,” he said in a letter to members of Parliament.

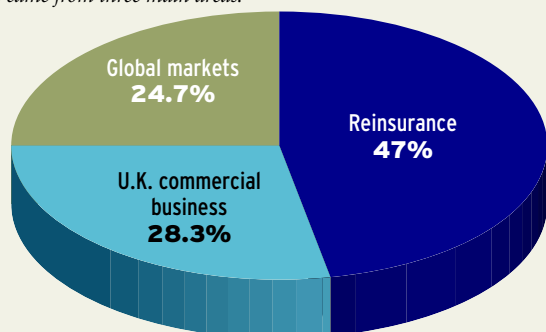
The Equitable Life Members Support Group also has called for the £4.8 billion figure to be used as the basis for compensation payments.

The issue is to be considered in the U.K. government's spending review in October. The Treasury Department said it hoped to begin payments by mid-2011.

## MERGERS &amp; ACQUISITIONS

## GROSS WRITTEN PREMIUMS

Brit Insurance Holdings N.V. had £851.5 million (\$1.31 billion) in gross written premiums for the first half of 2010, a 13.4% decline from the first half of 2009. Brit's first-half premiums came from three main areas:



Source: Public filings

## Apollo sweetens offer to buy Brit Insurance

*Due diligence begins of Lloyd's of London acquisition target*

By STUART COLLINS

**LONDON**—Private equity firm Apollo Management VII L.P. has increased its offer for Amsterdambased Brit Insurance Holdings N.V., the Lloyd's of London and U.K. insurance and reinsurance group.

Last week's move took New York-based Apollo a step closer to acquiring Brit Insurance, which moved its domicile from the United Kingdom to the Netherlands in 2009. But analysts say it is too early to say how a change of ownership would affect policyholders if the deal were to go ahead.

Apollo's informal offer last week of £10.75 (\$16.58) per share, which would value Brit Insurance at about £852 million (\$1.31 billion), came after lesser offers in June and July, both of which Brit's board rebuffed.

Brit has neither formally rejected nor recommended the latest offer,

but it has agreed to open its books to allow Apollo to perform due diligence, said a London spokesman for the insurer. If Apollo makes a formal offer, Brit's board then would consider whether to recommend it to shareholders, he added.

The latest offer could “spell the end for Brit” as an independent insurer, said Eamonn Flanagan, director and equity analyst at Shore Capital Group Ltd. in Liverpool, England. “Apollo is a strong firm and, having done its homework, is determined in its bid for Brit.”

Apollo's pricing strategy also has put it in a good position, Mr. Flanagan said. Having nudged the price upwards, Apollo has teased Brit shareholders to talk to Brit's management, and they are unlikely to want the insurer's share price to drop back to the preoffer value of around £7 (\$10.80) per share, he said.

Apollo's bid for Brit is an opportunistic one and reflects the insurer's discounted share price compared with its book value as well as

See **BRIT** page 19

## P/C INSURERS

## Solvent insurer's commutation plan gets initial go-ahead from R.I. court

*U.K.-style approach may be used to run off telecoms captive*

By COLLEEN MCCARTHY

**PROVIDENCE, R.I.**—Tapping a Rhode Island statute, an attempt by a solvent reinsurer to execute a U.K.-style commutation process in the United States has passed its first legal hurdle.

If successful, the plan would enable the reinsurer to wind up its business quickly and avoid a lengthy runoff or liquidation. It's unclear, however, whether the commutation technique will gain widespread favor in the United States and be used by other reinsurers and insurers.



**Rhode Island in 2002 passed legislation allowing voluntary restructuring of solvent insurers.**

At a hearing last week, GTE Reinsurance Co. Ltd., a reinsurer based in Providence, R.I., won court approval to convene a meeting of creditors and secured a voting date for Nov. 30 for creditors to vote on the commutation plan.

Commutation plans for solvent insurers, such as the one proposed by GTE Re, are the U.S. equivalent to the U.K. regulatory mechanism known as a solvent scheme of arrangement. The schemes have gained popularity, particularly in the United Kingdom, as a tool to run off and restructure solvent and insolvent insurers. However, the approach often is controversial for solvent insurers, particularly among U.S.-based policyholders who argue the plans erase decades of valuable occurrence-based coverage.

Borrowing language from the U.K. Companies Act, Rhode Island in 2002 passed legislation allowing “voluntary restructuring of solvent insurers,” enabling a solvent commercial lines insurer or reinsurer to

See **SOLVENT** page 19

## BI extends Women to Watch deadline

*Business Insurance* is accepting nominations for the magazine's 2010 Women to Watch feature, with an extended deadline of Aug. 20.

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 professional 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 go to [www.BusinessInsurance.com](http://www.BusinessInsurance.com) or e-mail *BI* Editor Regis Coccia at [rcoccia@businessinsurance.com](mailto:rcoccia@businessinsurance.com).

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# Love Parade: Probe begins of deadly stampede causes

CONTINUED FROM PAGE 1

Cologne, Germany-based unit of AXA S.A. said the policy was written to cover any event sponsored by Lopavent, a Berlin-based company.

Since the accident, numerous calls have been made to hold those responsible accountable for the deaths and injuries.

German Chancellor Angela Merkel demanded an "intensive investigation" into the cause of the tragedy, saying in a statement that "we must do everything possible so that it does not happen again."

The Duisburg prosecutor's office has begun a criminal investigation aimed at the office of Duisburg Mayor Adolf Sauerland, Lopavent and Lopavent CEO Rainer Schaller.

Duisburg prosecutors said in a statement that an investigation of negligent homicide is under way. Duisburg city leaders and Lopavent have provided documents related to planning the event, according to the statement.

Mr. Sauerland has come under fire for allegedly ignoring safety warnings about the festival. He acknowledged calls for his resignation in a statement, but said his office will continue working with authorities to determine the reasons for the tragedy.

"We will share our findings immediately with the prosecutor's office and will support them fully in their work," Mr. Sauerland said.

Published accounts said a report leaked to the media put the maxi-



LANDOV

**The Duisburg prosecutor's office has begun a criminal investigation aimed at the office of Duisburg Mayor Adolf Sauerland (right), Lopavent and Lopavent CEO Rainer Schaller (left). Mr. Sauerland has come under fire for allegedly ignoring safety warnings about the festival.**

mum occupancy of the venue at 250,000, well below the actual number of parties who crowded into the former rail yard. Fire and police officials have been quoted as saying the venue was too small for the Love Parade, and that the mayor was under pressure not to oppose holding the event.

Spiegel Online, the online unit of German news magazine Der Spiegel, said it obtained a document written by Duisburg city officials to Lopavent that allowed the organizers to skirt some safety regulations. The document allowed, for example, more narrow emergency exits than those normally permitted for such events, the website reported.

Lopavent officials could not be reached. The company's website

has been replaced with a single page offering condolences and information on counseling services.

The AXA spokesman said the insurer is working with Duisburg city officials to ensure that claimants are helped as quickly as possible, and is participating in the effort to determine why the tragedy occurred and which parties are responsible.

"Everyone involved in this event should take responsibility to help the injured," the AXA spokesman said.

He could not say what other coverage Lopavent might have to pay claims related to the deaths and injuries.

AXA Konzern does not write liability coverage for the city of Duisburg, the spokesman confirmed.

Meanwhile, security for a street parade scheduled for Aug. 14 in Zurich is being reviewed in light of the Love Parade tragedy.

"We will look to Duisburg" for any security lessons that could come from the tragedy, a spokeswoman for the Zurich police department said. The Zurich parade, though, is "very, very different" from the Love Parade, she said.

The Zurich parade usually attracts more than 500,000 celebrants to the broad streets along Lake Zurich. The police spokeswoman pointed out that there are no access restrictions or barricades and people can move easily throughout the city during the event.

Though Zurich's geography makes it less likely that problems similar to those in Duisburg could occur, "the tragedy of Duisburg will be a topic in the next meeting with the organizing committee," the police spokeswoman confirmed.

## Commentary

# Necessity the mother of loss prevention



## REGIS COCCIA

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

Great businesses often start their lives out of necessity or to overcome some particular challenge. Such is the case with FM Global, which on Friday celebrated its 175th anniversary.

Nearly two centuries of operation is a long time for any business, but it's especially noteworthy in the insurance industry. Very few insurance brands have lasted anywhere near that long. In the United States, the Hartford Financial Services Group Inc. this year marked its 200th anniversary, and that's quite an achievement, too. The only older insurance brand that comes immediately to mind is Lloyd's of London, which famously got started in Edward Lloyd's London coffeehouse in July 1688. It's now 322 years old.

FM Global, formally known as Factory Mutual Insurance Co., traces its roots to 1835, when textile mill owner Zachariah Allen formed a mutual insurer. Mr. Allen was ahead of his time in loss control, yet he couldn't get his insurer at the time to credit his efforts with a reduction in premium. FM Global is built on loss prevention engineering and has a history of returning substantial dividends to its members, a tangible reward for reducing losses.

Mr. Allen and the other mill owners he recruited took a risk by betting on loss control, and it paid off handsomely. They formed additional mutual insurers in the mid-1800s, creating what was known as the Factory Mutual System until three main operating companies—Allendale Mutual Insurance Co., Arkwright Mutual Insurance Co. and Protection Mutual Insurance Co.—were consolidated in 1999 and rebranded FM Global.

To say that loss prevention research and engineering is in FM Global's DNA is an understatement. Today, the company operates a Research Campus in West Gloucester, R.I., where it tests building materials and analyzes the effects of hazards ranging from wind to fire to hail to earthquake. One of FM Global's biggest contributions to loss control is the popularity of the fire sprinkler. While FM Global didn't originate this device, the company's ongoing enhancements and support of sprinklers enabled them to become widely adopted.

A recent addition to FM's Research Campus is a "shake table" in which the insurer's engineers can simulate an earthquake. The company's natural hazards laboratory is capable of simulating windstorm damage, too, and FM Global is quite proud

of the fact that most of its policyholders' facilities in the path of the series of strong hurricanes in 2004 and 2005 in Florida and the Gulf Coast remained intact.

It would be easy to think FM Global is all about property risk. Its property risk engineering is an important part of its business, but the insurer also is a major provider of business interruption coverage and supply chain risk management services.

**To say that loss prevention research and engineering is in FM Global's DNA is an understatement.**

On Friday, FM Global celebrated its anniversary at its Research Campus by doing some of what it does best: demonstrating the effect of perils and the lessons learned.

### Summer entrepreneurs

Speaking of business stories, I've noticed a distinct lack this summer of a once-common type of entrepreneurship: kids selling lemonade. In my suburban Chicago neighborhood, kids seem more interested in other kinds of goods and services.

My 9-year-old son and his friends have had some modest success peddling bike repair services, rocks for collecting and even a taxi service using a bicycle trailer. Other kids have opened stands selling cookies and other baked goods, but street corner lemonade is hard to find where we live.

Not sure why. My son suggested it's because kids want to try new things, even if they don't succeed. That's the spirit of entrepreneurship in action.

I'm feeling pretty optimistic about this new generation of risk-takers.

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# Business Insurance OPINIONS

## Disability law proves value of the workforce

THE AMERICANS WITH DISABILITIES ACT has not been that bad after all.

Despite some initial fears, the law that marked its 20th anniversary last week has been manageable to deal with and has led to some significant benefits for U.S. businesses.

The ADA, which President George H.W. Bush signed into law on July 26, 1990, guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications.

Sure, it has had its abusers, including workers who filed bad back claims, which undermine the law's

intent. And there have been a small number of incidents of disabled people going from store to store, actively searching for aisles that are too narrow for their wheelchair so they can file nuisance litigation against unsuspecting retailers.

In some cases, the law also has been a challenge to well-meaning employers to not only determine who legitimately is disabled but also figure out how best to accommodate these workers without incurring significant expense.

But it also has encouraged businesses to tap into a valuable resource, by getting them to hire the hitherto invisible workforce of disabled people.

Even in cases in which firms have had to expand aisles or make other changes in order to give the disabled access to their establishments, the law has meant more business.

That makes it a win for everyone.

## Time to put some teeth in Risk Retention Act

A LAW with no penalty for violating its provisions is unenforceable.

That's why we're pleased that a group of lawmakers has called on the Government Accountability Office to examine whether nondomiciliary states are attempting to regulate risk retention groups directly or indirectly through fees, filing requirements and other actions.

Those actions run counter to the Liability Risk Retention Act, which subjects RRGs to the regulation of their states of domicile. There's been a running battle for years between RRGs and some states over how far the regulatory reach of nondomiciliary states extends. But because the law doesn't provide an enforcement or a dispute resolution mechanism, such disputes end up in federal court, an extremely expensive venue for most RRGs.

The lawmakers also want the GAO to examine whether there are legislative solutions to "underscore the foundation" of the Risk Retention Act, which limits the ability of nondomiciliary states to regulate RRGs. One could argue that it's the lawmakers' job to come up with such solutions; but if the GAO can provide a road map, so much the better.

For too long, some states have ignored the clear intent of the Risk Retention Act and have done so with relative impunity. The law should be enforced. Armed with a GAO study, we hope Congress will finally provide the law with the enforcement power it must have for maximum effectiveness.

*It has encouraged businesses to tap into a valuable resource, by getting them to hire the hitherto invisible workforce of disabled people.*



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#### THIS WEEK'S RESULTS

Should the National Flood Insurance Program begin to offer windstorm coverage?



#### NEXT WEEK'S QUESTION

Q: Has the Americans with Disabilities Act been beneficial or harmful to the workplace?

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## Market Moves

### Donegal Group makes \$39 million acquisition

**MARIETTA, Pa.**—Donegal Group Inc. has agreed to acquire Michigan Insurance Co. from parent company West Bend Mutual Insurance Co. for an estimated \$39 million.

As part of the agreement, the Grand Rapids, Mich.-based per-

sonal and commercial property/casualty insurer will enter into a 25% quota-share reinsurance agreement with Donegal Group and 50% quota-share agreement with third-party reinsurers to replace the 75% quota-share agreement with West Bend Mutual Insurance, Marietta, Pa.-based Donegal Group said in a statement.

Donegal Group said the purchase price will be based on the generally accepted accounting principles-based book value at the time of the transaction and estimated the payout to shareholders to be nearly \$39 million.

"We are excited about this opportunity to expand our Midwestern operations into Michigan

by acquiring a company with a very capable management team and an excellent independent agency distribution system," Donald H. Nikolaus, president of Donegal Group, said in a statement.

Donegal Group said the acquisition is subject to approval by Michigan's Office of Financial & Insurance Regulation, among other conditions.

### Hanover expands surety business

**WORCESTER, Mass.**—Hanover Insurance Group Inc. has expanded its surety capabilities in the western United States after an agreement with Insurance Co. of

the West.

Per the agreement, for which terms were not disclosed, Hanover Insurance Group has hired 20 surety underwriters and field support staff from ICW Group, focusing on surety operations in Arizona, California, Colorado, Oregon, Texas and Washington state, the Worcester, Mass.-based property/casualty insurer said in a statement.

With the additional capabilities in the region, Hanover Insurance Group said that it expects its agent partners to write nearly \$15 million of contract surety business.

"As always, we will be very strategic and selective about where we pursue new agency appointments and deeper partnerships,"

Frederick H. Eppinger, CEO of Hanover Insurance Group, said in the statement.

San Diego-based regional property/casualty insurer ICW Group said in the statement that the transaction supports its strategy to streamline its surety operations with a larger surety carrier.

ICW Group provides coverage of workers compensation, personal and business auto, earthquake and surety services.

### Propel expands through acquisitions

**TACOMA, Wash.**—Propel Insurance has expanded its real estate insurance operations with the acquisition of two brokerages based in Washington state.

The privately held insurance agency said it has acquired Cascade Risk Placement Inc. and Encore & Co. Insurance Inc., with both teams joining Propel Insurance's real estate team at its Seattle office, the Tacoma, Wash.-based agency said in a statement.

Terms of the acquisitions were not disclosed.

Bellevue, Wash.-based Cascade Risk Placement offers risk management services to property owners, franchise companies and management firms.

Encore & Co. Insurance provides property/casualty insurance products for owners and managers of manufactured housing communities, shopping centers, apartment buildings, strip malls and storage facilities.

### Allied Insurance Brokers names wholesale division

**PITTSBURGH**—Allied Insurance Brokers Inc. said its insurance wholesale brokerage division is now called Ascinsure Specialty Risk.

"Our broker department has always operated independently of our retail side, so it just made sense to differentiate them with a unique name and logo" and website, Marty O'Brien, president of Allied Insurance Brokers, said in a statement.

Ascinsure will focus on wholesale brokerage services for crane owners and operators, rental equipment and party goods dealers, scaffolding companies, and offer a packaged general liability auto program, among others.



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A series of worker suicides at a Foxconn Technology Group plant in Shenzhen, China, which is a major supplier for Apple Inc., raised awareness about supply chain risks for U.S. companies with overseas suppliers.

REUTERS

# Outsourcing overseas cuts costs, raises risks

*Global supply chains create new exposures for U.S. firms*

By ZACK PHILLIPS

A majority of companies already have experienced disruptions of their global supply chains, yet top executives may not be aware of the problem for which insurance is only a partial answer, experts say.

Companies with global supply chains should devise and enforce stringent safety and quality standards, establish alternate suppliers and take a variety of other measures; the plans must address perils that include political unrest, natural disasters, labor strife, terrorism and other disruptions that can harm a company's profitability, logistics and insurance experts say.

"They're outsourcing the production, but they can't outsource the risk," said Ken Davey, London-based senior vp at Factory Mutual Insurance Co., which does

business as FM Global.

Companies should understand that cost savings from using overseas producers must be weighed against the increased risk of operating in developing countries, which observers say should elevate risk management among senior management and link it to the procurement and logistics departments.

"They don't actually realize, oftentimes inadvertently, that by taking steps to drive costs out of their supply chain, they're actually driving costs in," said Linda Conrad, New York-based director of strategic business risk management for Zurich Services Corp.

"Maybe they're aware, but in this economic time they're making tough choices. The problem I have is...the C-suite is sometimes not aware of this increased exposure the company is now facing," Ms. Conrad said. "That risk perspective has to be elevated out of the silo of procurement to the (chief financial officer)."

See **SUPPLY CHAINS** page 15

**'They're outsourcing the production, but they can't outsource the risk.'**

Ken Davey, Factory Mutual Insurance Co.

Global Risks:  
Business  
Continuity

SPOTLIGHT

**BI RANKING: LARGEST  
PROPERTY LOSS CONTROL  
SPECIALISTS**

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**BUSINESS INSURANCE  
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**INSURANCE OPTIONS  
RISE FOR DISRUPTIONS  
OF SUPPLY CHAINS**

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**PLANNING, RESEARCH  
ESSENTIAL IN WEIGHING  
A PARTNER IN CHINA**

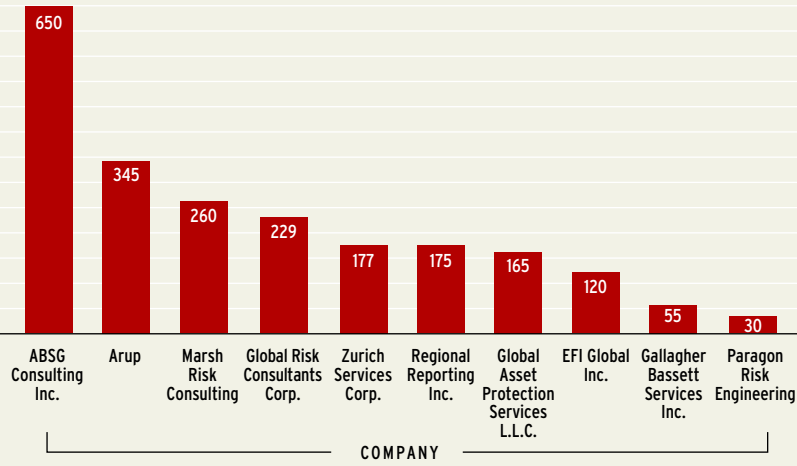
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**TRAINING, PREPARATION  
KEY TO AVOID EMPLOYEE  
KIDNAPPINGS ABROAD**

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**LARGEST BY PROFESSIONAL STAFF**

Ranked by number of professional property loss control staff



Source: BI survey

**LARGEST BY UNBUNDLED CLIENTS**

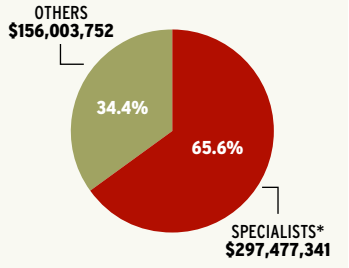
Ranked by number of unbundled clients

Company	Unbundled clients
ABSG Consulting Inc.	1,600
Marsh Risk Consulting	1,500
Global Risk Consultants Corp.	1,250
Arup	850
Regional Reporting Inc.	300
Gallagher Bassett Services Inc.	250
Global Asset Protection Services L.L.C.	225
Zurich Services Corp.	89
Risk Logic Inc.	48
EFI Global Inc.	40
Paragon Risk Engineering	40

Source: BI survey

**SPECIALISTS VS. OTHER PROVIDERS**

Total revenues of all property loss control consultants listed.



\*Specialists derive a majority of their total revenues from unbundled property loss control consulting

Source: BI survey

# Largest property loss control specialists

Ranked by 2009 gross revenues from unbundled property loss control consulting\*

Rank	Company/Address	Phone/Web site	Unbundled property loss control consulting revenue	% of property revenue from unbundled services	Professional property loss control staff	Unbundled clients	Principal officer
<b>1</b>	<b>ABSG Consulting Inc.</b> 16855 Northchase Drive, Houston, Texas 77060	281-673-2800 <a href="http://www.absconsulting.com">www.absconsulting.com</a>	\$198,900,000	100%	650	1,600	Tony Nassif, president/CEO-ABS Group
<b>2</b>	<b>Global Risk Consultants Corp.</b> 100 Walnut Ave., Suite 501, Clark, N.J. 07066-1247	732-827-4400 <a href="http://www.globalriskconsultants.com">www.globalriskconsultants.com</a>	\$54,918,211	100%	229	1,250	William F. Ramonas, chairman/CEO
<b>3</b>	<b>Global Asset Protection Services L.L.C.</b> 100 Constitution Plaza, 12th Floor, Hartford, Conn. 06103	860-293-7901 <a href="http://www.xlgaps.com">www.xlgaps.com</a>	\$29,000,000	70%	165	225	Timothy Heinze, managing director
<b>4</b>	<b>Paragon Risk Engineering</b> P.O. Box 648, Allenwood, N.J. 08720	732-785-0746 <a href="http://www.paragonconsults.com">www.paragonconsults.com</a>	\$4,950,000	100%	30	40	Robert McMullen, president
<b>5</b>	<b>Matrix Risk Consultants Inc.</b> 3130 S. Tech Blvd., Miamisburg, Ohio 45342	937-886-0000 <a href="http://www.matrixrc.com">www.matrixrc.com</a>	\$4,815,000	100%	22	25	Walter P. Luker, CEO
<b>6</b>	<b>Risk Logic Inc.</b> 48 Dimmig Road, Upper Saddle River, N.J. 07458	201-930-0700 <a href="http://www.risklogic.com">www.risklogic.com</a>	\$1,750,000	100%	10	48	John Durante, president
<b>7</b>	<b>Allrisk Engineering Inc.</b> 903 E. Main St., Suite 206, Auburn, Wash. 98002	253-735-0554 <a href="http://www.allriskengineering.com">www.allriskengineering.com</a>	\$730,000	100%	5	7	Jesse Wilson, president
<b>8</b>	<b>Copper Harbor Consulting Inc.</b> 323 Great Plain Ave., Needham, Mass. 02492	781-400-1305 <a href="http://www.copperharb.com">www.copperharb.com</a>	\$710,000	100%	3	8	Thomas A. Gaitley, managing consultant
<b>9</b>	<b>Fire Protection Solutions Inc.</b> 668 N. Coast Highway, Suite 518, Laguna Beach, Calif. 92651	866-777-3473 <a href="http://www.fpsolutions.org">www.fpsolutions.org</a>	\$631,250	100%	5	3	Steve Shabazian, president
<b>10</b>	<b>Sebench Engineering Inc.</b> P. O. Box 451041, Atlanta, Ga. 31145	678-222-0551 <a href="http://www.sebench.com">www.sebench.com</a>	\$400,000	100%	10	5	Michael Swahn, president

\*Only those companies that derive a majority of their total revenues from unbundled property loss control consulting are ranked.

Source: BI survey

Research by Kevin Edison and Karen Tucker

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# Forensic accounting firms

Company/Address	Phone/Web site	Clients	Revenue from forensic accounting	Total staff	Principal officers
<b>AGC-Alfermann Gray &amp; Co. L.L.C.</b> 219 Highway 72 W., Rolla, Mo. 65401	573-364-1700 <a href="http://www.agccpa.com">www.agccpa.com</a>	4	\$150,000	10	Felecia G. Dixon, partner
<b>BDO Consulting</b> 135 W. 50th St., New York, N.Y. 10020	212-885-8000 <a href="http://www.bdoconsulting.com">www.bdoconsulting.com</a>	500	N/A	175	Carl Pergola, partner/executive director
<b>Crowe Horwath L.L.P.</b> 70 W. Madison, Suite 700, Chicago, Ill. 60602-4903	312-899-7000 <a href="http://www.crowehorwath.com">www.crowehorwath.com</a>	100	\$6,000,000	43	Howard Grobstein, Mari Reidy, partners
<b>Dempsey Partners L.L.C.</b> 426 Danbury Road, Wilton, Conn. 06897	203-762-5052 <a href="http://www.dempseypartners.com">www.dempseypartners.com</a>	200	N/A	32	John D. Dempsey, managing partner
<b>Gettry Marcus Stern &amp; Lehrer CPA P.C.</b> 20 Crossways Park N., Woodbury, N.Y. 11797	516-364-3390 <a href="http://www.gmslly.com">www.gmslly.com</a>	N/A	N/A	N/A	Mark Warshavsky, partner-in-charge-business valuation and forensic group
<b>Hutson Resource Group L.L.C.</b> 4715 133rd Ave. S.E., Bellevue, Wash. 98006	425-681-0700 <a href="http://www.hutsonresourcegroup.com">www.hutsonresourcegroup.com</a>	N/A	N/A	6	John Hutson, director-forensic accounting
<b>Marsh Risk Consulting-Forensic Accounting &amp; Claims Services (FACS) Practice</b> 1166 Ave. of the Americas, New York, N.Y. 10036	212-345-1063 <a href="http://www.marshriskconsulting.com">www.marshriskconsulting.com</a> , <a href="http://www.marsh.com">www.marsh.com</a>	498	\$50,000,000	185	Ken Giambagno, managing director/ global practice leader
<b>RWH Myers &amp; Co. L.L.C.</b> 200 W. Monroe, Suite 1270, Chicago, Ill. 60606	312-739-1800 <a href="http://www.rwhmyers.com">www.rwhmyers.com</a>	50	\$4,000,000	18	Bill Myers, Sharon Pisko Wolfe, Glenn Rand, Chris Hess, Bill Warren, partners
<b>Navigant Consulting Inc.</b> 30 S. Wacker Drive, Suite 3100, Chicago, Ill. 60606	312-583-5700 <a href="http://www.navigantconsulting.com">www.navigantconsulting.com</a>	N/A	N/A	N/A	Brad Murlick, managing director
<b>Nihill &amp; Riedley</b> Public Ledger Building, Suite 800, 150 South Independence Mall West, Philadelphia, Pa. 19106	215-238-8450 <a href="http://www.nihillriedley.com">www.nihillriedley.com</a>	N/A	N/A	N/A	Joseph T. Burns, principal

N/A=not available

Source: BI survey

Researched by Kevin Edison and Karen Tucker

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## Supply chain disruption coverage offering more options

By **ZACK PHILLIPS**

Multinational companies concerned about potential supply chain disruptions have an increasing number of insurance options.

Several insurers now offer supply chain disruption coverage, and buyer interest in the products is increasing, brokers and underwriters say.

Business interruption coverage long has been available to cover the loss of income due to physical damage at a company's facility, and contingent business interruption policies cover income that is lost due to damage at a supplier's facilities. However, property damage is required to trigger those policies—not typical disruptions such as political instability, labor disputes and disease outbreaks.

For example, the April eruption of a volcano in Iceland closed European airspace for five days. While

the disruption affected thousands of firms' air shipments, observers say it likely is not covered by most contingent business interruption policies.

Brokers and underwriters say buyer interest in insurance to cover sup-

**'The real causes of these disruptions are (things like) sabotage, terrorism, crime, shortage of labor...piracy, (information technology) outages or electrical outages.'**

Linda Conrad, Zurich Financial Services Ltd.

ply chain disruptions has increased in recent years and the volcanic eruption strengthened the trend.

"There's always a spike in interest right after something happens that gets people's attention," said Karen O'Reilly, chief innovation officer at Lexington Insurance Co. in Boston.

Aside from Lexington, supply chain disruption coverage is available from Zurich Financial Services Group, Berkshire Hathaway Inc. and Munich-American RiskPartners Inc., a division of Munich Reinsur-

ance Co., brokers say. The policies cover lost income from calamities that cause nonphysical damage.

Supply chain disruption insurance requires an upfront assessment by the underwriter and covers nearly all perils for named suppliers. In contrast, contingent business inter-

ruption policies typically cover only specific perils listed in the policy.

"Who would say a volcano—you'd never name a volcano" as a listed peril, said Linda Conrad, New York-based director of strategic business risk for Zurich Financial Services Ltd.

She said Zurich has built a database tracking supply chain disruptions worldwide and property damage is not the cause of most such disruptions.

"Physical damage like that is relatively rare in terms of what's causing that disruption," Ms. Conrad said. "The real causes of these disruptions are (things like) sabotage, terrorism, crime, shortage of labor...piracy, (information technology) outages or electrical outages."

Still, only a small number of buyers have purchased supply chain disruption coverage. Brokers say the price can be 1% or more of the lim-

it; a Marsh Inc. report said the cost typically ranges from 2% to 5% of the limit.

"The upside is they cover all sorts of things, in some cases (with) almost no exclusions," said Roger Schwartz, New York-based senior vp with the political risk practice at Aon Corp. "The downside is they can be very expensive and they're not easy to necessarily put together. You're getting (high-end) cover, but you're paying (high-end) prices."

Capacity also is relatively limited. The typical purchase is \$50 million or \$100 million in aggregate limits, brokers say.

"There's really no reinsurance support for the coverage, so it's a challenge to build very large capacity towers," Ms. O'Reilly said.

Ms. O'Reilly said more insurers might begin to offer supply chain coverage on excess layers in the future.

# Supply chains: Disruption frequency rises

CONTINUED FROM PAGE 11

In a 2009 survey by the London-based Business Continuity Institute, 74% of employees and executives involved in risk management and supply chain management said they had suffered a supply chain disruption in the past 12 months and 88% expected to suffer one in the coming year.

Ms. Conrad said such business interruptions generally depress sales about 10% while increasing costs about 11%, and 40% of companies with extended disruptions never recover, according to a separate academic study.

Experts say global firms employ a variety of strategies to manage these risks. To evaluate potential contractors, they ask for recommendations from other U.S. firms or employ third-party analysts to investigate; during contract negotiations, they require that contractors have appropriate levels of insurance from a financially sound global insurer, and mandate that suppliers notify the larger firm if they plan to change insurance or subcontract the job.

In some cases, they even require the contractor post a letter of credit that could be drawn down if it failed to deliver the product as quickly and with the quality mandated by the contract, experts say.

## Building a complete picture

Still, establishing and communicating clear, specific standards and consequences for the local workers and management who run the outsourced operation is crucial, said Gary Lynch, global leader of the supply chain risk management practice at broker Marsh Inc. in New York.

"The big consumer product companies that source from these types of countries, what they've come to realize is without...smart operators, all their testing and auditing and contracts and everything else really don't account for much in the way of risk mitigation," he said.

Mr. Lynch said it's also important that companies figure out the exact impact of political unrest or other disruptions not only on the supply chain but also on the company's cash flow. This kind of analysis helps management understand how to respond to such a disruption, he said.

"Until you make it relevant to your revenue stream, you can't determine the impact for you and you can't allocate" resources, Mr. Lynch said. "(Business impact analyses) used to be done for the whole supply chain or for one facility. Now it has to be done for a product family."

It's also important that a company understand how its suppliers' countries differ culturally and philosophically from the United States, said Ann Minzner Conley, loss control product and general liability specialist at Warren, N.J.-based Chubb Corp.

"The whole issue of the cultural perception of safety can be really powerful," Ms. Minzner Conley said. "It may not be their intent to

sell you something that is unsafe; they may just have a different perception of what is safe and you may need to bridge that."

While building codes routinely require large U.S. manufacturing facilities to have fire sprinklers and other protections against fire, earthquakes, hurricanes and other hazards, Mr. Davey said many Asian and European countries have no such mandates.

"We believe that the majority of loss is preventable," Mr. Davey said. "In many countries we deal in, there's a belief that loss is inevitable and there's not much you can do

about it."

One recommendation experts uniformly offer to companies is establishing alternate suppliers in case a primary supplier is hit by an earthquake, port closure, political unrest or other calamity. Mr. Davey said that in a recession, many companies consolidate suppliers and that could lead to "disastrous" results. Companies not only should establish relationships with alternate suppliers but make them an active part of their supply chain to avoid production having to start from scratch during a disruption, he said.

"No one wants a lot of redundan-

cy in their supply chain because it's expensive, but you need to have the ability to bring up an alternate supplier pretty quickly," said Karen O'Reilly, chief innovation officer for Lexington Insurance Co. in Boston.

Experts also suggest relying on suppliers with a wide geographic distribution so that any one peril does not affect all contractors in the supply chain.

"Obviously, those with production capability in multiple regions and/or countries present a lower risk than a single location or a cluster of facilities in a single region or country," said Mark A. Taylor, Charlotte, N.C.-based area vp at Risk International Services Inc. "Even if you source 90% from the primary, by maintaining a second

or third qualified (supplier), you've substantially shortened your lead time in making a change."

Companies also can use insurance to manage some of the risk (see story, page 14). Business interruption policies cover lost income due to physical damage to production facilities and relatively new supply chain insurance policies cover lost income from political unrest and other kinds of nonphysical damage.

"You can insure it, but all that does is provide you with some financial respite; it doesn't solve the problem," Mr. Davey said.

"At the end of the day, if a major supplier goes out of business, that's going to have a much bigger impact than any insurance you can buy," he said.

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# International suppliers heighten legal risks

*Companies urged to research partners before sealing deals*

By JEFF CASALE

Whether it's toys containing lead paint or pet food contaminated with melamine, experts say past product recalls encourage cautious planning and research when evaluating a foreign trading partner, particularly in China.

Product recalls usually lead to legal issues. When it comes to litigation and China, U.S. businesses might find it difficult to win a victory in court. The difficulties arise in part due to failing to properly research trading partners, while a majority of legal issues and risks with foreign trading companies

stem from failing to understand contract laws and judicial environments, say political risk and product recall experts.

Products made in China have become common in the United States and elsewhere. A slew of recalls in recent years—stemming from lead paint, contaminated pet food and dehydrated milk and, more recently, Chinese-manufactured drywall—have given some U.S. companies pause when considering whether to do business with a China-based supplier, insurance and legal experts say.

Bernie Steves, Chicago-based regional director of Aon Corp.'s product recall and contamination team, said the recalls have caused some apprehension among some U.S. businesses when they consider the sourcing of their ingredients and component parts from China.



AP PHOTO

**A slew of recalls in recent years—including Chinese-manufactured drywall—have given some U.S. companies pause when considering whether to do business with a China-based supplier, insurance and legal experts say.**

Insurance underwriters are just as concerned, he said.

"Underwriters are going to look at your trading partner's quality

standards and they are going to want to see if they are the same as your (business') quality standards," Mr. Steves said. "They're going to want to know if you're testing the products as they come over (from China) or are you testing them on a batch basis and if those products are abiding by the standards required by the United States."

U.S.-based companies will continue doing business with Chinese suppliers because it is cost-effective and a majority of products from China are "fine" from a quality standpoint, Mr. Steves said.

Insurance is available for product recalls and nonpayment for or failure to deliver goods, also known as default coverage. The coverage usually will cover up to 90% of the loss, Mr. Steves said, which forces the insured to try to get the issue resolved before turning to insurance.

When evaluating a foreign trading partner, it's important to consider their corporate culture, capital and capacity, said Mike Bond, Washington-based head of international surety, credit and political risk unit with Zurich North America, part of Zurich Financial Services Ltd.

Extensive vetting of a potential trading partner is necessary to get to know what kind of company you're dealing with, Mr. Bond said, as well as understanding their business reputation and their ability to make good on contracts. A third-party audit would help reveal details about a company's operations, product quality and business practices.

"It requires time to get to know your trading partners," Mr. Bond said. "You want to make sure the company has the capital to execute on its contracts and if they have the resources to correct errors if they occur. You also want to know if they have been successful in (prior) trade relationships, and if they have experience making the product and if they can produce on an international scale."

The contract between trading partners, particularly those in China, might be the most crucial aspect of the relationship between the two companies.

Corina Muller Monaghan, vp of

Aon's trade credit and political risk practice, said contractual law in China is not always reliable and that contracts should include an arbitration clause should there be a dispute between the two parties.

Further, Ms. Monaghan recommends that the arbitration process take place outside of China, as arbitration processes and laws in China change from province to province.

"Litigation is not the preferred route to go when you have a dispute," Ms. Monaghan said. "It's expensive to litigate a Chinese claim in the U.S., which is why it's better to go through the arbitration process. In fact, most Chinese businesses would rather have arbitration to settle a dispute...but be sure to get to know the arbitration process and how it works."

Having a local agent in China can give businesses a sense of the legal and political risks involved with doing business there. This also will help U.S. companies understand how each province within China operates.

"The legal system there is not developed and it's thoroughly confusing," said Mark Connoley, a London-based partner with Reed Smith L.L.P.'s insurance and reinsurance group. "It can be difficult to identify what rights you have and if you're being treated fairly."

U.S. companies filing a lawsuit against a Chinese trading partner sometimes encounter non-responses to court orders, which could be due to the company only having a presence in China with no subsidiaries in the U.S., Mr. Connoley said.

Proceedings can move forward and result in a default judgment in favor of the U.S.-based company, however, Mr. Connoley said those type of judgments aren't recognized by any other court system and are difficult to enforce.

To avoid pitfalls when doing business with a foreign trading partner, sources said it is important to know everything about the company, from its assets to its branches, to have a solid method of testing products and goods, and to know what the risks are and to get proper protection as there is no blanket insurance coverage.

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# Employers have ultimate liability when their workers are kidnapped

*Employees, companies should be prepared well in advance*

By MARK A. HOFMANN

**WASHINGTON**—When kidnapers target employees of multinational companies, security experts say responsibility for their safety ultimately rests with the employer.

The best way to meet that responsibility is to make sure the kidnapping never happens. Training and preparation—with upper management buy-in—are key elements in mitigating the risk, experts say.

Understanding the exposure is key, said Richard Hildreth, managing director-crisis management planning at Falls Church, Va.-based screening and security company Altegrity Inc. The risk is “significant today depending upon where they’re traveling or where they have operations,” he said.

The threat of kidnapping is particularly high in countries with a poor law enforcement infrastructure, security experts say.

“Mexico is probably about as high-risk as you can get these days,” said Mr. Hildreth, but countries with police corruption, including some in South America, as well as major oil and gas interests, such as Nigeria and the Middle East, also present kidnapping threats, he said.

“In places like Mexico and Brazil, multinational workers may be seen as richer than locals and therefore targeted,” said Francisco Quinones, operations director at Clayton Consultants in Herndon, Va. But in Nigeria, kidnapers don’t care as much about how much an oil company worker makes as the fact that the worker is employed by an oil company, he said.

“Companies have a duty of care to their employees to provide them with a safe and secure working environment,” said Jonny Gray, Los Angeles-based senior vp and director of crisis security consulting for the Americas for London-based Control Risks. “The test of this is to take all reasonable steps to provide that.”

“First and foremost, preparation, preparation and preparation” is essential to deal with the exposure, said Mr. Quinones (see box). This requires due diligence to determine

## KIDNAPPING AVOIDANCE

*The three most important security measures to avoid being kidnapped*

- Vary times, routes, patterns, mode of transportation, locations and any activity that can be used to predict your presence at a certain place and time.
- Be aware of your surroundings and be suspicious. Know the typical situation and environment and notice things that are unusual or potentially dangerous. Note suspicious license plates or strangers in the area.
- When someone or something is suspicious, react immediately and know what steps to take.

*Source: Clayton Consultants’ “Personal Security Handbook”*

not only which countries present threats but specific regions that are dangerous, he said.

Executives must be a “good consumer of security,” said Neil Livingstone, chairman and CEO of ExecutiveAction L.L.C. in Washington. That means knowing whether security personnel have real-world experience and knowledge, he said.

In addition, “every executive

who’s in a hostile part of the world ought to be reading a book” on how to deal with security and safety issues or taking a course on the matter, Mr. Livingstone said.

Before being posted outside the United States, employees should receive a security briefing about all threats ranging from being short-changed by a taxi driver to being robbed to being kidnapped, Mr. Quinones said.

Mr. Hildreth said employers need to have crisis plans and travel policies in place. “Have transportation arranged before you get there. Check out the hotel before you get there,” he said. Employees need to learn techniques as simple as taking different routes each day and being wary of surveillance.

“Know exactly what to do” if training and security measures fail and kidnapers seize an employee, Mr. Quinones said. Companies should establish crisis teams far in advance. The team, which would respond to any crisis, must answer questions about how the crisis arose, how it affects the company, and how it affects the victim’s family, he said.

The team usually involves the CEO, chief financial officer, and representatives of human resources, legal and security units, Mr. Quinones said. Mr. Hildreth, whose company has responded to more than 500 kidnap or extortion incidents since 1993, also said the risk manager and media spokesman should be on the team.

“Most global companies will have a crisis management team, they’re going to have a plan and, hopefully, will have gone through some tabletop scenarios,” Mr. Hildreth said. They “need to have scenarios where they rehearse an incident.”

“You have to have management buy into this,” he said. Team members also need backups because “these things never happen 9 to 5 Monday through Friday,” Mr. Hildreth said.

Kidnap and ransom insurance can be tapped if an employee is seized, although Mr. Livingstone said he’s heard “mixed views on K&R insurance,” with some clients preferring to put the ransom together themselves. Employers that carry K&R coverage usually can call upon the services of a professional to handle the ransom drop-off, but he said there are “a lot of pitfalls unless you have real professionals” delivering the ransom, such as kidnapers trying to rob the team that brings the money, he said.

“It’s ultimately the company’s responsibility,” said Mr. Gray. Even if the ransom demand is made directly to the family, he said that doesn’t absolve the company of responsibility.

Fortunately, the chances are “very, very good” that a victim will be released by kidnapers, whose motivation is financial.

## UP CLOSE

Comings & Goings



### STEVE TOPELE

**NEW JOB TITLE:** Orland Park, Ill.-based president and chief sales officer of the Horton Group, an insurance broker.

**PREVIOUS POSITION:** Chicago-based president and managing principal of JMB Insurance Agency Inc.

**GOALS FOR NEW POSITION:** My most important goal is to help continue the evolving sales culture at the Horton Group. I was brought in specifically to work with our sales team to work with not only what they are doing already but to add additional talent.

**INDUSTRY CHALLENGES:** Currently, of course, the property/casualty industry is affected by a combination of the economy, rate environment and, on the employee benefits side, there is lower employment and lower enrollment in health plans.

**INDUSTRY OUTLOOK:** I think we are pretty bullish about the industry. We think the brokerage industry is a strong business model and a mature business model. The companies that will

grow in this model are the ones that are going to reinvent. The brokers that will thrive in this environment are the ones that bring in top-notch intellectual capital.

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### WHAT YOU WANTED TO BE WHEN YOU GREW UP:

When I was younger, I had no idea I wanted to be in insurance, that’s for sure. I thought I wanted to be a lawyer. Then I thought I wanted to be a (certified public accountant), but then I took a few college courses in it and was bored to tears. Then I ended up in risk management and went that direction. Then I wanted to work at a Fortune 500 company in the risk management department and quickly learned that I much preferred the sales side of things.

### OUTSIDE THE INDUSTRY, A DREAM JOB:

I would love to be a political science professor at the University of Wisconsin in Madison. I love the campus there and I love political science. That would be a fun thing to do.



REUTERS/LANDOV

Nigerian militant group Movement for the Emancipation of the Niger Delta released this photo in January of two Britons it kidnapped, saying it would continue to kidnap American and European oil workers to push its demands.

## 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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*Business Insurance*  
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[mtsikoudakis@businessinsurance.com](mailto:mtsikoudakis@businessinsurance.com)

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## REQUEST FOR PROPOSAL

Groupe de la Banque africaine de développement  
Agence temporaire de relocalisation



Division des achats institutionnels  
Numéro de télécopie : + (216) 71 835 249

### APPEL D'OFFRES INTERNATIONAL DEMANDE DE PROPOSITIONS POUR LA COUVERTURE D'ASSURANCES VOYAGES DU PERSONNEL EN MISSION DE LA BANQUE AFRICAINE DE DEVELOPPEMENT

REF. ADB/ICB/CGSP/2010/0073

- La Banque africaine de développement (ci-après dénommée « la Banque » ou « la BAD ») compte recruter un courtier ou un groupement de courtiers d'assurance et/ou de réassurance éligibles, pour offrir les prestations de services d'assurance voyages au profit de son personnel en mission officielle.
- Cette assurance devra couvrir la perte des bagages ou les sinistres causés aux bagages et/ou effets personnels/professionnels du personnel de la Banque, ainsi que le retard d'acheminement desdits bagages ayant occasionné des frais et ce, au cours des voyages en mission officielle exclusivement.
- Le marché sera attribué pour une période de trois (3) ans, qui pourra être étendue à une (1) ou deux (2) années supplémentaires au maximum. Toutefois, la police d'assurance sera établie pour une durée annuelle, renouvelable par tacite reconduction. Le commencement de l'exécution des prestations de services est prévu pour le 1er janvier 2011.
- Les courtiers ou des groupements de courtiers d'assurance et/ou de réassurance intéressés doivent être originaires de l'un des pays membres de la Banque dont la liste peut être consultée sur le site Web de la BAD ([www.afdb.org](http://www.afdb.org)) et être constituées conformément à la législation d'un pays membre, dont la majorité du capital social est détenue par des ressortissants des pays membres de la BAD et qui sont installées dans l'un des pays membres.
- Le dossier de demande de propositions sera téléchargeable sur le site web de la Banque (<http://www.afdb.org/en/about-us/corporate-procurement/business-opportunities/current-solicitations/>) à compter du 19 juillet 2010 ou bien obtenu sur simple demande adressée à [tender@afdb.org](mailto:tender@afdb.org). Toutes les réponses aux demandes de clarifications seront également publiées sur la même adresse web.
- L'évaluation des offres sera conduite en fonction des critères ci-dessous, tels que détaillés dans le document de la demande de propositions; Critères éliminatoires:
  - Etre originaire de l'un des pays membres de la Banque (tel que détaillé dans le paragraphe 4 ci-dessus);
  - Justifier d'une autorisation d'exercer l'activité de courtage d'assurances/ou de réassurances;
  - Fournir l'attestation d'assurance de la Responsabilité Civile Professionnelle du soumissionnaire;
  - Fournir une lettre de couverture de l'assureur, signée et tamponnée par l'assureur, reprenant précisément les garanties, la totalité des exclusions (qui doivent correspondre exactement à ce qui est requis par la Banque dans les termes de références décrits dans l'Annexe A du dossier d'appel d'offres), la liste des justificatifs à fournir en cas de sinistre; la clause de participation bénéficiaire. Il ne doit y avoir aucune indication de la tarification proposée qui devra figurer exclusivement dans l'enveloppe financière;
  - Justifier d'un chiffre d'affaires minimum moyen, états de résultat à l'appui, de 140 000 Euros (ou équivalent) par an au cours des années 2009, 2008 et 2007. Critères d'évaluation techniques;
  - Qualité du programme d'assurance proposé, y compris les principales garanties et exclusions, en mettant en exergue ses avantages et son originalité;
  - Proposition d'un processus dynamique de règlement des sinistres;
  - Qualification technique de l'ensemble du personnel dédié pour la gestion des polices d'assurances;
  - Références clients pour des services similaires, justifiant l'expérience pertinente du courtier ou du groupement de courtiers dans la gestion de programmes similaires d'assurances voyage du personnel en mission au cours des trois (3) dernières années (2009, 2008 et 2007);
- Les propositions techniques et financières formulées en réponse à la demande de proposition sus-référencée doivent être envoyées au plus tard le jeudi 16 septembre 2010 à 15h (Heures de Tunis) à l'adresse suivante:

Division des achats institutionnels(CGSP.2)  
EPI Bâtiment B – 2ème étage- Bureau 2A2  
Banque africaine de développement  
Agence temporaire de relocalisation  
Angle des trois rues : Avenue du Ghana, Rue Pierre de Coubertin, Rue Hédi Nourie  
B.P. 323, 1002 Tunis Belvédère- Tunisie  
Demande de propositions Réf. ADB/ICB/CGSP/2010/0073

- Une ouverture publique des offres techniques aura lieu le jeudi 16 septembre 2010 à 15h30.
- Les offres arrivées en retard seront purement et simplement rejetées.
- Au terme de l'évaluation technique, seulement les soumissionnaires qui auront obtenu la note technique minimale requise par le dossier d'appel d'offres, seront considérés pour l'évaluation financière
- Tous les soumissionnaires seront informés, dans les meilleurs délais, de la suite donnée à leurs soumissions.

## LEGAL NOTICE

### Notice of increase in the Payment Percentage in relation to OIC RUN-OFF LIMITED and THE LONDON AND OVERSEAS INSURANCE COMPANY LIMITED (both subject to a Scheme of Arrangement)

Notice is hereby given in the matter of OIC Run-Off Limited (formerly The Orion Insurance Company Plc) and The London and Overseas Insurance Company Limited (the "Companies") that, in accordance with the Companies' Scheme of Arrangement ("Scheme") which became effective on 7 March 1997, the payment percentage will be increased by 3% from 50% to 53%.

Creditors who have received a payment of 50% of their liabilities established under the Scheme will receive an additional 3% payment within 90 days. Policyholders who are still to establish their claims under the Scheme will receive payment as soon as those liabilities become established.

Queries regarding claims' agreement and payments should be directed to the run-off manager, Armour Risk Management Limited, appointed by the Scheme Administrators from PricewaterhouseCoopers LLP. Their details are as follows:

Telephone: +44 (0)20 7347 5768

Email: [oic.run-offlimited@uk.pwc.com](mailto:oic.run-offlimited@uk.pwc.com)

DY Schwarzmann Joint Scheme Administrator

OIC Run-Off Limited

The London and Overseas Insurance Company Limited

## LEGAL NOTICE

### NOTICE OF SANCTION OF THE CUAL SCHEME IN THE HIGH COURT OF JUSTICE CHANCERY DIVISION COMPANIES COURT

Claim Nos. 21910, 21911, 21912 and 21913 of 2009  
IN THE MATTERS OF

### ALLIANZ GLOBAL CORPORATE & SPECIALTY (FRANCE)

(a company incorporated in France)

AND

### ALLIANZ IARD

(a company incorporated in France)

AND

### DELVAG LUFTFAHRTVERSICHERUNGS-AG

(a company incorporated in Germany)

AND

### NÜRNBERGER ALLGEMEINE VERSICHERUNGS-AG

(a company incorporated in Germany)

(together the "Scheme Companies")

### AND IN THE MATTER OF THE COMPANIES ACT 2006 OF GREAT BRITAIN

Notice is hereby given that by an Order dated 9 July 2010 made in the above matters, the High Court of Justice of England and Wales has sanctioned the schemes of arrangement between the Scheme Companies and their Scheme Creditors (the "Schemes"). A copy of the Order sanctioning the Schemes was delivered to the Registrar of Companies in England and Wales on 26 July 2010 and the Scheme became effective for each Scheme Company on that date (the "Effective Date"). David McGuigan, whose address is set out below, is the Scheme Manager.

Please note that all Scheme Creditors are now bound by the provisions of the Scheme.

A copy of the Scheme documents and the Claim Form may be downloaded from the website at [www.CUAL-scheme.co.uk](http://www.CUAL-scheme.co.uk) (the "Website"). Scheme Creditors requiring printed copies of these documents or a list of their policies which, where known, may be affected by the Scheme, should contact the Scheme Manager, on the contact details below and a copy will be sent free of charge.

Return of Claim Forms

For each Scheme Creditor of which he is aware, the Scheme Manager has prepared a Claim Form. Included with the Claim Forms will be the details he has of: (1) each Insurance Contract of which he is aware and which may give rise to a Scheme Claim; and (2) any Unpaid Agreed Claims of which he is aware arising under such Insurance Contracts.

Claim Forms may be submitted by completing and returning a paper copy of the Claim Form, via email, post or fax to the Scheme Manager. The policy details accompanying the Claim Form for each Scheme Creditor can be supplied electronically in Microsoft Excel format by the Scheme Manager. Scheme Creditors are strongly encouraged to request this and to enter the data on the Excel spreadsheet where possible, because this should be easier than entering it on the paper spreadsheet. Alternatively, a blank schedule may be downloaded in Microsoft Excel from the Website.

Scheme Creditors wishing to submit a Scheme Claim must submit their Claim Forms and supporting evidence by no later than 11.59 pm, London Time on 21 February 2011, the Final Claims Submission Date, failing which the Scheme Creditor shall not be entitled to assert any Scheme Claim and shall not be entitled to any payment pursuant to the Scheme or otherwise from a Scheme Company, except in relation to any Unpaid Agreed Claims.

Any Scheme Creditor who has any questions concerning this notice or the action it is required to take or who requires assistance in completing its Claim Form, should contact the Scheme Manager. Further information may be obtained from the Website at [www.CUAL-scheme.co.uk](http://www.CUAL-scheme.co.uk) or upon request from the Scheme Manager whose contact details are as follows:

#### THE SCHEME MANAGER

David McGuigan, CUAL Scheme Manager.

E-mail: [dmcuigan@limbo.eu](mailto:dmcuigan@limbo.eu)

Post: CUAL Scheme Manager, PO Box 683, Redhill, RH1 9BY, United Kingdom.

Fax: +44 (0)20 7626 7937

26 July 2010

## LEGAL NOTICE

### STATE OF RHODE ISLAND SUPERIOR COURT PROVIDENCE, SC

IN RE GTE REINSURANCE COMPANY, LIMITED  
P.B. No.: 10-3777

IN THE MATTER OF GTE REINSURANCE COMPANY  
LIMITED

COMMUTATION PLAN PURSUANT TO RHODE  
ISLAND CHAPTER 27-14.5

BETWEEN

GTE REINSURANCE COMPANY LIMITED

AND ITS

COMMUTATION PLAN CREDITORS

(as defined in the Commutation Plan)

NOTICE IS HEREBY GIVEN that, by an Order dated July 21, 2010 made in the above matter (the "July 21 Order"), the Superior Court in and for the County of Providence, Rhode Island (the "Court") has directed that a meeting of the Commutation Plan Creditors (as that term is defined in the proposed Commutation Plan referred to below) (the "Meeting of Creditors") is to be convened at 10:00 AM (EST), on November 30, 2010 at the offices of Roberts, Carroll, Feldstein & Peirce, Inc., 10 Weybosset Street, 8th Floor, Providence, RI 02903-2808, for the purpose of considering, and if thought fit, approving the Commutation Plan proposed to be made between GTE Reinsurance Company Limited (the "Company") and its Commutation Plan Creditors pursuant to Rhode Island Chapter 27-14.5.

All Commutation Plan Creditors will be required to register their attendance before the commencement of the Meeting. Registration will commence at 9:00 AM EST and Commutation Plan Creditors are requested to arrive no later than 9:45 AM EST in order to register. The Chairman of the Meeting of Creditors will address Commutation Plan Creditors generally on the Commutation Plan and/or issues relevant to voting at the commencement of the Meeting.

Commutation Plan Creditors may attend and vote in person (or, if a corporation, by a duly authorized representative) at the Meeting of Creditors. Alternatively, they may appoint another person, whether a Commutation Plan Creditor or not, as a proxy to attend and vote in their place.

Copies of the Commutation Plan, Form of Proxy and Voting Form for use at the Meeting of Creditors may be obtained from the Run Off Manager in the manner set out below.

Whether or not Commutation Plan Creditors intend to be physically present at the Meeting of Creditors, they are requested to complete the Form of Proxy and Voting Form and return them and any documents referred to on or accompanying the Voting Form to the Run Off Manager as soon as possible at the address below and, in any event, so that they are received by 5:00 PM, EST on October 29, 2010. Forms of Proxy and Voting Forms may also be handed in at the registration desk prior to the commencement of the Meeting of Creditors. Commutation Plan Creditors may send their Form of Proxy by facsimile transmission to facsimile number +1 (610) 500 5068 or by electronic mail transmission to [GTERErunoffresolve.com](mailto:GTERErunoffresolve.com) by the same time on the same date; provided that the original forms are subsequently received by the Chairman of the Meeting of Creditors in care of the Company at Roberts, Carroll, Feldstein & Peirce, Inc., 10 Weybosset Street, 8th Floor, Providence, RI 02903-2808 within seven (7) days after the date on which they were sent by facsimile or electronic mail.

In order to be approved, the Commutation Plan must be agreed by a majority in number representing not less than 75 per cent in value of the Commutation Plan Creditors present and voting either in person or by proxy at the Meeting of Creditors. If agreed by the requisite majority of Commutation Plan Creditors, the Commutation Plan will be subject to the subsequent approval of the Court. Pursuant to the July 21, 2010 Order, the Court also directed that there shall be a single class of creditors for the purpose of the Meeting of Creditors and set forth all other dates relevant to this proceeding as follows:

- The Company shall provide notice of the Commutation Plan to all Commutation Plan Creditors on or before July 29, 2010;
- The Company shall file with the Court an affidavit of notice attesting to the above on or before August 9, 2010;
- Claim forms and Proxy forms shall be returned by October 29, 2010;
- Assuming a favorable vote at the Meeting of Creditors, the Court shall conduct a hearing at 11:00 a.m. EST on December 15, 2010 to determine whether implementing the Commutation Plan would not materially adversely affect either the interests of the objecting creditors or the interests of assumption policyholders, and to enter an order implementing the Commutation Plan;
- Assuming an implementation order is entered, the Company shall provide notice to the Commutation Plan Creditors of the implementation order as well as the claim submission requirements on or before December 31, 2010;
- Final claim forms shall be submitted to the Commutation Plan Advisor on or before April 1, 2011;
- The Company will agree all claims properly and timely submitted on or before June 30, 2011;
- Final, approved claims shall be paid on or before September 30, 2011; and
- The Company shall provide notice to the Court upon completion of the Commutation Plan.

Any Commutation Plan Creditor which is unclear about or has any questions concerning the action it is required to take should contact the Commutation Plan Advisor in the manner set out below.

Dated: July 22, 2010

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## RRGs: Lawyers seek probe of state regulation efforts

CONTINUED FROM PAGE 3

that should be taken to ensure that states comply with the law.

The lawmakers' request for the GAO study coincided with a dispute between Nevada and Alliance for Nonprofits for Insurance, Risk Retention Group, which is domiciled in Vermont.

In July, Nevada's Acting Insurance Commissioner Brett J. Barratt issued an order forbidding the RRG from offering commercial auto insurance in the state.

In a July 26 letter to Nevada Attorney General Catherine Cortez Masto, the Minneapolis-based National Risk Retention Assn. called the move "simply wrong as a matter of law."

RRG backers hailed the request that the GAO examine how non-domiciliary states treat RRGs.

"The need for the report is simply that LRRRA is a federal law that preempts state insurance law and there is no oversight by a federal agency," said Robert Myers, the NRRRA's general counsel and a partner with Morris, Manning and Martin L.L.P. in Washington. He said that when the original Product Liability Risk Retention Act was considered in 1981, "there was some discussion" of having the Commerce Department oversee it, but nothing came of the discussion.

As a result, there is a federal law with no federal oversight, he said. "This creates a problem because some of the nondomiciliary states have a very loose interpretation of what the federal law permits and doesn't permit," he said, adding that with 49 nondomiciliary states, opinions will differ.

Kevin Doherty, chairman of the Self-Insurance Institute of America Inc.'s alternative risk committee and a partner in the Nashville, Tenn., office of Burr & Forman L.L.P., also stressed that the law has no regulatory or enforcement provi-

sions. The only legal remedy when an RRG believes a nondomiciliary state has overstepped its bounds is a federal lawsuit, which is very expensive, said Mr. Doherty.

"Most risk retention groups don't have the capability to file a federal lawsuit to enforce their rights," he said.

"We hope the GAO will be able to examine and quantify what these problems are and come out with a report from a neutral body that will facilitate resolution of these problems with the states," said Mr. Myers.

He noted that Rep. Moore's risk retention group bill calls on the Treasury Department to provide a dispute resolution facility. But the bill was drafted before the enact-

**'Most risk retention groups don't have the capability to file a federal lawsuit to enforce their rights.'**

Kevin Doherty,  
Self-Insurance Institute of America Inc.

ment of the Dodd-Frank Wall Street Reform and Consumer Protection Act last month. The bill creates a new Federal Insurance Office within the Treasury Department to provide insurance expertise at the federal level. Part of its job will be to oversee the government's terrorism insurance program.

The FIO could wield resolution authority for RRGs as well, said Mr. Myers.

"Now that there is an FIO, that FIO has jurisdiction over TRIA, which is a federal law which provides limited pre-emption of state law, which is analogous to the LRRRA," said Mr. Myers. "So it makes sense to put that authority in the FIO."

## Anderson: Famed policyholder lawyer dies

CONTINUED FROM PAGE 3

experimental treatment of advanced breast cancer, and to pay to rebuild black churches in the south that had been targeted by arsonists.

"He was a creative genius. He thought 'outside the box' way before that phrase ever was coined," said Bob Horkovich, a partner at Anderson Kill, in an e-mail correspondence announcing Mr. Anderson's passing.

Moreover, "Gene was a unique individual, a true character. His

cowboy boots, the wooden moose head in this office that his brother carved with a chain saw, his kindergarten certificate on his wall instead of his law degree from Harvard...all demonstrated that he could care less about social trappings. He enjoyed defying them," Mr. Horkovich wrote.

"He empowered women lawyers, and he empowered junior lawyers to learn how to stand on their own two feet and to not just practice law but to act like business people and find ways to solve their clients' problems," said Ed Joyce, a former

partner in the coverage group at Anderson Kill who is now a partner in the Insurance Recovery Group in the New York office of Jones Day.

Mr. Anderson also was respected by his adversaries in the courtroom.

"Gene Anderson was both a pioneer and giant in the insurance coverage area. I admired him greatly, and he will be sorely missed by his many friends and colleagues of the bar," said Barry R. Ostrager, a senior partner at Simpson Thacher & Bartlett L.L.P. in New York who heads the firm's litigation department.

## Solvent: Commutation plan gets initial go-ahead

CONTINUED FROM PAGE 4

settle quickly its outstanding liabilities for past and future claims and terminate its business. Solvent U.S. insurers seeking to terminate business have few options, experts say, and typically enter runoff, where they can spend decades trying to wind down business in an orderly fashion.

A commutation plan, however, offers a variety of advantages, its proponents say, including early payment of claims. In addition, the plan offers a mechanism to achieve "claims agreement," relying on an independent adjudicator to ensure claims are valued fairly, according to the plan documents.

Although "on the books" for eight years, no insurer has attempted to use the law until now, largely because of widespread uncertainty, observers said. However, several insurers have redomiciled to Rhode Island in recent years as a preliminary maneuver, observers said.

GTE Re was formed in Bermuda in 1976, as a wholly owned subsidiary of GTE Corp, although after a series of mergers, Verizon Com-

munications Inc. now is its ultimate parent. In addition to GTE exposures, the company reinsured third-party property/casualty risks of U.S. and international insurers, including pools, via quota share, excess of loss and loss portfolio transfer contracts, all of which have been in runoff since 1990. The company redomiciled to Vermont in 1994 and subsequently Rhode Island this year.

The commutation plan has been approved by the Insurance Division of Rhode Island's Department of Business Regulation. Joseph Torti III, deputy director and superintendent of Insurance, said GTE Re is the "ideal candidate" to test the process because it has well-developed reinsurance portfolio, that has been in runoff for a long time. In addition, GTE Re has proposed a "straightforward and transparent plan to honorably discharge all of its reinsurance liabilities," he said.

Given the debate in the U.S. over solvent schemes, the GTE Re plan has the potential to raise concerns. However, legal experts said this particular plan is not likely to be perceived as controversial, because it

involves a reinsurance company and its cedents—rather than a primary insurance company and its policyholders, essentially making it a "different game," they say.

The plan is likely to find support from its creditors, legal experts say, because primary insurers are accustomed to doing commutations. U.S.-based policyholders, however, are very interested in keeping coverage in place, said William Greaney, partner with Covington & Burling L.L.P. in Washington, who is not involved in the current plan. Therefore, any attempt by a primary insurer to use the Rhode Island statute to promulgate a similar plan likely would face widespread opposition from U.S.-based policyholders, they say.

In order to be sanctioned by the court, the plan must have the support of the majority of voting creditors, and those in favor of the plan must represent 75% of the value of its liabilities.

The plan's independent adviser, Andrew Rothseid, of RunOff Resolve L.L.C. said it already has secured support of cedents comprising almost 60% of GTE Re's total reserves, which in 2009 stood at \$58 million.

Mr. Torti said he is "optimistic" the plan will be successful, and hopes it "opens the door" for additional plans to be put forth.

## Brit: Apollo sweetens deal in attempt to purchase Brit Insurance

CONTINUED FROM PAGE 4

its relatively low levels of debt, said Joanna Parsons, equity analyst at RBS Global Banking & Markets in London.

But she questions how much Apollo ultimately would be prepared to pay for Brit, given the insurance supervisors' restrictions on insurers carrying debt and the United Kingdom's relatively high regulatory capital requirements.

"I don't believe that the revised offer at £10.75 is technically the right price for an established insurer like Brit," Ms. Parsons said. "However, in the current market, it is not about what is the right price; it is more a question of whether shareholders prefer cash today from a strong uplift in share price to taking a longer-term view."

Little is known of Apollo's plans for Brit should its takeover of the

insurer be successful, and a spokesperson for the private equity fund's manager, Apollo Global Management L.L.P., in New York said the company was unable to comment on the latest offer.

However, Brit is considered to be relatively well capitalized and the private equity firm may look to release capital by returning capital it considers excess to its shareholders, analysts say.

"It is difficult to say what Apollo may do if it were to acquire Brit, because it has no track record in insurance," Shore Capital Group's Mr. Flanagan said. "Apollo could look at the management of Brit's asset portfolio and debt gearing. The insurer has relatively low debt levels compared with the industry, and there is scope to push up leverage. Brit's reinsurance business is also not as good as it could be, and Apollo could build on that," he said.

**'It is difficult to say what Apollo may do if it were to acquire Brit, because it has no track record in insurance.'**

Eamonn Flanagan,  
Shore Capital Group Inc.

On a related front, Fitch Ratings Ltd. in London said it would review its financial strength rating of "A" for Brit should the due diligence lead Apollo to make a final offer.

An Apollo takeover could affect Brit's strategy, capitalization, return expectations, financial leverage and financial flexibility, said Chris Waterman, London-based analyst

and managing director at Fitch.

The acquisition of an insurance company by a private equity investor brings certain credit implications for an insurer, he said.

"Private equity firms typically have higher return-on-equity demands than publicly traded companies and may therefore look to extract what they consider as unrecognized value. This could result in an insurer taking on more debt and excess capital being returned to shareholders, potentially weakening capitalization."

Private equity firms also tend to have shorter time frames in which to turn a profit, and would look to develop an exit strategy that could emphasize short-term goals over long-term goals, he added.

Brit's business has not been affected by Apollo's approaches, said the spokesman for the insurer.

As for its finances, Brit last week

said its gross written premiums for the first six months of the year fell 13.4% to £851.5 million (\$1.31 billion)—coincidentally matching Apollo's latest offer. Of this, 47% was from reinsurance, 28.3% was U.K. commercial business and 24.7% was from global markets, which include Brit's property, marine, professional, aerospace, and accident and health lines of business.

Brit said its reduced premiums for the first half of this year compared with the first half of last year reflect "proactive management of the underwriting cycle."

The insurer also posted net income of £67.4 million (\$104 million), in the first half of 2010 compared with a net loss of £6.3 million (\$9.7 million) for the first six months of 2009.

The insurer's first-half combined ratio also deteriorated 2.7 percentage points to 96.5%.

## ADA: Businesses still adapting to laws

CONTINUED FROM PAGE 1

### TIMELINE FOR THE AMERICANS WITH DISABILITIES ACT

**JULY 26, 1990:** The Americans with Disabilities Act, which guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications, is signed into law by President George H.W. Bush.

**JUNE 22, 1999:** The U.S. Supreme Court rules in *Vaughn L. Murphy vs. United Parcel Service Inc.* and *Karen L. Sutton & Kimberly Hinton vs. United Air Lines Inc.* that plaintiffs with disabilities that can be mitigated with corrective lenses or medication cannot sue for alleged discrimination under the ADA.

**JAN. 8, 2002:** The Supreme Court rules in *Toyota Motor Manufacturing Kentucky Inc. vs. Ella Williams* that a worker's inability to perform a certain job activity does not necessarily mean the worker is disabled and entitled to ADA protection.

**JAN. 1, 2009:** The ADA Amendments Act of 2008, which expands the definition of disability under the ADA in response to the Supreme Court decisions, goes into effect.

**JUNE 17, 2009:** The U.S. Equal Employment Opportunity Commission votes to revise its regulations to abide by changes made by the ADA Amendments Act. To date, final regulations have not yet been issued.

**JULY 26, 2010:** The U.S. Department of Justice publishes in the Federal Register a notice of proposed rulemaking regarding accessibility requirements for websites, movies, equipment and furniture, and 911 call-taking technologies. The agency says the rules will reflect technology that was unavailable 20 years ago.

Sources: The U.S. Department of Justice, the U.S. Equal Employment Opportunity Commission, Business Insurance

"Some would say this is another administrative headache, to have to comply with the interactive process and the sometimes burdensome means of getting someone to be able to do their jobs with reasonable accommodations," said Brian T. Ashe, a partner with law firm Seyfarth Shaw L.L.P. in San Francisco. But "it has taken an entire segment of society and a significant, and heretofore silent, segment of society and brought them into the mainstream," he said.

Jonathan T. Hyman, a partner with law firm Kohrman Jackson & Krantz P.L.L. in Cleveland, said, "Most employers try to do the right thing by their employees, and I think to the extent that the act has put in a regulatory regime of hoops that employers have to jump through to accommodate employees...it has increased diversity and helped employees with legitimate disabilities do their jobs better."

Daniel Burnick, a shareholder with law firm Sirott & Permutt P.C. in Birmingham, Ala., said, "I don't think that the costs associated with the ADA, as far as accommodations in the workplace, have been, in most instances, out of line."

But complying has not always been easy for employers.

Employers "have had to come to grips with the ADA's purpose, which is not just to remedy discrimination when it takes place but to sort of proactively avoid it," said Franklyn Steinberg III, a principal at the Steinberg Law Offices in Somerville, N.J., who represents employers and employees. In that sense, "it differs...from other kinds of anti-discrimination laws."

Dennis Westlind, a partner with law firm Stoel Rives L.L.P. in Portland, Ore., agreed. Rather than just saying everyone must be treated the same, which is easier for employers "to wrap their minds around conceptually," employers must make

### Employers still await regs for enacting ADA Amendments

It still is too soon to clearly evaluate the effect of the ADA Amendments Act of 2008, the law intended to counteract U.S. Supreme Court decisions that, its supporters say, too narrowly defined disabilities under the Americans with Disabilities Act.

Meanwhile, more than 18 months since its January 2009 enactment, employers still are awaiting regulations to guide them in complying with the law. No timetable has been set for the rules, said a spokeswoman for the U.S. Equal Employment Opportunity Commission.

The number of charges filed with the EEOC under the ADA for fiscal year 2009, which ended Sept. 30, increased 10.3%, to 21,451, compared with the previous year, but the economy may have played a role in that increase.

Under the ADA Amendments Act, the use of mitigating devices such as prosthetics or medicines cannot be considered when determining whether an individual is entitled to ADA protection. The law also expanded

ADA protection to individuals with episodic impairments or conditions that are in remission if the impairment, while in its active state, would substantially limit a major life activity (*BI*, Oct. 2008).

Jonathan T. Hyman, a partner with law firm Kohrman Jackson & Krantz P.L.L. in Cleveland, said the ADA Amendments Act "has taken the focus in ADA litigation away from whether or not the employees are disabled to whether or not, No. 1, employers have taken action against

employees because of that disability and, No. 2, whether employees have been properly accommodated," he said.

Many observers say they have not seen a big increase in litigation, at least so far.

"I don't believe it's led to the tsunami of litigation people were concerned about," said Lawrence Z. Lorber, a partner with law firm Proskauer Rose L.L.P. in Washington.

—By Judy Greenwald



"reasonable accommodations" to comply with ADA.

This can be time consuming and expensive, he said. "Sometimes you have to go out of your way to adapt your facilities, to buy special equipment, to have your (human resources) person perhaps spend a lot of time with an employee who

may be disabled" to determine if an accommodation is appropriate, Mr. Westlind said.

"A lot of time and energy has been spent in attempting to determine what a reasonable accommodation is" and in asking, "How do I implement the ADA?" said Wendy M. Lazerson, a partner with law firm

Bingham McCutchen L.L.P. in East Palo Alto, Calif. "Certainly, employers must be mindful at all times of becoming aware of a disability, and what their obligation is if they become aware, and how to administer their workforce in a way that the disabled are given proper accommodation."

ADA-inspired litigation has been a major issue for employers.

Lawrence Z. Lorber, a partner with law firm Proskauer Rose L.L.P. in Washington, said initially, the No. 1 complaint made under the ADA was for bad backs. "There simply has been unnecessary litigation, which is wasteful and detrimental to the goals of the ADA," he said.

Peter J. Petesch, a shareholder with law firm Littler Mendelson P.C. in Washington, said another downside to the ADA is that by the law's very nature, there has been a "lack of bright-line tests out there" on issues such as what constitutes essential functions of a job, whether an individual is disabled within the meaning of the law, whether the individual is qualified under the law "and how far must the employer go to make reasonable accommodation."

These are all very fact-specific issues, he said. "There's no one-size-fits-all answer and that's caused, I suppose, some frustration. But it doesn't seem like there's any other formula for protecting, and ultimately accommodating, such widely varying needs in widely varying workplaces," said Mr. Petesch.

Complicating the situation is enactment of the ADA Amendments Act.

Kelly-Ann Cartwright, a partner with law firm Holland & Knight L.L.P. in Miami, said the 20-year-old ADA "is a difficult statute to understand for some employers. The statute was written, and case law developed around the statute, and then the statute was recently changed again" with the ADA Amendments Act. "So employers are now having to deal with those changes" and how the courts may interpret them, she said.

## Justice Department considering expanding accessibility requirements

**WASHINGTON**—The U.S. Justice Department's civil rights division is considering adding accessibility requirements for websites, movies, equipment and furniture used by public agencies and in public places, and 911 call-taking technologies under the Americans with Disabilities Act.

The Justice Department, marking last week's 20th anniversary of the ADA, published formal notice of the proposed rulemaking in the Federal Register last week and is seeking public comment for 180 days.

"We are working hard to ensure that the ADA keeps up with technological advances that were unimaginable 20 years ago," U.S. Attorney General Eric Holder said in a statement of the proposed rules.

In its Federal Register submission, the Justice Department said the Internet did not exist when the ADA was enacted, yet today "being unable to access websites puts individuals at a great disadvantage."

In 2008, Minneapolis-based retailer Target Corp. agreed to pay \$6 million to the

National Federation of the Blind, a Baltimore-based advocacy group, to settle charges that the design of Target's retail pages on its website illegally denied access to the visually impaired.

The notice is of concern to "any business that opens itself to the public via a website," said Peter J. Petesch, a shareholder with law firm Littler Mendelson P.C. in Washington.

Stanley P. Jaskiewicz, a member of law firm Spector Gadon & Rosen P.C. in Philadelphia, said, "The fact that the government is considering regulations doesn't change the law," which has been in existence for two decades. Businesses should already be considering making their websites accessible to disabled people, he said.

Jared Smith, associate director of Logan, Utah-based WebAIM, a nonprofit associated with Utah State University that performs Web accessibility training, said websites' complexity will be a factor in determining the cost of modifying existing websites to comply with a new regulation. Starting

from scratch, providing accessibility features adds 10% to 15% to the cost of developing a website, he said.

The Justice Department also is considering requiring movie theaters to accommodate those with hearing or visual impairment to take advantage of technical advances introduced since the early 1990s.

In April, a panel of the 9th U.S. Circuit Court of Appeals overturned a lower court ruling that held the ADA does not require movie theaters to alter the content of their services for the disabled. The case was bought by one plaintiff who had a severe hearing loss and a second who was partially blind.

Comments provided in response to the proposed rules will "provide an indication of whether or not the rules impose a large monetary burden" to theater owners, said Jan K. Buddingh, senior counsel with law firm Gordon & Rees L.L.P. in San Diego.

In addition, the Justice Department also is asking for comments on appropriate steps

to provide the disabled with access to emergency 911 call systems.

It also is considering accessibility requirements with regard to furniture and equipment used by public agencies and in public places, including medical equipment.

On a related front, the Justice Department last week issued two final rules that revise its ADA regulations, including its ADA Standards for Accessible Design.

One regulation concerned design standards that are applicable to public entities. The second applies to public accommodations and commercial facilities. Both adopt standards for accessible design that are consistent with guidelines developed by the U.S. Architectural & Transportation Barriers Compliance Board, a federal agency.

The regulations generally take effect in six months, although compliance is not required for 18 months.

Further information is available at [www.ada.gov](http://www.ada.gov).

—By Judy Greenwald

# Class: Fewer securities suits

CONTINUED FROM PAGE 3

tinues, there will be a total of 202 federal securities class actions filed in 2010," NERA said in a statement. "This would represent a decline from the 221 filings observed in 2009 and the 248 filings in 2008."

Both reports said a drop in credit crisis-related litigation resulted in fewer overall filings.

Cornerstone said, for example, that credit crisis-related litigation accounted for eight filings during the first six months of this year in contrast with 37 during the first half of last year and 16 in the second half of last year.

"The securities fraud litigation wave stimulated by the credit crisis now appears to be history," Professor Joseph Grundfest, director of the Stanford Law School Securities Class Action Clearinghouse, which cooperates with Cornerstone Research to produce the report, said in a statement. "We have an inventory of cases waiting to be dismissed, settled or tried, but to borrow a phrase from the current Gulf oil spill crisis, it seems that this flow has largely been capped."

But the decline in credit crisis-related cases was offset partially by increased filings alleging breach of fiduciary duty in mergers and acquisitions and lawsuits against life sciences and technology companies, NERA said.

NERA also said complaints alleging product and operational defects by financial and nonfinancial companies rose, "such as those relating to the oil spill in the Gulf of Mexico or vehicle recalls issued by Toyota."

While certain lawsuits have increased, there is nothing indicating the decline in overall filings could reverse soon, said John Gould, senior vp at Cornerstone Research.

"I don't see anything on the horizon, but I wouldn't be surprised if there was something," Mr. Gould said.

Meanwhile, the median settlement amount for the first six months of this year was considerably higher than prior years, NERA said.

"At \$11.8 million, the median settlement exceeded 2009's value of \$9 million by almost one-third, crossing the \$10 million mark for the first time," NERA said in the report. Investor losses were a driving force, reaching \$436 million during the first half of 2010, the highest level since 1996.

With fewer lawsuits in the

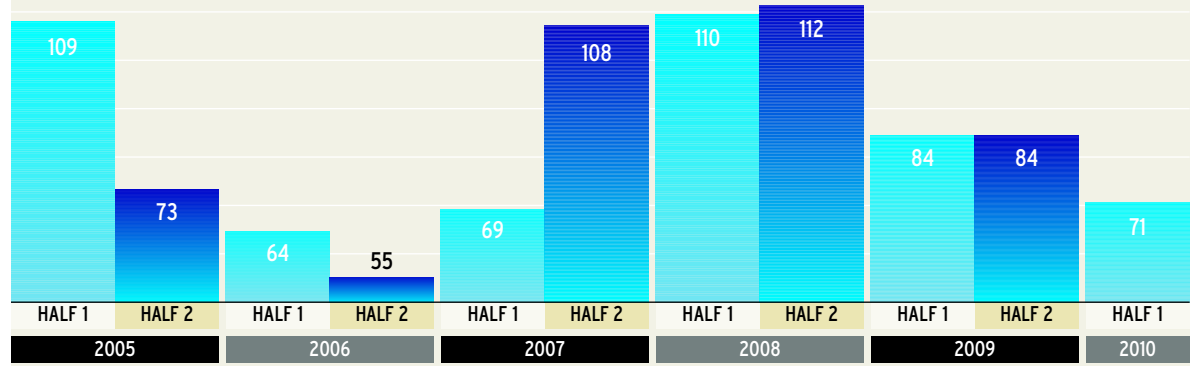
pipeline, plaintiff attorneys may be negotiating more fiercely to win larger settlements from existing cases, Alliant's Ms. Murray said.

The increase in settlement amounts demonstrates the importance of purchasing D&O insurance despite the drop in overall claims volume, said Susan Page White, a partner in the insurance coverage practice at Dickstein Shapiro L.L.P. in Los Angeles.

"Litigation that could involve D&O insurance is still something that is a very high-alert issue for companies," Ms. White said. "This litigation is just not getting cheaper."

## SECURITIES CLASS ACTION LAWSUITS

Semiannual number of class action filings, 2005 through first-half 2010



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse


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## News In Brief

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materials at the World Trade Center site in New York. Supporters failed to get the two-thirds majority needed to pass the bill without controversial amendments to the measure. The bill would have provided \$3.2 billion over 10 years for health care costs for those who became sick after being exposed to toxic materials at the site of the Sept. 11, 2001, terrorist attacks. It also would have provided an additional \$4.2 billion in compensation for victims during the same period.

### Everest Re names CEO, reports lower profit

Everest Re Group Ltd. announced last week that longtime Chairman and CEO Joseph Taranto will retire as CEO at year-end. Ralph E. Jones, president and chief operating officer, will take over as CEO, the company said. Mr. Taranto, who joined the firm in 1994, will remain chairman of the reinsurer. Meanwhile, Everest Re reported net income of \$134 million for the first half of 2010, down 64% from the prior-year period.

### Swiss Re covers Alabama's primary hurricane risks

Swiss Re said last week it has agreed to provide the Alabama State Insurance Fund with a three-year insurance plan for its primary catastrophic hurricane exposure. The insurance fund will receive funds based on hurricanes' wind speed. The reinsurer said this is the first time a U.S. state government has used such a solution to transfer its financial exposure from natural catastrophes to the private sector.

### Emotional volatility justifies fitness-for-duty test: Court

An employer can order a fitness-for-duty exam when a worker's emotional stability is in question, even when job performance has not been affected, a federal appeals court ruled. The plaintiff in last week's ruling by *Oscar J. Brownfield vs. City of Yakima* by the 9th U.S. Circuit of Appeals in San Francisco was a Yakima, Wash., police officer who had "repeatedly exhibited emotionally volatile behavior," according to the decision. He was

terminated from his position in April 2007 after he refused to cooperate in a fitness-for-duty exam. Mr. Brownfield sued the city, alleging that the city violated the Americans with Disabilities Act on the basis that an employer may not require a fitness-for-duty exam to determine whether an employee is disabled unless it is "consistent with business necessity." The court said its consideration of the exam's legitimacy in this case "is heavily colored by the nature of Brownfield's employment."

### New insurance regulators oversee New Mexico, Hawaii

New Mexico and Hawaii have named new insurance regulators, with John G. Franchini taking the post in New Mexico and Gordon Ito moving into the job in Hawaii. Mr. Franchini is a New Mexico native with nearly four decades of insurance industry-related experience. The New Mexico Public Regulation Commission voted 4-1 to approve his appointment as insurance superintendent. In Hawaii, Gov. Linda Lingle named Mr. Ito as commissioner of the Hawaii State Insurance Division.

### Chipotle's policy violates ADA: Court

Actions that two Chipotle Mexican Grill Inc. restaurants took to accommodate disabled customers violated the Americans with Disabilities Act, the 9th U.S. Circuit Court of Appeals has ruled. The federal appeals court, hearing the case of *Maurizio Antoninetti vs. Chipotle Mexican Grill Inc.*, ruled that a written policy failed to provide disabled customers the "Chipotle experience" of watching their food being prepared, court records state. A trial court ruled that the revised policy met ADA requirements, but the appeals court overturned the trial court, saying Chipotle did not provide "equivalent facilitation." The appeals court remanded the case.

### Starr Aviation enters satellite market

Starr Aviation Agency Inc. has entered the satellite insurance market with up to \$35 million in aggregate coverage limits. The managing general agent unit of C.V. Starr & Co. Inc. in New York will write the coverage. The MGA is writing up to \$30 million in launch risk insurance on any one satellite, with the ability to provide up to \$35 million in aggregate coverage on missions involving the launch of two satellites, a spokeswoman for C.V. Starr confirmed.

## MATCHING CONTRIBUTIONS

Employers that suspended matching contributions to employees' 401(k) plans

EMPLOYER	MATCH SUSPENDED	MATCH REINSTATED
Cincinnati Bell Inc.	June 1, 2009	Jan. 1, 2010
Cushman & Wakefield Inc.	Nov. 1, 2009	N/A
FedEx Corp.	Feb. 1, 2009	Jan. 1, 2010
Ford Motor Co.	Nov. 1, 2009	Jan. 1, 2010
Frontier Airlines Inc.	Nov. 1, 2009	Oct. 1, 2010*
GenCorp Inc.	Jan. 15, 2009	July 1, 2010
General Motors Co.	Nov. 1, 2009	Oct. 10, 2009
Intermountain Healthcare Inc.	Nov. 1, 2009	Jan. 1, 2010
McClatchy Co.	March 31, 2009	N/A
Sears Holdings Corp.	Jan. 31, 2009	No
Sprint Nextel Corp.	March 1, 2009	March 1, 2009**
Station Casinos Inc.	Nov. 1, 2009	No
Tenneco Inc.	Jan. 1, 2009	N/A
Unisys Corp.	Jan. 1, 2009	No
United Parcel Service Inc.	Feb. 1, 2009***	No
Weyerhaeuser Co.	May 1, 2009	July 1, 2010
Zep Inc.	Jan. 1, 2009	Jan. 1, 2010

\*Match reinstated by Republic Airways Holdings Inc., which acquired Frontier on Oct. 1, 2009

\*\*Restored with company contribution tied to corporate profits

\*\*\*Match suspended for salaried employees only

N/A = not available

## 401(k): Employers slowly restore contribution matches

CONTINUED FROM PAGE 1

have restored the reductions since then (see chart).

Although roughly the same number of employers suspended or reduced their 401(k) plan matches during another weak economic period from 2000-2001, benefit consultants say the rate of match restoration is a bit slower this time around.

As employers move to reinstate those contributions, some are altering the way they calculate them and, in some cases, linking them to company profitability, the consultants say.

Since the financial crisis came to a head in September 2008, between 8% and 18% of employers either reduced or suspended their match of 401(k) plan contributions, according to various surveys by benefit consultants.

For example, while Boston-based Fidelity Investments' March survey of 293 plan sponsors pegged the suspension rate at 7.9%, Towers Watson & Co.'s April survey of 334 plan sponsors put the suspension rate closer to 13% and 5% reduced the match.

**'Companies don't like to make commitments to their employees and withdraw them. It's not good for the morale of the workforce.'**

David Wray,  
Profit Sharing/401k Council of America

The restoration rate is a bit slower than the economic downturn at the beginning of the decade, said Beth McHugh, vp of market insights at Fidelity Investments in Boston. More than 50% of the 8% of plan sponsors that either reduced or suspended their matches in 2000 or 2001 reinstated them by the middle of 2002; that compares with just 44% as of March, she said.

Although Hewitt Associates Inc. said in a February survey that 80% of employers that suspended or reduced their company match last

year were planning to restore it this year, only about one-third have done so, said Byron Beebe, Hewitt's Cleveland-based U.S. retirement market leader.

"We did expect that a large number would put the match back in 2010," Mr. Beebe said. Companies that restored the match usually accompanied other good company news, such as improved earnings, he said.

David Wray, president of the Profit Sharing/401k Council of America in Chicago, attributed employers' hesitation in part to déjà vu in that it wasn't that long ago that they were implementing similar suspensions and cuts because of an ailing economy.

"It's the lack of confidence in the future. Companies don't like to make commitments to their employees and withdraw them. It's not good for the morale of the workforce," Mr. Wray said.

Particularly in industries recovering more slowly from the recession and credit crisis, those employers have been reluctant to reinstate their 401(k) matching contributions, said Jack Abraham, principal and head of the benefit practice at PricewaterhouseCoopers L.L.P. in Chicago.

"There are certain industries this time that are not recovering—for example, the construction materials industry," Mr. Abraham said. "With prices depressed, they haven't been able to reinstate those types of benefits because they're still losing money," he said.

To ensure they don't make promises they may not be able to keep, some employers are making 401(k) contributions contingent on company profitability, benefit consultants say.

"We are seeing some be discretionary about their match so they won't put themselves in the position to make deadlines when they have to go through this again," said Bill McClain, a principal at Mercer L.L.C. in Seattle.

Rather than matching employees' regular payroll contributions, "they are contributing a percentage of pay at year-end depending on how well the company performs," said Leslie Smith, senior vp in the retirement practice at Aon Consulting in Somerset, N.J.

Overland Park, Kan.-based Sprint Nextel Corp., for example, which had matched employee 401(k) plan contributions up to 5% of salary, revamped its plan in March 2009 to match contributions only up to 4% of salary provided the company exceeds its operating income target by at least 10%, a company spokesman said.

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## Firm 'Rainns' on pancake parade

Rainn Wilson, the actor who portrays contentious, power-hungry toady Dwight Schrute on television's "The Office," is embroiled in a conflict of his own.

Mr. Wilson is part owner of a company that operates a website, *www.SoulPancake.com*, which describes itself as a "place to speak your mind, unload your questions, and figure out what it means to be human."

Mr. Wilson and SoulPancake L.L.C. are being sued by Portland, Ore.-based Web design firm Think Brilliant Media Studios L.L.C., which was hired to design the *www.SoulPancake.com* website. The suit alleges that the defendants broke a promise to grant an ownership stake in SoulPancake and hacked into its system, among other allegations.

The suit seeks up to \$11.3 million, including \$4.2 million in punitive damages.

Mr. Wilson countersued late last month, denying the hacking charge and accusing Think Brilliant of "brazen fraud and breach of trust" for allegedly working on another project when it was supposed to have been working exclusively on SoulPancake.

In denying the hacking assertion, Mr. Wilson said the login that Think Brilliant provided gave complete access to Web development tools and that's how the work on the other project was discovered. His suit seeks at least \$400,000 in damages.

Perhaps Mr. Wilson should step into character as Dwight and see how he would handle the problem.

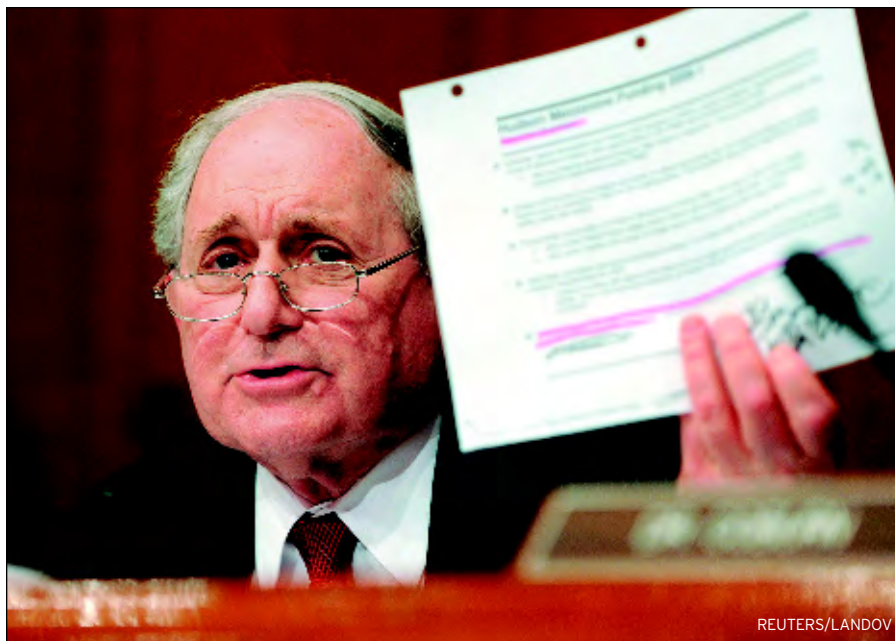


Only seven people in the world know the secret recipe for Thomas' English Muffins.



# Business Insurance END PAGE

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



Sen. Carl Levin, D-Mich., hold up paperwork while questioning the executive director of a Goldman Sachs unit in April.

## No more s--- deals

Here's another casualty of the financial crisis: f-bombs and other colorful language in e-mails from employees at Goldman Sachs Group Inc.

The New York-based investment bank has advised its employees that it is closely watching and filtering electronic messages that contain expletives of any sort of four-, six- or eight-letter combinations. The move comes after recent congressional hearings, during which several e-mails from the firm were showcased to illustrate its dealings prior to the financial crisis, according to a report by the Wall Street Journal.

During the hearing, an e-mail by Thomas Montag, who helped lead firm's securities business, was featured in which Mr. Montag wrote in June 2007, "(B)oy, that timberwo(l)f was one s--- deal."

Since then, the communications policy at Goldman has been overhauled and is being enforced by screening software that will eliminate cuss words—even ones spelled with asterisks, the Journal reported.

Goldman said it is using screening tools to

detect common swear words and acronyms such as "WTF," the Journal reported.

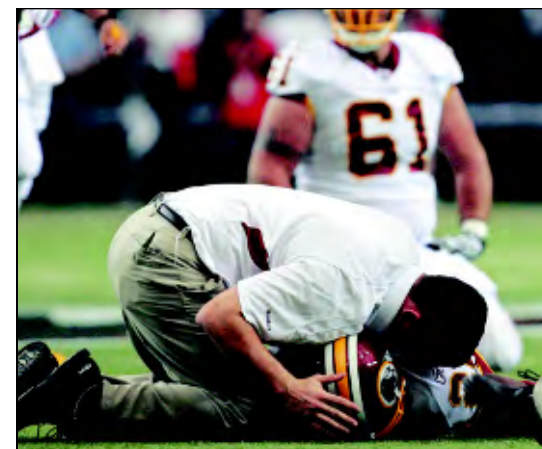
Seriously? "Shut the front door!"

"Of course we have policies about the use of appropriate language and we are always looking for ways to ensure that they are enforced," a spokeswoman for Goldman told the Journal.

The firm's employee e-mails have come under scrutiny since the investigation by the Securities and Exchange Commission alleged that it had been cheating clients by selling mortgage securities designed by a hedge-fund firm scheming to cash in on the housing market's collapse.

In July, Goldman agreed to pay \$550 million to settle the civil charges without admitting or denying the allegations.

Goldman's no-swearing policy covers instant messages and texts from company-issued cell phones and e-mails, the Journal reported, adding that naughty language-filled tirades would be sent directly to the principal's office, aka compliance department.



AP PHOTO

Washington Redskins running back Clinton Portis lies on the field after suffering a concussion during a game in 2009.

## Use your head to protect your head: NFL

It's a matter of using your head wisely.

The National Football League wants to reduce the incidence of traumatic head injuries to its players, such as concussions. Late last month, the league sent results of tests of 16 football helmet models to its member teams.

According to the Washington Post, NFL President Roger Goodell said in a memo that the league and the NFL Players Assn.—the players' union that backed the study—"believe that the information contained in the summary should be shared with your players."

According to the league, the helmets underwent a variety of impact tests, and the results were compared with similar tests on helmets used in the 1990s. The league and union said "no contemporary helmet performed worse" than the older helmets and three newer helmet models qualified as "top performing," according to the newspaper.

The NFL doesn't dictate which helmets players should wear, other than requiring that they meet requirements set by the National Operating Committee on Standards for Athletic Equipment.

"We're not telling players to wear any particular helmet," Jeff Pash, the league's executive vp of labor, told the Post. "Based on this study, you can't do that. This was a first step. There's more work to do."

That's good news for players and fans alike. Improved helmet performance can only make players' on-field performance better—and safer.

## Trouble baking over trade secrets

What do English muffins and Twinkies have in common?

Aside from dough of the flour variety, both involve dough of the dollar variety and the right of one of the seven people in the world who know the secret recipe for Thomas' English Muffins to seek employment with a rival baking giant.

According to a decision issued last week by a three-judge panel of the 3rd U.S. Circuit Court of Appeals in Philadelphia, Chris Botticella—a vp with Bimbo Bakeries USA Inc.—agreed to accept a job with Hostess Brands Inc. on Oct. 15, 2009, but didn't leave Bimbo until three months later. During that time, he continued to have access to Bimbo's trade secrets.

Bimbo sued to block Mr. Botticella from joining Hostess. It argued that even though Hostess—probably

best known for Twinkies—doesn't bake English muffins, it could learn that from Mr. Botticella. Bimbo also said a confidentiality agreement bound Mr. Botticella.

A federal judge in Philadelphia agreed and temporarily blocked the job switch by Mr. Botticella, who appealed before the case even went to trial.

The appeals court last week also sided with Bimbo, sending the case back to the federal judge to decide whether Mr. Botticella should be allowed to join Hostess.

Mr. Botticella said he took a 20% pay cut to join Hostess, and decided not to inform Bimbo of his decision to leave until after he received his annual bonus. Perhaps that was a lot of dough—the decision doesn't say—but Mr. Botticella may be out of considerably more dough if the courts ultimately rule against him.

AP PHOTO



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