

**E&O POLLUTION EXCLUSION VALID REGARDLESS OF SPILL'S CAUSE, APPEALS COURT RULES / PAGE 3**

**SUNSHINE STATE SEES FLOODING AFTER TROPICAL STORM FAY LINGERS FOR DAYS / PAGE 3**

**SOFT MARKET, CREDIT WOES HIT SECOND-QUARTER RESULTS FOR P/C INSURERS / PAGE 3**

## In Brief

### Flagstone plans Swiss platform

Flagstone Reinsurance Ltd. plans to restructure its global reinsurance operations by merging its Flagstone Reinsurance Ltd. of Bermuda and Flagstone Reassurance Suisse S.A. units. The two wholly owned subsidiaries will be merged into one operating platform, Flagstone Reassurance Suisse S.A., which will be based in Switzerland. Flagstone Reinsurance Holdings will remain in Bermuda, and there will be no management changes, the company said.

### MMC names finance chief

Marsh & McLennan Cos. Inc. last week named its third chief financial officer in as many years with the hiring of Vanessa A.

See **IN BRIEF** page 22

# Aon to buy Benfield in \$1.75B deal

*Acquisition solidifies broker's position as world's largest reinsurance intermediary*

By **SALLY ROBERTS**

**LONDON**—Ceding insurers will see some significant benefits from the combination of Aon Re Global and Benfield Group Ltd., but they will have fewer options when looking for a large reinsurance broker with extensive capabilities, observers say.

Chicago-based Aon Corp. said last Friday that it will pay \$1.75 billion in cash to acquire its London-based rival, which combined with Aon Re will become known as Aon Benfield Re.

Aon Re is the world's largest reinsurance brokerage, with \$958 million in reinsurance revenues in 2007, while Benfield is the third largest, with £339.2 million (\$673 million).



Aon's Greg Case (left) will be joined on Aon's executive committee by Benfield's Grahame Chilton.

For Aon Re, Benfield further strengthens its dominant position in the reinsurance market

and specifically adds to Aon's analytic capabilities and boosts its position in the Florida catastrophe market as well as developing markets, such as Asia.

While Benfield has gained a reputation over the years for innovation, proprietary technology and analytics capabilities, it has recently been plagued by the soft reinsurance market, the weak dollar and ceding clients assuming more risk, which have stymied growth.

Greg Case, president and chief executive officer of Aon Corp., described the deal as "very complementary" with little overlap and one that will result in greater opportunities in helping clients

See **BENFIELD** page 22

## Rulings erase doubts on cash balance plans

*9th circuit concurs plans don't breach bias law*

By **JERRY GEISEL**

**SAN FRANCISCO**—A fifth appeals court ruling that cash balance pension plans do not violate age discrimination law almost certainly ends years of uncertainty and costly litigation that threatened their future, legal experts say.

In a unanimous decision last week, the 9th U.S. Circuit Court of Appeals joined four other appeals courts in ruling that the plans do not discriminate against older employees.

While the wording in the decisions has varied a bit, all five courts rejected arguments by plaintiffs attorneys that the plans are age discriminatory because the benefit earned by younger employees are worth more—expressed as retirement annuity—than the same benefit earned by older retirees.

In the latest ruling, 9th Circuit Court Judge N. Randy Smith wrote

that the reason a younger employee's benefit is worth more is the result of time, not discrimination.

"Although a younger worker's total accrued benefit at retirement age will be greater under the cash balance formula than an older worker's if both started at the same time, the difference is due to the time value of money rather than age discrimination," Judge Smith wrote in the case involving a cash balance plan sponsored by Southern California Gas Co., a subsidiary of Sempra Energy in San Diego.

Concurring with the precedent-setting decision handed down in 2006 by the 7th U.S. Circuit Court of Appeals in Chicago, Judge Smith said nothing in federal age discrimination law suggests that lawmakers were opposed to younger workers having more time left before retirement and thus a greater opportunity

See **CASH BALANCE** page 19

## Flood cover aid may raise costs

*Public entities hit as FEMA changes policy*

By **DAVE LENCKUS**

**BATON ROUGE, La.**—Louisiana insurance regulators' efforts to help public entities avoid significant cuts in disaster financial aid under a federal agency's retooled assistance plan could significantly and needlessly drive up some public entities' insurance costs, according to risk managers and insurance experts.

Meanwhile, the Louisiana Insurance Department is scaling back the breadth of its program under pressure from the Federal Emergency Management Agency, which has final authority over approving the program.

Louisiana regulators say the revisions are necessary to allow FEMA to meet its statutory charge of providing financial grants only to adequately insured public entities after a catastrophe that the president declares a national disaster.

But critics complain that the changes will jeopardize public entities' ability to obtain future FEMA assistance if they recovered federal aid after previous disasters.

There also is some uncertainty

about whether the state program, as Louisiana regulators hope, would even guarantee FEMA assistance for public entities that received past FEMA assistance (see story, page 21).

"It becomes clearer and clearer to me that miscommunication, or a lack of understanding on these issues, is rampant," said Ron Hayes, a board director for the Alexandria, Va.-based Public Risk Management Assn. and its incoming president.

"This thing is just an example of not a whole lot of people who have a good grasp on this," said Mr. Hayes, who also is risk manager for the Calcasieu Parish School Board in Lake Charles, La.

FEMA distributes financial grants to public entities as provided by the Robert T. Stafford Disaster Relief and Emergency Response Act. The assistance is meant to

cover the uninsured portion of damage caused by catastrophes, such as floods, hurricanes and earthquakes.

See **FEMA** page 21

### INSIDE:

**REGULATION:** Critics say FEMA's position on aid to public entities not supported by law.

**PROBE:** U.S. Senator vows to investigate agency's approach to disaster relief.

**CONFUSION:** Federal officials send mixed messages on program for disaster assistance.

See stories page 21

## Directory RANKINGS

### LARGEST POLICYHOLDER-OWNED ALTERNATIVE RISK FACILITIES

Policyholder-owned alternative risk financing facilities provide coverage for the risks of single organizations or groups. Members of the facilities may have similar or different risk profiles. **Page 12**

### LARGEST RENT-A-CAPTIVE FACILITIES

Rent-a-captive facilities provide access to risk financing through a captive vehicles that insure their owners' risks. Rent-a-captives provide the infrastructure but not capital to self-insure. **Page 14**

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# Appeals court rules for insurer in pollution case

## Coverage excluded from E&O policy for engineering firm

By SALLY ROBERTS

**ATLANTA**—A pollution exclusion in a professional liability insurance policy applies even if the policyholder does not cause the pollution, the 11th U.S. Circuit Court of Appeals ruled last week.

In reversing a decision from the U.S. District Court for the Middle District of Florida, the Atlanta-based appeals court said James River Insurance Co. does not have to provide a legal defense to Ground Down Engineering Inc. A client accused Ground Down of failing to discover construction debris, including 55-gallon drums, and fuel tanks during

an environmental site assessment.

After purchasing the site and upon development, Priority Development L.P. found that the drums and underground storage tank previously contained petroleum and the construction debris elevated the level of methane gas on the property, which required remediation.



Priority sued Ground Down and its engineer, Laurel A. Hall, for breach of contract, negligent misrepresentation and negligence for failing to properly complete its site assessment.

It is seeking damages for lost profits, lost property value and costs for

environmental remediation.

Ground Down submitted the claim to James River Insurance, a Richmond, Va.-based excess and surplus lines insurer, which initially provided a defense but also sought a declaratory judgment that it was not required to provide coverage due to the pollution exclusion in Ground Down's professional liability policy.

The district court dismissed James River's complaint, ruling that Priority Development's claims against Ground Down arose out of the failure of Ground Down to carry out professional responsibilities and not out of pollution. Because Ground Down had not caused the pollution, the exclusion should not apply, the lower court reasoned.

The 11th Circuit disagreed. "These claims for damages arise directly out of the alleged discov-

ered pollution and are covered explicitly by the exclusion," the court said in its opinion. "Although the alleged conduct was negligence in performing the site assessment, Priority's claim depends upon the existence of the environmental contamination."

"It would be a strange interpretation of the policy to say that although 'negligent hiring, placement, training, supervision, retention, or wrongful act' are covered by the exclusion, negligent performance of a site assessment is not," the court said.

Neither James River Insurance nor Ground Down was immediately available for comment.

*James River Insurance Co. vs. Ground Down Engineering Inc., 11th U.S. Circuit Court of Appeals, Aug. 20, 2008, No. 07-13207.*

# Soft market takes toll on P/C insurer results

## Credit woes, lower reserves add to pressure

By JUDY GREENWALD

Soft pricing, lower investment income and higher catastrophe losses are pressuring the earnings of major U.S. commercial property/casualty insurers.

Observers disagree about how long the soft market is likely to last, with some predicting it could be several years before the cycle turns.

Meanwhile, observers warn that the reserve redundancies that have been boosting commercial property/casualty insurers' results are running out (see story, page 20).

Observers also see indications of increased merger and acquisition activity, spurred in part by the weak U.S. dollar (see story, page 20).

Thirteen major commercial P/C insurers surveyed by *Business Insurance* posted a \$7.09 billion loss for the first half of this year vs. a profit of \$17.67 billion for the same period a year ago (see chart, page 20).

Subtracting American International Group Inc.'s \$13.16 billion first-half loss, the insurers reported a 34.5% decrease in net income, to \$6.07 billion.

"From an earnings perspective, at least, the public companies were pretty good," said Paul Newsome, an analyst with Sandler O'Neill & Partners L.P. in Chicago.

"There was a fair amount of reserve releases, which offset heavy catastrophe losses, and the result was that most companies had pret-

ty solid earnings," although their "investment results were not so good. Most companies were lucky to have flat book value, so they weren't immune to the problems of the financial markets," he said.

The soft market remains a dominant factor. John Iten, a director at Standard & Poor's Corp. in New York, said the rating agency changed the sector's outlook to negative from stable earlier this month, with price declines a primary reason for the move.

"It looked like there was really no letup in the second quarter vs. the first quarter, and certainly the first half of the accident year has been worse than what we saw in 2007," with "nothing on the horizon that's going to turn that around over the next few quarters," Mr. Iten said.

Observers say the outlook is for continued soft pricing, barring a major catastrophe.

"The combination of declining prices and continued, albeit moderate but increasing, trends in loss costs means underwriting margins will remain pressured for at least 18 to 24 months," said John D. Gwynn, managing director at Memphis, Tenn.-based investment firm Morgan Keegan & Co. Inc.

Others see the soft P/C market lasting longer.

"We're still years away" from a hardening market, said Cliff Gal-

### KEY FIGURES

- P/C insurers reported a modest 1.5% increase in net premiums written, to \$75.90 billion.
- The insurers reported a first-half 94.2% combined ratio vs. 89.9% for the year-earlier period.
- Policyholder surplus, for the 11 companies reporting that data, increased 0.4%, to \$94.42 billion.

Source: BI survey



ZUMA

**Tropical Storm Fay made landfall in Florida three times in five days last week. Sustained winds reached only 60 mph, however, the storm dumped more than 30 inches of rain in some areas of the state.**

# Flood losses expected as Fay sits over Florida

## Wind damage limited but storm pours rain over Sunshine State

By JEFF CASALE

**MELBOURNE, Fla.**—Tropical Storm Fay plodded across Florida late last week, making its third landfall in the Sunshine State in five days, accompanied by heavy rain and 45 mph winds.

Catastrophe modelers did not have estimates of insured losses as of Friday and most agreed that the storm would not reach hurricane status as it continued its cycle. A majority of Fay's wrath was felt by residential areas, said Steve Smith, president of property solutions with ReAdvisory, a unit of Carvill America Inc.

The biggest impact Fay had late in the week was heavy rain that led to severe flooding, such as 32.7 inches of precipitation falling in Melbourne, Fla., according to the National Weather Service. The aver-

age August rainfall for Melbourne is 6.1 inches and its annual average is 49.4 inches, according to the NWS.

"Fay has gone over mainly residential areas and it could take quite some time before we know what the commercial losses will be," said Mr. Smith, who is based in Chicago. "Flood is one of those perils that is usually covered commercially, but it's difficult to tell what the losses will be. If this storm was sitting over Miami, we would have a different story."

Fay made its first landfall in southwest Florida near Naples on Aug. 19, bringing maximum sustained winds of 60 mph. Fay then meandered toward the East Coast and has since stalled and then slowly headed toward the Florida Panhandle.

The Florida Department of Insurance said most claims reported so far involved homes and cars, with central Florida hit the hardest. All-state Floridian said it was seeing mostly wind and structure damage, interior water damage to property and auto claims.

# U.S. workplace fatalities fall to lowest level in 15 years

Defying the overall trend, homicides increase to 610

By COLLEEN MCCARTHY

The number of workplace fatalities in the United States fell in 2007, but the number of workplace homicides increased, according to the Bureau of Labor Statistics.

Some 5,488 people, or 3.7 out of every 100,000 workers, died from injuries on the job last year, according to the Washington-based bureau's National Census of Fatal Occupational Injuries in 2007, which was released last week. The figure represents the lowest number of worker deaths since the department began keeping track in 1992, and a 6% decrease from 2006.

"This is continued evidence that the initiatives and programs to protect workers' safety and health, designed by and implemented in this administration, are indeed working," Labor

Secretary Elaine Chao said in a release.

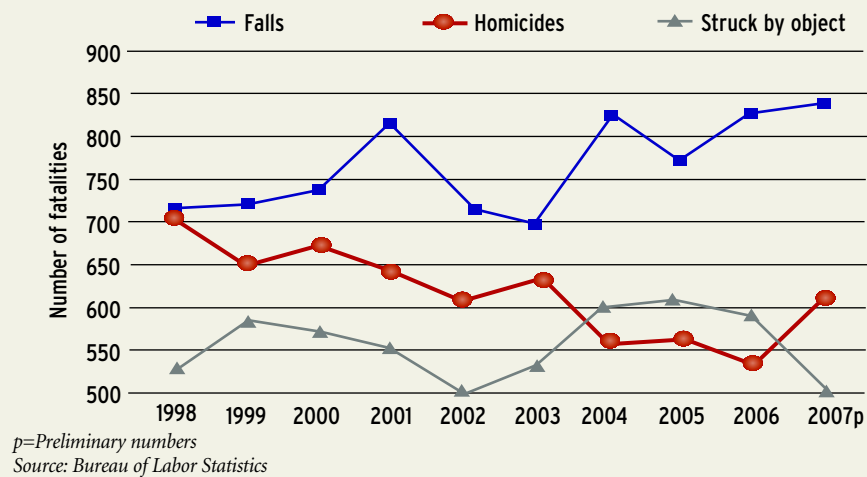
Still the government found significant increases in some types of fatal injuries: workplace homicides increased 13% from 2006, and a record 835 workers died from falls during 2007.

Fishing was the most dangerous occupation for the third year in a row, with a rate of 111.8 fatalities per 100,000 workers. Other dangerous jobs included logging, aircraft pilots, flight engineers, and structural iron and steel workers.

Construction continued to have the most deaths of any private-sector industry, with 1,178 fatalities reported in 2007, down from 1,239 in 2006.

The numbers are preliminary, with a final report due in April 2009. The BLS report on workplace deaths can be accessed at <http://www.bls.gov/news.release/pdf/cfoi.pdf>.

## WORKPLACE HOMICIDES INCREASE



## New captive regulator focuses on resources

Vermont has challenges as No. 1 U.S. domicile

By JERRY GEISEL

**BURLINGTON, Vt.**—The appointment earlier this year of Vermont's first new top captive regulator since 1990 won't change the domicile's regulatory attitude toward captives, the new regulator says.

In June, David Provost, at the time assistant chief examiner at the Vermont Captive Insurance Division, succeeded Leonard Crouse as deputy commissioner and head of the captive division.

During his 18-year tenure, Mr. Crouse, who retired on June 1, was widely regarded in the Vermont captive community as having a tough but fair and flexible attitude.

Mr. Provost, who has worked in the state's captive insurance division since 2001, says his approach to captive regulation is similar to his predecessor's. "We share pretty much the same philosophy," he said.

A parent setting up a captive, he said, must have a good business plan. "The captive has to be well-thought out and well-capitalized. That is the kind of business we are looking for," he said in an interview prior to the start of the 23rd annual Vermont Captive Insurance Assn. conference in Burlington.

Mr. Provost's appointment as Vermont's top captive regulator comes at a time when Vermont is facing increased competition from

other domestic domiciles. More than two dozen states now have captive laws and some—such as Arizona, Nevada and Utah—have been growing at a faster clip than Vermont, albeit from a smaller base.

One attraction of some of the newer domiciles, such as Arizona and Utah, is that, unlike Vermont, they do not impose premium taxes on business run through captives that they license, giving those domiciles a slight cost advantage.

Mr. Provost acknowledges that cost difference, but said that the more than \$20 million in revenue generated by Vermont captive premium taxes allows the domicile to maintain a well-staffed regulatory department. Captive sponsors value those regulatory resources, he said.

"Our taxes are not the lowest, but they pay for resources,"

Mr. Provost said. With 29 full-time staffers, Vermont's Captive Division dwarfs captive departments in other domestic domiciles.

That size means, for example, that a change in a captive's business plan can be reviewed and approved within an hour, he said.

Regulation aside, the state's ranking as the nation's largest captive domicile by far generates value for captive sponsors in itself, Mr. Provost said.

"If you want to be a place with a



David Provost, Vermont's new captive regulator, says he has 'pretty much the same philosophy' as his predecessor, Leonard Crouse, who has retired.

VCIA

See VERMONT page 6

## Winning hearts and minds at Cisco

WebNeuro tool backs effort to trim health spending, boost productivity

By ROBERTO CENICEROS

**DENVER**—Cisco Systems Inc. is testing an outreach program that includes a Web-based assessment to help employees suffering from stress, anxiety, depression and related problems that reduce productivity.

The program relies on WebNeuro, a Web-based tool that helps outreach workers and the employee's doctor provide appropriate treatment, speakers told the Disability Management Employer Coalition's 2008 conference.

WebNeuro replaces the common approach of assessing and treating depression, said Roy Sugarman, director of behavioral solutions in Sydney, Australia, for Brain Resource Ltd., which owns WebNeuro.

Typically, doctors treating depression ask a limited number of questions and then prescribe an antidepressant, Mr. Sugarman said at the Aug. 10-13 gathering in Denver.

However, by using a 30- to 40-minute WebNeuro screening, which measures general cognition and social cognition, brain function markers for behavioral health issues such as depression and anxiety can be determined and shared with the employee's doctor, Mr. Sugarman said.

It helps determine which prescriptions or psychotherapies will best treat specific problems. It can

also help establish when a patient does not need medication but would benefit from other assistance, such as wellness coaching, to make them more resilient to stress and anxiety, the speakers said.

WebNeuro, drawing on a database of brain function tests, is also used to measure how a patient is progressing and whether treatments are helping them.

Cisco's WebNeuro test follows from health risk assessments that the San Jose, Calif.-based network technology company began in 2005, when it sought to address rising medical costs by helping employees engage in their health care, said Lisa Jing, human resources manager for integrated health at Cisco.

See DMEC page 10

**MORE DMEC:** Be a lifesaver, speakers say at the Disability Management Employer Coalition annual conference. PAGE 11

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Enterprise risk management has been widely discussed as a critical tool for businesses and is becoming increasingly important to regulators and rating agencies, but organizations still face hurdles in implementing ERM programs.

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The panel of ERM experts includes:

- Laura L. Brooks, vp of risk management and chief risk officer for utility Public Service Enterprise Group.



- Steven Dreyer, U.S. practice leader for utilities and infrastructure at Standard & Poor's Corp.

- John J. Hampton, KPMG Professor of Business; Dean, School of Professional & Continuing Studies & Graduate Business Programs at St. Peter's College.

*Business Insurance* Editor Regis Coccia will moderate the interactive

panel discussion.

Topics to be addressed include best practices in enterprise risk management, where to seek support for ERM, who should champion the ERM process and much more.

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# Issue of RRGs' authority unsettled

Unlike Calif., many states see risk retention groups as boost to economy

By JERRY GEISEL

**BURLINGTON, Vt.**—While the litigation between a small Montana-domiciled risk retention group providing medical stop-loss insurance coverage to California auto dealers and California regulators has ended, the controversy is likely to continue, a captive consultant says.

Earlier this month, the Auto Dealers Risk Retention Group said it would terminate a legal battle with the California Insurance Department, which tried to stop the RRG from operating in the state and said that the coverage the RRG was providing was not permitted under either California law or the federal Liability Risk Retention Act.

The RRG, with support from RRG trade groups, challenged that argument—saying that California, as a nonchartering state, lacked the authority to decide what the RRG could and could not write. It later dropped the case, though, and agreed to stop writing the coverage, saying it could not afford the legal fees necessary to continue the fight.

Because the case ended before the litigation concluded, no legal precedents were set, said Karin Landry, a managing partner at Spring Consulting Group L.L.C. in Boston.

But the issue of whether RRGs can cover medical stop-loss exposures is likely to come up again, giv-

en the interest of employers in finding new ways to fund liabilities, Ms. Landry said.

"This is something that down the line will have to be addressed," Ms. Landry said at a session at the 23rd annual Vermont Captive Insurance Assn. conference held earlier this

**'The future is uncertain. (Legislation calling for a GAO investigation and allowing RRGs to underwrite property coverage) has a ways to go.'**

Karin Landry, Spring Consulting Group

month in Burlington, Vt.

Already, Ms. Landry noted, there is congressional interest in whether nonchartering states exceeded their authority and are improperly interfering with risk retention groups that want to operate within their borders.

Legislation passed by a House committee in July would require the Government Accountability Office to conduct a study to determine if nonchartering states have unlawfully tried to interfere with risk retention groups, such as through unilateral cease-and-

desist orders.

The legislation, which also would expand the Risk Retention Act to allow RRGs to write property coverage, would require the GAO to determine how much the groups are spending as a result of improper state actions.

Passage of the legislation, though, is far from a done deal, Ms. Landry warned. "The future is uncertain. It has a ways to go before" enactment, she said, noting that the National Assn. of Insurance Commissioners opposes the bill, while many observers believe that the Senate will not have time this year to take up the measure.

Still, Ms. Landry said, RRGs are a good vehicle to take on corporate liabilities, noting that the groups can write business in any state, eliminating the need and expense required to retain a commercial insurance company as a fronting carrier.

State opposition to RRGs is by no means universal, with some states viewing RRGs as arrangements that are good for their economy, she said.

California, though, is another issue; it is No. 1 on the list of states that do not like RRGs, said Kathryn Boucher, director of captive management at Premier Insurance Management Services in South Burlington, Vt., who also spoke at the session.

## Vermont: New regulator, same philosophy

CONTINUED FROM PAGE 4

really vibrant captive insurance community, Vermont is the place to be," he said.

In addition, state legislators, regulators and the executive branch have worked together to keep Vermont's captive law up to date.

"We don't rest on our laurels. We know you have a choice. Your busi-

ness is important to us and we will work to maintain that coveted status—the gold standard," said Vermont Gov. Jim Douglas in his keynote address at the VCIA conference.

That special interest perhaps isn't surprising, given the importance of captives to the economy of one of the nation's smallest states; Vermont's population is only 620,000.

Aside from revenue generated by premium taxes, the captive industry has boosted the state's economy in other ways. A study by the Vermont Department of Economic and Development found that in 2003 the captive industry supported about 1,400 jobs, a figure that likely is higher today given the increase in the number of captives since the study was conducted.

"Fourteen hundred jobs...that is a big deal here," Mr. Provost said.

Still, like other domiciles, Vermont, perhaps because of the slowing economy, has seen captive formation ease a bit. So far this year, nine captives have been licensed, with state regulators expecting to license roughly two dozen by year-end, well under 2007 when 32 captives were licensed.

The decline in formations, though, does not unduly worry state regulators. "It is not all about numbers. It is about licensing good-quality captives," said Peter Raymond, director of captive insurance.

In the year ahead, VCIA officials say they want to work more closely on issues of mutual interest with other captive organizations, such as the National Risk Retention Assn.

"We want to do more with" other groups, said Michael Bemi, the VCIA's incoming board chair and president and chief executive officer of the National Catholic Risk Retention Group Inc., a Vermont-domiciled RRG.

## Commentary

# Avoid strikeout when the twister sirens sound

I've been reading a lot lately about how 2008 is shaping up as a pretty extraordinary year on the tornado front. Most recently, it was in August's monthly property/casualty report from investment bank Keefe, Bruyette & Woods Inc. that devoted several pages to the topic.

The report noted that the National Oceanic and Atmospheric Administration estimates that there were 1,016 tornadoes in the United States in the first six months of this year, nearly double the average number for the first six months of any year in the past decade and—amazingly, I think—nearly the total number of either of the previous two years, 1,093 for all of 2007 and 1,106 for 2006.

For the insurance industry—and those with exposures in tornado-prone areas—this is obviously a noteworthy development. KBW points out that tornadoes and related weather events have caused nearly 60% of U.S. catastrophe losses since 1953. And tornadoes and associated weather were responsible for 80% of the \$9 billion in insured catastrophe losses in the United States in the first half of this year, according to the investment bank's report.

As a lifelong Midwesterner, I'm pretty well-acquainted with twisters. While I've had a few close encounters, I've been lucky enough that none has ever directly affected my immediate family or our home.

The KBW piece noted that with an average of about 1,000 tornadoes a year, the United States experiences more tornadoes than anywhere else on earth. So, in much of the country—particularly the 15 or so states known as Tornado Alley—tornadoes are largely a spring and summer fact of life.

Still, it does seem something strange is happening.

While my lifetime in the Midwest has made me familiar with tornadoes, I've spent the past quarter century or so living on Chicago's North Side, an area which, for whatever reason, is generally tornado-free.

As far as I can tell, though there are lots of theories, no one knows for sure why that's so. But in the time I've lived near Chicago's lakefront, while we've had some serious storms, we've never experienced a tornado.

So, when a tornado warning that interrupted our viewing of a Cubs game earlier this month also included our Lakeview neighborhood, it came as a bit of a shock.

(We'd actually planned to be



**RODD ZOLKOS**

Senior Editor Rodd Zolkos can be reached at: rzolkos@businessinsurance.com

at Wrigley Field for that night's game, but with the weather clearly threatening and stuff that had to get done, we decided to stay dry and follow the game on TV from our place, a few blocks from the ballpark.)

With the tornado's anticipated path indeed tracking for our neighborhood, we elected to abandon watching the game in our living room in front of a sizable picture window, instead following the action on a portable

**Rare tornado warning in Chicago signals need to be ready.**

radio from a position of relative safety in the hall. It was there that we heard a sound we hadn't experienced before: the warning siren across the street from Wrigley's left field bleachers, prompting fans at the ballpark to abandon their seats for shelter in the concourses.

Ultimately, no tornado hit Lakeview that night, though we did experience a pretty significant storm, bringing the Cubs game to a premature conclusion and causing considerable tree damage in our neighborhood and in the park along the lake. Many elsewhere—including residents of Griffith, Ind., which was hit by another tornado that was part of the same storm system—were less fortunate.

So what's the takeaway from this recent unusual tornado activity? Obviously, whether at home or business, if you're in a tornado-prone area, you need to make the appropriate preparations and have the necessary emergency plans in place before a storm strikes.

And, wherever you might be, pay attention to those tornado warnings.

## 1,350 attend 23rd VCIA

**BURLINGTON, Vt.**—When the Vermont Captive Insurance Assn. held its first conference more than two decades ago, a few dozen people attended.

Times have changed. About 1,350 people, including registrants from 42 states and 11 foreign countries, attended the 23rd annual VCIA meeting held earlier this month in Burlington.

That growth befits Vermont's status as a captive colossus. With 562 captives, Vermont is easily the nation's largest captive and the third-largest domicile in the world.

In 1986, when the VCIA held

its first conference, Vermont had just 67 captives but was already rapidly growing as a domicile.

The VCIA conference, in fact, has become so big that it has literally outgrown its longtime home—the Sheraton Burlington Hotel & Conference Center. Next year, some conference events will be held at a facility at the nearby University of Vermont.

More information on the 2009 conference, to be held Aug. 11-13, is available by contacting the VCIA at 802-658-8242.

—By Jerry Geisel



www.VermontCaptive.com

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2008248

# Business Insurance OPINIONS

## Cash balance debates should end—for good

IN LOOKING at the latest—and we think last—federal appeals court decision affirming the legality of cash balance pension plans, we can't help but be reminded of the saying "the wheels of justice turn slowly but surely."

The controversy over the plans' legality erupted five years ago when a federal judge ruled that the design of cash balance plans in general and IBM Corp.'s plan in particular discriminated against older employees.

The judge's decision was, to put it bluntly, loony.

Of course, in a system with thousands of federal judges, occasionally a judge will hand down a decision that is dead wrong, as Judge G. Patrick Murphy did in the IBM case. The proof came three years later when an appeals court in Chicago overturned his ruling. Since then, four other appeals courts—including the 9th, which is not known as especially business friendly—also ruled that the plans pass muster.

While we welcome the rulings as victories for common sense, the shame is that is the controversy probably didn't have to develop. The Treasury Department had crafted rules making clear that the plans were not age discriminatory, but a handful of congressmen who apparently hated cash balance plans, joined by other legislators who didn't take the time to study the issues, pulled the regulations, which had the effect of encouraging lawsuits.

There also were those in the media whose one-sided stories so tarnished the plans that, no doubt, some employers who considered putting in the plans backed off, fearful of getting a public relations black eye.

Now the dust has settled. Courts have blessed the plans, while Congress finally took the time a few years ago to understand how the plans work and their value to employees, and gave its seal of approval to new plans.

With the legal atmosphere finally clear and public opinion favorable, we hope that employers will again consider cash balance plans when deciding what plan design works best for them and their employees.

## Aon Re's expansion redraws playing field

AON RE GLOBAL's proposed acquisition of Benfield Group Ltd. late last week might have caught some people by surprise, but in several respects, it makes a good deal of sense.

As we report on page 1, both reinsurance intermediaries, the world's largest and third-largest, respectively, have global footprints, talented managers and advanced analytical capabilities. A broker cannot truly compete in today's global reinsurance market without offering significant analytical capabilities and access to capital markets.

Aon has made a point of investing in people and capabilities to serve clients and, at the same time, improve its operating performance. Buying Benfield would further all three goals in the reinsurance space. Investors must be happy with the deal, too. It not only would give Benfield's shareholders a big premium over the current share price but also would add a high-margin business to Aon's portfolio.

A downside to this deal is it would remove another choice for ceding insurers. The number of reinsurance brokers has been shrinking for years, and really only a handful are able to serve large cedents' needs. To compete in this new era, other brokers will have to enhance their game.



### WRITE

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

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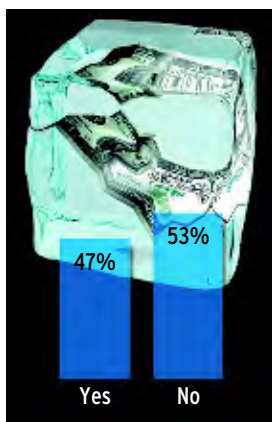
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in the *BI* Online Poll at  
[www.businessinsurance.com](http://www.businessinsurance.com)

#### THIS WEEK'S RESULTS

Should employers be allowed to transfer their frozen defined benefit pension plans to a financial services firm?



#### NEXT WEEK'S QUESTION

Q: Does your organization provide a program in which employees can make pretax contributions to pay for mass transit commuting expenses?

*BI* Online Poll tool is sponsored by Wausau Insurance Cos.

### LETTERS

#### Supply issue a key part of the debate on compensation

TO THE EDITOR: I have read with great interest the continuing debate about insurance agent/broker compensation and most particularly contingent compensation based on profits produced for the insurer. Calling this a debate is probably a misnomer since it seems the preponderance of publicly expressed thought is that contingent commissions are wrong and present an inherent conflict of interest. As the *Business Insurance* issue of July 14 indicated, the state of New York is now going to take another look at this practice to try to determine whether it is as egregious as many think. Given this development, I thought it appropriate to present another perspective that seems to be missing from the "debate."

If you look at the history of the business over the last few decades (I have been in it for four), you will find that the principal cause of substantial

See **LETTERS** page 18

### PERSPECTIVES

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

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

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

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

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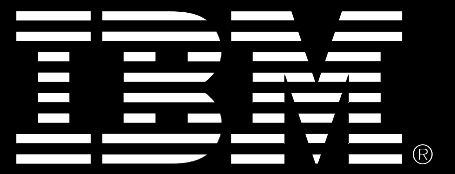
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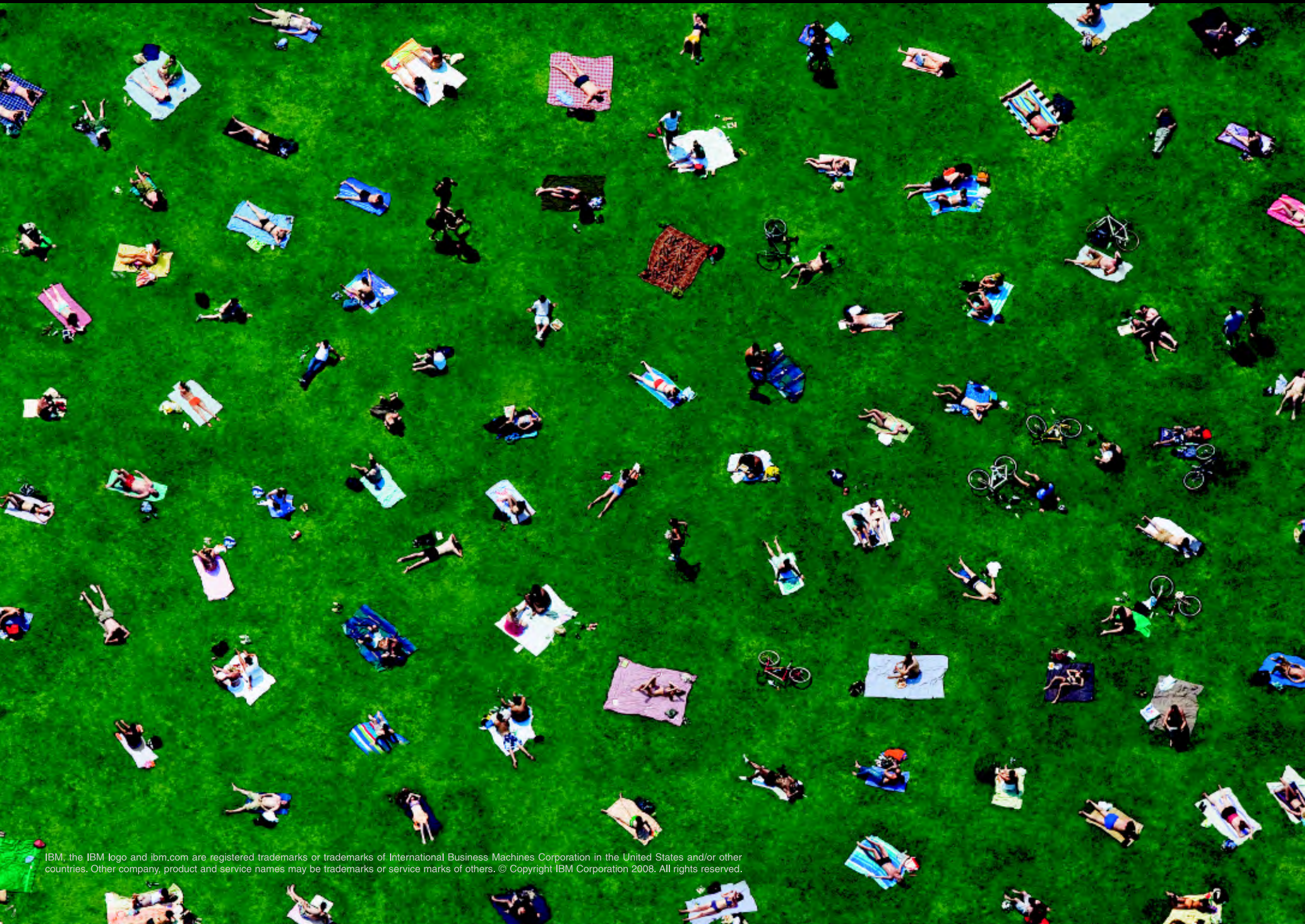
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# DMEC: Outreach effort aimed at cutting costs, boosting productivity

CONTINUED FROM PAGE 4

Cisco's strategy includes rigorous measurement of factors such as employee health risks, medical cost drivers, health outcomes and employee presenteeism—or employees who are on the job but not functioning efficiently because of physical or mental health reasons, Ms. Jing said.

"We are looking at a broader employee engagement strategy and a broader view of human capital management metrics that give us

an indication of how our population is doing and how engaged they are in their work," Ms. Jing said.

Health risk assessment data on Cisco's medical costs revealed that overall its employees are healthy, but their stress is rising and depression drives a substantial amount of health care spending as well as productivity losses, Ms. Jing said.

Related problems such as anxiety, sleeplessness and fatigue are an issue, she added.

"The big surprise was what we

**'The big surprise was what we found in the presenteeism area. The total loss to presenteeism was absolutely startling.'**

Lisa Jing,  
Cisco Systems Inc.

found in the presenteeism area," Ms. Jing said. "The total loss to presenteeism was absolutely startling."

Nearly 10% of Cisco employees complained of anxiety and depression, said Dr. David Whitehouse, chief medical officer for strategy and innovation at Golden Valley, Minn.-based OptumHealth Behavioral Solutions. Those employees accounted for 40% of Cisco's total lost productivity in 2005.

To help its employees, Cisco partnered with OptumHealth, which in turn partnered with Brain Resource,

the speakers said.

OptumHealth, a unit of United-Health Group Inc., trained outreach workers in interviewing skills so they don't alarm employees whose health risk assessments reveal they could benefit from help such as that available through the optional WebNeuro tool kit, Dr. Whitehouse said.

OptumHealth is also learning lessons along the way, such as it's best for its outreach workers to make their first contact with employees through e-mail rather than by telephone, allowing employees to decide whether they want to talk about what is bothering them, Dr. Whitehouse said.

Cisco's effort will have final outcome data from its intervention program next spring, Ms. Jing said. But so far, the WebNeuro tool has been well-received by Cisco employees who have participated in the outreach program.

Cisco intends to offer the WebNeuro resource to employees at an onsite health center scheduled to open later this year, Ms. Jing added.

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## DMEC draws nearly 600; next year in Oregon

**DENVER**—Disability programs with the sole aim of reducing employer costs are less likely to succeed than programs structured to help employees improve their health and well-being, several speakers told about 590 people who registered for the Disability Management Employer Coalition's 2008 Absence and Disability Management Conference.

"You are not the money savers of your corporation; you are the lifesavers of your corporation," keynote speaker Richard Pimentel told attendees at the Aug. 10-13 gathering.

Mr. Pimentel is a Vietnam veteran who helped lead the push to pass Americans with Disabilities Act. He also is an author and his life story is the subject of the 2007 movie "Music Within."

Nearly 50 vendors displayed their services at the Denver conference that included panels speaking on behavioral risks, absence management and integrating disability programs.

DMEC's next annual conference will be held July 19-22, 2009, in Portland, Ore. For more information, see [www.dmec.org](http://www.dmec.org).

—By Roberto Cenicerros

Keynote addresses by:

				
<b>Joseph J. Plumeri</b> Chairman and CEO, Willis	<b>Bill Hartnett</b> US Insurance Industry Solutions Director, Microsoft Corp.	<b>Alex Letts</b> CEO, RISK	<b>John Lupica</b> President & CEO, ACE USA	<b>Mario P. Vitale</b> Deputy CEO, Zurich Global Corporate



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Insurance

# To bundle claims and medical services or not to bundle?

*Each workers comp approach carries pluses and minuses*

By **ROBERTO CENICEROS**

**DENVER**—Office Depot Inc. spent six months reviewing whether purchasing bundled claims services and specialty occupation medical services would improve its workers compensation program.

After completing its extensive review this year, the employer stayed with purchasing the services unbundled, Jean A. Heald, Office Depot's manager for workers comp in Delray Beach, Fla., told the Disability Management Employer Coalition's 2008 conference.

Such decisions show how the decision to go with unbundled rather than bundled claims services will vary from firm to firm, experts say.

Employers on both sides of the debate want quality programs that provide early intervention when a claim is filed, medical cost management and positive return-to-work outcomes, and both bundled and unbundled approaches can deliver those results, they said during a session at the gathering held Aug. 10-13 in Denver.

"Initially when you look at bundled programs, they look very attractive," Ms. Heald said. "On paper they look like they could save you a lot of money. But when you really look at the different (medical) product lines that are included in the comprehensive care management program, you find a different story."

That, however, is not a view all risk managers share, said Betsy Robinson, vp for product marketing, reporting and analysis for Intracorp in Philadelphia. Research by Intracorp shows that risk managers at companies with 5,000 or more employees are evenly split on whether to bundle claims and medical management services or to leave them unbundled.

Risk managers who prefer bundled services—usually through a third-party administrator—say unbundled services cost more and are not worth the challenges of managing multiple contracts and overseeing the performance of multiple organizations, Ms. Robinson said.

Additionally, they don't think data management is efficient when services are unbundled and they believe a claims management company with clinical capabilities can deliver similar medical cost containment results as a specialty medical management company.

Employers that prefer unbundled services say they get better quality managed care services that ultimately lower overall claims costs and improve worker productivity, Ms. Robinson said. They also say they have more control over employees' treatment and better customer service.

Office Depot contracts with Sedgwick Claims Management Services Inc. for claims services and with Intracorp, a unit of CIGNA Corp., for specialty medical services, Ms. Heald said.

Her six-month request for proposal review found that bundled programs would not provide a consistent level of quality across all medical cost containment services, she said.

A bundled program might provide a strong preferred provider network and bill review services, but falter on pharmacy management, Ms. Heald said. Yet unbundling claims from medical management can present challenges in integrating claims data if vendors are not working toward a common outcome, she said.

Overseeing claims and medical services providers in an unbundled

structure "has made us better managers" of our workers comp program, said Edward Codd, managing director of corporate safety and workers comp for Houston-based Waste Management Inc.

The attention Waste Management employees and local managers receive through unbundled services is also more personal, Mr. Codd said.

For example, four years ago, Waste Management had 700 of its 45,000 employees out on temporary total disability claims, among other workers comp performance problems, Mr. Codd said.

So the waste hauler implemented

a safety program, allocated the cost of the programs to individual offices and contracted with Intracorp to provide so-called occupational health counselors who work in conjunction with a transitional duty program to help injured employees return to work, Mr. Codd said.

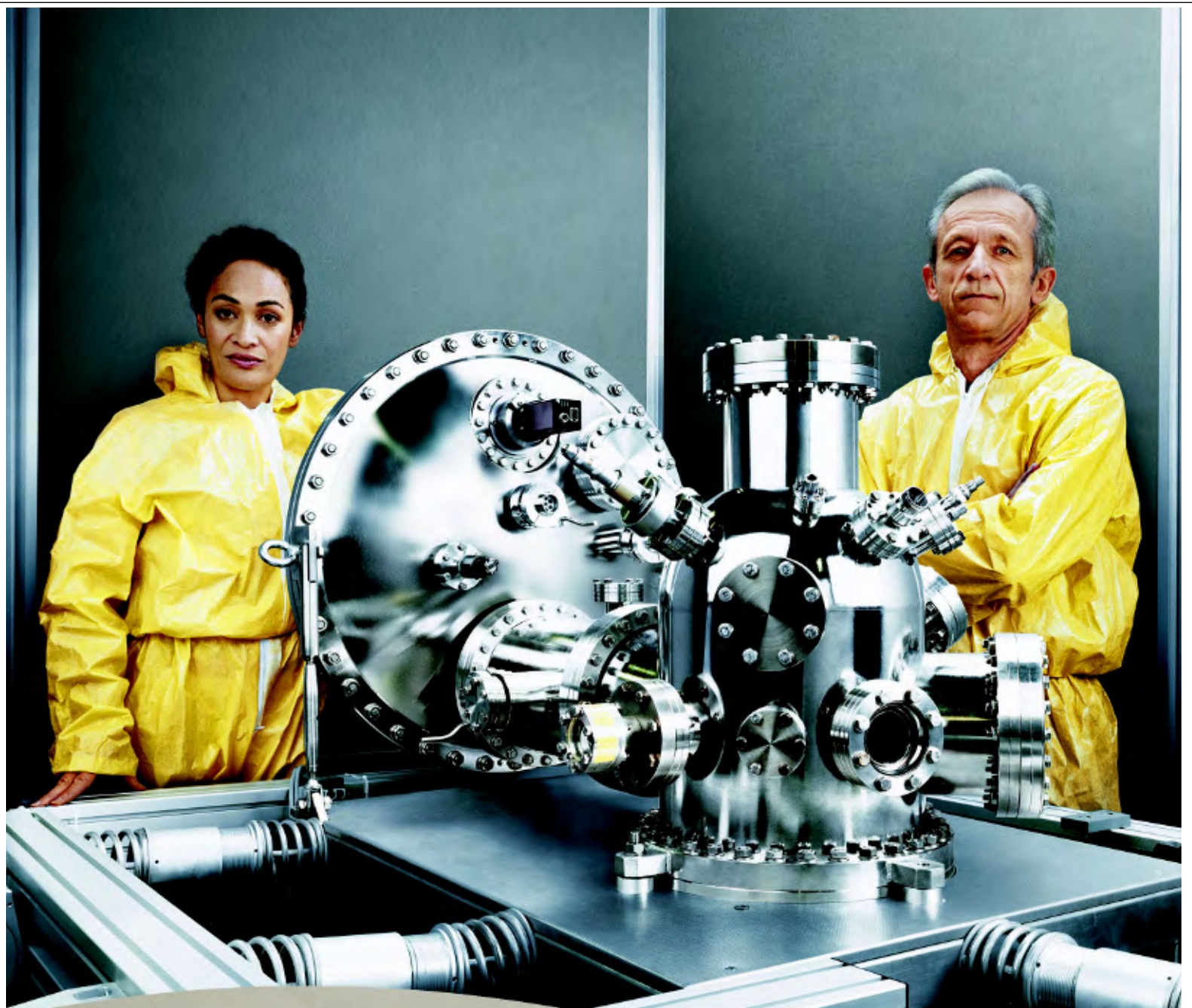
The counselors work from Waste Management field offices and attend local safety and operations meetings.

That way, "they are well-known as an asset to our field managers to get people back to work," Mr. Codd said. "That is key to us in...the ability for our managers to contact

them on a minute's notice."

When employees are injured, the counselors contact doctors early on, sometimes even before the employee arrives at the doctor's office, Mr. Codd said. Counselors also contact local occupational clinics treating injured employees so the clinic's medical staff understands how Waste Management's transitional work program operates.

Among other improvements Waste Management's temporary total disability cases have decreased from 700 to 200, and lost-time injury cases have dropped from about 60 a month to about 20, Mr. Codd said.



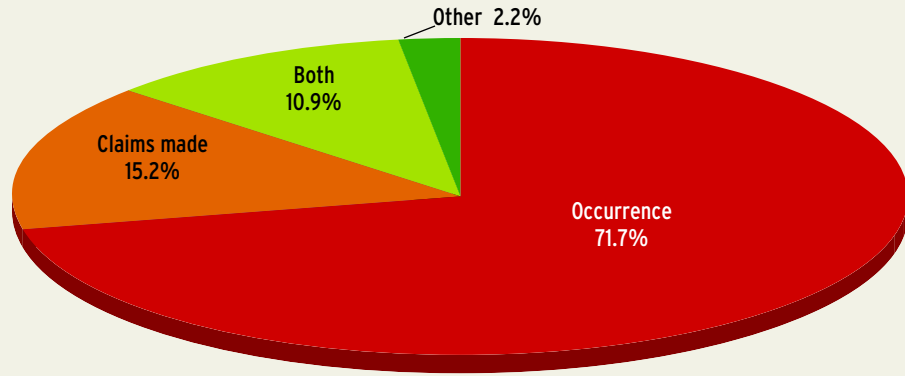
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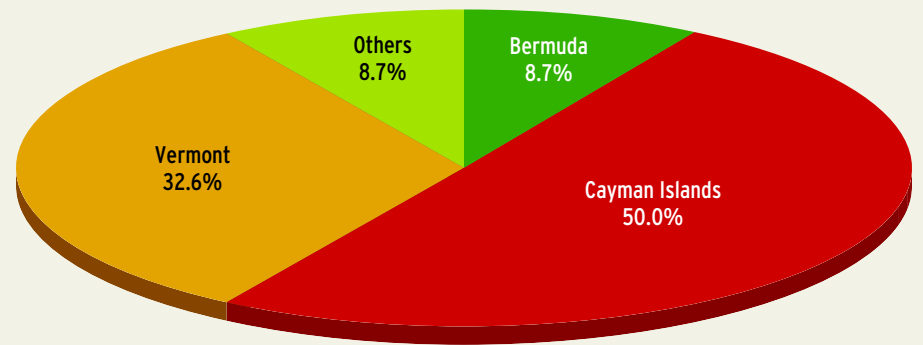
Coverage forms used by policyholder-owned facilities



Source: BI survey

### ONSHORE AND OFFSHORE

Policyholder-owned facilities by domiciles



Source: BI survey

# Largest policyholder-owned alternative risk facilities

Ranked by 2007 gross premiums written

Rank	Facility/Domicile	2007 gross premiums written	2007 participants	Business conducted by participants	Risks insured	Management company	Phone/Web site	Contact
<b>1</b>	Associated Electric & Gas Insurance Services Ltd. Bermuda	\$1,231,002,000	434	Utility and related energy industries	D&O, excess liability, employment practices, excess workers compensation, fiduciary liability, professional liability, property	AEGIS Insurance Services Inc. The Maxwell Roberts Building, 1 Church St., Fourth Floor, Hamilton, HM 11 Bermuda	441-296-2131 <a href="http://www.aegislink.com">www.aegislink.com</a>	Alan J. Maguire, president/CEO
<b>2</b>	Oil Insurance Ltd. Bermuda	\$1,016,819,000	56	Chemicals and mining, oil and gas exploration and production, petro-chemicals, utilities	Control of well and third-party pollution liability, physical damage to property	OIL Management Services Ltd. 30 Woodbourne Ave., Third Floor, Pembroke, HM 08 Bermuda	441-295-0905 <a href="http://www.oil.bm">www.oil.bm</a>	Kevin Bean, vp
<b>3</b>	Raffles Insurance Ltd. Cayman Islands	\$203,557,979	257	Contractors, distributors, manufacturers	Auto liability, auto physical damage, general liability, workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands, B.W.I.	345-946-2100 <a href="http://www.rafflesinsurance.com">www.rafflesinsurance.com</a>	Michael Gibbs, president-Kensington Management Group Ltd.
<b>4</b>	American Contractors Insurance Group Bermuda	\$168,559,000	38	Construction	Auto liability, financial guaranty, general liability, workers compensation	ACIG Insurance Co. 12222 Merit Drive, Suite 1660, Dallas, Texas 75251	972-702-9004 <a href="http://www.acig.com">www.acig.com</a>	William S. McIntyre, chairman
<b>5</b>	Affinity Insurance Ltd. Cayman Islands	\$99,467,771	224	Contractors, distributors, manufacturers, retail.	Auto liability, auto physical damage, general liability, workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands, B.W.I.	345-946-2100 <a href="http://www.affinityinsuranceltd.com">www.affinityinsuranceltd.com</a>	Michael Gibbs, president-Kensington Management Group Ltd.
<b>6</b>	Churchill Casualty Ltd. Cayman Islands	\$91,179,320	98	Distributors, manufacturers, contractors	Auto liability, auto physical damage, general liability, workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands, B.W.I.	345-946-2100 <a href="http://www.churchillcasualty.com">www.churchillcasualty.com</a>	Michael Gibbs, president-Kensington Management Group Ltd.
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<b>8</b>	Oil Casualty Insurance Ltd. Bermuda	\$51,125,000	66	Chemicals and mining, oil and gas exploration and production, petrochemicals, utilities	Excess general liability	Oil Management Services Ltd. 30 Woodbourne Ave., Third Floor, Pembroke, HM 08 Bermuda	441-295-0905 <a href="http://www.ocil.bm">www.ocil.bm</a>	Jerry Rivers, senior vp/COO
<b>9</b>	Traffic Insurance Ltd. Cayman Islands	\$49,683,258	57	Trucking companies	Auto liability, auto physical damage, general liability, workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands, B.W.I.	345-946-2100 <a href="http://www.trafficinsuranceltd.com">www.trafficinsuranceltd.com</a>	Michael Gibbs, president-Kensington Management Group Ltd.
<b>10</b>	Everest Property Insurance Co. Cayman Islands	\$44,548,805	453	Manufacturing, service companies	Crime, boiler/machinery, property	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands, B.W.I.	345-946-2100	Michael Gibbs, president-Kensington Management Group Ltd.

Source: BI survey

Researched by Kevin Edison and Karen Tucker

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uh oh.

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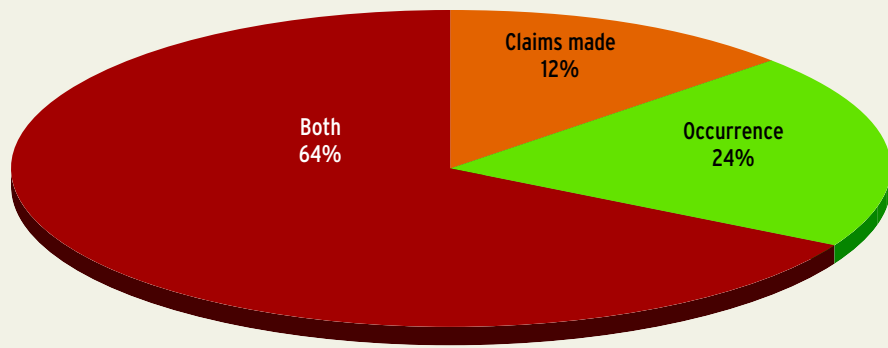
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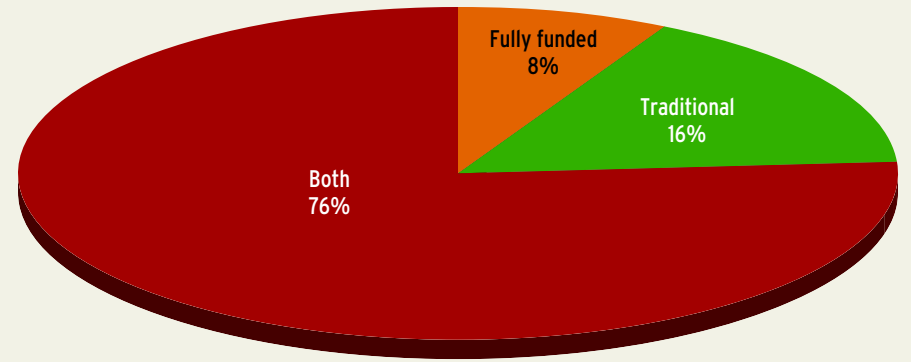
### LIABILITY TRIGGERS

Coverage forms used by rent-a-captive facilities



Source: BI survey

### TYPES OF RENT-A-CAPTIVE PROGRAMS



Source: BI survey

# Largest rent-a-captive facilities

Ranked by 2007 gross premiums written

Rank	Facility/Domicile	2007 gross written premiums	Estimated 2008 gross written premiums	2007 participants	Estimated 2008 participants	Risks insured	Management company	Phone/Web site	Contact
<b>1</b>	Guardrisk Group of Cos. South Africa	\$463,848,659 <sup>1</sup>	\$499,833,597 <sup>2</sup>	344	392	Life, nonlife	Guardrisk Holdings Ltd. Alexander Forbes Place, 90 Rivonia Road, Fourth Floor, Sandton, 2146 South Africa	27-11-669-1100 www.guardrisk.co.za	Herman Schoeman, managing director
<b>2</b>	Universal Re-Insurance Co. Ltd. Bermuda	\$165,000,000	\$175,000,000	135	145	All lines	Atlantic Security Ltd. Windsor Place, 18 Queen St., Hamilton, HM 11 Bermuda	441-295-5425	Hal Forkush, president
<b>3</b>	Universal International Insurance Ltd. Bermuda	\$152,000,000	\$165,000,000	70	75	All lines	Atlantic Security Ltd. Windsor Place, 18 Queen St., Hamilton, HM 11 Bermuda	441-295-5425	Hal Forkush, president
<b>4</b>	Alternative Re Ltd. Bermuda	\$48,378,000	N/A	N/A	N/A	Auto liability, general liability, property, products and completed operations, workers compensation	Alternative Re Ltd. Wessex House, 45 Reid St., Hamilton, HM 12 Bermuda	441-278-9245 www.alternativegroup.bm	Gavin P. Coltery, president/COO
<b>5</b>	Arlington Insurance Co. Ltd. Bermuda	\$43,391,196	\$38,000,000	150	120	Auto liability, general and professional liability, product warranty, workers compensation	Liberty Mutual Management (Bermuda) Ltd. P.O. Box HM 2455, Hamilton, HM JX Bermuda	441-296-2131	Simon Hothersall, assistant vp
<b>6</b>	Hurst Holme Insurance Co. Ltd. Bermuda	\$36,949,224	\$40,000,000	22	24	Property/casualty	International Advisory Services Ltd. 44 Church St., Hamilton, HM 12 Bermuda	441-295-3688 www.ias.bm	David P. Pickering, president
<b>7</b>	Lansdowne Insurance Co. Ltd. Bermuda	\$35,127,000	\$40,000,000	59	65	Property/casualty	CTC Allegro Insurance & Risk Management Ltd. Burnaby Building, 16 Burnaby St., Hamilton, HM 11 Bermuda	441-295-8495	Andy McComb, president
<b>8</b>	SEG Insurance Ltd. Bermuda	\$27,200,000	\$30,000,000	429	432	Auto liability, general liability, workers compensation	Artex Risk Solutions (Bermuda) Ltd. Swan Building, 26 Victoria St., Hamilton, HM HX Bermuda	441-292-4654 www.rent-a-captive.com	Peter J. Mullen, president
<b>9</b>	Quest (SAC) Ltd. Bermuda	\$23,902,000	\$30,115,000	29	32	General liability, property, workers compensation, all lines considered	Quest Management Services Ltd. F.B. Perry Building, 40 Church St., P.O. Box HM 2062, Hamilton, HM HX Bermuda	441-295-2482 www.questgroup.bm	Larry Turnbull, senior vp/treasurer
<b>10</b>	Stuart Insurance Group Ltd. Bermuda	\$20,626,483	\$19,500,000	34	31	Commercial auto liability, commercial general liability, warranty, workers compensation	Liberty Mutual Management (Bermuda) Ltd. P.O. Box HM 2455, Hamilton, HM JX Bermuda	441-296-2131	Gunther Gerber, account manager

<sup>1</sup> 2007 premium volume is converted from South African rand = \$0.1413 (3/31/08). <sup>2</sup> 2008 estimated premium volume is converted from South African rand = \$0.1275 (8/15/08).

Source: BI survey

Research by Kevin Edison and Karen Tucker

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Waldorf=Astoria  
in New York City

For more information, contact  
Pat Ghazvini at  
212-210-0137

## A Spotlight Report

Publishing: Dec. 1 | Ad Close: Nov. 19

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## HELP WANTED

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## HELP WANTED

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For additional information on duties and requirements, please visit our website at [www.rockfordmutual.com](http://www.rockfordmutual.com). EOE

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## LEGAL NOTICE

## LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT • SOUTHERN DISTRICT OF NEW YORK

In re Petition of John Gibbons, as Liquidator of  
NEW CAP REINSURANCE CORPORATION LIMITED,  
Debtor in Foreign Proceeding.

In a Proceeding Under Section 304  
of the Bankruptcy Code  
Case No. 99-B-42752 (SMB)

### NOTICE OF ORDER PURSUANT TO SECTION 304 GRANTING RECOGNITION AND GIVING EFFECT TO SCHEME OF ARRANGEMENT IN THE UNITED STATES AND A PERMANENT INJUNCTION

NOTICE IS HEREBY GIVEN THAT, in connection with the motion (the "Motion") of John Gibbons (the "Petitioner"), the duly appointed liquidator and a scheme administrator of New Cap Reinsurance Corporation Limited (the "Company"), for the entry of an order pursuant to section 304 of title 11 of the United States Code (the "Bankruptcy Code") granting recognition and giving effect to the scheme of arrangement between the Company and its Creditors pursuant to section 411 of the Australian Corporations Act 2001 (Cth) (the "Scheme") and a permanent injunction, dated July 25, 2008 [Docket No. 101], the United States Bankruptcy Court for the Southern District of New York (the "Court") has entered an order dated August 12, 2008 (the "Order"), among other things:

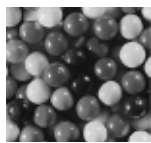
1. Providing that the Scheme and its terms shall be given full force and effect in the United States, and shall be binding on and enforceable against any person or entity that is a Creditor (as defined in the Order) in the United States;
2. Permanently enjoining all persons and entities, including, without limitation, any person or entity that is a Creditor, from taking any action in contravention of, or inconsistent with, the Scheme;
3. Permanently enjoining all persons and entities from: (a) repossessing, transferring, relinquishing or disposing of any assets of the Company in the United States, or the proceeds thereof, to any person or entity other than the Scheme Administrators (as defined in the Order), (b) commencing or continuing any action or legal proceeding claim against the Company (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), including by way of counterclaim, against the Company or any assets in the United States that is involved in the foreign proceeding, or any proceeds thereof, and seeking discovery of any nature against the Company; (c) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order, or arbitration award against the Company, and commencing or continuing any act or action or legal proceeding (including, without limitation, arbitration, or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) or any counterclaim to create, perfect or enforce any lien, attachment, garnishment, setoff or other claim against the Company or any of its property in the United States, or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts; (d) drawing down any letter of credit established by, on behalf or at the request of, the Company, in excess of amounts expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established; and (e) withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest in excess of amounts expressly authorized by the terms of the contract and any related trust or other agreement pursuant to which such letter of credit, trust, escrow, or similar arrangement has been established; except, however, no drawing against any letter of credit shall be made in connection with any commutation unless the amount has been agreed in writing with the Scheme Administrators or permitted by further Order of the Court;
4. Requiring that all persons and entities in possession, custody or control of assets of the Company in the United States, or the proceeds thereof, shall turn over and account for such assets or their proceeds to the Petitioner, as the Liquidator; and
5. Requiring that all persons or entities, including, without limitation, Creditors, that are beneficiaries of letters of credit established by, on behalf or at the request of, the Company or parties to any trust, escrow or similar arrangement in which the Company has an interest to: (a) provide notice to Petitioner's United States counsel of any drawdown on any letter of credit established by, on behalf or at the request of, the Company, or any withdrawal from, set off against, or other application of property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest, together with information sufficient to permit the Scheme Administrators to assess the propriety of such drawdown, withdrawal, setoff or other application, including, without limitation, the date and amount of such drawdown, withdrawal, setoff or other application and a copy of any contract, related trust or other agreement pursuant to which any such drawdown, withdrawal, setoff, or other application was made, and provide such notice and other information contemporaneously therewith; and (b) turn over and account to the Petitioner, as the Liquidator, for all funds resulting from such drawdown, withdrawal, setoff, or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such letter of credit, trust, escrow or similar arrangement has been established.

Copies of the Order, the Scheme and the Motion are available upon request to the Petitioner's United States Counsel at the address below:

CHADBOURNE & PARKE LLP • Attorneys for the Petitioner • 30 Rockefeller Plaza  
New York, New York 10112 • (212) 408-5100 • Attn: Howard Seife, Esq. and Francisco Vazquez, Esq.

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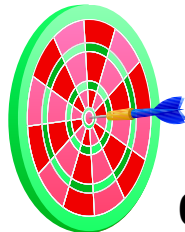


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For details on listing your company, contact Monique at  
212-210-0129 or [mmurray@businessinsurance.com](mailto:mmurray@businessinsurance.com)

## Mark your calendar...

### Global Reinsurance Markets

Publishing: September 1

Classified Ad Close: August 26

### Surplus Lines

Publishing: September 8

Classified Ad Close: September 2

### Sector Briefing-Transport, Marine & Aviation

Publishing: September 15

Classified Ad Close: September 9

### Benefit Manager of the Year Benefit Consulting & Outsourcing

Publishing: September 22

Classified Ad Close: September 16

Contact Monique Murray  
at 212-210-0129 For Details

# International NEWS

## European companies form captive association

By RICHARD MILLER

**LUXEMBOURG**—A new European captives association got its official start last week.

At the first general meeting of the European Captive Insurance & Reinsurance Owners Assn. on Aug. 19, a notary deed forming the Luxembourg-based association was signed in the presence of five founding member companies: Deutsche Bank AG, Evonik Degussa, European Aeronautic Defence & Space Co., ArcelorMittal and Deutsche Bahn.

Elected to an interim board of directors were Guenter Droese of Deutsche Bank, Hans-Joachim Fippinger of Evonik Degussa, and Hans-Juergen Allerdisen of Deutsche Bahn.

Mr. Droese—who serves as managing director and global head of group insurance at Frankfurt, Germany-based Deutsche Bank—was named interim chairman, and Mr. Fippinger was named interim

vice chairman.

Another general meeting will be held within three months in order for new members to join the board and the association's working groups.

The member companies in ECIROA are currently major European companies from a variety of industries and business sectors—with seats in Germany, the Netherlands, Switzerland and Denmark—representing more than 30 captive companies. The captives are located primarily in Luxembourg, Ireland and Malta.

A current key goal for ECIROA is simplifying the rules for captives under Solvency II, the new European insurance regulatory requirements.

"Although we join the negotiations of Solvency II in an already advanced stage, there is still enough time left to develop the new framework into a perfect Solvency II regime also for captives," Mr. Droese said in statement.

## Europe's insurers strong

*Volatility from financial market varies: Moody's*

By RICHARD MILLER

Despite poor performance in the capital markets, European insurers have shown relatively strong financial results in the first half of 2008, according to a report by Moody's Investors Service.

Due to insurers' underlying performance and improved asset risk hedging, the industry remains relatively robust overall, with no credit rating impact to date for European insurance companies, Moody's said.

"Aside from depressed investment returns, the H1 2008 earnings of the major European insurance and reinsurance groups have been notable for the relatively strong performance of the underlying insur-

ance business, in both nonlife and life," according to Dominic Simpson, a Moody's senior credit officer and co-author of the report. "This is in contrast to some other financial institutions," he said in a statement.

The degree to which European insurers have been affected by volatility in the global financial markets varies widely, the report notes.

Moody's report, "European Insurers' H1 2008 Results: No Overall Credit Impact, But Moody's Continues to Monitor," cover such differences, and their implications, for the sector, the rating agency said.

A copy of the report is available at [www.moody.com](http://www.moody.com) for registered users of the site.

## Crash may boost aviation rates

*Fatal Spanair accident likely to mean unprofitable year for insurers*

By DAVE LENCKUS

**MADRID, Spain**—Aviation insurance losses from a fatal Spanair crash in Madrid, Spain, last week likely ensures the second consecutive unprofitable year for insurers and a stronger push by underwriters to increase rates this fall, brokers say.

But market competition fueled by abundant capacity may stifle those efforts, which likely would not help underwriters avoid another unprofitable year anyway, brokers say.

Hull and liability losses from the Aug. 20 Spanair crash, which killed 153 passengers and crew, would be covered under a policy led by a unit of ACE Ltd. for a group of airlines that includes Spanair parent Scandinavian Airlines System A.B., according to sources.

The policy, placed by Aon Ltd. in London, provides \$1.5 billion in liability limits to the SAFIT Group, sources said. Besides SAS, the group includes Austrian Airlines, Finnair, Icelandair and TAP Portugal.

Underwriters last week had not established a liability reserve for the air crash, Spain's worst in almost 25 years, sources said.

The jet, a 15-year-old McDonnell Douglas MD-82, was destroyed in the fiery wreck. It was valued at \$9 million, sources said.

The flight, bound from Madrid's Barajas airport to the Canary Islands off Africa's Northwest coast, crashed at the end of the runway while attempting to take off. A total of 172 people—162 passengers, four flight attendants and six flight crew—were onboard, according to Spanair.

Various news reports quote survivors and witnesses saying they heard an explosion and saw an engine on fire before the jet ran off the runway, broke apart and burned.

If crash investigators ultimately blame equipment problems, the insurers for any equipment manufacturers found liable would cover the loss. Many of the same underwriters cover both airlines and manufacturers, but the loss experience for one type of risk does not affect rates for the other group, brokers said.

Meanwhile, the airline insurance market will absorb the loss, and experts say that probably guarantees that airline underwriters will face their second consecutive unprofitable year in 2008 after five profitable years. Before 2007, underwriters last reported losses in 2001,



EFE/ZUMA PRESS

A Spanair crash Aug. 20 at the Barajas airport in Madrid was Spain's worst airline disaster in almost 25 years.

largely because of terrorist attacks that year.

Underwriters' premiums lag losses by nearly a year, since about 70% of premiums are written during the fourth quarter. As a result, comparing claims for a year with that year's premium volume creates a distorted picture of the market, but it can show trends, said Paul Hayes, director of safety at London-based air transport consultant Ascend Worldwide Ltd.

In 2007, claims totaled \$1.97 billion while underwriters generated about \$1.5 billion of premium volume, according to Mr. Hayes.

Ascend does not provide data on airline losses to date in 2008, but claims for 12 months through July exceeded \$2 billion, while premium volume during that period totaled between \$1.5 billion and \$1.6 billion, Mr. Hayes said.

But before the Spanair crash, underwriters' loss experience this year "was not too bad," said Steve Doyle, a London-based executive director at the Willis Aerospace division of Willis Group Holdings Ltd.

Wayne Wignes, the Chicago-based vice chairman of the North American aerospace division at Jardine Lloyd Thompson Group P.L.C., said losses this year were below underwriters' expectations until the Spanair crash.

That loss, however, "guarantees it'll be another red year" for underwriters, Mr. Wignes said.

Accounts that already have renewed and those that are scheduled to renew later this year are "already rated below expected losses," he said.

Among the accounts renewing

this fall is the SAFIT Group on Dec. 1, according to sources.

Mr. Wignes projected that underwriters' claims for the year would exceed \$1.5 billion and that premium volume would fall short of that level.

So far this year, liability rates have dropped about 8% and hull rates have been flat, Mr. Doyle said. About half of the market's renewals have been completed this year, but they account for only about one-third of its premium volume, because most of the biggest accounts renew during the fourth quarter, he said.

"Does (the Spanair loss) add more strength to the market to halt rate cuts or increase premium? Undoubtedly," Mr. Doyle said.

"In general terms, it is going to have a significant impact on market sentiment going into the fourth quarter," said Magnus Allan, an aviation researcher for Aon. "This could well be a catalyst for a harder market."

But the market's abundant capacity could maintain competition for business that would keep rates down, brokers said.

Available capacity exceeds the demand for limits by as much as 100%, brokers estimated.

Even renewing accounts at existing rates, as underwriters are attempting, will lead to a drop in premium volume, because many airlines have cut back their service, Mr. Wignes noted. Fewer flights and passengers mean reduced premiums if rates remain unchanged.

"So it's not looking like an attractive situation for underwriters, Mr. Wignes said.

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# UP Comings & Goings CLOSE



## DEREK WHITE

**NEW JOB TITLE:** President of Strategic Risk Solutions (Vt. Ltd.), in charge of Eastern U.S. operations.

**PREVIOUS POSITION:** Director of Captive Insurance for the State of Vermont.

**NOTABLES:** I was just named "Captive Crusader," which is kind of like being man of the year in the industry, at the captive insurance conference for the Vermont Captive Insurance Association.

**GOALS FOR NEW POSITION:** I knew all the captive insurance companies in the state because we oversaw them when I worked for the state. I knew this one already had great accountants and technology. What I want to do here is create one team; I want to improve the corporate culture.

### MAJOR CHANGES ON THE WAY:

Not to sound like I am in advertising or PR, but we are growing. That'll put us, in size anyway, in the top 10 captive managers in the world. When I tell people that, they are shocked because many have never heard of us.

### CHALLENGES FACING THE INDUSTRY:

The commercial market is relatively soft right now...and we are starting to see some group captives that are losing members because it is easier to buy insurance in the commercial market.

### FIRST JOB IN INDUSTRY:

When I worked at a CPA firm, I actually audited captives. I learned a lot about captives there.

### DREAM JOB OUTSIDE OF THE INDUSTRY:

That's easy. During the day I would make furniture in a woodworking shop and at night I would play jazz piano in a jazz group.

## LETTERS

CONTINUED FROM PAGE 8

upward price fluctuations and volatility in insurance premiums has been as a consequence of a constriction in the supply of coverage. That is to say, the insurance industry has been unable or unwilling to put forth an adequate market supply for the demand in that market. This supply problem can be for a particular insurance product, for a particular industry or it can be broad-based and impact the market as a whole. There have been times over the last few decades when this supply problem has been particularly acute, forcing insurance pricing to exorbitant levels and forcing insureds to reduce or eliminate coverage or finding that coverage is not available at any price.

Insurance is designed to provide certainty and stability of cost. This enables businesses to function in a more risk-free environment and have insurance companies assume the volatility of many of the risks that a business faces. So a consistent, stable, properly priced supply

of insurance coverage is essential to the successful operation of the business community. This consistent supply can only be maintained if the insurance industry makes a profit. Like any other business, the supply of capital will go elsewhere if making a profit becomes elusive. Given this fact, does it not make sense that the agent or broker has "some" role in assisting the insurance carriers he represents in making a profit that will help sustain a consistent supply of insurance coverage, all to the everlasting benefit of his clients?

Let's face it; one could make a case for the fact that the entire agent/broker commission compensation system is a conflict since we get a percentage of the premium, and the higher the premium the higher the income. But competitive forces within the business have overridden this issue as have demands from major buyers of insurance for fee-based arrangements.

Now that the few egregious practices of a few bad apples have been exposed and the vendetta against certain carriers has subsided, let's

get back to reality. Do we want to end up with an oligopoly like the oil industry? I don't think so. If there are any lingering doubts about the importance of a broad-based supply of competitive insurance coverage, ask a business, or for that matter an individual, that owns property in Florida.

So where does this leave us? Surely we owe our clients a competitive, stable, consistent price for their insurance program. We owe them that today, tomorrow, next week, next year and so on. But to ignore the importance of the suppliers of coverage and their financial health is irresponsible and will ultimately damage our clients and their financial well-being. So we have a dual responsibility. That's why they call us "intermediaries." As long as we handle our transactions with 100% transparency and take all of the mystery out of the insurance buying and selling process, this will serve all of our interests today and in the future.

**Sam H. McGoun, CPCU, LIC**  
Senior Vp  
Bosquett & Co.  
Troy, Mich.

## Products & Services

### XL offers warehouse environmental cover

**EXTON, Pa.**—XL Insurance, a Exton, Pa., unit of XL Capital Ltd., has introduced an environmental insurance program covering pollution exposures of facilities that store or distribute potentially harmful material.

The environmental policy is being underwritten by XL units Greenwich Insurance Co. and Indian Harbor Insurance Co. and is designed for U.S.-based warehouses, storage and distribution facilities. The policy covers pollution liability and cleanup expenses including protection against remediation expense, bodily injury and property damage. The program also covers legal defense costs for pollution conditions resulting at or from the insured facility.

Common environmental risks faced by such facilities include: spills or leaks during loading or unloading of materials from trucks or rail cars, contamination resulting from a fire at the facility, waste from onsite vehicle or forklift maintenance and storage and leaks from material containers stored at the facility.

For more information, contact Rich Corbett, head of XL Insurance's global environmental insurance unit, at [rmlxlenvironmental@xlgroup.com](mailto:rmlxlenvironmental@xlgroup.com).

### Karen Clark online tool estimates wind losses

**BOSTON**—Karen Clark & Co. has introduced an online tool to assess likely insured damage from tropical cyclones or hurricanes.

The KC Wind Damage Scale offers insurance companies and others a detailed description of damage that high winds likely will have on buildings, contents and related business interruption.

The scale ranges from KC 0 to KC 7. KC 0 is a storm with winds less than 40 mph with negligible insured damage. KC 7 denotes a hurricane with winds in excess of 160 mph in which all but highly fortified structures would likely suffer destruction.

For each hurricane that hits the United States, Boston-based Karen Clark & Co. also provides wind damage contours to allow users to get a good idea of the nature of the claims in specific geographic areas affected by the storm.

The KC Wind Damage Scale has an interactive map that allows users to see storm tracks and designations for significant hurricanes hitting the United States since 1990. Maps at [www.karenclarkandco.com](http://www.karenclarkandco.com) are shown in standard, satellite, hybrid or vegetation view.

For more information, contact Glen Daraskevich, senior vp, at 617-423-2800, ext. 204.

### HealthCare Insight revamps Web site

**SOUTH JORDAN, Utah**—HealthCare Insight, a unit of Insurance Services Office Inc., has redesigned its Web site in an attempt to better serve the fraud detection and abuse surveillance service needs of health care claims payers.

The revamped site, [www.hcinsight.com](http://www.hcinsight.com), is designed for managed care organizations, insurers and third-party administrators. A Live Help section allows users to connect with a specialist in real time. A Media Lab section contains service sheets, white papers and videos. Webinars with fraud experts are also offered via the site.

The site supplements the suite of fraud and abuse surveillance services of South Jordan, Utah-based HCI,

which ISO purchased late last year.

For more information, contact Darin Johnson, vp of marketing, at 801-990-1805 or [darin@hcinsight.com](mailto:darin@hcinsight.com).

### Zurich targets smaller risks

**SCHAUMBURG, Ill.**—Zurich Integrated Products, a unit of Schaumburg, Ill.-based Zurich North America's commercial division, is accepting new business submissions from agents and brokers in 12 states serving small- to middle-market commercial customers.

Zurich said the Integrated Products unit was developed to address the commercial insurance needs of an underserved business segment—businesses with annual revenue between \$5 million and \$25 million.

Submissions are now being accepted for new business policies effective Oct. 1 from distributors in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota and Wisconsin.

The unit offers a package of auto, general liability, property, workers compensation and umbrella coverage, with the ability to integrate specialty lines such as directors and officers and employment practices liability.

Zurich said the program would be rolled out to the entire United States by the third quarter of 2009.

For more information, contact Bill Skapof, head of distribution, Zurich Integrated Products, 212-553-5752.

## Comings & Goings

# ONLINE

**VISIT** [www.businessinsurance.com/CandG](http://www.businessinsurance.com/CandG) for a full list of this week's personnel moves and promotions. Check our Web site daily for additional postings.

### TO SUBMIT ITEMS

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

Allison Martinat  
Business Insurance  
360 N. Michigan Ave.  
Chicago, Ill. 60601-3806  
[amartinat@businessinsurance.com](mailto:amartinat@businessinsurance.com)

### POSTING THIS WEEK

#### BROKERS:

- Willis Group Holdings Ltd.
- Integro Insurance Brokers Ltd.

#### INSURERS:

- XL Insurance

#### OTHER PROVIDERS:

- AgencyPort Insurance Services Inc.
- Coventry Health Care Inc.

### TO SUBMIT ITEMS

Please send Products & Services announcements to: Colleen McCarthy, Business Insurance, 711 Third Ave., New York, N.Y. 10017-4036 or [cmccarthy@businessinsurance.com](mailto:cmccarthy@businessinsurance.com)

# Cash balance: Legal challenges to pension design look to be over

CONTINUED FROM PAGE 1

ty to earn interest on each year of retirement savings.

Legal experts say the impact of the ruling goes beyond a victory for Southern California Gas, which converted its traditional final average pay plan to a cash balance plan in 1998. More than 1,000 other employers, including many of the nation's largest corporations, have made such conversions.

With the ruling by the 9th Circuit, widely considered to have an anti-business slant, endorsing the legality of cash balance plans, litigation over the age discrimination issue and the possibility that employers could have to shell out huge damages is now almost certainly at an end, legal experts say.

"The fear of litigation should be over. The courts have spoken very clearly on the issue," said Jeffrey Huvelle, a partner with Covington & Burling L.L.P. in Washington. He was lead counsel for IBM Corp. in its successful appeal to the 7th Circuit of a lower court's 2003 ruling.

"Given the universal conclusion reached by all courts of appeal, notwithstanding their diverse political leanings, this challenge should be buried once and for all," said Nancy Ross, a partner with McDermott, Will & Emery L.L.P. in Chicago.

"There is little doubt that the issue finally has been settled,"

added Ethan Kra, chief actuary with Mercer L.L.C. in New York.

That will be of great comfort to employers, legal experts say.

"As a practical matter, this is the end on the line on this issue," said Richard Shea, a Covington & Burling partner in Washington.

Cash balance plans grew rapidly in the late 1980s and 1990s, typically as replacements for final average pay plans. Cash balance plans provide richer benefits to shorter-service employees than traditional plans.

Employers adopting the plans, with their rapid accrual of benefits, believed they would be a better fit—compared with traditional plans—

for an ever more mobile workforce.

Additionally, employers believed the plans' account-based feature—in which benefits are expressed as a cash lump sum, enabling employees to instantly know the value of their benefits—would increase employee appreciation.

Still, the litigation, adverse publicity and fears of adverse rulings have taken their toll. Many companies that were considering converting their traditional plans to cash balance plans changed course and moved entirely to a defined contribution plan approach, at least in part because of fears of being sued and being hit with big damage

awards, after the initial IBM decision triggered a wave of lawsuits.

"The damage has been done," said Kevin Wagner, a senior retirement consultant with Watson Wyatt Worldwide in Atlanta.

Still, some believe cash balance plans may rebound modestly now that the litigation likely is at an end and Congress, as part of a 2006 pension plan funding reform law, has protected new cash balance plans from age discrimination suits.

In part, that rebound could be the result of pressure from employees, who have seen their 401(k) account balances hammered as equities markets have slumped, for

a plan that promises a guaranteed benefit with no investment risk to them, Mr. Kra said.

A handful of big employers, including Dow Chemical Co. of Midland, Mich., and SunTrust Banks Inc. of Atlanta, have converted their final average pay plans to cash balance designs.

Several others major employers are considering doing the same, consultants say.

*David Hurlic et al. vs. Southern California Gas Co.; Southern California Gas Co. Pension Plan, 9th U.S. Circuit Court of Appeals, No. 06-55599, Aug. 20, 2008.*



## Enterprise Risk Management: Eliminating Obstacles to Success

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### THE TIDE TURNS

*How the legal and political climate for cash balance pension plans, once very chilly, has warmed through court and congressional action.*

**JULY 2003:** In a decision that rocks the business community, U.S. District Court Judge G. Patrick Murphy in Southern Illinois rules that the design of cash balance plans in general and IBM Corp.'s plan in particular discriminates against older employees.

**SEPTEMBER 2003:** The U.S. House of Representatives approves legislation blocking the Treasury Department from taking action that would assist in overturning the IBM ruling.

**JUNE 2004:** Under pressure from Congress, the Treasury Department shelves rules proposed in 2002 stating that the core of cash balance plans—providing employees' accounts with interest and pay-related credits—does not violate federal age discrimination law.

**AUGUST 2006:** The 7th U.S. Circuit Court of Appeals reverses the lower court ruling in the IBM case. In a decision that becomes a precedent for other courts, the 7th Circuit says that while the benefits provided to younger employees are worth more than the same benefit provided to older employees, that difference is the result of the time value of money, not age discrimination.

**AUGUST 2006:** Congress approves legislation clarifying that cash balance plans do not violate age discrimination law, but applies the measure only to new plans.

**JANUARY 2007:** The 3rd U.S. Circuit Court of Appeals, in a case involving PNC Financial Services Group Inc., is the second appeals court to rule that cash balance plans are not age discriminatory.

**JULY 2007-AUGUST 2008:** Three more appeals courts—the 6th, 2nd and the 9th Circuits—rule unanimously that cash balance plans are not age discriminatory.

## More M&As expected as insurers vie to grow

Merger and acquisition activity, already on the upswing, is likely to intensify as insurers seek additional growth and international players take advantage of the relatively weak U.S. dollar, observers say.

They point to Boston-based Liberty Mutual Group's \$6.2 billion purchase of Seattle-based SAFECO Corp., which is expected to close this quarter, and Tokio Marine Holdings Inc.'s plan, announced last month, to buy Philadelphia Consolidated Holding Corp. in a \$4.7 billion deal, among others.

"Lack of organic growth, the softness in the top line and the tremendous capitalization and excess capital that exists in the industry" will all be important drivers of M&A activity, according to John L. Ward, chief executive officer of Cincinnati-based Cincinnati Partners L.L.C.

"There's also a diversification benefit to companies as they acquire companies in different geographical regions or different lines of business," said Jeanne M. Hollister, Hartford, Conn.-based managing principal of Towers Perrin's Americas P/C insurance practice.

Paul Newsome, an analyst with Sandler O'Neill & Partners L.P. in Chicago, said M&A activity "is never real smooth in how it shows up, but it's kind of that time in the cycle for M&A to happen."

Insurers "still have a fair amount of capital, and the currency situation makes acquisitions by non-U.S. firms fairly attractive," said Mr. Newsome.

While there will likely be more transactions involving insurers based overseas, lower stock values in the United States have been "kind of a double-edged sword," according to James B. Auden, Chicago-based senior director for Fitch Ratings.

Acquisitions may be more attractively priced by the price of potential buyers' own stocks have been beaten down a bit as well, which makes it more difficult for them to use their stock to fund purchases, Mr. Auden said.

—By Judy Greenwald

## Property/casualty insurers' 2008 first-half results

Ranked by net income. All amounts are in thousands of dollars.

	Corporate			Property/casualty operations					
	Net income	Percent increase (decrease) 2008-2007	Consolidated revenues 2008	Combined ratio 2008 <sup>1</sup>	Combined ratio 2007 <sup>1</sup>	Net premiums written 2008	Percent increase (decrease) 2008-2007	Policyholder surplus 2008	Percent increase (decrease) 2008-2007
Travelers Cos. Inc.	\$1,909,000	(18.4)%	\$12,527,000	88.5%	88.5%	\$10,817,000	(0.4)%	\$22,288,000	2.0%
Chubb Corp.	1,133,000	(20.2)	6,843,000	86.2	83.1	5,983,000	1.0	13,250,000	8.2
ACE Ltd.	1,123,000	(16.8)	6,910,000	86.2	87.4	6,273,000	1.6	16,327,000	7.5
Hartford Financial Services Group Inc.	688,000	(54.2)	9,047,000	91.8	90.3	5,167,000 <sup>2</sup>	(2.4)	8,300,000	(2.4)
Liberty Mutual Insurance Co.	660,000	(4.2)	13,833,000	101.3	100.6	12,535,000	12.3	15,371,000	13.5
CNA Financial Corp.	368,000	(28.3)	4,603,000	97.9	94.9	3,327,000	(5.1)	7,428,000	(11.4)
SAFECO Corp.	291,300	(21.0)	3,019,600	93.5	89.8	2,789,200	(2.3)	2,833,600	(19.4)
American Financial Group Inc.	136,300	(24.5)	2,044,900	85.1	86.4	1,319,400	(1.4)	1,993,000	(24.7)
RLI Corp.	64,109	(22.2)	318,939	83.6	76.5	262,443	(5.0)	741,102	(5.5)
Argo Group International Holdings Ltd.	59,900	29.9	557,300	97.7	96.6	530,500	32.2	N/A	N/A
Cincinnati Financial Corp.	21,000	(96.2)	1,621,000	101.1	89.1	1,566,000	(5.4)	3,650,000	(26.1)
Old Republic International	(383,832)	N/M	1,458,529	97.4 <sup>2</sup>	91.2 <sup>2</sup>	1,028,322 <sup>2</sup>	(2.6)	2,239,977	(7.2)
American International Group Inc.	(13,162,000)	N/M	33,964,000	97.3	87.3	24,300,000	0.2	N/A	N/A
<b>Cumulative</b>	<b>(\$7,092,223)</b>	<b>N/M</b>	<b>\$96,747,268</b>	<b>94.2%</b>	<b>89.9%</b>	<b>\$75,897,865</b>	<b>1.5%</b>	<b>\$94,421,679</b>	<b>0.4%</b>

<sup>1</sup> Includes dividends. <sup>2</sup> Statutory. N/M - Not Meaningful  
Source: BI survey, company reports

## Results: Soft market takes toll on P/C insurer results

CONTINUED FROM PAGE 3

lant, an analyst with Keefe, Bruyette & Woods Inc. in New York.

Good loss trends, the level of reserves and "OK levels of profitability all mean we're still far from the bottom on pricing," Mr. Gallant said.

John L. Ward, chief executive

officer of Cincinnati-based Cincinnati Partners L.L.C., agreed. "Because there is so much available capacity in the industry, my view is that the soft market, in a fairly significant way, will continue for at least several more years," particularly in commercial lines.

Meanwhile, "earnings will continue to slide," said James B. Auden,

Chicago-based senior director at Fitch Ratings. "Pricing may have stabilized a bit, but it's still dropping, so we see further deterioration in results going forward."

P/C insurers also are feeling the effects of the credit crisis on their investment portfolios.

"Investment income is down considerably from historical levels, and the outlook's very uncertain and looms as the big unknown for industry results for the short term," Mr. Ward said.

There are several concerns, "but,

also affect insurers' directors and officers liability and errors and omissions claims, said Jeanne M. Hollister, Hartford, Conn.-based managing principal of Towers Perrin's Americas P/C insurance practice.

"The fact that you had deterioration in underwriting standards on mortgage loans can lead to a wide variety of E&O and D&O claims," Ms. Hollister said. Furthermore, when housing prices go down, sometimes there is an increase in construction-defect claims that can affect insurers, she said.

Higher-than-usual second-quarter catastrophe losses have affected results as well.

"Most of the carriers are reporting an increase in catastrophe losses year-to-date in a significant way, and we're still early in the hurricane season," Mr. Ward said.

Regional P/C insurers in particular have been hurt by the catastrophes, while the bigger national players were relatively less affected, Mr. Auden said.

## Excess reserves to dry up

Analysts are keeping a close eye on the property/casualty insurance industry's reserves.

While redundant reserves are still boosting major U.S. P/C insurers' financial results, they are running out, analysts say.

"The good news is that there is that redundancy in the industry reserves," said John L. Ward, chief executive officer of Cincinnati-based Cincinnati Partners L.L.C.

"The bad news is that the redundancy is declining and will probably have less of a positive impact on results in the months ahead, and may very well turn into a deficiency situation as the market continues to soften and turn in general," Mr. Ward said.

Furthermore, mounting inflationary pressure "could turn the tide even more quickly," from reserve redundancy to reserve deficiency, Mr. Ward said. "So that is an economic trend to watch and to monitor as that further develops."

Jeanne M. Hollister, Hartford, Conn.-based managing

principal of Towers Perrin's Americas P/C insurance practice, said the industry's reserve position at the end of 2007 "was strong but probably less strong than in 2006, and they're not doing anything at the moment to replenish the reserves. They're eating away at reserve redundancy," which she said cannot continue indefinitely.

"We've seen fairly significant reserve releases over the past few years," said John D. Gwynn, managing director at Memphis, Tenn.-based investment firm Morgan Keegan & Co. Inc. While there will be redundancy at the end of this year, "it's going to be very narrow, probably less than 1% or 2%," he said.

"Given the direction of pricing and the relaxation of terms and conditions going forward, I think it's very reasonable to expect this industry to return to its old habit of being deficient in reserve accounts" in 2009 or 2010, Mr. Gwynn said.

—By Judy Greenwald

**'It's just a more challenging operating environment today and it's likely to get worse in the near term.'**

James B. Auden, Fitch Ratings

by far, the biggest is the level of impairments, write-downs and unrealized losses," he said.

"We typically think of the volatility in this business being squarely in the underwriting side of the house," but "with the uncertainty of the credit markets and the asset-quality issues that loom, investment risk is evolving as the big unknown for the industry, the big concern for the industry in the short term," said Mr. Ward.

"I wouldn't expect much improved performance on the investment side in the second half of the year," Mr. Auden said. "It's just a more challenging operating environment today and it's likely to get worse in the near term."

The subprime credit crisis can

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# FEMA: Public entities face higher costs

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floods, hurricanes and earthquakes.

Contrary to how it previously provided aid, FEMA has said it plans to reduce its assistance after a disaster by the amount of damage an earlier catastrophe of the same nature caused, if the same buildings are damaged in both losses. That reduction could be a multiple of the assistance FEMA had provided previously.

A FEMA official has said the agency is not changing its aid policy but finally enforcing longstanding policy correctly (see related story).

"That's going to be a tough one for local governments to swallow," said claims adjuster Dan S. Ramsey, director-disaster recovery consult-

ing at Utica, N.Y.-based Adjusters International Inc.

PRIMA last week urged FEMA to rescind the portion of its policy relating to flood losses. But PRIMA Industry Specialist Paree L. Roper said the organization's focus on flood losses "doesn't mean we don't care about the other perils." He said PRIMA focused on flooding because the organization has raised that concern with FEMA before, including last year, when FEMA backed off a similar effort to cut aid after risk managers protested (*BI*, Sept. 3, 2007; Aug. 27, 2007).

The Stafford Act, however, allows FEMA to waive its aid cutback policy if, after an earlier disaster, a public entity obtained a certification from its state insurance regulator that adequate insurance was not reasonably available to cover future losses.

While property insurance rates are falling, coverage for catastrophic perils such as floods and earthquakes can be very expensive, brokers say. Windstorm rates are falling, but that coverage requires policyholders to take high deductibles of 5% to 10% of building values or location values, brokers report. Locations consist of multiple buildings, and a public entity could face the total deductible for an entire location even if a single building is damaged.

Regulators in several states handle certification requests on a case-by-case basis.

But in Louisiana, insurance regulators last year developed a plan to facilitate the FEMA waiver process. In an Aug. 10, 2007, letter to President Bush, Louisiana Insurance Commissioner James J. Donelon certified that flood and windstorm coverage were not reasonably avail-

able for any public entity in the state.

However, public entities still had to obtain individual certifications from the Insurance Department. In their applications, public entities had to demonstrate that they spent a certain percentage of their operating budget on property insurance, excluding the cost of business interruption coverage.

The department established different percentages for different types of public entities based on historical data of insurance expenditures it had on file, said Warren Byrd, executive counsel.

But the department's program inadvertently works against public entities that have large operating budgets but still cannot purchase adequate flood and windstorm coverage, said Nancy Sylvester, a Baton Rouge, La.-based managing director in the Public Entity & Scholastic Division at Gallagher Risk Management Services Inc., a unit of Arthur J. Gallagher & Co.

Because of falling property rates, the program will force some public entities to buy far more insurance than they would need to cover a probable maximum loss, she said.

An example is the Calcasieu Parish School Board about 50 miles from the Gulf Coast. The school board this year spent nearly \$1.19 million, or 0.46% of its \$260 million operating budget, for property insurance, said Karl Bruchhaus, chief financial officer. The school board has \$25 million in property insurance limits, which covers wind losses. The board also has \$500,000 in property flood limits and \$500,000 of contents limits under the National Flood Insurance Pro-

See **FEMA** next page

## Louisiana gets mixed signals about effectiveness of waiver

Questions about how changes in a Louisiana Insurance Department's program could complicate rather than facilitate public entities' ability to recover federal financial assistance after a disaster could be moot if the program ends up far less potent than intended.

While the Louisiana program was intended to ensure that the Federal Emergency Management Agency could not reduce aid to public entities that received federal assistance in a previous disaster, the program may satisfy only FEMA's proof-of-insurance requirement to release funds after the first disaster.

"We just don't know," said Dan Jilek, a Baton Rouge, La.-based insurance specialist with James Lee Witt Associates who consults with the Louisiana Governor's Office of Homeland Security and Emergency Preparedness. Mr. Jilek conducts

the first reviews of the program applications and then sends them to the Insurance Department for separate reviews.

"We're getting mixed signals" from FEMA officials about how broad the waiver would be, Mr. Jilek said.

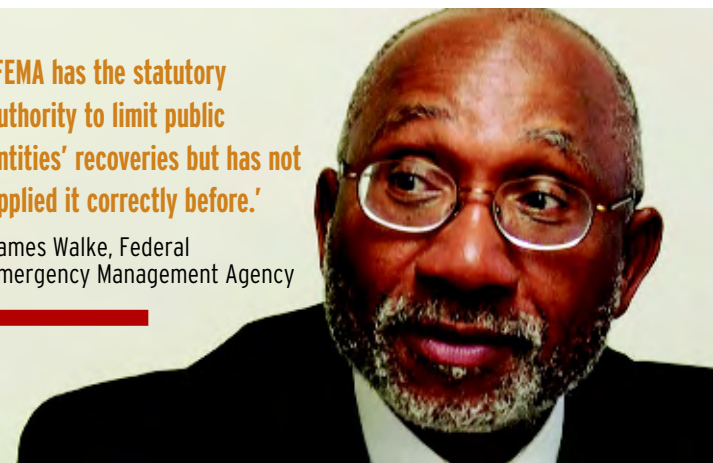
The Insurance Department is attempting to clear up the confusion by the end of the month, said Warren Byrd, executive counsel.

However, in separate e-mails to *Business Insurance* and a broker, FEMA official James Walke said certifications issued through the Louisiana program would ensure that the agency would cover repair costs after a second disaster. Mr. Walke is the Washington-based director of FEMA's Public Assistance Division, which is part of the Disaster Assistance Directorate at the U.S. Department of Homeland Security.

—By Dave Lenckus

'FEMA has the statutory authority to limit public entities' recoveries but has not applied it correctly before.'

James Walke, Federal Emergency Management Agency



## FEMA critics say new policy not supported by regulation

By **DAVE LENCKUS**

Critics of the Federal Emergency Management Agency's new method of determining how much federal assistance public entities will receive when they are hit by two similar disasters contend that FEMA does not have statutory support.

"I think all of this is moot," said Jack Moore, risk manager of the Terrebonne Parish School Board in Houma, La.

Referring to the Robert T. Stafford Disaster Relief and Emergency Response Act and FEMA guidelines explaining federal disaster assistance, Mr. Moore said: "I've seen all of the FEMA documents. I don't see this interpretation" that FEMA can reduce federal assistance when a public entity has sustained damage in a second disaster.

Claims adjuster Dan S. Ramsey, director-disaster recovery consulting at Utica, N.Y.-based Adjusters International Inc., agreed. "I would really like them to prove without a doubt that this is in the Stafford Act," he said, noting that FEMA in past disasters often helped local communities maximize federal grants.

However, James Walke, Washington-based director of FEMA's Public Assistance Division, said FEMA has the statutory authority to limit public entities' recoveries but has not applied it correctly before. That authority is found in Section 311 of the Stafford Act, Mr. Walke said.

The following is the entire section of the Stafford Act that Mr. Walke points to:

Sec. 311. Insurance (42 U.S.C. 5154)

(a) Applicants for replacement of damaged facilities

(1) Compliance with certain regulations—An applicant for assistance under section 5172 of this title (relating to repair, restoration, and replacement of damaged facilities), section 5189 of this title (relating to simplified procedure) or section 3149(c)(2) of this title shall comply with regulations prescribed by the President to assure that, with respect to any

property to be replaced, restored, repaired, or constructed with such assistance, such types and extent of insurance will be obtained and maintained as may be reasonably available, adequate, and necessary, to protect against future loss to such property.

(2) Determination—In making a determination with respect to availability, adequacy, and necessity under paragraph (1), the President shall not require greater types and extent of insurance than are certified to him as reasonable by the appropriate State insurance commissioner responsible for regulation of such insurance.

(b) Maintenance of insurance—No applicant for assistance under section 5172 of this title (relating to repair, restoration, and replacement of damaged facilities), section 5189 of this title (relating to simplified procedure), or section 3149(c)(2) of this title may receive such assistance for any property or part thereof for which the applicant has previously received assistance under this Act unless all insurance required pursuant to this section has been obtained and maintained with respect to such property. The requirements of this subsection may not be waived under section 5141 of this title.

(c) State acting as self-insurer—A State may elect to act as a self-insurer with respect to any or all of the facilities owned by the State. Such an election, if declared in writing at the time of acceptance of assistance under section 5172 or 5189 of this title or section 3149(c)(2) of this title) or subsequently and accompanied by a plan for self-insurance which is satisfactory to the President, shall be deemed compliance with subsection (a). No such self-insurer may receive assistance under section 5172 or 5189 of this title for any property or part thereof for which it has previously received assistance under this Act, to the extent that insurance for such property or part thereof would have been reasonably available.



Sen. Mary Landrieu

## Sen. Landrieu to investigate grant method

The Federal Emergency Management Agency's new approach to providing financial grants after disasters has created some confusion not only for public entities but also for U.S. Sen. Mary Landrieu, D-La., who has vowed to investigate the issue.

After first issuing a statement containing blistering criticism of how FEMA has handled the situation, the senator revised the statement by removing the rebuke.

But in both statements, Sen. Landrieu promised to ensure that "communities can work with a government agency that fairly provides assistance, rather than throwing up bureaucratic roadblocks."

In her revised statement, the senator also vowed to "continue to push for available and affordable insurance for communities so they can better protect themselves from the extreme financial burden a disaster can inflict."

Sen. Landrieu chairs the Disaster Recovery Subcommittee of the Senate's Homeland Security and Governmental Affairs Committee.

—By Dave Lenckus

# News In Brief

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Wittman as executive vp and CFO. Ms. Wittman succeeds Matthew B. Bartley, who plans to leave the company. Mr. Bartley was named CFO of New York-based MMC in September 2006. He succeeded M. Michele Burns, who joined MMC as CFO in March 2006, but was then tapped to serve as chairman and chief executive officer of MMC's Mercer Human Resources Consulting unit. Ms. Wittman most recently was CFO and executive vp of Adelphia Communications Corp.

## Health screen incentives set for Alabama workers

Alabama state employees who have health screenings next year will be exempt from a \$25-per-month health insurance premium under a plan approved last week by the state's insurance board. To further encourage employees to have the screenings, the state will pay any office-visit copayments they are charged. But if the screenings turn up serious problems with blood pressure, cholesterol, obesity or glucose, employees will have one year to see a doctor, enroll in a wellness plan or reduce risk levels, such as losing weight. Those who don't do so will have to pay the \$25 premium starting in 2011.

## Commissioner Bell takes Swiss Re post

Swiss Reinsurance Co. has tapped Walter Bell, Alabama's top insurance regulator, to be the next chairman of Swiss Re America Holding Corp. Mr. Bell will start with Swiss Re America on Sept. 2. He succeeds Roger Ferguson, who left Swiss Re to join TIAA-CREF. Mr. Bell will be based in New York. Earlier this month, Mr. Bell announced he would be leaving his post as Alabama's insurance commissioner, a role he has held since 2003.

## Noted

Voters in Maine in November will decide whether to repeal tax hikes designed to shore up the state's struggling **subsidized health insurance program**. The taxes replaced an assessment on health insurers that hasn't come close to providing the revenue needed to fund DirigoChoice....Delaware Insurance Commissioner Matt Denn has ordered an 11.57% average **workers compensation rate decrease** for Delaware employers, effective Oct. 1....U.S. affiliates of German delivery giant Deutsche Post A.G., including DHL Express, are asking the Labor Department for permission to **fund employee benefit risks** through the Vermont branch of a Bermuda captive owned by a Deutsche Post affiliate. Under the arrangement, the Vermont branch will reinsure long-term disability policies issued by Prudential Insurance Co. of America.

# Benfield: Aon purchase builds strengths

CONTINUED FROM PAGE 1

manage their capital.

"We've built over time a platform that we believe can truly offer distinctive value to clients....We saw Benfield as a tremendous opportunity to partner with and strengthen that platform," he said.

Over the past several years, Benfield has reportedly been the target of takeover approaches by several suitors.

Under the terms of the deal, Aon will pay \$6.55 per share in cash, representing a 29% premium to Benfield's closing stock price on Aug. 21. Aon will also assume £91 million (\$170 million) of Benfield debt as part of the deal.

"The Benfield board believes that the offer provides Benfield's shareholders with fair and certain value," Benfield CEO Grahame Chilton, said in a statement announcing the deal.

On completion of the deal, Mr. Chilton will become vice chairman of Aon Group and will join the executive committee of Aon Corp. and of Aon Benfield Re. Michael O'Halloran, currently executive chairman of Aon Re Global, will become chairman of Aon Benfield Re, while Andrew Appel, currently CEO of Aon Re Global, will serve as CEO of the new unit.

Mr. Case said other senior management positions will be determined. "I can assure you that colleagues like Paul Karon (chairman of Benfield's U.S. division) will play very important roles," he said.

Analysts reacted favorably to the deal.

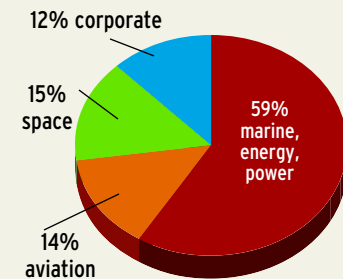
"I think it's a fantastic combination," said Chuck Hamilton, an analyst with FTN Midwest Securities Corp. in Nashville, Tenn. "It really builds on the strength of Benfield and really leverages Aon Re's already dominant position in rein-

## BENFIELD 2007 HIGHLIGHTS

Overall revenue:	<b>£339.2M</b>
International reinsurance	<b>171.1M</b>
U.S. reinsurance	<b>131.4M</b>
Benfield Corporate Risk	<b>26.3M</b>
Profit after tax:	<b>£36.8M</b>

## BENFIELD CORPORATE RISK

Revenue breakdown for retail unit



Source: Benfield Group Ltd.

surance around the world."

Clearly Benfield could not "ignore" an opportunity to give shareholders a 29% return with cash, he said.

"Benfield has been pretty clear over the past year that it doesn't necessarily see survival as an independent entity as likely," said Meyer Shields, a principal with Stifel Nicolaus & Co. Inc. in Baltimore.

So when looking at potential buyers on the retail brokerage side, the only other candidates were really Marsh & McLennan Cos. Inc. and Willis Group Holdings Ltd. Marsh is busy building its firm back up, while Willis has its hands full with its recent acquisition of Hilb Rogal & Hobbs Co., Mr. Shields said. That left Aon.

"It's a nice transaction for Aon," said Mark Lane an analyst with William Blair & Co. in Chicago.

Benfield "rounds out" Aon's product portfolio so it is stronger in several areas that include the United States and Japan, Mr. Lane said.

For Benfield the transaction gives it a "nice premium" and it becomes "part of a more stable, deeper organization," Mr. Lane said.

"For clients, there's probably some positives and some negatives," Mr. Lane said. "For the more sophisticated clients, it will help bring more resources," he said.

On the flip side, though, the deal reduces the number of choices. "The positives probably outweigh the negatives from a client perspective, but it's not all positives," Mr. Lane said.

John Wortman, president of Metairie, La.-based Louisiana Citizens Property Insurance Corp., the market of last resort for property insurance in the state, which uses Benfield, said, "While it does reduce options by one, sometimes it can also enhance some other competition and maybe continue to make things better."

An executive at a ceding insurer that has done business with both Benfield and Aon said the deal raises concerns about whether the traditional strengths of Benfield will be retained in the combined organization.

Aon brings a lot of clout to the marketplace, but Benfield has "always tried to market themselves as more technically competent and open to new ideas," said the executive, who did not want to be identified.

"Many times in an acquisition, the target becomes conformed to the acquirer and not the other way around," he said.

Judy Greenwald contributed to this report.

# FEMA: La. ordered to curtail certification

CONTINUED FROM PREVIOUS PAGE

To meet the state's 0.65% requirement, the school board would have to spend about \$501,000 more in premiums. That would push its limits to at least \$50 million—more than double its probable maximum loss, Mr. Bruchhaus said.

"Why do I need that for?" Mr. Bruchhaus noted that the school district's windstorm losses in Hurricane Rita, which damaged all 68 district buildings, totaled about \$25 million. Insurers covered \$11 million and FEMA has covered \$14 million, he said.

Mr. Hayes said the local PRIMA chapter plans to protest the program with state legislators.

New Orleans-based risk management consultant Todd Thomas, a member of the task force established to develop the certification process, said some of his clients faced similar circumstances. But he said they met the Insurance Department's budget requirement by purchasing more—albeit an inadequate amount—of pricey windstorm or commercial

flood insurance that sits excess of the NFIP coverage.

Public entities also could seek an exception from the state's budget requirement, said Mr. Thomas, managing director of Sigma Consulting Corp., whose clients include New Orleans and neighboring Jefferson Parish.

While there is no formal process to obtain an exception, Louisiana insurance regulators would review such requests, Mr. Byrd said.

Meanwhile, Louisiana officials said FEMA has required them to curtail the breadth of the certification issued to applicants. Each certification will apply only to buildings damaged by flood or wind in 2005, rather than to all of an applicant's properties as the Insurance Department originally intended.

While the Insurance Department has begun issuing certifications, FEMA still must approve the modified process, Mr. Byrd said.

In a future loss, that modification could create problems in determining how much financial assistance FEMA would provide when a public

entity's deductible is based on a percentage of a location's value, Gallagher's Ms. Sylvester and Sigma's Mr. Thomas said.

For example, determining the deductible for a specific building would be complicated if buildings at a location are damaged in two disasters of the same nature and if not all of those damaged in the first loss are damaged again, Ms. Sylvester said.

Mr. Bruchhaus said that the issue of federal assistance to local communities could be eliminated if all communities took sole responsibility for funding their own disaster recoveries, but he said that approach would be unrealistic and unfair.

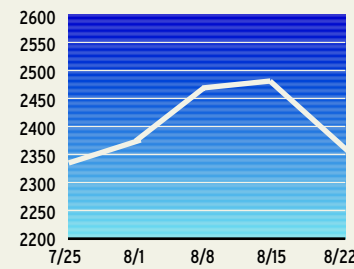
"In reality, those with more politically connected status—the politically connected cities—when they have a disaster, they're going to get their money" from the federal government, he said. Some of that aid would come from tax revenue from small communities, so those communities also should be able to rely on federal disaster aid, he said.

## Stock Index

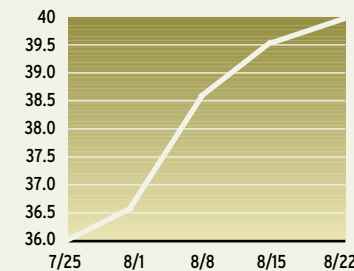
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at [www.IndustryFocus.com](http://www.IndustryFocus.com).

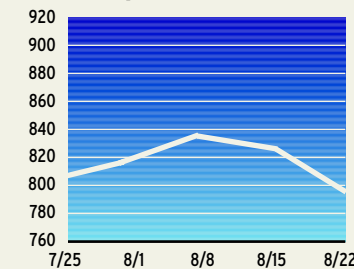
### BI STOCK INDEX



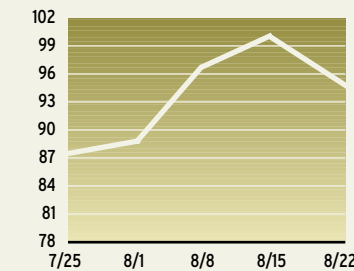
### BI BROKERS INDEX



### BI INSURER/REINSURERS INDEX



### BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

<b>BI STOCK INDEX</b>	2359.82	↓ -3.87%
<b>DOW JONES</b>	11628.06	↓ -0.27%
<b>S&amp;P 500</b>	1292.20	↓ -0.46%

### LARGEST GAINS

<b>NYMAGIC Inc.</b>	6.97%
<b>Willis Group Holdings Inc.</b>	5.45%
<b>Unitrin Inc.</b>	3.32%
<b>Navigators Group Inc.</b>	3.08%
<b>Brown &amp; Brown Inc.</b>	1.87%

### LARGEST LOSSES

<b>AIG</b>	-13.57%
<b>MBA Inc.</b>	-9.09%
<b>UnitedHealth Group Inc.</b>	-7.27%
<b>Ambac Financial Group</b>	-6.51%
<b>American Safety Insurance</b>	-5.93%

Source: Financial Content Inc. <http://financialcontent.com>

Contributing: Jeff Casale, Roberto Cenicerros, Jerry Geisel, Mike Tsikoudakis

## Man turns to embezzling to support high-rolling

Strippers, gambling, expensive cars and loans of tens of thousands of dollars to friends were all part of an Eden Prairie, Minn., man's lavish spending habits, federal prosecutors say.

But then law enforcement caught up with 34-year-old Nathan John Mueller. He is awaiting sentencing after pleading guilty Aug. 15 to defrauding his former Minneapolis employer, ING Reinsurance Corp., of \$8.5 million, according to the U.S. Attorneys Office for the District of Minnesota.

Mr. Mueller embezzled the money by tricking ING into issuing 99 checks payable to entities with names similar to those of companies that were ING customers, said the U.S. Attorney's office in Minneapolis.

The checks went into bank accounts controlled by Mr. Mueller, who faked entries in ING Reinsurance's books.

Mr. Mueller "spent the embezzled funds on gambling, cars, travel, jewelry, friends, acquaintances and extensive entertainment expenses," the July indictment alleged.

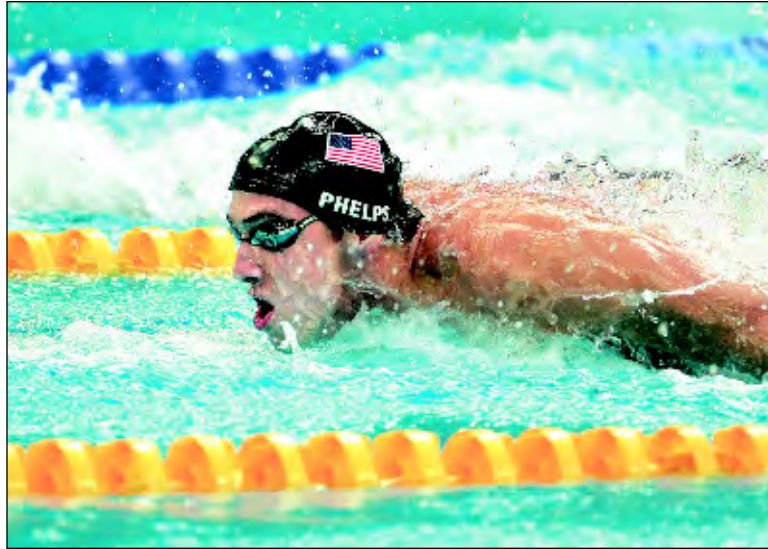
Tens of thousands of dollars reportedly went to tips for strippers, prosecutors said.

Mr. Mueller also must have been concerned about his retirement, because his indictment seeks forfeiture of money in an individual retirement account. Additionally, he has agreed to forfeit properties in Eden Prairie and Brooklyn Park, Minn., prosecutors said.

Facing up to 20 years in prison, he may not have to worry about retirement for a while, though.



# Business Insurance END PAGE



NYT PHOTOS

Michael Phelps earned a \$1 million bonus from sponsor Speedo for breaking Mark Spitz's record of seven gold medals at a single Olympics.

## Speedo covers Phelps, but not with insurance

Would you bet against eight-time Olympic gold medalist Michael Phelps? Insurance companies wouldn't, either.

For the second straight Summer Olympiad, the Speedo-sponsored swimmer was offered a \$1 million bonus to tie Mark Spitz's 1972 record seven gold medals in a single Olympics.

Craig Brommers, Speedo vp of marketing, told reporters that Speedo insured its prize offer to Mr. Phelps for the 2004 Olympics in Athens, Greece, for a premium of about \$300,000. Mr. Phelps took the gold six times in Athens.

But the Nottingham, England-based swimsuit maker did not exhaustively pursue coverage for the 2008 games, believing that this time around the premium may have been close to 90% of the \$1

million payout.

"Unfortunately, due to Michael's performance at the Melbourne World Championships (in 2007) and the probability that he might reach that million-dollar bonus, Speedo was unable to secure insurance this time around," Mr. Brommers told CNBC.

On Aug. 17, with every seat filled in the Water Cube at the 2008 Olympic Games in Beijing, Mr. Phelps added his chapter to Olympic history by collecting a record eighth gold medal in a single Olympics.

Despite lacking insurance coverage, Speedo isn't fussing about the impending payout.

"The happiest check that Speedo will ever write is Phelps' million-dollar bonus," Mr. Brommers told reporters.

## Will anyone get to watch 'Watchmen'?

All eyes are on the upcoming movie "Watchmen," as film production giants Warner Bros. Entertainment Inc. and 20th Century Fox Film Corp. battle over rights to the superhero flick.

The Web site for the highly anticipated film—based on an acclaimed 1980s DC Comics series written by Alan Moore—features a "Doomsday Clock" inching closer to the movie's planned release of March 6, 2009. However, the pending and potentially ugly legal battle between the two media groups could freeze time.

Earlier this month, a judge in the U.S. District Court for the Central District of California denied a motion made by Warner Bros. to dismiss a lawsuit filed by Fox, which claims that it owns partial rights to the film. The judge agreed with Fox, claiming that while the Los Angeles-based film production company does not own all material rights, it could hold some due to a contract agreement made in 1991.

"Watchmen," a story about flawed superheroes, was acquired by Fox when the studio entered into an agreement with the "Watchmen" distributor, Lawrence Gordon, nearly two decades ago. New York-based Warner Bros., which is producing the \$120 million motion picture—which has completed filming—claims that it has obtained all rights to produce and distribute the movie from Mr. Gordon, and that based on that agreement, Fox's claim of copyright infringement is baseless, according to court documents.

"The judge did not opine at all on the merits, other than to conclude that Fox satisfied the pending requirements" for the case to go forward, a spokesman for Warner Bros. told Reuters. "We respectfully disagree with Fox's position and do not believe they have any rights in and to this project."

To be continued....



WARNER BROS./PARAMOUNT

## Harry and Louise still fretting about health care system

Remember Harry and Louise?

They were the fictional middle-class couple that worried about whether the Clinton administration's health care reform package would destroy the nation's health care delivery and finance system.

And their anxieties about the Clinton proposal in the campaign, paid for by the Health Insurance Assn. of America—later merged into an industry trade group that now is America's Health Insurance Plans—had much to do with increased public skepticism about the package and its eventual collapse in 1994.

Now, Harry and Louise, in a new series of TV spots featuring the



original actors, are back to discussing health care.

This time, though, the message

and the sponsors are different. In ads coinciding with the Democrat and Republican national con-



GODDARD CLAUSSEN

ventions, the fictional couple will raise issues such as the rising number of uninsured and the need for

Harry and Louise—then, left, and now. In new ads, the characters discuss the need for the next president to make health care reform a priority.

the next president to make health care reform a top priority.

The advertising is being paid for by several trade groups, including the National Federation of Independent Business—a vocal opponent of the Clinton plan—advocacy group Families USA as well as the American Cancer Society Cancer Action Network.

"Bring everyone to the table and make it happen," Louise says in ending the spot calling for health care reform to be a key priority.



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