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MAKING A COMEBACK  
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TO COURT / PAGE 3**

**RIMS CHAPTERS GIVING  
THE OLD COLLEGE TRY  
IN RECRUITING BID / PAGE 4**

## In Brief

### AIG's D&O insurers pay to settle suits

American International Group Inc.'s insurers agreed last week to pay \$90 million to settle derivative lawsuits alleging that former CEO Maurice Greenberg and other executives misled investors while running the insurance company. The payment will go to AIG, not individual investors.

### SeaWorld challenges fines in trainer's death

SeaWorld of Florida L.L.C. said it is contesting citations and fines totaling \$75,000 by the Occupational Safety and Health Administration in the death of an animal trainer. An OSHA investigation into the incident found that even though trainers had a history of unexpected and potentially dangerous incidents involving killer whales at various SeaWorld facilities, including Orlando, SeaWorld management "failed to make meaningful changes to improve the safety of

See **IN BRIEF** page 20

## HEALTH CARE REFORM

# Rules set process for claims appeals

*Employers concerned health reform change will add to burdens*

By **JOANNE WOJCIK**

**WASHINGTON**—Interim final rules about the appeals and external claims review processes that non-grandfathered self-insured group health plans must follow under new federal law could prove a challenge for many large, multistate employers, some benefit consultants say.

The challenge is that less than a dozen independent review organizations are qualified to provide those services, the consultants say.

However, the trade group representing the review organizations as well as URAC, its accrediting body, say external reviews are so infrequent that employers should have no trouble lining up the three independent review organizations required under the interim final rules that the Department of Labor, the Department of Health and Human Services and the Internal Revenue Service issued last week (see story, page 19).

Still, employers are concerned

about the administrative burden that the regulations implementing the Patient Protection and Affordable Care Act set up, especially because they were issued as many employers are about to start open enrollment for the 2011 plan year.

The law mandates that employees in nongrandfathered self-funded health care plans be able to request a "federal external review" if a claim or benefit is denied during internal reviews by employers and plan administrators.

Under the interim final rules, which apply to plan years beginning on or after Sept. 23, a group health plan must give claimants up to four months to request an external review after an adverse claim or benefit decision. A preliminary review of that request must be conducted within five business days of its receipt, and the plan must issue a written notification of its decision to the claimant within one business day of completing the preliminary review.

If the preliminary review finds an external review is needed, the request must be referred to an independent review organization

See **APPEALS** page 19

## ALTERNATIVE RISK TRANSFER

# RRG fighting Nevada move to bar auto liability cover

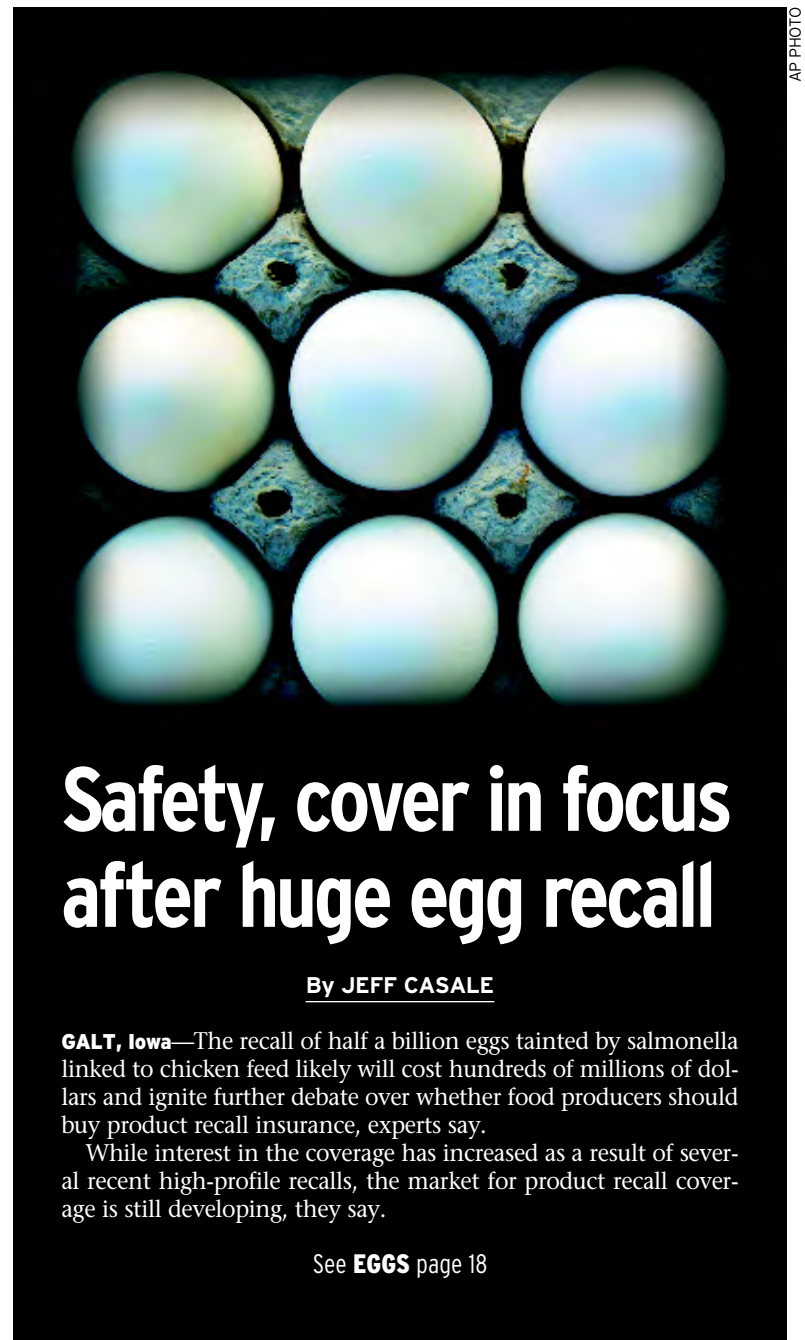
By **RODD ZOLKOS**

**CARSON CITY, Nev.**—The Nevada insurance regulator's ban on a Vermont-domiciled risk retention group writing first-dollar automobile liability coverage in the state violates fed-

eral law, according to the RRG and others in the captive industry.

Such a stance also could negatively affect the state's ambitions as a captive domicile, some contend.

But the state's insurance commissioner says the federal Liability Risk



## Safety, cover in focus after huge egg recall

By **JEFF CASALE**

**GALT, Iowa**—The recall of half a billion eggs tainted by salmonella linked to chicken feed likely will cost hundreds of millions of dollars and ignite further debate over whether food producers should buy product recall insurance, experts say.

While interest in the coverage has increased as a result of several recent high-profile recalls, the market for product recall coverage is still developing, they say.

See **EGGS** page 18

## SPOTLIGHT

### KATRINA: FIVE YEARS LATER



Risk managers wiser post-Katrina; innovations speed claims; BI's Michael Bradford witnessed a nightmare; insurers regroup; data enhances models. **PAGE 10**

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Retention Act provides a "carve out" for states with regard to mandated coverages. Nevada Commissioner of Insurance Brett J. Barratt also argues that case law supports his determination and says Nevada's stance in this case is consistent with the way it has treated RRGs on other mandated coverages, such as workers compensation.

Mr. Barratt last month ordered the Alliance of Nonprofits for Insurance, Risk Retention Group to cease writing first-dollar or mandated motor vehicle financial responsibility coverage in the state within 60 days of his order. The order also said other RRGs would be barred from writing the coverage.

The commissioner's order allows

ANI to write excess liability coverage in Nevada, provided it sets up a fronting arrangement with an authorized Nevada insurer.

Kimberly Maxson-Rushton, a partner with Las Vegas law firm Cooper Levenson April Niedelman & Wagenheim P.A., who represents the risk retention group, said she has asked Nevada's attorney general to review the order and hopes there is a mechanism for reversing the ruling.

But an appeal in federal court is likely, she said. "It is likely that we will pursue a federal action, probably within the next 30 days," Ms. Maxson-Rushton said. In addition to seeking a federal injunction

See **RRGs** page 17

# UNITED IN ACTION

With three months to go, the 2010 hurricane season still has plenty of time to leave its mark.

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### VIDEO: LESSONS FROM KATRINA

In this new Issues in Risk Management video, *Business Insurance* talks with Quantum Global Advisors' Gerald L. Ritter and Aon Risk Solutions' Al Tobin on lessons learned from the 2005 hurricane. Click through the Multimedia tab.

### WEBINARS & WEBCASTS

*Business Insurance's* webinars and webcasts are presented live online, as well as on demand. Click on Webcasts/Webinars to sign up for "Urgent Care: Managing Medical Risks After Health Reform" on Sept. 15.



### LET YOUR VOTES BE REGISTERED

The annual Readers Choice Awards survey is now online for readers to vote on their favorite insurance industry firms. [www.BusinessInsurance.com/ReadersChoice](http://www.BusinessInsurance.com/ReadersChoice).

### COMP BLOG

Comp Time, the award-winning blog by Senior Editor Roberto Cenicerros



Stay on top of workers compensation trends and issues. Click on the Blogs tab and select Comp Time.

### MOST POPULAR STORIES Week of August 23, 2010

1. AIG discloses how CEO Benmosche earned his bonus
2. More health care costs to be shifted to employees: Survey
3. Court vacates \$34.4M judgment against AIG
4. AIG pays back \$4 billion of U.S. loan
5. Chile taps NASA for 'unheard of' miner rescue
6. HMO enrollment surpasses CDHPs: Survey
7. SeaWorld contests OSHA fines in whale trainer's death
8. Reinsurer to appeal Travelers' asbestos coverage award
9. Single incident triggers harassment law: Appeals court
10. Insurance brokers profitable in 2009: Moody's

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## Business Insurance RESEARCH CENTER

## EMPLOYMENT PRACTICES

# More men filing sexual harassment, bias claims

*Reduced stigma, economic woes seen fueling charges*

By JUDY GREENWALD

More men are alleging sexual harassment in the workplace, a trend many attorneys expect to continue.

Observers say driving the increase in male claims of sexual harassment as well as sex-based discrimination in the workplace in general is men's greater awareness of their rights under U.S. law. They say the ailing economy may be a factor as well.

Men and women are protected from sexual discrimination under

the Civil Rights Act of 1964. Victim and harasser can be a woman or a man and can be the same gender, according to the U.S. Equal Employment Opportunity Commission.

Men accounted for 19.7% of all sex-based charges filed with the EEOC through fiscal year 2009. Within the subset of sexual harassment charges, charges filed by men accounted for 16% of the total, up from 8% in 1990, according to the EEOC (see box, page 17).

Although not a sexual harassment case, workplace sex-based discrimination received attention when Paul Tarascio, a former stage manager for NBC's "Late Night With Jimmy Fallon" show, alleged in July that he was demoted because

## 19.7%

Men accounted for 19.7% of all sex-based charges filed with the EEOC through fiscal year 2009

Mr. Fallon prefers "to take direction from a woman," according to the complaint filed with the EEOC.

While some attorneys say their practices have not handled any sex-based discrimination or harassment charges filed by men, others say

they have and expect the number to increase.

"I've definitely seen an uptick in sex discrimination claims brought by men," said Martha J. Zackin, of counsel with law firm Mintz, Levin, Cohn, Ferris, Glovsky & Popeo P.C. in Boston.

"We've just had more clients calling me, where either men have complained internally they didn't get a promotion, they didn't get a job, or a woman got a promotion or a job they wanted ahead of them, or they were laid off and a woman wasn't," Ms. Zackin said. "Of course, they were better qualified, they say, and therefore must have been discriminated against."

"I think, in part, the job market is

driving it," she said. "People don't always take responsibility for their own actions or performance, and the job market doesn't help that."

Furthermore, said Ms. Zackin, as such complaints are publicized, there is less stigma attached to men who file a complaint. "People don't look poorly at a man who files a harassment charge if it's legitimate. So as it becomes more acceptable," more men will take advantage of the law, she said.

"As employers are becoming more cognizant of the need to have a balanced workforce, I think men are becoming aware of their rights under the federal discrimination

See **BIAS** page 7

## PENSION BENEFITS

## CASH BALANCE PENSIONS

Large employers that have adopted cash balance pension plans since 2006 include:

EMPLOYER	EFFECTIVE DATE	BENEFIT FORMULA
MeadWestvaco Corp.	January 2007*	benefit credits between 4% and 8% of pay, based on age and service
SunTrust Banks Inc.	January 2008	benefit credits between 2.5% and 5% of pay, based on age and service
Dow Chemical Co.	January 2008	benefit credit of 5% of pay
Coca-Cola Co.	January 2010	benefit credit begins at 3% of pay and increases with age
Marathon Oil Co.	January 2010	benefit credit between 7% and 11% of pay, based on age and service

\* Offered to new employees. Expanded Jan. 1, 2008, to employees under age 40.  
Source: Business Insurance, company reports

## Cash balance pension plans get boost from law change

*Popularity returning in four years since age bias fears allayed*

By JERRY GEISEL

Four years after Congress removed a huge roadblock that had threatened to bring a permanent halt to the formation of cash balance pension plans, employers again are setting up the once-popular plans.

Since the passage of legislation in 2006 that protected new plans from age discrimination suits, nearly a dozen large employers, including some of the nation's best-known companies, and many small and professional firms, have adopted the plans.

Fortune 500 employers that have established the plans since 2006 include MeadWestvaco Corp., the Richmond, Va.-based paper packaging and office products manufactur-

er; Atlanta-based SunTrust Banks Inc.; Dow Chemical Co. in Midland, Mich.; and more recently, beverage giant Coca-Cola Co. of Atlanta, and Marathon Oil Co. and Marathon Petroleum Co. L.L.C., which are subsidiaries of Houston-based Marathon Oil Corp.

Other employers, such as package delivery giant FedEx Corp. in Memphis, Tenn., and Gainesville, Fla.-based Shands HealthCare, a private health care system affiliated with the University of Florida Health Science Center, have expanded existing cash balance plans to cover more employees.

The uptick in plan formation is modest compared with the late 1980s and early 1990s when dozens of employers each year set up the plans, typically by converting existing traditional final average pay plans. In all, more than 1,000 employers set up the plans,

See **CASH** page 20

## DIRECTORS &amp; OFFICERS LIABILITY

## Stanford, insurers dispute D&O cover at trial

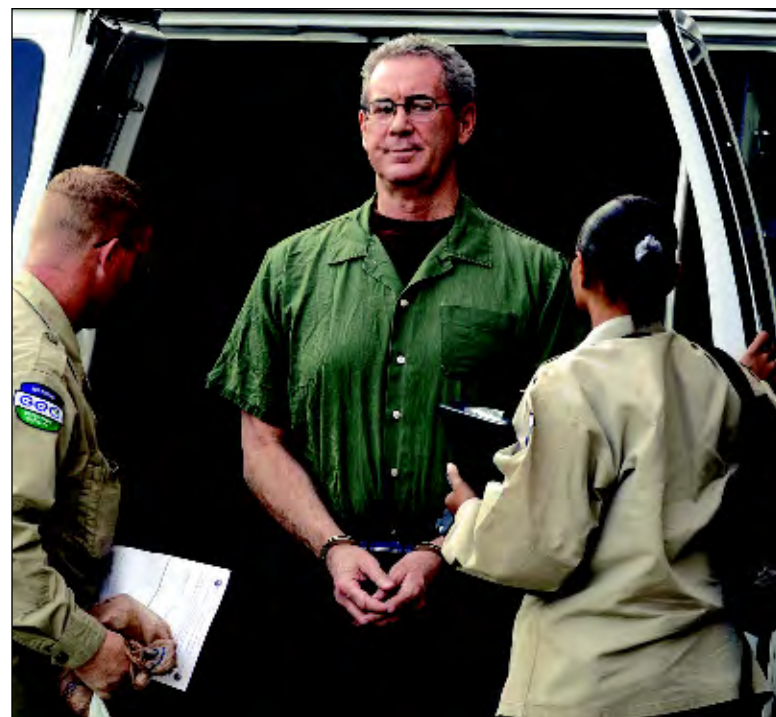
By ZACK PHILLIPS

**HOUSTON**—A federal judge soon will decide whether directors and officers liability insurers must continue to pay the legal bills for executives accused of running one of the nation's largest Ponzi schemes.

U.S. District Court Judge Nancy Atlas heard arguments last week in *Laura Pendergest-Holt vs. Certain Underwriters at Lloyd's of London* in U.S. District Court for the Southern District of Texas.

Federal indictments have accused R. Allen Stanford and three other executives of running Houston-based Stanford Financial Group Co. as a \$7 billion Ponzi scheme. The company and its executives have \$100 million in D&O coverage, but the underwriters—Lloyd's of London syndicates and Arch Specialty Insurance Co.—say the coverage should be void because of a money laundering exclusion in the

See **STANFORD** page 18



R. Allen Stanford arrives at the federal courthouse in Houston last week. Stanford Financial Group Co. has \$100 million in D&O coverage.

## CAPTIVES

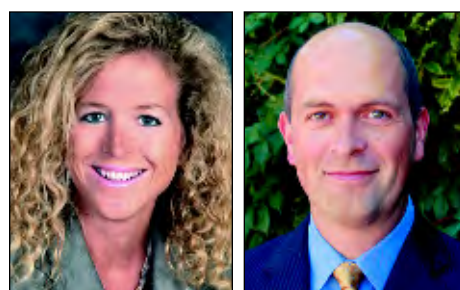
## Forum focuses on captive strategy

*World Captive Forum to feature case studies from top risk managers*

**SCOTTSDALE, Ariz.**—The 20th Annual World Captive Forum promises to continue a tradition of top-quality speakers and educational sessions that give experienced and novice captive sponsors the tools they need to be more effective at their jobs.

Whether it's learning about Captives 101, or about the latest developments in using captives for benefits funding, or making new personal and professional contacts, the World Captive Forum is known for delivering a unique and valuable conference experience.

As a special draw, this year's con-



Patricia A. Henry of ACE (left) and Simon Barker of Marsh are keynote speakers.

ference will feature case studies from each of the 2010 winners of the *Business Insurance* Risk Manager of the Year® and Risk Management

Honor Roll® discussing their risk financing strategies.

Set for Nov. 8 through 10 at the Hyatt Regency Scottsdale at Gainey Ranch in Scottsdale, Ariz., this year's forum will feature more than 20 sessions by industry leaders, organized in concurrent tracks, as well as general sessions and keynotes. In addition to the formal program, conference-goers will find opportunities for one-on-one informal discussions with expert speakers and peers during breaks, meals and receptions.

See **WCF** page 20

## RISK MANAGEMENT

# RIMS chapters work to boost interest among students

*Outreach efforts seek to bring new blood to RIMS, profession*

By MARK A. HOFMANN

**PHILADELPHIA**—Reaching out and cultivating the risk managers of tomorrow is one of the key challenges facing the profession today.

As colleges and universities begin their fall semesters, local chapters of the Risk & Insurance Management Society Inc. continue to seek ways to get risk management students more involved in RIMS and the profession they have chosen. The efforts range from mentoring stu-

dents to working with local chapters of Gamma Iota Sigma—the international professional fraternity for students pursuing careers in risk management, insurance and actuarial science—to sponsoring scholarships.

In a recent example, the Delaware Valley chapter of RIMS this year began reaching out to students to get them more involved, said Robert Cartwright, director-member and chapter services for RIMS and loss prevention manager for Bridgestone Americas Holding Inc. in Exton, Pa.

“We have for some time supported educational opportunities through the Spencer Educational Foundation Inc.,” said Earl Varney,

**‘When you take it to the next step, you say, ‘What can we do to encourage colleges in our own backyard?’”**

Earl Varney, Vanguard Group Inc.

president of the chapter and manager-corporate insurance for Philadelphia-based Vanguard Group Inc. “When you take it to the next step, you say, ‘What can we do to encourage colleges in our own backyard?’”

One of the chapter’s younger members, Malika Adams, suggested holding a competition for students at Philadelphia-area colleges, Mr. Varney said.

“We thought a competition would entice them to attend at least one meeting and becoming actively involved,” said Ms. Adams, who is a senior analyst-risk management for Comcast Corp. in Philadelphia.

The chapter’s board agreed, saying the students were the future leaders of the profession, and approved a contest in which students would discuss emerging risk issues of the next three to five years,

Mr. Cartwright said. The top three contestants made formal presentations to the chapter.

All three presenters won scholarships—\$1,000 for first place, \$500 for second and \$250 for third, said Mr. Varney.

The chapter received 16 submissions, he said. “One of the surprises was that some of the universities that don’t have a true risk management program made submissions.”

The winning presentation by Temple University students dealt with business reputational risk and ethics and began with pictures of Tiger Woods and Martha Stewart, Ms. Adams said.

See **EDUCATE** page 17

## AVIATION



REUTERS/LANDOV

The wreckage of a passenger plane that crashed in northeast China last week is seen in Yichun City, China.

## Crashed Henan Airlines jet covered by group program

*Amlin is lead insurer; Marsh, Willis alternate as broker for account*

By ZACK PHILLIPS

**YICHUN CITY, China**—Amlin P.L.C. led insurance coverage of an airliner that crashed Tuesday in northeast China with 91 passengers aboard, a market source said.

China’s state-run media reported that at least 42 passengers were killed in the crash. The Henan Airlines flight had departed Harbin on a 224-mile flight to Yichun City, near the Russian border, the state-run Xinhua news agency reported. The plane landed early, broke in two and caught fire, according to state-run China Central Television.

An insurance market source said Amlin led the insurance coverage under a group insurance program for multiple airlines. Under an unusual arrangement, Marsh Inc. and Willis Group Holdings P.L.C. alternate as the account’s broker

from year to year, the source said.

The Embraer 190 jet was valued at about \$31 million, the source said.

Henan Airlines grounded all flights for a day and, according to state run media, removed its president.

Separately, 11 passengers and three crew members also were killed Tuesday in the crash of an Agni Air flight in Nepal. The twin turboprop went down near Katmandu in thick cloud cover. Four U.S. residents, one from the United Kingdom and one from Japan were among the 14 dead.

Insurance information for that flight was not immediately available.

The Nepal crash marked the 11th fatal accident of a passenger plane this year, with 549 fatalities so far, according to Ascend Worldwide Ltd., a London-based aerospace consultant. Those figures do not include the Henan Airlines crash in China.

There were 609 such fatalities in 2009, according to Ascend.

## EMPLOYMENT PRACTICES

## Hiring by insurers slowing: Research

*Percentage of firms planning to add staff down from January*

By RODD ZOLKOS

While insurance companies appear to be more conservative in their plans to add staff than they were six months ago, a new study shows that more than 39% of companies plan to increase staff in the next 12 months, with only 15% planning to trim their workforces in the same period.

The figures from the most recent Jacobson Group and Ward Group “Insurance Labor Market Study” compare with 44% of those surveyed in January indicating that they expected to increase employees and 13% indicating that they expected to decrease employees.

39%

The percentage of insurers that plan to increase staff in the next 12 months. Only 15% of insurers plan to trim their workforces in the same period.

The figures still show improvement in hiring expectations over results from the July 2009 survey, when only 35% of companies expected to add employees and 21% expected to reduce staff in the 12 months ahead.

“To me, the great thing about

this survey...is now we’re being able to see some trends in terms of how people are anticipating revenue growth and how that translates into hiring staff,” said Greg Jacobson, co-CEO of the Jacobson Group in Chicago.

The June and July survey of 118 U.S. property/casualty and life/health insurers companies—the third such survey conducted by Chicago-based staffing and executive search firm Jacobson Group and Cincinnati-based consulting firm Ward Group—has found that 61% of companies anticipate revenue growth over the next 12 months. The percentage of companies expecting revenue growth is down slightly from 63% earlier this year, but up from 54% a year ago.

“What we’re seeing is companies are probably less confident about

See **STAFF** page 17

## Cast your votes for industry’s best

CHICAGO—Balloting is open for the 2010 *Business Insurance* Readers Choice Awards.

Now in its seventh year, the Readers Choice Awards invite *Business Insurance* readers to cast their votes for the companies that they believe offer the best overall combination of innovation, quality, service and value. This year’s awards feature 18 categories:

- Best admitted property insurer.
- Best admitted liability insurer.
- Best workers compensation insurer.
- Best captive manager.
- Best employee assistance program provider.
- Best employee benefit consulting firm.
- Best insurance wholesaler.
- Best health plan provider.
- Best property/casualty reinsurer.
- Best reinsurance intermediary.



- Best retail brokerage, in four revenue subcategories.
- Best risk management consulting firm.
- Best surplus lines insurer.
- Best third-party claims administrator, in two subcategories.

Winners in these categories will be announced and profiled in the Nov. 22/29 issue of *Business Insurance* and online. To view profiles of winners in previous Readers Choice Awards competitions, please visit [www.BusinessInsurance.com](http://www.BusinessInsurance.com).

All votes are completely confidential, and *BI*’s ballot provides lists of the largest companies in each category for convenience only; voters may write in other companies if they choose.

Balloting will remain open until Sept. 24. To participate in this year’s Readers Choice Awards, go to [www.businessinsurance.com/section/readers-choice-awards](http://www.businessinsurance.com/section/readers-choice-awards).



# Marsh Market Information: “The right service for the right markets at the right time.”

-Bill Bergman  
Senior Equity Analyst, Morningstar

Excerpts from Morningstar Equity Research Report of May 21, 2010:

“With the upheaval in the ratings business in recent years, and with rising awareness of the need for self-responsibility in credit risk management as opposed to blind reliance on external ratings, this looks like the right service for the right markets at the right time.

The MMI saves clients time and money. It saves time by efficiently gathering, analyzing, and presenting information needed for risk management decision-making. MMI also saves money by helping Marsh and its clients negotiate better deals with carriers, given the leverage that information about market conditions can provide. ”



The Marsh Market Information (MMI) web site is a one-stop tool for global insurer and industry credit analysis, providing access to up-to-date information that will help you evaluate the market security risks of your insurance program. MMI was developed with clients to support multiple analytical methods and to help them evaluate the credit quality of their insurers.



For more information about the Marsh Market Information web site please call your local Marsh representative or visit [www.global.marsh.com/MMI](http://www.global.marsh.com/MMI).

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MARSH

# Travelers wins asbestos court fight

By JUDY GREENWALD

**NEW YORK**—The New York State Supreme Court has awarded Travelers Cos. Inc. \$262.3 million plus interest from several reinsurers in asbestos litigation stemming from policies written as long ago as 1948, but at least one of the reinsurers said it plans to appeal.

Princeton, N.J.-based Munich Re America Inc., which is slated to pay the biggest portion of the award, said it plans to appeal the Aug. 20 ruling, which is the latest development in the long-running case.

According to the ruling, USF&G Corp. wrote several liability insurance policies for Western Asbestos Co. between 1948 and 1960 for losses arising from hazards related to its products and business operations. St. Paul Cos. Inc. acquired USF&G in 1998, and St. Paul merged with Travelers Cos. in 2004.

In 1956, USF&G entered into one reinsurance treaty with American Re-Insurance Co., which now is Munich Re America, and another with a

pool, the Excess Casualty Reinsurance Assn., which then consisted of 20 member companies. Both treaties contained a “follow the fortunes” clause, which bound the reinsurers to any claims paid by USF&G.

In 1993, Western MacArthur Co., which had purchased most of Western Asbestos’ operating assets, sued USF&G and two other Western Asbestos insurers. In a 2002 settlement of the suit, USF&G agreed to pay \$975 million plus interest, with \$940 million to be placed into a bankruptcy trust for current and future claims.

USF&G subsequently filed litigation seeking to recover a part of its losses under reinsurance treaties issued by the defendants. In addition to American Re and the pool, the remaining constituent pool members also were named as defendants: ACE Property & Casualty Co., Century Indemnity Co., OneBeacon American Insurance Co., American International Group Inc. unit American Home Assurance Co. and American Re, which was

also a pool member in addition to having the separate policy.

In a complex, 28-page ruling in *United States Fidelity & Guaranty Co. et al. vs. American Re-Insurance Co. et al.*, New York State Supreme Court Justice Richard Lowe III rejected several arguments by the defending reinsurers and ordered American Re—now Munich Re America—to pay \$202.5 million plus interest and the ECRA pool to pay \$59.8 million plus interest.

In a statement, a Travelers spokesman welcomed the ruling. “We are pleased with the New York Supreme Court’s ruling that reinsurers must pay the full amount of their obligation to Travelers plus interest.”

However, a Munich Re America spokeswoman said an appeal is planned. “We are currently evaluating the ruling to assess all of the issues which will form the substance of an appeal,” she said in a statement.

AIG and OneBeacon declined to comment. Representatives for the other defendants could not be reached.



Mr. Casale

## Business Insurance promotes staffer

**CHICAGO**—*Business Insurance* has promoted an editorial staffer in Chicago.

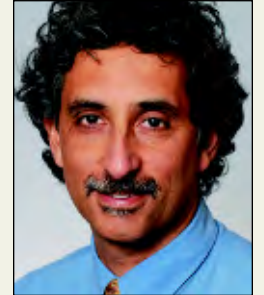
Jeff Casale, previously staff reporter-interactive, now is an associate editor. Mr. Casale joined the publication in 2007, focusing on enhancing *BI*’s online news content. As associate editor, he will take on additional reporting responsibilities for print and online news and features, as well as multimedia projects including video reports.

Mr. Casale previously was a staff writer for the Daily News-Record in Harrisonburg, Va. Prior to that, he was a staff writer/assistant editor for the News of Orange County in Hillsborough, N.C. He also has worked as a claims representative for Progressive Insurance in Rosemont, Ill.

He can be reached at 312-649-5249 or [jcasale@businessinsurance.com](mailto:jcasale@businessinsurance.com).

## Commentary

# Strategies to lessen on-the-job stress



## ROBERTO CENICERROS

Senior Editor Roberto Cenicerros can be reached at: [rceniceros@businessinsurance.com](mailto:rceniceros@businessinsurance.com)

The JetBlue Airways Corp. flight attendant who reportedly plunged down an emergency chute, beer in hand, to become an instant symbol of stressed-out workers underscored discussions I heard at a recent conference.

Ironically, I was dealing with a potential work-travel disaster that was causing me an abundance of stress just days before the JetBlue incident when I discovered my own air-travel hero, but this was a helpful employee.

More on that in a moment.

First, let me tell you about the annual Disability Management Employer Coalition conference earlier this month in San Diego.

There were the expected discussions about integrating disability programs, return-to-work strategies, and managing absences and worker productivity.

But more than in past years, speakers commented on the economy and operating with streamlined workforces.

They talked about disability management strategies being even more significant today as workers and managers do so much more with less help, which drives increased stress and mental health challenges.

Employees are dealing with record stress levels, a keynote speaker told the conference. He quoted a May Bureau of Labor Statistics report that said U.S. worker output increased 3% while work hours fell 3.1% in the first quarter of this year compared with just one year earlier.

“Fewer employees to do the work, but more is getting done,” the speaker said. “That’s a double whammy on employees. That’s stressful.”

A few days later, a CNN-Money.com story reported that worker productivity fell by 0.9% for the second quarter. The story had a headline that said, “It’s Official: We’re All Burnt Out,” and reported that perhaps workers “are simply stretched too thin.”

Whether thinner staffs are driving more or less productivity, I’m not certain. There is widespread agreement, however, that the recession is causing more job-related stress.

So it wasn’t a surprise when news organizations reported that Steven Slater became an instant folk hero to flight attendants and other workers feeling overstretched. Mr. Slater is the flight attendant who reportedly swore at a passenger, grabbed some beers, pulled the emergency chute lever and headed home.

T-shirts went on sale proclaiming, “I wish my job had an

emergency exit.”

It’s hard to say whether job stress drove Mr. Slater’s behavior, and some observers see him more of a jerk than a hero.

But after his escapade, a New York Times travel blog reported that domestic airlines employed 462,977 full-time workers this summer, down from 607,387 in 2009. Meanwhile, the number of people who flew in 2009 rose to 769 million, up from 629 mil-

**It’s hard to say whether job stress drove Mr. Slater’s behavior, and some observers see him more of a jerk than a hero.**

lion in 2000.

As speakers at the DMEC conference said, customer service suffers when employees are absent from work.

I might add that it suffers when they are at work but are stressed out.

But that isn’t always so.

On the way home from the DMEC conference, I left my digital tape recorder containing valuable quotes from the event in a rental car. I usually guard those things with my life.

Luckily, I reached a Hertz Corp. worker named Olga at Hertz’s San Diego airport car rental facility. She was the epitome of excellent customer service. Then she headed off to search for my recorder and called back with great news.

Out of curiosity, I looked it up and found that Hertz has cut its workforce by 32% since 2006. Olga is probably being asked to do more with less, but she’s found a way to do it with a smile in her voice.

# 20<sup>TH</sup> WORLD CAPTIVE FORUM

## Celebrating 20 YEARS!

November 8-10, 2010

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# Bias: More men filing sexual harassment, bias claims

CONTINUED FROM PAGE 3

laws," said Amy L. Bess, a shareholder with law firm Vedder Price P.C. in Washington.

In some cases, observers say men are accusing their employers of being more amenable to women taking time off for family responsibilities than men.

Laura J. Maechtlen, a partner with law firm Seyfarth Shaw L.L.P. in San Francisco, said some men are alleging that "they were not given equal amounts of parental leave or sick leave or time off from work. I think the general stereotype would be that men don't have the same

care-giving responsibilities as women, which we all know isn't true in this day and age."

Some say they believe one factor behind the sexual harassment claim increase by men is the failure of the proposed federal Employment Non-Discrimination Act to be passed by Congress. The act would bar discrimination based on sexual orientation.

Nesheba M. Kittling, an associate with law firm Fisher & Phillips L.L.P. in Chicago, said because sexual orientation is not protected under federal law, "basically the only way (gay men) can assert a claim is through sexual harassment or sexual discrimination" charges.

**'These cases are covered under Title VII even though there may be evidence of sexual orientation discrimination as well.'**

Ernest Haffner, EEOC senior attorney adviser

However, Washington-based EEOC senior attorney adviser Ernest Haffner said the courts are recognizing the issue of gender discrimination even if sexual orientation discrimination has not been specifically outlawed.

He pointed to the U.S. Supreme Court's 1989 decision in *Price Waterhouse vs. Ann Hopkins*, in

which the court ruled that a gender stereotyping claim could be filed under Title VII of the Civil Rights Act in a case in which a woman allegedly was denied a partnership because she did not act feminine.

In addition, in the 2009 decision in *Brian D. Prowel vs. Wise Business Forms Inc.*, the 3rd U.S. Circuit Court of Appeals in Philadelphia said a gay

man is not necessarily barred from filing a sexual discrimination claim under Title VII (*BI*, Sept. 7, 2009).

"These cases are covered under Title VII even though there may be evidence of sexual orientation discrimination as well," Mr. Haffner said.

Mr. Haffner also pointed to *Carl Thomas Sassaman vs. David Gamache*, a decision last year by the 2nd U.S. Circuit Court of Appeals in New York. In that case, the court ruled that a supervisor's belief that men have a propensity to commit sexual harassment, and his failure to properly investigate a sexual harassment charge lodged against the plaintiff, could be inferred by a jury to be discrimination based on gender stereotyping.

## BIAS AGAINST MALES

*U.S. Equal Employment Opportunity Commission litigation alleging discrimination against or harassment of males, including selected settled and active cases.*

**JULY 2010:** Virginia Beach, Va.-based Tidewater Plastering & Drywall Co. Inc. accused of subjecting an employee to a hostile work environment. The EEOC said a male foreman subjected the worker to unwelcome sexual conduct and made derogatory comments about his Salvadoran origin.

**DECEMBER 2009:** The EEOC alleges Sparks Steak House in New York created a hostile work environment for male employees, including physical and verbal sexual harassment, by a male manager and co-workers.

**DECEMBER 2009:** New York-based fish market M. Slavin & Sons Ltd. accused of male-on-male physical and sexual, racial and national origin harassment in its Brooklyn location that created a hostile work environment.

**NOVEMBER 2009:** Pasadena, Calif.-based Lawry's Restaurants Inc. agreed to pay \$1 million to settle a sex discrimination class action, in which the EEOC alleged a longstanding companywide policy of hiring only women servers.

**NOVEMBER 2009:** Calabasas Hills, Calif. Cheesecake Factory Inc. agreed to pay \$345,000 to settle a sexual harassment suit in which it was accused of knowingly tolerating sexual assaults against six male employees by male kitchen staffers in Chandler, Ariz.

**SEPTEMBER 2009:** New Orleans-based Boh Bros. Construction Co. L.L.C. accused of subjecting an employee to a sexually hostile work environment on a federal post-Hurricane Katrina bridge repair project, and then retaliating against him for complaining.

**AUGUST 2009:** Mooresville, N.C.-based Lowe's Cos. Inc. agrees to a \$1.7 million settlement involving two men and a woman allegedly subjected to a sexually hostile work environment by managers and co-workers in Longview, Wash., and retaliation for complaining.

**JULY 2009:** LensCrafters Inc., a unit of Mason, Ohio-based Luxottica U.S. Holdings, is accused of failing to address sexual harassment complaints from a male employee about a female co-worker in a Detroit-area store and with perpetuating a sexually hostile work environment.

**JUNE 2009:** Little Rock, Ark.-based retailer Dillard's Inc. agrees to pay \$110,000 to settle a same-sex harassment suit in which two men accused a male supervisor of verbal and physical sexual harassment in Orlando, Fla.



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# Business Insurance OPINIONS

## Next new plan design needs good guidance

EMPLOYERS ONCE AGAIN are setting up cash balance pension plans, as we report on page 3, and we think that is a good development.

Plan growth took off in the late 1980s and continued through the 1990s. Reasons for the growth included easier-to-understand benefit formulas compared with more traditional plans and a more rapid buildup of benefits.

But as has been well reported, a cloud settled over the plans. Cash balance pension plans came under a attack as the plaintiffs bar filed a barrage of suits that argued the plan design discriminated against older employees.

*We hope the next time an innovative plan design is launched, regulators provide the necessary guidance in a timely fashion.*

Under pressure from a handful of congressmen, federal regulators declined to issue guidance to resolve the discrimination issue.

Finally, the wheel turned a few years ago.

Alarmed at how defined benefit plans were shrinking, Congress made clear that new cash balance plans would be protected from age discrimination suits.

At the same time, appeals court after appeals court rejected the age discrimination charge.

With those developments, the plans are beginning to grow again, but there's an important lesson here that we hope regulators learn for the future: Had regulators issued definitive guidance on what plan designs were acceptable and unacceptable when the plans began forming, the litigation and years of legal uncertainty could have been avoided.

We hope the next time an innovative plan design is launched, regulators don't duck and, instead, provide the necessary guidance in a timely fashion.

## Male gender bias claims a new cause for concern

GENDER DISCRIMINATION and sexual harassment on the job are not problems limited to women. Men can be victims, too.

Although men account for only a relatively small percentage of the sexual harassment charges filed with the U.S. Equal Employment Opportunity Commission, their numbers are growing.

As reported on page 3, the percentage filing claims with the EEOC was 16% in 2009, up from 8% in 1990. Many cases involved male-on-male harassment.

The issue of male gender discrimination in general has gotten attention with the recent suit filed by a former stage manager for NBC's "Late Night with Jimmy Fallon," which alleged that Mr. Fallon said he preferred to take direction from a woman.

Observers attribute the increase to greater awareness by men of their rights under federal law as their employers conduct anti-discrimination and anti-harassment training and, perhaps, the ailing economy.

Meanwhile, although federal law does not recognize gender orientation per se, courts are acknowledging gender discrimination in their rulings.

No employer wants to deal with an EEOC complaint and possibly face litigation and/or significant fines, along with the accompanying blow to their company's reputation.

Clearly, employers have to be on the lookout for sexual harassment and gender discrimination affecting all of their employees, regardless of their gender.



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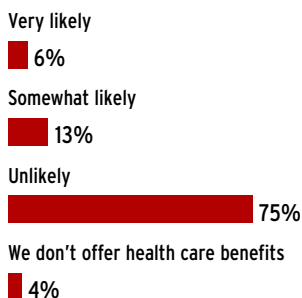
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#### THIS WEEK'S RESULTS

How likely is it that your organization will stop offering health care benefits within the next five years?



#### NEXT WEEK'S QUESTION

Q: What was your reaction to the salmonella-related egg recall?

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## HURRICANE KATRINA: Five Years Later

# SPOTLIGHT

**CLAIMS INNOVATIONS,  
FOCUS ON DETAILS,  
SPEED UP PROCESS**

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**ABUNDANT CLAIMS  
DATA ENHANCES  
CATASTROPHE MODELS**

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AP PHOTO

Gulfport, Miss., shown in September 2005, was devastated by Hurricane Katrina along with a large area of the U.S. Gulf Coast.

## Risk managers wiser after storm

*Experience taught buyers  
value of crisis planning*

By **MICHAEL BRADFORD**

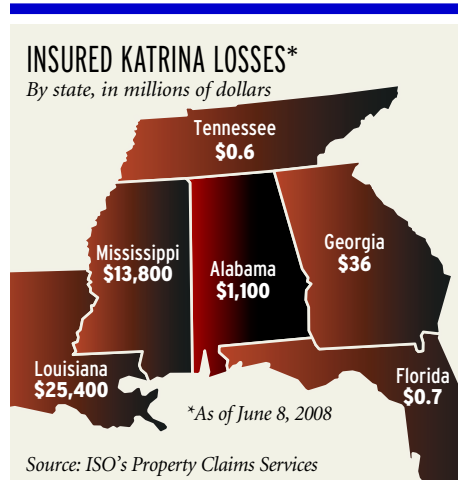
Gulf Coast risk managers are poorer but wiser five years after Hurricane Katrina, having weathered the high cost of insurance in the aftermath of the catastrophe while learning valuable lessons that have left them better prepared for such storms.

As soon as Katrina's flood waters receded, insurance buyers found coverage drying up as well. Availability shrunk and prices swelled for windstorm and flooding risks. In some cases, only now are those problems nearly resolved.

"Our big challenge—and we have just about overcome it five years later—was that virtually every insurer on our program had a levee exclusion" at the renewal after Katrina, said James D. Hinton, vp-risk and insurance at Nashville, Tenn.-based hospital company HCA Inc.

HCA operates Tulane Medical Center and two other hospitals in the New Orleans area, part of its multihospital organization in which half of its \$40 billion in insured property values is in locations vulnerable to windstorms, Mr. Hinton said.

Immediately after Katrina, "the market got real tight for wind (risks)," Mr. Hinton said. Its latest renewal May 1 was the first since Katrina in which HCA secured the \$350 million coverage limits it needs to cover its probable maximum property loss, he said. The



**'If you are a coastal insured—a regional or national customer—you have a more comprehensive plan than in 2004 and 2005.'**

Al Tobin, Aon Risk Services

windstorm coverage is part of a \$1 billion blanket program covering HCA properties, he said.

Boh Bros. Construction Co. L.L.C. was involved in rebuilding areas devastated by Katrina. The company discovered that the builders risk insurance it needed to cover its

projects evaporated after the storm, said Warren C. Perkins Jr., vp and risk manager of the New Orleans-based company.

Coverage rates skyrocketed, doubling for some commercial construction policyholders. Since then, they have softened as subsequent years had relatively mild hurricane seasons "and availability has gotten better," Mr. Perkins said, noting that insurers that fled the market have returned.

"That was a big challenge that we faced—convincing the builders risk market that they could come here and make money," Mr. Perkins said. Insurers have returned, he said, partly because they are confident that flood protection programs in New Orleans will keep the city safe from a repeat of flooding like that from levees that failed under Katrina's storm surge.

Mr. Hinton said HCA's rates for windstorm coverage were high even before Katrina because the company has so many coastal locations and hurricanes in 2004 boosted rates. Katrina was responsible for another increase of about 25%, he said.

Today, the cost of coverage remains high compared with before the storms in 2004, but it fell 5% to 10% this year, Mr. Hinton said.

Commercial insurance buyers in the Katrina-stricken area have learned the value of planning for the risk of storms and their aftermath, sources said.

"If you are a coastal insured—a regional or national customer—you have a more com-

Continued on next page

Continued from previous page

prehensive plan than in 2004 and 2005," said Al Tobin, New York-based national property practice leader at Aon Risk Services. "Written, well-defined plans on how to respond certainly exist more than they did then."

"What I have seen is an emphasis on, or awareness of, the catastrophe exposure and what the needs might be" to prepare for and recover from a storm, said Bud Trice, vp of U.S. property/casualty catastrophe services at Atlanta-based Crawford & Co.

When Katrina hit, many large companies were ready with contingency plans, Mr. Trice said. That was not the case for some risk managers and many smaller companies, he said.

Many companies that found their plans were inadequate have strengthened them, Mr. Trice said. In addition, some companies with Gulf Coast exposures have redesigned their catastrophe plans in response to the more recent Deepwater Horizon oil spill, he said.

"They are looking for a holistic plan" that will provide a response not only to a hurricane but other threats, such as that posed by the oil spill, Mr. Trice said.

Mr. Hinton said the series of hurricanes that struck Florida and the Gulf Coast in 2004 provided some lessons that HCA put to use when Katrina arrived in 2005. "We had an infrastructure in place; we learned how to pre-position some generators, for example, and we arranged for satellite phones" before Katrina made landfall, he said.

"But out of Katrina, we learned to establish a command center," Mr. Hinton said. "We have a more formalized emergency preparedness program," he said, because Katrina's exceptional fury meant HCA faced unpre-



**'Out of Katrina, we learned to establish a command center. We have a more formalized emergency preparedness program.'**

James D. Hinton, HCA Inc.

cedented challenges.

"We had to find planes and air traffic controllers because we had to evacuate hospitals," he said.

Employees lost homes and many wanted to move out of the area for good, Mr. Hinton said. With so many U.S. locations, HCA was able to accommodate employees who wanted to move away from the coast, he said.

"Now, this time of year, we practice all of this," Mr. Hinton said of efforts to be ready should another hurricane strike.

Mr. Perkins said Boh Bros. has adjusted its planning to include arranging housing for its employees that need to be in the area during recovery operations after a future storm.

"Our whole company has evolved" with regard to risk management, Mr. Perkins said. A new safety director and management team have helped improve risk management at Boh Bros., making it "a lot more sophisticated than it was" at the time of Katrina, he said.

Risk management experience gained during Katrina has paid off in other catastrophes, Aon's Mr. Tobin said. "The hospitality industry learned many lessons and they are better prepared," he said.

Aon's clients include "global franchise hotels that were very well-prepared" for the earthquake in Chile this year, Mr. Tobin said. The hotels applied lessons learned from sister properties on the Gulf Coast that were hit by Katrina, he said.

"Preloss planning and postloss execution" allowed the hotels to function with the resources they needed and keep their personnel on the properties during the earthquake recovery, Mr. Tobin said. "They did an exceptional job in keeping their doors open."



St. Roch Tavern owner John Victorson props up a reconstruction sign in February. New Orleans' St. Roch Market has yet to be rebuilt since Hurricane Katrina.

## Katrina greatly adjusts claims-handling process

*More detailed data, technology advances speed payments*

By MICHAEL BRADFORD

Insurers and adjusters are using improved technology and lessons learned from the unprecedented demands of handling claims from Hurricane Katrina to improve the way losses are settled.

Bud Trice, vp of U.S. property/casualty catastrophe services at Atlanta-

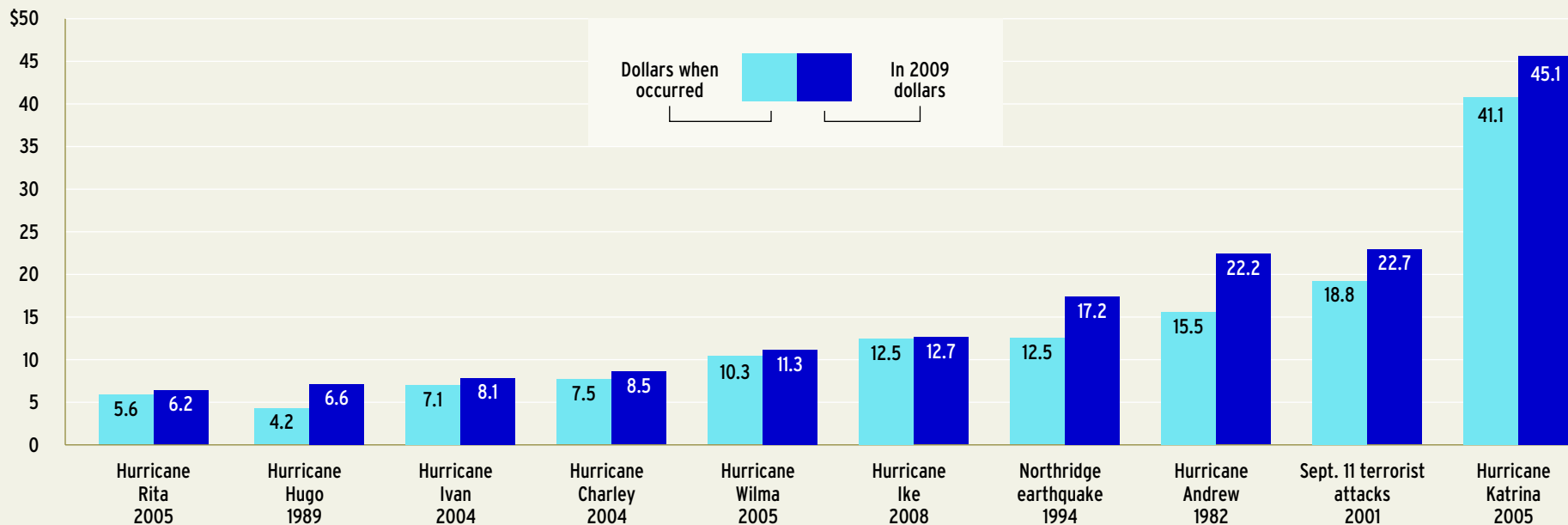
based Crawford & Co., said one of the biggest lessons to come from Katrina is the importance of getting the small details right.

"In the pre-Katrina world," some claims information that Crawford adjusters needed was left out of electronic files prepared by data input personnel in the haste to get information into the system as quickly as possible, he said. That slowed the adjusting process, which made for bottlenecks in the midst of the immense catastrophe created by Katrina, he said.

See **ADJUSTERS** next page

## 10 COSTLIEST DISASTERS IN U.S. HISTORY

Six of the 10 most expensive disasters in U.S. history occurred since 2004. Figures are insured losses, in billions of dollars.



Source: Insurance Information Institute, Insurance Services Offices Inc.'s Property Claims Services



AP PHOTO

One of the many homes in New Orleans that Hurricane Katrina damaged in 2005. The hurricane and ensuing flooding destroyed entire neighborhoods.

## Adjusters: Claims-handling changes made

CONTINUED FROM PREVIOUS PAGE

"Now we are religious about getting every bit of information to the adjuster so they don't waste time in adjusting the claim," Mr. Trice said.

Technology changes since Katrina have helped insurers better prepare to adjust claims after a major catastrophe, said Gerald Ritter, a principal with Quantum Global Advisors L.L.C., a claims services company in Chicago.

Improvements in Internet technology have paved the way for easier sharing of information through file-sharing systems. "Insurers are much more comfortable with that technology," he said.

"The insurance industry was not as technologically advanced as it should have been" when Katrina hit, said M. Todd Richard, president and CEO of F.A. Richard & Associ-

ates Inc., a Mandeville, La., claims management company. "There were a lot of legacy systems out there" that have been replaced, he said.

"At the end of the day, insurance claims are basically an exchange of information," said Steve Dimakos, a principal with Quantum. "To the extent that technology can speed that up, it makes things better."

"As an industry, we are much more in tune with technology," said Mr. Richard. "If a Katrina-type storm occurred today, the marketplace would be better able to respond."

The industry learned that a catastrophe as large as Katrina means adjusters will be in short supply if there are not enough under contract in advance, experts noted.

"The insurance industry was taxed very heavily" to find adequate adjusting manpower to handle Katrina claims, said Mr. Dimakos. "Kat-

rina was unique in a lot of ways. It destroyed whole neighborhoods and the area lost a lot of population," he said.

Devastation that vast strained adjusters to the point that some insurers were forced to hire those with little or no experience to handle Katrina claims, Mr. Dimakos said. "You could see how low they had to dip," he said of inexperienced adjusters some insurers were forced to employ.

"We can all say they should have hired more people," Mr. Dimakos said. "But from an insurance company's perspective, how many people can you have sitting around doing nothing" until a catastrophe strikes? "Their model is such that they tap all their local resources and then move outward. It's easy to criticize, but I don't know how else they could do it," he said.

## Awash in lessons in the Big un-Easy

Five years ago in rural Alabama, I woke up and watched a nightmare take shape.

At first, the news seemed good. Hurricane Katrina had pounded the Gulf Coast with high winds and heavy rain. But news reports immediately afterward showed a battered but mostly dry downtown New Orleans. Windows were blown out and portions of roofs had blown away. That was damage that could be repaired. News-casters used the phrase "dodged a bullet" to describe the city.

I had arrived in Alabama the day before with Theresa, my next-door neighbor and soon-to-be wife, with enough clothes for a couple of days and plans to drive home after a long weekend with family. We would return to Abita Springs, La., a leafy New Orleans suburb on the north shore of Lake Pontchartrain, rake the pine needles and get on with the week.

At least, that was the plan before the levees broke.

From Alabama, I watched in horror as the breaches multiplied and New Orleans was swamped. Looters crawled out of dark corners. People were stranded on a city overpass in relentless heat. The Louisiana Superdome, filled with evacuees, was a sweltering prison of filth, crime and despair.

And things sounded worse in Mississippi. Entire towns had been blown apart. More than 1,800 people had been killed along the coast. The region was a place of shock and confusion.

Weeks later, when authorities allowed residents to re-enter Abita Springs, I returned to find my home buried in pines, the roof damaged but repairable. The house had protected Theresa's home, which was untouched by the trees.

During the years since then, I have watched from hurricane-free Switzerland as the Gulf Coast lurched through an uneven recovery.

While New Orleans has gotten the bulk of attention from Katrina because of the dire conditions stranded residents endured, the damage in Mississippi was nearly inconceivable. Pass Christian was so devastated that as I drove through the small town a month after the storm I became completely disoriented. All the landmarks had vanished. Bay St. Louis, Biloxi and Gulfport also were hit extremely hard.

Yet Mississippi led the pack in the recovery. Gov. Haley Barbour and other officials showed strong leadership in putting the devastated communities back together. Today, Mississippi's coastal com-



**MICHAEL BRADFORD**

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munities are up and running—maybe not to the same degree as the pre-Katrina days, but significant progress has been made.

New Orleans, meanwhile, has not moved with the same speed. The recovery was thrown into chaos by an inept response from the city's mayor and the state's governor. Clearly unprepared before the storm, the politicians spent far too much time after the wind died down looking for scapegoats rather than executing

**I watched in horror as the breaches multiplied and New Orleans was swamped.**

a workable crisis response.

Five years later, blight remains in sections of New Orleans. Crime, which soared after the storm, remains a problem. Some schools and churches never reopened.

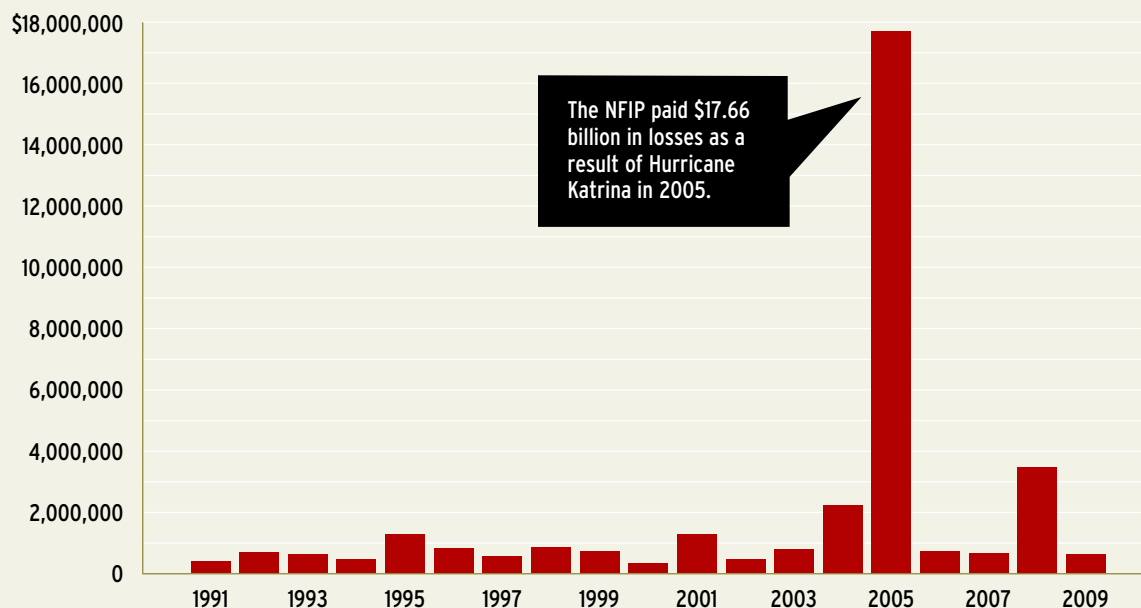
The fact that New Orleans' recovery is ongoing makes some people wince where catastrophes have left large-scale destruction. Someone in flood-ravaged Kentucky remarked last year on a news broadcast that his neighborhood was all but destroyed. His take was that the community would rebuild quickly without much outside help. "This ain't New Orleans," he growled.

Granted, a flooded community is not a disaster the size of Katrina. And New Orleans has made gains in protecting the city against storms. Levees strengthened by flood protection programs are not expected to break under storm surges like those Katrina produced. A risk manager in the city told me he thinks it is unlikely that the levees will ever suffer another breach.

Let's hope he's right. Otherwise, another punch like the one Katrina delivered could be a knockout.

### NFIP LOSSES

Losses paid by the National Flood Insurance Program, in thousands of dollars.



Source: Federal Emergency Management Agency

# Katrina changed how insurers underwrite risks

By MICHAEL BRADFORD

Hurricane Katrina's battering of the Gulf Coast five years ago left insurers holding historic catastrophe losses and changed the way they underwrite and prepare for the risk of windstorms and flooding.

The massive storm that came ashore in August 2005 killed more than 1,800 people and left property damage across an area the size of Great Britain. Economic damage was estimated at more than \$100 billion, with insurers paying around \$60 billion in Katrina-related claims.

Experts contend that insurers were among those caught off guard by the storm, suffering unexpectedly heavy losses that forced them to rethink the way they underwrite hurricane risks.

"The magnitude of losses far exceed anything they thought could happen," said Al Tobin, New York-based national property practice leader with Aon Risk Services. That's proven by the fact that several insurers "blew through their treaties" and were left without reinsurance protection on Katrina-related losses, he said.

"That meant they then had to pay every dollar of losses from their own reserves, and that is not what they wanted to do," Mr. Tobin said.

Many insurers were unprepared before the storm hit, said Jeffrey Beaman, vp and all-risk underwriting manager at Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global. "There was a tremendous amount of chaos in the industry about what was about to happen," he said.

Some insurers were caught flat-footed by unexpectedly high losses because they didn't properly understand their exposures or prepare their clients for a storm as devastating as Katrina, Mr. Beaman said.

Rick Kuzmanoff, Chicago-based vp for property claims, North America, at XL Insurance, said Katrina proved how planning in advance pays off in making recovery from a storm run smoother.

"That's been a big change I've seen at XL," Mr. Kuzmanoff said. Improved catastrophe models allow the insurer to better identify its risks on a more "granular basis" before a storm hits, he said, and gives him the ability to follow up quickly with policyholders to determine what resources they need as soon as a storm moves through.

"We have much better tools than five years ago," Mr. Kuzmanoff said.

On the underwriting side, insurers offer far less windstorm coverage for hurricane risks than before Katrina hit, even as pricing for limits that are available has stabilized, sources said.

"Immediately after Katrina, most insurers withdrew capacity and put in severe wind restrictions and bigger deductibles," said Mr. Beaman, though FM Global was able to leave its underwriting practices unchanged.

"Prior to Katrina, there were no limitations on windstorm coverage," Mr. Tobin said. "It was common to have a \$2 billion limit on fire, which included \$2 billion for windstorm. Today, it is much more

common to see \$100 million or \$200 million for windstorm."

"That has not come back," he said of the billion-dollar limits insurers offered before Katrina. "And I don't believe we will ever go back to that."

As Katrina losses piled up, windstorm insurance prices moved up as well. Eventually, they softened slightly, only to spike again after Hurricanes Ike and Gustav struck the coast in 2008, Mr. Tobin said.

"But last year was very profitable," he said. "Prices softened again in 2010 even with the forecast of an active hurricane season."

Insurance availability and pricing have become more appealing to Gulf Coast insurance buyers since the market contraction immediately after Katrina, said Warren C. Perkins Jr., vp, risk manager at Boh Bros. Construction Co. L.L.C. in New Orleans.

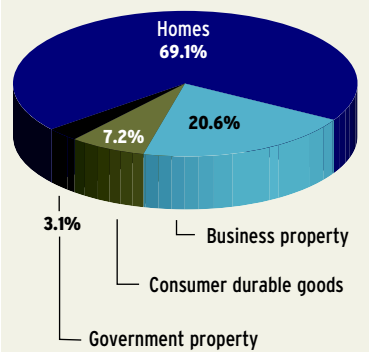
"After Katrina, being able to get builders risk insurance to rebuild the city was the biggest challenge we faced," said Mr. Perkins.

Flood protection projects that have strengthened New Orleans' levee system, which failed under Katrina's powerful storm surge and

led to massive flooding, have helped convince insurers to return to the market, Mr. Perkins said. "That whole market has evolved from one that didn't want to have anything to do with us into one that recognizes the risk is not there anymore because of flood protection."

For HCA Inc., the Nashville, Tenn.-based hospital group that has three hospitals in New Orleans, its biggest post-Katrina coverage challenge has been to convince insurers not to exclude damage caused by levee failures, said James D. Hinton, the company's vp-risk and insurance.

**TOTAL KATRINA LOSSES**  
Distribution of total insured and uninsured loss dollars by type of damage



Source: Property Casualty Insurers Assn. of America, Department of Homeland Security

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# Katrina provided wealth of modeling data

*Claims data, other information help improve products*

By MICHAEL BRADFORD

Catastrophe modelers have capitalized on one of the few positive things to come from Hurricane Katrina—a wealth of claims data and other information they are using to improve their products and help insurers and risk managers mitigate windstorm losses.

Katrina and the spate of Gulf Coast hurricanes that preceded it in 2004 produced an abundance of loss information that has helped shape models, said Jayanta Guin, senior vp of research and modeling at Boston-based AIR Worldwide Corp.

“Insurers did a very good job of collecting that information,” Mr. Guin said. “We have never had that much data to validate modeling with such precision.”

Katrina’s impact on modeling can be seen in improvements that allow exposures to be examined in finer detail, sources say. The storm’s widespread destruction also led to models that now include some previously unexamined risks. In addition, esoteric influences on claims costs such as the political pressure on insurers that mounted after Katrina now are included in some models, according to experts.

“What happened definitely influenced changes,” said Robert Muir-Wood, London-based chief researcher for Risk Management Solutions Inc. in Newark, Calif. “Not just to modeling, but to science.”

Modeling has benefited from the same data from Katrina that engineering scientists have used to examine the potential failure of flood defenses under storm surge, Mr. Muir-Wood said in citing an example. “Catastrophe modeling had to learn these broad lessons as well.”

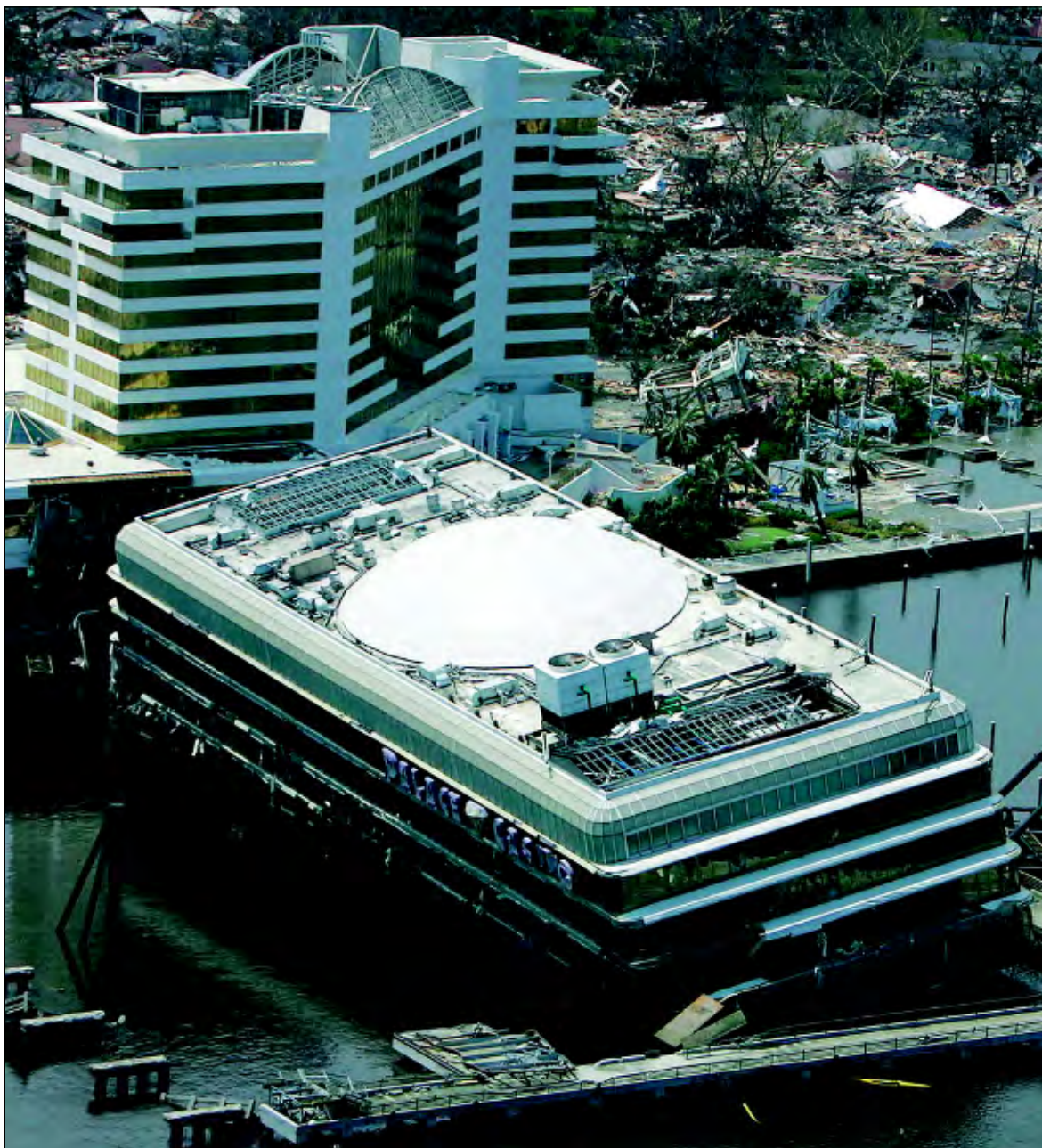
Modeling since Katrina has become a “game changer,” said Al Tobin, New York-based national property practice leader for Aon Risk Services. While previous models largely were in the domain used by insurers and reinsurers, more risk managers are using them today, he said.

Insurance buyers are “very familiar with the benefits of having quality data” from models that are used as tools to help determine exposures and the amount of insurance needed to cover them, Mr. Tobin said.

Katrina influenced modelers to include some exposures in newer versions of their models.

The storm caused a significant contraction in the offshore energy market and led the companies to model that exposure in their updated products.

“We’ve included offshore energy,” said David Smith, senior vp at Oakland, Calif.-based EQECAT Inc. “There’s been an increased demand for that type of modeling” since Katrina, he said.



AP PHOTO

**Casinos that floated just offshore in Mississippi were destroyed by Hurricane Katrina. They were accounted for in the models, but were quoted as buildings on solid ground. Those risks are now properly accounted for in AIR’s model.**

Revised models treat some risks differently from how they did before Katrina because the storm revealed features about those exposures that were previously unknown to the modelers.

Casinos that floated just offshore in Mississippi were destroyed by the hurricane. “Although they were accounted for in the models, they were quoted as buildings on solid

ground,” said Mr. Guin. Those risks are now properly accounted for in AIR’s model, he said.

An RMS report cited several unmodeled lines of business that escaped major storm losses until Katrina hit, some of which are now covered by the modeling process and others that may be included one day. Among those lines, RMS listed cargo, inland marine and

recreational watercraft, floating casinos, onshore energy and automobiles.

Modelers are modeling some of these exposures, and are hoping to include others in updated versions.

“We’re certainly doing better in capturing the casinos,” said Mr. Muir-Wood. “Cargo is still a challenge. It’s not insured by location,” he said. It is an asset that moves

around and can be difficult to track. “Inland marine is slightly easier than cargo,” he added, but remains a complicated risk to model.

Katrina was a storm that had a “high political profile” that added never-before-seen complexities to the modeling process, Mr. Muir-Wood said. “We saw a lot of insurers paying for things that were not covered,” he said, in some cases because of “extreme political pressure” to make policyholders whole even though their losses were not insured.

Such influences are now considered in RMS’ modeling, Mr. Muir-Wood said.

EQECAT’s Mr. Smith said there has been a “renewed emphasis on storm surge” in models. “That is a big part of what happened in Katrina,” he said. Much of Katrina’s destruction along the coast was attributed to the powerful tidal surge that damaged and overtopped levees in New Orleans and washed away structures along other coastal areas.

Demand surge, or the increase in the costs of materials and services to recover from a storm, is another component of modeling that has gotten new attention since Katrina.

“After Katrina, we saw four separate phenomena pushing up costs,” said Mr. Muir-Wood.

“Classic demand surge,” which pushes up prices because of a scarcity of building materials and other resources, was evident post-Katrina, Mr. Muir-Wood said. The effects were worsened by a similar surge created by several hurricanes that hit the coast in 2004 and powerful storms after Katrina.

Repairs often took an unusually long time to complete after Katrina because contractors and materials were scarce, Mr. Muir-Wood said. Repair costs rose as rain caused further water damage and mold took hold.

Katrina produced an unusually high number of claims, which meant overwhelmed insurers also received a larger-than-usual amount of fraudulent submissions, Mr. Muir-Wood said.

Insurers also experienced “coverage expansion” as they felt obligated by political pressure to pay some claims for damage they had not covered, he said.

As modelers improve their products, they monitor their effectiveness by simulating losses. When they consider a storm like Katrina today, insured losses are not significantly different from five years ago.

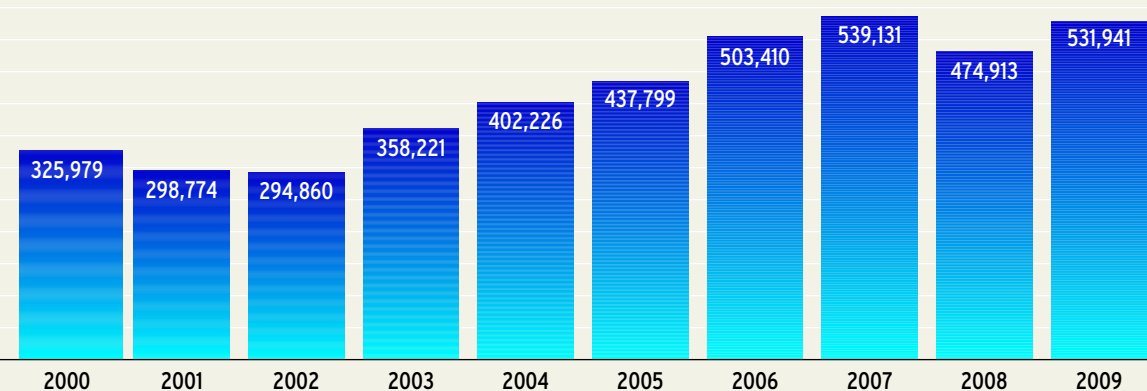
That’s partly because reconstruction after Katrina has been slower than other hurricanes and parts of the devastated area remain blighted, said Mr. Guin. “There are certain areas of New Orleans and Mississippi that haven’t been rebuilt to pre-Katrina days,” he said.

Property values have risen since Katrina, Mr. Guin acknowledged, but those increases are at least partly offset by the absence of so much property that was destroyed by Katrina and not rebuilt.

Mr. Muir-Wood said flood protection programs in New Orleans since Katrina would help hold down losses from a similar storm. RMS models, he said, “show a very significant reduction in areas that would flood.”

## SURPLUS LEVELS

Pre- and post-Katrina property/casualty policyholder surplus, in millions of dollars.



Source: A.M. Best Co. Inc.

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**Business Insurance**

# Court rules on hostile environment

Single incident triggers harassment law: Appeals court

By JUDY GREENWALD

**CHICAGO**—Just a single incident of sexual harassment, if severe enough, can violate federal civil rights law, says a federal appellate court in a decision Monday.

The decision by the Chicago-based 7th U.S. Circuit Court of Appeals in *Cynthia Berry vs. Chicago Transit Authority* involved a dispute by Ms. Berry, who was a carpenter with the CTA, with a fellow worker over a card game in January 2006.

Ms. Berry said after she refused to get up so that a co-worker, Philip Carmichael, could partner with another worker in a game during a morning break, Mr. Carmichael grabbed her breasts, lifted her up from a bench and rubbed her buttocks against the

front of his body. Ms. Berry said that when she landed off-balance with only one leg on the ground, Mr. Carmichael pushed her into a fence.

When Ms. Berry reported the incident to a manager, he told her he did not care what happened because she was a "pain in the butt," predicted she would lose her job if she filed charges, and promised he was going to do "whatever it takes to protect the CTA," said the opinion.

Ms. Berry filed suit against the CTA in July 2006, claiming Mr. Carmichael's actions and the manager's response created a hostile work environment and constituted sex discrimination in violation of Title VII of the Civil Rights Act of 1964. A district court subsequently granted the CTA's motion for summary judgment dismissing the case.

The appellate court said with respect to Mr. Carmichael's actions, "Berry has provided enough evidence to allow her hostile work

environment claim to go forward. As the district court noted, a single act can create a hostile environment if it is severe enough."

The court also said Ms. Berry's testimony "would allow a reasonable fact finder to conclude" that the manager "maliciously thwarted any legitimate investigation and that the CTA was therefore negligent or worse in responding to her report of harassment."

The three-judge panel, however, upheld the lower court's dismissal of Ms. Berry's discrimination and retaliation claims.

The case was remanded for further proceedings.

Plaintiff attorney Paul Mollica, a partner with law firm Meites, Mulder, Mollica & Glink in Chicago, said although the civil rights law establishes that a severe-enough single incident of harassment violates the law, most lawsuits charge either pervasive, or severe and pervasive, harassment. "There aren't a lot of cases like this where a solitary act is evaluated," he said.

## UP CLOSE



### JIM BEARDSLEY

**NEW JOB TITLE:** Baltimore- and Washington-based managing director for Marsh Inc.'s global rail practice.

**PREVIOUS POSITION:** Baltimore- and Washington-based resident managing director of Aon Risk Services.

**GOALS FOR NEW POSITION:** The main goal...is that we not only want to build the largest but the strongest industry practice devoted to railroads and railroad-related business from a global platform. What we are looking to do is change the service delivery model to one that makes us an advocate for the industry as opposed to being only transaction-based. Railroad is a long-term enterprise, so (another goal is that) we need to get the generation behind us ready to take over for those of us who will retire in the next 15 years.

**INDUSTRY CHALLENGES:** One is the common carrier obligation that railroads have to carry very, very hazardous material that they call "toxic inhalant hazards" and "poisonous inhalant hazards" and the allocation, or the lack

thereof, of the liability associated with carrying those materials. That's probably the biggest issue we have going right now. No matter who makes the product, if there is an accident and a release, then all the responsibility is on the railroad company. It's a question of whether other entities need to be included in that responsibility.

**INDUSTRY OUTLOOK:** (The railroad industry) is very economically dependent. There will be more train starts, more cars out on the system if business is better; and then, risk increases. There is also the increased passenger transport. The outlook for both freight and passenger is on the upswing, but then, so is the risk. The risk managers have to be cognizant of this and work their risk management program around this.

**WHAT YOU WANTED TO BE WHEN YOU GREW UP:** When I was a kid, I wanted to be an oceanographer. It looked like a lot of fun and interesting.

**OUTSIDE THE INDUSTRY, A DREAM JOB:** To be a Division I college football coach. I was never good enough to play.

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#### POSTING THIS WEEK

##### BROKERS:

- Beecher Carlson Holdings Inc.
- IMA Inc.
- Lawson-Hawks Insurance Associates

##### INSURERS:

- Argo Group Insurance Holdings Ltd.
- Meadowbrook Insurance Group Inc.

##### OTHER PROVIDERS:

- Airclaims Ltd.

## RRGs: Nev. bars cover

CONTINUED FROM PAGE 1

against the Nevada order, ANI would seek costs and damages. "I believe we have pretty solid claims for damages," she said.

The dispute is the latest pitting state officials against RRGs (see box).

ANI formed as an RRG in 2001 to provide a stable source of reasonably priced liability insurance for nonprofits and to help those organizations develop effective loss control and risk management programs. It writes coverage in 24 states and the District of Columbia.

"The interesting thing is (Nevada) allowed this particular group to write this coverage for nine years," said Robert H. Myers Jr., general counsel for the National Risk Retention Assn. and a partner in the insurance group at Morris, Manning & Martin L.L.P. in Washington. "You'd think that would carry some weight."

This year, though, the Nevada Department of Motor Vehicles stopped allowing ANI insureds to register their vehicles because ANI wasn't included in the list of insurers with valid certificates of authority issued by the state's insurance division. In May, the division notified the RRG that it wasn't authorized to write first-dollar auto liability policies.

ANI subsequently requested a hearing before the insurance commissioner, which led to the July order.

"Having read that decision, we were concerned that decisions were being made that might have been based on the motor vehicle statute as opposed to the insurance statute," said James L. Wadhams, president/chairman of the Nevada Captive Insurance Assn. "We think the decision probably should be reconsidered."

Mr. Wadhams, an attorney with Jones Vargas in Las Vegas, wrote the Nevada commissioner on behalf of the association asking him to reconsider the ruling. His letter argued that the state insurance division's position "is at odds with controlling federal law, will adversely affect insurance consumers and will damage Nevada's reputation as a premier captive insurance company domicile."

"It's a mystery to me why the insurance department would do that," said the NRRRA's Mr. Myers. "All you have to do is understand what the law says and you'd come up with the right decision."

"I'm aware of their thoughts and feelings in the matter. I respectfully disagree," said Mr. Barratt. "In the Liability Risk Retention Act, there is a carve-out for states to handle their mandated coverages."

"It's not our law. We just ended up having to interpret the DMV's law under the insurance code," the Nevada insurance commissioner said.

"What had happened in 2009 and 2010 is the Department of Motor Vehicles had obtained a new method of auditing their insurance providers and through that new method they caught ANI as an unauthorized insurance provider," said

### A HISTORY OF DISPUTES

*Risk retention groups and state insurance regulators have been at odds over state rights vs. protections of the Liability Risk Retention Act. Disputes include:*

**1995:** Louisiana legislators pass a measure requiring RRGs licensed in other states to meet capitalization and surplus requirements before they can operate in Louisiana. A federal judge strikes down the law in 1996, which an appeals court affirms.

The 11th U.S. Circuit Court of Appeals upholds a Florida law requiring taxi and other passenger transportation firms to buy the first \$30,000 of liability coverage from Florida Insurance Guaranty Assn. insurers. Under federal law, RRGs cannot be members of state guaranty funds or associations. An appeals court rules that the law was a legitimate extension of state authority.

**2000:** LRRRA pre-empts Oregon laws that effectively bar auto dealers from selling vehicle service contracts and require them to purchase reimbursement policies from authorized insurer members of the state guaranty association, the 9th U.S. Circuit Court of Appeals rules. The court said the requirement was a categorical exclusion of RRGs, which cannot be guaranty association members under LRRRA. The decision creates a split at the appeals court level.

Five years earlier, the 11th U.S. Circuit Court of Appeals came to the opposite conclusion in a somewhat similar case.

**2001:** A federal judge strikes down an attempt by Michigan insurance regulators to impose a fee of 0.5% on premiums written by RRGs licensed in other states for coverage they provide to Michigan policyholders. Michigan regulators say LRRRA allows such a tax, but the judge said the assessment was a fee that LRRRA pre-empts.

**2007:** California insurance regulators issue a cease-and-desist order to the Auto Dealers Risk Retention Group, a Montana-domiciled RRG, concerning medical stop-loss coverage. A federal judge later rules that as a nonchartering state, California lacks the right to regulate the RRG. The RRG stops writing the coverage, saying it cannot afford the cost of continued litigation.

Michael Lynch, deputy commissioner in the captive section of the Nevada Department of Insurance.

Insurers holding a Nevada certificate of authority are subject to the Nevada Insurance Guaranty Assn. Under the LRRRA, RRGs can't be required or permitted to be members of such state guaranty associations.

"In ANI's case, all they ever needed to do to comply with DMV's requirements was to get a fronting carrier," Mr. Lynch said. "But ANI didn't want to go that route."

"We believe that's inconsistent with the LRRRA as well," said Ms. Maxson-Rushton. In addition, "There's a cost associated with that," she said, and fronting costs would defeat ANI's purpose of providing affordable insurance to nonprofits.

David F. Provost, deputy commissioner of the Captive Insurance Division of the Vermont Department of Banking, Insurance, Securities and Health Care Administration in Montpelier, said he hopes Nevada will reconsider its ruling.

"We do agree, obviously, with ANI that they should be allowed to write in Nevada and we do think there are some recent decisions that the Nevada commissioner didn't look at," Mr. Provost said.

"We do hope they will reverse it," he said. "If ANI appeals the ruling, we'll probably file an amicus brief."

## Educate: RIMS chapters boost interest

CONTINUED FROM PAGE 4

"They were highlighting the importance of making ethical decisions in the context of business reputation," she said.

Since then, the Spencer Foundation has asked the chapter to put together a template for others to follow. "We're working on that right now," Mr. Cartwright said. "We plan to do the same thing again this coming April."

A New York RIMS chapter has for several years sponsored a \$5,000 annual scholarship for students in the New York tri-state area through the Spencer Foundation.

The scholarship honors Thomas Regan, a former chapter president who died in the Sept. 11, 2001, terrorist attack on the World Trade Center, said Brendan Cahalan, a board member and vp-education for the chapter. The chapter also contributes to the Anita Benedetti Memorial Scholarship at RIMS and sponsors a student to attend RIMS' annual conference, he said.

"We've got a pretty good growing relationship with St. John's University," said Mr. Cahalan, who is risk manager at Standard Motor Products Inc. in Long Island City, N.Y. Members of the chapter go to the New

York-based university's career day to promote RIMS and the industry.

Mr. Cahalan said the chapter also has a "shadow day" during which volunteer risk managers bring students from St. John's with them to work for a day "so they can see what it's like to be in the risk management industry." Risk managers, brokers and insurers participate, he said, noting that more than 20 companies volunteered to "spend a day in the life" last year.

At the Greater Quad Cities RIMS chapter, "we work at it from several fronts," said Hal Larson, a member of RIMS' House of Delegates and vp and risk manager at Muscatine Foods Corp. in Muscatine, Iowa.

For example, the chapter has a member of Gamma Iota Sigma included in officers' meetings to help plan the meetings. In addition to having students speak at chapter meetings, chapter members go to Gamma Iota Sigma meetings and some speak at university classes, he said.

Mr. Larson said a lot of the activities are coordinated through the Emmett J. Vaughan Institute of Risk Management and Insurance and at the University of Iowa in Iowa City. The institute offers a certificate in risk management and insurance for business students who want to spe-

cialize in risk management, he said.

The biggest question for students is, "When I graduate, how do I get into the profession and into a job? What's my best preparation? What's the path and what can I expect?" said Mr. Larson.

He said the chapter, the Vaughan Institute and the local Gamma Iota Sigma chapter also provide an industry mentoring program, "where we take applications from students for mentoring and match them to professionals in the area."

Mr. Larson said the program allows students to "get a hands-on, live perspective of the profession. It's one thing to give them academic background, and it's another to show them the real world."

Mr. Larson noted that RIMS' Student Advisory Council has posted a series of podcasts about mentoring on RIMS' website, [www.rims.org](http://www.rims.org).

"It's about the process," said Debra Rodgers, vice chair of the Student Advisory Council and vp-global risk manager at Aramark Corp. in Philadelphia.

"It's about trying to encourage people to do it to build their networking and get started in their careers," added Ms. Rodgers, this year's *Business Insurance* Risk Manager of the Year.

## Staff: Insurer hiring slows, analysis finds

CONTINUED FROM PAGE 4

the recovery than they were six months ago," Mr. Jacobson said. "Companies are still seeing growth and opportunities for growth...but there's trepidation with that because they're not as willing to go out and hire staff as they were six months ago."

Jeff Rieder, president of Ward Group, said the survey shows that despite declines in premiums and rates in the commercial lines sector, demand remains high for commercial lines underwriters and marketing professionals.

The survey suggests that most commercial lines insurance companies' strategies are to reinforce agency relationships and add the right underwriting and sales pieces, he said.

And, Mr. Rieder said, while the conventional wisdom might be that it would be slightly easier to fill positions in the current economy, that's not proving to be the case in areas such as actuarial executives.

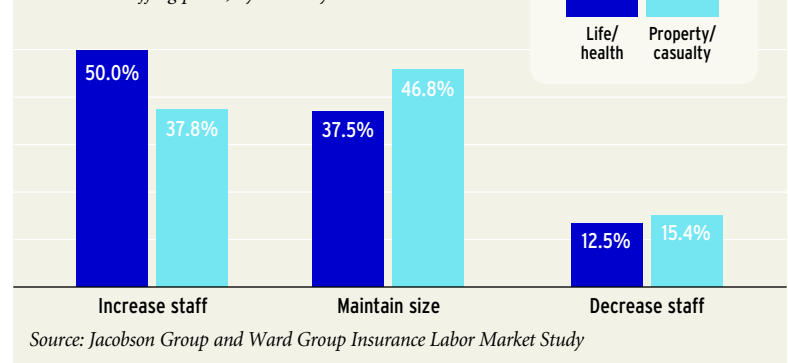
"It's not that there aren't people out there wanting to be hired, it's also finding the right person that fits into the organization," Mr. Rieder said.

"We're finding positions in that particular niche extremely difficult to fill," Mr. Jacobson said of commercial lines companies, particularly in specialty markets.

National unemployment statistics give a false picture of what's happening in the insurance industry labor market, Mr. Jacobson said. "The unemployment rate in the insurance industry is nothing close to that in the general economy," he said, particularly with regard to

### INSURER HIRING PLANS

12-month staffing plans, by industry



high-level executive positions.

"That's not surprising given that the insurance industry is a little bit insular. People tend to come up through the industry," Mr. Jacobson said. "That in itself creates a limited supply of talent."

Because of that disconnect between insurance industry labor market conditions and the general economy, insurer hiring managers tend to have false expectations about the ease with which they'll fill positions, he said.

Mr. Rieder noted that when insurance companies have engaged in reductions in force, those moves typically have been targeted at mid-level employees. "By doing that, they've depleted some of their bench strength," he said. "That's one of the reasons you're seeing it very difficult to fill these actuarial executive positions."

Of the companies participating in the July survey, 86% were property/casualty companies and 14% life/health insurers.

The survey shows that life/health

companies' hiring plans are more focused on technology and actuarial hiring than on the property/casualty side, Mr. Rieder said, adding that he expects that trend to continue among health insurers as they look to address some of the new demands of federal health care reform. "Our instincts are you're going to see a lot more focus on automation and technology."

Insurers continue to appear particularly susceptible to a talent gap as baby boom employees retire.

"Nothing has changed in terms of the demographics of the industry being older than the economy in general," Mr. Jacobson said. "So there is going to be a gap."

In response, some companies are offering early retirement incentives, "which is counter to what you'd think," Mr. Rieder said. But in fact, those companies are trying to manage their way through that gap by creating a tiered approach to the anticipated retirements, rather than getting hit by a large wave all at once, he said.

## Eggs: Safety, cover in focus

CONTINUED FROM PAGE 1

The egg recall began Aug. 18 when Galt, Iowa-based Wright County Egg issued a voluntary recall of 380 million eggs. Two days later, another egg producer, Pennsylvania-based Hillandale Farms of Iowa recalled 170 million eggs due to contamination. On Aug. 26, the U.S. Food and Drug Administration announced investigations linked a salmonella outbreak to salmonella-positive chicken feed at both farms.

The feed, which was produced at a mill that is part of Wright County Egg's operations, was distributed to Hillandale Farms, according to the FDA. The recalls only apply to fresh whole eggs.

The salmonella outbreak is one of the country's largest since 1970, with more than 2,400 cases of illness linked to salmonella, according to the U.S. Centers for Disease Control and Prevention. About 1,470 cases have been connected to the recalled eggs.

Eggs affected by the recall were distributed to grocery distribution centers, retail grocery stores and foodservice companies in at least 23 states, according to the Egg Safety Center, an organization run by the United Egg Producers—a group made up of egg farmers with approximately 95% of the United States' egg-laying hens.

Jackson, Miss.-based Cal-Maine Foods Inc., one of the largest U.S. producers and distributors of fresh eggs, said on Aug. 20 that it purchased 9.6 million eggs from one of the Iowa producers, which accounted for 0.3% of its total sales between April 9 and Aug. 18.

In a statement, the company said it is monitoring the situation and that none of the eggs involved in the recall were produced in Cal-Maine facilities or operations.

Thirty-seven brands reported being affected by the recall. Information on those brands can be found at [www.eggsafety.org](http://www.eggsafety.org).

Insurance losses for the event still are unknown, but some experts estimate the economic losses could be "hundreds of millions" of dollars.

"It's going to be awhile before we know, but the (economic) losses will likely be substantial," said

Geoff Mills, a managing director in Marsh Inc.'s product recall practice based in Princeton, N.J. "The peanut recall (in February 2009) is estimated to have cost more than \$1 billion. I don't think the egg recall will be that costly, but by the time it's all said and done, costs could well be in the hundreds of millions. As far as how much of that is insured, that's anyone's guess right now."

Insured losses likely would fall under first-party product recall insurance coverages, insurance experts said, adding that business interruption coverage under that coverage is triggered by a contamination event. In some cases, third-party coverage, which would cover the recall expenses of the producers' customers as well as lost profits, can be purchased. Insurance industry experts, however, said this is still a developing area of coverage and that only a handful of insurers offer third-party recall coverage.

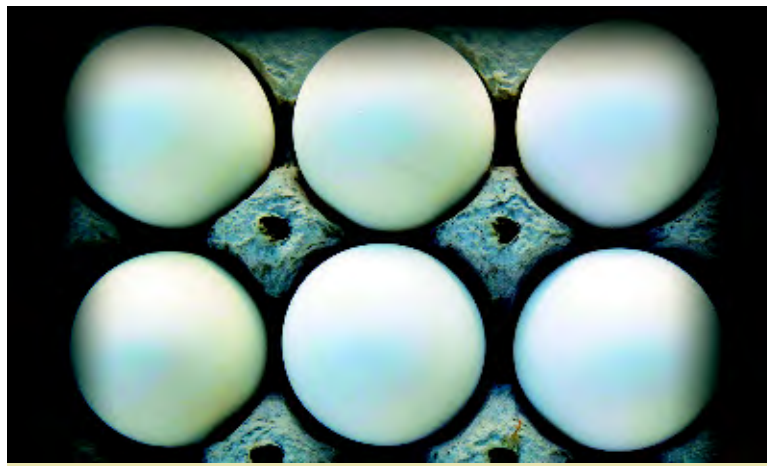
The first-party element of the coverage usually covers the expense of the recall, business interruption and the cost of rehabilitating a damaged brand, which can include advertisements and product education efforts. The coverage also can cover lost profits and bodily injury claims stemming from the recall.

"Product recall insurance is still a growing area," said Bernie Steves, a managing director of Aon Risk Solutions crisis management practice in Chicago. "Given the number of recalls that have been high profile in nature, you could see even more growth...there certainly has been an increase in interest in product recall insurance in the food and beverage industry since 2006."

Mr. Mills estimates that between 10% and 20% of companies in the food and beverage industry buy recall insurance.

Recent recall incidents include a 2006 E. coli outbreak linked to fresh spinach and a 2009 peanut products recall after a massive salmonella outbreak killed nine and sickened nearly 700.

Alan M. Maxwell, an Atlanta-based attorney who leads the foodborne illness practice group for Weinberg Wheeler Hudgins Gunn



## Safety bills before Congress

**WASHINGTON**—The recall of 500 million eggs has put some pending legislation on food safety in the spotlight.

As the U.S. House and Senate consider bills designed to give the federal government more power to regulate and inspect the nation's food supply, members of the insurance industry hope this recall will prompt Congress to act.

The Food and Drug Administration can compel recalls only on certain food items, such as baby formula. It cannot, however, require recalls on eggs, produce and beef, for example. Those recalls are done voluntarily by the producer.

The bills—S.B. 510 and H.R. 875—would enhance the authority of federal agencies involved in food safety, inspection and regulation, including the FDA.

"Certainly, it comes as a great surprise to the public to learn that the FDA cannot compel recalls, but that recalls to this day remain voluntary, and this has been a longstanding gap in the FDA's authority," said FDA Commissioner Margaret Hamburg during an Aug. 23 new conference. "The legislation that Congress is currently considering would give us that authority and other critical tools, such as enhanced authority to trace back products to the source, to

require firms to implement preventative (contamination) controls, and to provide FDA with access to important records."

The bills are part of the Food Safety Modernization Act, which is designed to hold companies that produce, process, package and distribute food products to higher standards, including allowing the FDA to conduct unannounced inspections and access records of food that the secretary of the Department Health and Human Services deems hazardous.

Further, the proposal would strengthen and expand foodborne illness surveillance systems and require imported food to meet the same standards as U.S.-made food. The measure also would establish a national traceability system for food.

"It's going to give the FDA more regulatory authority to conduct mandatory inspections on food," said Katherine Ann Cahill, global managing director in Marsh Inc.'s global product risk practice in New York. "The FDA can then set test standards and mandatory inspections and can help order product recalls," she said. "It would also be able to shut down plants that aren't following those regulation guidelines."

—By Jeff Casale

& Dial L.L.C., was involved on the litigation stemming from both events. He said typically companies involved in a food contamination

recalls have enough insurance to cover the bodily injury claims associated with the event, but that they can run into trouble when covering

business interruption expenses.

"If they have adequate (general liability) insurance, bodily injury usually gets taken care of," Mr. Maxwell said. "The pressure is really on the business interruption portion. Wright County Egg is probably not receiving payment on its outgoing receivables, which is going to create a cash flow problem. Recalls like this usually end up being a business interruption problem."

Neither Wright County Egg nor Hillandale Farms could be reached for comment.

Brand reputation and managing the impact of a recall on a business also can pose a sizeable problem. Susan Morton, Boston-based vp with Marsh Risk Consulting, said addressing a recall and possible issues associated with it are "essential" in protecting the brand and the long-term effects of a product recall.

Open communication with the public and shareholders and stakeholders also is important, she said.

"Think through the potential consequences and look ahead when handling a situation like this," Ms. Morton said. "If you are a company that is touched by (a recall situation) it's important to think proactively when managing the situation."

The egg recall comes shortly after the FDA issued a rule that enhances egg safety to limit salmonella-related illnesses. There is also important food safety legislation before Congress (see related story).

The egg safety rule requires egg producers with fewer than 50,000 but at least 3,000 laying hens whose eggs are not processed with a treatment, such as pasteurization, to comply with the regulation by July 9, 2012. Producers who sell all their eggs directly to consumers or have fewer than 3,000 hens are not covered by the rule.

The egg safety rule went into effect July 9, but it was after the eggs involved in the recall had gone out to distributors, retailers and consumers. Meanwhile, bills in the House and Senate would boost the FDA's regulatory powers and its ability to ensure food safety.

"You might see that this recall forces Congress to take the legislation more seriously," Mr. Steves said.

## Stanford: Insurers dispute coverage at trial

CONTINUED FROM PAGE 3

policies.

Before the start of the three-day trial last week, former Stanford Chief Financial Officer Laura Pendegest-Holt settled with the underwriters, the judge said.

Attorneys for Mr. Stanford and other executives have said they would have to leave the case if they could not secure payment from the underwriters. Stanford's court-appointed receiver has argued that the \$100 million D&O tower is property of the bankrupt estate and should be used instead to compensate bilked investors.

D&O insurers typically advance

defense costs to policyholders. Most policies exclude fraud, but most such exclusions are triggered by "a final adjudication," and cases typically settle before reaching a final court decision.

But Stanford's D&O policies had an unusual exclusion for money laundering, defined broadly as the use or possession of criminal property. That provision is triggered not by a final adjudication but when "it is determined" the policyholder "in fact" committed money laundering, without specifying who would make that determination.

The 5th U.S. Circuit Court of Appeals ruled in March that a district court must make that determi-

**'I find it staggering that the 5th Circuit allowed this to happen.'**

Ann Kramer, Reed Smith L.L.P.

nation and that the underwriters must pay defense costs until then.

But, in sending the case to Judge Atlas, the appeals court set up an unusual scenario: The underwriters are presenting evidence against their own policyholders while the executives decline to testify because of the civil and criminal trials set to

begin early next year.

"I find it staggering that the 5th Circuit allowed this to happen," said Ann Kramer, a New York-based insurance recovery attorney and partner at Reed Smith L.L.P. "The policyholder (has) to plead the Fifth—you can't engage in a trial like this before your criminal case. Normally, the coverage case is stayed, the duty to defend is honored and then after the matter at hand—whether product liability or a criminal case—you get to (insurers') rights."

Two forensic accounting experts testified last week that Stanford executives reverse-engineered financial information and intentionally over-valued a land purchase to hide losses. They also said Stanford's bank in Antigua loaned \$3.5 billion to Mr. Stanford and the company without proper disclo-

sure. Defense attorneys argued that such misbehavior was perpetrated by James M. Davis—Stanford's ex-finance chief, who pleaded guilty last year and is cooperating with prosecutors—and without the knowledge or consent of the three executives under indictment.

Ms. Kramer said she was concerned about other courts opting to hear coverage disputes before criminal or civil trials.

"Insurers will latch onto this and use it in far less (extreme) cases, and it will be precedent and it will be very bad for policyholders if it's followed by anybody," Ms. Kramer said. "It should be a wake-up call to everybody in this business to be careful about what kind of D&O policies they're buying."

Judge Atlas told attorneys not to expect an immediate decision.

## Review firms expect increase in demand

**WASHINGTON**—Increased demand for independent review organization services by self-funded health benefit plans likely will stimulate growth in the industry, sources familiar with the IRO market say.

Because external review volume is low, demand for internal claims reviews has sustained many IROs, said Seana Ferris, president of the National Assn. of Independent Review Organizations and director of strategic initiatives at Permedion Inc. a Westerville, Ohio-based IRO that is accredited by URAC and has been certified to operate in a dozen states.

"For the 12 states where we are an IRO, we probably only do about 600 (external reviews) a year," Ms. Ferris said.

Some 46 states and U.S. jurisdictions already have external review requirements that apply to insured plans, according to the Kansas City, Mo.-based National Assn. of Insurance Commissioners.

In the vast majority of those states, IROs are vetted by the state insurance departments and a list of those that have been approved is provided to insurers, which contract to use one or more depending on the state law.

But the volume of external reviews is fairly low, said Christine Leyden, senior vp, general manager of client services and chief accreditation officer at Washington-based URAC.

"Based on URAC's accreditation experience, 50% of administrative denials in health care are due to lack of information," Ms. Leyden said. When the additional information is provided by physicians as part of an internal claims review, claim denials are overturned 90% of the time, she said.

Because of the low volume of claims sent for external review, Ms. Ferris and Ms. Leyden said they were not concerned about IROs' ability to meet the needs of the self-funded employers in addition to the insurers they already serve.

Moreover, only a handful of reviewers are needed for each claim referred for external review and most IROs have upwards of 1,000 physicians and other health care providers on their panel of reviewers, Ms. Leyden said.

The turnaround time requirements should not be difficult to meet because of the size of the panels, Ms. Leyden and Ms. Ferris concurred.

—By Joanne Wojcik

## BY THE NUMBERS

Independent health claim review organizations in the United States

**43** Number accredited by URAC

**10** Number operating in more than one state

**19** Number of NAIRO members

**46** Number of U.S. states and jurisdictions with external review laws

Source: URAC and National Assn. of Independent Review Organizations

in Wisconsin vs. Illinois," he said.

Of the 43 IROs that URAC has accredited, only 10 operate on a multistate basis, said Christine Leyden, senior vp and general manager of client services and chief accreditation officer at Washington-based URAC.

Seana Ferris, president of the National Assn. of Independent Review Organizations, said all 19 NAIRO members operate in more than one state, but none operates nationally and NAIRO's members cover only 15 states.

The cost should not be particularly onerous for self-funded employers, said Ms. Ferris, who said the average external review tab is only about \$600.

Even if the cost is nominal, the external review requirement establishes another task for employers, which already are overburdened by PPACA's myriad other requirements, Ms. Boggs said.

"Time is money. Adding these additional steps is additional work, and the fact that things need to be turned around so quickly could require additional resources," she said.

Shawn Nowicki, director of health policy at the New York Business Group on Health, agreed.

"The time and the effort to comply with the new administrative tasks (prescribed by PPACA) eclipse the actual costs," he said.

He also said issuing the regulations so late in August has many employers scrambling to comply.

"The open enrollment planning process is coming to a close. A lot of their proposed plans are almost set. These regulations are coming late in the process," Mr. Nowicki said.

## Appeals: Rules establish process for claims review

CONTINUED FROM PAGE 1

accredited by URAC or similar nationally recognized accrediting organization, which has 45 days to render a final coverage decision.

To ensure there is no bias in the external review process, benefit plans are required to contract with at least three independent review organizations and rotate claims assignments among them. In addition, the review organizations cannot be paid any financial incentives based on the likelihood that they would support a denial of benefits.

An expedited external review is prescribed for situations requiring immediate medical care, including urgent care and those in which denial of payment for treatment would jeopardize the claimant's ability to regain maximum function.

The interim final rules also outline specific requirements that group benefit plans must include in their contracts with independent review organizations, as well as the type of information and documents that the review organizations must consider in making decisions.

Mike Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York, said the rules are "pretty prescriptive and set pretty high standards for the appeals process."

A requirement he said he had not anticipated is that employers with self-funded health plans must contract with at least three IROs and rotate claims among them.

"That would be unprecedented, and it will require a great deal of coordination," Mr. Thompson said.

Steven Wojcik, vp of public policy at the National Business Group on Health in Washington, said most self-funded employers already have external review processes, but they usually contract with only one IRO.

### PROCESS AFTER DENYING A CLAIM

*Interim final rules for the appeals and external claims process required by the Patient Protection and Affordable Care Act for nongrandfathered self-insured group health plans*

- Effective for policy years beginning on or after Sept. 23.
- Self-insured plans must contract with at least three accredited independent review organizations.
- Claimants have four months to file a request for an external review.
- Preliminary review must be completed within five business days.
- External reviews must be completed within 45 business days.
- Claimant can request an expedited review for a medical condition that could seriously jeopardize life, health or the ability to regain maximum function.
- IRO must complete an expedited review within 72 hours.

Source: U.S. Department of Labor, Health and Human Services, Internal Revenue Service

In addition, the required turnaround time may not coincide with employer practices, he said. "Under the new rules, plan members will have four months to file a claim. Some employers may only have given them three months," Mr. Wojcik said.

Employers that already have an expedited review process may have applied it only to situations where withholding coverage could jeopardize the life and health of a claimant, but not necessarily for jeopardizing a claimant's ability to regain maximum function, Mr.

Wojcik added.

Although many large, self-funded employers may have had external review procedures in place prior to the new law, this will be the first time federal law will require them to do so, said Kimberly Boggs, senior employee benefits adviser at Morgan, Lewis & Bockius L.L.P. in Chicago.

Although the regulations permit employers to voluntarily comply with the provisions of their state's external review process as an alter-

native to complying with the federal regulations, IROs, which are vetted by the states and used by insurers in connection with their insured claims, generally operate in just one or two states and may not be able to provide such services everywhere a multistate employer operates, Mr. Wojcik said.

"If an employer is operating in more than one state, it will try to have a uniform process for external review to make sure there's not a different process for people who live

## Business Insurance Webcasts & Webinars

**Business Insurance's Webcasts** are developed by *BI* editors to discuss the latest and most pressing issues facing our readers. **Business Insurance's Webinars** are educational and informative presentations by leading companies serving the risk management, employee benefits and commercial insurance communities. Both formats are presented live online and afterward are accessible on demand.

### **Urgent Care: Managing Medical Liability Risks After Health Reform**

**Live Online: Sept. 15, 2010 | 2 p.m. Eastern | Free Of Charge**

The Patient Protection and Affordable Care Act will change how patients access health care, shifting how medical professional liability claimants target the industry. How will liabilities be parceled out, and what concerns does the changing landscape raise for health care industry risk managers? While most of the act's provisions are still a few years from implementation, this *Business Insurance* webcast will help risk managers and other health care industry professionals determine now what issues they need to consider.

Kathryn A. Meyers, director of broking for Aon Risk Solutions' health care practice, and Edward M. Wrobel, a director at Towers Watson & Co., will discuss what is known today about new demands that will fall on health care systems, and what risk mitigation steps are necessary. Roberto Cenicerros, senior editor of *Business Insurance*, will moderate the webcast.

A *Business Insurance* Webcast, sponsored by:



For details, visit [BusinessInsurance.com/Webinars](http://BusinessInsurance.com/Webinars)

## News In Brief

CONTINUED FROM PAGE 1

the work environment for its employees," OSHA said in a statement.

### WTC Captive opt-in deadline extended

WTC Captive Insurance Co. has extended its deadline for opting into its settlement to Nov. 8 from Sept. 8, the captive said. The company said the extension would allow rescue and recovery workers who filed suit against New York City over their exposure to contaminants at the World Trade Center site that was attacked Sept. 11, 2001, by terrorists more time to consider whether to accept the settlement.

### Court vacates \$34.4M award against AIG

A federal appeals court vacated a \$34.4 million judgment against American International Group Inc. that a jury awarded to AXA S.A., holding that AXA's charges were fraud-related and had expired under the statute of limitations. According to court papers, a jury in 2008 held AIG liable for \$34.4 million, including \$5.8 million in punitive damages, on claims of "fraudulent inducement" with respect to two 1997 and 1998 reinsurance facilities that AIG had agreed to with AXA as the reinsurer.

### Court OKs award to spouse for asbestos exposure

A woman's "bystander exposure" to asbestos from washing her husband's work clothes for more than three decades substantially contributed to her mesothelioma, a New Jersey appellate court has ruled in upholding a \$7.5 million jury

award. The ruling upheld a jury award of \$7 million for the woman and \$500,000 for her husband, plus prejudgment interest.

### BB&T gets OK to fund benefits via captive

The Labor Department has given tentative authorization to BB&T Corp. to fund employee benefit risks through the South Carolina branch of its Bermuda-based captive insurance company. Under the proposal, life and disability policies written by Hartford Life & Accident Insurance Co. would be reinsured through BB&T Assurance Co. Ltd.

### Brokers profitable in 2009: Moody's

The U.S. insurance brokerage sector remains financially solid despite economic challenges, according to an Industry Scorecard report by Moody's Investors Service. "While the economic downturn and lower pricing resulted in marginal or even negative organic growth for some insurance brokers in 2009, overall the industry was able to maintain profitability," Moody's said in the report.

### Glacier Re puts portfolio into runoff

Glacier Reinsurance A.G. said its existing insurance portfolio will be placed into an orderly runoff, and the company no longer will write or accept new business. Glacier Re will manage the runoff process itself, the reinsurer said in a statement.

### California work comp combined ratio increases

California workers compensation insurers' combined ratios climbed during 2009 to the highest level since 2001, while average claims costs continued increasing, according to a report on insurer experience. The ultimate accident-year 2009 combined ratio is estimated to have reached 124%, the Workers' Compensation Insurance Rating Bureau of California said in its report.

## Cash: Pension plans get boost from law change

CONTINUED FROM PAGE 3

including such corporate giants as trailblazer Bank of America Corp.—which in 1986 established the first plan—CIGNA Corp., IBM Corp., Hewlett-Packard Co. and Wells Fargo & Co.

Then and now, a prime reason employers embraced the plans was their easy-to-understand benefit design.

"The benefits are easier to communicate and so employees understand and appreciate them," said Ray Hoskavich, Shands Health-Care's senior director of human resources.

The cash balance model is "easy to understand. In our case, it's basically 3% of your salary accumulated as credits within an account," said Joseph Molloy, corporate director of benefits at Lake Success, N.Y.-based North Shore-LIJ Health System, which moved to a cash balance plan just over a decade ago.

The benefit design of the plans is simple: Employees are credited with a benefit equal to a percentage of their current pay. In addition, interest is calculated at a set rate—for example, the rate for one-year Treasury notes plus one percentage point—and is added to the accumulated benefit.

The accumulated benefit is expressed as a cash lump sum. As a result, plan participants always know the value of their benefit.

"An account-based plan is something everyone can relate to," said Alan Glickstein, a senior consultant with Towers Watson & Co. in Dallas.

Another plan attraction is the way benefits are earned. As career-average pay plans, benefits build more rapidly compared with traditional plans, making them more appealing to a younger, more mobile workforce, employers said.

But the plans began to lose their

luster in 1999. That was when a highly publicized lawsuit was filed against IBM, alleging that the plan's design discriminated against older employees, triggering a wave of copycat suits against other employers with the plans.

The Treasury Department stopped issuing determination letters—which are a kind of seal of approval—at about the same time the IBM suit was filed.

The appeal of the plans dimmed further in 2003 when, in the first decision in that direction, a U.S. district court judge ruled that cash bal-

**The cash balance model is 'easy to understand. In our case, it's basically 3% of your salary accumulated as credits within an account.'**

Joseph Molloy,  
North Shore-LIJ Health System

ance plans in general, and IBM's plan in particular, were age-discriminatory because the same benefit provided to a younger employee would be worth more—expressed as a retirement age annuity—than that of an older worker.

That ruling was probably the nadir for the plans and their sponsors, but over time the climate brightened. Federal lawmakers, concerned about the rise in the number of employers freezing defined benefit plans, including cash balance plans, approved a pension funding reform measure in 2006 with provisions that protected new cash balance plans

from age discrimination suits.

Almost simultaneous with the enactment of the pension funding measure, the 7th U.S. Circuit Court of Appeals in Chicago overturned the lower court ruling in the IBM case. Four other appeals courts were to follow with the same finding in suits involving plans sponsored by other employers.

With legal uncertainties removed, employers again began to set up new plans, with MeadWestvaco the first to do so after the passage of 2006 legislation.

But it isn't just big employers who have set up new plans since 2006. Very small employers also have moved to the plans. "We have seen much more interest in cash balance plans in the small professional market," said Tom Foster, vp and national spokesman for retirement plans for Hartford Financial Services Group Inc.'s Retirement Plans Group in Simsbury, Conn.

"The growth has come from professional firms and partnerships," said Jack Abraham, a principal with PricewaterhouseCoopers L.L.P. in Chicago.

A key appeal of the plans to small professional firms is that top executives can fund much bigger benefits for themselves compared with defined contribution plans, such as 401(k) plans, experts say.

Still, the passage of legislation and favorable court rulings have not ended all uncertainty about cash balance plans and that uncertainty is holding up plan growth. The biggest uncertainty is a provision in the 2006 law that gives plan sponsors the option to use a "market rate" to credit interest on participants' account balances. The Internal Revenue Service, though, has yet to provide definitive guidance on what would be considered a market rate.

The lack of guidance is an "impediment" hampering plan adoption, said Jay Rosenberg, a director with Buck Consultants L.L.C. in Secaucus, N.J. "You want to set up a new plan, but you don't know what the parameters are" of the market-rate interest issue, he added.

## WCF: Forum to focus on strategy for captive insurers

CONTINUED FROM PAGE 3

Plus, new for 2010, the conference is offering a reduced registration fee to risk managers and captive owners. All registrants can benefit from early bird discount by registering at [www.worldcaptiveforum.com](http://www.worldcaptiveforum.com) before Sept. 30.

The World Captive Forum's co-sponsors are *Business Insurance*, R&Q Quest Management Services Ltd. and Towers Watson & Co. Conference attendees will include risk managers and benefit managers, captive domicile regulators, captive managers and consultants, insurance and reinsurance brokers, company executives, accountants, lawyers and bankers.

"For 20 years, this conference has delivered a great educational and networking forum for the leading lights of the captive insurance industry—both among captive owners and the supporting industry," said

Paul Winston, associate publisher and online general manager/events director for *Business Insurance* in Chicago. "That remains just as true today and is due to continual innovations and efforts to deliver current information that helps attendees do their jobs better."

On Tuesday, Nov. 9, after breakfast and welcome remarks, the first morning general session begins with a keynote address on crisis management and reputational risk issues by Simon Barker, west zone practice leader and senior consultant in the crisis management and reputational risk practice of Marsh Risk Consulting San Francisco.

The remainder of the day will feature concurrent sessions aimed at captive fundamentals, advanced topics and benefits funding. These include, for example, "Health Care Reform and its Impact on Employers," "Tax Topics: The Developments & Issues," "Solvency II and

Regulatory Risk," "Claims, Captives and Section 111," among several other sessions. Visit the conference website for complete details.

Wednesday, Nov. 10 commences with a keynote speech by Patricia A. Henry, executive vp and deputy general counsel of ACE Group Holdings Inc. in Philadelphia. Ms. Henry will review regulatory and legislative activity that affects risk managers, as well as explore how the midterm congressional elections could impact key initiatives.

Wednesday also features a session on "Hot Topics in Captive Insurance." Topics already identified for this year's session, to be moderated by P. Bruce Wright, partner, Dewey & LeBoeuf L.L.P., are the real or illusory benefits of cells, the mounting burden of regulation, rising collateral requirements and the outlook for 831(b) exemptions to continue unchanged.

In the afternoon is one of the

World Captive Forum's most popular sessions. "Case Studies: Award Winning Risk Managers" will feature presentations by the 2010 honorees of *Business Insurance's* Risk Manager of the Year® and Risk Management Honor Roll® Awards. Hear Debbie Rodgers, vp-global risk management for ARAMARK Corp.; Scott Borup, director, corporate risk management for Johnson & Johnson; and Christine L. Eick, executive director, risk management and safety for Auburn University, discuss their distinct risk profiles, major challenges and the role that captives do—or do not—play in their risk financing strategies.

The conference closing speaker is U.S. Army Maj. Gen. Jeffrey Talley, who served in Baghdad. Among his accomplishments was the responsibility to rebuild Sadr City in Iraq after the Gulf War. His efforts, described as "Engineering the Peace," enabled the people of the

Iraqi capital and its government to advance security and stability efforts.

Besides the conference's educational sessions, there will be recreational activities, including a Nov. 8 golf tournament and lunch, sponsored by the State of Vermont. In addition, receptions will be held each night for attendees to network with peers and presenters.

Early bird registration rates are available until Sept. 30. Until then, registration fees are \$250 for risk managers and captive owners, \$495 for captive regulators and \$1,250 for service providers.

Special room rates at Hyatt Regency Scottsdale Resort at Gainey Ranch are \$239 per night before Oct. 15. The Hyatt Regency Scottsdale at Gainey Ranch is 20 minutes from the Phoenix Sky Harbor International Airport.

For more information—including updated speaker and sponsor information—or to register to attend or exhibit at the World Captive Forum, please visit [www.worldcaptiveforum.com](http://www.worldcaptiveforum.com) or call 952-928-4659.

## Products & Services

### Aon Benfield tool measures cat exposures

**MINNEAPOLIS**—Aon Benfield Fac has launched an online tool for insurers to measure their exposure to catastrophes.

ImpactOnDemand provides insurers with real-time information on earthquakes, hurricanes, wildfires, tornadoes, hail events and volcanic eruptions. It also allows them to upload their portfolio for analysis, the London-based facultative reinsurance unit of Aon Corp. said in a statement.

The online tool combines Aon Benfield's existing ExposureView and CatPortal platforms into one package, with forecasting and historical information to support claims and capital management capabilities supported by Aon Benfield Research.

"ImpactOnDemand allows clients to dynamically interact with their data to build and deliver reports in real time," Aon Benfield Analytics CEO Steve Mildenhall said in the statement.

For more information, contact Kristi Wilts, managing director at Aon Benfield, at 952-886-8314 or [kristi.wilts@aonbenfield.com](mailto:kristi.wilts@aonbenfield.com).

### Sedgwick CMS adds E&O services

**CHICAGO**—Sedgwick Claims Management Services Inc. has added to its professional liability services and now offers errors and omissions claims management services for professional services organizations.

The Memphis, Tenn.-based claims management firm's Chicago-based team will manage risks, resolve claims and administer settlements for professional service providers, Sedgwick CMS said in a statement.

The company will assist in resolving E&O claims at the complaint stage. Services also include causal analysis, contract compliance review, ongoing mitigation and correction efforts, extended settlement negotiations, and litigation support, the statement said.

The service is aimed at "financial advisers and financial services providers, realtors, property managers, architects, engineers, accountants, attorneys and others whose

insurer, captive insurance company or self-insurance arrangements allow for independent expert assistance in the management of E&O claims," said Tim C. Over, senior vp and national director of professional liability claims operations at Sedgwick CMS.

For more information, contact Mr. Over at 312-356-0813 or [Tim.Over@sedgwickcms.com](mailto:Tim.Over@sedgwickcms.com).

### Zurich enhances construction coverage

**SCHAUMBURG, Ill.**—Zurich North America Commercial has enhanced its professional liability policy aimed at midsize and large construction firms.

"The coverage is designed for the

professional exposures of a construction manager, whether offered through an at-risk or agency contract, as well as trade subcontractors with or without direct design exposure," said Scott Rasor, head of construction-commercial business division, for the Schaumburg, Ill.-based unit of Zurich Financial Services.

The policy can be composed of three parts: third-party professional liability, first-party professional liability and contractors pollution liability.

Enhancements to the policy include damages may now include repair costs and economic losses arising from professional services; rectification coverage, which can indemnify a policyholders for necessary expenses incurred to correct a

design defect; and mitigation of loss, which can cover expenses to address pollution.

For more information, contact Michael A. Davis, director of construction professional and pollution liability, at 215-979-6639 or [michael.davis@zurichma.com](mailto:michael.davis@zurichma.com).

### Allianz launches online aviation claims system

**NEW YORK**—Allianz Global Corporate & Specialty has launched an online system for aviation claims in the United States.

The system allows policyholders and brokers to access claims information anytime via the Internet, according to a statement from the New York-based unit of German

insurer Allianz S.E.

The online system also allows access to financial information on claims, summaries and loss runs. The loss runs can be automatically generated every day.

To register for access to the system, contact Andrea Van Buren, aviation business development, at [avanburen@aic-allianz.com](mailto:avanburen@aic-allianz.com).

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BI's Products & Services column reports on new product offerings. Please send Product & Services news to Mike Tsikoudakis, 360 N. Michigan Ave., Chicago, Ill. or e-mail [mtsikoudakis@businessinsurance.com](mailto:mtsikoudakis@businessinsurance.com).



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## Facebook no friend to new social site

Facebook Inc. CEO and founder Mark Zuckerberg is throwing the "book" at an upstart online teacher community.

Palo Alto, Calif.-based Facebook filed suit in federal court in San Jose, Calif., this month alleging that Northbrook, Ill.-based Teachbook.com is "misappropriating" the "book" portion of Facebook's trademark.

Further, Facebook said Teachbook.com is a "blatant" attempt to become "Facebook for Teachers," thus riding the "coattails" of the networking community's fame.

Teachbook provides several of the same services as Facebook and, according to the lawsuit, actually is designed to be a teacher's substitute for Facebook, as some schools do not allow teachers to maintain a Facebook or MySpace account to protect personal information from students.

The trademark infringement lawsuit, which seeks a jury trial, states the term "book" cannot be used to name social-networking sites and argues that there could be confusion over which is the real Facebook.

However, Teachbook vowed to fight the infringement suit.

"It's a David and Goliath situation," Greg Shrader, managing partner of Teachbook, told Wired magazine. "They're throwing bombs at a mosquito. They believe we're going to roll over and in some respect they get to own the term 'book.'"

"It's not that they are using 'book,'" Facebook said in a statement to the Chicago Tribune. "We have no complaint against Kelley Blue Book or others" that already have a well-known online network with "book" as part of the name.

## Feds hatch plan for Web relations



The Internet Age meets the World War II era in guidance from the U.S. Office of Special Counsel interpreting a law about permissible political involvement by federal employees.

The Hatch Act, which restricts political activity by federal employees, dates back to 1939.

The Office of Special Counsel, which released the guidance last month in the form of frequently asked questions, discussed how federal employees can comply with the law when using social media, primarily Facebook and Twitter.

For instance, the guidance says federal employees can write blogs expressing support for or opposition to political candidates and political parties on their own time, not while on duty or in their office.

Furthermore, they are not permitted to use their official titles in their blogs, nor can they ask readers to make a political contribution.

However, they are allowed to identify the political party they support on their Facebook profiles.

Federal employees who are "friends" with their subordinates on Facebook also can advocate for or against a political party or candidate, so long as their messages are not specifically directed at the subordinates, says the guidance at <http://www.osc.gov/haFederalfaq.htm>.

# Business Insurance END PAGE

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



## Insurance award goes to the dogs

A Labrador retriever that consumed a pesticide-soaked beehive containing thousands of dead bees—and lived—has something else to gnaw on: this year's Veterinary Pet Insurance Co.'s Hambone Award.

The Brea, Calif.-based company awards its annual trophy to the most unusual pet insurance claim of the year. Nearly 3,000 people visited VPI's website during the first two weeks of August to choose among a dozen nominees for the bronze trophy.

The insurer, a unit of Nationwide Mutual Insurance Co., named its award in honor of an insured doggie that got stuck in a refrigerator and consumed an entire Thanksgiving ham before being found suffering from a mild case of hypothermia.

The dog licked the hambone clean,

VPI said.

Ellie, this year's winner, also is a voracious pet. The young Labrador from Santee, Calif., also has consumed wooden toy train tracks and laptop computer keys.

"So the beehive was just another culinary adventure for this insatiable pooch," VPI said in a statement. "Unfortunately for Ellie, the recently sprayed beehive was full of pesticides and thousands of dead bees, and that combination sent her to the veterinary hospital." But after a veterinarian administered anti-nausea medication, Ellie went home to meals of chicken and rice.

A border collie that leaped through a window to reach a mailman garnered the second-place award, and a terrier that tried to bite a running chain saw won third place.

## Lucas returns to court in fight for Jedi brand

First it was lasers, and now it's a computer application that has Lucasfilm Ltd. heading to court over alleged violations of its "Star Wars" trademarks.

Earlier this year, the company tangled with a Hong Kong-based company that manufactured a laser that Lucasfilm argued too closely resembled the light sabers wielded by the likes of Luke Skywalker.

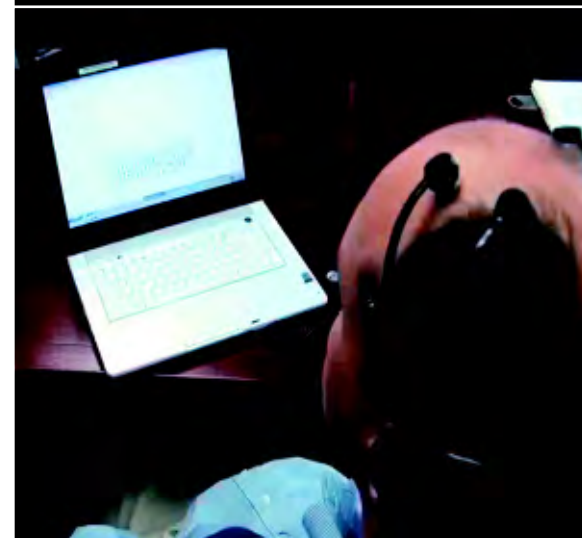
Now, the company has filed a trademark infringement suit against Encinitas, Calif.-based Jedi Mind Inc. over a computer application that Jedi Mind says can detect brain waves and allow users to play computer games or run software applications by thought.

Jedi Mind offers three such products, one of which is called Jedi Mouse.

This was too much for Lucasfilm, which had already sent Jedi Mind two cease-and-desist letters over the use of the word "Jedi" in its name.

In its suit, filed Aug. 17 in U.S. District Court in San Francisco, Lucasfilm holds that the alleged trademark infringement will cause confusion in the marketplace and harm its business and reputation.

Whether this will be viewed as a case of the empire strikes back a move to the dark side may well be a job for a jury.



JEDI MIND  
Jedi Mind Inc. offers three products it says can detect brain waves and allow users to control by thought, including the Jedi Mouse.

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