

Business Insurance

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In Brief

Feds outline sentences in Gen Re finite case

Federal probation officials have recommended 14- to 17-and-a-half year prison terms for five former General Re Corp. and American International Group Inc. executives convicted of fraud earlier this year, but federal prosecutors are arguing for stiffer sentences. In a court filing Friday, prosecutors contended that AIG shareholders lost as much as \$1.4 billion as a result of a fraudulent \$500 million loss portfolio transfer deal between Gen Re and AIG in 2000, and that the five defendants' sentences should be longer than recommended. Probation officials incorrectly concluded that the loss caused by the deal could not be reasonably calculated in deciding on a recommended sentencing range of 168 to 210 months, prosecutors argue. Convicted of various conspiracy, securities

See **IN BRIEF** page 41



NY TIMES

Republican presidential nominee Sen. John McCain, R-Ariz., has outlined a health care reform plan based on tax credits. Under the plan, workers with coverage from their employers would be taxed on employer-paid premiums.

GOP health reforms rely on tax credits

McCain outlines policy to offset premium costs

By **JERRY GEISEL**

ST. PAUL, Minn.—If Sen. John McCain, R-Ariz., wins the presidency, he likely will propose a radical change in the way health care coverage is taxed, but observers say health care reform proposals likely to pass Congress will be much more modest.

Under Sen. McCain's health care plan, all taxpayers would be eligible to receive tax credits to offset the cost of health insurance premiums. For individual coverage, the annual tax credit would be \$2,500, while the available credit would be \$5,000 for family coverage.

These credits would be available to those buying coverage on their own as well as employees covered

under group plans.

However, employees who receive coverage from their employers would be taxed on employer-paid premiums.

Sen. McCain's proposals would be a big change from current law, which he says is unfair to those who buy coverage on their own.

Under current law, individuals buying their own coverage pay premiums with aftertax dollars. By contrast, employees receiving group coverage are not taxed on premiums paid by their employers—a tax savings of potentially thousands of dollars a year, while employee-paid premiums almost

See **REPUBLICANS** page 39

VIEWS DIFFER: Democrats and Republicans have outlined several policy positions that would have an impact on insurers and risk managers. **Page 39.**

Losses from Gustav won't shift market

Ample capital can easily absorb storm's hit

By **DOUGLAS McLEOD**

Hurricane Gustav may turn out to be one of the costliest U.S. storms on record, but it will take bigger losses than Gustav's to turn the softening property/casualty insurance market, industry observers agree.

Estimates of Gustav's insured losses were as high as \$7 billion, and came after \$9.4 billion in winter storm and other catastrophe losses in the United States recorded in the first half of this year.

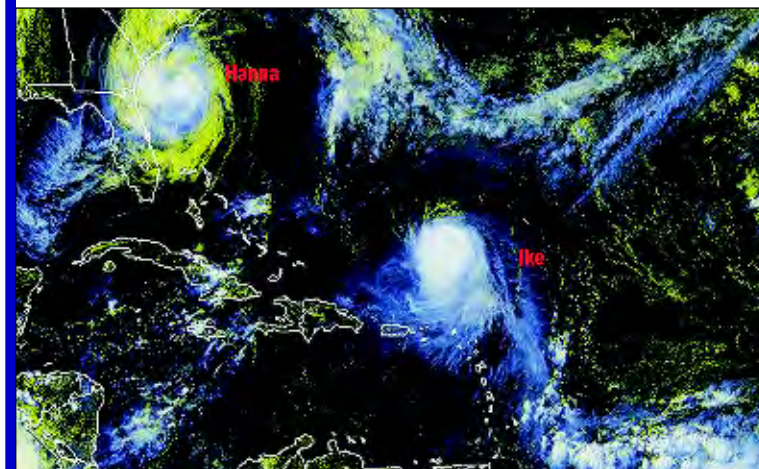
Still, the insurance and reinsurance industries are so heavily capitalized and protected by risk management steps taken after

2005's Hurricane Katrina that it would take losses several times Gustav's upper range to trigger a shift in pricing and other market conditions, experts say.

Such losses could take the form of a single megacatastrophe—equal to or larger than Katrina's \$41 billion in insured property losses—or a series of less devastating but still-sizable events.

"For a catastrophe to affect pricing, it would have to be significant," said Taoufik Gharib, a director with Standard & Poor's Corp. in New York. "Something of the magnitude of Katrina,

See **OUTLOOK** page 40



NOAA

After Gustav hit, other storms were building strength in the Atlantic.

Damage moderate

Some areas hit hard; New Orleans spared

By **ZACK PHILLIPS**

BATON ROUGE, La.—Damage claims from Hurricane Gustav that began to flow into insurers last week could ultimately total as much as \$7 billion, according to catastrophe modeling firms.

The Category 2 hurricane, which made landfall near Concorde, La., on the Gulf Coast, downed trees and cut power as it pushed inland.

Baton Rouge, La., sustained significant damage, but New Orleans was spared the brunt of the storm, which packed winds of about 110 mph before it weakened after coming ashore.

Though it likely will be weeks before insurers and claims adjusters learn the true breadth of damages, early indications are that damages from the storm,

See **GUSTAV** page 40

SPOTLIGHT

SURPLUS LINES

Risk managers turn to E&S market to fill out complex property programs; new products target niches; soft market generates innovation, improved service; state gets rid of rule



on declinations; plus *B/I* rankings for surplus lines insurers, wholesalers and MGAs and underwriting managers. **Page 11**

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Greg Flood, chief executive officer of Ironshore Holdings (U.S.) Inc., discusses Ironshore's niche focus in an expanded version of his interview with Senior Editor Roberto Cenicerros at www.BusinessInsurance.com/audio.

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Conn. to restart probe of Brown & Brown

State Supreme Court clears way for A.G.'s antitrust investigation

By SALLY ROBERTS

HARTFORD, Conn.—Connecticut Attorney General Richard Blumenthal said he will resume his investigation into possible antitrust violations at insurance brokerage Brown & Brown Inc. following a Connecticut Supreme Court move stemming from the probe.

The state's high court last week declined to rule on Brown & Brown's efforts to block Mr. Blumenthal from disclosing information about the firm obtained through various subpoenas and other requests for information. Mr.

Blumenthal said those efforts have delayed his investigation into the brokerage for more than two years.

The attorney general originally subpoenaed Brown & Brown in 2006 as part of his ongoing insurance industry investigation into possible antitrust violations.

While the Daytona Beach, Fla.-based broker initially submitted more than 12,000 pages of documents to the attorney general in response, it refused to provide any further materials after they were unable to reach a confidentiality agreement.

Brown & Brown sued Mr. Blumenthal in 2006, arguing that state statutes governing the attorney general's subpoena powers prevent him from sharing confidential information with the public. It sought a declaration from the court that the



AP PHOTOS

Connecticut Attorney General Richard Blumenthal will resume his investigation into Brown & Brown despite confidentiality concerns.

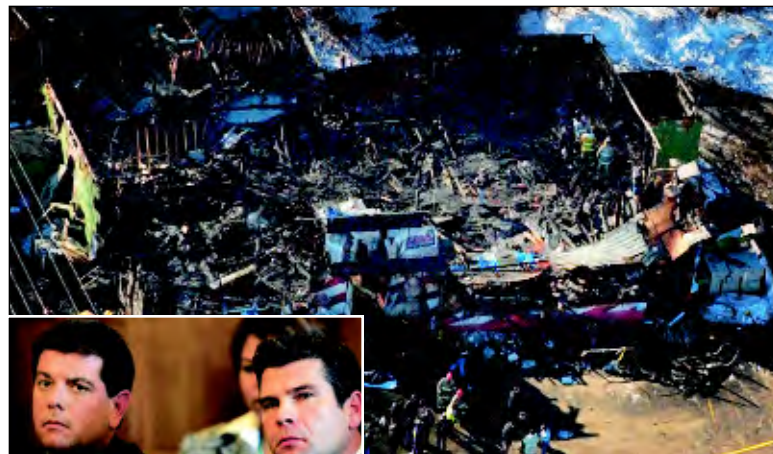
attorney general cannot disclose any of the documents or informa-

tion to any person outside his office with two exceptions: when the information becomes public in a court proceeding and Brown & Brown has had the opportunity to be heard as to whether such disclosure may be made; and when the information is provided to an official of another state or the federal government who will maintain the same degree of confidentiality.

Mr. Blumenthal filed a separate action against Brown & Brown, seeking an order requiring the brokerage to comply with subpoenas and other requests for information.

The two suits were consolidated, and in May 2007 a Hartford, Conn., trial court denied Brown & Brown's motion for summary judgment, ruling that the declaration it sought

See **ANTITRUST** page 41



AP PHOTOS



The Station nightclub owners Michael and Jeffrey Derderian (left) have settled claims stemming from a 2003 fire.

R.I. nightclub owners settle with fire victims

Many claims settled, but some issues remain in court

By DAVE LENCKUS

PROVIDENCE, R.I.—A surplus lines unit of Markel Corp. would cover the \$813,000 settlement that two nightclub owners have agreed to pay to resolve claims stemming from a deadly fire at the Rhode Island club in 2003, according to an attorney for the club owners.

The Sept. 4 tentative settlement is the latest of many in which hundreds of victims of the February 2003 fire at The Station nightclub in West Warwick, R.I., stand to recover a total of about \$175 million in damages.

One hundred people were killed and more than 300 were injured when a fire consumed The Station after a pyrotechnics display for the rock band Great White ignited packaging foam that the nightclub owners had installed as soundproofing.

The tentative settlement, which

is subject to court approval, would be covered by the nightclub's \$1 million liability insurance policy. Glen Allen, Va.-based Essex Insurance Co., a Markel unit, already has paid fire victims or their families \$187,000 in medical costs, according to attorney Anthony F. DeMarco, who represents nightclub owners Jeffrey and Michael Derderian. A policy provision caps medical payments at \$1,000 per person, noted Mr. DeMarco, a partner at Reynolds, DeMarco & Boland Ltd. in Providence, R.I.

The Derderians' liability was capped under a September 2006 bankruptcy ruling, Mr. DeMarco noted.

Nearly all claims against numerous other defendants have been tentatively settled, but a few claimants have asked the 1st U.S. Circuit Court of Appeals to reverse a lower court's decision not to hold the insurers of several defendants liable for failing to inspect the nightclub, Mr. DeMarco noted. Essex is among the insurers named in that case, he said.

Markel declined to comment on the case.

Employers seek veto of California comp bills

Measures would drive up costs, say critics

By ROBERTO CENICEROS

Employers and insurers in California are urging Gov. Arnold Schwarzenegger to veto two bills they say would roll back workers compensation reforms and increase costs.

But supporters of the legislation say the measures will ensure that workers suffering from permanent disability injuries are justly compensated and not unfairly denied benefits.

The bills would change two different areas of workers comp legislation, with one increasing permanent disability payments and the other adding various qualifications to apportionment calculations.

Senate Bill 1717 passed Aug. 30 would double permanent disability benefit payments by increasing, over three years, the number of weeks injured workers receive benefits, according to a legislative analysis.

The bill, sponsored by Sen. Don Perata, D-Oakland, would also repeat a portion of a return to work incentive employers sought as part of workers comp reforms signed into law in 2004.

The incentive, referred to as a "bump up/bump down" provision, decreases permanent disability awards by 15% if an employer provides modified duty, but an employee declines. It also allows employees to collect an extra 15% in benefits from employers that do not offer alternative duty.

S.B. 1717 would repeal the portion of the law resulting in a 15% bump down when employer offers modified work.

Supporters of the bill—including the California Applicants' Attorneys Assn., which represents lawyers representing workers comp claimants

—say the legislation is necessary because 2004 reforms that required applying objective medical evaluations to determine permanent disability awards have resulted in a 50% average cut in benefits.

They say the size of the benefit reduction was unintended and unfair.

But the Sacramento-based California Chamber of Commerce has added the legislation to its list

of so-called job killer bills.

In a letter to Gov. Schwarzenegger urging him to veto the bill, the California Chamber says that before California adopted its reforms, claimants in the state filed permanent disability claims at a rate of three times the national average and subjective disability determinations helped drive skyrocketing insurance premiums.

The bill is unnecessary because the California Division of Workers' Compensation has proposed increasing permanent disability benefits by an average of 16%, added Steve Suchil, assistant vp of state affairs for the Western region for American Insurance Assn. in Sacramento.

The DWC is weighing public

See **COMP** page 41



AP PHOTOS

Calif. Sen. Don Perata, sponsored a bill that would increase disability payments.

Target settles case over Web site access for the blind

Experts say deal could trigger other lawsuits against retailers

By NICK WHITFIELD

While businesses have known for decades about the need to make their buildings accessible to the disabled, a recent multimillion-dollar settlement may make accessibility a greater concern in e-commerce, too.

Minneapolis-based retailer Target Corp. late last month agreed to pay \$6 million to the National Federation of the Blind, a Baltimore-based advocacy group, to settle charges that Target's Web site, through the design of its retail pages, illegally denied access to the visually impaired.

In addition to paying damages, Target agreed to alter its Web site

and pay the NFB to monitor the site and provide accessibility training.

The settlement could lead to more litigation against other online retailers, some experts say.

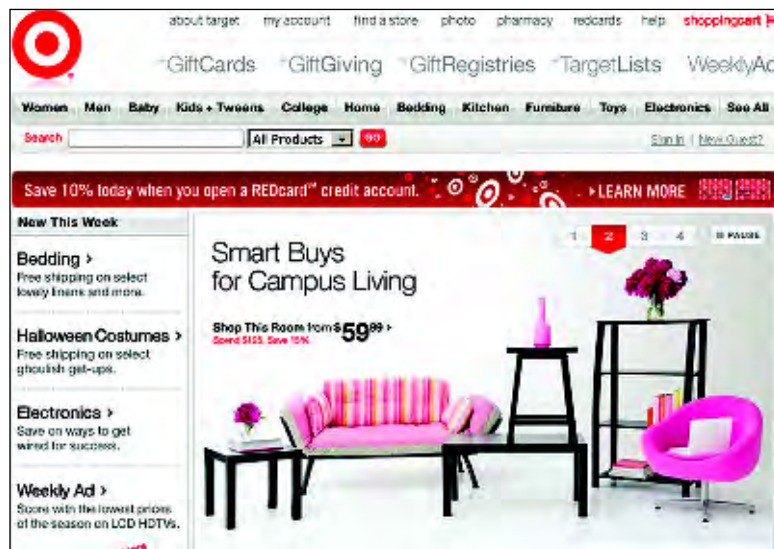
"After Target, I would certainly expect to see additional accessibility cases brought by advocates with the means to do so," said Stanley P. Jaskiewicz, a Philadelphia-based lawyer with Spector Gadon & Rosen P.C. who specializes in online commerce and has closely followed the case. "I don't think it's surprising that you find a large, well-financed company with a good reputation that was the target of the lawsuit.

"It's not different from the way

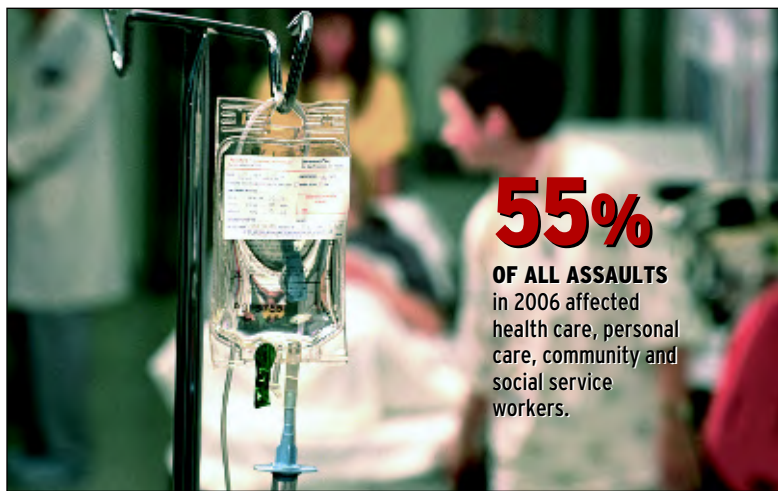
other advocacy groups and civil rights groups have pursued change through litigation over the years. While, theoretically, everyone's at risk, not everyone is going to be the target of a lawsuit," he said.

An NFB spokesman said that, while the group prefers to work with companies to improve accessibility voluntarily—and has completed such projects with companies including General Electric Co., Merck & Co. and Hewlett-Packard Co.—"litigation is a strategy that's out there, and the NFB will use it if we're unable to amicably resolve a problem."

See **ACCESS** page 40



In settling a lawsuit brought by the National Federation of the Blind, Target Corp. agreed to alter its Web site to translate text and images for blind users.



Workplace violence rate continues to decline

On-the-job assaults, however, show volatility

By ROBERTO CENICEROS

Rates of workplace violence continue to drop, according to research released last week.

The report, by NCCI Holdings Inc., shows that cab drivers, chauffeurs, security guards and workers with access to cash drawers—such as retail employees, hotel and food service workers—are at the greatest risk of being killed on the job. Robbery accounted for 68% of all workplace homicides in 2006, said NCCI.

Health care workers, including social service providers, are also at high risk of violence at work. They experienced roughly 55% of all assaults in 2006.

But employment-related violence is not limited to those jobs.

News reports show disgruntled employees or angry customers also are the perpetrators of violence across various industries, said Martin Wolf, an economist in Hoboken, N.J., for Boca Raton, Fla.-based NCCI, the parent of the National Council on Compensation Insurance Inc.

"All employers need to be concerned," Mr. Wolf said. "It's implic-

in the employment contract that the employer provides the employee with a safe place to work. It's not only the cab drivers or the people behind the counter at (convenience stores) that need to be worried, though certainly robbery is a very important factor when it comes to homicide."

NCCI has produced four biennial reports on workplace violence, based mainly on U.S. Bureau of Labor Statistics data. Last week's report is based on 2006 statistics, the most recent available.

Overall violence at work continues to trend downward, that data shows.

Homicides in private-sector jobs totaled 461 in 2006, down 52.8% from a high in 1994. Homicides fell by 25% from 2000 through 2006, NCCI found. In contrast, homicide rates for the entire nation edged up 4% since 2000, although they have fallen 39% since 1992.

Workplace assaults have shown more year-to-year volatility, according to NCCI data.

Assaults that resulted in lost-

See **VIOLENCE** page 6

Insurer must defend siding maker

Texas construction-defect ruling seen as influencing other U.S. courts

By SALLY ROBERTS

AUSTIN, Texas—A commercial liability insurer must defend any claim of physical property damage that occurs during the policy term regardless of when the damage is actually discovered, the Texas Supreme Court has ruled in a construction defect case on appeal before the 5th U.S. Circuit Court of Appeals.

The federal appeals court asked the Texas Supreme Court to define when property damage occurs under Texas law for purposes of an occurrence-based commercial general liability insurance policy. The court also was asked to determine whether an insurer's duty to defend is triggered when damage is alleged to have occurred during the policy period but was not discovered until after the policy expired.

The Texas Supreme Court late last month ruled that property damage occurs—and coverage is therefore

triggered—when the actual physical damage occurs, not when it is discovered.

The case, *Don's Building Supply Inc. vs. OneBeacon Insurance Co.*, stems from lawsuits brought by various Texas homeowners against Don's Building Supply Inc., a Dallas-based retailer and distributor of a



synthetic stucco siding product. The homeowners alleged that DBS' siding product was defective and not weather-tight and thus allowed moisture to seep into wall cavities behind the siding, causing wood rot and other damage.

The siding was installed on various homes from Dec. 1, 1993,

through Dec. 1, 1996. During that period, DBS was covered by a comprehensive general liability policy underwritten by Hamilton, Bermuda-based OneBeacon Insurance Co.

OneBeacon initially provided a defense to DBS but then filed suit in federal district court in Texas seeking a ruling that it had no duty to defend or indemnify DBS under the CGL policies because that duty arises after damage is identified, which in this case was after the policies had expired.

The district court agreed with OneBeacon. On appeal, the 5th Circuit asked the state's high court to define when property damage occurs and when an insurer's duty to defend is triggered.

While the state Supreme Court acknowledged that most Texas courts have ruled that an insurer's duty is triggered only when the

See **LIABILITY** page 37

P/C market consolidation intensifies

Strong capital, weak organic growth put buyers in shopping mood

By COLLEEN MCCARTHY

NEW YORK—The pace of consolidation in the U.S. property/casualty market is accelerating, and small regional and specialty insurers are the most likely targets of buyers, observers say.

Cliff Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York, said strong balance sheets and excess capital, combined with a lack of organic growth opportunities, means the P/C insurance industry is "ripe for deals."

Meanwhile, current market conditions may be pressuring some smaller insurers to consider an exit strategy, he said.

If a company is struggling with growth and running into operating problems, "throwing up the white flag" and asking to be bought may be a viable strategy, Mr. Gallant said last week at the KBW 2008 Insurance Conference in New York.

For buyers, there is a lot less risk than there will be a few years from now, given that the reserve positions of the target companies are redundant, Mr. Gallant said.

KBW noted there already have been a couple of large deals this year, which are expected to close in the fourth quarter: Bermuda-based Allied World Assurance Co. Holdings Ltd.'s \$550 million acquisition of Farmington, Conn.-based Dar-

win Professional Underwriters Inc.; and Tokio Marine Holdings Inc.'s \$4.7 billion purchase of Philadelphia Consolidated Holdings Corp.

KBW said several companies in both the U.S. and Bermuda markets—including some specialty insurers—would offer larger companies geographic or product expansion through potential acquisitions.

Bermuda-based AXIS Capital Holdings Ltd.'s Chief Executive Officer John Charman agreed that consolidation is likely to increase and told attendees he is looking for acquisitions both large and small.

AXIS is also considering small

See **M&A** page 37



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Violence: Workplace incidents decline

CONTINUED FROM PAGE 3

work-time injuries declined 18% in 2005 then increased 10% in 2006—both largely affecting the health care industry. That volatility limited the average annual rate decline to just 0.6% for 1999 through 2006, NCCI said.

In comparison, the rate of all lost work-time injuries declined an average of 5% annually since 1999.

Employer efforts have helped reduce the incidence of workplace violence, Mr. Wolf said.

“The workplace is safer, and companies have been taking action,” he said. “It’s paid off, clearly.”

But workers comp claims from crime have higher medical and indemnity severity than other claims, NCCI said.

Indemnity payments for violent acts often include death benefits. Work injuries resulting from violence often involve multiple body parts, including a larger percentage of head and nervous system injuries than nonviolent workplace injuries.

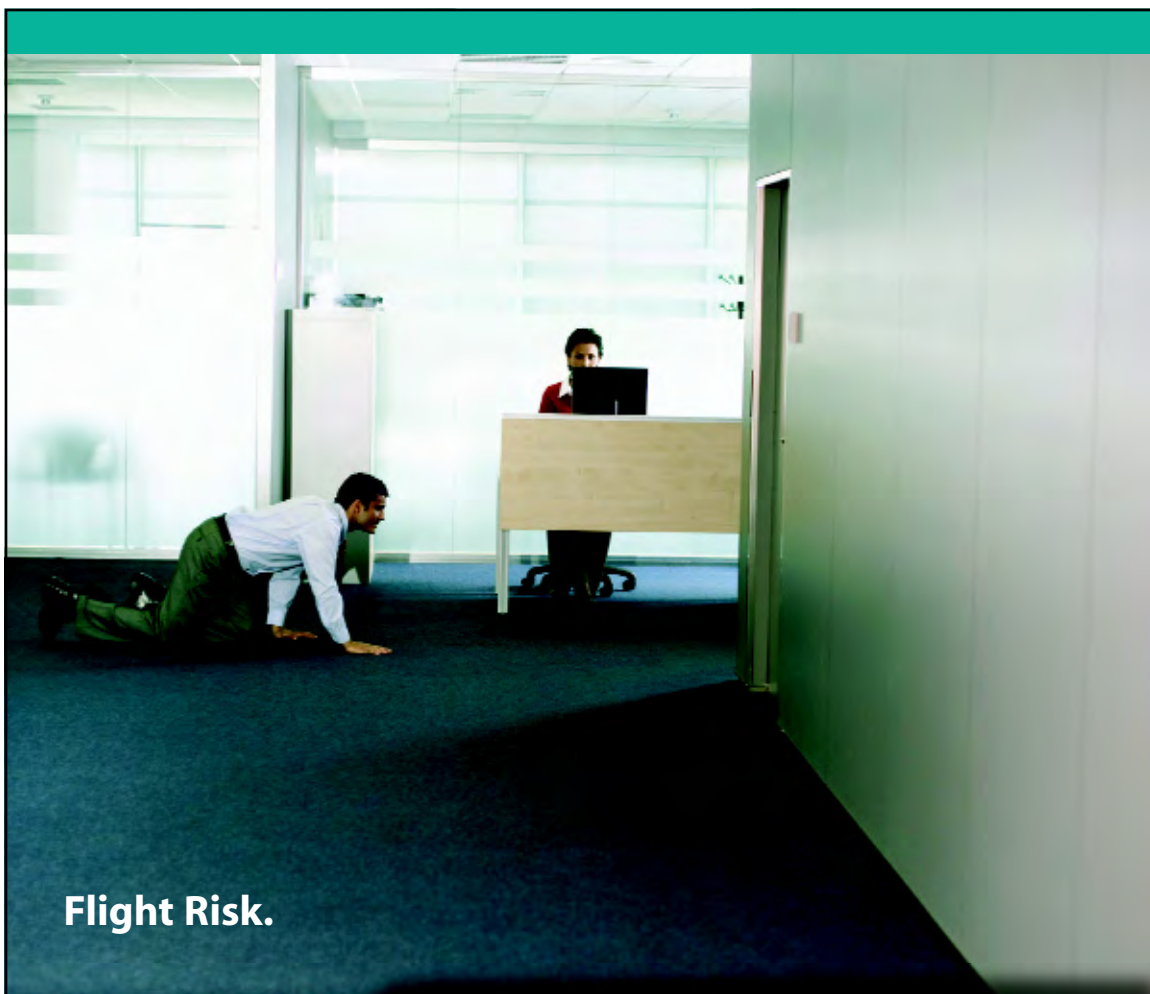
Workplace bullying with “malicious health-endangering” behavior may be an emerging concern for employers, NCCI found. But data on bullying is still lacking and only anecdotal accounts are available, making it hard to determine the

extent of the problem, Mr. Wolf said.

“It’s something companies might want to bear in mind,” he said.

So far, many employers have largely brushed aside complaints of workplace bullying as long as it does not involve illegal discrimination, said Enid Reiley, a partner at Emerald Training Consultants, a Syracuse, N.Y.-based firm with a specialty in workplace violence prevention.

But employees are speaking out about it and a few states, such as New York, are exploring laws that would ban workplace bullying, Ms. Reiley said.



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Commentary

Congress passes test on risk management



MARK A. HOFMANN

Senior Editor Mark A. Hofmann can be reached at: mhofmann@businessinsurance.com

The 110th Congress will soon be history. Lawmakers, who spent virtually all of August and the beginning of September as far from the legendarily wretched Washington summer as they could, are back for a few weeks but hope to adjourn for good by the end of the month.

Even though this Congress remains in session, some pundits have already written its obituary, an obituary that ignores the admonition to speak no ill of the dead. This group has been branded a do-nothing Congress in some quarters for its failure to tackle critical national concerns such as energy policy.

Now, most of the time I prefer do-nothing Congresses to hyperactive ones, because hyperactive ones can get into a good deal of mischief at public expense. At the same time, there are some issues, such as entitlement reform and confronting the deficit, on which I wish Congress had taken some serious action.

But there is one area where Congress did take action of the positive variety, and that's the area of risk management-related legislation.

This, after all, was the Congress that not only extended the federal terrorism insurance backstop but did so for seven years rather than the two years approved during the last extension in 2005. Extending the backstop, which should be viewed more as a national security issue than an insurance one, for seven years means that many risk managers can sleep more easily. They can do so because they know that they have both a backstop in place and that they're not going to have to begin fighting the legislative battle to keep it in place as soon as the new Congress convenes early next year.

The reauthorization of the backstop in and of itself would remove this Congress from the list of do-nothing Congresses. But this Congress may still do more in the risk management area.

I stress the “may” because Congress works in mysterious ways, and no one can foresee which issue—if any—might catch fire in the waning days of this session. But after Senate Banking, Housing and Urban Affairs Chairman Chris Dodd, D-Conn., said a few weeks ago that his committee could still take up a pair of risk management issues—the Nonadmitted and Reinsurance Reform Act as well as legislation creating a new Office of Insurance Information within the Treasury Department—the odds increased markedly that the measures would move forward.

With TRIA, this Congress proved it was a can-do group.

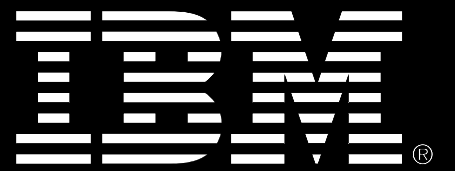
And they should. The surplus lines bill enjoys widespread support from risk managers as well as other stakeholders across the insurance industry. A version of the bill supported by the Risk & Insurance Management Society Inc. sailed through the House. It's a remarkably noncontroversial bill before what has been a very contentious Congress.

The bill that would create the insurance information office is a bit more controversial, but only a

bit. At least one lawmaker expressed concern that the bill would allow federal authorities to trump state consumer protection laws, which held up consideration of the bill before the August recess. Some, but not many, elements of the insurance industry oppose the bill because they consider it a backdoor way to impose—shudder, shudder—federal insurance regulation. But risk managers, the bulk of the industry and the White House all support the idea of having some insurance expertise available to federal officials.

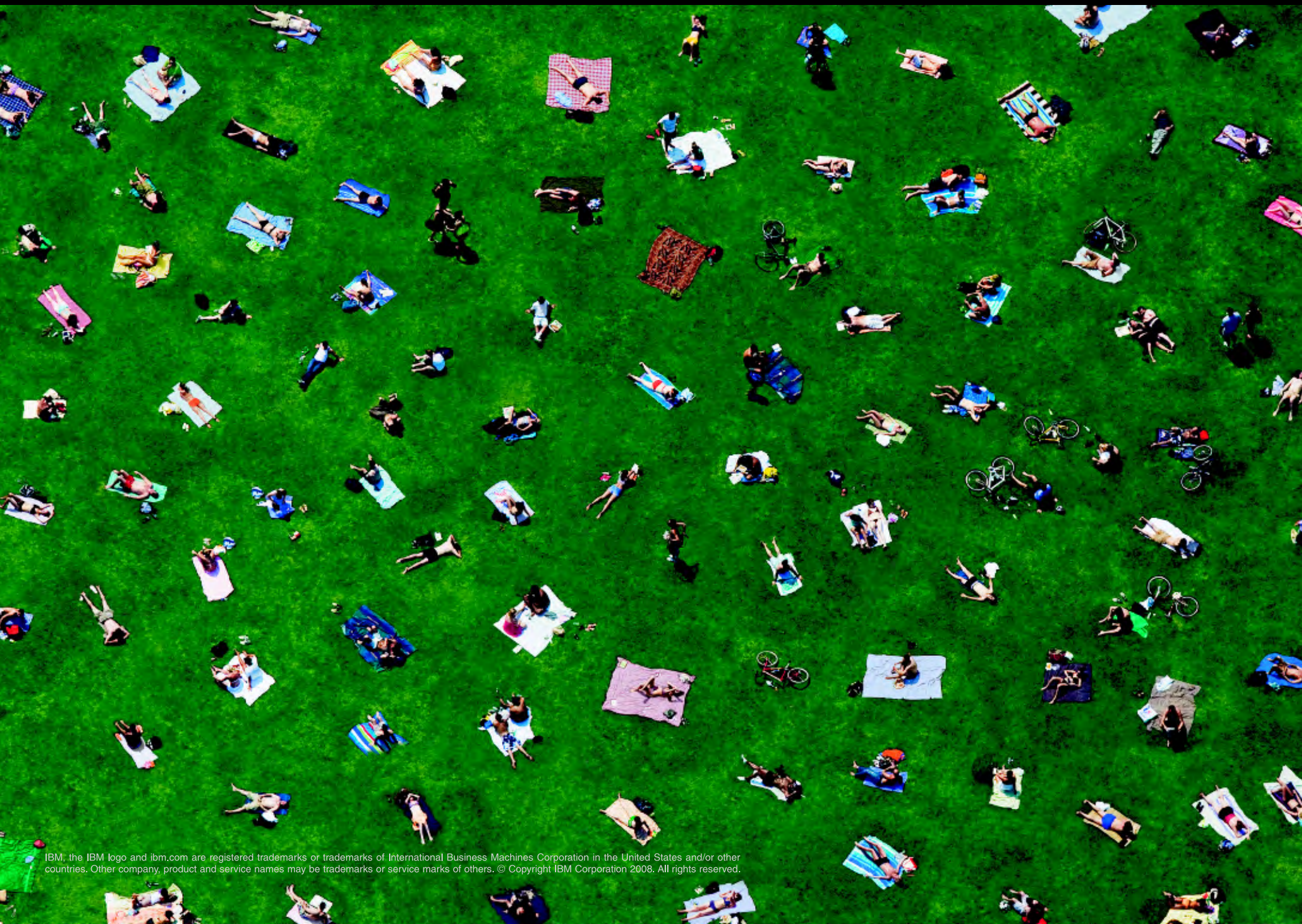
Both measures deserve passage in the current Congress. Given Sen. Dodd's comments, the odds of passage are greater than ever, provided that this limited risk management agenda gets through the committee he chairs and onto the Senate floor—and back to the House if necessary—before the clock runs out.

With passage of the terrorism insurance backstop, this Congress proved it was a can-do group rather than a do-nothing Congress where risk management-related issues are involved. Passage of the other two bills would make it one of the most active in terms of such issues in quite a while.



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Business Insurance OPINIONS

Maintain status quo on federal tort reform

THE BEST DEFENSE may, indeed, be a strong offense under most circumstances, but there are some cases in which the best defense is simply the best defense.

Unfortunately, that appears likely to be the case regarding tort reform on the federal level no matter who takes the keys to the White House next Jan. 20. Efforts to achieve tort reform at the federal level probably reached their high-water mark in 2005 when Congress approved the Class Action Fairness Act. A change in control of Congress as a result of the 2006 elections rendered any significant legislation moot.

As we report on page 39, the results of this year's elections could mean even grimmer times for tort reform advocates. Efforts to roll back the use of arbitration agreements and to limit federal pre-emption of state tort laws emerged in the current Congress even though such bills would face a probable veto. They are certain to re-emerge in the next Congress, particularly if the Democratic Party ends up controlling both the legislative and executive branches.

Civil justice reform proponents must prepare for the possibility now. Even when the generally pro-reform Republicans controlled both branches, enacting federal tort reform was more than difficult. Now it is impossible, and is likely to stay so. Tort reform advocates must focus their efforts on preserving the gains they have made. When it comes to tort reform, defense seems likely to be the only name of the game on Capitol Hill for the foreseeable future.

Tort reform advocates must focus their efforts on preserving the gains they have made.

Consensus will be key for health care reform

WHICH PRESIDENTIAL CANDIDATE has a better health care reform package?

While we're not prepared to answer that question in the absence of a lot more detail, we are encouraged. As we have reported over the past two weeks, the ideas of Sen. John McCain, R-Ariz., and Sen. Barack Obama, D-Ill., are not set in stone, and each likely will work with the other party in trying to find common ground.

While such an approach may seem basic, that common-sense political principle was discarded the last time the executive branch sought enactment of major health care reform legislation.

That, of course, was in 1993, when President Clinton—along with then-First Lady Hillary Clinton—tried to win approval of a sweeping plan.

Despite a great willingness of both parties and numerous interest groups to work together, that plan 15 years ago failed resoundingly, in large part because of the Clinton approach toward enactment, which could be simply summed up as "our way or the highway."

That isn't the way to get legislation passed, especially in an area as tough, complex and controversial as health care reform. It hardly was a surprise that the package found few supporters in Congress or, for that matter, anywhere.

No individual, no interest group and no political party has a monopoly on good health care reform ideas. Reform is possible only through consensus and a sharing of ideas.

Whoever is elected president should not forget that.



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Which major party presidential nominee is most likely to cut the number of uninsured?



Barack Obama 45%

John McCain 27%

Neither 28%

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Was Hurricane Gustav a good test of the Gulf Coast's readiness?

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Nonadmitted market key on big property risks

SPOTLIGHT

Rankings:

**LARGEST U.S.-BASED
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Surplus lines insurers take on the most difficult-to-place risks

Large, complex accounts often seek cover outside admitted market

By **SALLY ROBERTS**

Although risk managers regularly tap the excess and surplus lines market for specialty risks and excess casualty coverage, they also often turn to nonadmitted insurers for needed capacity for large property programs, brokers and risk managers say.

In fact, risk managers would be hard-pressed to fill out a complex property program today without the E&S market, they say.

But given the choice, risk managers say they prefer to place their business in the admitted market, which is regulated by the state and backed by state guaranty funds in case of insolvency.

Risk managers also have a greater

administrative burden when using E&S insurers. For instance, when E&S coverage is placed, it is up to buyers and their retail brokers to file E&S forms and pay surplus lines premium taxes in each state where the company has an exposure.

On the flip side, though, E&S insurers often provide broader terms and conditions and are more willing to underwrite difficult risks.

As such, risk managers view E&S markets as vital players in their insurance programs.

"Historically, the surplus lines markets have been invaluable towards filling out our insurance programs as well as maintaining competitive terms," said Bradley R. Wood, senior vp-risk management for Marriott International Inc. in

Bethesda, Md.

Although Marriott uses surplus lines markets for some specialty lines, they are tapped most often for Marriott's property program, which includes "significant amounts" of limits and capacity, Mr. Wood said.

"Admitted markets are preferred," Mr. Wood said, noting the surplus lines taxes and extra filings, "but it's really a function of price, competitiveness and policy form."

Brokers say when it comes to large, complex property programs, the E&S market regularly plays a role in today's underwriting.

"You really can't get significant limits for complex property accounts without going to the

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Trends: Complex property programs frequently turn to E&S market

CONTINUED FROM PREVIOUS PAGE

excess and surplus lines markets. They tie hand-in-hand," said Al Tobin, managing director and national property practice leader for Aon Risk Services in New York.

He noted, however, that not all large property accounts are complex. Complex accounts are those with "very difficult occupancies,"

such as chemical and energy risks and those with exposure to windstorms, earthquakes and other catastrophes, he said.

E&S insurers have "become mainstream, standing side-by-side with the admitted carrier in terms of the capacity they contribute, particularly to the large, complex risks with catastrophe exposures," said Gary Marchitello, property practice lead-

er for Integro Ltd. in New York.

"Some people have the impression that you go to excess and surplus lines if you're trying to cover a trapeze artist or a fireworks manufacturer, which indeed you do, but certainly for large, complex risks, you absolutely routinely need them, go to them and have to have their capacity" to fill out the program, Mr. Marchitello said.

Scott B. Clark, risk and benefits officer for Miami-Dade County Public Schools in Miami, said he regularly turns to E&S markets for the district's property program.

"For us, because of the size of the exposure and the size of the district and because we take such a sizable self-insured retention and deductible, when you get into that excess risk arena, more often than

not it's surplus lines companies that play there," Mr. Clark said.

While he prefers the admitted market that is covered by guaranty funds, "because of the fact that we're dealing, from a property standpoint, in the excess risk and predominately catastrophic-driven risk, the majority of players...that are willing to put out the big, big limits are going to be London-based Lloyd's companies and companies like Lexington (Insurance Co.) that are in the excess risk cat-driven environment."

But not every large property account uses E&S markets.

"Knock on wood, we have been pretty successful with admitted carriers in providing capacity" for the company's windstorm exposure, said John Phelps, director of business risk solutions for Jacksonville-based Blue Cross & Blue Shield of



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CORPORATE BANKING CAPITAL MARKETS RISK MANAGEMENT

'When you get into that excess risk arena, more often than not it's surplus lines companies that play there.'

Scott B. Clark,
Miami-Dade County Public Schools

Florida Inc. "Now we've taken a whopping retention to get there, but...we have convinced the underwriters that our risk profile is so much less significant that if they want to write property in Florida, they want to write us."

While he has been successful in keeping the Florida Blues' property exposures out of the surplus lines market, "we wouldn't hesitate to go there if we had to build capacity," Mr. Phelps said.

Overall, "we have a tendency to lean toward the admitted markets where it makes sense for our company to do so," Mr. Phelps said. "In circumstances where we can't find the capacity...or if we think there is unique coverage that we're willing to forgo the state guaranty fund on that line, then that's what we will do."

See **TRENDS** page 16

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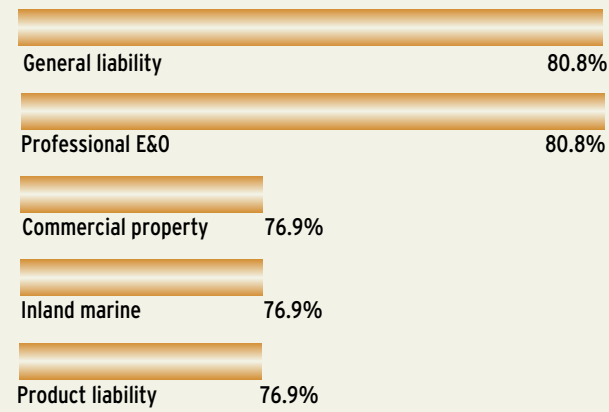
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MOST COMMON CLASSES OF BUSINESS PROVIDED

Percentage of surplus lines insurers providing coverage



Source: BI survey

OVER AND UNDER

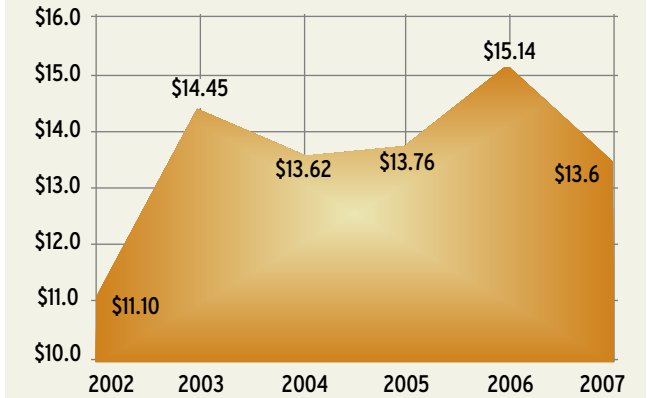
Ranked by combined ratio as determined by A.M. Best and/or S&P

LOWEST	
American Empire Surplus Lines Insurance Co.	37.8%
Adriatic Insurance Co.	49.8%
National Fire & Marine Insurance Co.	52.1%
Landmark American Insurance Company	59.0%
General Star Indemnity Co.	61.5%
HIGHEST	
Noetic Specialty Insurance Co.	102.3%
Western World Insurance Co.	99.5%
Tudor Insurance Co.	99.5%
Scottsdale Insurance Co.	97.3%
IFG Cos.	95.8%

Source: BI survey

PREMIUM VOLUME UPS AND DOWNS

Nonadmitted direct written premiums from the 10 largest surplus lines insurers, in billions.



Source: BI survey

Largest U.S.-based surplus lines insurers


Ranked by 2007 nonadmitted direct written premiums

Rank	Company/Address/Parent	Phone/Web site	2007 nonadmitted direct written premiums	% change	2007 gross premiums	% change	2007 net written volume	2007 net income (loss)	2007 combined ratio*	Principal officer
1	Lexington Insurance Co. ¹ 2711 Centerville Road, Suite 400, Wilmington, Del. 19808 American International Group Inc.	617-330-1100 www.lexingtoninsurance.com	\$6,619,303,663	5.5%	\$7,782,413,943	5.3%	\$4,288,801,791	\$1,206,405,799	72.0%	Kevin H. Kelley, chairman/CEO
2	American International Specialty Lines Insurance Co. 1400 W. Benson Blvd., Suite 315, Anchorage, Alaska 99503 American International Group Inc.	212-770-7000 www.aig.com	\$1,489,355,065	-14.4%	\$1,552,326,996	-12.9%	\$258,559,817	\$118,847,180	84.4%	Kristian P. Moor, chairman/president
3	Scottsdale Insurance Co. 8877 N. Gainey Center Drive Scottsdale, Ariz. 85258-2108 Nationwide Mutual Insurance Co.	480-365-4000 www.scottsdaleins.com	\$1,198,493,764	-6.2%	\$2,700,053,879	-3.3%	\$621,744,402	\$46,717,003	97.3%	Michael D. Miller, president/COO
4	Columbia Casualty Co. CNA Center, 333 S. Wabash Chicago, Ill. 60604 CNA Financial Corp.	312-822-5000 www.cna.com	\$763,028,277	-9.5%	\$790,906,385	-8.5%	N/A	\$9,760,754	N/A	Stephen W. Lilienthal, chairman/president
5	Landmark American Insurance Co. 945 East Paces Ferry Road, Suite 1800, Atlanta, Ga. 30326-1125 Alleghany Corp.	404-231-2366 www.rsui.com	\$707,053,618	-11.1%	\$714,262,323	-10.9%	\$43,766,213	\$17,614,097	59.0%	E.G. Lassiter III, chairman/CEO
6	Evanston Insurance Co. 10 Parkway N., Deerfield, Ill. 60015 Markel Corp.	847-572-6000 www.markelcorp.com	\$660,805,870	-7.1%	\$853,457,066	-2.9%	\$689,617,998	\$134,707,136	83.2%	Susan J. Swanson, senior vp
7	Arch Specialty Insurance Co. 1 Liberty Plaza, 53rd Floor, New York, N.Y. 10006 Arch Capital Group Ltd.	212-651-6500 www.archinsurance.com	\$640,558,769	-17.2%	\$674,256,233	-14.9%	-\$23,571,821	\$20,419,033	NM	Mark D. Lyons, chairman/CEO
8	Admiral Insurance Co. 1255 Caldwell Road, Cherry Hill, N.J. 08034-3220 W.R. Berkley Corp.	856-429-9200 www.admiralins.com	\$561,736,975	-6.8%	\$619,324,147	-6.1%	\$571,640,460	\$190,029,187	80.4%	James S. Carey, president/CEO
9	National Fire & Marine Insurance Co. 3024 Harney St., Omaha, Neb. 68131-3580 Berkshire Hathaway Inc.	402-536-3269 www.nationalindemnity.com	\$544,582,972	-23.4%	\$605,252,755	-22.2%	\$503,433,634	\$478,046,749	52.1%	Donald F. Wurster, president
10	Essex Insurance Co. 1209 Orange St., Wilmington, Del. 19801 Markel Corp.	804-273-1400 www.essexinsurance.com	\$430,645,562	-19.4%	\$476,351,226	-17.3%	\$349,868,382	\$108,388,757	78.1%	William B. Dickler, president

* Combined ratio as determined by A.M. Best Co. and/or Standard & Poor's Corp. 1 Figures reported on pooling basis. NM Not meaningful

Source: BI survey
Researched by Karen Tucker

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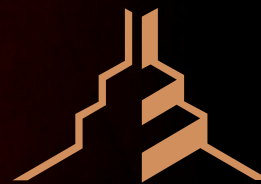


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Trends: E&S market caters to risk managers' specialty, niche needs

CONTINUED FROM PAGE 12

"Fortunately there's enough capacity and terms and conditions are broad enough (in the admitted market) to meet our needs in the property market," said Bill Milaschewski, director of risk management for Cabot Corp., a Boston-based global specialty chemical and materials manufacturer. "Because

we are a chemical company, where we've looked for help is in the excess casualty and specialty lines."

Indeed, it's not just large, complex property accounts where E&S insurers play a regular role for risk managers, brokers say. They also are tapped for casualty placements, although not to the same extent. Brokers point out that the use of E&S markets often varies with mar-

'Because we are a chemical company, where we've looked for help is in the excess casualty and specialty lines.'

Bill Milaschewski, Cabot Corp.

ket cycles. Because of today's intense competition, risk managers most often tap E&S insurers for excess coverage and other specialty casualty coverages that admitted markets either don't want to underwrite or don't offer coverage terms that are as broad, they said.

On the casualty side, E&S coverage most often supports "difficult product liability-type accounts—

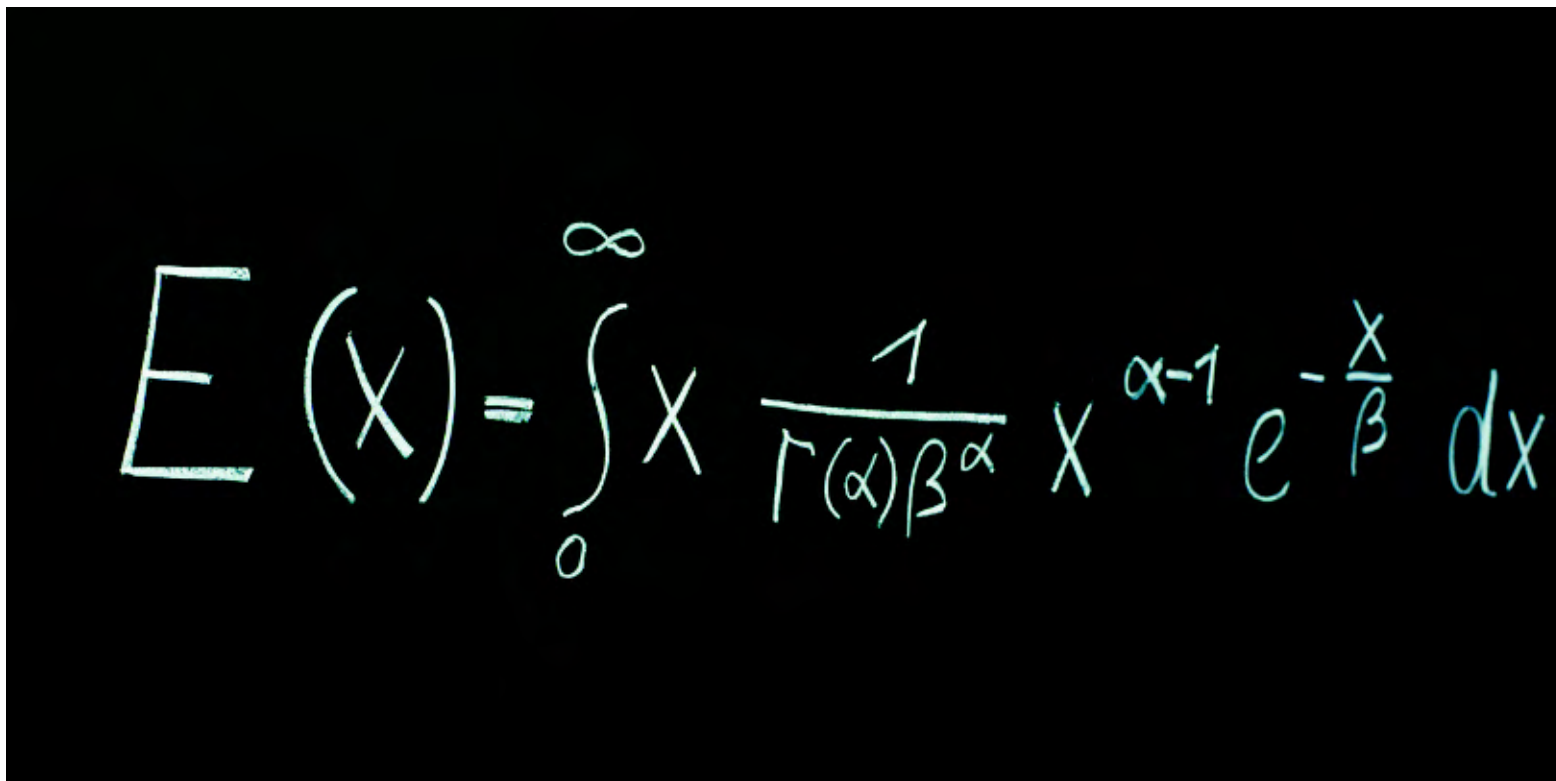
those that manufacture products that are considered too difficult to underwrite by the conventional or admitted marketplace," said Paul G. Smith, executive vp and casualty practice co-leader for Willis North America in New York.

Mr. Phelps said he uses E&S underwriters for the Florida Blues' managed care liability risks and for its cyber risks, but for different reasons.

While managed care liability coverage is available only in the surplus lines market due to the volatile nature of the risk, there is plenty of capacity out there for cyber liability coverage in the admitted market, Mr. Phelps said. Despite that, Mr. Phelps said he buys cyber coverage in the nonadmitted market because certain underwriters provide "very unique and broad coverage."

In addition to filling out his complex property program, Mr. Clark of the Miami-Dade County Public Schools said he taps the E&S market for "one-off" casualty risks.

The school district, for example, has its own police force, "so I buy police professional liability and that traditionally has only been available in the surplus lines marketplace."

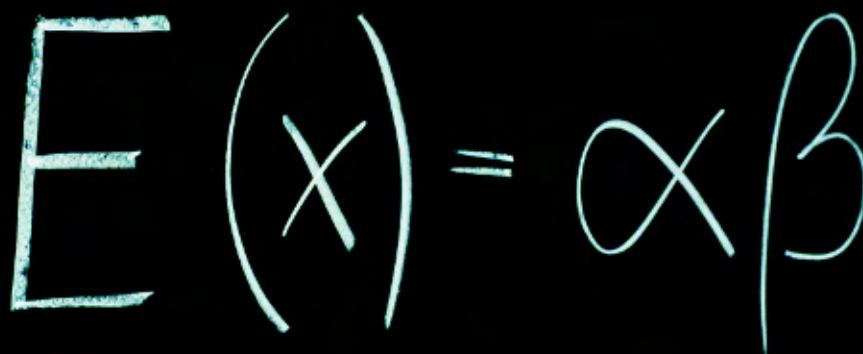


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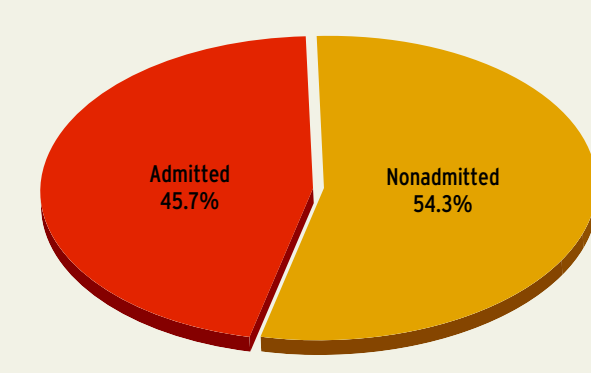
Number of wholesale employees as of 12/31/2007



Source: BI survey

MIX OF BUSINESS: ADMITTED VS. NONADMITTED

Types of business placed by wholesale brokers



Source: BI survey

LARGEST OVERALL WHOLESALERS

Ranked by 2007 wholesale premium volume including employee benefits and property/casualty

Rank	Company	Total premium volume
1	Crump Group Inc.	\$5,467,921,315
2	AmWINS Group Inc.	\$3,328,700,458
3	CRC Insurance Services Inc.	\$3,121,692,419
4	Swett & Crawford Group	\$2,503,000,000
5	Colemont Corp.	\$1,347,000,000
6	ARC Excess & Surplus L.L.C.	\$465,000,000
7	Westrope	\$434,346,000
8	Partners Specialty Group L.L.C.	\$387,500,000
9	Gresham & Associates Inc.	\$251,275,000
10	Property Risk Services L.L.C.	\$251,000,000

Source: BI survey

Largest wholesale insurance brokers

Ranked by 2007 wholesale premium volume from property/casualty placements*

Rank	Company/Address	Phone/Web site	2007 premium volume	% change	2007 gross revenues	% change	Surplus lines	Underwriting Manager	Wholesale broker	Managing general agent	Lloyd's of London coverholder	Employees	Principal officer
1	CRC Insurance Services Inc. 1 Metroplex Drive, Suite 400, Birmingham, Ala. 35209	205-870-7790 www.crcins.com	\$3,121,692,419	-6.0%	\$260,415,194	4.2%	7.5%	10.0%	82.8%	7.2%	0.0%	849	Thomas Curtin Sr., co-chairman/CEO
2	Swett & Crawford Group 3715 Northside Parkway N.W., Building 200, Suite 800, Atlanta, Ga. 30327	404-240-5200 www.swett.com	\$2,503,000,000	-5.2%	\$222,113,567 ¹	-5.5%	55.0%	0.0%	75.0%	18.5%	6.5%	825	Neal Abernathy, president/CEO
3	AmWINS Group Inc. 4725 Piedmont Row Drive, Suite 600, Charlotte, N.C. 28210	704-749-2700 www.amwins.com	\$2,205,688,979	-3.6%	\$236,337,700 ¹	1.2%	62.0%	0.0%	82.8%	13.5%	3.7%	1,047	M. Steven DeCarlo, CEO
4	Crump Group Inc. 105 Eisenhower Parkway, Roseland, N.J. 07068	973-285-0300 www.crump.com	\$1,821,921,315	-8.9%	\$465,000,000	-8.0%	17.0%	0.0%	90.0%	7.0%	3.0%	2,985	John Howard, CEO
5	Colemont Corp. 5910 N. Central Expressway, Suite 400, Dallas, Texas 75206	214-561-7000 www.colemont.com	\$1,347,000,000	4.3%	\$102,600,000	5.9%	50.0%	0.0%	90.0%	8.0%	2.0%	735	Marshall P. Kath, CEO
6	ARC Excess & Surplus L.L.C. 1122 Franklin Ave., P.O. Box 9240, Garden City, N.Y. 11530	516-747-4100 www.arcbrokers.com	\$465,000,000	-7.0%	\$39,000,000	-4.9%	20.0%	0.0%	95.0%	5.0%	0.0%	135	Christopher J. Cavallaro, managing director
7	Westrope 801 W. 47th St., Suite 500, Kansas City, Mo. 64112	816-842-8222 www.westrope.com	\$434,346,000	-15.3%	\$31,108,000	-12.4%	55.0%	0.0%	97.0%	3.0%	0.0%	131	Kevin T. Westrope, president/CEO
8	Partners Specialty Group L.L.C. Bentwood Executive Campus, 301 E. Germantown Pike, Suite 402, Norristown, Pa. 19401	484-322-0400 www.psgins.com	\$387,500,000	-5.6%	\$30,641,000	-2.0%	48.0%	0.0%	97.0%	2.0%	1.0%	170	Maureen C. Caviston, president
9	Gresham & Associates Inc. 1 Gresham Landing, P.O. Box 927, Stockbridge, Ga. 30281	770-389-1600 www.gresham-inc.com	\$251,275,000	-37.2%	\$37,036,000	-6.3%	N/A		0.0%	60.0%	0.0%	279	James V. Gresham, chairman/CEO
10	Property Risk Services L.L.C. 105 Fieldcrest Ave., Suite 602, Edison, N.J. 08837	732-346-0101 www.prsins.com	\$251,000,000	1.2%	\$33,207,000	2.1%	59.0%	0.0%	100.0%	0.0%	0.0%	37	John F. Keegan, president

* Companies deriving more than 50% of their premium volume from wholesale brokerage. Excludes brokerages that do not break out wholesale premium volume. 1 BI estimate.

Source: BI survey

Researched by Karen Tucker

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Property ■ Casualty ■ Financial Services ■ Wholesale Brokerage ■ MGA ■ Specialty Programs

LARGEST MGAs BY NUMBER OF EMPLOYEES

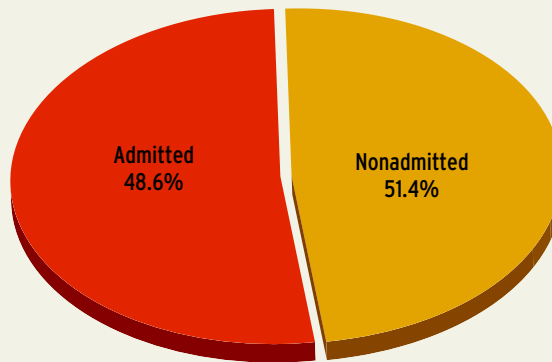
Number of wholesale employees as of 12/31/2007



Source: BI survey

ADMITTED VS. NONADMITTED

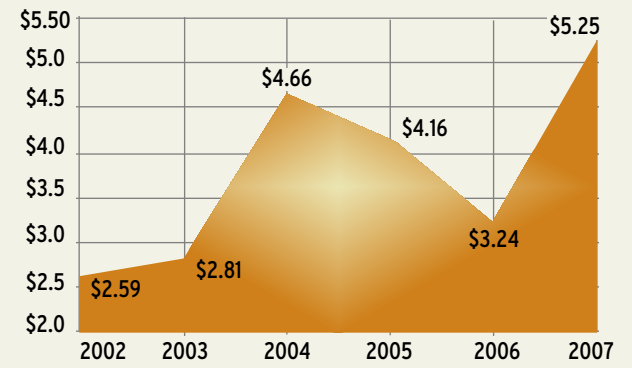
Types of business performed by MGAs/underwriting managers



Source: BI survey

PREMIUM GROWTH

Gross written premiums by the 10 largest MGAs/underwriting managers, in billion of dollars.



Source: BI survey

Largest MGAs/underwriting managers

Ranked by 2007 wholesale premium volume from property and casualty risks *

Rank	Company/Address	Phone/Web site	2007 premium volume	% change	2007 gross revenues	% change	Surplus lines	Underwriting manager	Managing general agent	Wholesale broker	Lloyd's of London coverholder	Employees	Principal officers
1	Risk Placement Services Inc. 2 Pierce Place, 20th Floor, Itasca, Ill. 60143-3141	630-285-4303 www.rpsins.com	\$1,490,000,000	6.6%	\$117,130,000	5.3%	60.0%	0.0%	47.0%	49.0%	4.0%	865	Joel Cavaness, president
2	Schinnerer Group 2 Wisconsin Circle, Chevy Chase, Md. 20815	301-961-9800 www.schinnerer.com	\$902,000,000	-5.9%	\$75,768,000 ¹	-6.0%	5.0%	95.0%	0.0%	5.0%	0.0%	450	Jean Laurin, president/CEO
3	All Risks Ltd. 10150 York Road, Fifth Floor, Hunt Valley, Md. 21030	800-366-5810 www.allrisks.com	\$738,500,000	10.0%	\$68,000,000	11.5%	67.0%	5.0%	45.0%	40.0%	10.0%	499	Nicholas Cortezi, CEO
4	Burns & Wilcox Ltd. 220 Kaufman Financial Center, 30833 Northwestern Highway, Farmington Hills, Mich. 48334	800-521-1918 www.burnsandwilcox.com	\$702,000,000	-6.4%	\$180,000,000	-2.7%	85.0%	0.0%	62.0%	25.0%	13.0%	860	Alan J. Kaufman, chairman/president/ CEO
5	U.S. Risk Insurance Group Inc. 10210 N. Central Expressway, Suite 500, Dallas, Texas 75231	800-232-5830 www.usrisk.com	\$475,000,000	2.2%	\$77,000,000	-6.1%	95.0%	0.0%	42.0%	44.0%	14.0%	511	Randall G. Goss, chairman/CEO
6	W. Brown & Associates Insurance Services 19000 Mac Arthur Blvd., Suite 700, Irvine, Calif. 92612	949-851-2060 www.wbais.com	\$220,000,000	-6.7%	\$41,000,000	-6.8%	16.0%	84.5%	15.0%	0.0%	0.5%	67	William W. Brown, chairman
7	Eastern America Insurance Agency Inc. Metro Office Park, Street One, Lot 10, P.O. Box 193900, San Juan, Puerto Rico 00919-3900	787-273-1288 www.universalpr.com	\$215,228,643	-4.1%	\$10,532,564	-9.0%	2.0%	0.0%	100.0%	0.0%	0.0%	163	Luis Miranda Casanas, president
8	K&K Insurance Group Inc. 1712 Magnavox Way, Fort Wayne, Ind. 46804	260-459-5000 www.kandkinsurance.com	\$209,696,267	1.7%	\$40,232,624	6.2%	14%	N/A	92%	8%	N/A	268	Ross T. Smith, president/CEO
9	Sullivan Group-Wholesale Operations 800 W. Sixth St., Suite 1800, Los Angeles, Calif. 90017	213-626-1000 www.gjs.com	\$191,333,214	-3.0%	\$20,888,072	-8.9%	30.0%	0.0%	55.0%	41.0%	4.0%	141	Gerald J. Sullivan, chairman
10	NIF Group Inc. 30 Park Ave., Manhasset, N.Y. 11030	516-365-7440 www.nifgroup.com	\$179,000,000	-12.7%	\$20,000,000	-9.0%	40.0%	0.0%	70.0%	29.0%	1.0%	124	Mark P. Maher, president

* Companies deriving more than 50% of their wholesale premium volume from acting as a managing general agent, underwriting manager or Lloyd's of London coverholder (authority to bind risks for Lloyd's syndicates, similar to an MGA). 1 BI estimate. Source: BI survey. Researched by Karen Tucker

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Surplus lines insurers fight to grow business in soft market

Underwriters, brokers offer niche coverages, improved service

By ROSEANNE WHITE GEISEL

Excess and surplus lines insurance buyers can now find more products aimed at exposures in niche markets and a greater emphasis on service delivery as wholesale brokers and underwriters strive for success in the soft market.

Buyers also continue to benefit from the downward pressure on rates and the easing of terms and conditions in the competitive E&S environment.

Predictions on when the cycle will turn vary widely. "What '09 holds remains to be seen," said J. Neal Abernathy, president and chief executive officer of Atlanta-based wholesale broker Swett & Crawford Group. "There isn't any consensus on what it will take to make the market turn. Will an event cause it to turn? If those billions of dollars (lost on defaulted subprime mortgages) don't change the underwriting approach, is a storm going to have any effect?"

The tipping point will come eventually, Mr. Abernathy said, because insurers can't sustain underwriting that results in losses for long.

Other brokers and underwriters agree. Marshall Kath, chief executive officer of Colemont Brokers headquartered in Dallas said "Right now, everyone's got decreased written and decreased earned premiums and decreased investment income." But claims costs are higher, leading to lower net income and higher combined ratios, he added.

Terms and conditions also have been more generous as underwriters fight to maintain market share, said Bob Piller, president of IronSelect, the New York-based excess casualty division of Ironshore Insurance Ltd. "Nothing is wrong with expanding terms and conditions, as long as you get appropriate rates to support it."

And while waiting for the cycle to turn, brokers and underwriters increasingly are courting midsize policyholders with smaller risks that are becoming the market's mainstay.

The size of the risk notwithstanding, it's the niches, the unique and those risks that can only be understood with specific expertise that are the strength of the E&S and specialty markets, brokers and underwriters say (see story, page 24).

"We see the biggest opportunity in two areas, specialty plays and niches that require expertise," said Christopher Treanor, president and chief executive of wholesale broker Mercator Risk Services Inc. in New York. "Expertise businesses hold up better," he said, citing professional liability and errors and omissions as two such areas.

"There are about 20 to 30 subsets of professional liability, each with different markets and different forms," Mr. Treanor said. "We're making a big push in that market."

Toward that end, Mercator early this year acquired Tennant Risk Services Insurance Agency L.L.C., a Hartford, Conn.-based wholesale broker specializing in professional liability.

Another transaction aimed at broadening expertise in the E&S and specialty markets, according to company executives, is the merger of the specialty lines insurance companies of Meadowbrook Insurance Group Inc., based in Southfield, Mich., and ProCentury Corp. of Columbus, Ohio.

"Meadowbrook looks for specialty business with a history," said



'There isn't any consensus on what it will take to make the market turn. Will an event cause it?'

J. Neal Abernathy, Swett & Crawford Group

Joseph Mattingly, senior vp at the surplus lines insurer.

On the other hand, said Christopher J. Timm, chief executive officer

of Century Surety Co., a unit of ProCentury Corp. "We focus on underwriting expertise and new and emerging risks. To that end, a lot of programs we do would be startup."

Underwriters for Markel Corp.'s group of specialty insurers look for new, different and complex exposures, according to Letha Heaton, vp corporate marketing for the Richmond, Va.-based holding company. "We definitely see growth in areas of

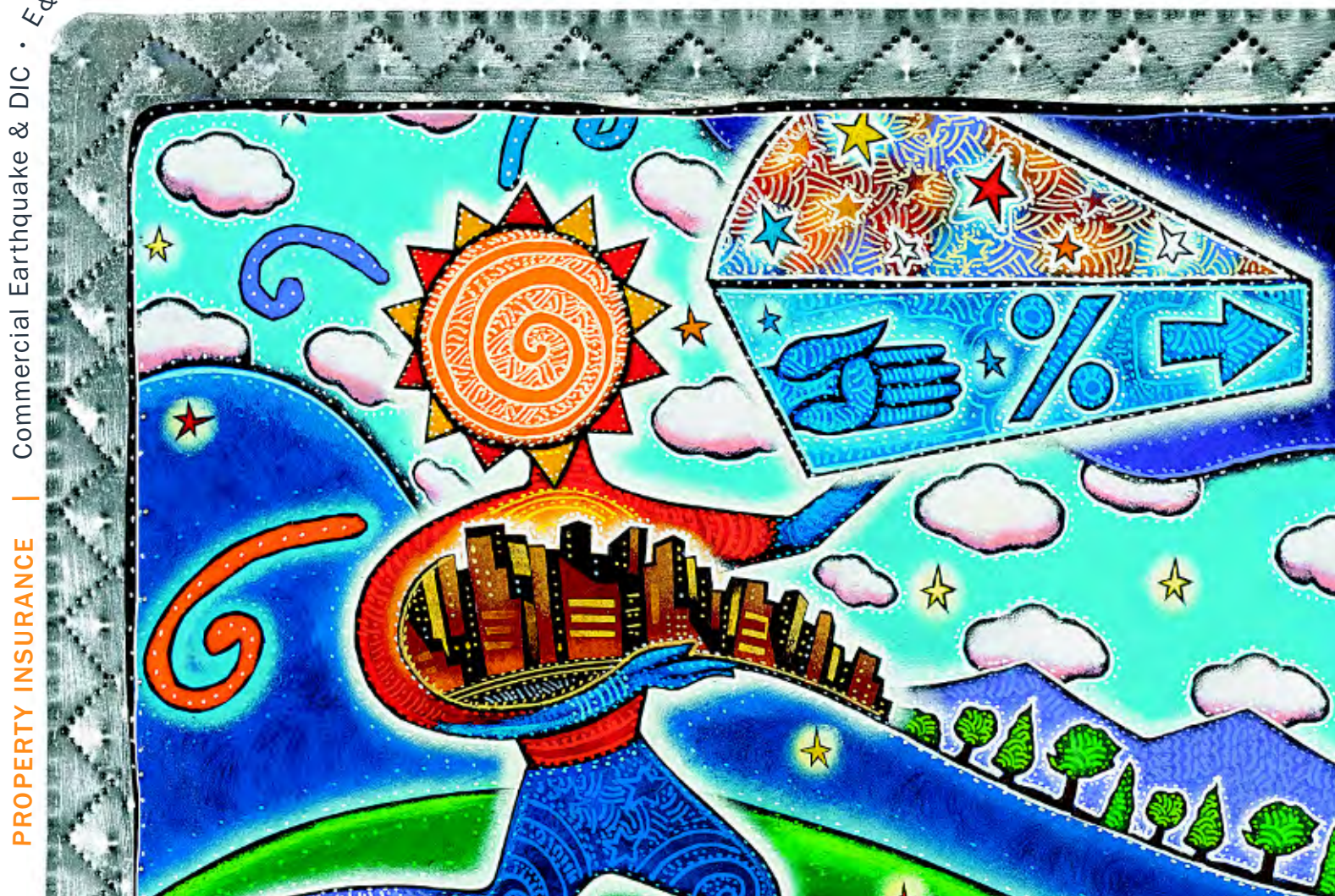
information technology, health care, alternative health care and elective medical procedures," Ms. Heaton said. Other areas still providing new business are professional liability and product liability, she said.

Besides professional liability, growth at Swett & Crawford is also coming from energy industry risks. "We are up in those two areas," said Mr. Abernathy.

Other lines have changed with the economy. For example, Swett & Crawford's construction business is

Continued on next page

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CONTINUED FROM PREVIOUS PAGE

currently generated more by public infrastructure projects than residential construction.

Beyond products and programs, the market is increasing its service focus. Underwriters are emphasizing high service levels to wholesale brokers, and wholesale brokers are trying to win the loyalty of retail brokers through faster and more efficient transactions, surplus lines market executives say. Many organizations are using the lull in the market to brainstorm on better uses of technology to enhance service.

Markel has made a change to give producers easier access to its E&S coverages. The insurer opened a

Dallas office this month to provide one point of contact for all E&S lines, said Ms. Heaton. The insurer plans to open several other offices around the country.

Fireman's Fund Insurance Co. is making changes as well. "We have made an effort to be closer to wholesalers," said Brian S. Specht, vp and national casualty product executive in New York. "That's been a huge success." There are teams dedicated to wholesalers at 12 locations, he said.

"Retailers are trying to keep things in the admitted market, so by the time a risk gets to the nonadmitted, the client needs fast service," Mr. Specht said. "We have to do triage and get turnaround."

As a result of the dedicated teams



'By the time a risk gets to the nonadmitted market, the client needs fast service.'

Brian S. Specht,
Fireman's Fund Ins. Co.

and other factors, Fireman's Fund has seen submissions increase between 30% and 40% this year, Mr. Specht said.

In an attempt to boost demand at TAPCO Underwriters Inc., a managing general agent in Burlington,

N.C., the company is expanding its service approach geographically.

"We're seeing less demand," said Tap Johnson III, TAPCO president, which quotes and binds over the telephone. He said calls fell to 4,000 in June, compared with 6,000 calls in June 2007. While the com-

pany used to do business only on the East Coast, it expanded to California and Texas last year. TAPCO currently is expanding to the entire West Coast, and will be in a total of 29 states by year's end. About six of 10 agents contacted are signing on

with TAPCO, Mr. Johnson said.

"We answer the phone in 30 seconds, and the whole quote and binding process takes five minutes," he said. "In this struggling environment, you have to look at how the agent makes money."

A similar sentiment was expressed by Century Surety's Mr. Timm. "The challenge we have right now in growth is more serviced by making distribution efforts more profitable." If the company saves wholesalers money through efficiencies, then wholesalers may pass that savings onto retailers, he said.

At Burns & Wilcox, Chief Executive Officer Alan Kaufman said the wholesale broker is "making a greater investment in technology" that will allow the Farmington Hills, Mich., company to search the best markets, quote and bind within one day.

"Good service is a way brokers can differentiate (underwriters) to their clients," said Jim DeSimone, the New York-based senior vp of specialties for Zurich Insurance Group. "Brokers don't want to have to apologize" to a client for an underwriter's poor service.

So while brokers and underwriters say they are pushing up service levels, competition and the desire to maintain market share are keeping rates down.

Mercator's Mr. Treanor said it's the issue of admitted carriers who reach into the E&S and specialty market terrain when markets are soft. "In this part of the cycle, the standard market wants to do everything," he said.

Many brokers and underwriters, however, say there is a slowing or leveling of rate decreases.

"We are closer to the end of this cycle than the beginning," said Fireman's Fund's Mr. Specht. "We have seen some decelerations or flattening of rate decreases." Benchmarking data indicates that many E&S underwriters have cut rates between 13% and 15% during this market cycle, Mr. Specht said.

Pricing at TAPCO "is steady because the price already is as low as it can go" in the effort to accommodate small-business clients in the current economy, said Mr. Johnson.

Because of the economy and abundant capital, Mr. Kaufman of Burns & Wilcox said he thinks the market won't change until the end of 2009 or 2010. He also expects more consolidation among brokers and underwriters.

To find as much stability as possible, brokers and underwriters are looking to midsize companies with smaller risks. "The smaller (business) holds up better than the bigger," said Mr. Treanor. Transactions between "\$5,000 and \$10,000 tend to be less interesting to (admitted market insurers)."

Markel pursues smaller businesses including startups, according to Ms. Heaton. "We're often not the market for the Fortune 500. We're a better fit for the middle and small market."

Amid the uncertainty in the market, Mr. Johnson is sure of one thing, "that the best of the best will win the battle. The last hard market carried weak players. Really strong players become creative."

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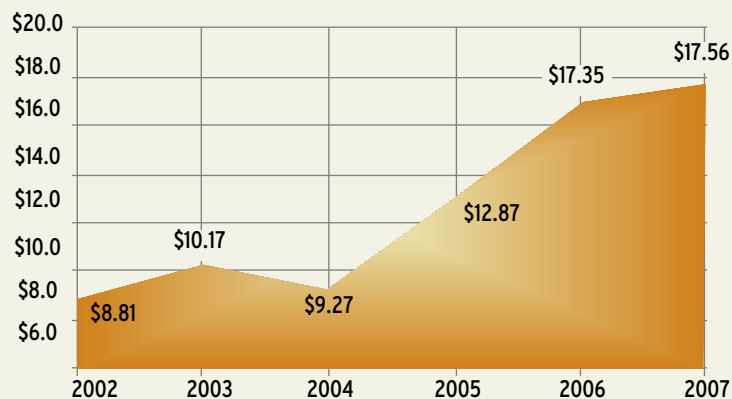


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PREMIUM GROWTH OF TOP 10 WHOLESALER BROKERS

Gross written premiums by the largest wholesaler brokers, in billions of dollars



Source: BI survey

Numerous, varied factors provide impetus to develop E&S products

By ROSEANNE WHITE GEISEL

Inspiration for innovation in the excess and surplus lines market has many sources.

"I think we have to look at innovation from two very different perspectives," said Kevin Kelley, chairman and chief executive officer of Lexington Insurance Co. in Boston, a unit of American International Group Inc. "One is to take a look at more macro trends that are driving change. The other is to talk to

clients and see what they say bothers them."

Among macro trends that Mr. Kelley sees are the environmental movement, concern about terrorism and changes in laws that might generate new industry-specific exposures.

Lexington and other E&S wholesalers and underwriters this year have introduced products to respond to these needs.

Lexington's products rolled out this year include: the Upgrade to

Green Commercial endorsement to its commercial property policy, which enables owners experiencing a partial or total loss to rebuild according to sustainability principles and reduce the building's environmental footprint; Pandemic Rx, an endorsement to the commercial property policy for acute care medical facilities that covers business losses or extra expenses due to a declared influenza pandemic; and truck broker liability insurance, which resulted from a federal court decision that increased truck brokers' exposure.

'Risk-takers and policyholders recognize that the world has changed and we all need to act accordingly.'

Kevin Kelley, Lexington Insurance Co.

More fodder for innovation has come from the financial services industry.

Christopher Treanor, president and CEO of wholesale broker Mercator Risk Services Inc. in New York, said the company is launching a business that will specialize in brokerage services to meet the insurance needs of private equity firms.

Letha Heaton, vp of corporate marketing for Richmond, Va.-based specialty insurer Markel Corp., said, "There is always new product development, whether it's hybrid cars, security systems or quality-of-life products (such as Botox) that provide business opportunities for the E&S market."

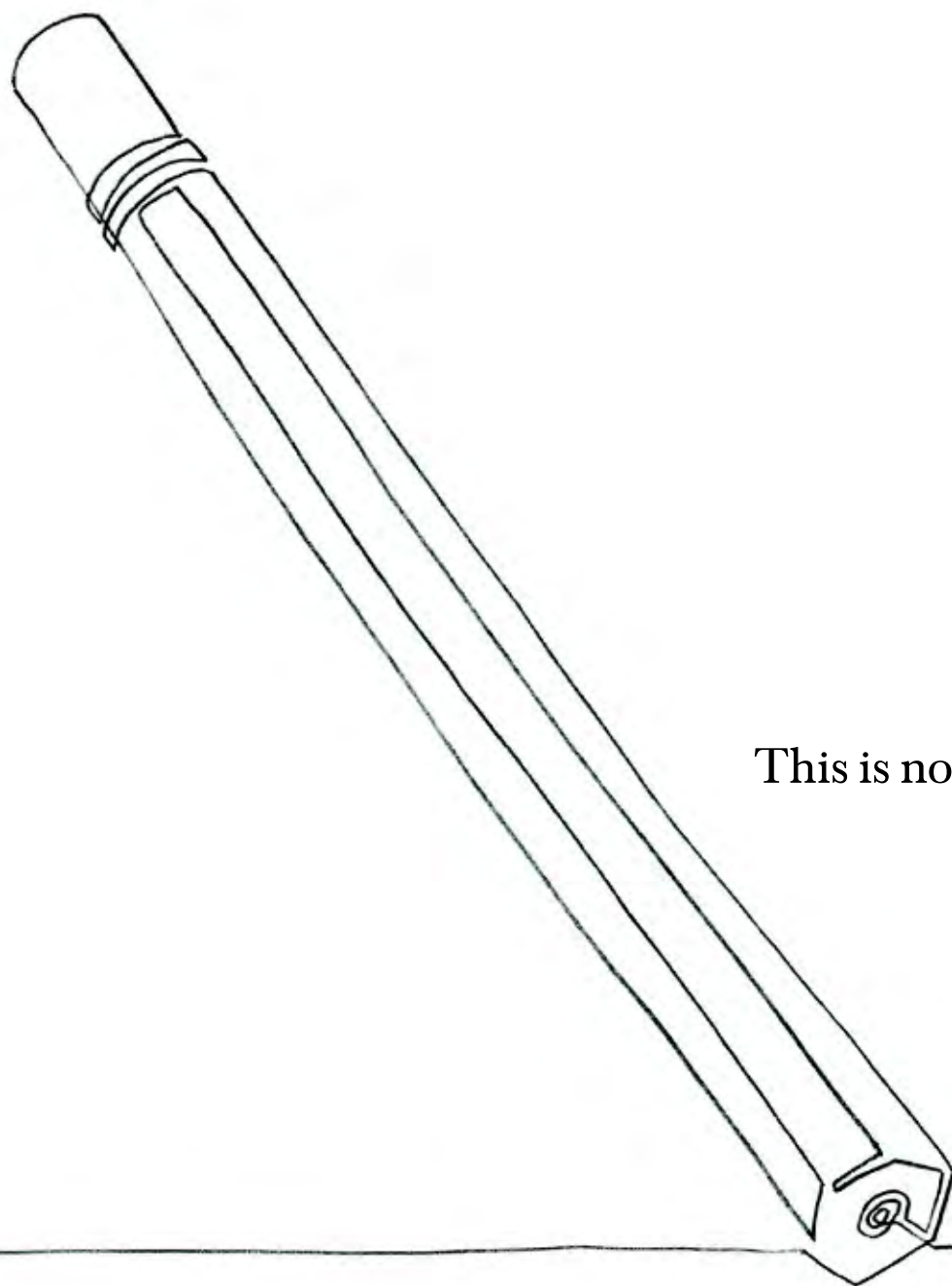
For Fireman's Fund Insurance Co., products "are coming to market much faster," said Brian S. Specht, vp and national casualty product executive in New York. The company has implemented Idea Central, through which employees in the field and the company's broker partners can suggest new coverages via the company's intranet. Fireman's Fund will bring to market a new professional liability policy for architectural engineers later this year.

Growth, like innovation, also reflects the times.

Ronda Whaley, vp-property broker for Brown & Riding Insurance Services Inc. in Los Angeles, said there's been significant demand for coverage for completed unsold construction.

For TAPCO Underwriters Inc. in Burlington, N.C., coverage for vacant property is up about 30%, said Tap Johnson III, president of the managing general agent.

Assessing the market, Lexington's Mr. Kelley said, "There is a lot more risk in the marketplace, and risk-takers and policyholders recognize that the world has changed and we all need to act accordingly."



This is not a pencil.

Rising demand for renewable energy generates interest from E&S market

Surplus lines insurers offer tailored coverage to green sector

By **ROBERTO CENICEROS**

Surplus lines insurers say the coverage they provide will help meet the growing demand for alternative energy sources that the high price of oil is helping to fuel.

Investor attraction to large solar farms, wind-generated electricity and biofuels is an opportunity for wholesalers and surplus lines underwriters to sell products that insure construction, operational risks, mechanical breakdowns and loss of profits, they say.

Some surplus lines companies already have in-house underwriters who have the relatively scarce expertise needed to insure renewable energy operations. Others have arrangements with underwriters that have such expertise.

That expertise, coupled with the speed with which nonadmitted products often address emerging risks through their "freedom of form," makes the surplus lines industry ideal for writing alternative energy risks, they add.

"Since the green energy area is still relatively new and there are still a lot of nuances to (underwriting it), the excess and surplus lines market is the way to go," said Alan Jay Kaufman, chairman, president and chief executive officer of Farmington Hills, Mich.-based wholesaler Burns & Wilcox Ltd. "It is clearly the innovative market that expeditiously comes to the table to deliver what insureds need."

But with the renewable energy sector growing rapidly, admitted insurers already are challenging the nonadmitted markets.

"Renewable energy is an expanding industry and as a result, more people want to become involved in it from an investment perspective and from an insurance perspective," said Fraser McLachlan, CEO of London-based GCube Underwriting Ltd., which distributes its nonadmitted renewable energy products in the United States through retail and wholesale brokers.

"So we are starting to see increased competition from people writing the coverage," Mr. McLachlan said.

Warren, N.J.-based Chubb Corp., for instance, a year ago formed a "green energy team" of underwriters and loss control experts to create commercial products to respond "to the accelerated development of environmentally friendly energies."

More recently, Tri-City Brokerage, a unit of wholesaler Crump Group Inc., said in June that it offers coverage for wind power plant development including construction, operational risk and business interruption losses.

The product is written mainly on admitted paper but also is available on a nonadmitted form, said James Sipich, senior vp at Tri-City in San

Francisco. It is underwritten by PowerGuard, an Irvine, Calif.-based managing general agent, Mr. Sipich added.

The PowerGuard product can be tailored for solar and biofuel production facilities, Mr. Sipich said. It provides limits up to \$250 million, but limits up to \$1 billion can be arranged by combining various insurers.

An admitted form facilitates building renewable energy production operations because investors

and lenders prefer admitted coverage over nonadmitted policies, Mr. Sipich said.

But GCube's Mr. McLachlan doesn't agree that an admitted product necessarily offers advantages. Purchasers of GCube products often are large commercial entities with a risk manager who purchases coverage through the world's largest brokers, he said.

They are sophisticated insurance

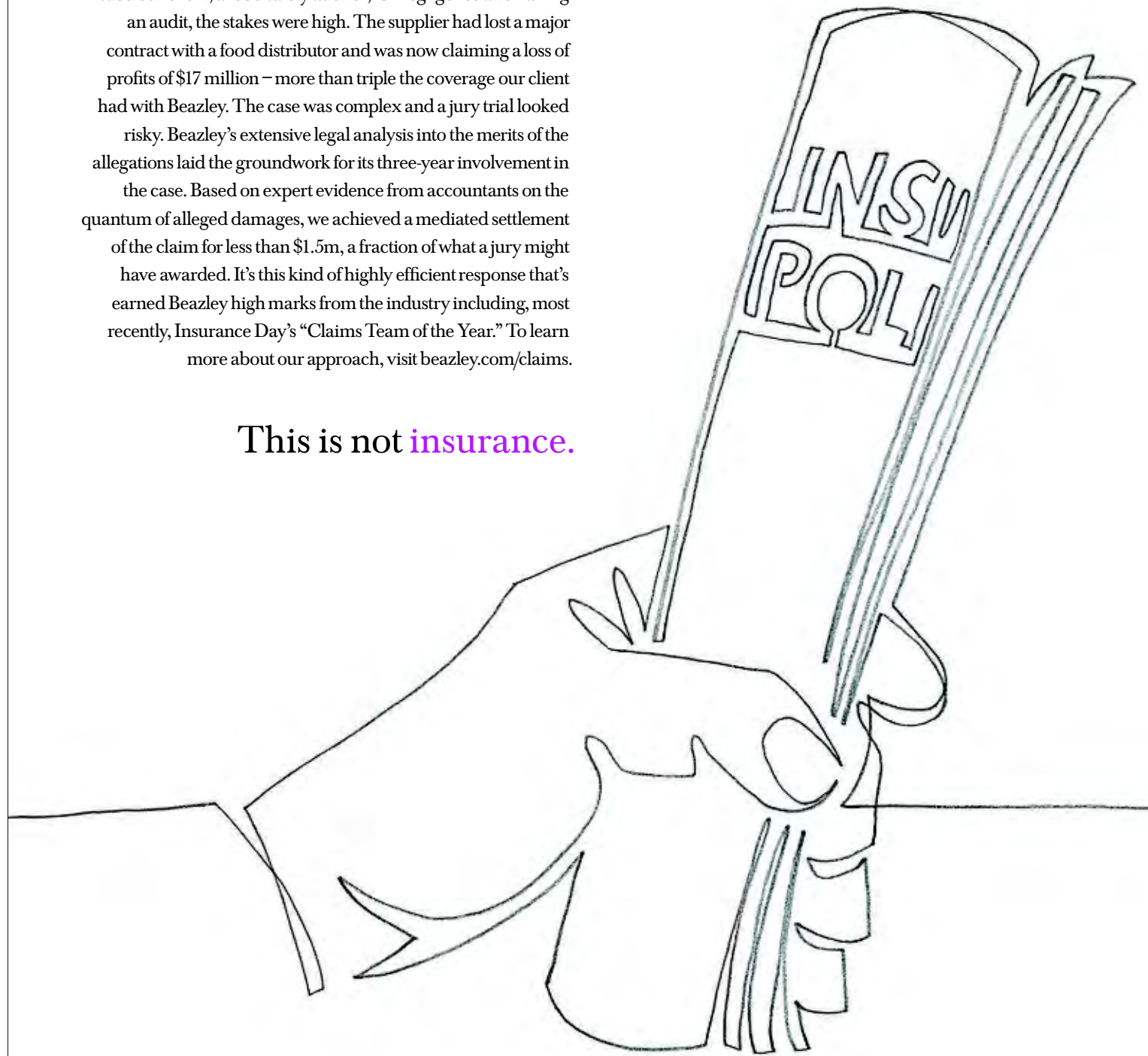
See **ENERGY** next page



As investors become increasingly interested in alternative energy projects, such as wind farms, surplus lines insurers say they are making use of their freedom of form to devise coverage tailored to green risks.

A pencil without a tip. A policy without claims service. One without the other isn't much good. Which is why our claims teams are every bit as knowledgeable and resourceful as our underwriters. One example: When an aggrieved food supplier sued our client, a food safety auditor, for negligence after failing an audit, the stakes were high. The supplier had lost a major contract with a food distributor and was now claiming a loss of profits of \$17 million – more than triple the coverage our client had with Beazley. The case was complex and a jury trial looked risky. Beazley's extensive legal analysis into the merits of the allegations laid the groundwork for its three-year involvement in the case. Based on expert evidence from accountants on the quantum of alleged damages, we achieved a mediated settlement of the claim for less than \$1.5m, a fraction of what a jury might have awarded. It's this kind of highly efficient response that's earned Beazley high marks from the industry including, most recently, Insurance Day's "Claims Team of the Year." To learn more about our approach, visit beazley.com/claims.

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Straight Answers

Energy: Surplus lines coverage will help meet growing demand

CONTINUED FROM PREVIOUS PAGE

buyers who understand the surplus lines industry and “frankly, if you are supplying the best product at the best price, I believe people are going to buy that product from you,” Mr. McLachlan said.

GCube, which underwrites on behalf of Lloyd’s of London syndicates, has been providing coverage for wind energy production for 20 years. It recently diversified, offering insurance for biofuel, solar and small hydroelectric production facilities.

It offers up to \$620 million in limits for all-risk coverage for wind-powered electrical generation operations. The coverage includes marine transit, construction, start-up delays, operating risks, mechanical breakdown, business interruption and loss of profits.

Similar coverage is available with limits up to \$290 million for biofuel and solar operations, Mr. McLachlan said.

Not only is there growing demand to insure different types of alternative energy production operations, the size of operations are expanding, several sources said.

“The value of the projects is getting much bigger,” Mr. McLachlan said. “A few years ago, we were looking at \$100 million (wind) projects

and we thought those were big. Now we are looking at \$900 million projects. As a result, we have had to increase our underwriting capacity to keep up with it.”

For example, the wind energy industry invested \$9 billion last year, according to the U.S. Department of Energy. DOE also said the U.S. wind power industry has grown 30% annually in the past five years, accounting for nearly one-third of new electrical generating capacity in 2007.

Investments in solar energy production are also growing because over time they pay off once the price of oil is \$90 a barrel or higher, said Brian K. McCarthy, managing director and CEO of Peabody, Mass.-based Conifer Insurance Agency Inc. “So private equity firms are building large solar farms and selling to the (electrical) grids.” Conifer, a program administrator as well as a wholesale and retail broker for energy industry products, in August said it agreed to be acquired by Energi Holdings Inc.

Not all new renewable energy production operations are large, however.

“We are seeing more local efforts,” said David J. Price, executive vp and chief underwriting officer for Burns & Wilcox. That increase is found “particularly in

the Midwest, where we see local groups getting together and financing ethanol plants and wind farms because the Great Plains are obviously a good spot for steady wind.

“So we are looking at customers that use local agents, and not the giants of our industry, because those are the ones we appeal to for this line,” Mr. Price said.

As is common for surplus lines wholesalers that try to protect their markets, Burns & Wilcox would not disclose the underwriters for the ethanol and wind production coverage it provides.

While surplus lines entities foresee a growth in demand for alternative energy coverage, the engineering and underwriting expertise needed to provide it is still relatively scarce, several sources said.

Growing renewable energy production also poses an underwriting challenge because manufacturers, such as those that make wind turbines, can’t keep up with the demand.

“When you are insuring loss of profits on a turbine and you can’t replace it (quickly), it increases the time out of service and the loss,”

Tri-City’s Mr. Sipich said.

But new investors are showing a long-term commitment to profiting from power production, sources say. Therefore, they are taking care of their equipment, a contrast with 1980s investors in wind production. Then, investors were mainly interested in tax credits, so equipment maintenance tended to be poor and losses were high.

Better care of equipment and fewer losses, though, will continue making the power generation industry more appealing to admitted markets.

First-half surplus lines premiums fall

Stamping office data indicates biggest decline since 1996

By NICK WHITFIELD

The soft U.S. market squeezed surplus lines insurers in the first half of 2008, as combined premiums reported by the 14 state stamping offices declined.

Overall, state stamping offices reported a 7.6% drop in premiums compared with the first half of 2007. Surplus lines premiums of \$11.37 billion were collected in the first six months of this year, down from \$12.31 billion in the same

period last year.

That puts 2008 on pace for the biggest decrease since 1996, when premiums dropped 8.5%. The last time stamping offices reported an overall decline in premiums was 1998, when they fell 5% from the previous year.

Absent anomalous increases in four states, first-half 2008 numbers would have fallen more, said Philip Ballinger Jr., executive director of the Surplus Lines Stamping Office of Texas, the Austin office that com-

piles the data.

“The premium decline is not what you’d expect because four states have premium increases, which is a little bit of an aberration,” Mr. Ballinger said. “The offices that showed increases, usually that was reflecting some kind of unusual filing event.”

That was the case in California, which reported a 4.7% rise in premiums because of “some jumbo

See **PREMIUMS** page 30



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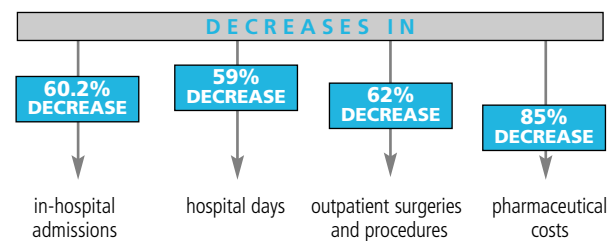


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SOURCE: JOURNAL OF MANIPULATIVE AND PHYSIOLOGICAL THERAPEUTICS, MAY 2007

For more information regarding the value of chiropractic care visit: www.yes2chiropractic.com
Alternative Medicine Integration study results available at: [www.jmptonline.org/article/S0161-4754\(07\)00076-0/abstract](http://www.jmptonline.org/article/S0161-4754(07)00076-0/abstract)



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Surplus lines premiums and taxes by state

State	Gross surplus lines premium written			Percent change		Surplus lines taxes collected			
	2007	2006	2005	2006-2007	2005-2007	2007	2006	2005	Tax rate
Alabama ¹	\$541,090,633 ²	\$451,530,667 ²	\$445,746,000 ²	19.8%	21.4%	\$32,465,438	\$27,091,840	\$26,744,760	6.0%
Alaska	\$104,981,227	\$102,172,010	\$103,996,208	2.7%	0.9%	\$2,459,065	\$2,336,754	\$2,413,186	2.7%
Arizona	\$539,927,191	\$568,661,085	\$575,388,342	-5.1%	-6.2%	\$16,368,603	\$17,040,032	\$17,261,650	3.0%
Arkansas ³	\$194,588,630	\$231,123,111	\$201,859,745	-15.8%	-3.6%	\$7,960,372	\$9,244,924	\$8,074,390	4.0%
California	\$6,813,968,858	\$7,245,191,416	\$6,423,082,782	-6.0%	6.1%	\$173,255,236	\$187,456,876	\$168,673,514	3.0%
Colorado	\$617,844,992	\$508,831,342	\$503,030,140 ⁴	21.4%	22.8%	\$18,535,350	\$15,525,724	\$15,340,834	3.0%
Connecticut	\$336,167,910	\$343,269,576	\$342,533,152	-2.1%	-1.9%	\$12,929,535	\$13,202,676	\$13,174,352	4.0%
Delaware ³	\$65,355,858	\$69,555,579	\$92,689,683	-6.0%	-29.5%	\$1,307,117	\$1,391,112	\$1,856,719	2.0%
District of Columbia ¹	\$145,722,400	\$140,411,550	\$154,855,058	3.8%	-5.9%	\$2,914,448	\$2,808,231	\$2,632,536	2.0%
Florida	\$4,799,006,734	\$4,567,682,045	\$3,574,878,986	5.1%	34.2%	\$214,923,177	\$205,739,594	\$165,729,641	5.0%
Georgia ³	\$860,021,750	\$942,684,870	\$895,643,175	-8.8%	-4.0%	\$34,400,869	\$37,707,394	\$35,825,726	4.0%
Hawaii	\$311,707,140 ⁵	\$323,215,121 ⁵	\$233,981,170 ⁵	-3.6%	33.2%	\$14,574,528	\$15,126,468	\$10,948,720	4.7%
Idaho	\$84,500,000	\$74,485,837	\$81,022,035	13.4%	4.3%	\$1,621,000	\$2,097,486	\$2,040,562	1.5%
Illinois	\$1,089,883,883	\$918,477,742	\$1,016,395,632	18.7%	7.2%	\$38,146,151	\$32,166,151	\$35,577,662	3.5%
Indiana	\$582,089,831	\$371,996,109	\$409,581,452	56.5%	42.1%	\$14,552,246	\$9,299,903	\$10,239,536	2.5%
Iowa	\$128,535,346	\$163,006,640	\$134,327,940	-21.1%	-4.3%	\$1,285,353	\$2,037,583	\$2,014,919	1.0%
Kansas	\$167,854,408	\$157,538,836	\$170,612,997	6.5%	-1.6%	\$10,047,070	\$9,724,511	\$10,483,500	6.0%
Kentucky	\$158,629,064	\$172,487,709	\$168,339,118	-8.0%	-5.8%	\$4,799,202	\$5,251,389	\$5,144,899	3.0%
Louisiana	\$1,363,817,132	\$1,216,561,799	\$882,190,525	12.1%	54.6%	\$68,190,857	\$60,828,090	\$44,109,526	5.0%
Maine	\$70,539,569	\$71,600,315 ⁶	\$73,732,685 ⁶	-1.5%	-4.3%	\$1,950,985	\$1,975,189 ⁶	\$2,028,369 ⁶	3.0%
Maryland	\$418,796,318	\$439,263,980	\$434,889,000	-4.7%	-3.7%	\$12,563,890	\$13,174,919	\$13,046,628	3.0%
Massachusetts	\$699,058,618	\$750,927,907	\$760,792,604	-6.9%	-8.1%	\$25,875,639	\$27,577,916	\$28,115,151	4.0%
Michigan ¹	\$728,702,360 ⁵	\$721,487,485	\$715,567,116	1.0%	1.8%	\$18,217,559 ⁷	\$17,918,515	\$17,581,213	2.5%
Minnesota	\$378,078,257	\$361,736,603	\$392,730,267	4.5%	-3.7%	\$11,334,759	\$10,852,098	\$11,781,923	3.0%
Mississippi	\$389,525,164	\$346,124,602	\$263,329,614	12.5%	47.9%	\$15,580,799	\$13,844,009	\$10,532,527	4.0%
Missouri ³	\$474,154,860	\$507,981,766 ⁶	\$504,271,000 ⁶	-6.7%	-6.0%	\$23,008,047	\$24,472,450 ⁶	\$24,389,202 ⁶	5.0%
Montana	\$66,539,049	\$58,032,705	\$64,932,129	14.7%	2.5%	\$1,839,015	\$1,604,037	\$1,997,423	2.8%
Nebraska	\$104,741,901	\$96,543,856	\$92,141,171	8.6%	13.7%	\$3,614,688	\$2,892,931	\$2,764,235	3.0%
Nevada	\$360,154,862	\$443,921,611	\$370,018,174	-18.9%	-2.7%	\$12,605,458	\$15,537,292	\$12,950,663	3.5%
New Hampshire ³	\$73,763,404	\$89,448,090 ⁶	\$102,917,482	-17.5%	-28.3%	\$1,475,268	\$1,788,962 ⁶	\$2,058,925	2.0%
New Jersey	\$1,144,198,728	\$1,252,113,734	\$1,197,282,785	-8.6%	-4.4%	\$34,975,991	\$36,871,781	\$35,526,829	3.0%
New Mexico ³	\$37,057,727	\$91,627,155	\$81,341,786 ⁶	-59.6%	-54.4%	\$2,985,352	\$2,560,869	\$2,525,186 ⁶	3.0% ⁸
New York	\$3,691,581,963	\$3,751,197,308 ⁴	\$5,202,372,438	-1.6%	-29.0%	\$94,769,655	\$94,396,410	\$99,670,251	3.6%
North Carolina	\$523,549,178	\$508,249,065	\$516,807,631	3.0%	1.3%	\$26,511,260	\$25,389,360	\$25,842,686	5.0%
North Dakota	\$53,410,087	\$33,056,680	\$36,222,949	61.6%	47.4%	\$934,796	\$578,536	\$633,919	1.8%
Ohio ³	\$552,430,581	\$202,262,453	\$430,334,745	173.1%	28.3%	\$27,521,460	\$27,419,179	\$12,076,886	5.0%
Oklahoma	\$304,837,700	\$333,761,067	\$319,526,400	-8.7%	-4.6%	\$18,290,262	\$20,025,664	\$19,171,584	6.0%
Oregon	\$250,210,825	\$320,800,101	\$289,169,707	-22.0%	-13.5%	\$5,004,217	\$6,416,002	\$5,783,394 ⁷	2.0% ⁹
Pennsylvania	\$1,000,878,746 ^{7,10}	\$1,023,614,979 ^{7,10}	\$987,736,270 ^{7,10}	-2.2%	1.3%	\$25,664,000 ⁷	\$26,402,000	\$23,420,000	3.0%
Rhode Island	\$70,480,500 ⁷	\$70,480,500	\$71,794,062	0.0%	-1.8%	\$2,114,415 ⁷	\$2,114,415	\$2,153,822	3.0%
South Carolina	\$597,412,273	\$573,454,293	\$412,680,977	4.2%	44.8%	\$23,896,475	\$22,938,166	\$16,507,235	4.0%
South Dakota	\$31,501,555	\$35,087,568	\$38,702,132	-10.2%	-18.6%	\$787,537	\$877,189	\$967,553	2.5%
Tennessee	\$457,094,816	\$471,747,480 ²	\$270,373,000 ²	-3.1%	69.0%	\$12,649,418	\$12,612,474	\$11,314,281	2.5% ¹¹
Texas	\$4,848,000,425	\$4,675,581,647	\$3,860,649,387 ⁴	3.7%	25.6%	\$175,902,204	\$163,745,314	\$146,246,324	4.9%
Utah	\$176,256,102	\$162,393,456	\$147,809,055	8.5%	19.2%	\$7,216,938	\$6,901,722	\$6,281,885	4.3%
Vermont	\$31,877,954	\$37,913,016	\$41,919,438	-15.9%	-24.0%	\$956,339	\$1,137,390	\$1,257,583	3.0%
Virginia	\$575,748,627	\$610,770,223	\$634,472,929	-5.7%	-9.3%	\$13,596,317	\$14,180,202	\$13,759,440	2.3%
Washington	\$719,302,643 ⁷	\$678,587,399	\$740,466,877	6.0%	-2.9%	\$14,386,053 ⁷	\$13,571,750	\$14,809,339	2.0%
West Virginia	\$143,748,797	\$146,936,094	\$140,307,224	-2.2%	2.5%	\$5,359,326	\$5,525,082	\$5,219,050	4.0%
Wisconsin	\$224,726,172	\$297,051,583	\$248,758,333	-24.3%	-9.7%	\$6,741,785	\$8,911,547	\$7,462,750	3.0% ²
Wyoming	\$57,336,020	\$54,316,403	\$42,548,643	5.6%	34.8%	\$1,641,208	\$1,557,061	\$1,215,809	3.0%
Totals	\$38,176,840,141	\$37,786,954,168	\$35,896,752,150	1.0%	6.4%	\$1,300,706,732	\$1,281,847,169	\$1,157,378,697	

¹ Fiscal year ending 9/30. ² Estimated. ³ Fiscal year ending 6/30. ⁴ Includes surplus lines taxes paid directly to state of Colorado under self-procured policies. ⁵ Net surplus lines premiums written. ⁶ Numbers revised following new information. ⁷ B/I estimate. ⁸ 33% effective as of July 1, 2003. ⁹ Plus 1% on premium subject to fire marshal tax. ¹⁰ Includes premium for independently procured insurance. ¹¹ 3.25% on fire and 4.4% on excess workers compensation. ¹² 0.5% on ocean marine.

Source: B/I survey

Researched by Karen Tucker



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FIRST-HALF 2008 PREMIUMS AND FILINGS FOR THE 14 STATE STAMPING OFFICES

State	Rates		First-half premiums (in millions of dollars)			First-half items* written			Fee changes
	State fee	State tax	2008	2007	% Chg.	2008	2007	% Chg.	
Arizona	0.20%	3.00%	\$249.3	\$286.4	-13.0	36,059	34,098	5.8	
California	0.13%	3.00%	\$3,116.8	\$2,976.8	4.7	232,638	254,652	-8.6	
Florida	0.10%	5.00%	\$2,585.8	\$2,806.4	-7.9	586,476	631,769	-7.2	
Idaho	0.25%	1.50%	\$38.9	\$45.9	-15.3	7,386	7,016	5.3	
Illinois	0.10%	3.50%	\$608.4	\$540.5	12.6	51,854	57,749	-10.2	
Mississippi	0.25%	4.00%	\$156.9	\$172.4	-9.0	40,857	32,890	24.2	
Montana	1.00%	2.75%	\$24.0	\$36.4	-34.1	5,412	5,541	-2.3	
Nevada	0.40%	3.50%	\$160.0	\$168.7	-5.2	14,686	15,083	-2.6	
New York	0.20%	3.60%	\$1,841.0	\$2,486.6	-26.0	110,305	108,298	1.9	Additional \$25 fee applies for late/erroneous filing
Oregon	\$5.00	2.00%	148.5	\$118.9	24.9	19,553	17,699	10.5	Flat stamping fee of \$5 per original filing
Pennsylvania	\$25.00	3.00%	\$504.2	\$460.4	9.5	88,894	55,804	59.3	New stamping fee effective Jan. 1; late filing fee \$50
Texas	0.06%	4.85%	\$1,577.8	\$1,802.9	-12.5	426,494	440,400	-3.2	
Utah	0.25%	4.25%	\$88.2	\$92.9	-5.1	9,479	8,759	8.2	
Washington	0.25%	2.00%	\$274.0	\$312.3	-12.3	43,360	46,868	-7.5	
TOTAL			\$11,373.8	\$12,307.5	-7.6%	1,673,453	1,716,626	-2.5%	

*Items generally are policies, endorsements, cancellations and audits. Items include certain nonpremium filings in Illinois, Nevada and Texas. New York data is gross premium; 2008 net premium = \$1,345.6 million. Florida data for 2008 includes \$465.9 million and 7,547 policies in independently procured insurance. Texas data for 2008 excludes \$225.3 million in other state and \$95.6 million in tax exempt premiums. New stamping fee rates are shown where applicable.
Source: Surplus Lines Stamping Office of Texas

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Premiums: Soft market squeezes surplus lines

CONTINUED FROM PAGE 26

policies that were filed years late by a large broker," said Ted Pierce, executive director of the San Francisco-based Surplus Line Assn. of California. Otherwise, California's premiums would have declined three to four percentage points, he said.

Pennsylvania reported a 9.5% increase in premiums, thanks to a new late stamping fee and the adoption of electronic filing that produced a deceptively large number of first-half transactions, said Ken Rudert, executive director of the Exton, Pa.-based Pennsylvania Surplus Lines Assn.

"I would say overall we'll probably see a decline in premiums once we get down to apples and apples," Mr. Rudert said.

A new electronic filing system also boosted premium numbers in Illinois, which reported a 12.6% gain. "It has increased compliance and allocation for our business from out of state and also allowed faster filing, so there's a bit of compression," said David L. Ocsek, executive director of the Surplus Lines Assn. of Illinois.

Stamping office officials from Oregon, which registered a 24.9% first-half increase, could not be reached.

New York state's 26% first-half decline was the largest of the stamping offices. While most stamping offices count and tax only in-state risks, New York reports gross premiums, said Eugene Nunziante, education and communications director for the Excess Line Assn. of New York. Counting only in-state risks, New York's decrease would have been about 9%, which he said was more in line with other state stamping offices.

For all stamping offices, the overall premium downturn is especially tough because it has affected all lines of business, Mr. Ballinger said.

"A large Texas broker indicated to me that this is the worst market he's ever seen, because in previous soft markets there were at least pockets of light," Mr. Ballinger said. "But in this market, it seems like it's across the board."

Brian S. Specht, national casualty product executive with Fireman's Fund Insurance Co. in Novato, Calif., said he "may be a little more optimistic than some of my peers. There are some signs of improvement for June and July."

"In some years, the admitted market might cut across the bow and take up some business from surplus lines," Mr. Specht said, "but overall I still think the surplus lines market is healthy."

Rob Lala, New York-based senior vp for general liability for Liberty International Underwriters, said he also has seen premiums start to level out.

"The pace of business going to some of the admitted standard lines markets is beginning to slow down," Mr. Lala said. "Most of our competition now is coming from pure (excess and surplus lines) carriers."

For all of 2007, the state stamping offices reported premiums of \$23.14 billion, a 0.6% rise from 2006.

The 14 state stamping offices—Arizona, California, Florida, Idaho, Illinois, Mississippi, Montana, Nevada, New York, Oregon, Pennsylvania, Texas, Utah and Washington—will rise to 15 next year.

The new Minnesota stamping office is expected to bring in \$3 million a year in surplus lines premium taxes, according the state Department of Commerce.

New Virginia E&S law eliminates declinations requirement

Particularly for commercial lines, experts see more states allowing buyers to directly access the surplus lines market

By KRISTIN GUNDERSON HUNT

Requirements that companies or their brokers diligently search the admitted market for insurance coverage before turning to the surplus lines market have a questionable future, surplus lines experts say.

Experts' opinions varied on whether Virginia's recent removal of the due diligence search requirement indicates a trend toward similar actions in other states or at least the waning importance of such requirements.

Typically, states require brokers or policyholders to prove they were denied coverage for a particular risk multiple times by admitted carriers before seeking coverage in the surplus lines market, although the mandated number of declinations and other rules vary from state to state.

Twenty states require three rejec-

'A lot of our retailers are highly educated and they know if they can get coverage' in the admitted market.

Greg Provenzo,
Atlantic Specialty Lines Inc.

tions of coverage, two states require five rejections and many other states simply require an affidavit be submitted claiming coverage in the admitted market was sought and declined.

In March, Virginia abolished its requirement that mandated the policyholder or its broker be denied coverage three times in the admitted market and that an affidavit be filed stating such. The legislation became effective in July.

Greg Provenzo, senior vp of Atlantic Specialty Lines Inc. in Richmond, Va., said he supported Virginia's action because searching the admitted market for coverage involved significant administrative work and essentially only confirmed what the brokers or policyholders already knew.

"It was a delay in the process," Mr. Provenzo said. "A lot of our retailers are highly educated and they know if they can get coverage. It's one less document we have to obtain from our retailers."

Hannah Findlay, a London-based senior consultant for SMART Business Advisory & Consulting L.L.C. in Devon, Pa., said she believes other states will begin to follow Virginia's lead within the next year or two.

She said as states re-examine their requirements, they likely will allow commercial lines customers to go directly to the surplus lines market because so many businesses have a risk manager or risk management department already aware of the coverage available in the admitted market and don't need a formal declination process. She said she foresees many states abolishing due

diligence requirements in the future.

"I believe for commercial lines businesses that have risk management departments or risk managers, there is little added benefit for the (diligence) search requirements," Ms. Findlay said in an e-mail.

Steve Stephan, director of government relations for the National Assn. of Professional Surplus Lines Offices Ltd. in Kansas City, Mo., said many of the organization's members thought the Virginia bill was a good idea because it eased

market access and reduced record-keeping and compliance efforts.

Whether the change drastically affects the market remains to be seen, he said. He said there are still advantages to insuring through the admitted market if coverage is available. He said surplus lines taxes typically are higher, no guaranty fund protection exists for surplus lines insurers and the retail agent must split the commission with a surplus lines broker.

The Virginia law's impact aside, passage of a potential federal law

could also change the due diligence search process. The Nonadmitted and Reinsurance Reform Act also sets out to streamline what many consider to be a gratuitous declination process. The act is awaiting a formal senate vote.

A key provision of the reform bill would allow brokers representing large policyholders to seek coverage in the nonadmitted market without proving they first sought the coverage in the admitted market. One of the prerequisites for doing so, however, is that the policyholder must

employ a "qualified risk manager."

Still, Mr. Stephan said it is unlikely due diligence search requirements will disappear entirely throughout the nation.

"I do not expect this to occur in other states because the insurance departments will normally object," he said.

Experts said eliminating due diligence requirements could create problems since they distinguish the surplus lines market from the

See **DUE DILIGENCE** next page

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Due diligence: Export lists may expand

CONTINUED FROM PREVIOUS PAGE

admitted market.

Mr. Stephan said the requirements have essentially stopped the two markets from becoming competitors by keeping the surplus lines market as a supplemental market.

Tom Mulligan, executive vp for Western World Insurance Group in Franklin Lakes, N.J., said some barriers to the surplus lines market should exist—even if it's not the current "administratively onerous" process—to ensure that risks are being placed appropriately.

"Unfettered access without some sort of diligence search can call into question how the risks are getting into the surplus lines market," Mr. Mulligan said.

Rather than eliminate due diligence search requirements entirely, Mr. Stephan said it's more likely states will expand their export lists, which are catalogs of risks considered too difficult to place in the admitted market. Common risks highlighted on export lists include construction contractors, carnivals

and petroleum haulers, he said.

Once risks are placed on a state list, brokers or policyholders can go straight to the surplus lines market for coverage.

In July, the Excess Line Assn. of New York proposed expanding its

'Unfettered access without some sort of diligence search can call into question how the risks are getting into the surplus lines market.'

Tom Mulligan,
Western World Insurance Group

export list to include new risks such as vacant property, special events, prize indemnification and special multiperil coverage. It has yet to pass the Legislature.

Gary Ricker, president of the New York-based Professional Insurance Wholesalers Assn. of New York State Inc., said expanding the export list would streamline the process of placing specific difficult risks.

He said due diligence search requirements for certain hard-to-place risks take time and offer little value because everyone involved already knows admitted carriers won't provide the necessary coverage. He said going through declinations just to go to through the declination process is inefficient.

Still, Mr. Ricker said eliminating due diligence search requirements isn't likely the best option. He said the standard markets would be up in arms that the surplus lines markets were getting an unfair advantage or at least making the two equal, and thereby possibly making the admitted market less appealing to go to.

"The more hoops you remove (for the surplus lines market)," he said, "the more the markets are put on a level playing field."

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Questions Answers

Greg Flood is chief executive officer of Ironshore Holdings (U.S.) Inc., a New York unit of Bermuda-based Ironshore Inc. Ironshore launched in 2006 as a specialty commercial insurer to provide capacity following the 2004 and 2005 U.S. hurricane seasons. Ironshore focused initially on catastrophe-exposed coastal areas with coverage written on a nonadmitted basis. Then Ironshore acquired Minnesota-based Stockbridge Insurance Co. in 2007 to establish an admitted U.S. insurer for its IronPro and IronBuilt divisions. IronPro is a specialty construction unit distributing through wholesale brokers. IronPro writes directors and officers and errors and omissions primary and excess coverages through retailers and wholesalers. In an interview with Business Insurance Senior Editor Roberto Cenicerros, Mr. Flood said Ironshore followed a typical model, first writing nonadmitted coverage offshore, then domesticating and writing admitted coverage.

Ironshore's niche focus

Q. Will Ironshore always need to write some business on nonadmitted paper or will you continue to move toward writing mostly admitted business?

That's going to depend on the product line. We have a strategy that focuses a lot of growth on specialty niche plays. Many times in the specialty niche areas, you end up working on nonadmitted excess/surplus lines paper. So in our D&O group, for instance, our orders are about 65% to 70% admitted paper and about 35% surplus lines paper. And in our errors and omissions practice, which constantly deals with a lot of specialty line miscellaneous exposures that aren't generically adaptable to standard policy forms, we're usually surplus lines.

Q. In total, for all of Ironshore business, what percentage remains nonadmitted business?

About half in the United States right now.

Q. What Ironshore lines continue to be placed mostly through wholesale brokers?

Errors and omissions, whether it be miscellaneous or health care, we have an awful lot of wholesale traffic on that. Plus we do residential construction wrap-ups, small residential builders. That is almost 100% wholesale-driven. There are also some wholesalers participating in directors and officers insurance and fidelity bonds.

Q. It's on an account-by-account basis, depending on what the needs are?

Yes. That, through broker representation, is up to the client, not us.

Q. For your units writing admitted business, does that work in tandem with your capability to write on a nonadmitted basis?

Yes. Every underwriter on my staff has the option when they quote a policy to consider doing it on admitted paper or doing it on

nonadmitted paper. But not all our policies are filed and whether they are on admitted or nonadmitted paper can depend on what they (clients) want in (the policy). There are certain statutory and regulatory issues we have to be aware of, however.

Q. What are the plans for Ironshore?

We're going to continue expanding our platform in specialty niche plays as best we

LISTEN to the complete podcast with Greg Flood at www.BusinessInsurance.com

can here in the United States and we're probably going to be expanding into Canada. We now have sales offices that are in California, Illinois and Georgia supporting the profit center offices, which are essentially in New York; Simsbury, Conn.; and Boston. Over time, we would like to increase the number of those regional offices around the country and transition them from sales into point-of-sale underwriting offices. We will be looking at that over the next couple years.

Q. You mentioned expanding into Canada. Can you elaborate?

It's been announced publicly that we're going into an agreement to acquire Pembroke Managing Agency over in London and Syndicate 4000. So we would take the capabilities of a Lloyd's platform and see if we couldn't make good use of it servicing risk in Canada.

Q. What new lines and new products do you foresee?

We just hired a guy named Bob Piller (as president of IronSelect) with years of experience in excess casualty and primary casualty, and he will be making a presence for us in that marketplace. We are also looking into a small lawyers' book. We'll be doing a lot of cyberspace coverages for security from theft of client information.

Products & Services

Riskconnect launches RMS product

MARIETTA, Ga.—Riskconnect has launched a Web-based risk management information system.

Marietta, Ga.-based Riskconnect says the system offers users the ability to manage policies, claims, litigation and other insurable risk information. Features include claims management, data integration services, exposure tracking, litigation management, incident reporting, policy management, property management and custom configuration. The system also allows users to create their own custom workflow, business rules, reports and screens, independent of Riskconnect.

According to Riskconnect, the system offers a fast response time and is easy to use.

Previously, the independent software company launched Riskconnect ERM to support an organization's enterprise risk management efforts.

For more information, contact Bob Morrell, chief executive officer, at 678-810-0805 or visit www.riskconnect.com.

USI offers advice to DB plan sponsors

GLASTONBURY, Conn.—USI Consulting Group, a subsidiary of USI Holdings Corp., is offering consulting services for employers managing defined benefit plans.

According to Glastonbury, Conn.-based USI, the service is designed to help employers get a better understanding of plan costs. It offers plan sponsors several options for monitoring the funded status of plans.

By improved monitoring, sponsors should be able to better anticipate funding and expense needs of their plans, and manage any associated risks, USI says.

"Many plan sponsors are dealing with the difficult issues surrounding plan underfunding, benefit freezes or terminations," said Bill Tremko, president of retirement and investment services for USI.

USI Consulting Group is a Goldman Sachs capital partners company. For more information, contact

Vp Paul Denu at 212-878-0428 or paul_denu@usicg.com.

NAS expands cover for business interruption

ENCINO, Calif.—NAS Insurance Services Inc. has expanded its regulatory business interruption insurance coverage to include health care and medical risks, providing protection to hospitals, long-term care facilities and public health departments.

NAS' business interruption policy is also offered to restaurants, food suppliers and vendors, hotels, schools and other for-profit entities.

The regulatory business interruption coverage provides companies with extra-expense protection, on a per-day basis, for business interruption or interference due to business closure by a regulator as a result of a

variety of perils, with limits up to \$50,000. Covered exposures include disease, contagion and/or infestation as well as terrorism, homicide, suicide and/or workplace violence. The policy also has a legal-expense sublimit to contest a regulatory shutdown. The total reimbursable policy limit is \$1 million.

The coverage can be purchased for single or multiple locations and is available in all states.

For more information, contact Vp Melvin Osswald at 818-808-4467 or at mosswald@nasinsurance.com or Allison Hayase, underwriter, at 818-808-4468 or ahayase@nasinsurance.com.

Outreach program targets cancer risks

COLUMBIA, Md.—Resolution Health

Inc., a unit of WellPoint Inc., has launched a member outreach program to increase members' breast and cervical cancer screening rates.

The Women's Health and Wellness Action campaign is offered to all employers and includes various tools to identify and engage "out of compliance" individuals to encourage compliance with recommended preventive measures and improve members' health.

The program begins with a claims analysis to identify plan members who have not undergone recommended mammograms or cervical cancer screenings. Using speech-enabled technology, the program reaches out to members via telephone on behalf of their health plan to inform them about cancer screenings. The calls also collect data to assess an individual's behavior.

A personalized follow-up mailing is then sent providing more information and advice. The mailing may also include a gift card incentive offer to reward members who complete the recommended procedures, depending on a health plan's benefit design. The programs incentive rewards are being managed by Lyndhurst, N.J.-based IncentOne.

For more information, call Dan Heneghan at 240-295-1410 or visit www.resolutionhealth.com.

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Large plan providers report drop in 401(k) loans by workers

But hardship withdrawals on the rise as employees struggle with economic difficulties arising out of credit crisis

By **LISA SHIDLER**

Despite reports that more people have been borrowing from their

401(k) accounts in 2008 to cover daily expenses, recent data from several plan providers show that such loans have fallen in some cases.

However, most companies still show an increase in the number of participants taking hardship withdrawals, saying most people desperately need the money to prevent home foreclosures.

Companies that have shown a decrease in 401(k) loans so far this year include Boston-based Fidelity Investments; Greenwood Village, Colo.-based Great-West Retirement Services; New York-based Merrill Lynch & Co. Inc.; San Francisco-based Charles Schwab Corp.; and Baltimore-based T. Rowe Price Group Inc.

Overall, the number of new 401(k) loans for the first six months of this year declined 7% from the first half of 2007, according to data compiled by Lincolnshire, Ill.-based human resources firm Hewitt Associates L.L.C.

"It does show the decline in the number of new loans, which is contrary to what the press and all of the noise has been showing," said Alison Borland, who is the leader of Hewitt's defined contribution consulting practice and is based in Nashville, Tenn.

"The good news is, the fears that people were raiding their 401(k) just to cover daily expenses for food and gas doesn't tend to be happening," Ms. Borland said.

No groups track 401(k) loans on a quarterly basis, though major fund companies track their own loan data.

During the past two years, T. Rowe Price said, its loans per total

participants have risen about 2% to 3%, but fell 7% during the first half of this year compared with the first half of 2007.

The good news is that the data show that participants are still protecting their retirement savings on the whole, said Stuart Ritter, a certified financial planner with T. Rowe Price.

"There's not a wholesale move to drain retirement accounts, and people aren't mortgaging their future just to get through," he said.

Loans remain historically low at Fidelity Investments, which said the percentage of workers initiating a loan during the second quarter was 2.8%, down from 3.1% during the same period a year earlier.

Data from Great-West Retirement Services, which combines its loans and hardship withdrawals, show that the new loans and new hard-

ship withdrawals in the second quarter were at 1.1% compared with 1.15% a year earlier. However, the loans and withdrawals were higher in the first quarter this year compared with a year ago.

At Schwab, there has been a slight decrease in new loans every quarter since the third quarter of 2007. In the first quarter this year, 0.9% of participants took out new loans from their 401(k) plans compared with 1% of new participants in the first quarter of 2007.

Vanguard's new loans in the first quarter fell 3.12% from the same period a year earlier.

Although participants at certain companies or in certain parts of the country might be borrowing more money, overall there has been no uptick in loans at Vanguard in the

Continued on next page



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Year-to-date loan activity of DC plan providers

FIDELITY INVESTMENTS

	1H '08	1H '07
% of workers having a plan balance with loan at the period's end	19.2%	19.4%
% of workers initiating loan in the second quarter	2.8%	3.1%
% of workers initiating hardship withdrawal in the second quarter	0.6%	0.6%

GREAT-WEST RETIREMENT SERVICES

	2Q '08	1Q '08	2Q '07	1Q '07
% of participants who initiated a loan or hardship withdrawal	1.1%	0.94%	1.16%	0.81%

MERRILL LYNCH

	1H '08
Number of general-purpose-plan loans initiated vs. year-earlier period	-3.8%
Dollar volume of general-purpose loans initiated vs. year-earlier period	-1.8%
Number of residential loans initiated vs. year-earlier period	-19.8%
Dollar volume of residential loans initiated vs. year-earlier period	-13.7%
Number of hardship withdrawals vs. year-earlier period	+22.7%
Dollar volume of hardship withdrawals vs. year-earlier period	+21.7%
Total number of plan participant loans and hardship withdrawals initiated	69,059

CHARLES SCHWAB

	1Q '08	4Q '07	3Q '07	2Q '07	1Q '07
% of participants in loan-allowing plans who initiated loans in quarter	0.9%	1.2%	1.3%	1.3%	1%

T. ROWE PRICE

	1H '08
Average loan amount vs. year-earlier period	+2%
Average hardship withdrawal amount vs. year-earlier period	+8%

VANGUARD GROUP

	1Q '08
Number of plan loans initiated vs. year-earlier period	-3.12%

Source: Investment News, company disclosures

CONTINUED FROM PREVIOUS PAGE

past few years, said Stephen P. Utkus, director of the Vanguard Center for Retirement Research.

At Merrill Lynch, the number of general-purpose loans declined 3.8% for the first half compared with a year earlier. However, residential loans declined 19.8%, and Kevin Crain, managing director for institutional client relationships, said he thinks the fact that fewer people are borrowing money to purchase homes is directly related to the slumping economy.

But hardship withdrawals at Merrill Lynch soared 22.7% from a year earlier.

Participants have begun to realize that a 401(k) loan should be used only in financial emergencies, and not simply for daily expenses, said Catherine Miller, Richfield, Ohio-based vp of participant services and advice with Schwab.

Thinking twice

"If someone's taking a loan, it's their last resort," Ms. Miller said. "I hear a lot of conversations with representatives, and after talking to an employee, once they understand the pitfalls, they think twice about taking a loan."

But plan participants are still taking out loans to pay off credit card debt, said Allan J. Chappelle, president of Chappelle Consulting Group Inc. in Birmingham, Ala., which has about \$500 million in

assets. He advises companies about their 401(k) plans and said employees like the option of borrowing money from their plans.

"When we go over our statistics in our investment review, there are quite a few clients that have more than half of the employees with loans," Mr. Chappelle said.

However, Terrence Morgan, an adviser and president of Oklahoma City-based OK401k Inc., which advises companies on their 401(k) plans, said he hasn't noticed a spike

in loans. Mr. Morgan, who handles 401(k) plans for companies in Arkansas, Oklahoma and Texas, among other states, declined to disclose his assets under management, but works with plans with an average of about \$1 million in assets.

"The blue-collar worker here is doing just fine," Mr. Morgan said. "The average Joe is not accessing his account like an ATM."

Meanwhile, a spokeswoman for Reserve Solutions Inc. didn't return a phone call seeking comment. The

subsidiary of Reserve Management Corp. in New York offers the ReservePlus debit card, which allows investors to tap into their 401(k) plan for loans.

Prudence prevails

While the average 401(k) loan is about \$8,000, according to 2006 data from the Washington-based Employee Benefit Research Institute, the average loan through the ReservePlus program was \$4,852 as of March 17.

In the long run, it seems that consumers are being prudent about loans, said Michael Doshier, vp of marketing for Fidelity.

"We always counsel people to think long and hard whether what you're borrowing the money for is worth it. You don't want to sacrifice a successful retirement for having a newer car," Mr. Doshier said.

Lisa Shidler is a reporter for Investment News, a sister publication of Business Insurance.

Employers face worker 'presenteeism': Study

By JEFF CASALE

Nearly half of U.S. workers were absent from work at least once in the past six months, but a trend of greater concern was the number of ill or otherwise distracted workers going to work and not being able to perform up to expectations, according to a recent survey by CIGNA Corp.

On average, surveyed individuals admitted to spending between 2.5 and five hours per week resolving personal issues at work, CIGNA found. Further, 61% of the respondents said they went to work even though they were sick or dealing with a family or per-

sonal issue that had negative effects on their productivity.

CIGNA's survey on absenteeism and presenteeism—when

61%

OF U.S. WORKERS went to work while sick or while dealing with family or personal issues.

employees go to work but are unable to perform their duties at full capacity—consisted of telephone interviews with 1,149

part-time and full-time employees. Participants' employment ranged from white-collar jobs to service workers.

Of those who missed work, 47% said it was due to sickness, while 22% said they missed work for a family-related issue, according to the survey.

Among those who reported showing up to work when they were not at their peak performance level, 25% of survey respondents said they came in because they needed money, while 38% cited a sense of duty to their company.

"These survey results highlight the stress that many American

workers feel, which not only affects their performance on the job, but over the long term can also affect their mental health and overall sense of well-being," Jodi Prohofsky, senior vp of operations for Bloomfield, Conn.-based CIGNA's Health Solutions unit, said in a statement.

Ms. Prohofsky added that flexible work schedules and employee wellness and assistance programs are ways to help reduce stress for employees having a hard time coping with the work-life balance.

For the full survey and results, go to <http://newsroom.cigna.com/images/56/AP%20Findings-A.ppt>.

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NOTICE TO ASSURED AND REASSURED ON LONDON MARKET SLIPS AND PARTICIPATIONS

RE: *The State of Texas v. Highlands Insurance Company*; Cause No. D-1-GV-03-004537; In the 53rd Judicial District Court of Travis County, Texas; Receivership No. 519

Highlands Insurance Company (UK) Ltd. in Administration ("HICUK")

If you had insurance coverage issued by Highlands Insurance Company ("Highlands") through an underwriting stamp called either Tower X or Highlands Underwriting Agents Limited from the London Market, this notice relates to your claims, if any, on those London Market risks. This notification is to advise you of very important events that may impact your legal rights, including rights of offset, if any. Please read this notification completely and thoroughly.

For avoidance of doubt, this notification relates only to contracts of insurance and reinsurance, assumed and ceded by Highlands Underwriting Agents Limited and the Tower X underwriting stamp of Tower Underwriting Management Limited on behalf of Highlands.

On November 6, 2003, Highlands was placed in permanent receivership for the purposes of rehabilitation by order of the 53rd Judicial District Court of Travis County, Texas ("receivership court") under its *Agreed Permanent Injunction and Order Appointing Permanent Receiver*. The receivership court approved the rehabilitation plan for Highlands in its *Order Approving Second Amended Plan of Rehabilitation* entered on June 6, 2008. The Texas Commissioner of Insurance has been appointed Receiver of Highlands, and has designated Prime Tempus, Inc. as Special Deputy Receiver ("SDR").

HICUK is a United Kingdom domiciled insurance and reinsurance company. Effective November 1, 2007, the High Court of Justice, Chancery Division, Companies Court ("English Court") placed HICUK into administration under the U.K. Insolvency Act 1986 ("Administration") and appointed Dan Schwarzmann and Mark Batten as its court-appointed joint administrators ("Administrators") to manage the business and affairs of HICUK.

A settlement between Highlands and HICUK is being presented to the receivership court and will affect policyholders and reinsureds who had insurance coverage from the London Market. From 1971 to 1982, Highlands participated in London Market risks. Highlands wrote London Market excess of loss business and also participated in marine, aviation, and non-marine business through the underwriting pools known as Tower X and Highlands Underwriting Agents Ltd. In 1986 and 1988, there were transfers of this business from Highlands to HICUK pursuant to Section 51 of the Insurance Companies Act 1982 ("Section 51 Transfers"). This notice contains important information on the legal rights, including rights of offset, if any, of policyholders and reinsureds of Highlands on London Market risks that were the subject of the Section 51 Transfers.

The SDR filed its *Application for Authority to Settle (Highlands Insurance Company (UK) Ltd. (In Administration))* ("pleading") on July 30, 2008, that may affect your legal rights, including rights of offset, if any. You should review the pleading and the terms of the settlement that is the subject of the pleading ("settlement") to determine its impact on your claims, if any, against Highlands and HICUK, now or in the future.

The pleading requests that the receivership court require that all policyholders and reinsureds with London Market participations be required to assert their claims, if any, in the HICUK Administration. All claimants and parties in interest will be bound by the terms of the pleading.

All matters relating to the approval of the pleading are set before the receivership court. The pleading is set for Monday, October 13, 2008, at 10:00 a.m. and will occur at the Travis County Courthouse located at 1000 Guadalupe, Austin, Texas, 78701. No additional notices will be sent to you about the pleading, so you will be responsible for monitoring the status of the receivership court's hearing on the pleading, if the date is changed. Copies of pleading and court orders relating to the receivership court's hearing will be posted on www.highlandsrehabplan.com. If you are a party in interest, you may request that notice of legal documents filed by the SDR be sent to you.

You received this notice as your legal rights may be impacted by the pleading and the receivership court's approval of the settlement. If you are a Highlands' policyholder or reinsured with London Market participations, you may have received communications from HICUK in 2007 directing you to file a proof of claim with Highlands. The effect of the settlement is to alter that direction. Any proof of claim filed with Highlands for London Market participations will be disallowed by the terms of the settlement.

The pleading asks for relief from the receivership court. The terms used below that are in bold are terms defined in the pleading and settlement. The pleading requests the following specific items:

- All **Section 51 Policies** and all **Section 51 Policyholder claims** shall be administered exclusively through the Administration for HICUK.
- Highlands shall have no liability to Section 51 Policyholders with respect to the Section 51 Policies.
- Any now existing or hereafter asserted claim on a Section 51 Policy made by any Section 51 Policyholder or otherwise in the Receivership shall be disallowed and denied in the Receivership and shall be exclusively asserted against HICUK either through the Administration or pursuant to the Scheme.
- No Section 51 Policyholder or any HICUK policyholder, reinsurer or claimant may set off any claim in the Administration, any claim in the Scheme or any claim against HICUK against any obligation owed by such policyholder, reinsurer or claimant in the Receivership.
- The notice of the application to approve this Agreement is effective, as at the date of the **Approval Order**, to bind all Section 51 Policyholders and any claimant under a Section 51 Policy;

Please take necessary action to inform yourself of this situation. Thank you for your time and attention to this matter.

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Liability: Insurer must defend defect case

CONTINUED FROM PAGE 4

damage manifests itself during the policy term or that coverage is limited to claims in which damage was discovered or discoverable during the policy period, it said this case provides no basis for such a ruling.

"The policy in straightforward wording provides coverage if the property damage 'occurs during the policy period,' and further provides

that property damage means 'physical injury to tangible property,'" the high court wrote in its opinion. "This policy links coverage to damage, not damage to coverage."

At least one attorney who represents insurers said the decision is significant. "The court's analysis of the construction-defect trigger issue was one of the most thorough I've ever seen, which means that other courts around the country are likely

to look at it for guidance," said Randy Maniloff, an attorney with White & Williams L.L.P. in Philadelphia, noting that the duty to defend trigger arises frequently in coverage disputes. "This case will have legs."

OneBeacon declined comment. DBS was not available for comment.

Don's Building Supply Inc. vs. OneBeacon Insurance Co., Texas Supreme Court, 07-0639, Aug. 29, 2008.

M&A: Consolidation pace gains steam

CONTINUED FROM PAGE 4

acquisitions along the lines of its 2007 purchase of Kansas City, Mo.-based media and professional liability insurer Media/Professional Insurance from Aon Corp.

"We continue to look for those types of opportunities and expect to add at least one or two of those deals every year," Mr. Charman said.

Another Bermuda-based insurer, Argo Group Holdings Ltd., indicated it will likely seek acquisitions as

part its overall growth strategy.

"We will continue to look for companies and assets to complement our organic growth," Jay Bullock, chief financial officer, told investors attending the New York event.

Earlier this year, Argo acquired London-based property and liability insurer Heritage Underwriting Agency P.L.C. In March, Argo bought Boston-based Massamont Insurance Agency to expand in New England.

A small number of publicly trad-

ed brokers also are on the hunt, Mr. Gallant said.

Daytona Beach, Fla.-based broker Brown & Brown Inc., which has completed 29 acquisitions so far this year, said it is seeking more deals. "There are a lot of good opportunities out there, and we are looking at all of them," said President J. Powell Brown.

Mr. Brown also said he believes the pool of possible partners includes some banks looking to sell off their insurance units "in light of their financial situations."

UP CLOSE



CORY ANGER

NEW JOB TITLE: New York-based head of global structuring for GC Securities, Guy Carpenter & Co. L.L.C.'s investment banking arm and division of MMC Securities Corp.

PREVIOUS POSITION: Senior vp of the insurance products group for Lehman Bros. Inc.

GOALS FOR NEW POSITION: My goal is to really leverage the Guy Carpenter platform, take GC Securities to a leadership position in structuring, arranging and placing insurance and securities transactions.

CHALLENGES FACING THE INDUSTRY: The transactions that we do are multiyear transactions and companies are trying to find ways to diversify their source of funding capacity for catastrophes. If you look 15 years ago at capital structures, people predominantly used equity. And now, post-Katrina, everybody is saying, "I don't want to be holding onto one market for equity and one year later, reinsurance." They are asking how can they diversify and effectively fund their capital. If you look at the banking industry, they use a variety of forms of capital for diversification purposes. In the industry itself, as a result of Katrina, there have been a lot of changes around

diversification of capital sources and how you access the capital markets when you are looking at insurance and securities. How do you minimize risk and get it in place to be cost-effective in the current rate environment?

FIRST EXPERIENCE IN THE INDUSTRY JOB MARKET: When I first entered the field, it was with Lehman's, doing this type of job. I think what's different about the field relative to what I am doing now is we actually have a sense of development of the investor base and an understanding of what they need to invest. In the early days, it was how do I get people to think about these transactions as, one, strategic, and two, adding value, and three, how do we sell this risk to investors.

ADVICE: I would say have patience and perseverance in this field and be thoughtful of all the constituents in these transactions to get the best transaction.

OUTSIDE THE INDUSTRY, A DREAM JOB: Well, I love to travel and something that has always interested me is figuring out puzzles. People laugh when I tell them I've always had an interest in the CIA. I wouldn't want to be the spy on the front lines, but I wouldn't want to be a desk jockey. Somewhere in the middle, I suppose.

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Government publication assesses probability, effects of U.K. risks

Despite general praise, report faulted for not including financial threats

By TONY DOWDING

LONDON—The U.K. government has published a National Risk Register that sets out its assessment of the likelihood and potential impact of a variety of risks that could affect the United Kingdom.

The government said the register, which is part of the United Kingdom's National Security Strategy, is designed to complement community risk registers that have already been published locally by emergency planners.

The risks covered range from those deemed to be of significant impact, such as pandemic influenza—which the register said could result in up to half of the U.K. population becoming infected and between 50,000 and 750,000 deaths—and coastal flooding, to those with a greater likelihood such as attacks on transport and electronic attacks.

"The publication of information on these risks, previously held confidentially within government, is intended to encourage public debate on security and help organizations, individuals, families and communities, who want to do so, to prepare for emergencies," said the government's Cabinet Office in the introduction to the register.

The publication of the register has been broadly welcomed by those involved with risk management and business continuity planning.

"The government has done a pretty decent attempt at producing what they see as a set of national risks," said Eddie McLaughlin, a managing director in the risk consulting practice at Marsh Ltd. in London, part of New York-based Marsh Inc.

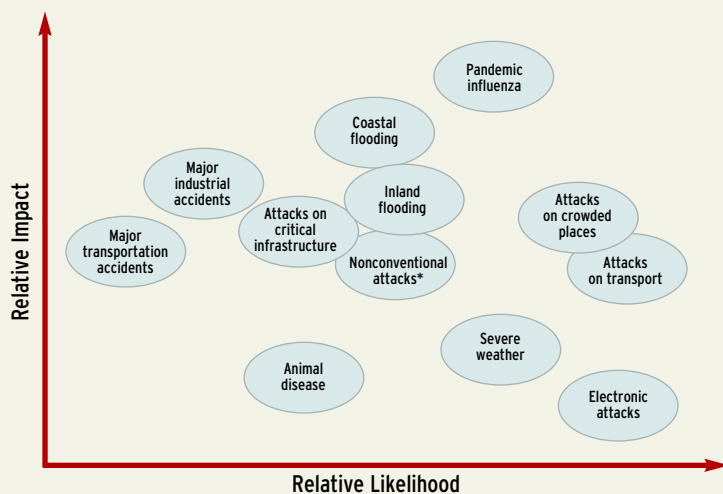
He explained that the register has three different audiences: small- and medium-size companies that will use the register to develop their plans, larger companies that will test their plans against the register and the government's response to emergencies, and the general public.

The document itself states that "much of the information in risk registers is unsurprising."

As Shaun Kelly, Crawford & Co.'s Birmingham, England-based head

LIKELIHOOD AND IMPACT OF U.K. RISKS

Risks that are most likely with the greatest effects are in the upper right quadrant.



*The use of chemical, biological, radiological and nuclear materials has the potential to have very serious and widespread consequences.
Source: National Risk Register

of the business solutions group for Europe, the Middle East and Africa, explained: "Risk managers and business continuity practitioners in larger organizations should be well-versed in the types of risks discussed because they have access to information available from their own industry bodies and professional organizations and also, of course, because that is their main role."

But he said the government's register is useful as it does "consolidate, rationalize and position risk for individuals, communities and businesses that do not have a risk or business continuity management function."

The register has value for larger organizations, too, said Mr. McLaughlin, because it sets out what the government and emergency services are doing to prepare for emergencies.

"A lot of business continuity plans are done in isolation, and some of the reasons that they failed (in the past) is that no one quite knew what the plans and actions of the local authority or government would be," he said. "So the fact that they have communicated those plans is a good thing."

Robin Rumbles, director, customer experience and compliance

at SunGard Availability Services Ltd.—based in Bracknell, England, and part of Wayne, Pa.-based SunGard Data Systems Inc.—said: "It is addressing the country as a whole and highlights many of the risks to the country, which by definition will be risks to individual organizations."

"It is important to know that the government is considering these risks and is developing strategies through its national register and its local community risk registers," he said. "The fact that you know these are in place, and that the government is considering what it is going to do, for example over the issue of floods, is good information for an organization to have."

Mr. McLaughlin said, however, that although it was a good start, he felt that there was more the government could have done.

"They do not talk much about financial risk, for example. They do not discuss systemic financial risk. They tend to categorize risks in terms of natural disasters, accidents and malicious threats, whereas of course, any financial crisis can have a huge impact on the country."

More information on the National Risk Register is available at www.cabinetoffice.gov.uk/reports/national_risk_register.aspx.

International NEWS

Lloyd's hits U.K. taxes

Leader also criticizes insurers' pricing 'madness'

By STUART COLLINS

LONDON—Lloyd's of London Chairman Lord Peter Levene has called on the U.K. government to amend the tax treatment of Lloyd's insurers or risk losing out to lower-tax domiciles.

The future success of Lloyd's is threatened by competition from other markets, notably offshore centers with tax rules that are very attractive to insurers, said the chairman of Lloyd's in a speech to the Lloyd's City Dinner in London last week.

"The tax treatment of Lloyd's in the United Kingdom must be amended for us to stay on top," he said.

Lloyd's has been in discussions with the U.K. Treasury ministry, which is said to understand the force of Lloyd's argument and is expected to reach a decision soon, Mr. Levene said. "I fear, though, that 'soon' is a moveable feast, and we need a favorable decision now," he added.

Commenting on the threat of major Atlantic hurricanes, Lord Lev-

ene said that insurers must run their businesses on an economic basis if they are to pay out for damage.

Noting that insurers are in a "soft market" where prices for insurance are falling, he said: "I am still amazed at the industry's collective madness in not maintaining prices at economic levels."

On growing Lloyd's business, Mr. Levene said the market must "wake up" to the shift of economic power toward markets in Asia, Latin America and the Middle East.

"Today, 40% of our world premium income stems from the United States, and that is built on foundations laid by our predecessors over a hundred years ago. We must work to maintain and grow our business there, but at the same time we must build the markets of the future to bequeath to our successors," he said.

Lloyd's is expanding in China and elsewhere in Asia, but it has been blocked from making progress in India, Lord Levene said, despite promises from the Indian government to remove protectionist measures.

Ratings stable in Europe

By MICHAEL BRADFORD

European insurers have escaped much of the fallout from the recent global credit market turmoil and are expected to survive the crisis in good shape, Moody's Investors Service says in a report.

Moody's said it will continue to closely monitor the quality of insurers' asset portfolios and their ability to absorb further declines in asset values as a result of the credit market crisis.

"The rating agency recognizes that Europe's insurers generally have a substantial ability to hold assets to maturity, which, together with their generally lower levels of exposure to subprime-type assets, should ultimately lead to lower real-

ized asset losses," Moody's said in a statement announcing the release of its European Insurance Industry Outlook.

"The European insurance industry once again reported good underlying results in the first half of 2008," David Masters, a Moody's analyst and author of the report, said in the statement. The property/casualty market was not affected as heavily by natural catastrophes during the first half of 2008 as in the same period a year ago, he said.

European insurers have enjoyed rating stability during the first half of this year and that should continue, at least in the medium-term, Moody's said.

The report is available at to Moody's clients at www.moody.com.

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Candidates promise change on natural catastrophe policy

But observers expect little movement on tort reform front, regardless of which party wins the White House

By **MARK A. HOFMANN**

No matter who wins the presidency, national natural catastrophe policy could be an issue addressed sooner rather than later by the next administration.

That isn't to say that Sens. John McCain, R-Ariz., and Barack Obama, D-Ill., agree what that policy should be. But both major parties addressed the issue in their official platforms, with the Democrats promising the creation of a national insurance fund and the Republicans calling for a "radical overhaul" of the nation's catastrophe response system.

The issue ties into that of insurance regulatory reform as well, with Sen. McCain having said earlier this year that optional federal charters for insurers, rather than a national insurance fund, might better meet the demands for coverage in catastrophe-prone areas.

While campaigning before the Florida primary early this year, Sen. McCain stressed his opposition to a federal catastrophe insurance backstop, indicating that federal charters could give insurers more flexibility in dealing with coastal issues without exposing taxpayers to financial liability that would arise if a government fund ran out of money.

But whether significant regulatory reform would be a priority for either a McCain or Obama administration remains murky.

What is clear is that federal tort reform is unlikely to occur for the foreseeable future, no matter which candidate wins. Although both supported the Class Action Fairness Act

of 2005, which permits the removal to federal court from state courts certain class action lawsuits, neither has spoken much about the subject. In addition, Sen. Obama's running mate—Sen. Joe Biden, D-Del.—has been an outspoken foe of any federal tort reforms during his long tenure in the Senate.

Natural catastrophe policy appears likely to receive a considerable amount of attention, though.

The Democratic platform promises the development of "a national catastrophic insurance fund to offer an affordable mechanism for high-risk catastrophes that no single private insurer can cover by itself for fear of bankruptcy," but gives no details of a fund's structure. The Republican platform calls for a "radical overhaul" of the "federal government's system for responding to a natural calamity" and says "we recognize the need for a natural disaster insurance policy" without providing details.

"It's very encouraging and historic that for the first time ever, both parties have addressed this issue in their platforms," said Ed Collins, a national director of ProtectingAmerica.org, a Washington-based group that supports a national insurance program. "They've addressed them differently, but both recognize that the status quo is unacceptable, that there is a need

for comprehensive reform and we're confident that both parties and either candidate if elected will work to enact a comprehensive integrated program that will better prepare and protect America from catastrophes."

"Gustav, Hanna, Ike and the storms that will follow, as well as



the reality that earthquakes are inevitable, will remind us that the stakes are higher than ever," said Mr. Collins, who is also managing counsel for Allstate Corp. in Northbrook, Ill.

But Howard Mills, a former New York insurance superintendent who now is chief advisor of Deloitte's Insurance Industry Group, downplayed the importance of the GOP plank.

"There's a lot in that thin sentence that doesn't necessarily imply there would be a backstop," said Mr. Mills, who was a McCain delegate at the GOP convention. "You could take that sentence and do anything."

"I still believe the politics of natural catastrophes will be driven by

events on the ground as opposed to political philosophy," said Joel Wood, senior vp at the Council of Insurance Agents & Brokers in Washington.

Mr. Wood stressed Sen. McCain's expression of support for optional federal charters for insurers as a potential harbinger of things to expect should he win the election.

The financial services regulatory reform blueprint issued by Treasury Secretary Hank Paulson earlier this year called for creation of OFCs. Mr. Wood said he thought movement would come sooner rather than later.

"The issue of insurance regulatory reform is not exactly an issue that's going to move the polls," said Mr. Mills.

"But I think conventional wisdom would be that regulatory reform, including insurance, might be something a Republican administration" would push forward, he added.

The approach an Obama administration might take remains unknown, said Mr. Wood. But he added that the Illinois senator "has not been a demagogue on insurance issues" and that CIAB members who have met with him found him "very considerate, very knowledgeable about the importance of the insurance industry to his state."

But one issue that appears dead

regardless of who wins the election in November is tort reform, at least on the federal level.

"I would think tort reform would stand less of chance with a Democratic administration and Congress than with a Republican administration and Congress," said Mr. Mills. "If McCain is elected and he's dealing with a Democratic Congress, the prospects of tort reform are not very good at all."

A longtime tort reform advocate was even blunter.

"The difference between the two is not tort reform—there will not be any significant tort reform under either Obama or McCain," said Victor Schwartz, general counsel of the American Tort Reform Assn. in Washington. "Even when the Republicans were in charge of Congress in the beginning of the Bush term, tort reform did not move. Once CAFA was made law, that was pretty much the end," he said.

"Now you have a Democratically controlled Congress and no tort reform can move. The big difference is that with Obama as president, the offensive movement by the trail lawyers to do away with" a number of protections for business, such as binding predispute arbitration and implied pre-emption of state liability laws by federal regulators, "are likely to be in high gear," he said.

Republicans: Tax credits key to McCain health reforms

CONTINUED FROM PAGE 1

always are made with pretax dollars.

In advocating health care tax equity, Sen. McCain, who accepted the Republican Party presidential nomination last week at the party's national convention in St. Paul, Minn., said making health care tax breaks available to all taxpayers would make coverage more affordable.

"We want a system of health care in which everyone can afford and acquire the treatment and preventive care they need," Sen. McCain said in an earlier position paper, Straight Talk on Health System Reform.

"Health care should be available to all and not limited by where you work or how much you make," Sen. McCain said in the position paper.

Such a proposal, though, would face rough sledding in Congress, observers say. For employees with company-provided health insurance coverage, the kind of change Sen. McCain advocates would result in additional taxable income, in some cases amounting to a significant new tax bite.

Such a change "would come as a real surprise for employees that they would be taxed on benefits they now receive tax-free," said Paul Dennett, senior vp-health care reform for the American Benefits Council in Washington.

The fear of a political backlash

that likely would erupt from the millions of employees who would be taxed on employer-paid health care benefits would make federal legislators reluctant to back such a plan, observers say.

"This would be a minefield. It is hard to see any circumstances for an agreement on this scale of change," said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

'Improvements in portability is something Democrats and Republicans could agree on.'

Frank McArdle, Hewitt Associates Inc.

The tax-free status of employer-provided coverage has long been a "sacred cow," said Steve Raetzman, a senior consultant with Watson Wyatt Worldwide in Arlington.

"No one in Congress has seen fit to back a change. And that is not very likely to change," Mr. Raetzman said.

While the health care tax plan may be a nonstarter in a McCain presidency, other reform ideas backed by the Arizona Republican might receive a more favorable reception.

For example, Sen. McCain favors improvements in health care plan portability so employees could change jobs without the risk of losing coverage.

Indeed, in his acceptance speech last week, Sen. McCain said his health care reform plan will "make it easier for Americans to find and keep good health insurance."

While Sen. McCain has not detailed exactly what he has in mind, improvements in health care portability would build on a 1996 law that removed some roadblocks for employees looking to change jobs. Under the Health Insurance Portability and Accountability Act, employees who change jobs cannot be denied coverage for pre-existing conditions by their new employer.

That politically popular law, though, has a number of exceptions, which Sen. McCain might try to loosen. For example, in order for the ban on pre-existing medical condition exclusions to apply, employees can't let coverage lapse for more than two months.

"Improvements in portability is something Democrats and Republicans could agree on," Mr. McArdle said.

"This is one of the more logical areas Congress could address," Mr. Raetzman said.

Another area for which the odds are high for enactment in a McCain presidency is mental health care benefits parity, assuming Congress

doesn't reach a final agreement on parity legislation in the remaining weeks of the current session. Such legislation would mandate that employers provide the same coverage for mental disorders as they offer for physical ailments.

"I would expect mental health care parity to be part of Sen. McCain's health care agenda," said James Gelfand, senior health policy manager at the U.S. Chamber of Commerce in Washington.

Sen. McCain, in fact, endorses mental health care parity as does the Republican Party platform.

Observers also expect Sen. McCain to push for legislation to increase the appeal of health savings accounts. In a position paper, Sen. McCain said he will, if elected, expand HSAs, which he described as "an important step in the direction of putting families in charge of what they pay for."

Congressional Democrats, especially those in the House, are likely to oppose HSA legislation, but observers say such proposals shouldn't be counted out. While acknowledging enactment of HSA legislation would be difficult, observers say Democrats might back such an expansion in exchange for presidential support of measures they want.

In fact, Sen. McCain, a self-described political maverick, has a long history of crossing party lines to try to find a middle ground, Mr. Raetzman said.

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Outlook: Only major storm will turn tide

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that would probably turn the market around.”

“Our estimate is that the reinsurance industry has about \$50 billion in excess capital, so as we approach that number, you get closer to the breaking point on prices,” said Cliff Gallant, managing director and analyst with Keefe, Bruyette & Woods Inc. in New York.

“If we have three or four events—which right now looks possible—that could start to have an impact. If each event reaches \$10 billion or so, you start to use up the excess capital,” Mr. Gallant said.

Some observers point out, though, that reinsurers are not only highly capitalized but also are protected by higher ceding-company retentions and other risk management steps taken since Katrina, meaning that a similarly sized storm would not have as much of an impact.

“I’m not sure that even another Katrina would have a significant effect on turning the market,” said John L. Ward, chief executive officer of Cincinnati Partners L.L.P. in Cincinnati.

Hurricane Gustav made landfall last week 70 miles southwest of New Orleans as a Category 2 storm with maximum sustained winds of about 110 mph.

Damage estimates

Late last week, catastrophe modeling companies’ estimates of onshore and offshore insured losses ranged from \$2 billion to \$7 billion, with the offshore component—comprising mainly oil and gas drilling rigs—accounting for \$1.8 billion to \$4.4 billion of the totals.

One modeler, EQECAT Inc., cut its estimated range of onshore damage to \$3 billion to \$7 billion from an earlier \$6 billion to \$10 billion.

When Gustav losses were projected to reach as high as \$10 billion, that would have put it among the five costliest U.S. hurricanes on record, Moody’s Investors Service noted in a report on the storm. If low-end estimates prove more accurate, Gustav may not even rank in

the top 10.

Even at the high end, though, Gustav is not likely to trigger a tightening market, observers agree.

A.M. Best Co. Inc. said it “does not expect the impact of Gustav alone to change the current competitive dynamics facing insurers and reinsurers,” even though the losses are “considerable in comparison to the overall premiums collected for the coverage.” A \$4 billion onshore loss from Gustav would represent 100% of the cat-exposed property premiums paid in Louisiana last year, Best noted.

“It’s a significant event in a year of poor results” for reinsurers, said Steven Bolland, president of reinsurance broker Gill & Roeser Inc. in New York. But “I don’t think it’s a market-changing event.”

Not market-turning

Industry experts offered varying ideas about what it would take to turn the market.

They include a single, shockingly severe catastrophe; an accumulation of losses from smaller events; or a combination of large cat losses and other pressures, such as widening investment losses.

A single loss would have to be in the neighborhood of \$50 billion to wipe out excess reinsurance industry capital and push up pricing, said KBW’s Mr. Gallant.

“You’d have to have a loss north of (\$40 billion to \$50 billion) to bring the kind of contraction we saw after Katrina,” agreed Pedro Galban, a partner with the DLJ Merchant Banking Partners unit of Credit Suisse in New York.

Apart from its size, a single loss also would have to be so unexpected in nature as to shift market assumptions, suggested Sean Mooney, chief economist for Guy Carpenter & Co. Inc. in New York.

“You would need a large storm, and that storm would have to be a shock, to be outside the range of what people are expecting,” Mr. Mooney said.

A succession of smaller storms accumulating tens of billions of dollars in losses might also turn the

market, which remains a possibility, observers add.

Tropical Storm Hanna was expected to make landfall along the Southeast coast during the week-end, possibly strengthening to a Category 1 hurricane. Following it was the more dangerous Hurricane Ike, forecast last week to make landfall in South Florida, possibly as a Category 4 storm.

A “compilation” of losses from Gustav and additional hurricanes this season, along with cat losses already incurred in the first half, could dampen the market’s competitive tendencies, said Richard Attanasio, an analyst with A.M. Best.

“One storm doesn’t necessarily make a market turn, but a few would,” Mr. Bolland said.

A market turn may also result from a combination of cat losses and other factors. The hard market cycle that began in 2001-2002 stemmed not only from the Sept. 11, 2001, terrorist attacks but also from a sharp drop in stock prices and insurers’ recognition of huge shortfalls in casualty reserves, noted Mark Rouck, a senior director at Fitch Ratings in Chicago.

“You put all three of those things together and that takes enough capital out of the market to really cause it to turn,” Mr. Rouck said, suggesting that it may take a combination of circumstances to turn the current market.

After two years of light U.S. storm losses, insurers and reinsurers may view a rise in the frequency of storms this year with caution, observers say.

“If there were a large number of small storms, reinsurers would become nervous,” said Mr. Mooney, adding that the more frequent storms become, the greater the probability that one will be devastating.

Referring to Gustav, S&P’s Mr. Gharib said, “it’s a wake-up call that there is increasing frequency and (insurers and reinsurers) need to pay more attention to that.”

Colleen McCarthy contributed to this story.

Gustav: Losses stream in

CONTINUED FROM PAGE 1

though severe in some areas, were relatively moderate compared with Hurricane Katrina, which hit the region three years ago.

“I think this is the worst storm to hit Baton Rouge in 50 years,” said Ben Lemann, area president of the Baton Rouge and Lake Charles, La. offices of broker Arthur J. Gallagher Risk Management Services Inc.

Mr. Lemann said the city’s power infrastructure was devastated. Entergy Corp., an energy utility with affiliates in Louisiana, Mississippi, Texas and Arkansas, reported more than 850,000 customers lost power due to Gustav, though power had been restored to many customers late last week.

Mr. Lemann and others expect the outages to generate a stream of business interruption claims. By late last week, Gallagher had received a “steady” volume of claims.

Other than pockets of severe damage, like the outages in Baton Rouge, the storm brought “fairly wide areas of relatively light damage,” said David Smith, senior vp of the Oakland, Calif.-based cat modeler EQECAT Inc.

“This wasn’t a particularly severe event as these things go,” Mr. Smith said. “It wasn’t particularly strong windwise, but (was) a fairly broad storm and (there is) a decent amount of exposure in the area.”

EQECAT is refining its most recent estimate of \$3 billion to \$7 billion in damages caused by Gustav and likely will end with a figure in the middle of that range, he said. Boston-based modeler AIR Worldwide Corp. predicted \$2 billion to \$4.5 billion in damages, and Newark, Calif.-based Risk Management Solutions Inc. put the range at \$2.5 billion to \$4.5 billion.

Christine Ziehm, director of model management at RMS, said the firm’s reconnaissance team had visited several cities in Louisiana and reported no major road closures. Although large numbers of trees fell, the team saw relatively few damaged buildings, she said.

After a mandatory evacuation

before the storm hit, New Orleans residents began returning Sept. 3. Insurers and claims adjusters cautioned that they were just beginning to hear reports at the end of the week, but that those reports indicated moderate damage.

Still, the power outages and the absence of workers would hinder firms’ ability to return to normal operations, said Nigel Brunning, regional partner and chief executive officer for the New Orleans office of Willis Group Holdings.

Production disruptions

Energy production operations were also disrupted by the storm.

The Interior Department’s Minerals Management Service estimates that 100% of the region’s oil production had been “shut in”—closing underground safety valves so no more oil is brought into the production plant or refinery—by the time Gustav made landfall on Sept. 1. Four days later, 96% of the Gulf’s oil production and 92% of the region’s natural gas production remained shut in, according to MMS. Of 31 refineries in Gustav’s path, the U.S. Department of Energy reported that four were back to normal by Sept. 5, with another eight working at reduced capacity.

The gaming industry, which suffered billions of dollars in damages when the 2005 storms ripped casino barges from their moorings, expects far smaller losses from Gustav.

Lance Ewing, vp of risk management for Harrah’s Entertainment Inc. in Cordova, Tenn., said Harrah’s Casino in New Orleans and its Grand Casino in Biloxi, Miss., suffered some water damage, but most of its losses would come from business interruption. Scheduled to reopen over the weekend, the facilities will have been closed less than 10 days, he said.

In addition to the weaker storm, the gaming industry fared better during Gustav than the hurricanes three years ago because a 2005 Mississippi law allows onshore casinos to be situated up to 800 feet away from the coastline. Previously, casinos had to be located on the water.

Access: Target settles case over Web site access for visually impaired

CONTINUED FROM PAGE 4

Whether the Americans with Disabilities Act’s protections apply to the Web has been in question for years. In 2002, the judge in a federal lawsuit against Southwest Airlines Co. ruled that the company’s Web site, as a nonphysical space, was not a “public accommodation” under the ADA.

In the Target lawsuit, the NFB alleged that Target’s retail Web site was incomprehensible to screen-reading programs that read online text to the blind and that it was impossible to make a purchase on the site without being able to point a mouse.

The key ruling in the case, Mr. Jaskiewicz said, came in October 2007, when Northern District Judge Marilyn Hall Patel accepted plain-

tiffs’ argument that Target’s Web site, if it were inaccessible, could prevent blind users from enjoying the public accommodation of the physical store. Some users in the lawsuit claimed that online “preshopping” is an important part of in-store accessibility for blind shoppers, and that the inability to do so made their in-store shopping more difficult or caused them to shop elsewhere. This interpretation—that the site served as a “nexus” with the actual store—left the Web site open to an ADA lawsuit.

While case law has not established that a Web site itself, without the connection to a physical store, is subject to ADA standards, Mr. Jaskiewicz sees that as a possibility.

“Certainly the case law that you see so far is that a Web site is not a

public accommodation,” Mr. Jaskiewicz said. “But if you look at the trends, creative lawyers are finding their way around it. It’s not too far to see where some court’s going to come to the next step, that Web sites are public accommodations.” Such a decision would leave e-commerce sites as open to ADA lawsuits as any commercial building.

More suits coming?

In the same ruling, Judge Patel found that California civil rights laws—the Unruh Act and the Disabled Persons Act—do not require an accessibility suit to be tied to a physical store.

“Under the Unruh Act, any California resident could theoretically sue a company over its Web site being inaccessible, no matter where the company is based,” said Jim

Thatcher, an Austin, Texas-based Web accessibility consultant who helped design one of the first screen reader programs for IBM Corp. and testified in the Target lawsuit as an expert witness for the NFB.

“I think these court rulings should really be a wake-up call to anyone who has a Web site that operates in California—which is to say, everyone on the Web,” said Lainey Feingold, a private practice Berkeley, Calif.-based lawyer who has negotiated Web accessibility agreements for retailers including Rite-Aid Corp. and RadioShack Corp. Businesses with inaccessible Web sites “should be very worried about lawsuits,” she said.

Visually impaired users generally access the Web using screen reader programs that translate on-screen text to a synthesized voice or, using

a specially made device, to Braille. “The Web was almost more accessible in the early days, before it was so image-based,” Ms. Feingold said.

Jared Smith, associate director of WebAIM, a Logan, Utah-based nonprofit that performs Web accessibility training, explained that, for links and images to be intelligible to a screen reader, they have to be accompanied by meaningful text labels, which are usually hidden in the underlying code. “It usually doesn’t appear visually, but it can be seen by the screen reader,” Mr. Smith said. “That was actually one of the biggest issues surrounding the Target page.”

National Federation of the Blind et al. vs. Target Corp., U.S. District Court for the Northern District of California, No. C 06-1802 MHP.

News In Brief

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fraud and mail fraud charges in February were former Gen Re Chief Executive Officer Ronald E. Ferguson; former Gen Re Chief Financial Officer Elizabeth Monrad; Robert Graham, a former Gen Re senior vp and associate general counsel; Christopher Garand, a former senior vp for finite reinsurance for Gen Re; and Christian M. Milton, a former senior vp with AIG. Prosecutors charged that the five defendants knew that the loss portfolio deal was a sham designed to inflate AIG's loss reserves by \$500 million to placate stock market analysts.

MMC says it won't bid for Benfield

Marsh & McLennan Cos. Inc. last week denied media reports that it planned to outbid rival Aon Corp. for London-based reinsurance brokerage Benfield Group. "We have no interest in making a counterbid for Benfield," a spokeswoman for New York-based MMC said. Chicago-based Aon last month said it will pay \$1.75 billion in cash to acquire Benfield.

Reinsurer writings up, but ratio worsens

A group of 20 U.S. property/casualty reinsurers tracked by the Reinsurance Assn. of America wrote \$12.7 billion of net premiums in the first half of this year, up 4.1% compared with the total recorded by a similar group a year ago. The Washington-based RAA said the group posted a 97.5% combined ratio for the first six months of 2008, up from 90% in 2007.

Alabama names new commissioner

Jim L. Ridling, a banker and former insurance executive, has been named Alabama's insurance commissioner. Mr. Ridling, who helped establish the River Bank & Trust and is vice chairman its board, previously worked as president and chief executive officer of Southern Guaranty Insurance Co. in Montgomery. Mr. Ridling replaces Walter A. Bell, who was appointed chairman of Swiss Re America

Holding Corp.

S.F. clarifies rules on health care spending

San Francisco regulators have provided further guidance on how to comply with a controversial ordinance that imposes a health care spending requirement on employers. The latest guidance, which was issued in response to questions from employers, clarifies how much employees must earn for them to qualify as exempt employees, for whom employers do not have to make the required contributions. In the latest guidance, San Francisco regulators said the cutoff figure for determining exemption refers to individuals' base salary and that bonuses and overtime should be excluded in determining that figure.

Lockton approved for China operation

Lockton Cos. L.L.C. has received a wholly owned foreign enterprise insurance broking license and will open a new operation in China. The license, which was approved by the China Insurance Regulatory Commission, allows the brokerage to set up a unit in Shanghai, which will be known as Lockton Cos. (Shanghai) Insurance Brokers Ltd. Lockton has operated in Asia for more than 30 years and established an office in Beijing in 1996.

Noted

Property/casualty insurance rates dropped an average of 10% in August compared with rates of a year earlier, MarketScout reported....**Catlin Group Ltd.** is sponsoring a scientific expedition to gather data on the impact of global warming on the Arctic ice cap. The effort, slated to begin next February, will be led by British explorer Pen Hadlow....**Ironshore Specialty Insurance Co.** said it has been added to New York's list of eligible surplus lines insurers. Ironshore, which has surplus lines approval in 46 states, said it will provide specialty commercial insurance on an excess and surplus lines basis in New York....**CIGNA Corp.** has appointed Dr. Charles Smith as chief medical officer of its health solutions unit, which offers wellness, lifestyle management and coaching programs. Dr. Smith is returning to Philadelphia-based CIGNA, where he held various medical leadership positions from 1999 to 2007. Most recently, he was a principal for the Towers Perrin health and welfare practice.

Antitrust: Court refuses Brown & Brown request

CONTINUED FROM PAGE 3

was not in accordance with the state statutes.

Brown & Brown appealed the ruling, and the case was transferred to the state Supreme Court.

In a 4-1 decision, the Connecticut high court dismissed Brown & Brown's appeal, concluding that it did not have jurisdiction to rule because no final judgment has been rendered in the trial court.

Mr. Blumenthal applauded the decision, saying it allows his office to resume its investigation into the brokerage, which he said should "swiftly surrender documents...or face more legal action."

"State law provides my office with clear authority to share subpoenaed documents with witnesses and others in order to conduct antitrust investigations," Mr. Blumenthal said in a statement.

"Brown & Brown's argument clearly contradicted the statute,

seeking to hobble and hamstring my office's ability to uncover and uproot anticompetitive activity," he said.

Brown & Brown attorney William Rubenstein, a partner with Axinn, Veltrop & Harkrider L.L.P., said his client is considering the best way to get the case back to the Connecticut Supreme Court for a decision.

The trial judge could, for example, convert the denial of summary judgment motion into a formal judgment in favor of the attorney general, which would be "ripe for appeal," Mr. Rubenstein said.

The issue does not pertain only to Brown & Brown, Mr. Rubenstein noted.

"Every investigated company has had to have confidentiality discussions and ultimately agreements with attorneys general, which govern how these things are going to be dealt with. It would be nice to know what the law actually is," Mr. Rubenstein said.

Comp: Employers urge veto of Calif. legislation

CONTINUED FROM PAGE 3

comments before determining whether to implement its proposal, a DWC spokeswoman said. Last month the Workers' Compensation Insurance Rating Bureau of California recommended raising comp rates in the state by 16% next year, and said an additional 3.7% increase would be necessary if the DWC adopts its proposal.

The California Chamber, meanwhile, has also added S.B. 1115, passed Aug. 19 and sponsored by Sen. Carole Migden, D-San Francisco, to its job-killer list. It prohibits discrimination on the basis of race, religion, color, national origin, age, gender, marital status, sex or genetic predisposition when doctors apportion a claim's medical causation for the purpose of determining an employer's liability for permanent disability awards.

Apportionment refers to separating out pre-existing medical conditions or previous industrial medical disabilities from the current permanent disability claim for which an employer is responsible.

Apportionment was one of the most significant components of

California's 2004 reforms, said a spokesman for the Sacramento-based Workers' Compensation Action Network, which is a coalition of employers and insurers.

Before the reforms, apportionment was one of the most litigated issues in California's work comp system, he added. But the reforms required doctors to "tease out" pre-existing illnesses and injuries when helping determine total permanent disability awards.

Employers oppose S.B. 1115 because it would make apportionment more complex and easier for claimants to litigate the matter, the WCAN spokesman said.

S.B. 1115 is unnecessary since California law already protects against discrimination, Mr. Suchil said.

Legislators have approved several other workers compensation bills during the current session.

For instance, Assembly Bill 2081, passed Aug. 29 and sponsored by Assemblyman Joe Coto, D-San Jose, would prohibit utilization review companies from paying kickbacks to third-party administrators.

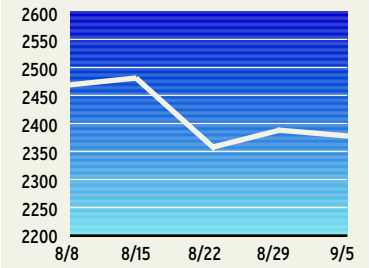
But employers are focusing their opposition on S.B. 1115 and S.B. 1717, the WNAC spokesman said.

Stock Index

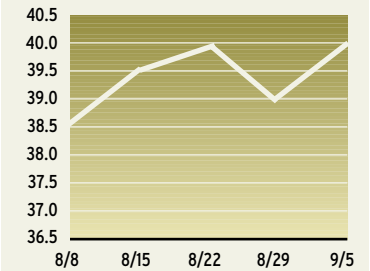
[9/1 - 9/5]

Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.IndustryFocus.com.

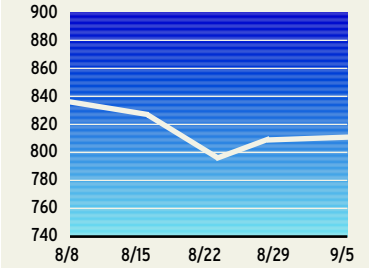
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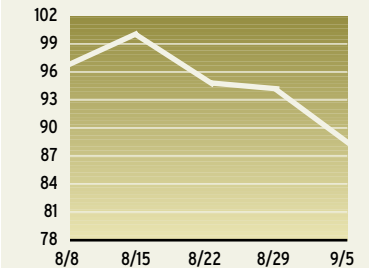
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

Indicator	Value	Change
BI STOCK INDEX	2390.16	-0.90%
DOW JONES	11543.55	-2.79%
S&P 500	1282.83	-3.16%

LARGEST GAINS

Ambac Financial Group Inc.	18.99%
CNA Financial Corp.	7.56%
Meadowbrook Insurance	11.79%
Brown & Brown Inc.	7.04%
Unitrin Inc.	4.70%

LARGEST LOSSES

UnitedHealth Group Inc.	-9.00%
Wellpoint Health Networks	-7.14%
Humana Inc.	-6.55%
XL Capital Ltd.	-5.07%
CIGNA Inc.	-4.92%

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



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Is disco inferno a covered peril?

An insurance executive in upstate New York is keeping up the “Saturday Night Fever” with the World’s Largest Disco party.

The annual sell-out event in Buffalo, N.Y., features an evening of groovy tunes, leisure suits and platform shoes—and draws disco fans of all ages.

Dave Pietrowski, vp at Depew, N.Y.-based managing general agent LoVullo Associates Inc., founded the event in 1994 as a way to combine his love of 70’s music with his passion for philanthropy. The event has raised more than \$1 million for cancer organizations in New York.

Each year, super 70’s celebs like Ted Lange, the actor who played Isaac Washington from “The Love Boat”; Barry Williams, who played Greg Brady in “The Brady Bunch”; and Deney Terrio from the television program Dance Fever, have all been on hand to dance the night away.

The event is held the Saturday after Thanksgiving every year. For more information, visit www.worldslargestdisco.com.

Business Insurance END PAGE

Contributing: Jeff Casale, Mark A. Hofman, Colleen McCarthy, Sally Roberts

Lighter cars, heavy claims

Drivers are feeling the pinch at the pump due to rising gas prices, and they soon may be paying more for car insurance as well.

According to new research from the Insurance Research Council, the average motor vehicle injury claim is likely to climb as more drivers opt for lighter, more fuel-efficient vehicles to help offset rising gas prices.

The average auto injury claim payment in accidents involving lighter-weight vehicles was 14.3% greater than the average payment in accidents involving heavy vehicles, according to the IRC, which analyzed more than 9,000 personal injury protection claims with payments made in 2007.

Whether this ultimately results in higher insurance rates



remains to be seen, but it has the potential to offset, to some extent, any beneficial effects to rates of reduced driving, the IRC said.

Bitter bottle battle capped off

The battle of the beer bottles has ended in Ontario.

That battle was a legal fight between Waterloo, Ontario-based Brick Brewing Co. Ltd. and Mississauga, Ontario-based Brewers Retail Inc., which operates The Beer Store. The Beer Store has more than 400 outlets in Ontario.

At issue was Brick’s use of so-called “stubby” bottles in a retro marketing campaign launched six years ago. Stubbies, which have shorter necks than stan-

dard beer bottles, were the most common shape of beer bottles in Canada until the 1980s.

But when Brick started using stubbies to market its Red Cap brand, Brewers Retail said the craft brewer violated an agreement to use standard long-neck bottles.

Brick responded that it had never agreed to use only one type of bottle.

The case was slated to go to court this month, but Brick

announced last week that the companies reached an undisclosed agreement allowing Brick to continue using stubbies for Red Cap, one of its 15 beers.

According to a Reuters story, Brick Chairman Jim Brickman said the case had cost his company about \$850,000 Canadian (\$802,000) in legal costs, adding, “We’re just relieved that we can go back to selling more beer.”

No doubt his customers are relieved as well that the company can focus its attention on a really important matter—what goes into the bottles, regardless of their shape.



Guardian's goal? Informed employees

While a big-time “hockey mom from Alaska” is soaking up the political spotlight, a big-time soccer playing mom is working to make sure employees understand the importance of their benefits packages.

Mia Hamm, an Olympic gold medalist and new mom, has partnered with the Guardian Life Insurance Co. of America to promote the importance of workplace benefits. The fall marks the beginning

of open enrollment season when employees across the United States re-assess their benefit elections.

According to a survey by New York-based Guardian, employees spend an average of 1.4 hours a year reviewing their benefits, compared with nearly five hours of holiday shopping. Guardian and Ms. Hamm are trying to change that by informing employees and urging them to make choices that will benefit them and their families.

“As a new mom, (Ms. Hamm) understands first-hand the importance of preparation.” Elena Wu, a vp with Guardian Group Marketing and Worksite Planning, said in a statement.

A video of Ms. Hamm explaining the importance of employee benefits can be viewed online at www.guardianenrollmenttips.com.



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