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## In Brief

**JLT Ltd. chair resigns,  
replacement named**

Andrew Agnew has resigned as chairman of Jardine Lloyd Thompson Ltd. and has been replaced by Martin Hiller, the London broker's chief executive. Mr. Agnew also stepped down as a member of Jardine Lloyd Thompson Group P.L.C.'s executive committee, JLT said. Mr. Agnew was named chairman nearly four years ago when JLT Group merged its risk solutions business with its Lloyd's of London broker Agnew Higgins Pickering & Co. Ltd. to form JLT Ltd.

**Former Frank Crystal  
execs launch brokerage**

Mark Freitas, the former president and chief operating officer of brokerage Frank Crystal & Co., said he is starting a

See **IN BRIEF** page 20

## LIABILITY & LITIGATION

# High court to tackle varied liability cases

*Pre-emption issues, retaliation claims on upcoming docket*

By **MARK A. HOFMANN**

**WASHINGTON**—Cases with implications for risk managers constitute nearly half of the business docket facing the U.S. Supreme Court when it begins its new term Oct. 4.

Issues such as federal pre-emption of state tort laws in product liability cases, the use of arbitration in consumer contracts, the amount of information a company must disclose regarding potential liability exposures and the extent of protections afforded employees under the Civil Rights Act of 1964 all will be before the court in the new term.

Led by Chief Justice John Roberts, the Supreme Court has maintained a "healthy appetite" for such cases, Robin Conrad, executive vp of the Washington-based National Chamber Litigation Center Inc., which handles litigation for the U.S. Chamber of Commerce, said during a briefing last week.

She said 17 of the 38 cases accepted by the high court so far are

business-related.

One recurring theme is federal pre-emption of state tort law.

"Pre-emption in the area of tort claims is a particularly important issue for business," Maureen Mahoney, of counsel in the Washington office of Latham & Watkins L.L.P., told the briefing. The court will consider that issue in two product liability cases.

The first, to be heard Oct. 12, is *Russell Bruesewitz and Robalee Bruesewitz vs. Wyeth Inc. et al.* Hannah Bruesewitz, described in court papers as a healthy 6-month-old child, suffered permanent developmental damage after receiving Wyeth's Tri-Immunol, a combined vaccine for diphtheria, pertussis and tetanus, in 1992.

The National Child Vaccine and Injury Act of 1986 holds that no vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after Oct. 1, 1988, if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accom-

See **COURT** page 20

## CATASTROPHES



REUTERS/LANDOV

**Hurricane Karl hit central Mexico last week, resulting in flooding and damage that cut off the port city of Veracruz from the rest of the Mexican state.**

# Despite active storm season, market seen absorbing losses

By **MICHAEL BRADFORD**

An active Atlantic hurricane season is keeping property owners on their toes, but it hasn't been a big worry for reinsurers that still hold significant excess capital even after substantial catastrophe losses this year.

Hurricane Igor pounded Bermuda and Hurricane Karl hit Mexico with high winds and extensive flooding

this month, leaving insured damages that catastrophe modeling companies estimated as high as \$300 million.

However, hurricane losses of that size won't faze reinsurers, experts said.

"This is not even going to be a ripple in the marketplace leading up to

See **DAMAGE** page 7

## RISK MANAGEMENT

# Twitter virus attack highlights key risk of social media

By **JUDY GREENWALD**

Last week's hacker attack on the popular microblogging site Twitter underscores a major risk that companies face in using third-party-run social media sites in their marketing and outreach efforts.

Last Tuesday morning, many Twitter users were hit by a worm—a type of self-replicating virus—that was triggered simply by a user "mousing" over a link in a Twitter posting, or Tweet. Affected users were redirected to porn and other third-party sites, and they also spread the virus to

accounts of their followers—those linked to them on Twitter. The problem spread quickly, but was fixed by Twitter Tuesday afternoon. Users of third-party Twitter applications were not affected.

More and more companies are setting up accounts on social media sites such as Twitter and Facebook in an effort to connect with customers and increase their public profile, among other reasons. Experts say many risks that firms face from having a presence on social media sites are inherent in using a third-party provider, whose

security and crisis management they cannot control.

But vigilance can mitigate the impact of incidents, they say.

Jeffrey D. Neuburger, a partner with law firm Proskauer Rose L.L.P. in New York, said he had not seen any reports of actual damage as a result of last week's Twitter incident, which was "more along the lines of a nuisance." But, he said, "when companies use services like Twitter, they are exposed" to vulnerabilities and "there are always people out

See **TWITTER** page 18



## REINSURANCE: RENDEZ-VOUS REPORT

Reinsurers set to cut prices again; property cat rates seen falling at year-end; casualty rates sink further; reinsurers strive to manage excess capital; growth expected to return to the cat bond market; interest rises in industry loss warranties.

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Week of September 20, 2010

1. Former Frank Crystal execs launch brokerage
2. Labor Department guidance clarifies health care law
3. Obama to meet with insurance commissioners
4. Congress gives final approval to Roth 401(k) rollover bill
5. 16 brokerages join LexisNexis Insurance Exchange
6. Directors and officers liability rates fall 16.4%: Aon
7. Senators warn health insurers on premium increases
8. Nashville mall sues insurers, broker in flood claims dispute
9. FSA can't reimburse OTC drugs without prescription: IRS
10. Aon, Hewitt shareholders approve \$4.9 billion deal

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## RISK MANAGEMENT

# Stalled projects muddle cover

*Owners, builders should check insurance when restarting work*

By **JEFF CASALE**

Thousands of U.S. building projects were shut down when the economy crashed and the banking crisis dried up funding, creating insurance coverage dilemmas for property owners and contractors that persist today.

Resuming work on offices, hotels, condominiums and homes that stalled after the recession began in December 2007 raises a host of insurance-related questions. While the National Bureau of Economic

Research said last week that the recession officially ended in June 2009, the economy remains weak and owners and builders face the additional challenge of what insurance will cover once a project is restarted.

"Stalled projects complicate things from an insurance standpoint," said Stacy Pocrass, Denver-based vp and account executive in Lockton Cos. L.L.C.'s construction practice. "Particularly when you restart a project, you need to know what type of insurance was in place prior to the restart, who was the project owner, and will the work completed prior to the work stoppage be covered by insurance once the project is completed."

Construction projects are abandoned for several reasons, but it often comes down to financing for those projects, industry experts say.

Between January and August 2008, 5,980 projects reached the abandoned phase, according to Norcross, Ga.-based Reed Construction Data Inc., a division of Reed Business Information. That number jumped 6.2% to 6,348 during the same time period in 2009 and crept up another 1.5% during same period this year.

Construction projects that were shut down in 2008-2010 were up 20% to 25% from 2006 and 2007, before the recession began, said Jim

See **PROJECTS** page 18



Construction project shutdowns since 2008 have been 20% to 25% higher than before the recession began in December 2007, according to Reed Construction Data Inc.

## LIABILITY &amp; LITIGATION



Workers remove contaminated drywall from a home in Bradenton, Fla., in January 2009. Litigation against a China-based drywall maker continues.

## Chinese drywall lawsuit moved to New Orleans

*Judge rules Florida not venue for suit by Chartis, Lexington*

By **JEFF CASALE**

**TAMPA, Fla.**—A federal judge in a Florida court has ordered a lawsuit brought by Chartis Inc. and subsidiary Lexington Insurance Co. concerning Chinese drywall coverage be transferred to New Orleans, where multidistrict litigation is pending.

Judge Steven D. Merryday of the U.S. District Court for the Middle District of Florida in Tampa last week ordered that Chartis' case be moved to U.S. District Court for the Eastern District Court of Louisiana as part of the MDL.

The defendants in the case, Bonita Springs, Fla.-based homebuilder WCI Communities Inc. and WCI Trustee Robert C. Pate, sought to dismiss or to transfer Chartis' case, alleging the insurer violated the "first filed" rule and was engaged in "a flagrant and belated attempt at forum shopping," according to court documents.

In his capacity as the trustee for the WCI Drywall Trust, which was formed in July 2009 after the homebuilder and its subsidiaries went bankrupt, Mr. Pate filed suit in December 2009 against 14 insurers, including Chartis, that sold liability insurance to WCI in the New Orleans MDL.

On June 29, Chartis sued WCI and sought a declaratory judgment

See **DRYWALL** page 6

## HEALTH CARE REFORM

## Guidance clarifies health care reforms

By **JERRY GEISEL**

**WASHINGTON**—The latest health care reform law regulatory guidance gives employers more time to comply with certain provisions, clears up uncertainty on other requirements and suggests that some rules will be relaxed.

The most significant changes in last week's Labor Department guidance involve Patient Protection and Affordable Care Act provisions affecting coverage decisions and review procedures. For example, the law requires that health plan enrollees be notified of an urgent care coverage decision within 24 hours of a request. A decade-old Labor Department rule had required that such decisions be made within 72 hours.

In rules issued in July, regulators said the notification requirement

would go into effect on Jan. 1, 2011. But in technical guidance released last week, the Labor Department said it was establishing an "enforcement grace period" through July 1, 2011. No action will be taken against employers sponsoring self-funded plans that are working in good faith to comply with the new standard by that deadline, the federal agency said.

The same grace period extension applies to other new mandates, including one requiring that notices of internal and external claims appeals processes and review be provided in a "culturally and linguistically appropriate manner," and another that requires plans to step up the amount of information provided to enrollees when cover-

age is denied.

Benefit lobbying organizations welcomed the grace periods as necessary to give employers the time needed to comply with the requirements.

**24 hrs**

The new law requires that health plan enrollees be notified of an urgent care coverage decision within 24 hours of a request.

"The new guidance will help ensure that employers and health plans have much-needed additional time to make complex changes in the procedures they use to make accurate and efficient determinations on hundreds of millions of health care claims each year," James Klein, president of the Washing-

ton-based American Benefits Council, said in a statement.

In separate guidance, the Labor Department clarified a requirement

See **GUIDANCE** page 21

## AGENTS &amp; BROKERS

## Insurance exchange adds brokerages

*LexisNexis project seeks to improve placement process*

By **MARK A. HOFMANN**

**NEW YORK**—Establishing an online insurance exchange will aid risk managers by increasing efficiency and quality of data, according to people involved in the project.

Sixteen insurance brokerages have joined the LexisNexis Insurance Exchange, LexisNexis Risk Solutions said last week. The exchange, which was announced earlier this year, is designed to enhance the flow of application data among insurance agents, brokers and insurers (BI,

March 1). The exchange was established by an alliance of LexisNexis Risk Solutions, the Council of Insurance Agents & Brokers and intellectual property development company Marketcore Inc.

The brokers are part of an early adopter program that is to launch Oct. 11. An industrywide launch is slated for the second quarter of next year.

The online exchange is designed to enhance efficiency and reduce errors and redundancy in placing insurance, said Peter Lynch, president of the New York-based LexisNexis Insurance Exchange. "Brokers will be better brokers," he said.

"We're not trying to change the world," said Mr. Lynch. "We're creating efficiency in a system that

already worked." Greater efficiency will allow brokers to "spend more time with risk managers and understand the risks," he said.

"Probably the most important thing for the buyers: I think there will be significant improvement in quality over the long haul," said Ken Crerar, president of the CIAB. "That's the critical piece for this. One of the quality challenges the industry has is the number of handoffs that happen because of the lack of technology and a single entry system."

Mr. Crerar noted that the industry has struggled for decades to set up such a system, and the new exchange will build on accomplishments of previous years.

See **EXCHANGE** page 21

## HEALTH CARE BENEFITS

# Group health plan costs to rise 8.8%, Hewitt says

*Economy helps fuel largest cost increase since 2005: Study*

By **JERRY GEISEL**

Group health care plan costs are expected to increase an average of 8.8% in 2011, the largest percentage gain since 2005, new research shows.

The average group health plan cost per employee is projected to rise to \$9,821 next year, according to an analysis released by Lincolnshire, Ill.-based Hewitt Associates Inc. this week. Costs include employer and employee premium

contributions, but not employee out-of-pocket costs, such as copayments and coinsurance.

The analysis is based on information from 325 large employers, which mainly self-fund their health care programs.

That 8.8% cost hike compares with a 6.9% increase this year and 6% increases in 2008 and 2007 (see box).

The spike in costs is driven in large part by the economy, said Jim Winkler, a managing principal in Hewitt's Norwalk, Conn., office.

With the ongoing weak economy, employers drastically have reduced hiring. That has resulted in an aging workforce because new hires tend to be younger than exist-

ing employees, Mr. Winkler said. Older employees typically have more medical problems than younger workers, boosting the average health care cost per employee, he said.

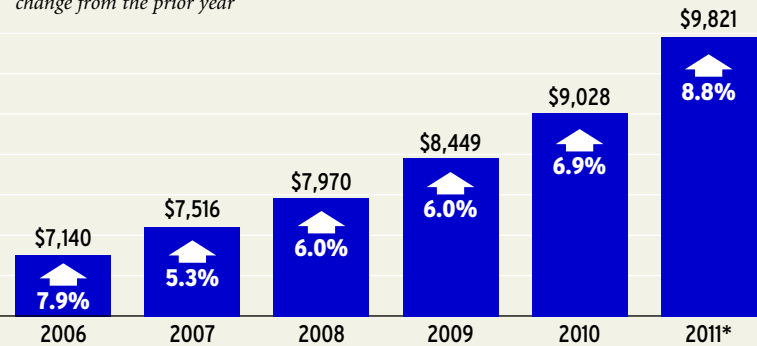
In addition, employers have seen increased frequency of high-cost claims, which also could be related to aging workforces, Mr. Winkler said.

In addition, the new health care reform law also is driving up costs. Provisions, such as eliminating lifetime dollar limits and expanding coverage to employees' adult children up to age 26, begin Jan. 1, 2011, for most employers.

See **COSTS** page 20

## HEALTH CARE COSTS

The average cost per employee for employer-provided health insurance and percent change from the prior year



\*Projected  
Source: Hewitt Associates Inc.

## ENVIRONMENTAL LIABILITY



This brownfield site in Paulsboro, N.J., has been vacant since the mid-1990s, when BP P.L.C. used it to distribute oil. AP PHOTO

## Brownfields projects slow as economy curbs funding

*Redevelopment efforts put on back burner; coverage competitive*

By **JOANNE WOJCIK**

The nation's economic downturn has slowed the rate at which brownfield sites are being redeveloped, regardless of the availability of insurance to finance cleanup cost overruns and shield contractors and property owners from potential liability.

Although insurers that write such coverage are scrutinizing most brownfield projects to ensure cost projections are realistic, the market for environmental impairment liability coverage is more competitive than ever, experts say (see story, page 19).

Despite the availability of insurance, approximately 3,035 of the nation's more than 22,000 brownfield sites have been "mothballed," primarily because of a lack of financing, according to a recent poll by the

Washington-based U.S. Conference of Mayors. Other impediments cited in the survey included the need for environmental assessments, poor real estate market conditions and concerns about potential liability.

"Our conclusion regarding the biggest factor in the slowdown of projects has been the issue of the economy and the fact that financial institutions are not lending money," said a spokeswoman for the conference. Insurance is just "an added cost," she said.

Acknowledging the survey's findings, Dave Dybdahl, president of American Risk Management Resources Network L.L.C. in Middleton, Wis., said "lenders don't want to lend on brownfields business because it's too much work to process any loan that involves a piece of contaminated property, regardless of the availability of insurance coverage."

"In the current real estate market, the availability of insurance products to protect against environmen-

See **BROWNFIELDS** page 19

## RISK MANAGEMENT

## Risk managers urged to target quality

*Established programs utilized to improve safety, processes*

By **JEFF CASALE**

**WHEELING, III.**—Quality management is being touted as the latest risk management tool to eliminate loss costs and improve safety, quality and efficiency at construction sites.

While quality management programs date as far back as the 1920s, they became prolific in the auto industry in the 1970s and 1980s. However, usage of comprehensive quality management programs could surge, insurance industry experts say, particularly in the construction industry.

For Divane Bros. Electric Co., using a quality management program has improved its on-the-job safety and changed the way Franklin Park, Ill.-based company organizes and executes its projects,

works with subcontractors and measures the quality of its work.

"It's not an easy process to implement into construction," Dawn Stefanc, quality manager at Divane Bros., said during a session at the Risk & Employee Benefits Conference & Exhibition on improving the workers compensation process and claims processing by using quality and safety programs.

Divane Bros. started using a quality management program two years ago, she told attendees at the Sept. 21-22 gathering in Wheeling, Ill. Quality management programs, which outline project safety and quality-of-work standards, initially were part of most of the company's public works projects, but have started making their way into private projects, she said.

Aspects of a comprehensive quality management program that can be used to perform certain types of work include:

- Contract language that specifies requirements of a formal quality and safety program.

- Safety and quality programs can consistently address issues related to workers compensation and claims cost containment.

- Contract requirements often include program auditing and inspection for compliance with the quality program.

- Quality programs are focused on eliminating reconstruction, which results in increased production and reduces the chance of human and property loss during the reconstruction process.

"You can have an injury or property loss (during reconstruction) due to performing a nonroutine process or project," Ms. Stefanc said. "If you're performing the scope of work twice, you obviously increase your chances of risk that much," she said.

Dan Pfister, Chicago-based vp and regional manager of Willis Group Holdings P.L.C.'s construction practice safety program, said a quality management program can

See **REBEX** page 20

## WORKERS COMPENSATION

## Comp rule doesn't bar harassment claim

By **ROBERTO CENICEROS**

**SAN DIEGO**—Workers compensation's exclusive remedy does not bar a claim for intentional infliction of emotional distress filed by a Qualcomm Inc. employee who alleged sexual harassment and discrimination, a California appeals court has ruled.

The plaintiff in *Debra Blumenfeld vs. Qualcomm Inc.* alleged a supervisor subjected her to unwelcome sexual comments, inappropriate touching and battery, court records state.

A trial court granted Qualcomm's request for summary judgment. It found, among other things, that the plaintiff could not show the supervi-

sor's conduct was unwelcome and that her claims were subject to the exclusive remedy doctrine.

But California's 4th District Court of Appeals in San Diego ruled Sept. 24 that the plaintiff's evidence cre-

READ documents from this case and other public documents at [www.BusinessInsurance.com](http://www.BusinessInsurance.com)

ated a triable issue as to whether the supervisor's conduct was unwelcome and whether it was directed at the plaintiff because of her gender. The appeals court reversed the trial court's grant of summary judgment regarding harassment and failure to prevent harassment.

"We also conclude that because Blumenfeld's claim for harassment is viable, her common law claim for intentional infliction of emotional distress is not subject to the workers compensation system," it said.

But claims for assault, battery and negligent supervision alleged by Ms. Blumenfeld are subject to the exclusive remedy of the workers comp system, the appeals court ruled.

The appeals court also decided that the lower court did not err in summarily adjudicating Ms. Blumenfeld's discrimination allegations, "as she cannot show that she has been subject to an adverse employment action because she remains employed by Qualcomm."

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**Business Insurance**

# D&O prices keep falling: Analysis

By ZACK PHILLIPS

The market for directors and officers liability insurance remains soft, according to a quarterly pricing index that an Aon Corp. unit released last week.

The price of D&O coverage decreased 16.4% in the second quarter of this year compared with the same period last year, concluded the report from Chicago-based Aon's Financial Service Group. That is the largest decrease since the fourth quarter of 2007 and the second consecutive quarter in which prices declined by double digits, according to the report.

Comparing only programs that renewed in the second quarter last year and this year, the price decreased 9.9%, the report said.

Aon also said its analysis shows

## 80%

The average amount paid to settle securities class action suits has increased by 80% since 2003.

that claim frequency is more important than claim severity in influencing D&O pricing.

"The average (securities class action) settlement has increased by 80% since 2003, while D&O rates have decreased by 57%, proving little-to-no correlation between severity and D&O pricing," the report said.

The average class action settlement in the second quarter of this

year was nearly 28% higher than the preceding three-year average, while the number of filings was about 12% higher than the second quarter of 2009, the report said. Only 16% of those class action suits were filed against financial firms, compared with 46% a year earlier.

Financial firms, which have faced the toughest pricing for D&O coverage over the past few years, saw rates drop 3.5% in the second quarter, Aon said in the report.

About 28% of companies bought higher limits than a year ago, suggesting that firms are using some of their premium savings to increase policy limits, Aon said.

Aon attributed the price decreases to less frequent class action filings and to a "mini-bull" market run between March of 2009 and March of this year, the report said.

## Drywall: Insurers' lawsuit transferred to New Orleans

CONTINUED FROM PAGE 3

on the same subject matter in the Tampa, Fla., court.

Citing the first-filed rule, Judge Merryday ordered Chartis' case transferred to the New Orleans MDL.

"This action shares both a party and a substantial, overlapping issue with the first-filed action. Both the

first-filed action and this action require a determination as to whether the insurer has the duty to indemnify under the relevant policy for a claim arising from defective Chinese drywall," Judge Merryday wrote. "Furthermore, the plaintiffs fail to show a compelling circumstance warranting disregard of the first-filed rule."

New York-based Chartis had

argued that it sought dismissal of Mr. Pate's suit in its first-filed action and that Mr. Pate's filing in Louisiana was "forum shopping."

Attorneys familiar with the MDL and other Chinese drywall disputes previously have commented that Louisiana's judicial climate typically is favorable to the policyholder, while Florida usually is more pro-insurer.

According to the Consumer Product Safety Commission, about 3,600 complaints about Chinese drywall have been filed in 38 states including the District of Columbia, American Samoa and Puerto Rico.

## Commentary

# Daley's planned exit fans political clamber

Recent events here in Chicago are making me think about "political risk" in a different sort of way.

I suspect the same thought is running through the minds of some local business leaders as well.

This stems, of course, from Chicago Mayor Richard M. Daley's announcement earlier this month that he will not seek re-election next spring.

The mayor's decision created a predictable frenzy among local politicians hoping that they might be the next to occupy the mayor's seat, and local political observers—basically, most Chicagoans—who immediately set to handicapping the 2011 mayoral election.

Finley Peter Dunne, the Chicago writer and humorist of the late 19th and early 20th centuries, is credited with coining a phrase I think is particularly applicable here: "Politics ain't beanbag."

At this point, it's not at all clear who might succeed Mr. Daley as mayor. There used to be a natural order to these things. When the current Mayor Daley's father, Richard J., died in office in December 1976 after his own 21-year tenure, the city council quickly chose Alderman Michael A. Bilandic to fill the mayor's post until a special election could be held, which saw Mr. Bilandic easily elected to fill the remainder of his predecessor's term.

That order began to break down after Mr. Bilandic's hold on the mayor's office proved short-lived, running afoul of a 1979 blizzard inconsiderate enough to shut down the city just weeks before a mayoral primary that saw Mr. Bilandic defeated by Jane Byrne.

Even less order was evident in November 1987 when Mayor Harold Washington died in office. A city council squabble ultimately saw Alderman Eugene Sawyer chosen to replace Mr. Washington, with the current Mayor Daley defeating Mr. Sawyer for the office in 1989.

But enough history. The point is, with no clear successor to Mr. Daley, it's unclear to local businesses and business leaders just whom they should back in the upcoming race. Many, I think, are keenly aware of the risks associated with backing the wrong horse.

While it might not be what it once was (I would argue that while politics still "ain't beanbag" around these parts, the



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state of the local political art is probably down a bit from its heyday), there's a reason Chicago politics enjoys a certain reputation nationwide.

You can see that when President Barack Obama's detractors sometimes describe him as "a Chicago politician," though I suspect that behind their words some of the more serious and astute politicians probably see at least some elements of that

**There are real business issues at stake—zoning, tax issues and economic development ramifications, for example.**

description as a badge of honor.

As far as the "political risk" to local businesses, I think beyond backing the wrong candidate, there are real business issues at stake—zoning, tax issues and economic development ramifications, for example. If you're taking a risk-is-risk approach, shouldn't these be among the things you're considering?

Granted, a mayoral race might seem a bit removed from the more pressing everyday risk management concerns of floods or fires or flawed products, but it seems to me that simply taking a "you can't fight city hall" approach might not be sufficient.

It's not unusual, of course, for business leaders to get involved in local politics, whether as donors, visible supporters or, occasionally, as candidates themselves.

It's just that in Chicago—for now at least—many of those business leaders are having a tough time determining exactly what the risks might be.

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# Damage: Market absorbing losses despite storms

CONTINUED FROM PAGE 1

Jan. 1 renewals," said John DeMartini, the Stamford, Conn.-based leader of Towers Watson & Co.'s catastrophe risk management practice.

Experts say it would take huge catastrophe losses to send reinsurance rates higher. Sources at the annual gathering of reinsurance executives in Monte Carlo, Monaco, this month said reinsurers are holding enough excess capital that they could withstand property catastrophe losses of as much \$50 billion without the need to significantly raise rates (see story, page 12).

So far, hurricanes and tropical storms have not produced claims anywhere near that amount.

Karl, a Category 3 hurricane that caused 12 deaths, widespread flooding and wind damage in Veracruz, Mexico, and surrounding areas on Sept. 17, is expected to cost as much as \$200 million in insured losses, according to AIR Worldwide Corp., a Boston-based catastrophe modeler.

Meanwhile, Igor swept to within about 40 miles of Bermuda on Sept. 19, with sustained winds of 75 mph that knocked down trees and power lines. Heavy rain caused floods in low-lying areas of the island.

AIR estimated Igor cost insurers as much as \$100 million before moving north to drench eastern Canada with heavy rain that caused significant flooding in several coastal towns.

Commercial property owners survived the recent storms in good shape, sources reported.

Bermuda Electric Light Co. Ltd. said Igor knocked out power to 28,700 customers.

Economic damage from Hurricane Karl was estimated by Veracruz, Mexico, Gov. Fidel Herrera to be as high as \$3.9 billion, according to published reports. But insurance penetration is relatively low in Mexico, AIR said, which means insured damage will be far less than total damage.

Much of the insured losses will find their way to the reinsurance market, where reinsurers are, so far, well-prepared to pay storm claims.

Bryon Ehrhart, chairman of analytics and security at Aon Benfield in Chicago, said losses from Igor and Karl are "quite immaterial." It would take aggregate losses of around \$35 billion this year to change reinsurers' pricing behaviors, he said.

Losses that high would cause reinsurers to stop reducing prices, Mr. Ehrhart said. If losses reached \$50 billion, reinsurance rates would increase, he said.

Mr. Ehrhart and other experts said that although reinsurers have been hit with substantial catastrophe losses this year, the impact has been localized. Rates have risen in Chile, for example, where a February earthquake caused billions in insured damage.

Towers Watson's Mr. DeMartini agreed that it will take heavy losses to influence reinsurers to charge significantly more for coverage. Losses such as those in Chile and from the Deepwater Horizon oil spill in the Gulf of Mexico have been expensive, but they have not had a global

impact on rates, partly because they have hit a spread of business classes written by several reinsurers, he said.

"When you look at the Chile earthquake and the oil spill in the Gulf of Mexico, those were meaningful losses, but they did not really hit any reinsurer extraordinarily hard," Mr. DeMartini said.

"The frequency of losses this year seems to be increasing," said Taoufik Gharib, a New York-based credit analyst with Standard & Poor's Rating Services. "But if you take each individual catastrophe loss on an individual basis, it's not moving the market, even with the

Chile earthquake, which is \$8 billion to \$12 billion."

Coverage costs for property catastrophe insurance have risen significantly in Chile and other local markets where disasters have struck, "but overall they are not creating an inflection point" at which global prices will begin to curve upward.

Weather forecasters indicate that it may be too soon for reinsurers to relax entirely.

Weather Services International, a unit of Weather Channel Cos., recently adjusted its outlook on the hurricane season because of the "somewhat surprising attainment of major hurricane status" by Hurri-

cane Julia and Karl, Chief Meteorologist Todd Crawford said in a statement last week.

Weather Services International said it expects 18 named storms, 10 hurricanes and another six hurricanes of Category 3 strength or greater—one more than originally predicted—by the end of hurricane season in November. The predictions are well above average seasonal totals since 1995, it said.

Colorado State University's Tropical Meteorology Project said in a two-week forecast that it expects "above-average amounts of activity" at least through the end of September.



REUTERS/LANDOV

A flooded neighborhood is seen in Veracruz, Mexico, on Sept. 19, after Hurricane Karl made landfall.

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# Business Insurance OPINIONS

## Too early to party over health reform

MILESTONES ARE SOMETHING to celebrate, but we think the Obama administration's hoopla marking six months of nation's health care reform law was too much.

In news releases, Web postings and even an appearance by President Barack Obama at a "backyard" event, the administration used the occasion to extol the new law's virtues.

Certainly, the administration has the right to crow about the reform law.

There are many provisions—extending coverage to employees' adult children, eliminating pre-existing medical condition exclusions and extending federal health insurance premium subsidies to the lower-income uninsured, just to name a few—that we have long supported and are in the national interest.

*We think a celebration of the law is premature. The precise impact of the law won't be known for many years.*

But we think a celebration of the law is premature. For starters,

many provisions the administration cited as already being in effect really won't start for most health care plans until Jan. 1, 2011.

More substantively, the precise impact of the law won't be known for many years.

On one hand, extending coverage to tens of millions of the previously uninsured would benefit them and employers if the amount of uncompensated care is reduced and the provider cost-shifting to insured plans declines.

On the other hand, health care costs may continue to spiral and more employers may abandon their plans, resulting in the unraveling of the employment-based health care system.

We don't know which scenario will develop. For that reason, we think it prudent to hold off on celebrations.

## Social media risks arise as fast as a mouse click

AS BUSINESSES FLOCK to social media such as Twitter and Facebook, they face reputational risks, such as one that came to light last week.

As we report on page 1, hackers put a virus on Twitter that redirected to porn sites visitors who had simply put their cursor on the links in Tweets. At the very least, such a prank disrupts the intended original communication.

Even worse, it can damage the reputation of companies and individuals who post Tweets.

What is a risk manager to do in this situation? Using a third-party site as an extension of an organization's communication and marketing efforts can be a good idea, but it takes control out of the organization's hands, as experts note. A business using social media must rely on the host to manage service disruptions and other problems.

We think it makes sense for risk managers to understand and discuss the pros and cons of using sites such as Twitter as a way to reach customers and other stakeholders, in the context of various communication channels.

Forming a plan to monitor use of social media and respond to events such as hacker attacks is even better.



### WRITE

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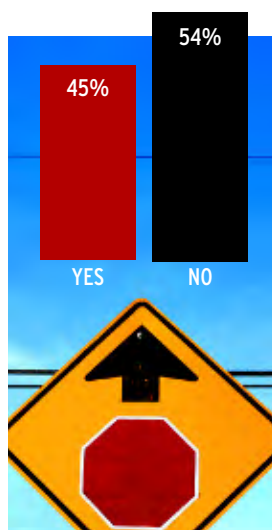
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#### THIS WEEK'S RESULTS

Q Will health care reform be repealed or struck down before it is fully implemented?



#### NEXT WEEK'S QUESTION

Q: Does your company use social media sites for business purposes?

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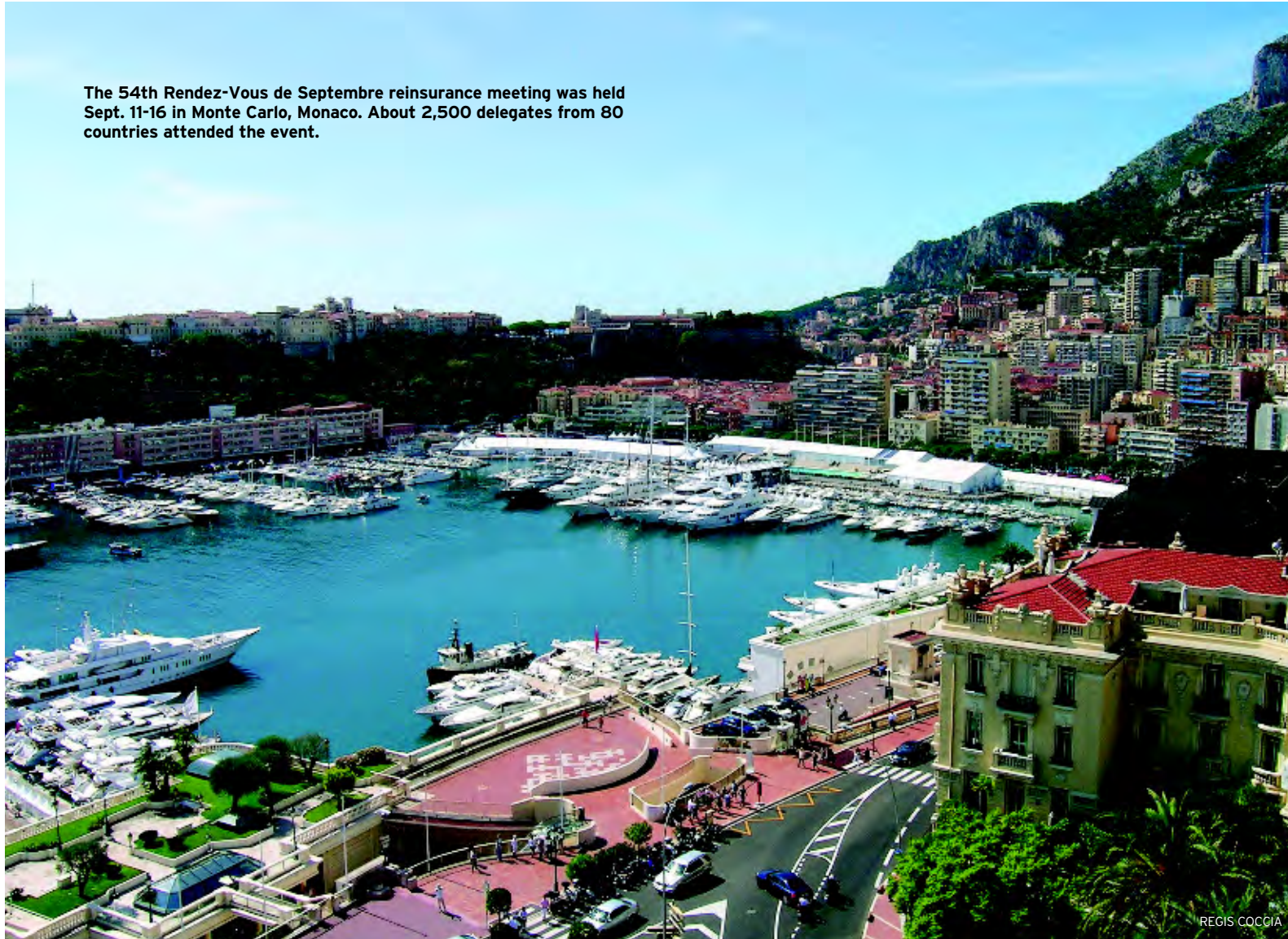
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The 54th Rendez-Vous de Septembre reinsurance meeting was held Sept. 11-16 in Monte Carlo, Monaco. About 2,500 delegates from 80 countries attended the event.



# Reinsurers set to cut prices again

*Soft market expected to continue with abundant capacity available*

By SARAH VEYSEY and REGIS COCCIA

**MONTE CARLO, Monaco**—Plentiful capital likely will fuel further rate decreases for property reinsurance, a trend that is being reflected in the primary insurance market, said experts gathered at the 2010 Rendez-Vous de Septembre reinsurance meeting in Monte Carlo, Monaco.

Though rate increases are being experienced on some loss-affected lines of business, plentiful capacity means rates likely will remain flat or fall further at the Jan. 1, 2011, renewals for most buyers, sources said.

Despite an above-average incidence of catastrophe losses during the first half of 2010, Guy Carpenter & Co. L.L.C. forecast flat or decreased rates during this year's renewals and thus far that has been borne out, said Chris Klein, London-based global head of reinsurance markets at Guy Carpenter.

Price increases were only seen in loss-affected lines, he said in citing Chilean earthquake coverage as an example.

"We would expect pricing to continue to drift downwards" in the absence of any large catastrophe in the second half of the year, Mr. Klein said.

While a huge loss could turn the market, a "surprise" loss—such as the Sept. 11, 2001, terrorist attacks, or a series of major earthquakes or hurricanes—could be the trigger for underwriters to increase rates, said Mr. Klein.

Standard & Poor's Corp. does not expect to see rate increases on most reinsurance lines unless there is a major event, said Mark

Coleman, lead analyst for reinsurance at S&P in London.

"We've seen a degree of pressure on rates in the prior year," said Conan Ward, CEO of Bermuda-based Validus Reinsurance Ltd., which writes mainly short-tail specialty property/casualty lines. "But, without any outsized loss activity this year, we still don't expect rates to fall into irresponsible territory."

"The business as a whole, across all the people that sell our same products, is well-capitalized," Mr. Ward said. "Supply-and-demand dynamics generally dictate price levels. Pricing levels in virtually all of our products are healthy. They're on the wane and it's a question of how you change your overall risk appetite. The market has been pretty disciplined."

There are some pockets of business where rates are hardening, said Paddy Jago, London-based president of Willis Re, the reinsurance arm of Willis Group Holdings P.L.C. in London.

Primary rates for offshore energy business are hardening, for example, he said.

Energy rates likely will increase because of the Deepwater Horizon loss, said Steve Redmond, managing director of Lloyd's of London managing agency Antares Managing Agency Ltd.

Primary and reinsurance rates for business in Chile and New Zealand likely will increase because of the recent earthquake losses there, he said. The New Zealand earthquake also may have a knock-on effect on rates in Australia because so much New Zealand coverage is underwritten there, he added.

See **PROPERTY** next page

**'We've seen a degree of pressure on rates in the prior year. But, without any outsized loss activity this year, we still don't expect rates to fall into irresponsible territory.'**

Conan Ward, Validus Reinsurance Ltd.

Reinsurance:  
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Report

SPOTLIGHT

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# Property cat rates likely to fall next year

By SARAH VEYSEY  
and REGIS COCCIA

**MONTE CARLO, Monaco**—U.S. property catastrophe reinsurance rates likely will decline further for renewals early next year unless there is a major event before then, attendees said at the 54th annual Rendez-Vous de Septembre.

But this year's earthquakes in Chile and New Zealand and Hurricane Earl, which threatened but did not make landfall in the United States, show the potential risks of catastrophic events, experts said.

Aon Benfield, the reinsurance brokerage arm of Aon Corp., said it expects rates for U.S. property catastrophe business to soften further at the Jan. 1, 2011, renewals absent major catastrophes for the rest of this year.

If this year's insured losses are light—causing reinsurer capital to be depleted by no more than 5%—then property catastrophe rates-on-line for U.S. standard commercial lines business likely will range from flat to a decline up to 10%, according to research by Aon Benfield's analytics arm.

If a medium degree of catastrophe losses occur and cause reinsurer capital depletion of 5% to 10%, then rates likely will range from flat to a 10% increase on standard commercial lines business, it said.

Heavy catastrophe losses causing reinsurer capital depletion of 10% to 20% could result in reinsurance rates increasing 10% to 20% for standard commercial lines business, according to the Aon Benfield analysis.

For complex commercial property catastrophe accounts, light catastrophe losses this year likely would result in 2011 reinsurance renewal rates that range from flat to an increase of 10%; with medium losses, rates could range from flat to up 15%; and heavy catastrophe losses could push rates higher by 15% to 30%, according to the Aon Benfield analysis.

Rates for U.S. catastrophe reinsurance business are not far from their 2007 peak, even though accounts that renewed in July saw large rate decreases, said Mark Coleman, lead analyst for reinsurance at Standard & Poor's Corp. in London.

Although U.S. property catastrophe coverage rates are falling, it remains attractive to underwriters, said James H. Veghte, executive vp and CEO of reinsurance at Hamilton, Bermuda-based XL Group P.L.C.

U.S. property catastrophe business is one area where rates have decreased about 10% to 15%, said Victor Peignet, CEO of property/casualty business for Paris-based SCOR S.E.

SCOR does not write a huge amount of U.S. property catastrophe business, but Mr. Peignet said this is one area that the Paris-based reinsurer intends to grow.

"For 2011, we feel we'll see

upward pressure on catastrophe pricing, particularly in nonpeak zones," said Ulrich Wallin, chairman of the executive board at Germany's Hannover Re Group.

Overall, the property reinsurance market is "characterized by stability amid softening," Mr. Wallin said. "We still feel the pricing prevailing in nonlife reinsurance is adequate, but there is a softening trend."

"Catastrophe business so far this year has not seen any devastating, market-changing loss," Mr. Wallin said. "The losses, particularly the Chilean earthquake, have not been enough to halt the slide in rates."

While experts agreed that it would take a major loss to turn the market for U.S. property catastrophe business, several recent events have shown the magnitude of possible losses, experts said.

Hurricane Earl was "a good wake-up call for the industry about hurricane risk outside Florida and the Gulf of Mexico," said William M. Keogh, senior vp at catastrophe

## 10%-20%

Heavy catastrophe losses causing reinsurer capital depletion of 10% to 20% could result in reinsurance rates increasing 10% to 20% for standard commercial lines business, according to an Aon Benfield analysis.

modeler EQECAT Inc. in Hackensack, N.J. "Earl was the most intense hurricane (in history) to reach north Atlantic latitudes but didn't make landfall."

Other catastrophes underscore the global risks that property insurers and reinsurers face, Mr. Keogh said.

"This year has highlighted a number of important issues for us and shows the potential for multibillion-dollar events outside peak zones. The Chile and New Zealand earthquakes are good examples of this. People have to manage risk in all catastrophe-exposed areas," Mr. Keogh said.

While it's unlikely that this year will be as active as the 2004 and 2005 hurricane seasons, "all we really need is one or two events to have a serious impact on the market," Mr. Keogh said. "The potential for a \$50 billion event is very real."

The global insured catastrophe loss picture for this year still is developing, said Hemant Shah, CEO of catastrophe modeling company Risk Management Solutions Inc. in Newark, Calif. "The clock is still running on Chile as losses from the earthquake mount," he said.

"Earthquake is a major source of risk accumulation. Up to now, there has been a focus on windstorm and flood, which tend to be more frequent. The Chilean event is a useful reminder that earthquake risks are out there," Mr. Shah said.

Rubble and debris are seen near a damaged phone booth in Christchurch, New Zealand, after an earthquake struck on Sept. 5.



APPHOTO

## Property: Reinsurers set to cut prices

CONTINUED FROM PREVIOUS PAGE

Nevertheless, Mr. Redmond said his company was cutting back on the amount of direct property and facultative business it writes because, despite some losses, prices still are softening.

While there are rate increases in some pockets of primary business, such as the auto market, these are not yet filtering through to the reinsurance industry, said Dominic Christian, London-based co-CEO of Aon Benfield, the reinsurance arm of Chicago-based Aon Corp.

There will be rate movement on business that has been affected by large losses, he said. Rates for Spanish business may increase because of Spanish underwriters' heavy involvement in the Chilean marketplace, he said.

But even the recent earthquake losses are unlikely to have a big effect on the market, said Charles Dupplin, CEO of Hiscox International, a unit of Bermuda-based

**Although the New Zealand quake could turn out to be a fairly costly loss for the reinsurance market, 'there is still a lot of capital floating around,' and it likely would take a very large loss to turn the market.**

Charles Dupplin, Hiscox International

Hiscox Ltd.

Although the New Zealand quake could turn out to be a fairly costly loss for the reinsurance market, "there is still a lot of capital floating around," and it likely would take a very large loss to turn

the market, Mr. Dupplin said.

Several commentators said it would take an event of the magnitude of \$50 billion—the approximate amount wiped off the industry's balance sheet by the 2008 financial crisis—to move the market.

It would take a very large loss to cause a spike in rates for short-tail insurance and reinsurance lines, said James H. Veghte, executive vp and CEO of reinsurance at Hamilton, Bermuda-based XL Group P.L.C.

It is, in fact, very rare for a loss to move the entire market, he said, with perhaps the Sept. 11, 2001, terrorist attacks being the only example.

He said that while rates have increased for business in Chile, XL was "quite disappointed" by the market's reaction to the loss and reduced its participation on some large proportional business there because it did not deem rate

Continued on next page

CONTINUED FROM PREVIOUS PAGE

increases to be adequate.

Areas of rate movement appear to be regional, said Toby Esser, CEO of London-based brokerage Cooper Gay Swett & Crawford Group.

For Chilean reinsurance business, rates have increased about 40%, Mr. Esser said.

Business in New Zealand and Australia also may experience rate increases because of the recent earthquake in Christchurch, New Zealand, he said.

The insurance and reinsurance market cycle is "choppy," said Michael Watson, chairman of London-based Canopious Group Ltd. While weak economic conditions in the United States, United Kingdom and Europe have led to a reduction in demand for insurance, this has not had any meaningful effect on rates, he said.

There still is plentiful capacity for commercial risks in France, said Luc Malatre, managing director of Willis Gras Savoye Re, based in Paris, and there still is relatively high demand from buyers. The financial crisis did not produce an expected explosion in property claims in France, he said.

"There is, frankly, no sign of an end to the soft market," Mr. Malatre said.

Any change in direct primary rates likely would be prompted by an increase in reinsurance rates, and there is little sign of that happening yet, he said.

But there are factors that might spell an end to the soft market in the coming years, experts said.

With the exception of the U.S. property catastrophe market (see story, page 10), where rates are decreasing, there are signs that reinsurers are trying to increase rates in most lines, said Victor Peignet, CEO of the property/casualty business of Paris-based SCOR S.E.

Rates still are falling in the Middle East, he said, but that is a very small segment of the market.

Typically, however, SCOR has begun negotiations with buyers about rate increases on many lines, Mr. Peignet said.

SCOR believes there will be an increase in the demand for, and price of, facultative coverage, though it is difficult to predict when this will take place, said Mr. Peignet.

Rates for large, corporate insurance in the United States are likely to increase in the next couple of years, largely as a result of the Deepwater Horizon energy loss, Mr. Peignet said.

SCOR, which on the eve of the Monte Carlo Rendez-Vous was upgraded to A from A- by A.M. Best Co. Inc., will seek to expand in the U.S. regional market and the rating upgrade will help that effort, Mr. Peignet said.

There are some longer-term factors that may prompt an upturn in rates in the future, analysts noted.

The ability of companies to use reserve releases to boost their profits appears to be dwindling, said Guy Carpenter's Mr. Klein, and this could spur companies to seek to increase rates.

The upcoming Solvency II risk-based capital regulatory regime, slated for introduction in the European Union in 2012, also could

increase the cost of capital and prompt an increase in rates, Mr. Klein said. Solvency II also may increase demand for reinsurance, he added.

The diminishing ability of reinsurers to boost their results by making reserve releases or by relying on investment returns could act as drivers for future rate increases, said Chris Waterman, managing director of insurance at Fitch Ratings in London.

Henry Keeling, CEO of international operations at Guy Carpenter, said that while his "crystal ball is not that clear" on predicting when the soft market will end, it is likely to continue for as long as there is perceived to be excess capital in the industry.



## 2,500 attend Rendez-Vous de Septembre in Monte Carlo

**MONTE CARLO, Monaco**—The 54th Rendez-Vous de Septembre reinsurance meeting was held Sept. 11-16 in Monte Carlo, Monaco.

About 2,500 delegates from 80 countries attended the event, said Jean-Philippe Thierry, president of the Monaco-based Rendez-Vous de Septembre Assn.

Next year's Rendez-Vous de

Septembre, in which reinsurers meet informally with underwriters and other market executives, will be held Sept. 10-15, 2011.

Mr. Thierry said he will step down as the association's president when his term is up at the end of 2011 and a new president will be elected for the 2012-2013 term.

—By Sarah Veysey

# Max Capital Group Ltd. and Harbor Point Limited have merged to form **Alterra Capital Holdings Limited.**

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# Casualty rates continue to fall despite concerns

*Some reinsurers reduce capacity, others look to grow*

By SARAH VEYSEY  
and REGIS COCCIA

**MONTE CARLO, Monaco**—Rates for casualty reinsurance business likely will continue to decline, said experts who attended the 54th annual Rendez-Vous de Septembre reinsurance meeting in Monte Carlo, Monaco.

Although some underwriters said they believe the casualty market is producing attractive returns, others said they may reduce the amount of casualty business they underwrite until rates pick up.

U.S. casualty rates have been softening since the market's peak in about 2004 and likely will continue to do so through the rest of this year, said Mark Coleman, lead analyst for reinsurance at Standard & Poor's Corp. in London.

Inflation and U.S. tort reform are two factors that could change that situation, he said.

While both are possible future developments, tort reform likely is not a high political priority, he said.

Rates for U.S. casualty business are flat to down 5%, said Chris Waterman, a managing director in the insurance rating arm of Fitch Ratings in London.

Some reinsurers have expressed concern about decreasing rates and have reduced their line sizes, Mr. Waterman said.

XL Group Ltd. has reduced its

positions in some longer-tail lines because of concern about falling rates, said James H. Veghte, executive vp and CEO of reinsurance at Hamilton, Bermuda-based XL Group P.L.C. It probably will take some "pain," such as underwriters no longer being able to use prior-year reserve releases to bolster current-year results, to compensate for lower rates for longer-tail lines, he said.

For Hannover Re Group, the Germany-based reinsurer is seeing a halt in the long-term slide in rates for casualty business, said Michael Pickel, a member of the reinsurer's executive board. "The overall decrease in rates has stopped, but we're not satisfied. We're skeptical on casualty pricing in financial lines," he said. "Casualty business is under pressure, but there is less quality capacity available."

In today's economy, many underwriters may see casualty business as less attractive than property, said John Berger, vice chairman of Bermuda-based Alterra Capital Holdings Ltd. and CEO of its reinsurance operations. "The business climate is a challenge, and the economic environment is difficult," he said. "The whole market, at every level of the food chain, is under downward pressure."

"Our rate levels are just a bit better than in 1999, and that was a tough operating environment," Mr. Berger said.

"1999 was probably the worst underwriting accident year ever, and reserve increases following that year were frightening," said W. Marston Becker, president and CEO



Reinsurance industry executives, analysts and others gathered for their annual round of informal meetings at Rendez-Vous de Septembre in Monte Carlo, Monaco, earlier this month.

REGIS COCCIA

**'The overall decrease in rates has stopped, but we're not satisfied. We're skeptical on casualty pricing in financial lines.'**

Michael Pickel, Hannover Re Group

of Alterra. "Whatever investment returns you had in 1999 to support those losses were much greater than what you have in the current year, so fundamental economics are just not very strong right now."

"It's a big concern when you have very low investment returns coupled with soft premium rates," Mr. Berger said.

In France, prices still are declining for primary casualty business, said Luc Malatre, managing director

of Willis Gras Savoye Re. While a recent commercial court decision—which said gross negligence claims must be fully indemnified—likely will increase the awards for liability claims, this has not yet been market-changing in terms of prices, he said.

Other experts, however, said casualty rates remain "attractive" for underwriters in some areas of the world.

For proportional casualty business, SCOR S.E. said it believes rates still are adequate in most of the areas in which it operates. In a presentation at the Sept. 11-16 Rendez-Vous, the reinsurer said rates for its nonproportional casualty business are attractive in Australia, Europe, Japan as well as northern Asia.

Some trends even suggest the casualty market may harden in the medium-term, experts said.

"There is clearly claims inflation" in casualty lines, said Nick Frankland, CEO of European operations

at Guy Carpenter & Co. L.L.C.. For example, he said, bodily injury claims in the United Kingdom have been increasing in size and reserves have been "found to be wanting," he said.

Primary casualty rates are showing signs of firming, he said. "We are seeing steadying of pricing," Mr. Frankland said.

It likely will be about 18 months before any uptick in rates is felt in the casualty reinsurance market, he said.

The prospect of inflation is another concern for casualty underwriters, said Dwight Evans, president and CEO of White Mountains Reinsurance Co. of America in New York. "For any company that has a significant amount of casualty reserves, inflation would put a real strain on the adequacy of those reserves," he said.

Mr. Evans said he has been seeing average rate reductions of more than 5% on casualty business for the past four years.

# Reinsurers focus on capital management strategies

By REGIS COCCIA  
and SARAH VEYSEY

**MONTE CARLO, Monaco**—Managing the expectations of investors and customers when it comes to excess capital was a theme of the annual Rendez-Vous de Septembre reinsurance gathering in Monte Carlo, Monaco, this month.

Reinsurance industry executives and analysts offered their perspectives on whether and how reinsurance companies should remove excess capital to create higher returns. Relatively mild insured losses in the years since a wave of new companies formed in 2006 has enabled reinsurers to build up excess capital, but companies have

to balance the need to generate returns against keeping an adequate amount of capital for claims, observers noted.

The reinsurance industry appears to be overcapitalized, but that will last only until there is a big event, said Michael D. O'Halleran, executive chairman of Aon Benfield, the reinsurance arm of Chicago-based Aon Corp., of which he also is a senior executive vp.

If there is a catastrophic event, clients will need reinsurance capacity to enable them to survive and thrive, he said.

At the end of the first half of 2010, Guy Carpenter & Co. L.L.C. estimated that the reinsurance industry had excess capital of about 6%, said

Chris Klein, London-based global head of reinsurance markets at the intermediary.

Despite views that the industry has too much capital at the moment, a \$50 billion industry loss could leave many players suddenly short of capital, said Michael Watson, chairman of London-based Canopi Group Ltd.

## Buybacks

One popular method of removing excess capital is repurchasing stock, market sources said.

"Capitalization today is higher and stronger than it was pre-financial crisis," said Chris Waterman, managing director in Fitch Ratings' insurance ratings group in London.

Since the first half of 2009, there has been a dramatic uptick in the number of share buybacks by companies, he said. So far, however, those have been relatively small in relation to the amount of capital in the industry, he said.

Fitch expects the trend for share repurchases to continue and sees this as less risky than other uses of excess capital, such as diversification into new lines of business or geographical areas, Mr. Waterman said.

"It's a balancing act because investors would like to see you buy back all the stock you can, and rating agencies would like to see you overcapitalized," said W. Marston Becker, president and CEO of

Bermuda-based Alterra Capital Holdings Ltd. "You have to maintain a balance."

"Given the amounts of capital that reinsurers need to have to take on volatility from our customers, companies are going to be in the position from time to time to manage their capital," said Conan Ward, CEO of Bermuda-based Validus Reinsurance Ltd.

"We've executed on stock buybacks. We still have plenty of capital for our customers to feel safe, and we're off the charts in terms of our capitalization" relative to rating agency models, Mr. Ward said.

"Buying back shares is mathematically a great thing," said Dwight Evans, president and CEO of White

## Interest grows in industry loss warranties

**MONTE CARLO, Monaco**—The market for industry loss warranties is down from its peak after Hurricane Katrina in 2005, but it is growing again, reinsurance industry executives said this month at the Rendez-Vous de Septembre.

An ILW is a form of capital typically used to complement traditional reinsurance. ILW contracts may range in value from \$5 million to more than \$100 million and are triggered by a predetermined threshold for an industrywide loss in any line of business.

ILWs can be tied to reinsurance, in which case a proof of loss is required, or in derivative form, which does not need proof of loss but requires a different form of accounting, said Stefano Nicolini, a New York-based senior vp at BMS Group Ltd.

"People buy ILWs throughout the year; it depends on what they need," said Mr. Nicolini. "We're working on end-of-year

products to protect results or to hedge against something companies wrote at the beginning of the year, to lock in margins."

"The nature of the product spikes and drops according to the market loss as well as the perception" of the product's value, said David Priebe, chairman of global client development at Guy Carpenter & Co. L.L.C. "Following the Chilean earthquake, a number of people got back into the ILW market" to hedge against further catastrophe exposure, he said.

The ILW market peaked in 2006 in pricing and in-force limits, Mr. Nicolini said. After Hurricane Katrina, the rate on line—or premium as a percentage of the coverage limits—was 38% for a \$20 billion ILW and 9% for a \$70 billion ILW. About \$8 billion of ILW limits was put in force that year, whereas the current market has between \$3.5 billion and \$4 billion, Mr. Priebe said.

Pricing fluctuates with supply

and demand, but the current rates on line for ILWs are relatively low, he said.

"In a soft market, the number of ILWs sold is smaller; but in a hard market, people are looking at all kinds of ways to protect themselves," Mr. Priebe said.

The majority of ILW purchasers are reinsurers seeking retrocessional capacity, though about 25% of the market comes from insurance companies that want hedges to balance their portfolios, he said. For example, because ILW contracts are based on loss levels rather than specific perils, a company that buys a contract with hurricane risk in mind could collect even if other perils trigger the ILW.

One factor in the growing interest in ILWs and insurance-linked securities is the use of indexes, Mr. Priebe said. "It's becoming increasingly active as modeling and sophistication grow, resulting in more refined ILWs," he said.

An example that Guy Carpenter developed this year is CWIL, or County-Weighted Industry Loss, which allows investors in ILS and ILWs to hedge against risk at the county level rather than a wide geographic area, such as hurricane risk for the entire state of Florida.

While this type of product requires extensive modeling up front, "it's a more efficient structure for both sponsors as well as investors," Mr. Priebe said. CWIL is linked to catastrophe loss data compiled by the Insurance Services Office Inc.'s Property Claim Services unit and helps to remove basis risk, which is the risk that offsetting hedges will not perform as intended, he said.

"Indexed business will become a fairly prevalent instrument" in the future, Mr. Priebe said.

—By Regis Coccia



**The County-Weighted Industry Loss index allows investors in insurance-linked securities and industry loss warranties to hedge against risk at the county level rather than a wide geographic area, such as hurricane risk for the entire state of Florida.**

Mountains Reinsurance Co. of America in New York. "But you have to manage your risk profile and determine how much capital you need."

"We tend to view share buybacks as positive capital management," said Mark Coleman, lead analyst for reinsurance at Standard & Poor's Corp. in London.

S&P is happy to see capital being returned to shareholders so long as companies are aware of the potential need to attract such capital back if there is an event, such as a large catastrophe, that establishes a need for capital to facilitate underwriting, he explained.

"It's nice to have some sort of capital buffer, but if we get through this wind season without major losses, there will be tough decisions to make" regarding returning capital, said James Eck, vp and senior analyst in the financial institutions

group at Moody's Investors Service in New York. "Companies can't find investments that generate high returns, and they can't put capital to work on the casualty side (due to current market conditions), so the most obvious opportunities now are buying back stock or doing more dividends," Mr. Eck said.

### Redeploying capital

Reinsurers are looking for ways to use excess capital, said Paddy Jago, CEO of Willis Re, the reinsurance arm of Willis Group Holdings P.L.C.

It isn't always wise for reinsurers to deploy that excess capital by writing new risks, he said. There may be some sporadic merger and acquisition activity, but this is unlikely to be widespread as many potential acquirers may consider themselves to be undervalued, he said.

Returning capital to shareholders

does not produce profitable growth or increase market share, said Henry Keeling, president and CEO of Guy Carpenter's international operations. He said that while returning capital to shareholders may be a prudent approach for some reinsurers, Guy Carpenter viewed such actions as giving up a potential competitive advantage that could be gained through offering new products or expanding into new markets.

Returning capital through share buybacks or dividends can provide some relief for companies striving to achieve return-on-equity targets, but it "comes at the expense of future growth," Mr. Klein said.

Reinsurers should look for "value-accretive opportunities" to deploy their capital, said Bill Kennedy, head of analytics at Guy Carpenter.

"We believe that those (reinsurers) that succeed will be those who

# Cat bond market expected to grow after down years

## Reinsurance firms seek to establish integrated programs

By REGIS COCCIA and SARAH VEYSEY

**MONTE CARLO, Monaco**—Insurance-linked securities are regaining popularity after the economic downturn, and issuance is expected to increase this year, reinsurance industry leaders said at the Rendez-Vous de Septembre gathering this month in Monte Carlo, Monaco.

Despite softness in traditional reinsurance pricing, the ILS market is attractive to issuers and investors as an alternative form of capital offering good returns, observers said.

"A number of traditional reinsurers are setting up insurance-linked securities. We're seeing that aspect building up," said David Priebe, chairman of global client development for Guy Carpenter & Co. L.L.C. "Clients are looking to develop more integrated capital solutions."

One of the most popular forms of ILS, accounting for the majority of issuances, are catastrophe bonds, though risks that can be securitized vary widely, observers pointed out.

"A group of investors see cat bonds as a good asset class," Mr. Priebe said. Guy Carpenter is seeing growing interest in ILS in Europe and Asia, he said. Investor participation could "morph from pure ILS to collateralized reinsurance (such as sidecars), to tradition-

al reinsurance," he said.

"We believe the insurance-linked securities market is likely to develop," said Denis Kessler, chairman and CEO of Paris-based SCOR S.E. There is a great deal of investor interest in insurance-linked securities, he said, and a wider investor base than traditional reinsurance.

SCOR's participation in the ILS market likely will increase, and Mr. Kessler said SCOR has set up a "fund of funds" in Luxembourg. "We

**'A number of traditional reinsurers are setting up insurance-linked securities. We're seeing that aspect building up.'**

David Priebe, Guy Carpenter & Co. L.L.C.

hope to generate a flow of investment," he said.

Torsten Jeworrek, a member of the management board of German giant Munich Reinsurance Co., said he expected capital markets to play an increasing role in the coverage of catastrophe-type risks—those risks that can be modeled.

Reinsurers can use the capital markets as a way to remove risks from their own balance sheets, he said. For example, he noted, the market for traditional retrocessional

See ILS page 26

grow despite price volatility," said Mr. Keeling. Areas of opportunity for growth include microinsurance and emerging markets such as Asia, he said.

There is "abundant capital" that reinsurers can use to fuel growth and help primary insurance companies and buyers to have access to innovative insurance products, said Bryon Ehrhart, chairman of Aon Benfield's analytics and investment banking divisions in Chicago. "Reinsurers will need to help insurers take on new risks profitably to help them both grow," he said.

Innovative products are needed to provide primary insurance buyers more value, said Mr. Ehrhart.

One question on some companies' minds is whether they will be able to raise additional capital after a major loss.

"The question is: What would be the cost at that point in time" to

raise capital? "Companies that have done a good job managing their capital will be able to access capital, but you need to prove you have a risk management process," said White Mountains' Mr. Evans.

"Buybacks are popular in Bermuda, as they give companies flexibility," said Colm Homan, a partner at PricewaterhouseCoopers L.L.P. in Bermuda. "It's important to have a degree of comfort that if you wanted the capital back, the anchor investors would support you."

"One of the obvious benefits of companies like ours is we offer more tools for capital management," Alterra's Mr. Becker said. "You can just do things with a \$3 billion capital base that you can't do" with lower levels of capital, he said. "Undoubtedly, it's tougher to be small in a capital-intensive business."



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## ILS: Catastrophe bond market expected to grow

CONTINUED FROM PREVIOUS PAGE

coverage is quite limited, so there is a need for reinsurers to find alternative risk carriers with the appetite and ability to take on risk. One such alternative is to purchase industry loss warranties, which provide coverage when an industrywide loss figure is reached.

"Insurance-linked securities are still very attractive" to investors and "there's a lot of interest," said Stephen Breen, a partner at TigerRisk Partners L.L.C. in

Stamford, Conn.

Capital-market investment funds "have money to put into the arena," Mr. Breen said.

As a result, it's easy to deploy capital through issuing insurance-linked securities, he said.

Aon Benfield, the reinsurance brokerage arm of Aon Corp., forecasts that catastrophe bond issuance likely will reach about \$5 billion by the end of the year, said Paul Shultz, president of Aon Capital Markets in Chicago.

clients the solutions they require, he said.

Primary insurers have been the real drivers of the ILS marketplace, said Mr. Shultz and other reinsurance market executives.

Cory Anger, New York-based managing director and global head of ILS structuring at Guy Carpenter Securities, said that so far this year, primary insurers rather than reinsurers have been the chief ILS sponsors, using ILS as a tool in their enterprise risk management plans.

The second quarter of 2010 was the second-most active ever, after the second quarter of 2007, she said. Historically, the second and fourth quarters of each year are the most active because that is when major renewal dates occur, she said. A record \$7 billion in catastrophe bonds were issued in 2007 (*BI*, Sept. 21, 2009).

Pricing for ILS deals this year largely has been flat, she said, having fallen about 30% to 40% since the first half of 2009, when prices reflected the upheaval in broader financial markets.

About 55% of the structures put together this year have had indemnity triggers, compared with about 40% that have been based on industry-loss triggers.

For the rest of the year, Guy Carpenter expects there to be a focus on non-U.S. exposures, Ms. Anger said.

Typically, the second quarter of the year sees a great focus on U.S. perils because of the Atlantic wind-storm season, she said.

New sponsors continue to look at ILS and the role of reinsurance brokers in arranging transactions has increased dramatically, she said. Guy Carpenter expects issuance for 2010 to total between \$4 billion and \$6 billion, she said.

**'We are agnostic about what form of capital we bring to our clients.'**

Michael D. O'Halleran, Aon Benfield and Aon Corp.

The investor base for insurance-linked securities is larger and more sophisticated than ever, he said, and investors are less opportunistic and more long-term in nature than previously. Many insurer and reinsurer sponsors of such securities also are investors in the market, he said.

"We are agnostic about what form of capital we bring to our clients," said Michael D. O'Halleran, executive chairman of Aon Benfield in Chicago and senior executive vp of Aon Corp. It can be traditional treaty reinsurance, facultative reinsurance, ILS or any other form of capital; the key is giving the

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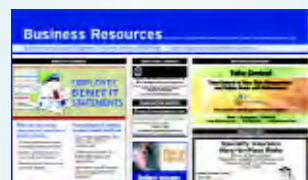
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Reinsurance brokers meeting in Monte Carlo said they are seeing an increase in demand for insurance-linked securities.



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### Stuckey & Co. covers renewable energy

**LAKE ST. LOUIS, Mo.**—Stuckey & Co. has launched an insurance program for companies engaged in renewable energy projects.

The program is available for companies involved in solar, wind, geothermal, biomass and hydro energy generation projects. It offers property; general liability, including product recall and replacement; workers compensation; umbrella; and inland marine coverages. Deductibles range from \$250 to \$25,000.

The green coverage, handled by independent agents who have registered with Stuckey & Co, is underwritten by Hartford Financial Services Group Inc., a spokesperson said.

For more information, contact Dwight Stuckey, president and CEO of the Lake St. Louis, Mo.-based managing general agent, at 800-828-3452, ext. 22, or [dwright@stuckey.com](mailto:dwright@stuckey.com).

### Chartis introduces social media cover

**NEW YORK**—Chartis Inc. has launched an employment practices liability insurance policy to address exposures stemming from using the Internet and social media.

Employment Edge covers exposures from workplace bullying to

violations of the Genetic Information Nondiscrimination Act, including coverage of company losses from social media and blogging activities of employees, the New York-based unit of American International Group Inc. said in statement.

Policyholders also have access to EPL Pak Premier, a suite of loss prevention tools and resources.

For more information, contact Kim Lewis-Collins, director of marketing, executive liability, at 212-458-5891 or [kim.lewis-collins@char-tisinsurance.com](mailto:kim.lewis-collins@char-tisinsurance.com).

### Ironshore launches timber program

**HAMILTON, Bermuda**—Ironshore Inc. has begun underwriting insurance for institutional timber tract owners and managers.

The Timberlands Insurance Program protects timber assets through property/casualty coverage, including professional, management and environmental liability risks, the Hamilton, Bermuda-based specialty insurer said in a statement.

Atlanta-based brokerage and consultant Palmer & Cay L.L.C. designed the program offered to institutional, industrial and private timber owners, managers and investors in the United States.

Ironshore said the policy mitigates loss to standing timber assets due to catastrophic or unexpected occurrences and covers costs related to remediation, reforestation and other associated expenses after an event.

For more information, contact Joseph Boren, CEO of environmental insurance at Ironshore, at 464-826-6775 or [joe.boren@ironshore.com](mailto:joe.boren@ironshore.com).

### Central Arkansas offers professional designation

**CONWAY, Ark.**—The National Alliance for Insurance Education and Research has partnered with the University of Central Arkansas to offer insurance program students a professional designation before graduation.

National Alliance will offer students at the Conway, Ark., university the University Associate Certified Insurance Counselor designation, the Austin, Texas-based insurance research and educational organization said.

Students who complete the university's property and liability insurance program receive credit for the Certified Insurance Counselor designation established by the Commercial Casualty Institute. Students then can complete the life and health portion of the five-part professional designation program and become a designated UACIC.

For more information, contact William J. Hold, director at National Alliance, at 512-349-6325 or [wjhold@scic.com](mailto:wjhold@scic.com).

#### TO SUBMIT ITEMS

##### PRODUCTS & SERVICES

BI's Products & Services column reports on new product offerings.

##### MARKET MOVES

BI's Market Moves column reports on activities by insurance industry companies and related entities.

Please send Product & Services and Market Moves news to Mike Tsikoudakis, 360 N. Michigan Ave., Chicago, Ill. 60601 or e-mail [mtsikoudakis@businessinsurance.com](mailto:mtsikoudakis@businessinsurance.com).

## UP Comings & Goings CLOSE



### CHARLES T. LEE

**NEW JOB TITLE:** Stamford, Conn.-based partner and Connecticut practice group leader for Anderson Kill & Olick P.C.

**PREVIOUS POSITION:** Stamford, Conn.-based partner-insurance coverage at McCarter & English L.L.P.

**GOALS FOR NEW POSITION:** We want to develop the insurance recovery practice in the Northeast, and that's going to include assisting policyholders in insurance recovery. For me in particular, there will be a focus on the energy industry, petroleum and gas.

**INDUSTRY CHALLENGES:** There are three main ones. The first challenge facing the industry is profitability....Risks dealing with unforeseen perils are another challenge to the industry. When new technology comes, so does new risk. The third area of challenge is (figuring out) what the national insurance office is going to do. Are there going to be federal standards that become a floor that the state regulators build on?

**INDUSTRY OUTLOOK:** I think midterm, it's going to improve with the economy. Long term, the outlook is excellent. It is the insurance industry's role to help businesses hedge risk. The pace of technological change has never been more rapid. The demand for insurance to cope with new risks should continue.

**FIRST MARKET EXPERIENCE:** My first job overall was when I was hired by Time Magazine to start a newspaper in Harlem. It was a great job, actually. But my first experience in the industry...was in 1985 to 2006. I was involved in a famous asbestos trial in San Francisco.

**ADVICE:** First, do what interests you most; you'll be the best at it. Secondly, do not be dismayed by setbacks. And three, play it straight.

**HOBBIES:** History, politics, swimming in the ocean and going to church.

**CAN'T-MISS TV SHOW:** "Madmen." It's so accurate in terms of recreating New York advertising in the early 1960s. I had a parent in that business, so it's remarkable to see it.

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In order to be eligible, completed bid proposals must be received by 3:00 P.M. EST on October 22, 2010.

All inquiries for additional information regarding the Invitation for Bid are to be directed, in writing via e-mail, to [Paul.Perry@towerwatson.com](mailto:Paul.Perry@towerwatson.com).



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## Comings & Goings

# ONLINE

**VISIT** [www.businessinsurance.com/ComingsandGoings](http://www.businessinsurance.com/ComingsandGoings) for a full list of this week's personnel moves and promotions. Check our Web site daily for additional postings and sign up for the weekly e-mail.

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

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#### POSTING THIS WEEK

##### AGENTS:

■ Welsch, Flatness & Lutz Inc.

##### BROKERS:

■ Aon Risk Solutions  
■ Crump Insurance Services Inc.  
■ Integro Insurance Brokers Ltd.

##### INSURERS:

■ HCC Insurance Holdings Inc.  
■ SPARTA Insurance Co.  
■ Sul América Seguros e Previdência

##### OTHER PROVIDERS:

■ Professional Dynamics Inc.  
■ Protiviti Inc.

##### REINSURANCE:

■ Willis Re

## REBEX: Aim for quality

CONTINUED FROM PAGE 4

help distinguish a company from its competitors from a safety and quality standpoint, showing that a company that uses the strategy is a one that seeks a challenge and is not content with merely meeting industry standards.

"There are standard specifications and then there are your specifications," Mr. Pfister told the REBEX audience. "(This program) allows you to challenge yourself in detail."

Ms. Stefanc illustrated how quality management is used within Divane Bros. to change its culture. This includes everything from document control during a project and subcontractor selection and requirements, to the measuring and testing of equipment, and corrective action when a mistake is made.

"These are our tools to make sure the foundation is right before we start a job," Ms. Stefanc said.

She said getting subcontractors to buy into working under her company's quality model has been an uphill battle at times, but that some are starting to see its benefits, such as repeat business.

"Subcontractors were not too crazy about this at first, but they are trying to adapt," Ms. Stefanc said. "This (program) can actually help weed out (subcontractors), but it will also allow us to build close relationships with those who want to work with us."

While there are no benchmarking data on how a quality program can help reduce workers compensation claims costs in the construction industry, Mr. Pfister said having a quality program and a quality manager can go a long way in terms of reducing risks and improving a company's culture.

"It reduces the risk on a job, it allows a company to close a job faster, and it brings the office and field management teams together," Mr. Pfister said, adding that a quality management program requires buy-in from all areas of a company.

### REBEX meeting attracts 300

**WHEELING, Ill.**—Nearly 300 people attended the 2010 Risk & Employee Benefits Conference & Exhibition in Wheeling, Ill.

The Chicago and Wisconsin chapters of the Risk & Insurance Management Society Inc. hosted the Sept. 21-22 conference at the Westin Chicago North Shore Hotel.

The next REBEX conference is scheduled for Oct. 13-14, 2011, at the same venue.

For more information, visit [chicago.rims.org](http://chicago.rims.org) or [wisconsin.rims.org](http://wisconsin.rims.org).

—By Jeff Casale

## Social networking, cloud computing bring new risk exposures

By JEFF CASALE

**WHEELING, Ill.**—Organizations that embrace social media and cloud computing to increase efficiencies and boost their brand also are taking on a slew of new exposures, a panel of experts said.

While some specialized insurance coverage exists to cover the exposures, risk managers need to know their own risk profile before they approach the market, they said.

"Underwriters have their own checklist to compare what a company is doing against industry standards as well as what other companies are doing to protect themselves,"

Kevin Kalinich, Chicago-based national managing director of Aon Corp.'s professional risk solutions team, said during a session at the Risk and Employee Benefits Conference and Exhibition in Wheeling, Ill.

In one case, for example, underwriters surveyed employees at a policyholder and found that 19% used the company's default password to log on to its network or e-mail platform. When prompted to change the password, 100% of them complied, Mr. Kalinich said, but 23% of those employees posted the new password on a note at their desk.

Cloud computing, which is Internet-based and involves shared

resources such as software and information, is a cost effective way a company can manage its network. But with the ease and flexibility comes risk, the expert panel said, including data storage issues and who has access.

Aside from sensitive data, a company's image and brand also are vulnerable through the advancements of technology—mainly through social media such as Facebook, Twitter and YouTube.

Having a social media policy in place within an organization is one way it can protect itself, said Carolyn Rosenberg, Chicago-based attorney with Reed Smith L.L.P. and a mem-

ber of the firm's social and digital media task force, adding that most companies should have rules about how employees should use social media and a compliance policy.

Katherine Abbott, Chicago-based vp and treasurer with online travel booking company Orbitz Worldwide Inc., agreed it was important to establish such a policy.

"We want to get our name out there (on Facebook and Twitter) because it can provide us with some positive aspects such as customer feedback at a low cost," she said. "We also have to monitor the social media use of our employees when they use the Orbitz name."

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# Projects: Stalled developments build coverage dilemma

CONTINUED FROM PAGE 3

Haughey, a Boston-based chief economist with Reed Construction Data.

Further, several projects were abandoned in the proposal phase, which Mr. Haughey said makes it difficult to get good data on the number of projects that stalled after breaking ground.

"Basically, in 2008 and 2009, construction spending stopped," Mr. Haughey said. "Of those major projects that have stopped, only a few have restarted."

When a project stalls, contractors should evaluate their work to determine if it can be left as is or if further work or tear-down is needed to limit liability, insurance experts said. Further, contractors should document the site's status through pictures or written documentation before leaving, said Michael Hastings, Atlanta-based national project insurance practice leader with Marsh Inc.'s construction practice.

"They'll want to document the exact status of the site when they leave it," he said. "If something collapses, it could be the result of defective construction. Having documentation of how the site was when you left it is key because it will help if a claim arises later," he said (see related story).

Coverage problems that can arise from a stalled project vary and hinge on whether there is an owner-controlled insurance program in place or if the contractor provided its own insurance.

"The owner of the project would be the primary coverage on a stalled site unless they are impaired financially and are behind on premium payments," said James Conroy, Boston-based vp and chief underwriting officer for Liberty Mutual Group's construction practice.

## Vacant construction sites require protection

When the economy crashed in 2008, several construction projects also came to a halt—some leaving behind partially finished work that became eyesores and targets of thieves.

"The economy surely has been inhospitable to the construction market and it has been for a while now," said Jim Conroy, vp and chief underwriting officer for Boston-based Liberty Mutual Group's construction practice. "Most of the ongoing projects that were going to stall already have and not many of those have come back to life."

The incomplete projects have opened potential liabilities for project owners and contractors, as both must find ways to minimize their liabilities and ensure that insurance is in place should there be losses.

One risk cited by insurance industry experts is the euphemism "urban mining," or when thieves raid dormant construction sites for copper wire, pipe and other materials they can sell to recyclers.

"With assets that are vacant, they become a target of theft," said Charlotte Stone, Glendale, Calif.-based managing director of worldwide property practice group and executive vp for Gallagher Real Estate & Hospitality Services, a unit of Arthur J. Gallagher & Co. "We have seen a huge rise in losses with people ripping out wiring and tearing out walls to get to heating, ventilation and air conditioning systems to remove copper from them, in some cases damaging the structure itself."

Insurance for these losses usually would be covered by the project owner's property and liability policies. However, contractors could find them-

selves exposed if the owner becomes financially strapped and the owner's insurance is canceled.

This makes risk management of the building all the more critical, Mr. Conroy said.

"You're going to want to protect your assets when you leave a site," he said. "There is a public liability exposure because a stalled project is something of an attractive nuisance for thieves and other nefarious acts."

Protecting assets includes fencing off the site as well as installing lighting as a deterrent. If removing equipment isn't possible, contractors should make sure it is secured and, if possible, within the fenced-in perimeter, Mr. Conroy said.

Some insurers may void coverage on an abandoned project if protections have not been installed and a claim occurs, said Martha Bane, Glendale, Calif.-based area senior vp for Gallagher Real Estate & Hospitality Services.

Industry experts say other steps that also should be taken when leaving a site include removing signs with the contractor's or project owner's names to protect their reputation and shoring up the existing structure to ensure its structural safety.

"When you leave a site, you're going to have to take a good look at the structure as it exists and decide if it is safe to leave it as is or if work is going to be necessary to make it safer, or you might have to deconstruct a little bit in some cases," said Michael Hastings, Atlanta-based national project insurance practice leader for Marsh Inc.'s national construction practice.

—By Jeff Casale

"Then the liability would be left to the contractor as they are the only one left and likely have good insurance and assets."

While OCIPs can provide sufficient construction project coverage, they usually are arranged with completion in mind, Mr. Conroy said. When a project stalls, the OCIP can stall, too. This is due either to non-

payment of premiums or the insurer canceling coverage because the nature of the risk changed to a partially completed project.

While insurance experts say contractors can shore up the coverage gap in their commercial general liability policy for work completed on the site, this can prove to be tricky, said Mary Ann Krautheim, New

York-based client strategy officer with Aon Risk Services' construction group services group. That is because most insurers' CGL policies have a wrap-up exclusion, she said.

"It's going to take a heightened awareness on behalf of the contractor to know that they are covered no matter what," Ms. Krautheim said. "They will have to work with

their broker and insurer to make sure they get the coverage that they need if they're involved in a wrap-up and the project they're working on stalls."

Throwing one more wrench into things is completed operations coverage, which is designed to cover claims that arise after the contractor has left the site and the project is finished. Marsh's Mr. Hastings called this the "wild card" when dealing with stalled projects, because insurers may or may not cover the completed work.

The recession-hit economy has rebounded somewhat and the construction industry is expected to follow, Reed's Mr. Haughey said. Along with restarting projects come questions of what will be covered and by which insurers.

"There's a bit of a gray area here in how the insurance would work because there isn't a lot of precedence for (stalled projects) and it will vary from project to project," Liberty Mutual's Mr. Conroy said.

How much time elapsed is a key question for underwriters as they check to see how long the building and its materials have been exposed to the weather and other factors. If the shutdown time is relatively short, the original insurer still may be involved with the project, Mr. Conroy said.

If the original project insurer no longer is involved, owners, contractors and potential new insurers will grapple with coverage terms and conditions on previously completed work.

This opens a line of questioning from insurers, such as the condition of the previously completed work and whether any of it has deteriorated, Mr. Conroy said.

"The fact that there is a stalled project causes a lot of insurance dilemmas," Ms. Krautheim said. "There is insurance for a stalled construction project, but there really isn't a clean solution."

## Twitter: Attack shows social media risk

CONTINUED FROM PAGE 1

there looking to exploit them." The next time, he said, there may be more damage.

Alan E. Brill, Secaucus, N.J.-based managing director for Kroll Ontrack Inc., a Kroll Inc. unit, said: "Companies that are jumping on the bandwagon to exploit social media have to understand that, unlike doing things in their own environment, in large part they're depending on the environment of the social media site for things like security and reliability, and...you're in essence subject to problems that your organization had nothing to do with."

When there are problems involving third-party sites, "there are significant problems with system downtime" as well as with the resources needed to clean systems of problems that malware or viruses can cause, said Alexander Nemiroff, a partner with law firm Jackson Lewis L.L.P. in Philadelphia.

Robert J. Scott, managing partner

with law firm Scott & Scott L.L.P. in Dallas, said one major risk is reputational damage arising from someone hacking into a company's social media account and using the contact information in that account to send messages purportedly from the company.

When problems arise, it is important for companies to learn of them as quickly as possible.

Mr. Brill said he tells firms that use social media to ensure "you have some of your own people getting whatever you're sending, so you have a way to quickly close the loop if something has gone wrong."

Philip C. Gordon, a shareholder with law firm Littler Mendelson P.C. in Denver, said companies using social media providers should consider working with the provider "to identify a contact person in the event there's a problem, and get some kind of understanding of how a security intrusion and the social media host could have an impact on the business."

However, he warned, when a

company signs up to use a social media website, "it most likely is going to agree to the terms of service and whatever limitations on liability are in there," and those remedies "tend to not be particularly favorable to the customer."

"We generally recommend that companies have breach response plans in place in advance of a situation," said Mr. Neuberger.

This involves establishing a task force with representatives from various disciplines within the company, including information technology, communications and legal help, to respond to the situation, he said.

Companies also should be "sure their own systems are up to date, that they've installed all the vendor patches," firewalls and security measures needed to mitigate and reduce the impact of an incident, he said.

While risks can be minimized, they cannot be eliminated, said Michael R. Overly, a partner with law firm Foley & Lardner L.L.P. in Los Angeles. "Unfortunately, a lot of social media is the wild, wild West, so you have to take it for what it is," he said.

## Control social media access with tough-to-crack password

Companies that use social media need to have a clear policy in place for such tools, says an attorney.

A social media policy should "clearly define who can speak on behalf of the company using social media," said Michael R. Overly, a partner with law firm Foley & Lardner L.L.P. in Los Angeles.

It also must establish "the type of information that can be communicated via social media," he said.

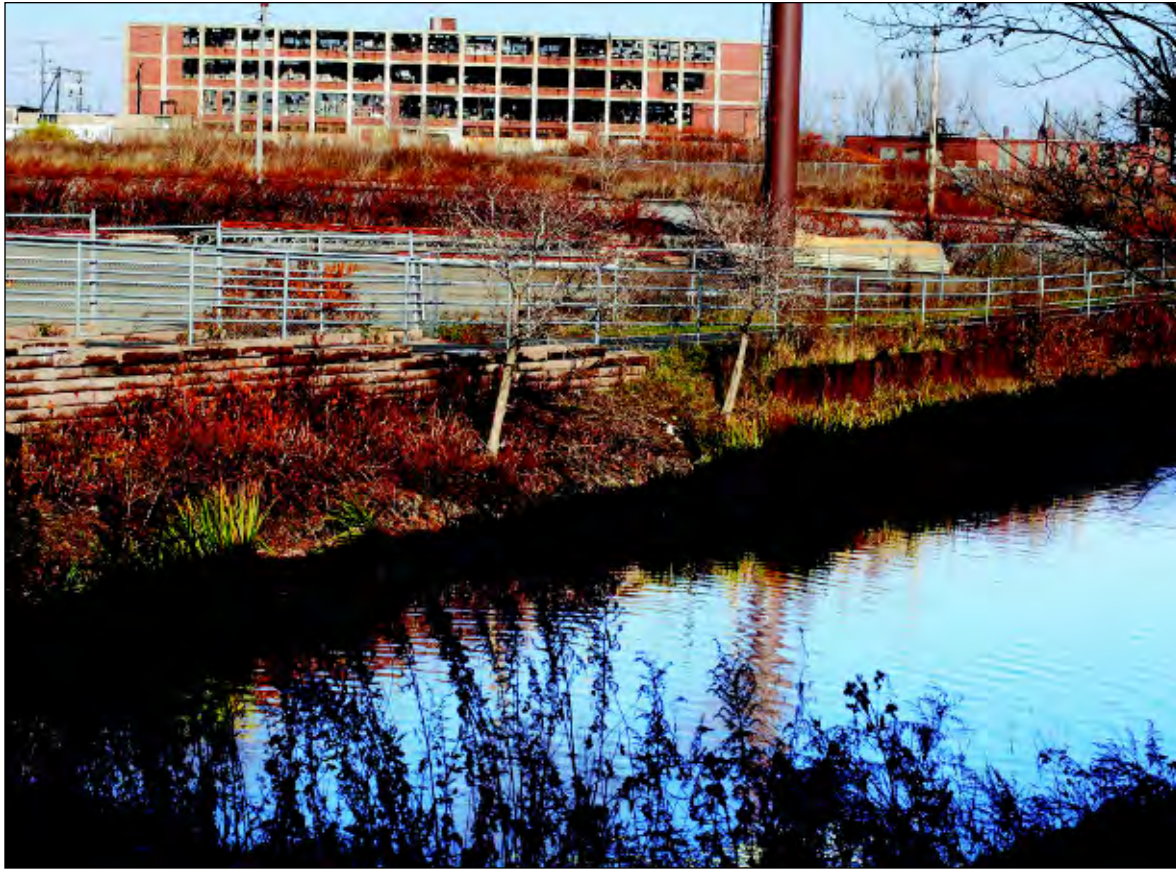
JoAnna L. Brooks, a partner with Jackson Lewis L.L.P. in San Francisco, said firms should make sure their workers know not to violate internal policies with respect to discrimination, harassment and the communication of confidential information, including trade secrets, nor to engage in "any sort of unfair competition."

In addition, passwords for corporate social media accounts should follow recommended guidelines for complexity, including having at least seven characters—a combination of alphabetic, numeric and special characters—and should be changed frequently, typically every 90 days, Mr. Overly said.

"Many companies use a password like 'admin' and never change," he said.

—By Judy Greenwald





REUTERS/LANDOV

A nonprofit organization wants to use this brownfield site in Buffalo, N.Y., to store excess rainwater to prevent runoff into sewers that contaminate the Great Lakes.

## Brownfields: Poor economy slows projects

CONTINUED FROM PAGE 4

tal exposures encountered during brownfields redevelopment projects is not a significant factor in driving these types of projects," Pamela Edgington, product line manager-environmental for Zurich North America Commercial in Phoenix, said in an e-mail. "The current slowdown has been primarily driven by overall (economic) conditions."

Jim Vetter, Philadelphia-based managing director in the environmental practice at Marsh Inc., said, "Overall, compared to prior to the economic downturn, there's definitely been a drop-off" in brownfield redevelopment projects. "Some projects aren't going forward because of lack of financing."

"The biggest drop-off has been where brownfields were being turned into residential development," Mr. Vetter said, explaining that a high foreclosure rate has produced a glut of available housing, reducing the need to develop new properties.

"When there's not a lot of open real estate, the brownfields opportunities look attractive," said Matt Pateidl, vp of environmental risk consulting at Lockton Cos. L.L.C. in Kansas City, Mo. "We're not working with any clients that are actively pursuing brownfields projects" because "our large-portfolio real estate clients are finding opportunities that don't have brownfields issues at market-discounted prices because of the economy."

Jennifer Hernandez, partner and chair of the West Coast land use and environmental group at Holland & Knight L.L.P. in San Francisco, said she helped negotiate a deal a few years ago in which a client purchased an operating oil refinery on San Francisco Bay, shut it down and built homes on the land. Although actual cleanup costs exceeded initial estimates, the pro-

ject was fairly lucrative for the developer because housing prices were soaring at the time.

By contrast, the subsequent meltdown in U.S. housing prices has been "devastating" for developers attempting to redevelop brownfields for residential use, Ms. Hernandez said.

"On the other hand, the large projects like military base conversions" are going forward, Ms. Hernandez said. That is because they often have help from public financing and are being redeveloped for mixed use, which is subject to a

**'When there's not a lot of open real estate, the brownfields opportunities look attractive.'**

Matt Pateidl, Lockton Cos. L.L.C..



lower cleanup standard than when a brownfield site is redeveloped strictly for residential use, she said.

Some projects that are going forward despite the economic downturn often are associated with corporate restructuring, Marsh's Mr. Vetter said.

These either involve cleanup of contaminated property as part of a sales agreement or when a company razes and then replaces an existing structure rather than buying a new one, he said.

Because of the economic downturn, "a lot of companies have to divest properties" to pay down debt, many of which are classified as

brownfields because of their historic use, said Howard Tollin, director of Aon Risk Solutions' environmental services practice in Jericho, N.Y.

But often there still is a considerable lag in their transition from brown to green "because of finance issues more than environmental issues," he said.

Brownfields redevelopment has been "hurt mostly by the economy," said Jon Peeples, a vp at ACE Environmental Risk in Denver. "In a lot of cases, financing for the redevelopment projects isn't going through," he said.

Some banks, especially those that have foreclosed on properties that later turned out to be contaminated, have become more conservative in their underwriting criteria, said Laurence Kirsch, a partner at Goodwin Procter L.L.P. in Washington.

He recalled a situation in which a bank he represented repossessed a property from a borrower in bankruptcy which later was found to be contaminated.

"The lender ended up doing the cleanup" to make the property marketable again, Mr. Kirsch said.

Then things went from bad to worse for the bank when the landfill where the cleanup waste was deposited ended up on the Superfund list.

"The bank ended up paying to clean up the site where the borrower's waste had been taken," he said.

Some brownfields are being transformed into platforms for alternative energy generation, said William Hazelton, senior vp at ACE Environmental Risk in New York. "Instead of taking old distressed properties and developing them into parks or for commercial or residential use, they are now taking properties and turning them into solar farms or putting wind turbines on them," a process Mr. Hazelton dubbed "green on brown."

## Insurers tighten cost-cap coverage as claims mount

Although claims experience has made insurers offering remediation cost-containment coverage—also known as "cost cap" coverage—more cautious about how they underwrite brownfield redevelopment projects, the insurance still is readily available, although the terms are a bit less favorable for policyholders, environmental insurance experts say.

In sharp contrast, the environmental impairment liability market is hotly competitive, with more than 30 insurers writing upwards of 100 different types of policies, insurance experts say.

"It's been a binary split in terms of experience," said Jim Vetter, managing director in the environmental practice at Marsh Inc. in Philadelphia.

"Pollution legal liability has been very robust. With new entrants, pricing has gotten soft, with 10% to 30% reductions in premiums," Mr. Vetter said. "The limits are largely unchanged with up to \$50 million in coverage available from any one carrier, but it's easy to stack carriers on a layered program" when additional limits are required.

By contrast, "cost cap has gone the other way. A number of carriers have had adverse loss experience," and at least one has "quietly withdrawn from the market," Mr. Vetter said.

"While in the environmental liability world there have been some upstart and new markets, there are very few markets that write the cost cap coverage. Maybe three markets have any appetite for it," said William Hazelton, senior vp in New York at ACE Environmental Risk, one of the insurers still writing cost cap coverage.

"It's been driven by substantial losses by some of the carriers that played in this marketplace and a scarcity of reinsurance," Mr. Hazelton said.

As a result of the poor loss experience associated with cost cap coverage, "there's a lot more discipline on the part of remaining carriers in terms of vetting individual projects," Mr. Vetter said.

"The underwriters are being more cautious because of claims history on cost caps," said Howard Tollin, director of Aon Risk Solutions' environmental services practice in Jericho, N.Y.

Among other things, many insurers are reducing the duration of the policy, which traditionally had been as much as 10 years, he said.

"They also are looking to increase the amount of coinsurance if you do get into the policy layer," Mr. Tollin said. "It's almost like health insurance—just to keep the insured having some skin in the game."

In addition, Mr. Vetter said that "once you're into the insurance layer, some carriers have moved from 20% to 30% coinsurance."

Attachment points, which are similar to deductibles, also are climbing, brokers said. "The carriers are adding on anywhere from 15% to 20% on top of the number we bring," Mr. Vetter said.

Matt Pateidl, vp, environmental risk consulting, at Lockton Cos. L.L.C. in Kansas City, Mo., has seen attachment points grow to 15% to 20% of coverage limits from the previous 10% of limits.

Meanwhile, pricing and limits are largely stable, with premiums averaging 10% of limits and limits up to \$50 million, according to industry experts.

While most cost cap insurers provide up to \$25 million in limits, ACE Environmental Risk offers up to \$50 million, which Vp Jon Peeples called "more than adequate" because most brownfield project remediation costs range between \$10 million and \$20 million.

"We had one project that needed to go beyond that, so they put another carrier (in) excess of us," Mr. Peeples said.

—By Joanne Wojcik

## News In Brief

CONTINUED FROM PAGE 1

new insurance brokerage, Mark Edward Partners L.L.C., headquartered in New York. Mr. Freitas, who was with Frank Crystal for more than 25 years, will serve as president and CEO of Mark Edward Partners, the company said in a statement. Craig de Gruchy, who also was part of the senior management team at Frank Crystal, has joined Mr. Freitas at the new broker as COO. Mark Edward Partners, which also has an office in Palm Beach, Fla., is licensed in 50 states.

### RIMS names enterprise risk practice director

Carol Fox has been named director of the Risk & Insurance Management Society Inc.'s new strategic and enterprise risk practice. Ms. Fox most recently was senior director-risk management of Cincinnati-based Convergys Corp. She also has held several leadership positions within RIMS. She takes her new position as director of RIMS' enterprise risk practice effective Sept. 30, RIMS said.

### Treasury expects \$706M in Hartford warrant sale

The Treasury Department said it expects to receive \$706.3 million from the sale of 52.1 million warrants it holds in Hartford Financial Services Group Inc. Treasury obtained from the warrants from the insurer when it provided financial assistance to boost Hartford's capital position. The warrants, priced at \$13.70 per share, give buyers the right to buy Hartford shares for \$9.79 per share. Hartford shares closed Friday at \$22.69.

### Shareholders approve Aon Hewitt deal

Shareholders of Aon Corp. and Hewitt Associates Inc. last week overwhelmingly approved Aon's acquisition of the benefit consulting and human resourcing giant. As part of the transaction, Hewitt shareholders will receive a combination of cash and Aon Corp. stock totaling \$4.9 billion based on the July 9 closing price of Aon's shares. Aon expects to close the deal on or about Oct. 1. Once the transaction is completed, Aon plans to integrate Hewitt and its Aon Consulting unit and change the name of the consulting operations to Aon Hewitt.

### Airline rates rise, stability seen: Aon

Premiums on hull and liability cover for airlines are rising, but the aviation insurance market may be stabilizing, according to Aon Corp. In a report on airline insurance market indicators, Chicago-based Aon said that for accounts placed between January and July, lead hull and liability premiums rose 7% on

average over 2009. More than 60% of accounts placed so far this year have seen a premium increase, compared with 80% of accounts at this point last year, Aon said. That trend suggests the cost of aviation insurance is stabilizing or falling in real terms after 11 consecutive quarters of price increases, the broker said. After several major incidents between May and August, loss levels this year are well above the long-term average, the report said. The report also said confidence appears to be returning to the airline industry, with airlines predicting a 13% increase in passengers in 2011, compared with predictions of a 9% decrease in passengers at this point last year. The average projected fleet value is forecast to rise 9% compared with only 1% last year, the report said.

### NFIP extension approved

The House of Representatives has given final approval to legislation to extend the National Flood Insurance Program through Sept. 30, 2011. Without congressional action, the NFIP, which has been temporarily extended several times during the past year, would have expired Sept. 30. "A long-term extension of the NFIP has been the goal of the insurance industry all year, and we're pleased that it now heads to the president for his signature," an American Insurance Assn. spokesman in Washington said in statement last week.

### Brokers back system to track liability cover

The British Insurance Brokers' Assn. said it supports a government proposal to establish a database to allow employees to trace the employers liability insurance policies of their former employers. The proposals are intended to help workers who suffered a work-related injury or illness trace the insurance coverage of companies that are difficult to find and seek compensation. Historically, it has been difficult for some workers to trace the coverage bought by their former employers, sometimes years after the employer has ceased operations.

### Congress approves Roth 401(k) rollovers

Employers could amend their 401(k) plans immediately to allow participants to roll over account balances into Roth 401(k) plan accounts under legislation that received final congressional approval last week. Under H.R. 5297, participants eligible for a 401(k) plan distribution could roll over part or all of their account balance into a Roth 401(k) plan offered by their employer. If the rollover is made this year, the participant could elect to pay the tax on the money in equal parts in 2011 and 2012. Once rolled over into the Roth 401(k) plan, the money would earn tax-free investment income and participants would not be taxed when they receive a distribution. Depending on participants' current and future tax bracket, the measure could reduce their tax liability.

## Court: Varied liability cases on docket

CONTINUED FROM PAGE 1

panied by proper directions and warnings.

The Bruswitzes argue that the law does not preclude all vaccine design-defect claims if the side effects were avoidable, which they argue was the case with their daughter and that Wyeth could have made a safer vaccine. They first sought compensation from a special vaccine court, which rejected their claim. Then they sued in Pennsylvania state court, from which Wyeth had the case removed to U.S. district court. The district court and a three-judge panel of the 3rd U.S. Circuit Court of Appeals later upheld Wyeth's claim of pre-emption.

Another pre-emption case, *Delbert Williamson vs. Mazda Motor of America Inc.*, also involves product liability. The case, brought by the family of a woman who died in a car crash while wearing only a lap seat belt, involves whether a federal safety standard, which allowed Mazda to install two lap-only seat belt configurations in the rear seat of the car, is shielded from a lawsuit brought in state court. A California Court of Appeal upheld pre-emption, setting the stage for Nov. 12 arguments before the Supreme Court.

A clash between state law and the Federal Arbitration Act led to *AT&T Mobility L.L.C. vs. Vincent and Liza Concepcion*. The California couple alleged that AT&T Mobility's offer of a free telephone to people who signed up for its wireless service was fraudulent, because the customers still had to pay sales tax on the phone. The Conceptions brought a class action suit against AT&T, which said the claims should be subject to individual arbitration as stated in the arbitration clause of the service contract. The clause also banned class actions.

A U.S. district court judge called the provisions "perhaps the most fair and consumer-friendly provisions this court has ever seen" in a consumer arbitration agreement, according to court papers. Despite the consumer-friendly nature of the agreement, the judge and a three-judge panel of the 9th U.S. Circuit Court of Appeals held that the arbitration provision violated California law.

In its petition for Supreme Court review, AT&T Mobility argued that

if the 2009 appeals court decision stands, "it will be the death knell for consumer arbitration in California, and possibly in many other states in the circuit."

Arguments will be heard Nov. 9.

Another 9th Circuit decision, this one involving securities law, also will be reviewed by the high court. The case—*Matrixx Initiatives Inc. et al. vs. James Siracusano et al.*—alleges that Scottsdale, Ariz.-based Matrixx and senior executives misled investors at the pharmaceutical maker about allegations that its cold remedy Zicam had caused a loss of smell in some patients. Matrixx said it did not have to disclose the adverse-event reports because they were not sta-

the statistically insignificant argument.

No date has been set for oral arguments.

In an employment-related case, the high court will hear arguments Dec. 7 in *Eric L. Thompson vs. North American Stainless L.P.* At issue is whether someone who is only associated with an employee who engaged in legally protected activity also should be protected from workplace retaliation under Title VII of the Civil Rights Act of 1964.

According to court papers, Mr. Thompson, a metallurgical engineer, and Miriam Regalado, then his fiancée and now his wife, both worked for Ghent, Ky.-based North American Stainless. Ms. Regalado

### QUESTIONS FOR THE SUPREME COURT

- **BRUESEWITZ VS. WYETH:** Does the National Childhood Vaccine Injury Act of 1986 pre-empt all design-defect claims?
- **WILLIAMSON VS. MAZDA:** Does a federal safety standard that allows car manufacturers to install either lap-only or lap/shoulder seatbelts pre-empt state tort law?
- **AT&T MOBILITY VS. CONCEPCION:** Does the Federal Arbitration Act pre-empt California's law barring class action waivers where the arbitration provision provides for individual resolution of claims?
- **MATRIXx INITIATIVES VS. SIRACUSANO:** Do adverse health reports have to be statistically significant before nondisclosure can give rise to a securities fraud claim?
- **THOMPSON VS. NORTH AMERICAN STAINLESS:** Does the anti-retaliation provision of Title VII of the Civil Rights Act of 1964 protect a person who suffers retaliation based solely on that person's association with an employee who had engaged in protected activities?

Source: U.S. Supreme Court

tistically significant. The plaintiffs argued that Matrixx's failure to disclose the complaints led to investment losses.

Between 1999 and 2003, Matrixx received some complaints about Zicam, two doctors compiled data on 10 such patients, and several customers sued, according to court documents. But Matrixx officials expressed optimism about future growth and did not publicly mention the allegations and lawsuits.

The U.S. District Court of Arizona granted Matrixx's motion to dismiss the lawsuit in March 2006. In October 2009, however, the 9th Circuit reversed that decision. Among other things, the appeals court rejected

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

Mr. Thompson, who had worked at the firm since 1997, was terminated three weeks later. He sued and alleged the termination was in retaliation for Ms. Regalado's complaint and violated Title VII protections. North American Stainless argued the termination was performance-related.

Last year, the en banc 6th U.S. Circuit Court of Appeals in Cincinnati held that only those who engaged in protected activity under the law are protected against retaliation (*BI*, June 8, 2009).

## Costs: Group health plan costs to rise

CONTINUED FROM PAGE 4

While health care cost increases are accelerating, the rate remains far below the double-digit increases of 15.2% in 2002, 14.7% in 2003 and 12.3% in 2004.

To avoid double-digit cost increases, Mr. Winkler said employers are analyzing strategic steps they can take that will result in healthier workforces and increase the likelihood that employees will receive high-quality, cost-effective services when they see a health care provider.

By type, health maintenance

organization plans are projected to have the largest percentage increase in 2011, a 9.4% rise to \$10,254 per employee. Point-of-service and preferred provider organization plan costs each are projected to increase an average of 8.5%, rising to \$10,575 and \$9,408 per employee, respectively.

Cost-shifting to employees also is increasing, according to Hewitt's survey. For example, employees' premium contributions

**9.4%**

Health maintenance organization plans are projected to have the largest percentage increase in 2011, a 9.4% rise to \$10,254 per employee.

averaged \$1,966 per person in 2010, up 7.6% from the prior year, while those contributions comprised 21.8% of the total premium, up from 21.6% in 2009.

In addition, employees' out-of-pocket costs, including copayments and coinsurance, averaged \$1,934 per employee this year, up 11.6% from 2009.

Additional information on Hewitt's analysis is available online at [www.hewitt.com](http://www.hewitt.com).

# Guidance: Health care reforms get some clarification

CONTINUED FROM PAGE 3

that health plans must use independent review organizations when employees request an external review after their request for coverage is denied through internal reviews conducted by employers and plan administrators.

In the clarification, the Labor Department said employers with self-funded plans do not have to contract directly with independent review organizations, but could leave the contracting to their third-party claims administrators.

"Employers did not want to do that work. It would have required a

lot of work and effort. This is a very important clarification," said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

The Labor Department also clarified a health care reform law provision that requires group plans to extend coverage to employees' adult children up to age 26 generally as of Jan. 1, 2011. Many plans now extend coverage only to age 18 or 19, or 22 or 23, if the child is a full-time college student.

Consultants say many employers also voluntarily extend coverage to employees' grandchildren, nieces and nephews if certain conditions, such as financial dependency and

## ADDED CLARITY

Major clarifications in the latest Labor Department guidance about requirements in the new health care reform law

- Effective date to meet certain external and internal claims review requirements delayed to July 1, 2011, from Jan. 1 for self-funded employers working in good faith to meet the requirements.
- Self-funded employers do not have to contract directly with independent review organizations to provide external reviews of disputed claims.
- Employers can continue to impose residency, financial dependency and other requirements before extending health care coverage to employees' relatives who are not sons, daughters, stepchildren, adopted children or foster children.
- Requirement that employer plans that change insurers automatically lose grandfathered status may be eased.

residency, are met.

Ending months of uncertainty on

the issue, the Labor Department last week said such eligibility restric-

tions can continue to be imposed on employees' relatives who are not sons, daughters, stepchildren, adopted children or foster children.

The Labor Department also said it will "shortly address situations" in which grandfathered plans may change insurers without losing that status. Previous rules said a change of insurers automatically would result in loss of grandfathered status.

The Labor Department "is signaling that it will make a change in this area," said Sharon Cohen, an attorney with Towers Watson & Co. in Arlington, Va.

Grandfathered plans are shielded from certain health care reform law requirements, such as providing full coverage of preventive benefits.

## Exchange: Brokers join

CONTINUED FROM PAGE 3

"It's taking some of the noise out of the system," Mr. Crerar said. "It's a utility platform. Your name isn't going to get misspelled. The system is going to work more quickly. It's intended to change the work flow in the backroom to ensure quality."

According to the exchange, brokerages participating in the early adopter program are AmWINS Group Inc.; Brown & Brown Inc.; BB&T Insurance Services Inc.; John L. Wortham

**'The system is going to work more quickly. It's intended to change the work flow in the backroom to ensure quality.'**

Ken Crerar,  
Council of Insurance Agents & Brokers

& Son L.P.; BancorpSouth Insurance Services Inc.; Rutherford/Marsh & McLennan Agency L.L.C.; Edgewood Partners Insurance Center; Van Gilder Insurance Corp.; McQueary Henry Bowles Troy L.L.P.; Riggs, Counselman, Michaels & Downes Inc.; Sterling & Sterling Inc.; M3 Insurance Solutions Inc.; Early, Cassidy & Schilling Inc.; Roach Howard Smith & Barton; Oswald Cos.; and Cook, Hall & Hyde Inc.

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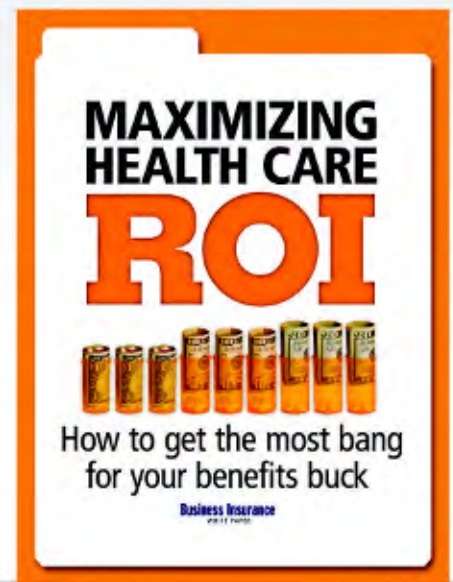
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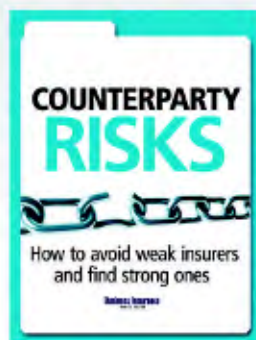


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## Heated debate continues: How hot is too hot?

Once again, we have to wait for the answer to a burning question involving the fast-food business: How hot is too hot?

In March, we reported on a lawsuit filed against McDonald's Corp. by Florida carnival operator Frank Sutton.

Mr. Sutton alleged that he had been severely burned when he bit into a grease-filled chicken sandwich at a McDonald's restaurant in Duffield, Va. Mr. Sutton sought \$2 million as compensation for his misfortune.

A federal judge in Alexandria, Va., dismissed his case, but a divided three-judge panel of the 4th U.S. Circuit Court of Appeals reinstated it, sending it back to the district court for reconsideration.

The trial was supposed to start in a few days, but now there won't be a trial.

According to published reports, Mr. Sutton reached an undisclosed settlement of his suit.

So we'll just have to wait for another case involving injury by fast-food—and given the litigious nature of society, we're probably likely to get one sooner rather than later—to determine just exactly how hot is too hot.

# Business Insurance END PAGE

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



AP PHOTO

Bob Marley's family, in a lawsuit, accused a record company of intentionally withholding royalties from their company.

## Marleys stand up for their rights

Bob Marley's family followed the late reggae singer's advice to "don't give up the fight" for his copyrighted recordings, but a federal judge wasn't swayed.

U.S. District Judge Denise Cote said the Universal Music Group Recordings unit of Vivendi S.A.'s Universal Music Group owns copyrights to five albums Mr. Marley recorded between 1973 and 1977 for Island Records.

The albums were "Catch a Fire," "Burnin'," "Natty Dread," "Rastaman Vibrations" and "Exodus." All were recorded with Mr. Marley's band The Wailers and include some of his most well-known songs.

In their suit, Mr. Marley's family accused the New York-based record company of intentionally withholding royalties from their company, Fifty-Six Hope Road Music Ltd., and ignoring a

1985 agreement assigning the family rights to Mr. Marley's songs.

Further, court records show the Marley family accused the record company of failing to consult them on licensing decisions, as required by the 1985 agreement, to use Mr. Marley's music as ringtones.

However, Judge Cote ruled that Mr. Marley's recordings were "works made for hire" under U.S. copyright law, making the recording company the owner of the recordings for the initial 28-year copyright term and renewals, according to court documents.

Judge Cote also showed no love of the family's request to upholding its claims concerning digital downloads, citing ambiguity in a 1992 royalties agreement.

Mr. Marley, whose songs preached unity, died of cancer in 1981 at age 36.

## Chubb comes to rescue in wildfire

Homeowners affected by recent wildfires in the Colorado foothills five miles west of Boulder could count on their insurer to come to their rescue during and after the blaze.

Chubb Corp. hired a private team of firefighters to protect the homes of its policyholders in Four Mile Canyon, where the inferno ignited Sept. 6 and burned for nearly a week, fueled by strong winds and low humidity.

The private firefighters sprayed fire-suppressing gel on homes, set up sprinkler systems, and cleared trees and brush around structures.

Only three of the 10 homes covered by the Warren, N.J.-based insurer reportedly were destroyed



in the fire, which caused an estimated \$217 million in damage. It was Colorado's most costly conflagration on record, in which 169 homes were destroyed and nearly 10 square miles of land were blackened, officials said.

Established in 2008 by Chubb and Red Lodge, Mont.-based Wildfire Defense Systems Inc., the service helps protect the homes of Chubb policyholders in 13 states through a network of highly trained, certified wildfire fighters, the company said.

The service is available to Chubb policyholders in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

## Judge ends film suit suspense

Did Steven Spielberg and others commit copyright infringement with the story line they used in the movie "Disturbia"?

That's the argument that the estate of a literary agent used in efforts to persuade a federal judge in New York to rule in their favor.

According to the Associated Press, the Sheldon Abend Revocable Trust argued that the plot of the 2007 movie followed that of Alfred Hitchcock's classic 1954 film "Rear Window."

The trust owns the rights to the 1942 Cornell Woolrich short story on which "Rear Window"

was based.

The short story and "Disturbia" involve protagonists confined to their dwellings who believe they've uncovered evidence of a murder.

But in a ruling last week, federal Judge Laura Taylor Swain could not find evidence that Mr. Spielberg et al. had stolen the movie's story from the World War II-era short story. In fact, she wrote that the two works were similar only "at very general levels of abstraction."

With that ruling, which the Abend Trust must find quite disturbing, the judge tossed out the suit.



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