

Business Insurance

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SUPREME COURT TO TACKLE SEVERAL BUSINESS CASES IN LATEST TERM / PAGE 3

RETURN-TO-WORK RULING LIMITS TESTING OPTIONS FOR EMPLOYERS / PAGE 4

In Brief

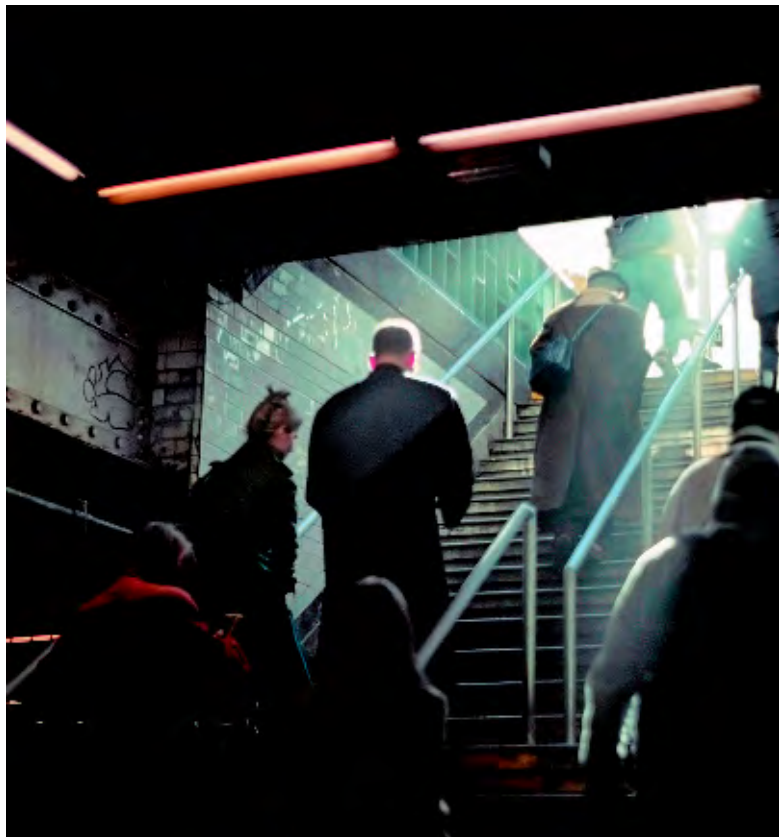
P/C insurer profits drop

U.S. property/casualty insurers' net income for the first half of 2009 fell 59.3% to \$5.8 billion compared with the same period in 2008, according to a report from the Insurance Services Office Inc. and the Property Casualty Insurers Assn. of America. The survey found net written premiums dropped 4.2% to \$212.8 billion in the first half of 2009, while net earned premiums declined 2.9% to \$6.3 billion. Policyholders' surplus rose 1.2% to \$463 billion as of June 30. The industry's combined ratio improved to 100.9% in the first half of this year from 102% during the same period last year.

Bill calls for federal insurance office

The chairman of a key House subcommittee has released draft

See **IN BRIEF** page 37



Foiled terror attack highlights 'soft' risks

Experts outline steps to mitigate threats to potential targets that attract crowds

By **MARK A. HOFMANN**

The recent arrest of alleged terrorists accused of planning to strike targets in New York underscores the need to bolster the defenses of so-called soft targets, security experts say.

Soft targets—venues that are relatively unprotected against terror attacks—come in many varieties, such as, transit systems, stadiums, hotels and other places where large numbers of people gather. These are places where instituting the type of comprehensive security found at airports and military sites is impracticable, yet security experts say steps can be taken to mitigate the terrorist exposure.

One of the first steps is realizing that the exposure is not static. "Continued repeated evaluation of your risk and protective methods is necessary because the methods of attack constantly change," said Chris Grniet, vp at Marsh & McLennan Cos.

See **TARGETS** page 36

Health reform plan moving in Senate

Finance Committee expected to OK bill, but battles loom

By **JERRY GEISEL**

WASHINGTON—The Senate Finance Committee is expected to pass sweeping health care reform legislation this week as the focus shifts to the Senate floor, the next battleground for the bill.

The Finance Committee completed action early Friday on the bill assembled by panel Chairman Max Baucus, D-Mont., having worked through 564 amendments.

This week, the committee will vote on the bill. Then, Senate Majority Leader Harry Reid, D-Nev., will meld the Finance Committee measure with a very different one approved in July by the Health, Education, Labor and Pensions Committee for the full Senate to consider, probably beginning the week of Oct. 12.

Many of issues that dominated the Finance Committee deliberations during the past two weeks are certain to come up on the Senate floor. These include whether a government-run plan should be established to compete with private insurers and whether employers should be mandated to offer coverage.

"It is a milestone, but a long road remains," said Paul Dennett, senior vp-health care reform at the American Benefits Council in Washington.

"A big step has been completed, but an even bigger one lies ahead," said Frank McArdle, a consultant in the Washington office of Hewitt Associates Inc.

In the House of Representatives, Democratic party leaders have to put one bill together for floor debate from the measures passed in July by three House panels: the Education and Labor, Energy and Commerce, and Ways and Means committees. That also could happen as

See **REFORM** page 36



UPI/LANDOV

Sen. Baucus

SPOTLIGHT



SURPLUS LINES REPORT

Opportunities exist for nonadmitted companies despite pricing squeeze in traditional market; surplus lines premiums drop amid soft market; surplus lines regulatory reform supporters hope Senate will pass bill; stamping offices say they aid buyers. **PAGE 11**

Hartford hopes new CEO will lend fresh viewpoint

By **JUDY GREENWALD**

HARTFORD, Conn.—Hartford Financial Services Group Inc. has brought in a new perspective on the insurer's problems with its selection of a new leader from outside the industry, many analysts say.

Former banking executive Liam E. McGee's experience heading a complex financial services organization also is expected to benefit Hartford, which observers say is much improved from its situation of a few months ago but still faces significant challenges.

Mr. McGee, who last week was named Hartford's chairman and chief executive officer, previously was president of Charlotte, N.C.-based Bank of America Corp.'s consumer and small-business bank operations (see box, page 35). He succeeds Ramani Ayer, who in June announced plans to retire.

See **HARTFORD** page 35



BUSINESS WIRE

LIAM MCGEE

AGE: 55

PREVIOUS JOB: President, Bank of America consumer, small-business operations

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On the Web

BI VIDEO

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BI SPECIAL REPORTS

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BMOY 2009

Nominate benefit managers by Oct. 9

The deadline to nominate your favorite benefit manager for *Business Insurance's* 2009 Benefit Manager of the Year Award is Oct. 9. The honoree will be featured in the Nov. 30 issue. www.BusinessInsurance.com/BMOY.

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Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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RIDE ALONG ENCLOSED IN EDITION 4

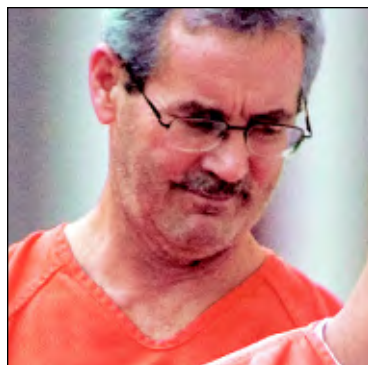
Fraud case shows need for D&O priority clause

Alleged Ponzi leaders vie with company for coverage limits

By ZACK PHILLIPS

DALLAS—The leaders of an alleged billion-dollar Ponzi scheme and the receiver of the now-bankrupt company are involved in a court battle that observers say illustrates the need for a directors and officers policy provision that has become more prevalent in recent years.

Federal authorities have accused R. Allen Stanford of operating Houston-based Stanford Financial Group Co. as a Ponzi scheme, bilking investors of more than \$7 billion through fake certificates of deposit from a subsidiary bank in Antigua.



REUTERS/LANDOV

R. Allen Stanford arrives at federal court in Houston on Sept. 15. He is accused of operating a Ponzi scheme.

Mr. Stanford and his alleged co-conspirators, who face lawsuits and criminal charges, say they need to tap the company's D&O policy to pay their attorneys; a court-appointed receiver says the

bankrupt company's estate needs all proceeds of that policy to pay swindled investors and litigants. The case is being heard by the U.S. District Court for the Northern District of Texas in Dallas.

Stanford Financial's D&O policy, like many D&O policies, covers claims against the company and individual directors and officers, which can create conflicts when the corporation and individuals both face legal expenses and losses likely to exceed the policy limit.

Stanford Financial so far faces class action lawsuits alleging at least hundreds of millions of dollars in claims, while its insurers at Lloyd's of London have received indemnity requests from more than 60 former Stanford directors and officers, according to a brief filed by Stanford Financial receiver Ralph S. Jan-

vey.

The Lloyd's policy offers at least \$50 million in limits, Mr. Janvey's brief said.

To deal with these kinds of disputes, many D&O policies now have priority-of-payments provisions, which attempt to clarify the order in which the insurer will disburse funds in cases of competing claims. Stanford's policy does not have such a provision.

Observers say the provisions have become more prevalent in recent years, although such disputes are not new. Joshua Gold, an attorney and shareholder at Anderson Kill & Olick P.C. in New York, said such provisions were in about one of four policies five or six years ago; now he sees them in 80% or 90% of policies.

See **PONZI** page 35

Supreme court to hear several business cases

Disputes affecting risk, benefit managers slated for rulings

By MARK A. HOFMANN

WASHINGTON—At first glance, the docket facing the Supreme Court when it begins its new term Oct. 5 might appear more noteworthy for what it doesn't address than for what it does.

As Robin Conrad, executive vp of the National Chamber Litigation Center Inc. in Washington, noted during a court preview last week, business cases make up slightly more than half of the high court's docket of cases it will hear this term. Unlike recent years, the list contains no cases involving federal pre-emption of state laws or environmental issues. In fact, it contains only one case involving the Employee Retirement Income Security Act.

But that case—*Sally L. Conkright et al. vs. Paul J. Frommert et al.*—is one of a handful of cases of interest to risk managers and benefit managers. And the term could become even more interesting if the high court decides to review a San Francisco law relating to employer health care spending.

The issue in *Conkright vs. Frommert* involves how much deference a court must give to an ERISA plan administrator's interpretation of the terms of the plan. A group of Xerox Corp. retirees who left and then returned before retiring brought the suit. At issue is the method of

accounting for lump sum distributions received by the employees when they first left the company when determining the benefits to which they were entitled at retirement.

In a review of the case, a three-judge panel of the 2nd U.S. Circuit Court of Appeals ruled last year that a district court has no obligation to defer to a plan administrator's reasonable interpretation of the plan's terms if the administrator arrived at the conclusion outside the context of an administrative claim for benefits. It also held that a district court

has "allowable discretion" to adopt any "reasonable" interpretation of the retirement plan terms under certain circumstances. The high court has not set a date for oral arguments.

A case involving class actions is slated for oral argument on Nov. 2. The suit—*Shady Grove Orthopedic Associates P.A. vs. Allstate Insurance Co.*—presents the justices with the question of whether state legislatures can dictate procedure in federal courts.

New York state law bars lawsuits seeking a statutory penalty from being brought as class actions. In the underlying case, the orthopedic group alleged that Allstate failed to pay statutory interest penalties on overdue payments of insurance benefits owed under no-fault automobile insurance policies. Rather than seeking the payments—which Allstate did pay Shady Grove—sought the interest penalties in a federal suit, citing diversity of the parties



The Supreme Court will consider a new batch of cases starting Oct. 5.



REUTERS/LANDOV

A car hangs from the wall in a building in Pago Pago, American Samoa, after an earthquake caused a tsunami on the island last week.

Tsunami, quake claims likely low

By JEFF CASALE

PAGO PAGO, American Samoa, and PADANG, Indonesia—Two deadly earthquakes rocked Indonesia within 17 hours of one another last week, and another large earthquake spawned a tsunami that swallowed parts of the islands of Samoa, American Samoa and Tonga.

Insured commercial losses from the two Indonesian quakes are unknown at this time, but those losses are expected to be low because it's likely not much of the property is insured, according to some catastrophe modelers.

The tsunami that struck the Samoan islands was triggered by an earthquake about 125 miles south of the Samoan capital of Apia, according to Boston-based modeler AIR Worldwide Corp. The U.S. Geological Survey issued a preliminary magnitude of 8.0 for the event.

The tsunami was so powerful it twisted concrete beams, AIR reported, adding that at least 100 people were killed in the Samoan islands. Pago Pago, the largest city in American Samoa, sustained heavy damages, AIR said in a statement.

Shortly after the Samoan quake, a 7.6 magnitude quake near Padang,

Indonesia, occurred. About 17 hours later, a 6.6 magnitude quake struck nearby, bringing the death toll from both events to more than 1,100 people and injuring more than 400, according to early reports.

The initial Indonesian quake caused significant damage to buildings and houses surrounding the area, according to Newark, Calif.-based modeler Risk Management Solutions Inc.

AIR estimated insured losses from the quakes would be not be "significant" because there is a low penetration rate of earthquake insurance.

"It is a humanitarian catastrophe, but in terms of insured losses, we do not expect it to be a big event," said a spokesman for Munich Reinsurance Co.

A representative of Swiss Reinsurance Co. said it was too early to estimate whether it had any exposure. A Hannover Reinsurance Co. spokeswoman told Reuters it could see claims of more than €5 million (\$7.3 million) from the quakes in Indonesia but noted that was a very rough, preliminary estimate.

Senior Editor Michael Bradford contributed to this report.

See **COURT** page 35

Ruling on return-to-work tests sets fine line for employers

Evaluation allowed of injured workers, not a medical exam

By **ROBERTO CENICEROS**

Employers may need to re-evaluate functional ability tests given to injured employees to make certain they are capable of returning to work safely as a result of an appeals court decision last week, attorneys say.

In that case, the 9th U.S. Circuit Court of Appeals ruled 2-1 that an employee can sue Georgia-Pacific Corp. for violating the Americans with Disabilities Act because of the way a vendor administered an evaluation for an injured employee trying to return to work.

Such tests are known as both physical capacity evaluations and functional capacity evaluations.

Claims administrators and case managers frequently rely on results of such tests to determine whether injured or disabled employees can safely perform essential job functions, said Bob Stoner, vp of employer payer services for Hanover, Md.-based BTE Technologies Inc., which provides functional assessment systems and other products.

Job-specific tests also provide physicians with information to help determine whether to release an injured employee for modified or full duty.

But attorneys said last week's ruling in *Kris Indergard vs. Georgia-Pacific Corp.* represents the first time a federal appeals court has weighed guidelines from the Equal Employ-

WHAT HAPPENED

■ In *Indergard vs. Georgia Pacific*, an appeals court said a lower court erred in dismissing a challenge of return-to-work testing.

WHAT'S NEXT

■ The court said the testing must be evaluated to determine if it is job-related and consistent with business necessity.

ment Opportunity Commission to determine when a PCE/FCE crosses the line to become a medical exam.

Under the ADA, employers may not require employees to undergo medical exams unless they can show the exam is job-related and

consistent with business necessity, last week's ruling states.

The court's finding has "a potentially very broad application for anyone that uses this type of evaluative tool with people (returning) from workers comp injuries and nonwork-related injuries," said Scott G. Seidman a partner at Tonkon Torp L.L.P. in Portland, Ore., who represents Georgia-Pacific in the case.

"It doesn't give employers a very wide scope to conduct these types of exams because there is a pretty narrow line between being able to test for functional ability and stepping over that line," Mr. Seidman said.

Ms. Indergard's attorney could not be reached for comment.

In addition to showing a business necessity, employers can avoid run-

ning afoul of the courts by giving an employee a physical agility exam limited to specific injured body parts, said Clay Creps, chair of the employment law practice group at Bullivant Houser Bailey P.C. in Portland, Ore.

Put it in writing

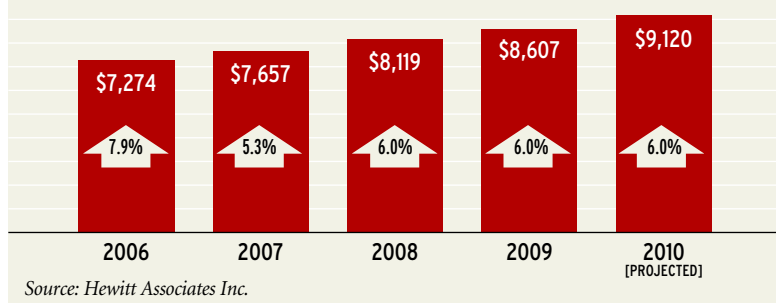
Every employer should have a written protocol for return-to-work exams that states "the only thing that exam is to explore is whether the injury or illness that caused the person to be out of work has healed to the point that they are now capable of performing the function," Mr. Creps said.

Employers also should provide a written directive to health care providers that conduct the tests and

See **RETURN** page 33

ON THE RISE

Average annual health care costs per employee, and percent change from the prior year



Health care costs rising at 6% annual clip: Study

By **JERRY GEISEL**

Group health care costs are increasing at a stable rate, but they continue to rise faster than general inflation, new research shows.

In 2009, group health care costs increased an average of 6% to \$8,607 per employee, and are projected to rise 6% again next year to an average of \$9,120 per employee, according to Lincolnshire, Ill.-based Hewitt Associates Inc. The analysis released last week is based on information from 325 large employers.

This year's 6% increase is the second consecutive year that average costs climbed that amount (see box).

In comparison, overall inflation has been near zero so far in 2009 and in 2008, while the Consumer Price Index rose just over 4% in 2007, according to government figures.

Still, health care cost increases are modest compared with the earlier part of the decade: In 2002, costs increased an average of 15.2%, in 2003, costs rose 14.7%; and in 2004, 12.3%. Cost increases have moder-

ated since due to employer actions.

"Employers were able to successfully mitigate rising health care costs through one of the worst economic climates in history and they did so by taking some very simple steps—cost-shifting, tougher negotiations with health plans and an increased focus on preventive care," Jim Winkler, Hewitt's Norwalk, Conn.-based health management consulting practice leader, said in a statement.

By type, health maintenance organization plans had the highest cost increase in 2009, rising 7.4% to an average of \$8,869 per employee. Point-of-service plan costs climbed 5.4%, averaging \$9,320 per employee. Preferred provider organization plan costs increased 5.2% to an average of \$8,264.

Cost-shifting to employees also has increased. For example, employees' total health plan costs that include out-of-pocket expenses averaged \$3,656 per person in 2009, up 6.5% from 2008.

Copies of Hewitt's analysis are available online at www.hewitt.com.

Has Sanford scandal hurt domicile?

S.C. captive experts weigh market impact of governor's troubles

By **RODD ZOLKOS**

Political turmoil that has swirled around South Carolina Gov. Mark Sanford since June may have clouded his political future, but opinions are mixed on whether Gov. Sanford's situation is negatively affecting captive insurance business in the state.

While some suggest that Gov. Sanford's struggles aren't diverting attention from state support of captive insurance business, others say the governor's situation is indeed a distraction and the perceived instability at the top of South Carolina state government is causing many captive prospects to look elsewhere.

Gov. Sanford's political troubles began in June when he was forced to admit that he spent a mysterious five-day absence from the state pur-



LANDOV

In late June, South Carolina Gov. Mark Sanford revealed that an extramarital affair took him to Argentina.

suing an extramarital affair in Argentina. The Republican governor since has faced accusations that he misused state, private and commercial aircraft, assertions he has denied.

The governor has rebuffed calls from South Carolina political leaders from both parties that he resign,

and has promised to fight any impeachment attempt.

"The whole thing with the governor and the Legislature hasn't affected us at all," said Jeff Kehler, program manager of alternative risk transfer services in the South Carolina Department of Insurance. "It really hasn't. The governor has been supportive and the Legislature has been very supportive of the captive industry in the state, and the whole thing hasn't changed that one bit."

"We don't think it's going to have any distracting effect," said John A. Weitzel, managing director of W.A. Taft & Co. (S.C.) L.L.C. in Columbia, S.C., and chairman of the South Carolina Captive Insurance Assn.

"Obviously, it's a distraction overall through the state government process," Mr. Weitzel said. But, he said, the governor and the Legislature have been at odds for several years, and it is the Legislature that's been providing most of the support for South Carolina's

See **SANFORD** page 37

Marine market stable amid turmoil

By **MICHAEL BRADFORD**

BRUGES, Belgium—The marine insurance market did not swoon in tandem with the significant drop in global trade, an expert with the International Union of Marine Insurance said.

Global marine insurance premiums were \$22.9 billion in 2008, "a very small decrease" from 2007 that may be attributed partially to currency exchange fluctuations, said Astrid Seltmann, secretary and vice chairman of IUMI's facts and figures committee. "But the whole picture is quite stable," she said.

Ms. Seltmann, an actuary and analyst with the Nordic Assn. of Marine Insurers in Oslo, Norway, presented the report at IUMI's annual meeting late last month in Bruges,



Marine insurance premiums have held steady despite a drop in trade.

Belgium. The report described a little changed marketplace but one that is facing challenges this year that could yet strain insurer performance.

Marine insurance capacity is more than adequate, IUMI President Deirdre Littlefield said in a statement issued at the start of the conference. But, "the danger now is that many underwriters will be

tempted to cut rates and make other concessions in order to maintain market share."

She urged marine insurers during upcoming hull renewals to "set fair prices in a disciplined and responsible manner and aim for stability."

Just prior to the conference, IUMI released figures showing that marine premiums written in 2008 fell 3.6% compared with 2007.

Cargo premiums dropped 2.3% and marine liability premiums fell 8%. But offshore energy premiums fell 19.4%.

Hull premiums, meanwhile, rose 2.4% in 2008, according to IUMI.

Marine market players worry that 2009 may be bleaker and say a full year of insurer results during the

See **IUMI** page 34

Errors & Omissions

Martin Albers, head of client markets in Europe for Zurich-based Swiss Reinsurance Co., clarified a comment in a Sept. 21 story, "Reinsurer Capital Levels Rising, but Investors Remain Wary." Mr. Albers said aggregate insurance industry capital now is about 15% to 20% lower than before the financial crisis.



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—Denise Morris, Senior Vice President
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Commentary

Weighing health costs of a few extra pounds

Like many Americans, I've been battling the bulge for most of my adult life. Also like many Americans, my motives have been primarily cosmetic. It wasn't until this "obesity epidemic" started making national news that I even considered the harm that the extra pounds could do to my health.

Responding to those headlines, employers increasingly are encouraging their employees to lose weight and get fit, believing it will lower health care costs. Whether it's weight-loss programs at work, onsite fitness facilities or a few bucks off their monthly health insurance premiums, workers are being prodded to drop pounds and adopt a healthier lifestyle.

But based on the literature I've collected on the subject of obesity, I'm becoming a bit skeptical that carrying a few extra pounds is really all that bad for one's health. For every study that suggests being overweight leads to health problems, there is another study that contradicts it.

Researchers at the Harvard School of Public Health's Department of Nutrition published a study in the Sept. 30 online edition of the journal *BMJ* that found women who are obese in middle age are almost 80% more likely to have multiple health problems by the time they reach age 70.

The researchers analyzed 20 years of data on 17,065 women of all sizes beginning at an average age of 50. When the study began, none of the women had major chronic conditions; but by the time they reached age 70, only about 10% of the women had what researchers termed "healthy survival," and the obese women were 79% less likely to have healthy survival than their slim counterparts. Every 2.2 pounds of extra weight lowered the odds of healthy survival by 5%, according to the study.

But another study in the June issue of the journal *Obesity* found that people who are overweight—defined as having a body mass index between 25 and 29.9—are actually 17% less likely to die prematurely than are people of normal weight, defined as those having a BMI between 18.5 and 24.9.

So being overweight might not be the problem everyone thinks it is, said Dr. David H. Feeny, a senior investigator at Kaiser Permanente Center for Health Research in Portland, Ore., and one of the study's authors. In fact, being underweight may be a worse problem, he said. The study found that people with a BMI of less than 18.5 were 73%



**JOANNE
WOJCIC**

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more likely to die prematurely than those of average weight.

I've also found research that shows weight gain is an inevitable byproduct of the aging process. Think about it. If your parents were thin in their courtship pictures but got a little chubby as they reached old age, can you really expect to be thin for the rest of your life?

A few years ago, I read an article that explained how women tend to gain weight in middle

I'm becoming a bit skeptical that carrying a few extra pounds is really all that bad for one's health.

age as part of the body's natural defense against post-menopausal bone loss. In fact, doing a recent Internet search, I discovered several studies that found maintaining or losing body weight during the menopausal transition may lead to reduced bone mineral density.

A study by Paul Williams of the Ernest Orlando Lawrence Berkeley National Laboratory found that men also tend to gain weight naturally as they age, regardless of how hard they work out to try to keep it off. The 1997 study showed that in 4,769 runners between 18 and 50, weight gain occurred at the same rate almost regardless of the number of miles run per week. Per decade, the average six-foot-tall man gained about 3.3 pounds.

So no matter how many studies I read that say it's good for me to lose weight, I can't help but consider those that say it doesn't really matter. Regardless, I've decided I'm still going to pursue my weight-loss quest. But I may as well be honest about my real motive. I've got a whole closet full of size 6 suits that I hope to fit into again before they go out of style.

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Business Insurance OPINIONS

Ruling complicates return-to-work tests

AN APPEALS COURT RULING last week that a paper products firm crossed the line between physical evaluations and medical exams won't do anything to improve safety in the workplace.

As we report on page 4, the 9th U.S. Circuit Court of Appeals ruled in a case concerning the paper products firm's efforts to evaluate whether a worker who had been off work with an injury could safely return to her job.

While employees' disability rights should be taken seriously, so should an employer's right to ensure that people working around potentially dangerous equipment are able to function safely. Aside from basic safety concerns, you can be sure an employer who allows a worker back on the job too soon would face additional claims should an employee reinjure themselves, or liability claims should the employee be involved in an accident that hurt others.

An employer who allows a worker back on the job too soon would face claims.

Employers can take some solace from the ruling, however, as it is the first time a federal appeals court has ruled on regulations that have been in place for about a decade on physical capacity tests.

Under the Americans with Disabilities Act, employers cannot require workers to undergo medical exams unless they can show the exam is job-related and necessary. While this sounds reasonable, it is, of course, open to interpretation, and last week's ruling provides some guidance for employers to follow when they require the exams.

Going forward, it is clear that employers should ensure they have written policies in place outlining how to ascertain what physical tests are necessary, how workplaces and the physical requirements for operating in those environments should be evaluated, and what limitations should put on testing. Just as importantly, employers should relay these policies to all third-party providers and physicians they use to evaluate and administer workers compensation claims.

Such moves are in everyone's interest—employers' and employees'.

Keep public option out of health care reform

SHOULD A PUBLIC OPTION be part of health care reform legislation?

Last week, five Democrats on the Senate Finance Committee joined all 10 of their Republican colleagues in voting against including a public option, or government-run health insurance plan, as part of a larger reform package.

The most telling vote was that of Sen. Max Baucus, D-Mont., the panel's chairman. While not opposed to a public option, Sen. Baucus said its inclusion in a reform bill would almost certainly doom the legislation's chances of winning approval by the full Senate.

We agree. Republicans oppose a public option, with many believing it would be the first step toward a single-payer, national health insurance program that ultimately would force private insurers out of the market. Some Democrats share that sentiment.

On the other hand, many Democrats said a public option would inject more competition in the market, leading to lower prices for consumers.

While we suspect both sides may be exaggerating their cases, we agree with Sen. Baucus' assessment that the inclusion of a public option will kill any chance that reform legislation will be passed in the near future. It is simply too controversial.

Legislators would be wise to focus on health care reform issues, such as subsidizing health insurance premiums for the lower-income uninsured and writing new personal lines rules, for which there is widespread support and virtually no opposition. Enactment of those reforms would make a difference in improving health care coverage for millions of U.S. residents.



WRITE

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

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in the *BI* Online Poll at
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THIS WEEK'S RESULTS

Should health care reform include a fee on employers that choose not to offer coverage?



Yes, it's needed to ensure access to insurance

58%

No, it's a burden on employers

41%

NEXT WEEK'S QUESTION

How will property/casualty rates change at Jan. 1, 2010, renewals?

LETTERS

Coverage exclusion bars criminals

TO THE EDITOR: Not addressed in Judy Greenwald's article "Ex-convicts in Workforce Pose Liability Problems" (*BI*, Sept. 14) regarding employment of people with criminal convictions is a basic exclusion in employee crime coverage of anyone with a criminal conviction. The carrier must be asked for a waiver, which is unlikely to be granted. Furthermore, coverage ceases upon the insured learning of any dishonest act of an employee while in the employ of an insured.

Earle S. Rynston
East Hampton, N.Y.

FDIC reinsurance still a possibility

TO THE EDITOR: I read the Sept. 28 commentary on reinsurance for the Federal Deposit Insurance Corp. with great interest. The idea of reinsurance is right on. However, this strategy had been looked at a few years ago but never came to pass.

There were three main reasons why the reinsurance community was not interested. The biggest hurdle was due to the aggregate exposure of trillions of dollars in deposits. As of June 30, 2009, total deposits in U.S. banks was approximately \$8.3 trillion. The other hurdles were the pricing and lack of creativity to limit this tremendous risk for the insurance industry. All of these hurdles could be overcome.

We at VERIBANC Inc. have hands-on experience in pricing excess FDIC insurance. From 1993 through 2000, we were the underwriting engine behind DEPOSITURE. DEPOSITURE was an insurance program offered through General Re Corp.'s subsidiary General Star Indemnity that provided banks with excess FDIC

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Opportunities exist despite pricing squeeze

By KRISTIN GUNDERSON HUNT

Generally soft pricing for traditional insurance is limiting opportunities for excess and surplus lines insurers, but opportunities exist, brokers and insurers say.

"There aren't too many opportunities in the surplus lines market right now," said Kevin T. Westrope, president and chief executive officer of Westrope, a commercial wholesale brokerage based in Kansas City, Mo. "The standard markets are fighting for market share in a soft market like this, so there are fewer opportunities."

He sees E&S opportunities in the property catastrophe market because the volatility in the market makes the admitted market hesitant.

E&S insurers currently handle much of the property catastrophe business as traditionally is the case, said Jim DeSimone, senior vp of Zurich Specialty Casualty in New York.

See **SURPLUS** next page

BI RANKS

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LARGEST WHOLESALE
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Q&A WITH INCOMING
NAPSLO PRESIDENT
MARSHALL KATH

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Surplus: Nonadmitted property market presenting opportunities

CONTINUED FROM PREVIOUS PAGE

"Property catastrophe is traditionally a surplus lines type of coverage," Mr. DeSimone said. "If the (nonadmitted property catastrophe) market is softening, it may go back to the admitted market, but (right now) it's not turning all that much. It's mostly flat."

David Bresnahan, Boston-based executive vp of the casualty, health care and programs divisions for Lexington Insurance Co., said property catastrophe business will remain in the nonadmitted market until a pricing shift occurs.

"The property catastrophe market is not going to get soft until you see a fundamental change on the supply side," Mr. Bresnahan said. "Right now, the catastrophe reinsurance market remains tight. Terms and conditions continue to improve from an underwriter's perspective."

Excess and surplus lines experts say the property market is showing growth, but opportunities are available in various areas.

Underwriting vacant personal and commercial properties is becoming more popular among E&S underwriters, said Alan J. Kaufman, chairman, president and CEO at Burns & Wilcox Ltd., a Farmington Hills, Mich.-based wholesaler.

As people have defaulted on their mortgages and been forced to

move, and commercial construction has skidded as developers run out of money, the vacant property insurance business has accelerated, Mr. Kaufman said.

Lenders, such as banks and private equity funds, are purchasing vacant property coverage on foreclosed property because ownership has reverted to them. Alternatively, if the property still is owned by the homeowner or commercial property owner and developer, the owner will purchase vacant property insurance on their own account.

Another growth area Mr. DeSimone cited for Zurich is habitation real estate, which typically includes older, inner city apartments. He said such real estate often falls into the surplus lines market because the buildings might not be in the nicest areas or meet building standards as a result of grandfather clauses in building codes.

He attributed the growth to the number of active competitors interested in the space. He said units and area don't decrease in a down economy like payroll and sales generally do, and more properties may be faced with financial challenges, pushing them into the E&S markets for surplus lines insurers to compete over.

While real estate-related construction insurance typically is a growth area for the surplus lines

'Right now, the catastrophe reinsurance market remains tight. Terms and conditions continue to improve from an underwriter's perspective.'

David Bresnahan,
Lexington Insurance Co.

market, Mr. DeSimone said it is a shrinking segment of the market as the stale economy slows construction of new buildings.

However, Mr. DeSimone said construction-related stimulus money in the American Recovery and Reinvestment Act could spur demand among E&S insurers in the near future.

Another potential surplus lines growth area is professional liability coverage for clinicians affiliated with medical clinics, such as medical spas or dermatology and cosmetic surgery clinics, said Mr. Kaufman, who said such clinics are expanding across the country and need the coverage.

Skip Cooper, Birmingham, Ala.-based president of AmWINS Group Inc., said he sees opportunities for surplus lines insurers to write directors and officers liability coverage for financial institutions—the area where admitted-market insurance pricing has spiked.

Mr. Cooper said while such coverage is available, many insurers are staying away from it because of concerns about the proliferation of risk and future lawsuits emanating from the financial market crisis.

Opportunities in the environmental insurance arena also seem to be expanding, several executives said.

Increased awareness and more comprehensive products with fewer exclusions have spurred interest in E&S insurers' environmental offerings, Mr. Westrope said.

"Better products are out there to deal with environmental exposures on a more comprehensive basis," he said.

Admitted-market insurers are avoiding environmental insurance because of the type of exposure it presents, Mr. Kaufman said.

"It's sophisticated, it's complicated and it takes understanding," he said. "It's not in-the-box writing."

In addition, movement toward green technologies and environmentally friendly buildings, not necessarily the soft market, is gener-

ating interest in the environmental liability space, Mr. Bresnahan said.

"The traditional need that has fueled the environmental business for the last 20 years is the same," he said. "What makes environmental liability unique is it always stays with a company. Environmental liabilities are indefinite in nature."

Still, the sluggish economy has limited growth in surplus lines environmental insurance, Mr. DeSimone said.

"It's a discretionary purchase for a lot of people and, if there is not a lot of money, they may elect to not purchase it," he said.

AmWINS' Mr. Cooper said the environmental insurance market might have limited growth opportunities because of the myriad new entrants saturating the market and a lack of demand.

"As of today, there is a lot more talk about it than there is opportunity in it," Mr. Cooper said. "I know there is a lot of talk about green this and green that, but at this point I don't see a lot of demand from the customer. It's the flavor of the day."

While no one would predict when the surplus lines market would harden, Mr. DeSimone said, "There seems to be a buzz or new energy in the surplus lines market in anticipation of the market getting a little harder, although I don't know when that will be."

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MOST COMMON CLASSES OF BUSINESS PROVIDED

Percentage of surplus lines insurers providing coverage



Source: BI survey

OVER AND UNDER

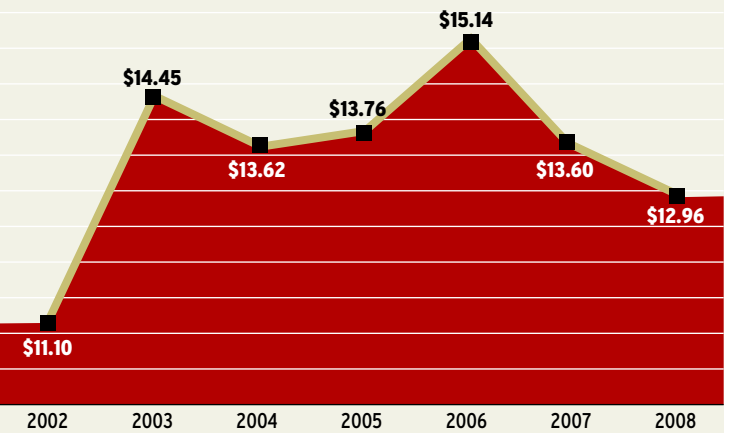
Ranked by combined ratio as determined by A.M. Best Co. and/or S&P

LOWEST	
American Empire Surplus Lines Insurance Co.	37.8%
National Fire & Marine Insurance Co.	45.9%
General Star Indemnity Co.	65.0%
Nautilus Insurance Co.	81.3%
RSUI Indemnity Co.	81.3%
Mt. Hawley Insurance Co.	82.9%
HIGHEST	
American International Specialty Lines Insurance Co.	164.7%
Prime Insurance Co.	120.1%
Westchester Surplus Lines Insurance Co.	107.8%
Tudor Insurance Co.	101.1%
Western World Insurance Co.	101.0%

Source: BI survey

PREMIUM GROWTH UPS AND DOWNS

Nonadmitted direct written premiums by the top 10 surplus lines insurers, in billions of dollars



Source: BI survey

Largest U.S.-based surplus lines insurers

Ranked by 2008 nonadmitted direct written premiums


Rank	Company/Address	Parent	Phone/Web site	2008 direct written premiums	% change	2008 gross premiums	% change	2008 net written volume	2008 net income (loss)	Principal officer
1	Lexington Insurance Co. ¹ 2711 Centerville Road, Suite 400, Wilmington, Del. 19808	Chartis Inc.	617-330-1100 www.lexingtoninsurance.com	\$6,016,530,122	-9.1%	\$7,081,745,209	-9.0%	\$3,999,270,777	\$208,534,746	Peter Eastwood, president/CEO
2	American International Specialty Lines Insurance Co. 300 S. Riverside Plaza, Suite 2100, Chicago, Ill. 60606-6613	Chartis Inc.	212-770-7000 www.chartisinsurance.com	\$1,199,167,031	-19.5%	\$1,188,093,559	-23.5%	\$198,240,912	(\$96,447,808)	David N. Fields, president
3	Steadfast Insurance Co. ¹ 1400 American Lane, Schaumburg, Ill. 60196-1056	Zurich Financial Services Group	847-605-6000 www.zurichna.com	\$1,195,530,902	-4.5%	\$1,416,364,363	-10.5%	N/A	\$35,129,836	Nancy D. Mueller, president
4	Scottsdale Insurance Co. ¹ 8877 N. Gainey Center Drive, Scottsdale, Ariz. 85258-2108	Nationwide Mutual Insurance Co.	480-365-4000 www.scottsdaleins.com	\$1,074,443,119	-10.4%	\$2,507,614,163	-7.1%	\$610,904,130	\$9,473,777	Michael D. Miller, president/COO
5	Columbia Casualty Co. CNA Center, 333 S. Wabash, Chicago, Ill. 60604	CNA Financial Corp.	312-822-5000 www.cna.com	\$737,532,213	-2.0%	\$738,788,485	-6.6%	N/A	\$8,815,509	Thomas F. Motamed, chairman/CEO
6	Evanston Insurance Co. 10 Parkway N., Deerfield, Ill. 60015	Markel Corp.	847-572-6000 www.markelcorp.com	\$615,721,938	-6.8%	\$801,837,308	-6.0%	\$597,563,029	\$37,983,239	Paul W. Springman, president
7	Landmark American Insurance Co. 945 E. Paces Ferry Road, Suite 1800, Atlanta, Ga. 30326-1125	Alleghany Corp.	404-231-2366 www.rsui.com	\$588,216,809	-16.8%	\$595,318,635	-16.7%	\$40,084,198	\$10,621,951	E.G. Lassiter, chairman/CEO
8	Illinois Union Insurance Co. 525 W. Monroe St., Suite 400, Chicago, Ill. 60661	ACE Ltd.	215-640-1000 www.aceusa.com	\$543,727,444	-15.8%	\$546,001,244	-15.6%	N/A	\$1,403,600	John J. Lupica, president
9	Westchester Surplus Lines Insurance Co. 500 Colonial Center Parkway, Suite 200, Roswell, Ga. 30076	ACE Ltd.	215-640-1000 www.aceusa.com	\$517,809,818	-16.2%	\$523,335,998	-16.2%	\$26,576,913	\$2,675,300	Dennis A. Crosby, president
10	Arch Specialty Insurance Co. 300 Plaza Three, Jersey City, N.J. 07311	Arch Capital Group Ltd.	201-743-4000 www.archinsurance.com	\$470,303,764	-26.6%	\$494,645,863	-26.6%	\$252,736	\$12,468,845	Mark D. Lyons, chairman/CEO

¹ Figures reported on pooling basis. N/A=Not available

Source: BI survey

Researched by Kevin Edison

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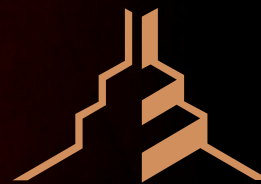


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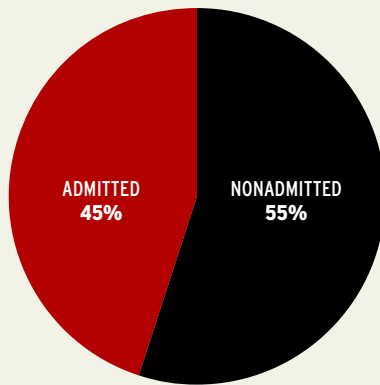
Ranked by 2008 wholesale premium volume including employee benefits and property/casualty

COMPANY	TOTAL PREMIUM VOLUME
Crump Group Inc.	\$5,277,928,174
AmWINS Group Inc.	\$3,454,277,686
CRC Insurance Services Inc.	\$2,891,049,340
Swett & Crawford Group	\$2,204,014,665
Colemont Corp.	\$1,362,000,000
All Risks Ltd.	\$711,000,000
ARC Excess & Surplus L.L.C.	\$542,000,000
Westrope	\$357,805,000
Partners Specialty Group L.L.C.	\$336,500,000
Gresham & Associates Inc.	\$308,038,000

Source: BI survey

MIX OF BUSINESS: ADMITTED VS. NONADMITTED

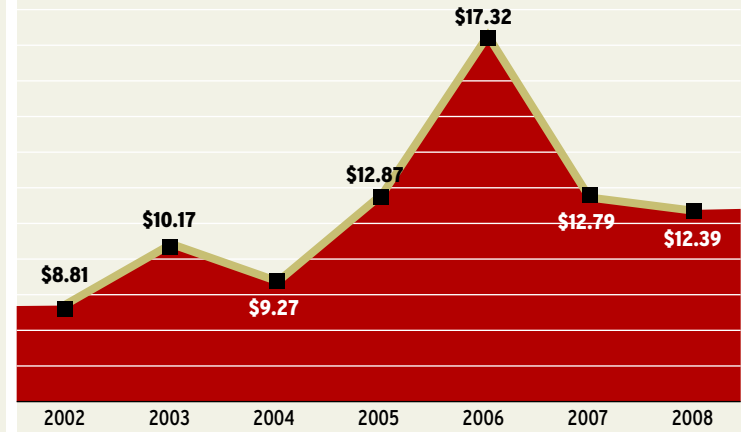
Business performed by wholesale brokers



Source: BI survey

PREMIUM GROWTH

Written premiums by the top 10 wholesale brokers, in billions of dollars



Source: BI survey

Wholesale insurance brokers

Ranked by 2008 wholesale premium volume from property/casualty placements*

Rank	Company/Address	Phone/Web site	2008 premium volume	% change	2008 gross revenues	% change	Surplus lines	Underwriting manager	Wholesale broker	Managing general agent	Lloyd's of London coverholder	Employees	Principal officer
1	CRC Insurance Services Inc. 1 Metroplex Drive, Suite 400, Birmingham, Ala. 35209	205-870-7790 www.crcins.com	\$2,891,049,340	-7.4%	\$295,628,967	13.5%	80.0%	10.0%	75.0%	15.0%	-	1,129	Thomas J. Curtin, co-chairman/CEO
2	AmWINS Group Inc. 4725 Piedmont Row Drive, Suite 600, Charlotte, N.C. 28210	704-749-2700 www.amwins.com	\$2,210,059,588	0.2%	\$244,609,500	3.5%	62.0%	-	82.5%	14.0%	3.5%	1,115	M. Steven DeCarlo, CEO
3	Swett & Crawford Group 3715 Northside Parkway N.W., Building 200, Suite 800, Atlanta, Ga. 30327	404-240-5200 www.swett.com	\$2,204,014,665	-11.9%	\$198,361,321 ¹	-10.7%	55.0%	-	75.0%	18.5%	6.5%	850	Neal Abernathy, CEO
4	Crump Group Inc. 105 Eisenhower Parkway, Roseland, N.J. 07068	973-285-0300 www.crump.com	\$1,470,429,798	-19.3%	\$420,000,000	-9.7%	12.0%	-	91.0%	6.0%	3.0%	2,881	John Howard, CEO
5	Colemont Corp. 5910 N. Central Expressway, Suite 400, Dallas, Texas 75206	214-561-7000 www.colemont.com	\$1,362,000,000	1.1%	\$105,000,000	2.3%	30.0%	-	96.0%	3.0%	1.0%	707	Marshall P. Kath, CEO
6	All Risks Ltd. 10150 York Road, Fifth Floor, Hunt Valley, Md. 21030	800-366-5810 www.allrisks.com	\$711,000,000	-3.7%	\$68,500,000	0.7%	67.0%	5.0%	55.0%	35.0%	5.0%	483	Nicholas Cortezi, CEO
7	ARC Excess & Surplus L.L.C. 1122 Franklin Ave., P.O. Box 9240, Garden City, N.Y. 11530	516-747-4100 www.arcbrokers.com	\$542,000,000	16.6%	\$42,000,000	7.7%	20.0%	-	95.0%	5.0%	-	138	Christopher J. Cavallaro, managing director
8	Westrope 801 W. 47th St., Suite 500, Kansas City, Mo. 64112	816-842-8222 www.westrope.com	\$357,805,000	-17.6%	\$27,108,000	-12.9%	54.0%	-	95.0%	4.0%	1.0%	132	Kevin T. Westrope, president/CEO
9	Partners Specialty Group L.L.C. Bentwood Executive Campus, 301 E. Germantown Pike, Suite 402, Norristown, Pa. 19401	484-322-0400 www.psgins.com	\$336,500,000	-13.2%	\$27,361,000	-10.7%	60.0%	-	97.0%	2.0%	1.0%	155	Maureen C. Caviston, president
10	Gresham & Associates Inc. 1 Gresham Landing, P.O. Box 927, Stockbridge, Ga. 30281	770-389-1600 www.gresham-inc.com	\$308,038,000	-12.3%	\$35,065,000	-5.3%	N/A	-	60.0%	40.0%	-	259	James V. Gresham, chairman/CEO

*Companies deriving more than 50% of their premium volume from wholesale brokerage. Excludes brokerages that do not break out wholesale premium volume. 1 BI estimate. N/A=Not available. Source: BI survey

Researched by Kevin Edison

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Surplus lines premiums decline as market remains soft

Stamping offices report fall in first-half volume as risks leave market

By KRISTIN GUNDERSON HUNT

Continued declines in combined U.S. surplus lines premiums, as reported for the first half of 2009 by 15 state stamping offices, indicate that excess and surplus lines insurers have not escaped the soft market.

"The surplus lines market is

heavily correlated with the overall insurance market," said Phil Ballinger, executive director of the Surplus Lines Stamping Office of Texas. "When markets soften, you see business leave surplus lines markets and go into the admitted market."

According to a Texas Stamping Office report, combined premiums for the 15 state stamping offices fell from \$11.37 billion in the first half of 2008 to \$10.3 billion in the first half of 2009, a 9.4% decline.

California experienced the biggest dollar decline, with first-half

'When markets soften, you see business leave surplus lines markets and go into the admitted market.'

Phil Ballinger,
Surplus Lines Stamping Office
of Texas

2009 surplus lines premiums falling 27.7% to \$2.25 billion compared

with the year-earlier period. That allowed Florida to become No. 1 among the 15 states, with \$2.35 billion in first-half 2009 premiums.

Gary Pullen, executive director of Florida Surplus Lines Service Office in Tallahassee, attributed Florida's hefty premium volume to hurricane exposures that have largely scared off the state's admitted market as well as improved regulations that ensure premiums are reported accurately and completely to the state stamping office.

Still, Mr. Pullen said he was surprised that Florida topped Califor-

nia's surplus lines premiums.

"They have generally been significantly larger than any of the other states' premiums," Mr. Pullen said. "To gain that much premium volume over (California) is surprising. We've also experienced premium decreases, but it has just not been to the same level."

Florida's first-half 2009 premiums dropped 9.1% compared with first-half 2008.

Mississippi, Montana, Texas, and Utah were the only stamping offices to report increases in premiums.

New York, the third-largest of the stamping offices with \$1.81 billion in premiums, posted a 1.6% decline for the six-month period.

Mr. Ballinger said Texas' 12.2% increase in premiums, which rose to \$1.77 billion, is tied to an increase in underwriting for catastrophe-prone areas, primarily along the U.S. Gulf Coast.

Minnesota, which launched its stamping office in January, reported premium volume of \$114 million, behind 10 other states.

Montana, which had premium volume of \$34.6 million, closed July 1, decreasing the number of U.S.



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COMBINED PREMIUMS for the 15 state stamping offices fell from \$11.37 billion in the first half of 2008 to \$10.3 billion in the first half of 2009, a 9.4% decline.

-27.7%

CALIFORNIA experienced the biggest dollar decline, with first-half 2009 surplus lines premiums falling 27.7% to \$2.25 billion compared with the year-earlier period.

stamping offices to 14.

Mr. Pullen said the declining surplus lines premiums are tied closely to the economy and its effect on businesses as payrolls and office space shrink.

"I think a lot of this is a reflection of the general business climate throughout the country," Mr. Pullen said. "Because business is constricting, we're producing less premium. Some people are forgoing insurance altogether. It's one of the places they select to reduce their expenses."

Even with falling premium volume, the Texas Stamping Office report reflects the viability of the surplus lines market, Mr. Ballinger said.

"Despite the decline, the surplus lines market, at more than \$10 billion just in the stamping office states for the first half of 2009, continues to serve its important role as a supplemental market providing coverage for insureds unable to obtain insurance elsewhere," Mr. Ballinger said.



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Momentum builds to pass surplus lines reform measure

Senate may be ready to follow House lead and vote this year

By MARK A. HOFMANN

WASHINGTON—In a case of what Yogi Berra might have called “déjà vu all over again,” the fate of a popular measure that would reform the regulation of surplus lines insurers rests in the hands of the U.S. Senate.

The House of Representatives unanimously approved the Nonad-

mitted and Reinsurance Reform Act shortly after returning from its August recess (*BI*, Sept. 14). The voice vote marked the third time the House approved a version of the measure, but it has never made it to the Senate floor.

The bill enjoys broad support among risk managers, insurers and producers. Among other things, the bill would make it easier for risk managers to access the surplus lines market and set a uniform system of allocating and remitting surplus lines premium taxes.

The measure provides a liberal

definition of what criteria a risk manager must meet to be regarded as a “qualified risk manager” entitled to bypass the admitted market when seeking coverage.

The New York-based Risk & Insurance Management Society Inc. endorsed the measure once a more restrictive definition of “qualified risk manager” contained in an earlier version of the bill was replaced with the more liberal criteria.

The bill also would simplify reinsurance regulation by eliminating extraterritorial application of state reinsurance laws and make the

domiciliary state the lone regulator for financial solvency.

Economic crisis

A year ago, Senate Banking, Housing and Urban Affairs Committee Chairman Chris Dodd, D-Conn., said he expected the NRRA to be one of two insurance-related bills—the other a measure to create an Office of Insurance Information within the Treasury Department—that he expected the Senate to deal with before last year’s elections. But his assessment came just days before the collapse of Lehman Bros.

and the near-collapse of American International Group Inc. The economic crisis that followed removed NRRA from the table.

Supporters of the bill say this year is different, particularly given Sen. Dodd’s continued support of the bill and the fact that two key committee members—Sen. Evan Bayh, D-Ind., and Mike Crapo, R-Idaho—are co-sponsoring the Senate version of the measure.

“I recently met with Chairman Dodd, who expressed complete confidence in this portion of regulatory reform being passed by the end of this year,” said Maria Berthoud, a partner at B&D Consulting in Washington, which represents the Kansas City, Mo.-based National Assn. of Professional Surplus Lines Offices. She added that the chairman and his staff have confirmed that the surplus lines provision

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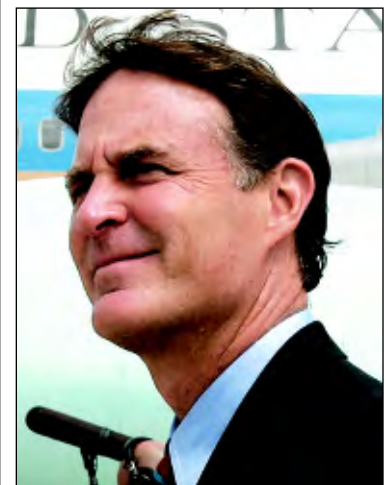
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AP PHOTO

Sens. Evan Bayh, D-Ind., (above) and Mike Crapo, R-Idaho, are the co-sponsors of a bill that would ease access to the surplus lines market.

“could well be within whatever” provision in the broader bill that contains the proposed Office of Insurance.

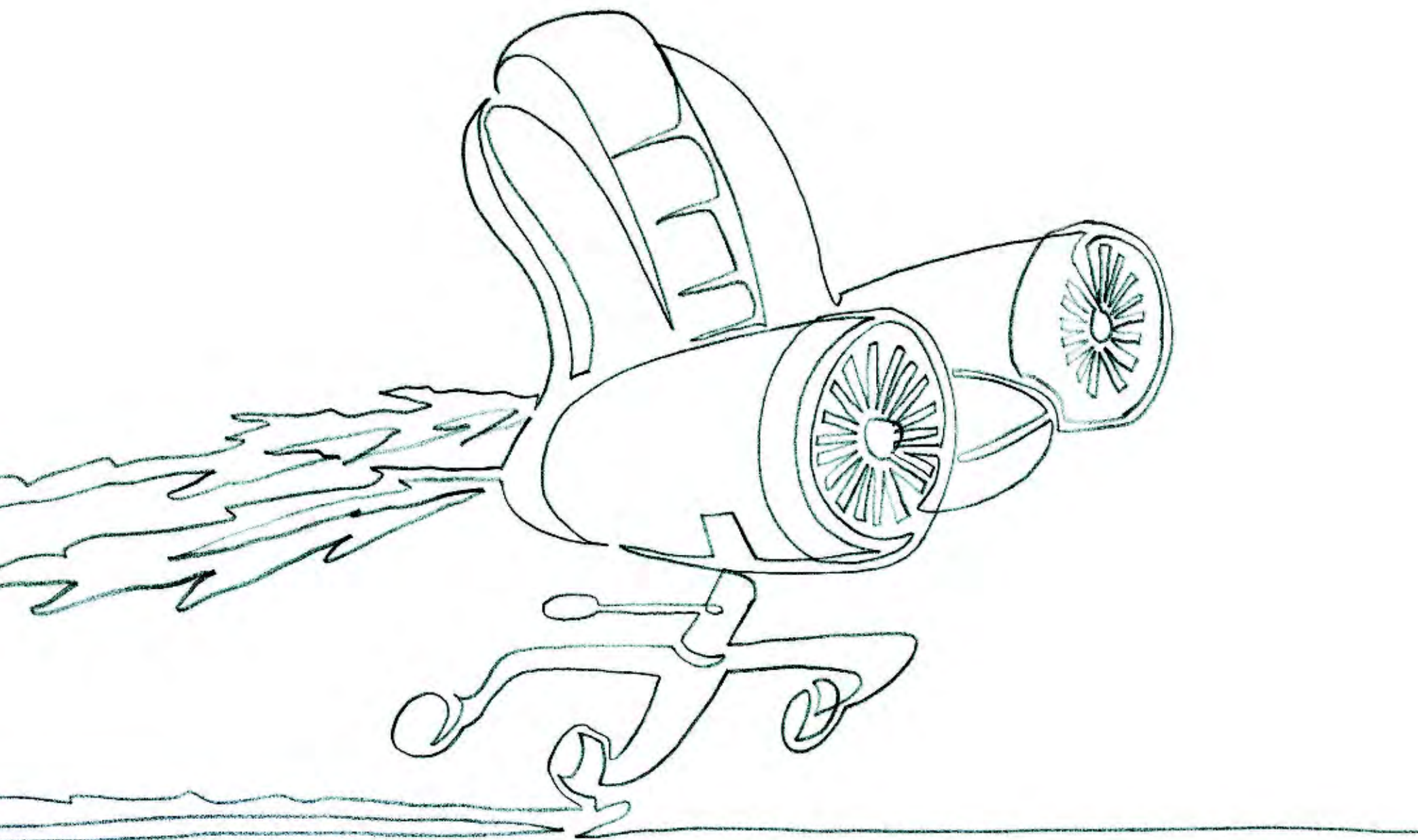
“NAPSLO is thrilled to have so much momentum for this bill to finally become law,” Ms. Berthoud said.

Attainable goal

“I think the third time is the charm, especially with Sen. Bayh being enthusiastic and introducing legislation on the Senate side, that we can finally kick this over the goal line,” said Marliiss McManus, senior federal affairs director in the National Assn. of Mutual Insurance Cos.’ Washington office.

“I am optimistic that we may be able to enact into law the NRRA this year,” said Charles Symington, senior vp of the Alexandria, Va.-based Independent Insurance Agents and Brokers of America. “The insurance marketplace is almost unanimous in its support for the legislation and, more importantly, the foundation has been laid in Congress with both House passage of the legislation as well as Senate introduction of the bill.”

Mr. Symington said the Senate Banking Committee has expressed interest in moving forward with the bill, which he said he hoped would result in Senate action later this year.



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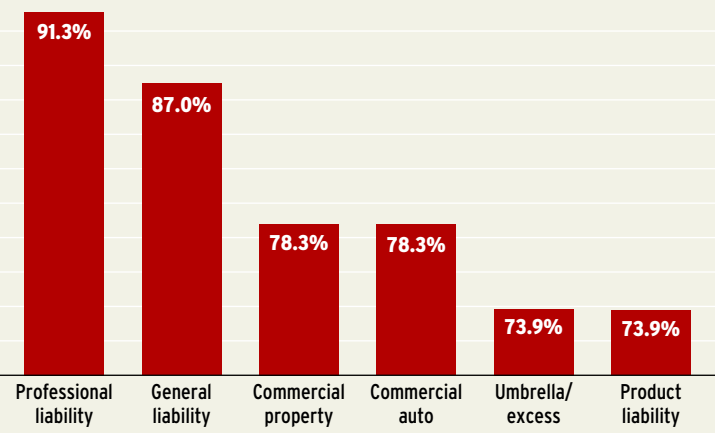
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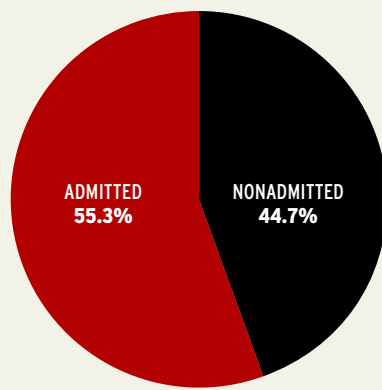
Percentage of MGA/underwriting managers providing coverage



Source: BI survey

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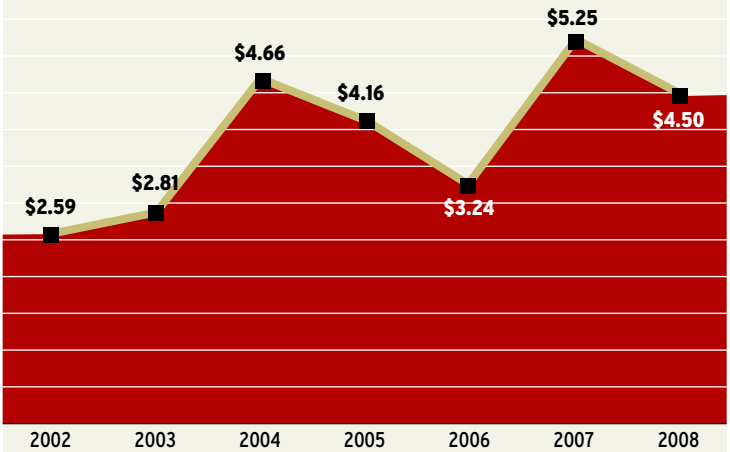
Business performed by MGA/underwriting managers



Source: BI survey

PREMIUM GROWTH

Written premiums by the top 10 MGAs/underwriting managers, in billions of dollars



Source: BI survey

Largest MGA/underwriting managers

Ranked by 2008 wholesale premium volume from property/casualty placements*

Rank	Company/Address	Phone/ Web site	2008 premium volume	% change	2008 gross revenues	% change	Surplus lines	Underwriting Manager	Managing general agent	Wholesale broker	Lloyd's of London coverholder	Employees	Principal officers
1	Risk Placement Services Inc. 2 Pierce Place, 20th Floor, Itasca, Ill. 60143-3141	630-285-4303 www.rpsins.com	\$1,420,000,000	-4.7%	\$128,000,000	9.3%	60.0%	-	49.0%	48.0%	3.0%	865	Joel Cavaness, president
2	Schinnerer Group 2 Wisconsin Circle, Chevy Chase, Md. 20815	301-961-9800 www.schinnerer.com	\$836,000,000	-1.6%	\$74,404,000 ¹	-1.8%	5.0%	95.0%	-	5.0%	-	436	Jean Laurin, president/CEO
3	Burns & Wilcox Ltd. 220 Kaufman Financial Center, 30833 Northwestern Highway, Farmington Hills, Mich. 48334	800-521-1918 www.burnsandwilcox.com	\$660,000,000	-6.0%	\$166,000,000	-7.8%	85.0%	-	60.0%	26.0%	14.0%	805	Alan J. Kaufman, chairman/president/CEO
4	U.S. Risk Insurance Group Inc. 10210 N. Central Expressway, Suite 500, Dallas, Texas 75231	800-232-5830 www.usrisk.com	\$411,000,000	-13.5%	\$68,500,000	-1.1%	95.0%	8.0%	35.0%	43.0%	14.0%	466	Randall G. Goss, chairman/CEO
5	K&K Insurance Group Inc. 1712 Magnavox Way, Fort Wayne, Ind. 46804	260-459-5000 www.kandkinsurance.com	\$237,946,036	13.5%	\$45,559,814	13.2%	16.0%	-	90.0%	5.0%	5.0%	261	Ross T. Smith, president/CEO
6	Eastern America Insurance Agency Inc. Metro Office Park, Street One, Lot 10, P.O. Box 193900, San Juan, Puerto Rico 00919-3900	787-273-1288 www.universalpr.com	\$205,158,088	-4.7%	\$9,560,798	-9.2%	2.0%	-	100.0%	-	-	188	Rafael Rodriguez, president
7	WKF&C Agency Inc. 1 Huntington Quadrangle, Suite 4N20, Melville, N.Y. 11747	631-756-3000 www.wkfc.com	\$193,600,000	-1.2%	\$27,675,800 ¹	-0.6%	77.0%	-	94.0%	-	6.0%	86	Thomas J. Kennedy, chairman/CEO
8	Sullivan Group-Wholesale Operations 800 W. Sixth St., Suite 1800, Los Angeles, Calif. 90017	213-626-1000 www.gjs.com	\$189,343,787	-1.0%	\$33,386,159	59.8%	30.0%	-	57.0%	38.0%	5.0%	151	Gerald J. Sullivan, chairman
9	W. Brown & Associates Insurance Services 19000 MacArthur Blvd., Suite 700, Irvine, Calif. 92612	949-851-2060 www.wbais.com	\$186,200,000	-15.4%	\$34,900,000	-14.9%	18.0%	86.0%	-	13.0%	1.0%	64	Scott Brown, president-aviation; John W. Krebs, president-property and casualty
10	NIF Group Inc. 30 Park Ave., Manhasset, N.Y. 11030	516-365-7440 www.nifgroup.com	\$157,000,000	-12.3%	\$20,000,000	0.0%	40.0%	-	70.0%	29.0%	1.0%	145	Mark P. Maher, president

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

Source: BI survey
Researched by Kevin Edison

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Surplus lines premiums and taxes by state

State	Gross surplus lines premiums written			Percent change		Surplus lines taxes collected			Tax rate
	2008	2007	2006	2007-2008	2006-2008	2008	2007	2006	
Alabama ¹	\$477,447,000 ²	\$541,090,633 ²	\$451,530,667 ²	-11.8%	5.7%	\$28,466,820	\$32,465,438	\$27,091,840	6.0%
Alaska	\$98,659,502	\$104,981,227	\$102,172,010	-6.0%	-3.4%	\$2,331,452	\$2,459,065	\$2,336,754	2.7%
Arizona	\$446,776,571	\$539,927,191	\$568,661,085	-17.3%	-21.4%	\$13,403,297	\$16,368,603	\$17,040,032	3.0%
Arkansas	\$194,737,480	\$194,588,630	\$231,123,111	0.1%	-15.7%	\$7,784,005	\$7,960,372	\$9,244,924	4.0%
California	\$5,671,679,594	\$6,813,968,858	\$7,245,191,416	-16.8%	-21.7%	\$148,141,122	\$173,255,236	\$187,456,876	3.0%
Colorado	\$500,674,190	\$617,844,992	\$508,831,342	-19.0%	-1.6%	\$15,020,000	\$18,535,350	\$15,525,724	3.0%
Connecticut	\$314,938,794	\$336,167,910	\$343,269,576	-6.3%	-8.3%	\$12,113,031	\$12,929,535	\$13,202,676	4.0%
Delaware	\$62,488,872	\$65,355,858	\$69,555,579	-4.4%	-10.2%	\$1,251,659	\$1,307,117	\$1,391,112	2.0%
District of Columbia	\$142,197,650	\$145,722,400	\$140,411,550	-2.4%	1.3%	\$1,292,564	\$2,914,448	\$2,808,231	2.0%
Florida	\$4,350,075,914	\$4,799,006,734	\$4,567,682,045	-9.4%	-4.8%	\$196,827,134	\$214,923,177	\$205,739,594	5.0%
Georgia	\$773,019,300	\$860,021,750	\$942,684,870	-10.1%	-18.0%	\$32,182,373	\$34,400,869	\$37,707,394	4.0%
Hawaii	\$266,610,549 ³	\$311,707,140 ³	\$323,215,121 ³	-14.5%	-17.5%	\$12,444,083	\$14,574,528	\$15,126,468	4.7%
Idaho	\$74,153,561	\$84,500,000	\$74,485,837	-12.2%	-0.4%	\$1,169,627	\$1,621,000	\$2,097,486	1.5%
Illinois	\$1,062,017,764	\$1,089,883,883	\$918,477,742	-2.6%	15.6%	\$37,168,493	\$38,146,151	\$32,166,151	3.5%
Indiana	\$362,329,438	\$582,089,831	\$371,996,109	-37.8%	-2.6%	\$9,058,236	\$14,552,246	\$9,299,903	2.5%
Iowa	\$153,794,438	\$128,535,346	\$163,006,640	19.7%	-5.7%	\$1,537,944	\$1,285,353	\$2,037,583	1.0%
Kansas	\$166,316,271	\$167,854,408	\$157,538,836 ⁴	-0.9%	5.6%	\$10,164,618	\$10,047,070	\$9,724,511 ⁴	6.0%
Kentucky	\$147,504,433	\$162,893,307 ⁴	\$183,187,662 ⁴	-9.4%	-19.5%	\$4,457,812	\$4,927,638 ⁴	\$5,155,039 ⁴	3.0%
Louisiana	\$1,303,277,762	\$1,363,817,132	\$1,216,561,799	-4.4%	7.1%	\$65,167,670	\$68,190,857	\$60,828,090	5.0%
Maine	\$63,613,142	\$70,539,569	\$71,600,315 ⁴	-9.8%	-11.2%	\$1,748,567	\$1,950,985	\$1,975,189 ⁴	3.0%
Maryland	\$363,277,699	\$418,796,318	\$439,263,980	-13.3%	-17.3%	\$10,898,331	\$12,563,890	\$13,174,919	3.0%
Massachusetts	\$693,187,811	\$699,058,618	\$750,927,907	-0.8%	-7.7%	\$25,284,212	\$25,875,639	\$27,577,916	4.0%
Michigan	\$592,746,594	\$728,702,360 ⁵	\$721,487,485	-18.7%	-17.8%	\$14,639,765	\$18,217,559 ⁵	\$17,918,515	2.5%
Minnesota	\$319,266,650	\$378,078,257	\$361,736,603	-15.6%	-11.7%	\$9,576,641	\$11,334,759	\$10,852,098	3.0% ⁶
Mississippi	\$352,327,618	\$389,525,164	\$346,124,602	-9.5%	1.8%	\$14,095,433	\$15,580,799	\$13,844,009	4.0%
Missouri ⁷	\$439,207,492	\$474,154,860	\$507,981,766 ⁴	-7.4%	-13.5%	\$21,254,184	\$23,446,860 ⁴	\$24,472,450 ⁴	5.0%
Montana	\$56,615,624	\$66,539,049	\$58,032,705	-14.9%	-2.4%	\$1,816,711	\$1,839,015	\$1,604,037	2.8%
Nebraska	\$115,553,923	\$104,741,901	\$96,543,856	10.3%	19.7%	\$3,570,812	\$3,614,688	\$2,892,931	3.0%
Nevada	\$293,080,460	\$360,154,862	\$443,921,611	-18.6%	-34.0%	\$10,257,850	\$12,605,458	\$15,537,292	3.5%
New Hampshire	\$73,626,311	\$73,763,404	\$89,448,090 ⁴	-0.2%	-17.7%	\$1,472,526	\$1,475,268	\$1,788,962 ⁴	2.0%
New Jersey ⁷	\$1,062,208,793	\$1,170,386,670 ⁴	\$1,252,113,734	-9.2%	-15.2%	\$31,847,279	\$34,975,991	\$36,871,781	3.0%
New Mexico	\$36,575,977 ⁵	\$37,057,727	\$91,627,155	-1.3%	-60.1%	\$2,955,499 ⁵	\$2,985,352	\$2,560,869	3.0% ^{5,8}
New York	\$3,282,162,085	\$3,691,581,963	\$3,751,197,308 ⁴	-11.1%	-12.5%	\$79,837,049	\$94,769,655	\$94,396,410	3.6%
North Carolina	\$492,940,414	\$523,549,178	\$508,249,065	-5.8%	-3.0%	\$24,921,563	\$26,511,260	\$25,389,360	5.0%
North Dakota	\$44,288,922	\$53,410,087	\$33,056,680	-17.1%	34.0%	\$775,061	\$934,796	\$578,536	1.8%
Ohio ⁹	\$208,236,962	\$552,430,581	\$202,262,453	-62.3%	3.0%	\$30,232,899	\$27,521,460	\$27,419,179	5.0%
Oklahoma	\$320,523,031	\$304,837,700	\$333,761,067	5.1%	-4.0%	\$19,231,382	\$18,290,262	\$20,025,664	6.0%
Oregon	\$294,549,143	\$250,210,825	\$320,800,101	17.7%	-8.2%	\$5,992,252	\$5,004,217	\$6,416,002	2.0% ¹⁰
Pennsylvania	\$919,848,150 ¹¹	\$1,000,878,746 ^{5,11}	\$1,023,614,979 ^{5,11}	-8.1%	-10.1%	\$24,071,000	\$25,664,000 ⁵	\$26,402,000	3.0%
Rhode Island	\$45,559,778	\$65,825,259 ⁴	\$54,364,682 ⁴	-30.8%	-16.2%	\$1,366,793	\$1,974,758 ⁴	\$1,630,940 ⁴	3.0%
South Carolina	\$506,265,522	\$597,412,273	\$573,454,293	-15.3%	-11.7%	\$20,250,615	\$23,896,475	\$22,938,166	4.0%
South Dakota	\$28,659,850	\$31,501,555	\$35,087,568	-9.0%	-18.3%	\$716,496	\$787,537	\$877,189	2.5%
Tennessee	\$518,488,047	\$457,094,816	\$471,747,480 ²	13.4%	9.9%	\$12,962,201	\$12,649,418	\$12,612,474	2.5% ¹²
Texas	\$3,912,420,734	\$4,848,000,425	\$4,675,581,647	-19.3%	-16.3%	\$170,785,658	\$175,902,204	\$163,745,314	4.9%
Utah	\$178,472,478	\$176,256,102	\$162,393,456	1.3%	9.9%	\$7,301,542	\$7,216,938	\$6,901,722	4.3%
Vermont	\$34,482,609	\$31,877,954	\$37,913,016	8.2%	-9.0%	\$1,034,478 ²	\$956,339	\$1,137,390	3.0%
Virginia	\$541,193,044	\$575,748,627	\$610,770,223	-6.0%	-11.4%	\$12,614,995	\$13,596,317	\$14,180,202	2.3%
Washington	\$595,114,357	\$719,302,643 ⁵	\$678,587,399	-17.3%	-12.3%	\$11,902,287	\$14,386,053 ⁵	\$13,571,750	2.0%
West Virginia	\$133,845,763	\$143,748,797	\$146,936,094	-6.9%	-8.9%	\$5,118,842	\$5,359,326	\$5,525,082	4.0%
Wisconsin	\$257,202,439	\$224,726,172	\$297,051,583	14.5%	-13.4%	\$7,716,096	\$6,741,785	\$8,911,547	3.0% ¹³
Wyoming	\$63,837,631	\$57,336,020	\$54,316,403	11.3%	17.5%	\$1,801,764	\$1,641,208	\$1,557,061	3.0%
Total	\$33,408,078,137	\$38,187,185,711	\$37,781,538,303	-12.5%	-11.6%	\$1,188,032,725	\$1,301,134,323	\$1,281,267,343	

1 Fiscal year ending Sept. 30. 2 Estimated. 3 Net surplus lines premiums written. 4 Restated. 5 B/I estimate. 6 2% for companies not recognized by the commerce department. 7 Fiscal year ending June 30. 8 3.003% effective as of July 1, 2003. 9 Fiscal year ending Jan. 31. 10 Plus 1% on premium subject to fire marshal tax. 11 Includes premium for independently procured insurance. 12 3.25% on fire and 4.4% on excess workers compensation. 13 0.5% on ocean marine.

Source: B/I survey
 Researched by Karen Tucker



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14

Number of state stamping offices

\$21.2B

Amount of surplus lines premiums filed with the stamping offices in 2008

61.6%

Percent of the total surplus lines premiums written in 2008 filed with the stamping offices



Source: National Assn. of Professional Surplus Lines Offices

Policyholders may not realize benefits from stamping offices

NAPSLO director says offices help ensure compliance with laws

By SALLY ROBERTS

Surplus lines policyholders pay millions of dollars a year in stamping fees to keep the country's 14 stamp-

ing offices operational, but many remain unaware of the actual value that stamping offices provide, observers say.

Because stamping offices are run by surplus lines brokers for surplus lines brokers, policyholders—who work mainly with retail brokers—are further removed from the process.

However, stamping office execu-

tives and others say policyholders ultimately benefit from their efforts.

"We support (independent stamping offices) because they're on the ground in the states helping brokers figure out how to comply" with state laws and regulations, which ultimately "protects the consumer because they eliminate any problems with the surplus lines placement," said Steve Stephan, director of government relations for the National Assn. of Professional Surplus Lines Offices Ltd. in Kansas City, Mo.

Although no two stamping offices are alike, all stamping offices examine surplus lines filings to ensure compliance with state laws and regulations. They also ensure that surplus line taxes and stamping fees are properly calculated and collected.

Most also provide education and guidance to surplus lines brokers, while others go as far as providing financial solvency oversight of eligible surplus lines insurers and governmental lobbying.

While policyholders essentially are paying for these services, many remain unfamiliar with the benefits that brings, risk managers say.

"Most risk managers, including me, are probably not as familiar as we should be" with stamping offices, said Raymond J. Alletto, vp-risk management for United Rentals Inc. in Irving, Texas.

"I've heard of them. I know what they do, but if you asked me is there any value to them—not that I can see. But there may be value that I'm not aware of," said Mr. Alletto, who does not currently use the nonadmitted market, but has done so in the past.

"My gut feeling tells me that the rank-and-file risk manager knows what (the Florida Surplus Lines Office) is, but really doesn't know what its value is," said Scott B. Clark, risk and benefits officer for Miami-Dade County Public Schools. "For those of us who are subject to a lot of placements through the (excess and surplus lines) market, because what we're trying to buy is just not available in the admitted market...we know what value they provide and think they do a very, very good job of managing the E&S markets in the state."

Stamp of approval

The first stamping offices were formed in the late 1930s in California and Oregon at the request of state insurance departments, which were seeking assistance in regulating surplus lines transactions and collecting surplus lines taxes.

In response, surplus lines insurance brokers formed nonprofit associations with primary responsibilities that included evaluating each surplus lines filing and physically stamping those found to be in compliance.

Continued on next page



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CONTINUED FROM PREVIOUS PAGE

Today, stamping offices—most of which are codified statutorily—continue to receive and examine all surplus lines broker filings in their respective states, although few still physically stamp the policies. The Florida Surplus Lines Office is one exception.

Surplus lines brokers are charged a stamping fee—typically less than 1% of the premium—per filing, which then is passed on to policyholders. The stamping fees are used to maintain the stamping offices.

If there is a main role of the stamping office, executives say it is that of an intermediary between the licensed surplus line broker and state regulators, which ultimately maintain authority over the surplus lines market.

“It’s a lot easier for brokers to contact a surplus lines association if there’s an issue than directly contacting the department of insurance,” said Nicholas Schroeder, executive director of the Surplus Lines Assn. of Minnesota based in Mora. “I think that’s the value of all stamping offices. We’re kind of the middleman.”

SLAM became the 15th U.S. stamping office in January when it commenced operations.

‘Compliance with the law certainly enhances the quality of the policies issued, which is clearly a consumer protection issue.’

Phil Ballinger,
Surplus Lines Stamping Office
of Texas

The total number of stamping offices, however, fell to 14 in July when Montana’s Insurance Department assumed the stamping office functions from the Montana Surplus Lines Agents Assn. Inc. (see story, page 28)

While stamping offices essentially are self-regulating entities run by surplus lines brokers, policyholders benefit, the executives say.

“One of the main goals of all stamping offices is to encourage compliance by agents and insurers with the insurance code, with the statutes and with the regulations the insurance department puts out,” said Phil Ballinger, executive director of the Surplus Lines Stamping Office of Texas based in Austin. “So compliance with the law certainly enhances the quality of the policies issued, which is clearly a consumer protection issue.”

Dan Maher, executive director of the Excess Line Assn. of New York, said, “We’ve seen a dramatic falloff over the last 20 years in fines imposed on surplus lines brokers” because of ELANY’s compliance efforts. “The indirect benefit to the insured is that the more we can create efficiencies...on some of these compliance functions, the more brokers can focus on their clients.”

For example, ELANY recently spent \$3 million to build a new electronic filing platform for its members, Mr. Maher said. While the New York Department of Insurance was “very supportive of us creating e-filing, you’re not going to find the department putting up \$3 million to ease the burden on surplus lines brokers,” he said.

Like New York and Texas, the Surplus Lines Assn. of California provides some financial solvency oversight of eligible surplus lines

insurers in the state.

“We help the department of insurance create the...list of eligible surplus lines insurers” known as the LESLI, said Ted Pierce, executive director of the California stamping office. “The check for financial solvency those carriers go through is identical to the check done on licensed carriers,” he said. “We have experts in statutory accounting, and we produce security summary reports on every carrier who wants to be on the LESLI,” he said.

For surplus lines policyholders, that means the “carriers that are eligible to write surplus lines have been vetted for financial solvency, which is very important because they don’t participate in state guaranty funds,” Mr. Pierce said.

He noted that the stamping office also makes sure that surplus lines business is written only by eligible insurers. “Because of the filings, we know all the business written in surplus lines is done through eligible insurers” so policyholders can be

assured of that, Mr. Pierce said.

Mr. Clark of Miami-Dade County Public Schools said one of the biggest benefits he sees from Florida’s Stamping Office is the physical stamp that comes on all of his E&S policies.

“The stamp clearly says this is not something covered by the guaranty fund,” Mr. Clark said. “A good risk manager needs to make sure the stamp is on the E&S policies and that they communicate that effectively to their hierarchy.”

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Concern expressed over Montana stamping office closure

State's insurance department has taken over office's duties

By SALLY ROBERTS

HELENA, Mont.—The number of U.S. stamping offices decreased by one in July when the Montana Insurance Department assumed stamping responsibilities, including the collection of fees, from the Montana Surplus Lines Agents' Assn.

The decision was a "difficult process" and "brought about by many factors, including the uncertainty of the surplus lines insurance market and proposed federal legislation," the Montana Insurance Department said of its decision in a June letter to surplus lines producers.

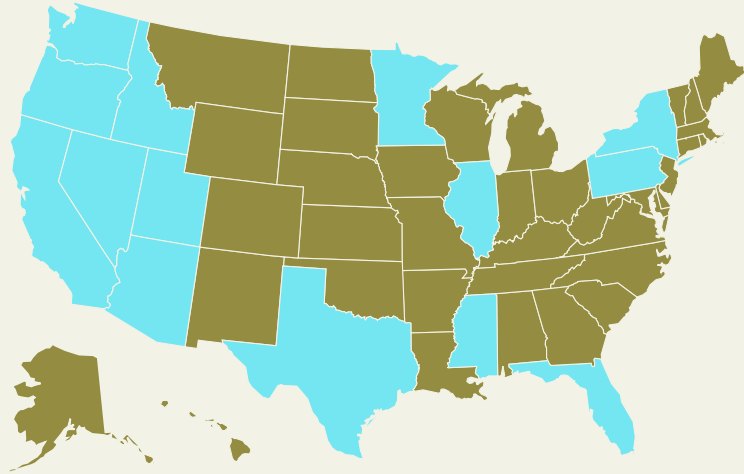
Critics of the move, including the National Assn. of Professional Surplus Lines Offices, question the legality of the department continuing to collect the stamping fees, which are intended to offset the costs of operating a stamping office and ultimately are borne by insurance buyers.

MSLAA background

For 19 years, the MSLAA served as the designated surplus lines authority in Montana, providing surplus lines producers various resources and educational services. It also reviewed and processed all surplus lines submissions and determined and collected the applicable stamping fees

14 STAMPING OFFICES IN U.S.

States with surplus lines stamping offices (in blue): Arizona, California, Florida, Idaho, Illinois, Minnesota, Mississippi, Nevada, New York, Oregon, Pennsylvania, Texas, Utah and Washington.



Source: National Assn. of Professional Surplus Lines Offices

and surplus lines taxes owed.

MSLAA was established at the request of the Montana Insurance Department in 1981 and began providing stamping office services in 1990 via a contract with Public Risk Insurance Management Inc., a Helena, Mont.-based service provider to insurance agency associations.

The Insurance Department's decision to take over those services had nothing to do with the performance of the MSLAA or PRIM, said Bob Biskupiak, executive director of

the Helena, Mont.-based association. "If there was a main reason they communicated to us, it was that if (the stamping functions were) in-house, they'd better be able to regulate the surplus lines business."

Mr. Biskupiak said he still believes stamping functions should be conducted by a third-party entity such as the MSLAA.

"We would get probably on average 25 phone calls a day from surplus lines producers asking, 'Here's what I've got. How does it work?'"

'The stamping fee is intended to fund a stamping office. The Insurance Department should be funded by tax dollars, not a policy surcharge.'

Steve Stephan, NAPSLO

Producers are less inclined to call a regulator to get an interpretation. (The stamping office) was that resource...and (the Insurance Department) is not going to be perceived that way. The producers are simply not going to rely on the department for those types of things because they're concerned about the regulatory risk," he said.

Mr. Biskupiak also said he believes it is "inappropriate" for the state to continue collecting stamping fees, which he said were set up "to offset the cost of a third-party entity to handle stamping office functions."

While the Insurance Department intends to collect the stamping fee, it will not provide as many services as the stamping office did previously, Mr. Biskupiak said.

"It's shifting the cost and the burden onto producers; and I believe

when producers are made to jump through more hoops, they have less time to spend serving their customers," he said "It's a distraction from what your main purpose is and that is to take care of your customers."

NAPSLO, which supports independent stamping offices, also questions the Montana Insurance Department's authority to collect the stamping fees.

In a letter to Montana Commissioner of Securities and Insurance Jennifer Massman, NAPSLO Director of Government Relations Steve Stephan noted that Montana laws clearly state that the stamping fee may be collected only by the insurance commissioner if a surplus lines advisory organization is not operating as set forth in the statute.

The MSLAA "was clearly an association performing duties as set forth in the Montana surplus lines code," Mr. Stephan wrote. As such, "the precondition for the department to collect the stamping fee has not been met."

In an interview with *Business Insurance*, Mr. Stephan added, "The stamping fee is intended to fund a stamping office. The Insurance Department should be funded by tax dollars, not a policy surcharge."

However, a spokeswoman for the Montana Insurance Department said the state agency intends to continue collecting the fee.

"We will still be collecting the stamping fee because we've taken over the function of the Stamping Office," the spokeswoman said. "We're working to make the Stamping Office and the procedure more efficient and (bringing the function in-house) should help streamline the process for producers in Montana."

Looking to future

In addition, the Insurance Department is anticipating that standardization of multistate surplus lines policies will come to fruition, resulting in decreased filings in and revenue to Montana, she said. "By resuming the Stamping Office functions now and developing an electronic filing system, the (department) should be well-positioned for the future."

Mr. Biskupiak said that despite losing responsibility for the Stamping Office, the MSLAA "will continue" as a nonprofit organization to serve surplus lines producers. "It's just going to have to have a different mission to it," he said.

Surplus lines producers could move to get legislation introduced addressing the issue. But because Montana's Legislature won't meet again until January 2011, "nothing can be done until that time," Mr. Biskupiak said.

According to statistics from the Surplus Lines Stamping Office of Texas, \$54.2 million was in surplus lines premiums in Montana in 2008. Based on the state's tax rate and stamping fee, roughly \$1.5 million would have been collected in surplus lines taxes and \$542,000 would have been collected in stamping fees.



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Ambiguity may be helpful for surplus lines organizations

Some firms do not want to be called broker or MGA

By **ROBERTO CENICEROS**

Surplus lines organizations often broker hard-to-place business for retail brokerage clients and underwrite coverage that admitted insurers decline.

So are they a broker or a managing general agent with an insurer's authority to bind coverage? When the answer is both, surplus lines companies sometimes try to avoid being tagged as one or the other.

"That's why a lot of people just call themselves 'wholesalers' and just leave it up in the air," said Euclid Black, president of Henderson, Nev.-based Black/White Group, an MGA and wholesale broker.

"We call ourselves a wholesaler," which purposely avoids describing Charlotte, N.C.-based AmWINS Group Inc. as either a broker or an MGA, said Skip Cooper, president of the group. "We don't want to be labeled an MGA and we don't want to be labeled a broker because those are just two pieces of the operations," which also includes underwriting property/casualty and program business, property/casualty brokerage services and providing employee benefits.

Some surplus lines organizations are more focused on either underwriting or brokering, although many also engage in both to a certain degree. An organization's histo-

ry, reputation and expertise often determine its focus.

But acquisitions, the economy and insurance market conditions can shift the line that determines whether a surplus lines organization is more broker or MGA.

For example, Farmington Hills, Mich.-based Burns & Wilcox Ltd. conducted brokerage and MGA business when it opened its doors in 1969, although it mostly was a brokerage then, said Alan Jay Kaufman, chairman, president and chief executive officer.

Today, any Burns & Wilcox office

'We don't want to be labeled an MGA and we don't want to be labeled a broker because those are just two pieces of the operations.'

Skip Cooper, AmWINS Group Inc.

across the country might be entirely an MGA operation, exclusively a brokerage or a mix of both. Acquisitions have expanded Burns & Wilcox's expertise in various areas.

Economic forces also influence

Burns & Wilcox's overall mix of business, Mr. Kaufman said. Under some market conditions, MGAs generate more business; under others, the broker side is more active.

"In this market, we are about

60% MGA and 40% brokerage," Mr. Kaufman said. "When the market changes, we may end up being more brokerage. We could be half and half."

If that occurs, Burns & Wilcox can keep its description as "a specialty insurance wholesaler."

Mergers and acquisitions also could shift AmWINS' makeup.

About 50% of AmWINS revenue comes from property/casualty brokerage and MGA business, Mr. Cooper said. Of that 50%, about

See **MGAs** next page

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MGAs: Some firms opt for ambiguity

CONTINUED FROM PREVIOUS PAGE

20% derives from MGA business, with the rest resulting from brokerage transactions. But AmWINS is looking to expand its percentage of MGA activity through acquisitions.

"I do think the percentage (of MGA business) we do will change based on M&A (activity)," Mr. Cooper said.

However, other surplus lines organizations stick more closely to one side of the business, focusing more on brokering or underwriting.

Broker "is our calling card," said Maureen C. Caviston, president of Partners Specialty Group L.L.C. in Stamford, Conn.

While Partners Specialty overwhelmingly provides wholesale brokerage services for large commercial accounts, it also underwrites high-value coastal residences and smaller businesses on which the standard market passes, Ms. Caviston said.

Partner Specialty's MGA services are "basically an added service that we provide a retailer," she said. "We can also handle their small-account business in addition to handling their larger, tough business. It's more full service," which keeps retail broker clients from turning to competitors for their smaller business needs.

"If you have a good retail customer, you don't want to send them somewhere else," Ms. Caviston said. "If they are happy doing business with you, you would rather say, 'We can handle all your excess and specialty business, small and large.'"

Most wholesale brokers provide some degree of MGA services, said Christopher Treanor, president and CEO of Mercator Risk Services Inc., a wholesale brokerage in New York.

While Mercator's business is about 95% brokerage, it also engages in MGA work by underwriting insurance agents' errors and omissions liability insurance, said Mr. Treanor, who also is co-CEO of Sharebridge Holdings Inc.

'Although we work with brokers and sell to them every day, our ultimate loyalty is profitability for carriers.'

Lorna Parsons,
Victor O. Schinnerer & Co. Inc.

Sharebridge is a boutique wholesaler that aggregates insurance purchasing for the private equity sector, with broker and MGA operations. Mercator became part of Sharebridge late last year.

While wholesale brokers find it advantageous to expand into the underwriting side, companies that predominantly are underwriters also see advantages in expanding into brokerage services.

Chevy Chase, Md.-based Victor O. Schinnerer & Co. Inc. is known mainly as an underwriter. But less than 5% of its business derives from

wholesale brokerage services for directors and officers liability and public entity lines, said Lorna Parsons, president and chief underwriting officer.

Schinnerer refers to itself as a managing general underwriter rather than an MGA because, unlike many MGAs, it represents more insurers than broker clients.

We "put emphasis on the fact that we are underwriters first and foremost," Ms. Parsons said. "Although we work with brokers and sell to them every day, our ultimate loyalty is profitability for carriers."

But Schinnerer is considering expanding its wholesale broker services by hiring more brokers, Ms. Parsons added. That would enable the company to generate revenue from business that it declines to underwrite and keep brokers from seeking a competitor to meet their needs.

"For an underwriter like us, it's a defensive strategy," Ms. Parsons said of the potential to expand Schinnerer's brokerage operations. "We get frustrated by the business we have to turn away."

With many surplus lines organizations maintaining a different mix of brokerage and underwriter operations, each company's self-description often is a matter of business priorities, Mercator's Mr. Treanor said.

"It's really what do you see yourself as when you wake up in the morning," Mr. Treanor said. "We all do it a little bit differently and I think a lot of it is just your historic bias."

Questions Answers

Marshall Kath is chief executive officer of Dallas-based Colemont Insurance Brokers Ltd. and is incoming president of the National Assn. of Professional Surplus Lines Offices Ltd. In a recent interview with Business Insurance Staff Reporter-Interactive Jeff Casale, Mr. Kath discussed the surplus lines market as well as his thoughts on the Nonadmitted and Reinsurance Reform Act.



Surplus lines insurers deal with challenges

Q: Premiums for surplus lines have been down for the first half of 2009. Do you think it's going to rebound or do you think it's going to stay the same?

You get different answers as to first-half results whether you're talking to people on the carrier side vs. people on the distribution side. As a reference point... (Colemont) is basically flat year over year, which in this environment is monstrously huge. So then you end up having to go, "OK, is it because somebody is doing maybe more catastrophe property than they do casualty and general liability? Or is it reversed? Or do they have more of an equilibrium, perhaps, between property/casualty underwriting or property underwriting and financial services?" So you kind of end up having to look at it by product offering and that's the case whether you're on the distribution side or the carrier side.

But in the aggregate, for surplus lines writings to be down by that amount in the first half of this year probably shouldn't surprise anybody because of the environment we're in economically and... we're still bouncing along the bottom of this soft phase of our industry cycle... which leads into the next six months.

Q: What are some of the biggest challenges ahead for surplus lines insurers?

What some insurers did, I would say, even last year was just to say, "I'm going to price myself at a certain point in the market for my products; and if market prices drop below those, then I'm just not going to write the business." And you can actually look at their results and see that either their gross or net premiums written... are down noticeably. And what they've said is, "As a business strategy, we would rather save our surplus, our capital for when we can get better prices than use it now and kind of lock it up now and not have it in the future when we think pricing will

be better." And that is a strategy that a few people took starting 12 months ago through now. For the group that didn't do that, their daily, weekly, monthly decision is, given where pricing is at now, "Do I continue to write at these levels or not? And if I do, then I guess I just continue to write. I continue to write business, but at lesser and lesser price."

So that's the challenge that a surplus lines insurer has... I think the smarter surplus lines insurers and carriers, who've been through a number of cycles and they understand this, they basically just say, "We're not going to play that game. We're not going to go where those people are going because we don't think that pricing and the economics... are sustainable so we're not going to do it."

Q: What are your thoughts on the Nonadmitted and Reinsurance Reform Act and the likelihood that it will pass? What effect do you think that will have?

I view NRRRA as a stimulus—I say this tongue-in-cheek—as a stimulus package for the wholesale insurance broking marketplace. It will put good and smart people back doing good work—not messing with or having to deal with multistate allocation of surplus lines taxes. The provisions in NRRRA that we care about eliminate or go a long ways towards eliminating those entanglements that we currently have to live with. And for the record, I commend the (National Assn. of Insurance Commissioners) surplus lines tax working group, which is trying to put together some reporting forms and things to kind of speed this process along... It's good on so many fronts. It's good for businesses; it's good for consumers. This is like a—you've heard people say it's a win-win—this is like a win trifecta. You know everybody involved wins on this one.

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CLEVELAND—The Fire Equipment Manufacturers' Assn. is offering free fire safety planning and preparedness educational materials to organizations throughout October.

The Cleveland-based trade association said the effort is in connection with National Fire Prevention Month.

Via the association's Web site, www.femalifesafety.org, anyone can access up-to-date fire safety tools

and information for commercial and residential facilities.

Materials include interactive training on equipment that includes portable fire extinguishers, standpipe rack hoses and automated suppressions systems, the association said. Materials can be downloaded for free or ordered in bulk for a nominal printing fee, FEMA said.

For more information, call 216-241-7333.

Watson Wyatt releases updated BenTrack

WASHINGTON—Watson Wyatt Worldwide Inc. has released an updated version of its online BenTrack tool that helps multinational organizations manage their benefit and compensation programs globally.

BenTrack enables organizations to centrally manage plan data from multiple countries, subsidiaries, divisions or employee groups, the consultant said. Organizations can control their pensions, medical and dental coverage, death and disability benefits, termination and severance provisions, and other related data through a secure, online site.

The enhanced version includes more tools, customizable templates, a feature that facilitates plan changes after a merger or acquisition, and updated market data and benefits-related news from about 60 countries, according to the Washington-based

employee benefits consultant.

The program also includes local language capabilities and users are able to generate customized reports, the company said.

For more information, visit www.watsonwyatt.com/bentrack or contact Melissa Kurtzman, international consultant, at Melissa.Kurtzman@WatsonWyatt.com or 248-936-7705.

Dominion Dental adds group vision benefits

ALEXANDRIA, Va.—Dominion Dental Services Inc. has added a group vision benefits plan to its suite of products.

The employer-paid and voluntary vision plan includes access to the EyeMed Network, which includes more than 46,000 retail providers as well as independent optometrists, ophthalmologists and opticians, the company said.

The plan covers eye exams, eyeglass lenses, frames and contact lenses and offers discounts on LASIK laser vision correction surgery. Out-of-network coverage also is included. Employers can enroll in dental, vision or both benefit packages at different coverage tiers with two-year rate guarantees available, Dominion Dental said.

Vision benefits also are offered through the company's eDental program, which offers coverage on a direct-pay basis to members of associations, chambers of com-

merce, credit unions, student bodies and other groups, the company said.

For more information, contact Dominion's Group Service Center at 877-559-9624 or e-mail gsc@dominiondental.com.

Allied World rolls out EPLI package for PEOs

PEMBROKE, Bermuda—Allied World Assurance Co. has introduced an employment practices liability package for professional employer organizations.

The coverage is designed specifically for third-party providers who manage human resources, employee benefits, payroll and workers compensation insurance programs for corporate clients, Allied World said in a statement.

The program includes insurance for employment-related exposures, including discrimination based on

race, color, religion, disability or sex-based wage issues.

The professional employer organization employment practices liability product has limits up to \$25 million, the company said.

For more information, contact Ed Moresco, vp, at ed.moresco@awac.com.

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The intended distribution is a final distribution and may be made without regard to any claims not proved by 4 December 2009. Any creditor who has not proved his debt by that date, or who contests the claim in his proof after that date, will not be entitled to disturb the intended final distribution. The joint liquidators intend that, after paying or providing for a final distribution in respect of creditors who have proved their claims, all funds remaining in the joint liquidators' hands following the final distribution to creditors shall be distributed to the shareholders of the Company absolutely. The Company is able to pay all its known creditors in full. Dated 25 September 2009.
Jeremy Simon Spratt, Joint Liquidator

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Return: Court ruling on physical testing sets fine line for employers

CONTINUED FROM PAGE 4

any insurer that requests them to assure compliance with the employer's policy, Mr. Creps said.

Georgia-Pacific contracted with an independent occupational therapy company to conduct the PCE once an orthopedic surgeon authorized Ms. Indergard to return to work in 2005.

She had taken medical leave in 2003 to undergo surgery for work-related and nonwork-related knee injuries, court records state. A Georgia-Pacific policy required employees to participate in a PCE before returning from medical leave.

Before evaluating the woman, a physical therapist visited her work-site to analyze Ms. Indergard's duties.

The therapist studied the job's physical demands, including the amount of weight-lifting and body motion required.

Then an occupational therapist conducted the PCE, recording information such as Ms. Indergard's pain level, use of alcohol and tobacco, blood pressure, heart rate and breathing after a treadmill test. Range of motion and muscle strength tests also were administered.

As a result of the exam, the therapist recommended that Ms. Indergard not return to work.

Georgia-Pacific then terminated Ms. Indergard in 2006, pursuant to a collective bargaining agreement allowing the employer to terminate employees on leave for more than two years.

Ms. Indergard sued, arguing that the PCE was an improper medical exam among other allegations. But a lower court judge agreed with Georgia-Pacific that the PCE was not a medical exam and dismissed the suit.

Ms. Indergard appealed and the appeals court noted that the ADA does not define "medical exam" and case law on the issue is limited. So the court turned to EEOC Enforcement Guidance that distinguishes between a medical exam and a physical agility test.

It found that several components of the PCE administered to Ms. Indergard are considered medical exams under the EEOC guidance, which came into force about a decade ago, including the heart rate measurement and observations of her breathing after the treadmill exercise.

In overturning the lower court,

the appeals court said that while the purpose of the exam may have been to determine whether Ms. Indergard was capable of returning to work, it clearly sought information



capable of revealing whether she suffered a disability.

Employers that have not evaluated their employee testing in light of EEOC Enforcement Guidance applied in the case may want to do so, said Anthony Oncidi, chairman of the labor and employment

department for the Los Angeles office of Proskauer Rose L.L.P.

The opinion "shows how carefully regulated the testing and analysis that employers can do with respect to employees is under the ADA," Mr. Oncidi said.

A dissenting judge hearing the case argued that, under the EEOC guidance, "any return-to-work test qualifies as a medical examination by seeking to determine whether an employee is fit enough to resume their duties."

To avoid ADA lawsuits, employers "would have to allow injured workers to return to the job without being able to verify their fitness for

duty, creating the potential for re-injury," dissenting Judge Diarmuid F. O'Scannlain said.

The decision could negatively affect workers compensation claims, said Trey Gillespie, senior workers compensation director for the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America.

The appeals court remanded the case to the trial court to determine whether the PCE was job-related and consistent with business necessity.

Kris Indergard vs. Georgia-Pacific Corp., 9th U.S. Circuit Court of Appeals, No. 08-35278, Sept. 28, 2009.

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CHRIS TAURO

NEW JOB TITLE: Partner in the insurance and reinsurance department of the Boston office of law firm Edwards Angell Palmer & Dodge L.L.P.

PREVIOUS POSITION: Partner at Boston-based Setrulo & Capone L.L.P.

GOALS FOR NEW POSITION: Grow my practice here. I brought with me a large chunk of the practice that I worked on at Setrulo & Capone and I want to continue to work on that on the larger platform I have here at Edwards Angell Palmer & Dodge.

INDUSTRY CHALLENGES: A lot of regulatory matters are taking place out of Washington and the carriers need to understand and follow (emerging regulations).

CAREER HIGHLIGHT: I was a prosecutor, both criminal and civil, for eight years: for four years in the District Attorney's office and four years in the U.S. Attorney's Office. I have to say the case I found most rewarding was a case in the D.A.'s office involving an elderly woman with dementia who

was targeted by a career criminal...in a home improvement scam....The woman could not testify (at trial) due to her mental incapacities. I proved the case through a handwriting expert, a building expert and medical experts. He went to jail for 10 years. That was probably my most rewarding (case) because it was the most troubling.

GROWING UP: I wanted to play center field for the Red Sox. Other than that, I have always been inquisitive, always asked a ton of questions.

MOST PASSIONATE ABOUT: In my personal life, it's my family. I have wonderful wife, a 3-year-old girl and a 10-year-old boy. They are, by far, the most important aspect of my life.

HOBBIES: I play tennis. I love to read. I love martial arts. Chasing my kids around, making sure everybody is happy at home.

FAVORITE BOOK: My favorite author is Hemingway and I would have to say my favorite book would be "For Whom the Bell Tolls." I love endings and this ending is heroic.

Few insurers agree to participate in database for marine claims

Some markets voice concerns over confidentiality issues

By MICHAEL BRADFORD

BRUGES, Belgium—A proposed database of major marine claims that the International Union of Marine Insurance says would provide insurers with more accurate rating models has attracted only a handful of commitments.

IUMI already has received commitments from Swiss Reinsurance Co. and Munich Reinsurance Co. to participate in the database, but the association needs more involvement by insurers, reinsurers and IUMI members, said Cedric Charpentier, chairman of IUMI's facts and figures committee and chief underwriting officer of cargo at AXA Corporate Solutions in Paris.

Unprofitable years in the marine market, particularly on the hull side, often occur because ratings do not properly reflect potential major losses, Mr. Charpentier said during a briefing at IUMI's Bruges, Belgium, conference earlier this month.

"Major claims are not well-addressed in our ratings," Mr. Charpentier said. "Memories are short."

Zurich, Switzerland-based IUMI has worked hard to win support for the project, which was promoted at last year's IUMI conference in Vancouver, Canada.

"We face some difficulties because some markets consider there are confidentiality issues" regarding information the database would gather and produce, he said.

Insurers are worried their policyholders could somehow be identified through information in the database, he said.

"We are working to resolve this issue, meaning that aggregated figures could be produced, because the main idea behind this database



The tower known as the Belfry in Bruges, Belgium was the site of the IUMI conference.

Marine insurance meeting draws 500

BRUGES, Belgium—The International Union of Marine Insurance drew about 500 participants to Bruges, Belgium, for its annual conference.

The Sept. 13-16 conference with the theme "Mastering Rough Seas" was held at the landmark 13th century tower known as the Belfry or Belfort in the historic city nicknamed the Venice of the North.

Participants heard experts discuss the state of the marine market and a host of other topics related to piracy, the effects of the worldwide financial crisis, risk management and others.

IUMI will hold its 2010 conference in Zurich, Switzerland. For more information, go to www.iumi.com.

—By Michael Bradford

is to make sure that insurance companies have at their disposal enough information to build accu-

rate models," Mr. Charpentier said.

IUMI's idea is to build a database of higher-value marine claims. "We have a threshold in mind of between \$5 million and \$10 million" of claims to put in the database, Mr. Charpentier said.

Whether to record that data on a per-event or total-loss basis "is one of the difficulties which has been identified" but not yet resolved, he said. For example, if a container vessel were lost, major claims would be filed against hull and cargo insurers.

"And overall, it's going to be a major claim, obviously. So how we treat that in the database is an area of discussion," Mr. Charpentier said.

IUMI President Deirdre Littlefield acknowledged during the briefing that the mission of the association of marine and transport insurers to gather major claims statistics has made slow progress in winning participation.

"We view this as an evolutionary process as we move through it, very consistent with the way we've developed things all along," Ms. Littlefield said.

IUMI hopes to have a clearer idea of when the database could be become a reality by year-end.

"We are now building the whole project to be submitted to each (IUMI member) national association, to gather their comments and, hopefully, their agreement on this project," Mr. Charpentier said.

IUMI plans to have the finished proposal to its 54 member associations within the next few months, he said.

A few associations already have agreed to participate, along with Swiss Re and Munich Re, Mr. Charpentier noted. "But, as I said, we need more."

Lloyd's of London, he acknowledged, "is one of the markets that is still to be convinced" of the need for the database.

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IUMI: Marine market stable amid turmoil

CONTINUED FROM PAGE 4

financial crisis will reflect its impact.

"In 2009, all the conditions have changed dramatically," Ms. Seltmann said. There has been a "severe reduction in trade," falling oil prices that have reduced cargo values and declining vessel values among other issues, she noted.

During the conference, Ms. Littlefield said the shipping industry's response to the downturn has been "predictable and understandable. Where only a short time ago there were shortages of vessels, now there is a glut," she said. "Unfortunately, despite the delays and cancellations and plans for scrapping, there are still too many ships chasing too little cargo, and a huge amount of tonnage is still on order."

She was referring to a remark by

'Trade has been one of the worst casualties of the global economic slowdown. This is not good news for cargo insurers.'

Cedric Charpentier,
AXA Corporate Solutions

Philippe Louis-Dreyfus, former president of the Brussels, Belgium-based European Community Shipowners' Assns., that shipping capacity will exceed market needs by 50% to 70% in the near future.

"Trade has been one of the worst casualties of the global economic

slowdown," said Cedric Charpentier, chairman of the facts committee and chief underwriting officer of cargo at AXA Corporate Solutions in Paris. "This is not good news for cargo insurers."

He said the shipping industry was unprepared for the downturn in trade and will likely go through at least two more years of a depressed market before a recovery begins.

Even so, experts said there are bright spots in the gloom.

Total losses in 2008 amounted to 92, down from 110 the previous year, according to IUMI's figures.

Ms. Littlefield said that despite fewer total losses, the overall claims picture is "very worrying. Repair prices remain high, which may put further pressure on owners to defer essential repairs and maintenance, to the detriment of underwriters."

Hartford: New chairman, CEO to succeed Ayer

CONTINUED FROM PAGE 1

In an interview, Mr. McGee said he has already spent a lot of time with Mr. Ayer to learn about the company and the insurance industry.

"I've been working hard to avail myself of his experience and insights," Mr. McGee said. "The transition will be seamless and very constructive." As a newcomer to insurance, "I have things to learn, without doubt, but I'm a quick study."

While some observers are concerned about Mr. McGee's lack of insurance industry experience, many say it is not necessarily a problem.

"I think it's good to get an outside perspective—someone outside the insurance industry to take a look at the company's profile a little bit differently," said Mark Lane, a principal and research analyst with William Blair & Co. L.L.C. in Chicago.

Mr. McGee "has a very strong consumer-oriented background," which is the thrust of Hartford's life business, Mr. Lane said. But it may take longer for Mr. McGee to make a decision on Hartford's direction than someone who has been in the insurance business and has "a view with more conviction," he said.

"He does have experience in a complex financial situation, which will probably suit him well at the Hartford," said Drew Woodbury, an associate analyst with Morningstar Inc. in Chicago. "Some of the distribution for the Hartford's annuity and life insurance products is done through a bank channel, so maybe he has some experience" in that area.

John Wicher, principal of John Wicher & Associates of San Francisco, said at this point, "you need somebody coming in who has real expertise in complex financial institutions," which Mr. McGee has.

Cliff Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York, said KBW banking analysts liked Mr. McGee. They "thought he was a guy who spoke his mind, has strong opinions, knows how to measure and handle risk, seems like a good leader," Mr. Gallant said.

According to a Securities and Exchange Commission filing last week, Mr. McGee will receive an annual base salary of \$1.1 million plus deferred units under the Hartford Deferred Stock Unit plan at an annual rate of \$4.4 million. In addition, when the insurer makes long-term incentive awards to other employees in 2010, he is to receive another \$2.7 million in restricted units under the plan.

Analysts say Hartford appears to have stabilized its financial situation, although challenges remain.

While the company all along has been considered to have strong property/casualty operations, financial market turbulence hit its life business—in particular its variable annuity business—as well as its investments in both its property/casualty and life investment portfolios.

Hartford reported a \$2.75 billion loss for 2008 and a \$1.22 billion loss for this year's first half. To improve its capital, Hartford has received \$3.4 billion in federal Troubled Asset Relief Program funds, a \$2.5 billion capital infusion from Munich, Germany-based Allianz S.E., and raised \$900 million in an August equity offering.

"They're in a much better capital position, just given the government funds they've received," said Brian Schneider, an analyst with Fitch Ratings in Chicago.

The company has reported that its net unrealized losses declined 29% in July and August, to \$8.2 bil-

McGee brings broad background

HARTFORD, Conn.—While new to insurance, Liam E. McGee brings an extensive financial services background to his job as chairman and chief executive officer of Hartford Financial Services Group Inc.

Most recently, Mr. McGee, 55, who has more than 30 years of experience in the banking industry, was president of Charlotte, N.C.-based Bank of America Corp.'s Consumer and Small Business Bank.

In that position, he ran a business that serviced 50 million households and small businesses through a distribution network that included more than 6,100 branches and

the nation's largest online and mobile bank, according to Hartford.

He announced his resignation from that post in August concurrently with a management shake-up at Bank of America.

A native of County Donegal, Ireland, Mr. McGee grew up in Southern California.

He is a graduate of the University of San Diego with a master's degree in business administration from Pepperdine University in Malibu, Calif., and a law degree from Loyola Law School in Los Angeles.

—By Judy Greenwald

lion before taxes and deferred acquisition costs.

"The company has been pretty clear about wanting to derisk," including reducing its exposure to the equity markets, which includes no longer writing new variable annuity business in Japan and cutting back on this business in the United States, said Shellie Stoddard, an analyst with Standard & Poor's Corp. in New York.

E. Stewart Johnson, a portfolio manager with Stamford, Conn.-based investment bank Philo Smith & Co., said that while Hartford's capital position has improved, "they've gone through some pains to achieve that. They seem to be extremely aware of the exposure that their annuity business exposed the P/C business to. The capital problem that they're going through right now, that was a tough lesson, but it seems to be a lesson learned."

Paul Bauer, senior credit officer with Moody's Investors Service in New York, said while he is not yet willing to say Hartford has stabi-

lized, "over the last few months, things have generally been more positive than negative" for the insurer, including raising equity capital and naming a new CEO.

However, Brett Howlett, an S&P securities analyst in New York, had a slightly different view.

"Certainly, they face a lot more challenges than others, just based on the damage" that Hartford brands suffered the past year with the government involvement in the business, he said.

"They generally have a pretty deep bench, but they've lost quite a few good people over the last year," Mr. Schneider said. "The CEO will certainly have to gain the confidence of management that they're willing to continue to do the work of the turnaround."

Hartford's stock closed Friday at \$25.11, down from the previous week's close of \$25.84. Its 52-week low was \$3.33.

Editor Regis Coccia contributed to this article.

Court: Business cases on tap

CONTINUED FROM PAGE 3

involved: Allstate is an Illinois corporation, Shady Grove is a Maryland corporation, and the insurance policy is governed by New York law. A district court judge and three-judge panel of the 2nd U.S. Circuit Court of Appeals held that New York law prevailed.

In an amicus brief filed with the Supreme Court, a group of insurance and business organizations argues that the state law should prevail. "Nothing in the federal Class Action Fairness Act supports petitioner's assertion that it is entitled to bring a class action claim to recover New York statutory penalties. Indeed, the legislative history of CAFA makes clear that its primary purpose was to address the problem of the overreadiness of some state courts to certify multistate and national class actions."

Last week, the justices agreed to review an employment discrimination case brought by a group of black firefighters against the city of Chicago. The plaintiffs in *Arthur L. Lewis Jr. et al vs. Chicago* claim that the city's use of an employment test had an unlawful racial impact. The question before the court is whether a plaintiff can bring an action under Title VII of the Civil Rights Act of 1964 is how long the plaintiffs have to bring suit—whether they must do so within a specified period after the test was taken or whether they can wait until the test has been used to hire new employees.

The justices still are mulling whether to review *Golden Gate Restaurant Assn. vs. City and County of San Francisco*. The case involves a San Francisco law that requires some employers to make health care expenditures.

Opponents of the mandate that took effect in 2008 argue that it violates ERISA, but a three-judge panel of the 9th U.S. Circuit Court of Appeals last year upheld the ordinance. Earlier this year, the full appeals court refused to rehear the case, which the association appealed to the Supreme Court.

LETTERS

CONTINUED FROM PAGE 8

insurance. This program had no losses during its eight-year run.

It is our position that a shared reinsurance program could be structured to motivate the reinsurance industry to participate in providing additional risk protection to the banking system. The pricing of the risk can be quantified—we have already done this—and a limit or a percentage of risk could be provided to appease the insurance industry's concern.

Michael M. Heller
President
VERIBANC Inc.
Woonsocket, R.I.

Ponzi: Case shows need for D&O priorities clause

CONTINUED FROM PAGE 3

"D&O insurance companies have now become sensitive to the fact that, because they've made D&O policies more complicated over time and because they've added coverage (for the corporation), there is now some concern that all these different categories of insureds now have a claim to the (same) insurance proceeds," he said. "This issue is only going to get bigger."

Though some details vary, priority-of-payments provisions generally specify that when corporate and individual claims are likely to exceed the total policy limits, Side A claims—claims from individuals that cannot be indemnified, typically because the company is insolvent or legally barred from doing so—should be paid first.

The recent rise in bankruptcies and derivative litigation—the two primary drivers of Side A claims—make that kind of competing-claim scenario more likely. In addition, budgetary restraints prevent many companies from buying more limits, which elevates the importance of the

order-of-payment provision, said Susanne Murray, a New York-based executive vp of executive risk at broker Alliant Insurance Services Inc.

"While you may be looking at the adequacy of your limits, most companies aren't buying more limits today," Ms. Murray said. "Then what they're saying is, 'If I'm not going to spend more money, how can I make what (insurance) I have provide me with the most protection?'"

Order-of-payments provisions come with some problems. Most such clauses provide instructions for insurers on how to handle competing claims likely to exceed the policy limits but do not specify what person or group determines if that is likely to happen, Mr. Gold and Ms. Murray said. Mr. Gold said many of the clauses are "inadequate and ambiguous."

"Right now, it looks to me like a half-hearted attempt to kind of throw some provision in there without really exploring how the language is going to be interpreted and invoked in these kinds of situations," Mr. Gold said.

Adding to the confusion is the

fact that courts have differed on whether a bankrupt estate can claim the entire proceeds of a company's D&O policy, and they rarely have ruled on priority-of-payments clauses specifically, legal observers say.

In a 2002 case involving Enron Corp., the bankruptcy court allowed a D&O insurer to pay legal costs for former executives of the failed energy company because of a priority-of-payments provision, said William A. Boeck, a Kansas City-based senior vp and insurance and claims counsel at Lockton Financial Services.

"They have not been rigorously tested in the courts," Mr. Boeck said. "Where there's a dispute over an insurer's ability to pay (Side A) loss, you end up litigating it within the bankruptcy (court). There are cases going both ways."

Mr. Gold, who said he has been involved in several such disputes, said a court will rule on the issue eventually, whether that is in the Stanford Financial case or another case.

"Oftentimes that gets argued and negotiated before it ever reaches the court, but it will happen," Mr. Gold

said. "You'll take one of these nightmare scenarios like a Madoff or Stanford or Enron and ultimately people are going to start saying, 'I've got no option but to have a judge or jury decide it.'"

Lloyd's had agreed to advance defense costs to former Stanford Financial Chief Investment Officer Laura Pendergest-Holt until Mr. Janvey wrote Lloyd's in June arguing that all of the D&O policy proceeds belonged to the Stanford Financial receiver.

Ms. Pendergest-Holt asked the U.S. District Court to clarify the situation, and Mr. Stanford and other former executives joined that motion. Ms. Pendergest-Holt's attorney has threatened to leave the case over \$500,000 in unpaid expenses. Mr. Stanford is being represented by a public defender after other attorneys left his case over lack of payment.

In a brief, Lloyd's said it reserved the right to deny coverage to the estate or the former directors based on policy exclusions for being convicted of money laundering, fraud or other criminal acts.

Reform: Health care legislation moving in Senate, but battles loom

CONTINUED FROM PAGE 1

soon as mid-October.

"Certainly, a lot of spirited debate" is in the offing, said Neil Trautwein, vp and employee benefits counsel with the National Retail Federation in Washington.

While there is a lot of work to be done, observers say enactment of reform legislation now appears more likely than ever.

"With an issue that is the top domestic priority for the president and significant Democratic majorities in the House and Senate, it would be difficult to see how that a reform bill won't be enacted by the end of the year," Mr. Dennett said.

Some last-minute actions by the Senate Finance Committee will be beneficial to employers, the most significant involving an excise tax that would be imposed on the costliest health plans.

Sen. Baucus had proposed a 40% excise tax on employer-provided coverage in which premiums exceed \$8,000 a year for individual coverage and \$21,000 for family coverage. This would include premiums for medical, dental and vision care; employer contributions to health reimbursement arrangements and health savings accounts; and employee contributions to flexible spending accounts. The threshold amounts would increase to match rises in the Consumer Price Index for urban areas, plus one percentage point.

Those \$8,000 and \$21,000 thresholds, which would begin in 2013, would be higher in certain cases.

For retirees age 55 and older in employer plans and employees in certain high-risk professions, the thresholds under an earlier proposal would have been \$8,750 for individual coverage and \$23,000 for family coverage. However, the Finance Committee last week approved an amendment by Sen. John D. Rockefeller IV, D-W.Va., to bump up the thresholds to \$9,850 for single coverage and \$26,000 for family coverage for early retirees and employees in high-risk professions, which include law enforcement, firefighting, rescue squads, ambulance crews, construction and mining.

More changes are possible.

Sens. Debbie Stabenow, D-Mich., and John Kerry, D-Mass., said they want the higher thresholds to apply to all group plans. Sen. Baucus said he would consider such a modification.

The excise tax, to be paid by insurers and by third-party claims administrators handling self-funded plans, has triggered alarm in the business community. Employers most exposed to the proposed tax are those with older workforces with health care plans that are very expensive. Insurers and TPAs



'We are now closer than ever before to finally passing reform that will offer security to those who have coverage and affordable insurance to those who don't. We have a long way to go, but I am confident that as we move forward, we will continue to engage with each other as productively as the members of the Finance Committee, and will get reform passed this year.'

President Barack Obama

may try to pass on that cost to employers.

Initially, few employer plans would be exposed to the cap, but that could change over time. That's because the thresholds would increase to match the CPI plus one percentage point, while medical care inflation in recent years has outstripped those increases.

If there is an excise tax, the indexing of threshold amounts should be

closer to medical care inflation, Mr. Dennett said.

The Finance Committee also accepted a change involving contributions to health care FSAs. Sen. Baucus initially proposed a \$2,000 annual cap, but later bumped it up to \$2,500, which the committee accepted. There is no cap under current law.

Benefit experts expect the FSA cap could be further liberalized, either in the compromise bill Sen.

Reid develops or perhaps on the Senate floor.

Sen. Baucus, for example, said he would accept indexing the \$2,500 cap to the CPI. "That indicates some opportunities on the FSA cap issue," Mr. Dennett said.

But the foundation of the bill remains intact. The legislation would create federal premium subsidies for the lower-income uninsured, a provision intended to make a big dent in the 46 million uninsured in the United States.

It also would impose penalties on individuals who do not enroll in a health insurance plan. In addition, employers with more than 50 employees that provide plans in which premiums paid by employees are at least 8% of their adjusted gross incomes would be hit with financial penalties, generally no greater than \$400 per employee. The same penalties would apply to employers

with more than 50 employees that do not offer any coverage.

In addition, the legislation would reform the personal lines markets, including eliminating exclusions for preexisting medical conditions.

Some proposed reforms could aid employers. For example, with an expansion of coverage, health care providers would have less uncompensated care, a cost now shifted to insured patients, Mr. McArdle said.

Targets: Foiled New York terrorist attack highlights 'soft' exposures

CONTINUED FROM PAGE 1

Inc.'s Kroll Security Group in New York. "For every countermeasure, there is a new attack methodology being made to circumvent what's in place."

The terrorist attack allegedly planned for New York targeted commuter trains, according to law enforcement officials. Last month three men, two U.S. permanent residents and one U.S. citizen, all of whom were originally from Afghanistan, were arrested for their role in the alleged plot.

Review of protection plans against attacks should be constant, Mr. Grniet said. "If you suspect there's an issue, you need to report it. This is one of those times that crying wolf repeatedly is not necessarily a bad thing. If it deters loss of life, people are going to be grateful for it."

One way to deter loss of life in transit systems is to get riders involved, says a former federal security official.

"If you're going to bring some degree of security awareness to transit systems, you need to figure ways to engage the transit ridership," said Tom Blank, former acting deputy administrator of the federal Transportation Security Administration. While at TSA, Mr. Blank wrote the first security directives for rail, heavy rail and transit following the 2004 bombings on commuter trains in Madrid.

Mr. Blank, now vice chairman of

lobbying firm Wexler & Walker Public Policy Associates in Washington, said systems can increase surveillance by transit police, use bomb-sniffing dogs and video surveillance. He said transit agencies should have trained observers looking for suspicious behavior.

But "security measures are a filter and not a guarantee," warned Mr. Blank.

Security measures can be built into public buildings that might be tempting targets, said Neil C. Liv-

and secure external boundaries to properties with fencing or, in some cases, concrete barriers.

Kroll's Mr. Grniet said a facility's risk profile can change by the nature of its guests or the event it hosts. For example, a New York hotel that is not high-profile most of the year might house dignitaries for the week of the United Nations' General Assembly.

"That raises the risk profile," Mr. Grniet said. Even though the visitors may have their own security

'If you're going to bring some degree of security awareness to transit systems, you need to figure ways to engage the transit ridership.'

Tom Blank, formerly of the U.S. Transportation Security Administration

ingstone, chairman and chief executive officer of ExecutiveAction L.L.C., a business consulting firm in Washington and the author of nine books on terrorism.

"Traditionally it was something that was resisted, but more firms are beginning to see that they're going to have to have security, so it's cheaper and wiser in the long run to design the security into the structure rather than retrofit," Mr. Livingstone said. For example, minimize the use of glass, avoid having underground parking garages, test building materials for inflammability and strength,

forces, hotels also need to look at the individuals who work there, start or increase security searches, and enhance their overall security posture.

Security measures should extend beyond the building itself, said Hank Chase, managing principal of Frederick, Md.-based Integrity Consulting, a security consulting firm.

"It's classical military protective perimeter," Mr. Chase said. "They need to push their perimeter out as far as practicable. That's easier said than done. It's vehicles and people they need to be concerned with,

pedestrians that mean you harm and vehicles that mean you harm; the farther away you can check them, the better. You need to prevent big vehicles from getting up right next to your facility."

Still, "there are an awful lot of businesses that are relatively naked out there in terms of their security considerations," said Executive Action's Mr. Livingstone. "They have not reacted as aggressively as many of us would have hoped in dealing with the current round of the terrorist threats."

Despite the recent arrests in the New York case, Mr. Livingstone said he believes there is low awareness of such risks, particularly in the entertainment industry.

Chris Rogers, senior consultant and director of risk control for national entertainment practice at Aon/Albert G. Ruben Insurance Services Inc. in Los Angeles, disagreed. Operators of entertainment venues are keenly aware of the terrorist risk and take steps to reduce their vulnerability, he said.

"We do everything from working with clients from a physical standpoint, which we call target-hardening," he said. This includes limiting access to the venue, putting in bollards and keeping vehicles away from the facility, and training employees to recognize suspicious behavior and notice that things that are out of place.

Mr. Rogers noted that the University of Michigan recently banned

any bags being brought into a football game. That can work when people arrive by car and can put such items in their vehicles, but would present problems at an event where most people arrive via public transportation, he said.

"More and more people do not want a problem" with their event, Mr. Rodgers said. "Most venues take this issue very, very seriously"

Those responsible for protecting soft targets shouldn't go it alone, Messrs. Grniet and Chase both stressed.

They should evaluate the risk to terrorist threats and communicate with both local and federal law enforcement agencies, said Mr. Grniet. Sometimes, "they'll come to you and suggest you're a target."

"As a practical matter, they absolutely need to talk to local law enforcement and the local FBI office and establish a relationship," said Mr. Chase.

He said the Department of Homeland Security has security advisers in the largest metropolitan areas who work with law enforcement and local asset owners on ways to protect themselves. The advisers can meet with business owners face-to-face and, in some cases, visit facilities, provide best practices or refer business owners to consultants, he said.

"There's a lot of help available locally for business and asset owners," Mr. Chase said. "They need to initiate the dialogue."

News In Brief

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legislation that would establish a new Federal Insurance Office within the Treasury Department. Rep. Paul Kanjorski, D-Pa., who chairs the House Financial Services Committee's Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, unveiled the Federal Insurance Office Act of 2009. According to the draft language, the Federal Insurance Office would have the authority to monitor all aspects of the insurance industry and assist the Treasury secretary in administering the federal terrorism insurance program. In addition, it would coordinate federal efforts and establish federal policy "on prudential aspects of international insurance matters," among other functions.

Xerox to buy parent of Buck Consultants

Xerox Corp. said it plans to acquire Affiliated Computer Services Inc., the parent company of Buck Consultants L.L.C., in a cash and stock transaction valued at \$6.4 billion. No plans have been made to spin off Buck Consultants after the acquisition, a spokeswoman for Dallas-based ACS said. New York-based Buck Consultants, which began as an actuarial consulting firm in 1916, has operated as an independent subsidiary of ACS since 2005. It provides human resources consulting services addressing employee health and wellness, HR technology, and administration and retirement plans.

AIG seeks to reinstate RICO claims against rivals

American International Group Inc. filed an amended complaint in its ongoing battle with other insurers over alleged underreporting of workers compensation premiums. The amended complaint, filed in federal court in Chicago, alleges that Liberty Mutual Group Inc., ACE INA Holdings Inc. and Hartford Financial Services Group Inc. violated the Racketeer Influenced and Corrupt Organizations Act. The group of insurers is locked in a court battle with AIG, with each side claiming the other underreported workers comp premiums for several years to avoid paying state residual market assessments, which are calculated as a percentage of an insurer's premiums written in a state. A federal judge previously dismissed RICO claims by AIG, but allowed other parts of the suit to continue. AIG presented additional information to reinstate the RICO allegations.

Health risk assessments face genetic bias hurdle

New Internal Revenue Service rules implementing sections of the Genetic Information Nondiscrimination Act of 2008 could put employers' plans to use financial incentives for

completion of health risk assessments in jeopardy, experts say. The GINA modifications to the Internal Revenue Code add prohibitions against discrimination based on genetic information to Subtitle K, which covers group health plan requirements originally regulated under the Health Insurance Portability and Accountability Act. The interim final rules will affect group health plans for plan years beginning on or after Dec. 7.

Ontario sues tobacco firms over health care costs

Ontario, Canada, is suing a group of tobacco companies for \$50 billion Canadian (\$45.8 billion) in damages for past and ongoing health care costs associated with tobacco-related illnesses. The suit was filed under the Tobacco Damages and Health Care Costs Recovery Act, 2009, which passed the provincial Legislature unanimously earlier this year. According to the provincial government, \$50 billion represents the health care costs borne by Ontario taxpayers since 1955. Two other provinces have similar suits.

Mexico buys cat bond for storm, quake cover

The government of Mexico plans to buy a \$250 million catastrophe bond backed by Swiss Reinsurance Co. to cover its natural catastrophe fund, according to Standard & Poor's Corp., which assigned preliminary ratings to the notes. The bond, issued by Cayman Islands-based special-purpose vehicle MultiCat Mexico 2009 Ltd., was sponsored by the Fund for Natural Disasters, a government fund that provides aid to the general population after natural catastrophes, S&P said.

Noted

Lloyd's of London Chairman **Lord Peter Levene** has been named 2009 Insurance Leader of the Year by St. John's University's School of Risk Management....Willis Group Holdings Ltd.'s North American operation, which became Willis HRH a year ago with completion of the Hilb Rogal & Hobbs Co. acquisition, now will operate under its original name of **Willis North America**....Congress extended the **National Flood Insurance Program** through Oct. 31....**Ironshore Inc.** is expanding its distribution network by setting up regional offices throughout the United States....Factory Mutual Insurance Co., which does business as **FM Global**, will operate in Brazil as an admitted reinsurer.

Sanford: Impact on captives weighed

CONTINUED FROM PAGE 4

captive industry.

Though the state's captive industry would prefer otherwise, "The governor has not been as involved and active in the captive industry as, say, in Vermont," Mr. Weitzel said. "It's really the legislators who have carried the banner thus far."

The industry has a good relationship with the Legislature and has been able to work with legislators to get what the industry has needed, he said.

Mike Coulter, deputy managing director at Aon Insurance Managers (USA) Inc. in Charleston, S.C., said he thinks Gov. Sanford's political struggles are "high enough up that it hasn't affected us directly." The state's captive industry is "an established industry," not likely to be affected by one individual in the state, he said.

But Garry W. Coulter, executive vp at USA Risk Group in Greenville, S.C., said he thinks the governor's situation is affecting South Carolina's captive business.

"There's been very little captive activity since the first of the year. We've done one," Mr. Coulter said. "Nobody's doing business in South Carolina."

"It's bad. It's top-down bad," he said. "We're going to hang in and the rest of the industry is going to hang in until the next administration."

"We're in a difficult period here, primarily because of the governor," Mr. Coulter said. "I think the problem that exists here exists because of the uncertainty that's going on."

Mr. Kehler said South Carolina has seen a good level of captive activity this year. As of Sept. 10, South Carolina had issued seven new licenses thus far in 2009, "and I'm getting ready to do three more," he said.

"And we have more in the pipeline," Mr. Kehler said. "So we're going to do more this year than we did last year."

But USA Risk's Mr. Coulter said he believes that half of the captives licensed this year already were in the state's pipeline last year.

Mr. Weitzel suggested that if there is a change in the state's chief executive, it could result in greater support for the captive industry. A governor more interested in captives might drive cabinet-level support for the industry in areas such as the state's economic development and tourism departments, he said.

"If there are any changes, it

Change in Vermont governor not seen hurting captives

Though Vermont Gov. Jim Douglas has indicated he won't seek re-election next year, his decision not to seek a fifth two-year term isn't expected to disrupt the state's captive insurance industry.

Captive industry insiders note that the industry historically has enjoyed support from governors and legislators regardless of political party in Vermont.

"This isn't the first time in our history that we've gone through changes in governor," said Nancy Gray, regional managing director at Aon Global Insurance Managers in Burlington, Vt. "We've gone through it several times and we've always had the support of the governor regardless of political party."

Michael Bemis, president and chief executive officer of the Vermont-chartered National Catholic Risk Retention Group Inc. and chairman of the Vermont Captive Insurance Assn., agreed that the Republican governor's departure isn't likely to have an impact on Vermont's captive industry, even though Gov. Douglas will be missed on a personal basis.

"I think probably not. And I don't mean that in any regard



Vermont Gov. Jim Douglas won't seek re-election next year. His decision isn't expected to disrupt the state's captive insurance industry.

to be derogatory of the governor himself," Mr. Bemis said, "because he's been a pleasure to work with and he's been very supportive of the captive industry in Vermont."

"But the industry receives so much support from the state government, and has from various governors and legislators of either party. The industry's importance to the state is well-recognized," Mr. Bemis said.

Gov. Douglas "has been a great supporter of the industry, and we expect the next governor to be a supporter of captives," Ms. Gray said.

—By Rodd Zolkos

'The governor has not been as involved and active in the captive industry as, say, in Vermont. It's really the legislators who have carried the banner thus far.'

John A. Weitzel, W.A. Taft & Co.

might give us an opportunity to get more support for the captive industry," Mr. Weitzel said. "Thus far, we have not gotten as much of the

administrative support for the captive industry as we would like."

The captive industry has contributed \$73.5 million in economic development to South Carolina during the past five years, and the industry directly employs 160 people in the state, Mr. Kehler said.

"It's a huge economic development tool if they want it to be," USA Risk's Mr. Coulter said.

One positive note to Gov. Sanford's difficulties is that he found time to attend this year's SCCIA conference earlier this month, Mr. Weitzel said.

"Ironically, what (the scandal) has done is it freed up the governor's calendar," he said. After initially declining to appear at the SCCIA meeting, the governor later chose to attend, Mr. Weitzel said.



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Mr. Polanski

Lawyer in Gen Re trial to defend Polanski

Reid Weingarten, a well-known defense lawyer, may be about to tackle one of the most visible cases of his career.

In a recent high-profile insurance case, Mr. Weingarten was the attorney for Elizabeth Monrad, a former General Re Corp. executive who, along with several others, was accused of participating in a sham reinsurance deal between Gen Re and American International Group Inc.

Last week, the New York Times reported that Mr. Weingarten has joined the defense team of Roman Polanski, the director of acclaimed movies such as "Chinatown."

Mr. Polanski was arrested recently in Switzerland on a U.S. fugitive warrant in a decades-old case in which he pleaded guilty to having sex with a minor. However, he fled the United States before sentencing and has been in exile since 1978.

As for Mr. Weingarten's first task, the newspaper report said that likely will be attempts to block Mr. Polanski's extradition to the United States from Switzerland.

Mr. Weingarten declined comment on his involvement in the case, the newspaper reported.

No doubt Mr. Weingarten hopes the outcome of the Polanski case will differ from that of the Gen Re/AIG trial. In that case, his client was sentenced to prison, a conviction that is being appealed.

Judge pooh-poohs royalties claim

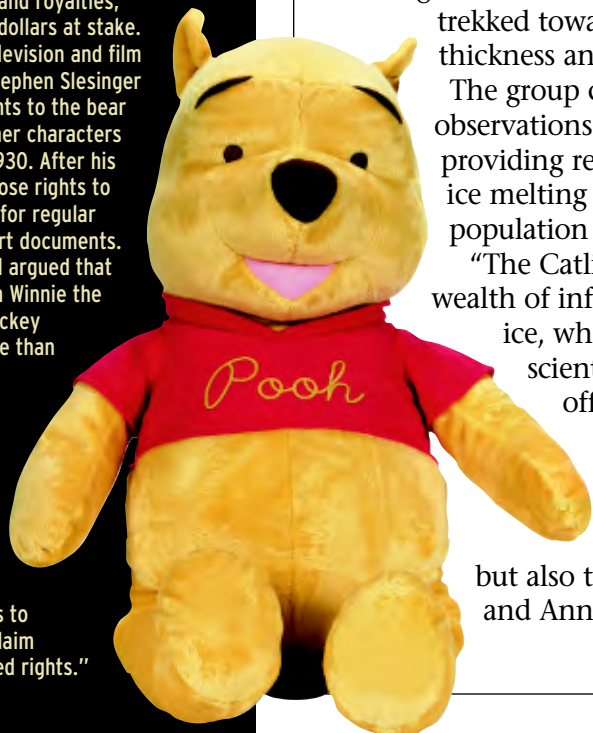
There will be no additional "hunny" for relatives of the founder of a company that once owned licensing rights to Winnie the Pooh, which a federal judge has ruled are owned entirely by Walt Disney Co.

The ruling late last month against Winnie the Pooh licensee Stephen Slesinger closed the door on an 18-year legal battle between Mr. Slesinger's heirs and Disney. The parties were haggling over merchandising rights and royalties, with potentially billions of dollars at stake.

The former New York television and film producer and founder of Stephen Slesinger Inc. obtained exclusive rights to the bear who loves "hunny" and other characters from author A.A. Milne in 1930. After his death, heirs transferred those rights to Disney in 1961 in exchange for regular royalties, according to court documents.

Mr. Slesinger's heirs had argued that Disney mixed revenue from Winnie the Pooh with revenue from Mickey Mouse to avoid paying more than \$700 million in royalties.

However, U.S. District Judge Florence-Marie Cooper dismissed the case, saying the Slesinger heirs failed to describe what remaining rights they had to Pooh, adding that they had "transferred all rights in the Pooh works to Disney, and may not now claim infringement of any retained rights."



Business Insurance END PAGE

Contributing: Jeff Casale, Mark A. Hofmann



MARTIN HARTLEY/WWW.MARTINHARTLEY.COM

Catlin Group Ltd. recently sponsored an arctic survey team's trip to the Arctic Circle to study floating Arctic sea ice.

Catlin survey team frozen in TIME

With the status of the environment becoming more critical and more attention focused on climate change, TIME magazine has recognized a group of explorers for their work in the Arctic Circle.

The magazine recently recognized Pen Hadow, Martin Hartley and Ann Daniels, members of Catlin Group Ltd.'s Catlin Arctic Survey team, for their work in determining the rate at which ice is melting in the area. The three were part of TIME's annual "Heroes of the Environment" report, which recognizes individuals making significant environmental contributions.

The team, sponsored by London-based specialty property/casualty insurer Catlin Group, spent 73 days on floating Arctic sea ice. During the survey, the explorers trekked toward the North Pole to measure the thickness and density of the sea ice.

The group compiled approximately 16,000 observations and 1,500 physical measurements, providing researchers with much-needed data on sea ice melting rates and how it will affect the world's population in the future.

"The Catlin Arctic Survey ice team gathered a wealth of information about the floating Arctic sea ice, which had previously not been available to scientists," Stephen Catlin, chief executive officer of Catlin Group Ltd., said in a statement. "It is appropriate that TIME has recognized not only the explorers' commitment to a better understanding of our environment, but also the physical hardships that Pen, Martin and Ann endured while collecting crucial data."

NFL vets tackle firm over career replays

The seemingly endless battles of former professional athletes suing video game makers for using their likeness without any compensation have another contender.

This time, two retired NFL players—Hall of Famers Jim Brown and Herb Adderley—asked a federal judge to allow them to join a lawsuit by former University of Nebraska quarterback Sam Keller, who alleges Electronic Arts Inc. and the National Collegiate Athletic Assn. unfairly used images of college basketball and football players in its NCAA Football and NCAA Basketball video games.

Messrs. Brown and Adderley joined the suit by filing a legal document in support of Mr. Keller's arguments.

In the past, Redwood City, Calif.-based Electronic Arts has argued it has free speech rights to use the images, which do not include players' names. Instead, the gamemaker uses other aspects of information about players including jersey number, race and athletic ability, which the firm and the NCAA argue is allowed without players' permission because the games are based on public data such as statistics and bios.

Mr. Brown is no stranger to such lawsuits. A federal judge in Los Angeles recently threw out his suit against Electronic Arts for using his image in the "Madden NFL" game. The judge ruled that the First Amendment protects video games as artistic expressions.

Mr. Adderley, however, had better luck. Last year, he settled a \$26.3 million lawsuit against the NFL Players Assn. for allowing Electronic Arts to use retirees' images without compensation. Electronic Arts was not a named party in the suit.



GETTY IMAGES

Former Cleveland Browns player Jim Brown has asked a judge to allow him to join a lawsuit against Electronic Arts Inc.

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