

GROUPS SEEK FUNDING BREAK AS PENSION ASSET VALUES FALL AMID FINANCIAL CRISIS / PAGE 3

LOEWS ADDS \$1.25B TO CNA AS INVESTMENTS, CATS HIT INSURER'S 3Q RESULTS / PAGE 3

RICO SUIT CAN MOVE AHEAD IN WORKERS COMP DISPUTE, APPEALS COURT RULES / PAGE 3

In Brief

Cat claims total \$11.5B in quarter

U.S. property/casualty insurers will pay \$11.5 billion in catastrophe claims for the third quarter, estimates the Property Claim Services unit of the Insurance Services Office Inc. PCS said in a statement that 11 catastrophes in 22 states produced 1.7 million claims in the period, which it noted was the fourth-costliest third quarter since 1998. The state with the highest insured loss total was Texas, at \$6.4 billion, followed by Louisiana, with \$1.9 billion. The 2008 nine-month insured loss total now stands at an estimated \$22.1 billion, PCS said.

Hartford shares fall on \$2.6 billion 3Q loss

Hartford Financial Services Group Inc. reported a \$2.63 billion third-quarter loss last week, compared with an \$851

See **IN BRIEF** page 30

SPOTLIGHT

LIABILITY & LITIGATION

Bills barring mandatory arbitration make progress; financial crisis drives up some D&O rates; tort reformers win some battles; state-level efforts on civil justice reform face various challenges; market turmoil creates bonanza for plaintiff lawyers; *BI* ranks insurance recovery firms. **Page 13**

Shape of Congress will inform agenda

Regulatory changes expected, but extent unclear

By **MARK A. HOFMANN**

WASHINGTON—The ongoing financial markets crisis almost guarantees that insurance regulation will be on the next Congress' agenda, industry observers say.

The nature of any new regulation could well depend on a handful of congressional elections, according to industry observers. Shifts in the composition of key committees appear likely, as do increased Democratic majorities in both houses. There is the possibility of a filibuster-proof Democratic majority in the Senate, where Democrats would either hold 60 seats outright or close enough to 60 to block filibusters with the support of a Republican senator or two.

"The agenda is going to be clearly dominated by the financial markets crisis and the issues related to that," said Leigh Ann Pusey, chief operat-

ing officer of the American Insurance Assn. in Washington. "Our opinion is that includes systemic risk regulation issues and financial markets regulatory reform.

"All indications are they will keep these issues on a fast track," she said. "They feel the public is going to demand some accountability and some change in how these institutions are regulated."

The financial meltdown will lead to "a congressional inquisition into the regulation of insurance," said Joel Wood, senior vp at the Council of Insurance Agents & Brokers in Wash-

ington. "What will that mean?" he asked. "Does that mean a federal regulator superimposed on top of state regulation for holding companies? Does it mean a federal option? Does it mean a more incremental (Office of

See **ELECTION** page 27



Find more election coverage online at www.BusinessInsurance.com

Rivals snatch AIG staff as uncertainty lingers

Insurer says personnel defections manageable

By **DAVE LENCKUS**

NEW YORK—Numerous senior underwriting executives have bolted from American International Group Inc. in recent weeks in an exodus that some departed executives and AIG's competitors expect to continue as many remaining AIG personnel circulate their resumes.

But senior AIG officials and several brokers said the company's 12,500 U.S. employees provide AIG a deep pool of talent from which it can draw replacements.

For example, Ralph Mucirino, the New York-based president of AIG Global Marine & Energy, said he filled two key open positions in his division with "two five-minute phone calls."

In addition, AIG is hammering out a new executive compensation plan in



EDWARD LIDDY: AIG's recently appointed chief talks about the challenges facing the insurer. **Page 29**

Meanwhile, AIG's former chief warns that time is running out for the company. **Page 30**

an effort to retain executives whose compensation plunged along with AIG's stock price, said John Doyle, the New York-based president and chief executive officer of AIG Commercial Insurance. AIG's domestic property/casualty insurance companies report to Mr. Doyle's unit.

AIG's financial position dramatically deteriorated in September when sub-prime-related problems forced it to turn to the government for \$122.8 billion in bailout loans (*BI*, Oct. 13, Sept. 29, Sept. 22).

To repay the debt, the New York-based insurance holding company plans to sell some company assets but retain its core property/casualty insurance units (*BI*, Oct. 6).

While many risk managers said they would not move their business, 30 to

See **AIG** page 29

Skimping on health care feared in tough times

Employers urged to caution workers against cutting corners by skipping doctor visits, prescriptions

By **JOANNE WOJCIK**

Concerned that some employees may be scrimping on essential health care during the current economic downturn, experts advise employers to step up benefit communications to emphasize the importance of getting preventive

screenings and taking prescription medications for chronic conditions.

They warn that employees who forgo necessary care now could end up costing their employers more later in both additional health care expenditures and increased absenteeism should a serious health threat go untreated or a chronic

condition get worse.

Meanwhile, some employers are using incentives to ensure that their employees get the care they need at low or no cost.

With family budgets strained by higher fuel and food costs, U.S. residents are filling fewer prescriptions and visiting the doctor less often, researchers say.

IMS Health Inc., a health care analytics firm based in Norwalk, Conn., this summer recorded the first decline in prescriptions issued since 1996. The number of prescriptions dispensed in the second quarter of this year fell almost 2% from a year earlier. That followed a 0.5% drop in the first quarter, the first time that number has been negative since 1996, IMS Health said. It also found that doctor visits dropped

1.2% for the 12-month period ending in July.

Although the number of prescriptions was down, the dollar value of drug sales still posted modest growth of 1.4%, rising to \$288 billion in June from a year earlier, IMS Health said. Still, sales growth has slid dramatically from late 2006 when annual prescription sales growth approached 12%.

In a survey fielded in July, the National Assn. of Insurance Commissioners found that 22% of consumers have reduced the number of times they see the doctor and 11% have cut back the number of prescription drugs they take or the dosage of those medications to make prescriptions last longer.

See **HEALTH CARE** page 28

INDEX

Advertiser Index	26
Business Resources	24
Commentary.....	6
End Page	31
International	25
Opinions	8
Perspective	8
Professional MarketPlace	24
Stocks	30
Up Close	24

Unique.



ASHFORD
HOSPITALITY TRUST

Just Ask Ashford.

Aon focuses on delivering value and impact to clients, and as a result more clients choose Aon than any other broker.

Just ask Ashford. By partnering with Aon to design a unique insurance program for its existing and future Property portfolio, Ashford added long-term value to its bottom line through better limits and better pricing than ever before.

Does your Property program maximize your growth, profit and continuity? Visit aon.com/unique to sign up for a complimentary Property diagnostic and find out how you can experience results like Ashford.

AON RISK SERVICES

On the Web

QUESTIONS & ANSWERS

See expanded interview with AIG chief Ed Liddy

Business Insurance offers an expanded version of the interview with American International Group Inc. Chairman and CEO Edward Liddy, featured on page 29, online at www.BusinessInsurance.com/Qanda.



RISK MANAGER OF THE YEAR Nominations open for 2009 award

Business Insurance is accepting nominations for the 2009 Risk Manager of the Year award, in collaboration with the Risk & Insurance Management Society Inc. The award recognizes excellence in risk management, and anyone involved in risk management for a corporation, financial institution, nonprofit or governmental entity can be nominated. For details or to download a nomination form, go to www.BusinessInsurance.com/RMOY.

BI DIRECTORIES

Largest insurance recovery law firms

Business Insurance has posted its new Directory of Insurance Recovery Law Firms for 2008. You can buy and download the full content of these and other *BI* directories online at www.BusinessInsurance.com/directories.

BI KNOWLEDGE CENTER

Expand your knowledge at a central location

At the *Business Insurance* Knowledge center, you can find contributed content from industry experts as well as white papers and a section devoted to court filings and public documents. Go to www.BusinessInsurance.com/knowledgecenter.

Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

Business Insurance (ISSN 0007-6864) Vol. 42, No. 44, is published weekly by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to *Business Insurance* Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912. \$5 a copy and \$97 a year in the U.S. \$130 in Canada and Mexico (includes GST). All other countries, \$230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in U.S.A. Copyright © 2008 by Crain Communications Inc.

Groups seek reprieve on pension funding

Drop in plans' funded status putting pressure on employers

By JERRY GEISEL

WASHINGTON—Business groups are urging federal legislators to temporarily suspend certain pension plan funding rules, warning of serious consequences if employers are required to replenish too quickly plans battered by the plummeting equities markets.

Fifteen business groups last week wrote to the two top members of the House Ways and Means Committee, cautioning them about the impact on employers, employees and the economy if funding rules are not eased.

"The drop in the value of pension plan assets coupled with the current credit crunch has placed plan sponsors in an untenable position. At a time when companies need cash to keep their businesses afloat, they are also required to make unexpectedly large contributions to their plans in order to meet funding requirements," according to the letter, whose signatories include the American Benefits Council, the ERISA Industry Committee, the National Assn. of Manufacturers

and the U.S. Chamber of Commerce.

Given the massive looming funding requirements, many companies will be forced to consider freezing or terminating their plans or reducing future benefit accruals, the letter said.

And even some of those actions may not be enough to prevent the damage to the economy if employers have to meet requirements mandated by a 2006 pension funding reform law, the tougher rules of which now are being implemented.

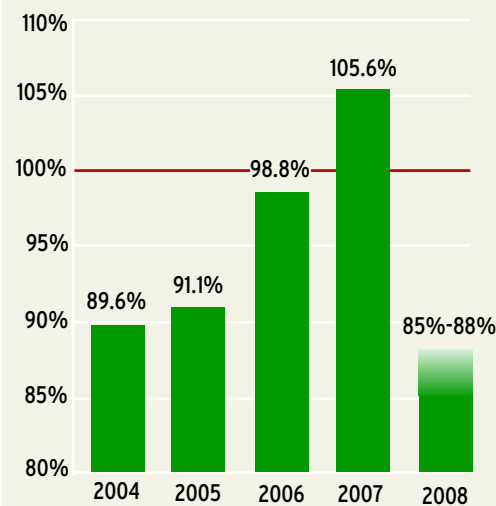
For example, freezing a pension plan does not eliminate the "huge funding obligations triggered" by the market downturn, according to the letter.

As a result, those obligations, if not modified, will "divert assets away from job retention, job creation and needed business investment, thus increasing the number of Americans who are unemployed and slowing our economic recovery," the letter states.

See **PENSIONS** page 26

RISE AND FALL

How pension plan funding levels have reversed course and are plummeting.



Ratio of assets to liabilities for large employers
Source: 2004 through 2007, Milliman Inc.; October 2008, *BI* estimate

CNA gets capital boost as losses hit 3Q results

Parent adds \$1.25B as investments, cats take toll on insurer

By JUDY GREENWALD

CHICAGO—Loews Corp.'s \$1.25 billion capital infusion into its CNA Financial Corp. unit will help the insurer maintain its strength despite its \$331 million third-quarter loss, observers say.

The move also continues Loews' practice of injecting money into the insurer when CNA needs extra capital, they say.

The third-quarter loss, which compares with a \$174 million profit for the same quarter last year, reflects \$423 million in net realized investment losses and \$168 million in aftertax catastrophe losses, according to the Chicago-based insurer.

For the nine-month period, CNA reported \$37 million in profits, down 94.6% from the first nine months of last year.

CNA said New York-based Loews, which owns about 90% of the insurer, will buy \$1.25 billion of the insurer's nonvoting cumulative senior preferred stock. The stock will have a 10% dividend rate for the first five years, which then will be reset.

CNA plans to use \$1 billion of the capital to increase the statutory surplus of its principal insurance unit, Continental Casualty Co. The remainder will be held at the holding company level.

Loews has come to CNA's aid previously. In 2003, it injected \$750 million into CNA, through purchasing preferred shares, after the insurer reported a \$1.61 billion loss because of reserve strengthening

and other charges. A year earlier, Loews also pumped \$750 million into CNA, again using preferred stock. In 2007, the insurer accounted for 55.1% of Loews' revenues.

Among results for the nine-month period, CNA reported \$4.93 billion in property/casualty net premiums written, down 4.2%; and a 100.9% combined ratio, up from 93.8% for the comparable period a year ago.

The objective of the capital infusion was 'to position us to really withstand any stresses, as well as really act on opportunities.'

D. Craig Mense,
CNA Financial Corp.

Major rating agencies made no changes to the financial strength ratings of CNA's P/C units as a result of last week's activity, though New York-based Fitch Investors Service changed its rating outlook for CNA from stable to negative.

The capital infusion will put the insurer in a position to "meet the challenges and act on the opportunities likely to emerge in the marketplace," CNA Chairman and Chief Executive Officer Stephen W. Lilienthal said in a statement.

During an analyst call, CNA Executive Vp and Chief Financial Officer D. Craig Mense said the objective of the capital infusion was to remove

See **CNA** page 27

Court allows RICO suit over comp claim denial

Claimants allege employer, TPA conspiracy

By ROBERTO CENICEROS

A federal appeals court decision allowing a racketeering lawsuit to proceed against an employer and its third-party administrator could drive increased litigation over denial of workers compensation claims, some attorneys say.

The Oct. 23 ruling by the 6th U.S. Circuit Court of Appeals also could put workers comp claims decisions in a federal judge's hands and potentially drive up claims costs, attorneys add.

Most states adjudicate workers comp claims, often with specialist judges or magistrates, including Michigan, where the current case arose.

But the 6th Circuit's opinion in *Paul Brown, William Fanaly, Charles Thomas, Gary Riggs, Robert Orlikowski and Scott Wa vs. Cassens Transport Co., Crawford & Co. and Dr. Saul Margules* allows workers comp claimants to pursue a federal case alleging mail fraud, wire fraud and violations of the federal Racketeer Influenced and Corrupt Organizations Act stemming from the denial of their claims. Defense and claimants attorneys say this is the first time that a federal appeals court has allowed a RICO suit in a comp case.

A federal trial judge now must determine whether certain medical evidence and opinions have relevance in denying workers comp benefits, said Michael Brenton, a workers comp defense specialist at law firm Murphy, Brenton & Spagnuolo P.C. in East Lansing, Mich.

Under the workers comp exclusive remedy doctrine, such determinations have statutorily been the domain of Michigan workers comp

magistrates, who have experience with such matters, said Mr. Brenton, who did not represent parties in the case.

"I have a real concern that...this sort of action opens the door for a federal district judge to make such decisions," Mr. Brenton said.

"It is definitely a workers compensation matter landing in a federal court, where it is not supposed to be," agreed Kimberly D. Brown, senior vp and general counsel for Sedgwick Claims Management Services Inc. in Memphis. "The whole

READ the full court document at *Business Insurance's* Knowledge Center
www.BusinessInsurance.com

purpose of the (state) workers compensation regime is a compromise on behalf of employers and employees (reached) ages ago when it was created to avoid extraneous litigation of this type."

The plaintiffs in the case allege that "Cassens and Crawford deliberately selected and paid unqualified doctors, including Margules, to give fraudulent medical opinions that would support the denial of workers compensation benefits, and that defendants ignored other medical evidence in denying them benefits," the appeals court opinion states.

The plaintiffs claim that the defendants' communications among themselves constituted mail and wire fraud.

The court opinion neither provides details about the underlying workers comp claims, nor does it

See **RICO** page 26

P/C insurer groups unite in opposing federal capital aid

AIA, NAMIC and PCI say primary coverage providers are sufficiently capitalized and reserved to pay their claims

By MARK A. HOFMANN

WASHINGTON—The three major primary property/casualty insurer trade groups may not agree on everything, but they are united in their belief that P/C insurers should not participate in the federal government's capital purchase program.

The program, which is part of the federal government's \$700 billion financial market bailout package, is designed to pump capital into banks and other financial institutions.

However, all three major trade groups that represent primary property/casualty insurers issued statements last week urging their mem-

bers to forgo tapping the fund.

Evan Greenberg, chairman of the Washington-based American Insurance Assn., issued a statement saying the majority of AIA members don't support inclusion of P/C insurers in the program. If the program became available to them, they would not participate, he said.

"Those members believe that...they are well-capitalized and well-positioned to weather the current financial market crisis



Members believe 'they are well-capitalized and well-positioned to weather the current financial market crisis without the assistance of the CPP.'

Evan Greenberg, ACE Ltd. and American Insurance Assn.

without the assistance of the CPP," said Mr. Greenberg, who also is chairman and chief executive officer of Switzer-

land-based ACE Ltd.

The National Assn. of Mutual Insurance Cos. also stated its opposition to expanding the program to include P/C insurers.

"As an industry, property/casualty insurance companies, particularly the nation's mutual insurance companies, are well-capitalized and have adequate reserves to pay claims," Charles

Chamness, president and CEO of Indianapolis-based NAMIC, said in a statement.

NAMIC's policy "is to oppose the

expansion of Treasury's capital purchase program to include the property/casualty insurance industry," Mr. Chamness said.

The Property Casualty Insurers Assn. of America also spoke on the issue last week.

In a statement, PCI's board of directors said its position is "that the industry is generally well-capitalized and managed and is continuing to provide sound and secure products to consumers.

"PCI believes that property/casualty insurer participation in a Treasury relief program is neither necessary nor in the best interest of property/casualty consumers," the Des Plaines, Ill.-based association said in its statement.

New York seeks private takeover of runoff

Unusual tactic used in Midland liquidation

By ZACK PHILLIPS

EAST RUTHERFORD, N.J.—The New York Liquidation Bureau will solicit proposals from private runoff companies to take over the 22-year-old liquidation of Midland Insurance Co., a state official said.

Mark G. Peters, special deputy superintendent in charge of the Liquidation Bureau, said the agency would release a request-for-proposals in the next few months seeking bidders to manage the liquidation, which began in 1986.

Mr. Peters disclosed the plan during a speech at the annual AIRROC/Cavell Commutation & Networking Event, which was held Oct. 20-22 in East Rutherford, N.J., and sponsored by the Assn. of Insurance & Reinsurance Run-Off Cos. and Cavell Commutations, a unit of London-based Randall & Quilter Investment Holdings P.L.C.

Mr. Peters said he is not aware of any public liquidation bureau anywhere in the United States using such an approach.



'My hope is that it will be a model that we use and many of my fellow liquidators use.'

Mark G. Peters, New York Liquidation Bureau

"At end of the day, no one's tried it before, but we cannot continue along and end up waiting another 20 years," he said. "My hope is that it works. My hope is that it will be a model that we use and many of my fellow liquidators use to get (a long-running liquidation) off the state funds desk quick-er."

The Liquidation Bureau oversees insolvent insurers in New York.

Midland Insurance, which sold various types of insurance and reinsurance and wrote excess coverage for Fortune 500 companies, went into liquidation in 1986. Companies bidding on the Liquidation Bureau's RFP must propose a price to take over all of the company's assets and liabilities. The New York Liquidation Bureau hired Seattle-based Milliman Inc. to evaluate how many cents on the dollar the Liquidation Bureau could

afford to pay, and that will be the floor for bids, Mr. Peters said.

Even if no responses to the solic-

See **RUNOFF** page 26

States pass comp rate reductions

Employers expected to benefit from decline in coverage costs

By ROBERTO CENICEROS

Several states recently approved workers compensation rate reductions for next year.

Florida Insurance Commissioner Kevin McCarty last Tuesday approved an 18.6% workers compensation rate reduction effective Jan. 1. The reduction will produce an estimated savings of more than \$610 million for Florida employers, the commissioner said in a statement. It marks the sixth consecutive rate drop since 2003, when Florida lawmakers adopted sweeping workers comp reforms that have since reduced rates by more than 60%.

In California, Insurance Commissioner Steve Poizner has approved a 5% workers compensation rate increase, effective Jan. 1, to reflect rising medical and claims adjustment costs.

The commissioner's action rejects a pure premium increase of 16% sought by the Workers' Compensation Insurance Rating Bureau of California. Including the 5% increase for January, rates have fallen 63.4% since 2003.

Although the commissioner cannot dictate insurance rates, he warned underwriters to be cautious if they seek to raise them.

"It is clear that insurance companies remain profitable in California and still have room to reduce the premiums they charge," the commissioner said in his statement. "Insurers should work with their



Florida Insurance Commissioner Kevin McCarty approved an 18.6% reduction in workers comp rates to take effect on Jan. 1, 2009.

employer customers to control the cost of workers comp insurance and help California business remain financially healthy and competitive."

In addition, North Carolina Insurance Commissioner Jim Long last week approved a 4.4% workers compensation voluntary market rate decrease effective April 1. He also approved a 3.8% rate decrease for the assigned risk market.

The decrease will save North Carolina employers about \$65.5 million, the commissioner said in a statement. The average rate in the voluntary market is now about 2.17% of payroll.

Webinar eyes regulatory reform

Free online forum Nov. 12 features panel of industry experts

Amid the global economic crisis, regulatory reform is a hotly debated topic.

To explore this subject in depth and pose questions to industry experts, join *Business Insurance* supplement *Industry Focus* for a free Online Executive Forum Wednesday, Nov. 12, at 2 p.m. Eastern Standard Time.

The 60-minute webinar, "The New Regulatory Reality: Reforming Insurance Regulation in Times of Turmoil," features a panel including:

- Howard Mills, director and chief advisor in the insurance



industry group of Deloitte L.L.P. in New York and the state's former superintendent of insurance.

- Francine L. Semaya, chair of

the insurance corporate and regulatory practice of law firm Cozen O'Connor in New York.

- J. Stephen Zielezienski, senior vp and general counsel of the American Insurance Assn. in Washington.

IF Editor Rodd Zolkos will moderate the discussion to help companies anticipate the impact of proposed changes in the insurance regulatory system on their businesses.

To register for this free *Industry Focus* Online Executive Forum, visit BusinessInsurance.com/webinars.

Errors & Omissions

- A story in the Oct. 20 issue, "Predictive Models Tackle Drivers of Workers Comp Claims," misstated the name of a third-party administrator. The correct name is Cambridge Integrated Services, not Cambridge International.

- A chart in the Oct. 27 issue, ranking the world's largest reinsurance intermediaries misstated the principal officer of Willis Re. Peter Hearn, chief executive officer of Willis Re, is the reinsurance brokerage's principal officer.



Risk
can be
contained.

If your coverage isn't
already with **Navigators**,
maybe it's time it was.

 **avigators**

Insuring a World in Motion since 1974

www.navg.com

Obstacles?
Opportunities.

© 2008 Dickstein Shapiro LLP. All Rights Reserved.

EXPERIENCE INNOVATION.

FOX ENTERTAINMENT GROUP DOES.

Fox Entertainment Group is one of the world's most recognized and respected producers and distributors of films and television programs. With its broad portfolio of entertainment assets, Fox Entertainment Group faces the gamut of insurance coverage challenges. To help resolve these complex insurance coverage issues, Fox Entertainment turns to Dickstein Shapiro for comprehensive and strategic legal counsel.

"The insurers know we are serious about defending our rights when we retain lawyers at Dickstein Shapiro."

-Ted Russell, Senior Vice President of Litigation, Fox Entertainment Group

WASHINGTON, DC | NEW YORK | LOS ANGELES
Prior results do not guarantee a similar outcome.

DICKSTEINSHAPIRO LLP

Commentary

Blame regulatory vacuum for subprime meltdown

Enrico Fermi, working on the Manhattan Project in the New Mexico desert in 1945, famously took bets on whether the first atom bomb test would ignite the atmosphere.

It's not known whether the math geniuses who perfected mortgage-backed securities and credit default swaps worried about the financial equivalent of that kind of destruction. They should have.

The shock waves are still traveling. Mortgage defaults pounding banks and other investors have already cost taxpayers more than \$800 billion. About 12 million U.S. homeowners now owe more than their houses are worth and that number is expected to climb to 14.6 million by next year. Investors of all kinds are dumping assets to pay off debt. Credit is scarce, hampering small businesses to giant corporations; General Electric, of all companies, now has to rely on the U.S. Treasury to buy its commercial paper.

Of all the incomprehensible features of this meltdown, one of the most difficult to understand is the regulatory vacuum that allowed it to develop.

Former Fed Chairman Alan Greenspan recently expressed "shock" that an instinct of self-preservation didn't stop lenders from making catastrophically bad decisions. He and other free-market true believers in Washington counted on enlightened self-interest to guide the market's behavior; unfortunately, the market only got the self-interest part.

The oversight failures go back to the late 1990s. Then, a government commodities regulator warned Mr. Greenspan and Clinton administration officials that the unregulated credit derivatives market presented dangers; their response was to lobby Congress to do nothing.

In 2000, former Republican Sen. Phil Gramm attached a provision to the Commodities Futures Modernization Act—later signed by Bill Clinton—that barred regulation of credit default swaps.

In 2004, the Securities and Exchange Commission agreed to demands by the biggest investment banks, including the defunct Bear Stearns and Lehman Bros., to relax minimum capital rules. The result was a dramatic increase in leverage—in Bear's case to a 33-to-1 debt-to-asset ratio—as they poured billions into risky instruments, the New York Times has reported.

By bipartisan consensus, all of that is about to change. Deregulation is over, and the only question is what shape the regulatory overhaul will take.

Congress could start with the



DOUGLAS
McLEOD

Senior Editor Douglas McLeod
can be reached at:
dmcleod@businessinsurance.com

credit default swap market, which exploded from next to nothing a decade ago to as much as \$62 trillion in notional value last year, and which helped bring down American International Group Inc.

There are two kinds of CDS: the kind bought by actual bond owners as insurance against the bonds' default; and "naked" swaps, bought and sold by speculators simply betting on others' credit-worthiness with no requirements

Serious and sensible regulation would work better for all of us.

that they report the deals or have the capital to back them up.

SEC Chairman Christopher Cox explained this to a Senate committee last month and belatedly asked for authority to regulate the instruments. Sen. Tom Harkin, whose Agriculture Committee oversees derivatives, suggested banning naked swaps. Not a bad idea. That kind of trading doesn't spread risk; it creates risk.

Meanwhile, the New York Insurance Department has decided that all credit default swaps, other than naked swaps, are insurance and can be sold only by licensed insurers. That's a start. Whether regulated by states as insurance or by the SEC, the CDS market has to be put under supervision.

Many smart people saw the financial crisis coming, including Warren Buffett, who called derivatives "financial weapons of mass destruction."

Back at the Trinity test site in 1945, Fermi's colleague Edward Teller knew enough to slather himself with sunscreen before the bomb went off.

Understanding risk is good, but when it comes to the financial markets, that understanding shouldn't be left to individual initiative. Serious and sensible regulation would work better for all of us.

Zurich HelpPoint



One global insurance program for your expanding business. Even for places you've never been.

Zurich HelpPoint is here when you need more than just insurance. So we offer the Zurich Multinational Insurance Proposition (MIP)*. It helps you keep global insurance programs compliant when you expand your business to a new market and expose yourself to new risks. The strength of Zurich MIP lies in a transparent and thorough set of solutions for writing and maintaining global insurance programs in over 170 countries. Our game-changing solution can help you sleep better at night, no matter the time zone. For more details about *Zurich HelpPoint*, visit www.zurich.com

Here to help your world.



*Because change happenz*SM

Business Insurance OPINIONS

Benefits paid in full well worth the risk

IT IS UNDERSTANDABLE if federal legislators are skeptical about proposals by more than a dozen business groups to temporarily ease pension plan funding rules that Congress stiffened little more than two years ago.

There is an historical basis for skepticism. In the mid-1980s, pension funding laws were so riddled with loopholes that they did little to improve plan funding. The result was that financially weak companies continued to put little into their pension plans. When those companies later failed, the pension liabilities were passed on to the Pension Benefit Guaranty Corp.

To pay benefits that companies promised to their employees and retirees but didn't fund, the PBGC several times had to go to Congress to raise insurance premiums on all employers, including those who fully funded their pension commitments. That was unfair.

Because the PBGC doesn't guarantee all promised benefits—guarantees for recent benefit increases, for example, are phased in—plan participants haven't always received the benefits they earned. In 2006, Congress finally got serious about funding reform and passed legislation that tightened funding rules.

Now, a huge and sudden drop in the equities market has walloped pension plan funding levels. Because of the 2006 changes, many employers will be required to make massive contributions to boost pension funding levels.

That creates a dilemma for employers. If they don't increase funding now, tougher rules kick in and they will have to make even bigger contributions later. And if they do make the needed contributions now, they will have a lot less money for other and perhaps equally important business needs later.

Extraordinary times, as these are, demand extraordinary responses. In this case, the call by business groups to temporarily ease some of the 2006 funding rules, as we report on page 3, is appropriate.

The risk that easing the funding rules will lead to major losses for the PBGC if some plans fail later is more than offset by the increased likelihood that the breathing space will enable employers to survive and keep their pension plans.

Battle positions drawn on binding arbitration

WHILE WE CAN'T predict the exact composition of the Congress that will be elected tomorrow, it's a safe bet that the assault on binding arbitration agreements that began in the last Congress will continue. In fact, it will likely gain strength.

And as far as we're concerned, that's not a good thing. Arbitration and other forms of alternative dispute resolution provide a valuable alternative to costly and time-consuming litigation. Without this alternative, even the most routine cases could end up burdening a legal system that's already stretched thin in some places.

Absent some sort of unimaginable turn in the political tide, the next Congress will have more Democrats than the old Congress. Combine that with the possibility of an executive branch considerably less favorably disposed to tort reform than the current administration, and arbitration is likely to be in the legislative cross hairs.

Proponents of binding arbitration need to begin burnishing their arguments. This legislative battle appears inevitable. What is not inevitable is that pro-arbitration forces will overcome those who oppose the use of arbitration as easily as they did in the last Congress.

This time, the battle is likely to be fierce, and being prepared for it sooner rather than later cannot help but enhance the chances of victory.

Extraordinary times, as these are, demand extraordinary responses.



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.

Please send your letters to:

Letters to the Editor
Business Insurance
360 N. Michigan Ave.
Chicago, Ill. 60601-3806

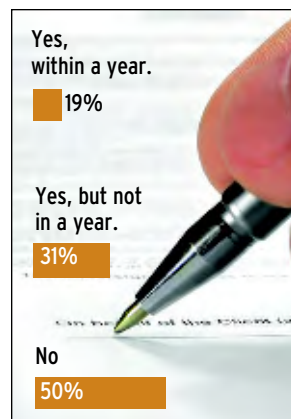
fax: 312-280-3174, e-mail:
rcoccia@businessinsurance.com

VOTE

in the BI Online Poll at
www.businessinsurance.com

THIS WEEK'S RESULTS

Can New York achieve insurance contract certainty in a year?



NEXT WEEK'S QUESTION

Q: How will you adjust your contribution to a medical savings account for 2009?

BI Online Poll tool is sponsored by Wausau Insurance Cos.

READ

Perspectives and expert analysis online at
www.businessinsurance.com/knowledgecenter



Fighting cancer, soaring costs

Some 9 million U.S. residents are living with cancer as oncology drug costs rise up to 15% per year. This means health plan sponsors need to develop clinically appropriate strategies to control those rising costs, say Dr. Lon Castle, senior director, department of personalized medicine, at Franklin Lakes, N.J.-based, Medco Health Solutions Inc., and Steven B. Russek vp of the professional practice and chief clinical officer at Memphis, Tenn.-based Accredo Health Group Inc. While cancer therapy is expensive, the human costs of inadequate or inappropriate treatment are much higher, they say.

ONLINE
Read the full text of this and other Perspectives at BI's Knowledge Center at
www.BusinessInsurance.com

Vice President/Publisher:
Martin J. Ross III (New York)

Associate Publisher/Editorial Director:
Paul D. Winston (Chicago)

Editor: Regis J. Coccia (Chicago)

Editor-at-Large: Jerry Geisel (Washington)

Managing Editor: Gavin Souter (Chicago)

Assistant Managing Editor - Graphics:
Kathy L. Barnes (Chicago)

Assistant Managing Editor - News:
Matt Scroggins (Chicago)

Senior Editors: Roberto Cenicerros (Boise); Meg Fletcher, A.R.M. (Chicago); Judy Greenwald (San Jose); Mark A. Hofmann (Washington); Dave Lenckus (Tucson); Douglas McLeod (New York); Sally Roberts (Denver); Joanne Wojcik (Denver); Rodd Zolkos-Industry Focus (Chicago)

Associate Editors: Kristin Gunderson Hunt (Chicago); Colleen McCarthy (New York); Zack Phillips (New York)

Staff Reporter - Interactive:
Jeffrey Casale (Chicago)

Deputy Graphics Editor: William Murphy (Chicago)

Copy Editors: Charmain Benton (Chicago); Joe Walker (Chicago)

Research Director: Kevin P. Edison (Chicago)

Research Editor: Karen Brown Tucker (Chicago)

Online Editor: Katherine Downing (Chicago)

Online Producer: Amy R. Curtis (Olathe)

Assistant Online Producer:
Pharaoh Blackwell (Chicago)

Editorial Cartoonist: Roger Schillerstrom (Chicago)

Editorial Assistant: Allison J. Martinat (Chicago)

Advertising Director:
Robert A. Raidt Jr. (New York)

Director - Business Development:
Robert L. Niesse (Chicago)

Regional Sales Managers: Russell J. Carpel (Chicago); William J. McGuire (Chicago); Ron Kolgraf (Boston); Todd D. Lockwood (New York); Robert B. Murray (New York)

Classified Advertising Manager:
Monique Murray (New York)

Assistant to the Publisher:
Pat Ghazvini (New York)

Events Manager: Rebecca Briggs (New York)

Traffic Coordinator: Sarah Potter (New York)

Sales Assistant: Mike Tsikoudakis (Chicago)

Production Manager: J. Thomas Janka (Chicago)

Circulation Manager: William O'Driscoll (New York)

Assistant Circulation Manager:
Craig Bowman (Detroit)

Promotion Director: Michael Ambrosio (New York)

Promotion Coordinator: Barbara O'Brien (New York)

EDITORIAL: Boise: 208-286-1425; Chicago: 312-649-5200; Denver: 303-282-4260; London: 44-207-457-1400; Los Angeles: 323-370-2455; New York: 212-210-0100; San Jose: 408-774-1500; Tucson: 520-579-1937; Washington: 202-662-7200

ADVERTISING: Boston: 617-292-4856; Chicago: 312-649-5276; Los Angeles 323-370-2405; New York: 212-210-0133

SUBSCRIPTIONS: Detroit: 888-446-1422

Business Insurance is published by
Crain Communications Inc.

Chairman: Keith E. Crain

President: Rance Crain

Secretary: Merrilee Crain

Treasurer: Mary Kay Crain

Executive Vice President/Operations:
William A. Morrow

Senior Vice President/Group Publisher: Gloria Scoby

Group Vice President/Technology, Circulation,
Manufacturing: Robert C. Adams

Vice President/Production & Manufacturing:
Dave Kamis

Crain's Corporate Circulation Director:
Patrick Shepesh

Chief Information Officer:
Paul Dalpiaz

G.D. Crain Jr. Founder (1885-1973)

Mrs. G.D. Crain Jr. Chairman (1911-1996)

S.R. Bernstein Chairman-executive committee (1907-1993)


Published weekly at 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Fax: 312-280-3174. biweb@crain.com. Offices: 711 Third Ave., New York, N.Y. 10017-5806. Fax: 212-210-0704; Suite 814, National Press Building, Washington, D.C. 20045-1801. Fax: 202-638-3155; 6500 Wilshire Blvd., Suite 2300, Los Angeles, Calif. 90048-4947. Fax: 323-655-8157; 967 Bermuda Court, Sunnyvale, Calif. 94086-6750. Fax: 408-774-1155; 21 St. Thomas St., London SE1 9RY, U.K. Fax: +44-(0)20-7457-1440; 7300 N. San Anna Drive, Tucson, Ariz. 85704. Fax: 520-579-3476; 1746 Cole Blvd., Suite 150, Golden, Colo. 80401. Fax: 303-733-9941; 12524 Acuff Court, Olathe, Kan. 66062. Fax: 312-280-3174. 77 Franklin St., Suite 809, Boston, Mass. 02110-0710. Fax: 212-210-0704. \$5 a copy and \$97 a year in the U.S., \$130 in Canada and Mexico (includes GST). All other countries, \$230 a year (includes expedited air delivery). Four weeks' notice required for change of address. Send subscription correspondence to Circulation Department, Business Insurance, 711 Third Avenue, New York, N.Y. 10017-5806. Microfilm copies available: University Microfilms, 300 Zeeb Road, Ann Arbor, Mich. 48103. Microfiche copies: Bell & Howell, Micro Photo Division, Old Mansfield Road, Wooster, Ohio 44691. Portions of the editorial content of this issue are available for reprint or reproduction in other media. For reprints or reprint permission: The YGS Group, 1808 Colonial Village Lane, Lancaster, PA 17601; 800-290-5460, ext. 160; BusinessInsurance@reprintbuyer.com.

To subscribe, Call 888-446-1422, or 313-446-0450 outside the U.S.

www.businessinsurance.com

BPA AMERICAN BUSINESS MEDIA

THE ASSOCIATION OF BUSINESS MEDIA COMPANIES

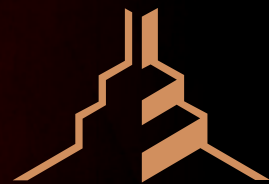


*Strong
Stable
Exceptional*

You expect financial strength, stability and leadership from your business partners. And we deliver. However, it takes more than those things to build a one-of-a-kind partnership. We're here to bring strategy and innovation to the market so together we can exceed the demands of our ever-changing marketplace.

A.M. Best Rating of A+XV (Superior)

To learn more or to find a Scottsdale agent, visit us at: scottsdaleins.com



SCOTTSDALE
INSURANCE
COMPANY®



A Nationwide® Company

Business Insurance adds event planner

Risk management awards, other project among Rebecca Briggs' duties

NEW YORK—Rebecca Briggs has joined *Business Insurance* as event manager, responsible for all of the publication's events including the Women to Watch Luncheon, the Risk Manager of the Year Awards and other projects.



Ms. Briggs

Before joining *Business Insurance* in New York, Ms. Briggs worked at the *Financial Times*, where she was responsible for the execution of all conferences,

events and awards programs in the United States, Canada and South America.

Prior to the *Financial Times*, Ms. Briggs managed events for four trade publications with Lebharr-Friedman Publishing: Home Channel News, Drug Store News, Retailing Today and Chain Store Age.

She also has worked in nonprofit event management and fundraising

for organizations such as the Thurgood Marshall Scholarship Fund, the Audubon Society and SHARE: Self-help for Women with Breast or Ovarian Cancer.

Ms. Briggs graduated in 2000 from Franklin & Marshall College in Lancaster, Pa., with a bachelor's degree in sociology and is currently doing post-graduate work in conference and event management at New York University Tish Center.

To contact Ms. Briggs, call 212-210-0132 or send an e-mail to rbriggs@businessinsurance.com.

Victim of racial attack ineligible for comp

By ROBERTO CENICEROS

MONTGOMERY, Ala.—A Burger King restaurant manager sexually assaulted in a racially motivated attack as she arrived at work is not eligible for workers compensation benefits, the Alabama Supreme Court has ruled.

The state high court agreed with a lower court ruling that the manager did not sustain a compensable injury because her injuries were caused by third parties intending to injure her for personal reasons and

not because of her employment. The trial court also ruled that the attack was racially motivated.

The incident occurred Aug. 11, 2002, when two men attacked the manager while she attempted to unlock the restaurant, court records in the case of *N.J.J. vs. Wesfam Restaurants Inc.* show.

The attackers pulled her behind the Huntsville, Ala., restaurant and sexually assaulted her while a third person acted as a lookout.

She testified during a court hearing over her eligibility for workers comp benefits that her attackers repeatedly made racially charged comments relating to consorting with African-Americans, court records state.

She also testified that shortly before the attack, she had banned the man who acted as the lookout from the Burger King restaurant for setting a napkin holder on fire.

She had never seen the two men who attacked her and, during the attack, the lookout did not mention his earlier ejection from the Burger King restaurant, court records state.

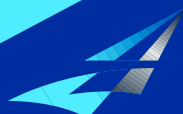


Colony Professional Lines is now Argo Pro.
We are ready to serve.

© Argo Group International Holdings, Ltd.

Join us in christening Argo Pro, your new company for professional lines underwriting with the same team and commitment you've known as Colony Professional Lines. Now with a sharper focus and additional resources dedicated to the underwriting of AM, EO and ENV risks, Argo Pro is the specialist relationship that can enhance your long-term success. Visit us at the PLUS conference and help us launch the celebration. After all, the party's for you.

800-577-6614
argoprou.com



ARGO PRO

Member Argo Group

 **LISTEN:**
"This Week in
Business
Insurance"



Our weekly podcast reviews the headlines in each new issue of *Business Insurance* and interviews reporters for in-depth insights to the top stories of the week.

Subscribe to this free podcast on iTunes or listen to these audio reports online at www.businessinsurance.com/tisweek

BusinessInsurance®

www.BusinessInsurance.com



Property insurance and loss prevention solutions

You can feel secure in our large capacity and deep understanding of complex industrial loss exposures to protect your facility against severe property damage and prevent costly shutdowns.

PLATINUM PROPERTY XL

Our *Platinum Property XL* coverage provides the capacity to insure 100% of your account. Through our global insurance network, we can issue policies worldwide and provide you with a one-stop solution. Additionally, our global network of experienced field consultants provides effective assessment and advice for your facilities. So whether they're around the corner or around the world, you can feel secure.

ENHANCED LOSS PREVENTION CONSULTING SERVICES

Our property program is supported by Global Asset Protection Services (XL GAPS) for even greater breadth and scope of services. XL GAPS has a 118-year track record of excellence in property loss prevention consulting services.

EASILY-ACCESSIBLE LOSS PREVENTION REPORTS

Right from the start, the data in our loss prevention reports is yours and easily accessible anytime from our secure website via MyAnalysis®, the XL GAPS online reporting tool which easily turns data into fully-customizable reports. Because the best way to minimize your exposures is when we're all on the same page.

With the large limits of *Platinum Property XL*, the convenience of MyAnalysis®, and the expertise of XL GAPS, we're the only property insurer you'll need. We also offer additional lines of business including casualty, professional and specialty.

For more information or a live demonstration of MyAnalysis®, call 800-609-2581.

The XL Insurance companies have one or more of the following ratings:

A+ by S&P

A (Excellent) by A.M. Best

A1 by Moody's

The strength and expertise to protect your business

XL INSURANCE
FUNDAMENTAL STRENGTH – CAPITAL AND PEOPLE

Experience our strength:
www.xlinsurance.com

"XL Insurance" is a registered trademark of XL Capital Ltd. XL Insurance is the global brand used by member insurers of the XL Capital Ltd group of companies. described herein are underwritten by XL Insurance America Inc. and XL Select Insurance Company. Coverages not available in all jurisdictions. Ratings accurate as of August 25, 2008.
MyAnalysis® is a registered service mark of Global Asset Protection Services, LLC

Location: Shipyard, Hamburg, Germany

It's a risky world. Can you rely on your reinsurer?

Loss Event	Year	Estimated Return Period
9/11 terrorist attacks	2001	1 in 20 years
Stock market decline	2002	1 in 20 years
Casualty reserve increases	2003/4	1 in 25 years
Hurricane Katrina	2005	1 in 40 years
Credit crisis	2007/8	1 in 75 years

It seems like there's a different major event nearly every year. You need reinsurers who are adept at managing risk across the board, who will provide consistent capacity, and whose capital strength promises an unequivocal ability to pay claims. With that in mind, we've provided seven questions to ask your reinsurers. The answers will help you make a clear assessment of whether they deserve your confidence and trust. In a risky world, you need to know who you can rely on.



To see these seven questions, and for more information, go to www.partnerre.com

PartnerRe



Liability &
Litigation

SPOTLIGHT

DECLINES LIKELY FOR
SOME IN D&O MARKET

PAGE 17

Q&A WITH NATIONAL
CHAMBER LITIGATOR

PAGE 18

TORT REFORMERS
WIN SOME BATTLES

PAGE 19

RANKING: INSURANCE
RECOVERY LAW FIRMS

PAGE 20

STATE-LEVEL
CHALLENGES ABOUND

PAGE 21

FINANCIAL CRISIS AN
ATTORNEY BONANZA

PAGE 22



Bills target mandatory arbitration

Legislation would curtail use in nursing homes, consumer agreements

By NICK WHITFIELD

Federal legislation that would ban or greatly limit the use of mandatory arbitration to resolve certain contract disputes gained traction in the latest session of Congress and, some say, may win passage in the next Congress.

Mandatory arbitration contract clauses, which require both parties to submit to binding arbitration before taking any dispute to court, have become a widely used way for businesses to avoid the costs and risks of litigation.

Such clauses have become ubiquitous in consumer contracts, appear-

ing in about 75% of consumer agreements, according to a study published in the Summer 2008 issue of the Journal of Law Reform at the University of Michigan.

"Arbitration sets up a system that equitably resolves disputes outside

See **ARBITRATION** next page

Arbitration: Legislation would curtail use in consumer contracts

CONTINUED FROM PREVIOUS PAGE

the courtroom without using lawyers," said Victor Schwartz, general counsel for the Washington-based American Tort Reform Assn., which opposes the legislation.

The most sweeping of the proposed bills—the Arbitration Fairness Act—would invalidate predispute arbitration agreements in contracts in which there is a "disparity" in negotiating power, including employment, franchise and consumer disputes.

The act would be retroactive, Mr. Schwartz said. Existing contracts with predispute arbitration agreements, including those for cell phones and credit cards, would be altered, making arbitration optional for the consumer.

If "this bill is signed into law, the agreement could look very similar, but I, as the customer, would have the right to withdraw from that agreement and sue you, as a business," Mr. Schwartz said.

"There is still a possibility of parties agreeing (to arbitration) after a dispute arises, but that almost never happens, for tactical reasons," said Richard Naimark, senior vp of the American Arbitration Assn. in New York, which supports predispute arbitration agreements. "Usually, there's one party that wants to move forward at that point."

While business groups and tort reform advocates have lauded predispute arbitration clauses for keeping disputes out of court, consumer advocates and trial lawyer groups argue they deny consumers due process. Longstanding relationships between arbitrators and



'Arbitration sets up a system that equitably resolves disputes outside the courtroom.'

Victor Schwartz,
American Tort Reform Assn.

the businesses that select them, opponents allege, may cause pro-business bias.

"If you and I have a dispute, and I get to pick the judge and the rules, you're not going to like that very much," said David Arkush, director of Public Citizen's Congress Watch, a Washington-based consumer advocacy group. "There is a range of things I can do, large and small, blatant and subtle, to bias the proceedings.

"Each arbitration provider has its own rules, and I haven't seen a set of arbitration rules that are good for consumers," Mr. Arkush said.

"There is no guarantee—in fact, there is virtually no opportunity—of review in court if you lose in arbitration."

Many arbitration agreements also preclude class action lawsuits. Although many businesses welcome that relief from potential liability, consumer advocates and trial lawyers see it as a denial of basic rights.

If a company "can eliminate class actions, (it) can pretty much steal money from...

customers, as long as it's in increments smaller than, say, \$1,000 or \$500," Mr. Arkush said. Such small amounts are usually not worth the cost of pursuing, either in litigation or arbitration, unless they can be aggregated into a class action, he said.

Opponents of predispute arbitration agreements argue that they are often buried in the fine print of consumer transactions.

"We don't oppose arbitration as long as it's voluntary," said Joanne Doroshov, New York-based executive director of the Center for Justice & Democracy. "But banks and cred-

it card companies, and sometimes health insurers, are slipping mandatory arbitration agreements into contracts that consumers are not aware of."

These arguments, bolstered by what a recent report from University of Georgia law professor Peter Rutledge called horror stories of arbitration abuse, have allowed anti-arbitration legislation to gain traction in Congress in recent years, leading to proposals that would greatly curtail use of predispute mandatory binding arbitration clauses in business-consumer and business-employee contracts—both in specific industries and in general.

Narrower bills

Along with the Arbitration Fairness Act, which has spent the last year gaining co-sponsors in the House and the Senate, two narrower arbitration bills have a chance to pass next year. One, the Fairness in Nursing Home Arbitration Act would ban predispute arbitration agreements between nursing homes and their residents; the other, the Automobile Arbitration Fairness Act, would curtail use of the agreements in auto sales.

The nursing home and auto bills "are what I call picador bills," Mr. Schwartz said, referring to the practice of slowly weakening a bull in a

bullfight. "They go to weaken the business community arguments that arbitration is fair, that arbitration reduces costs.

"They try to weaken business opposition, and then they come down with the big one, the Arbitration Fairness Act," Mr. Schwartz said.

Despite business protests, experts on both sides of the issue expect the legislative attack on predispute arbitration agreements to gain momentum in the next year, especially if Barack Obama were to win the presidency and Democrats were to expand their majority in Congress.

The bills added sponsors in the House and survived the committee process, despite the possibility of a veto from President Bush.

"For those who are brave enough to forecast, people are saying that you're going to see (the Arbitration Fairness Act) in the first or second quarter of next year," said Mr. Naimark of the American Arbitration Assn.

Both sides of the debate agree that the bill's effect would be felt immediately.

"Realistically, consumers are going to find themselves in court a lot more," said Matt Webb, senior vp, legal reform policy for the U.S. Chamber Institute for Legal Reform in Washington.

Birth trauma claims are a risk manager's nightmare, representing 41% or more of total indemnity dollars paid

Plaintiffs are successful 53% of the time in Bad Baby Cases



With all due respect, maybe someone should have called Kitch

Investigation will reveal that the Kitch National Birth Trauma Coordinating Counsel Team, with its vast resources and experience, is the most effective solution to the exposures associated with Bad Baby cases.

- ◆ Timely analysis allowing for early and realistic reserves
- ◆ Successful Daubert attacks and effective impeachment of plaintiff's experts
- ◆ Identifying and securing effective defense experts
- ◆ Defendant and witness preparation
- ◆ Trial expertise
- ◆ Mock depositions/trials
- ◆ Effective demonstrative evidence

It costs nothing to verify this valuable and cost effective resource.

KITCH NATIONAL BIRTH TRAUMA COORDINATING COUNSEL TEAM
kitchbirthtrauma@kitch.com
(313) 965-7400

KITCH
Attorneys & Counselors



Her expertise is protecting the environment. And your clients.

– Karen Companion, Assistant Vice President
LIU Environmental

Yes, there's an Environmental insurer that's as responsible as you are.

Of all the reasons Liberty International Underwriters has become a leading specialty lines insurer, what truly sets us apart is our instinct to do the right thing. We meet your needs quickly, consistently, and responsibly. Together, we can provide the best products for your clients. We don't just value our relationship with you. We work at it.

For specific information about the types of risk we write, visit liu-usa.com/environmental. Liberty Mutual is rated A by A.M. Best.

Responsibility. What's your policy?



Liberty
International
Underwriters

Member of Liberty Mutual Group

EXCESS CASUALTY & UMBRELLA • E&O • D&O • PRIMARY CASUALTY • FIDELITY • ENVIRONMENTAL • CONSTRUCTION • MARINE • ENERGY

All products written by member companies of Liberty Mutual Group. © 2008 Liberty Mutual Group.

Secretive nature of arbitration makes it difficult to evaluate

More research has been conducted on employment and securities cases than consumer and franchise disputes

By **NICK WHITFIELD**

In the debate over predispute mandatory arbitration agreements, advocates for both sides cite empirical research to back their claims.

But the data that is available has not been enough to clear the air—because arbitrated cases are not subject to the same public scrutiny as litigation, and the quality and quantity of available data varies between states, arbitration providers and types of arbitration.

Arbitration “is hard to study

because it’s so secretive,” said David Arkush, director of Public Citizen’s Congress Watch and co-author of a study that, using existing research, concluded that arbitration often is unfair to the consumer or employee.

“The National Arbitration Forum actually has a rule that says that arbitrations are completely secret unless both parties agree otherwise,” Mr. Arkush said.

Peter Rutledge, a University of Georgia Law professor who has given congressional testimony in sup-

Firms ‘complied in such a way that it was difficult to learn anything from what they provided. This information just wasn’t useful.’

David Arkush,
Public Citizen’s Congress Watch

port of arbitration, published a study this year that, using much of the same research, reached the opposite conclusion.

But he agrees that the available data is spotty. “Probably, the area where we have the best empirical research is employment arbitration,” Mr. Rutledge said. “The second area in which we have some empirical research is securities arbitration, and we know the least about consumer arbitra-

tion and franchise arbitration.”

Arbitration providers vary in their disclosure practices. As arbitration has become more common, there have been efforts to make it more transparent. A 2002 California law requires arbitration providers to disclose quarterly data on their consumer cases, including the number of cases handled, what corporations are involved, consumer arbitration costs and who won.

Mr. Arkush said the largest arbitration providers have generally complied with the disclosure law, but the formatting and sheer volume of data—enormous data files listing thousands of cases and outcomes—have made it difficult for researchers to interpret, and essentially inaccessible for the public.

“Firms have started to comply, but they complied in such a way that it was difficult to learn anything from what they provided,” Mr. Arkush said. “This information just wasn’t useful. We at Public Citizen wound up writing a computer program to interpret these files.”

The most promising area of research—and one that is yet to be explored—is on the economic effect of laws that limit arbitration, Mr. Rutledge said. “A couple of years ago, Congress enacted the (Motor Vehicle Franchise Contract Arbitration Fairness Act of 2001) which basically invalidated (predispute arbitration agreements) between auto manufacturers and dealers,” he said.

“So far as I can tell, no one has really studied the effects of that bill. If we’re going to measure better-off/worse-off questions, it would behoove us to research how similar legislation has fared,” Mr. Rutledge said.

This is not a **pencil**.

Purchase BI's online directories

Business Insurance's online directories are now available for purchase as Excel files or as PDFs in the directories area of www.BusinessInsurance.com.



The Excel spreadsheets will allow you to sort the information and provide reports and contacts that will be valuable to your sales and marketing staff. The information that you have depended on for years is now available in a format that allows you to adapt it to your company's needs.

BusinessInsurance.com

Financial institution D&O rates on the rise as lawsuits mount

Other categories could see flat to lower rates; capacity still plentiful

By KRISTIN GUNDERSON HUNT

The financial crisis has already hardened the directors and officers liability market for financial institutions, but it's unclear whether the rate increases will spill into other sectors of the D&O market, observers say.

With plentiful capacity still available for many D&O risks, rates may flatten for some organizations, but observers say some declines are still likely.

One thing that is certain, though, is that shareholder lawsuits will increase as a result of the crisis, observers say.

Already, D&O rates are increasing for financial institutions, said Bill

'It's the wild, wild West that has come to roost with the financial services industry.'

Carol V. Gildea,
Cohen, Milstein, Hausfeld & Toll P.L.L.C.

Boeck, senior vp and counsel at Lockton Financial Services in Kansas City, Mo.

"The meltdown is going to have a profound effect if you're a financial institution, particularly if you are in any way exposed to mortgage-backed securities," Mr. Boeck said.

Premiums have nearly doubled in some instances where insurance programs have been changed in the past six months, he said. Mr. Boeck said some financial institutions have seen rates increase 7% to 10% just to replace a program layer. He said the increase is the result of situations such as institutions looking for alternative coverage to what they've been getting from New York-based American International Group Inc., which has experienced financial problems.

Rates are increasing for many financial institutions, especially those exposed to subprime mortgage-related losses, said Steve Shappell, managing director of the legal and claims practice for Aon Financial Services Group in Denver, a unit of Aon Corp.

In the past month, rates have increased between 5% and 10% for financial institutions, said Michael Smith, president of AIG Executive Liability in New York.

Rates for D&O coverage for other sectors may stop falling as a result of the crisis, he said.

Premium reductions have already slowed for some risks, said Aon's Mr. Shappell, but there is still plenty of capacity available, so nonfinancial companies with good claims records may still see double-digit decreases.

A hard market doesn't appear to be looming for most companies, but requests for broader coverage

are being turned down in some cases, said Lockton's Mr. Boeck.

But, he noted, advantageous coverage terms negotiated over the past two years are not being altered.

The financial crisis is certain to lead to more lawsuits, experts agree.

"There is very little doubt claims will be rising for this underwriting year and probably the next," said Key Coleman, managing director at SMART Business Advisory & Consulting L.L.C. in Chicago.

Investors likely will accuse executives at financial institutions of acting recklessly, said Carol V. Gildea, a partner at Cohen, Milstein, Hausfeld & Toll P.L.L.C. in Chicago who

represents investors.

"It's the wild, wild West that has come to roost with the financial services industry," Ms. Gildea said.

Cases will likely center on issues such as a lack of timely disclosures on how assets were valued, failure to disclose exposure to subprime investments and lax mortgage underwriting procedures, she said.

A wide range of suits will likely arise from the crisis, said AIG's Mr. Smith.

Securities class actions alleging misleading statements in the event of unexpectedly poor results, secondary offering suits alleging misleading information related to capi-

tal-raising efforts, shareholder derivative suits alleging breaches of fiduciary duty by executives, and suits alleging violation of the Employee Retirement Income Security Act in cases where pension assets are invested in company stock are likely to be filed, Mr. Smith said.

"The volatility and drop in the stock market is concerning," a huge amount of investor money was lost and that could lead to more than 200 suits being filed this year, said Aon's Mr. Shappell.

Shareholder class actions are likely to be the biggest exposure for D&O insurers, he said. "Those are

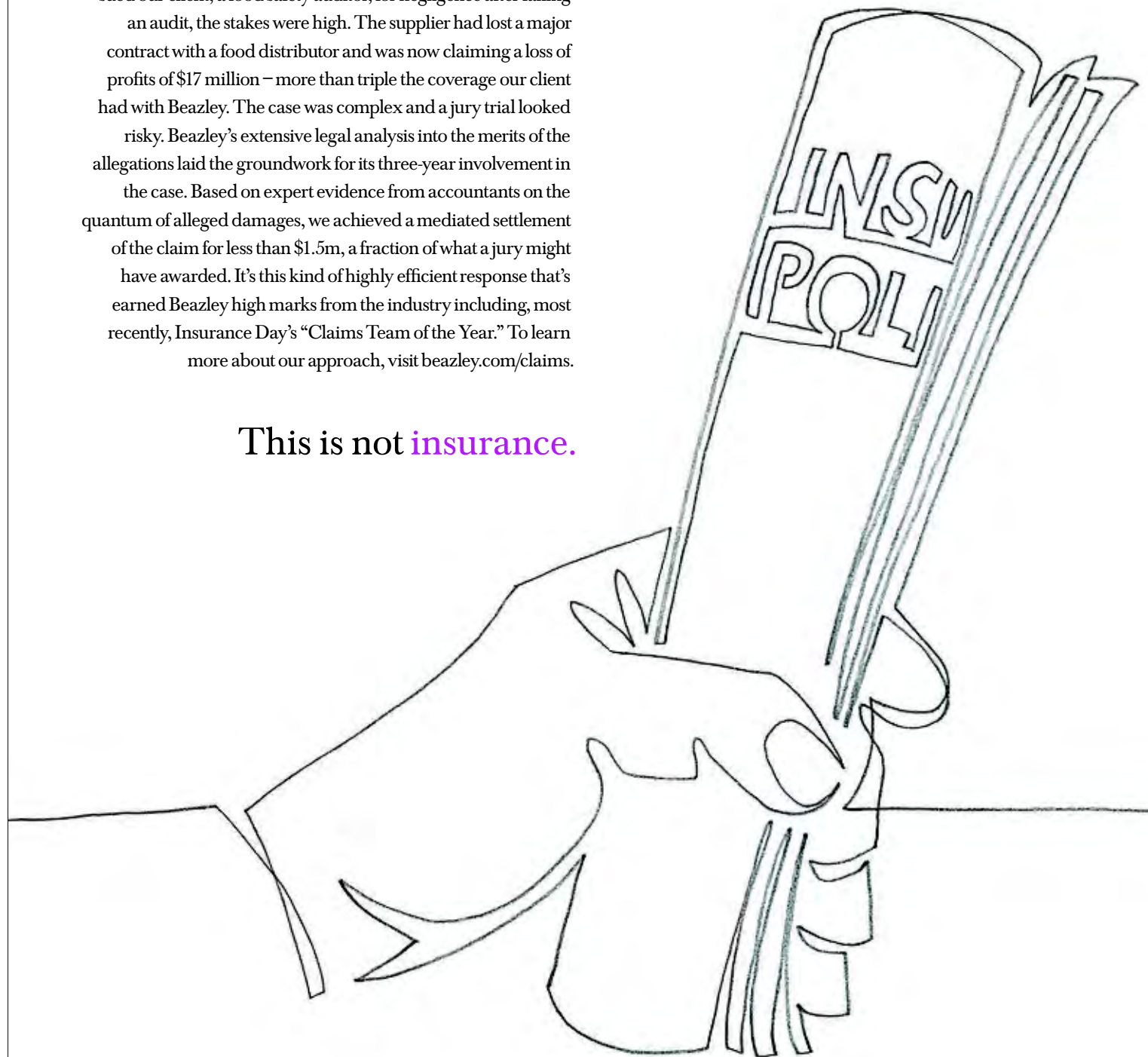
the key exposures for directors and officers; the quality of disclosures being made by directors and officers is critical," Mr. Shappell said.

Despite the uptick in securities class action suits being filed, it will be a lengthy amount of time before the cases are decided, therefore stalling the potential effect on the market and whether it actually turns hard. But if the huge losses result in numerous lawsuits and large settlements, a complete turn of the market could occur, Mr. Boeck said.

"If the planets align, that could certainly affect the hardness or softness of the D&O market," he said.

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

This is not **insurance**.



beazley
Straight Answers

Questions Answers



Robin S. Conrad was promoted in 2007 to executive vp of the National Chamber Litigation Center Inc., which handles lawsuits on behalf of the U.S. Chamber of Commerce in Washington. During her more than two decades with the NCLC, Ms. Conrad has played a key role in developing its litigation strategy. She recently spoke with Business Insurance Senior Editor Mark A. Hofmann about the current Supreme Court's approach to liability, punitive damages and other risk management issues.

LISTEN to the podcast of this abridged BI interview at www.BusinessInsurance.com/Audio

High court's rulings cut both ways

Q: How would you describe the Supreme Court's recent approaches to liability issues in general?

Well, the (Chief Justice John) Roberts court certainly has been a lot more sensitive to the high costs of litigation. And it has also seemed to be more concerned these days about the adverse impact of multiple layers of regulation on companies doing business in a national economy.... In October 2006, which was the first full year of the Roberts court, we began to see a real effort on the part of the court to reduce what the court itself described as lawyer-driven litigation.

And in a wide variety of cases ranging from antitrust litigation to securities class actions, the court expressed significant concern about how enormously expensive litigation has gotten.... As a result, over the past two full terms of the Roberts court, we have really seen

the court rein in excessive awards of punitive damages and we have seen the court limit the trial bar from regulating by litigation.

The court has tightened up pleading standards and other procedural requirements.

Q: Are there any discernible trends in the past few years as to the way the Supreme Court has decided employment-related cases?

It is really no secret that last year was not a good term for employers. In fact, the Chamber participated in seven labor and employment cases last term and we only had one victory. What we have seen is a real uptick in the number of retaliation cases—there have been four retaliation cases, one in the 2006 term, two last term and then there was an employment retaliation case just argued in the first week that the court got back into session this term.

One of the reasons that we're seeing the court take so many retaliation cases is that retaliation charges are really the second-most frequent claim made in cases that are filed before the Equal Employment Opportunity Commission. In fact 32%, according to a recent report, of the complaints filed before the EEOC involved retaliation. It is easier for employees to bring retaliation cases than it is to bring substantive actions under, let's say, Title VII (of the Civil Rights Act) or some of the other employment discrimination cases. This is something that the business community will continue to watch.

Q: We have *Philip Morris vs. Mayola Williams* coming before the Supreme Court for the third time later this year. Do you expect state Supreme Courts to continue to defy the U.S. Supreme Court on punitive damage limits?

It depends on whether the Supreme Court does the right

thing in the *Williams* case. This case is making its third trip before the U.S. Supreme Court, and twice now the court has vacated a \$79.5 million punitive damage award only to have the Oregon Supreme Court twice thumb its nose at the Supreme Court and defiantly reinstate that award.

We have been seeing a lot of rogue jurisdictions besides Oregon. If you recall in 2003, the court decided a *State Farm* case in Utah. Kind of the same thing happened; the court remanded that decision recommending that the putative damage award be substantially reduced. The Utah Supreme Court thumbed its nose at the U.S. Supreme Court and reinstated the award.... The court takes very few cases. We like to think it took this one for a reason and we hope that the court takes advantage of this by sending a very strong message to the states that they really need to get it right when it comes to putative damages.

Q: Another issue that has come up, federal pre-emption of state law, has been a hot-button issue for U.S. businesses for some time. Do you see it continuing to be prominent on the Supreme Court docket in years to come?

We do. The court heard a record number of five pre-emption cases last term. It is hearing two very important pre-emption cases this term. While it may not this term play as prominent a role as last term, we do expect to see many more pre-emption cases in the years to come.

The one reason being that this is really an explosive national debate. Neither side has won this. We see the debate on who gets to regulate your business really emanating from every branch of government. So if anything, the debate over federal pre-emption is escalating and we'll see more of these cases before the U.S. Supreme Court.

You're Unique.

We notice.

PINNACLE
ACTUARIAL RESOURCES, INC.

The Firm of Choice

- Alternative Markets
- Predictive Modeling
- Litigation Support
- Enterprise Risk Management

thefirmofchoice.com

Bloomington • Chicago • Columbus • Des Moines • Detroit • Indianapolis • New York • San Francisco



Point. Click. Explore.

Subscribers to *Business Insurance* can register online to enjoy the broadest access to BI content.

- Search and retrieve articles from *BusinessInsurance.com's* vast online article archive.
- Search and retrieve any directory listing in the online database of industry vendors.
- Access exclusive vendor rankings online.
- Sign up and receive the digital edition of the weekly issue.
- Sign up for a variety of e-mail News Alerts. View all e-mail products.

BusinessInsurance.

www.BusinessInsurance.com

Tort reform backers win some battles to reduce liability risks

'Reinvigorated plaintiffs bar' requires ongoing vigilance

By **MARK A. HOFMANN**

Tort reform has been losing traction at the federal level and is facing increasing challenges at the state level as well, say civil justice reform advocates.

That doesn't mean that tort reformers have given up trying to achieve their goals in state legislatures.

In fact in some states, such as New Jersey, they have been redoubling their efforts (see story, page 21).

In some cases, pro-reform forces may be victims of their own past successes. The key for reformers is to view their efforts as an ongoing process rather than one-time events, advocates say.

"While there is an affirmative agenda, still the reality is that the legal reformers are both defending past gains as well fighting off efforts to substantially expand liability," said Sherman Joyce, president of the American Tort Reform Assn. in Washington.

"It is a more challenging environment in the last year or two," said Lisa Rickard, president of the U.S. Chamber Institute for Legal Reform, a Washington-based affiliate of the U.S. Chamber of Commerce.

"We have had some major reforms and improvements in a number of states with the most abusive legal systems. Now we're working in states where the trial bar is more entrenched," she said, including states such as California, Illinois and West Virginia.

"The trial lawyer lobby is reinvigorated in both mission and money. They're spending a lot more in campaign contributions and have gotten better at recruiting friendly candidates" in both parties, Ms. Rickard said.

The result has been efforts to roll back comprehensive laws limiting liability, she said.

"But we've been successful in keeping them at bay. At the same time, we're also remaining on the offensive, looking at those states where we could pursue reforms," said Ms. Rickard.

An opponent of tort law changes said the fact that pro-business forces face greater challenges is hardly surprising.

"I think the main thing that drives this spurt of activity of tort reform is insurance rates," said Joanne Doroshow, executive director of the Center for Justice &

Democracy in New York. "And we have seen a stabilizing of the insurance market since at least 2005 and 2006, so the pressure that the insurance industry and policyholders have exerted on lawmakers has dissipated substantially because rates have stabilized."

Ms. Doroshow said that "related to that, you see states where no tort reform was enacted, like Connecticut, Washington and Pennsylvania," also experienced drops in insurance rates. That "just confirms our view that (tort reform) is not what drives insurance rates."

The public simply isn't interested



'The pressure that the insurance industry and policyholders have exerted on lawmakers has dissipated substantially because rates have stabilized.'

Joanne Doroshow,
Center for Justice & Democracy

in tort reform, she said. "It's been...demonstrated that voters don't care about this issue. Clearly, I think lawmakers understand that this is not registering with voters,

that tort reform advocates face. "Our view is civil justice reforms are not one-time events," said Ms. Rickard. "I think businesses understand that fundamentally, that you

that people don't care about it."

Keeping people thinking about civil justice issues is one of the key tasks

can't go in and try to advance reforms to have a more balanced system and then walk off the playing field. You've got to stay engaged—it's a long-term fight and you have to keep the commitment up."

ATRA's Mr. Joyce said the organization tracked 105 pieces of legislation in 25 states that attempted to overturn tort reforms. Of those, 10 were enacted into law.

"That's 10 more than we would want, but that shows that the overall success rate was not terribly

See **LEGISLATION** page 21

There's a lot
more to us
than our name
suggests.

Insurance & Specialty

You probably know us as one of the world's leading reinsurers. But we're much more than that. Swiss Re is also a leader in offering many other innovative risk solutions through its Industrial Risk Insurer and Commercial Insurance businesses. From small businesses with specialized needs to (multi)national corporations, we bring insurance capacity, high quality service and innovative risk management solutions to our clients across the globe. Founded in 1863, Swiss Re offers products that enable the risk-taking essential to enterprise and progress. For more information on how we can work together to tailor risk transfer solutions for your specific requirements, please visit us at swissre.com/insurance.



©2008 Swiss Re

Expertise you can build on. **Swiss Re**



Business Insurance

If you have moved recently and would like to change your subscription address, or if you would like to report a delivery problem, please call us at 1-888-446-1422 toll-free or e-mail us at subs@crain.com

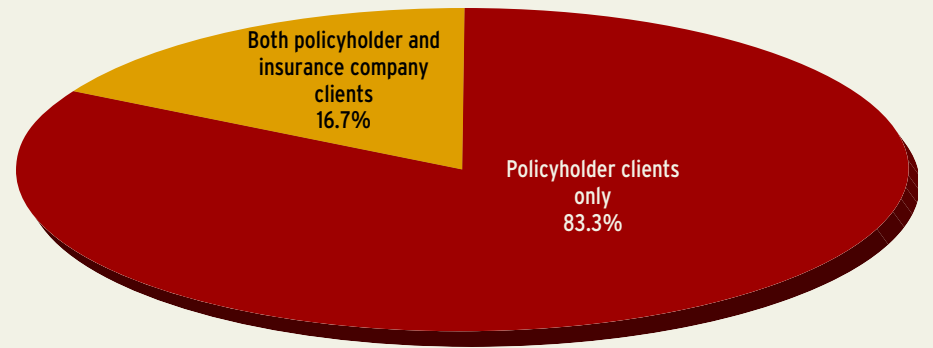
INSURANCE RECOVERY SERVICES OFFERED

Advice on notice, cooperation and communications with insurance companies	100%
Advice on rights and obligation in the event of a loss	100%
Advice on identifying and submitting claims under lost policies	100%
Advice on procurement issues and insurance programs	94%
Advice on the scope of coverage	100%
Enforcement of rights under insurance policies	100%
Interpretation and construction of existing policies	100%
Litigation support against insurance companies to obtain payment of disputed claims	100%
Policy procurement	88%
Risk assessment	88%

Source: BI survey

CLIENT BREAKDOWN

Percentage of law firms surveyed, with either policyholder clients or insurance company clients.



Source: BI survey

Largest insurance recovery law firms

Ranked by number of attorneys in recovery practice

Rank	Company/Address	Phone/Web site	Attorneys	Managing partners	Total clients	Officers	Contact
1	Dickstein Shapiro L.L.P. 1825 I St. N.W. Washington, D.C. 20006-5403	202-420-2200 www.dicksteinshapiro.com	86	2	250	Kirk Pasich, partner and practice leader- insurance coverage	Kirk Pasich; 310-772-8305; pasichk@dicksteinshapiro.com
2	Morgan Lewis 1701 Market St. Philadelphia, Pa. 19103-2921	215-963-5000 www.morganlewis.com	67	2	200	Paul A. Zevnik, Michel Yves Horton, partners	Paul A. Zevnik, pzevnik@morganlewis.com ; Michel Yves Horton, mhorton@morganlewis.com
3	Howrey L.L.P. 1299 Pennsylvania Ave. N.W. Washington, D.C. 20004	202-783-0800 www.howrey.com	62	3	218	Jill B. Berkeley, David W. Steuber, Robert H. Shulman, partners and co-chairs-insurance recovery practice group	Jill B. Berkeley, berkeleyj@howrey.com ; David W. Steuber, steuberd@howrey.com
4	Reed Smith 435 Sixth Ave. Pittsburgh, Pa. 15219	412-288-3131 www.reedsmith.com	61	1	829	Douglas E. Cameron, partner	Douglas E. Cameron; 412-288-4104; dcameron@reedsmith.com
5	Anderson Kill & Olick P.C. 1251 Ave. of the Americas New York, N.Y. 10020	212-278-1000 www.andersonkill.com	45	5	425	Robert M. Horkovich, chair-insurance recovery group	Carol Ueckerman, communications/marketing manager; 212-278-1339; cueckerman@andersonkill.com
6	Gilbert Oshinsky L.L.P. 1100 New York Ave. N.W., Suite 700 Washington, D.C. 20005	202-772-2200 www.gilbertoshinsky.com	35	1	110	Scott D. Gilbert, chairman	Ellen Katkin, director-marketing; katkine@gilbertoshinsky.com
7	Proskauer Rose L.L.P. 1585 Broadway New York, N.Y. 10036-8299	212-969-3000 www.proskauer.com	35	5	150	John Gross, Seth Schafner, John Failla, Steve Gilford, Nancy Sher Cohen, partners	Suzanne Titus, senior business development manager; 617-526-9889; stitus@proskauer.com
8	Jenner & Block 330 N. Wabash Ave. Chicago, Ill. 60611-7603	312-222-9350 www.jenner.com	33	1	75	John H. Mathias, chair-insurance litigation and counseling practice	Kevin Blasko, manager-public relations; kblasko@jenner.com
9	Barnes & Thornburg L.L.P. 1 N. Wacker Drive, Suite 4400 Chicago, Ill. 60606-2833	312-357-1313 www.btlaw.com	27	3	200	Andrew J. Detherage, Charles P. Edwards, Alan J. Martin, co-chairs-policyholder insurance recovery and coverage group	Andrew J. Detherage, 317-231-7717, andy.detherage@btlaw.com ; Charles P. Edwards, 317-231-7438, charles.edwards@btlaw.com ; Alan J. Martin, 312-214-4813, alan.martin@btlaw.com
10	Orrick, Herrington & Sutcliffe L.L.P. 405 Howard St. San Francisco, Calif. 94105	415-773-5700 www.orrick.com	25	17	109	Barry Levin, partner	Matthew Beckerman; 212-506-5254; mbeckerman@orrick.com

This directory lists law firms that either specialize in insurance recovery or have specific practices dedicated to insurance recovery. Firms that practice general litigation only or lack insurance recovery practices are not included.

Source: BI survey

Researched by Kevin Edison and Karen Tucker

Visit www.businessinsurance.com/directories for more information and to access the full searchable Directory of Insurance Recovery Law Firms. Business Insurance now offers the option to purchase the entire online directory as an Excel file or as a PDF.

Tort law battlegrounds stretch from East to West coasts

Emotional damages in wrongful death case at issue in New Jersey; efforts to limit California class actions fall short

By **MARK A. HOFMANN**

Even when playing defense in protecting hard-won gains in state legislatures, tort reform advocates constantly look for new opportunities to restore what they consider balance to the civil justice system.

For example, they have stepped up efforts in some states, such as New Jersey, where a tort reform organization formed in October 2007.

"We're kind of beginning to lay the groundwork," said Marcus Rayner, executive director of the New Jersey Lawsuit Reform Alliance in Trenton. "New Jersey's civil justice climate is becoming another dead weight on the state's economy."

He said the group is "trying to begin the process" of restoring balance to the state's tort system. One of its biggest challenges is blocking efforts to allow unlimited emotional damages in wrongful death cases.

"That's something we are vigorously working to stop," Mr. Rayner said. "If the bill is enacted, New Jersey would be only one of eight states to allow unlimited emotional damages in wrongful death" cases.

"Our legislature and governor are very much aware of the economic struggles businesses in New Jersey are facing. What we offer are very important pro-business reforms that don't cost the state any money," Mr. Rayner said.

Across the country, one of the oldest tort reform advocacy groups—the Sacramento, Calif.-based Civil Justice Assn. of California—has faced challenges but

recently has posted some victories.

"A lot of bad things start here and sometimes, good things," said John H. Sullivan, president of the group that was founded in 1979.

"On the good front, between the legislature and the governor, we've been able to block the plaintiffs bar's anti-business proposals," Mr. Sullivan said.

Learned intermediary

For example, the group "blocked the attempt to reverse a longstanding theory that protected drugmak-

ers from lawsuits over prescription drugs," he said. The effort involved an attempt to repeal the so-called "learned intermediary rule, which every state so far as applied to exempt from liability drug companies whose prescription drugs have been properly made and marketed but nevertheless caused unfortunate harm in a patient," he said. The "learned intermediary" is the doctor who knows the patient's medical history and who prescribes the drug, thus absolving the manufacturer of liability.

"That was a big fight" this year, said Mr. Sullivan.

But that victory was tempered by a failure to achieve a long-term goal regarding class actions, he said.

"Our actual setbacks were in our attempts to bring some balance to California's class action law," said Mr. Sullivan. He said that when a judge decides to certify or deny a class, the plaintiff in the suit can immediately appeal a denial of certification. But defendants cannot immediately appeal when class certification is granted, and that

remains the case despite efforts to change the law.

But he said tort reform advocates have been able to elect moderate Democrats to the California Legislature who take a "balanced view" of civil justice matters.

"Our biggest challenge, of course, is remaining strong on a bipartisan front on the legislature because Gov. Arnold Schwarzenegger's term will end in 2010," said Mr. Sullivan, adding that the governor "has been terrific in vetoing" legislation opposed by the civil justice group.



ORRICK BUILDS PREMIER INSURANCE RECOVERY PRACTICE

Orrick, Herrington and Sutcliffe LLP is pleased to welcome seven former Insurance Recovery partners from Heller Ehrman LLP who have brought their leading full-service policyholder-side insurance practice to the Firm:

Richard DeNatale (*San Francisco*) Edward Joyce (*New York*) Barry Levin (*San Francisco*) Mark Plumer (*Washington, D.C.*)
Edward Henneberry (*London*) David Klein (*Washington, D.C.*) Mark Parris (*Seattle*)

This distinguished group includes three former chairs of Heller Ehrman's Insurance Recovery Practice Group, and four lawyers rated as leading lawyers by Chambers USA.

Combined with Orrick's existing insurance recovery capabilities, this group offers 25 lawyers in the United States and Europe, serving Fortune 500 and middle market companies in a wide range of industries. The partners and of counsel in this practice include:

LONDON

Edward Henneberry (*Partner*)

LOS ANGELES

William Oxley (*Partner*)

SACRAMENTO

Norman Hile (*Partner*)
Thomas Welsh (*Partner*)

NEW YORK

John Ansbro (*Partner*)
Lisa Cirando (*Of Counsel*)
David Fine (*Partner*)
Stephen Foresta (*Partner*)
Edward Joyce (*Partner*)
Daniel Thomasch (*Partner*)

SAN FRANCISCO

Richard DeNatale (*Partner*)
Karen Johnson-McKewan (*Partner*)
Barry Levin (*Partner*)
Christopher Vejnaska (*Partner*)
George Yuhua (*Partner*)

SEATTLE

Mark Parris (*Partner*)

SILICON VALLEY

Robert Freitas (*Partner*)

WASHINGTON, D.C.

David Klein (*Partner*)
Peri Mahaley (*Of Counsel*)
Raymond Mullady (*Partner*)
Mark Plumer (*Partner*)

For more information, please see www.orrick.com/insurance_recovery, or contact Barry Levin at 415-773-4565.

Legislation: Lobbying to reduce risk

CONTINUED FROM PAGE 19

high," Mr. Joyce said.

"I think we're going to see more of the same," he said. "We will see more efforts to repeal existing reforms—simply to provide new lines of business for the plaintiffs bar."

Ms. Doroshov predicted that advocates of tort law changes would face even greater challenges in the future, courtesy at least in part to the problems faced by American International Group Inc.

The element that probably will have more of an effect in the future involves "where you have mammoth insurance companies like AIG that in the past have driven tort reform." With AIG accepting billions of dollars in federal loans, "I think that lawmakers are now going to be hard-pressed to pass laws that are going to take money away from catastrophically injured people and put it in the pockets of insurance companies," Ms. Doroshov said.

ASIA | EUROPE | NORTH AMERICA

BEIJING HONG KONG SHANGHAI TAIPEI TOKYO
BERLIN DÜSSELDORF FRANKFURT LONDON MILAN MOSCOW PARIS ROME
LOS ANGELES NEW YORK ORANGE COUNTY PACIFIC NORTHWEST SACRAMENTO
SAN FRANCISCO SILICON VALLEY WASHINGTON DC

Orrick, Herrington & Sutcliffe LLP | 666 Fifth Avenue | New York, NY 10103-0001 | United States | tel +1-212-506-5000
Attorney advertising. As required by New York law, we hereby advise you that prior results do not guarantee a similar outcome.


ORRICK

WWW.ORRICK.COM

Financial crisis expected to fuel civil suits, criminal charges

'Bonanza' predicted for plaintiff lawyers targeting companies

By MARK A. HOFMANN

WASHINGTON—The current financial crisis likely will lead to what one attorney calls a “lawyer-palooza.”

There will be a “wave of private suits” six to 18 months from now, Andrew J. Rossman, New York-based co-head of the litigation group of Akin Gump Strauss Hauer & Feld L.L.P., said last week during a

presentation at the Washington Legal Foundation.

“This is going to be a bonanza for plaintiffs attorneys,” he said.

Meanwhile, the U.S. Department of Commerce released a report last week calling for further tort law changes to increase U.S. competitiveness in the international marketplace.

Federal authorities, including the FBI, are closely following civil suits arising from the financial market meltdown, said John M. Dowd, head of Akin Gump’s criminal litigation group in Washington during the WLF presentation. FBI investigations into possible criminal

charges already are under way, he said.

That comes on top of continuing congressional investigations into the matter. The House Committee on Oversight and Government Reform is investigating matters such as executive compensation at American International Group Inc. (BI, Oct. 13). Mr. Dowd predicted that the Senate would launch its own investigations after this week’s elections.

Mr. Dowd said he believes that such investigations “don’t accomplish a lot” other than making “politicians look good.”

But, he added, the high emotions involved in the meltdown “will make Enron look like beanbag,” referring to the 2001 collapse of energy giant Enron Corp. and years of litigation and criminal charges that followed.

“Everything is being criminalized today,” Mr. Dowd said. In addition, the public atmosphere is becoming “toxic” to the point where the “adversary system is losing its fairness,” he said.

The subject of criminal law

encroaching into civil matters received attention at a legal reform summit at the U.S. Chamber of Commerce in Washington also held last week.

Until the U.S. Constitution was amended in 1913 to require the

purview as those lawmakers, like their directly elected counterparts in the House, sought to win voter approval by dealing with perceived problems by passing laws criminalizing conduct that previously was not the legal concern of the federal government.

Over the past 50 years, Congress has used the Constitution’s Commerce Clause to create new federal crimes, he said.

The problem is, however, that no one knows exactly how many federal crimes there are now, according to Mr. Suthers.

“We now have a sorry situation” in which a person can commit a federal crime without knowing it, the Colorado attorney general he said, citing violations of the Sarbanes-Oxley Act and the Clean Water Act as examples.

Mr. Suthers, like the WLF pan-

Continued on next page



'Fear of legal liability was one of the top three barriers that Europeans cited about investing in the U.S.'

Carlos Gutierrez, U.S. Commerce Secretary

direct election of U.S. senators, there were very few federal crimes on the books, Colorado Attorney General John W. Suthers noted during the meeting. Before the constitutional changes, federal crimes included acts such as piracy and treason.

But popular election of senators led to an expansion of the federal

Going to great depths

to meet the excess liability insurance needs of energy companies.



» COMMITMENT
» EXPERIENCE
» VISION

For over twenty-two years, OCIL has provided quality insurance protection for energy companies around the globe.

OIL CASUALTY INSURANCE, LTD.

30 WOODBOURNE AVE
PEMBROKE HM 08
BERMUDA

P.O. BOX HM 1751
HAMILTON HM GX
BERMUDA

T 441.295.0905
F 441.295.0351

www.ocil.bm

eighth annual



Legal Malpractice & Risk Management conference

March 4-6, 2009

Westin Chicago River North
Chicago



Attend the premier annual conference
focused on current and important developments in the law and litigation of malpractice claims, legal malpractice insurance and risk management strategies

The 2009 Legal Malpractice & Risk Management Conference

offers interactive panels comprised of leaders in their respective fields, from professional liability practitioners and law firm general counsel to insurance professionals. Each panel will provide a comprehensive examination of current developments with an emphasis on recent legal decisions.

Legal Malpractice Topics (March 4-5)

- Guess Where You Are Being Sued – Bankruptcy Court
 - Developments Concerning the Litigation Attorney
 - Selecting and Interviewing Expert Witnesses
 - Statutory Causes of Action – Consumer Protection Statutes
 - Developments in Disciplinary Defense
- ...and much more

Risk Management Topics (March 5-6)

- Reducing Loss – Self-Help, Mitigation and Protection
 - Plaintiff’s Perspective – Red Flags and Selection Criteria
 - Risk Management and Electronic Advertising
 - Grab and Leave Cases – Protecting the Firm When People Depart
- ...and much more

Register Online Now

at www.LMRM.com or call our Conference Planner at 312-704-3329

Who Should Attend?

- Professional Liability Practitioners
- Law Firm General Counsel and Managing Partners
- In-House Corporate Counsel
- Legal Malpractice Insurance Professionals
- Any Practicing Lawyer Concerned about Risk Management in the Practice of Law

Earn up to **13.75 Hours of CLE Credit** and up to **5.5 Ethics Credit**

Conference Sponsors

LAWYERS FOR THE PROFESSION
Professional Responsibility, Risk Management and the Law Governing Lawyers

THOMSON REUTERS

HINSHAW & CULBERTSON LLP



CONTINUED FROM PREVIOUS PAGE

elists, also expressed concern that the current financial crisis would lead Congress to criminalize more activities.

On another legal front, the U.S. Commerce Department used the Chamber event—which was sponsored by the U.S. Chamber Institute for Legal Reform—to issue a report on the effects that the U.S. tort system has had on foreign direct investment in the United States.

Citing a survey conducted by the Chamber and its European counterpart, the Brussels, Belgium-based Assn. of European Chambers of Commerce and Industry, U.S. Commerce Secretary Carlos Gutierrez said “fear of legal liability was one of the top three barriers that European companies cited about investing in the U.S. Foreign investment is risky enough without the burden of rampant litigation.”

State tort reforms have paid off, Mr. Gutierrez said.

The high emotions involved in the meltdown 'will make Enron look like beanbag.'

John M. Dowd, Akin Gump

“In February 2007, Toyota announced it would spend \$1.3 billion to build a new manufacturing facility near Tupelo, Miss.,” he said. “Mississippi’s Gov. (Haley) Barbour specifically noted that Toyota would not have made this investment in Mississippi if the state hadn’t passed tort reform.”

“This example is played out in the global markets each and every day,” said Mr. Gutierrez. “When the United States loses out to foreign investment on account of an investor’s fear of an overreaching litigation environment, it directly translates into fewer jobs and less economic opportunities for Americans.”

The Commerce Department report—The U.S. Litigation Environment and Foreign Direct Investment: Supporting U.S. Competitiveness by Reducing Legal Costs and Litigation—calls for encouraging additional tort reforms at the state level, encouraging judges to enforce existing legal standards in frivolous lawsuits and making efforts to lower tort-related expenses as a share of gross domestic product. It also calls for additional economic research and analysis into the legal environment.

The plaintiffs bar’s national association disputed conclusions of the Commerce report.

“The title of the report contradicts the content of the report,” said a spokesman for the American Assn. for Justice in Washington. “The United States is the world’s largest recipient of foreign direct investment, and it has more than doubled in the past 10 years. This major indicator seriously undermines the conclusions of this report.”

The report is available at www.commerce.gov.

Products & Services



Crump, Ironshore offer construction program

DENVER—Crump Insurance Services Inc., a division of Crump Group Inc., has partnered with Bermuda-based Ironshore Inc. to offer a general liability program for commercial and residential subcontractors with premiums starting at \$2,000.

According to Crump, the program is designed to enable subcontractors with reduced income in “the troubled construction market” to secure affordable liability protection.

The policy will be underwritten by Boston-based IronBuilt, Ironshore’s specialty construction unit.

The policy includes a broad duty to defend provision and does not

exclude punitive damages. In most states where the coverage is offered, there also is no prior works exclusion.

The program provides coverage for risks in Arizona, California, Colorado, Florida, New Mexico, Nevada, Oregon, Texas, Utah, Washington and Wyoming.

The minimum premium for coverage is \$2,000 with limits of \$1 million per occurrence and \$2 million per policy aggregate.

For more information, contact Joe Benkelman, head of Crump Insurance Services’ Denver office, at 866-907-1023 or visit www.crumpins.com.

Lincoln National enhances LTD program

PHILADELPHIA—Lincoln National Corp. has made a 10% progressive income benefit a standard part of its group long-term disability insurance program.

The 10% progressive income benefit is a standard part of LTD policies quoted after Sept. 20, the Philadelphia-based insurer said.

The benefit is triggered when an employee suffers cognitive impairment or is unable to perform two or more activities of daily living, the insurer said. The typical base benefit amount might be 60% of the covered individual’s income. When a qualified disability occurs, the progressive income benefit would increase coverage to 70% of the claimant’s income.

Additional coverage may be purchased to raise the benefit amount to 100% of the employee’s pre-disability earnings. The additional coverage can be paid by the employer or the employee, Lincoln National said.

For more information, contact Dave Swanson, vp, risk and product management, at Lincoln Financial Group Protection at david.swanson@lfg.com or 402-361-2899.

AIG Excess upgrades bank umbrella policy

NEW YORK—AIG Excess Casualty, a unit of American International Group Inc., has added an endorsement to its commercial umbrella policy for U.S.-based banks that operate overseas.

The policy endorsement is designed to help banks meet Basel II standards, which require specific capital and risk management practices to protect against operating risks, New York-based AIG said.

Basel II is issued by the Basel Committee on Banking Supervision, an international forum for banking supervision and standards.

The endorsement allows qualified banks to purchase insurance as a partial offset to their Basel II capital requirements for operational risk. The program includes an extended policy period and appropriate cancellation provisions.

Financial institutions must be classified as a consolidated supervised entity using the alternative measurement approach to qualify for the commercial umbrella policy, AIG said.

For more information, contact Tim McAuliffe, president of AIG Excess Casualty, at t.mcauliffe@aig.com or 212-458-6000.

RIMS, E&Y join forces on Risk Insights

NEW YORK—The Risk & Insurance Management Society Inc. has

teamed with accounting and consulting firm Ernst & Young L.L.P. to offer a series of white papers about issues affecting the risk management profession.

Risk Insights is available at www.rims.org/riskinsights and is free to RIMS members. Nonmembers may request a trial.

The first issue, Proving Your Insurance Claim, focuses on specifics of proving a company’s claim from catastrophic loss, according to New York-based RIMS. The article offers suggestions to prove claims and expedite the recovery process.

Future articles will cover topics including the RIMS professional growth model, global property and business interruption claims, and enterprise risk management.

For more information, contact Felicia Messimer, RIMS communications associate, at fmessimer@rims.org.

TO SUBMIT ITEMS

BI’s Products & Services reports on new product offerings. Personnel changes appear in Comings & Goings, while Market Moves column reports on activities by insurance industry companies and related entities. Please send Products & Services items should be sent to Colleen McCarthy at cmccarthy@businessinsurance.com

Market Moves news to: Zack Phillips, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; zphillips@businessinsurance.com. and C&G items should be mailed to Allison Martinat at the above address or e-mailed to amartinat@businessinsurance.com.

BRAINS & BRAWN

SINCE 1992 WESTROPE HAS PLACED BILLIONS WITH MAJOR CARRIERS IN THE U.S. AND GLOBAL MARKETS IN THE BELIEF THAT THE WORLD NEEDS THE BEST WHOLESALE INSURANCE SOLUTIONS.

PROPERTY | CASUALTY | TRANSPORTATION | CONSTRUCTION | AGRIBUSINESS | HEALTHCARE
EXECUTIVE & PROFESSIONAL LIABILITY | WORKERS’ COMP | CLAIMS SERVICES | LIFE SCIENCES

WESTROPE.COM



WESTROPE

ENSURING INSURANCE

PROFESSIONAL MARKETPLACE

To place your ad, contact **Monique Murray** at (212) 210-0129
 fax: (212) 210-0704 / E-mail: mmurray@BusinessInsurance.com
Business Insurance, Classified Department
 711 Third Ave., New York, NY 10017-4036.
 Call for details on blind box and internet advertising



You're hired.

Business Insurance CAREER CENTER

The ultimate career resource in the insurance industry.

<http://careers.BusinessInsurance.com>

Mark your calendar...

Market SourceBook 2009

Publishing: December
Ad Closing: December 3

BUSINESS RESOURCES

EDUCATION & TRAINING



FLORIDA STATE UNIVERSITY

Totally ONLINE master's degree in Risk Management and Insurance

Complete your degree from anywhere in the world
 Classes taught by full-time faculty
 Affordable and Flexible
 Visit <http://riskmanagement.fsu.edu>

SPECIALTY RISKS



BROWNYARD PROGRAMS
 WE PROTECT THE PROTECTORS

Guards • Investigators • Alarms
 WC • GL/Professional • Umbrella
 1-800-665-7304
www.brownyardprograms.com

Advertisements appearing in this section also appear online at www.BusinessInsurance.com/Marketplace

Everything you could ask for from the leading commercial insurance news magazine EXCEPT THE MAGAZINE



Business Insurance's Digital Edition

Accessible, Anywhere, Anytime!
 The Digital Edition of *Business Insurance* is an exact replica of the print version but with added benefits.

- Receive automatic delivery to your e-mail address, no more snail mail.
- Read at your convenience online or download in PDF format.
- View high quality easy to read text, charts and images.
- Click on live links in articles and ads.
- Navigate easily within articles and pages with a single click.
- Access all your archived issues.

Experience the digital difference today sign up at www.businessinsurance/digital



UP CLOSE

Comings & Goings



SHARON SCHEUERMANN

NEW JOB TITLE: Scotch Plains, N.J., and New York-based senior associate with Dubraski & Associates Insurance Services L.L.C.

PREVIOUS POSITION: New York-based senior vp with Marsh Inc.

VITAL STATISTICS: I am a CPCU (Chartered Property & Casualty Underwriter).

GOALS FOR NEW POSITION: My first goal is to grow our health care practice in the Northeast and that's why I was hired. We have business there, but we want to grow. We want people to know Dubraski & Associates. That would be our first goal. Because we specialize in health care and because we are small, our (second) goal is to continue with our clients we have and enjoy the strong relationships with our clients. We will continue to work with them on all aspects of their insurance needs.

FIRST EXPERIENCE IN THE INDUSTRY JOB MARKET: I started in insurance in the Midwest. I started at a small, private company, so I am sort of coming back to my origins (now). When I started out, I was a finance major and there wasn't a huge market for finance jobs in the Midwest, so I interviewed for this position (in insurance) and I didn't get it. Then I interviewed two more times and the company called me back and said they really liked me and that they wanted to create a position for me, and they did. The position was very administrative. I was typing five-page certificates of insurance on a typewriter where if I made a mistake on one page, I would have to start all over again.

ADVICE: First, I believe that a strong technical knowledge of what you are doing, whether it is in insurance or not, will help you with whatever direction you want to go in the future. No. 2, I cannot stress enough that your reputation follows you wherever you go. You want to be respectful of others and ethical because you never know where you might wind up.

OUTSIDE THE INDUSTRY, A DREAM JOB: I always say that I want to be president and CEO of my own company, but what that company would be I am not sure. I just feel that I am very organized and I would love to help other working moms get organized.

Comings & Goings ONLINE

VISIT www.businessinsurance.com/ComingsandGoings for a full list of this week's personnel moves and promotions. Check our Web site daily for additional postings. Sign-up online for the weekly Comings and Goings e-mail.

TO SUBMIT ITEMS

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

Allison Martinat
Business Insurance
 360 N. Michigan Ave.
 Chicago, Ill. 60601-3806
amartinat@businessinsurance.com

POSTING THIS WEEK

INSURERS

- Zurich North America Commercial
- Berkley Offshore Underwriting Managers L.L.C.
- ACE European Group Ltd.
- Health Care Service Corp.

BROKERS

- Edgewood Partners Insurance Center
- Assurex Global
- Colemont Brokerage Group Inc.
- Aon Corp.

OTHER PROVIDERS

- Towers Perrin

MANAGED CARE

- American Specialty Health Inc.

International NEWS

BENEFITS OF RISK MANAGEMENT

Percentage of respondents that agreed with the following statements:

■ Risk management improves accountability, decisionmaking, transparency and visibility.	93%
■ Risk management protects reputation and stakeholder confidence.	93%
■ Risk management reduces the likelihood of events that would have a negative consequence.	90%
■ Risk management protects revenue and enhances value for money.	87%
■ Risk management increases the likelihood of events that would have a positive consequence.	77%
■ Risk management identifies opportunities where taking risks might benefit the organization.	66%

Source: British Standards Institution

U.K. sets standards for risk management

Framework a guide to principles, models

By SARAH VEYSEY

LONDON—The British Standards Institution has launched its standard for risk management.

The standard, BS 31100 Code of practice for risk management, went into effect Oct. 31. It is intended to be a guide to risk management principles, models, framework and processes to assist organizations to achieve their objectives through effective risk management, according to London-based BSI British Standards, the United Kingdom's national standards organization.

A survey that accompanied the launch of the standard showed that 94% of companies employ a risk manager or someone who takes overall responsibility for risk, and 93% have both a risk management framework and risk management processes in place.

The BSI British Standard's business barometer study surveyed 100 FTSE 250 companies, the United Kingdom's largest 250 publicly listed companies.

Of the companies surveyed, 87% said they believe risk management protects revenue and enhances value for money, and 90% said that risk management reduces the likelihood of events that would have a negative consequence.

"Publication of BS 31100 could not be more timely. As we have seen

in recent weeks, the scale of risk and opportunity among blue chip companies is enormous," said Mike Low, director of BSI British Standards. "Businesses of all sizes are operating in a challenging environment. They must manage their opportunities while controlling risk, and this will be a fundamental skill to survive these difficult times."

"The standard provides a set of clear and simple guidelines which positions risk taking as a positive business facet," he said.

"If you read any chief executive officer survey these days, the top answer as to what's keeping them awake at night will be economic volatility," said Julia Graham, chief risk officer at law firm DLA Piper L.L.P. and chair of the BS 31100 drafting committee.

"The credit crunch and what has followed has woken boards up to the fact that failures in risk management are fundamental problems and part of the reason why they are in the position they are in now," she said.

"BS 31100 raises the profile of risk management at just the right time, and I think it could become a benchmark for organizations that do not want to make the same mistakes others have made," Ms. Graham said.

More information on the standards is available at www.bsi-global.com.

Reinsurers predict higher rates

Not all in Baden-Baden expect short-term end to soft market

By RICHARD MILLER

BADEN-BADEN, Germany—Reinsurers expect that increased demand for reinsurance as a form of capital relief will allow them to increase rates by at least 10% or more in certain lines at Jan. 1, 2009 renewals.

Long-tail liability lines and capital-intensive classes such as U.S. natural catastrophe, European wind-storm and credit insurance are among those targeted for rate hikes, according to experts gathered for renewal discussions last week in Baden-Baden, Germany.

"We have returned to the hard reinsurance market," said Ludger Arnoldussen, a member of Munich Reinsurance Co.'s board of management.

And Thomas Witting, managing director for the German and Nordic markets at Swiss Re Germany A.G. in Munich, a unit of Swiss Reinsurance Co., said that in consideration of the higher cost of capital, rates would need to rise in capital-intensive and long-tail lines.

While other reinsurance experts say talk of a hard market may be premature for the upcoming renewals, there are expectations that the credit crisis and economic slowdown could have a major impact over the coming year both for reinsurance and primary insurance lines.

There could be a "tsunami" of liability claims in an economic slowdown, said Rolf Tolle, Lloyd's of London's franchise performance director at the Baden-Baden reinsurance symposium sponsored by Hamilton, Bermuda-based XL Capital Ltd. Many of the areas affected by a recession are the same areas Lloyd's insures and reinsures, he added.

This torrent of liability claims from directors and officers, errors and omissions and professional indemnity lines will lead to a hard market, mostly for primary insurance, starting in mid-2009, he said.

As for the current renewal, primary rates are most likely to remain flat. "If your renewal is Jan. 1, I don't think you will see the big push—a total realignment such as we had after the Sept. 11 terrorist attacks or after Hurricane Katrina," Mr. Tolle said. "The combination of Hurricanes Ike and Gustav and the problems at (American International Group Inc.) are not market-changing events."

But the potential claims from the subprime crisis and financial turmoil may result in changes, he added.

On the reinsurance side, Stephen Hitchcock, managing director at Lockton Re, a London-based reinsurance unit of Lockton Cos. Inc., thinks rates generally will stay flat for the current renewal, but harden for Jan. 1, 2010.

For the upcoming renewal, many reinsurers have had write-downs on investments and will not want to risk a negative cash flow by losing business.

"I think a lot of (reinsurers) will say, 'let's just keep the cash coming through the door and we will put rates up where we can,'" Mr. Hitchcock said. "The most important thing is to renew the book."

"I think the rates will harden next year because people will wake up to the fact that capital needs a return. Capital is scarce," he said.

The cost of capital argument is one that the major reinsurance companies now use to warrant higher rates. Under the present circumstances, insurers are expected to seek



Reinsurers meeting in Baden-Baden, Germany, said the subprime crisis may result in rate changes.

more reinsurance this year, and as Munich Re's Mr. Arnoldussen put it: "Quality and security have their price in reinsurance."

James Vickers, London-based chairman of Willis Re International, said he understands that the balance sheets of both insurance and reinsurance companies are under pressure. "There is obviously some form of capital constraint," he said. "And reinsurers will seek to put up their charge for the capital involved."

Indeed, insurers are expected to buy more reinsurance this year, he said. "It's not easy at the moment to go out and raise additional capital; it is much easier to just buy a bit more reinsurance."

But Mr. Vickers expects stable to slight increases in rates, though this is dependent on the client, the territory and line of business.

"I see some major reinsurers calling for a broad-brush increase across the market and I think that would be disappointing if that happened, because I don't think that is what the primary companies would appreciate," he said.

European insurers lead in ERM: Study

By SARAH VEYSEY

European insurers and reinsurers are making progress in implementing enterprise risk management strategies and overall tend to lead their U.S. counterparts on ERM implementation, according to a study by Towers Perrin.

Towers Perrin surveyed 359 insurance and reinsurance executives. Of those, 29% were from Europe, 19% were from Asia-Pacific, 2% were from Latin America, and were 1%

from Africa and the Middle East, with the remaining 49% from North America and the rest of the world.

More than half of European insurers—56%—are giving greater short-term priority to the use of economic capital in their decision-making processes than their North American counterparts—40%—and those insurers in the Asia-Pacific region—38%—according to the study.

More than half of European com-

panies—52%—have documented their risk appetite, compared with 40% in North America, the study found.

Half of respondents said they believed Solvency II, the risk-based capital regulatory regime slated for introduction in Europe in 2012, would result in consolidation, while 39% said they thought it would result in the need for insurers and reinsurers to raise more capital.

More information on the survey is available at www.towersperrin.com.

Total insurance coverage.

The only newspaper dedicated to corporate risk managers, insurers, reinsurers and brokers in Europe.

Subscribe today
visit www.BIEurope.com/subscribe

In Europe we have it covered

Business Insurance
EUROPE™

RICO: Court allows lawsuit over comp claim denial

CONTINUED FROM PAGE 3

describe any evidence concerning RICO violations.

The attorney for the plaintiffs, Marshall D. Lasser of Southfield, Mich., declined to elaborate.

"I don't want to telegraph my moves," Mr. Lasser said.

But civil RICO rules allow him broad discovery, including inspecting communications between the defendants concerning their claims-handling practices, Mr. Lasser said.

Defense attorneys agree that RICO allows broad discovery.

The 6th Circuit originally affirmed a district court's 2005 dismissal of the plaintiffs' RICO claims, finding that they failed to plead a detrimental reliance on the defendants' alleged misrepresentations.

But earlier this year, the U.S. Supreme Court vacated the 6th Circuit's initial ruling and remanded the case, citing another Supreme Court case earlier this year, *Bridge vs. Phoenix Bond & Indemnity Co.*, finding that civil law RICO plaintiffs do not need to show that they detrimentally relied on alleged misrepresentations.

The 6th Circuit then allowed the case to proceed because Michigan workers comp law does not

pre-empt RICO claims and "because plaintiffs have sufficiently pleaded a pattern of racketeering activity given that reliance is not an element of a civil RICO fraud claim."

The plaintiffs, however, still carry the burden of proving collusion and fraud, said Kerry L. Morgan, of counsel and a specialist in labor and employment law at Pentiuik, Couvreur & Kobiljak P.C. in Wyandotte, Mich., who is not involved in the case.

Aside from broad discovery, RICO cases allow plaintiffs to collect triple damages and attorney fees, the lawyers said. The two factors combined could encourage plaintiffs attorneys to allege RICO violations in more workers comp cases, they add.

Should that happen, workers comp insurers are not likely to fund a federal court defense because policies normally cover only state-level disputes, Mr. Morgan said.

Neither Atlanta-based Crawford & Co. nor attorneys for Edwardsville, Ill.-based Cassens Transport returned telephone calls.

No. 05-2089. Paul Brown, William Fanaly, Charles Thomas, Gary Riggs, Robert Orlikowski, and Scott Way vs. Cassens Transport Co., Crawford & Co., and Dr. Saul Margules.

Pensions: Groups seek funding reprieve

CONTINUED FROM PAGE 3

The business groups emphasize that employers are not seeking a federal bailout.

"We are not asking for a federal infusion. This is just a request for some breathing room so plan sponsors have the time they need to fund their plans," said Kathryn Ricard, vp-retirement policy at the ERISA Industry Committee, the Washington-based benefits lobbying group.

And the groups say they are not seeking an overhaul the 2006 Pension Protection Act, which closed loopholes that made it relatively easy for employers to chronically underfund their pension plans. Such underfunding exposed the federal pension insurance agency to big losses when employers got into financial difficulty and were forced to jettison their plans and dump the liabilities on the Pension Benefit Guaranty Corp.

"We are in no way advocating an overhaul of the PPA funding changes," the groups wrote. Instead, the recommendations seek "temporary provisions" to address problems stemming from the recent financial crisis.

One such change is a one-year delay in rules that are gradually boosting funding requirements. Under the 2006 law, employers must contribute enough money to their plans each year so that

liabilities are fully funded after seven years. That was a big change from old law, under which plans had to be only 90% funded to be considered fully funded and employers had 30 years to amortize liabilities.

Under the PPA, the 100% funding target is being phased in so that in 2008 employers only have to hit

'This may be the most devastating year ever for pension plan funding.'

John Ehrhardt, Milliman Inc.

a 92% funding target, while in 2009, the funding target is 94%.

If an employer misses the funding target—even by just one percentage point—the PPA mandates that the employer must make annual contributions over a seven-year period to meet a 100% funding target, a requirement that can result in a large employer being on the hook for immediately tens of millions of dollars in accelerated contributions.

"If you miss the funding target, your funding obligation can increase significantly," said Eric Keener, a senior consultant with Hewitt Associates Inc. in Norwalk,

Conn.

At a minimum, the trade groups are urging Congress to keep the 2008 full funding target of 92% for one more year.

The groups also proposed a change in pension asset-smoothing rules. Employers, in valuing pension plan assets, currently can smooth unexpected losses over a 24-month period. However, PPA also limits the extent to which smoothing can be applied, so that the smoothed value of plan assets at most is within 10% of current fair market value.

The business groups say that no percentage limitations should be imposed on smoothing results for 2009 and 2010, given the extent to which equity values have recently declined.

A call for pension funding relief would have seemed inconceivable at the start of the year, when large U.S. pension plans were, on average, 105.6% funded, according to a survey by Milliman Inc.

Since then, though, the equities' market has experienced huge drop, with the Dow Jones Industrial Average falling about 30%. With pension plan assets typically about 60% to 65% invested in equities, plans' funding levels also have plunged. Actuaries say pension plan funding among very large employers now probably averages in the 85% to 88% range.

"This may be the most devastating year ever for pension plan funding," said John Ehrhardt, a Milliman consulting actuary in New York.

Some retirement experts are hopeful Congress will extend funding relief.

"There will be a lot of pressure on Congress, and I'm optimistic we will get a fair hearing, because there is so much pain out there," said Alan Glickstein, a senior retirement consultant with Watson Wyatt Worldwide in Dallas.

"I hope Congress will get the message" that funding relief is critical to the nation, said Brad Klinck, a senior vp with Aon Consulting in Somerset, N.J.

Runoff: New York seeks private takeover of Midland

CONTINUED FROM PAGE 4

tation satisfy the bureau's requirements, the bids themselves will help the agency evaluate how to bring an expeditious end to the liquidation, he said.

"We've certainly had a number of financial institution-type bidders who'd be interested in buying a company like Midland," Mr. Peters said. "It's obviously an investment not correlated to the stock market."

Midland has \$924 million in assets—including \$38 million in cash and \$228 million in total invested assets—and \$2.9 billion in liabilities, according to bureau figures.

Jonathan Rosen, chairman of the AIRROC Board of Directors, said the industry is skeptical the approach will work; the bureau is seeking bids from companies willing to pay high-

er dividends than the bureau projects paying, but a firm presumably would bid to purchase the estate only if it felt it could make money

'If privatizing Midland will create value for policyholders...more power to them.'

Jonathan Rosen, Assn. of Insurance & Reinsurance Run-Off Cos.

out of the deal.

"If privatizing Midland will create value for policyholders—because they're really the stakeholders in an insolvent estate—more power to them," Mr. Rosen said via e-mail.

"My concern is if you put it out to bid, whoever tenders will be looking to extract value and that appears inherently problematic to achievement of a successful bidding process."

Mr. Peters also offered an update on Executive Life Insurance Co. of New York, which went into rehabilitation in 1991 and now pays structured settlement annuities to about 11,000 accident victims and others. A 2007 review found that ELNY might not be able to meet its future obligations and faced a projected \$2 billion deficit in 12 to 15 years. The Liquidation Bureau brokered a deal with private insurers and life insurance guaranty funds last year to raise \$650 million to cover the deficit.

Mr. Peters said the bureau has received financial commitments from industry that exceed the \$650

million, but still has not finished the effort affecting Midland Insurance.

"It is not finished, but we are a lot closer now than we've ever been," Mr. Peters said. "While I would be rash to guarantee that it's going to work, I feel more optimistic about it now than I did a year ago."

Also at the New Jersey gathering, Mr. Peters said that his agency is in the process of completing the first financial audit in its 99-year history. Two of those audits are now available on the bureau's Web site.

The audit noted that volatility in financial markets this year may materially affect the value of ELNY's assets and its ability to raise sufficient funds.

The networking event attracted 462 attendees, making it the largest commutation event ever held, said AIRROC Chief Executive Officer and Executive Director Trish Getty.



Sponsor a 2008 Online Executive Forum™

- Connect with an influential and engaged audience of senior-level decision-makers.
- Co-brand with the industry news leader.
- Associate with a highly informative online event to discuss the most pressing issues facing our industry.

Business Insurance

www.BusinessInsurance.com

For lead generation opportunities, e-mail: Advertising@BusinessInsurance.com

connect to — www.BusinessInsurance.com/Webinars

ADVERTISER

INDEX

Issue of November 3

ADVERTISER	PAGE #
AIG Corporate	32
Aon Corporation	2
Argo Group	10
Beazley Group Inc.	16, 17
Brownard Programs	24
Dickstein, Shapiro, Morin, Oshinsky ...	6
Florida State University	24
Hinshaw Culbertson	22
Kitch Attorneys & Counselors	14
Liberty International Underwriters ..	15
Midlands Management	30
Navigators Group, Inc.	5
Oil Casualty Insurance	22
Orrick, Herrington & Sutcliffe LLP ...	21
Partner Re	12
Pinnacle Actuarial Resources	18
Scottsdale Insurance Company	9
Swiss Re	19
Westrope & Associates	23
XL Insurance	11
Zurich Financial Services	7

Elections: Regulatory changes expected

CONTINUED FROM PAGE 1

Insurance Information)-styled federal presence? Those are open questions."

"Looking forward, (federal) regulation is probably going to encompass insurance," said Ben McKay, senior vp in the Property Casualty Insurers Assn. of America's Washington office. "Whether that can live independently of and comfortably with a state regulatory system has yet to be determined."

If Sen. Barack Obama, D-Ill., wins the presidency, his running mate, Joe Biden, D-Del., would leave his post as chairman of the Senate Foreign Relations Committee. Senate Banking, Housing and Urban Affairs Committee Chairman Sen. Christopher Dodd, D-Conn., would be next in line to become chair of the Foreign Relations Committee if he chooses. That would put Sen. Tim Johnson, D-S.D., in line to chair the Banking Committee.

Sen. Johnson co-sponsored legis-

lation that would create an optional federal charter for insurers and producers.

But the chief GOP Senate advocate of the OFC—Sen. John Sununu, R-N.H.—was trailing his Democratic opponent in recent polls. "Sen. Sununu is probably the Republican most endangered in the Senate," said Jimi Grande, vp-federal and political affairs in the National Assn. of Mutual Insurance Cos.' Washington office.

"If there's an Obama administration, there's a lot of speculation Jack Reed could be tapped for a cabinet post," said Mr. Grande, referring to another member of the Banking Committee—Sen. Jack Reed, D-R.I.

Mr. Grande also noted that yet another committee member—Sen. Elizabeth Dole, R-N.C.—was in a tight race.

Every change in membership could be crucial, he noted. "It's a small committee—11 Democrats and 10 Republicans—so change three or four faces, including the chairman, and you've got a new dynamic as we head into perhaps the most profound reform of financial services since the 1930s," Mr. Grande said.

"I think if you have a change in chairmanship, it's significant," said PCI's Mr. McKay of the prospect of Sen. Dodd leaving his Banking Committee position. "In this case, you're losing a senator who has decades of knowledge related to our industry and the financial services industry generally."

Some OFC proponents may be trying to inject the issue into the larger debate, said NAMIC's Mr. Grande. "Those that would like to see an OFC value the optional component and they value the deregulatory component. And this next Congress is not going to be in the mood to deregulate or give companies options to choose a regulator."

On the other side of the Hill, the chairman of the House Financial Service's Committee's Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises—Rep. Paul Kanjorski, D-Pa.—is in a tight race with Hazelton, Pa., Mayor Lou Barletta. Mr. Barletta, a Republican whom Rep. Kanjorski defeated in 2002, became nationally known for his tough stance against illegal immigration.

"The most significant race to the insurance industry is Rep. Kanjorski's race," said PCI's Mr. McKay.

Rep. Kanjorski is regarded as one of the most knowledgeable lawmakers in terms of insurance. "Many in the financial services sector have worked very well with him," said AIA's Ms. Pusey.

Rep. Kanjorski was critical in the passage and reauthorization of the federal terrorism insurance backstop and most recently has advocated establishing an Office of Insurance Information within the Treasury Department, an initiative supported by most of the property/casualty insurance industry. If Rep. Kanjorski loses, there is no clear indication who would replace him on the committee.

Several states poised to get new insurance regulators

By MEG FLETCHER

Voters' choices in Tuesday's elections could affect top insurance regulators in as many as 10 states.

Five states have elections to determine the top insurance regulator—Delaware, Montana, North Carolina, North Dakota and Washington. Change is certain in Delaware, Montana and North Carolina since the incumbents are not seeking re-election.

In the five other states that have appointed insurance commissioners, the outcome of gubernatorial races may determine who holds the insurance oversight post. Those races are in Indiana, Missouri, New Hampshire, Utah and West Virginia.

In those five states, the gubernatorial election's impact on the state's top insurance regulator is uncertain because in the past, some governors have reappointed a commissioner even though he or she is of a different political party.

Historically, "there is a greater possibility that (the incumbent insurance commissioners) will remain," said Neil Allredge, vp state and regulatory affairs with the National Assn. of Mutual Insurance Cos. in Indianapolis.

This week's general election will result in much greater change in legislatures than in governors' mansions, because races in 44 states mean that 75% of state lawmakers are up for election, said John Lobert, senior vp-state government relations for the Property Casualty Insurers Assn. of America in Des Plaines, Ill.

Tuesday's biggest battles will determine control of 28 state legislative chambers, according to the National Conference of State Legislatures.

PCI is particularly interested in the outcomes of statehouse races in Delaware, Iowa, New York and Ohio, Mr. Lobert said.

While there are increasing calls for federal involvement in

the regulation of insurers, states still control that process, observers emphasize. State legislative races determine which party will control the process of establishing laws that affect the industry, including whether model regulations proposed by the National Assn. of Insurance Commissioners are approved or rejected.

Historically, the insurance industry favors Republican candidates, who are perceived as being more sympathetic to business interests, observers say.

"As a general rule, Democratic legislatures are more responsive to labor and trial bar issues," Mr. Lobert said.

The major-party candidates running for the post of top insurance regulator in their respective states are:

- Delaware: Republican John Brady, an attorney and county recorder of deeds, is running against Democrat Karen Weldin Stewart, a former state insurance deputy receiver.

- Montana: Duane Grimes, a former Republican state legislator, is running against Democrat Monica Lindén, founder of the state's largest internet service provider and a former state legislator.

- North Carolina: Democrat Wayne Goodwin, the current assistant insurance commissioner who has been endorsed by retiring Commissioner Jim Long, is running against Republican John Odom, a businessman who is executive director of the Greater Raleigh Merchants' Assn.

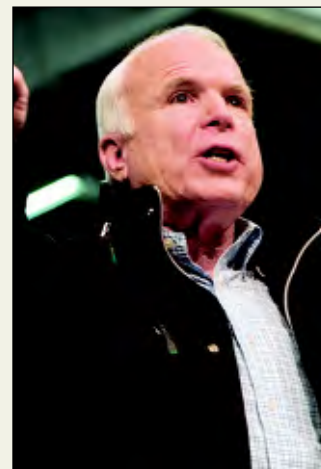
- North Dakota: Republican incumbent Adam Hamm, an attorney who was appointed in 2007 to fill the unexpired portion of Jim Poolman's term, is running against Jasper Schneider, a lawyer and Democratic state representative.

- Washington: Incumbent Democrat Mike Kreidler, who is seeking his third term as commissioner, is running against John Adams, a Republican surplus lines broker.



McCain vs. Obama

How the presidential contenders differ on health care reform



PHOTOS NY TIMES

JOHN MCCAIN SUPPORTS

- Adding health premiums paid by employers to employees' taxable income.
- Providing a refundable tax credit of \$2,500 for individuals and \$5,000 for families to pay health premiums. Unused credits could be deposited in HSAs.
- With states, developing a plan to cover those denied health insurance and help pay premiums of those whose incomes fall below certain levels.
- Reimporting prescription drugs and speeding introduction of generic drugs.

BARACK OBAMA SUPPORTS

- Establishing a national plan to cover those without employer-provided insurance and federal help paying premiums for lower-income individuals.
- A "play or pay" mandate in which employers not making a "meaningful" contribution to coverage pay a percentage of payroll to the national plan.
- Adding a national exchange for individuals to buy coverage from insurers.
- Reimbursing employer plans for part of catastrophic costs.
- Requiring health plans to cover employees' adult children up to age 25.

CNA: Loews injects capital to offset insurer's losses

CONTINUED FROM PAGE 3

uncertainty "and to position us to really withstand any stresses, as well as really act on opportunities."

Mr. Mense also said CNA had \$3.4 billion in net unrealized investment losses as of the end of the third quarter. "We regard the unrealized loss position as temporary and based on current circumstances," he said.

Analysts welcomed the capital boost.

The capital infusion is "another indication of Loews' support for CNA," said John Iten, a director at New York-based Standard & Poor's Corp. Loews has "a strong track record for supporting CNA over the years" and this is reflected in S&P's rating, he said.

CNA "had some losses from third-quarter hurricanes, like all companies, but they were not by any means out of line with expectations, so, the investments aside, we're comfortable that operationally CNA can continue on a sound footing," said Alan Murray, senior credit officer at Moody's Investors Service in New York.

Brian Schneider, senior director at Fitch, said having Loews as a parent gives CNA financial flexibility that "others don't have in this market."

But, he added, CNA has a "sizable unrealized loss position, and at some point Loews would not be prudent providing unlimited amounts of capital to CNA."

Fitch's negative outlook "really reflects the potential for investment issues to deteriorate over the near term," and to the extent they do so, "you could see different issues developing in terms" of how Loews decides "to fill that hole, if they need to do that again," Mr. Schneider said.

However, Moody's Mr. Murray said CNA is a "very significant investment holding at Loews" and the rating agency believes "they would do what they view as necessary to defend the value of CNA's franchise as an investment, as they've demonstrated in the past."

In response to Mr. Schneider's comments, a Loews spokeswoman referred to a transcript of Loews President and CEO James Tisch's comments during an analyst call last week.

When questioned whether Loews should rethink its long-term commitment to CNA, Mr. Tisch said these are "unprecedented times," and "what I see is, very simply, that CNA needs to get through this period and that, on the other side of it, there is a very sound and solid business there."

Health care: Employees skimp on services

CONTINUED FROM PAGE 1

Watson Wyatt Worldwide's not-yet published 2008 Employee Perspectives on Health Care survey, which was conducted in May and June, found that 40% of workers went to the doctor only for more serious conditions, up from 35% the year before; and that 17% did not fill or skipped doses of prescribed medications, up from 13% in 2007.

Although it will be a while before this overall trend is reflected in employers' benefit plan spending, benefit consultants have begun advising employers to be aware of the phenomenon and its potential ramifications.

"I think employers have been so preoccupied about the economy in general from a business perspective

that they may not realize the implications of employees' self-imposed cuts in health care utilization," said Jennifer Boehm, a principal in Hewitt Associates Inc.'s health management practice based in Atlanta.

"When people are worried about fuel costs and food costs and about whether they'll have a job tomorrow, they may reduce their prescription drug intake, particularly those drugs that don't have a symptom-relieving effect," Ms. Boehm said. "What you don't want to have happen is to have folks stop taking their meds or taking them in a way that's not effective and then end up in the emergency room or developing more serious conditions later on."

Jodi Prohofskey, senior vp for health solutions operations at CIGNA Corp. in Eden Prairie, Minn., said she's already starting to

notice an uptick in the use of emergency room services by individuals with chronic conditions.

"Their choice is, 'I either have to put gas in my car, food on my table or take my pills.' We're going to see them choose not to take their pills, pill splitting or other things, such as not going for routine doctor visits, and then we'll see them in the emergency room," she said.

Tracey Moorhead, president and chief executive officer of the Washington-based DMAA: The Care Continuum Alliance, formerly the Disease Management Assn. of America, urges employers to be vigilant.

If not, "we're going to see a decline in health status across the population," Ms. Moorhead said. "While some forms of belt-tightening make sense in tough economic times—dining out less often or car pooling—we can't afford to extend cost-cutting to medical care, especially for people with chronic conditions."

After reading news reports on the reduction in health care spending nationwide, Andy Gold, executive director of global benefits planning at Pitney Bowes Inc. in Stamford, Conn., asked the company's pharmacy benefit manager to track prescription compliance. The software, hardware, services and solutions provider also sent notices to employees reminding them of resources available should they consider forgoing necessary health care to save money.

"We're reminding people to use their health plan. We reminded them they can use their (flexible spending account) to pay for health care-related expenses. We reminded them about the importance of adhering to maintenance medica-

EMPLOYEES REDUCE SPENDING ON HEALTH CARE

Survey finds workers concerned about costs



* Questions added in 2008

Source: Mercer L.L.C.

EAP vendors report surge in number of help line calls

By JOANNE WOJCIK

As employers increase benefit communications efforts to make employees aware of the availability of employee assistance programs, EAP vendors are reporting an unprecedented number of calls to help lines.

Many of the employees calling EAPs are seeking help with their finances, and some who have lost their homes to foreclosure are asking for housing assistance. But the vast majori-

debt, struggling to pay the mortgage, uncertain about their future and turning to their EAP because it's free, confidential and personalized help," said Ann Clark, chief executive officer and founder of the San Diego-based EAP vendor.

Andy Gold, executive director of global benefits planning at Pitney Bowes Inc. in Stamford, Conn., said his company also has seen a surge in calls to its EAP, but attributed part of it to employees who had been affected by recent hurricanes.

Recognizing that the economic downturn could exacerbate the situation for those employees while also posing problems for other employees, the company is increasing the frequency of EAP services, he said.

"Normally we offer two seminars a month on such topics as handling debt and safeguarding children from Internet dangers," said Mr. Gold. "We're going to increase the number of seminars around managing debt, good cash management, etc."

In addition to increased call volumes from employees, Jodi Prohofskey, senior vp of health solutions operations at CIGNA Corp. in Eden Prairie, Minn., said some employers are asking the EAP for help.

"Employers are using the EAP to do such things as onsite counseling during layoffs and downsizing," she said. In addition, "we're seeing employers ask for us to come in and do seminars in a group format on how current financial times are impacting health, well-being and stress. A lot of people confuse their net worth with their self worth."

'I've been in the business for 20 years and I've never seen anything like it.'

Mike Garfield, ComPsych Corp.

ty call to get help managing the stress associated with today's dire economic conditions, EAP vendors say.

"I've been in the business for 20 years and I've never seen anything like it," said Mike Garfield, senior vp of global business development at ComPsych Corp. in Chicago.

Call volume for the EAPs' financial counselors was up more than 30% in October, he said.

Moreover, "what's interesting about today's issues is the intensity of them," he said. "The life issues people are facing today are nothing like I've ever seen. One counselor said she had over 1,000 cases with housing needs."

ACI Specialty Benefits has reported a 45% increase in calls since January 2008, and an 87% increase since September 2007.

"People are swimming in

tion," Mr. Gold said.

Since the economic slump happens to coincide with open enrollment, EMC Corp. also is promoting its FSA, said Delia Vetter, senior director of benefits and programs for the Hopkinton, Mass.-based information technology consulting company. "In times like these, the FSA becomes a financially advantageous tool to mitigate out-of-pocket costs" by allowing employees to pay for health care expenses on a pretax basis, she said.

John Garner, CEO of Pasadena, Calif.-based Garner Consulting, said several of his employer clients are changing their health plans to ensure their employees get essential care in the current economic climate.

"One client waived all copayments on preventive services," Mr. Garner said. "Another client is waiving copayments for insulin and diabetic supplies (and) another client

modified its plan to cover some of the newer immunizations."

The intent of this strategy, known as "value-based insurance design," is to ensure continued access to care for plan members who can't afford it but need it the most.

Hoping to relieve some of the pressure on its employees' pocketbooks, Pitney Bowes is adding several drugs to its existing value-based insurance design program in 2009, Mr. Gold said.

"It is our hope that with the increased adoption of value-based insurance designs, which remove or reduce patient copayments for high-valued services, that even in tough economic circumstances, individuals will have unfettered access to essential medical services," said Mark Fendrick, co-director of the University of Michigan's Center for Value Based Insurance Design in Ann Arbor.

Some attribute drop in medical service use to rise in consumer-driven health plans

Some health care experts attribute recent findings showing a decline in the use of medical services to the consumerism movement and hope the current economic downturn will persuade many employees to consider lower-cost health care options.

The current phenomenon runs counter to activity that occurred during previous recessions, according to research from the Brookfield, Wis.-based International Foundation of Employee Benefit Plans. Typically, health care consumption increases during periods of economic uncertainty, the IFEBP found.

Ruth Hunt, a principal in communications and health care at Buck Consultants L.L.C. in Minneapolis, said that one reason utilization increased in the past was the dominance of managed care in the marketplace. "If you needed to use health care, and it was just a \$10 copay; it wasn't that big of a barrier," she said.

Experts attribute increased use of medical services during tough

economic times to various factors, such as, increased stress and workers, wary of being laid-off and losing health coverage, seeking treatment for nagging ailments.

Now, however, "one could say there's a little bit of a shake-out going on now that's an ongoing remnant of the consumerism movement," Ms. Hunt said. "We've been trying to make people better health care shoppers. Now they've got the motivation" to reduce their health care spending because of higher copayments, among other things.

Since the economic downturn is occurring at the same time as most large employers' open enrollments, Jacob Lawrence, a consultant at Towers Perrin in Denver, thinks employees might be a little more receptive to lower-cost options, such as consumer-driven health plans with high deductibles.

Likewise, Delia Vetter, senior director of benefits at Hopkinton, Mass.-based EMC Corp., hopes

the economy will spur employees to make use of—many for the first time—online tools to estimate their out-of-pocket medical expenses.

"We have a feature in our (personal health record) where employees can see the true cost of care, how much they've paid out of pocket, and project next year's expenses. It helps them pick the right plan and determine how much to put in their" flexible spending accounts, she said.

"I'm hoping we'll see data after open enrollment that shows people are using the cost calculators and online tools created to help them make decisions on which plans to choose," said Ms. Hunt.

"The game right now is incentives. A lot of employers are giving incentives to take the health risk assessment or to participate in disease management. One of the best incentives is paying a share of the costs, especially in this economic environment," she said.

—By Joanne Wojcik

Questions Answers

AIG chief sees bright future despite current turmoil



American International Group Inc. continues to borrow money under federal financing programs to meet obligations, but its underlying insurance operations are running smoothly, said Edward Liddy, chairman and chief executive officer. Mr. Liddy spoke with Business Insurance Editor Regis Coccia recently to explain how AIG is getting its house in order.

Q. How are AIG's core businesses faring?

They're doing OK, and that's a good word to me. The market is tough for all insurance companies right now, from the standpoint of new business. We're writing new business, not as much as we used to, but more, probably, than people think. Our customers aren't running out the door on us, as some assumed they would. When we first announced the Fed facility, we had some attrition, but that seems to have stabilized. With the Fed facility in place, we're in, to a certain extent, a better position than many of our competitors are. Our businesses are doing well and they reflect the strength of the company.

Q. How is AIG keeping employees focused?

I've been in the insurance business for 15 years or so, and I've always said all you have when you're in this business is people and capital, and AIG has really high-quality people. We want them to stay with us and we want them focused.

What we've done is paint a picture of a business that can emerge from this crisis. It'll be a business that's built on our core strengths of underwriting and pricing in the property/casualty area. It's a business that folks in those areas know very, very well. We've put in place the standard array of retention arrangements to help people stick with us so they can enjoy that future.

We're doing a yeoman's job of communicating with them, explaining what's happening each week. I think our people are giving us the benefit of the doubt. The folks at AIG are real fighters. They want to be successful. They're used to competing aggressively in the marketplace, and I think they want to show the world that the world is wrong about AIG.

Q. What's your vision for the AIG that will emerge from this crisis?

We will have our property/casualty business in the United States; we'll have AIU, which is our foreign general business; and we'll have a majority piece of the AIA business, which is our foreign life insurance. We're stepping back and taking a page from our successes of yesteryear, where we were a very strong, global property/casualty-focused business. We're really good at that. We're good at underwriting. We're good at pricing. We're good at specialty lines that comprise that business. That's what we will be in the future as we emerge from 2009 and going into 2010.

THE FULL TEXT of this abridged BI interview is at www.BusinessInsurance.com/Qanda

The assets that we have for sale will be sold sooner rather than later. We want them to go into the hands of good buyers who can keep those businesses running well and smoothly. On the other hand, we want to get full value for the assets.

AIG had about \$100 billion in revenue in 2007. The business that we'll retain (does) about \$40 billion to \$43 billion a year. To some, they'll look at that and say that's a lot smaller than \$100 billion. But if you look at that size compared to most of the companies that we'll be competing with, it's a behemoth. It depends on whether you're forward looking or backward looking. We will be a very competitive and viable entity.

Q. What do risk managers most need to know about AIG?

Our core insurance operations are very

strong. They are well-capitalized. They are well-managed. We know those businesses extremely well. We've staked out what we're going to be in the future. We intend to be very competitive, very disciplined. We have good underwriting skills, good pricing skills, good claims capacity in those areas. They're businesses in which we've demonstrated success in the past, and we will be players in those businesses in the future.

Q. Why did you take the job of turning around AIG?

I was very happy in the life that I had crafted, which involved a couple of very nice boards of directors and private equity work with Clayton Dubilier & Rice, one of the premier firms in private equity.

Life is pretty simple: You can sit on the sidelines and be an observer or you can get in the game and see if you can help. I prefer the latter.

When I received a call from government officials, I thought long and hard about it: Was I ready to get back in the saddle? My conclusion was I think I can help the country out of its financial crisis by helping this company out of its (crisis), and that's why I decided to come on board and see what I could do.

Q. How many serious buyers have approached AIG so far?

We have a lot of serious buyers. What most people are doing is waiting for third-quarter results to be finalized so we can put them in our offering memoranda. We are not going to lack for serious buyers. There will be really good values attached to these various properties. For most CEOs, you don't get a crack at some of the assets that we have for sale during your lifetime as a CEO. I think we're going to be just fine in this regard.

AIG: Rivals snatch several executives as uncertainty lingers for insurer

CONTINUED FROM PAGE 1

40 AIG underwriting and claims officials have defected to competitors in recent weeks, Mr. Doyle acknowledged. AIG, however, considered only a half dozen of them "key" executives, a small percentage of the company's approximately 200 key personnel, he said.

It's still a talent churn that observers agree is much greater than normal.

Indeed, in several cases, teams of AIG executives have moved to other insurers.

For example, W.R. Berkley Corp. has picked up two teams.

The Greenwich, Conn.-based insurer created a worldwide property unit for energy risks and named former AIG executive Frank Costa as its president. Mr. Costa had been president of the AIG Oil Rig Division. AIG's Mr. Mucerino confirmed that Mr. Costa took three subordinates, including a senior manager, with him. Mr. Mucerino also said that another team of five executives, including three senior managers, left without disclosing where they were headed.

Berkley also established a professional liability underwriting facility

and named John Benedetto president. Mr. Benedetto was a key AIG executive in his role as president of AIG Executive Liability's national accounts division. Other executives hired for the facility include Executive Vp Steven P. Walsh, who had been the president of corporate accounts at Mr. Benedetto's AIG unit, and Senior Vp Paul Brophy, who held the same title with the AIG unit.

Another group of AIG D&O executives recently joined ACE USA's Professional Risk unit in New York. Former AIG key executive Scott A. Meyer, who was president of AIG's Financial Institution Group and M&A Group, was named an executive vp at ACE; Steven F. Goldman, a former executive vp in AIG's Financial Institution Group, was named a senior vp; and former AIG executive Michael Mollica has been named an assistant vp at the ACE unit.

AIG also lost an aviation team to the Atlanta office of Allianz Aviation Managers, a division of Allianz Global Corporate Specialty. William E. Lovett, another former key AIG executive in his role as president and chief executive officer of AIG Aviation (North America), now is

the managing director at the Allianz unit. In addition, former AIG Aviation claims specialists Keith Wright and Peter Guy were named vps at Allianz Aviation.

New York-based Allianz Aviation CEO Harold Clark said, "We've not gone out to make contact or have

'I know for sure that competitors are approaching our people, but that's not a new phenomenon.'

John Doyle,
American International Group Inc.

hired recruiters" in an effort to hire away AIG personnel. But Mr. Clark noted that he continues to receive resumes from AIG personnel and would consider them.

Berkley and ACE would not comment on whether they targeted AIG executives.

Citing recent discussions with

current AIG personnel, a former AIG executive who worked in another area of the company said Mr. Clark's approach is consistent with other AIG competitors.

Many people at AIG are "looking for a new job," said the former executive, who didn't want to be identified.

That former executive and several others said the plunge in AIG stock value was an important factor in their decisions to leave the company.

Some also said that they left in part because they do not see how AIG can service its government debt without selling one or more of its core insurance units.

And even if AIG decides to sell those units, buyers may want to avoid merger problems by buying only renewal rights to books of business and cherry-picking just a few of the executives responsible for that business, observers say.

In addition, even if a buyer was interested in acquiring an AIG company, a deal would be tough to negotiate because portions of AIG units' capital are tied to assets that AIG has said it must sell to pay off the government loans, sources said. D&O and aviation brokers said

risk managers are concerned about the loss of their underwriting contacts at AIG and that some have refused to renew with AIG as a result. A few also have canceled their coverage midterm, brokers said.

But largely, there is no wholesale departure of D&O and commercial aviation policyholders from AIG, brokers said. However, uncertainty over AIG's future has prompted many risk managers for Fortune 500 companies to move corporate fleet coverage to other insurers, aviation brokers said.

AIG's Mr. Doyle said competitors are targeting AIG personnel. "I know for sure that competitors are approaching our people, but that's not a new phenomenon," he said, noting that senior management at many competitors has long included former AIG executives.

Mr. Doyle stressed, though, that AIG is not losing significant business, because departing executives cannot take clients with them. In addition, many executives that AIG is tapping have more experience than those that have left, he said.

"We're not happy to lose any talented people, but it's not problematic," Mr. Doyle said.

News In Brief

CONTINUED FROM PAGE 1

million profit for the prior-year period. For the nine-month period, Hartford posted a \$1.94 million loss, compared with \$2.35 billion in net income. Hartford Chairman and Chief Executive Officer Ramani Ayer attributed the results to volatile credit and equity markets and catastrophes. Hartford's stock, which opened at \$19.13 on Oct. 29, the day the results were released, plunged as low as \$8.23 before closing at \$10.32 on Friday. The 52-week high for Hartford's shares is \$98.70. Late Friday, Fitch Ratings downgraded its financial strength ratings of Hartford's primary property/casualty and life insurance subsidiaries to AA- from AA, and the rating agency dropped Hartford's issuer default rating to A from A+, among other changes.

Ironshore exec Rock departs

Les Rock, president and chief underwriting officer of Ironshore Insurance Ltd., has resigned for personal reasons. Howard Barnes,

Peter Coleman and Rod Todd will continue to underwrite property insurance through Ironshore's Hamilton, Bermuda office, the company said. Russ John, chairman of the underwriting and risk committee of the company's board of directors, has agreed to take a more active role in the oversight of underwriting at Ironshore's three platforms in Bermuda, London and the United States.

Hiscox to expand Lloyd's operations

Opportunities provided by turmoil in the financial markets have prompted Hiscox Ltd. to announce its intention to increase capacity for its Lloyd's of London syndicate 33 for 2009 and its plans to launch a new, wholly owned syndicate. Bermuda-based Hiscox said it would increase capacity for syndicate 33 to £750 million (\$1.15 billion) for 2009 from £700 million (\$1.07 billion) for 2008. Hiscox previously had planned to reduce syndicate 33's capacity for 2009 to £550 million (\$843.3 million). Hiscox also said it had applied to Lloyd's to start a new, wholly owned syndicate, 3624, which would have capacity of £60 million (\$92.2 million). That syndicate would write technology and small insurance risks mainly from the United States, a spokeswoman for Hiscox said. Hiscox also announced hurricane losses of about \$175 million for the quarter.

RMS estimates losses from possible quake

If a 7.0 magnitude earthquake occurred along California's Hayward Fault today, economic losses could reach \$235 billion, but only \$30 billion are likely to be insured losses, according to a study by Risk Management Solutions Inc. The Newark, Calif.-based catastrophe modeling firm also said a 6.8 earthquake rupturing a portion of the Southern Hayward Fault would result in losses of \$112 billion to \$122 billion, of which roughly \$13 billion would be insured losses. The RMS study marks the 140th anniversary of the 1868 Hayward Earthquake, which ruptured the southern section of the fault from Fremont to Oakland, and caused extensive damage to buildings and farms along the fault line. RMS noted in its analysis that population along the fault and in surrounding areas has grown by more than 25 times since the last quake.

Swiss Re buys Barclays Life

Global reinsurer Swiss Reinsurance Co. has completed its purchase of Barclays Life Assurance Co. Ltd. for £762 million (\$1.21 billion). Through the transaction, Swiss Re acquired 760,000 life insurance and pension policies and annuity contracts, representing approximately £6.8 billion (\$10.8 billion) in invested

assets. Barclays Life has been closed to new business since 2001.

Marsh sets up London binding authority division

Marsh Inc. has launched a binding authority division to place consumer business and small to midsize business into Lloyd's of London, the London insurance market and European markets. The division will source the business, and association and consumer business, from the North American, European, Middle East, Africa and Asia-Pacific regions, using delegated underwriting authority. The team is headed by Toby Pollard, a managing director at Marsh in London.

Noted

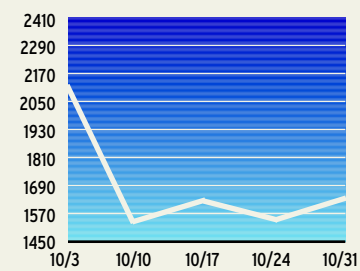
Willis Group Holdings Ltd.'s **Willis Research Network** and the National Center for Atmospheric Research are teaming up to provide insurers with hurricane projections that the groups claim are the most detailed ever of future activity in the Caribbean and Gulf of Mexico....**Swiss Reinsurance Co.** and Arrecon Carbon U.K. Ltd. have formed a facility to acquire carbon emission reduction credits in China. The facility will acquire the credits, each of which correspond to one ton of carbon dioxide not emitted into the atmosphere, from a range of projects under a Kyoto Protocol program.

Stock Index

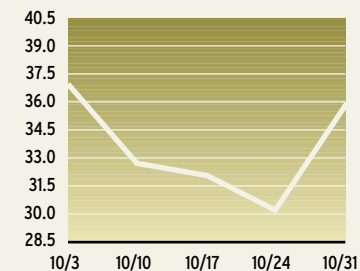
[10/27-10/31]

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

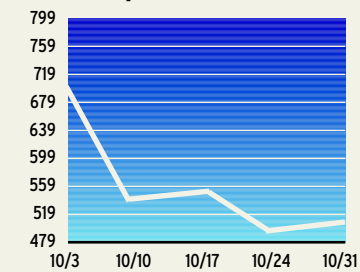
BI STOCK INDEX



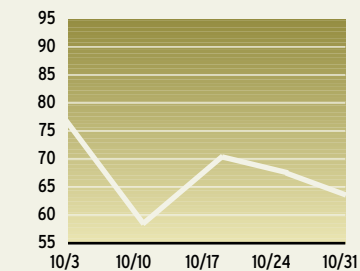
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

BI STOCK INDEX	▲	3.17%
1581.85		
DOW JONES	▲	11.29%
9325.01		
S&P 500	▲	10.49%
968.75		

LARGEST GAINS

MBIA Inc.	50.77%
XL Capital Ltd.	34.54%
EMC Insurance Group Inc. ...	28.06%
Selective Insurance Group. . .	25.66%
Willis Group Holdings Ltd. . .	22.67%

LARGEST LOSSES

Hartford Financial.	-57.53%
Gainsco Inc.	-38.61%
CIGNA Corp.	-31.60%
Humana Inc.	-18.42%
Lincoln National Corp.	-17.87%

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

Greenberg to Liddy: Time is running out

By JUDY GREENWALD

NEW YORK—Time is running out for American International Group Inc., former Chairman and Chief Executive Officer Maurice R. Greenberg said in a letter to current Chairman and CEO Edward Liddy that calls for a different approach to the insurer's government rescue.

In an Oct. 30 letter filed with the Securities and Exchange Commission, Mr. Greenberg said, "The value of AIG's assets is declining daily. Employees are leaving and renewals are down. Brokers are looking to place business elsewhere."

Mr. Greenberg's letter states that AIG should be permitted to participate in a program similar to the Troubled Asset Relief Program proposed by U.S. Treasury Secretary Henry Paulson for some financial institutions, in essence reiterating

his assertions in a previous letter to Mr. Liddy (*BI*, Oct. 20).

With such a program, he said, the current federal loan would be converted into a senior preferred security, "thereby reducing the need to sell assets in a rapid, fire-sale manner. Under this plan, AIG stakeholders would be treated neither any better nor any worse than stakeholders in other companies receiving assistance from the government," Mr. Greenberg said in the letter.

"Your publicly weighing in on these issues would be very helpful," Mr. Greenberg wrote Mr. Liddy.

An AIG spokesman had no comment.

Meanwhile, as of Oct. 29, AIG had reduced the total amount it borrowed from the U.S. Federal Reserve by \$6.8 billion from the previous week, to \$83.5 billion.

The reduction is a result of the

participation of four AIG affiliates—AIG Funding Inc., International Lease Finance Corp., Curzon Funding L.L.C. and Nightingale Finance L.L.C.—in the Federal Reserve Bank of New York's Commercial Paper Funding Facility, in which they are drawing money from that source, an AIG spokesman said.

The commercial paper facility is a more favorable way to get liquidity, the spokesman said. He did not reveal the sum borrowed from this facility, noting there are administrative costs and interest associated with the program.

AIG has drawn down \$65.5 billion of its \$85 billion bridge loan as of Oct. 29. It has paid \$331 million in interest and fees on that loan, said the spokesman. It has also drawn down \$17.7 billion under a separate \$37.8 billion securities lending agreement.



READ
the full letter from Mr. Greenberg at *Business Insurance's* Knowledge Center
www.businessinsurance.com



The Midlands Companies

A Leading Market for Self-Insureds
& Self-Insured Groups

www.midlandsmgt.com

EXCESS WORKERS' COMPENSATION PROGRAM

- Limits up to statutory specific
- Wide variety of classes written
- Minimum SIR of \$300,000
- Aggregate coverage available
- Claims & risk management services available

Accepting Applications from Agents & Brokers Nationwide

Oklahoma: 405.840.0074 • Texas: 972.588.2000 • New York: 212.681.8300

Contributing: Mike Tsikoudakis and Joanne Wojick.

Business Insurance END PAGE



Employers recork holiday champagne

Employer-sponsored holiday parties are being scaled back in response to the nation's economic troubles, but spirits will still be flowing at many gatherings.

In its annual survey, global outplacement consulting firm Challenger, Gray & Christmas Inc. found that 77% of employers plan to hold holiday parties this year, down from 90% last year.

Corporate belt tightening also is forcing many companies to trim their party budgets this year, with 13% slashing party spending by an average of 53%, the survey found. Only 4.3% of employers are increasing their party budgets this year, increases that average only 5%. Eighty-three percent are spending the same on their parties this year as they did last year.

But even those companies spending the same amount will have to settle for less extravagant affairs this year thanks to higher costs for food, alcohol and venues, said John A. Challenger, chief executive officer of the Chicago-based firm.

"With a few notable exceptions, many companies had already

abandoned the extravagant parties that were common during the dot-com boom of the late 1990s. Even as the economy expanded following the 2001 recession, increasing scrutiny from shareholders, analysts and the media compelled companies to hold more low-key affairs," he said in a statement.

"Now, with the economy teetering on the edge of recession, plans are becoming even more subdued with a growing percentage of companies indicating that parties will be held during the workday and open only to employees," Mr. Challenger said.

According to the survey, 57% of employers will hold holiday parties during the workday, up from 42% last year, while 65% are inviting employees only, up from 46% last year.

But many employees will still be able to share a little holiday spirit this year. Despite the focus on containing costs, 48% of employers will still be serving alcohol, up slightly from last year, perhaps reflecting another tradition that often occurs during economic downturns: increased alcohol consumption.



CORBIS

Insurance was source of Kafka's angst

Before Franz Kafka's metamorphosis into literature's lonely scribe of existential despair, he worked as a high-ranking lawyer for an insurance company.

"Franz Kafka: The Office Writings," published this fall by Princeton University Press and edited by Stanley Corngold, Jack Greenberg and Benno Wagner, compiled documents and briefs written by Mr. Kafka during his employment with the Workmen's Accident Insurance Institute for the Kingdom of Bohemia, in Prague.

In 1907, Mr. Kafka was first hired by Italian insurer Assicurazioni Generali S.p.A. Unhappy, he resigned a year later and found a more suitable position with the Workmen's Accident Insurance Institute for the Kingdom of Bohemia, where he worked as a lawyer for 14 years.

Some titles of Mr. Kafka's professional writings gathered in the book include: "The Scope of Compulsory Insurance for the Building Trades," "Fixed-Rate Insurance Premiums for Small Farms Using Machinery" and "Workmen's Insurance and Employers."

"It re-establishes him as an important commentator on a wide range of topics, such as social institutions, political changes, and technological innovations in high industrial capitalism," said Rolf J. Goebel of the University of Alabama-Huntsville, in an endorsement of the book.

According to "The Office Writings," the documents collected may help readers further understand the themes and strategies found in Mr. Kafka's fictional prose.

The loss ratio as muse? Sounds like a fine paper for a literature major.

Want \$10M? Easy! Just fix health care

Americans who don't like either of the two presidential candidates' health reform proposals now have a chance to try to fix the system themselves.

Indianapolis-based health insurer WellPoint Inc. and the X PRIZE Foundation are offering \$10 million to any person or group of people that can come up with a workable solution to the nation's health care ills.

The challenge is the latest in a series of contests sponsored by the Playa Vista, Calif.-based foundation whose motto is "revolution through competition." In conjunction with

Progressive Insurance Group, X PRIZE is also offering to pay \$10 million to anyone who

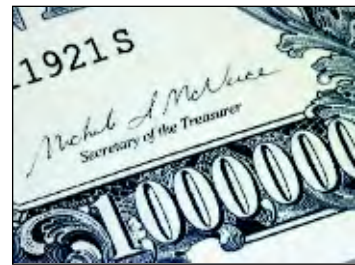
can come up with a car that gets 100 miles per gallon.

Employers, health care providers, consumers, government agencies and any other interested parties are invited to help develop competition guidelines that reflect the health care industry's most pressing problems.

The X PRIZE Foundation, along with noted experts in the field, will independently lead the competition, and WellPoint has agreed to test finalists' entries in the state markets where the insurer operates.

Both former House Speaker Newt Gingrich and former U.S. Senator Bill Bradley endorsed the competition as "groundbreaking" and as "a way for maximizing the involvement of the American people."

To learn more about the contest, visit www.xprize.org/wellpoint.



Fallback on recipe for heart health

Turning back the clock over the weekend may have saved your life.

A study in the New England Journal of Medicine suggests that heart attacks decrease by 5% on the Monday after daylight-saving time, possibly because of the extra hour of sleep.

Dr. Imre Janszky of the Karolinska Institute in Stockholm and Dr. Rickard Ljung of Sweden's National Board of Health and Welfare conducted the study. They looked at a registry chronicling heart attacks in Sweden from 1987 to 2006.

They compared heart attacks occurring in the week following the "spring forward" and "fall back" time changes and found an

overall 5% increase in heart attacks the week after clocks are turned ahead for daylight-saving time.

The time shifts cause "a complex disruption of our body rhythms, so there are plausible reasons for sleep deprivation as a trigger for a heart attack," Dr. Janszky told Scientific American.

Experts agree that sleep deprivation, exacerbated by a change in routine, can adversely affect the heart through elevated blood pressure, cholesterol and blood sugar.

"When somebody has sleep deprivation, obviously that deprivation does affect their health, including the possibility of having a

heart attack and stroke," Dr. Susan Zafarloti, clinical director of the Institute for Sleep-Wake Disorders at Hackensack University Medical Center in New Jersey, reportedly said.

In a 2005 study published in the European Journal of Epidemiology, Dutch scientists showed that most heart attacks occur on Monday, possibly due to the start of a stressful workweek.

"Our results suggest that this shortness of sleep contributes to the increased risk on Monday, except for that Monday (after the switch to standard time) when we have that extra hour we can use for sleep," Dr. Janszky said.

CLAIMS NO OTHER COMPANY CAN MAKE

Today, companies need to know their insurer will be there when they file a claim. The claims-paying ability of the AIG Commercial Insurance companies is unmatched:

- **We have one of the largest claims organizations in the business.** A staff of 6,000 claims professionals available to service our customers' claims every day.
- **High severity claims are a specialty.** 1,000 specialists help clients manage complex claims litigation. Our team has the depth and breadth to manage these claims.
- **Our claims specialists are experts in their fields,** including Excess Casualty, Commercial Property, Medical Malpractice, Aviation, Directors & Officers, Pollution Insurance Products and Workers' Compensation.
- **Our claims reach and expertise are unparalleled.** With a global network, we have "boots on the ground" where and when you need them.
- **We paid millions of dollars in claims today and will do so tomorrow and the day after, too.** In fact, we pay out an average of \$73 million each business day.

Whether helping to manage complex litigation or reaching hurricane-affected insureds even before they report a loss, AIG Commercial Insurance companies stand behind every product we sell, today and every day.

www.aig.com/commercialinsurance

