

**AIG, GOVERNMENT IN TALKS TO REVISE TERMS OF LOAN UNDER RESCUE PLAN / PAGE 3**

**RATES FOR REINSURANCE FLAT OR SLIGHTLY HIGHER AT RENEWALS / PAGE 3**

**CLIENT'S NEGLIGENCE LAWSUIT YIELDS \$48.5 MILLION VERDICT AGAINST MARSH / PAGE 3**

## In Brief

**\$9.6B in losses seen for subprime D&O, E&O**

Advisen Ltd. projects directors and officers and errors and omissions insurers will see \$9.6 billion in total losses from the subprime mortgage and credit crisis. Advisen, which is projecting \$3.7 billion in E&O losses and up to \$5.9 billion in D&O losses, said that much of the losses will be spread out over the 2007, 2008 and 2009 accident years, but that 2008 will bear the brunt of the losses.

## Maiden Holdings buys GMAC Re

Maiden Holdings Ltd. has bought the reinsurance operations of GMACI Holdings L.L.C. for an undisclosed sum. GMAC Re L.L.C. will be acquired by Maiden Holdings' U.S. subsidiary, Maiden Holdings North America Ltd. The transaction will result in a dedicated U.S. reinsurance group, Maiden Re, that will be based in Mount Laurel, N.J.

See **IN BRIEF** page 25

## BENEFITS MANAGEMENT

**RETIREE BENEFITS: PENSION & 401(k) PLANS**



Cash balance plans may be poised for a comeback; increase in employers turning to automatic enrollment;

Roth 401(k) plans becoming increasingly popular with employers. **Page 9**

# Health reform gets new hope

*Plan's shape, cost remain big questions*

By **JERRY GEISEL**

**WASHINGTON**—The election of Barack Obama as president will change the health care legislative landscape dramatically when the Illinois Democrat takes office in January.

For the first time since Bill Clinton assumed the presidency in 1993, the occupant of the Oval Office will have as a goal developing federal legislation to drastically reduce the number of people who lack health insurance.

"This will be a president whose vision is one of a move toward universal coverage, with the federal government playing a much larger, though not an exclusive role," said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

During the campaign and in his position papers, Sen. Obama laid out in broad terms his view on the direction health care reform should take. His plan is roughly comparable to a 2006 state law that has moved Massachusetts very close to universal health insurance coverage.

Like Massachusetts' approach, Sen. Obama's plan backs a play-or-pay system in which employers—except the smallest firms—would be required to offer coverage meeting federal standards or pay a fee to help fund coverage for the uninsured. Lower-income individuals would have their health insurance premiums subsidized by the federal government, which would contract with commercial health insurers to offer coverage.

Last year, just over 15% of the U.S. population, or 45.7 million people, lacked health insurance, according to the U.S. Census Bureau.

While a Massachusetts-style program may be Sen. Obama's current vision of the best way to move the nation closer to universal coverage, he almost certainly will be open to change, Washington observers say.

They contrast Sen. Obama's background, which includes four years in the U.S. Senate, with Bill Clinton and then-First Lady Hillary Rodham Clinton, who developed a massive universal

See **HEALTH CARE** page 24



**ONLINE:** Visit the Election 2008 feature on [www.BusinessInsurance.com](http://www.BusinessInsurance.com) for an interactive map featuring the results of various ballot initiatives and insurance regulator races.



REUTERS

# Change coming. How much?

*Future of regulation, tort, terror backstop debated*

By **MARK A. HOFMANN**

**WASHINGTON**—The executive and legislative changes brought about by last week's elections present both opportunities and challenges for risk managers and their insurance industry partners, say observers.

While there is a general sense that, in light of the recent financial crisis, a greater federal role in insurance regulation will be favored by the Obama administration and a Congress even more dominated by Democrats, the ultimate scope of that role remains sketchy at best. There is also some hope that Congress will expand the federal terrorism insurance backstop to deal

more comprehensively with losses stemming from chemical, nuclear, biological and radiological attacks.

But there's concern that federal tort reform, a moribund issue since Democratic majorities took control of both houses two years ago, could come under assault. In addition, there is some fear that Congress will attempt to limit tax deductions for reinsurance premiums paid to offshore entities (see story, page 24). Legislation to do so was introduced in September by Rep. Richard Neal, D-Mass.

Risk managers are hopeful that insurance regulation will be addressed.

See **RISK** page 25

# Long jail terms possible in Gen Re finite fraud

*Judge rules phony reinsurance deal caused more than \$500 million in losses to AIG shareholders*

By **DOUGLAS McLEOD**

**HARTFORD, Conn.**—Five former reinsurance executives face an

increased risk of long prison terms following a federal judge's ruling that a fraudulent 2000 reinsurance deal caused more than \$500 million

in losses to American International Group Inc. shareholders, legal experts say.

After weeks of briefings and oral arguments, U.S. District Judge Christopher Droney found that drops in AIG's stock price on three days in 2005 could be linked to disclosures about AIG's bogus loss portfolio deal with General Re Corp. The declines resulted in shareholder losses of between \$544 million and \$597 million, he concluded.

The amount of loss is the largest single factor in setting sentence recommendations under federal sen-

tencing guidelines, and Judge Droney's findings produce guideline recommendations of life in prison for all five defendants.

The judge has discretion to depart from the guidelines, and prosecutors say they are seeking only "substantial" jail time and not life terms.

The ruling makes light sentences less likely, though, experts say.

"They're getting the kitchen sink thrown at them," said Peter J. Henning, a professor at Wayne State University Law School in Detroit.

See **RULING** page 6

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# AIG attempting to reduce financial pressures

Loan facility, term changes among possibilities; earnings report moved up

By DOUGLAS McLEOD

**NEW YORK**—American International Group Inc. was in discussions with federal officials late last week about new steps to ease financial pressure on the insurer, according to a person familiar with the situation.

Those steps could include an equity injection of several billion dollars; a cut in the interest rate and extension of the two-year term of AIG's \$85 billion credit facility with the Federal Reserve; or a government guarantee of AIG's credit default swap portfolio, the source of billions of dollars in collateral demands from counterparties that recently pushed AIG into a liquidity crisis, Reuters and the Wall Street Journal reported last Friday.

AIG late Friday rescheduled its

earnings report for 6 a.m. today; previously, the New York-based insurer had been scheduled to report today after the market closed.

Under the terms of the emergency loan deal that AIG agreed to in September, the insurer is paying 8.5% above the three-month London Interbank Offered Rate—more than 4% a month ago and currently about 2.3%—on funds it borrows, and 8.5% on undrawn funds. The government also received warrants giving it a nearly 80% stake in AIG.

Those terms are much tougher than the 5% preferred stock dividend that the U.S. Treasury has since negotiated in return for its multibillion-dollar capital infusions to banks.

Maurice R. Greenberg, AIG's former chief executive officer and a

major AIG shareholder, noted the contrast in a letter to current CEO Edward M. Liddy on Oct. 30. In the letter, Mr. Greenberg outlined possible modifications to the bailout deal that mirror the options reportedly under discussion last week with federal officials.

The letter proposed, for example, that AIG be allowed to participate in the Treasury's Troubled Asset Relief Program, converting the loan facility into a grant of AIG preferred stock. This would reduce the insurer's costs and prevent a "fire-sale" of assets to repay the loan, Mr. Greenberg wrote. He also suggested a federal guarantee to meet the collateral demands of AIG's credit default swap counterparties, halting the cash drain on the insurer and allowing it to repay the Fed.

An AIG spokesman declined to comment on possible changes to the loan facility. "AIG continues to work on its plan to find a permanent solution to its liquidity losses, sell assets so it can repay the Federal Reserve loan with interest, and explore other avenues to help AIG restore its financial health," the spokesman said in a statement.

Mr. Greenberg and lawyers representing him could not be reached.

As of last Wednesday, AIG had borrowed \$81.2 billion under the \$85 billion facility and a separate \$37.8 billion facility covering its securities lending operations. AIG also participating in a government program to buy commercial paper, and has used proceeds from commercial paper sales to pay down the loans. AIG had paid off about \$9.1 billion of the debt as of last week, according to Federal Reserve figures.

## Charges put MMC into red for third quarter

Marsh Inc. ordered to pay \$48.5M settlement

By SALLY ROBERTS

**NEW YORK**—Marsh & McLennan Cos. Inc. last week recorded a \$33 million third-quarter charge to increase its professional liability reserves after its brokerage unit was ordered to pay \$48.5 million to a client for a political risk policy that failed to pay out.

A Los Angeles federal jury ruled Oct. 27 that Marsh Inc. was negligent in procuring a political risk policy for San Diego-based Sempra Energy, which had an investment in two gas companies in Argentina that was adversely affected by a change in government policy.

In 1996, Sempra invested \$48.5 million to purchase a 12.5% interest in the Sodigas Cos., the parent of two companies authorized to distribute natural gas in Argentina pursuant to licenses issued by the government.

Those licenses granted the two natural gas companies the right to, among other things, calculate gas tariffs in U.S. dollars rather than Argentine pesos and to adjust tariffs in accordance with the U.S. Producer Price Index.

In 2006, however, the Argentine government enacted the Public Emergency and Reform of the Exchange System Act, which nullified those rights. As a result, Sempra's net investment declined by more than \$77 million, court papers say.

Sempra sought to recover the \$48.5 million it had in political risk policy limits with National Union Fire Insurance Co. of Pittsburgh, Pa., but the unit of American International Group Inc. denied coverage, pointing to its exclusions for cur-

rency devaluation and the expropriation of intangible assets, such as licenses.

In 2006, an arbitration panel upheld National Union's denial of coverage.

Sempra Energy then sued Marsh in 2007 for negligence, breach of contract and breach of fiduciary duty, alleging that the brokerage failed to obtain a policy that covered the risks it had told the brokerage it was most concerned about, including the risk that the Argentine government might unilaterally change the license and tariff regime.

"It's a pretty straightforward case of a policy that didn't do its job," said Kirk A. Pasich, a Los Angeles-based attorney with Dickstein Shapiro L.L.P. who represented Sempra.

"Sempra wanted that investment to be insured by whatever policy Marsh got. Marsh delivered a policy...and it turned out the policy failed at its fundamental purpose," Mr. Pasich said.

An MMC spokeswoman said the company was "disappointed" with the verdict, plans to file post-trial motions and will appeal the ruling if necessary.

The \$33 million charge helped push MMC into an \$8 million loss for the third quarter. That compared with a \$1.95 billion profit in the third quarter of last year, which reflected a \$1.9 billion net gain MMC recorded related to its divestiture of Putnam Investments, among other factors. Marsh last year sold Putnam to Winnipeg, Manitoba-based Great-West Lifeco Inc. for \$3.9 billion in cash.

Total MMC revenues increased 4.5% in the quarter to \$2.84 billion.

**\$48.5M**

PAYOUT that a jury ruled Marsh had to pay a policyholder.



Worsening economic conditions were a major topic of conversation at the Property Casualty Insurers Assn.'s annual conference in Scottsdale, Ariz.

## Reinsurance market reels

But renewals will remain flat, rise slightly

By JUDY GREENWALD

**SCOTTSDALE, Ariz.**—Reinsurance rates at the upcoming January renewals will either level off or rise slightly, particularly for property lines, many reinsurance officials say.

However, some observers expect the reinsurance market to harden as 2009 continues.

Meanwhile, the reinsurance market is still reeling from several factors, including the general financial crisis, losses from catastrophes, depleted reinsurance capital, reduced retrocessional capacity and concerns the Florida Hurricane Catastrophe Fund could fall short in efforts to raise additional capital.

Reinsurance officials discussed the state of the market at the Property Casualty Insurers Assn. of America's annual meeting Oct. 26-29 in Scottsdale, Ariz.

"There's a tremendous amount of speculation" about how events of the past three or four weeks will affect the market, including rates, said William J. Adamson, chief executive officer of Carvill America Inc. in Chicago.

"January renewals are going to be difficult to track," said Pierre L. Ozendo, CEO-Americas division at Swiss Reinsurance America Corp. in Armonk, N.Y. "There's a greater requirement to see good, strong, underwriting," Mr. Ozendo said. "How do you get away from the basic (economic) factors? They are there, and responsible companies have to take responsible action."

No dramatic changes are expected at the January renewals, many observers say.

Various factors have "created a market where the cost of capital has gone up. Whether that will translate into a suddenly hard market is debatable," said Andrew Marcell, CEO of Guy Carpenter & Co. L.L.P.'s Americas broking operations.

"At the moment, it's still a little up in the air," said Steven K. Bolland, president of New York-based reinsurance intermediary Gill & Roeser Inc. "I have yet to hear anybody who says prices are going down. The issue is: Are they going up?"

### ONLINE:

**MORE COVERAGE:** of the PCI conference is online at [www.IndustryFocus.com/pci](http://www.IndustryFocus.com/pci).

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# Credit crunch seen as boost for premium financing firms

*Interest rates rising but remain generally lower than banks*

By ZACK PHILLIPS

Businesses looking to finance their insurance premiums already are seeing higher rates from premium finance companies as a result of tightening credit markets, according to finance firms and observers.

Still, premium finance companies say they remain a cheaper alternative to bank loans and hope the liquidity crisis provides an opportunity to expand their business.

Premium finance companies pay a policyholder's premium essentially as a short-term loan, but they typically charge interest rates below

what many banks offer on conventional lines of credit.

Home construction contractors, trucking companies as well as physicians, attorneys and others with professional liability coverage are among the relatively small percentage of policyholders—about 10% in the estimate of one industry official—who finance premiums.

"The neat thing about premium finance is companies can almost treat it as an additional line of credit that they don't have at their bank," said Jeff Larson, manager of premium finance at Itasca, Ill.-based broker Arthur J. Gallagher & Co. "And if they're getting squeezed at the bank, this is another way (to get financing) at a competitive rate."

Mr. Larson and others in the industry say most premium financiers have raised their rates

over the past month or two. A company paying 6% interest on a premium finance note last year likely is looking at a minimum rate of 7.5% at this year's renewal, Mr. Larson said.

Alvin Jones, executive vp at Tallahassee, Fla.-based Premium Assignment Corp., estimated that most premium finance companies raised rates 1 to 1.5 percentage points since last year.

Typically, premium finance rates are pegged to the London Interbank Offered Rate, or LIBOR, which has fluctuated wildly since the credit crisis began; the three-month LIBOR spiked 200 basis points, or 2 percentage points, between mid-September and mid-October, although it has since declined to 40 basis points above its September level.

Some observers say the LIBOR increases and tightening credit markets make rate increases a necessity for some premium finance companies.

"If you don't (increase rates) and assume the LIBOR is going to come back down, you put out a bunch of low-yielding loans," said John Holsan, founder and president of Dallas-based premium finance firm AFS/IBEX Financial Services Inc.

In other cases, observers inside and outside the industry say rate increases indicate that premium finance companies see the current climate as an opportunity to improve their margins in a sector where intense competition often keeps pricing relatively soft. As a result, premium finance companies and brokers are aggressively courting new business.

"As a result of the credit crisis, many of our clients who in the past had no trouble borrowing money maybe can't today, and those who can are probably paying more now than they did before," said Ray Walsh, a managing director and head of the premium finance group at New York-based Marsh Inc.

Mr. Walsh, who said he has been pushing premium finance to his clients more since the economic crisis developed, and others say they have seen increased demand for premium financing and expect demand to increase further as the credit crisis continues.

Mark Henderson, executive vp at Kansas City, Mo.-based Lockton Cos. L.L.C., said the broker's premium finance activity in September

See **PREMIUMS** page 22



The 28th annual International Risk Management Institute Inc. conference was held in Las Vegas in October.

## Insurers building a floor for construction market

*Tight credit, building slowdown hurt stability*

By JEFF CASALE

**LAS VEGAS**—While financial institutions bore the brunt of October's financial crisis, the ripple effect is making its way to the construction industry, where risk managers, contractors, brokers, insurers and underwriters are bracing for a hard insurance market in 2009.

market has been soft for much of the year, recent events on Wall Street have begun to harden the insurance market, giving some risk managers and contractors pause when evaluating their projects and coverage.

American International Group Inc. was still very much at the forefront of attendees' minds as contractors and risk managers talked of controlling costs and maintaining stability.

"I think we are all holding our breath and hope that AIG succeeds," said Scott Trethewey, senior vp of Moss & Associates L.L.C., a Fort Lauderdale, Fla.-based contractor. "Their situation is leaving a lot of people with questions with where to go for contractual backstops for projects."

The key in the current financial market, said Paula Gentile, senior vp, general counsel and risk manager for Las Vegas-based gaming com-

See **IRMI** page 22

### Errors & Omissions

• An item in the Nov. 3 issue misstated Hartford Financial Services Group Inc.'s 2008 nine-month

result as a \$1.94 million loss; the loss for the period was \$1.94 billion.

## Court backs prior-litigation exclusion

*Appeals panel rules against ex-HealthSouth execs accused in lease deal*

By DOUGLAS McLEOD

**ATLANTA**—A company controlled by former top officers of HealthSouth Corp. is not entitled to liability coverage in a lawsuit charging that the company improperly siphoned money away from HealthSouth, a federal appeals court has ruled.

A panel of the 11th U.S. Circuit Court of Appeals in Atlanta ruled last week that Twin City Fire Insurance Co. correctly denied coverage under a directors, officers and company liability policy issued to Capstone Capital Corp.

The charges in the lawsuit were similar to allegations in another complaint filed before the Twin City policy inception, and coverage is thus barred under the policy's "prior litigation" exclusion, the

panel found.

Capstone, later known as HR Acquisition I Corp., was founded and owned by three former officers



and directors of HealthSouth, including Richard Scrusby, HealthSouth's former chairman and chief executive officer, according to court filings.

A shareholder derivative lawsuit filed in an Alabama court in 2002 charged that Capstone acquired property from Birmingham, Ala.-based HealthSouth at below-market rates and then leased it back to

HealthSouth at inflated rates, wrongfully enriching Capstone and its owners at HealthSouth's expense.

The charges mirrored those leveled in a whistle-blower lawsuit filed five years earlier by a former HealthSouth employee against the Birmingham health care company, Capstone and Mr. Scrusby. That suit—which HealthSouth settled for \$7.9 million—charged that the Capstone property deals defrauded the federal Medicare program, from which HealthSouth sought reimbursement for its costs.

Twin City—which is a unit of Hartford Financial Services Group Inc. that wrote claims-made D&O coverage for Capstone from July 2000 to October 2004—denied lia-

See **HEALTHSOUTH** page 22

## WRM America courts education

*Insurer plans to extend coverage to nonprofit and municipal markets*

By JEFF CASALE

**NEW YORK**—Wright Risk Management L.L.C. and Aquiline Capital Partners L.L.C. have partnered to form WRM America Holdings, a specialty lines property/casualty holding company that will focus on the insurance needs of the education market.

WRM America Indemnity will provide comprehensive education insurance programs to private and public schools, colleges and universities, the partners said last week. The company also plans to extend coverage to the national nonprofit and municipal markets.

Uniondale, N.Y.-based WRM America is licensed in 33 states, but initially will write business only in 18 states in the Northeast, Midwest

and Southeast excluding Florida, said Steven Sims, president of WRM America Indemnity Co.

Mr. Sims said WRM eventually will write business nationwide.

Aquiline provided \$75 million in capital for the partnership, a spokesman for the New York-based private equity firm said. WRM Indemnity, the underwriting subsidiary of the company, received a financial strength rating of A- from A.M. Best Co. Inc.

Wright Risk Management, an insurer and risk management consultant, also is based in Uniondale.

General and professional liability coverage limits are \$25 million, Mr. Sims said, adding that property limits will be \$300 million. Mr. Sims said WRM America's insurance pro-

gram is unique in that the company understands the risk management and loss control issues associated with educational operations.

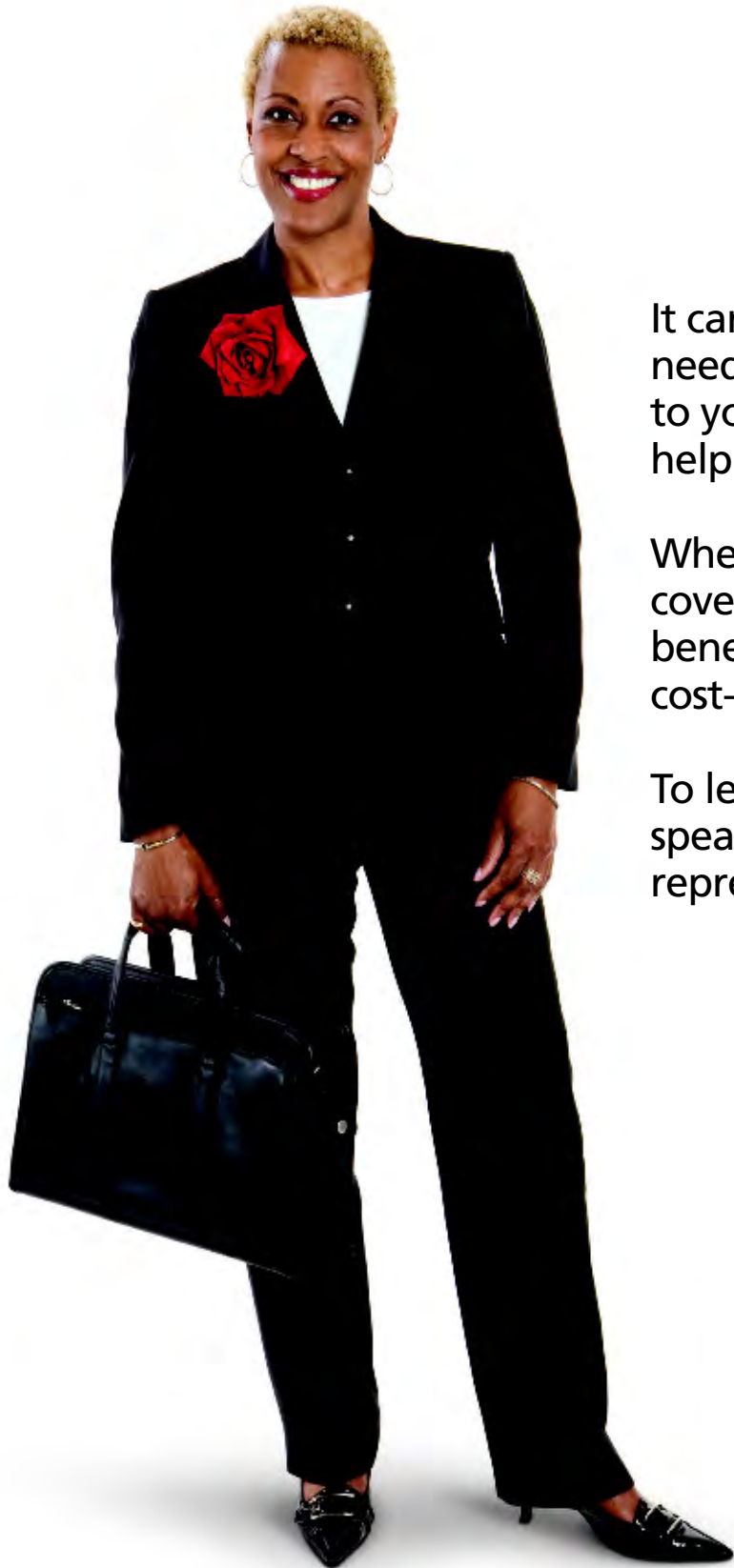
"We're incredibly focused on the reputational risks for schools and universities," Mr. Sims said, referring to shooting tragedies at Virginia Tech University, Northern Illinois University and Columbine High School as examples of areas where WRM offers services in risk management and safety planning. "We are very focused on pre- and post-loss containment," he said.

WRM currently manages the operations of the New York Schools Insurance Reciprocal and the New York Municipal Insurance Reciprocal. As a result, WRM America said it will not underwrite public entities in New York state.

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# Ruling: Long sentences possible

CONTINUED FROM PAGE 1

Starting at such a high guideline level, “a substantial departure would take them down to 12 years,” Mr. Henning said, adding that sentences of 15 to 20 years would not be surprising.

Judge Droney’s loss ruling makes his view of the seriousness of the offense clear, “frighteningly so for the individuals,” said Ellen Podgor, an associate dean and professor at Stetson University College of Law in Gulfport, Fla.

But “the offense side only tells half the story,” Ms. Podgor said. “You are sentencing a person, you are not sentencing a loss. The offender side is a very important consideration,” and judges may also give weight to such factors as a defendant’s motivation and whether the defendant personally gained from the crime, she said.

The loss ruling puts more pressure on lawyers for the five former Gen Re and AIG executives to make the strongest possible case for mitigating circumstances, Mr. Henning noted.

Defense lawyers are expected to press arguments for leniency in another round of briefs due later this month. Judge Droney has not yet set a date for sentencing.

A federal jury convicted the five executives in February on charges of conspiracy to commit securities and mail fraud and making false statements to the U.S. Securities and Exchange Commission.

## No risk transferred

Found guilty were Ronald E. Ferguson, former General Re chief executive officer; Christopher P. Garand, former General Re senior vp in charge of U.S. finite underwriting; Robert Graham, former senior vp and legal counsel for the reinsurer; Elizabeth Monrad, former chief financial officer for General Re; and Christian M. Milton, AIG’s former vp for reinsurance.

Prosecutors alleged that the defendants engineered a sham loss portfolio reinsurance transaction that helped AIG inflate its loss reserves by \$500 million in 2000 and 2001. The deal, aimed at countering stock analyst concerns about AIG’s reserve levels, transferred no risk of loss to AIG and featured an unwritten side agreement that AIG would refund Gen Re’s \$10 million premium and pay it a \$5 million fee, the government charged.

In his Oct. 31 ruling on the loss issue, Judge Droney adopted one of several alternative loss theories offered by the prosecution. Those theories, using AIG stock declines on varying dates, produced loss estimates ranging from a low of \$344 million to a high of \$1.4 billion.

The judge rejected both the low and high estimates, pegging the loss at \$544 million to \$597 million based on stock price declines that followed three events:

- AIG’s Feb. 14, 2005, disclosure that it had been subpoenaed by the New York Attorney General and the SEC regarding “nontraditional insurance products and certain assumed reinsurance transactions and AIG’s accounting for such transactions.”

While the defense argued that the announcement didn’t specifically mention the Gen Re deal, evidence showed that the stock market associated the disclosure with the deal, Judge Droney wrote.

- March 14, 2005, news reports that Maurice R. Greenberg, then AIG’s chief executive officer, would resign. The judge rejected defense arguments that the reports did not reveal anything new about the Gen Re deal and that the market was instead reacting to the loss of Mr. Greenberg, a successful CEO. In fact, Mr. Greenberg’s departure “was viewed by analysts as confirmation of his role in the (loss portfolio transfer) and the seriousness of the LPT fraud,” Judge Droney wrote.

Mr. Greenberg, who initiated the deal in a 2000 phone call to Mr. Ferguson, was identified as an unindicted co-conspirator during the trial. He has denied wrongdoing.

- AIG’s official announcement the following

day that Mr. Greenberg would be replaced; that Howard I. Smith, the insurer’s chief financial officer, would take a leave of absence; and that AIG’s 2004 10-K filing would be delayed.

AIG shares dropped 2.2% to \$71.49 on Feb. 14, 2005; 1.3% to \$63.85 on March 14, 2005; and 3% to 61.92 on March 15, 2005.

In his loss ruling, Judge Droney rejected a defense contention that because none of the stock declines could be linked clearly to the Gen Re



LANDOV

**Evidence showed the stock market associated AIG’s SEC disclosure with the Gen Re deal.**

Christopher Droney, U.S. District Court Judge



deal, the loss was actually zero. He also declined to follow a finding by federal probation officials that the loss could not be reasonably calculated. Probation officials, looking instead at Gen Re’s \$5 million gain in the deal, recommended sentences of 14 to 17½ years.

Pressing for leniency, meanwhile, defense lawyers have attacked what they call the “draconian” impact of loss calculations on guideline sentences.

## Sentencing guidelines

The guidelines are based on a point system, with points added to a “base offense level” to reflect—in financial fraud cases—the size of the loss, the number of victims and other factors. Point totals of 43 or higher call for life sentences.

In this case, Judge Droney, starting with a base level of seven for each defendant, added 30 points because the loss exceeded \$400 million and 6 points because the number of AIG shareholder victims exceeded 250.

In fraud cases involving public companies, the large numbers of shareholders and shares outstanding can cause loss figures to rise rapidly, leading to sentence recommendations that are out of proportion to a defendant’s actual conduct, defense lawyers argue.

“This is a very controversial issue,” Mr. Henning said of the guidelines’ treatment of losses. The idea that the guidelines call for life sentences for the Gen Re defendants “is just this side of absurd.”

Judges in a handful of fraud cases have dismissed guideline recommendations. In 2006, for example, a New York federal judge sentenced Richard P. Adelson—former president of Impath Inc., a laboratory services company that collapsed in an accounting fraud—to 42 months in prison despite a guideline recommendation of life.

Noting that Mr. Adelson only became aware of the fraud in its later stages, U.S. District Judge Jed Rakoff wrote that the case showed the “utter travesty of justice that sometimes results from the guidelines’ fetish with abstract arithmetic, as well as the harm that guideline calculations can visit on human beings if not (confined) by common sense.”

Most federal judges in fraud cases stay within sentencing guidelines, though, Stetson’s Ms. Podgor said.

The Adelson case, Mr. Henning said, is uncommon: “The sentence (Judge) Rakoff gave was an outlier.”

## Commentary

# Law enforcement is a lot like an insurance policy



**PAUL WINSTON**

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President-elect Barack Obama’s election night party drew more than 200,000 people to Chicago’s Grant Park hoping to celebrate his victory and be a part of history. TV news channels broadcast frequent reports from the event, and cameras panned the crowd throughout the night. Reports say it was a happy and mostly mellow gathering, albeit far from the 1 million people that Mayor Richard M. Daley had predicted would turn out to celebrate.

But there were plenty of people who were braced for a far larger, rowdier crowd and violent outbreaks in the city that night. After all, Chicago has a notorious reputation for poor behavior at precious political events—the 1968 Democratic National Convention, for example—as well as the paradox of some citizens “celebrating” a victory, such as the rampages that followed several Chicago Bulls NBA championship victories in the 1990s.

Thankfully, very little of that occurred this time and the city’s enjoyment of the evening was not marred by riots, wanton property destruction or worse, nor by a harsh police response captured on video for the world to see.

It was a relief to many, especially those behind Chicago’s bid to host the 2012 Olympic Games, that the city and its people were on their best behavior when in the global spotlight.

Nobody was more relieved, I suspect, than the Chicago police. In preparation, the city canceled all days off for police, imposed 12-hour shifts, launched a Mobile Strike Force and activated a regional law enforcement warning system to call in area police in case of an emergency, such as a terrorist attack.

The behind-the-scenes preparation for the risk of election night turning ugly probably is familiar to any first responder or risk management professional who has had the unpleasant task of imagining the worst that could happen and preparing for it. Also familiar to some might be the criticism of such preparations as representing an uncalled for pessimism that runs contrary to others’ widely held optimism.

I regularly read a blog about Chicago police called *SecondCityCop*, <http://secondcitycop.blogspot.com>. My brother-in-law is a Chicago police officer and I like to read about events that don’t make the newspapers. Before last week’s election, I came across an entry titled, “Riot Survival for Dummies.”

It called on officers with experience in past situations to share their advice on how to prepare in case the election outcome, regardless of who won, should get out of hand and deteriorate into unrest or worse.

The blog’s anonymous author offered these tips: “Remember, essentials for 10 or more hours on post. Things like water, snacks, bullets, gas masks, helmets, batons, are givens. We’re going to say 50% or more of this department hasn’t been through a

Bulls riot. What little things do people forget? Things like picking up or breaking all glass bottles around your post can deprive miscreants of weapons. Garbage cans can provide handy cover in emergencies. What else?”

Comments ranged from the basic (“NEVER LEAVE YOUR PARTNERS!”) to the absurd (“I brought different colored tape and changed the numbers on our car!”) to the practical (“Bring a

**Police are like insurance policies that too often are underappreciated for risks assumed on our behalf.**

towel to wrap around your neck. It keeps broken glass from going down the back of your collar and can be used to wipe sweat and moisture from your helmet visor and face.”) Some were downright scary: (“Like ‘Blackhawk Down,’ we have to be prepared to be out in the streets for days. Make sure you have food, water...and ammo.”).

In the end, there were a few minor incidents that night, such as guns fired in the air, some cars overturned and several crowds throwing bottles at police. A Nov. 5 post by the blog summed it up like so: “It was more like a typical New Year’s Eve rather than a Bull’s celebration. All well and good—we prepare for possibilities, not what is hoped for. If it went (south) in a hurry, we get blamed for not being prepared. If we overprepare and nothing happens, we’re alarmists, racists and nuts. We can’t win.”

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# Business Insurance OPINIONS

## Health care reform requires consensus

WHEN BILL CLINTON won the presidency 16 years ago, hopes were high that the new administration would lead a successful drive to enact sweeping health care reform legislation.

As is well-known, that effort failed, in large part due to the administration's political ineptitude on the issue.

And with the election last week of Barack Obama, the United States soon will have a president committed to moving the nation closer to universal health insurance coverage.

To date, President-elect Obama hasn't provided much detail on how he would achieve that goal, other than state a preference for elements of the 2006 law that has moved Massachusetts much closer to universal coverage. That is a good thing.

Certainly the biggest lesson to be drawn from the Clinton health care reform debacle is that the executive branch, if it wants to be successful, has to work closely with Congress and outside interest groups to develop a consensus, which is something the Clinton administration failed to do. From all indications so far, President-elect Obama appears ready to listen and work with members of Congress on both sides of the aisle rather than embark on a my-way-or-the-highway approach.

On pension issues, there is a need for quick action. Business groups have made a convincing case to temporarily ease pension funding rules amid a plunge in the equities market and a steep fall in plans' funding levels.

Unless funding relief is provided, employers could face plan contribution requirements that could put some into bankruptcy. That hardly would be in the public interest at a time of economic turmoil, and the new administration would be wise to get funding relief legislation on the fast track.

## New risk management agenda same as the old

ALTHOUGH CHANGE WAS THE THEME of President-elect Obama's campaign, the risk management agenda for the new Congress looks a lot like the one that faced the old Congress. But given the faltering economy and the push for comprehensive financial services regulatory reform, sections of the agenda take on a new urgency.

We would like to see the creation of optional federal charters for insurers and producers as an integral part of broader financial services regulatory reform. The market meltdown underscored the complexity of the current financial landscape and the issues involved are simply too big to be left to individual state regulators.

We know that making such a fundamental change won't be easy. But these aren't easy times and demand bold initiatives. Legislation allowing optional federal charters may take a while to pass, but it deserves passage.

Two other pieces of leftover legislation that should be easy to pass should be put on the fast track. One would streamline the regulation of reinsurers and surplus lines insurers. It should be revived and passed quickly. Legislation that would allow risk retention groups to offer members property as well as liability coverages deserves the same treatment.

There is one area, however, where we're glad that change did not happen—congressional leadership. With Senate Banking Committee Chairman Chris Dodd, D-Conn., choosing to retain his chairmanship and Rep. Paul Kanjorski, D-Pa., who chairs the House subcommittee that oversees insurance—winning re-election, risk management issues appear certain to continue to receive the thoughtful consideration both men have provided.

*On pension issues,  
there is a need for  
quick action.*



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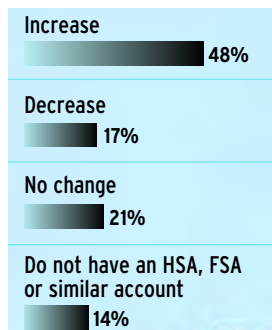
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Q How will you adjust your contribution to a medical savings account for 2009?



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Q: How long will it take the Obama administration to reform health care?

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## Pandemic plans still important

With the global financial crisis affecting many businesses, it may be tough for risk managers to get C-suite attention and support in preparing a pandemic plan, says Mike McGuire, vp of anti-infectives at F. Hoffman La Roche Inc. That is why it is as important as ever for risk managers to stay focused and vigilant and to have a solid strategy to maintain pandemic preparedness as a priority for their companies, he says. Be an expert resource and partner with like-minded colleagues to get the attention and budget that pandemic planning requires, Mr. McGuire says.



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## PENSIONS & 401(K) PLANS

**Business Insurance ranks the largest 401(k) plan administrators / Page 12**

**403(b) sponsors face tougher rules from the Internal Revenue Service / Page 18**

# BENEFITS MANAGEMENT

## Cash balance plans making a comeback

By **JERRY GEISEL**

The combination of the financial market crisis, recent legislative changes and court rulings may renew the appeal of converting defined benefit pension plans to cash balance plans, experts say.

While few major employers in recent years have made the change, more than 1,000 employers adopted cash balance plans in the 1980s and 1990s. Some of the biggest names in corporate America—Bank of America Corp., Hewlett-Packard Co. and IBM Corp.—were among those making adoptions during cash balance plans' golden era.

Employers were drawn for a variety of reasons to cash balance plans, so named because benefits are expressed as a cash lump sum.

The visibility of the benefit and an easy-to-understand benefit formula—participants earn credits equal to a percentage of their annual pay—increased employee appreciation.

In addition, because benefits build more rapidly compared with traditional plans, cash balance plans were more appealing to a younger, more mobile workforce, employers said.

But the golden era ended in 1999. That was when a highly publicized lawsuit was filed against IBM, alleging that the company's cash balance plan design discriminated against older employees, triggering a wave of similar suits against other employers.

The climate grew even harsher when the Treasury Department stopped issuing so-called determination letters—a type of seal of approval—at about the same time as the IBM suit was filed.

More bad news came in 2003. In the first decision going in that direction, a Southern Illinois federal judge ruled that cash balance plans in general and IBM's plan in particular were age discriminatory because the same benefit provided to a younger worker would be worth more—expressed as a retirement age annuity—than that of an

See **CASH BALANCE** page 12



## Automatic enrollment becoming the norm

*More than half of large employers use system*

By **KRISTIN GUNDERSON HUNT**

More employers are adding automatic enrollment to their 401(k) plans as they strive to get and keep their employees saving for retirement in what has become many employers' primary savings plan vehicle.

"It's really evolving into an automatic 401(k) world," said Liz Miller, senior consultant in the retirement practice of Towers Perrin in New York.

In 2007, more than half of large plans reported using 401(k) automatic enrollment, while the percentage of small plans using the feature increased from 6.8% in 2006 to 11.1% in 2007, according to the "51st Annual Survey of Profit Sharing and 401(k) Plans," released in September by the Profit Sharing/401k Council of America in Chicago.

Pamela Hess, director of retirement research at Lincolnshire, Ill.-based consulting firm Hewitt Associates Inc., said retirement is "top-of-mind" for employers, and they

want to ensure employees are on track to retire, especially since defined benefit plans are decreasing and more responsibility is falling on employees to save.

"It's very hard to engage employees," Ms. Hess said. "People mean to save and they don't. Nothing moves participation rates like auto enrollment does."

Experts said automatic enrollment on average increases participation rates in 401(k) plans from about 75% to 90% depending on the industry.

They attribute the across-the-board increased participation to automatic enrollment's "stickiness," meaning employees often choose not to opt out of the plans and, instead, continue to contribute.

Kinder Morgan, a pipeline transporter and terminal operator in Houston, implemented automatic enrollment in June 2003 because participation in its 401(k) plan was at about 60%, which the company

See **AUTO ENROLL** next page

## Roth 401(k)s expected to join the mainstream

*Number of employers offering plans grows more than 10% in 2007*

By **ZACK PHILLIPS**

Employers are adopting Roth 401(k) savings plans faster than employees are embracing them, but many observers expect the plans to join the mainstream of employer-sponsored retirement packages in the coming years.

The relatively new type of savings plan permits employees to make aftertax contributions and, if certain conditions are met, receive retirement distributions that are tax-free.

According to a September survey of 1,000 employers by the Chicago-based Profit Sharing/401k Council of America, about 30% of 401(k) plans offered a Roth 401(k) feature

in 2007, up from 18.4% the previous year. However, only 12.6% of employees used that option in 2007, up from 11.6% the previous year.

Still, observers say Roth 401(k) plans, which were authorized under a provision in a 2001 law that took effect in 2006 and were made permanent under a 2006 pension law, will become more popular.

"They're not commonly available nor commonly used, but availability and use is growing," said David Wray, president of the PSCA.

A Roth 401(k) offers some of the advantages of Roth individual retirement accounts and traditional 401(k) savings plans. Roth 401(k)s allow workers to contribute aftertax

dollars and receive distributions tax-free as long as the worker is at least 59½ years old and five years have elapsed since the first contribution was made.

Traditional 401(k) plans are funded with pretax dollars, but those contributions and accumulated investment earnings are taxed when withdrawn.

Roth IRA accounts also use after-tax dollars but limit workers to \$5,000 in annual contributions.

Under federal rules, employees can decide how much to allocate to their Roth 401(k) account and how much to contribute to their traditional 401(k), but the combined contributions currently cannot exceed \$15,500. The accounts were

expected to appeal to workers who anticipate being in a higher tax bracket when they retire and higher-paid employees who want to save more for their retirement.

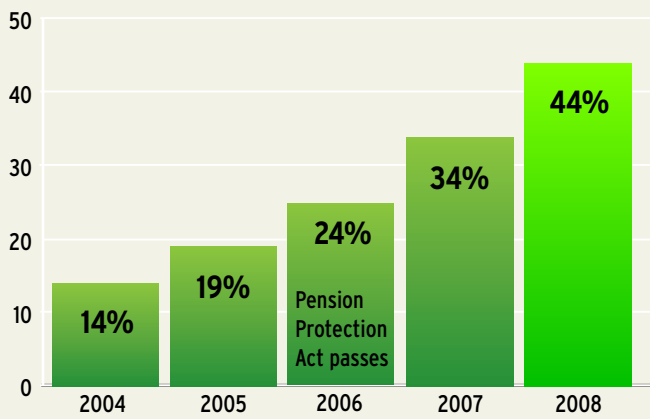
Slightly more than half of workers already using Roth 401(k) accounts also invest in a traditional 401(k) or another account, according to a 2006 survey by Fidelity Investments.

Many observers say the 2006 Pension Protection Act that made Roth 401(k) plans permanent assured employers and was a key impetus for the recent increase in the number of organizations offering such plans.

See **ROTH 401(K)** page 16

## ON THE RISE

Employer adoption of automatic enrollment in their 401(k) plans has increased steadily.



Source: Hewitt Associates Inc.

## Auto enroll: Employers increase use

CONTINUED FROM PREVIOUS PAGE

considered low, said Sandy Ward, manager of qualified plans. Five years later, in June 2008, she said employee participation surged to 91.5%. She said few employees opt out of the program, and many view it as beneficial.

"401(k)s have become a better part of an employee's savings," Ms. Ward said. "We feel employees need to become more proactive in saving for their future."

Companies typically start automatic enrollment contribution rates at about 3% of an employee's pay, experts said. They said the contribu-

tions are most often directed to target retirement date funds, but are sometimes directed toward target risk, stable value or managed accounts.

Not only are more employers adopting automatic enrollment for their employees, they are also implementing automatic escalation, whereby they increase employees' contributions by a certain percentage each year to combat stagnant growth and complacent employees from contributing the minimum amount. According to the Profit Sharing/401(k) Council of America survey, automatic enrollment with automatic contribution

escalation increased from 8.5% in 2004 to 32.8% in 2007.

"Auto enrollment is great but it doesn't necessarily address the stasis issue—employees just kind of go along with it," said Mary Ann Langevin, defined contribution business leader with Mercer L.L.C. in Norwood, Mass.

Companies typically increase employees' contributions by 1% a year, said Robyn Credico, national director and defined contribution consultant for Watson Wyatt Worldwide in Arlington, Va. Most companies, however, only automatically escalate contributions up to the amount of the company match or to an average ceiling of 5%, and

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**'The cost of automatic enrollment is very high.'**

Pamela Hess,  
Hewitt Associates Inc.

very few going above 6%, Ms. Miller said. The ceiling for contributions is 10%.

Ms. Ward said Kinder Morgan implemented automatic escalation in October 2006. Anyone contributing less than 5% experienced an auto increase of 1%. In 2008, the company revised the plan's goal to a 6% contribution rate for employees, therefore automatically increasing employees' contributions by 1% annually until they reach 6%.

With so many more employees participating, and contributing more, automatic enrollment and escalation can be expensive for some companies, particularly those that match contributions up to a certain level. They have to begin matching contributions for employees that likely wouldn't have been contributing before.

"The cost of automatic enrollment is very high," Ms. Hess said.

Kinder Morgan, which does not offer a match program, did not incur any extra costs associated with implementing automatic enrollment, making it a positive feature for all parties, Ms. Ward said. She said despite not offering auto enrollment with a match, employees still see the feature favorably.

"We're pleased to see auto enrollment does work. Inertia does keep them in. Participants seem to be not threatened by these auto enrollment features. Employees enjoy that we are conscientious enough to help them save."

Employers incurring additional costs associated with implementing automatic enrollment, however, appear committed to helping their employees save in part out of concern for their employees and in part for business reasons, experts said.

"You don't want people to stay because they have to," Ms. Hess said. "This is the cost of doing business. We have to help people save for retirement."

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# Cash balance: Financial crisis could renew appeal of plans

CONTINUED FROM PAGE 9

older worker. Soon thereafter, the House of Representatives embraced—at least temporarily—the IBM ruling when the House passed legislation in 2003 to bar the Treasury Department from issuing any rules that would effectively upend that court decision. That probably was the low point for the plans and their sponsors. Then the climate gradually began to brighten. Concerned about the growing number of employers freezing defined benefit plans, including cash balance plans, Congress approved and President Bush signed into law the 2006 Pension Protection Act, a broad pension funding reform law that also protected new cash balance plans from age discrimination suits. In another positive development for the plans, a Chicago-based federal appeals court in 2006 reversed the lower court ruling in the IBM

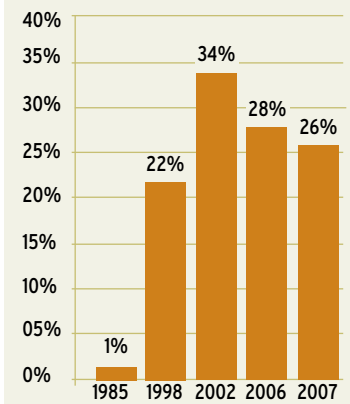
case. That was the first of a total of five appeals court rulings that said the plans do not violate federal age discrimination law. Since those developments and for the first time in several years, a few major employers converted their traditional pensions to cash balance plans. The first to do so following passage of the 2006 legislation was MeadWestvaco Corp., a Richmond, Va., paper packaging and office products company. SunTrust Banks Inc. of Atlanta was the next to make the conversion, while package delivery giant FedEx Corp. of Memphis, Tenn., expanded an existing cash balance plan to cover all eligible employees. Later, Dow Chemical Co. of Midland, Mich., adopted a cash balance plan for new employees, making it the largest employer to do so since Congress passed the PPA. The companies cited a variety of reasons for moving to a cash balance plan.

For MeadWestvaco, a cash balance plan has allowed the company to provide a “simpler, more portable benefit,” a spokeswoman said, adding that research shows that benefit portability is appealing to a more mobile workforce. Under MeadWestvaco’s plan, 4% to 8% of participants’ annual salary is credited to their accounts based on their age and years of service. Visibility and portability also were factors in SunTrust’s adoption of a cash balance plan. “Cash balance plans are portable, they build value steadily over time and they allow employees to watch their benefit grow,” a SunTrust spokesman said. Under the plan, participants receive annual pay-related credits ranging from 2.5% to 5% based on age and service. More big employers are weighing whether to adopt cash balance plans, consultants say. “A few years ago, cash balance plans just weren’t a viable option.

Now they are, and companies are looking at the plans,” said Alan Glickstein, a senior retirement consultant with Watson Wyatt Worldwide in Dallas. “There has been only a slow trickle now, but the pendulum is swinging back in favor of plan adoption,” said Ethan Kra, chief actuary for Mercer L.L.C. in New York. Mr. Kra says as the labor market tightens with baby boomer retirements, more employers will need to offer a retirement plan that promises a visible and secure benefit to attract and retain employees. The benefits provided by the plans may not be as rich as those once offered by old-style final-average pay plans, but the benefits are guaranteed, a significant advantage compared with employers that offer only defined contribution plans such as 401(k)s, Mr. Kra said. The current turmoil in the equities market is increasing the appeal to employees of cash balance plans over 401(k) plans, some say.

## YEARS TO REBOUND

Percentage of Fortune 100 employers offering hybrid pension plans\* to newly hired salaried employees.



\* Hybrid plans include cash balance and pension equity plans. Source: Watson Wyatt Worldwide

“With a cash balance plan, you don’t have to look at the account every day” and worry that the balance has decreased, said Kevin Wagner, a Watson Wyatt senior retirement consultant in Atlanta.

# Largest 401(k) plan administrators

Ranked by number of plan participants receiving services on an unbundled basis. <sup>1</sup>

Rank	Company/Address	Phone / Web site	Unbundled participants <sup>2</sup>	Unbundled clients <sup>2</sup>	Average participants per plan <sup>3</sup>	401(k) staff <sup>3,4</sup>	Principal Officer
<b>1</b>	Hewitt Associates Inc. 100 Half Day Road, Lincolnshire, Ill. 60069	847-295-5000 <a href="http://www.hewitt.com">www.hewitt.com</a>	4,400,000 <sup>5</sup>	210 <sup>5</sup>	N/A	N/A	Russ Fradin, chairman/CEO
<b>2</b>	Affiliated Computer Services Inc. 2828 N. Haskell Ave., Dallas, Texas 75204	214-841-6111 <a href="http://www.acs-inc.com">www.acs-inc.com</a>	1,900,000	56	13,500	650	Lynn Blodgett, president/CEO
<b>3</b>	Great-West Retirement Services 8515 E. Orchard Road, Greenwood Village, Colo. 80111	303-737-3000 <a href="http://www.gwrs.com">www.gwrs.com</a>	1,013,784	6,781	107	2,321	Mitchel Graye, CEO
<b>4</b>	Paychex Inc. 911 Panorama Trail S., Rochester, N.Y. 14625	585-385-6666 <a href="http://www.paychex.com">www.paychex.com</a>	590,000	48,000	12	1,200	Jonathan J. Judge, president/CEO
<b>5</b>	Milliman Inc. 1301 Fifth Ave., Suite 3800, Seattle, Wash. 98101	206-624-7940 <a href="http://www.milliman.com">www.milliman.com</a>	475,100	1,354	900	400	Patrick J. Grannan, president/CEO
<b>6</b>	ADP Retirement Services 71 Hanover Road, Florham Park, N.J. 07932	800-432-4015 <a href="http://www.adp401k.com">www.adp401k.com</a>	78,590	6,453	N/A	992	Doug Politi, senior division vp/general manager
<b>7</b>	Principal Financial Group P.O. Box 9397, Des Moines, Iowa 50306	800-986-3343 <a href="http://www.principal.com">www.principal.com</a>	68,482	119	89	3,326	Dan Houston, president-retirement and investor services
<b>8</b>	Charles Schwab Corp. <sup>6</sup> 4150 Kinross Lakes Parkway, Richfield, Ohio 44286	877-456-0777 <a href="http://www.scrs.schwab.com">www.scrs.schwab.com</a>	61,094	52	1,150	900	James D. McCool, executive vp
<b>9</b>	Transamerica Retirement Services 1150 S. Olive St., Los Angeles, Calif. 90015	888-401-5826 <a href="http://www.ta-retirement.com">www.ta-retirement.com</a>	61,073	1,959	N/A	590	Kent Callahan, president/CEO
<b>10</b>	Findley Davies Inc. 300 Madison Ave., Suite 1000, Toledo, Ohio 43604-1596	419-255-1360 <a href="http://www.findleydavies.com">www.findleydavies.com</a>	49,000	456	109	31	Robert J. Rogers, Marc E. Stockwell, Gary P. Thiemann, principals

<sup>1</sup> Companies must offer 401(k) plan administration services, such as recordkeeping and handling of account activity, on an unbundled basis. <sup>2</sup> As of 6/30/08. <sup>3</sup> Includes both unbundled and bundled 401(k) plans. <sup>4</sup> Reflects staff dedicated to 401(k) plan recordkeeping, administration or consulting. <sup>5</sup> As of 12/31/07. <sup>6</sup> Formerly 401(k) Co was acquired by Charles Schwab Corp. on 4/1/2007. N/A=Not available  
Source: BI survey

Visit [www.businessinsurance.com/directories](http://www.businessinsurance.com/directories) for more information and to access the full searchable Directory of 401(k) Plan Administrators. Business Insurance now offers the option to purchase the entire online directory as an Excel file or as a PDF.

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~~$A \sin(1.66t + B)$~~   
 ~~$1.66 + B$~~   
 ~~$1.5e^{-1.5t}$~~   
 ~~$e^{-1.5t} [A \sin(1.66t + B)]$~~   
 ~~$y = e^x \sin \pi$~~   
 ~~$\frac{dx}{dt} = e^{-1.5t} [1.66 \cos \phi - 1.5 \sin \phi]$~~

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**Karen Schmitt**

Chief Operating Officer, Maiden Re

## ROTH 401(k) CONTRIBUTIONS

Percent of employees contributing in 2007 to a Roth 401(k)

Size of plan	Percent contributing
1-49 participants	19.6%
50-199 participants	10.2%
200-999 participants	8.6%
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5,000 participants and up	8.6%

Source: Profit Sharing/401k Council of America

## Roth 401(k): Confusion slows adoption

CONTINUED FROM PAGE 9

Most industry estimates are similar to the findings in the PSCA's survey.

Pam Hess, director of retirement research at Lincolnshire, Ill.-based Hewitt Associates Inc., said the consultant's latest survey showed that 19% of employers had Roth 401(k) plans in 2007, and that 11% of employers without the plan said they were very likely to add one this year and another 23% said they were somewhat likely to add one.

Eventually, Ms. Hess said, half of employers are expected to have the Roth option as part of their 401(k)

plans.

The first employers to add the Roth option to their 401(k) plans generally were professional firms—medical practices, law firms, consultants and other businesses in which employees had financial advisers or were sufficiently knowledgeable about finances to ask for the new Roth option, Mr. Wray said. Most were smaller firms, he said.

"The 401(k) plan in a small company is the retirement plan for the CEO. Whereas, as you get to larger and larger companies, the retirement plans are more customized for senior management," Mr. Wray said.

Since then, firms in different industries, such as manufacturing, have followed suit, observers say.

"I'm seeing retail organizations—companies that were not at all interested a couple years ago—are now putting (Roth 401(k) plans) in," said Bill McClain, a Seattle-based consultant with Mercer L.L.C.

Still, as the number of employers adding the option has increased, the portion of workers using the plan remains low. Hewitt's Ms. Hess said 4% to 17% of workers use the Roth 401(k) option when offered; Mercer's Mr. McClain said he thinks that figure is about 5%.

Observers say most of those using the option are young workers—because they earn less, are taxed less, and expect their pay and tax rate to rise in the future—and new hires, 25% of whom use the Roth option when available, according to the Hewitt survey.

**'Some people...think increased tax rates are inevitable, despite what we heard from both presidential candidates. That would, of course, favor investing in a Roth.'**

Bill McClain, Mercer L.L.C.

Ms. Hess said the percentage of users will increase as more employees become aware of the option.

"We've come a long way," she said. "When Roth first came out, there was a lot of fear that employees wouldn't know what to do with it."

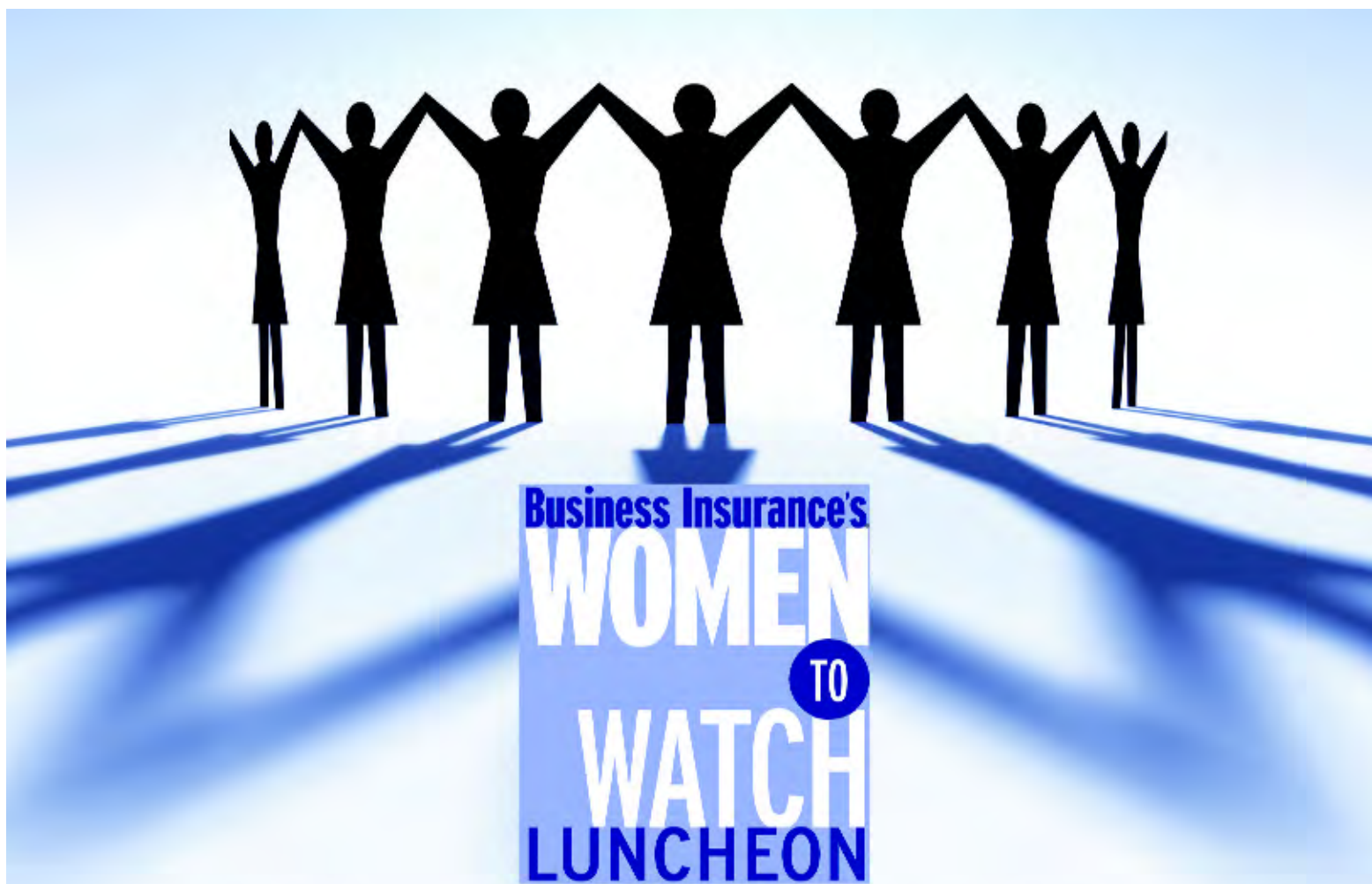
Ms. Hess and others say worker confusion remains a concern for employers considering offering the Roth option as part of their 401(k) program. She said businesses should explain the new option frequently and in detail to avoid wasting the effort and time of implementing a new plan that few workers use.

"It's not like clicking a button. There's a lot of work. It often costs money to do it from the employer's perspective," Ms. Hess said. "The small number of firms that added (the Roth option) that didn't communicate heavily—those are the companies that have the lowest utilization."

"You want to make sure you make a splash, employees know it's available and, from the employer's perspective, that you get credit for doing it," Ms. Hess said.

She and Mr. McClain said the more recent global financial crisis could slow the adoption of Roth 401(k)s, although one could argue the reverse.

"You have an aging demographic, the ongoing wars in Iraq and Afghanistan, and then throw in the financial bailout," said Mr. McClain. "There are some people out there who think increased tax rates are inevitable, despite what we heard from both presidential candidates. That would, of course, favor investing in a Roth."



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# 403(b) plan sponsors face tougher IRS rules

*Nonprofit employers seen reducing choices to ensure compliance*

By **JERRY GEISEL**

Many nonprofit employers that offer 403(b) defined contribution pensions are scrambling to bring their plans into compliance with Internal Revenue Service rules that take effect next year.

Those regulations, which were published in July 2007 and generally go into effect on Jan. 1, 2009, will

end the informal way that many 403(b) plans have been administered. Most of the affected plans are funded solely through employees' salary deferrals, with no matching contributions from employers.

Under the IRS rules, though, such plans must have official documents detailing administrative responsibilities and benefit features. That requirement will end the longtime hands-off way some nonprofits have offered salary-deferral-only 403(b) plans, with employers passing that authority to mutual funds and insurance companies offering investment options, as well as to

plan participants.

That lack of centralized employer control resulted in situations such as participants asking investment fund providers for hardship withdrawals of funds, with employers unaware that such requests were made or whether participants were legally eligible to get the distribution, experts say.

At the same time, employees with 403(b) plan accounts at various financial institutions sometimes requested hardship distributions from all investment providers. While such distributions may have broken IRS rules that limit such dis-

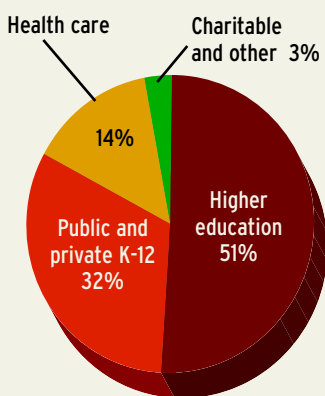
tributions, the funds may have been distributed anyway because of a lack of coordination among the funds.

"No one was looking. In fact, employers' view, in many cases, was that their role was that of distributing to mutual funds and insurers the monies that 403(b) plan participants contributed through salary deferral to mutual funds and insurers," said Glenn Poehler, a principal in the Richmond, Va., office of Mercer L.L.C.

Adding to this casual approach, consultants say, is that employees at times were allowed to self-certify that a hardship withdrawal or loan

## SPONSORS OF 403(b) PLANS

Breakdown of organization types based on assets held in plans.



Source: Retirement Research Inc.

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**'It's a lot easier for an employer to deal with one entity and have one point of contact.'**

Peter Gold, Buck Consultants L.L.C.

complied with federal law.

With the IRS rules coming into effect, those days are coming to an end. Effective Jan. 1, 2009, employers with 403(b) plans will ultimately be held responsible for ensuring that federal rules are met, said Dan Schwallie, a consultant in the Cleveland office of Hewitt Associates Inc.

"The IRS has made it clear that employers are responsible," said Lisa Arko, a consultant with Watson Wyatt Worldwide in Philadelphia. Penalties for noncompliance can be severe, such as including employees' salary deferrals as taxable income.

"In some cases, dozens of vendors have offered funds to participants," Ms. Arko said.

To that end, many 403(b) plan sponsors are reducing the number of investment fund vendors with which they deal for a very practical reason, experts say.

"It is a lot easier for an employer to deal with one entity and have one point of contact," said Peter Gold, a principal with Buck Consultants L.L.C. in Stamford, Conn.

Still, reducing the number of plan vendors can be a sticky issue in some parts of the nonprofit world. "In the university environment, most things have to be done by consensus" and that can slow things down, Mr. Gold said.

How far along employers are in finalizing plan documents and laying out administrative responsibilities varies considerably by industry. In general though, nonprofits that have large internal human resource departments, such as health care systems and universities, are the furthest along or may already be in compliance, while smaller school systems and other organizations lacking HR departments will bump up against the deadline.

Some community colleges, for example, are "panicked" as the deadline nears, Mercer's Mr. Poehler



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The panelists, individuals who are widely recognized in the industry for their expertise on the subject of insurance regulation, will address such pressing industry concerns as the push for federal regulation of insurance and an optional federal charter, the debate over a federal role in helping address natural catastrophe exposures and modernizing U.S. reinsurance regulation.

Also, given that the event will be shortly after election day, the panelists will engage in a bit of "crystal ball gazing," discussing the potential impact on November's elections on future insurance regulation.

Panelists Include:

- *Howard Mills*, Director and Chief Advisor in the Insurance Industry Group of Deloitte L.L.P. in New York
- *Francine L. Semaya*, Chair of the Insurance Corporate and Regulatory Practice at the Cozen O'Connor law firm in New York
- *J. Stephen Zielezienski*, Senior VP and General Counsel of the American Insurance Association in Washington, DC

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## LEGAL NOTICE

## LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
COMPANIES COURT  
No 9392 of 2008  
IN THE MATTER OF

**CITY GENERAL INSURANCE COMPANY LIMITED**  
AND IN THE MATTER OF THE COMPANIES ACT 2006  
ARRANGEMENT

between

CITY GENERAL INSURANCE COMPANY LIMITED

(in relation to business underwritten by Swiss Union General Insurance Company (now Generali Assurances Générales))

and its

ELIGIBLE POLICYHOLDERS

(as defined in the Closure Plan referred to below)

NOTICE IS HEREBY GIVEN that by an order dated 3 November 2008 made in the High Court of Justice of England and Wales in the above matters the Court has directed that meetings of the Eligible Policyholders (as defined in the Closure Plan hereinafter mentioned) (the "Meetings") of City General Insurance Company Limited ("City General") be convened for the purpose of considering and, if thought fit, approving (with or without modification) a Closure Plan proposed to be made between City General and its Eligible Policyholders being an arrangement pursuant to Part 26 of the Companies Act 2006 (the "Closure Plan"). The Meetings will be held on Tuesday 3 February 2009 at the offices of Clyde & Co LLP, 51 Eastcheap, London, EC3M 1JP, United Kingdom, commencing at 11am (London time). All Eligible Policyholders are requested to attend at such place and time either in person or by proxy.

Two separate Meetings will be held by City General, one Meeting for Eligible Policyholders in respect of their Notified Outstanding Claims and one Meeting for Eligible Policyholders in respect of their IBNR Claims (each as defined in the Closure Plan). If you are an Eligible Policyholder with both Notified Outstanding Claims and IBNR Claims you will be entitled to vote at both Meetings.

Eligible Policyholders may vote in person at the Meeting(s) or may appoint another person, whether an Eligible Policyholder or not, as their proxy to attend and vote in their place.

Eligible Policyholders having claims or potential future claims arising under or in connection with any policy forming part of the portfolio of business underwritten in London between 1 January 1956 and 17 March 1970 by Generali Assurances Générales under its former name Swiss Union General Insurance Company which was transferred to City General under Part VII of the Financial Services and Markets Act 2000 in October 2007 are Eligible Policyholders for the purposes of the Closure Plan.

Eligible Policyholders should note that the insurance and reinsurance policies included in the Closure Plan are policies that were originally underwritten by Swiss Union General Insurance Company and not by City General.

Eligible Policyholders are requested to lodge completed forms of proxy and voting forms with the helpdesk at City General at 2nd Floor, 150 Minorities, London EC3N 1LS, United Kingdom by 5.30pm (London time) on Friday 30 January 2009. Forms may also be handed in at the registration desk prior to the Meetings. Completed forms may be returned by fax and, if scanned and saved in Portable Document Format (PDF), by email. Please note that faxed and emailed forms will only be accepted if they are legible and (in the case of forms returned by email) they are received in the mailbox of the addressee and can be opened and printed by the recipient. Eligible Policyholders are requested to send the originals, to be received at the above address by 5.30pm (London time) on Tuesday 10 February 2009, or to hand them in at the registration desk prior to the Meetings.

A copy of the proposed Closure Plan and a statement explaining the effect of the Closure Plan are incorporated in the document of which this notice forms a part. Copies of these documents, as well as blank forms of proxy and voting forms, may be obtained by attending at, or on written application to, City General Insurance Company Limited, 2nd Floor, 150 Minorities, London, EC3N 1LS, United Kingdom before 5.30pm (London time) on Friday 30 January 2009. They may also be downloaded and printed from the website [www.citygeneral.co.uk](http://www.citygeneral.co.uk).

The Court has appointed Philip Grant, the independent non-executive Chairman of City General to act as chairman of the Meetings and has directed the chairman of the Meetings to report the result of the Meetings to the Court. The Court has appointed Romy Comiter of Smart UK to act as Independent Vote Reviewer for the purposes of reviewing the values placed on Claims for voting purposes and preparing a report on the reasonableness of those values for submission to the Court.


If approved by the requisite majority of Eligible Policyholders (or any class of them), the Closure Plan will be subject to the subsequent approval of the Court.

Any Policyholder who has any questions concerning the action he is required to take should contact the helpdesk, tel: +44 (0) 20 7347 5021, fax: +44 (0) 20 7347 5011, email: [enquiries@citygeneral.co.uk](mailto:enquiries@citygeneral.co.uk)

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## 403(b): Rules stiffen for plan sponsors

CONTINUED FROM PAGE 18

said.

On the other hand, some non-profit employers have little if any additional work to do now because they centralized plan administration years ago.

"We wanted to be sure that all benefit programs were administered with the highest level of scrutiny," said Joseph Molloy, director of benefits at North Shore-Long Island Jewish Health System in Lake Success, N.Y.

Other IRS rules—such as one requiring that all employees, with limited exceptions, be offered the right to make pretax contributions to 403(b) plans—already is being met by some plan sponsors.

For example, the Archdiocese of Chicago allows all employees to make pretax contributions.

"Our philosophy is that if employees want to contribute, we did not want to stand in the way," said Chris Cannova, the Roman

Catholic archdiocese's director of compensation and benefits.

Like their private-sector counterparts, nonprofit employers also are adding automatic enrollment features to their 403(b) plans to boost participation.

### Tackling inertia

Unless such employees take direct action, they are automatically enrolled in a 403(b) plan with a pre-set percentage of their salaries deferred to the plan.

"This tackles employee inertia," Mr. Cannova said.

Plan sponsors adding automatic enrollment have seen big increases in employee participation.

For example, Archdiocese of Chicago employee participation jumped to about 80% from about 35% to 40% since automatic enrollment was added on Jan. 1, Mr. Cannova said.

At North Shore-Long Island Jewish Health System, plan participation leaped to the high 80s from

just under 70% when automatic enrollment also was added on Jan. 1, said Joseph Cabral, chief human resources officer.

"We want to help employees save for their retirement," he said.

While 403(b) plans are becoming more similar to 401(k) plans due to the IRS rules and plan sponsors adopting automatic enrollment, a key difference remains.

That difference is that employees' salary deferrals into 403(b) plans are not subject to an IRS nondiscrimination test, while the test applies to salary deferrals made by 401(k) plan participants. That test is used to ensure that average deferrals made by highly compensated employees do not exceed those of rank-and-file employees by a legally set amount.

In many cases, that test means that highly-paid employees in the private sector can't contribute the maximum deferral allowed—currently \$15,500—because lower-paid employees, on average, aren't contributing very much.

## Market Moves

developing nations, Willis said in a statement.

Willis Re, the first reinsurance broker to support GEM, will contribute research into seismic risk from its Willis Research Network, a collaboration between the insurance broker and scientific leaders in academia.

### Willis HRH, DAVID team up; broker backs quake model

**SAN FRANCISCO**—New York-based brokerage Willis HRH, a unit of Willis Group Holdings Ltd., said it will partner with DAVID Corp. to provide a new underwriting and policy administration system for clients that pool their risks.

The San Francisco-based firm's NavRisk Policy makes the labor- and data-intensive management of a pool more efficient, allowing quoting prices, invoicing, issuing policies, adding and removing exposures, and performing what-if analyses in one system, according to a statement from Willis.

Separately, Willis' London-based reinsurance arm, Willis Re, announced that it would be a sponsor of the first earthquake model for the entire globe, including developing countries where reliable modeling does not exist currently.

The Global Earthquake Model, a five-year project of the Paris-based Organization for Economic Co-operation and Development, is an open-source earthquake model that aims to communicate risk, improve mitigation and promote insurance and risk sharing.

More than 500,000 people died during the past decade from earthquakes and tsunamis, most them in

### HMS, Warfield-Dorsey complete merger

**HUNT VALLEY, Md.**—HMS Insurance Associates Inc. said it has merged with Hunt Valley, Md.-based Warfield-Dorsey Co.

HMS will add Warfield-Dorsey's office in Hunt Valley—20 miles north of Baltimore—to its existing Lutherville, Md., office.

Combined, the two offices will have 130 personnel now under the HMS name, the company said in a statement.

Warfield-Dorsey specializes in manufacturing, nonprofits, schools, cultural organizations, clubs and property accounts, HMS said. An HMS official said there would be no significant management changes as part of the deal.

### Ironshore licenses RMS modeling tool

**HAMILTON, Bermuda**—Hamilton, Bermuda-based property/casualty insurer Ironshore Insurance Ltd. has licensed a tool from catastrophe modeling firm Risk Management Solutions Inc. to help manage Ironshore's fire risk.

The Account Fire Model from Newark, Calif.-based RMS is the industry's first physics-based numerical simulation of fire hazards, according to an Ironshore statement.

The tool will help Ironshore assess the potential property damage and losses from fire, smoke or water using information from fire departments, building layouts and common fire attributes along with other data, Ironshore said.

### German insurer taps DFA capital model

**COLOGNE, Germany**—Provinzial NordWest Holding A.G. will use an economic scenario generator model from Purchase, N.Y.-based DFA Capital Management Inc.

The financial analysis software provider said Cologne, Germany-based Provinzial selected GEMS, DFA's capital market scenario generator, to use with other modeling instruments and software.

DFA said GEMS creates a realistic simulation of future market conditions to help calculate how much risk capital a company needs to secure liabilities. For example, the system can quantify the probability, scope and causes of financial events such as the current credit crisis, DFA said in a statement.

Provinzial offers property/casualty and life insurance and said it generated \$2.9 billion in premiums in 2007.

### National Equipment Register moves to parent's offices

**JERSEY CITY, N.J.**—The National Equipment Register has moved its office from New York to Jersey City, N.J.

The database company was established in 2001 to reduce theft of heavy construction equipment and improve recovery rates.

In October, the National Equipment Register moved to the offices of its parent company, Insurance Services Office Inc.

### TO SUBMIT ITEMS

BI's Market Moves column reports on activities by insurance industry companies and related entities. New product offerings appear in Products & Services. Please send Market Moves news to: Zack Phillips, [zphillips@businessinsurance.com](mailto:zphillips@businessinsurance.com). P&S items should be sent to Colleen McCarthy at [cmccarthy@businessinsurance.com](mailto:cmccarthy@businessinsurance.com)

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# International NEWS

## Investments, cat losses hit results at Swiss Re

By JUDY GREENWALD

**ZURICH, Switzerland**—Investment losses and catastrophes hit Swiss Reinsurance Co.'s nine-month results, dropping the reinsurer's net income for the period by 77.9% to



Zurich-based reinsurer Swiss Re last week reported a \$260 million loss for the third quarter of 2008 compared with a \$1.26 billion profit in the same period last year.

884 million Swiss francs (\$756.8 million).

For the third quarter, the Zurich-based reinsurer reported a 304 million Swiss franc (\$260.3 million) loss vs. a 1.47 billion Swiss franc

(\$1.26 billion) profit, for the year-earlier period.

Nine-month results reflected 6.1 billion Swiss francs (\$5.22 billion) in net realized investment losses for the period vs. 833 million Swiss francs (\$713.1 million) in net realized gains for the comparable period a year ago.

The reinsurer also reported that its total net claims for hurricanes Gustav and Ike were \$365 million.

"Swiss Re's strong capital base together with our high level of diversification and the longstanding expertise of our people place us in a competitive position to benefit from the current market developments," Swiss Re Chief Executive Officer Jacques Aigrain said in a statement.

Following Swiss Re's announcement, New York-based Moody's Investors Service affirmed its Aa2 financial-strength ratings and its debt ratings, but revised its outlook on Swiss Re to negative from stable. Moody's said the change reflects the potential for available capital to erode, among other factors.

New York-based Standard & Poor's Corp. affirmed Swiss Re's AA-insurer financial strength and long-term counterparty credit ratings and said the third-quarter loss was within expectations.

## Crisis won't halt startups: Panel

*Future catastrophe still expected to trigger wave of new companies*

By SIMON CHALLIS

**LONDON**—A wave of new capital is likely to flood into the insurance industry after the next mega-catastrophe, despite the credit crisis. And much of that new cash may go into London as well as Bermuda, a panel of senior insurance experts said.

Industry analysts have raised doubts about whether there would be a string of formations following a big disaster, as happened after the Sept. 11, 2001, terrorist attacks and Hurricane Katrina in 2005.

New firms, they say, are less likely to be created because the credit crunch has soaked up much of the cash that hedge funds and private investors had to invest in new ventures. And the creation of sidecars and other similar forms of capital are a more efficient way to deal with a market crisis than the formation of new stand-alone businesses, the analysts argue.

But Bronek Masojada, chief executive officer of Hamilton, Bermuda-based Hiscox Ltd., told an A.M. Best Co. Inc. conference last month in London that these innovative forms of capital were unlikely to prevent startups following a major disaster.

"I do not think (sidecars and special-purpose vehicles) are going to do away with new startups, because that implies that existing players have a monopoly on innovation and new ideas. Sadly, I do not believe that we do."

Bermuda companies that were originally set up to take advantage of market turbulence stepped back from taking more risk following the devastating hurricanes Katrina, Rita and Wilma in 2005, even though prices jumped, said Mr. Masojada. New firms had to be established to

fill that coverage vacuum, he said.

"I would predict that many of my (Bermuda) competitors would be more cautious after a big bang, even though they were started up to take advantage of a big bang," said Mr. Masojada.

Though many hedge funds are nursing wounds caused by the credit crisis, private equity funds have plenty of cash still to invest in startups if a major catastrophe triggers a new capacity crunch, said Ian Clark, a partner at London-based Deloitte & Touche L.L.P.

"Your average private equity fund is sitting there awash with capital that it can't deploy at the moment. The only difference is that before, they were working with a heavy gearing business model. The large private equity houses are now writing large equity checks, but they are still investing," he said.

State-backed investment vehicles were unlikely to invest directly in new insurers, said Mr. Clark. "The kind of assets they buy simply are not represented by startup operations."

Unlike in previous market upheavals, when London lost out to offshore centers, Lloyd's of London may see as much new cash pumped into it as Bermuda, said Mr. Clark.

"In Bermuda, you can still get capital away and establish vehicles quickly. But you also have a structure within Lloyd's now where the regulator recognizes that in extreme scenarios, new capital will want to come into the industry quickly, and it has tightened up its processes and timescales appropriately," he said.

Several vehicles have been established in Lloyd's to exploit the next capacity crunch, said Mr. Clark. "They have been set up with mini-

mal capital, and as and when the industry needs capital, you are likely to see it flood into those vehicles," said Mr. Clark.

Lloyd's is also a more attractive place now for U.S. investors to invest their cash since Berkshire Hathaway Inc.'s acquisition of Equitas Ltd. last year ended uncertainty over Lloyd's exposure to long-tail liabilities, while changes to the Central Fund have reassured overseas investors, said Mr. Clark.

But further mergers and acquisitions of Lloyd's firms by Bermuda rivals are likely, as the latter look to reduce their reliance on property catastrophe business.

"I think we will start to see some M&A coming in that direction," said Chris Hitchings, an insurance analyst for Keefe, Bruyette & Woods Inc. in London.

Last year, Bermuda startups Ariel Reinsurance Co. Ltd. and Validus Re Ltd. made expensive acquisitions of Lloyd's firms Atrium Underwriting P.L.C. and Talbot Underwriting Ltd., respectively. They paid roughly double the Lloyd's firms' book values when the U.S. dollar was particularly weak against the pound. But the situation has changed since then, making Bermuda firms look anew at investment in Lloyd's.

Now Bermuda and U.K. insurers "are trading at below book value. If you apply the 30% to 40% premium (that is usual in acquiring public companies) then you are looking at multiples of 1.25, maybe 1.4 times book value. Meanwhile, the dollar has fallen back to around \$1.70 to the pound, from around \$2.00. For those companies that still do not have diversification, then London is a very attractive place to be," Mr. Clark said.

## Europe considers future of insurers' antitrust exemption

*Commission asks for more evidence that block exemption from competition laws for industry is still necessary*

By SARAH VEYSEY

**LONDON**—The European Commission is still investigating whether the insurance industry's block exemption to certain European competition laws should be maintained when it expires in 2010, but the Commission needs to see compelling evidence for why the exemption should be kept in place, a representative said.

At a seminar in London last week, Eithne McCarthy, a member of the Competition Directorate of the Commission and project leader for the consultation process on the insurance block exemption regulation, said the Commission had received 57 replies to its consultation, far fewer than it had expected.

The block exemption regulation for insurance is due to expire in March 2010. By March 2009, the

Commission must present to the European Parliament and Council a report on whether or not the exemption is still justified.

The block exemption makes it easier for insurers to cooperate on joint calculations and tables, coinurance and reinsurance and pools, and standard policy conditions and models, among other things.

Consultation on the block exemption ended in July. But Ms.

McCarthy said the Commission had been "relatively disappointed" by responses to the consultation, many of which did not address the questions asked by the Commission.

She said that the Commission still would be open to evidence from interested parties.

For the exemption to be retained, she noted, the Commission must be convinced that there are specific

characteristics of the insurance industry and that an exemption is needed. It will not be sufficient simply for industry participants to state that cooperation is beneficial.

If the exemption is not continued, the onus may fall on insurance companies to show that cooperation is justified under Article 81(3) of the European Treaty.

The seminar was organized by Lawrence Graham L.L.P.

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## Premiums: Financing interest rates rising

CONTINUED FROM PAGE 4

and October increased 10% over the same period in 2007, though he pointed out there was no pronounced increase in October. He said about half of the 10% increase could be attributed to tightening credit markets.

"As capital becomes scarce, you tend to weigh the cost of capital more closely. So if the internal cost to create capital is running at 8% and you can finance premiums at 5% or 6%," premium financing might be a viable option, he said.

And if the insurance market hardens, premium financing may increase, said Mr. Henderson and others. Standard lines insurers frequently offer financing options, whereas policyholders make more use of premium financing firms when they use the excess and surplus lines markets, they say.

Some premium finance companies raise funds by borrowing from

financial institutions or securitizing their receivables and selling them, while others are owned by larger financial institutions.

For example, Imperial A.I. Credit Cos. in Jersey City, N.J., is owned by New York-based American International Group Inc. Several other financiers are owned by banks: Premium Assignment Corp. is owned by Atlanta-based SunTrust Banks Inc.; AFCO Credit Corp. is owned by Winston-Salem, N.C.-based BB&T Corp; and Denver-based Flat Iron Capital is owned by Wells Fargo & Co. of San Francisco. Officials for all three firms say their parent banks are stable and report no increased difficulty in funding their operations.

Part of this may be because many view premium financing as a consistently profitable business, absent some kind of mismanagement. Typically, agreements allow the finance company to cancel the insurance coverage if the policyholder

defaults on payment, with the unearned premiums serving as collateral.

"If banks are tightening up their offerings in other loan categories, it's very possible that they could be counting on premium finance to make up for volume lost in other areas," said Kathy Walker-Eich, a vp at the advisory and investment banking firm Hales & Co. and who previously worked in premium finance. "It's one of the best lending niches," she said.

Observers say premium finance companies are using current market conditions to aggressively court new business.

"If you're a company and you've got to pay \$40,000 to \$50,000 for your insurance program, even if you haven't borrowed before, now might be a good time to consider it, because you'd rather keep cash inside the business as long as you can," said Paul Zarookian, president of Imperial A.I. Credit.

## IRMI: AIG woes raise contractor worries

CONTINUED FROM PAGE 4

pany MGM Mirage, is evaluating insurance options and consulting with all those involved in a construction project—owner, contractor, agent or broker—before making a change in coverage or carrier.

"People should not rush to change something in a panic when in a panic," Ms. Gentile said during the panel discussion. "You need to monitor your situation, but not panic. It's important to look at insurance as a partnership, and a good partnership gets all the information and looks at all the options before making a decision."

The financial problems surrounding AIG aside, the construction industry also is weathering more conservative pricing from insurers and tightening credit lines, especially those that require posting letters of credit as collateral. This combined with a sharp slowdown of residential and commercial projects have left construction companies with a dwindling project lineup.

"We're seeing some evolutionary changes in construction company risks and what organizations are considering," Mr. Trethewey said. "There are not many new projects

coming within the next nine to eleven months and there is a shrinking backlog of projects, so risk managers will be dealing with the issue of maintaining stability" to keep construction companies operating.

From an insurance standpoint, there is still plenty of capacity, said Terry Gray, Minneapolis-based global head of construction for Zurich Financial Services Inc. Some firming of the insurance and reinsurance markets is already taking place, he said.

"As we look into 2009 and 2010, I think we will see a firming in pricing and terms and conditions, both in property/casualty and surety" insurance, Mr. Gray said. "But there is still adequate capacity and we still have the major players in the market."

According to the Insurance Information Institute, 2004 was the first time in 30 years that insurers made an underwriting profit, when the combined ratio was 98.3%. Following strong underwriting years in 2006 and 2007, the combined ratio for 2008, however, is forecast to be near 102%.

Karen Reutter, Minneapolis-based senior vp with Aon's Construction

Services Group, said during a presentation that there will be more disciplined underwriting and pricing in the near future as insurers generally cannot offset underwriting losses with investment gains.

"There will likely be better data management by underwriters than in years past," Ms. Reutter said. "In today's environment, underwriters can better manage profitability and lines of coverage with more discipline, which impacts the negotiation of coverages."

Broadening and restricting coverage ebbs and flows with the soft vs. hard market cycle, Ms. Reutter said. Policy endorsements, such as an expanded definition of what constitutes an occurrence and gap coverage, that were offered during a soft market for commercial general liability cover for contractors likely will not be offered by insurers in a harder market, she said. Some restrictions on policy endorsements are based on the size of the business, the breadth of coverage requested and retention levels.

The 29th annual IRMI Construction Risk Conference will be held Nov. 2-5, 2009, in Washington. For more information, visit [www.irmi.com/go/crc](http://www.irmi.com/go/crc).

## HealthSouth: Defense exclusion upheld

CONTINUED FROM PAGE 4

bility for the 2002 derivative action, citing policy exclusions for fraud and prior litigation, among other things.

In subsequent coverage litigation, though, a federal court in Birmingham denied Twin City's motion for summary judgment, finding that the exclusions did not apply.

Last week, the 11th Circuit panel overturned that ruling, concluding that the prior litigation exclusion bars coverage.

The provision excludes coverage for claims "based upon, arising from or in any way related to" any other claim that existed on or before a "prior litigation date" specified in the policy. The specified date was Dec. 17, 1997.

The claims in the derivative lawsuit are related to those in the 1997 whistle-blower action, and the whistle-blower suit was filed two days before the policy's prior litigation date, the appeals panel noted. That means the prior litigation exclusion bars coverage for the

derivative suit, the panel found.

The appeals court rejected Capstone's contention that the 1997 suit did not technically "exist" as of the prior litigation date because Capstone had not yet been served with it.

HealthSouth agreed in 2006 to pay \$445 million to settle federal securities and derivative claims that followed revelations of a multibillion-dollar accounting fraud at the company. HealthSouth's D&O insurers from 1998 to 2003 covered \$230 million of the settlement.

## UP Comings & Goings CLOSE

### GRANT BELL

**NEW JOB TITLE:** Senior vp, William Gallagher Associates in Atlanta

**PREVIOUS POSITION:** Vp

**GOALS FOR NEW POSITION:** My specific goal is to grow the Atlanta regional office of WGA.

**CHALLENGES FACING INDUSTRY:** The overall economy has had a direct impact on the insurance and risk management industry. A certain amount of recent press that insurance companies have faced, most notably AIG, has also had a direct impact on our business overall and our day-to-day operations. We've had to react to client concerns.

**FIRST EXPERIENCE IN THE INDUSTRY JOB MARKET:** My first job was handling tens of thousands certificates of insurance and other documents of insurance for large risk management clients. I was a paper pusher. I was a clerk for a well-known firm. What really motivated me to stay in the industry was I worked very closely with producers and I had a real appetite to do what they did, which was relationship-driven, complicated, hands-on business. I



could tell which ones were the good ones and which ones weren't. I could tell how much success they had in their lives and families and I wanted that.

**ROLE MODELS:** My dad. He was a decorated, high-ranking military officer who always saw something through to the finish, always strived for excellence, never did anything halfway and never sacrificed his integrity.

**ADVICE:** Develop a level of expertise in some part of the business you're passionate about. Don't try to be all things to all people. The way you differentiate yourself in this business is by all the personal traits you bring to the table, such as passion and urgency about what you do....Provide a level of service to your customers that you are 100% convinced nobody else can offer.

**OUTSIDE THE INDUSTRY, A DREAM JOB:** I dream of making enough money to support my family from the (contemporary Christian) music I write and produce. My band, Good Sam, put out an album last month called "Living the Message."

## Comings & Goings

# ONLINE

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### POSTING THIS WEEK

#### INSURERS

- Ironshore Inc.
- Zurich North America Commercial

#### BROKERS

- Willis Group Holdings Ltd.

#### OTHER PROVIDERS

- Buck Consultants L.L.C.
- ALS Consulting Inc.

#### ASSOCIATIONS

- The American Society of Pension Professionals & Actuaries

# PCI: Many predict steady or slightly higher reinsurance rates

CONTINUED FROM PAGE 3

"A few weeks ago, I would have said there will be a further round of rate reductions," said Hugo Crawley, chairman of London-based BMS Intermediaries Ltd. But with the full effects of the financial crisis still not known and "until we get a better handle on the market, it is hard to say what will happen," he said. "I think (rate increases are) going to be spotty."

However, other industry officials say the market will harden more broadly.

"It is our sense that the marketplace has come closer to our thinking in terms of where the market is going" and there is a hardening market environment, said Anthony Kuczinski, CEO of Princeton, N.J.-based Munich Reinsurance America Inc.

There could be an increase of "perhaps a couple of points" in property catastrophe rates and probably property in general, said Thomas Upton, a managing director with Standard & Poor's Corp. in New York.

"I expect to see an increase in property renewals for sure," with some expecting property catastrophe rates to rise about 10%, said John Andre, group vp at Oldwick, N.J.-based A.M. Best Co. Inc. "I think (casualty) depends on the class of business."

Lines such as directors and officers liability and errors and omissions "will see increases," Mr. Andre said. With some lines rising and others saying flat, "if you add them together, there might be a slight increase" in commercial rates.

"It would appear that rate decreases will be few and far between," said John N. Gilbert Jr., chairman of reinsurance intermediary Holborn Corp. in New York. "It'll be up slightly, maybe 3% to 5% in some instances, nothing monumental."

William H. Eyre Jr., managing director and CEO of Philadelphia-based Towers Perrin Reinsurance, said property rates will be flat or rise moderately depending on experience and aggregate exposure.

"Casualty lacks that same clarity, but we see pricing being anywhere from a very slight decrease to expir-

ing, to small increases at January," he said.

There is general agreement that peak-zone catastrophe rates will increase.

"I think peak zone cat has to go up," said John Berger, CEO of Hamilton, Bermuda-based Harbor Point Ltd., pointing to hurricanes and less retrocessional capacity among other factors. "The rest of the world, I'm not sure," he said.

Others see largely stable prices.

Howard Mills, chief advisor of the global insurance industry practice at Deloitte & Touche USA L.L.P. in New York, sees "pretty much stability and consistency at this point,

unless some intervening event changes pricing."

Paul Karon, CEO of Benfield Group Ltd.'s U.S. division in Minneapolis, doubts the market will harden at Jan. 1 renewals. "I understand the intellectual arguments of why the market should harden," including losses from hurricanes and in equity markets, "but I don't see the conviction of underwriters (and) the fear I've seen before previous market turns. I would call it more wishful thinking than deliberate action," he said.

Arthur Dougherty, senior vp of Pearl River, N.Y.-based U.S. Re Corp., said he expects stable pricing outside

specialty areas and peak cat zones, although "there's still two months left to the year."

Mr. Marcell said he expects higher rates for property clients that have experienced losses. "On the casualty side of the ledger, the rates pretty much follow the insurance rates, and we haven't seen any evidence of significant increases on casualty yet."

Some observers see rates hardening later in the year.

"I see kind of flat renewals at 1/1 with some hardening at the end of the first quarter" in anticipation of June 1 renewals, Mr. Karon said.

Rates "are going to be flat at year

end, but going up during the course of the year, so if you've got renewal" in April through July 2009, "you're going to see price increases," Mr. Bolland said.

Pricing in both property and casualty lines "will start to move up during the course of 2009," said Mr. Eyre.

Both the insurance and reinsurance sectors are expected to report combined ratios above 100%, Mr. Eyre said. Through October, the property/casualty sector lost 15%, or close to \$100 billion of its capital base, "which is really, when you think about it, pretty scary, actually," he said.



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## Bermuda market worries about future tax treatment

By COLLEEN MCCARTHY

Offshore insurance and reinsurance companies, including those based in Bermuda and the Cayman Islands, are likely to be targeted by a Barack Obama White House and a Democratic Congress, observers say.

While some issues drop off after an election, the debate over tax advantages for offshore insurers and reinsurers isn't going away, said Robert Hartwig, president of the Insurance Information Institute in New York.

Other observers say the issue of non-U.S.-based insurance companies won't be a priority for the administration and any proposals to address the U.S. tax treatment of such companies like will take time to play out.

"I think it's too soon to tell," said Scott Nebergall, tax partner and co-chair of the tax department with Edwards Angell Palmer & Dodge L.L.P. in Providence, R.I. "I would be surprised if anybody from the Obama camp was considering this right now."

The incoming president talked about cracking down on so-called "tax haven abuse" while on the campaign trail and co-sponsored the Stop Tax Havens Abuse Act, which was introduced in the Senate last year. Meanwhile, the debate gained momentum in September with the introduction of reinsurance tax legislation in the House of Representatives by Rep. Richard Neal, D-Mass.

The bill, H.R. 6969, alleges that favorable tax treatment for foreign insurance groups, such as those based in Bermuda and the Cayman Islands, makes it difficult for U.S. insurers to compete. The measure calls for altering the tax code to disallow deductions for a portion of reinsurance premiums ceded to affiliated insurance companies not subject to U.S. taxation, said Alan Levin, a Hartford, Conn.-based insurance lawyer and partner with Edwards Angell.

Rep. Neal and the bill's supporters contend that under the current structure, offshore insurance companies with U.S. affiliates avoid paying taxes on billions of dollars on U.S. underwriting and investment income by reinsuring the business with a foreign affiliate in a low-tax or no-tax jurisdiction, Mr. Levin said.

The Neal bill is backed by the Coalition for Domestic Insurance Industry, a group of 14 U.S.-based insurers that includes Greenwich, Conn.-based W.R. Berkley Corp., Warren, N.J.-based Chubb Corp. and St. Paul, Minn.-based Travelers Cos.

Coalition spokesman William

R. Berkley, chairman and chief executive officer of W.R. Berkley Corp., said in a statement that the current tax structure has put considerable pressure on domestic companies to relocate to offshore jurisdictions and failure to begin "leveling the playing field" could encourage others to locate offshore and deprive the U.S. Treasury of billions in tax revenues.

But opponents maintain that offshore companies play an important role in filling U.S. insurance market needs. Bermuda companies, they contend, "provide needed capital and flexibility to the market" said Don Kramer, chairman and CEO of Bermuda-based Ariel Reinsurance Co. Ltd.

But pressure on an Obama White House to shore up the economy and find ways to fund the programs he has promoted, means the new administration may target this tax revenue as a way to "plug holes in the deficit," Mr. Levin said.

The Assn. of Bermuda Insurers and Reinsurers also opposes the Neal measure and says the island has made a strong case in demonstrating its value to the United States. By the end of 2008, Bermuda-based insurers will have paid roughly \$30 billion in catastrophe loss claims to U.S. consumers in the last seven years, ABI President Brad Kading said in an e-mail.

Mr. Kading said Bermuda companies provide 40% of U.S. property catastrophe reinsurance and about 20% of general U.S. reinsurance. In addition, Bermuda companies provide 66% of the private property catastrophe reinsurance to insurers providing coverage to Florida homeowners, he said.

Opponents argue that legislation such as H.R. 6969 will likely increase the cost of insurance to consumers.

In addition, enactment of H.R. 6969 "may lead to capacity shortfalls in certain classes of business," Mr. Kading said.

Opposition to the measure also comes from New York-based Risk and Insurance Management Society Inc., which says the legislation would result in negative implications for the global reinsurance marketplace.

Bermuda-based companies, meanwhile, are preparing for any potential changes in the tax structure, said Mark Murray, senior financial analyst with A.M. Best Co. Inc. in Oldwick, N.J. "It's definitely on their radar screens. Companies are thinking about it, discussing it, but I wouldn't say there is an overwhelming concern just yet."

40%

OF U.S. PROPERTY catastrophe reinsurance is provided by Bermuda companies

## Health care: SCHIP tops Obama agenda

CONTINUED FROM PAGE 1

health insurance plan in 1993 only to see it fall apart for a variety of reasons, not the least of which was the Clintons' failure to bring in key lawmakers in shaping the package to build bipartisan support for it.

"(Sen. Obama) understands that health care reform can't be engineered top-down. It has to be an inclusive process in which the administration works with legislators and major stakeholders," said Paul Dennett, senior vp-health care reform with the American Benefits Council in Washington.

With his Washington experience, "he understands that give and take is necessary," Mr. McArdle said.

Still, while Sen. Obama's Capitol Hill experience may put him in a better position to achieve passage of major health care reform than the last Democrat in the Oval Office, passage of Massachusetts-type legislation is not a sure thing.

Near-term odds of such a measure winning passage are low for a variety of reasons.

"While there is strong interest, there is not a consensus. And as to an employer mandate, the great majority of employers will fight that tooth and nail," said James Gelfand, senior health policy manager at the U.S. Chamber of Commerce in Washington.

Aside from the current lack of consensus on the direction health care reform legislation should go, a major expansion of coverage would run up against a glaring fiscal reality: the lack of money, due to mas-

sive budget deficits and the costly—perhaps as much as \$1 trillion—federal bailout of financial institutions.

"Whether the resources are there to pay for an expansion is an open question," Mr. McArdle said.

"There isn't a lot of new money available," added the Chamber's Mr. Gelfand.

In fact, Sen. Obama may initially concentrate his health care initiatives on relatively noncontroversial programs, such as one that provides health insurance coverage to millions of children in lower-income families.

In the past year, Congress twice passed legislation to expand the State Children's Health Insurance Program, which President Bush vetoed, saying the legislation went too far and expanded coverage more than was necessary.

In the end, legislators simply extended the current SCHIP program through March 31, 2009, and observers say Sen. Obama's first health initiative will be working with Congress to win passage of an expanded SCHIP program.

"Phase one will be reauthorization and expansion of SCHIP," Mr. Gelfand said.

"At first, there may be some nibbling around the edges with legislators looking at SCHIP and the 'doughnut hole,'" said Blaine Bos, a worldwide partner in the Minneapolis office of Mercer L.L.C. "Doughnut hole" is the common term used to describe a coverage gap in the Medicare Part D prescription drug benefit.

On another issue, though, business groups may have to play

defense once Sen. Obama takes the oath of office. That concerns the tax-favored status of health savings accounts linked to high-deductible health insurance plans, a centerpiece of the Bush administration's health care reform initiatives that went into effect in 2004.

Many congressional Democrats, especially those in the House of Representatives, are no fans of HSAs, which have been embraced by employers as a way to lower their cost of providing health insurance coverage. In the just-concluded congressional session, the House approved a bill that effectively would have increased the costs associated with administering HSAs.

But the Senate never considered that measure, in part because of President Bush's veto threat.

While Sen. Obama said little about HSAs during the campaign, at minimum he lacks President Bush's enthusiasm for the arrangements. And that could embolden congressional opponents to press for legislation to curb, if not kill, the appeal of HSAs.

"It could be a death by a thousand cuts," said the Chamber's Mr. Gelfand.

Others, though, doubt that legislators—fearful of a public backlash—would want to add HSAs to their health care reform agenda.

"I don't see them going away. While I don't see anything being done to make them more attractive, I also don't see how Congress would want to antagonize" the 6 million people enrolled in health plans linked to HSAs, said Steve Raetzman, a senior health care consultant with Watson Wyatt Worldwide in Arlington, Va.



## Business groups seek pension funding relief

By JERRY GEISEL

WASHINGTON—One of the first pension issues Barack Obama may have to deal with as president could be deciding whether to support proposals backed by business groups to temporarily ease pension plan funding rules.

Fifteen business groups, including the American Benefits Council, the ERISA Industry Committee and the U.S. Chamber of Commerce, banded together last month to lobby for legislation that would, among other things, stretch out the much tougher funding rules set by the Pension Protection Act in 2006.

The equity markets plunge that began in September and accelerated last month triggered the business group push. Pension plans, which typically invest 60% to 65% of assets in equities, have seen their funding levels fall dramatically and, with that, the need to make massive contributions to shore up the plans as required by federal law.

"I know of a company whose required contribution is going

from zero to \$100 million," said Lynn Dudley, senior vp-policy for the American Benefits Council in Washington.

The magnitude of the required contributions could force companies to lay off employees or, in extreme cases, even lead to bankruptcy, Ms. Dudley said.

Business groups now are trying to convince legislators to attach funding relief provisions to a stimulus package that Congress could consider in the coming weeks, assuming there is a lame-duck session.

If that fails or there is no lame-duck session, business groups say they will lobby for funding relief when the new Congress convenes in January. Some members believe—given the broad support behind the lobbying effort—that the Obama administration will give its approval.

"The coalition is quite broad and that augurs well" for administration support, said Kathryn Ricard, vp-retirement policy at the ERISA Industry Committee in Washington.

Until the last month, Presi-

dent-elect Obama said little about his retirement plan initiatives, which include expanding an existing program in which lower-income individuals who contribute to a 401(k) plan or to an individual retirement account are given tax credits.

In fact, Sen. Obama hasn't given retirement plan issues the same priority as health care reform, said Mark Warshawsky, director of retirement research at Watson Wyatt Worldwide in Arlington, Va.

But responding to the economic crisis, Sen. Obama in October proposed allowing 401(k) plan participants to withdraw up to 15% of their account balance, up to \$10,000, for any reason in 2008 and 2009 and not have to pay the 10% penalty tax that now applies.

Some say with some fine-tuning—such as limiting the penalty tax exemption to those who could prove financial hardship—such a plan could win passage.

"Legislators are very sympathetic to those in financial plight," Ms. Dudley said.

# News In Brief

CONTINUED FROM PAGE 1

Maiden Re is expected to generate \$1 billion in annual written premium, the company said. As part of the deal, two U.S.-domiciled GMACI units—GMAC Direct Insurance Co. and Integon Specialty Insurance Co.—will be transferred to Maiden Holdings. During the transition, GMAC Insurance Co. will continue to write reinsurance, which Maiden will reinsure on a 100% basis. After the deal is complete, Maiden will write all business directly, the company said.

## Hartford plans to cut 500 jobs

The Hartford Financial Services Group Inc., which reported a \$2.63 billion third-quarter loss last week, said it plans to cut 500 jobs, or about 1.6% of its workforce, in an effort to cut costs. A spokeswoman said the job cuts, as well as other expense reductions, are intended to cut \$250 million in expenses.

## PBGC premiums to rise slightly

The base premium that employers with defined benefit plans pay the Pension Benefit Guaranty Corp. will increase to \$34 per plan participant next year from \$33 this year. Separately, the PBGC announced an increase in the maximum annual benefit it will guarantee to participants who retire at age 65 and are in underfunded plans that the agency takes over. The cap in 2009 will be \$54,000, up from \$51,700 for plans that terminated in 2008.

# Risk: Future of several issues debated

CONTINUED FROM PAGE 1

“RIMS has a tradition of working in a bipartisan manner, so we look forward to continuing work on the legislative and regulatory issues important to our members,” said Janice Ochenkowski, president of the New York-based Risk & Insurance Management Society Inc. These include streamlining surplus lines regulation and access; allowing insurers to seek federal rather than state regulation and allowing risk retention groups to offer their members property as well as liability coverages and expanding the scope of the federal terrorism insurance backstop to deal better with CNBR risks. Bills to achieve each of these goals were introduced in the last Congress, but none won final approval except a measure extending a more modest version of terrorism insurance backstop.

“Looking ahead to the 111th Congress, the Senate Banking and House Financial Services committees will comprehensively address the financial regulatory system, and RIMS believes that the insurance regulatory structure should be a part of this package,” said Ms. Ochenkowski, who is also managing director at Jones Lang LaSalle Inc. in Chicago. RIMS supports the creation of an optional federal charter for insurers.

“My viewpoint is, we’ll take the wait-and-see approach as to how aggressive the predominantly Democratic leadership is willing to push the agenda for insurance and risk management,” said Lance Ewing, vp-risk management Harrah’s Entertainment Inc. in Cordova, Tenn. He said if history is any indicator, the new majority will tilt toward “more government.”

But the shape of greater federal involvement remains unclear. One of the chief Senate backers of an optional federal charter for insurers—Sen. John Sununu, R-N.H.—

was defeated last week, as was Rep. Tim Mahoney, D-Fla., who was a chief House sponsor of legislation that would give the federal government a greater role in catastrophe insurance.

Nonetheless, debate over the regulation of financial services will be “probably first order of business of the 111th Congress,” said Ben McKay, senior vp in the Property Casualty Insurers Assn. of America’s Washington office, during a post-election press conference. Insurance regulatory reform will be part of that issue he said, as the new Congress attempts over exercise greater control over business in general.

Congress will examine the management of systemic risk, “particularly in complex financial services holding companies,” Joel Wood, senior vp at the Washington-based Council of Insurance Agents & Brokers, said in an analysis sent to members. “In multiple conversations with key congressional staffers and members of Congress in recent weeks, it is my belief that this battle will not be about the optional federal charter. The word ‘optional’ might not survive the upcoming battle.”

PCI’s Mr. McKay predicted that the increased Democratic majorities—which grew by at least 18 seats in the House and six in the Senate—will renew efforts to require the National Flood Insurance Program to offer windstorm as well as flood coverage, an expansion opposed by most insurers. President-elect Obama supports a greater federal role in guaranteeing property insurance in catastrophe-prone areas.

The larger Democratic edge could also mean that Congress will reshape the federal government’s terrorism insurance backstop, which was extended for seven years in 2007. At the time, House Financial Services Committee Chairman Barney Frank, D-Mass., vowed to

attempt to expand the program to include group life insurance and broader CNBR coverage after the Senate approved a much narrower program.

“We think that the increased Democratic majorities in the House and Senate bode well for future attempts to pass this (expansion) legislation,” said Ms. Ochenkowski.

“Most policyholders feel that they are in a good spot with the current” law, said Brad Wood, senior vp-risk management for Bethesda, Md.-based Marriott International. He noted that many risk managers would like the program to cover NCBR risks more comprehensively, though “there doesn’t seem to be clamoring among policyholders at this time.”

Mr. Wood expressed concern on how universal health coverage, an aim of many in Congress, would mesh with the workers compensation system.

“We should begin to think about health care reform which could include universal...coverage that may impact our current state based workers compensation health care delivery system,” he said. He noted that decades of experience and reform have led to managed care arrangements and utilization review in state-based workers comp programs.

An official with an insurer trade said he didn’t see health care reform proposals having any immediate effect on the workers comp system.

“We watch what’s being proposed in Congress and reviewed what was proposed by the presidential candidates and neither one of them appeared to impact our coverages,” said Keith Bateman, vp-workers compensation for PCI in Des Plaines, Ill. “The Obama proposal builds on existing governmental programs plus the employer-based health care system. Given economic circumstances, its likely that whatever is done will be more incremental than a massive restructuring of the health care system.”

Tort reform may also come back into play as a result of the elections.

“I also think the new government is going to look at a different slant on tort reform than what we had under the Republican leadership,” Mr. Ewing said. He said Supreme Court appointments approved by the new Congress could change the court’s direction on matters regarding employment.

The president of the Washington-based American Tort Reform Assn. also predicted some potential hard times ahead for civil justice reform. The issue of federal pre-emption of state laws “is one that will be front and center in the next Congress,” said Sherman Joyce.

He also expressed concern about the role Vice President-elect Joe Biden will play in tort issues. As a member of the Senate Judiciary Committee, the Delaware Democrat consistently opposed tort reform.

Mr. Joyce said President-elect Obama supported the Class Action Fairness Act, “which is to his credit.” But given Sen. Biden’s record, reformers are concerned about “how he may look to be an advocate for the plaintiffs bar,” he said.



Rights, charges that Proposition 8 is invalid because the initiative process was improperly used in an attempt to undo the state constitution’s equal-protection clause.

That ACLU suit was accompanied by a similar petition also filed on Wednesday in the state’s highest court by city attorneys from Los Angeles and San Francisco and Santa Clara County’s counsel. In that suit, the three attorneys assert that the California Constitution’s equal protection provisions do not allow “a bare majority of voters” to use the amendment process to divest politically disfavored groups of their constitutional rights. The suit further states that such a sweeping redefinition of equal protection would require a constitutional revision, which can be accomplished only by a constitutional convention and ratifi-



For information on other ballot initiatives related to benefits and risk management issues, as well as the outcomes of several insurance regulator races, visit the interactive state map (above) at [www.businessinsurance.com/election2008](http://www.businessinsurance.com/election2008).

# Suit filed to overturn Calif. gay marriage ban

By JOANNE WOJCIK

**SAN FRANCISCO**—Even before all of Tuesday’s votes had been tallied, opponents of a California ballot measure that would end same-sex marriage filed a lawsuit asking the state Supreme Court to invalidate the proposed constitutional amendment.

Proposition 8, an amendment to California’s state constitution recognizing marriage as a union between a man and a woman, passed with 52.8% of the vote. The initiative overrides a ruling by the California Supreme Court in May that permitted gay and lesbian couples to marry. Since then, approximately 18,000 same-sex couples have legally wed in California.

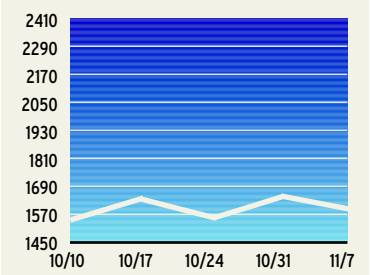
The suit, filed Wednesday by the American Civil Liberties Union, Lambda Legal and the National Center for Lesbian

## Stock Index

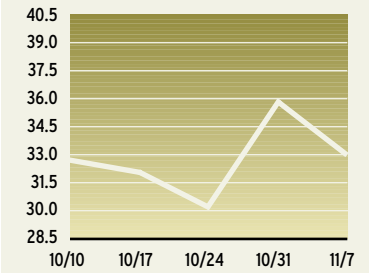
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at [www.IndustryFocus.com](http://www.IndustryFocus.com).

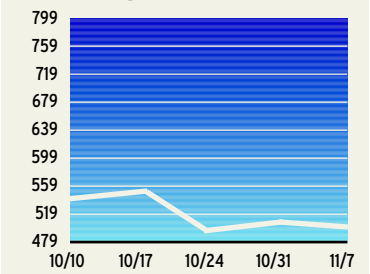
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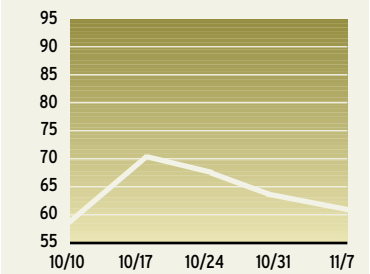
### BI BROKERS INDEX



### BI INSURER/REINSURERS INDEX



### BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

Indicator	Value	Change
BI STOCK INDEX	1592.65	0.68%
DOW JONES	8943.81	-4.09%
S&P 500	930.99	-3.90%

### LARGEST GAINS

Hartford Financial Services	43.31%
AEGON N.V.	36.01%
Humana Inc.	20.24%
ING Groep N.V.	18.90%
Gainsco Inc.	18.69%

### LARGEST LOSSES

Ambac Financial Group	-37.69%
MBIA Inc.	-18.82%
Citigroup Inc.	-13.41%
XL Capital Ltd.	-13.20%
Health Net Inc.	-13.12%

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



GIORDANO INTERNATIONAL LTD.

## Nightmare on Pine St. T-shirts available

Hong Kong-based retailer Giordano International Ltd. is exploiting the frightening condition of American International Group Inc. and other U.S. financial firms in a line of Halloween-themed T-shirts.

Giordano, an apparel retailer with about 1,800 shops across 30 countries, occasionally releases sets of themed shirts. For its Halloween series, it combined slightly misspelled company names and spooky imagery.

In the AIG-themed offering, bones form the company's logo, with a pirate's skull replacing the "I."

In another shirt, the normally stalwart Merrill Lynch bull appears sliced into so many blood-dripping steaks above the name "Merirll Lynch." A "Layman Brothers" shirt features two grim reapers.

# Business Insurance END PAGE



## Virtual RIMS meeting on real-world risks

When science fiction giant William Gibson coined the term "cyberspace" back in 1982, it's unlikely he envisioned that realm as a place for risk management meetings.

But the Risk & Insurance Management Society Inc. is about to enter cyberspace in a new way. The New York-based professional society announced it would host its first RiskLive! RIMS Virtual Conference & Expo beginning Wednesday.

The two-day event will occur in a 3-D "metaverse" environment that simulates a real conference, including a virtual exhibit hall. The program includes 14 educational sessions on subjects from loss control to enterprise risk management. Much like in the virtual world in the game Second Life, participants create so-called avatars—animated representations of

themselves—and interact.

As risk managers know so well, the nature of risk itself is constantly changing, so it's only fitting that the forum in which they learn how to better deal with risk should evolve as well. What's learned in a virtual world today could have significant repercussions for the risks that must be confronted in the all-too-real world tomorrow.



Contributing:  
Jeff Casale,  
Roberto  
Ceniceros  
and Mark A.  
Hofmann

REUTERS

## Star pays for watch mix up

Time is money, as the saying goes. For actress Charlize Theron, settling a lawsuit before it went to trial saved her at least one of those.

Ms. Theron last week reportedly settled a suit brought by Swiss watch maker Raymond Weil S.A. While a settlement amount was not disclosed, Weil reportedly had sought as much as \$20 million in damages for breach of contract.

Ms. Theron, who won an Academy Award for her role in the movie "Monster," had inked a \$20 million deal with Weil saying she would wear only its watches in public. She broke that contract when she was photographed wearing another brand of timepiece, the company alleged.

Weil won summary judgment in a federal civil complaint, according to reports, but the Swiss business wanted to take Ms. Theron to trial to get its money back.



## Court strips club of right to sue

The owners of an East Los Angeles strip club cannot sue the makers of the Grand Theft Auto video games for boosting their logo, an appeals court says.

In the game "Grand Theft Auto: San Andreas," players must complete missions as they advance through the dystopian recreations of virtual West Coast cities inhabited by gangs, prostitutes and drug dealers.

To create the games, Rockstar Games Inc., the New York-based maker of GTA, sent its artists to several cities, including Los

Angeles. They snapped photographs of streets and businesses to use as references in designing the games' settings.

Their creations include the fictional city of East Los Santos, a game version of East Los Angeles that includes a strip club called the Pig Pen, court documents show.

In April 2005, the owners of ESS Entertainment 2000 Inc., which operates the Play Pen Gentlemen's Club east of downtown Los Angeles, sued Rockstar. They claimed the fictional Pig Pen infringed on their trademark logo, consisting of the words "the

Play Pen," "Totally Nude," and the silhouette of a nude female dancer.

Although the artists took inspiration from photographs of the Play Pen, they used photographs of other East Los Angeles locations to design other aspects of the Pig Pen, court records state.

A district court agreed with Rockstar that the First Amendment protected it against liability. The 9th U.S. Circuit Court of Appeals last week affirmed, finding that Rockstar's modification of the trademark was protected.

The XL Insurance companies offer a broad range of products that include:

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Environmental Liability  
Equine  
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Jewelers Block  
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