

Business Insurance

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PIRATE ATTACKS MAY DRIVE UP RATES / PAGE 3

AON'S CAMERON FINDLAY SAYS POOL COULD COVER ILLIQUID ASSETS / PAGE 3



SOUTHERN CALIF. WILDFIRES CAUSE UP TO \$800 MILLION IN INSURED LOSSES / PAGE 4

In Brief

AHIP proposes coverage mandate

Health plans support the use of so-called guaranteed-issue policies for all Americans, including those with pre-existing medical conditions, as long as the federal government mandates that everyone purchase coverage. America's Health Insurance Plans previously opposed guaranteed issue, which requires health insurers to cover anyone regardless of health status. The change of stance was announced last week by AHIP.

Illinois passes autism cover bill

Illinois Gov. Rod Blagojevich is expected to sign legislation passed last week requiring insurers to provide up to \$36,000 in coverage annually for the diagnosis and treatment of autism until the patient turns 21.

See **IN BRIEF** page 26

SECTOR BRIEFING CONSTRUCTION

Some see firmer construction company rates in 2009; U.S. surety market focuses on cash flow; European builders face more insurer questions; European prices firming; Q&A with risk manager on the outlook for 2009. **PAGE 11**

Hartford buys bank to tap bailout funds

But uncertainty lingers over success of strategy

By **SALLY ROBERTS**

HARTFORD, Conn.—While observers viewed Hartford Financial Services Group Inc.'s decision earlier this month to purchase a Florida savings bank to qualify for up to \$3.4 billion in federal bailout funds as a good move, some question whether the beleaguered insurer actually will receive the capital infusion.

The Treasury's \$250 billion Capital Purchase Program—part of the government's \$700 billion emergency economic stabilization package passed by Congress and signed by President Bush in October—is intended to bolster banks' balance sheets so they will resume normal lending.

While the \$10 million acquisition of Federal Trust Bank of Sanford, Fla., makes Hartford eligible to participate in the CPP and follows the moves of other life insurers (see story, page 25), some observers ques-

tion whether life insurers will be able to convince the Treasury Department that such an infusion will benefit the public at large.

Others note that because the life insurers are traditionally large buyers of U.S. corporate debt, they are ideal candidates for the federal financing.

In a statement announcing it was applying for CPP funds, Hartford Chairman and Chief Executive Officer Ramani Ayer said the insurer was looking for "maximum flexibility and stability" and that the CPP funds would allow the insurer to "further supplement our existing capital resources."

The purchase of Federal Trust Bank is contingent on Treasury's approval of Hartford's participation in the CPP.

With the recent \$2.5 billion capi-



Hartford is looking for 'maximum flexibility and stability' to 'further supplement our existing capital resources.'

Ramani Ayer, Hartford Financial Services

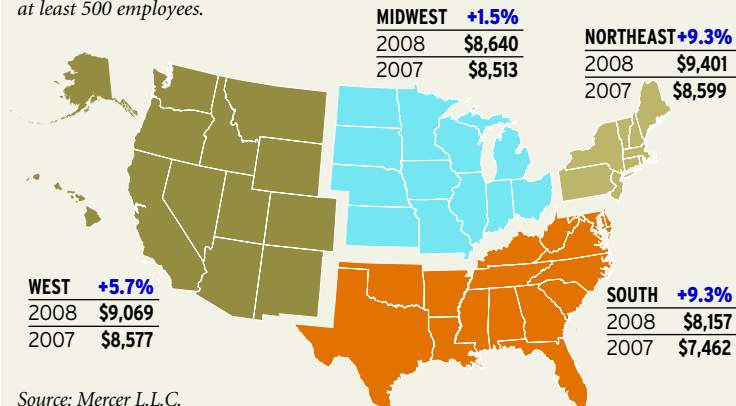
Courts and lawmakers across the United States increasingly are

addressing whether illegal immigrants injured on the job have the right to workers compensation benefits.

By **ROBERTO CENICEROS**

ON THE RISE

How average health care plan costs per employee have increased among employers with at least 500 employees.



Source: Mercer L.L.C.

Health premiums stable as deductibles increase

Surge in CDHPs alters structure of PPO plans

By **JOANNE WOJCIK**

The growing popularity of consumer-driven health plans is influencing the size of deductibles in traditional preferred provider organization plans, a study concludes.

Meanwhile, the rate of increase in group health care plan costs showed little change from the past few years, according to the National Survey of Employer-Sponsored Health Plans, conducted annually by New York-based consultant Mercer L.L.C.

Overall this year, plan costs increased 6.3% to an average of \$8,492 per employee, up from

\$7,983 last year, according to the survey. This marks the fourth consecutive year that health care plan costs increased by slightly more than 6%. From 2005 through 2007, costs rose 6.1% each year.

With regard to deductibles, the median PPO deductible, which reflects both individual and family coverage, doubled to \$1,000 this year from \$500 last year.

The surge is notable because as recently as 2000, only about half of employers imposed a deductible for PPO coverage. When they did impose a deductible, the median

See **HEALTH CARE** page 25

Limits sought on illegal workers' rights to comp

Courts uphold state mandates, but some allow employers to halt wage benefits to injured workers

By **ROBERTO CENICEROS**

Courts and lawmakers across the United States increasingly are

addressing whether illegal immigrants injured on the job have the right to workers compensation benefits.

Most recently, New York's Third Judicial Department of the State Supreme Court's Appellate Division, for instance, ruled Oct. 30 in *Benjamin Amoah vs. Mallah Management L.L.C.*, that a Ghana citizen injured while working as a parking lot attendant is eligible for wage replacement benefits even though he used someone else's drivers license and Social Security card to obtain employment (see story, page 26).

About 7 million illegal immi-

grants work in the United States, or about 5% of the country's working population, according to a 2007 study produced by the Center for Immigration Studies, a nonpartisan think tank in Washington.

The Washington-based National Council of La Raza, a Hispanic civil rights and advocacy organization, in a 2008 fact sheet on undocumented workers also reports that about 5.3% of the U.S.

See **COMP** page 26

NEXT WEEK: Case managers face various challenges when helping illegal immigrants access medical care.

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On the Web



BI VIDEO

Latest IF video report looks at rating agencies

The latest "Property/Casualty Insights" video report, sponsored by IBM, explores the role of risk models and rating agencies. Visit www.IndustryFocus.com/IFvideo.

RISK MANAGER OF THE YEAR Nominations open for 2009 award

Business Insurance is accepting nominations for the 2009 Risk Manager of the Year award, which features a collaboration with the Risk & Insurance Management Society Inc. Anyone involved in risk management for a corporation, financial institution, nonprofit or government entity is eligible. For details and nomination forms, go to www.BusinessInsurance.com/RMOY.

SECTOR BRIEFING

Check out insights on construction risk issues

The online Construction Sector Briefing package includes stories on rates trends, European builders and a Q & A podcast with Paula Gentile, Las Vegas-based senior vp and general counsel of MGM Mirage's risk management division, whose interview is featured on page 20. Listen to the full interview at www.BusinessInsurance.com/Qanda.

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Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Insurance pool needed, CIAB tells Treasury

Self-funded plan would stabilize assets

By MARK A. HOFMANN

WASHINGTON—The Treasury Department should create an insurance pool to help financial institutions deal with illiquid assets, one industry official urged last week.

As he testified on behalf of the Washington-based Council of Insurance Agents & Brokers, D. Cameron Findlay, executive vp and general counsel of Chicago-based Aon Corp., outlined a plan that somewhat resembles the nuclear liability insurance pool created by the Price-Anderson Nuclear Industries Indemnity Act. That pool was set up because the private insurance market was unwilling to take on such liabilities.



'This effort does not address a primary cause of the liquidity problem—the hundreds of billions of dollars of illiquid assets.'

D. Cameron Findlay, Aon

Mr. Findlay noted that the Treasury Department already has given financial institutions hundreds of billions of dollars in capital. "However, this effort does not address a primary cause of the liquidity problem—the hundreds of billions of dollars of illiquid assets that reside on the ledgers of America's financial institutions," he told the House Financial Services Committee last week. Such assets, largely related to the subprime mortgage meltdown, are blamed for the current credit market freeze.

Under the Emergency Economic Stabilization Act, Treasury has the power to establish a program to insure

See **POOL** page 24

PBGC reduces deficit

But slumping economy may sour fiscal 2009

By JERRY GEISEL

WASHINGTON—The lack of big pension plan failures and higher interest rates helped the Pension Benefit Guaranty Corp. narrow its deficit to \$10.7 billion in fiscal 2008.

That is a \$2.4 billion improvement compared with 2007 and is more than \$12.5 billion less than 2004's record \$23.3 billion deficit. 2008 marks the fourth consecutive year the agency's deficit has declined.

But the good news almost certainly is nearing an end. More corporate failures are certain in the slumping economy, which likely would result in the PBGC taking over more underfunded pension plans.

In a statement, PBGC Director Charles E.F. Millard said that while the lower deficit is good news, "it is important to remember that the deficit is a snapshot of where we stood on Sept. 30."

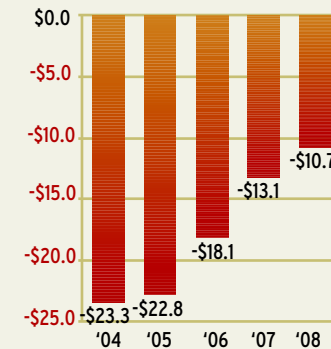
Since the close of the PBGC's fiscal year, the equities market has taken a huge beating, reducing the value of PBGC assets in its single-employer insurance program, which was \$61.6 billion on Sept. 30.

During fiscal 2008, the PBGC terminated 67 plans, down from 110 plans in 2007. Most of those losses were small, with no single plan termination even close to generating \$100 million in losses.

The PBGC's most recent large loss occurred in 2006 when it took over the pension plan of Delta Air Lines

BETTER RESULTS

How the financial condition of the PBGC improved as of Sept. 30, in billions of dollars.



*For single employer insurance program
Source: Pension Benefit Guaranty Corp.

Inc. pilots, which had \$920 million in unfunded guaranteed benefits.

The PBGC is funded in part by premiums paid by employers with defined benefit plans. In fiscal 2008, the agency collected about \$1.48 billion in premium income, down from \$1.6 billion in 2007. It racked up \$4 billion in investment losses in 2008 vs. \$4.7 billion in investment gains in fiscal 2007.

The PBGC paid \$4.3 billion in benefits to participants in terminated plans in 2008, about the same as in the previous year. In all 640,070 people were receiving benefits from the PBGC at the end of fiscal 2008, up from 631,130 in 2007.



95 SHIPS

HAVE BEEN ATTACKED this year in or near the Gulf of Aden, 11 in just one week, according to the International Maritime Bureau.

U.S. NAVY PHOTO BY AVIATION WARFARE SYSTEMS OPERATOR 2ND CLASS WILLIAM S. STEVENS

Pirates hijacked the giant oil tanker MV Sirius Star, which is Saudi-owned and flies the flag of Liberia, hundreds of miles off the coast of Kenya on Nov. 15. The craft was loaded with crude oil worth more than \$100 million.

Pirate attacks could boost Gulf of Aden rates

But impact limited for overall marine market

By ZACK PHILLIPS

A surge in piracy off the coast of Somalia, culminating in pirates' seizure of a Saudi-owned oil tanker last week, will boost insurance rates for shippers traveling through that area but won't have a significant impact on the marine market overall, market observers say.

The recent spate of attacks in the Gulf of Aden also could bolster an effort in the marine market to shift piracy exposures to marine war risk policies from cargo and hull coverages, some observers say.

Saudi Arabian oil tanker MV Sirius Star, holding 2 million barrels of crude oil worth over \$100 million, was 450 nautical miles offshore—more than twice as far out to sea as any previous pirate attack—when Somali pirates seized the vessel. The Sirius, along with a Ukrainian ship carrying battle tanks and arms, and 15 other ships and their crew and cargo remained under pirate control late last week.

More than 20,000 vessels pass through the Gulf of Aden annually, including about 4% of the world's oil supply. And piracy in the area is growing quickly, with 95 ships attacked this year, compared with fewer than 25 raids last year and just five in 2004, according to reports citing data from the International Maritime Bureau's Piracy Reporting Centre. In the past week alone, at least 11 ships have come under attack by pirates.

Piracy traditionally has been a marine peril covered by a cargo insurance policy for the goods being shipped and a hull and machinery policy for the vessel itself. Shipowners with routes in volatile areas also sometimes purchase additional kidnap and ransom coverage. Without K&R insurance, an injury or death to a crew member likely would be covered by the ship owner's protection and indemnity insurance.

Premiums for marine coverages

are expected to rise for shippers traveling through the Gulf of Aden, market observers say.

"With those areas (in the Gulf of Aden), if there is increased risk of loss, then insurers providing cover for that will react to reflect that in their pricing," said Neil Smith, senior manager for underwriting at the Lloyd's Market Assn., which represents the managing agents at Lloyd's of London. He stressed, though, that the size of rate hikes would depend on the individual risks and underwriters.

Derek Rogers, managing director of the K&R team at Hamilton, Bermuda-based Hiscox Ltd., said the firm's rates for the Gulf of Aden doubled in the past six months.

"Should one of our clients have a claim or be exposed to the piracy problem, it would certainly be reflected in their rates," said Richard Decker, president of AIG Global Marine, a New York-based unit of American International Group Inc.

But Messrs. Smith and Decker and others said the recent uptick in pirate attacks would not affect the market beyond shippers traveling through the Gulf of Aden. Losses, they note, often are low, as pirates typically have sought a ransom, later returning vessels and cargo undamaged and crews unharmed.

"The physical loss or damage to property (in piracy cases) is not so significant," Mr. Decker said. "World trade, even though it's slowed over 2008, is trillions of dollars (annually) and the amount of loss (the spate of pirate attacks) represents is very, very small."

In addition, shippers and underwriters have been aware of the piracy problem in the Gulf of Aden and elsewhere since long before the recent high-profile attacks. The Joint War Committee at Lloyd's Market Assn. included Somalia on its list of areas of enhanced risk for war, strikes, terrorism and related

See **PIRATES** page 24



Firefighters battled a firestorm in Yorba Linda, Calif., in mid-November, one of a series of wildfires that scorched more than 42,000 acres.

Losses from wildfires may hit \$800 million

Blazes in Calif. destroy homes, disrupt business

By JEFF CASALE

LOS ANGELES—Wildfires continued to burn across portions of Southern California last week, scorching more than 42,000 acres and causing what could be up to \$800 million in estimated insured losses, according to one catastrophe modeler.

As of Nov. 21, the Tea Fire in Santa Barbara County and the Freeway Fire in Riverside County were 100% contained. Those fires combined burned more than 32,000 acres. The Sayre Fire near San Fernando, Calif., was 98% contained and had burned more than 11,000 acres.

Boston-based catastrophe modeler AIR Worldwide Corp. said last week that total insured losses for the three fires likely will range between \$600 million and \$800 million. They added that the estimate not only includes destruction to primary structures and their contents, but also business interruption expenses for commercial properties.

"While many homes and businesses will have survived, the number of claims is likely to be significantly larger than the number of destroyed structures," Thomas Girnius, senior research scientist at AIR Worldwide, said in a statement.

Oakland, Calif.-based EQECAT Inc. issued a report to its clients Nov. 19, saying that insured losses could exceed \$500 million.

EQECAT estimated that the Tea Fire caused \$300 million in damage, while the other two fires each could cause between \$75 million and \$100 million in damage.

California Insurance Commissioner Steve Poizner declared an insurance emergency last week, which allows insurance companies to use out-of-state adjusters to process fire claims. A similar situation happened in October 2007, when firestorms caused more than \$2 billion in damage.

California Gov. Arnold Schwarzenegger, who requested federal disaster declaration last week, proposed an insurance surcharge of 1.25% this year on all residential and property insurance statewide. The money gained from this surcharge would go toward the state's ability to fight wildfires.

According to the governor's office, based on 10 months of billing, the surcharge would generate approximately \$104.9 million for the state's Insurance Fund.

The fires started Nov. 13 and were aided by high temperatures and 70 mph winds, according to AIR. Late last week, temperatures dropped into the 70s and winds subsided, giving firefighters a chance to contain the fire more quickly.

The fires forced the evacuation of 50,000 homeowners, but no deaths were reported as of Friday.

Bill would ease pension funding rules

Senate measure would offer temporary fix for struggling employers

By JERRY GEISEL

WASHINGTON—Business groups are welcoming bipartisan legislation introduced last week in the Senate that would ease temporarily some of the tough pension plan funding requirements laid down by a 2006 law, but action on the bill may be put off until the next congressional session.

The most significant provision in the measure would soften a requirement under which employers must pump in extra money if they miss federally set funding targets by as little as one percentage point.

Under the Pension Protection Act, employers must contribute enough money to their plans each year so that liabilities are fully funded after seven years. That was a big

change from prior law, in which plans only had to be 90% funded to be considered fully funded, while employers had 30 years to amortize those liabilities. The new 100% funding target is being phased in so that in 2008, employers only have to hit a 92% funding target, while in 2009, the funding target is 94%.

If an employer misses the funding target, that employer's target then increases to 100%. Such a requirement can result in a huge increase in contributions.

The Senate legislation instead would allow employers whose plans fall under the funding target to fund up to the target set for that year rather than fund to the 100% target, a change that could save some companies tens of millions of dollars in contributions over the

next few years.

But business groups say the odds are long for passage this year due to the few remaining days left in the session and the press of other issues.

"There is a glimmer of hope, but only that," said Kathryn Ricard, vp-retirement policy with the ERISA Industry Committee in Washington.

Other provisions in the bill would exempt for one year retirees age 70½ and older from taking so-called minimal distributions from their pension plans, while allowing employers with plans that are less than 60% funded to look at the prior year to determine the plan's funding level. This provision would apply to the requirement that plans that are less than 60% funded stop benefit accruals.

New York orders insurers to provide equal benefits to same-sex couples

Insurance Department: Failure to comply violates discrimination law

By JOANNE WOJCIK

NEW YORK—Employers must offer same-sex couples who are legally married outside of the state of New York the same employee benefits as they extend to opposite-sex married couples, the New York Insurance Department has ordered.

Under a bulletin issued Nov. 21 by Insurance Superintendent Eric Dinallo, any employer that fails to recognize the marriages of same-sex couples legally performed in other jurisdictions will be in violation of state laws prohibiting discrimination.

Insurers also are required to provide the same coverage treatment to same-sex legally married couples as to opposite-sex married couples, Mr. Dinallo's order states. If not, they will be considered in violation of insurance laws prohibiting discrimination.

The bulletin, known as a Circular Letter, was issued in response to an inquiry to the department that was precipitated by a February 2008 decision by a New York state appellate court in *Martinez vs. Monroe Community College*. The court found the plaintiff and her same-sex partner were entitled to recognition in



'Insurance is an essential part of our planning for daily life. We expect insurance companies to provide the same rights and benefits to all legally married couples, regardless of the sex of the spouses.'

Eric Dinallo,
New York Insurance Department

LANDOV

New York state as legally married for purposes of receiving employer-provided benefits.

The plaintiff, Patricia Martinez, had filed the lawsuit after her employer denied her application to obtain health care benefits for her same-sex spouse, whom she had married in Canada. The employer's attempt to appeal the ruling was denied.

"Insurance is an essential part of

our planning for daily life. We expect insurance companies to provide the same rights and benefits to all legally married couples, regardless of the sex of the spouses," Mr. Dinallo said in a statement.

"As Governor David Paterson has explained, this is consistent with the position the State historically has taken with respect to marriages conducted in jurisdictions outside of the State of New York."

BI seeking Risk Manager of the Year nominations by Dec. 1

Business Insurance invites its readers to nominate candidates for the magazine's annual Risk Manager of the Year award and Risk Management Honor Roll by the deadline of Dec. 1.

BI and the Risk & Insurance Management Society Inc. are collaborating on the annual honors.

Anyone involved in risk manage-

ment for a corporation, financial institution, nonprofit organization or government entity can be nominated. Candidates need not practice risk management full time but must be a full-time employee of the organization for which he or she manages risk.

A simplified, two-part process for nominating candidates has been

implemented for the awards.

Part I of the process requires a summary that is not more than 600 words in length of a candidate's most recent accomplishments and factors that make him or her worthy of the award.

An independent panel of former award winners and risk management professionals will screen the

Part I nominations.

If selected as a finalist, the more detailed Part II Risk Manager of the Year nomination form will be required and reviewed by a panel of independent judges, including executives from leading industry companies, the president of RIMS as well as the immediate past winners of the awards.

Winners will be profiled in the April 20, 2009, issue of *Business Insurance*, and the 2009 Risk Manager of the Year will be the 32nd person so honored.

To download nomination forms as well as instructions for completing the forms, please visit www.BusinessInsurance.com/RMOY.

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Commentary

Be calm in financially uncertain times

These are unsettling times, whether you're an investor or an insurance policyholder.

Financial markets hate uncertainty, but unfortunately, uncertainty reigns right now. Stock markets are volatile because of continuing uncertainty.

Insurance exists to provide certainty where little to none exists. So when questions about insurance companies' financial stability add to the uncertainty, as is happening now, it's natural for people to get nervous.

I'm concerned that the uncertainty is turning fear into panic, globally. People have long talked about the risk of a flu pandemic, but we are closer to having a financial pandemic.

It's vitally important for governments and the private sector to take control of the crisis. The U.S. Treasury Department has acted quickly to help bail out the financial services industry, and especially American International Group Inc., to preserve the nation's financial infrastructure. AIG's bailout was necessary, as it's essentially a keystone company that touches and supports so many others in the global financial system. Not surprisingly, other troubled industries also are seeking help.

Desperate times call for desperate measures, and I'm afraid many legislative leaders are not seeing the forest for the trees. Anyone who saw the political theater in which two of AIG's former chief executives were grilled about the company's meltdown and why it was still hosting expensive events knows that Congress and big business are divided by a chasm of misunderstanding.

Detroit's Big Three automakers took their turn last week at a congressional hearing where they were roundly criticized for traveling to Washington in corporate jets.

Mischaracterization of business operations is not unique to legislators. Other observers who should know better are not helping, either.

Take ACE Ltd.'s need to respond last week to comments by an analyst about ACE's variable annuity reinsurance exposure. After a Citigroup Inc. analyst downgraded ACE's shares to "hold" from "buy" and raised its risk rating to "high" from "medium," citing an ACE filing showing a \$6.5 billion "net amount at risk" measurement, the company issued a statement.

Chairman and Chief Executive Officer Evan G. Greenberg said: "Using the NAR as a measure of risk is like deciding that the world is literally ending tomorrow. It is essentially measuring



REGIS COCCIA

Editor Regis Coccia's commentary appears periodically. He can be reached at: rcoccia@businessinsurance.com

insurance risk solely by adding together all of the limits of all policies issued and then assuming that every one must be paid at once. It is, frankly, completely incompatible with the nature of the insurance business and with reality as we know it." By the way, ACE stopped writing reinsurance on variable annuity contracts in 2007.

Also last week, Reuters report-

I'm afraid many legislative leaders are not seeing the forest for the trees.

ed that some investors are skittish about Berkshire Hathaway Inc., one of the very few companies that still carries a triple-A credit rating. Berkshire Hathaway is important not only for the insurance businesses that it owns but also because it's a market of last resort for big risks.

What's scaring Berkshire Hathaway investors? Some are worried that the company will be unable to pay its debts, reflected in the higher cost of buying credit default swaps. One hedge fund manager who has been buying Berkshire Hathaway shares suggested that those investors are viewing Berkshire Hathaway as having the kind of derivative exposure that AIG had, and "coming to the insane conclusion that Berkshire faces similar risks."

We need to avoid jumping to conclusions, but at same time, we need to make leaps of faith. The current financial mess will sort itself out eventually, with sound government policy and sensible actions by consumers and investors. Seeing risks clearly, with open eyes not clouded by wild assumptions, is the way forward.

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2008248

Business Insurance OPINIONS

Pension funding relief must be passed in '09

WE ARE NOT SURPRISED that Congress declined to move a bipartisan pension funding relief bill last week.

Because of the slumping economy and the plummeting stock market, employers need temporary relief from federal rules requiring them to pump tens of billions of dollars into their now-underfunded pension plans. At the same time, the Pension Benefit Guaranty Corp. needs to be protected from exposure to potentially huge losses. Finding a middle ground between these needs is not an easy task.

A lame-duck session probably is not the time for lawmakers to hammer out an agreement on legislation to provide funding relief. Lawmakers are in Washington for only a few days and have many other issues to address.

As we have urged before, funding relief should be one of the top priorities of the next session of Congress and the incoming Obama administration.

Common sense dictates the passage of funding relief legislation.

Employers are not lobbying for a return to the days when loophole-ridden laws meant that financially weak employers could promise big benefits, not fund those promises, and then file for bankruptcy reorganization and walk away from those promises—leaving the PBGC to pay the tab.

What business groups are lobbying for is temporary relief from the tougher funding rules mandated by a 2006 law that are kicking in now. That relief may well be the difference between employers staying in business and retaining their plans, and employers collapsing under the weight of contribution requirements and taking their pension plans down with them.

Common sense dictates funding relief legislation must be passed and we hope a majority of the members of the new Congress, and the Obama administration, see it that way as well.

Insurers seeking bailout should argue their case

SOME INSURERS' STRATEGY of buying banks to access federal bailout funds smacks of a backdoor way of tapping public funds intended for other purposes.

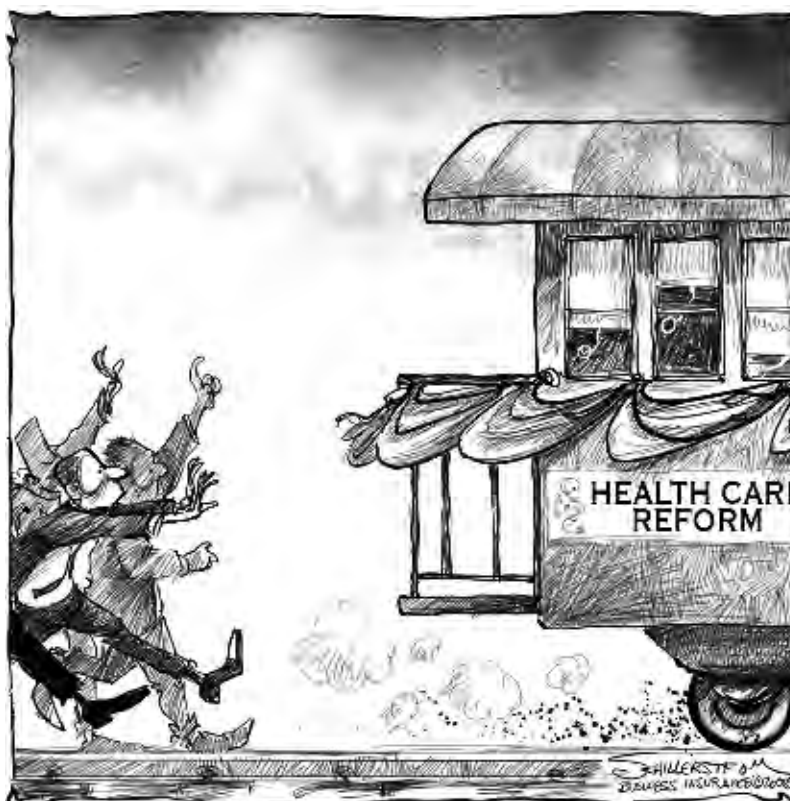
As we report on page 1, multiline insurer Hartford Financial Services Group Inc. and life insurers Genworth Financial Inc. and Lincoln Financial Group all have bought savings and loans to enable them to convert to thrift holding companies and apply for bailout money set aside to free up credit markets.

Several observers have welcomed the move as a means of securing the future of institutions that play an important role in the credit system as major investors in corporate bonds.

That may well be the case, but, if so, it is a case that needs to be made upfront in the same way that other industries, such as U.S. automakers, are having to plead for government funds.

And if the insurance industry does not need more access to government money, then selected insurers should not be allowed to circumvent the intent of the government rescue plan by creating a banking façade. Doing so leads to unnecessary interference in the market economy for insurance that has served insurers and insurance buyers well.

As more and more companies clamor for federal funds to help them survive the financial crisis, it seems clear that lawmakers, regulators and other federal officials will have to make some tough decisions about who will be allowed to access the funds. Such decisions are best made when all the available facts are placed before them.



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SECTOR BRIEFING

CONSTRUCTION

FINDING STRUCTURE IN THE DOWNTURN

AP PHOTOS

Some see firmer rates in the coming year

Increased market competition limiting price increases, but insurer margins also thinning

By **NICK WHITFIELD**

The credit crunch-induced building slowdown has not yet had a major effect on the U.S. construction insurance market, but industry experts warn that the end of softer rates could be at hand and contractors should be prepared.

Several years of manageable losses, combined with premiums earned during the construction boom at the start of the decade, allowed insurers to build their reserves and cut rates, said Michael Feigin, global construction practice leader for Marsh USA Inc. in New York.

"The market is still soft and there's not a lot of pressure right now for rates to go up," Mr. Feigin said.

Some experts, however, do not expect the

soft market to last as the economic slowdown squeezes insurers' finances and the construction slowdown lowers premium volume.

"The margins are thinner after years of decline and insurers' returns on investments are falling," said Don Pickens, executive vp and chief underwriting officer with Liberty Mutual Group in Boston.

"The third-quarter cat losses from Hurricanes Ike and Gustav are hitting a bit harder than people thought, and then you have the impact of three or four years of rate erosion. Carriers are going to be looking to stabilize pricing and then push it up because we need to generate a fairly good return on equity," he said.

"Rates have been going down for three or four years, but now we're going to see rates flattening for good, financially strong con-

tractors, and they'll probably go up for the others," Mr. Pickens said.

"We expect, within the first quarter of 2009, to see a number of insurance carriers show worse results than they have in the last few years, just because they can no longer rely on investment returns to back up their portfolio," said Paul Jansen, chairman of the London-based broker Jansen & Hastings Intermediaries Ltd. "As far as 2008 is concerned, the number of competitors has led to some softening, with markets trying to fight for the business that is out there."

Some experts say competition might take the edge off of any market hardening in the short-term, particularly as premium revenue thins.

See **RATES** next page

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Rates: Underwriters scrutinize builders' potential risks more closely

CONTINUED FROM PREVIOUS PAGE

"Carriers who were in the project wrap-up business before got out, but are now getting back in," Mr. Feigin said. "Parts of the business expect bigger losses because of hurricanes and other losses, but the good news for the construction industry is that there are more players."

Despite the economic pressures, they're "not enough to overcome the competition in the marketplace, and not enough to overcome simple supply-side economics," Mr. Feigin said.

Some, however, expect construc-

tion-related insurance pricing to firm or rise.

"I believe we will see a shift to a hardening market, but it's too early to tell right now when that's going to come to fruition," said Paul Primavera, Washington-based senior vp-claims with Lockton Construction Services Group, a unit of Lockton Cos. L.L.C.

Diminishing insurance margins likely will lead to tighter underwriting guidelines, said Paul Becker, Nashville, Tenn.-based president of the Willis HRH construction practice.

"We do expect underwriters to get much more diligent about how

'The good news for the construction industry is that there are more players.'

Michael Feigin, Marsh USA Inc.

requirements are met and take a closer look at (potential risks posed by) subcontractors," Mr. Becker said. "That might cause insurance costs to grow."

The breadth of coverage avail-

able, however, shows few signs of narrowing in the near future, some say.

"Currently, carriers want to keep or stabilize the premium base they have, so that tells me that those terms and conditions will either stabilize or broaden vs. retract," said Lockton's Mr. Primavera. "We still see a lot of long-tail coverages that were probably placed three years ago, and those are going to have an impact as well. Carriers will take a look at those and make a decision."

Rates also likely will be softer for contractors who have an established history with their insurers,

said Sal Perrucci, executive vp and managing director of Aon Construction Services Group in Chicago. "What the underwriters are looking to do is establish long-term relationships," Mr. Perrucci said. "The cost of new business is pretty significant, and they would like to lock in an arrangement on a multi-year basis."

The increasingly competitive environment for builders also may bring new risks, which could lead to increased losses.

"Some overhead cost cuts are getting close to the bone, like risk management and safety management," Mr. Becker said. "In the effort to get overhead down, we're afraid that some contractors might be tempted to cut into those necessary things."

There also may be pressure, as construction projects become scarce and bidding among contractors gets more competitive, for contractors to take on projects they normally would not.

"You could see some overreaching—we've seen some of that from residential builders going to general building," said Liberty Mutual's Mr. Pickens. "Some can make that transition well, but from an underwriting perspective, we'll want to make sure the contractor has the experience to do the job they're taking."

Experts warn that, while business pressures might tempt contractors to take jobs with thin profit margins or outside their normal areas of expertise, caution is in order.

"Clearly, we've seen contractors getting into marketplaces that they haven't done before," Mr. Primavera said. "That may include contractors going into new territories or partnering with new subs, and that needs a lot of preparation to be successful."

"Clearly, that's something that you have to be looking at from a risk management perspective," Mr. Primavera said. "You have to be careful about making sure you have adequate coverage. There may be contractors who were not doing residential work, for example, that may have residential exclusions in their policies."

Another potential source of instability in the construction market this year was the government bailout of American International Group Inc., which covers many of the biggest construction firms. Brokers say that, while clients have looked for reinsurance and made sure they had alternatives to AIG, there has been almost no movement of business away from AIG.

"We're retaining about 95% of our renewals since everything broke," said Daniel Conway, president of AIG Construction Risk Management in New York.

"I would describe that currently as a stabilized situation," Mr. Primavera, of Lockton, said. "We've looked at them from a financial standpoint, and we offer our individual clients options."

"They are currently trying to remain in the market, and that's an interesting development," Mr. Primavera said. "We haven't seen any exodus or loss of premium—that's actually stabilizing the market."

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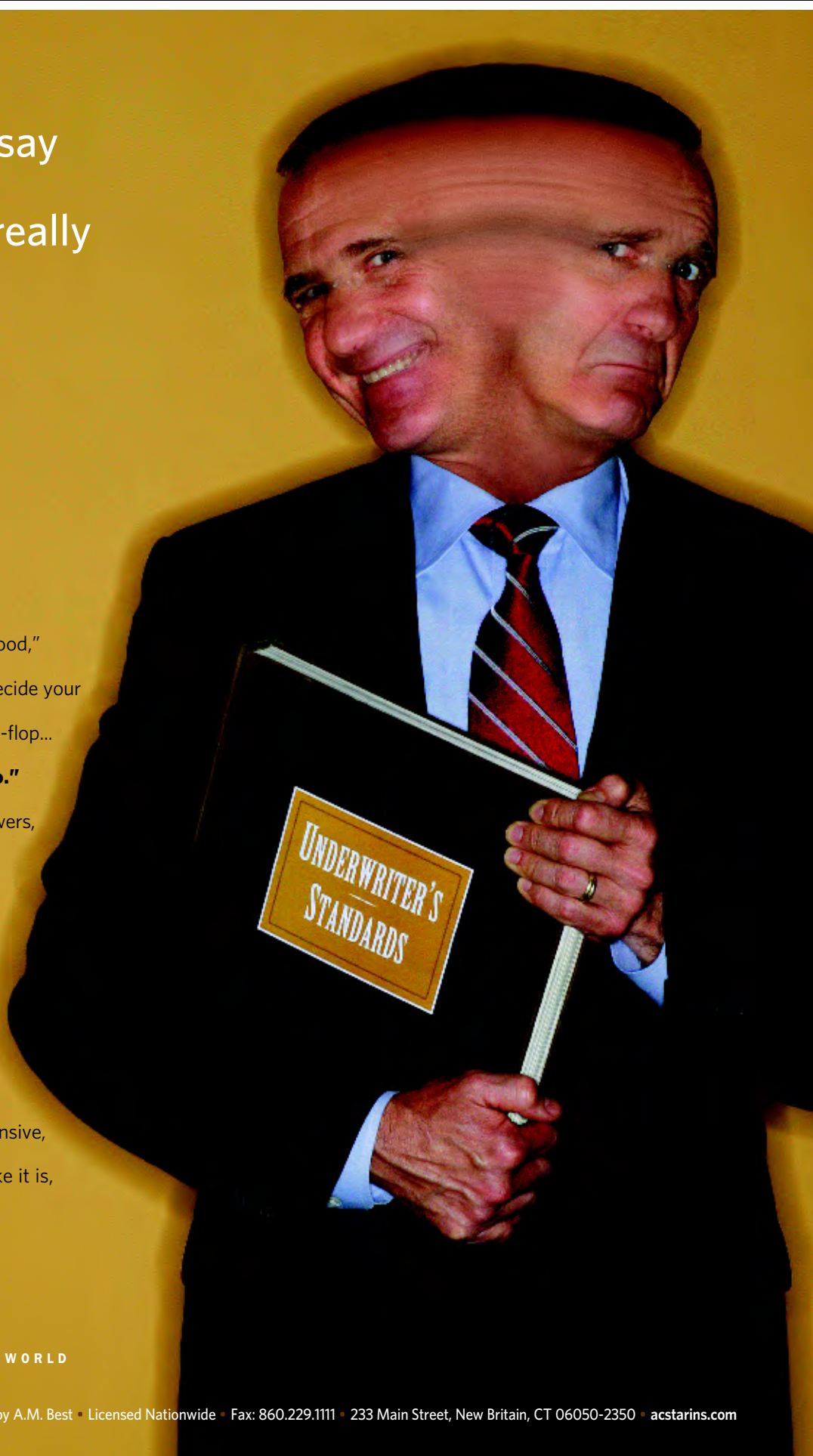
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Surety bond underwriters scrutinizing contractors' cash flow

Construction slowdown already affecting insurer loss ratios and some anticipate underwriting losses into 2010

By NICK WHITFIELD

The credit crisis, which has already hit the U.S. construction market as building projects have slowed or stopped, also is affecting the construction surety bond market, experts say.

While brokers and insurers say they expect rates to remain stable in the short-term, many underwriters are paying extra attention to contractors' financial health.

"Companies have been exercising responsible underwriting, pricing

has been stable and, as a result of that, capacity has been good," said Roland Richter, vp-marketing for Liberty Mutual Surety in Plymouth Meeting, Pa.

However, the overall drop in U.S. construction also caused the related insurance premiums to drop during the second quarter of this year vs. the same time last year, according to the Washington-based Surety & Fidelity Assn. of America.

"That is the first time we have had a quarterly drop in three or four years," said Mr. Richter.

Increased competition for scarce jobs diminishes contractors' profit margins, making balance sheet management crucial to their financial health, Mr. Richter said.

"From a contractor standpoint, it's going to have an impact on the balance sheets," said Michael Feigin, global construction practice leader for Marsh USA in New York. "They generally do 60 days of work before they get paid. They're out 60 days of payrolls, rentals and everything else, so cash flow is critical."

The building slowdown also

increases surety bond issuers' loss ratios as premium revenue falls. In a May report on construction loss severity, the SFAA said an examination of 1,600 surety claims in the United States and Puerto Rico produced surprises in that the average size of loss varied by bond limit, contractor type, region and concentration of limits.

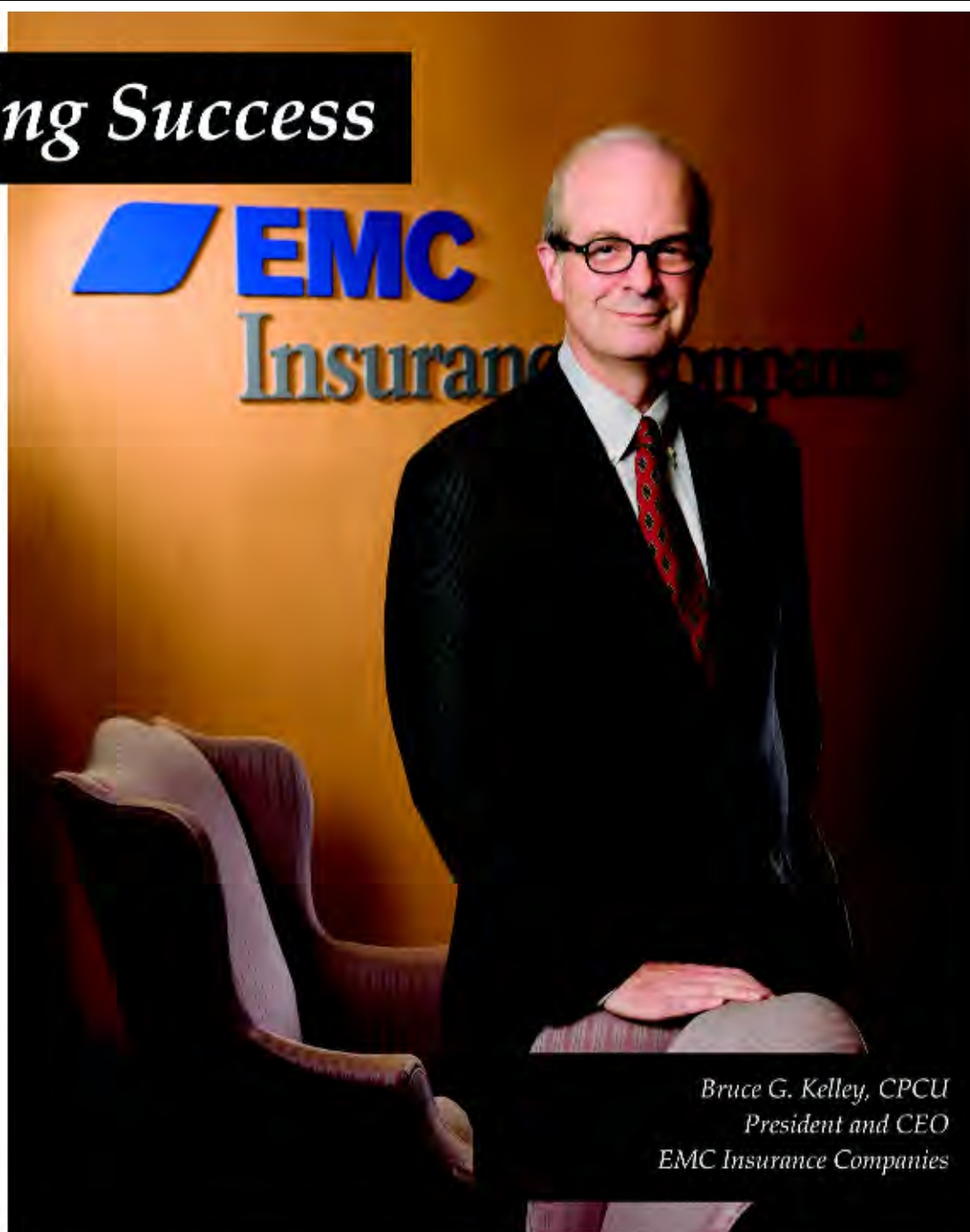
"The last few years have been profitable for construction," said James Maloney, deputy chairman-construction for Willis HRH's construction practice in New York. "But

with more bidders, despite the fact that underwriters have had disciplined practices, we expect to see some underwriting losses for 2009 through 2010, with more projects being canceled."

While competition among surety bond issuers should be sufficient to keep premiums stable in the short-term, underwriters will exercise additional discipline as loss ratios rise.

"The biggest things they are going to look at are the balance sheet and safety," said Mr. Feigin.

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WHAT'S A SURETY BOND?

A surety bond is a contract guaranteeing performance of a specific obligation. It is a three-party agreement under which one party, the surety company, answers to a second party, the owner, creditor or "obligee," for a third party's debts, default or nonperformance. Contractors often are required to purchase surety bonds if they are working on public projects. The surety company becomes responsible for carrying out the work or paying for the loss up to the bond "penalty" if the contractor fails to perform.

Source: Insurance Information Institute

"We're cautious," said Dan Conway, president of American International Group Inc.'s construction risk management practice in New York. "We've maintained our position in the surety market as a large-capacity carrier, but we're looking at backlogs and work in progress just to make sure there are no surprises."

Experts advise basic sound business practices can help contractors navigate a market with more stringent underwriting.

"When work is limited, it's so tempting for contractors to take on jobs where the profit margin is lower," Mr. Maloney said. "They need to make sure funding is available, make sure the contract isn't onerous. If the client has a history of being unreasonable, avoid them."

"Contractors have to eliminate unnecessary expenses, validate the funding on every project and make sure of their banking agreements," Mr. Maloney said. "Like any business, the sureties are advising the contractors to watch overhead, watch receivables exposure. Cash is king."

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AP PHOTOS
A worker eyes a construction project last December in Pamplona, Spain, where a drop in building has major construction companies concerned about reasonably priced coverage and underwriters worried about shareholder litigation.

Experts warn of tough economic times for construction companies

Some insurance firms are being more cautious in providing coverage

By **RODRIGO AMARAL**

Construction companies in Spain and the United Kingdom already have been hit hard by the credit crunch and resulting economic downturn. And companies in the worst-hit sectors and regions should brace themselves for tougher times, experts say.

Insurers now are more cautious of construction companies when it

comes to certain types of coverage and, in some instances, have shied away from offering cover—such as credit and directors and officers insurance—for construction firms because of their perceived higher risk.

But the reverse also is true, and some construction companies are growing warier of their insurers, according to the risk manager of one of the top European firms in

the industry.

“We have enhanced our vigilance over the quality and safety of insurance companies,” said Henri Lebosse, the head of risks and insurance at St.-Quentin-en-Yveline, France-based Bouygues Construction. “Although rates are still essential when we make our choice of insurer, we tend to prefer providers with good solvency.”

Companies cannot risk choosing an insurer with good prices but low solvency, he said. “In the case of a loss, you get little or no compensation, or are paid with very long delays,” Mr. Lebosse said.

Bouygues is a leading player in infrastructure projects in Europe. Experts say infrastructure projects such as roadways and utilities are unlikely to feel much distress from the economic downturn. Other types of construction are faring much worse, and that could impact

‘We are on a road that is less stressful than in 2001 and 2002, even though we may face difficulties in some programs.’

Henri Lebosse, Bouygues Construction

builders’ insurance programs.

“The construction market is very diverse in the types of work that are undertaken,” said Paul Knowles, managing director of construction and real estate at London-based Jardine Lloyd Thompson Group Ltd. “There are certain sectors that have been hit very hard by the current crisis, like house building and commercial development. But others like infrastructure still have lots of activity,” he said.

“We believe infrastructure projects will continue very strongly,” agreed Michael Spencer, head of construction at London-based Zurich Global Corporate U.K. “We think the government will carry on spending money on infrastructure like roads, railways, water, energy and alternative energy.”

However, there are signs that companies in the segments most affected by the downturn will struggle to renew at least some insurance programs in the next round of renewals on Jan. 1.

The risk of construction company clients struggling to pay for the work they have contracted already looks to have made some insurers think twice in some cases.

“There have been comments that leading credit insurers have closed themselves to companies specialized in house building or commercial development,” JLT’s Mr. Knowles said.

In Spain, where the residential property market has plunged

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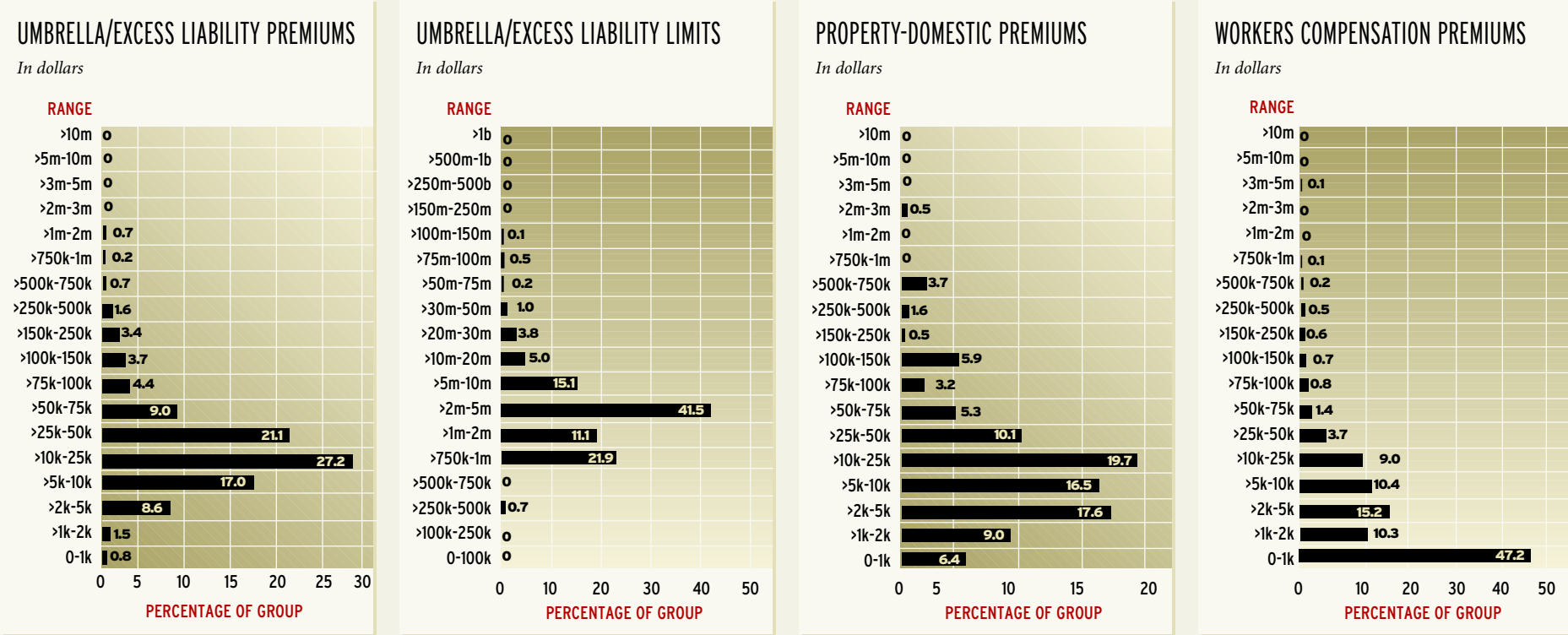
CONSTRUCTION INDUSTRY

The year-to-date value of construction starts through October, excluding residential contracts, totaled \$242.7 billion, a 2.5% drop vs. the first 10 months of last year, according to Reed Construction Data. Information from Advisen Ltd. below offers details on how firms in the construction sector purchase protection, by revenue size.

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Value of United States construction starts with percent change from previous year			
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\$69,611M	\$4,236M	\$93,592M	\$169,113M
-9.9%	-48.7%	6.5%	-3.6%

Source: Reed Construction Data

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New players may keep prices stable

Costs could be held at bay come January's round of renewals

By **RODRIGO AMARAL**

Despite the problems faced by European construction companies in the past year, new players in the construction insurance market should keep prices stable at the next round of renewals in January, experts say.

But experts also say things are set to change during 2009, and dramatic rate reductions of the past few years have come to an end.

Softer pricing for construction company insurance looks to continue in January, said Paul Knowles, managing director of construction and real estate at London-based Jardine Lloyd Thompson Group Ltd.

In spite of the deteriorating economic conditions, there is no need for risk managers to expect higher prices and tougher conditions when they renegotiate their deals.

"Buyers should still be able to benefit from good covers and competitive prices," Mr. Knowles said.

"In recent years, premium volumes have risen and premium rates have declined in line with the general soft market conditions," Mr. Knowles said. The key for this development, he stressed, has been the entrance of new players in the construction insurance market. They have been attracted by the market's good performance in recent years and have increased capacity levels.

Competition also has been spurred by improved risk management practices by construction companies, which has turned the industry into a more attractive proposition than other economic sectors, he said.

Demand for construction insurance has increased in line with the growth of construction activity in Europe since 2000, said Tom Wylie, a director in the construction team at London-based Aon Ltd., the brokerage arm of Chicago-based Aon Corp.

"Contractual structures for pro-

jects like public and private partnerships, PPPs, have become more sophisticated, using more risk-structured contracts and therefore augmenting the use of insurance. The amounts of construction premiums have increased very considerably in that period. And in the past 12, 18 months, we have seen a lot of new insurers enter the construction environment," Mr. Wylie said.

"Although we have probably seen a bottoming out of the rates, I do not think there will be a major swing in terms of hardening the market," Mr. Knowles said.

Aon's Mr. Wylie said, while he

'We still are in a buyer's market, but the situation could change in 2009.'

Tom Wylie, Aon Ltd.

believes there is some degree of uncertainty in the market, buyers should be able to find good rates in January.

"In terms of the next renewals, it is difficult at the moment to say what will happen. The indications are that there won't be a strong hardening of rates. Perhaps we won't see rates to fall further, and maybe some insurers and reinsurers will try to increase rates," Mr. Wylie said.

"It is still possible to go out and get very good deals," Mr. Wylie said. "We still are in a buyer's market, but the situation should change in 2009."

Coverage terms and conditions are not likely to prove a problem in the short-term, he said, although they are not particularly favorable for buyers. "The soft market has not

been so for the wording of contracts. Although rates have gone down in the last few years, the wording of contracts has remained under control," Mr. Wylie said.

For their part, insurers and reinsurers have warned that the downward trend of construction insurance premiums is over. They also say the credit crunch is forcing underwriters to demand more from clients as they strive for stronger technical underwriting results.

But Mr. Wylie warned that certain reinsurers are trying to "talk the market up," he said. "The cost of capital will increase and it will be difficult for any new entrants to the market to obtain capital. Reinsurers in general will try to sell their capital at a higher price."

Construction underwriters also argue that there is little room to reduce premiums. Prices have fallen in recent years, despite the fact that the size and complexity of construction projects have grown, they say.

Francisco Triviño, the Madrid-based property underwriting manager for corporate accounts at XL Insurance, a unit of XL Capital Ltd., anticipates a "slight increase" for construction insurance premiums in 2009.

Michael Spencer, the head of construction at London-based Zurich Global Corporate U.K., a subsidiary of Zurich Financial Services Group, is more cautious, but sees prices starting to flatten in the short-term.

"Premiums have been slowing down, slowly but steadily, since 2003," Mr. Spencer said. "We do not expect any more reductions in premiums in the future. This is because the financial crisis not only affected construction, but also financial services. So we would not be surprised to see a reduction in capacity levels as well. And, with less capacity, prices will stabilize," he said.

Europe : Some prepare for harder market

CONTINUED FROM PAGE 16

dramatically after several years of boom, leading construction companies have expressed concern that they will not find the best deals for coverage such as directors and officers liability, as underwriters fear a sharp increase in litigation due to losses suffered by shareholders.

But not every construction company is likely to get the cold shoulder from insurers even when it comes to D&O coverage, particularly given an increase in insurers writing construction coverage (see story, page 20).

"There are no insurers who refuse to deal with us," Bouygues Construction's Mr. Lebosse said.

However, even he is preparing himself for a harder market.

"I believe in the short-term we will see an increase of prices, but they should stabilize in the medium-term,

as the insurance demand in construction will decrease" he said.

Mr. Lebosse said he believes buyers will face the most difficulty in segments where there are fewest players in the market, such as the 10-year structural civil responsibility insurance that is mandatory in France.

In other property lines where competition is fierce, price hikes should be minimal or prices may be flat, a situation Mr. Lebosse said is very logical.

Lessons learned

He also said construction companies learned their lessons from the hard market that came after the Sept. 11, 2001, terrorist attacks in the United States and are more prepared to face the downturn.

"Today we are on a road that is less stressful than in 2001 and 2002, even though we may face difficul-

ties in some programs," Mr. Lebosse said.

One concern of insurers is that the sector will not continue the innovation that has helped it manage the growing complexity of risks that construction companies face.

"It is certainly true that the construction insurance market has risen to the challenge of ever-bigger, more complex projects like the major road projects in Europe and the Olympic Games here in London," Mr. Knowles said.

"The reason they have been able to do that is that construction companies have taken a much more sophisticated approach to risk and risk management. I do not think we will lose that level of innovation, because construction underwriters can see that the way construction companies build a house or a tunnel has been constantly developed," Mr. Knowles said.

Questions Answers

Paula Gentile, Las Vegas-based senior vp and general counsel of MGM Mirage's risk management division, is responsible for insurance procurement, risk management, liability claims, claims-related litigation, workers compensation and safety for all properties of the gaming, resort and entertainment company. She arranges insurance and risk management programs for all company construction projects. She recently spoke with Business Insurance reporter Jeff Casale about the con-



struction insurance market and what risk managers can expect in the next year.

What will future bring?

Q: What are your thoughts on the current insurance market as it relates to the construction industry?

Well the insurance market, it's a little hard to tell right now. I think that some of the carriers are scrambling to build up their budgets for the upcoming years because a lot of underwriters have been counting on upcoming projects with some of their recurring clients, if you will. I think there's going to be a lot of pressure on the buyer's side to soften rates, and on the insurance company side there's going to be a lot of pressure to solidify or increase rates to make up for the loss in budget items in the upcoming year.

Q: Do you see a hard market in 2009?

I looked into my crystal ball yesterday and I just can't figure it out. I know that there are a lot of people who are forecasting a hard market. I know that there are at least a couple of people who are working very diligently at trying to create a hard market. I think insurance is just like anything else. Demand and supply are everything, and so long as you have a lot of capacity and very few buyers, I think it's going to be tough for a hard market to be created. On the other hand, I think—quite obviously—if the capacity starts to shrink or if we start experiencing a real loss in quality insurance (companies) as a result of some of the financial issues that have plagued some of our best insurers in the past six months or so, we could see a hard market because good capacity might shrink, quality capacity might shrink.

Q: For construction risk managers, what are some of their biggest challenges in this economy?

I think one of the problems we're going to face and the biggest risk is potential defaults from construction companies who may not be able to pay their own bills because of issues on some projects that they're working on. I think that's going to be our No. 1 problem. I'm a little bit worried about the market for performance bonds in the short-term, and I think that risk managers are going to see some change...potentially in their sub-

contractors that could be as a result of those financial issues. (This) could cause some real confusion later on in cases where they see claims arising from work that no longer has continuity where they have a couple or more different subcontractors picking up to complete someone else's work.

Q: In tough economic times, how important is it to maintain a high safety standard on a tighter budget?

If you heard me speak at the International Risk Management Institute conference (in Las Vegas in late October), one of my biggest issues is safety and I think it has to be the No. 1 focus of the owners, developers and construction professionals. It has a psychological and financial impact on everybody on that job. And when you have catastrophic injuries or you have deaths on a project, you lose the faith of the workers on that project and it makes everyone

LISTEN to the podcast of the complete BI interview at www.BusinessInsurance.com/QandA.

unhappy about working on that project. In other words, everyone feels that they're at risk....Probably in bad financial times you have to be more cognizant and work harder to maintain good safety culture.

Q: What does 2009 hold for construction risk managers?

Big question. I think for 2009, one of the good things that's going to happen for construction risk managers is that we're going to see a serious decline in the amount of residential construction, even in commercial-grade construction—a lot of which we have been doing in Las Vegas—and that's a positive thing because it makes dealing with insurance and claims issues a lot easier for risk managers. It's easier, more effective and cheaper, especially in terms of wrap-up insurance, to insure a project that doesn't include residential construction. I think that 2009 holds the potential for a lot of default claims on performance bonds. It's going to be a very uncertain market—I think, at least the next six months until things shake out—for someone to get a feel of what the future of construction is going to be over the next 12 to 24 months.



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LEGAL NOTICE

IN THE SUPREME COURT OF BERMUDA No.251 of 2008
CIVIL JURISDICTION

HARRINGTON INTERNATIONAL INSURANCE LTD.
(THE "COMPANY")

NOTICE OF A MEETING ORDERED BY THE SUPREME COURT OF BERMUDA UNDER SECTION 99 OF THE COMPANIES ACT 1981 OF BERMUDA

Notice is hereby given that on application by the Company, orders were made by the Supreme Court of Bermuda on November 12, 2008 that a meeting of the Scheme Creditors of the Company could be convened at 11.00 am (Bermuda time) on February 19, 2009 at the offices of Appleby, Canon's Court (5th Floor), 22 Victoria Street, Hamilton, Bermuda for the purpose of considering and, if thought fit, agreeing (with or without modification) to a scheme of arrangement proposed to be made between the Company and its Scheme Creditors (the "Scheme"). Terms defined in the Scheme shall have the same meaning in this notice.

A Scheme Creditor may vote in person at the Creditors' Meeting or may appoint another person, whether a Scheme Creditor or not, as proxy to attend and vote in their place. Scheme Creditors are requested to submit any Scheme Voting Form and form of proxy (if required) to the Company, for the attention of Harrington Scheme Administrator at 8 Par-la-Ville Rd., Hamilton, HM 08, Bermuda, or by fax to +1 441 296 0761 or by email to scheme@harringtonintl.com by 5.00 pm (Bermuda time) on February 10, 2009 (provided that if the Scheme Voting Form and/or form of proxy are submitted by fax or email, they must be legible and an original executed copy or copies must be received by the Company within 3 Business Days of the date of electronic submission), but if the forms are not so returned, the Chairman has discretion to accept them if handed to him at the Creditors' Meeting.

The Scheme Voting Form, form of proxy a copy of the Scheme and Explanatory Statement, as required by Section 100 of the Companies Act 1981 of Bermuda, as well as all other documents in relation or ancillary thereto have been sent by Post to all known potential Scheme Creditors. Further copies of these documents may be obtained from the Company website at www.kpmg.bm/harrington. Please contact the Company by email at scheme@harringtonintl.com, by fax at +1 (441) 296 0761, by telephone using the Scheme Helpline on +1 (441) 296 0757 or post at 8 Par-la-Ville Rd., Hamilton, HM 08, Bermuda, attention Harrington Scheme Administrator if you are not able to access these documents via the Company website. A copy of the Scheme documents will then be sent to you at the address you specify (or if no address is specified, your last known address as shown in the Company's records).

The Court has directed that Charles Thresh of KPMG Advisory Limited be the Chairman of the Creditors' Meeting, and Michael Morrison of KPMG Advisory Limited be the alternate Chairman of the Creditors' Meeting, and report the results of the Creditors' Meeting to the Court. In addition, John McKenna has been appointed as the Independent Vote Assessor in respect of any vote disputed by the Chairman of the Creditors' Meeting.

The Scheme of Arrangement, if approved by the Creditors' Meeting, will not come into force unless it is sanctioned by order of the Court at a hearing, which is expected to take place in February 2009, and a copy of the order is delivered for registration to the Registrar of Companies in Bermuda.

All Scheme Creditors are entitled to attend the Sanction Hearing in person or by counsel to support or oppose the approval and sanction of the Scheme of Arrangement.

Dated 12 November, 2008 Appleby, Canon's Court,
22 Victoria Street, Hamilton,
Bermuda, Ref: 251 of 2008

LEGAL NOTICE

IN THE MATTER OF THE COMPANIES ACT 1981 and

IN THE MATTER OF TRANSPORTATION TRUCKING INSURANCE COMPANY, LIMITED

NOTICE IS HEREBY GIVEN that it is proposed that the above named company intends to discontinue in Bermuda as per Section 132(G) of the Companies Act 1981 and continue in the state of Arizona of the United States of America as if the Company had been incorporated under the laws of the state of Arizona of the United States of America.

Dated this 18th day of November, 2008.

By Order of the Board
Rollis H. Anderson
President

HELP WANTED

President, Northern States Agency

We are looking for a leader with a desire to manage our general agency business located in the Twin Cities.

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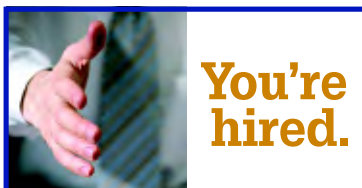
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UP Comings & Goings CLOSE



BARRY FRANKLIN

NEW JOB TITLE: Principal, corporate enterprise risk management practice of Towers Perrin

START DATE: Oct. 16, 2008

PREVIOUS POSITION: Group managing director, Americas, for Aon Global Risk Consulting

VITAL STATISTICS: I've been in the industry for a little over 27 years. I'm a fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries.

GOALS FOR NEW POSITION: The primary goal is to help Towers Perrin grow its presence and its footprint in risk management to corporate clients. The types of services we want to continue to expand are services focused on helping those companies make better or more optimal risk management decisions.

CHALLENGES FACING INDUSTRY: There is an underlying challenge facing all of us right now—the financial situation. Companies are reluctant, and understandably so, to embark on

new ventures unless they can see real value or it's something very tangible. Clients are faced with bigger challenges. It's an interesting time to be in the risk industry. Insurance prices are going up, while at the same time companies are having a harder time borrowing money. Spending scarce resources in the best way possible while still adequately addressing the risk they face is a challenge.

FIRST EXPERIENCE IN INDUSTRY JOB MARKET: I worked for Allstate Insurance Co. in its personal lines auto pricing market. It was a pretty traditional start to the actuarial field.

DID YOU ENVISION YOURSELF WHERE YOU ARE NOW? Probably not. When I first entered the field, my ultimate goal was to be the chief actuary officer at a large insurance company. Now I gravitate toward consulting. I've enjoyed the variety of consulting.

OUTSIDE THE INDUSTRY, A DREAM JOB: There are days when I think it would be really nice to operate a charter fishing boat out of somewhere warm. I'd get to enjoy the outdoors. It's something I can dream about.

Comings & Goings

ONLINE

VISIT www.businessinsurance.com/ComingsandGoings for a full list of this week's personnel moves and promotions. While at the site, sign up for a weekly e-mail of comings and goings. Check our Web site daily for additional postings.

TO SUBMIT ITEMS

Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers. Please send news and photos of recently promoted, hired or appointed senior-level executives to: Allison Martinat Business Insurance 360 N. Michigan Ave. Chicago, Ill. 60601-3806 amartinat@businessinsurance.com

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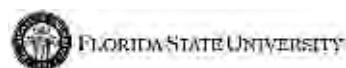
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International NEWS

AIG faces investor suit filed under Canadian law

Proposed class action seeks \$550M in damages

By **DAVE LENCKUS**

LONDON, Ontario—American International Group Inc. and several current and former officers of the troubled insurance holding company are the first U.S. defendants sued under a 2005 provision of the Ontario Securities Act, according to the plaintiffs' attorney.

The proposed class action litigation seeks \$550 million in damages.

In addition to AIG, the lawsuit names subsidiary AIG Financial Products Corp., which wrote the risky financial guarantees for mortgage-backed securities that have threatened AIG's financial viability.

Among the 10 individuals named as defendants are former Chief Executive Officer Martin J. Sullivan and former Chairman Robert B. Willumstad, who replaced Mr. Sullivan as CEO in June. The Federal Reserve Board replaced Mr. Willumstad in September with former Allstate Corp. CEO Edward M. Liddy as part of the government's bailout of the company.

The lawsuit was filed on behalf of all Canadian AIG investors that acquired AIG securities from Nov. 10, 2006, through Sept. 16, 2008.

In the lawsuit, filed in the

Ontario Superior Court of Justice in Kitchener, Ontario, an individual investor contends that AIG maintained in its Securities Exchange Commission filings and company officials verbally assured investors that the financial guarantees, known as credit default swaps, were safe instruments that could not produce losses under any "reasonable" scenario.

"Indeed, in September 2007—a year before the market was made aware of the severity and scope of the problem—AIG was told by its auditors that there were problems in how AIG was accounting for its derivative products. The defendants concealed this information," the lawsuit asserts.

A spokesman for AIG said the company does not comment on lawsuits.

Under Part XXIII.1 of the Ontario Securities Act, which was adopted in 2002 and went into effect in late 2005, Canadian investors can sue in Canadian courts in an effort to recover damages from companies that either are not Canadian or are not listed on the Toronto Stock Exchange. Previously, Canadian investors had to sue those defendants in their own jurisdictions.

E.U.'s Solvency II may be delayed

Argument over capital allocation rules could mean 2013 implementation

By **RICHARD MILLER**

To the dismay of the European insurance association, the draft of the Solvency II framework directive has hit a snag over the issue of group support, which likely will require the European Parliament and European Economic and Financial Affairs Council to work out a compromise by early next year.

The French government, which holds the rotating presidency of the European Union and heads the Council, recently proposed that the directive's group support section be deleted.

Group support is viewed as a key component of the directive by the European Parliament as well as the Brussels, Belgium-based insurance association, Comite Europeen des Assurances.

"The European insurance industry has always maintained and continues to believe that the group support regime is a fundamental element of Solvency II's economic risk-based regulatory regime," CEA President Tommy Persson said in a statement.

"The future regulation of Europe's insurers and reinsurers must reflect their economic reality, and that reality for many is that they form part of a larger group," he said.

The group support regime would allow more efficient capital allocation to meet solvency requirements

for large cross-border insurance groups, and encourage cooperation between E.U. supervisors. But, some member states fear group support would reduce their regulatory influence over multinational insurers operating in their own countries.

Besides deleting group support, the French government also proposed that the Solvency II text include the so-called duration approach, which deals with the treatment of equity risk. The European Parliament opposes that approach.

Karel Van Hulle, head of the European Commission's Internal Market and Services Directorates General, said in an interview last week that if the European Union's Economic and Financial Affairs Council, comprised of economic and finance ministers, accepts the French position at its Dec. 2 meeting, it will mean that the Council and Parliament have "diametrically opposing views (on those issues), which is always difficult to reconcile."

"I would hope that we can find a solution before the end of the year, and we will know that by the beginning of December," he said. "If the Council cannot come to an agreement on the 2nd of December, then it will have to be done under the Czech presidency early next year."

From the Commission's point of view, Mr. Van Hulle, a speaker at a

Committee of European Insurance and Occupational Pensions Supervisors conference in Frankfurt, Germany, last week, told delegates in a speech that the proposal to delete group support is "unfortunate and the Commission cannot agree with such a proposal."

"Group support is a concept worth fighting for," said Sharon Bowles, a U.K. member of the European Parliament in her speech at CEIOPS. "We must not forget that a key part of Solvency II is delivering safe, affordable insurance and group support is part of that. If times are getting harder, we need it all the more."

In an interview, Ms. Bowles said she expects Parliament and the Council to work out its differences by early next year, with a final vote on the directive by April. "It's not unusual for the Parliament and the Council to have different positions," she said.

One possible compromise is to leave the group support regime in the directive and allow countries to opt in or opt out of such a system, said Alberto Corinti, the CEA's deputy director general. "At the end, I don't know what will be the final result that balances all the positions," he said.

The delay over the final text will mean the October 2012 implementation date of Solvency II probably will be pushed back a few months to at least January 2013, the Commission's Mr. Van Hulle told conference delegates.

"We hope that we will be able to meet 2012," he said during his speech. "It will most likely be 2013, but the number 13 is not a very nice number, that's why we always said 2012."



'I would hope that we can find a solution before the end of the year, and we will know that by...December.'

Karel Van Hulle,
European Commission

Inhalation date marks asbestos coverage trigger: U.K. court

By **GAVIN SOUTER**

LONDON—Liability for compensation payments to workers afflicted with an asbestos-related disease should be paid by employers liability insurers that covered the workers' employers at the time the asbestos was inhaled, a U.K. High Court judge ruled last week.

The ruling confirms longstanding U.K. insurance market practices that had been challenged in light of a 2006 appeals court ruling in a public

liability insurance dispute that the trigger for insurance coverage should be the manifestation of the disease.

In the latest ruling, the judge, Mr. Justice Burton, ruled in six test cases that had been combined to resolve the issue as it relates to employer liability wordings. The litigation, dubbed Employers Liability Trigger Litigation, pitted workers against several runoff and continuing insurers and in one case, a runoff insurer, Municipal Mutual Insurance Ltd., against another insurer, Zurich

Financial Services Group Inc. Zurich had bought the renewal rights to Municipal Mutual's business.

The traditional approach to handling asbestos-related worker liability claims in the United Kingdom was based on the time of exposure. An employer and its insurer were typically liable to pay compensation for the proportion of time an employee was exposed to asbestos dust.

But the 2006 Court of Appeal ruling in *Bolton vs. Municipal Mutual & Commercial Union* held that in pub-

lic liability cases, an insurance policy would pay out only if it were in force at the time an individual fell ill, potentially many years after exposure. Several insurers had tried to apply the *Bolton* ruling to employers liability claims, arguing that policies were triggered by the development of the disease, rather than by the exposure to asbestos.

In the test case ruling, Judge Burton ruled that the wordings of employer liability policies should be interpreted to mean that the cover-

age trigger is exposure to asbestos, not the manifestation of the asbestos-related disease.

The judge ruled that the policies respond "to claims against insurers where employers are liable on the basis of inhalation by employees during the policy period. They respond, consistently with other (employers liability) policies, in respect of mesothelioma claims, on an 'exposure' basis."

Stuart Collins contributed to this article.



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Pool: Detailed outline of plan revealed to Treasury late last month

CONTINUED FROM PAGE 3

the value of illiquid assets, but has not done so.

Aon's response, first outlined in a letter to the Treasury late last month, is to create an insurance program that would combine risk retention, risk pooling and government backstop liquidity, Mr. Findlay told the panel.

He provided detail of how the insurance program would work in a written statement entered into the committee's record.

"Such a plan, largely self-funding and drawing inspiration from the Price-Anderson program, involves the sharing of risk by participants in an entity that we refer to as the 'asset stabilization pool,'" Mr. Findlay said in the statement. Pool participants would have part of the principal and interest from "specific, illiquid assets" guaranteed.

The program would be designed to insulate asset holders from the decline in value resulting from the nonpayment or expected nonpayment of principal and interest. The

asset holders would be required to retain a small portion of the shortfall of principal and interest, subject to a maximum annual payout per asset.

"Asset holders would be reimbursed from the pool for a shortfall in principal or interest once such amounts exceed their retained amount in a single year," Mr. Findlay said in the statement.

Participating institutions would pay premiums into the pool, with the amount to be determined annually by actuaries who calculate the level needed to pay for guarantee payments for the next year. The government would determine where payments should be capped.

Mr. Findlay's testimony said that because the insurance program would be funded chiefly by its beneficiaries, "it would restore liquidity without requiring massive outlays of government funds," which would benefit taxpayers.

The insurance program, he noted, would let participants hold assets until maturity or until they regain value, and would preclude a potential worsening of the problem

from a "flood" of distressed assets coming into the market.

Mr. Findlay's remarks came as the committee conducted a wide-ranging hearing on the implementation of the Emergency Economic Stabi-

'Such a plan...involves the sharing of risk by participants in...the asset stabilization pool.'

D. Cameron Findlay,
Aon Corp.

lization Act and the impact of government actions on the economy and availability of credit. During a question-and-answer period after the testimony, Mr. Findlay told panel members the fundamental problem in the market is the lack of reliable information about the value of assets held by financial institutions.

The proposal drew support from

others testifying before the committee. Edward Yingling, president and chief executive officer of the American Bankers Assn., called the idea "valuable to explore," and Cynthia Blankenship, vice chairman and chief operating officer of Irving, Texas-based Bank of the West, said such a program "would be helpful." Ms. Blankenship appeared on behalf of the Independent Community Bankers of America.

An insurance industry economist praised the plan.

Robert Hartwig, president of the New York-based Insurance Information Institute, said in an e-mail that the plan "draws on existing and proven risk pooling concepts that have worked well for many years in the property/casualty industry. The approach is innovative and it is important for the committee to hear the recommendation."

But Mr. Hartwig added that the Treasury Department's actions could stymie the proposal.

"Treasury—citing changed circumstances in economic and market conditions—seems less inclined

to believe that treatment of illiquid assets is the proper policy response tool when the objective is to stabilize the balance sheet of a financial institution. Instead, Treasury and its counterparts abroad have decided that cash infusions in exchange for equity stakes are the preferred method for stabilizing the U.S. and global financial systems," Mr. Hartwig said.

An outside observer was more cautious.

"It deserves some more study and analysis but, for now, I'm a skeptic," said Eli Lehrer, a senior fellow at the Washington-based Competitive Enterprise Institute who follows insurance issues.

"Many analysts think that Price-Anderson has tended to discourage nuclear power plant construction by creating an impression that everything is so incredibly dangerous," he said. "I think that there's a chance that a program like this could attach a stigma to all sorts of securities industries, not in the least because of the explicit comparisons to Price-Anderson."

Pirates: Increase in activity could change how risk is underwritten

CONTINUED FROM PAGE 3

perils in 2005, and added the Gulf of Aden in May 2008. Underwriters can negotiate an additional premium for every trip a policyholder makes through an area on the com-



This map shows all piracy and armed robbery incidents reported to the IMB Piracy Reporting Centre in 2008.

mittee's list of risky locations.

But the piracy in the Gulf of Aden presents unique problems, observers say. The pirates are more heavily armed than those of previous generations, and whereas pirates in other parts of the world typically ransack a vessel for cash and valuables before fleeing, the pirates in the Gulf of Aden are hijacking entire ships and holding them for ransom.

In addition, the theft of the Sirius demonstrates their ability to operate much farther offshore than previously thought

possible. And the political vacuum that has existed in Somalia since its central government collapsed in 1991 poses perhaps the largest problem, with some observers alleging government complicity in the piracy.

Mr. Smith and others say it was the efforts and cooperation of the local governments that in 2006 effectively stamped out the last piracy hotbed, the Malaccan Straits in between Malaysia and Singapore.

Forces from NATO, the European Union and elsewhere have converged on the Gulf of Aden in recent weeks in an effort to protect shipping lanes. The Indian navy's INS Tabar sank a suspected pirate ship Wednesday, although the personnel on board escaped.

Because of the heightened risk, two shipping companies have announced they will reroute their

vessels away from the Gulf of Aden, incurring significant extra costs for the longer route. Copenhagen-based A.P. Moller-Maersk A/S ordered all vessels "without adequate speed"—mainly tankers—to travel around the Cape of Good Hope at the southern tip of Africa. Norwegian shipping group Odfjell SE directed all its ships to do the same, which will add thousands of miles and possibly as much as two weeks of extra steaming.

Some observers say the jump in pirate activity could change how that risk is underwritten.

Lloyd's of London created an endorsement in 2005 that would exclude piracy from hull policies, effectively shifting it to a peril covered by a separate "war risk" policy. But the effort did not take hold widely.

"It didn't gain any acceptance in

the marketplace," said Neil Smith, senior manager for underwriting at Lloyd's Market Assn., which represents the managing agents of Lloyd's of London. Mr. Smith said he has heard that some underwriters in recent weeks have considered moving piracy to war risk policies.

Basil Mavroleon, manager of the projects group at ship insurance broker and marine consultant Charles R. Weber Co. Inc., said there are a lot of ongoing discussions about how to cover piracy.

Mr. Mavroleon said ship owners often pass on the cost of "war risk" insurance to the chartering business, as opposed to the hull and machinery cover, which the ship owner would pay for. The chartering company typically pays for the extra insurance as part of its contract with the shipowner, he said.

Market Moves

Brown & Brown acquires Agency Associates

ZIONSVILLE, Ind.—Daytona Beach, Fla.-based brokerage Brown & Brown Inc. said one of its subsidiaries has purchased Indiana-based intermediary Agency Associates Inc.

Brown & Brown of Indiana bought Agency Associates and its affiliates, which have combined annual revenue of \$5.2 million, the intermediaries said in a joint release.

Agency Associates offers property/casualty, group employee bene-

fits and financial products and services, with a concentration on professional and trade organizations.

Agency Associates' offices will remain in Kokomo and Mishawaka, Ind. The Zionsville, Ind., office will merge with Brown & Brown's Indianapolis staff in a new Indianapolis location, the companies said. Frederick W. McClaine, formerly a principal at Agency Associates and now executive vp of Brown & Brown Inc. of Indiana, will lead the new Indianapolis office.

Arthur J. Gallagher buys N.C. broker

GREENSBORO, N.C.—Itasca, Ill.-based broker Arthur J. Gallagher & Co. said it has purchased retail broker Roberts & Roberts Insurance Service Inc.

Terms of the deal were not disclosed.

Greensboro, N.C.-based Roberts & Roberts provides property/casualty insurance and risk management services to clients in the Southeast, specializing in coverage for the transportation, construction and manufacturing industries.

Roberts & Roberts will operate under the direction of Mitchell Brashier, Southeastern regional manager of Gallagher's retail P/C brokerage operation.

Nippon Life Benefits backs employer offerings

NEW YORK—Nippon Life Insurance Co. of America will do business in the United States under the Nippon Life Benefits moniker, which the New York-based mutual life insurer said is to emphasize its employee benefits business.

The company said in a release that it conducted research into the potential change with agents and brokers across the country.

NLI America is a subsidiary of Osaka, Japan-based mutual life insurance company Nippon Life Insurance Co., which serves 10 million policyholders.

Nippon Life Benefits specializes in small- to midsize commercial policyholders.

TO SUBMIT ITEMS

BI's new Market Moves column reports on activities by insurance industry companies and related entities. Please send Market Moves news to: Zack Phillips, *Business Insurance*, 711 Third Avenue, New York, N.Y. 10017-4036; or zphillips@businessinsurance.com.

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Health care: Deductibles rise with advent of CDHPs

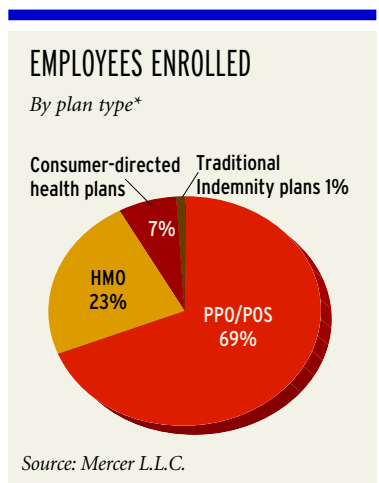
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amount was just \$250, according to the unit of Marsh & McLennan Cos. Inc.

Blaine Bos, worldwide partner at Mercer in Minneapolis, said the growing prevalence of CDHPs—which combine a high-deductible health plan with a health savings account or a health reimbursement arrangement—is making it easier for employers to increase PPO deductibles without significant employee backlash.

PPO deductibles remain lower at large employers, however, with a median deductible of \$300 for individual coverage and \$800 for family coverage, according to the survey of nearly 2,900 employers released last week.

But large employers have been moving quickly toward CDHPs, which, when linked to an HSA are required under federal tax rules to have individual deductibles of at least \$1,100 in 2008 and \$1,150 in 2009, Mr. Bos said.



This year, 20% of employers with 500 or more employees offered CDHPs with either an HSA or HRA, up from 14% in last year. The plans are most common among the largest employers—those with 20,000 or more employees—and were offered by 45% of the survey group this year, up from 41% last year.

By contrast, growth of CDHPs has been slower among small employers. Mercer found that just 9% of employers with 10 to 499 employees offered a CDHP this year, up from 7% last year.

As another indication that some employers are trying to shift more employees into CDHPs as a cost-saving strategy, the proportion of all employers offering a CDHP as employees' sole health plan option surged in the past year to 12% from just 1% last year, Mr. Bos said.

Overall, the rate of increase in group health care plan costs showed little change from the past few years.

Among plan types, CDHPs had the lowest percentage increase at 4% this year, rising to an average of \$6,207 per employee compared with \$5,970 last year.

Large employers, however, saw a spike in CDHP costs, which grew

8.2% to \$6,389 this year, up from \$5,903 last year. Large employers' CDHP costs decreased 1.1% in 2006.

Mr. Bos said large employers are paying more in CDHP costs because more are funding HSAs this year to make the option attractive to employees. In 2008, 71% of employers made contributions to HSAs compared with 65% in 2007, he said. The average HSA contribution for large employers was \$694 per employee this year, Mercer found.

Health maintenance organizations were the most expensive option offered by large employers, costing an average of \$8,106 per employee this year, up 8.3% from last year. HMO costs at employers of all sizes grew an average of 9.1% to \$7,768 this year compared with 2007.

PPO plan costs increased 5.8% at large employers to an average of \$7,861 this year compared with \$7,429 last year. PPO costs at all employers grew 6.3% this year to an average of \$7,815, up from \$7,352 last year.

Employers should brace themselves for the possibility that health care costs could climb even further as the economy deteriorates, Mr. Bos said, because utilization tends to increase when job security is in jeopardy and employees and their dependents hurry to get any medical services they need while they are still covered.

"We've got two things working here: We do know from the last recession that there was a utilization spike. It was due to the fact that a lot of layoffs were announced well in advance of when they actually occurred. So there was a lot of stuff getting done that they could have put off," Mr. Bos said.

"In the current environment, if the layoffs occur much more swiftly, we may get a spike in people who are buying COBRA," which could lead to adverse selection because people typically opt for COBRA coverage only when they have ongoing medical needs, Mr. Bos said.

"People who typically enroll (in coverage mandated by the Consolidated Omnibus Budget Reconciliation Act) have two to three times average claims experience" than that of active employees, he said.

Mercer will continue tracking health care unit costs and utilization throughout the recession to spot any trends, Mr. Bos said.

"We need to warn employers early if we start seeing utilization increases that will spike costs. The budgets for the 2009 calendar year were set before the stock market tanked. It reflects a (projected) cost increase of 6.4%," but it could end up being much more than that next year, he warned.

The Mercer survey will be available in late March. The report alone costs \$600. The report and tables cost \$1,200. For more information, go to or contact Tara Lewis at 212-345-2451.

Hartford: Seeking federal bailout funds

CONTINUED FROM PAGE 1

tal infusion from Munich, Germany-based Allianz S.E., the insurer said that it expects its capital margin—the capital in excess of modeled rating agency requirements to maintain AA level ratings—would be about \$2 billion at year-end, assuming a year-end Standard & Poor's 500 level of 900.

Like other businesses, Hartford has been hit hard by the economic downturn—especially its life insurance business, which represents about half of the insurer's operations. The decline in the equity markets and bad investments have stressed Hartford's life business, which is heavily concentrated in variable annuities.

Hartford's life operations reported a \$1.8 billion net loss in the third quarter of 2008 compared with a \$525 million profit in 2007. The net loss included \$1.3 billion in realized investment losses and a \$941 million after-tax charge related to reduced estimates of the profitability of its variable annuity business.

Overall, the insurer posted a \$2.63 billion loss in the third quarter, which includes \$2.2 billion in investment losses, a majority of which relate to Hartford's investments in other financial services companies negatively affected by recent market turmoil, including bankrupt Lehman Bros. Inc., American International Group Inc., Washington Mutual Inc. and mortgage giants Fannie Mae and Freddie Mac.

While Moody's Investors Services affirmed the insurance financial strength ratings of Hartford's primary life and property/casualty insurance subsidiaries after the release of its third-quarter results, Fitch Ratings downgraded the financial strength ratings of those operations to AA- from AA, with a negative outlook.

A.M. Best placed the operations' financial strength ratings under review with negative implications, and Standard & Poor's Corp. maintained its "stable" outlook on Hartford's core insurance operations, but it revised its outlook on the parent company to "negative."

Chicago-based Fitch analyst Brian C. Schneider said he views Hartford's move to seek CPP funds as

FREEFALL

Hartford's stock falls in last 3 months



Source: www.financialcontent.com

prudent, especially if the market deteriorates further and the insurer needs access to more capital in order to maintain its ratings, he said.

"Obviously, there are not a lot of avenues for them to get capital in the...normal market process, so I think having access to this is probably a good thing to have in case something does happen," Mr. Schneider said.

But not everyone is confident that the insurer will get the CPP funds.

"We continue to believe that, outside of AIG, it's questionable whether any life company will ultimately be awarded capital," Eric N. Berg, an analyst with Barclays Capital Inc. in New York, wrote in a Nov. 17 research note. "Not only is there considerable competition for the government's limited cash—with the most recent and forceful competition coming from the strapped U.S. auto industry—it's unclear whether the Treasury will ultimately conclude that providing capital to Hartford... will benefit the public at large."

"The stated purpose of the CPP is to restore liquidity in financial mar-

kets—to get basic lending moving again—and it's just not clear to us that Hartford, or for that matter any other life insurer, will be able to convince the Treasury that beefing up life insurers' capital accounts will...get things unfrozen in lending markets."

"It appears to fly in the face of what (CPP) was all about," said Myron Picoult, a New York-based independent insurance consultant. "Isn't this a back door way of getting additional capital? And that raises the question of what happened to Hartford's capital in the first place, Mr. Picoult said.

"There's a material difference between providing capital to companies that for whatever reason got themselves nailed as opposed to just a capital back-up," he said.

John L. Ward, CEO of insurance advisory firm Cincinnatus Partners, said he believes life insurers will be allowed to participate in the CPP.

"Life insurance companies aren't the main flow of lending, but they are big purchasers of bonds and corporate debt and their balance sheets are massive," Mr. Ward said. "The investment holdings that life insurers...have as an industry makes them very important players in this."

"We think that for insurers, access to the program is a good thing, said Jeffrey S. Berg, senior vp of Moody's New York.

"When you think about it, life insurers...are some of the largest long credit investors out there. If banks are not going to lend money, maybe an insurer that now has a capital injection feels more comfortable about its liquidity problem and will take their investment funds and rather than parking them in treasury funds, will not go out and buy corporates again."

Even without the CPP funds, Hartford has access to additional capital, Mr. Ayer said.

In a statement commenting on the insurer's capital position earlier this month, Mr. Ayer said that if the markets should become more severe, the insurer has access to capital in the parent company, its property/casualty subsidiaries, a \$500 million contingent capital facility, and a \$1.9 billion bank credit facility.

Other insurers attempt to enter CPP system

Hartford Financial Services Group Inc. was not the only insurer to buy a bank and apply for federal funds under the U.S. Treasury Department's Capital Purchase Program before the Nov. 14 deadline.

Richmond, Va.-based Genworth Financial Inc. and Philadelphia-based Lincoln Financial Group also filed savings and loan holding company applications with the Office of Thrift Supervision concerning the respective acquisitions of InterBank F.S.B. of Maple Grove,

Minn., and Newton County Loan & Savings F.S.B. of Goodland, Ind.

Both life insurers said they filed applications with the Treasury Department to participate in the CPP.

Under the CPP program, the Treasury Department will purchase up to \$250 billion of senior preferred shares of participating banks and savings and loan holding companies.

In return, participating companies must adopt Treasury's standards for executive com-

penetration and corporate governance for the period in which the government owns the equity. Those standards include ensuring incentive compensation for senior executives does not encourage unnecessary and excessive risks that threaten the value of the firm and requiring a "clawback" of any bonus or incentive paid to a senior executive based on statements of earnings or gains that are later proven to be materially inaccurate.

—By Sally Roberts

News In Brief

CONTINUED FROM PAGE 1

Illinois' measure applies only to fully insured individual and group policies and will not apply to self-insured benefit plans. At least 26 other states and the District of Columbia require insurance coverage for individuals with autism, according to the National Conference of State Legislatures in Denver.

Vitale to head Zurich unit

Mario Vitale has been named chief executive officer of Zurich Financial Services' Global Corporate business division. Mr. Vitale, who was deputy CEO of the division, succeeds Geoff Riddell, who will assume the new position of chairman of the division, as well as overseeing Zurich's operations in the Asia-Pacific and Middle East regions, according to a statement from the Zurich, Switzerland-based insurer. Zurich's Global Corporate division provides commercial property/casualty insurance products and risk management services to large corporations and multinationals.

ACE names chief risk officer

Sean Ringsted has been appointed chief risk officer for the ACE Ltd., in addition to his role as chief actuary with the insurer. Mr. Ringsted will be responsible for the continued development and implementation of the Swiss-based insurance company's risk management strategy and processes. He will remain in Bermuda—where the company maintains executive offices—and report to ACE Chairman and Chief Executive Officer Evan Greenberg.

Comp: Fights over illegal workers' rights

CONTINUED FROM PAGE 1

labor force is undocumented.

About 55% of illegal immigrants "work on the books," meaning they provided their employer a Social Security card, although the cards often are fraudulent, said Steve Camerata, author of the Center of Immigration Studies report.

In addition to New York, courts in several other states, including California, Florida, Georgia, Minnesota and Pennsylvania, have ruled that the federal Immigration Reform and Control Act adopted in 1986 does not pre-empt state mandates to provide workers comp benefits, explained Rusty Watts, a workers comp defense attorney at Swift, Currie McGhee & Hiers L.L.P. in Atlanta.

That law made it illegal to hire immigrants who do not possess legal work authorization or to continue employing them, and it imposed duties on employers to confirm applicants' right to work.

A related issue that courts nationwide are deciding involves illegal immigrants that have been injured, but completed medical treatment and normally would return to work under light-duty assignments, Mr. Watts said.

Employers and insurers increasingly are attempting to limit their exposure by arguing employers should be allowed to terminate wage benefits in such cases without bringing the worker back to work, Mr. Watts said.

Wage benefits typically are based on a claimant's inability to continue earning because of a work-related disability, he said. But employers and insurers argue that employers should not have to continue paying benefits or provide light-duty employment to illegal immigrants because their inability to work is not due to their injury. Rather, they cannot work because it is illegal for employers to hire

them, they argue.

Most of those cases still are working their way up to the appeals court level, Mr. Watts said. But appeals courts in Georgia, Oregon and Pennsylvania already have sided with employers.

Court battles over providing workers comp benefits to illegal immigrants "seem to be narrowing" around whether employers can stop paying indemnity benefits without retaining workers or providing them with vocational rehabilitation that helps them return to work, said Bruce C. Wood, associate general counsel & director of workers compensation for the American Insurance Assn. in Washington.

The issue has prevented payers' normal attempt to provide return-to-work placement for workers that have been injured, said Darrell Brown, workers comp practice lead for Sedgwick Claims Management Services Inc. in Long Beach, Calif.

Normally the objective within the workers comp system is to return injured workers to "full functionality" and place them back in jobs, he said.

But doing so is contrary to laws saying they cannot be returned to work as part of the vocational rehabilitation process, Mr. Brown said.

"If benefits are payable then we pay the benefits," he said. "But when it comes to the aspect of placement we have a bigger issue."

Illegal immigrants are eligible for workers comp benefits in 30 states and "likely covered" in 19 others where statutes or case law stating otherwise do not exist, according to the AIA.

"The fact that many statutes don't even mention aliens...shows you that this has not been an issue until very recently," Mr. Wood said.

Several of the states requiring workers comp benefits for illegal immigrants deny them vocational

rehabilitation benefits because they do not have Social Security cards allowing them to obtain legal employment, according to the AIA, which is updating a state-by-state analysis on benefits for illegal immigrants it released in January.

Many states justify providing benefits because disallowing them would only encourage unscrupulous employers to hire more illegal workers so they could avoid paying workers comp insurance premiums, according to the AIA.

Only Wyoming, in a 1999 state Supreme Court ruling, specifically precludes illegal immigrants from receiving workers comp benefits.

Lawmakers in other states such as Michigan and Arizona have introduced legislation in recent years proposing to outlaw workers comp benefits for illegal immigrants. So far, none of those bills has been enacted, observers say.

Arizona lawmakers have introduced bills throughout several years that would have prohibited workers comp benefits to illegal immigrants, sources say.

While efforts in Arizona have not succeeded, the amount of support such measures have received in the state suggests "that more state legislators may now be willing to at least consider denying workers' compensation benefits to illegal aliens," especially in states bordering Mexico, according to the AIA.

The AIA favors payment of full workers comp benefits to legal and illegal immigrants, Mr. Wood said.

"If an employee is good enough to be hired then they are good enough to be paid if they are injured on the job," he said.

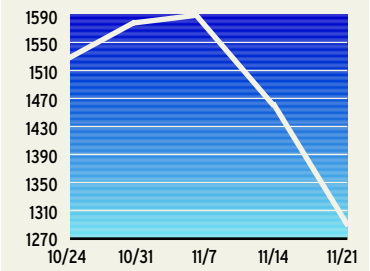
"To hold otherwise would be further encouragement for employers to take advantage of undocumented (workers) knowing full well that if they get injured then they are not going to have to meet their statutory obligation to pay benefits," Mr. Wood said.

Stock Index

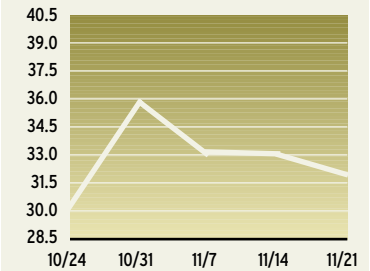
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.IndustryFocus.com.

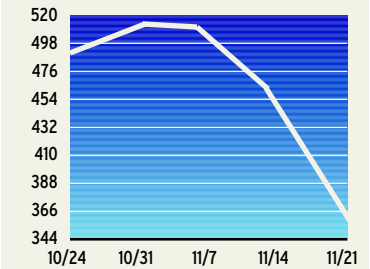
BI STOCK INDEX



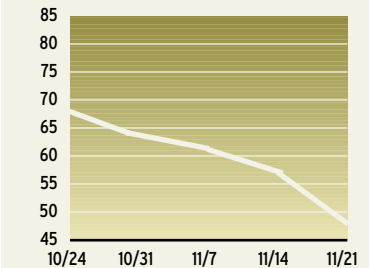
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

Index	Value	Change
BI STOCK INDEX	1285.68	-11.70%
DOW JONES	8046.42	-5.31%
S&P 500	800.03	-8.39%

LARGEST GAINS

Gainsco Inc.	11.30%
Renaissance Re Holdings	2.85%
Fairfax Financial Holdings	2.05%
Philadelphia Consolidated	1.91%
RLI Corp.	0.82%

LARGEST LOSSES

Hartford Financial Services	-60.87%
Citigroup Inc.	-60.40%
Lincoln National Corp.	-55.68%
MetLife Inc.	-34.33%
CIGNA Corp.	-31.89%

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

Court requires workers comp payout for illegal immigrants

By ROBERTO CENICEROS

NEW YORK—Employees earn workers compensation wage replacement benefits even if they use fraudulent documents to get the job, a New York appellate court reasoned in granting the benefits to an illegal immigrant.

The court in *Benjamin Amoah vs. Mallah Management L.L.C.* also found there is no conflict between federal immigration law and state mandates requiring employers to maintain a safe work environment.

Therefore, New York's 3rd Judicial Department of the State Supreme Court's Appellate Division upheld an April 2005 finding by a New York State Workers' Compensation Board that Mr. Amoah's use of fraudulent documents to get a job does not eliminate his entitlement to workers

comp benefits.

Mr. Amoah, a citizen of Ghana, arrived in the United States in 2003 under a temporary visa that did not allow him to work, court records show. But an acquaintance allowed Mr. Amoah to use his driver's license and Social Security card to get a job as a parking garage attendant.



Mr. Amoah suffered an injury in April 2005, although court records do not describe the nature of that injury. He was awarded workers comp benefits.

But the man who allowed Mr. Amoah to use his documents and identity demanded a portion of those benefits and a portion of

any third-party recovery related to the accident.

Mr. Amoah later notified his employer's insurer of his real identity, and the insurer contested paying the benefits because the claimant used fraudulent documents.

However, a workers comp judge and the workers comp board ruled against the employer and insurer, who argued that federal immigration law outlawing the use of fraudulent documents pre-empts state-mandated benefit awards.

The appellate court said it had to determine whether state workers comp law is pre-empted under a doctrine of "conflict pre-emption," or a situation in which state law stands as an obstacle to implementing Congress' objectives.

Because Mr. Amoah is totally disabled, there is no evidence the award would require him to violate

or continue violating federal law that prohibits him from obtaining work, the court said.

The court also said that "wage replacement benefits under the Workers' Compensation Law constitute a form of consideration (i.e., insurance) that formed a part of the contract for services already rendered by the employee."

Mallah Management could not be reached for comment, but the company is insured by Argonaut Insurance Co., according to the New York attorney general's office, which represented Mr. Amoah and the New York State Workers' Compensation Board. Argonaut would not comment.

Benjamin Amoah vs. Mallah Management L.L.C. et al.; New York Supreme Court, Appellate Division, 3rd Judicial Department; No. 504220; Oct. 30, 2008.

Contributing: Jeff Casale, Mark A. Hofmann, Mike Tsikoudakis

Beef up carnivores' health cover, PETA tells Vt. Blues

What should a succulent steak sizzled to perfection cost?

At least as far as People for the Ethical Treatment of Animals is concerned, people who eat meat should pay more for their health insurance.

In a recent letter, PETA Executive Vp Tracy Reiman urged BlueCross BlueShield of Vermont President Bill Milnes Jr. to reduce insurance rates for vegetarians and increase premiums for people who consume meat, citing last month's E. coli outbreak in Vermont that resulted from tainted meat.

"By giving your policyholders a financial incentive to go vegetarian—and penalizing those whose meat-based diets fuel our nation's worst health problems—BlueCross BlueShield could save millions of dollars in the long run," Ms. Reiman wrote in her letter.

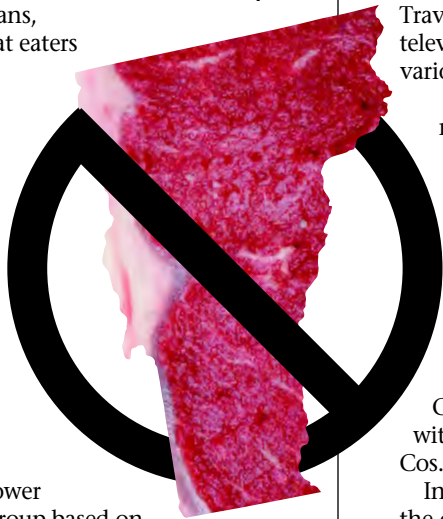
PETA's blog, the PETA Files, hosted a snarky debate between vegans, vegetarians and meat eaters regarding insurance coverage.

Although many bloggers supported PETA's letter to the Vermont insurer, some argued the feasibility of administering such a program. Others argued that it singles out those who eat meat but maintain healthy lifestyles.

"Implementing lower premiums for one group based on diet would make no sense without also lowering or raising premiums based on many other factors and lifestyle choices," one blogger commented.

It seems the Vermont Blues is rejecting PETA's suggestion.

"Under Vermont law, we would not be allowed to vary rates based on the dietary and nutritional habits of various members," Kevin Goddard, BlueCross BlueShield's vp of executive affairs, reportedly said.



Business Insurance END PAGE

Travelers rains on Citigroup reportage

The red umbrella, the longtime logo of Hartford, Conn.-based Travelers Cos. Inc. and prominently featured in a recent television commercial for the insurer, has been popping up in various media accounts about massive layoffs at Citigroup Inc.

So Travelers last week tried to make certain that those reading about the troubled banking company don't confuse it with the insurer.

According to a spokeswoman for Travelers, the insurer reacquired the rights to the red umbrella logo from Citigroup in February 2007, yet many media outlets neglected to update their logo database and ran the image with Citigroup stories.

The latest tussle for the red umbrella stems back to 1998 when Citicorp and Travelers Group merged.

In 2002, Citigroup spun off Travelers Property Casualty Corp. but kept the umbrella logo. In 2004, the insurer merged with St. Paul Cos. Inc., becoming St. Paul Travelers Cos. Inc.

In 2007, at the time it reacquired the logo, the company changed its name to Travelers Cos. Inc.

"An umbrella is believed to have first appeared in a Travelers advertisement in 1870, and was formalized as the company's legal mark in 1959," according to Travelers' Web site.

"In an industry devoid of tangible symbols, not only is the umbrella well-recognized, it is unparalleled in being able to convey insurance protection from the ever-changing risks our customers face," Kate Bolduc, Travelers' executive vp and chief marketing officer, said in an April statement.

Game backs collaboration, preplanning

How would you respond if the Big One struck California?

That's what a "massively multiplayer collaborative game" designed by the Institute for the Future in Menlo Park, the U.S. Geological Survey and the Art Center College of Design in Pasadena are trying to get people to think about long before a massive earthquake strikes California.

The game, "After Shock," began Nov. 13 and runs for three weeks. Players use video, blogs, online resources and other tools to collaborate with others to deal with the aftermath of a massive earthquake.

Players of the game, which can be found at <http://www.aftershock.net/>, receive new information throughout the game in an effort to get them to devise solutions to the



After Shock designer Jason Tester said the post-earthquake game's goal is to empower and inspire people to be disaster recovery leaders.

challenges they would face if a major earthquake devastated their area, leaving 1,800 dead, tens of thousands injured and hundreds of thousands homeless.

The simulated quake causes \$213 billion in damage and leaves the ravaged region without water and power for weeks, if not longer.

After the game, the data will be examined by the game's creators in an effort to better understand how residents would react to a quake and to measure their degree of preparedness.

"After Shock" may only be a game now, but its creators say they hope it will teach its participants to think critically about how they would and should respond if the nearly unthinkable became reality.

DOUBLING UP

10 jobs listed as earning double the national median income of \$40,690.

1. Associate actuary	\$81,924*
2. Attorney	\$88,235
3. Compensation and benefits manager	\$80,011
4. Economist	\$80,817
5. Floor broker	\$83,608
6. Marketing manager	\$86,283
7. Petroleum engineer	\$86,899
8. Pharmacist	\$88,786
9. Risk management supervisor	\$85,655
10. Veterinarian	\$80,069

* Annual mean income from CBSalary.com
Source: CareerBuilder.com



Supervising management of risk proves a lucrative, growing field

More people may start looking for jobs in risk management and benefits as they try to increase the size of their paychecks.

Compensation and benefits managers and risk management supervisors are among 10 jobs listed as earning double the national median income of \$40,690.

CareerBuilder.com compiled the list, which serves a quick reference for people looking to boost their salaries through a career move. Some other occupations on the list are associate actuaries, attorneys, economists, petroleum engineers and veterinarians.

Job seekers are eyeing these careers and many are expected to migrate toward them in the future.

Compensation and benefits managers and risk management supervisors earn an average annual income of \$90,000, according to the Bureau of Labor Statistics. By 2016, total employment for compensation and benefits managers is projected to increase 12%, from 49,000 to 55,000.

Experiencing a similar flux, risk management supervisors are expected to reach a 13% increase of total employment in 2016, from 506,000 to 570,000.

Stay the course—these key industry roles aren't going away anytime soon.

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*As of September 30, 2008.

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