

# Business Insurance

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**WAL-MART CASE TO TEST RULES FOR CERTIFICATION OF CLASS ACTIONS / PAGE 3**

**REP. BACHUS TO LEAD KEY FINANCIAL PANEL IN HOUSE / PAGE 4**

**CAPITAL NEEDS CAN PUT CAPTIVES, PARENTS AT ODDS IN TOUGH ECONOMY / PAGE 4**

## In Brief

### AIg signs 'master transaction agreement'

American International Group Inc. said it has signed a "definitive recapitalization agreement" with the government which marks "an important step forward in our progress towards completely repaying taxpayers." Parties to the complex "master transaction agreement," which supersedes a September 2010 agreement, include AIg; the AIg Credit Facility Trust; the Federal Reserve Bank of New York; the Treasury Department; and two special purpose vehicles, ALICO Holdings L.L.C. and AIA Aurora L.L.C.

### 2011 hurricane season very active: Forecaster

Next year's Atlantic hurricane season will be more active than normal, according to a forecast issued by the Tropical Meteorology Project at Colorado State University. The team forecasts 17 named storms

See **IN BRIEF** page 25

## WORKERS COMPENSATION

# Fall in comp claims coming to an end?

*Some insurers say frequency flattening; role of economy eyed*

By **ROBERTO CENICEROS**

A long-term trend of declining frequency of workers compensation claims has flattened, insurers say.

The widespread shift is significant because declining frequency of workers comp claims—or lost-time claims filed per payroll dollars—has helped counter rising costs driven by the severity of claims, said Eric Brosius, senior vp and corporate actuary for Boston-based Liberty Mutual Group Inc.

Claims frequency, which had been falling an average of about 4% per year because of safety programs and worksite automation, is a substantial driver of workers comp loss costs and rates, other observers said.

But the change in the frequency of claims could be a temporary fluke driven by the ailing economy, observers said. For instance, financial pressures could have eroded some employers' ability to

fund safety programs that reduce worker injuries.

Hiring of employees who are less experienced and more prone to injuries than experienced workers also could be a factor, others added.

For example, Hartford Financial Services Group Inc. has seen decreases in claims frequency moderate during 2010, Glen Pitruzzello, vp of workers comp claim practices for the Hartford, Conn.-based insurer, said in a statement.

It is "too early to determine whether this indicates a reversal in the long-term trend that has occurred since the 1990s, a floor on frequency that will remain for the foreseeable future or a temporary pause in the long-term downward trend," Mr. Pitruzzello said. "However, given the conventional wisdom that newer, lesser-experienced workers tend to have a higher incidence of workplace injuries, this could be an early indication of a strengthening job market and an improving economy."

Meanwhile, self-insured employers may be seeing an

See **COMP** page 24

## RISK MANAGEMENT



REUTERS/LANDOV

Protests related to controversial website WikiLeaks and its principal representative, Julian Assange, took several forms last week, including denial-of-service cyber attacks on several companies.

# Cyber attacks hit companies that cut ties with WikiLeaks

By **SONJA RYST**

Denial-of-service attacks on corporate websites, such as those launched by WikiLeaks supporters last week, are relatively rare, but risk managers and information technology leaders should be prepared for the threat, experts say.

PayPal, the online payment operation owned by eBay Inc., and the websites of MasterCard Inc. and Visa Inc., among others, were hit by denial-of-service attacks, reportedly by WikiLeaks' sympathizers, after the compa-

nies' refusal to process contributions to the secret-revealing non-profit website.

Despite the attack, MasterCard said it had "made significant progress" in restoring full service to its corporate website, and its cardholder account data was not put at risk. "While we have seen limited interruption in some web-based services, cardholders can continue to use their cards for secure transactions globally," MasterCard said in a statement.

See **WIKI** page 24

## CLIMATE CHANGE

# High court case to shape global warming litigation

By **JOANNE WOJCIK**

**WASHINGTON**—If the Supreme Court allows a global warming suit that hinges on the federal common law of "nuisance" to go forward, a slew of similar suits—and insurance coverage battles—could follow.

The high court agreed last week

to hear an appeal involving *American Electric Power Co. Inc. et al. vs. State of Connecticut et al.*, in which a coalition of states, environmental groups and New York sued several of the nation's largest coal-burning utilities, alleging that their carbon dioxide emissions led to beach erosion, droughts

and floods.

A New York federal judge dismissed the case in 2006 on grounds that the regulation of greenhouse gas emissions was a political question best left for the elected branches of government. However, in September 2009, the 2nd U.S. Circuit Court of Appeals reversed, sending shock waves through the energy industry.

Because of its far-reaching implications, *AEP vs. Connecticut* is being closely watched by parties in two other climate change nuisance cases pending in U.S. courts: *Kivalina vs. ExxonMobil Corp.*, filed by a group of Eskimo villagers who allege that oil, energy and utility companies' greenhouse gas emissions caused Arctic sea ice to diminish and threaten

native fisheries; and *Ned Comer et al. vs. Murphy Oil USA et al.*, filed by a group of Gulf Coast property owners who claim that oil and electric power companies' emissions "added to the ferocity of Hurricane Katrina" by contributing to global warming.

In August, the Obama administration intervened in *AEP vs. Connecticut*, filing a brief asserting that the Environmental Protection Agency, not the courts, should address greenhouse gas emissions.

If the Supreme Court elects to uphold the 2nd Circuit's decision, it could open the floodgates to similar global warming nuisance suits, legal experts say.

On the other hand, a reversal

See **GREENHOUSE** page 6

## YEAR IN REVIEW 2010

From a massive change affecting nearly every level of the U.S. health care system to control failures that led to the worst oil spill in U.S. history, 2010 presented fresh challenges for risk managers and benefit managers. *Business Insurance* editors identified the top issues of the year as well as the top newsmakers. **PAGE 11**

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NEWSPAPER


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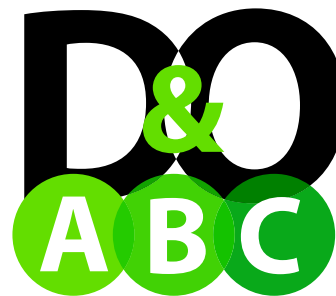


### WOMEN TO WATCH HONORED

View a slideshow of photos from the 2010 Women To Watch luncheon, held last week in Chicago. Go to [www.BusinessInsurance.com/WomenToWatch](http://www.BusinessInsurance.com/WomenToWatch).

### COMINGS & GOINGS

Search industry executive changes alphabetically by a person's name or company, as well as by date. Click on the Comings & Goings tab.



### VIDEO: THE ABC'S OF D&O

In the newest D&O In Focus video, *BI* talks with experts about available coverage. Click through the Multimedia tab to Video Reports.



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### MOST POPULAR STORIES

Week of December 6, 2010

1. Continental convicted in Concorde jet crash trial
2. Supreme Court to decide Wal-Mart class action suit
3. West Coast wholesale brokers merging forces
4. Injury while traveling for business compensable: Court
5. Berkshire reserve releases raise concerns: Analyst
6. Ryan Specialty unit buys professional liability broker
7. 2011 property/casualty outlook much like 2010: Analysis
8. Maximum HSA contribution to rise in 2010
9. Insurers, reinsurers face growing profitability pressures: Experts
10. Marsh execs join Lloyd's of London insurance broker

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### CLIMATE CHANGE WEBCAST

*BI*'s on-demand webcast "An Inconvenient Risk: Climate Change Liability and Coverage" explores climate change issues including global warming and Hurricane Katrina, and insurance coverage battles related to climate change. Go to the Multimedia tab and click through Webcasts/Webinars.



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Registered *BusinessInsurance.com* users now have an expanded array of online community tools. Register and log in to customize your personal profile, create blogs, invite friends, join discussions and more.



## LIABILITY &amp; LITIGATION

# High court to examine class action certification

## Massive bias suit against Wal-Mart will be reviewed

By JUDY GREENWALD

**WASHINGTON**—Businesses say they hope the U.S. Supreme Court's eventual decision in the Wal-Mart gender discrimination case will provide much-needed guidance to courts considering massive class action lawsuits.

Observers view the court's agreement to even consider *Wal-Mart Stores Inc. vs. Betty Dukes et al.* as a strong indication that it is likely to overturn the 9th U.S. Circuit Court of Appeals' ruling on the issue, which approved a class estimated at 1.5 million members. They note that the 9th Circuit has a particularly high rate among federal appeals courts of having its decisions overturned by the Supreme Court.

How narrow or broad a ruling

the court will make remains unknown. Oral arguments are expected in the spring, with a ruling expected during the summer.

The case involves allegations that Bentonville, Ark.-based Wal-Mart paid female employees less than males in comparable positions despite females' higher performance ratings and seniority. The six female employees who brought the suit, initially filed in 2001, also allege that women waited longer for and received fewer in-store management positions than men.

The suit seeks injunctive and declaratory relief, lost pay and punitive damages. If ultimately successful, observers estimate the suit could cost Wal-Mart billions.

Although the case is said to be the largest workplace class action suit ever certified, observers noted that the Supreme Court's decision is expected to apply to class action suits of any type, not just employment cases.

In 2007, a divided three-judge

### WHAT HAPPENED

■ U.S. Supreme Court agrees to consider gender discrimination case *Wal-Mart Stores Inc. vs. Betty Dukes et al.*

### WHAT'S NEXT

■ Court's eventual decision could apply to all class actions and affect circumstances under which class actions can be certified.

panel of the 9th Circuit upheld a lower court's 2004 ruling that granted class action status to women who work or have worked at any of Wal-Mart's 3,400 stores at any time since 1998.

On April 26, an en banc 9th Circuit ruled 6-5 in agreeing with the three-judge panel in upholding on technical grounds most aspects of the district court's ruling. It concluded that the proposed plaintiffs in the case had enough in com-

mon to create a class despite varying jobs the women held—ranging from part-time, entry-level employees to full-time, salaried managers—and the thousands of sites at which they worked.

The majority remanded the case to the district court to decide whether to certify a class with respect to punitive damages. It also remanded the issue of whether the class should include women who no longer work for Wal-Mart (*BI*, May 3). Defense attorneys complained, though, that the decision makes it very easy to obtain class certification.

In accepting the case for review, the Supreme Court agreed to consider one question proposed by Wal-Mart in the case, and asked for briefs on another. Both relate to federal rules of civil procedure as to when class actions can be formed and address highly technical issues as to whether members of the proposed class have enough in common.

An issue the court is expected to

address also includes circumstances under which class actions can be certified when punitive damages are sought.

Business groups and defense attorneys said massive class actions put unfair pressure on businesses to settle because of the inordinate expense of defending such suits, while advocates say such lawsuits are necessary to pursue justice for individuals who otherwise might not be able to recruit attorneys to represent them individually because of the relatively small sum each case likely would involve.

Mark W. Batten, a partner with law firm Proskauer Rose L.L.P. in Boston, said the court could decide to uphold the 9th Circuit decision, which he considers unlikely; it could reject the 9th Circuit's decision and decertify the case, which would reflect the law "as we all understand it right now;" or the Supreme Court could go further and "tighten up the

See **WAL-MART** page 23

## LIABILITY &amp; LITIGATION

# Manslaughter ruling chills airlines

## Concorde crash case seen raising stakes in aviation accidents

By SARAH VEYSEY

**PONTOISE, France**—A French court's conviction of a U.S. airline and one of its employees for involuntary manslaughter in the 2000 Concorde disaster has sent shock waves through the aviation industry, experts say.

Although such corporate manslaughter convictions are rare, the high-profile decision underscores the criminal liability that airlines can face from air dis-

asters, experts say.

The case centered on the July 2000 crash of an Air France-operated Concorde jet just after takeoff from Paris' Charles de Gaulle Airport. The crash killed 109 passengers and crew as well as four people on the ground.

Air France already has paid undisclosed compensation to most of the victims' families, aviation sources said.

Investigations concluded the crash was caused when a metal strip that had fallen from a Continental Airlines Inc. DC-10 onto the runway punctured the Concorde tire. Pieces of the tire then punctured the jet's fuel tanks, causing it to explode (*BI*, Feb. 8).

In Pontoise, France, last week, Judge Dominique Andréassier ruled that Continental Airlines, now owned by United Continental Holdings Inc., was guilty of involuntary manslaughter in the crash.

He ordered Continental to pay a €200,000 (\$268,220) fine and €1 million (\$1.3 million) to the French airline, now Air France-KLM, for damage that the crash caused to its brand.

In a statement, Air France said it was delighted with the verdict.

The judge also convicted a Continental mechanic, John Taylor, of involuntary manslaughter. The judge sentenced him to 15 months in prison, but suspended the sentence, and fined him



AP PHOTO

This Concorde jet crashed just after takeoff in July 2000, killing 109 passengers and crew and four people on the ground.

€2,000 (\$2,682). Mr. Taylor fitted the metal strip deemed to have caused the accident.

Continental described the ver-

dict as "absurd" and said it would appeal.

See **CONCORDE** page 23

## Risk Manager of the Year entry deadline approaching

Business Insurance  
**Risk Manager  
OF THE YEAR®  
2011**

*Business Insurance* invites readers to nominate candidates for the annual Risk Manager of the Year® award and Risk Management Honor Roll®.

The award to recognize outstanding risk managers involves a two-part nominating process. Part I requires a nominating statement that summarizes the achievements or qualities that make the individual worthy of consideration for the award. An independent panel of former honorees will screen the nominations, which are due Dec. 31.

Nominees advanced by the screening panel are then asked to prepare a more detailed nomination form in Part II of the process. Those

nominations will be judged and scored by a panel of independent judges representing the 2010 honorees and other risk management experts.

The risk manager with the highest score is selected as the Risk Manager of the Year by a panel of 10 independent judges. Up to five other nominees can be named to the Risk Management Honor Roll.

Anyone involved in managing the risk of their organization, anywhere in the world, is eligible for consideration. For complete information about the process, please download a copy of the Part I nomination form at [www.BusinessInsurance.com/RMOY](http://www.BusinessInsurance.com/RMOY).

## Nominations open for 2011 Innovation Awards

Business Insurance 2011  
**INNOVATION  
AWARDS**

*Business Insurance* is seeking nominations for its 2011 Innovation Awards.

The awards recognize innovation in products, services and technologies designed for risk managers. Eligible are products or services that are designed for and made available to professional risk managers that address key risk management functions.

To be considered for the 2011 *Business Insurance* Innovation Awards, the submitted product or service must have been rolled out to risk managers or entered the marketplace between Jan. 1, 2010, and Dec. 31, 2010.

Products that are intended for general busi-

ness or administrative functions and are not specifically intended to support the role of risk management in a public or private organization are not eligible. A company may submit more than one entry but may only receive one award as an organization.

An independent panel of risk managers will select the award winners, which will be honored at a special dinner during the 2011 Risk Management Summit, to be held March 14 in New York.

Entries must be completed by Jan. 14, 2011, using the official *Business Insurance* submission form. For information and to enter, please visit [www.BusinessInsurance.com/Innovation](http://www.BusinessInsurance.com/Innovation).

## CAPTIVES

# Capital needs put captives, parents at odds

*During lean times, captives must show financial flexibility*

By **RODD ZOLKOS**

**GRAND CAYMAN, Cayman Islands**—With the economy recovering but weak and many companies still pressed for capital, captive insurance company leaders looking to maintain appropriate funding might find themselves at odds with parent companies looking to tap what they see as idle capital.

In that environment, it's important that captives find ways to demonstrate financial flexibility, according to a group of panelists who spoke at the annual Cayman Captive Forum this month in Grand Cayman.

As a form of contingent capital, reinsurance can help provide that flexibility, the panelists said,

## Cayman Captive Forum draws 1,000

**GRAND CAYMAN, Cayman Islands**—This year's Cayman Captive Forum drew more than 1,000 attendees to the Ritz-Carlton Grand Cayman.

Sessions at this year's Nov. 30-Dec. 2 forum covered topics such as regulatory issues, leveraging health care captives to promote patient safety and quality, captive benchmarking, collateral issues, emerging risks, the impact of man-made disasters and the impact of U.S. health care reform.

Next year's forum is scheduled for Nov. 29-Dec. 1, 2011, at the Ritz-Carlton Grand Cayman. For more information on next year's event, go to [www.caymancaptive.ky](http://www.caymancaptive.ky).

—By **Rodd Zolkos**



though it's essential that captives form sound reinsurance relationships if they want to realize that benefit.

Clayton Price, managing director and office head at Marsh Management Services Cayman Ltd., a unit of Marsh & McLennan Cos. Inc., said he's seen considerable

demand in recent years from parent companies seeking capital that's committed to the captive. "You have to strike the right balance," Mr. Price said.

"I would say balance is the whole issue," said Jay Waters, vp-corporate risk management services at University Hospitals in

Cleveland.

"There are an awful lot of pressures on the captive for what I would call that 'idle capital,'" Mr. Waters said, adding that there's always a desire to "raid" the captive's capital, usually with promises to replenish it later, when a parent company faces tough times.

"My experience is, at the exact point in time that I need these funds the most, the parent is least likely to have those funds available," Mr. Waters said.

"Looking at it from the outside, I think there's always a natural tension between the captive and its parent," said Brendan Barry, senior vp at Greenlight Reinsurance Ltd. in Grand Cayman.

The proper approach to address such conflicts has evolved from simply considering capital structure to crafting an "appropriate business operations structure" to build flexibility into the business whenever possible, Mr. Barry said. "The role of the captive...is to insulate the owner from volatility," he said. "The captive has to be strong enough and flexible enough to take that."

"Capital is always available when you don't need it," Mr. Barry

See **CAYMAN** page 24

## FEDERAL LEGISLATION

## P/C industry hails new chair of House panel

By **MARK A. HOFMANN**

**WASHINGTON**—The incoming chairman of the House Financial Services Committee likely will try to repeal certain aspects of the Dodd-Frank Wall Street Reform and Consumer Protection Act, insurance industry observers say.

But the efforts of Chairman-elect Spencer Bachus, R-Ala., probably will not greatly involve the measure's property/casualty provisions, observers say.

House Republicans last week chose Rep. Bachus to head the committee when the new Republican-controlled House convenes next month. As the panel's ranking member the past four years, he criticized some government actions in its rescue of American International Group Inc.

Insurance industry observers hailed Rep. Bachus' ascension to chairman.

"I don't know anyone in the insurance community who isn't pleased by the upcoming chairmanship of Congressman Bachus," said Joel Wood, senior vp at the Council of Insurance Agents & Brokers in Washington. He "has a good sense of the balance between assuring safety and soundness, and regulatory overreach."

Mr. Wood said he expects Rep. Bachus to try to roll back some Dodd-Frank provisions, but "I don't expect much of that to



Rep. **Bachus**

AP PHOTO

impact the insurance industry." He added that Rep. Bachus was a "key player" in passage of the "very good surplus lines and reinsurance provisions" of the legislation.

Ben McKay, a senior vp in the Property Casualty Insurers Assn. of America's Washington office, predicted there would be "robust hearings" on insurance aspects of the bill. He also noted that Rep. Bachus supports a narrow role for the new Federal Insurance Office and backs state regulation of the industry.

Agreeing that repealing parts of Dodd-Frank will be a large part of the Bachus agenda, Marliss McManus, senior federal affairs director in the National Assn. of Mutual Insurance Cos.' Washington office, said she expects insurance "for the most part will be a pretty quiet subject." She also said she expects the committee to address reform of the National Flood Insurance Program, which is slated to expire Sept. 30, 2011.

The American Insurance Assn. "will continue to reinforce the distinctions between insurance and other financial services," as the committee deals with Dodd-Frank, Leigh Ann Pusey, AIA president and CEO, said in a statement.

## PROPERTY/CASUALTY INSURERS

## Soft market set to continue: Fitch

By **JUDY GREENWALD**

The U.S. property/casualty insurance market is unlikely to harden significantly next year as competition continues to promote low pricing and there is no sign of meaningful change in underwriting capacity, Fitch Ratings said in an analysis.

The New York-based rating agency, which has a stable outlook on the industry for 2011,

said a major catastrophe or other sharp loss next year could lead to a negative outlook.

Other factors that will affect the market include diminished loss reserve redundancies and investment challenges in light of low interest rates and lower invested asset leverage, given recent declines in industry premium volume, Fitch said in the report, "2011 Outlook: U.S. Property/Casualty Insurance," which

was issued last week.

For commercial lines in particular, Fitch said it believes pricing will continue to fall moderately.

"There is a chance that the soft pricing environment will intensify before any market turn takes hold. Grossly inadequate rate levels, similar to some past cycles, would produce much larger underwriting losses than those encountered recently," Fitch said in the analysis.

## RETIREMENT BENEFITS

## Most firms to wait on Roth rollovers

*Despite new law, many first want to gauge interest*

By **JERRY GEISEL**

A majority of 401(k) and other defined contribution plan sponsors intend to add a feature to allow participants to roll over account balances into Roth accounts, but few plan to do so immediately, a survey shows.

Such rollovers are permitted by a small-business jobs bill that Congress approved in September.

The Mercer L.L.C. survey of nearly 300 defined contribution plan sponsors found that only 17% of respondents plan to add the Roth rollover feature by the end of this year, with 14% planning to add the feature by the end of next year. Twenty-four

**17%**

The Mercer L.L.C. survey of nearly 300 defined contribution plan sponsors found that only 17% of respondents plan to add the Roth rollover feature by the end of this year.

percent said they will amend their plans to allow the rollovers sometime in the future. Forty-five percent said they have no plans to permit conversions. Thirty-seven percent of employers said they are not changing their plan immediately to first see how much interest there is from plan participants.

In addition, nearly one-third of respondents are waiting to see when plan administrators will be

ready to handle conversions; just under 25% are waiting to see what others intend to do.

Adding a conversion feature would boost the appeal of 401(k) and other defined contribution plans by potentially reducing taxes that participants pay when they receive a distribution, retirement plan experts have said.

Under current law, employees make pretax contributions to 401(k) plans. Employee contributions, employer matching contributions and investment income are taxed when the participant receives a distribution, such as at retirement. In a Roth 401(k), contributions are made after taxes have been taken out and distributions are not taxed.

Once rolled over into the Roth 401(k), the money would earn tax-free investment income and participants would not be taxed when they receive a distribution.



W

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# Greenhouse: High court to hear 'nuisance' case

CONTINUED FROM PAGE 1

could halt global warming nuisance suits, at least temporarily, until creative plaintiffs lawyers find another cause of action to seek redress, legal experts say.

Legal experts also point to a third potential scenario: The high court could adopt the position it took in its 2007 decision in *Massachusetts et al. vs. Environmental Protection Agency et al.*, which found that greenhouse gases are air pollutants covered by the Clean Air Act, and that it is the EPA's job to regulate them.

Regardless of how the Supreme Court rules, the emergence of climate change nuisance suits is posing insurance coverage questions for defendants and their insurers, though so far only one such suit has spawned actual coverage litigation: *Steadfast Insurance Co. vs. AES Corp.*, which stemmed from the *Kivalina* case, is slated to be heard by the Virginia Supreme Court in early 2011.

"If the court upholds *Connecticut vs. AEP*, we're certainly going to see more climate change claims," said John H. Denton, senior vp and an attorney at Marsh Inc. in New York. "Consequently, we're going to see more claims by policyholders to recover the cost of climate change claims from their liability insurance carriers."

"On the other hand, if the Supreme Court reverses...it would

be a significant setback for climate change litigation in general. Although in other contexts, plaintiffs have been creative and have been able to, at times, avoid legal roadblocks," Mr. Denton said.

A reversal "will be the death knell for judicial regulation of greenhouse gases," said William Stewart, partner in the national insurance coverage group of Nelson Levine de Luca & Horst L.L.C. in Blue Bell, Pa.

Conversely, "if they rule the case can go forward...we are going to be swimming in global warm-

ing nuisance claims," Mr. Stewart said.

Trent Taylor, a partner in the environmental and toxic tort practice at McGuireWoods L.L.P. in Richmond, Va., said the most likely outcome is that the court will reverse the 2nd Circuit's ruling on a narrow basis.

"Maybe six justices will agree on one component and decide the case based on that," he said.

For example, the court may decide such cases shouldn't be decided based on common law tort, but rather based on federal law and federal regulations, Mr. Taylor said.

"This is what the solicitor general's brief argued," he said.

But even if the court rules this

way, "it would not completely end the litigation" over contributions to global warming, according to Collin Hite, a partner and co-leader of the insurance coverage practice group at McGuireWoods.

"There are a couple of different ways to sue over climate change," such as personal injury, property damage, conspiracy, fraud and failure to disclose, which is the most likely cause of action to be cited in shareholder derivative suits, he said.

And while the pollution exclusion most likely will bar coverage under commercial general liability policies, "I think there's a much better argument for coverage under D&O," said Mr. Hite, who wrote a white paper analyzing the directors and officers liability coverage in climate change litigation.

Even if the pollution exclusion bars coverage for damages stemming from alleged contributions to climate change, "whether that affects insurers' duty to defend...that remains to be seen," said John Nevius, a partner and chair of the environmental law group at Anderson Kill & Olick P.C.'s New York office.

"The fact that the Supreme Court took up this case underscores that global climate change is a fact of life in modern society from the standpoint of potential liability and corporate disclosure. How the court holds will inevitably be used by both sides on the insurance divide to argue their position on the impact of any exclusionary language related to pollution in this type of litigation," Mr. Nevius said.



## Commentary

# Access to health care remains top concern

Whenever I attend a health benefits conference that addresses wellness issues, I often am greeted with a bit of envy because I come from what many consider to be the fittest state in the union. It's generally assumed that everyone who lives in Colorado is into mountaineering, bicycling or skiing, depending on the time of year. But while Colorado may have the lowest obesity rate in the nation at 18.9%, it is questionable whether that alone is enough to lower the prevalence of chronic disease in the population. In reality, access to health insurance and health care has a much bigger effect, regardless of how much one weighs.

According to "America's Health Rankings," published this month by the United Health Foundation, a nonprofit established by UnitedHealth Group Inc.; the American Public Health Assn., which represents public health professionals; and the Partnership for Prevention, a coalition of business, nonprofit and governmental leaders, the United States is losing ground because of its high uninsured population—15.6%—and its low immunization rates among children 19 months to 35 months old.

Childhood immunization coverage in Colorado actually decreased from 92.1% in 2009 to 85% in 2010. Perhaps that is due in part to the percentage of children younger than 18 in poverty increasing from 11.6% a decade ago to 18.2% in 2010.

Conversely, the report found that several other states have been making great strides in improving the health of their populations. According to the report, Vermont is the healthiest state, based on measures such as its low uninsured rate of 9.6%, its lower percentage of children in poverty at 12%, and its ready access to early prenatal care, as 83.5% of pregnant women receive such care in the first trimester.

Critics of Massachusetts' health reform law, after which the federal reform law was modeled, will be surprised to learn that it actually helped the state move up a notch to No. 2 in the AHR rankings.

Massachusetts' steadily declining uninsured rate, now at 5%, is down from the previous year's low of 5.4%. Massachusetts also has a low prevalence of smoking, which dropped to 14.9% in 2010 from 18.5% five years ago, and high rates of immunization, with 93.4% of children 19



**JOANNE WOJCİK**

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months to 35 months old receiving vaccinations.

Massachusetts supplanted Utah, which dropped five notches from No. 2 to No. 7 even though the state has the lowest smoking rate in the country at 9.8% of the population. The biggest strikes against Utah were its limited availability of primary care physicians; increasing rate of children in poverty, growing from 8.8% in 2009 to 13.9% in 2010; and its high uninsured rate, 14% of the population.

**Access to health insurance and health care has a much bigger effect, regardless of how much one weighs.**

New Hampshire, with a 10.4% uninsured rate, is the new No. 3.

Meanwhile, Colorado slid from No. 8 to No. 13.

Overall, the nation's health improved by one percentage point last year, the report found. That's because the reductions in tobacco use, preventable hospitalizations and infectious disease it documented were not enough to offset continuing increases in obesity rates, children living in poverty and the lack of health insurance.

According to the U.S. Census Bureau, an estimated 51 million U.S. residents have no health insurance. In "America's Health Rankings," the uninsured increased from 16% of the U.S. population in 2010 from 15.3% in 2009 and 13.9% in 2001.

Only time will tell whether the health reform law, which requires virtually everyone to have health insurance, can turn things around.

To find out how your state measures up, go to [www.americashealthrankings.org](http://www.americashealthrankings.org).

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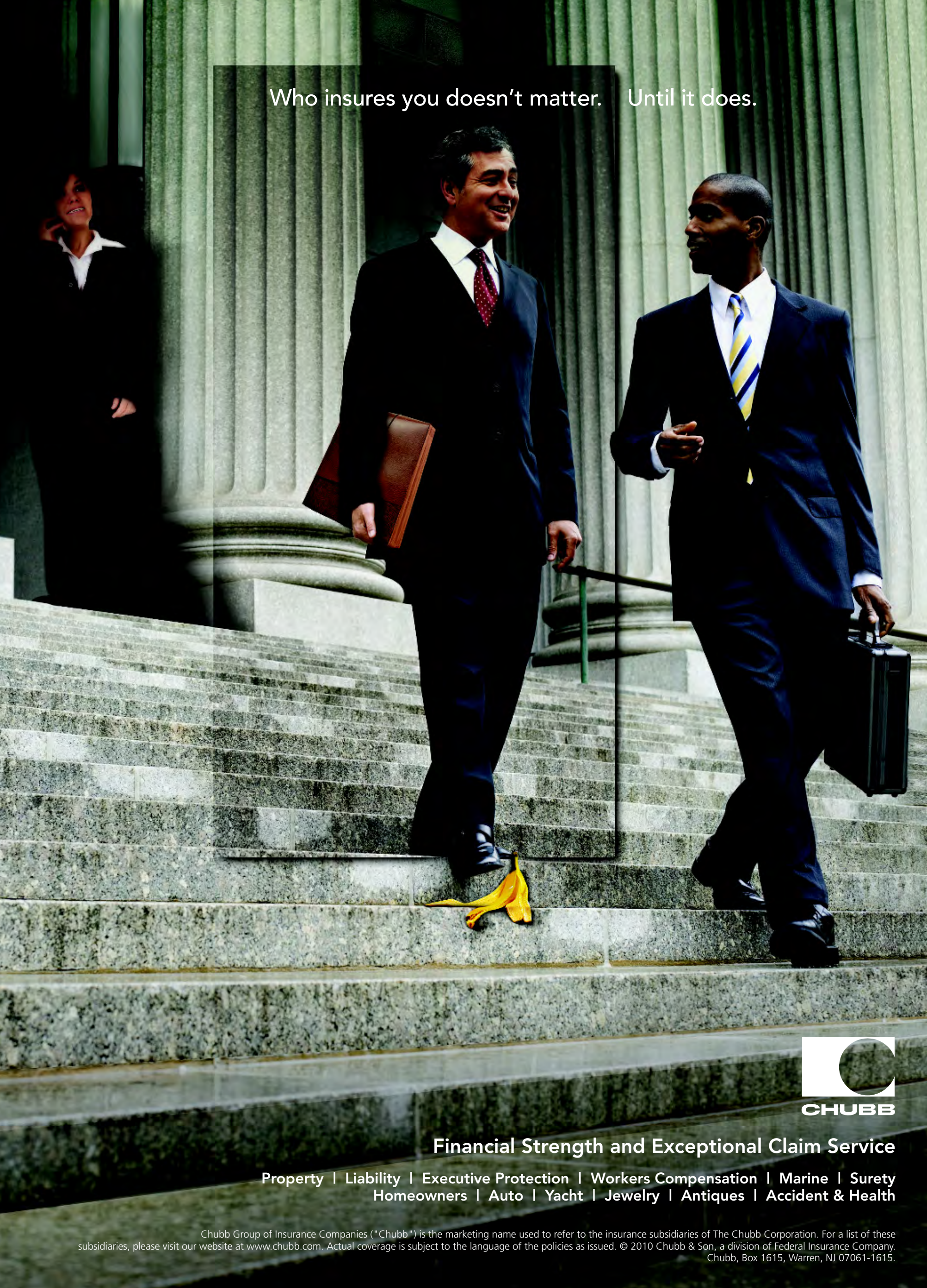
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# Business Insurance OPINIONS

## Punitive damages case should provide clarity

THE SUPREME COURT'S decision to review a case involving the largest workplace class action suit ever certified is a welcome one.

As we report on page 1, in addition to spelling out when a massive class can be certified, the case—*Wal-Mart Stores Inc. vs. Betty Dukes et al.*—gives the nation's highest court a chance to clarify the circumstances under which a class can be certified when punitive damages are sought.

The suit against Wal-Mart, which alleges that the company discriminated against female workers, seeks punitive damages for a class estimated at 1.5 million members.

But even though the suit involves alleged workplace discrimination, the court's ultimate decision could affect class actions of other kinds as well.

In recent years, the high court has provided ever-clearer guidance regarding punitive damages as it has decided a series of significant cases that began in 1996 with *BMW of North America Inc. vs. Ira Gore Jr.*, in which the court for the first time held that punitive damages can be so disproportionate to compensatory damages as to violate constitutional guarantees. Most recently, the high court addressed maritime laws' impact on punitive damages in its 2008 decision in *Exxon Shipping Co. et al. vs. Grant Baker et al.*

Although Wal-Mart focuses primarily on technical issues surrounding class actions, the case gives the court another chance to address the issue of punitive damages.

We hope the justices make the most of that opportunity.

*The case gives the court another chance to address the issue of punitive damages.*

## Mini-med health plans still play a vital role

DURING A RECENT HEARING, Senate Commerce Committee Chairman John D. Rockefeller IV, D-W.Va., asked whether mini-med plans are doing consumers more harm than good.

That's a fair question. The plans, which typically are offered to low-wage, part-time or temporary employees, have little resemblance to mainstream employer-provided health care plans.

Typical group plans have high or no annual dollar limits on covered services. Compare that with a mini-med plan that has an annual limit of only several thousand dollars, which Sen. Rockefeller said is so low that it wouldn't fully cover the medical costs of having a baby.

But we don't think it is fair to say the plans do more harm than good. The plans ensure that enrollees have coverage—in some cases with little, if any, cost-sharing—of routine medical care, such as office visits. That may encourage employees to seek preventive care, such as annual physicals, and increase the likelihood that medical issues are detected before they develop into more expensive-to-treat conditions.

By 2014 under the health care reform law, health care plans no longer will be able to impose annual limits on essential benefits, a threshold test that mini-med plans, as currently designed, won't be able to pass.

But that won't matter because many mini-med plan enrollees will be able to obtain comprehensive, federally subsidized coverage starting in 2014 through new state health insurance exchanges that the reform law authorizes.

Until then, the plans will have served a vital role in providing at least some coverage of employees' health care needs.



The clock's over-wound,  
the spring is too tight.  
Health care reform passed  
but, oh, what a fight!  
The system is broken  
(not that you'd know it,  
from listening to those  
who fiercely opposed it!)

The spring's still winding  
keep raising your voice!  
We've got to go "green"  
we don't have a choice.  
BP's massive spill  
was a clarion cry  
to change how we live  
or let the earth die.

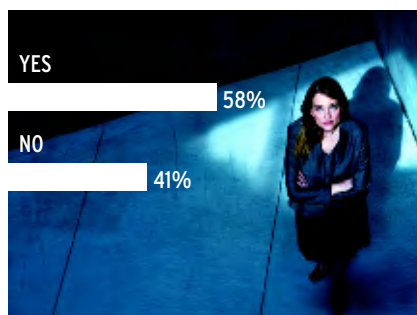
The clock is still ticking,  
may the coil unwind.  
The recession is ending  
and loosening its bind.  
Let's take a deep breath,  
recall why we're here:  
to be stewards to others  
throughout the New Year.

### VOTE

in the BI Online Poll at [www.businessinsurance.com](http://www.businessinsurance.com)

#### THIS WEEK'S RESULTS

Q Do you feel that there is a glass ceiling for women executives in your organization?



#### NEXT WEEK'S QUESTION

Q: Is internet security a risk management issue or just an IT issue?

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*Because change happenz.*

## Products & Services

### Lexington introduces spoliation insurance

**BOSTON**—Lexington Insurance Co. has introduced coverage for firms exposed to spoliation torts during other litigation.

The coverage is designed to protect against claims arising from spoliation, the direct physical loss or damage of property and documentation that serves as material

evidence in a legal proceeding, the Boston-based unit of Chartis Inc. said in a statement.

The coverage is available to firms that preserve property and documentation of evidentiary value belonging to others and covers liability for monetary damages, settlements and defense costs for claims alleging breach of professional duty.

"Professionals are often entrusted with property that can affect the outcome of a court case," Robert Rogers, assistant vp at Lexington, said in the statement. "Many states recognize a separate spoliation tort action for the destruction, alteration or loss of evidence."

The coverage is available for

architects, engineers, land surveyors and agency construction managers, among others.

Lexington said spoliation coverage is available as an enhancement to its architects and engineers professional liability policy and expects to expand the coverage to other lines of business.

For more information, contact Mr. Rogers at 617-330-8564 or [robert.rogers@chartisinsurance.com](mailto:robert.rogers@chartisinsurance.com).

### MetLife adds will, estate services

**NEW YORK**—MetLife Inc. has enhanced its group life benefits portfolio for small businesses by adding will preparation and estate resolution services.

The enhancements are standard features of the life insurer's supplemental term life and supplemental term life insurance coverages and available to employers with as few as 10 employees in their group life insurance programs, New York-based MetLife said in a statement.

Will preparation and estate resolution services, offered through MetLife subsidiary Hyatt Legal Plans Inc., are available to employees and their spouses or domestic partners.

They include fully covered attorney fees when using a participating Hyatt Legal Plans attorney, face-to-face and telephone consultations, and document preparation for testamentary trusts and

probate asset transfers, among others.

MetLife said the services are intended to help employers add value to their supplemental life insurance offerings.

"The features can help increase employees' appreciation of their benefits by providing peace of mind now, along with thoughtful and personal assistance for their beneficiaries later," Stephen Pontecorvo, vp of group life products for MetLife, said in the statement.

For more information, contact Maureen Leary Gutenstein, managing life sales director for MetLife, at 908-253-1175 or [mgutenstein@metlife.com](mailto:mgutenstein@metlife.com).

### Buck Consultants launches iPhone app

**NEW YORK**—Buck Consultants L.L.C. has launched an iPhone application for health care and insurance benefits information.

The application, Benefits Genie Lite, lets users keep track of and store health benefits and insurance information for themselves and family members, the New York-based human resources and benefit consulting unit of Xerox Corp. said.

Information such as known allergies, prescribed medications, doctor appointments, copayments, deductibles and physician contact information are accessible from a user's iPhone.

An expanded version of the application, Benefits Genie, has a networking feature to share information with family members and caretakers, along with a benefits dictionary, health quizzes and healthy recipes.

"Individuals walk into medical facilities every day without knowing basic information about their insurance coverage," Donald Sanford, principal at Buck Consultants, said in a statement. "This application not only puts benefit information at an individual's fingertips; in an emergency, it can even save a life."

Buck Consultants said the applications also are being developed for other smartphone platforms.

Both versions of the application are available at the iPhone App Store at <http://www.apple.com/iphone/apps-for-iphone/>.

Benefits Genie and Benefits Genie Lite may be purchased for \$4.99 and \$0.99, respectively.



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# YEAR IN REVIEW 2010

## TOP 10 STORIES

### Issues, people shaped the year

From a massive change affecting nearly every level of the U.S. health care system to control failures that led to the worst oil spill in U.S. history to continued controversy over broker compensation practices and increasing health insurance costs, 2010 presented a series of fresh developments and challenges for risk managers and benefits managers. *Business Insurance* editors identified the top 10 issues that risk managers and benefits managers faced in 2010 and, starting below, we examine their impact. We also profile the top newsmakers of the year (see story, page 18).

#### Health reform law promises change for employers

*Business Insurance's* top story of 2010—enactment of comprehensive health care reform legislation—will continue to play out in 2011 and beyond.

The March passage of the legislation, President Barack Obama's signature domestic issue, came after more than a year of legislative maneuvering.

The maneuvering heated up in 2010 when Scott Brown won the seat that Sen. Edward Kennedy, D-Mass., held until his death in August 2009. Until the Republican's election, Democrats had 60 certain votes, enough to stop a filibuster. With Sen. Brown joining the fold, Republicans had the votes to successfully mount a filibuster.

Stunned, top Senate Democrats pondered their next move. By early March, they decided the health care reform bill would be considered under a legislative procedure known as reconciliation that requires a simple majority to win passage. By contrast, other measures require 60

votes to end debate.

President Obama endorsed the procedure and the measure received final approval from Congress within weeks, which the president then signed into law.

The impact of the new law hardly could be overstated. With its expansion of Medicaid and the creation of federal health insurance premium subsidies, more than 30 million uninsured U.S. residents will gain coverage.

For employers, the law meant a scramble to amend their plans to comply with provisions such as extending coverage to employees' adult children up to age 26, eliminating lifetime dollar limits and providing full coverage of preventive services, effective Jan. 1, 2011, for calendar-year plans.

Many more changes for employers lie ahead. In 2013, they have to cap contributions to flexible spending accounts at \$2,500 per year. Also in 2013, employers that provide prescription drug plans to Medicare-eligible retirees will lose part of a generous tax break.

Some employers already are analyzing what will be their biggest decision: whether it makes sense to drop their health care



1. Sweeping federal law changes the U.S. health care landscape.
2. AIG makes financial progress but faces illness of top leader.
3. In an about-face, contingents again allowed for largest brokers.
4. Risk management failures lead to Deepwater Horizon disaster.
5. Financial services reform aids insurance industry goals.
6. Regulators act quickly to issue health care reform rules.
7. Group health plan costs surge on higher fees, utilization.
8. General Re sham reinsurance case moves to appeal.
9. COBRA lifeline cut as support fades in Congress.
10. Wholesale brokers merge while startup's hiring sparks litigation.

plans, pay a \$2,000 per employee penalty that begins in 2014 and bump up employees' salaries to partially offset the cost of coverage available to individuals through state insurance exchanges or should they still offer coverage.

However, GOP lawmakers in Congress have said they will try to repeal the law, while courts will rule on suits challenging fines on individuals who do not enroll in a qualified health plan.

—By Jerry Geisel

#### AIG spins off, sells units to further bailout repayment

Uncertainty continues to surround American International Group Inc., but there were indications by year-end that the company's plans to emerge from federal ownership, albeit as a smaller entity, were beginning to take shape.

That was a major improvement from the start of 2010, when AIG said it was pumping \$2.3 billion into Chartis Inc., its property/casualty unit, as the parent company reported a \$10.95 billion loss for 2009. Much of AIG's loss was attributed to accelerated amortization expense related to its Federal Reserve Bank of New York credit facility set up as part of its bailout, which began in September 2008 and totaled \$182 billion.

Shortly after the Chartis infusion, matters looked brighter for AIG when it was announced that

London-based Prudential P.L.C. would buy Asian life insurance unit AIA Group Ltd. for \$35.5 billion, which observers said was significantly more than AIA would have fetched just several months previously.

But the AIA deal with Prudential collapsed in response to growing shareholder unrest about its price. AIG terminated the deal after rebuffing an attempt to seek new terms. Instead, AIG revived its plan to take AIA public, and raised proceeds of about \$17.8 billion in an initial public offering in Hong Kong. AIG sold 7.03 billion shares, or a 58.4% stake in the company, according to a filing with the Securities and Exchange Commission.

AIG also agreed to sell American Life Insurance Co. to MetLife Inc. for \$15.5 billion.

In September, AIG said it would accelerate repaying the government. The plan called for AIG to exchange more than 1.6 billion shares of its common stock for \$49.1 billion worth of preferred shares held by the U.S. Treasury Department, which would temporarily leave Treasury owning more than 92.1% of AIG's common stock. Treasury then would sell the common stock.

As part of its third-quarter report, AIG said it had raised \$36.71 billion—\$27.71 billion in cash—to repay the U.S. government from the ALICO sale and the AIA IPO. Even so, AIG reported a \$2.4 billion quarterly loss.

Earlier this month, reports said AIG and the U.S. Treasury Department were planning a stock offering for the first half of 2011 that could see the government cut its stake in the insurer by up to 20 percentage points.

Federal assistance provided to AIG under the Troubled Asset Relief Program ultimately will cost the U.S. Treasury about \$14 billion, according to a November report by the Congressional Budget Office.

—By Judy Greenwald



## Largest brokers allowed to resume contingent pay

An issue that roiled the brokerage industry for years came back to life in 2010 as state authorities allowed the world's three largest insurance brokerages to once again accept contingent commissions.

The issue came to a head in 2004 when former New York Attorney General Eliot Spitzer accused bro-

kers of steering clients and rigging bids to maximize contingent commission payments. The allegations resulted in large monetary settlements by the largest brokers and a 2005 ban on their collecting contingent commissions.

But the ban was lifted this year when the three largest brokerages—Marsh & McLennan Cos. Inc., Aon Corp. and Willis Group Holdings P.L.C.—agreed to comply on a nationwide basis with New York state's new producer compensation disclosure regulation.

The three took varying stances on circumstances under which they would or would not accept contingents. Many smaller brokers still collect contingent pay.

The move did not sit well with

the Risk & Insurance Management Society Inc., which considers contingents an inherent conflict of interest that should be banned.

Meanwhile, prosecutions of individual brokers for their involvement in alleged bid-rigging and client-steering fell apart. In the highest-profile case—which involved former Marsh executives William Gilman and Edward McNenney—New York Supreme Court Judge James A. Yates cited previously undisclosed evidence in overturning their convictions.

In another bid-rigging case, though, a panel of the 3rd U.S. Circuit Court of Appeals in Philadelphia reversed a lower court in August and permitted parts of a suit alleging antitrust and racketeering

among dozens of brokers and insurers that allegedly participated in a bid-rigging scheme to go to trial. The case, which was undecided at year-end, involved suits that were consolidated into two groups—one representing commercial property/casualty policyholders and the other, employee benefit sponsors.

Related to the contingent commissions controversy is disclosure of broker compensation, another point of contention between risk managers and brokers. While RIMS pushed for mandatory disclosure, New York state's rules that go into effect on Jan. 1, 2011, require disclosure only on client request. In November, a judge rejected efforts to block the rules.

—By Mark A. Hofmann

## Risk management failures result in worst U.S. oil spill

An explosion on the Deepwater Horizon oil rig that killed 11 workers and ruptured a pipeline that spewed tens of thousands of barrels of oil a day into the Gulf of Mexico left BP P.L.C. with a huge self-insured loss caused by a massive risk management failure.

The oil spill, triggered by the April explosion that two days later sank the rig owned by Transocean Ltd., was the worst in U.S. history. A blowout preventer on the pipeline failed, allowing oil to flow into the Gulf for months.

BP agreed to pay the majority of costs related to the cleanup and losses businesses suffered due to the spill, which BP estimated would cost it about \$40 billion.

To pay the claims, BP established the Gulf Coast Claims Facility, which had paid nearly \$4 billion as of early December.

Fitch Ratings Ltd. said the disaster may cost insurers as much as \$6 billion. Liability rates for energy risks spiked as much as 100% after the disaster.

In July, BP finally shut in the well and stopped the flow of oil into the Gulf.

In a report, BP acknowledged that decisions by "multiple companies and work teams," including misreading pressure data that indicated a blowout was imminent, among other mistakes, cleared the way for work on the well to continue and led to the fatal explosion and fire.

The well spewed as much as 40,000 barrels of crude oil into the water each day it was uncapped, some experts said, making it five to six times worse than the 1989 Exxon Valdez spill in Alaska.

More recently, however, BP's lawyers reportedly asserted that estimates of the spill were vastly overstated.

The spill imperiled at least \$1.6 billion in tourism, recreational and commercial fishing, and economic benefits from coastal wetlands, according to the Corpus Christi, Texas-based Harte Research Institute for Gulf of Mexico Studies at Texas A&M University.

The disaster prompted Torus Insurance Holdings Ltd. to set up an excess liability facility known as excEED, for excess energy exploration and development. The facility plans to offer up to \$1 billion in excess casualty and pollution capacity in tranches of \$250 million through a consortium of reinsurers and insurers if demand for the coverage is sufficient.

Separately, Munich Reinsurance Co. said the Deepwater incident led to its plans to offer as much as \$20 billion in excess casualty limits if U.S. lawmakers raise the \$75 million liability cap set by the Oil Pollution Act.

—By Michael Bradford



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## Key risk manager legislative aims passed into law

Risk managers realized a couple of long-term federal legislative goals when President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law in July.

The law focuses primarily on noninsurance financial institutions, such as banks, stock broker-

ages and hedge funds, in an effort to minimize chances that the U.S. financial system would repeat the chaos that rocked it in late 2008.

The law attempts to minimize systemic risk throughout the financial services system. But its chief drafters—Senate Banking, Housing and Urban Affairs Committee Chairman Christopher Dodd, D-Conn., and House Financial Services Committee Chairman Barney Frank, D-Mass.—also incorporated two major insurance provisions into the measure.

The first establishes a new Federal Insurance Office within the Treasury Department. The office, which has been sought by risk managers and insurers, would advise federal authorities on insur-

ance matters, coordinate federal policy on international insurance matters, represent the United States in the International Assn. of Insurance Supervisors and oversee the federal terrorism insurance backstop program. The office, however, has extremely limited powers to pre-empt state insurance regulations.

The other provision, which had been approved by the House as the Nonadmitted and Reinsurance Reform Act several times, holds that no state other than the home state of a policyholder can require premium taxes on nonadmitted insurance, leaving it to the states to determine how to allocate taxes among themselves. In addition, it subjects placement of nonadmit-

ted insurance only to the regulation of the policyholder's home state under most circumstances. Of particular interest to risk managers is a provision that allows brokers representing qualified buyers to approach the surplus lines market directly without having to be rejected by the admitted market.

The measure also streamlines solvency regulation of reinsurers.

Although the reform measure has been law nearly six months, implementation questions remain.

For example, no director has been named to head the FIO. In addition, the states have yet to come up with a system to implement the nonadmitted market reforms set out in the law.

—By Mark A. Hofmann

## Quick action taken to implement health reform

When Congress passed health care reform legislation in March, President Barack Obama signed it and his administration quickly geared up to draft regulations to interpret and implement the sweeping new law.

Even though the Patient Protection and Affordable Care Act comprises more than 2,000 pages, many parts of the law are ambiguous, requiring regulatory clarification, while lawmakers in other cases deliberately left it to regulators to provide the guidance needed for implementation.

With some provisions going into effect on Jan. 1, 2011, quick action was essential to help employers revise their health care plans. Regulators responded with a flurry of rules.

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every employer: the new requirement that employers extend coverage to employees' adult children up to age 26, which goes into effect on Jan. 1, 2011, for calendar-year plans.

In their guidance, regulators resolved several issues. The rules allowed employers, on a tax-favored basis, to amend their plans to expand young-adult coverage retroactive to March 23, when the president signed the legislation.

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More rules are yet to come as regulators examine additional issues, such as defining "essential" benefits that group plans must offer.

—By Jerry Geisel

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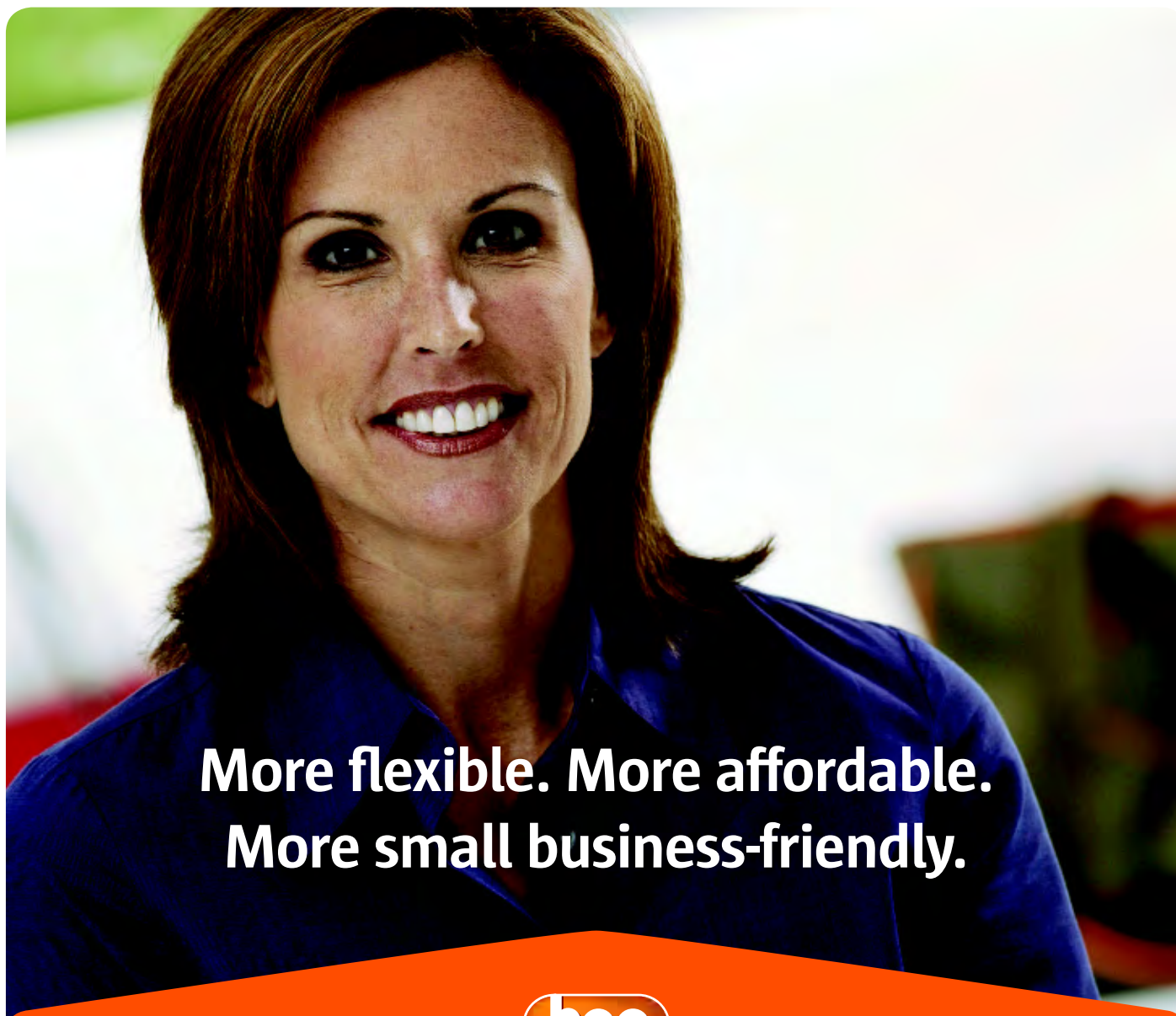
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## Health care hikes again reaching double-digit range

Group health plan cost increases picked up steam in 2010 after several years of relative stability, and the health care reform law is expected to help that surge continue in 2011.

Higher medical fees and increased utilization caused group health care plan costs to jump an average of 6.9% in 2010, the largest

increase since 2004, according to Mercer L.L.C. That brought average annual costs to \$9,562 per employee vs. \$8,945 in 2009, according to the annual survey.

Similarly, a Milliman Inc. study found that average medical costs for a typical family of four enrolled in an employer-sponsored preferred provider organization rose an average of 7.8% in 2010. The \$1,303 increase was the largest dollar gain since 2005.

Higher-than-usual COBRA enrollment rates also pushed up total health care spending, researchers at Hewitt Associates Inc., now Aon Hewitt Inc., found. That was due to a federal subsidy of COBRA premiums, boosting the typical 12% enrollment rate to as high as 46% in

June 2009. Insurers also established higher reserves for COBRA enrollees, who traditionally are greater users of medical care.

Improvements in group health benefit coverage mandated by the Patient Protection and Affordable Care Act could increase costs even more for employers. If no plan design changes are made, costs could grow as much as 10.1% in 2011, Mercer researchers warned.

Hewitt forecasts that group health plan costs per employee will increase an average of 8.8% in 2011, the largest percentage gain since 2005. That compares with a 6.9% actual increase in 2010.

In fact, group health insurance rates for small and midsize employers already jumped

between 11% and 20% for 2011 renewals that occurred during the summer, according to the Council of Insurance Agents & Brokers' June survey.

However, the 12th Annual Kaiser Family Foundation/Health Research & Educational Trust survey found that employer-sponsored health insurance costs climbed just 3% in 2010, but that was due largely to increased cost-shifting to workers.

Since 1999, the share of health care premiums paid by employees has increased 159%, while the cost of employer-sponsored health care benefits has grown 138%, according to the KFF/HRET survey.

—By Joanne Wojcik

## Appeals heard in Gen Re, AIG finite fraud case

2010 came and went without final resolution of the long-running case in which prosecutors alleged that executives of General Re Corp. and American International Group Inc. engaged in a sham reinsurance deal.

The charges were brought in 2005 by the Securities and Exchange Commission and then-New York Attorney General Eliot Spitzer, in which prosecutors alleged that the bogus deal helped AIG inflate its loss reserves by \$500 million in 2000 and 2001.

In February 2008, former Gen Re executives Ronald E. Ferguson, Christopher P. Garand, Robert Graham and Elizabeth Monrad and former AIG executive Christian M. Milton were convicted on charges of conspiracy, securities and mail fraud, and making false statements to the SEC. All were sentenced to prison and fined, but appealed their convictions.

In their appeal this year, the attorneys for the five told the 2nd U.S. Circuit Court of Appeals that they had not received a fair trial.

Among other arguments, defense attorneys said the trial court took AIG's multibillion-dollar stock price drop in 2005 as proof that the sham deal was "material," requiring AIG to inform investors. The defense also argued that prosecutors failed to present evidence on what really hurt AIG's stock price.

Prosecutors argued that the defense never offered other reasons for AIG's 2005 stock plunge.

Mr. Spitzer's 2005 probe of the Gen Re/AIG reinsurance deal also resulted in a civil suit against former AIG Chairman and CEO Maurice R. Greenberg and former Chief Financial Officer Howard I. Smith.

While many allegations were dropped after AIG's 2006 agreement to pay \$1.6 billion in damages and penalties, a lesser charge remains against Messrs. Greenberg and Smith: that they disguised losses in AIG's auto warranty program by moving them to Barbados-based CAPCO Reinsurance Co. Ltd. Late this year, New York State Supreme Court Justice Charles E. Ramos validated the prosecution's claim about the CAPCO deal without requiring a trial, and Mr. Greenberg plans to appeal the decision holding him liable for damages.

But Justice Ramos also refused summary judgment on the Gen Re allegations, saying while the facts "strongly suggest knowledgeable conduct on the part of Greenberg," the evidence against him is "too remote" to charge him now when confronted with his denials.

In January, Gen Re paid \$92.2 million to the SEC to settle charges that it entered into a fraudulent reinsurance agreement with AIG and Prudential Financial Inc.

As the year ended, the cases involving the ex-Gen Re and AIG executives still were not resolved.

—By Sonja Ryst

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TOP STORIES  
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## Support to extend COBRA lifeline wanes in Congress

Amid increased concern about its cost, federal lawmakers in 2010 cut a lifeline they had extended during the recession that enabled millions of laid-off employees and their families to pay COBRA health insurance premiums.

With strong backing from Democratic and Republican legislators as part of a massive economic stimulus package they later approved, Congress in 2009 included a provision that provided a nine-month, 65% federal COBRA premium subsidy to employees let go from Sept. 1, 2008, through Dec. 31, 2009.

As the subsidy was running out for the first beneficiaries, Congress in late 2009 extended the maximum subsidy period to 15 months and offered it to people laid off through Feb. 28, 2010.

In 2010, Congress twice extended the subsidy. The first extension continued the subsidy through March 31; the second offered the subsidy to those laid off through May 31.

The subsidy was a boon to millions of laid-off U.S. residents as well as their families. Studies by Hewitt Associates Inc.—now Aon Hewitt Inc.—found that the COBRA takeup rate among terminated employees working for large employers roughly doubled after the subsidy became available.

However, the COBRA premium subsidy law also meant a lot more work for employers. The first challenge was to locate employees who were laid off before the subsidy measure became law and had declined COBRA to tell them that they had a second chance to enroll.

Employers also had to figure out—in the absence of definitions in the law—what constituted involuntary termination. Later, though, administrative problems eased when the Internal Revenue Service issued guidance on numerous situations in which laid-off employees would be entitled to the subsidy and when they would not.

But that didn't end uncertainties associated with the subsidy law. After each stopgap extension of the subsidy, employers wondered if lawmakers would approve another extension.

But the end of the line became apparent in June, when Senate Democratic lawmakers, who previously had supported a federal COBRA premium extension through the end of 2010, dropped their support of any extension. The biggest reason for the loss of congressional support of another extension was lawmakers' fears of a public backlash against measures that would increase the burgeoning federal budget deficit, Washington observers said.

—By Jerry Geisel

## Wholesale brokers merge, startup sparks litigation

Wholesale brokers joined forces in two high-profile mergers, and a notable startup added competition and controversy in 2010.

AmWINS Group Inc. and Colemont Insurance Brokers Ltd. merged in April, forming an entity with more than \$4.8 billion in annual premiums. The combined entity, with 1,800 employees in 16 countries, operates under the AmWINS Group name and is based in Charlotte, N.C.

AmWINS was the second-largest wholesaler in *Business Insurance's*

2009 ranking, based on 2008 property/casualty premium volume of \$2.21 billion. Colemont, with \$1.36 billion in placements, was ranked No. 5. The combined entity AmWINS Group was the top wholesaler in the 2010 ranking based on 2009 premium volume of \$3.72 billion.

After that pairing, Swett & Crawford Group Inc. merged in July with Cooper Gay (Holdings) Ltd. A new holding company, Cooper Gay Swett & Crawford Ltd., was established with about \$3.5 billion in premiums and 1,500 staff members in more than 60 countries.

This year's mergers continue a trend of consolidation in the wholesale market. There were sev-

eral deals involving private equity firms in 2007, including the combination of BISYS Group Inc.'s insurance services and retirement operations with Crump Insurance Services to form Crump Group Inc.

The infusion of private equity capital died down after the credit market crisis made borrowing money for highly leveraged deals difficult.

Early this year, industry veteran Patrick G. Ryan was responsible for a notable formation in the wholesale brokerage market with his announcement that Ryan Specialty Group had set up operations in Chicago.

At the same time, Mr. Ryan, founder and former executive chairman of Aon Corp., launched

Ryan Specialty (Europe) Ltd., a U.K.-based managing general underwriting agency.

He also triggered legal action by rival broker CRC Insurance Services Inc., which cried foul when 120 employees left to join Ryan Specialty Group.

A Chicago federal judge in June denied a request by CRC for a preliminary injunction seeking to restrain former employees from working for any competitor and to prevent competitors from soliciting CRC employees and customers for two years. Separately, about 60 former CRC employees are seeking a declaratory judgment that restrictions in their employment contracts are unlawful.

—By Michael Bradford

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# NEWSMAKERS OF THE YEAR 2010



American International Group Inc. President and CEO **Robert H. Benmosche** was the victor in a dispute with

Harvey Golub, who resigned as chairman in July after a showdown with the strong-willed executive. Tensions reportedly escalated between the two after the board rejected a lower offer from London-based Prudential P.L.C. when shareholders balked at the \$35.5 billion price for AIA Group Ltd. AIG subsequently raised nearly \$18 billion in an October initial public offering of AIA. On a personal level, Mr. Benmosche in October revealed that he was suffering from an undisclosed form of cancer and undergoing chemotherapy. He continues to head AIG, but the firm's board said Chairman Steve Miller would step in as interim CEO should Mr. Benmosche need to step down. That still left the question of who would replace him permanently should it be necessary. The consensus among observers is that Mr. Benmosche's accomplishments would allow a successor to focus on day-to-day operations rather than crisis management.



Long a force in the reinsurance market, **Warren Buffett** increased his influence in 2010, raising his stake in of Munich Reinsurance Co. to

more than 10% of the German-based company and indicating that he might buy more shares of the world's largest reinsurer. Mr. Buffett owns the Munich Re stake through Berkshire Hathaway Inc., National Indemnity Co. and OBH L.L.C. He also has a stake in the world's second-largest reinsurer, Swiss Reinsurance Co. Ltd. The chairman and CEO of Omaha, Neb.-based Berkshire did well by the Swiss Re investments. In November, the Zurich-based reinsurer said it was going to repay the 3 billion Swiss franc (\$3.08 billion) capital injection Berkshire provided in February 2009; reports indicated that when the convertible notes are redeemed, which is expected in January, Berkshire could realize a profit of more than \$1.3 billion on the investment. If that isn't enough, President Barack Obama in November said that Mr. Buffett will be among those receiving the 2010 Medal of Freedom.



Senate Banking, Housing and Urban Affairs Committee Chairman **Christopher Dodd**, D-Conn., this year achieved

one of his most ambitious goals before he retired from Senate—a sweeping overhaul of financial services regulation. Although the Dodd-Frank Wall Street Reform and Consumer Protection Act focused mostly on noninsurance financial institutions, it contained two provisions long sought by risk managers. One made it easier for qualified risk managers to access the surplus lines markets; the other established an unprecedented Federal Insurance Office. Sen. Dodd also won kudos from risk managers, insurers and others over the years for his staunch support of a federal terrorism insurance backstop, now in place until 2014. His retirement also ends one of the most influential recent political partnerships on Capitol Hill, which he enjoyed with House Financial Services Committee Barney Frank, D-Mass., a partnership reflected in the name of the bill they fashioned.



Although C.V. Starr & Co. Inc., the company founded by former American International Group Inc. leader **Maurice R.**

**Greenberg**, appears to be well-established, he is still dogged by legal problems. In October, New York Supreme Court Justice Charles E. Ramos said Mr. Greenberg and former AIG Chief Financial Officer Howard Smith could be held liable for damages arising from the alleged improper use of an offshore vehicle, Barbados-based CAPCO Reinsurance Co. Ltd., as a shell corporation to take on auto warranty losses that AIG generated in the mid-1990s to remove them from its books. While Mr. Greenberg's lawyer said he would appeal, it was a partial victory because the judge refused to grant summary judgment for the New York attorney general's office on the larger count that Messrs. Greenberg and Smith used a sham reinsurance deal between AIG and General Re Corp. to hide AIG's losses and inflate its reserves in an effort to mislead Wall Street stock analysts.



**Tony Hayward** made headlines for the wrong reasons following the April explosion of the Deepwater Horizon oil rig in the Gulf of Mexico

that killed 11 workers and caused the worst oil spill in U.S. history. Mr. Hayward, who made a series of public relations gaffes and reportedly received death threats, resigned as CEO of BP P.L.C. in September. When he took the post in 2007, he said safety would be a top priority. Although a BP report concluded the company was not entirely to blame for the catastrophe, and a White House commission in November said it found no evidence to suggest that BP had cut corners to reduce costs, the disaster tarnished the company's reputation. During the spill, Mr. Hayward's assertion that he would "like his life back" and photographs of him relaxing on his yacht were among public relations missteps that created pressure on him to quit. Largely self-insured, BP estimated its Deepwater Horizon costs at \$40 billion. Fitch Ratings Ltd. estimated insured losses could reach \$6 billion.



From the beginning, it was clear that **President Barack Obama** had studied the reasons why prior attempts to pass

health care reform legislation had failed and was determined to avoid those mistakes. For example, he left the drafting of the legislation to congressional Democrats, a decided contrast with the Clinton administration, which drafted its own bill in great secrecy that lawmakers promptly discarded when it was released. At key moments, though, President Obama got deeply involved. In September 2009, he spoke before a joint congressional session to shore up support that had begun to lag under a barrage of criticism, much of it unfounded. Then in February, as Democrats battled among themselves in trying to iron out a final compromise package, he presented his own recommendations, including one to reduce the impact of a controversial excise tax on costly health plans. Many of his ideas were incorporated into the measure that won final passage in March.



California Insurance Commissioner **Steve Poizner** attracted media attention during 2010 when he attempted to

force insurers doing business in the state to shed their investments in Iran and released a list of nearly 300 insurers that refused to agree to a moratorium on Iranian investments. Five industry groups filed a petition with the California Office of Administrative Law, seeking to invalidate the actions. They argued that, among other things, the commissioner lacks the authority to ban investments by insurers domiciled in other states. In October, the office agreed with the insurance organizations and ruled the commissioner did not follow proper procedure. Then in November, Mr. Poizner countered with a lawsuit challenging the determination. He asked a state judge to rule that his actions did not constitute impermissible "underground" regulations. No decision had been made on the suit by Mr. Poizner, who did not run for re-election. Instead, he ran unsuccessfully for governor.



When Scott Brown won a January special election to fill the seat that Sen. Edward Kennedy, D-Mass., held for nearly 47 years until his

death, Senate Majority Leader **Harry Reid**, D-Nev., did not panic. With the election of Sen. Brown, a Republican, Senate Democrats now had only 59 certain votes to pass the big health care reform bill, one vote shy of the 60 votes needed to stop a Republican filibuster. Rather than panic, Sen. Reid said, "We are not going to rush into anything." He didn't and during the succeeding weeks, Sen. Reid helped hone the legislative strategy—a relatively unusual one—that would be used during the final consideration of the bill. It would be considered under a procedure known as budget reconciliation in which only a simple majority of senators would be required for approval. President Barack Obama signed on to the approach as did House Speaker Nancy Pelosi, D-Calif., assuring final passage of the Patient Protection and Affordable Care Act in March.



**Patrick G. Ryan** made good on his pledge to remain active in the insurance industry after retiring from Aon Corp., launching a

venture in 2010 that he hopes becomes a significant player in wholesale insurance. Mr. Ryan in February announced the formation of Chicago-based Ryan Specialty Group Inc. after leaving Aon, the company he founded and where he served as executive chairman as it grew to become the world's second-largest brokerage, according to *Business Insurance* rankings. Ryan Specialty is a holding company of managing general underwriters and managing general agencies that provide specialty insurance services to retail agents and brokers worldwide. After more than 120 employees left CRC Insurance Services Inc. for Ryan Specialty, a federal judge in June denied CRC's request for a preliminary injunction to keep 39 former employees from working for Ryan Specialty or CRC competitors. Mr. Ryan also was CEO of Chicago's unsuccessful bid to host the 2016 Summer Olympics.

In a blow to prosecutors, New York County Supreme Court Judge **James A. Yates** probably wrote the last episode in one of the insurance industry's longest-running dramas when he threw out the bid-rigging convictions of two former Marsh Inc. executives in July. That ended a series of prosecutions targeting individual brokers named in the investigations launched in 2004 by then-New York Attorney General Eliot Spitzer. In his July 2 ruling, Judge Yates overturned the convictions of former Marsh Managing Directors William Gilman and Edward J. McNeeney, citing previously undisclosed evidence that "undermines the court's confidence in the verdict." He had convicted them earlier of violating New York antitrust law, but acquitted them on 20 counts of fraud and larceny. They were accused of colluding with employees at various insurers to rig the market for excess casualty insurance between 1998 and 2004. Judge Yates previously had dismissed related charges against other former Marsh executives.

## TIMELINE OF EVENTS 2010

### JANUARY

- American International Group Inc. makes high-level management appointments and reaches agreements to sell some operations as part of its plan to repay a federal bailout.
- A major earthquake devastates Haiti, but insured damage is small.
- Judge dismisses criminal charges against former Marsh Inc. executives in a bid-rigging case started by former New York Attorney General Eliot Spitzer's investigation of industry practices.

### FEBRUARY

- A winter storm slashes the U.S. East Coast, leaving insured damage as high as \$2 billion.
- Authorities lift a ban on contingent commissions for the world's three largest brokers.

### MARCH

- Ending a nearly yearlong drive, Congress passes and President Barack Obama signs sweeping health care reform legislation. Employers must add coverage of employees'

older adult children, eliminate annual and lifetime dollar limits, fully cover preventive services and cap FSA contributions.

- Losses from the February earthquake in Chile hit the global insurance market, as billions of dollars of insured damage mount.
- Lloyd's of London posts record \$5.81 billion profit for 2009.

### APRIL

- President Obama signs another extension of the 15-month, 65% federal COBRA premium subsidy for laid-off employees.
- Companies seek coverage for business interruption losses caused by volcano ash in Europe.
- The Deepwater Horizon oil rig explodes, killing 11 and resulting in billions of dollars in losses and the worst oil spill in U.S. history.

### MAY

- In *Arthur J. Lewis et al vs. City of Chicago*, the Supreme Court eases public employees' ability to file employment discrimination cases.

### JUNE

- Employers that qualify are allowed to amortize pension plan funding shortfalls over 15 years for any two years between 2008 and 2011 under legislation signed by President Obama.
- Marsh & McLennan Cos. Inc. sells its Kroll Inc. unit for more than \$1 billion.
- House and Senate negotiators reach a deal on sweeping financial services reform, including a new Federal Insurance Office and streamlining regulation of the surplus lines market.

### JULY

- In the biggest benefit consultant deal ever, Aon Corp. purchases Hewitt Associates Inc. in a cash-and-stock deal valued at \$4.9 billion.
- Judge Yates dismisses last Spitzer-era bid-rigging suits against former Marsh executives.
- AIG Chairman Harvey Golub resigns after a boardroom clash with President and CEO Robert Benmosche.
- President Obama signs financial services reform bill into law.

- Soft market continues for major P/C lines.

### AUGUST

- Massive recall of eggs ignites debate: Do buyers need product recall insurance?

### SEPTEMBER

- Department of Health and Human Services approves applications by employers and other organizations for a \$5 billion program that partially reimburses claims by pre-Medicare-eligible retirees and their dependents.
- Employers allowed to amend their 401(k) plans to allow participants to roll over balances into Roth 401(k) plan accounts under legislation given final congressional approval.
- Robert Clements, former Marsh executive who played a key role in creating the Bermuda insurance market, dies.
- AIG plans to speed bailout repayment.

### OCTOBER

- AIG President and CEO Robert Benmosche reveals he has cancer.
- Andrew Beazley, a co-founder of Beazley

P.L.C., dies.

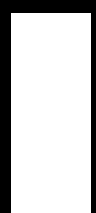
- New York judge finds former AIG Chairman and CEO Maurice Greenberg liable for the smaller of two allegedly fraudulent reinsurance transactions.

### NOVEMBER

- Fueled by increased utilization and higher provider charges, group health care costs in 2010 rose an average of 6.9%, the biggest increase since 2004, according to Mercer L.L.C.
- Republicans win the House and gain in the Senate, promising a changed agenda for risk management and insurance issues.
- Insurers tell the Treasury Department they are not a systemic risk.
- Former AIG and General Re Corp. executives seek to have their convictions in a sham finite reinsurance deal overturned.

### DECEMBER

- U.S. Supreme Court agrees to decide whether Wal-Mart Stores Inc. must face what could be the largest workplace class action suit ever certified.



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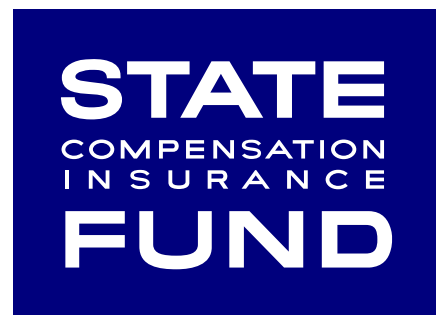
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## DATA SNAPSHOT

# Largest employee assistance program providers

Ranked by number of lives covered at year-end 2009

Rank	Company/Address	Phone/website	Total lives covered
<b>1</b>	<b>ComPsych Corp.</b> NBC Tower, 455 Cityfront Plaza Drive, Chicago, Ill. 60611	800-851-1714 <a href="http://www.compsych.com">www.compsych.com</a>	35,316,000
<b>2</b>	<b>Aetna Inc.*</b> 151 Farmington Ave., Hartford, Conn. 06156	877-238-6200 <a href="http://www.aetna.com">www.aetna.com</a>	20,600,000
<b>3</b>	<b>Ceridian Health &amp; Productivity Solutions</b> 3311 E. Old Shakopee Road, Minneapolis, Minn. 55425	925-853-8100 <a href="http://www.ceridian.com">www.ceridian.com</a>	20,000,000
<b>4</b>	<b>OptumHealth Behavioral Solutions</b> 425 Market St., 27th Floor, San Francisco, Calif. 94105-2426	866-427-6845 <a href="http://www.optumhealth.com">www.optumhealth.com</a>	16,199,926
<b>5</b>	<b>Magellan Health Services Inc.</b> 55 Nod Road, Avon, Conn. 06001	860-507-1900 <a href="http://www.magellanhealth.com">www.magellanhealth.com</a>	12,124,000
<b>6</b>	<b>Bensinger, DuPont &amp; Associates</b> 134 N. LaSalle St., Suite 2200, Chicago, Ill. 60602	312-726-8620 <a href="http://www.bensingerdupont.com">www.bensingerdupont.com</a>	9,951,250
<b>7</b>	<b>CIGNA Behavioral Health</b> 11095 Viking Drive, Suite 500, Eden Prairie, Minn. 55344	952-996-2426 <a href="http://www.cignabehavioral.com">www.cignabehavioral.com</a>	8,300,000
<b>8</b>	<b>ACI Specialty Benefits Corp.</b> 6480 Weathers Place, Suite 300, San Diego, Calif. 92121	800-932-0034 <a href="http://www.acispecialtybenefits.com">www.acispecialtybenefits.com</a>	6,945,000
<b>9</b>	<b>ValueOptions Inc.</b> 240 Corporate Blvd., Norfolk, Va. 23502	866-867-2537 <a href="http://www.valueoptions.com">www.valueoptions.com</a>	6,208,030
<b>10</b>	<b>Charles Nechtem Associates Inc.</b> 595 Bay Isles Road, Suite 115, Longboat Key, Fla. 34228	866-327-2040 <a href="http://www.charlesnechtem.com">www.charlesnechtem.com</a>	5,623,223

\*Aetna Inc. acquired Horizon Health Corp. from its parent company, Psychiatric Solutions Inc. in November 2009.  
Source: BI survey  
Researched by Karen Tucker

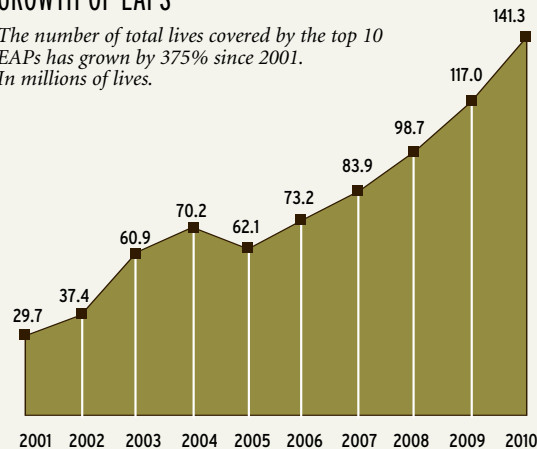
### LARGEST EAP PROVIDERS BY EMPLOYER CLIENTS

<b>13,870</b>	ComPsych Corp.
<b>9,250</b>	Integrated Behavioral Health
<b>7,820</b>	New Directions Behavioral Health L.L.C.
<b>2,545</b>	Bensinger, DuPont & Associates
<b>2,500</b>	Aetna, Inc.*

\*\*Aetna Inc. acquired Horizon Health Corp. from its parent company, Psychiatric Solutions Inc. in November 2009.  
Source: BI survey

### GROWTH OF EAPS

The number of total lives covered by the top 10 EAPs has grown by 375% since 2001. In millions of lives.



Source: BI survey

### LARGEST EAP PROVIDERS BY REVENUE

<b>\$188,000,000</b>	ComPsych Corp.
<b>\$110,500,000</b>	Ceridian Health & Productivity Solutions
<b>\$103,100,000</b>	Magellan Health Services Inc.
<b>\$96,000,000</b>	OptumHealth Behavioral Solutions
<b>\$59,300,000</b>	Charles Nechtem Associates Inc.

Source: BI survey

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Publishing: January 3  
Classified Ad Close: December 21

**Property/Casualty Insurance Market Report**

Publishing: January 10  
Classified Ad Close: December 28  
Extra Distribution: JIF

**Understanding Financial Risk Management**

Publishing: January 17  
Classified Ad Close: January 11

**Case Study: EPL Best Practices**

Publishing: January 24  
Classified Ad Close: January 18

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For Details

# UP Comings & Goings CLOSE



## JACK HICKEY

**NEW JOB TITLE:** Shelton, Conn.-based senior vp at BMS Intermediaries Inc., a unit of London-based reinsurance broker BMS Intermediaries Ltd.

**PREVIOUS POSITION:** Jericho, N.Y.-based senior vp at Tri-State Consumer Insurance Co.

**FIRST MARKET EXPERIENCE:** After college, I spent a year in London working for Willis Faber (P.L.C.) and then I returned to New York to work at Willcox Inc., which is now part of Guy Carpenter (& Co. L.L.C.)

**CAREER HIGHLIGHT:** I worked on a yearlong consulting project for the Chinese government to set up a new insurance pool in Beijing to provide (accidental death and dismemberment) benefits for the coal mining industry.

**ADVICE:** Work hard, treat everyone with respect and, above all, never compromise on your principles, because your reputation means everything.

**WHAT YOU WANTED TO BE WHEN YOU GREW UP:** I wanted to be a

pilot in the Air Force, but that was only until I found out I was too tall to fit in the cockpit.

**HOBBIES:** Golf, reading and coaching my sons' soccer, baseball and basketball teams.

**MOST PASSIONATE ABOUT:** At work, I am most passionate about partnering with my clients to help them implement their strategic plans and reach their goals. At home, I am most passionate about spending time with my family, whether it's playing soccer with my three sons, swimming at the beach or taking my wife out to dinner.

**FAVORITE BOOK:** "Season of Life: A Football Star, a Boy, a Journey to Manhood" by Jeffrey Marx. It's the story of a former NFL player who is now an ordained minister and he teaches young men what is most important in life.

**CAN'T-MISS TV SHOW:** "Hannity," mainly because I went to high school with Sean Hannity.

**ON A SATURDAY AFTERNOON:** I'm typically watching or coaching one of my sons' games.

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Comings & Goings

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

Mike Tsikoudakis  
Business Insurance  
360 N. Michigan Ave.  
Chicago, Ill. 60601-3806

[mtsikoudakis@businessinsurance.com](mailto:mtsikoudakis@businessinsurance.com)

### POSTING THIS WEEK

#### ASSOCIATIONS:

- Self-Insurance Institute of America Inc.
- Texas Surplus Lines Assn. Inc.

#### BROKERS:

- Aon Risk Solutions
- Willis of Alabama Inc.
- Willis of New Orleans Inc.

#### INSURERS:

- C.V. Starr & Co. Inc.
- Harleysville Insurance Group Inc.
- XL Insurance

#### OTHER PROVIDERS:

- Crawford & Co.
- Mercer L.L.C.

# Concorde: Manslaughter ruling chilling

CONTINUED FROM PAGE 3

The judge acquitted Mr. Taylor's supervisor, a French airline regulator and two employees of the company that built the Concorde.

The judge also said that Leiden, Netherlands-based European Aeronautic Defense & Space Co. N.V., which now owns the factories that built the Concorde, has some civil liability and must pay 30% of any damages payable by Continental to the families of victims.

The purpose of the manslaughter case was to apportion blame for the disaster, one legal source explained.

A separate, commercial court case was suspended pending the outcome of the manslaughter trial. Last week's verdict makes it more likely that the commercial court will allow Air France to tap Continental for compensation for money paid to victim's families, said another aviation legal source who asked not to be identified.

While damage claims made by the crash victims' families largely have been resolved, it is likely that Air France and its insurers will seek to reclaim the payouts from Continental, said Clive Garner, head of the aviation law team at Sheffield, England-based law firm Irwin Mitchell L.L.P.

The combined hull and liability coverage for the Air France Concorde was led by Paris-based aviation insurance pool La Réunion

Aérienne (BI, July 31, 2000).

Meanwhile, the manslaughter convictions could have far-reaching implications for aviation risk management and safety, aviation legal experts say.

Manslaughter convictions against airlines have been rare, according to one legal source. But the risk of such cases must be on airline companies' radar.

While Continental was "perhaps in the vanguard of the trend," such cases are very much the trend of the future, according to Sean Gates, a partner at London-based aviation law firm Gates & Partners.

For example, Mr. Gates said, five executives of defunct Cypriot airline Helios Airways are facing manslaughter charges for alleged negligence that led to the August 2005 crash of a Helios Boeing 737-300 aircraft in which 115 passengers and six crew members were killed.

The conviction in the Concorde case is surprising, Mr. Gates said.

"It gives the undesirable impression of the potential for accidents to become criminal events," he said.

Many airlines are not sufficiently prepared for such actions, according to Mr. Gates.

Manslaughter convictions against airlines historically have been rare, in part because it is arguable that such cases can discourage airlines from sharing important safety information that might be used against them in the event of future litigation, according to one legal source.

"From years of experience of safety, we know that you cannot 'punish away' human error," said William R. Voss, president and CEO of the Alexandria, Va.-based Flight Safety Foundation, a non-profit organization.

But rulings like the Concorde case and others may cause airline employees to fear that their words may be used against them, Mr. Voss said.

"It could drive the reporting of errors underground," he said. "And that would mean that we need to wait for tragedies to happen to learn lessons."

While it is necessary for guilty parties to be held accountable and punishment meted out in cases of negligence, there needs to be a balance between such liability concerns and appropriate disclosure, Mr. Voss said.

Next year, the Flight Safety Foundation and the Montreal-based International Civil Aviation Organization will chair a group of judges, prosecutors and aviation experts that will seek to find ways that safety information can be given a degree of protection, Mr. Voss said.

## Wal-Mart: Case OK'd

CONTINUED FROM PAGE 3

standards for class certification beyond what everyone sees as being the law."

"This could be a seminal decision because it's been several years since the Supreme Court has grappled" with the issue of class action lawsuits and this is an opportunity to provide lower courts with "much-needed guidance," said Felix Shafir, an attorney with Horvitz & Levy L.L.P. in Encino, Calif.

"The class action system is way out of control and something needs to be done to rein it in," said Richard Samp, chief counsel of the Washington Legal Foundation, which submitted an amicus brief supporting Wal-Mart in the case.

Observers say the eventual decision will not address the merits of the case. The "procedural mechanisms" for how class actions can be prosecuted will be at the decision's heart, said Gerald L. Maatman Jr., a partner with law firm Seyfarth Shaw L.L.P. in Chicago.

Observers say if the Supreme Court rejects the 9th Circuit's stance, it may end the case without its merits being adjudicated.



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# Attacks: Companies that cut ties with WikiLeaks hit

CONTINUED FROM PAGE 1

Visa did not respond to a request for an interview.

PayPal said attempted attacks slowed its website "for a short while, but did not significantly impact payments" and that it was fully operational.

Anonymous, which describes itself as a "hacktivist" group sympathetic to WikiLeaks, reportedly claimed credit for the retaliatory denial-of-service attacks.

While such attacks are unusual, experts say they are a real threat.

"It validates what we've been cautioning our insureds about for the past decade," said Tracey Vispoli, worldwide cyber security product manager for Chubb Group of Insurance Cos. The attempted shutdown of the websites "is an eye-opening story for businesses to remind themselves that they're not immune to these events," she said.

In December, shortly after WikiLeaks published 251,287

U.S. embassy cables, Swiss Post's PostFinance banking unit closed the account of WikiLeaks founder Julian Assange, saying the Australian citizen provided false information regarding his place of residence. Soon afterward, hackers overloaded PostFinance's website with clicks, making it unavailable for about a day.

Despite the attack, a media spokesperson for Swiss Post, said money in the accounts held by the company never was in jeopardy.

"Fortunately, it was not a day when people normally pay their bills," he said. "It's hard to say how much the attack cost us."

He also declined to detail steps his company took to prevent another attack.

According to the 2010/2011 Computer Security Institute "CSI Computer Crime and Security Survey," only 17% of the 351 respondents have suffered a denial-of-service attack like those last week, down from 29% in 2009. And among losses suffered from vari-

## RESOURCES TO AVOID CYBER RISKS

Sources of information for risk managers concerned about their company experiencing hacker attacks include:

- The Computer Security Institute's 2010/2011 "CSI Computer Crime and Security Survey."
- The Verizon Inc. "2010 Data Breach Investigations Report" conducted in cooperation with the U.S. Secret Service.
- The Ponemon Institute L.L.C.'s research on privacy, data protection and information security policy.
- How their business processes compare with the International Organization for Standardization's standards, such as the ISO 27000 series on information technology security.

Source: Cyber security experts

ous types of computer crime, only two cases were large losses—about \$20 million and about \$25 million. Discarding those two, the average loss across the group was less than \$100,000 per respondent.

Robert Parisi, New York-based national practice leader for technology, network risk and telecommunications at Marsh Inc., said he has seen very few insurance claims due to denial-of-service attacks. That is because few companies purchase the property portion of cyber liability insurance, which would cover lost revenues. Those that purchase the coverage most likely were able to get their computers back up and running quickly enough so the coverage was not triggered, he said.

Meanwhile, experts say politically motivated hackers typically target well-known companies that are more likely to generate news headlines—the same companies that tend to have the most IT security resources.

Ben Greenbaum, Calgary-based senior research manager for Symantec Security Response, said the seriousness of an attack depends on the nature of the company's business.

"If it's just a vanity website and the company does most of its business over the phone or via letters and faxes, it won't affect them much, but companies that solely

serve their customers on the Internet can see their earnings wiped out for the duration of the attack," he said.

Still, Mr. Greenbaum said, such attacks don't result in the permanent loss of confidential data.

Lisa Sotto, head of the privacy and information group at Hunton & Williams L.L.P., advises clients to have a direct response team in place, handling issues ranging from how to deal with public relations to how to manage service providers should such an attack occur.

She also said it is wise for companies to assess which security approaches and products might be useful to avoid attacks, balancing the need for security with the need to conduct business.

Ben Beeson, a London-based partner at Lockton Inc., said the WikiLeaks story offers a lesson on the importance of an employer knowing its employees.

"You hear a lot about encryption software, intrusion detection systems, firewalls and so on, but people focus on that too much," Mr. Beeson said. "They need to think about the people risk."

One step he recommends companies take to protect themselves from external and internal threats is conducting background checks on employees who have access to sensitive information (see box).

# Cayman: At odds

CONTINUED FROM PAGE 4

said. "It's really about building the right partnerships and flexibility into your corporate business structure so that you don't end up going to the markets for capital when you need it."

Mr. Waters said the biggest pressure he's faced "is to maintain sufficient excess funds" in the captive when the parent is looking for sources of capital.

Mr. Price said he's begun to see increased interest in captives using loss portfolio transfers as a way to free up capital for the parent.

"We have looked at portfolio transfers on a couple of occasions," said Mr. Waters. "They have always seemed to be very expensive to me."

University Hospitals puts considerable emphasis on claims management, Mr. Waters said, so its experience is probably better than what an insurer's would be with the same loss portfolio. Consequently, University Hospitals is probably better off holding on to those claims than paying what it would cost to transfer them, he said.

A well-crafted reinsurance program could provide a more cost-effective method for the captive to achieve some capital flexibility, the panelists said.

"What reinsurance really provides is a call option on capital when the organization is at a particular stress point," said Mr. Barry.

"Particularly in the current market, reinsurance is a very efficient way to get that contingent capital," Mr. Price said.

Mr. Waters said reinsurance is essential to University Hospitals' captive program and, like many captives, University Hospitals' captive wouldn't be able to write the business it writes without reinsurance. "It is something quite honestly few of us could do without," he said.

But, Mr. Barry said, to use reinsurance most effectively, the approach to buying and selling reinsurance has to go from an absolute dollar-based approach to a value-based approach. It's necessary to establish long-term partnerships between captives and reinsurers, because a captive can't create real capital flexibility without them, he said.

Mr. Waters offered a similar perspective: "Captives have been put together with a long-term view of what we do. Only by partnering with your service providers for the long term will you be successful."

"Establishing those long-term relationships, knowing each other's businesses, what each other's interests are, I think, are critical to achieving those goals," Mr. Waters said.

He said he also tries to spread University Hospitals' captive reinsurance program among several reinsurers to make it easier to fill a hole in their reinsurance program if one company leaves the market.

Andie Welsch, vp at Greenlight Re, moderated the panel.



LANDOV

A wanted picture of WikiLeaks founder Julian Assange is seen on the Interpol website.

# Comp: Claims fall coming to an end?

CONTINUED FROM PAGE 1

increased number of claims, although that is not the same as an increase in claims frequency as measured by insurers and insurance rating organizations.

"We are seeing flattening or small increases of new workers comp claim counts" among self-insured employers, said Keith Higdon, senior vp and business intelligence director of Memphis, Tenn.-based Sedgwick Claims Management Services Inc. "But we can't say conclusively at this point the extent to which the trend is driven by changing patterns of behavior as opposed to changes in the total number of people at work."

Liberty Mutual's data, however, shows that the frequency has flattened or even increased slightly based on the number of claims filed per employer payroll.

That happened in 2009 and has appeared to continue throughout

2010. The shift to flattened or slightly increased claims frequency is evident across Liberty Mutual's entire workers comp book of business, including all industry segments, U.S. regions and employer sizes, Mr. Brosius said.

Because it is "happening everywhere, we are convinced it is not a blip," Mr. Brosius said.

Accident Fund Holdings Inc. saw workers comp claims frequency flatten "vs. its normal trend" beginning late in 2009, said Lisa Riddle, vp of claim operations for the Lansing, Mich.-based workers comp insurer.

The pattern continued throughout 2010 across all U.S. regions, she said.

"We have been seeing it and I know a lot of the public (insurance) company CEOs have been commenting on it," Ms. Riddle said.

Southfield, Mich.-based Meadowbrook Insurance Group Inc. has seen "pockets" of the workers

comp program business it underwrites experience flatter or slightly increased claims frequency, said Archie McIntyre, senior vp of business development.

While some Meadowbrook programs continue to experience favorable frequency decreases, other programs with a history of falling frequency are now seeing that trend flatten out.

"There is some newness in some areas to change toward flattening from what was previously a consistent reduction," Mr. McIntyre said.

Some rating organizations also report seeing a potential shift in claims frequency in some states. Because rating organizations rely on insurers for claims data, their information is not as current as underwriters'.

For instance, the Workers' Compensation Insurance Rating Bureau of California said one of its measurements is showing that claims frequency has turned positive, a spokesman said. But that

measurement is based on a "raw" count of claims filed and is not the bureau's best frequency indicator.

A better indicator of frequency will emerge about a year from now, after insurers provide the rating bureau with claims data that weighs how many workers that insured employers have on their payrolls at the end of the policy year vs. the number of employees they estimated when coverage was purchased, the spokesman said.

But if claims frequency is rising, employers can help counter the trend, sources said.

Santa Barbara, Calif.-based Select Staffing Inc., for example, saw its injury frequency start to climb at the beginning of 2010, said Fred O. Pachón, vp of risk management and insurance. So the company that provides temporary workers implemented more safety initiatives that knocked its claims frequency down about 10%, Mr. Pachón said.

"So I would say that (our claims frequency) is feeling pretty flat now," Mr. Pachón said.

# News In Brief

CONTINUED FROM PAGE 1

will form next year in the Atlantic basin. Nine of the storms will grow into hurricanes, with five of those growing into major hurricanes with sustained winds of at least 111 mph, according to the forecast.

**S&P upgrades ACE's rating to AA- from A+**  
Standard & Poor's Ratings Services raised its financial-strength rating of ACE Group of Cos. and its core operating insurance companies to AA- from A+. The new rating applies to ACE's core operations in North America, Europe and Bermuda, which account for more than 75% of the insurer's global business. S&P said its outlook for the companies is stable. The rating agency also upgraded the rating of the insurer's Swiss-based holding company, ACE Ltd., to A, the company said in a statement.

**U.S. P/C rates fall 5% in November: MarketScout**  
U.S. commercial property/casualty rates dropped an average of 5% in November compared with those of a year earlier, Dallas-based MarketScout reported. That followed a 4% decline in October, according to the electronic insurance exchange. General liability insurance experienced the largest decline, a drop of 6%, followed by property, 5%.

## West Coast wholesale brokers merging

Two West Coast insurance wholesalers are merging to form a brokerage with annual premiums of about \$250 million. The merger of Brown & Riding Insurance Services Inc. of Los Angeles and Alexander Morford & Woo Inc. of Seattle will give the combined entity a broader

reach as well as allow it to grow organically and through limited acquisitions, AMW said.

## Reform critic to head key House committee

Health care reform critic Rep. John Kline, R-Minn., has been selected to succeed Rep. George Miller, D-Calif., as chairman of the House Education and Labor Committee when the new congressional session begins next month. Rep. Kline, the committee's ranking member, has been a strong critic of health care reform legislation, which was assembled by congressional Democrats with help from the Obama administration.

## Ryan Specialty unit buys OakBridge

The wholesale brokerage unit of Ryan Specialty Group L.L.C. has acquired OakBridge Insurance Services L.L.C. OakBridge, a specialist broker that concentrates on professional liability coverage, is based in Bloomfield, Conn. Terms of the acquisition by R-T Specialty L.L.C. were not released.

## Marsh aviation execs join Lloyd's broker

Houlder Insurance Services Ltd. is looking to grow its aviation business with the hiring of two executives from Marsh Ltd. The Lloyd's of London broker that is a

subsidiary of China Merchants Group, a state-owned Chinese conglomerate, named Simon Howell as divisional director of its aviation business and Coran Barford as associate director of the division.

## Aon unit to acquire South African broker

Aon Corp.'s South African unit said it intends to acquire broker Glenrand MIB Ltd. Aon South Africa (Pty.) Ltd. will pay \$72 million for Randburg, South Africa-based Glenrand, an Aon spokesman in Chicago said. The deal, which is subject to shareholder and regulatory approvals, is expected to close in the first quarter of next year, Glenrand said in a statement.

## Noted

Reinsurance broker **Guy Carpenter & Co. L.L.C.** has been awarded a wholly owned foreign enterprise broking license by the China Insurance Regulatory Commission. It will provide reinsurance services in China as Guy Carpenter Insurance Brokers (Beijing) Co. Ltd....Former New York State Insurance Superintendent Eric R. Dinallo has joined law firm **Debevoise & Plimpton L.L.P.** as a partner and a member of its financial institutions group.... **Flagstone Reinsurance Holdings S.A.** said Mark Byrne, Flagstone co-founder and former executive chairman, will retire as a member of the board effective immediately.

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## Bishop's posts cause him a royal pain

A British bishop has discovered he can get into trouble for what he says on Facebook, especially if it is something negative about the royal family.

According to media accounts, Church of England Bishop Pete Broadbent was suspended last month for writing a series of posts on Facebook in which he said the upcoming marriage of Prince William and Kate Middleton would last just seven years and that the April 29, 2011, wedding is being surrounded by "nauseating tosh."

He also said the royal family was full of "broken marriages and philanderers" and expressed disappointment that the wedding would cost the public "an arm and a leg," according to the reports.

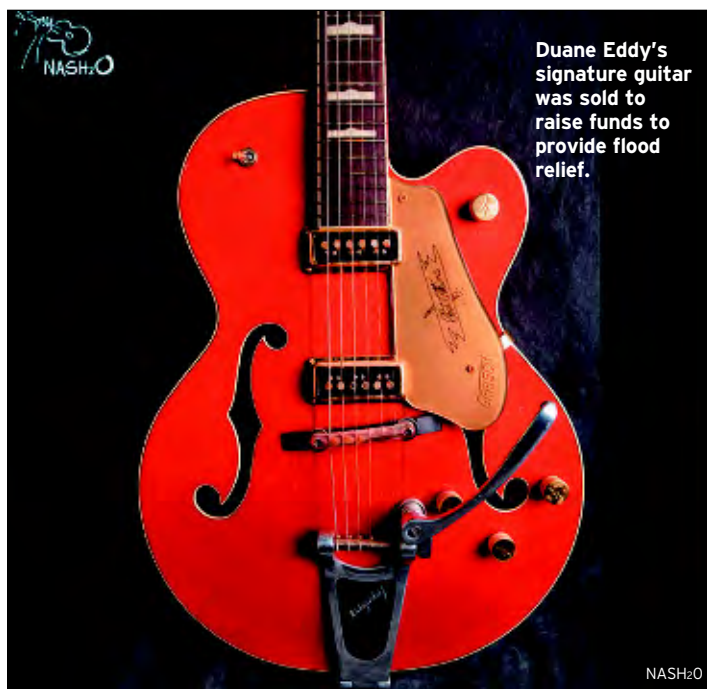
The bishop of London, the Right Rev. Richard Chartres, who reportedly is a close friend of Prince Charles, did not take kindly to the remarks. Although Bishop Broadbent apologized for his comments, he was suspended indefinitely.

However, there is a possibility that Facebook could come to the rescue. According to a report, a campaign that includes an 850-member Facebook group is seeking to have the outspoken bishop reinstated.



# Business Insurance END PAGE

Contributing: Jeff Casale, Judy Greenwald, Sarah Veysey, Rodd Zolkos



## Auction instrumental in flood relief effort

"Music City" may have been flooded with water this year, but lately it's been flooded by music fans' support.

In May, heavy rain drenched much of the Southeast and caused extensive flooding in some areas, but Nashville, Tenn., was hit the hardest by the storm. Many of the city's country music landmarks were flooded and many musicians lost instruments and equipment.

Several relief efforts were set up, including a live online auction website, [nash2o.org](http://nash2o.org), which allows the public to bid on damaged guitars that musicians such as Vince Gill, Kenny Chesney, Bill Cooley, Keb Mo and Peter Frampton lost in the flood.

Guitars that raised big bucks include a Kenny Chesney acoustic that sold for \$4,500, a Peter Frampton Les Paul that sold for \$4,105 and a Keith Urban vintage Airline electric guitar for \$4,000.

Proceeds from the auction organized by nonprofit NASH2O and sponsored by Fireman's Fund Insurance Co., will go toward flood relief funds set up by Nashville firefighters, MusiCares Foundation Inc. and Nashville Musicians Assn.

NASH2O's latest auction on flood-damaged instruments owned by famous musicians runs through Jan. 8, 2011. The organization said it expects to raise \$45,000 to \$50,000 based on bidding trends.

## No insurance for Sampras' stolen awards

Tennis legend Pete Sampras, who lost much of his tennis memorabilia when it was stolen last month from a public storage facility in Los Angeles, has revealed that he had no insurance to cover the loss.

The multiple Grand Slam winner appealed last week for information on the whereabouts of the memorabilia, which includes his first Australian Open trophy and an Olympic ring as well as crystal, two Davis Cups and other trophies.

While Mr. Sampras still has 13 of



AP PHOTO

Tennis great Pete Sampras said multiple items of his tennis memorabilia were stolen from a storage space.

his 14 Grand Slam trophies, dozens of other trophies as well as boxes of tennis memorabilia were stolen.

He reportedly described the theft as being "like having the history of my tennis life taken away."

When Mr. Sampras, who retired from tennis in 2003, asked for help in finding the trophies, he said he would like to be able to show them to his children.

Police reportedly said they had at least one lead in the case.

The tennis great said the memorabilia was not insured because it was impossible to assess its value.



The 1986 Super Bowl Champion Chicago Bears perform the "Super Bowl Shuffle" in a video whose owner claims Viacom Inc. aired without permission.

## VIACOM TACKLED BY 'SHUFFLE' OWNER

The owner of an important artifact of the Chicago Bears' Super Bowl season is shuffling off to court, alleging that a media conglomerate's airing of the "Super Bowl Shuffle" without permission hurt potential sales of the video during the 25th anniversary of the Bears' last NFL title season.

Julia Meyer, who owns the copyright to the "Super Bowl Shuffle," filed suit in federal court in Chicago recently against Viacom Inc., alleging that Viacom aired the video on its MTV and VH1 networks without permission.

More than 500,000 copies of the "Super

Bowl Shuffle" song were sold, and the rap tune and accompanying video featuring several 1985 Bears as the "Shufflin' Crew" became part of the lore surrounding Super Bowl XX in 1986.

In the video, NFL Hall of Famer and Shufflin' Crew member the late Walter Payton raps, "We're not doin' this because we're greedy. The Bears are doin' it to feed the needy."

The suit, however, asks that a jury determine damages caused by sales lost due to the video's alleged unauthorized airing.

Viacom called the claims "unfounded."

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