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DECEMBER 21/28, 2009
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E&S UPDATE

Side-A Market Competition Heating Up

Pages 28

Top Stories of The Week

Insurers Remain Wary Of Systemic Risk Fund

House passage of financial services reform legislation is drawing a mixed response from the property and casualty insurance industry, mainly due to concerns about a systemic risk bailout fund. ▶ Page 6

House Bill Includes E&S, Reinsurance Reforms

Reinsurance and E&S purchases would be governed by the requirements of the buyer's home state under a provision added to the House financial services regulatory reform legislation. ▶ Page 7

State Farm Strikes Deal To Remain In Florida

Florida's acrimonious battle with State Farm over its threat to leave the state's homeowners market ended with the company winning a 14.8 percent rate hike and permission to drop 125,000 insureds. ▶ Page 8

Carriers 'Going Green' With New Coverages

Insurers are increasingly offering products and promoting behavior that address the growing risk of climate change, as well as to meet the demands of policyholders who are "going green." ▶ Page 10

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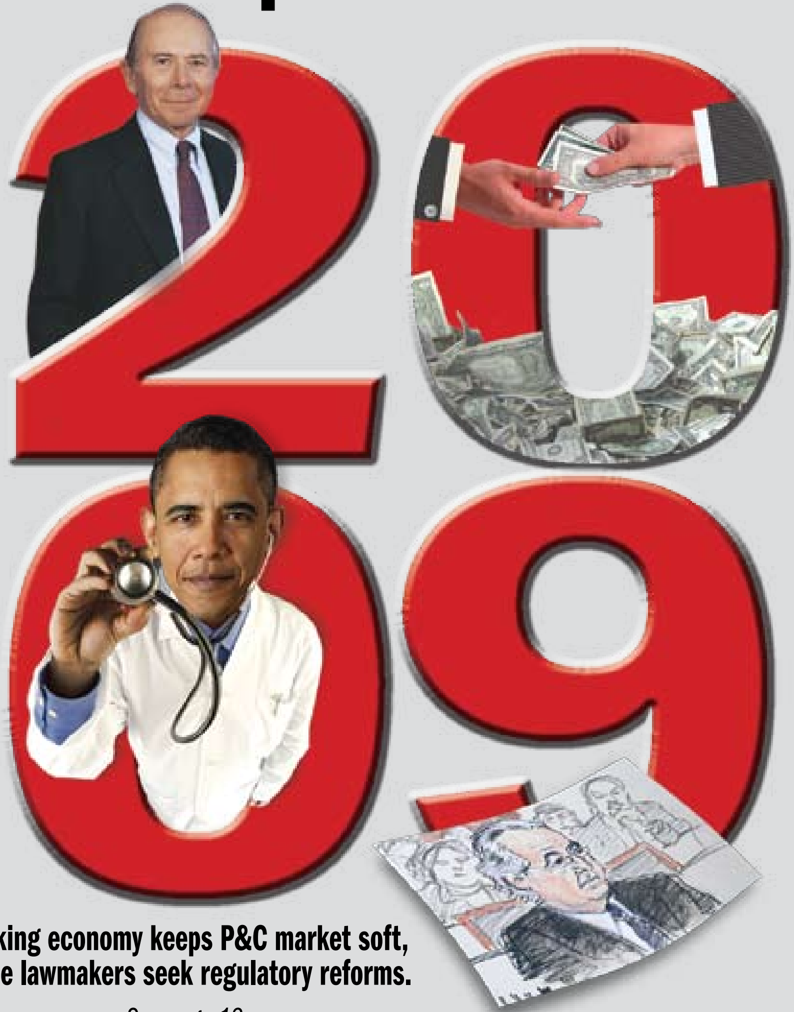

Sinking economy keeps P&C market soft, while lawmakers seek regulatory reforms.

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CHEERLEADERS NEEDED!

Industry Can Do More To Boost Its Reputation

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A summit PUBLICATION

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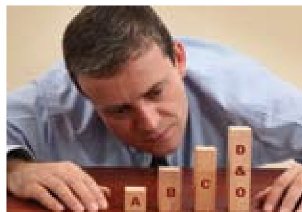

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NU takes a holiday break next week, but we'll be back on Jan. 4, 2010 with a look at the challenges our readers will face in the year ahead. Meanwhile, follow breaking news online at www.property-casualty.com.

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A VIEW FROM THE PRESS BOX

20-20 Hindsight On 2009

WAY BACK ON JAN. 5, I PEERED into my crystal ball for the likely Top 10 Property and Casualty Insurance Stories of 2009. Before you check on what turned out to be my actual picks on page 13, let's see how many of my predictions came true:

1 AIG's Fire Sale Comes Up Short! I was right when I predicted that "AIG will continue to struggle against the restraints imposed by meddling members of Congress as it sells more subsidiaries at bargain prices to pay off its federal bailout loan." However, my fear that AIG would require additional federal funds is thus far unfounded.

2 As The Market Turns! I was right on target in figuring that commercial insurance price cuts would level off, but would "not rebound as sharply as the industry hopes." I properly suggested "there is still too much competition in a contracting economy," noting that "troubled carriers are pricing aggressively to overcome reputational risks and maintain market share."

3 Obama To The Rescue! I was overly optimistic that President Barack Obama's stimulus package would "spur rapid exposure growth in the summer and fall, to the benefit of a multitude of insurers." However, it's encouraging that job losses are at least bottoming out.

4 Is There A Doctor In The House...Or The Senate? I was also premature in predicting that Congress would pass a health care reform bill by year's end, but we're a lot closer to game-changing legislation than we've been in decades. With no public option likely, insurers and their agents could enjoy a flood of new customers once mandates kick in.

5 Noah Gets Coverage, But Only For Floods! I was wrong to assume that Congress would reauthorize the National Flood Insurance Program for three years by March 6, but at least federal coverage hasn't been expanded for wind claims…yet!

6 Who Let The Cats Out? I was absolutely correct in predicting that Congress would not establish a National Catastrophe Fund to back up state insurance facilities, despite President Obama's rhetoric during the campaign to push such a plan—a pledge that helped him win Florida, and the White House.

7 Uncle Sam Spurns Insurance Oversight! Not only was I right about Congress not creating an optional federal charter, it looks like most insurers will be spared any significant federal regulatory burdens under financial services reform.

8 Insurers Get Urge To Merge! I expected a surge in mergers and acquisitions, given AIG's fire sales and trouble at other firms. But outside of a few major deals, M&A activity has been quiet.

You can comment on this column on Sam's Dec. 17 blog entry at **www.NUSamSoapbox.com.** You may also follow Sam on Twitter at **http://twitter.com/NUSam.**

9 NAIC Drops Ratings Initiative! I correctly figured that the National Association of Insurance Commissioners would not dare to create its own rating agency. There are simply too many financial and practical obstacles.

10 Spitzer's Back In Business! While Eliot Spitzer, New York's disgraced former governor and attorney general, has taken a more prominent public role this year, appearing as an expert media commentator on financial regulatory reform, I went too far in predicting he would be appointed to some federal post—warning that he might end up as Insurance Czar under a new federal oversight regime.

So there you have it. I was correct with four of my 10 predictions, dead wrong on four others, and half-right on the other two.

But that won't stop me from taking another stab at fortune-telling. Check out my column and blog of Jan. 4 to see my predictions for the Top-10 P&C Insurance Stories of 2010!

Sam Friedman
Editor In Chief

THE NEWS

WASHINGTON UPDATE

P&C Industry Finds Some Positive Points In House Financial Regulatory Reform Bill

Biggest objection remains assessments to bail out systemically risky companies

BY ARTHUR D. POSTAL
WASHINGTON

HOUSE PASSAGE OF FINANCIAL services reform legislation is drawing a mixed response from the property and casualty insurance industry.

The legislation—H.R. 4173, "The Wall Street Reform and Consumer Protection Act of 2009"—was passed by the House on Dec. 11 by a vote of 223-202. All Republicans and 27 Democrats opposed the bill.

The measure heads to the Senate, where the Banking Committee is working on legislation that may contain different provisions. Committee members have broken up into teams to develop a bipartisan bill. Whether the Senate will unveil its version before Congress leaves for the holiday recess this week is unclear.

The bill included an amendment that allocates supervision of reinsurance and surplus lines purchases to the buyer's home state. (See related story on page 7.)

One bone of contention in the House bill is creation of a Federal Insurance Office.

Charles Symington, senior vice president of government affairs for the Independent Insurance Agents and Brokers of America, voiced support for the provision.

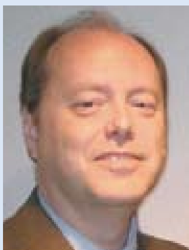
He said the final language narrows the scope of the federal office from what originally was sought by the Obama administration and the staff of the House Financial Services Committee "and provides it with no regulatory authority whatsoever."

Instead, the office would serve as an informational resource for Congress and federal policymakers on insurance issues, in addition to assisting the coordination of international trade agreements.

However, another agent group was less sanguine about the measure's passage.

QUOTEBOX

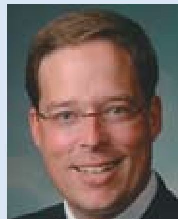
WHAT IS THE INDUSTRY SAYING ABOUT H.R. 4173?



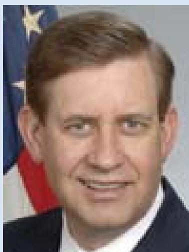
Leonard Brevik
PIA CEO

"A death by a thousand cuts is still a death. For proponents of state regulation of insurance, passage of H.R. 4173 is not a cause for celebration. It is certainly not something that should be cheered by independent insurance agents."

"There's no metric by which a p&c insurer would be considered 'systemically significant'...Forcing them to pay assessments for a federal resolution authority would effectively be asking insurance consumers to foot the bill for the failures of other financial institutions."



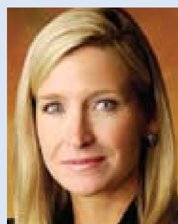
Charles Chamness
NAMIC President



David Sampson
PCI President

"Because p&c carriers are not systemically risky, they should not be forced into a duplicative federal regulatory system designed for companies that caused the economic crisis. We urge Congress not to fix what is not broken."

"[AIA is] encouraged that the legislation establishes a federal office of insurance, and believes that this provision offers a substantial contribution toward broadening and deepening our nation's understanding of the critical role of insurance in our financial system."



Leigh Ann Pusey
AIA President

"A death by a thousand cuts is still a death," said Leonard Brevik, vice president and chief executive officer of the National Association of Professional Insurance Agents. "For proponents of state regulation of insurance, passage of H.R. 4173 is not a cause for celebration."

Specifically, Mr. Brevik said, "while positive changes to H.R. 4173 were implemented throughout the committee process which made the bill slightly less onerous, PIA nevertheless believes that creating a federal insurance office is a bad idea, not a good one."

He added that "it is certainly not something that should be cheered by independent insurance agents."

Charles Chamness, president and CEO of the National Association of Mutual Insurance Companies, said the bill respected the state-based regulatory framework for property and casualty insurance while creating an office to serve as a national information center.

"NAMIC is encouraged by the efforts made to narrowly tailor the purpose and authority of the Federal Insurance Office during the legislative process," Mr. Chamness said.

Leigh Ann Pusey, president and CEO of the American Insurance Association—which has long supported an optional federal charter for insurers—said in a statement that her group is "encouraged that the legislation establishes a federal office of insurance and believes that this provision offers a substantial contribution toward broadening and deepening our nation's understanding of the critical role of insurance in our financial system."

In another positive development, while H.R. 4173 would create a separate Consumer Financial Protection Agency

for financial products, the bill specifically excludes property and casualty insurance from the jurisdiction of the new agency.

That's wise, according to Mr. Chamness, who said that "as insurers, NAMIC members are deeply concerned with the concept of separating consumer protection from soundness and solvency regulation."

In the view of Mr. Chamness, creation of a federal Consumer Financial Protection Agency carries "a potentially serious risk of regulatory conflict and confusion, particularly as it relates to the business of insurance. We are pleased that the members of the Financial Services Committee recognized the problems this would cause and exempted the [property and casualty] industry from this new agency."

However, NAMIC, AIA and the Property Casualty Insurers Association of America voiced concern about a provision to make large insurers pay into a fund to cover any failure by an institution large enough to cause a systemic risk.

H.R. 4173 would establish a Financial Services Oversight Council with the power to designate financial companies it deems as posing a systemic risk to the overall economy for heightened regulation.

To address the costs of insolvencies at these designated companies, the bill would create a fund to aid the unwinding of troubled firms that would be assessed on a pre-event basis.

"As NAMIC has said throughout the past year, there's no metric by which a property-casualty insurer would be considered 'systemically significant,'" according to Mr. Chamness, noting that "property-casualty insurers are required by state regulators to maintain high reserves, low leverage ratios and to participate in resolution mechanisms to mitigate against insolvencies.

"Forcing them to pay assessments for a federal resolution authority would effectively be asking insurance consumers to foot the bill for the failures of other financial institutions," he said.

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FINISH LINE

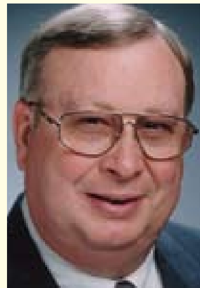
House Bill Includes E&S, Reinsurance Reform Measure

BY ARTHUR D. POSTAL
WASHINGTON

REINSURANCE AND EXCESS AND surplus lines purchases would be governed by the tax policies, licensing and other requirements of the buyer's home state under a provision added to the House version of financial services regulatory reform legislation passed by the House on Dec. 11.

The amendment contained in the House bill reflects the same language passed by the House as the stand-alone Nonadmitted and Reinsurance Reform Act of 2009, known as the NRRA.

That bill's provisions are now part of the broader H.R. 4173—the Wall Street Reform and Consumer Protection Act of 2009. (See related story on page 6.)



"The surplus lines industry should be governed by one set of consistent rules on a transaction, and this amendment will do that."

Richard Bouhan, Executive Director NAPSLO

The reinsurance and surplus lines provisions were added at the request of the industry because financial services regulatory reform is a priority in Congress.

"By establishing that the home state of the policyholder governs a transaction, the surplus lines industry would no longer face trying to comply with confusing and conflicting laws and regulations of multiple states on a multistate transaction," said Richard Bouhan, executive director of the National Association of Professional Surplus Lines Offices.

"The surplus lines industry should be governed by one set of consistent rules on a transaction, and this amendment will do that," he added.

NAPSLO President Marshall Kath added that his association and sector of the industry "have been seeking reform regarding tax remittance and regulation of multistate surplus lines transactions for many years and are pleased to see it as part of the bill."

Looking ahead, Mr. Kath noted that the reinsurance and surplus lines provisions were included in the draft financial services regulatory reform bill recently circulated by Sen. Chris Dodd, D-Conn., chair of the Senate Banking Committee. "With the House and Senate taking up the language as part of reform legislation, we are hopeful that the issue will be resolved," he said.

Frank Nutter, president of the Reinsurance Association of America, said the inclusion of the NRRA legislation in the broader House financial services reform bill is "an important step toward a more efficient regulatory regime for global reinsurers, and vital to modernizing our current insurance regulatory system."

Adding the reinsurance and surplus lines provisions to the financial reform measure increases the odds that the NRRA will ultimately be enacted, according to Joel Wood, senior vice president of government affairs for the Council of Insurance Agents and Brokers.

In addition, according to Mr. Wood, "the inclusion of the NRRA in the House bill will make the issue a 'conference-able' issue, even in the event the Senate fails to include surplus lines reform and modernization provisions in its version of the bill."

"Again, this does not in any way diminish our determination to build strong bipartisan support for surplus

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HOMEOWNERS UPDATE

State Farm Strikes Deal To Stay In Florida, But Will Cut 125,000 Policies, Raise Rates

BY DANIEL HAYS

FLORIDA'S YEAR-LONG, acrimonious battle with State Farm over its threat to leave the state's homeowners insurance market ended last week with the company winning a 14.8 percent rate increase and permission to drop 125,000 policyholders.

Insurance Commissioner Kevin McCarty announced that he had ended the year-long dispute and resolved pending legal action with a Consent Order allowing the non-renewal of 125,000 of the company's 810,416 Florida policies.

"By the terms of the Consent Order, State Farm Florida will remain a significant player in the Florida residential property insurance marketplace," he said in a statement released after a press conference.

The insurer had issued a withdrawal plan on Jan. 27—a month after a judge had upheld Mr. McCarty's denial of a 67.1 percent rate increase. In February, the commissioner said the insurer could withdraw, but only by complying with stringent conditions he set.

He forbid them from dumping customers on the state-run insurer of last resort and said they should allow their agents to place policies with other private insurers.

The company had argued that it was going broke in Florida, but Mr. McCarty back then called the State Farm contention that it faced insolvency and an inability to pay claims "both disingenuous and misleading."

He noted last week that the agreement he had reached with the insurer is "the product of a long and arduous negotiation process."

"The final result is beneficial to the people of the state of Florida, and beneficial to the Florida insurance marketplace," he added. "The Consent Order satisfies the office's requirements issued in our Order dated Feb. 13, 2009, and allows State Farm Florida to remain a viable insurer in the Florida market."

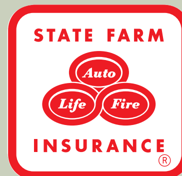
His statement noted that even after the non-renewals, State Farm Florida will remain the largest private insurer of property insurance risk in Florida.

The Consent Order that was reached, the department explained, results in State Farm

"**By the terms of the Consent Order**, State Farm Florida will remain a significant player in the Florida residential property insurance marketplace."

Florida Insurance Commissioner Kevin McCarty

"**...[I]t is essential for the state to continue** working to develop constructive and sustainable insurance reforms that better serve the long-term interests of all Floridians."



State Farm Statement

pulling the withdrawal plan it filed on Jan. 27, 2009, as well as the cancellation of a hearing set for Jan. 25, 2010, before the Division of Administrative Hearings.

State Farm Florida issued a statement saying the Consent Order "will allow us to continue to serve most of our current policyholders and help improve State Farm Florida's financial ability to be there when our customers need us most."

The company said policies designated for non-renewal would receive at least six months advance notice, adding that "State Farm agents will be able to provide affected residential customers with other insurance options. New rates will go into effect as policies are renewed."

"We apologize for any inconvenience or anxiety this process might cause our customers, but this is a necessary step for us as we attempt to stabilize State Farm Florida's financial condition and serve our remaining customers," the company said.

The carrier added that "these are not easy times for the Florida property insurance market. The [Office of Insurance Regulation] has noted publicly that 102 of the 210 private property insurers operating in the state are losing money, and three have gone out of business in the last year."

State Farm said that "to that end, it is essential for the state to continue working to develop constructive and sustainable insurance reforms that better serve the long-term interests of all Floridians." NU

SURVEY SAYS

Social Media Usage Found Lagging With Agents & Brokers

BY LAURA M. TOOPS

ALTHOUGH LESS THAN A QUARTER of independent agents and brokers responding to a recent survey are using social networking in their marketing plans, almost 20 percent are considering it, according to an exclusive reader survey of *American Agent & Broker* readers.

Published in *AA&B*'s December issue on Internet marketing, the unscientific survey suggests that although agents may still be holding back from full involvement in social media, interest is strong in reaching customers through other Web methods.

AA&B is an affiliated publication of *National Underwriter*, as part of Summit Business Media.

The online survey, which was conducted in October and November, included more than 600 participants of all sizes and locations. The questions focused on what types of Internet marketing methods users were currently employing, from basic Web sites to Twitter and Facebook.

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CLIMATE RISK SUMMIT

Global Warming Talk Heats Up At NAIC

Carriers seek more cooperation in mitigating disaster losses while 'going green'

BY PHIL GUSMAN
SAN FRANCISCO

INSURERS ARE INCREASINGLY offering products and promoting behavior that address the growing risk of climate change, according to presentations delivered at a Climate Risk Summit here sponsored by the National Association of Insurance Commissioners.

During the forum—run by the NAIC's Climate Change and Global Warming Task Force—insurers outlined an array of products and initiatives in which they are involved, and offered projections on how the industry can constructively participate in a warming global environment going forward.

WHILE WORLD LEADERS WERE MEETING in Copenhagen to hammer out a deal to contain global warming, insurers were discussing their contribution to mitigating climate change at the NAIC meeting in San Francisco.

Stephen Bushnell, product director at Fireman's Fund Insurance Company, which is an Allianz affiliate, outlined products his company has designed to address energy emission-driven climate change—including coverage for certified "green" (more environmentally friendly) buildings and a green homeowners product in 2008, as well as a variety of other green products ranging from coverage for manufacturers to automobiles.

Looking forward, he said insurers and policymakers can work together to build and rebuild property intelligently—updating building codes to reflect exposure to natural disaster risks associated with climate change. Additionally, he said they can combine to promote energy-efficient buildings as a priority in climate and energy policy.

Areas for possible cooperation were highlighted by two experts in separate fields citing different flaws with building codes.

Mr. Bushnell noted that energy-efficient buildings—such as those that are certified under the Leadership in Energy and Environmental Design (LEED) rating system—do nothing for improving coastal, wind and fire loss resistance.

Meanwhile, in an earlier presentation, Evan Mills, an analyst in the U.S. Department of Energy's Lawrence Berkeley National Laboratory, pointed out that structures built outside of flood zones and designed to withstand wind damage are not always the most energy-efficient.

Mr. Bushnell recommended building codes that promote both sustainable and resilient buildings.

Lindene Patton, climate product officer at Zurich Insurance, said the industry has a long history of reducing risks and can do so again with climate change if carriers are allowed to price according to the risks they assume.

"No amount of insurance will make a poor project/site/product/operation good," Ms. Patton said in her presentation. "Policymakers should engage insurance industry expertise and capital to most efficiently and effectively adapt to, and mitigate the risks of climate change."

However, she said insurers must be allowed to use their core skills to "send risk-based price signals."

Government indemnity funds or pools that spread or mask risks, she warned, "may inadvertently increase moral hazard and overall risk."

Panelists also discussed pay-as-you-drive (PAYD) insurance products—which price auto insurance policies according to miles driven—as a way to decrease driving and cut auto emissions.

Justin Horner, transportation policy analyst for the Natural Resources Defense Council, said 14 percent of total

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CLIMATE CHANGE

Insurers 'Going Green' With New Products, Coverage Features

BY DANIEL HAYS

THE UNITED NATIONS CLIMATE Change conference in Copenhagen is a reminder of the range of new insurance products and services available to people interested in "going green," according to the Insurance Information Institute.

More than 600 innovative, eco-friendly products and services are now offered by 244 insurers, reinsurers, brokers and insurance organizations in 29 states—with 37 percent of those activities coming from U.S. companies, according to the I.I.I.

Twenty-two companies now offer 39 products and services specifically designed for new green buildings and green upgrades for existing buildings, either following a loss or in the course of normal renovations, the I.I.I. noted.

"Insurers have become good corporate citizens by creating important new green insurance products and services to reflect changes in society," said I.I.I. Vice President Loretta Worters.

Meanwhile, Swiss Re—as part of the

continued on page 40

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NU's Top-10 Insurance Stories Of

BY SAM FRIEDMAN

As I scanned all the 2009 editions of *National Underwriter*, picking candidates for my annual choices as the year's top insurance stories, one thought kept crossing my mind—it could've been worse.

No one will look back fondly on 2009. The economy was in a shambles. Insurable exposures disappeared at an alarming rate. The investment markets—especially in the first half—were volatile at best.

Insurers saw their net written premiums flat-line and their net income plummet. Washington raced to restructure the entire financial services regulatory system, including insurance.

But all things considered, this recap could have been far more grim, for insurers as well as their agents and brokers.

For one, the property and casualty market, while still soft on the commercial lines side, at least began to stabilize, with the average rate cut much lower these days than at the start of the year.

For another, we were spared any major natural or man-made disasters, compared to the multi-event years we've seen far too often in this decade. The lack of catastrophe losses might leave the industry with some excess capacity—especially for property insurance--but I do not hear any underwriters complaining about a lack of hurricanes, earthquakes or terrorist attacks.

The industry did face one major coverage crisis—over claims for damage from Chinese drywall. But as our recap notes, drywall is far from the dreaded "next asbestos," with short-term losses potentially large, but long-term exposure very limited.

Thus far, another potential mega-threat—the feared H1N1 flu pandemic—has had a limited impact on insurers, except for a few specialty carriers that offered new covers.

Meanwhile, in Washington, at the start of the year lawmakers seemed determined to sweep the insurance industry into their orbit with some heavy-duty federal regulations. But today, it appears the impact on most insurers will be limited.

Health care reform dominated the debate in D.C., but with a public option dead-on-arrival in the Senate, not only health insurers, but p&c agents generating a huge chunk of their revenue and profits from group health sales can sleep easier.

Claims related to the biggest Ponzi scheme in history started to pour in, but while the insurance industry is indeed paying for some of the losses caused by the notorious Bernie Madoff, the ultimate liability is unlikely to be off the charts.

Like I said, 2009 was awful, but it could have been a lot worse!

The following pages reflect my personal choices for the Top-10 P&C Insurance Stories of 2009. If you feel I've left a big story out, by all means let me know it by e-mailing me at sfriedman@sbmedia.com, or filing a comment on my Dec. 21 blog entry, at www.NUSamSoapBox.com.

In my column this week on page 5, I review my predictions a year ago for what I thought would be 2009's top stories. Flip back a few pages and see how I did. (You can also respond on my Dec. 17 blog entry.)

What will be the top-10 stories of 2010? Check out *NU*'s Jan. 4, 2010, edition for my crystal ball outlook, and give me your feedback on my blog entry that same day.

I very much appreciate your readership and feedback—especially on my blog, where we have had some lively discussions.

All of us here at *National Underwriter* wish you and yours a very happy, healthy and profitable new year! NU

EDITOR'S PICKS

And The Top Stories Are...

NU Editor Sam Friedman lists his choices for the 10 most interesting property and casualty insurance stories of 2009.

	Story	Page
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■ PRICES FALL

1 Invisible Hard Mkt. Nowhere To Be Seen

Shrinking exposure base, calm hurricane season combine to keep premiums plummeting

BY SAM FRIEDMAN

BACK IN JANUARY, BRIAN Duperreault, president and CEO of Marsh & McLennan Companies, said the property and casualty industry was entering its "first 'invisible' hard market," in which prices would begin to rise—but because of shrinking insurable exposures, little positive impact would be seen in top- and bottom line results.

Nearly a year later, insurers and their agents and brokers are still looking intently for the first visible signs of any market hardening, as premium rates kept falling for most buyers and lines of business.

▶ **THANKS TO A RAPIDLY SHRINKING ECONOMY** and the calmest hurricane season in a dozen years, an "invisible hard market" failed to materialize this year, with no turnaround in sight.

A big part of the problem is we're stuck in the worst economic tailspin since the Great Depression. Companies are going bankrupt, closing facilities, scaling back production and laying off millions. That means less demand for standard insurance products such as property, liability and workers' compensation coverage.

Still, Mr. Duperreault expected insurance supply to drop faster than shrinking buyer demand, given the "staggering investment losses" absorbed by many leading carriers. Add to that the fact that reinsurance rates were rising, and the stage was set for a turnaround in primary company pricing.

However, as it turned out, most carriers were able to keep writing business at reasonable prices, and shrinking demand forced many to cut rates to retain the good business they still had on their books.

Add to that a thankfully mild hurricane season—the calmest in 12 years, with only three Atlantic basin storms, according to the Insurance Information Institute—and you end up with a stubbornly soft commercial coverage market.

Price cuts have moderated—the average commercial premium fell 5 percent in October, compared to 9 percent in December 2008, according to MarketScout's Market Barometer survey. But rates are still falling for most. Unless an account has catastrophe-exposed properties or claims related to the Madoff Ponzi scheme or the subprime mortgage meltdown, buyers are sitting pretty.

MarketScout CEO Richard Kerr back in June chastised an anonymous "terrible trio" of carriers for being "irresponsible underwriters." He said "every sensible economic indicator tells us rates should be increasing, yet there are still three large, admitted, publicly traded insurers clamoring for premium, seemingly at any rate and continuing to prolong the soft market."

"Even the E&S market is refusing to chase rates down, sitting on the sideline as the terrible trio slash each other to bits," Mr. Kerr added.

"Once these irresponsible underwriters are reined in, we should be on the way to rate increases," he said. "Our guess is prudent insurers are waiting to pick up the fallout when the terrible trio have their day of reckoning." However, he warned, "until that occurs, the soft market will continue."

At the time, Mr. Kerr predicted that "the turn will come by year-end because all but the terrible trio are making appropriate underwriting decisions."

Yet here we are in December, with no turn in sight (and still with no clue just which carriers Mr. Kerr was talking about).

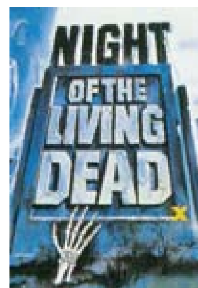
Last month, *NU*'s Mark Ruquet reported that "the soft market direction seems to be defying business logic," citing a report from Advisen, titled "Planning for 2010: The Recession Will Keep Commercial Insurance Premiums Under Pressure."

"Like the zombies in the classic horror film 'Night of the Living Dead,' the soft insurance market should be dead and buried, but it continues to lurch on, terrorizing underwriters and brokers," wrote Advisen Executive Vice President Dave Bradford.

No wonder the p&c industry's first-half income was down nearly 60 percent, despite an improvement in underwriting losses. Net written premium volume fell by 4 percent—down about $9.4 billion. The outlook for 2010 doesn't look much better for insurers.

"If a hard market is coming, it's up the road a bit," said Ken A. Crerar, president of the Council of Insurance Agents and Brokers, in CIAB's second-quarter report.

"Suppressed demand and appetite for business continued to drive competitive pricing in the market during the third quarter," he added this fall. "It was still very much a buyer's market as carriers chased market share. A significant upward turn in pricing remains elusive for the foreseeable future." NU



> "**Like the zombies in the classic horror** film 'Night of the Living Dead,' the soft insurance market should be dead and buried, but it continues to lurch on, terrorizing underwriters and brokers."
>
> *Dave Bradford, Executive V.P. Advisen*

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NEW RULES

2 P&C Firms Might Dodge Regulatory Bullet

Financial services reform may not dramatically alter insurance oversight landscape

BY ARTHUR D. POSTAL
WASHINGTON

ALTHOUGH THE NEED FOR A federal bailout of the troubled American International Group created demands for strong federal regulation of insurance, to this point the industry appears to have preserved state oversight for property and casualty carriers.

Although only the House has completed work on financial services reform, there appears to be little political support for a federal takeover of insurance regulation.

For example, the industry was able to carve itself out of regulation by a new Consumer Financial Protection Agency.

Meanwhile, provisions of legislation creating a system for resolving large, systemically-risky financial services companies ensures a strong voice for state regulators in the process.

The House bill, passed on Dec. 11, creates a National Insurance Office, but through industry lobbying, its powers have been watered down. And, in general, state solvency and consumer protection laws remain intact.

Charles Symington, senior vice president of government affairs for the Independent Insurance Agents and Brokers of America, said the final language in the provisions creating a federal insurance office within the Treasury Department narrows its scope from what was originally sought by the Obama administration and House Financial Services Committee staff, "and provides it with no regulatory authority whatsoever."

Leigh Ann Pusey, president and CEO of the American Insurance Association, said her group—a longtime supporter of an optional federal charter--is "encouraged the legislation establishes a Federal Office of Insurance and believes that this provision offers a substantial contribution toward broadening and deepening our nation's understanding of the critical role of insurance in our financial system."

Unlike most parts of the House bill, the insurance provisions have bipartisan support.

At press time, it was unclear when the Senate Banking Committee would unveil its legislation and how comparable it would be to the House version.

Two provisions key to insurance are in the House bill--H.R. 4173, the Wall Street Reform and Consumer Protection Act. One provision stirring deep concerns among both life and property and casualty insurers would require large financial institutions to pre-fund a systemic risk resolution fund.

The fund--created through assessments against financial institutions with assets of more than $50 billion--would be used to pay for the failure of systemically significant financial firms.

"A new pre-funded systemic fund would threaten the economic recovery by diverting capital from job creation when previous efforts to augment capital are beginning to have an impact," argued a letter to both the House and Senate signed by, among others, AIA and the Property Casualty Insurers Association of America.

"Further, there is no evidence that the existence of such a fund would deter the creation of new asset bubbles or other market distortions," the letter added.

All P&C insurance companies voiced concern with the potential impact of the dissolution fund on the industry.

"To the extent property and casualty insurers are considered in these reforms, the nature of our business and regulatory standards, our existing resolution and guaranty [fund] processes, and the general risk our industry poses to the broader financial system has to be recognized," said Ms. Pusey.

"AIA opposes legislation that subjects our industry to pre-funding obligations for systemically important financial companies and assesses insurance companies to pay for the risks presented by the failure of non-insurance institutions," she added. PCI voiced similar objections.

One change in the bill would allow the director of the Federal Insurance Office to have an advisory role on the Financial Services Oversight Council that would deal with large financial institutions that might create a systemic risk.

State insurance and banking regulators would play a similar role on the council, and the insurance regulator of a domiciliary state of a troubled systemically risky insurance company would have to be consulted before federal regulators stepped in to deal with it--including calling for the company to raise capital, or to declare it insolvent.

A manager's amendment to the bill includes a provision requiring the Oversight Council to use state law when resolving failing state-regulated insurers.

The Senate is likely to debate its measure in the first quarter, so stay tuned! NU

THE SKINNY

WILL INSURANCE REGULATION CHANGE?

While the financial meltdown in general, and AIG's near collapse in particular prompted Congress to set its regulatory reform spotlight on insurance, in the end, any changes might be minimal for practical purposes:

- A new Federal Insurance Office may be established, but its regulatory powers will likely be very minimal.
- Insurers are unlikely to come under the purview of a new Consumer Financial Protection Agency.
- All but the biggest carriers are likely to be spared any assessments for a fund to resolve systemically risky companies that get into trouble.

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HOUSE CALL

3 Health Bill Threatens P&C Agency Income

Producers fight against public option; carriers protest removal of antitrust exemption

BY ARTHUR D. POSTAL
WASHINGTON

DESPITE DEEP DIVISIONS WITHIN their own ranks and united opposition from Republicans, Democrats appeared to be moving closer and closer at year's-end to landmark legislation reforming the nation's health care system, with vast implications for insurance sellers and consumers.

The outcome is potentially huge for property and casualty agents, as a growing number depend on the sale of group health coverage—for which the market is never soft—for an increasing share of both their top-line revenue and bottom-line profits.

Throughout the often acrimonious debate, agents had two goals in mind. The first was retaining the employer-based, private health insurance system, and second, preserving their ability to sell all types of plans offered under the new regime.

With the Senate debate continuing as this story went to press, industry lobbyists worked feverishly to defeat any amendment to repeal the antitrust exemption accorded to health and medical malpractice insurers. Such a provision is included in the bill passed in early November by the House.

The House bill also includes a provision inviting the Federal Trade Commission to conduct studies of potential antitrust activities of all insurers, including property and casualty carriers. P&C industry lobbyists are concerned about the collateral damage such a provision might have on their business, as well as the potential cost of litigation that could be prompted.

Although prospects for passage have appeared bleak at times, given the division among Democrats and the nearly unanimous opposition of Republicans, Ira Loss, an analyst at Washington Analysis, believes passage of some bill is probably inevitable.

"Democrats have not given up on passage of health care reform. They are just too close," he said. "It is no longer about policy. It is about winning."

P&C INSURANCE AGENTS HAVE A HUGE STAKE in the health care reform debate begun by President Obama, because many depend on the sale of group health coverage for a growing percentage of their top-line revenue and bottom-line profits.

He said he believes the Senate, with the urging of the Obama Administration, will "cut the necessary deals to neutralize the opposition and secure the necessary votes."

He added that "although there are still several fights to be had and time is short for the Senate to pass the legislation before year-end, we remain optimistic that the Senate will meet this goal."

That would set the stage for a final bill to be negotiated with the House in the first quarter of 2010, he believes.

The most controversial dispute was over a public plan, included in the House bill.

Senate Democrats put forth a last-ditch compromise, negotiated by 10 moderate and liberal Democrats, which would allow people without health insurance who are over 55 to join Medicare, with younger uninsureds able to secure coverage through the federal employee insurance plan.

At press time, however, the compromise did not appear to have the 60 votes needed to clear a Senate filibuster, and would be dropped to secure passage of the broader reform legislation.

John Greene, vice president of congressional affairs for the National Association of Health Underwriters, said the compromise plan was misrepresented and would be hard to administer.

He described the insurance coverage for federal employees--administered by the federal Office of Personnel Management—as an "employer plan with a single entry- and exit point designed for a specific pool of individuals, and not solely for the purpose of gaining insurance coverage."

He said it was "frustrating" to see reports ignoring this important distinction. "The federal government provides significant assistance with the premium and the rate increases that have occurred despite their size," he explained.

Mr. Greene said that allowing people to buy into the federal program would be "an administrative nightmare." Separating employees of the federal government from everyone else "will add significant administrative burdens, and for a purpose not associated with employment in the government."

While the compromise was still in play, Joel Kopperud, a director of government relations for the Council of Insurance Agents and Brokers, indicated that it might be acceptable to his membership, who sell a great deal of group health coverage.

"Of course we need to see the details of how this national plan would be administered through state exchanges," he said "But on the surface, we think that this may be something that competes fairly and are very encouraged."

He added that this latest plan "sounds like it threads the needle."

One way or the other, however, it appears agents can rest easy that private health insurance will survive the reform debate in some significant form—at least for the time being. NU

LIGHTNING ROD

4 AIG Reinventing Itself On The Fly

Carrier rebrands p&c units, changes CEOs, battles with Uncle Sam over compensation

BY SAM FRIEDMAN

THE MOST PROLIFIC HEADLINE-generator by far this year was American International Group, which struggled to regain its credibility and repay its debt to taxpayers after a massive federal bailout while changing CEOs, fending off challenges to its executive compensation, rebranding its property and casualty subsidiaries, and burying the hatchet with its former boss.

Back in early January, AIG's roller-coaster year began with criticism from Maurice Greenberg—its former chair, president and CEO—about the sale of Hartford Steam Boiler to Munich Re.

Mr. Greenberg—now CEO of C.V. Starr & Company, and still a major stockholder in AIG—noted pointedly that under his reign, HSB had been purchased for $1.2 billion in 2000, yet was sold for what he termed a "distressed" price of $724 million.

(As part of its efforts to pay off its federal loans, AIG also agreed to sell auto insurer 21st Century Insurance Group to a Zurich subsidiary—Farmers Group—for $1.9 billion.)

Meanwhile, Mr. Greenberg and AIG locked horns in court over the summer, battling for control of billions in company stock held by Starr International Company—with the jury verdict going in favor of Mr. Greenberg's SICO. (For more on Mr. Greenberg's own eventful year, see page 20.)

There was also turmoil in the executive suite, with Ed Liddy—the former Allstate head who came out of retirement in September 2008 to lead the company after its federal bailout—announcing in May he would step aside as AIG chair and CEO. While he only took $1 per year for his posts, there was controversy after it was revealed that his expenses totaled about $460,000.

In August, AIG recruited another retiree—Robert Benmosche, the former head of MetLife—as its new CEO. (The company appointed a separate non-executive chair—former American Express CEO Harvey Golub.)

But the assignment has not been a cakewalk for Mr. Benmosche, who has clashed with federal officials over compensation for his top executives. There were even published reports that he was threatening to resign—which prompted him to send a letter to employees reassuring them about his commitment to the company.

Indeed, compensation for AIG employees was a recurring controversy this year, starting with public uproar in the first quarter over revelations that big retention bonuses had been paid. Much of the brouhaha centered on $165 million given to employees of AIG's Financial Products unit, which traded the credit default swaps on securities bundling subprime mortgages that nearly brought down the company.

New York Attorney General Andrew Cuomo helped negotiate a return of some of the bonus money, which seemed to put out the firestorm for the moment.

On more positive notes, AIG posted a $455 million profit in the third quarter—its second straight period in the black. But management said it expects "continued volatility" for earnings. Last month, AIG lowered its debt to Uncle Sam by $25 billion after completing deals for two life insurance entities.

AIG also rebranded its p&c carriers under the name Chartis—the Greek word for map, meant to underscore the company's global reach. There was talk about a possible public offering and the appointment of a separate board to further distance the p&c carriers from its parent's tarnished reputation following the federal bailout, but such a move has yet to be initiated.

However, a threat to the new brand came late last month in the form of a report from Todd Bault, an analyst with Sanford C. Bernstein, which reportedly suggested that reserves may be deficient by $11 billion—particularly affecting workers' compensation, general liability and professional liability. The company had no comment about the report.

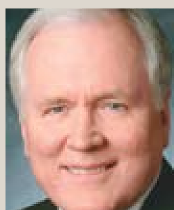
The news overshadowed an announcement issued late afternoon on Thanksgiving eve that AIG and Maurice Greenberg had agreed to a procedure to settle all their remaining disputes.

All that is certain is that for better or worse, AIG and its subsidiaries are likely to remain prominent as headline-generators in 2010. Stay tuned! NU

NEW CEO

CHANGING OF THE GUARD AT AIG

Who's Out?



- **Edward Liddy**, former head of Allstate, came out of retirement in September 2008 to lead AIG after its federal bailout.
- Mr. Liddy announced in May he would step aside as AIG chair and CEO.
- Mr. Liddy only took $1 per year in salary for his AIG posts, but there was controversy about expenses of at least $460,000. He also took heat for retention bonuses paid to employees at the Financial Products unit.

Who's In?

- **Robert Benmosche**, former chair, president and CEO at MetLife, who agreed to replace Edward Liddy as CEO of AIG in late summer.
- Breaking a longtime tradition, AIG named a separate non-executive chair–former American Express CEO Harvey Golub.
- Mr. Benmosche clashed with federal officials over limits on executive compensation. There were reports he threatened to quit, but reiterated his commitment to AIG in a letter to employees.

COMEBACK KID

5 Greenberg Returns To Center Stage

Icon settles with AIG and SEC, while speaking out against Washington, regulators

BY SAM FRIEDMAN

IF THE INSURANCE INDUSTRY HAD the equivalent of baseball's "Comeback Player Of The Year" award, the winner in 2009 would no doubt be Maurice Greenberg.

While Mr. Greenberg may have left his post as CEO at American International Group following an accounting scandal in 2005, he remains the property and casualty industry's embodiment of the old E.F. Hutton ads—when he talks, everyone listens.

After taking an uncharacteristically low profile for a few years while running C.V. Starr & Company, dealing with government probes of his AIG activities and legal battles with his former company, Mr. Greenberg stepped back into the spotlight big time.

Prominent coverage of Mr. Greenberg's actions and musings began in January, when he publicly challenged AIG's sale of Hartford Steam Boiler to Munich Re. He pointed out that while he bought HSB when still in charge at AIG for $1.2 billion in 2000, his successors—under pressure to repay federal bailout loans as quickly as possible in a terrible economy—sold the carrier for what he characterized as a "distressed" price of $724 million.

The most recent headlines came in the late afternoon of Thanksgiving eve, with an announcement that AIG and Mr. Greenberg had set in motion a resolution process to settle any remaining differences between them and effectively bury the hatchet.

In between, Mr. Greenberg commanded the headlines throughout the year.

Back in April, Mr. Greenberg—still a major stockholder in AIG—appeared on Capitol Hill to tell a House committee that the federal government's bailout plan to rescue his former company was doomed to fail if predicated on dumping assets at fire sale prices during the economic downturn.

Taxpayers, he warned, would only get "pennies on the dollar for their investment in AIG." He also argued that had the government walled off AIG's Financial Product unit and simply offered guarantees to counterparties, everyone would have been better off.

He vigorously defended his running of AIG and suggested that risk management had become lax after his departure in the trading of credit default swaps.

Mr. Greenberg enjoyed a sweet victory over his former firm after what he called a "grueling" seven days on the witness stand in a court battle over whether Starr International Company—which he heads—had been obligated to hold some $4.3 billion worth of AIG stock shares in trust for retiring employees.

He also ended his long-running dispute with the Securities and Exchange Commission, paying $15 million to settle concerns about fraudulent accounting while he was at AIG. However, he then clashed with the SEC over the settlement's meaning and the seriousness of the charges, prompting a clarifying statement from Mr. Greenberg in which he acknowledged the "significance" of the situation.

Last month, Mr. Greenberg's representatives put out a statement denying an Oct. 27 *New York Times* article that reported his firm was "raiding people" from AIG, noting that "only 13" employees from his former company had joined C.V. Starr.

Mr. Greenberg made more headlines with a speech at the St. John's University School of Risk Management in October, in which he placed most of the blame on regulators for failing to detect the warning signs and head off the kinds of corporate behavior prompting the financial meltdown.

"We ought to appoint a blue ribbon panel of some wise people to look at what happened, whether regulators did their jobs and whether we really need more regulations or just better regulators," he said.

Finally, Mr. Greenberg and AIG announced the terms of their peace treaty in late November. Under the deal, an arbitrator will determine claims by Mr. Greenberg for legal fees and expenses, with a cap of $150 million—which perhaps showed that the only winner in their battle were the lawyers.

There were also some personal points resolved, including access to AIG documents for use in research in writing Mr. Greenberg's memoirs—which you can bet will have a different title than the one written in 2006 by a former employee, "Fallen Giant."

The settlement sparked speculation about a possible return of Mr. Greenberg to AIG in some formal capacity—even if only as an advisor. If he pulls that off in 2010, he might be the only person to ever win two straight "Comeback Player Of The Year" awards. NU

RECAP

COMEBACK PLAYER OF THE YEAR!

Maurice Greenberg, former CEO of AIG and now head of C.V. Starr, made more headlines than any one individual in the p&c business by a wide margin in 2009. Among the highlights and lowlights, Mr. Greenberg:

- **Blasts AIG** for selling Hartford Steam Boiler at a "distressed" price.
- **Criticizes Washington** for mishandling AIG's rescue and urges more patience in the sales of properties to repay taxpayer loans.
- **Wins a jury verdict** over AIG in a trial about Starr International Company's holdings of AIG stock, enduring seven "grueling" days on the witness stand.
- **Settles SEC allegations** of accounting fraud for $15 million, then clarifies his characterization of the deal that the SEC found objectionable.
- **Denies reports** his firm is "raiding people" from AIG.
- **Blames regulators** for the financial meltdown in a controversial speech.
- **Buries the hatchet** with AIG by dropping all legal battles, while allowing an arbitrator to decide how much he should be reimbursed for legal fees and other expenses.
- **Begins work on his memoirs**, according to a note in an SEC filing on the AIG settlement.

What's Next?

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WORST-CASE SCENARIO

6 Chinese Drywall Won't Be Next Asbestos

Still, claims are likely to mount against insurers of homeowners and contractors

BY PHIL GUSMAN

AMID THE REBUILDING EFFORTS after the 2004-2005 hurricane seasons, and in the midst of a housing boom, domestic drywall was in short supply. Imports from China filled the gap, and that decision has apparently created more problems than it solved.

Homeowners—particularly in Florida, Louisiana and Virginia—have been complaining about health problems, foul odors, damage to furniture and electrical woes in homes built from 2004 to 2007. The culprit seems to be Chinese drywall.

Over 550 million pounds of Chinese drywall imported between 2004 and 2007 was installed in up to 100,000 U.S. homes, according to a fact sheet from the National Association of Insurance Commissioners.

The Consumer Product Safety Commission has recorded over 2,091 reports of defective drywall in 32 states, the NAIC noted, with the most common complaint being the smell of rotten eggs.

Federal agencies have conducted studies and appealed for patience as the science behind the problem is worked out. Results released in October showed homes with Chinese drywall had elevated levels of sulfur and formaldehyde, but not high enough to explain home degradation and health woes. In November, a study found hydrogen sulfide gas in affected homes.

For the insurance industry, the Chinese drywall liability debate is in its early stages, and it is not yet known how many claims will come of it.

A situation in Florida involving the state's insurer of last resort, Citizens Property Insurance Corp., caused a stir amid reports the carrier threatened to nonrenew a home because it contained Chinese drywall.

John Kuczwanski, public information manager for Citizens, said the nonrenewal was not because the house had Chinese drywall specifically, but rather the resulting degradation was thought to have damaged the house to the point where it no longer met the insurer's underwriting standards.

Upon further inspection, he noted, it was determined the damage had not progressed to a significant degree to cause concern, and the nonrenewal was rescinded.

Will insurers for homeowners and contractors have to cover claims arising from Chinese drywall? Industry associations are saying that will be determined on an individual policy-by-policy basis.

COMPLAINT DEPT.

WHAT'S THE BEEF WITH CHINESE DRYWALL?

Among the complaints cited by homeowners, with Chinese drywall cited as the possible cause:

- **Corrosion** of pipes, coils and wiring
- **Damage** to furniture, fixtures and jewelry
- **Respiratory** problems and sinus infections, asthma attacks and fatigue
- **Headaches**, persistent cough and bloody noses
- **The smell of** rotten eggs

Some, such as Mike Barry, a representative for the Insurance Information Institute, told *NU* Chinese drywall claims fall under pollution or builder's defect exclusions. Mr. Kuczwanski said Citizens has inspected 24 claims related to Chinese drywall, and none have resulted in payment.

But in testimony to the NAIC, Charles Miller, a principal of the Insurance Law Center in Berkeley, Calif., cited the *Fire Casualty & Surety* (*FC&S*) bulletins—a publication affiliated with *NU*—to question whether those exclusions apply.

On the pollution exclusion in homeowners policies, for example, Mr. Miller said *FC&S*—a resource for insurers for interpretation of both commercial and personal lines coverages—noted that many courts have found the exclusion only applies to "traditional environmental damage," which would not include the release of gasses inside a residence.

He said insurers have tried to use latent defect and inherent vice exclusions as well, but *FC&S* states those exclusions apply to "a loss due to any quality in the property that causes the property to damage or destroy itself that results from something in the property itself."

The drywall, he noted, is not destroying itself but rather causing ensuing damage to its surroundings, which should be covered.

On construction defect exclusions, Mr. Miller again cited language from the June 2009 *FC&S*, which states: "Any ensuing loss as a result of the faulty drywall would be covered—for example, if the drywall caused corrosion damage to wires or pipes."

For commercial insurers, liability is uncertain as well. Lennar Corp., a home building company based in Miami, stated in a 10-Q filing it will seek reimbursement for Chinese drywall-related losses from, among other parties, its insurers.

The good news for insurers is that the Chinese drywall exposure will not likely become the dreaded "next asbestos."

David Golden, director of commercial lines for the Property Casualty Insurers Association of America, said Chinese drywall is a "limited universe" in that only a limited number of homes were built with the material over the course of three years.

How liability shakes out will likely be a matter for the courts to decide. NU

BRACE YOURSELVES!

7 Madoff Might Be Scourge Of Insurers

Jury still out on whether claims involving Ponzi-schemer will hit catastrophic levels

BY DANIEL HAYS

IF THERE WAS A LISTING OF individually initiated financial disasters, the depredations of Ponzi-schemer Bernard Madoff might rank at the top, but opinions may differ on how much of an insurance catastrophe he has created.

Mr. Madoff—who was arrested in December 2008 and finally sent to prison for 150 years this June—is credited with ripping off clients of his Bernard L. Madoff Investment Securities LLC to the tune of between $10 billion and $20 billion.

Generally, the official insurance industry definition requirement for a catastrophe is a covered loss of $25 million or more, and Loretta Worters, an Insurance Information Institute representative, said that "we don't have anything like that at this point" when it comes to Madoff-related losses.

Still, given the ongoing legal search by plaintiff attorneys for deep pockets with insurance coverage, the "no catastrophe" label could be premature.

Grabbing a handle on how much insured damage Mr. Madoff may have created at this point without a crystal ball is almost as difficult as the court-appointed trustee's search for all of Mr. Madoff and his wife's assets—homes in France, Palm Beach, Fla., East Hampton, N.Y., foreign bank accounts, furs, jewels, watches, art, etc.

In March, Aon Benfield's Actuarial and Enterprise Risk Management practice developed a $1.8 billion estimate of direct insurance losses that could be paid out on behalf of asset management firms, banks and other firms being sued in connection to Madoff-related claims.

Back then, Aon's Stephen Mildenhall, who heads the firm's actuarial and enterprise risk management practice, said he believed that part of the fallout from the Madoff scheme would be heightened underwriting for the professional liability coverage class.

And Sherrie Savett, an attorney with Berger & Montague, P.C. in Philadelphia, said the Madoff plaintiffs' lawyers would chase after solvent hedge funds with Madoff assets, pursuing the legal theory that those funds did not do sufficient due diligence.

▶ **CLAIMS FROM VICTIMS OF** Bernard Madoff's Ponzi scam are expected to multiply, hitting carriers of directors and officers, errors and omissions, fiduciary liability, and even homeowners policies.

Accountants that audited the hedge funds were pointed out by Ms. Savett as another potential target for litigation.

"How could they have done a proper audit of the assets of a hedge fund if assets weren't really there? We now know that Madoff didn't even trade for the last 13 years, so there was a real lack of due diligence on the part of the hedge funds and their auditors," she said.

However, there has been at least one federal court ruling that could make recovery from the funds difficult, according to John C. Coffee Jr., a professor at Columbia University's law school.

Cases may also be brought against bank custodians entrusted with checking to make sure the assets Mr. Madoff claimed were there, Ms. Savett advised.

Meanwhile, for the many victims stung by Mr. Madoff, who dealt with him through brokerage accounts and feeder funds, there is a $500,000 recovery limit from the Securities Investor Protection Corp., which could also prompt suits to collect additional recovery funds from insured players.

For some well-to-do victims who had the right homeowners policies, there have been recoveries. Mark Herr, a representative for the Private Client Group of Chartis, said the American International Group unit had paid off "hundreds of eligible policyholders who suffered Madoff-related losses."

One claim that the firm did not pay involved a couple who, by the insurer's reckoning, had received more money from Mr. Madoff through withdrawals from their account than they had deposited.

Recently, the latest insurance sector to be identified as a target for claims is the group that provides fiduciary liability coverage for employee benefit pension plans.

In November, attorneys speaking at an insurance conference predicted that with fewer hurdles to face in bringing lawsuits against employee benefit plan fiduciaries than against directors and officers, more victims of Ponzi schemes will file pension liability suits.

Madoff plaintiff legal actions based on Employee Retirement Income Security Act (ERISA) law open up "another pocket" for the recovery of investment losses, according to Kenneth Rubinstein, a partner with Nelson, Kinder, Mosseau & Saturley in Manchester, N.H. NU

DEBATE IN LIMBO

8 Calm Winds Leave NFIP Reform Adrift

Congress keeps extending debt-ridden flood program without adding wind coverage

BY ARTHUR D. POSTAL
WASHINGTON

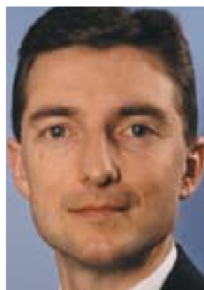
THE QUIETEST STORM SEASON IN more than a decade prompted Congress to keep postponing permanent resolution of one of the country's biggest insurance challenges—how best to reform the debt-ridden National Flood Insurance Program.

As this story went to press, Congress—preoccupied with debates over health care and financial services regulation—was planning to attach a provision extending the NFIP once again for six-to-nine months while it deals with more urgent matters.

This latest effort would mark at least the fourth time Congress has extended the current NFIP since it originally expired on Sept. 30, 2008, because the House and Senate could not reconcile differences over a controversial proposal to include wind coverage in the federal program.

"We expect an extension to be attached to one of the final appropriations bills," said Blain Rethmeier, a representative for the American Insurance Association. "The time frame on the extension is still unknown, but it's imperative that the program not be allowed to expire."

A routine extension would leave up in the air the matter of whether to forgive NFIP's $20 billion debt, mostly built up thanks to Hurricane Katrina and other major storms. Meanwhile, debate about whether to develop a more comprehensive policy to deal with national catastrophes remains on the backburner.



"**Insurers are rightly highly skeptical** that they would ever be allowed to charge a rate to cover expected flood losses."

Robert P. Hartwig, President Insurance Information Institute

Congress felt less urgency to settle the NFIP's future because there were only nine named storms in the Atlantic basin this year, with just three becoming hurricanes—the lowest totals in each category since 1997, according to the Insurance Information Institute.

"Clearly, Congress missed an opportunity to deal with the issue last year—especially the forgiveness of the debt—and eventually they are going to have to deal with it," according to Eli Lehrer, a fellow at the Heartland Institute.

"The economic problems, the budget deficit and the fact that the waters were cool this year have allowed Congress to delay action," he said. "Obviously, without a major hurricane, it is not going to become a major issue."

However, he warned, "the problem is that if Congress waits until there is a major disaster, it adds to the probability that it will act to reform it in the wrong way—for example, by adding wind to the program."

SOME FEAR THAT IF CONGRESS WAITS until there is a major disaster to act on NFIP's future, in its haste it will reform the program in "the wrong way"—for example, by adding wind coverage to the federal flood policy.

He said expanding the NFIP to cover wind would "undermine the private market and ultimately raise the price for all homeowners insurance products for consumers."

Insurance Information Institute President Robert P. Hartwig also sees NFIP reform as a long-term proposition. "It is unlikely that it will return to the front burner unless there is a significant hurricane accompanied by storm surge," he said.

As for a broader disaster reform bill, "most people believe reauthorization of the NFIP should be separated from a national catastrophe plan, because most insurers don't want to be obligated to provide flood coverage," said Mr. Hartwig. "If insurers are asked to cover flood insurance as part of a comprehensive solution, they will object:"

The reason, he said, is that states set rates which aren't adequate in coastal areas for wind coverage alone now. "Insurers are rightly highly skeptical that they would ever be allowed to charge a rate to cover expected flood losses," he explained.

Mr. Hartwig also commented on an amendment that Rep. Kathy Castor, D-Fla., sought to add to legislation reforming the financial services industry that would have declared state windstorm programs systemically risky.

The amendment, according to industry officials, was designed to shift the cost of bailing out Florida's troubled windstorm program to either large financial institutions or the federal government.

"The problems of the windstorm programs are of their own making," said Mr. Hartwig. "It is dubious to claim that they are systemically important in that they are too big to fail. That means if a hurricane hit Florida or other states with windstorm programs, the losses could lead to a global financial catastrophe. That is absurd—just preposterous. It will cause problems, but they are of the state's own making."

He added that "Florida has intentionally made a number of decisions that has put it on a collision course for a financial catastrophe. If Florida can no longer subsidize homeowners coverage for millionaires, that is not something that is going to bring down the global economy." NU

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SHOW ME THE MONEY!

9 Contingency Fee Firestorm Reignites

Illinois allows Gallagher to accept fees again, while N.Y. seeks disclosure rules

BY MARK E. RUQUET

THE DEBATE OVER WHETHER THE major brokerages should be allowed to earn contingency fees for delivering a certain volume or quality of business to carriers raged anew this year after Illinois eased restrictions over the practice.

As of Oct. 1, with the blessing of Illinois Attorney General Lisa Madigan, Arthur J. Gallagher was once again allowed to accept contingent commissions after an almost four-year ban imposed by Ms. Madigan and New York's attorney general at the time, Eliot Spitzer, following a kickback scheme uncovered at Marsh & McLennan Companies.

In September, when the Itasca, Ill.-based broker's Chair, President and CEO Patrick J. Gallagher Jr. made the announcement about the ban being lifted, executives from Marsh (the brokerage subsidiary of MMC) and Chicago-based Aon applauded the decision, and rumors began to swirl they were in talks with New York's Attorney General's Office to lift the ban on contingents for them as well.

AJG's pardon, said Mr. Gallagher, came about after the realization that nationally, regulators were not going to ban contingents, putting the broker at a financial disadvantage. He also stressed the firm's strict adherence to transparency so clients understand how they are compensated and the influence that could have.

Groups representing corporate buyers (the Risk and Insurance Management Society), public entities (the Public Risk Management Association) as well as individual consumers (J. Robert Hunter, director of insurance for the Consumer Federation of America) stressed the need for transparency to avoid conflicts of interest.

But Mr. Hunter said transparency is no panacea. "Transparency is a good cover-up for getting rid of real protection," he said. "We'll be transparent while we're ripping you off, but in a very transparent way. [Consumers] will never find out."

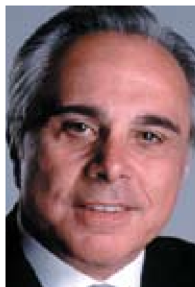
He concluded that acceptance of contingencies "has to be banned—it sets up an automatic conflict. There is a perverse incentive. You can't tell me every agent is perfect and clean."

▶ **CONSUMER ADVOCATE J. ROBERT HUNTER SAYS** contingencies must be banned. "It sets up an automatic conflict. There is a perverse incentive. You can't tell me every agent is perfect and clean."

When AJG's ban was lifted, RIMS noted that the announcement would probably lead to Marsh, Aon and Willis striking similar agreements once New York put compensation disclosure rules in place.

However, Willis Chair and CEO Joseph Plumeri—an early critic of the practice, even before the industry's bid-rigging scandal—remains firm in his opposition.

"We've already decided at Willis that we're not going back to the old ways," he said in a speech last month in Chicago. "We're looking to the future, and we will continue to put in place the measures that will enhance trust and transparency—not undermine them."



> **"We've already decided at Willis that we're** not going back to the old ways. We're looking to the future, and we will continue to put in place the measures that will enhance trust and transparency—not undermine them."
>
> *Willis Chair and CEO Joseph Plumeri*

New York's former insurance superintendent, Eric Dinallo—who initiated the formulation of new producer compensation disclosure rules—said after leaving office earlier this year that a segmented market where some are banned from taking the commissions and others are not isn't good for anyone.

The contingents, he said, are "not unlike a lot of conflicts in financial services that we often either manage or disclose," stressing that the conflicts around such compensation arrangements are "not irreconcilable." He added that he saw no great clamoring among buyers to end contingency deals.

A draft regulation published this month by the New York Insurance Department, requiring agents to explain to clients their relationship with carriers, drew fire. Indeed, the Independent Insurance Agents and Brokers of New York threatened to sue.

The concern, according to IIABNY, is that the proposed regulation is too much of a burden on producers. IIABNY President and CEO Richard A. Poppa said he believes the rule is unnecessary but held out hope that concerns could be worked out.

Responding to IIABNY's threat, the department's Special Counsel, Matthew Gaul, said regulators were surprised that the least controversial element of the rule would prompt the threat of a lawsuit. He added that while for years the organization has branded its members as the "Trusted Choice" for consumers, it sounds like agents don't want to tell clients that "in most transactions they represent the insurance company."

Thus, the war of words continues, and perhaps will spill over into a court battle before long. NU

RISK MANAGEMENT

10 Swine Flu Bug Leaves Firms Exposed

Many organizations still apathetic about contingency plans for potential pandemic

BY CAROLINE MCDONALD

WHETHER THE H1N1 VIRUS HAS run its course is unknown, but the fact is while many organizations have taken precautions, others are still unprepared for a pandemic event in what turned out to be the top risk management story of the year.

In a recent status report on the pandemic, Dr. Keiji Fukuda, special adviser to the director-general on pandemic influenza for the World Health Organization, reported from London that "it is fair to say we still haven't fully gone through the pandemic and that it is possible there could be unexpected events which occur as we continue to go through it."

On a positive note, he added, "it is quite possible to have a pandemic on the milder side, and if we are experiencing that, and if the number of serious cases is kept down, this is again something for which we should all be thankful."

One roadblock to implementing a loss control plan by companies of all sizes is "pandemic fatigue," or apathy, caused by the perception that the H1N1 virus may be a "non-event," Dr. William Lang, former associate chief medical officer at the U.S. Department of Homeland Security, warned in a conference call with *NU*.

While the likelihood is that we may be facing a "bad flu season" rather than a full-blown pandemic, some businesses could be hit with high absenteeism rates, he observed.

He explained that the impact of a pandemic to businesses is different than other disasters because it affects people rather than facilities, meaning that companies need to protect their employees.

Dr. Lang said that in preparing for the H1N1 virus, larger organizations have the advantage of being able to begin with their existing disaster plan and apply it to H1N1 risks. Small- and medium-size businesses, however, may not have an all-hazards plan in place as a starting point.

Another aspect, he added, is that smaller businesses often don't have a risk manager employed to formulate, let alone implement a complex disaster plan.

Bob Boyd, chief executive officer of the Agility Recovery Solutions consulting firm, pointed out during the conference call that smaller businesses—which haven't been mandated by any regulator to put a disaster plan in place—may perceive that implementing an all-hazards contingency program is too time-consuming and costly.

> **H1N1**
>
> ### Fear Factor
>
> While a large percentage of employers—particularly the larger ones—are putting risk management contingency plans in place to deal with the impact of a mass outbreak of the H1N1 virus, many firms are just winging it. There are a number of Web sites offering loss control information, including:
>
> - www.ready.gov
> - www.flu.gov
>
>

Fifty-five percent of top executives at global organizations said they have a plan in place to manage pandemic risk and have activated it in response to the outbreak of the H1N1 "swine flu" virus variation, according to The Conference Board, a not-for-profit think tank.

A survey taken earlier this year by the New York-based organization found that of 121 members of 44 councils—small, cross-industry networking peer groups of executives—the majority (66 percent) are responding at a global, enterprise level, rather than locally. Thirty-one percent are responding at a national level—only in affected countries where their company is doing business.

"While there are some differences in corporate responses to the danger of an influenza pandemic, most companies are in agreement that they should be prepared for the worst and ready for a major threat to their global operations," said Carolyn Cavicchio, senior research associate of global corporate citizenship at The Conference Board, in a statement.

But even those organizations with contingency plans in place may need to do more to educate employees.

A "Tell It Now" survey released by ComPsych, a provider of employee assistance and other programs, found that while over 70 percent of workers polled said they have made changes, nearly a third (29 percent) said the flu had not made them more careful about protecting their health and that their habits have not changed.

The poll asked workers if the H1N1 flu had made them more careful about protecting their health this year—and, if so, what was their primary focus.

Of those responding, 47 percent said they were more careful and more likely to wash their hands and avoid touching people or workplace surfaces; 16 percent said they were more inclined to get a flu shot; and 8 percent said they were more likely to stay home and/or /keep family members home if there are flu symptoms, the survey found.

Dr. Richard A. Chaifetz, ComPsych chair and CEO, said in a statement that while the survey results are a good indication that employees are responding to public health advice, "employers should take note of the nearly 30 percent who are not inclined to change health behavior even in the face of a pandemic."

Risk management starts at home. Have you gotten your flu shots yet? NU

D&O UPDATE

Side-A Market Competition Heating Up

Demand on the rise, but independent director liability policies still a tough sell

▶ **WHILE SIDE A, B AND C COVERS FOR DIRECTORS** and officers remain popular, buyers are shying away from separate coverage for independent directors, seen as the "next step" in D&O sales.

BY SUSANNE SCLAFANE

WHEN MICHAEL TURK, SENIOR consultant for Towers Perrin, pulled together figures for his firm's annual directors and officers liability insurance survey back in 2007, something just didn't seem right.

"I didn't even believe the numbers," he said, referring to survey findings revealing that 14 percent fewer insurance buyers had purchased a Side-A-only D&O policy.

The conclusion didn't fit together with the growing level of interest Mr. Turk saw in the market for Side-A coverage—which responds to non-indemnifiable D&O losses, where a corporation can't indemnify directors because of statutory prohibitions in a state, because the corporation is financially impaired, or some other reason.

A year later, the Side-A purchase figures came roaring back. According to the Towers Perrin 2008 report published late last month—based on a survey conducted in third-quarter 2008—Side-A purchases jumped 33 percent for repeat public company survey participants.

"I think it is still going to grow more," Mr. Turk said, citing a table in the report indicating that 43 percent of public companies said they have had Side-A coverage at some point. "It's still less than half," he said—noting, however, that purchases are greater for larger companies.

Among all organizations with assets over $10 billion, 73 percent bought Side-A-only coverage, according to the report. In contrast, only 1 percent of those with assets less than $6 million had the cover, with the percentage rising to 16 percent for those in the $50-to-$100 million range, and 57 percent for those between $5-to-$10 billion.

Pulling together the overall results for public and private company survey participants of all sizes, the report indicates that 11 percent said they had purchased Side A at some point on the 2008 survey, compared to just 9 percent in 2007.

A change in the distribution of survey participants may explain some of the differences between the results in the two years. The report notes that there were 11 percent fewer participants in 2008, and that the largest decline in participation came for a group with assets between $6 million and $10 million (a 59.4 percent reduction).

Still, the trend in the Side-A survey figures makes sense to Mr. Turk. "There's a greater awareness of the benefits of a Side-A policy," he said, adding that many insurance purchase decisions are spurred when people see the coverage at work on actual claims.

"There's a D&O claim, and whether it's because of insolvency or some other reason, the company does not reimburse the directors and officers, and people see these individuals can get protected by a Side-A policy. A lot of companies will look at that and ask, 'Do we have this insurance?'"

This is what makes D&O "such a dynamic coverage. It's constantly changing based on claim experience," he said, referring not just to buyer appetites, but also how insurers react to enhanced coverage.

Like the 2007 survey, the latest Towers Perrin report has one set of results Mr. Turk finds puzzling—figures revealing low buyer appetites for coverage similar to Side A that is known as Independent Directors Liability coverage.

He explained that IDL is "the next step"

in D&O coverage, which not only focuses on individuals by removing Side B corporate reimbursement and Side C entity coverage, but also removes internal directors and officer from coverage.

It's basically Side A just for the outside directors, Mr. Turk said.

"Last year, we had a lot of people that were looking at that," he noted. In fact, 2007 survey results revealed that 23 percent of the participants were evaluating IDL coverage.

According to the just-published 2008 survey, however, "less than 1 percent of public companies reported buying it [and] there was a big reduction in the number of companies that were even considering it," according to Mr. Turk.

In total, only 3.2 percent said they considered IDL—1.7 percent of public companies and 4.3 percent of private firms. The much higher comparable figures from the 2007 survey were 21 percent of public companies and 30 percent of private firms.

"There could be a number of reasons," Mr. Turk said, speculating that the economic downturn was a big one. "As the economy started to deteriorate, people may just be saying, 'We've got to be very careful about how much we're spending on all this kind of coverage,'" he said.

The low take-up rates are probably not that surprising to insurance brokers, based on the comments delivered by two brokers during a recent webcast.

On the webcast, hosted by New York-based Advisen late last month, Phil Norton, vice chair for the Midwest Region at A.J. Gallagher in Chicago, said one reason IDL policies are not popular "is because the Side-A policy is so much easier to place."

"IDL insurers seem to ask for so much more information, even though fewer people—and some of the same people—are included in Side A. Side A just covers a few more," he said. "They want more information for a product they may overprice."

He also noted that the Side-A form is more attractive to the typical buyer he deals with—the chief financial officer, treasurer or risk manager—who may opt to buy Side A, reasoning that "this could cover me, too."

In contrast to IDL, Mr. Norton said

continued on page 32

THE SKINNY

What's The Deal With IDL Coverage?

Explaining the concept behind an independent director liability policy, **Kevin LaCroix**, a partner with Oakbridge Insurance Services, said the basic idea is that **"you dramatically reduce the number of insured persons under the [D&O] policy and provide protection just for them, usually on an excess basis—excess of indemnification and underlying insurance."**

Phil Norton, a vice chair for A.J. Gallagher in Chicago, explained the newest layered program trend by example: **"Think of it this way: You write a D&O policy designed to cover about 200 people plus the entity; then you write a Side-A policy designed to cover just 25 key people; and then you write one of these IDLs, and it covers six outside directors."**

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POLICY EVOLUTION

The ABCs of D&O Insurance Clauses

Problems continue to exist from coverage innovations of the mid-1990s

BY PETER R. TAFFAE

THERE HAS BEEN A PROLIFERATION of Side-A-only insurance forms to cover directors and officers in recent years, but few know the history of the underlying coverage of the full D&O policy—a policy now more than seven decades old.

The first ever D&O policy came out of Lloyd's of London in the late 1930s. Even after the depression, the directors and officers did not see a great need for this insurance and the coverage did not sell well. Companies were not permitted to indemnify their directors or officers at the time.

In the 1940s and 50s, corporations began to see the advantages to corporate indemnification, thus prompting state legislatures to pass laws that permitted corporations' by-laws to be amended by adding indemnification provisions. The courts upheld these changes.

The 1960s brought an onslaught of mergers and acquisitions. This period has been referred to as "conglomerate merger mania period," and the mergers resulted in litigation against the corporation and its directors and officers. This litigation, in turn, resulted in court interpretation of the securities laws—interpretations giving rise to the real possibility that boards of directors and officers of corporations could have personal liability exposure.

As a result of these events, the "original" D&O policy now had the opportunity not only to protect the legal entity's balance sheet but also the personal liability of individuals.

The "newly improved" D&O liability policy (circa 1960s) was actually two policies usually stapled together, each word for word the same except each had its own insuring clauses.

Insuring Clause 1, or Side A as it later became known, provided personal financial protection to the corporation's directors and officers when the company could not indemnify the individuals. This was usually in the case of bankruptcy or the filing of a derivative suit.

(Editor's Note: Derivative suits are suits brought by shareholders on behalf of the company, naming directors and officers as defendants. Statutory prohibitions against indemnification of derivative suits exist in many states.)

Insuring Agreement B, or Side B, reimburses a corporation for its loss when the corporation indemnifies its directors and officers for claims against them.

Side B does not provide coverage for the corporation for its own liability. This insuring agreement protects the company's balance sheet, and in this respect is no different from a property policy, which also similarly provides balance sheet protection.

By the mid-eighties, all insurers except INAPro had changed to the current one policy with multi-insuring clauses format. (INA was the Insurance Company of North America, which later merged with Connecticut General to form CIGNA)

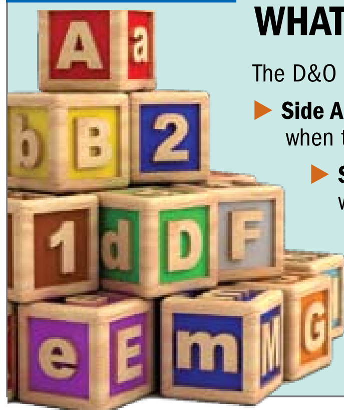
In the late 1980s, insurance companies—in the interest of becoming more efficient— started to issue one D&O policy with the two insuring clauses. Chubb took advantage of merging the two policies together to allocate certain policy exclusions to the particular insuring clause, thus in many ways enhancing the coverage. At the time, this was very innovative and later became the standard we have today.

THE POLICY EVOLVES

The development of the Side-A coverage of the D&O policy has a number of milestones and enforces how the D&O policy has matured over the years, reminding us of how the policy has had to adapt to both the litigation environment and human nature over the last

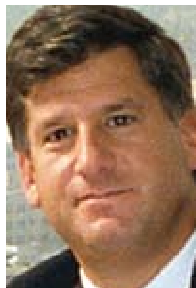
EASY AS A-B-C

WHAT ARE D&O'S BUILDING BLOCKS?



The D&O coverage parts are:

- **Side A**, which protects a corporation's directors and officers when the company can not indemnify the individuals.
- **Side B**, which is designed to reimburse the organization when it indemnifies the individuals, thereby protecting the company's balance sheet.
- **Side C**, also known as entity coverage. introduced to eliminate disputes of coverage allocation when both directors and officers and the insured organization itself are named as co-defendants in securities lawsuits.



"Although D&O policies across the industry might share similar 'skeletons,' each insurer's D&O policy has a different heart, soul and skin. With the right guidance, this aspect of D&O coverage can provide substantial coverage positives to the directors and officers."

Peter R. Taffae

70-plus years.

An excellent example that demonstrates the evolution of ever-ameliorating D&O policy is the addition of the "presumptive indemnification" clause.

In the mid 1980s, a New York Stock Exchange-listed pharmaceutical company based in Philadelphia had accepted a Side-B/corporate reimbursement retention of $5 million. The hard market of 1985 mandated that Fortune 500 firms would have corporate reimbursement retentions ranging anywhere from $2.5 million to $5 million.

Shortly after the pharmaceutical company's renewal, the directors and officers became defendants in a class-action securities lawsuit. Because the policy was silent on when the individual side of the policy, Side A, would respond, and when the corporate reimbursement, Side B, would respond, the pharmaceutical's legal department "creatively" reasoned that if the company just decided not to indemnify the directors and officers, the claim would shift from Side B—with a $5 million retention—to Side A. At the time, most underwriters applied a $1,000 per individual and a $5,000 aggregate retention to the individuals protected under Side A.

The policy wording on when a loss would be paid under Side A versus Side B was so vague that by just declining to indemnify, the directors and officers shifted what normally would be a Side-B claim to Side A.

As the policy did not define the term "non-indemnification," the underwriter at the time handled the claim under Side A, thus supplanting the $5 million retention with a $5,000 one, even though $5 million is what was originally anticipated for this type of claims situation when the policy was written.

Almost immediately, the underwriting community responded by endorsing all D&O policies with a "presumptive indemnification" endorsement that stated that Side A would only apply when the insured organization could not legally indemnify directors and officers (as in the case of derivative litigation) or financially indemnify (as in a bankruptcy situation) indemnify, thus eliminating the insured organization's ability to just refuse to indemnify. Today, this clause is built into the policy.

For clarification, Side A then and now only protects the individuals. Side B is designed to reimburse the organization when it indemnifies the individuals, thus protecting the company's balance sheet.

Both Side A and B provide personal/individual protection. The term "corporate reimbursement" used to describe Side B is confusing and can be misleading. The legal entity is NOT an insured under an A&B D&O policy.

SIDE C INTRODUCED

For decades, the D&O policy had only two insuring clauses and with rare exceptions the claims process was fraught with arguments because the insured organization (company) was often named as a co-defendant along with the directors and officers when lawsuits

▸ *continued on page 33*

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SIDE-A MARKET

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there's been "an amazing trend" toward increased Side-A purchases since 2006. In that year, he said roughly 50 percent of his clients bought Side-A-only policies or added limits to the Side-A limits they already had. "Then the next year, 50 percent again."

Kevin LaCroix, a partner with Oakbridge Insurance Services in Beachwood, Ohio, said "the value proposition for Side A has gotten a big boost recently with the settlement in the Broadcom case," referring to a $100 million derivative lawsuit, which is a non-indemnifiable claim.

While the company is not insolvent, excess Side-A insurers contributed $40 million, he said. "It's the first example outside the insolvency context where excess Side-A carriers had to contribute substantially toward settlement—[making] the need for this type of protection…much more apparent."

Mr. LaCroix noted that the question of whether a broker's discussion of IDL turns into a sale depends on who is on the other end of the conversation. "When you're having it with the CFO or treasurer, it's a different dialogue than if you're having it with the board and the outside board members," he said.

He reported that while teaching at the Stanford Law School Directors College earlier this year, he addressed "a roomful of outside board members, all of whom" wanted to talk about D&O insurance designed specifically for them, although they didn't necessarily refer to the IDL product name.

The trend now, he said, is toward creating insurance that "continues to get more refined—so on top of the A-B-C D&O policy, and on top of excess Side A, there's yet another layer that takes out the risk of the Dennis Kozlowski effect—of an inside black-hat person [or wrongdoer] soaking up all the insurance, and leaving outside directors with nothing left to defend themselves." (Mr. Kozlowski, the former chief executive of Tyco International, was convicted in a corporate scandal in 2005.)

"This is the newest trend," Mr. Norton agreed. "We are seeing these triple-layer programs." He likened the new structure to a layered dessert parfait topped off with "a little tower that's an IDL-type policy."

Mr. LaCroix suggested that the top layer need not be a true IDL policy, but instead could be an excess Side-A policy written for non-officer directors as a group.

Explaining the distinction, he explained, "when you compare the protection available under an IDL policy to what's available under a state-of-the-art excess Side-A DIC, the IDLs just haven't kept pace—in part because there was no competitive pressure to do it."

MOST COMPETITIVE SEGMENT?

Chris DiLullo, a senior vice president in Lockton's Washington, D.C., office, believes competition for broad-form Side-A coverage is more intense than any other sector of the D&O industry right now.

On a coverage basis, Mr. DiLullo said examples of expansions include the removal of insured versus insured (or company versus insured exclusions) and the addition of reinstatement-of-limits provisions (sometimes limited to just the independent directors). "I've even seen one contract that didn't have a bodily injury/property damage exclusion," he said.

David Bradford, executive vice president of Advisen, said his firm has seen some Side-A policies that clearly cover ERISA liability.

"Generally speaking there's a lot of competition on a price basis for broad-form A-side coverage," Mr. DiLullo observed. "I would think there would be a lot of support for that statement in the industry." He declined, however, to quantify the level of price declines.

Brokers and consultants over the years have told *National Underwriter* that one significant obstacle to Side-A coverage purchases has been the high price tag.

Giving one reason for high Side-A premiums, Mr. DiLullo said carriers "are underwriting the financial solvency" of the insured. Insolvency "is obviously one of the key moments in time that the broad-form contract could be called upon."

With bankruptcy filings now multiplying and potentially prompting insurer claims payouts under more Side-A policies, price competition could start to disappear, experts confirm, but they expect competition to stick around for a little while longer.

"Logic would tell you that as loss payments occur, underwriters will react," Mr. DiLullo said. "They haven't always reacted to frequency of the claims, but their pricing dispositions have reacted when they're actually making the payments. We're not really in that period yet."

Mr. Bradford agreed. "In theory, the spike in bankruptcies and associated securities claims would put Side-A policies at risk, [but] I haven't actually talked to any underwriters who are wringing their hands at this point in time over the Side-A exposure….It's something that people talk about a lot, but I haven't seen the real angst in the marketplace that there's a crisis going on with Side A."

Interestingly, some figures in the Towers Perrin report—which are notably based on survey responses that are a year old—seem to suggest Side-A rates are rising, while A-B-C rates fall.

According to the report, the average rate per $1 million limit for A-B-C coverage was $16,624 in 2008, down from $21,422 in 2007, while the average rate per $1 million limit for Side-A-only was $15,638 in 2008, up from $11,015 in 2007.

Mr. Turk said he is not entirely comfortable drawing the conclusion suggested by these numbers—that A-B-C rates fell 22 percent while Side-A rates jumped 42 percent. He said that since the average rate figures in the report are not just for repeat participants, "there could be some explanation for [the changes] based on a change in the makeup of the firms participating."

The figures for just 2008, however, put the Side-A average rate per million ($16,624) very close to the average A-B-C rate per million ($15,638). NU

D&O SURVEY

FOR MORE INFORMATION:

The latest edition of Towers Perrin's annual survey of directors and officers liability insurance purchasing trends is available on the Towers Perrin Web site at http://www.towersperrin.com/tp/getwebcachedoc?webc=USA/2009/200908/DO_Survey_Report_2008_FINAL.pdf.

In addition to presenting results related to Side-A coverage, the report analyzes trends related to policy limits, retentions, coverage enhancements and prices.

INSURANCE CLAUSES

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were filed. This is frequent in securities class action litigation.

Because the intent of the D&O insurance has always been that of an "individual protection" policy (unlike the general liability policy), the insurance company and the insureds were at odds when trying to determine a fair allocation of defenses costs and any settlement. Frequently, this led to litigation between the company and D&O underwriters.

It was not until the now famous *Nordstrom vs. Chubb* decision in 1995 that insurers were forced to address this historical allocation dilemma.

The U.S. 9th Circuit Court of Appeals in *Nordstrom* determined that a means of differentiating the liability between directors, officers and the legal entity did not exist in securities litigation, and that Chubb was on the hook for paying the entire settlement of a securities case that named both the directors and officers and the company as defendants.

The initial underwriting community response was to establish a predetermined allocation between the individuals and legal entity at the inception of the policy. The percentages ranged from 70 percent to 100 percent, and the policies were supposed to be priced accordingly.

There was initially a cost involved, and the coverage was endorsed to the policy via a Predetermined Allocation endorsement.

As a result of competition, this lasted less than a year, and 100 percent became the norm with no increase in premium. As the insurance industry revised and introduced newer versions of their D&O policies, the Predetermined Allocation endorsement soon became SEC Entity coverage, also known as Side C.

By adding Side C, the insurance industry solved one problem while creating others, which to this day have not been resolved.

The first problem is that the substantial increase in exposure (due to adding the entity as an insured) did not affect the pricing. Now, for the first time, insurance companies were insuring the legal entity (although only in securities litigation) and the directors/officers. Some estimate that by adding Side C, the risk to underwriters increased fivefold.

Second, most insureds continue to purchase the same limit of liability. Many broker experts believe that by adding Side C, the individuals' protection actually substantially decreased because now the limit of liability will be greatly diluted since it is shared with the legal entity.

This is an excellent reason to secure standalone Side-A coverage, and it has contributed to the increased interest in this standalone coverage in recent years.

MONOLINE SIDE-A POLICIES: THE NEW GENERATION

Although theoretically available prior to 1986, it was not until the creation of Corporate Officers Directors Assurance (CODA) that monoline Side-A policies became commercially available.

The attraction to Side A has evolved over the last 20-plus years. Initially it was created to address the lack of affordable and available coverage for Fortune 500 companies during the hard

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INSURANCE CLAUSES

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market of 1985. Lately, renewed interest has been fueled by several factors, including the high defense costs associated with securities litigation, the large number of corporate bankruptcies and insider versus outsider allegations of fraud.

Executive Risk Management Associates (the underwriting manager for Executive Risk, which was acquired by Chubb in 1999) introduced a by-product of the standalone Side A policy, called IDL, or the Independent Director Liability policy. The IDL policy introduced in the late 1990s got off to a slow start; however, in the last five years it has taken Side A to the next level by furthering expanding the financial protection for the independent director constituency.

The needs of independent (non- employee) directors became very evident during the litigation of companies like Enron, WorldCom, HealthSouth earlier in this decade. During the litigation of these and other companies, we were reminded of the specific and unique duties, responsibilities and exposures of inside officers/directors and outside/independent directors. Sometimes we refer to the separation by referring to the guilty as "black hats" and innocent as "white hats."

Keep in mind the D&O policy limit of liability is a depreciating asset and does not discriminate in its burn rate. Thus first to spend is first to be defended.

Layering a program with A-B-C, followed with Side A, topped with IDL is considered today's state-of-the-art architecture. (See related article, page 28, for more on this layering approach.)

With that said, please take note that there is no standard or generic A-B-C, Side A and IDL policy language. Each underwriter has its own propriety products with unique terms, conditions and exclusions.

Today's D&O policies have come a long way since the 1960s, and the insuring clauses are only one example how the industry has responded to the ever-changing environment over the years.

For many people who have not worked with the D&O policy to a great extent, it is uniquely different from other insurance policies which are based on ISO forms (crafted by the Insurance Services Office.)

In the absence of ISO forms, although D&O policies across the industry might share similar "skeletons," each insurance company's D&O policy has a different heart, soul and skin. With the right expertise, this aspect of D&O coverage can provide substantial opportunities to be creative and enhance the coverage for the directors and officers. Alternatively, without the right guidance, if the D&O purchasing process is treated with a generic commodity approach, it can lead to great problems. NU

Peter R. Taffae is managing director of Executive Perils, a Los Angeles-based national wholesaler solely dedicated to D&O, E&O, EPL, digital, intellectual property, media, legal malpractice, insurance agents E&O, crime and fiduciary liability insurance. He can be reached at petert@eperils.com.

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TIP SHEET

'Tis The Season To Get A Jump On 2010

Company rep offers top-five ways for agents to pave the way for higher sales

BY DAN KING

DURING MY 35 YEARS IN THE insurance industry I have repeatedly heard independent agents say that this is typically a slow period in their business. Several agencies have gone so far as to say that they could probably close their doors for the last four-to-six weeks of the year without it having an appreciable impact on their operations.

If that's the case, this "slow time" is the perfect time for agency owners and managers to take a page out of Santa's playbook and start making a few lists of their own.

Agencies that take advantage of this downtime will find themselves well poised for a productive start to the New Year.

With increased competition in the marketplace and the numerous changes taking place in our industry, many agencies are trying to reinvent how they conduct business.

Yet in spite of shifting sands, one thing remains the same--the large majority of independent agents are still focused on growing their revenue and client base.

In my experience, these are the top-five areas that require attention and improvement in order for an agency to grow:

- Account rounding
- Cross-selling
- Referrals
- Electronic Funds Transfer/lump-sum payment clients
- Retention

What is interesting about the first four areas of improvement is the considerable impact they have on the fifth--retention.

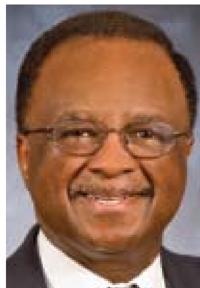
Specifically, agencies that make a concerted effort to increase account rounding and cross-sell percentages as well as the number of referrals and EFT clients almost always naturally benefit from a better retention rate.

If the latter part of the year provides a little additional time, why not take advantage and be proactive in addressing these five significant areas? Let's take a look at how to capitalize on growth strategies during this slower period.

ACCOUNT ROUNDING

This would be a great time to get into your agency management system and run the listings of auto-only and home-only clients. Most agency management systems are capable of displaying this information.

However, I have encountered a number of agencies that cannot easily access this data. If running an in-house listing isn't an option in your agency, carrier representatives can supply these reports.



"**Agencies that make a concerted effort** to increase account-rounding and cross-sell percentages as well as the number of referrals and EFT clients almost always naturally benefit from a better retention rate."

Dan King

Once an agency has the monoline lists, they can develop a letter to send to clients they are looking to round out. These letters should be ready to go right after the New Year.

If this sounds like a strategy worth pursuing, make sure to set up a way to measure results. You cannot manage what you don't measure.

CROSS-SELLING

Another good use of time is to run a report of all commercial or financial services clients who don't have any personal insurance within the agency. The agency would again develop a letter to be followed up by a call from the personal insurance staff person.

The probability of retaining more customers increases as the agency writes more lines of coverage with each client.

This can be a great opportunity for many agencies since cross-sell percentages are usually much lower than account round percentages.

REFERRAL NUMBERS

As I travel the country working with independent agents, they unanimously acknowledge that their number-one source of new business is referrals.

However, less than 20 percent of these agencies have a written, documented strategy for attracting referrals.

A substantial number of principals and owners believe they're not getting as many referrals as they'd like simply because their staff isn't asking for them.

This is a great time to put pencil to paper and establish a proactive strategy for increasing referrals.

Keep in mind, account rounding and cross-selling are positive customer interactions, so when agency staff asks for referrals at these times, clients are often forthcoming. Think of it this way--what better time to ask for referrals than after educating a client and addressing their needs?

INCREASE EFT CLIENTS

As agencies increase their percentage of electronic funds transfer clients, they begin to experience a dual benefit. First, it enhances retention by decreasing the number of non-pay situations. Second, it also decreases the number of billing questions. This provides the staff additional time to sell.

A number of agencies have shared that their personal insurance staff isn't comfortable offering and selling EFT. If that's the case, now might also be a good time to explain EFT process and procedures and to develop a script to assist staff in this effort.

During my agency visits, I have observed staff ending a sale by offering to have installments taken directly from the customer's checking or savings account. When offered in that manner, some clients may decline.

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AGENTS & BROKERS

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In general, the responses suggest that although most agents and brokers are actively using more traditional Internet methods, they have been slower to get involved in more cutting-edge practices.

When asked whether their agency or brokerage had a social media presence, 58.1 percent said no, 22.3 percent said yes, and 19.6 percent said they were considering it.

Of those respondents who had a social media presence, 26.6 percent used LinkedIn while 24.9 percent were on Facebook, 11.4 percent on Twitter, and 3.8 percent on MySpace.

Of the social networking users, 47 percent reported having a formal policy on what employees can do on the Web during working hours.

Surprisingly, even the use of a basic Web site is not ubiquitous. Although 81 percent of respondents reported having an agency Web site, 19 percent did not.

FOR MORE INFORMATION

To learn more about the survey results, go to www.agentandbroker.com.

Of those respondents with Web sites, the majority (32.3 percent) had supervised a redesign over the past six-to-nine months, 24.6 percent did so more than two years ago, and 21.9 percent did so over the past year.

In an open-ended question, several respondents commented that they didn't pursue any form of Internet marketing because Web sales were "undesirable."

Along with Web sites and social networking, other popular Internet-based marketing methods used to reach current and prospective customers included:

- E-mail marketing (49.3 percent)
- Search engine optimization (24.9 percent)
- Lead-based Web sites (13 percent)
- Interactive Web sites, such as reader forums (10.4 percent)
- Electronic customer relationship management (8.4 percent)

Other methods mentioned in an open-ended question included insurer-sponsored Web sites, online and print advertising, telemarketing, seminars, direct mail, cross-policy sales lists, and instant quotes and purchase options on Web site. NU

Laura M. Toops is Editor In Chief of *American Agent & Broker*, part of Summit Business Media's P&C Magazine Group, which includes *National Underwriter*. She may be reached at ltoops@sbmedia.com.

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JUMP ON 2010

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Many agencies experience success when they try a different approach. Instead, suggest to customers that the carrier can simply bill their bank. It's a subtle change but it sounds much more pleasant than telling a customer that money will be taken directly from their account.

RETENTION

By addressing the aforementioned areas, an agency is well on its way to retaining more of its business. I have seen countless examples of improved retention when agencies proactively address account-rounding, cross-selling, referral solicitation and EFT numbers.

Agencies should systematically track which customers are leaving and why.

However, the retention effort does not end there. It is very important for an agency to track lost business to understand which customers are leaving and why. It is critical to pinpoint if it's customer satisfaction, claims concerns or a competitive position that's causing clients to leave.

The end of the year would be a good time to set up a simple "lost business log" that CSRs and account managers can start using on day one of the New Year.

A lost business log might include the following:

- Named Insured
- Date Lost
- Policy Type
- Other Policies at Risk
- Payment Type
- Deductible
- Lost to who
- Reason for loss

Many agencies track their lost business and identify those clients they would like to re-solicit. This might also be an ideal time to develop a "win back" letter.

There are two significant benefits to going after lost clients. First, there is no additional expense incurred by the agency to identify potential new clients. Second, many agents say that when you write a client for the second time, they tend to stay with the agency.

A solid agency growth plan should always include these five areas of improvement but so often the impediment to improving in these areas is simply the lack of time to develop and implement a strategy.

If that rings true, why not seize that small window of opportunity at the end of this year to gear up for a productive 2010?

You might find it's what you do now that influences your agency's growth in the New Year. NU

Dan King is a Director of Agency Development for Travelers Personal Insurance, working with independent agents countrywide on business planning and strategy and other agency development areas to help agents achieve their growth objectives. You may reach him at dking@travelers.com

HOUSE BILL

continued from page 7

lines reform in the Senate—but we're grateful for this 'insurance policy' that moves us to our long-sought goal," he said.

The NRRA bill would subject surplus lines transactions to a single set of regulations—those of an insured's home state or principal place of business—regardless of the location of the risk.

"Such a step would consolidate regulatory oversight and streamline surplus lines regulation, eliminating current overlapping and—for tax filings—sometimes conflicting rules that vary from state to state," Mr. Wood explained.

Steve Bartlett, president and CEO of the Financial Services Roundtable—whose members include multinational insurers—said enactment of this provision into law will improve U.S. insurance regulation "in a narrow, but meaningful way."

At the same time, Mr. Bartlett said he would "urge Congress to build on this progress toward uniformity by moving to pass comprehensive insurance reform for all lines of insurance."

He added that "we believe financial services regulatory reform remains incomplete without the creation of a functional regulator that would give insurers and reinsurers the ability to be chartered and exclusively regulated at the federal level." NU

NAIC UPDATE

Regulators Poised To Probe Credit Scoring

P&C Committee plans to explore impact of pricing tool for informational purposes

BY PHIL GUSMAN
SAN FRANCISCO

REGULATORS ARE POISED TO BEGIN exploring how to gather data on insurer use of credit information to determine premiums, and might even expand their study to examine other rating factors in underwriting.

That's the word that came down from the chair of the National Association of Insurance Commissioners Property and Casualty Committee at the group's meeting here this month.

The committee would like to collect information and develop a report on the controversial credit scoring issue by the third quarter of 2010, according to Illinois Insurance Director and Committee Chair Michael McRaith.

During a committee meeting at the NAIC Winter National Meeting here, Mr. McRaith said he plans to schedule a public conference call in January, during which regulators will discuss how to approach developing a set of questions designed to procure information from individual insurers on how they use consumer credit information.

Connecticut Insurance Commissioner Thomas Sullivan, recalling a question he asked in March when the P&C Committee and Market Regulation and Consumer Affairs Committee first sought permission to hold a joint hearing on credit-based insurance scores, asked: "What would be our endgame [in further examining the credit issue]? What are we trying to get at?"

Mr. McRaith responded that the purpose of gathering such information and producing a report will be to discern the rhetoric from the facts in order to provide accurate information to those who need it.

Credit scoring has been attacked by opponents as failing to account for major, unusual expenses such as large medical bills, as well as unfairly impacting low-income and minority consumers.

Insurers respond that credit scoring is a proven underwriting technique that rewards those who are good risks, and that there is a correlation between credit and insurance risk.

Mr. McRaith said if there is going to be "significant change" in the states on credit-based insurance scores, it will likely be through laws passed by state legislatures.

"My view is the service we should provide is information," he said, adding that regulators cannot attempt to resolve the social or policy questions surrounding the credit issue, "but we can inform those who have that responsibility with some objective, factual data about the impact on consumers."

One area the committee wants to understand better is the range of impact of

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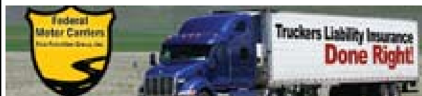

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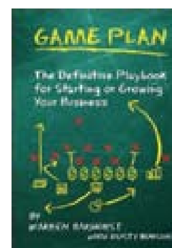

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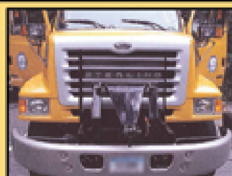

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REFORM BILL

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PCI President and CEO David Sampson voiced similar complaints about this aspect of the House bill.

"We reiterate that home, auto and business insurers did not cause the financial crisis and are not systemically risky," Mr. Sampson said. "They are not highly leveraged or interconnected with other financial firms as a source of credit or liquidity."

He added that because p&c carriers are not "systemically risky, they should not be forced into a duplicative federal regulatory system designed for companies that caused the economic crisis. We urge Congress not to fix what is not broken."

AIA's Ms. Pusey also cited "concern" about the proposed dissolution fund. "To the extent property and casualty insurers are considered in these reforms, the nature of our business and regulatory standards, our existing resolution and guaranty processes, and the general risk our industry poses to the broader financial system has to be recognized," she said.

"AIA opposes legislation that subjects our industry to prefunding obligations for systemically important financial companies and assesses insurance companies to pay for the risks presented by the failure of non-insurance institutions," she added.

"Given the importance of these reforms, AIA stands ready to work with Congress to improve the bill as the legislative process moves forward," said Ms. Pusey.

At the same time, PCI's Mr. Sampson said his group was "pleased" with comments on the House floor by Rep. Barney Frank, D-Mass., chair of the House Financial Services Committee, that made "critical clarifications to the bill and publicly underscored the chairman's commitment to additional improvements [to the legislation] for the property-casualty industry and its policyholders."

The statements were made during debate the day before the bill's passage through a dialogue between Rep. Frank and Rep. Carolyn McCarthy, D-N.Y.

In his comments, Mr. Sampson said, Rep. Frank made a commitment to include additional language in the conference report on the bill when it is reconciled with the eventual Senate measure. NU

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'GOING GREEN'

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official Swiss delegation to the COP 15 conference in Copenhagen—said it is advocating immediate implementation of climate adaptation measures to reduce losses caused by climate risks. The Zurich-based reinsurance company is on hand with the Swiss delegation representing the Swiss Insurance Association.

Swiss Re said it is pushing for a swift transition from COP 15 discussions to practical implementation of adaptation measures in the near term, with the objective of reducing climate-related losses and building economic resilience in the countries and regions most at risk.

Swiss Re noted that a recent Economics of Climate Adaptation study concluded that annual losses due to climate risks could amount to up to 19 percent of a developing country's gross domestic production by 2030. However, it also found that action on climate adaptation can significantly reduce economic losses from climate risks by between 40- and 65 percent, thereby boosting local economic resilience.

"Our societies urgently need to become more resilient by adapting to severe weather events," said Swiss Re's senior climate change advisor, Andreas Spiegel.

"For example, current scientific estimates suggest that the sea level will rise between one-half and one-and-a-half meters before 2100," he warned. "Peak surge height could increase by 50 percent, meaning that a sea-level surge previously seen only once in 1,000 years could now appear on average every 30 years."

Since 1970, Mr. Spiegel noted, "36 of the 40 worst insurance losses have been weather-related. This does not even take account of developing countries, where over 90 percent of such events are not insured."

He said that "while the insurance industry is an important contributor to the absorption of volatile risk, it cannot tackle the challenges of climate change alone. To address this, public-private partnerships will be indispensable."

Swiss Re's head of sustainability and emerging risks, David Bresch, said that to absorb highly volatile losses, the company offers alternative forms of risk transfer in addition to traditional insurance, as well as "concrete guidance, based on our expertise and experience as a global reinsurer, for how societies can respond to the climate adaptation challenges."

Swiss Re noted that in collaboration with partners—including McKinsey, the Rockefeller Foundation and GEF—the reinsurer has developed an adaptation framework designed to give local decision-makers the tools to start costing and planning for climate adaptation.

The Insurance Information Institute noted that one insurer has introduced the world's first-ever insurance for humanitarian emergencies, which was purchased by the World Food Programme. That coverage tracks rainfall amounts and patterns and pays claims well in advance of when post-event relief would be distributed.

"By mobilizing aid faster than would be possible by traditional approaches, this product reduces human suffering and the overall costs of responding to humanitarian crises," noted Ms. Worters.

Among other insurer green product offerings mentioned by the Institute:

- Pay-As-You-Drive insurance programs rewarding policyholders who drive fewer miles with discounts.
- Premium discounts up to 10 percent for those who drive hybrid vehicles.
- Green homeowners and commercial property policies with discounts for homes meeting stringent efficiency and sustainability standards.
- Homeowners coverage that replaces/rebuilds homes after a loss with more eco-

GLOBAL WARMING TALK

continued from page 10

emissions come from light-duty vehicles. Reducing that number, he said, requires less driving, lower emission cars and cleaner fuels.

PAYD insurance products, he added, address the "less driving" part of the equation, noting that drivers who choose such products have been shown to reduce their driving by an average of 5 percent.

It was pointed out that there is some controversy concerning how and what factors insurers may monitor when using telemetry devices with PAYD products. Devices installed in cars can track how, where and when a driver drives in addition to the miles logged.

In California, consumer advocates effectively lobbied to ban the use of GPS capabilities that can monitor where a driver is driving, said Adam Cole, general counsel at the California Insurance Department.

A representative from the Reinsurance Association of America held up his BlackBerry, noting it has GPS and that he can be tracked through the device, questioning why such capabilities in telemetry devices was different.

Mr. Cole said the California insurance department wanted the regulation authorizing the sale of PAYD products to be popular with everyone. If tracking a driver's location makes consumers uncomfortable, he said, the department was willing to ban it for now to gain wide acceptance.

California Insurance Commissioner Steve Poizner, Mr. Cole said, wanted the products authorized and used as much as possible for its environmental benefits.

Mr. Mills of the U.S. Department of Energy offered statistics showing the effects of climate change between the 1997 meetings in Kyoto and the current summit in Copenhagen.

In 1997, he said, scientists offered various projections regarding emissions. "We have outpaced even the high-end projections," according to Mr. Mills. "The world is now pumping 90 million tons of carbon dioxide into the air per day."

Climate-related effects are manifesting themselves now, he said, and will only increase. He said it is the extremes in temperatures that are becoming dangerous, even if the average temperature is not necessarily changing a lot.

Aside from temperature-related impacts, rising CO_2 is acidifying the ocean, which is eating away the shells of animals and impacting coral reefs, he said.

Mr. Mills also addressed the so-called "Climategate scandal," in which scientists' e-mails denigrating global warming opponents and advocating blocking their efforts were revealed. He said the "illegal breach" that exposed the e-mails represents a "desperate resurgence" of contrarian views. He also said the "debate" around the scandal seems to be about "fear and ideology."

As for the substance in the e-mails, Mr. Mills said it shows scientists are human, get frustrated and say bad things about each other.

However, Bob Detlefsen, vice president of public policy for the National Asso-

friendly materials—including some that pay homeowners extra if they replace old kilo-watt-hungry appliances with energy-saving devices and recycled debris rather than send destroyed materials straight to a landfill.

- For homeowners generating their own geothermal, solar or wind power, and that sell any surplus energy back to the local power grid, policies cover both income lost when there is a power outage caused by a covered peril and the extra expense to the homeowner of temporarily buying electricity from another source. Policies generally cover the cost of getting back on line, such as utility charges for inspection and reconnection.
- Policies allowing building owners to replace standard systems and materials after a loss with green ones—such as energy-efficient electrical equipment and interior lighting, water-conserving plumbing, and nontoxic and low-odor paints and carpeting.
- With a total loss, a policy will often cover the cost of rebuilding as a green-certified building. This coverage may also pay for engineering inspections of heating, ventilation, air-conditioning systems, building recertification fees, replacement of vegetative- or plant-covered roofs and debris recycling.

Some cover the income lost and costs incurred when alternative-energy generating equipment is damaged. NU

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ciation of Mutual Insurance Companies, commented to Mr. Mills that he was disappointed by the "frivolous attempt" to explain away the e-mails.

He called it "remarkable evasion" to dismiss the content of the e-mails, and cited a *Wall Street Journal* article that contended the e-mails showed the lengths to which some will go to blacklist dissent, and that the computer models used to understand climate change are poorly designed.

Mr. Mills said if he was trying to evade the issue, he would not have brought it up in the first place.

Mr. Cole said the California Insurance Department will provide a guidance document online to assist insurers as they complete the Climate Risk Disclosure Survey developed by the NAIC.

Although the NAIC said it will not provide any further guidance, Mr. Cole said the California department will make available a four-page guidance document to help spell out what the survey questions mean. Some questions, he said, are not self-explanatory. NU

CREDIT SCORING

continued from page 37

insurance scores on consumers.

South Carolina Insurance Director Scott Richardson said his department did a data call in his state asking how insurers used credit information, noting he was "stunned" at the impact credit had on rates.

For homeowners insurance, Mr. Richardson said credit accounted for savings in a range of 7.6 percent to 51 percent per policy for consumers that benefited from their insurance score, and a surcharge of 1 percent to 86 percent for consumers who were adversely affected.

For auto insurance, Mr. Richardson noted, consumers benefited up to 36 percent per policy, and were adversely impacted by a range of 12 percent to 99 percent.

He stressed that he did not know how many people were in the extreme ranges, but indicated that is information regulators should seek to collect.

Commissioner Sullivan, while offering support for the collection of data, wondered where it ends, and whether the committee will start examining other areas beyond credit. "This could be endless," he said.

In fact, Mr. Richardson pointed out that regulators may want to get a handle on what factors insurers use to determine rates beyond credit.

He said the technical aspects of underwriting have gotten to a point "where we need to talk about what is fair."

Next September, Director McRaith indicated he would like to take a look at marital status as a rating factor.

For now, however, Mr. McRaith said the goal is to "identify questions that we want answers to, and not with the intent of attacking or antagonizing an industry or any one company."

A second component, he said, would be to explore regulating advisory companies that develop credit-based insurance scores.

To do that, Mr. McRaith said the NAIC would have to develop a model law for states that don't have the authority to regulate these companies. NU

OBITUARY

Former Claims Editor Phil Schreiner Passes Away

BY ERIC GILKEY

THE INSURANCE AND JOURNALISM worlds lost one of their best last week when Philip "Phil" Schreiner, former editor of *Claims* magazine, passed away on Dec. 10 after a short battle with lung cancer at the age of 66.

IN MEMORIAL

For those wishing to make a donation in Phil Schreiner's memory, please send any contributions in his name to the American Lung Association, One Trans Am Plaza, Suite 460, Oakbrook Terrace, Ill. 60181.

Mr. Schreiner took over as editor in chief of *Claims* in late 2000, and retired from the magazine in May 2008. It was under his leadership that the magazine went through several successful redesigns and launched its Web site.

Throughout his 40-year career, he was the winner of almost two dozen Jesse H. Neal Awards from American Business Media—journalistic awards often referred to as the "Pulitzer" of the business-to-business press.

He covered groundbreaking claim issues ranging from mold and asbestos, to the insurance implications of 9/11 and Hurricane Katrina.

Besides his accomplishments at the magazine, Mr. Schreiner was a friend to many at this company, and beloved by those in and out of the industry for his larger-than-life personality, his knowledge and his poise.

He will be missed immensely by all here at Summit Business Media, as well as by his family, most notably by his wife Therese and his three children—Henry, Greg and Tracee. NU

Eric Gilkey is Editor in Chief of *Claims*, part of Summit Business Media's P&C Magazine Group, which includes *National Underwriter.*

NU VIEW

Industry Can Do More To Boost Its Reputation

BY MARK E. RUQUET

EARLIER THIS MONTH THE property and casualty insurance industry held its annual “love fest” in New York City, honoring its greatest cheerleader, Willis Group Chair and CEO Joseph J. Plumeri.

I was on the scene, and left wondering whether the industry would ever be able to project the positive image it has of itself to the public at large.

The event was the third annual Insurance Industry Charitable Foundation gala fundraising dinner, and Mr. Plumeri was this year’s honoree.

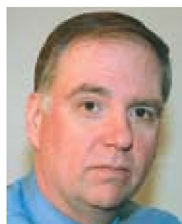
True to form, he struck a folksy, “How ya’ doin’?” as he began his address to thank IICF for the honor (which last year went to Pierre Ozendo, chair and CEO of Swiss Re America Corp., and in 2007 to Brian Duperreault, president and CEO of Marsh & McLennan Companies).

Joe honored his family, joking about them, promoting his son’s restaurant and reading a letter from his Mom. (“He loves insurance. And he’s a nice boy.”) He also gave the industry a strong pat on the back for a job well done.

In close to a decade as head of Willis, Mr. Plumeri has been both an ardent critic and promoter of the insurance industry, and has probably annoyed a few people in an industry of generally low-key personalities.

He stands out, as he did on this occasion, as being both vocal and passionate in his opinions about the direction and purpose of the insurance industry.

Indeed, his best applause line of the night was: “We do not get the fair recognition that we deserve in this business for what we do.”



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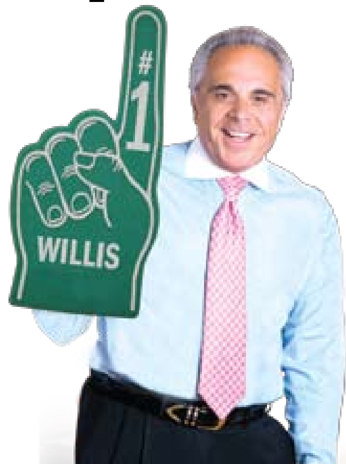

WILLIS CEO JOE PLUMERI IS A TIRELESS CHEERLEADER for the industry, but we need more like him to alter the negative perception of insurance.

He pointed to the considerable amount of money the industry makes available to policyholders when disaster strikes, upholding a promise to pay claims in an effort to make their lives whole again.

Insurance is the mother’s milk of capitalism, he intoned, and when catastrophes strike, insurers are there to aid in the recovery.

The economy won’t function without the backing of insurance, he pointed out, noting that even the chairs which the evening’s attendees were sitting on would not be there without coverage.

From the manufacturer to the delivery truck, to the hotel holding the event, the night’s gala would not proceed without insurance, he noted.

By the end of his brief but poignant address, Mr. Plumeri had everyone there feeling pretty good about the industry they work for.

Later, the chair of the IICF—Michael P. Fujii, president and CEO of worldwide insurance operations at Endurance Specialty Holdings Ltd.—spoke about the four charitable organizations the organization will give grants to:

- The Boys Hope Girls Hope New York.
- The International Rescue Committee.
- Starlight Children’s Foundation NY*NJ*CT.
- The World Cares Center.

The money they raise, he said, benefits children in need, alleviates humanitarian crises and helps communities to prepare for disasters. How many people know the industry does such things?

At the end of the evening, former NBC News anchor Tom Brokaw gave an inspiring and hopeful speech about the challenges the United States has faced in the past, and how he believes younger Americans will rise to the occasion to become the greatest generation of their time. He also joked about worrying whether his insurance was in place during a recent auto accident, expressing relief that both his life and auto coverage were paid up.

By the end of the evening, many of the contributors must have been feeling pretty good about their industry despite soft market competition and a fragile economic recovery.

Yet Mr. Plumeri voiced a common complaint during his speech—that there is nothing in media promoting a positive image of the industry, and that for all insurance does, the business deserves better. From the applause, one would say that many agreed.

The question is: What will this industry do to change its negative perception among the consumer press and the general public?

The industry gave itself a well-deserved pat on the back for its charitable work and noble aims at this dinner. But will it take anything away from these inspiring observations other than it being a victim of misunderstanding and underappreciation?

It would have been nice to see the speakers challenge the industry to stand up and defend its reputation before the public—to charge confidently forward and assert the righteousness of its purpose.

I fear that instead, the industry will just keep circling the wagons when negative news emerges, as it has in the past.

Perhaps to encourage such behavior—or at least recognize those who do defend the industry—there should be an award dinner to honor the insurance organizations that do the best job presenting a positive image to the public, while also raising funds for some good cause. Think about it. NU

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