SEPTEMBER 5, 2011 | VOL. 89, NO. 17

WEST REGION

INSURANCE JOURNAL

THE NATIONAL PROPERTY CASUALTY MAGAZINE

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Reviving the Kemper Name

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Top 25 Workers' Compensation Writers

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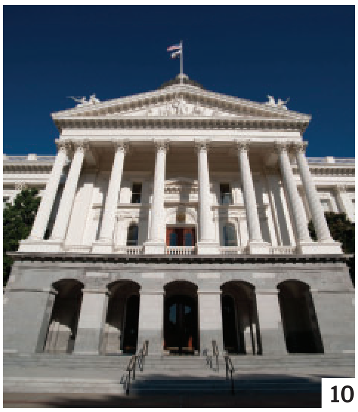

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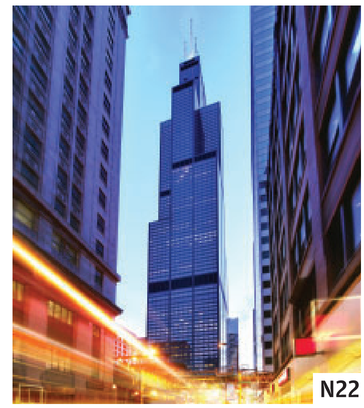

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Opening Note

Irene's Legacy

In some towns, Hurricane Irene turned out to be less destructive than initially feared, although that is small consolation to those along the Eastern Seaboard who did feel her force, lost loved ones, were flooded out of their homes, or suffered other property damage or business losses.

With Irene recovery efforts underway along the East Coast, some say there is no better time for Congress to get serious about reforming and renewing the National Flood Insurance Program (NFIP), which many of the people victimized by Irene will call upon.

But there actually have been plenty of times for Congress to act, plenty of times when Congress has been reminded of the importance of the federal flood program. There have been serious floods across the country all year. Just ask people in Iowa, Nebraska, Montana, Kentucky, Connecticut, New York, Utah, Louisiana, Georgia, Wisconsin, North Carolina, Missouri, Mississippi, Tennessee, North Dakota — the list of states with floods this year goes on.

> **There have been serious floods in states all year.**

Why should Hurricane Irene be any more of a motivator?

Because Irene came rushing in just as time is running out. The NFIP will expire at the end of September if Congress doesn't act.

Also now is the time because the heavy work has been done. Earlier this year, the House passed legislation extending the program for five years and implementing significant reforms.

Now all that needs to happen is for the Senate to do its job.

Insurers are motivated to push the Senate to act. During a lapse in the program, NFIP insurers are required to continue paying claims with the expectation of reimbursement once the program is reauthorized, notes Jimi Grande, senior vice president of federal and political affairs for the National Association of Mutual Insurance Companies.

While this would protect existing policyholders, no new coverage can be written during an NFIP hiatus. A lapse in the NFIP can make buying a home far more difficult since lenders require coverage. "If Congress fails to act before Sept. 30, thousands of home sales could be delayed or cancelled altogether," Grande said. "This could cause significant damage to an already fragile economic recovery."

Budget-conscious lawmakers should know that under the House bill, premiums will begin to match risk so the federal government will not be on the hook like it has been in the past for underpriced policies— provided lawmakers themselves don't intervene to do constituent favors.

If the Senate needs any more motivation, there is always the potential that another major hurricane or flooding event could hit any day.

The final reason the Senate should reauthorize the NFIP is because it's the right thing to do. Oh, forget that. It's not right or left — it's just common sense.

Andrea Ortega-Wells
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CONFIDENCE
is on the agenda.

News&Markets

Pinnacol Stops Administering Colorado State Claims

A Colorado-chartered workers' compensation insurer will no longer administer the claims of state employees following disagreements with state officials over lavish trips, compensation and golden parachutes for executives.

Pinnacol Assurance's decision to bail forced Colorado to scramble to hire an independent contractor to administer claims for state workers.

State Rep. Sal Pace, D-Pueblo, said 42,000 employees were affected, including about 1,000 with claims pending.

Pinnacol spokeswoman Suzi Stolte said that the decision had nothing to do with state lawmakers' criticism after it was revealed that the company spent more than $318,000 on a five-day golf trip and questions over its compensation and severance packages.

The company insures about 55,000 employers with more than a million clients. The state is self-insured, Pinnacol only administered the program. Stolte said the state contract is a small portion of the company's business.

"We just decided this is not the core of what our business is," Stolte said.

The story was first reported by the Pueblo Chieftain.

Pinnacol has had a rocky relationship with the state after it was challenged last year over reports of lavish spending and excess profits, which lawmakers said the company racked up by denying claims from injured workers. The company has denied those allegations.

'We just decided this is not the core of what our business is.'

Gov. John Hickenlooper signed a bill in May that limits travel expenditures by state employees and state-chartered entities. He has also questioned a new $4.3 million severance package for its top 12 executives.

Pinnacol defended its executive pay and incentive trips, saying they are modest compared to competitors. President Ken Ross said the incentives for himself and his employees, such as $1,500 for one night at the Mirage in Las Vegas, helped recruit top talent.

The governor appoints Pinnacol's board but it operates like a private insurer. It is required to cover employers that private insurers won't cover and is exempt from paying state taxes.

A state audit last year determined the company's practices could result in excessive rates. The state later reached an undisclosed settlement on rates.

In 2010, then-Gov. Bill Ritter canceled a proposal to allow Pinnacol to go private after lawmakers said it had no chance of passing. Hickenlooper is considering a similar proposal. Ross has offered $330 million to the state so it can go private.

Stolte said Pinnacol informed the state in January of its intent to discontinue offering administrative services. The company had one year remaining on its contract. IJ

Washington Court Rules in Single-Car, Underinsured Motorist Case

A Washington State couple has lost their appeal of a ruling that allowed Farmers Insurance to deny their uninsured motorist claim following a single-car accident, which they said was caused by another driver who disappeared.

The case involved an accident that Michael and his wife, Brenda, Osborne had on April 16, 2009. While driving on a lonely road in Skagit County, their Subaru went off the road. When the county sheriff arrived on the scene, they told him that they had been driven off the road by a car traveling in the opposite direction. The other car — referred to as the "phantom car" in the court decision — never stopped. Five days later, the Osbornes, who had injuries, filed an underinsured motorist claim with their insurer, Farmers Insurance Co. of Washington.

Farmers denied their claim on the grounds that there was no corroborating evidence of another driver, and their policy clearly stated that, in cases where there was no physical crash between the insured's car and the other car, the "facts of the accident must also be verified by someone other than you or another person having an underinsured motorist claim from the same accident."

The sheriff said in his report that he passed no car in the area prior to arriving on the scene, and that there were no skid marks on the road to indicate the Osbornes, or another driver, had swerved hard to avoid a collision. He noted that it was possible that Brenda Osborne simply kept driving straight when the road turned. He also noted that they seemed oddly calm and composed.

The Osbornes sued Farmers for denying their claim. They lost at the trial court level and now the Court of Appeals Division One of Washington has upheld that lower court decision. IJ

Declarations

Status Symbol

"It's so wildly popular as far as pop culture goes. Watching the TV you see professional athletes coming in and out of them and other celebrities too. It's a status symbol."

Matt Moore, vice president at the Highway Loss Data Institute as to why the Escalade is the vehicle most often hit by thieves.

Hurricane Catalysts

"It wouldn't take much of a material event to cause significant firming."

Gary Prestia, chief executive of the U.S. business at global reinsurer Flagstone Re speaking about how hurricanes may be catalysts for insurance rate increases.

Online Records

"Scares the living hell out of me."

Paul Thompson on the security breach regarding patients' data accidentally made public on a Southern California Medical-Legal Consultants Web site recently. Tompson was one of the patients affected by the breach.

Colorado Earthquake

"I thought maybe a car had hit my house."

70-year-old Trinidad, Colo., resident Nadine Baca, referring to the feeling of the largest earthquake to strike Colorado in almost 40 years.

Figures

94 Percentage of the 1,200 members of the Gulfport, Miss.-based National Association of Professional Allstate Agents who are said to have voted in favor of affiliating with the Office and Professional Employees International Union.

$75,000 Dollar amount awarded to settle a disability discrimination lawsuit brought on behalf of a Texas Starbucks barista who said she was fired because she was a dwarf, according to the U.S. Equal Employment Opportunity Commission.

71 The number of shots fired at an ex-marine in an Arizona County SWAT raid igniting a $20 million claim filed by the victim's widow against the officers involved alleging negligence in providing medical attention after the shooting, according to the Arizona Daily Star.

14 The annual average of deaths in Utah due to accidents involving off road motorcycles, all-terrain vehicles and snowmobiles; 1,800 people are said to receive injuries on average per year. The Utah Department of Health shows a third of those accidents happen to riders 18 years old or younger.

News&Markets

California High Court Rejections of Appeals Expected to Raise Costs for Workers' Compensation System

The California Supreme Court has refused to hear several appeals on cases this year that threaten to bring higher costs for workers' compensation and greater uncertainty for insurers.

The Supreme Court announced on Aug. 24 that it was not going to review the decision of the Fifth District Court of Appeal in the case *State Compensation Insurance Fund v. W.C.A.B.* [Workers' Compensation Appeals Board], known popularly as the Almaraz case after the applicant in the original case, Mario Almaraz.

The rejection means that one of the pillars of the reforms to the California workers' compensation system fashioned in 2004 has been knocked down.

The Supreme Court rejection of the Almaraz case comes on the heels of final decisions in two other cases that also allow for greater physician discretion in assessing impairment — also, perhaps, promising more disputes and more variability.

One of those cases is popularly known as the Guzman case. It was paired with the Almaraz case by the Workers' Compensation Appeals Board, as it addressed the same issue. The other case is known popularly as the Ogilvie case. This case likewise concerned whether claimants could challenge the schedule for assessing impairments. It said that they could.

'It's pretty unequivocal that costs will continue to go up in California.'

"It's pretty unequivocal that costs will continue to go up in California," said Jerry Azevedo, of the Workers' Compensation Action Network, which represents the interests of employers.

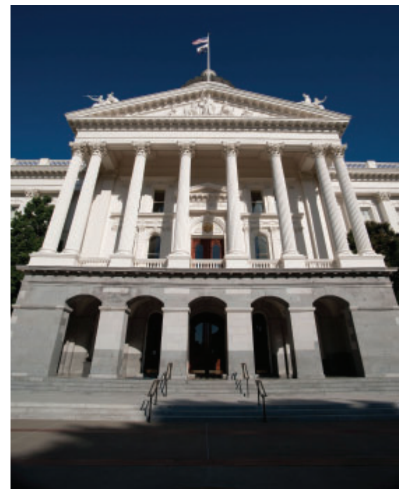
"We have to look to other ways to restore the predictability that the legislators [who enacted the 2004 reforms] were looking for," he added.

The Almaraz case involved a trucker driver, Mario Almaraz, who sustained a back injury on the job. According to the 2004 reforms, physicians examining persons making workers' compensation claims were supposed to follow the AMA Guides 5th edition very strictly when assessing the injured workers' degree of permanent disability. Almaraz's physician rated his disability at 12 percent, but also noted that the 12 percent degree of impairment did not adequately describe the extent and impact of the injury. His injury prevented him from prolonged sitting, so he could not do trucking at all.

Almaraz appealed to the Workers' Compensation Appeals Board. His attorneys argued that a physician had to have latitude from the schedules in the AMA Guides when the Guides did not adequately capture the injury. The Appeals Board agreed, though it said that when a physician decides to rebut the schedule he still has to remain inside the Guides in finding his rationale for the disability rating he gives. That is the decision the Fifth District Court of Appeals affirmed.

In the Guzman case, Joyce Guzman sustained an industrial injury to her bilateral upper extremities while employed as a secretary by the Milpitas Unified School District. Her doctor concluded that her injury caused 3 percent whole person impairment (WPI) under the AMA Guides, and also that her injury caused a 25 percent loss of her pre-injury capacity for pushing, pulling, grasping, gripping, keyboarding and fine manipulation.

Azevedo said that freeing physicians to use their discretion this way undermines what the reformers were trying to achieve in 2004 — imposing a strict schedule to ensure that compensation awards were standard and predictable — and opens the door to more cases going to court, and perhaps some higher claims awards.



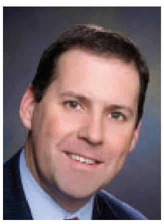
The Schwarzenegger administration's efforts to "return sanity" to the permanent disability (PD) system was dealt yet another — perhaps fatal — blow, said Don Barthel, a partner at Bradford and Barthel LLP. "It appears clear that PD awards will continue to increase and an objectively-based PD system will continue to be whittled away," Barthel wrote in a recent article on *InsuranceJournal.com*.

Together the cases have dramatically undercut the "uniformity, consistency and objectivity" in permanent disability that reforms sought to produce, according to Barthel.

"To a large extent, Almaraz/Guzman has returned California to the 'bad ole days' of PD. When reserving PD for a case, adjusters again must focus less on the objectively verifiable organic findings, and more on the 'wild cards' of litigation: patient motivation, secondary gain, aggressiveness of legal counsel, political bent of reporting physicians, and the judicial temperament of the assigned workers' compensation judge," he wrote. IJ

People


Roberta Haskins


David J. Bresnahan


Ray Dudonis

AIPSO has appointed **Roberta Haskins** to serve as the manager of its Western Region, which includes the California Automobile Assigned Risk Plan (CAARP), the California Low Cost Program, and the Western Association of Automobile Insurance Plans (WAAIP).

She will assume responsibility in AIPSO's San Francisco office for the management of day-to-day operations and administration for the California Plan and the 11 automobile insurance plans comprised by the Western Association.

The California Plan and Western Association Plans are assignment mechanisms that provide automobile insurance coverage to individuals and businesses that cannot obtain insurance through the voluntary personal auto and commercial auto insurance markets, respectively.

Prior to her promotion to her new position, Haskins served as assistant manager of the New York Insurance Plan, the position she has held since joining AIPSO in January 2002.

David J. Bresnahan has been named president of **Lexington Insurance Co.**, the surplus lines unit of Chartis Insurance.

He is succeeding Peter Eastwood, who is moving into his new role as president and CEO of Chartis for the United States and Canada region.

Most recently, Bresnahan was the executive vice president of Lexington's casualty, healthcare, and programs divisions. He joined Lexington in 1999 as manager of the errors and omissions product line. In 2002, he was named vice president responsible for Lexington's professional lines and construction business. In 2004, he was promoted to senior vice president, casualty division executive.

Prior to joining Boston-based Lexington, Bresnahan held managerial positions at Executive Liability and New Hampshire Insurance Co. after joining Chartis in 1995. Bresnahan began his underwriting career in 1990 at Chubb Group.

United Fire & Casualty Co., based in Cedar Rapids, Iowa, announced that East Coast Regional Office Branch Manager **Ray Dudonis** has been named vice president.

Dudonis joined Mercer Insurance Group, a subsidiary of United Fire & Casualty, in 2006 as underwriting vice president. He has more than 30 years of experience in the insurance industry.

Atlanta-based insurance broker **Beecher Carlson** has appointed **Michael Mizrachi** as senior vice president. He will work out of the Scottsdale, Ariz., office.

Prior to joining Beecher Carlson, Mizrachi worked for Wells Fargo Insurance Services in the Phoenix office. He began his insurance career as a broker in London with Lloyd's market. He has also worked with Marsh and Aon and moved to the Phoenix area in 1985.

SullivanCurtisMonroe has named **Rikki MacBarron** an account executive and **Jacqueline Scott** as vice president in its Irvine, Calif., office.

Prior to joining SCM, Scott held the position of vice president at Lockton in San Diego and account executive at Willis, also in San Diego.

Before coming to SCM, MacBarron held the position of account executive and office manager at Schweikert & Company/Valcourt Insurance Services in Irvine.

SullivanCurtisMonroe offers commercial property and casualty, employee benefits and personal lines coverage.

White & Co. Insurance Inc., of Santa Monica, Calif., has added **Dane Lupe** to its staff.

Lupe is coming to White Sutton as a producer, responsible for new and renewal business.

Lupe has three years of experience in commercial property/casualty insurance. Before coming to White Sutton, he worked for Lockton Insurance Brokers as a senior account manager. Lupe was responsible for the insurance program implementation and marketing on the national accounts team. IJ

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News&Markets

California Supreme Court Rules on Workers' Compensation Payment Increases

By Tim Kirn

The California Supreme Court has ruled that cost of living adjustments in total permanent disability cases are to be calculated starting the Jan. 1 after the injured worker started collecting his or her payments.

The ruling is expected to be greeted by employers with a sigh of relief because it overturns a court of appeal ruling that said the cost of living adjustments (COLA) need to be calculated from back in 2004, when the labor code statutes governing cost of living increases were implemented.

The ruling is going to save the industry "an enormous amount of costs," said a spokesperson for the Workers' Compensation Action Network, an association of employers and insurers. "You almost hate to call it a victory because this is the way the statute should have been read all along. But it is."

The ruling will save an enormous amount.

The Court said that in coming to its ruling it had to decide what the Legislature had in mind when it passed the labor code provision regarding cost of living increases for those receiving permanent disability payments of life benefit payments.

In the court of appeal case, the California Applicants' Attorneys Association (CAAA) filed an *amicus curiae* brief that maintained that the "plain language of the statute mandates that the COLA in fact begins to accrue Jan. 1, 2004, without regard to the date of injury."

The Court of Appeal, in siding with the CAAA, said that it would not be fair for a worker to be penalized because their case dragged on and they did not begin receiving their benefits for years after their injury.

The Supreme Court said the appeal court's decision was wrong because according to the language of the statute there could not be an increase calculated to the payment until there actually had been a payment. The Court also said that when the statute mentioned a date of January 2004 as the date from which a COLA needed to be calculated it did not intend that date to be read literally; rather it was intended to be an example.

In its opinion, the Court noted that the statutory language is not exactly clear, and suggested the Legislature might want to revisit it. IJ

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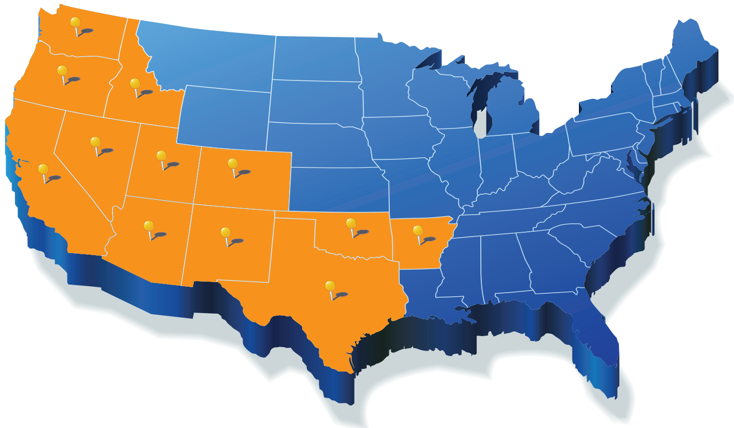

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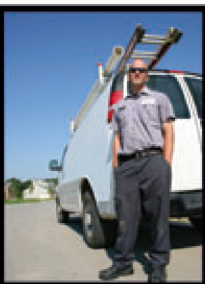


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Business Moves

Northbridge, Scanlon Guerra Burke

Two independent insurance brokers are joining forces to become one of the largest insurance brokerages in Los Angeles and Ventura counties. The agreement combines Northridge Insurance Agency (NIA) in the San Fernando Valley with the Scanlon Guerra Burke (SGB) operation in Woodland Hills. NIA brings its office locations in Ventura and more than 70 employees. The combined agency will offer all lines of insurance for businesses and individuals.

SGB was started by Scanlon's father in 1964 and has developed a niche serving the manufacturing and tool industry in Los Angeles County, the San Fernando Valley and Ventura County areas. In 2009, SGB became the master broker for the Household Industries Self-Insured Group, a single pool of self-insured retailers.

NIA was started in 1931 in the San Fernando Valley and expanded to three locations. Partners Stuart Lorch, Paul Newman, Paul Roth, Tom Leman and Steve Ruehlen purchased the company in June 2006. NIA offers all lines of personal insurance, business insurance, life and health insurance, and employee benefits.

Vertafore, Kaplan Compliance

Insurance agency technology vendor Vertafore said that its subsidiary Sircon will acquire Indianapolis, Indiana-based Kaplan Compliance Solutions (KCS), which sells insurance and securities software and services. Terms of the transaction were not disclosed.

KCS, an operating unit of Kaplan University's School of Professional and Continuing Education (KU PACE), offers services for producer contracting, securities registration, insurance licensing and appointing, education tracking, renewal and data management. Kaplan Inc. is a subsidiary of The Washington Post Co. and its largest division.

The acquisition is expected to close late third or early fourth quarter 2011, subject to customary closing conditions.

Vertafore is based in Bothell, Wash. Vertafore has 17,000 customers and 500,000 users.

Tokio Marine, Hawaii's First

Tokio Marine Holdings Inc. is to become the sole shareholder of the largest Hawaii-based property/casualty insurer. The Japanese insurer reached an agreement to acquire the remaining 50 percent ownership interest of First Insurance Co. of Hawaii.

Chicago-based CNA Financial Corp. has agreed to sell its half of First Insurance to Tokio, which became 50 percent owner in 1999.

Tokio Marine said the acquisition price is $165 million, and will be financed through cash on hand.

First Insurance President and CEO Allen Uyeda said the company would retain its name, brand, service and products.

The transaction is pending regulatory approval.

AIG, U.S. Treasury

American International Group Inc. has reduced the remaining liquidation preference of preferred interests that the U.S. Department of the Treasury holds in AIA Aurora LLC to approximately $9.3 billion by applying the proceeds of approximately $2 billion from the sale of Nan Shan Life Insurance Co. Ltd. AIG closed the sale of Nan Shan, its Taiwan-based life insurance company, to Ruen Chen Investment Holding Co. Ltd., a company owned 80 percent by the Ruentex Group and 20 percent by Pou Chen Corp., for $2.16 billion in cash.

"We continue to make progress in helping the Treasury and taxpayers recoup their investment in AIG," said AIG President and CEO Robert H. Benmosche. IJ

News&Markets

California Initiative Will Ask Voters to Expand Persistency Discounts

The California Attorney General's office last month released a title and a summary of a proposed ballot initiative that would allow automobile insurers to offer "persistency discounts" to new customers.

The bill is being sponsored by the American Agents Alliance. In a statement, the Alliance says the initiative's new law "will allow consumers to receive a discount for their years of continuous automobile coverage regardless of the company where they seek insurance."

Under the current law, the persistency discounts can only be offered to current consumers who have been insured by the company continuously for a number of years.

"The way the law is written now rewards insurance companies," Mike D'Arelli, executive director of the Alliance, in the statement. "We believe that giving the consumers control over their discounts will increase competition between insurance companies, lower costs, and insure more people."

The new initiative is similar to Proposition 17, an initiative that was put on the California ballot in 2010. The Proposition 17 campaign was sponsored largely by Mercury General Corp. It was opposed by most newspaper editorials, and by the group Consumer Watchdog, which is often at odds with Mercury General. Despite the opposition, the insurance industry hugely outspent the proposition opponents and the initiative was only narrowly defeated, 52 percent to 48 percent.

The new initiative is being supported by Mercury's chairman, George Joseph, but not, technically, by Mercury, a company spokesperson told the *Los Angeles Times*. It is thought that Mercury would benefit under the new law because it has lower rates and would be at an advantage in attracting low-risk drivers away from other insurers.

The Consumer Watchdog says the initiative will allow insurers to impose a surcharge on persons who did not purchase automobile insurance, even if they were not driving. IJ

California Earthquake Authority Bond Issue a 'First Step'

Officials with the California Earthquake Authority said that their recent $150-million bond issue is just a first step in diversifying their risk so that they can expand earthquake coverage in the state.

"It is just a step and we need to keep at it," said Glenn Pomeroy, CEO of the CEA.

Pomeroy said his major goal with the CEA is to expand the number of homes it covers. Currently, the CEA accounts for 70 percent of residential earthquake policies sold in California, but only 12 percent of households have earthquake insurance.

He would like the CEA to "develop more affordable insurance while remaining sustainable in the event of a big earthquake," he said.

The CEA recently announced that it will institute a 12 percent rate reduction, starting Jan. 1, 2012.

The bond issue, the sale of which was completed last month, was not large in the scheme of the CEA plan, but it was an important first effort, Pomeroy said.

The issue was the first time the CEA has accessed the capital markets. Prior to this, the CEA went to the traditional, reinsurance markets when it needed to transfer some of its risk. But the CEA knew there was demand.

"We knew there was appetite out there for earthquake risk in the capital market," Pomeroy said.

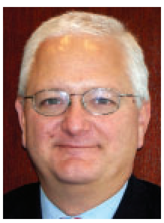
The bonds came from an arrangement CEA entered into with Embarcadero Reinsurance Ltd, a special purpose, reinsurance vehicle established in Bermuda for this bond sale, and for others with the CEA. The sale of the bonds — three-year catastrophe bonds, paying a floating rate of 6.6 points above one-year U.S. Treasury money-market funds — was led by Deutsche Bank Securities.

The CEA intends to have more, similar bond issues in the future, perhaps every four to six months, said Tim Richinson, chief financial officer of the CEA. IJ

Construction Bonds

What's in a Name?

Changes to Terminology Reduce Construction Bond Mystery



By Richard S. Pitts

Preparing for an *Insurance Journal* Academy of Insurance bonding seminar, I studied the American Institute of Architect's bond forms again. The first one I eyed was the A310, the bid bond form, which was revised in 2010. It was the first revision denominated as such in 40 years.

The basic structure hasn't changed, though there are some significant revisions, such as acknowledging the prospect of an agreed extension of time to award the contract — up to 60 days — without invalidating the bond.

One change might seem to be cosmetic, which is that of renaming the parties. Now, rather than using the name of "Principal," we'll refer to the "Contractor." The surety's name remains unchanged — still called "Surety." But the biggest, and the best, of the nomenclature alterations is that of "Obligee" now becoming the "Owner."

Why such a big deal? Well, is it a hard "g" or a soft "g"? Is it pronounced "obli-GEE," with "gee" rhyming with "key," or is it "oblizhee," with a muted "g" sound? Which way can I say it and not sound foolish? Whoops … too late.

Mostly, though, what these changes do is reduce the mystery of what a bond is and how bonds function. We're giving everyday parties their respective everyday names. We're more accurately describing them in relation to one another, by referring to their role in the construction project, and not their role with respect to the suretyship arrangement.

That's a really good result — because of what it suggests for our future. Perhaps this is an opportunity for the construction industry and the insurance industry to communicate very, very well with one another.

Sure, the major construction and insurance players on the national and international stage talk to each other at great length when major construction industry forms are revised. That happened with the bond form revisions, as the AIA (American Institute of Architects), SFAA (Surety & Fidelity Association of America), and the NASBP (National Association of Surety Bond Producers) all collaborated.

However, the communication that is interesting to me is on a much smaller level: individual, non-standard construction contract forms, far afield from the usual AIA or AGC (Associated General Contractors of America) documents.

These are the forms that "request," for instance, the exceptionally broad ISO additional insured form (20 10) from the mid-1980s. As a former member of a construction law firm, and as counsel to a large Midwest general agent and the Independent Insurance Agents of Indiana, I've seen many of these.

And I get to use a favorite line: "The bad news is that the contract drafter may not know what it is that is being demanded. The worse news is that the contract drafter may know exactly what is being demanded."

Often, I just cross my fingers and hope, if my client or agent is on the receiving end of the request, that someone simply hasn't updated their agreement form since, say, before the Berlin Wall fell.

The scrimmage moves from place to place. It starts with the requests to modify the ACORD form certificate of insurance to extend rights to cancellation notice. It moves to arguments over "primary and non-contributory." It flirts with a requirement for XCU (explosion, collapse and underground) coverage. It shifts back to the broadest possible additional insured status.

The changes reduce the mystery of what a bond is and how bonds function.

The subjects are disparate, really. The common thread is the request in the form of the non-standard, but purportedly unchangeable, construction contract and the insurance industry's general inability or unwillingness to provide what's being requested.

For those of us on the insurance side, we represent collateral damage. It's not our construction agreement because we're not parties to it. Yet we are diminished in our client's or insured's eyes when we get ensnared and don't have a cogent, precise solution.

So, I suppose that's why I'm happy with the name changes in the A310. Sure, it's modest, but plain language, and especially clear terminology, should always be cheered.

What should really be good news is when we get leading construction industry forms and insurance industry forms saying exactly the same thing. The example of the A310's terminology change is reflective of an approach that I hope influences both industries as a whole, and does so on an everyday, normal basis. IJ

Pitts is vice-president and general counsel to Arlington/Roe & Co. Inc., an insurance brokerage and managing general agent headquartered in Indianapolis, Ind.

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Agency Management

Transparency in a Soft Marketplace

By Treacy Duerfeldt

Seeing something through can have quite a bit of meaning, especially when underwriting margins are thin and policyholders are struggling to pay bills. Transparency is a buzz word of sorts and continues to be a challenge for the insurance industry. Given the struggles of premium volume and profitability, it may just be the difference between profit and loss.

Three key aspects of a given risk are ideally used to determine underwriting acceptability and pricing. They are: exposure, loss history and hazard/account characteristics. Because discipline is more commonly exercised regarding the first two aspects, actuaries typically lend exposure and loss history some credibility. Files are rarely reviewed to check the credibility of documentation regarding these aspects.

When are loss runs considered real, and when should they be verified? Hopefully this is a rare issue to bring up. Exposure, though, is muddled data at best for those accounts not enjoying a physical audit. Phone audits (with under a 25 percent industry-wide completion rate) typically result in policyholders referring to their premium basis and picking a number that's convenient. Post card audits are not much different. The complications of non-audited policies are self evident.

I wonder how many small trade contractors are just being humble.

Cost is a factor. Physical audits average $400 per file, when including expenses. The audit is a representation of what records were volunteered by the client. Rarely do the actual records (tax returns, payroll information, etc.) accompany the report. Ultimately, the cost is prohibitive for small accounts, but where does that leave pricing? If small account rates are based on the same loss cost modifier (LCM) as larger, exposure verified accounts, then under-pricing is likely. This could be severe and rampant, particularly when most crucial, i.e., when a soft market meets hard economic times.

Underwriting Questions

As carriers and program managers are reluctant to reduce human resource expenses (talent), premium volumes must be maintained. By either consciously cutting rate, or unconsciously via unverified exposure, the underwriting thought process may boil down to two questions:

- Do I want this account?
- How much credit must I give to earn the business?

> **Underwriting acceptability should not be a blank check.**

As every hard market turns soft, insurance companies incessantly trumpet that they "will hold the line." They will protect the bottom-line by accurately underwriting each risk. The reality is soft market underwriting becomes an endeavor to reduce audit and loss control expenses and boost premium volumes through account acquisition. Underwriting guidelines are compromised and the painful oscillation of an industry cycle is perpetuated.

Let's analyze the underwriting questions.

Do I want this account? Too many times we see loss ratio drive the decision (loss free = good to go). With loss free accounts in mind, are the premiums performing on purpose or by accident? As account size decreases, the luck involved increases. Such accounts become more volatile and risky to underwrite. So, is the solution to command higher minimum premiums? While a few more premium dollars never hurt, it may be best to gain more insight into the risk. Rolling up the sleeves and asking questions about business practices and specific hazards is always a good practice. Getting documentation to verify the answers, makes this true form of underwriting credible and worthwhile.

Where do I need to be to write it? How much credit must I give to earn the business? The question clearly sees underwriting as an art, rather than a science. Underwriting acceptability should not be a blank check. Assuming credible (and thorough) documentation of exposure and history, how can the underwriter gauge where "the line" is by which to hold for each account? The common answer: see the supplemental application.

Supplemental applications are only as credible as the person completing them. Policyholders sign "agent prepared" supplemental applications (post binding) all the time. Some wholesale brokers even prep the supplemental for

their agents (yeah, it happens). Even if the policyholder is the author, supporting documentation to critical answers is rarely provided.

Questions are a key starting point to good underwriting — agreed. But discerning the credibility of the answers is when most balls are dropped, exposing profitability and creating many unknown variables, each of which can invite access to policy limits and red ink.

At least with "short tail" business the resulting impact on profitability from these problems can be determined, and adjustments made, before losses become critical. What about all the "long tail" business? Will the soft market harden in time to offset the above mentioned underwriting challenges? Could things ever "harden" enough? No wonder carriers "get while the gettin's good" during hard market times.

Question is … Will you get enough next time to cover the unknowns on your books right now? IJ

Duerfeldt has 21 years in the insurance industry and develops solutions and processes to address problems. Phone: 360-456-0926. E-mail: info@case-assist.com.

Agency Management

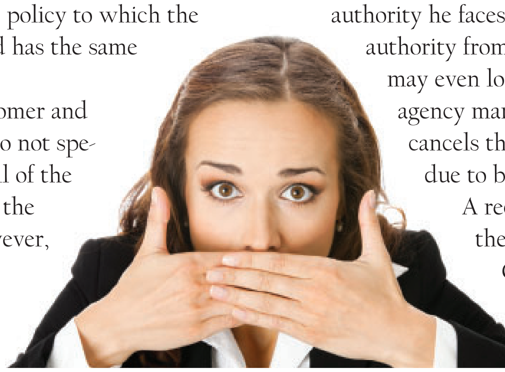
Essentials: Be Careful What You Say When Issuing a Binder

By Steven Plitt

Insurance binders are contracts of temporary insurance pending the issuance of a formal policy or proper rejection of the application by the insurer. The binder serves only as a temporary or interim policy until a formal policy is issued. Once the formal policy is issued, the binder merges into the policy and is extinguished. The binder constitutes evidence that insurance coverage has attached at a specific time and continues in effect until either the policy is issued or the risk is declined.

Not all of the terms of the insurance contract are set forth in the binder. This is especially true in situations where oral binders are issued. Nevertheless, a binder is a fully enforceable contract of insurance. Once the binder is in effect, it is deemed to include all of the terms of the policy to which the binder was given, and has the same effect as the policy.

Typically, the customer and the insurance agent do not specifically agree upon all of the essential terms when the binder is issued. However, they are presumed to have contemplated the terms, conditions, and limitations in the the policy issued by the insurance company at that time, at least for other similar risks or standard policies.



A recent court decision casts a cautionary light on how vague discussions between clients and agents concerning verbal or written binders can raise significant problems.

Although a binder typically incorporates the terms of a prospective formal insurance contract, there must be a "meeting of the minds" between the parties for the binder to be in effect.

A "meeting of the minds" legally occurs when there is agreement on the subject matter being insured, the risk, the duration and amount of coverage, the premium amount, and the identity of the parties.

Binding Authority

Insurance companies do not grant their agents binding authority easily.

In many instances agency contracts specifically state that the agent has no binding authority. In those situations the insurer wants to control all significant communications which could create an insurance contract. Such control ensures the that whatever contract is created through communications remains compliant with the policy to be issued.

Some agents do have binding authority. Binding authority can be a substantial asset to an agent addressing the emergent insurance needs of a client. Binding authority might even make the difference between making a sale or not.

Binding authority does come with risk. If the insurance agent exceeds his binding authority he faces possibly losing that authority from the insurer and may even lose the insurer as an agency market if the insurer cancels the agency contract due to binder improprieties.

A recent decision from the Oregon Supreme Court casts a cautionary light on how vague discussions between clients and agents concerning verbal or written binders can raise significant problems between the agency and an insurer.

In *Stuart v. Pittman*, P.3d, 2011 WL 2162919 (Ore., June 3, 2011), the Supreme Court of Oregon substantially liberalized Oregon's insurance binder statute to commit indirect modifications to the policy that is later issued. Oregon's binder statute provides in relevant part:

(1) Binders or other contracts for temporary insurance may be made orally or in writing, and shall be deemed to include all the usual terms of the policy as to which the binder was given together with such applicable endorsements as are designated in the binder, *except as superseded by the clear and express terms of the binder*. ORS § 742.043(1) (emphasis added)

The italicized language is an exclamation point upon the language of the statute that any binder will necessarily include all of the usual terms of the policy, which includes policy restrictions and exclusions. In order to displace this default principal, whereby the binder incorporates the contemplated policy terms, conditions, restrictions and exclusions, there must occur an act during the policy purchase/binder process that specifically and clearly displaces the policy terms. Absent that clarity in the transaction, the "default" continues, which means that the binder is coextensive with the actual terms and conditions of the policy being purchased.

Stuart v. Pittman

In Stuart, the insured decided to build a new house. To protect that interest he wanted to purchase a course-of-construction insurance policy to cover the house while it was being built. The insured contacted an insurance agent who was experienced with course-of-construction policies. During their meeting the insured and the agent discussed at length the scope of coverage that the policy would provide, i.e., that the policy would provide coverage from the start of construction to its finish and that the coverage would be beyond what was normally available in a homeowners policy. The insured told the agent that he wanted coverage that would provide a "safety net" or "catch basin" coverage "in all instances that something goes wrong during construction."

The agent agreed to provide the coverage and did not communicate to the insured any coverage limitations.

Then, an ice storm struck and substantially damaged the home. The insurer raised several policy exclusions applicable to the loss. The insured sued the insurance com-

continued on page N4

Agency Management

Essentials, continued from page N2

pany for breach of the oral binder claiming unrestricted coverage. The case was tried to an Oregon jury and a verdict was rendered in favor of coverage and against the insurer.

On appeal, the appellate court construed Oregon's binder statute and concluded that the terms "clear and express" meant that the oral binder terms must "definitely, explicitly, and unambiguously supersede the terms [in the written policy]." See *Stuart v. Pittman*, 235 Or.App. 196, 204, 230 P.3d 958, 963 (Ct. App. 2010). The appellate court concluded that the phrases "safety net" and coverage "in all instances that something goes wrong" were too vague and obscure to satisfy the "clear and express" requirements of the binder statute. Because of this, the appellate court overturned the jury verdict.

On petition to the Oregon Supreme Court, the Supreme Court reinstated the jury verdict. The Oregon Supreme Court held that the words "clear" and "express" as used in the binder statute were words of common usage and should be given their plain and ordinary meaning. As such, the Court found that the term "clear" meant "easily understood" and the term "express" meant "directly and distinctly stated, rather than implied or left to inference." Using those definitions led the Court to the conclusion that the "clear and express" requirement of Oregon's binder statute, ORS § 742.043(1), meant that those binder terms that were easily understood and expressed, as opposed to implied, will ordinarily be sufficient to supersede the usual or contrary terms in a policy. (*Stuart*, 2011 WL 2162919).

The Oregon Supreme Court found that the insured's request that the insurance policy provide "catch basin" or "safety net" coverage "in all instances that something goes wrong during construction," was, in essence, a request for "all risk" coverage. Thus, the course-of-construction policy, based upon the purchase transaction was converted to an "all risk" policy. The Court reached this conclusion because the words quoted were expressed by the insured to the agent and were not implied. Moreover, the request was easily understood. This was sufficient to modify the actual contract that was eventually issued so that the issued contract's exclusions were unenforceable because they were contrary to the binder.

Warning for Agents

The Stuart case represents a stop sign to agents with binding authority.

The agent should always tell the insured that the binder includes and incorporates all of the terms, conditions, restrictions and exclusions of the policy that will be issued.

The agent should tell the customer an exemplar policy can be provided if the customer would like to review it before purchase. In most instances, the insured will decline the opportunity to review the policy.

The agent should commit all oral binders to writing and confirm the fact that no representations have been made inconsistent with the terms, conditions, restrictions and exclusions of the policy that will be issued.

Finally, the agent should confirm with the insured that the insured has been given an opportunity to review an exemplar of the basic terms and conditions of the policy.

Sometimes it is difficult to get an exemplar of the policy and the policy that is actually issued will contain additional endorsements. Discretion should be used by the agent to account for the fact that the exemplar policy being provided for informational purposes is only for informational purposes and that there will be additional terms, conditions, restrictions and exclusions contained in policy endorsements.

The exposure to the agent and the insurance company exists between the issuance of the binder and the actual issuance of the formal policy. If a loss occurs in that no man's land, the concern regarding the language of the policy can become significant to whether the loss will be covered, notwithstanding that the loss would otherwise be excluded by the formal policy that is ultimately issued. This is so because when the formal policy is issued, the binder merges into the formal policy and is extinguished on its own terms. IJ

Plitt is a licensed insurance agent and an attorney with the Phoenix law firm of Kunz Plitt Hyland Demlong & Kleifield practicing in the field of insurance law. Phone: 602-331-4600.

MyNewMarkets

Vacant Property

Market Detail: New England Excess Exchanged Ltd. (www.neee.com) offers vacant property products and other property products including: builders' risk; dwellings; habitational property; and mercantile - restaurants/bars/taverns. New England has online quoting, electronic payment, and a revised gift card program.
Available limits: As needed
Carrier: Unable to disclose, admitted and non-admitted available
States: Conn., Maine, Mass. N.H., N.J., N.Y., Pa., R.I., and Vt.
Contact: Mari Schaarschmidt at 802-229-5066 or e-mail: mari@neee.com

Environmental Liability - Education Sector

Market Detail: Ironshore Environmental (www.ironshore.com) enhanced its asset-class specific Site Pollution Incident Legal Liability Select (SPILLS) suite of products to address risk exposures within the education sector, including public and private K-12 schools, colleges, universities and other educational facilities. Ironshore's SPILLS EDU program provides coverages for a range of environmental pollutants, including mold, legionella, drinking water contaminants and PCB containing materials, among others. The SPILLS EDU program provides environmental liability coverages without the need to schedule specific school properties. Coverage is provided for first and third party on-site and off-site remediation expenses, claims for bodily injury and property damage, including natural resource damages, transportation, waste disposal activities and business interruption (without a sublimit) for pre-existing and new conditions.
Available limits: Minimum $1 million, maximum $30 million
Carrier: Unable to disclose, admitted and non-admitted available
States: All states
Contact: John O'Brien at 646-826-6776 or e-mail: john.obrien@ironshore.com

Hotel and Motel Program

Market Detail: Bass Underwriters' (www.bassuw.com) hotel and motel program targets hotels countrywide. All quotes include hired/non owned auto and a property enhancement endorsement. The company can quote franchises up to $5 million in TIV and any type of construction. They can also attach a swing endorsement. General liability is receipt based, but, this form waives any audit additional premium as long as the audit comes in within 20 percent of the initial scheduled receipt total. General liability and packages available.
Available limits: As needed
Carrier: Unable to disclose, non-admitted
States: Ala., Calif., Conn., Fla., Ga., Ill., La., Maine, Mass., Miss., N.C., Nev., N.J., N.Y., Pa., Ohio, Ore., S.C., Tenn., Texas, and Va.
Contact: Julia Sauceda at 212-413-7405 or e-mail: jsauceda@bassuw.com

Inland Marine

Market Detail: Allied World Assurance Co. (www.awac.com) offers a market for all filed and non-filed classes of inland marine business in the United States, with a focus on the construction industry. Allied World U.S.'s inland marine division is available to insureds in all 50 states on either an admitted or surplus lines basis, and provides broad coverage with limits of up to $50 million. Coverage is available for all inland marine classes, including commercial output program exposures.
Available limits: Maximum $50 million
Carrier: Allied World Assurance Co.
States: All states
Contact: Alan Crater Vice President at 646-794-0597 or e-mail: alan.crater@awac.com

Restoration Contractors

Market Detail: Bonding & Insurance Specialists Agency Inc. (BISA) (www.bisa-inc.net) offers a package policy that covers all operations related to restoration work. Policy highlights include: general liability, products and completed operations, contractor pollution liability, fungi/bacteria coverage in one policy; and separate $1 million/$2 million aggregate limits for each coverage part.
Available limits: Minimum $1 million, maximum $8 million
Carrier: Gemini Insurance Co.
States: All states except Alaska, Hawaii, La. and N.Y.
Contact: Dennis Konieczny at 800-346-1031 or e-mail: dkonieczny@bisa-inc.com IJ

Top 100 Profile

Discover INSURICA

Seeking Unexplored Routes to Riches, a Rising Oklahoma Agency Network Finds Its New Corporate Identity, While Doubling Its Size

By Charlie Dodge

If Don Draper were selling insurance, the darkly creative protagonist of television's *Mad Men* would know intuitively that there was something vague and equivocal about a name like North American Group.

Top 100 Agency Profile

Rank: No. 15

Agency Name: INSURICA Insurance Management Network

Main Office: Oklahoma City, Okla.

Additional Locations: 26

Year Founded: 1959

Total No. of Employees: 244 employees at the end of 2010; After April 2011 acquisition of Guaranty Insurance Services, 476 employees

Principals: Mike Ross, president and CEO; Gary Jarmon, executive vice president; Ed Young, chief financial officer; John Hester, vice president, mergers and acquisitions; Kevin Wellfare, vice president, marketing; Shelley Thornhill, director of colleague resources

Market Specialization: construction, education, energy, environmental, healthcare, hospitality, manufacturing, ministries, not-for-profit, staffing, technology, transportation, workers' compensation

2010 Total P/C Premium: $454.6 million

2010 Other Than P/C Premium: $150.5 million

Total P/C Revenue: $57.8 million

The man who imagined a simple round slide projector as a carousel, and even time machine, might also find a lot to like in a copywriter's inspired choice for the hyper-capitalized replacement name: INSURICA.

Just as the Kodak Carousel's whirling images return people to a place where they always knew they belonged, INSURICA is an undiscovered land — raw, great, and brimming with promise and potential. It is at once frontier and sophistication, Sooner wagon and moon shot. Like America itself, INSURICA thrives as not just a place, but as an idea.

For Debby Johnson, vice president of Oklahoma's Ackerman McQueen advertising agency, one of those big ideas was strength through unity. North American Group was an aimless confederation of disparate agencies, mismatched colonies of convenience. Stitching them together under one recognizable banner was her most important vision. And so ultimately the full new name was unfurled just three years ago as the INSURICA Insurance Management Network.

In the language of creative advertising, the birth of this new property/casualty power was known as the "rebranding" initiative, which transformed the company identity, marketplace positioning and individual agency self-image.

"They came to us saying we know we need to do something, but we don't know what we need to do," recalls Johnson. At that time, the group was known as North American Group.

"Google 'North American' sometime and see how many things you come up with," agrees John Hester, vice president for mergers and acquisitions. "The other thing that was a problem with North American is that it didn't say 'insurance' anywhere."

Johnson's team created a handful of new names, but ultimately decided to reveal just one name to company principals.

"It was funny when they first introduced it to us, in that it was a one-word name and it wasn't really a word," Hester remembers.

The new brand delivered excitement and even more collaboration among members, says INSURICA President and CEO Mike Ross. "Identity within the industries we serve has dramatically grown."

Oklahoma City Thunder

The new brand and look of this exclusive group of independent agencies not only generated excitement, but also generated tremendous growth in recent years. In April, INSURICA acquired Texas-based Guaranty Insurance Services — a deal that almost doubled the size of the organization.

With corporate headquarters in Oklahoma City, Okla., the INSURICA Insurance Management Network is a collection of constituent offices in Oklahoma, Kansas, Arizona, Arkansas, California, Oregon and Texas.

INSURICA's roots began in 1959 with its founder C.W. Cameron. Since then, the agency has operated as a privately held independent insurance agency and remains a star in the Cameron family constellation of properties, which includes American Fidelity Assurance Co., First Fidelity Bank, real estate and even two Oklahoma basketball teams.

"We're very proud of the private ownership and the environment and the culture that we're able to create partly as a result of that," says Ross, who came to the agency as a commercial lines producer more than 25 years ago.

"We're not driven by quarterly earnings reports and shareholders meetings," Ross says. But that doesn't mean the agency lacks drive.

"We're certainly driven, and we're certainly focused on growth and profitability, but we do have the luxury of taking a longer

continued on page N10

Mike Ross, president and CEO

Photography © Joseph Mills Photography/josephmills.com

Top 100 Profile

John Hester, vice president, mergers and acquisitions; Mike Ross, president and CEO; Ed Young, chief financial officer

Kevin Wellfare, director of marketing; Shelley Thornhill, director of human resources

term view, and I don't know that any of us would give that up for what might be considered short-term advantages of being publicly traded," he says.

"We are not at the whim of market changes as many other companies are. I think the private ownership also encourages a very strong family environment at the colleague level."

Under Ross, INSURICA has pushed to develop specializations in construction, education, energy, environmental industries, healthcare, hospitality, manufacturing, ministries, not-for-profit organizations, staffing, municipalities, technology and transportation. At the same time, he has set multi-year goals to accelerate growth and motivate member agencies and employees.

In 1998, Ross announced an ambitious goal of achieving $10 million in annual revenues by the end of 2002. This so-called "10 by 2" plan was established at a time when profit had stalled out after two years of stagnant growth.

"The year of this announcement, our revenues were about $6 million and had been declining," he says. "We had lost money at the bottom-line, and things did not look good. The 10 by 2 goal was bold, if not crazy at the time."

The agency hit the goal two years early, in part because of a new acquisition strategy that had begun to yield results. Ross then set a new goal: $20 million in revenues by 2005, which was achieved by 2004. At that point, "We decided we would become even more bold in our efforts and shoot a little higher and establish 75 by 15 — $75 million by 2015."

But Ross knows goal-setting is not enough.

"For us the key has been a simple, understandable, communicable strategy. It's one thing to throw out bold numbers and then tell everybody just to show up to work and do what they've been doing and we'll hopefully get there. It's another thing to throw out bold numbers and then build a specific plan that supports those numbers and supports the level of activity that gets those numbers."

New Stars for the Banner

To ensure expanding revenues in the next few years, Ross is counting on organic growth fueled by new talent and a renewed emphasis on specialization. But just as important is the company's acquisition strategy, which has once again begun to bear fruit after a disappointing 2010.

"Last year we struck out — it was a tough year," he says.

By this spring, however, the acquisition picture began to brighten. In April, the agency announced it was acquiring Texas-based Guaranty Insurance Services, a deal which overnight nearly doubled the size of INSURICA.

Even as it acquires new agencies and new sources of revenue, INSURICA's manifest destiny unfolds guardedly, within a company culture that values selectivity and deliberation.

"Our pipeline has been in good shape for the last 24 months with regards to prospects," says Hester, who became a leader at INSURICA after his own agency was acquired by the company. "The difficult part has been since we only desire quality operations, the economy and the soft insurance market has put even quality operations in a position that they're not necessarily operating at peak performance right now, and that has made many of the sellers perhaps hesitant to go ahead and get too far into a deal."

"Ten or 12 years ago when we strategically started down the path of acquisitions, we very aggressively marketed and worked hard to develop new opportunities," says Ross. "We still do seek opportunities, but not as broadly and as aggressively as we used to." Now, given INSURICA's success, opportunities seemed to come to them, Ross says.

Some of those opportunities come from investment banking firms such as Mystic Capital Advisors Group LLC, which provided advisory services for the Guaranty Insurance Services acquisition.

"Right now in some form or fashion we've probably got seven to eight [acquisition opportunities] that we are evaluating or working on," Ross reveals.

Ross admits it may take evaluating 20-25 agencies before actually completing one acquisition. "The primary reason is that we're so focused on there being a cultural fit, and so focused on finding agency partners who want to remain very involved and com-

Gary Jarmon, executive vice president; David Saldon, director of sales development

mitted to growing their agencies," he says. "We're not acquiring agencies where the owner is looking to retire and cash in all his chips and call it a day."

Hester agrees the quality and culture are critical. "We are not in the bailout business, so we are looking for quality operations that have the ability to manage themselves on a local basis," Hester says. "We're looking for agencies that look like us." This includes a similar book of business, staffing and workplace environment, a high level education and training for staff, and growth oriented management.

Hester says INSURICA will remain active in acquisitions over the next five years with plans to bring in at least $5 million a year in acquisition revenue.

The INSURICAN Way

Although member agencies that become part of the network retain aspects of independence, each must cede a 51 percent ownership stake to INSURICA.

Explains Ross: "As we've acquired the agencies, a separate entity is established for the partner agency and INSURICA will own the majority of the ownership of that new entity, and the leadership in that agency — very often it's the partners who owned it previously or younger managers who would be evolving into the partnership arrangement — are allowed and even encouraged to buy into a minority ownership position."

"The fact that we allow minority ownership is unique, so when an investment banker has a prospect that wants to sell, we're a unique opportunity for them," says Hester. "There's a lot of people out there who want to take some chips off the table but want to remain active in the business, want to grow their business and then sell the rest of it down the road. That's the model that we look at."

As head of an agency that was acquired by INSURICA, Hester experienced the process firsthand. In 1999, he began looking for ways to accelerate the growth of his agency. "It was really a size issue with the fact that at our size we couldn't develop the resources we needed to compete as effectively as I thought we needed to compete," he recalls. "I felt like we were good, [but] we were going to have a very difficult time ever being excellent without a larger partner."

Hester's agency became part of the network in 2001 and grew more than 60 percent in the first three years. Hester ultimately moved to Oklahoma City and, while still active in his own member agency, plays the lead role in finding new agencies to acquire.

"We are all under one common umbrella," says Ross. "We are not a cluster; there is a common strategy, common direction, common focus and obviously common ownership among all of our partner agencies."

In practical terms: "We all participate together with insurance company contracts, and we all share in the profit-sharing and contingency income that comes from the volume and the profitable efforts that we do with our insurance companies. … More importantly, the partner agencies have access at very economic levels to services, including all the technology and accounting, human resources and marketing that we manage and provide here from our corporate offices."

Given INSURICA's ethos of cautious deliberation, the acquisition process may at times seem like a courtship.

"There's not a prescribed process; it's very unique in each and every case," Ross says. "We will spend a lot of time evaluating each other from a cultural standpoint — culture is at the top of the list. And there needs to be a fit in terms of location and size and market. We are pretty selective in what we are looking for and what fits."

Knowns and Unknowns

Although the vast majority of INSURICA revenue comes from P/C commercial lines, the benefits segment has been one of the engines of organic growth for the agency over the past few years.

Traditionally INSURICA has placed a strong emphasis on its workers' compensation business, especially in Oklahoma. Now, like many insurance companies across the country, INSURICA is looking at the recently enacted federal healthcare legislation with a mixture of both terror and curiosity, and working hard to figure out how to profit from it.

"What we're already seeing is that employers are confused and frustrated," says Ross. "The opportunity I see is that more so than ever before employers will need counselors; they're going to need guides. And those brokers and consultants who learn how to work through the maze of the new requirements and the new system, and how to design plans for their clients at the employer level, will be handsomely rewarded because it'll be an art."

This is especially true for smaller companies, in which the human resource department is often a single person juggling myriad responsibilities. Even large companies are experiencing high levels of frustration and confusion over what's to come, he adds "It is human nature to be fearful and cautious in a dark room. Our clients feel as if they are in a dark room, moving slowly and very carefully."

Yet even as companies flounder in the metaphorical dark room, tripping over the oddly positioned mandates which clutter the new law, Ross is confident that great undiscovered opportunities for growth will emerge amid the chaos. It may take some imagination and transformation. But, in the end, seizing opportunities by bravely reinventing itself is what INSURICA does best. IJ

Residential Contractors

Contractors Acting As Public Insurance Adjusters Irk States

By Denise Johnson

Public adjusting activity is not welcome or licensed in all states and even in some where it is, the practice is coming under close scrutiny. In particular, states are cracking down on roofing and other contractors who pass themselves off as claims adjusters for customers.

Forty-four states have some form of licensing for public adjusters. Alabama is not one of them.

In a statement released shortly after April tornadoes ripped through the state, causing more than $2 billion in insured losses, Alabama's State Bar Association reminded the public, "Alabama does not license claims adjusters so any claims settled by such third party recovery firms are considered to be the unauthorized practice of law which is subject to criminal prosecution."

Brian Goodman, legal counsel for the National Association of Public Insurance Adjusters, said the association supports creating licensing requirements in Alabama. "It creates more chaos when you don't have licensing," said Goodman.

While he knows of no specific reason that caused Alabama officials to question the public adjuster role, he is aware of concerns that arose last year involving roofing contractors who advertised public adjuster services.

Contractor Role

State insurance departments continue to issue regular warnings to contractors who attempt claim negotiations.

Last year, Arizona was hit by a hailstorm that produced more than 100,000 claims in a single day, resulting in out-of-state restoration contractors flocking to the state. The Arizona Department of Insurance ordered one contractor, True-Built Construction LLC, to stop acting as an insurance adjuster without a license. True-Built had customers sign an authorization form stating the company was operating on their behalf in negotiations with the insurer.

Also last year, Iowa's insurance department issued cease and desist orders to two contractors who solicited storm repair business without being properly licensed.

Gene Veno, president of the American Association of Public Insurance Adjusters, said the problem with contractors is not confined to a few states.

"There is a problem nationwide with non-licensed public adjusters, some of whom are contractors, who prey on homeowners to solicit insurance claims in the areas of hailstorm damage or other roofing and siding issues, especially after a catastrophic loss," said Veno.

Some states have addressed the problem by enacting more stringent public adjuster laws.

Under a newly enacted public adjuster law in Illinois, a person who acts as a public adjuster without a valid license in Illinois is "inimical to the public welfare and [is] to constitute a nuisance," according to Veno.

Minnesota has also enacted a new law and regulations that specifically target roofing contractors who have been acting as public adjusters without a license.

In the few states that don't offer licenses, public adjusting is considered the unauthorized practice of law, although Veno says there are states such as Nebraska, North Dakota, and a few others that license "insurance consultants" who perform the same function as public adjusters.

New Legislation

In addition to Alabama, three other states reviewed bills addressing public adjusting activities this year.

On June 15, the Pennsylvania House of Representatives unanimously passed a bill (H.B.424) that strengthens the state's public adjuster regulations, which hadn't been updated in 25 years.

An Arkansas bill (S.B. 378) aimed at allowing property owners the opportunity to hire public adjusters failed to pass in March, despite three attempts.

"Public adjusters are not allowed in Arkansas. The system which currently exists appears to be working for our consumers. There has been no public outcry for licensure of public adjusters here. This fact speaks well for the claims management by the agents and brokers licensed by the state of Arkansas," Insurance Commissioner Bradford told *Claims Journal*.

Florida's legislature recently passed a property reform bill (S.B. 408) that includes language capping public adjusters' fees on reopened claims at 20 percent.

Other states are expected to handle public adjuster legislation in the coming months. Veno cited Louisiana as one example. The state has allowed licensed public adjusters for the past six years; however, they cannot participate in negotiations. He is hopeful the law will be amended to address the issue in 2012. IJ

High Net Worth

Stability in the Affluent Market Shows Promise for Brokers, Insurers

By Andrea Wells

The high net worth insurance market remains a stable market for agents and the insurers specializing in this exclusive class.

"From a market opportunity perspective we are seeing a market that continues to be fairly stable," says Michelle Kenny, senior director, personal insurance underwriting, at Novato, Calif.-based Fireman's Fund Insurance Co.

Even despite the tough economy, Kenny says the very wealthy continue to buy and accumulate assets.

Lisa Samler, vice president in personal lines, at Van Nuys, Calif.-based Momentous Insurance Brokerage Inc., an *Insurance Journal* Top 100 Agency, says her agency's client base continues to grow.

"The personal lines market for affluent and high net worth customers is very large, and surprisingly it's still growing," Samler says.

Momentous, which specializes in insuring high profile individuals, has remained steady in its high net worth business, Samler says. "I don't see a lot of highs and lows" in the market, she adds.

Kenny admits that even for Fireman's Fund, high net worth premiums continue to trend slightly up.

That's good news for agents and the few insurers specializing in the high net worth insurance market.

What has changed in this exclusive segment of the personal lines market is how the affluent view their insurance coverage, the experts say.

"The high net worth client, just like the rest of America, is being affected by both a poor economy, low interest rates on their investments and a volatile equity marketplace," says Ray Celedinas, president and CEO of Celedinas Insurance Group based in Palm Beach Gardens, Fla. High net worth premiums may be stable or slightly up because the down economy, he adds. Tightened finances may be pushing the affluent to examine their insurance portfolio in greater detail, which may be leading to additional insurance purchases.

"Unlike years past when clients paid little attention to their renewals, they are now as concerned about the cost of their coverage as they are gaps in coverage,"

continued on page N19

PURE Competition

Despite the continued growth and stability in the high net worth insurance market, few insurers specialize in the unique risks of the very wealthy.

One new insurer is making headway with a new approach.

The Privilege Underwriters Reciprocal Exchange, better known as PURE Insurance, launched in 2006 to serve as an exclusive market for the insurance needs of high net worth clientele.

Ross Buchmueller, president and CEO of PURE and one of its founders, is no stranger to the affluent market. He spent the last 25 years of his career in leadership positions at Chubb Insurance and AIG, where he set up AIG's Private Client Group to target the affluent.

Buchmueller says while the market for high net worth business is large, it isn't extremely competitive.

"It had been and continues to be a growing market, even with what's gone on in the economy, but you see relatively modest competition," Buchmueller says. "And so we set out to build a new, fresh, alternative view."

What Buchmueller helped build is a policyholder-owned and managed company.

The lack of insurers specializing in high net worth property/casualty insurance created a problem for insureds, according to Buchmueller.

"We saw the fundamental problem was the alignment of interests between shareholders and policyholders … in the insurance industry, the interests of policyholders and the interests of shareholders are not in sync unless there is robust competition. But if there's not a lot of competition (as in the high net worth market), you're going to see these circumstances where people pay well above the odds."

PURE founders examined the benefits of building a policyholder-owned company for the affluent market and saw a perfect fit.

"We realized that if we could pool together the most responsible owners of the finest built homes, we could build a much more compelling alternative than a company whose stated goal is to maximize the wealth of shareholders. And that's what we did."

In just six years, PURE and the PURE Group of Insurance Cos. has grown to serve over 11,000 members. PURE currently writes in 20 states with plans for further expansion.

But Buchmueller adds the company is only looking for the very best risks. "We select very carefully. We only write business that we think meets the highest standards of everything from construction quality, elevation, etc.," he says. That's one of the benefits of a fresh start; no legacy issues or risks, he adds. "We select very carefully, we optimize the distribution, we maximize the membership in any one area, and I think it serves us very well."

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News&Markets

Top 25 Workers' Compensation Insurers

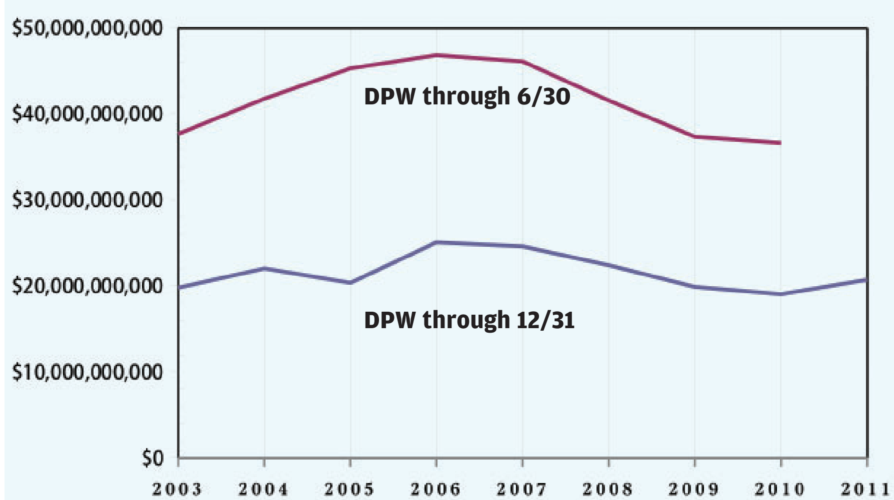
Based on Premium Growth From June 30, 2011 vs. June 30, 2010

By Douglas A. Powell

On Aug. 16, 2011, The National Academy of Social Insurance reported that "the number of workers covered by workers' compensation dropped by 4.4 percent in 2009, the biggest decrease in two decades." Moreover, they reported that employer costs associated with benefits decreased by 7.6 percent. According to The National Academy of Social Insurance, these factors indicate that overall employment has declined. In fact, the Bureau of Labor Statistics published unemployment rates at its highest levels since 1982 hovering around 10 percent. Since that time, unemployment rates have steadily decreased and workers' compensation insurance premium volume has increased.

Direct premium for workers' compensation writers for the first six months of 2011 has increased by 8.8 percent over the same period last year. This is the largest increase for the second quarter period-over-period

Workers' Compensation Direct Written Premium Since 2003



Top 25 Workers' Compensation Direct Premium Growth - Second Quarter Update

Rank	Company Name	Group Name	6/30/2011 Workers' Compensation DPW*	6/30/2010 Workers' Compensation DPW	Growth	% Change
1	Travelers Property Casualty Co.	Travelers Group	$503,360,005	$331,885,998	$171,474,007	51.7%
2	Commerce & Industry Insurance Co.	American Intl Group	$354,721,828	$220,938,920	$133,782,908	60.6%
3	Texas Mutual Insurance Co.	N/A	$349,569,833	$291,321,861	$58,247,972	20.0%
4	Hartford Fire Insurance Co.	Hartford Fire & Casualty Group	$189,836,071	$132,125,226	$57,710,845	43.7%
5	Zurich American Insurance Co.	Zurich Insurance Group	$707,518,868	$653,505,238	$54,013,630	8.3%
6	Companion Property & Casualty Insurance Co.	BCBS of SC Group	$160,964,608	$112,253,584	$48,711,024	43.4%
7	Hartford Accident & Indemnity Co.	Hartford Fire & Casualty Group	$170,196,310	$126,150,677	$44,045,633	34.9%
8	Twin City Fire Insurance Co.	Hartford Fire & Casualty Group	$385,999,733	$350,241,053	$35,758,680	10.2%
9	Missouri Employers Mut Insurance Co.	N/A	$88,044,777	$52,898,212	$35,146,565	66.4%
10	Castlepoint Natl Insurance Co.	Tower Group	$65,285,384	$30,684,434	$34,600,950	112.8%
11	Employers Compensation Insurance Co.	Employers Holdings Grp	$127,628,898	$93,110,828	$34,518,070	37.1%
12	Praetorian Insurance Co.	QBE Insurance Group	$82,414,810	$48,669,575	$33,745,235	69.3%
13	Hartford Underwriters Insurance Co.	Hartford Fire & Casualty Group	$254,208,811	$221,579,796	$32,629,015	14.7%
14	Federal Insurance Co.	Chubb & Son Inc Group	$233,982,708	$202,468,877	$31,513,831	15.6%
15	Charter Oak Fire Insurance Co.	Travelers Group	$148,373,928	$117,409,664	$30,964,264	26.4%
16	Riverport Insurance Co.	WR Berkley Corp Group	$55,531,884	$24,884,227	$30,647,657	123.2%
17	Zenith Insurance Co.	Fairfax Financial Group	$216,593,947	$187,064,566	$29,529,381	15.8%
18	Retailfirst Insurance Co.	Retailfirst Group	$29,174,648	$0	$29,174,648	N/A
19	Security National Insurance Co.	Amtrust GMACI Maiden Group	$36,736,981	$7,596,726	$29,140,255	383.6%
20	Hartford Casualty Insurance Co.	Hartford Fire & Casualty Group	$182,473,130	$154,356,047	$28,117,083	18.2%
21	Markel Insurance Co.	Markel Corporation Group	$26,417,002	$0	$26,417,002	N/A
22	Travelers Indemnity Co. of America	Travelers Group	$193,893,104	$168,475,524	$25,417,580	15.1%
23	Hartford Insurance Co. of The Midwest	Hartford Fire & Casualty Group	$259,188,653	$234,237,881	$24,950,772	10.7%
24	Employers Preferred Insurance Co.	Employers Holdings Group	$47,221,055	$22,439,775	$24,781,280	110.4%
25	Continental Insurance Co.	CNA Insurance Group	$85,876,397	$61,136,936	$24,739,461	40.5%
		Top 25	**$4,955,213,373**	**$3,845,435,625**	**$1,109,777,748**	**28.9%**
		All others	**$15,755,641,460**	**$15,187,969,710**	**$567,671,750**	**3.7%**
		Total	**$20,710,854,833**	**$19,033,405,335**	**$1,677,449,498**	**8.8%**

Data Source: The National Association of Insurance Commissioners (NAIC), Kansas, Mo., by permission.Information derived from a Highline Data Product. The NAIC and Highline Data do not endorse any analysis or conclusion based upon the use of this data.

** This data is based upon the initial reporting of second quarter 2011 data, estimated to be in excess of 90 percent of the market.*

Historical Workers' Compensation Direct Premium Written

	Total Workers' Compensation DPW			Total Workers' Compensation DPW		
Year	DPW Through 6/30	Growth (Loss)	% Change	DPW Through 12/31	Growth (Loss)	% Change
2003	$19,777,724,619	$2,631,877,872	15.3%	$37,658,881,067	$4,087,404,316	12.2%
2004	$22,019,867,646	$2,242,143,027	11.3%	$41,751,815,778	$4,092,934,711	10.9%
2005	$20,340,943,353	-$1,678,924,293	-7.6%	$45,285,798,858	$3,533,983,080	8.5%
2006	$25,044,649,594	$4,703,706,241	23.1%	$46,811,757,341	$1,525,958,483	3.4%
2007	$24,581,648,405	-$463,001,189	-1.8%	$46,074,330,001	-$737,427,340	-1.6%
2008	$22,403,613,031	-$2,178,035,374	-8.9%	$41,556,038,575	-$4,518,291,426	-9.8%
2009	$19,878,464,013	-$2,525,149,018	-11.3%	$37,329,375,073	-$4,226,663,502	-10.2%
2010	$19,033,405,335	-$845,058,678	-4.3%	$36,598,558,029	-$730,817,044	-2.0%
2011*	$20,710,854,833	$1,677,449,498	8.8%	--	--	--

Data Source: The National Association of Insurance Commissioners (NAIC), Kansas, Mo., by permission.
Information derived from a Highline Data Product. The NAIC and Highline Data do not endorse any analysis or conclusion based upon the use of this data.
** This data is based upon the initial reporting of second quarter 2011 data, estimated to be in excess of 90 percent of the market.*

since 2006. At this rate, year-end 2011 projects to be the first year that workers' compensation direct premium written increases year-over-year since 2006 as well.

"The National Council on Compensation Insurance filed 14 increases in the 2010-2011 filing cycle," said Steven Groeschen, chief consulting actuary and risk analyst at Demotech Inc. "These results reflect rate increases as well as the moderate improvement in the unemployment rate."

Workers' compensation direct premium growth reported by insurers within the top 25 was 28.9 percent. Two unaffiliated companies are in the top 25 gainers: Texas Mutual Insurance Co. and Missouri Employers Mutual Insurance Co. Otherwise, members of insurance groups dominate the top 25 gainers, with Hartford Fire & Casualty Group holding six spots.

As we have previously stated, profitability for this line of business is still of concern given the current low investment yields, increasing medical costs and uncertainty about the impact of the federal healthcare law. Whether or not the companies within the workers' compensation insurance industry can increase direct premium written year-over-year remains to be seen. There are still a lot of unanswered questions pertaining to the market, but for now, the contributing factors that lead to increased premium volume have become apparent again. IJ

Powell is a senior financial analyst with Demotech Inc. Founded in 1985, Demotech is a Columbus, Ohio-based financial analysis firm that provides services to regional insurance companies, title underwriters and specialty insurance markets. Demotech has been assigning Financial Stability Ratings® (FSRs) to these markets since 1989. FSRs of A or better are accepted by the secondary mortgage marketplace, as well as virtually all mortgage lenders, an increasing number of umbrella insurance markets and some writers of insurance agents errors and omissions insurance. Web site: www.demotech.com.

News&Markets

Unitrin CEO Southwell Sees Growth, Value in New Kemper Name

By Andrea Wells

Unitrin Inc. is counting on added success as it takes on a new name — the well-known and legendary Kemper name — for the future of the company.

Effective Aug. 25, Unitrin Inc. officially became Kemper Corp. and Don Southwell, chairman, president and CEO, says the name change has set the stage for further growth and expansion at all levels of the company.

"Part of this rebranding is a re-emphasis on our core values and what we stand for," Southwell told *Insurance Journal*. The new name — Kemper Corp. — will provide the company with a good platform for growth and expansion in the future, he says.

"As we consider acquisitions or entering new geography we've got a good brand platform on which to build." That trust in the Kemper name comes from decades of brand recognition and value with both customers and agents, Southwell said.

The Kemper name was a permanent fixture in the property/casualty insurance until 2001-2002 when the insurer fell victim to a series of losses. Kemper's capitalization declined substantially in late 2001 due to a reduction in surplus caused by adverse loss reserve development principally in asbestos reserves, adjustments to regulatory accounting principles and modest losses from the Sept. 11 attacks.

Shortly after that, in April 2002, Kemper sold its personal lines business to Unitrin. Today, this segment represents Unitrin's largest business unit with just under $1 billion in total earned premiums in 2010.

"Kemper is a legendary name in the insurance industry," said Southwell. "When we bought the rights to the Kemper business in 2002 we thought we would only have the rights to the Kemper brand for five years," he said. But Unitrin negotiated an extension to keep the name and then just last year purchased the Kemper name outright.

Web Box

To listen to a podcast interview with Don Southwell visit: **http://www.insurancejournal.tv/videos/5786/**

Southwell said agents have repeatedly told the insurer how valuable the Kemper brand was to their business.

"They say this is a great brand, our customers love it, they recognize it, and you should do what you can to retain it. So we listened to our agents," Southwell said.

While the insurer kept the Kemper name on the original Kemper book of personal lines business, other divisions under the Unitrin umbrella used the Unitrin name.

"We never changed this unit's name. It was Kemper Auto and Home when we bought it. It became Unitrin Auto and Home briefly; it then reverted to Kemper, and now it will be Kemper Preferred," Southwell explained.

But now all divisions of Unitrin, including Unitrin Specialty and Unitrin Direct, will be rebranded to the Kemper name within a year or so, Southwell says. Even Unitrin's life insurance sector will become endorsed under the Kemper name.

Kemper's strong name and brand recognition supported the name change, Southwell said. Research showed that while the insurer's existing agents and customers held the Unitrin brand in high regard, prospective agents and customers didn't recognize the Unitrin brand as well as the Kemper brand. "If we can make the sales process easier (for agents) by providing a trusted and recognized name, then that makes us more attractive to them," he said.

Other than the new name, Southwell says agents should expect business as usual.

"I don't really see any changes," he says, "… other than it gives us a brand that we want to deliver on consistently, whether it be through agents or direct," he says.

And don't look for some of the old Kemper ways of marketing anytime soon, Southwell says. "We love the Kemper name, the Kemper heritage and the equity of the Kemper brand but we will try to modernize and build for the future." IJ

High Net Worth

High Net Worth, continued from page N14

Celedinas says. Celedinas Insurance Group, an *Insurance Journal* Top 100 Agency, also specializes in insuring the wealthy.

Fireman's Fund Kenny agrees.

"Customers are asking their agents to take a look at their policies and evaluate the coverages that they have. Customers are uncovering coverage gaps that they didn't know they had," Kenny says. "And when they find out, then they are actually working with their agents to maybe buy more insurance rather than less insurance."

For example, Fireman's Fund insures a $22 million home in Nebraska, which sits atop a hill. As the region began to experience tremendous rain storms this year, the homeowner began to worry about flooding risk.

"He reached out to his insurance agent and said: 'I just want to check that I have flood insurance. I assume that I do.' The agent checked and said, "No, actually you don't have any flood insurance.' Nobody thought he needed it," Kenny says. While nothing ever happened, the homeowner decided he needed to purchase flood insurance.

Samler agrees there's a large demand for coverage review and explanation right now in the high net worth market.

"We're doing a lot more reviews, a lot more meetings and educating with financial advisors and the clients themselves," she adds. "They want to see what's happening with their insurance coverage, what they're insured for, and if they're adequately protected."

Business Risks for the Wealthy

Today's high net worth client looks similar to a business risk, the experts say. The heightened attention on coverage reviews gives agents working in this sector an opportunity to offer additional coverages as well.

"High net worth clients are targets as a result of their deep pockets, and so high net worth carriers now offer coverages to protect the wealthy similar to those carried by both small and mid-sized businesses," Celendinas says.

Coverages such as employment practices liability (EPLI) and workers' compensation for domestic employees, directors and officers liability and even kidnap and ransom are a few newer coverages gaining some attention, says Celedinas.

Samler says coverages like EPLI and excess liability for the wealthy are becoming increasing importantly.

"I think unfortunately in this day, in these very interesting and trying times, it's kind of like the old saying 'desperate measures for different times,'" she says. "Even if you have a domestic employee that you decide either isn't working out or you just don't really want the expense any longer, there's always that possibility that the person's going to come back with some sort of harassment suit or wrongful termination suit if they think that there's a possibility that they can make a quick dollar." IJ

News&Markets

Most Doctors Sued Sometime in Career

By Tim Kirn

A new study published in the *New England Journal of Medicine* says that one in 14 doctors faces a malpractice suit every year.

Moreover, almost every physician will face a malpractice suit — or more than one — during his career.

The study authors, led by Anupam B. Jena, of Harvard Medical School, say their study is the first to look at malpractice and how common it is, with a large number of physicians, followed for a number of years, and, without the bias of having the physicians report their experience themselves.

The study also reported that, although many suits are filed, relatively few are successful. The aggrieved patient wins only 22 percent of the time.

The study's findings are not a huge revelation to malpractice insurers, of course.

"The report doesn't provide information that is surprising to those in the medical professional liability industry," said Rob Francis, chief operating officer at The Doctors Company, Napa, Calif. "The frequency of claims does vary significantly by specialty, and the majority of claims are resolved in favor of the physician, pointing out the prevalence of frivolous claims. In our data, over 80 percent of claims are closed with no payment to plaintiffs."

The study looked at data on 40,916 physicians who were insured for at least one year sometime between 1991 and 2005 by a single professional liability insurer, which the researchers agreed not to name. The data set, coming from an insurer, allowed the researchers to see the cases filed but not won by the plaintiffs, and awards given when the physician lost. Previous studies have not had the ability to do both, the researchers said.

The researchers were also able to look at the data by specialty, and they found the risk of being sued and the awards associated with losing varied considerably.

The physicians with the highest risk of being sued were neurosurgeons, with an annual risk of 19.1 percent, followed by thoracic-cardiovascular surgeons, with an annual risk only slightly less at 18.9 percent, followed by general surgeons, with an annual risk of just less than 15.3 percent. The physicians with the lowest risk of being sued were pediatricians, with an annual risk of 3.1 percent, followed, lastly, by psychiatrists, with an annual risk of 2.6 percent.

The physicians most likely to lose a malpractice case in any given year were general surgeons, 4 percent of whom lost a case annually.

Overall, the study authors said, 75 percent of physicians practicing in a low-risk specialty will have been sued by the time they are 65 years old, 19 percent will have made an indemnity payment. For those in the high risk specialties, 99 percent will have been sued by age 65, and 71 percent will have lost.

The average indemnity payment was $274,887 in 2008. But, there was a range, from a low of an average of about $110,000 for a claim against a dermatologist to a high of $520,924 for a claim against a pediatrician.

The majority of claims filed result in favor of the physician with no payment to plaintiffs.

The high dollar amount of an indemnity payment in a pediatrics case reflects the fact that when there is an injury, it is an injury to a child.

The same factor has been thought to affect obstetrics/gynecology. The prevailing notion in medicine has been that obstetricians face the highest likelihood of being sued and the highest likelihood of losing big because when a mishap occurs in obstetrics it occurs to a baby, and it is extremely emotional for all involved.

Obstetricians often pay the highest premiums for malpractice insurance of any specialty. According to figures from the federal government, from 2003, the average rate paid by an obstetrician/gynecologist was $64,000 a year, or more. That compared with $28,000 to $50,000 for a general surgeon and $6,000 to $11,000 for an internist. In Florida, where malpractice premium rates tend to be the highest, an obstetrician/gynecologist can pay over $100,000 a year — sometimes well over.

In this study, however, the average payment in an obstetrics/gynecology case ranked third, behind the average payment in pediatrics and pathology. The average payment in an obstetrics/gynecology case was slightly more than about $360,000.

In recent years, as malpractice premiums have continued to rise, a number of states have enacted caps on malpractice awards. Twenty-seven states currently limit the amount that can be awarded for non-economic damages, usually to around $250,000, notably California and Texas.

Some research has indicated that having a cap really does not keep down malpractice premium rates, though it may help a state attract physicians. But, Howard Lamb, chairman of Medicus Insurance Co., Austin, Texas, said that, when just about every physician is likely to be sued, tort reform and awards caps make a huge difference.

He said that in Texas, where tort reform was enacted in 2004, the number of cases filed have dropped by a half. "There appears to be a lot of difference," Lamb said. "Texas is a good example.

The Doctors Company's Francis said that because the study contains no surprises for malpractice insurers, it is unlikely to change premium rates in any way. "There is nothing in the report that will change rates as the information is consistent with industry experience," he said. IJ

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INSURANCE JOURNAL

News&Markets

9/11 Brought Some Changes to Skyscrapers and High-Rises But More Should Be Done

By Don Babwin

What if it should happen again? A decade after the Sept. 11 terror attacks, could any of the nation's 21,000 high-rises withstand an attack like those that caused New York's twin towers to collapse? Could the thousands of people inside find a way to safety?

Twin Towers

At Chicago's Willis Tower, like other skyscrapers around the country, much has changed since two hijacked jetliners slammed into the World Trade Center on Sept. 11, 2001. North America's tallest building now has concrete barriers, metal detectors and sophisticated security cameras that trace every movement in and around the structure.

Those measures, however, might do little to prevent a calamity on the scale of Sept. 11. Despite proposals for major structural changes over the past decade, thousands of buildings remain vulnerable, experts say, because the cost to retrofit existing structures is too high, and cities and states have been slow to adopt tougher building codes for new construction.

Other, less sweeping improvements, such as equipping elevators for use in evacuations, are lagging behind other countries, too.

"You only can do as much as lobbyists, politicians, and the agencies you're dealing with will let you do," said Monica Gabrielle, whose husband died in the 9/11 attacks and who co-chairs the Skyscraper Safety Campaign that sprang up afterward. "The further away you get from events, then you become more complacent."

And for all the talk about reinforced security, there is only so much that can be done to protect buildings that stand 1,000 feet (305 meters) or more.

Retrofitting Proves Too Costly

As for skyscrapers themselves, while there was talk after 9/11 about making them sturdier and easier to escape from in an emergency, the structural work that would have been necessary was either too expensive or just impossible.

"I don't know of any buildings that have gone through a structural retrofit for the purpose of withstanding a major attack like 9/11," said Adrian Smith, an architect who designed the Trump International Hotel and Tower in Chicago and the Burj Khalifa in Dubai, now the world's tallest building.

At the same time, some actions have been taken to make new buildings safer and more secure.

The International Code Commission has recommended 40 post-9/11 building code changes, including wider stairways to ensure firefighters can climb up while occupants are coming down. Municipalities can adopt the changes as they see fit, but they are not mandatory, said ICC spokesman Steve Daggers.

Chicago, for example, adopted an ordinance that requires high-rises to have an emergency evacuation plan on file with the city. And the tallest buildings must provide the fire department with their floor plans so crews know the exact layout of the buildings when they walk in.

People who live and work in high-rises around the city say evacuation drills are now routine, something many say never or rarely happened before 9/11.

Many high-rises also are more difficult to enter. In the immediate aftermath of the attack, Willis Tower installed airport-style security, complete with officers searching bags.

That has been scaled back, said David Milberg, a spokesman for the Schiff Hardin law firm, which has offices a little more than halfway up the 110-story building.

"Now we have keycard access for tenants. Nontenants must produce photo IDs, and we have to register guests in advance," he said.

"It's not as conspicuous as it was, (but) you don't get in here unless you're vetted," he said.

New Buildings, New Safety Features

Not surprisingly, new buildings, those under construction and those on the drawing board have a number of features that older buildings did not.

In New York City, for example, stairwell enclosures in high-rises must be wider and made of harder materials, and elevator shafts must be stronger as well.

To prevent the pancaking that happened at the World Trade Center as one floor fell onto another, the city requires high rises to be built to prevent "progressive collapse," but it doesn't spell out how to do that.

Even in places where codes have not been updated, some high-rises are taking steps to strengthen their buildings, said Jon Schmidt, an associate structural engineer and director of anti-terrorism services for the Kansas City, Mo.-based Burns & McDonnell, an engineering, architectural and consulting firm.

Materials and measures once reserved for military and government buildings gradually are becoming more mainstream, including concrete-encased stairwells to protect evacuating tenants and laminated glass that is less likely to shatter into fragments during a blast, Schmidt said.

More attention is being paid to fireproofing material that better sticks to steel — an issue that got a lot of attention because the jets that hit the twin towers apparently knocked the coating off the girders to the point they softened and broke.

But money is never far from mind.

"That's one of the frustrations," says Irwin Cantor, a structural engineer and consultant who has engineered major high-rises nationally and sits on New York City's planning commission.

"A guy says, 'I want to protect my building against a bomb blast of 'X' pounds ... and you tell them, 'I can protect it from a bomb of such-and-such pounds and such-and-such a distance for $10 (million), $20 million.

"And they say, 'Wait a minute, I'm scared but I'm not that scared," Cantor said.

One major change that experts say is coming is the construction of elevators that can be used in fire emergencies by both people fleeing buildings and firefighters climbing up inside them, a common practice in other parts of the world.

"We like to think of not using elevators in fire emergencies as one of the most successful public education campaigns in history," said Jason Averill, a fire safety expert with the National Institute of Standards and Technology.

It is unclear how many of the 2,700-plus people who perished at the twin towers died before getting to the ground. A study concluded many of them would have survived had they been able to take elevators.

"I'm absolutely convinced it shortens evacuation time to such a degree we have to find ways to embrace the technology," Averill said.

A question looming over all of these preparations and code changes has far less to do with elevators and stairwells than it does with a public's memory of people in the twin towers who perished because voices on the intercom told them to go back to their desks.

Willis Tower

There is real concern among safety experts that the next catastrophe will trigger a stampede of workers no matter what they are told, which is one reason why some fire departments, including Chicago's, now take command of a building's intercom system as soon as they arrive.

But to some high-rise residents, it won't matter. Nan Feiber, who lives on the 33rd floor of a 57-story Chicago high-rise, said she wouldn't hesitate to evacuate if the day comes. IJ

Closing Quote

Terrorism 10 Years After

Ten years after the events of Sept. 11, 2011, terrorism remains a significant risk both globally and within the United States. The need to be vigilant against those who would harm innocent people in the name of whatever cause they profess to follow is ever present, but the nature of the risk is not necessarily the same as it was a decade ago.

Osama bin Laden is dead. The terrorism organization he led in 2011, al-Qaeda, was centrally organized and well-funded, and able to carry out large scale attacks of high visibility. Bin Laden's demise coupled with the military operations carried out in Iraq and Afghanistan have diminished the centralized nature of al-Qaeda's leadership, according to a recent report by Guy Carpenter & Co., a unit of Marsh and McLennan Cos. The ideology behind the organization, along with its stated intentions to avenge bin Laden's death, remains strong, meaning that the United States and its allies continue to face a credible threat from al-Qaeda.

Assuming there is no major terrorism loss or other market-changing events, we do not expect reinsurers to significantly change their terror underwriting appetite in the near term.

Despite the continued, ongoing and ever evolving threat of terrorist risks, Guy Carpenter reports that the insurance capacity for terrorism events is abundant in the United States — between $6 billion and $8 billion — partially due to the existence of the terrorism backstop program created by the Terrorism Risk Insurance Act of 2002.

In its report, Guy Carpenter observes that future terrorism risks may include globally organized threats but domestic attacks, as well. As the report points out, the July 2011 attacks in Norway that killed 77 people, of whom the majority were youths, were planned and executed by a right wing extremist Norwegian national. It was the worst such incident of its kind in Norway since World War II and "Western Europe's deadliest terrorist-related attack since 2004," the report noted.

Cyber terrorism, too, is seen to be an increasing threat. "Due to the global economy's increasing reliance on computer systems, the Central Intelligence Agency (CIA) has described cyber terrorism as the battleground for the future," the report states. "Cyber risks are a mounting concern for governments and organizations around the world, prompting warnings that any successful attack on critical infrastructure, such as military installations, financial markets, aviation control centers, water systems and power supplies, could have devastating consequences."

As a result of the perceived growing threat of cyber terrorism, "the Pentagon recently announced plans to categorize cyber attacks as acts of war, allowing the president to consider all appropriate options" if key computer systems in the United States were attacked.

Prices for terrorism reinsurance peaked between 2002 and 2004, according to the report, and gradually drifted downward and flattening in recent years. Reinsurers' terrorism risk pricing is related not only to global terrorism events and losses from civil unrest, but is also indirectly linked to the property catastrophe market, according to Guy Carpenter. Both are high severity but generally low frequency risks — although 2011 seemed to be shaping to be the costliest year in history for natural disasters around the globe, even before the onslaught of hurricane season.

It will be interesting to see if Hurricane Irene, which stormed up the East Coast of the United States in late August will be a catalyst for rate increases in either the property or terrorism insurance markets.

"While there is no direct link between terrorism underwriting and natural peril catastrophe losses or model changes, the reverberating impact of these factors on the market has necessitated an evaluation of all catastrophic exposure allocations and strategies, including for the peril of terrorism," the report states. "Yet, assuming there is no major terrorism loss or other market-changing events, we do not expect reinsurers to significantly change their terror underwriting appetite in the near term."

The global capacity for terrorism insurance has not changed much over the past five years and "barring major events or very strong currency movements," Guy Carpenter does not expect 2012 to bring significant modifications in capacity or pricing either. IJ


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