



## September 2011

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*"There are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations."*

James Madison

### SLAOR News:



**Financial** - July premiums were off a surprising 20.2% from 2010. Bad news is we were also off 20.7% in new and renewal policies for the month. One way to "read" these results would be that premiums stayed reasonably level for retained business and the fluctuation in premium was due to risks migrating to the admitted market. Year to date in premiums we are now off 12.6% which is exactly what we budgeted for the seven months. Number of new/renewal policies is only off 6.3% for the year to date.

We are \$10k short in income and \$30k over in expenses for the year to date. The good news is that income shortfall is due to items over which we have little control: decreased dividends and interest from investments, and off-budget expenses for audit of our operations and reconfiguration of our IT software to accommodate the NRRRA changes to how we do business.

*The last time politics and religion were mixed,  
people were burned at the stake.*

#### Operations

We just received the draft audit and the only recommendation is that we have board members acknowledge annually their awareness of, and compliance with, our conflict of interest policy.

Approval of our C.E. classes for C.E. day is now in. Classes are: 10/27 9:00 am – Noon (Current Events in the Surplus Market Place) and 10/27 1:00 – 4:00 pm (Street Level Ethics) - both taught by Bernie Heinze, Executive Director, AAMGA. Venue is Crowne Plaza, Kruse Way, Lake Oswego. Ethics C.E. credit can be applied to the Law and Ethics requirement or the general requirement. Any P&C licensees in your firm are invited to attend (we continue our policy of charging \$25 only if you are a no-show). Call the SLAOR office at 503.718.6700 if you want to register now.

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#### SMART ALEC ANSWER

*The police officer got out of his car as the kid who was stopped for speeding rolled down his window. 'I've been waiting for you all day,' the officer said. The kid replied, 'Yeah, well I got here as fast as I could.' When the cop finally stopped laughing, he sent the kid on his way without a ticket.*

## National News:



### **New York agent, broker groups appeal state's incentive compensation disclosure rule** **Mark A. Hofmann (Business Insurance)**

ALBANY, N.Y.—Two New York insurance agent and broker groups on Thursday appealed a judge's decision upholding a state regulation that requires producers to disclose incentive compensation they receive.

The Independent Insurance Agents & Brokers of New York and the Council of Insurance Brokers of Greater New York filed the appeal with the New York State Supreme Court Appellate Division, Third Department in Albany.

They seek to overturn New York State Supreme Court Judge Richard M. Platkin's November decision that upheld the state insurance department's authority to promulgate New York Insurance Regulation 194.

The regulation, which took effect Jan. 1, requires producers to disclose the incentive commissions they receive from insurers and other third parties. Further information about the nature, amount and source of compensation must be disclosed to clients upon request.

Longstanding opposition - The two producer groups have consistently opposed the regulation, holding that it is arbitrary and imposes significant compliance costs on their members. In addition, they argue that the New York State Insurance Department does not have the power to promulgate the regulation.

After the trial court rejected those arguments last year, the groups filed a notice of appeal, which preserved their right to appeal.

"We still believe that the Insurance Department exceeded its authority by issuing this burdensome, unnecessary regulation," IIABNY board Chairman Christopher A. Brassard, said in a statement announcing the appeal. "Regulation 194 places unprecedented obligations on law-abiding insurance producers, and it provides no additional benefit to consumers. We fully expect to prevail after the appellate court hears our arguments." (Neither RIMS nor the producer associations will give up on this remuneration disclosure requirement, if finally ed).

*APHORISM = A SHORT, POINTED SENTENCE EXPRESSING  
A WISE OR CLEVER OBSERVATION OR A GENERAL TRUTH*

- *How come it takes so little time for a child who is afraid of the dark to become a teenager who wants to stay out all night?*
- *Business conventions are important because they demonstrate how many people a company can operate without.*
- *Why is it that at class reunions you feel younger than everyone else looks?*



I had amnesia once---or twice.  
They told me I was gullible and I believed them.  
I used to be indecisive. Now I'm not sure.

## Marketplace:



### Willis Develops New Coverage for Nuclear Exclusion Risk

Willis Group Holdings plc announced from its London office that it has developed a new insurance product “to cover business interruption costs for companies with key locations, suppliers or customers situated in the vicinity of a nuclear power station, should they be forced to suspend operations in the event the plant’s safety is compromised and an exclusion zone is implemented to contain the damage.”

Willis’ new product is designed to address the problem, faced by many businesses when their own facilities, or those of a key supplier or customer, are located inside a nuclear exclusion zone.

Willis explained that in such cases they “are likely to find that their conventional insurance policies will not cover the impact on their business, because traditional Property Damage and Business Interruption policies usually contain a Radioactive Contamination Exclusion Clause, which excludes any damage, denial of access or other consequences arising from nuclear radiation or contamination.”

Willis said its product is “designed to respond not only when a nuclear exclusion zone is imposed following an earthquake or other natural catastrophe, but also when the exclusion zone is the result of other events or failures at a nuclear plant.”

“With over 440 commercial nuclear power reactors operating in 30 countries, exclusion zone risk is a very real threat to business around the world. We were reminded again of the potential for loss on 23 August, when the earthquake centered near Richmond, Virginia, prompted the declaration of an “unusual event” at seven US nuclear power plants, and we are proud to have found an insurance solution to help our clients mitigate this risk.” *Source: Willis Group Holdings*

**NEW YORK (Reuters)**—Former New York Gov. Eliot Spitzer was hit with a \$60 million libel lawsuit by a former Marsh & McLennan Cos Inc. executive over a column posted on Slate.com concerning an insurance bid-rigging scandal.

William Gilman, a former Marsh managing director, said Mr. Spitzer acted with “actual malice” by suggesting in an Aug. 22, 2010 column titled “They Still Don’t Get It” that he was guilty of crimes, including crimes of which he was never accused, after his conviction had been thrown out the prior month.

Mr. Gilman filed his complaint late Friday in the U.S. District Court in Manhattan. A copy was made public Monday. A Washington Post spokeswoman declined to comment. Mr. Spitzer and Mr. Gilman’s lawyer, Jeffrey Liddle, did not immediately respond to requests for comment.

Mr. Gilman was among eight insurance executives indicted in September 2005 as Mr. Spitzer, then New York’s attorney general, probed the alleged steering of clients to favored insurers in exchange for kickbacks.

MMC agreed in January 2005 to pay \$850 million in a civil settlement with Mr. Spitzer. While Mr. Gilman was found guilty in February 2008 on a felony antitrust charge after a bench trial, the judge threw out that conviction in July 2010, citing new evidence.

That case was dismissed in January. The other indicted executives either were acquitted or had their cases dismissed. Twenty-one others pleaded guilty.

*(cont.)*



**These alleged quotes from employee evaluations have been seen before but are just too good not to revisit occasionally ...**

*Works well when under constant supervision and cornered like a rat in a trap.*

*When she opens her mouth, it seems that it is only to change feet.*

*He would be out of his depth in a parking lot puddle.*

## Marketplace (cont.):



### Defamation Alleged

In his complaint, Mr. Gilman said Mr. Spitzer defamed him in writing that “Marsh's behavior was a blatant abuse of law and market power: price-fixing, bid-rigging and kickbacks all designed to harm their customers and the market while Marsh and its employees pocketed the increased fees and kickbacks.”

Mr. Gilman also said Mr. Spitzer defamed him in writing that “many employees of Marsh” have been “convicted and sentenced to jail terms,” when none had. Mr. Spitzer had written the column after a recent critical editorial in The Wall Street Journal.

“While Mr. Mr. Spitzer's statements do not refer to Mr. Gilman by name,” the complaint said, “Mr. Gilman is readily identifiable as the subject of the defamatory comments. “Mr. Spitzer was well aware of his own allegations as attorney general and the resolution of those allegations in favor of Mr. Gilman and yet, recklessly disregarded these facts,” it added.

Mr. Gilman is seeking at least \$10 million of compensatory damages; \$20 million in general damages, including damage to his reputation; and \$30 million of punitive damages.

Last month, Time Warner Inc.'s CNN canceled Mr. Spitzer's low-rated television talk show “In the Arena” after less than one year on the air.

Mr. Spitzer resigned as New York's governor in March 2008 after being linked to a prostitution ring,



### AIG Watch:



**I'm Canadian.  
It's like being American, but without the gun.**

**NEW YORK (Reuters)—AIG's aircraft leasing unit**, International Lease Finance Corp., filed for an initial public offering on Friday despite deep uncertainty in equity markets that could delay an offering until next year.

ILFC Holdings Inc., as the company will be called, is the world's No. 1 in the business of buying planes and leasing them to airlines. It controls more than 1,000 aircraft and is one of the most important customers of both Boeing Co. and EADS' Airbus unit.

AIG plans to sell more than 20% of its stake in the company through the IPO.

### Timing in doubt

The ILFC filing with the U.S. Securities and Exchange Commission lists an offering size of \$100 million, though that is typically a placeholder. Sources said in July the offering could be as large as \$1.5 billion and value the company at \$8 billion to \$10 billion.

But the U.S. IPO market has struggled as concerns about Europe's debt crisis and a weak economic recovery in the United States have made markets extremely volatile. This has made it difficult to price IPOs.

The IPO filing did not reveal how ILFC shares would be offered or their expected price. The company intends to list its common stock on the NYSE under the symbol "ILFC."

*(cont.)*



## **AIG Watch (cont.):**

### **AIG Pays \$2.15 Bln To US Treasury After Nan Shan Sale**

NEW YORK (Dow Jones)--American International Group Inc. (AIG) paid the \$2.15 billion it got from selling a Taiwan life insurance unit to the U.S. Treasury as part of its effort to repay its bailout.

The \$2.15 billion in proceeds comes from the sale of Nan Shan Life Insurance Co., a unit AIG had struggled to sell earlier this year. Regulators in Taiwan had blocked an earlier agreement when they ruled the buyer lacked financial strength and commitment to Nan Shan. But the regulator last month signed off on Ruen Chen, a cement-to-footwear consortium that AIG had picked when the first buyer was rejected.

The funds repaid another chunk of the AIG bailout, reducing the amount Treasury is trying to recoup from AIG asset sales to roughly \$9 billion.

Treasury also holds 77% of AIG's common stock and is separately seeking to recover \$41.7 billion from selling its majority stake in the company over time.

In January, AIG closed an agreement that consolidated most of its outstanding federal assistance with Treasury.

### **AIG Suit Against Bank of America Raises Disclosure Issues**

Top Bank of America Corp. lawyers knew as early as January that American International Group Inc. was prepared to sue the bank for more than \$10 billion, seven months before the lawsuit was filed, according to sources familiar with the matter.

Bank of America shares fell more than 20% on Aug. 8, the day the lawsuit was filed, adding to worries about the stability of the largest U.S. bank. It wasn't until Warren Buffett stepped up with a \$5 billion investment that those fears were eased, though hardly eliminated.

The bank made no mention of the lawsuit threat in a quarterly regulatory filing with the U.S. Securities and Exchange Commission just four days earlier. Nor did management discuss it on conference calls about quarterly results and other pending legal claims.

The SEC's rules for litigation disclosure are murky, and some lawyers said Bank of America may have been justified in not revealing AIG's lawsuit before it was filed. The bank's litigation disclosures are in line with those of many rivals. But other lawyers said banks have an obligation to disclose legal threats that could have major consequences.

"Publicly owned companies are supposed to disclose material threatened litigation under generally accepted accounting principles," said Richard Rowe, a former director of the SEC's Division of Corporation Finance, who was commenting generally and not specifically about Bank of America.

Rowe, now a partner in the Washington, D.C., office of law firm Proskauer Rose, said bank executives must make a "judgment call" as to what is material, but "the general rule is, if it's threatened litigation and it's material, and you can put a number on it, you should disclose it."

AIG's lawsuit shows why investors are so fearful: they have no idea how much litigation lurks behind closed doors.

"Management surely has a credibility problem with investors," said Jonathan Finger, whose Finger Interests Number One Ltd in Houston owns Bank of America shares. "They continue to under-address or under-disclose on the mortgage issue." Finger in 2009 sued the bank over its disclosures related to the takeover of Merrill Lynch & Co.

Bank of America and AIG declined to comment for this article.

*(cont.)*

**Everyone seems normal until you get to know them**



## AIG Watch (cont.):

### AIG profits increase, Chartis premiums grow

NEW YORK—American International Group Inc. on Thursday reported \$2.11 billion in net income attributable to AIG for the first six months of this year, compared with a loss of \$873 million during the prior-year period in 2010.

AIG's Chartis Inc. property/casualty insurance unit reported year-to-date operating income of \$326 million, compared with \$1.83 billion during the first half of last year. Although core property/casualty unit Chartis reported operating income of \$789 million for the second quarter, its first quarter results had been battered by catastrophe losses, resulting in a quarterly operating loss of \$463 million because of catastrophes.

Chartis' net written premiums for the first six months of the year totaled \$18.33 billion, an 18.8% increase from the same period in 2010.

Chartis' U.S. operations generated net written premium of \$9.09 billion during the first six months of the year, an increase of 6.6%. International net written premium, however, jumped 33.8% to \$9.25 billion during the first half.

Chartis' year-to-date combined ratio stood at 111.2%, compared with 102.3% during the same period last year. The combined ratio for the second quarter of this year was 104.0%, a slight decline from the 102.0% registered during the second quarter of last year but a significant improvement over first quarter 2011's 119.0%.



### Rerun of some glorious insults, some of which may come in handy one of these days:

*"Thank you for sending me a copy of your book; I'll waste no time reading it." -- Moses Hadas*

*"I didn't attend the funeral, but I sent a nice letter saying I approved of it." -- Mark Twain*

*"He has no enemies, but is intensely disliked by his friends." -- Oscar Wilde*

## Catastrophe News:



### Insurance Lawsuits to Follow Irene

As the water recedes from Hurricane Irene, lawyers are expecting disputes over insurance coverage to pour in.

The biggest fights will stem from arguments over property damage and whether it resulted from wind or water, legal experts said. Similar questions arose in the aftermath of Hurricane Katrina six years ago.

The first step in the process will be for policyholders to make their claims.

"A flood of claims may lead to a river of litigation," said University of Pennsylvania Law School professor Tom Baker.

Homeowners insurance policies usually cover damage from wind, but not flooding. And while mortgage providers usually require homeowners in flood-prone areas to buy separate policies through the National Flood Insurance Program, property owners in other areas, including upstate New York, Connecticut and Vermont, often do not have such insurance.

Those who do have flood insurance may find it hard to get reimbursement from the government program, which is overburdened from Hurricane Katrina.

*(cont.)*

## Catastrophe News (cont.):



### *DIFFERENT LAWS IN DIFFERENT STATES*

Insurance policies can be hyper-detailed and laws vary from state to state, so it is difficult to predict exactly when any litigation will begin.

The outcome of most cases will hinge on experts and eyewitnesses, said Wayne Lee, a partner in New Orleans-based Stone Pigman Walther Wittmann who represented insurers defending class actions after Hurricane Katrina.

One “extensively litigated” issue, he said, was whether flood insurance covered wind-driven flooding, including storm surges. Generally speaking, it didn’t.

“Courts, at least in Louisiana, said a flood is a flood,” Lee said.

More difficult questions arise when a home has been swept away. Determining the cause of the destruction is tough when nothing is left, Lee said.

Another factor that will affect the volume of litigation is whether a jurisdiction allows policyholders to recover legal fees, said Amy Bach, executive director of the consumer advocacy group United Policyholders.

Laws vary widely, however, based on factors such as the dollar amount of claims. New York, Vermont and North Carolina, for example, usually allow successful litigants to recover costs and fees, but the standards are different in each state.

“If I can’t recover my attorney’s fees, I’m probably not going to bring the case,” Bach said.

Individuals with separate policies for homeowners and flood insurance could find themselves in both state and federal courts, Lee said.

Federal courts have exclusive jurisdiction over disputes arising from coverage under the National Flood Insurance Program. A fight over a claim made against an insurer based in the same state as the policyholder could end up in state court.

States could also consolidate lawsuits with a particular judge or establish arbitration forums, University of Pennsylvania professor Baker said.

What differentiates Irene from other hurricanes is that it struck densely populated regions of the upper East Coast, said Michael Troisi, a partner in Rivkin Radler in Uniondale, New York, who focuses on insurance defense.

With more claims being made, more disputes will arise, he said, but residents had a lot of preparation time, which may have reduced damage.

Disputes over claims are by far the exception since “insurance companies have their reputations to consider,” said Baker. Even so, he added, the lawsuits are coming and could take years to resolve. *(From Reuters, Reporting by Leigh Jones; Editing by Lisa Von Ahn)*

Hurricane Irene caused \$3 billion to \$6 billion in insured losses, catastrophe modeling company AIR Worldwide said Monday, affirming the insurance industry’s suspicion the impact was not as bad as feared.

Total economic damage could reach \$20 billion, Standard & Poor’s Senior Economist Beth Ann Bovino said.

Hundreds of thousands of homes suffered damage, raising questions about how much would be covered by insurance as many homeowner policies do not cover flood damage. *(From Reuters)*

*(cont.)*

## Catastrophe News (cont.):



### Insurance Payouts From Missouri Tornado Expected to Approach \$2 Billion

Insurance payouts from the May tornado that devastated Joplin, Mo., are likely to approach \$2 billion, making it the largest insurance event in the state's history, according to John M. Huff, director of the Department of Insurance.

Insurers have made \$745.4 million in payments for more than 16,600 claims so far, according to the insurance department. The total includes \$404.2 million for 7,600 homeowners claims, \$289.6 million for 1,900 commercial property claims, and \$43.5 million for more than 6,600 private automobile claims. About 1,300 claims remain open.

Risk-modeling company Eqecat Inc. had estimated insured losses from the massive, EF-5 tornado, the most powerful there is with wind speeds topping 200 miles per hour, that struck Joplin, a city of some 50,000 people, on May 22 would total \$1 billion to \$3 billion (Best's News Service, May 24, 2011). The Storm Prediction Center of the National Oceanic and Atmospheric Administration has confirmed more than 1,200 tornadoes in the United States this year, including 751 confirmed twisters in April, and 314 confirmed tornadoes for May. The center reports 544 tornado-related fatalities, up from 45 last year and 21 in 2009.

Since 1989, there has been a rising trend in insured losses from severe thunderstorms and related weather events, attributed to rising property values, greater building density and more insurance coverage, according to the May 16 A.M. Best Catastrophe Review special report.

The companies with the largest market share in the Missouri homeowners multiperil market last year were State Farm Group, with a 27.8% market share; American Family Insurance Group, with 16.69%; Farmers Insurance Group, with 7.24%; Shelter Insurance Cos., with 6.05%; and Liberty Mutual Insurance Cos., with 5.1%, according to BestLink, which provides online access to A.M. Best's database of insurance information. *(By Diana Rosenberg, senior associate editor, BestWeek) (c) 2011 A.M. Best Company, Inc.*

### Hurricane Cost Seen as Ranking Among Top Ten

Hurricane Irene will most likely prove to be one of the ten costliest catastrophes in the nation's history, and analysts said that much of the damage might not be covered by insurance because it was caused not by winds but by flooding, which is excluded from many standard policies.

Industry estimates put the cost of the storm at \$7 billion to \$10 billion, largely because the hurricane pummeled an unusually wide area of the East Coast. Beyond deadly flooding that caused havoc in upstate New York and Vermont, the hurricane flooded cotton and tobacco crops in North Carolina, temporarily halted shellfish harvesting in Chesapeake Bay, sapped power and kept commuters from their jobs in the New York metropolitan area and pushed tourists off Atlantic beaches in the peak of summer.

While insurers have typically covered about half of the total losses in past storms, they might end up covering less than 40% of the costs associated with Hurricane Irene, according to an analysis by the Kinetic Analysis Corporation. That is partly because so much damage was caused by flooding, and it is unclear how many damaged homes have flood insurance, and partly because deductibles have risen steeply in coastal areas in recent years, requiring some homeowners to cover \$4,000 worth of damages or more before insurers pick up the loss.

### After Irene, a look at recent US disaster costs

Insurers have paid out claims totaling almost \$25 billion in this year's disasters - compared with the typical \$30 billion total for a whole year - and peak hurricane season is less than halfway through. Hurricanes often account for half of the industry's annual payout.

*(cont.)*



**The last thing I want to do is hurt you.  
But it's still on the list.**

## Catastrophe News (cont.):



Tropical Storm Irene was the tenth U.S. weather disaster this year to have caused more than \$1 billion in damage, the National Weather Service says. Even in inflation-adjusted dollars, that's the largest number of major events in thirty years of record-keeping.

Here's a look at this year's biggest weather catastrophes, by estimated cost:

- Tropical Storm Irene (Aug. 27-28): The first big storm of the Atlantic hurricane season threatened population centers along the East Coast. It caused extensive flooding and some wind damage but weakened before hitting the most populated areas. It has led to the deaths of 38 people in 11 states. Cost: \$3 billion to \$5 billion in insured losses; estimated \$7 billion total.
- Flooding in upper Midwest (Summer): Melted snow from the Rocky Mountains combined with heavy rains to flood the Missouri and Souris rivers' watersheds in seven states. Cost: More than \$2 billion so far.
- Flooding of the Mississippi River (Spring, Summer): Heavy rainfall in the Ohio Valley combined with melting snow to flood the Mississippi and the rivers that feed it. It led to at least two deaths. Cost: \$2 billion to \$4 billion.
- Drought, heat wave and wildfires in southern plains and Southwest (Spring, Summer): High heat, a lack of rain and then fires ravaged parts of Texas, Oklahoma, New Mexico, Arizona, Kansas, Arkansas and Louisiana. Cost: More than \$5 billion.
- Tornadoes in the Midwest/Southeast (May 22-27): About 180 tornadoes in more than a dozen states caused 177 deaths, mostly from a giant twister in Joplin, Mo. Cost: More than \$4.9 billion in insured losses; total cost not available.
- Tornadoes in the Midwest/Southeast/Ohio Valley (April 25-30): Around 305 tornadoes caused 327 deaths. Cost: More than \$6.6 billion in insured losses; total cost not available.
- Tornadoes in the Midwest/Southeast (April 14-16): About 160 tornadoes, relatively weak compared to the other outbreaks. There 38 related deaths. Cost: More than \$1.4 billion in insured losses; total cost not available.
- Tornadoes in Midwest/Southeast (April 8-11): About 59 tornadoes in nine states. Cost: More than \$1.5 billion in insured losses; total cost not available.
- Tornadoes in Midwest/Southeast (April 4-5): Ten states were hit by about 46 tornadoes. Cost: More than \$1.6 billion in insured losses, 9 deaths; total cost not available.
- Blizzard in central and Northeastern states (Jan. 29-Feb. 3): The storm dumped several feet of snow across much of the nation and is blamed in 36 deaths. Cost: More than \$1.1 billion in insured losses; total cost not available.



**Rock is dead.**

**Long live paper and scissors.**

**Editor's note: "Newsletter" is compiled from press releases and news articles published in industry publications such as Advisen FPN, The Insurance Journal, and Business Insurance among others**

*Please share this NewsLetter with your staff – Thanks*

*Note: The opinions expressed in this newsletter are those of the Editor and do not reflect an official position of The Surplus Line Association of Oregon unless so noted*