

Mixed Results in Orchestrated Attacks on Big-Box Retailers

In July a federal judge in Baltimore, MD struck down the Maryland Employer-Financed Health Care law (the so-called "Wal-Mart Bill") that would have required large employers spend at least 8 percent of their payroll on health care or pay the difference in taxes.

Attorneys opposing the law argued that it violated the federal ERISA statute, which bars state preemption of federal employer benefits rules.

U.S. District Judge J. Frederick Motz concluded that the law would have hurt Wal-Mart by requiring it to track and allocate benefits for Maryland employees in a different way than how it tracks employee benefits in other states. Judge Motz wrote that the law "imposes legally cognizable injury upon Wal-Mart."

The measure became law in January when the Maryland legislature overrode a 2005 veto by Governor Bob Ehrlich (R). Without the

court's intervention, the law would have taken effect in January 2007.

In other news, union activists partnered with anti-poverty organizations in July to convince the Chicago City Council to pass an ordinance requiring big box retailers pay a minimum wage of \$10 an hour by 2010, along with at least \$3 an hour worth of benefits. The ordinance applies to stores that occupy more than 90,000 square feet and are part of companies grossing more than \$1 billion annually. This is the first ordinance in the country to single out large retailers for wage rules.

Mayor Richard Daley (D) and ICSC Chairman John Bucksbaum expressed their opposition to the ordinance at a July 24 press conference sponsored by the Chicagoland Chamber of Commerce.

Mayor Daley has until Sept. 13 to sign the ordinance or veto it. If the ordinance is signed into law, the Illinois Retail Merchants Association plans to challenge it in court on the basis that it violates the equal protection guaranteed in the Constitution.

As a result of the ordinance, Target Corp. has killed plans to open one new store in Chicago and will likely pull out of a second shopping center development. Target had planned to take an anchor position at developer Primetor's 440,000-square-foot power center on the city's South Side.

ICSC is following similar local legislation in Spokane, WA and there are reports that members of the Boston City Council plan to introduce "living wage" legislation similar to the Chicago ordinance. ■

ASK THE EXPERTS

Industry Faces Insurance Gaps



Martin A. Mayer is the President and CEO of Stirling Properties, a development, brokerage and management company headquartered in Louisiana. He serves as ICSC Louisiana State

Director and Co-Chair of ICSC Open Air Center Program Committee. He is a member of Urban Land Institute (ULI) Leadership Group and serves as Vice-Chair of the ULI Small Scale Development Council (Silver Flight).

Q What is the current problem with the insurance industry in the Gulf Coast?

A As we in the Gulf Coast try to deal with the many complexities and obstacles facing us in the rebuilding process, a new and severe problem is threatening to derail this entire recovery. That is the lack of available commercial property insurance.

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ICSC Chairman John Bucksbaum, SCSM (General Growth Properties, Inc.) expresses opposition to anti-big box ordinance at a Chicagoland Chamber of Commerce press conference.

Senate Can't Find Votes for Tax Provisions

In August the House passed a two-year extension of the 15-year depreciation period for leasehold improvements and expensing for brownfields remediation, two important tax provisions championed by ICSC. The Senate, however, failed to complete work on the tax extender package.

The major focus of the tax package was the long-awaited business tax extenders. Also included in this legislation was a compromise permanent solution for the estate tax and an increase in the minimum wage.

While ICSC was pleased with the efforts to extend these important tax provisions, it was at the expense of a raise in the Federal minimum wage, which was fought

by many business organizations.

The tax extenders also included an extension of the placed-in-service deadline of the bonus depreciation provisions in the GO ZONE to December 31, 2009 for parishes and counties in the Gulf South with more than 40 percent of the homes damaged by hurricanes in 2005.

Both Representative Jim McCrery (R-LA) and Senator Trent Lott (R-MI) played a significant role in having this provision included in the package.

ICSC will continue to lobby for extension of these important tax provisions in September when Congress returns from the August District Work Period. ■

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While this problem is most acute in the Gulf Coast states, it is a rapidly expanding problem threatening the East Coast as well. Similar problems occurred post-Andrew and post-9/11, however this situation seems to be far worse than both.

Insurance companies and re-insurance companies have pulled out of the market, cancelled policies, or quickly sold their very limited capacity in this region, leaving virtually no avenue for commercial property owners to pursue. If any insurance company is even willing to quote wind and storm coverage, it is with astronomical increases on premiums, shrinking coverages, and much higher deductibles. These huge increases in premium will then be passed on to tenants in these properties resulting in increased occupancy costs and ultimately higher prices for consumers. Many property owners find themselves with no alternative but to go without coverage and to self-insure, which could result in a default of loan agreement if they do not have the required insurance under their loan documents.

Some states, such as Florida, are investigating a state pool to cover wind and storm insurance as well as other alternatives to solve this pressing problem.

Q *What has been your personal experience with this issue?*

A Out of our company's entire portfolio, Stirling Properties owns 12 properties in the "affected" area. The definition of the affected area is somewhat arbitrary. In Louisiana, most insurance companies are defining it as any parish that either touches the Gulf or one that borders on another parish that touches the Gulf. This, needless to say, covers most of south Louisiana. While only one of our 12 properties experienced damage for which a claim was made, our existing insurance company refused to renew our policy, which expired June 30, 2006.

At that time, this particular portfolio of properties carried \$98 million of coverage, with a total premium of \$120,000 and a 2 percent of value deductible. Upon renewal, only one company was willing to quote at all, which was for \$10 million of coverage and a premium of \$900,000 on top of a 7 percent of value deductible, subject to a minimum of \$500,000 per occurrence. In essence, this represented an increase of more than 1,000 percent of our out-of-pocket cost for one-tenth of the coverage. Needless to say, we have elected to self-insure until a more acceptable option is available.

Q *What options do businesses have when facing this situation?*

A Unfortunately, business owners have few options to deal with this situation. Those commercial property owners who have one or two properties in the affected area may be able to find very limited coverage at

much increased premiums. This, for many, will be their only choice. Also, in our state, as in many other states, there is The Louisiana Citizens Insurance Corporation, which is a state-sponsored backstop program. However, the limitations to this program are that coverage is capped at \$2 million per location and all buildings must be within one city block. Other insurance companies will not write excess coverage due to their requirements for assessing liability on a pro-rata basis.

For larger property owners and those with a portfolio of properties, such as Stirling Properties, the choices may be even more limited. Many have chosen to go without coverage and self-insure until the market adjusts or the federal government intervenes with some type of federal catastrophic backstop for wind related coverage, similar to what was done post-9/11 with respect to terrorism insurance.

Q *How is this situation impacting new development?*

A As catastrophic as the lack of availability of insurance is for existing properties, it is an even more critical problem threatening to bring the rebuilding and redevelopment of the Gulf Coast to a screeching halt. The people of the Gulf Coast, particularly those of us in Louisiana and Mississippi, are very grateful for the support that we have gotten from the federal government and from the nation as a whole. Obviously, that financial support was critical for us to begin to take the first steps on the road to recovery. However, all of those billions of dollars and all of the tax incentives will be of little value if there is no avenue to obtain affordable and adequate coverage for new development.

If commercial property owners and developers are not able to obtain builder's risk insurance and casualty insurance for wind and storm on their major developments, there will be no lender willing to finance these projects and the redevelopment process will come to an abrupt halt.

Q *What can ICSC members do to help?*

A The Chairman and CEO of Willis Group Holdings, one of the world's leading risk management and insurance brokers, recently addressed the Real Estate Roundtable. He believes the U.S. has entered a "new era of risk" and advocates the U.S. establish a single plan to deal with disaster insurance issues. He feels current laws do not address the reality that the new era of risk presents.

Commercial policyholders must contact governors, state insurance commissioners and legislators with their personal experience. Whether it is the lack of re-insurance, insurance companies backing out of entire areas, or the emergence of an entirely new era of risk, ICSC members must communicate the problems they face to public officials in order to facilitate the debate on the potential issues. ■