

Business Insurance

August 27, 2007

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JANICE OCHENKOWSKI PLEDGES TO MAINTAIN QUALITY DRIVE AS RIMS PRESIDENT / PAGE 3

SUBPRIME PROBLEMS HAVE LITTLE IMPACT ON P/C INSURERS / PAGE 3

PLAN FIDUCIARIES BARRED FROM FIGHTING EACH OTHER IN COURT / PAGE 4

In Brief

AARP wants high court to review age-bias ruling

The AARP says it will ask the U.S. Supreme Court to review a court ruling upholding employers' ability to reduce retiree health benefits—without facing age discrimination charges—when retirees become eligible for Medicare. The move followed last week's ruling by the 3rd U.S. Circuit Court of Appeals denying AARP's request for the full court to review a unanimous decision by a three-judge panel in June. In that ruling, the panel said the Equal Employment Opportunity Commission can implement a rule to exempt from the Age Discrimination in Employment Act health plan changes for Medicare-eligible retired workers.

Willis amends pact to permit service fees

Willis Group Holdings Ltd. has reached an agreement with New

See **IN BRIEF** page 22

SECTOR BRIEFING

FINANCIAL INSTITUTIONS

Mortgage woes raise concerns for D&O insurers; banks ramp up efforts to fight fraud by employees; outsourcing brings host of new liabilities for financial institutions; sector sets pace for risk management. **Page 9**

FEMA scraps plan to cut deductible aid

Public sector, nonprofits faced loss of financial help in cases of repeat property damage

By **DAVE LENCKUS**

WASHINGTON—The Federal Emergency Management Agency backed down under pressure last week and rescinded a largely unknown plan that would have cut its financial assistance to public entities and certain nonprofit organizations that sustain property damage in natural catastrophes.

Under the plan, which was quietly introduced in June, public entities and nonprofit organizations faced the prospect of losing federal assistance for any damaged property that also had been damaged in a previous disaster. Brokers say the same buildings often are damaged in one disaster after another.

In the same plan, FEMA also informed public sector and nonprofit buyers of National Flood Insurance Program coverage that it expected them to purchase enough commercial insurance excess of the program's \$500,000 limits to

See **FEMA** page 22



FEMA's plan would have affected certain New Orleans properties damaged in future catastrophes.

AP PHOTOS

Deadly mine collapses add to insurer worries

Dangerous industry sees rate increases despite soft market

By **ROBERTO CENICEROS**

High-profile accidents at mining operations, such as the recent collapses at the Crandall Canyon mine in Utah, come as U.S. coal mining companies already face tight insurance conditions.

Deadly accidents during the past two years have brought lawsuits against some coal mining companies, which could eventually add to insurance purchasing challenges. Apart from the loss of life, coal mining companies have also faced large

property and business interruption losses under their property policies from accidents that did not result in injuries or fatalities.

The magnitude of some of the property and business interruption losses have driven property insurance contract changes and helped firm property coverage prices for coal mining operations, observers say. That contrasts with most other industries, which have been enjoying softening property insurance conditions.

"These events really make underwriters nervous," said a risk manager for a large, publicly traded coal mining company, who asked not to be identified.

See **MINING** page 20

Cat. 5 Hurricane Dean causes limited losses

Storm strikes Caribbean nations, spares U.S.

By **MARK A. HOFMANN**

KINGSTON, Jamaica—The U.S. insurance industry dodged a bullet of potentially disastrous proportions last week when Hurricane Dean followed a path that took it far from the U.S. coast and across far less developed areas, observers say.

At its strongest, the Category 5 hurricane packed wind speeds of about 160 mph when it struck Mexico, but Dean inflicted its greatest insured losses on Jamaica. Had it struck more populated areas, insured losses could have been far higher than those currently estimated by catastrophe modeling firms, say observers who also warn that the hurricane season is still young and potentially costly.

The Insurance Services Office Inc.'s AIR Worldwide Corp. unit estimated that insured losses in Jamaica would be no more than \$1.5 billion while those in Mexico would not exceed \$400 million.

"This was one of the strongest land-falling hurricanes in decades" but it caused relatively little destruction, said Glen Daraskevich, vp of research and modeling at Boston-

based AIR. "So really the story is location, location."

If Dean had taken a different path and hit Houston, for example, damage "could easily result in excess of \$120 billion in losses," he said.

Oakland, Calif.-based modeler EQECAT Inc. estimated total damages of about \$2 billion, no more than \$250 million of which would be sustained in Mexico and the rest in Jamaica.

Newark, Calif.-based Risk Management Solutions Inc. estimated that total Dean losses would range from \$750 million and \$1.5 billion, with the vast majority in Jamaica and a maximum of \$300 million in Mexico.

Loss adjusting had begun by the middle of last week.

"We're getting folks into Jamaica as well as some of the Lesser Antilles," said Bud Trice, vp of Crawford Catastrophe Services in Atlanta. "From the U.S. perspective, we did dodge a bullet. The U.S. insurance industry, I think, has fared fairly well on this thing."

"We track these hurricanes very

See **HURRICANE** page 21

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INDEX

Advertiser Index	21
Business Resources	16
Commentary	18
End Page	23
International	17
Market Moves	16
Opinions	8
Professional Marketplace	16
Stocks	22

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SECTOR BRIEFINGS

Financial institutions Sector Briefing online

The Financial Institutions Sector Briefing, which covers the potential domino effect of the subprime mortgage crisis on insurers of financial firms, is now available online. Go to www.BusinessInsurance.com/sectorbriefings to see the entire collection of stories about this sector.

BI INSIGHT AUDIO

RIMS' incoming chief details plans, views

Janice Ochenkowski, managing director at Chicago-based Jones Lang LaSalle Inc. and incoming president of the Risk & Insurance Management Society Inc., discusses her top priorities for the coming year with Senior Editor Gloria Gonzalez. Topics include risk manager quality, legislative issues and enterprise risk management. Go to www.BusinessInsurance.com/audio.

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RIMS' new head to build quality initiatives

Defining good risk management is key goal

By GLORIA GONZALEZ

NEW YORK—Helping insurance buyers navigate today's challenging issues and promoting enterprise risk management education are key priorities for the new president of the Risk & Insurance Management Society Inc.

Janice Ochenkowski, managing director at Chicago-based Jones Lang LaSalle Inc., will succeed Michael Liebowitz as president of the New York-based organization on Aug. 31. Her term will end Jan. 1, 2009.

RIMS extended the terms of Mr. Liebowitz, who is director of insur-

ance and risk management for New York University, and Ms. Ochenkowski to 16 months to synchronize presidential terms with its fiscal year. Future presidents will revert to 12-month terms.

The incoming and outgoing presidents expect a smooth transition with Ms. Ochenkowski planning to build on work started by her predecessors.

Quality for risk managers will be a primary area of focus with Ms. Ochenkowski developing criteria that outline the qualities of a good risk manager and teaching them

See RIMS page 6



A PODCAST OF BI'S INTERVIEW with Janice Ochenkowski can be heard at www.BusinessInsurance.com/Audio.

Janice Ochenkowski begins her term as RIMS president this week.

RIMS

First-half results show continued strength

Second half, however, may not be as rosy

By JUDY GREENWALD

Commercial property/casualty insurers continue to enjoy good results for now, although the still-softening market is likely to cut into future profits, observers say.

"It's pretty obvious going into the second half of this year, and more importantly going into '08 and '09 (price softening is) going to lead to a deterioration in underwriting results," said John Gwynn, managing director at Memphis, Tenn.-based investment firm Morgan Keegan & Co. Inc.

Meanwhile, the industry is still benefiting from previous rate hikes, observers say. In addition, the release of prior year reserves into income boosted results.

The 14 major property/casualty insurers surveyed by *Business Insurance* reported a 20.8% increase in first-half net income, to \$17.79 billion. Among other survey results:

- Net premiums written increased a modest 2.9%, to \$73.08 billion.

- Insurers posted a 90.1% combined ratio for the first half of 2007 vs. 90.2% for first half of 2006.

- Policyholder surplus for the 12 insurers reporting that data increased 16.5%, to \$93.45 billion.

"I think the first half was pretty good," said Cliff Gallant, an analyst with investment bank Keefe, Bruyette & Woods Inc. in New York. The industry is starting to see top-line pressure, but loss trends remain favorable, he said.

"The momentum in the first half of 2007, for the most part, continued on the strong path set in the last 12 to 18 months," said John L. Ward, chief executive officer of Cincinnati-based Cincinnati Partners L.L.C., an advisory firm specializing in the insurance industry.

"We continue to see signs of rate environment softening for commercial lines, but the trend line for loss costs and claims inflation has been somewhat moderated, and this has helped to buffer, in some ways, the effects of the soft market pricing," said Mr. Ward.

"I think the second quarter was a lot like the first quarter in that we continue to see pressure on premium growth, we contin-

See RESULTS page 19

P/C insurers largely avoid subprime woes

Investment exposures generally single digits

By JUDY GREENWALD

Commercial property/casualty insurers are expected to be relatively insulated from the subprime mortgage credit crisis that is roiling financial markets.

Analysts note that property/casualty insurers tend to restrict risk-taking to their underwriting and generally are much more conservative in their investment strategies.

However, one observer notes that the turmoil could cause the capital markets to rethink their involvement in the insurance and reinsurance industry.

Risky behavior has led to the current crisis. Mortgages are placed in collateral pools with thousands of other mortgages and then securitized, with the mortgages divided into tranches, based on their credit quality. Investors in these securities are repaid from payments made by borrowers.

The current crisis stems from subprime mortgages, which are mortgages for individuals with weaker credit ratings. Lending standards in recent years were stretched to permit many such home buyers to obtain mortgages. But as interest rates have

risen, many more borrowers than expected have been defaulting on adjustable-rate loans, creating the current situation.

A report issued by rating agency Moody's Investors Service last week notes that overall, the U.S. property/casualty industry's subprime mortgage exposure "appears to be minimal," amounting to about 3% of shareholders equity and 1% of total invested assets.

"The majority of insurers reported no subprime exposure at all, and of the set that did report exposure, amounts ranged from 1% to 15% of total equity, with the majority in the single-digit range," the report said.

Analysts say also these investments have held little appeal to property/casualty insurers. "Property/casualty insurers usually don't invest in subprime mortgage-backed securities. They usually have more high-grade bonds, sometimes a few equities," said Steve Lawrence, senior consultant and national practice leader for Watson Wyatt Worldwide's risk management service in New York.

Cliff Gallant, an analyst with

See SUBPRIME page 19

Business Insurance

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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ON OCT. 8, 2007, *Business Insurance* will celebrate its 40th anniversary of publication. Each week until then, *BI* will offer a peek at news we reported during the past four decades.

AUG. 2, 1971 Illinois becomes the 27th state to create a guaranty fund following a string of insolvencies. The fund includes all types of insurers except health and accident writers and requires all insurers in the state to contribute. In addition, property and liability insurers must post a policyholder security deposit of up to \$10 million.

AUG. 16, 1971 Union Mutual Life Insurance Co. of Portland, Maine, unveiled a \$250,000 maximum benefit plan as a secondary layer for major medical coverage. The plan is designed to supplement basic coverage of \$50 per day and \$25,000 for major medical. The insurer said the number of claims exceeding \$50,000 was bound to rise.

Court blocks legal battle between ERISA plan fiduciaries

Appeals panel ruling may stifle settlements in other disputes

By DAVE LENCKUS

ST. LOUIS—A federal appeals court ruling that bars fiduciaries of federally regulated employee benefits plans from suing each other could complicate settlements of plan disputes, according to experts.

Though the ruling in *Travelers Casualty & Surety Co. of America vs. IADA Services Inc.* adds to the existing division among federal appeals courts over a plan fiduciary's so-called right to contribution, experts

disagree over whether the U.S. Supreme Court would be interested in resolving the issue.

A three-judge panel of the 8th U.S. Circuit Court of Appeals issued its unanimous ruling Aug. 15 in the case involving the Iowa Automobile Dealers Assn.

IADA Services provides administrative and investment services for IADA Insurance Trust, which is an employee benefit plan for association members. The Employee Retirement Income Security Act governs the trust.

After an audit, the U.S. Department of Labor determined the trust had overpaid IADA Services. Because the trust owned and directed IADA Services, the plan adminis-

trator was not entitled to collect any fees that exceeded its direct expenses, the Labor Department said.

Travelers, the plan trustees' fiduciary liability insurer, agreed to fund the \$350,000 settlement that the trust and IADA Services hammered out with the Labor Department, although Travelers did not insure IADA Services. But the insurer, a subsidiary of the Travelers Cos. Inc. of St. Paul, Minn., reserved its right to recover from IADA Services.

The plan administrator, however, refused to reimburse Travelers.

The insurer sued, but a federal judge in Des Moines, Iowa, ruled in a summary judgment that ERISA bars plan fiduciaries from recovering from one another.

In its ruling in Travelers' appeal, the 8th Circuit panel rejected the insurer's argument that allowing plan fiduciaries to recover from each other is the kind of federal common law that Congress contemplated federal courts would develop to govern ERISA. Travelers also argued that the U.S. Supreme Court has established that common law that federal courts have established for ERISA is guided by the common law of trusts, which recognizes the right of contribution among co-fiduciaries.

The 8th Circuit panel ruled that the Supreme Court has determined in various decisions that Congress did not intend for courts to create remedies for litigants that lawmak-

ers "simply forgot to incorporate expressly" in the law. Instead, courts should only clarify existing ERISA provisions, the panel said.

While a split 2nd Circuit panel ruled otherwise in 1991, the Supreme Court has reiterated its position since then, the 8th Circuit panel noted. In addition, it noted, a unanimous 9th Circuit panel ruled in 1989 that ERISA does not permit plan fiduciaries to sue one another.

Travelers has not decided whether it will appeal, said attorney Troy A. Howell, a partner with Lane & Waterman L.L.P. of Davenport, Iowa.

Several employer attorneys sug-

See **ERISA** page 21



Canada develops guide to help stop data leaks

String of high-profile breaches prompt move

By GLORIA GONZALEZ

OTTAWA—Canadian companies now have a risk management tool to help them respond to breaches of personal information: new guidelines issued by Canada's federal privacy commissioner.

While the guidelines are voluntary, Canadian organizations can use them to minimize reputational or legal risks related to data breaches and prevent passage of legislation that would make customer notification mandatory, experts say.

The guidelines resulted from a five-year review of Canada's Personal Information Protection and Electronic Documents Act, which sets standards for the collection, use and disclosure of personal information in the course of commercial activities (*BI*, Sept. 18, 2006). High-profile breaches of personal information spurred legislators and regulators to examine developing guidelines or a law outlining the management of data breaches.

Privacy Commissioner of Canada

Jennifer Stoddart earlier this month released the guidelines that outline key steps in responding to a breach: containing the breach, evaluating the risk associated with it, notifying affected individuals and preventing future breaches (see story, page 18).

"They're best business practices," said Steven Lingard, assistant general counsel for the Toronto-based Insurance Bureau of Canada, which represents property/casualty insurers and consulted on the privacy guidelines. "If you're a risk manager at a company and you were asked to develop guidelines, you would probably come up with these four steps."

Privacy experts say Canadian organizations must prepare for data breaches, which generated 424 complaints to the federal privacy commissioner's office in 2006, up from 400 in 2005, according to its annual report.

"Really these guidelines do represent a risk management approach

See **SECURITY** page 18

Benefit calculations must include pregnancy leave predating bias law

Court rules retirees should get credit for time served before rule change

By JUDY GREENWALD

SAN FRANCISCO—Employees who received less credited service time while on pregnancy leave compared with other disabled workers before that issue was addressed by federal law 28 years ago can regain that lost time retroactively, says a federal appellate court.

The Aug. 17, 11-4 en banc decision in *Hulteen vs. AT&T Corp.* overturns a 2006 decision by a three-judge panel of the 9th U.S. Circuit Court of Appeals.

The plaintiffs in the case were four current and former AT&T Corp. employees—who had each taken partially uncredited pregnancy leave before the Pregnancy Discrimination Act's 1979 effective date—and their union, the Communications Workers of America. As a result of the uncredited time,

they received less favorable benefits or retirement opportunities, according to the opinion.

A lower court ruled in the plaintiffs' favor, but the three-judge panel said in its 2006 opinion that a 1991 9th Circuit decision in a similar case—*Pallas vs. Pacific Bell*, in which a plaintiff was granted the extra time—could no longer be used as precedent. An intervening U.S. Supreme Court decision that prohibits applying federal law retroactively, *Landgraf vs. USI Film Products*, trumped the appellate court decision, the panel ruled (*BI*, March 20, 2006).

In its most recent decision, however, the en banc panel ruled that high court decision was not "clearly irreconcilable" with "intervening authority."

"A statute does not operate 'retroactively' merely because it is

applied in a case arising from conduct antedating the statute's enactment, or upsets expectations based in prior law," the decision says.

"Rather, the court must ask whether the new provision attaches new legal consequences to events completed before its enactment," says the decision. "The conclusion that a particular rule operates 'retroactively' comes at the end of a process of judgment concerning the nature and extent of the change in the law and the degree of connection between the operation of the new rule and a relevant past event."

The opinion notes also that the Pregnancy Discrimination Act requires employers to treat "women affected by pregnancy...the same for all employment-related purposes."

See **LEAVE** page 6

IRS says it will tax 401(k) savings used to buy retiree health coverage

Proposed rules deliver fatal blow to innovative design

By JERRY GEISEL

WASHINGTON—Employees who designate a portion of 401(k) or other savings plan contributions to pay for retiree health care coverage will be taxed on those contributions, the Internal Revenue Service says.

In proposed rules published last week, the IRS said such an arrangement is not entitled to tax-favored treatment and that such contributions would be included as taxable income to the employee.

While such arrangements have long been discussed, few employers have implemented them amid informal warnings from IRS officials that the arrangements are not entitled to the same tax breaks provided to other benefit plan designs.

"In the past, the IRS has not looked favorably on these arrangements," said Amy Bergner, an attorney with Mercer Human Resource Consulting in Washington.

Now, with the IRS officially laying out its position through proposed rules, "it is the final nail in the coffin" of such designs, said Andy Anderson, of counsel with the law firm Morgan, Lewis & Bockius L.L.P. in Chicago.

"The IRS has made its position

crystal clear," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Arlington, Va.

The appeal of such designs is obvious: employees would make pretax contributions to 401(k) plans; the money would earn tax-free interest and then could be pulled out tax-free to pay for retiree health care premiums.

"It would be a triple crown of tax-free funding," Mr. Anderson said.

But the IRS, in its proposed rules, published in the August 20 edition of the Federal Register, says Congress has very "carefully and strictly limited the ability to pre-fund" health care benefits on a tax-

See **IRS** page 20

Errors & Omissions

Due to an editing error, an Aug. 20 letter to the editor attributed an incorrect job title to the writer. The writer is employed by the American Osteopathic Assn. but is not the executive director of the organization.



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Business Insurance OPINIONS

Insurers can't depend on luck for next storm

LUCK. THAT'S THE best way to describe why the insurance industry didn't take a beating as a rare Category 5 hurricane dubbed Dean blasted its way across the Caribbean before battering parts of Mexico.

Had Hurricane Dean followed a different path and made landfall along the U.S. Gulf Coast—which had been a distinct possibility—insurers and the economy they insure could now be facing staggering losses rather than the relatively mild aftermath that exists.

While we're fully aware of the suffering even a diminished Dean wrought, the storm could have been worse along the path it took. As we report on Page 1, one positive result of 2005's Hurricane Wilma—a Category 5 hurricane that was the most intense Atlantic hurricane ever recorded—was that damaged structures were often rebuilt to be more hurricane resistant.

The dodged bullet of Dean should serve as a reminder of both the importance of

constructing exposed properties to the highest reasonable standards and that mitigation is an ongoing process. Yesterday's standards may be inadequate to meet tomorrow's demands, and wise risk managers must consider tomorrow's demands as they map out their mitigation strategy.

This year's hurricane season is indeed young and we got lucky. What could have been a major disaster didn't happen, giving coastal areas a bit more breathing room. That extra time needs to be used to make sure that every reasonable step has been taken to prepare for the next storm. There are limits to luck, and there will come—if not this hurricane season, some hurricane season sooner rather than later—the inevitable bullet that no one will be able to dodge.

Yesterday's standards may be inadequate to meet tomorrow's demands.

Retiree health benefit funding a looming crisis

WHAT IS THE COST of retiree health care benefits that state and local governments have promised to current and future retired employees but have not funded?

Answers to that question soon will become apparent as public employers begin to comply with new accounting rules that require them to disclose their retiree health care obligations.

A report prepared by Aon Consulting on New Jersey's liabilities gives an indication—a disturbing one—on the magnitude of those liabilities. According to that report, New Jersey will need \$58 billion to pay for the benefits promised to current and future retirees.

To put that number in perspective, it is roughly twice the amount of the entire state budget.

We have no doubt that the amassed liabilities for many other states are just as staggering. The problem is two-fold: states, in many cases, have refused to take steps, such as redesigning plans in which retirees pay only a small percentage of the premiums, while plan benefits have been overly rich.

Eventually, the bill will have to be paid. The question is, will states start to take steps now to bring down liabilities—through providing affordable health care plans—or will they wait until a crisis hits and tax revenues needed to pay employees' salaries and provide vital governmental services are gobbled up by paying for retiree health care benefits.

We hope the answer, as we are sure state taxpayers would agree, is that states begin to take action now.



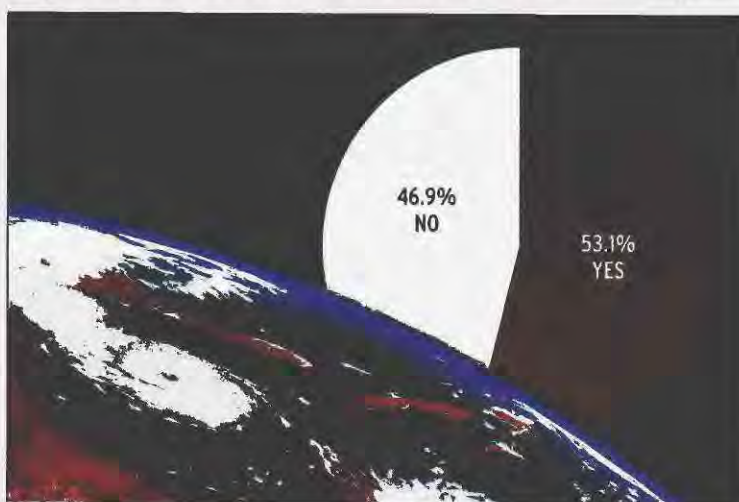
BI beats list

In an effort to ensure continuing timely coverage of risk management, insurance and benefit-related news, Business Insurance has formalized a list of its reporters' assigned beats. This list is not intended to be exclusive but rather to represent core subject areas of importance to BI readers. BI welcomes ideas and tips from readers on these and other areas. Following is a list of the beats and the principal reporters for each:

Agents/brokers: Sally Roberts.	legislation-benefits: Jerry Geisel.	cat risks: Mark A. Hofmann.
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	Property loss control/	Workers compensation: Roberto Cenicerros.

Online Poll at www.businessinsurance.com

Do you think the 2007 hurricane season will be worse than last year's?



NEXT WEEK'S POLL: When will Congress give its final approval to an extension of the terrorism insurance backstop?

BI Online Poll tool sponsored by Wausau Insurance Cos.

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SECTOR BRIEFING

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Subprime mortgage woes raise concerns for insurers of financial institutions

Lawsuits may generate D&O, professional liability claims

By STACY SHAPIRO

Falling U.S. house prices and rising foreclosures are affecting financial markets worldwide, particularly financial institutions that offered or invested in subprime mortgage-backed securities.

As a result, professional liability, and directors and officers liability insurers are getting nervous about the daily notices of financial trouble caused by the U.S. subprime mortgage market, experts say.

Though the professional liability and D&O markets continue to be soft, some lawsuits have already

spawned potential D&O claims, and brokers expect that more litigation will give rise to more claims. In turn, some underwriters are becoming more selective when they decide which institutions to insure and are adding some exclusions to those policies, according to brokers.

But how serious and extensive these potential losses will be for the insurance market remains to be seen.

"The fundamental question which we are asking is, 'What impact will there be on the financial institutions' (errors and omissions) market?'" said Michael

See **SUBPRIME** next page

BANKS INCREASE EFFORTS TO FIGHT EMPLOYEE FRAUD
PAGE 11

OUTSOURCING BRINGS IN NEW LIABILITIES
PAGE 12

FINANCE SECTOR SETS PACE FOR RISK MANAGEMENT
PAGE 14

International loans crisis escalates

In the past few weeks there has been a daily flood of announcements in both the United States and Europe linked to subprime mortgage-backed securities. Among these are:

- The winding down of two hedge funds managed by New York-based Bear Stearns Asset Management, which borrowed heavily to invest in mortgage-backed securities known as collateralized debt obligations. News reports said investors may retrieve some money from one hedge fund, but none from the other.

- The announcement by Countrywide Financial Corp., the largest U.S. mortgage company, of a sharp decline in second-quarter 2007 profit to \$485 million compared with \$722 million in the same period last year. This was mainly due to charges of \$417 million taken during the quarter on the company's investments in credit-sensitive retained interests.

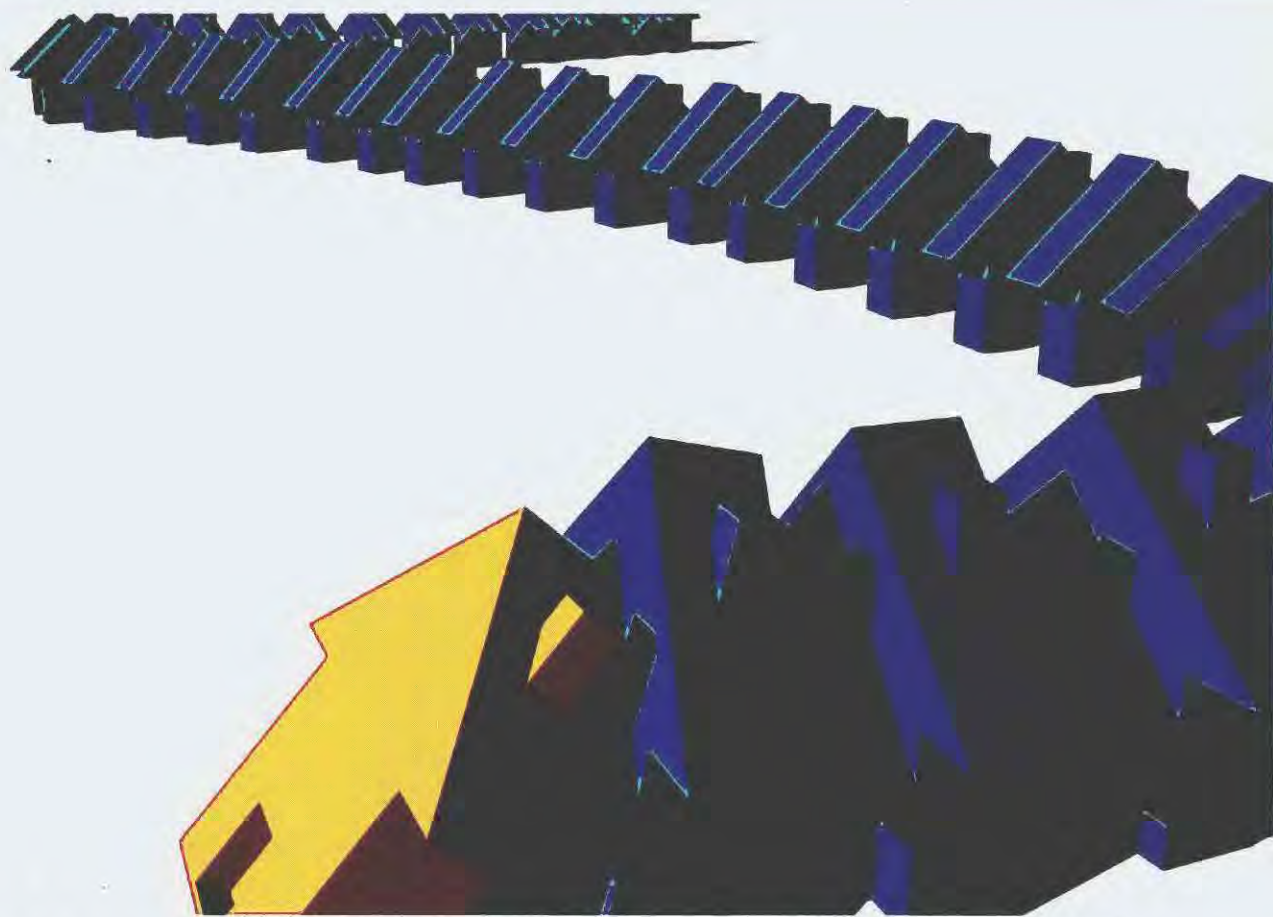
- Small company lender IKB Deutsche Industriebank A.G. in Düsseldorf, Germany, issued a profit warning linked to problems in the U.S. subprime market. IKB's biggest shareholder, state bank KfW Bankengruppe, analyzed the situation together with the German banking regulator and took action to rescue the bank. KfW said in a statement that it will cover "IKB from all such risks and is thus contributing substantially to a stabilization of the market."

- A reduction in earnings by Chicago-based CNA Financial Corp. CNA reported lower quarterly earnings as investment losses increased, partly because of write-downs on bonds linked to subprime mortgages. CNA announced that net earnings were \$217 million, down from \$239 million a year earlier.

- Meanwhile, Standard & Poor's Ratings Services recently placed its credit ratings on 612 classes of residential mortgage-backed securities backed by U.S. subprime collateral on credit watch with negative implications. The affected classes totaled approximately \$12.1 billion in rated securities, which represented only 2.13% of the \$565.3 billion in U.S. RMBS rated by S&P between the fourth quarter of 2005 and the fourth quarter of 2006, the rating agency announced.

- S&P also has changed its criteria for new deals, said a spokesman in New York. Asked whether there could be other downgrades, he said, "You never know. There could be further rating actions," though none is anticipated, he said.

—By Stacy Shapiro



Subprime: Insurers concerned by mortgage problems

CONTINUED FROM PREVIOUS PAGE

O'Connell, managing director and practice leader for New York-based Aon Financial Institutions, a unit of Chicago-based Aon Corp. "It is often the case that when expectations are not met and there is devaluation of investments or a loss of money, there is an increase in claims, whether it is D&O insurance or professional liability insurance claims," he said.

This situation has happened before when there were major currency devaluations in 1994 of the Mexican peso and in 1998 for the Russian ruble, said Mr. O'Connell. "Then you had major losses in values of assets and increased litigation."

During this current situation, "we expect an increase in claims on both the professional indemnity side and D&O marketplace," Mr. O'Connell added.

However, it is too early to tell how this situation will affect the soft professional liability insurance market, he said. Many major financial institutions do not buy broad-form professional indemnity insurance, so they may have no claims, he said.

Right now, it continues to be a favorable marketplace for financial institutions, with rates down about 10% from last year, Mr. O'Connell added.

"The market is soft and there is plenty of capacity in the professional indemnity financial institutions market sector, but we are starting to see some nervousness now and we will begin to see underwriters selecting their risks," said Lorraine Adlam, director of financial institutions for London-based Aon Ltd. Indeed, London underwriters recently showed some reluctance to cover a third-party administrator involved with these securities, but the coverage was eventually placed, she said.

"It is too early to tell how this situation will affect the (professional liability and D&O) market," said Siobhan O'Brien, senior vp and transaction specialist of FinPro, a division of Marsh Inc. in New York.

The devaluation of the subprime mortgage securities market will be an issue for major institutions and investors who will be concerned about D&O lawsuits and E&O lawsuits that accuse management of ill-advisedly operating in this market, said Ms. O'Brien.

But for smaller banks in the United States and overseas, the biggest risk "is bankruptcy," said Ms. O'Brien. These banks are concerned that

they will not be able to secure lines of credit if mortgage loans cannot be repaid, she said. "These banking operations live by their line of credit, and if they cannot secure these, then the biggest risk for them is bankruptcy."

Nevertheless, rates for financial institution professional liability insurance are down 10% to 15% from last year, said Ms. O'Brien who has not seen anyone penalized on rates as a result of the subprime mortgage securities situation. If a client is a subprime lender, however, there may

'There is plenty of capacity in the professional indemnity financial institutions market sector, but we are starting to see some nervousness.'

Lorraine Adlam,
Aon Ltd.

be a "predatory lending exclusion" added to the policy and rates may remain flat.

"I am about to meet with the three big markets in the United States to talk about this situation," Ms. O'Brien said.

Problems in the U.S. subprime mortgage market and the residential mortgage-backed securities market have been ongoing for the past 18 months, she said. The U.S. subprime mortgage market is by nature the most risky for banks, as it offers mortgages to borrowers who have impaired or no credit history.

The situation has intensified, however, since investors filed a securities class action suit against Irvine, Calif.-based New Century Financial Corp. Investors claim the lender issued misleading financial statements and failed to exercise internal controls that would have minimized losses.

In the past few weeks, too, there has been a daily flood of announcements in both the United States and Europe concerning subprime mortgage-backed securities (see box). Despite the flurry of announcements, litigation remains sparse. Aside from the New Century case, only a handful of other cases are known to have been filed though more disputes may exist or have been settled.

"I have three different cases involving collateralized debt obligations and I think there will be more," said Melanie Ryan, a partner at Barlow Lyde & Gilbert L.L.P. in London. Though she would not comment on specifics, she said the cases involve both U.S. and European entities.

Such cases can be incredibly complicated, but they usually involve three main issues, noted Ms. Ryan, namely: whether the collateralized debt obligation was properly structured; whether the security was properly valued; and whether the risks in buying them were explained properly.

"The biggest issue for clients is the valuation of these securities," said Ms. Ryan. "Right now, they do not know what the value of these securities are that are sitting on their books, and they cannot sell them because they do not know what the values are. Liquidity will be quite an issue," she said.

At least four other lawsuits have been or will be filed by attorney Dale Ledbetter of Ledbetter & Associates in Fort Lauderdale, Fla. The first, in U.S. District Court, Middle District of Florida, was filed in April by Bankers Life Insurance Co. against Credit Suisse First Boston Corp. and DLJ Mortgage Capital Inc., the Bank of New York and others.

The lawsuit seeks to recover 95% of Bankers Life's \$1.4 million investment that it lost when it purchased in 2004 certain securitized mortgage-backed loans issued in 2001 in an offering underwritten by Credit Suisse First Boston.

These securities—which were bought at around \$104 per security and given excellent ratings by New York-based Moody's Investors Service—were subsequently downgraded by Moody's to only \$8 per security, the suit alleges.

Chicago-based Bankers Life believes that Credit Suisse and others misrepresented key indicators relating to the portfolio's performance, which led to this decline, the lawsuit said.

Indeed, Mr. Ledbetter said the information originally given to the ratings agency by the defendants was "incomplete, inaccurate and downright misleading." He believes that some subprime mortgages on which the securities were based were already in default before the securities were issued. His law firm is in the process of filing other cases against Credit Suisse in Illinois and Indiana.

"We think this is just the tip of a huge iceberg," said Mr. Ledbetter.

Employee fraud is key concern for financial institutions

Fraud schemes become more sophisticated as technology improves

By LOUISE ESOLA

When it comes to fraud and banks, employees are often the ones with the tendency to steal, according to experts who say access to information and accounts is usually a prerequisite to fraudulent acts in financial institutions.

"They are the ones with trusted access to the systems," said Michael Lamprecht, senior vp for Aon Financial Services, a unit of Aon Corp. in Chicago. "There is an astounding level of frequency when it comes to bank employees and fraud."

Based on a recent survey, employee fraud in the financial services industry is a widespread problem that banks fear is getting worse as technology progresses.

According to the study by Actimize Inc., a New York-based provider of transactional risk management software for the financial services industry, 85% of banks surveyed reported that they have been somewhat to extremely affected by employee fraud in the past three years, 65% see the threat of fraud among employees increasing and 77% see the nature of the threat becoming more sophisticated.

The study released in late July, "Employee Fraud Within Financial Services," featured a survey of 40 financial institutions, more than

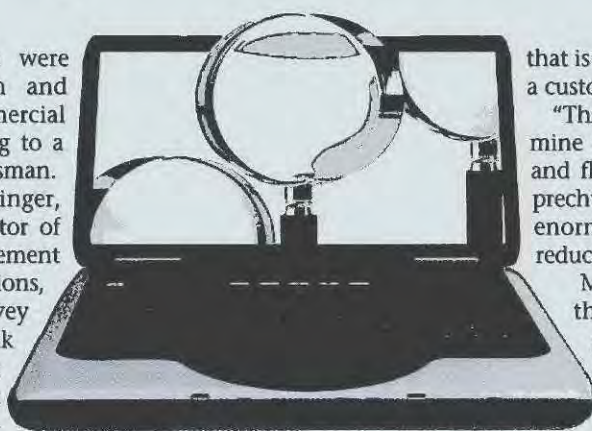
half of which were small, medium and large commercial banks, according to a company spokesman.

Paul Henninger, Actimize's director of product management and fraud solutions, said the survey does not break new ground but does reflect growing concerns among banks. "As long as there have been employees, there has been fraud (at banks)," he said. "But it has really exploded over the last few years."

Accessibility to technology, organized crime, poor hiring and employee screening, and staff dissatisfaction were the top reasons listed in the survey about why fraud is on the rise.

Banks have long applied fidelity bonds and other insurance-related means of protecting assets against fraud, but more recent best practices and new technology can help prevent fraud or catch employees in the act.

Aon's Mr. Lamprecht points to "neural network" software as the latest level of protection against employees committing fraud. Such complicated computer programs—already put to use in hundreds of large banks and brokerage firms—work to track any account activity



that is outside the norm for a customer.

"This software will determine unusual transactions and flag them," Mr. Lamprecht said. "It has been enormously effective at reducing fraud."

Mr. Henninger said there are some programs available that monitor employees' transactions and flag those that are repetitive or questionable. For example, employee monitoring software would raise a flag when an employee spends a disproportionate amount of time working on one task, such as making address changes to multiple, unrelated accounts.

LaVonda Alleman, senior account executive and vp with Kansas City, Mo.-based Lockton Cos. Inc., said there are some simpler, less technical ways to prevent and track employee fraud. For example, a bank might want to consider a policy forcing employees to take annual vacations.

By allowing one employee to fill in for a colleague on vacation, the replacement employee can easily spot fraudulent activity, according to Ms. Alleman, who says that rogue employees often have the advantage of concealing their fraudulent acts if they are the only employee accessing certain accounts, information or performing certain duties all

the time.

Ms. Alleman knows of a case where a \$4 billion bank—which she would not name—lost \$4.5 million in assets because a bank manager was stealing proceeds from certificates of deposits. "What could have prevented that is a mandatory vacation," she said.

Another risk management strategy is to never allow employees across-the-board access to all bank procedures, she said. For example, "if they are writing the checks, they should not be in charge of (balancing) the checkbook."

Banks can also greatly reduce the occurrence of crimes such as mortgage fraud by mixing up the bankers, closing attorneys and appraisers who work together on transactions. This can eliminate the chances of three employees and contractors committing more organized forms of fraud, she said.

While fraudulent loans, embezzlement and wire fraud have always made the list of top concerns among banks, the most prevalent concern is when bank employees steal personal data, according to experts.

Information theft is making headway thanks to a growing market among identity thieves seeking personal information such as names, account numbers and social security numbers.

Insurance and risk management gaps in fraud protection for banks often fall in the arena of cyber security, said Ms. Alleman.

See **FRAUD** next page

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Solutions at Work

Outsourcing considered an emerging risk in financial services industry

Large banks are taking on new liabilities as they look beyond their organizations to outsource functions that are costly or do not fit within the financial institution's core competencies.

When discussions turn to banks' emerging risks, "outsourcing gets a lot of attention," said Charles Beresford-Davies, head of Marsh Inc.'s financial services practice in London. There are a host of liabilities that can arise when business is being handled by a business partner in another country, he said.

European and U.S. banks in

recent years have turned to service providers in countries such as India and Russia to handle technology, research, analysis and functions other than cash handling. "There's a lot of outsourcing going on," said Vishal VEDI, London-based partner with Deloitte & Touche L.L.P.'s risk consulting team. "It does create risk in how to manage and monitor that."

Using foreign vendors means banks risk damage to their reputations if a service provider causes problems that impact the financial institution's operations. And, there

are risks related to employees not under direct control, fraud issues, contractual exposures and other risks that suddenly materialize when business is handled by an outsider, Mr. Beresford-Davies said.

Liabilities that arise from outsourcing are managed partly through agreements between the bank and its service providers, Mr. VEDI said. An agreement is put in place covering the legal responsibilities of each party and establishing the bank's authority to monitor how its business is handled and kept secure, he said.

Société Générale outsources a number of information technology functions to companies in France and, to a lesser extent, in India, said Michel Yarhi, head of group insurance at the Paris-based investment bank. "We do not make a distinction between who does the job," when determining how outsourcing exposures are covered, said Mr. Yarhi. "It is part of our global activity; whatever company does it, it's our activity."

That means Société Générale's insurance programs have coverage

in place for losses that might arise from missteps by business partners that provide outsourcing services, Mr. Yarhi said.

He acknowledged that the bank has to carefully weigh the risks associated with handing over control of banking functions against the savings that can be realized through outsourcing. Staff costs for banks are much higher than for many nonfinancial organizations and, therefore, savings through outsourcing can be significant in comparison, he noted.

—By Michael Bradford

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Fraud: Banks suffer losses

CONTINUED FROM PREVIOUS PAGE

Brian Brenner, Kansas City, Mo.-based vp of Lockton Financial Services, said compromised confidential information is the largest dollar loss for banks victimized by employee fraud. Some large banks have seen losses in the millions, he said.

Breach notification laws enacted in at least 34 states now require any institution or business with personal information on file to notify those affected if their information has been lost or stolen.

Banks, which suffered more than a dozen data breaches in 2006 alone, have been known to take it a step further and offer customers free credit reports, long-term credit monitoring and, increasingly more often, new account numbers and debit/credit cards, according to Mr. Brenner.

"There is a host of specialty (insurance) products on the market to handle these losses," he said. For example, many insurers now offer products that help pay the notification and credit monitoring costs—estimated by experts to cost upwards of \$40 per individual affected—associated with data breaches.

To prevent information from being leaked or used to commit fraud, Ms. Alleman said extrusion practices are now making headway at financial institutions.

This method of protection limits and monitors the information available to certain employees. Extrusion, or data leak prevention, can be put to work via specialized software that filters out information that is available to certain employees and prevents employees from sharing specific data by tracking where information is being sent via e-mail. According to Mr. Lamprecht, some experts have warned that as technology in tracking fraud improves, so does the technology to commit fraud. They also say banks have to run fast to stay ahead of the curve.

"Committing fraud is so easy to do and it just seems more common," Mr. Lamprecht said. "Banks are now looking at upgrading their security."

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Banks take effective efforts to manage core risks

New regulations push financial institutions to deal with operational exposures

By **MICHAEL BRADFORD**

Large banks, having earned their reputations as sophisticated managers of financial risks, are being driven by regulators to apply the same careful attention to their operational exposures.

And, the big retail and institutional banks are becoming savvy enough at addressing those risks that their risk management counterparts at nonfinancial organizations would do well to mimic their approaches, experts say.

Over the past five years, financial institutions have brought a new level of discipline to managing operational risks, said Charles Beresford-Davies, head of Marsh Ltd.'s financial services practice in London, a unit of New York-based Marsh Inc. "Banks have become extremely sophisticated relative to other nonfinancial retail businesses," he said.

New regulations, such as Basel II, have prompted banks, which historically have excelled at identifying and managing financial risks, to bring their operational risk management up to par, sources say.

"Operational risks have been handled for some years by banks," but without the same attention paid to the financial exposures that are closer to their core business, said Michel Yarhi, head of group insurance at Paris-based investment bank Société Générale. "Basel II has obliged us to structure the approach to risk and to check that all kinds of risk have been addressed," he said. "Basel II has given us a new method."

Because Basel II has forced banks to more closely address their risks, Mr. Yarhi said they are becoming pacesetters in terms of sophisticated and comprehensive risk management techniques.

But banks have had to exercise some previously underused risk management muscles to take on operational risks, sources say.

"Nonfinancial risks are more difficult to quantify and the exposure is more difficult to manage," said Richard Smith, banking partner specializing in risk management at PricewaterhouseCoopers L.L.P. in London. "Banks have taken some leaps and bounds in managing them, but that still is relatively new in comparison with managing financial risks," he said.

Mimic a bank's approach

That is because, understandably, banks have tended to focus on managing the exposures that are most closely identified with their business, said Mr. Smith. Look at oil and gas companies, he said. "They really manage operational risks well. That is because those risks are core to their business just as financial risk is core to the banking business."

Sources say that as banks have become increasingly sophisticated in managing financial and operational risks, other, nonfinancial organizations could do well to emulate their approaches.

"Even if they are not obliged by something like Basel II," said Mr. Yarhi, nonfinancial businesses should employ the same rigorous and careful assessments of their exposures as banks that are bound to do so by regulations. "They should adopt the same approach to be sure that they know perfectly well the different kinds of risks and that they know the importance of each one."

Mr. Smith agreed that nonfinancial organizations can learn something about managing risk from banks. "Their strength is financial risk management," he said of banks, which involves precise quantification, measurement and mitigation of risks. "The use of quantitative models is something to learn from. Banks are very good at quantifying risk. I would not say they have perfect data, but they are very good at getting an accurate picture."

Nonbanks can learn "how to create a risk management structure that is robust, one that relates to diversified business units around the world" by studying how financial institutions put together such structures, said Mr. Beresford-Davies.

"There are commonalities," he said. "If you look at operational risks, everyone has fraud, legal, employment and process-failure risks."

Nonfinancial businesses could also take lessons from banks on managing portfolios of risks as opposed to



handling individual exposures, according to Mr. Smith. Banks increasingly have improved the way they manage large portfolios of financial transactions, he noted.

Like publicly held banks, other shareholder-owned companies can benefit by considering the wide ramifications of poorly managed risks, Mr. Yarhi pointed out. "At the end of the day, it is how much can it cost them and their shareholders," he said.

"A main problem today is providing confidence to shareholders," Mr. Yarhi said. "If the chairman can say, 'We know our risks and if something should happen, we are covered,' shareholders will rest easier."

Room for improvement

As sophisticated as they may be in managing their risks, banks are not perfect, even with regard to financial exposures. In a recent example of how financial risk management is less than foolproof, Milan, Italy-based Banca Italease S.p.A. reported in July that it had lost €686 million (\$937.9 million) in derivatives trading. All but two of its directors were forced by regulators to step down and the bank had to reorganize its risk management department in a move it hopes will prevent such losses in the future.

There is still room for improving risk management at financial institutions, sources agree. Financial institutions have been given the tools, now it is up to risk managers to use them, they say.

"What regulation has done to credit and market risks is given better data, better quantitative tools, better transparency," said Mr. Smith. "The challenge now is

embedding it and making it work. They are not quite finished with Basel II," he said of financial institutions. "You have got to embed that."

Some of the emerging risks banks face are related to information technology. Outsourcing has presented a new lineup of liabilities for banks to address and financial institutions fight a constant battle against Internet crime.

Mr. Yarhi said Société Générale battles electronic "phishing" threats by keeping its customers educated against those scams. Phishing scams use phony e-mails to attempt to convince bank customers to give up information that can be used to access their accounts. "We cannot protect the Internet systems of our customers. The most we can do is give them information showing them how to be careful," said Mr. Yarhi.

Société Générale has not had claims from customers burned by phishing scams, he said. If there are such losses, it is unclear whether the bank has insurance coverage in place that would respond, said Mr. Yarhi. "We have not committed fraud if the customer has willingly given his account-access information. I am not sure that insurance would pay for something like that. If someone wants to put their wallet in the street, are we responsible if someone picks it up?"

Because of the nature of their business, the approach to the mitigation of risks is different for banks than nonfinancial organizations. "It is a combination of regulatory prescriptive measures and their own measures," said Vishal Vedi, London-based partner with Deloitte & Touche L.L.P.'s risk consulting team.

Basel II requires that banks model their risks and provides formulas for doing so, Mr. Vedi said. It must be determined for example, how much credit risk the bank faces, he explained. "Then you can put in place a series of risk management and risk mitigation measures," he said.

Banks can then decide, according to their appetite for risk, whether to use credit derivatives or securitization instruments to mitigate credit risk, said Mr. Vedi.

"Capital also is basically a form of insurance," he said, as regulations mandate how much capital must be retained with regard to a bank's exposures.

On the operational risk side, banks are more focused in managing those exposures now that regulations demand it, Mr. Vedi said.

"Until Basel II, the way operational risks were looked at was not especially sophisticated," he said. But under the regulatory framework, "banks are paying more attention to it," he said, in particular because of the requirements that call for the measurement of and mitigation of those exposures.

While banks do not seem to make as much use of captive insurers as large nonfinancial businesses, according to Mr. Vedi, many do use other alternative mechanisms.

Société Générale does have a captive in place, Mr. Yarhi said. "It is for small losses which fall under deductibles" within property/casualty policies that cover the bank and its subsidiaries, he said. "It is a way to have a global approach."

Top risks

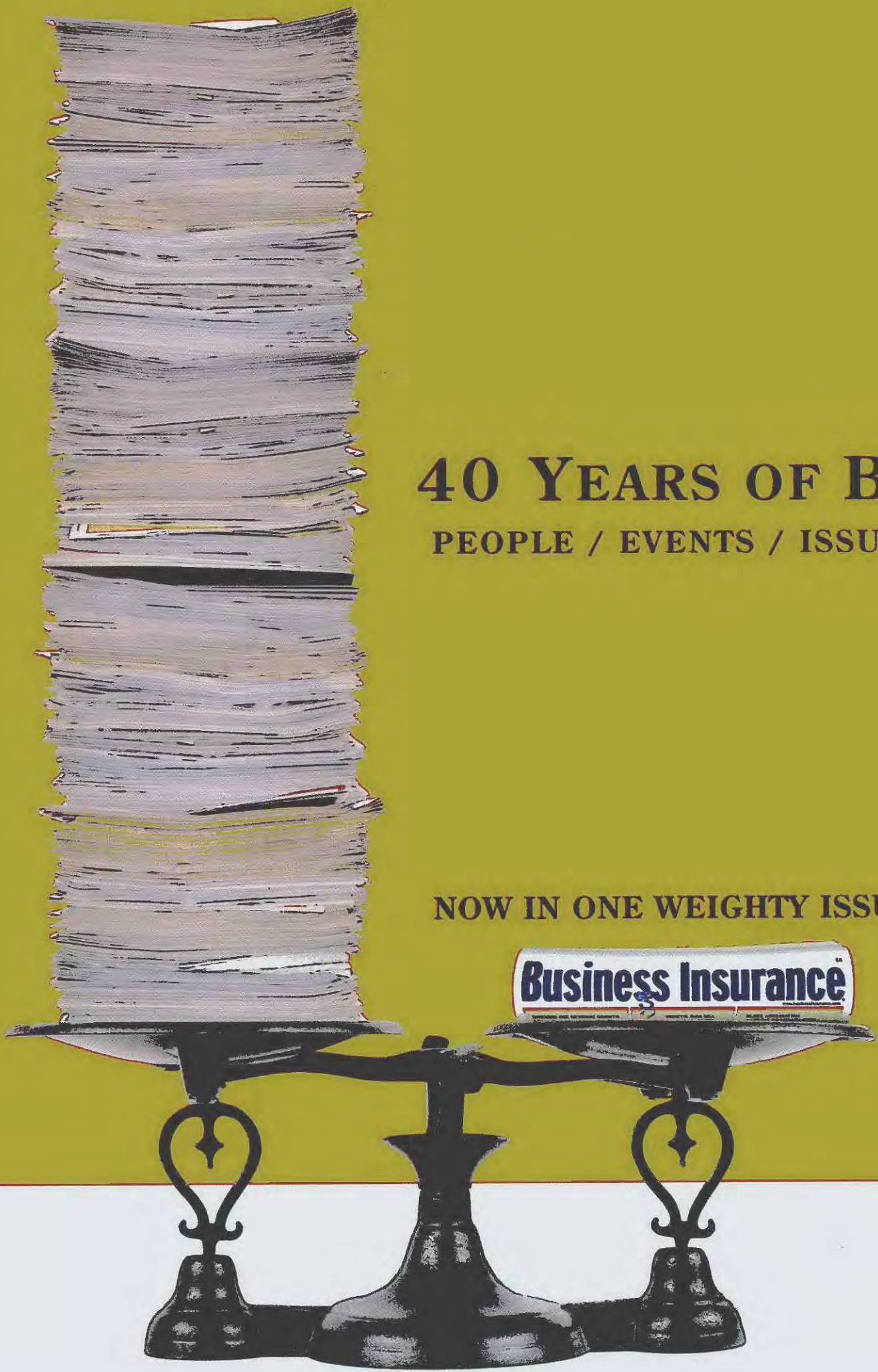
Ironically, as sources give credit to regulation for forcing banks to adopt ever more sophisticated risk management techniques, the regulatory environment is also a big concern for financial institutions.

In a survey by PricewaterhouseCoopers L.L.P. last year, regulatory overkill was cited by financial sector businesses as the greatest risk they faced. The survey that gathered 468 responses from organizations in 60 countries showed that banks and other financial institutions felt that the cost and distractions of heavy regulation endanger their financial health.

Many respondents added comments about political interference that they said was obstructing free markets and said they had concerns regarding government actions to influence the behavior of banks.

The survey listed credit risk as the second-greatest risk faced by the sector, with derivatives at third and commodities fourth.

Financial institutions also indicated that they worry about whether their risk control is up to standard. They listed risk management techniques 10th among the 30 major risks to their operations.



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Market Moves

Aetna enhances Medicare position with acquisition

PHOENIX—Aetna Inc. has completed the acquisition of Schaller Anderson Inc., a Phoenix-based health care management services provider, for \$535 million, the Hartford, Conn.-based health care service provider said.

"This acquisition positions Aetna as a significant player in the Medicare market and gives us an additional avenue for profitable growth," Ronald A. Williams, Aetna's chairman and chief executive officer, said in a statement. "The sale will allow Aetna to enter new markets while providing enhanced services to customers served by both organizations," Joe Anderson, chairman and CEO of Schaller Anderson, said in a statement.

Schaller Anderson administers physical and behavioral health care for Medicaid, Medicare, commercial and self-funded employer plans in eight states—Arizona, California, Delaware, Maine, Maryland, Missouri, New Hampshire and Texas.

Completion of the \$535 million acquisition, which Aetna said was financed with "available resources," was announced earlier this month.

Argonaut Group, PXRE complete merger

HAMILTON, Bermuda—Argonaut

Group Inc. and PXRE Group Ltd. have completed their previously announced merger as part of Argo Group International Holdings Ltd.

Argo Group International becomes the Hamilton, Bermuda-based holding company for insurance subsidiaries of PXRE; U.S. operations of Argonaut Group; and a new Bermuda reinsurer, Peleus Reinsurance Ltd., the company stated about the transaction completed Aug. 7.

Andrew Carrier will be president of Peleus and join the reinsurer later this year.

Mark E. Watson III, president and CEO of Argonaut Group, will hold the same titles with Argo Group International Holdings Ltd.

Jeff Radke, former president and CEO of PXRE Group, which was hit hard financially by 2005 hurricane losses, will serve as a consultant to

Argo Group (BI, March 19).

Hub International buying Texas brokers

DALLAS—Chicago-based Hub International Ltd. said it has entered into an agreement to acquire all of the stock of Dallas-based brokerage Rigg Group Inc. and has completed the acquisition of San Antonio-based brokerage Templeton Southwest Insurance Agency Inc. and Templeton Southwest of Houston Insurance Agency Inc.

Terms of the deals, which were announced earlier this month, were not disclosed by Hub, which said it has completed 120 acquisitions since it was formed in 1998.

Hub itself became the target of an acquisition—a \$1.9 billion buyout by Apex Partners and Morgan Stanley Principal Investments—

that was finalized this summer and took the brokerage private (BI, June 25).

Hub was the 12th-largest brokerage of U.S. business in *Business Insurance's* 2007 ranking (BI, July 16).

TO SUBMIT ITEMS

BI's Market Moves column reports on activities by insurance industry companies and related entities. Personnel changes appear in *Comings & Goings*, while new product offerings appear in *Products & Services*.

Please send Market Moves news to: Charmain Benton, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; cbenton@businessinsurance.com.

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IN THE MATTER OF THE COMPANIES ACT, 1981 AND IN THE MATTER OF THE KODIAK COMPANY LIMITED IN LIQUIDATION

NOTICE IS HEREBY GIVEN that the creditors of the above named Company, which is being voluntarily wound up, are required on or before 21 September 2007, to send their full names, their addresses and descriptions, full particulars of their debts or claims, and the names and addresses of their attorneys (if any) to the undersigned, at PricewaterhouseCoopers Advisory Limited, PO Box HM1171, Hamilton HM EX Bermuda, being the Joint Liquidators of the said Company, and if so required by notice in writing from the said Joint Liquidators are personally, or by their attorneys, to come in and prove their debts or claims at such time and place as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts are proved.
PETER C B MITCHELL & NIGEL J S CHATTERJEE
Joint Liquidators
15 August 2007

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LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT • SOUTHERN DISTRICT OF NEW YORK

In re: Petition of PHILIP HEITLINGER, as foreign representative of AXA Insurance UK PLC, ECCLESIASTICAL INSURANCE OFFICE PLC, GLOBAL GENERAL AND REINSURANCE COMPANY LIMITED, and MMA IARD ASSURANCES MUTUELLES, Debtors in Foreign Proceedings.

In Cases Under Chapter 15 of the Bankruptcy Code
Case Nos. 07-B-12110 to 07-B-12113 (REG)
(Jointly Administered)

NOTICE OF ORDER GRANTING RECOGNITION OF FOREIGN PROCEEDINGS, PERMANENT INJUNCTION AND RELATED RELIEF

NOTICE IS HEREBY GIVEN THAT, in connection with the petitions filed on July 9, 2007 (the "Petitions") by Philip Heitlinger (the "Petitioner"), in his capacity as the duly authorized foreign representative, as defined in section 101(24) of title 11 of the United States Code (the "Bankruptcy Code"), of AXA Insurance UK PLC ("AXA"), Ecclesiastical Insurance Office plc ("Ecclesiastical"), GLOBAL General and Reinsurance Company Limited ("GLOBAL") and together with AXA and Ecclesiastical, the "UK Scheme Companies") and MMA IARD Assurances Mutuelles ("MMA"), the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has issued an Order Granting Recognition of Foreign Proceedings, Permanent Injunction and Related Relief (the "Order"), among other things:

1. Providing that the proceedings respecting the Schemes (as defined in the Order) of the UK Scheme Companies before the High Court of Justice of England and Wales (the "High Court") and the Schemes of the UK Scheme Companies are granted recognition as foreign main proceedings pursuant to section 1517(b)(1) of the Bankruptcy Code;
2. Providing that the proceedings respecting the Scheme of the Non-UK Company before the High Court and the Scheme of the Non-UK Scheme Company are granted recognition as foreign nonmain proceedings pursuant to section 1517(b)(2) of the Bankruptcy Code;
3. Providing that the Schemes shall be given full force and effect in the United States, and shall be binding on and enforceable against any person or entity that is a Scheme Creditor, including, without limitation, against such person or entity in its capacity as a debtor of a Scheme Company in the United States;
4. Providing that the Established Liability (as defined in the Order) in favor of each Scheme Creditor determined in accordance with the Schemes shall be final and binding on the Scheme Companies and such Scheme Creditor, including, without limitation, against such person or entity in its capacity as a debtor of the Scheme Companies, provided the Scheme Companies do not revert to run off in accordance with the Schemes;
5. Permanently enjoining all Scheme Creditors from taking any action in contravention of, or inconsistent with, the Schemes;
6. Permanently enjoining all Scheme Creditors from seizing, repossessing, transferring, relinquishing or disposing of any property of the Scheme Companies related to the Scheme Business or in connection with any Scheme Liabilities in the United States, or the proceeds thereof, to any person or entity other than the Scheme Manager (as defined in the Order);
7. Permanently enjoining all Scheme Creditors from: (a) commencing or continuing any action or legal proceeding in connection with any Scheme Liability (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative action, proceeding or process whatsoever), including by way of counterclaim, against the Scheme Companies, or any property in the United States, or any proceeds thereof, and seeking discovery of any nature against a Scheme Company; (b) enforcing any judicial, quasi-judicial, administrative judgment, assessment or order, or arbitration award obtained in connection with any Scheme Liability, and commencing or continuing any act or action or legal proceeding in connection with any Scheme Liability (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative action, proceeding or process whatsoever) or any counterclaim to create, perfect or enforce any lien, attachment, garnishment, self-off or other claim arising out of a Scheme Liability against the Scheme Companies or any of their property in the United States, or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts; (c) invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring a Scheme Company to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative action, proceeding or process whatsoever) in connection with any Scheme Liability and such statute, rule or requirement will be rendered null and void for proceedings; provided, however, that nothing in the Order shall in any respect (i) affect any Security Interest (as defined in the Order) in existence at the Effective Date (as defined in the Order) or the replacements for such security or (ii) enjoin any policy or regulatory act of a governmental unit, including a criminal action or proceeding, in accordance with section 1521(d) of the Bankruptcy Code; (d) drawing down any letter of credit established by, on behalf or at the request of, a Scheme Company, that relates to the Scheme Business in excess of amounts expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established; and (e) withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar arrangement that relates to the Scheme Business in which a Scheme Company has an interest in excess of amounts expressly authorized by the terms of the contract and any related trust or other agreement pursuant to which such letter of credit, trust, escrow, or similar arrangement has been established; provided, however, no drawing against any letter of credit shall be made in connection with any commutation unless the amount has been agreed in writing with the Petitioner or the Scheme Manager or permitted by further Order of the Bankruptcy Court;
8. Requiring that all Scheme Creditors that are beneficiaries of letters of credit established by, on behalf or at the request of a Scheme Company or parties to any trust, escrow or similar arrangement in which a Scheme Company has an interest that relates to Scheme Business, to: (a) provide notice to the Petitioner's United States counsel of any drawdown on any letter of credit established by, on behalf or at the request of, a Scheme Company, or any withdrawal from, self-off against, or other application of property that is the subject of any trust or escrow agreement or similar arrangement in which a Scheme Company has an interest, together with information sufficient to permit the Scheme Manager to assess the propriety of such drawdown, withdrawal, self-off or other application, including, without limitation, the date and amount of such drawdown, withdrawal, self-off or other application and a copy of any contract, related trust or other agreement pursuant to which any such drawdown, withdrawal, self-off, or other application was made, and provide such notice and other information contemporaneously therewith; and, (b) turn over and account to the Scheme Manager for all funds resulting from such drawdown, withdrawal, self-off, or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such letter of credit, trust, escrow or similar arrangement has been established unless such Scheme Creditor has a bona fide defense to this obligation to turn over;
9. Providing that nothing in the Order shall in any respect prevent the commencement or continuation of proceedings against any person or entity other than the Scheme Companies; provided, however, that if any third party shall reach a settlement with, or obtain a judgment against, any person or entity other than a Scheme Company, such settlement or judgment shall not be binding on or enforceable against the Scheme Companies; and
10. Providing that except with respect to the matters over which the Bankruptcy Court has expressly retained jurisdiction, the above-referenced Chapter 15 cases are hereby closed, subject to it being reopened pursuant to section 350(b) of the Bankruptcy Code. Copies of the Order, the Schemes and the Petitions are available upon written request to the undersigned counsel.

CHADBOURNE & PARKE LLP • Attorneys for the Petitioner • 30 Rockefeller Plaza
New York, New York 10112 • (212) 408-5100 • Attn: Howard Seife, Esq. and Francisco Vazquez, Esq.

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International NEWS

Largest passenger jet hull, liability cover led by Allianz

Munich, Germany-based Allianz S.E. will be the lead liability and hull underwriter covering the world's largest passenger jet—the Airbus A380—when it is scheduled to enter service for Singapore Airlines in October. Singapore Airlines recently renewed its liability and hull insurance, purchasing \$2.25 billion of liability coverage and \$275 million of hull

coverage per aircraft, according to a market source. The jet can accommodate up to 853 passengers depending on its configuration. Airlines, though, are expected to configure the jet to carry around 500 passengers. London-based Willis Group Holdings Ltd. placed the coverage for Singapore Airlines.

—By Dave Lenckus



REUTERS

Despite a huge blaze when an engine on a China Airlines Boeing 737-800 exploded after landing in Japan, all 165 passengers and crew aboard the commercial passenger jet had already escaped safely.

Aviation insurance market takes jet crash and jet fire in stride

One more major mishap, however, could begin to affect pricing

By DAVE LENCKUS

The loss of a Chinese commercial passenger jet last week on the heels of a tragic Brazilian jet crash last month likely will not harden the aviation insurance market, but it may stem rate cuts for airlines with blemished loss records, market experts say.

Before the China Airlines loss, some insurers already were paring back capacity in a competitive market, and airline risk managers with fourth-quarter renewals faced the

likelihood of having to line up more underwriters to secure their desired limits.

The market, however, remains overcapitalized despite those actions, experts say. Airlines with good loss records, therefore, still should be able to negotiate rate cuts during fourth-quarter renewals, if market losses do not deteriorate more than expected for the remainder of the year, they said.

But, with marketwide losses for the year edging up to a level where another big loss could threaten the

market's profitability, some airlines that do not have pristine loss records should not expect rate cuts, brokers said.

China Airlines sustained a \$45 million hull loss Aug. 20 when one of its Boeing 737-800 passenger jets exploded on an airport tarmac shortly after landing in Okinawa, Japan. All 157 passengers and eight crew members—including two pilots who jumped from a cockpit window—escaped safely before the

See **AIRLINES** page 20

Former Zurich exec sanctioned in finite reinsurance case

By RUPAL PAREKH

SYDNEY, Australia—Zurich Australian Insurance Ltd.'s former chief executive officer has been sanctioned by Australia's insurance regulator over improper finite reinsurance deals.

The Australian Prudential Regulation Authority has banned Malcolm Murray Jones from being or acting as a director or senior manager of a general insurer or an authorized

non-operating holding company or being an agent of a foreign general insurer.

Mr. Jones—who served as a director and CEO of ZAIL from 1998 to 2002—is the seventh former Zurich executive to be disqualified by or have accepted enforcement by APRA relating to the regulator's investigation of two financial reinsurance transactions in 2000 with General & Cologne Re Group Australia that caused ZAIL's profits to

be overstated.

Other former executives who were banned previously are: John Butler, Richard Mayo, Alan Parsonson, Florian Salzgeber, John Stanbridge and Robert Stevenson.

In a statement earlier this month, APRA said its investigation found that Mr. Jones was not only aware of the purpose and effect of the reinsurance contract but knowingly facilitated the deal and misled ZAIL's board and auditors regarding

the deal's effect on the company's balance sheet.

The transactions ZAIL entered into with GCRA in some cases involved no genuine risk transfer, which APRA described earlier as "a complex opaque arrangement involving multiple contracts spanning several legal jurisdictions."

In March, APRA concluded its investigation into ZAIL itself and said it would pursue no further

actions against the company (BI, March 19).

In a 2005 settlement with regulators, ZAIL and parent Zurich Financial Services Australia Ltd. agreed to submit to corrective actions in lieu of legal charges against the companies.

Among other things, the ZFS units agreed to bolster corporate governance procedures and improve accounting for reinsurance transactions.

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Commentary

Renewal déjà vu for terrorism backstop

As the great philosopher Lawrence Peter Berra put it, "it's déjà vu all over again."

But déjà vu means thinking you've experienced something before when you encounter the situation for the first time. You think you've been there before, but you haven't. Unfortunately, the situation regarding the extension of the federal terrorism insurance backstop is a repeat of a very real event.

August 2007 looks an awful lot like August 2005. As was the case two years ago, the backstop is slated to sunset on Dec. 31. And as was the case two years ago, extension legislation has yet to pass either house of Congress.

One difference comes in the fact that recently a bill to extend the program—and extend it by a hitherto unthinkable 15 years—won approval of the House Financial Services Committee only days before Congress broke camp and headed home for the August recess. That's progress, but it's offset by the fact that no companion legislation has surfaced in the Senate and what ultimately emerges in the Senate will almost surely be much more modest in terms of both scope of coverage and duration of extension.

Supporters of the backstop—supporters that include the Risk & Insurance Management Society Inc., all major property/casualty and life insurance trade groups and assorted other business and public policy organizations—had reason to believe this August would not track August 2005 so closely. Within weeks of last year's off-year elections that gave Democrats control of both houses of Congress for the first time in a dozen years, I asked the prospective chairmen of the committees that would deal with the backstop issue what kind of priority they placed on extending the backstop. At separate press briefings, both answered that the backstop was high priority, and one that they intended to deal with sooner rather than later.

That was before Christmas and now we're looking at Labor Day. There's a distinct possibility that events will continue to track those of two years ago a bit too closely for comfort. Even though we're a bit ahead of the 2005 curve, given the Financial Services Committee's vote, there's a lot of work left to do.

When Congress returns, the House will have to take up the measure approved by the Financial Services Committee. The Senate Banking, Housing and



MARK A. HOFMANN

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Urban Affairs Committee will probably come up with its own bill, which will have to go through the legislative process.

Assuming that both chambers approve their own versions of the bill, those versions will have to be reconciled by a conference committee and then returned to both chambers for final passage and then on to the White House for the president's signature.

The situation regarding the extension of the terrorism insurance backstop is a repeat of a very real event.

That's time consuming under any circumstances. But further complicating the situation is the fact that the administration has already made its displeasure with the House bill known, particularly with the 15-year extension provision. I doubt that President Bush would veto any terrorism insurance measure approved by both chambers, given the support for extension from what is often a key Republican constituency—insurance agents—when the president's party will need all of the support it can muster in 2008. But administration opposition could scale back the final bill—or delay passage until the last possible moment, as happened in 2005.

The question is how far the bill would be pared back to be acceptable to the White House and its congressional supporters. If 15 years isn't acceptable, would a shorter extension—say six years—work? Or will the only acceptable extension be two years? I certainly hope not, if only because I don't want to be writing this column again in August 2009.

Security: Guidelines to help mitigate risk

CONTINUED FROM PAGE 4

and good organizations will make them a part of their business continuity plans," said Drew McArthur, vp, corporate affairs and compliance officer for Vancouver, British Columbia-based TELUS Communications Inc. and a key participant in developing the guidelines.

The guidelines can help mitigate a critical risk for companies experiencing data breaches—potential harm to an organization's reputation or brand by mismanaging the situation. "That's really where the big potential problems occur because once customers decide you can't be trusted, it's difficult to get their trust back," said Mark Hayes, a Toronto-based partner with Blake, Cassels & Graydon L.L.P. who consults on privacy issues.

Class action lawsuits against companies experiencing data breaches is another exposure. "Certainly, there's the possibility of liability issues and that is something organizations are taking quite seriously, although so far in Canada there have been no situations where organizations have been found liable for data breaches," Mr. Hayes said.

The most controversial aspect of the guidelines is the absence of mandatory notification of consumers in all instances of a data breach, observers say. Data breaches should be considered on a case-by-case basis with the key consideration being whether notification is necessary to avoid or mitigate harm to an individual whose personal information has been inappropriately accessed, collected, used or disclosed, according to the guidelines. For example, if a company

laptop containing encrypted information were to be lost or stolen and subsequently recovered but the information had not been tampered with, notification may not be necessary, the guidelines say.

Several consumer groups withdrew support in favor of a legislative response because the guidelines do not mandate consumer notification in all data breaches. The Public Interest Advocacy Centre, for example, expressed concern that notification was left to a company's discretion, arguing that companies are not in a good position to judge potential harm to their customers and that their commercial interests could factor into notification decisions, said John Lawford, counsel for the Ottawa-based consumer group.

Notification, though, is not always in individuals' best interests, according to companies and business associations involved in the consultation process. Consumers could be desensitized to potential risks if they receive a flurry of data breach notifications and might ignore situations that would require them to take action, privacy experts say. On the flip side, individuals notified of a data breach may take unnecessary action, such as canceling credit cards, they say. In addition, mandatory notification could give potential criminals insight into the value of the stolen information.

"If you had to notify in those circumstances, what you're doing is creating more harm to the individual," said Frank Zinatelli, a Toronto-based vp and associate general counsel for the Canadian Life and Health Insurance Assn., which participated in the consulta-

tion process.

PIAC rejected these arguments, saying consumers have the desire and right to know if any of their personal information is breached. "It's better for them to know so that they can take precautions" such as monitoring their credit reports, Mr. Lawford said.

Many organizations, including TELUS, voluntarily notify customers of data breaches even in circumstances that do not meet the threshold in the guidelines, Mr. McArthur said. "We have undertaken notification in very benign circumstances and it's more to cement the relationship with the customer."

Compliance expected

Canadian companies are expected to comply with the voluntary recommendations, particularly in light of the number of data breaches in Canada, the risks they present and the "common-sense" approach of the guidelines, privacy experts say.

Widespread compliance could stem the movement toward mandated breach notification, which Ms. Stoddart, several legislators and consumer groups that include PIAC are still promoting, privacy experts say.

"The Canadian experience has been so far that guidelines work well in this country," said Ariane Siegel, a partner in the technology industry group of Gowling Lafleur Henderson L.L.P. and a member of the Information Technology Assn. of Canada, which consulted on the guidelines. "We don't always need statutes and regulations to tell us what to do."

Data breach guidance establishes key steps

OTTAWA—Jennifer Stoddart, the privacy commissioner of Canada, outlined key steps for Canadian companies to consider when responding to a suspected or actual breach of personal information security.

Companies should immediately take steps to limit the breach, including stopping the unauthorized access, recovering the records, shutting down the system that was breached, revoking or changing computer access codes and correcting physical or electronic security weaknesses.

"I think that is absolutely critical," said Ariane Siegel, a partner in the technology industry group of Gowling Lafleur Henderson L.L.P. and a member of the Information Technology Assn. of Canada, which consulted on the guidelines.

Organizations should also designate a point person to lead the investigation and, if necessary, assemble a breach response team that could include the company's privacy officer, security officer, risk manager and legal counsel. During the investigation,

staff members should be careful not to destroy evidence that may be valuable in determining the cause of the breach and the appropriate corrective action, according to the guidelines.

After containing and assessing the breach, companies should evaluate the risk associated with the breach. For example, companies should assess the type of data breached, the sensitivity of the information and the number of affected individuals. They also should assess the potential harm to customers, such as financial loss, identity theft and security risks as well as the harm to the organization, including the risks to its reputation and possible class action lawsuits.

Although notification is not legally mandated, it can be an

important mitigation strategy in managing the aftermath of a breach, according to the guidelines.



Jennifer Stoddart, privacy commissioner of Canada, issued voluntary guidelines to help companies take the right steps after data is breached.

If a privacy breach creates a risk of harm to customers, they should be notified promptly, which can help them take steps to protect themselves. Notification, though, should be determined on a case-by-case basis.

Finally, companies should consider developing a plan to prevent future breaches, which could include a security audit of

both physical and technical security and a review of policies and procedures to incorporate lessons learned from the data breach. In addition, the plan may include a review of employee training practices and of service delivery partners.

—By Gloria Gonzalez

Subprime: Property/casualty insurers to experience minimal exposures

CONTINUED FROM PAGE 3

investment bank Keefe, Bruyette & Woods Inc. in New York, said insurers with bad investments in this area will have a book value impact "that takes a little bit of capacity out of the business, but I think the property/casualty business is generally positioned pretty well in terms of direct exposure, because their underlying profitability is so strong. I don't think the (property/casualty) industry was reaching for yields or taking a lot of risky investment bets." Instead, for the most part, it was "focusing on the underwriting part of the business," said Mr. Gallant.

"I don't see this as being a big issue" for the commercial property/casualty industry, said John L. Ward, chief executive officer of Cincinnati-based Cincinnati Partners L.L.C., an advisory firm specializing in the insurance industry. "Its impact and exposure are quite manageable."

Mark Lane, an analyst with William Blair & Co. in Chicago, said: "Property/casualty insurance companies philosophically take more of the risk with their business on the underwriting. So relative to the life insurance industry," their portfolios are "quite conservative, although I'm sure there's some companies that have been a little

bit more aggressive," said Mr. Lane. "But overall, for the industry, we don't see it as being a material issue."

Moody's analyst Jeffrey Berg said one question that had arisen earlier in the month was whether the subprime crisis would lead the industry's access to capital to dry up if it was needed in the event of a large catastrophe.

But "it seems a little bit of that pressure has come off" since the Federal Reserve board cut the discount rate by half a point on Aug. 17, said Mr. Berg. "It took some of that stress off the market, so liquidity freed up, at least relative to what it had been," he said.

"It tells us insurers can probably go back to the market to some extent if they need to," Mr. Berg said.

However, "once they come to grips with the subprime issue, people will look around and say, 'What else has a risk that we might be devaluating?'" said Chris McShea, a principal with Ernst & Young L.L.P.'s insurance advisory practice in Chicago.

"There has been a lot of money that has been funneled towards the property cat exposure in the last 18 months," said Mr. McShea. "Last year, people made a lot of money because the wind did not blow. And that seemed to support the decision

to invest there."

However, the current situation may lead people with significant investments in the industry to "take a step back and rethink those a little bit, just because this subprime stuff was a pretty harsh lesson on not taking a hard enough look at the risk factors," said Mr. McShea. The investments in the catastrophe area "may end up on the 'C' list as far as risk is concerned."

Property/casualty insurers' 2007 first-half results

Ranked by net income. All amounts are in thousands of dollars.

	Corporate			Property/casualty operations		Property/casualty operations		
	Net income	Percent increase (decrease) 2007-2006	Consolidated revenues 2007	Combined ratio 2007 ¹	Combined ratio 2006 ¹	Net premiums written 2007	Percent increase (decrease) 2007-2006	Policyholder surplus 2007
American International Group Inc.	\$8,407,000	31.7 %	\$61,795,000	87.3%	87.8%	\$24,245,000	5.9 %	N/A
The Travelers Cos. Inc.	2,340,000	18.4	13,000,000	88.5	89.4	10,858,000	4.1	\$21,843,000
Hartford Financial Services Group Inc.	1,503,000	24.8	14,419,000	90.3	89.0	5,296,000 ²	(0.8)	8,400,000
Chubb Corp.	1,419,000	11.7	7,040,000	83.1	84.0	5,925,000	(1.3)	12,250,000
ACE Ltd.	1,350,000	27.1	7,017,000	87.4	89.3	6,177,000	(1.2)	15,184,000
Liberty Mutual Insurance Co.	689,000	12.0	12,438,000	105.8 ²	102.9 ²	8,059,000 ²	5.2	13,547,000
Cincinnati Financial Corp.	545,000	(20.4)	2,301,000	89.1	93.3	1,656,000	0.8	4,937,000
CNA Financial Corp.	513,000	9.6	4,986,000	94.9	96.0	3,504,000	(1.2)	8,380,000
SAFECO Corp.	368,900	(9.6)	3,046,200	89.8	86.8	2,855,500	(0.8)	3,508,100
Old Republic International Corp.	222,900	(8.7)	1,989,800	92.5	88.8	1,783,000	5.4	N/A
American Financial Group Inc.	180,600	(19.5)	2,171,500	86.4	88.1	1,337,500	3.2	2,647,000
Ohio Casualty Corp.	119,700	36.8	807,100	90.3	97.0	702,700 ²	(3.3)	1,111,400
RLI Corp.	82,370	69.6	333,124	76.5 ²	90.9 ²	276,305 ²	(2.0)	784,264
Argonaut Group Inc.	46,100	5.0	475,900	96.6	95.0	401,300	6.1	860,200
Cumulative	\$17,786,570	20.8 %	\$131,819,624	90.1%	90.2%	\$73,076,305	2.9%	\$93,451,964

1 Includes dividends. 2 Statutory.

Source: BI survey, company reports

Results: Price softening to continue

CONTINUED FROM PAGE 3

ue to see pressure on pricing," said Mark Lane, an analyst with William Blair & Co. in Chicago. The latter "became more intense as the first half developed, and I think that has continued into the third quarter."

"Earnings results have been quite good because claims inflation has continued to be very benign," Mr. Lane said. "There's been some modest loss reserve development on prior years and catastrophe losses have been relatively well-contained, so all in all, it was a very good first half."

James B. Auden, senior director at Chicago-based Fitch Ratings, said earnings in fact are "a little worse than it looks like on the surface" because of reserve redundancies that have been released into income.

Those reserving actions "seem to have been warranted," said Mr. Ward of Cincinnati Partners. "I don't think the industry is setting itself up for a giveback for the future. It's a byproduct of pretty solid reserving practices over the last couple of years."

Earnings should continue to be strong at least for the second half, say observers. "It should be a good year—probably not as strong as last year—but returns on capital will be pretty good," said Mr. Auden.

"Weather aside, I expect that profitability is going to continue to be good, even with price cuts starting to take a bite out of returns," said Mr. Gallant of Keefe, Bruyette & Woods. "You still have favorable loss trends, redundant reserves and strong investment income helping to buoy results," he said.

There will be "continued favorable results from an earnings perspective, but underlying deterioration in pricing," said William Blair's Mr. Lane.

"We're not seeing the margin pressure yet, given the pressure on pricing and the pressure on premium growth, but we will," Mr. Lane said. However, "We don't expect it, really, until maybe early to mid-2008 because the claims inflation environment continues to be so benign."

"It's still going to be a strong year this year, barring any major catastrophes, and most likely a pretty good

year next year again, but there is going to be margin compression, results are going to deteriorate on the whole," said Andrew Colannino, vp in the P/C division for Oldwick, N.J.-based A.M. Best Co. Inc. Best predicts a 98% combined ratio for this year for commercial P/C insurers, but "I would expect that combined ratio to increase a little bit in 2008," he said.

Price softening, meanwhile, will continue, observers say. "Strong profits mean more competition. I think over the next year we'll see pricing continue to fall, probably across all lines of business," said Mr. Gallant.

"There's just a lot of capacity built up in the market and companies are trying to deploy it," said Mr. Auden of Fitch Ratings. "That increases competition" and leads to rate declines. "We don't see anything" reversing that trend, he said.

Steven Ader, a director at New York-based Standard & Poor's Corp., said he expects the price declines to bottom out in 2008. "It's going to have to bottom out some time. It can't keep declining by 10% a year."

Meanwhile, some observers anticipate increased merger and acquisition activity. One recent major deal was Boston-based Liberty Mutual Group Inc.'s \$2.7 billion acquisition of Fairfield, Ohio-based Ohio Casualty Corp., which is expected to bolster Liberty Mutual's small and midsize book of business (BI, May 14).

"Premium growth was relatively flat and, in most cases, well behind expectations for the first half, so there are signs that organic premium growth has virtually dried up, and that could potentially lead to some stepped up M&A activity," said Mr. Ward.

"I would expect to see a stepped up level of M&A activity over the next 12 months because of those two factors playing off each other," he said.

"I think that consolidation is a theme on everyone's mind," said Mr. Lane. "And with valuations for the group coming down, given the overall stock market weakness and maybe some concern about increasing pricing competition, I think that makes consolidation activity more likely in the near term, particularly if some of the valuations for some of the smaller cap companies have come down quite a bit."

Big insurers unaffected

Major U.S. property/casualty insurers report relatively little, if any, involvement in subprime mortgage investments.

For example, as of June 30, New York-based American International Group Inc. has total holdings of \$28.7 billion, about 3.5% of its total invested assets, in subprime residential mortgage-backed securities, according to the company. Of the \$28.7 billion, 97.5% is in securities rated AAA or AA.

The company also has \$253 million invested in subprime collateralized debt obligations, which are similar in structure to residential mortgage-backed securities.

AIG units also extend first- and second-lien mortgages to borrowers, provide mortgage insurance for first and second-lien mortgages and provide credit protection through credit default swaps on collateralized debt obligations.

Chicago-based CNA Financial Corp. said it has written down \$20 million in securities linked to subprime mortgage collateral. For the first half, CNA held \$834 million of securities linked to subprime mortgages, which accounted for less than 2% of invested assets, according to the company. A total of 94% of these are rated A or better.

A spokesman for Warren, N.J.-based Chubb Corp. said, "We have no subprime exposure or CDO exposure in our investment portfolio."

The Hartford, Conn.-based Hartford Financial Services Group Inc.'s subprime mortgage-backed security holdings had a book and market value of \$3.4 billion, or 3.6% of total investments, excluding trading securities, as of June 30, of which 86% are rated AAA or AA, according to the company.

At St. Paul, Minn.-based The Travelers Cos. Inc., these investments account for 0.3% of the insurer's total fixed-income portfolio, and no securities in its residential real estate mortgage portfolio have been downgraded or placed on credit watch this year, according to the company.

—By Judy Greenwald

Mining: Utah accident's impact uncertain

CONTINUED FROM PAGE 1

Mines worldwide have a high exposure level, said Josh Phair, vp in Phoenix for Willis Group Holdings Ltd.'s mining practice. Accidents—both fatal and nonfatal—can force mines to shut down for extended periods.

Contributing to production delays is worldwide demand for scarce mining equipment, which can force companies to wait months for replacement parts, while rising commodity prices exacerbate their business interruption losses, Mr. Phair said.

Government investigations, even for nonfatal accidents, also cause closures to drag on, observers say.

Beginning about two years ago, underwriters responded by adjusting their business interruption contracts, the risk manager said. Previously, underwriters offered policies that paid based on the price per ton of coal at the time they sold the coverage.

But during that same period, coal prices generally have risen significantly after underwriters already priced their property contracts, causing insurers to suffer significant losses, the risk manager explained. Now, payouts often are determined by a mine's daily fixed costs.

Many insurers also increased their deductible waiting period from 30 days to 45 days, in some cases pushing it as high as 90 days, the risk manager said. While accidents have played a role, other factors, such as the 2005 storm losses that affected many property insurance deals, also had an impact, the risk manager added.

"The market almost went away" for property insurance for underground coal mines, the risk manager said.

Several insurers stopped writing property coverage for coal mines, said Ron Parry, senior vp and a mining account executive for Aon Corp. in Pittsburgh. But purchasing con-

ditions, which include general market softening, have improved over the past year for coal mining operations, with some underwriters easing up on the 90-day deductible waiting period, he said.

Whether the Crandall Canyon accident will affect the mining industry's property insurance market remains to be seen, brokers said. A tunnel collapse at the mine south of Salt Lake City trapped six coal miners—whose fate remained unknown last week—and three rescue workers were killed in a subsequent collapse.

D&O exposure

In addition to creating property/business interruption and workers compensation losses, mining accidents also have triggered lawsuits against company directors and officers.

The "headline risks" associated with high-profile mining accidents in recent years have made D&O underwriters concerned about the industry, despite its solid business fundamentals, said R.J. Coar, senior associate who places D&O coverage for mining companies at Integro Insurance Brokers in New York.

So-called activist hedge funds within the past year or so targeted several coal mining companies in potential takeovers. That has made D&O purchases more challenging for coal mining companies, Mr. Coar and the risk manager said.

Tragic accidents that grip media attention don't help, either.



AP PHOTOS

Separate collapses at the Crandall Canyon coal mine in Utah trapped six miners and killed three rescuers trying to reach the trapped miners.

"It's fair to say that as these things captivate the media and captivate the public. So, too, do they captivate the imagination of the plaintiffs bar, and underwriters are very sensitive to that," Mr. Coar said.

Safety improving

Recent mining incidents have come amid an improving safety culture within the U.S. coal mining industry, said Stephen Dmytriw, a health and safety specialist at the Colorado School of Mines in Golden, Colo.

In the first half of the 20th century, coal mining had one of the worst fatal accident rates in the nation, with hundreds of miner deaths yearly, Mr. Dmytriw said. With added government inspections and financial pressures, coal mining companies became more convinced that miner safety "adds to the bottom line," he said.

Improved technology and a reduction in the number of workers necessary to mine coal have helped reduce fatalities, Mr. Dmytriw said.

In 2006, coal mining companies saw worker deaths spike to 47, after declining to 22 the prior year, U.S. Mine Safety and Health Administration data shows. Seventeen coal mine deaths have been reported so far this year.

Willis' Mr. Phair agrees that safety records have improved. A shortage of skilled workers coupled with knowledge that accidents hurt productivity has driven companies to value safety over a constant push for production.

Workers compensation costs also have forced mining companies, like other employers, to consider safety. Companies with a favorable loss history have seen declines in workers comp coverage prices, even though many underwriters still avoid workers comp coverage for underground coal mines, Mr. Phair said.

Airlines: Despite crash, market overcapitalized

CONTINUED FROM PAGE 17

jet exploded. The jet had landed early from a flight originating in Taipei, Taiwan, where China Airlines is based.

Global Aerospace Underwriting Managers Ltd. of London is the airline's lead hull and liability insurer. Chicago-based Aon Corp. placed the coverage.

China Airlines, which has a checkered loss history, canceled its existing coverage in July and negotiated a new policy for a reduced premium, according to sources. It renewed early because of concerns that rate reductions would be difficult to obtain during the market's primary three-month renewal season, which begins Oct. 1.

Over the past 10 years, the airline has had four total losses, three of which resulted in a total of 391 fatalities, said broker Trevor Howard, a partner with Jardine Aerospace, a London-based unit of Jardine Lloyd Thompson Group P.L.C.

The number of total losses for the airline is "quite extraordinary," Mr. Howard said. The number of fatalities also is high, he said.

On average, the world's 400 airlines sustain 24 total losses that result in 1,000 fatalities annually, Mr. Howard said. Over a 10-year period, that averages 25 fatalities and less than one loss per airline.

A month earlier, an Airbus 320 jet operated by Brazilian airline TAM Linhas Aereas S.A. crashed while landing in rainy conditions at Congonhas Airport in Sao Paulo, Brazil, killing nearly 200 passengers, crew and ground personnel. The destroyed jet was valued at \$41 million (BI, July 23).

Even before the TAM crash, losses this year were slightly higher compared with the same period a year ago but still were far below losses over the past several years on average, according to brokers.

Therefore, the China Airlines loss will not change the market, several brokers predicted. During last year's fourth-quarter renewals, airlines negotiated double-digit rate cuts—



LANDOV

Firemen work at the site where a TAM jet crashed in Sao Paulo, Brazil, in July and killed up to 200.

some as high as 20%, according to brokers.

"Unless something drastic happens, I don't see anything changing too much" for the upcoming renewal season, said Alan P. Webb, managing director of the aerospace division at London-based Heath Lambert Ltd.

But the market is "becoming less tolerable to rate reductions," and underwriters are telling brokers not to expect large rate reductions during the upcoming renewal season, one broker noted.

Brokers, however, do not expect that underwriters will be able to maintain that resolve across the board, the broker said.

Another broker, Wayne Wignes, the Chicago-based vice chairman of the North American aerospace division at JLT, agreed that good risks still should be able to negotiate rate cuts.

But because China Airlines sustained a hull loss, which underwriters pay quickly, the market's resolve to stop premium reductions across the board will be strengthened, he predicted.

The result likely will be that airlines with bad experience will face rate hikes, he said.

MAJOR ACCIDENTS

Underground coal mining had several fatal accidents in 2006, including:



REUTERS

JAN. 2: Methane explosion kills 12 miners at the Sago Mine in Tallmansville, W.Va. Surviving relatives sue International Coal Group Inc. and its executives. Among the allegations, plaintiffs claim the mine owner caused emotional harm by waiting to correct initial statements that the miners survived. Related litigation against ICG is still pending. In a 10-K statement filed last month, Scott Depot, W.Va.-based ICG said it is appropriately insured and has reserved for any deductible it might have to pay.

JAN. 19: Conveyor belt fire kills two coal miners at a Massey Energy Co.-owned mine in Melville, W.Va. A still-pending suit alleges publicly traded Massey and Don Blankenship, its chairman, chief executive officer and president, were negligent in handling safety, said Bruce E. Stanley, an attorney at Reed Smith L.L.P. in Pittsburgh, who represents surviving family members. Mr. Stanley said he believes a directors and officers liability insurer is providing a defense for Massey; the company did not return a phone call.

MAY 20: Methane gas explosion kills five miners at Darby Mine No. 1 in Holmes Mill, Ky., operated by Kentucky Darby L.L.C. The mine operator has been dismissed from a suit brought by a survivor of the explosion and relatives. Litigation, however, continues against other parties.

Source: U.S. Mine Safety & Health Administration, attorneys, court records

IRS: 401(k) health benefits rule 'final nail in the coffin'

CONTINUED FROM PAGE 4

favorable basis.

Under federal law, for example, employers can designate that up to 25% of their contributions to their defined benefit pension plans be used to fund retiree health benefits, while a portion of assets from over-funded pension plans can be used for the tax-favored funding of retiree health care benefits so long as certain conditions are met.

Additionally, last year's sweeping pension funding reform law includes a provision through which retired public safety officers can use up to \$3,000 a year of their pen-

sion benefits to pay for retiree health care premiums on a tax-free basis.

So long as the retiree makes such an election and the amount is directly transferred by the plan to an insurer, the retiree will not be taxed on the amount.

Given how specific Congress has been in laying out rules for tax-favored funding of retiree health care benefits, "a broad exclusion permitting a tax-favored treatment of any distribution used to pay accident or health insurance premiums would be inconsistent with this intentional statutory scheme," the IRS said.



AP PHOTOS

Hurricane Dean, which was a Category 5 storm when it struck Mexico, caused relatively little insured damage.

Hurricane: U.S. insurers dodge bullet with Dean

CONTINUED FROM PAGE 1

closely and we have a direct feed from the National Hurricane Center, and for the longest while they had this running right over the top of Jamaica. Our Caribbean manager has reported back to us that there's plenty of damage, but I think when you expect the worse and anything less than that you feel like you've done OK," said Mr. Trice.

"The industry and the economy are fortunate that it did not hit Jamaica head-on or the Caymans or the resorts in Mexico," said William Eyre, managing director and chief executive officer of Philadelphia-based Towers Perrin Reinsurance.

"We have good indications of what losses could be in those areas from Ivan in '04 and Wilma in '05," he said. "The key is the industry as well as Wall Street are keeping a close eye on the next two months to see what other storms could develop."

Because of where Dean did hit, there was not enough damage to "to generate any significant loss," said Tim Gardner, global leader-property specialty practice for reinsurance intermediary Guy Carpenter & Co. L.L.C. in New York. "I think to start to have an impact on prices, we're probably talking about a \$20 billion event to move the reinsurance market."

"It was big, powerful, strong storm," said Mr. Gardner. Had it struck more populated areas, "it could have been a much different situation."

The Half Moon Montego Bay resort in Rose Hill, Jamaica, issued a statement Aug. 20 saying it was ful-

ly operational. "A survey crew has assessed the property and has reported only some fallen trees, limbs and debris. There has been no physical damage to any structure or injury to any person," according to the resort.

Commercial properties fared better than they might have because of construction improvements made after Hurricane Wilma struck Mexican resort areas and Florida in 2005, observers said.

Hurricane Dean had "very minimal impact" on Marriott International's property in the Cayman Islands, said Bradley R. Wood, senior vp-risk management for Bethesda, Md.-based Marriott International Inc. Damage at Marriott's Cancun operations "was described as minor—minimal water leaks," said Mr. Wood.

Mr. Wood noted that resort operators learned from 2005's Hurricane Wilma and rebuilt damaged structures to incorporate the latest hurricane protection. New emphasis was placed on tying down roofs, window frames and glazed windows, with the "overall goal to mitigate the potential of penetration of the building," he said.

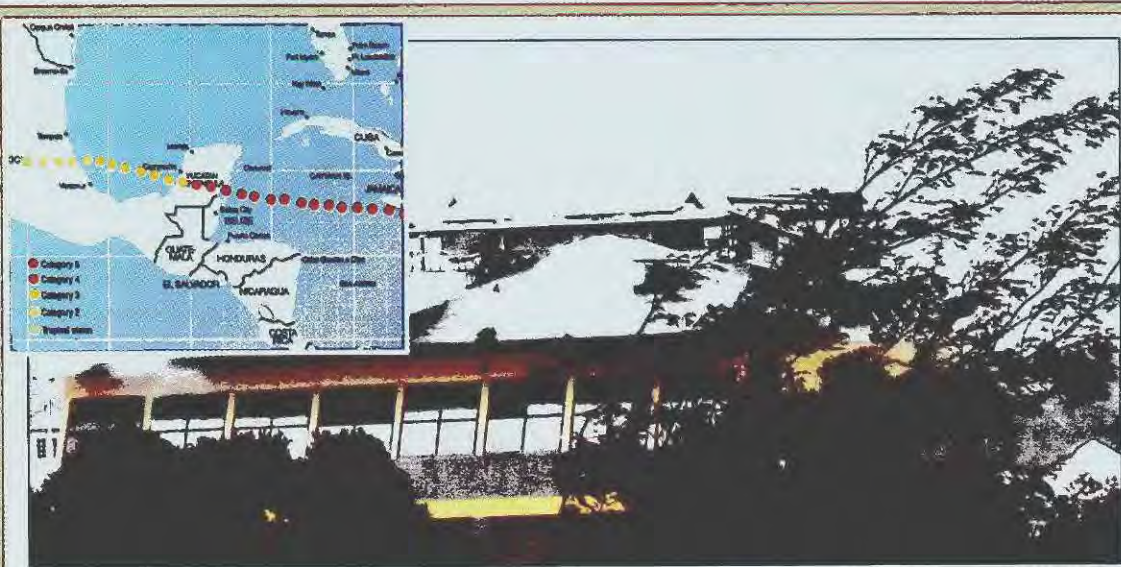
"Very fortunately, for a Category 5 storm, damages were not of the magnitude that they could have been," said Claire Wilkinson, vp-global issues at the Insurance Information Institute in New York.

She said that "people have learned" from the unusually active 2004 and 2005 hurricane seasons. Owners of commercial structures "have heeded advice in building stronger structures."

"You tend to have the rebuilds built up to modern code. That's a consistent lesson people have learned over a long time," said Guy Carpenter's Mr. Gardner.

"Awareness has grown significantly," said Ms. Wilkinson. "Hopefully, people have learned from the '04 and '05 storm seasons that you can't take these storms lightly."

Ms. Wilkinson noted that "we still have along way to go in the hurricane season," adding "it behooves all of us to be prepared because we might not dodge the next bullet."



MIAMI HERALD

Though several buildings in Jamaica were damaged by Hurricane Dean, wind speeds on the island were not enough to trigger payouts from the Caribbean Catastrophic Risk Insurance Facility.

Caribbean Catastrophic Risk Insurance plan won't make any payouts because of Dean

Last week's Hurricane Dean will not trigger any payout by the Caribbean Catastrophic Risk Insurance Facility, but it came close.

"Had Dean gone past 30 miles further north as it passed Jamaica, then the policy would have triggered to its full limit for Jamaica, which is \$50 million," said Simon Young, chief executive officer of Kingston, Jamaica-based Caribbean Risk Managers Ltd., which has been appointed to oversee CCRIF. "It was very close to triggering a full payout for them," he said.

"It was a significant event," said Mr. Young, but not the kind that CCRIF was set up for, which are those natural disasters that have a "long-term impact on entire economies."

CCRIF, the Cayman Islands-registered regional disaster insurance facility, officially began

offering coverage to participating Caribbean and other nations at the start of the 2007 hurricane season (BI, June 4).

Those nations are: Anguilla, Antigua and Barbuda, Barbados, Belize, Bermuda, Cayman Islands, Dominica, Grenada, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, and Turks and Caicos Islands.

Policies written by the facility are parametric, linked to the intensity of a particular event, not specific losses. The policies can be triggered to provide coverage in the wake of multiple catastrophes, though, provided the sum of the insured losses do not exceed the aggregate liability under a particular country's policy.

In the case of Jamaica, this year it paid a \$4 million premi-

um for a total of \$94.4 million in insurance coverage through CCRIF for hurricane and earthquake losses.

While Jamaica is still tallying its insured damage from Dean, the storm will not cause a payout from CCRIF, Mr. Young said.

Dean—which plowed through the Caribbean before striking Mexico as a Category 5 storm on the Saffir-Simpson scale—also will not trigger a payout for other Caribbean nations affected by the storm that are participating in the insurance pool.

Those islands are Belize, the Cayman Islands, Dominica, Haiti and St. Lucia, Mr. Young said.

For all of the participating nations, a storm triggering payout from CCRIF must be less frequent than a 1-in-20-year event, Mr. Young said.

—By Rupal Parekh

ERISA: Suits barred between fiduciaries

CONTINUED FROM PAGE 4

gested that in the 8th Circuit and other jurisdictions where fiduciary contribution lawsuits are barred, plan sponsors should expect difficulties in settling disputes involving ERISA-governed plan fiduciaries.

A fiduciary will not want to settle unless the contributions of all fiduciaries are detailed at the same time, said Josh Sternoff, a partner at Paul, Hastings, Janofsky & Walker L.L.P. in New York. "That will be difficult, because plaintiffs try to divide and conquer" defendants, he said.

While settlements may be more difficult to negotiate, bringing all parties to the settlement table at the same time is "a better way of doing it," asserted Scott Macey, the Somerset, N.J.-based senior vp and director of government affairs for employer consultant Aon Consulting Inc., unit of Chicago-based Aon Corp.

Employer consultant Henry

Saveth, an attorney at Mercer Human Resource Consulting in New York, said the ruling tells plan fiduciaries that "they have to be quite careful and shouldn't be influenced by whether they can recover from co-fiduciaries."

Employer attorney Nancy G. Ross, however, said settlements are more difficult in jurisdictions that allow plan fiduciaries to seek contributions from other fiduciaries. In those jurisdictions, a fiduciary could settle a claim and later face a lawsuit from a co-fiduciary seeking additional damages over the same claim, said Ms. Ross, a partner with McDermott, Will & Emery L.L.P. in Chicago.

Ms. Ross predicted that the 8th Circuit's ruling and others like it will have "a deterrent effect on potential fiduciaries," because fiduciaries now will have difficulties enforcing the indemnity provisions in trust agreements.

Some ERISA experts said the split

among the 8th, 9th and 2nd Circuits makes the issue ripe for Supreme Court review. Others disagreed.

For example, employer attorney Henry L. Solano, a partner at LeBoeuf, Lamb, Greene & MacRae L.L.P. of New York, said other appeals courts besides the 9th Circuit have ruled similarly to the 8th Circuit, though not directly on point.

"Thus, I would say that the weight of authority among the circuits is consistent with the 8th Circuit opinion," and the Supreme Court's rulings after the 2nd Circuit's contrary opinion "raise a question as to the continuing applicability" of that circuit's decision, said Mr. Solano, a solicitor of labor in the Clinton administration and later an acting secretary of labor.

Travelers Casualty & Surety Co. of America vs. IADA Services Inc.; 8th U.S. Circuit Court of Appeals, No. 06-2674; Aug. 15, 2007.

ADVERTISER

INDEX

Issue of August 27

ADVERTISER	PAGE #
AIG	24
Aon Corporation	2
Biologics	5
Burnham Systems	16
Business Insurance	7, 12, 13, 15, 22
Risk Strategies	11

FEMA: Rescinds natural catastrophe deductible plan

CONTINUED FROM PAGE 1

fully cover their buildings and contents.

Public entities and eligible non-profit organizations count on FEMA to cover their property insurance deductibles and other uninsured costs after a natural disaster, such as a hurricane, flood and earthquake.

As a result, FEMA's plan would have been a costly surprise if a natural catastrophe had caused extensive damage this summer, brokers said.

Considering that most public entities in the Gulf Coast area can rarely obtain flat property deductibles and instead face deductibles ranging from 2% to 10% of a location's value, they can amount to millions of dollars, said Nancy Sylvester, a Baton Rouge, La.-based managing director in the public entity and scholastic division at Gallagher Risk Management Services Inc., a unit of Arthur J. Gallagher & Co.

The loss of FEMA assistance for even much smaller losses would be significant, said Jack Moore, risk manager of the Terrebonne Parish School Board in Houma, La. The board has a \$1 million property insurance deductible, and many of its facilities have been damaged repeatedly in various hurricanes and floods, Mr. Moore said.

Losing \$400,000 to \$600,000 of financial assistance from FEMA—in addition to the board's growing insurance costs and deductible over the past several years—would be a

budget-buster, he said.

"I am glad FEMA came to its senses and stopped trying to slip through a rules change that could have been truly devastating to many organizations serving the citizens of Louisiana in the event of another hurricane," U.S. Sen. Mary Landrieu, D-La., said in a prepared statement.

The senator's staff was one of numerous parties that FEMA official Gil H. Jamieson said he met with recently over the issue. Mr. Jamieson said that after meeting with the senator's staff on Aug. 22, he conferred with FEMA Director David Paulison, and the two officials agreed to rescind the plan.

The rescission took effect Aug. 23, said Mr. Jamieson, associate deputy administrator for the Gulf Coast recovery.

FEMA outlined its plan in a June 4 bulletin on the agency's Web site. But buyers and brokers largely did not become aware of the change until last week.

"This would have been interesting if Hurricane Dean had decided to turn up the Gulf Coast and affect either us or Texas," Mr. Moore said. "It would have been a real eye-opener."

A key property insurance renewal date for public entities was July 1, so FEMA's lack of communication put brokers in the position of advising clients without knowing how FEMA would respond after a natural catastrophe, said Susan Blankenburg, a senior vp with Marsh Inc. in San Francisco.

If the plan had not been rescinded, it would have been "a real hardship" for California schools, because they cannot afford to purchase earthquake insurance, she said. Without that coverage, the schools also would have been ineligible for FEMA assistance, she said.

Mr. Jamieson agreed with FEMA critics that the bulletin was not effectively communicated to public entities and nonprofit organizations.

"It wasn't very well messaged at all," he said.

How the plan would work wasn't even clear from one state to another.

For example, Ms. Sylvester said public entities and nonprofits might have been eligible for some FEMA assistance even for a repeatedly damaged property if they had increased their deductible since the last time the property was damaged. Ms. Sylvester read the FEMA plan to state that in such a case, the agency would cover the difference between the old and the new deductible.

But in Florida, state insurance officials interpreted the plan to read that FEMA would not cover even the difference in deductible levels, said Trilly Lester, the Tallahassee-based director of the state's risk management department. The department provides property insurance for state facilities.

Ms. Lester noted that FEMA had contacted her department about the plan change but that FEMA officials could not fully describe the plan in

an Aug. 9 meeting. The department was still waiting for a clarification Friday.

In 2005, FEMA provided financial assistance to public entities in Florida using the difference-in-deductibles approach, Ms. Lester said.

Ms. Sylvester said FEMA's financial assistance varies not only from state to state but also within a state.

Mr. Jamieson said the plan was "confusing at best" and probably misleading. He said the bulletin did not clearly detail FEMA's intent. But, Mr. Jamieson noted, FEMA does want to ensure that the federal government is not "the first in line to bear the risk for disaster losses."

To that end, FEMA will make another attempt to outline the kind of financial assistance it will provide after a natural catastrophe and the insurance requirements it will demand that public entities and nonprofit organizations meet.

But he promised that FEMA would work with "the business community" in hammering out its policy on disaster relief and then properly circulate it.

That modified plan, however, likely will not address flood insurance, he said, noting that issue would be too broad to address in a revised bulletin.

But Mr. Jamieson said FEMA, in general, did want NFIP buyers to purchase excess commercial insurance that would cover their buildings and contents. The issue of the availability of that coverage would be handled separately, he said.

Stock Index

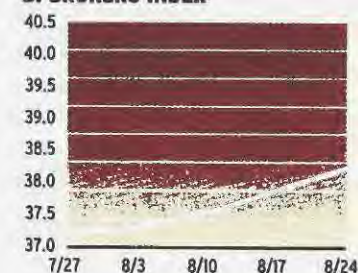
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.BusinessInsurance.com.

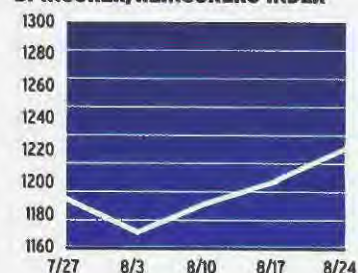
BI STOCK INDEX



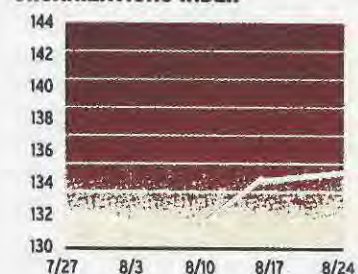
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

BI STOCK INDEX	3290.42	▲ 1.87%
DOW JONES	13378.87	▼ 2.29%
S&P 500	1479.37	▲ 2.31%

LARGEST GAINS

Fairfax Financial Holdings	9.26%
Allmerica Financial Corp.	9.23%
NYMAGIC Inc.	8.01%
Philadelphia Consolidated	7.63%
XL Capital Ltd.	6.53%

LARGEST LOSSES

Gainsco Inc.	-11.01%
MBIA Inc.	-7.72%
UNICO American Corp.	-6.86%
CNA Surety Corp.	-6.35%
Baldwin & Lyons Inc.	-5.27%

Source: Financial Content Inc.
<http://financialcontent.com>

News In Brief

CONTINUED FROM PAGE 1

York authorities to allow the brokerage to begin accepting certain fees from insurers in brokerage transactions. The move, which amends Willis' \$50 million 2005 settlement with then-New York Attorney General Eliot Spitzer over client-steering concerns, follows in the footsteps of Marsh & McLennan Cos. Inc., which reached a similar agreement with New York authorities earlier this month. A spokesman for Aon Corp. said the brokerage has reached a similar service fees amendment with authorities in New York and Illinois and expects Connecticut regulators to join the agreement soon.

California bias plaintiffs must show qualification

Plaintiffs who claim disability discrimination under California's Fair Employment and Housing Act must prove they are qualified to perform the job's essential function with or without reasonable accommodation, the California Supreme Court ruled. Employers do not have the burden of proving a plaintiff is unqualified, said

the court in its 4-3 ruling last Thursday in *Dwight D. Green vs. State of California*. The decision overturns an appellate court ruling.

Attorney Scruggs faces contempt charges

High-profile Mississippi trial lawyer Richard F. Scruggs is facing criminal contempt of court charges relating to Hurricane Katrina claim documents from State Farm Insurance Co. In charges filed Aug. 21 in federal court in Alabama, U.S. District Court Judge William M. Acker Jr. said there is "probable cause to believe" that Mr. Scruggs and The Scruggs Law Firm delivered to a third party the State Farm claim documents, which under an earlier civil injunction were found to have been secretly copied by two whistleblowers and were to be returned to the insurer's claims adjusting firm. Mr. Scruggs, who represents various Hurricane Katrina victims in insurance dispute cases, filed a motion to dismiss the proceedings in the 11th U.S. Circuit Court of Appeals.

PartnerRe to base global unit in Dublin

PartnerRe Ltd.'s global reinsurance structure will be centralized in Dublin, Ireland, beginning in 2008, the company said. Partner Reinsurance Europe Ltd. will operate as the principal reinsurance carrier for all business underwritten by the

company in Canada, France, Ireland and Switzerland, effective Jan. 1, 2008, Bermuda-based PartnerRe said in a statement. The new Dublin-based unit—which will assume all property/casualty and life business previously written by other PartnerRe subsidiaries—will be capitalized "in excess of \$1 billion," PartnerRe said.

Two UnitedHealth execs depart for new jobs

UnitedHealth Group Inc. said two executive vps are leaving for jobs at other companies. Richard Anderson, an executive vp of the insurer and president of its commercial services group, will become the chief executive officer of Delta Air Lines Inc. Lois Quam, an executive vp and president of UnitedHealth's public and social markets group, will become a managing director with Piper Jaffray & Co., an investment bank and institutional securities firm, the insurer said. William Munsell and Anthony Welters, both executive vps for UnitedHealth, will replace Mr. Anderson and Ms. Quam, respectively.

BLS health study compares union, nonunion plans

Health insurance coverage provided to employees represented by labor unions costs more on average than coverage offered to nonunion employees, according to a survey. The survey, released by the U.S.

Bureau of Labor Statistics, found that for single coverage in which employee premium contributions are required, total monthly premiums average \$399.96 for union plans, compared with \$341.13 for plans covering nonunion employees. Among employers that require employees to pay a portion of the health insurance premium, union-represented employees, on average, pay a monthly premium of \$62.45 for single coverage compared with a monthly average of \$83.51 for nonunion employees. In addition, only half of union-represented employees pay a portion of the premium for single coverage, while 81% of nonunion employees do so.

Noted

North Dakota Insurance Commissioner Jim Poolman plans to resign at the end of the month to start a consulting business.... **Munich Re America HealthCare**, a unit of Munich Reinsurance America Inc., has agreed to acquire Cairnstone Inc., a Miami-based managing general underwriter providing stop-loss insurance for self-insured employers.... **A.M. Best Co. Inc.** said it upgraded to A from A- its financial strength rating for **CRC (Bermuda) Reinsurance Ltd.** CRC is a unit of Toronto-based Fairfax Financial Holdings Ltd., and the majority of premiums written by CRC are ceded from the subsidiaries of Fairfax's Northbridge Financial Corp. unit.

Business Insurance END PAGE

Contributing: Louise Esola,
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This wife is dead! No, no... she's resting

A New Jersey man kept his dead wife's memory alive in an alleged insurance scam and faces up to 10 years in prison on theft and falsified records charges.

According to the New Jersey Attorney General's office, a grand jury has indicted 46-year-old Sohan Singh Gill of Elmwood Park, N.J., on charges that he purchased a \$150,000 life insurance policy on July 24, 2000—two days after his wife died—and falsified documents to show that she died on Jan. 15, 2003.

When Mr. Gill tried later in 2003 to collect on the life policy issued by Reassure America Life Insurance Co., a Jacksonville, Ill.-based unit of Swiss Reinsurance Co., the insurer discovered the fraud by locating the wife's actual death records.

The insurer later contacted New Jersey authorities, the state attorney general's office said in a statement.

Mr. Gill, who could not be reached for comment, was indicted Aug. 21 on one count of second-degree attempted theft by deception and two counts of fourth-degree falsifying or tampering with records. If convicted on the most serious charge, he faces up to 10 years in prison and \$150,000 in fines. He also could face civil insurance fraud fines, the attorney general's office said.



Organizers of a charity run near Scotland's Loch Ness have bought insurance against the appearance of the loch's most famous inhabitant.

FIRSTGROUP

Runners fully protected against monster attack

Organizers of a charity race in Scotland have taken out an airtight policy to protect athletes against the most monstrous of hazards.

FirstGroup P.L.C., United Kingdom-based transport company, last week said it has taken out a £1 million (\$1.99 million) policy with Royal & Sun Alliance Insurance P.L.C. to ensure that competitors in its duathlon—held on the shores of Loch Ness in northern Scotland—are not harmed in an attack by the lake's fabled monster, commonly known as Nessie.

Under the policy, R&SA must pay not only in the event of a Nessie attack but also if the elusive monster is spotted during the 120 km

(74.4 mile) competition, which is slated for Sept. 2.

According to the policy terms, a "proven sighting" of the creature must be verified independently.

"This is one of our more unusual requests, but it certainly gave our team something to get their teeth into," Jon Woodman, trading director at R&SA, said in a statement.

"In the event of Nessie deciding to cause some havoc on the 2nd, we have agreed to compensate the victims accordingly and hopefully now all the participants can rest assured before the event," Mr. Woodman said.

Nobody can put film clip on their babywear

Nobody puts Baby...on a T-shirt, a bib, or a sweatshirt without the permission of Lions Gate Entertainment Corp., which filed a suit earlier this month in California's Central District Court claiming rights to a line from the popular film "Dirty Dancing."

The Los Angeles-based film company, which filed a trademark infringement lawsuit, claims that it has sole rights to the line, "Nobody puts Baby in a corner," through approved licensees as part of the "Dirty Dancing" merchandise. It is seeking to permanently keep 15 named companies from selling the products.

The line has been channeled in films and television shows since "Dirty Dancing" became a hit in 1987. And, according to Lions Gate's Aug. 15 lawsuit, the phrase made its way onto T-shirts and other merchandise, mostly geared towards babies.

Up there next to Casablanca's "Here's looking at you, kid," Patrick Swayze's "Nobody puts Baby in a corner" line is ranked among the top 100 popular film quotes by the American Film Institute.



Mattel seeks to nix Pornstar Barbie

Has Barbie become a porn star?

No way, says Mattel Inc., which reportedly filed a lawsuit in New York federal court last week in an attempt to stop adult entertainer China Barbie from using its trademarked name in the domain of her pornographic Web site.

The Web site, www.chinabarbie.com, is reportedly registered to Hollywood, Fla.-based Global China Networks L.L.C., which Mattel alleges used "Barbie" in the site's domain name in bad faith and damaged Mattel's good name.

The suit seeks the transfer of the domain name registration to Mattel, up to \$100,000 in damages and any profits Global China Networks earned from the Web site, according to reports.

The El Segundo, Calif.-based toy manufactur-



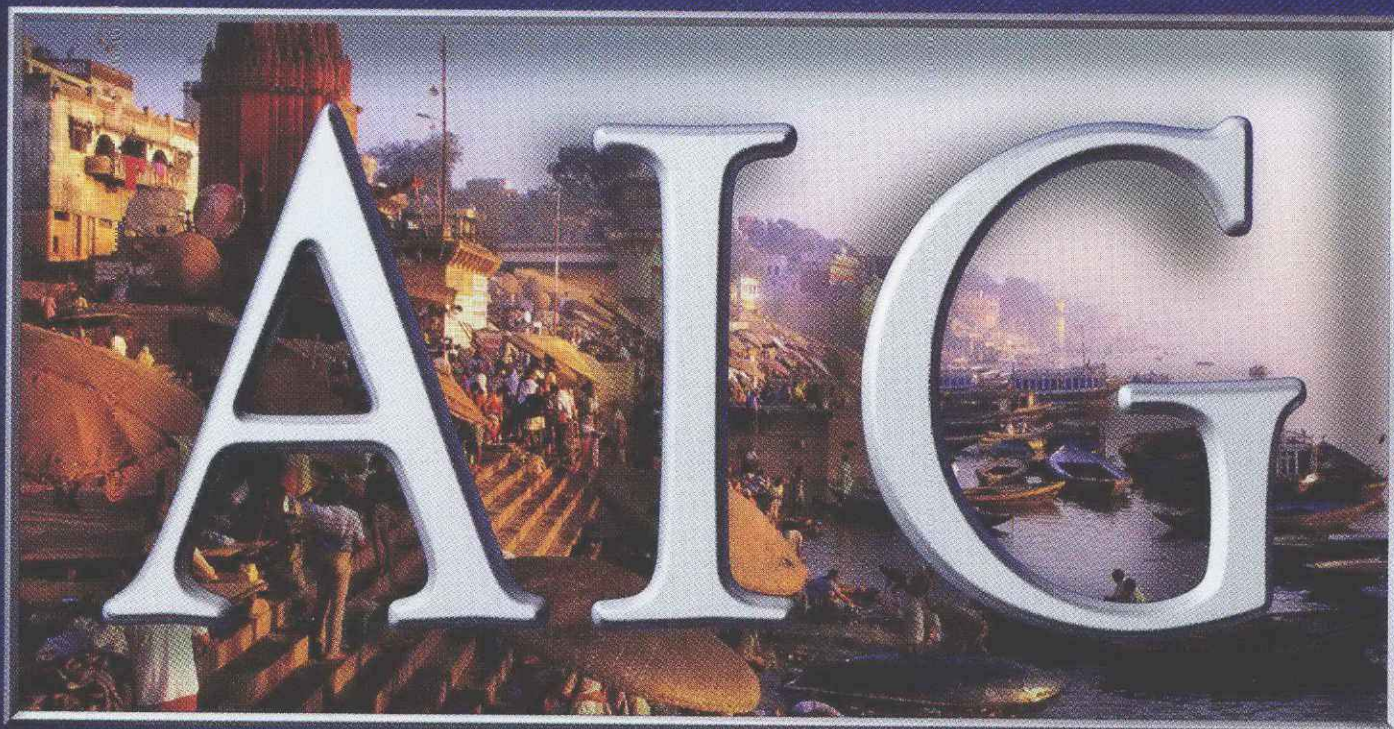
Mattel Inc. is seeking to stop an adult Web site from using the name of its hugely popular girl's doll in its domain name.

er isn't having much luck with China lately.

It recently recalled hundreds of thousands of toys manufactured in China containing lead paint.

It also recently recalled Barbie and Tanner play sets, which also were made in China, because of a magnet in a "scooper" accessory that could come loose and endanger small children.





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