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PHOTO: AFP

Business to feel bite of COBRA subsidy

Congress forges plan to aid workers displaced by trade competition

By JERRY GEISEL

WASHINGTON—Federal COBRA subsidies in trade legislation awaiting President Bush's signature could be the starting point for future expansion of the health coverage continuation law.

Under the legislation—designed to give the president "fast-track" trade negotiating authority—the federal government would subsidize 65% of the COBRA premium for employees who lose their jobs due to foreign trade, such as steelworkers and others in competitive industries.

COBRA beneficiaries would pay the remaining 35% of the premium. Under current law, a beneficiary must pay the entire COBRA premium, which is 102% of his or her former employer's group rate.

Alternatively, this same 65% federal subsidy—which would be provided through a new tax credit—would be available for certain other health insurance programs, including special pools for the uninsured that states might establish.

In addition to displaced workers, the premium subsidy would be available to retirees age 55 through 64 whose pension plans were taken over by the Pension Benefit Guaranty Corp. and who now receive pension benefits from the PBGC but lack health care benefits.

In all, the health care tax credit would cost the government about $4.8 billion between 2003, its first fully effective year, and 2012. While precise figures are not available, informal estimates are

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Late News

Senate, White House patient bill talks stall

One of the chief sponsors of a Senate managed-care regulation bill remains hopeful that lawmakers can work out a deal on patient protection despite a halt in negotiations between the White House and Senate leaders. Sen. John McCain, R-Ariz., one of the driving forces behind the Senate's version of managed-care regulation, said that "much progress" had been made in talks with the White House. But, he added, "a resolution eludes us, and I think it is time to appoint conferees" to a committee that would work out differences between the Senate bill and a less-restrictive House measure.

Sen. McCain

Gerling Re to exit U.S. P/C reinsurance

Gerling Reinsurance is pulling out of the U.S. property/casualty reinsurance market to concentrate on the European market. U.S. subsidiary Gerling Global Reinsurance Corp. of America will write no new business but will continue its administration of existing treaties. In the current financial year, GGRCA of New York expects gross premium revenues of about $700 million. The primary insurance activities of the group will not be affected by the repositioning of its reinsurance activities, a Gerling statement said.

Judge OKs discovery in docs' suit against HMOs

Physicians are praising a federal judge's decision to lift a stay of discovery in the doctors' lawsuit against health maintenance organizations. Judge Frederico Moreno in U.S. District Court in Miami ruled that discovery can

See LATE NEWS /next page

Class action bill backed by regulator

By MARK A. HOFMANN

WASHINGTON—As debate formally began in the Senate on class-action reform legislation last week, a panel of lawmakers heard an insurance regulator's concerns that nationwide class actions against insurers can undermine state regulators' authority.

"Large-scale, nationwide litigation against major insurance companies frequently goes around or simply ignores the role of state regulators," D.C. Commissioner of Insurance and Securities Lawrence Mirel told the Senate Judiciary Committee in testimony last week. "Class-action lawsuits against insurers can, and often do, directly impact our statutory authority to regulate the busi-

See CLASS ACTION/page 20

Society sees tools driving improvement

RIMS seeks broader use of quality measures

By SALLY ROBERTS

Nearly four months after the Risk & Insurance Management Society Inc. unveiled a broad set of guidelines for performance expectations, some risk managers are beginning to incorporate them into their contracts with service providers as a means to improve quality in the industry.

Over the coming year, RIMS will make a concerted marketing effort to spread the word about the guidelines to industry professionals in the hopes of more-widespread implementation.

Service providers that are familiar with the guidelines generally view them positively but have some concerns.

Introduced at this year's annual conference in New Orleans, the guidelines offer 39 recommended general performance expectations for handling business among risk managers, brokers, insurers, claims service providers and safety and loss control providers. Risk managers can select and tailor any combination of the performance expecta-

See QUALITY/page 22

RIMS QUALITY GUIDELINES

The major categories of the 39 performance expectations for setting and measuring business transactions among suppliers:

- Trust and reliability
- Providing operational efficiency and competitiveness
- Identifying customer needs and creating solutions
- Building internal and external partnerships
- Developing and providing expertise
- Engaging in two-way interactive communication

Source: Risk & Insurance Management Society Inc.

Spotlight

PROPERTY LOSS CONTROL

Hurricane Andrew's legacy

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REPORTING WEEKLY ON CORPORATE RISK, EMPLOYEE BENEFIT AND MANAGED HEALTH CARE NEWS

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CONTINUED FROM PAGE ONE

proceed in the case originally filed in 2000 by individual physicians and the California Medical Assn. The suit charges some of the country's largest HMOs with conspiring to violate contracts and defraud doctors. Among the defendants are UnitedHealth Group, WellPoint Health Networks, Humana Health Plan Inc. and PacifiCare Health Systems Inc.

PHOTO: GETTY

New York-based Citigroup is proceeding to spin off its Travelers Property Casualty Corp. unit.

Citigroup to distribute Travelers stock

Citigroup Inc. will distribute nearly 700 million shares of Travelers Property Casualty Corp.'s common stock to Citigroup shareholders as part of its planned divestiture of the Hartford, Conn.-based insurer. Citigroup currently owns 76.9% of Travelers. The stock distribution is the second phase of Citigroup's planned spinoff of Travelers P/C, after it sold 20% in a March initial public offering.

Liability rate hikes spur cutbacks in limits: Marsh

Large commercial policyholders are buying less liability insurance as they seek to curb premium increases, according to a report by Marsh Inc. On average, Marsh clients with $10 billion or more in revenues bought 10.4% less insurance, in terms of liability limits, during the first quarter of 2002 than they did in the same period last year, the report states. Overall, liability limits bought by all Marsh commercial policyholders examined fell 6% in 2002, the report says.

Late News

SAFECO buys Swiss Re group life business

SAFECO Corp. has completed the acquisition of the medical excess-of-loss and group life insurance books of business that Swiss Re acquired from Lincoln National Corp. in December 2001. The acquisition nearly doubles the size of SAFECO's excess-of-loss business for employers with self-funded medical plans, a statement by the Seattle-based insurer said. During 2001, SAFECO wrote $284 million in excess-of-loss insurance premiums.

Aetna's loss narrows in first half

Aetna Inc. reported a $2.72 billion loss for the first six months of 2002, compared with a $37.6 million loss for the comparable period a year earlier. Hartford, Conn.-based Aetna said that the 2002 loss reflects a $2.97 billion charge the insurer took earlier this year due to changes in accounting rules with respect to goodwill. Aetna recorded revenues of $10.33 billion for the half, down 20.3% from the first half of 2001. The insurer attributed the decline to a planned reduction in its overall membership.

CIGNA reports lower profits, higher revenues

CIGNA Corp. reported net income of $432 million for the first six months of 2002, a 21.7% decline over the same period last year, after 2001 figures were adjusted in accordance with a change in accounting standards. The fall in profits was largely due to increased realized investment losses. The Philadelphia-based health care insurer reported revenues of $8.14 billion for the first half of 2002, a 7.7% increase over the comparable period last year.

Oxford Health Plans posts mixed results

Oxford Health Plans Inc. reported net income of $124.3 million for the first half of 2002, a drop of 12.7% over the same period the previous year. Results reflect second-quarter pretax charges of $26.5 million related to the company's termination of a computer outsourcing contract and a reduction in the value of an investment. The managed care firm reported $2.39 billion in revenues, a 9.2% increase over the year-earlier period.

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To get breaking news as it occurs, visit *Business Insurance*'s free online Daily News, at *www.businessinsurance.com*. Sign up for your daily e-mail of breaking news. All the material in the Late News column, as well as other content in this week's issue, is generated from daily news postings that appeared on the *BI* Web site in the previous week.

Online this week:

- New Directory of Property Loss Control Consultants, plus other **searchable directories**.
- Check the **Datebook** calendar for upcoming industry meetings and events or add your own.
- New **commentary** from Paul Winston joins other regular columnists, including Dr. George Head.
- **Online forum** allows readers to exchange ideas and information.

Daschle commits to pension reform

Senate Majority Leader Tom Daschle, D-S.D., affirming an earlier commitment, said he plans to bring to a Senate floor vote in September a 401(k) reform bill that melds portions of measures passed earlier by two Senate committees. The compromise bill, among other things, is expectec to let participants sell, after three years, company stock contributed by their employers as a match and to make it easier for participants to sue company officials and others who provide misleading advice that harms plan assets. The House of Representatives passed its own reform measure several month ago.

Sen. Daschle

Briefly noted

J. Howard Bunn Jr., the retired chairman of the North Carolina Industrial Commission in Raleigh, N.C., died July 29 at age 64. Mr. Bunn was a nationally recognized expert in the field of workers compensation....**Michael W. Cremins**, executive vp and chief operating officer of The Daniel & Henry Co., has died at age 59. He joined the St. Louis-based broker in 1981 and was elected COO in 1992, after the death of Peyton Daniel, the company's president and chief executive officer....The **California Earthquake Authority** has named Elaine Bush as its CEO. Ms. Bush, chief deputy commissioner of the California Department of Insurance, succeeds David Knowles, who resigned from the CEA last year....American International Group Inc. will acquire Grass Valley, Calif.-based medical stop-loss underwriter Excess Inc. and merge it into AIG's Medical Excess Insurance Services Inc. unit. The combined entity will be renamed **Medical Excess L.L.C.** John Snyder, CEO of Excess Inc., will be president and CEO of the new company, while AIG Senior Vp-General Insurance Kevin H. Kelley will be chairman. Financial terms were not disclosed.

Ruling that CGL policies don't cover intangible property touches a nerve

Judge to AOL: You've got no coverage

By JOANNE WOJCIK

ALEXANDRIA, Va.—A federal judge has ruled that computer data, software and systems cannot be perceived by any of the senses and, therefore, are not insured under commercial general liability policies.

As a result, St. Paul Mercury Insurance Co. does not have to pay to defend America Online Inc. in multidistrict litigation alleging that the installation and operation of its version 5.0 software caused substantial damage to users' computer systems after it was released in the fall of 1999. AOL was seeking defense-cost coverage under a primary technology commercial general liability policy issued by St. Paul in April 1999.

While insurer attorneys agree with last month's decision by Judge George Bruce Lee of the U.S. District Court for the Eastern District of Virginia, policyholder attorneys say they are outraged that a judge would have such an archaic view of technology in today's information age.

And the case is expected to have a widespread impact on other e-commerce coverage cases involving CGL policies that do not contain specific exclusions for the exposures.

"The court gave straightforward effect to the policy terms," said Laura Foggan, a partner at Wiley Rein & Fielding L.L.P. in Washington who represents the Complex Insurance Claims Litigation Assn., an insurance industry organization.

Ms. Foggan said insurers never intended to cover technology-related liabilities under CGL

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Aviation market's Sept. 11 response debated

By STACY SHAPIRO

More coverage of the 6th annual Beaumont Garnault International Aviation Conference on page 21

LONDON—The aviation insurance market overreacted to the terrorist attacks of Sept. 11, a senior brokerage executive contends.

Insurers swiftly raised rates and imposed surcharges after the attacks, generating a threefold increase in premium volume, while also restricting coverage terms and conditions and limiting war risk liabilities to only $50 million, the broker says.

"I think the aviation market has done a lot of damage to itself through overreacting" to the Sept. 11 attacks, said Giles Wilkinson, practice leader and chairman of Willis Global Aviation in London. In the aviation war risk market, "is it reasonable to expect a (profitable) return on the biggest loss you've ever had? I think that's a bit unfair, probably, to expect to get all your money back in one year."

But aviation underwriters counter that raising rates and reducing their exposure was necessary and prudent in light of their exposure. Without this market hardening—which could continue into 2003—the aviation insurance industry could have collapsed, underwriters told delegates at the Beaumont Garnault 6th International Aviation conference in London last month.

Aviation insurance losses totaled $5.5 billion in 2001, including about $3.97 billion reserved for Sept. 11, according to London market sources. Following Sept. 11 and the imposition of a $1.25 per passenger surcharge to replenish premiums, aviation insurance premiums totaled between $3.5 billion and $4 billion at the end of 2001, compared to between $1.1 billion and $1.3 billion in 2000, market sources say.

One of the world's largest aviation insurers wants the market to maintain a $4 billion premium volume.

"We simply must not return to our old bad habits in the aviation insurance sector," said Matthew Farrell, underwriter for Global Aerospace Underwriting Managers in London. "If we do, we won't survive, and we won't be able to provide the service that airlines and the traveling public really do need."

Aviation insurers have generated plenty of losses for their capital providers and reinsurers over the past 10 years, said Mr. Farrell. Between 1984 and 2001, the cost of claims grew by an average of 9.6% annually, he said. Indeed, he added, from 1992-2000, aviation underwriters made money in only two years.

"We at Global Aerospace have concluded that the airline insurance sector needs an annual premium of around $4 billion for it to be sustainable," he said.

Mr. Farrell said this amount would cover:

- $1.7 billion in annual losses, which is the historic industry average between 1992 and 2001, excluding war risk liabilities over $50 million per event.
- $600 million for claims administration costs.
- $600 million for additional reinsurance costs.
- $500 million in increased exposure to losses as a result of higher retentions by primary insurers.
- $600 million for a 15% return on capital.

To maintain this level of premium, aviation underwriters are looking to incorporate the $1.25 per passenger surcharge into their underwriting when renewing hull and liability coverage.

Global Aerospace, for example, also will be calculating its all-risk liability premium based on a rate applied to the number of passengers carried and the number of departures per airline, said Mr. Farrell. Until now, aviation underwriters traditionally calculated liability premium by the revenue passenger miles or kilometers traveled by the airline.

Added to this will be "some assessment" for war risk liability exposures, said Mr. Farrell. The avia-

See AVIATION/page 21

Self-insured employers' financial woes hurting California fund

Comp guaranty fund facing shortfall

By ROBERTO CENICEROS

Financial troubles and bankruptcies among California companies are creating a projected $50 million deficit for a state fund that backs the workers compensation obligations of self-insured employers.

Trustees of California's Self Insurers' Security Fund say the fund must change how it operates and assesses employers to overcome the shortfall and avoid this problem in the future.

While the fund has sufficient cash reserves on hand to pay claims, a cash-flow crunch could arise sooner than anticipated if more self-insured employers encounter financial problems and cannot pay claims.

By law, all private California employers that self-insure their workers comp exposures must participate in the fund and pay assessments as needed. The fund is a private, nonprofit mutual benefit corporation managed by Bickmore Risk Services, a Sacramento, Calif.-based pool manager.

As a result of its projected liabilities, the California fund is assessing employers the maximum—2% of benefits paid annually—that it is legally able to collect, and assessments will remain at that level for some time.

This is the first year in more than a decade that the fund has levied the maximum assessment, which has generated about $4.2 million for the fund, said Mark Ashcraft, a fund trustee. He also is manager of the Self-insurance Plans Division of California's Department of Industrial Relations, which authorizes qualified employers to self-insure.

During the last three or four years, the fund assessed employers 1% of benefits and, before that, went several years without any assessments, Mr. Ashcraft said. California's assessments are made on a post-loss basis, meaning that employers are assessed only after the fund steps in to cover a self-insured company that defaults on paying workers comp claims.

The fund's current financial condition resulted after the California Department of Industrial Relations ordered it late last year to take over claim payments for two large self-insured employers—retailer HomeBase Inc. of Irvine, Calif., and baker San Francisco French Bread Co. Inc. of Oakland, Calif.

When HomeBase filed a Chapter 11 bankruptcy petition in 2001, the retailer estimated it had about $8 million in outstanding claims. But actuarial projections have since set the amount at about $32 million, Mr. Ashcraft said. San Francisco French Bread was ordered into the fund when its insurer collapsed and its replacement coverage did not meet state requirements.

"There were several bankruptcies, but HomeBase sort of sent us over the edge," said

See CALIFORNIA/page 6

U.S., state court rulings buffet insurer

Despite state ruling, federal court says policyholder owed a defense

By DAVE LENCKUS

CHICAGO—An insurer must defend a general liability policyholder in a federal court case over a fatal work-related traffic accident even though a state court has relieved the insurer of that obligation in separate litigation against the policyholder over the same accident.

Scottsdale Insurance Co. of Scottsdale, Ariz., will not appeal the July 15 ruling by a 7th U.S. Circuit Court of Appeals panel, insurer attorney Michael R. Fitzpatrick said.

The panel earlier this year, however, affirmed a district court's ruling that Scottsdale has no duty to indemnify Subscription Plus Inc. of Oklahoma City. In its latest ruling, the panel also suggested it would rule likewise in a pending duty-to-indemnify case involving Subscription Plus' president, Karleen Hillery, whom the GL policy also covered.

Subscription Plus is preparing to appeal a Wisconsin state court decision that Scottsdale has no duty to indemnify or defend either the company or Ms. Hillery, policyholder attorney Robert W. Dace said.

The litigation, which was complicated by conflicting evidence over the accident victims' employment status, stems from a one-vehicle accident on a Wisconsin highway in March 1999. A van carrying 12 passengers, most of whom were minors, crashed while the driver was fleeing a state trooper. Seven passengers were killed, and the other occupants were injured.

The passengers were on their way to solicit subscriptions for their employer, Y.E.S.! Inc., a now-defunct magazine sales agency that Subscription Plus, which processes subscriptions, had hired.

The van's driver, who was convicted of negligent homicide, said he worked for Y.E.S.! and for an individual who said he worked for Y.E.S.! and Subscription Plus, court papers show. Ms. Hillery also at times directed the magazine solicitors' work, Mr. Fitzpatrick said.

Scottsdale argued in the state and federal court cases that it has no duty to defend or indemnify the policyholders. Scottsdale, however, covered its policyholders' defense costs

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Germany investigates 13 insurers

Offices searched in price-fixing probe

By CAROLYN ALDRED

BONN, Germany—German authorities raided the offices of 13 insurers across the country late last month, looking for evidence of price-fixing following steep increases in commercial insurance premiums.

German insurance association the Gesamtverband der Deutschen, or GDV, confirmed the searches, which were undertaken following a court ruling on behalf of Bundeskartellamt, the German cartel department.

The Bonn-based Bundeskartellamt obtained a search warrant from the Bonn District Court following "a suspicion that insurers had agreed among themselves about premium rate increases for industrial insurance," a spokesman for the cartel department said.

A spokesman for the Berlin-based GDV said that insurers were charging higher commercial property and liability premiums in response to years of inadequate pricing during a period of intense competition.

Commercial risks are facing steep increases as insurers strive to become more profitable, the spokesman said. Overseas insurers also are raising their rates dramatically, he noted.

Neither the GDV nor the Bundeskartellamt would name the 13 insurers under investigation.

However, Munich-based Allianz Versicherungs A.G., the property/casualty insurance unit of Allianz A.G. Holding, Germany's largest insurance group, confirmed that investigators had searched some of its

See GERMANY/page 20

New York HMOs improve scores in quality review

By MICHAEL PRINCE

LAKE SUCCESS, N.Y.—Health maintenance organizations in New York state are providing better-quality health care in 2002 than they did last year, according to a report issued last week.

Overall, New York state HMOs received higher scores on nine measures of quality, while getting only one lower mark. Five measures were unchanged from last year, according to the annual New York HMO Report Card, which was released by the New York Health Accountability Foundation, a nonprofit organization co-sponsored by the New York Business Group on Health, and IPRO, a Lake Success, N.Y.-based organization that evaluates health plan quality.

The report card examined all 24 commercial HMOs operating in New York state, evaluating members' satisfaction in seven service areas, such as their ratings of their HMOs overall, their primary care providers and their ability to get services quickly. The report card also scored the plans' performance of 12 clinical quality measures, including four that were added this year. The clinical measures include

such areas such as the receipt of early prenatal care, childhood immunizations and mammograms and the control of cholesterol levels and blood pressure.

Results were derived from information the HMOs submitted to the National Committee for Quality Assurance and the New York Department of Health Quality Assurance Reporting Requirements..

New York HMOs also scored higher than HMOs from across the United States. Of the 11 clinical measures compared nationwide, New York HMOs scored higher than the national average on 10. Similarly, New York HMOs scored higher than the national average on six of seven service measures.

Employers can use the report card to better evaluate their health plans and inform employees about the strengths and weaknesses of the various health plans, said Laurel Pickering, the executive director of the New York Business Group on Health. "They really need something to help them purchase their health benefits," Ms. Pickering said.

Armed with this report, employers can question those plans that score poorly as to what they are doing to improve quality, Ms. Pickering said. "It opens a conversation that employers can have with their health plan," she said.

Plans were rated above average, average or below average for the seven service and 12 clinical measures, with the results presented in a report card format.

As in past reports, this year's indicates that big differences in quality exist among the plans. For example, Blue Cross & Blue Shield of the Rochester Area and Preferred Care Inc. scored above average on four service measures and average on three others. Meanwhile, CIGNA HealthCare of New York scored below average on six service measures and average on the seventh, and Group Health Inc. HMO Select scored below average on five measures and average on two others.

On clinical quality, Blue Cross & Blue Shield of the Rochester Area scored above average on 10 measures, average on one, and below average on one. Conversely, Physicians Health Services scored above average just twice, average once and below average eight times. UnitedHealthcare of New York Inc. had just one above-average score and eight below-average scores, along with three average scores.

Looking at specific measures, 49% of CIGNA plan members with depression had at least three follow-up visits in the first 12 weeks after diagnosis. Only 9% of plan members of Blue Cross & Blue Shield of Utica-Watertown with depression had similar follow-up care, according to the report card. Statewide, 32% of such patients, on average, receive such care.

Also, 20% of the diabetic patients in Preferred Care had blood-sugar levels that were too high, possibly leading to complications from the disease. Meanwhile 74% of diabetic patients with Physician Health Services had elevated blood-sugar levels. The New York average is 39%.

The improvement in quality over the past year stems from the pressure put on the plans by employers and the state government, according to Dr. Mary Hibberd, senior vp for medical affairs at IPRO. "I don't think any plan wants the state to think they are not doing a good job," Dr. Hibberd said.

Dr. Hibberd noted, though, that despite the upward trend, much could be done to improve health care quality. "There clearly can be more done by plans, patients and providers," Dr. Hibberd said.

The New York HMO Report Card can be viewed at www.abouthealthquality.org.

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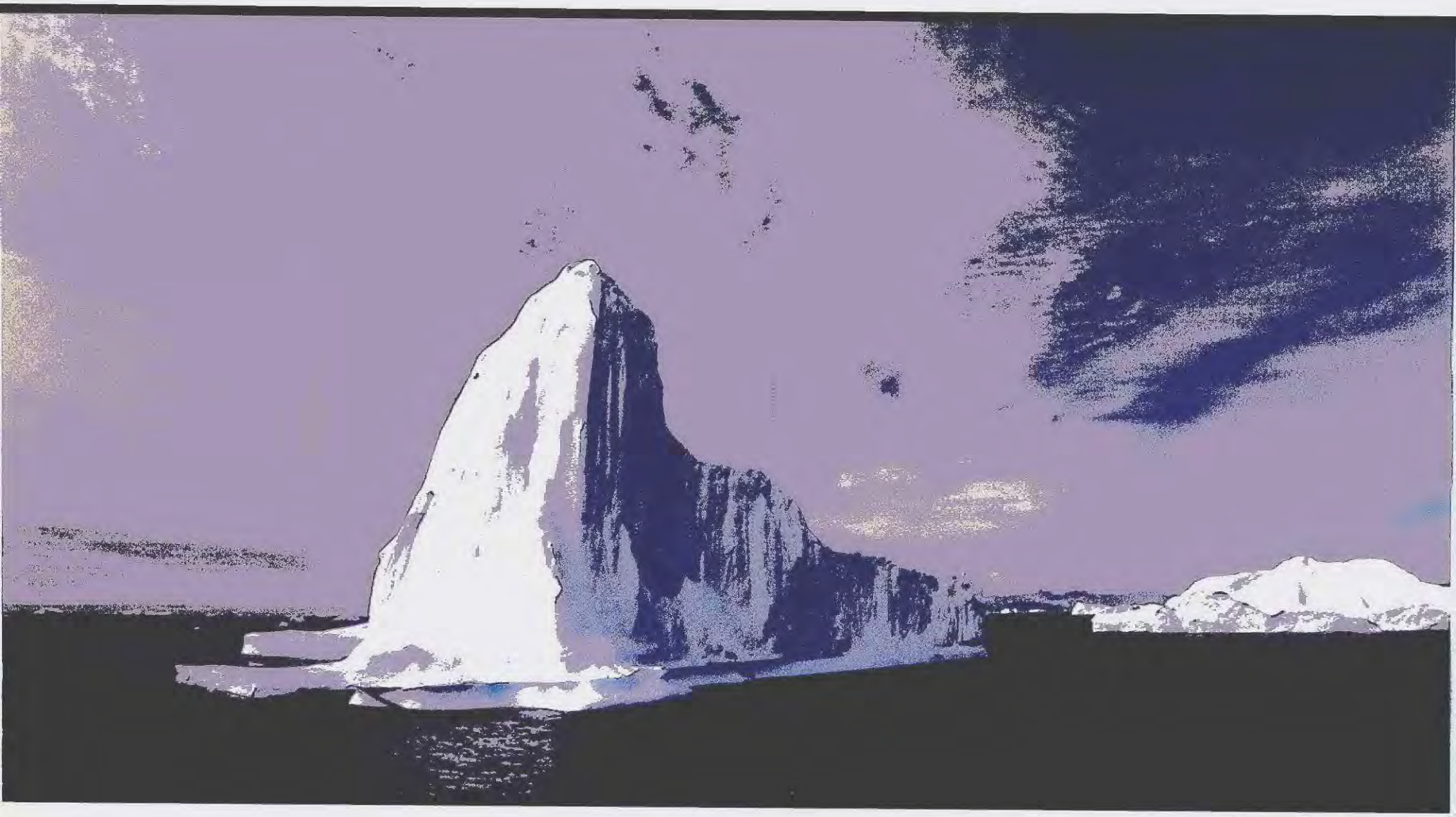

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California: Fund seeking help

Continued from page 3

Jill Dulich, regional director of claims services for Marriott International Inc.'s Western region in Santa Ana, Calif. She is a fund trustee.

To overcome its deficit, the California fund supports legislation to help it restructure its financing.

Legislation has yet to be introduced, said Theresa L. Muir, chairwoman for the Self Insurers' Security Fund's board of trustees and manager of workers compensation for Southern California Edison Co. in Rosemead, Calif.

Under the proposal, drafted by a self-insurer group, the fund would create a mechanism to attract money from self-insured employers that now is used to purchase bonds and letters of credit required as security.

The financial security, which must be posted with the Department of Industrial Relations, is earmarked to pay workers comp claims when a company fails to do so. But the security often equals only about half the amount needed to pay an employer's claims, Ms. Muir said.

Employers in California spend $45 million to $60 million to obtain the security, she said. That money could fund a pool instead.

The pool would back members' security obligations. But instead of bonds or letters of credit, which are more expensive in the hard market, employer funds would build up in the pool. Until the pool attained sufficient size, the Self Insurers' Security Fund would seek capital markets funds, Mr. Ashcraft said.

The employer assessments for the proposed pool would be comparable to what they now pay for security deposits but would be easier for them to arrange, Ms. Muir said.

Legislation to make the arrangement possible, though, still would require the approval of labor, applicant attorneys and others that have a stake in the workers comp system.

In contrast to California, many other states prefund self-insurance guaranty funds, which makes money readily available when an employer can't pay its claims.

The Florida Self-Insurers Guaranty Assn. Inc., for instance, has a $40 million surplus while paying out about $3 million a year in claims, said J. Baxter Swing, president and CEO of the Tallahassee-based group. The fund also monitors the financial condition of self-insurers and can make special individual assessments as needed if it finds them at greater risk of not paying claims.

In the case of Kmart Corp., for example, when the fund learned the retailer was having financial difficulties, it asked Kmart to post an additional $4 million deposit, he said. Troy, Mich.-based Kmart filed for Chapter 11 bankruptcy protection in January.

Funds for self-insurers form group to raise clout

RALEIGH, N.C.—State guaranty funds for self-insured workers compensation plans are banding together to exchange information and boost their clout.

Although the structure of state guaranty funds for self-insured employers differs, nine funds in May formed the Self-Insurance Guaranty Funds of America.

The Raleigh, N.C.-based association was formed, in part, to address the bankruptcy issues, though several member funds say they have not been as hard hit by bankruptcies among self-insurers as California's fund.

Through the association, guaranty fund managers can informally discuss the financial health of national employers that self-insure workers comp.

Nine member funds participate in the association, said Richard W. Meyer, the organization's vp and executive director of the New Jersey Self-Insurers Guaranty Assn. in Princeton, N.J. Besides California and New Jersey, they are Alabama, Arkansas, Florida, Georgia, Minnesota, North Carolina and Oregon.

Among other goals, members want to share data on investing fund assets and how they can improve their standing in bankruptcy courts, he said.

—By Roberto Ceniceros

Commentary

What's the rush to anger buyers?

Insurers, by nature, are a slow, cautious and deliberate bunch.

This attitude is reflected in the speed with which they perform a wide range of activities. So buyers who had grown accustomed to that pace can be forgiven for being astonished at how insurers are racing to restore their damaged profitability. Indeed, "astonished" might not fully capture buyers' reaction, because this profit restoration comes at their expense.

A more moderate pace is typical in nearly all other phases of insurance. Take policy issuance. Only a few policyholders receive their policies by the inception date of coverage. A celebrated example involves the delay in issuing the policies covering the World Trade Center, which has given rise to disputes over what the policies were expected to say vs. what they did say after Sept. 11. Another example is the glacial speed at which the industry covers new and emerging risks. Rather than underwrite known but uncertain exposures—such as e-commerce liabilities, mold and terrorism—the cautious insurer typically excludes or severely restricts coverage until it becomes better acquainted with such risks. Eventually, though, as we're already seeing with terrorism coverage, the industry develops creative solutions and provides coverage incrementally.

Paul D. Winston

We also know that insurers are famously slow about paying anything other than absolutely clear-cut claims. Risk managers know they must wait while the claims process grinds to a resolution; even then, the claim might not be paid until after litigation. Insurers used to play this game because they knew that the longer claims payouts were delayed, they more they could build up additional reserves through investment gains. Maybe now that investment gains are virtually nil, they will stop this dilatory practice, but don't count on it. Some insurers delay claims in hopes that case law will develop during this period that will vindicate their refusal to pay.

Nobody is happy with the industry slowness, but they have grudgingly come to expect it.

The good news is that insurers' rush to raise rates and recover enough money to offset Sept. 11 losses, underreserving, investment setbacks and shareholder aggravation in one fell swoop can't last forever.

I don't begrudge insurers the need to make a profit for performing their role of assuming the risks that others do not wish to retain. It's their business, after all, and they owe shareholders a return on their investment. If buyers aren't happy, they can always return to the roots of insurance and mutualize.

But I do question whether insurers need to recover all their losses in one year. After all, they aren't paying out on their liabilities right away. And I also wonder why more insurers haven't figured out that proceeding at a more rational pace might give them an edge in winning and retaining customers.

If insurers slowed down, they might see there are better ways to do things. One approach that should get another look, for example, is multiyear policies. During the soft market, many policies were written on a multiyear basis. This enabled insurers to lock in a rate without fear of it being negotiated downward yearly. And it let policyholders avoid the expense and hassles of annually shopping for coverage, while strengthening their ties with underwriters.

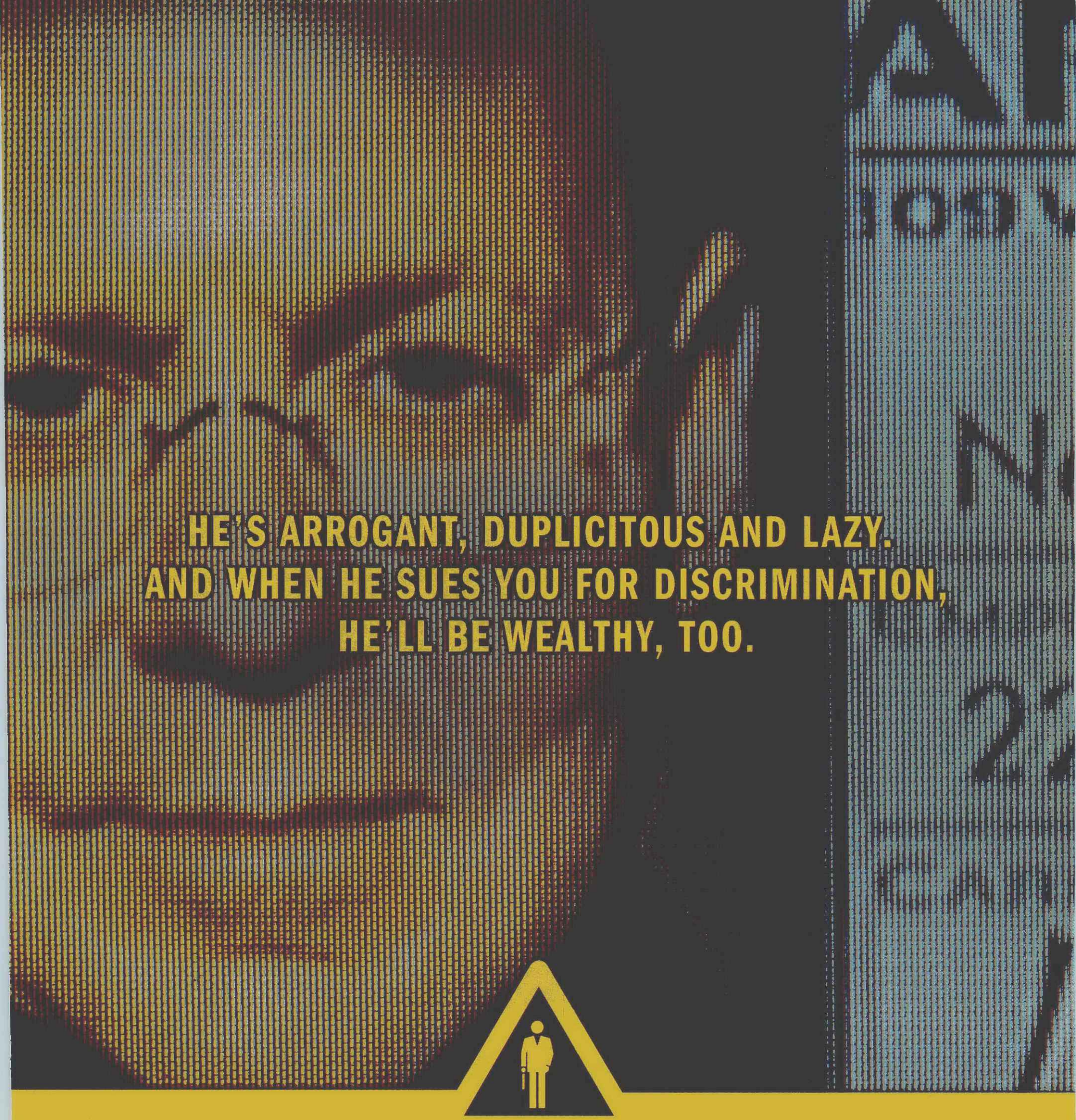
As the market hardened in 2000 and 2001, insurers dropped these policies as fast as they expired, because multiyear arrangements were having the opposite effect of locking them into rates lower than those the market would support. Buyers seeking price stability found themselves back in the annual hunt for the best coverage deals and looking for new insurers.

Insurers for 2002 were able to name their price, as demand outstripped supply. And they have milked this for all it is worth. But it can't last forever, and before insurers alienate customers and lose them to competitors as prices inevitably soften again, perhaps multiyear policies deserve reconsideration.

A multiyear policy should cost less than a single-year policy. That's because insurers again could lock in a rate that otherwise is likely to drop in the next year or two. That feature is what should enable them to price these below the going rate for a single year of coverage.

Maybe a little more partnering like this will keep the market from repeatedly tilting so far in favor of one party or the other. That might be worth rushing to achieve.

Editor Paul D. Winston's commentary appears fortnightly and on www.businessinsurance.com. He can be reached at pwinston@crain.com.



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Editorials

401(k) reform deserves credit

GIVEN THAT we bashed legislators the other week for dithering around and displaying blatant partisanship on Medicare prescription drug legislation, fairness dictates that we give Congress praise where it is due.

Praise is indeed warranted for the quick and bipartisan action that federal lawmakers took late last month in passing a corporate governance and accounting reform measure that includes much-needed 401(k) plan changes.

As we reported, the new law requires employers to give 401(k) and other defined contribution plan participants 30 days' notice of plan blackouts, which are periods in which transactions, such as switching from one plan investment option to another, cannot be conducted.

That is a reasonable and necessary requirement. Defined contribution plan account balances do belong to employees,after all, and those employees have a right to know well ahead of time of when they will lose, even if only temporarily, their ability to conduct transactions.

Legislators and their staffs also should be applauded for listening to business groups' concerns and fine-tuning the notice requirement to make it workable.

Initially, the legislation would have imposed the 30-day advance notice on all blackouts, except those that were not foreseeable and were beyond an employer's or plan administrator's control.

But, clearly, for some foreseeable blackouts, such as those associated with routine maintenance or software upgrades, it may not be possible to provide 30 days' notice. Legislators addressed those situations by exempting from the notice requirement blackouts that do not exceed three business days.

The new law, though, is only part of what is needed to give employees greater confidence that their 401(k) plans will be administered fairly. One other change also is needed: Allowing employees to sell, after three years of service, company shares that are contributed as a match.

Employees should not have to watch helplessly—as Enron employees did—as the value of company stock held in their accounts vanishes because of their employer's requirement that shares be held for long periods of time. Some companies, in the wake of Enron debacle, are eliminating lengthy holding periods for company stock in 401(k) plans, and Congress should act to eliminate such requirements for those companies that have not done so themselves.

Tort reform worth the effort

SENATE JUDICIARY Committee Chairman Patrick Leahy, not typically known as a tort reformer, says he's looking for a better way to compensate fairly the victims of asbestos-related illnesses.

In fact, the Vermont Democrat called it "a matter to which I'd like to see us turn our attention in September and beyond," during a hearing on a class-action reform bill last week.

We couldn't agree more. Even some trial lawyers admit that the current system can reward less-than-deserving claimants—and their attorneys—while leaving real victims uncompensated. It's little more than a legal crapshoot.

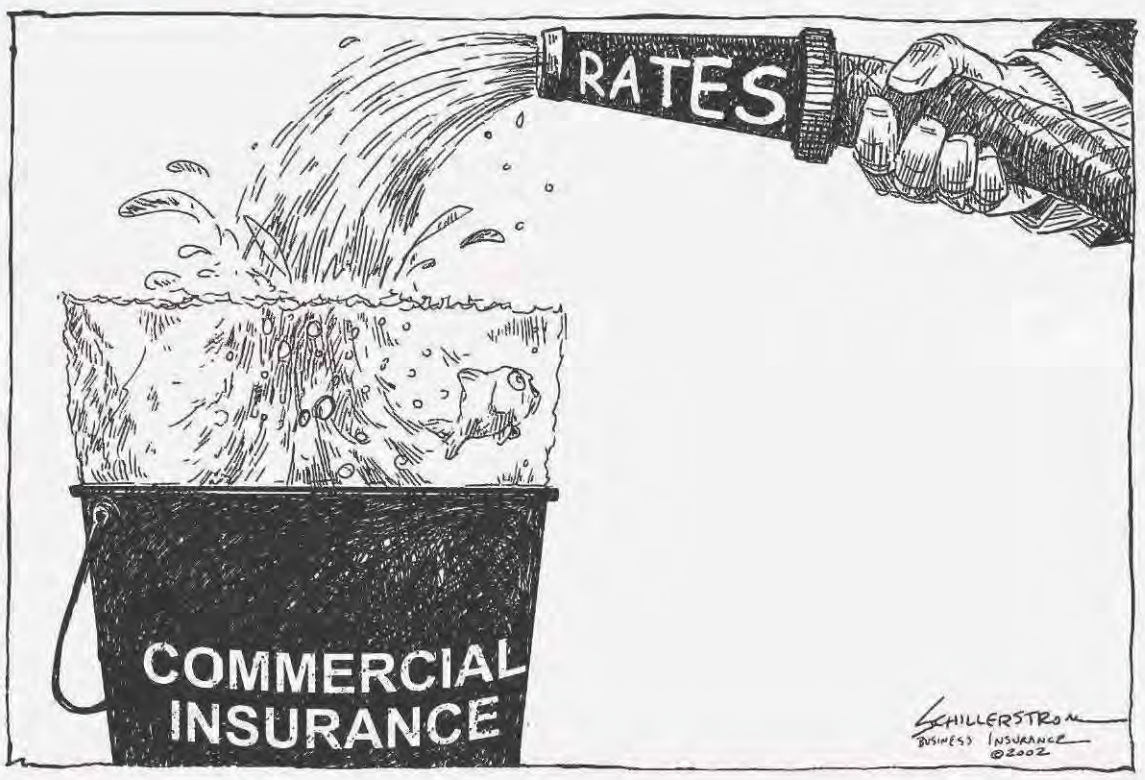
Class-action lawsuits drive companies—some of which haven't manufactured asbestos products for decades—into bankruptcy. Some plaintiffs get rich, some lawyers get richer and some people die without seeing a cent of the compensation to which they're due because of the complexity of the legal wrangling.

Sen. Leahy says he wants to improve the compensation system without turning it into a "Christmas tree" of provisions that reward special-interest groups.

We wish the senator luck if he's sincere about doing so.

Getting any reform of this magnitude through Congress without having an ornament or two attached along the way is going to be no small task. But it is well worth the effort, even if it takes considerably beyond September to get it done—and get it done right.

Schillerstrom



Letters to the Editor

Expressing reservations about insurers' reserves

To the editor: In the July 15 article, "Insurers Unlikely as Source of Next Accounting Scandal," Judy Greenwald wrote that insurers are an unlikely source of the next accounting scandal because of the degree of oversight and the fact the insurance industry operates on a basis of trust.

While accounting fraud per se may be less likely for the reasons Ms. Greenwald cites, the fact remains that the financial results reported by insurers are very much subject to timely and proper reserve valuations.

The Workers Compensation Insurance Rating Bureau of California just announced that workers comp reserves in California alone were underreserved by an estimated $10 billion. The required reserve increases will have a negative impact on insurer profitability.

There may not be intentional accounting fraud on the part of insurers but their inadequate reserving practices, will result in significant adjustments to their financial results. The result will be that insurer financial and accounting credibility will be questioned and scrutinized.

Investors are spooked by the lack of credibility in reported financial results. Fraud actually provides somewhat of a legitimate excuse: i.e. we were duped. If, however, your financials are not credible because management did not properly reserve, than it becomes a question of competence.

If the workers comp line in California is, in fact, some $10 billion underreserved, what may the collective underreserving be on all property/casualty lines? Will investors really distinguish why the financial results were not credible or will the property/casualty industry be just another industry where the financials were not worth the paper they were printed on?

Given the current climate of skepticism by the public and investors, I do not think they will be very forgiving when insurers report unexpected reserve increases. I think the industry needs to come clean on the reserving issue sooner than later or it faces the prospect that investors and the public will lose their trust in the insurance industry.

Rolf Neuschaefer
Bond Manager
Robert E. Harris
Insurance Agency Inc.
Costa Mesa, Calif.

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AOL: Judge rules intangible property not covered

Continued from page 2

policies, as evidenced by the recent introduction of a variety of new insurance products covering this exposure.

"It is clearly wrong to judicially rewrite existing insurance contracts to cover things not within their terms," Ms. Foggan said. "To do so would alter the insurance contract bargain entered by the parties and potentially stick insurers with substantial liabilities not assumed or planned for under the policies."

But while insurers and their attorneys may hold this view, risk managers and policyholder attorneys see things much differently.

"It's as if the commercial insurance market is stuck in 1947," said Joshua Gold, a partner at Anderson, Kill & Olick in New York. "We're in the year 2002, and insurance companies still are not providing a definition of tangible property under their policies—especially a policy sold to a company like AOL."

"If you're going to be selling a general liability policy to a computer company, I think the fact that a court is going to construe tangible property so narrowly and against insurance coverage really makes very little sense for the policyholder's risk exposure," Mr. Gold said.

"There is a dictionary of insurance terms, which the judge apparently has not read, based on the ruling he has handed down. If he has read it, his interpretation is completely different from that of risk managers," said Lance Ewing, senior director of legal/risk management at GES Exposition Services in Las Vegas and first vp and chief risk officer of the New York-based Risk & Insurance Management Society Inc.

"It states, 'intangible personal property is that which cannot be touched; having no meaning to the senses. It is represented by incorporeal rights in property (that which is evidence or represents value; for example, a copyright),'" Mr. Ewing said, quoting from "Barron's Dictionary of Insurance Terms."

"I'd be interested in knowing how he wrote his ruling. Did he do it on a computer?" Mr. Ewing said. "He needs to come into the century in which he's living."

In reaching his decision, Judge Lee used both "Black's Law Dictionary" and "Webster's Third New International Dictionary of the English Language" but did not cite any insurance reference books. He explained that "because the policy does not define tangible, the court turns to the plain meaning of the word tangible," and "the plain and ordinary meaning of the word tangible is something that is capable of being touched or perceptible to the senses," he wrote. "Computer data can be transmitted and stored in a variety of ways, but none of them renders the data capable of being touched. A 'bit' on a computer disk or hard drive is not palpable."

The judge also rejected the reasoning in *American Guaranty & Liability Insurance Co. vs. Ingram Micro*, one of the first cases addressing the tangibility of computer data.

"The court in *Ingram Micro* did not apply the plain meaning of the word 'physical.' Rather, the court relied on the increased importance of computers in our lives and the reflection of this level of importance in various state and federal statutes qualifying loss of computer data as physical damage," Judge Lee wrote. "Although the importance of computers in our personal and professional lives cannot be overstated, this court is bound by the terms of the insurance policy."

How did the judge write his ruling? 'Did he do it on a computer? He needs to come into the century in which he's living.'

Lance Ewing
GES Exposition Services

Even though the AOL decision is only at the federal district court level, it is expected to have at least persuasive influence in other cases, because so few courts have ruled on technology-related insurance coverage matters.

"We're dealing with a cutting-edge issue, and it might have persuasive force. And so, when other judges are grappling with the same sort of problem, this case can be looked at and another judge may agree with the reasoning in this decision. And for that reason, it has impact. This is how the law is built," said Eric J. Sinrod, a partner at Duane Morris L.L.P. in San Francisco who regularly represents insurers in coverage cases.

"It's one of the early cases, and it's such a big-name insured. I think it will have impact," agreed Ms. Foggan.

America Online Inc. vs. St. Paul Mercury Insurance Co., U.S. District Court for the Eastern District of Virginia, Alexandria Division; Civil Action No. 01-1636-A, June 20, 2002.

Property Loss Control

Spotlight editor: Mark Hofmann

PHOTO: SIGMA

Risk management and Hurricane Andrew

Storm changed much more than Florida landscape

By MARK A. HOFMANN

The impact of Hurricane Andrew remains significant 10 years after the storm ripped through South Florida.

Virtually every aspect of property loss control and property insurance, from the nuts and bolts of roof attachment to the most esoteric reinsurance issues, has undergone considerable change since the monster storm made landfall in the early hours of Aug. 24, 1992.

Fortunately, those changes have been for the better.

"Things have improved dramatically. I think Hurricane Andrew was a wake-up call for a lot of business and a lot of insurance companies, too," said Lance Ewing, senior director of legal/risk management for GES Exposition Services Inc. in Las Vegas. His company has facilities exposed to coastal hurricanes across the Southeast and Gulf Coast states, Mr. Ewing noted.

"I think it served as a wake-up call for every form of loss prevention," said Mike Burke, vp and manager-catastrophe exposures for Factory Mutual Insurance Co.—which does business as FM Global—in Johnston, R.I.

Mr. Burke said that the common image of Andrew's impact as acres of scattered plywood and ruined homes didn't apply to commercial property. He visited the affected area with an engineering team to evaluate damage and found that commercial structures "were pretty much unaffected" in the sense that they remained standing. But the buildings' waterproof membranes had been torn away, leading to millions of dollars in water damage, he said.

Andrew caused about $19.6 billion in inflation-adjusted insured damage, according to the Property Claim Services unit of Jersey City, N.J.-based Insurance Services Office Inc.

"We went through every facility that had significant loss. And we very quickly convinced ourselves that the vast majority of these losses—80%—were preventable with good, solid engineering," Mr. Burke said.

In particular, this meant keeping the flashing attached to the edge of the roof, keeping the deck secured to the joist, and ensuring more careful welding and better securing of insulation and roof covering to the roof deck, he said. "These are things you could drive with a pocketful of screws," he said.

"We came back pretty invigorated that there was a lot we could do to help our customers and ourselves," he said. He

See ANDREW/page 13

Interruption claims harder away from Ground Zero

By JOANNE WOJCIK

Commercial policyholders that sustained direct physical property damage from the Sept. 11 terrorist attack on the World Trade Center in New York are having an easier time settling their business interruption claims than are those located away from Ground Zero.

But even policyholders with straightforward claims are finding that assembling all of the information necessary to prove their losses is time-consuming and tedious, often requiring outside professional assistance.

Perhaps the most contentious issues for policyholders at or near Ground Zero has been determining the extent of the damage, what needs to be done to repair it, and the duration of the period of business interruption.

'There are some smaller claims that have been resolved, but all suffered direct loss. Either they were in the World Trade Center or were within the area that was closed down by order of civil authority.'

Lee Epstein
Fried & Epstein

For those away from Ground Zero, the issues are whether they have coverage for lost income under endorsements to their property insurance policies for contingent business interruption, ingress/egress and civil authority.

Already, at least one far-flung policyholder, New Orleans hotelier 730 Bienville Partners Ltd., is suing its insurer for failing to cover income lost when tourists were unable to reach the property due to airport closures nationwide.

"There are some smaller claims that have been resolved, but all suffered direct loss," said Lee Epstein, a partner in the New York law firm of Fried & Epstein. "Either they were in the World Trade Center or were within the area that was closed down by orders of civil authority."

For example, Greg "Red" Hidden, director of risk management services at Mail-Well Inc. in Englewood, Colo., said he settled his company's claim with Factory Mutual Insurance Co. of Johnston, R.I.—which does business as FM Global—"about six weeks ago." Mail-Well's printing facility was closed for five days because of its proximity to the WTC and was, therefore, unable to get trucks in or out.

While resolution was a little more time-consuming compared with other claims Mail-Well has had in the past, Mr. Hidden said, "it was only in the sense that we're all operating on new ground because of the cause. But if you extract that, I think it went really well."

The claim also was relatively small, amounting to just $82,000 above Mail-Well's $250,000 deductible, he said.

"A lot of our customers, unfortunately, were located in those

See INTERRUPTION/next page

Ranking of leading Property Loss Consultants/12

Andrew spurred cat modeling /15 U.K. flood coverage debated /16

Interruption: Sept. 11 claims

Continued from page 10

buildings. That was, in fact, where most of the documentation requests came from to show the kind of business (we) lost as a result," Mr. Hidden explained.

Many of the clients of Marsh Inc. also have settled their claims, some ranging as high as $150 million, according to Paul McVey, managing director of Marsh in New York.

"I've had some big ones resolved, yes. It wasn't easy, but they've been resolved," he said.

Steve Kessler, a director in PricewaterhouseCoopers L.L.P.'s Insurance Claims Services Group in New York, said that those claims he's seen resolved either involved policyholders with relatively small coverage limits or those whose losses exceeded their policy limits. But, in almost all cases, "they had actual property damage."

"The 'bells and whistles' claims are either being withdrawn or tabled while attention is turned on the direct business interruption claims," said John Dempsey, managing partner of the Wilton, Conn.-based forensic accounting firm of Dempsey, Myers & Co. L.L.P.

Mr. Dempsey said he has seen some progress in recent weeks, as reinsurers urge insurers to resolve as many Sept. 11-related claims as possible.

"The reinsurers are really driving the bus now," Mr. Dempsey said. In fact, he said, "a couple of my clients got advances."

But while the smaller or more-straightforward business interruption claims have been paid, many remain outstanding, particularly those with little or no direct property damage.

"This loss gave rise to a panoply of issues: civil authority, ingress/egress, contingent business interruption," explained Mr. Epstein. Perhaps the biggest issue is "what happens when you've suffered a loss, a business interruption, but your particular property wasn't hit?" he said.

"When you're talking about civil authority issues, or closure of airports due to FAA proclamations, etc., and where certain clients have had reductions in revenues, whether they be hotels or retailers or any type of business dependent on air traffic.... I haven't seen any insurers agree to any liability on those at all," said Mr. McVey.

Business interruption coverage traditionally provides coverage for income lost during the period of restoration following property damage, explained Laura Foggan, a partner at Wiley, Rein & Fielding in Washington.

But in cases such as that of the New Orleans hotel, "you're not talking about something with a direct connection to the event. You're getting several steps removed. And that's when you get into a lot more difficult coverage issues, because you have to look at the terms of the business interruption and civil authority provisions to figure out if they are even applicable," Ms. Foggan said. "Since these properties weren't destroyed or damaged, there's going to be some serious issues about whether or not coverage applies to them."

Some claims are being held up because of lack of access to determine the extent of damage, according to Ed Joyce, a partner at the New York law firm of Heller, Ehrman, White & McAuliffe L.L.P.

"There are several buildings still in the frozen zone," he said. "There are issues there.... Is the building a total loss? Do we have to clean the building? Do we have to gut the building? And what is the business interruption period? Is it still going on? In a lot of the buildings down there, they really couldn't begin to do anything, and now they're thinking about what they're going to do."

Still more claims are being delayed by insurers taking time to ensure they are paying only what they consider to be legitimate claims.

For example, "if you're a travel agent in Chicago and the airlines shut down, you're not covered unless you bought contingent business interruption," said Don Griffin, director of business and personal lines at the National Assn. of Independent Insurers in Des Plaines, Ill.

And securities firms that were able to recoup their losses in the weeks following the catastrophe may not have any losses to claim, especially if they compare their 2001 revenues against prior years, Mr. Griffin added.

Policyholders, likewise, are taking time to ensure they are including all of their lost income and extra expenses when calculating their claims, according to Joshua Gold, an attorney at Anderson, Kill & Olick in New York.

"The amount of accounting work involved is quite complex to provide to the insurance company a useful proof of loss," Mr. Gold said.

To facilitate settlement of their Sept. 11-related claims, Mr. Joyce advises risk managers to do whatever their insurers ask them to do, consider hiring forensic accountants and/or retaining legal counsel, and keep good records.

"It's like a game of tennis. They're going to ask you a million questions. Give them back as many answers as you can possibly give. And they're going to keep coming back with questions. The idea is to constantly get the tennis ball back over the net so that you put your claim in; you've answered their requests, and now their obligation to pay within X amount of time starts to run," he said.

"These are not easy claims," Mr. Dempsey said. "There are going to be several problem claims, big-money claims and claims where coverage is in dispute. This is going to take years to settle out."

GREATEST NUMBER OF STAFF

Number of professional property loss control staff

Company	Professional staff
CP Commercial Specialists	440
GE Global Asset Protection Services	200
Regional Reporting Inc.	175
Schirmer Engineering Corp.	170[1]
Global Risk Consultants Corp.	146
Zurich Services Corp.	109
NATLSCO	86
Gallagher Bassett Services Inc.	54
Gage-Babcock & Associates Inc.	46
ACE USA Property Engineering	40

1 Estimated
Source: *BI* survey

MOST CONSULTING REVENUE

Revenue from unbundled property loss control consulting

Company	Unbundled property loss control consulting revenue
GE Global Asset Protection Services	$35,000,000
Global Risk Consultants Corp.	$30,025,000
Schirmer Engineering Corp.	$20,000,000[1]
CP Commercial Specialists	$17,000,000
Regional Reporting Inc.	$14,400,000
Zurich Services Corp.	$14,000,000
Gallagher Bassett Services Inc.	$13,250,000
ACE USA Property Engineering	$5,000,000
The RJA Group Inc.	$4,050,000
Matrix Risk Consultants Inc.	$3,175,000

1 Estimated
Source: *BI* survey

COMMON CONSULTING SERVICES

Most common services by property loss consultants

Services	Percent of companies
General onsite plant loss prevention inspections	94.1%
Hazard identification	94.1%
Risk and hazard analysis	94.1%
Fire prevention inspections engineering	91.1%
Client training	85.2%

Source: *BI* survey

Top property loss control specialists

Ranked by total gross revenues from unbundled property loss control consulting*

	Company (Parent) Address	Phone, Fax Web site	Unbundled property loss control revenues	% total revenues	Total staff	Professional property loss control staff	Clients	Unbundled clients	Chief executive officers
1	**GE Global Asset Protection Services** (General Electric Co.) 1114 Ave. of the Americas, 33rd Floor New York, N.Y. 10036	212-703-9600; Fax: 212-703-9696 www.gegapservices.com	$35,000,000	95	250	200	250	250	Loren Douglass, president
2	**Global Risk Consultants Corp.** (GRC MERLIN Holdings Inc.) 100 Walnut Ave., Fifth Floor Clark, N.J. 07066	732-827-4400 Fax: 732-827-4490 www.globalriskconsultants.com	$30,025,000	100	230	146	618	618	William F. Ramonas, chairman/CEO
3	**Schirmer Engineering Corp.**[1] (Aon Corp.) 707 Lake Cook Road Deerfield, Ill. 60015	847-272-8340 Fax: 847-272-2639 www.schirmereng.com	$20,000,000	100	200	170	600	600	Carl F. Baldassarra, president
4	**Regional Reporting Inc.** 111 John St. New York, N.Y. 10038	212-964-5973 Fax: 212-608-5074 www.regionalreporting.com	$14,400,000	80	215	175	300	300	Martin Myers, CEO
5	**ACE USA Property Engineering** (ACE Ltd.) 1601 Chestnut St. Philadelphia, Pa. 19103	800-447-5677 Fax: 215-640-2572 www.acelimited.com	$5,000,000	100	40	40	100	100	Michael Schmidt, vp
6	**Matrix Risk Consultants Inc.** 3130 S. Tech Blvd. Miamisburg, Ohio 45342	937-886-0000 Fax: 937-432-2099 www.matrixrc.com	$3,175,000	100	21	15	22	22	Walter P. Luker, president
7	**ISI Insurance Services** P.O. Box 458 Chalk Hill, Pa. 15421	724-434-1555 Fax: 724-434-2555 www.ageorgeinc.com	$1,140,000	60	70	20	40	20	Alan George, president
8	**Risk Logic Inc.** 93 Apple Ridge Woodcliff Lake, N.J. 07677	201-930-0700 Fax: 201-930-8795 www.risklogic.com	$1,000,000	100	8	6	46	46	John Durante, president
9	**Fire Protection Solutions Inc.** 668 N. Coast Highway, Suite 518 Laguna Beach, Calif. 92651	866-777-3473 Fax: 949-371-0103	$850,000	100	6	6	8	8	Steve Shabazian, president
10	**Donald Mayo-Fire Protection Consultant Inc.** 150 Grove Circle Pleasant Hill, Calif. 94523	925-933-6299 Fax: 925-933-6288	$786,000	100	3	3	5	5	Donald G. Mayo, president/ treasurer

* Only those firms that derive a majority of their revenues from unbundled property loss control consulting are ranked. [1]Revenues, staff and clients are estimated.
Source: *BI* survey

The full Directory of Property Loss Control Consultants is available online, in the directories area of *www.businessinsurance.com*. The searchable directory allows users to locate property loss control consultants by company name, number of unbundled clients, number of professional staff and services provided, among other information. The online database is free to subscribers of *Business Insurance*. PDF copies of the directory can be purchased online.

AGENT/BROKER TOPICS

A MONTHLY EDITORIAL SECTION SENT EXCLUSIVELY TO AGENTS, BROKERS AND CONSULTANTS

Industry wary of invasions from privacy

By DAVE LENCKUS

Proposals that lawmakers and regulators hope eventually will ensure the privacy of the insurance-buying public's personal information continue to be moving targets—some of which insurers, brokers and agents would rather not have to hit.

One major headache for the industry is the National Assn. of Insurance Commissioners' effort to modify a 2-year-old model act that lays out rules on when regulated companies must issue privacy notices to customers and others, and how those individuals can prevent regulated companies from sharing that information with unaffiliated third parties.

The industry also is concerned about recent state actions governing company practices for safeguarding files containing personal information.

Setbacks on either privacy regulation front, which have emerged out of directives in the 1999 Gramm-Leach-Bliley Financial Services Modernization Act, would be onerous and costly for the industry and could create problems for insurance buyers, industry representatives say.

The industry is greatly concerned about some proposed amendments to the NAIC's widely adopted 2000 model act on privacy disclosures. The NAIC now wants the act to apply to employees covered by workers compensation insurance, as well as to their employers.

The industry objects to the proposal for several reasons.

By adding commercial entities, the NAIC is going well beyond Congress' intention of ensuring that financial institutions protect individuals' personal information, said Kathleen Jensen, insurance services counsel for the National Assn. of Independent Insurers of Des Plaines, Ill.

If the insurance industry must issue privacy notices to commercial enterprises as well as injured employees, the industry would face more costly regulation than other financial institutions would, Ms. Jensen said. "It's no longer an even playing field."

The industry also is concerned about the ramifications if state lawmakers and regulators open up already enacted statutes and regulations to adopt the NAIC's revisions.

"Who knows what may happen? Things could get out of hand very quickly," said Rey

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AGENT/BROKER TOPICS

Privacy: New costs, hassles feared

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Becker, vp-property/casualty at the Alliance of American Insurers of Downers Grove, Ill.

And uniformity problems could develop if some states revise their privacy notification rules and others do not, said Tim Tucker, director of state government affairs for the Alexandria, Va.-based Independent Insurance Agents & Brokers of America.

Some industry groups, such as the Alliance, have stated that they would be more amenable to the revisions if some language were modified. Those changes would substantially reduce the industry's notification requirements by making clear that notices and information-sharing "opt-out" forms must be sent only to those individuals whose personal information would be shared with unaffiliated third parties, according to industry representatives. The NAIC model requires regulated companies to give individuals an opportunity to veto, or "opt out" of, such information-sharing plans.

The NAIC tentatively has agreed to those changes in its latest revisions to its proposal. But, another NAIC revision makes the proposal more onerous than ever, industry representatives contend. The latest revision would make annual privacy notices to policyholders and possibly claimants mandatory, even if there is no intention of sharing personal information with unaffiliated third parties.

"It's unnecessary," Mr. Becker said. "They're taking something that's very simple and making it much more onerous and complicated."

But, the revision reflects the NAIC's intention all along, asserted Susan Donnellan, deputy general counsel at the New York Insurance Department. New York Superintendent Gregory V. Serio co-chairs the NAIC Privacy Issues Working Group, which Ms. Donnellan said should release a draft of its latest proposal around the NAIC's September meeting.

Meanwhile, various industry groups continue to press their lawsuit that challenges Vermont regulators' authority to issue the state's version of the 2000 NAIC model act. The industry strongly opposes a more stringent "opt in" information-sharing approval provision, which bars companies from sharing personal information unless an individual has given express consent.

The industry also is awaiting a proposal from California regulators, who have indicated an interest in using an opt-in requirement, requiring regulated companies to issue privacy notices to commercial risks, and imposing other requirements that industry representatives said would be costly.

'If there are availability problems in a state, this is not the time to be adding in requirements that result in more costs.'

Rey Becker
Alliance of American Insurers

The NAIC's new model act on safeguarding the personal, nonpublic information that insurers, brokers and agents keep internally on individuals generally draws praise from industry groups. In recognition of the great diversity in the sizes of regulated companies, the complexities of their systems and the differences in their business practices, the NAIC did not specify how companies should safeguard that information.

But the industry is concerned about how states will fashion their specific safeguarding statutes and regulations.

Trouble already has developed, with some states proposing or adopting measures that focus on consumer, rather than customer, information. Customers are clients, while consumers include many other kinds of individuals, such as applicants and third-party claimants, with whom a regulated company has no business relationship.

Regulated companies do not like the expanded requirement because safeguarding consumer information would be more difficult and expensive, industry representatives say. That information typically is less detailed, so it is stored on different systems and often is available to employees with lower security clearance, they say.

"And the way we've interpreted the model, you can't have two separate security standards for consumers and customers," said Nicole Allen, director of government affairs for the Washington-based Council of Insurance Agents & Brokers.

CIAB members largely produce commercial business, so their clients are not the intended protected class under Gramm-Leach-Bliley. But, how states adopt the model act still is a concern to the producers. Some coverage that they place, such as supplemental life and supplemental disability insurance, is a hybrid of commercial and personal lines and may be classified as personal business, Ms. Allen noted.

Only eight states have taken action on information safeguarding since the NAIC adopted its model law, according to the NAII. But West Virginia adopted an emergency rule with the consumer language, and Arkansas regulators proposed safeguarding consumer information.

The Arkansas Insurance Department, though, recently decided that it instead would likely focus its regulation on the smaller universe of customers and applicants, said Jay Morgan, general counsel with the department in Little Rock.

Pending further analysis, that new focus has garnered tentative approval from industry representatives.

States that go beyond the NAIC model may create problems for themselves as well as for national and large regional companies, industry representatives warn.

Companies "have to carve out the requirements in those states" and modify their systems and practices to comply with them, noted the IIABA's Mr. Tucker. "It could cause people not to want to operate in a certain region."

"If there are availability problems in a state, this is not the time to be adding in requirements that result in more costs" for insurers, the Alliance's Mr. Becker said.

AGENT/BROKER TOPICS

'Boot camp' prepares insurance professionals for politics

By SALLY ROBERTS

Insurance professionals who are serious about running for public office can learn the ropes of campaigning at a "political boot camp."

The Independent Insurance Agents & Brokers of America and Future One, a cooperative effort between the IIABA and 26 insurance companies, held their third biennial Insurance Campaign Institute in February.

Twenty-five insurance professionals—chiefly independent agents, though it is open to all industry professionals—attended this year's two-day Institute, which provided industry professionals from all party affiliations with the tools, knowledge and expertise required to run a successful campaign.

'Who better to deal with insurance issues –a person with no insurance background or a person who is not intimidated by the subject...?'

Rep. Leslie Waters
Florida state legislator

All facets of the campaign trail are covered, from management to fund-raising to advertising to media relations to campaign research, said Tim Tucker, director of state government affairs for the Alexandria, Va.-based IIABA. Training sessions are conducted by experts on campaigning, including current and former lawmakers and consultants.

The IIABA limits attendance to 25 to ensure a better dialogue among participants, he said. Interested parties must be serious candidates for local, state or federal office and must have an insurance industry background, Mr. Tucker added.

Although the Big I and Future One foot the bill for the entire Institute, they see it as money well spent.

"What we want to do is to get people elected to public office who understand insurance issues," Mr. Tucker said. "While we know these people aren't always going to agree with us once they get into office, with term limits now, sometimes there's such an information disconnect with the insurance industry and the committees they come to sit on. If we can get people in there who understand the issues, they can be much more effective legislators and can make better public policy," Mr. Tucker said.

"Insurance a pretty complex business," said Robert A. Rusbuldt, chief executive officer of IIABA. "We're the largest industry in the country that is solely state regulated, and many times when people come to Congress they really don't have that background in insurance if they haven't served in the state legislature," he said. "It's our goal to have people who really understand the business of insurance and to have them be educators of their colleagues in their legislative bodies when important insurance issues arise," he said.

The IIABA says that 80% to 90% of those who attend the Institute run for office, though it does not track how many of those campaigns are successful.

Leslie Waters, a former Allstate Insurance Co. manager and now Florida state representative, is a perfect example of what the Institute seeks to do.

"I spend a great deal of time discussing complex insurance issues with legislative colleagues," said Rep. Waters, R-Seminole, who was first elected in 1998 and chaired Florida's House Insurance Committee from 2000 to 2002. "With a limited number of insurance legislators in the Florida House, I am one of the few 'go to' people on insurance issues."

"Who better to deal with insurance issues—a person with no insurance background or a person who is not intimidated by the subject and who has a certain comfort level in dealing with very complex and often controversial issues?" Rep. Waters said.

"Political grassroots involvement from employees who work in insurance is very important, because insurance is a very complicated, misunderstood and often unpopular product," Rep. Waters continued. "Insurance employees, agents, management and officers of companies must not assume that their elected officials understand their business."

Ms. Waters attended the IIABA's first Insurance Campaign Institute in 1998. "It provided great presentations by experts in the political process on how to effectively campaign, how to work

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AGENT/BROKER TOPICS

An insurance industry lobbyist with a calling

By MEG FLETCHER

Anyone who thinks that an effective insurance industry lobbyist has to be a cigar-puffing, whiskey-swilling operator who doles out campaign contributions hasn't met Mary Lanning.

At first glance, she appears to be everybody's favorite Irish aunt—a 5-ft. 2-in. dynamo whose blue eyes sparkle as brightly as her quick wit.

Listen to her talk, and you hear street smarts combined with a profound understanding of human nature. Those characteristics have made New York-based ML&G Associates Inc., her lobbying and consulting firm, an effective advocate and mediator for her insurance industry clients, according to leading legislators, regulators and industry representatives.

But that is only half of her life.

Mary Lanning is also a Roman Catholic nun, who in 1970 left a Dominican monastery after 13 years to live independently as a member of the service-oriented Sisters for Christian Community.

Ms. Lanning calls on her decades of experience as the eldest daughter in a family of 11, a hospice volunteer and grief counselor, to provide a compassionate ear and practical advice to those who face life-changing losses or problems. She also develops and coordinates free services for the elderly and terminally ill, regardless of their religious beliefs.

In what one friend calls "her 36-hour days," Ms. Lanning is especially devoted to helping the homeless with food and necessities. For decades, she has coordinated scores of volunteers—including insurance industry executives, legislators, firefighters, stockbrokers, senior citizens, students and church groups—in the preparation, serving and sharing of an outdoor gourmet feast on Thanksgiving Day. Last year, nearly 1,200 people gathered for food and fellowship at a blocked-off street near her one-room apartment in Harlem.

Currently, she supports her charitable work primarily from her earnings and small contributions from family and friends.

Until the terrorist attacks of Sept. 11, Ms. Lanning shied away from publicity for herself. She blocked media coverage of the Thanksgiving feast in order to preserve the dignity of its guests.

The native New Yorker also downplayed her religious affiliation because, as she says with characteristic candor, she found "that people had such low expectations once they learned I was a nun."

Her vocation inadvertently became public knowledge as she counseled the grief-stricken families of the 295 employees of Marsh & McLennan Cos. Inc., a client, who were killed on Sept. 11. The name tag she was issued as a volunteer at Marsh's Family Assistance Center was based on her driver's license, which identified her as "Sister Mary Lanning." As a result, business colleagues who had known her for years became aware for the first time of her membership in a religious community.

Previously, the only outward sign of her religious commitment was the narrow gold ring she wears on her right hand, in the European tradition among nuns. It is her deceased mother's wedding ring, minus the decorative orange blossoms, which were filed off in keeping with her commitment to living simply.

Counseling the grieving after Sept. 11 "had the effect of bringing me out of the closet," said Ms. Lanning. For once, all her identities—insurance lobbyist, businesswoman, New Yorker and nun—"were one," she said.

She "provided wonderful counseling to families of our deceased colleagues," said John T. Sinnott, the chairman and chief executive officer of Marsh Inc., Marsh & McLennan's brokerage arm.

Since 1994, ML&G Associates—literally, "Mary Lanning and God"—has primarily represented brokers and insurers by lobbying legislators and regulators, mediating hardship cases and consulting on new products.

Ms. Lanning established her firm after working for eight years as the executive director of the Insurance Brokers' Assn. of the State of New York, which is still an ML&G client. In addition, she has two decades of insurance industry and business experience, including developing and managing a technical resources division at former broker Johnson & Higgins and managing international compliance at Skandia America Reinsurance Corp., where she began her career in insurance.

She also has been a longtime participant in several groups that advise insurance and social service organizations. In addition, she regularly takes part in industry advisory activities with national organizations representing state insurance legislators and commissioners.

Ms. Lanning's "knowledge and understanding of the business is substantial and broad and...invaluable in lobbying effectively for the industry," said Richard Bouhan, the executive director of the National Assn. of Professional Surplus Lines Offices Ltd. in Kansas City, Mo.

"I feel that her greatest strengths as an insurance industry lobbyist and consultant are her honesty, dedication and loyalty to her cause," said Sen. William J. Larkin Jr., R-New Windsor, chair of the New York Senate's Majority Steering Committee and the current president of the National Conference of Insurance Legislators.

Industry leaders say Ms. Lanning is known as a great listener and writer. But it is "her great sense of humor" and love of a good story that draws people to her, said Peter A. Lefkin, senior vp-government and external affairs for Allianz of America in Washington.

PHOTO: DOUG GOODMAN

Ms. Lanning

Since traditional lobbyists "have a bigger lobbying budget than mine—which is zero—I've had to prevail on substance, merit and personal credibility, as well as making my position intelligible," Ms. Lanning explained.

As a communicator, she said, "I open the door for people to explain their position to me. That gives me more opportunities to identify points that we can agree on and areas where I can explain away their concerns or find an alternative solution to address their concerns."

"Mary's greatest strength is her ability to fully understand the issue, to correctly frame it and to articulate it with clarity to legislators," said Marsh's Mr. Sinnott.

As a negotiator, Ms. Lanning says she "is passionate about the process of compromise, because that is the essence of democracy. It is the only way that people can live together in peace."

"I genuinely want to find a way that I can—maybe by creativity and resourcefulness—give them what they were trying to achieve, but give it to them in a different way that doesn't harm my client," she said.

Furthermore, "if I don't understand other viewpoints I hear, I'm not at all shy about asking them about the politics as well as the substantive arguments," Ms. Lanning said. "I think it's very difficult to separate politics from public policy."

Ms. Lanning said she crafts compromises "by making each party understand the limitations of any solution that we might eventually agree to, so we don't spin wheels and waste a lot of time haggling."

Before Ms. Lanning agrees to take on a client's case, whether in Albany or before other legislative or regulatory bodies, she sets certain ground rules. "I tell my clients upfront, 'If you want this, you have to want it all the way,' " she said.

Ms. Lanning said she would not ask a legislator to do "the heavy horsetrading" that he or she must do only to have her client walk away in the middle of the process. "If I'm in it, I'm in it until the end," she said.

Ms. Lanning "is among the most intelligent and articulate people" on the Albany scene, said the

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Boot Camp: Political preparation

Continued from previous page

with the press, messaging, opposition research and overall hints on how to win as an insurance professional," she said.

Bill Hamilton, president of Loudin Insurance Agency in Buckhannon, W.Va., said he wished he had known about the Institute a few years ago when he first ran for West Virginia's House of Delegates.

"I ran two years ago, and I lost by 115 votes in my race," he said. "I found out too late about the Campaign Institute to attend it two years ago."

But after the local IIABA state executive suggested that Mr. Hamilton take part in this year's Institute, he did so. "I went to the Institute in February, which was in the middle of my race, but there was a lot of good information that helped us" nonetheless, he said.

Mr. Hamilton's wife, who is his campaign treasurer, also attended the Institute in February. "We picked up a lot of good information, especially with advertising," he said. "We found that some of the things that we did and were doing were fine. And with some of the things we had done before and weren't sure if we wanted to do again, the conference convinced us not to do it again."

Mr. Hamilton won his bid for the state legislature in the primary election in May and will run unopposed in the general election in November.

AGENT/BROKER TOPICS

Lanning: An insurance industry lobbyist with a calling

Continued from previous page
spokesman for Assemblyman Peter Grannis, D-Manhattan, who chairs the New York State Assembly Insurance Committee.

"Beyond that easygoing and charming personality, she is very dogged and determined, takes her duties to clients very seriously, has energy to burn. All of these qualities make her a formidable lobbyist," Assemblyman Grannis said.

Dealing with New York state issues means that Ms. Lanning drives at least three hours each way from Harlem to Albany and stays for a few days each week throughout the year. When the Legislature is not is session, she can often be found educating staff members and solidifying relationships with them. These efforts often pay off in the future, she said, if the staff members rise to positions of prominence.

'It's pretty remarkable to see hard-boiled politicians and lawyers embrace her and give her a hug, even if they don't agree with her position.'

Jay Martin
LeBouef, Lamb, Greene & MacRae

Her style of lobbying "wears out a lot of shoes," Ms. Lanning says.

"At every level—commissioner or clerk, CEO or assistant, governor or aide—Mary treats everyone with the same respect and importance," said Peter H. Bickford, a partner with the law firm of Cozen O'Connor in New York.

As a result, she enjoys bipartisan affection.

"It's pretty remarkable to see hard-boiled politicians and lawyers embrace her and give her a hug, even if they don't agree with her position," said Jay Martin, a partner with LeBoeuf, Lamb, Greene & MacRae L.L.P. in Albany.

Mr. Martin is also on the board of directors of YES! Solutions, a nonprofit charitable organization Ms. Lanning founded. The organization plans to begin fund-raising activities in the near future.

And Ms. Lanning's reputation extends beyond Albany, as she provides services to clients nationwide.

She said she gets "a lot of hardship cases from individuals and companies" who have been notified that state commissioners are threatening to suspend or revoke their licenses, in addition to imposing significant financial penalties. The threats usually result from the failure to meet requirements, such as agents' responsibility for continuing education.

She will take on such a case if the client is "not a bad player" and she can find some mitigating circumstances that the client is willing to acknowledge. In such cases, regulators usually are somewhat compassionate, Ms. Lanning said.

"In her business capacity, she has always been viewed as an extremely honest individual who is quick to bring reason and compromise when various individuals have differences," said John Oxendine, Georgia's insurance commissioner. Indeed, Ms. Lanning is "a peacemaker," he said.

In addition to lobbying and advocacy work, Ms. Lanning consults on insurance-related issues, including the development of new products, such as alternative risk financing and collateralization-type products designed to meet global trading needs.

To those who know her, Ms. Lanning "works so hard in the secular world in order to support her good works, and not for personal gain," said Nick Pearson, a partner with Edwards & Angell L.L.P. in New York.

Unfortunately, "I have witnessed too many instances where business contacts and clients believe they are entitled to the same free assistance from her on their business problems as with her charitable endeavors," said Mr. Bickford of Cozen O'Connor.

Yet, "I have never met anyone that has the unaffected instinct, drive and ability to care for people in need, whether the homeless, the dying, the grieving or the business client with an impossible hill to climb," he said.

Among those who regard Ms. Lanning with "awe" is Donald G. Mauro, a Marsh vp and aviation insurance broker whose wife was one of the World Trade Center victims.

Over the past nine months, her counseling has helped Mr. Mauro cope with his loss. To assist him with the painful task of packing up and giving away his wife's clothes, Ms. Lanning recently established "The Petite Boutique" at a Harlem shelter. At the boutique, volunteer consultants helped needy women select clothing they could use.

"Since there were many business suits, Mary felt that these women could use the clothing to go out on job interviews," Mr. Mauro said. "I'm consoled by the thought that my wife's clothes may be helping less-fortunate women get ahead in life," he said.

Summing up, Mr. Mauro said that, to him and the many others whose lives Mary Lanning has touched, "she's New York's very own Mother Teresa."

AGENT/BROKER TOPICS

Years of incremental change result in the same old story

Optional federal chartering is worth pursuing, even as part of a carrot-and-stick strategy

By Joel Wood

In late July, Sen. Ben Nelson, D-Neb., was speaking at a breakfast to a group of insurance lobbyists, and the subject of regulation arose. How far, he was asked, could Congress push the envelope on the optional federal charter for insurers, and what does the future hold?

Sen. Nelson reflected on his decades of experience in public life as the insurance director for Nebraska, the executive vp of the National Assn. of Insurance Commissioners, a two-term governor and now a U.S. senator. "For many years, I kept a little file box of clippings from the insurance trade publications," he said. "From time to time, I would pull out the articles and play a game with friends from the industry: I'd read the headline, and they'd get to guess what decade it was from. I could stump them every time."

Perhaps the most graphic quote to illustrate this point is one that comes from a former NAIC president: "The commissioners are now fully prepared to go before their various legislative committees with recommendations for a system of insurance law which shall be the same in all states—not reciprocal but identical; not retaliatory but uniform." That was New York Insurance Superintendent George Miller, speaking at the end of the inaugural NAIC meeting—in 1871. Here we are, more than 130 years later, and the full promise of that good intent has yet to be realized.

The NAIC's latest major modernization initiative is an interstate compact for annuity, life insurance, disability income and long-term care insurance products. Such a compact was discussed as an alternative to the proposed federal insurance charter of Rep. John Dingell, D-Mich., a decade ago—an effort that went nowhere in Congress but resulted in the NAIC's worthwhile solvency accreditation program. This year, Congress is again asking whether pure state insurance regulation is appropriate in the era of convergence and consolidation. So the compact idea has significant political appeal for those who are deeply wary of federal intervention. But is it achievable? Based on our experiences in the agent/broker licensing arena, we'd like to be proven wrong, but we highly doubt it.

As a part of the Gramm-Leach-Bliley Act of 1999, Congress approved provisions designed to ratchet up the pressure for state-by-state uniformity in agent/broker licensing. Under the law, if 29 states failed to enact reciprocal or uniform licensing laws within three years, the National Assn. of Registered Agents & Brokers would go into effect, essentially providing a national licensing opportunity for producers. States, to their credit, did respond to the NARAB challenge. In September, the NAIC is expected to announce that the requisite number of states has fully complied with the NARAB mandate.

NARAB was the first time that Congress said "Do it, or else" to the states. While the technical qualification of NARAB compliance may have been reached, the goal of national harmony in licensing law is far from being achieved. Many states have adopted the NAIC's model licensing law with lots of add-on requirements. And some onerous protectionist laws—such as Florida's countersignature statute, which only adds costs without adding any value—seem a long way from being overturned.

'The commissioners are now fully prepared to go before their various legislative committees with recommendations for a system of insurance law which shall be the same in all states–not reciprocal but identical; not retaliatory but uniform.'

George Miller
New York Insurance Superintendent
Inaugural NAIC meeting—1871

Yet, for all its complexity and the excruciatingly hard work of scores of state insurance officials, the licensing problem should be one of the easiest areas of insurance regulation to resolve. That's compared with the thousands of layers of state-by-state oversight of solvency regulation, rate and form regulation, market conduct and statutory accounting requirements for insurers. After all, licensing law doesn't have a lot to do with standards of professionalism. The mere fact that a producer is lawfully licensed is little assurance to a risk manager that he or she meets high standards. Variations in licensing law are largely a reflection of bureaucracy, duplication, revenue to the states and, sometimes, protectionism.

So, that begs the question: Is optional federal regulation the only answer? Ultimately, the Council of Insurance Agents & Brokers—and an increasingly open-minded insurance community—believes it is. Making the case isn't hard. In an era of convergence, consolidation and globalization, insurers are at a competitive disadvantage to both their domestic financial services counterparts and to international insurers. The dual bank chartering system offers a very good template for reform.

But surely we could find a back issue from *Business Insurance*, say, a decade ago, arguing the same thing from the same large-brokerage perspective. Does history have to repeat itself? Will there be an endless cascade of headlines for decades to come: "Congress Threatens Intervention; States Launch Modernization Initiative"?

Many respected voices in the industry believe that an optional federal charter must come and that GLB made it inevitable as financial services product offerings continue to overlap. Arguing for more incremental changes, they say, only undermines the larger imperative and widens the competitive regulatory imbalance between financial sectors.

Much can be said for that view. Almost all of the thoughtful, academic studies on this subject conclude that the optional charter is the preferable route to efficiency and reform. The Council's Foundation for Agency Management Excellence, for example, recently released a comprehensive study of the costs and benefits of insurance regulatory options indicating that "the inexorable trend seems to lead away from continued state regulation."

The study concluded that GLB, "while offering significant near-term regulatory improvements, also has set the industry upon a potentially conflicting course in the longer term. While the act simply synthesizes and embodies a number of forces already at work, it likely will trigger further changes in the financial services industry as a whole that will continue to strain the regulatory structure."

Can an optional federal charter be sold, though, on Capitol Hill? The current debate over a federal terrorism reinsurance backstop is instructive. After Sept. 11, insurers united around the notion of a federal program modeled after the United Kingdom's Pool Re. Similarly, several congressional leaders indicated they weren't interested, not because they were worried about the price tag of a potential terrorist event but because the industry plan smacked of creating a federal insurance regulatory body. This pushback came despite the many backers of the Pool Re-styled plan who themselves strongly oppose an optional federal charter. Ultimately, the House and Senate approved plans, with industry support, that are designed to narrowly constrain the federal regulatory role.

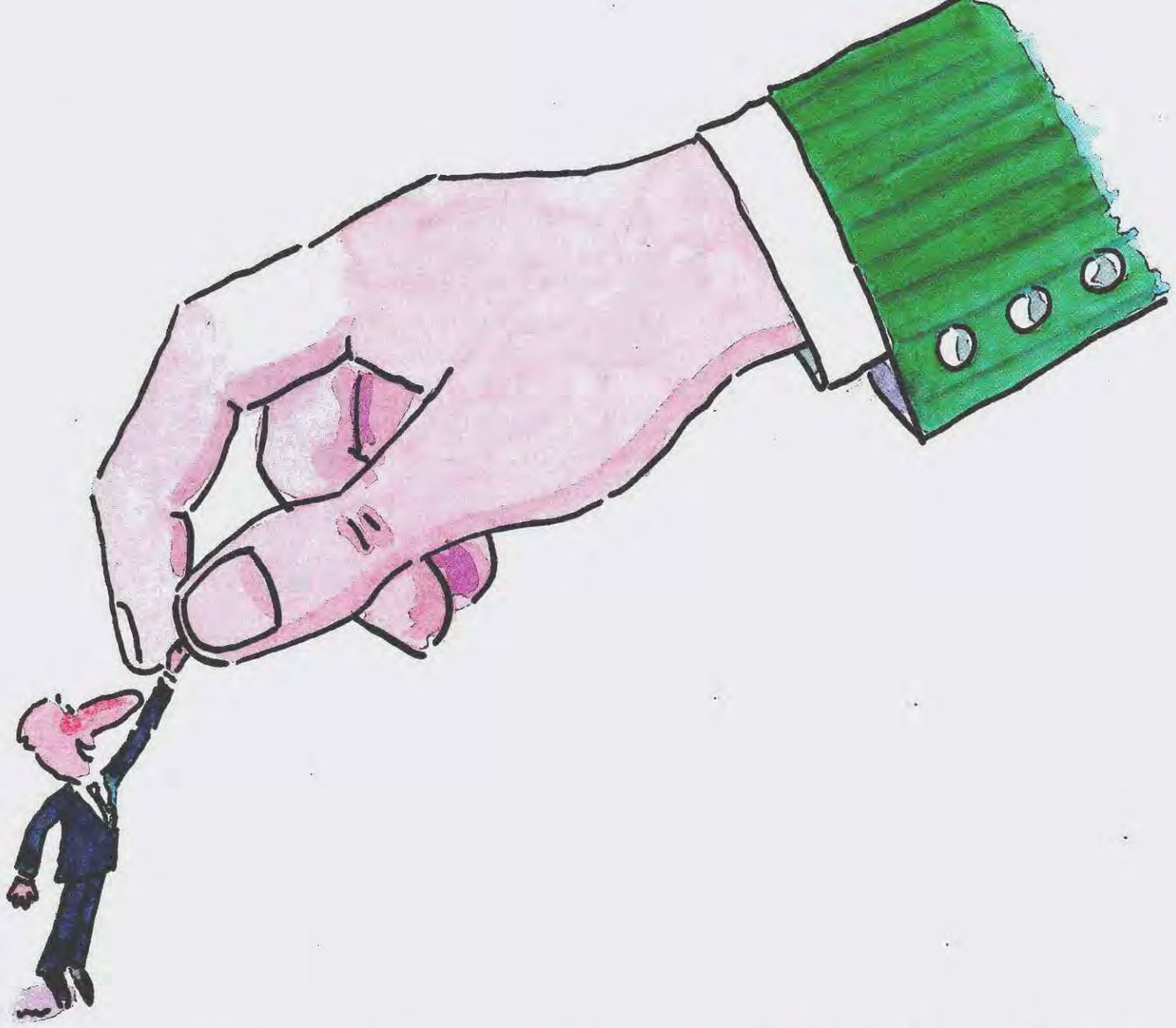
In Congress, it is always easier to beat something than to pass something; that's why GLB was 25 years in the making. Exceptions to this rule come at times of crisis, such as terrorism reinsurance, or the corporate governance legislation just rushed into law. A hard market is hardly the crisis atmosphere necessary to persuade policymakers that state regulators aren't up to their task, or that command-and-control price and form regulations must be junked. The market perhaps shouldn't prejudice the battle, but, as a matter of political reality, it does. Even if the debate moves to a full boil, these market conditions could produce legislative barnacles—such as federal price controls or a punitive "Community Reinvestment Act" for insurers—that could make such an optional charter unacceptable.

House Financial Services Committee Chairman Mike Oxley, R-Ohio, and Insurance Subcommittee Chairman Richard Baker, R-La., have a record of responsiveness and activism on insurance issues and have a deregulation bent. Rep. Oxley authored the NARAB amendment in GLB over the objections of Sen. Phil Gramm, R-Texas, and Rep. Baker iced the deal by noting that the past several insurance commissioners from his state wound up as convicted felons. These two leaders are open to the federal charter, but neither can be expected to jump until more of a consensus is reached. Right now, the CIAB is the only producer trade group in open support of the chartering opportunity. It doesn't take a sophisticated political scientist to figure the odds if the agents' lobby is largely opposed. Meanwhile, Senate Banking Committee Chairman Paul Sarbanes, D-Md., has shown little interest in the federal charter. Unlike Rep. Baker, he has held no hearings on insurance regulatory modernization.

Reps. Oxley and Baker have shown a good bit of interest in a "NARAB II" approach that would build on the significant (but not complete) successes of federal incentives on producer licensing. The idea of carrots and sticks—goals and timetables for state reforms, with the threat of federal pre-emption—has much appeal to them, though these efforts would surely fit the definition of "incremental." Rep. Baker will hold a "roundtable" discussion of industry leaders to explore the opportunities in September. Perhaps the "stick" in such an approach could be the federal charter. Perhaps the experience of NARAB can be successfully exported to other critical areas of insurance regulation. And perhaps Congress will never reach a consensus on any of this, and the headlines will remain the same for years to come.

For all of the compelling arguments in support of significant federal intervention, there are several potential political downsides. After all, everybody wants to go to heaven, but nobody wants to die. Nevertheless, chartering is worth pursuing, even if it leads only to incremental reforms.

Joel Wood is senior vp of government affairs for the Council of Insurance Agents & Brokers in Washington.



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A/BT briefs

New York letting brokers renew licenses online

NEW YORK—Insurance brokers in New York now can renew their licenses electronically via the Internet, Gregory V. Serio, New York's superintendent of insurance, recently announced.


Mr. Serio

"The department continues to build on our online licensing capabilities to make both the application and renewal process the most effective and efficient for all producers," Mr. Serio said in a statement.

Earlier this year, the department launched an online capability for all agents and brokers to apply for original licenses.

The day after the broker online renewal process went into full production in late July, more than 150 brokers renewed online. "This is exactly what I had anticipated—brokers are taking advantage of this electronic convenience that allows the department to be open 24 hours a day, seven days a week," Mr. Serio said.

IIABA names Jenkins ACSR of the Year

ALEXANDRIA, Va.—Barbara S. Jenkins, a customer service representative with DeJarnette & Beale Inc. of Bowling Green, Va., is the 2001 National Accredited Customer Service Representative of the Year, the Independent Insurance Agents & Brokers of America recently announced.

The IIABA's National ACSR of the Year honor recognizes the value that CSRs bring to the independent insurance agency system. Ms. Jenkins, a 16-year veteran, was recognized for her outstanding individual contributions to her agency, her community, the insurance industry and the strength of her essay on customer service.

"Barbara is a unique individual," said Diane Mattis, education director for the Independent Insurance Agents of Virginia, in a statement. "She has obtained her ACSR life and health designation to become Virginia's first ACSR to earn all three designations—personal, commercial, and life and health."

To be eligible for the ACSR of the Year award, nominees must hold the ACSR designation from IIABA and uphold the professional standards for which ACSR designees are recognized.

More than 13,000 ACSR designations have been conferred on CSRs in the past 11 years, the IIABA said.

WTC attack was two occurrences: Article

ALEXANDRIA, Va.—A jury will find that the World Trade Center disaster was caused by two occurrences if the court rules that no definition of "occurrence" is included in insurance policies covering the destroyed complex, according to a special article written by the Big "I" Virtual University, a service of the Independent Insurance Agents & Brokers of America.

The paper, "One vs. Multiple Occurrences," provides insight and research into the coverage controversy surrounding the Sept. 11 terrorist attacks. Leaseholder Larry Silverstein contends that the attacks constituted two occurrences, while the property's insurers argue that it was a single event and one insurable loss.


A paper by the Big "i" Virtual University contends that the World Trade Center attack constituted two occurrences.

Because the WTC losses were caused by two separate aircraft controlled by two separate groups that struck two separate buildings, the claim is two losses, authors of the paper conclude.

"If the court rules that no specific contractual definition of 'occurrence' applies, our prediction is that the court will find that this was two occurrences. In our opinion, a 'plan' is neither a peril nor an occurrence as contemplated by most insurance policies," the paper says.

The paper goes on to say that even if the WTC losses arose out of a single plan of attack, the originators of the plan are too remote for this to be considered a single occurrence.

"If you take the position that the originators of multiple attacks constitute the 'occurrence,' then one could argue that all losses attributable to a master plan of a single terrorist group must be one occurrence."

A spokesman for the Alexandria, Va.-based IIABA said, "The University paper does not reflect the views of the IIABA. IIABA will not get involved with this litigation and strongly supports our company partners on the terrorism insurance issue."

The Big "I" Virtual University paper can be found online at *http://vu.iiaa.net/1vs2.htm*.

SIAA forms groups in Texas, Canada

PORTSMOUTH, N.H.—The Strategic Independent Agents Alliance, the Portsmouth, N.H.-based independent insurance agency distribution network, recently made several announcements.

Dallas-based Sovereign Insurance Group recently formed Signature Insurance Group as a Strategic Master Agency for the south and central regions of Texas and will be based in San Antonio. Sovereign Insurance Group also has master agencies in the Dallas area and in Louisiana.

"The south and central areas of Texas have historically been the most profitable areas of the state," said William Wilkinson, regional president for SIAA, in a statement. "However, due to smaller agency size and volume requirements, companies are unable to penetrate to the extent they would like. Signature Insurance Group will help with these difficulties and benefit all concerned," Mr. Wilkinson said.

Separately, SIAA said it has developed a joint relationship with The Safety Group to form SIAA Canada.

"The Safety Group will provide many SIAA advantages to those smaller agencies in Canada that seek to grow while retaining their independence, and to direct writers and life and financial service agents who wish to become independent agents," said SIAA Chairman James A. Masiello in a statement.

InsurBanc expands to 15 more states

FARMINGTON, Conn.—InsurBanc, the federal savings bank developed by the Independent Insurance Agents & Brokers of America, has received regulatory approval to expand its operations to 15 additional states.

The Office of Thrift Supervision approved the expansion of InsurBanc into three states on a full-service basis and 12 states on a limited-service capacity.

InsurBanc's authority now allows full commercial and consumer banking services to agencies and agency employees in Delaware, Maine and Rhode Island. InsurBanc agents also can make referrals for commercial and consumer banking products. This is the same authority the bank already has in Connecticut, Massachusetts and New Jersey, the three states where InsurBanc was permitted to do business when its charter was approval in April 2001.

InsurBanc also was granted limited-service authority in Illinois, Indiana, Iowa, Kentucky, Louisiana, Minnesota, Missouri, Nebraska, Oklahoma, Oregon, South Carolina and Virginia. Limited-service authority enables the bank to provide full commercial and consumer banking services to agencies and agency employees, as well as pay referral fees to agents for the origination of credit card applications and settlement fees for residential mortgages.

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Andrew: Storm changed risk management practices

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said the engineering team developed easy retrofitting guidelines that allowed them to "zero in on deficiencies that would expose the customer."

Customers came to understand the hazards, Mr. Burke said, and within three years, more than 80% of all recommendations had been put into place. "They really embraced the solutions and really took control of their own destiny."

Andrew also prompted significant changes in school construction, said David L. Marcus, national director-public entity and scholastic division for Arthur J. Gallagher & Co. in Boca Raton, Fla. Like Mr. Burke, Mr. Marcus noted that Andrew revealed serious shortcomings in roof construction.

'Risk managers, insurers and reinsurers need and expect more information about risk potential, especially natural hazards, as a result of Andrew.'

Bill Ramonas
Global Risk Consultants

As a result, schools began putting up 2-foot parapets to prevent roof edges from peeling off in high winds, he said. That technique also protects against flying objects. In addition, air-conditioning units that had been put on roofs are now being put on the ground.

Rep Plasencia, Gallagher's Boca Raton area president, also noted that schools are now using a combination louver/shuttering system that closes quickly and automatically in high winds.

Insurers have also responded by providing policyholders with early warning systems, noted Gary Andress, manager-field services loss prevention for Liberty Mutual Insurance Co.'s LMG Property unit in Weston, Mass. For Liberty Mutual's Severe Weather Alert System, the technical staff monitors weather data from a variety of public and private sources, he said. The team tries to determine where landfall might occur and sends out faxes to alert policyholders about last-minute precautions to take before a storm hits.

FM Global uses a similar warning system. "Primarily, we do it by fax, which seems odd when you consider (the prevalence of) e-mail. But we find that in a time like that, a fax tends to get looked at, where e-mails just pile up," said Mr. Burke.

In addition to driving loss control efforts, Andrew changed risk managers' and insurers' approach to assessing catastrophe exposures.

"Risk managers, insurers and reinsurers need and expect more information about risk potential, especially natural hazards, as a result of Andrew," said Bill Ramonas, chairman and chief executive officer of Global Risk Consultants in Clark, N.J. "No longer is it sufficient to just know the distance to the coastline. People are asking, 'What is the peak ground-wind acceleration that can be experienced at this site?' and 'What is my building designed to withstand?'"

The 1992 storm clearly has had an impact on the public sector's awareness of hurricane exposures, said Nanette McElman, building code manager for the Tampa, Fla.-based Institute for Business & Home Safety. "It's safe to say that Hurricane Andrew really generated an accelerated building code movement that is now expanding throughout the nation."

New model building codes reflect many of the more stringent standards adopted by the South Florida building code that has been enforced since 1994, she said. That's critical, Ms. McElman said, because without incorporating such protections into new structures, "we will be attempting to retrofit buildings forever."

But there will be claims even with the best codes, and Andrew revolutionized claims handling as well, pointed out Gary Kerney, assistant vp of ISO's Property Claim Services unit in Jersey City, N.J.

As a result of Andrew, many insurers have developed catastrophe teams, he said. Before Andrew, insurers would seek volunteers to serve cat duty. Those volunteers were normally asked to work for three to four weeks. "If they didn't want to re-up for an additional period of storm duty, they would go home, and that tended to disrupt the handling of claims." Now, companies have dedicated teams that work from start to finish, he said.

Other changes include using the Internet—which was not widely used in 1992—to send assignments to adjusters in the field, using phone centers to deal with small claims and creating public/private coalitions so that public agencies better understand the role of adjusters, Mr. Kerney said.

Andrew, of course, also changed catastrophe underwriting. Insurers began seeking more information from customers, said Ralph Tiede, vp-loss prevention for LMG Property.

Andrew was really the first major hurricane of a generation of insurance people, said Pat Lyons, manger-regional underwriting at LMG Property. "It kind of singlehandedly recreated the value of underwriting guidelines. They're a lot more stringent than they were be-

See ANDREW/next page

PHOTO: NOAA

Hurricane Andrew devastated the Miami offices of the chief executive officer of fast-food giant Burger King.

Andrew: Hurricane changed risk management practices

Continued from previous page

fore Andrew," he said. The hurricane also put more emphasis on computer modeling (see story, page 15).

The hurricane "made us much more sensitive to knowing what our aggregate exposures are," said FM Global's Mr. Burke. Because early cat models dealt primarily with homeowners and light-commercial exposures, what is now FM Global had to create its own modeling based on its knowledge of facilities, he said. The model goes from a generic base to onsite engineering assessment of actual deficiencies that will drive the loss, and it can factor these loss drivers in or out of the model as customers deal with deficiencies, he said.

Mr. Burke said that the lessons learned from Andrew were seen when Hurricane Georges hit Puerto Rico in 1998. "On that entire island, every single recommendation our customers put in place worked without fail," he said. Of 25 or so losses in excess of $1 million, 22 involved customers who had received recommendations but had failed to implement them, he said.

Business-continuity planning also got a boost from Andrew.

"Hurricane Andrew certainly was a wake-up call," said Brian Zawada, director-business continuity solutions in New York-based GE Global Asset Services' Cleveland office. He said that the United States had been "much more immature" regarding business continuity planning than Europe, where business had "to wrestle with a lot of issues," including terrorism and natural disasters.

"If you go back to the early '90s, when it came to business-continuity planning, it was mainly focused on the (information technology) environment," he said. Andrew showed that disaster could affect many other aspects of an organization as well, from infrastructure to simply having a physical place available from which to work.

"It integrated a lot of risk management disciplines," said Mr. Zawada. "Business continuity was one of the big gaps that showed up."

"Our company was profoundly impacted by Hurricane Andrew," said John Phelps, director-risk management for Blue Cross & Blue Shield of Florida in Jacksonville. "I say that, although physically we were hardly touched," suffering a single broken window.

Instead, the impact came in the realization that the Blues "had a need for better contingency planning," said Mr. Phelps. "It caused us to initiate a sequence of events that culminated in our current business-continuity program. We've been through a business-impact analysis, and a business-recovery program was developed in 1995, which was transformed in 2000 to a business-continuity plan."

While recovery programs focus on how to fix something that goes wrong, the continuity program seeks to keep the critical business functions up and running all the time, Mr. Phelps said. "Currently, our business continuity program has been improved. All the business continuity planning is done on the risk management intranet Web site," he said, with management for the critical business functions held accountable for creating, upgrading and maintaining that plan. "On top of that, we created a crisis management, command and control program at the enterprise level. All of these plans have been designed to address any 'adverse events,' " from hurricanes to terrorism, he said.

GES' Mr. Ewing noted that insurers are asking more questions about policyholders' hurricane preparedness than they did before Andrew. They want to know what mitigation efforts are in place and they want to look at crisis-management plans.

And that's good for risk managers, he said, because "this presents an opportunity for a risk manager to say, 'I haven't really thought of that, what do we do if....?' "

After Andrew, cat modeling validated, encouraged

By RODD ZOLKOS

Catastrophe modeling existed before Hurricane Andrew, but it was the 1992 windstorm that smashed into South Florida that lent credibility to the tools and propelled their development.

"There were actually catastrophe models in existence prior to Andrew, but they were really semi-probabilistic, somewhat simplistic," said Dennis E. Kuzak, senior vp at EQECAT in Oakland, Calif. "The models really went through significant changes after Andrew and also after the Northridge earthquake."

"What characterized the first generation of catastrophe models is they sort of used components that were lying around," said Robert Muirwood, head of the global risk-modeling unit at Risk Management Solutions Inc. in London. As a result, "they were clunky, (and) they tended not always to give very reliable results."

'I think that's the one message over the past 10 years: If you're in this business and are a risk-taker, then having a model—and probably more than one—is essential.'

Dennis E. Kuzak
EQECAT

Not only did Hurricane Andrew prompt the development of modeling technology, but it also increased insurance industry interest in the models and their results.

Karen Clark, the president and chief executive officer of Applied Insurance Research Inc. in Boston, said that, from 1987 to 1992, "our people were telling our clients there could be $30 billion in losses from a hurricane in South Florida, and people didn't believe it."

"So, the biggest change was really in the industry's perception of the models and the need for the models," Ms. Clark said.

Today, the use of the models has become common among reinsurers writing property treaty business, and by most primary property insurers, who gain access to the tools either directly or through reinsurance intermediaries.

"I think that's the one message over the past 10 years: If you're in this business and are a risk-taker, then having a model—and probably more than one—is essential," Mr. Kuzak said.

Over the past 10 years, modeling firms have expanded their offerings from the technology's beginnings in California earthquake and Florida windstorms to tools examining a variety of exposures around the world.

And catastrophe modelers are taking advantage of technological improvements that enable them to do more-sophisticated analysis.

"We can generate hurricanes that never happened, but they have completely credible life histories," Mr. Muirwood said. Not reliant on historical data for measuring a storm's possible impact, such models can study hurricanes following an infinite number of possible tracks, he said.

The way the models are being used is changing as well. Cat models were originally created to facilitate reinsurance transactions, according to Mr. Kuzak. Now the models are migrating to the primary insurance underwriting level, so an insurer can see the impact of adding an individual risk to its portfolio and determine how to price it properly.

Catastrophe models, Mr. Kuzak said, are being used to remove the "veil of opacity" from the risk-pricing process. "If people now can see visible prices of risk based on some benchmark of risk assessment, we could begin to see what the impact would be to incur some risk, to hedge some risk, to mitigate that risk."

It's hoped that efforts to model terrorism risk will have that kind of effect.

Sept. 11 "has caused us to expand our definition of catastrophe," Ms. Clark noted, and since Sept. 11, insurers have been approaching the modeling firms for help assessing urban accumulations of risk and the potential for manmade catastrophes.

"We've sort of dropped down the order of magnitude with which we're going to be modeling things in urban areas," Mr. Muirwood said. For example, in some cases, the company might now look at an urban area on a building-by-building basis, or even a floor-by-floor basis, also studying how an event at one building might affect nearby structures.

"Again, I think once people begin to understand how you should be thinking about pricing and accumulating manmade risk, then they might begin to be comfortable getting in there again and offering that coverage," Mr. Muirwood said.

He likened the current level of interest in modeling terrorism to that for modeling hurricanes following Hurricane Andrew.

"Models can make markets," Mr. Muirwood said. "You might have an area where the markets just aren't working at present," he said, but by promoting an understanding of an exposure, modeling can help create or stabilize the insurance market for the risk.

U.K. insurers deluged by heavy flooding claims

Losses in 2000 and 2001 threaten to end longtime insurer-government coverage partnership

By SARAH VEYSEY

LONDON—A series of serious floods in the United Kingdom over the past few years has prompted many insurers to rethink the flood coverage they offer, and that is posing new flood risk management challenges and creating uncertainty, experts say.

In the United Kingdom, flood risks have generally been covered by small-business policies, tailored coverage for large commercial risks, and household insurance since the early 1960s, when the government decided that the existing system of disaster relief aid was not sustainable.

In 1961, the government called on the insurance industry to make flood coverage a standard element of most policies. This allowed the government to use resources that would have been swallowed up by disaster relief to fund flood and coastal defenses, according to the Assn. of British Insurers.

Jane Milne, manager of household and property insurance at the London-based ABI, said, "An effective partnership between government and insurers was established, with government providing physical protection backed up by the financial protection insurance provided."

But that insurer-government partnership is breaking down, said climate change expert Professor David Crichton, visiting fellow at University College London and visiting fellow at the flood research center at Middlesex University, and many insurers have been telling buyers that coverage cannot be guaranteed beyond 2002.

Indeed, Ms. Milne said insurers have indicated that they may not be able to continue offering the same levels of flood coverage at the end of this year.

In 2000, when floods ravaged the United Kingdom (*BI*, Oct. 23, 2000), U.K. insurers handled 30,000 claims for flood damage and paid out more than £1 billion ($1.49 billion) in claims, according to ABI statistics. And in 2001, flooding and storm claims totaled £593 million ($863.4 million).

Ms. Milne said these large losses prompted the ABI to discuss flood risk management with the government and to call for greater government investment in flood defenses.

While, "in some circumstances, it may no longer be feasible to offer flood cover in its current form," new insurance products may be developed, Ms. Milne suggested. "Safety net flood cover, similar to German products" that have a very high deductible, or "some form of co-insurance or capping might meet customers' needs," she said.

The U.K. government unveiled a series of proposals last year on funding flood and coastal defense systems. The proposals included a one-time charge on developers wishing to build on floodplains and bringing both central and local governments together to plan flood funding arrangements.

The report, published by the Department for Environment, Food and Rural Affairs, stated that the bulk of investment in flood protection plans would continue to come from government.

A problem that risk managers face, particularly local authority risk managers, noted Mr. Crichton, arises from the pressure on U.K. property developers to find new land on which to build. He advised risk managers to take steps to minimize flood risk on such properties and, where possible, to talk with planners.

Dam break is another serious problem facing risk managers, he said. While the U.K. government has detailed dam maps, these are not made public, he said. Risk managers should take steps to gain access to such maps to assess whether their properties and businesses are in a potentially high-risk area.

The London-based Institute of Civil Engineers, in a report published last year, said that risk management measures need to be taken to try to minimize flood losses.

PHOTO: REUTERS

A gas inspector wades through a supermarket in Uckfield, East Sussex, that flooded after days of torrential rain in Southern England in October 2000. That year, U.K. insurers handled 30,000 claims for flood damage, paying out more than £1 billion ($1.49 billion), according to the Assn. of British Insurers.

The ICE said that risk management steps can be taken to improve resistance to flood damage. For example, materials such as water-resistant paint and coatings can shore up external walls.

For new properties, risk managers should ensure that materials are chosen to limit water penetration in case of flood. "Generally, denser materials will provide greater flood resistance," the ICE advised.

Water-resistant linings are also available to coat internal walls, the ICE said. "Any new water-resistant lining should be installed to a height of 500 millimeters above the maximum expected flood level to prevent water being absorbed into the old lining above," the report stated. "For refurbishment works and new buildings, it may be more cost effective to install the lining to the ceiling level."

Solid concrete floors with damp-proof membranes are considered the most water-resistant type of floor, according to the ICE.

In its report, the ICE also warned that underfloor heating systems can be seriously damaged by floodwaters. Such systems should be checked by electrical engineers in case of flooding, the report said.

BI call for Best of the Web entries

Business Insurance is seeking entries for its second annual Best of the Web competition.

The Best of the Web Awards were created by *Business Insurance* to recognize and promote excellence in Internet-based services for corporate risk and employee benefit executives.

Web sites that are designed primarily—though not necessarily exclusively—to serve buyers of commercial insurance services may be submitted for consideration.

Web sites will be judged on their functionality, interactivity, design, innovation and relevance to the buyer of commercial insurance services (i.e., risk managers and employee benefit managers).

To be considered, a site must fit into one of eight specified contest categories: insurance services, claims services, risk management services, benefits management services, health plan services, claims services, legal services and educational/professional services.

Detailed information about the eight categories and rules and entry forms for the competition can be downloaded from the Datebook section of *www.businessinsurance.com*.

The deadline for submitting completed entries to *BI* is Aug. 12.

Web site sponsors from anywhere in the world may enter, though the sites must be accessible via the World Wide Web and should be understandable to English-speaking judges.

Any site that is not open to the general public must provide the judging panel with a sample account, user ID and password—or other means of access, as needed—for the duration of the judging process to be eligible for consideration. The access will be used only for judging purposes and will remain confidential.

All contest entries will be screened by a panel of *BI* editors to ensure that they fit the specific contest categories for which they are entered and that they meet the criteria for entry.

2002 BEST OF THE WEB Business Insurance www.businessinsurance.com

A panel of independent judges—knowledgeable in various aspects of risk management, benefits management, insurance and technology—will then score the entries and select the highest-scoring candidates in each category as *BI*'s Best of the Web.

The panel has the option to present additional Awards of Excellence in any category.

Those companies that won awards in the 2001 competition—and were profiled in the Oct. 8, 2001, issue of *Business Insurance*—are eligible to submit entries for this year's competition.

The winners of the 2002 competition will be announced and profiled in the Nov. 4 issue of *Business Insurance*.

To obtain an entry form and rules for the competition, visit *www.businessinsurance.com* or send an e-mail with "Best of the Web" in the subject line to *pwinston@crain.com*.

Products & Services

Traction device aids ice safety

BREMERTON, Wash.—A new safety device is designed to give employees extra traction in icy conditions.

The product, called Yaktrax, is made of a web of flexible molded plastic that is sheathed in small steel coils. The coils provide extra traction to reduce the risk of slips and falls on ice and packed snow.

Yaktrax are designed to be stretched over normal shoes or boots and can easily be slipped on and off. The product comes in several sizes and colors.

According to Bremerton, Wash.-based Yaktrax Inc., approximately 1,000 personnel at the Winter Olympics Games in Salt Lake City used the devices.

For more information, visit *www.yaktrax.com*.

Aon launches online HR service

CHICAGO–Aon Corp. has launched HR Portal Solution, a technology platform that allows human resources professionals to manage their entire HR function, including benefits, online.

The system can be customized for a variety of organizations and provides a seamless integration with existing HR information systems. Among the tools HR Portal Solutions provides are those that can help employees balance work and family life. Health care information, maps to health care providers, financial planning, product purchase assistance and various elective benefit products are available through the system.

More information is available at *www.aon.com* on the site's news page.

Guide on risks of bioterrorism

NEENAH, Wis.—J.J. Keller & Associates Inc. has teamed up with Maximum Compliance Technologies Inc. to publish "Bioterrorism: Biological and Chemical Agents Emergency Response Guide."

The 175-page guide was written for medical personnel, emergency response agencies and others. It provides detailed information on chemical and biological agents as well as how to treat exposure to those agents. Decontamination procedures and preventative measures also are discussed.

Among the agents covered are smallpox, anthrax and bubonic plague, as well as chemical toxins and those that are commercially developed and recognized as potential threats.

The book is available for $29.95 and can be ordered by calling 800-327-6868. Callers should mention action code 1506.

Benefit communication Web portal offered

SANTA BARBARA, Calif.—Benefit Software Inc. has released Fringe Facts Online Benefits Monitor, a Web-based benefit communications portal.

For a modest per employee, per month fee, employers can integrate the system into corporate intranet

systems to streamline the benefit communications process and the management of human resources functions.

Additional system features include an employee directory, company benefit profiles, a library of forms, benefit contribution calculators and more.

Enrollment, employee satisfaction surveys and compensation statements can be performed by the system.

More information on the portal is available at *www.bsiweb.com* or 800-533-1388.

Aetna offers stop-loss for California disability

HARTFORD, Conn.—Aetna Inc. is offering a stop-loss disability program to California employers.

The program is available to employers that maintain a statutory self-insured disability benefits plan for their workers.

Aetna's Aggregate Disability Stop-Loss Plan pays disability claims that exceed a pre-determined ceiling. The plan is offered to companies with at least 500 employees and aims to help contain their benefit costs.

Innovative Care Systems of California, a third-party administrator in Torrance, Calif., will administer short-term disability claims for self-insured employers under the program, while Aetna provides coverage for the stop-loss risk and for long-term disability claims.

Changes in California's state-mandated disability program have caused some employers to set up self-insurance alternatives, Aetna said in a statement announcing its new offering.

More information is available at *www.aetna.com* at the site's press center.

Scottsdale: U.S., state courts buffet insurer

Continued from page 3

while the courts were resolving the dispute.

The insurer noted that Subscription Plus' policy excluded workers compensation and automobile risks. Scottsdale also argued that even if its policyholders did employ the driver, his negligence superseded the policyholders' liability.

While the state court agreed with the insurer in its January ruling, the federal appellate and district courts—which applied Oklahoma law—ruled that Scottsdale owes Subscription Plus and Ms. Hillery a defense.

The appeals court found that Subscription Plus did not employ the driver, which made Scottsdale's "superseding cause" argument moot. The auto exclusion would have barred coverage even if Subscription Plus had employed the driver and crash victims, the court ruled.

But while Scottsdale's arguments are designed to show the weakness of the underlying litigation against Subscription Plus, the 7th Circuit panel ruled that "the duty to defend is not just a duty to defend against good claims."

The panel continued: "The insured who has bought a liability policy that entitles him to defense as well as indemnification wants to be defended against claims of liability regardless of their merit. He doesn't want to be stuck with the lawyer's bill just because he wins and therefore doesn't need to look to the insurer for indemnification. If he wanted that he would just buy indemnification, and not defense."

Mr. Fitzpatrick said that while he must "respectfully disagree," the conflicting rulings do not indicate a true conflict between the federal and state courts on the duty-to-defend issue. Plaintiffs in the underlying suits leveled different allegations against Subscription Plus. The federal courts found that Scottsdale must provide a defense against the specific allegations in the federal court case, while the state court ruled that the different charges did not trigger a duty to defend, said Mr. Fitzpatrick, a partner with Brennan, Steil, Basting & MacDougall S.C. of Janesville, Wis.

Plaintiffs in the federal case charged, among other things, breach of contract and failure to provide safe transportation, while plaintiffs in the state case alleged child labor law violations, negligence and misrepresentation claims, Mr. Fitzpatrick said.

Mr. Dace disagrees. While the plaintiffs in the state case alleged far more claims than were raised in the federal case, the state case included all of the allegations made in the federal case, he said. In addition, the 7th Circuit panel's ruling affirms a federal district judge's ruling that Scottsdale must defend Subscription Plus against all claims arising from the accident, said Mr. Dace, a partner with McAfee & Taft P.C. of Oklahoma City.

Scottsdale Insurance Co. vs. Subscription Plus Inc. and Karleen Hillery, 7th U.S. Circuit Court of Appeals; No. 01-3484, July 15, 2002.

Lloyd's capacity tops $19 billion

LONDON—Underwriting capacity at Lloyd's of London has reached a midyear high of £12.5 billion ($19.16 billion), Lloyd's announced last week.

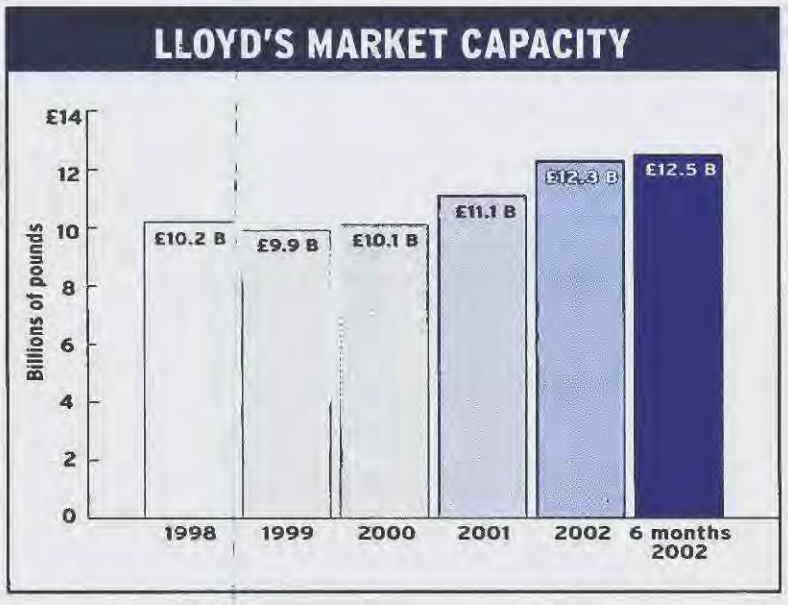
Capital-raising efforts have boosted capacity from a record £12.2 billion ($18.70 billion) at the start of the year, according to Julian James, director of worldwide markets at Lloyd's.

Mr. James told attendees at the Western States Surplus Lines conference in Whistler, Canada, that an additional £428 million ($656.0 million) has been raised through quota-share reinsurance deals in the first half of 2002, and a further £500 million ($766.4 million) in such arrangements are awaiting approval.

Additional capital raising plans announced by several syndicates could boost the market's overall capacity to £12.9 billion ($19.77 billion) by the end of the year. Lloyd's said in a statement.

"As stock markets around the world take a beating, insurance premiums are rising and are expected to provide positive returns for several years to come. This demonstrates the contracyclical nature of insurance markets like Lloyd's," said Mr. James. "But it is not our intention to allow Lloyd's to be flooded with so much capital that a soft market is created. Indeed, we are very aware of this possibility."

—Sarah Veysey



Australian courts poised for tort reforms

Recent decisions increasingly demand a duty of care for one's own safety

By KATE TILLEY

GOLD COAST, Australia—Insurance law experts say Australian courts' propensity to issue large public liability verdicts, even in cases where plaintiffs may bear a large degree of responsibility for their injuries, is starting to change.

The duty of care in Australian law "is not intended to protect fools," said Richard Douglas, a Brisbane-based senior counsel. Mr. Douglas spoke at the annual Queensland Law Society-Australian Insurance Law Assn. Insurance Law Intensive, held July 18-19 on Queensland's Gold Coast.

Court decisions since 1998 have begun to show "a sea change" in their attitude toward public liability suits, with a "newfound recognition of individual autonomy and responsibility" and an acknowledgement that the public bears the costs through increased insurance premiums, he said

Duty of care is now interpreted to require a person to exercise reasonable care for his or her own safety, Mr. Douglas said.

He said the change began with the High Court of Australia's 1998 decision in *Romeo vs. Conservation Commission of Northern Territory*. The court rejected a lower courts' decisions and found that Nadia Romeo, a 15-year-old girl who was severely injured when she slipped down a cliff face at a beachfront parking area, was responsible for her injuries because she "ignored the obvious." The plaintiff had been drinking at the time. Other appeal court cases also demonstrate that "the tide is turning," Mr. Douglas said.

For example, the New South Wales Court of Appeal's decision last month in *South Tweed Heads Rugby League Football Club Ltd. vs. Cole* showed that courts are "getting tougher," Mr. Douglas said. Rosellie Cole went to a champagne breakfast at the club and remained there all day, drinking. The club eventually refused to serve her because she was intoxicated and ejected her. Although the club had offered to call a taxi or give her a ride home on the club bus, a companion said he would "look after" Ms. Cole. About half an hour later, she was struck by a car while walking along a road in the dark and was seriously injured, Mr. Douglas said.

Initially, the trial judge found the club 30% liable and the driver whose car hit Ms. Cole 30% liable. But the appeal court said there was no evidence the driver was at fault, and the club's duty of care did not extend to having to stop serving alcohol to an inebriated patron, Mr. Douglas said.

The judges ruled that competing interests operated against a finding of strict liability. For example, if a person refused to leave and police were called, did the club have to de-

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Insurers propose mandatory use of GPS for high-cost commercial vehicles

Danes crack down on car theft costs

By GERARD O'DWYER

COPENHAGEN, Denmark—In response to the high cost of vehicle and cargo theft, insurers in Denmark may soon require their commercial auto policyholders to install satellite tracking systems on high-value vehicles.

Currently, about 72% of commercial fleet owners in Denmark voluntarily use geo-positioning satellite, or GPS, technology, according to the Danish insurer association Dansk Forsikring & Pension. The insurers' proposal would make such technology mandatory in all high-value commercial vehicles, as well as in luxury automobiles.

Some commercial policyholders in Denmark say they support the initiative if it would lead to lower premiums.

According to the DFP, around 35,000 vehicles were stolen in Denmark in 2001. Of these, roughly 3,700 were commercial vans and goods transport trucks. And the cost in claims paid out last year for unrecovered or damaged vehicles by the insurance industry was $52 million. That figure does not include cargo losses.

Approximately 35,000 vehicles were stolen off the streets of Copenhagen and elsewhere in Denmark last year.

The DFP will meet with government officials in September to discuss the cost implications of mandatory GPS deployment in commercial vehicles and luxury cars.

The DFP is also holding talks with several European automakers to determine whether there is support for the change to Danish insurance laws that would be needed to put the GSP proposal into practice.

Some insurers in Denmark already plan to require some policyholders, including those buying commercial fleet auto coverage, to use the satellite technology.

On Aug. 1, Copenhagen-based insurer Topdanmark Forsikring started requiring owners of high-

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World Updates

U.K. court dismisses oral contraceptives suit

London's High Court has dismissed a closely watched group-action lawsuit against pharmaceutical companies Schering Health Care Ltd., Organon Laboratories Ltd. and John Wyeth & Brother Ltd. The suit was one of the largest brought under the European Union's product liability system. The court ruled that the lead plaintiffs failed to establish that any of the so-called third-generation combined oral contraceptives supplied to them presented any greater risk of venous thromboembolism, or blood clots, than did an earlier version of the contraceptives. The claimants, who said they suffered various injuries as a result of oral contraceptives prescribed between 1990 and 1995, claimed the pills were defective under the 1987 Consumer Protection Act (*BI*, March 18).

Revenue, profits increase at JLT

Jardine Lloyd Thompson Group P.L.C. reported operating revenue of £203.5 million ($318.6 million) for the first half of 2002, a 10.4% increase over the same period in 2001. Pretax profits at JLT, the world's fifth-largest broker, increased 20%, to £50.9 million ($79.7 million), for the first half. Steve McGill, chief executive of the London-based broker, attributed the gains to both new business and organic growth.

RSA to sell group life unit

U.K. multiline insurer Royal & SunAlliance Insurance Group P.L.C. has agreed to sell its Group Risk Business subsidiary to Toronto-based Canada Life Assurance Co. for £60 million ($93.9 million). RSA's Bristol, England-based Group Risk Business writes employer-sponsored group life policies. The transaction is expected to be completed by Oct. 1. RSA Group Chief Executive Bob Mendelsohn said the sale was part of London-based RSA's plan to concentrate chiefly on nonlife business.

Converium sees first-half profits

Converium A.G., which formerly was the reinsurance unit of Zurich Financial Services Group, reported profits of $31.6 million for the first half of 2002. Gross written premiums totaled $1.77 billion. Converium was spun off from Zurich in an initial public offering in December 2001.

Lawsuits: Courts' tack changing

Continued from previous page
tain the person? Mr. Douglas asked. If so, under what authority? If the duty of care was extended too far, the club "would be placed in a virtually untenable position," he said.

David Muir, Brisbane-based national insurance business leader with law firm Deacons, told the conference the High Court is "in the mood for tort reform."

The nation's highest court wants to get rid of "special categories and anomalies" in negligence and apply a general duty of care instead, Mr. Muir said. The High Court also is starting to reject the notion that the existence of insurance alters a plaintiff's circumstances. "Courts often wrongly assume insurance is readily available and the increased cost of an extension of liability can be spread among customers by adding the cost of premiums to the cost of goods and services," he said. The High Court opposes "this principle of loss spreading," he said.

Courts unfortunately took insurance into consideration in the past when setting liability and damages, Mr. Muir said. But "the days of the long pockets are numbered" as part of courts' decision-making, he said.

He said he hoped that tort reform would help rein in liability awards.

A Queensland Supreme Court judge who spoke at the conference criticized the federal government's decision to appoint a panel of experts, headed by a New South Wales Supreme Court justice, to report on required changes to public liability laws.

Judge Glen Williams of the Queensland court told the conference it was "absurd to think you can put a couple of lawyers in a room and come up with a new tort law in a couple of weeks." There has been "too much knee-jerk reaction" to the public liability problems, Judge Williams said. He said Queensland legislation to limit plaintiffs' ability to file suits under certain circumstances (*BI*, May 27) was "based on the false premise that everyone likely to sue for personal injuries is going to be insured." The law would not apply to those who were not insured.

"Will that mean we have two damages regimes? Time will tell," Judge Williams said.

Germany: Insurers investigated

Continued from page 3
offices.

In a statement, Allianz said that "due to a decision of the district court in Bonn, searches of some of its buildings in Munich, Unterfoehring and Stuttgart were undertaken."

Allianz stated that it "is supporting the authorities in their work and co-operating with them."

Gerling-Konzern Allegmeine Versicherungs A.G. in Cologne is also under investigation, a Gerling spokesman confirmed.

The investigation will not turn up any evidence of insurers colluding to raise rates, the spokesman said.

"During the last decade or so, industrial insurance has been unprofitable. We cannot go on living without profits, and premiums have gone up everywhere," he said.

Meanwhile, in a separate development in Germany, state prosecutors raided the Heidelberg offices of German life insurer and pension provider MPL A.G. following allegations that the fast-growing insurer used reinsurance to inflate its profits for 2001 at the expense of future profits.

In a July 23 statement, MLP said that "the public prosecutor's office in Mannheim today inspected the reinsurance business files at MLP following an anonymous notification." It also released a report prepared by a unit of Ernst & Young in Stuttgart, Germany, that said that reinsurance had not been used to inflate profits. MLP presented that report to the public prosecutor's office on the day of the raid.

MLP was founded in 1971 and has grown rapidly. It reported profits of 98.9 million euros ($88.2 million) and revenues of 1.05 billion euros ($936.1 million) for 2001. It specializes in providing life insurance and pension products for professional groups and has operations in Switzerland, the United Kingdom, the Netherlands and Spain.

Following a special review of reinsurance contracts purchased by MLP units, Ernst & Young concluded that "the accounting and valuation methods used with respect to the reinsurance contracts are in accordance with the valid regulations relating to commercial and supervisory law."

Ernst & Young points out in its report that "rapidly growing life insurance companies have increasing financing requirements as their new business expands" and, as is typical in this sector, "a reinsurer is involved in the whole of the business including its financing."

Theft: Insurers push tracking tool

Continued from previous page
value vehicles seeking to purchase or renew comprehensive auto coverage to equip their vehicles with a satellite-surveillance system approved by the insurer.

Previously, Copenhagen-based Codan Forsikring was the only Danish insurer that required policyholders to use such a tracking system.

Although the systems can be expensive, costing as much as $1,350 per vehicle, policyholders should see dividends in the form of reduced premiums, insurers say.

"Everyone gains from having an efficient vehicle tracking system that is dedicated to finding stolen vehicles. Car owners benefit by having a facility that finds and returns their property. Insurers will lower compensation costs, and these savings can translate to cheaper auto insurance premiums," said Erik Jensen, administrative director of Topdanmark, which wrote $270 million in commercial auto business in 2001.

The insurer's new policy will affect new and renewal policyholders with vehicles valued at $81,000 and over. Topdanmark also has notified existing customers with lower-priced vehicles that their premiums may be reduced if they use a satellite-tracking system.

Niels Basse, chief loss appraiser for Codan, said that the insurance company's satellite-tracking system policy has helped reduce its costs. Codan, which instituted its GPS requirement in March 2000, saw its claims costs on commercial vehicles drop by 7.5% last year, the company said. Codan wrote $224 million in commercial auto business in 2001.

Denmark's Nordic neighbor Finland in 1993 became the first European country to see widespread use of GPS technology to track commercial vehicles. The system was introduced by Helsinki-based companies Finncargo Oy and Huolintakeskus Oy to monitor fleet vehicle movements in Russia, the Baltic countries and Poland. GPS technology is now installed in 80% of all trucks registered in Finland and operating on European delivery routes, according to Finland's Ministry of Transportation and Communications.

"Commercial vehicles using GPS in Finland saw their premium costs fall by an average of 10%," noted Poul Sorensen, a senior fleet management executive with DanTrans, a commercial trucking company in Copenhagen. DanTrans last year installed GPS technology in its international fleet, Mr. Sorensen noted.

"What the DFP's proposal would mean is that all commercial vehicles would be required to have GPS units. If having them would mean lower insurance premium costs, we would have no objection," Mr. Sorensen said.

Class action: Regulator says suits undercut authority

Continued from page 1
ness of insurance and protect our constituents," he said.

Mr. Mirel was one of six witnesses who testified before the committee on the bipartisan Class Action Fairness Act. The hearing marked the first formal Judiciary Committee action on the bill, which was introduced late last year by a bipartisan group of senators.

The measure would, among other things, allow parties in certain multistate class-action lawsuits to move the suits to federal court from state courts. Proponents of changes to class-action reform hold that such a change would cut back on so-called "forum shopping," in which plaintiff attorneys seek out the most plaintiff-friendly state courts in which to bring multistate cases. Opponents of change, however, say that the federal courts cannot accept the additional burden of dealing with cases that belong in state courts.

The House of Representatives earlier this year passed its version of class-action reform legislation, which includes the provision designed to curb forum-shopping. A similar measure cleared the Senate Judiciary Committee in 2000 but never reached the Senate floor.

Mr. Mirel, the District of Columbia commissioner, elaborated on his oral remarks in written testimony submitted to the committee. "When valid insurance company practices, reviewed and approved by state insurance regulators, are challenged in class-action litigation, we must recognize that the result could be the discontinuation of products that are desired by the public and are beneficial to the public."

Mr. Mirel's written testimony cited a suit currently before the California Supreme Court as an example of how a class-action suit in one state could undercut the authority of regulators in another. The suit charges that Bloomington, Ill.-based State Farm Mutual Automobile Insurance Co. is holding too much money in reserves.

Mr. Mirel said that the suit ignores the notion that he and other regulators require insurers to maintain adequate reserves. "Who should decide what level of reserves are adequate to protect the State Farm policyholders in the District of Columbia—the statutory commissioner of insurance for the District of Columbia or a jury of laymen in California?" he asked.

Walter Dellinger, a former acting U.S. solicitor general and head of the Office of Legal Counsel to President Clinton, made a similar point. "The courts in one county in one state" can determine the rights of citizens in 50 states, said Mr. Dellinger, who is now a partner in the Washington law firm of O'Melveny & Myers.

Committee Chairman Patrick Leahy, D-Vt., though expressing hope for a "full and balanced view of class-action litigation," made clear that he regarded state-based class-action lawsuits as a powerful force for progress in areas that range from guaranteeing civil rights to curbing smoking to helping defrauded investors. "I believe that some special-interest groups have distorted the state of class-action litigation by relying on a few anecdotes in their ends-oriented attempt to justify moving almost all class-action cases involving state law into federal court," Sen. Leahy said.

But after citing numerous examples of how class actions have promoted justice, Sen. Leahy added that he wanted to work with lawmakers of both parties to find a "way out of the specific area" of asbestos litigation that would compensate victims fairly without becoming a "Christmas tree" of provisions that reward special-interest groups. He expressed hope that the Judiciary Committee would turn its attention to the issue when it returns from its August recess in September.

Although they acknowledge that the bill faces an uphill battle, class-action reform proponents are hopeful that the full Senate will consider the matter this year.

"It's a very positive sign that they held a hearing. It was a very positive hearing," said Melissa Shelk, vp-federal affairs for the American Insurance Assn. in Washington. "I think we remain very upbeat on trying to bring this to a vote this year. I think everybody's assessing what the correct strategy will be."

"I think the hearing was significant in the sense that the issues were aired," said Ken Schloman, Washington counsel for the Alliance of American Insurers. He said it was also significant that Sen. Dianne Feinstein, D-Calif., while not endorsing the legislation, acknowledged that the current class-action system has problems that need to be addressed. Getting a bill through the Senate this year will be "a tough lift, but possible," he said.

Both Ms. Shelk and Mr. Schloman welcomed Sen. Leahy's call for an examination of the asbestos compensation issue.

"I do think there are many senators on both sides of the aisle are acknowledging that there is a problem. I think it is positive that Chairman Leahy he has indicated there's a need to address the asbestos litigation issue," Ms. Shelk said.

Beaumont Garnault 6th International Aviation Conference

DVT lawsuits hinge on 'accident' definition

By STACY SHAPIRO

LONDON—Passengers suffering from deep vein thrombosis are starting to file lawsuits against airlines in the United States, following a trend started in the United Kingdom and Australia.

The growth of such claims worldwide could give rise to liabilities not envisaged by underwriters under existing aviation liability policies.

Airlines and their insurers hope to defend themselves against this exposure by citing a relevant provision in the Warsaw Convention. According to Article 17 of the convention, which governs international flights, an airline is liable to pay only for a passenger injury that is caused by an "accident."

Plaintiffs attorneys believe, though, that they will succeed in establishing that DVT injuries constitute an accident under the Warsaw Convention and go on to prove that airline negligence caused this medical condition.

These are the observations of panelists at the Beaumont Garnault 6th International Aviation Conference, held in London July 24-25. The biannual invitation-only event is sponsored by the London-based law firm of Beaumont & Son and the Paris-based law firm of Cabinet Garnault.

DVT has become a major concern for airlines fighting lawsuits brought by passengers in the United Kingdom, Australia and the United States. DVT, which is also known as "economy-class syndrome," is a circulatory condition in which blood clots develop in the legs and travel to the brain or heart. Sitting for long periods of time in cramped conditions, such as long-distance flights, is cited as a potential cause of the disorder.

It has been alleged that more than 2,000 people die annually worldwide from DVT injuries caused by sitting on long-haul flights and another 30,000 people suffer from flight-related DVT illnesses each year. If lawsuits are successful, aviation insurers could face huge losses

But attorneys for the airlines told conference attendees they believe that DVT victims have several legal barriers to overcome if they are to win their cases against the airlines. First, a plaintiff must prove that obtaining a serious blood clot during a flight is an "accident" under the meaning of that word in the Warsaw Convention. Then he or she must prove that the blood clot was caused by the airline and not a coincidental event.

Most flights involved in DVT litigation have been international and are, therefore, governed by the convention, said John Samoitis, a partner with Beaumont & Son in London. The term "accident" under the convention, he noted, is defined in the landmark 1985 U.S. Supreme Court decision of *Air France vs. Saks* as "an unexpected or unusual event or happening external to the passenger—not the passenger's own internal reaction to the usual, normal and expected operation of the aircraft." Mr. Samoitis said he believes, therefore, that a blood clot would not be considered an accident.

A federal court in Melbourne, Australia, is expected in coming weeks to determine whether DVT injuries are considered accidents under the Warsaw Convention. The decision of one test case could affect more than 2,000 potential litigants represented by the law firm of Slater & Gordon in Melbourne.

In the United Kingdom earlier this year, the High Court agreed to one of the first group actions ever in the country, by air travelers who filed litigation against airlines for DVT injuries (*BI*, Feb. 4) .

Meanwhile, a smattering of cases have been filed in the United States, according to plaintiff lawyer Gerald C. Sterns, a partner with Sterns & Walker in San Francisco. Mr. Sterns said that he agrees with the definition of "accident" provided by the U.S. Supreme Court. Mr. Sterns said he believes, though, that the case of a passenger who develops DVT differs from that of, say, a passenger who coincidentally has a heart attack on a plane.

"DVT is different, and I think you will find that these cases roll along," Mr. Sterns said. There are external factors found only in flying that cause these DVT incidents, he said, namely, cramped space, the airline cabin's ventilation system and the lack of oxygen.

"It will be interesting to see how these

Beaumont Garnault 6th International Aviation Conference

Compensation to begin for WTC attack survivors

By STACY SHAPIRO

LONDON–The U.S. government's September 11 Victim Compensation Fund of 2001 will soon make its first batch of compensation offers to people injured and the families of those killed in the terrorist attacks.

These first awards are expected to be between $1.6 million and $1.8 million per claimant, according to Paul Clinton Harris, deputy associate attorney general for the U.S. Department of Justice in Washington, which is administering the fund. The offers will be reduced by the "collateral source benefits" that each victim or family member has received, such as life insurance.

The fund's compensation offer is contingent on claimants waiving their right to file a civil action against all parties except the terrorists.

So far, about 650 claims have been filed with the Victim Compensation Fund out of 1,500 application forms requested, Mr. Harris said at the Beaumont Garnault 6th International Aviation Conference, held in London July 24-25.

The first offers are important because "if these awards are deemed to be fair," then more victims and family members will seek compensation from the fund rather than file lawsuits, said Mr. Harris. To date, only a handful of wrongful death and bodily injury cases have been filed against airlines and other parties in conjunction with the terrorist attacks.

If these initial compensation awards are considered adequate by injured parties and by victims' families, then as many as 90% of the Sept. 11 claimants will seek compensation from the fund, predicted plaintiffs attorney Michel F. Baumeister, senior partner of Baumeister & Samuels P.C. in New York. Mr. Baumeister said his firm has presented six test cases to the Victim Compensation Fund, so if the first offers are "deemed to be fair" then his clients will file formally with the fund and will not litigate.

But if the first offers are not deemed adequate, then Mr. Baumeister expects at least half of the thousands of claimants will sue the airlines and other parties, he said. "The key question is the fund's fairness," he said.

Regardless of the outcome of the test-case claims, other suits will be filed against the airlines, Mr. Baumeister noted. For example, property owners and individuals with respiratory ailments allegedly stemming from dust in and around the World Trade Center will sue, because they are not eligible to file claims with the Victim Compensation Fund, he said.

PHOTO:AP/WIDE WORLD

Some relatives of victims of the World Trade Center attack will soon receive awards from the Victim Compensation Fund.

Airline defense lawyer Desmond T. Barry, managing partner of Condon & Forsyth in New York, warned that litigation has "enormous risks" for plaintiffs. People who file suit will face years of litigation and an uncertain outcome, he said.

The Air Transportation Safety and Stabilization Act, which established the fund last year, also capped the liability of airlines at their liability insurance limits, Mr. Barry noted. If total insured losses from Sept. 11 are $50 billion including property losses but there's only $5 billion available to pay from airlines' liability insurance limits, "does it pay to go through litigation" against airlines when all a plaintiff might receive is 10 cents on the dollar for a claim? Mr. Barry asked.

The Sept. 11 atrocity "was no accident but an act of terrorism," said Ken Walder, group general counsel for Global Aerospace Underwriting Managers Ltd. in London. Global is the lead insurer for American Airlines' liability coverage and has a joint defense agreement with United States Aircraft Insurance Group, which leads United Airlines' policy.

"It is wrong to blame the airlines for the events," said Mr. Walder. The intelligence services failed to prevent the attacks or warn the airlines, he said.

The "psychology" of Sept. 11 litigation will be "changed profoundly by the establishment of the Victim Compensation Fund," he said "But that doesn't make the defendants' job an easy one."

Aviation: Market reacts to Sept. 11

Continued from page 3

tion insurance market continues to only provide up to $50 million per event for third-party war risk liability and full limits for passenger war risk liability. Additional non-aviation markets offer up to $1 billion in third-party war risk liability limits.

Other factors will be considered when calculating airline liability premium, added Mr. Farrell. Those include: the liability limit requested; the geographical region served by the airline; the fleet profile and number of passenger seats; and any additional coverages required for cargo risks.

Global also will take into account the loss record, and the safety and risk management culture of each airline when calculating premium, said Mr. Farrell.

Primary insurers are mimicking the conditions imposed on them by their reinsurers, such as substantial increases in premium, tighter payment terms, restriction on additional coverages and reduced capacity, said Christopher Hancock, underwriting director and team leader of aviation for Faraday Underwriting Ltd. at Lloyd's of London.

Following the demise of some aviation reinsurers—particularly underwriting agent Fortress Re, but also others such as Overseas Partners Ltd. in Bermuda—direct insurers must retain more risk than they did before, said Mr. Hancock. In the 1990s, retention levels were at $25 million or lower, he said. "Today, reinsurance available below an original market loss of $200 million is available but "at a price that is uneconomic...to buy."

Mr. Hancock said that more "significant changes" may be necessary in the direct aviation insurance market. "For example, will the market continue to provide unlimited occurrence coverage for both aviation hulls and liabilities?" he asked. "Will airline liability policies in future years be aggregated annually, as product risks are currently, with one reinstatement of coverage at a pre-arranged additional premium.... Will the market also continue to cover multiple hull losses from natural perils or deliberately caused occurrences?"

There can be no better time than now for underwriters to differentiate between risks and airlines, added Mr. Hancock.

Mr. Wilkinson of Willis welcomed underwriters' decision to differentiate between risks. But he pointed out just how much money aviation underwriters have already taken in since Sept. 11.

Between Oct. 1, 2001 and July 1, 2002, the aviation market generated $3.72 billion in gross premiums—including $1.9 billion from the surcharge—compared to just $1.1 billion in the comparable period a year earlier, according to Mr. Wilkinson.

In addition, the hull war risk market increased rates dramatically and imposed a surcharge equal to 0.05% of fleet value on all airlines following Sept. 11, which produced a phenomenal increase in worldwide premium, according to Mr. Wilkinson. The hull war market suffered a total loss of $539 million in 2001, including $450 million from the July 24, 2001 loss of four Sri Lankan Airlines aircraft, he said.

From Oct. 1, 2001 to July 1, 2002, hull war risk gross premium totaled $512 million compared to just $46 million from the same period of 2000-2001, he said. Calling this premium level "staggering," Mr. Wilkinson said that these hull war risk insurance rates are "unsustainable." The hull war risk surcharge is to be reviewed on Oct. 1.

COBRA: Businesses wary of additional subsidies

Continued from page 1

that 200,000 to 400,000 people each year would use the credit.

That is a small number compared, for example, to the more than 40 million Americans without health insurance.

But it is a number that could grow—with potential adverse cost consequences for employers—if the measure becomes a starting point for future legislative initiatives to expand COBRA subsidies, benefit experts warn.

"To the extent this goes well, it will become a lot easier for Congress to pass broader legislation to subsidize other beneficiaries' COBRA premiums," said Andy Anderson, a consultant with Hewitt Associates Inc. in Lincolnshire, Ill.

"The real significance of these provisions is that they could be the seed to developing a much broader response to address the 41 million uninsured," said Paul Dennett, vp-health policy at the American Benefits Council in Washington.

Federal COBRA subsidies could make a significant dent in the number of uninsured by greatly bringing down their out-of-pocket premium cost, thus making coverage much more affordable. Today, only about 20% of eligible beneficiaries opt for COBRA, benefit consultants say, in part due to the high cost.

The annual COBRA premium for family coverage can easily exceed $7,000. A federal subsidy slicing that cost by two-thirds would make coverage much more affordable for beneficiaries.

While federal subsidies would be a boon to beneficiaries, affected employers likely would see their own costs increase.

Currently, COBRA beneficiaries incur about $1.50 in claims for every $1 in premium collected by the employer. That is because most of the people who opt for the expensive COBRA coverage are individuals who expect to make heavy use of health care services.

If the government were to pay a 65% share of the premium, adverse selection likely would be reduced—though not entirely eliminated—and costs still would outstrip premiums collected.

For employers, "COBRA always will be a money loser," Mr. Anderson said.

Others say implementation of the new federal premium subsidies in the trade bill will provide a test of whether subsidies induce healthier individuals to opt for COBRA.

'The real significance of these provisions is that they could be the seed to developing a much broader response to address the 41 million uninsured.'

Paul Dennett
American Benefits Council

"Will the credit be sufficient so the perfect healthy buy coverage? From this limited program, we can see what the experience will be," Mr. Dennett said.

While it will be some time before results are in, employers are relieved that congressional staffers made a key change to the legislation prior to passage that addressed a key concern of business groups regarding the implementation of the premium subsidy.

Initially, the legislation said the affected beneficiaries would receive an "advance" tax credit for the share of the premium assumed by the government.

Benefit experts interpreted that to mean that beneficiaries would pay 35% of the premium and employers would have had to seek reimbursement from the government for the remaining 65% they front.

The legislation left it to the Treasury Department to develop rules for government reimbursement of COBRA premiums to employers.

The legislation, however, did not set any deadline for the development of those rules, even though the COBRA health insurance credit provision would have gone into effect upon enactment. The result would have been significant confusion and uncertainty for employers.

But the final measure resolves those concerns through a key change. Initially, the premium subsidy only would be provided as a tax credit. Beneficiaries would pay the full premium and then, when filing their tax returns, report the premium cost and receive the appropriate tax credit. A tax credit reduces tax liability by the amount of the credit.

The advance tax credit would not be put in place until after the Treasury Department develops rules, which, under the legislation, it is supposed to do by August 2003.

"That is a very good development. The (advance tax credit) program doesn't start until there are rules," Mr. Anderson said.

Henry Saveth, an attorney with Mercer Human Resource Consulting in New York, expects some kind of offset mechanism to be proposed. This would allow employers to offset the federal income and Social Security taxes they withhold from employees and forward to the government by the amount of any COBRA subsidies owed to them by the government, he explained.

Congressional staffers discussed such an approach when COBRA subsidies were proposed, but not adopted, to aid those who lost their jobs due to the Sept. 11 attacks.

Quality: RIMS promotes performance measures

Continued from page 1

tions in negotiating the terms of agreements with their industry partners. Such expectations might include disclosure and justification of compensation, commitment to performance incentives and penalties, and timeliness and accuracy.

Among the expectations are disclosure and justification of compensation, commitment to performance incentives and penalties, and timeliness and accuracy.

The guidelines are a component of RIMS' overall quality improvement effort, which it announced at its annual conference in Atlanta in 2001 (*BI*, April 30, 2001). Eventually, the society wants to use the guidelines to measure the quality performance of each industry group and report the findings in what it is calling a "performance measurement tool."

This tool, which RIMS hopes to distribute at its 2004 annual conference, would effectively replace the controversial quality scorecard. RIMS intends to issue a "baseline report" at the 2003 annual conference.

That scorecard, developed by RIMS in 1999 with the now-defunct Quality Insurance Congress, was poorly received by the industry. Several of the companies ranked by the scorecard criticized the tool, contending that it used a narrow sampling and a flawed methodology. A year later, a second scorecard produced similar results and feedback.

"The idea is not to become a tornado of controversy," said Lance Ewing, senior director of legal/risk management at GES Exposition Services Inc. in Las Vegas and first vp of RIMS' Executive Council. The performance measurement tool "is not about rating and ranking. That's not the ultimate goal. Quality is the ultimate goal. We're trying to enhance the quality of everybody who's involved in this."

Whether the performance measurement tool would ultimately rank companies based on their quality performance is still undetermined, Mr. Ewing said.

'Quality is the ultimate goal. We're trying to enhance the quality of everybody who's involved in this.'

Lance Ewing
GES Exposition Services Inc.

"We need to get people utilizing the guidelines first; then we'll start tabulating and make decisions at that point," he said. "The focus of the coming year is to get as many people utilizing the guidelines as possible."

Under Mr. Ewing's direction, RIMS' quality committee has been given the task to develop a more-specific deployment plan to promote the use of the performance expectation guidelines, said Christopher E. Mandel, assistant vp-enterprise risk management for the San Antonio-based United Services Automobile Assn. and president of RIMS.

RIMS also has been had informal discussions with the heads of a couple of industry trade organizations about forming a partnership with RIMS, Mr. Mandel said. He said he hopes the partnership includes a funding arrangement not only to deploy the performance measurement tool but also to make a marketing push to their industry members.

"The request to them is to do the same kind of selling to their folks who deal with our members as we're making and will make to our members about the use of the product as a system," Mr. Mandel said.

Mr. Mandel would not name the specific associations, but David Mair, RIMS' immediate past president, said at this year's conference that RIMS was in discussions with the Council of Insurance Agents & Brokers and the American Insurance Assn. (*BI*, April 22).

As RIMS starts to market its guidelines, several risk managers are busy integrating the guidelines into their service contracts.

In addition to Messrs. Mandel and Ewing, Suzen Shaw, vp/quality systems and risk manager for the First National Bank Alaska in Anchorage, also has implemented RIMS' guidelines for performance expectations into her service contracts.

"I thought, as the chair of the (RIMS) quality committee, I should be the first to do so," Ms. Shaw said. "We had already put a form of the guidelines in place before the committee actually created the guidelines, because we knew we wanted to be able to do more than ask a broker to respond to a (request for proposal). The scope of work is the scope of work, but it doesn't set forth how they are going to perform it. That's where the performance expectations come in."

Industry observers are generally positive about the guidelines but have some misgivings.

"We view it as a great help in increasing the communication between brokers, clients and insurers," said Alan Driscoll, senior vp at Chubb & Son Inc. and worldwide head of Chubb Commercial Insurance's risk management group in Warren, N.J. "Through that, we believe, you're going to get a lot more clarity as to the expectation of service, as well as roles and responsibilities. It will serve to break down some barriers that currently do exist."

Mr. Driscoll said that while he thinks the guidelines provide a good tool for risk managers to create individualized performance scorecards for their service providers, he questions whether the guidelines will "lead to a fairer and more comprehensive measurement" of service provider performance. "Time will tell," he said.

'We view it as a great help in increasing the communication between brokers, clients and insurers.'

Alan Driscoll
Chubb & Son Inc.

Joe McSweeny, chairman and chief executive of Willis Global Risk Solutions, which is based in New York and London, said that RIMS is on target with its guidelines. "We agree that the industry is woefully inadequately prepared for an efficient, high-quality performance-based interface among all the parties," he said.

Still, Mr. McSweeny said he has some reservations. "The problem is, this is like curing world hunger; you're packing a lot of stuff here," he said, referring to the guidelines. "Are you interested in prioritizing this list to focus on a few key" expectations that "we could all together attack?"

"As far as the guidelines go, they are expectations we would expect in the due course of providing our clients with the service, products, transactions and expertise they expect," said Lloyd Reid, a managing director and chief quality officer of Marsh Inc. in New York.

Marsh has gone as far as incorporating 31 of the 39 performance expectations into a list that has been disseminated throughout its North American operations, Mr. Reid said. Marsh is now working to further implement its guidelines, including giving them to clients.

"We don't see this lending itself to a broad scale distribution," Mr. Reid said. "We see this as something individual client executives would sit down one-on-one with their clients and negotiate those expectations that the client feels are important."

Copies of the RIMS quality performance guidelines can be downloaded from www.rims.org

ADVERTISER INDEX

Issue of August 5th

For the Record

This roundup of news from the previous week is generated by *BI*'s daily news reporting. To get breaking news as it occurs, log on to *www.businessinsurance.com*, or sign up online for free *BI* Daily News by e-mail.

PHOTO: ZIUMA PRESS

Emergency-response personnel survey the site of a July 29 Amtrak derailment in Maryland.

Amtrak insured for Maryland derailment

Amtrak has insurance in place to cover losses stemming from the July 29 derailment of a Chicago-to-Washington passenger train in Kensington, Md. A spokeswoman could not provide details of the coverage that would respond to the derailment, which injured 101 passengers. Thirteen of the Capitol Limited Train No. 30's cars derailed in Kensington, about 12 miles north of Washington. The National Transportation Safety Board has launched an investigation.

House names conferees on terror insurance bills

The House of Representatives has opened the way for a conference committee to begin working on compromise terrorism insurance legislation. House leaders named their conferees shortly before their August recess. The conferees include Financial Services Committee Chairman Mike Oxley, R-Ohio, and Judiciary Committee Chairman James Sensenbrenner, R-Wis.

Willis' first-half revenues up 21%

New business growth and the hard insurance market helped boost Willis Group Holdings Ltd.'s revenues by 21.1% for the first half of the year to $862 million. Net income at Willis rose 8.9% for the first six months of 2002 to $61 million. That figure reflects $96 million in performance-based stock options Willis paid management in the past two quarters as part of the 1998 buyout arrangement with Kohlberg Kravis Roberts & Co. L.P.

Missouri considering comp rule changes

The Missouri Insurance Department is considering changing the state's managed care rules for workers compensation cases to allow employers to contract directly with managed care organizations, without their workers comp insurers' prior knowledge or agreement. Under the proposed arrangement, workers comp in the state insurers would be obligated to reimburse the employer-selected MCO for some fees and costs, according to a statement by the Chicago-based American Insurance Assn.'s Midwest Regional Office.

Chubb reports gains in first-half profits

Chubb Corp. reported profits of $408.4 million for the first half of 2002, up 26.9% over the year-earlier period. The Warren, N.J.-based insurer's first-half net written premiums rose 27.7%, to $4.31 billion. Chubb's main commercial insurance unit posted first-half net written premiums of $1.66 billion, up 37.4% over last year. Chubb's specialty insurance unit, which includes directors and officers liability insurance, had net written premiums of $1.53 billion, up 26.7%.

McDonald's has beef over fast-food suit

McDonald's Corp. is calling "frivolous" a lawsuit accusing four fast-food chains of endangering people's health. The lawsuit, filed last month in Bronx County Court in New York, names Oak Brook, Ill.-based McDonald's; Louisville, Ky.-based KFC Corp.; Miami-based Burger King Corp.; and Wendy's International Inc. of Dublin, Ohio. The plaintiff, Caesar Barber, charges that the four chains sold food products that are "high in fat, salt, sugar and cholesterol," which are detrimental to consumers' health.

Colorado commissioner to resign post

Colorado Insurance Commissioner William J. Kirven III said he will resign Aug. 9 because of "fundamental, ongoing conflict in management philosophies with the executive director of the state's Department of Regulatory Agencies, which oversees the Division of Insurance." Mr. Kirven said that the announcement of his resignation was "somewhat sudden" and that he is still undecided about his plans after leaving office. Colorado's deputy insurance commissioner, Maryellen Waggoner, had previously announced plans to resign her post on Aug. 31 to become the executive director of the National Insurance Producer Registry, which is an affiliate of the National Assn. of Insurance Commissioners.

ACE Ltd. sees rise in first-half income

ACE Ltd.'s first-half income rose 20.8%, to $302 million, even as profits dipped in the second quarter. Hamilton, Bermuda-based ACE's gross premiums written for the first half were $6.05 billion, up 21.8% over the same period in 2001. Second-quarter profits fell 20.6%, to $104 million. The decrease in earnings reflects net realized losses on investments of $125 million and a $7 million debt prepayment during this year's second quarter.

Humana's profits, revenues rise

Humana Inc. reported first-half net income of $92.1 million, up 18.7% from the year-earlier period. Revenues at the Louisville, Ky.-based managed care company rose 12.2% to $5.56 billion for the first half. Total medical membership grew 1.7%, to 6.6 million at June 30. Humana's medical expense ratio held relatively steady at 84.4% for the second quarter of 2002, compared with 83.9% for the same period a year ago.

PHOTO COURTESY: PETROBRAS

The Petrobras P-19 oil platform was one of the rigs at the center of performance-bond dispute.

Petrobras wins dispute on construction cover

Insurers must pay Petroleo Brasileiro S.A. $207 million for performance-bond claims stemming from the construction of two oil platforms, a U.S. District Court in New York has ruled. The court ruled last month that United States Fidelity & Guaranty Co. and American Home Assurance Co. were responsible for the payment to Rio de Janeiro, Brazil-based Petrobras. The oil company had to fund the completion of the rigs, built in the 1990s, after construction companies failed to complete the work.

Briefly noted

Wisconsin Gov. Scott McCallum has signed budget legislation containing a provision conforming state law to recognize a section of the federal Economic Growth and Tax Relief Reconciliation Act that allows employees 50 and older to make an extra $1,000 **catch-up contribution** to their 401(k) plans. Without the conformity change, which is retroactive to Jan. 1, 2002, catch-up contributions would have been subject to state income taxes....**Max Re Capital Ltd.** reported a net loss of $2.4 million for the first six months of 2002, compared with a profit of $1.1 million for the same period in 2001. The Hamilton, Bermuda-based insurer saw a 72.3% drop in net gains on its alternative investment portfolio. Gross written premiums rose 8.6% to $465.4 million....President Bush signed corporate governance and accounting reform legislation that includes provisions requiring employers to give 401(k) and other defined contribution plan participants 30 days' **notice of plan blackouts**—periods in which transactions cannot be conducted. The new notice provision goes into effect in six months.

Online Poll [7/29 - 8/2]

As part of corporate governance reforms, should U.S. companies be required to disclose more information on risks and risk management procedures to shareholders, as is required of U.K. companies?

YES	NO
95.7%	4.3%

Take part in our weekly poll at *www.businessinsurance.com*

BI Stock Index [7/29 - 8/2]

Up-to-the-minute data for all 87 companies that comprise the *BI* Stock Index can be found at *www.businessinsurance.com*

Percentage change of *BI* Stock Index vs. key indicators

BI Stock Index	Dow Jones	S&P 500
1785.84	8313.13	864.24

Largest gains

Fremont General Corp.	33.03%
ACE Ltd.	16.09%
American Financial Grp.	10.64%
Berkshire Hathaway	10.45%
St. Paul Cos.	10.41%

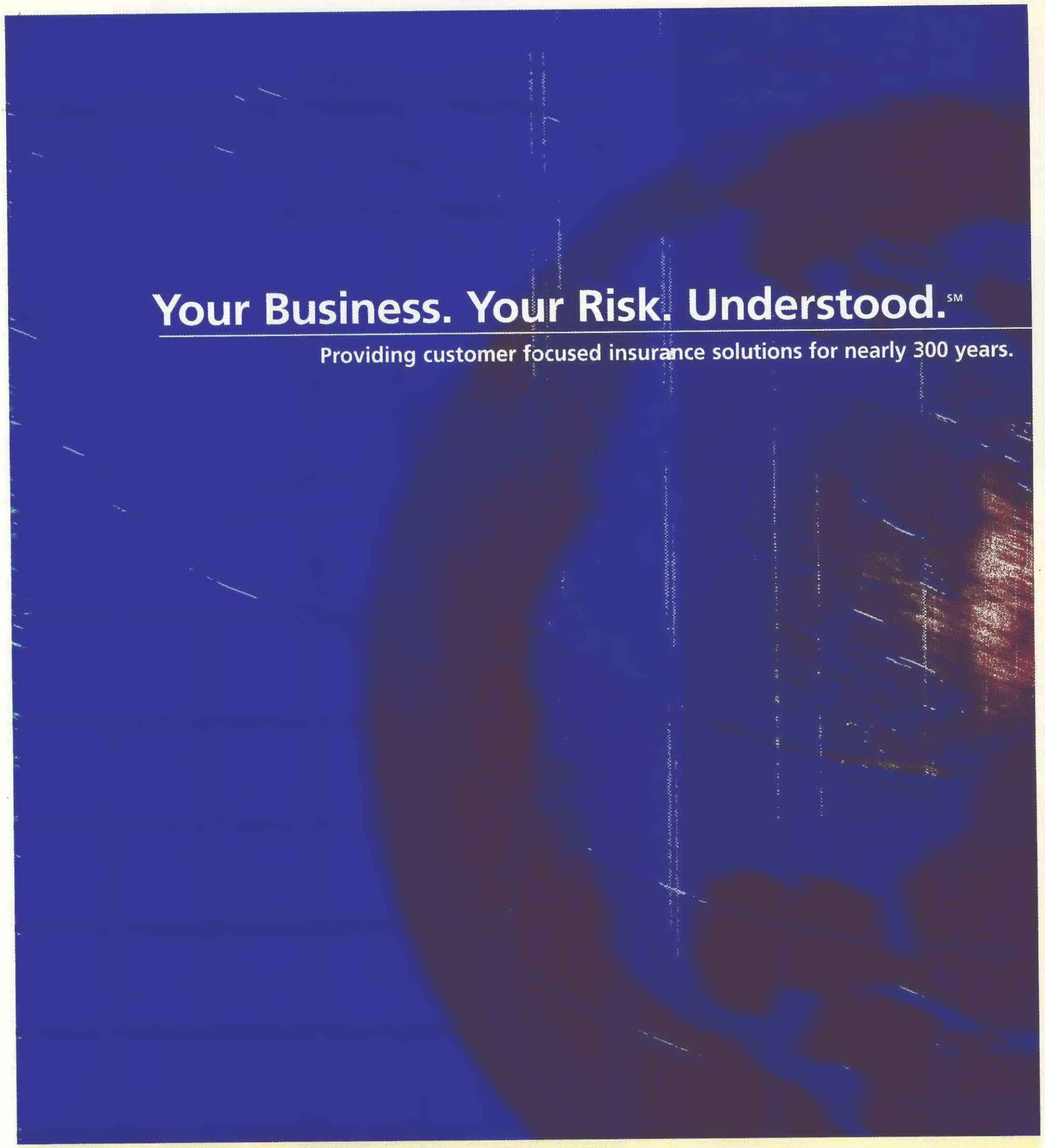
Largest losses

Gainsco Inc.	-16.67%
Allmerica Financial Co.	-10.46%
Vesta Insurance Co.	-9.88%
PMA Capital Corp.	-9.79%
AXA-UAP Group	-8.37%

Weekly change by market segment

Brokers	-0.71%
Insurers/Reinsurers	1.88%
Managed Care Organizations	1.12%

Source: CNET Investor (investor.cnet.com)



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