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IN MINN. BRIDGE COLLAPSE
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FOR UNDERWRITING UNIT
COMBINED INSURANCE / PAGE 3**

**EMPLOYERS MUST TAKE STEPS
TO ENSURE BENEFIT CHANGE
DOCUMENTS SENT / PAGE 4**

In Brief

Colorado State team cuts storm projection

The Colorado State University hurricane forecasting team has lowered its 2007 hurricane estimate to eight for this year's Atlantic hurricane season from the nine forecast on May 31. The team also reduced its estimate of named Atlantic and Gulf Coast storms to 15 from 17 forecast in May. The number of intense hurricanes predicted by the team dropped to 4 from 5 forecast in May.

Katrina water damage not covered: Court

A three-judge federal appeals court panel ruled that the flood exclusion in Louisiana commercial and homeowners policies precludes recovery for water damage sustained when levees failed after Hurricane Katrina struck New Orleans in

See **IN BRIEF** page 42

SPOTLIGHT

CATASTROPHE MANAGEMENT

Catastrophe models offer risk managers valuable data;

fire research helps establish appropriate defenses; hurricane predictions have little impact on preparedness

and policies; planning and education are key to identifying tornado exposures. **Page 11**



House panel OKs extended backstop

Measure would add 15 years to program; White House opposes

By **MARK A. HOFMANN**

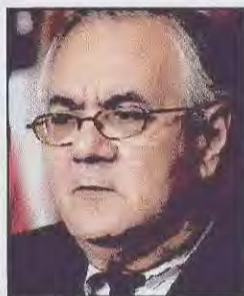
WASHINGTON—The House Financial Services Committee's vote to extend the federal terrorism insurance backstop by 15 years should not doom the program despite the Bush administration's opposition to expanding the program, observers say.

The committee approved an amended version of the Terrorism Risk Insurance Revision and Extension Act last week by a 49-20 vote. The most significant amendment calls for extending the federal insurance backstop by 15 years rather than the 10 years provided in the version of the bill approved last week by the committee's Capital Markets, Insur-

ance and Government Sponsored Enterprises Subcommittee.

The amendment to extend the program for 15 years, which was offered by Rep. Peter King, R-N.Y., enjoyed the support of the committee's chairman, Rep. Barney Frank, D-Mass.

The subcommittee had already approved several significant changes to the program. These include adding group life insurance to the lines of insurance covered by the backstop, expanding the program to cover acts of domestic- as well as foreign-originated terrorism, and requiring participating insurers to offer coverage for terrorist acts involving nuclear, biological, chemical and radio-



Rep. Barney Frank, D-Mass., backs the amendment to extend the program for 15 years.

logical agents.

In addition to calling for a 15-year extension, the full House committee approved amendments that

See **TRIREA** page 41

PREVENTIVE PRESCRIPTIONS

Prescription drug classes considered preventive by many health plans and PBMs

ACE inhibitors	Contraceptives
Anti-asthmatics	Diuretics
Anti-coagulants	Pediatric vitamins with fluoride
Antidepressants	Prenatal vitamins with iron and folic acid
Anti-diabetics, insulin therapy	Smoking deterrent medications
Anti-hypertensives	Some anti-cancer drugs
Anti-obesity	Statins and anti-hyperlipidemics
Anti-osteoporosis	Vaccines

Source: Various insurers, PBM formularies

Some employers wary of HDHP drug strategy

By **JOANNE WOJCIK**

While some employers with high-deductible health plans linked to health savings accounts have decided to exempt some "preventive" pharmaceuticals from the deductible, others with HSA-qualified HDHPs are holding back, waiting to find out how the Internal Revenue Service reacts.

Although many health plans and pharmacy benefit managers say they have had "conversations" with the IRS, the federal tax authority has yet to say whether the aggressive drug lists these vendors have compiled meet the definition of "preventive" the federal tax authority put forth in August 2004.

The health care industry had sought clarification from the IRS as to which medications would be considered preventive and therefore exempt from the deductible in HDHPs. Many employers had concerns that if they offered HSAs without some sort of prescription drug coverage, plan members would forego vital treatments because of cost.

The National Business Group on Health, a Washington-based consortium of the nation's largest employers, encourages its members to cover prescription drugs considered to be preventive outside the deductible in HSA-qualified health

See **PREVENT** page 42

Bill aims to reverse court's pay-bias decision

House passes measure to eliminate time bar for employee claims

By **JUDY GREENWALD**

WASHINGTON—A bill that would essentially reverse a U.S. Supreme Court decision limiting the time

workers have to file claims for pay discrimination would greatly increase employers' exposure to bias suits, employer groups and attorneys warn.

The House of Representatives last week passed the measure, the Lilly Ledbetter Fair Pay Act of 2007, on a largely party-line vote of 225-199. Although a companion bill has been introduced in the Senate by a

bipartisan group of senators, observers say it is too soon to project the likelihood of the legislation's enactment (see story, page 39). The current measure does face a key obstacle, though, as it is opposed by the White House.

Pay decisions

The bill, H.R. 2831, was introduced in response to the Supreme Court's May 29 decision in *Lilly Ledbetter vs. Goodyear Tire & Rubber Co.* (BI, June 4). The measure would remove time limits on filing claims for discriminatory compensation.

Under Title VII of the Civil Rights Act of 1964, a charge of unlawful employment practice must be filed with the U.S. Equal Employment Opportunity Commission within 180 days, or 300 days if the "complainant has first instituted proceedings with a state or local agen-

cy," the ruling says.

The plaintiff argued that Goodyear made a series of intentionally discriminatory pay decisions, some of which went back 19 years, and that those decisions affected her later earnings.

The U.S. Supreme Court affirmed the 180-day limitation that applied to Ms. Ledbetter in its 5-4 ruling, saying: "A new violation does not occur, and a new charging period does not commence, upon the occurrence of subsequent nondiscriminatory acts that entail adverse effects resulting from the past discrimination."

Opponents of the bill contend that the measure, as currently written, could have far-reaching consequences, including having a potentially devastating impact on

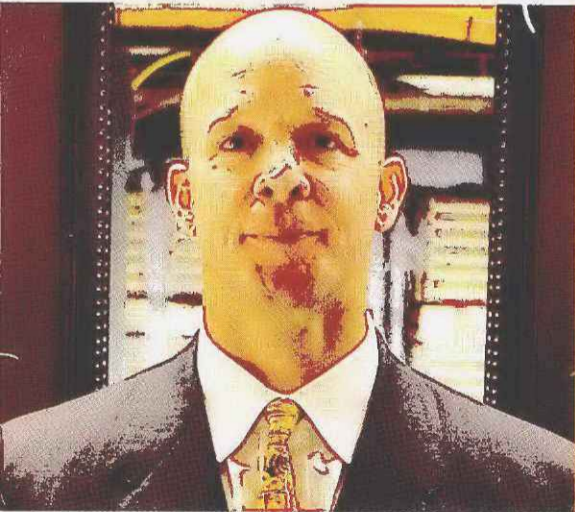
See **BIAS** page 39

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Is data privacy a big exposure for your organization?

Ask Aon.



Breaches in network security have created unprecedented data theft, litigation and financial loss. Purchasing network risk insurance is one way to protect your company from liability for data privacy exposures. But before

you do, there are a host of other strategies to consider – behavioral risk mitigation, contractual limitations, IT security to name a few – that can make your network risk management program more efficient and effective.

- Kevin Kalinich,
managing director of Aon's Financial Services Group



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On the Web

BI WOMEN TO WATCH

See expanded profiles of women leaders online

The 2007 Women to Watch feature profiles of 50 women working in risk management, insurance, employee benefits and related fields. To read their full profiles and learn more about these leaders, visit www.BusinessInsurance.com/women2007.

BI INSIGHT

Business interruption explored in podcast

In an audio interview, Jayanta Guin, senior vp of research and modeling at



AIR Worldwide in Boston, discusses how business interruption exposures can be modeled, lessons

learned from previous catastrophes and more. To hear the interview, visit www.BusinessInsurance.com/audio.

BI DIRECTORIES

Property loss consultants directory updated for '07

Business Insurance has updated its Property Loss Control Consultants directory for 2007. It is available online in the Directories area of *BusinessInsurance.com*. All BI directories may be purchased in Excel spreadsheet or PDF file format at www.BusinessInsurance.com/directories.

BI BROKER RESOURCES

Video interviews, more on largest brokers

Video interviews with top executives at the world's leading brokers, profiles on the 10 largest companies and more are available online. Hear chief executive officers discuss their firms' strengths and how they deliver value to clients at www.BusinessInsurance.com/brokers2007.

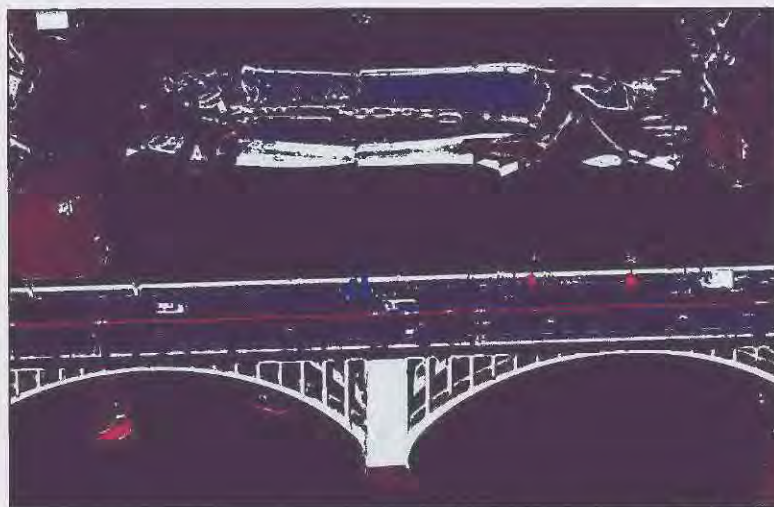
Bridge collapse claims face legal hurdles

By DOUGLAS McLEOD

MINNEAPOLIS—While a flood of liability claims from last week's disastrous bridge collapse in Minneapolis is virtually certain, potential plaintiffs face legal hurdles in any effort to recover damages, lawyers familiar with Minnesota law say.

The Minnesota Department of Transportation, which designed, owned and maintained the bridge, likely is a primary target of claims, particularly given last week's discovery that it decided against reinforcing the bridge's structural members last year.

The state has a sovereign immunity statute that allows tort claims only in limited circumstances, though, and there is a "reasonable chance" that the state would be totally immune, said Richard Allyn, a lawyer with Robins, Kaplan, Miller & Ciresi L.L.P. in Minneapolis and a former Minnesota solicitor general.



Claims resulting from last week's bridge collapse in Minneapolis may be barred because of sovereign immunity. If claims are allowed, state law caps damages. REUTERS

If claims are allowed, state law would cap recoveries at \$300,000 per person and \$1 million per occurrence.

Other possible targets of lawsuits,

meanwhile, are private contractors and consultants that DOT used over the years to work on the bridge. Work has ranged from the kind of road resurfacing that was under way

at the time of the collapse to consulting engineering services on inspection and repair issues.

The extent—if any—to which contractors contributed to the disaster remains to be seen, lawyers note. In addition, Minnesota's "statute of repose" may protect any company for work performed more than 10 years ago, confirmed David B. Potter, a lawyer with Oppenheimer Wolff & Donnelly L.L.P., who has defended companies in mass tort cases.

The law bars claims related to "improvements of real property"—arguably including bridge repairs—that are older than 10 years, lawyers say.

The 1,907-foot I-35W bridge, the most heavily traveled span in Minnesota, collapsed into the Mississippi River during the evening rush hour last Wednesday, plunging

See **BRIDGE** page 40

Aon underwriting unit set for spinoff or sale

Brokerage again eyes new ownership for Combined Insurance

By SALLY ROBERTS

CHICAGO—Aon Corp. is renewing efforts to divest itself from the underwriting business.

The Chicago-based brokerage announced last week that it is exploring strategic alternatives for Combined Insurance Co. of America, its remaining accident/health and life insurance underwriting unit, which generated around \$2.0 billion in 2006 revenues.

This is Aon's third public effort to sell its underwriting units since 2001 and follows last November's completion of sales of Aon Warranty Group, including Virginia Surety Co., to an affiliate of Toronto-based investment firm Onex Corp. and Construction Program Group to Old Republic Insurance Co.

The brokerage placed all of its remaining property/casualty underwriting business into runoff in the fourth quarter of last year.

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2006 PREMIUMS: \$1.95 billion*

OFFERS: Supplemental insurance coverage, including accident, health, life, disability, cancer, Medicare supplement, long-term care and critical illness insurance.

*Includes reimbursements from the Centers for Medicare and Medicaid Services

"Combined is a great company with a longstanding record of success, and I'm confident that it will continue to succeed in the future," Aon President and Chief Executive Officer Greg Case said in a statement. "We are making preparations for a spinoff of the company to our shareholders, but we anticipate receiving inquiries from potential buyers and are prepared to respond accordingly."

Aon has engaged Credit Suisse Securities (USA) L.L.C., Merrill

See **COMBINED** page 39

Confidential evidence discounted in lawsuit

7th Circuit dismisses securities fraud suit over verification issues

By DAVE LENCKUS

CHICAGO—Attorneys expect that securities fraud plaintiffs nationwide will pay close attention to a federal appeals court's dismissal of a case that relied heavily on statements of confidential witnesses.

After interpreting a recent U.S. Supreme Court ruling on case dismissals, a three-judge panel of the 7th U.S. Circuit Court of Appeals decided unanimously to heavily discount the importance of confidential witness statements because they never could be verified.

With the statements no longer of significant value to plaintiffs' allegations that the defendants intended to deceive shareholders, the panel affirmed a lower court's dismissal of the lawsuit against Deerfield, Ill.-based Baxter International Inc. in *Dennis Higginbotham et al. vs. Baxter International Inc.*

"A ruling like this does give a

court the flexibility to dismiss cases it didn't think it had before," said policyholder attorney William Passannante, a partner with Anderson Kill & Olick P.C. of New York. "I would think it lessens the exposure" of directors and officers liability insurers.

The ruling was the fourth federal court decision since a June 21 U.S. Supreme Court ruling that outlined how courts should analyze the strength of plaintiffs' cases at the early motion-to-dismiss stage. In that case, *Tellabs Inc. et al. vs. Makor Issues & Rights Ltd. et al.*, the Supreme Court ruled plaintiffs' allegations should survive only if—after considering all plausible inferences of defendants' fraudulent and innocent activity—a reasonable person would find the plaintiffs' arguments "at least as compelling" as any opposing inferences that person could draw (*BI*, July 2).

But the 7th Circuit ruling is significant because the appeals panel had to extensively interpret the Supreme Court's guidelines in weighing how much value to give to confidential

See **BAXTER** page 40

Business Insurance

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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

AUG. 2, 1993 Midwestern U.S. towns and cities coped with massive flooding that inundated thousands of square miles. Insured losses were estimated at \$655 million, with an additional \$680 million in insured crop damage. The city of Des Moines, Iowa, was among those hardest hit by the floodwaters that began rising July 11.

AUG. 30, 1993 A string of property catastrophe reinsurers forms in Bermuda a year after Hurricane Andrew. Three new facilities, introduced by industry companies and investment banks, were dubbed PartnerRe, Compass Re and Reinsurance Australia Corp. Ltd. CentreCat, formed earlier in 1993, seeks to raise at least \$300 million.

Employers, unions battle over payment of health premiums

Conflicting arbitration decisions send fight to Ontario courts

By **GLORIA GONZALEZ**

TORONTO—Ontario employers with unionized workforces are engaged in legal battles against unions over costly health care premiums that the unions claim employers must pay under their labor agreements.

Since the premiums were introduced more than three years ago, several Ontario employers have been forced by labor arbitrators to pay the premiums on behalf of their unionized employees, although most companies have successfully avoided that obligation.

The Supreme Court of Canada recently declined to enter the fray, essentially deferring to the judgment of individual arbitrators in the labor disputes, a move lawyers predict will lead to more legal confrontations between employers and unions.

The situation "has fostered a lot of litigation," said Harold Goldblatt, a senior partner with Toronto-based Sack Goldblatt Mitchell L.L.P., which represents unions and employees.

On July 1, 2004, the provincial government introduced the Ontario Health Premium, an individual income tax that is used to fund improvements in Ontario's health care system (see box). That triggered a wave of arbitration grievances filed by unions on behalf

ONTARIO HEALTH PREMIUM

The Ontario government introduced the Ontario Health Premium—an individual income tax—on July 1, 2004, to generate revenue to improve the health care system by reducing wait times for services and increasing the number of doctors and nurses in the Canadian province.

Individual contributions vary based on taxable income level. Those with taxable income of \$20,000 Canadian (\$18,914) or less pay nothing, while those earning more than \$200,600

Canadian (\$189,707) pay a maximum of \$900 Canadian (\$851).

According to projections by Ontario's Ministry of Finance, the premium will generate \$2.6 billion Canadian (\$2.46 billion) in revenue during the 2007-08 fiscal year.

In comparison, an already existing tax on employers to fund the health care system is expected to generate \$4.6 billion Canadian (\$4.35 billion) during the fiscal year.

of their members, arguing that collective agreement language mandated that employers pay any such premiums. About 28% of Ontario's workforce belongs to a union,

according to Statistics Canada, the federal government's research agency.

Of the almost 50 arbitration cases considering the employer's obliga-

tion to pay the premium on behalf of its employees, employers have lost eight and won the rest, according to a 2006 report by Toronto-based Filion Wakely Thorup Angeletti L.L.P.

Although the disputes began at the arbitration level, the Supreme Court in June dismissed requests by two employers to review their claims that Ontario courts applied the wrong standard of review to the decisions of the arbitrators and erred in not quashing the arbitration awards, particularly in light of the inconsistent decisions regarding the employers' obligation to pay the premiums.

The arbitrators in these two cases ruled that labor contracts mandated

See **CANADA** page 38

Veteran brokerage exec seeks to restart firm where he made his name

Tom Sharkey Sr. funding renewal of Meeker Sharkey

By **SALLY ROBERTS**

CRANFORD, N.J.—Dissatisfied with the direction Bank of America Corp. was taking with its insurance agency subsidiary and sensing opportunity, Tom Sharkey Sr. is resurrecting his family's agency more than seven years after Meeker Sharkey Financial Group was acquired by Summit Bancorp.

Cranford, N.J.-based Meeker Sharkey Associates will offer a full range of property/casualty and employee benefit services to middle- and upper middle-market clients in the three-state New York metropolitan area, said the 74-year-old Mr. Sharkey, who said he is financing the venture.

Similar to the original Meeker Sharkey, the new agency will focus on cross-selling commercial risk management and insurance with employee benefits and health care services.

"We feel that the opportunity to launch an agency today is a good one," Mr. Sharkey said, noting in particular the "turbulent" state of today's health care marketplace.

The agency has six employees, has secured contracts with "a number" of insurers and has written "a number" of accounts, Mr. Sharkey said.

He said he is looking to acquire an agency or two with as much as \$7.5 million in commissions in the three states around New York to give the new Meeker Sharkey a greater infrastructure.

"We were one of the top three or



Tom Sharkey Sr.'s new agency will focus on cross-selling commercial risk management and insurance with employee benefits and health care services.

four New York metropolitan agencies and we have aspirations to do the same thing," said Mr. Sharkey, referring to the original Meeker Sharkey, which was ranked as the 38th largest broker of U.S. business in 1999 with \$28.5 million in 1998 brokerage revenues, the last time it appeared in *Business Insurance's* annual rankings.

A few months after Summit acquired Meeker Sharkey in early 2000, it was consolidated with a number of other agencies to form Summit Insurance Advisors. Mr. Sharkey was chairman of Summit, while son Tom Sharkey Jr. was president and chief executive officer. They continued at the helm of Fleet Insurance Services upon Fleet-Boston Financial Corp.'s acquisition of Summit Bancorp. later that year.

When Bank of America acquired FleetBoston in late 2003, Tom

See **MEEKER** page 38

Argonaut granted temporary order barring ex-official from recruiting

Former MGA head tried to lure colleagues to First Mercury: Suit

By **DOUGLAS McLEOD**

SAN ANTONIO—Argonaut Group Inc. has won a temporary restraining order against Kevin P. Brooks, the former head of one of its surplus lines units who left last month to join competitor First Mercury Financial Corp. of Southfield, Mich.

In a lawsuit filed in San Antonio federal court, Argonaut charges that Mr. Brooks induced another Argonaut executive to leave with him and that he was in contact with another Argonaut official about

making a similar move.

A restraining order issued by U.S. District Judge Fred Biery bars Mr. Brooks from recruiting former Argonaut co-workers pending a hearing on the dispute scheduled for today.

Ronald B. Given, Argonaut's general counsel, declined to comment on the litigation.

Mr. Brooks and other officials of First Mercury could not be reached.

A surplus lines industry veteran, Mr. Brooks was president of Argonaut Specialty, a managing general underwriting unit that Argonaut formed in 2005 to write larger risks than its other excess and surplus lines unit, Colony Group. Before joining Argonaut, he had been president of General Reinsurance Corp.'s General Star Indemnity Co.

Mr. Brooks left Argonaut on July 10, and the insurer discovered afterward that he had been negotiating a new job with First Mercury since the beginning of the year, Argonaut court filings say.

The filings include a copy of a July 19 e-mail from Mr. Brooks to Mark Richards, an Argonaut co-worker, discussing their employment negotiations with Richard Smith, president and chief executive officer of First Mercury.

Mr. Brooks noted in the e-mail that "we have been discussing this deal with Richard since January," and outlined elements of the First Mercury offer, including a bonus plan, stock options and indemnity

See **ARGONAUT** page 38

Employer must take steps to ensure benefit change notice was sent: Court

Company loses case due to lack of proof it mailed documents

By **JUDY GREENWALD**

NEW ORLEANS—An employer must present evidence that workers were informed about a benefits plan change to prove the employer complied with the Employee Retirement Income Security Act's reporting and disclosure requirements, a federal court of appeals has ruled.

But no such proof was provided in *Michael Custer vs. Murphy Oil USA Inc.*, the 5th U.S. Circuit Court of Appeals ruled in its July 24 decision, which overturned a lower court's

June 2006 dismissal of the case.

According to the decision, Mr. Custer suffered ruptured discs in his neck in a December 2003 accident in his home and was unable to return to work. He was told by his employer, El Dorado, Ark.-based Murphy Oil, that his employment would be terminated because he was totally disabled.

Furthermore, Mr. Custer was told that, under a plan modification effective in January 2003, he no longer would qualify for coverage under the company's self-insured group insurance plan. Under the plan in effect prior to 2003, Mr. Custer would have been covered until he turned 65.

Murphy Oil said it mailed a written notice in December 2002 and

again in March 2003 to all active employees notifying them of that and other changes to the plan.

Mr. Custer, though, claimed he did not receive either document, the opinion stated. He filed suit against the company, seeking a declaratory judgment and damages under the pre-2003 version of the plan.

No evidence

Under U.S. Department of Labor regulations that enforce ERISA, administrators must "use measures reasonably calculated to ensure actual receipt of the material" describing plan modifications.

However, "the summary judg-

See **NOTICE** page 38



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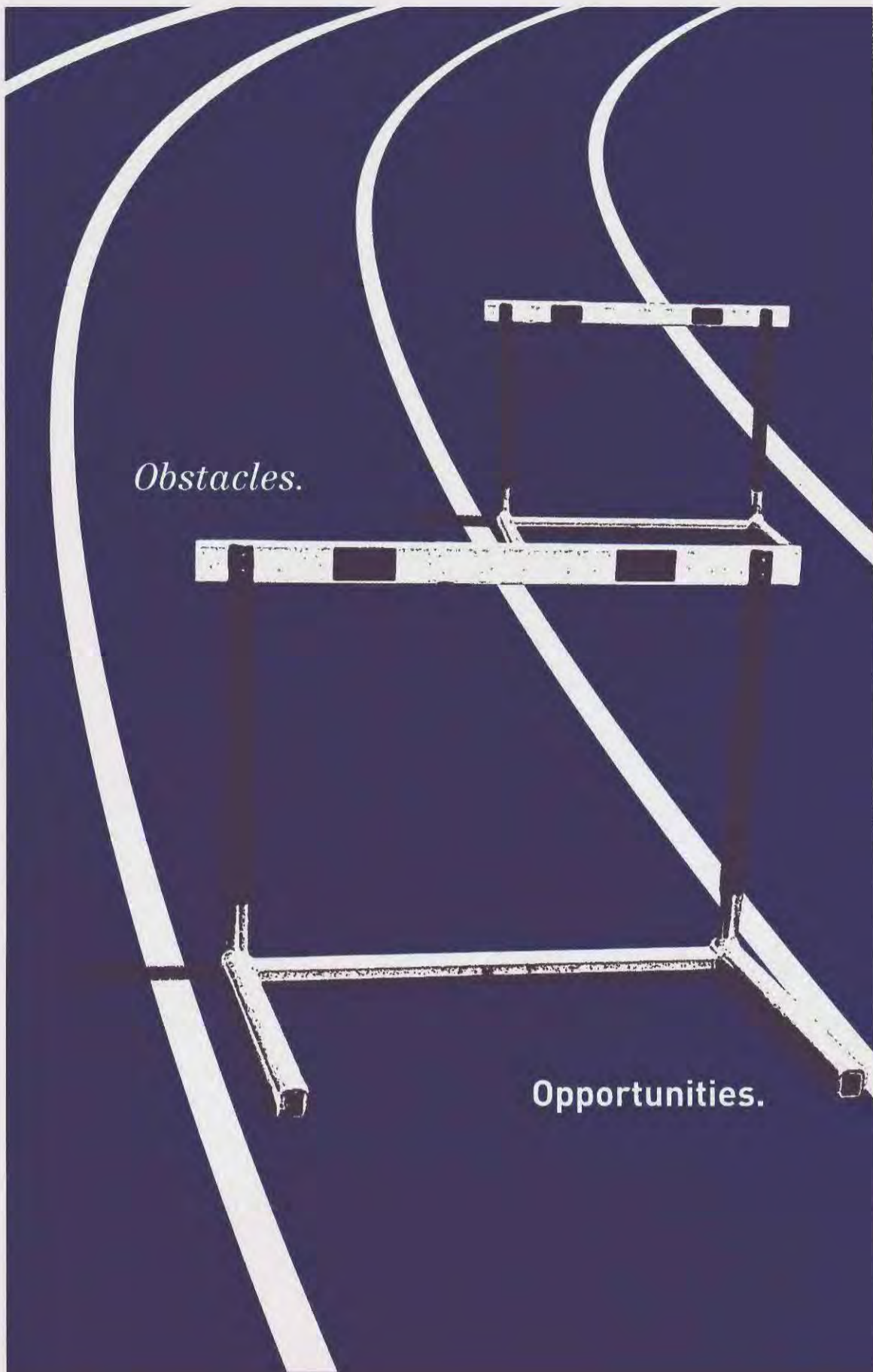
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Prior results do not guarantee a similar outcome.

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Commentary

Florida short-sighted about long-term threat

I recently saw a startling weather statistic: 95% of hurricanes occur after Aug. 1.

The traditional June 1 start date notwithstanding, the 2007 Atlantic hurricane season has had very little activity. Practically speaking, this year's hurricane season has just begun.

My concern is that states with the greatest exposure aren't prepared for major storms. Florida is a prime example of one that appears to be taking steps backward. With more than \$1.9 trillion of property exposure on its coastline and a long history of hurricane activity, the Sunshine State should seek to increase the number of private insurers underwriting there.

But in fact the opposite is occurring. Seemingly concerned more about the present cost of insurance than its longer-term availability, Florida lawmakers have expanded a state-run property insurer, Citizens Property Insurance Corp., as well as a reinsurance program that backs Citizens.

I'm familiar with Citizens because an aunt of mine has windstorm insurance written by it. I considered her hurricane deductible and premium to be quite reasonable given the location of my aunt's home, yet we both were surprised when, this spring, Citizens sent out a refund of premium—after legislators approved rate cuts.

By statute, Citizens must use "actuarially sound" rates.

Providing affordable coverage to more than 1.2 million residents—many of them, like my aunt, retired and living on fixed incomes—is a noble goal, but I have to wonder whether the light catastrophe year in 2006 hasn't lulled many into a false sense of security that the wind won't blow again soon. Citizens Property Insurance Corp. ought to be planning for the windy and rainy day. Is cutting rates and offering refunds the right thing to do in a state where private insurers can't seem to charge enough?

Florida Gov. Charlie Crist has taken private insurance companies to task for not offering competitive rates to homeowners, citing Citizens' ability to do so. Market competition is a sore point for private insurers, which contend that Florida is artificially suppressing rates and allowing Citizens to undercut other underwriters in the state. Not surprisingly, some insurers that can't get rates commensurate with the hurricane risk are withdrawing.

Florida's state-run insurer can



**REGIS
COCCIA**

Editor Regis Coccia's commentary appears periodically. He can be reached at: rcoccia@businessinsurance.com

compete on price as long as hurricanes avoid Florida. But what will occur if another Andrew strikes Homestead or Miami's South Beach? What will happen if 2004 repeats itself and four—or more—major hurricanes crisscross the state?

Some observers have suggested that a massive windstorm would make Citizens insolvent,

Citizens Property Insurance Corp. ought to be planning for the windy and rainy day.

exhaust Florida's reinsurance program, trigger assessments on the private market and force the state to seek federal aid.

Ultimately this would all fall back on the taxpayers, potentially damaging Florida's credit rating. That is a bigger problem than many lawmakers appear to realize. Without a solid credit rating, the state, its counties and cities will have a much higher cost of capital—potentially at a time when their only option for funding infrastructure projects is to issue bonds.

There is a certain amount of opportunism in rate increases following catastrophes, but generally underwriters link rates to perceived risk. Looking at 2004 and 2005 alone, Florida is a very risky place to write property insurance. Charts in the Aug. 6 *Business Insurance* catastrophe management report show that virtually all of the costliest hurricane losses have occurred in Florida.

I am hopeful that the wind won't be as severe this year in Florida, but if it is, a lot of people there are in for a rude awakening.



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Business Insurance OPINIONS

TRIREA extension deserves passage

THE BAR IS SET HIGH in the version of the Terrorism Risk Insurance Revision and Extension Act that was approved last week by the House Financial Services Committee.

And as far as we're concerned, the committee was right to approve the bill it did.

As we report on page 1, approving an extension of the federal terrorism insurance backstop for 15 years—rather than the 10 years called for in the underlying bill passed by the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises—is the most significant change the full committee made.

While the proposed 10-year extension represented a marked improvement over the two-year extension that received congressional approval only days before the backstop was slated to expire in 2005, a 15-year extension is even better.

That's because of the nature of the underlying risk and the reality of the insurance marketplace.

Insurers don't like uncertainty. Terrorism—particularly terrorism involving weapons of mass destruction—ranks among the most uncertain of risks.

Unlike natural catastrophes, there is no extended record of frequency or severity. There is only a relatively sketchy record of events—not all of which are related—that have occurred over a relatively short period of time. It is a risk that does not respond well to modeling.

The vibrant private terrorism insurance marketplace that those who oppose extending the backstop beyond two or three years believe would arise—if only the government got out of the terrorism reinsurance business—is nothing more than wishful thinking. If such a purely private marketplace were possible, wouldn't industry giants known for innovative underwriting be rushing in to grab their share of the market and the premiums it would generate?

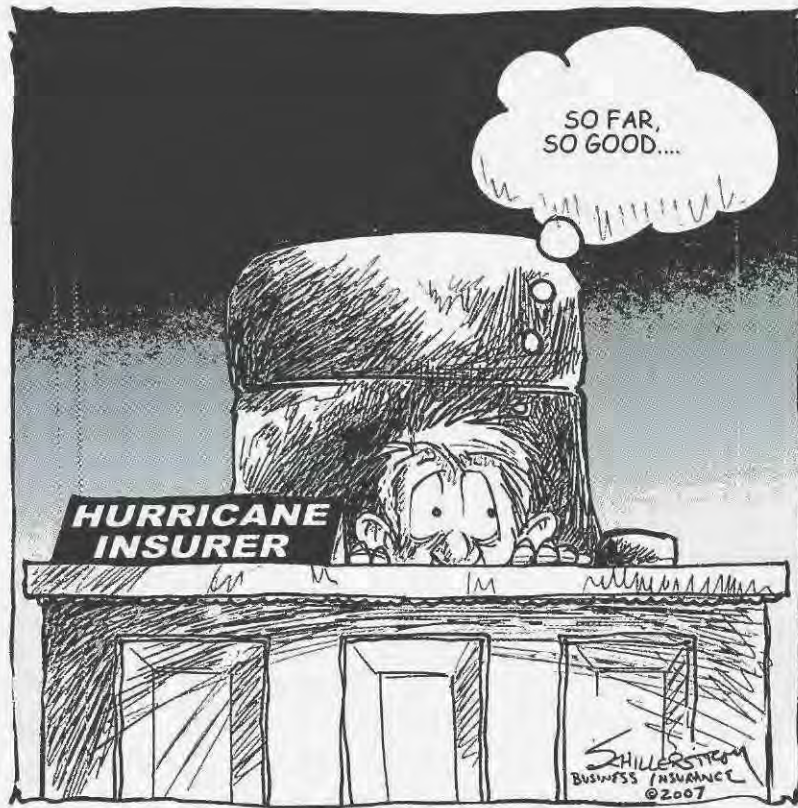
They're not doing so and are unlikely to do so anytime soon. We know what happened in the aftermath of the Sept. 11, 2001, attacks: Nobody wanted to write terrorism-exposed properties. When insurers got the backstop created by the Terrorism Risk Insurance Act of 2002, they began writing such coverage and continue to do, but only with the understanding they will not be left to shoulder the full burden of a future catastrophic terrorist attack.

And they—and their policyholders—shouldn't be expected to shoulder that burden alone, either. Terrorist attacks such as those of Sept. 11 are not aimed at a specific company; they are aimed at the U.S. economy and society as a whole. This is not a risk that should be considered a purely private matter.

And terrorism isn't a short-term phenomenon. It hasn't gone away, and there are no signs it will. In fact, all signs point to a long, drawn-out conflict that may last a generation or more.

And a long-term threat demands a long-term solution. The 15-year extension of the federal backstop approved by the House Financial Services Committee is just such a response. It may set the bar high indeed, but it is far better to have a high bar than one so low as to be meaningless. We hope that the full House—and then the Senate—follow the panel's example.

And terrorism isn't a short-term phenomenon. It hasn't gone away, and there are no signs it will. And a long-term threat demands a long-term solution.



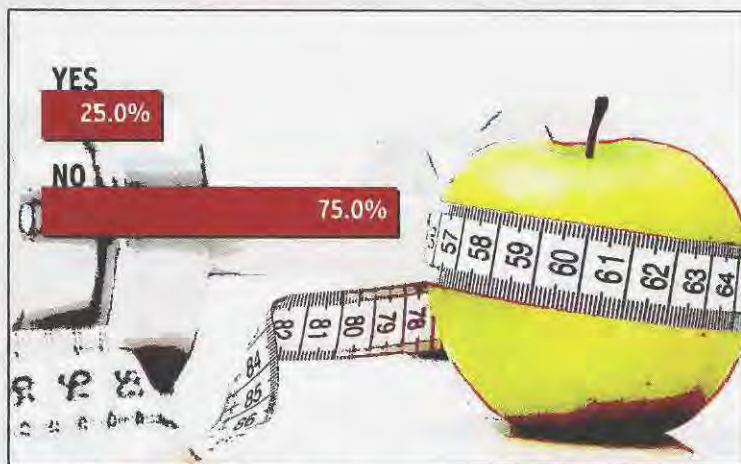
BI beats list

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

- | | | |
|--|--|--|
| Agents/brokers:
Sally Roberts. | legislation—benefits:
Jerry Geisel. | cat risks: Mark A. Hofmann. |
| Benefits—health care and ancillary benefits:
Joanne Wcjik. | Federal regulation/legislation—risk management:
Mark A. Hofmann. | Regulation of insurance:
Meg Fletcher. |
| Benefits—retirement savings/pensions:
Jerry Geisel. | Health care industry operations: Gloria Gonzalez. | Reinsurance:
Judy Greenwald. |
| Bermuda market:
Rupal Parekh. | Industry Focus: Rodd Zolkos, Meg Fletcher. | Risk management profession: Dave Lenckus. |
| Canada—risk management and benefits:
Gloria Gonzalez. | Insurance coverage litigation: Douglas McLeod. | Runoffs/receiverships:
Douglas McLeod. |
| Claims management:
Rupal Parekh. | Insurance fraud:
Douglas McLeod. | Safety/ergonomics: Meg Fletcher. |
| Employment practices:
Judy Greenwald. | Latin American markets:
Roberto Cenicerros. | Surplus lines/wholesalers:
Roberto Cenicerros. |
| Environmental risk management: Sally Roberts. | Property/casualty industry operations: Judy Greenwald. | Tort reform: Mark A. Hofmann. |
| Federal regulation/ | Professional liability:
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| | Property loss control/ | Workers compensation:
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NEXT WEEK'S POLL: How worried are you about a terrorist attack using nuclear, chemical, biological or radiological weapons?

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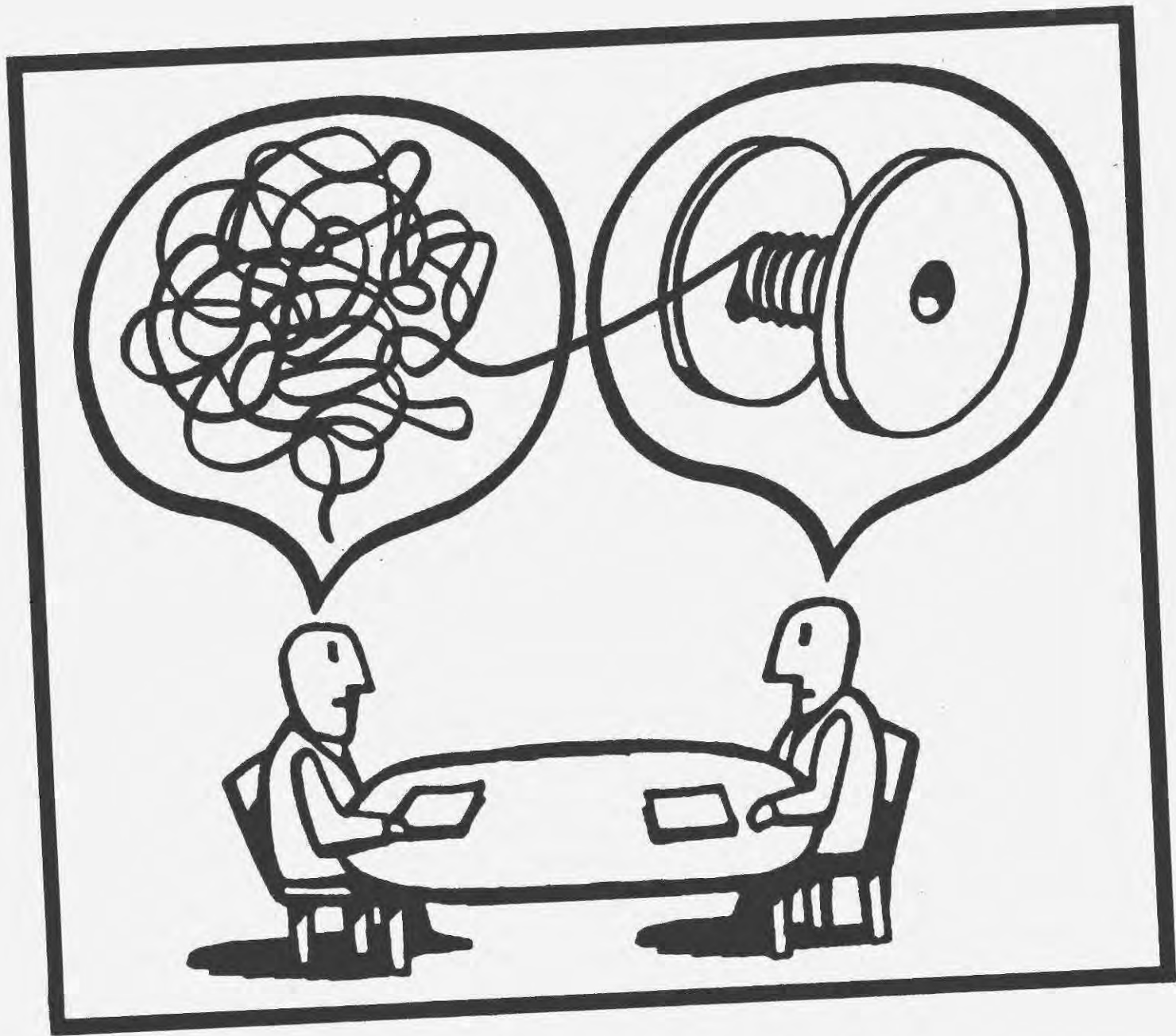
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GAUGING
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RISK

*Models offer
risk managers
valuable information*

By **MARK A. HOFMANN**

Every risk manager knows that knowledge is power. And for an increasing number of risk managers, a new source of knowledge is one in which underwriters have relied on for quite some time—catastrophe modeling.

By working through their brokers, risk managers are using cat models to crunch data on their property exposures and present that data to underwriters during renewals. In some cases, risk managers are approaching the modelers directly to better understand the nature of their exposures and their options for dealing with them (see story, page 17).

The trend has been driven in part by unsettled

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**FIRE RESEARCH
TESTS
PROTECTION
STANDARDS**
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**HURRICANE
PREDICTIONS
NOT IMPACTING
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**PLANNING KEY
TO ADDRESSING
TORNADO
EXPOSURES**
PAGE 30

Modeling: Provides a 'peek in the black box' of risk exposures

CONTINUED FROM PAGE 14

risk solutions for Blue Cross & Blue Shield of Florida in Jacksonville, said his experience with cat modeling began with a discussion about capacity with his broker, Marsh. He said as they discussed how much of his property line would actually be subscribed, "they said, we can model" the Blues' exposure using an RMS program.

The result was an approximately 60-page report that showed that even under a worst-case scenario, "it would take 70,000 years for us to get anywhere within shouting distance of insured value," he said.

Mr. Phelps noted that underwriters do their own modeling, but don't always share details with the customers. The Blues wanted to be able to present their own information when negotiating the property renewal.

When presented with the Blues' analysis, the underwriters "understood, they agreed. We got premium that was several thousand dollars less than what we paid last year," said Mr. Phelps, who added that some of the decrease reflected

'Models are only as good as the inputs that are provided for the analysis. The greater the...detail regarding the underlying exposure, the more benefit.'

Aaron Davis, Aon Corp.

market conditions. "But what's more important is that it defused any argument" that might have arisen in an effort to raise rates.

A consultant agreed that modeling is valuable for risk managers.

"I could see for relatively large organizations that have multiple properties, this would certainly be a service that would be of interest to them," said Vincent Burke, managing director-advisory business services at Devon, Pa.-based SMART Business Advisory & Consulting L.L.C.

Underwriters are using models as well, and if the issue were one of price negotiation, risk managers would certainly want to compare the outcomes, Mr. Burke said.

Having good data is key, experts say.

"Models are only as good as the inputs that are provided for the analysis," said Aaron Davis, director of Aon Corp.'s national terrorism and property resources unit in New York. "The greater the...detail regarding the underlying exposure, the more benefit."

"You need to make sure that the model is modeling accurate data," said Integro's Mr. Marchitello.

A typical report would start with a description of physical assets that are being modeled—buildings, con-

struction type, occupancy, characterization of the contents—and of the business interruption exposure, said Bill Keogh, Hackensack, N.J.-based group executive-global client development for Newark, Calif.-based Risk Management Solutions Inc. The report would include mapping and a description of the financial structure of any policies that are being modeled, he said.

It also would include a "rich amount of output" from the model that would help describe the expected cost of the catastrophe exposure, the uncertainties involved, and assessment of the premium charged and other financial

information, he said.

"We try to keep it short but do a brief write-up of our interpretation," said Ben Fidlow, principal and head of Integro's actuarial and analysis practice in New York.

"Insurers are always going to err on the conservative side," Mr. Fidlow said. "The output you're going to see is very client-friendly. It's also broker-friendly."

"What we are providing the market that is of the greatest value to the client is the raw data on their locations, so that the markets can best model (the exposure). Without that input, the markets are going to take whatever they can find and many

run a very generic analysis for the clients locations," said Bob Siner, director of Aon Risk Services Natural Hazards Group in Algonquin, Ill.

"The value the customer can get out of cat analyses is proportional to the effort the broker or consultant running the analysis puts into developing the service," said Mr. Siner. "The typical analysis programs do not give up more than the very basic results easily. Considerable effort is needed to build databases that dig deep into the input/output tables and pull results together so that extended results can be prepared in a reasonable time."

"It is a very crucial tool for assess-

ing exposures—flood, quake, wind-storm—identifying what the appropriate loss limits should be," said Aon's Mr. Davis. The prevailing benchmark for most of the Fortune 1000 is to buy insurance to cover a 1-in-250-year event to a 1-in-500 year event, "although vast majority is purchasing to a 1-250-year event," he said.

Marsh's Ms. Dalton said that underwriters generally welcome the modeling information. "The more information they have, the happier they are," she said.

"It seems a no-brainer that you need to get a peek in the black box," said Mr. Marchitello.

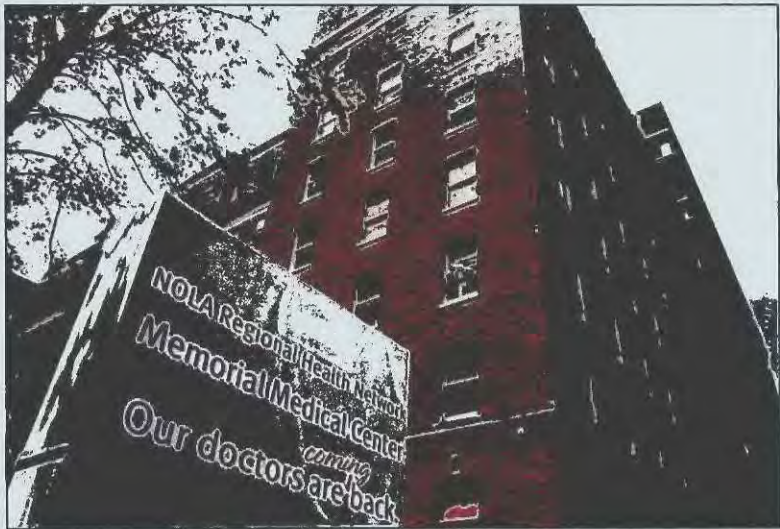
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Katrina left New Orleans' Memorial Medical Center flooded and without power. Recently, a grand jury refused to indict a doctor charged in mercy killings.

Risk managers turning more often to catastrophe models to gauge risk

Aside from premiums, data also being used for mitigation efforts

By MARK A. HOFMANN

Catastrophe modelers are reporting an uptick in interest in their products and services from risk managers.

"We are seeing a dramatic increase in interest—a 500%

increase in inquiries from risk managers thus far in 2007 from last year," said Bill Keogh, Hackensack, N.J.-based group executive-global client development for Newark, Calif.-based Risk Management Solutions Inc.

"We think the reason is as parties to a transaction with an insurance company, the risk managers need to understand the techniques the insurers are using to evaluate their risk profile," said Mr. Keogh. "The more the insured knows about

these techniques, the better it is for them to have an informed dialogue with their insurance company counterpart."

"EQECAT has always had a very active risk management practice working with major corporations," said Richard Clinton, president of the Oakland, Calif.-based modeler.

He said that 40% of EQECAT's revenue comes from risk management activity.

More sophisticated risk managers "really want an independent view of the risk. They want to be able to understand what that risk is," he said. The effect of the modeling goes beyond providing buyers with a negotiating tool, he said. The results can indicate whether an exposure is best mitigated through engineering or perhaps requires an alternative such as a catastrophe bond, he said.

There is "absolutely" an increased level of interest in modeling by risk managers, said Jayanta Guin, senior vp-research and modeling at the Insurance Services Office Inc.'s AIR

'The more the insured knows about these techniques, the better it is for them to have an informed dialogue with their insurance company counterpart.'

Bill Keogh
Risk Management Solutions Inc.

Worldwide Corp. in Boston. He said that the 2005 hurricanes have greatly improved modeling so that factors such as downtime caused by the actions of civil authorities are now included in the programs.

Mr. Guin noted that modeling beyond standard property insurance is becoming more common. Modeling for business interruption exposures is becoming popular, he said.

"At the end of the day, every business is unique," Mr. Guin said. A hospital and a bank may be quite similar in a property model, but have entirely different business interruption profiles, he said. A bank might have to relocate in the aftermath of a catastrophe while the hospital would have to find some way to stay at least partially in operation.

RMS' Mr. Keogh predicted that the trend of risk managers using cat models will continue.

"We do not think this is an anomaly," Mr. Keogh said. "We think because insurance capacity will continue to be elusive that risk managers will continue to increase their reliance on catastrophe risk models even if market conditions change."



Fighting fire with fire and research helps install appropriate defenses

Sometimes, 'burning down the house' is the best corporate test

By **ROBERTO CENICEROS**

With businesses continually innovating, insurers, engineers and risk managers must regularly test new building designs, building contents, and sprinkler systems to see how they react in a fire.

Larger warehouse sizes, increasing overseas operations, introduction of new packaging materials and other advancements also drive fire research, observers say.

"A lot of this focuses on managing change," said Lou Gritz, Norwood, Mass.-based vp and manager of research for Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global.

Sometimes policyholders and insurers push the limits of existing fire sprinkler technology or challenge established fire protection standards to meet business needs

while still paying attention to safety, they say.

Or, risk managers say that fire testing can help them prove to insurance underwriters that their buildings deserve favorable coverage terms and pricing.

'We were hoping to push the limits a little bit, but we found out (the standards) are already set correctly.'

John Frank, Swiss Reinsurance Co.

Testing might start with computer modeling that simulates a fire, said Tim Heinze, head of Swiss Reinsurance Co.'s Global Asset Protection unit in Avon, Conn.

But finding out how flames in a large warehouse will react when sprinklers kick in requires using real

flames in a real warehouse, said Martin Pabich, staff engineer at Underwriters Laboratories Inc.'s fire safety testing facility in Northbrook, Ill.

In one test conducted last year, UL and Swiss Re evaluated the effectiveness of certain sprinklers in tall warehouses with sloped ceilings. Because pitched ceilings direct heat upwards, they can set off more overhead sprinklers than necessary, which can cause unnecessary water damage, said John Frank, senior vp and loss prevention center of excellence leader for Swiss Re in Alpharetta, Ga.

Additionally, the sprinklers that Swiss Re and UL tested didn't meet existing fire protection standards for their use with sloped ceilings.

"We were hoping to push the limits a little bit, but we found out (the standards) are already set correctly," Mr. Frank said.

The sprinklers tested by Swiss Re and UL are valued in flat ceiling warehouses because they eliminate a need for other sprinklers typically placed inside of warehouse storage

See **FIRE** page 20



FM GLOBAL

FM Global, which has its own materials testing facility, purposely burns stacks of pallets to collect data and recommend safe practices for its clients.

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Fire standards include input from many points of view

National Fire Protection Assn. codes and standards that often govern building safety typically evolve from a very formalized yet "open consensus-based process," said Christian Dubay, NFPA vp and chief engineer in Quincy, Mass.

Anyone can submit proposals on, for example, the type of sprinkler systems that should be installed in certain types of buildings, when the NFPA calls for proposals, he said.

But a host of experts sitting on NFPA technical committees weigh in on or draw up their own recommendations before voting on whether a proposal can proceed.

Even after committees of experts help shape proposals by submitting a report, the NFPA takes public comment on the committees' work. The committees then meet anew to act on the public recommendations.

Further scrutiny ensues and includes NFPA members voting on whether to adopt a proposal. There is also an appeals process before the NFPA Standards Council finally decides whether to publish recommendations.

Experts from various industries and consumer groups

serve on the NFPA's review committees, Mr. Dubay said. That way the codes and standards are balanced and a particular interest group, such as insurers, can't dictate their final form, Mr. Dubay explained.

State and federal regulators rely on the NFPA's work to set their building and safety codes, Mr. Dubay said.

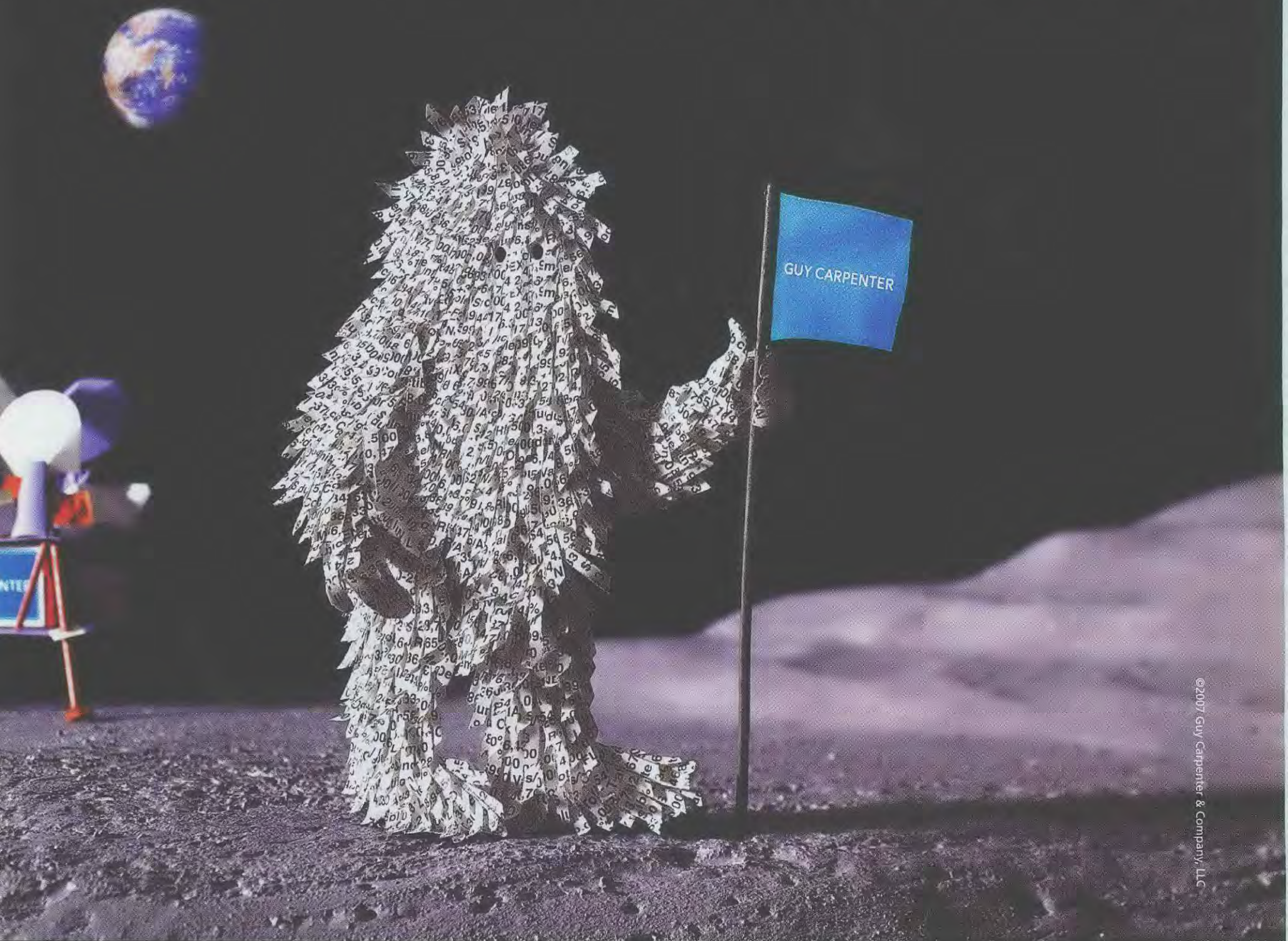
But sometimes new methods for suppressing fires evolve before the NFPA can give them their blessing, said Rodney Marchand, property risk manager for International Paper Co. in Memphis, Tenn.

A fire safety research unit, such as the Fire Technology Laboratory operated by Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global, might be two years ahead of the NFPA in finding effective methods for protecting buildings, Mr. Marchand said.

In such cases, Mr. Marchand might adopt the new methods just as soon as FM Global gives its blessing. Mr. Marchand is insured by FM Global and participates in FM Global's Risk Management Executive Council.

—By Roberto Cenicerros

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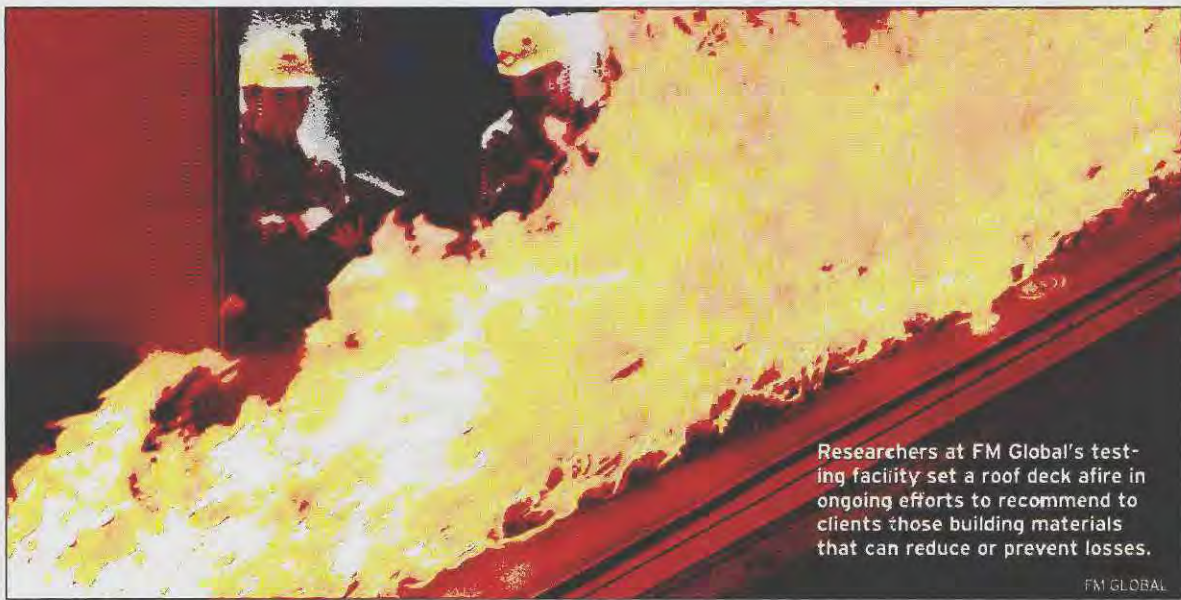


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Researchers at FM Global's testing facility set a roof deck afire in ongoing efforts to recommend to clients those building materials that can reduce or prevent losses.

FM GLOBAL

Fire: Insurers, universities join forces in best practices

CONTINUED FROM PAGE 18

racks, Mr. Frank said.

The storage rack sprinklers can cause operational headaches for warehouse managers, so eliminating their use in buildings with sloped ceilings could improve customers' operations, Mr. Frank said.

Had researchers been able to safely use the tested sprinklers in sloped-ceiling buildings, it would have helped companies with operations overseas where warehouses with those types of ceilings are more

prevalent than in the United States.

To conduct the fire test, UL simulated a large warehouse complete with storage racks at its Northbrook, Ill., facility. Researchers then burned pallet loads of polystyrene cups and captured data such as ceiling temperature and the velocity of gasses released by the fire.

Because similar polystyrene cups have been used in fire testing since the 1970s, ample benchmark data exists on how they burn, UL's Mr. Pabich said.

FM Global also operates a fire technology laboratory on its research campus in West Gloucester, R.I., where it also can replicate large warehouse fires.

Fire testing helps determine potential hazards and define protection strategies when, say, customers begin using new materials in their products or packaging, such as recycled fibers, FM Global's Mr. Gritzko said.

Researchers also initiate testing when FM Global engineers notice customers begin shifting their operation methods, such as a trend toward using taller warehouses.

Rodney Marchand, property risk manager for International Paper Co. in Memphis, Tenn., said that over the decades FM Global's research has helped his industry eliminate warehouse fires. Before the 1980s, for example, existing fire protection standards called for using just one type of sprinkler for all warehouses storing rolls of paper regardless of the paper type, Mr. Marchand said.

"We were actually burning down warehouses and didn't know why," Mr. Marchand said.

Then FM Global's research in the early 1980s established that different types of sprinklers were more effective in extinguishing fires, depending on the type of paper being produced.

Different types of paper burn differently, Mr. Marchand said. There are now many types of sprinklers utilized depending on the paper product, he said.

Massive, 70-ton paper rolls represent a high hazard because the production process heats up the paper. If the rolls—which are difficult to wet thoroughly—catch fire, they unwind as they burn and continually feed the conflagration, Mr. Marchand added.

In most situations, researchers can drive the risk of damage from fires down to zero, FM Global's Mr. Gritzko said. But that ultimately may be too expensive.

More often, the goal is to drive risk hazards down to the "right level" by finding cost-effective loss prevention measures that simultaneously protect a customer's financial expenditures while also protecting their properties.

"That is where engineering and business come together," Mr. Gritzko said.

Spending on fire testing impacts insureds' budgets in other ways, said Swiss Re's Mr. Heinze.

Risk managers typically have a set

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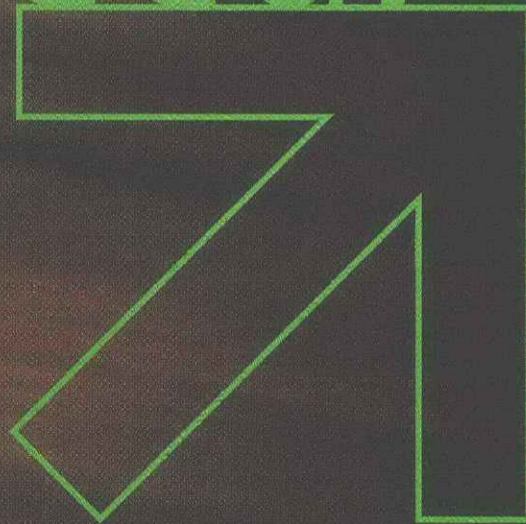


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10 LARGEST FIRE LOSSES IN U.S. HISTORY

DATE	EVENT	LOSS, IN 2004 DOLLARS
Sept. 11, 2001	World Trade Center	\$35.6 billion
April 18, 1906	Great San Francisco Earthquake and Fire	\$7.3 billion
Oct. 8-9, 1871	Great Chicago Fire	\$2.6 billion
Oct. 20, 1991	Oakland, Calif., firestorm	\$2.1 billion
Nov. 9, 1872	Great Boston Fire	\$1.2 billion
Oct. 23, 1989	Pasadena, Texas, manufacturing plant	\$1.1 billion
May 4, 2000	Los Alamos, N.M., wildfire	\$1.1 billion
Oct. 25, 2003	Julian, Calif., Cedar wildfire	\$1.1 billion
Feb. 7, 1904	Great Baltimore Fire	\$1.0 billion
Oct. 25, 2003	San Bernardino, Calif., Old Fire wildfire	\$1.0 billion

Source: National Fire Protection Assn., Insurance Information Institute

Fire: Cost-effective strategy

CONTINUED FROM PAGE 22

budget they can spend for the entire spectrum of exposures their companies must mitigate, Mr. Heinze said.

Testing can help them find effective alternatives, such as specific types of sprinkler heads that might, for instance, safely eliminate the need for retrofitting an entire building with an elaborate fire suppression system that code enforcement officials or insurers recommend, Mr. Heinze said.

"Why would I just accept the recommendations (and) potentially pump millions of dollars into retrofitting the facility when maybe

I have a solution that might cost me a couple of tens of thousands of dollars, and I can reapply (those funds) in another (risk mitigation) area that is going to give me more impact?" Mr. Heinze asked.

Policyholders can also help obtain more desirable insurance pricing and coverage levels by differentiating themselves and showing insurance underwriters that they are "best in class" among their industry, said Bradley R. Wood, senior vp-risk management for Bethesda, Md.-based Marriott International Inc.

One way to do that is by fire testing innovations that make their buildings safe, Mr. Wood said.

Hotelier, insurer tap university

Marriott International Inc. is collaborating with the University of Maryland Fire and Rescue Institute to simulate guests' hotel room use to make real safety improvements.

Separately, Factory Mutual Insurance Co.—which has its own world-renowned fire technology laboratory where it simulates large-building conflagrations—began working recently with institute for research that complements FM Global's own resources.

The approaches show two distinct ways of working with a university to advance building safety and fire suppression. The College Park, Md.-based MFRI is known for studies into fire and heat transference, fire modeling, burn injuries, and smoke movement and toxicity.

FM Global works with the MFRI and other fire research universities for "fundamental research" into topics such as chemical reactions that cause things to burn, said Lou Gritzso, vp and manager of research for FM Global in Norwood, Mass. The insurer uses the information to advance its own testing of how a customer's products or facilities might burn.

"The number of challenges we have with our clients is very broad," Mr. Gritzso said. "So we take advantage of the (university) research."

Doctoral and master's degree candidates performing the research also provide a pool of future employees for FM Global, Mr. Gritzso said.

Marriott, meanwhile, narrows its life safety research focus to issues posing significant business challenges for a large number of its hotels or future property developments, said Bradley R. Wood, senior vp-risk management for the Bethesda, Md.-based hospitality company.

Marriott's risk management department must be judicious in deploying its resources, Mr. Wood said.

Yet Marriott's innovations have spread beyond its properties. In the 1980s, for instance, it pioneered using plastic sprinkler pipes that eventually were adopted into building codes nationwide.

More recently, Marriott worked with MFRI to adapt a mist system for fire suppression that requires less water and smaller pipes than typical sprinklers. Similar technology can now be found aboard cruise ships, Mr. Wood said.

—By Roberto Cenicerros

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Hurricane Katrina, which battered the Gulf Coast in 2005, caused the greatest insured losses in recorded U.S. history.

Hurricane predictions have little impact on preparedness, policies

By JUDY GREENWALD

Seasonal hurricane predictions are interesting but have little practical impact on how risk managers, insurers, catastrophe modelers and others go about their business, observers say.

This is largely because of uncertainty surrounding hurricane predictions, which are based on a com-

plex yet still-evolving science (see story, page 28).

Risk managers and others need look only at the generally inaccurate predictions of a heavy hurricane season in 2006 to see they should not necessarily be relied upon, observers say.

Furthermore, these predictions usually are made too late to introduce effective loss prevention pro-

grams or to be reflected in that year's insurance or reinsurance policies.

Observers point out that—whatever the total number predicted—it takes only one hurricane to cause considerable damage.

Even so, there is general agreement that hurricane predictions have played a valuable, if less quantifiable, role in creating greater awareness of such risk.

Meanwhile, experts say the Atlantic Basin is in an active hurricane cycle that began in 1995 and could last another decade or two.

According to the Fort Collins, Colo.-based Tropical Meteorology Project at Colorado State University, the average of 1.5 major Atlantic hurricanes per year during the 25-year period ending in 1994 increased to 3.9 during the 12-year period ending in 2006.

The project has predicted that 17 named storms will form in the Atlantic Basin during the current hurricane season that runs through Nov. 30, of which five are projected to become major storms.

However, observers say the predictions are simply are unreliable for advance planning.

"We don't find them that useful," said Ann Brown, risk manager for New Hanover County, N.C., based in Wilmington. "Last year, they projected such a massive amount of hurricanes to come up the Eastern seaboard and we didn't have any major storms at all."

Lance Ewing, vp-risk management in Memphis, Tenn., for Harrah's Entertainment Inc., said none of the predictions warned of either Hurricanes Katrina or Rita in 2005, "so I take them with a little grain of salt."

"It is extremely difficult to give accurate weather forecasts beyond 10 days even of normal weather," let alone accurately predict hurricanes five to six months in advance, said Warren Ison, New York-based senior vp for Willis Re Inc.

Mark Saunders, head of seasonal forecasting and meteorological hazards at the Benfield Hazard Research Center at University College London and also lead scientist at London-based forecasting consortium Tropical Storm Risk, said a study of the forecasts issued since 1984 indicates it is not until early May that the forecasters have a relatively precise idea of how many intense storms there will be, and early July before they can accurately predict how many will make landfall.

Bill Steiner, managing director at reinsurance intermediary Guy Carpenter & Co. Inc. in New York, said predictions of CSU Meteorologist William Gray made six months in advance of hurricane season are "really of little value" in forming the catastrophe models used by underwriters "because the models are based on probabilities," not so



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Risk managers prepare for the worst in areas prone to hurricanes

When it comes to hurricanes, risk managers and others say it's important to be ready for the worst regardless of what the prognosticators say.

Scott Clark, risk and benefits officer for Miami-Dade County Public Schools in Miami, said hurricane predictions are a "guide for us to use," but they do not change the district's preparedness no matter how many storms are forecast. "It only takes

one of those to hit you and really set you back," Mr. Clark said.

"Whether they predict we should have no storms, or 20, as a public entity we have to protect the public and keep everything running as much as possible," said Ann Brown, Wilmington-based risk manager for New Hanover County, N.C. "So we're always prepared."

She noted that in 1996, the county experienced three hurri-

canes when none had hit the previous 10 years. That made the county "very aware, very alert to the issue," said Ms. Brown.

"We have our hurricane preparedness systems and plans in place regardless of what they say," said Chad Callaghan, vp-enterprise loss prevention at Bethesda, Md.-based Marriott International Inc. Hurricane predictions "may help us get people really focused on it, but it does-

n't really impact us because we've learned from the past" that it is better to be prepared all the time.

In hurricane-prone areas, "our engineering approach is established to prepare for those," said Louis Gritz, vp and manager of research at Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global. If it is not a bad hurricane year this year, it may be one next

year, he said. "We know this is a natural phenomenon that will occur."

"Certainly from the risk manager's standpoint, the predictions come out pretty close to hurricane season, and the things that can be done to prevent losses generally have to be done well beforehand regardless of the details of the seasonal prediction," Mr. Gritz said.

—By Judy Greenwald

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Hurricanes: Forecasts aid awareness

CONTINUED FROM PAGE 24

much on how many storms will occur over the next year as "looking ahead in increments of a few years."

"It's much more difficult to make a precise, single-year estimate even when you have information up to the very start of the season," said Bob Ward, London-based director of the global science network at Risk Management Solutions Inc., a Newark, Calif.-based modeling firm. "Our clients don't ask us for seasonal forecasts," although such fore-

'Wind doesn't cause a loss. It's blowing buildings down' that causes a loss.

Thomas Larsen, EQECAT Inc.

casts can be helpful in gauging whether a busy season is ahead because of the information the firm provides to insurers during and after major catastrophes, he said.

Furthermore, the forecasts are less useful in predicting which hurricanes will make landfall than they are in predicting a season's total number. "An awful lot of hurricanes die before they make it into land," and even then, there is a two-thirds chance they will skip major population centers, said Thomas Larsen, senior vp of Oakland, Calif.-based modeling firm EQECAT Inc. "Wind doesn't cause a loss," said Mr. Larsen. "It's blowing buildings down" that causes a loss, he said.

Observers also say the predictions neither immediately nor directly impact premiums. Past experience is the basis for insurers setting rates, said Eileen Gardner, risk manager of Brunswick County, N.C., based in Bolivia.

Noting it is not until July that hurricane forecasts are very good, Steve Smith, senior vp of ReAdvisory, the analytical arm of reinsurance

Continued on next page

SPOTLIGHT

CONTINUED FROM PREVIOUS PAGE

intermediary Carvill Group in London, said, "The problem with that in terms of reinsurance buying, is it's all over" by then.

"Insurance is very illiquid," said Mr. Larsen. Most contracts take effect in January, June or July and once the contract is set, "There's not a lot of flexibility," he said. You "can't trade reinsurance contracts," regardless of whether the risk changes.

Insurers and reinsurers are interested in insuring against the one in 100-year loss, said Eric Brosius, senior vp and manager of reinsurance for Liberty Mutual Insurance Co. in Boston, which buys and sells reinsurance. So hurricane forecasts "make us feel better or worse about the decisions we make, but they don't have a large, objective effect on our decision-making," he said.

Some observers describe the predictions as just one tool. "They are a piece of how we at Harrah's prepare" for a catastrophe, said Mr. Ewing.

Claire Wilkinson, vp-global issues, at the New York-based Insurance Information Institute, said hurricane predictions "are one of the tools and one of the pieces of information that insurers can use as they look ahead." How useful they are "would depend

Hurricane forecasts 'make us feel better or worse about the decisions we make, but they don't have a large, objective effect on our decision-making.'

Eric Brosius, Liberty Mutual Insurance

company by company, according to what type of business you're writing and your portfolio."

But while they can be a useful part of the underwriting process, "it's important to remember that forecasts are just that" Ms. Wilkinson said. "They don't give you an absolute level of risk."

Nevertheless, long-range hurricane predictions have accomplished "raising everyone's consciousness and understanding about hurricanes," said Gary Kerney, vp, property claim services, at Jersey City, N.J.-based Insurance Services Office Inc.

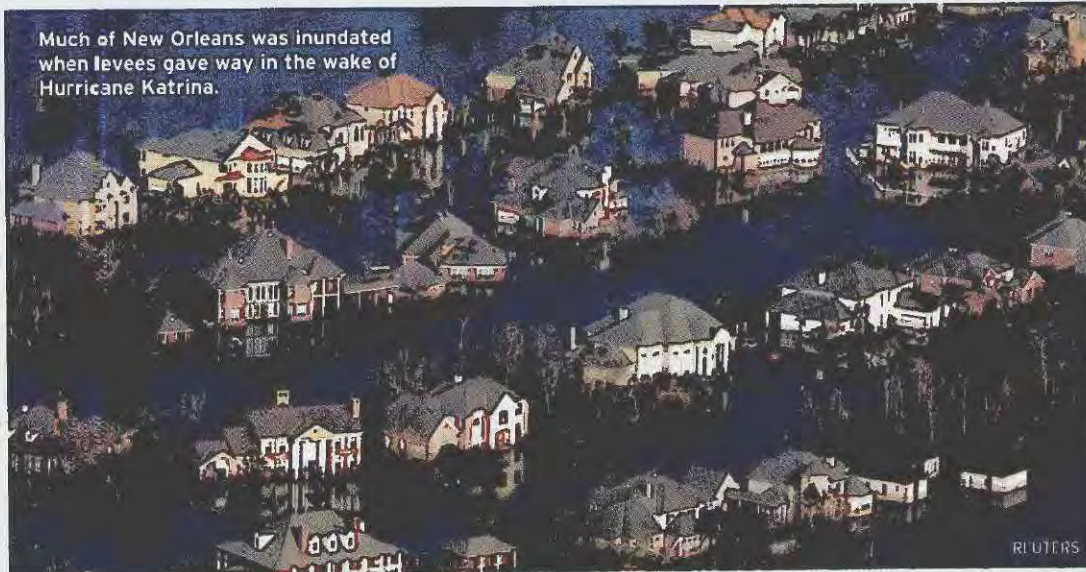
Work by CSU's Mr. Gray and others has spurred research in hurricanes that predates the 120 years or so for which records have been kept. Research, for instance, has indicated that several severe hurricanes have hit the Northeast United States over the past 500 years, said Mr. Kerney.

"I think that people in the scientific community and folks in the insurance industry now have a better understanding of what the risk is because now we can see beyond the 1880 record, and now we understand there is a probability of significant and costly occurrence happening within the foreseeable future," Mr. Kerney said. Preparation in response to this awareness "makes the recovery that much easier," he said.

10 MOST EXPENSIVE U.S. HURRICANE LOSSES

STORM	DATES	INSURED LOSS, IN 2006 DOLLARS*
Katrina	Aug. 25-29, 2005	\$41.9 billion
Andrew	Aug. 23-26, 1992	\$22.3 billion
Wilma	Oct. 24, 2005	\$10.6 billion
Charley	Aug. 13-15, 2004	\$8.0 billion
Ivan	Sept. 16-21, 2004	\$7.6 billion
Hugo	Sept. 17-22, 1989	\$6.8 billion
Rita	Sept. 20-26, 2005	\$5.8 billion
Frances	Sept. 5, 2004	\$4.9 billion
Jeanne	Sept. 15-25, 2004	\$3.7 billion
Georges	Sept. 21-28, 1998	\$3.6 billion

*Property coverage only
Source: Insurance Services Office Inc., Insurance Information Institute



Much of New Orleans was inundated when levees gave way in the wake of Hurricane Katrina.

REUTERS

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The National Oceanic & Atmospheric Administration's National Hurricane Center tracks tropical storm Barbara in Miami May 31. The NOAA predicted an above-normal hurricane season this year.

Hurricane forecasting improves, but predictions are far from perfect

By JUDY GREENWALD

Devising hurricane predictions is a difficult, highly complex exercise that has improved over the years but still remains an educated guess, observers say.

It involves research, global observations and computer models, according to the U.S. National Oceanic & Atmospheric Administration, which has predicted an above-normal hurricane season this year.

Peter Dailey, director of atmospheric science at AIR Worldwide Corp., the Boston-based weather modeling firm of the Insurance Services Office Inc., said two primary factors that influence hurricane activity levels are the sea surface temperature, which is a measure of the warmth of the ocean, and wind shear, which is a measure of the difference between the weaker surface winds and the stronger winds in the upper atmosphere.

One important element in wind

shear is what is known as the El Niño/Southern Oscillation. Warming of equatorial Pacific Ocean temperatures, or El Niño, leads to more wind shear and fewer Atlantic hurricanes. The cooling La Niña has the opposite effect.

Forecasters try to anticipate how ocean temperatures and wind shear conditions will develop. But they can be wrong, which was the case last year when a widely predicted busy hurricane season never materialized. Observers say El Niño and the Sahara desert were the main reasons 2006 had a light hurricane season.

Colorado State University based its forecast on incorrect information it received about El Niño, said Philip J. Klotzbach, research associate at CSU's Tropical Meteorology Project in Fort Collins, Colo., and chief author of the forecast. "Nobody saw it coming," he said.

"Until Aug. 1, (2006,) the conditions in the sea surface temperatures and the surrounding atmosphere looked very similar to what was going on in 2005," said Steven Drews, Chicago-based senior lead meteorologist and associate vp at Aon Re Global.

El Niño can change entirely in 20 to 30 days' time for unknown reasons, which affects the quality of researchers' long-term predictions, said Thomas Larsen, senior vp of Oakland, Calif.-based weather modeling firm EQECAT Inc.

The Sahara also played a role last year, say observers. What is known as the Saharan air layer, which is increasingly being recognized as an important factor in hurricanes, can lift and transport dust over the Atlantic. It has been hypothesized that this reduces hurricane activity partly because of its drying effect on the atmosphere.

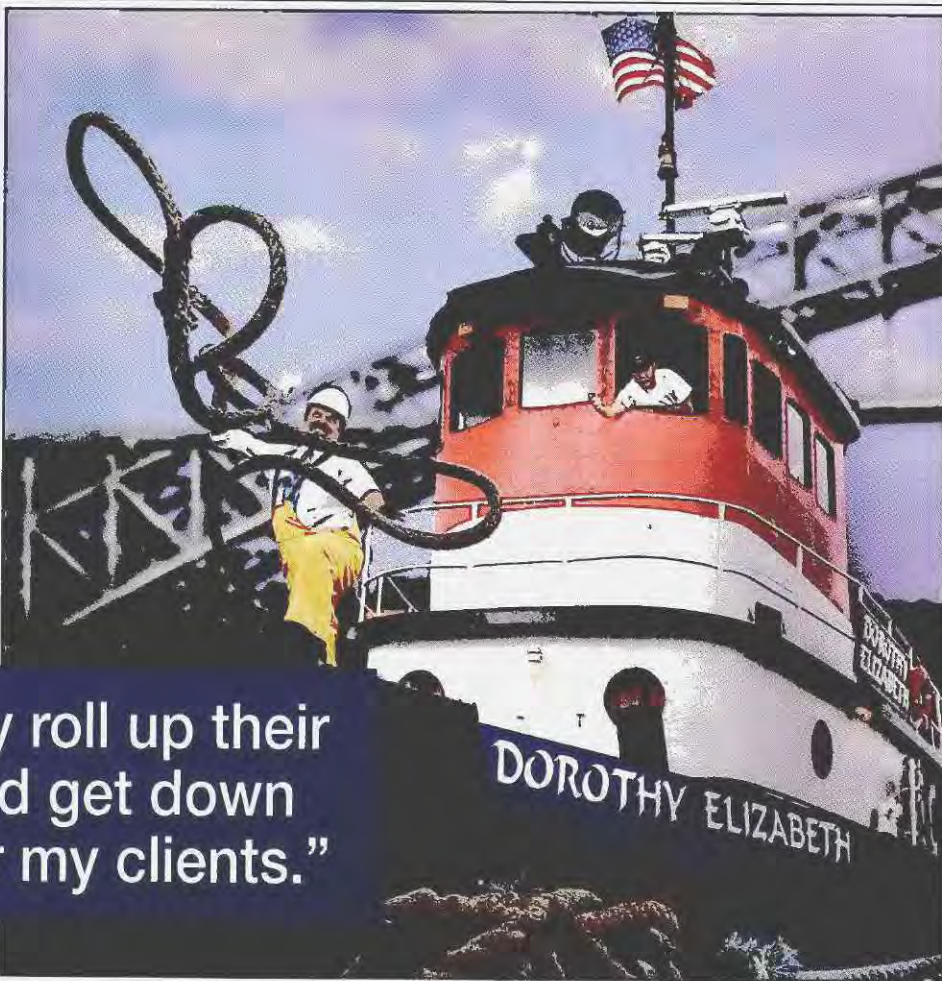
That was the case last year, Aon's Mr. Drews said. "What ended up happening is a bunch of dry air and dust moved from the Sahara desert out to the central Atlantic, where hurricanes typically start to form" and prevented development of what could result of a tropical storm or hurricane, he said.

Forecasting is getting better but still is not foolproof, experts say.

Mike Halpert, head of forecasting operations for NOAA's Climate Prediction Center in Camp Springs, Md., said, "It's complex, and it won't ever be perfect, but I think there's still room for improvement."

Hurricane forecasting is improving incrementally, said EQECAT's Mr. Larsen. "We'll have a much better understanding of what to expect" in 20 years. However, "we're never going to know" with absolute precision in advance that a Category 4 hurricane is going to make landfall in Miami on a particular date.

Scott Clark, risk and benefits officer for Miami-Dade County Public Schools in Miami, said while the predictions have improved, "I don't know they're ever going to be able to absolutely ascertain both severity and frequency because I think it's much more of an art than it is a science."



From left:
John Toscani
Vice President,
Frenkel & Co., Inc.
Jersey City, N.J.

Capt. Mike Vinik
President,
Vinik Marine, Inc.
Keyport, N.J.

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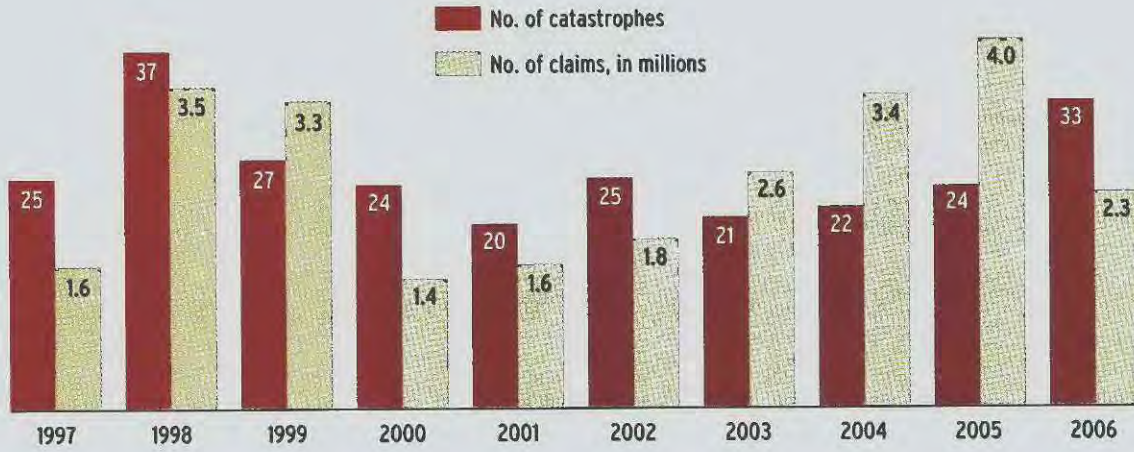
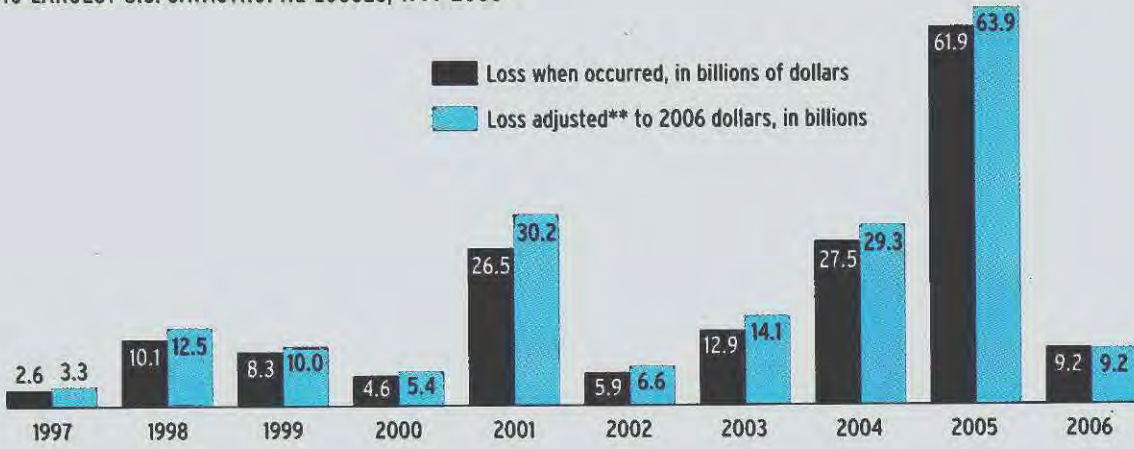
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10 LARGEST U.S. CATASTROPHE LOSSES, 1997-2006*



*Includes catastrophes causing insured losses to the industry of at least \$25 million and affecting a significant number of policyholders and insurers.
 **Adjusted to 2006 dollars by the Insurance Information Institute

Source: ISO; Insurance Information Institute Inc.

10 LARGEST INSURED LOSSES SINCE 1970

INSURED LOSS*	DATE	EVENT
\$45,000	Aug. 24, 2005	Hurricane Katrina
22,274	Aug. 23, 1992	Hurricane Andrew
20,716	Sept. 11, 2001	Terror attack, World Trade Center
18,450	Jan. 17, 1994	Northridge earthquake
11,648	Sept. 2, 2004	Hurricane Ivan
10,000	Sept. 20, 2005	Hurricane Rita
10,000	Oct. 16, 2005	Hurricane Wilma
8,272	Aug. 11, 2004	Hurricane Charley
8,097	Sept. 27, 1991	Typhoon Mireille
6,864	Jan. 25, 1990	Winter Storm Daria

*In U.S. dollars in millions, indexed to 2005
 Source: Swiss Reinsurance Co.

10 LARGEST INSURED LOSSES OF 2006

INSURED LOSS*	DATE	EVENT	COUNTRY
\$1,850	April 13	Tornado, storms, winds up to 240 km/h, hail	U.S.
1,282	April 6	42 tornadoes with winds up to 274 km/h	U.S.
1,024	Sept. 15	Typhoon Shanshan/No. 13; winds to 126 km/h	Japan
920	March 11	Tornadoes, winds up to 202 km/h, floods	U.S.
560	Aug. 23	Storms, tornadoes, hail, floods	U.S.
500	April 2	Thunderstorms, tornadoes, hail	U.S.
407	Aug. 1	Floods caused by monsoon rains	India
401	June 25	Thunderstorms, heavy rain, floods, landslides	U.S.
355	April 23	Hail and tornadoes	U.S.
335	March 20	Tropical Cyclone Larry	Australia, South Pacific Ocean

*In U.S. dollars in millions
 Source: Swiss Reinsurance Co.

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Solutions at Work



A half-mile-wide twister blew through Moore, Okla., in May 1999 in a central Oklahoma storm system that A.M. Best Co. Inc. ranks as the fourth-costliest tornado loss in the United States.

AP

Tornado exposures not entirely predictable

Risk managers advised to combine advance, on-the-spot planning

By BETH MURTAGH

Risk managers in tornado-prone areas can prepare for this unpredictable exposure with communica-

tion, education and identifying business exposures, observers say.

Tornadoes can strike with little or no warning. The National Weather Service says its average tornado warning precedes a twister by more than 11 minutes. The impact of an individual tornado can be glancing—knocking over a single tree—or it can devastate an entire town.

Collectively, 1,106 tornadoes and related weather events, such as hail, caused more than \$8 billion in insured U.S. losses last year, according to Oldwick, N.J.-based A.M. Best Co. Inc.

Risk managers need to understand their buildings' structure and vulnerabilities. In fact, it is essential for risk managers to know what type of wind speed their locations can sustain, said Molly Nolan, New York-based senior vp of the global property practice group of Kansas City, Mo.-based Lockton Cos. Inc. Aside from the buildings, risk managers also should examine surrounding areas. Tornadoes, for example, can uproot large trees and blow them through a property, Ms. Nolan said.

It is also important to identify any type of rooftop equipment, such as an air conditioning unit. These objects "get blown off really easily and usually take part of the roof with them," Ms. Nolan said. She advised tying down these objects with extra strapping, using more than building codes require.

Risk managers should have a contingency plan if a tornado halts production, said Gerry Alonso, senior vp and manager of claims at Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global. He advised risk managers to work with the company's property insurer, adjusters and loss prevention engineers to find potential bottlenecks and exposures in a business' production paths.

Backup plans essential

Companies should have contingency plans not only for being hit by a tornado but also for when severe weather puts their suppliers out of commission, Mr. Alonso said. A risk manager should line up backup suppliers. If several similar businesses in the area are hit by a tornado, these services may come at a premium. It's wise to have alternate contractors in place beforehand so a risk manager's business is first in line, rather than 20th, Mr. Alonso said.

But as vital as "what-if" plans are, so is the flexibility to react to unexpected situations, Mr. Alonso said. "You can have four different buildings hit by a tornado and four different reconstruction and repair paths," he said.

The relationship between a client and insurer can mean the difference between an efficient claims process

Continued on next page



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CONTINUED FROM PREVIOUS PAGE

and one fraught with surprises over what the policy actually covers, observers said.

"The first line of defense is to have an insurance policy on hand sufficient to pay for the loss incurred," said Donna Percy, risk manager for the University of Iowa in Iowa City, Iowa.

When a tornado battered Iowa City in April 2006, the school's insurer, FM Global, responded within 24 hours, Ms. Percy said. She credited much of the smooth claims process to the school's "good working relationship" with FM Global, which she called "a true partner after the loss."

A good insurer will help its clients find spare equipment and recommend consultants or contractors, Mr. Alonso said. The shared goal of recovering as quickly as possible is achievable only if both parties are willing to collaborate to make the necessary repairs and mitigate the loss. When there's clear communication between both parties, the settlement data should hold no surprises, he said.

In the public sector, some risk managers say education is their biggest hurdle. "There's not a lot you can do about what's going to happen to property," said Laura Peterson, state risk manager for the state of Nebraska in Lincoln and a

'There's not a lot you can do about what's going to happen to property. For me, the focus is people.'

Laura Peterson, State of Nebraska

board member of the Alexandria, Va.-based Public Risk Management Assn. "For me, the focus is people."

Tornado sirens are seemingly straightforward signals to warn those outside to seek shelter. But risk managers said the sirens' meanings can be confusing. People sometimes leave buildings, thinking the siren indicates that it is "all clear," said the University of Iowa's Ms. Percy. To help minimize miscommunication during a tornado, the school recently purchased a new alert system that would allow officials to use verbal warnings in addition to alarms.

Those who live in tornado-prone areas can grow complacent about the weather potential, said Ms. Peterson. When watches and warnings are frequent, "you get people who say, 'We've had this a million times before. I'm going to stay here in my office and work' instead of going into a basement," Ms. Peterson said. Radio and television stations in tornado-prone areas broadcast frequent tips and safety reminders at the tornado season's start.

"You can never have too much education," she said. "A tornado has an extraordinarily short warning. That preparation ingrained in people, so they don't have to take time to figure out what to do, is really important."

TOP TWISTER LOSSES

The costliest U.S. tornadoes and related weather events (in 2007 dollars). The figures represent total losses from the events:

DATE	LOCATION	DAMAGE
March 31, 1973	Central and northern Georgia	\$5.21 billion
June 8, 1966	Topeka, Kan.	\$1.94 billion
May 11, 1970	Lubbock, Texas	\$1.43 billion
May 3, 1999	Oklahoma City	\$1.30 billion
April 3, 1974	Xenia, Ohio	\$98 million

Source: A.M. Best Co. Inc.



Tornadoes swept through central Oklahoma in May 1999, including one that struck Bridge Creek and left what once was a truck outside a demolished home.

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Adjust safety practices to retain older workers

By Joseph Gillian

Older workers bring a lifetime of skills and experience to their jobs, making valuable contributions into their 50s, 60s and 70s. But the normal aging process may impact an older worker's ability to perform a job safely.

As the nation's baby boomers approach traditional retirement age, more and more seem to be saying, "No, thanks." Surveys indicate that this generation, the largest in U.S. history, is opting to stay on the job, thereby making a profound impact on employers and the workers compensation system they support.

This could be good news for business owners who value the experience, expertise and work ethic of senior employees. But business owners, insurance agents and risk managers should also know a counter-factor: While older workers report fewer workplace injuries the injuries they do receive can be costlier than those of younger workers.

Safety and claims issues

An indication of the growing, graying U.S. workforce lies in research from the Bureau of Labor Statistics. It reports that workers aged 55 and older constituted 11.8% of the workforce in 1992 and rose to 14.3% in 2002. By 2012, the bureau projects this will

Business Insurance PERSPECTIVE

climb to 19.1%—nearly one in five workers, or a total of 31 million.

Many older workers go on working out of need to make ends meet, and some do so to continue feeling useful by staying active. Better health also seems to be a factor because of advances in medical technology and incessant warnings about eating and drinking less, exercising more and not smoking.

In Maryland, for example, records of the state Workers' Compensation Commission support the conclusion that older workers are safer workers. Commission records for fiscal-year 2006 show that, of the 23,005 workers of known age and gender who filed workers' compensation claims, only 6,880—less than one-third—were 50 or older. However, the agency's records also show that even among these older workers, the number of filed claims was 986 higher than in the preceding year.

As might be expected, injured older workers take longer to heal and return to work—if they return at all. A 2005

study by the Workers Compensation Research Institute indicated that 35% of these seniors were less likely to return to the job, compared with 12% in the 25 to 35 age bracket. In addition, injured workers 55 and over who ultimately returned did stay out longer, by 62%, than those 25 to 35 years old.

According to the National Institute for Occupational Safety and Health, roadway crashes are the leading cause of occupational fatalities for older workers, while back pain is the leading cause of lost workdays and one of the most costly health problems facing employers today. Among nonfatal injuries, those associated with ergonomic exposures such as bending, climbing, crawling, reaching, twisting and overexertion made up the greatest number of occupational injuries and illnesses involving lost workdays among construction workers.

Safety adjustments

In light of such facts, employers can easily adjust their safety practices by taking into account that age usually diminishes strength, ability and endurance. While older workers generally have better safety records than younger ones, there are steps employers can take to improve this further by adjusting workplace conditions and habits. Here are some recommendations:

- Use brighter lighting to compensate for age-induced loss of visual acuity.

- Recommend the use of larger type on computer screens.

- Consider reducing noise from machines, air conditioners and other appliances.

- Adjust seats and desktops at workstations to reduce leg and back problems.

- Set and enforce comprehensive driver safety policies and evaluate jobs that require quick reaction times.

- Post reminders about proper use of ladders to retrieve high objects and the use of carts or wheelbarrows for heavy lifting.

- Mark and light slippery floors, stairs and uneven surfaces.

- Recommend brief breaks from working at computers to avoid back problems and prescribe hand exercises to reduce carpal tunnel syndrome.

- Remind older workers to push pride aside and recognize the changes in strength, agility and balance that age inevitably brings, then adjust their work goals to those changes.

Growing older is a natural condition, and wanting to work, for whatever reason, is becoming more prevalent. The profitable trick, for worker and employer alike, is to see that it is done safely.



Joseph Gillian is director of loss control for IWIF Workers' Compensation Insurance in Towson, Md.



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Food contamination claims place company brands at risk

By Zachary Finn
and Timothy Anderson

For most people, purchasing products at their local grocery store is a mundane event. For those with a culinary spirit, it may be a task that is accomplished with a sense of satisfaction and enjoyment. In either case, it is not an event that typically elicits concerns over the possibility of sickness, or in extreme cases, death.

However, recent events have cast doubts on the safety of America's food supply. Be it peanut butter or

dog food, the issue facing risk managers at food manufacturers is how to reduce these escalating risks and manage any unfortunate outcomes.

As it pertains to food contamination claims, there are three primary ways in which a loss can occur:

- **Accidental contamination:** This is usually thought of as the introduction of an unintended substance into the product. More commonly, however, it consists of mislabeling a product.

- **Malicious contamination:** This form of product contamination is intentional and can result from any

Business Insurance PERSPECTIVE

number of sources, such as a disgruntled employee or a customer.

- **Extortion threats:** In the case of extortion, product contamination may have occurred or there may simply be a threat by someone to contaminate a product. The goal is

to extort money from the company.

Regardless of how product contamination occurs, and as any risk manager will tell you, the best kind of loss is no loss at all.

For food manufacturers, the most common system for preventing contamination and applying loss prevention tools is the Hazard Analysis and Critical Control Point system. While the U.S. Food and Drug Administration has not mandated use of HACCP by all food manufacturers, it is the recognized safety standard across the industry.

The seven principles/steps of HACCP are:

- **Analyze hazards:** What are the potential hazards associated with the food being manufactured—such as physical contamination or biological contamination—and the best methods to prevent and control these hazards?

- **Identify critical control points:** At which points in the manufacturing process should identified prevention and control tools be applied?

- **Establish preventive measures with critical limits for each control point:** What are the thresholds or standards needed to ensure that a given prevention or control tool is effective, such as cooking time or the strength of the magnet used to screen for metal contamination.

- **Establish procedures to monitor the critical control points.**

- **Establish corrective actions when monitoring shows that a critical limit has not been met.**

- **Establish procedures to verify that the system is working properly.**

- **Establish effective recordkeeping to document the HACCP system.**

Use of a co-packer

Some of the more recent contamination events have revealed a fact that, until recently, was not widely known outside the food manufacturing industry—that a fair amount of companies outsource the manufacturing of their products to others, commonly referred to as co-packers.

While there is nothing wrong with this practice in and of itself, those manufacturers that do this should ensure that, in addition to the use of HACCP, they are requiring: certificates of analysis describing the quality control data for a particular lot/batch of product; audits of supplier testing through the use of outside lab testing; and proper insurance and indemnification provisions, i.e. contractual risk transfer, to ensure that the company is being indemnified and held

harmless for any losses resulting from the co-packer's negligence or willful misconduct. These steps will ensure that the outsourcing company's quality control standards are strictly observed and that the co-packer maintains some "skin in the game" for any negligent deviations.

Since even the best loss prevention efforts are not 100% effective, it is important to consider how to fund for any losses that do occur. Unfortunately, many company officials believe they have coverage for a product contamination event under their general liability policy. While the typical general liability policy will pay for bodily injury or property damage caused by a hazardous or defective product, it does

not typically cover the logistical costs of a recall, which can include transportation and warehousing, employee overtime, additional staffing expenses, product testing and destruction, cleanup and increased costs to subcontract additional products.

In addition, there is a significant risk that a contamination event will result in a loss of consumer confidence, with a corresponding loss in revenue. If this trend is not reversed, the damage to brand value and goodwill can be quite significant and ultimately can destroy the brand.

From a risk financing perspective, the appropriate insurance tool for addressing these exposures is product contamination insurance, also referred to as accidental contamination and malicious tampering insurance.

Covered losses under most product contamination policies include product recall expense (first- and third-party), product replacement, extra expense, etc.

However, these policies also recognize the importance of indirect losses, such as lost revenue and damage to brand value. These policies will often provide coverage for: loss of profits, advertising and consumer education campaigns, brand rehabilitation expenses and consultant and public relations assistance.

Often a company will spend years, decades or even a century cultivating its brands. Risk managers of these companies are the stewards of the respective brands, and must take great pains to ensure that contamination exposures are properly identified and mitigated. Only through the use of proper risk control, transfer and financing techniques, such as those identified above, can the risk manager ensure the long-term viability of the company's brands.



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Zachary Finn (top) is the risk manager for a Fortune 1000 food manufacturer in Ohio. He is also a member of the Risk & Insurance Management Society Inc.



Timothy Anderson is a claims specialist for Nationwide Insurance Co. in Greensburg, Pa.

Market Moves

ACE expanding to Peru, Bahrain

LIMA, Peru—ACE Ltd., with approval from Peru's superintendent of banks and insurance, has begun operations in Lima, Peru, under the badge of ACE Seguros S.A.

ACE Seguros, which consists primarily of the assets of Altas Cumbres Life Insurance Co., which ACE acquired in December, specializes in accident, group, credit life and commercial property/casualty insurance.

ACE Ltd. Chairman and Chief Executive Officer Evan Greenberg described Peru's insurance market as "dynamic and rapidly developing" and said ACE looks forward to expanding ACE Seguros "to include a broad array of life, accident and health insurance products."

Separately, ACE Ltd. received approval to underwrite commercial property/casualty insurance and reinsurance in Bahrain.

The Bermuda-based insurer said it would write domestic business and facultative reinsurance focusing initially on oil and gas, power generation, large and/or complex property, casualty, construction, and directors and officers liability.

ACE, which said it received operational approval from the Central Bank of Bahrain, has had a representative office in Manama, Bahrain, since November.

HRH purchases Kansas brokerage, consultant

OVERLAND PARK, Kan.—Hilb Rogal & Hobbs Co. has purchased The Resource Group L.C., an Overland Park, Kan.-based benefits brokerage and consulting firm, for an undisclosed amount.

Founded in 1996, TRG had about \$5.1 million in 2006 revenue, HRH said in a statement.

Richmond, Va.-based HRH said it planned to complete the acquisition last week and said TRG's staff of 37 would operate as part of HRH's central region under William L. Chaufy, vp and central region director of HRH.

Arthur J. Gallagher buys Minn. agency

MENDOTA HEIGHTS, Minn.—Arthur J. Gallagher & Co. has purchased retail insurance brokerage Spanjers Insurance Agency Inc. for an undisclosed sum.

Mendota Heights, Minn.-based Spanjers, which was formed in 1998, offers risk management, commercial property/casualty and employee benefits services and has specialized in the fitness, restaurant, manufacturing, transportation and construction industries.

"George T. Spanjers and his associates will continue to operate out of their current location" under the direction of Steven A. Ring, north central regional manager of Gallagher's retail brokerage services division, Itasca, Ill.-based Gallagher said in a statement.

Catlin Group opens equine unit in Kentucky

LEXINGTON, Ky.—Specialty property/casualty insurer and reinsurer Catlin Group Ltd. has opened an equine underwriting unit in Lexington, Ky.

The four-person unit is headed by equine insurance veteran Sheila Gott, director of equine

underwriting for Catlin U.S., Bermuda-based Catlin said in a statement.

Catlin's equine underwriting office is at 2333 Alexandria Drive, Lexington, Ky. 40504. Phone: 859-967-8424, 8542.

Integro launches office in Tennessee

FRANKLIN, Tenn.—New York-based Integro Insurance Brokers has opened its 12th office since its May 2005 founding, the latest in Franklin, Tenn., near Nashville.

The office at 725 Cool Springs Blvd., Franklin, Tenn. 37067, is led by Greg Daniels, a managing principal with more than 30 years of property/casualty experience, most

recently with Marsh Inc.

RLI forms property reinsurance arm

STAMFORD, Conn.—RLI Corp., a Peoria, Ill.-based specialty insurer, has created RLI Reinsurance to underwrite property facultative reinsurance.

Kevin Brawley, reinsurance president, and his team will focus on "providing truly innovative risk transfer solutions," said Michael Stone, RLI Insurance Co. president and chief operating officer.

The RLI Re office is at Six Landmark Square, Suite 469, Stamford, Conn. 06901. Phone: 203-359-5643.

NYMAGIC arm focuses on smaller risks

NEW YORK—NYMAGIC Inc. said its subsidiary, Southwest Marine & General Insurance Co., has received approval from the Excess Lines Assn. of New York to write surplus business in the state.

In a statement, NYMAGIC said Southwest Marine would focus on smaller property, casualty and professional liability risks that do not qualify for the New York Free Trade Zone, an area already served by NYMAGIC's New York Marine & General Insurance Co.

See **MARKET MOVES** page 36

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Market Moves

Engle Martin opens Nashville office

NASHVILLE, Tenn.—Engle Martin & Associates Inc., an Atlanta-based insurance adjuster and claims management firm, has opened an office in Nashville, Tenn. Five-year Engle Martin veteran Jarred McNeal, general adjuster, is leading the office at 211 Union St.,

Suite 711, Nashville, Tenn. 37201. Phone: 615-942-7690. With the addition of Nashville, Engle Martin said it now has 22 U.S. offices.

Frank Crystal & Co. opens Hamptons office

BRIDGEHAMPTON, N.Y.—Frank Crystal & Co. has expanded its private client services unit "to another community of high-net worth individuals," this one in the Hamptons, the New York-based brokerage said in a statement. John Wiltshire, director in the personal insurance department that is part of the private client services unit, will work in the new

office at 2316 Main St., Suite G, Bridgenampton, N.Y. 11932. Phone: 631-537-5939.

Lincoln Financial taps Go2dental.com for Web site

PHILADELPHIA—Philadelphia-based Lincoln Financial Group has reached agreement with Go2dental.com Inc. to provide an online dental resource for employees. The Web-based service, Lincoln DentalConnect, is aimed at employees and their dependents insured by a Lincoln Financial dental policy, Go2dental, a Santa Clara, Calif.-based information technology and decision support

tool supplier, said in a statement.

Digital, Guardium form data security partnership

Digital Inc., a Dulles, Va., software risk management consulting firm, and Guardium Inc., a Waltham, Mass., data security company, said they have formed a referral partnership to enhance data security and compliance for their respective customers. Digital experts can address legacy and Web 2.0 application integration issues while Guardium provides an appliance-based solution for real-time protection of sensitive corporate information, the companies said in a statement.

TO SUBMIT ITEMS

BI's new Market Moves column reports on activities by insurance industry companies and related entities. Personnel changes appear in Comings & Goings, while new product offerings appear in Products & Services. Please send Market Moves news to: Charmain Benton, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; cbenton@businessinsurance.com. P&S and C&G items should be mailed to Joe Walker at the above address or e-mailed to jwalker@businessinsurance.com.

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The work will be performed at: NYS Insurance Department, One Commerce Plaza, Suite 1850, Albany, NY 12257

Proposals will be due on Friday, August 31st at 4:00pm and should be sent to the contacts listed below.

To obtain a copy of the RFP or for more information please contact:

Karol O'Sullivan, Chief Budgeting Analyst,
NYS Insurance Department,
One Commerce Plaza, Albany, NY 12257
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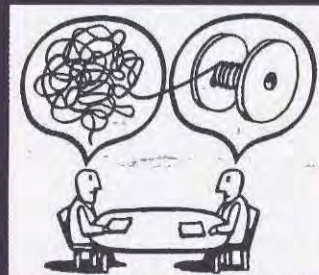
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International NEWS

French government to introduce legislation to allow class actions

By RICK MITCHELL

PARIS—The newly elected French president has put reform of France's consumer protection laws—and the possibility of class-action style lawsuits—back on the political agenda.

The government plans to draft new legislation that would allow class-action lawsuits by the end of the year.

In a July letter, French President Nicolas Sarkozy instructed his minister of economy, finance and employment, Christine Lagarde, to prepare a series of measures to modernize the French economy, among them "class actions à la Française," as part of consumer-protection legislation.

The potential introduction of class-action style lawsuits was a contentious issue in the run-up to this year's presidential elections.

In January the government of then-Prime Minister Dominique de Villepin, a fellow member of Mr. Sarkozy's conservative Union pour un Mouvement Populaire party, withdrew a bill including a form of class action about to be considered by Parliament.

The bill had been fiercely resisted by business and insurance representatives, but criticized as being too weak by consumer groups.

While consumer groups this month welcomed news of a reinvigorated class-action project, business representatives reserved judgment.

"We will be paying particular attention, but we need to know what (the government) plans to put into



LANDOV

French President Nicolas Sarkozy directed Christine Lagarde (right) to prepare consumer protection laws.

the law before we weigh in with an opinion," said Gerard Lancner, newly elected president of the Assn. pour le Management des Risques et des Assurances de l'Entreprise.

Consumer representatives, however, welcomed the government's move.

Cedric Musso, manager for institutional relations at French consumer body Union Federale des Consommateurs—Que Choisir, was one of several consumer group representatives to meet in July with Luc Chatel, secretary of state in charge of consumer affairs and tourism under Ms. Lagarde's ministry, to discuss plans for consumer legislation.

"Mr. Chatel's involvement, which Mr. Sarkozy requested...is encourag-

ing because, as a UMP deputy in Parliament last year, he proposed a real class-action bill that included many of the features we think are necessary, including the opt-out principle, and with no limits placed on damages," said Mr. Musso.

An opt-out principle allows consumers to benefit from a class action without having to formally join it or appear before a judge, as the bill abandoned in January would have required.

Businesses are not likely to support an opt-out principle "because they know they will have to compensate all damages caused by their errors," said Mr. Musso.

Under the bill abandoned in January, judges could only hear complaints for consumer goods linked to a contract and only cases filed by government-approved consumer organizations, with damages capped at €2,000 (\$2,720).

"We are hoping for a law that resembles the one Mr. Chatel proposed last year," said Mr. Musso. He added: "We don't want an American law with its excesses—no contingency fees for lawyers or elected judges and jury trials. There would be a series of brakes on abuses with professional judges."

A spokeswoman for Mr. Chatel noted that "Mr. Chatel is a government official now. He will solicit consumer associations' help as he drafts new consumer-protection legislation. However, it is unlikely to be the same text as he proposed as a member of Parliament."

U.K. public entities launching mutuals

Latest insurer to offer P/C coverage for fire and rescue risks

By STUART COLLINS

LONDON—A second public sector mutual insurer is set to open its doors in the United Kingdom later this year, with others in the pipeline.

Following the March launch of the London Authorities' Mutual Ltd.—the first local government insurance mutual to be formed in the United Kingdom in 100 years—another mutual insurance company is currently being formed to provide property and liability cover for fire and rescue authorities.

"We have 10 fire and rescue authorities committed to inject the requisite amount of capital to get full Financial Services Authority authorization and committed to the transfer of their principal insurance coverages as soon as their long-term agreements expire," said Martin Fone, head of public sector development for the mutual development unit at Charles Taylor Consulting P.L.C., a London-based manage-

ment company helping establish the mutual.

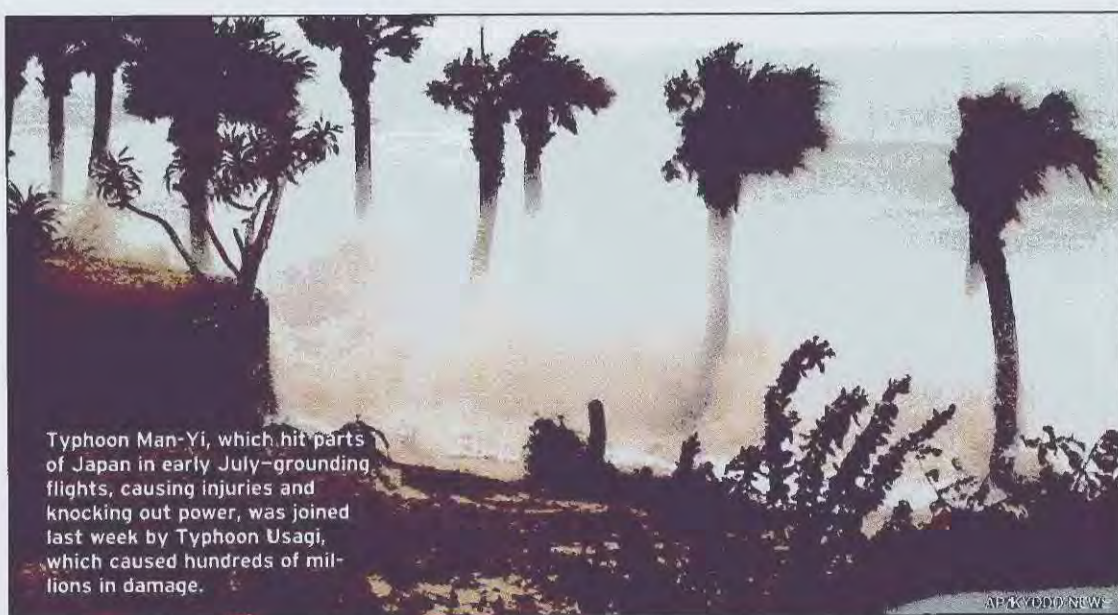
Of the nearly 50 fire and rescue authorities in England—which pay an estimated £20 million (\$40.5 million) in annual premium—about half are targeted to join the mutual insurer, Mr. Fone said. "The key factor for a successful mutual is a degree of selectivity—you select the good risks rather than the poor ones."

The number of public sector mutuals is expected to grow in coming years, increasing competition in a soft insurance market, experts say.

In a trading statement earlier this month, CTC, which has won the contract to manage the Fire & Rescue Authorities Mutual, said that it has been instructed to develop and implement a new mutual insurance company for local government authorities in the United Kingdom. "We have got other groups looking to form mutual insurance companies, although they are not as far down the road as the Fire & Rescue Authorities Mutual," he said.

Following its general meeting on Aug. 1, the Fire & Rescue Authorities Mutual is expected to start under-

See **MUTUAL** next page



Typhoon Man-Yi, which hit parts of Japan in early July—grounding flights, causing injuries and knocking out power, was joined last week by Typhoon Usagi, which caused hundreds of millions in damage.

Usagi hits Japan, causing up to \$500M in damage

By MARK A. HOFMANN

HYUGA, Japan—Catastrophe modelers expect insured losses in the hundreds of millions of dollars or more from the typhoon that struck the southern Japanese island of Kyushu last week.

Typhoon Usagi made landfall on northeastern Kyushu as a Category 2 storm, according to EQECAT Inc. of Oakland, Calif. "As the storm progressed northwards, it made landfall on Honshu, in Yamaguchi Prefecture.... Winds along the southern coastal areas

of Shikoku Island approached hurricane force," with sustained winds of about 75 mph, EQECAT said.

EQECAT said that insured losses from the typhoon would likely be in the range of 50 billion yen to 250 billion yen (\$420.9 million to \$2.10 billion), noting that "the relatively low level of winds across a vast region makes a more precise estimate of losses very difficult."

AIR Worldwide Corp., meanwhile, projected insured losses of no more than \$500 million from the typhoon.

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Canada: Health premiums spark battle

CONTINUED FROM PAGE 4

the employers—the Toronto Transit Commission and National Steel Car Ltd.—pay the premium on behalf of their employees.

The TTC has begun paying the premium on behalf of its 8,000 unionized employees at a cost of about \$6 million Canadian (\$5.7 million) per year, according to a spokeswoman.

Hamilton, Ontario-based National Steel Car could not be reached for comment.

In declining to review the two cases, the Supreme Court essentially upheld the Ontario Court of Appeal's December 2006 ruling that the right standard of review was applied to the decisions of the arbitrators—namely, whether their decisions were “patently unreasonable.”

“That’s a pretty high threshold to meet,” said David Elenbaas, a Toronto-based partner and head of the employment and labor relations practice of McMillan Binch Mendelsohn L.L.P.

In addition, the Ontario Court of Appeal rejected an argument made in the National Steel Car case that it should intervene on behalf of the employer because more than 75% of the arbitration decisions sided with the employers.

The courts will “defer to whatever the arbitrators determine,” Mr. Goldblatt said.

The arbitration cases pivot on the specific wording of the collective agreements and the arbitrator’s interpretation of the wording, labor lawyers say. “The language is all over the map,” said Mr. Elenbaas, whose firm represents employers.

For example, an arbitrator overseeing a dispute between the City of Hamilton and the Hamilton Professional Firefighters Assn. found that the city was responsible for the premiums because the specific language featured in the collective agreement signaled an intention that the employer’s obligation would extend to any form of government-funded or provided health care benefits.

According to an argument commonly advanced by unions in these disputes, employers are responsible under labor agreement language that required them to pay premium contributions under the Ontario Health Insurance Plan, the previous

Employers adjust benefits for delisted health services

TORONTO—A number of Ontario employers are adjusting their benefit programs as a result of the removal of certain health care services from the government health care system.

The provincial government delisted several services from its health insurance program three years ago in an effort to reduce costs and align its coverage package with other provinces. The government eliminated coverage of routine optometry exams, except for seniors and residents under 20 years old; chiropractic services; and physiotherapy for most Ontario residents.

An Aon Consulting survey conducted at the time the changes were introduced found that 48% of employers said their benefit plans would not automatically assume the costs of the delisted services, but a number of employers have chosen to assume some of the costs, said Laura Mensch, senior vp, health strategies practice leader for Aon Consulting in Toronto. “There are some employers that still have a maternal-paternal philosophy,” she said.

Only 13% of unionized employers said they were bound by labor agreements to assume the costs of the delisted services, according to the Aon survey.

Responsibility for the delisted services has become a part of labor negotiations. Cooper Standard Automotive Canada Ltd., a Georgetown, Ontario-based auto parts manufacturer, agreed to pay \$40 Canadian per employee toward the cost of eye exams during its last round of contract negotiations with the United Steelworkers of America Local 719.

Employers, though, are dealing with rising health care costs and have limited ability to cover all services that are delisted by the government, benefit consultants say.

There is a trend among Canadian employers to create flexible benefit plans with health spending accounts, which allow employees to choose the benefits they want and pay for them out of their accounts if they are eligible expenses within the tax guidelines, Ms. Mensch said.

—By Gloria Gonzalez

regime for collecting contributions for health care coverage. The OHIP was eliminated in 1990 and replaced by an employer payroll tax.

Employers have refused to reimburse employees for the Ontario Health Premium, arguing that unlike the OHIP, the OHP is a tax rather than a premium and reimbursement is not mandated by the labor agreements.

Some arbitrators have accepted this argument, while others have said that the OHP and the OHIP are essentially similar, making employers liable for the tax. This has led to a frustrating situation for employers who have lost their cases because they are responsible for paying both the employer payroll tax as well as

the OHP on behalf of their employees, observers note.

“In essence, employers have gotten hit twice,” said Keith Morrallée, a Toronto-based partner with consulting firm Morneau Sobeco.

Depending on the employer, the cost of paying the premium could increase total compensation by 1% to 2%, Mr. Morrallée said.

The only recourse for employers found liable for the premiums is to negotiate during the collective bargaining process, but their success in removing their obligation to pay depends on their bargaining power, Mr. Elenbaas said. “I don’t think there’s much else employers can do other than bargain over the issue,” he said.

\$50 million (\$101.9 million).

The mutual is offering its members broader coverage at a reduced cost, Mr. Fone said. “Members can obtain broader coverage than they had with higher limits, with greater clarity on terrorism for liability covers and enhanced pollution cover,” he said. “It offers all that and still shows a reduction in expiring rates.”

A large percentage of the coverage is reinsured in the London and European reinsurance markets by the mutual insurer, Mr. Fone said. “There is a low, any-one-occurrence retention, but the plan is to increase

that as funds are made available.”

Until 1992, most local government entities bought their insurance from Municipal Mutual Insurance Ltd., although this ceased trading after it was unable to meet statutory solvency margins, according to Peter Bristow, the Sheffield, England-based director of the public sector group at Aon Ltd., the U.K. arm of Chicago-based brokerage Aon Corp.

Renewed interest in mutual insurers is caused in part by reform of local government, which encourages cooperation among local government organizations, experts say.

Notice: Benefit changes must be communicated

CONTINUED FROM PAGE 4

ment record provides no direct evidence that the December 2002 notices were mailed, such as business records, a signed receipt from certified mail, or a post-marked envelope. Murphy does not even provide a sworn statement that the notice was mailed,” the three-judge panel ruled unanimously.

The only deposition testimony to support Murphy Oil’s claim was by the benefits department manager, who said his department stuffed the notice into envelopes. “But he did not provide evidence that the envelopes were mailed, or, if they were mailed, to whom,” the opinion stated.

Not enough evidence

Those responsible for addressing and mailing the envelopes provided no evidence to corroborate the manager’s statement “that the notices were mailed, or how they were addressed,” said the opinion. Two employees said “the mail room does not keep, as a matter of practice, any records, reports, codes or memoranda concerning what it sends out,” the opinion stated. Furthermore, “the computers and printers that would have been used to address the envelopes were discarded in February 2006.”

For their part, the plaintiffs produced four other employees from Mr. Custer’s plant in Meraux, La., who also did not remember receiving the December 2002 notice.

“It is, of course, possible each of these employees received the notice and just forgot, but the testimony of these employees reveals individuals who carefully examined and stored such benefits documents and discussed benefit changes amongst each other,” the opinion said.

There is “a genuine issue of material fact as to whether Murphy properly mailed the December 2002 notice to Custer,” ruled the appeals court, which remanded the case to the lower court.

The appeals court did, however, uphold the lower court’s dismissal of other allegations made by Mr. Custer, ruling that the language of the December 2002 notice was “sufficiently clear,” that the company did not discriminate against Mr. Custer or interfere in the exercise of his ERISA rights, and that the modifications were properly approved in accordance with the plan.

F. Michael Custer; Marsha F. Custer, plaintiffs-appellants, vs. Murphy Oil USA Inc., formerly known as Murphy Oil Corp., defendant-appellee, 5th U.S. Circuit Court of Appeals, No. 06-30672, July 24, 2007.

Meeker: Brokerage revived

CONTINUED FROM PAGE 4

Sharkey Sr. stepped down as chairman but remained a consultant until this January, he said. Tom Sharkey Jr. stepped down as president and CEO of Banc of America Corporate Insurance Agency in 2006.

Mr. Sharkey said he and his son left BACIA because they didn’t like the direction the bank was taking the insurance agency operation.

“We thought it was going to be a wonderful mutual relationship where we would be referring our clients to them and their clients to us, but there were so many walls, some artificial and some real,” Mr. Sharkey said. “We had a great business model with Summit Bancorp

and we had a great business model with Fleet. We didn’t have the same opportunity to develop that with Bank of America.”

In May, Bank of America said it was exploring strategic alternatives for Cranford, N.J.-based BACIA, which in 2006 ranked as the 27th largest broker of U.S. business revenues, according to *BI*’s rankings.

While Tom Sharkey Jr. is an “affiliate” of the new Meeker Sharkey, he is neither an officer nor an investor, his father said. Whether he joins the firm “is a decision he’s going to make.”

Tom Sharkey Jr. is still bound by a non-solicitation clause in his BACIA employment contract, the elder Mr. Sharkey confirmed.

Mutual: Offers P/C cover for fire, rescue

CONTINUED FROM PAGE 37

writing risk on Sept. 1, with five fire and rescue authorities insuring all or part of their portfolios. The remaining five will join as their insurance contracts expire, Mr. Fone said.

The mutual will offer property, business interruption, material damage, fidelity guarantee, personal accident, employers liability, public liability, errors and omissions, and slander insurance coverage. Coverage limits are offered up to the full value of property, while employees and public liability limits are up to

Argonaut: Obtains order

CONTINUED FROM PAGE 4

agreements. Mr. Brooks expressed frustration with what he described as last-minute demands Mr. Richards had made of First Mercury, and told him in the message that “it is time to make a decision.”

Comparing Argonaut with First Mercury, Mr. Brooks’ e-mail also criticized what it called Argonaut’s “centralized management” and said there would be “no stupid meetings” and “no home office harassment” in their new positions.

Mr. Richards, however, remains a

sales executive at Argonaut. Another co-worker, Robert Gilbert, resigned as senior vp last month and has joined Mr. Brooks at First Mercury, according to Argonaut’s lawsuit.

Mr. Brooks’ actions, including his efforts to recruit Messrs. Richards and Gilbert, violated terms of several restricted stock and stock option agreements he signed with Argonaut, the lawsuit alleges.

In addition to breach of contract and fiduciary duty charges, the suit seeks a permanent injunction barring Mr. Brooks from hiring away Argonaut employees.

Bias: Overturning high court decision on wages may increase litigation

CONTINUED FROM PAGE 1

employers' pension plans. They also say that by eliminating the time limitations to file claims, years or even decades could elapse between the original discriminatory act and the complaint, which could make it difficult for employers to find the witnesses and documents to adequately defend charges.

Richard I. Greenberg, an attorney with Jackson Lewis L.L.P. in New York, said if the Supreme Court decision is undone by the legislation, it "could open the door for litigation of pay decisions made years ago."

"If employees are able to file lawsuits years after the alleged discriminatory activity, it's going to make it very difficult for employers to be able to successfully defend those lawsuits, because evidence and eyewitnesses may no longer be available to them," said Richard Gisonny, a principal with Towers Perrin in Valhalla, N.Y.

"Class action lawyers are using the *Ledbetter* decision and trying to argue the rule also applies to a class action context in cases involving hundreds of thousands of employees," said Gerald L. Maatman Jr., an attorney with Seyfarth Shaw L.L.P. in Chicago.

"For me, it's a very high stakes issue that Congress is debating," and the legislation's ultimate outcome "could significantly impact ongoing and future class action lit-

igation," he said.

Supporters of the bill say the legislation only restores the situation that existed before the *Ledbetter* decision.

"It's a very narrow fix," said Jocelyn Frye, general counsel for the National Partnership for Women & Families in Washington. "It brings the law back to where it was before the *Ledbetter* decision" and "doesn't do any more than that."

'Serious headache'

But Debra S. Friedman, an attorney with Cozen O'Connor in Philadelphia, said the bill goes beyond the Supreme Court's decision. Unlike the *Ledbetter* decision, which just addressed salary, the bill applies to all types of compensation, including bonuses, vacations, pensions and perhaps even medical and life insurance benefits, she said.

Furthermore, while the *Ledbetter* case was brought under Title VII of the Civil Rights Act of 1964, the bill also applies to the Age Discrimination in Employment Act, the Americans with Disabilities Act and the Rehabilitation Act, Ms. Friedman said.

"What they're doing effectively here is eliminating the statute of limitations for any compensation and discrimination claim," said Ms. Friedman. "It could be a serious headache for employers if it's passed."

Anne Waidmann, Washington-based director in Pricewaterhouse-

Prospects of pay-discrimination measure unclear in early stage of legislative process

The prospects of H.R. 2831 remain unclear, observers say.

The House of Representatives passed the bill, known as the Lilly Ledbetter Fair Pay Act of 2007, on a largely party-line vote of 225-199.

A companion bill, the Fair Pay Restoration Act—S. 1843—was introduced July 20 in the Senate by a bipartisan group of 14 senators led by Sen. Edward Kennedy, D-Mass., and Sen. Arlen Specter, R-Pa.

Jason Straczewski, director of employment and labor policy at the Washington-based National Assn. of Manufacturers, said it is clear Sen. Kennedy, who issued a press release applauding the *Ledbetter* bill's passage, "would like to explore the issue further in the fall."

"I think we've only seen the beginning of the legislative process," said Michael Eastman, the U.S. Chamber of Commerce's

executive director of labor policy in Washington.

Although Bush administration advisors have said they would urge the president to veto the current bill, "If the bill's changed, who knows? We don't know what the White House would say," Mr. Eastman said.

While the House "rammed this thing through with very little open debate," the Senate is likely to take a more thoughtful approach and hold hearings before it reaches the floor, "but it all depends on the timing," said Mr. Straczewski. "I'm not sure how the votes are in the Senate, though we're just getting started" on lobbying efforts.

However, Amy Kohn, human resources legal consultant with Hewitt Associates Inc. in Lincolnshire, Ill., said the legislation's chance of becoming law is "slim."

"Even if it gets out of Con-

gress, it is very unlikely President Bush would sign it" and there are not enough votes in the House in its favor to overcome a veto, she said.

"This is not a consensus piece of legislation, and we hope that senators will hear us out as we move our education efforts over to the Senate side and talk about the ways this legislation may be potentially unfeasible for HR professionals," said Michael Layman, manager of labor and employment legislation at the Alexandria, Va.-based Society for Human Resource Management.

But Jocelyn Frye, general counsel for the National Partnership for Women & Families in Washington said, "We're very positive" about the legislation's passage. "We think we have strong bipartisan support in the Senate."

—By Judy Greenwald

Combined: Aon may sell or spin off underwriting unit

CONTINUED FROM PAGE 3

Lynch & Co. and Aon Capital Markets as advisers on any potential transaction, Aon said.

Analysts say CICA could fetch from \$2 billion to \$2.5 billion in a sale and Aon most likely would use the proceeds to buy back company stock, although acquisitions are not out of the question, analysts noted.

"We believe this sale creates the potential for Aon to do a large share repurchase," said David Small, an analyst with Bear, Stearns & Co. Inc. in New York.

Aon's capital management strategy so far has been to buy company stock "very aggressively," although "we continue to believe that they could improve the collection of their consulting assets, (so) an acquisition there could make a lot of sense," said Mark Lane, a principal with William Blair & Co. in Chicago.

Aon first tried to exit the underwriting business in 2001 when it attempted to spin off Combined Specialty, the umbrella company under which it organized its underwriting operations, including CICA, Aon Warranty, Virginia Surety and London General. Aon, citing difficult market conditions, eventually scrapped the plans and opted instead to sell all or part of the umbrella operations.

With the exception of Sheffield Insurance Corp., a small excess and surplus lines insurer that Aon sold to AXIS Specialty Ltd. in November 2002, the underwriting operations remained part of Aon.

In November 2005, Aon said it was exploring strategic alternatives for its warranty, credit insurance and property/casualty underwriting businesses. CICA was excluded from consideration at that time (*BI*, Nov. 21, 2005).

In a conference call with analysts last week, Mr. Case said Aon's decision now to spin off or sell CICA and its subsidiaries, including Sterling Life Insurance Co., is a continuation of Aon's efforts beginning about 18 months ago to exit the underwriting business and focus on its core brokerage business.

Gretchen Roetzer, a credit analyst with Fitch Ratings in Chicago, said Aon could use the money from a sale of CICA for purposes that could range from repurchasing stock to making acquisitions to funding its pension plan.

"We've always thought (CICA) was strategic and not a core business and when the time was right it may be something (Aon) would look to try to do something with again," Ms. Roetzer said. "It's definitely not a fire sale. I think they waited for the right time, the right market and the right management."

Cooper's Human Resource Services division, said there is concern in the benefits community as to how the legislation may affect pensions.

If an employee files a lawsuit over

an alleged wage discrimination that occurred 30 years ago that results in an award of back pay, "then does the pension plan have to refigure the benefits that it owes you?" she

asked. And if so, how does that impact the plan's funding? With compounding of interest, "It could bankrupt the company," said Ms. Waidmann.

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Bridge: State law caps damage potential

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dozens of vehicles and their passengers into the water or stranding them on buckled approach roads.

As of Friday, authorities had confirmed five deaths and 100 injuries, with the number of people missing, which ranged from seven to 30, still in dispute.

Since 1990, the 40-year-old steel-deck truss bridge has been designated "structurally deficient" under federal standards, a category that includes thousands of U.S. bridges but does not necessarily mean that a bridge is unsafe, state and federal officials said.

The design of the I-35W bridge, though, left it with 52 steel beams that engineers considered "fracture critical," meaning that the failure of any one element could cause the entire bridge to collapse, according to a July 2006 report prepared for the state DOT by San Francisco-based consultant URS Corp.

An earlier 2001 report by University of Minnesota engineers noted that concerns about cracking in the deck truss system were heightened by the "lack of redundancy" in the underlying main truss system.

DOT inspectors examined the bridge in 2005 and 2006, noting numerous fatigue cracks in the main trusses, along with repairs to those elements. A 2006 report by DOT engineers said the bridge should be replaced or redecked in the longer term, but recommended only annual inspection and minor repairs in the shorter term.

Meanwhile, DOT hired URS in 2003 to carry out an in-depth structural evaluation of the bridge. Last July, URS offered DOT three "equally viable retrofit approaches": install steel plate on all 52 fracture-critical truss girders, a "relatively high-cost" option; conduct annual girder inspections to spot developing problems, the "most cost-efficient" choice; or a combination of the two. DOT opted for the inspection



Search efforts continued late last week into the collapse of the Interstate 35W bridge in Minneapolis that killed at least five people.

route, in part because of concerns that steel plating would require drilling holes in the beams, potentially weakening them further, a DOT spokeswoman said.

Minnesota state agencies' property and liability risks are insured by the state's Risk Management Fund, a self-insurance program. Phillip Blue, director the government's St. Paul-based Risk Management Division, could not be reached on how the fund would respond to tort claims from the collapse.

Minnesota's immunity statute, though, bars claims for losses resulting from the state's performance of any "discretionary duty." Courts have previously held that road repairs and signage are immune discretionary functions, Mr. Allyn said.

Plaintiffs' lawyers, however, will likely try to get around the statute by arguing that bridge inspection and maintenance are not discretionary, Mr. Potter said.

Should plaintiffs win on the immunity issue, they would run into the state's damage caps, which also bar punitive awards against the state.

Mr. Potter speculated that the terrible circumstances of the disaster could create pressure on the govern-

ment to waive the caps. The Minnesota Legislature could also create a special victims' fund, similar to the federal fund created after the Sept. 11, 2001, terror attacks, Mr. Allyn added.

Contractors and consultants who worked on the bridge in the past 10 years also are possible litigation targets, though the statute of repose would probably shield companies that had done work prior to 1997 and include those originally involved in the bridge's construction, lawyers say.

Progressive Contractors Inc. of St. Michael, Minn., had an 18-person road resurfacing crew on the bridge when it collapsed. As of Friday, one worker was still missing, three were hospitalized and the others were treated at the scene, according to Progressive Contractors.

Representatives of the DOT and Progressive last week dismissed any connection between the road work and the collapse.

"All indications are that the work PCI was doing had nothing to do with the collapse of the bridge," said David Lillehaug, a lawyer for Progressive Contractors with the Minneapolis firm of Fredrikson & Byron P.C.

Business interruption losses may be tough to prove

MINNEAPOLIS—Obtaining proceeds from business interruption claims stemming from the collapse of the Interstate 35W bridge in Minneapolis could be challenging for policyholders, observers say.

It was too early to tell late last week whether there would be a significant amount of claims filed due to the closure of a stretch of the Mississippi River or the loss of the bridge, which carried more than 140,000 vehicles daily. But policy language could make it tough to establish a business interruption claim, observers said.

Business interruption claims that might occur would likely trigger the civil authority or prevention of ingress/egress clauses in many insurance policies, said Paul McVey, managing director and head of global property claims for Marsh Risk Consulting in New York.

Each business interruption coverage has separate limits, making it possible to trigger both simultaneously, said Finley T. Harkham, an insurance recovery attorney at Anderson Kill & Olick P.C. in New York.

Both coverages apply when there is direct physical damage affecting a business, but not to the policyholder's property. Civil authority is triggered when government denies access to a business. Ingress/egress is triggered when a physical barrier, such as debris from the collapsed bridge, interrupts business, the observers said.

The U.S. Coast Guard closed a 10-mile stretch of the Mississip-

pi and a spokeswoman said it could remain closed for days.

But shipping traffic on that stretch of the river was light last week and no ships were waiting to pass through the area, the Coast Guard spokeswoman said.

Barges filled with commodities, such as corn, travel the upper reaches of the Mississippi River. The barges, however, typically do not travel the area where the bridge collapsed, so little impact is expected on that business, said a spokesman for the Minnesota Corn Growers Assn. in Minneapolis.

"It's not really a big deal as far as flowing traffic," the spokesman said. While the bridge collapse greatly affected traffic on roads in the area, rail lines continued to function, he added.

With alternative forms of transportation such as rail being available, it could be tough to argue or collect on business interruption coverage, Mr. Harkham said. Case law has established that under some policies, transportation must be completely prohibited, not just impaired.

Additionally, business interruption policies often contain "distance limitations," Mr. McVey said. Such language limits coverage for civil authority or ingress/egress claims to physical damage occurring within as little as one mile from a policyholder's property.

Every policyholder would have to examine their particular policy language, Mr. McVey advised.

—By Roberto Cenicerros

Baxter: Appeals court discounts anonymous source statements

CONTINUED FROM PAGE 3

witness statements in the court's analysis of whether to dismiss a securities fraud lawsuit, attorneys said.

The *Baxter* case stems from the May 2004 disclosure that executives at a Brazilian subsidiary of the medical equipment manufacturer and pharmaceutical concern misrepresented the timing of sales and fabricated some sales to drive up profits.

Baxter began investigating the claims shortly after it issued its first-quarter 2004 financial statements in early May that year. When Baxter announced the problem, its stock price dropped 4.6% but rebounded somewhat a few weeks later when the company determined the profit impact would not be as severe as shareholders had anticipated, according to court papers.

Shareholders sued, but a lower court dismissed the consolidated litigation before reinstating it and then dismissing it again in 2005.

The 7th Circuit panel earlier this year deferred action on the case while awaiting a decision in the *Tellabs* case, in which the Supreme Court overturned the 7th Circuit's previous case evaluation process, which did not take into account inferences that the court could draw on potentially innocent behavior by defendants.

Court expresses frustration

In light of the *Tellabs* decision, the 7th Circuit panel said it felt frustrated with the confidential witness statements in the *Baxter* case because the plaintiffs' attorney told the court the witnesses would never be identified.

"It is hard to see how information from anonymous sources could be deemed 'compelling' or how we could take account of plausible opposing inferences. Perhaps these confidential sources have axes to grind. Perhaps they are lying. Perhaps they don't even exist," the pan-

el wrote.

But the panel also said it would not ignore evidence from confidential witnesses. "It is possible to imagine situations in which statements by anonymous sources may corroborate or disambiguate evidence from disclosed sources," the panel noted. "Informants sometimes play this role in applications for search warrants. Because it is impossible to anticipate all combinations of information that may be presented in the future, and because *Tellabs* instructs courts to evaluate the allegations in their entirety, we said above that allegations from 'confidential witnesses' must be 'discounted' rather than ignored. Usually that discount will be steep."

Insurer attorney Arthur Washington, a partner at Mendes & Mount L.L.P. in New York, and Mr. Passanante said they expect the ruling to be influential among other courts because of reputation of the judges on the 7th Circuit panel.

Plaintiffs' attorney Carol Gilden, president of the Washington-based National Assn. of Shareholder & Consumer Attorneys, predicted that some courts would follow the 7th Circuit's reasoning but that others would not.

The attorneys agreed that plaintiffs nationwide, who often rely on confidential witness statements to establish defendants' intent, will pay attention to the decision.

The attorneys also agreed that the 7th Circuit followed the guidelines that the Supreme Court established in its *Tellabs* decision.

But, Mr. Washington said the panel had to balance the high court's direction to consider all factors that could give rise to opposing inferences of culpability and innocence against the panel's discomfort with allegations that could never be verified. "Personally, I think this 7th Circuit decision probably gets it right," Mr. Washington said.

Ms. Gilden did not expect other

courts would be troubled by the 7th Circuit panel's interpretation of *Tellabs*. "The application of a standard always necessitates involving some interpretation by the court," said Ms. Gilden, a partner at Cohen Milstein Hausfeld & Toll P.L.L.C. in Chicago.

The panel also "poked holes" in arguments in which the plaintiffs' tried to demonstrate that the defendants acted with the intent to commit fraud, noted insurer attorney Dan A. Bailey, a partner with Bailey Cavaliere L.L.C. of Columbus, Ohio.

Among those arguments was the time Baxter executives took to investigate the problem before announcing it publicly. The panel ruled: "Managers cannot tell lies but are entitled to investigate for a reasonable time, until they have a full story to reveal."

Dennis Higginbotham et al. vs. Baxter International Inc., 7th U.S. Circuit Court of Appeals, July 27, 2007; No. 06-1312.

TRIREA: Bush administration opposes 15-year backstop extension

CONTINUED FROM PAGE 1

include exempting insurers with annual direct premiums of less than \$50 million from having to offer coverage for nuclear, biological, chemical and radiological attacks if insurers show that doing so would jeopardize their solvency. Another amendment would tie the size of insured losses required to trigger the backstop to a measure of inflation.

The Bush administration quickly expressed its displeasure.

"We are particularly disappointed with the committee's decision to extend the program for 15 additional years," said Assistant Treasury Secretary for Financial Institutions David G. Nason. "This extension runs counter to the public policy goal of reducing and eventually eliminating the federal government's role in the terrorism insurance market, and it sends the wrong message to the marketplace for a program that was intended to be temporary."

"We strongly oppose this bill," said Mr. Nason in his statement.

The full House is expected to take up the measure after it returns from its August recess. The Senate has yet to move on the issue.

The Risk & Insurance Management Society Inc. welcomed the vote.

"RIMS strongly supports the Terrorism Risk Insurance Revision and Extension Act as it was marked up" in committee, said Terry Fleming, a RIMS board member. "The inclusion of a 15-year extension, NBCR coverage with lower trigger and deductible, as well as eliminating the distinction between domestic and foreign terrorism will provide long-term stability to the insurance markets and provide peace of mind for businesses and their workers. We encourage the full House membership to pass the legislation as soon as

possible," said Mr. Fleming, who is also director-division of risk management for Montgomery County, Md., in Rockville.

Industry representatives downplayed the impact of the longer extension.

"It doesn't doom the bill," said Joel Wood, senior vp for the Council of Insurance Agents & Brokers in Washington. "I think there is a very high-stakes game in respect to the administration's opposition to that bill. On the other hand, I could argue that 15 years is politically pushing the envelope, but I likewise believe that it helps set the bar a little higher for the Senate considera-

'The longer, the better for creating stability in the marketplace.'

Leigh Ann Pusey,
American Insurance Assn.

tion. I think it is noteworthy that the administration has expressed understandable opposition but has not issued any veto threat."

Mr. Wood said he was "very optimistic that this will be resolved amicably and the president will sign it."

"I think it's distinction without a difference," said Ben McKay, senior vp in the Property Casualty Insurers Assn. of America's Washington office. Mr. McKay said it was easier to propose a longer duration rather than a shorter duration because "it is more likely that terrorism is going to be around for 50 years than for five."

He noted that more than 70% of the committee's members supported the bill, and "it doesn't seem likely" that the longer duration will jeopardize it. "The significance may come into play in negotiations with the Senate depending on the length of the extension chosen by Senate."

"It's going to be interesting to see

what comes out of the Senate as far as duration," said Marliis Browder, senior federal affairs director for the National Assn. of Mutual Insurance Cos. in Washington. "As far as NAMIC is concerned, we've always supported a long-term public-private partnership."

The American Insurance Assn. "is on record as supporting a permanent program," said Leigh Ann Pusey, the Washington-based insurer group's chief operating officer. "We were encouraged by the discussions of a long-term program—eight, 10, 15 years. The longer, the better for creating stability in the marketplace," she said.

Wellness & Consumer-Driven Health Plans: Contradictory or Complementary?

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- Health Insurers & Brokers
- Wellness & Disease Management Providers

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September 2005. A group of about 40 policyholders held that the exclusion should not apply because the levees had been poorly designed and built. The panel, in overturning a lower court decision, noted the policyholders' arguments but held "we conclude, however, that even if the plaintiffs can prove that the levees were negligently designed, constructed or maintained and that the breaches were due to this

negligence, the flood exclusions in the plaintiffs' policies unambiguously preclude their recovery."

Beacon Mutual fined, to refund \$7 million

Rhode Island's dominant workers compensation insurer, Beacon Mutual Insurance Co., has agreed to pay a \$1 million penalty and return \$7 million to eligible policyholders as a result of a market conduct exam that revealed improprieties. The exam of Beacon by Rhode Island's Department of Business Regulation also resulted in 79 recommendations related to board practices, financial controls, underwriting procedures and management structure. The insurer said that the problems stem from activities carried out before it implemented reforms and changes in

April 2006.

Premium growth slows among U.S. captives

Premium growth for U.S.-domiciled captive insurers slowed last year, but captives' combined ratios improved dramatically, according to a new report. The report by A.M. Best Co. Inc. found that net written premiums of captives based in U.S. domiciles rose just 2.7% in 2006 to \$10.2 billion. That increase is significantly lower than the 7.3% average written premium increase over the last five years. Additionally, year-end surplus climbed to \$18.8 billion at year-end 2006, up 10.3% from year-end 2005, while captives' combined ratios improved to 94.1% at year-end 2006 compared with 102% at year-end 2005. The information is based on

captive insurers for which Best was able to obtain financial statements.

URAC launches PBM accreditation

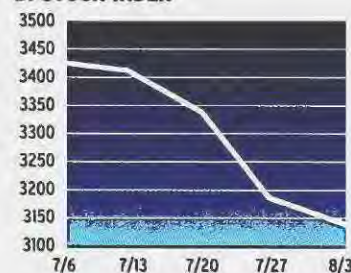
Nonprofit health care accreditation organization URAC has developed voluntary quality accreditation standards for the pharmacy benefit management industry. URAC has launched a program for health plans and standalone PBMs in the commercial market to receive accreditation that they have met quality standards set by the Washington-based nonprofit for consumer protection and empowerment, appropriate access to drugs and pharmacies, patient safety, and disclosure of pricing and contracting terms, according to a statement.

Stock Index

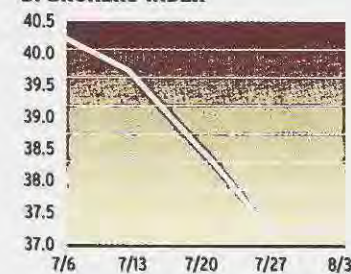
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.BusinessInsurance.com.

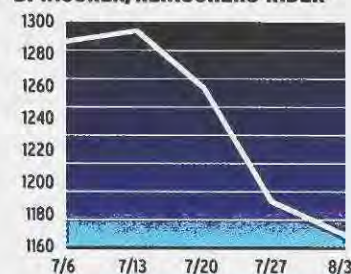
BI STOCK INDEX



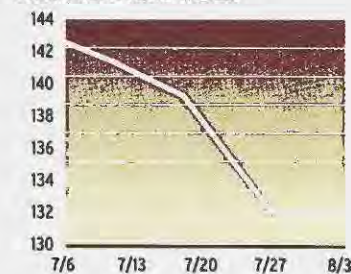
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

Indicator	Value	Change
BI STOCK INDEX	3135.88	-1.41%
DOW JONES	13181.91	-0.63%
S&P 500	1433.06	-1.77%

LARGEST GAINS

Alleghany Corp.	6.55%
Baldwin & Lyons Inc.	4.63%
Harleysville Group Inc.	4.34%
Navigators Group Inc.	4.33%
Arthur J. Gallagher & Co.	3.96%

LARGEST LOSSES

Ambac Financial Group	-16.75%
MBIA Inc.	-15.75%
Gainsco Inc.	-8.40%
NYMAGIC Inc.	-8.13%
CNA Financial Corp.	-7.82%

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

Prevent: Employers split on covering certain drugs

CONTINUED FROM PAGE 1

plans, according to Helen Darling, the organization's president.

"It helps get people over the hump of higher out-of-pocket costs," which could encourage more employees to sign up for the plans that cost employers less than traditional health plans, she said.

And while the additional benefit may increase plan costs slightly—experts estimate costs are approximately 1% to 2% higher than the typical HSA-qualified HDHP—the move should lower the plan's net costs by reducing claims for the conditions the drugs are intended to prevent, Ms. Darling said.

Preventive drugs are an estimated 27% to 29% of an employer's total prescription drug costs, said Robin Downey, head of product development at Aetna Inc. in Hartford, Conn. Aetna was one of the first HDHP insurers to cover preventive drugs outside the deductible.

Most employers that do provide coverage for preventive prescription drugs in their HSA-qualified plans generally treat them as if the deductible has already been met, Ms. Downey said. Such drugs may be subject to copays or coinsurance.

Express Scripts had developed a predictive modeling tool to help plan sponsors calculate the cost of providing first-dollar coverage for select preventive medications before the HDHP member meets the plan's deductible.

The St. Louis-based PBM estimates about 25% of its HDHP clients are providing such coverage. But most employers are not yet

Clarity lacking in IRS rules

Many benefit consultants feel the Internal Revenue Service's description of prescription drugs considered preventive is too vague and are dissuading their employer clients from adding drug coverage to their HSA-qualified plans.

The consequences could be severe for plan members if the IRS decides some of these drugs are not preventing illness and are being prescribed to treat existing medical conditions.

In addition to losing the favorable tax treatment of their HSA contributions, financial penalties may be assessed on plan members. It also could expose employers and high-deductible health plan administrators to plan member suits.

Although the likelihood of

an HSA plan member being audited in connection with their HSA deduction is remote, if that does happen, there could be dire consequences, warns Jay Savin, a principal at Towers Perrin in St. Louis, Mo.

Mr. Savin advises employers to ask the vendor providing the drug list "to indemnify you against all lawsuits connected to their guidance."

But Ed Fensholt, senior vp and director of compliance services at Lockton Benefit Group in Kansas City, Mo., said an employer should be safe "as long as it has a good faith argument that the drugs that they are paying for below the deductible are considered preventive."

—By Joanne Wojcik

covering drugs outside of the deductible in their HSA-qualified HDHPs, either because of cost or uncertainty about IRS guidance, industry experts say.

"Many of the employers that aren't covering drugs as preventive are doing so because of cost," Ms. Downey said. "Then there are some employers who...wouldn't consider this if it wasn't OK with Treasury."

Sarah Novak, director of benefits at Plexus Corp. in Neenah, Wis., is among the latter group.

"I have seen the IRS give the OK, but I have not seen a list, so I am

concerned about the potential risk to the qualification of the HDHP if we were to implement this right now," she said in an e-mail.

"The IRS guidance hasn't been specific enough," said Sander Domaszewicz, a principal and head of the consumerism group at Mercer Health & Benefits in Newport Beach, Calif. Still, "the industry has moved ahead and is going to do something until someone tells them they can't. Some have created pretty broad lists, while others have been much more conservative. We have a client offering two health

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Business Insurance

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Public scrutiny just part of the job, ruling says

A Pennsylvania public official can't blame the messenger for his psychological injuries.

Joseph Rosenfeld, a community affairs assistant working for the mayor of Allentown, Pa., filed a workers compensation claim alleging that negative news stories about him caused psychological injuries including weight fluctuation and fear of leaving his house.

About 30 stories in a local paper alleged that Mr. Rosenfeld obstructed the relocation of a bus terminal to financially benefit his family, court records show. The stories also alleged he used his employer's telephone and fax machines for personal use.

A doctor supported Mr. Rosenfeld's 1996 workers comp claim that the newspaper stories caused psychiatric disorders. The doctor said Mr. Rosenfeld would require counseling to prevent post-traumatic stress disorder and depression that left him unable to work, court records show.

But a workers compensation judge, a workers comp appeals board and the Commonwealth Court of Pennsylvania all sided with Mr. Rosenfeld's employer, the City of Allentown, and denied his claim late last month.

Even if the news stories were misguided, as Mr. Rosenfeld contended, unfounded negative press scrutiny is a normal part of working as a public employee, especially one with a community affairs role, the appeals court stated.



Hospital bans holey Crocs

Hospital workers love their comfortable Crocs—those clog-style shoes with abundant ventilation that come in several bright colors.

Some detractors, on the other hand, think the hugely popular, rubber-like shoes are ugly.

At least one hospital is weighing in with a different opinion, and it has nothing to do with the shoes' comfort or style.

Mercy Hospital in Pittsburgh recently banned "the Beach," Croc Inc.'s most popular shoe style and other Croc-like shoes. The hospital fears that nurses and other hospital workers could injure themselves if they were to drop a syringe, because

it could puncture the skin through the holes dotting the top of the shoe.

The hospital reportedly said that it has nothing in particular against the shoes that health care workers find ideal for long days spent on their feet. But the federal Occupational Safety and Health Administration requires the hospital to protect its workers from environmental hazards, the facility says.

A solution may be on the way.

Niwot, Colo.-based Crocs has reportedly worked with a nurse association to develop a shoe without holes and made to withstand any punishment health care professionals could encounter.

Contributing:
Roberto Cenicerros,
Louise Esola,
Joanne Wojcik

Skip the meat and earn a premium discount

Brits who would take a newspaper-wrapped batch of fish and chips over other traditional Anglo fare like bangers or shepherd's pie may be eligible for a discount on their life insurance.

U.K.-based Animal Friends Insurance Services Ltd. recently announced it would take up to 10% off the premiums of vegetarians and fish-eaters because they are less likely to suffer from a range of chronic illnesses, including some cancers.

"The risk of vegetarians suffering from some cancers is reduced by up to 40% and from heart disease by up to 30%, but despite this they have to pay the same life insurance premiums as meat-eaters," AFI Managing Director Elaine Fairfax said in a statement.

"When it comes to life insurance, we believe that insurers should start to look at meat-eaters and nonmeat-eaters in a similar way to the way they look at smokers and nonsmokers," she added. "Hopefully others in the industry will follow our lead."

AFI, which puts its profits toward animal charities worldwide, writes coverage for pets in addition to its life insurance offering for humans.

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Surveillance catches oily truth

A woman slipped up on her alleged attempt to scam a supermarket last week when the store's surveillance system caught her opening a bottle of olive oil and drizzling in on the floor just minutes before she faked a fall.

Luis Diaz,

owner of the Neighbors Food Market in Sunrise, Fla., said he got suspicious after viewing a tape of the woman's fall and saw that she fell forward and not back. "When you slip, you usually fall back," he said.

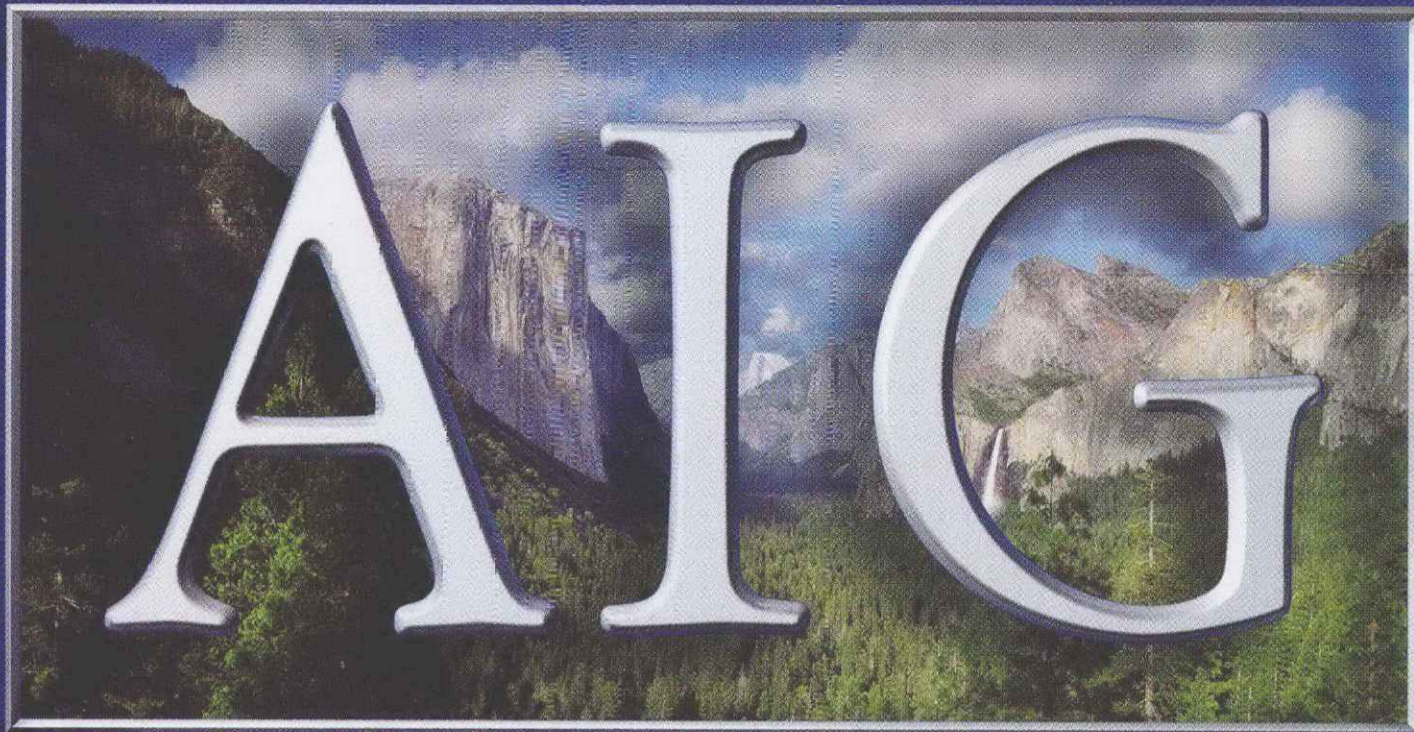
He rewound the tape and saw that she poured oil on the floor, left that aisle for several minutes and returned to stage her fall. When a worker tried to help the

woman up, she fell again. "She made a scene about it—had the ambulance come and everything."

Mr. Diaz said he purchased the \$30,000 video recording system about six months ago and initially had doubts. "I thought, this is a lot of money," he said. "But it paid off in the end because right now, I could be getting sued."

The Greek poet Homer called olive oil "liquid gold," but the owner of a Florida supermarket said in-store cameras captured a woman trying to turn the liquid into slip-and-fall "gold."





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