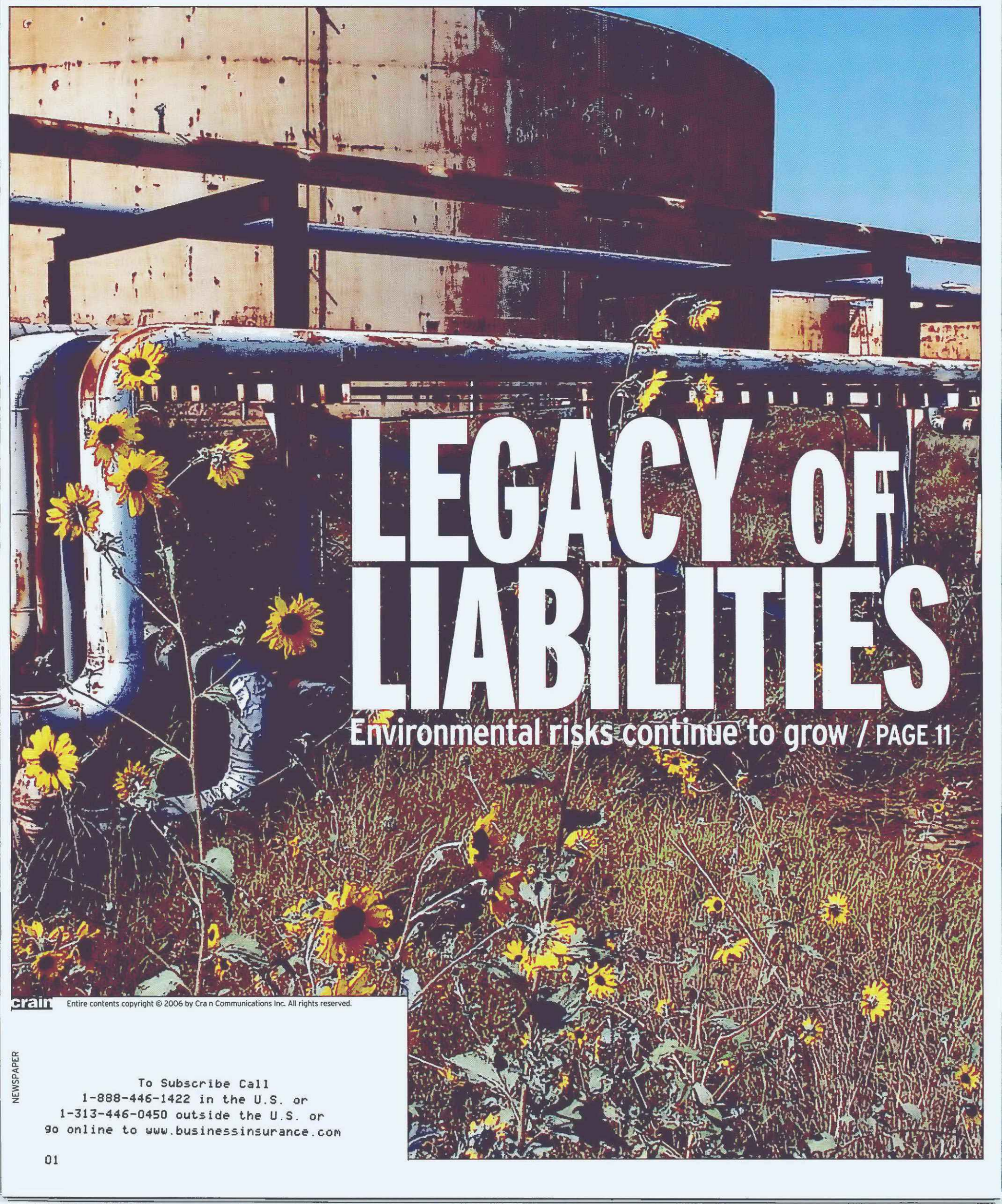


Business Insurance

\$5

December 4, 2006

www.businessinsurance.com



LEGACY OF LIABILITIES

Environmental risks continue to grow / PAGE 11

crain

Entire contents copyright © 2006 by Crain Communications Inc. All rights reserved.

To Subscribe Call

1-888-446-1422 in the U.S. or

1-313-446-0450 outside the U.S. or

go online to www.businessinsurance.com

Is your company ready to address sustainability risks?

Ask Aon.



Many risk managers are unaware that as their organizations expand globally, sustainable performance will require greater diligence and a broader approach to risk management that encompasses economic, environmental and social factors as well as traditionally insurable risks. Corporations that understand this changing risk landscape will

- Peter Breitstone, *Managing Principal and CEO,*
Aon Environmental Services Group

assemble teams with the requisite skills to identify and address sustainability risks. Sustainability Risk Management (SRM) is a process that helps organizations identify and manage these risks. To learn about specific SRM strategies that can help ensure your corporate survival, visit www.aon.com/ask.

Download our full perspective
at www.aon.com/ask



AON

Business Insurance

December 4, 2006

www.businessinsurance.com

**FEW STORMS, HIGH PREMIUMS
ADD UP TO STELLAR RESULTS
FOR INSURERS / PAGE 3**



**SUPREME COURT HEARS
PAY DISCRIMINATION
DISPUTE / PAGE 3**

**EMPLOYER GROUP OFFERS GUIDE
TO HELP COMPANIES EMBRACE
PREVENTATIVE CARE / PAGE 3**

In Brief

Reinsurer results improve in period

Reinsurers' results for the first nine months of the year improved markedly over last year's hurricane-battered returns, according to the Reinsurance Assn. of America. A group of 23 reinsurers reported a combined ratio of 95.4% for the first nine months of 2006, compared with a 124.1% combined ratio reported by a similar group in the same period last year. The reinsurers reported gross written premiums of \$31.58 billion, up 3.7% compared with last year's group, and profits of \$6.3 billion vs. a loss of \$133.6 million last year.

St. Paul Travelers cuts back in New Orleans

St. Paul Travelers Cos. Inc. plans to stop renewing many small and

See **IN BRIEF** page 30

Contingents bar sparks agent protest

Latest Spitzer order cuts extra compensation on more products, takes fight to personal lines

By **SALLY ROBERTS**

NEW YORK—New York Attorney General Eliot Spitzer took aim at the personal lines industry last week as he notified four insurers that, in accordance with their previous settlements, they no longer could pay contingent commissions on six additional lines of business including homeowners and personal automobile coverage.

The ban—imposed on ACE Ltd., American International Group Inc., St. Paul Travelers Cos. Inc. and

Zurich American Insurance Co. Inc.—is the latest in Mr. Spitzer's more than two-year-old investigation into broker compensation practices and essentially shifts the focus away from commercial lines to personal



ACE PICTURES

New York Attorney General Eliot Spitzer has barred four insurers from paying contingents in several lines.

al lines, which has never been a major focus of his past investigations.

That not only has industry players questioning the appropriateness of the move, but also what they see as one state attorney general being allowed to regulate broker compensation nationwide.

Independent agent groups, in particular, took exception to Mr. Spitzer's announcement and vowed to fight to preserve the right for insurers to pay agents and brokers legal incentive compensation.

Much of Mr. Spitzer's investigations and resulting settlements into broker compensation practices have centered on an alleged bid-rigging scheme orchestrated by Marsh & McLennan Cos. Inc. and several insurers involving excess casualty business, and allegations that the world's three largest brokers failed to act in the best interest of their commercial clients by steering business to insurers that paid the highest contingent commissions.

See **CONTINGENT** page 29

RIMS launches online tool to advance ERM

*Risk managers welcome program
but recognize it has limitations*

By **DAVE LENCKUS**

NEW YORK—Risk managers have a new online tool to help them not only gauge how advanced their enterprise risk management processes are but also to understand how they could be improved.

After cursory reviews of the Risk Maturity Model, unveiled last week by the Risk & Insurance Management Society Inc., several risk managers and consultants said they were eager to use the self-assessment, educational and benchmarking tool.

"I was very happy to see RIMS come out with this and define ERM better," said Kevin Hoskinson, director of enterprise risk management solutions at Sun Microsystems Inc. of Broomfield, Colo.

"I think I have a tool in front of me that neither I nor any risk manager can ignore," said Joey Page, risk manager for the city of Plano, Texas.

But risk managers and consultants also cautioned that the tool has limitations. They said it offers only limited guidance on developing an ERM process, could generate inconsistent assessments and does not offer the most robust benchmarking capabilities.

The tool is designed to help guide risk managers as they implement ERM processes, but it is not meant to provide step-by-step implementation directions, explained John Phelps, who chairs the RIMS ERM Development Committee, which developed the model over the past eight months.

Instead, the model is designed to help risk managers evaluate how far along they are in implementing an



TIMES-PICAYUNE/NNS/LANDOV

A loose barge crashed through the Industrial Canal in New Orleans in 2005 creating a huge gash. A federal judge last week ruled that flood exclusions in some policies were ambiguous and, therefore, the insurers should pay many of the flood claims that followed Hurricane Katrina.

New Orleans flood ruling opens way for more claims

*Commercial policyholders
could see more Katrina
losses covered*

By **MARK A. HOFMANN**

NEW ORLEANS—A federal judge's refusal to dismiss coverage suits stemming from water damage caused by breached levees in New Orleans following Hurricane Katrina may benefit some commercial buyers even though the policies involved are mainly homeowners' policies, according to legal

experts on both sides of the issue.

But that's only if the decision withstands the appeals that some of the dozen or so insurers involved have decided to pursue.

In his Nov. 27 decision regarding four individual insurance-related cases contained in *In re Katrina Canal Breaches Consolidated Litigation*, Judge Stanwood R. Duval Jr., of the U.S. District Court for the Eastern District of Louisiana in New Orleans, drew a distinction between natural and manmade flooding. Insurers had argued their property policies excluded flooding regardless of its source, but

See **KATRINA** page 31

SPOTLIGHT

ENVIRONMENTAL RISK MANAGEMENT

Environmental liability reporting rules tighten; new E.U. states come to grips with exposures; capacity tight for hazardous waste sites; tougher rules in Canada hit D&O risks.



**RANKING OF LARGEST
RISK MANAGEMENT
CONSULTANTS / PAGE 16**

INDEX

Advertiser Index	29
Business Resources	24
End Page	32
International	25
Opinions	8
Paul Winston	6
Products & Services	27
Professional MarketPlace	24
Stocks	29

See **ERM** page 30

● ● ● What if your underwriter
was a product of
your local environment?

We offer a team of environmental specialists based locally.

Biologists, nuclear engineers, chemists, environmental attorneys — Zurich's professionals know the industry. With more than fourteen years of experience, we also know it's important to have regionally-based specialists who understand your local challenges. Because of our experience, our customers can feel protected. Offering a portfolio of Environmental, Real Estate, Professional and Contractor's Pollution Liability insurance, as well as supporting casualty coverages, through local offices in New York, Boston, Philadelphia, Atlanta, Chicago, Houston, Denver, San Francisco and Glendale.

www.zurichna.com/environmental

Because change happenzSM


ZURICH[®]

On the Web

RISK MANAGER OF THE YEAR®
2007 RMOY nominations
are due by Dec. 15

Business Insurance's Risk Manager of the Year award and the Risk Management Honor Roll recognize the achievements of risk managers in various industry sectors. Nomination forms are available at www.BusinessInsurance.com/RMOY. The deadline is Dec. 15.

BI ONLINE EXECUTIVE FORUM™

Webinar to explore drug cost solutions

Join Michael Jacobs, a principal and national practice leader at Buck Consultants L.L.C., and a panel of other prescription drug benefits experts at 11 a.m. EST

Dec. 12 as they discuss ways to reduce one of the fastest-growing components of health care



costs. Register for "Hard to Swallow: Why Prescription Benefit Costs Are So High," a free *Business Insurance* Webinar, at www.BusinessInsurance.com/webinars.

COMMUNITY FORUMS

Join online discussions of current industry news

New York Attorney General Eliot Spitzer has ordered four major insurers to cease paying contingent commissions on several lines, and a federal judge has refused to dismiss coverage suits stemming from water damage caused by breached levees in New Orleans following Hurricane Katrina. Join a discussion of these and other news items online at www.forums.BusinessInsurance.com.

ONLINE DIRECTORIES

List of risk management consultants updated

BI's risk management consultants directory has been updated for 2006. It can be purchased online as a spreadsheet or PDF at www.BusinessInsurance.com/directories.

Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

Business Insurance (ISSN 0007-6864) Vol. 40, No. 49, is published weekly by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to *Business Insurance* Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912. \$5 a copy and \$97 a year in the U.S. \$130 in Canada and Mexico (includes GST). All other countries, \$230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in U.S.A. Copyright © 2006 by Crain Communications Inc.

High court to rule in pay discrimination case

Pro-worker decision would increase costs for employers

By MARK A. HOFMANN

WASHINGTON—The Supreme Court could burden employers with considerable additional administrative costs if the justices decide that a plaintiff can sue for illegal pay discrimination under Title VII of the Civil Rights Act of 1964 even after the 180-day period for filing such a complaint has expired, say employment law experts.

That's the issue in *Lilly Ledbetter vs. Goodyear Tire & Rubber Co.*, a case in which the high court heard oral arguments last week. Ms. Ledbetter worked at a Goodyear plant

in Gadsden, Ala., from 1979 to 1998.

In 1998, she sued Goodyear, claiming it paid her less than her male counterparts because of her gender. Goodyear reviewed her salary annually, and Goodyear held that her case depended on whether she could prove that unlawful discrimination affected an annual salary review within 180 days of her filing her discrimination charge.

Title VII holds that a charge of unlawful employment practice must be filed with the Equal Employment Opportunity Commission within 180 days of the alleged offense. But Ms. Ledbetter 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 will determine whether employers can be sued for illegal pay discrimination under Title VII of the Civil Rights Act of 1964 even after the 180-day period for filing such a complaint has expired.



A jury took into account Ms. Ledbetter's salary history before awarding her back pay, a mental anguish award and punitive damages. The judge later reduced both the back pay and punitive damage awards to \$360,000 but allowed the decision to stand.

But the 11th U.S. Circuit Court of Appeals reversed the lower court in August 2005, holding that "all we need to do is examine the last salary decision Goodyear made that affected" Ms. Ledbetter's pay during the limitations period. The appeals court said Goodyear's most recent pay decision regarding Ms. Ledbetter had not been intentionally discriminatory, a decision Ms. Ledbetter appealed to the Supreme Court.

See **GOODYEAR** page 30

Low losses, high rates boost insurer profits

Property/casualty sector sees strong nine-month results

By JUDY GREENWALD

A lack of major U.S. catastrophes combined with reserve redundancies and continued hard market rates are leading to strong, if not record-breaking, profitability for property/casualty insurers.

Results for the quarter ended Sept. 30 and the nine-month period "are some of the best results that we can remember," said Adam Klauber, director of equity research for Cochran Carolina Waller, a Chicago-based insurance industry investment banking firm. Whether it be insurers' combined ratios, return on equity or growth in earnings, "we're looking at pretty close to record levels for most of the sector," Mr. Klauber said.

But 2006 is likely to be the peak year in profitability for the industry because the market is softening and there is a likelihood of increased catastrophe activity in 2007, observers say.

Fourteen major commercial property/casualty insurers surveyed by *Business Insurance* reported \$23.49 billion in net income for the nine months ended Sept. 30, an increase of 28.6%.

Among other survey results:

- Insurers posted an improved combined ratio of 90.2% vs. a 98.1% combined ratio for the comparable nine-month period in 2005.

- Net premiums written increased 4.5%, to \$105.52 billion.

- Policyholder surplus increased 15.7%, to \$87.41 billion.

Weather was a factor in the strong results. With catastrophes

having disrupted results for the previous two years, this year's nine-month results "are off the charts" comparatively, said Jeffrey Berg, a vp and senior analyst with Moody's Investors Service Inc. in New York.

However, John L. Ward, chief executive officer of Cincinnati-based Cincinnati Partners L.L.C., an advisory firm that specializes in the insurance industry, said the favorable cat experience "was only a small part of the overall positive story."

Other factors include reserve development, he said. Reserve development "has hurt the industry the last few years, but the reserve development in the third quarter (of 2006) was very positive, and not only is there the absence of unfavorable development charges, but most companies actually reported a positive reserve development," Mr. Ward said.

James B. Auden, senior director at Chicago-based Fitch Ratings, said after five years of reporting unfavorable reserve development, this year's positive reserve development should improve the industry's combined ratio by 1.5 to 2 percentage points.

Gary Ransom, managing director at Fox-Pitt, Kelton Inc. in Hartford, Conn., said while the lack of catastrophes has boosted results, "a lot of it was just because we're still having premiums being earned at fairly high and profitable rates. Even though rates may be declining now, the underwriting margins are some of the strongest we've seen in a long time."

Jay A. Cohen, an analyst with Merrill Lynch L.L.C. in New York, said "pricing has remained fairly reasonable. You're seeing competi-

P/C 9-MONTH RESULTS CHART
Most insurers see increased profitability.
PAGE 28

PREVENTION GETS A SHOT IN THE ARM

A new guide from the National Business Group on Health aims to help promote preventive care. Advantages include:

Clinical preventive services can help individuals avoid disease altogether (e.g. tobacco use treatment).

Preventive services can detect disease in its earliest stages (e.g. cancer screening). Identifying patients early enables clinicians to begin treatment sooner, when interventions are more effective and less expensive. Early detection and treatment can also prevent spread of some infectious diseases.

Disease avoidance and early identification have financial benefits, including lower medical costs and reductions in absenteeism, lost productivity, turnover and disability.

NBGH guide emphasizes shift toward utilizing more preventive care

Insurers increasing investments in illness prevention

By ROBERTO CENICEROS

The National Business Group on Health has released an extensive guide to help employers shift their health plans from emphasizing acute care and medications to focusing more on preventive care.

Under the traditional insurance model, preventive health services have been poorly supported in contrast to the coverage provided for acute care services, said Helen Darling, the NBGH's president in Washington.

Even today, some preventive measures known to be effective, such as obesity counseling, are not covered by all large employers or insured plans, Ms. Darling said.

Insurers, though, say they increasingly are investing in preventive services, and partnering

with employers to promote good health practices and provide consumer-driven health plans that emphasize preventative measures.

But 52% of insureds currently do not receive prevention services that the Centers for Disease Control and Prevention and the Agency for Healthcare Research and Quality know protect health, said CDC Director Dr. Julie Gerberding.

"So it isn't just an issue of having insurance," Dr. Gerberding said. "It's an issue of when you do have insurance, not having the right benefits or not accessing the right benefits that really are (scientifically determined) to promote better health protection."

The NBGH's roughly 500-page guide, "A Purchaser's Guide to Clinical Preventive Services: Moving Science into Coverage," aims to change that.

It provides detailed information on 46 clinical preventative services that medical evidence shows can

See **PREVENTION** page 26

See **RESULTS** page 28

ERISA ruling highlights need to update plan documents

Employers face risk of de novo reviews on benefit decisions

By DAVE LENCKUS

DENVER—A health benefits dispute wending through the federal courts underscores that plan sponsors with dated plan documents risk turning over disputed benefit decisions to courts for a full, trial-like review, according to benefits and legal experts.

Although a federal appellate court ruled that the plan documents of the health plan involved in the case contained language that make any coverage disputes subject

to only a narrow review by courts, many other plans do not contain those vital clauses, experts say.

In a split ruling, a 10th U.S. Circuit Court of Appeals panel on Nov. 15 overturned a lower court's decision to conduct a trial-like review of the benefits decision that a plan's claims administrator had made. The appeals panel ruled that the lower court should have determined only whether the claims administrator's decision was arbitrary and capricious, which is a much less stringent standard for plan sponsors and does not allow plan participants to introduce additional evidence into the case.

The case, *Michael Geddes and Kari Geddes vs. United Staffing Alliance Employee Medical Plan et al.*,

stemmed from a coverage dispute over nearly \$186,000 of medical treatment for a spinal cord injury suffered by the plaintiffs' son, Andrew Geddes, after he dived into shallow water while on an out-of-state trip to a lake in 2002.

He was transported by air ambulance to a hospital that was not part of the network of his parents' medical plan, which was sponsored by U.S.A. United Staffing Alliance L.L.C. United Staffing is a Provo, Utah-based professional employment organization that provides coverage through a self-insured plan, which is governed by the Employee Retirement Income Security Act.

The plan's claim administrator, Everest Administrators Inc. of

Springville, Utah, refused to cover nearly 80% of the claim on the grounds that the out-of-network hospital's charges exceeded the "usual and customary" rate covered by the plan and that nearly all of the follow-up in-network treatment was rehabilitative care, which is subject to a \$2,500 cap under the plan.

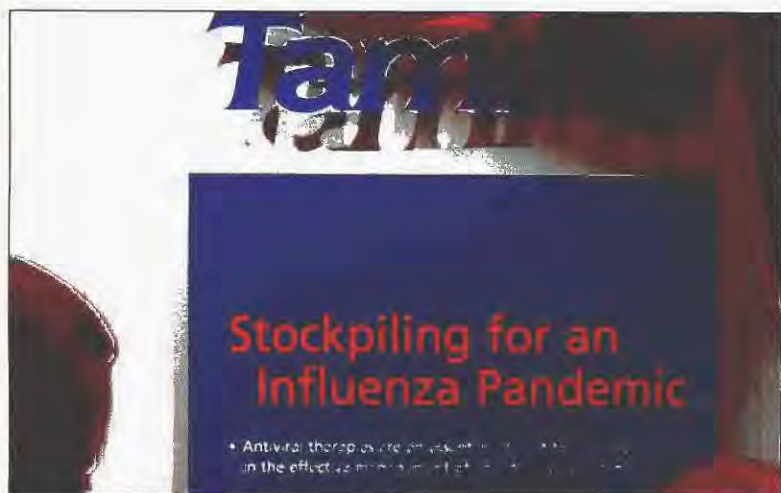
The Geddes' sued alleging, among other things, that the benefits denial was improper under ERISA.

A district court determined that the case should be subject to a full, trial-like review, known as a de novo review, rather than the narrower arbitrary and capricious standard of review that United Staffing claimed it was entitled to under

ERISA as a plan fiduciary. The lower court ruled that the plan sponsor forfeited that standard of review by failing to exercise its so-called discretionary authority to make benefit decisions when it delegated those decisions to Everest, which is not a plan fiduciary.

The court then conducted a de novo review of the claim and considered not only the administrative record but also an affidavit from the treating physician in the case and deposition testimony. Such "extrinsic" evidence would not have been allowable under a narrower review of the claim. In a summary judgment, the court ruled for the plan participants.

See **ERISA** page 26



BLOOMBERG NEWS/LANDOV

Roche, the maker of Tamiflu, has been encouraging organizations to stockpile supplies of the influenza medicine, but some say such a move has drawbacks.

Employers questioned on pandemic drug plan

By LOUISE ESOLA

Some employers preparing for a possible avian influenza pandemic have opted to stockpile antiviral drug Tamiflu, though that approach has raised questions about the effectiveness and appropriateness of that approach.

Basel, Switzerland-based drug company Roche Holding A.G., which manufactures Tamiflu, in July launched an online effort at <http://pandemictoolkit.com> to urge companies to buy the drug as part of their crisis planning. Governments worldwide, including the United States, have been stockpiling the drug for more than a year to make it available to clinics and hospitals.

In 2005, Virgin Atlantic Airways Ltd. said that it had ordered 10,000 treatments of Tamiflu to stockpile

for a potential pandemic. The Crawley, England-based airline could not be reached for comment.

Since the summer, about 300 U.S. companies have ordered Tamiflu to set aside for a pandemic, according to an e-mail from a Roche spokesman. The drugmaker did not reply to requests to identify those companies.

Some observers, though, say employers should proceed cautiously when deciding to stockpile Tamiflu, noting that the drug can shorten the duration of seasonal flu but hasn't yet proven effective in preventing or treating avian flu.

"It is controversial and the reason is, we don't know to what extent (Tamiflu) is going to be effective against the (avian) viral strain," said Dr. William Craig, senior vp of the

See **TAMIFLU** page 29

California employers given guidance on harassment prevention training

Proposed final rules clarify employers' training obligations

By JUDY GREENWALD

SAN FRANCISCO—Employers in California have gotten long-awaited clarification of legislation that requires them to provide sexual harassment prevention training, observers say.

The legislation, which became law in 2004, called for businesses with 50 or more employees to provide two hours of training and education to all supervisors by January 2006.

But the legislation "left a lot of open questions," said Wendy Lazerson, an attorney at Bingham McCutchen L.L.C. in East Palo Alto.

Among them were how the training should be scheduled, the trainers' qualifications and whether only California-based employees should be counted in determining which employers must conduct the training.

Following a long review process, the San Francisco-based Fair Employment and Housing Commission last month issued its final proposed regulations. The anti-harassment training rules are expected to become effective around Feb. 1, 2007, following their anticipated approval by the Office of Administrative Law and submission to the Secretary of State.

Observers say one issue clarified in the proposed regulations is how the training year is measured. The regulation gives employers two alternatives: An employer may track its training for each supervisory

employee, measuring two years from the date of the individual's completion of his last training. Alternatively, an employer can designate a "training year" in which it trains some or all of its supervisors, and then must retrain the supervisors by the end of the next training year two years later.

With the latter option, employers "don't have to keep track of dozens, if not hundreds, of different dates for two-year cycles," although those who want to keep their individual supervisors on a strict calendar year basis still have that option, said a spokesman for the Sacramento-based California Chamber of Commerce.

The regulations also require that such training be conducted by qualified personnel who have either for-

See **HARASSMENT** page 28

Willis, Millennium Hilton settle lawsuit over WTC property program

Broker agrees to pay \$17.5 million in coverage dispute

By RUPAL PAREKH

NEW YORK—Millennium & Copthorne Hotels P.L.C. last week said it has reached a \$17.5 million settlement with a unit of Willis Group Holdings Ltd. over the handling of its 2001 property program and losses from the Sept. 11 terrorist attacks.

The hotel chain's Millennium Hilton property—a 565-room high rise located across the street from the World Trade Center site—was damaged in the attacks and

remained closed until May 2003. It was fully restored in September 2003.

In October 2005, London-based Millennium and its CDL Hotels USA Inc. subsidiary sued Willis of New York Inc. for \$45 million, alleging that Willis failed to secure three years of business interruption coverage that it promised to secure for the hotel as part of its 2001 property program; that it knowingly hid from the hotel that it actually had limited coverage; and that Willis' actions led to a dispute with one of the companies' property insurers.

Under the settlement this week, CDL will receive \$17.5 million in cash on or before Dec. 13, according to a statement from Millennium.

Willis, Millennium and CDL

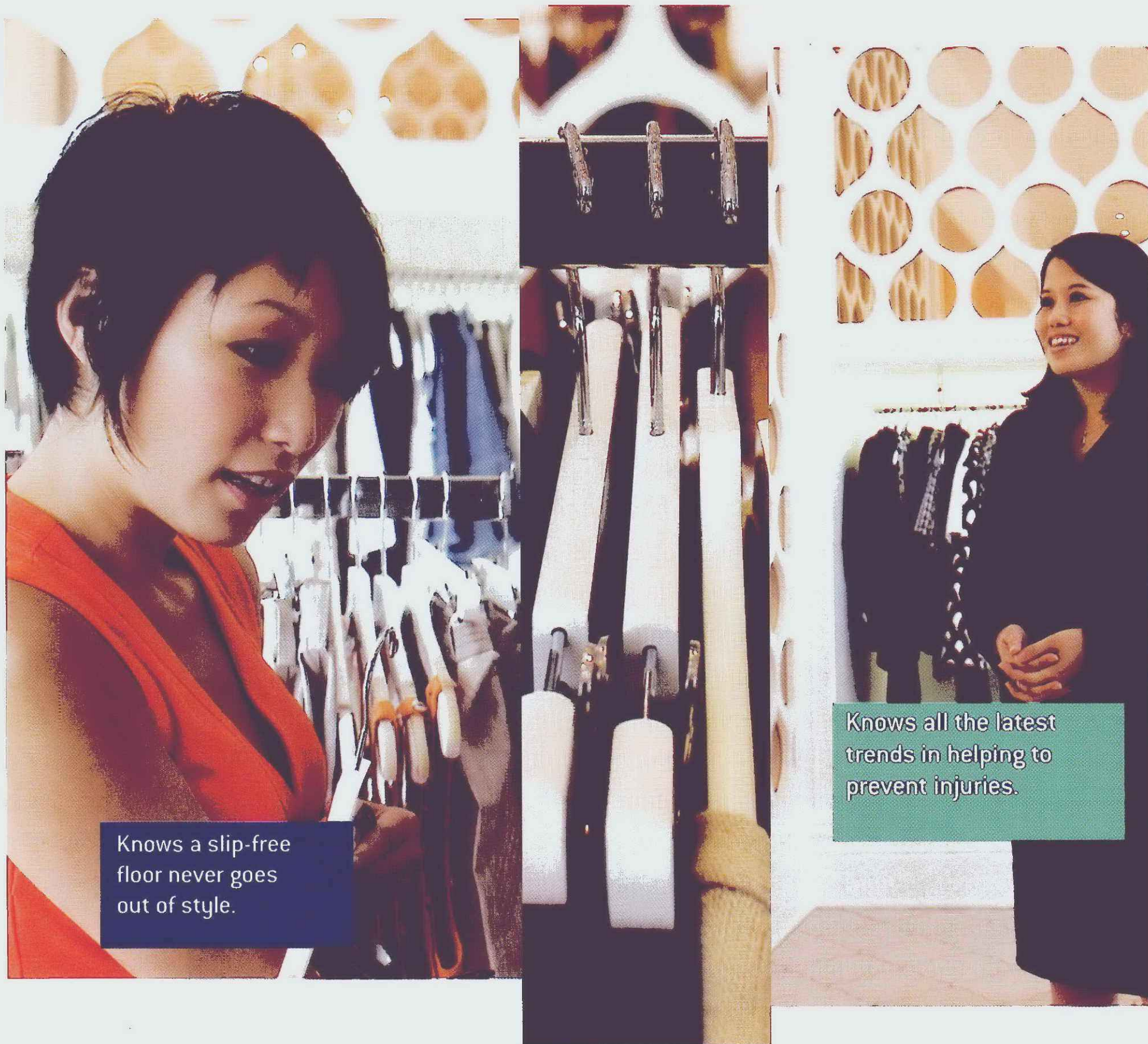
have agreed to "a full and final settlement of any and all claims the parties may have had against each other arising out of or related to M&C group's 2001 U.S. property insurance coverage," the statement said.

The \$17.5 million is in addition to more than \$85 million collectively paid to the owners of the Millennium Hilton for Sept. 11-related damages by CDL's primary and excess carriers, Lexington Insurance Co., and Essex Insurance Co., Greenwich Insurance Co. and Travelers Property Casualty Corp., respectively (*BI*, March 21, 2005).

A Willis spokesman would only confirm that "the parties have settled the lawsuit," but declined to comment further.

Errors & Omissions

- A story in the Nov. 13 issue, "Insurers Put Teeth Into Health Care Benefits," mischaracterized the changes that Kansas City, Mo.-based Assurant Employee Benefits is making to its offerings. Assurant is enhancing certain services for all individuals covered by most of its dental benefit plans.
- Due to a production error, the ranking on page 11 of this issue should have stated it was of the largest risk management consultants.



Knows a slip-free floor never goes out of style.

Knows all the latest trends in helping to prevent injuries.

Yes, there's a General Liability insurer that's as responsible as you are.

You'd be nowhere without customers. Liberty Mutual can help you protect them. We can work with you to identify potential risks to customers and make recommendations that help you gain more control over your cost of risk. We'll also help you track your progress. Because, at the end of the day, safer customers mean a safer business.

For more information on insuring your business, visit libertymutual.com/business.

Responsibility. What's your policy?™



WORKERS COMP

COMMERCIAL AUTO

PROPERTY

GENERAL LIABILITY

UMBRELLA

GROUP BENEFITS

© 2006 Liberty Mutual Group.

30th Annual Award**Call for Nominations****Risk Manager of the Year®
Risk Management Honor Roll®**

Nominations for the Risk Manager of the Year® and Risk Management Honor Roll® are now being accepted by *Business Insurance*.

Honorees are announced and profiled in the annual Risk Manager of the Year® feature published by *Business Insurance* which is distributed at the RIMS annual Conference and Exhibition each spring. Awards will be presented at a special luncheon honoring these risk managers.

**DEADLINE FOR NOMINATIONS:
December 15, 2006**

For nominating
forms and instructions,
call 312-649-5274
or e-mail:

rcoccia@BusinessInsurance.com

or visit

BusinessInsurance.com/RMOY

The Risk Manager of the Year® Award was created in 1977 by *Business Insurance* to increase recognition of the risk management profession and to recognize outstanding performance in the practice of risk management. The Risk Management Honor Roll® was added in 1980 as a way to recognize worthy risk managers and risk management programs in industries not represented by the annual Risk Manager of the Year® award winner.

Executives anywhere in the world who are involved in risk management for a corporation, not-for-profit institution or government entity can be nominated.

The nominations will be judged by a panel of executives representing all aspects of risk management and the commercial insurance industry.

Business Insurance www.BusinessInsurance.com

Risk Manager of the Year® and Risk Management Honor Roll® are Registered Trademarks of *Business Insurance* and Crain Communications Inc.

"By understanding what insurers want,
Dempsey, Myers built a bridge between corporate accounting
and loss accounting."

P E A C E



Dempsey, Myers & Company LLP
WE KNOW WHAT'S ON THE LINE.

Visit dempseymyers.com or call 800.762.5052.

Commentary**Bad news sneaks in
near end of the year**

What a week for the industry! Just as December arrived, and the end of the year was in sight, along came two developments to spoil an otherwise terrific year for many insurers.

First, a federal judge in Louisiana ruled against most insurers in coverage litigation over the New Orleans flood exclusions in Katrina policies, and then Eliot Spitzer reminded everyone he hasn't forgotten the industry by ordering four insurers to cease certain types of payments to agents and brokers.

Until last week, the U.S. property/casualty industry could be forgiven for thinking it would finally have a quiet and profitable year, especially after the tumult of 2005, a year in which the twin perils of regulatory intervention and record hurricane activity provided a relentless barrage of bad news.

As the Atlantic hurricane season ended last month, the insurance industry escaped without a single hurricane-force storm striking the United States in 2006, compared with 27 tropical storms, 15 hurricanes and \$61.2 billion in catastrophe losses the year earlier. Combined with hefty rate increases in the wake of 2005, the light cat record spelled profitable coastal property underwriting for the first time in years.

Indeed, as pricing for other lines of business softened in 2006, favorable loss experience in property cat lines created pressure from buyers and regulators alike for more competitive pricing in that line, as well.

Now, however, with the risk that Katrina flood exclusions could be reinterpreted in policyholders' favor, the industry faces billions of dollars in additional claims—if the ruling is upheld on appeal. In the meantime, any momentum for lower rates for cat-exposed property is likely to vanish.

Although flood coverage has long been avoided by the private insurance industry, as evidenced by the federal flood insurance program, it's amazing that the industry has left its policies ambiguous on this front and put itself in this vulnerable position. The fact that two insurers, State Farm and The Hartford, were exempted from the ruling for policy wording that left no room for doubt suggests the rest of the industry should have done the same.

Meanwhile, if that ruling were not enough to give the industry a bad case of post-Thanksgiving indigestion, Mr. Spitzer did his part to increase sales of antacids and analgesics.



**PAUL
WINSTON**

Associate Publisher
and Editorial Director
Paul Winston's commentary
appears periodically. E-mail:
pwinston@businessinsurance.com

In another example of the dangers of complacency, a feeling that might have pervaded the industry after his widespread inquiry seemed to run its course in favor of a successful run for governor of New York, he served notice last week that he has not forgotten insurers.

Mr. Spitzer was joined by Connecticut and Illinois in notifying

**The industry has a long way
yet to go before it can truly
put the ravages of Katrina
and Spitzer behind itself.**

four insurers that they could no longer pay contingent commissions on homeowners, personal automobile, boiler and machinery, and financial guarantee insurance under the terms of settlement agreements the states reached with those insurers this year. Under the deal they struck, they must halt the payments if more than 65% of coverage in a line is provided by insurers that do not pay the commissions.

If anything is surprising about Mr. Spitzer's announcement, it should be that after the long and painful debate and costly settlements over the practice that they were continuing at all. I wonder how many policyholders of the four insurers—ACE, AIG, St. Paul Travelers and Zurich American—were aware these payments continued on the affected lines? What about on other lines that have not yet reached the 65% limit? Are buyers even asking these questions?

As these developments show, the year is not over yet, and the industry has a long way yet to go before it can truly put the ravages of Katrina and Spitzer behind itself.

CREATE A BRIGHTER FUTURE. MAKE PROGRESS.

Taking on the responsibility of risk is what we do at ACE. With our expert underwriting, superior claims handling, and local market experience, you can focus on the possibilities, not the liabilities, to make progress in your business. For more on the ACE Group of insurance and reinsurance companies, visit insuringprogress.com

▲ PROPERTY & CASUALTY

▲ ACCIDENT & HEALTH

▲ LIFE

INSURING PROGRESS®



Business Insurance OPINIONS

Contingent phaseout likely to court trouble

NOW THAT ELIOT SPITZER has said four major multiline insurers can no longer pay contingent compensation to agents and brokers in six lines of business, including boiler and machinery, financial guarantee, homeowners and private-passenger auto liability, we wonder what the next phase in this saga will be.

Terms of the settlements that ACE Ltd., American International Group Inc., St. Paul Travelers Cos. and Zurich Financial Services Group reached with Mr. Spitzer and other state attorneys general require the insurers to cease paying contingents in lines where competitors writing 65% or more of the business in such lines do not offer such compensation to producers. As we report on page 1, Mr. Spitzer announced that the "tipping point" has been reached in several lines.

Groups representing agents and brokers are not happy, and we can hardly blame them. Regulation by litigation is no way to govern industry practices. While a handful of individuals did unethical things, most brokers and insurers have committed to disclosure and transparency, and altered their business practices to prevent such acts in the future.

Commendable as Mr. Spitzer's efforts to punish wrongdoers are, we think his aggressive campaign to rid the industry of an incentive payment system that was never illegal is going to hurt a lot of people who did nothing wrong, including insurance buyers.

It's not that we favor volume-based contingent pay; as overwhelming evidence has shown, it clearly creates a conflict of interest among brokers, whose job it is to represent insurance purchasers. But agents are different. They are the appointed representatives of insurers and have a right to be compensated for their efforts. Indeed, contingent income is vital to agents' profitability and ability to stay in business.

Is the inevitable consolidation of distribution channels really going to benefit insurance buyers? Will insurers that shave a few points in their expense ratio because they no longer pay contingents pass those savings on to policyholders? Don't hold your breath waiting for that to happen.

Regulation by litigation is no way to govern industry practices.

It is time to update FMLA regulations

THE LABOR DEPARTMENT says a fresh look is needed at Family and Medical Leave Act regulations, and we couldn't agree more. Congress passed the FMLA more than 13 years ago and it took the DOL a couple of years to finalize regulations it proposed after FMLA's enactment.

Clearly, the regulations need updating. Courts have invalidated some parts of the rules, notably one that had required employers, in certain situations, to provide more than the 12-week maximum leave. Other problems include continued wrangling over whether certain conditions, such as colds, entitle an employee to FMLA leave, as well as a cumbersome medical certification process.

Updated regulations, we hope, would address these and many other issues since the original regulations were developed.

The DOL deserves applause for its approach. Rather than just propose new regulations, it is seeking employer input. The experience of thousands of employers will be a valuable source of information in developing new and better regulations.

For all its administrative hassles, the FMLA law is a good one. Knowing that their jobs and health insurance are protected if they have to take leave undoubtedly reduces stress and boosts productivity.

Now, it is up to regulators to make sure the law works as well as it should.



Community Forums

A new feature allows risk and benefits management professionals to connect and exchange information at www.BusinessInsurance.com. The BI Community Forums is an easy-to-use discussion board that enables readers to ask questions, exchange ideas and voice opinions. Topic-focused categories include:

- **Risk Managers Forum** on various risk management issues.

- **Benefits Managers Forum** on general benefits management issues.

- **In the News** to express opinions and comments.

- **Industry Focus Forum** on issues from probes, to quality improvement.

- **The Lighter Side.** Share stories of success as well as blunders.

- **General Forum.** Discuss general insurance market issues and conditions, trends and other topics.

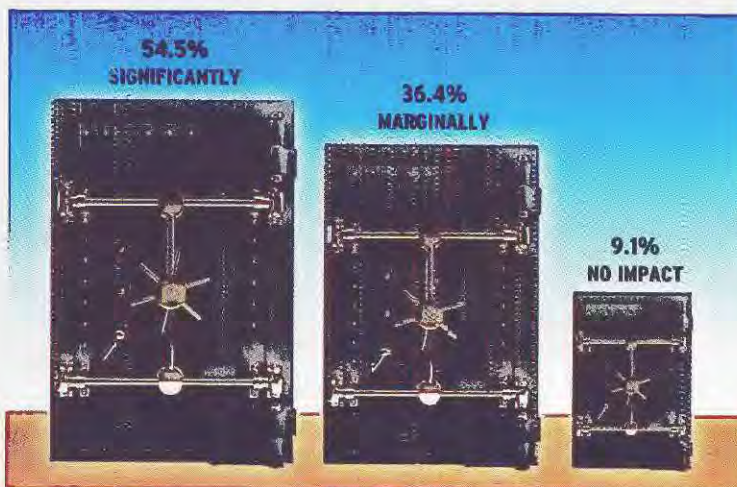
Please visit www.BusinessInsurance.com today and click on the Community Forums link. A simple free registration to create a user ID is all you need to join this online community and begin exchanging information, discussing ideas and sharing your observations.

Write us

Business Insurance welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Please send your letters to: Letters to the Editor, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; fax: 312-280-3174; e-mail: letters@businessinsurance.com

Online Poll at www.businessinsurance.com

To what extent will updated rating agency capital requirements improve insurer security?



NEXT WEEK'S POLL: Does contingent compensation to agents and brokers benefit insurance buyers?

Vice President/Publisher:
Martin J. Ross III (New York)

Associate Publisher/Editorial Director:
Paul D. Winston (Chicago)

Editor: Regis J. Coccia (Chicago)

Editor-at-Large: Jerry Geisel (Washington)

Managing Editor: Gavin Souter (Chicago)

Assistant Managing Editor - Graphics:
Kathy L. Barnes (Chicago)

News Editor: Matt Scroggins (Chicago)

Senior Editors: Roberto Cenicerias (Los Angeles);
Meg Fletcher, A.R.M. (Chicago); Judy Greenwald
(San Jose); Mark A. Hofmann (Washington); Dave
Lenckus (Tucson); Douglas McLeod (New York);
Sally Roberts (Denver); Joanne Wojcik (Denver);
Rodd Zolkos - Industry Focus (Chicago)

Associate Editors: Louise Esola (Chicago); Gloria
Gonzalez (New York); Rupal Parekh (New York)

Correspondents: Elizabeth Fry (Australia)

Deputy Graphics Editor: William Murphy (Chicago)

Copy Editors: Charmain Benton (Chicago);
Joe Walker (Chicago)

Assistant Copy Editor: Carrie A. Peinado (Chicago)

Directory Editor: Kevin P. Edison (Chicago)

Research Editor: Karen Brown Tucker (Chicago)

Online Editor: Katherine Downing (Chicago)

Online Producer: Amy R. Curtis (Olathe)

Editorial Cartoonist: Roger Schillerstrom (Chicago)

Director - Business Development:
Robert L. Niesse (Chicago)

District Managers: Ron Kolgraf (Boston); William J.
McGuire (Chicago); Robert B. Murray (New York);
John L. Phillips (Chicago)

Classified Advertising Manager:
Tina Vasilakis (Chicago)

Assistant to the Publisher: Pat Ghazvini (New York)

Advertising Traffic: Monique Murray (New York)

Production Manager: J. Thomas Janka (Chicago)

Circulation Manager: John Azua (New York)

Circulation Coordinator: Craig Bowman (Detroit)

Director of Communications:
Ronnie I. Drachman (New York)

Promotion Manager: Michael Ambrosio (New York)

Promotion Coordinator:
Barbara O'Brien (New York)

EDITORIAL: Chicago: 312-649-5200; Denver: 303-
282-4260; London: 44-207-457-1400; Los
Angeles: 323-370-2455; New York: 212-210-0100; San
Jose: 408-774-1500; Tucson: 520-579-1937;
Washington: 202-662-7200

ADVERTISING: Boston: 617-292-4856;
Chicago: 312-649-5276; Irvine, CA: 949-255-5355;
New York: 212-210-0133

SUBSCRIPTIONS: Detroit: 888-446-1422

Business Insurance is published by
Crain Communications Inc.

Chairman: Keith E. Crain
President: Rance Crain
Secretary: Merrilee Crain
Treasurer: Mary Kay Crain
Executive Vice President/Operations:
William A. Morrow
Senior Vice President/Group Publisher:
Gloria Scoby
Group Vice President/Technology, Circulation,
Manufacturing: Robert C. Adams
Vice President/Production & Manufacturing:
Dave Kamis
Crain's Corporate Circulation Director:
Patrick Shephard

G.D. Crain Jr. Founder (1885-1973)
Mrs. G.D. Crain Jr. Chairman (1911-1996)
S.R. Bernstein Chairman-
executive committee (1907-1993)

Published weekly at 360 N. Michigan Ave., Chicago, Ill.
60601-3806. Fax: 312-280-3174. bweb@crain.com. Offices:
711 Third Ave., New York, N.Y. 10017-5806. Fax: 212-210-
0704; Suite 814, National Press Building, Washington, D.C.
20045-1801. Fax: 202-638-3155; 6500 Wilshire Blvd., Suite
2300, Los Angeles, Calif. 90048-4947. Fax: 323-655-8157;
967 Bermuda Court, Sunnyvale, Calif. 94086-6750. Fax:
408-774-1155; 21 St. Thomas St., London SE1 9RY, U.K. Fax:
+44-(0)20-7457-1440; 7300 N. San Anna Drive, Tucson,
Ariz. 85704. Fax: 520-579-3476; 1746 Cole Blvd., Suite 150,
Golden, Colo. 80401. Fax: 303-733-9941; 12524 Acuff Court,
Olathe, Kan. 66062. Fax: 312-280-3174; 77 Franklin St., Suite
809, Boston, Mass. 02110-1510; Fax: 212-210-0704, 4
Executive Circle, Suite 185, Irvine, Calif. 92614-6791. \$5 a
copy and \$97 a year in the U.S., \$130 in Canada and Mexico
(includes GST). All other countries, \$230 a year (includes
expedited air delivery). John Azua, circulation manager.
Four weeks' notice required for change of address. Send
subscription correspondence to Circulation Department,
Business Insurance, 711 Third Avenue, New York, N.Y. 10017-
5806. Microfilm copies available: University Microfilms,
300 Zeeb Road, Ann Arbor, Mich. 48103. Microfiche copies:
Bell & Howell, Micro Photo Division, Old Mansfield Road,
Wooster, Ohio 44691. Portions of the editorial content of
this issue are available for reprint or reproduction in
other media. For reprints or reprint permission: Reprint
Management Services, 1808 Colonial Village Lane,
Lancaster, PA 17601; 800-290-5460, ext. 160.
BusinessInsurance@reprintbuyer.com

To subscribe, Call 888-446-1422 or
313-446-0450 outside the U.S.
www.businessinsurance.com

BPA WORLDWIDE **AMERICAN BUSINESS MEDIA**
The Association of Business Media Companies

THE XL INSURANCE COMPANIES are chosen by the world's leading firms not only for the strength of our capital and the depth of our experience, but also for the quality and variety of our products:

PROPERTY

Global All Risk Property Damage & Business Interruption | Energy & Construction All Risk | Fine Art | Cash In Transit

CASUALTY

Primary Liability | Global Public & Products Liability | Automobile Liability | Umbrella & Excess Liability

PROFESSIONAL

Directors & Officers | Employment Practices Liability | Errors & Omissions

SPECIALTY

Aviation & Space | Environmental Liability | Equine | Marine & Marine Cargo | Programs

Ultimately, it is the dedication of our people creating tailored solutions and services to meet your individual insurance requirements. If you expect more, visit: www.xlinsurance.com or call us toll-free: 800-609-2518.

The XL Insurance companies have one or more of the following ratings:

A+ by A.M. Best

A+ by Standard & Poor's

Aa3 by Moody's

XL INSURANCE
FUNDAMENTAL STRENGTH — CAPITAL AND PEOPLE

The fundamental strength to deliver customized insurance solutions.



Members of the European Union welcomed representatives of Bulgaria and Romania at an April 2005 gathering in Luxembourg, signing a treaty allowing the former communist nations to formally join the E.U. next year.

Environmental cover remains a rarity among most eastern E.U. nations

Greatest interest found in Hungary and Czech Republic

By RICHARD MILLER

As the European Union expands eastward, new member states face the challenge of complying with tougher E.U. environmental standards.

Governments, however, are usu-

ally able to soften the blow to industry by negotiating reprieves before full compliance is required.

Such is the case for Bulgaria and Romania, which become member states in January 2007. The Accession Treaty signed in April 2005 between the 25 member states and both countries provides several "transitional measures," including some dealing with environmental directives.

Bulgaria and Romania will need to comply, for instance, with the

E.U.'s integrated pollution prevention and control directive of 1996, which is designed to minimize industrial pollution throughout the European Union. Operators are required to get permits that take into account the whole environmental performance of a plant, including emissions.

Under the Accession Treaty, specific installations in Bulgaria and Romania have been given grace periods to comply with IPPC emission limits and other requirements as far ahead as 2015.

Still, not all facilities can put off compliance with this and other regulations.

Romanian companies not on the list will be hard pressed to comply with the new laws, said Ciprian Dragomir, a partner and head of the environmental practice group in the Bucharest law firm of Tuca Zbarcea & Asociatii.

"A lot of Romanian companies do not have the means to comply with (the new standards) because of a lack of funds," he said.

For instance, companies that operate slag or waste dumps may have to close down if they don't have the money to meet the standards beginning Jan. 1. "If you cannot operate the waste dump you cannot operate the company," he said.

Old mindset

In Bulgaria, the business community is also concerned with the cost and burden of compliance, said Stoian Lilov, chief executive officer of the Bulgarian Risk Management Association, based in Sofia.

"Risk managers in Bulgaria have always been aware of environmental risks, especially those working for foreign-owned companies," he said. Mr. Lilov noted that some companies have "gone through a lot of pains and cost to minimize negative impact on the environment."

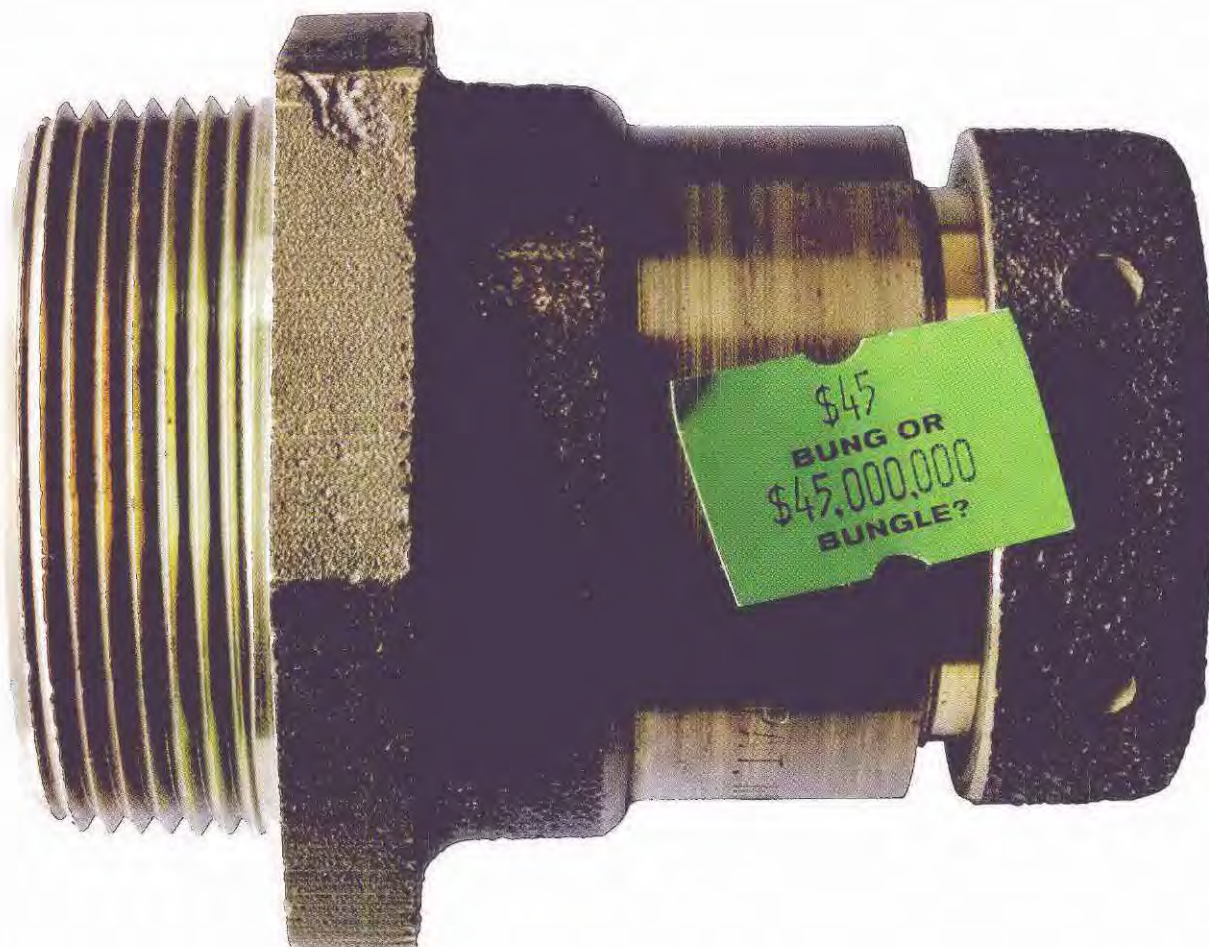
However, there is still an old mindset on environmental pollution that may take time to change, he added.

The "environment in Bulgaria has suffered substantially from gradual and constant pollution for 50 years. The state, as principal owner of all former business activities, did little to prevent or narrow the scope of industrial pollution, which is an attitude difficult to break for some presently privatized enterprises," Mr. Lilov said.

The attitude limits local demand for environmental liability insurance in the former Eastern bloc, according to some insurance executives and brokers.

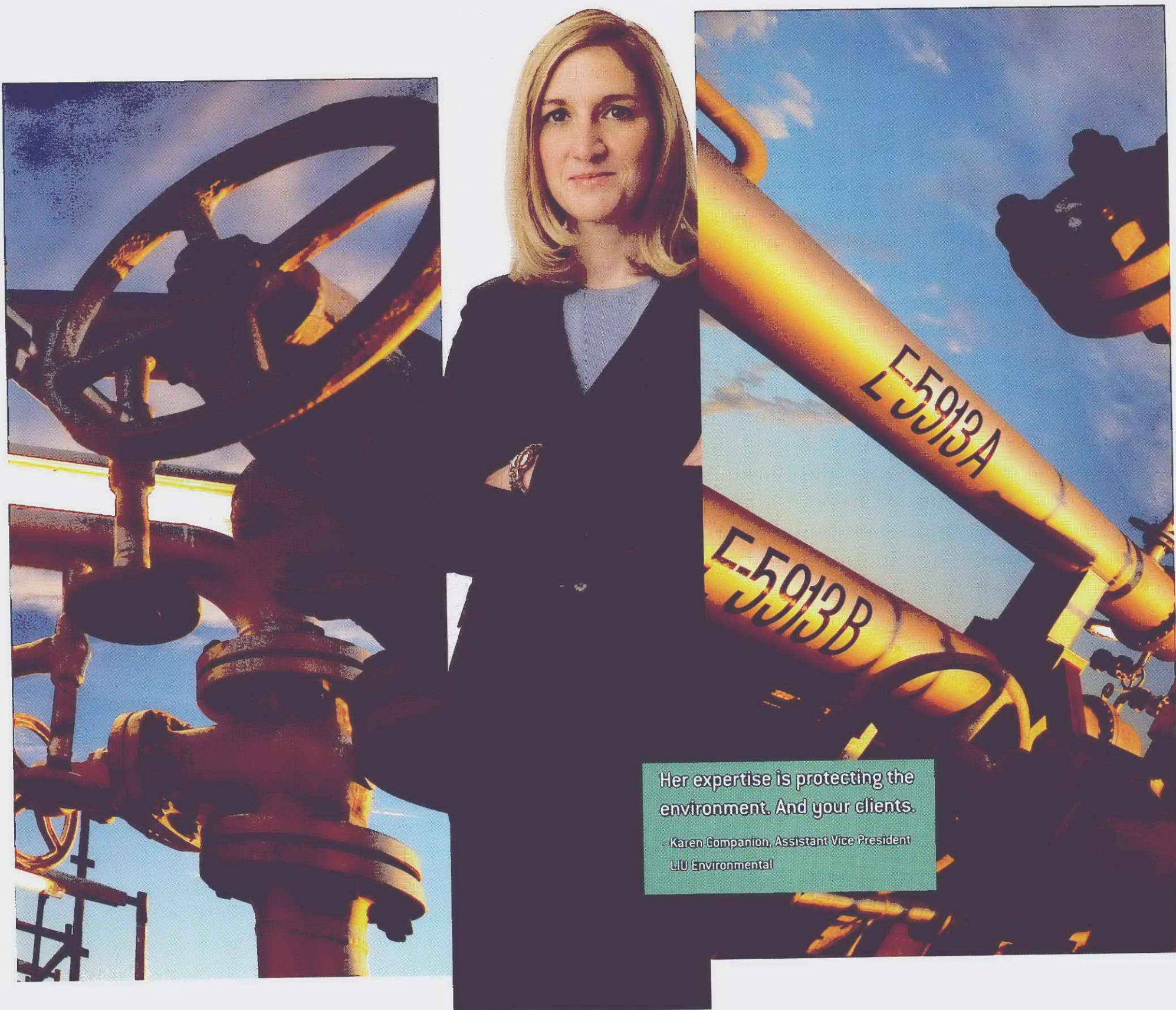
Observers say, environmental coverage can be obtained, although mostly it is provided by major foreign insurers, such as American International Group Inc. and ACE European Group.

"So insurers are ready, but not the prospects," said Dimo Markov, chief executive of Aon Bulgaria in Sofia.



When you're dispensing flammable liquids, you should have a safety bung on each drum, or everything you've worked for could blow up in your face. Which is precisely why the world's leading companies find FM Global's engineering approach the best fit. Because, unlike insurance companies that use actuaries to calculate risk, FM Global's 1,500 engineers work full-time to minimize risk. When one incident can cost millions of dollars in lost revenue and shareholder value, you should ask yourself: What price are we willing to pay for *not* having the right property protection? Visit fmglobal.com to learn more.





Her expertise is protecting the
environment. And your clients.

—Karen Companion, Assistant Vice President
LIU Environmental

Yes, there's an Environmental insurer that's as responsible as you are.

Of all the reasons Liberty International Underwriters has become a leading specialty lines insurer, what truly sets us apart is our instinct to do the right thing. We meet your needs quickly, consistently, and responsibly. Together, we can provide the best products for your clients. We don't just value our relationship with you. We work at it.

For specific information about the types of risk we write, visit libertyiu.com/environmental. Liberty Mutual is rated A by A.M. Best.

Responsibility. What's your policy?™

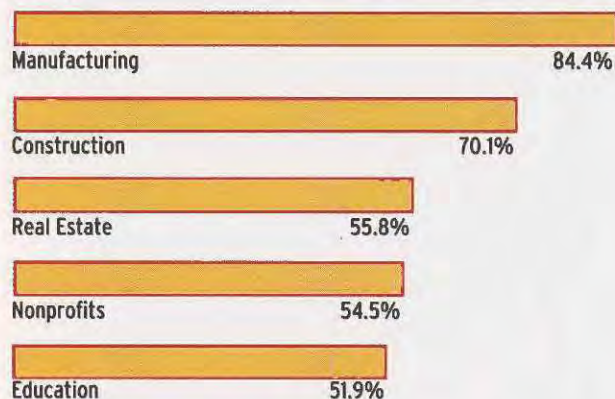


EXCESS CASUALTY & UMBRELLA • E&O • D&O • PRIMARY CASUALTY • FIDELITY • ENVIRONMENTAL • CONSTRUCTION • MARINE • ENERGY

All products written by member companies of Liberty Mutual Group. © 2006 Liberty Mutual Group.

MOST COMMON INDUSTRIES SERVED

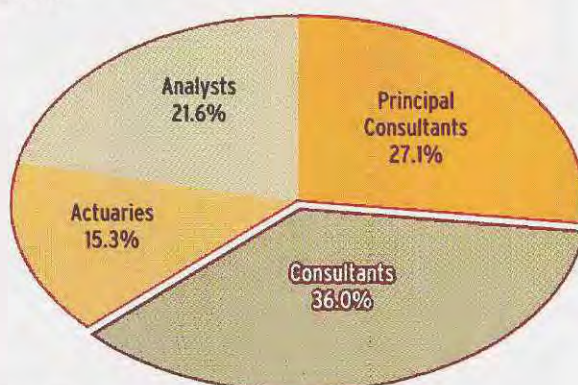
Percentage of all companies in the directory that provide services to these industries.



Source: BI survey

TYPE OF PROFESSIONAL STAFF

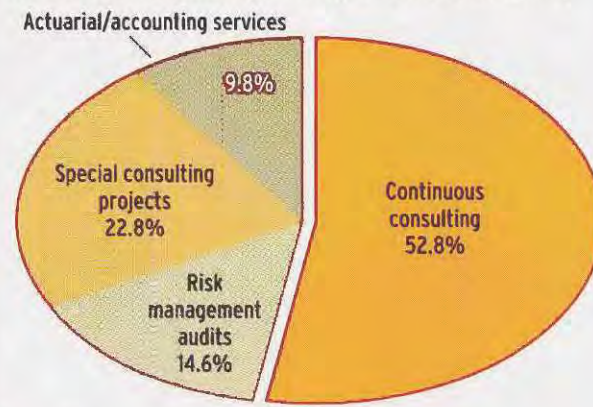
Breakdown of risk management professionals for all companies listed in the directory.



Source: BI survey

REVENUE SOURCES

Breakdown of revenue sources for all companies listed in the directory



Source: BI survey

RANKING

Largest independent U.S. risk management consultants

Companies deriving a majority of their gross revenues from unbundled risk management consulting¹

Rank	Company/Address	Telephone/Fax/Web site	2006 unbundled revenue from risk management consulting ²	Unbundled clients ³	Professional staff ³	Principal officer
1	RMI Consulting Inc. 20 Soundview Marketplace, Port Washington, N.Y. 11050	516-767-7373 Fax: 516-767-7486 www.rmiconsulting.com	\$11,700,000	500	31	MaryAnn Sackman, president
2	J.H. Albert International Insurance Advisors Inc. dba Albert Risk Management Consultants 72 River Park, Needham Heights, Mass. 02494-2631	781-449-2866 Fax: 781-449-5340 www.albertrisk.com	\$8,500,000	600	35	Alfred H. Nagelberg, Stuart T. Cowart, presidents
3	Risk International Services Inc. 4199 Kinross Lakes Parkway, Suite 220, Richfield, Ohio 44286-9394	216-255-3400 Fax: 216-255-3450 www.riskinternational.com	\$4,350,000	42	14	Douglas L. Talley, chairman/CEO
4	RCS Services 5506 Mitchelldale, Houston, Texas 77092	800-807-7475 Fax: 713-461-2457 www.rcsservicesinc.com	\$4,342,400	330	16	Trish McCall, president
5	Alpha Risk Management Inc. 60 Cutter Mill Road, Great Neck, N.Y. 11021	516-829-3500 Fax: 516-829-6029 www.alphariskmanagement.com	\$3,820,000	74	18	Herbert H. Feldman, president/CEO
6	Robert Hughes Associates Inc. 508 Twilight Trail, Suite 200, Richardson, Texas 75080	972-980-0088 Fax: 972-233-1548 www.roberthughes.com	\$2,600,000	230	16	John R. Oakley, president
7	North American Risk Co. ⁴ 5161 Lake Osprey Drive, Suite 307, Sarasota, Fla. 34240	941-373-1545 Fax: 941-373-1401 www.narco.biz	\$2,499,000	147	58	Bud Schade, president
8	Kevin F. Donoghue & Associates 190 High St., Boston, Mass. 02110	617-482-7015 Fax: 617-556-4030 www.kfda.com	\$2,200,000	120	11	Kevin F. Donoghue, president
9	Insurance Buyers' Council Inc. & First Risk Management/IBC Inc. 9720 Greenside Drive, Suite 1E, Cockeysville, Md. 21030	410-666-0500 Fax: 410-666-6177 www.consultibc.com	\$2,121,547	135	9	Adam P. Sielicki Jr., president/treasurer
10	Taylor Risk Consulting 16415 Addison Road, Suite 800, Addison, Texas 75001	972-447-2055 Fax: 972-248-1729 www.taylorrisk.com	\$1,894,292	80	14	Gabriel Lugo, senior vp

¹ Business Insurance defines independent consulting operations as those that are not owned by insurers or brokers. In addition, companies deriving 50% or more of their revenues from actuarial, captive, environmental, property loss or safety consulting are not ranked. ² Estimated as of 6/30/2006. ⁴ Formerly North American Risk Management Inc.

Source: BI survey

Visit www.businessinsurance.com for more information and to access the full searchable Directory of Risk Management Consultants. Business Insurance now offers the option to purchase the entire online directory as an Excel file or as a PDF.

Great **partnerships** show you new vehicles for success.



www.cna.com/agents

If you're ready to drive your business in positive new directions, CNA can provide you with the assistance you need to move your efforts along. Our experienced team of underwriting, marketing, risk control and claim professionals is dedicated to supporting you locally with a high level of expertise. If you want a partner to help you move your business forward, we'll be right by your side.

Use of the term "partnership" and/or "partner" should not be construed to represent a legally binding partnership. CNA is a service mark registered with the United States Patent and Trademark Office. Copyright © 2006 CNA. All rights reserved.

CNA

E.U.: Education campaign aims to boost use of pollution coverage

CONTINUED FROM PAGE 14

"The problem here is owners and managers think, 'This will not happen to us.'"

AIG's experience in Central and Eastern Europe is that there is just "sporadic interest from individual clients" for environmental impairment liability coverage, said Andrew Redman, AIG's regional liabilities manager for the Central and Eastern Europe countries and the Commonwealth of Independent States.

In the region, most of the interest is coming from Hungary, the Czech Republic and, to a lesser extent, Slo-

vakia. But he said it was "still relatively few and far between." In countries such as Bulgaria and Romania, there was a "misconception" by companies that they have coverage in liability policies, not realizing that it is for only sudden and accidental environmental damage—or it could be excluded altogether, he noted.

"Clients aren't aware and the level of knowledge in the broker community is not sophisticated enough," said Mr. Redman, adding that one of AIG's goals is to train brokers and educate the market.

"There are serious exposures from past operations and from current

operations that are poorly understood by local regulatory authori-

'Clients aren't aware and the level of knowledge in the broker community is not sophisticated enough.'

Andrew Redman, AIG

ties," he said. "There has been very little done to actually identify what

exposures exist, but there is absolutely no doubt that substantial exposures exist in the region."

The take-up situation would certainly change if coverage becomes mandatory in eastern countries. In Bulgaria, for instance, the Ministry for Environment and Water last month announced a proposal to impose mandatory insurance for environmental pollution in regulated industries. Business associations in Bulgaria were quick to denounce the requirement as an "unnecessary cost burden" and "going over the required compliance," with E.U. law, according to Mr. Lilov of BIRMA.

However, short of a compulsory insurance requirement in Bulgaria and elsewhere, environmental liability insurance will be bought mainly by western companies venturing into these new E.U. states, said Karl Russek, senior vp, environmental risk, for ACE in London.

That's been the case in Poland, which joined the E.U. in 2004. In recent years, there has been a steady stream of western companies—as well as banks funding private commercial development—buying environmental insurance as a way to hedge some of the exposure they perceive

As for local companies, "we are just starting to see indigenous Polish firms seek out the coverage," Mr. Russek said. "That may be also a matter of infrastructure as well. We are just getting to the point where we've got local wordings for this coverage in the local language and sold through our local distribution as opposed to being a centralized London-type operation."

The newest E.U. member states could follow a similar trend.

"The first thing on the mind of the financial manager of a midsize Bulgarian company—provided there is not a compulsory insurance requirement—is not likely to be to rush out and buy environmental coverage," Mr. Russek added.

For now, demand will come from western investors.

"The amount of investment is not likely to curtail anytime soon and the people who are doing the investing are very aware of environmental liability and are seeking out ways to lay it off," Mr. Russek said.

Getting health care right ... **Together.**

Health care is hard. It's hard for everyone: employers, patients, physicians, hospitals and, at times, even us.

But health care is too important to be this hard.

Together with America's leading employers, Uniprise is working to make health care work better: improving access, quality, usability and affordability.

We start with the basics: paying claims correctly the first time, supporting people as they navigate the complex health care system, and freeing physicians to practice medicine not process paperwork.

But **we** can't stop there. **Together**, we are building new capabilities that will radically change how health care works – for the better.

We are leading the drive to consumer-directed care and patient empowerment; integrating financial services and health care through one integrated ID card, and paying claims in real time. These are real shifts in how the system works, making it work better for everyone.

Uniprise is proud to be working with our great partners in this effort — our employer customers, consumers, physicians and the consultant community. We are changing the face of health care ... **Together.**

Uniprise®
A UnitedHealth Group Company

**The help you need
is always at your
fingertips...**



**Get breaking
industry news as it
happens ... posted in
real time throughout
the day.**

BusinessInsurance.com/DailyNews

BusinessInsurance.com

Our old name identified.



Munich Re America
Munich Re Group

Our new name unifies.



American Re is now Munich Re America. We've changed our name to better reflect the close relationship with our parent, Munich Re, the world's preeminent reinsurance brand. Although we have a new name, you can expect the same individualized service, custom solutions and marketplace knowledge you have always received from American Re.

www.munichreamerica.com

PREFERRED PARTNER IN RISK

Products and services provided by Munich Reinsurance America, Inc. © Copyright 2006 Munich Reinsurance America, Inc. All rights reserved.

Cover pricey and tight in closing hazardous waste, landfill sites

By RUPAL PAREKH

Owners and operators of hazardous waste sites face numerous exposures when shutting down facilities, but finding adequate insurance coverage to help minimize those risks is becoming more difficult, experts say.

The market for so-called "closure/post-closure" insurance is sluggish, they say, with a limited number of players willing to write coverage at high prices and short policy terms.

Beyond insurance to shield owners and operators from potential

risks of pollution legal liability or third-party claims for bodily injury emanating from the cleanup of a site, a chief concern is meeting state and federal closure and post-closure financial assurance obligations for landfills as well as facilities to treat, store and dispose of hazardous waste.

Such sites can terminate operations only after regulators approve a detailed closure plan that outlines steps necessary to decontaminate a site, a closure timeline and proof of sufficient funds to safely shut down the unit.

For post-closure—a process that

requires groundwater monitoring and other on-site maintenance—the U.S. Environmental Protection Agency mandates regulated waste facilities to carry 30 years of financial assurance that the facility and the land it sits on will not pose future threats to human health and the environment, said Ann Waeger, a partner at the law firm of Farer Fersko P.A. in Westfield, N.J.

Market tightens and flattens

During the 1990s, insurance became a popular alternative to other accepted methods—including bonds, letters of credit and trust

funds—for fulfilling regulators' financial assurance requirements, said Ken Berger, executive vp, Zurich North America. But its use has lessened during the past few years as the closure/post-closure insurance market has tightened.

Operators and firms are witnessing "a general flattening out of capacity in the environmental insurance business," Mr. Berger noted. Furthermore, "the regulations really overestimate and are conservative in terms of what they want people to set aside for closure/post-closure," he said. "I think (owners and operators) would probably find it more difficult than they would have five years ago," to obtain policies for closure and post-closure care today.

Waste site operators most commonly use a specialized policy known as an "environmental protection program" to satisfy financial responsibility requirements for closure/post-closure, and to help cover future costs and monitor a hazardous waste site, experts say.

Closure/post-closure programs typically exclude third-party bodily injury, property damage or defense claims, they say. Such a policy must be obtained for a face value at least equal to the cost estimate for closure/post-closure expenses and increase annually to account for inflation.

Such policies are considered a combination of risk transfer and risk funding because collateral—as much as 80% or more of the expected cost of post-closure work—is required on the front end, said Elizabeth Banister, senior vp with Marsh Inc.'s environmental practice in Atlanta.

Compared to other financial assurance options, the advantage in using an EPP for closure and post-closure work is that "if you blow through the limit, there's actually insurance to step in and pay for that," said Howard Tollin, managing director at Aon Corp.'s environmental services group in Jericho, N.Y. "Regulators like that because they see this as a high level of protection," he said.

Key players in the closure/post-closure space are New York-based American International Group Inc., Schaumburg, Ill.-based Zurich North America and—to a lesser degree—XL Environmental Inc. of Exton, Pa., experts say.

"AIG is probably the biggest (player) because they are the one that's most willing to take a risk. Some of the other companies are smaller and more conservative and are not willing to take that risk," Farer Fersko's Ms. Waeger said.

"The carriers' fear is that the company is no longer financially viable and then the insurance carrier would be on the hook for closure/post-closure" costs, Ms. Banister said.

"If there is a loss, it's going to be really large vs. doing some small pollution policy for a local gas station," said Brenna Melvin, senior vp in the Boston environmental practice for broker Beecher Carlson Holdings Inc.

"It's a really long process to get a

policy put in place" due to necessary regulatory approvals for the policy terms and limits, Ms. Melvin said. "It could take two months vs. property insurance, which, depending on the risk, you could get something done in a week."

Insurers and brokers were unwilling to say how much the coverage costs, since price hinges on a variety of factors that include the size of the landfill or hazardous waste site, number of contaminants present at the site, and proximity to the general population and other commercial entities.

Still, experts concur that the coverage is costly, and usually an option only for the largest sites.

Environmental protection program advantage: 'If you blow through the limit, there's actually insurance to step in and pay for that.'

Howard Tollin, Aon Corp.

"It's very expensive," said Ms. Melvin. "In my experience, if they can find a less expensive alternative than the insurance, they'll take it," she said, including "cash or some sort of creative financing provided by a bank."

Ms. Banister noted that in an EPP type of program, companies are generally looking for minimum clean-up and maintenance costs of \$5 million. "I don't see the market getting soft in this area," she said.

Another key problem for insureds is that limits have been slashed in recent years, experts say.

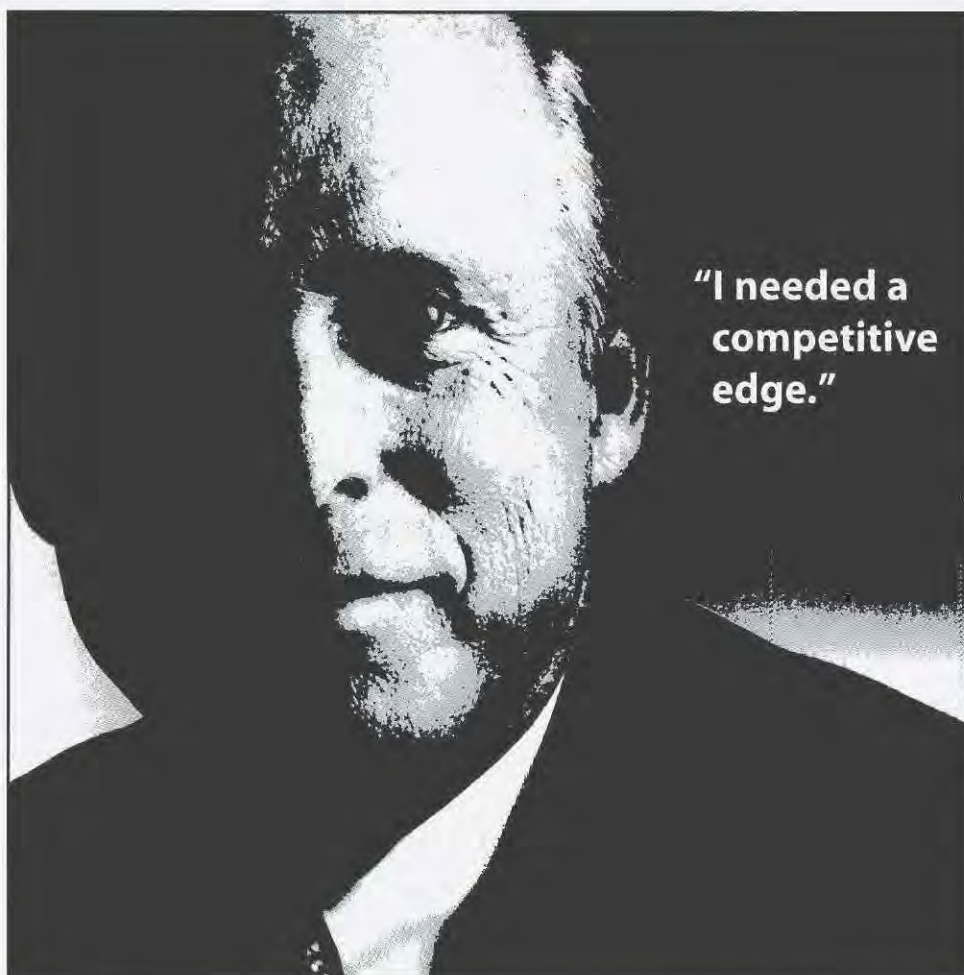
"An overall hardening of the market with regard to longer-term policies" has resulted in cutting policy terms to 10 years from 30 years in just the past couple of years, Ms. Banister said. "You may be able to get 15, but typically, they are all drawing the line in the sand at 10."

"The industry used to support 30 years, which paralleled the general statutory requirements for financial assurance," said Richard O. Wagner, senior vp and manager of national accounts for AIG Environmental in New York. But in the past two years, "that has retracted."

"We can offer as much as 15 years for the expected closure costs on the EPP," Mr. Wagner said. Operators would need to fill in the remaining 15 years following the policy term with "some form of guaranteed investment product or surety."

The new, shorter term limits are likely here to stay, Mr. Wagner said. "I don't think it will change to where it will go higher," he said.

Mr. Wagner noted that going forward, regulators overseeing the closure and post-closure of landfills and other hazardous waste facilities should be expected to become "more aggressive in reviewing...and making sure they have enough money to get these sites closed."



"I needed a competitive edge."

"And I got that edge from the Institutes. They gave me the foundation, the purpose, and the process I needed to build a successful practice. The knowledge I gained let me break free from the insurance transaction—it gave me the passion to become a trusted advisor and partner to my clients."

F. Scott Addis, CPCU • The Addis Group

What do YOU need?

The right professional development program can give you a competitive edge. With the Institutes, you'll get in-depth, real-world professional education you need in areas like agency management and insurance production, claims, underwriting, risk management, and more.

The Institutes gave Scott Addis the knowledge and skills he needed to build his business, set himself apart, and serve his clients better.

Log on to www.aicpcu.org/edge.htm to learn more. We'll help you get started.

American Institute for CPCU • Insurance Institute of America
www.aicpcu.org/edge.htm • (866) 844-0378 • cserv@cpaiia.org

AICPCU Succeeding
together.
EDUCATION • RESEARCH • ETHICS



●●● What if your store's big sale gets too big?

We help you plan for the unexpected.

At Zurich, we realize that things can go wrong when everything seems to be going just right. So we offer industry specialists that can help you think through risks you might not even consider. Because we've seen fortunes change quickly, our customers can feel better prepared for the real world.

www.zurichna.com/commercial

Because change happenzSM


ZURICH[®]

Market: Real estate market, brownfield redevelopment drive demand

CONTINUED FROM PREVIOUS PAGE

increasingly requiring that companies have mold or moisture management plan in place before offering coverage.

One proven and popular prevention method includes having adequate ventilation in areas where water is present, according to the experts at Aon.

"People are more aware of mold," said Ms. Knowles of Marsh.

Health concerns and bodily injury issues stemming from mold have eased in recent years after it was discovered that, as Mr. Ayers put it, "the science didn't support the injury."

For a health-related claim to pass the test, it must be proven that the injury was caused by the substance.

"It's been difficult for (plaintiffs) to prove the science," Mr. Ayers said.

Where science related to mold risks left off, it picked up significantly in other areas, which could lead to a potential expansion of specialty coverages if more environmental risks are excluded from general liability policies, they say.

Vapor intrusion, for example,

where chemicals in groundwater are trapped in homes and businesses above ground, is relatively new and is causing environmental agencies to re-open historic chemical spill cases across the country, brokers say.

Greg Roberts, Houston-based national managing director with USI Environmental Risk Mitigation Group, said so far, vapor intrusion

in general has not made the list of exclusions, but could eventually once entities like the Environmental Protection Agency produce more studies.

"The insurance industry is always the last to know," he said. "Asbestos was around forever, and it wasn't until the insurance companies got the lawsuits that asbestos was excluded."

PROFESSIONAL MARKETPLACE

To place your ad, contact **Tina Vasilakis** at (312) 649-5340 / fax: (312) 649-7937 / E-mail: tvasilakis@BusinessInsurance.com
Business Insurance, Classified Department, 360 N. Michigan Ave., Chicago, IL 60601-3806. Call for details on blind box and internet advertising

EDUCATION

Florida State University



offers an online master's degree in Risk Management and Insurance. This affordable and flexible program can be completed via Internet access from any location. For more information on the May 2007 sequence, visit www.cob.fsu.edu/grad

For 2007 B/I Rates or Editorial Calendar
Call Tina at 312-649-5340

HELP WANTED

key strategies

"The Risk Management Career Experts"

Executive Recruiting • Career Coaching
• Corporate Risk Management
• Insurance Brokerage
• Risk Management Consulting
• RMIS

100 Eagle Rock Ave. East Hanover, NJ 07936
Tel: 973-887-2300 Fax 973-887-4334
www.keystrategies.com

• Mike Tannenbaum
• Barry Citron

HELP WANTED

HELP WANTED

HELP WANTED



RMA
RICHARD MEYERS & ASSOCIATES, INC.

(888) RMA-Search

INFO@RMAINC.COM

WWW.RMAINC.COM

Building on Our Trusted Reputation in Executive Recruitment

TALENT ACQUISITION

• Executive Search
• On-Boarding
• Contract Labor
• Salary & Comp Surveys

TALENT MANAGEMENT

• Executive Coaching
• Leadership Development
• Culture Assessment
• Competency Models

Risk • Brokerage • Sales • Safety • Claims • Underwriting
Loss Control • RMIS/HRIS • Finance • Human Resources

HELP WANTED

HELP WANTED

BUSINESS RESOURCES

CONSULTING SERVICES

P & C Broker and Insurer Performance Reviews & RFP's

Clients include Public Entities, Public & Private Corporations, Large Non-Profits, and HC Providers. Also expert testimony, alternative risk evals, professional liability product development, & policy drafting for insurers of all sizes. Joseph M. Inwald, JD, CPCU
jlinwald@comcast.net or 248-406-5038.

EDUCATION & TRAINING

CPCU®

AIC, ARM, IIA, CLU/ChFC, and CIC candidates

Executive Summaries so good, you'll pass the first time, every time or your money back!

Call 1-888-BURNHAM Now!
www.BurnhamSystem.com

small ads...

BIG RESULTS!

Trust Business Insurance to reach your target audience.
Call Tina at 312-649-5340 for details.

Mark your calendar...

December 25
Year-In-Review
Employee Benefits
Ad Closing: Dec. 18

January 1
Year-In-Review
Risk Management
Ad Closing: Dec. 26

CONTACT TINA VASILAKIS AT 312-649-5340 FOR DETAILS.

Global Property Practice Broker

The Global Property Practice Broker will work nation-wide within a team to build, expand and solidify relationships with new and existing clients.

- Evaluate and critique complex property and insurance coverage structures
- Identify and analyze property and time element exposures for large commercial property accounts
- Gather underwriting data and prepare high quality market specifications
- Identify key issues and goals of the marketing specifications
- Develop a marketing strategy to accomplish these goals
- Provide creative ideas on solving difficult coverage or market problems
- Manage and create competition in the Global Property Marketplace
- Maintain a high level of market knowledge and strong underwriter relationships
- Negotiate terms and conditions on complex, multi layered property programs
- Make professional presentations to clients and underwriters
- Assist producers in bringing in new accounts
- Manage professional presentations to clients and underwriters

Requirements

- Bachelor's degree in Business or related field
- 7 to 10 years of brokerage experience
- Adept at working with diverse personalities and working styles - Strong leadership and service orientation; ability to build client confidence that leads to strong and resilient broker relationships.
- Skilled at managing and guiding others as they perform tasks
- Exceptional oral and written communication skills.
- Strong delegation skills.
- Be comfortable working as a member of a team or as a team leader
- Ability to think quickly and work in a fast paced environment

Lockton Companies, Inc. is an equal opportunity employer. As a privately held company, we offer a competitive compensation and benefits package reflecting our commitment to attracting and retaining great individuals. This includes health and dental coverage, which begins on your first day of work, 401(k) with match and immediate vesting, a competitive vacation plan and unrivaled career advancement opportunities.

Interested candidates should send resumes to:

Mindy Sokolaski
444 W. 47th Street, Suite 900
Kansas City, MO 64112
Or email to msokolaski@lockton.com

For other career opportunities, please visit our website at www.lockton.com



LOCKTON®

International NEWS

Ex-FAI exec sentenced

Unit played major role in 2001 HIH collapse

By SARAH VEYSEY

SYDNEY, Australia—Anthony Boulden, a former financial controller at FAI General Insurance Co. Ltd., has been sentenced to a term in prison for being privy to the fraudulent alteration of a ledger that had the effect of reducing claims estimates against the company.

Mr. Boulden was sentenced to a 12-month term, to be served by periodic detention.

FAI was a unit of the HIH Insurance Ltd., which became Australia's largest corporate failure when it collapsed in 2001. The financial condition of FAI Insurance Ltd. was determined to have played a role in HIH's demise.

Several former employees of HIH have been sentenced for their role in the insurer's downfall. Among them are Rodney Adler, former head of FAI Insurance and a director

of HIH Insurance Ltd., and Ray Williams, former chief executive officer of HIH, both of whom were sentenced to four-and-a-half-year prison terms.

Mr. Boulden pleaded guilty to one count of being privy to the fraudulent alteration of a ledger that reduced claims estimates by about \$5.5 million Australian (\$3.6 million).

The falsified estimates were reflected in FAI Insurance's financial results for the half-year ended Dec. 31, 1997, according to the Australian Securities & Investments Commission, which brought the charges against Mr. Boulden.

For the period, FAI reported a pre-tax operating profit of \$3.2 million Australian (\$2.1 million). But without the improper claims estimate reductions, it would have posted a loss of about \$2.3 million Australian (\$1.5 million), ASIC noted.

Syndicate to cover U.S. catastrophes

Lloyd's unit 4242 to cater to midsize and small companies

By SARAH VEYSEY

LONDON—Chaucer Holdings P.L.C. and ICAT Holdings L.L.C. have established a syndicate at Lloyd's of London to underwrite U.S. catastrophe business for medium and small companies.

Syndicate 4242 will have underwriting capacity of \$148 million for 2007.

Starting Jan. 1, the syndicate will underwrite insurance in catastrophe-exposed areas of the United States.

ICAT Managers, a Boulder, Colo.-based managing agency, will write most of the syndicate's business

through Lloyd's-approved coverholder arrangements, the two companies said in a statement.

The syndicate will be managed by Chaucer Syndicates Ltd., Chaucer's managing agency. Chaucer manages multiline syndicate 1084 and nuclear syndicate 1176 at Lloyd's.

"Chaucer was attracted to working with ICAT due to its reputation in the market as a disciplined specialty underwriter," Bob Stuchbery, chief underwriting officer of Chaucer, said in the statement. "We are excited to be their partner in Syndicate 4242."

ICAT's Gregory Butler is the active underwriter of Syndicate 4242. He has held several underwriting positions at ICAT and was the founding chief executive officer of the California Earthquake Authority.

Insurers, risk managers object to French disaster pool reforms

Groups say system for disaster claims not in need of repair

By RICK MITCHELL

PARIS—Planned changes to France's natural disaster insurance pool aimed in part at introducing greater competition on rates have drawn criticism from insurers, who say there is no need for a "radical" reform of the current system.

France's two main insurer associations issued a rare joint statement to oppose key provisions of a draft bill that would heavily rewrite the country's natural-disaster pool program. The country's risk manager association also weighed in against the bill.

The draft bill, presented by the Ministry of Economy and Finance, aims in particular to introduce more rate competition among private insurers and to speed the compensation process for disaster claims.

Insurers and risk managers say these are worthy objectives, but that the means proposed could do more damage than good.

Michel Yarhi, president of France's association of risk managers, l'Association pour le Management des Risques et des Assurances de l'Entreprise, said the bill rehashes an old theme.

"They want to make those who are more exposed to risk pay more for their insurance. This targets particularly people and organizations located in flood-prone areas. The problem is that there are other risks, drought for example, for which we cannot prepare as we can for floods," he said.

"The two professional insurance organizations do not see the urgency to reform a system that is well-known, financially balanced and which has proven its merits," said the joint statement by the Groupe des Entreprises Mutuelles d'Assurance and the Fédération Française des Sociétés d'Assurances.

Insurers said the bill "could undermine important features of the current natural disaster regime," which was established in 1982. The current system, based on the principle of national solidarity, provides "unlimited coverage in the event of a major disaster," for which insured parties pay an additional premium



ROUGH GUIDES

Insurer groups oppose natural disaster pool changes they say would make flood-prone areas, such as the River Seine in Paris, at risk of major rate hikes.

at a fixed rate of 12% of their total premium, no matter what the risk profile of their property. Under the reformed regime, the state-backed reinsurer, the Caisse Centrale de Réassurance, would continue to guarantee coverage for natural disasters. However, insurers could adapt the premium rate to the natural risk exposure of the insured asset.

Competition vs. solidarity

According to the government, this leeway would spur healthy competition on rates. But the FFSA and GEMA warned that such competition, and a disparity of rates based on location and other factors, "could diminish solidarity among the French." They urged the ministry to consider other solutions.

According to Mr. Yarhi, "it's unlikely the law would have a direct consequence on rates. In any case, rates will go down when the market is soft and up when it's tight. At best, the law will change nothing. At worst, it will make your insurance situation worse, especially if your buildings are in a high-risk area."

Insurers also oppose the bill's plan to accelerate the disaster compensation process by eliminating the current mechanism by which natural disasters are recognized by so-called cat-nat decrees published in the nation's "Official Journal," following time-consuming consultations between various ministries.

In the case of droughts, for example, damage can take a long time to appear, delaying compensation. In

the new system, insurance companies would decide what events qualify as natural disasters based on accepted scientific data, although the government would provide a list of events that could qualify.

According to the ministry's introduction accompanying the draft bill, it wants to introduce more transparency about what kinds of events are covered. It would guarantee such disasters as droughts, floods, earthquakes, mudslides and tidal waves, but exclude smaller events such as rockslides and sinkholes. Other measures deal specifically with drought risk, establishing conditions for granting coverage, as well as encouraging disaster prevention.

GEMA and FFSA said that although "anything that makes the regime more just, transparent, and better understood by citizens constitutes progress," they warned of a "risk of inequality of treatment between insured parties, and potential conflicts with public authorities."

They also said those most exposed to flood and drought risks could face more difficulty getting adequate coverage at acceptable rates. For its part, the ministry contends that reform could lead to creation of private insurance to fill gaps not covered by the pool.

The reform bill was motivated by a need protect the pool's survival following a series of costly droughts, culminating in the heat

See **POOL** next page

Doing what we do best, in Europe.

The only newspaper dedicated to corporate risk managers, insurers, reinsurers and brokers in Europe.

For your FREE trial subscription complete the subscription card or visit www.BEurope.com/subscribe

In Europe we have it covered

Business Insurance
EUROPE

Pool: French insurers object to proposed reforms

CONTINUED FROM PREVIOUS PAGE

wave of 2003 that drained the disaster pool of some €3.5 billion (\$4.59 billion), according to FFSA.

"The FFSA agrees that reform is necessary to protect the system, but not at the cost of abandoning solidarity," said a spokeswoman for the Paris-based trade body. She suggested other measures, such as better risk control, building standards, and targeted changes to speed compensation without eliminating

the current system.

100-year flood

Mr. Yarhi added that, "in France we talk of the once-in-a-century flood. The last one was 1910. Does this new law mean that buildings and businesses near the edge of the Seine in Paris will have to pay higher premiums? That will be a test."

The ministry reportedly plans to submit the draft to Parliament in a corrective finance law by the end of the year.

XL Capital backs up operating units

Cayman reinsurer created to cover subsidiaries' risks

By ROBERTO CENICEROS

HAMILTON, Bermuda—XL Capital Ltd. has set up a Cayman Islands-based vehicle to provide reinsurance for certain XL operating entities.

Fitch Ratings last week said it has assigned an A+ issuer default rating

to Stoneheath Re, which received its license in October, according to the Cayman Islands Monetary Authority.

Stoneheath Re is an exempted company formed to issue noncumulative perpetual preferred securities, according to Fitch.

Fitch said it has assigned an A-underlying rating to Stoneheath Re's issuance of the securities. Proceeds from the securities will be deposited in a trust account to collateralize Stoneheath Re's reinsurance obligations.

After three months, XL can change the perils covered under the reinsurance agreement, attachment points and aggregate retentions. XL can make such changes every six months, according to Fitch.

XL declined to comment on the arrangement.

Separately, New York-based Standard & Poor's Corp. assigned a BBB preferred stock rating to Stoneheath Re's proposed noncumulative perpetual preferred securities, while Moody's Investor Services Inc. assigned them a Baa2 rating.

ERISA: Health care plan updates needed

CONTINUED FROM PAGE 4

On appeal, the 10th Circuit panel ruled, among other things, that the lower court misinterpreted ERISA and a 1989 U.S. Supreme Court ruling on the issue in *Firestone Tire and Rubber Co. vs. Bruch*. In *Firestone*, the Supreme Court instructed courts to defer to the benefits decisions of ERISA plan fiduciaries if plan documents explicitly give fiduciaries discretionary authority to make benefit decisions.

As in most situations, the claims administrator in the *Geddes* case was not a plan fiduciary, and the *Firestone* ruling did not address that point.

But, under its interpretation of ERISA and the *Firestone* ruling, the appeals panel ruled 2-1 that the court should have shown "judicial deference" in the case by reviewing only whether Everest's decision was arbitrary and capricious.

The court ruled that judicial deference should be extended to claims administrators when they have acted as agents for plan sponsors—as long as plan documents contain so-called *Firestone* language on discretionary authority.

A provision in United Staffing's plan documents contains the necessary language specifying that United Staffing is the "named fiduciary" and the "plan administrator" and that it "makes all final decisions about benefits paid from the plan," according to the ruling.

In addition, United Staffing exercised its discretionary authority by accepting Everest's benefits decision, the appellate panel ruled.

The appellate panel suggested that the lower court reached its decision in part because of its "misleadingly truncated reading" of an ERISA provision. Quoting ERISA, the appellate panel ruled that the statute's provision, in its entirety, allows plan fiduciaries "to designate persons other than named fiduciaries to carry out fiduciary responsibilities," except trustee responsibilities, under the plan.

"There is nothing in the language of the ERISA statute, the logic of *Firestone*, or the background principles of trust law that requires fiduciaries, when delegating authority, to delegate only to other fiduciaries," the appellate panel ruled. "For purposes of liability, decisions made by third parties are decisions made

by the fiduciary."

The appellate panel remanded the case to the lower court with instructions to conduct another review—this time applying the arbitrary and capricious standard—of the United Staffing plan's benefit decision.

The decision potentially sets up a Supreme Court review of the issue, because the three appellate courts that have ruled on it have interpreted the *Firestone* decision differently (see box). The plan participants in the 10th Circuit case, however, asked the full appeals court last week to review the panel's decision, said their attorney, Jeffrey J. Droubay, a senior associate with Parsons Behle & Latimer P.C. in Salt Lake City.

Predicting what cases the Supreme Court will agree to review is difficult, but "I think a time is coming soon when they will take a case" on when courts should defer to benefit plan decisions, said employer attorney Michael Graham, a partner with McDermott, Will & Emery L.L.P. in Chicago.

"You can seriously see the loser in this case going to the Supreme Court" with a request to review the issue, said J.D. Piro, a principal in the Norwalk, Conn., office of Hewitt Associates Inc.

Meanwhile, although the 10th Circuit panel ultimately sided with the plan sponsor on the standard-of-review issue, the case is a reminder that the benefits decisions of many plan sponsors are vulnerable to extensive court reviews, experts said.

An important factor in the United Staffing's success in the case was that its plan documents stated that it would delegate claims handling to a nonfiduciary third party but would reserve the authority to make final claim decisions and interpret plan provisions.

"The problem is that older plans that haven't been updated in awhile" often do not contain that language, Mr. Graham noted.

Mr. Piro agreed. "There are some employers that still don't have the necessary documents in place" defining which parties are plan fiduciaries and what duties are delegated to nonfiduciaries, he said.

Even with that plan document language in place, benefit decisions still might be subject to *de novo* reviews if other appellate courts or

MAJOR ERISA DECISIONS

Timeline of major ERISA decisions made by the federal courts

1989—In *Firestone Tire and Rubber Co. vs. Bruch*, the U.S. Supreme Court rules that federal courts should review the denial of ERISA health plan benefits only for arbitrariness and capriciousness, as long as the plan explicitly grants discretionary authority to make benefit decisions to a plan administrator or another fiduciary.

1990—In *Baker vs. Big Star Division of the Grand Union Co.*, the 11th U.S. Circuit Court of Appeals rules that to qualify for judicial deference under the *Firestone* standard, an ERISA plan administrator that delegates its claims-handling authority must do so only to other fiduciaries.

1990—In *Madden vs. ITT Long Term Disability Plan for Salaried Employees*, the 9th Circuit rules that plan decisions qualify for judicial deference when a fiduciary delegates its discretionary authority to another fiduciary. Both fiduciaries would qualify for judicial deference. The 10th Circuit in a later ruling would call this decision "ambiguous."

2006—In *Geddes et al. vs. United Staffing Alliance Employee Medical Plan et al.*, the 10th Circuit rules that judicial deference extends to the benefit decisions made by properly designated nonfiduciaries, such as third-party claims administrators.

the Supreme Court rules that claims administrators' decisions should not be given judicial deference, Mr. Graham noted.

He and Mr. Piro agreed that the only way to ensure judicial deference is if claims administrators accept fiduciary responsibilities for the plans they handle. But claims administrators historically have refused to accept that responsibility so that they cannot be sued for breach of fiduciary duties, they said.

Michael Geddes and Kari Geddes vs. United Staffing Alliance Employee Medical Plan et al., 10th U.S. Circuit Court of Appeals, Nov. 15; No. 05-4142.

Prevention: Guide issued

CONTINUED FROM PAGE 3

prevent serious illness and premature death stemming from conditions such as obesity, diabetes and cancer.

It also addresses issues such as alcohol and tobacco use.

The "Purchaser's Guide" released last week translates scientific research on the most effective preventive care practices into benefits language to help employers adjust their summary plan descriptions, Ms. Darling said.

That way, employers can develop a "structured clinical services program," according to the NBGH.

The guide also establishes a business argument for funding screenings, immunizations, counseling and other care. It does so by detailing the cost effectiveness of recommended interventions.

For example, a section on alcohol abuse states that each \$1 invested in screening and brief counseling saves about \$4 in health care costs. It details the billions of dollars spent annually on alcohol-related health care, the cost to health plans, and the cost of alcohol abuse to employers in terms of absenteeism and lost productivity.

Some recommendations made by the guide, such as a call to cover immunization for the human papillomavirus associated with cervical cancer, could add "noticeable" cost to an employer's health plan spending, Ms. Darling said.

But the guide provides suggestions to prioritize coverages that might be most pressing for an employer to add to their plan offerings if they are not able to add them all at once.

While adding some of the 46 clinical preventative services to a health plan would increase immediate costs, it would reduce care expenses in the long term, the NBGH said.

Some increased costs can be offset by eliminating preventative services that some plans offer but have been found to be ineffective, Ms. Darling said.

For example, some plans continue to provide Pap smear tests annually to detect cervical cancer, Ms. Darling said.

But the guide points out that, although some health professional organizations recommend more frequent tests, the U.S. Preventative

Service Task Force has not found evidence that annual screenings provide better outcomes than screening every three years.

Because doctors have limited time to spend with patients and employers have limited dollars to spend on care, it's critical that employers limit their investment only to services that provide the greatest health impact, said Dr. Carolyn M. Clancy, director of AHRQ.

"Not only is underuse of effective preventative services a concern to

GOALS OF PREVENTION

- Encourage individuals to avoid or delay disease by practicing healthy lifestyles.
- Identify individuals who could benefit from treatment for a condition about which they are unaware.
- Prevent further disability among individuals with established disease.

Source: National Business Group on Health

employers, but so, too, should utilization of ineffective or unproven clinical preventative services," Dr. Clancy said.

The "Purchaser's Guide" recommendations for coverage are largely based on the preventative task force's recommendations for people who have not yet shown signs of illness. The task force is a panel of primary care and prevention experts sponsored by the AHRQ, a unit of the U.S. Department of Health and Human Services.

The CDC provided funding to develop the guide.

Insurers also rely on preventative health data available from organizations such as the CDC and the AHRQ as well as their own claims data to develop their plan offerings, said Alan Spiro, chief medical officer of national accounts at Well-Point Inc. in Atlanta.

Still, part of the ongoing challenge for insurers and employers is in finding incentives that encourage consumers to take advantage of health screenings and risk reduction services, Mr. Spiro said.

The "Purchaser's Guide" is available for free on the NBGH's Web site at www.nbgh.com.

Products & Services

CIGNA launches Fundamental Care

BLOOMFIELD, Conn.—CIGNA HealthCare is offering Fundamental Care, a plan that will give employers the ability to provide benefits to employees who are ineligible for or do not have access to traditional major medical coverage.

Companies can offer Fundamental Care to all employees as a core medical plan, to a selected class of employees within the entire population or to employees during their service waiting period until they are eligible for the company-sponsored major medical plan.

Fundamental Care is available to companies with 51 or more eligible employees and is designed to be 25% to 40% less expensive than traditional major medical coverage, according to a survey by the Kaiser Family Foundation and the Health Research and Educational Trust. Fundamental Care has maximum coverage levels up to \$100,000 per year and requires a minimum employer contribution of 25%. Plans can be tailored to match the cost and benefit levels that meet the financial and medical needs of the workforce, the Bloomfield, Conn., insurer said.

More information is available at www.starhrg.com.

Darwin offers policy for lawyers' liability

FARMINGTON, Conn.—Darwin Professional Underwriters Inc. has launched a lawyers professional liability program designed to cover standard market LPL risks. New York-based Professional Coverage Managers is the program administrator for the coverage.

The program will be available on an admitted basis in Colorado, Georgia, New Jersey, New York, Ohio and Pennsylvania. It is geared toward law firms in all practice areas, including criminal, residential real estate, family law and other areas.

The product features extended reporting period options; supplementary coverage of up to \$5,000 for grievance procedures also is available.

Policyholders also will receive a comprehensive suite of risk management resources, including a 24-hour hotline, online continuing legal education credits and access to a Web site with business, legal and industry information.

For more information or to access the program, contact Annamarie Haught of Darwin at 860-284-1722 or by e-mail at ahaught@darwinpro.com.

darwinpro.com; or Bob Meyer of PCM at 212-344-8774 or rmeyer@pcmgroupp.com. Additional information may be found at www.pcm-group.com.

Schinnerer offers tech E&O program

CHEVY CHASE, Md.—Victor O. Schinnerer & Co. is offering a new online application for errors and omissions insurance for technology firms.

This program helps simplify the application process by saving time and effort for both brokers and clients. In addition to quotes being delivered and processed more quickly, the new online application

has other time saving features that include:

- "Pause" allows the applicant to save the application midstream and return to it later using a tracking number.

- "Forward" allows the applicant to e-mail the application to others for help in completing certain sections.

- "Submit" sends the application directly to Schinnerer. Copies are automatically sent to all e-mail addresses included on the application, including the broker and the prospective policyholder.

- "Attachment" allows documents of all kinds to be attached to the online application instead of mailing them separately.

- "Coded Links" are customized

for the broker that, when accessed, prefill the application with the brokerage information. Brokers can send the coded links to prospects via e-mail.

For more information, contact John Ajello, senior vp, at 301-951-9755, or john.l.ajello@schinnerer.com.

Guy Carpenter, Hiscox launch e-trading

NEW YORK—Guy Carpenter & Co. Inc.'s facultative reinsurance unit, GCFac, has launched a new e-trading facility that allows brokers in Latin America to deal directly online with London-based Hiscox P.L.C. and achieve greater cost savings.

The system caters to political risks—riots, strikes, civil commotions and malicious damage, including sabotage and terrorism—in key Latin American markets that include Argentina, Chile, Colombia, Mexico, Peru and Venezuela.

The system, named STEALTH for sabotage and terrorism electronic application linked to Hiscox, sends submissions directly to Hiscox underwriters and provides replies in as little as 10 minutes. The system is also fully compliant with U.K. Financial Services Authority regulations.

For more information, contact Jonathan M. Prinn, head of operations, at 44-207-357-1504, or at jonathan.m.prinn@guycarp.com.

Controlling Prescription Drug Benefit Costs

A Business Insurance Online Executive Forum™



Join Business Insurance Editor Regis Coccia on December 12, 2006, along with our expert panel, for a webinar devoted to exploring **Controlling Prescription Drug Benefit Costs**.

Prescription drugs have been cited as the fastest-growing component of health care spending, and employers continue to struggle with annual increases in health care benefit costs. Controlling the drug expense component can help employers continue to provide these important benefits.

Attend this Online Executive Forum™ to learn about what's driving prescription drug costs and how employers can rein them in through plan designs and other innovations. Hear the viewpoints of these expert panelists, and ask questions during this live event.

Panelists Include:

- **Rhonda Grabow**, VP Strategic Planning, Innoviant, Wausau, WI
- **Michael Jacobs**, Principal, Buck Consultants L.L.C., An ACS Company, Atlanta
- **Lisa Zeitel**, Principal, Health & Benefits Consulting Practice Leader, Mercer Health & Benefits L.L.C., Norwalk

QUESTIONS TO BE ADDRESSED:

- What makes prescription drugs so costly?
- What strategies for drug benefits should employers consider now for active employees and retirees?
- How can employers design their benefit plans to provide access to appropriate drugs in an affordable way?
- What should employers be doing to educate members about drug cost and utilization?

SAVE THE DATE:

Tuesday, December 12, 2006

TIME:

11:00 EST / 10:00 CST / 8:00 PST

BI's Online Executive Forum™ webinars, developed by our editorial staff, are highly informative online events where noted panelists and respected business leaders come together with BI's editors to discuss the most pressing issues in this live interactive format. **Register now for this free webinar.**

www.BusinessInsurance.com/Webinars

Property/casualty insurers' nine-month 2006 results

Major U.S. P/C insurers ranked by net income. All amounts are in thousands of dollars.

	Net income	Corporate Percent increase (decrease) 2006-2005	Consolidated revenues 2006	Combined ratio 2005 ¹	Combined ratio 2005 ¹	Property/casualty operations Net premiums written 2006	Percent increase (decrease) 2006-2005	Policyholder surplus 2006	Percent increase (decrease) 2006-2005
American International Group Inc.	\$10,609,000	5.7%	\$83,201,000	88.2%	99.1%	\$34,113,000	7.5%	N/A*	N/A*
St. Paul Travelers Cos. Inc.	3,019,000	109.2	18,621,000	88.6	97.9	15,713,000	4.1	\$19,961,000	12.5%
Hartford Financial Services Group Inc.	1,962,000	8.6	18,921,000	89.5	91.2	8,035,000 ²	1.5	7,800,000	11.4
Chubb Corp.	1,874,000	54.8	10,402,000	84.5	93.3	9,000,000	(2.0)	10,450,000	20.8
ACE Ltd.	1,640,000	107.1	9,859,000	88.2	98.9	9,166,000	-	13,511,000	32.1
Liberty Mutual Insurance Co.	1,171,000	51.3	17,512,000	101.8 ²	105.5 ²	11,779,000 ²	12.0	11,508,000	20.3
Cincinnati Financial Corp.	799,786	90.7	3,555,607	94.2	91.0	2,422,860	3.2	5,072,850	8.9
CNA Financial Corp.	779,000	62.0	7,533,000	95.5	106.2	5,342,000	2.9	7,827,000	6.4
SAFECO Corp.	663,600	32.6	4,757,400	87.4	91.7	4,303,600	(2.6)	3,933,800	8.7
Old Republic International Corp.	360,235	(11.8)	2,856,755	90.3 ²	91.4 ²	1,461,504 ²	4.2	2,289,494	6.9
American Financial Group Inc.	317,900	269.2	3,127,600	88.4	101.8	2,064,800	8.6	2,507,200	9.3
Ohio Casualty Corp.	142,800	5.5	1,254,500	96.1	96.9	1,086,400 ²	(2.3)	1,030,500	10.0
RLI Corp.	78,956	(11.3)	452,832	88.7 ²	81.5 ²	429,960 ²	14.3	707,795	2.1
Argonaut Group Inc.	74,600	35.4	695,600	94.3	99.4	604,600	6.6	809,100	23.7
Cumulative	\$23,491,877	28.6%	\$182,749,294	90.2%	98.1%	\$105,521,724	4.5%	\$87,407,739	15.7%

(1) Includes dividends (2) Statutory accounting method (*NA) Company did not provide data.

Source: BI survey

P/C results: Low losses, high rates boost nine-month insurer profits

CONTINUED FROM PAGE 3

tion, but it has not deteriorated into a price war."

Mr. Ward said price softening is the only negative factor from insurers' perspective in the nine-month results. "There's definitely, for virtually all commercial lines of business, a flat to downward bias in the pricing scenario," he said.

John Iten, a director at rating agency Standard & Poor's Corp. in New York, said the industry's combined ratio is likely to deteriorate somewhat in the fourth quarter—although remain very good—because that is when companies historically boost their reserves. "We don't expect anything huge, but there will be some reserve strengthening," he said.

While it has been a strong year for P/C insurers, observers say 2007 results are unlikely to match this year.

"I think 2006 will prove to have

been a peak year for two reasons," said Cliff Gallant, an analyst with investment bank Keefe, Bruyette & Woods Inc. in New York. One is that weather "will be more normal in the future. I think it's more of a reasonable expectation there will be more bad weather, if nothing else, more hail and small storms." Furthermore, he said, "pricing seems to be topping off" and "now it will start to squeeze margins as well."

"Most companies have ample, if not excess capital," Mr. Cohen said. "It is fair to expect competition to continue and prices to move lower.... The next conclusion would be that the current underwriting margins are probably not sustainable."

He added, "We think the deterioration will be gradual, but you'll begin to see it in 2007," along with "a more normal level of catastrophes."

Mr. Ransom said one unanswered question is "what is going on with loss cost trends." It is "hard to know

with long-tailed casualty lines," he said. "We've put in a lot of higher terms and conditions during the hard market, which everyone says are still there." This means the

"There's definitely, for virtually all commercial lines of business, a flat to downward bias in the pricing scenario."

John L. Ward,
Cincinnati Partners L.L.C.

industry might have "better combined ratios for a longer period than people expect."

Mr. Ward said one big issue for the industry is evaluating how it will

handle the excess capital that it is building at "record-breaking levels." Indications are that commercial insurers "are planning to pursue significant stock repurchase plans and increase dividends. If so, that will be a positive factor in avoiding the temptation by the industry to use the excess capital to dramatically cut rates and write bad business at rates they shouldn't write it at," he said.

Acquisitions are another possible use of the excess capital, observers say.

"The environment is becoming more conducive to consolidation," Mr. Cohen said. With rate increases slowing, organic growth "is more of a challenge," he said.

In addition, "balance sheets have gotten a lot better, so potential buyers may have excess capital and potential targets probably have more adequate loss reserves," which would make them more attractive targets. "We're still not expecting a rush of deals to occur, but would

expect the pace to pick up modestly," said Mr. Cohen.

Suitors are "not as skittish as they were a few years back when actuaries, external and internal, were still grappling" with the 1998-2001 accident years, said Daniel Ryan, vp in Oldwick, N.J.-based A.M. Best Co. Inc.'s property/casualty division.

However, "because it's really been one of the best of times" in the property/casualty insurance industry, many potential acquisition targets "basically want to stay independent" so "there's give and take there," said Best Vp Andrew Colaninno.

John Gwynn, managing director at Memphis, Tenn.-based Morgan Keegan & Co. said, "I think we'll continue to see a fairly muted amount of activity for the same old reason it's been muted over the past year—people don't like buying other people's reserves, because there's always issues over reserves," despite the overall redundancy.

Harass: California clarifies legislation mandating prevention training

CONTINUED FROM PAGE 4

mal education and training or substantial experience.

Shanti Atkins, president and chief executive officer of San Francisco-based ELT Inc., which provides employment law training programs, said "a lot of self-proclaimed harassment prevention experts... sort of popped up for obvious reasons" immediately after the law

was passed.

"This is something that clearly is not permissible under the (recently released) regulations," said Ms. Atkins.

The regulations and legislation signed into law earlier this year by Gov. Arnold Schwarzenegger also clarify that while employees in all locations will be counted in determining which firms must conduct the sexual harassment prevention

training, it is required only of supervisors who are in California.

Maggie Martinez, human resources director at the Los Angeles-based AIDS Healthcare Foundation said, "it has not been difficult at all" to comply with the legislation. The foundation, which works with San Francisco-based Workplace Answers Inc., a provider of Web-based training, has about 700 employees, she said.

Lynn Lieber, Workplace Answers' chief executive officer, said, though, that implementation of the legislation "has been quite burdensome for some people," because of the negative feelings generated by the time required for training and "just the logistics of rolling it out" for firms with large employee populations. "But I think it's very necessary and important," she added.

Ms. Lieber noted that Connecticut is the only other U.S. state that has comparable legislation.

"I think there's been a real dearth of guidance in training," despite federal laws that call for training in various areas. The California legislation "has actually been helpful, in a way, and I think more and more states are going to adopt something like this," said Ms. Lieber.

Contingent: Spitzer takes aim at payments in personal lines

CONTINUED FROM PAGE 1

Not only did MMC, Aon Corp. and Willis Group Holdings Ltd. cease collecting contingent commissions in 2004 as a result, but ACE, AIG, St. Paul Travelers and Zurich, which were accused of colluding with MMC in the alleged bid-rigging scheme, also agreed to curtail their contingent payments in settlements reached with Mr. Spitzer and other authorities earlier this year.

The four insurers agreed to cease paying contingents on excess casualty coverage and on any line, product or segment of business if insurers that represent 65% of the gross written premiums on that line—including direct writers—were not paying such commissions or were to reach similar agreements.

Last week, Mr. Spitzer said his department's analysis of 2005 data provided by A.M. Best Co. Inc. showed that the 65% "tipping point" had been reached on six additional lines: homeowners multi-peril, private passenger automobile physical damage, private passenger auto no-fault, private passenger auto liability, boiler and machinery, and financial guarantee.

As a result, the four insurers must cease paying contingent commissions on those lines beginning Jan. 1, 2007, Mr. Spitzer's letters state.

Connecticut Attorney General Richard Blumenthal and Illinois Attorney General Lisa Madigan also joined in the notices.

Industry observers were not sur-

prised that homeowners and personal auto businesses hit the 65% threshold test, given the market share penetration of direct writers. Whether other commercial lines outside of boiler and machinery and financial guarantee will be hit in the future will depend on how many if any other insurers settle with Mr. Spitzer, sources note.

In general, observers have been skeptical about whether the 65% test would be met given the highly competitive nature of the commercial lines industry (*BI*, April 17).

And while Mr. Spitzer's latest ban does curtail contingents on boiler and machinery and financial guarantee coverage, the impact is not great, as they are small specialty lines of coverage, sources say.

Hartford, Conn.-based Hartford Steam Boiler Inspection and Insurance Co., a major writer of boiler and machinery insurance, for example, is owned by AIG and, like ACE, AIG ceased paying all contingents to brokers in 2004 in the wake of Mr. Spitzer's suit against MMC.

These developments appear not to greatly impact commercial lines, and the Council of Insurance Agents & Brokers has confirmed that surety bonds do not count in the definition of financial guarantee insurance, said Joel Wood, senior vp-government affairs for the Washington-based CIAB.

The move is expected to have a far bigger impact on the personal lines market.

Independent agency groups last

"It's ironic ... the first people to be hit are the independent agents at the retail level who are not and have not been accused of engaging in illegal bid rigging or false quoting, and yet they're the ones losing significant compensation."

Robert A. Rusbuldt, IIABA

week blasted Mr. Spitzer's move, saying the ban is misdirected toward personal lines business when the alleged illegal activity uncovered by his investigations occurred in commercial lines.

They also note that incentive payments such as contingent commissions remain a legal way to compensate sales forces, and the groups vowed to continue to defend the longstanding industry practice.

"The bottom line is when you think about this logically, it makes no sense," said Robert A. Rusbuldt, chief executive officer of the Alexandria, Va.-based Independent Insurance Agents & Brokers of America

Inc. "It's ironic that the illegal activities that were originally uncovered involved large commercial accounts and big brokers and the first people to be hit are the independent agents at the retail level who are not and have not been accused of engaging in illegal bid rigging or false quoting, and yet they're the ones losing significant compensation."

In a statement, Len Brevik, executive vp and CEO of the Alexandria, Va.-based National Assn. of Professional Insurance Agents, said: "Eliminating all contingent compensation is patently unfair to those who never committed abuses, such as Main Street insurance agents. Main Street agents are not megabrokers. This is an example of settlement powers run amok. Our job is to make sure that this judicial madness does not become a model imposed on the entire insurance industry."

In a statement, the IIABA also said it will continue to fight to preserve the right of insurers to pay contingent commissions.

"It is interesting" that Mr. Spitzer has essentially gone after personal lines where most of the business is placed by agents that work on behalf of insurers rather than buyers, noted Ken A. Crerar, president of the CIAB.

More than that though, this "makes it very clear that we've got a single attorney general who's impacting 53 jurisdictions in a regulatory process that is not being regulated," he said.

"Our argument has been that we should not be defining compensation. We should be disclosing the relationships" between clients, insurers and brokers, Mr. Crerar said.

"The bottom line is that incentive compensation arrangements are legal, valid and a valuable way of rewarding outstanding sales performance by producers in many industries," a spokesman for the Property Casualty Insurers Assn. of America. "We support legislation that clarifies such relationships and brings more transparency to the insurance transaction, but don't believe consumers are best served by arbitrary thresholds that penalize personal lines consumers and insurers who were not involved with Mr. Spitzer's investigations."

A spokeswoman for St. Paul Travelers said the insurer is complying with the settlement. "We remain committed to providing our agents with an attractive overall compensation opportunity and we will continue to offer a competitive compensation program," she added.

In a statement, Schaumburg, Ill.-based Zurich said it is reviewing the notice "and will take appropriate responsive action consistent with the terms of its agreement."

A spokesman for AIG said the insurer "is complying with the terms of the settlement."

A spokesman for ACE declined comment.

Calls into Mr. Spitzer's office were not returned.

Tamiflu: Questions raised on stockpiling antiviral medications

CONTINUED FROM PAGE 4

risk consulting practice with Marsh USA Inc. "We don't think there is enough evidence."

The World Health Organization and the U.S. Centers for Disease Control and Prevention have selected oseltamivir phosphate, the generic name for Tamiflu, as one of two antiviral drugs of choice—out of four such drugs on the market—

that could work as a prophylactic or a treatment for avian flu.

A second, less popular antiviral drug, Relenza, also was selected. Unlike the Tamiflu pill, Relenza—made only by Research Triangle Park, N.C.-based GlaxoSmithKline Inc.—comes in a powder form which must be inhaled through the mouth using a special device. And unlike Roche, Relenza manufacturer GlaxoSmithKline P.L.C. hasn't widely marketed Relenza.

Meanwhile, the World Health Organization and the U.S. Centers for Disease Control have warned there is not enough clinical evidence that that Relenza or Tamiflu would be effective in a pandemic.

Tamiflu made headlines last month when British scientists reported that the medication was ineffective in fighting avian flu in some patients in Southeast Asia, where most of the infections from the H5N1 strain of the virus have occurred. In response, Roche has maintained that there was no proof that the strain is resistant to Tamiflu.

The avian flu has already caused more than 150 deaths in 20 countries, according to the WHO. All reported cases were the result of humans coming into contact with infected birds; there have been no reports of human-to-human transmission of the avian flu virus. However, health experts are bracing for such transmission, which many believe could spur a global outbreak

weeks after first occurring.

For businesses worldwide, a pandemic could be catastrophic, and many companies have begun preparing for the worst.

Dr. Craig, who has helped guide companies in preparing for a pandemic, said that steps such as equipping employees to telecommute, setting up alternative offices and screening employees for illnesses before allowing them to work are among the most effective ways of preparing for a pandemic.

Unanswered questions

Stockpiling Tamiflu, he said, raises several issues.

"The first question is, who are (companies) going to give it to? Everybody?" Dr. Craig said. "How are you going to administer it? Does the company really want to be responsible for giving out medications?"

Because Tamiflu is a prescription drug, companies must have onsite doctors to prescribe it or have access to a clinic that will store and prescribe the drug to employees. Additionally, companies need to find secure storage for the drug, which has a shelf life of five years.

Gisele Norris, a San Francisco-based senior consultant with Aon Healthcare, said the administration of Tamiflu for companies that are stockpiling could cause additional problems.

"Would there be a hierarchy of who to give (the drug) to?" she

asked. "Companies that give it to one employee and not the other could face legal issues because of it."

Ms. Norris said it is "hard to say" whether stockpiling is a good idea or not.

"Some companies that I know with multinational operations have stockpiles of Tamiflu, and they are facing major issues like security," she said. "If there's a pandemic, there's going to be widespread panic. With companies having stockpiles in some warehouse somewhere, people who need it may not get it."

Dr. Craig said companies also need to be concerned about potential side effects and the additional risks they present. Tamiflu, like many drugs, comes with a host of potential side effects that include dizziness, nausea and vomiting.

Incorporating the drug into a company's pandemic plan also might lead to lax adoption of other measures that are proven to prevent the spread of viruses, Dr. Craig said.

"Relying on the drug can lead to risky behavior," he said. "It may make you careless."

As for costs, a course of Tamiflu can cost between \$25 and \$64, according to Roche. "For a large corporation, that's a lot of money, particularly if they want to use it as a prophylactic," he said.

Dr. Craig added that he hasn't seen droves of companies line up to order Tamiflu, but said he believes companies may be "scared" into

doing so.

New York-based Marsh & McLennan Cos. Inc., which has more than 60,000 employees, weighed the option during the past year and decided not to order the drug, he said.

Bradley R. Wood, senior vp-risk management for Bethesda, Md.-based Marriott International Inc., said the hotel chain considered Tamiflu as part of its pandemic plan, but opted against ordering after finding no evidence from credible sources that the drug would work against avian flu.

"We were looking toward the experts on this and they are saying not to stockpile," Mr. Wood said.

In addition, the Chicago-based American Medical Assn. and the Washington-based National Business Group on Health have warned against stockpiling Tamiflu for several reasons, including fears of misuse or mishandling of the drug.

Marriott, which has 143,000 employees worldwide, said it is taking other precautions, such as beefing up hygiene practices and setting up remote workspaces, to prepare for a pandemic.

Lance Ewing, vp-risk management for Memphis, Tenn.-based Harrah's Entertainment Inc., said his company also opted against stockpiling due to lack of evidence.

"I'm sure the company that makes Tamiflu would like to see their market share increase," he said.

ADVERTISER

INDEX

Issue of December 4

ADVERTISER	PAGE #
Ace	7
AIG	Cover 4
American Institute for CPCU	20
Aon Corporation	Cover 2
Beazley Group Inc.	10
Burnham System	24
Business Insurance	6, 27
CNA Insurance	17
C.V. Starr	13
Dempsey, Myers & Co., LLP	6
Endurance Re	23
FM Global	14
Holborn Corporation	Cover 3
Insurance Overload Staffing	22
Inwald Consulting Services	24
Liberty International Underwriters	15
Liberty Mutual	5
Munich Reinsurance America	19
Saxe, Doernberger & Vita	30
Uniprise	18
Wausau Signature Agency	12
XL Insurance	9
Zurich North America	2, 21

News In Brief

CONTINUED FROM PAGE 1

mids ze commercial policies in the New Orleans area next year. A spokeswoman for the St. Paul, Minn.-based insurer declined to specify how many policyholders would be affected. The insurer found it had a high concentration of hurricane-prone risks in Louisiana and decided it would redistribute its exposures in the state, she said. St. Paul Travelers is the second-largest writer of commercial property insurance in Louisiana, she said.

Labor Department seeks FMLA views

The Department of Labor is asking for public comment on its Family and Medical Leave Act and FMLA regulations. Noting that it has been more than a decade since the DOL first published regulations to help employers comply with the FMLA, the DOL is seeking comments on numerous technical issues, such as the definition of a serious illness under FMLA, as well as general issues, such as methodologies that could be used to estimate usage of FMLA leave. Comments can be submitted by e-mail to whdcomments@dol.gov.

Ill. Supreme Court rejects class action

In a unanimous ruling the Illinois Supreme Court has ruled that most mass tort personal injury cases should not be litigated as class actions. In *Smith et al. vs. Illinois Central Railroad Co.*, the court ruled that class actions are inappropriate when the nature and extent of plaintiffs' individual injuries—rather than questions of liability for a catastrophic incident—dominate the case. The case was brought by residents of Tamaroa, Ill., who sued the railroad after they were exposed to dangerous chemicals after a freight train derailment.

USI gets new trial in copyright case

The U.S. District Court for the Eastern District of Pennsylvania in Philadelphia has ordered a new trial

on damages and statute of limitation issues in a copyright infringement case involving insurance brokerages USI Holdings Corp. and The Graham Co. In June, a Philadelphia jury found that a USI subsidiary and a former Graham employee, who joined one of USI's predecessor firms in 1991, violated copyright infringement laws. The jury ordered the subsidiary—USI MidAtlantic Inc.—to pay Graham nearly \$16.6 million and the former employee to pay nearly \$2.3 million.

Aon, Gallagher expand Cayman operations

Aon Insurance Managers (Cayman) Ltd. has acquired a 50% stake in Cayman National Insurance Brokers Ltd., a unit of Cayman National Corp. The agreement presents a significant opportunity for growth of reinsurance operations, particularly as Cayman Island regulators explore ways to facilitate its development as a reinsurance domicile, said Daniel MacLean, managing director of the Aon unit. Meanwhile, Gallagher Captive Services (Cayman) Ltd. will acquire Fair Winds Captive Management (Cayman) Ltd., effective Jan. 1, as part of its effort to expand its captive operations in the domicile. The combined entity will manage 15 captives with more than \$100 million in premium volume.

Willis appoints Millwater as COO

Willis Re Chairman Grahame Millwater has been appointed to the additional post of chief operating officer of London-based Willis Group Holdings Ltd. The COO position was formerly shared by Tom Colrairie and Richard Bucknall. Mr. Colrairie has decided to leave the brokerage at the end of the year, Willis said. Mr. Bucknall, who is chairman of Willis Ltd., the brokerage's U.K. unit, will assume the additional post of chief executive officer of the unit from Mr. Colrairie. Mr. Bucknall also will remain a vice chairman of the group.

Fireman's Fund names CEO

Joseph J. Beneducci has been named chief executive officer of Fireman's Fund Insurance Co. Mr. Beneducci, former president and chief operating officer of the Novato, Calif.-based insurer, succeeds Charles Kavitsky, who has been named president of Allianz America with responsibility for Fireman's Fund and Allianz Life Insurance Co. of North America, the company said.

Goodyear: 'Significant' employer principle at stake

CONTINUED FROM PAGE 3

Employment law experts say that a ruling in favor of Ms. Ledbetter could mean new administrative headaches for employers, and might have an impact beyond Title VII.

There is "a significant principle at stake here for employers," which is "the certainty that statutes of limitations provide employers," said Richard Greenberg, a partner in the New York office of Jackson Lewis L.L.P. "A decision here overturning the 11th Circuit would take away that certainty."

'What the plaintiff is looking to do here is open the door for claims that could date back many years.'

Debra Friedman, Cozen O'Connor

"It's just not a monetary issue—it is an administrative burden, it is an evidentiary issue," said Robin Conrad, senior vp of the National Chamber Litigation Center Inc., the legal arm of the Washington-based U.S. Chamber of Commerce. The NCLC filed an amicus brief with the high court supporting Goodyear. Ms. Conrad pointed out that personnel who made the pay decisions in question may no longer be employed by the company. "It really places a huge burden on the employer and flies in the face of the 180-day statute of limitations period that is clear as day in Title VII."

"It is important for employers, because it has the potential to expand the number and type of claims employees can bring," said Debra Friedman, a member at the law firm of Cozen O'Connor in Philadelphia. "What the plaintiff is looking to do here is open the door for claims that could date back many years. Therefore, employers could be faced with having to deal with claims that are stale," she said.

"When we look at the practical problems of defending against stale claims, you're looking at witnesses whose memories have faded, witnesses who may not be available, either due to inability to locate

them or due to death or incapacity," Ms. Friedman said.

"The other issue you have besides witnesses are documents, because currently employers are required to keep documentation for various periods of time, but generally one year under EEOC regulations. If you're allowed to go back many years to bring a disparate pay claim, employers are forced to retain documents for potentially the course of an employee's career," she said.

A top lawyer with a group that filed an amicus brief supporting Ms. Ledbetter disagreed about the impact of claims beyond the Title VII limit of 180 days.

"It does not require a huge administrative burden," said Jocelyn Frye, general counsel of National Partnership for Women & Families in Washington. "This has been the way the law has operated, and it has been clear for many years that if discrimination occurred, you're going to be liable for that discrimination as long as you pay them pursuant to a discriminatory policy."

If the court holds for Ms. Ledbetter, "there's nothing that would make that obligation any tougher than it would be already," said Ms. Frye. If discriminatory pay practices go uncorrected for years, "that's money that's building up year after year after year. It's particularly important for women to be able to challenge it once they discover it," she said.

"The key issue in the case is whether the Supreme Court is going to reaffirm its holding in the *Morgan* case that employers' decisions about whether to hire, fire, promote or transfer would only be actionable if they occur within the limitations period and extend that holding to employers' decisions about how much to pay their employees," said Jonathan Wetchler, a partner in Philadelphia law firm Wolf, Block, Schorr & Solis-Cohen L.L.P. Mr. Wetchler was referring to the high court's 2002 decision in *National Railroad Passenger Corp. vs. Abner Morgan*.

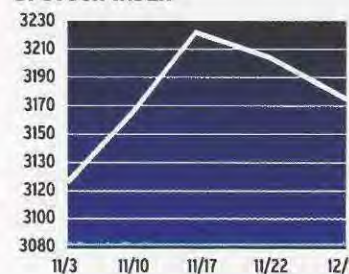
"The court's decision could absolutely apply beyond Title VII, such as to claims under the Age Discrimination in Employment Act. The court typically applies the same concepts concerning continuing violations under all the federal civil rights statutes," Mr. Wetchler said. "I would be shocked if the court didn't say that the rule in *Morgan* applies to compensation decisions."

Stock Index

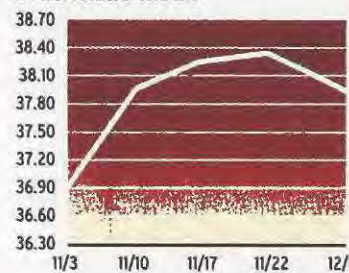
[11/27 - 12/1]

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

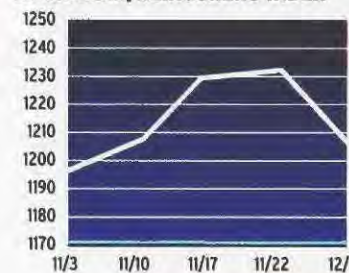
BI STOCK INDEX



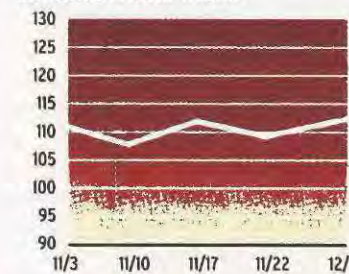
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

Indicator	Value	Change
BI STOCK INDEX	2175.41	-0.63
DOW JONES	12194.13	-0.70
S&P 500	1396.71	-0.30

LARGEST GAINS

Sierra Health Services	8.29%
EMC Insurance Group	8.07%
WellPoint Health Networks	4.90%
UnitedHealth Group	4.54%
MBIA Inc.	3.48%

LARGEST LOSSES

Odyssey Re Holdings	-6.76%
Meadowbrook Insurance	-6.54%
American Safety Insurance	-5.77%
Gainsco Inc.	-5.62%
SCPIE Holdings Inc.	-4.89%

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

GETTING SOAKED BY YOUR INSURER?

When your insurer says no, we've got you covered.

ADVOCATES FOR POLICYHOLDERS IN INSURANCE COVERAGE DISPUTES

203.287.8890 • www.sdvlaw.com

SDV
SAXE DOERNBERGER & VITALE, P.C.
ATTORNEYS AT LAW

Katrina: Ruling on definition of flood could raise claims levels

CONTINUED FROM PAGE 1

Judge Duval disagreed and held that the language in most of the policies was ambiguous regarding exclusions for manmade flooding.

He did, however, uphold the contention of both State Farm Fire & Casualty Co. and Hartford Insurance Co. of the Midwest that their policies did not cover flooding under any circumstances.

At the heart of Judge Duval's decision was the Insurance Services

Office Inc.'s water damage exclusion contained in many of the policies in question. Judge Duval wrote that "flood is not defined anywhere in the policy."

"The plethora of insurance case law where the issue of causation is at play with respect to the application of a water damage exclusion is a further demonstration that the term is subject to two reasonable interpretations," with some courts limiting the exclusion to naturally occurring events, wrote the judge.

"It is the considered opinion of this court that because the policies are all-risk, and because 'flood' has numerous definitions, it reasonably could be limited to natural occurrences. Simply put, the language of the ISO Water Damage Exclusion chosen by the insurer is unclear." Under Louisiana law, the court is "constrained to find the language ambiguous," he wrote. "To find otherwise, leads to absurd results. Once this finding is made, the court is further constrained to interpret it against the insurer."

The judge found that the ISO water damage exclusion contained in the Travelers Property Casualty Co. of America policy held by Xavier University in New Orleans is "ambiguous and as such affords Xavier coverage for damages provided that Xavier can prove that the flooding it experienced was caused by the negligence of man."

A spokesperson for St. Paul Travelers Cos. Inc. said, "We respectfully disagree with Judge Duval's ruling, and intend to appeal it because the ruling is inconsistent with many other court rulings that held a flood is a flood, whether or not manmade factors are involved. The language in our policies clearly excludes damage from flood water."

A spokesperson for another insurer involved in the case—Allstate Insurance Co.—said the Northbrook, Ill.-based insurer also plans to appeal.

If it ultimately stands, the decision may help some commercial policyholders, say legal experts.

Douglas Widin, who represents policyholders as counsel in the Philadelphia office of Reed Smith

L.L.P., said that language in the homeowners' policies and the Xavier University policy are "quite similar." Reed Smith was not involved in the case.

Mr. Widin said there are "a lot of policies out there on standard ISO forms that are going to have the same type of language as the standard ISO form homeowners' policies that are the subject of the decision."

He cautioned, though, that large commercial properties "are going to be mostly insured under manuscripted policies and most of those manuscripted policies have flood coverage in them" even if the coverage is subject to sublimits.

"To the extent that the ISO" language was problematic in its definition of flood, the same language in an ISO commercial property policy would be affected by the decision, said Randy J. Maniloff, a partner in Philadelphia-based White & Williams L.L.P. Mr. Maniloff, who represents insurers but who was not involved in the case, called the decision a "classic example of result-oriented jurisprudence. I don't think the decision is adequately reasoned—I think he strains to find an ambiguity that doesn't exist."

"Any court that wants to find coverage can take the easy way out and say the term is ambiguous and work backwards to justify the result," said Mr. Maniloff. "There's a lot of law out there that goes against this decision."

Mr. Maniloff called the decision "reminiscent of the early days of the coverage battles over asbestos and pollution. There, the courts created legal fictions to find coverage that

otherwise did not exist because it enabled them to solve these widespread social problems. The distinction between an artificial and naturally occurring flood is also a legal fiction being created to solve a huge social and economic problem."

Robert Hartwig, executive vp and chief economist of the Insurance Information Institute in New York, doubted whether the ruling would withstand an appeal.

"We don't believe it will be upheld on appeal," he said. But if by some "remote" possibility the decision is upheld by the 5th U.S. Circuit Court of Appeals, it would become a "multibillion dollar decision, because it is a federal decision that is not confined to Louisiana."

Mr. Hartwig, who will become the I.I.I.'s president on Jan. 1, said the ruling would hurt homeowners insurers but would be less severe on commercial property policyholders "because commercial flood insurance is widely available" and has responded to Katrina claims.

In contrast, Mr. Widin said he thinks "the judge did a very nice job and displayed a judicial temperament" in approaching the case. "For example, he did not reach out unnecessarily to address the anti-concurrent causation issue," he said.

"It's not a total victory for either side" with the possible exception of State Farm and Hartford, Mr. Widin said.

In re Katrina Canal Breaches Consolidated Litigation, U.S. District Court for the Eastern District of Louisiana, No. 05-4182. Nov. 27, 2006

Reinsurer wordings examined

NEW ORLEANS—Some reinsurers may be on the hook if a Louisiana district court's decision to allow some claims for Hurricane Katrina-related water damage in New Orleans is upheld.

If the decision stands on appeal, contract wording will determine whether reinsurers ultimately will face claims from insurers, said Julius A. Rousseau, a reinsurance attorney with Herrick, Feinstein L.L.P. in New York.

"If the reinsurer has the same flood definition, they are going to have to follow the fortunes" of the primary insurer, Mr. Rousseau said. "If your reinsurance contract defines flood differently than your underlying policy, which could happen on a treaty basis, you can get into some battles" because there is a difference in conditions in the same contract, he said.

"There is a lot of case law as to

what flooding really means, and a flood is a flood...a flood is water rising, man-made or artificial," said Stephen K. Bolland, president of reinsurance intermediary Gill & Roeser Inc. in New York.

"At the moment, (the decision) brings in a little uncertainty," Mr. Bolland said, noting that companies such as "State Farm and Allstate at that time were not huge buyers of reinsurance."

And "if they've already gone through their reinsurance layer...the insurers will be back on the hook," said Paul Budde, manager, ReMetrics-Product Development and Applied Research, for Benfield Group Ltd. in Minneapolis.

In any event, predicted Mr. Rousseau, "We're going to see some changes to contract wording...so (reinsurers) get out of this problem."

—By Rupal Parekh

ERM: Online tool to advance practice

CONTINUED FROM PAGE 1

ERM process using one of several existing ERM standards or a method of their own design, said Mr. Phelps, director of risk management for Blue Cross & Blue Shield of Florida Inc. in Jacksonville. It also is designed to be supported by ERM tools available at the RIMS Web site, he said.

RIMS has made the model available at www.rims.org. To promote ERM industrywide, the tool, which runs on software developed by LogicManager Inc. of Boston, is free to all RIMS members. In addition, a limited version is available to non-members.

The first step in using the tool is answering a series of questions about the subject organization's ERM process, which takes about 15 to 20 minutes.

The model then generates a report that scores the process on seven attributes (see box). The model scores each attribute on a maturity level that ranges from one to five, with one denoting no maturity in that area and five representing a leadership position.

For each attribute, the model suggests what the organization would need to accomplish if it wanted to reach higher maturity levels.

The model also would provide

risk managers with a "personalized assessment" of their entire risk management program as measured against the model, Mr. Phelps said.

After about 500 risk managers have used the model and contributed data on their ERM processes, the tool also would allow them to benchmark against other organizations by business sector and size, Mr. Phelps said.

Risk managers optimistic

Overall, risk managers said they are looking forward to using the tool.

"It looks like it would give a pretty good assessment of where I need to go to get to the best in class," said Gary F. Kilburg, assistant treasurer, risk management, at Whirlpool Corp. of Benton Harbor, Mich. Mr. Kilburg has been implementing an ERM process at Whirlpool over the past few years.

Walter N. Coleman of Atlanta-based First Data Corp. said he anticipates using the results of the tool's self-assessment feature when First Data next renews its directors and officers liability and errors and omissions coverage. During negotiations with underwriters in recent years, the topic of how far First Data's ERM process has progressed has been "practically all we've talked about," said Mr. Coleman,

senior vp-risk, control and audit.

In addition, "anything you can do" to make the corporate board feel more comfortable with how its organization's ERM process compares with others, "the better off you are," Mr. Coleman said.

Plano's Mr. Page said he was "excited" about the tool because so little ERM guidance is available to public sector risk managers. Mr. Page described his ERM process as in the "research and development phase."

Plano's risk management department initially will use the model as a "diagnostic tool" that will help guide the department as it develops an ERM process, said independent consultant John R. Billingham. Later, risk management will use the tool as a "scorecard" to compare its process with those at other public and private entities, he said.

While it will be a helpful addition to risk managers' toolbox in the early phases of developing an ERM process, the model will not be an ERM panacea, risk managers and consultants said.

Even with the tool, "there's still a hunger for a step-by-step manual on doing ERM," Mr. Hoskinson said.

Prakash Shimpi, the New York-based ERM practice leader for the Tillinghast unit of Towers Perrin,

MEASURING ERM

RIMS' Risk Maturity Model assesses seven attributes of an organization that has an enterprise risk management process. Those attributes are the organization's:

- **ERM-BASED APPROACH**, or the degree of executive support for ERM. That support would extend beyond regulatory compliance to all processes, functions, business lines, roles and locations.
- **ERM PROCESS MANAGEMENT**, or the degree that ERM has been woven into business processes to identify, assess, evaluate, mitigate and monitor risk using qualitative and quantitative methods and tools.
- **RISK APPETITE**, or management understanding of the risk-reward tradeoffs in business.
- **ROOT CAUSE DISCIPLINE**, or management's discipline for examining how risk is related to people, the external environment, systems, processes and relationships.

- **ABILITY TO UNCOVER RISK** by collecting information from employees, databases and other electronic files to document risks and opportunities and understand their dependencies and correlation across the enterprise.
- **MANAGEMENT PERFORMANCE**, or how well management executes its vision and strategy by working from financial, customer, business process and other perspectives gleaned from a balanced scorecard or a similar approach.
- **BUSINESS RESILIENCY** and sustainability as a result of the ERM process being integrated into operational planning for, among other things, supply chain disruptions, dramatic market pricing changes, cash flow volatility and business liquidity.

agreed. He said the model will help risk managers "think about things they can be doing" but is short on providing specific guidance.

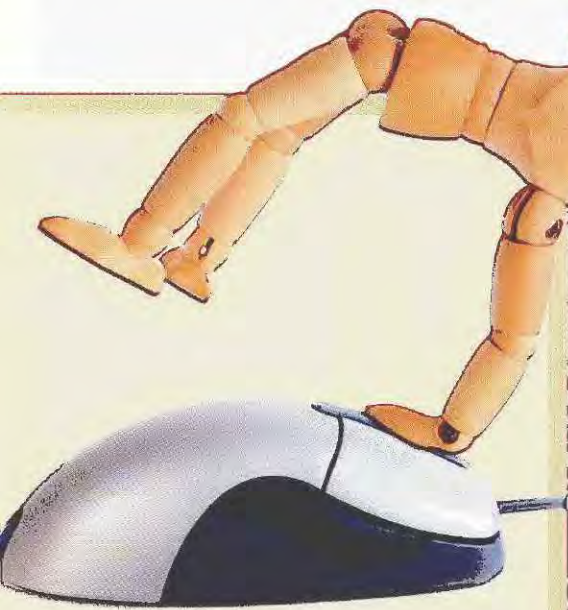
Because of some "jargon" language in the model, risk managers likely will interpret its prompts differently, said Christy Kaufman, an associate director in the ERM practice at Chicago-based Aon Corp. That could lead to varying results for ERM processes at the same stage of development, she said.

James Lam, a former chief risk officer at two companies and now the head of consulting practice James Lam & Associates of Wellesley, Mass., said benchmarking results are more valuable when organizations measure each other in person rather than online.

"This way, the ERM staff can obtain firsthand knowledge of lessons learned, ask important questions and observe specific applications of ERM," he said.

Business Insurance

END PAGE



Slouching can be good ergonomics

Mom doesn't always know best.

At least that's the conclusion one could draw from some new research by a team of scientists in Scotland that found—contrary to what mothers have been telling children since the invention of the chair—it's not a good idea to sit up straight. In fact, it's a bad idea unless you happen to like lower back pain.

The scientists found that leaning back in a chair at an angle of about 135 degrees, rather than sitting upright, reduces pressure on the lumbar discs. That, in turn, helps keep the lower back from aching.

"Really the best position is what you get in a La-Z-Boy," researcher Dr. Waseem Amir Bashir reportedly said of the study presented to radiologists in Chicago. Even so, "that wouldn't work well for someone using a computer."

The research, conducted at Woodend Hospital in Aberdeen, Scotland, reinforces what ergonomics experts have been saying for years—that maintaining flexibility is the key to lower back health. Federal health officials say lower back pain is the No. 1 cause of job-related disabilities in the United States.

Despite doubts cast on the motherly advice to sit up straight, no one had stepped forward to examine a more controversial maternal imperative: whether you should, indeed, have to clean your plate before you can have dessert.



Ancient wiring ignores most common perils

Every day, everywhere, people face the risk of injury or death. So why do we have a hard time distinguishing between high-probability risks and remote ones?

Researchers cited in a recent Time magazine article suggest modern humans possess a prehistoric brain more suited to fight or flight than thoughtful risk analysis. We're just wired to focus on possibilities more than probabilities, and our emotions often trump rational thinking.

That could explain why many people worry more about the low odds of getting mad cow disease than suffering a heart attack, which is common. Hundreds of thousands die annually in the United States from the effects of high cholesterol, yet just a handful of people worldwide contract bovine spongiform encephalitis.

A sense of control, even an illusory one, contributes to people's propensity to worry about remote risks and ignore common ones, researchers say. Fear of flying is a prime example. Many who dread a plane crash—a slim possibility—think nothing of getting behind the wheel, even though auto accidents claim tens of thousands of lives a year.

Perhaps our brains will evolve to where we'll focus on analyzing risk rather than reacting to it. What are the odds?

Hail, hail: The risk's all here

Tulsa, Okla., tops the list as the most hail-prone metropolitan area in the United States, according to hazard mapping company CDS Business Mapping L.L.C.

CDS' list of the 10 most hail-prone areas comes from its RiskMeter Online Hail Model, which uses National Climatic Data Center data to pinpoint the frequency of hail storms for any location in the continental United States.

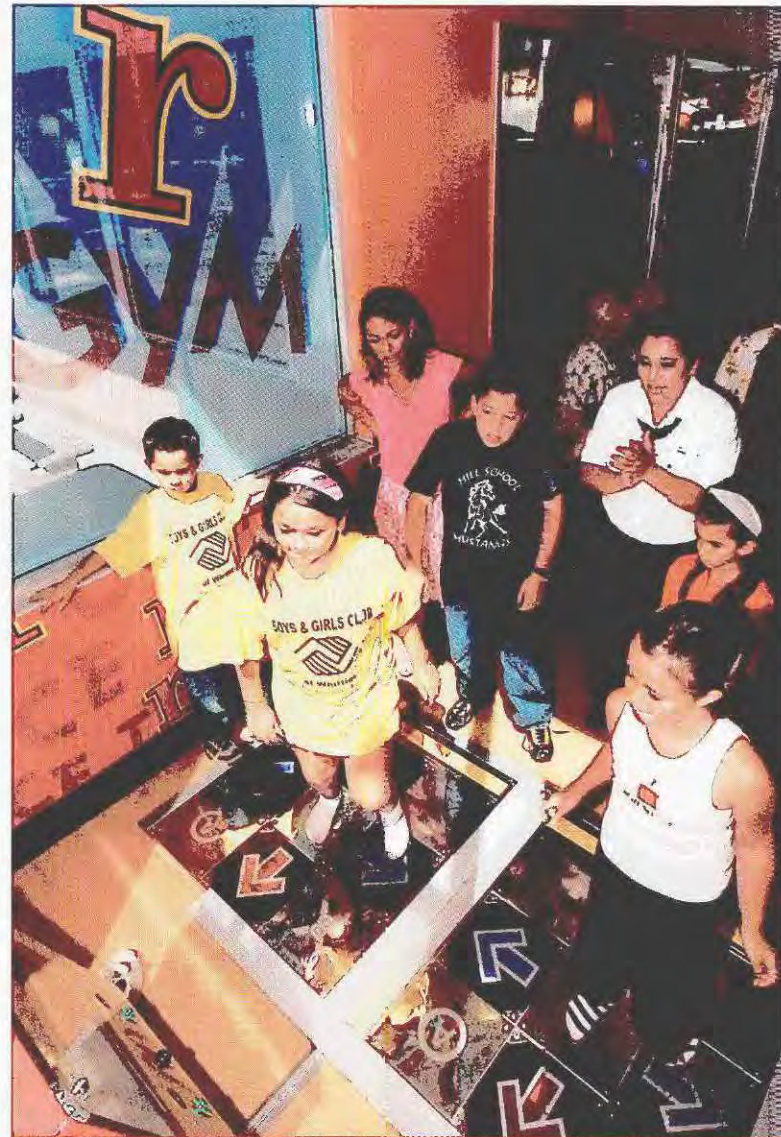
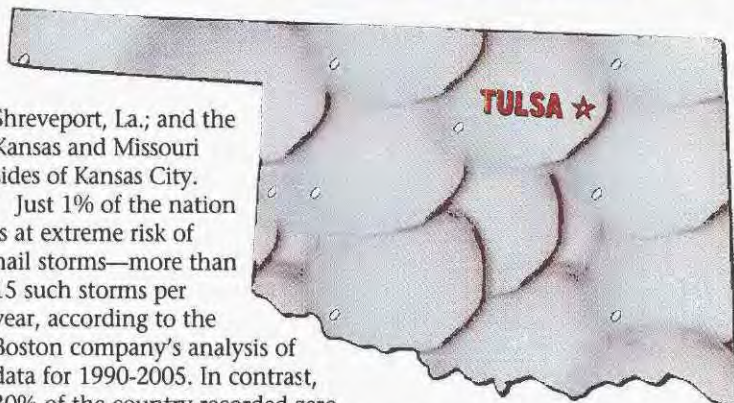
Following Tulsa, the most hail-prone cities are: Amarillo, Texas; Oklahoma City; Wichita, Kan.; Dallas/Fort Worth; Arlington, Texas; Denver; Colorado Springs, Colo.;

Shreveport, La.; and the Kansas and Missouri sides of Kansas City.

Just 1% of the nation is at extreme risk of hail storms—more than 15 such storms per year, according to the Boston company's analysis of data for 1990-2005. In contrast, 30% of the country recorded zero hail activity, which usually occurs east of the Rocky Mountains.

Hail storms are a constant threat

to property/casualty insurers as there were more than 13,000 U.S. hail storms in 2005, CDS said.



Patrons at a McDonald's in Whittier, Calif., test the fast-food chain's new R Gym earlier this summer. The effort, aimed at children ages 3-12, attempts to boost physical activity as well as social skills.

McDonald's gyms aim to stop trend toward Supersize

Kids in need of a little exercise after wolfing down a McDonald's Happy Meal now can hit the gym without even leaving the fast-food restaurant.

Oak Brook, Ill.-based McDonald's Corp. opened its fourth R Gym last month—this one in Santa Ana, Calif.—with plans to open a total of 20 by the end of the year, the company said in a statement.

The R Gym, named after its famous mascot Ronald McDonald, features stationary bikes linked to videogames, monkey bars, climbing ropes and a small basketball court.

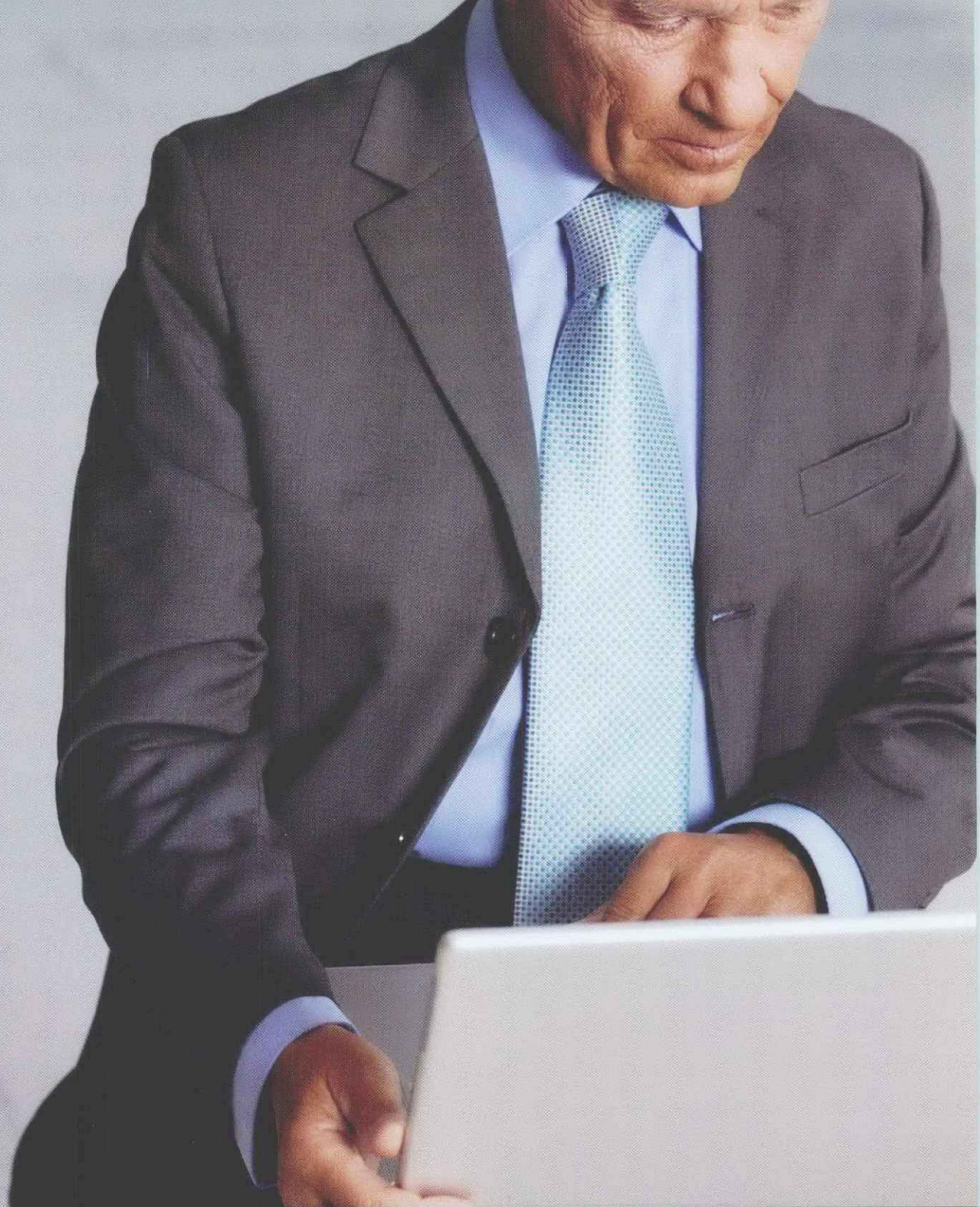
Replacing the less active PlayPlace that made its debut in California in the 1970s, the R Gym in the Santa Ana restaurant

follows other franchises in Sacramento and Whittier, Calif., and Tulsa, Okla.

The new minigyms are the physical extension of the restaurant chain's healthy menu campaign, the company said in a press report. It's "another example of McDonald's dedication to helping customers live balanced, active lifestyles," a company spokeswoman said.

McDonald's has been under scrutiny for its role in the childhood obesity epidemic and has faced a number of obesity-related lawsuits.

McDonald's has said all of its U.S. restaurants will have nutritional labeling on at least some products by the end of the year.



SEE MORE.
KNOW FASTER.
DECIDE BETTER.

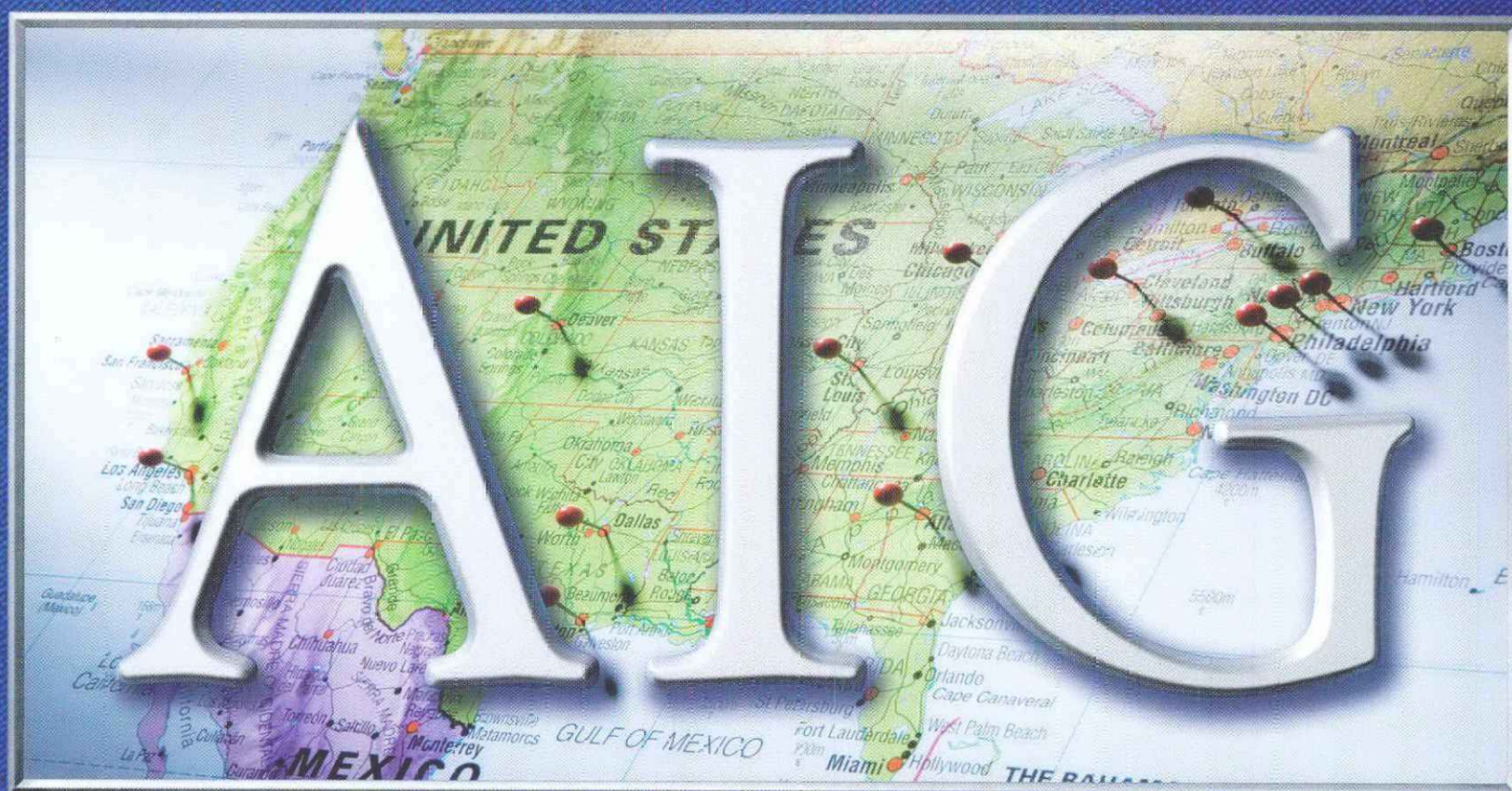
Eye in the Sky, Holborn's new information management tool, delivers advanced mapping functions, flexible analytics and robust event simulation capabilities. With such a multidimensional understanding of their risk profiles, insurers can fine-tune their capital deployment and underwriting strategies to deliver optimal business performance.

For more information or to arrange a demonstration, please contact Paul Little at (212) 797-2285.



EYE IN THE SKY
HOLBORN

WWW.HOLBORN.COM



AIG ENVIRONMENTAL: WE ARE WHERE YOU ARE

If your environmental risk is in Oakland, why is your underwriter 2,500 miles away? AIG Environmental® works side by side with you, in your area. Our local underwriting specialists have the knowledge, relationships and resources to address most risks. To find out about the full range of products, expert claims services and financial strength that you can count on, make a local call.

ATLANTA	(770) 671-2304	COLUMBIA	(443) 259-7622	NEW YORK	(212) 770-2670
BERKELEY HEIGHTS	(908) 679-3276	DALLAS	(214) 932-2310	PHILADELPHIA	(215) 255-6170
BOSTON	(617) 457-5815	DENVER	(303) 382-8543	SAN FRANCISCO	(415) 836-3394
CHICAGO	(312) 930-5379	HOUSTON	(713) 342-7512	ST. LOUIS	(314) 889-7845
CLEVELAND	(216) 479-8887	LOS ANGELES	(213) 689-3935	TORONTO	(416) 596-4104

Call your insurance broker or contact us at
aigenvironmental@aig.com.



THE STRENGTH TO BE THERE.™

AIG Environmental is a division of the property and casualty insurance company subsidiaries of American International Group, Inc. Insurance underwritten by member companies of American International Group, Inc. The description herein is a summary only. It does not include all terms, conditions and exclusions of the policies described. Please refer to actual policies for complete details of coverage and exclusions. Coverage may not be available in all states. Issuance of coverage is subject to underwriting guidelines.