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\$5

Late News

Northwest pilots OK pension freeze

Northwest Airlines Corp. pilots last week overwhelmingly ratified an agreement to freeze, effective at the end of this month, their underfunded pension plan. Northwest, which last year filed for bankruptcy protection, will initially make a contribution equal to 5% of pay to a new defined contribution plan, which will begin on Feb. 1. In 2005, Northwest froze two pension plans covering salaried employees. The PBGC earlier estimated that the three plans, which have more than 70,000 participants, were underfunded by \$5.7 billion, with the agency liable for \$2.8 billion of that shortfall in a termination.

California comp rates down 38% since 2004

Workers compensation insurers in California have reduced their filed rates 37.7% since reforms went into effect in January 2004.

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Medicare Rx law creates broad notice duty

Even employers lacking retiree plans soon must comply

By JERRY GEISEL

WASHINGTON—A new requirement for employers to inform the federal government electronically whether their group prescription drug coverage is at least equal to the Medicare Part D prescription drug benefit plan may catch many employers by surprise.

According to benefit consultants, many employers incorrectly believe that they are exempt from the filing requirement.

The requirement—part of the 2003 federal law that, effective earlier this month, added a limited prescription drug benefit to the Medicare program—affects all employers that offer prescription drug benefits and have employees and/or retirees eligible for Part D.

Under the requirement for 2006, employers will have to complete and submit to the U.S. Centers for Medicare and Medicaid Services by March 31 disclosure notices informing CMS whether the prescription drug cover-

age they provide to individuals eligible for Medicare Part D is at least equal to the Part D drug benefits.

In succeeding years, the "credible coverage" disclosure form will have to be filed within 60 days of the beginning date of the plan year.

Experts say many employers are not aware that the reporting requirement applies to them. Some employers believe that the reporting requirement applies only to organizations with retiree health care plans.

"The reaction from some is: 'I

don't have a retiree health care plan. Why do I have to do this?'" said Karen Frost, a consultant with Hewitt Associates Inc. in Lincolnshire, Ill.

Others believe, erroneously, that if they have applied for and have qualified to receive federal drug benefit claims cost subsidies, they are automatically exempt from the disclosure requirement.

In fact, noted Andy Anderson, of counsel with the law firm of Mor-

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AIG officials settle out of suit over Starr

Insurer also nears deal over Spitzer charges

By DOUGLAS McLEOD

NEW YORK—American International Group Inc. executives last week were poised to settle a shareholder suit over commission payments, and the insurer itself was reportedly closing in on a separate settlement of up to \$1.5 billion to resolve fraud charges leveled last year by New York Attorney General Eliot Spitzer and other officials.

The two settlements would mark significant steps in AIG's efforts to emerge from problems that have dogged it recently and have led to major changes at the insurer, including the ousting of longtime chief Maurice R. Greenberg last year.

The settlement with Mr. Spitzer would not include Mr. Greenberg, who was also named in Mr. Spitzer's May 2005 complaint, according to reports.

In the shareholder suit, the Teachers Retirement System of Louisiana has agreed to drop 15 directors and officers of AIG from a 2002 shareholder derivative lawsuit it filed over commissions the insurer paid to companies controlled by Mr. Greenberg and other AIG officials.

The proposed partial settlement would dis-



PHOTO: REUTERS PHOTO ARCHIVE

Former AIG Chairman Maurice R. Greenberg still faces charges under a shareholder suit that other AIG officials have agreed to settle.

miss the litigation against 10 current or former outside AIG directors and five insiders, including current President and Chief Executive Officer Martin J. Sullivan. The case would continue against Mr. Greenberg, two other former AIG executives and C.V. Starr & Co. Inc., which Mr. Greenberg heads.

TRSL sued C.V. Starr and nearly 20 AIG directors and officers in Delaware Chancery Court in 2002, charging that AIG was improperly paying tens of millions of dollars in undisclosed commissions and fees to managing general agencies owned by Starr. The payments benefited Mr. Greenberg and other AIG officials who owned and managed Starr, the lawsuit alleged.

AIG last year pursued a failed effort to buy

BlackBerry litigation sends message about lack of patent cover

By GLORIA GONZALEZ

A patent infringement lawsuit involving the popular BlackBerry communications device has highlighted both the growing exposure of patent litigation and the lack of affordable commercial insurance to cover the risk.

Millions of BlackBerry users in the United States may soon be forced to live and work without the wireless devices because of an injunction that would ban Research In Motion Ltd.—the maker of the BlackBerry—from using certain patented technology utilized in the device and its software and service.

While other companies have found themselves facing similar lawsuits due to the sheer volume of patents and the difficulty in ensuring that patents are not being violated when new products or services are introduced, most companies do not have patent infringement insurance. That's because the coverage is both expensive and difficult to obtain in the commercial insurance market.

Waterloo, Ontario-based RIM is battling both a



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Casino owners at odds with excess insurers.

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MARSH REVAMPING

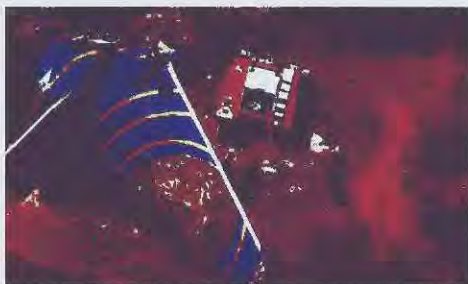
CEO of largest broker discusses changes.

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INTERNATIONAL NEWS

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AON

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JANUARY 16, 2006

Trade credit and political risks in an ever-changing world



Bryan Squibb is managing director of Aon Trade Credit. He advises multinational companies about global trade and political risks to help them establish overseas operations and safely conduct global transactions. Bryan can be reached at: bryan_squibb@aon.com.

With a new year — and new growth goals — in front of us, many corporations are focused on international opportunities. A key first step in this pursuit is to assess the threats, including government interference, legal and regulatory risks, terrorism and war, and currency and credit risks.

While some countries in Latin America, including Argentina and Colombia, have experienced a number of improvements on a geopolitical basis, many still represent difficult operating environments. Argentina, for example, has made strides toward reversing its previous financial downturn; however, substantial economic improvements are still needed. The recently elected Bolivian government continues to raise questions about the viability of foreign investment, and business opportunities in Venezuela remain somewhat challenged as tensions with the United States and other Western countries persist.

Eastern Europe continues to improve as tangible commercial benefits and reduced political risk have created renewed opportunity. The political environment in Ukraine and Russia is improving, and business opportunities are expected to continue to develop there.

Much of the African continent has continued to realize positive improvements in the business climate as well, although the tenuous political situations in Nigeria and Côte d'Ivoire do present significant political risk and supply chain exposures.

There are also supply chain risks, as U.S. companies continue to expand heavily in China and India. Thus, critical risks to supply chains that rely on operations in these countries can be acute.

Multinational corporations, particularly those conducting business in emerging markets, are highly vulnerable to supply chain disruptions resulting from political, economic and social volatility. Business interruptions resulting from these risks can add considerable cost and be the cause of substantial income losses over the long term.

Ranked in order of risk, countries currently posing the greatest threat to U.S. supply chains, because of natural disasters, political instability, arbitrary regulatory actions, labor unrest and infrastructure failures, include:

- | | |
|--------------|---------------|
| 1. China | 6. Italy |
| 2. Venezuela | 7. Nigeria |
| 3. Mexico | 8. Canada |
| 4. India | 9. Japan |
| 5. Brazil | 10. Guatemala |

To overcome the risk obstacles inherent in international business, corporations should undertake systematic reviews of political and economic risks in the countries in which they seek to conduct business. They must also create practical supply chain alternatives to protect product flow and develop other risk-mitigation strategies to insulate the balance sheet from unanticipated financial shocks. Companies that take these steps will reap the incredible benefits of international business while ensuring that shareholder value and critical assets are firmly protected.

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Prudent corporations that are globally expanding will insulate their balance sheets from unanticipated financial shocks.

New global risk information helps companies navigate political, economic exposures

Global political and economic risks are in a constant state of flux. As risks increase, international organizations can be exposed to forced shutdowns, relocations and other events. In this volatile environment, companies must fully understand and stay current with changes in the political and economic profiles of countries and regions around the world. The new 2006 Political & Economic Risk Map rates the economic and political risks in more than 200 territories and includes key supply chain disruption events and a list of this year's significant global stress points. For further insights and to access the map, visit www.aon.com/focus.

GAO report calls for balance between employees' benefits and the burden on plan sponsors

On the heels of litigation increases and substantial settlements over companies' attempts to convert defined benefit plans to cash balance plans, the Government Accountability Office (GAO) issued a report to Congress on cash balance plans and the effects of conversions from defined benefit plans to cash balance plans. The report concludes that additional protections are necessary to address potential adverse outcomes of this conversion. This report may help strike an important balance between protecting workers' benefits expectations with unduly burdensome requirements that could spur the exodus of plan sponsors from the defined benefit system. For more information, visit www.aon.com/focus.

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Catastrophe management needs a fresh approach

Insurer executives argue that cat funds or regulatory changes could help. Page 4

Progressive chief to collect Insurance Leader award

Peter Lewis hailed as groundbreaking insurance executive. Page 4

Lower stock market losses may not ease D&O rates

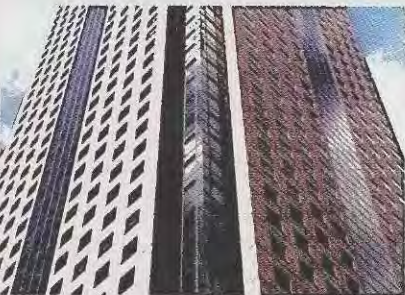
Market capitalization losses fell in 2005, but insurance rate could still rise. Page 4

Katrina coverage dispute could have wide impact

A dispute over flood coverage could affect many insureds, an editorial says. Page 8

Online poll - [1/9 - 1/13]

In the next six months do you expect property rates to:



Increase significantly	55.4%
Decrease significantly	7.1%
Remain the same	33.9%
Do not know	3.6%

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Casino sues insurers for Katrina flood cover

Says exclusion not in place at time of loss

By DOUGLAS McLEOD

GULFPORT, Miss.—The owner of the Hard Rock Hotel & Casino Biloxi is suing two of its 10 property insurers for refusing to pay their parts of an estimated \$175 million in damages from Hurricane Katrina under policies that went into effect two weeks before the storm hit.

Premier Entertainment Biloxi L.L.C. filed suit in federal court in Gulfport, Miss. last week against SR International Business Insurance Co. Ltd., a London-based unit of Swiss Reinsurance Co., and Richmond, Va.-based James River Insurance Co.

Swiss Re, which participated in excess layers of the Hard Rock's \$181.5 million property program, contends that Premier's claim is an uninsured flood loss despite a clause in the underlying primary policy covering hurri-

cane-related flood damage, the suit says. The insurer is the only one of five underwriters on the program's first excess layer to deny the claim, Premier notes.

James River, which participated on an upper excess layer, likewise denied coverage despite the primary policy's 72-hour catastrophe clause, according to the suit.

Neither insurer has yet filed an answer to the complaint. Michael Oakes, chief financial officer of James River, declined to comment. A Swiss Re representative could not be reached.

The newly built Hard Rock complex in Biloxi included an 11-story hotel, a 48,000 square foot casino, a theater, several restaurants and a 1,600 space parking garage. The \$235 million project was set to open for the

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Two insurers of the Hard Rock Hotel & Casino in Biloxi, Miss., are being sued by the owners of the complex for refusing to pay for damages from Hurricane Katrina.

Marsh set for growth as troubles fade: CEO

By REGIS COCCIA

NEW YORK—As Marsh Inc. begins a new year, it's looking ahead to changes that its chief executive says will make the world's largest broker even more focused on serving its clients.

"Marsh appropriately, in my view, stepped back in 2005 coming out of the Spitzer investigation and turned inwardly," Chairman and Chief Executive Officer Brian Storms said in an interview last week.

Investigations of insurance brokers' compensation practices by New York Attorney General Eliot Spitzer led to big settlement agreements last year. The first and largest was by New York-based Marsh parent Marsh & McLennan Cos. Inc., which last February agreed to pay clients \$850 million. Along with MMC, brokers Aon Corp., Willis Group Holdings Ltd., Arthur J. Gallagher & Co. and Hilb, Rogal & Hobbs Co. agreed to settlements totaling more than \$1.1 billion.

The agreements with Mr. Spitzer and other state attorneys general called for transparency and disclosure, but executing those requirements was left to the brokers to work out. "What does transparency mean and how do you engage with clients? And how do you price that?" asked Mr. Storms, adding that Marsh spent

a long time analyzing these issues. "2005 was that internal focus (for Marsh). We were defending our business and defending our clients."

In the months following the settlement, Marsh lost many senior executives to rival firms. The company has been realigning its operating structure and recently has added staff in key areas, Mr. Storms pointed out.

"Did we lose a few people we didn't want to? Absolutely," Mr. Storms said. "There will always be a percentage of people who will (want to seek opportunities elsewhere). People make choices in business and life. The vast majority of our employees understand what Marsh is trying to do, he said.

"We went to great lengths to create financial incentives for people to stay. A number of people chose to leave. That was not accidental, and we've managed that effectively," he said.

"Now, when we pick up the phone and say, 'How'd you like to build your career at Marsh?' we're getting people's attention," Mr. Storms said.

Indeed, Marsh recently added three senior executives: James R. Pierce Jr. as chairman of Marsh's global marine and energy practice; Ken Fong as chief human resources officer; and Joseph A. Varnas as glob-



"We went to great lengths to create financial incentives for people to stay."

Brian Storms
Marsh Inc.

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'Wal-Mart' legislation on health coverage may launch trend

By JOANNE WOJCIK

ANNAPOLIS, Md.—A new Maryland law that requires large employers to spend a minimum amount on providing health insurance or pay a new tax could be the start of a national effort by organized labor to win passage of similar measures in dozens of other states.

Last week, Maryland lawmakers successfully overrode Gov. Bob Ehrlich's 2005 veto of legislation that requires employers with more than 10,000 employees in the state to spend at least 8% of their payroll on providing health care benefits to employees.

Under the law—which is aimed at giant retailer Wal-Mart Stores Inc.—those that fail to meet that spending threshold would have to contribute to a state fund that provides health care coverage to low-income residents.

Last week, the Maryland Senate voted 30-17 and the House of Delegates voted 88-50 to override the veto. The law will take effect 30 days from the date of the override.

Bentonville, Ark.-based Wal-Mart blasted the move. "This vote was never about health care," Wal-Mart said in a statement. "This was about partisan politics in the Maryland gubernatorial race. In allowing a bad bill to become a bad law, the General Assembly took a giant step backward and placed the special interests of (District of Columbia) union leaders ahead of the well-being of the people they serve."

But the United Food & Commercial Workers, the union to which Wal-Mart had referred, suggested otherwise.

In a statement, UFCW International President Joe Hansen said: "We have a national health care crisis in this country, but that doesn't excuse large employers, like Wal-Mart, from shifting their health care costs onto taxpayers and responsible employers."

He added that the UFCW plans to lobby for passage of similar legislation pending in at least 30 other states.

According to the UFCW, more than 60% of Wal-Mart employees—600,000 workers—are forced to obtain health care coverage either from the government or through their spouses' plans, or to go without coverage entirely.

Wal-Mart maintains that more than 75% of its employees have health insurance, and the company offers coverage for just \$23 a month.

Four companies have 10,000 or more employees in Maryland, but Wal-Mart, which employs about 17,000 in the state, is believed to be the only one affected by the law.

CEOs call for new ways to handle natural cat risks

More care in underwriting, education of buyers needed

By REGIS COCCIA

NEW YORK—Top executives at several major insurance and reinsurance companies generally are optimistic that the industry can maintain underwriting discipline in 2006, but they say the industry must adopt new approaches to managing natural catastrophe risks.

At the Property/Casualty Insurance Joint Industry Forum in New York last week, a panel of chief executive officers discussed some of the effects of the string of hurricanes in 2005, which caused mar-

ketwide losses in what would have been an otherwise profitable year.

Asked whether the industry could survive another year of big catastrophe losses, the CEOs said companies need to put more care into underwriting and educating buyers.

"To be in the large-catastrophe and -risk area, one has to be an optimist," said Brian O'Hara, CEO of Hamilton, Bermuda-based XL Capital Ltd. "I look at '04 and '05 and think that the Chinese character for 'catastrophe' also means 'opportunity.'"



Ron Pressman
GE Insurance Solutions

"Our time horizon isn't a 1-in-250-years event; it's a 1-in-10-to-15-years environmental event. We have to align our underwriting model to the time horizon we're in."

Pressure on risk management and portfolio management "has never been more intense," Mr. O'Hara said. "It's incumbent on all managements to have a good year, and that's about risk selection and portfolio management."

"We've got to face...certain realities" such as population density and value at risk on the coasts, said Ron Pressman, president and CEO of GE Insurance Solutions in Kansas City, Mo. "We've been looking at the reality of aligning ourselves and

our stakeholders to the cycle."

"We're in a period of higher environmental volatility," Mr. Pressman said. "Our time horizon isn't a 1-in-250-years event; it's a 1-in-10-to-15-years environmental event. We have to align our underwriting model to the time horizon we're in."

The development of sophisticated modeling tools has helped the industry in pricing and understanding geographic risks, noted Frederick Eppinger, president and CEO of The Hanover Insurance Group Inc. in Worcester, Mass. "The underlying ability to get rates by ZIP code, not just loss patterns, is a great advantage. There are a lot more tools available" than existed years ago,

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Progressive chairman wins award for leadership

By RUPAL PAREKH

NEW YORK—From a small family-owned firm to the nation's third-largest automobile insurer, Progressive Corp. has thrived under the leadership of Peter B. Lewis for nearly 40 years.

Now chairman of Cleveland-based Progressive, Mr. Lewis began his career working part time at the company—which was founded by his father, Joseph Lewis, and Jack Green, its former chief executive officer—while still in high school.

After graduating from Princeton University in 1955, Mr. Lewis joined Progressive full time and has been with the company ever since.

He took over as CEO in 1965, brought the insurer public in 1971, and, by 1987, Progressive earned more than \$1 billion annually in premiums.

Through a national workforce of over 26,000, the company now serves 13 million customers in various business lines, writing premiums totaling \$13.4 billion, according to Progressive.

This week, Mr. Lewis will be recognized for his achievements when he receives the 2005 Insurance Leader of the Year award from St. John's University's School of Risk Management, Insurance & Actuarial Science in New York.

The honor—bestowed each year



Mr. Lewis

to an individual who has either had a lifetime of achievement in the insurance industry or has made exceptional contributions to the field during the specific year of the award—

"He turned (Progressive) into perhaps the most respected company in the entire property/casualty industry."

Jim Stone
Plymouth Rock Group of Cos.

was established by the school 11 years ago (see box, page 19).

"Outstanding leadership within the insurance world is important and something that should be recognized and celebrated," Dr. Ellen Throver, executive director of the school of insurance at St. John's, said. "I'm very excited that it's Peter Lewis this year."

"Progressive was a minor company

when he took over, and he turned it into perhaps the most respected company in the entire property/casualty industry," Jim Stone, chairman of the Boston-based Plymouth Rock Group of Cos., said of Mr. Lewis.

"There are less than half a dozen people who have succeeded in our industry to an equal extent numerically, but there may be none who has had as great an impact on the way the industry does business," Mr. Stone noted. "We all have to

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Will D&O prices stabilize as market cap losses drop?

Settlement values are just one factor driving rates

By DAVE LENCKUS

Market capitalization losses—a major impetus behind directors and officers liability claims—have been markedly lower in recent years and fell substantially in 2005, but that does not set the stage for an extended run of stability in D&O insurance rates, experts say.

Other factors could drive a tighter market, even as some forces are at work to keep D&O rates fairly stable, experts say. How all that will play out is uncertain, they say.

"While legal trends play a role in D&O pricing, competitive market forces have a significant impact as well," said Joe Underwood, a senior

consultant with Albert Ris & Management Consultants in Needham, Mass.

"There are so many variables" that trying to guess where losses are heading "doesn't make much sense," said plaintiffs attorney Melvyn I. Weiss, a partner with Milberg Weiss Bershad & Schulman L.L.P. of New York.

A report released earlier this month by the Stanford Law School Securities Class Action Clearinghouse of Stanford, Calif., and Cornerstone Research of Boston showed that the number of securities lawsuits filed in 2005 fell 17%, to 176 from 213 in 2004.

In addition, the disclosure dollar

loss—or the market capitalization loss that investors sustained the day after an organization announced it had misrepresented its financial reports—plummeted to \$99 billion in 2005 from \$147 billion in 2004 and from \$127 billion, on average, in each of the previous nine years.

Notably, the 2005 disclosure dollar loss is the second-lowest loss since 1998, with the smallest loss of \$80 billion reported in 2003, according to the report.

But a July 2005 report by White Plains, N.Y.-based NERA Economic Consulting, a unit of Marsh & McLennan Cos. Inc., projected that

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Employers see productivity gains from reduced claims across multiple lines

By ROBERTO CENICEROS

An increasing number of midsize employers say that they save at least \$1 in productivity costs for every dollar saved in claims, according to a survey by Wausau Insurance Cos.

According to the survey by the Wausau, Wis.-based insurer, 81% of employers perceive that they make such productivity savings when workers compensation claims costs are reduced, up from 70% in a similar survey last year.

In addition, 75% of policyholders, up from 60% a year ago, report saving at least \$1 in lost productivity expense and "related uncovered

A win-win situation

81% of employers perceive that they save at least \$1 in productivity costs for each dollar saved in workers compensation claims costs, up from **70%** last year in a survey by Wausau Insurance Cos.

loss of value" for every dollar reduction in commercial auto, general liability and property claims costs.

The survey of 200 commercial policyholders—not all of which were Wausau clients—is an uncommon attempt to measure productivity costs and other value that companies lose when they face com-

mercial automobile, general liability, property and workers compensation claims.

Other studies have captured data on productivity and other indirect losses beyond direct claims costs associated with workers comp-related

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Supreme Court hears Title VII case

Exemption for small employers debated

By MARK A. HOFMANN

WASHINGTON—The Supreme Court will decide whether an employer's size alone is enough to shield it from sexual harassment lawsuits brought under Title VII of the Civil Rights Act of 1964.

And although the particulars of the case involve how Title VII treats very small employers, the justices' decision could have an impact on how several federal anti-discrimination laws are enforced, according to one employment law expert.

The high court heard oral arguments in *Jenifer Arbaugh vs. Y&H Corp.* last week. The case involves an employee of Moonlight Café in New Orleans who alleged that she became the victim of a sexually hostile work environment during her tenure at the establishment, which was owned by Y&H Corp., a corporation with two individual owners. The suit went to the U.S. District Court for the Eastern District of Louisiana, and in 2002, a jury awarded Ms. Arbaugh \$40,000 in damages.

After the verdict had been entered, Y&H sought to have the action dismissed, arguing that the federal court had no jurisdiction in the case be-

cause Title VII does not apply to businesses with fewer than 15 employees. Taking the position that Y&H did not have the required number of employees if one excluded the two owners, their wives—who also worked for the business—and Y&H's delivery truck drivers, the district court agreed with Y&H and dismissed the case in 2003. A three-judge panel of the U.S. 5th Circuit Court of Appeals agreed with the district court a year later, and Ms. Arbaugh appealed, thus setting the stage for last week's Supreme Court hearing.

Brett Prendergast, the New Orleans attorney who represented Y&H, argued that the employee head count provision was deliberate, even though it means that very small businesses "can engage in the most egregious" acts of discrimination. Congress decided that providing small business with protection was more important, he said.

Daryl Joseffer, assistant to the U.S. solicitor general, supported Ms. Arbaugh. Determining "who is an employee" is a long-standing issue for the jury," to decide, he said.

Robin S. Conrad, senior vp at the National Chamber Litigation Center, a Washington-based enterprise that handles litigation for the U.S. Chamber of Commerce, said that Congress deliberately set the employee requirement to keep "the

smallest of small businesses' out of such litigation. The NCLC filed a brief supporting Y&H's position.

"What is the issue here—did Congress intend federal courts to have jurisdiction over Title VII claims against the smallest of employers? No, Congress intended to immunize small businesses from Title VII, and that is the reason why it set strict limits on the number of workers a business had to have in order to be subject to Title VII," said Ms. Conrad.

Ms. Conrad said that the high court's decision could have an impact beyond the interpretation of the scope of Title VII. "There are a number of employment statutes that set limits on the numbers of workers an employer has to have in order to be subject to those statutes, she said.

These include such well-known antidiscrimination laws as the Americans with Disabilities Act, the Age Discrimination in Employment Act and the Family and Medical Leave Act. FMLA, for example, exempts employers with fewer than 50 employees.

"If the action doesn't apply to a covered employer, it should be dismissed at the earliest possible stage" to prevent the defendants from being "burdened with the cost of litigation," said Ms. Conrad.



PAUL WINSTON

Editorial Director

Writer renounces liability for misuse

Some people believe that outrageous warning labels on various products are a bad thing. They see them as a depressing indication that we are becoming a nation of injury-prone cretins, that our courts are willing to entertain any weird legal claim that walks in the door, and that businesses have little recourse in this climate but to cover their backsides in every way possible.

All of that may be true, but I also wonder if warning labels have become an inside joke among risk managers, who may be practicing the arcane art of hold-harmless humor. The punch line of these gags would be delivered when some wretch tries to blame the manufacturer for injuring himself in a spectacularly bizarre fashion, such as swallowing a fishing lure with a treble hook, and is told with a straight face: "I'm sorry but we specifically warned you not to do that. This product is only meant to be consumed by fish." I'm sure the mirth would be trebled if the claimant were represented by an attorney who was hoping for a big score, only to see those hopes dashed during discovery of the iron-clad warning.

For nine years, an organization called Michigan Lawsuit Abuse Watch, or M-LAW, has held a competition for the wackiest warning labels, which it cites as evidence of the depths to which our society has sunk as a result of litigation fears. Or, it could be evidence of the heights of greed to which some will ascend to compensate for their imbecility. You choose.

M-LAW recently announced the latest "winners" in this contest for warning labels that represent the most absurd and imaginative scenarios of consumer misuse.

The winner: The unidentified manufacturer of a heat gun, which is specifically labeled as a "hot air paint removal tool" and capable of temperatures of up to 1,000 degrees Fahrenheit. Among the usual safety precautions against touching the nozzle before it has cooled, or leaving the heat gun on an inflammable surface, is this warning: *Do not use the heat gun as a hair dryer.*

For those of you who shop for all of your bath and beauty supplies at Home Depot, this probably also means you should stop brushing your teeth with an or-

bital sander, no matter how awesome it is at eliminating plaque.

Second place was won by J.A. Henckels International, which included a product safety sheet with a large carving knife that cautioned "Never try to catch a falling knife!" Speaking from personal experience, I can vouch for the wisdom of this precaution, and have the scar to prove it. If only someone had told me.

Third place went to a bar in Hilton Head, S.C., whose cocktail napkins are adorned with the likeness of a nautical chart of the waterways around the barrier island. In tiny print is the label, "Caution: Not to be used for navigation." This may have less to do with the accuracy of the reproduction than the fact that such tiny "maps" are often obtained in tandem with alcoholic beverages, rendering one's ability to discern between a shoal and a channel suspect.

Honorable mention was given to the unidentified manufacturer of "Fox/Bobcat Urine Powder," which notes that even among consenting species, the product is "not for human consumption." For those of you wondering where or why to buy dried animal urine, also on the label is the explanation: "Creates the illusion that fox and bobcats are present in your lawn or garden." Note the use of the word "illusion," lest your neighbors sue you for harboring wild animals.

Another honorable mention went to the maker of RevereWare ovenware, which saw fit to advise consumers that "ovenware will get hot when used in oven." Some would say that is the *raison d'être* of ovenware. Perhaps this was not truly meant as a warning to would-be burn victims per se, as much as a boast about the amazing heat conducting properties of this product. You bought this ovenware to heat your food and that is *exactly what it does.*

If you are in need of additional sensible guidance on how—and how not—to use a wide array of products, M-LAW's Web site, www.mlaw.org/www/index.html, features the highlights from this year's contest and previous award winners.

Note: This article is not intended to offer legal, risk management or dental hygiene advice. You've been warned.

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Editorial

Burning questions in Mississippi courts

COMMERCIAL LINES insurance coverage litigation following Hurricane Katrina is heating up, and how it turns out may have long-term implications for insurance buyers.

As we report on page 3, the owners of a casino in Biloxi, Miss., that was destroyed by Katrina are suing two excess property insurers for their shares of an estimated \$175 million loss. One of the excess insurers, a unit of Swiss Reinsurance Co., denied the claim, arguing the loss resulted from flooding, which it says is not covered under its policy. The primary insurer as well as four other insurers on the first excess layer have agreed to pay out their limits.

In another Mississippi lawsuit on Katrina damage, state Attorney General Jim Hood's civil action against homeowners insurers, at issue is whether insurers should cover even the losses that appeared to result from flooding.

The insurance industry is confident that it will prevail in the Hood case. A verdict requiring insurers to pay flood losses that their policies did not cover and for which they collected no premium

would have a chilling effect on insurance markets well beyond the borders of Mississippi. By the same token, the latest casino suit could clarify recovery rights in large catastrophe claims.

Insurers and reinsurers rightly argue that the attorney general's suit appears to seek to rewrite contracts. If he succeeds, the withdrawal of insurers—and possibly businesses of many stripes—would be felt immediately in Mississippi. That would create a troubling situation for insurers and regulators, to be sure, and do so at a time when the state's economy is struggling to recover.

Important case law is likely to result from both of these coverage suits. No matter which side prevails, insurance buyers need to watch the legal battles closely. Catastrophes of the magnitude of Katrina fortunately do not happen often, but windstorms will continue to strike, and coverage disputes will inevitably follow. Unfortunate legal precedents set in the wake of an unprecedented natural catastrophe like Katrina could have devastating results for risk managers and underwriters alike.

Schillerstrom



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Wal-Mart mandate not the answer for health cover woes

SHOULD EMPLOYERS with health care plans be required to spend at least a certain amount on those plans?

That is an issue many states, responding to pressure from organized labor, are likely to consider in the coming months. Indeed, the Maryland Legislature last week overrode a gubernatorial veto of a bill that would require employers with more than 10,000 employees in Maryland to spend at least 8% of payroll on health care benefits or make a contribution to a state fund that provides coverage to the low-income uninsured. Wal-Mart Inc., the giant retailer, is the only known employer in Maryland with that many employees that

does not meet the health care spending requirements.

Certainly, we understand the motivation of the proposal's backers. When coverage provided by employers is inadequate or unaffordable, it increases the likelihood that employees end up receiving care through public programs, like Medicaid, that taxpayers fund.

That said, we have deep misgivings—on several grounds—about such a mandate. To start, we question if the mandate would pass legal muster. The federal Employee Retirement Income Security Act pre-empts state laws and regulations that relate to employee

benefits. A state law that requires employers to spend a certain amount of money on its health care program would seem to very much relate to employee benefit plans and be pre-empted by ERISA.

On an issues level, we question whether this is the direction states should go in, if their intent is to expand employer-sponsored health care. Requiring employers to spend a certain amount of money on their health care plans does nothing to get at the root cause of why, over the past several years, fewer workers have been offered employer-sponsored coverage.

Coverage through employer plans has been

falling for one obvious reason: cost increases, which until recently have been in double-digit territory, have made the plans unaffordable for some employers. A mandate does nothing to address this problem.

We think the best course of action for state legislators—if their goal is to expand coverage—is to take steps to make health care more affordable.

That means, for starters, passing fair and balanced tort reform measures and requiring hospitals to disclose publicly more cost and quality information so consumers can make better and more informed choices when selecting providers.

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Perspectives



By William J. Richards
and Mitchell J. Matorin

Filling in gaps in Internet coverage

Enhanced policies offer protection not found in standard forms

ditionally, property policies tend to focus on the perils that are typically involved in losses to tangible property, such as fire, explosion and wind. Business interruption insurance that is sold as part of such property policies tends to define property and perils similarly. While the form may cover the loss of income when a business sustains a fire loss, it will not cover the loss of electronic revenues due to a distributed denial of service.

Standard crime forms safeguard only against losses resulting from fraud related to or the theft of money, securities or other tangible property. Computer fraud and information theft that results in damage or deleted information assets are deemed intangible and, therefore, are not covered.

Commercial general liability policies cover claims for physical injury to tangible property, including the loss of the use of such property. They also cover claims for the loss of the use of tangible property that has not been physically damaged. CGL policies do not cover property damage to or the loss of the use of intangible property, nor do they cover the loss of the use of tangible property that has not been physically injured when the loss of the use arises out of a defect, deficiency, inadequacy or dangerous condition in the insured's product.

Additionally, while the standard

CGL policy includes coverage for personal and advertising injury, coverage does not apply if the insured is in the business of advertising, broadcasting, publishing, telecasting, telemarketing, etc. Any information on a Web site, including banner ads, can create legal third-party exposure to alleged libel, slander or defamation, copyright, title or trademark infringement or invasion of privacy.

Most standard technology errors and omissions forms provide coverage for property damage to or the loss of use of intangible property and the loss of use of tangible property that has not been physically damaged when the loss of use arises out of a defect, deficiency, inadequacy or dangerous condition in an insured's product. However, E&O forms typically exclude losses arising from breaches of security and/or failures to prevent unauthorized access. A breach of network security can result in claims from customers whose client information was stolen and denial of service claims from customers who could not access a site, as well as claims from anyone to whom a deadly computer virus was transmitted.

With respect to the additional exposures created by the use of the Internet, a specialized sector of the insurance industry has developed enhanced forms to fill the gaps in the property, CGL and technology E&O forms. The forms are nonstandard

in approach, yet most will offer some of the following components:

With **enhanced technology E&O policies**, standard technology E&O coverage is typically augmented by the inclusion of professional services relating to or conducted via the Internet. Additionally, coverage for breaches of security and failures to prevent unauthorized access is usually afforded by a specific coverage grant. The policy territory is usually expanded to include worldwide suits.

With **Web content liability policies**, Internet/media liability agreements provide coverage for advertising and personal injury and copyright and trademark liability arising out of Internet activities. It is important to coordinate the language of such a policy with the CGL to be sure coverage is in place for personal injury and advertising injury for non-Internet-related activities.

Network security coverage can be provided on a third-party or first-party basis. Third-party coverage provides liability coverage arising from a failure of the insured's product and/or service to prevent unauthorized use of or access to its network. This coverage can apply to claims arising from the transmission of a computer virus, the theft of a customer's information and denial of service liability. First-party coverage provides reimbursement

for losses arising out of the altering, copying, misappropriating, corrupting, destroying, disrupting, deleting, damaging or theft of information assets. Typically, the policy will cover the cost of replacing, reproducing, recreating, restoring or re-collecting those assets. First-party coverage also provides reimbursement for lost revenue as a result of a covered event. In this case, the policy will provide coverage for the period of recovery plus an extended business interruption period.

Loss prevention services are an important feature of a quality cyber-risk insurance program. Typically, these services include anything from a free online self-assessment program and free educational CDs to a full-fledged onsite security assessment.

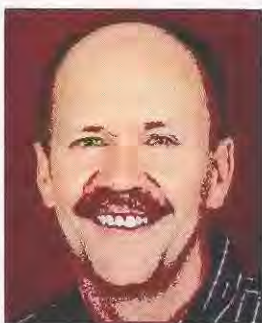
It is clear that no single risk management strategy can completely eliminate the risks associated with cyberspace. Insurance coverage represents a critical tool, in that it provides an essential nontechnical control and a transfer of risk. Insurance programs should include a combination of traditional insurance and specific cyber-risk insurance, and they should be provided by top-rated, technology-savvy insurers.

William J. Richards is a senior vp of William Gallagher Associates in Boston. Mitchell J. Matorin is counsel at Foley Hoag L.L.P. in Boston.

The increasing reliance on the Internet exposes many businesses to risks not previously associated with their traditional risk profiles, including computer hacking, liability for trademark and copyright infringement, defamation and privacy claims.

Unfortunately, traditional insurance forms such as property and commercial general liability and standard technology errors and omissions insurance policies do not cover many of the risks associated with cyberspace. The following is a brief summary of how some of these insurance policies do—and do not—respond to such risks:

Property policies cover only tangible property and not data. Ad-



By Steven Pahl

Property insurance is in the spotlight after the 2005 hurricane season, with much attention on questions of causation and such esoterica as "concurrent causation" and "efficient proximate cause." Although the 2005 season ended Nov. 30, less than six months remain until it starts all over again. Come June 1, 2006, will your property policy reflect what was learned from the most prolific and destructive hurricane season on record? Here are some things to consider:

Civil authority: Both federal and local governments have been made highly sensitive to the need for a prompt, pre-emptive government response to an impending catastrophe. Witness how quickly an evacuation order was given to the city of Houston when Wilma was bearing down on it. As a result, the coverage in commercial policies for business interruptions that arise out of the orders of civil authorities should be examined as never be-

fore. Be aware that civil authority coverage is anything but simple.

First, the coverage applies only if the peril that gave rise to the order of evacuation by civil authorities is covered.

Second, the requirement in most policies for "direct physical loss or damage" can apply to: a) the covered premises; b) an immediately contiguous property; c) a property within a given distance (e.g., one mile); or d) a property located within the coverage territory. For a business that relies on one or a handful of supplier or customer locations for its revenue, the last requirement is most desirable as part of dependent business premises coverage.

Third, when the coverage begins and ends is another critical issue. Most policies have waiting periods of at least 24 hours before coverage begins, but such waiting periods can extend to several days. Coverage can end after a time certain (e.g., 30 days) or when your business interruption ends. Obviously, the longer the coverage period and the shorter the waiting period, the better.

Finally, extra-expense coverage should be available immediately after the order of civil authority is given and continue until the interruption in business has ended. And while none of the above discussion

touches on appropriate limits for such coverage, suffice it to say that whatever that amount is, it should be blanketed across all locations and for both business interruption and extra expenses.

Ordinance- or law-increased cost of construction: In some jurisdictions, if only one-third of a roof is damaged, the entire roof must be replaced. In others, damage

touches on appropriate limits for such coverage, suffice it to say that whatever that amount is, it should be blanketed across all locations and for both business interruption and extra expenses.

First is the cost to demolish the undamaged property and clear the site. Second is the proportion that the value of the undamaged property bore to the value of the entire property before the loss. Third is the

Although the 2005 season ended Nov. 30, less than six months remain until it starts all over again.

to less than one-half of a building, commercial or residential, triggers the destruction of the entire building and requires replacement with one that conforms to more-stringent windstorm, earthquake or flood construction requirements.

Once again, if the peril that gave rise to the loss is not covered, the "increased cost of construction" coverage is not triggered. Assuming it is, the following four coverages must then be considered together, because each will be triggered in most ICC claims and will comprise the total value of the loss. Keep in mind that the property in question can be any or all of owned, dependent or "unnamed" property loca-

increased cost to replace—or repair, if demolition is not called for—the covered property on the same or at another site. Fourth is the cost of any increase in business interruption or extra expense—such as an increased period of restoration—that comes about as a result of the additional time needed to comply with the law or ordinance.

The policy understandably will not pay for more than the minimum requirements of the laws governing the reconstruction or repair of the covered property. If the policyholder chooses not to repair or replace the covered property, the increased cost of construction that would have been incurred will not

be paid as part of the loss.

The treatment of the ordinance- or law-increased cost of construction coverages can be addressed in several different ways. The ISO ordinance, or law coverage endorsement, provides for the first three coverages but not for business interruption or extra expense; these can be provided through endorsements to the business income and extra-expense coverages. The ISO form also provides the option to blanket the demolition cost and the increased cost of construction.

Some policies can provide ordinance or law coverage as simply an extension to the basic property coverages, while others provide the coverage or coverages subject to a separate sublimit within the overall policy limit.

The more complex the web of interdependent properties, the more important it is to consider policy language and a coverage form that blankets these four coverages under a separate limit. This approach will help to lessen the likelihood of coverage disputes, inadequate limits or uncovered locations should another hurricane season like the one of 2005 come calling again—as it most surely will.

Steven Pahl is a senior consultant with Risk Resources in Elmhurst, Ill.

Incorporating the hurricanes' lessons

Benefits termination affirmed for refusal of treatment

A benefit plan regulated under the Employee Retirement Income Security Act was entitled to terminate an employee's disability benefits for refusal to be treated, according to the U.S. Court of Appeals for the Sixth Circuit.

Sharon McCartha, an employee of National City Corp., elected to be covered by her employer's disability plan. In June 2000, Ms. McCartha became disabled and her employer gave her a medical leave of absence.

Her application for short-term disability benefits was approved. She was also approved for long-term disability benefits.

At that time, Ms. McCartha was informed that continuation of benefits depended on certification of continuing disability. Her treatment plan required her to make one appointment a month with her doctor and one therapy session a month.

The record revealed that Ms. McCartha had missed many appointments and had not rescheduled her appointments.

Her therapist remarked that Ms. McCartha's lack of progress was likely due to her not being seen on a regular basis.

In January 2002, the disability plan terminated Ms. McCartha's benefits based on her failure to comply with the terms of the treatment plan.

Ms. McCartha appealed the decision, claiming that she had always complied with her treatments to the extent she was able. The appeals committee denied her appeal. Ms. McCartha then brought this suit seeking long-term disability benefits. The trial court ruled against her. She appealed.

On appeal, Ms. McCartha argued, in part, that she did not refuse treatment but simply missed some of her appointments.

The court concluded that the ERISA plan was entitled to terminate her benefits for her refusal to be treated, because payment of benefits depended on certification of continuing disability.

The court was satisfied that the record established that Ms. McCartha missed numerous scheduled appointments with her doctor and therapist. The trial court decision was affirmed.

McCartha vs. National City Corp., U.S. Court of Appeals for the Sixth Circuit, Aug. 10, 2005 (BI/04/J.-\$10)

Mental disability comp laws ruled unconstitutional

The Supreme Court of New Mexico ruled that provisions in the state Workers Compensation Act regarding mental disability violated the equal protection clauses of the state and federal constitutions.

Two employees who suffered temporary total primary mental impairments compensable under the act appealed a decision that their compensation was limited to 100 weeks even though they were found to have been disabled in ex-

Legal Briefs

cess of 240 weeks.

They contended that the act violated both state and federal equal protection clauses, because the act treated workers with permanent physical impairments differently from workers with mental impairments.

Under the act, totally permanent physically disabled employees could receive lifetime benefits and compensation for up to 700 weeks

for permanent partial physical disability, yet compensation was capped at 100 weeks for primary mental disabilities. The compensation judge denied their applications for the longer benefits. The Court of Appeals affirmed the compensation judge. The employees appealed to the state Supreme Court.

The state Supreme Court said that the threshold question in analyzing all equal protection challenges was whether the legislation creates a class of similarly situated individuals who are treated dissimi-

larly.

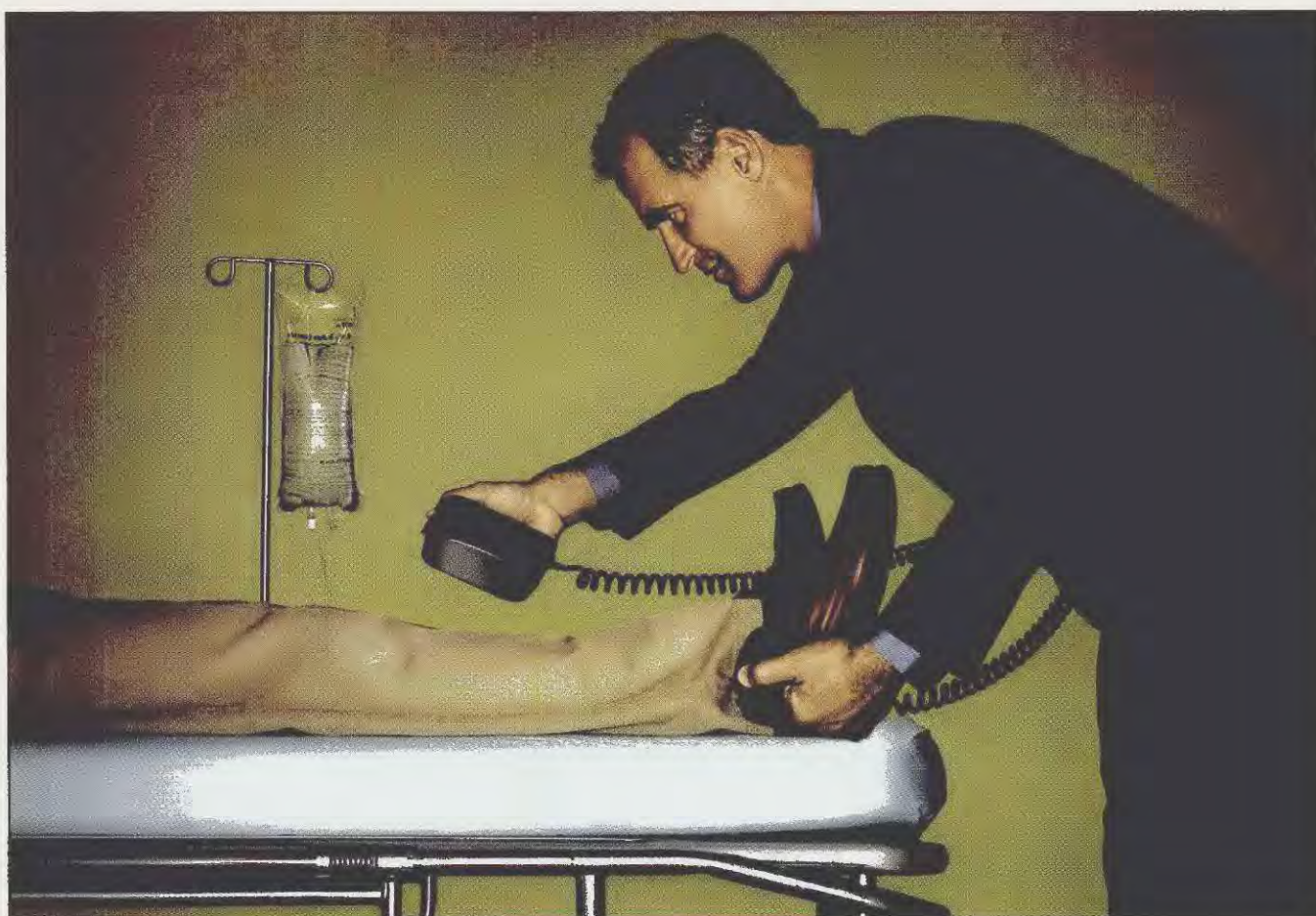
The court said that here the act resulted in dissimilar treatment of similarly situated workers.

The court emphasized that "the historical discriminatory treatment of persons with mental disabilities shows that the courts should be sensitive to possible discrimination against persons with mental disabilities contained in legislation that purports to treat them differently based solely on the fact that they have a mental disability."

The court also said that limiting the compensation for mentally disabled workers compared with physically disabled workers was not substantially related to furthering the purposes and goals of the act.

The decisions of the Court of Appeals and the trial court were reversed.

Breen vs. Carlsbad Municipal Schools, Supreme Court of New Mexico, Aug. 15, 2005 (BI/05/J.—copies not available due to length of decision)



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D&O: Rates may rise despite lower market cap losses

Continued from page 4

settlement values, on average, would increase 30% to \$26 million in 2005 from \$20 million a year earlier and exceed the 2002-05 average by \$3.3 million. The projection excluded the massive Enron Corp. and WorldCom Inc. settlements. Of the 119 settlements in 2004, nine totaled \$100 million or more and 16 exceeded \$50 million.

Projected median settlement values of \$6.8 million for 2005, though, were much lower than the mean average, NERA reported. But that figure is 28.3% higher than the \$5.3 million median in 2004,

which, when adjusted for inflation, equaled the 1991 median settlement value, according to NERA.

"It's conceivable" that the lower-than-average market cap losses on a disclosure dollar loss basis in 2003 and 2005 will lead to smaller securities class action settlements in a few years, said Carl Pursiano, a New York-based senior vp of management liability at Liberty International Underwriters, a unit of Liberty Mutual Group Inc.

Because of the current "bit of a bull market, it's arguable we won't see the same size of settlements in 2007 through 2009" that the D&O

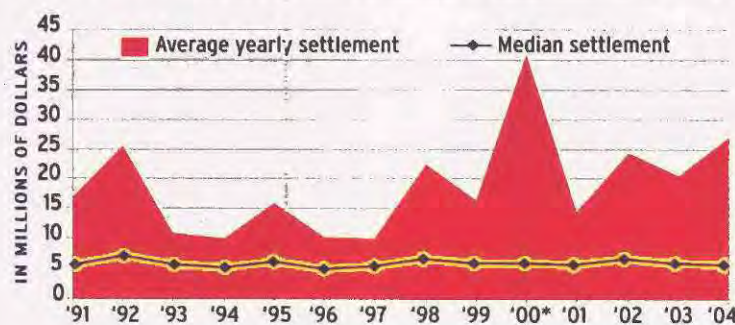
market faced in the first half of the decade, when claims over market cap losses in the bear market of 2000-02 were settled, Mr. Pursiano said.

Even so, "there is lots to suggest that megasettlements will continue," he said.

Laura E. Simmons, a Washington-based Cornerstone principal who co-authored the research firm's joint study with the Stanford Law School's clearinghouse, agreed.

Smaller damages "may not affect the overall settlement value," Ms. Simmons asserted. Plaintiffs attorneys face some settlement funding

Settlements of securities class action lawsuits



*In May 2000, Cendant Corp. settled its class action lawsuit for approximately \$3.2 billion.
Source: Cornerstone Research

constraints that drive settlements toward a dollar figure rather than a recovery based on percentage of loss, she explained.

Mr. Weiss concurred that there is "some legitimacy" to Ms. Simmons' observation.

Ultimately, Mr. Weiss said he does not foresee the demise of massive settlements. While "there are not as many monumental losses as when WorldCom and Enron were in the forefront, that doesn't mean there aren't prospects for more in the future," he said.

Several D&O market executives also do not hold out high hopes for vastly reduced insured losses, even if market cap losses continue to shrink.

The differences between market cap losses during bear and bull markets "don't make much difference" when settlements over losses in either market exceed defendants' insurance limits, observed Tony Galban, senior vp and global D&O product manager at Warren, N.J.-

based Chubb Specialty Insurance, a unit of Chubb Corp.

Large- and mid-cap companies do not purchase sufficient limits to fully cover their potential losses in the event of a big market cap drop, agreed Lou Ann Layton, a managing director and the national D&O practice leader for Marsh Inc. of New York. Fortune 100 companies purchase the greatest amount of D&O coverage—\$250 million of limits, on average, she said.

Data collected by American International Group Inc. of New York give the insurer little reason to expect that the recent bull market will lead to lower securities claims losses, according to Paul Lavelle, president of subsidiary AIG Domestic Claims Inc.-Financial Lines.

During the past three years, investors have filed nearly 100 lawsuits that seek at least \$500 million of damages purportedly caused by

See D&O/page 14



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In uncertain times, raise coverage limits

What should risk managers make of the latest information on falling market capitalization losses as they analyze how to structure their directors and officers liability insurance programs?

Despite the drop in market cap losses, as well as in the number of class action securities claims in recent years, most directors and officers liability insurance market experts advise risk managers to purchase more limits.

In addition, risk managers should reassess the goals of their D&O insurance programs, experts advise.

Whether the drop in market cap losses will lead to smaller D&O claims is "too early to say," said Carl Pursiano, a New York-based senior vp of management liability at Liberty International Underwriters, a unit of Liberty Mutual Group Inc. Therefore, risk managers should "do the prudent thing," he said. "Right now, buy as much as possible."

Risks managers have to think about unexpected systemic losses in their industries, corporate scandal and catastrophic loss-

es—caused by terrorism and natural disasters—that investors may claim could have been minimized or prevented, Mr. Pursiano said. "So, the risk manager has to be prepared with as much limit as possible," he said.

Because large market cap companies never purchase enough limits to cover a settlement for a big market cap drop, "I don't think directors will agree to less limits because market cap losses have dropped," said Lou Ann Layton, a managing director and the national D&O practice leader for Marsh Inc. of New York.

In determining how high a limit to purchase, risk managers should calculate how big a loss a market cap drop of 20% to 60% would generate, Ms. Layton advised. Market cap drops of 20% land companies on plaintiffs attorneys' radar screens, she said.

Defense attorney Richard J. Bortnick "absolutely" agrees that risk managers should purchase additional limits when they can.

Mr. Bortnick, a partner with Cozen O'Connor P.C. in Philadelphia, noted that in addi-

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D&O: Lower market cap losses may not lead to rate cuts

Continued from page 12

market cap losses, Mr. Lavelle noted. From 2000 through 2002, investors filed about 75 lawsuits of that size, he said.

Another problem for securities issuers and insurers is that "the cases are getting better" for plaintiffs, observed insurer attorney Richard J. Bortnick, a partner with Cozen O'Connor P.C. in Philadelphia.

Fast settlements in earlier cases, which often involved companies missing their earnings projections, were largely a function of "good lawyering," Mr. Bortnick said. To-

day, laws and court rulings force plaintiffs to hinge their cases on the materiality of inaccurate statements by corporate officials and on the officials' scienter, or intent to deceive, when issuing those statements, Mr. Bortnick said.

"When corporate officials' actions are outside the bounds of good business practices and outside Generally Accepted Accounting Principles, then scienter is easier to show," he said.

The advent of institutional investors as lead plaintiffs in class actions also could prevent settlement

values from falling, experts say.

Compared with individual investors, "the expectations of institutional investors are elevated, and their total resources are much greater" to pursue larger settlements, Mr. Weiss said.

And each year, the percentage of cases led by institutional investors increases, noted Ann M. Longmore, a New York-based senior vp and the D&O product leader with the executive risk practice at Willis North America, a unit of Willis Group Holdings Ltd.

Meanwhile, defense costs contin-

ue to rise. Based on a June 2005 projection of average settlement values for the entire year, plaintiffs attorneys were in line to recover more than \$6 million in fees, compared with \$3.6 million five years earlier, according to NERA, which excluded the Enron and WorldCom settlements.

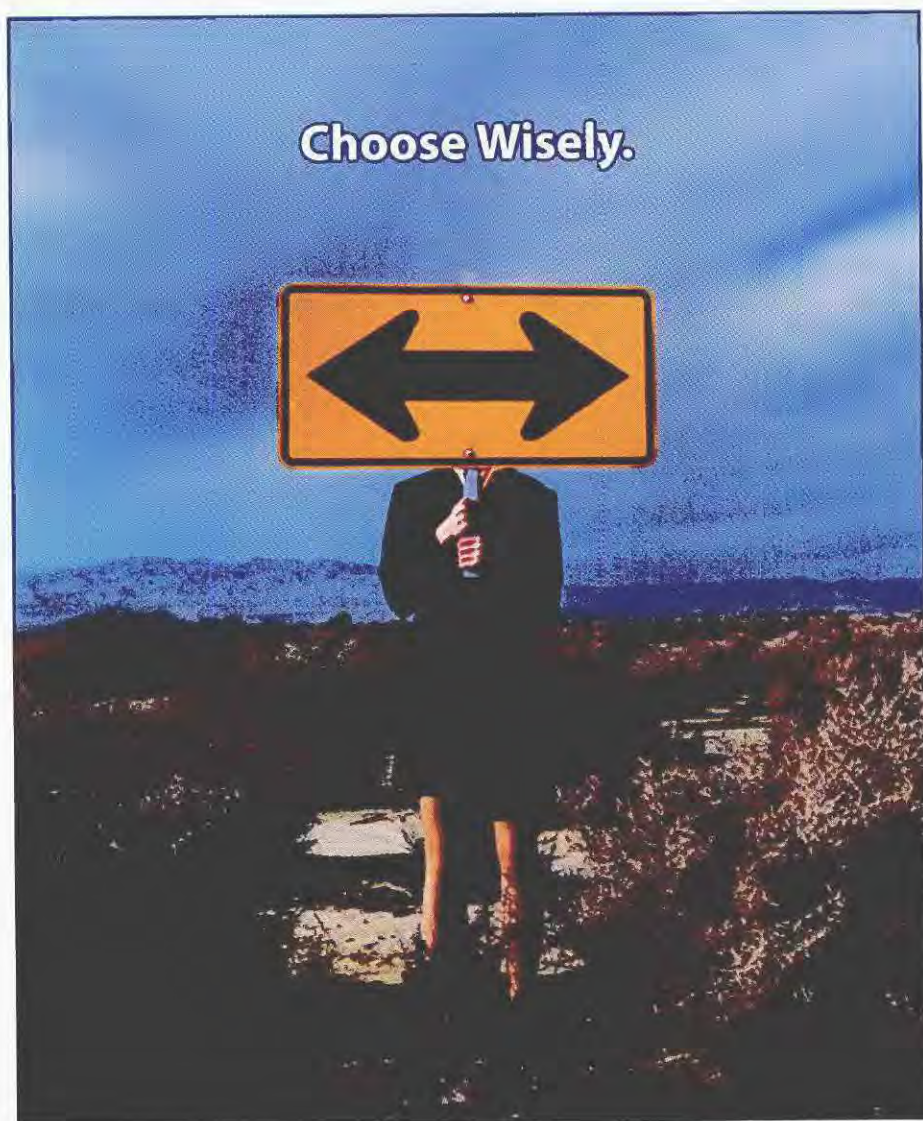
But other factors are in place to promote D&O insurance market stability.

Most notably, worldwide D&O insurance capacity of at least \$1 billion and perhaps as much as \$1.7 billion exceeds demand and has not

wavered over the past several years, market experts say.

And the U.S. Supreme Court in April ruled that proof of inflated share prices—absent evidence that a misrepresentation caused economic loss for plaintiffs—is insufficient grounds for recovering damages (BI, April 25, 2005).

Regardless of how underwriters analyze losses, capacity and other factors to price coverage in the years ahead, AIG's Mr. Lavelle is certain of one thing: "My claims operation will be a vibrant business for years to come."



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Limits: In uncertain times, establish coverage priorities

Continued from page 12

tion to the damages that eat up insurance limits, defense costs are rising dramatically as co-defendants increasingly point fingers at one another. That brings more attorneys into a case than if the defendants had maintained a unified defense, he explained.

Before purchasing additional limits, though, risk managers should establish and prioritize goals for their D&O programs, market executives advise.

"Consider your overall risk tolerance and philosophy, the nature of your industry and specific company situation, and utilize a variety of tools and viewpoints when selecting your limits."

Joe Underwood
Albert Risk Management Consultants

That's because market cap losses can far exceed coverage, said Tony Galban, a senior vp and the global D&O product manager at Warren, N.J.-based Chubb Specialty Insurance, a unit of Chubb Corp.

Before purchasing coverage, a risk manager should determine whether the coverage is meant to protect the company's balance sheet, independent outside directors, the entire board or some combination of those interests. A priority list should be based on the strength of a company's balance sheet, he said.

Mr. Galban asserted that many companies do not need corporate entity coverage but purchase it only "because it's cheap."

Broker Ann M. Longmore

agreed that risk managers should be prioritizing their coverage goals and carefully examining why they purchase entity coverage. Without that coverage, limits could stretch much further for all executives, said Ms. Longmore, a New York-based senior vp and the D&O product leader with the executive risk practice at Willis North America, a unit of Willis Group Holdings Ltd.

Risk managers also should more clearly assess which executives the organization wants to cover, Ms. Longmore said. "Every executive of every subsidiary? Every former executive? Or just the senior board? Or just the outside independent directors?" she asked.

The shorter the list, the further the coverage will stretch, Ms. Longmore noted.

Risk management consultant Joe Underwood agreed that "more limits are better," though that has "to be assessed on a case-by-case basis."

"Don't overreact to one or two cases when deciding what limits to purchase," advised Mr. Underwood, a senior consultant with Albert Risk Management Consultants in Needham, Mass. "Consider your overall risk tolerance and philosophy, the nature of your industry and specific company situation, and utilize a variety of tools and viewpoints when selecting your limits."

"But just buying more limits is not the only solution to the problem" of protecting executives, Mr. Underwood said. "It goes back to governance," he said.

Despite all the variables involved in analyzing an organization's risks and goals, structuring the most appropriate D&O insurance program is not a science but is more than a guessing game, observed Steve Shappell, director of the legal and claims practice in Denver-based Aon Financial Services Group, a unit of Aon Corp.

"It's an art form," he said.

—By Dave Lenckus

Self-insured comp fund converts to mutual insurer

Retailer group seeks to expand cover, attract new members

By AMY LANE

LANSING, Mich.—The Michigan Retailers Assn. is putting a new face and structure on its 25-year-old workers compensation business.

The association has converted its self-insured workers comp fund to a mutual insurance company, a move expected to bring growth to its insurance business and new members to the association.

The retailers' previous self-insured fund was limited in the businesses it could cover. Association officials said that as the MRA grew and its membership evolved beyond traditional retailers, state regulations governing group funds prevented the self-insured fund from serving much of the expanded membership.

For example, if a retailer decid-

ed to enter the restaurant business, the fund could not offer it workers comp coverage even though the business was a member of the association, said Jim Hallan, MRA president and COO.

"We felt that was an artificial barrier, and that it should be the insured's decision as to what fund they wanted to join," he said. The new company can offer coverage to any business that joins the association.

The new Retailers Mutual Insurance Co. will cover the previous 1,000 association members who participated in the self-insured fund, and will offer workers comp insurance to the association's other 5,000 members and to new members.

Larry Meyer, MRA chairman and CEO, said building the insurance business was the primary driver in forming the new company. "Consequential to that growth, will be growth of the association," he said.

He and Hallan expect the insurance business to increase by at

least 20% in the first year. Policies will be sold through independent insurance agents throughout the state and by MRA marketing representatives.

The conversion has been approved by the Michigan Workers' Compensation Agency and the Michigan Office of Financial and Insurance Services, as well as by trustees and participants of the self-insured fund and the MRA board of directors.

The new company will be regulated by the Office of Financial and Insurance Services. In a statement, Insurance Commissioner Linda Watters said she is pleased the new insurer is domiciled in Michigan. She said it is a "prime example of a company taking advantage of the positive Michigan business environment by expanding its services and presence in Michigan."

The Lansing-based company started operating Jan. 1.

Amy Lane is a reporter for *Crain's Detroit Business*, a sister publication of *Business Insurance*.

DB plans on the wane: Survey

By JERRY GEISEL

More employers this year are likely to follow in the footsteps of such corporate giants as IBM Corp., Hewlett-Packard Co. and Lockheed Martin Corp. and close out their defined benefit pension plans, according to a new survey.

Nearly one-third of employers with traditional final-pay plans responding to a Hewitt Associates Inc. survey said it was either "very likely" or "somewhat likely" in 2006 that they would no longer allow new employees to participate in the plans.

Another 16% of employers with traditional plans said it was very likely or somewhat likely that they would take an even more dramatic step: freeze benefit accruals for all or a portion of current participants.

Sponsors of hybrid plans, such as cash balance and pension equity plans, which combine elements of defined benefit and defined contribution plans but legally are defined benefit plans, also are moving away from those plans.

Twenty-seven percent of employers with hybrid plans said it was very likely or somewhat likely that they would not allow new employees to participate in the plans, while 16% said it was very likely or somewhat likely they would freeze future benefits for all or a portion of plan participants.

IBM is the best-known employer to take that approach. After the end of

2007, participants in its cash balance and PEP plans will receive retirement savings benefits only through a 401(k) plan, which IBM is beefing up.

According to the Hewitt survey, employers are considering moving away from defined benefit plans due to cost-related factors. For example, 44% said the cost of a defined benefit plan was the top reason they may phase out their plans, while 31% cited the volatility of costs.

Meanwhile, the survey, based on the responses of 227 employers, also found that most employers have no immediate plans to add Roth 401(k) account features to their existing 401(k) plans. In a Roth 401(k), employees' contributions are made with after-tax dollars but—unlike a traditional 401(k) plan—investment earnings can be withdrawn tax-free, provided certain requirements have been met.

Sixty-six percent of employers said it was either very unlikely or somewhat unlikely they would add Roth 401(k) account features to their plans this year.

The reasons most frequently cited by employers as to why they are unlikely to offer Roth 401(k) features include administrative complexity, lack of definitive regulatory guidance and concerns about whether enough employees would participate to justify adding the feature.

The survey, "Hot Topics in Retirement 2006," is available from the Hewitt information desk at 847-295-5000.

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COMMENTARY

Senior Editor Mark A. Hofmann

Putting in a good word for Washington lobbyists

Official Washington has entered one of its periodic paroxysms of self-examination, and it claims not to like what it sees.

What it sees is a city ridden with, gasp, lobbyists. Under normal circumstances, this fact of life wouldn't merit attention. But these are not normal circumstances, and lawmakers have responded in the time-honored manner of calling for something to be done, in this case something about lobbyists. Lobbyists are suddenly, at best, a necessary evil.

Just as in 1980, when Abscam rocked the Capitol and in 1994, when the check bouncing scandal in the House of Representatives helped give the GOP control of both houses of Congress for the first time in 40 years, the scandals of 2006—centering around one Jack Abramoff, lobbyist extraordinaire—have left many people in this city expressing shock and dismay. Their shock is about as convincing as Captain Renault's in "Casablanca" when told that gambling was going on at Rick's Café Americain.

For those who have somehow managed to avoid any form of news—including blogs—for the past few weeks, Mr. Abramoff recently pleaded guilty to a variety of charges, including conspiracy to bribe public officials. The particulars had to do with the actions of Mr. Abramoff, who claimed to be working on behalf of his clients, Native Americans with casino gambling interests. Apparently, he defrauded them along the way as he merrily pocketed millions of dollars.

Now, this would have been business as usual in a previous Gilded Age, although back in the 1870s Native Americans didn't have the wherewithal to hire people like Mr. Abramoff. Perhaps we have made some progress—at least now people who cheat Native Americans can be held accountable.

Mr. Abramoff's plea was part of a deal in which he agreed to name names, including the names of some members of Congress, as well as those of their staff members. People are nervous, and rightly so. And when people get really nervous, they tend to overreact.

The problem isn't the lobbyists. In more than 20 years of covering politics at both the state and national level, I can count the number of truly dishonest lobbyists I've dealt with on the fingers of one hand, with enough fingers left over to tally the number of really

stupid ones I've encountered. The vast majority, both within and without the insurance industry, are honest, hard-working people.

Lobbyists perform a valuable service in a republic like ours. The average citizen has neither the time nor the money to spend camped on a member of Congress' doorstep in hopes of making a plea for this or that policy initiative. The citizens' interests, particularly their professional interests, need professional representation. That's where lobbyists come in.

That doesn't mean that the practice of lobbying couldn't use some reform. Government can always use more transparency. The public has a right to know who's paying whom how much for what. Ethics panels need to take their job seriously.

But the real problem isn't lobbyists—it's what I call the "perpetual campaign." That's the endless election cycle that starts anew even before the loser delivers a concession speech. It's become an engrained part of Washington culture that invites the kind of dishonest antics in which Mr. Abramoff engaged.

As I noted in a commentary some time ago, other advanced democratic nations manage to choose their governments with remarkable dispatch, spending, at most, a few months on the campaign trail. If you want to see how it works, just look north—the Canadians are in the midst of what by U.S. standards would seem a remarkably short, if not particularly sweet, run-up to national elections.

Instead, we've got the political equivalent of a perpetual motion machine that demands a constant stream of campaign contributions for fuel, 365 days a year, whether it's an election year or not. The kind of money the overheating campaign machine demands can create both desperation and temptation for lawmakers, and opportunities for those who are less than scrupulous.

Bringing the perpetual campaign under control will require a cultural change, and it won't happen overnight, or possibly for quite a few election cycles. But doing so ultimately would be to everyone's benefit, including lawmakers, who'd have more time to focus on the people's business.

So let the lobbying reforms begin, while bearing in mind that lobbyists are a necessary part of the political process. The perpetual campaign, though, is not.

Senior Editor Mark A. Hofmann can be reached at mhofmann@businessinsurance.com.

PRODUCTS & SERVICES

AFC program covers child care liability

BETHLEHEM, Pa.—AFC Insurance Inc., a subsidiary of Brown & Brown Inc., is offering a program to cover child care facilities. The program is being launched in conjunction with AIG Programs, an American International Group Inc. member company.

The Child Care Solutions program was developed for licensed and professionally staffed day care and child care centers. It provides coverage for professional liability claims arising from sexual abuse and molestation and professional liability coverage for child care professionals, as well as off-premises coverage for exposures such as field trips and attendance at swimming programs.

AFC serves as the managing general underwriter for this program, and AIG Programs is providing the insurance coverage.

For more information, contact Jane Gordon, president-AFC Insurance, at 877-456-5323 or at jane.gordon@afcins.com.

IFEBP offers HSA and HRA course

BROOKFIELD, Wis.—The International Foundation of Employee Benefit Plans is offering an online course for employers that is intended to explain the basic elements of health savings accounts and health reimbursement arrangements.

The course was designed to assist employers that are interested in offering these health benefits but are unfamiliar with how the accounts work. The course is geared to benefit and human resource professionals,

as well as those involved with strategic planning responsibility for benefits and compensation.

The online course is self-paced and can be completed at any time. The time required to complete the course ranges from four to six hours. Among the course topics covered are an overview of HSAs, including eligibility, contribution and distribution; the requirements of HRAs; and the integration of HSAs and HRAs with employer health plans.

For more information on the course, visit www.ifebp.org/hsa/hra.

McNeary expands risk management offering

CHARLOTTE, N.C.—McNeary Inc., an independent insurance consulting and risk management firm, has added risk management department review services to its range of services.

McNeary will assess the client's risk management strategy; review the department's effectiveness; provide benchmark comparisons; evaluate key processes, current staff and organizational structures; assess the accuracy of the risk management department's reports and services; and create an improvement plan.

For more information, contact the company at 877-729-4149 or visit www.mcneary.com.

Venture adds workers comp market

WEST CHESTER, Pa.—Venture Insurance Programs, an insurance program administrator, is adding another workers compensation market to its Venture Hospitality package.

The Venture Hospitality program is an all-lines package that is targeted at full-service restaurants, resort properties and hotels. The workers compensation coverage is underwritten by Venture Insurance Programs on behalf of The Hartford Financial Services Group Inc.

More information can be obtained by contacting Annamarie Keen, director-corporate sales, at 800-282-6247, ext. 278, or by visiting the company's Web site at www.ventureprograms.com.

Betterley publishes EPLI market report

STERLING, Mass.—Betterley Risk Consultants has published its annual review of the employment practices liability insurance market.

"The Employment Practices Liability Insurance Market Survey 2005" provides an evaluation of the policies offered by 26 leading insurers, analyzing the differences among the offerings. In addition, the report examines the state of the market, including rate, retention and growth trends.

For an executive summary visit www.betterley.com/products.html.

To order the report, contact the company at 877-422-3366.

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Upgrades leave risk map unaltered

130 countries in riskiest categories

While more countries were upgraded than were downgraded in Aon Corp.'s annual political and economic risk map rating for 2006, the number of countries considered to be of high, medium-high, and medium risk for traders and investors remained almost unchanged.

The map, based on a survey of London market political risk underwriters and other sources, grades 204 countries on a five-level scale from low risk to high risk.

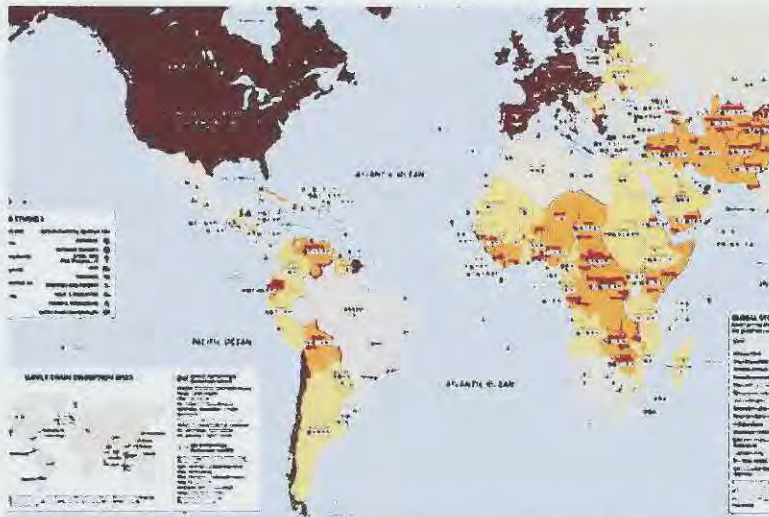
For 2006, Aon said, 23 countries were upgraded—rated as less risky than in 2005—while 11 countries

were downgraded and are considered more risky than they were a year ago.

However, the number of countries in the three riskiest categories—high, medium-high and medium risks—remains almost unchanged for 2006 at 130 compared with 132 a year ago.

Charles Keville, director of the crisis management division of Aon Ltd. in London, said rates for political risk insurance cover remained largely stable at the Jan. 1 renewals.

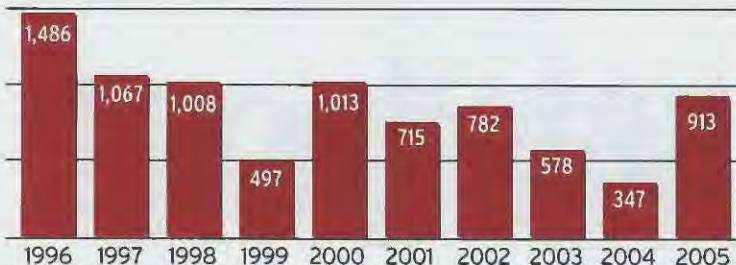
Copies of the "2006 Political and Economic Risk Map" are available from Alexandra Lewis by telephone at 11-44-207-882-0541 or by e-mail at alexandra.lewis@aon.co.uk or on the Aon Corp. Web site at www.aon.com/uk/en/about/Press_Office/media_centre.jsp.



Aon Corp.'s world map of political and economic risk grades 204 countries on a five-level scale, from low risk to high risk.

Airline deaths highest in five years

The number of fatalities on passenger air flights by year.



Source: Airclaims Ltd.

'05 flight fatalities up, covered losses steady

By SARAH VEYSEY

Fatalities on passenger air flights increased dramatically in 2005 to 913, compared with 347 in 2004, according to Airclaims Ltd., but insured losses likely increased by only a relatively small amount.

In 2005, there were eight fatal accidents on Western-built commercial jets—which carry about 90% of all air traffic, according to Airclaims—resulting in 718 passenger deaths. In 2004, the safest year for passenger travel since records began in 1945, there were just three fatal accidents on Western-built jets and 211 passenger fatalities.

According to Airclaims, the number of passenger deaths in 2005 was in line with a trend of improving air safety, and the years from 2001 to 2004 were exceptional in terms of the low number of passenger deaths recorded.

"In actual fact, 2005 represents a disappointing return to 'normal,'" said Paul Hayes, director of safety at Airclaims, a London-based consulting and claims management service for the aerospace industry, in a statement.

Last year was "another good year from the standpoint of safety in the industry," noted Steven

See FATALITIES/page 18

Report sees increased M&A action in Europe

By SARAH VEYSEY

The European insurance market could see merger and acquisition activity in the near future as companies seek to find ways to use excess capital, according to analysis by the investment bank Fox-Pitt, Kelton.

European insurance companies likely will not seek to merge solely for growth reasons, predicted Bob Yates, head of European research at FPK, but they instead may seek to acquire companies to gain footholds in new markets and to diversify their portfolios.

And companies from outside Europe may seek to acquire European companies in a bid to diversify their books of business and use excess capital, Mr. Yates noted.

Mr. Yates was speaking at a briefing on FPK's European insurance outlook for 2006. Founded in 1971, London-based FPK has been a wholly owned subsidiary of Swiss Reinsurance Co. since 1999.

In its outlook for the European insurance sector, FPK says that, "where the economics can be justified, managements prefer to acquire than to return capital" to shareholders. FPK says it expects "a continuation of the focused, smaller-scale transactions calculated to rationalize portfolios by exiting or bulking up subscale activities, but also a growing appetite

for larger, though still economically driven, acquisitions."

Regulators and rating agencies are likely to reward such risk diversification with lower capital requirements, FPK notes in the report.

"There are three drivers of increased consolidation: pressure to cut costs to improve profitability, and the pursuit of scale and diversification in order to capture the benefits of lower capital requirements," the report states.

Companies likely will seek to expand into markets in which they currently have little or no penetration, Mr. Yates predicted. Large cross-border acquisitions require shareholder consent, Mr. Yates said, so most merger and acquisition activity will likely be smaller in scale.

Companies from outside Europe may seek to acquire European companies, according to Mr. Yates.

Bermuda-based specialty or monoline companies may seek to diversify their portfolios, because rating agencies are beginning to require such companies to hold more capital, he said. The cost of capital for specialty companies is high, Mr. Yates noted, and so some such companies may decide to diversify their business in order to reduce the cost of their capital. Such companies may look to acquire European operations as part of that diversification effort, he said.

Updates

Amlin reports increase in renewal premiums

Amlin P.L.C. has announced that gross written premiums for its Lloyd's of London syndicate 2001 for the 2005 underwriting year were £810 million (\$1.4 billion), compared with £830 million (\$1.6 billion) in 2004. A spokesman said the 2% drop in written premiums in 2005 was due to a reduction in rates for renewal business. The London-based group said in a statement that, during the Jan. 1 renewals syndicate 2001 has written £183 million (\$324.0 million) in premiums, an approximate increase of 10% compared with the same period last year.

Scottish Power to close DB plans

Energy company Scottish Power P.L.C. is set to close its defined benefit pension plans to new participants and introduce a defined contribution plan instead. The Glasgow, Scotland-based firm said that from April 1, new employees can join the defined contribution plan and will be required to contribute 5% of their salary to the plan. Scottish Power will match that contribution. In addition, Scottish Power said it would increase the retirement age for new plan participants to 65 from 63. The firm said it was making the changes "against the background of the general increase in life expectancy, legislative changes and the balancing of investment to help manage risk and returns in the future."

S&P predicts good year for European insurers

The European insurance industry was profitable in 2005 despite catastrophe losses from hurricanes Rita, Katrina and Wilma, according to a report by Standard & Poor's Corp. "Industry Report Card: European Insurance," published by London-based S&P's Ratings Services, said 74% of its insurance ratings in Europe, the Middle East and Africa have a stable outlook. Authors of the report said they expect 2006 to be a good year for property/casualty insurers, with the large losses of 2005 likely helping insurers to maintain pricing discipline.

GE Frankona names Isherwood chairman

GE Insurance Solutions has appointed Jonathan Isherwood president and chairman of the board of management at its Munich, Germany-based subsidiary GE Frankona Rückversicherungs A.G. Mr. Isherwood, who remains the leader of GE Insurance Solutions' global product strategy team, replaces Inga Beale, who now heads Zug, Switzerland-based reinsurer Conventum Holding Ltd.

U.K. rules call for early warning of pension changes

By SARAH VEYSEY

LONDON—New regulations slated for introduction in April will require employers to consult with members of their defined benefit and defined contribution pension plans before any changes to those plans are made.

Under the Occupational and Personal Pensions Schemes (Con-

sultation by Employers and Miscellaneous Amendment) Regulations 2006, employers will have to inform participants in their plans—or those employees' representatives—at least 60 days before any proposed changes are introduced.

The new regulations, which are subject to approval by Parliament, would require employers to con-

sult with members and staff on such issues as closing a plan to new members, changing the accrual rate in a defined benefit plan, and reducing employer contributions or increasing employee contributions, according to the United Kingdom's Department for Work and Pensions.

The regulations would come into force for employers with more

than 150 employees on April 6 of this year.

For employers with 100 to 149 employees, they would take effect on April 6, 2007, while employers with 50 to 99 workers would not face the new requirements until April 6, 2008.

The regulations would not apply to employers with fewer than 50 employees.

Fatalities: Fewer passengers killed in air crashes in 2005

Continued from page 17

Doyle, aviation and aerospace practice manager at Aon Ltd. in London. Mr. Doyle said that newer planes and improved safety meant that the number of losses was still fairly low compared with historical trends.

August 2005 saw a spate of air crashes, three of which resulted casualties (BI, Aug. 22, 2005). The first major loss of 2005 occurred on Aug. 2, when an Air France Airbus A340-300 en route from Paris to Toronto skidded on landing and burst into flames at Toronto's Pearson International Airport. The plane, valued at \$131 million, according to sources, had 297 passengers and 12 crew on board. There were no fatalities.

On Aug. 6, 2005, a Tunisair turboprop plane crashed into the sea near Sicily after encountering engine trouble on its way from Bari, Italy, to Djerba, Tunisia. Thirteen of the 39 people on board died. The plane was valued at \$12.5 mil-

lion. On Aug. 14, 2005, a Helios Airways Boeing 737-300 jet crashed into a mountainside north of Athens on its way from Larnaca, Cyprus, to Prague, Czech Republic, killing all 115 passengers and six crew.

And on Aug. 16, 2005, a Colombian passenger jet crashed in Venezuela, killing all 160 people on board. The McDonnell Douglas MD-82 aircraft, owned by West Caribbean Airways, was en route from Panama to Martinique when it crashed near Machiques, Venezuela.

But despite that series of accidents, insured losses for 2005 are predicted to be only slightly higher than those in 2004, a relatively benign year for aviation losses. According to Airclaims' predictions, losses of between about \$1.2 billion and \$1.3 billion were likely incurred during 2005, up from \$1.06 billion in 2004.

"The market has been lucky,"



said Mr. Hayes, noting that if the Air France accident in Toronto had been more serious, insured losses could have been markedly higher, noting that the lower insurance losses in the fatal crashes reflect the

lower average liability losses in the affected countries.

That all the passengers escaped the Toronto accident alive shows the improved safety of modern planes, said Aon's Mr. Doyle. He

A Helios Airways jet crashed in Greece last August killing 115 passengers. Overall, air passenger fatalities increased last year.

noted that those accidents last year in which there were fatalities occurred, in the main, on older aircraft. The aviation market's results were likely not hit severely by those losses, Mr. Doyle said, and the losses did not cause a hike in rates.

According to Airclaims, there is continued downward pressure on insurance rates for aviation business.

The series of hurricanes in the second half of 2005 did not directly affect the aviation insurance industry, Mr. Doyle said. He noted, though, that one potential side effect could be a decision by reinsurance underwriters to move capital away from aviation and into lines of business such as marine energy, where large rate increases are being seen.

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REQUEST FOR PROPOSALS

REQUEST FOR PROPOSALS

NEW YORK CITY HOUSING AUTHORITY REQUEST FOR PROPOSALS (RFP) FOR ACTUARIAL SERVICES

- CLAIMS RESERVES ANALYSES
- LIABILITY & WORKERS' COMPENSATION
- ANCILLIARY SERVICES IN SUPPORT OF RISK MANAGEMENT PROGRAM

The New York City Housing Authority ("NYCHA") requests proposals from qualified ACTUARIAL CONSULTANTS for providing estimated claims reserves for liability and workers' compensation consistent with generally accepted accounting principles (GAAP) and analyses of insurance procurements for NYCHA's Risk Management Program.

Proposals must be made in the format outlined in the RFP packet containing instructions, specifications and detailed submission requirements. Packets may be obtained beginning January 9, 2006 from NYCHA's Coordinator for this RFP: Margaret Davila, RFP Coordinator, New York City Housing Authority, Risk Finance Division, 90 Church Street, 6th Floor, New York, New York, 10007-2919 and telephone 212-306-6687. Completed proposals must be received by 4:00 P.M. on Friday, February 10, 2006.

A Proposers' Conference will be held on Monday, January 23, 2006 at 2:30pm on the 5th floor Ceremonial Room at NYCHA's offices located at 90 Church Street, New York, New York. All inquiries for additional information regarding the RFP are to be directed to: Margaret Davila, Risk Finance Division @ the above address and telephone number.



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Productivity: Savings linked to claims costs

Continued from page 4

incidents. But little research has attempted to find productivity and indirect costs arising from multiple lines of coverage, according to Wausau and other sources.

While it would seem logical for employers to want that data, they have not yet demanded it, said Marcia Carruthers, chief operating officer for the San Diego-based Disability Management Employer Coalition.

Many large employers, though, are now developing objective measurements for productivity and other losses stemming from workers compensation and disability claims, Ms. Carruthers said. Those efforts often tie productivity measurements to employers' return-to-work or stay-at-work programs.

"If you are not at work, you are not productive," she said.

Wausau studied the indirect costs associated with other types of claims because it concluded after discussions with policyholders that businesses incur significant indirect costs outside of workers comp-related claims, explained Mark Fiebrink, Wausau's president and chief operating officer.

The insurer surveyed financial executives at midsize companies nationwide and found growing buyer interest in the indirect costs they incur.

Productivity expenses and related uncovered loss of value can stem from factors such as the time damaged equipment is out of service, the cost of lost business opportunities, the disruption of business relationships, the cost of internal investigations and the loss of reputation, according to Wausau.

Respondents' estimations of such costs may have been subjective, because Wausau did not collect data about how they determined their loss of value or indirect expense, the insurer said.

But Mr. Fiebrink said he believes the findings are accurate because they are based on respondents' best



Mark Fiebrink, president and COO of Wausau Insurance Cos., said Wausau studied the indirect costs associated with claims other than workers comp after talks with policyholders.

judgment and because the responses are consistent with past studies on indirect costs in workers compensation.

More than 83% of survey respondents also said they achieve significant productivity savings by inte-

grating multiple lines of coverage under one insurer. And more than two-thirds said their brokers counsel them to consider total risk costs in addition to the direct cost of premiums and deductibles.

But Wausau's results on indirect costs appear on the low

side, according to Ms. Carruthers. Other studies on lost productivity and indirect costs stemming from workers comp and disability-related claims have typically shown that they can run from three to 10 times higher than direct claims costs, she said.

The ratio between direct and indirect costs can depend on how a company captures the data and other factors. If an employer, for example, does not have a workers comp return-to-work program, its ratio of indirect to direct costs will likely be higher, Ms. Carruthers explained.

Wausau's Multiline Productivity Poll is online at www.wausau.com/poll.

"If you are not at work, you are not productive."

**Marcia Carruthers
Disability Management
Employer Coalition**

AIG: Insurer nearing settlements of two suits

Continued from page 1

the Starr managing agencies, and Mr. Greenberg's relationship with his former company has deteriorated since he resigned as chairman and CEO last June. AIG and Starr International Co. Inc., another outside company Mr. Greenberg controls, have since sued each other over various issues.

In a filing with the Delaware court earlier this month, TRSL and AIG reported an agreement that would drop charges against all current and some retired AIG directors and officers.

The agreement would permanently dismiss the complaint against 10 outside AIG directors who have never owned C.V. Starr stock. They include longtime directors M. Bernard Aidinoff, Marshall A. Cohen, Carla A. Hills and Martin S. Feldstein.

TRSL would also dismiss charges against five directors and officers who have sold their Starr shares as part of a tender offer that Starr completed earlier this month. They are: Mr. Sullivan, Donald P. Kanak, Thomas R. Tizzio, Edmund S.W. Tse and Jay S. Wintrob.

The dismissal of the five AIG officials is "without prejudice," though, meaning that TRSL could refile charges against them at any time until final resolution of the case.

TRSL will continue to press its suit against Mr. Greenberg, former AIG Chief Financial Officer Howard I. Smith, former AIG director Edward Matthews and Starr. The partial settlement was awaiting a Delaware judge's approval on Friday.

On Friday, AIG announced that with the completion of the Starr tender offer, no AIG executive officers are now shareholders of Starr.

Meanwhile, also last Friday, the Wall Street Journal reported, citing unnamed sources familiar with the situation, that AIG may pay up to \$1.5 billion to settle Mr. Spitzer's lawsuit in a deal that would also resolve the Securities and Exchange Commission's investigation of AIG accounting practices.

Any settlement by AIG would not include Messrs. Greenberg and Smith. In his suit, Mr. Spitzer charged the two men with orchestrating

fraudulent transactions intended to inflate AIG's financial results and pump up its stock price.

Representatives of AIG and the SEC declined to comment.

A spokesman for Mr. Greenberg said in a statement Friday that "he intends to challenge allegations of misconduct at trial and is confident that he will prevail."

Referring to the reported \$1.5 billion settlement amount, he added, "a settlement of this magnitude is merely a political trophy for the attorney general and totally disproportionate to the impact of the alleged misconduct."

Mr. Spitzer and the New York State Insurance Department "are involved in discussions with AIG, and we hope to resolve things," a spokesman for the attorney general's office said. The talks are "showing signs of progress," he said, "but we can't give any comment on when our issues with the company may be wrapped up."

Rupal Parekh contributed to this article.

Lewis: Recognized for achievements in industry

Continued from page 4

work harder and recruit smarter people to compete with Progressive. That's the monumental influence on the industry he's had."

John J. Byrne, retired chairman and CEO of Hamilton, Bermuda-based White Mountains Insurance Group Ltd., first met Mr. Lewis in 1976 while working at GEICO Corp. "We were direct competitors, and we got to know one another," he said.

According to Mr. Byrne, Mr. Lewis deserves to be named Insurance Leader of the Year "because he is one of the great general managers our industry has ever seen." Particularly in terms of the consistent and strong returns Progressive offers stakeholders, "I doubt if anybody in the last 100 years has done the kind of job Peter has," he said.

"I think he will go into the history books as one of the great, great CEOs of all time," Mr. Byrne noted.

Mr. Lewis will receive the honor at St. John's annual award dinner, Wednesday, Jan. 18, in New York.

Insurance Leaders of the Year

Past recipients of the St. John's University award*

- | | |
|------|---|
| 2004 | Brian Duperreault, chairman, ACE Ltd. |
| 2003 | John T. (Jack) Sinnott, retired chairman and CEO, Marsh Inc.; senior adviser, Marsh & McLennan Cos. Inc. |
| 2002 | Paul B. Ingre, chairman and CEO, Arch Worldwide Insurance and Reinsurance Group |
| 2001 | John J. (Jack) Byrne, chairman, White Mountains Insurance Group Ltd.; chairman, OneBeacon Insurance Group |
| 2000 | Ronald E. Ferguson, chairman and CEO, General Re Corp. |
| 1999 | Robert Clements, chairman, Risk Capital Reinsurance |
| 1998 | Maurice R. Greenberg, chairman and CEO, American International Group Inc. |
| 1997 | Patrick G. Ryan, chairman and CEO, Aon Corp. |
| 1996 | Sir David Rowland, chairman, Lloyd's of London |
| 1995 | Edward J. Muhl, superintendent of insurance, State of New York |

*Title and company at the time the award was presented

Source: St. John's School of Risk Management, Insurance and Actuarial Science

Forum: Insurers, reinsurers optimistic about maintaining underwriting discipline

Continued from page 4

Mr. Eppinger said.

But "probably more important (than such tools) is what we do with that information," said Edward B. Rust Jr., chairman and CEO of State Farm Group in Bloomington, Ill. "It's human nature to think that (a hurricane is) not going to be that bad. If you thought about a 30-foot storm surge at Bay St. Louis, Miss., you probably wouldn't want to live there. It's a beautiful area but for the 30-foot storm surge," he said. Bay St. Louis was among the Gulf Coast cities devastated by Hurricane Katrina last year.

"After a major event, people

think, 'Well, we've got that behind us.' These events are going to happen and are going to have a devastating impact. What do we do with the tens of thousands of people in harm's way?" Mr. Rust asked.

W.G. Jurgensen, CEO of Nationwide Group in Columbus, Ohio, suggested the industry can help educate buyers about the risks they face and the protection insurance can provide. "The public suffers from our nomenclature...because we haven't explained it. People think a 1-in-100-year event means every 100 years, not a 1% chance every day of the year," he said.

In addition, "a major issue (for

insurers) is the extent to which you can ask certain customers in the portfolio to subsidize the risks of others in the portfolio," Mr. Jurgensen said.

Edward Liddy, chairman and CEO of Northbrook, Ill.-based Allstate Corp., said a national fund for catastrophe risks is "an area reasonable people can disagree on, but it's important to have a debate and get people to focus on it."

Allstate is promoting a proposal, outlined at www.protectingamerica.org, that Mr. Liddy said was crafted with careful attention to wording. "Ours is a private solution, but it's government-sponsored. It has to have actuarially

sound pricing. States need to have pools so we have prefunded what's needed for what we saw occur last year," he said. "The key is to have money available for these things that we know will happen (but) we just don't know where."

Mr. Rust agreed that "a partnership with government is critical. Financial markets will not allow you to accumulate the capital required" to deal with events such as Katrina, he said. Mr. Rust noted that few investors are willing to take long-term positions with little return such as what insurers would need to build up sufficient reserves for large catastrophes.

Regulatory and market reforms

also are needed to help the industry weather future storms, Mr. O'Hara said. "It's a myth that it is a free market. It's highly regulated (by each state). If you could charge actuarially sound rates in the affected areas," insurers could do well, he said.

"I think a government solution is an oxymoron most of the time. We had an uphill battle with the (Terrorism Risk Insurance Act) right until the end. It's not an industry bailout. There are unintended consequences of inviting the government into what should be an industry solution. Regulatory reforms... would go a long way toward solving the problems," Mr. O'Hara said.

BlackBerry: Patent infringement risks seldom covered

Continued from page 1

jury finding that it violated the patents of NTP Inc., a patent holding company in Arlington, Va., and an injunction that would bar the company from continuing to sell BlackBerry handhelds, software and service in the United States (see box).

Despite the jury verdict, patent lawyers say the BlackBerry case does not necessarily reflect inadequate due diligence by RIM. Rather, the case is symbolic of the difficulties companies encounter in researching patents and ensuring that their products and services do not violate them.

Due diligence

"I wouldn't say the case indicates they hadn't done their due diligence," said Scott Creasman, a partner in the intellectual property and technology group of Powell Goldstein L.L.P. in Atlanta. "I think they did look at the NTP portfolio and decided that it either didn't apply to them or it was invalid. They truly believe that no one else invented the technology that they use in the BlackBerry."

There are millions of patents in force at any given time, observers note, and even the best research might fail to unearth the existence of a patent that applies to the product or service a company offers, they say. "You can be the best-run company and do the best due diligence possible and still get sued," said Ted Doolittle, a principal with Integro Insurance Brokers Ltd. in San Francisco.

Patent disputes also arise because officials at the U.S. Patent and Trademark Office sometimes grant broad patents, patent lawyers say.

The number of patent infringement lawsuits has increased dramatically in recent years, a trend that is expected to continue because of the rise in patent holding companies such as NTP that build portfolios of patents and file actions against companies

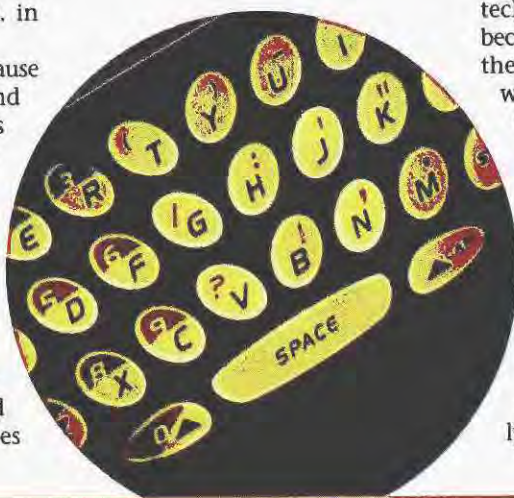
that violate them, lawyers say. "You're going to see more and more of what happened to RIM," said John Rogitz, a patent lawyer with San Diego-based Rogitz & Associates.

There have been major settlements and damage awards in patent infringement lawsuits. In fact, RIM reached a settlement with NTP last year to pay \$450 million to resolve all claims related to the use of the patented technology, a settlement that later fell apart, reportedly over nonfinancial details.

Because of the increase in patent infringement litigation and the potential for large damage awards and settlements, capacity for insurance coverage of the risk is extremely tight. In the past, broad wordings in commercial general liability policies allowed policyholders to successfully force their insurers to defend

"Because you're faced with an injunction that could put you out of business, you pay the best lawyers in the patent business, and they are expensive."

Mike Smith
National Union Fire Insurance Co.
of Pittsburgh, Pa.



against patent infringement lawsuits, but recent CGL policies specifically exclude patent risks, so policyholders have to seek stand-alone policies.

"It's an area that the insurance market continues to grapple with," said John Brosnan, media and intellectual property practice leader, technology and professional risks, for Aon Financial Services Group in Chicago. "There are a limited number of markets that will even consider stand-alone patent infringement insurance."

The BlackBerry case "reinforces the opinion we always had, that this is a very difficult line of business to underwrite," said Mike Smith, New York-based president of the professional liability division of National Union Fire Insurance Co. of Pittsburgh, Pa., a New York-based unit of American International Group Inc. "We do have a patent product, but it's one we have a very limited appetite for."

Difficult risk

Underwriters find patent infringement to be a difficult risk because even a policyholder's best efforts at investigating the technology used in its product or service can leave room for unintentional infringement of patents, Mr. Smith said.

In addition, defense costs are extremely high due to the level of specialty required of patent lawyers. Furthermore, injunctions barring the continued use of a patented technology are almost automatic, because it is generally assumed that the continued use of the patent would cause irreparable harm to the patent holder, he noted. All of this makes it difficult for underwriters to price the product appropriately, Mr. Smith said.

"Because you're faced with an injunction that could put you out of business, you pay the best lawyers in the patent business, and they are expensive," Mr. Smith said. "The stakes are so high that, obviously, if you're BlackBerry, you have

Who thought of it first?

A timeframe of events in the BlackBerry patent infringement lawsuit:

NOVEMBER 2001

Research in Motion Ltd., the maker of the BlackBerry, is served with a complaint filed by NTP Inc. alleging that the company infringed on eight of its patents that cover the use of radio frequency wireless communications in electronic mail systems.

NOVEMBER 2002

A jury in the U.S. District Court for the Eastern District of Virginia finds that certain products and services sold by RIM willfully infringed on five of NTP's patents and awards millions in damages to NTP.

AUGUST 2003

The district court judge overseeing the case grants an injunction barring RIM from continuing to sell BlackBerry handhelds, software and service in the United States, but also grants RIM's request to stay the injunction pending the completion of RIM's appeal.

OCTOBER 2005

The U.S. Supreme Court denies RIM's application to stay or suspend the case pending RIM's request for Supreme Court review.

DECEMBER 2005

The U.S. Patent and Trademark Office rules that NTP's patents are invalid after being asked to re-examine the disputed patents. RIM says any court injunction barring its BlackBerry products and services from being sold in the United States is inappropriate due to this recent rejection of NTP's patent claims by the patent office.

FEBRUARY 2006

The district court judge is expected to rule on the scope of the injunction and the exact amount of damages to be awarded to NTP.

to spend whatever it takes to win it."

Louisville, Ky.-based Intellectual Property Insurance Services Corp., a managing general agent, is active in the patent infringement market. The company provides two types of patent infringement products. Its abatement/enforcement policy covers litigation expenses incurred in enforcing the insured's intellectual property against infringers, while the defense cost policy reimburses the policyholder for legal expenses when that policyholder must defend itself against an infringement claim.

IPISC mostly writes policies for companies with less than \$30 million in annual revenues, which tend to focus on abatement/enforcement policies to protect their property from being infringed, according to IPISC President Robert W. Fletcher. Midsize companies with revenues between \$30 million and \$500 million are great candidates for defense costs coverage, he said, because a sizable claim can put them out of business.

Insurance limited

Companies with more than \$500 million in revenues generally do not purchase patent infringement coverage, because they have substantial resources and their own legal teams in place to deal with

patent lawsuits. "The big guys don't really need the insurance," Mr. Doolittle said. "They have enough cash, and their patent portfolios are so developed. The little guys are the ones who need it and can't really afford it."

Because patent infringement coverage is very expensive, only a small number of companies actually purchase the insurance.

The minimum premium for National Union's policy is 10%, so a \$10 million policy has a premium of at least \$1 million, Mr. Smith said. "We have difficulty finding insureds that are interested in partnering at the premiums we're talking about."

Some companies choose to self-insure patent infringement risks through captives or pursue other alternative risk transfer methods because traditional insurance is either unavailable or too expensive, Mr. Brosnan noted.

The few insurers willing to write patent infringement coverage generally offer limits in the range of \$2 to \$10 million. National Union, for example, offers a defense cost policy with a limit of up to \$10 million, a \$2.5 million retention and 10% co-insurance.

Co-insurance is a dominant feature in patent infringement policies, with the policyholder sharing anywhere from 10% to 25% of the risk.

What can risk managers do?

Given all the difficulties in obtaining insurance coverage for patent exposures, risk managers need to take aggressive steps to protect their companies against such lawsuits. First and foremost, they should ensure that experts who understand their products and services thoroughly analyze them for any hint of patent infringement, observers say.

If a company is sued for patent infringement that occurred before patent exclusions in CGL policies became the norm, the risk manager should check the company's previous policies to see if the wording is broad enough to force the carrier to defend, lawyers say.

Companies should also create plans to design their products or services around any disputed

patents. RIM, for example, has developed a contingency plan that it says will allow it to continue offering its services even if the injunction is ultimately instituted against the company, although no details have been released. RIM did not respond to requests for comment.

A company that is sued for patent infringement should attempt to settle the case quickly, because the damages awarded in these cases can be enormous. Rather than get caught up in litigation that will crawl through the court system for years, the better business solution might be to settle the case even if the company thinks there is no infringement, Mr. Creasman said. "I bet RIM wishes they had settled the case when they had a chance to."

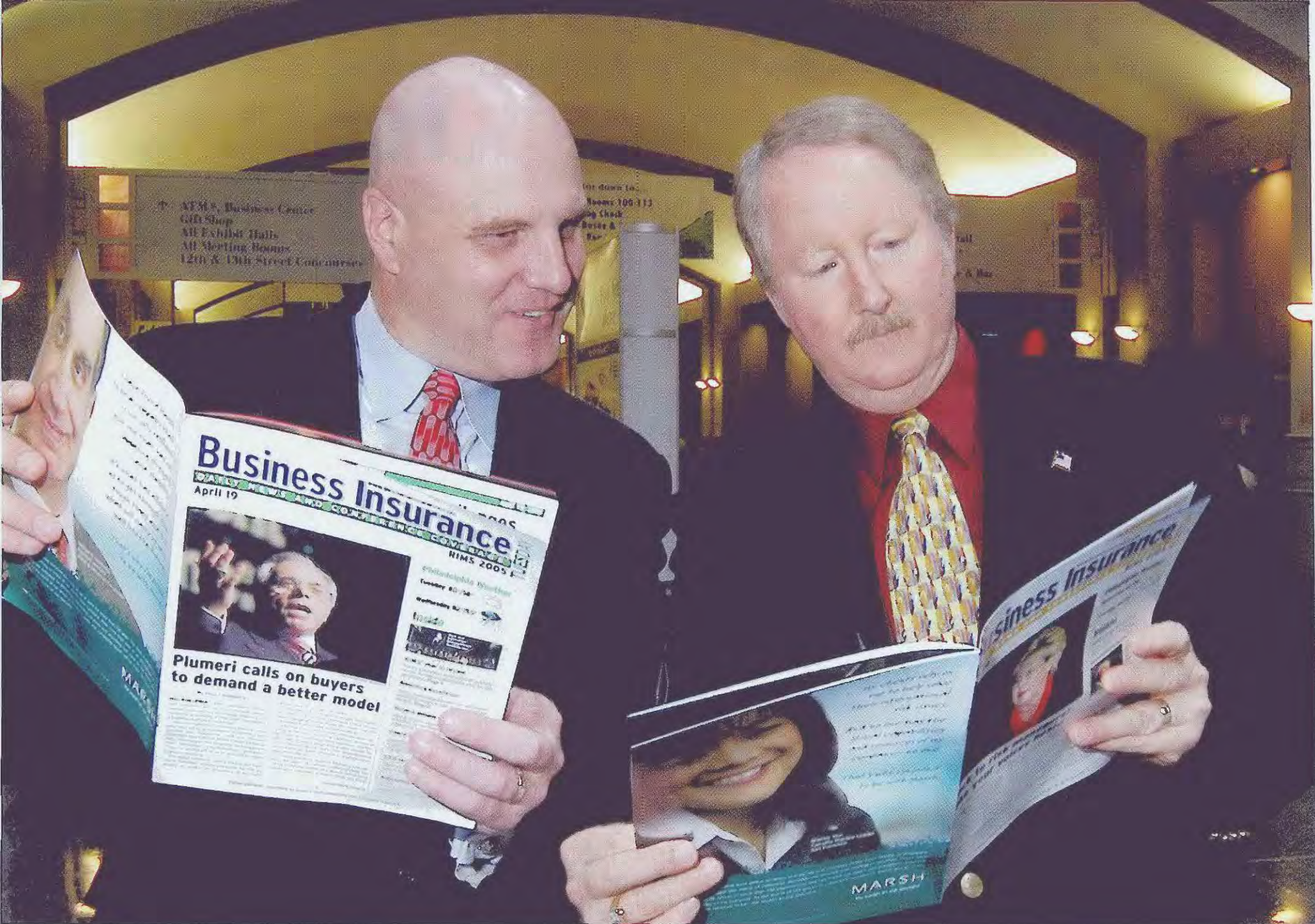


Photo: Michael Marcotte

Lance Ewing (L) and Chris Mandel, RIMS past presidents.

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The owner of the Hard Rock Cafe casino complex in Biloxi, Miss., is suing two of its excess insurers seeking coverage for flooding damage that the casino suffered when Hurricane Katrina struck last year.

Hard Rock: Casino sues for flood coverage

Continued from page 3

first time when Mississippi gaming authorities ordered it and other Gulf Coast casinos closed on Aug. 28, 2005, as Hurricane Katrina approached.

The storm destroyed the Hard Rock's casino and caused significant water damage to a low-rise building containing the theater, shops and restaurants, according to Premier filings with the Securities and Exchange Commission.

About half the hotel's 318 rooms survived intact, but the other half suffered damage to furniture, fixtures and equipment. The hotel and parking garage sustained no structural damage, and Premier has estimated the cost of rebuilding and replacing damaged furniture and fixtures at \$121.9 million.

Premier placed \$181.5 million in coverage for the Hard Rock complex, effective Aug. 15, according to court filings. The program includes a primary policy written by the Industrial Risk Insurers unit of GE Insurance Solutions excess of a \$5.4 million hurricane deductible, which Premier separately insured. The IRI policy provides limits of \$25 million per occurrence and an annual aggregate of \$25 million for flood losses. Above the primary policy are two excess layers:

- A \$25 million first excess layer whose participants are Westchester Surplus Lines Insurance Co., a unit of ACE Ltd., for \$5 million; Swiss Re for \$4 million; Lloyd's of London and London market underwriters for \$7.5 million; Essex Insurance Co., a unit of Markel Corp., for \$3.5 million; and RSUI Indemnity Co. for \$5 million.

- A \$131.5 million second excess whose participants are Homeland Insurance Co. of New York, a unit of OneBeacon Insurance Group, for \$15 million; Clarendon America Insurance Co. for \$10 million; RSUI for \$15 million; Great American E&S Insurance Co. for \$5 million; James River for \$14 million; Swiss Re for \$21 million; and Lloyd's and

other London underwriters for \$51.3 million.

The IRI primary policy includes a "weather catastrophe occurrence" clause that provides coverage for losses caused during a 72-hour period by a named storm, "including but not limited to flood, wind, hail, sleet, tornadoes, hurricane or lightning," Premier's court filings show.

The IRI policy and most of the excess policies also included a separate endorsement specifically providing flood coverage, the filings say. All of the first excess layer policies include the flood endorsement, while 55% of the second excess layer coverage includes the endorsement, Premier's filings say.

IRI paid out the limit of its primary policy last year, and all of the first excess layer insurers except Swiss Re have paid their shares of the \$25 million layer or notified Premier that they will pay, the filings say.

Swiss Re, though, sent a letter to Premier last month denying the claim as an uninsured flood loss. Swiss Re contended that its excess policies include an endorsement imposing a \$25 million sublimit on flood losses, effectively making the limit of the IRI primary policy Premier's only flood coverage, Premier alleges.

Premier contends that the Hard Rock's hurricane damage is covered by all the excess insurers under the weather catastrophe clause in the IRI policy, which the excess insurers followed.

The company also alleges that the flood sublimit endorsement Swiss Re has cited was not included in the policy the insurer delivered to Premier and that the insurer delivered the endorsement to Premier's lawyers only after it denied the Hard Rock claim. The endorsement was thus not part of the Swiss Re policy at the time Katrina struck, Premier contends.

In its lawsuit, filed in U.S. District Court in Gulfport, Premier seeks a ruling that the IRI policy's weather catastrophe and flood provisions

obligate Swiss Re to pay losses in both excess layers, and that IRI's \$25 million aggregate limit on flood losses does not operate as a sublimit for Swiss Re.

Noting that Swiss Re also sent copies of its claim denial to the other excess insurers, Premier seeks unspecified punitive damages for Swiss Re's alleged interference with its claim negotiations as well as for the insurer's wrongful refusal to pay.

Premier simultaneously filed a separate suit against James River over its coverage denial. The casino owner similarly seeks a ruling that the weather catastrophe clause obligates James River to pay up to its \$14 million share of the second excess layer.

While Premier says it expects to collect its full \$25 million first excess limit, the amount it recovers from the second excess layer insurers remains uncertain.

If the Katrina loss is found to be covered by the weather catastrophe clause, Premier should be able to recover up to the full \$131.5 million second excess limit, the company has reported in an SEC filing.

It may recover less, though, if the claim is treated as a flood loss: while 55% of the second excess coverage incorporates the IRI flood provision, the other 45% excludes flooding. Premier's payout would then depend on how much of the Hard Rock damages was attributed to flooding and how much to wind damage, the company reported.

If the damages were split 50/50, the second excess layer insurers may be liable for \$124.8 million for property and business interruption losses, Premier said. If 80% of the damage is allocated to flooding and 20% to wind, the top-layer insurers may pay only \$107.3 million.

Cleanup at the hotel casino site has already been completed, and Premier expects to have a temporary casino facility running by this summer. Rebuilding work at the entire complex should be completed by next year, Premier says.

Part D: Many are unaware of reporting requirement

Continued from page 1

gan, Lewis & Bockius L.P.P. in Chicago, "almost all employers will be faced with this new electronic disclosure requirement, and it is a requirement they will have to comply with every year."

The requirement is imposed on any employer that offers prescription drug coverage and has individuals eligible for Part D. For example, a company that limits prescription drug coverage to employees but has at least one employee or dependent over age 65, and thus eligible for Medicare Part D, would have to file the disclosure form.

"A lot of employers that don't, in fact, provide retiree health care coverage are going to have to file this form if they have employees and dependents who are over 65," said Henry Saveth, an attorney with Mercer Human Resource Consulting in New York.

Even employers that receive the

"Almost all employers will be faced with this new electronic disclosure requirement, and it is a requirement they will have to comply with every year."

Andy Anderson
Morgan, Lewis & Bockius L.L.P.

federal prescription drug benefit subsidy—whose plans, in order to be eligible for the subsidy, must be at least actuarially equal to Part D—may have to file the so-called creditable coverage notice to CMS, experts say.

While CMS says employers that the agency has approved to receive the federal drug subsidy are exempt from filing the disclosure notice, that exemption is limited to those retirees for whom the employer is claiming the subsidy.

That leaves open "the possibility—informally confirmed by CMS representatives—that employers still need to complete the disclosure with respect" to those active employees who may be eligible for Part D but who have postponed enrollment, Morgan, Lewis said.

The disclosure notice is intended to help CMS counsel potential Part D enrollees such as employees age 65 and older, as well as Medicare-eligible retirees, on whether to opt for Part D. If the prescription drug benefits those individuals receive from employer plans are at least equal to those provided under Part D, the individuals are considered to have creditable coverage.

If the employer coverage is creditable, individuals can delay enrolling in Part D from the time they first become eligible and avoid a late-enrollment penalty. The penalty is 1% of the monthly Part D premium—which, in many parts of the country, is in the \$35 range—for

each month that enrollment is late. The penalty is assessed for as long as beneficiaries pay Part D premiums.

Earlier guidance issued by CMS makes it relatively easy for an employer to determine if its prescription drug benefit plan is creditable. Under that guidance, employer plans automatically are considered creditable if they qualify for a CMS safe harbor. To qualify, the employer has to offer coverage for brand name and generic prescriptions, provide reasonable access to retail providers and pay, on average, 60% of participants' prescription drug expenses, among other things.

Additionally, a plan would have to meet at least one of two other thresholds. To qualify under one test, the prescription drug benefit would either have to cover at least \$25,000 in claims a year or not impose an annual dollar limitation on the amount of claims it covers; alternatively, the prescription drug coverage provided would have to have an actuarial expectation that the amount payable by the plan would be at least \$2,000 per Medicare-eligible individual in 2006.

Information that has to be included in the CMS creditable coverage disclosure form includes:

- The name of the entity, such as an employer or union, that is providing the prescription drug benefits coverage, as well as its address, telephone number and tax identification number.

- Whether the drug coverage the entity offers under the health care plans is creditable.

- An estimate of the number of individuals eligible for Part D coverage who were covered, as of the beginning date of the plan year, under a health care plan with prescription drug coverage.

- The number of individuals, if any, covered under a retiree health care plan.

- The date that a notice of creditable or noncreditable coverage was provided to individuals eligible for Part D coverage.

The disclosure form is available at www.cms.hhs.gov/apps/ccdisclosure/default.asp.

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Judge dismisses some defendants from WTC subrogation lawsuit

By DOUGLAS McLEOD

NEW YORK—A federal judge has dismissed a lawsuit against the City of New York and numerous claims against various other defendants accused by insurers of Consolidated Edison Co. of New York Inc. of contributing to the Sept. 11, 2001, destruction of 7 World Trade Center.

The 47-story office building, adjacent to the WTC's twin towers, caught fire during the terrorist attack on the morning of Sept. 11 and collapsed several hours later. A Con Ed electrical substation was destroyed in the collapse, and the utility's insurers—including AEGIS Insurance Services Inc.—sued a number of parties they contended were

responsible for the loss.

The insurers alleged, for example, that the Port Authority of New York and New Jersey, the property's owner, and 7 World Trade Co., the building's owner and manager, were negligent in allowing the City of New York and Solomon Brothers Inc. to maintain large diesel fuel tanks and emergency generators in the building. Ignition of the diesel fuel contributed to 7 WTC's collapse, the insurers argue. The suit also charged several contractors, engineers and architects with negligence in the design and construction of the building and facilities leased to New York and Solomon.

In a ruling last Thursday, however, U.S. District Court Judge Alvin

Hellerstein threw out several of the claims while leaving others intact.

Judge Hellerstein dismissed all charges against the City of New York. The judge also dismissed several counts against the Port Authority, 7 World Trade, Citigroup—which later acquired Solomon—and various design and construction professionals.

The ruling leaves intact negligence counts against the Port Authority, 7 World Trade and Citigroup, along with product liability claims against several design and construction defendants.

Judge Hellerstein scheduled a Feb. 1 status conference for the ongoing case, which also includes airline and airport security company defendants.

Storms: Marsh to sharpen focus on clients

Continued from page 4

al head of operations and information technology.

One big change at the broker is a shift from localized operations to more centralized finance and accounting, Marsh's CEO said. "We're a company that operates in 100 countries around the world, but for years we operated with a very autonomous structure. That was the right model for years and years," he said.

"Embedded in our autonomous structures were multiple" profit and loss operations. "Every office had its own P&L. In the business world, vertical structures are being replaced with horizontal structures. Mercer and Marsh have had vertical structures for years," he said.

"When you take that away from, for example, our Morristown, N.J., office, you say, 'I want you to focus on clients and run our business for the benefit of our clients. You are going to collaborate with your colleagues in Norwalk, Conn., and Washington, D.C.' I'm not focused

on the Morristown P&L," Mr. Storms explained. He noted that Morristown is a key office for Marsh in serving New Jersey-based clients, especially in the pharmaceutical industry. Under Marsh's new operating environment, "If the best pharmaceutical person is in L.A., well, that person is going to be introduced to clients of the Morristown office," he said.

"If you look at the great global companies, they go through a period of autonomous operating models" and evolve away from that, Mr. Storms said. "Are we operating as optimally as we can? Internally, our clients tell us we need to see a more integrated Marsh and deal with one Marsh, where systems and technology are integrated," he said.

The changes at Marsh were not unexpected, said Gretchen Roetzer, principal brokerage analyst at Fitch Ratings in Chicago. "We were definitely expecting some significant changes. Of all the brokers, they had the deepest hole to dig out of," she said. Marsh has "big challenges

ahead with expenses and recouping the losses of (contingent) commissions, which represented a big part of their margin."

While certain internal systems and processes are changing, Mr. Storms said what makes Marsh stand out will remain. "One of the things that continues to distinguish us is the quality of our client executives. People are there to understand the company and the market. We have world-class people in client service. We have the ability to provide data that nobody else can," he said. And "what hasn't changed is our placement strength. The way we place trades and the way we're going to strengthen that hasn't changed."

Marsh's biggest advantage as a broker is "to leverage our global footprint, our knowledge base, for our clients," Mr. Storms said. "What Spitzer didn't say was that Marsh shouldn't use its size and clout as the largest insurance broker in the world to benefit our clients. That's what our clients want."

Late News

Continued from page 1

state Insurance Commissioner John Garamendi said last week. But rate decreases that insurers have passed on to policyholders are still falling far short, the commissioner said. In an analysis of cost savings that insurers have derived from reforms adopted in 2003 and 2004, the commissioner states that he has recommended insurers cut rates by 46% since January 2004. The commissioner sent the analysis to state legislators last Thursday.

Tenet says D&O coverage to help fund settlement

Tenet Healthcare Corp. said it expects its directors and officers insurance policy to contribute \$75 million toward the costs of settling several securities and shareholder derivative lawsuits. The Dallas-based hospital system said last week that it would pay \$215 million to settle allegations made in a series of securities class actions lawsuits that Tenet and a number of its former officers and directors made or were responsible for false and misleading statements concerning the company's receipt of Medicare outlier payments and other issues. The settlement would also cover several derivative actions brought by certain Tenet shareholders.

XL Reinsurance America names president/COO

John P. Welch has been named president and chief operating officer of XL Reinsurance America Inc., a subsidiary of XL Capital Ltd. The move follows the Jan. 5 announcement that James H. Veghte, CEO of the unit, had been appointed chief executive of XL's reinsurance general operations. Mr. Veghte will continue as CEO of Stamford, Conn.-based XL Reinsurance America but will relinquish the role of president of that division. Mr. Welch, formerly head of casualty and surety underwriting for the U.S. reinsurance unit, will join XL's reinsurance executive group, the company said in a statement. Earlier last week, XL Capital Ltd. named David B. Duclos chief operating officer of its XL Insurance unit.

New wholesaler Mercator to serve larger retailers

Mercator Risk Services Inc., an independent wholesale and specialty insurance broker headed by former executives from Alliant Resources Group Inc. and Marsh Inc., has been formed to provide coverages for midsize to large retail insurance brokers. The founding management team is led by Chairman John Addeo. Christopher Treanor will serve as president and chief executive officer. Mr. Addeo recently retired as CEO of retail broker Alliant Resources, while Mr.

Treanor left Marsh Inc., where he served as CEO of worldwide placement operations. Trident III L.P., a private equity fund managed by Greenwich, Conn.-based Stone Point Capital L.L.C., is the lead investor in Mercator.

Bureau Veritas buys NATLSCO

Third-party claims administrator Broadspire Services Inc. has agreed to sell its NATLSCO risk and safety unit to Bureau Veritas for an undisclosed sum. Lake Zurich, Ill.-based NATLSCO Risk & Safety Services is "an ideal fit" for Paris-based Bureau Veritas—a firm specializing in quality, health, safety and environmental management services—Dennis Replogle, Broadspire's president and chief executive officer, said in a statement. The sale will allow NATLSCO to increase its market share—Bureau Veritas operates in 140 countries and has more than 600 offices and laboratories—while strengthening Bureau Veritas' North American presence, Broadspire said.

Briefly noted

Everest Re Group Ltd. has increased to \$1.2 billion its pretax loss estimates for hurricanes Katrina, Rita and Wilma. The Hamilton, Bermuda-based reinsurer previously estimated those losses at \$1 billion. The aftertax impact of the storms for 2005 on Everest Re is estimated at \$962 million....William J. Ashley has been promoted to chief executive officer of Glencoe Group Holdings Ltd., the individual risk business of Pembroke, Bermuda-based RenaissanceRe Holdings Ltd. Mr. Ashley, who most recently served as Glencoe's president and chief underwriting officer, replaces William I. Riker, president of RenaissanceRe, as CEO of Glencoe....A.M. Best Co. has downgraded to A from A+ the financial strength ratings of Allied World Assurance Co. Ltd. and its subsidiaries. According to Best, the downgrade stems from, among other factors, AWAC's move to operate independently of its original sponsor, New York-based American International Group Inc.

At BusinessInsurance.com

New Online Poll: Should states require employers to spend a certain amount of money on their health insurance plans?

Items in the Late News column originally appeared in BI's Daily News feature on www.businessinsurance.com. Visit the BI Web site to sign up to receive BI's Daily News by e-mail.

BI Stock Index [1/9 - 1/13]

Up-to-the-minute data for all 85 companies that comprise the BI Stock Index can be found at www.businessinsurance.com

Percentage change of BI Stock Index vs. key indicators

BI Stock Index	
2939.18	-0.90
Dow Jones	
10959.87	-0.47
S&P 500	
1287.61	-0.20

Largest gains

Gainsco Inc.	5.62%
EMC Insurance Group Inc.	5.57%
HCC Insurance Holdings Inc.	2.92%
Harleysville Group Inc.	2.85%
USI Holdings Corp.	2.77%

Largest losses

Endurance Specialty Holdings Ltd.	-4.48%
Health Net Inc.	-4.37%
WellPoint Inc.	-3.62%
Aetna Inc.	-3.53%
Vesta Insurance Group Inc.	-3.33%

Weekly change by market segment

Brokers	0.03%
Insurers/Reinsurers	-0.12%
Managed Care Organizations	-1.90%

Source: FinancialContent Inc. (<http://financialcontent.com>)

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