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\$5

Late News

WellPoint gets N.Y. access with WellChoice deal

Indianapolis-based WellPoint Inc. has completed its \$6.5 billion acquisition of fellow for-profit Blues insurer WellChoice Inc. The acquisition will allow WellPoint to gain a foothold in the key New York market, where WellChoice has a major presence, and pursue accounts with the 17% of Fortune 500 companies located in WellChoice's service region. WellPoint, the largest managed care company in terms of membership, now has about 34 million medical members.

Centene eyes expansion with US Script purchase

Centene Corp. will acquire US Script Inc., a pharmacy benefits manager based in Fresno, Calif. The acquisition will allow the St. Louis-based health plan provider to realize savings on prescription drug costs, access US Script's information technology and enter new states and markets by offering

See **LATE NEWS**/page 23

Sedgwick CMS finds growth-oriented buyer

Diversification bid by title insurer will aid in cross-selling

By **RUPAL PAREKH**

MEMPHIS, Tenn.—Fidelity National Financial Inc.'s proposed \$635 million purchase of claims administrator Sedgwick CMS Holdings Inc. will help the title insurer diversify and provide Sedgwick CMS with growth opportunities, executives and observers say.

The deal will allow Jacksonville, Fla.-based Fidelity National to enter the claims management

market through a well-established service provider.

And privately held Sedgwick CMS—which has been on the block since September—will have the chance to grow with the backing of a public parent company.

In a statement, Fidelity National Chairman and Chief Executive Officer William P. Foley II said the transaction was “a very exciting opportunity in an attractive, growing market.” The

long-term nature of Sedgwick CMS' contracts and the strength of its customer relationships will offer Fidelity National shareholders consistent revenue and earnings, he added.

Memphis, Tenn.-based Sedgwick CMS, which handles a wide range of claims services that includes workers compensation, general liability, and disability claims, is the second-

See **SEDGWICK** / page 23

Potential avian flu pandemic raises insurance questions

By **MICHAEL BRADFORD**

An avian flu pandemic could leave employers with decimated workforces and a host of insurance coverage questions, while insurers could suffer billions of dollars in losses, experts contend.

The H5N1 strain of the influenza virus—the so-called “bird flu”—has left at least 73 dead in Asia and has caused illnesses in Eastern Europe. The flu's high mortality rate—greater than 50% in the 141 cases reported to the World Health Organization—has sparked fears that the illness will sweep the globe if it mutates into a form that is easily transmissible among humans.

The U.S. Congressional Budget Office predicts that a severe pandemic would infect more than 90 million in the United States and kill more than 2 million. A milder outbreak would infect 75 million and cause around 100,000 deaths, according to the CBO.

The World Bank has estimated that each year of a severe pandemic could cost the U.S. economy \$100 billion to \$200 billion, and economies worldwide could suffer a total per-year loss of \$800 billion.

Those potentially dire consequences aside, there remains uncertainty as to whether employers would have the coverage to pay the health care, business interruption, workers compensation and other losses that could arise if the U.S. workforce were to be ravaged by the virus and productivity were to be dramatically slowed.

Some coverages would respond, according to industry sources.

Insurers worldwide could suffer losses from \$71.3 billion to \$200 billion in a worst-case sce-



nario, according to Standard & Poor's Corp., which based its estimate on figures from its analysts and numbers compiled by the Insurance Information Institute.

New York-based S&P said in a report issued in November that losses would occur among health insurers, commercial property/casualty underwriters, life insurers, property and life reinsurers and retrocessional programs. Automobile and homeowners insurance would likely be the only lines “not to suffer a hit” by avian flu-related claims, S&P said.

While the U.S. P/C market as a whole is well capitalized to handle the worst-case scenario, “the effect on individual companies would vary depending on geography or business concentrations,” S&P said. “Companies headquartered in major cities or with concentrations in business interruption insurance might find the risks more than they can handle,” the report stated.

Aside from facing heavy flu-related claims, in-

See **AVIAN FLU** / page 22

Risk managers see benefits of fees disclosure

But signing off may add to workload of buyers

By **SALLY ROBERTS**

Risk managers recently renewing their insurance programs got a taste of the new broker disclosure policies mandated under settlement agreements with state attorneys general and the world's largest brokerages last year.

While insurance buyers overall view the new-disclosure process as a positive development within the industry, they note there are elements that still need to be worked out.

Some risk managers, for example, said their required signature giving consent to the broker's disclosed information left a bad aftertaste, while others were sour about compensation models in London.

To settle charges that they steered clients to insurers paying the highest contingent commissions, the world's largest brokerages, including Marsh & McLennan Cos. Inc., Aon Corp. and Willis Group Holdings Ltd., agreed to pay clients restitution and to change certain business practices.

Among the new business practices required under the settlement agreements, brokers must, prior to binding coverage, disclose in writing to each client all quotes and indications sought and received and all terms of coverage, including any interest in or contractual agreements with the prospective insurers.

See **DISCLOSURE** / page 22

Inside



HURRICANES' COST
Insured losses may reach \$57.6 billion.

PAGE 3

EARLY MARKS

The Bermuda startups get their credit ratings.

PAGE 3

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01



SPOTLIGHT

YEAR IN REVIEW: RISK MANAGEMENT

A look at the major events and newsmakers in risk management during 2005.

PAGE 9

AON**Focus**

www.aon.com/focus

Many properties not in special hazard flood zones still need flood coverage.

JANUARY 2, 2006

Flood coverage: A changing environment for insureds and their brokers



Tom Becker is product manager for Floodwatch™, an Aon company. He provides flood compliance solutions, including zone determination, NFIP and excess flood insurance to financial institutions, insurance carriers, agents, brokers and wholesalers. Tom can be reached at tom_becker@fprsi.com.

The Federal Emergency Management Association (FEMA) and the National Flood Insurance Program (NFIP) are under attack by property owners and the insurance industry to improve the national flood program to more appropriately protect property values in flood-prone areas. The mounting pressure is pushing Congress to make changes to the NFIP, including:

- Expanding the mandatory flood zone from its current 100-year flood zone level to the 500-year level
- Increasing the building and content limits of flood coverage from the NFIP, currently \$250K/\$100K for residential and \$500K/\$500K for commercial
- Adding additional business interruption insurance

FEMA is responsible for mapping the country to define what is covered under the NFIP. This agency is already taking steps to modernize the maps it uses to determine flood risks. Its \$400 million map-modernization program will inevitably define flood zones that affect more people and properties nationwide than ever before. Houston is a good example. Map modernization was completed prior to the 2005 hurricane season. After Hurricanes Katrina and Rita, many Houston properties that were previously in non-special hazard zones found themselves remapped in special hazard flood zones. As a result, property owners must learn what the new zones mean to them, understand the requirements of flood insurance coverage and determine an appropriate level of protection.

For agents and brokers, the most important lesson to learn is that, even if a property is not in a special hazard flood zone, it is extremely important to at least offer flood insurance coverage to clients. Offering this coverage helps to protect clients as well as reduce errors and omissions exposures. In the aftermath of Hurricane Katrina, for example, many property owners sued their banks and insurance agents because they were told that they did not require flood insurance. Agents should offer primary NFIP and excess flood coverage for both the property structure and its contents.

The next three to six months will be telling. During this time, we are likely to find out how the impact of the storm surge will be measured and how the insurance industry intends to define wind versus flood damage. In addition, the new changes currently being debated in Congress will begin to take effect, giving the market a better idea of how to operate in a new environment.

Today, however, property owners and insurance brokers and agents must understand that the market for flood coverage is changing, and they must review NFIP and FEMA actions, work to correctly identify flood risk by utilizing accurate flood zone determination and offer/secure NFIP and excess flood coverage to protect all parties from costly lawsuits and uninsured losses.

Joanne Nilles also contributed to this article. She is a senior syndicator overseeing the centralization and coordination of Aon's flood-processing unit.

To receive Aon Focus by email, log on to www.aon.com/focus.

DB/DC bundling enhances retirement information, streamlines administration

Demands for personalized retirement information and the need for accurate and cost-effective administration have reshaped the array of services available to plan sponsors. Many sponsors are outsourcing the ongoing administration of their qualified retirement plans. These sponsors are looking for ways to help participants understand retirement costs and the extent to which defined benefit (DB) and defined contribution (DC) benefits may offset those costs. One emerging method is total retirement outsourcing, or DB/DC bundling, which includes streamlined recordkeeping and plan administration, compliance testing, actuarial valuation, retirement consulting services and more. For further insights, visit www.aon.com/focus.

Companies use two-part approach to improve return on compensation investment

The traditional approach to achieving compensation cost-effectiveness has been for HR to benchmark compensation, manage talent and count heads. This approach can lead to poor decisions based on inadequate analysis. Investors seek high returns and HR is the steward of the single largest investment in the business. Companies seeking to capture greater return on their compensation investment can use a unique two-part approach. First, improve the effectiveness and efficiency of incentives to generate more revenues from the same spend, and second, size the organization and spend to the scale of the business. To learn more, visit www.aon.com/focus.

“With everything else, do we really need to worry about flood compliance, too?”



The National Flood Insurance Program (NFIP) can be confusing and difficult to administer. Aon can help. With a team of dedicated professionals using a bundled service called Floodwatch™, Aon provides financial institutions, insurance carriers, agents, brokers and wholesalers with a complete flood compliance solution. So you're never underwater.

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Inside

Recruiting workers online means more record-keeping

The rule taking effect Feb. 6 affects employers with federal contracts. Page 4

D&O exposure reduced by Ontario court ruling

Post-prospectus disclosure a must only in cases of material change. Page 4

N.Y. transit workers to pay part of health care costs

Settlement of three-day strike preserves pension set-up, retirement at 55. Page 4

Appeals court denies Frontier Insurance motion

Case claiming legal and fiduciary duty violations proceeds to discovery phase. Page 4

Online poll - [12/26 - 12/29]

Should employees who smoke pay higher health insurance premiums than non-smokers?

Yes 90.14%



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Departments

Advertiser Index	22
Business Resources	16
Commentary	16
International	17
Opinions	8
Products & Services	20
Professional MarketPlace	18
Ticker	23
Paul Winston	6
World Updates	17

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Insured hurricane losses may hit \$57.6 billion

By MICHAEL BRADFORD

Three major hurricanes that devastated the U.S. Gulf Coast in 2005 will cost insurers and reinsurers \$57.6 billion, an analytics and research firm estimates.

Advisen Ltd. based the pretax figures on losses from hurricanes Katrina, Rita and Wilma being reported by insurers and reinsurers. The cumulative catastrophe losses, the largest on record, amount to more than twice the annual total for 2004 and one and one-half times the insured losses from the 2001 terrorist attacks in New York and Washington, according to New York-based Advisen.

By predicting unreported losses from State Farm Mutual Insurance Group, regional mutual insurers and smaller reinsurers, and by

making other projections, Advisen said the losses will amount to \$40.4 billion for Katrina, \$10.8 billion for Wilma and \$6.4 billion for Rita.

Advisen said that, to date, it has calculated aftertax losses, based on reported property and business interruption claims, at \$28 billion for Katrina, \$4.8 billion for Wilma and \$4.5 billion for Rita.

Several variables could cause the estimates to increase dramatically, Advisen said in a statement.

Flood losses could elevate the estimates by billions of dollars if lawsuits seeking to force insurers to cover flood damage from Katrina are successful. Property owners are suing insurers that have denied claims on the grounds that flooding, which is not covered under

their policies, caused damages rather than Katrina's winds.



New Orleans faced widespread damage following Hurricane Katrina last year.

AIA chief aims for consensus

Public understanding is key goal

By MARK A. HOFMANN

A life in public service isn't the worst preparation for taking the reins of a major insurance industry association, according to the new president of the American Insurance Assn.

In fact, "it's very close to serving in a public office," said Marc Racicot, who became president of the Washington-based AIA after Robert E. Vagley stepped down last summer. Accepting the job of AIA president is "an opportunity that allows me to take advantage of my past experiences and skills building consensus within a very diverse constituency."

Mr. Racicot has had quite a bit of experience with consensus-building. He served as governor of Montana from 1993 to 2001, and followed that with stints as chairman of the Republican National Committee and chairman of the Bush-Cheney re-election committee.

Consensus-building was key to success in all of those jobs, and Mr. Racicot said he sees that as one of his most critical jobs at the AIA, of which he became president in

August. He noted that property/casualty insurance companies, whether members of the AIA or not, represent a wide variety of views and concerns.

"The industry has strong, diverse views, and building consensus within that industry on policy initiatives that are critical to the American people and consumers and those companies that sell something—that I'm familiar with."



Mr. Racicot

Getting the American public to understand the nature of insurance is something Mr. Racicot said he believes will be one of his major challenges.

In fact, making "sure we expend every ounce of effort to allow the American people to understand the industry as thoroughly as possible" is what Mr. Racicot said he views as his "pre-eminent" challenge. "It's only through that understanding I think that they ultimately have confidence in the industry. It's a very complex industry," he said.

But "it's also a very noble industry in my judgment,"

Rating agencies' scorecard

Bermuda startup ratings

AM BEST

Amlin Bermuda Ltd.	A-
Ariel Reinsurance Co. Ltd.	A-
Flagstone Reinsurance Ltd.	A-
Harbor Point Re Ltd.	A
Hiscox Insurance Co. (Bermuda) Ltd.	A-
Lancashire Insurance Co. Ltd.	A-
New Castle Reinsurance Co. Ltd.	A-
Validus Reinsurance Ltd.	A-

STANDARD & POOR'S

Amlin Bermuda Ltd.	A
Hiscox Insurance Co. (Bermuda) Ltd.	A-

MOODY'S

Amlin Bermuda Ltd.	A2
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Startups not yet rated

Arrow Capital Reinsurance Co. Ltd.	A-
Ascendant Reinsurance Ltd.	A-
Castellum Re Ltd.	A-

Bermuda 'Class of 2005' awarded secure ratings

By RUPAL PAREKH

Any concerns over the swiftness of ratings being assigned to the so-called "Class of 2005" Bermuda startups are largely unwarranted, rating agencies and reinsurance intermediaries say.

Confidence can be drawn from the stringent capital requirements and detailed business plans that the rating agencies are demanding from new companies, they say, coupled with the knowledge that most startups are focused on underwriting short-tail lines.

Record hurricane losses in 2005 prompted investors—who anticipate a favorable market environment—to devote billions of dollars in recent months to reinsurance ventures in Bermuda. Within a matter of weeks of opening their doors, a number of these firms obtained ratings (see box).

Oldwick, N.J.-based A.M. Best Co. was the first to assign a rating for a member of the Class of 2005, with its A- rating for the newly created catastrophe reinsurer Amlin Bermuda Ltd., a unit of London-based Amlin P.L.C. It has also issued the most startup ratings of any agency—for eight of the 11 new Class 4 companies the Bermuda Monetary Authority approved since late October. Class 4 commercial insurers and reinsurers are required by the BMA to have a minimum of \$100 million in capital and surplus.

Representatives from Best did not return calls seeking comment on their

rating methodology, but the agency has defended the practice of rating startup companies.

"A.M. Best believes the practice of rating startups is a positive contribution to the overall health of the insurance industry as new companies are required to maintain conservative capitalization during the startup phase—generally considered to be at least five years—and demonstrate the expertise of its management and operating personnel, as well as the development of infrastructure or infrastructure operations in order to obtain a Best's rating," Best said in a statement last month.

Other rating agencies have also said they will issue ratings for the new Bermuda reinsurers.

"We do rate startup reinsurance companies," confirmed Mark Rouck, analyst at Chicago-based Fitch Ratings. "We don't have a set policy that prohibits us from doing that."

As part of its minimum requirements, Fitch requires from startups a detailed business plan, a description of the products the company will underwrite and a pricing strategy and marketing and distribution plan for the products, Mr. Rouck explained.

"If there is a parent company involved, you want to examine (the startup's) relationship with the new company," he added.

Still, Class of 2005 reinsurers will

Employers face bias rule for Internet job applications

Recruitment regulation could lead to increase in class action lawsuits

By JUDY GREENWALD

Employers with federal contracts that recruit job applicants through the Internet face more onerous record-keeping requirements under a federal rule that will take effect Feb. 6, and they risk giving ammunition to plaintiffs attorneys seeking to file class action lawsuits as well, some attorneys warn.

Conversely, the new rule provides a welcome, clear definition of who may be considered an applicant, say observers.

Meanwhile, there are steps companies can take to prepare to more readily comply with the record-

keeping rule issued by the U.S. Dept. of Labor's Office of Federal Contract Compliance Programs last October, say observers (see story page 19).

The OFCCP requires covered federal contractors and subcontractors to collect information about the gender, race and ethnicity of each job applicant, which it uses to deter contractors from engaging in systematic hiring discrimination, according to the rule. The new rule is intended to modify the agency's record-keeping requirements on applicants to reflect employers' Internet use.

Any company that has at least

\$10,000 in federal contract work within any 12-month period is considered a federal contractor. But the agency's 5,000 random annual audits tend to be focused on firms with at least \$50,000 in contracts and 50 employees, which means that, for practical purposes, the rule applies generally to Fortune 1,000 companies, explained John Fox, an attorney with Manatt, Phelps & Phillips L.L.P. in Palo Alto, Calif., who is a former OFCCP deputy director.

Mr. Fox said the agency can levy penalties, including back pay and

See RECRUITMENT/page 19



Canadian court ruling reduces D&O exposure on need for disclosure

By GLORIA GONZALEZ

TORONTO—A recent decision by the Ontario Court of Appeal is seen as a big win for the directors and officers of Canadian companies and their insurers because it reversed a lower court ruling that could have led to a substantial increase in D&O claims.

The ruling by the lower court had significantly expanded the disclosure requirements for Canadian companies and failed to give any deference to the business judgment of directors and officers, leaving them vulnerable to lawsuits challenging such judgments.

In May 1998, Toronto-based Danier Leather Inc. made an initial public offering of its shares through a prospectus, which contained a forecast that included the company's projected revenue and earnings for the last quarter of its 1998 fiscal year, which ended in June of that year.

An internal company analysis prepared a few days before its public offering closed on May 20 of that year showed that the company's revenue and earnings for the first half of its fourth quarter were lagging behind the forecasted figures.

Danier did not disclose those lagging results for the first half of the fourth-quarter before the closing of the IPO. It did disclose the results after the closing in a revised forecast, which precipitated a significant decline in its share price.

But the company's sales rebounded and, by the end of the fiscal year,

it had substantially achieved its original forecast.

A lawsuit seeking class action status was filed, alleging prospectus misrepresentation.

The trial judge found in May 2004 that the company should have disclosed the results before the closing of the IPO and awarded substantial damages.

The Court of Appeal, though, found that the trial judge wrongfully determined that Danier had a continuing obligation to disclose material facts occurring between the date of its prospectus and the date of the closing of the IPO.

In reversing the trial court's decision in *Kerr vs. Danier Leather*, the court pointed out that there exists a distinction between material facts and material changes, and it ruled that new or revised material facts need not be disclosed unless all or several of the facts result in a material change.

"Once you've made a forecast on a certain day, you do not have to update that forecast unless there is a material change to the operation of the business," said Alan J. Lenczner, a partner with Lenczner Slight Royce Smith Griffin L.L.P. in Toronto, which represented Danier in the case.

The Court of Appeal set a less-rigorous standard for disclosure than did the trial court in citing a hypothetical example of the type of material change that would have to be disclosed, lawyers say. According to the appellate decision, one example

See RULING / page 19

Transit union cedes ground on health care



New York's transit workers returned to work after agreeing to benefits cuts.

NEW YORK—The Metropolitan Transit Authority and the Transport Workers Union have reached a tentative agreement on a contract that includes employee contributions to health care costs but preserves current pension benefits for all employees.

Under the tentative contract reached last week, which must still be ratified by the more than 33,000 transit workers via mailed ballots, employees would pay 1.5% of their wages toward health care costs. Previously, transit workers made no contributions toward health care premiums.

The MTA agreed to leave the current pension system intact, meaning that employee contributions are to remain at the current 2% of income, with the retirement age continuing to be 55 after 25 years of service. The agency also agreed to refund certain member contributions to pensions made in previous years.

In its original offer, the MTA proposed that new employees be at least 62 years old to collect full pensions. The transit agency also proposed an increase in pension contributions to 6% of wages.

According to the new contract, the current benefits plan would be amended to ensure pre-Medicare retirees receive the same benefits as active members. Deductibles for the pre-Medicare drug benefit would be eliminated, according to the agreement.

In addition, the current prescription drug plan would be amended to cover reversible contraceptives.

—By Gloria Gonzalez

Frontier Insurance suit to proceed

By MICHAEL BRADFORD

NEW YORK—A lawsuit charging directors and officers of Frontier Insurance Co. with, among other things, violating insurance laws and breaching fiduciary duties, will continue in its current form after defendants failed to convince an appeals court that some procedures in the case did not meet legal standards.

The Appellate Division of the New York Supreme Court on Dec. 22 affirmed a lower court decision denying the executives' motions to dismiss the suit filed in Dec. 2002 by then-New York Superintendent of Insurance Gregory V. Serio. The executives had asked the lower court to dismiss the complaint against them on various grounds, including failure to commence the action within the statute of limitations and failure to state a cause of action.

The defendants had charged, among other arguments, that Mr. Serio's allegations against the executives

did not provide proper specifics. The Supreme Court ruled, though, that the defendants may acquire such specifics "via a demand for a bill of particulars and disclosure. Indeed, disclosure will undoubtedly result in a refining of the action. The lack of exact specificity at this procedural juncture, however, is not a ground for dismissal."

"We believe the complaint fails to articulate a basis for liability for each of the defendants" and the defendants will continue a vigorous defense, said Robert C. Boneberg, an attorney with Lowenstein Sandler P.C. in New York.

The case will continue in the discovery phase, said Mr. Boneberg, whose firm represents the 18 defendants. They include Harry W. Rhulen, who served as chief executive officer of Frontier Insurance Group, Frontier's Rock Hill, N.Y.-based parent; and his sister, Suzanne Loughlin, an executive vp with the group.

Frontier was ordered into rehabilitation in Oct. 2001, and regulators found the insurer had a negative policyholder surplus of \$170.3 million at the end of that year (*BI*, May 17, 2004).

The insurer had been writing liability coverages until massive losses forced it to stop underwriting in March 2001.

Mr. Serio, as Frontier's rehabilitator, outlined a number of allegations in his 46-page complaint in 2002. He charged that the defendants—some of whom are related and held positions with both Frontier and its parent Frontier Insurance Group—showed a disregard for the well-being of the insurer, failed to properly manage its business, did not properly scrutinize bonuses, showed poor oversight of investments and made other moves that contributed to the company's financial difficulties.

Frontier Insurance Group filed for Chapter 11 bankruptcy protection in July.

Error & Omissions

A story in the Dec. 26, 2005, edition contained an out-of-date

affiliation for Ellen Vinck. Ms Vinck works at BAE Systems Ship Repair.



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PAUL WINSTON

Editorial Director

Risk managing your management risks

As 2006 begins, risk managers, employment attorneys and liability insurers can take heart that there continues to be a strong need for their services in keeping managers from making employment-related blunders.

That's my conclusion after reading a press release on the subject of 2005's "most unbelievable workplace events," from the Chicago-based outplacement consulting firm of Challenger, Gray & Christmas Inc. This is a firm that helps companies find new opportunities for outplaced employees, so it knows a thing or two about how people suddenly unemployed got that way.

For risk managers and others charged with minimizing employment practices liabilities, the top 10 list—which the firm describes as "the stories most likely to make you ask, 'What was that person/company thinking?'"—should serve as a guide to how to avoid unwelcome communication from the Equal Employment Opportunity Commission and plaintiffs attorneys in the year ahead (no matter how tempting some of the policies may seem in certain situations).

Some of the highlights from the Challenger, Gray & Christmas list follow:

- **Tales from the Water Cooler.** According to CGC, a German company initiated a no-whining policy, in which more than two instances of complaining at work is grounds for termination. According to CGC, several workers have quit and two others have been fired for violating the policy. I am impressed that the company has been able to identify several malcontents that apparently left in anticipation of being snared by this policy.

- **Free Towing Benefits.** CGC reports that DaimlerChrysler's transmission plants in Kokomo, Ind., designated 80% of their employee parking as reserved for Chrysler vehicles only. Any employee parking another make of vehicle in the reserved area will have his or her vehicle towed to a lot in Indianapolis, 50 miles away, where the employee must pay \$200 to get the car back. No doubt employees get paid time off from work to hitchhike to Indy for their Kias.

- **Support the War Effort.** A Michigan woman was fired from her part-time receptionist job after

failing to show up for work the day after seeing her husband deployed to Iraq with his National Guard unit, CGC reports. If I were the employer, I'd take a long vacation the day after he gets back.

- **Find Your Nuts on Your Own Time.** According to CGC, a woman was suspended from her job for "spending too much time trying to rescue a squirrel trapped in the ceiling of the library where she works." I'm sure the employer was concerned about bearing the cost of rabies treatment under its benefit plan. And how do we know the squirrel was trapped?

- **Isn't This Covered by Our Flex Plan?** An executive for a foundation that funds heart disease research was accused of embezzling more than \$237,000 and using some of the money to pay for the services of a dominatrix, CGC's list states. Clearly, this was a cry for help. If the individual had used some of the money to pay for the services of a qualified psychiatric professional, the foundation might have overlooked that minor detail of embezzlement, right?

- **What Happens at Work Stays at Work.** The National Labor Relations Board refused to strike down a security company's rule that prohibits employees from getting together away from work. The policy forbids workers from going to lunch together, attending each other's weddings or doing anything else they might want to do with each other outside of work, according to CGC. Luckily for the security firm's workers, the company does not yet have a strict no-whining policy, too.

- **When You Say Budweiser, You've Said It All.** A worker with a good employment record and no supervisory problems was fired from a beer distributor, the CGC list states. While no reason was given, the firing occurred on the same day that a picture of the worker drinking a competitor's beer appeared in a local newspaper, according to CGC. Hey, at least all DaimlerChrysler does is tow the cars of workers who dare to sample a competitor's product. I hope it was a good beer at least.

Of course, the management geniuses that would think up these kinds of policies probably also are not the types to take kindly to a risk manager advising them against them. Pick your battles wisely in 2006—and watch where you park your car.

Editorial Director Paul Winston's commentary appears fortnightly. He can be reached at pwinston@businessinsurance.com



SOME SAY THE FACTORY COULD BE CLOSED BY A FIRE.
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INSURING PROGRESSSM

Editorial

What to look forward to as the new year begins

AS THE OLD YEAR ENDS and a new year begins, *Business Insurance* continues its tradition of looking back at the predictions we made for 2005, and looks forward to what we think will be "in" and "out" in risk management and employee benefits in 2006.

Last year, as usual, we were right on the money with some of our predictions, but at least a little early with some of our other predictions.

First, where we were right.

Financial reinsurance was definitely "out" in 2005. Accusations by regulators and prosecutors that some companies had wrongly accounted for some deals as insurance when they should more properly have been accounted for as loans, meant that there was little activity in the finite market in 2005.

We were also spot on with our predictions that there would be more big losses for the Pension Benefit Guaranty Corp. and that there would be increasingly

costly natural disasters.

And state attorneys general did continue their investigations of insurance industry practices, though their activities did appear to begin to wind down toward the end of 2005.

Our results were mixed in other areas. We said, for example, that contingent commissions would be "out," and although the largest brokers have given up those commissions in the United States, mid-sized and smaller brokers are still collecting contingents.

We were also less than on target with our prediction that pension funding reform legislation would be "in"—while bills passed both the House of Representatives and Senate—legislators did not agree on a final measure.

While we are still searching for that elusive crystal ball, below are some of our suggestions for what to expect in the coming year in the fields of risk and benefits management.

In:

- Passage of comprehensive pension funding reform legislation
- Opportunistic underwriting capital
- Policyholder litigation over wind vs. flood losses
- Medicare Prescription Drug Plans
- Sharp rate hikes for catastrophe-exposed property risks
- Increased interest in defined contribution plans
- Big enrollment increases in consumer-driven health care plans
- Funding employee benefit risks through captives
- Better computer-based catastrophe models
- Retro coverage

Out:

- Discussion of possible TRIA extensions
- Lengthy periods between coverage inception and policy issuance
- Big health care plan mergers
- Comprehensive tort reform
- Defined benefit pension plans
- Unobtrusive flood exclusions
- Broker lay-offs
- Widespread ratings downgrades
- Out-of-control prescription drug costs
- Eliot Spitzer's interest in the insurance industry

Schillerstrom



More women win top jobs but more diversity needed

WILL 2006 BE the Year of the Woman for the insurance industry?

A recent string of executive appointments suggests that women are finally advancing to the top echelons of large industry companies.

In the past few weeks, SAFECO Corp. and Convergium Ltd. each appointed women as chief executive officers, while Marsh & McLennan Cos. Inc. named a woman as chief financial officer.

Women CEOs are rare among large corporations, and rarer still in insurance and financial services. The insurance industry, by and large, still lacks diversity in race and gender, but it is making strides.

The fact that SAFECO and MMC had to look outside the insurance industry to find qualified women executives indi-

cates the industry has a way to go in this regard.

Later this year, *Business Insurance* will revisit the topic of women leaders in insurance, risk management and employee benefits in a special report to be called Women to Watch. *BI* welcomes readers' help in identifying women who are poised to lead the industry into the future.

The industry needs talented individuals—men and women—to bring innovation, creativity and leadership to serving its customers' needs. We think corporate diversity offers clear benefits in generating ideas and broadening perspectives, and we hope that the insurance industry will continue to recruit, train and cultivate talent—including women and minorities.

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Spotlight

YEAR IN REVIEW:
RISK MANAGEMENT

TOP RISK MANAGEMENT STORIES OF 2005

1. Hurricanes inflict biggest property losses ever
2. Brokers settle fraud charges
3. Congress moves to reauthorize TRIA
4. AIG titan Greenberg resigns, company restates earnings
5. Corporate directors pay with personal funds to settle securities fraud litigation
6. Brokers divest wholesaler operations
7. Class-action reform legislation signed into law
8. New players enter the brokerage industry
9. Swiss Re to become world's largest reinsurer through purchase of GE insurance units
10. States move to update and sweeten captive insurer statutes

Hurricane losses leave scar on market in 2005

Contingent commission scandals take a back seat to Katrina, Rita and Wilma

By MICHAEL BRADFORD

While the contingent commission scandals may not be completely forgotten by risk managers, they have taken a back seat to a headline-grabbing storm season.

As 2005 began, the investigations by New York Attorney General Eliot Spitzer and others into contingent commissions paid by insurers to brokers were still near the top of the news. Early in the year, Marsh & McLennan Cos. Inc. reached an \$850 million settlement with Mr. Spitzer, and other brokers set aside tens of millions of dollars in similar arrangements and pledged to change their business practices.

Even with the settlements, though, that story "certainly wasn't put to bed," noted Ellen Vinck, vp-risk management and benefits at BAE Systems Ship Repair Inc. in San Diego. "Risk managers are still coming to terms with how the changes in the industry affected them," if at all, Ms. Vinck said.

Insurance buyers' reactions to the scandals ranged "across the board," Ms. Vinck said. While a lot of risk managers "couldn't understand the big brouhaha," others "not only changed their brokers but would have preferred to never use a broker again," she said.

But as powerful as the story of the scandals was in 2004 and early 2005, what happened on the U.S. Gulf Coast late last summer took

the focus off the investigations and turned it toward the misery and destruction wrought by an unprecedented natural disaster in the United States.

Hurricane Katrina was "by far" the biggest development of 2005, said Robert Boik, national director of risk management at Domino's Pizza L.L.C. in Ann Arbor, Mich. With hurricanes Rita and Wilma arriving soon after Katrina hit in late August, Gulf Coast property owners were hammered with additional losses, he pointed out.

While Domino's did not lose company-owned property to the storms, its franchisees were hit hard, Mr. Boik said. Volunteers from Domino's stores in other areas arrived to help

them restore their operations. "One of the biggest problems they had was people," he said of the stores' loss of workers who had fled during evacuations.

Bradley R. Wood, senior vp-risk management at Marriott International Inc. in Bethesda, Md., agreed that Katrina swept other risk management headlines onto the back pages. Along with the damage, the hurricane left behind important loss control lessons, he emphasized.

"Hurricane Katrina taught businesses that they have to be self-reliant when the government does not respond," Mr. Wood said, re-

See **OVERVIEW** /next page

NEXT SPOTLIGHT: Property/Casualty Market Report Jan. 9

Overview: Losses from hurricanes Katrina, Rita and Wilma dominate news in 2005

Continued from previous page

ferring to the delayed recovery efforts of federal and state authorities.

"It goes beyond food and shelter," Mr. Wood said of storm preparedness and recovery, and involves such factors as security, medical and humanitarian assistance. "That was a big take-away that came out of this for us," he said.

Emeritus Corp., a Seattle-based company that operates assisted living facilities in 40 states, had a facility nearly completely destroyed in Biloxi, Miss., by Hurricane Katrina and sustained damage to others from Rita. Several of its Gulf Coast facilities had to be evacuated during the storms, recalled Leslie Seabrook, Emeritus' director of risk management.

"I'm wondering how it will impact the property market," Ms. Seabrook said of the property damage. "We have business in about 40 states," she noted, with property assets of more than \$1 billion.

As big a story as the storms were, other issues had a more-direct impact on Emeritus, according to Ms.

Seabrook. "Any news related to tort reform" was important to the company, she said. "Professional liability and medical malpractice are big issues for this company," she said.

Emeritus benefits from such reforms as caps on noneconomic damages, and, with 30 locations in Texas, the company has seen "a drastic drop in litigation" in that state since damage caps were instituted in 2003, Ms. Seabrook noted. As a result, "insurers are feeling more comfortable" about providing Seabrook facilities with professional liability coverages, she added.

Mr. Wood also pointed to growing concerns over the potential of a pandemic influenza outbreak as one of the year's biggest issues. Marriott has developed a comprehensive plan to deal with that possibility and mitigate the impact on its business and employees, he said.

And while Katrina may not have been the biggest story for every risk manager, even those who were not directly affected may feel its impact.

"We're hit when catastrophe losses hit the market, and there were a lot of storms and catastrophes" in

"We're hit when catastrophe losses hit the market, and there were a lot of storms and catastrophes" in 2005 that will affect insurance buyers "across the board."

Nancy L. Chambers
Waterloo Regional Municipalities
Insurance Pool

2005 that will affect insurance buyers "across the board," said Nancy L. Chambers, risk manager with the

Waterloo Regional Municipalities Insurance Pool in Kitchener, Ont.

As an entity that does not use a broker, her organization was not affected by the contingent commission scandals. "But that was a big story," she agreed.

A bigger issue this year for risk managers at Canadian municipalities, though, remains an ongoing concern, Ms. Chambers noted. "Municipalities are deemed to have deep pockets," she pointed out. And under Canada's joint-and-several liability rules, "even if we are found 1% liable, we can be on the hook for all costs" in a claim, she explained. The problem is serious enough that insurers are reacting by restricting capacity for municipal liability risks, she said.

Ms. Chambers is a former president of the Risk & Insurance Management Society Inc. and currently serves on the organization's board of directors. She said some of the society's accomplishments rank among the 2005's biggest developments affecting risk managers.

"The success of the conference in Philadelphia was amazing," Ms. Chambers said, from the standpoints of attendance and the quality of the educational offerings. The society's November 2005 launch of its Center of Excellence to provide members with resources to develop enterprise risk management programs is another important news-maker for risk managers, Ms. Chambers said.

Ms. Vinck, who serves as RIMS' president, said risk managers were responsible for some of 2005's most important developments by being active in federal and state affairs. That was evident from the large turnout in Washington by risk managers to meet with legislators at the society's annual RIMS on the Hill event last year, she said.

Attendance grows each year at RIMS on the Hill, she noted, and the gathering is important because lawmakers and others in Washington "realize who we are and learn that we are not the insurance industry," Ms. Vinck said.

Record storm damages set scene for sharp rate hikes

2006 likely to be another active year

They came early and often, and they hit hard. Very hard. So many inordinately powerful hurricanes and tropical storms formed in 2005 that the World Meteorological Organization ran out of names for them and had to identify the final storms of the season with letters of the Greek alphabet.

Well before then, though, the storms that made up the unprecedented 2005 hurricane season included the costliest hurricane ever to hit the U.S. mainland. Five hurricanes blew into the Gulf of Mexico in 2005, the first time in 55 years that more than two hurricanes have churned their way into the home of a couple thousand oil and gas drilling rigs.

Hurricanes Dennis, Rita and Wilma caused a total of \$14 billion

of insured damage between July 10 and Oct. 24. But 2005 will be remembered as the year that the powerful Category 4 Hurricane Katrina whipped up floodwaters that swallowed much of New Orleans and many small towns along the Mississippi River and pummeled the Gulf Coast.

Katrina, which made landfall on Aug. 29, killed hundreds, left thousands homeless and caused at least \$34 billion—and possibly as much as \$64 billion—of insured damage. The devastation was so widespread that it set in motion a widely reported rescue and recovery operation that kept Americans glued to their television sets for a couple weeks.

In total, hurricanes in 2005 caused at least \$50.3 billion of in-

sured property damage, according to the Insurance Services Office Inc.'s Property Claim Services unit. By comparison, the four hurricanes that lashed Florida last year caused a total of \$22.8 billion of insured damage.

While the record storm damage so far has not triggered a surge of insurer insolvencies, it has been especially troublesome for a few markets.

For example, Lloyd's of London has announced that its hurricane losses of £2.92 billion (\$5.02 billion) likely will result in a marketwide loss for 2005. Hamilton, Bermuda-based XL Capital Ltd. reported \$1.47 billion of third-quarter catastrophe losses, drawing criticism from securities analysts who complained the loss was too big for the insurer's size and triggering a ratings downgrade.

Other insurers have managed to



remain hugely profitable this year. Still, hurricane losses have gobbled up a large chunk of industry profits, which is expected to spark some

rate hardening. The 14 insurers surveyed by *Business Insurance* for the nine months ended Sept. 30 reported that their increase in net income dropped by nearly half, to 23.7% from the 44.5% increase they had reported for the first six months of the year.

The losses already have triggered billions of dollars of capital-raising initiatives by insurers, and insurers are expected to try to raise billions more to replenish their capital.

While the hurricane season has ended, coverage litigation is just beginning. Coverage for direct and contingent business interruption and flood losses, as well as pollution liability, tops the list of issues for policyholders.

Meanwhile, storm forecasters already have predicted that the 2006 hurricane season also will be unusually active.

—By David Lenckus

Brokers settle charges over compensation practices

Restitution made to clients to end state officials' probes into steering

For much of the first half of 2005, the question wasn't so much which of the world's largest brokerages would be next to settle investigations into its compensation practices but rather when each was going to settle.

Marsh & McLennan Cos. Inc. started the wave in January by settling charges leveled by New York Attorney General Eliot Spitzer that it rigged bids and steered clients to those insurers paying the highest contingent commissions. MMC agreed to establish an \$850 million compensation fund for clients and

to change its business practices, including no longer accepting millions of dollars in contingent commission income.

MMC's agreement served as a template for other brokerages, whose settlements with various state attorneys general and regulators were reached, whether coincidentally or not, in the same order as their worldwide rankings, beginning with No. 2, Aon Corp.

The Chicago-based brokerage agreed in March to pay back \$190 million to clients and change its business practices to settle steer-



ing charges with five agencies in three states, including Mr. Spitzer's office.

Then in April, No. 3, London-based Willis Group Holdings Ltd., settled steering concerns with officials in New York and Minnesota by agreeing to pay \$51 million as restitution to its clients. The following month, No. 4, Itasca, Ill.-based Arthur J. Gallagher & Co., followed suit, agreeing to pay \$27 million back to its clients to end probes with officials in Illinois.

While Chicago-based Acordia Inc., whose parent, Wells Fargo & Co., is the world's fifth-largest brokerage, was next on the investigation radar screen, it has opted to defend itself against the contingent

commission lawsuit leveled by West Virginia Attorney General Darrell V. McGraw Jr. rather than settle.

And while the settlements did seem to taper off toward the second half of the year, they were not over, albeit no longer in ranking order.

In September, No. 10, Hilb Rogal & Hobbs Co., agreed to pay \$30 million to settle steering charges leveled by Connecticut Attorney General Richard Blumenthal.

But unlike the other settlements, which called for the elimination of contingent commissions, HRH's settlement allows for the brokerage to continue collecting the majority of its contingents.

—By Sally Roberts



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Just-in-time extension for terror coverage backstop

A report delivered at the last possible minute helped assure that the fate of the federal reinsurance backstop created by the Terrorism Risk Insurance Act wouldn't be determined until the last possible minute, either.

The Treasury Department prepared the report in question, which was required by TRIA to be completed by June 30. And on the morning of June 30, Treasury released its report on the state of the terrorism insurance market. Proponents of extending TRIA didn't like what they read.

The report said that the Bush administration—which had pushed hard for TRIA's enactment in 2002—could not support extending the backstop beyond its scheduled Dec. 31, 2005, expiration unless lawmakers scaled back the program considerably. The report said the



very existence of the backstop had discouraged the private insurance

market from tackling the terrorism exposure. Insurers responded, as they had during the initial debate over TRIA, that they could not bear the entire terrorism risk, which they regarded as uninsurable.

Both the House Financial Services Committee and the Senate Banking Committee held hearings on TRIA after the issuance of the report, but neither moved on legislation immediately. Meanwhile, the devastation wrought by Hurricane Katrina wrought havoc with the congressional calendar as well, as lawmakers scrambled to respond to the needs of people displaced by the record-breaking storm. Action on TRIA reauthorization, initially expected in September, was delayed until November.

When the time to act arrived, the House and Senate took radically different approaches to the issue. The

House Financial Services Committee approved a bill that, rather than remove lines of coverage from TRIA's protection as the administration sought, added group life insurance to covered lines while increasing the size of the terrorist losses needed to trigger the backstop. The Financial Services Committee bill also called for the creation of a broad-based commission that would be charged with recommending long-range solutions to the question of insuring terrorism exposures.

The Senate Banking Committee instead hewed close to the Treasury Department report, calling for a scaled-back program with higher triggers. Rather than create a commission, the Banking Committee bill entrusted a presidential working group with the task of reporting back to Congress on the state of the

terrorism insurance market, much as Treasury had been assigned in the original bill.

The Senate and House of Representatives approved their respective bills. But the administration announced its preference for the Senate bill, and although the House quickly named conferees to iron out differences between the bills, the Senate balked at following suit. Finally after days of on-again, off-again discussions, representatives of both sides agreed on an extension bill that looked almost identical to the Senate bill.

The measure passed the Senate on Dec. 16 and the House one day later, arriving at the president's desk barely a week before the original backstop was set to expire.

President Bush signed the bill into law Dec. 22.

—By Mark A. Hofman

Greenberg era ends at AIG amid finite investigations

"Tumultuous" might be an understatement in describing the past year for New York-based American International Group Inc. and its former chairman and chief executive officer, Maurice R. Greenberg.

And many observers believe a key factor behind it all was a finite risk deal that accounted for only a tiny portion of the giant insurer's revenues.

The four-year old, \$500 million loss portfolio deal between AIG and General Reinsurance Corp., which AIG has admitted should not have been accounted for as reinsurance, had attracted considerable regulatory scrutiny. It also contributed to an industrywide reluctance to write finite reinsurance.

Observers say the deal led to Mr. Greenberg's downfall. In April, after months of investigations, Mr. Greenberg—who rose from roots as a farm boy in upstate New York to building and running one of the

world's largest property/casualty insurers—resigned from his position as CEO of AIG. Two weeks later, he stepped down as nonexecutive chairman as well.

Then in May, New York Attorney General Eliot Spitzer's investigation culminated in AIG, Mr. Greenberg, and former Chief Financial Officer Howard I. Smith being charged in a civil lawsuit with numerous fraudulent transactions to manipulate the insurers' financial results. New York State Insurance Superintendent Howard Mills also joined the lawsuit.

Analysts, many of whom said they expected AIG to eventually settle the litigation, noted that the lawsuit's primary focus was on Mr. Greenberg and Mr. Smith, rather than on the company itself or current management.

The suit charged that the loss portfolio deal "was explicitly designed by Greenberg from the be-



ginning to create no risk for either party—AIG never even created an underwriting file in connection with the deal."

But there were other charges as well, including that AIG disguised losses from its auto warranty and Brazilian life insurance businesses as investment losses in an effort to protect its reputation as an underwriter, according to the lawsuit.

In November, Mr. Spitzer announced he would not file criminal charges against Mr. Greenberg, but the civil suit is still pending.

Meanwhile, the insurer has twice restated its earnings. In May, AIG filed its long-delayed 10-K report with the Securities and Exchange Commission, restating more than five years of earnings because of the regulatory probes. The effect of the restatement was to shrink AIG's reported net income between 2000 and 2004 by \$3.92 billion and to reduce its shareholder equity for year-end 2004 by 2.7%, to \$80.61 billion.

Observers complained, though,

that while the restatement settled some questions, it raised many others.

"I think that in general we were looking for the 10-K to provide a lot of clarity," said Mark Lane, a principal and research analyst with William Blair & Co. in Chicago.

"It did provide some clarity, but it also raised some questions we are not likely to get resolved for the next two to three quarters," he said.

And there was more to come. In November, AIG released its delayed third-quarter earnings, which reflected the correction of errors AIG said it discovered during an internal review.

AIG corrected its financials for 2002 through 2004—along with certain data for 2000 and 2001—as well as quarterly earnings statements for all of 2004 and the first two quarters of 2005.

—By Judy Greenwald

Directors focus on insurance after costly settlements

Unusually costly settlements of class action securities lawsuits filed against the corporate directors who oversaw two of the most spectacular meltdowns in U.S. corporate history pushed directors and officers liability coverage in a new direction in 2005.

The settlements—in which WorldCom Inc. and Enron Corp. directors agreed to contribute millions of dollars of their personal assets—spawned remarkable growth in stand-alone Side A D&O insurance, which directly covers executives when their companies are legally precluded from indemnifying them or refuse to do so.

Indeed, the stand-alone policies quickly are becoming part of standard D&O coverage programs, according to market executives.

Ironically, though, the coverage would not shield the assets of corporate executives who find them-

selves facing the same types of demands that plaintiffs made of the WorldCom and Enron directors.

Risk managers understood that. In addition, market and legal experts predicted that demands by plaintiffs for personal contributions from directors would not become a trend. They predicted that, in future securities cases, plaintiffs would ask for personal contributions only when directors' alleged misconduct was especially egregious.

Still, corporate directors were rattled by the WorldCom and Enron settlements, and many took a deep interest in their D&O coverage for the first time. They wanted greater assurances that their coverage and wealth would not be jeopardized if they were to find themselves in other increasingly common circumstances, such as when:

- A judge freezes a bankrupt company's D&O coverage as an asset

of the organization, because the insurance policy covers claims against the entity as well as its executives. Such a ruling ultimately can leave directors with little or no coverage.

- The corporation otherwise is legally precluded or refuses to indemnify its executives.
- An insurer rescinds a policy because of materially incorrect information on the policy application.
- Policy limits are exhausted by previous settlements and defense costs.

The D&O market responded by offering Side A coverage that does more than provide directors additional limits. For example, many Side A stand-alone policies that attach to traditional D&O policies cannot be rescinded for any reason.

In addition, insurers began offering difference-in-condition policies that fill coverage gaps in traditional



policies. Under DIC policies, for example, insurers would cover some pollution, insured vs. insured and

benefits fiduciary claims.

And risk managers can purchase excess Side A DIC policies that would drop down if an underlying insurer were to be financially incapable of paying a claim or if the corporation that purchased the coverage were to wrongfully refuse to indemnify its executives.

Several insurers also have introduced policies that cover only outside independent directors. The theory behind the new coverage is that outside directors are much less likely to engage with rogue corporate officers in activities to hide poor corporate financial performance or to profit personally at the company's expense.

Risk managers have not heavily purchased those new policies to date, though some insurers report they are receiving more requests for the coverage.

—By Dave Lenckus

2005's risk management newsmakers

While many may see the probe by Connecticut Attorney General **Richard Blumenthal** into insurance industry abuses as a me-too move following the 2004 investigations by New York Attorney General Eliot Spitzer, few will disagree that Mr. Blumenthal held his own in 2005.

Three months after Mr. Spitzer sued Marsh & McLennan Cos. Inc. over alleged fraud and bid rigging, Mr. Blumenthal filed his own suit against MMC and ACE Financial Solutions Inc., alleging the broker steered a state workers compensation contract to the insurer for a secret commission. Mr. Blumenthal later settled the case with ACE but amended his complaint against MMC to include charges

of bid rigging, price fixing and illegal steering.

Not only was Mr. Blumenthal one of the three attorneys general to settle fraud and steering charges against Aon Corp., he also settled steering charges against Hilb Rogal & Hobbs Co., whereby the brokerage agreed to pay back \$30 million to clients. But unlike other agreements, Mr. Blumenthal allowed HRH to continue collecting most of its contingent commission income.

Then in November, Mr. Blumenthal reached an agreement with Aon under which more than 20 Connecticut municipalities, corporations and individuals received more money than they expected from the brokerage's \$190 million settlement fund due to miscalculations discovered by his office.

After a six-month search, Aon Corp. announced in April 2005 that it had found a new president and chief executive officer to succeed longtime chief Patrick G. Ryan.

But rather than appointing an experienced insurance brokerage leader, Chicago-based Aon opted instead for a young, relatively unknown McKinsey & Co. consultant, **Gregory C. Case**, to lead the company forward.

While Mr. Case may not have much experience in running an insurance brokerage, he is no stranger to the industry or to Aon. Prior to serving as head of McKinsey's financial services practice, he was responsible for the firm's global insurance practice, of which Aon had been a client.

Since his appointment, Mr. Case has announced a three-year restructuring plan that is expected to save Aon about \$150 million, sold its claims and wholesale brokerage business and is exploring options for its property/casualty and warranty underwriting business.

The 42-year-old Mr. Case officially took over the helm on April 4, 2005, but Mr. Ryan remains close at hand as executive chairman.

Michael G. Cherkasky, president and chief executive officer of New York-based Marsh & McLennan Cos. Inc., went a long way toward putting the brokerage's problems behind it when he spearheaded an agreement with New York Attorney General Eliot Spitzer early in 2005.

The \$850 million settlement agreement reached with Mr. Spitzer over alleged fraud and bid-rigging charges called for establishing a compensation fund for clients and reforming a number of Marsh's longstanding business practices.

Separately, Marsh also said it was disbanding its global broking unit, which Mr. Spitzer cited as the epicenter of alleged client steering and bid rigging at the brokerage.

More changes were to follow, with the company subsequently announcing that, in an effort to recoup the loss of \$845 million in contingent commissions and to restore profitability, Marsh was abandoning unprofitable accounts and moving to a standardized rate card with insurers that includes a higher upfront commission structure.

Taking advantage of what he saw as a dearth of large-account brokerage options in the insurance market and the turmoil resulting from industry investigations, renowned insurance company builder **Robert Clements** launched New York-based Integro Ltd. in May 2005 with more than \$300 million in a private securities placement.

The former Marsh Inc. chairman, who left his position as chairman of Arch Capital Group Ltd. to form the new large-account brokerage, teamed up with two other former Marsh executives, Peter F. Garvey and Roger E. Egan, to run the new venture.

Over the last six months of 2005, Integro made quite a stir in the market by raiding the executive ranks of its competitors as it built up its infrastructure around the globe.

And while some remain skeptical about the fledgling brokerage's ability to attract large-account clients, Mr. Clements has a track record in building successful insurance ventures in any indication.

Mr. Clements helped build such powerhouses as ACE Ltd. and X.L. Capital Ltd.

John Coomber is preparing to give up his role as chief executive officer of Swiss Reinsurance Co. this year, but not before the Zurich, Switzerland-based company embarks on an acquisition that will make it the largest reinsurer in the world.

In November 2005, Swiss Re announced a \$6.8 billion takeover of GE Insurance Solutions, the Kansas City, Mo.-based insurance arm of General Electric Co.

In his three years at the helm of Swiss Re, British-born Mr. Coomber has steered the company through such events as the record-breaking hurricane losses of 2005 and litigation

over whether the Sept. 11, 2001, loss of the World Trade Center twin towers represents one occurrence or two.

This year, after 33 years with Swiss Re, Mr. Coomber will hand over the CEO post to Jacques Aigrain, currently deputy CEO.

Oh, how the mighty have fallen. **Maurice R. Greenberg**, who rose from his beginnings on a farm in upstate New York to building one of the largest insurers in the world, stepped down last year as chief executive officer, and then as chairman, of American International Group Inc.

The resignations came amid an expanding probe into AIG's accounting of certain reinsurance transactions conducted by New York Attorney General Eliot Spitzer, the U.S. Securities and Exchange Commission and the New York Insurance Department.

Both Mr. Greenberg and New York-based AIG were subsequently charged with orchestrating numerous fraudulent transactions to manipulate the insurer's financial results. But Mr. Spitzer went out of his way to implicate Mr. Greenberg when he said, at the time, that while AIG was well-run and profitable, its former top management "routinely and persistently resorted to deception and fraud."

In November 2005, Mr. Spitzer announced he would not file criminal charges against Mr. Greenberg, but the civil suit is pending.

As head of the London Market Reform group, **Nick Prettejohn**, chief executive of Lloyd's of London, has spearheaded the London insurance market's drive to meet a deadline of the end of 2006 to achieve contract certainty for buyers.

The Financial Services Authority, the United Kingdom's insurance regulator, has set the

market a deadline of Jan. 1, 2007, for contract certainty on all business written in London. The Market Reform Group, which is comprised of representatives from Lloyd's and London company market insurers and brokers, has issued guidance on how to achieve contract certainty and written to London insurance market CEOs regularly on the subject.

Mr. Prettejohn, who has been chief executive of Lloyd's since 1999, left the market at the end of 2005 to take up a post as chief executive of the U.K. insurance operations of Prudential P.L.C. A permanent successor to Mr. Prettejohn has not yet been named.

U.S. Senate Banking Committee Chairman **Richard Shelby**, R-Ala., has never cared much for the Terrorism Risk Insurance Act.

Yet the lawmaker, who was one of only 11 senators to vote against the original TRIA in 2002, ultimately determined the shape and scope of terrorism risk insurance extension legislation that President Bush signed shortly before the federal terrorism insurance back-

stop created by TRIA was scheduled to sunset on Dec. 31, 2005.

Following the lead of the Bush administration, Sen. Shelby refused to consider anything beyond a bare-bones TRIA extension, and as the sunset date approached, it became evident that if TRIA's backstop were to survive, it would be on Sen. Shelby's terms. Faced with the prospect of no backstop at all after Dec. 31, 2005, proponents of a more comprehensive federal terrorism insurance program bowed to the inevitable and gave Sen. Shelby his victory.

The Bush administration's point man on terrorism insurance made his point forcefully on June 30, 2005.

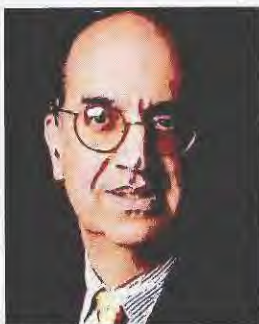
That's when U.S. Treasury Secretary **John Snow** released a report on the state of the terrorism insurance market that argued for a much smaller role, if any, for the federal government in guaranteeing a federal backstop for insurers facing catastrophic losses from future terrorist attacks. The report came only six months before the Terrorism Risk Insurance Act, which created the backstop, was slated to expire on Dec. 31, 2005. In fact, the report blamed TRIA for the failure of the emergence of a broad private terrorism insurance market.

Insurers and policyholders alike considered the Treasury secretary's position unrealistic, holding that terrorism is and would remain an uninsurable risk. Yet Mr. Snow's views ultimately carried the day in late December 2005, when President Bush signed legislation that extended to the end of 2007 a much narrower federal terrorism insurance program.

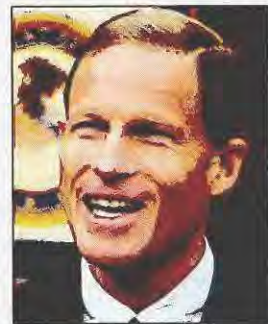
After putting the words "bid rigging" into the vernacular of the insurance industry with his October 2004 blockbuster lawsuit against Marsh & McLennan Cos. Inc., New York Attorney General **Eliot Spitzer** continued to clean house around the insurance industry throughout 2005.

Among his efforts: Mr. Spitzer secured an \$850 million settlement with MMC, filed criminal charges against eight former Marsh Inc. executives and netted 17 guilty pleas from individuals as a result of his bid-rigging probe. He also reached a \$190 million settlement with Aon Corp. and a \$50 million settlement with Willis Group Holdings Ltd.

But it wasn't only the conflicts of interest over brokers' acceptance of contingent commissions that took up Mr. Spitzer's time in 2005. Amid investigating American International Group Inc.'s relationships with its brokers, Mr. Spitzer determined that the insurer improperly accounted for certain finite reinsurance deals. That investigation ultimately led to the departure of AIG's longtime CEO, Maurice R. Greenberg.



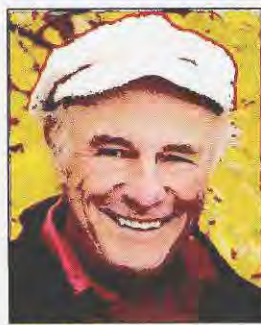
Mr. Cherkasky



Mr. Blumenthal



Mr. Greenberg



Mr. Clements



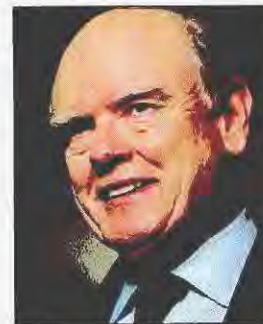
Mr. Case



Mr. Coomber



Mr. Shelby



Mr. Snow



Mr. Spitzer

PHOTO: BLOOMBERG NEWS/LANDOV

Risk Management 2005

JANUARY

Continuing investigations into insurer and broker practices continue to shake the insurance industry as ACE USA President Susan Rivera resigns while ACE Ltd. conducts an internal inquiry in response to investigations by New York Attorney General Eliot Spitzer and federal securities regulators.

The United Kingdom's Financial Services Authority takes over oversight of brokerages and introduces a rule requiring brokers to disclose information on commissions they receive if commercial clients request the information. In late November, the FSA indicates that it may make such disclosure mandatory if brokers do not improve how they manage potential conflicts of interest.

Connecticut Attorney General Richard Blumenthal sues Marsh & McLennan Cos. Inc. and ACE USA over business practices.

Marsh & McLennan Cos. Inc. reaches an \$850 million settlement with Mr. Spitzer over alleged fraud and bid-rigging charges. The settlement, however, does not resolve investiga-

tions by attorneys general or regulators in other states, and does not settle several policyholder and shareholder class actions.

London underwriters form a task force on broker compensation to help prepare the market for changes in brokers' business models stemming from the backlash against contingent commission arrangements.

FEBRUARY

The Class Action Fairness Act is signed into law by President Bush. The act, which allows the removal of certain class actions to federal court from state courts when defendants and plaintiffs are citizens of different states, ranks among the most comprehensive federal tort reforms in recent history.

As investigations into brokerage practices continue, Aon Corp. announces it has put aside \$50 million for potential settlements, even though it had not been charged with any wrongdoing. In early March, Aon announces that it would revamp its business practices and pay \$190 million to policyholders to settle fraud charges



President Bush signs the Class Action Fairness Act of 2005, one of the most comprehensive federal tort reform measures in recent history.

brought by officials in three states.

MARCH

In an effort to recoup \$845 million in lost contingent commission income and to restore profitability, Marsh announces that it will abandon unprofitable accounts and move to a standardized rate card with insurers. The new rate card includes a higher up-front commission structure.

Long-time American International Group Inc. Chief Executive Officer Maurice R. Greenberg resigns as regulators investigate

AIG's finite risk deal with General Reinsurance Corp. Martin J. Sullivan, AIG's co-chief operating officer and vice chair since 2002, becomes CEO. A few weeks later, Mr. Greenberg steps down as the company's nonexecutive chairman. Frank G. Zarb, chairman of the AIG's board's executive committee, assumes Mr. Greenberg's duties.

Ten German insurers are fined a total of nearly \$172 million for engaging in anti-competitive business practices by Germany's Bundeskartellamt—the country's competition regulator. The fines cap a three-year investigation into business practices.

APRIL

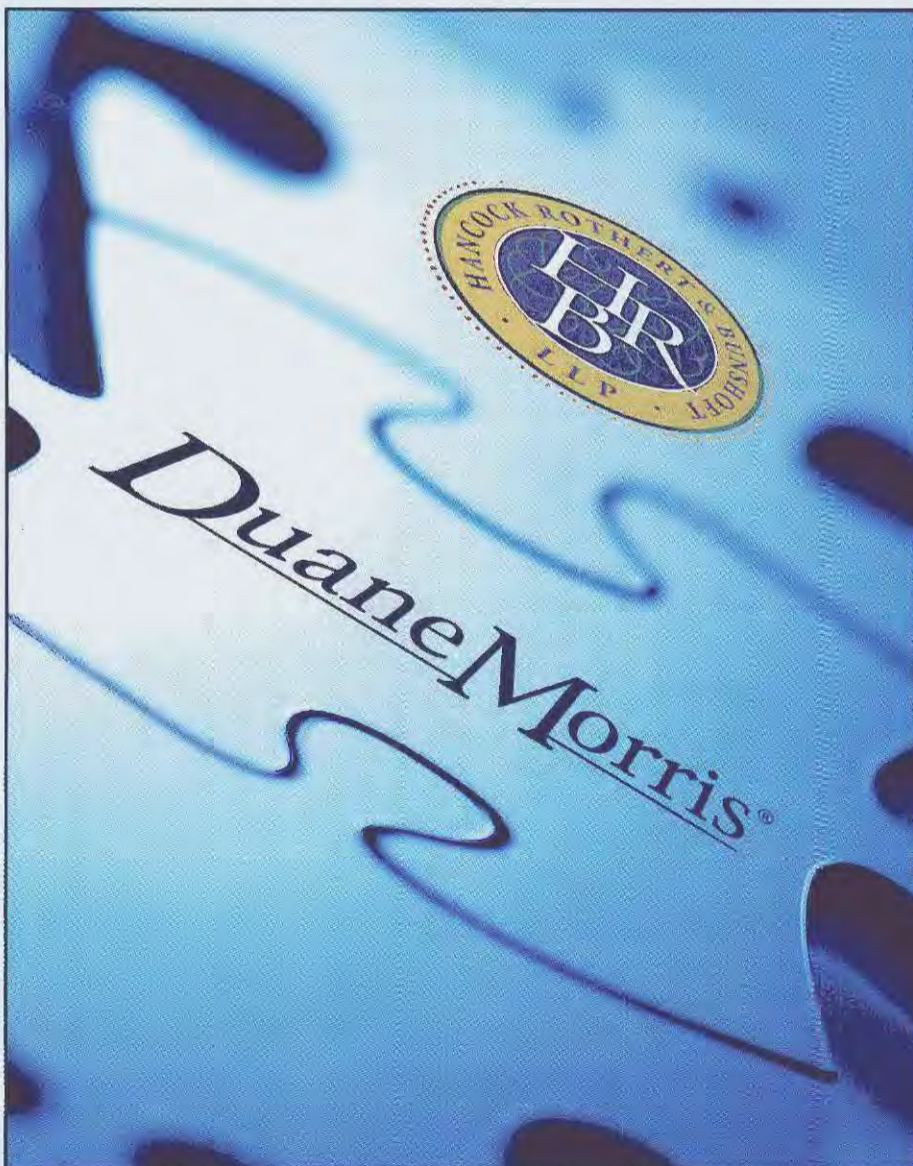
Willis Group Holdings Ltd. agrees to pay \$51 million to state officials to end probes into the broker's compensation practices. In addition, Arthur J. Gallagher & Co. announces that it will set aside \$35 million to settle investigations related to its use of contingent commissions, even though it had yet to be charged with any wrongdoing. Gallagher later settles with Illinois regulators.

Gregory C. Case, an insurance consultant, is named to succeed Patrick G. Ryan as president and chief executive officer of Aon.

MAY

AIG announces that it will restate more than four years of financial reports, cutting stockholder equity by about \$2.7 billion. An ongoing probe of the company's accounting practices leads it to restate earnings yet again

Continued on next page



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COMMENTARY

Senior Editor Rodd Zolkos

The top ten reasons to make lists in 2005

As each year ends—along with the holidays, gatherings of friends and family and assorted examples of overindulgence—comes a dramatic reminder of just how enamored we all are of lists.

As one year changes to the next, it's just about impossible to pick up a newspaper or magazine, listen to the radio, turn on the TV or even surf the Web without encountering aggregations of the year's best and worst, top and bottom, silliest and most serious.

There are lists of the year's top news stories, top sports stories, top films, top albums and top recipes. On the flip side are the lists of dubious distinction: worst films, biggest disappointments, worst dressed.

BI's own pages, of course, aren't immune from this apparently universal list-making impulse. As each year ends and the next begins, we offer our own lists of the top employee benefits and risk management stories of the year, along with the top newsmakers in each area.

List making is such an elemental part of human nature that it has even made its way into literature at least once that I'm aware of. Throughout his novel "High Fidelity," author Nick Hornby has his protagonist compulsively make lists, ranking everything from songs to breakups. David Letterman long ago took this obsession to the extreme, satirizing it in ridiculous fashion with his own "Top Ten" lists. The irony is that Letterman's lists have become fully part of our obsession and are now an expected and essential element of each night's show.

I don't know if there's anything that isn't subject to year-end lists. Last week I saw that America Online had released its list of the top junk e-mail subjects of 2005. While Donald Trump made it into the top 10, porn has fallen from the list, Reuters reported. There's some sort of societal insight to be gleaned here, I suspect, but I'm not sure what it is.

Last month, the San Diego-based nonprofit group Global Language Monitor checked in with its annual list of the year's top words. Here it's easier to derive some insight into the essence of 2005. "Refugee" tops the 2005 GLM list, followed by "tsunami." "Katrina" also makes the top 10, as does "insurgent" and, of

course, "H5N1"—the avian influenza strain.

The GLM's list of top phrases of 2005—led by "out of the mainstream"—includes "climate change." It also included "jumping the couch," a phrase the GLM suggests refers to losing complete emotional control: think Tom Cruise on Oprah's show.

For many *BI* readers, a truly significant list is that of the year's worst catastrophes. Swiss Reinsurance Co. posted its preliminary version of such a list in December—actually two versions, one listing 2005's worst catastrophes in terms of victims, the other ranking the most costly insured losses. Interestingly, Hurricane Katrina offers the only overlap between the two.

The deadliest catastrophe last year, according to Swiss Re, was the Oct. 8 earthquake that hit Pakistan, India and Afghanistan, killing 87,000. The March 28 Indonesian quake is next, with 2,600 dead or missing, followed by 2,030 dead or missing as a result of rain, mudslides, avalanches and three burst dams in Pakistan. Katrina is fifth on the list, with 1,193 dead or missing.

With an estimated \$45 billion in insured losses, August's Hurricane Katrina obviously tops Swiss Re's list of 2005's largest insured losses, followed by \$10 billion from September's Hurricane Rita, \$8 billion from October's Hurricane Wilma and \$2 billion from July's Hurricane Dennis. The floods and landslides caused by August's heavy rains in Switzerland, Germany and Austria also make the list, as does January 2005's winter storm Erwin in Denmark, Sweden, Norway and Germany.

While the reasons for some lists are obvious, many others seem far less necessary, and I'm not sure what's behind our list-making obsession. Maybe we derive some sort of validation of our own experiences by seeing them enumerated on such rosters. Maybe, as with grocery lists, these "top" lists provide us a sort of organizational tool, helping to focus our thinking about the events of the past year.

Whatever is behind all this list making, I hope that 12 months from now all of your personal 2006 lists will tilt heavily toward "bests" and be decidedly thin on "worsts." Happy New Year to all.

Senior Editor Rodd Zolkos can be reached at rzolkos@businessinsurance.com.

Continued from previous page
a few months later in November.

Former Marsh Inc. Chairman Robert Clements forms a new brokerage called Integro Ltd., which will target large accounts. The new entity broker manages to lure many top personnel from other brokerages to join its ranks.

■ New York Attorney General Spitzer formally charges AIG and Mr. Greenberg with fraud.

■ Two former Gen Re executives plead guilty to a conspiracy charge in connection with a sham reinsurance deal transacted more than four years earlier with AIG. A few days later, a U.S. attorney in New York issues subpoenas to several insurers and reinsurers relating to finite insurance.

■ The U.S. Treasury Department issues its long-awaited report on the state of the terrorism risk insurance market. Treasury recommends that the existing federal financial backstop for insurers facing future catastrophic terrorism losses not be extended beyond its Dec. 31 sunset unless lawmakers scale it back significantly.

JULY

■ A terrorist attack on London's transit system kills dozens, heightening concerns in the United States and elsewhere over the vulnerability of transportation systems to terrorism.

AUGUST



Hurricane Katrina wrought havoc on the Gulf Coast and was the costliest natural disaster in U.S. history.

■ An investment scandal involving Ohio's Bureau of Workers Compensation derails efforts to enact employer-backed reforms.

■ Hurricane Katrina devastates much of the Gulf Coast, hitting New Orleans particularly hard. The storm will become the most costly natural disaster in U.S. history,

with the Insurance Services Office Inc.'s Property Claim Services unit offering a preliminary insured loss estimate of \$34.4 billion.

SEPTEMBER

■ A second major hurricane, Rita, strikes the Gulf Coast, causing an estimated \$4.7 billion in insured property damage, according to PCS. Meanwhile, National Hurricane Center Director Max Mayfield tells a Senate subcommittee that the current period of above-average hurricane activity could last another two decades.

OCTOBER

■ The House approves measures that would limit the liability of gun manufacturers and the makers and sellers of food products. This sets the stage for House approval of the Lawsuit Abuse Reduction Act, which would curb what tort reform advocates consider to be "frivolous" lawsuits. The Senate, though, shows no appetite for any of these reforms and fails to act upon them by year's end.

■ Lloyd's of London Chief Executive Nick Prettejohn announces that he will step down at year's end to become chief executive of U.K. operations of life insurer Prudential P.L.C. Luke Savage, Lloyd's director of finance and risk management, will assume the role of acting chief on Jan. 1, 2006, until a permanent successor is named.

■ The already-battered property insurance market takes another major hit as Hurricane Wilma rakes across South Florida, causing an additional \$6.1 billion in insured property damage, according to a preliminary estimate by PCS. Even before the official end of hurricane season: on Nov. 30, PCS estimates that catastrophes of all sorts had caused \$50.3 billion in insured property damage in 2005.

NOVEMBER

■ Swiss Reinsurance Co. agrees to buy General Electric Co.'s GE Insurance Solutions property/casualty business for \$6.8 billion, contingent on a massive reserves increase. If the deal is completed by the middle of 2006, Swiss Re will become the world's largest reinsurer.

DECEMBER

■ Both Tropical Storm Risk in London and the Tropical Meteorological Project at Colorado State University predict that there will be higher-than-normal hurricane activity in the Atlantic Basin in 2006. They add, though, that a repeat of 2005's record number of hurricanes is unlikely.

■ Congress gives final approval to legislation to extend the Terrorism Risk Insurance Act through the end of 2007, albeit in a shrunken state.

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Court OKs manufacturer's restructuring plan to manage current, future asbestos claims

By SARAH VEYSEY

LONDON—Turner & Newall Ltd., a U.K. unit of Southfield, Mich.-based automotive parts manufacturer Federal Mogul Corp., may set up a so-called "company voluntary arrangement" or a "scheme of arrangement" to restructure the company and handle its current and future asbestos claims, a U.K. court has ruled.

And the ruling may pave the way for Turner & Newall's underfunded defined benefit pension plan to tap the United Kingdom's Pension Protection Fund, a rescue mechanism

modeled loosely on the U.S. Pension Benefit Guaranty Corp.

Federal Mogul bought engineering company Turner & Newall in 1998 and filed for Chapter 11 bankruptcy protection in 2001 because of huge asbestos liabilities in the United States and the United Kingdom. Federal Mogul's asbestos liabilities, a large proportion of which arise from the acquisition of Turner & Newall, are estimated to be about \$1 billion, according to sources.

In the case of *T&N Ltd. and Others in the matter of the Insolvency Act 1986*, which was heard in the High

Court in London last month, Mr. Justice David Richards ruled that Turner & Newall's administrators, New York-based Kroll Inc., may set up either a company voluntary arrangement or a scheme of arrangement, or both, to bind creditors together in a mechanism to restructure the company.

A company voluntary arrangement is a bankruptcy procedure that enables an insolvent company to enter into a legally binding agreement with its current creditors, while a scheme of arrangement is a mechanism that forges an agreement between a company and

its future creditors.

The judge ruled that future asbestos claimants could be bound together by either a company voluntary arrangement or a scheme of arrangement. By contrast, he ruled that future asbestos claimants could not be considered creditors of Turner & Newall in the event of the company entering liquidation.

Legal sources say the ruling is significant because the Turner & Newall case is the first instance of the collapse of a major U.K. asbestos manufacturer. And they note

See **ASBESTOS** / next page



Swiss soldiers remove driftwood from the Aare River waterfront in a suburb of Bern, Switzerland, following flooding in August 2005.

London market striving to meet deadlines for contract certainty

By SARAH VEYSEY

LONDON—London market insurers and brokers likely have met interim contract certainty targets for 30% of all business placed in December 2005 to be complete at coverage inception, but the market still has to overcome hurdles to meet the final deadline for contract certainty in January 2007.

Observers say that it will probably prove most difficult to implement contract certainty at inception in some specialty lines.

But efforts by all market participants should ensure that any difficulties are overcome in time to meet the Jan. 1, 2007, deadline for 100% contract certainty laid down by the Financial Services Authority, the U.K. insurance regulator, they say.

Although final figures will not be available until February, market participants are confident that the Market Reform Group's 30% target for year-end 2005 was met.

The Market Reform Group—which comprises representatives of Lloyd's of London and London company market insurers and brokers—and the FSA set a target for 30% of all contracts to be agreed and complete by the end of 2005, 60% by the end of June 2006, and 85% of all business written in the market to comply with contract certainty requirements by the end of 2006.

The Market Reform Group defines contract certainty as "the complete and final agreement of all terms (including signed lines) between the insured and insurers before inception."

In addition, in a code of practice published last fall and circulated to all chief executives of London market companies, the group said that "the full wording

must be agreed before any insurer formally commits to the contract" and "an appropriate evidence of cover is to be issued within 30 days of inception."

The code of practice also requires that brokers notify their clients of all terms and conditions and obtain clients' agreement before policy inception, among other things.

It is likely that data on whether the market has met the 30% target will be available in February, said Steve Quiddington, director of operations at Lloyd's. Thereafter, monthly data will be available to help the market monitor its progress toward the other deadlines, he said.

Brokers are working hard to ensure that contract certainty deadlines are met, said Peter Staddon, head of technical services at the British Insurance Brokers' Assn. in London. BIBA is confident that the 30% target has been met.

The next "test" that the Market Reform Group will set for companies in the bid to achieve contract certainty is that they contact all London market companies and ask them to ensure that their boards of directors have agreed to adopt the code of practice, said Mr. Quiddington, who also serves on the Market Reform Group.

This likely will take place over the next several weeks, he said.

Sources say that efforts such as the Market Reform Group's code of practice and frequent letters to and meetings with market participants helped the drive to meet the 30% target.

Such moves have given the market greater understanding of the steps that need to be taken in order to achieve contract certainty.

See **CERTAINTY**/next page

Central, Eastern Europe awash in flood losses

By SARAH VEYSEY

Total insured losses from flooding in Central and Eastern Europe last year reached more than €1.25 billion (\$1.48 billion), according to a report by reinsurance brokerage Guy Carpenter & Co. Ltd. in London.

Many countries in Central and Eastern Europe, including Austria, Germany and Switzerland, were hit by heavy flooding in the summer of 2005, while other countries, including Bulgaria and Romania, suffered unrelated flooding in the spring and summer.

Switzerland incurred the largest economic and insured flood-related losses, according to the report, after heavy rainfall in August caused severe flooding, particularly in the cantons of Bern and Lucerne.

Insured losses in Switzerland stemming from the floods were an estimated €1.2 billion (\$1.42 billion), while economic losses totaled more than €1.7 billion (\$2.02 billion), according to the report.

In Austria and Germany, also in August, several rivers burst their banks after heavy rainfall and caused damage in the Austrian

provinces of Tyrol and Vorarlberg and the German state of Bavaria.

According to the report, insured losses resulting from the floods in Austria are likely to be about €100 million (\$118.7 million). No insured estimate is available for Bavaria, but economic losses are expected to be about €172 million (\$204.2 million).

Flooding in northern Romania in the spring and summer killed 69 people and forced thousands to evacuate their homes.

According to the report, the Romanian government estimates the total economic losses from the flooding to be more than €1.5 billion (\$1.78 billion). Insured losses are not expected to be large, though, because of the relatively low number of households that are insured against flood, the report notes.

In Bulgaria, flooding in the spring and summer caused estimated economic losses of about €520 million (\$617.4 million), according to the report.

Copies of the report, "European Flood Report 2005-Central and Eastern Europe," are available at www.guy-carp.com.

Updates

Benfield Group opens South Korean office

Broker Benfield Group Ltd. has opened an office in Seoul, South Korea. Benfield Korea Ltd. has been licensed by the Financial Supervisory Service of Korea, London-based Benfield said in a statement. Choi Chiwan, formerly a senior executive at Korean Reinsurance Co., has been named president of the operation.

FTSE 100 companies' pension deficit grows

The combined deficit of the defined benefit pension plans sponsored by the United Kingdom's 100 largest companies currently stands at about £75 billion (\$130.1 billion), up from £65 billion (\$112.8 billion) at the start of 2005, according to estimates by Deloitte & Touche L.L.P. London-based Deloitte studied disclosures made by FTSE 100 companies, the largest 100 publicly listed companies in the United Kingdom, under Financial Reporting Standard 17, which measures the assets and liabilities of company pension plans. David Robbins, a consulting partner at Deloitte, said in a statement that falling interest rates in 2005 contributed to the increase in pension plan deficits.

U.K. issues pension rules for cross-border plans

The United Kingdom's regulatory body for work-based pension plans has published guidance and application forms for companies that wish to operate cross-border pension plans. From January 2006, U.K. pension plans will need approval and authorization from the Brighton, England-based Pensions Regulator. Authorization need be obtained only once, though approval of a plan is needed each time an employer wants its pension plan to operate across borders in an additional country. The requirements will make the U.K. regulatory regime compliant with the Occupational Pensions Directive, which was adopted by the European Union in 2003. All E.U. member states have to comply with the directive. The guidance and application forms are available at www.pensionsregulator.gov.uk.

Allianz units to offer Turkish credit coverage

Two units of Allianz A.G. Holding have joined forces to offer credit insurance services in Turkey. Paris-based credit insurance unit Euler Hermes and Turkish insurer Koç Allianz will offer risk assessment services and credit insurance coverage. Koç Allianz has 12 regional offices in Turkey and a network of 800 agencies, according to a statement by Euler Hermes.

PRODUCTS & SERVICES

CCH offers online tool for 401(k) plan sponsors

RIVERWOODS, Ill.—CCH Inc., a provider of employment law and human resources information and software, is offering an online tool to assist plan sponsors who are responsible for 401(k) and 403(b) plans.

CCH's offering, the Plan Investment Analyzer, provides plan sponsors with practical terms and benchmarks on current fiduciary issues. It also includes an electronic evaluation tool, which analyzes existing portfolios and provides recommendations on how to choose vendors and investments.

The Plan Investment Analyzer is available on a subscription basis, which includes print and electronic formats of "The 401(k) & 403(b) Participant-Directed Handbook."

For more information, contact CCH at 888-224-7377 or visit the company's Web site at www.hr.cch.com.

National Union offers hedge fund policy

NEW YORK—American International Group Inc.'s member company, National Union Fire Insurance Co. of Pittsburgh, Pa., has announced an insurance policy to protect hedge fund managers and advisors, as well as directors and officers.

National Union's Hedge Fund Protector policy features coverages for directors and officers liability, partnership liability, managing member liability and professional

liability specifically designed for hedge funds.

More information can be obtained by contacting the company at atmanagementliability@aig.com or by visiting www.aignationalunion.com.

SHPS offering assists Medicare Rx drug plans

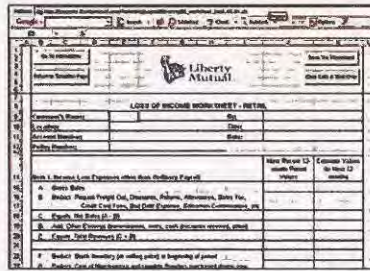
LOUISVILLE, Ky.—SHPS Inc., an integrated health management provider, has launched a suite of tools to help Medicare Part D prescription drug plans serve new enrollees.

The SHPS offering aims to help providers attract and retain retirees in their Medicare Part D plans. Some of the tools offered include enrollment of retiree participants by telephone, mail and Internet; print on demand, which is designed to help prescription drug plans in their participant communications; personalized member billing, which provides direct billing services for prescription drug plans for their Medicare Part D premiums; and participant call center support for eligibility-related issues.

For more information, contact J.D. Grimes, vp-large market sales, health care and human resource solutions, at 502-267-3239 or visit the company's Web site at www.shps.com.

Liberty Mutual launches online training program

BOSTON—Liberty Mutual Property, a unit of Liberty Mutual Group, is



Liberty Mutual offers online training on business interruption issues.

offering an online business interruption training program.

The program aims to help risk managers and producers strengthen their knowledge of business interruption insurance. The program consists of four lessons: business interruption basics, which details business interruption coverage; extra-expense insurance, which covers the differences and similarities between business interruption and extra-expense insurance; the business income worksheet, which reviews the importance of accurate business income values and helps users understand how to calculate the costs of business interruption as a result of a covered loss by providing an Microsoft Excel-based worksheet; and loss adjustment, which details the process of adjusting business interruption claims.

The business interruption online training is available at www.libertymutualproperty.com/Bitraining. For information regarding training, contact Liberty Mutual Property's training and development group at Imp_t&d@libertymutual.com.

The Hartford enhances D&O product for NAREIT

HARTFORD, Conn.—The Hartford Financial Services Group Inc. has enhanced its directors, officers and company liability policy for members of the National Assn. of Real Estate Investment Trusts Inc.

The policy intends to provide protection for those who manage real estate investment trusts. The updated version includes nonrescindable Side A coverage that would stay in force if a material misrepresentation in the application were to arise; broad severability language that would maintain coverage for innocent insureds if the other directors and officers were to be found to have made these misrepresentations; and a broad definition of an operating entity. The policy also features coverage for punitive and multiple damages, where insurable, and an option for investigative cost coverage, among other terms and conditions.

The program is available through New York-based Frank Crystal & Co., which is the exclusive broker and administrator.

For more information, NAREIT members can contact Ken Gamble, executive director for Frank Crystal & Co., at 212-504-5873.

For more information on the directors, officers and company liability policy, contact Patricia Fitzgerald, national marketing director for The Hartford Financial Products, at 212-277-0457 or visit the company Web site at www.hfpinsurance.com.

Trustmark offers HSA through Alliance

PEORIA, Ill.—Trustmark Mutual Holding Co. is offering the MyHSA product from Charles Schwab Trust Co. of San Francisco and the Alliance Benefit Group of Illinois of Peoria, Ill.

This HSA product offers numerous mutual fund investment choices to participants, along with a fixed rate of return option. Employees can contribute directly or through pretax payroll deductions, and employers can contribute with savings from reduced premiums in fixed-dollar amounts or by matching contributions. Trustmark will offer the HSA product through its subsidiaries CoreSource, Starmark, Trustmark Group Insurance and Trustmark Affinity Markets. The Charles Schwab Trust Co. serves as the custodian for the plan, and Alliance Benefit Group of Illinois functions as the plan administrator.

For more information, contact the MyHSA help desk at 800-576-9472 or visit www.m/hsa.com. More information on Trustmark can be found by visiting www.trustmarkins.com.

We'd like to report on new risk management and employee benefit products and services offered by your company. Send information about your new offerings to: Carrie A. Peinado, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; telephone: 312-649-5313; fax: 312-649-7801; e-mail: cpeinado@businessinsurance.com.

Racicot: AIA president seeks to build industry consensus on complex issues

Continued from page 3

he added. The insurance industry manages assets that allow it to be in a position to "make policyholders whole" in the event of a loss, which means insurers have a significant impact on the economy.

Fortunately, the people involved in the industry "are highly competent and capable," he said, a factor that made joining the AIA "very attractive."

"They perform a mission that they believe in and that I think is very noble: people coming together and making voluntary contributions to a business entity whose sole purpose is to make people whole, the private-sector portion of the safety net in the event of difficulty or disaster."

We have a "constant requirement" to describe what we do in proper terms so people can understand it "in plain and proper terms," said Mr. Racicot.

Risk managers have a role to play in this effort as well, said Mr. Racicot. "Could there be a better source of information or insight than those who calculate risk, who quantify it, describe it and mathematically ascertain a value associated with that risk?" he said.

"The issue matrix is, I think, incredibly challenging. These policy

initiatives impact every American life," and they are focused on both the state and federal level, he said.

One of the issues that deals directly with the question of state vs. federal power is that of insurance regulation, which is a critical ongoing debate facing the industry, according to Mr. Racicot.

"I am, as I think most Americans are, a strong believer presumably in the capacity of states to assume all of those powers and duties not specifically provided to the federal government in a very competent and proper way," he said. "But there have been numerous instances throughout our course of history where, because of evolutions in our economy, we have realized there is a reason for the Constitution's commerce clause, and there is a reason to have one system of regulation that allows for a complex business to be carried on in a way that is of substantial benefit to virtually every American."

As businesses have grown more complex, it becomes unrealistic "to expect that somehow you could have 50 different sets of regulatory control" that could respond to all the challenges of complexity, he said. "I believe there are times and issues that are appropriate for discussion of a redrawing of the bal-

ance of state and federal regulatory authority. With the way things have changed over the past 20 years, insurance is one of those issues."

"I believe there are times and issues that are appropriate for discussion of a redrawing of the balance of state and federal regulatory authority."

Marc Racicot
American Insurance Assn.

With the two-year extension of the Terrorism Risk Insurance Act completed only days before the backstop created by the act was slated to expire on Dec. 31, 2005, AIA still faces additional daunting issues.

In fact, Mr. Racicot pointed out that the legislation approved in late December "is just a temporary solution, so we will have some significant responsibilities throughout the

course of that two-year period of time addressing from a policy perspective what we do on a permanent basis with terrorism insurance here in this country."

The AIA also will be involved, as it has been for years, with seeking some way to improve the liability system surrounding asbestos. For Mr. Racicot, asbestos is no theoretical issue, either.

"It happens to be something I've been exposed to, literally as well as figuratively, because I come from Libby, Mont.," he said, referring to the city that has become a poster child for asbestos pollution.

Mr. Racicot noted that he had to deal with the issue as governor of Montana. But he also stressed that a Senate plan to create a national no-fault trust fund paid for by defendant companies and their insurers is not acceptable to the AIA and has not been for more than a year.

Funds of a different sort are likely to occupy the industry for the next few years, said Mr. Racicot. That's the "ongoing discussion of a national catastrophe fund and state catastrophe funds," particularly post-Hurricane Katrina.

Of all issues, the "most undefined at the moment is natural catastrophe funds. The genesis of that discussion has just occurred,"

said Mr. Racicot.

"It's a process of distillation in the industry. There are some who have very strong feelings about creating a national fund as well as state funds," he explained. "The devil's in the details, and there are no details."

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Avian flu: Coverage questions abound, billions in losses seen should pandemic strike

Continued from page 1

urers could also "suffer from an operational standpoint, as they did in the aftermath" of the 2001 terrorist attacks, according to S&P. The report pointed out that many "insurance company employees could be barred from their workplaces" at a time when their companies would have increased workloads.

If growing numbers of people were to become sick, some coverage questions would have to be sorted out, sources note.

Workers comp insurance does not cover illnesses unless they are contracted "out of the course of employment," explained Mark J. Noonan, Boston-based managing director and head of Marsh Inc.'s workers compensation practice for North America.

The avian flu, though, does generate some "interesting issues," Mr. Noonan pointed out. For example, if the flu were not present in the United States but an employee traveling on business in Asia were to contract the virus and spread it to workers upon returning, their only exposure likely would be at the workplace, he explained. Health care workers would also be at risk of contracting the illness on the job.

The workers comp issue is complicated in some states that restrict which occupational diseases are covered, Mr. Noonan noted. "You would have to approach it on a state-by-state basis," he said.

Employers, particularly hospitals, need to prepare for a potential pandemic by providing as secure an environment as possible to protect their workers and patients, cau-

tioned Thomas N. Falzarano, managing director and global practice leader for liability claims at Marsh in Boston. Hotels face the same issues, he said, in protecting their employees and guests.

Mr. Falzarano said employers should determine whether their general liability coverage would offer protection from claims related to the avian flu. He recalled that employers were hit with liability claims in 2003 when they were accused of being unprepared for the epidemic of severe acute respiratory syndrome that swept through Asia.

Steven Weisbart, an economist with the Insurance Information Institute in New York, said legal liability claims from a pandemic would be possible but probably not widespread. "There's always an imaginative lawyer who can come up with a legal liability claim," Mr. Weisbart said, perhaps one by a restaurant patron who claims to have gotten ill from a poultry dish. "But I don't think that's likely," he said.

Property insurance questions may also arise, sources say.

If the avian flu were to strike a workplace to the extent that the property would have to be decontaminated, property coverage probably would not cover the costs, said Paul D. McVey, managing director and head of the global property claims practice at Marsh in New York. "Generally speaking, unless you have specific coverage for infectious diseases, it's doubtful," he said.

Speaking during a teleconference sponsored by Marsh in December,

Mr. McVey recommended that employers consider buying insurance that specifically covers infectious diseases. The coverage does come with limitations, he warned, and buyers should "fully understand what they are buying."

Mr. Weisbart agreed that contamination claims would be a stretch for employers. The contaminant generally must be a named peril to trigger coverage, he pointed out.

Although S&P says business interruption losses would hit insurers in a pandemic, many risk managers aren't counting on that coverage to make up revenue lost to reduced productivity.

The coverage generally requires "direct physical damage" before it could be triggered, explained a risk manager with a large retailer that has operations in the United States, Asia and elsewhere. "I assume you can buy contingency business interruption coverage" to cover the exposure, he added, but "I haven't heard of any avian flu business interruption policies."

"We have business interruption insurance," said Ellen Vinck, vp-risk management and benefits at BAE Systems Ship Repair in San Diego, "but we don't look to business interruption to respond in that type of situation."

Michael Liebowitz, director of risk management at Bridgeport Hospital & Healthcare Services Inc. in Bridgeport, Conn., said facilities such as his could lose business because of the crush of patients that would have to be treated during a pandemic. He said he would not expect business interruption insur-



Health workers culled roosters in Marsilleni, Romania, 80 miles east of Bucharest, earlier this month following deaths of birds from avian flu. The Balkan nation has found bird flu in 21 villages and around the Danube delta.

ance to respond to such a loss, because the virus is not a "tangible covered loss," as a fire would be, for example.

In the United Kingdom, some coverage has become available for poultry farmers. Under a program offered by London-based broker Heath Lambert Group and written by Lloyd's of London underwriters, U.K. poultry farmers can buy all-risk mortality policies that include coverage for financial losses suffered in an avian flu outbreak.

In the United States, poultry

farmers appear to be safe from an outbreak that would destroy their flocks, according to a spokesman for the National Chicken Council in Washington. Birds from Asia are not imported by U.S. farmers, the spokesman explained, and poultry farms in America raise their flocks indoors, keeping them safe from any wild birds that might be infected.

If an infection were to occur, the spokesman noted, "any such flock would be (destroyed) and would not go to market."

Disclosure: While still a work in progress, new broker procedures generally lauded

Continued from page 1

They also must disclose in writing all compensation they are to receive for each quote from any insurer and third party in connection with the coverage and obtain written consent from clients acknowledging the compensation.

For the most part, risk managers who recently went through the renewal process reacted positively to the new broker disclosure procedures.

"I'm glad to have full disclosure," said a manager of risk and benefits at Denver Water and a Marsh client. "You at least have the comfort that no other fees or commissions are being paid that you might not be aware of."

He said that in the past, when he asked how much Marsh was receiving in contingent commissions off his placements, he was either told that it was a national contract and they didn't know or that the amount was not very much.

"With full disclosure, there is just that sense of comfort," Mr. Crockett said.

"We definitely received a lot more in the way of disclosure than we ever had in my history as a risk manager—and I think positively so," said John Phelps, director of risk management for Blue Cross &

Blue Shield of Florida Inc. in Jacksonville.

There were frustrations, though, said Mr. Phelps, also a Marsh client. For instance, while 80% of all the policies BCBS buys fall within one global fee paid to Marsh, there are other policies, like an excess layer that is purchased in the London market, for which a commission has to be paid.

"So that's a little frustrating," Mr. Phelps said, acknowledging that Marsh continues to work on a new compensation model in London.

"The good news is, we fully understand how much we're paying for the London pieces now, where in the past we did not," Mr. Phelps said. "So overall it was worth the pain."

The brokers have "been very diligent as far as giving complete quote disclosure reports," said Jeff Hoke, director of risk management for NCR Corp. in Dayton, Ohio, and an Aon client. Mr. Hoke said his recent disclosure report not only indicated all the insurers Aon approached and their quotes, but also indicated whether there was any other intermediary, like a wholesaler or surplus lines insurer, that was involved on the placement. "Those are things that are not necessarily disclosed if you don't ask, so that's

good," he said.

Mr. Hoke noted, however, that he did take issue with having to sign off on the disclosure report. Buyers should not be put in the position of assuming the burden that everything the broker did was cor-

"You at least have the comfort that no other fees or commissions are being paid that you might not be aware of."

James E. Crockett
Denver Water

rect, he said. The buyer only knows what is correct based on the information that the broker provides, he said.

Furthermore, Aon's renewal proposal and quote disclosure report requires that the buyer acknowledge that it provided information about its contractual agreements and ownership interests with prospective insurers, Mr. Hoke said. "All Aon does regarding this is to di-

rect you to a Web site that is supposed to include all market relationships, where the onus is on you to pick through all this data. I had a problem with that."

"I went back to them and said, 'No, of the ones you're proposing here...you point out to me if there's any common ownership.' So I put the onus back on them."

Rather than sign off on the disclosure report, Mr. Hoke said he and Aon agreed to bind in a separate letter.

Mr. Phelps of the Florida Blues said the required signatures indeed resulted in increased paper work for him.

"Obviously, in the aftermath of Sarbanes-Oxley, a signature for anything within our company (has) to go through a very defined and rigorous process," he said. "Even though it may be just a paper that says it is OK to pay a commission, I had to go through the same process. So in that case, it created work for us."

Overall, Mark DiLillo, North American risk manager for Taylor Woodrow Inc. in Bradenton, Fla., says full disclosure should ease any concerns risk managers might have with their brokers.

"For me personally, it doesn't

change things much. I've always relied upon disclosure. But I think that just the fact that this is now standard practice lends a lot of credence to what transpired a couple of years ago with the investigations. It's now clearly laying it out for everyone," he said.

While Taylor Woodrow won't renew its insurance program until March, Mr. DiLillo recently amended his broker service agreement with Willis to reflect the new disclosure requirements.

ADVERTISER

INDEX

Issue of January 2

ADVERTISER	PAGE #
Ace Insurance	7
AIG	24
Aon Corporation	2
Broadspire	13
Burnham System	16
Business Insurance	21
Dickstein, Shapiro, Morin & Oshinsky	6
Duane Morris	15
Liberty Mutual	5
M. Beitle	16
Sigma Actuarial Consulting Group	16
World Insurance Forum	9A-B
Zurich North America	11

Sedgwick: Fidelity National's umbrella opens growth opportunities

Continued from page 1

largest claims administrator in the United States based on 2004 claims revenues of \$290.5 million for self-insured clients (*BI*, Jan. 31, 2005). Currently, the company has more than 400 clients under multiyear contracts across various industries.

According to David A. North, president and CEO of Sedgwick CMS, the third-party administrator will be better poised to grow its business under the Fidelity National umbrella through cross-selling opportunities.

"We think the growth opportunities for Sedgwick are very good," said Mr. North. Fidelity National will bring "additional insight into markets that we don't currently operate in," he said.

In its search for a new parent, Sedgwick CMS saw "a great deal of interest" from the market, Mr. North said, but Fidelity National stood out largely due to its management culture. "Fidelity believes, as we do, that the value we bring to our customers is in our colleagues."

Under the terms of the deal, Sedgwick CMS will become a Fidelity National operating entity, but it will retain its name, and its headquarters will remain in Memphis. The firm's current office structure—approximately 4,200 employees in more than 80 offices in the United States and Canada—will also remain intact, with Mr. North continuing as its CEO, reporting to Mr. Foley.

Both companies have inked definitive agreements, though the transaction is not expected to close until Jan. 31, pending regulatory approvals.

Fidelity National plans to fund the \$635 million purchase through a mix of cash and borrowings under existing lines of credit.

The primary selling shareholders of Sedgwick CMS are New York-based Marsh & McLennan Cos. Inc. and Trident II L.P., a private equity fund managed by Greenwich, Conn.-based Stone Point Capital L.L.C. The entities' stake in Sedgwick CMS stems from MMC's 1998 buy of brokerage Sedgwick Group P.L.C.

MMC did not return calls seeking comment, but a Sedgwick CMS spokesman said the TPA's owners "made a decision as investors to maximize their returns."

Observers said the deal was not surprising, as Sedgwick had been up for sale for several months and Fidelity National was interested in expanding into nonrisk-bearing insurance businesses.

"It was expected," said Geoffrey Dunn, an analyst at Keefe Bruyette & Woods Inc. in Hartford, Conn. "This is exactly the area (Fidelity National) was expressing interest in for several months."

With its stake in the title insurance market and expertise in financial institution processing under its belt, picking up a nonrisk-bearing insurance business makes sense for Fidelity National, Mr. Dunn said.

And inexperience in insurance claims management should not hinder Fidelity National, he said. "The management team at (Fidelity National) knows how to do acquisi-

tions successfully," Mr. Dunn said, by "bringing along the key people who know the specific business."

Following the acquisition announcement, New York-based Standard & Poor's Corp. in a statement said it "considers the acquisition to be consistent with (Fidelity National's) stated intent to explore modest-sized acquisitions and continue the parent company's diversification plans."

And while "Marsh has been disposing of some businesses" due to any potential or perceived conflicts of interest, according to S&P analyst Steven Ader, "that issue was a lot less prevalent in this case."

"There is new management at Marsh, and they've publicly stated that they were looking at the strategic fate of all their entities, and I think this was just part of that," Mr. Ader said.

Last year, Marsh divested its wholesale brokerage operations through the sale of Crump Inc. to private equity firm J.C. Flowers & Co. L.L.C. (*BI*, Sept. 12, 2005).

Late News

Continued from page 1

pharmacy services, thus creating potential opportunities to cross-sell multiple products. The transaction, which could cost up to \$50 million, is expected to close this week.

Odyssey Investment to buy York Insurance Services

Odyssey Investment Partners L.L.C. has agreed to buy third-party claims administrator York Insurance Services Group Inc. in a deal valued at \$105 million. The principal shareholder for Parsippany, N.J.-based York is Bexil Corp., and the transaction—pending regulatory approval—is expected to close in the first quarter of 2006. Odyssey last week also announced the creation of Odyssey Insurance Services, a partnership between Odyssey and Cincinnati-based advisory firm Ward Partners L.L.C. that will seek investments in insurance services firms.

Bermuda: Agencies defend practice of giving credit ratings to Class of 2005 startups

Continued from page 3

likely have a tough time securing the highest ratings from Fitch. "While Fitch's rating methodology does not impose a ceiling on startup reinsurer's ratings," the agency said in a statement, it will be "difficult for the majority of the Class of 2005 to achieve insurer financial strength ratings as high as the 'A' range," though it noted that startup status likely would not preclude "secure" ratings in the BBB range.

Unlike market conditions when the last wave of startups formed in Bermuda—following the Sept. 11, 2001 terrorist attacks, which resulted in premium rate hikes across a range of business lines—rate increases this time around could be narrow and short lived, Fitch predicted.

An even greater concern lies in the availability of management tal-

ent, according to Fitch, because a relatively small talent pool exists to staff the multitude of companies that simultaneously set up in Bermuda.

Many Class of 2005 startups, though, have attracted expertise from established firms.

Bermuda-based Validus Reinsurance Ltd.—backed by an insurance investment vehicle headed by former Marsh & McLennan Cos. Inc. Chairman and Chief Executive Officer Jeffrey Greenberg—has taken on as its chairman and CEO Edward J. Noonan, former president and CEO of American Re Corp.

Lancashire Insurance Co. Ltd., a new insurer and reinsurer created to write aviation, marine and energy, and property catastrophe risks, will be run by CEO Richard Brindle, formerly an underwriter at Charman Underwriting Agencies Ltd. and a

director of Ascot Underwriting Ltd., both in London.

Management track records represent a key factor in the ratings for new Bermuda startups, rating agencies say, but not all firms have been providing adequate information.

"We have companies that haven't even hired a chief executive that are asking us to rate them," said Mark Puccia, managing director at Standard & Poor's Corp. in New York. "I just don't see how you can assign an A- to that situation," he said.

"We are concerned that some companies are getting A- ratings because they need one," Mr. Puccia noted. While S&P does assign ratings to startup companies—and has done so for nearly a decade—"what we do not do is assign ratings to facilitate a company's ability to do business," he said.

"There are certainly a number of startups we believe we can rate," Mr. Puccia said of the new crop of Bermuda companies. "I think we can and will see some 'A-'s, but we do not expect to see a lot of 'A-'s."

So far, S&P has assigned ratings to two companies from the new batch: an A rating to Amlin Bermuda; and an A- to Hiscox Insurance Co. (Bermuda) Ltd., an arm of London-based Hiscox P.L.C. that will underwrite both reinsurance and retail insurance business.

But, according to Steve Dreyer, managing director at S&P in New York, these ratings are "not necessarily indicative of the ratings we would expect to be assigning to many of the 'true' startups," he said, referring to companies that are starting with fresh capital, new investors and new management teams.

Despite being seemingly early, intermediaries expressed confidence in Class of 2005 ratings and indicated they provide clients with a stronger sense of security than no company rating at all.

"The general concept of giving an immediate rating is something that I think is positive," said Steve Bolland, president of intermediary

Gill & Roeser Inc. in New York.

Mr. Bolland recalled a time when A.M. Best, for example, assigned all startups an "NA3"—or "not assigned"—rating based upon insufficient operating experience, noting that such a practice "was unfair, because they could hide behind the rating."

And because most companies will be writing short-tail lines, intermediaries say, the ratings for the latest crop of Bermuda startup reinsurers are justified, provided they possess sufficient capital.

"These are catastrophe reinsurers, in the main," Mr. Bolland said. "We're not talking about people who are writing long-term liability risks, and the fact that it's short-tail business makes it more secure."

"Certainly, in the first year of operations, a billion dollars covers up a lot of mistakes," acknowledged Tim R. Gardner, managing director and leader of the global property specialty practice for Guy Carpenter & Co. Inc. in New York. "While that's not necessarily a great long-term strategy," Mr. Gardner said, it does give the new Bermuda companies some time to work out any kinks.

According to Mr. Gardner, the process of conducting individual security assessments is tough, and not necessarily a practical undertaking. "We just don't get enough access to information" and the same types of financial and company data as the rating agencies do, he said.

"Generally, we are comfortable that the rating agencies, in total, are the keepers of financial strength," Mr. Gardner said. "We tend to live by those assessments."

"We tend to rely on the ratings from the rating agencies quite heavily," concurred Mr. Bolland. "As an intermediary, it's very difficult to find the time to analyze the underlying asset."

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BI Stock Index
2,914.11



Dow Jones
10,784.72



S&P 500
1,254.42



Largest gains

Tower Group Inc.	3.86%
PMA Capital Corp.	2.90%
WellPoint Health Networks, Inc.	2.17%
Navigators Group, Inc.	2.16%
Hub International Limited	1.95%

Weekly change by market segment

Brokers	-0.93%
Insurers/reinsurers	-0.12%
Managed care organizations	-0.17%

Largest losses

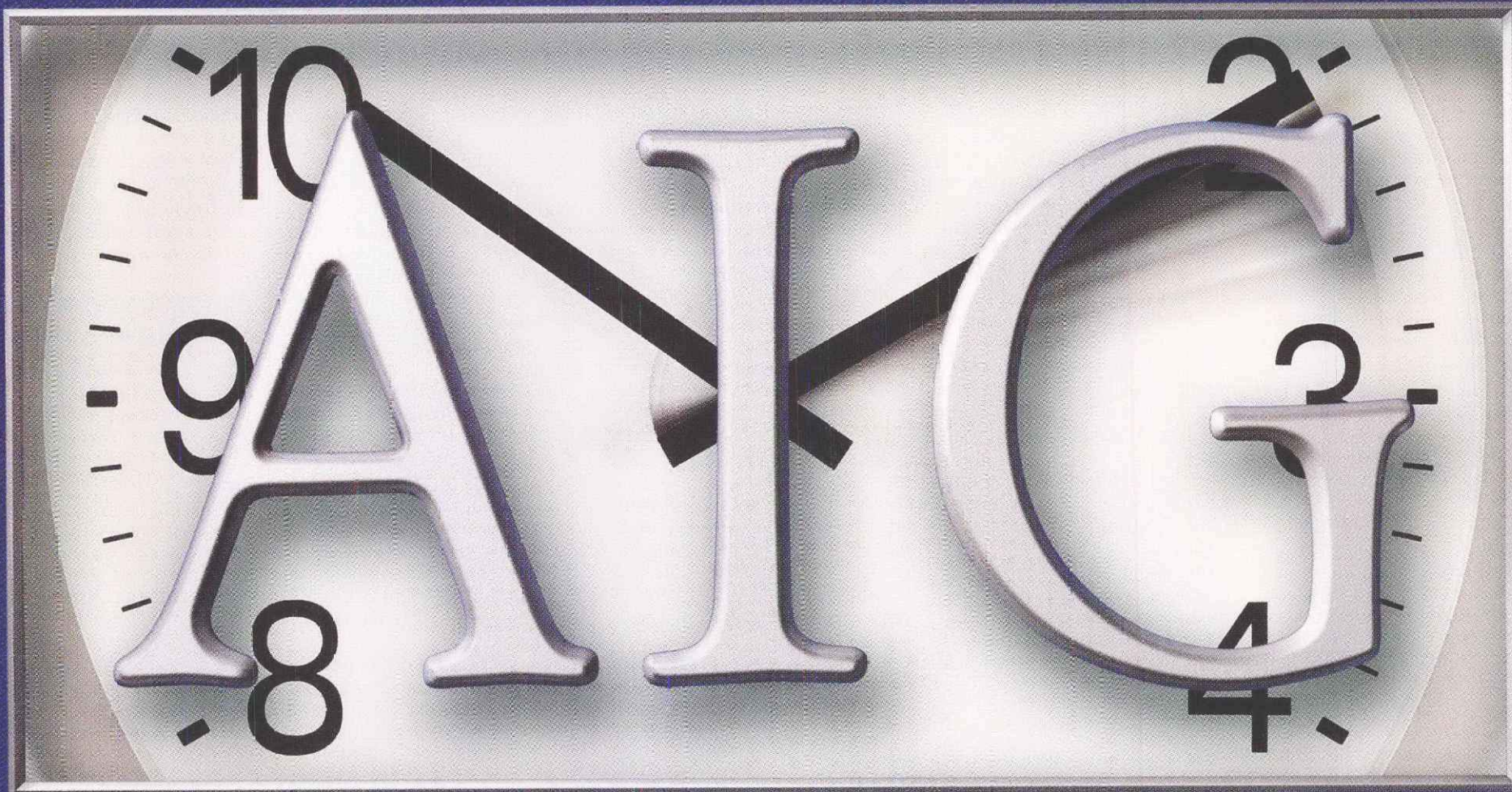
Vesta Insurance Group, Inc.	-7.14%
Clark Inc.	-4.35%
Marsh&McLennan Cos., Inc.	-3.39%
Gallagher & Co.	-2.58%
RLI Corp.	-2.24%

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