

# Business Insurance

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\$4

Hatch sets bill markup for this week

## Asbestos bill gains momentum

By MARK A. HOFMANN

**WASHINGTON**—The chairman of the Senate Judiciary Committee wants to begin his committee's formal consideration of an asbestos liability reform bill this week.

"We're going to a markup, probably" June 12, said Sen. Orrin Hatch, R-Utah, during a June 4 hearing on the bipartisan Fairness in Asbestos Injury Resolution Act, S. 1125. Sen. Hatch added that he might be willing to put the matter off for an ad-

ditional week, but no longer.

Sen. Hatch made his remarks before Laurence H. Tribe, a professor of constitutional law at Harvard Law School in Cambridge, Mass., assured the committee that S. 1125 would pass constitutional muster if enacted.

Mr. Tribe, who has a longstanding reputation as a liberal advocate of victims' rights, pointed out that the Supreme Court has "implored" Congress at least three times to provide a legislative solution to prob-

lems arising from mass asbestos litigation. Mr. Tribe noted that although he would recommend some minor changes to S. 1125, "the perfect is the enemy of the good" in this case.

Sen. Hatch stressed that the bill will certainly undergo more change before the Judiciary Committee votes upon it, particularly after hearing criticism that the measure might not compensate victims who were exposed to asbestos outside the workplace, leaving them

with no certain legal recourse. Sen. Hatch repeated his call for input from stakeholders in the asbestos debate before the committee votes.

As the bill stands now, S. 1125 would replace the litigation-based system for compensating victims of asbestos-related occupational disease with a no-fault \$108 billion national trust fund. A special asbestos claim court would determine compensation eligibility for  
**See ASBESTOS/page 30**

## Late News

### Reinsurers report lower losses, higher profits

U.S. property/casualty reinsurers reported a 96.4% combined ratio for the first quarter of 2003, compared with 101.8% reported by a similar group for the comparable period a year ago, according to the Reinsurance Assn. of America. The 96.4% combined ratio reported by the 29 reinsurers that participated in the Washington-based RAA's survey reflects a 71.3% loss ratio and a 25.1% expense ratio. Net premiums written by the 29 reinsurers totaled \$8.53 billion for the first quarter, up 27.6% compared with the comparable group in the year-earlier period.

### Bill would remove limits on offering MSAs

All employers would be allowed to offer tax-favored medical savings accounts under bipartisan legislation introduced last week in the House of Representatives. The bill, H.R. 2351, introduced by House Ways and Means Committee Chairman Bill Thomas, R-Calif., and Rep. William Lipinski, D-Ill., would remove provisions in a 1996 law that limits MSAs to employers with 50 or fewer employees and put a 750,000 limit on the number of MSAs that can be established.

### Conservation order issued for Fremont

California Insurance Commissioner John Garamendi has obtained a conservation order over insolvent insurer Fremont Indemnity Co. The

workers compensation insurer has not written "a significant amount of business since 2000," and its remaining policies are set to expire this month, the



**Mr. Garamendi** commissioner said. But based

on an actuarial analysis, the insurer was required to increase its loss reserves by approximately \$300 million in 2002. That sapped its policyholder surplus, dropping it to negative \$290.6 million and making the Glendale, Calif.-based insurer insolvent under California law.

**See LATE NEWS/page 31**

## Court expands legal definition of 'supervisor' 2nd Circuit ruling adds vicarious liability risk

By JUDY GREENWALD

**NEW YORK**—Employers in New York, Connecticut and Vermont are more likely to be found vicariously liable for employment discrimination as a result of a federal appellate decision that expands the definition of "supervisor" for the purposes of bias claims, say employer attorneys.

Some observers say that because the unanimous decision by the 2nd U.S. Circuit Court of Appeals panel in *Mack vs. Otis Elevator Co.* relies on a definition of "supervisor" different from that in other federal court decisions, the U.S. Supreme Court may eventually decide the issue.

The April 11 decision, which initially received little attention, is based on two 1998 U.S. Supreme Court decisions that dealt with supervisor harassment—*Burlington Industries vs. Ellerth* and *Faragher vs. City of Boca Raton*. In those decisions, the high court set forth the standard of vicarious liability for employers, and established an affirmative defense employers could use to minimize or avoid such liability in cases of supervisors harassing subordinates. To use that defense, an

**See SUPERVISOR/page 29**

## WELLPOINT GETS THE BLUES

WellPoint's acquisition of Cobalt Corp. would mark its third Blues plan purchase since 2001.



**June 2003** WellPoint signs a definitive agreement to acquire Milwaukee-based Cobalt Corp., which operates Blue Cross & Blue Shield United of Wisconsin, in a cash-and-stock deal estimated at \$906 million.

**January 2002** WellPoint completes its \$1.3 billion acquisition of St. Louis-based RightCHOICE Managed Care Inc., which operates the Missouri Blues plan and HealthLink. RightCHOICE adds 2.8 million medical members.

**March 2001** WellPoint completes its \$700 million acquisition of Atlanta-based Cerulean Cos., the parent company of the Georgia Blues plan. Cerulean adds approximately 1.7 million medical members.

## WellPoint to buy Cobalt Wisconsin Blues purchase to expand reach

By SALLY ROBERTS

**THOUSAND OAKS, Calif.**—WellPoint Health Networks Inc. is aiming to expand its reach with a nearly \$1 billion bid for Wisconsin health insurer Cobalt Corp. that analysts say would give Cobalt the resources it needs to be more competitive.

Milwaukee-based Cobalt is the holding company for Blue Cross & Blue Shield United of Wis-

consin. If approved, this deal would mark the third Blues plan that Thousand Oaks, Calif.-based WellPoint has bought since early 2001. WellPoint was formed by the 1996 conversion of Blue Cross of California to a for-profit entity.

The Cobalt bid comes on the heels of WellPoint's frustrated \$1.3 billion offer to acquire Owings Mills, Md.-based CareFirst Blue Cross & Blue Shield, Maryland's largest health insurer.

**See MERGER/page 31**

## Spotlight

### INTERNATIONAL RISK MANAGEMENT

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## Noteworthy

### New product tailored to offshore operations

U.S. multinationals with offshore operations just acquired options to help protect against political and other risks that could negate their cost savings. Aon's political risk experts have developed Offshoring Protection Insurance to cover losses resulting from a forced shutdown or relocation of operations. Insurable perils include confiscation or expropriation of property, cancellation of licenses and permits, discriminatory government actions, riots or civil unrest, and war. Recent research shows that, over the next five years, 100 of the world's largest financial services companies expect to transfer overseas \$365 billion of their operations and 2 million jobs to reduce expenses. To learn more about the foreign services protection insurance, please contact Bryan Squibb in Aon's Chicago office.

Phone: +1.312.381.4512

### Service delivers double-helping of benefits

Aon is helping two sectors of the business community respond to their most pressing issues. Aon's financial institutions experts have perfected a new service helping small-business owners cope with their No. 1 problem of rising health care costs – while simultaneously offering banks a new revenue stream. Aon is partnering with banks to offer their small-business customers a wide range of health insurance, voluntary benefits and annuity products. Business owners like it because they can tap into Aon's clout as a leading broker, giving them access to more plans, better terms and greater cost savings. Banks benefit because the service enhances their relationship with customers, and it generates new income that's not dependent on interest rates. To learn more about this service, please contact Joe Wheeler in Aon's Chicago office.

E-mail: [joe\\_wheeler@aon.com](mailto:joe_wheeler@aon.com)

### Health care costs still climbing

Medical plan costs are still rising at double-digit rates, according to Aon's 2003 Spring Health Care Trend Survey. Based on data provided by more than 20 top medical, dental, pharmacy and vision providers, the survey forecasts the average increase in claims costs from April to September. Pharmacy claims lead the pack, with a predicted increase of 17.7 percent. Claims under various types of health plans are expected to increase from 14.4 percent to 17.2 percent. Interestingly, claims under health maintenance organization and point-of-service plans are increasing at a greater rate than preferred provider plans. The costs of vision (3.8 percent) and dental claims (4.8 percent to 7.6 percent, depending on the plan) have remained relatively stable. Aon's employee benefits specialists conduct the survey every spring and fall to help clients evaluate their medical plans and develop claim projections. For more information about the survey, please contact Bill Sharon in Aon's Tampa office.

E-mail: [bill\\_sharon@aon.com](mailto:bill_sharon@aon.com)

### Course is primer on political risk insurance

Buyers, brokers and underwriters of political risk insurance are invited to join Aon for a two-day course in London on June 11-12. The course will explore the risks associated with assets and investments in foreign countries, ranging from stocks of commodities to permanent equity investments. Participants from a range of countries and backgrounds will discuss case examples and examine claims – with a focus on solutions to mitigate and insure political risks. Charles Keville, a director of Aon Political Risk, will lead the course. To learn more, please visit the Aon Political Risk web site.

[www.aonpoliticalrisk.com](http://www.aonpoliticalrisk.com)

### Publication offers insight into drivers of health care costs

Aon examines the factors behind escalating health care costs in a special edition of Healthline, a periodic publication authored by experts inside and outside Aon. The lead article explains trends in medical malpractice insurance and gives a hint of what to expect in the coming months. Also in this edition: a case study of financial-clinical partnerships that work, an update on the Health Care Insurance Portability and Accountability Act (HIPAA), and some facts behind the workforce shortage in health care organizations. Healthline is available on Aon.com.

[www.aon.com/focus/healthline21](http://www.aon.com/focus/healthline21)

## Views

### International risks need global strategy

Organizations expanding into the world marketplace must think globally. Too often, clients approach global risks as if they were merely securing insurance and risk services for their local needs. To their detriment, businesses often employ the same risk strategies for worldwide operations that they use in their home countries. In addressing their foreign businesses, companies must create a strategy that anticipates the various risk challenges on a country-by-country basis.

Most companies want and need to be perceived by the host country as "good citizens." That means not only abiding by local laws and traditions, but also demonstrating an understanding of those differences. It is important to look closely at a culture and evaluate how to fit

in strategically, especially when dealing with risk management.

Managing foreign exposures from the home country can leave companies vulnerable to unknown risks. Every domicile has a different set of issues and hurdles that varies from country to country. France, for example, operates under a very different legal system known as the Napoleonic Code; some countries require specialty coverage for unique risks, as in Italy and Japan, where earthquakes are common; the maze of international tax and insurance laws and regulations, such as the recent Kvaerner Ruling, require global experience.

When managing international risk needs in building or expanding a global venture, too often companies base their decisions almost exclusively on costs. While shorter-term cost of risk comparisons are easier when risk managers are intimately familiar with the home country,

different rules apply when dealing internationally. A skilled communication infrastructure and knowledge of local country insurers and their ratings can help to avoid overpayment for unneeded coverage.

Companies can navigate through these risk traps and optimize their risk budgets by developing country-specific strategies for risk management that are coordinated with overall plans. This gives risk managers greater leverage over their ultimate risk program. So while cost is an important tool in evaluating need, a successful global risk management strategy will take into account a broad range of factors and options that secure global presence.



Philip Gawthorpe

*Philip Gawthorpe is managing director of Aon Risk Services Global Business Unit (Americas). He partners with Bruce Trigg, managing director of Aon Risk Services Global Business Unit (International). They can be reached at [philip\\_gawthorpe@ars.aon.com](mailto:philip_gawthorpe@ars.aon.com) and [bruce.trigg@ars.aon.co.uk](mailto:bruce.trigg@ars.aon.co.uk).*

**"If we expand overseas,  
how do I manage my risks?"**



The world is becoming a more complicated place. Risks are greater and more diverse. In order to implement practical solutions for your company's risk management strategy, you need partners who understand the local environment wherever you do business. Whether you are expanding to another country or strengthening an existing international presence, Aon can help.

Aon's unique global service delivery network sets the standard for serving multinational companies that want influence and input over their worldwide insurance and risk management activities. Aon's wholly owned global network consists of specially trained experts established in more than 75 countries and skilled in the

technical aspects of insurance and risk, intercultural distinctions and the nuances of international business. Our specialists are singularly positioned to solve local risk challenges and complex global issues, and to improve the overall coordination of your global risk program.

With more than 600 offices and 55,000 professionals in the United States and abroad, Aon is one of the world's leading providers of risk management, insurance and reinsurance brokerage, and human capital consulting services.

To find out how Aon can help you manage global risk, please contact us at 1-866-4AONNOW or visit us at [www.aon.com](http://www.aon.com).

**AON**

# Insurers allege surety fraud

## Lawsuit charges contractor family with RICO violations

By DOUGLAS McLEOD

**NEWARK, N.J.**—A family-controlled network of construction contractors siphoned millions of dollars away from government projects in New York before defaulting on the work and leaving surety insurers with as much as \$15 million in losses, two insurers charge.

In a civil racketeering lawsuit, AXA Global Risks U.S. Insurance Co. and First Indemnity of America Insurance Co. allege that members of a Queens, N.Y., family used a web of sham companies and phony financial statements to obtain dozens of surety bonds covering projects throughout New York state beginning in 1994.

Family members used proceeds from the jobs "to fund their own personal piggy bank," and their companies later failed to complete the work as company officials con-

ceded that millions of dollars of assets they'd claimed to own did not exist, the insurers charge.

The suit, filed in U.S. District Court in New Jersey, names:

- Stamatios "Steve" Shinas of Whitestone, N.Y., and several people identified as members of his family, including George Shinas, Vasilios Shinas, Parthenopi Shinas, Maria Shinas and Maria Demetrulacos.

- John Rusin and Leila Rusin of Chappaqua, N.Y.

- Sixteen corporations and joint ventures allegedly controlled by the Shinas family or the Rusins, including GBE Contracting Corp., Cosmos Contracting Corp. and Alasia Corp., all based in Mount Vernon, N.Y.

In an interview, Mr. Rusin blasted the complaint as "total nonsense." While saying he has shared office space in Mount Vernon with

some of the other defendants, Mr. Rusin said the suit unfairly lumps his business together with the others.

"It makes us look like a mafia kind of thing," he said, charging the insurers with engaging in "guilt by association." He declined to comment in detail on the allegations, citing advice of his lawyer.

None of the other defendants could be reached through GBE's Mount Vernon office, and Vasilios Shinas did not respond to a message left at his home. None has yet answered the complaint.

New York corporation records show a number of similarly named companies associated with various defendants. In addition to GBE, they include GBE General Contracting Corp. and GBE/Alasia Corp., which give Queens addresses and list George Shinas as the compa-

See RICO/page 29

# Privacy law could snare unwary employers

## Disability info brings new risk

By MEG FLETCHER

Employers should review their disability management activities to ensure that they don't inadvertently increase their responsibilities under the privacy rules of the federal Health Insurance Portability and Accountability Act, several experts say.

Some aspects of the rules regarding the electronic transmission of health care information could be applied to employers under certain circumstances, and violations of the rules could result in fines.

One simple way of avoiding the fines, though, is to take a step backwards with regard to technology and communicate the specific information using simpler methods, such as the telephone, they say.

Typically, HIPAA privacy provisions, which took effect in April, "don't apply to employers—in their employer role—nor are workers'



compensation and disability plans covered health plans," said William P. Molmen, general counsel of the Integrated Benefits Institute, a San Francisco-based nonprofit organization that supports integrating employee benefits.

But, Mr. Molmen warned, employers' disability management activities "are likely to be affected." He reached that conclusion following extensive analysis and discussions with a federal enforcement official from the U.S. Department of Health and Human Services' Office

of Civil Rights.

The definition of covered "health care providers" under the HIPAA rules is so broad that employers may be inadvertently included as a result of a case manager's efforts to manage a workers compensation or short-term disability claim or a worker's return to work, he said.

He said such a situation might arise, for example, when a case manager engages in activities that might be considered "counseling," "service" or "assessment" with respect to an individual's physical or mental condition or functional status. In one scenario, a disability nurse case manager might e-mail a request to find out if a health plan is accepting the course of treatment suggested by the nurse case manager to accelerate a worker's return to his or her job.

"Where an employer gets into trouble is if it gets personally identi-

See HIPAA/page 30

# APIW Woman of the Year

## Fiona Luck credits Bermuda move as her good fortune

By MICHAEL BRADFORD

Fiona E. Luck gives Bermuda credit for much of her success in the insurance business.

The island, she said, has been "wonderful for me in terms of presenting opportunities" over the 23 years she has worked in the world's largest offshore insurance market. Over those years, Bermuda has touted its

In recognition of her hard work, achievements and leadership within the insurance industry, Ms. Luck has been named Insurance Woman of the Year by the Assn. of Professional Insurance Women.

"Fiona is an exceptional woman in the insurance industry and a role model for all of us," said Maddy Lichtman, president of APIW and a senior vp with Marsh in New York.

Ms. Luck said she is "honored and completely surprised. It makes me proud." She will receive the award at a reception and ceremony in New York on June 10.

Like many others, Ms. Luck said, she was unexpectedly drawn to the insurance business. She holds a bachelor's degree in economics and finance from the University of Manchester in England and received a chartered account-

tancy designation from the Institute of Chartered Accountants in Scotland. While working as an accountant in London, she accepted an offer to work with Marsh in Bermuda.

Ms. Luck held a variety of management positions over 14 years with the brokerage and was elected one of Marsh's youngest managing directors in 1992. She ran Marsh's global brokerage office in Bermuda from 1992 until 1997, when she

See APIW/page 30



Ms. Luck

role as an insurance "incubator" of innovative products and services, and "I've been fortunate in being caught up in that wave," Ms. Luck remarked.

"Having said that, I've worked really hard and been open-minded about moving into new areas," she said. Ms. Luck has worked in several capacities at Marsh Inc., ACE Ltd. and XL Capital Ltd. during her tenure in Bermuda. She currently serves as executive vp of group operations at XL.

# Inside Business Insurance

## Bush may propose health care changes

White House proposals to improve access to health care could come this fall, a former staffer says. Page 4

## Boeing won't contest liability in air crash

Boeing Co. won't contest its share of liability for the 2000 crash of an Alaska Airlines jet. Page 4

## Careful consideration key to benefit mandates

Careless imposition of benefit mandates has given way to careful cutting of such laws, says Paul Winston. Page 6

## Time to introduce Medicare Rx benefit

Congress must work to add a needed prescription drug benefit to Medicare. Page 8



## E.U. mulling big changes to environmental liability

The European Union is considering introducing strict and joint-and-several liability for environmental damage. Page 25

## Online

- The Datebook calendar lists upcoming industry seminars and meetings and allows you to add info on your own event.

- Searchable directories of all the listings of industry vendors found in *BI's* Market Sourcebook.

- New Opinion Poll for readers: What is the most common reason your organization's employees take leave under the federal Family and Medical Leave Act?

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS.

## Asbestos, reinsurance recoverables among key concerns

# Insurer outlook not rosy: S&P

By DOUGLAS McLEOD

**NEW YORK**—Despite rising rates and improved profits, the property/casualty insurance industry's prospects are clouded by concerns about reserve deficiencies, unrecoverable reinsurance and the duration of the hard market, industry observers say.

Substantial rate increases in virtually all lines but property will produce a roughly 14% increase in the industry's premium volume this year, with the increase slowing to the high single digits or low double digits next year, predicted John Iten, a director with Standard & Poor's Corp. in New York.

More restrictive terms and conditions will also favor insurers, Mr. Iten told an audience at an S&P conference, "Insurance 2003: Are Better Times Ahead?" in New York last week.

For a variety of reasons ranging from asbestos exposure to the possible return of market competition, the property/casualty insurance industry's outlook is not rosy, Mr. Iten said at the meeting.

In the past 12 months, S&P has downgraded ratings of 23 primary property/casualty insurers while upgrading none. Sixteen of the 23 received single-notch downgrades, including such large property/casualty companies as Allianz of America Inc., Chubb Corp. and Hartford Financial Services Group Inc.

The ratings outlook for commercial insurers continues to deteriorate, Mr. Iten noted. Twenty-one commercial insurers currently have "stable" ratings outlooks from S&P, compared with 27 a year ago, while 21 insurers carry "negative" outlooks, up from 17 a year ago.

One area of concern, he observed, is the possibility that rate competition could return to the market, eroding gains insurers have made in the tighter market. Property insurance pricing has already peaked, and further increases are needed in casualty lines to outpace loss costs, he suggested.

The need for underwriting profits is underscored by plummeting investment returns, Mr. Iten added. Insurance companies can expect "no help from their fixed-income

portfolios," he said.

Meanwhile, reserve deficiencies for asbestos and other losses have led to huge charges against earnings for several insurers in recent months, including multibillion-dollar charges for reserve additions by Hartford, Travelers Property/Casualty Corp. and ACE Ltd.

Gross asbestos reserves for a group of 13 large property/casualty insurers tracked by S&P are \$25.73 billion currently, up 87% since 2001, according to S&P. The current level includes Hartford's first-quarter 2003 increase of \$3.91 billion.

While announcing big gross reserve increases, the 13 insurers also reported that 45% of their expected losses will be recoverable from reinsurers.

"There is a very large difference between the gross reserves and the net reserves for the industry," Mr. Iten noted.

This, in turn, has created rising concern about the willingness and ability of reinsurers to pay, he said. Among the issues still to be deter-

See S&P/page 6



PHOTO: AFP/MIKE NELSON

A probe into the crash of an Alaska Airlines MD-83 faulted the airline's failure to properly maintain a part in the jet's tail.

## Boeing decides against contesting its liability in Alaska Airlines crash

By DAVE LENCKUS

**SAN FRANCISCO**—Boeing Co. will not contest its share of liability for the January 2000 crash of an Alaska Airlines passenger jet off the Southern California coast, the aircraft manufacturer told a U.S. district court judge on June 2.

Boeing's decision, however, is not an admission of liability, noted attorney Robert F. Scoular, a partner with Sonnenschein Nath & Rosenthal in Los Angeles. The Chicago-based manufacturer decided not to contest its liability so it could expeditiously resolve crash-related claims and speed payments to victims' families, Mr. Scoular said.

A July 7 jury trial is still scheduled to determine compensatory damages for the plaintiffs who have not settled with Boeing or Alaska Air. The airline did not contest its liability for the crash.

Eighty-three passengers and five crew died when Alaska Airlines Flight 261 crashed in the Pacific Ocean on Jan. 31, 2000, after diving, flipping over and flying upside down. The flight,

which was bound for San Francisco and Seattle, originated in Puerto Vallarta, Mexico.

Boeing and the airline have settled with 72 of the victims' families. That leaves 17 unresolved cases, because one victim's family members filed two lawsuits against each defendant.

The National Transportation Safety Board determined that the crash was caused by the airline's failure to lubricate a part crucial to controlling the horizontal stabilizer in the tail section of the MD-83 jet. McDonnell-Douglas Corp., which Boeing acquired several years ago, designed the jet.

U.S. District Judge Charles Breyer of the Northern District of California in San Francisco ruled on May 16 that the plaintiffs had insufficient evidence to press a punitive damages claim against Boeing.

Another judge ruled in May 2001 that the Warsaw Convention and subsequent international airline liability conventions barred plaintiffs from seeking punitive damages against Alaska Air.

## New York governor calls for new coverage for disruptions

**NEW YORK**—New York Gov. George E. Pataki has proposed creating insurance coverage to protect businesses against disruptions resulting from government actions.

He introduced legislation Thursday, S. 5390, to authorize the sale of stand-alone "civil authority insurance," which would cover businesses in the state that are forced to close because of government action but that do not suffer actual physical damage. Such damage typically is required to trigger standard business interruption policies.

Such coverage would have been valuable to the businesses that had to shut down after the Sept. 11, 2001, terrorist attacks, he said. "After Sept. 11, it was clear that many downtown Manhattan businesses were not protected by the safety net previously afforded by business interruption coverage alone," he said in the statement.

The New York Insurance Department, which said the coverage is not mandated, was unable to state late last week why a new law was needed.

Nothing prevents insurers from offering the coverage in manuscript policies, said Suzanne Douglass, managing director-property at Willis Group Holdings Ltd. in New York. "You don't need a law" to offer this, she said.

—By Michael Prince



PHOTO: FRANCES M. ROBERTS

New York Gov. George E. Pataki late last week introduced legislation that would create stand-alone business interruption coverage triggered by government shutdown orders.

### Council of Insurance Agents & Brokers' Employee Benefits Leadership Forum

## Hughes highlights White House plans

By JERRY GEISEL

**WHITE SULPHUR SPRINGS, W.Va.**—New Bush administration proposals to improve access to health care coverage could emerge this fall, a former White House official says.

With the situation in Iraq no longer dominating the time and attention of administration officials, there will be a greater focus on domestic issues, predicts Karen Hughes, who served in the White House

for 18 months as counselor to President Bush.

In a speech at the Council of Insurance Agents & Brokers' Employee Benefits Leadership Forum, Ms. Hughes said the administration in the coming months will focus more on improving access to health care, adding a prescription drug benefit to Medicare and medical malpractice reform.

"The next six months will be very important," said Ms. Hughes, who delivered the keynote address at the

CIAB meeting, held May 28-31 at the Greenbrier resort in White Sulphur Springs, W.Va.

While Ms. Hughes did not detail what the administration may propose in these areas, she did provide some insight into the administration's thinking on health care issues. President Bush, she noted, is staunchly opposed to a government-controlled, single-payer health care system like the one in Canada. The president, she said, believes strongly in giving people

choices in health care.

She also said that Congress in the coming weeks could begin to take up proposals to reform Medicare and expand the federal program to add a prescription drug benefit.

With the election cycle soon beginning, it is critical for legislators to reach an agreement on Medicare in the coming months.

"If Medicare is to get done, it will have a better chance this summer,"

See HUGHES/page 28



PHOTO: GETTY/GREG WHITESELL

Ms. Hughes



## XL News # 1305

### Fiona Luck Honored as 2003 Insurance Woman of the Year.



Fiona Luck  
Executive Vice President,  
Group Operations

XL Capital Ltd (XL) congratulates Fiona Luck for being honored as the 2003 Insurance Woman of the year by the Association of Professional Insurance Women (APIW).

Fiona was selected as the Insurance Woman of the Year due to her strong leadership qualities and high level of achievement in her professional career. Fiona is committed to helping women advance within the insurance industry, and in the business and local communities. She is also actively involved in a number of philanthropic activities.

As Executive Vice President of Group Operations for XL, Fiona's responsibilities include: group strategic planning, business planning, global human resources, global information technology, and global marketing.

Fiona's talent and commitment to the insurance industry have been evident since she joined Marsh & McLennan 20 years ago. In 1992, she was selected to head Marsh's Global Broking operations in Bermuda and subsequently held several senior executive positions at ACE Bermuda Ltd. before joining XL Capital Ltd as EVP Group Operations in 1999. At XL, she quickly established herself as a key member of the Executive Management Board.

The XL Capital group is a global provider of insurance, reinsurance and financial products. As of March 31, 2003, XL Capital had consolidated assets of approximately \$37.5 billion and consolidated shareholders equity of approximately \$6.8 billion.

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FUNDAMENTAL STRENGTH – CAPITAL AND PEOPLE

# S&P: Bad times ahead

Continued from page 4

mined are the extent to which reinsurers have recognized their liabilities—particularly for incurred-but-not-reported losses—and the extent to which primary insurers have properly reserved or made capital adjustments for uncollectible reinsurance.

Along with asbestos exposures, insurers are facing big problems with certain lines of business, Mr. Iten added. These include workers compensation, where the industry is still recovering from years of underpricing and underreserving and

faces the potential threat of massive terrorism losses; and directors and officers liability insurance, where corporate fraud and the bursting of the stock market bubble have led to huge increases in shareholder litigation.

Insurers shouldn't hold their breath waiting for Congress to solve the asbestos crisis, executives on another panel at the S&P conference suggested.

Ramani Ayer, Hartford's chief executive officer, predicted that the proposed Fairness in Asbestos Resolution Act—which would create a

\$108 billion federal trust fund to handle all asbestos claims—has only a 1-in-4 chance of being enacted.

American International Group Inc. Chairman and CEO Maurice R. Greenberg—who has worked with Mr. Ayer and other industry officials in negotiating the bill's terms—was similarly downbeat.

Mr. Greenberg said he is more optimistic about tort reform on the state level, where AIG has threatened to stop investing in bonds issued by states with high tort costs and poor tort reform records.

"Why should we buy their municipal bonds if they are going to discriminate against insurers and take them to the cleaners?" Mr. Greenberg said.

## Paul Winston

### Some mandates are necessary

In an ironic twist, lawmakers in some states are scaling back benefit mandates that they or their predecessors imposed over the past few decades. This effort, which is occurring in numerous legislatures, is taking place as lawmakers try to make health insurance more affordable, particularly for small businesses that do not self-insure, and to prevent employers from dropping plans and increasing the ranks of the uninsured.

But don't mistake the reason for this legislative trend to be altruism toward employers, or an epiphany about the burden of mandates. The truth is that if the ranks of uninsureds swell, it will increase the financial load on state Medicaid programs. And with budgets strained by a host of issues, a flurry of cost-cutting ideas—including reforms to keep the private sector providing health insurance—are being contemplated by state governments.

Regardless of the motives, benefit mandates are something that employers and insurers have come to loathe. For every benefit mandate designed to ensure that health insurance covers a critical or common-sense medical treatment, there is another that was enacted simply because of lobbying by special interests that stand to gain financially.

*Business Insurance* has opposed many of the latter type of mandates over the years, especially in cases where expanding insurance for benefits of interest to a few would result in the loss of coverage for many. As we have said many times, benefit mandates drive up the cost of coverage and add to the administrative complexity of benefit programs. They also force some employers, especially smaller firms, to drop health insurance benefits that have become so encrusted with added mandates that they hardly resemble the health care policy they set out to offer their employees.

Consider: If it weren't true that mandates produce these unpleasant side effects, then state lawmakers would not now be trying to undo them to make coverage more affordable.

But we have also championed mandates in certain situations—cases where not offering coverage for selected treatments would mean substandard care. Examples of mandates we have supported include coverage of 48-hour hospital stays for maternity patients, which was needed to eliminate the practice of so-called drive-through deliveries to hold down costs. Other mandates we support are coverage of AIDS/HIV treatment and parity between

benefits that health insurance provides for mental health care treatment and other medical care.

We recognize that these mandates drive up coverage costs, too. The difference is that we believe there is a true need for these medical services that balances favorably with the added costs. The gaps in coverage that necessary mandates close typically result from advances in medical treatment, discriminatory underwriting for certain medical conditions or the need to correct overzealous cost controls.

Lawmakers, unfortunately, do not always stop to consider this balance when adding mandates.

And I don't believe they are considering it now, as they rush to cut

mandates. Consider, for example, some of the mandated benefits that will be eliminated in Texas under a bill sent to the governor last week. According to the Texas Department of Insurance, the bill would allow insurers to cut coverage of: AIDS/HIV treatment; treatment for alcohol or chemical dependency; complications of pregnancy; emergency

medical care; oral contraceptives and contraceptive devices; and mental and emotional illness. Similar cutbacks are under consideration in several other states.

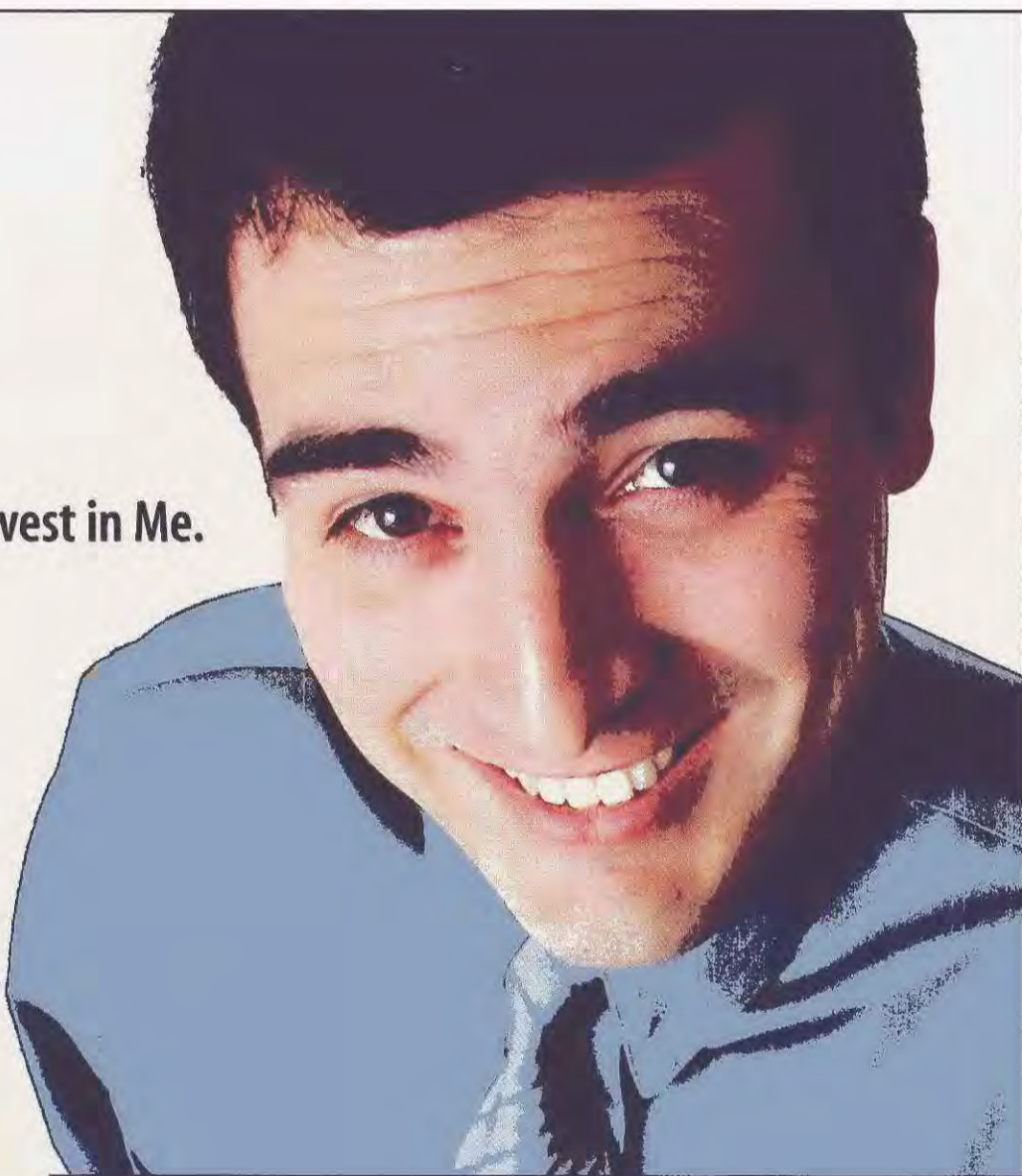
I think most people would regard a health insurance policy that covered none of the above benefits to be subpar. Sure, it would be cheaper, but you get what you pay for.

What this illustrates to me is that any decisions about what health care procedures should be covered by insurance, and what should not, is important enough not to be left to state lawmakers and special-interest lobbyists. Employers and insurers, as the primary payers of private coverage, obviously deserve a say in such decisions. Medical providers should be consulted to discuss the costs/benefits of certain procedures and to educate decisionmakers about prevailing standards of care. And consumers possibly could be consulted to answer whether they are prepared to pay more for insurance in exchange for adding—or retaining—specific mandates.

I think that lawmakers must consider all those voices and give greater consideration to the consequences of mandating coverage of certain procedures before they add new benefit mandates. That duty of care is equally necessary now, as lawmakers rush to cut benefits to save costs.

Editor Paul Winston can be reached at [pwinston@crain.com](mailto:pwinston@crain.com).

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## Editorial

# Time to add a Medicare Rx benefit

**W**ILL CONGRESS and the executive branch be successful in reaching agreement on adding a prescription drug benefit to the Medicare program?

If that is to happen, lawmakers and the Bush administration must study the mistakes of the past—and avoid repeating them.

For the last two congressional sessions, legislators have tried but spectacularly failed to agree on a Medicare expansion package.

In the last congressional session, for example, there was a Republican plan and a Democratic plan and even a "tripartisan" plan, so named because its backers were three Republicans, one Democrat and the

Senate's sole independent, Sen. James Jeffords, I-Vt. What all those plans lacked, though, was broad bipartisan support. In fact, the introduction of those proposals was done chiefly for political posturing.

In something as large and important as the Medicare program, which covers about 40 million people, bipartisanship has to be the order of the day. In that regard, it is encouraging that the top Republican on the Senate Finance Committee—Charles Grassley, R-Iowa—and the top Democrat—Max Baucus, D-Mont., who is the ranking minority member—announced last week that they will work together to craft what they say will be a bipartisan

Medicare drug package.

Expanding Medicare to cover prescription drugs is, in fact, long overdue. When Medicare was enacted in 1965, it isn't surprising that legislators didn't include prescription drugs in the benefit package. Drug costs were low, and drug therapies hadn't developed as a widespread alternative to hospitalization.

Today, drug costs no longer are an incidental cost item. And just as significantly, drug therapies have expanded, which, in fact, may be a good thing. A patient taking a prescription drug costing \$100 a month may be avoiding surgery that costs far more than that.

Truly, a health insurance plan

that doesn't offer coverage for prescription drugs isn't much of a plan, and we hope legislators successfully fill that gap.

We also hope legislators can agree on a sensible expansion, in which patients have to bear a fair proportion of the expense and employers are encouraged to retain their own health care plans that supplement Medicare.

## Letters to the Editor

### Surety bonds best bet for public projects

To the editor: In an advertisement in the May 12 issue of *Business Insurance*, Peter Arkley of Aon questions the ability of the surety industry to meet the demand for bonds and, particularly, for performance and payment bonds on public construction projects. We respectfully disagree.

Despite changes in the surety industry, capacity to write surety bonds remains strong. In fact, the industry routinely provides bonds for projects of up to \$250 million, and even recently for a \$500 million project in New York. We are not aware of a single public project that has not been bid due to lack of availability of surety bonds.

There are good reasons for laws that treat public and private projects differently. Public and private projects are different, and the surety's independent third-party prequalification services and payment responsibilities are an essential part of public bidding. Default insurance will not provide comparable protection for many reasons: lack of independent prequalification, lack of protection for subcontractors, reduced amount of protection for the purchaser and lack of performance responsibility. In addition, the purchaser of default insurance retains risk through deductibles and co-pays, not something a public entity should do with taxpayer dollars at stake.

Existing laws do not prevent contractors on public projects from obtaining default insurance. Laws require public owners to have the protection of performance bonds and to secure payment bond protection for subcontractors and suppliers. These laws do not prevent a contractor from purchasing whatever form of protection it chooses. However, default insurance purchased by the contractor would not protect either the owner or the subcontractors and suppliers.

The bottom line: surety bonds not only are available but also provide far more protection for public and private projects than default insurance.

Lynn M. Schubert

President  
Surety Assn. of America  
Washington

# Regulatory fixes needed

**T**HE DEBATE OVER what role the federal government should play in regulating insurance has been going on for more than a century, and we wouldn't mind seeing it heat up seriously again.

As was evident in a recent discussion of the issue held at the Washington Legal Foundation, even proponents of state insurance regulation concede that the current system of state regulation has its problems (*BI*, June 2).

We, like many other proponents of optional federal charters for multistate insurers, welcome the steps that the National Assn. of Insurance Commissioners has taken to resolve some of those problems. But the NAIC does not have the power to bring a regulatory system designed

for 19th-century America into the 21st century. That authority rightly rests with state legislatures. Despite some steps toward that goal by lawmakers in some states, the fact remains that progress on modernizing the current regulatory system has been too little, too late.

There's no reason not to consider allowing multistate insurers the option of being chartered by the federal government. In contrast, there are multiple reasons in support of such a choice. These include streamlined regulation, an enhanced ability to compete with foreign insurers and greater flexibility in pricing and product offering, which, in turn, works to the benefit of risk managers.

The Risk & Insurance Management Society Inc. has recognized

the benefit to buyers from optional federal chartering of insurers and supports the proposal. And the American Insurance Assn., representing large property/casualty insurers, in recent years has been one of the more forceful champions of the concept.

The push for an optional federal charter should continue, particularly given the likelihood that the House Financial Services Committee will continue its examination of state insurance regulation later this year.

Last month's discussion at the Washington Legal Foundation underscored the ways in which the current regulatory system is broken, and the calls by its supporters for still more time to fix it aren't persuasive.

## Schillerstrom



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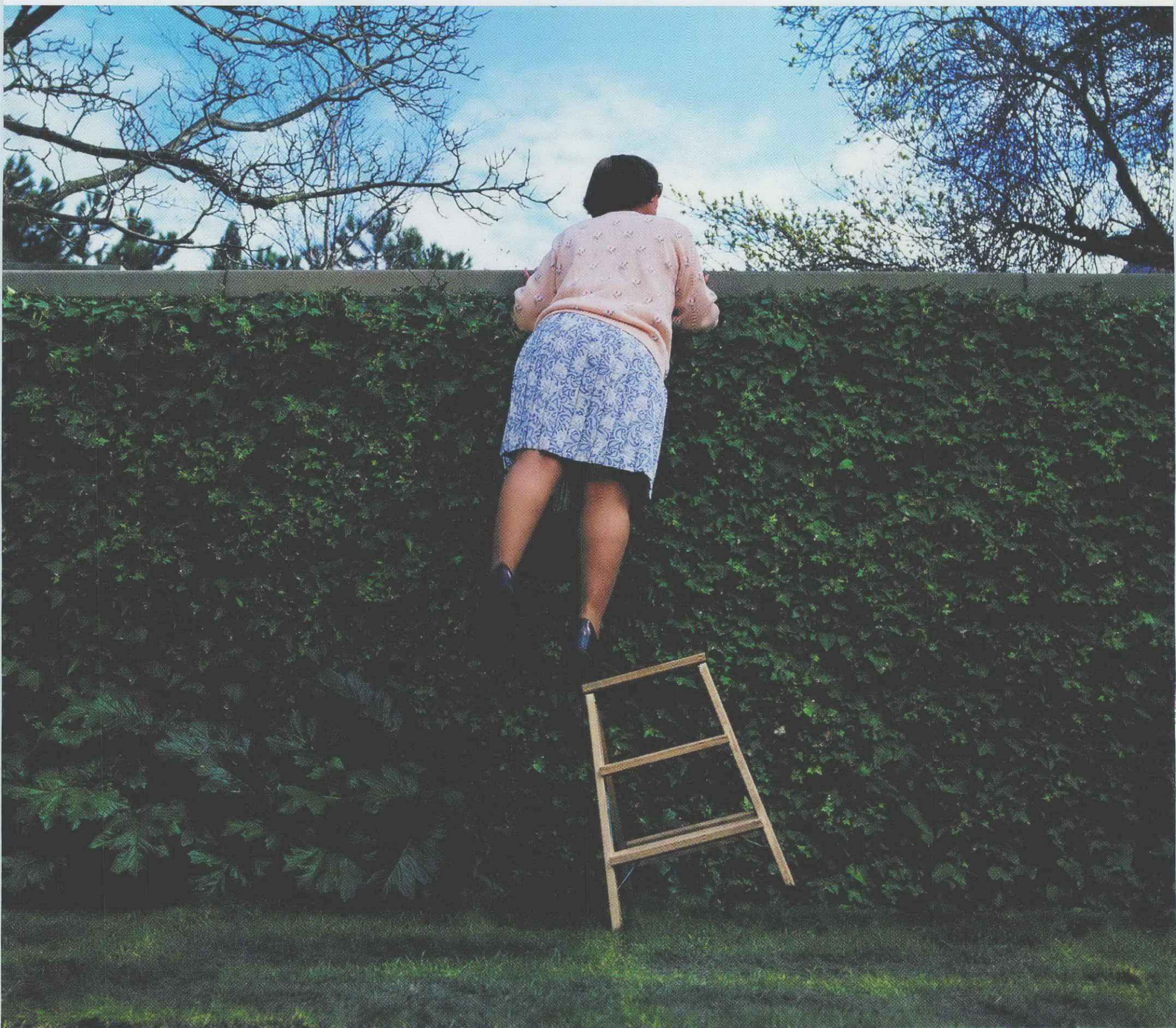
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# Spotlight

## International Risk Management

Spotlight Editor: Judy Greenwald



## Latin American brokers see growth in forming network

By ROBERTO CENICEROS

Independent Latin American brokers increasingly are looking to form networks to improve their business prospects and, at the same time, help commercial clients that need coverage in multiple countries.

The emergence of networks offering a competitive alternative to the dominant global brokers could benefit insurance buyers, especially local accounts with operations in several Latin American countries, insurance observers in the region say.

And members of at least one nascent broker network, RiskCo, hope their combined efforts will also prove helpful to large multinational corporations.

RiskCo's goals are twofold, said Ricardo Rosenthal, chief executive officer of the broker network. Mr. Rosenthal also is president of Makler Seguros S.A. in Buenos Aires, Argentina, and its subsidiary, Makler Rou S.A. in Montevideo, Uruguay. One objective is to help independent brokers place coverage for a growing segment of local clients that are expanding operations beyond their home bases and into other Latin American countries.

"You have many, many local companies that are opening subsidiaries within Latin America," said Mr. Rosenthal.

A second goal is to help European and U.S. multinationals find necessary coverage throughout Latin America, he said. Those companies often create global insurance programs with coverage purchased through large international brokers.

But they may still need local insurance representation for certain purchases. For example, many Latin American regulators require companies to buy coverage from domestic, admitted insurers, explained Mr. Rosenthal.

To meet that mandate, multinational com-

See **BROKERS**/page 18

## Collapse of HIH, other woes, shaping loss control practices

## Australia hard hit by a hard market

By MICHAEL BRADFORD

Australian risk managers dealing with a tough commercial insurance market aren't spending all their time on coverage problems.

Raising the profile of their profession, dealing with corporate governance issues, implementing enterprisewide programs and other concerns mean risk managers Down Under are busier than ever. With the lingering market conditions, it could stay that way awhile.

Australian businesses have watched insurance premiums rise and availability shrink much the way organizations in other parts of the world have been affected. A tightening

market exacerbated by terrorist attacks in 2001 was responsible for much of the hardening, as were corporate accounting scandals involving Enron Corp. and WorldCom Inc.

But Australian risk managers are feeling the added impact of the failure of a major insurer in their domestic market. After HIH Insurance Ltd. collapsed in March 2001, policyholders saw coverage costs soar, as the remaining players in the marketplace sought to correct years of underpricing.

Such changes in the Australian insurance market have influenced the way risk managers practice loss control, according to a recently completed survey by Aon Risk Services Australia Ltd.

The survey, the first of its kind by Aon, shows that risk managers were hit with significant increases in premiums and raised their retentions in 2002.

"There is a shrinking breadth of coverage and increased deductibles," said Judy Harris, senior insurance officer with The Australian Gas Light Co. in North Sydney. That makes securing adequate limits difficult and "hard on a business to manage," she said.

Bill Peck, executive director and managing principal of Aon's Australia unit, said that despite risk managers' willingness to take higher retentions, many of the survey respondents showed no understanding of their actual tol-

See **AUSTRALIA**/page 16

## View of corporate risks broadening

### Companies using various approaches to manage enterprise risks

By CAROLYN ALDRED

Risk management now has the attention of most European boardrooms, but companies in Europe are still trying to determine the best way to address the array of exposures they now face, say risk managers and consultants.

What is clear, though, is that European companies increasingly are recognizing that corporate risk is broadening, spanning all aspects of their business—including reputation, property and liability risks, intellectual property, supply-chain management, environmental and social risks—and that it increasingly cannot be financed or transferred.

As a result, getting a handle on all of an organization's risks involves greater cooperation among its various departments, including finance, legal, human resources, health and safety, production and distribution and information technology, consultants and risk managers say.

"There is no question that since (the Sept. 11, 2001, terrorist attacks) and since corporate governance has become an issue, boards have taken a serious interest in risk and insurance. Corporate governance, in particular, is driving the broader risk agenda," said Patrick Thomas, European development director of Aon Ltd. in London.

Some companies are installing a chief risk officer to oversee the management of all the company's risks, while others are setting up risk committees, with senior representatives from most departments reporting on risk to the board.

And organizations' approach to addressing risk can vary from country to country. For example, risk managers in Sweden and France tend to take a broader approach, looking at both traditional, insurable risks and risks such as brand and reputational exposures, Mr. Thomas said. Risk managers in the United Kingdom and United States, however, have

See **CORPORATE**/page 12

## SARS outbreaks test corporate crisis plans / 19

## Terrorism risk pools created to allay buyer fears / 20



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# Corporate: View of enterprise risks broadening

Continued from page 10

adopted a largely risk financing-based approach, with closer links to treasury departments; while risk managers in southern Europe still tend to focus on traditional risk transfer approaches, he explained.

## Increasingly broad backgrounds

While traditional insurance and risk managers have a role in the enterprisewide process, typically sitting on company risk committees, risk managers in Europe increasing-

ly are being drawn from a wider background than insurance and health and safety.

And in many cases, "we do not see traditional risk managers driving the agenda and asking to be involved in corporate governance, reputational risk, intellectual property and environmental issues. They are reacting to what is outside their traditional field of risk transfer but not necessarily embracing the broader concept of risk," said Mr. Thomas.

"I have not spotted a trend yet for the new type of risk manager.

Some have a financial background, others have an engineering or health and safety background," said Simon Lowe, head of risk management services for international accounting firm Grant Thornton in London.

"Risk managers now are coming from a variety of backgrounds. A risk manager could have a background in law, auditing or engineering as much as insurance," noted David Gamble, executive director of the Assn. of Insurance & Risk Managers in London.

Indeed, risk management no

lenger is confined to health and safety and insurance, but requires a breadth of knowledge that also embraces business continuity, project management, corporate governance and many other disciplines, said Steve Fowler, executive director of the London-based Institute of Risk Management.

"Risk management is a discipline that has come together through a number of different professions coming at risk from different aspects," he said, noting that IRM is broadening its syllabus to reflect such changes.

## Embedding risk management

As board-level interest in risk management grows in Europe, some companies are working to develop risk awareness across their entire organization. And whatever their backgrounds, risk managers can aid in those efforts, said AIRMIC's Mr. Gamble.

"No one owns risk; it appears right across an organization. Where a risk manager is most valuable is as a facilitator," Mr. Gamble said.

What is important, he said, is to

**'Risk managers now are coming from a variety of backgrounds. A risk manager could have a background in law, auditing or engineering as much as insurance.'**

*David Gamble  
Assn. of Insurance  
& Risk Managers*

embed risk management throughout a company. Companies are realizing that "this is something they need to get a good handle on, but there is no consensus as to how to do that," he said.

While some companies have appointed chief risk officers to oversee the entire risk management process, others are establishing special risk committees or are using their existing audit committees to co-ordinate risk management and to spread the principles of risk management throughout the organization.

The chief risk officer model has a downside, though, one risk manager said.

"The danger of appointing a chief risk officer is that everyone assumes (the CRO) is responsible for risk, whereas everybody should be responsible for risk management," said Richard Reddaway, vp of corporate insurance and risk management for London-based pharmaceutical company GlaxoSmithKline P.L.C.

Mr. Reddaway predicts that more European companies will adopt a structured and enterprisewide approach to risk management, setting up risk committees such as the Risk Oversight and Compliance Council set up by GlaxoSmithKline.

That group seeks to identify, monitor and manage the company's risks. Members of the council include business unit executives from throughout the pharmaceutical company.

And traditional risk managers stand to gain if they take part in the process, he said.

"There is a raised awareness of corporate and operational risk, and if insurance managers choose to step up to the party, they will have an access and visibility they wouldn't have had five years ago," said Mr. Reddaway, pointing out that risk and insurance managers now have a much "higher profile and access to board level."

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# LORD OVER THE FRAY

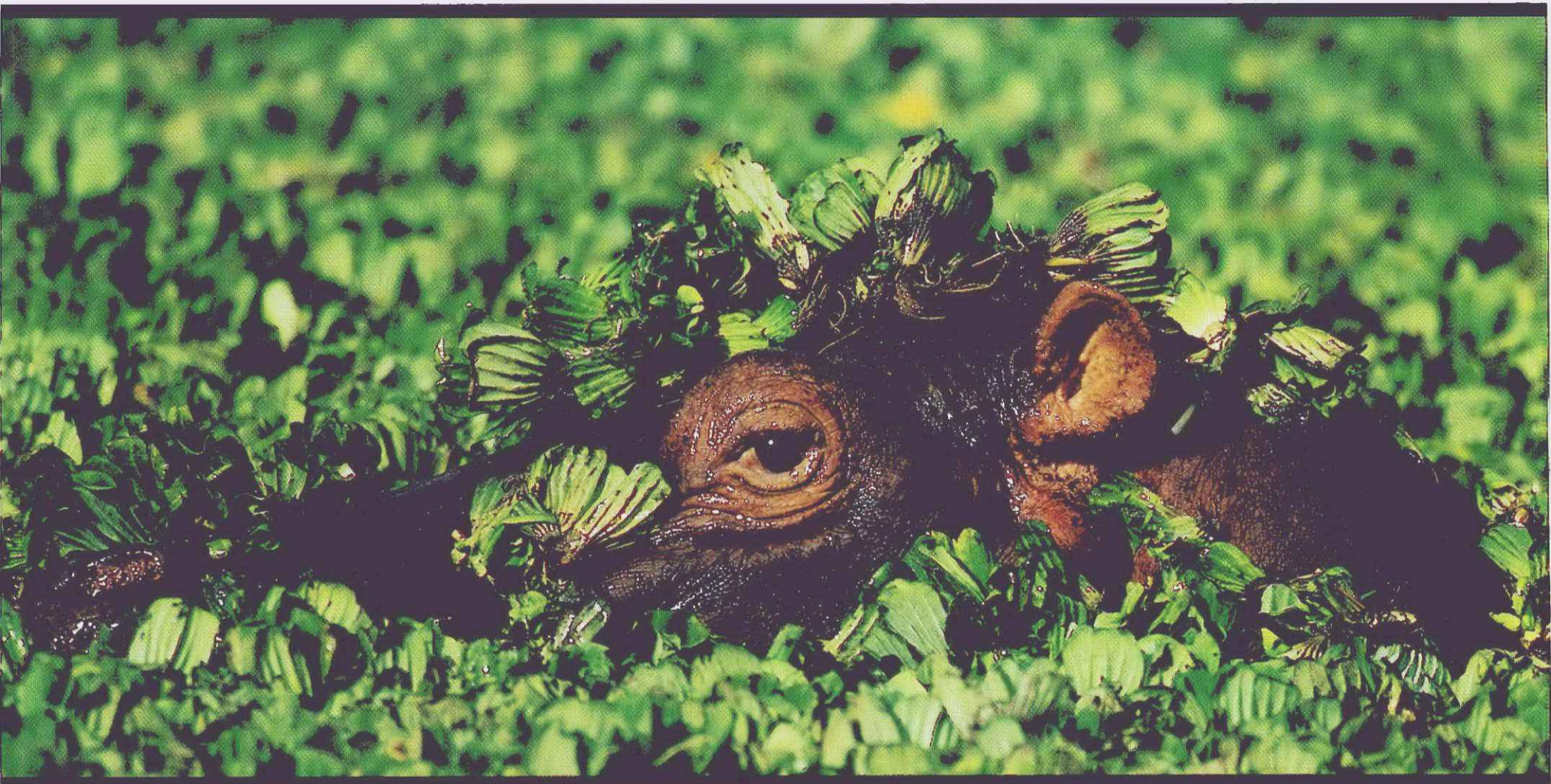
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# Corporate: View of enterprise risks broadening

Continued from page 12

Amarjit Atkar, global head of business continuity and crisis management at news organization Reuters P.L.C. in London, is one risk manager who is taking a broad view of corporate risk. Mr. Atkar's responsibilities include business continuity, software licensing and acquisition, intellectual property, brand protection and insurance.

As part of the company's risk management program, Mr. Atkar has worked to foster risk awareness throughout Reuters by training 800 middle and senior managers in

business risk. In addition, he has overseen the development of a risk management framework and process.

Under that framework, Reuters managers are asked to identify the risks that pose the greatest threat to their area of the business and to outline how those risks are being managed. In addition, each part of the organization is assigned a risk coordinator, who can come from any discipline, including finance, legal or human resources. Mr. Atkar said.

That dynamic approach to man-

aging risks allows Reuters to adapt to changes, he noted.

"Risks can change significantly. It is important that people understand risk and continually monitor the changing pressures on a company and its environment," Mr. Atkar said.

Another risk manager using a holistic approach to mitigating his company's exposures is Andy Keeling of Vodafone P.L.C. in Newbury, England.

Mr. Keeling began as an electrical engineer with responsibility for the risk management of computer con-

trol systems, but in his current role of as senior business risk manager of the telecommunications company, Mr. Keeling is taking a much broader approach.

"The whole view of risk management has changed in the last few years, but it has taken a while and proved a challenge," said Mr. Keeling, noting that "it took a while to get management to buy in to the idea that the risks being faced were not just technical."

Vodafone has grown from a seven-employee company in 1982 to become one of the world's largest

companies, with 200 million customers and 100,000 employees in 42 countries in 2002.

The company is setting up a new risk and insurance department to look more broadly at its risks, including financial, operational, marketing and strategic risks, said Mr. Keeling.

IFM's Mr. Fowler predicts that executives in all disciplines ultimately will need to acquire a greater understanding of risk management.

"Risk management is a key tool that all general managers should have in their tool set," he said.

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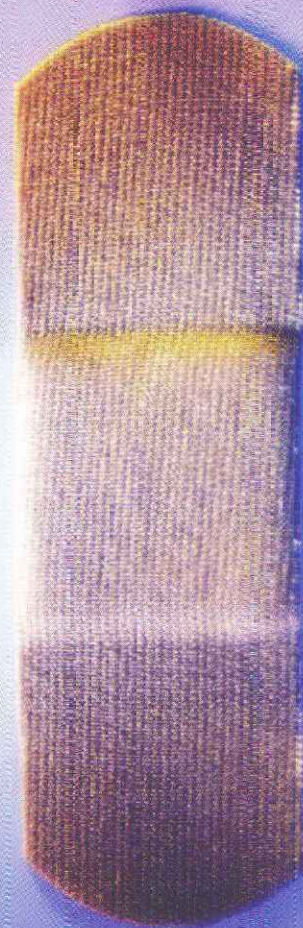
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# Australia: Hard hit by a hard market

Continued from page 10

erance for risk. It's an area, he said, where the brokerage plans to assist policyholders.

The respondents' cost of insurable risk was \$7.30 Australian (\$4.77) per \$1,000 Australian (\$653) of revenue, according to the survey.

Smaller businesses have been hardest hit by Australia's hard market, according to Daryl Watson, risk management consultant with Lumley Risk Consultants Ltd. in Sydney. Smaller organizations have not fared as well as larger ones that have had long-term relationships with insurers, he explained.

The "massive escalation of premiums and loss of cover" have driven some smaller companies out of business and put others on the brink of failure, Mr. Watson noted.

Respondents to the Aon survey said they believe the hard market will continue beyond 2003 but that the rate of increase of premiums and deductibles will slow. It also showed that 18% of respondents have a captive insurer or other risk retention vehicle and more than 90% are shopping their accounts for the next renewal.

"There have been some signs of reasonable pricing," said Ms. Harriss. "I'm not holding my breath for

this renewal, but maybe 2004 will be better."

Mr. Watson, who explained that his opinions don't necessarily reflect those of organizations with which he is associated, said he doesn't see any marketplace relief in sight for the near future. "This is a sorting out of the market that may have been overdue. It is a shame that it took these occurrences to do just that," he said of the collapse of HIH, the terrorist attacks and other events that affected the market.

States are passing legislation that could entice insurers to enter or increase their participation in some liability markets. In New South Wales, for example, so-called "personal responsibility" legislation recently was enacted. Mr. Watson explained that the law restricts liability in cases in which claimants are injured from an obvious or inherent risk or an injury that arises from recreational activities, intoxication or certain other circumstances.

Risk managers say it is important—though, in some cases, not easy—to instill a risk management culture into Australian organizations.

Mr. Peck said the survey shows that there appears to be a "significant awareness in the need for ac-

tive risk management," with 61% of respondents stating that they have a stand-alone risk management department within their organizations.

In some organizations, though, the discipline is not as easy to institute.

**'There have been some signs of reasonable pricing....I'm not holding my breath for this renewal, but maybe 2004 will be better.'**

Judy Harriss

The Australian Gas Light Co.

It is a challenge to get the "key players in risk management" to coordinate their efforts within an organization, said Graham Horton, risk manager with the New South Wales Police. Lines of authority and personalities often make establishing risk management programs difficult, he explained.

"The challenge is to convince employees and managers that risk management can improve the way they do their job," Mr. Horton not-

ed. Ways to do that include "improving education of employees through e-learning opportunities and providing one-stop shops for risk management through the Internet and intranet," he said.

Risk managers "have to market themselves and risk management through simple, easy-to-understand education programs where the individual can match the theory with the practical side of their work," Mr. Horton suggested.

Mr. Watson said there is an "ever-increasing difficulty" in establishing a risk management culture in Australian organizations, and there is a lack of understanding, mainly by government agencies, of the requirements of the position of risk manager.

Many organizations, he said, take care of that responsibility by hiring claims clerks or insurance managers who "have no concept of the real world of risk management."

Brad Greer, president of the Assn. of Risk & Insurance Managers of Australasia Ltd., said there is a movement to implement enterprisewide risk management systems into Australian businesses. Enthusiasm for those efforts, though, is spotty, he acknowledged.

"It really comes down to the organization," Mr. Greer explained.

"The organization that I work for now is open to moving forward in that direction." He serves as risk management coordinator for the City of Stonnington.

Others are embracing the concept as well. Ms. Harriss said Australian Gas Light has moved toward a more enterprisewide approach, launching over the last year "a cross-functional risk management process which covers the business, insurance and trading risks" of the company.

The Aon survey showed that a greater awareness of corporate governance issues is causing boards of directors and senior management of Australian companies to increase their roles in risk management.

Although the Australian Stock Exchange earlier this year published voluntary guidelines, Australia doesn't have legislation that outlines corporate governance responsibilities and provides for penalties when directors and officers breach those duties. Mr. Greer said a standard is expected to be adopted later this year for Australia and New Zealand.

Boards are becoming more aware of the risk management function, particularly at smaller organizations, because of the tight market, Mr. Watson noted. That's unfortunate in a way, he added, because it points up that "boards seem to act in a reactive manner to many of the risks aligned to them."

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# Brokers: Latin American network forms

Continued from page 10

panies frequently enter fronting arrangements with Latin American insurers while their global insurers take most of the risk. Or, they may buy all their coverage for certain exposures, such as workers compensation or automobile risks, from local markets.

RiskCo participants also hope their new network can help the local subsidiaries of European and U.S. multinationals place coverage for exposures falling within a deductible set by the parent company, Mr. Rosenthal said.

Parent companies often set deductibles for their Latin American subsidiaries at, say, \$200,000 or \$500,000, Mr. Rosenthal explained. Given the currency value in many Latin American countries, those amounts essentially leave the local managers feeling as though they have no coverage, Mr. Rosenthal said. So they may purchase insurance for losses falling within the deductible set by the parent company.

**"It is nice that, in an emerging market that has a lot of unknowns, there is this network made up of independents' that have banded together to offer better service."**

*Desiree M. Denoyer  
Near North Insurance Brokerage Inc.*

RiskCo already has 10 participating property/casualty partners, called shareholders, in Brazil, Chile, Colombia, Ecuador, Mexico, Panama, Peru and Venezuela, as well as in Argentina and Uruguay. It also has correspondent brokers in other Latin American countries.

The participating brokers formally launched RiskCo in April 2002, Mr. Rosenthal said. Because the organization is so new, the premium volume participants have placed through RiskCo remains small, Mr. Rosenthal said.

But several RiskCo members are among the largest commercial brokers in their countries, Mr. Rosenthal said. Several RiskCo brokers also are partners of Assurex Global, a Columbus, Ohio-based broker network. Mr. Rosenthal is an Assurex board member.

RiskCo members, independent of their new network, already transact business with U.S. brokers such as Near North Insurance Brokerage Inc.

Near North currently is arranging coverage for a North American corporation with multiple operations throughout South and Central America, said Desiree M. Denoyer, vp-global operations in Chicago for Near North. There is a "big likelihood" Chicago-based Near North will rely on RiskCo to help it service that business, she said.

RiskCo could have a bright future because U.S. companies continue to seek business opportunities throughout Latin America, Ms. Denoyer said. Plenty of independent U.S. brokers also need the assistance of Latin American counterparts ca-

pable of navigating local laws and business customs, she said.

"It is nice that, in an emerging market that has a lot of unknowns, there is this network made up of independents that have taken the time, the energy and the lead to band together to offer better service," Ms. Denoyer said.

Latin American risk managers, in particular, could benefit from an independent network, said Jorge D. Luzzi, president of the Latin American risk manager association *Asociacion Latinoamericana de Administracion de Riesgos y Seguros*.

Latin American companies generally seek quotes from at least three brokers before making any major purchase, said Mr. Luzzi, who also is director of risk management for the Americas, the Far East and Australia and deputy group risk manager for *Pirelli S.A.* in Sao Paulo, Brazil.

But because of consolidation among international brokers, companies with operations in several Latin American countries sometimes can't obtain the services of three brokers with substantial operations across Latin America.

There may be two global brokers

that can meet those needs, Mr. Luzzi said, but finding a third broker with the necessary capabilities can sometimes prove challenging. That scenario, however, generally is not an issue for large multinational corporations, he added.

The brokers participating in RiskCo hope the network will bring more business their way.

Andres A. Morales, president of *Ecuaprimas Compania Limitada* in Guayaquil, Ecuador, said he sought to join a network to grow his brokerage. That is more likely to happen, he said, by attracting interna-

tional business rather than relying just on domestic transactions.

At the same time, other RiskCo members will help provide his clients with the high service standard that he personally provides, said Mr. Morales, who is RiskCo's chief operating officer.

The growth in regional companies and potential brokerage clients spreading into neighboring countries is not unique to Latin America, said David Hokanson, managing director-international for Assurex.

Brokers worldwide increasingly are seeking to team up. Yet the practice may take on different forms in different regions, depending on factors such as cultural influences, Mr. Hokanson said.

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With SARS, many companies find themselves fighting a distant yet formidable foe

# Virus challenges efficacy of risk management plans

By CAROLYN ALDRED

A previously unknown killer virus that emerged in China late last year and rapidly spread to several major centers of commerce tested the corporate risk management programs of companies thousands of miles away.

Severe acute respiratory syndrome, or SARS, hit multinational companies and the economies of Hong Kong, Toronto and Taiwan in new and unpredictable ways. With-

in months of its first appearance in Southern China, the pneumonia-like virus spread rapidly and effectively shut down public activity in several cities, forcing the cancellation of exhibitions, conferences and business meetings (*BI*, April 14).

Companies around the globe had to respond quickly to the SARS threat, which, in most cases, was occurring thousands of miles from their head offices. Responses included sending employees in affected areas home, restricting employee

travel to such areas, implementing quarantine arrangements for exposed employees and adopting business continuity plans.

Most companies with a well-thought-out risk management plan would have dealt with the SARS situation quickly and effectively, with all the relevant departments approaching the problem together, according to Richard Reddaway, vp of corporate insurance and risk management for London-based pharmaceutical company Glaxo-

SmithKline P.L.C.

At GSK, group security took the lead in its SARS response because of the travel implications, but the occupational health and insurance departments also were involved, he said.

Although SARS is a new risk, in some ways the response is similar to other business interruption or denial-of-access situations, such as port strikes or foot-and-mouth disease outbreaks, he said. It also is an example of the sort of risk that

companies increasingly have to address without any recourse to insurance coverage, said Mr. Reddaway.

As soon as the seriousness of the SARS situation became apparent, Reuters P.L.C.'s newly developed risk management framework and processes swung into action, according to Amarjit Atkar, the global head of business continuity and rights management for the London-based media company.

The company's security review group—which includes Reuter's chief operating officer as well as Mr. Atkar and representatives from human resources, health and safety, legal, insurance, regulatory compliance and information technology—meets on a monthly basis, Mr. Atkar said. After the SARS outbreak, the group reviewed the situation and determined how the company should respond.

Employees were alerted to the SARS risk and response through Reuters' "incident notification page" on its corporate intranet, which provided links to other information sites, including the World Health Organization's Web site. Travel to all countries for which the WHO issued travel advisories was restricted, and Reuters staff returning from affected countries were asked to work from home for 14 days, said Mr. Atkar.

**Companies around the globe had to respond quickly to the SARS threat, which, in most cases, was occurring thousands of miles from their head offices.**

Insurance had little role to play in the risk management response, he noted.

"Companies should be doing everything they can to manage risk. Insurance is there to cope with a major disaster but should not be brought into the risk management debate too early," Mr. Atkar said.

Newbury, England-based telecommunications company Vodafone P.L.C. also was able to quickly alert its workforce to the emerging SARS threat because of its risk management warning system, said Senior Business Risk Manager Andy Keeling.

The company, which has adopted a broad and proactive risk management approach, has established a warning system that alerts different departments to any internal or external risks that may affect the company, said Mr. Keeling. These risks can include reputational, regulatory, social, ethical or technical risks, he said.

As soon as a risk to the company is identified, it is assigned a priority level and the appropriate departments are notified.

In the SARS situation, it was Vodafone's group health and safety director who took the lead and issued appropriate advice to employees.

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# Governments providing terror coverage backstops

## But a specialist terrorism insurer closes to new business due to lack of demand

By SARAH VEYSEY

**LONDON**—Continuing concerns about terrorism, sparked by recent terrorist activity and the conflict in Iraq, have kept the need to mitigate terrorism risks high on the agenda of risk managers across the globe, experts say.

And in several countries, governments and insurer groups have responded to buyers' fears about an inability to obtain terrorism insurance by providing new coverage

backstops or by broadening the scope of existing terrorism pools. In addition to the U.S. government's creation of a federal backstop for terrorism risks, terrorism coverage facilities have been established in Germany, Austria and France, while Australia's federal government is exploring the creation of a coverage program.

In response to the Sept. 11, 2001, attacks in the United States, the German insurance association, Gesamtverband der Deutschen Ver-

sicherungswirtschaft e.V., set up a pool to cover property and business interruption risks arising from terrorist attacks.

The pool, known as Extremus A.G., was formed in 2002 and is funded by the insurance/reinsurance industry and the German government. German insurers and reinsurers have provided 1.5 billion euros (\$1.77 billion) to the plan, and an additional 1.5 billion euros backing has been obtained from the international reinsurance market,

according to Claus Brinkmann, head of the reinsurance techniques department of the global property/casualty arm of GE Frankona Re in Munich, Germany.

The state also provides 10 billion euros (\$11.77 billion) of backing to Extremus, which covers excess property and business interruption limits of 13 billion euros (\$15.30 billion) above an insured limit of 25 million euros (\$29.4 million).

Bernd Michaels, president of the GdV in Berlin, said that demand for

cover from Extremus has been high and that he is "confident that there will be a sufficiently large portfolio in this company." The GdV estimates that the pool will have an annual premium volume of 1.5 billion euros (\$1.77 billion).

Another terrorism coverage pool began operations this year in Austria.

The Austrian insurance association, Verband des Versicherungsunternehmen Österreichs, last year announced its plans to establish an insurance and reinsurance pool to provide property coverage—including business interruption—for terrorism risks. The pool, known as Terrorpool-Oestereich, began operations on Jan. 1 and is funded by both insurers and reinsurers. Each insurer or reinsurer's funding obligation is determined by its market share.

**Terrorism coverage facilities have been established in the U.S., Germany, Austria and France, while Australia's federal government is exploring the creation of a coverage program.**

The insurer covers only risks that are insured in Austria and coverage is capped annually at 5 million euros (\$5.9 million) per event.

The pool defines covered acts of terrorism as "all acts of persons or similar groups of persons with a view to achieving political, religious, ethnic, ideological or similar goals, and which are apt to put the public or sections of the public in fear, thereby influencing a government or public bodies."

Only business interruption losses arising directly from a terrorist attack are covered. The pool excludes "indirect" business interruption losses, such as those arising from the interruption of water, gas or telecommunications services, according to Thomas Klockner, vp of Converium Ltd. in Cologne, Germany.

Many large Austrian risks, he pointed out, are insured in Germany and in the London market and thus are not eligible for coverage in the pool.

In France, where the government has long provided a backstop for coverage of natural catastrophes through Caisse Centrale de Reassurance, a company was formed in 2001 to cover terrorism losses.

Gestion de l'Assurance et de la Reassurance des Risques Attentats et Actes de Terrorisme, which began operations on Jan. 1, 2002, provides a backstop for property losses where the sum insured exceeds 6 million euros (\$7.1 million).

Funded by French insurers, reinsurers and CCR, GAREAT provides both property and business interruption coverage for terrorism risks in France and its overseas territories. Premiums charged vary accord-

See **TERRORISM**/next page

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\*Source: Standard and Poor's Global Reinsurance Highlights 2002. \*\*As at January 2003, based on an exchange rate of £1 sterling: US\$ 1.61, as at 31 December 2002.

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# Between the Lines

Compiled by Joanne Wojcik



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"It's kind of like sticking your finger in a wall socket," described Adam Whiton, one of the coat's designers. The jacket's design insulates the wearer from the electric current.

For more information, visit [www.no-contact.com](http://www.no-contact.com).

## Canadian Rx contraband?

Colorado regulators are considering whether to regulate Internet pharmacies illegally importing prescription drugs from Canada and selling them to state residents.

"There was a push in the last legislative session to regulate the entities that were importing the drugs from Canada," said Matt Mayer, deputy director of the Colorado Department of Regulatory Agencies in Denver. But that would put the state in the precarious position of sanctioning illegal activity, he said.

The U.S. Food and Drug Administration prohibits businesses from reselling drugs manufactured here and exported to other countries. The FDA also bars consumers from bringing nonapproved drugs into the United States. Despite this prohibition, Colorado regulators are researching whether they may be able to circumvent this ban and regulate the online pharmacies.

Mr. Mayer cited estimates that Americans spend \$650 million annually on prescription drugs from Canada because they cost less than when purchased from U.S. pharmacies.

## Clamoring for claims

A new investment fund being launched in Connecticut will enable insurers to pawn off their automobile-related subrogation claims.

"Think of us like a salvage company," said Thomas Riordan, chief executive officer of Subrogation Capital Group Inc. of Westport, Conn. "Insurance companies create the raw materials, and we have to go out and uncover overlooked opportunities." The firm has been processing subrogation claims on behalf of insurers on an outsourcing basis since 1994.

The arrangement is advantageous to insurers, particularly those that are distressed and "need to plug cash into their surplus," Mr. Riordan said. Selling off the subrogation claims also could shorten the liability tail for insurers exiting this line of business, he added.

For more information about Subrogation Capital Group's insurance subrogation fund, contact Thomas Riordan at 203-226-1693, ext. 12, or via e-mail at [info@SubroCap.com](mailto:info@SubroCap.com).

## For better or...ugly?

A British woman has taken out an insurance policy to cover her if her husband leaves her because she loses her looks.

The policy, created by Essex, England-based broker Ultraviolet and underwritten at Lloyd's of London syndicates, will pay out £100,000 (\$163,600) if 26-year-old Nicole Jones is ever deemed ugly by a panel of 10 randomly chosen men. The policy is renewable annually and the premium—currently £15 (\$24.54) a month—set according to her looks at the time.

Ms. Jones bought the policy as a gift for her husband, and the policy will also cover the cost of cosmetic surgery if she is scarred in an accident.

Tips and feedback from readers are welcomed. Please send information to [jwojcik@crain.com](mailto:jwojcik@crain.com).

# Products & Services

## Liberty Mutual adds features to extranet

**BOSTON**—Liberty Mutual Insurance Co. has enhanced its extranet portal for large commercial accounts to offer risk managers more timely information on developments in their workers compensation, general liability and commercial auto insurance programs.

The enhancements to the system, Liberty Mutual National Connection, include customizable alerts, which inform risk managers and other company employees of developments in their programs. In addition, a risk manager can choose from among a variety of reports that can be sent to individuals at his or her organization, according to Boston-based Liberty Mutual.

For more information, contact Alicia Rawnsley, 603-245-7559.

tions and one for the Web.

The system is designed for organizations that self-administer claims, insurers and third-party administrators.

The client/server version, STARS 8.0, has several new features, including one that allows users to create document-based audit trails.

The Web version, known as STARS Web 8.0, includes new features that make the system easier for remote users, as well as enhanced security and report management features.



## Consumer-driven plan assessment tool offered

**PRINCETON, N.J.**—Benefits consultant NiiS/APEX has developed a model to help employers with self-funded medical benefits assess consumer-driven health plans.

The CDH Plan Designer allows employers to analyze historical claims data and apply behavioral changes expected from a consumer-driven plan design, according to Barry Rosenfeld, assistant vp at NiiS/APEX in Princeton, N.J.

The model "also creates a mechanism to measure ongoing actual savings that emerge after a con-

sumer-driven option is introduced," he said.

For more information, contact Mr. Rosenfeld at 609-452-2488.



## Principal Financial launches pension benefit calculator

**DES MOINES, Iowa**—The Principal Financial Group has introduced an online benefits calculator for defined benefit plan participants.

The calculator allows participants to estimate their monthly defined benefit income at retirement.

"This calculator allows participants to see how their defined benefit plan fits into the big picture," said Chris Reddy, second vp at Principal. "Employees see their own plan data, not some commonly used proxy based on industry averages."

Plan participants can input up to three different retirement scenarios, using variables such as age at termination of employment, age at which benefits begin and salary increases, and then compare the results.

For more information, visit [www.principal.com](http://www.principal.com).



## Marsh launches two new version of RMIS

**NEW YORK**—Marsh Inc. has developed two new versions of its STARS risk management information system—one for client/server applica-

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Judge calls coverage time frame irrelevant in liability ruling

## Equitas on hook for full asbestos award

By CAROLYN ALDRED

**LONDON**—A High Court ruling that an insurer must pay the entire damages awarded to a mesothelioma victim, despite its limited time as insurer for the man's employer, could encourage insurers to agree to a market-wide mechanism for apportioning asbestos-related claims, according to the Assn. of British Insurers.

The ruling against Equitas Ltd., which has assumed the liabilities of defunct Lloyd's of London syndicate 992, follows the joint and several liability approach for asbestos claims adopted in the House of Lords in the closely watched

*Fairchild* case last year.

U.K. High Court Judge Eady ruled May 14 that Equitas must pay the full compensation owed by Kinkia Ltd. to the widow of mesothelioma victim Arthur Phillips, even though syndicate 992 was the company's insurer for only a part of Mr. Phillips' employment.

Mr. Phillips was employed by Kinkia between 1955 and 1957 and between 1959 and 1970. Kinkia, formerly known as Thermac Insulation Ltd., was dissolved in 1979. Syndicate 992 was Kinkia's insurer between 1959 and 1968. In October 2002, Mr. Phillips' widow was awarded total compensation of £205,000 (\$334,430) from Kinkia.

Equitas paid all but £56,375 (\$91,625), arguing that it was only liable for the portion of damages

**The ruling against Equitas follows the joint and several liability approach for asbestos claims adopted in the House of Lords in the closely watched *Fairchild* case last year.**

corresponding to the proportion of time it was on Kinkia's risk. Mrs.

Phillips sued for the remaining amount plus interest.

Judge Eady ruled that continuing exposure to asbestos fibers over the claimant's entire employment was a material contribution to his contraction of mesothelioma, including the period during which syndicate 992 was insurer. The judge held that the *Fairchild* ruling meant that it was irrelevant whether the fatal fiber may have been ingested during a time the syndicate was not insurer, ruling the insurer was liable for the full amount.

The judgment is one of the first mesothelioma rulings to follow the House of Lords ruling and confirms **See DAMAGES/page 27**

## World Updates

### Converium unit gets U.K. general liability license

The U.K. Financial Services Authority has licensed Converium Insurance (U.K.) Ltd. to write commercial general liability coverage. Converium Insurance is a unit of Switzerland-based Converium A.G., formerly known as Zurich Re. Converium said the new company, which has £50 million (\$82.0 million) in capital, will support the reinsurer's U.K. joint ventures and will not operate as a multiline insurer.

### France's health service suing tobacco companies

A branch of France's national health insurance fund is suing four tobacco companies to recoup costs related to treating thousands of smokers with cancer and other smoking-related illnesses since 1997. In the case—the first of its kind in France—the Caisse Primaire d'Assurance Maladie in Saint-Nazaire is seeking 18.6 million euros (\$21.9 million) from tobacco giants Altadis S.A., BAT-Rothmans, JTI-Reynolds and Philip Morris.

### Most U.K. pension plans closed to new members

Seventy-two percent of U.K. defined benefit plans are now closed to new entrants, signaling a rise of 17% in the past six months, a survey has found. The report, "Pensions Reform: Too Little, Too Late?" published by the Assn. of Consulting Actuaries in London, found that 42% of U.K. employers surveyed said that they are trying to reduce pension spending and that 51% are looking to reduce future pension liabilities.

### Alexander Forbes revenues up 15%

South African brokerage Alexander Forbes Ltd. recorded revenues of 4.9 billion rand (\$622.3 million) in its fiscal year ending March 31, up 15% from a year ago. Profits at Johannesburg-based Forbes, the world's eighth-largest broker in 2002, rose 19%, to 1.05 billion rand (\$133.3 million).

### Munich Re posts first-quarter loss

Munich Re Group had a net loss of 238 million euros (\$259.7 million) for the first quarter, vs. a 4.48 billion euro (\$3.90 billion) profit a year earlier. Munich Re blamed the loss, in part, on investment losses of 2.3 billion euros (\$2.51 billion). The German reinsurer's gross written premiums totaled 10.83 billion euros (\$11.81 billion) for the first quarter, up about 1%. Munich Re said the strong euro reduced the euro value of premiums written in other currencies, particularly the U.S. dollar.



PHOTO: AP/ALBERTO MORANTE

Workers toiled to clean up following the a massive oil spill off Spain's Galician coast in November 2002. A proposed European Union directive would institute joint and several liability in cases involving damage to the environment.

## E.U. proposes joint-and-several liability for environmental damage

By NEIL HODGE

**BRUSSELS, Belgium**—Risk managers and insurers are critical of European Union proposals to introduce strict and joint-and-several liability for environmental damage and to require organizations to show they have adequate financial resources—including insurance—to cover this expanded exposure.

In addition to creating an uncertain liability environment for European organizations, the directive could leave the insurance industry unable or unwilling to provide environmental coverage sufficient for the new liabilities, opponents of the directive contend.

The proposed directive on environmental liability, which could take effect as early as next year, is broadly supported by members of the European Parliament and by the European Council of Environment Ministers in Brussels, Belgium.

On its first reading before the European Parliament, the directive passed by roughly a two-thirds majority on May 14. The Council of Ministers is scheduled to have its first reading of the di-

rective on June 13.

Because the directive was proposed by both the European Parliament and the European Council of Environment Ministers, it must get three readings by each body. Members of the European Parliament that support the environmental measure are hoping to pass it before year end, after which the composition in the parliament and the council is likely to change, with the addition of 10 new E.U. member countries.

If the proposed directive is adopted as it now stands, observers expect that larger organizations would find themselves more often a target in pollution actions, regardless of their degree of blame, because they are more likely to have the "appropriate financial security"—as specified in the draft directive—than are smaller responsible parties.

In its current form, the regulation would apply to companies governed by the European Union's Integrated Pollution Prevention and Control regulations, which apply to high-risk enterprises such as petrochemical, mining and agricultural companies.

Members of the European Parliament who support the proposal see the directive as an alternative to the current system, in which European taxpayers foot the bill for pollution cleanups where only a few of the polluters responsible can be identified or have the necessary financial resources.

Parliament members also prefer joint-and-several liability to proportional liability because of concerns that smaller operators might not be able to pay their share of cleanup costs, leaving taxpayers to pick up the balance.

Another blow to industry was the European Parliament's adoption of strict liability by removing two key exemptions from the directive that would have shielded organizations that cause pollution, even in cases where their actions were approved by regulators or followed state-of-the-art practices at the time.

"Because of the overly punitive nature of the directive in its present form, there is no longer any incentive for companies to both improve risk management or even having a risk management function, because they will be li-

**See DIRECTIVE/page 27**

## Studies show liability premium growth

By NEIL HODGE

Two studies of the U.K. liability insurance market have recommended various changes to help stem increases in the cost of employers liability coverage.

Premiums for the coverage—which is mandatory insurance that covers employee injuries—rose by an average of 50% in 2002, according to the studies, which were conducted by the Office of Fair Trading and the U.K. Department of Work and Pensions.

Both organizations' reports also said that the impact of the increases was worsened by the lack of warning and explanation of why the costs of cover had been hiked.

The Department of Work and Pensions' review focused entirely on the growing cost of employers liability coverage and whether businesses, particularly small and mid-size enterprises, were finding it difficult to obtain affordable coverage.

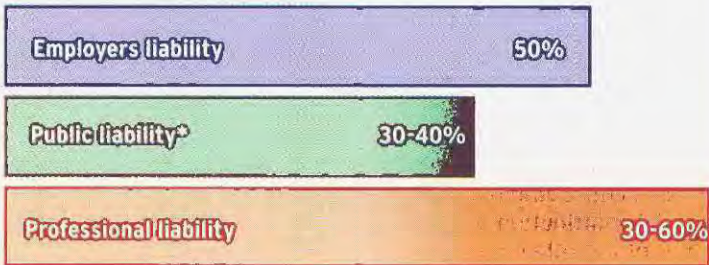
The OFT's study was broader, examining other areas of liability insurance, such as public and product liability and professional indemnity. The five-month study found "no evidence of a widespread lack of availability of liability insurance cover," but it did say that the liability insurance markets "could work better."

Both the OFT and Department of Work and Pensions recommend in their reports that renewal notification periods be lengthened, giving companies sufficient time to seek alternative quotes. In addition, both said that insurers should pro-

**See SURVEYS/next page**

## LIABILITY PREMIUMS SOAR

Average increases in 2002 for U.K. liability premiums



\* Includes product liability  
Source: Office of Fair Trading

# Surveys: Liability premiums up

Continued from previous page

provide more favorable terms to companies that have good track records in health and safety.

Both reports also recommend a greater effort to promote the rehabilitation of injured workers.

Neither the OFT nor the Department of Work and Pensions said how or when these recommendations should be put into practice, or

what role they would have in ensuring compliance. Both said, though, that they would continue to study the matter.

David Ireland, chairman of the Assn. of Insurance & Risk Managers, said that while the organization supports the government's findings, "our support is tempered by the fact that the government will be judged ultimately by what it does. Until we

get action with tangible results, things will go on staggering along in the current totally unacceptable fashion."

More information on the OFT report is available at [www.oft.gov.uk/News/Press+releases/2003/PN+70-03.htm](http://www.oft.gov.uk/News/Press+releases/2003/PN+70-03.htm).

The DWP report can be accessed at [www.dwp.gov.uk/publications/2003/index.htm](http://www.dwp.gov.uk/publications/2003/index.htm).

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CHANCERY DIVISION  
COMPANIES COURT  
REGISTRAR DERRET  
No 3506 of 2003  
No 3507 of 2003  
IN THE MATTER OF  
**ENGLISH & AMERICAN GROUP PLC**  
AND IN THE MATTER OF  
**ENGLISH & AMERICAN INSURANCE HOLDINGS PLC**

AND IN THE MATTER OF THE COMPANIES ACT 1985  
NOTICE IS HEREBY GIVEN that, by an order dated 3 June 2003 made in the above matter the Court has directed that meetings ("Meetings") be convened of the ILU Creditors and Non-ILU Creditors (as defined in the schemes of arrangement referred to below) (together "Scheme Creditors") of the above named companies ("Companies") for the purpose of considering and, if thought fit, approving (with or without modification) a scheme of arrangement proposed to be made between each of the Companies and their Scheme Creditors pursuant to section 425 of the Companies Act 1985 (the "Schemes"), and that the Meetings be held on 18 July 2003 at 10.00am at the offices of DLA, 3 Noble Street, London EC2V 7EE, United Kingdom.

All Scheme Creditors are requested to attend at such place and time either in person or by proxy. Scheme Creditors may vote in person at the Meetings or may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place.

Scheme Creditors are requested to lodge the appropriate form of proxy and accompanying voting form at PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT, United Kingdom, marked for the attention of Baljit Goraya, by 4.00pm (London time) on 17 July 2003. Forms of proxy and voting forms may also be handed in at the registration desk prior to commencement of the Meetings. A faxed copy of the form of proxy and voting form will be accepted if legible but Scheme Creditors are requested to send the originals, to be received by the Company at the above address by 4.00pm (London time) on 17 July 2003, or to hand them in at the registration desk prior to commencement of the Meetings.

A copy of the text of the Schemes and of the statement required to be provided to creditors pursuant to section 426 of the Companies Act 1985, as well as blank forms of proxy and voting forms, may be obtained by attending at, or on written application marked for the attention of Baljit Goraya to, the offices of PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT, United Kingdom, before 4.00pm (London time) on 17 July 2003.

The Court has appointed Paul Anthony Brereton Evans or, failing him, Dan Yoram Schwarzmann both of PricewaterhouseCoopers LLP, to act as chairman of the Meetings and has directed the chairman of the Meetings to report the result of such Meetings to the Court. If approved by the requisite majority of Scheme Creditors, the Schemes will be subject to the subsequent approval of the Court.

Dated 5 June 2003

Ref: DLA, 3 Noble Street, London EC2V 7EE

### REQUEST FOR PROPOSALS

## NOTICE

The Kansas State Employees Health Care Commission issued a Request for Proposal on June 6, 2003. RFP #06209 requests proposals for health plan benefits actuarial and consulting services. Closing date is July 11, 2003.

The state of Kansas offers four (4) fully insured health plans, one (1) self-insured PPO, one (1) self-insured managed indemnity option, a self-insured dental option, a self-insured prescription drug program, and a voluntary vision plan. The health plan participants include 35,100 active employees, 9,200 retirees and 4,100 non-state employees with total covered lives of 88,750. Consultant and actuarial services include contract development, plan design, plan utilization, fiscal analysis, current events, trends, legislative updates, attendance at quarterly Commission meetings and general Commission staff support.

A copy of this RFP is available as at: <http://da.state.ks.us/purch> or by contacting:

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# Directive: E.U. considering joint-and-several liability

Continued from page 25

able for all damage—whether by accident or carelessness—anyway,” said Valerie Fogleman, a partner at law firm Barlow Lyde & Gilbert and head of the London practice’s environment group.

Both risk managers and insurers, who are concerned that they could

face potentially massive claims as a result of the change, have slammed the proposals.

“These proposals have been inadequately thought through. They add to the uncertainties facing industry without focusing on what might really benefit the environment. We hope that the intentions

will be clarified,” said David Gamble, executive director of the London-based Assn. of Risk & Insurance Managers.

In a statement, the Brussels-based Federation of European Risk Management Assns. called for an amendment to the insurance requirements of the draft directive be-

fore “it upsets the volatile insurance market for environmental liability risks.”

FERMA is urging the elimination of the joint-and-several liability provision, among other changes.

Thierry van Santen, director of risk management for Groupe Danone in Paris and president of FERMA, said in a statement: “As practitioners, we know perfectly well that the directive, as it is today, will break the volatile insurance market still available for European environmental risks. It will not allow us to find the required insurance cover, and any compulsory insurance can only work if there is a market available.”

“In effect, if the directive was to become law as it currently stands, companies would be compelled to take mandatory insurance provision which they probably can’t afford and European insurers can’t provide,” said Phil Bell, technical insurance manager at Royal & SunAlliance Insurance Group P.L.C. in London and chairman of the environmental liability group of the Comité Européen des Assurances, Europe’s main insurance trade association.

The proposed directive that cleared the European Parliament

last month marks a substantial departure from the original European Commission proposal from last year, which required member states only to “encourage” the purchase of environmental liability insurance, rather than making buyers “obliged” to do so (*BI*, Aug. 26, 2002).

Businesses had warned prior to the vote that they would not be able to get insurance for damage to land, water and, particularly, biodiversity, which some say is ill-defined in the proposal. In a statement, the CEA said that biodiversity damage “cannot at the moment be measured” and so “cannot be covered by insurance solutions.”

The CEA statement also warned that the insurance industry currently cannot provide coverage on a “blanket” basis for all risks covered by the directive and added that it would not be able to do so any time soon, as “there is no established market or experience in sufficient depth” with these risks.

“This provision will force many businesses to trade without any financial protection, as financial security instruments will not be sufficiently available,” Daniel Schanté, the Paris-based director general of the CEA, said in a statement.

## Damages: Equitas found liable

Continued from page 25

the degree to which the earlier decision will impact insurers, lawyers agree.

“This is a significant ruling that confirms that insurers must pay full damages not partial. It is an important test case that will assist other claims pending,” said Rodney Nelson-Jones, partner in the London law firm of Field Fisher Waterhouse, who acted for the claimant.

“Unfortunately, apportionment was not fully argued in the House of Lords, which was a missed opportunity. (The *Phillips* case) was an attempt to reduce the impact (of *Fairchild*) on insurers,” said Simon Chandler, senior lawyer with CMS Cameron McKenna in London.

Although the ruling will disappoint insurers it “has helped to clarify the approach we want to take” and should remove some of the doubt insurers may have had about the need for an apportionment mechanism, said Alistair Finley, policy advisor on liability at the ABI in London.

Draft guidelines for an apportionment agreement recently were sent to the ABI members and the trade association hopes to have a final agreement in place later this year that would allow insurers to apportion and settle mesothelioma claims without going to court, he said.

Mr. Finley said he hopes that reinsurers, employers and the gov-

ernment also will adopt the guidelines.

A spokesman for Equitas said the decision confirms *Fairchild* and Equitas will not appeal.

“It would have been extremely difficult for the judge to have ruled any differently” because of *Fairchild*, noted Margaret Thomas, an associate lawyer for London law firm Davies Arnold Cooper.

The ruling demonstrates the difficult plight that insurers now are in, she said.

As asbestos claims continue and more insurers become insolvent, those surviving will pay larger percentages of each claim. It’s a question of “last one, turn out the lights,” said Ms. Thomas.



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# Hughes: Former staffer highlights president's plans

Continued from page 4  
she said.

Turning away from benefit issues, Ms. Hughes provided some insight into President Bush, whom she worked for since his time as Texas' governor. Discussing his recent success in winning congressional approval of an administration-backed tax cut package, Ms. Hughes credited President Bush's steadfastness.

"Because he stuck with it," the

president was able to get a substantial amount of the package passed, she said.

The former counselor also talked about the challenges of coordinating work and family demands, and also offered some communications advice to employers.

Like many people in high-powered positions, Ms. Hughes said she faced the pressures of a demanding job in the White House while trying

to meet the needs of her family.

She advised employers to be understanding of employees' family needs. "Be flexible," she suggested. Giving employees time off to meet family needs will not only help employees, but also help employers through the increased loyalty of appreciative employees.

She also advised employers, as part of their communications' strategy to employees, to be consistent,

clear and credible. When companies and their top executives deviate from that strategy, problems can quickly develop.

One example, she cited, was when former AMR Corp. CEO Don Carty said union employees had to accept substantial financial cutbacks for the financially strapped airline to survive. But as Mr. Carty was delivering this message, he revealed that American had set up

special retention and pension packages for salaried executives. That contradiction, Ms. Hughes said, undercut Mr. Carty's message on the need for sacrifice and he was forced to resign.

While now living in Texas, Ms. Hughes continues to advise the President as part of arrangement through the Republican National Committee and is writing a book on her White House experiences.

## CIAB's Employee Benefits Leadership Forum

# Pension reform faces struggle

By JERRY GEISEL

**WHITE SULPHUR SPRINGS, W.Va.**—Despite its passage in the House of Representatives by a big margin, legislation that would better protect defined contribution plan participants from Enron-type disasters faces an uphill battle in the Senate, a panel of experts says.

The measure—whose provisions include allowing 401(k) plan participants to sell company stock their employers contributed as a match after three years of service or three years after receiving the shares—cleared the House last month on a 271-157 vote (*BI*, May 19).

But in the Senate, passage may not be so easily won. While the House vote was a "great victory," the measure "has not ignited great support in the Senate," said Elizabeth Varley, vp and director of retirement policy at the Securities Industry Assn. in Washington.

Indeed, Senate Finance Committee Chairman Charles Grassley, D-Iowa, has yet to display much enthusiasm for the legislation, said Stuart J. Brahs, vp-federal government relations in the Washington office of The Principal Financial Group.

The measure, which also would make it easier for employers to provide access to investment advice, aims to protect plan participants from financial disasters such as the one that struck employees of Enron Corp. Enron's failure and the resulting free fall in its share price caused the company's 401(k) plan participants to lose more than \$1 billion invested in company stock. Their losses were exacerbated by Enron's rule that barred participants from selling company stock contributed as a 401(k) plan match until they were age 50.

Ms. Varley and Mr. Brahs discussed Washington-related employee benefits issues during sessions at the Council of Insurance Agents & Brokers' Employee Benefits Leadership Forum, held last

month at the Greenbrier resort in White Sulphur Springs, W.Va.

Another pension reform measure introduced last month by Reps. Rob Portman, R-Ohio, and Ben Cardin, D-Md.—or at least some of the measure's provisions—have a good chance of passage, according to Mr. Brahs.

He noted that the work of Reps. Portman and Cardin is a rare example of a genuine effort to create a bipartisan spirit. The two con-

gressmen worked together in 2001 and successfully attached a sweeping pension reform measure to a big tax cut bill. Their current proposal would,

among other things, speed up scheduled increases in maximum salary deferrals to 401(k) plans, as well as ease certain pension nondiscrimination rules.

If the Portman-Cardin bill does not pass on its own, parts of it likely would be included as part of a broader bill later on in the session, he said.

In contrast to the chances for that measure, the prospects for legislative proposals that would allow employers to use higher interest rate assumptions in valuing pension liabilities—which would dramatically reduce corporate contributions to those plans—are not good, Mr. Brahs said.

Under current law, employers use an interest rate, based on the yield of 30-year Treasury bonds, to value pension liabilities. Employers, who say Treasury bond yields are artificially low and inflate plan liabilities, favor a new interest index, which would be based on yields on long-term, high quality corporate bonds.

While employer groups have heavily lobbied Congress and the administration to make the change, "there does not seem to be a sense of urgency," Mr. Brahs said. The most likely congressional action, he said, would be an extension for several years of a 2002 law—set to expire at the end of 2003—that allows employers to make slightly higher interest rate assumptions in valuing their pension liabilities than they other-

wise could. Undersecretary of the Treasury Peter Fisher recently made such a recommendation at a House Ways and Means Committee hearing (*BI*, May 5).

In the health care field, another speaker at the meeting said there are several steps Washington regulators and legislators could take to reduce health care costs and improve quality the quality of care.

In particular, regulators could more carefully scrutinize the mergers of health care providers for antitrust violations, said Karen Ignagni, president and chief executive officer of the American Assn. of Health Plans in Washington.

In some communities, providers have acquired such clout that their starting point in negotiations with health care plans are rate increases of greater than 30%. Indeed, the leverage of providers is such that plans consider a 20% rate increase a victory, she said.

At the same time, health care cost increases could be restrained through medical malpractice reform and curbs on mandates that require health insurers to offer certain benefits in the plans they offer employers, Ms. Ignagni said.

On the subject of coverage mandates, Ms. Ignagni recommends that states set up review commissions to examine the cost ramifications of mandates. Such reviews would enable legislators to make informed, balanced decisions on whether or not to mandate a benefit, she said.

Ms. Ignagni also recommended that government work to ensure the disclosure of provider data, such as the rates they charge, the volume of procedures they perform and their success rates.

Health care information has to be "transparent" to enable health plan enrollees to make informed decisions on provider selection, Ms. Ignagni said.

If a health plan enrollee needs, for example, a heart bypass, he or she should know which providers in a community have achieved the best results, she said.

"It is time to get back to the real issues," Ms. Ignagni said, referring to the need to require more provider information disclosure.

## CIAB's Employee Benefits Leadership Forum

# Employers unready for consumer plans

By JERRY GEISEL

**WHITE SULPHUR SPRINGS, W.Va.**—Will employers adopt consumer-driven health care plans to supplement or replace their rich managed care plans?

Judging by a panel of benefit and human resource managers who spoke at the Council of Insurance Agents & Brokers' Employee Benefits Leadership Forum last month, employers are interested in the plans but aren't quite ready to use them in place of other health care benefits.

"There has to be a lot more (employee) education before we go in that direction," said Vicky De Leo, the director of human resources for the Greenbrier resort in White Sulphur Springs, W.Va., where the CIAB meeting was held.

"We'll let others test the waters first," added Katharine Claytor, human resources manager for Delta Dental Plan of Virginia in Roanoke, Va.

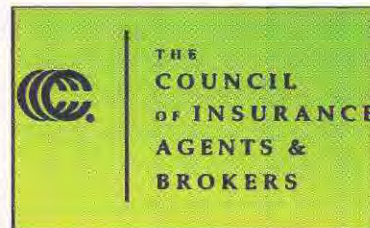
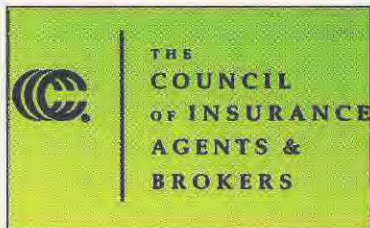
Once more provider cost and quality information is available, "we'd be interested," said Christine Wolf, vp-compensation and benefits for the Federal National Mortgage Assn. in Washington.

The benefit managers agreed, though, that the prevailing health care plan design—in which employers offer rich benefits as

long as employees use providers in a preferred provider organization or health maintenance organization network—has to change if costs ever are to be controlled.

In consumer-driven plans, a high deductible is imposed with employ-

See **CONSUMER**/next page



## CIAB's Employee Benefits Leadership Forum

# Conference growing

**WHITE SULPHUR SPRINGS, W.Va.**—Last year, when the Council of Insurance Agents & Brokers held its inaugural spring meeting

on employee benefits at the Greenbrier resort in White Sulphur Springs, W.Va., its officers said they hoped that one day the meeting would become to the community of benefit producers and insurers what the fall meeting has become to the property/casualty industry.

That may take some time, but the meeting, held under the auspices of the CIAB's Council of Employee Benefit Executives—which the CIAB created in 2001—is rapidly growing. This year's meeting, intended to allow benefits producers and underwriters to forge relationships, was held May 28-31 at the Greenbrier and attracted about 350

people, roughly a 50% increase from the 2002 meeting.

"It is an amazing accomplishment," said William R. Wilkerson

III, CIAB chairman and chief executive officer of Hass & Wilkerson Insurance Inc. of Shawnee Mission, Kan., referring to the growing popularity of the benefits meeting.

The meeting, known as the Employee Benefits Leadership Forum, "will get bigger and bigger now that there is momentum," added Robert Munao, CEBE chair and president of Tesco Benefits L.L.C. in Garden City, N.Y.

Next year's meeting will be held June 2-5 at the Greenbrier. For more information, contact the CIAB at 701 Pennsylvania Ave. N.W., Suite 750, Washington, D.C. 20004-2608; 202-783-4400.



# Consumer: Employers in no rush to adopt plans

Continued from previous page

ers funding an account, which partially reimburses employees for expenses they incur. The arrangement typically is linked to a PPO. The theory behind the plans is that, by exposing employees to more of the cost of care, individuals will use health care services more carefully.

By contrast, in typical benefit plans, "employees are not aware of the true costs," Ms. Wolf said.

"Employees believe a prescription costs \$7," said the Greenbrier's Ms. De Leo, referring to what, in fact, is just a co-payment.

"Employees don't really understand and don't really care

about costs. That has to change," added Randall Johnson, director of human resources strategic initiatives at Motorola Corp. in Schaumburg, Ill.

But to bring down cost increases, employers face some very practical problems.

For example, Ms. De Leo said few providers in the areas where most of the Greenbrier's employees live want to be part of managed care networks. That makes care expensive, she said.

At the same time, both employers and employees suffer from a lack of data on how one provider varies from another in terms of the quality of their services, said Motorola's

Mr. Johnson.

"There is very little quality data out there. We need to do something about it," he said.

If providers could be rated based on quality, the result would be a major effort by the providers to improve the services they deliver, he added.

Benefit managers have other concerns beyond health care cost and quality.

For example, Ms. De Leo said the move by insurers to put as much health care plan information online as possible creates problems for an older workforce, like the Greenbrier's, in which many employees do not want to get information from

computers.

The result, she said, is more work for herself and her assistants to communicate benefits information.

Additionally, Ms. De Leo said she needs brokers and insurers—because of her own limited staff resources—to do the statistical analysis necessary to determine where health care dollars are being spent.

Looking ahead, Motorola's Mr. Johnson warned of an impending crisis brought on by a reduction in the number of employers providing retiree health care benefits, especially to retirees not yet eligible for Medicare.

Health care costs for those younger retirees can be double those of active employees, he noted. "We have to find a way to help them," he said.

So far, Congress has provided a little assistance. Retirees ages 55 through 64 are eligible for a 65% tax credit to be applied against the cost of their health insurance premiums in cases where the federal Pension Benefit Guaranty Corp. has taken over their former employer's pension plan.

Earlier, the Clinton administration proposed allowing retirees as young as 55 to obtain coverage through Medicare, but Congress did not act on the proposal.

# Supervisor: Bias ruling adds vicarious liability risk

Continued from page 1

employer must have a discrimination policy in place and provide training on the policy to supervisors. Neither decision, however, provides a detailed discussion what constitutes a supervisor.

The suit in the 2nd Circuit case was brought by Yasharay Mack, an African-American woman who worked as an elevator mechanic's helper for Farmington, Conn.-based Otis Elevator Co. Ms. Mack, who worked for the company from July 1999 to May 2000, was assigned to assist six mechanics at a Manhattan building. One of the mechanics, James Connolly, was designated "mechanic in charge." Mr. Connolly's supervisor was rarely on the premises.

In October 2000, Ms. Mack sued Otis, accusing the company of subjecting her to a hostile work environment because of harassment by Mr. Connolly, among other charges. A lower court granted Otis summary judgment dismissing the case.

The district court held that because Mr. Connolly was not a supervisor, Otis could not be held vicariously liable for his conduct. But the appellate court disagreed, find-

ing that Mr. Connolly was a supervisor.

"Not only did (Mr. Connolly) direct the particulars of each of (Ms.) Mack's work days, including her work assignments, he was the senior employee on the worksite," says the decision. "He therefore possessed a special dominance over other onsite employees, including (Ms.) Mack, arising out of their remoteness from others with authority to exercise power on behalf of Otis."

The 2nd Circuit decision noted the court disagrees with a 1998 opinion by the 7th U.S. Circuit Court of Appeals in Chicago in *Parkins vs. Civil Constructors of Illinois Inc.* That ruling more narrowly defined a supervisor as someone with the authority to "hire, fire, demote, promote, transfer or discipline an employee."

The 2nd Circuit affirmed the dismissal of other charges against Otis, but it returned the case to the lower court for further proceedings on the issue of the alleged hostile work environment. Otis attorney Kenneth W. Gage of Stamford, Conn.-based Day, Berry & Howard said that Otis has not decided whether to appeal the case to the U.S. Supreme Court.

Employer attorneys say the decision, by broadening the definition of "supervisor," will make it easier for employees to prevail in bias lawsuits against their employers.

Phillip Berkowitz, an attorney with Seyfarth Shaw in New York, said the opinion "definitely gives employees another arrow in their quiver."

**Employer attorneys say the decision in *Mack vs. Otis Elevator Co.*, by broadening the definition of 'supervisor,' will make it easier for employees to prevail in bias lawsuits against their employers.**

The decision "threatens to create a new class of supervisors that essentially reaches across the corporate hierarchy, and it suggests that whenever an individual has responsibility over an employee's day-to-day activities, even if they don't reach the level of traditional supervisors with responsibilities for determining pay increases and perform-

ing performance appraisals, that the employee's conduct bonds the company and the employer can become automatically liable for that individual's discrimination or harassment."

The 2nd Circuit's view "winds up blurring the lines between employer liability for the acts of an immediate supervisor and those of a co-worker, who may be a member of management, but is not the immediate supervisor," said Jay W. Waks, an attorney with Kaye Scholar in New York.

Indeed, the decision "waters down" the historical definition of a supervisor, said Lawrence Peikes, an attorney with Wiggin & Dana in Stamford, Conn.

Richard Zackin, an attorney with Gibbons, Del Deo, Dolan, Griffinger & Vecchione in Newark, N.J., said the decision is "going to require employers to provide harassment training to more than just supervisors who have the authority to hire and fire and demote." They will need to train any employee who "can control the daily activities of the employees." Otherwise, employers will be unable to defend themselves on the basis that they have a sexual harassment policy in

place, he said.

The 2nd Circuit's conflict with the 7th Circuit's definition of a supervisor—which has been adopted by other courts—may ultimately be resolved by the U.S. Supreme Court.

"You not only have the conflict (with other courts), but you have the basic question of what does the phrase 'supervisor' mean," said John Canoni, an employer attorney with Nixon Peabody in New York.

Ms. Mack's attorney, Saul D. Zabell, of Farmingdale, N.Y.-based Somma, Zabell & Associates L.L.P., said the Supreme Court might consider the issue because of the "overly restrictive definition that came out of the 7th Circuit."

However, some attorneys believe the *Mack* decision arose out of the particular circumstances of this case, and, therefore, is unlikely to win the Supreme Court's attention. "It looks at the issue of supervisory status in a very, very specific context," said Mr. Peikes.

*Yasharay Mack vs. Otis Elevator Co. and Local 1 International Union of Elevator Constructors, 2nd U.S. Circuit Court of Appeals, 02-7056.*

# RICO: Contractor family charged with surety fraud

Continued from page 3

Alasia's contact person; and GBE Alasia Contracting Corp., which lists Mr. Rusin as its contact person.

According to the suit, GBE, Cosmos and Alasia won a number of bridge-painting contracts starting in 1994, including jobs for the New York State Thruway Authority and the New York State Department of Transportation.

The work required the contractors to post surety bonds, and members of the Shinas family went to Parsippany, N.J.-based First Indemnity and New York-based AXA Global Risks, now part of AXA Corporate Solutions Group, among other bonding companies, the suit says.

First Indemnity acted as underwriting and claims manager on

AXA's behalf, issuing AXA bonds and acting as a quota-share reinsurer on the business.

Over the next eight years, the two insurers and other sureties provided at least 36 bonds with limits of more than \$30 million to the alleged Shinas-controlled companies. To obtain the bonds, Shinas family members and other contractor officials provided at least 19 separate financial statements showing that they had the financial wherewithal to complete the projects, the suit says.

Throughout the eight-year period, though, the Shinas family used a welter of sham corporations and joint ventures to divert several million dollars from the proceeds of the projects to their own use, rather than keeping the funds in trust to

pay subcontractors, laborers and materials suppliers, the insurers charge.

The suit cites 10 examples of wire transfers and loans totaling \$2.5 million between 1998 and 2001 to Shinas family members and corporations that had "no apparent business reason," including a 2001 transfer of \$580,000 to a bank account in Athens, Greece.

Because of the alleged diversions, "the working capital of GBE, Cosmos and Alasia was drastically depleted and resulted in their inability to complete the bonded projects," the lawsuit alleges.

When GBE and Cosmos officials approached the insurers in early 2001 for financial help to finish the work, First Indemnity and AXA discovered that financial statements

they'd previously provided were false, the suit says.

For example, William Tzivelekis, Cosmos' president, admitted that he listed real estate he did not own on a personal financial statement to induce the insurers to issue bonds, according to the suit. Mr. Tzivelekis, who is not named as a defendant, could not be reached for comment.

AXA and First Indemnity have already incurred \$12.7 million in losses and expenses on the Shinas-related business and expect losses to exceed \$15 million. The suit seeks treble damages under federal and state racketeering laws, as well as damages for fraud, conspiracy, breach of contract and other alleged violations.

The suit is not GBE's first brush with legal trouble. The federal

trustee for a bankrupt New York employee leasing firm is seeking a \$2.1 million default judgment against GBE for money the contractor allegedly failed to pay before the leasing firm filed for Chapter 11 reorganization. GBE never answered the trustee's lawsuit, filed in October 2002, court records show.

In May 2002, New York state prosecutors indicted a state bridge inspector for soliciting and accepting a \$5,000 bribe from George Shinas to approve GBE's bridge-painting work. The inspector pleaded guilty to a felony bribery charge in June 2002 and was ordered to pay a fine and restitution, according to a spokesman for the state attorney general. George Shinas was not charged with wrongdoing in the case.

# Asbestos: Bill gains momentum

Continued from page 1  
claimants who met specific medical criteria.

The amount of compensation would be based on the nature of an individual's illness, with victims of mesothelioma, a lethal lung cancer, eligible for the maximum award of \$750,000.

In addition, awards would be offset by collateral source payments, such as those from health insurers.

Major asbestos defendants would pay assessments totaling \$45 billion into the fund, with their insurers contributing another \$45 billion. A special asbestos insurers commission would determine the liability of individual insurers.



**'With six operating asbestos trusts, and with 20 or so companies pending bankruptcy confirmation, a national trust and its single-payer format, such as the one in S. 1125, is long overdue.'**

Sen. Chuck Hagel, R-Neb.

Companies with asbestos-related liabilities and defense costs of less than \$1 million that are likely to avoid future liability under the FAIR Act could be required to pay a maximum additional \$14 billion into the fund. The rest of the money would be drawn from existing asbestos trust funds.

The payments would be made over a 25-year period, although the fund could operate for 50 years.

Another witness at the hearing—Sen. Patty Murray, D-Wash.—called upon the committee to add her recently introduced bill to impose a nationwide ban on the use of all asbestos—S.1115—to the FAIR Act

Sen. Murray also listed several criticisms of the bill, notably the fact that the measure, as currently written, appears as though it would not compensate victims who were exposed to asbestos outside the workplace, such as children who live near industrial sites containing asbestos.

The Judiciary Committee's ranking Democrat, Sen. Patrick Leahy, D-Vt., expressed concerns about the bill's provisions, saying, "I cannot support the bill as currently written."

Like Sen. Murray, Sen. Leahy said that the scope of the bill was

too narrow, and he questioned whether the fund would have enough money to pay all claimants.

In defense of S. 1125, Sen. Chuck Hagel, R-Neb., one of the bill's co-sponsors, called upon his experiences as a former trustee of the Manville Personal Injury Fund, a private fund designed to compensate victims of asbestos-related dis-

clined to comment or to return calls concerning the probable impact of S. 1125.

But a risk manager whose company never manufactured any products containing asbestos but that nonetheless has been hit with asbestos-related lawsuits welcomed the legislation, albeit with some reservations.

"I think any bill is going to help.

I think this will help the insurance industry, first of all, because the insurance industry struggles with reserving," said Roger Andrews, director of risk management for Cynthiana, Ky.-based E.D. Bullard Co.

During his 18 months as a trustee in the mid-1990s, Sen. Hagel said he learned that the fund faced several major problems, one of which was the inability to predict future claims. "When considering the pending legislation, all of us should try to become comfortable with the inevitable uncertainty associated with trying to determine the number of future claims," he said.

Sen. Hagel pointed out that the Manville Trust has low administrative costs and urged fellow lawmakers to seek as "low an administrative burden as possible" in designing the new trust fund. And the new trust fund is definitely needed, he stressed.

"With six operating asbestos trusts, and with 20 or so companies pending bankruptcy confirmation, a national trust and its single-payer format, such as the one in S. 1125, is long overdue," Sen. Hagel said.

S. 1125, he said, accomplishes the bipartisan goal of resolving the asbestos litigation crisis "in an imperfect, yet realistic and efficient way."

*Business Insurance* contacted several major defendants in asbestos-related lawsuits, but all of them de-

clined to comment or to return calls concerning the probable impact of S. 1125.

But a risk manager whose company never manufactured any products containing asbestos but that nonetheless has been hit with asbestos-related lawsuits welcomed the legislation, albeit with some reservations.

Questions surrounding allocation of costs for the fund led American International Group Chairman Maurice R. Greenberg to predict a day after the hearing that the bill had little chance of passing. Manufacturers will try to shift liability to their insurers, and insurers will try to shift liability to each other, said Mr. Greenberg at Sanford C. Bernstein & Co.'s annual strategic decisions conference in New York on June 5. "Too many companies have too many self-interest issues," he said.

# HIPAA: Privacy law brings new risks

Continued from page 3

fiable information about an employee from the group health plan," said Terri Rhodes, vp Oregon Health Systems, a Portland, Ore.-based managed care organization. Ms. Rhodes said she analyzed the issue in her previous job with a large health care system.

Employers don't want to inadvertently be swept under HIPAA's definition of a "health care provider," because "there is a huge administra-

**'The IBI's recommendation is a...feasible approach to eliminating the chance that an employer would inadvertently come under the health care provider definition.'**

Timothy J. Stanton  
Gardner Carton & Douglas L.L.C.

tive burden that is placed on anyone deemed to be a covered entity," Ms. Rhodes said. For example, employers under HIPAA have to identify a specific person to deal with privacy issues, issue notices to workers and establish a log to track each information disclosure, she said.

There is, though, a simple strategy employers can use to protect their disability management staff, Mr. Molmen said.

"It is possible to avoid being a covered health care provider by not using electronic transmissions," such as e-mail, when engaging in any of the defined transactions, such as counseling, he said.

The IBI is recommending that its members "have a policy to use the

phone, paper-to-paper fax, regular mail or oral communications to ask defined questions to avoid being covered by HIPAA," he said.

In addition, the IBI is recommending that members avoid using the Internet and dial-up lines and physically moving data by magnetic tape, disk or compact disk, he said.

This approach avoids the problem because the HIPAA law gives covered entity status only to a healthcare provider that "transmits any health information in electronic form" in connection with a specific transaction for which the HHS secretary has adopted a standard format for transmission, Mr. Molmen said. Such transactions usually apply to payments but could be used to regulate employers' disability management operations, he said.

Advising employers to take a backward step technologically may be seen as "antediluvian," he said, but it is a workable strategy to avoid the potentially larger problem. Mr. Molmen also advises that employers consult with privacy experts about federal and state laws.

"The IBI's recommendation is a conservative—but feasible—approach to eliminating the chance that an employer would inadvertently come under the health care provider definition," said Timothy J. Stanton, an employee benefits attorney with the Chicago-based firm of Gardner Carton & Douglas L.L.C.

"IBI's recommendation is a valid one" for employers who are getting protected health information from health plans, Ms. Rhodes said.

She also believes that employee authorization forms are another alternative, though Mr. Molmen questions the use of this option.

# APIW: Luck credits Bermuda

Continued from page 3

joined ACE as senior vp of financial lines. She was promoted to executive vp the following year and joined XL Capital in her current post in 1999.

Her strong technical background has been helpful as she has applied her skills to the insurance business, Ms. Luck said, noting that she enjoys the problem-solving teamwork at XL. "When you see problems solved by good teams of people and you can be a part of it, there's a lot of satisfaction in that," she said.

"It's still a business that relies on relationships," she added, whether they be dealings with customers or colleagues, and that too is a fulfilling part of her work.

Her job involves participation in many of XL's activities, from overseeing a new branding campaign, working on a professional development program to a host of others, and it is "incredibly stimulating," Ms. Luck said. "It's so varied," she said, "and I've been fortunate enough to develop skills to work in all these areas."

She stays busy outside XL's offices as well.

Ms. Luck is a government appointee to Bermuda's National Drug Commission, which last summer drafted a drug policy for the island. She also is a trustee of the Bermuda Biological Station, a job Ms. Luck says she particularly enjoys, having grown up as the daughter of a ship's captain.

As the deputy campaign chairperson of the Masterworks Foundation, Ms. Luck helps in the group's efforts to repatriate works of art by Bermudian artists or acquire works by famous artists whose paintings featured the island. "It's a great foundation," she said. "I'm a big supporter."

Looking ahead, Ms. Luck acknowledges that she is not much of a life planner. But, she adds, having traveled to XL's locations around the world and considering XL Chairman and Chief Executive Officer Brian M. O'Hara's vision for the company, "I think I've got plenty to keep me occupied. I'm very pleased to be where I am and have never worked where there is a greater degree of mutual respect."

## Deadline for directory nears

*Business Insurance* will publish its online Directory of Environmental Risk Management Consultants on June 30. Subscribers can access the directory at [www.businessinsurance.com](http://www.businessinsurance.com).

In addition, a ranking of the top environmental risk management consultants and the full directory will be included in the 2003/2004 Market Sourcebook, which will be published in December.

The directory is published as an editorial service; there is no charge to be listed. To be eligible for the directory, a company must provide environmental risk management consulting on an unbundled basis and must generate annual gross revenues of at least \$250,000.

Directory questionnaires must be submitted by the extended deadline of June 20. If your company meets the eligibility requirements but has not received a questionnaire, you may request one by calling Assistant Directory Editor Carrie Brittain at 312-649-5313.

Copies of the questionnaire also can be printed from the directory area of [www.businessinsurance.com](http://www.businessinsurance.com).

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# Late News

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PHOTO: AFP

**The PBGC has taken over the pension plan sponsored by Consolidated Freightways Corp.**

## PBGC takes over plan at Consolidated Freightways

The Pension Benefit Guaranty Corp. is taking over and terminating an underfunded pension plan sponsored by failed trucking company Consolidated Freightways Corp. The plan, which has about 8,000 participants, is underfunded by more than \$275 million, with assets of \$228 million and liabilities of \$504 million. Vancouver, Wash.-based Consolidated Freightways filed for bankruptcy in September 2002 and is now liquidating assets.

## Chubb expects to report higher catastrophe losses

Chubb Corp. has announced that its

preliminary estimate for aftertax catastrophe losses for the two months ending May 31 is \$49 million, up from the \$7.0 million in catastrophe losses Chubb posted in the entire second quarter of 2002. The insurer also said it expects to record a \$17 million aftertax charge in the second quarter as a result of a recent adverse arbitration decision against an insurance pool in which Chubb had been a 5.5% participant. The arbitration decision stemmed from property and business interruption losses arising from a fire in 1995.



## Senate panel to take up Medicare drug benefits

The federal Medicare program would be expanded to cover a portion of beneficiaries' prescription drug expenditures under bipartisan legislation the Senate Finance Committee will take up this week. While details are evolving, beneficiaries would be responsible for the first \$275 of drug expenditures. After that, they would pay 50% of prescription drug expenses, up to about \$3,500, and be responsible for 100% of expenses from about \$3,500 to \$5,300. Above that, beneficiaries would pay 10% of costs. A monthly premium of about \$35 would be charged. Participation would be voluntary.

## OSHA proposes changes to respiratory standards

The Occupational Safety and Health

Administration is seeking comments on proposed changes to its respiratory protection standards. The proposed rules are designed to prevent about 4,000 injuries and illnesses and 900 deaths annually caused by cancer and other chronic diseases, according to OSHA. The proposed standards include a new fit testing procedure and incorporate new assigned protection factors—or APFs—for respiratory protection programs. APFs are numbers that reflect the level of protection that given respirators provide in the workplace.



## RMS launches model for risk accumulation

Catastrophe modeling firm Risk Management Solutions Inc. has introduced a multiline computer modeling system to help calculate accumulations of exposures. The system is intended to help underwriters and brokers assess potential risk accumulation in dense urban areas. It analyzes a portfolio of property and workers compensation coverages and assesses vulnerability to a variety of terrorist attacks. The need to manage risk accumulations was highlighted by the Sept. 11, 2001, terrorist attacks, "which demonstrated the industry's vulnerability to concentrated losses in urban areas," according to the company.

## Briefly noted

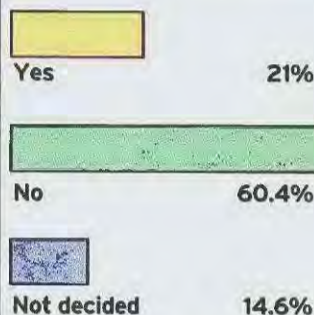
Jeremy Pinchin, previously Lloyd's of London's special counsel for claims related to the Sept. 11, 2001, terrorist attacks, has been appointed to the new post of head of reinsurance and claims....Average property/casualty renewal rates for coverage placed through Internet portal Marketscout.com increased by 18% in May....Hewitt Associates Inc. has completed its acquisition of Cyborg Worldwide Inc. Cyborg's subsidiary, Cyborg Systems Inc., provides human resource management software and payroll services. Hewitt paid \$43 million, plus potential performance-related payments, for the Chicago-based company....Ralph E. Jones III will become president and chief executive officer of Arch Insurance Group (U.S.) in New York effective July 1. He previously was CEO of Chubb Specialty Insurance and before that was managing director of Hiscox Insurance Co. Ltd. in London. Arch Insurance Group is the U.S. property/casualty insurance arm of Bermuda-based Arch Capital Group Ltd. Mr. Jones will report to Constantine Iordanou, president of Arch Worldwide Insurance & Reinsurance, who previously oversaw the U.S. insurance group.

## Check out BusinessInsurance.com

Items in the Late News column originally appeared in *BI's* Daily News feature on [www.businessinsurance.com](http://www.businessinsurance.com). Visit the *BI* Web site to sign up to receive *BI's* Daily News by e-mail.

## Online Poll [ 6/2 - 6/6 ]

Do you plan to add a debit card feature to your flexible spending account program?



## BI Stock Index [ 6/2 - 6/6 ]

Up-to-the-minute data for all 87 companies that comprise the *BI* Stock Index can be found at [www.businessinsurance.com](http://www.businessinsurance.com).

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

<b>BI Stock Index</b>	1950.81	↑ 2.33
<b>Dow Jones</b>	9062.79	↑ 2.40
<b>S&amp;P 500</b>	987.76	↑ 2.51

### Largest gains

Fairfax Financial Holdings	22.44%
Wellchoice Inc.	14.59%
PMA Capital Corp.	8.94%
Unico American Corp.	8.92%
NYMagic Inc.	8.89%

### Largest losses

Vesta Insurance Co.	-9.09%
CIGNA Corp.	-8.36%
Philadelphia Cons. Holdings	-8.06%
Chubb Corp.	-6.61%
XL Capital Corp.	-4.34%

### Weekly change by market segment

Brokers	2.81%
Insurers/Reinsurers	1.59%
Managed Care Organizations	3.66%

Source: CNET Investor ([investor.cnet.com](http://investor.cnet.com))

# Merger: WellPoint expanding its reach

Continued from page 1

Earlier this year, Maryland Insurance Administrator Steven Larsen rejected an application by CareFirst to convert to a for-profit insurer as "not in the public interest," effectively scuttling its takeover.

Because WellPoint and Cobalt both are for-profit insurers, the deal should close without regulatory objections, analysts say.

The deal is generally seen as positive, especially for Cobalt, which has struggled to reverse several years of large losses. That effort paid off in 2002, when the company posted net income of \$74.0 million, following a \$22.3 million loss in 2001 and a \$16.4 million loss in 2000.

Under the terms of the deal, which is expected to close by the end of the year, Cobalt would merge with a subsidiary of WellPoint. Cobalt shareholders would receive \$20.50—\$10.25 in cash and 0.1233 of a share of WellPoint stock—for each share of Cobalt stock. As of last Wednesday, the day after the deal was announced, WellPoint shares were trading at \$84.48 and Cobalt shares stood at \$20.70.

The addition of Cobalt will bring approximately \$1.5 billion in revenues and 809,000 medical members to WellPoint's existing \$17.3 billion in revenues and 13.5 million

medical members, WellPoint said in a statement.

Leonard D. Schaeffer, chairman and chief executive officer of WellPoint, said: "With a common Blue brand heritage and similar member-focused business philosophies, the combined organization will be well positioned to grow significantly in Wisconsin. We see opportunities to introduce innovative medical and specialty products and to deliver value to customers in all market segments," he said.

## The deal enhances WellPoint's presence in the Midwest and offers Cobalt greater financial security.

Analysts say the deal makes sense for WellPoint on several fronts.

"It fits WellPoint's strategy of acquiring smaller health plans that they can bring value to, particularly in the Blue Cross & Blue Shield environment," said Greg Crawford, an analyst with Fox-Pitt Kelton Inc. in San Francisco. "They can come in and add a level of expertise that some of the smaller Blues simply don't have."

The deal also will enhance WellPoint's presence in the Midwest.

"Cobalt brings to them another region, and it brings them strength in the Midwest," said Shellie Stoddard, a credit analyst with Standard & Poor's Corp. in New York.

With the purchase of Cobalt, "the whole Midwest is colored in with a combination of products WellPoint can offer," Mr. Crawford said. "They can really claim a lot of lives and a lot of leverage in the Midwest corridor."

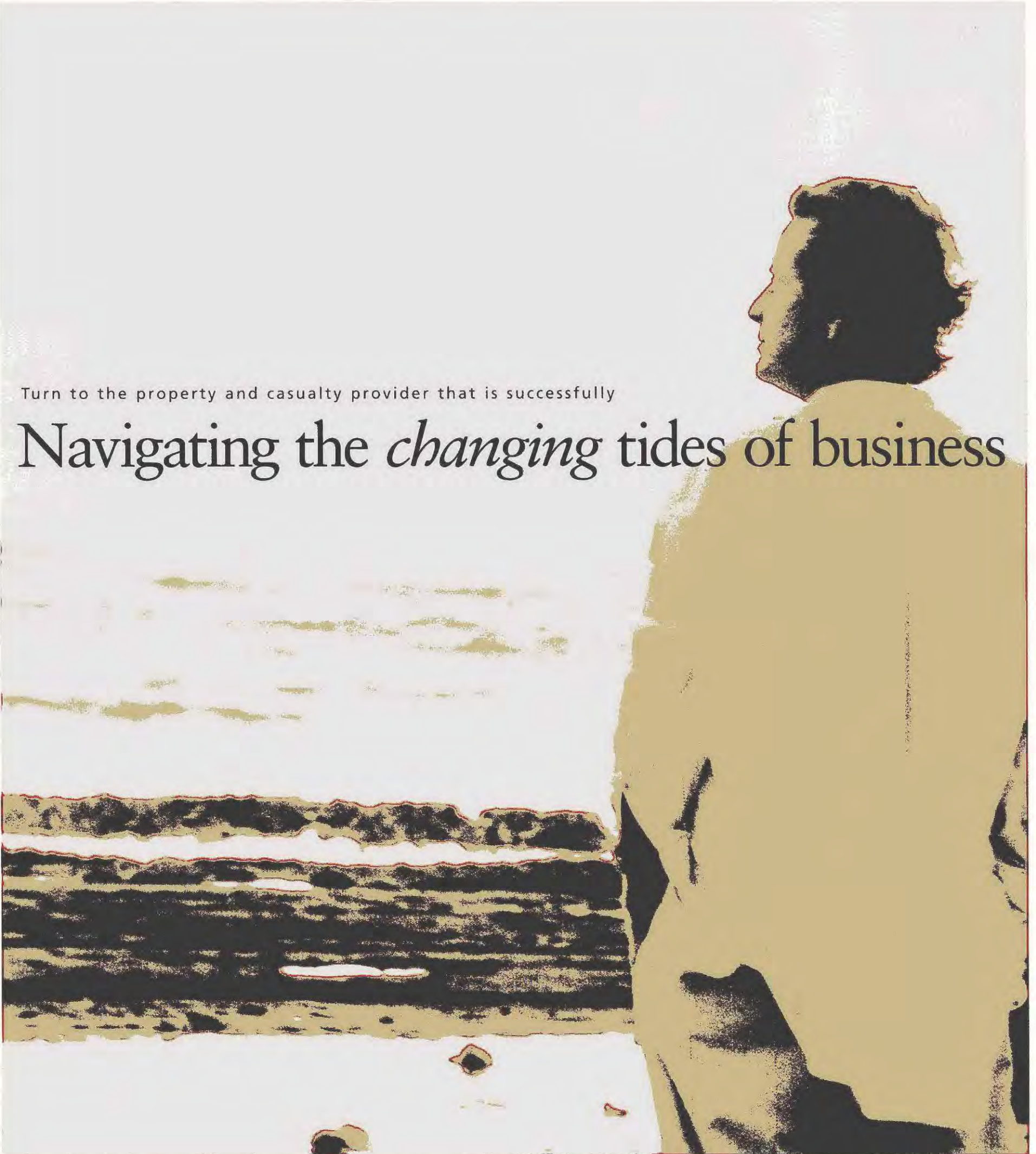
In addition to operating Blues plans, WellPoint also markets its health care products through other brand names such as HealthLink, which is offered in seven Midwestern states; and UNICARE, which is offered nationwide.

For Cobalt, the deal offers greater financial security.

As a combined company, "we'll have a stronger financial base and access to advanced technology that will provide broader health plan choices and improve communications with our members, physicians and employers here in Wisconsin," Stephen E. Bablitch, chairman and CEO of Cobalt, said in a statement.

Mr. Bablitch's role in the combined company has not been determined, a WellPoint spokesman said, noting that the company intends to keep management local in Wisconsin.

The acquisition is positive for



Turn to the property and casualty provider that is successfully

# Navigating the *changing* tides of business

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