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Late News

Belt to step down as head of PBGC

Bradley Belt, head of the federal government's pension insurance agency, will leave at the end of May. Mr. Belt, who joined the Pension Benefit Guaranty Corp. two years ago as executive director, did not give a reason for his departure—set for May 31—or what he intends to do after leaving the PBGC. His exit comes at a critical time for the PBGC, which has a nearly $23 billion deficit, the result of taking over several hugely underfunded pension plans in the last several years.

AGL gets tentative OK for benefits in captive

Natural gas distributor AGL Resources Inc. has received tentative approval from the U.S. Labor Department to fund employee benefit risks through the Hawaii branch of its British Virgin Islands-domiciled captive. The captive would reinsure long-term disability, life insurance and accidental death and dismemberment policies written through a unit of Hartford

See **LATE NEWS**/page 23

Inside

AFTER THE FLOODS
Alabama may be the next state to pass captive laws.
PAGE 3

QUALITY TALKS
RIMS steps up quality push with industry forum.
PAGE 3

CRISIS FALLOUT

Zurich settles some bid-rigging charges

Questions remain over future Spitzer pact, client payouts

By RUPAL PAREKH

SCHAUMBURG, Ill.—Zurich American Insurance Co.'s $171.7 million settlement last week resolves charges of price fixing and bid rigging by nine states, but some uncertainties—including the determination of which clients will be eligible for restitution under the deal and the impact of future settlements with other states—still remain.

Under Zurich's settlement—reached with the attorneys general

Settlement limits participants' ability to pursue other claims

PAGE 22

of California, Florida, Hawaii, Maryland, Massachusetts, Oregon, Pennsylvania, Texas and West Virginia, along with Florida's insurance commissioner—the insurer agreed to make payments to affected policyholders nationwide and to reform certain business practices, though it admits to no wrongdoing.

Regulators alleged that Zurich, the U.S. arm of Swiss insurer Zurich Financial Services Group, was one of several firms to participate in an anticompetitive "pay-to-play" scheme to rig bids for commercial insurance and pay brokers undisclosed contingent commissions for steering business to them.

"Businesses shopping for commercial insurance were deceived into believing they were getting the best deals available," Texas Attorney General Greg Abbott said in a statement. "For its part, Zurich showed a willingness to submit fake quotes and was rewarded with pro-

See **ZURICH** / page 22

Insurer consolidation set to pick up in pace as market softens

But past losses may stifle deals

By JUDY GREENWALD

Merger and acquisition activity in the commercial property/casualty insurance industry may increase this year as insurers pursue growth in a softening market, say some observers.

These observers say more mergers may materialize despite the St. Paul Travelers Cos. Inc.'s denial of a rumored merger between the St. Paul, Minn.-based insurer and Zurich, Switzerland-based Zurich Financial Services Group Inc.

Most believe, though, that a major U.S./non-U.S. deal is unlikely. M&A activity instead is likely to be focused on the U.S. market, observers say.

But some say legacy issues, among other factors, will discourage insurers from pursuing even domestic M&A activity to any significant degree.

John Iten, a director at Standard & Poor's Corp. in New York, said that prospects for M&A activity are "actually looking better this year than in recent years." Companies "have cleaned up their balance sheets to a large degree, which makes them somewhat more attractive as targets," he said. Furthermore, "the potential acquirers have much stronger capitalization" now, Mr. Iten said.

Several factors indicate there will be more M&A activity, said Peter Porrino, global director of insurance services at Ernst & Young L.L.P. in New York. "No. 1, you've got rates flattening out, at best," in contrast to the last the three years, when rate hikes helped insurers grow organically, he said.

Furthermore, the $171.7 million settlement reached earlier this month by Zurich American Insurance Co. with nine state attorneys general and one insurance commissioner (see related story) is expected to be followed by others, Mr. Porrino said, "and that will remove some of the overhang that we've seen out there in the marketplace."

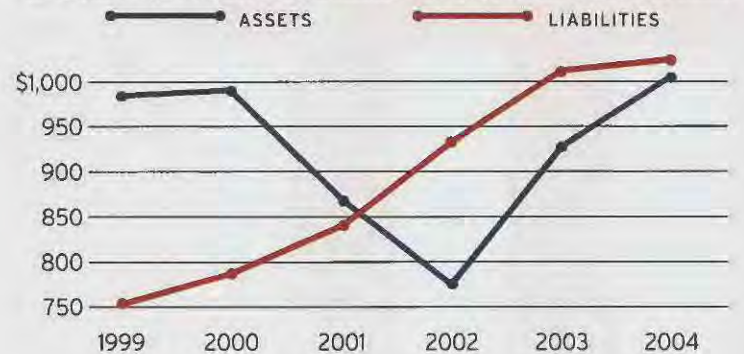
"The big question, in my mind,

See **CONSOLIDATION** / page 20

Double trouble for defined benefit plans

As interest rates have fallen, driving up liabilities, asset values have fluctuated due to big swings in the equities market.

Changes in total pension plan assets and liabilities of 100 very large U.S. companies, in billions



Source: Milliman Inc.

Big chill for pensions as plan freezes grow

By JERRY GEISEL

What started as a trickle of employers freezing their defined benefit pension plans is becoming a flood.

While pension plan freezes once were an unusual occurrence, last week alone, three large employers—including multibillion-dollar giants WellPoint Inc. and Unisys Corp.—announced that they are phasing out their pension plans in favor of enhanced 401(k) plans.

Those phaseouts follow a wave of freezes unveiled in recent months by such well-known companies as Alcoa Inc., General Motors Corp., Hewlett-Packard Co., IBM Corp., Lockheed Martin Corp. and Sprint Nextel Corp.

What is striking about the freezes is the differences in the financial resources of the companies making the changes, the range of industries and plans that are being affected, and the variety of strategies that are

See **PENSIONS** / page 22

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INTERNATIONAL NEWS

CASH MOVERS PAY
Bank heists mean higher premiums for security firms.
PAGE 17

FSA HOLDS OFF
U.K. regulator says market progress makes contract rules unnecessary.
PAGE 17

AON Focus

www.aon.com/focus

Disease, kidnap and ransom and terrorism risks are intensifying for global filmmakers.

MARCH 27, 2006

Bird flu poses threat to filmmakers shooting abroad

Chris Palmer is director of risk control for Aon/Albert G. Ruben. He advises directors and producers about the risks they face when making movies at home and overseas, and he is author of the 2006 Risks in Global Filmmaking Map, which is available at www.aon.com/filmrisk. Chris can be reached at chris_palmer@aon.com.

Filmmaking is a risky business even in the United States. During last year's hurricane season, a number of film crews had to be evacuated from the Gulf Coast, and some were exposed to financial loss as a result. These risks, however, are minor compared with those facing filmmakers shooting abroad. For these producers, risks including disease, kidnap and ransom and terrorism bring a new dimension to risk management.

According to findings published in the *2006 Risks in Global Filmmaking Map*, situations contributing to risk in many regions across the globe have not greatly improved over the past year. The Middle East is still a hotbed of terrorist activity and many countries in Africa are in economic turmoil. Some of the riskiest countries for filmmaking are Nepal, Kenya, Thailand, Pakistan and Zimbabwe.

However, in some areas, economic growth and/or a decrease in terrorism risk have created a more appealing business environment. The countries that present less risk to filmmakers compared with last year include Morocco, Nicaragua and the Slovak Republic.

In general, disease risk, kidnap and ransom risk (in some areas) and terrorism perils are intensifying. Filmmakers should be particularly concerned about bird flu, especially since it has spread so widely. If the virus makes the jump from animal-human to human-human transmission, it could have a catastrophic impact on filmmaking. In order to slow the spread of the disease, authorities would likely stop all international travel, meaning that nothing – not film reels, equipment or people – would be able to go to or come back from a location, perhaps indefinitely. This possibility of a global quarantine is a serious risk that should be considered carefully when planning film production.

Other threats facing filmmakers today are kidnap and ransom and terrorism. In Mexico, for example, kidnapping is now the second most prevalent criminal activity after narcotics trading. In fact, in 2005, Mexico recorded more incidents than Colombia and became the number one kidnap hotspot in the world. The threat of terrorism today is not only coming from international extremists, but it is also emerging from domestic single-interest ideological groups and from individual criminals that are cross-fertilizing and becoming more sophisticated.

Even with all the associated risks, film producers around the world will continue to seek out realism and push the limits of creativity. To keep their actors, crews and equipment safe, they must understand the threats they face and take all possible measures to protect themselves. This need includes assessing all the potential risks, developing solid risk mitigation and emergency response plans and transferring risk, when appropriate. Then, hopefully, the closest we all get to the threats outlined above will be in watching films about them on the big screen.

Go to www.aon.com/focus *to receive Aon Focus by e-mail.*

Technology companies must understand and mitigate risk to directors, officers

Technology companies face inherent risks, many of which arise from the dynamic nature of the industry. Shareholders often hold directors and officers accountable for a technology company's rapidly fluctuating business profile. As severe judgments and settlements against directors and officers continue, attracting and maintaining qualified professionals to positions that carry so much scrutiny and risk is a challenging task. In a March 30 webcast, "D&O Exposures in a Climate of Increasing Corporate Governance and Litigation," industry experts will discuss how public companies can manage, mitigate and avoid these risks. To register for the webcast, visit **www.aon.com/techseminars.**

Medicare secondary payer rules clarify model Part D notices

Medicare Part D model creditable coverage notices have led some employers to believe they can exclude active employees and their dependents from health or prescription drug plans if the employees are covered by, or eligible for, Medicare. However, the Medicare Secondary Payer (MSP) rules do not permit this exclusion. MSP rules require employers to allow older active employees to choose being covered by the employer's plan alone, dropping employer coverage and having Medicare coverage only, or having both Medicare and employer coverage with the employer plan as primary coverage. For more regulatory developments, visit **www.aon.com/focus.**

"We continue to push creative limits. How do we ensure that our productions are safe?"

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Inside

Bird flu response plans more common in Asia
Survey finds fewer U.S.-based units of multinationals prepared for pandemic.
Page 4

A culture of health, balance needed in the workforce
Employers find they must encourage workers to adopt healthier lifestyles.
Page 4

Settlement highlights need for insurer transparency
Bid-rigging settlement shows need for disclosure, an editorial says.
Page 8

Rising coverage costs seen for cash-in-transit firms
Recent raids on armored-car companies will likely raise rates for cash movers.
Page 17

Online poll - [3/20 - 3/24]

Do you believe state regulation of the insurance industry is:

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Departments

Advertiser Index 22
Business Resources 16
International 17
Opinions 8
Perspectives 10
Products & Services 16
Professional MarketPlace 18
Ticker 23
Paul Winston 6
World Updates 17

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Media winning more libel cases

But new risks involve intellectual property

By GLORIA GONZALEZ

NEW YORK—News organizations are winning more trials involving libel and defamation claims than ever before, a development their insurers view as positive but unlikely to affect the price of their insurance policies.

Despite the media's relative success in defending these claims, rising defense costs continue to be the main influence on the pricing of media liability products. And the key exposure for media companies has shifted away from these traditional claims toward intellectual property risks.

According to a recent report by the Media Law Resource Center, media defendants are winning more trial verdicts than they have in the past. The win rate has gone up from 36.3% in the 1980s to 53.8% so far this decade, according to the MLRC, a New York-based nonprofit organization founded by media organizations to monitor industry developments and promote First Amendment rights in the libel, privacy and related legal fields. In 2005, there were 14 trials involving libel, privacy and other related claims based on the gathering and publication of information. Media defendants won seven trials and lost seven trials, the report stated.

"It's good to see that the media are winning their share of these cases," said Mike DiSilvestro, assistant vp, claims, for Media/Professional Insurance, a Kansas City, Mo.-based unit of Aon Underwriting Managers that is a major provider of media liability insurance. "It's good news because we're defending these cases."

But this trend tells only a small part of the story of the market for media coverage, insurers say. Only a small number of claims filed against the media actually make it to trial, with most claims either dismissed at summary judgment or settled or mediated prior to trial, they say. For example, the average number of media trials is about 14 per year, down from 27 in the 1980s. "The media is getting smarter in terms of deciding what cases to take to trial and what cases to settle," said Leib Dodell, president and chief executive officer of Media/Professional.

Good news for the news media

News media defendants are winning a higher percentage of trials than ever before:

	Verdicts finding for plaintiffs	Verdicts for defense	Percentage of defense wins
1980-89	267	97	36.3%
1990-99	184	74	40.2
2000-05	80	43	53.8

Source: Media Law Resource Center's "Report on Trials and Damages"

Media companies have become better at mitigating these risks by vetting content prior to publication and making use of insurance solutions, said Chad Milton, senior vp and national practice leader for media liability for Marsh Inc. based in Kansas City, Mo. "If you're a news organization, defamation is still an everyday exposure, but it's now a more

See MEDIA / page 20

RIMS quality forum urges improvements

Focuses on timeliness, accuracy

By SALLY ROBERTS

NEW YORK—The Risk & Insurance Management Society Inc. last week stepped up its efforts to promote quality improvement in the insurance buying process at a quality improvement forum it convened in New York.

More than two dozen risk managers and industry executives met to discuss quality issues and were presented with preliminary findings from a recent quality survey, which, among other things, revealed risk managers' views on the accuracy and timeliness of policy issuance.

RIMS announced in February that it would hold the forum to encourage insurance market professionals to adopt the tenets of the society's quality improvement process and to emphasize the importance of improving business practices among insurance buyers and their business partners.

RIMS President Ellen Vinck moderated the meeting, which drew some of the top leaders of the world's largest brokerages, insurers and associations, including: William Malloy, president of Marsh Inc.; Patrick G. Ryan, executive chairman of Aon Corp.; and Mario Vitale, chief executive officer of Willis North America.

The meeting was closed to the press, but, according to a RIMS statement, participants discussed individual concerns regarding current industry practices in a "frank and interactive dialogue" and concluded that there is a need to improve the timeliness and accuracy surrounding the insurance placement process.

RIMS also presented at the meeting preliminary findings from its 2006 Quality Survey of more than 700 risk managers from the United States and Canada.

According to a copy of the preliminary findings, obtained by *Business Insurance*, 634 U.S. and 71 Canadian RIMS members provided responses. While exact figures were not available, the survey does provide information on risk manager satisfaction with policy issuance.

A sizable majority of respondents said they were either "very dissatisfied" or "somewhat dissatisfied" with the "timeliness of insurance policy issuance."

Among other findings, the survey provided information on whether broker and policyholder interaction has changed since state and regulatory authorities began investigating the compensation practices of the insurance industry in 2004.

For example, the vast majority of respondents—close to 600—said that they had not switched brokers as a result of the investigations or the ensuing publicity.

A similar number said that they had not seen a reduction in premiums as a result of insur-

See SURVEY / page 23

Petroleum storage tanks near Mobile, Ala., stand in flood waters in August 2005. A state task force concluded that allowing captives to form could make windstorm risk coverage more affordable for businesses.

Alabama prepares to establish state as captive domicile

By MICHAEL BRADFORD

MONTGOMERY, Ala.—Hurricanes that have hit Alabama over the past two years have spawned captive legislation in the state.

A bill establishing Alabama as a captive domicile is scheduled to receive a second reading in the state's House of Representatives this week, and sources say it is expected to pass and be signed by Gov. Bob Riley. That would make Alabama another in a lengthening list of states that have adopted captive laws.

The captive movement in Alabama gained momentum from a task force appointed by Gov. Riley and Alabama Insurance Commissioner Walter A. Bell after Hurricane Ivan battered the state in 2004. The Hurricane Insurance Issues Task Force was created to study ways to make windstorm property coverage more affordable and available to residents and businesses in coastal areas, which were hardest hit by Ivan.

"We had been talking about a captive law for a number years. The impetus was the task force formed after Ivan," said a spokesman for the insurance department.

The task force concluded that allowing captives to form in the state would be a way for businesses, and particularly associations, to affordably fund their risks and ensure they have coverage.

"We were ground zero in 2004," said state Sen. Bradley Byrne, R-Baldwin, who sponsored the captive legislation.

See ALABAMA / page 20

More Asian companies ready for bird flu

15% of U.S. multinational units have pandemic plans

U.S.-based units of multinational companies polled in a recent survey are less concerned than those in Asia that an outbreak of avian influenza could harm their employees and business operations.

The survey of 90 multinationals by Watson Wyatt Worldwide shows that just 15% of the U.S.-based units of those global companies have plans in place to respond to an outbreak.

More than double that number—32%—of multinationals' operations in the Asia-Pacific region, where the illness originated, have implemented plans to handle an outbreak, the survey found.

The multinationals that responded to the survey are Watson Wyatt clients. Seventy-eight percent of the respondents are headquartered in the United States, while the remainder are based in Hong Kong, the United Kingdom, Bermuda, Finland, India, Singapore, Netherlands and other nations.

"Planning has been around preparedness for Asian operations," said Robert Wesselkamper, Washington-based director of international consulting at Watson Wyatt. Similar planning for operations in America "is lagging somewhat," he noted, but U.S. multinationals are among those who have plans in place for their Asian operations.

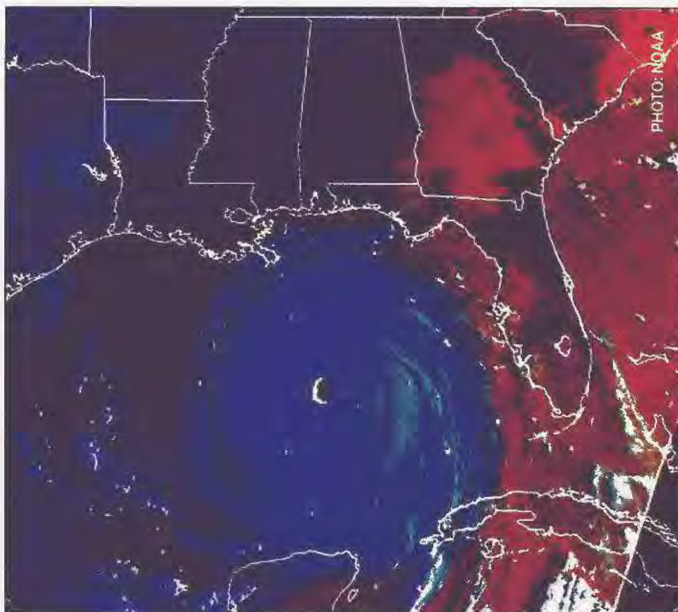
Of the respondents operating in the United States, 48% said they are considering a plan for facilities there, while 52% are considering a plan for their Asia-Pacific units. Thirty-seven percent of the respondents do not plan to implement safeguards at their U.S. operations against an outbreak, while 16% of those with Asia-Pacific operations said they take a similar view of preparing for the possibility of problems related to the avian flu.

Those who are implementing plans are focusing on taking care of "their employees, their clients and their customers, as well as addressing their vendors' issues," said Mr. Wesselkamper.

Providing those parties with details of response plans that are in place or plans to implement them is the focus of many of the multinationals, Mr. Wesselkamper said. "Communication is key right now."

—By Michael Bradford

Asian units of multinational entities are more than twice as likely to have plans for an avian flu outbreak as U.S. units, a survey has found.



Risk Management Solutions Inc. updated its catastrophe models to account for increased hurricane activity.

RMS cat models undergo update

Hurricane frequency cited

NEWARK, Calif.—Risk Management Solutions Inc. has updated its catastrophe models to reflect higher insured losses that are expected from increased hurricane activity that the modeling firm says should be continue for at least the next five years.

RMS said its updated catastrophe models consider the elevated levels of hurricane frequency and intensity in the Atlantic Ocean and use a shorter historical average baseline to project storm landfalls and the destruction they will cause.

As a result, the models project that annualized insurance losses will rise by an average of 40% across the Gulf Coast, Florida and the southeastern United States, compared with losses previously calculated by using long-term historical averages. Projected losses are 25% to 30% higher in the mid-Atlantic and northeast coastal regions than those from previous calculations.

Robert Muir-Wood, chief research officer at Newark, Calif.-based RMS, said in a statement that while the experts RMS convened to help develop its new view of hurricane risk "hold different climatological perspectives on the underlying causes of elevated hurricane activity, they agreed unanimously that a forward-looking view of risk should reflect a higher probability of land-falling hurricanes than is represented by long-term historical averages."

—By Michael Bradford

Employers setting sights on building culture of health among workers

By JOANNE WOJCIK

WASHINGTON—Realizing that having regular medical checkups and taking prescribed medication may not always be enough to ensure long-term wellness, many employers are taking a holistic approach by encouraging their employees to adopt healthy lifestyles.

"It is all about balance," said Brenda Barlek, manager of health and welfare benefits at Alcoa Inc., who spoke at the session "Actionable Informatics—Beyond Reports and Data Dumps" during the National Business Group on Health's Business Health Agenda 2006, held March 15-17 in Washington.

"We see far more employees who are walking at lunch time, participating in everything from aromatherapy sessions on site to stress management, different nutrition programs and activities like smoking cessation," said Fred Williams, director of benefits and strategic alliances at Quest Diagnostics Inc., who spoke during a session entitled "Decision Support and Health Management Tools for Employees."

"We're focusing our attention on building a culture of health

Continued coverage on page 14

throughout the company," said David H. Sensibaugh, director of integrated health at Eastman Chemical Co., a global producer of chemical, fibers and plastics based in Kingsport, Tenn., who also presented at the decision support tools session.

Indeed, "employers can have a profound influence over the health of the population," said Lisa Douglas, assistant vp of strategy, product and marketing at Bloomfield, Conn.-based CIGNA HealthCare, who spoke during the actionable informatics session.

Some of the approaches she suggested employers use to help promote healthy lifestyles include serving healthful fare in company cafeterias, changing vending machine offerings, opening fitness centers, conducting health screenings and health education programs and even providing incentives for joining proven weight-loss programs such as Weight Watchers.

After an analysis of Alcoa's 2003 medical claims data by Thomson Medstat, Alcoa, a major producer of aluminum based in Pittsburgh, found that between 9% and 11% of

See WELLNESS / page 13

Mental health programs bring payoff for employers

By ROBERTO CENICEROS

LONG BEACH, Calif.—Investing in employee mental health assessment and treatment programs reduces absence, increases productivity and helps address overall health care and disability costs, speakers told a workplace behavioral risk conference.

Pitney Bowes Inc.'s data, for example, revealed that one of its older-generation benefit plan designs limiting mental health treatment actually drove up the company's overall health care-related expenses, said David Hom, the company's vp-global human resources strategy in Stamford, Conn.

In contrast, the company found that easing access to its employee assistance program increased its mental-health spending. But it also has lowered absence, increased productivity and resulted in health care cost savings that can be passed on to shareholders, Mr. Hom told the conference sponsored by the Disability Management Employer Coalition.

A growing number of employers like Pitney Bowes are escalating their attempts to identify and address employee behavioral issues, according to the San Diego-based DMEC. A February survey of 55 DMEC employer members nationwide found that 97% identified behavioral risk as a growing employer concern.

As an example of how employers are addressing the risks, AOL Inc. will expand a pilot program that tackled mental health-related short-term disability claims filed by employees at one of its customer service call centers.

Under the program, claimants are directed to obtain functional assessments from a network psychiatrist before their STD claims can be processed, said Patrick Leary, AOL's senior benefits consultant in Dulles, Va.

Behavioral health disabilities were

See DMEC / page 12

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PAUL WINSTON

Associate Publisher/Editorial Director

A postcard from Europe

I am in London as I write this, preparing for the launch of *Business Insurance Europe*, a new publication of *Business Insurance* that will deliver in-depth news to risk managers throughout Europe.

In speaking with people here, someone asked me whether I would write a commentary for the new publication, which is a very good question, the answer to which is I don't know. While I know there are plenty of hard-news stories and interesting risk management trends in Europe for the magazine to cover, I was not sure if there was the sort of "special" news story that has informed my decisions on what to comment about. Could Winstonia open a consulate or embassy in the European Union? I wondered. So I opened a few newspapers and browsed the Web. Let me share with you some of what I found.

Flatulent furniture

A schoolteacher in England is seeking £1 million in damages for sexual discrimination from local authorities. Her complaint: for four years, she was stuck with a chair that made embarrassing noises. Repeated requests for a new chair were ignored, she claims, and when the school did receive new "executive-style chairs," they went to male counterparts at the school.

Naturally, nothing amuses a schoolchild more than flatulence, so you can imagine their reaction to an authority figure sitting on the equivalent of a whoopee cushion on a daily basis. The teacher became an object of ridicule, which she claims resulted in her developing depression, and ultimately resigning from her job after 26 years.

"It was a regular joke that my chair would make these farting sounds, and I regularly had to apologize that it wasn't me, it was my chair," she told the Daily Telegraph.

I suspect that the school may be glad to be rid of a teacher who, in four years, could not manage to solve the situation on her own by finding something else to sit on other than her noisy chair.

But if this claim is upheld, it signals that the foul odor of frivolous litigation continues to spread to Europe from America.

Liberté, egalité, l'iPod

In France, hundreds of thousands of protesters have taken to the streets in angry protests.

The most common explanation given is that they are unhappy with proposed new labor rules to address chronic unemployment. The rules would encourage employers to hire young workers by making it easier to fire them at will, as is the practice in the United States and elsewhere.

This is a story in itself, but it appears there is another issue causing French disenchantment, as well: the iPod music monopoly.

France's lower house of Parliament last week passed legislation that would require Apple to share its proprietary music encoding technology with rival firms. Currently, the only music format that plays on the popular iPod is one found on Apple's Internet-based iTunes store. The change, if upheld by the Senate, would require Apple to share the code, enabling iPods to share and play music in other formats and allow other devices to download music from the Apple store.

France's move could prompt other countries to take a closer look at proprietary encoding systems, which are designed to keep customers by preventing them from using rival formats. Sony and Microsoft, for example, also have proprietary encoding, but it is the iPod player that commands 70% of the market for music downloading worldwide.

If the legislation is enacted, Apple could withdraw from France. If that occurs, expect rioting to begin in earnest (at least among those who can take off from a job to do so).

Make mine a Tuborg

In Denmark, according to a BBC report, manufacturing workers are up in arms over efforts to limit the consumption of beer during working hours. After all, operating heavy equipment and precision machinery is hard work, and nothing refreshes like a six-pack of Carlsberg to get through the day.

According to the report, only 13% of manufacturing company canteens now provide beer, down from 75% in 2003. In 2005, workers at the Harboe Brewery went on strike over efforts to limit their on-the-job consumption (which might have served as quality control) by requiring them to enjoy their beer while on break rather than the production line, the BBC noted.

Clearly, issues like productivity, health and safety continue to hamper having a good time on the job.

There is more I could write about from Europe, but I will save it for another time. To receive a complimentary subscription to *Business Insurance Europe*, please sign up online from the subscription link at *www.BusinessInsuranceEurope.com*.

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

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Editorial

Bid-rigging settlements should change practices

AMONG THE CHARGES leveled against insurance industry companies beginning in October 2004, bid rigging rightly drew the most visceral reaction. The notion that brokers and insurers would conspire to provide false quotes during the placement process was—and remains—both shocking and utterly unacceptable.

Zurich Financial Services Group's announcement last week of a settlement with nine state attorneys general and an insurance commissioner over its involvement in bid rigging is welcome news, but the overall issue is far from settled. ZFS' Zurich American Insurance Co. unit, along with other insurers, was mentioned in New York Attorney General Eliot Spitzer's landmark lawsuit against Marsh & McLennan Cos. Inc., but not named as a defendant. Surprisingly, Mr. Spitzer is not one of the state attorneys general with which Zurich settled, and the insurer said it is still in talks with him.

As we report on page 1, the Zurich unit has agreed to pay nearly $172 million but does not admit to violating any state or federal law. That may be so, but if the company agreed to manipulate pricing to the detriment of its policyholders, then it clearly crossed what should have been recognized as a brightly drawn ethical line.

Contingent compensation of brokers, which Mr. Spitzer and others alleged was the underpinning of big-rigging activities, is not now and never was illegal. To suggest otherwise ignores the facts, but it doesn't mean contingent pay is in the best interest of the client, either. Any reasonable person can see there is a considerable difference between an insurer paying bonus commissions and cooperating in a scheme to defraud policyholders.

We predict that other insurance companies will reach similar settlements, and we hope that, like Zurich, they commit to changing their business practices to ensure disclosure of compensation arrangements. Brokers and insurers must operate in a transparent environment, for the benefit of their customers. Their clients deserve—and should demand—nothing less.

U.K. insurers' contract steps forestall regulatory action

THE DECISION BY the United Kingdom's insurance regulator to hold off on its threat to impose rules to ensure that the London market meets contract certainty targets should be cautiously welcomed for two reasons.

Firstly, any decision to suspend regulatory action after it has been determined that there is no practical need for the action is a welcome, common-sense approach to regulation.

In its approach, the Financial Services Authority recognized the importance of the need for policyholders to have coverage terms agreed to before inception and set out a fairly short timetable to achieve that goal. It then warned insurers that it would get more involved in the process if they did not meet intermediate goals that had been set. When insurers more than achieved those goals, rather than charging ahead with a rigid formal approach that can so often be the result of regulatory involvement, the FSA backed off.

Secondly, and more importantly, the announcement by the FSA would seem to signal that London market policyholders will enjoy contract certainty—defined as "the complete and final agreement of all terms (including signed lines) between the insured and insurers before inception"—by Jan. 1, 2007.

Such a development should help reduce some of the seemingly absurd coverage disputes that can develop when a loss occurs before coverage language has been fully determined.

But should the London market's efforts to ensure contract certainty on its own prove less effective than was hoped, the FSA should not hesitate to again assert the need for regulation.

Clarity of coverage for commercial insurance buyers in the United Kingdom—and everywhere else—is long overdue, and the FSA appears to be taking a firm but fair stance to make sure that is achieved.

Schillerstrom

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

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Perspectives

Productivity does not end with age

Incremental steps are key to securing older workforce

By Kenneth Mitchell

Baby boomers are living healthier lives and working longer and, as such, are poised to redefine the traditional "retirement years." Boomers will be creating a new life stage—the "productive-aging" stage—wherein they will continue working beyond retirement not only because they will need to but also because they will want to. Working yet "retired" will be a common boomer paradox.

This new stage brings both opportunities and concerns that employers and health care providers, as well as health and disability insurers, need to take note of and prepare for accordingly.

Illnesses, injuries and health problems are a reality for boomers, with health and disability problems arising from chronic disorders. UnumProvident Corp.'s long-term disability database indicates that the three most common impairments contributing to long-term work disruption for individuals between the ages of 40 and 60 are: back disorders and musculoskeletal injuries (accidents), at 25%; cancer, at 17%; and cardiovascular and circulatory disease, at 8%.

But these three primary impairments are also being addressed through advances in medical technology, screening and treatment, thereby offering great promise of the reduction of both mortality and morbidity and increased functional capacity as we age. Thus, individuals will be working longer and remaining healthier, creating a very different workplace and workforce. These additional 20 to 25 years of time following traditional retirement—the productive-aging period—will allow boomers to remain engaged and will become part of boomers' sense of self.

Productive aging refers to a worker who has the quality of life, power and incentive to produce or create at an optimum level during the latter stages of his or her work life-from over the age of 50 to about the age of 70. The protection of that functional work capacity is a key element in the productive-aging equation.

Productive aging is not based on a single concept but is built on a series of ideas. The basic foundation for productive aging is access to and the timely application of appropriate health care services that prevent the onset of pathology, mitigate the diminishing of capacity due to chronic impairment and protect the functional capacities related to strength, flexibility and endurance. Appropriate and balanced nutrition is vital to productive-aging functions.

The second tier of productive-aging concepts relate to continued cognitive and social engagement, creating a sense of hopefulness and honing individuals' coping skills to emotionally adapt to stressors generated by inevitable health and medical predicaments. Hopefulness in the form of positive job satisfaction and the expectation of a better, more secure future help minimize depression and stress-related impairments.

The third and fourth tiers relate to an individual and an employer's ability to structure a flexible and accessible work environment. Ultimately, an individual's capability to move independently within and between home and work offers him or her the best opportunity for fully productive aging.

The following incremental, collaborative steps should be taken within industries to recognize that their workers who are over the age of 50 are a critical part of their current and future workforce:

No. 1: Identify and reduce risk factors within the older workforce. The cost of poor health and aging is minimized through timely risk management.

No. 2: Develop and apply corporate policies that invite and reward worksite flexibility and accessibility.

No. 3: Reward employees for accepting responsibility for their personal well being and protecting their work capacity.

No. 4: Provide incentives for continued productivity by supporting services that reduce the impact of complex family obstacles on staying productive.

No. 5: Apply corporate resources to measure the impact of productive-aging programs and their subsequent return on investment.

No. 6: Offer programs within the organization that promote generational equity in protecting productivity. Reduced productivity is not an older-worker issue but an all-worker issue.

Age is not a disability, and aging is not a disease. Productivity does not have to stop at a certain age or with the onset of an injury or illness. The maintenance and restoration of good health is the cornerstone of the productive aging life phase.

Kenneth Mitchell is vp of corporate return-to-work program development at UnumProvident Corp. in Chattanooga, Tenn.

Novels by ex-industry insiders explore dark side of insurance

"Adrian's Bordereaux"
By Ron Bogg
Published by Authorhouse
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Bloomington, Ind. 47403
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By Stephen Gray
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By Sarah Veysey

Book Review

The insurance world has not been short on intrigue and drama lately, with headlines about investigations, indictments, subpoenas and settlements in recent months. Amid this, a new literary genre appears to be emerging—the insurance thriller.

Two recently published novels explore the themes of deception, double-crossing and even murder in the insurance and reinsurance industry. Both are fiction, written by former market insiders, but readers will no doubt recognize some of the traits and characteristics of the insurance market types described.

The title character of "Adrian's Bordereaux"—Adrian Carstairs, a charismatic millionaire Lloyd's of London broker—has died of a heart attack, leaving his former colleague Tony Lancaster concerned about Crystal Palace, the Guernsey-based reinsurance company the two secretly owned. With the help of attorney Samantha Dunstable, Tony sets out to close down Crystal Palace.

But Tony, a London-based broker at Chicago-based Bond & Powell, is not the only one who knows that there is something fishy about the Crystal Palace scheme. Tony is receiving mysterious threatening phone calls from someone named Uri, who claims to have given Adrian funding for Crystal Palace.

Meanwhile, in Chicago, B&P's boss decides to send quiet, mild-mannered widower Hank Galvin to London to investigate "Adrian's bordereaux"—a list of dubious-looking contracts underwritten by the Guernsey-based entity. But before long, Hank, too, is being threatened.

"Adrian's Bordereaux" is sharply written, well paced and, at turns, both funny and sad. Amid the subterfuge and intrigue, its protagonists deal with emotional and moral issues. While the novel contains lots of insurance and reinsurance background, readers from all walks of life will enjoy the slick writing and page-turning storyline.

"Bad Boy," by Stephen Gray, is set at Lloyd's in the late 1970s and comes, intriguingly, with a commendation from Gene Simmons, co-founder of the American rock band KISS, who says, "To use the American vernacular, 'Bad Boy' rocks!"

The novel's protagonists, Michael and Mac, are childhood friends who grow up together in North London. When Mac becomes a broker at Lloyd's after leaving school, Michael—like the book's author—soon follows him and earns a reputation for developing innovative reinsurance deals.

The two are successful and irreverent and soon start their own broking business. But, ultimately, they become mixed up in a web of lies, deceit, false accounting and betrayal that threatens their friendships, relationships and families.

"Bad Boy" evokes the excitement and excess of the City of London at the start of the Margaret Thatcher era, and the characters—both the old-school gentlemen of the Lloyd's "club" and the newer generation of "barrow boys," as they are dubbed—are well drawn.

Less convincing, perhaps, are the sex scenes, but the development of Michael's character from that of a troubled child to a torn adult makes for interesting reading. And beneath the intrigue of financial wheeling and dealing, there are hints at even darker human failings.

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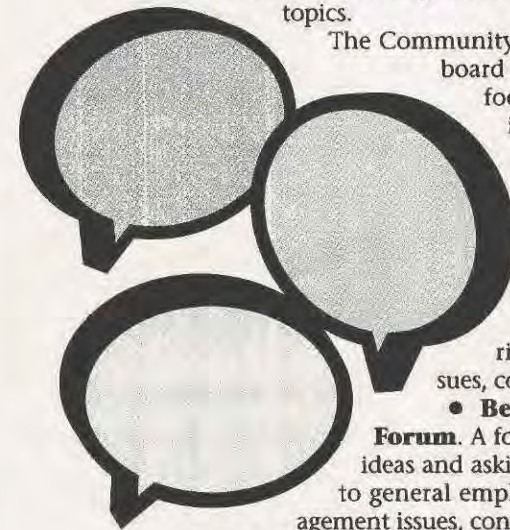

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DMEC: Spending on mental health treatments cost-effective for employers

Continued from page 4

the most common absence driver at the pilot site where AOL pays 100% of the premium for an STD plan providing 70% of an employee's hourly wage. The employees also earn incentive pay not covered under the STD plan. Behavioral health issues accounted for 31% of short-term disability claims at the site and drove direct and indirect costs, he said.

Meanwhile, employees were not using company-provided employee assistance program services, doctors who treated claimants typically were not mental health specialists and AOL's disability benefits provider, UnumProvident Corp., frequently encountered difficulties obtaining claim information.

Therefore AOL and UnumProvident partnered with Horizon Health Corp., a Lewisville, Texas-based behavioral health services company. Horizon created a custom network of psychiatric professionals to provide the assessments within 48 business hours of receiving a call from an AOL employee.

The comprehensive assessments are part of an overall claim review. Employees must provide assessment results within a certain number of days or their claim will be denied, Mr. Leary said. Each of Horizon's assessments, meanwhile, must result in an outcome such as a recommendation to return to work while obtaining EAP services or a recommendation for treatment.

"They are not leaving there with just a notice that their STD is going to be denied," Mr. Leary said. "They are being provided routes to appropriate care and treatment."

As a result, AOL has seen a 56% decrease in submitted behavioral health-related STD claims.

Mr. Leary said early data reveals that "those who are truly in need of behavioral health disability are the ones applying for the process."

AOL also has seen a 67% reduction in claims approvals, a 34% decrease in claims duration and a 73% decrease in claims costs. Additionally, employees with legitimate issues are appreciative because the expedited network services make it easier to obtain an appointment with a behavioral health care specialist paid for by AOL, Mr. Leary said.

Spreading the pilot program to other call center sites will depend on AOL's ability to obtain network services in cities where they are located, he added.

Southern California Edison, with more than 14,000 workers, is also focusing on employee mental health as part of an absence management program.

The Rosemead, Calif.-based utility's data revealed that mental health-related disability is the number three cause of absence, said Deborah Jacobs, manager, disability management.

SCE also found, as have other employers, that mental health issues have a "high co-morbidity" with other diagnoses that keep its workers away from work.

Among other measures, SCE called for its EAP administrator and its disability third-party claims administrator to cooperate and help create an employee advocacy program that removes obstacles to obtaining health care.

> Employees with legitimate issues are appreciative. The expedited network services make it easier to obtain an appointment with a behavioral health care specialist paid for by AOL.
>
> **Patrick Leary**
> **AOL Inc.**

Under the program, the EAP has trained TPA claims examiners to listen for certain key words when discussing claims issues with employees, Ms. Jacobs said. The key words trigger a transfer of the employee to EAP specialists.

The EAP also trained the TPA examiners on language that can make the transfer smoother, Ms. Jacobs said. The early intervention occurs "in the moment" when employees most need help, she added.

SCE plans to further the EAP's involvement with the TPA to improve claims management. The EAP's clinical psychologists are more likely to obtain useful information than would a claims examiner when talking "peer to peer" to mental health professionals treating employees, she said.

Limiting an EAP's role can be inappropriate and not cost-effective, Pitney Bowes' Mr. Hom told the conference. By funding an "off-site" EAP facility that employees in Connecticut can conveniently access after work hours, and increasing the number of allowable visits from three to eight, the employer is finding that employees are spending more time with counselors.

But they are seeing counselors funded under a captitated structure. And among other improvements, absenteeism has dropped to 11%, from 32% when Pitney Bowes limited EAP visits to three.

Because Pitney Bowes is a service provider, it must replace absent workers, so reducing absenteeism represents real labor cost savings, Mr. Hom said.

Improving health care for employees with financial challenges

Finding solutions to lower costs

By JOANNE WOJCIK

WASHINGTON—Concerned that consumerism may be putting too great of a financial burden on low-income workers and individuals who are chronically ill, employers are exploring ways to address growing health care disparity.

Among the options being considered are setting premium contributions on a sliding scale based on income; opening onsite health care clinics to provide health care services to employees and their dependents at low or no cost; and increasing employer contributions to health savings accounts and health reimbursement arrangements for low-wage earners and individuals who are chronically ill.

"When you institute consumerism with someone who has a negative net worth, it's meaningless," said Gary Loveman, chairman, president and chief executive officer of Las Vegas-based Harrah's Entertainment Inc.

He said language barriers and literacy issues also pose obstacles to ensuring that low-wage earners have access to necessary health care services.

"The only way to go ahead with this is to provide basic services for free," Mr. Loveman said, adding that Harrah's is beginning to do this via onsite clinics it is opening at many of its casinos around the country. To foster health care literacy, Harrah's also is planning to provide computers with high-speed Internet connections and classes for employees to earn their GEDs.

"We're going to begin to experiment with this," he said at a session titled "An Integrated Approach to Employee and Dependent Health" during the Business Health Agenda 2006 sponsored by the National Business Group on Health, held March 15-17 in Washington.

Harrah's also has established a sliding scale for employees' premium contributions so that those who earn more, pay more, while those who earn less, pay less, Mr. Loveman said (See related story, page 14).

When Brookfield, Wis.-based Fiserv Inc. introduced a $100-per-month working-spouse surcharge last year, resulting in an 11% reduction in spouses covered under the company's health benefits plans, "we became concerned that we might have people dropping coverage just because they couldn't afford it," said Kathy Dobrzynski, Fiserv's human resources officer, during a session titled "Going Mainstream: Consumer Health Accounts and High Deductible Health Plans."

"We surveyed a good portion of the people who did not have coverage," Ms. Dobrzynski said in a later interview. While many said they were covered by spouses' plans or government plans, "there were a lot of people who didn't indicate they had coverage," she said.

In response, the company instituted a low-cost high deductible plan, which resulted in an overall increase in enrollment of about 200 employees, Ms. Dobrzynski said. However, she said they were unable to determine how many of those additions did not have insurance previously, although she assumed that some of them had been among the uninsured. Fiserv also reduced the working spouse surcharge for the high-deductible plan to $50

See COSTS / next page

Wellness: Employers promote healthy living

Continued from page 4

its total health care costs are related to obesity. Following this discovery, the company began using its employee assistance program vendor to provide nutrition counseling to employees and their families, according to Ms. Barlek.

Alcoa's healthy-eating initiative is part of a comprehensive, three-part wellness pilot project at two of the company's 350 locations that also includes modules focusing on fitness and preventive care, she said.

"People can't tell you the difference between fried chicken and baked chicken unless you physically show them. They don't know how to read a label," said Ms. Barlek.

Quest Diagnostics, a Lyndhurst, N.J.-based diagnostic testing and services provider, is also emphasizing nutrition as part of its wellness program, called "Healthy Quest."

"We actually had one of our employees agree to serve as 'Chef Healthy Quest' and provide healthy recipes over the corporate intranet," Mr. Williams said.

In addition, Quest asked its vending machine supplier to flip all of the snack packages in the machines so that employees would see the nutritional information before making a selection, he said.

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REQUEST FOR PROPOSALS

The Medical Malpractice Joint Underwriting Association of Rhode Island

Request for Proposals
("RFP")–Servicing Carrier

The Medical Malpractice Joint Underwriting Association of Rhode Island ("JUA") was established by the laws and regulations of Rhode Island for the purpose of providing medical malpractice insurance for licensed physicians, hospitals and other licensed health care providers.

The JUA is seeking proposals to secure an entity to act as a Servicing Carrier, Central Processing Agent, and Manager for the JUA, for a three (3) year term, commencing on January 1, 2007, in return for mutually agreed upon compensation.

To secure a copy of the RFP, please send an e-mail message to David P. Whitman, Esq., Counsel to the JUA, at **dpw@hansoncurran.com** or a written request may be sent to David P. Whitman, Esq., Hanson Curran LLP, 146 Westminster Street, Providence, RI 02903.

REQUEST FOR PROPOSALS

REQUEST FOR PROPOSALS

NEW YORK CITY HOUSING AUTHORITY

REQUEST FOR PROPOSALS (RFP) FOR INSURANCE BROKERS AND CONSULTANTS

• INSURANCE BROKER
• RISK MANAGEMENT CONSULTANT
• COMMUNITY OPERATIONS INSURANCE BROKER
• AUDITOR - LIABILITY & WC
• LOSS CONTROL REPRESENTATIVE

The New York City Housing Authority ("NYCHA") requests proposals from qualified **INSURANCE BROKERS, RISK MANAGEMENT CONSULTANTS, LOSS CONTROL REPRESENTATIVES AND AUDITORS** for providing insurance placement, consulting, loss control and auditing services in support of NYCHA's Risk Management Program.

Proposals must be made in the format outlined in the RFP packet containing instructions, specifications and detailed submission requirements. Packets may be obtained beginning March 24, 2006 from **NYCHA's Coordinator** for this RFP: Augusto Montan, RFP Coordinator, New York City Housing Authority, Risk Finance Division, 90 Church Street, 6th Floor, New York, New York, 10007-2919 and telephone 212-306-6681. **Completed proposals must be received by 4:00 P.M. on Friday, April 21, 2006.**

All inquiries for additional information regarding the RFP are to be directed to: **Augusto Montan, Risk Finance Division @** the above address and telephone number or e-mail to Augusto.Montan@NYCHA.NYC.GOV.

Michael R. Bloomberg
Mayor, New York City

Tino Hernandez
Chairman, NYCHA

LEGAL NOTICE

LEGAL NOTICE

LEGAL NOTICE

GORDIAN RUNOFF (UK) LIMITED FORMERLY GIO (UK) LIMITED

HIGH COURT OF JUSTICE (CHANCERY DIVISION)
COMPANIES COURT No. 376 of 2005

NOTICE TO SCHEME CREDITORS

Solvent Scheme of Arrangement for Gordian RunOff (UK) Limited ("Gordian")

NEW DATE FOR SANCTION HEARING

The Directors intend to invite the Court to sanction this proposed scheme of arrangement at a hearing on **Tuesday 25 April 2006** in the Royal Courts of Justice, The Strand, London WC2. Scheme Creditors are entitled to attend that hearing. The time of the hearing and the court room number will be confirmed by the Court the day before please consult the Gordian Scheme website or contact Gordian on one of the numbers at the end of this Notice.

There has been a long delay between the Scheme Meeting and the proposed sanction hearing. The necessary voting majorities were achieved at the Scheme Meeting on 3 March 2005 but the sanction application was adjourned twice. First, it was adjourned while Gordian addressed the concerns of the single creditor who voted against the Scheme. Then, in July 2005, it was adjourned while Gordian considered the impact of the judgment in British Aviation Insurance Company Limited on Gordian's application for sanction.

AMENDMENTS TO SCHEME

The Scheme Document was prepared on 27 January 2005. By the time the Scheme becomes effective on or about 26 April 2006, over 12 months will have passed. Gordian will invite the Court to sanction the Scheme with a number of modifications, made pursuant to Clause 43 of the Scheme.

A draft modified Scheme (showing the proposed changes in red) has been posted on the Gordian Scheme website **www.gordianuk.co.uk** so that creditors may see the proposed changes.

1. The Ascertainment Date of 30 September 2004 will be changed to 31 December 2005 to provide a more up-to-date financial picture for Scheme Creditors.
2. Clause 38 (Reversion to Run-off) will be amended so as to limit the circumstances in which it may be invoked in the interests of the Scheme Creditors and in light of the comments made by Mr Justice Lewison in British Aviation Insurance Company Limited. Clause 38.1 will read as follows: "
   "38.1 If at any time before 35 Business Days after the Final Claims Submission Date or before the first Established Liability is paid the Scheme Company believes, in its discretion, that it will be unable to pay all Established Liabilities in full then it may choose to terminate the Scheme."
3. The definition of "Scheme Advisers" will be changed. Kirsteen Hodge is resigning from Deloitte & Touche LLP with effect from 16 May 2006 and Jamie Smith is retiring with effect from 31 May 2006 from Deloitte & Touche LLP. They have both withdrawn their consent to act as Scheme Advisers. Gordian has appointed Ian Clark of Deloitte & Touche LLP to act as the sole Scheme Adviser in their place.
4. Clause 30.4 of the Scheme will be amended to reflect the repeal of Section 304 of Title 11 of the US Bankruptcy Code and its replacement by Chapter 15 of the US Bankruptcy Code.

The Directors believe that none of these changes will have a materially adverse effect on the interests of Scheme Creditors.

EXPLANATORY STATEMENT

Certain information in the Explanatory Statement will also be updated via the Gordian Scheme website. A draft modified Explanatory Statement (showing the proposed changes in red) has been posted on the Gordian Scheme website:

1. The provisional timetable is out of date and so exact dates will be posted on Gordian's Scheme website once the Scheme becomes effective. **The following timetable is provisional:**
   - 1.1 26 April 2006: Effective Date;
   - 1.2 By 18 May 2006: Gordian will notify Scheme Creditors that the Scheme is effective and will post Claim Forms to Scheme Creditors; the Claim Form will also be available on the Gordian Scheme website by this date;
   - 1.3 25 October 2006: Final Claims Submission Date;
   - 1.4 26 December 2006: Likely commencement of payment to creditors of Established Liabilities.
   - 2. Appendix 3 (2003 annual accounts for Gordian): unaudited 2005 accounts are available on the website.
   - 3. Appendix 5 (sample Claim Form): a revised sample form is available on the website showing the new Ascertainment Date and the new Final Claims Submission Date.
4. Appendix 6 (Estimation Methodology): a revised version is available on the website; it operates in the same way as the earlier draft but now refers to an updated independent actuarial review (as at 31 December 2005) of gross and net unpaid liabilities. In addition, the methodology in relation to reinstatement premiums has been modified to reflect the improved data available.
5. Appendix 8 (Scheme Manager's 2003 accounts): unaudited 2005 accounts for the Scheme Manager are available on the website.
6. Since March 2005, the Scheme Manager's company name has changed from Cobalt RunOff Services Limited to Cobalt Solutions Australia Limited; the Scheme Legal Adviser, Miriam Bartlett, has moved firms; Kevin McAtee has taken over the support role previously held by Mary-Anne King; for the reasons explained above, Ian Clark of Deloitte & Touche LLP has replaced Kirsteen Hodge and Jamie Smith as Scheme Adviser. The text of the Explanatory Statement has been amended appropriately.

Queries may be emailed to **scheme@gordianuk.co.uk** or **miriam.bartlett@rpc.co.uk**. Please also refer to the Gordian Scheme website **www.gordianuk.co.uk** and to the Gordian Scheme Helpline on +44 (0) 20 7818 5368.

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LEGAL NOTICE | **LEGAL NOTICE**

UNITED STATES BANKRUPTCY COURT - SOUTHERN DISTRICT OF NEW YORK

In re Petition of the Board of Directors of **LION CITY RUN-OFF PRIVATE LIMITED**, Debtor in a Foreign Proceeding.

In a Case Under Chapter 15 of the Bankruptcy Code Case No. 06-B-10461 (SMB)

NOTICE OF FILING AND HEARING ON PETITION UNDER CHAPTER 15 OF THE UNITED STATES BANKRUPTCY CODE

PLEASE TAKE NOTICE, on March 15, 2006 the Board of Directors (the "Petitioner") of **Lion City Run-Off Private Limited** (the "Company") filed a Petition (the "Petition"), pursuant to Chapter 15 of Title 11 of the United States Code (the "Bankruptcy Code"), with the United States Bankruptcy Court for the Southern District of New York (the "Court") seeking recognition of a foreign main proceeding, requesting a permanent injunction, and related relief in aid of the Company's Scheme of Arrangement, pursuant to section 425 of the Companies Act 1985 of England and Wales and section 210 of the Companies Act, chapter 50 of Singapore (the "Scheme"), a foreign main proceeding, as defined in section 1502(4) of the Bankruptcy Code. Should the Court determine that the Scheme is not a foreign main proceeding, the Petitioner respectfully requests that the Court entertain the Petition as one for recognition of, and relief respecting, a foreign nonmain proceeding, as defined in section 1502(5) of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that pursuant to the Order Scheduling Hearing and Specifying the Form and Manner of Service of Notice, dated March 20, 2006 (the "Scheduling Order"), the Court has scheduled a hearing for April 13, 2006 or such other time as counsel may be heard (the "Hearing") before the Honorable Stuart M. Bernstein in Room 723 of the Bankruptcy Court, One Bowling Green, New York, New York, to consider the Petition and the Petitioner's request for an order (the "Permanent Injunction") granting recognition to the Scheme as a foreign main proceeding and providing for a permanent injunction and related relief on the terms as substantially set forth below:

1. that sections 361 and 362 of the Bankruptcy Code shall apply with respect to the Company and the property of the Company that is within the territorial jurisdiction of the United States;
2. that sections 363, 549, and 552 of the Bankruptcy Code shall apply to a transfer of an interest of the Company in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;
3. that the Company's representative may operate the Company's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552 of the Bankruptcy Code;
4. that section 552 of the Bankruptcy Code shall apply to property of the Company that is within the territorial jurisdiction of the United States;
5. that the Scheme shall be given full force and effect in the United States, and shall be binding on and enforceable against all Scheme Creditors (as defined in the Verified Petition under Chapter 15 of the Bankruptcy Code for Recognition of a Foreign Main Proceeding and Permanent Injunctive and Other Relief in Aid Thereof (the "Verified Petition")) in the United States;
6. that all Scheme Creditors shall be permanently enjoined from taking any action in contravention of, or inconsistent with, the Scheme of Arrangement;
7. that all Scheme Creditors shall be permanently enjoined from seizing, repossessing, transferring, relinquishing or disposing of any property of the Company in the United States, or the proceeds thereof, to any person or entity other than the Scheme Managers (as defined in the Verified Petition);
8. that, except as provided in section 1521 of the Bankruptcy Code, all Scheme Creditors shall be permanently enjoined from: (a) commencing or continuing any action or legal proceeding in connection with any Claim (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative action, proceeding or process whatsoever), including by way of counterclaim, against the Company, or any property in the United States that is involved in the foreign proceeding, or any proceeds thereof, and seeking discovery of any nature against the Company; (b) enforcing any judicial, quasi-judicial, administrative judgment, assessment or order, or arbitration award obtained in connection with any Claim, and commencing or continuing any act or action or legal proceeding in connection with any Claim (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative action, proceeding or process whatsoever) or any counterclaim to create, perfect or enforce any lien, attachment, garnishment, setoff or other claim arising out of a Claim against the Company or any of its property in the United States, or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts; (d) invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring the Company to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative action, proceedings or process whatsoever) and such statute, rule or requirement will be rendered null and void for such proceedings; provided, however, that nothing in the Permanent Injunction shall in any respect affect any Security in existence at the Effective Date or the replacements for such security; (e) drawing down any letter of credit established by, on behalf of or at the request of the Company, in excess of amounts expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established; and (f) withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest in excess of amounts expressly authorized by the terms of the contract and any related trust or other agreement pursuant to which such letter of credit, trust, escrow, or similar arrangement has been established; provided, however, no drawing against any letter of credit shall be made in connection with any commutation unless the amount has been agreed in writing with the Petitioner or the Scheme Managers or permitted by further Order of the Court;
9. that all persons and entities in possession, custody or control of the Company's property in the United States or the proceeds thereof, shall turn over and account for such property or its proceeds to the Petitioner or Scheme Managers unless such a person or entity has a bona fide defense to this obligation to turn over;
10. that all Scheme Creditors that are beneficiaries of letters of credit established by, on behalf or at the request of the Company or parties to any trust, escrow or similar arrangement in which the Company has an interest, shall be required to: (a) provide notice to the Scheme Managers' United States counsel of any drawdown on any letter of credit established by, on behalf or at the request of, the Company, or any withdrawal from, setoff against, or other application of property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest, together with information sufficient to permit the Scheme Advisors to assess the propriety of such drawdown, withdrawal, setoff or other application, including, without limitation, the date and amount of such drawdown, withdrawal, setoff or other application and a copy of any contract, related trust or other agreement pursuant to which any such drawdown, withdrawal, setoff, or other application was made, and provide such notice and other information contemporaneously therewith; and, (b) turn over and account to the Scheme Managers for all funds resulting from such drawdown, withdrawal, setoff, or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such letter of credit, trust, escrow or similar arrangement has been established unless such Scheme Creditor has a bona fide defense to this obligation to turn over;
11. that every Scheme Creditor that has a claim of any nature or source arising out of a Claim and that is a party to any action or other legal proceeding (including, without limitation, arbitration or any judicial, quasi-judicial, administrative action, proceeding or process whatsoever) in which the Company is or was named as a party, or as a result of which a liability of the Company may be established, shall be required to place the Petitioner's United States counsel (Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, NY 10112, Attn: Francisco Vazquez, Esq.) on the master service list of any such action or other legal proceeding, and to take such other steps as may be necessary to ensure that such counsel receives: (a) copies of any and all documents served by the parties to such action or other legal proceeding or issued by the court, arbitrator, administrator, regulator or similar official having jurisdiction over such action or legal proceeding; and, (b) any and all correspondence, or other documents circulated to parties named in the master service list;
12. that nothing in the Permanent Injunction shall in any respect prevent the commencement or continuation of proceedings against any person or entity other than the Company; provided, however, that if any third party shall reach a settlement with, or obtain a judgment against, any person or entity other than the Company, such settlement or judgment shall not be binding on or enforceable against the Company; and
13. that no action taken by the Petitioner or the Scheme Managers, their successors, agents or representatives, or any of them, or their counsel, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Scheme of Arrangement shall be deemed to constitute a waiver of the immunity afforded the Petitioner or the Scheme Managers, their successors, agents or representatives pursuant to sections 306 or 1510 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE, that any party in interest wishing to submit a response or objection to the Petition or the relief requested by the Petitioner must do so pursuant to the Bankruptcy Code and the Local and Federal Rules of Bankruptcy Procedure, including, without limitation, Federal Rules of Bankruptcy Procedure Interim Rule 1011, in writing and setting forth the bases therefore, which response or objection must be filed with the Office of the Clerk of the Court, Room 534, One Bowling Green, New York, New York 10004-1408, and served on the attorneys for the Petitioner, (Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, NY 10112, Attn: Howard Seife, Esq.), so as to be received by them all no later than 4:00 p.m. Eastern Time, April 10, 2006.

PLEASE TAKE FURTHER NOTICE, that the response or objection to be filed with the Office of the Clerk of the Court must be filed; (i) electronically by registered users of the Court's electronic case filing system in accordance with General Order M-242 of the Bankruptcy Court for the Southern District of New York, a copy of which may be viewed on the Court's website, www.nysb.uscourts.gov; and (ii) by all other parties in interest on a 3.5 inch disc, with hard copy provided to the Chambers of the Court at the address specified in the paragraph above.

PLEASE TAKE FURTHER NOTICE, that all parties-in-interest opposed to the Petition or the Petitioner's request for relief must appear at the Hearing at the time and place set forth above.

PLEASE TAKE FURTHER NOTICE, that the Hearing may be adjourned from time to time without further notice other than an announcement in open court at the Hearing of the adjourned date or dates or any further adjourned hearing.

PLEASE TAKE FURTHER NOTICE, that if no response or objection is timely filed and served as provided above, the Court may grant the recognition and relief requested by the Petition without further notice. Copies of the Petition, the Verified Petition and supporting documents will be made available upon request at the office of the Petitioner's United States Counsel at the address below:

Chadbourne & Parke LLP • Attorneys for the Petitioner • 30 Rockefeller Plaza • New York, New York 10112
(212) 408-5100 • Attn: Howard Seife, Esq. and Francisco Vazquez, Esq.

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FSA: Regulator pleased with market's progress

Continued from page 17

turn." "Achieving contract certainty is commercially vital to the market's survival, and the FSA has made clear that they will still intervene if necessary," Mr. Douetil said in a statement. "Every business must therefore continue its commitment to this issue," he added.

"Contract certainty is a commercial imperative. London is leading the way, and we welcome regulatory intervention being placed on the back burner," said Dave Matcham, chief executive of the International Underwriting Assn., which represents London company insurance market underwriters. "You can be sure for us it is on the front burner. It is embedded ahead of schedule, and we have exceeded the FSA's expectations," Mr. Matcham said.

Separately, the FSA announced plans to accelerate the process of authorizing new insurers "in response to market needs at times of pressure." The FSA said in a statement that the authorization of new insurers typically takes 17 weeks but that it would "accelerate this process for insurers in periods of market pressure."

It said that in instances where it has prior knowledge of a group, the authorization of a new company should take one month after the regulator receives an application; where the regulator does not have prior knowledge of a group, it will make a decision on the authorization within 10 weeks of receiving an application.

Simon Sperryn, chief executive of the Lloyd's Market Assn., which represents underwriters at Lloyd's, said he welcomes this announcement. "The flow of capital into Bermuda (late last year) was a wake-up call. There is no doubt the regulatory burden is becoming a significant cost that might hold London back," he said. "The FSA has done well to recognize this."

In addition, the FSA said that, as part of its public consultation on the European reinsurance directive, it will also confer with interested parties about the introduction of special-purpose insurance vehicles in the United Kingdom.

Enterprise risk: Holistic view helping buyers

Continued from page 17

tical practice at London-based broker Jardine Lloyd Thompson Group P.L.C. Coverage is expensive and the claims that pharmaceutical companies face often exceed their coverage limits, he said.

Policyholders are also used to dealing with a lack of capacity for risks, such as some U.S. and Japanese windstorm exposures, according to Brian Casey, vp, claim and litigation counsel, at Gateway Insurance Co. in St. Louis. Mr. Casey was the *Business Insurance* Risk Manager of the Year in 1996 when he worked at Corning Inc. in Corning, N.Y.

The cost of insurance is becoming much more visible to the boards of companies, Mr. Casey said, particularly for directors and officers coverage.

The session was moderated by Lothar Riedle, country manager for Germany for ACE European Group, a division of ACE Ltd.

Heists: Losses from robberies may turn cycle

Continued from page 17

($93.1 million) in cash on Feb. 22 in Britain's biggest cash heist. The gang kidnapped the family of a depot manager and threatened to harm them if the manager did not let the thieves into the facility.

Market sources say the underwriters have paid the claim.

Stockholm, Sweden-based Securitas covers an initial layer of loss through a captive insurer, according to industry sources. Company officials would not discuss their insurance arrangements.

Above the self-insured retention, a £5 million layer ($8.8 million) is provided by Ascot Underwriting Ltd.'s syndicate 1414, said David Edward, director of Ascot Underwriting Ltd.

Excess coverage is led by the Millennium syndicate 1221, which is operated by Navigators Underwriting Agency Ltd. (*BI*, Feb. 27)

Five people so far have been charged in connection with the crime, and police have recovered about £20 million ($35.1 million).

Ascot and other insurers are offering a reward of £2 million ($3.5 million) for the capture and conviction of the gang responsible for the robbery.

Rash of losses

Subsequent weeks have seen British robbers, who rammed a Securitas truck with a farm tractor, get away with £600,000 ($1.1 million) on March 8 and raiders brandishing assault rifles get away with £3 million ($5.3 million) at a Swedish airport as cash was being loaded onto a Securitas truck on March 7.

These follow two major raids last year. Robbers in the Netherlands stole a van carrying £52 million ($91.9 million) worth of diamonds, and a September cash heist involving a Group 4 Securicor van in Canada resulted in the loss of $30 million.

This has made the 2005-2006 period for cash-in-transit coverage the equivalent of a bad hurricane season on homeowners' insurance in the United States, underwriters say.

> "I want the sort of company that behaves as if they're uninsured. Insurance has been a catalyst of poor levels of security by providing cheap insurance."
>
> **Robert Read**
> **Hiscox Syndicates Ltd.**

More than just the spectacular events of the last month are affecting the market, though. Underwriters say profits from insuring cash-in-transit companies have been meager over the last 10 years, claiming that they have lost money in all but three.

Such losses, coupled with the Tonbridge raid, could spark a turn in the cycle.

For example, London-based Wellington Underwriting Agencies Ltd. will not write new policies until rates increase because of continuing losses, said David Turner, marketing manager.

"We view the book itself as a good solid business," Wellington's Mr. Turner said. "(But) we have a view of what the prices should be, and they're too cheap for us. When they come up to that level, we will be happy to be involved."

Mr. Turner would not say how much of the cash-in-transit market Wellington writes, but says it is a small percentage and is in decline.

The business also attracts what one underwriter called "naïve capital" from companies that are unaware of the risks.

Underwriters also complain that cash-in-transit companies substitute coverage for vigilance, effectively shifting the business risk onto the insurers, as they seek to cut their own prices in a competitive marketplace.

"I want the sort of company that behaves as if they're uninsured," said Robert Read, fine-art underwriter for London-based Hiscox Syndicates Ltd. "Insurance has been a catalyst for poor levels of security by providing cheap insurance."

Underwriters say one option for protecting themselves may be to stipulate in their policies the procedures for cash-in-transit companies must follow when guarding cash or screening employees.

Screening may be made simpler in the United Kingdom this month. Effective March 20, security guards in England and Wales must be licensed by the government's Security Industry Authority. The SIA notes, though, that 3,102 of the 9,346 individuals hired to guard cash and valuables in transit have not been licensed as of March 22, though 1,423 of the 3,102 have submitted applications.

In the United States, state and local governments license security guards.

Alabama: Allowing captives to form in the state

Continued from page 3

Ivan, and other storms that followed, led to "some instability in our market," he said of the response by insurers to cut back their property writings and increase rates in Alabama.

Sen. Byrne, who was a member of the task force, said the group recommended that a captive law be drafted partly so that restaurant associations, condominium associations and other similar organizations whose members were hard-hit by hurricanes would have an alternative to the traditional market, where coverage was scarce and high priced.

While those groups could have formed captives in other domiciles, passage of the law would make it easier and cheaper for them to create the vehicles close to home, the insurance department spokesman said.

The law was drafted as "kind of a hybrid" incorporating parts of captive legislation in Vermont and South Carolina, the spokesman said. "They were both used as a starting point," he said.

The bill calls for each pure captive to have minimum capital and surplus of $250,000 and each association captive to be funded with at least $750,000.

Industrial insured captives, which include risk retention groups, would have to be formed with at least $500,000 in capital, and sponsored captives, which operate as segregated cell companies, would be required to have at least $1 million.

As the concept of using captive insurers has been discussed in Alabama as a way to develop more-affordable coverage for exposures in coastal areas, interest has grown in other parts of the state as well.

"There are people with similar problems in obtaining coverage," said Sen. Byrne. Owners of timber trucks are among those who have expressed interested in using captives to write coverage for their vehicles, he said.

"As this moves along, groups across the state are seeing the value in it for their problems," agreed the insurance department spokesman. Day care centers, pest control firms and road builders are other businesses that may consider captives, he said.

Consolidation: How much M&A activity ahead?

Continued from page 1

is whether or not the carriers are ready to go out and look for transactions, and the rumbling that I guess I hear is they're much more willing to do that than they were a couple of years ago," he said.

"I think you might see an uptick in terms of potential M&A activity in the sector this year and ... probably more so in 2007," said Michael Dion, senior equity analyst at Sandler O'Neill & Partners L.P. in New York. "As growth becomes harder to come by, I think that could force some companies to look for acquisitions as a way to show growth."

Mr. Dion said, "I think the industry is probably overcapitalized, so I would be surprised to see new entrants emerge into the marketplace, but, by the same token, I think one thing the hard market did do over the last four to five years" is to separate the good underwriters "from the merely average and mediocre underwriters, and I think it'll be those stronger companies that will look to perhaps acquire the average or mediocre underwriters," he said.

John Wicher, principal with John Wicher & Associates in San Francisco, said the hard market was short lived, which "puts additional pressure on those who, frankly, needed a longer cycle to build their balance sheets and to be able to reinvest" in technology and other areas. In that situation, "partnership becomes a more-attractive option to achieve what you can't achieve on your own" and could drive an increase in M&A activity, said Mr. Wicher.

Mark Charron, a principal with Deloitte Consulting L.L.P. in Hartford, Conn., pointed in particular to reinsurers as a possible source of more M&A activity. "They've been doing pretty well from a rate adequacy standpoint, so their books of business may be a little bit profitable, and that could draw some investments into that side of the business," he said.

But others believe there is relatively little increased interest in M&A activity. Michelle Baurkot, assistant vp at Oldwick, N.J.-based A.M. Best Co., said, "There's probably been less interest, just given the fact that a lot of companies are uncomfortable with acquiring possible problems" from others.

"That is not to say there's going to be any, but I don't think we're going to see a huge increase in M&A activity," Ms. Baurkot said.

> "The U.S. has gone through a lot of consolidation in recent years, and there does seem to be some momentum for a global consolidation move."
>
> **John L. Ward**
> **Ward Partners L.L.C.**

"We think that the prospects for a significant increase in activity in the commercial property/casualty area are still fairly limited," said Adam Hodes, managing director at New York-based Sagent Advisors Inc., a consulting firm. "I think there will be pockets of activity related to acquisitions of smaller companies with particular capabilities or expertise, but large-scale acquisitions still present a reasonable amount of risk to the acquirer based on potential liability and reserve issues."

Some observers say the prospects of a U.S./non-U.S. deal in particular are unlikely. Mr. Dion said he does not expect much cross-border activity, at least on the P/C side. "If you look at the U.S. market, it's very fragmented in commercial lines insurance," with the top players together accounting for less than a 10% market share, he said.

"I think that presents opportunities within the U.S. market to grow market share without having to go outside the U.S. market to look for growth or potential market opportunities," Mr. Dion said.

S&P's Mr. Iten said a U.S./non-U.S. deal "might be an attractive way to diversify their exposure by diversifying their premium base" for an insurer that does not have international exposure, but "that would be a reversal" of the past few years' general trend away from international expansion.

Some observers say there would be little synergy with such a deal.

"Past deals have demonstrated an increased level of risk and probably less synergies compared to an in-market transaction," said Mr. Hodes.

Michael Brosnan, a consultant on insurer transaction advisory services with Ernst & Young in New York, said, "You're going to have to have different regulatory regimes" with a cross-border deal. "It's not like you can take two U.S. companies and combine them together and have synergies." There are not going to be "a whole lot of savings" in terms of infrastructure and other costs with such a deal, he said.

Mr. Charron said, "The bigger they are, the harder they are to pull off, and getting the fit with culture, getting the approvals necessary" from the European Union and the U.S. Securities and Exchange Commission "are some pretty big hurdles."

"I think we would see tremendous time to put something like that together and, frankly, that could kill the deal," he said.

John L. Ward, president of the Cincinnati-based insurance services industry advisory firm Ward Partners L.L.C., said, though, that "the U.S. has gone through a lot of consolidation in recent years, and there does seem to be some momentum for a global consolidation move."

Mr. Ward pointed to the Swiss Reinsurance Co.'s acquisition of Overland Park, Kan.-based Employers Reinsurance Corp. "It's a logical trend, and I would not be surprised to see some global consolidation," he said.

In fact, Mr. Ward added, "I would not be surprised to see the St. Paul-Zurich rumor resurrect itself, because it's a believable discussion." St. Paul is a large U.S.-based company, while Zurich can offer global as well as product line diversification with its strong life insurance presence, which, he said, "St. Paul Travelers does not bring to the table."

Media: Defense costs on the rise

Continued from page 3

managed exposure," he said. "It's one, to some extent, that's been put to bed."

Media companies appear relatively unconcerned about traditional media claims. Dallas-based Belo Corp., for example, said in its annual U.S. Securities and Exchange Commission report that a number of legal proceedings are pending against the company for alleged libel or defamation actions but it does not believe that liabilities arising from these proceedings, if any, would have a materially adverse impact on its operations or its financial position. Belo Corp. owns four daily newspapers, including The Dallas Morning News, and 19 television stations.

Meanwhile, the MLRC report does not take into account defense costs, which comprise about 80% of the expenses for media insurers, noted Michelle Worrall Tilton, president of First Media, a division of OneBeacon Professional Partners in Boston. "The fact that we're winning at trial still doesn't cut down on defense costs," Ms. Worrall Tilton said.

"In a way, that's one of the reasons why the MLRC study wasn't as relevant to the insurance market," Marsh's Mr. Milton agreed. "The cost of defending claims is going up, so that's a concern."

Even a case that is dismissed at summary judgment can result in defense expenses of about $150,000 in a major market such as Chicago, Ms. Worrall Tilton added.

Defense costs have a much greater impact on rates than do jury verdicts, Mr. Dodell said. Currently, pricing for media insurance is extremely stable, with renewals flat to 1% lower than 2005, which is good news for media organizations, he said. "What we're predicting for 2006 is a similarly flat rate environment," Mr. Dodell said.

Media insurers, though, say they are seeing an emerging exposure for media companies in the intellectual property arena. "Media companies, because of the Internet and new technology, are using their intellectual property in ways they haven't before," Media/Professional's Mr. DiSilvestro said. "The intellectual property that media companies are both using and creating has increased enormously, thus subjecting them to the possibility of claims."

The rise in the number of intellectual property infringement claims is directly attributable to the enormous pressure on media companies to provide content, Ms. Worrall Tilton said. In the race to quickly produce and provide this content, media companies may neglect to perform basic risk management functions such as reviewing licensing agreements or working with intellectual property attorneys, she said.

Diversified media companies such as New York-based Time Warner Inc., whose intellectual property assets include 45 U.S. magazines—such as People, Sports Illustrated, Entertainment Weekly and Time—as well as entertainment properties, are extremely concerned about these risks. Allegations of infringement could force Time Warner to enter into unfavorable royalty or licensing agreements or incur substantial monetary liability, the company noted in its annual report. "Even if Time Warner believes that the claims are without merit, the claims can be time-consuming and costly to defend and divert management's attention and resources away from its businesses," the report said.

Intellectual property claims often arise when old media content is republished through new media channels, such as when newspapers republish old stories online or music is provided through digital downloads, Mr. Milton said. "There just are more and more ways media is exploited," he said.

To date, there have been only two trials involving media defendants' Internet content, according to the MLRC report, but this is likely to increase as media companies expand their presence online, insurers say.

> "The ease of publishing on the Internet makes it a little more hazardous, because there is a less controlled editorial process."
>
> **Clint Johnson**
> **ACE USA Professional Risk**

"The ease of publishing on the Internet makes it a little more hazardous, because there is a less controlled editorial process," said Clint Johnson, senior vp, ACE USA Professional Risk, a unit of Philadelphia-based ACE USA.

Media insurers will react to increased exposure from intellectual property litigation by carefully evaluating an organization's clearance procedures, which may include the vetting or review of content by lawyers and the documentation of licenses and releases for any unoriginal content, Ms. Worrall Tilton predicted. If an organization has an increased exposure because it creates or produces entertainment-based content, the insurer may respond with a higher self-retention for such risks, she said.

Retentions for large media companies can be substantial. For example, a company with gross revenues of $100 million to $500 million may have retentions in the range of $250,000 to $500,000 and limits of up to $10 million.

Mr. Milton acknowledged that there may be pressure from insurers to raise premiums or retentions, but he said he does not anticipate pricing changes, because the media liability marketplace is very competitive.

Media/Professional's Mr. Dodell said the company considers its intellectual property protection to be a core coverage for the organization. "We don't expect any significant changes to terms or pricing based on the increase of intellectual property claims," he said.

Photo: *Michael Marcotte*

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

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Zurich: Insurer reaches agreement to settle bid-rigging charges with nine states

Continued from page 1

tection from competition so it could set artificially high premiums and profit on other lucrative accounts."

Schaumburg, Ill.-based Zurich is the first to reach a settlement as part of a nationwide class action lawsuit pending in a New Jersey district court against several commercial insurers and brokers allegedly involved in improper broker compensation and insurance placement practices.

The settlement, which requires court approval, builds on a confidential memorandum of understanding that Zurich reached last October with plaintiffs that brought the class action suit. Under that agreement, Zurich agreed to pay $100 million into a policyholder restitution fund. The settlement it reached last week increases the total amount to be refunded to policyholders to $151.7 million, while also tacking on an additional $20 million to cover the states' investigation fees and legal costs.

No part of the settlement monies is considered a fine or penalty, and, under the agreement, Zurich is eligible to be refunded up to $30.9 million, depending upon the number of policyholders that plan to join the settlement (see related story).

As part of the pact—which the Kansas City, Mo.-based National Assn. of Insurance Commissioners' Broker Activities Task Force assisted in developing—Zurich additionally agreed to implement various disclosure and compliance rules, including enhanced transparency for clients regarding the insurer's compensation arrangements.

Going forward, agents and brokers will be required to ensure that written disclosure forms about contingent compensation accompany "every commercial insurance policy written by Zurich, whether new business or renewal business," a Zurich spokesman said.

In announcing the settlement, James Schiro, ZFS' chief executive officer, said in a statement that the company is pleased to bring "a greater sense of clarity and transparency to the quoting process for our customers in the United States, and we look forward to working collaboratively with our producers and business partners in this new environment."

Which clients are eligible?

While Zurich agreed under last week's deal to pay a total of $151.7 million into a restitution fund for clients harmed by its alleged misconduct, the identity of those policyholders has yet to be determined, the insurer and regulators say.

A plan of allocation for the restitution fund "has yet to be decided on," and "lawyers of the settling states are working with the lawyers representing the members of the class action" to come up with such a plan, a spokesman for Zurich said. "Once that plan gets approved by the court, I believe it will be presented to policyholders that will be eligible to participate," said the spokesman, who could not provide a timeframe in which policyholders will be notified of their potential restitution.

According to the spokesman, one group of clients that would be covered under the agreement would be those excess casualty insurance policyholders that were sold their policies by one or more Zurich subsidiaries through a unit exclusively dedicated to selling insurance policies brokered by Marsh & McLennan Cos. Inc. between 2001 and 2004. The restitution fund is not limited to that group, though, and additional clients may be deemed eligible, the spokesman noted.

At this point, there are only "general understandings of what will be paid" by Zurich to policyholders affected by its misconduct, said Michael T. McRaith, director of the Illinois Division of Insurance and chairman of the NAIC task force that worked on the settlement.

"The exact amount to be paid to each policyholder has not yet been determined, but approximate accounts to be paid to each state are known," Mr. McRaith noted. It is, though, "subject to the discretion of the regulator or attorney general to disclose that amount," Mr. McRaith said, noting that many, including himself, are "holding back" at this point because the state totals are still preliminary numbers.

Among the states that have announced available restitution from the Zurich settlement for their state's policyholders are: Florida, which will receive approximately $8 million; Maryland, which will receive nearly $2.8 million; Texas, which will receive about $11 million, and Pennsylvania, which will receive about $10 million.

'Good for their image'

Following the settlement announcement, observers said Zurich's resolution of fraud and bid-rigging charges with nine states represents a positive step for the insurer, and one that is not expected to be a big burden on the company, although the impact of future settlements with other states remains unclear.

"The terms of the settlement seem to be especially heavy on the disclosure elements, and I think that works to Zurich's favor, because they are leading the pack in settling this and being at the forefront of additional disclosures, and they are being viewed as, and appear to be, cooperative with the regulators," said Cincinnati-based independent insurance analyst John L. Ward. That is "good for their image in the industry," he added.

"I think the settlement is a good settlement for Zurich. The financial burden is reasonable and one that Zurich can easily absorb," he said.

Jeffrey Berg, an analyst with Moody's Investors Service in New York, agreed that the settlement "quantitatively is not a material matter."

Zurich's settlement does not address charges, though, brought by New York Attorney General Eliot Spitzer or other states investigating the company.

Zurich was one of a number of insurers implicated in investigations of New York-based broker MMC launched by Mr. Spitzer in 2004, which have since resulted in a number of settlements by Marsh and other brokers and netted guilty pleas to criminal charges from several underwriters in the industry, including three former Zurich executives.

In a statement, Zurich noted that while it has reached settlements with nine states, it is "engaged in negotiations with other state legal and regulatory authorities and hopes to bring these to a successful resolution."

"New York regulators are working to resolve their issues with Zurich, and we are hopeful we can accomplish that in the coming months," a spokesman for Mr. Spitzer said.

In February, New York-based American International Group Inc. agreed to pay $375 million to compensate AIG policyholder clients that may have been harmed by bid-rigging activities as part of a $1.64 billion settlement with regulators.

Additionally, the settling state attorneys general, as part of the settlement agreement, released Zurich and its subsidiaries from any future claims relating not only to the alleged bid rigging, but also linked to any action involving finite reinsurance or nontraditional products. However, court papers say, that agreement does not prevent insurance regulators from the nine states "including without limitation the Florida Department of Financial Services and the Office of Insurance Regulation of the State of Florida, from seeking and obtaining any and all relief" against Zurich with regard to any potential finite reinsurance-related claims. Calls for comment to the Florida Department of Financial Services were not returned.

Senior Editor Judy Greenwald contributed to this report.

Parties to settlement will forfeit the right to further restitution

SCHAUMBURG, Ill.—Policyholders that participate in Zurich American Insurance Co.'s $171.7 million bid-rigging and price-fixing settlement will forfeit the right to restitution they could receive under a future settlement by New York regulators.

Under the terms of the settlement with Zurich, the U.S. arm of Swiss insurer Zurich Financial Services Group, aggrieved policyholder clients—the exact class has yet to be determined—will not be permitted to access both the insurer's restitution fund and future compensation that may be available under a parallel nationwide settlement expected to be reached with New York Attorney Eliot Spitzer, who has been investigating bid rigging in the insurance market and is in talks with Schaumburg, Ill.-based Zurich to resolve charges against it.

"If New York were to settle with Zurich on behalf of claimants nationally, then claimants can only file claims with one of the states," said a spokeswoman for the office of Florida Attorney General Charlie Crist, which acted as the lead in the investigation and settlement process. "We don't want claimants double-dipping," the spokeswoman said.

The nine states that settled with Zurich agreed that it would unfair for the insurer to have to pay policyholders twice for the same alleged charges, the spokeswoman said.

But the decision to join Zurich's settlement is at the discretion of the review and analysis of each state's insurance regulator.

Michael T. McRaith, director of the Illinois Division of Insurance and chairman of the NAIC task force that helped craft the settlement, said, "Since we were at the table for this document helping draft it, we believe the agreement is a legitimate, balanced approach to the conduct to which Zurich has been accused."

Mr. McRaith noted, though, that "we know that the New York attorney general and New York Insurance Department are very skilled and capable, and they might be fashioning a statement that warrants the scrutiny and consideration of regulators."

Additionally, under the settlement terms, depending upon how many policyholders choose to participate in its settlement, Zurich stands to be refunded up to $30.9 million.

"When attorneys were working on this settlement, they knew that there might be a future settlement with New York," the spokeswoman for the Florida attorney general said. "In case of that, they set up this credit."

"We don't anticipate" that Zurich will be eligible for any portion of the potential refund, the Florida attorney general's spokeswoman said. "We believe it would all be claimed." Nonetheless, "this provides an avenue for what would happen to those funds, if they were left over," she said.

—By Rupal Parekh

Pensions: Defined benefit plan freeze continues

Continued from page 1

being adopted.

For example, while some employers that are freezing their plans—most notably GM, which reported a $10.6 billion loss in 2005—are in financial difficulty, others are healthy and very profitable, such as managed care leader WellPoint, which racked up net income of $2.5 billion last year.

At the same time, employers freezing their plans are not concentrated in one industry but represent a broad cross section, including consulting, insurance, manufacturing and retail.

Similarly, the design of the plans employers are freezing varies significantly. A slice of the frozen plans are cash balance plans, which have elements of defined benefit and defined contribution plans. For example, plans being frozen by GM, Hewlett-Packard, IBM and WellPoint are cash balance. Other frozen plans are traditional final average pay plans, while at least one plan—sponsored by Motorola Inc.—is a pension equity plan, often described as a cross between a traditional and a cash balance plan.

Additionally, no generalizations can be made about how employers are freezing their plans. Some like Sears Holdings Corp., are ending benefit accruals in those plans, with current employees, as well as new hires, receiving future benefits through 401(k) plans.

Others, though, such as Lincoln Electric Holdings Inc., which announced its freeze last week, are giving all current employees a one-time choice of remaining in the defined benefit plan or moving to the enhanced 401(k) plan.

Some, such as WellPoint and Hewlett-Packard, are allowing employees whose combined years of service and age are at least equal to a certain number to remain in the

See PENSIONS / next page

ADVERTISER INDEX

Issue of March 27

ADVERTISER	PAGE #
ActiveHealth	9
AIG	24
Aon Corporation	2
Burnham Systems	16
Business Insurance	15, 21
C.V. Starr	11
Dickstein, Shapiro, Morin & Oshinsky LLP	6
First State Management	13
Liberty Mutual	5
The Navigators Group, Inc.	12
XL Insurance	7

Pensions: More companies freeze defined benefit plans

Continued from previous page

existing plans, with younger, shorter tenured employees, as well as new employees, receiving future benefits through souped up 401(k) plans.

Still others, such as Alcoa, are retaining their defined benefit plan for current employees, with only new employees covered through a 401(k) plan.

But while there are a wide variety plans being affected in several different ways, the main reasons for those freezes is clear: corporate desire to reduce financial volatility and retirement costs.

Many companies, in their announcements, cite volatility and cost control as prime motivators for their decisions to freeze defined benefit pension plans.

For example, John Stropki, president and chief executive officer of Lincoln Electric, a Cleveland-based designer and manufacturer of arc welding products, said in a statement that freezing its plan and moving to an enhanced 401(k) plan "will enable Lincoln to save on retirement costs for new employees and eliminate potential volatility in the cost elements of our retirement plans."

Volatility is inherent in defined benefit plans, with changes in interest rates and investment results causing swings in plans' funding levels and the need to contribute more or less into those plans.

Employers had long accepted volatility, but tolerance of it has eroded sharply in recent years, benefit experts say. One key reason is the economic downturn following the Sept. 11, 2001, terrorist attacks in which equities markets sank and interest rates fell, driving up plan liabilities, while plan assets fell.

For example, among 100 large employers studied by actuarial consultant Milliman Inc., plan assets between the end of 2001 and the end of 2002 fell by roughly $90 billion, or about 10%, while plan liabilities increased by about that amount, or nearly 11%.

The result was that plans that for years had been overfunded suddenly became underfunded, forcing employers to make big contributions to those plans.

"CFOs began to scream about volatility," said Sylvester Schieber, director of U.S. benefit consulting for Watson Wyatt Worldwide in Arlington, Va. Their reaction was exacerbated, Mr. Schieber said, by the fact that many of the CFOs began moving up the corporate ladder when plans were fully or overfunded, insulating those executives from the large and sudden cash demands those plans could require.

> Employers had long accepted volatility in their pension plans, but tolerance of it has eroded sharply in recent years.

The economic slide was the catalyst for some employers to begin intensive studies of whether to keep their plans or to phase them out, said Cecil Hemingway, a managing principal in the Stamford, Conn., office of Towers Perrin.

"What you are seeing now is not a knee jerk reaction," Mr. Hemingway said, referring to the wave of pension plan freezes. Corporations have studied this issue at length, he said.

Yet another factor driving some employers to freeze their plans has been the continuing uncertainty on whether cash balance plans violate age discrimination law. Many employers, believing that traditional plans no longer met their and their employees' needs, wanted to stay in the defined benefit plan system, but offer a cash balance plan instead of a traditional plan.

But with Congress and regulators refusing to end the uncertainty surrounding cash balance plans, some employers pressed ahead and froze their defined benefit plans and enhanced their 401(k) plans.

"There would have been a much better chance that employers" would have stayed in the defined benefit plan system if the legal environment for cash balance plans had been settled, said Larry Sher, a principal and director of retirement policy at Buck Consultants Inc. in New York.

Amid the wave of pension plan freezes, both employee and political reaction has been muted with few, if any, protests of the phaseouts. Some say that employees today are more focused on issues such as job security rather than the design of their pension plans.

"There is a general sense of insecurity in society. As companies move jobs overseas" and when the future of some companies is in doubt, "a switch in pension plan may seem relatively minor to employees," Watson Wyatt's Mr. Schieber said.

The ultimate impact of the move away from defined benefit plans remains to be seen. Some employees, such as those who work only a few years or invest well, may do better in a defined contribution plan than in a defined benefit plan.

On the other hand, employees who don't contribute to 401(k) plans or who retire at a time when the value of their investments is low will fare much worse, Mr. Schieber said.

Survey: RIMS urges quality improvement

Continued from page 3

ers not paying contingent commissions to brokers.

More detailed survey results will be presented at RIMS' annual conference next month in Honolulu, according to Janice Ochenkowski, RIMS director and treasurer.

Ms. Ochenkowski said that one of the goals of the forum was to garner support for an industry working group that would meet and discuss improving the insurance placement process, as well as work to enhance RIMS' quality improvement process tools and to create other quality improving processes and procedures.

RIMS created its Quality Improvement Process program in 2001 as a means to guide and facilitate quality improvement in the industry. The program includes guidelines for performance expectations, learning resources and performance measurement tools.

"The participants all agreed that a working group was a good thing" and decided to reconvene in the next six months, said Ms. Ochenkowski, who also is director of global risk management for Jones Lang LaSalle Inc. in Chicago.

Frustrations surrounding the timeliness and accuracy of insurance policies, which have been highlighted in the ongoing World Trade Center coverage dispute, are not new, she said.

"The point is, RIMS has worked on the process and has decided to work with its members and the industry as a whole to try to do something, so we can all stop talking about it," she said.

Also present at the meeting were executives from: ABD Insurance & Financial Services, Arthur J. Gallagher & Co., the Assn. of Insurance & Risk Managers, the Council of Insurance Agents & Brokers, the Federation of European Risk Management Assns., the Financial Services Commission of Ontario, Factory Mutual Insurance Co., Liberty Mutual, Lockton Cos. Inc., New York State Department of Insurance, the Property Casualty Insurers Assn. of America and Zurich North America.

In addition to various RIMS executives, also present were: Karen Beier, vp-risk management for Shaklee Corp. in Pleasanton, Calif.; Barbara Devine, vp-risk management for Standard Parking Corp. in Chicago; Mike Fenlon, corporate risk manager for United Parcel Service in Atlanta; Terry Fleming, director-division of risk management for Montgomery County, Md.; and Kim Hunton, risk manager for the city of Ottawa.

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

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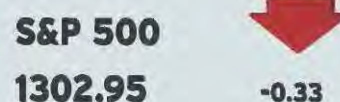


S&P 500 1302.95 -0.33

Largest gains		Largest losses	
EMC Insurance Group	9.23%	Fairfax Financial	-12.42%
Clark Inc.	7.75%	Odyssey Re Holdings	-5.53%
Tower Group Inc.	6.71%	Zenith National	-4.95%
Harleysville Group Inc.	4.27%	AXA	-4.07%
Gainsco Inc.	3.61%	Axis Capital Holdings	-4.03%

Weekly change by market segment	
Brokers	1.72%
Insurers/reinsurers	-1.01%
Managed care organizations	-0.39%

Source: FinancialContent Inc. *(http://financialcontent.com)*

Late News

Continued from page 1

Financial Services Group Inc., which would retain 20% of the risks. The Labor Department's final decision is expected by the end of next month.

Nike bias suit gets class action status

A U.S. district court judge in Chicago has granted class action status to a discrimination suit brought by 18 current and former black employees who worked at a Niketown store in downtown Chicago. The order expands the number of potential plaintiffs in the suit against Nike Inc., which operates the store, to more than 230. The plaintiffs allege that Nike segregated its black employees into its lowest-level and worst-paid jobs and denied them equal opportunity for promotions to more attractive positions, among other charges. A Nike spokesman said the judge's order does not address the merits of the claims. "We just don't believe that this reflects our company's culture of inclusion and respect" for its workers, he said.

Fairfax reports more SEC finite subpoenas

Fairfax Financial Holdings and its chief executive officer, Prem Watsa, have received additional subpoenas relating to finite risk coverage from the U.S. Securities and Exchange Commission. The subpoenas were filed in response to Mr. Watsa's answer to a question asked during a Feb. 10 investor conference call about an internal review of Fairfax's finite risk contracts, the company said in a statement. Fairfax unit Odyssey Re Holdings Corp. last month said it would restate its results for various periods to correct its accounting for certain ceded finite deals.

Aviva scraps plans for Prudential buy

British insurer Aviva P.L.C. late last week withdrew its nearly $30 billion bid to take over competitor Prudential P.L.C. The terms of its proposal were not accepted by Prudential and it was not in the best interests of Aviva's shareholders to alter the proposed terms, London-based Aviva said. Aviva noted it reserves the right to make an offer in the next six months in the event Prudential reconsiders or a third party announces a firm intention to make an offer for the insurer.

Pennsylvania governor vetoes tort reform bill

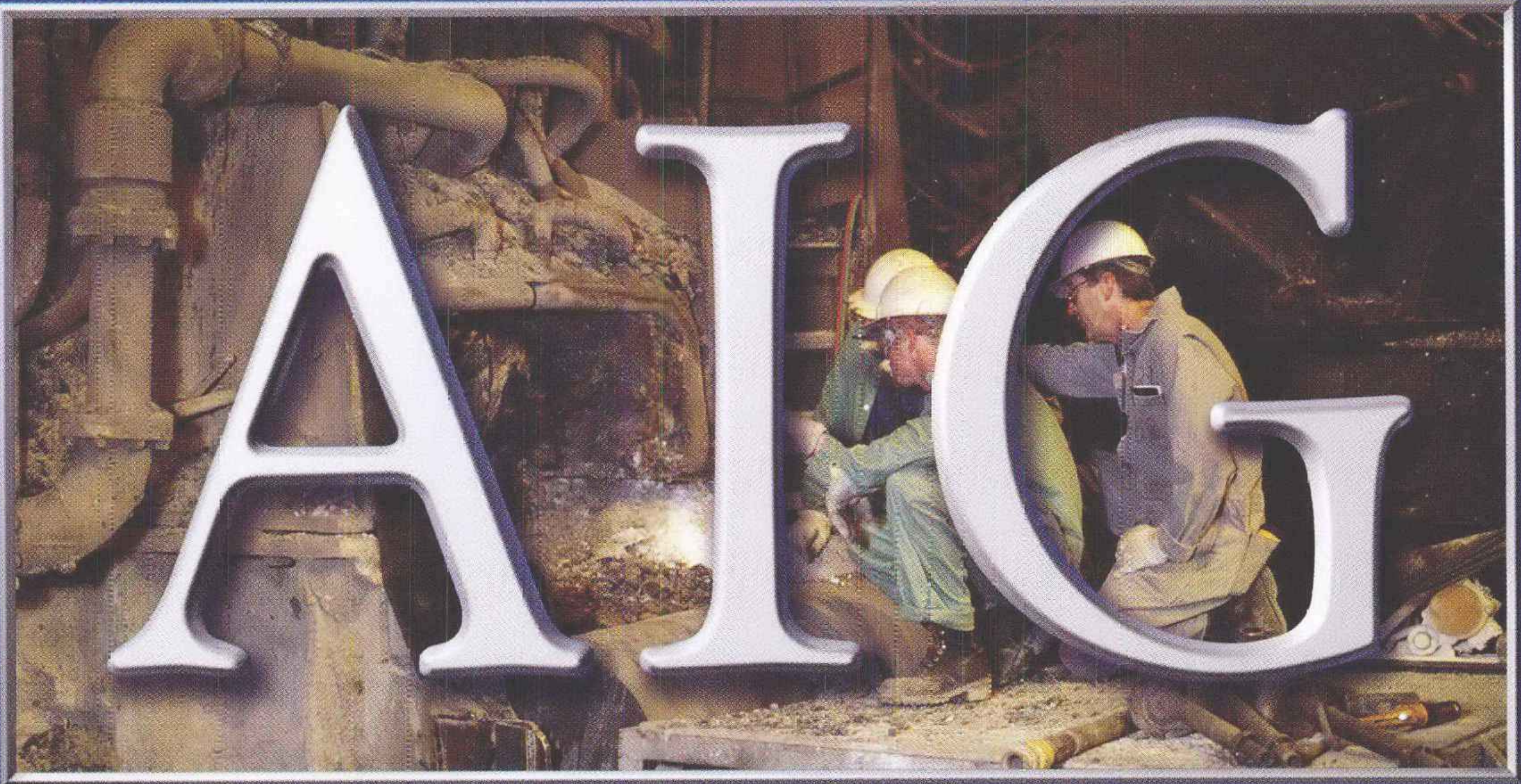
Pennsylvania Gov. Ed Rendell has vetoed a bill that would have ensured civil defendants pay only damages they are found to be directly responsible for in most lawsuits. Under S.B. 435, sent to the governor earlier this month, a defendant found negligent or strictly liable for an injury would be responsible only for his or her share of the total damages awarded to compensate the plaintiff, in most circumstances.

At *BusinessInsurance.com*

New Online Poll: Merger and acquisition activity among property/casualty insurers over the next 12 months will:

1. Increase
2. Decrease
3. Hold steady

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



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