MAY 14, 2001

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UPDATES

Congress again targets Bermuda tax 'advantage'

WASHINGTON—A renewed battle is brewing between U.S. and Bermuda insurers over legislation that would close an alleged tax loophole that some U.S. insurers say favors offshore insurance holding companies.

Reps. Nancy Johnson, R-Conn., and Richard Neal, D-Mass., last week intro-

See **Updates** *on next page*

Employers blast FMLA expansion

4th Circuit rules flu cases eligible for leave

By JUDY GREENWALD

RICHMOND, Va.—Employers could face, at best, additional administrative burdens and, at worst, expanded liability in the wake of a federal appeals court decision that says influenza and other minor illnesses fall under provisions of the Family and Medical Leave Act.

Employer groups and others say the 2-1 decision by a panel of the 4th U.S. Circuit Court of Appeals ignores Congress' intent that the FMLA apply only to serious illnesses. The May 7 decision, *Kimberly Miller vs. AT&T Corp.*, cites a Department of Labor regulation to support its decision that employees taking leave for minor illnesses, including the flu, could be covered under the FMLA.

The ruling by the 4th Circuit Court in Richmond, Va., has a direct impact only on employers in the states within its jurisdiction—Maryland, North Carolina, South Carolina, Virginia and West Virginia. But because it is the first federal appellate court ruling on this issue, it will likely be influential in other courts around the country.

"It's a door-opener" to abuse and possible litigation, said Ralph Dudek, human resources director at Jessup, Md.-based W.D. Class & Son, a wholesale produce distributor.

Employer groups that oppose the decision include two Washington-based groups—the U.S. Chamber of Commerce and the Employment Advisory Council—both of which submitted briefs in the case in support of AT&T; and the Springfield, Va.-based FMLA Technical Corrections Coalition. A Washington-based spokesman for AT&T said the company has not yet decided how to respond to the ruling.

Legislation introduced by Sen. Judd Gregg, R-N.H., in March that would prohibit minor illnesses such as the flu from being covered under the FMLA

See **FMLA** *on page 58*

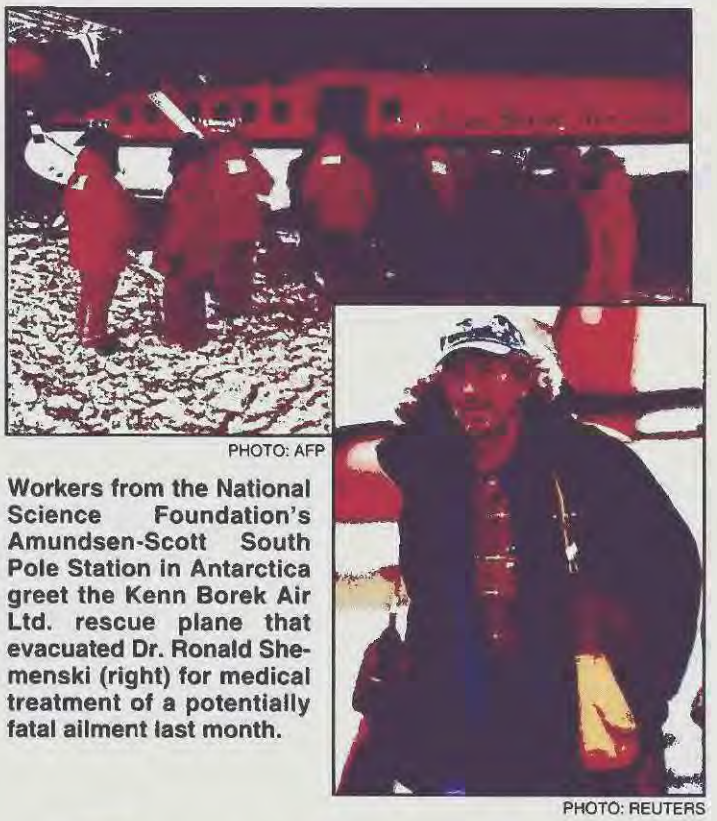

PHOTO: AFP

Workers from the National Science Foundation's Amundsen-Scott South Pole Station in Antarctica greet the Kenn Borek Air Ltd. rescue plane that evacuated Dr. Ronald Shemenski (right) for medical treatment of a potentially fatal ailment last month.

PHOTO: REUTERS

Travel policy goes to the ends of the Earth

By JOANNE WOJCIK

DENVER—The next time you see one of those machines in an airport selling travel accident insurance and wonder whether it's worth buying, you might stop and think about Dr. Ronald Shemenski.

The perilous rescue of the ailing doctor from the South Pole on April 26, at the start of the Antarctic winter, was covered by two travel accident insurance policies—one that was provided as an employee benefit by Dr. Shemenski's his employer and another that he purchased himself through his employer.

Dr. Shemenski's employer, Denver-based Raytheon Polar Services, a unit of Lexington, Mass.-based Raytheon Co., provides business travel accident insurance to its employees through a group program underwritten by AIG Life, a unit of American International Group Inc. of New York.

Employees can purchase additional voluntary personal travel accident insurance through payroll deduction. Dr. Shemenski purchased this coverage, which also is underwritten by AIG Life.

And, fortunately for both Raytheon and Dr. Shemenski, neither AIG policy had a limit

See **Evacuate** *on page 57*

Asbestos claims plan fought

Insurers sue to void cover

By DOUGLAS McLEOD

NEW ORLEANS—In another sign of the turmoil being created by a renewed surge of asbestos-related claims, London insurers are suing bankrupt Babcock & Wilcox Co. and its parent company to void a longstanding agreement on the coverage for such claims.

Lloyd's of London underwriters and London-based Turegum Insurance Co. charge that Babcock parent McDermott International Inc. breached the coverage agreement by pursuing a Chapter 11 reorganization plan for Babcock as a way of dealing with rising asbestos claims against the engineering unit.

While the agreement outlined roles for Babcock, McDermott and insurers in managing asbestos claims, the reorganization plan would create a trust to take over claims handling, allowing insurers no say in the process and potentially exposing them to immediate claims for their policy limits, underwriters allege.

McDermott officials denied the allegations, leveled in separate lawsuits against Babcock in U.S. Bankruptcy Court and McDermott in U.S. District Court, both in New Orleans.

See **Lawsuit** *on page 59*

Unfunded asbestos liabilities surge

Rising cost of asbestos liability shown over a 4-year period

*Cumulative paid losses plus net revenues as of end of prior year.
Source: A.M. Best Co.

GRAPHIC BY JOHN HALL

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NEWSPAPER

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INSIDE

- **ACE USA is teaming with Cargill-Alliant L.L.C. to offer utilities the ability to buy replacement power as part of the insurer's coverage against increases in the cost of replacement power. Page 4**

- **A federal judge threw out the Port Authority of New York & New Jersey's claim for coverage of its asbestos abatement efforts at numerous properties ranging from the World Trade Center to toll booths. Page 6**

- **A move by London underwriters to require a tougher standard of proof for asbestos claims should provide added impetus for U.S. lawmakers to revisit legislation that would streamline asbestos claims handling, this week's editorial says. Page 8**

- **Coverage of exhibit hall offerings and educational sessions at the Risk & Insurance Management Society Inc.'s 39th annual conference in Atlanta continues this week. Page 10**

- **U.K. employers are not adequately protecting their employees from the growing risk of kidnappings, a London-based think tank says. Page 53**

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UPDATES

Continued from previous page

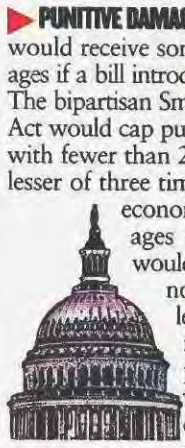
duced a bill that would effectively raise taxes on premiums ceded by U.S. insurers to affiliated reinsurers in low-tax foreign jurisdictions such as Bermuda. The new proposal—H.R. 1755—is strongly supported by a handful of U.S. insurers, including Chubb Corp., that charge that Bermuda-based insurers with U.S. affiliates enjoy an unfair tax advantage over U.S.-based competitors. While U.S.-based insurers pay U.S. tax on investment gains on the reserves they hold, insurers with overseas affiliates can cede business and let the reserves build up tax-free offshore, Chubb and others have argued.

Mr. O'Hare

The provisions of H.R. 1755 differ from those of a bill introduced by Reps. Johnson and Neal last year, though. H.R. 1755 would deny a U.S. insurer the normal tax deduction for ceded reinsurance premiums if those premiums go to an offshore affiliate. The bill would exempt U.S. insurers that can prove to the U.S. Treasury Department that their parent companies pay a specified minimum level of tax in their home jurisdictions. Chubb Chairman and Chief Executive Officer Dean O'Hare praised the bill, saying: "The U.S. tax code should not, as it does in this case, interfere with the free market. The code should not create winners and losers, particularly when the disadvantage falls on U.S.-based companies in our own market." Bermuda-based ACE Ltd. attacked H.R. 1755, calling it "a protectionist measure aimed at improving the competitive advantage of several U.S.-based companies by increasing taxes on their internationally-based competitors."

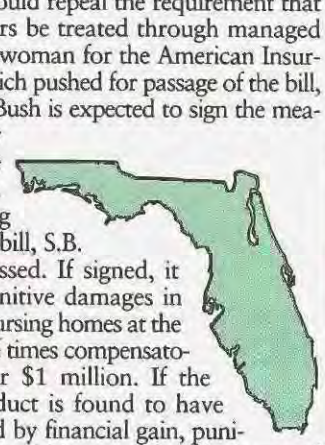
DRUG COST TRENDS STUDIED Drug spending by health care purchasers rose by 18.8% in 2000 over the previous year, a new study reports. Total spending for prescription drugs rose to $132.0 billion in 2000, from $111.1 billion in 1999, according to the study released by the National Institute for Health Care Management Foundation in Washington. The bulk of the higher costs came from increased spending on a small number of drugs. Just 23 drugs accounted for more than half of the increase in sales, the study found. Among those drugs were prescription medicines for arthritis, ulcers, high cholesterol and diabetes. Overall, the study states that 42% of the growth in spending stems from growth in the number of prescriptions, 36% comes from a shift to more-expensive drugs, and 22% comes from price increases. A copy of the study is available at *www.nihcm.org*.

ASBESTOS LIABILITIES RISING: A.M. BEST An avalanche of new asbestos claims could push property/casualty insurers' ultimate asbestos liabilities to $65 billion, nearly 63% higher than predicted four years ago, A.M. Best Co. says (see chart, page 1). Asbestos claims payments have already risen an average 15% annually over the last two years and will jump 20% annually over the next three to five years, as loss trends worsen, according to Best. Several factors have produced the trend, including bankruptcy filings by large defendant companies, which have pushed plaintiffs to target a wider array of alternative defendants. In some cases, defendant companies have "reopened" exhausted product liability limits by reclassifying old claims under other sections of general liability policies, making product limits available for new claims, Oldwick, N.J.-based Best said. Insurers, which have generally covered asbestos losses on a "pay-as-you-go" basis, are also about $33 billion underfunded to meet the projected ultimate loss of $65 billion, according to Best. Overall, the property/casualty industry reported $23.7 billion in asbestos and environmental loss reserves at year-end 2000, with the 30-largest insurance groups accounting for $20.4 billion, or 86%, of the total.

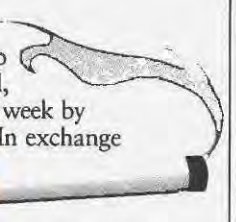


PUNITIVE DAMAGE RELIEF BILL Small businesses would receive some relief from punitive damages if a bill introduced last week becomes law. The bipartisan Small Business Liability Reform Act would cap punitive damages for businesses with fewer than 25 full-time employees at the lesser of three times the amount awarded for economic and noneconomic damages combined or $250,000. It would also replace joint liability for noneconomic damage awards levied against such small businesses with a system of proportional liability. The limits would not apply if the defendant committed a violent crime, violated civil rights laws, was being prosecuted under fraud laws or committed several other offenses. In addition, the measure would provide product sellers with immunity from product liability lawsuits under certain circumstances.

FLORIDA MAY CHANGE COMP LAW Managed care will no longer be mandatory in Florida's workers compensation system if a bill that passed at the end of the state's legislative session is enacted. H.B. 1803, which lawmakers passed earlier this month, would repeal the requirement that injured workers be treated through managed care. A spokeswoman for the American Insurance Assn., which pushed for passage of the bill, said Gov. Jeb Bush is expected to sign the measure. The law would become effective Oct. 1. A nursing home liability bill, S.B. 1202, also passed. If signed, it would cap punitive damages in cases against nursing homes at the greater of three times compensatory damages or $1 million. If the wrongful conduct is found to have been motivated by financial gain, punitive damages would be capped at the larger of four times the amount of compensatory damages or $4 million. Lawsuits filed after Oct. 1 would fall under the new statute.



CIGARETTE MAKERS AVOID BOND Three tobacco companies appealing the $145 billion punitive damages award against five cigarette makers in the landmark *Engle* case are paying nearly $2 billion in a deal that protects them from uncertainty surrounding Florida's bonding requirements. Philip Morris Cos., Lorillard Tobacco Co. and Liggett Group Inc. agreed to the deal, which was approved last week by a state court in Miami. In exchange for the payment into an escrow account, plaintiffs attorney Stanley M. Rosenblatt agreed to end his threat to challenge as unconstitutional the Florida law that limits the bond each company must post to $100 million or 10% of its net worth, whichever is less. Under the deal, the *Engle* class is guaranteed $709.7 million even if the plaintiffs lose the appeal. The plaintiffs agreed, though, not to seek to execute the punitive damage award during the appeal. Philip Morris is paying $1.2 billion in addition to the $100 million bond it already posted. Those amounts will be returned to the company if it wins the appeal. Another $500 million paid by Philip Morris will be nonrefundable, covering the largest portion of the $709.7 million guaranteed to the *Engle* class. Lorillard and Liggett are paying the remainder of the escrow amounts. Defendants R.J. Reynolds Tobacco Co. and Brown & Williamson Tobacco Corp. have yet to decide whether to join the agreement.



MEDICAL COSTS HURT AETNA Higher medical costs drove Aetna Inc.'s first-quarter results into the red, as the health insurer recorded a $48.2 million loss, compared with a profit of $75.4 million for the same period in 2000. Revenues fell 4.9%, to $6.43 billion. The poor results come at a difficult time for the Hartford, Conn.-based insurer, which is trying to turn its business around after lackluster results going back several quarters. "The problems in our core health business are substantial. They are not something we can fix in a quarter or two," said John W. Rowe, chairman and chief executive officer. In the most-recent quarter, Aetna's main problem was higher-than-expected medical costs, he said.

BRIEFLY NOTED **Chubb Corp.** named Weston M. Hicks chief financial officer. Mr. Hicks, a former property/casualty insurance industry analyst at J.P. Morgan & Co., joined Chubb earlier this year as senior vp and financial assistant to the chairman. He replaces David B. Kelso, who resigned.... Kaj Ahlmann has been named chairman of **inreon Ltd.**, an Internet-based reinsurance exchange (*BI*, Jan. 1). Mr. Ahlmann was most recently vice chairman of E.W. Blanch Holdings Inc.; prior to that, he was chairman and CEO of Employers Reinsurance Corp. Also last week, St. Paul Re, the reinsurance arm of The St. Paul Cos. Inc., joined inreon Ltd....Princeton, N.J.-based American Re Corp. has completed **a risk-linked securities deal** providing the company with $120 million in coverage for U.S. catastrophe losses resulting from Midwest earthquakes and Eastern and Gulf Coast windstorms. The deal was structured by subsidiary American Re Securities Corp., with the securities issued by Gold Eagle Capital 2001 Ltd., a special-purpose Bermuda company. Based on indexes of modeled insurance industry losses from specified catastrophic events, the securities are scheduled to mature in April 2002....**Odyssey Re Holdings Corp.**, a subsidiary of Toronto-based Fairfax Holdings Ltd., said in an amended filing with the Securities and Exchange Commission May 4 that it plans to raise up to $325.7 million in an initial public offering. The unit plans to sell 17.1 million shares for between $16 and $19 per share....The Insurance Services Office Inc. has moved its international headquarters to Jersey City, N.J., from New York. The move consolidates all of ISO's New York area operations, including its Property Claim Services unit, under one roof....Software producer **ebix.com Inc.** is buying the rights to all products previously offered by defunct online marketplace iwix.net L.L.C. iwix.net ceased operations in April after it failed to find additional funding.... Itasca, Ill.-based **Arthur J. Gallagher & Co.** has formed a new specialty brokerage services unit devoted to the production and development of insurance-based financial products. Based in Chicago, Gallagher Financial Products will be headed by Managing Directors Patrick Walsh and Robert Benvenuto.... **American International Group Inc.** agreed Friday to purchase American General Corp., a life insurance and pension company, for $23 billion. American General has paid AIG's rival suitor, Prudential P.L.C. in London, a $600 million fee to void a previous merger agreement, which was scuttled after a drop in Prudential's stock price. BI

To get breaking news as it occurs, visit Business Insurance's free online Updates at www.businessinsurance.com. All of the material in the Updates column, as well as other content in this week's issue, is generated from daily news postings that appeared on the Web site in the previous week.

Insurer must pay expected EIL claims

By DAVE LENCKUS

PROVIDENCE, R.I.—Rejecting insurance claims-handling convention in environmental liability cases, the Rhode Island Supreme Court has ruled that an insurer must indemnify its policyholder for identifiable future environmental losses.

In its unanimous decision, the court also found that an insurer that does not settle a coverage dispute with a policyholder is not entitled after it loses at trial to "set off," or reduce, its liability by the amounts that other insurers agreed to pay the policyholder in pre-trial settlements.

The April 24 rulings affirm a trial court's decision that ordered First State Insurance Co., a Boston-based subsidiary of The Hartford Financial Services Group Inc., to pay Greensboro, N.C.-based Kayser-Roth Corp. more than $9.1 million of damages.

Policyholder attorneys characterize the rulings as significant policyholder victories that could influence courts in other jurisdictions.

An insurance industry attorney maintains, however, that the rulings are not setbacks for insurers.

The case stems from a 1969 accidental spill of trichloroethylene, a cleaning solvent, as it was being delivered to a plant owned by Kayser-Roth subsidiary Stamina Mills Inc. in Forestdale, R.I. The spill eventually contaminated groundwater and the surrounding environment.

Stamina Mills closed the plant in 1975 and sold the property a year later. Stamina Mills dissolved in 1977.

In 1984, the U.S. Environmental Protection Agency notified Kayser-Roth that it was a potentially responsible party for cleaning the site.

A federal court in 1990 ordered Kayser-Roth to reimburse the government for more than $958,000 of incurred cleanup costs. The court also held the company liable for all future costs of cleaning its former plant site and the surrounding area.

Before an insurance coverage trial began in April 1996, all of Kayser-Roth's approximately 30 general liability insurers from 1969 through 1984—except First State—settled with the company.

First State wrote two unusual, manuscripted general liability policies—with some environmental insurance provisions—that covered Kayser-Roth from 1982 through 1985, said John Tarantino,

See **Cleanup** *on page 58*

Multiple benefits bills now before Congress

By JERRY GEISEL

WASHINGTON—Backers of legislation that would make it easier for trade associations to offer health care plans to their members hope that presidential support for the proposal will lead to its enactment.

Identical legislation—known as the "Small Business Health Fairness Act"—was introduced last week in the Senate by Sen. Tim Hutchinson, R-Ark., and in the House of Representatives by Rep. Ernie Fletcher, R-Ky. The legislation would create new "association health plans" that could operate nationwide after meeting federal solvency and other standards.

The legislation, H.R. 1774 in the House and S. 858 in the Senate, would allow trade associations to offer self-funded or fully insured health plans that would be generally exempt from state rules, such as laws mandating that insured health care plans offer certain benefits.

While states could regulate the plans, they would, in general, have to enforce the federal rules instead of their own.

The introduction of the association health plan proposal came as Congress took steps on several other benefits measures, including:

- Passage of legislation—H.R. 622—by the House Ways and Means Committee that would increase the amount that employers could reimburse employees for adoption expenses without that reimbursement benefit being added to employees' taxable income.

Under current law, an employer can pay tax-free to an employee up to $5,000 of the expenses for the adoption of a child, or up to $6,000 in the case of a child with special needs.

This tax-free benefit is available to em-

See **Congress** *on page 57*

Growing issue for health plan buyers

New quality emphasis

By MARK A. HOFMANN

WASHINGTON—Health care quality will be an increasingly critical issue for employers, a medical executive says.

Currently, however, a main priority of many large employers is obtaining less expensive care and resisting efforts to expand their share of rising medical and pharmaceutical costs, other experts say.

"Quality is a very hard sell," said Dr. Robert Galvin, director-global health care of General Electric Co. in Stamford, Conn., during a May 7 press briefing releasing the findings of a survey of the health care purchasing strategies of Fortune 500 companies. "Basically, we think quality is OK," because of state accreditation programs for health care providers and the like, he said. But quality actually varies greatly among providers, he said. He cited the Leapfrog Group project—an employer-driven effort to gather and disseminate information about health care quality—as an example of how purchasers respond to need to improve quality (*BI*, Nov. 20, 2000).

Eighty-three percent of the 408 Fortune 500 companies that responded to the survey—which appears in the May/June 2001 edition of Health Affairs—reported that they took quality into account when choosing health plans. But only 55% of those companies required that the National Committee for Quality Assurance accredit those plans.

"Only 32% of the companies reported that they set specific standards for clinical quality in their contractual arrangements," according to the article. Instead, the emphasis has been on improving customer service. "Because clinical quality evaluation requires more cost and effort, companies often neglect it in favor of more easily measured quality indicators such as customer service," said the article.

The desirability of a greater emphasis on quality was but one aspect of the wide-ranging discussion of corporate approaches to employee benefits. At the center was the survey itself, many key findings of which were outlined by one its authors—James Maxwell, director of health policy at the Boston-based John Snow Inc. Research & Training Institute.

Mr. Maxwell noted that after the Clinton administration's attempt in the early 1990s to change the shape of

See **Quality** *on page 56*

U.K. ruling in blood case sets precedent for product law

By CAROLYN ALDRED

LONDON—A landmark London High Court ruling on strict liability may have wide implications for manufacturers and producers across the European Union.

The recent judgment, which held that claimants who contracted hepatitis C as a result of blood transfusions should be compensated by the government health service, is one of the largest U.K. decisions on strict liability, as well as one of the first product liability judgments in a class-action lawsuit, attorneys say.

The ruling by Justice Burton also is expected to be influential throughout the European Union, as it is one of the first decisions to interpret the E.U. Product Liability Directive of 1985. Since the directive's adoption more than 15 years ago, the United Kingdom and other E.U. member countries have enacted provisions of the directive into their national legislation.

More immediately, the ruling could cost the U.K. government hundreds of millions of pounds in damages.

The trial involved six lead cases, representing 114 claimants who would receive an estimated total payout of some £3 million ($4.3 million) as a result of the decision. But as many as 5,000 people throughout the United Kingdom are believed to be infected with hepatitis C, a virus that can cause severe liver damage, as a result of tainted blood transfusions given through the National Health Service, according to a spokesman from the U.K. Department of Health.

The Department of Health is still examining the implications of the ruling and would not comment on whether other patients who contracted the virus would be compensated. But the government will not appeal the judgment, because it does not want to put the claimants through further ordeal, the spokesman said.

"Although an appeal would have provided an opportunity to seek clarification on some aspects of the judgment that may have a bearing on the future liability of NHS bodies, the government did not wish to subject the claimants to a further period of uncertainty," according to a statement issued by the Department of Health.

It is not just the health service that is concerned about its future liability as a result of the judgment.

The U.K. ruling is "the first major decision on strict liability in the U.K. and the first full judgment on liability in a multiclaimant product liability case," according to the London law firm of CMS Cameron.

"The judgment has wide implications for producers, manufacturers and insurers," said Sarah Payne, a lawyer with Davies Arnold Cooper, the London-based law firm that represented the National Blood Authority, a unit of the NHS that was the defendant in the case.

Ms. Payne said the judgment settles the question of whether the E.U. strict liability regime has changed legal liability under common law.

"The answer is yes; strict liability is very strict indeed. The risk of defect lies with the producer, not the consumer, and the producer must plan to cover this risk by insuring or ceasing production of any potentially defective product," she said.

According to the judgment, the E.U. directive holds a producer strictly liable if it produces a defective product, no matter what precautions it took to minimize any damage.

"This is the first substantive judicial pronouncement" on the E.U. strict liability regime, and it has "implications across Europe, which is why there is so

See **Liability** *on page 56*

PHOTO: NEWSMAKERS

With power outages expected rise summer, ACE is targeting utilities that seek to assure an affordable supply of replacement power.

ACE policy offers power to utilities

By GAVIN SOUTER

PHILADELPHIA—As the risk of power outages this summer increases for California and other states, ACE USA is expanding its replacement power coverage for utilities to include the ability to buy and deliver additional power.

The service, which is provided through an agreement with Cargill-Alliant L.L.C., will reduce the cost of purchasing replacement power, which will result in savings for the utilities and ACE, said Ed Zaccaria, senior vp at ACE USA, a Philadelphia-based unit of ACE Ltd.

By providing policyholders with replacement power through Cargill-Alliant, utilities that are not based near a major hub will still be guaranteed delivery of the power, he said.

Cargill-Alliant is a joint venture between agricultural and industrial conglomerate Cargill Inc. of Minneapolis and Alliant Energy, a power supplier based in Cedar Rapids, Iowa.

The service is a free addition to ACE's PowerBacker policy, which covers utilities for the extra expense of buying power in the event of an outage.

Under the PowerBacker policy, utilities agree to a certain price threshold with ACE and if, in the event of a power outage or shortage, the cost of replacement power exceeds the threshold, ACE will reimburse the utility for the extra cost, Mr. Zaccaria explained.

Previously, the utilities have gone to the open market to buy the extra power, and in some circumstances have faced huge price increases as power providers take advantage of increased demand for power in the first few hours or days of a power outage, he said.

Policyholders will still have the option to go to the open market, but if they buy the power through Cargill-Alliant they will likely benefit from the long-term relationship it has now established with ACE, Mr. Zaccaria said.

"In this case, the person supplying the power, Cargill-Alliant, is looking after two relationships, one is with the customer and the other is with ACE, so the relationship goes beyond the first day," he said.

Consequently, utilities using the service are more likely to receive a "fair" price for the power, Mr. Zaccaria said.

Additionally, ACE customers will receive priority treatment from Cargill-Alliant in the event the company faces an increased demand for power from several utilities, he said.

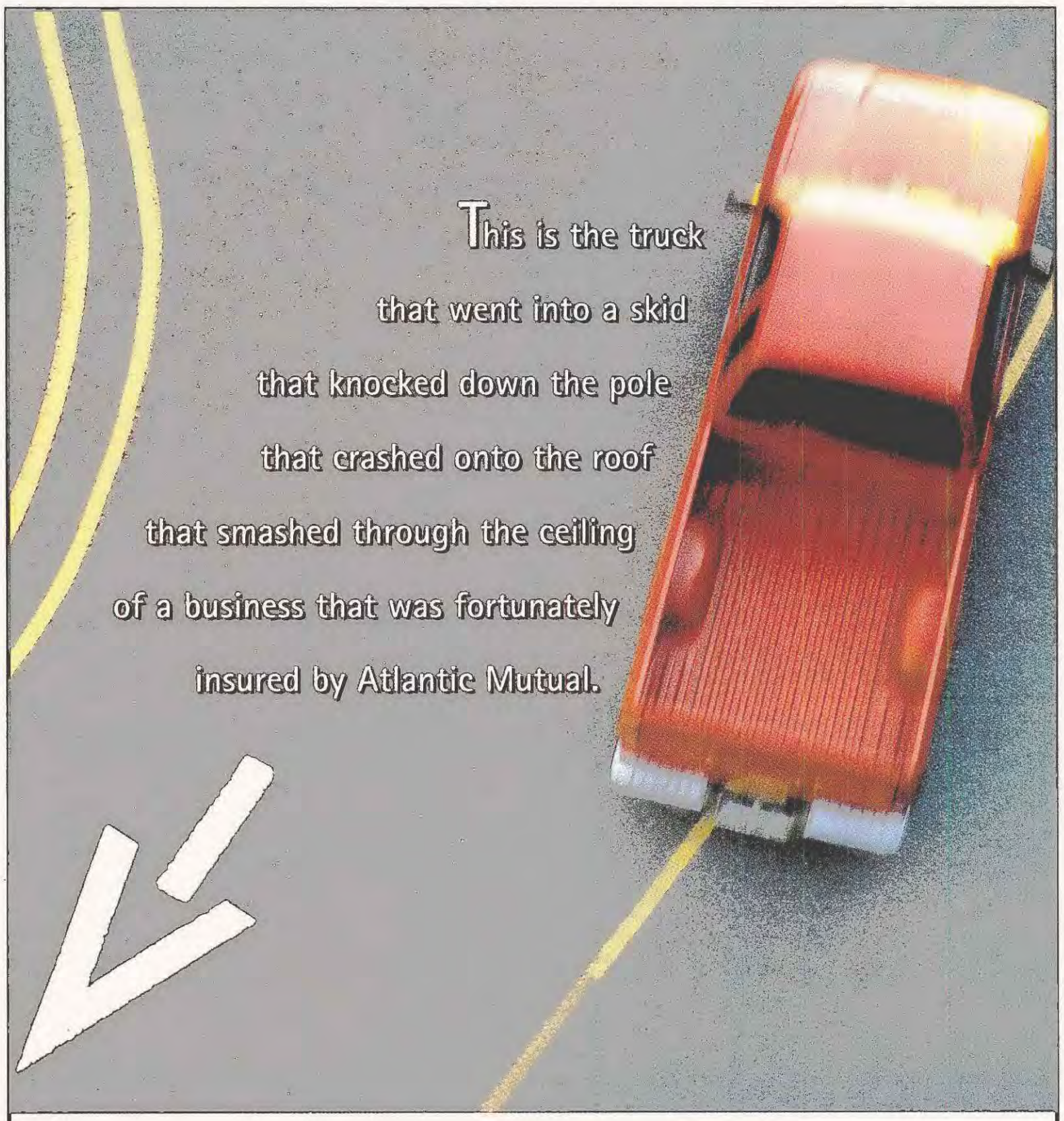
"It's an option for them in a market that has a tendency to really put the screws on folks that have a short-term need," Mr. Zaccaria said.

Utility policyholders will benefit from the service as they often have a catastrophe-level threshold and a co-insurance provision under the PowerBacker policy, and ACE will benefit, as the claims that do arise will likely be lower, he said.

Additionally, utilities that are not located near a major power hub will benefit from being supplied with power by Cargill-Alliant, Mr. Zaccaria said.

"Cargill-Alliant is probably one of the largest power transmission owners in the business, so they can deliver power to off-hub locations," he said.

The latest version of PowerBacker was launched last year. So far, it has insured more 100,000 megawatts of generated power, Mr. Zaccaria said. BI



BI hires new salesperson

CHICAGO—*Business Insurance* has added to its sales staff in Chicago.

John L. Phillips has joined the magazine as a district manager in Chicago. In his new role, Mr. Phillips will be responsible for advertising accounts in various states throughout the Midwestern and Southeastern regions as well as selected accounts in Chicago.

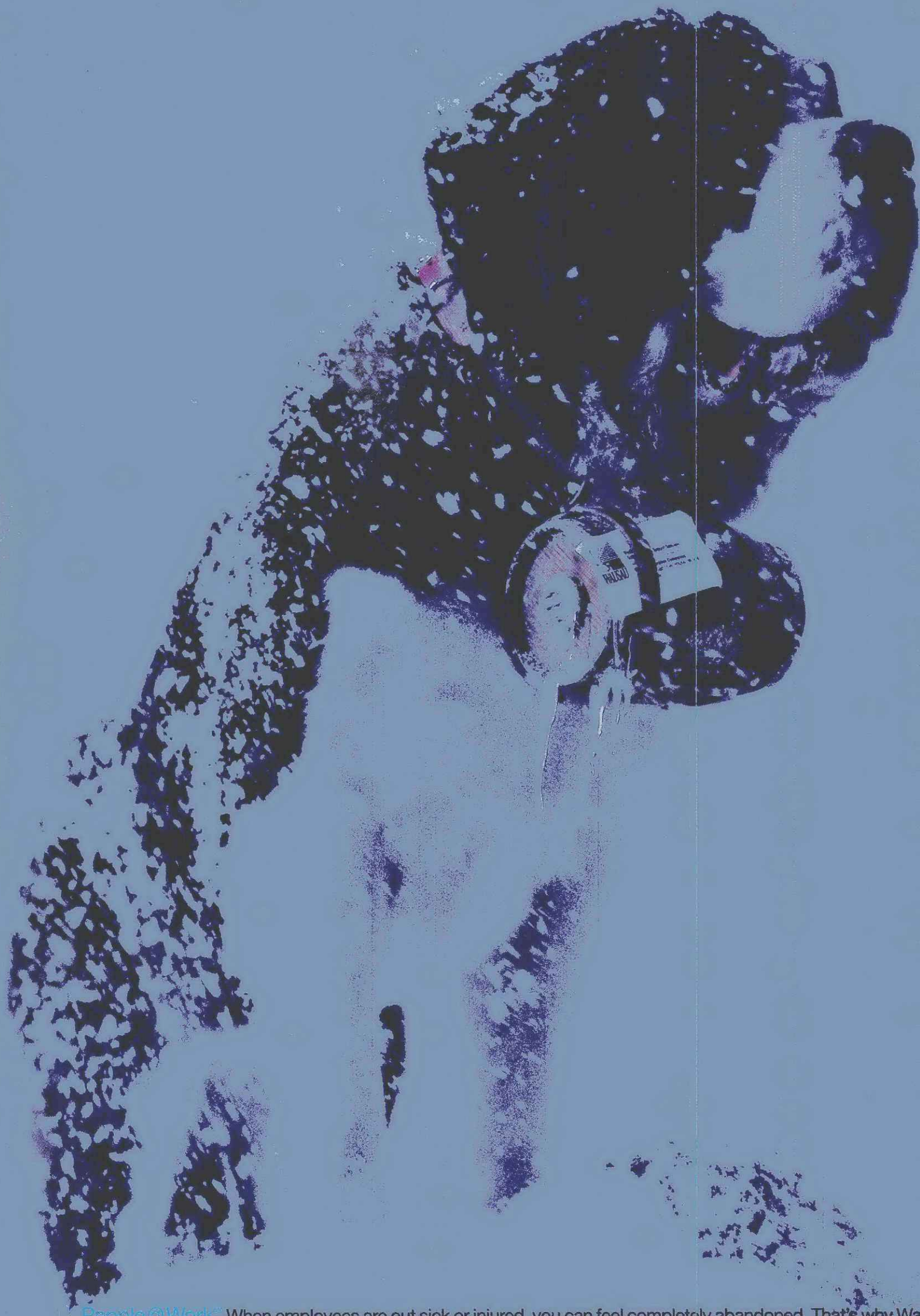
Mr. Phillips

He replaces Deborah Neale, who retired from the magazine.

Before joining *BI*, Mr. Phillips was a regional sales manager in Chicago for Maintenance Solutions magazine, a trade publication for engineering executives. Prior to that, he was a regional sales manager in Chicago for two other magazines, Energy Decisions and EducationFM, and before that was an account executive at ODA Advertising Inc. in Bloomingdale, Ill.

Mr. Phillips has a bachelor of arts degree in corporate communications from Northern Illinois University in DeKalb.

He can be reached at 312-649-5288. BI



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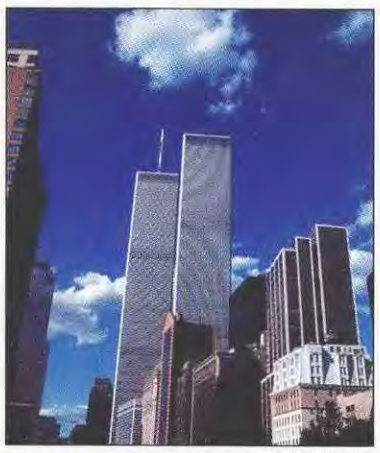


PHOTO: AFP

The Port Authority of New York & New Jersey sought coverage for the cost of removing asbestos from the World Trade Center and other properties.

Port loses claim for asbestos removal

By DOUGLAS McLEOD

NEWARK—Asbestos abatement costs are not covered by an all-risks property policy unless an actual asbestos release or an imminent release leaves a property useless or uninhabitable, a federal judge has ruled.

U.S. District Judge John W. Bissell earlier this month threw out the Port Authority of New York & New Jersey's final claims in a longstanding suit against dozens of insurers over coverage of more than $600 million in asbestos abatement costs at the World Trade Center, New York's three major airports and other Port Authority properties.

Granting summary judgment for the insurers in his May 1 ruling, Judge Bissell found among other things that the costs of removing asbestos do not constitute "physical loss or damage" triggering coverage under the Port Authority's all-risk policies.

A Port Authority spokesman said the agency is reviewing the ruling and has not decided whether to appeal.

"We have noted, however, that the judge himself observed that there was no controlling case with respect to the question before the court," the spokesman said.

The ruling ends the trial phase of a decade-long court battle that began when the Port Authority sued its property insurers in 1991 in a New Jersey state court.

The suit sought recovery of the Port Authority's huge expenses of removing asbestos from hundreds of properties ranging from the enormous World Trade Center complex—which represented more than $200 million of the abatement costs—to bridge and tunnel toll booths.

Later moved to the U.S. District Court for New Jersey in Newark, the suit named all of the agency's property insurers from 1969 until 1991. Among them were Affiliated FM Insurance Co., Allianz Insurance Co., units of American International Group Inc., Federal Insurance Co., Hartford Accident & Indemnity Co. and dozens of Lloyd's of London syndicates and London market insurers.

Judge Bissell last year granted summary judgment to insurers on policies issued prior to 1978, finding that the Port Authority breached policy provisions requiring timely notice of its claims.

The ruling removed pre-1978 policies from the case and left only policies in force from 1978 to 1991. In his ruling earlier this month, Judge Bissell found that the agency also has no coverage for its asbestos costs under the second group of policies.

The Port Authority had claimed that its manuscript all-risks property policies cover asbestos abatement costs at hundreds of locations within its facilities, including 780 locations it identified within the World Trade Center and 302 locations at Newark International Airport, according to the ruling.

The agency's claims related to locations that generally fell into three categories, Judge Bissell found. These were numerous locations where the mere presence of asbestos allegedly constituted physical damage under the policies; 801 locations where the risk of asbestos releases constituted damage; and 281 locations where actual releases constituted damage.

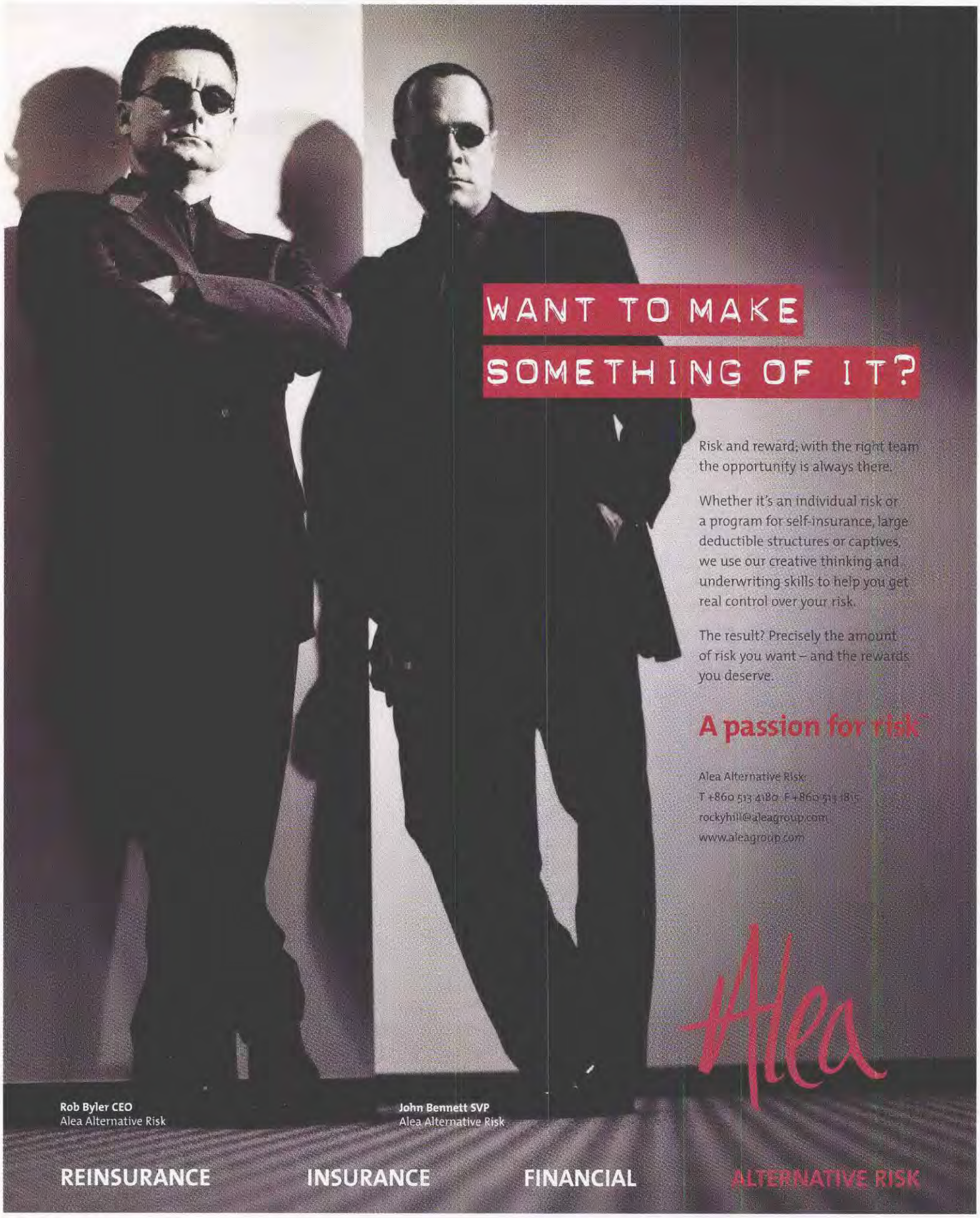
After reviewing submissions by both sides, however, Judge Bissell found no evidence that asbestos had posed a health risk to anyone at the Port Authority's properties.

Thousands of air samples taken at the Newark Airport buildings, for example, never revealed any instances of asbestos fibers exceeding safety limits, the judge noted, adding that the Port Authority had completed abatement projects at only a third of the airport locations for which it had claimed losses.

The agency also repeatedly vouched for the safety of its properties, according to the opinion. At one point, the director of the Port Authority's asbestos control program wrote in a memo to employees that "air monitoring tests are conducted to ensure the air quality in specific areas containing asbestos is within the required federal standards. All air monitoring tests taken so far at the (facility) indicate air quality well within federal standards."

Even the February 1993 terrorist bombing at the World Trade Center did not create an asbestos problem: Air sampling that began within hours of the explosion showed some higher-than-normal asbestos readings but none that exceeded levels considered safe under federal guidelines, the ruling notes.

See **Authority** *on page 59*



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OPINIONS

Insurers raise the stakes

AFTER WATCHING THE THREAT of unfunded asbestos liabilities sharply escalate in recent years, some insurers in the London market have fired a warning shot across the bow of asbestos plaintiffs and defendants.

The London market insurers, led by Equitas, the runoff reinsurer of Lloyd's of London's pre-1993 long-tail liabilities, have signaled that they will require greater evidence in support of claims, particularly for settlements involving large groups of claimants, before agreeing to payment.

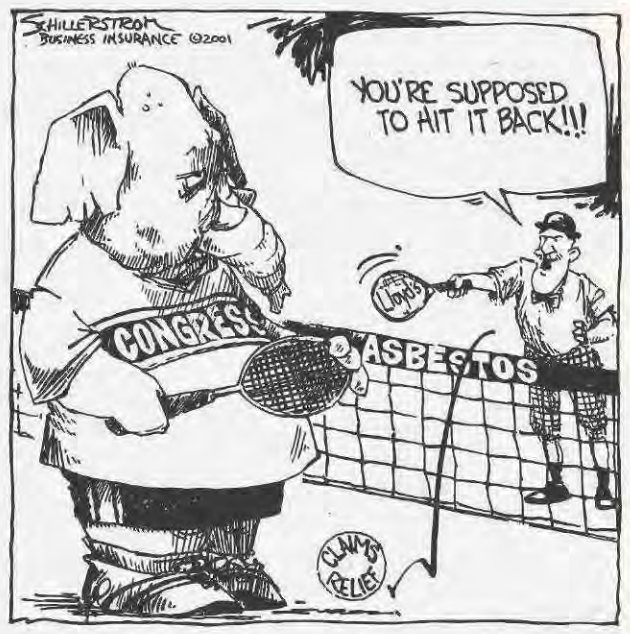
On its face, this is a reasonable defensive measure to avoid paying claimants who have not provided proof of injury or cannot show they were harmed by a policyholder's actions or products. It likely will prompt policyholders to be more diligent in scrutinizing the claims they are settling and submitting for coverage, especially when dealing with large groups in so-called inventory settlements. It could even make some plaintiffs attorneys recognize they are harming their chances of winning a settlement for their clients by lumping questionable claimants in with ones who have valid claims for reimbursement.

But this tougher stance also could have the unintended consequence of escalating the liabilities faced by asbestos defendants, potentially driving more companies into bankruptcy. That is because, although the claims settlement approach being targeted by underwriters may allow some questionable claims to be paid, it also minimizes the risk of far greater payouts and costs inherent in forcing more claims to court. It removes the flexibility of policyholders and their insurers to make cost/benefit analyses that allow some iffy claims to squeak through in exchange for avoiding the uncertainty of wild jury awards and bad legal precedents.

If asbestos defendants that continue on that settlement course find their claims for coverage challenged or denied by insurers, that also is likely to result in costly and protracted coverage battles.

If there were a favorable outcome to this situation, it would be that new pressure is brought by asbestos defendants and their insurers on U.S. lawmakers to pass legislation that would create a new central facility for coordinating asbestos claims. Congress attempted to create such a facility during its last session but failed to complete the task.

That legislation would go a long way toward relieving the risks defendants face in battling such claims in the courts and provide a more efficient



mechanism for resolving asbestos claims. It could also dramatically reduce the ability of plaintiffs attorneys to take advantage of defendants' fear of an unpredictable court system and hold them over a barrel at the settlement table.

We believe renewing the push for that legislation is a goal London underwriters share with U.S. asbestos defendants—perhaps it was an ulterior motive behind their tough new stance on asbestos claims.

The stakes in asbestos litigation have grown steadily higher in recent years for all concerned. By their action, the London insurers may have raised those stakes yet higher for defendant companies. We hope Congress seizes this opportunity to revive legislation that would defuse the situation; appease claimants, defendants and insurers; and remove the legal profiteers from the field.

LETTERS

State form regulation 'cumbersome'

To the editor: I support Robert Vagley's call for optional federal chartering of insurers in his article, "Regulation Out of Step With Industry," in your Feb. 19 Perspectives section.

Working with multistate policies in a recent assignment with a major regional broker has shown how cumbersome state regulation makes such policies needlessly lengthy and difficult to interpret.

Beyond the fact that every state has its own cancellation and non-renewal requirements, and its own uninsured/underinsured motorists endorsement for automobile policies, many states tinker with the terms and conditions of almost every property and casualty coverage. On one package policy covering 18 states, I found 58 state endorsements. Ostensibly introduced for policyholder protection, these endorsements make uniform nationwide policies impossible. The policyholders these endorsements are designed to "protect" do better through the efforts of their risk managers, brokers and/or consultants to craft broadly worded policies.

As part of a federal charter option, insurers should be free of all form regulation as long as they meet minimum requirements of the state where the policyholder is domiciled. This approach would avoid substituting federal for state regulation and leave insurers free to create the policies the market needs.

Harry L. Cylinder
Philadelphia

LETTERS TO THE EDITOR

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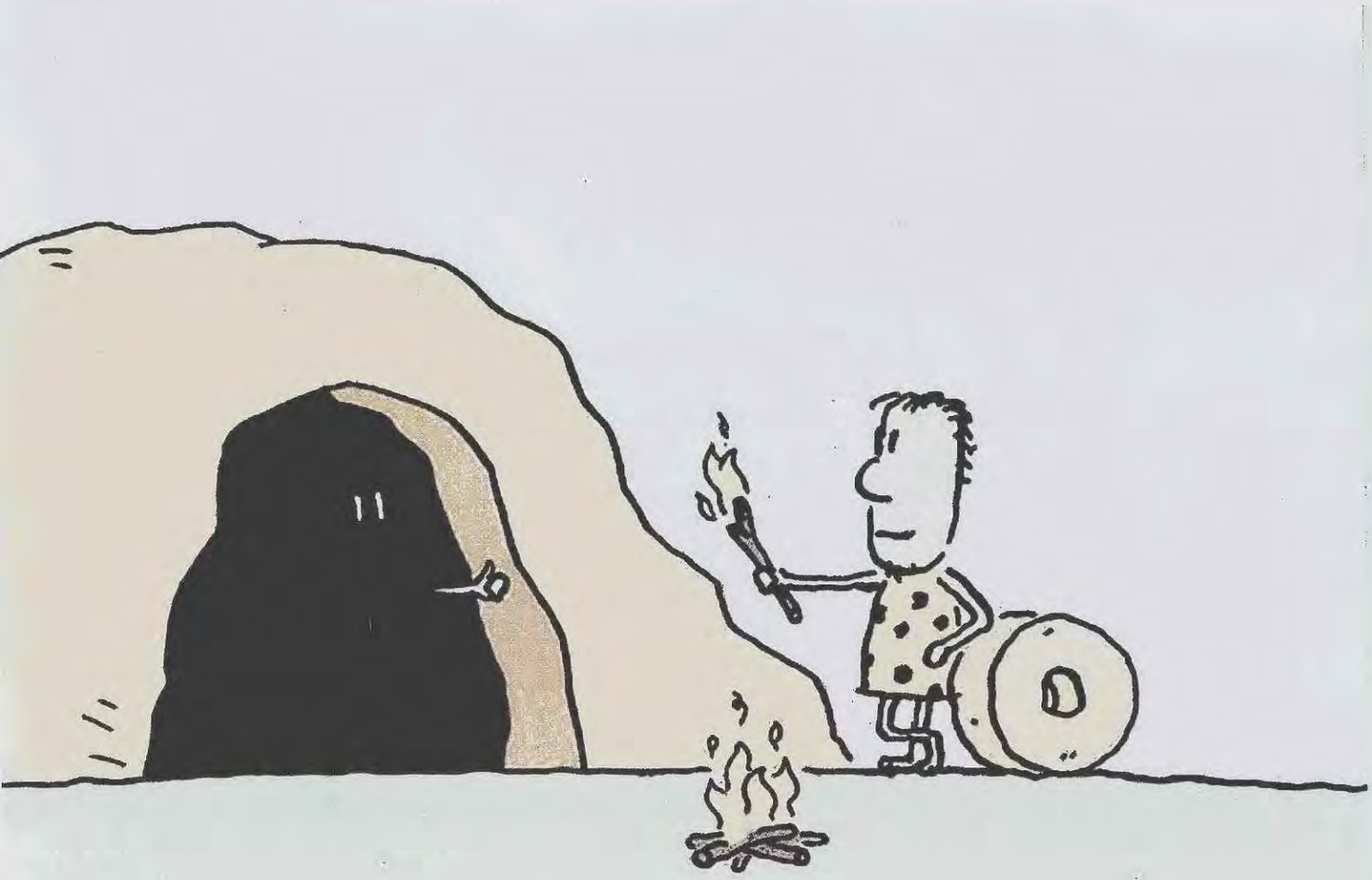

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RIMS REPORT 2001

39th RIMS Annual Conference and Exhibition

PHOTOS: MICHAEL MARCOTTE

Comp, benefits exhibits highlight online systems

By LEE FLETCHER

ATLANTA—Several companies exhibiting at the Risk & Insurance Management Society Inc.'s conference in Atlanta were there to unveil and tout workers compensation and benefit management products.

Some of the most impressive products on display at the Georgia World Congress Center included online workers comp management systems designed to cut the high costs often associated with claims processing, as well as systems that aim to aid employers with managing comp cases and returning employees to work.

Em3 Corp., an online workers comp service provider, made its debut at the RIMS conference, held April 29 through May 3.

Em3, a unit of Addison, Texas-based Concentra Inc., is designed to help its customers streamline the workers comp process, reduce costs and improve outcomes.

The goal of Em3, said Dr. W. Tom Fogarty, senior vp and chief medical officer at the company, is to "decrease the total cost of the case."

Dr. Fogarty explained that, of the workers comp cases that used Em3 services, just 7% resulted in lost time claims, compared with 25% of cases that resulted in such claims when other processing methods were used.

Em3 President Jim Greenwood said large, multisite employers have lacked effective tools to address workers

See **Exhibits** *on page 48*

Risk management exhibits play up novelty, novelties

By JOANNE WOJCIK

ATLANTA—With a record 438 exhibitors at this year's Risk & Insurance Management Society Inc. Conference and Exhibition in Atlanta, there was something to meet just about every risk management need.

Whether it was the latest in technology, new insurance products and loss control services, or just a new plaything or two for their children, risk managers were sure to find it.

And some veteran vendors even gave their exhibits a facelift to revive interest that may have started to wane over the years.

"We wanted to shake things up a bit," said Ronni Zimmerman, assistant vp and product integration manager at Warren, N.J.-based Chubb Corp., whose booth was revamped this year to feature an outdoor theme, thus illustrating the insurer's comprehensive coverage capabilities.

"We're insurance outfitters," said Ms. Zimmerman, who sported a khaki-colored safari vest. "Risk managers today are looking for coverage on many different fronts and in many different territories around the world."

Those who visited the booth received packages of trail mix and key chains made from carabiners—clips used in rock climbing. Visitors were invited to listen to 10-minute "mini-seminars" on such topics as cyber risks, global acquisitions and new ways to quantify risk.

Other longtime exhibitors used a type of performance art to attract RIMS attendees to their booths.

Munich-American RiskPartners, a Princeton, N.J.-based unit of Munich Re Group, used a tall ship constructed out of sand to illustrate its theme that "unique challenges call for a unique partner," said Christine Skurbe, marketing coordinator.

It took several days for artists from Sand World of San Diego to build the novel sand-

See **On display** *on page 38*

Booth survey finds widespread belief in more market firming

Property/casualty insurance rates are still on the rise, particularly for property coverage, and there is no end to the firming trend in sight.

Those are among the findings of a very informal opinion survey of attendees at the Risk & Insurance Management Society Inc.'s recent annual conference in Atlanta, conducted at the *Business Insurance* booth within the exhibit hall at the Georgia World Congress Center.

A total of 50 responses were collected, with the majority—40%—from risk managers, and the remainder divided among brokers, insurers, consultants and other insurance professionals.

All but one of the respondents agreed that rates are continuing to increase in the commercial property/casualty insurance market.

Asked which lines of insurance are experiencing the greatest rate increases compared with a year ago, 48% said property insurance, 30% said liability insurance, 14% said workers compensation and 2% cited directors and officers liability coverage. The remainder did not respond.

A majority of respondents—94%—said they expect price increases to continue beyond 2001, with only 4% saying the trend would not continue, and the remainder not answering.

In response to market firming, more companies are turning to self-insurance and captive insurance mechanisms, the survey indicated.

For the entire survey, 50% of respondents reported an increase in their use of captives and self-insurance, while 20% reported no increase. The remaining 30% did not respond.

Among risk manager respondents only, 68.4% reported increased use of captives/self-insurance, 15.8% said such use had not increased and another 15.8% did not answer.

The survey found that the majority of respondents are not yet using the Internet to place any of their corporate insurance programs.

Among all respondents, only 26% have used the Internet during such transactions, while 50% have not and 24% did not answer.

Among risk managers, 21.1% reported that they have used the Internet to secure coverage, while 73.7% have not and the remainder did not answer.

The gap between respondents was much narrower for another question: Do you think the Occupational Safety and Health Administration should develop a new ergonomics regulation?

See **Survey** *on page 52*

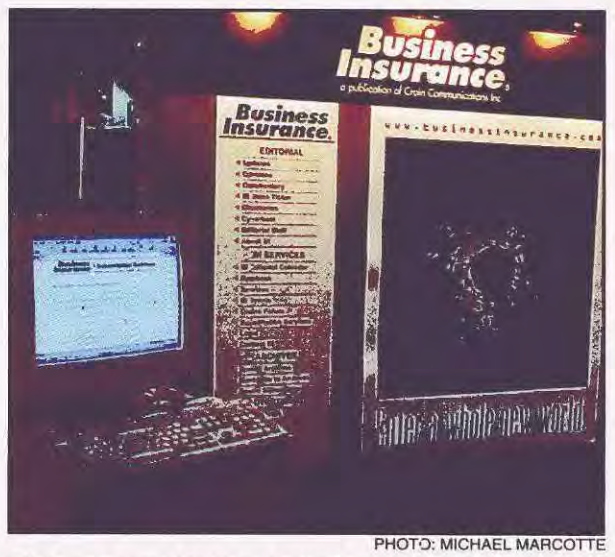

PHOTO: MICHAEL MARCOTTE

Risk managers, brokers, insurers, consultants and others took *BI*'s informal opinion survey at the RIMS exhibit hall.

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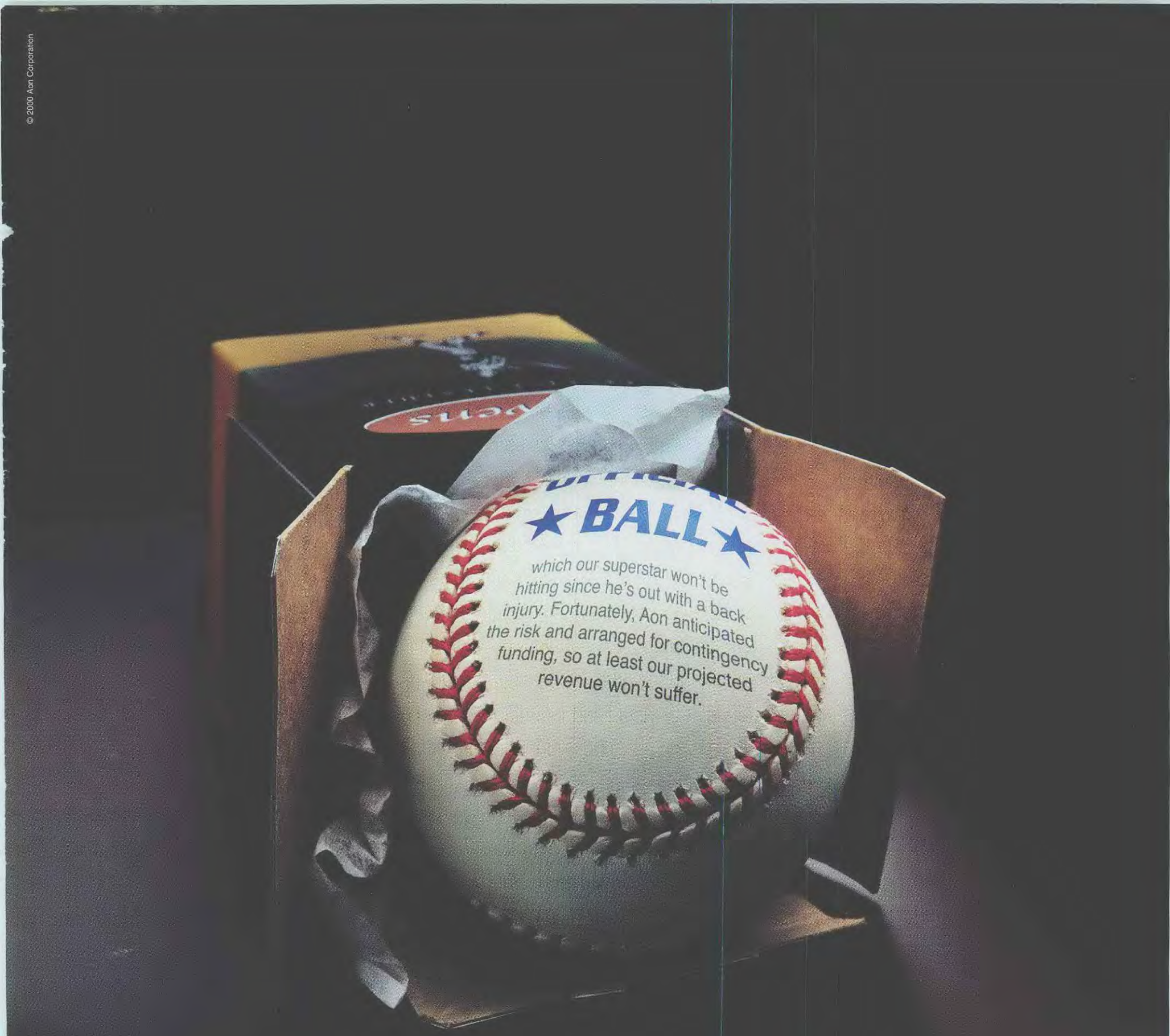

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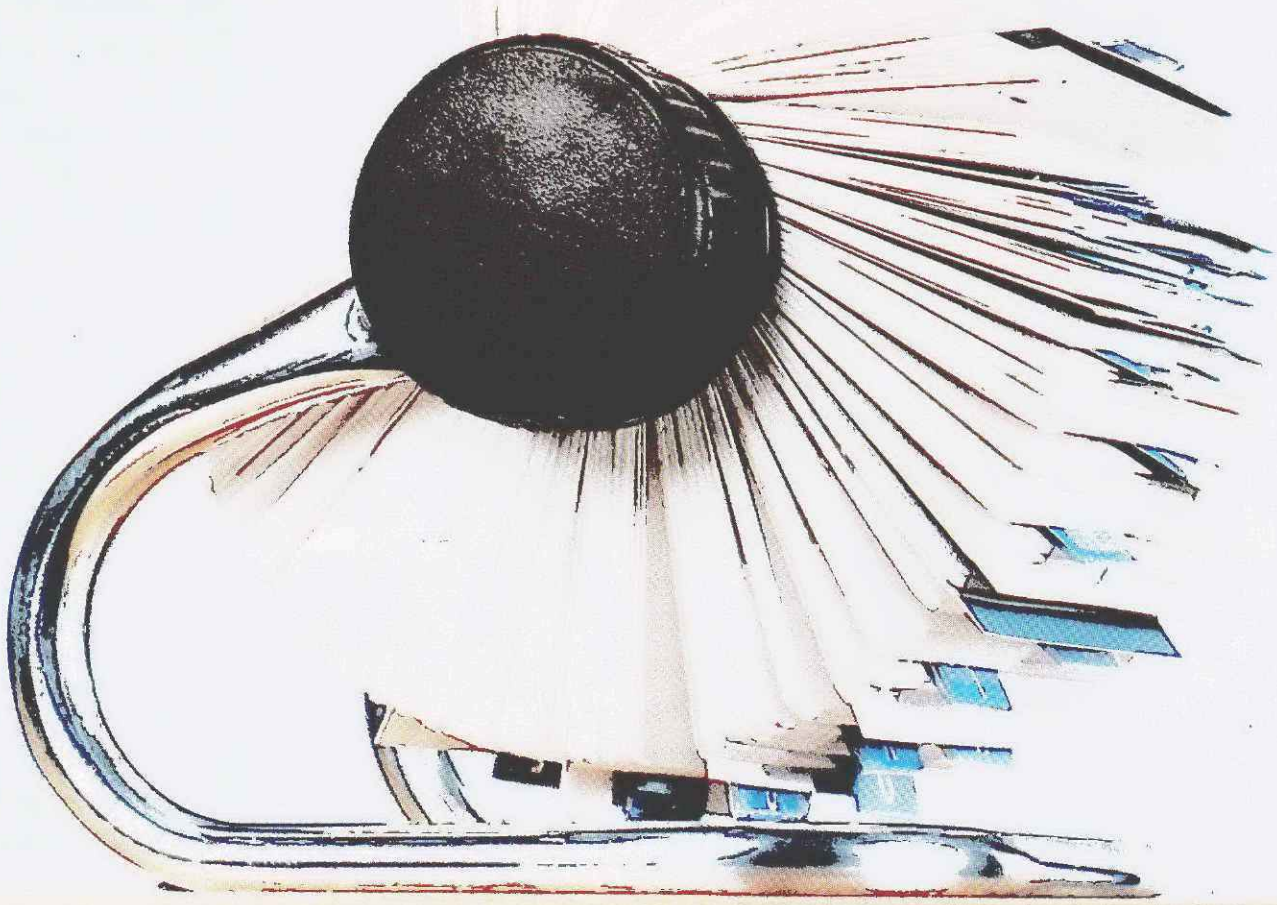

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Risk management, insurance continue evolving

By RODD ZOLKOS

ATLANTA—As risk management evolves to blend risks previously addressed separately, the way insurance is perceived is changing as well.

Accompanying a more holistic approach to risk management is a view of insurance as a form of capital, according to panelists discussing innovative uses of insurance capital at the Risk & Insurance Management Society Inc. annual conference in Atlanta.

"Clearly, an argument can be made that risk management and corporate insurance are evolving to have a much bigger role in the organization," said Art Kirchoffer, director-risk management at Atlanta-based BellSouth Corp.

David W. Langman, managing director of MMC Enterprise Risk Consulting Inc. in Atlanta, added that the convergence of insurance and the capital markets is "the principal thing going on in our industry."

"Both truly specialize in the ability to transfer certain kinds of risks," Mr. Langman said. "The lines between the two are really starting to blur."

The evolution of risk management is being driven by several factors, including new and larger risks, recognition of the flaws in the so-called "silo" approach to addressing risk in most companies, increased management accountability and new risk products, Mr. Langman said.

"The bottom line to it is, it's driving the way insurance capital is used," he said. "And, in the process, we have a whole new set of competitors in the marketplace."

In the process, risk management solutions now might be provided not only by insurers and reinsurers but also by investment banks and commercial banks.

"Simple intuition suggests that capital and risk are related," Mr. Langman said.

Sources of capital can include equity, debt and items off the balance sheet, including bank lines of credit and insurance or other forms, such as parental guarantees.

"A firm can be thought of as a collection of activities that all involve risk," Mr. Langman said. "To carry on those activities, a firm needs capital."

"The riskier a company is, the more capital it needs," he said.

Insurance is, by definition, contingent capital, Mr. Langman said. It is off the balance sheet and responds to a precise set of events.

Insurance has the advantage of being highly customized, with no basis risk. "You're insuring exactly a certain set of conditions and, assuming the policy is structured properly, it will respond," Mr. Langman said.

He noted that insurance can either replace or complement other forms of capital.

"In theory, off-balance-sheet capital should cost less than on-balance-sheet capital, because you're not injecting it into the company and demanding a risk-adjusted rate of return on the capital," Mr. Langman said.

> *'Clients are looking at risks and ways to fund these risks more holistically than ever before.'*
> — *Edmund S. Scanlon*
> *Zurich Corporate Solutions*

"There are a lot of areas where insurance capital is more efficient, it's cheaper and there's less basis risk than debt or equity," he said.

One way insurance can be used as a form of capital is through fixed-asset guarantees, which could be used to provide a floor to the value of an asset or to guarantee the value of a franchise.

Insurance also can be used to support project financings by insuring against risks prior to the completion of the financed project or covering shortfalls in debt-service revenues, or it could be used as a form of capital in insuring against credit defaults—"a huge consideration in the high-tech industry," Mr. Langman said.

Edmund S. Scanlon, senior vp-actuary at Zurich Corporate Solutions in New York, said entities that have commodity exposures can benefit by integrating those risks into broader insurance programs.

Such programs can benefit organizations by eliminating redundancies in their risk transfer efforts, he said. Insurance transactions also can provide tax and accounting benefits that are not available with financial derivatives.

"Essentially, we're seeing a lot of interest in the innovative insurance programs in general," Mr. Scanlon said.

"Clients are looking at risks and ways to fund these risks more holistically than ever before," he said.

Mr. Kirchoffer moderated the session. BI

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RIMS REPORT 2001

Alternative risk transfer tools growing in popularity

By RODD ZOLKOS

ATLANTA—Many alternative risk transfer techniques have actually become more mainstream than alternative in recent years, and higher prices in the traditional market should prompt further development of the ART market.

"At the outset, the search was for alternatives to guaranteed-cost contracts," said William E. Yocke, director-Western Region, actuarial research and consulting at Deloitte & Touche L.L.P. in San Francisco. "But it's come to embrace much more."

Speaking at the annual conference of the Risk & Insurance Management Society Inc. in Atlanta, Mr. Yocke said that, by some estimates, as much as 50% of the commercial insurance market now uses some form of alternative risk transfer tool.

"More important is a shift in outlook many organizations have undertaken," Mr. Yocke said. As part of that shift, companies have gone from looking at how much risk they can transfer to how much they can afford to retain, he said.

The underpricing that existed until recently in a soft insurance market was "really driven by a response to the alternative market," Mr. Yocke said.

"This will work for a while, but eventually it will catch up with the markets. That's what we're seeing now," he continued.

And, with insurance prices heading upward, the market will see the development of new ART products, Mr. Yocke predicted.

In determining who can benefit from ART tools, "I think what you need to focus on is not really as much premium, but what your losses are," said Mark P. Charron, a principal with Deloitte & Touche in Hartford, Conn.

Among the exposures most favorable for alternative risk transfer techniques are those with predictable losses, low volatility, no catastrophic-type exposure and those for which losses are high-frequency but low-severity, Mr. Charron said.

"There are various kinds of (traditional) risk transfer programs for the catastrophic risks, for the high-volatility risks," he said.

Mr. Yocke agreed that for companies using alternative risk transfer techniques, traditional insurance can play a role by providing relief from potentially volatile exposures. Also, traditional insurance can provide tax benefits, Mr. Yocke said.

Different sorts of ART techniques typically work best in different situations, the speakers noted.

Captives, for example, generally fit best with larger programs looking for a common mechanism for managing self-insured retained risk, said Mr. Yocke.

Setting up a captive is a long-term commitment, though, and the process can take time, he noted. With current changes in insurance pricing, "there is a lot of focus on 'What can I do quickly?'" Mr. Yocke said. In such cases, "rent-a-captives is one concept that has been thrown around."

Finite insurance best suits situations in which minimum coverage is required but the insured must finance the coverage, Mr. Charron said. "Finite insurance is a bit of a misnomer," he said. "It's really a banking arrangement."

Securitization can fit when normal sources of risk capital are too limited or expensive, Mr. Yocke noted.

Mr. Charron added that multiline/multitrigger programs can be the right choice when an organization can determine acceptable levels of annual retained risk for all its various exposures.

At present, securitization is used primarily by insurers and reinsurers and is generally beyond the reach of individual corporations. "But I don't think that's going to be the case for much longer," Mr. Yocke said.

As more companies embrace risk transfer alternatives, "we're continuing to see more focus on combinations of risk and multi-year approaches," Mr. Yocke said. And, as part of the multi-year approaches, there has been "more and more focus recently on smoothing" the balance sheet, he said.

And, for many companies, ART techniques provide a way to facilitate an enterprisewide approach to risk management.

"We've gone beyond just identifying risks. We're trying to manage financial aspects of the program," Mr. Yocke said.

Many companies are looking at ways to integrate management of those financial exposures with other aspects of the risk transfer program. "What we want to avoid, though, is the idea that ART is a panacea," Mr. Yocke said.

"ART is more of an approach than a product, and it's increasing the dialogue between the risk manager and other elements of the organization," he said. "The idea is to think 'holistic.'"

Howard M. Stansell, director of risk management for Dallas-based Thousand Trails Inc./National American Corp., moderated the session. BI

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RIMS REPORT 2001

Convergence brings new opportunities for risk managers

By SALLY ROBERTS

ATLANTA—Risk managers should view convergence in the financial services industry as an opportunity and not as a threat, a risk manager says.

Among many risk managers today, "there is some concern—there is some angst as to what all this convergence means," said J. Gary Meggs, director of risk management at Southern Co. in Atlanta. Nevertheless, convergence between the insurance and capital-markets sectors is giving rise to new risk transfer tools and approaches.

"After going through the process...we see (convergence) as an opportunity. We think that there's plenty of risk to go around, and we think there is room for everybody at the table," he said.

Beginning last April, Southern Co.'s utility subsidiary Southern Energy—which has since been spun off and renamed Mirant Corp.—embarked on a quest to find coverage for replacement energy price risks associated with forced power outages or decreases in power generating capacity—known as "de-rates."

After much discussion and education, Mirant was able to purchase a unique derivative program underwritten by the insurance industry. Mr. Meggs detailed the energy company's program and the lessons learned during a session at the Risk & Insurance Management Society Inc.'s 2001 annual conference in Atlanta.

As a provider of wholesale energy products and services, Mirant faces many exposures, but one of the bigger exposures is the potential for lost profits and/or actual damages as a result of a power outage, Mr. Meggs said.

Among other risk management tools, the company maintains a business interruption extra expense insurance policy, but it has a 30-day deductible before coverage kicks in.

"We were very concerned with the first 30 days," he said. "A lot could happen."

For example, "if your unit goes out, and you're in an obligation to serve, you're going to have to buy replacement power," he said. "If the unit happens to go out when prices are very high and at the hottest part of summer time, you could see extreme costs to replace that power," Mr. Meggs explained.

From a direct-cost standpoint, Mirant determined that the potential exposure for one of its plants if it lost 100% power for 15 days, including 16 hours of on-peak time, would be $9.9 million, based on alternate replacement power cost of $75 per megawatt hour. If the price rose to $350 per megawatt hour, the replacement cost would be $46.2 million, he said.

"At the end of the day, what we saw was that we had a commercial necessity," Mr. Meggs said. "We had generators with load commitments that needed to avoid buying power at spot prices during forced outages, and we had purchasers that wanted guaranteed cost of power," he said.

To provide protection against these market-price risks associated with a power outage or a derate, Mirant developed what Mr. Meggs described as "a derivative packaged as an insurance product."

Mirant was able to purchase $100 million in limits in an annual policy covering multiple generators around the country. The policy covers financial losses caused by power outages and decreases in power generating capacity. The payouts are tied to hourly energy prices, and the program reimburses the company for actual as well as opportunity costs lost as a result of outages, Mr. Meggs explained.

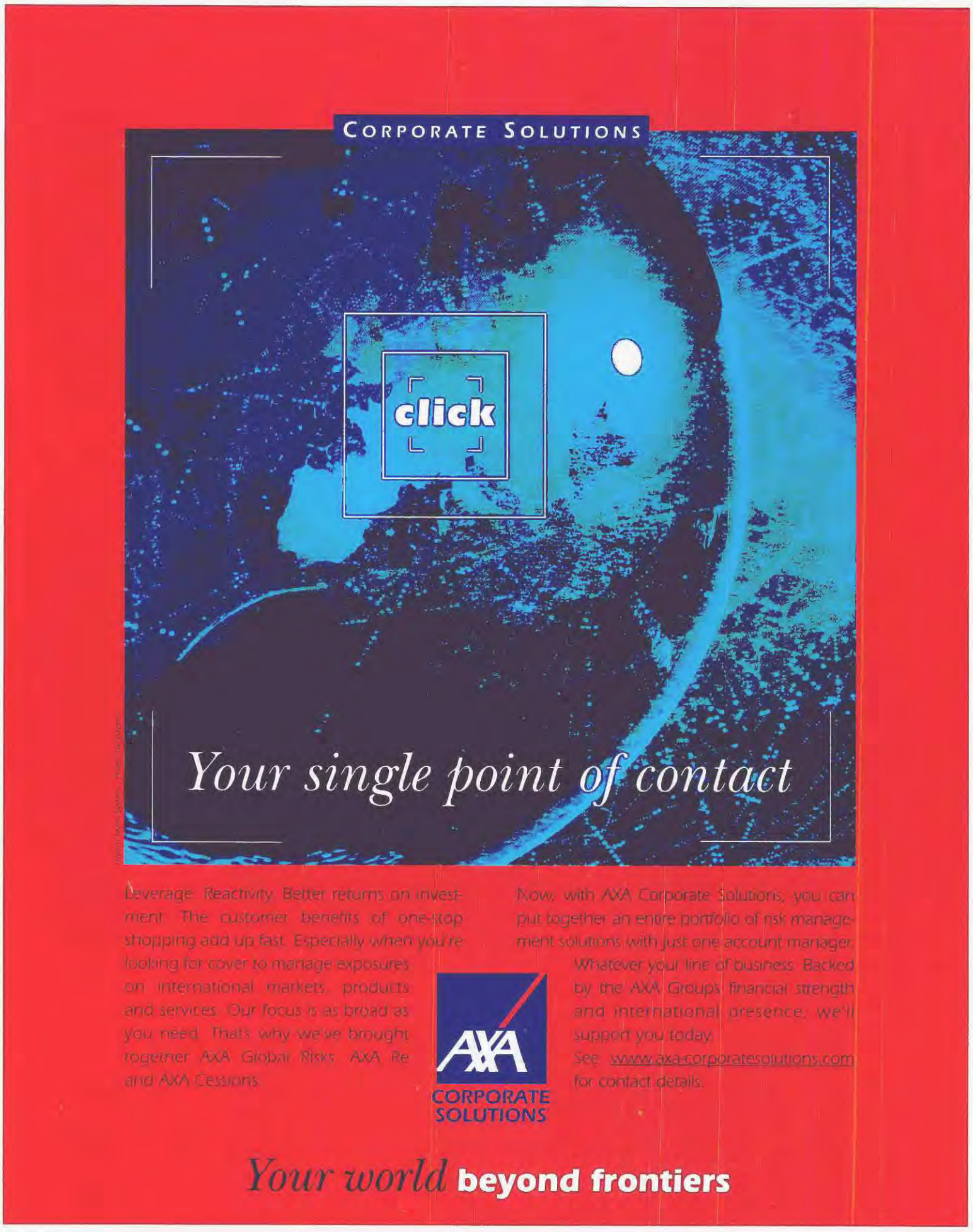
The program is structured as true catastrophic coverage, with primary and excess coverage and two coverage triggers. The primary layer has a $30 million limit, and the excess layer covers up to $100 million, with no cap on replacement power costs, he said.

The first trigger—or strike price—ranges by facility and power pool from $100 to $110 per megawatt hour in summer months to $60 to $70 per MWH in non-summer months. After the cost of replacement power meets or exceeds the strike price, the company must meet a dollar deductible, which varies from $750,000 to $2 million per event and $3 million to $8 million annual aggregate, depending on the facility, Mr. Meggs said.

Lloyd's of London is the lead underwriter on the program, but other insurers include Swiss Reinsurance Co., Associated Electric & Gas Insurance Services, Energy Insurance Mutual Ltd. and Nuclear Electric Insurance Ltd., he said.

Mr. Meggs told attendees that if there was one key thing they should take away from the session it was that it is possible to put together the skill sets of the traditional property/casualty insurance side with the risk management and financial risk management side to meet a need.

Brian M. Kawamoto, a director at Swiss Re New Markets Corp. in New York coordinated and spoke during the session. Kevin Hoskinson, director of risk management for Sun Microsystems Inc. in Palo Alto, Calif. also spoke during the session. BI



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RIMS REPORT 2001

Risks arise from one's own, and others', trade secrets

By RODD ZOLKOS

ATLANTA—A company's trade secrets can be the very "crown jewels" of the organization, but without taking definite steps to guard them, the company might forfeit legal protections those secrets would otherwise enjoy.

At the same time, companies must guard against "contamination" by the trade secrets of other firms or else risk, at a minimum, legal headaches and, at worst, court injunctions blocking them from doing business.

Trade secrets at greatest risk include customer lists, pricing information, product development information, sales and quarterly performance information, manufacturing information, strategic plans and cost information, said Bradford C. Lewis, a partner with Fenwick & West L.L.P. in Palo Alto, Calif.

Speaking on a panel discussing intellectual property risk management at the Risk & Insurance Management Society Inc.'s annual conference in Atlanta, Mr. Lewis noted that trade secrets are a much broader class of intellectual property than trademarks, copyrights or patents.

Unlike trademarks, copyrights or patents, a trade secret does not have to be registered. "It's a much more informal process," Mr. Lewis said. "But you do have to take specific steps within your organization in order to qualify for trade secrecy protection."

"I think there's still a very strong feeling among judges and lawyers that if a company doesn't care enough to protect it's own trade secrets then why should the courts provide that kind of protection," added Lee B. Altschuler, senior manager at Deloitte & Touche L.L.P. in San Jose, Calif.

The two intellectual property experts offered a number of tips for protecting trade secret exposures. The first is for companies to inventory their intellectual property assets. Another tip is to assess the company's various intellectual property protection policies.

"It's absolutely essential to know from an HR perspective who it is you're hiring," said Mr. Altschuler, adding that annual performance reviews are an ideal time to have employees sign updated non-disclosure agreements.

Mr. Lewis added: "When you're doing an exit interview, have them sign a document acknowledging that they were exposed to certain enumerated categories of trade secrets."

To prepare for possible disputes involving former employees suspected of taking trade secrets, companies should formally clarify company ownership of computer and e-mail systems. They also should adopt a company culture of "trust but verify," putting in place tracking tools and using color-coded badges to control access to sensitive areas, the attorneys said.

Regarding risks to trade secrets from outside the organization, "You're going to want to test your Web site. You're going to want to test your firewall," Mr. Lewis said. "Hire an ethical hacker."

Mr. Altschuler warned about "countries that don't recognize trade secrets at all," adding that companies might want to consider "quarantining" their trade secrets from such countries.

On the flip side of protecting a company's own secrets are situations in which a company must guard against "contamination" by the trade secrets of others.

Among the two experts' tips for preventing such problems were various steps involving new hires.

Offer letters to job applicants should clearly state the company's policy against using a previous employer's trade secrets, and the company should review a new hire's confidentiality agreements with prior employers.

A company concerned about trade secret contamination also should consider whether to create a temporary "ethical wall" around the new hire, placing the employee in a position in which it would not be possible for him or her to use information about the previous employer. And all employees should be covered by a written policy against importing or using other company's trade secrets.

Litigation against a company alleging trade secret theft can be devastating, the experts noted. "Very frequently the biggest risk in this type of investigation is an injunction," said Mr. Lewis.

Consequently, conducting your own investigation "quickly protects your firm if another company sues as an anti-competitive technique," Mr. Altschuler said.

"The key thing is to get your in-house or outside counsel involved early on," Mr. Lewis said. Once counsel is involved, the investigation is protected by attorney-client confidentiality and attorney work product protections, he noted.

Mary Isbell, director of risk management of Houston-based Friedkin Cos. Inc., moderated the session. BI

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RIMS REPORT 2001

Rules of litigation are important to risk managers

By DAVE LENCKUS

ATLANTA—Although few insurance coverage cases go to trial, risk managers should know some important litigation rules to give their organizations greater odds of winning the large-limit disputes that typically are litigated, two policyholder attorneys say.

That knowledge also will help policyholders broker settlements, which obviate the time and expense of a trial, the attorneys noted during a session at the recent Risk & Insurance Management Society Inc. conference in Atlanta.

"A bad settlement beats a good trial," observed attorney William G. Passannante, a partner with Anderson Kill & Olick P.C. in New York.

"The best way to settle a case is to properly prepare the case for trial," he said.

After deciding that a coverage dispute warrants court action against an insurer, a policyholder should bring its risk manager onto its litigation team immediately, Mr. Passannante advised.

"Lawyers like to think the litigation is theirs" and keep risk managers out of the litigation's team inner circle, he said.

"We prefer to have the risk manager involved," he said. They are important information resources and, unlike outside counsel, they and in-house counsel have no incentive to prolong the litigation if there is some way to settle it, Mr. Passannante said.

"So, it's important that all three groups of folks work together on the litigation team," he said.

How policyholders handle documents pertinent to their case will have a substantial impact on the litigation, stressed Mr. Passannante and attorney Robert M. Horkovich, another partner at Anderson Kill.

"Don't destroy documents," Mr. Passannante implored. While that may keep them out of insurers' hands, "they're lost to you, and you may need them."

Just as important, if an insurer discovers a policyholder destroyed documents and convinces a court that the documents would have helped the insurer's case, the policyholder loses the case there, he said.

The most important document is the policy, Messrs. Passannante and Horkovich emphasized.

Mr. Horkovich pointed out the irony of insurers routinely destroying policies four to seven years after writing them but rejecting claims when policyholders cannot produce copies of their policies.

"So, hold onto yours," Mr. Horkovich urged risk managers. "Forever; especially long-tail liability policies," he said. "You're not going to get it from the insurance company."

He also advised risk managers not to rely on their brokers to produce policies. Risk managers may have tremendous difficulty obtaining help from their current brokers years from now if the brokers either no longer have the account or have undergone significant restructuring, he explained.

If the nature of the case allows a policyholder to select the judicial forum for the suit, the policyholder must choose wisely, because each forum may interpret some legal and contract issues differently, Mr. Passannante noted.

For example, a policyholder that provided its insurer late notice on a claim would face tremendous difficulty winning its coverage dispute in a New York court, he said. But if it did not torpedo the insurer's opportunity to manage the claim, a late notice would not jeopardize the policyholder's case in a New Jersey court, he said.

Mr. Horkovich reminded risk managers that insurers look for two types of notice and will cite policyholders' errors in providing those notices as a defense in their coverage litigation.

One notice informs the insurer that an occurrence may lead to a claim against the policyholder.

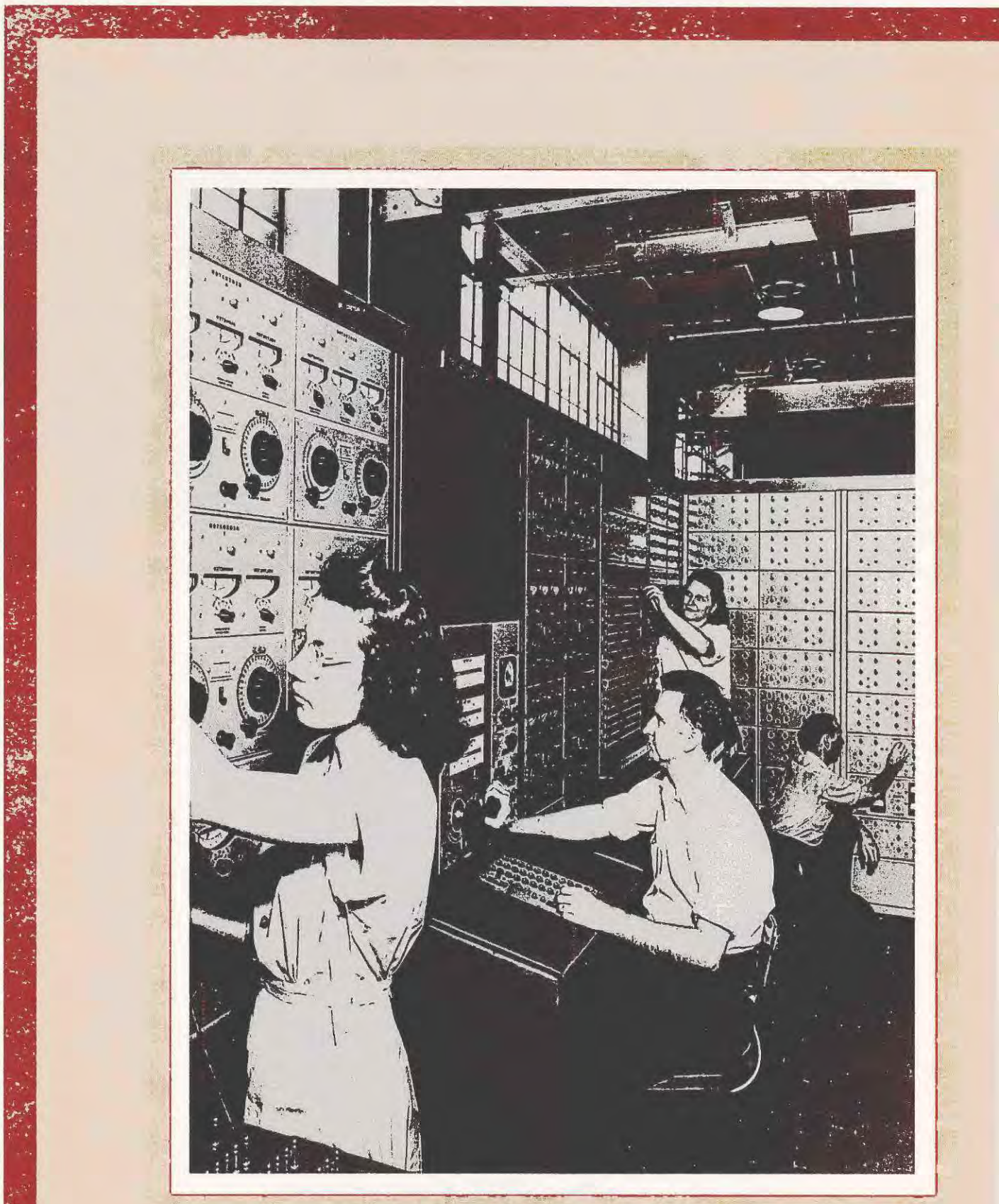
The other notice asks the insurer for a defense and for indemnity. "Until you ask, 'Mother, may I?' they will not pay your defense costs," Mr. Horkovich said. Policies do not explicitly state that insurers have the right to hold back defense costs until a policyholder formally requests them, but "courts interpret that in."

Another defense insurers raise is that policyholders breached their policies by making voluntary payments to plaintiffs in underlying litigation, Mr. Horkovich said.

The problem insurers create for policyholders is that they often indefinitely keep open their investigations into underlying claims, he said. That tactic keeps insurers from formally resolving their reservation of rights on whether they will defend and indemnify their policyholders, he said.

In such a case, a policyholder should notify its insurers that it plans, as a "prudent policyholder," to settle the underlying claim to minimize its loss. The policyholder should ask whether the insurer objects to the settlement and offer to reject the settlement if the insurer agrees to defend and indemnify the policyholder, Mr. Horkovich said.

Ard Allison, claims manager for Fleming Cos. Inc. of Oklahoma City, moderated the session. John B. Berringer, a partner with Anderson Kill, was the coordinator. BI



Global insurance program creates local challenges

By GAVIN SOUTER

ATLANTA—Risk managers at U.S. companies with overseas operations face special challenges when they purchase insurance coverage.

While global insurance programs save costs and ensure consistent coverage, they can be difficult to implement. Local insurance regulations and the insurance buying habits of local mangers can hamper risk managers ability to put an effective global program in place.

But with careful planning, global programs can be placed successfully, said international insurance experts speaking at a session at the Risk & Insurance Management Society Inc. conference in Atlanta.

U.S. risk mangers who are accustomed to dealing with U.S. insurance policies will often encounter very different policies and coverages when they deal with overseas insurers, said Mary Beth Pittinger, assistant vp in the multinational resource group at Chubb Corp. in Warren, N.J.

"Outside of the U.S., you are going to find a lot of surprises," she said.

For example, property coverage within the United States is usually written on a broad, "all risks" form that covers everything that is not expressly excluded, Ms. Pittinger said. The valuation agreements are based on what the assets are worth, and all of the assets are covered, she said.

In Latin America and Asia, however, property insurance contracts are highly regulated and more restrictive. For example, the "Fire Lightning Explosion and Aircraft Collision"—or FLEXA—policy, widely used in both regions, covers only the perils named. Also, valuations are usually based on cash value rather than replacement costs, Ms. Pittinger said.

Liability coverage also differs. In the United States, liability contracts are restrictive and reflect the country's litigious environment, she said. Outside the United States, liability losses usually are not as severe, and while liability policies generally offer broader coverage, they are less sophisticated, Ms. Pittinger said.

For example, a policy may not include coverage for defense expenses or the significant punitive damages that U.S. corporations may face if claims made against foreign subsidiaries are litigated in the United States, she said.

Risk managers can address the coverage gaps by purchasing a global controlled master program to cover their global risks, said James W. Gervang, assistant vp-international risk services at ABD Insurance & Financial Services Inc. in Redwood City, Calif.

Such a program integrates the corporate risk management program with local policies in various countries, which often must meet local regulatory requirements, he said.

The global programs also cover gaps in coverage that can occur when local policies do not offer the same level of coverage as the corporate program, Mr. Gervang said.

For example, in countries where policies provide cash-value coverage rather than replacement costs, the global program can make up the difference in any claims payment shortfalls, he said.

In some countries, regulations strictly forbid international companies from accepting a claims payment from a non-admitted insurer locally, meaning the payment must be made to the parent, Ms. Pittinger added.

The differences in policy conditions make it desirable to have one insurer with the capability to write the entire global program, including the local policies, said Mr. Gervang.

"If the local carrier is different, you then have two distinct claims," he said.

Symantec Corp. in Cupertino, Calif., has a global program to cover its worldwide exposures, said Assistant Treasurer Rossini Chin.

One of key elements of implementing a global program is to educate local managers about the advantages of a centralized approach, Ms. Chin noted. But risk managers also need to learn about the various different local requirements to ensure that they have the necessary coverage in place, she added.

"You need to identify an individual in each country to be your eyes and ears," Ms. Chin said.

Those individuals can then keep the risk manager informed of any changes that require a modification in the program, she said.

The program enables Ms. Chin to take a broad view of Symantec's worldwide exposures and tailor its coverage appropriately, she said.

For example, the company manufactures software in Ireland, which has a 10% tax rate. If a situation arose whereby Symantec could not manufacture or sell its product in Ireland, if may have to move its production to a country with a higher tax rate. Consequently, the program includes tax-relief coverage that would compensate Symantec for the higher tax rate, Ms. Chin said.

Such an exposure might not have been noticed if insurance purchasing had been left to local managers, she said.

The global program also helps to reduce costs, as it prevents unnecessary insurance purchases that conflict with the corporation's decision to retain certain risks, Ms. Chin said.

The session was moderated by Ms. Chin and coordinated by Ms. Pittinger.

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Latin American countries becoming more litigious

By ROBERTO CENICEROS

ATLANTA—There are great business opportunities in Latin America without the same exposure to litigation that is ever present in North America.

But that liability climate may be changing, said Stavros Costarangos, president of Compania Panamena de Productores de Seguros, a Panama-based broker. Unlike North American countries, in Latin America lawsuits over business disputes are relatively uncommon, he said.

Disputes there often are handled informally, usually with acquaintances intervening to help settle a problem, Mr. Costarangos said. However, he added, as the region attracts more foreign investment and expatriates familiar with handling arguments through litigation, a few lawsuits are emerging.

"Before it was 'No, don't sue him. He is a friend of Luis, my cousin and we can work things out,'" Mr. Costarangos explained. "Maybe they could be worked out, maybe they couldn't. But nowadays, with so much foreign investment, if something happens and you need to sue you are going to sue. With so much at stake, these suits are not going to be low end."

With the emerging exposure to litigation, risk managers with operations in Latin America should check to assure their liability limits are adequate for operations in the region, Mr. Costarangos said during a session at the Risk & Insurance Management Society Inc.'s annual conference in Atlanta.

Employment liability coverage for the region is relatively cheap and could help indemnify against the growing risk of lawsuits resulting from employee injuries, he added.

Workers in many of the region's countries are covered under government social security programs for job-related injuries.

The social security programs offer employers protection, somewhat akin to the protection provided by the exclusive remedy provisions in U.S. workers compensation laws.

But there are now a few cases in Panama where injured workers are trying to sue employers, Mr. Costarangos said. They are attempting to do so even in cases where the social security agency provides them with medical care, he noted.

But in some cases the agency goes after the employer to reimburse treatment in cases where the agency contends employer negligence caused the injury. In a few of those cases, workers also have filed suit against the employer seeking monetary damages, he said.

While more such lawsuits are occurring than previously, they remain a fairly rare occurrence, Mr. Costarangos said.

Seattle-based Stevedoring Services of America Inc. has not seen any such lawsuits and it has more than 700 employees in Panama, said Tom Scherting, risk manager for SSA. Nor has Mr. Scherting heard of other employers in Panama facing such lawsuits. In addition, SSA's general liability experience in the region is excellent. The company is planning on expanding its operations to Chile.

"I've always represented to the underwriting community that our exposure in North America is far worse than anywhere else we go," Mr. Scherting said. "I consider it a win-win when we go offshore."

In part, SSA's excellent loss history in Panama may be due to the good wages paid to local workers, Mr. Scherting said.

"We essentially created a middle class, a group in society in an area where unemployment beforehand was over 50%," he said. "So perhaps there is some persuasion there that 'Gee whiz, I have a very good job that pays me very well. Why would I want to sue this place?' Maybe that has something to do with it, but our experience has been very, very good."

The session was coordinated by Mr. Costarangos. BI

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RIMS REPORT 2001

Precautions, training can lessen risk of kidnapping

By ROBERTO CENICEROS

ATLANTA—The kidnapping of overseas employees occurs more frequently than companies reveal, but the risk must be discussed more openly because a failure to prepare can jeopardize lives, say risk managers and a consultant who have helped to manage several such incidents.

Risk managers must understand that merely insuring for ransom coverage is insufficient, the experts noted at an educational session during the annual conference of the Risk & Insurance Management Society Inc. in Atlanta. Strategies must be in place both to prevent kidnappings and to handle them should they occur.

"It happens all too frequently and is happening more and more," said Robert J. Graham Jr., director of risk management for Baker Hughes Inc. in Houston. "Unfortunately, kidnap and ransom is a booming business."

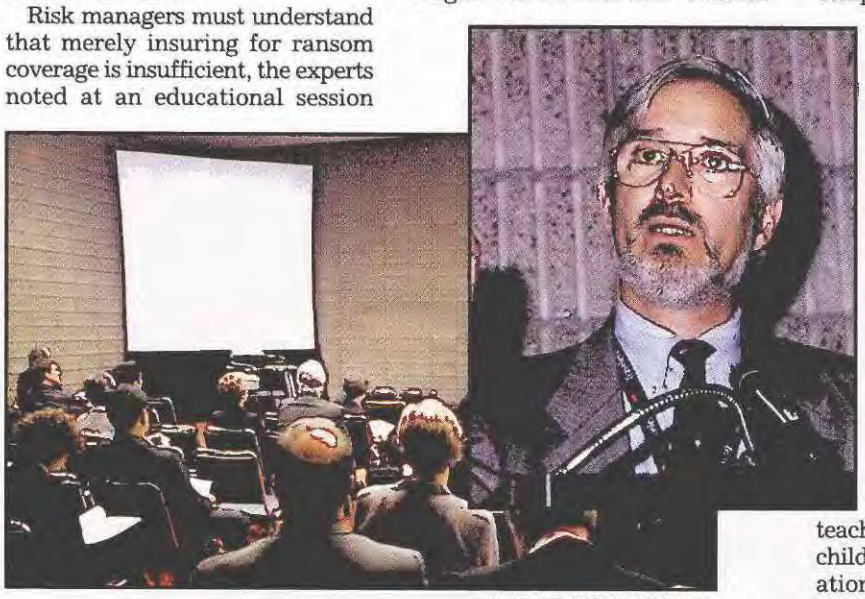

PHOTO: MICHAEL MARCOTTE

David Lattin, director of operations in Los Angeles for Control Risks Group L.L.C, speaks to session participants at the recent RIMS conference.

But precautions can mitigate the risk of kidnapping and help companies, their employees and their families should an incident occur, said Jonathan A.A. Russell, assistant director of risk management for Phelps Dodge Corp. in Phoenix.

Mr. Russell recalled that, at a company where he previously had worked, employees and their spouses received training in evasive driving techniques. He said that training paid off in Venezuela, where thugs frequently stole cars at gunpoint to sell to drug barons in neighboring Colombia.

The spouse of employee in Venezuela encountered such a situation when a man shoved a handgun in her face while she was stopped in traffic. "Unbelievably, she put the vehicle in reverse, did a 180-degree turn and sped off," Mr. Russell said.

Similarly, consultants with expertise in the field can teach employees, their spouses and children how to react to other situations that may occur while they are shopping, at school or at home, Mr. Russell said.

Expatriate families should also be provided with information about local politics and culture. Such training should be provided before the families leave the United States and again after they arrive in the country in which they will be staying, Mr. Russell said.

Dry runs of prepared plans are also important. One of Mr. Russell's former employers that operates in South America even practiced evacuating employees in a mock drill that involved helicopters and hovercraft.

While revolutionaries and guerrilla groups may be the most obvious potential kidnapers, businesses must investigate less likely parties, such as potential foreign business partners. Such partners may have ties to organized crime or to other parties that participate in kidnappings. Information to attempt to learn about potential business partners includes their apparent and not-so-apparent intentions and the sources of their funding, the experts say.

Similarly, individuals who provide services to employees, such as domestic helpers, also should be scrutinized. While they may not want to participate in kidnappings, they could be coerced into providing assistance, said David Lattin, director of operations in Los Angeles for Control Risks Group L.L.C. Mr. Lattin is a crisis management advisor and trainer who has advised companies about incidents such as kidnappings, product extortion and demands for "war taxes."

Other potential kidnapping conspirators include labor leaders, who may opt to enlist the help of local guerrillas to boost their leverage in negotiating contracts with companies, and business competitors, who want to force competition out of the area, Mr. Lattin said. In some instances, local security forces have been kidnappers.

Companies must also ensure that the managers they send to foreign countries are sensitive to the local populations, the experts say. Employees have been kidnapped and murdered because onsite managers mistreated local residents.

Employees also need to know that, should a kidnapping occur, the company will do all it can to ensure the safe return of all victims. Such assurance can be provided without breaching kidnap and ransom insurance policy provisions that forbid a policyholder to reveal that it carries such coverage, the experts say.

In addition to preventive measures, crisis-management planning is essential, Mr. Lattin said. Such plans should include a determina-

Continued on next page

Facing challenges of operating in Asia

Continued from previous page

tion about who will make the decisions and how the company will respond to demands for ransom.

If the abductors do demand money from the company, the company will have many duties as negotiations progress, including demanding that the kidnappers continually prove that the victim is still alive.

Following a kidnapping, a company must make every effort to maintain control of the situation, Mr. Lattin said. That includes preventing word of the kidnapping from reaching the media.

Negotiating with the kidnappers can be easier than maintaining control over several parties—such as the victim's family, local police and government agencies—that could potentially become involved in the dealings, Mr. Lattin said.

It is important, the experts said, to prevent the family from going the media or attempting to intervene in negotiations, as interference could hinder the company's plans. That can be accomplished by keeping the family abreast of every occurrence, the experts say.

Above all, the experts warn, the main goal in kidnapping preparedness is not to reduce costs but to keep employees safe.

Mr. Graham moderated the session. The coordinator was Kelly Sokol, manager of marketing services for Control Risks Group. BI

By MICHAEL BRADFORD

ATLANTA—Employers with operations in Asia should have plans in place to react quickly to developments in the region's unsteady economy and changes in insurance regulations, a panel of experts advises.

"Doing risk management in Asia can be very different from a risk management program anywhere else in the world," said Elizabeth F. Demaret, vp-international at Arthur J. Gallagher & Co. in Chicago. Speaking at a panel discussion at the Risk & Insurance Management Society Inc.'s recent annual conference in Atlanta, Ms. Demaret pointed out that U.S. multinationals must be aware of risk management concerns in a part of the world where their products and services increasingly are in demand.

Ms. Demaret said she recently spoke with the management of a company that saw its overseas sales jump, from 10% of its total sales up to 40%. Of that increase, she said, an estimated 90% was related to business in Asia. "That becomes a very important part in a risk management program," Ms. Demaret said.

For one insurer, the region's economic instability demanded that part of the company's risk management program be able to respond quickly to protect assets and people. "You have to have a basic plan in place to react to what can happen in Asia," said Peter C. O'Connor, executive vp-global government affairs with ACE INA Holdings Inc. in Philadelphia and a panelist for the discussion. ACE INA Holdings is a unit of ACE Ltd.

After determining in 1997 that problems in Thailand's economy could worsen, ACE took measures to lessen the impact of a crisis in the region. "The first thing we started to do was reduce the currency risk by moving to U.S. dollars or dollar-backed investments," Mr. O'Connor recalled. Accounts were moved from local banks to international banks to further protect assets.

"Thailand entered a period of severe economic crisis," Mr. O'Connor said. "It was a crisis that was felt throughout Asia, particularly in Indonesia."

ACE pulled expatriate workers out of the region as business slumped, and the salaries of local staff were pegged to the U.S. dollar as inflation raged. In some areas, security services were hired to protect business property and management housing.

As Asia weathered the crisis, ACE survived with its presence intact and a plan to move ahead. "We managed risk at a time of great instability in the region," Mr. O'Connor said. "We maintained our core business and core employees and have a secure platform for growth" as the economy rebounds, he said.

The insurer's moves, Mr. O'Connor noted, "are a good example of how to react quickly" when property, assets and employees are threatened.

In Japan, risk managers face significant challenges as the economy changes amid the deregulation of financial services, according to Shinichiro Hatani, strategic management consultant with Meiji General Insurance Co. Ltd. in Tokyo and a member of the panel.

Risk management as a profession in Japan is not as disciplined as it is in other parts of the world, and Mr. Hatani acknowledged that risk management practices must improve there. "A global standard of risk management" must be introduced within the unique cultural context of business in Japan, he said.

The insurance market has evolved since the so-called "big bang" of deregulation that began in Japan in 1997. International insurers are increasing their presence in Japan, he said, by aligning themselves with domestic insurers and concentrating on niche markets.

Ms. Demaret said the risk managers of U.S. multinationals operating in Asia face a number of unique challenges. One such challenge, she said, could be figuring out whether a broker is on the up and up, particularly a broker that does business in China.

"Everybody in the world has made a big deal during the last 10 years of where they have an office opened in China," Ms. Demaret said. Even with such claims of widespread local representation, many brokers merely service business in China from offices in Hong Kong, she said. "They are doing that sometimes without letting you know that that's how it's being done, and you find out as you run into program problems," she said.

The coordinator for the panel discussion was Duncan Ashurst, Chicago-based managing director of Near North National Group's risk management and consulting services practice. BI

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Depreciation deduction a matter of contention

By ROBERTO CENICEROS

ATLANTA—One of the most contentious issues that policyholders face when attempting to recover a claim for business interruption losses involves deductions for asset depreciation by insurance adjusters.

The adjusters often understate losses by deducting a depreciation expense from the policyholder's loss calculations, explained Byron O. Spruell, senior manager for Deloitte & Touche L.L.P.'s business insurance consulting practice in Houston. The calculation of depreciation can significantly lower the amount of a paid claim, he said.

Insurers argue that depreciation represents a savings against a loss because wear and tear is avoided due to loss of production. The practice of deducting the depreciation from the claim recognizes a saved expense to the policyholder because it does not have to replace facilities or equipment as soon because of the interruption to operations.

Insurers also contend that depreciation is a normal business expense not covered under business interruption policies, Mr. Spruell said during a session at the Risk & Insurance Management Society Inc.'s annual conference in Atlanta.

The practice's impact on policyholder claims can be weighed by considering what would happen if two identical facilities burned down, explained Mark S. O'Rear, manager for Deloitte & Touche's business insurance consulting practice in Houston. The two facilities in the example are identical, except that one has been fully depreciated and the other is brand new and just beginning the depreciation process.

By applying the insurers' method of deducting depreciation as a saved expense, the new facility would have a lower business interruption claim, Mr. O'Rear said.

"The (facility) with the fully depreciated asset, that might be years older, ends up better off after the loss," Mr. O'Rear said. "So depreciation of saved expense is really not getting too close to the actual loss."

Depreciation is not a true "saved expense," he said. Instead, it should be reserved for items, such as raw materials, that do not have to be paid for when finished goods are not produced, he explained.

Policyholders also can argue in support of their claim that depreciation is an accounting expense and not a cash item, Mr. Spruell said. Also, because depreciation is a non-cash item, deductions for depreciation violate the overriding principle requiring indemnity of the policyholder, he added.

Policyholders can also argue that the depreciation methods insurers apply are arbitrary, based on assumptions that need to be scrutinized, Mr. Spruell said. The policyholder can also argue that depreciation represents a "sunk cost," fixed in nature.

Modifying policy language can also help policyholders, Mr. Spruell said. Language to address the issue of depreciation might state,

> *'What we like to see is not interpretation around depreciation because it can be a large dollar item.'*
>
> *— Byron O. Spruell*
> *Deloitte & Touche L.L.P.*

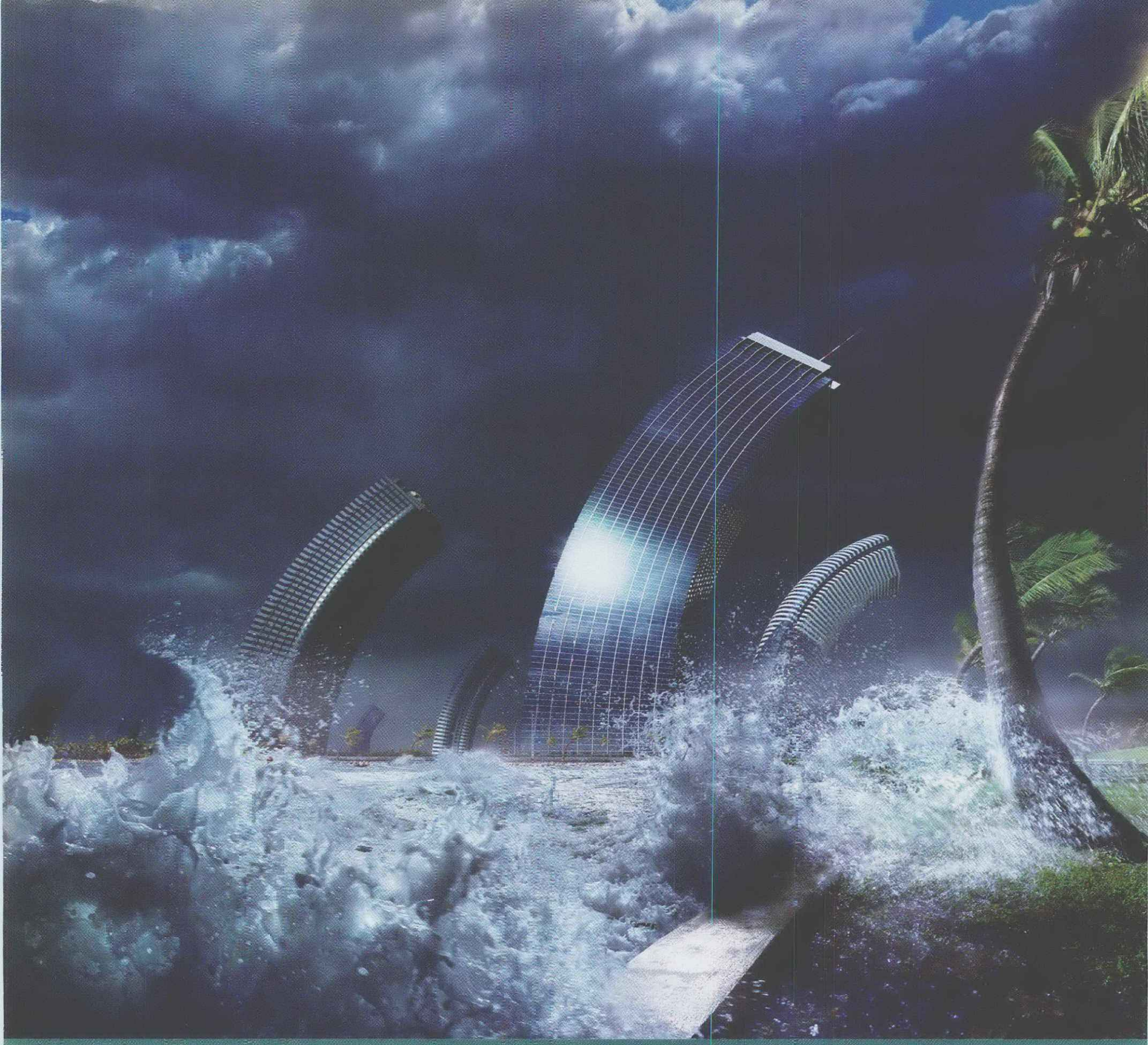
"The measure of recovery in the event of loss hereunder shall be the reduction in gross earnings directly resulting from such interruption of business less charges and expenses, other than depreciation and depletion, which do not necessarily continue during the interruption," he said.

"It always gets back to wording," Mr. Spruell said. "What we like to see is not interpretation around depreciation because it can be a large dollar item. But that 'other than depreciation and depletion' wording really cuts to the chase, and there is no interpretation around that."

Appropriate contract language also can help policyholders avoid other business interruption coverage problems. One example involves contingent business interruption coverage for losses caused by damage to "contributing property," such as that of a key supplier or customer, located in a state other than where a policyholder's operations are based, Mr. Spruell said.

To obtain coverage in such situations, policyholders need to ensure that the named perils in their policies consider events that can strike in the state where the contributing property is located, Mr. Spruell said. A Michigan-based policyholder dependent on a contributing property in California, for example, will want earthquakes as a named peril in its policy, he explained.

The session was moderated by Charles A. Buehler, risk manager for Huntsman Corp. in Houston. BI



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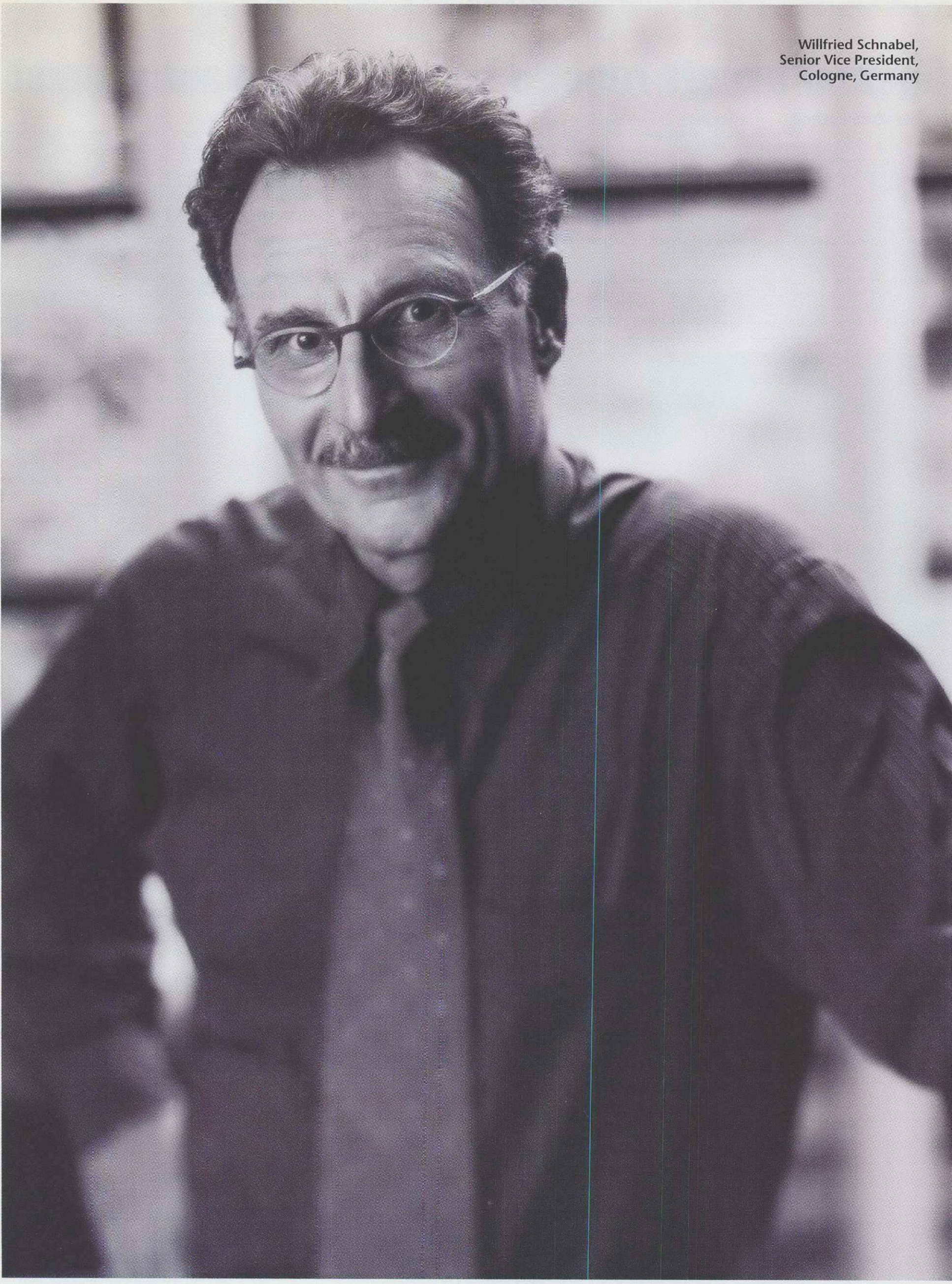

Willfried Schnabel,
Senior Vice President,
Cologne, Germany

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RIMS REPORT 2001

Special events require special risk management

By ROBERTO CENICEROS

ATLANTA—Risk managers may want to purchase separate insurance coverage for corporate-sponsored special events, rather than expose an existing insurance program to unusual losses associated with such a function.

Doing so can prevent renewal-time challenges for a primary program with an otherwise good loss history marred by one bad experience, said David J. Macek, vp of Near North Insurance Brokerage Inc. in Chicago. Buying coverage specifically for an event is helpful because special events often fall outside the expertise and normal day-to-day operations of a sponsoring company and its risk manager, agreed other speakers at the Risk & Insurance Management Society Inc. conference in Atlanta.

Special events can include picnics, sports outings, conferences, concerts, travel and the sponsorship of tournaments, such as golf hole-in-one prizes. The coverage areas that might be involved include third-party liability stemming from products given away, workers compensation, and personal injury to volunteers, subcontractors and participants.

"You know your industry...but when something like this rolls around, you may not want to retain the risk of something you don't understand," said Anthony Avitabile, senior financial and risk management analyst for the Office of the Commissioner of Major League Baseball in New York.

In addition, the limits, deductibles and other coverage terms in an existing primary program may not be appropriate for a special event, the speakers said. For example, a primary insurance program may not provide otherwise normal coverages for an employee traveling outside the country on a company-sponsored outing.

Mr. Macek added that, to ensure the separation of special-event losses from the primary program, a risk manager may want to avoid going to one of its usual insurers and instead use an entirely different underwriter for coverage.

One problem is that risk managers sometimes are among the last people in an organization to learn that their company is sponsoring an event, Mr. Avitabile said. To remain abreast of such matters, they need to maintain contact with other corporate departments, such as marketing and promotions.

Mr. Avitabile likes to spread insurance awareness around his organization by sending out memos informing other departments of the potential exposures associated with special events, as well as how they can be addressed.

Properly addressing the risks requires careful scrutiny of any applicable contracts with venue owners, vendors who will supply products or services, and equipment-leasing companies, among others. And risk managers should look beyond those contracts, Mr. Avitabile advised, noting that much can be learned from examining promotional materials and other documents.

Also, risk managers should review the insurance held by all vendors and suppliers to see whether the sponsoring company can be named as an additional policyholder, he suggested.

For any unfamiliar areas, "don't be shy about using your broker or insurance adviser," Mr. Avitabile said. "I'm not."

But depending on the complexity of the event, brokers may need several months lead time for arranging coverage, Mr. Macek said.

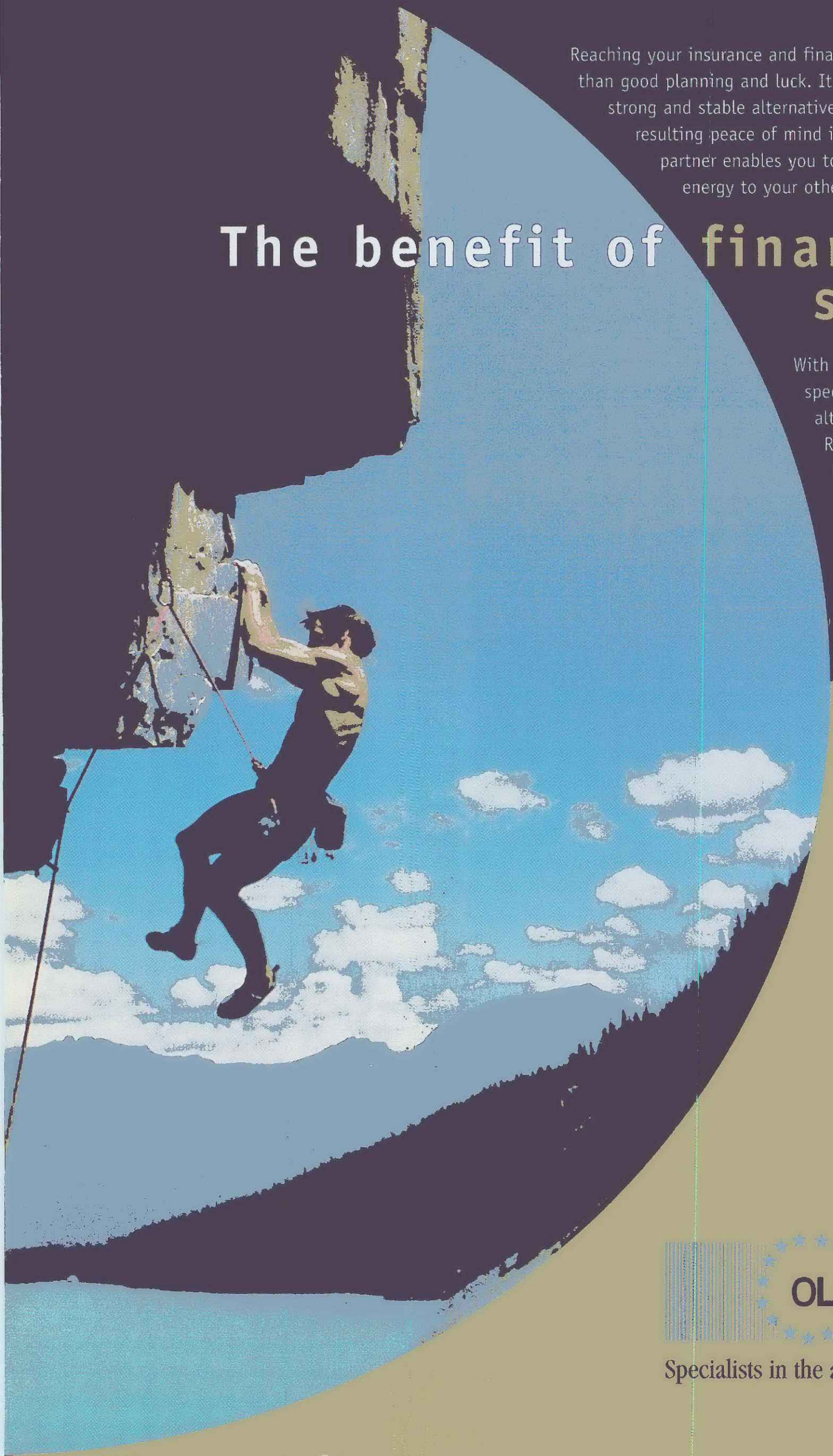
Never assume what party will be responsible should something go wrong, said Lowery Robinson, president of Atlanta-based Marketing Etc., a broker specializing in coverage for sports and entertainment events. He said risk managers should determine whether the liability for an incident, such as someone falling in the grandstands, will be the responsibility of the event sponsor or the owner of the venue.

Other issues to consider include celebrity-appearance clauses and event-cancellation coverage, speakers said.

Any time celebrities are involved in an event—particularly if they are the main draw—their contracts should address non-appearance and who will be responsible for related expenses and revenue losses, Mr. Robinson said. Policies are available with a wide variety of terms and conditions for celebrity non-appearance.

Specific coverage for weather-related cancellation is available, though it is dependent on specific triggers, such as an inch of rain falling during a certain time period. An event cancellation policy typically does not cost much more than a weather-specific policy and can cover a broader array of possibilities, the speakers said.

The session was coordinated by Elizabeth O. Simer, vp/corporate resources manager for Near North National Group Inc. in Chicago. It was moderated by Gary A. Nesbit, director of risk management and benefits for Buffets Inc. in Eagan, Minn. BI



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Internet use requires awareness of added exposures

By SARAH VEYSEY

ATLANTA—Cyberspace risk is one of the most confusing problems facing risk managers today, said a risk manager of a financial services company.

"This topic is of tremendous importance and interest," said Scott Newman, risk manager at Dun & Bradstreet Corp. "If the computer is down, we are out of business."

Mr. Newman moderated a session on insurance for Internet and cyberspace risks at the Risk & Insurance Management Society Inc. annual conference in Atlanta.

These online risks apply to all types of businesses, said an attorney who specializes in Internet risk. "You don't need to be an e-tailer to have all kinds of Internet exposures," said Joshua Gold, a partner at Anderson, Kill & Olick P.C. in New York. "This is a business issue that affects everyone on a day-to-day basis."

Mr. Gold said the risks associated with doing business online can be broadly broken down into three categories.

The first category, he said, is that of content liabilities, such as intellectual property risks, privacy risks and disparagement. Such liabilities are mostly third-party exposures, said Mr. Gold.

The second category, that of enabling-technology risks, involves both first-party and third-party exposures, he explained. Such risks, which mainly arise because of software problems, include intellectual property exposures, antitrust violations, business interruption losses and authentication problems.

Mr. Gold said the third risk category refers to security breaches. This risk can involve both first-party exposure—actual property loss—and third-party exposures, such as invasion of privacy claims, he said. The theft of confidential information, such as credit card details, can open a company to many liability exposures, he said.

When seeking to include Internet risks in insurance coverage, policyholders must be mindful of potential gaps in coverage, Mr. Gold warned. The global nature of the Internet poses problems for companies seeking to buy insurance coverage for their cyberspace exposures, he said.

Companies need to look very closely at what is covered under their insurance policies, Mr. Gold advised.

"For example, are you covered for property in all locations where you operate (via the Internet)? Does your coverage extend to lawsuits initiated in other countries?" he asked.

Jurisdictions sometimes have very different legal environments, he noted. "For example, decency laws vary from state to state and from country to country."

Another important question to ask when assessing the applicability of insurance coverage to Internet liability is what exactly is covered by the term "property damage."

Many policies, said Mr. Gold, define property damage as physical injury to tangible property—including all resulting loss. But if data is destroyed, the risk manager should determine whether the insurance company would consider that to be property damage under its policy, he pointed out. "Is data tangible property?" he asked. This is a legal area that is not yet well developed, he said.

Many errors and omissions liability policies will pay damages because of negligence in the performance of professional services, said Mr. Gold. "But a lot of times, with computer systems, it is not negligence," he pointed out.

One way to avoid this problem would be for insurance buyers to ask for a different definition to be included in their policies, such as "coverage for wrongful acts." But even if such wording is included, policyholders must check what exactly is included under the definition of a wrongful act.

Many intellectual property claims require specialized legal experience, Mr. Gold advised.

This, of course, can be expensive. Thus, an insurer may have a different idea on which lawyer to use when defending against an E&O claim. Under some professional liability policies, however, policyholders can get a "choice of counsel" endorsement that entitles them to choose their own lawyer, Mr. Gold explained. "If you can get this settled when you purchase (a policy), then the policyholder is better off."

Mr. Gold warned purchasers of E&O policies to watch out for the "professional services whipsaw."

If a policy contains the phrase "professional services," then policyholders must check the broadness of that definition, he recommended.

There are also possible punitive damages pitfalls in some E&O policies, said Mr. Gold.

"Insuring punitive damages is always a thorny issue—some states don't allow it and prohibit the insurability of punitive damages," he noted. "The question is, which jurisdiction will apply? It is important to have a sense of what law might apply to your policy," he said.

> *'You don't need to be an e-tailer to have all kinds of Internet exposures.'*
>
> — *Joshua Gold*
> *Anderson, Kill & Olick P.C.*

Computer crime policies and fidelity bonds also can involve certain coverage pitfalls when it comes to online risks, said Mr. Gold. An important consideration for risk managers, he said, is just who is insured under the policy; are employees, temp workers, third parties or joint venture partners included in the coverage?

When seeking to bring a claim under such a policy, companies should consider whether the conduct prompting the claim was malicious. There is also fear surrounding the reporting of a claim, said Mr. Gold. "For many companies, there is a fear that they will lose people's confidence, and therefore business, if they report a claim," he said.

Many policies covering e-commerce risks include a time limitation or a shortened statute of limitation. "This is the kind of issue you should be mindful of when deciding to report a claim," he said.

"There are lots of (specialty Internet) products, but the question for policyholders is that they are untested," said Mr. Gold.

"Also, is the language broad enough? And is the integration (with existing programs) seamless enough? The more specialty programs make gaps in coverage a real possibility," he said. "Investigate the claims environment with brokers," he advised.

Risk assessment is vitally important, added Jill Tellez, a vp and director-network liability of Aon Risk Services Inc. in Green Bay, Wis. "These policies have had very little testing from a claims perspective. That is why a risk assessment is so important." BI

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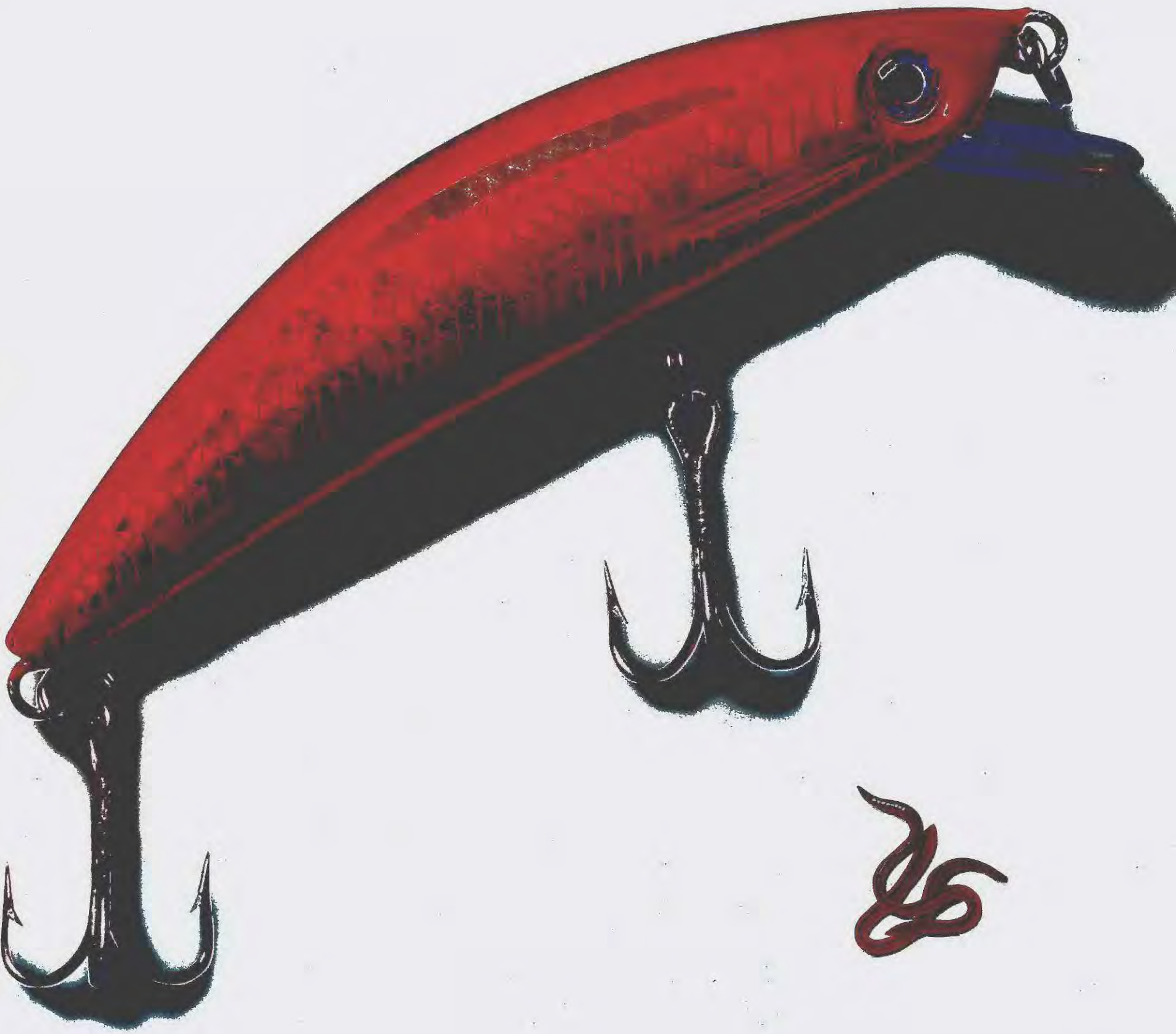

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RIMS REPORT 2001

Online manuals help keep information current, accessible

By SARAH VEYSEY

ATLANTA—By putting loss control program materials online, risk managers can ensure that the information is kept up to date and that materials reach everyone who needs them.

"Information is power. Poor access to information diminishes your power," said Steven Di Pilla, director of product development and training for ESIS Risk Control Services, a division of ACE Ltd. in Philadelphia.

Speaking at a session at the Risk & Insurance Management Society Inc.'s annual conference, Mr. Di Pilla contrasted the traditional way to communicate a loss control program—via a paper manual—with electronic distribution.

"If you want to change your loss control program, it is time-consuming in a paper version and it is incumbent on the user to actually do something with it," Mr. Di Pilla said.

"Another drawback with a traditional manual is that you have to make sure it stays in the hands of the people who need it," he added. An electronic version, though, "asks virtually nothing of the user. People who access it get the benefits of updates, and it is always there when you need it," he said.

An electronic loss control manual also is more cost-effective, he argued. Not only are copying and mailing costs eliminated, but everyone gets the latest versions of the manual.

"If you are using a paper manual that is out of date, you could make (a loss that occurs) more severe," Mr. Di Pilla said.

Electronic communication of loss control materials also reduces the work burden on risk management staff, he suggested, as other employees know how and where to access information and do not need to call the risk management department with routine questions.

The electronic manual can also be made searchable, and illustrations and links to relevant Web sites can be added, Mr. Di Pilla noted.

Robert Palmer, manager of safety, health and workers compensation for Compaq Computer Corp. in Houston, said that his company has reaped benefits by transferring its loss control materials to an electronic format.

Compaq's worldwide environmental, health, safety and security program is now fully accessible on the company's intranet. All related standards and contacts are also available on the company's Web site, he said.

Also, users of the online system are able to access to both real-time and historical loss control data.

There are some challenges involved in switching to an online loss control program, Mr. Di Pilla acknowleged.

The first problem is one of information security. This is not really a problem with loss control materials in the traditional binder format, he noted, "but once you put something on the Web, it becomes a target for sabotage."

While loss control information is not generally a target for saboteurs, he said, claims information can be, because it contains sensitive personal data.

In developing online loss control materials, companies must be wary of "design overload," Mr. Di Pilla cautioned. "Don't just put everything on because you can."

Another problem for "techies" such as himself, Mr. Di Pilla said, is the tendency to tinker. Care must be taken not to overcomplicate online manuals, he warned.

If loss control programs are to be transferred online, companies must make sure that all those who might need to access the manual have it, he added.

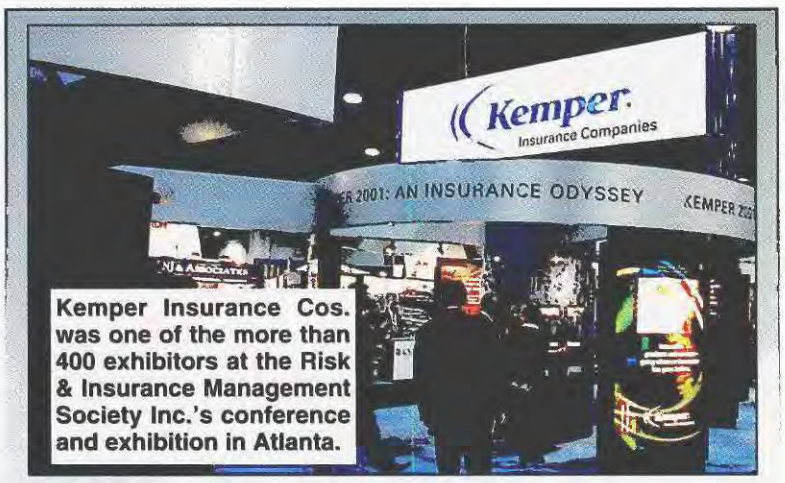
Another potential pitfall is so-called "downtime." Because computers systems can sometimes fail or fall victim to hacker attacks, back-up copies of the loss control materials must be maintained, stressed Mr. Di Pilla.

There are also copyright issues that must be addressed when posting information on the Web, he said. "There needs to be a clear policy on how people are allowed to use information."

Care must also be taken to ensure that all potential users of the loss control manual will find information posted in a language they can understand. "Loss control programs tend to have lots of technical information and language. So you need to have different levels of access so that people don't get overwhelmed with information they don't need and can't use."

Despite these potential challenges, Mr. Palmer said that Compaq had gone a step further and transferred its safety training program to the Internet. While he said that certain elements of training still required face-to-face sessions, other, more simple procedures can easily be taught or recapped online. This brings cost savings and gives employees timely access to training information, Mr. Palmer said.

The session was moderated by Mr. Palmer. BI



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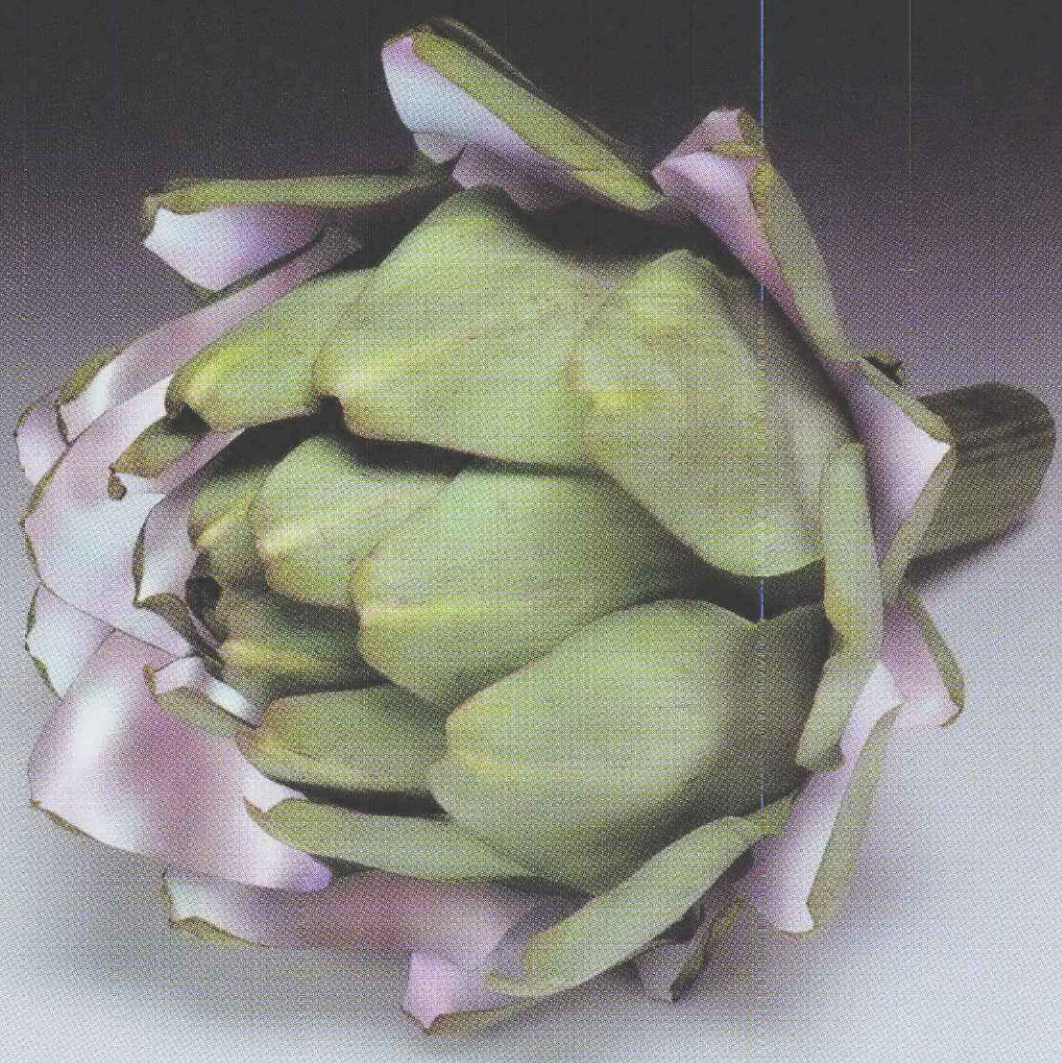

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Continued from page 10

castle, which was held together with glue.

Not far away, another artist assembled cards in the shape of the Statue of Liberty in the booth of Boston-based Liberty Mutual Insurance Co.

Kemper Insurance Cos. capitalized on the popularity of the television show "Who Wants to be a Millionaire" by inviting conference goers to participate in a trivia contest. But instead of $1 million, the ultimate prize in the Kemper competition was a camera watch, said Tom McCarthy, senior vp of Kemper Solutions in Philadelphia.

Kemper announced during this year's RIMS conference a strategic alliance with Aquila Inc., a wholesale energy trading company, and its reinsurance subsidiary, Aquila Re Ltd., that will expand the global market for weather derivatives and weather risk management products.

"This is aimed at adding another type of hedging...to manage the impact of weather on business and expenses," Mr. McCarthy said.

The coverage has many of the characteristics of extra-expense or contingent business interruption insurance, he said.

While Mr. McCarthy declined to provide the coverage limits that would be available through the allied partners' program, he did say that they would likely exceed the current weather derivatives market limits of $2 million.

Technology products—in particular, those using the Internet—were among the latest innovations featured at this year's RIMS conference.

Risk Laboratories L.L.C. of Marietta, Ga., demonstrated what it says is the first risk management information system built for the World Wide Web.

Unlike most so-called Web-enabled RMIS, which are basically Windows-based systems adapted for use on the Internet, RiskConsole was specifically designed for the Web, said Bob Morrell, chief technology officer, who demonstrated the product.

Because the system is offered as an application service provider model, it costs less to use, making it well within the financial reach of most organizations, said Paul Bildsoe, vp of business development.

Furthermore, because Risk Laboratories hosts the software on its server and provides necessary support and upgrades, "the need for internal IT support is virtually nonexistent," Mr. Bildsoe said during a telephone press briefing prior to the RIMS conference.

RiskConsole—aptly named because its home Web page follows an automobile dashboard theory, using semaphores as alerts in red, yellow and green—can be configured to meet any business need, Mr. Morrell said. "The information can be sliced and diced and shown in a lot of different ways," he said.

And, to ensure data security, RiskConsole can be set up so that an individual can see only the screens to which he or she is permitted access, Mr. Morrell added. This is possible, he explained, because each section of the RMIS has a separate Internet uniform resource locator, or URL.

Digital Defense Inc. of San Antonio offered risk managers the opportunity to purchase directly the same computer vulnerability assessment service that Digital Defense has been providing to insurers offering "cyber-insurance" for several years.

Digital Defense's network analysts come from the U.S. Air Force and are experts in Internet security, said Account Manager Louis Mayor.

"The Air Force is hackers' most popular site. Consequently, the Air Force is leading the charge against this threat," said Chris Cooper, Western regional vp of sales. "To truly understand what your posture looks like, you need to test it."

The assessment takes from one day to several days and can be conducted on a single system or on several systems.

"Vulnerability scanning is a virtual 'casing of the joint,'" Mr. Cooper said.

After the assessment is done, company IT managers usually are able to fix the vulnerable areas, Mr. Cooper said. "Very rarely does it involve capital expenditures," he said.

Houston-based Salvage Sale Inc., another first-time exhibitor, demonstrated its online auction site for commercial salvage. Among its major clients are insurance companies, railroads and trucking companies, said Vp J. Hank Diesel.

The Web-based site operates similarly to e-Bay but is less passive, Mr. Diesel explained. "We have commodity traders who help market the products properly," he said. "The more information the buyers have, the more willing they are to bid."

Salvage Sale also develops lists of buyers who are notified via e-mail whenever products they might be interested in become available.

The site has helped sellers maximize the resale value of damaged goods that might otherwise be sold for just cents on the dollar, Mr. Diesel said.

For example, a gas engine turbine that was dropped during transportation to a repair facility for routine maintenance might have been sold for between $200,000 and $280,000 to an engine rebuilder. But by using the site, the company that owned the equipment sold it for $850,000 after receiving 186 bids in four days.

The site, which went live in May 2000, evolved from a 10-year-old salvage brokerage called Searail. As a result, Salvage Sale has well-developed relationships in the global salvage business, Mr. Diesel said.

Another RIMS newcomer, The Adjusters Group Inc. of Philadelphia, espoused the benefits of using public adjusters to resolve major commercial property and business interruption claims.

"Insurance company adjusters are advocates of the insurance companies and have to follow company guidelines," said Stephen Figlin, president and chief executive officer of TAG. By contrast, he said, TAG serves as a policyholder advocate.

"The insureds are responsible for making their claim," Mr. Figlin said. "We make sure insureds are doing everything they must do to meet the requirements of their insurance contracts." Furthermore, "we often can respond faster than insurance company adjusters," he said.

TAG charges a contingency fee for its services, though it has some clients on retainer, Mr. Figlin said.

Some insurers and brokers rolled out new products and services at this year's RIMS conference.

Factory Mutual Insurance Co., which does business as FM Global, released information about three new offerings.

Business Impact Analysis gives client companies pre-loss business interruption assessments, said Michael Turner, vp of operations sales and client services in Johnston, R.I.

For example, the analysis surveys a company's property, financial, outsourcing and direct labor exposures, as well as its current preparedness to deal with loss situations, he said. Then, when and if a loss occurs, it has all the information it needs to file a business interruption claim, he said.

FM's new eConomy risk assessment program helps policyholders determine the vulnerability of their networked computer systems.

And FM's political risk coverage helps companies protect their bottom line from unexpected international events or foreign government actions such as war, civil unrest, breach of contract and confiscation of property.

Sherwood Insurance Services, a unit of Aon Corp., introduced a new insurance and loss control program for business interruption that occurs as a result of computer or online system failure.

"Companies all over the world are at significant risk of losing business revenue and incurring liabilities due to incidents involving their network systems and online communications," said Phil Pierson, vp-technology products at Sherwood and founder and manager of e-Sher Underwriting Managers. E-Sher is a subsidiary of Sherwood, both of which are based in Irvine, Calif.

As part of underwriting the coverage, e-Sher conducts a vulnerability assessment. If the policyholder purchases additional loss mitigation technology, it will receive a discount on its premium, Mr. Pierson said.

E-Sher can provide up to $10 million in limits from CNA Insurance Co. of Chicago and has $10 million in binding authority from Lloyd's of London underwriters. But it can also assemble an additional $100 million in coverage through Lloyd's, Mr. Pierson said.

Risk managers in search of toys to take home to their children found a plethora of playthings on the exhibit hall floor.

The counters of Insurance Overload Systems were crammed with blue squeeze toys, shaped like water drops with arms, legs and smiling faces.

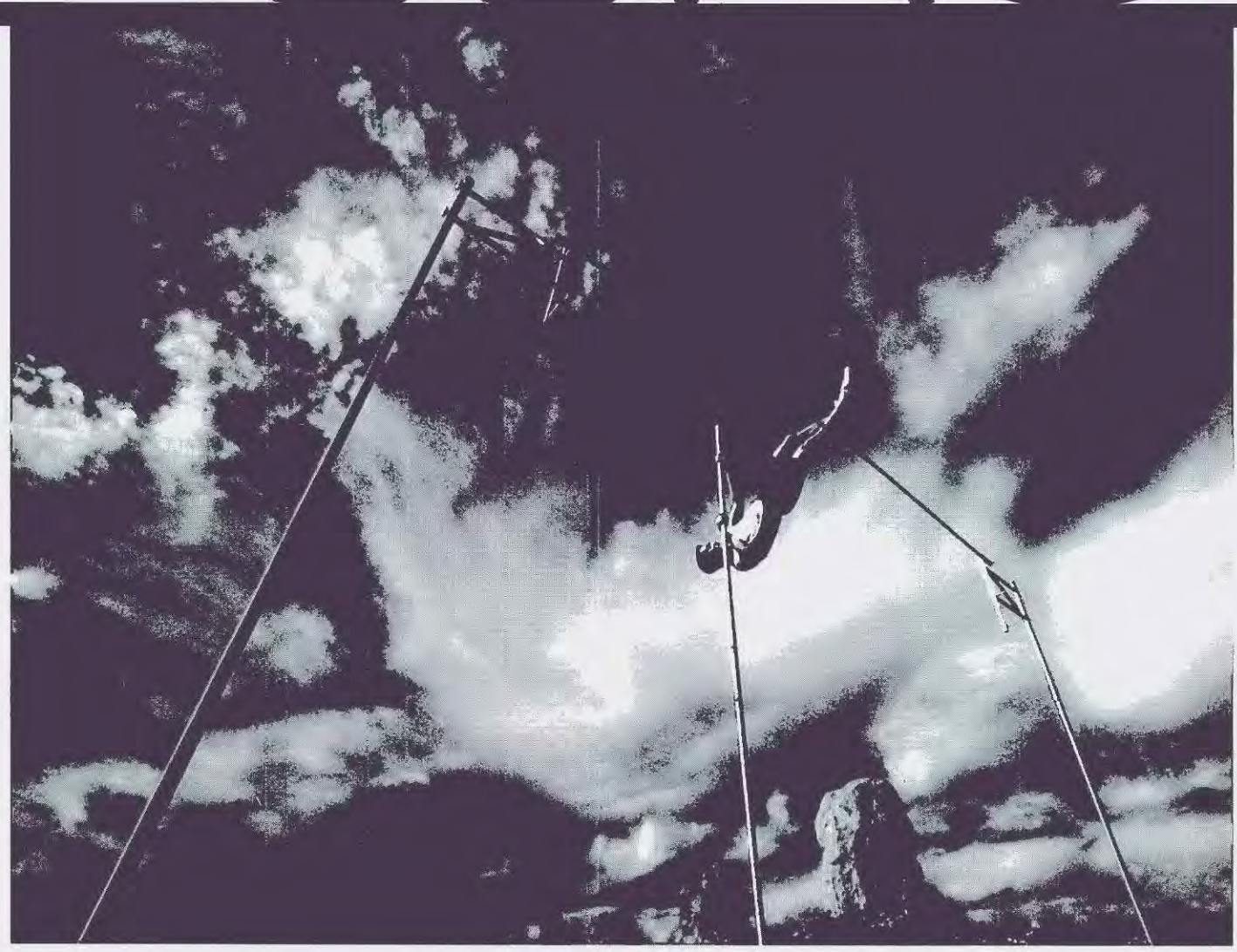
"We're using a water-related theme to show we're making a splash in the industry," explained Jill Russell, senior vp and national marketing director for Chicago-based IOS.

IOS is a temporary staffing service that screens applicants to provide a business with the best candidate for a particular job. It also provides job placement services and benefits to its applicants. BI

PHOTOS: MICHAEL MARCOTTE

Exhibitors at the Risk & Insurance Management Society Inc.'s annual conference in Atlanta used a variety of means to catch the eyes of attendees. From top, Munich-American Risk Partners built a ship out of sand, Liberty Mutual Insurance Co. erected a miniature city out of cards, Chubb enticed visitors with an eye-catching display of flags and an "outfitter" theme, and FM Global drew visitors to its booth with multimedia displays and information on new services.

THE AGILITY TO LEAD



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RIMS REPORT 2001

Risk managers urged to focus on e-commerce risks

By MICHAEL BRADFORD

ATLANTA—Risk managers who routinely protect their companies from various natural disasters may not be as well prepared when it comes to electronic disasters.

"E-commerce issues are becoming a focal point for our profession," said John A. Fromholtz, director of global insurance and risk services at Merrill Lynch & Co. Inc. in New York. "Each one of us is struggling with the impact of e-commerce and associated e-risks on our various businesses."

Mr. Fromholtz, who was moderator and coordinator of a panel discussion at Risk & Insurance Management Society Inc.'s annual conference in Atlanta, said that many risk managers "have evaluated, or are in the process of evaluating, the various insurance forms that are beginning to appear in the marketplace. Some of us are evaluating our current forms and trying to determine if in fact e-commerce is already covered."

"Doing business over the Internet may redefine the business you are in," warned Annette M. Merz, president of Zurich North America Financial Enterprises in Baltimore. She said by way of an "extreme example" that a bank that prints a flyer on home loans likely would not be considered a publisher. But a bank might assume a publisher's liabilities if it operates an Internet site that publishes information and tools related to home loans, she suggested.

Another panelist pointed out that the most serious e-commerce threat might come from inside an organization.

"A lot of firms may have insurance for floods, fires and natural disasters–traditional kinds of things. But the threat is now greatest from anyone who can walk through the door with a badge," and gain access to computer systems, said Michael B. French, senior consultant in IT security at IBM Global Services in New York. Employees, vendors, contractors and others who have access to a company's computers are potential threats, he noted.

Computer-related losses "are occurring with increasing frequency and are something we need to deal with," said Mr. French, who participated in the panel discussion.

Mr. French pointed out that, according to figures compiled by IBM in 1998, 75% of 563 organizations surveyed reported financial losses related to breaches of computer security. Most of those losses were caused internally, he noted, and for 249 organizations that could quantify the losses, those losses amounted to $100.1 million.

Companies that have increased the amount of business they conduct over the Internet may find that their techniques for ensuring privacy and security are out of date, Mr. French said. "One of the things that we try to do is remind people that security and privacy are really a giant circle, a continuous process," he pointed out. There are five steps on the circle, he said, and "by the time you finish one, it's time to start the next one all over again."

Those five steps in a privacy and security program, according to Mr. French, are:

- Assessing the value of assets, particularly intangibles such as customer lists.
- Identifying the particular privacy issues the organization faces.
- Determining how critical assets should be protected.
- Implementing appropriate protection based on the organization's needs.
- Continuously validating that safeguards are working.

Despite a shakeout among Internet-related companies in recent months, there is no shortage of interest in insurance products that cover e-commerce risks, according to Dominic J. Davison-Jenkins, senior vp with Aon Global Professional Services in New York. "This technology, this infrastructure, is not going away and the risk issues associated with it remain the same."

Traditional insurance is not going to be the answer for all e-commerce risks, according to Mr. Davison-Jenkins. While it will cover some of the risks, "it is not the answer to all of the issues that exist here," he said.

Still, some risks are covered by insurance policies already on the market, he said. "You'll read in the press, people saying that no e-business risks have been paid by insurers. This is not true." Loss of contents, errors and omissions and intellectual property claims, "some of them very, very substantial," have been paid, Mr. Davison-Jenkins noted. "Coverage does respond and it is there; so let's lay that one to rest."

The "next generation" of coverage includes policies such as those that pay for "enhanced crime and/or theft of intangibles" and insurance for Internet infrastructure providers who need to guarantee service levels or face potential negligence or breach of service claims, Mr. Davison-Jenkins remarked.

"Existing forms may provide more coverage than you realize," agreed Laurence J. Eisenstein, a partner in the Washington law firm of Swidler Berlin Shereff Friedman. "You should be reevaluating all of your existing policy forms," he told risk managers.

"There has not been a huge amount of claims yet. Part of that is that the dollars are not that large," said Mr. Eisenstein, and another reason is because policyholders are not sure whether claims are covered. BI

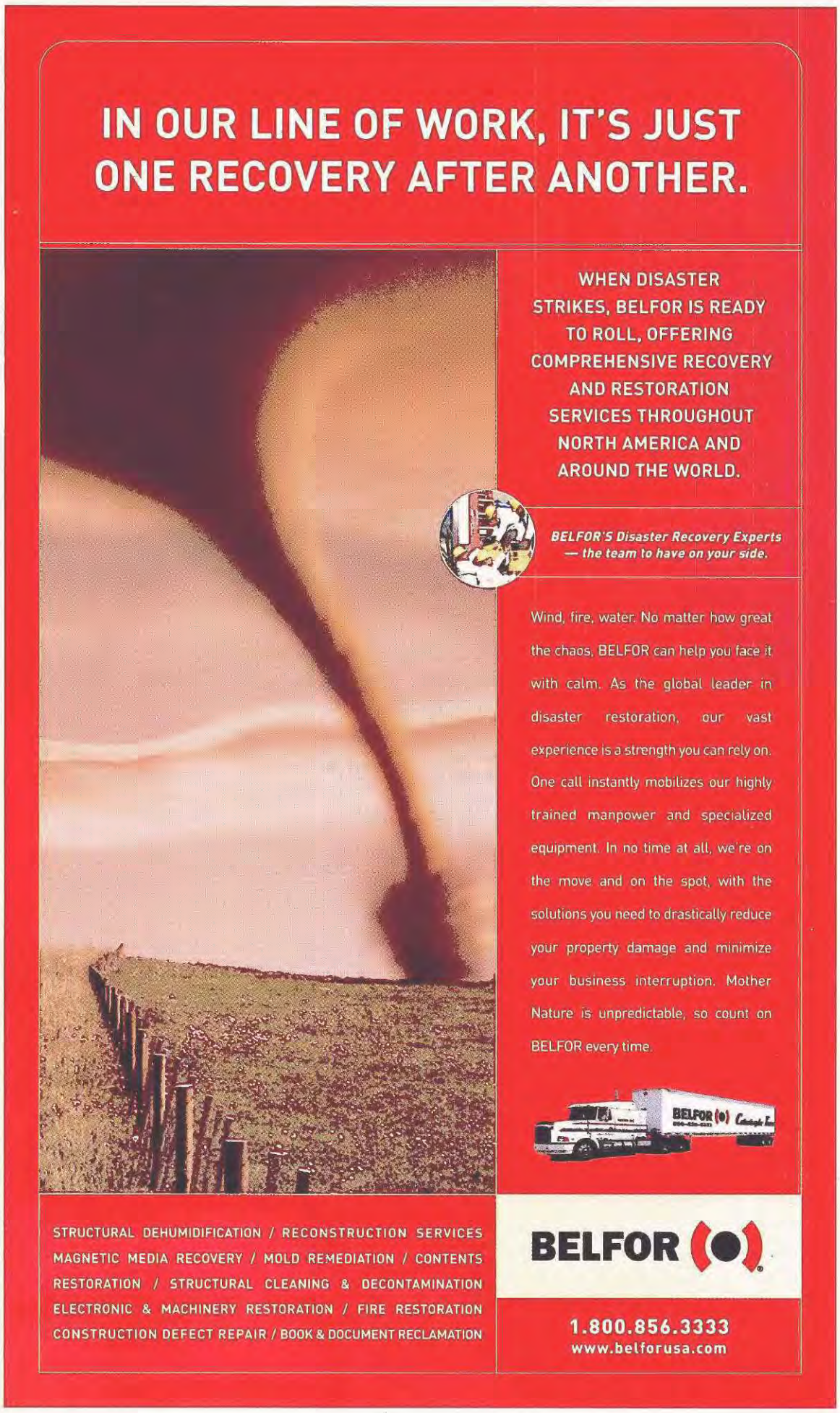
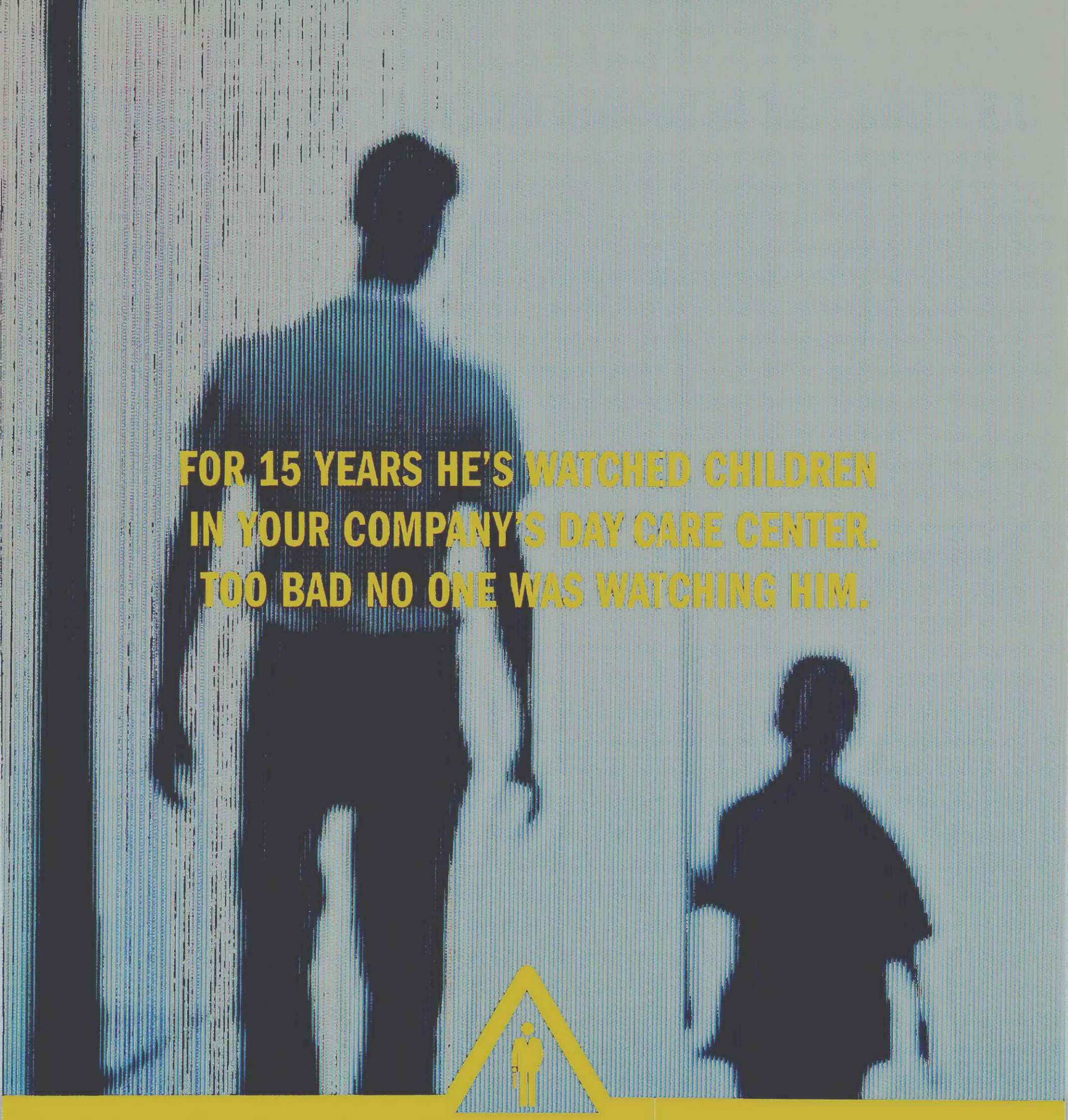


PHOTO: MICHAEL MARCOTTE

A record 443 exhibitors were on hand at the Risk & Insurance Management Society conference at the Georgia World Congress Center in Atlanta.



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PIONEERS IN REVOLUTIONARY PROTECTION

RIMS REPORT 2001

U.S. firms told to beware different types of terrorism

By SALLY ROBERTS

ATLANTA—American businesses are at risk of terrorist attacks worldwide, but it's not just bombs and guns they should be worried about, a risk consultant contends.

The threat of chemical and biological attacks is rising and businesses need to understand the issues surrounding the use of these agents and what actions can be taken to lessen the risk, said Steven Kuhr, senior consultant in the crisis and consequence management group of Kroll Associates Inc. in New York.

"In 1998, the large majority of anti-American political violence in the Western Hemisphere was carried out against U.S. businesses," he said. "In the same year, most anti-American incidents in Europe were also carried out against U.S. businesses."

"In the near term, we're very, very certain that bombs and guns are more of a threat than chemical and biological weapons, because they are easier to make and allow terrorists to get the flashy reaction that they want," Mr. Kuhr said. Nevertheless, he warned that terrorists seeking mass casualties increasingly are looking toward such unconventional weapons as chemical, biological, radiological and nuclear devices, as well as cyberterrorism.

"Cyberterrorist attacks are on the rise all over the world and, over time, chemical and biological attacks in particular will pose increasingly greater threats to American corporations at home and abroad," said Mr. Kuhr , who discussed the threat of unconventional weapons the Risk & Insurance Management Society Inc.'s annual conference in Atlanta.

Military chemical weapons—including VX, sarin, mustard gas and lewisite—are not easily accessible, but "precursors" of the chemicals can be found in industrial settings, Mr. Kuhr told attendees. These highly lethal chemicals can be disseminated in air or water, he said.

Toxic chemicals such as chlorine, parathion and cyanide are widely accessible in factories, labs and loading docks and aren't as closely monitored as biological substances or military chemicals, he said. "In massive quantity, (such chemicals) can act very similar to military nerve agents," and sophisticated dispersion methods or devices aren't needed,, he added.

"A disgruntled employee could relatively easily override safety measures at a chemical facility, and such an incident would probably go undetected and unreported as toxic chemicals drifted or seeped into the surrounding community," he said.

Biological weapons include viruses, such as smallpox; bacteria, such as anthrax; and toxins, such as botulin, Mr. Kuhr said, noting that these agents can be disseminated via aerosols, powders, water and food. Anthrax is of particular concern, because it is extremely lethal—100,000 times deadlier than the deadliest chemical warfare agent, he said. Various rogue nations are known to have the anthrax bacteria, he said, noting that over the last three years, there have been more than 300 anthrax threats across the United States.

To protect a company against terrorist attacks, Mr. Kuhr suggests first determining a facility's vulnerability. This includes assessing physical, personnel and information security. Risk managers should locate deficiencies, make improvements and form crisis plans and procedures to respond to attacks, he said.

Mr. Kuhr advises U.S. companies to establish and regularly practice emergency drills. Businesses also should establish a chain of command and lines of communication, so everyone knows what to do and whom to communicate with in the event of an attack, he said. Risk managers should also review building blueprints and perform walk-throughs to confirm the building layout, he suggests.

To protect against all types of terrorist attacks, Mr. Kuhr suggests erecting fences and heavy barriers around facilities and having sufficient exterior lighting., and controlling access to the facility, restricting parking and installing solid-wood or sheet-metal doors.

To specifically protect the facility and employees against chemical or biological attacks, Mr. Kuhr advises companies "to elevate security around entry points." These include vents, pipes, mechanical rooms, heating, ventilation and air-conditioning systems—and exhaust pipes that can be reversed, including sewer pipes, kitchen exhausts and cooling towers. Consider installing filters and scrubbers to protect ventilation systems, he said.

Mark J. Ryan, director of casualty insurance for Occidental Petroleum Corp. in Los Angeles, moderated the session. BI

Defining the broker's role

Risk managers told to put expectations in writing

By MICHAEL PRINCE

ATLANTA—Brokers may be quite useful in assisting risk managers, but it's important to know exactly what you get when you hire a broker, advised speakers at the Risk & Insurance Management Society Inc. annual conference in Atlanta.

The broker's role often is not clearly defined to the risk manager, said Andrew Reidy, a partner with law firm McKenna & Cuneo in Washington.Whatever relationship the risk manager chooses to have with the broker should be put in writing, said Mr. Reidy, who represents policyholders.

Risk managers should find out whether the insurance company is paying their broker, such as through contingent commissions, Mr. Reidy recommended. Such payments would indicate the broker has a stronger interest in its relationship with the insurer than with the policyholder, he told his audience of primarily risk managers.

Often, risk managers don't know whether their broker represents them or their insurer, Mr. Reidy said. Some risk managers believe brokers represent the policyholder, while others believe brokers represent the insurer, he said. They are both right, he said, because who the broker represents depends on the facts and circumstances.

In determining this, several factors are considered, he said, such as whether a written agreement exists between the broker and policyholder and the type of correspondence existing between the two. Other factors include who pays the broker, any state laws addressing the issue, whether the broker is registered with the state as an agent of an insurer, and the overall relationship between the broker and the policyholder.

Brokers have duties that are generally established by case law, Mr. Reidy said. These include negotiating for insurance coverage, binding that coverage, investigating the stability of the insurer, disclosing all material facts to the insurers, keeping certain policyholder facts confidential, maintaining all records and providing timely notices to the policyholder. If a broker fails to fulfill any of its duties, a policyholder can sue the broker for breach of contract or negligence.

Regardless of the nature of the suit involving a broker's actions, when the policyholder wins, the court deems that the policy is in effect during the disputed time. For a negligence suit, however, the policyholder may also seek to recover compensatory and punitive damages, a potentially more valuable course of action, Mr. Reidy said.

Even if a policyholder doesn't expect to bring a suit, Mr. Reidy recommends finding and saving all advertising and marketing material about the broker. These ads often promote the broker's expertise, helping to establish them as experts with a high standard of care to which they must adhere, he said. In a negligence suit, a big issue is the standard of care the broker owes the policyholder. And the higher the standard, the better for the policyholder, he said.

At least 10 states, including Connecticut, allow policyholders to sue brokers for failing to adhere to state-mandated levels of care. The statutes often permit recovery for punitive damages and attorneys' fees, he said. "That is a bonanza for you if you're in one of those states," he said.

Because a well-known legal doctrine holds that an ambiguity in a contract is to be interpreted against the drafter, Mr. Reidy recommends that the broker not draft any part of the policy as it could be construed against the policyholder. He said the broker should only use provisions already developed by the insurance industry.

Also, a broker should not write anything, even e-mails, that might cast doubt on a particular claim, Mr. Reidy said. Such material will be discovered during any litigation between the policyholder and insurer and could be used against the policyholder.

Finally, Mr. Reidy advised against making the broker the policyholder's agent because a broker forced to side with either a policyholder or an insurer it has longstanding ties with will choose the insurer. Policyholders are better off formalizing that relationship from the outset, he said.

Brokers should be used selectively, added Mark Siwik, senior counsel for Risk International Services Inc. in Richfield, Ohio. The broker is best used as a conduit tc the insurance market and should be used to buy coverage at the best price, he said."The broker is focused on the procurement of insurance. That's what they do best," he said. If a policyholder wants a broker to do more, he advises getting a written agreement.

Frederick Rich, executive vp of McLean Contracting Co. in Glen Burnie, Md., moderated the session.

Promoting change

Getting support of company leaders required

By DAVE LENCKUS

ATLANTA—Risk managers who have to battle senior management who are wedded to old but not necessarily better ways of doing business can promote change more easily by using the change-acceleration process, according to a panel of experts.

Risk management at The Walt Disney Co. executed the process flawlessly in persuading top management to drop their objections to using owner-controlled insurance programs for recent major construction projects, insurance executive Irene K. King said during a session at the Risk & Insurance Management Society Inc. conference in Atlanta.

Disney's risk manager detailed at the session how the process helped him win approval for the OCIP programs, under which Disney assumed responsibility for arranging insurance and a loss control program for all contractors that worked on the construction projects. The programs saved the entertainment giant millions of dollars, said Tim East, director-risk management business process for Glendale, Calif.-based Disney.

The change-acceleration process helps make the "six sigma" business-improvement methodology work, explained Ms. King, chief operating officer for P&C Re Americas, a unit of Overland Park, Kan.-based Employers Reinsurance Corp. Six sigma is a methodology for accelerating improvements in quality, productivity and overall operating efficiencies.

Ms. King said the change-acceleration process is designed "to speed natural change," rather than force change. She said risk managers should understand some critical elements of successfully promoting change:

- Risk managers have to work on building management's readiness for change.
- The various "owners" of change may have to be approached in different ways.
- Risk managers should identify and secure the support of the informal but influential leaders—or "gatekeepers"—of the management group that the risk manager is attempting to influence.

Identifying gatekeepers is part of an early phase of the change-acceleration process—analyzing the stakeholders of change.

Risk managers have to identify those who would be affected by a particular change, Ms. King said. Then, along a spectrum of "strongly supportive of" to "strongly against" change, risk managers should determine:

- Those managers' current positions.
- Where the managers need to be along the change-resistance spectrum.
- How all of the individuals are linked to each other.
- What actions the risk manager must take to "close the gaps."

"That's where your work begins," Ms. King told session attendees.

She said risk managers would accelerate top management's acceptance of change by giving the gatekeepers a role in the new project.

Gaining only lukewarm approval from a gatekeeper may not be enough to win support from other management, Ms. King said. "If they're not involved, then they're not a strong supporter."

Ms. King applauded Mr. East's early identification of four top managers whose support he said was critical to winning approval for the OCIP programs.

Understanding how people react to change and responding appropriately will help risk managers speed change, Ms. King said.

Management's initial reaction typically is denial of the need for change. Risk managers should explain what the managers should expect, offer them ways to adjust and give them some time to accept the change, she said.

Change will come more quickly if risk managers create a shared need with top management and shape a vision of how the proposed change will help them and the organization, Ms. King said.

She said Mr. East did that effectively by conducting a lot of upfront research on the financial impact OCIP programs would have on Disney and then offering management the prospect of reducing construction costs by at least 1%.

Ms. King also applauded Mr. East for visiting those executives rather than communicating by e-mail. "That's a big deal," because a personal visit is "the most effective form of communication" when trying to change someone's mind, she said.

Denial typically softens to resistance, which is when risk managers should listen to and acknowledge management's concerns.

With encouragement and support, management should begin exploring the recommended changes with some enthusiasm. During this period, risk managers must help them find answers to their questions about the proposal. Management commitment to the proposed change should follow.

John Roskopf, a senior director at Aon University, a Glenview, Ill.-based unit of Aon Corp., was the coordinator and moderator of the session. BI

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RIMS REPORT 2001

More risk managers seeking profitable projects

By MICHAEL BRADFORD

ATLANTA—Risk managers are learning to take the offensive and use risk as a profit-maker.

"Historically, risk management has been a very defensive function," said Christopher A. Duncan, director of risk management and insurance at Atlanta-based Delta Air Lines Inc. "Basically, we try to figure out what could go wrong and take care of it when it does happen. I happen to think a lot of the skills that risk managers have can be applied to revenue-generating things."

Speaking during a session on the best practices of Atlanta-area companies during the Risk & Insurance Management Society Inc.'s annual conference in Atlanta, Mr. Duncan pointed out that taking the offensive and using risk as an opportunity to make money can boost a risk manager's credibility and make it easier to get approval for and accomplish some of the more traditional risk management goals.

He acknowledged that most risk managers and others in the insurance profession are risk averse. But, Mr. Duncan noted, "sometimes you get so risk averse that you lose sight of the fact that risk is a good thing. You've got to have a little risk to generate above-average returns. The issue is balance."

As an example, Mr. Duncan said that an airline could use its captive insurer to fund travel insurance for passengers. "I have 120 million passengers a year flowing through the Delta system. Is there an opportunity to use those 120 million points of opportunity to perhaps offer a product that someone might find of value and could perhaps go through my captive insurance company? Absolutely."

Contacted after the session, Mr. Duncan would not say whether Delta is considering offering such a product.

Michael Eremchuk, vp-risk management at First Data Corp. in Atlanta, said his company provides credit card transaction processing services to 2 million merchants and also owns Western Union. There could be an opportunity for First Data to offer third-party coverage through its captive to generate revenue for the company, he said.

Many merchants fear doing business over the Internet because they are afraid of fraudulent credit card transactions and the resultant charge-backs they would owe, said Mr. Eremchuk. "There may be an opportunity to sell charge-back insurance as part of a suite of services to get them up and running on the Internet and take the fear out of that experience."

> *'I happen to think a lot of the skills that risk managers have can be applied to revenue-generating things.'*
>
> — *Christopher A. Duncan*
> *Delta Air Lines Inc.*

There are other opportunities for using risk management as a profit center, Mr. Duncan noted. "It's not that difficult to get your agency or your brokerage license" and set up an in-house operation to provide coverage to customers or other third parties, he said. "It's a lot of work, you may not want to do that because you may want to invest your finite resources elsewhere. But it's also a way to try to bring some revenue into your company. Let's just say you've got a general administration budget for your department of $600,000 and you manage to bring in $100,000 of commission income. Your finance people are probably going to like that and it's going to help you out in your budgeting."

Some companies are "insourcing," or providing risk management services to suppliers or other business partners, Mr. Duncan noted. "I think that's an interesting idea. It's very entrepreneurial. You're not going to bet the company by doing that. It's going to be a little bit of revenue and you can manage those risks."

Mr. Duncan said that if risk managers are not "joined at the hip with your tax person, you are absolutely losing a marvelous opportunity to generate massive value for your company. Tax people have schemes that we would never dream of," particularly as such schemes relate to using captives.

At Southern Company, an Atlanta-based utility, J. Gary Meggs helped develop a unique insurance package that could help protect revenues if power outages force the company to buy electricity on the spot market to meet customer needs.

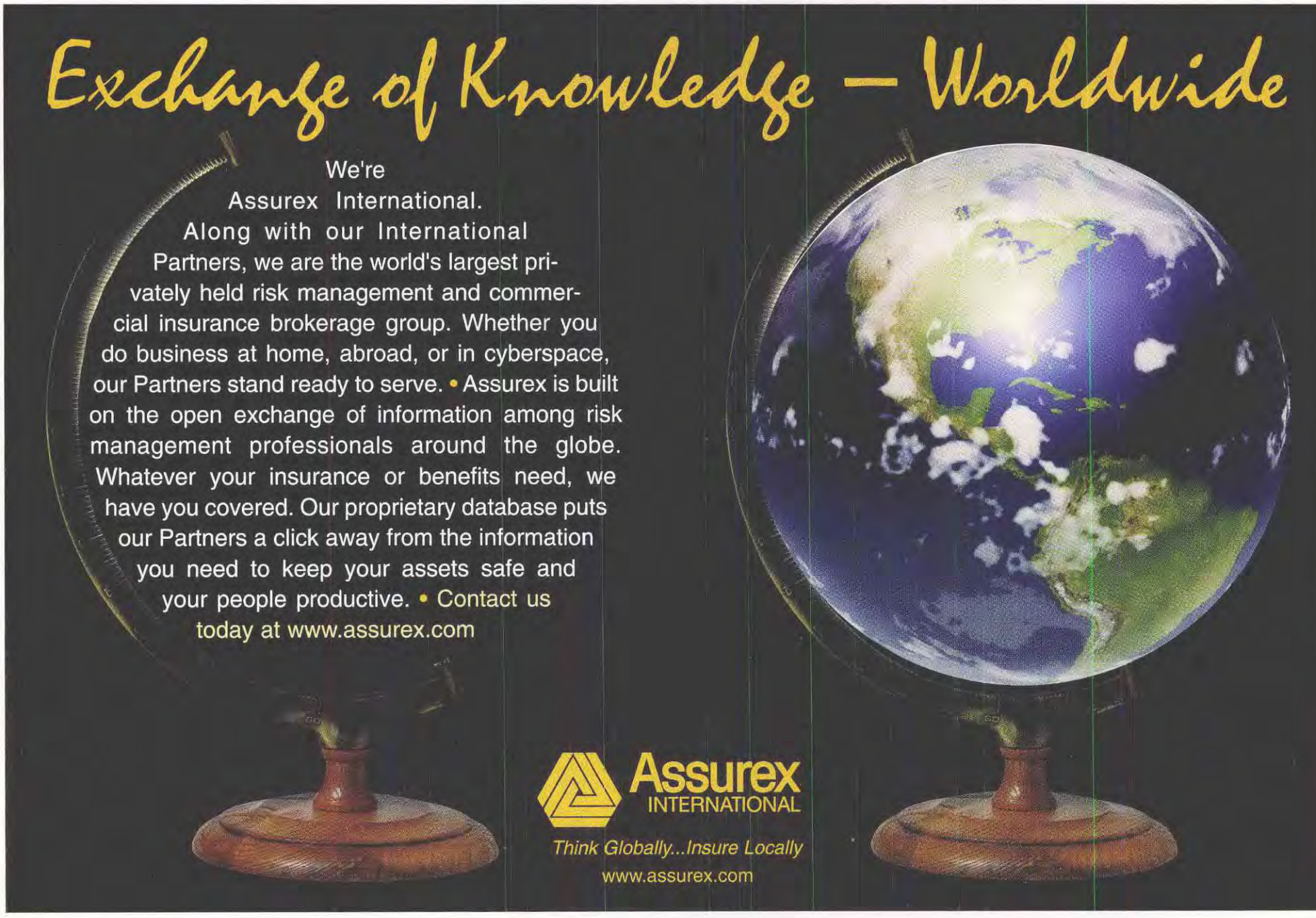
"Companies buying power want to firm up what we call unit contingent contracts," said Mr. Meggs, the director of risk management at Southern Company. "In other words, they want a guaranteed cost of electricity. At this point, the insurance industry, and even the capital markets, lack the competition to ensure fair pricing of coverage for this risk.

"We helped create a new market for this coverage," Mr. Meggs said, and "created some value for our asset managers and energy traders...what we did was really a derivative packaged as insurance." (see story, page 18).

The coverage is triggered if the cost of buying replacement electricity—such as could occur to meet obligations to customers after an outage or shortage in generating capacity—reaches a particular level, or strike price.

Mr. Meggs said there was a "very steep learning curve" in putting the coverage together. And, he added, turf issues among the participants had to be set aside. "There was plenty of risk to go around. I want to add some value, but I don't have to own the process."

The session was coordinated by Brian M. Kawamoto, a director with Swiss Re New Markets Corp. in New York. BI



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Coping with calamity

Risk management is key in mass emergency response

By SARAH VEYSEY

ATLANTA—Risk managers have a unique and vital role to play in planning a company's response to mass emergencies, a claims specialist says.

A mass emergency—usually one involving 20 people or more—carries with it a great likelihood of litigation and media coverage, said John Miles, casualty claims manager at Oxy Services Inc. in Dallas, a unit of Occidental Petroleum Corp. that provides support services to the petroleum industry.

A company at risk of becoming involved in a mass emergency should have a corporate emergency response team and disaster recovery plan, Mr. Miles advised during a session on handling emergencies at the Risk & Insurance Management Society Inc. conference in Atlanta.

The risk manager should be a key partner in this plan, he said. The risk manager has risk assessment expertise, knowledge and experience, as well as some of the resources needed when setting up such a plan. "So the risk manager really should be deeply involved in setting up a corporate disaster recovery plan and corporate emergency response," he said.

Key elements of such a plan include early notification and a division of responsibilities, said Mr. Miles. "The risk manager must be notified early," he said. "And you can't have one or two people doing everything. You have to plan for who will do what after an incident."

A communication strategy is a vital part of the recovery plan, he said. "It is very important. You also need communication from the community outside."

A disaster recovery plan should include a checklist detailing all the activities that must be carried out after a disaster. The plan should include a resource list with contact numbers of experts to be called in various types of emergencies. "Having an Internet connection is very important for finding resources," Mr. Miles said.

The plan must be flexible, he said, and "macro not micro—you need to call on functions, not individuals."

The plan must also be revisited frequently, Mr. Miles said. "Schedule maintenance of the plan," he said. "Plans become stale in six months. Things like the personnel and the exposures of the corporation change, so you need to update the plan."

Once a plan has been drawn up, a "special situation team" must be put in place, Mr. Miles said. "At Oxy, we have found this organizational structure very useful, even for things that aren't disasters—for example, merger announcements or our Y2K plan."

The Oxy special situation team has four permanent members: a facilitator to ensure that the plan and the team are in operation; a representative from the health, environment and safety department; a risk management department employee; and a public relations representative. "Anything that happens can easily end up in the public domain," he explained.

Mr. Miles said the team would also include an event manager, but this individual would not be a permanent member since there would be a different manager depending on the type of event. Thus, the event manager joins a team already in place, he said. "We also have other identified disciplines that we can bring in—such as fire engineers or environmental engineers that can be brought in as needed," he added.

Employees must be given individualized training in specialized areas of disaster recovery and then cross-trained, Mr. Miles said. Training with outside agencies, such as drills with fire fighting teams, is also important, he noted.

Once training has taken place, the plan must be tested, Mr. Miles said. "The goal of testing the emergency response plan is to identify weaknesses and improve the plan, to give team members experience (using the plan), and to improve the confidence of everyone," he said.

Third-party administrators can play an important role in responding to a mass event, Mr. Miles said.

As Earl Winters, claims administrator at Cunningham & Lindsey in Dallas pointed out, a disaster can happen to anyone. Quoting a saying from professional cycling, he said, "In cycling there are only two types of riders—those who have crashed and those who will crash."

Claims are more costly and more difficult to settle as time passes, Mr. Winters noted. Therefore, he said, it is important to follow a "claims continuum."

"If we follow all the steps in the plan, then everyone knows what to do and when to do it," Mr. Winters said. "We know to whom we should report and when."

Mr. Miles coordinated and moderated the session. BI

Managing recalls

Creation of an effective crisis team is crucial

By GAVIN SOUTER

ATLANTA—The first line of defense against a product recall emergency is a company's crisis plan, a consultant says.

Such a plan should be in place well before it is needed, and everyone involved should be trained how to respond in a crisis.

Once the recall is over, the risk manager can turn to insurance coverage for some compensation for costs related to the recall, a lawyer says. Though liability policies usually contain exclusions barring coverage for recall costs, some elements may be covered.

A crisis plan is an integral part of any risk management program, said Brian Delaney, president of the consulting firm Clarke & Co. in Boston. One crucial part of any plan—and one of the most difficult elements to address—is the creation of a crisis team, Mr. Delaney said at a session of the Risk & Insurance Management Society Inc.'s annual conference in Atlanta.

In developing a crisis team, the first task is to select a team leader. "When you deal with most public companies, the president or CEO wants to be the team leader, but that is the worst choice," Mr. Delaney said.

Top executives that lead crisis teams often make all of the decisions themselves instead of relying on the opinions of experts, he said. Nevertheless, he said, the team leader should be a person of authority, to ensure that the plan is executed.

Other members of the team should include representatives from various departments, including: quality control, legal, operations, sales, communications, security, finance, insurance and risk management and human resources.

Within the team, there should be a core group of four or five individuals who will have the main responsibility for drawing up and implementing the plan, Mr. Delaney said. "Even with 10 or 11 people, it's difficult to get them to react to a crisis and agree on a plan," he said.

The plan should include an executive summary of three pages or less, Mr. Delaney said. Long, unsummarized plans can be hard to implement in the first few hours of a crisis, he said. All components of the plan should be tested to ensure it is effective.

The first few hours of a crisis are especially difficult, because companies often have little information on the cause and likely outcome of the situation during that period. "If you are doing all the right things but not communicating it, you can go bankrupt in a matter of days," Mr. Delaney said.

Once a crisis involving a product recall is under control, risk managers can turn attention to filing claims for some of the expenses, said Jeannine W. Chanes, a partner at Fried & Epstein L.L.P. in New York. Companies without product recall coverage can turn to other liability policies to obtain some coverage, Ms. Chanes said.

"Is everything covered under a typical insurance program? Probably not. Are some things covered? Probably," Ms. Chanes said.

Commercial general liability policies usually contain several exclusions intended to bar claims for product recall expenses, but some claims may be covered, she said.

For example, in a case where a policyholder recalls its own defective products, the recall costs of retrieving the products from the market are probably not covered under a CGL policy, Ms. Chanes said.

But, she said, CGL policies generally would cover costs for inspection, removal and the cost of repairing and replacing products at their place of installation.

In a case where a policyholder's customer initiates a recall of the customer's goods because of an alleged defect caused by the policyholder's product, the policyholder's liability for those recall costs generally would be covered under the a CGL policy, Ms. Chanes said.

Some coverage for recalls of electronic products may be available under electronic errors and omissions policies, said Robert Bergen, vp at Marsh Risk & Insurance Services in San Francisco, a unit of Marsh Inc. Such policies are intended to provide coverage when an electronic product or service fails to perform as intended, generating third-party losses, he said.

The policies are usually manuscripted, and the terms can include coverage for expenses incurred in exchanging the failed product, Mr. Bergen said.

The session moderator was Paul W. Pressley Jr., director of risk management and insurance at Gold Kist Inc. in Atlanta. It was coordinated by Ms. Chanes.

To manage brand risk, be aware, plan, communicate

By SARAH VEYSEY

ATLANTA—A host of recent brand crises makes a clear case for brand risk management, said David Abrahams, managing consultant for Marsh Strategic Risk Consulting in London.

Mr. Abrahams addressed the concern in a panel discussion during the recent Risk & Insurance Management Society Inc. annual conference in Atlanta. Another panelist, Larry Offutt, director-loss control at Miami-based Burger King Corp., told attendees how Burger King deals with potential risks to the company's brand.

Mr. Abrahams stressed that the term "reputation risk" is an incomplete definition of brand risk. He described brand risk as "threats to the sustainability of demand and to the brand's continued capacity to create value, commitment or influence among key stakeholders." Brand risk, he said, is a combination of reputational risk, structural risk and equity risk. Structural risk, which is related to the structure of demand for a product, incorporates the "social acceptability" of a product. Equity risk encompasses the emotional benefits associated with a brand—"why I like the brand; why it makes me feel good"—as well as product-led values, Mr. Abrahams said.

Brands take in identity, quality, experience and values, he said, adding that, when considering brand protection, it is important to distinguish between brand value, brand image and brand equity.

"Brand image is the sum of all associations that consumers and other stakeholders have with a brand," while "brand equity is the subset of image elements that have the ability to shift economic demand," he said.

Mr. Abrahams demonstrated this distinction by comparing Gianni Agnelli, head of Italian auto manufacturer Fiat S.p.A., and Richard Branson, founder and head of United Kingdom-based Virgin Group P.L.C. He said that while both are figureheads for their companies, Mr. Agnelli is associated with Fiat's brand image and Mr. Branson with Virgin's brand equity. People don't buy a Fiat car because they associate their purchase with Mr. Agnelli, he said. When consumers buy Virgin products, though, they make an association between Mr. Branson and the Virgin brand.

Corporate conduct and corporate citizenship are also important to remember when seeking to protect a brand, Mr. Abrahams noted.

Mr. Abrahams said a brand risk management team must be aware of all potential risks to its brand—including what he described as "left-field" risks that might not be immediately obvious. Also, he said, "in brand risk management, you don't just concentrate on the risks that look like they are the bigger ones."

He suggested that attendees map out and thoroughly assess their brand risks. The impact of brand risk, he said, is "the extent to which customers and other significant stakeholders may think or act differently as a result of a risk event in ways that will either inhibit real recovery from the event or have indirect consequences for the organization now or in the future."

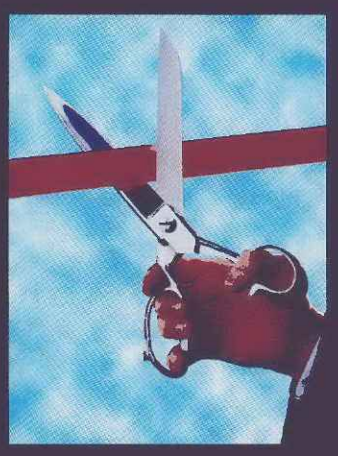
Because investor response to a catastrophe can make the difference between the recovery and nonrecovery of a brand, Mr. Abrahams said, managing brand risk is important.

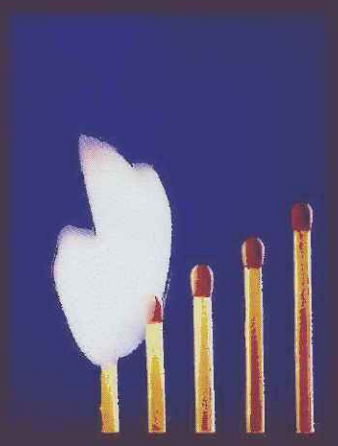
Burger King's Mr. Offutt outlined some of the steps his company has taken to manage its brand risk. He said the media sometimes like to "create crises," and he advised attendees to be watchful for potential threats to their companies' brands. A brand risk can come from virtually any source, Mr. Offutt said. "What could constitute a crisis at Burger King? Anything and everything," he said.

Prompted by a series of threats to its brand reputation, such as salmonella scares, Burger King refined its approach to crisis communications. "A little over three years ago, we decided to create a formal crisis communication program," he said. This included forming a 24-hour multilingual reporting team, a professional communications team and nationwide monitoring services to follow local television and radio broadcasts.

"As we worked through the issues, we realized that we had to establish internal communications training," Mr. Offutt said. Burger King set up a development group that included representatives of the company's legal, safety and risk management, quality assurance, communications and operations departments. This group then created an internal policy and a manual for dealing with communications crises. "We also had an educational campaign within the company and franchises," he said. This included setting up reporting procedures and a 24-hour reporting hotline for staff.

"You need to have a plan ready and a system to activate that plan immediately," Mr. Offutt said. BI





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May 21	*Distribution: AAMGA; ACORD*	IT Information Technology *Distribution: IASA*	May 9
May 28	Benefits: Pensions/Retirement Plans *Directory: 401(k) Plan Administrators*		May 16
Jun 4	*Distribution: AIRMIC; IASA*	ABT Employee Recruiting & Training	May 23
Jun 11	Government Risk Management *Distribution: AAHP; NAIC; PRIMA*		May 30
Jun 18		IT Employee Recruiting & Training	Jun 6
Jun 25	Benefits: Balancing Work & Life *Directory: EAPs & Dependent Care Resource & Referral Services* *Distribution: IMCA; SHRM*		Jun 13
Jul 2	Midyear Market Report: Property/Casualty & Health Care	ABT Marketing Strategies	Jun 20
Jul 9			Jun 27
Jul 16	30th Annual Agent/Broker Profiles *Directory: Agents & Brokers*	IT Marketing Strategies	Jul 3
Jul 23			Jul 11
Jul 30	Risk Management Services *Directory: Risk Management Consultants*		Jul 18
Aug 6	*Distribution: VCIA*	ABT Legislative Issues	Jul 25
Aug 13	Property Loss Control *Directory: Property Loss Control Consultants*		Aug 1
Aug 20	Wards Results	IT Legislative Issues	Aug 8
Aug 27			Aug 15

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Exhibits

Continued from page 10

comp claims, resulting in poor communication, inefficiency and mismanagement.

Em3 incorporates a "virtual provider community," made up of primary care physicians who focus on occupational medicine and work with physical therapists to manage cases and return injured employees to work, Dr. Fogarty said.

Under the system, all provider and pharmacy charges are submitted electronically, shortening the claims paper trail and cutting down on processing errors, Mr. Greenwood said.

"Although Em3 uses advanced technology, our goal is basic—ensuring employees receive high-quality health care delivered in an efficient, affordable and accountable manner, so they can return to productive work as soon as possible," Mr. Greenwood said.

Workers comp sales and service company ManagedComp Inc. attended the RIMS event to showcase its new ScoreCard program, designed to help employers control their workers comp losses.

Nancy A. Froude, recently named ManagedComp's president and chief executive officer, explained that ScoreCard's fivefold service consists of total injury prevention; prompt response to injured employees; channeling of injured employees to primary occupational providers; same-day reporting; and transitional duty, or "getting an injured employee back to modified duty."

The program's scorecards, which are provided at least twice per year, are designed to provide an ongoing assessment of an employer's workers comp program.

In addition, ManagedComp's E-Lert program provides risk managers with prompt notification that some aspect of the employer's program needs attention .

E-Lert "gives the employer timely feedback. If you're at the end of the year or after the fact, it doesn't do anyone any good, because they're not able to have immediate influence on the outcome of the injury," Ms. Froude said.

Ms. Froude said the ScoreCard program also allows risk managers to provide senior management with regular updates on the success of workers comp programs.

ManagedComp is based in Woburn, Mass., and provides services to more than 5,000 clients in 44 states.

First Health Services, a health benefits company based in Downers Grove, Ill., unveiled its 4.0 Bill Review System at this year's RIMS conference. First Health's system filters claim information, streamlining the bill review process, according to the company.

First Health's vp of provider networks and bill review systems, David S. Correia of West Sacramento, Calif., explained that a client can access the information it needs at the time and in the way it wants through the product's clinical editing system.

Mr. Correia said that the review system, through secure Internet access, can help a large company "to move bills around" throughout the organization.

First Health handles more than 39 million claims each year.

"Because First Health manages all aspects of the bill review system, including training and technical support, clients benefit from decreased administrative costs," a company spokeswoman said.

A CIGNA Group Insurance product—CIGNA Short-Term Disability with Insured Long-Term Disability—provides a spectrum of services to employers that require disability management programs for both short-term and long-term disability cases.

The product is designed to offer clients a smooth transition from STD to LTD claims, to ensure claims are handled immediately, and to put employees in touch with the right clinical and occupational resources.

One of CIGNA STD/LTD's principal goals, said Tim Suchecki, vp of national sales for CIGNA IntegratedCare, is getting people back to productive work.

Cambridge Integrated Services Group Inc. unveiled its newest product, Cambridge Ovation, at the conference. Cambridge Ovation is a "business intelligence" system that provides Web-based data reporting capabilities to suit the individual needs of its clients, said Tracy D. Mock, Glenview, Ill.-based vp-marketing for Cambridge.

Ms. Mock explained that clients are able to "drill down" into data at various levels of detail, to sort the data and to create both on-demand reports and standard reports.

Cambridge President Stephen A. Eisenmann said that Ovation will provide Cambridge's clients with quicker access to claims data.

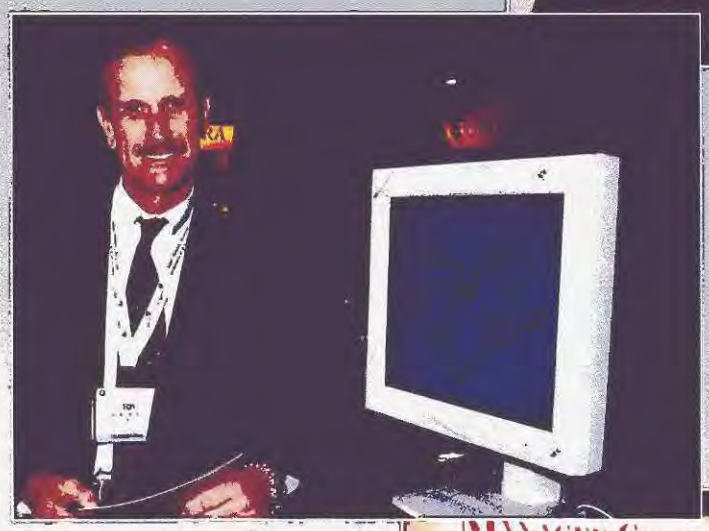
"The way this is designed, they can pick out certain parts. Whatever they want is at their fingertips," he said. Mr. Eisenmann said that Ovation allows its users "to evaluate where their exposures are and design solutions in a more timely manner."

Cambridge, a unit of Aon Corp., is a claims and loss-costs manager based in Cranbury, N.J.

Medical imaging network AnciCare PPO Inc. and Internet-based claims manager eStellarNet announced an agreement that will offer direct billing to workers comp payers for AnciCare's services. Miramar, Fla.-based AnciCare has over 1,000 freestanding magnetic resonance imaging centers.

The goal of the venture is to more efficiently provide medical imaging services to managed care organizations, insurance companies, third-party administrators and employers, said Bill Block, AnciCare's Syracuse, N.Y.-based vp of sales and marketing BI

Several companies attended the Risk & Insurance Management Society Inc. conference and exhibition to showcase workers comp and disability products and services. Above, from left: Tracy D. Mock, vp-marketing; and Stephen A. Eisenmann, president, of Cambridge Integrated Services Group Inc. Right, from left: Paul W. Carlson, senior account executive of CompManagement Inc., with Randy E. Jones, president-managed care services.



At left: Dr. W. Tom Fogarty, senior vp/chief medical officer of Em3 Corp.

Above: Nancy A. Froude, president and chief executive officer of ManagedComp Inc. At left, from left: Bill Block and Clay D. Parker III, vps-sales and marketing for AnciCare P.P.O.

PHOTO: MICHAEL MARCOTTE

Proper response helps control costs after a crisis

By LEE FLETCHER

ATLANTA—When disaster strikes, companies need to have a "ready to implement" plan to handle emergency claims arising from the incident, two experts advised.

Speakers during a session at the Risk & Insurance Management Society Inc. annual conference in Atlanta discussed how companies can best deal with some of the issues and costs associated with third-party catastrophe claims.

Evacuation is usually the immediate issue for companies following an incident, such as a plant explosion, said J. Randall Little, director of operations at Lexington, Ky.-based Empire Claim Service Inc.

Associated items—such as housing, food, transportation and other special needs—also require immediate attention, Mr. Little said.

Direct billing of a company for housing and food can help ensure that people displaced by the incident won't go too long without basic necessities, he said. Working with the Red Cross and the Salvation Army to find clothing also can be advantageous, as can coordinating with local medical facilities for people with special needs, he said.

Although problems may arise when using direct billing because some claimants may take advantage of the company, it's important to deliver to the general population and "sort through problems associated with that later," Mr. Little said.

"Good, solid press releases" are a good idea to get correct and timely information to the public, Mr. Little said.

An organized reimbursement system also needs to be established to avoid duplicate payments, he said. Some claims, such as those for bodily injury, property damage and third-party business interruption, will be complicated, he noted.

Also difficult is dealing with "problem claimants," Mr. Little said.

When dealing with problem claimants, he warned risk managers to "stick to your guns" to have the situation handled quickly and at limited expense.

Vikki J. Bell, a vp with Marsh USA Risk & Insurance Services in Salt Lake City, said some important risk management steps include: identifying exposures; examining techniques for dealing with exposures, such as hiring a third-party claims administrator; and monitoring and improving the services provided.

When determining one's exposures, Ms. Bell said it is critical to identify the worst-case scenario. After that, it's time to examine some techniques. Some options include handling the incident internally, relying on one's insurer or partnering with a third-party vendor, she said.

Companies should be specific and provide as much information as possible, especially about locations and exposure levels, when selecting techniques to implement, Ms. Bell stressed.

When selecting a TPA, Ms. Bell advised companies to obtain references, verify the experience of personnel, identify the TPA's information technology systems and specifically its check-writing capabilities.

Introducing a vendor's personnel is useful in order to get all participants involved, she said. Ms. Bell suggested that companies include in these meetings plant-level employees, upper management, media, the legal department, community leaders, citizen advisory groups and insurers.

Having employees participate in drills, responsible care programs and community activities can help the monitoring and improvement process before a catastrophic loss occurs, she said.

To ensure success, Ms. Bell advised companies "to get the word out" about what they are doing to avoid the indirect, or hidden, costs that could follow the catastrophe. "If you've got a good, proactive program, it helps your reputation," she said.

Moderating the session was Charles A. Buehler, risk manager at manufacturer Huntsman Corp. in Houston. BI

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Mistakes to avoid on property claims

By MICHAEL PRINCE

ATLANTA—From not preparing properly to negotiating poorly, pitfalls lie everywhere for risk managers when they face a loss.

But by following certain well-known and common-sense procedures, a risk manager can avoid mistakes and guide his or her company through a loss with a minimum of disruption and a maximum of recovery.

The biggest mistakes that risk managers make after a big property loss fall into 10 categories, according to two claims experts at the Risk & Insurance Management Society Inc.'s annual meeting in Atlanta. These errors can be organized according to when they occur, ranging from mistakes made before a loss even arises to ones that happen well after an occurrence, said Thomas Mury, manager-business insurance consulting at Deloitte & Touche L.L.P. in Costa Mesa, Calif., who also acted as the session's moderator.

Using a hypothetical example of a large property loss that disrupts a company's operations, the top 10 mistakes involving such a loss, he said, are:

• Not properly planning for possible losses.

This problem can arise when the policyholder does not prepare a contingency plan in the event of a loss, or even when it relies too heavily on a broker, Mr. Mury said.

Risk managers can avoid this by conducting a study of an organization's maximum probable loss, he said. This study should look at all business units and create potential loss scenarios for each, including putting a financial value on the amount of loss. Then those potential losses should be compared to existing insurance coverage to determine whether it is adequate, Mr. Mury said.

A contingency plan for responding after an event should be drafted and placed in multiple locations so that it can be found when needed and won't be destroyed in a catastrophe, he added.

• Not enlisting other people to help in a crisis.

There is strength in numbers, said David Ekaitis, manager-risk management for Ispat Inland Inc., a steel manufacturer based in East Chicago, Ind. After a loss, a risk manager can't tackle every problem alone, he said. Risk managers should assemble a team to handle the myriad of issues that can arise, he said. The team should include people from the risk management department plus purchasing, personnel, legal, public relations, engineers and financial personnel.

"You have to get your story together, the story of the loss," he said.

Having a team on the risk manager's side also is helpful when teams of people from the insurance company and its adjuster descend on a company after a loss, Mr. Ekaitis said. The risk manager's team not only can help meet their demands, but also provide a counter to their experience and size, he said.

• Not reading insurance policies.

Often a policyholder will not analyze its insurance coverage in light of its specific loss characteristics, Mr. Ekaitis said. Once coverage is analyzed, the risk manager should make sure that the senior financial and operations personnel know what is—and what is not—covered, he advised. After the loss, he added, make sure to prepare the claim so it's consistent

See **Losses** *on next page*

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Losses

Continued from previous page
with the policy.

"Certain things are covered, certain things aren't," he said.

- Losing sight of business priorities.

Companies should not let the prospect of insurance recoveries drive basic business decisions, Mr. Mury said. While processing a claim after a big property loss should be done diligently, it should not overwhelm the organization to the point where it loses its focus on doing what is needed to serve its customers, he said.

"Make the decisions that you would make without the insurance proceeds," he said.

- Providing an inaccurate loss estimate.

After a loss, policyholders as accurately as possible should develop an estimated range for the expected loss and transmit those figures to the insurer, the speakers said. By doing this, the insurer has information to help set its reserve and, by providing a range, the insurer is less likely to be shocked if the claim comes in near the top of that range.

"The adjuster never likes surprises and the insurer likes surprises less," Mr. Mury said.

It's important, he noted, to also provide a range for the claim to an organization's senior management so they know the amounts that might be recovered.

"You want to manage expectations on both ends," Mr. Mury said.

- Improperly allocating claims proceeds.

Mr. Mury said that when claims funds start to arrive from the insurer, the risk manager must be careful how it is allocated. An accounting system should be created that not only tracks the money coming in but also monitors any extra costs incurred because of the loss, he advised.

- Not providing enough information to support the claim.

When making the actual claim for property and business interruption losses, Mr. Mury recommends using a "three-column approach." The first column of information should list the policyholder's projected sales revenues and profits; "where you would have been had the loss not occurred," he said.

The next column should contain the actual sales and income figures following the loss and the third column should highlight the difference. With this approach, the key is making a strong case for how the projected loss figures are devised, he said.

"Everyone is going to have a different opinion of projected (losses). That's what's negotiated," he said.

- Letting others dictate the pace of the claims process.

Risk managers should lead and not follow, said Mr. Ekaitis. "You have to make sure things happen," he said.

The risk manager should set deadlines and then make sure they are met.

- Poor negotiating.

Ineffective negotiating is a common mistake after a loss, Mr. Ekaitis said.

"You have to believe in your claim. You have to believe in your story and you need to sell it," he said.

He recommends that if risk managers prepare a strong claim they should strive to receive the full amount from the insurer and not automatically accept splitting the difference between the amounts claimed and offered during negotiations.

- Poor communications.

It's important to communicate at every step of the way, Mr. Ekaitis said.

"It's the most important point you need to have with a claim," he said.

The risk manager has to keep the adjuster and insurer informed at every step while also keeping senior managers abreast of all major developments, he said. BI

Steps can be taken to limit exposure to punitive damages

By SALLY ROBERTS

ATLANTA—Multimillion-dollar punitive damage awards can be devastating to a company, but there are ways to mitigate the exposure, experts say.

"Punitive damage exposure is the greatest exposure for corporate America," contends Michael J. Brady, a partner in the law firm of Ropers, Majeski, Kohn & Bentley in Redwood City, Calif. Not only are corporations unpopular with juries, but juries also are "given little guidance when awarding punitive damages," he said.

A recent study by University of the Pacific McGeorge School of Law's Capital Center for Government Law & Policy found that the average punitive damage award in California rose from $5.6 million in the early 1990s to $19.3 million in the late 1990s, Mr. Brady said. In addition, the study found that within the last 10 years, punitive damage awards constituted 88.4% of the total damages awarded to plaintiffs in the state, and that the average punitive damage award is 7.6 times greater than the total mount of compensatory damages. "That's extraordinary, because punitive damages are actually returned in a small fraction—less than 5%—of cases when juries rule," he said.

Mr. Brady and Larry A. Reback, a vp with Marsh Risk Consulting in San Francisco, outlined several ways companies can mitigate their exposure to punitive damages during a session at the Risk & Insurance Management Society Inc.'s annual conference and exhibition in Atlanta.

First, he said, companies need to deflect the charge that they force claimants to litigate rather than settle out of court, he said. "This is a frequent charge," Mr. Brady said.

In addition, he said, companies must be careful about intentionally destroying records. Most states have laws allowing for the destruction of records after a certain number of years. "Make sure you comply with the law," he told attendees.

Companies also should be aware that plaintiffs' attorneys can introduce information on a company's net worth, which is used by the jury to determine how much to award in punitive damages, he said. Consequently, corporations should use expert witnesses to explain the company's financial-sheet and income statements, Mr. Brady advised.

> *'The key to victory is to humanize the corporation. Try to portray your people as good people.'*
>
> — *Michael A. Brady*
> *Ropers, Majeski, Kohn & Bentley*

"Whenever you are sued, the key to victory is to humanize the corporation," Mr. Brady said. "Try to portray your people as good people, family people, people who are involved in the community," he said.

Corporations also should introduce "positive evidence" that shows a jury that customers like the corporation, Mr. Brady said. "I tell corporations to keep a 'good book,' " he said. This is a file that contains letters thanking the corporation for a certain product or a salesperson for a job well done.

In addition to using such tactics, companies may be able to purchase insurance to cover punitive damages risks, Mr. Reback said.

While a majority of states allow punitive damages to be insured, each state is different, Mr. Reback said. Some states that otherwise prohibit coverage for punitive damages may, for example, allow coverage when an employer is held vicariously liable for the acts of an employee, he said.

In addition, coverage written offshore can fill the gap when a company cannot purchase coverage in a particular state, Mr. Reback said.

Such a policy applies only if punitive damages are awarded and actually paid: They do not come into play if the company settles a case and no defense is provided, he said. In addition, the company must be covered by an underlying insurance policy in order to obtain coverage for punitive damages, Mr. Reback said, noting that, generally, the same underwriter is used.

While the coverage does provide some protection and gives senior management some comfort, companies should bear in mind the additional premium cost, he said. The general rule of thumb is $1,000 per $1 million in limits. Risk managers also should note that the policy may not provide the amount of protection desired by the corporation, because it only comes into play on the rare occasions when the corporation goes to trial and punitive damages are awarded, he said.

Christina D. Dobleman, director of global risk management for Levi Strauss & Co. in San Francisco, moderated the session. BI

Industry finding more uses for Web technology

By GAVIN SOUTER

ATLANTA—While Internet-based claims processing has evolved from the mere downloading of forms to interactive claims management over the past several years, the field continues to develop rapidly, a panel of experts said.

A company can now securely submit claims information to several different providers and quickly receive information pertinent to the claim from those providers, the panel said, speaking at an educational session at the recent annual conference of the Risk & Insurance Management Society Inc. in Atlanta.

And soon the claims process will become even more integrated with technology, as risk managers seek real-time information about claims throughout the world, they said.

Although the Internet enables risk managers to carry out their jobs more efficiently, it does have some limitations. For example, for some tasks, it is noticeably slower than in-house server-based systems; consequently, one expert said, the two systems will exist side by side for several more years.

The Internet was first used in the filing of claims about six years ago, said Patty Morey Walker, director of sales and marketing operations for Delphi Technology Inc. in Cambridge, Mass.

Initially, a risk manager was able to fill out a claim form online, print it and mail it to the insurer. But because there existed no password protection over the Internet at the time, little Internet-based interaction was possible between insurers and risk managers, Ms. Morey Walker said.

But with the implementation of systems that can retain secure passwords, a risk manager can now file injury information directly into a claims system, and that information can be routed over the Internet to a safety manager, a third-party administrator, the risk manager's home office and any other entity that needs information about the claim, Ms. Morey Walker said.

"Now you can fill out the first report of injury information, and you get back a claim number, the name of the claim manager working on the claim and information on where the employee can go for treatment," she said.

Another recent development is Internet-based claims reporting systems that can immediately profile a claim, suggest recommended treatments and raise a red flag if there is a possibility of fraud, Ms. Morey Walker said.

And the settlement of claims over the Web is also taking off, as companies set up systems to permit involved parties to negotiate claim settlements, she said.

The use of the Internet should significantly reduce the cost of claims processing in the future, said Steele S. Scott, risk manager for Pratt & Whitney Canada, a unit of United Technologies Corp. of Hartford, Conn.

UTC is currently building a secure extranet with a risk management portal that will give insurers, brokers and third-party administrators access to relevant data that they will be able to download from UTC's "data warehouse," Mr. Scott said.

"We want open platforms, not software that doesn't talk to other software," he said.

By setting up an easily accessible system, the data and other information will be of practical use to line managers, making them more effective at getting injured workers back to work, Mr. Scott said.

And risk managers will have worldwide access to loss information, which could even extend to satellite images of major losses, he said.

Internet-based claims systems can provide links between systems and access to claims information, said David P. Duden, national risk management information system practice leader at Deloitte & Touche L.L.P. in Hartford, Conn.

But the systems have to be simple to ensure that multiple users can easily access relevant information, Mr. Duden said. "You don't want to slow things down, but you don't want technology that your people can't use," he said.

Technology can enhance claims processing, but it does have its limitations, said Christopher J. Mears, vp-development at Delphi.

New software often contains glitches, Mr. Mears noted. He said that a company would likely be better off with a second-tier system that is known to work than to have a more-recent system that hasn't been adequately tested.

And while the Internet can provide a good platform for a claims system, it is slower than a conventional server-based system, Mr. Mears said. The Internet is a useful tool for claims reporting, but claims transactions and payments still need the computer power of server systems, he said.

"There is a place for the Internet, but there will continue to be a place for client servers until the Internet can match their efficiency," Mr. Mears said.

The session was moderated and coordinated by Ms. Morey Walker. BI

Sorting out claims can be contentious

By JOANNE WOJCIK

ATLANTA—A fire on the opening day of the 2000 ski season at Marriott International's resort in Vail, Colo., proved to be a learning experience for both the hospitality company and its insurer.

Marriott learned the long-term relationship it had with its insurer made adjusting the loss much easier.

And its insurer, Factory Mutual Insurance Co., learned that it can be difficult to rebuild at high altitude in a national forest in the dead of winter, especially in a town with strict building codes.

"We had to get a permit to remove trees so we could access the property," said Robert McGovern, operations vp and allied lines claims manager of Factory Mutual—which does business as FM Global—in Norwood, Mass.

Still, "while we got along, it wasn't entirely a love fest," said Hector Mastrapa, director of insurance and risk management at Washington D.C.-based Marriott, during an educational session he moderated at the Risk & Insurance Management Society Inc. conference in Atlanta.

In fact, when each party obtained rebuilding estimates from local contractors that were remarkably similar, FM Global sought a third estimate to make sure the figures were in the right ballpark, Mr. McGovern said.

And to ensure that it was maximizing the value of its claim, Marriott hired an outside accounting firm to calculate business income lost as a result of the fire occurring on the opening day of ski season.

Unlike a lot of other resorts, whose biggest revenues come in the summer, the Vail Mountain Resort's peak season is between November and April, said session coordinator Glenn Pomerantz, a partner at accounting and consulting firm BDO Seidman L.L.P. in New York.

The Nov. 18, 2000, fire, which resulted in approximately $22 million in property damage and lost business income, was the largest property loss Marriott has suffered, according to Mr. Mastrapa. The loss represented nearly 10% of the total insured value of the company's 800 locations, he said.

Marriott buys a global property insurance policy directly from FM Global to cover all of the hotels it manages worldwide. Because Marriott does not own any of the hotels it manages, the policy also names the hotel owners as additional insureds, according to Mr. Mastrapa.

The policy, written on a manuscript basis, has no aggregate limits, but rather a "blanket limit" to cover existing as well as newly acquired properties. A $25,000 per-occurrence deductible is charged to individual hotels, but there is no retention at the corporate level. Deductibles are higher for high hazard properties such as those in California and on the East Coast.

Hiring an independent third party to determine the extent of a large property and business income loss is essential to making the loss adjustment process go more smoothly, according to Mr. Mastrapa.

Marriott believes so strongly in this that it has negotiated with FM Global to include payment of an independent accounting firm's services in the property insurance policy, which the hotelier renews annually.

Renewing annually also can make the loss-adjustment process easier, Mr. McGovern said. With an annual renewal, it's possible to alter policy language soon after a loss occurs, so issues that come up during the adjusting process can be resolved for the next time, he explained.

In fact, FM Global and Marriott sometimes invite loss adjusters to participate in drafting policy language so they can remove ambiguities that have caused friction in the past, he said.

Mr. Pomerantz also advises resolving the less contentious issues as soon as possible, so that the parties can concentrate on the more problematic issues later.

It also helps that both parties to the negotiation—the accountant representing the policyholder and the loss adjuster—understand the business of the policyholder that has suffered the loss, said Mr. Mastrapa.

"Our objective is to ensure the continuity of the customer's business. To do this, the adjuster has to have a knowledge of the risk," Mr. McGovern agreed. BI

Approaching alternative risk financing with caution

By GAVIN SOUTER

ATLANTA—Captive insurance and other alternative risk financing programs are useful risk management tools, but they need to be implemented with care, a panel of captive experts says.

Different parties with different concerns in an organization must be convinced of the effectiveness of an alternative program before it can be constructed, they say.

Risk managers also need to carefully guide their programs through a maze of tax, accounting and actuarial concerns on the way.

Once these hurdles are cleared, risk managers are more likely to win management's ultimate approval for their risk financing programs, the panelists said during a session at the Risk & Insurance Management Society Inc.'s conference in Atlanta.

Risk managers must carefully review their presentations and tailor them for different audiences when they propose to set up a captive or alternative risk transfer program, said Wanda L. Jong, vp and manager of Becher + Carlson Risk Management Inc. in Honolulu.

Corporate accountants are the first major group that risk managers should approach with an alternative risk transfer proposal, Ms. Jong said. "To them, cash flow is king."

They want to know when the premiums are paid, what the captive's capitalization will be, when losses will be paid and how the captive will affect earnings per share, she said.

Tax departments, on the other hand, have a whole different set of concerns about alternative risk transfer programs, Ms. Jong said. "They want to know what you pay Uncle Sam," she said. In particular, tax departments are interested in the deductibility of premiums, Ms. Jong said. And they are concerned about any references to "tax shelters," so a more appropriate term is "tax deferment," she said.

Tax specialists also are concerned about the relationship between a captive owner and any third parties the captive would insure, Ms. Jong said. If the Internal Revenue Service determines the third parties are really related parties, it may not allow deductibility of premiums, she said.

The next set to present to is internal auditors, Ms. Jong said. "They want to know about adequate controls and statutory requirements."

External auditors are primarily concerned with proper accounting treatment for the programs, but they will also review many other elements of the program that are also examined by company staff, said Ms. Jong, the session coordinator.

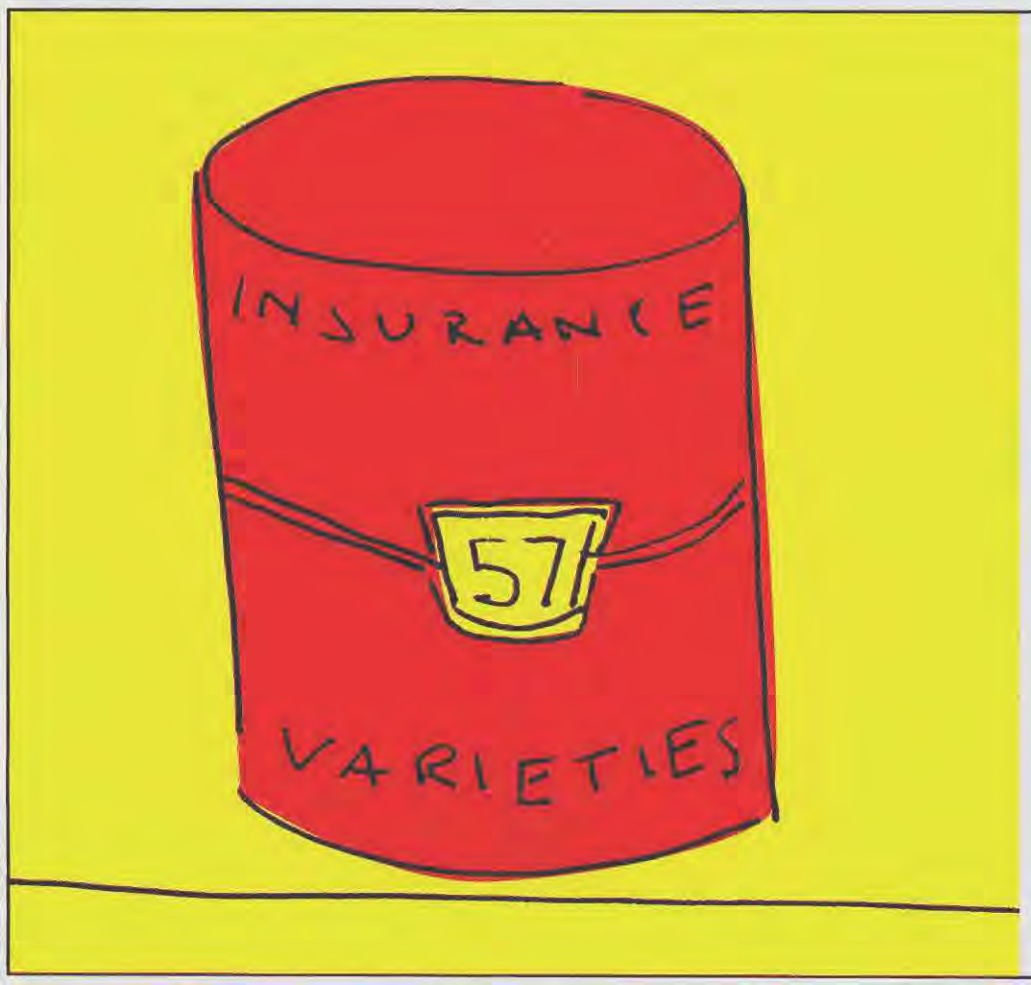
If the program's advantages are explained to each audience in terms that they can understand and relate to, they can assist in obtaining final management approval, she said.

Risk managers need other departments' support to win approval of a program, agreed Richard J. Tajak, senior vp of finance, information systems and customer operations at Fujisawa Healthcare Inc. in Deerfield, Ill.

"Risk managers know the policies and the coverage but not necessarily the accounting rules and regulations," he said. Internal auditors and corporate accountants, however, are experts on those issues, and their understanding of them and how they will affect a risk financing program can turn them into an ally or an enemy, said Mr. Tajak, who moderated the session. "The battleground is anywhere that judgment is involved with regard to retained risk."

Risk managers also must deal carefully with actuaries who are retained to calculate things like incurred but not reported losses, Mr. Tajak said. Actuaries are prone to run loss data through models, such as a Monte Carlo simulation, when some losses, such as high-severity and low-frequency losses, are not suitable for those models, he said. "You have to work with the actuaries and work with the assumptions."

Also speaking at the session was Mark E. Anderson, a partner at KPMG L.L.P. in Atlanta. BI



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RIMS REPORT 2001

Risk Management Honor Roll Luncheon in Atlanta

At a luncheon held in Atlanta during the Risk & Insurance Management Society Inc.'s conference, *Business Insurance* honored members of the 2001 Risk Management Honor Roll. From left, Honor Roll members Gary Baxter and Peggy Nakamura stand with Risk Manager of the Year Dan Hartman, chief risk officer of the state of Oregon.

Risk Management Honor Roll members thanked friends and colleagues after receiving their awards. At left, Peggy Nakamura, executive director of risk management and associate counsel of Adventist Health System/West; and, at right, Gary Baxter, assistant treasurer and director of insurance for Weyerhaeuser Co.

Above left, *Business Insurance* Publishing Director Kathryn J. McIntyre congratulates Weyerhaeuser Co.'s Gary Baxter on being named to the 2001 Risk Management Honor Roll. Mr. Baxter is joined by his wife, Cheri Hawkins, a former president of RIMS and the former risk manager for Weyerhaeuser.

PHOTOS: MICHAEL MARCOTTE

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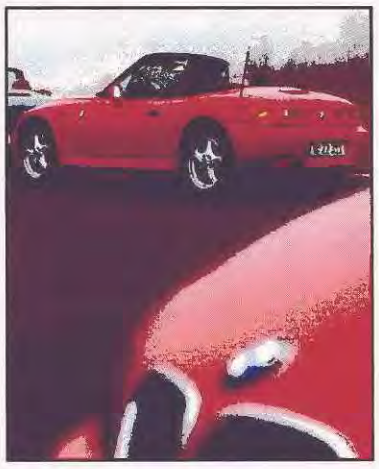
Business Insurance

Prize drives up interest in session

Attendee wins BMW Z3 at RIMS; opts for cash instead

ATLANTA—It was a cliffhanger of a different sort that kept risk managers on the edge of their seats until the end of an entertainment industry session at Risk & Insurance Management Society Inc. conference in Atlanta: the chance to win a new car.

"This is a real car," announced session co-moderators Michelle Darringer, executive director of risk management at Fox Entertainment Group Inc. in Los Angeles, and Marcia Rutledge, senior vp in Marsh Inc.'s entertainment group in Los Angeles, when they showed participants a picture of a BMW Z3 convertible on a video screen.



To win the automobile, session attendees had to correctly guess how many sprocket holes were in a reel of motion picture film. As a hint, they were given a range of 120,000 to 125,000.

And, much to everyone's surprise, someone guessed it.

Shaun Coyne, managing director of Crawford & Co. in London, had the winning guess of 123,242.

LeConte Moore, managing director of Marsh Inc.'s entertainment group in New York, said that Marsh bought prize indemnification insurance from a unit of Chubb Corp. to cover the risk. Needless to say, the Chubb underwriters were as surprised as everyone attending the session that they would have to pay the $35,000 claim, he said.

"We had dinner afterwards, and guess who picked up the tab," Mr. Moore said. "They managed to increase the premium a little bit."

"Our department does a lot of contingency insurance, and a lot of that business comes from Marsh's entertainment division," said Gene Williams vp and worldwide entertainment manager for Chubb & Son in Warren, N.J. Underwriting the session prize actually was intended as a demonstration to promote the coverage, he added.

Mr. Coyne won't be cruising through the English countryside in his new Beemer convertible, though. He instead opted for the car's cash equivalent.

—By Joanne Wojcik

Survey

Continued from page 10

Among all respondents, 44% said OSHA should not develop a new standard, while 36% said it should draft a new one; the remainder did not answer. A controversial ergonomics standard issued by OSHA last October, in the waning days of the Clinton administration, was rescinded by the new Congress earlier this year (*BI*, March 12).

Among risk managers, 52.6% said OSHA should not draft a new standard, while 31.6% said it should and the remainder did not respond.

Survey respondents also were asked whether they were seeking specific information on their visit to the RIMS exhibit hall. Two-thirds of all respondents planned to seek out certain types of companies, while the remaining third did not. Risk managers were even more purposeful, with 84.2% visiting the exhibit hall with specific types of companies in mind.

Among all respondents, the top three targets for those searching for information from specific types of companies were: alternative risk financing/captives, cited by 16.5%; claims services, 13.3%; and insurers, 11.9%.

Among risk managers, the top destinations were booths offering information on: alternative risk financing/captives, cited by 14%; employment practices liability, 12%; and a four-way tie among insurers, claims services, safety services and loss control, each with 10%. BI

GLOBAL BRIEFS

Recent flooding in the Somme region of Northern France could cost insurers more than 300 million French francs ($40.9 million), according to industry body the Federation Francaise des Societes d'Assurances. The Paris-based FFSA said that although the precise cost of the April flooding would not be known for some time, the severity of property damage caused by stagnant water could push the final tally above the FFSA's original estimate of between 200 million and 300 million francs....Standard & Poor's Corp. has given a stable outlook to the **Dutch insurance market**. The assessment reflects a potential for growth in Dutch pensions and supplementary health business as the government privatizes pension and health care provisions. It added, however, that there are negative prospects for insurance savings products and uncertainty in the nonlife market. S&P said that while nonlife underwriting results have been relatively stable despite intense competition, accelerating claims inflation—particularly for bodily injury, personal accident and auto markets—could result in underwriting losses for nonlife insurers unless they raise rates. The negative outlook for insurance savings products stems from government tax changes this year that cut some benefits on the products, according to Hans Wright, associate director in S&P's financial services group in London....**Kiln P.L.C.** has announced the retirement at the end of 2001 of Bill Rendall, senior nonmarine underwriter of Kiln Lloyd's of London syndicate 510. Robert Chase will assume responsibility for the Kiln Risk Solutions division....**Assurances Generales de France S.A.** has named Guy Lallour as executive chairman of AGF MAT, its transportation insurance unit. He will take over May 28 from Jean-Francois Le Garrec, who is leaving the company in a few months to pursue other interests. Mr. Lallour was managing director of AGF Courtage, its corporate risk entity...**Beazley Furlonge Ltd.**, a Lloyd's of London managing agency, has appointed Adrian Lewers as class underwriter for syndicate 623. He will help develop the syndicate's political, contract frustration and credit risk businesses. Mr. Lewers joined Beazley in April, having previously been a war and political risks underwriter with XL Brockbank Ltd....Captive manager **SINSER Holding A.B.** has appointed Derek Douglas as its London-based marketing director for Europe. He was previously managing director, strategic initiatives for International Risk Management Group....**Moody's Investors Service Ltd.**, has upgraded to B from B- the performance rating of Lloyd's of London marine syndicate 1036, which is managed by Limit Underwriting Ltd. Moody's said the change is based on improving market prospects and Limit's commitment to keeping the syndicate independent. Under the merger proposed last year between Limit and Wellington Underwriting Agencies P.L.C., which did not take place, syndicate 1036 would have been sold, and there was the possibility more recently of it being merged with similar Limit syndicates. Limit has said, however, there would be no such merging done during the 2002 year of account.

Kidnapping on the increase

U.K. employers not prepared for growing risk: Report

By CAROLYN ALDRED

LONDON—U.K. employers are not adequately protecting their employees from the growing risk of kidnappings, a London-based think tank says.

A recent report by the Foreign Policy Centre identified several factors that contribute to kidnapping risks, including widespread confusion about who is responsible for people working overseas, the absence of regulation of private security companies, the lack of minimum legal standards for health and safety protection abroad and inadequate training of managers overseas.

Businesses also often remain unaware of the dangers because they mistakenly associate kidnapping with political extremists interested only in high-profile public figures, the report found.

"In fact, most kidnappings are now motivated purely by economics. Kidnappers don't necessarily just target senior managers in multinationals. Anyone who is likely to attract the payment of ransom could be at risk," according to the report, "The Kidnapping Business."

"In many areas of the world, kidnapping is now big business, and kidnappers are motivated by profit rather than principle," the report states, adding that the threat "is centered largely around Latin America, most notably Colombia, Mexico and Brazil—but there are also pockets of activity in the Philippines, parts of the former Soviet Union and Africa."

The report, published last month, received financial backing and information from Hiscox Underwriting Group Services P.L.C., Control Risks Group, Asset Security Managers Ltd., Marsh Ltd. and London-based Special Contingency Risks Ltd. Other organizations contacted for information by the report's author, Rachel Briggs, include the Confederation of British Industry, London-based broker Crawley Warren Co. Ltd., BP Amoco P.L.C., Goldman Sachs International and AIG (Europe) Ltd.

The Foreign Policy Centre is an independent think tank set up in 1998 by U.K. Prime Minister Tony Blair and Foreign Secretary Robin Cook to revitalize debate on foreign policy.

"If companies want to do business in areas where there is a risk of kidnap, they have a responsibility to their employees to identify and manage the risk," said Paul Taylor, chairman of the international special interest group of the Assn. of Insurance & Risk Managers.

"Of course, the awareness and need for kidnap risk management depends on where the company is operating," said Mr. Taylor, head of risk management development for London-based retail conglomerate Kingfisher P.L.C.

PHOTO: REUTERS

Oil workers are escorted to safety after their employers paid a $13 million ransom in March. Eight workers were kidnapped four months earlier by an unidentified group in Ecuador; one of the hostages was killed.

Generally, awareness of the risk is growing among U.K. risk managers, said George Jones, vp for the FINPRO Special Risks Department of Marsh Ltd. Marsh's special risks department has about 900 clients, and Mr. Jones noted that all sorts of companies,

See **K&R** *on page 56*

Top risk concerns

U.K. risk managers identify their greatest risks:

Rank	2001	1999
1.	Damage to reputation	Business interruption
2.	Failure to change	Physical damage
3.	Business interruption	Product liability
4.	Product liability	Damage to reputation
5.	Computer crime	General liability
6.	General liability	Employee risks
7.	Physical damage	E&O liability
8.	Recruitment/retention	Computer crime
9.	D&O liability	Political risk
10.	Employee accidents	Other crime

Source: Aon Group Ltd.

What keeps U.K. execs awake at night

Reputation risk tops list

By EDWIN UNSWORTH

Minimizing the risks to an organization's reputation has outstripped the management of physical risks as the chief concern of U.K. risk managers, according to a survey from Aon Ltd.

In the "Biennial Risk Management and Risk Financing Survey 2001"—the seventh such survey conducted by Aon—loss of reputation was ranked as the No. 1 risk by U.K. risk managers—cited by 21% of respondents—up from fourth place in the 1999 survey. "Failure to change" was cited by 18% of survey respondents, making it the No. 2 concern of risk managers.

Aon received responses from 129 risk managers from among the 2,000 largest U.K. private and public organizations.

Aon said the growing concern about reputational risk arises out of the rapid changes taking place in the global business environment, including mergers and consolidation and the growing impact of the Internet. The findings illustrate that many businesses today fear that someone else will find a way of doing what they do better, faster or at a lower cost, according to the survey's authors.

Jo Macdonald, director of Aon's Business Risk Consulting Practice in London, said the finding is entirely consistent with the outcomes of strategic risk assessment exercises that Aon has conducted for corporate clients.

Despite the growing concern among U.K. companies about threats to their

See **Concerns** *on page 55*

Pact to cover claims on insolvent insurer

By SARAH VEYSEY

LONDON—U.K. insurers have struck a deal with the government under which asbestos victims will be compensated following the collapse of Chester Street Insurance Holdings Inc. earlier this year.

Chester Street, formerly Iron Trades Holdings, was declared insolvent in January after it announced that its £200 million ($284 million) in assets would not be enough to meet future liabilities for asbestos-related claims (*BI*, Jan. 22). The insurer's failure led to concerns that former employees of defunct companies that Chester Street had insured would be denied compensation for asbestos-related injuries or illnesses. Chester Street insured about 2,000 total employers.

Legislators and the London-based Trades Union Congress lobbied Parliament to ensure that those individuals would receive compensation.

Andrew Smith, chief secretary to the Treasury, announced last week that the insurance industry will fund compensation in two ways. If compensation was awarded before Chester Street's Jan. 9 insolvency, payments amounting to 90% of the original claims will be made by the government-backed guaranty fund, the Policyholders Protection Board, in accordance with its statutory powers, the Treasury said in a statement.

If compensation was awarded on or after Jan. 9, though, the insurance industry will fund payments totaling 90% of claims under the Financial Services Compensation Scheme, which is expected to take effect by November.

The government will fund compensation for 90% of claims to former employees of public sector companies for which it is liable, the Treasury said.

The Financial Services Authority will explore rules to cover employee third-party rights in employer liability cases, to ensure that victims receive compensation in cases where both the insurer and the employer are insolvent, the statement said.

"Where the employer still exists, or its liabilities have been carried forward to another company, that company or firm is liable to pay the compensation award," the statement said.

A spokeswoman for the London-based Assn. of British Insurers said it was pleased that the matter had been resolved but would make no further comment.

Chester Street's asbestosis liabilities arise from the pre-1990 insurance business of the Iron Trades Employers Assn. Ltd., a subsidiary of Iron Trades Holdings that was transferred to Chester Street as part of a restructuring program. The ongoing business of Iron Trades Holdings was sold last February to QBE International Insurance Ltd. of Sydney, Australia.

Iron Trades, formed in 1898 as a mutual company, insured U.K. industrial companies, particularly shipbuilding and engineering firms, according to A.M. Best Co.

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LEGAL NOTICES

THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF THE LIQUIDATION OF ILLINOIS ENVIRONMENTAL SERVICES WORKERS COMPENSATION TRUST

NOTICE OF CLAIM FILING DEADLINE AND PROCEDURES

PLEASE TAKE NOTICE, that on March 22, 2001, the Circuit Court of Cook County, Illinois, entered an Agreed Order of Liquidation With a Finding of Insolvency and Injunctive Relief against Illinois Environmental Workers Compensation Trust ("ENVIRONMENTAL"). Nathaniel S. Shapo, Director of Insurance of the State of Illinois, is the statutory and court affirmed Liquidator of ENVIRONMENTAL ("Liquidator").

TAKE FURTHER NOTICE, that on April 24, 2001, the Circuit Court of Cook County, Illinois, entered an Order Fixing Rights and Liabilities and Providing for the Filing of Claims and the Setting of Claim Filing Deadlines (Fixing Order). Pursuant to the Fixing Order, all rights and liabilities of ENVIRONMENTAL and its policyholders, members, creditors and all other persons interested in its property or assets, are fixed as of March 22, 2001, unless otherwise provided in prior or subsequent orders of the Court.

TAKE FURTHER NOTICE, that all persons, companies or entities who have, or may have claims against ENVIRONMENTAL, its property or assets, or against an enrollee or policyholder, shall have the right to present and file with the Liquidator proper proofs of claim on or before March 22, 2002 at 4:30 p.m. (C.S.T.).

TAKE FURTHER NOTICE, that pursuant to Section 209-4) of the Illinois Insurance Code, 215 ILCS 5/209(4), any insured under an insurance policy issued by ENVIRONMENTAL shall have the right to present the Liquidator with a proof of claim setting forth a contingent claim, subject to the claim filing deadline of March 22, 2002 at 4:30 p.m. (C.S.T.). The final date by which evidence supporting the liquidation of any such contingent claim may be received by the Liquidator shall be March 24, 2003 at 4:30 p.m. (C.S.T.). No such contingent claim shall be allowed for purposes of participating in any distribution of estate assets that may be made at the class "d" priority level, 215 ILCS 5/205(1)(d), unless such claim has been liquidated and the insured claimant has presented evidence of payment of such claim to the Liquidator on or before March 24, 2003 at 4:30 p.m. (C.S.T.).

TAKE FURTHER NOTICE, that the form and required contents of all proofs of claim are described in 215 ILCS 5/209. Proofs of claim, along with supporting documents, if any, are to be filed with and may be obtained from, the Liquidator of ENVIRONMENTAL, c/o the Office of the Special Deputy Receiver, located at 222 Merchandise Mart Plaza, Suite 1450, Chicago, Illinois 60654. A proof of claim shall be deemed "filed" with the Liquidator upon the Liquidator's receipt thereof. The Liquidator reserves the right to require such additional information with respect to any claim filed with him as he may deem necessary. The Liquidator further reserves any and all defenses available to ENVIRONMENTAL upon all filed claims. All proofs of claim must be duly sworn to before an officer authorized to take oaths.

THE LAST DATE FOR THE FILING OF PROOFS OF CLAIM WITH THE LIQUIDATOR IS SET FORTH ABOVE. NO PERSONS, COMPANIES OR ENTITIES HAVING OR CLAIMING TO HAVE ANY CLAIM AGAINST ENVIRONMENTAL, ITS PROPERTY OR ASSETS, OR AGAINST AN ENVIRONMENTAL POLICYHOLDER OR MEMBER, SHALL PARTICIPATE IN ANY DISTRIBUTION OF THE ASSETS OF THE COMPANY UNLESS SUCH CLAIMS ARE PROPERLY FILED WITH THE LIQUIDATOR ON OR BEFORE MARCH 22, 2002 AT 4:30 P.M. (C.S.T.)

Cathleen M. Travis
Special Deputy Receiver

LEGAL NOTICES

THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
IN THE MATTER OF THE LIQUIDATION OF ALPINE INSURANCE COMPANY

NOTICE OF CLAIM FILING DEADLINE AND PROCEDURES

PLEASE TAKE NOTICE, that on June 28, 2000, the Circuit Court of Cook County, Illinois, entered an Order of Liquidation With a Finding of Insolvency and Injunctive Relief (the "Liquidation Order") against Alpine Insurance Company ("Alpine"). Nathaniel S. Shapo, Director of Insurance of the State of Illinois, is the statutory and court affirmed Liquidator of Alpine (the "Liquidator"). The Liquidation Order was affirmed by the Illinois Appellate Court on December 21, 2000, and on April 4, 2001 the Illinois Supreme Court denied a petition for leave to appeal.

TAKE FURTHER NOTICE, that pursuant to the Liquidation Order, except for those persons entitled to file contingent claims, all rights and liabilities of Alpine and its policyholders/enrollees, creditors and stockholders, and all other persons interested in its property or assets, including but not limited to persons with claims arising under or related to either a policy of insurance or reinsurance agreement issued by Transco Syndicate #1, Ltd. ("Transco") and assumed by Alpine effective December 31, 1996, are fixed as of June 28, 2000.

TAKE FURTHER NOTICE, that on May 4, 2001, the Circuit Court of Cook County, Illinois, entered an Order Providing for the Filing of Claims and the Setting of Claim Filing Deadlines (the "Claim Filing Order"). The Claim Filing Order further provided that persons, companies or entities who have, or may have claims against Alpine, its property or assets, or against a policyholder, regardless of whether such claim arises under a policy of insurance or reinsurance agreement issued by Alpine or Transco, shall have the right to present and file with the Liquidator proper proofs of claim on or before May 6, 2002 at 4:30 p.m. C.D.T., and that insureds possessing contingent claims shall have the right to present evidence to the Liquidator of the liquidation of any such contingent claim on or before May 6, 2003 at 4:30 p.m., C.D.T. Proofs of claim received after the claim-filing deadline of May 6, 2002 may not participate in any distribution of estate assets made on allowed timely filed proofs of claims.

TAKE FURTHER NOTICE, that the form and required contents of all proofs of claim are described in 215 ILCS 5/209. Proofs of claim, along with supporting documents, if any, are to be filed with, and may be obtained from, the Liquidator of Alpine, c/o the Office of the Special Deputy Receiver, located at 222 Merchandise Mart Plaza, Suite 1450, Chicago, Illinois 60654. A proof of claim shall be deemed "filed" with the Liquidator upon the Liquidator's receipt thereof. The Liquidator reserves the right to require such additional information with respect to any claim filed with him as he may deem reasonably necessary to complete his evaluation of the claim.

THE LAST DATE FOR THE FILING OF PROOFS OF CLAIM WITH THE LIQUIDATOR IS SET FORTH ABOVE. NO PERSONS, COMPANIES OR ENTITIES HAVING OR CLAIMING TO HAVE ANY CLAIM AGAINST: (1) EITHER ALPINE OR TRANSCO; (2) ALPINE'S PROPERTY OR ASSETS; (3) ARISING UNDER OR RELATED TO A POLICY OF INSURANCE ISSUED BY EITHER ALPINE OR TRANSCO; OR (5) ARISING UNDER OR RELATED TO A REINSURANCE AGREEMENT ENTERED INTO BY EITHER ALPINE OR TRANSCO, SHALL PARTICIPATE IN ANY DISTRIBUTION OF THE ASSETS OF THE COMPANY UNLESS SUCH CLAIMS ARE PROPERLY FILED WITH THE LIQUIDATOR ON OR BEFORE MAY 6, 2002 AT 4:30 P.M. C.D.T.

Cathleen M. Travis
Special Deputy Receiver

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Concerns

Continued from page 53

reputations, the survey found that only 21% of companies have quantified their brand value and reputation in monetary terms. Companies are failing to determine the value of such intangibles at risk, even though they comprise a greater percentage of most companies' net worth today, Aon said. For virtually every company, physical assets now represent less than 25% of its net worth, down from 75% a decade ago, according to the survey's authors.

"Either directly or indirectly, the majority of every organization's value is made up of reputation. Brands alone can be valued in millions or even billions (of pounds). Most other intangible assets—skills, knowledge, know-how, strategic alliances, relationships—are interdependent with an organization's reputation," said Deborah Durkin, managing director of client service in Aon Ltd.'s corporate division in London.

The survey also reveals that 51% of the companies surveyed now outsource insurance administration services, up 22 percentage points compared with four years ago.

The remainder continue to perform that task internally. Insurance brokers are the main providers of these outsourced services, the survey showed. In addition, 76% of companies outsource claims administration, up by 12 points over four years earlier.

The survey also asked for the first time whether companies outsource pension fund administration, and it found that 63% of companies do so.

Another survey finding is that while major U.K. companies are supposed by now to have carried out a risk identification study as part of their compliance with corporate governance guidelines required under U.K. securities rules, only 14% of companies responded that they have done so.

Among responding companies that have audited risks, the survey found a general reduction in the incidence of risk audits and contingency planning over the prior years.

For example, among companies in the current survey that conducted risk identification studies, 68% have performed fire risk audits, compared with 88% in 1995; and 73% conducted audits of workplace health and safety risks, down from 83% in 1995.

"It is worrying that a significant number of businesses, depending on their risk, are neither auditing these major risks nor instituting plans to address their exposure. This is a dangerous path to tread for directors, who may be held liable for risk exposures that come to light," Ms. Durkin said.

Ms. Durkin said she was encouraged, though, by a turnaround in the interaction between risk management and other departments, particularly corporate planning. In response to a question asked for the first time, it was revealed that 80% of businesses place ultimate responsibility for risk management with their executive boards. In many businesses, this is a joint responsibility, usually held with risk management departments, but sometimes with the internal audit departments or committees.

Aon also noted that, since it began the survey, there has been a marked growth in self-insured retentions in both property and casualty classes.

For example, in 1991, 24% of companies responding to the survey said they retained more than £250,000 ($359,875) per casualty loss. That percentage climbed to 34% in 2001. Twenty percent of companies retained more than £250,000 per property loss in 1991; that figure increased to 34% in 2001.

The survey also asked companies to name leading insurers capable of organizing global insurance programs. Royal & SunAlliance Insurance Group P.L.C. headed the list for the second time in succession, cited by 36%. American International Group Inc., which came out on top in the 1997 and 1995 surveys, was second in the most-recent survey at 29%.

•

Copies of Aon's "Biennial Risk Management and Risk Financing Survey 2001" are available by e-mail, at nicky.rogers@ars.aon.co.uk, *or by telephone, at 44-207-882-0400. The cost is £75 ($107) per copy.*

AUL makes changes

Agency to focus on short-tail business

LONDON—Managing agency Alleghany Underwriting Ltd. has announced a shakeup of its Lloyd's of London operation in which the underwriting agency will withdraw from several lines of business.

Last Thursday, AUL appointed Michael Carpenter as chief executive officer. Mr. Carpenter, who will take up his post June 1, was formerly managing director of Lloyd's corporate capital vehicle Limit P.L.C.

AUL said Mr. Carpenter's appointment marked part of a plan to refocus its business on core areas of expertise—namely, short-tail business. AUL will continue to write property and aviation reinsurance, direct marine, financial institutions coverage and property insurance.

As part of the refocusing plan, AUL's sole active syndicate, 376, will withdraw immediately from writing marine and casualty treaty reinsurance, direct professional indemnity, directors and officers liability, bloodstock, accident and health, and employment practices liability. That business represents approximately £50 million ($72 million) in premium.

All existing contracts will be honored, and some D&O business will continue to be written as part of the syndicate's financial institutions account. Rupert Atkin, joint active underwriter of syndicate 376, has been appointed director of underwriting.

"AUL is not alone in the recent challenges it has faced in what have been testing times for the insurance market," Mr. Carpenter wrote in a statement. "I am delighted to be coming on board at a time when we are well placed to refocus our efforts on a robust business plan designed to deliver profitable underwriting in areas where we have specialist expertise."

For the 1998 year of account, Syndicate 376 lost 28.7% of its stamp capacity of £139.7 million ($208.6 million).

AUL said the refocusing would result in two job losses in the marine underwriting department but said it would aim to find other positions for those individuals elsewhere within the group.

—By Sarah Veysey

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LEGAL NOTICES

IN THE HIGH COURT OF JUSTICE
No 6669 of 1999
CHANCERY DIVISION
COMPANIES COURT
IN THE MATTER OF
THE HAWK INSURANCE COMPANY LIMITED
AND IN THE MATTER OF
SECTION 425 OF THE COMPANIES ACT 1985

At a meeting held on 9 December 1999 in London, the Scheme of Arrangement ("the Scheme") between The Hawk Insurance Company Limited ("the Company") and its Scheme Creditors (as defined in the Scheme) was approved by the requisite majority of Scheme Creditors.

On 28 February 2001, an office copy of the Court Order sanctioning the Scheme was delivered to the Registrar of Companies for registration. The Effective Date of the Scheme is therefore 28 February 2001. Philip John Singer and Christopher John Hughes are the Joint Scheme Administrators responsible for implementing the Scheme.

The Final Claims Submission Date is **30 May 2001**. Scheme Creditors whose claims arise out of insurance or reinsurance contracts, and who have amended their Scheme Claim Forms, must return them by this date. If an amended Scheme Claim Form is not received by this date, the Scheme Creditor concerned will be deemed to have accepted and agreed the information contained therein, prior to amendment.

All other Scheme Creditors must notify the Joint Scheme Administrators of their claims in writing with supporting documentation prior to the Final Claims Submission Date. The Joint Scheme Administrators have no power to take account of amendments to Scheme Claim Forms, or to admit claims, of which they receive notification after the Final Claims Submission Date.

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Scheme Creditors should return Scheme Claim Forms or send written details of their claims, as applicable, to the Joint Scheme Administrators at the following address:

THE HAWK INSURANCE COMPANY LIMITED
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FMLA

Continued from page 1

recently was referred to the Senate Committee on Health, Education, Labor and Pensions. A spokesman for the senator said, though, that it is a "toss up" as to whether the bill, S. 489, would be voted upon in this session.

The FMLA, which took effect in 1993, provides covered and eligible workers with up to 12 weeks of job-protected, unpaid leave to care for a seriously ill child, spouse or parent; to care for a newborn, newly adopted or newly placed child; or to take time off for a serious illness of their own.

The 4th Circuit decision involves Kimberly Miller, an AT&T employee who was terminated after she took time off because she was suffering from the flu. AT&T had already issued a warning to Ms. Miller at the time that she could be dismissed if she incurred additional "chargeable" absences. Time taken off under the FMLA is not considered chargeable.

In upholding a lower court decision, the majority opinion by the appellate court cited a Department of Labor regulation that defines a serious health condition under FMLA as one that includes a period of incapacity of more than three consecutive days and also involves either treatment two or more times by a health care provider, or "treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of the health care provider."

The decision concludes that Ms. Miller's situation met these conditions. AT&T "violated Miller's rights under the FMLA when it denied her request for leave," the judges ruled. "Miller's flu satisfied the regulatory criteria for a serious health condition, and while we may question the wisdom of regulations that arguably extend the scope of FMLA coverage beyond what Congress envisioned, we cannot say that the regulations are arbitrary," says the decision, which also upholds the lower court's ruling that Ms. Miller is entitled to back pay.

However, in a strongly worded dissent, Chief U.S District Judge Claude M. Hilton said the Department of Labor had "expanded the express limits of the statute" in its regulation and that Congress "never intended the ordinary flu to be covered by FMLA leave."

The decision could open the door for other minor illnesses to fall under the FMLA's provisions—a possibility some employer representatives say is clearly contrary to Congress' intent.

"It effectively confers federal protection on a whole host of minor illnesses as long as they meet the DOL's minimal definition," said Ann Elizabeth Reesman, an attorney with Washington-based McGuiness, Norris & Williams, who submitted a brief in the case on behalf of the Equal Employment Advisory Council. The decision could be influential outside the 4th Circuit, she added.

"It's easy enough for an employee to claim that they were incapacitated for several days and to see a doctor on a couple of occasions, and that's apparently enough, according to the 4th Circuit, to qualify for FMLA coverage, even if we're only talking about the flu or a common cold or headaches or other minor conditions," said Richard Tuschman, an attorney with Baker & McKenzie in Miami. He noted at least two district court decisions have ruled against employees in comparable situations, but this is the first appellate ruling on the issue.

Including the flu in the realm of serious illness is inappropriate, said W.D. Class & Son's Mr. Dudek. "I think it's an overreach," he said. "I don't really believe that was the intent of the law at all."

> *The decision 'effectively confers federal protection on a whole host of minor illnesses .'*
>
> *—Ann Elizabeth Reesman*
> *McGuiness, Norris & Williams*

Deanna Gelak, executive director of the FMLA Technical Corrections Coalition, which was founded by the Alexandria, Va.-based Society for Human Resource Management, said the ruling "points to the need for clarity on the definition of serious health conditions, and we're hoping that that happens soon, because employers who are trying to comply in good faith are mystified by these types of rulings."

Ms. Miller's attorney, Lonnie Carl Simmons of the Law Office of P. Rodney Jackson, in Charleston, W.Va., said the Labor Department did not overstep the FMLA's bounds. "I think all the case stands for is that the DOL has developed an objective test so that the court didn't find themselves in the position of making medical decisions that they have no competency to make under the system," Mr. Simmons said.

"It just makes the whole process more workable. It would be impossible" for the FMLA to have included "every conceivable ailment that could fit under this act, and therefore, the only workable solution is to develop an objective test," Mr. Simmons said.

However, opponents of the decision say it could increase employers' liability.

Mr. Dudek said it opens the door "to potential lawsuits and potential liability issues and for employees who don't have a particularly good attendance record to try to play it up and use the FMLA to take inappropriate time off."

David F. Dabbs, an employer attorney with McGurieWoods in Richmond, Va., said: "You wind up with a world in which employment decisions—which certainly pre-FMLA would have been considered routine actions to make sure that you have employees who come to work—are now routinely subject to challenge."

Mr. Dabbs added: "I sometimes tell clients that DOL regulations on the FMLA have two booby traps a page. If you sat down to write something that would frustrate employers and make their lives difficult and absorb administrative attention of human resources people, you could not come up with anything that would do that much more than what we have."

Stephen A. Bokat, executive vp of the National Chamber Litigation Center, which is the legal arm of the U.S. Chamber of Commerce in Washington, said, "It's a very complicated regulation to apply, and this area in particular is exceedingly complicated because there's an intersection of a variety of state and federal law," including the Americans with Disabilities Act; employers' own disability policies and "the problem employers have with employees who are repeatedly absent from work."

The Family and Medical Leave Clarification Act proposed by Sen. Gregg would exclude a "short-term illness, injury, impairment or condition for which treatment and recovery are brief," among other provisions.

"It's a fairly far-reaching bill that would really raise the bar significantly as to what is a serious health condition," said Mr. Perkins.

Ms. Gelak said the FMLA Technical Corrections Coalition strongly supports the bill. "It would address these confusing interpretations by making it clear as to what employers are required to do," she said.

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Kimberly Miller, Plaintiff-Appellee, vs. AT&T Corp., a foreign corporation, Defendant-Appellant, 4th U.S. Circuit Court of Appeals; CA-98-808-2, May 7.

Cleanup

Continued from page 3

one of Kayser-Roth's attorneys. Mr. Tarantino is a partner with Adler Pollock & Sheehan P.C. of Providence, R.I.,

In a July 1999 decision, a trial court judge ruled that First State breached its contract with Kayser-Roth. Company officials could not have anticipated the cleanup liability that the EPA imposed, the judge ruled.

The judge ordered First State to pay more than $9.1 million of damages, including $5.4 million of EPA oversight costs.

First State appealed to the Rhode Island Supreme Court. The state has no intermediate appellate court.

Among its arguments, First State contended that the $5.4 million award was premature and based on speculation and conjecture of future expenses.

In the 5-0 opinion, the state's high court, as did the trial judge, admonished First State for refusing to defend Kayser-Roth and then objecting to how the company defended itself against the EPA. The high court also noted that a Kayser-Roth damages expert testified at trial that the company found no problems with the EPA's draft invoice for its oversight costs.

The ruling is significant because it marks the first time that a state supreme court has ordered an insurer to pay a present-dollar judgment to cover future policyholder liabilities in an environmental coverage case, said policyholder attorney Robert M. Horkovich, a partner with Anderson Kill & Olick P.C. in New York. The 7th U.S. Circuit Court of Appeals ruled similarly in an asbestos liability case in the mid-1990s, he said.

Insurers customarily argue in environmental cases that they have no obligation to cover a policyholder's liabilities until the policyholder pays out, Mr. Horkovich said.

But in many other types of cases, such as when a policyholder must cover an injured claimant's future medical costs, insurers must cover those damages immediately, Mr. Horkovich said.

The ruling brings to the environmental coverage arena "the same legal principle accepted by courts for a number of years" in the tort law field, Mr. Tarantino said.

In another ruling that the policyholder attorneys called significant, the state's high court upheld the trial court's decision to bar First State from reducing its liability to Kayser-Roth by the amount of other insurers' settlements.

The high court cited three reasons:

- The settlements were so "generalized" that the trial court could not determine how the settlement amounts were reached and what portion of each settlement applied to the Stamina Mills claim.

Mr. Tarantino described the settlements as "global" agreements that resolved all of Kayser-Roth's past and future environmental coverage claims.

- Given another high court ruling that barred First State from raising an "other insurance" coverage defense because of problems with some of the insurer's pre-trial filings, First State could not use the settlement documents to show that its policies were excess of all of the other coverage and that First State was entitled to an allocation.

> *The ruling brings to the environmental coverage arena 'the same legal principle accepted by courts for a number of years' in the tort law field.*
>
> *— John Tarantino*
> *Adler Pollock & Sheehan P.C.*

- Allowing a non-settling insurer to take a setoff would discourage settlements in the future. And, in this case, a setoff would have rewarded First State for breaching its contract and then failing to show at trial that it had contractual rights to a setoff.

First State, though, will be allowed to take a nearly $2.5 million credit to reflect the limits of the primary coverage that was immediately underlying its policies.

Mr. Horkovich called the setoff ruling "a big deal" for policyholders. He noted that two state supreme courts—first Washington's and now Rhode Island's—have reached the same conclusion on setoffs over the past five months (*BI*, Jan. 22).

Insurer attorney Laura Foggan, who represents the industry-supported Insurance Environmental Litigation Assn., contends the ruling "doesn't give you a road map for where courts are headed."

The ruling was fact-specific and went against First State largely because the courts found that the insurer mishandled its "other insurance" defense, said Ms. Foggan, a partner with Wiley, Rein & Fielding in Washington.

The court also barred the insurer from invoking the "known-loss" defense, which alleges the policyholder was aware of a loss when it purchased coverage, to avoid indemnifying Kayser-Roth. The court explained that the insurer wrote the coverage before there were any claims and while there was much uncertainty about whether the policyholder would be held liable for any losses stemming from the accident.

First State attorney Gregory Deschenes of Nixon Peabody L.L.P. in Boston did not return calls.

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Insurance Co. of North America vs. Kayser-Roth Corp. et al., Rhode Island Supreme Court, April 24, 2001; No. 99-531-Appeal (PC 92-5248).

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Lawsuit

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"The actions of our underwriters appear to be an effort to impede resolution" of Babcock's asbestos claims, said Bruce Wilkinson, chairman and chief executive officer of the New Orleans-based McDermott, in a statement.

"After years of paying claims, the underwriters now seek to avoid their contractual obligations, as stated in our insurance policies and later confirmed by the coverage-in-place agreement," he continued.

London underwriters filed the suits amid a new tidal wave of asbestos claims that began a few years ago and that has triggered bankruptcy filings by several major asbestos defendants in the past 18 months.

Along with Babcock, companies filing for Chapter 11 protection after years of trying to manage their asbestos liabilities include Armstrong World Industries Inc., Owens Corning, Pittsburgh Corning Corp., Burns & Roe Enterprises Inc., W.R. Grace & Co. and a successor corporation to GAF Corp. (*BI*, Jan 8).

Insurers are also grappling with the new wave of claims hitting not only traditional asbestos defendants but also a widening array of new defendant companies targeted by plaintiffs lawyers in the wake of bankruptcies by traditional defendants. London market insurers, led by Equitas Ltd., announced this month that they will impose tougher standards of proof for asbestos claims to eliminate what they consider abusive demands by allegedly uninjured claimants (*BI*, May 7).

Equitas, the runoff reinsurer for Lloyd's syndicates' pre-1993 long-tail liabilities, is pursuing the lawsuits against McDermott and Babcock on behalf of Lloyd's underwriters.

The London insurers provided excess and umbrella liability coverage to McDermott from 1950 until 1986. In 1978, McDermott acquired New Orleans-based Babcock, which designed and built asbestos-insulated commercial boiler systems.

By the late 1980s, asbestos claims had exhausted Babcock's and McDermott's primary coverage limits, and London insurers, "rather than raise legitimate disputes" under the excess policies, entered into a coverage-in-place agreement in April 1990. The agreement made Babcock and McDermott responsible for managing claims, with the insurers providing input on a variety of matters, according to the complaints.

> *'After years of paying claims, the underwriters now seek to avoid their contractual obligations.'*
> — *Bruce Wilkinson*
> *McDermott International Inc.*

As of Babcock's bankruptcy last February, London insurers had paid "hundreds of millions of dollars" under the agreement and had exhausted the limits of virtually all pre-1979 and some later policies, the complaints say.

The Chapter 11 filing changed everything, though, London insurers contend.

Shortly after the filing, Babcock and McDermott began negotiations with an asbestos claimants' committee and other plaintiff representatives, and the companies have "deliberately isolated underwriters, with the apparent hope of effectively forcing underwriters to accept whatever ruinous coverage position (the companies) attempt to engineer for them," the suits allege.

Earlier this year, Babcock proposed a Chapter 11 reorganization plan that calls for the creation of a trust that would assume all of the companies' asbestos liabilities, along with the rights to the companies' insurance coverage and the coverage-in-place agreement, the suits say. Once the plan is approved, Babcock and McDermott would have no role in managing claims.

But the coverage-in-place agreement does not allow McDermott and Babcock to shift claims responsibility to the trust, and the agreement obligates the companies to cooperate with insurers in claims management, a duty they would no longer be able to fulfill if the trust is established, the suits charge.

In addition, Babcock has suggested that its Chapter 11 plan will require insurers to pay the limits of the 1980-86 policies immediately into the trust, a move that would "wrongfully expand underwriters' obligations beyond that contemplated by either the (agreement) or the policies themselves," the suits say.

The complaints seek rulings that London insurers have no further obligation to pay claims under the deal. They also raise several coverage defenses and ask the court to rule that the defenses apply to the 1980-86 policies.

For example, insurers argue that they are not on the hook for claims to the extent that McDermott and Babcock knew of the dangers of asbestos exposure before the inception of the policies.

McDermott and Babcock have not yet filed answers to the complaints.

Elihu Inselbuch, a lawyer representing the Babcock Asbestos Claimants Committee, labeled the suits "frivolous," though.

Babcock is still working on its reorganization plan, and the effort to date has been "dead in the water," Mr. Inselbuch said. Because no plan has been agreed to or confirmed, there has been no turnover of asbestos liabilities and insurance rights to a trust, he said.

"That's all in the future and has not happened," Mr. Inselbuch said, "so how can it be a breach?" BI

Authority

Continued from page 6

In addition, Judge Bissell concluded that some Port Authority abatement work at the World Trade Center was motivated less by health concerns than by the desire to avert rent revenue losses linked to the presence of asbestos in office space.

"The express purpose of (a Port Authority abatement project) was to stem lost revenue resulting from a loss of new tenants who wished to rebuild office space to their desired specifications but who would not do so unless (asbestos-containing materials) were abated," Judge Bissell found.

Whether insurers are liable for the Port Authority's costs depends on whether "asbestos-related conditions constitute physical damage" under the policies, a question for which the judge found "no controlling case" to serve as precedent.

"To be sure, there are circumstances in which the actual release of asbestos from building materials can constitute physical damage or loss. When this has been the case, however, the courts have described the level of asbestos release...in terms requiring the magnitude...to be relatively substantial," the judge said.

To constitute physical loss or damage, the judge ruled that the Port Authority's claims must involve "an actual release of asbestos fibers...that results in contamination of the property such that its function is nearly eliminated or destroyed, or is rendered useless or uninhabitable" or an imminent threat of an asbestos release of the same magnitude.

None of the agency's claims met this standard, Judge Bissell concluded.

Many of the claims, he noted, arise from the presence of asbestos "unaccompanied by even the suggestion of actual release or imminent threat of release," he wrote.

Out of 103 locations where the Port Authority offered proof of a threatened release of asbestos, the agency had undertaken abatement at only 13, the judge noted, which he said suggests that the Port Authority itself was not treating the threat seriously.

In addition, of 71 locations where the agency offered proof of actual asbestos releases, 45 occurred after the expiration of the last of the property policies at issue, the opinion said.

"Its proofs falling short, plaintiff is left with nothing more than speculative and conclusory allegations," Judge Bissell wrote. "The Port Authority's arguments that its abatement program is necessary for protection of human health misses the point. The issue here is first-party property coverage under the policy that plaintiff has purchased, coverage which plaintiff has failed to establish."

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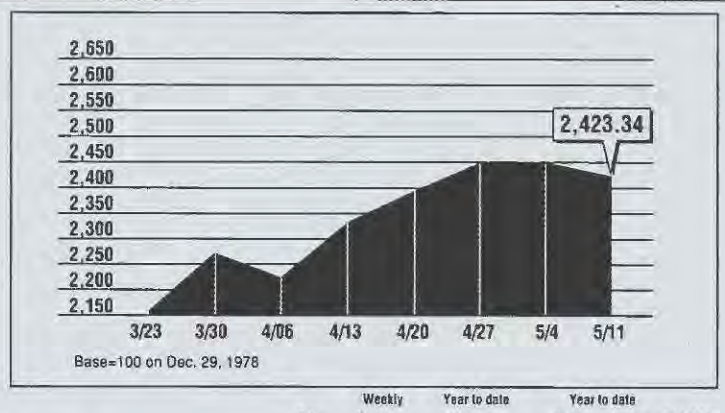
Port Authority of New York & New Jersey et al. vs. Affiliated FM Insurance Co. et al.; U.S. District Court for the District of New Jersey; No. 91-cv-2907.

BI Stock Index - 5/11/2001



Base=100 on Dec. 29, 1978

		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
BROKERS							
Aon Corp.	NYS	32.85	-0.51	-4.09	42.31	26.00	4548
Brown & Brown	NYS	40.80	-4.23	16.57	46.10	19.75	188
Clark Bardes Holdings	NDQ	14.00	0.00	38.27	17.88	7.25	272
E.W. Blanch Holdings Inc.	NYS	13.39	0.15	-23.21	29.50	6.70	641
Gallagher Arthur J. & Co.	NYS	24.00	-3.38	-24.56	34.25	17.28	1359
Hilb, Rogal & Hamilton	NYS	40.01	0.35	0.34	42.13	28.00	139
Kaye Group Inc.	NDQ	13.80	0.73	78.06	13.80	5.00	29
Marsh & McLennan	NYS	101.28	1.79	-13.44	135.69	80.30	3519
BROKERS	AVERAGE		-0.64	8.49			
INSURERS/REINSURERS							
ACE Ltd.	NYS	35.25	1.03	-16.94	43.94	23.44	6836
Accel International Corp.	NDQ	0.07	0.00	-76.42	0.88	0.07	0
Acceptance Insurance Cos.	NYS	4.73	11.29	-9.90	6.94	3.70	66
AEGON N.V.	NYS	30.75	-1.73	-25.79	43.00	25.92	728
AFLAC Inc.	NYS	30.93	0.10	-14.31	37.47	22.50	6046
Atmerica Financial Corp.	NYS	53.27	1.08	-26.52	74.25	46.30	1271
Allstate Corp.	NYS	41.83	1.16	-3.98	44.75	21.94	7154
Ambac Financial Group	NYS	53.86	0.82	-7.64	64.00	29.75	3445
American Financial Group	NYS	27.00	-1.46	1.65	29.00	18.69	403
American General	NYS	45.10	0.24	10.67	45.10	26.69	23315
American Intl Group	NYS	82.10	-2.67	-16.70	103.75	72.64	26318
American Safety Insurance	NYS	9.60	16.36	56.73	9.60	3.25	52
Argonaut Group	NDQ	17.11	-2.17	-18.52	21.25	13.50	146
AXA-UAP Group	NYS	60.60	0.61	-15.61	81.50	49.16	814
Baldwin & Lyons Inc.	NDQ	24.00	-7.34	3.23	28.75	15.25	4
Berkley W.R. Corp.	NDQ	39.97	-3.57	-15.30	48.75	18.12	1340
Berkshire Hathaway Inc.	NYS	68290.00	-0.89	-3.82	74600.00	51600.00	1
Capitol Transamerica Corp.	NAS	14.49	12.33	16.50	14.49	10.00	24
Chubb Corp.	NYS	70.85	3.66	-18.09	90.25	58.56	6456
Cincinnati Financial Corp.	NYS	39.48	-0.63	-0.21	43.31	31.00	1522
Citigroup	NYS	49.26	-2.99	-3.53	59.13	39.00	42811
CNA Financial Corp.	NYS	37.60	4.74	-2.97	41.94	28.31	1223
CNA Surety	NYS	13.30	-2.56	-6.67	14.94	10.38	156
EMC Insurance Group Inc.	NDQ	12.60	6.42	7.23	13.13	7.00	10
ESG Re Limited	NDQ	2.88	24.68	56.20	4.63	1.72	8
Everest Reinsurance	NYS	64.93	1.06	-9.35	74.75	28.75	1263
Fremont General Corp.	NYS	5.20	3.17	84.89	6.88	1.50	1655
Gainsco Inc.	NYS	1.53	11.68	-41.71	6.00	1.10	172
Harleysville Group	NDQ	25.98	3.10	-11.18	30.63	14.63	138
HCC Insurance Holdings	NYS	25.40	-7.64	-5.71	29.66	11.31	2183
ING Groep N.V.	NYS	65.62	0.95	-18.10	83.94	52.44	479
IPC Holdings Ltd.	NDQ	22.75	-0.74	8.33	24.50	12.13	148
Hartford Financial Services	NYS	64.00	1.65	-9.38	80.00	49.44	3500
John Hancock Financial Serv.	NYS	37.70	3.51	0.20	40.00	17.38	4914
Lincoln National	NYS	46.83	0.17	-1.02	56.38	32.50	2430
MAIC Holdings Inc.	NYS	14.90	-1.32	-10.71	18.50	10.00	53
Markel Corp.	NYS	194.00	-2.04	7.18	207.47	133.50	131
MBIA Insurance Group	NYS	48.44	0.25	-1.98	55.86	32.00	3173
Meadowbrook Insur. Group	NYS	2.90	11.54	-64.31	8.38	2.45	90
MetLife	NYS	28.96	-2.16	-17.26	36.63	16.19	8788
Mutual Risk Mgmt. Ltd.	NYS	8.62	31.00	-43.24	23.75	3.40	3788
Navigators Group	NDQ	15.25	10.51	14.55	15.25	8.63	13
NYMagic Inc.	NYS	20.60	1.93	9.14	20.60	13.00	35
Ohio Casualty Corp.	NDQ	9.17	-1.50	-8.30	17.06	6.13	762
Old Republic Int'l	NYS	27.95	-1.41	-12.66	32.06	14.31	1473
Partner Re Ltd.	NYS	54.47	11.16	-10.70	62.50	34.81	2312
Penn-America Group Inc.	NYS	10.00	0.00	31.15	10.60	6.88	8
PMA Capital Corporation	NDQ	17.65	-0.28	2.32	19.03	15.19	71
Philadelphia Cons. Holding	NDQ	25.05	-6.18	-18.87	31.92	15.13	404
PXRE Corp.	NYS	17.75	2.60	5.19	20.10	12.50	19
RenaissanceRe Holdings Ltd.	NYS	66.35	2.71	-15.28	84.19	36.50	411
RLI Corp.	NYS	40.42	-0.57	-9.55	46.16	31.25	39
St. Paul Cos.	NYS	46.55	2.60	-14.29	57.00	32.75	4919
SCOR	NYS	42.75	0.83	-14.93	53.75	38.38	48
SAFECO Corp.	NDQ	26.39	-1.82	-19.73	35.88	19.56	5680
SCPIE Holdings Inc.	NYS	19.25	-2.53	-18.52	31.40	18.31	NA
Selbels Bruce Group	NDQ	1.97	-1.50	250.22	2.25	0.53	41
Selective Ins. Group	NDQ	23.47	-10.76	-3.22	26.94	15.25	288
Tokio Marine & Fire	NDQ	52.02	-1.20	-8.74	61.00	45.25	39
Torchmark Corp.	NYS	36.87	-0.94	-4.08	41.19	23.00	1674
Transatlantic Holdings	NYS	111.80	2.66	5.60	111.80	80.38	76
Trenwick Group Inc.	NYS	20.49	3.54	-17.42	27.13	13.00	942
Unico American Corp.	NDQ	5.92	7.64	0.77	7.75	5.27	2
United Fire & Casualty	NDQ	30.24	17.44	53.11	30.24	15.50	65
Unitrin	NDQ	37.49	-3.80	-7.72	41.94	27.19	323
UNUM Corp.	NYS	31.40	4.84	16.84	32.20	15.25	6520
Vesta Insurance Co.	NYS	7.69	1.45	51.90	8.39	4.13	447
XL Capital Ltd.	NYS	75.25	11.40	-13.88	89.25	43.75	5596
Zenith National Ins.	NYS	25.90	-5.13	-11.83	30.70	20.00	99
INSURERS/REINSURERS	AVERAGE		2.27	-0.48			
MANAGED CARE COMPANIES							
Aetna Inc.	NYS	25.22	-5.61	-38.58	42.69	24.05	5189
CIGNA Corp.	NYS	93.00	3.91	-29.71	136.75	73.38	8004
Health Net Inc.	NYS	19.22	-6.70	-26.61	26.94	8.63	3540
Humana Inc.	NYS	9.29	-0.21	-39.08	15.81	4.75	5874
Oxford Health Plans	NYS	27.29	-3.74	-30.91	42.75	17.88	5451
Pacificare Health Sys.	NDQ	24.25	-10.32	61.67	72.31	9.81	6206
Sierra Health Services	NYS	5.09	-2.49	33.95	6.70	2.44	479
United HealthGroup	NYS	58.45	-4.42	-4.77	67.40	30.13	12426
Wellpoint Health Networks	NYS	87.10	-3.06	-24.43	121.50	66.75	6289
MANAGED CARE COMPANIES	AVERAGE			-3.63	-10.94		
ALL COMPANIES			-0.67	-0.97			

Top advancing issues: Mutual Risk Management Ltd., ESG Re Ltd., United Fire & Casualty. Leading decliners: Selective Insurance Group, PacifiCare Health Systems, HCC Insurance Holdings. Most active issue: Citigroup. The BI Index decreased 1.1%; the Dow Jones 30 Industrials dropped 1.2%; the S&P 500 went down 1.7%; and the NYSE Composite decreased 1.0%. Average P/E: Brokers, 21.7; Insurers/reinsurers, 27.0; and managed care companies, 15.0.

Source: *CNET Investor* (investor.cnet.com) Boulder, Colo.

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