

# Business Insurance

\$5

May 14, 2007

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**RUNOFF PLAN RECOMMENDATION  
MAY SCUTTLE REHAB PROGRAM  
FOR DEFUNCT INSURER / PAGE 3**

**MORE LARGE EMPLOYERS DROP  
DEFINED BENEFIT PLAN OPTION  
FOR NEW WORKERS / PAGE 3**

**REINSURER CONVERIUM ACCEPTS  
SWEETENED TAKEOVER OFFER  
FROM SCOR / PAGE 33**

## In Brief

Ex-CFO of comp bureau  
sentenced to 64 months

A federal judge has sentenced Terrance Gasper, the former chief financial officer for the Ohio Bureau of Workers' Compensation, to 64 months in prison. Mr. Gasper's acceptance of bribes in return for handing out bureau investment business came to light as part of a rare-coin investment scandal that surfaced in 2005 and became known as "Coingate." He pleaded guilty to violating the federal Racketeer Influenced and Corrupt Organizations statute, including extortion under color of authority as well as mail and wire fraud.

Committee OKs Calif.  
disability benefits bill

A California Senate committee has passed a measure that would double workers compensation

See **IN BRIEF** page 38

## Wells Fargo deal raises questions

*ABD chief quits after bank parent agrees to sale*

By **SALLY ROBERTS**

**REDWOOD CITY, Calif.**—ABD Insurance & Financial Services Inc. Chief Executive Officer Dan R. Francis resigned last week in an apparent fallout from Wells Fargo & Co.'s acquisition of Greater Bay Bancorp, which was announced only days before.

As part of the \$1.5 billion all-stock bank transaction, which is expected to close early in the fourth quarter, Redwood City, Calif.-based insurance broker ABD is to become part of Chicago-based Wells Fargo Insurance Services Inc., formerly known as Acordia Inc.

Speculation had been mounting that Greater Bay, which was rumored to be on the block for some time, would divest ABD on completion of a strategic review of the bank's operations (*BI*, April 23).

Although brokerage observers say the bank deal makes sense and the addition of ABD will enhance WFIS' upper middle-market and large risk management account presence, a successful integration is not guaranteed.

Details including integration plans or management decisions

### WELLS FARGO INSURANCE SERVICES

**HEADQUARTERS:** Chicago  
**2006 REVENUES:** \$1.01 billion  
**EMPLOYEES:** 4,304  
**OFFICES:** 161  
**OFFICERS:** Dave Zuercher, chairman, president, CEO; Scott R. Isaacson, executive vp.

### ABD INSURANCE & FINANCIAL SERVICES

**HEADQUARTERS:** Redwood City, Calif.  
**2006 REVENUES:** \$164 million  
**EMPLOYEES:** 830  
**OFFICES:** 23  
**OFFICERS:** Bruce M. Basso, cochairman and Frederick J. de Grosz, cochairman

have yet to be made for the combined brokerage, according to WFIS and Greater Bay, which is fielding inquiries for ABD.

Unlike traditional brokerage deals in which management generally hammers out some integration issues before announcing the trans-

See **ABD** page 37



ZUMA

A trial court ruled that claims arising from illness caused by inhaling asbestos from insulation can fall under several provisions of a general liability policy.

## Court ruling favors asbestos contractors

*Premises liability coverage tapped for claims*

By **DAVE LENCKUS**

**NEW YORK**—A New York trial court decision last week ultimately could lead to greatly expanded asbestos liability losses for insurers—including some cases in which insurers already have hammered out coverage settlements, policyholder attorneys say.

The trial court ruled on May 8 that a class of 20,000 third-party asbestosis claimants could recover under the premises/operations provision of the general liability insur-

ance policies of a now-defunct insulation contractor.

With little case law and mounting coverage disputes over whether premises/operations provisions can be tapped for coverage, the decision could be costly to insurers if other courts look to this decision for guidance and rule similarly, policyholder attorneys say. That's because liability insurers historically did not include aggregate limits in their premises/operations policy provi-

See **ASBESTOS** page 37

## SPOTLIGHT

### RIMS 2007: TRENDS & DEVELOPMENTS

Supplemental pay debate  
heats up; contract certainty



management strategies  
develop; policyholders  
wrangle with insurers over  
Katrina claims. Page 10

efforts gain traction; broker practices still under buyer scrutiny; pandemic risk

## Liberty Mutual to acquire Ohio Casualty

*Purchase of regional rival brings significant book of agency-based commercial business*

By **JUDY GREENWALD**

**FAIRFIELD, Ohio**—Liberty Mutual Group Inc. said it will acquire Ohio Casualty Corp. in a \$2.7 billion deal

that will bolster the Boston-based insurer's small and midsize book of business.

Under terms of the deal announced last week, Liberty Mutu-

al will acquire Fairfield, Ohio-based Ohio Casualty for \$44 per share in a cash deal. The transaction, which is subject to shareholder and regulatory approval, is expected to close during the third quarter.

Ohio Casualty, a regional insurer, will become part of Liberty Mutual Group's Agency Markets business unit, which focuses on the small commercial and personal markets and now includes 11 other companies.

Edmund F. Kelly, Liberty Mutual Group chairman, president and chief executive officer said in a statement that Ohio Casualty is a "great fit" with Liberty Mutual's

Agency Markets business. "With combined net written premiums exceeding \$7.3 billion following this transaction, we will become the largest regional provider of property and casualty products distributed through independent agents in the United States," he said.

The deal reinforces Liberty Mutual's "commitment to its regional company strategy, and the independent agency distribution system, and...will help the combined organization extend its relationships in the personal lines and small-to-medium-sized commercial markets

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**Kathy Burns**  
CEO of Aon's Solutions Group in Aon Risk Services - Americas

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## On the Web

### RIMS 2007

See RIMS video, podcasts, photos at *BI* site

Though RIMS 2007 is over, you can relive the experience online with multimedia offerings at [www.BusinessInsurance.com/RIMS2007](http://www.BusinessInsurance.com/RIMS2007),



where you will find photo galleries, podcasts and video interviews

of industry leaders, and PDFs of the *Business Insurance* show daily.

### ONLINE EXECUTIVE FORUM™

June 27 Webcast to look at practical side of ERM

Implementing a successful ERM program requires more than theory—it takes practical advice. Attend "ERM in the Real World: A Practical Approach to Solving Enterprisewide Problems" at 11 a.m. EDT June 27 for an in-depth discussion of how risk managers can understand the approaches of identifying, categorizing and addressing enterprise risks in real-world situations. For details, go to [www.BusinessInsurance.com/webinars](http://www.BusinessInsurance.com/webinars).

### BENEFIT MANAGER OF THE YEAR®

Nominations welcome for top benefit award

*Business Insurance* is seeking nominations for the 2007 Benefit Manager of the Year award to recognize excellence and innovation in benefits management. The winner will be profiled in a future issue of the magazine. To nominate a candidate by June 1, download a form at [www.BusinessInsurance.com/BMOY](http://www.BusinessInsurance.com/BMOY).

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# Policyholders protest Highlands runoff plan

*Court official says plan's projections overly optimistic*

By DOUGLAS McLEOD

**AUSTIN, Texas**—Policyholders and other creditors of Highlands Insurance Co. are wrangling over the defunct insurer's fate following the rejection of a runoff plan proposed by state insurance regulators.

A court-appointed special master recommended against the plan last

month, finding that it relied on overly optimistic projections of Highlands' long-tail liabilities and of its ability to settle claims at deep discounts. The special master also concluded that the plan would not treat all policyholders equally, favoring workers compensation claimants and potentially disadvantaging future claimants.

The Texas Insurance Department's special deputy receiver for Highlands has asked a state judge to overturn or modify the special master's recommendation and approve the runoff plan. The receiver is

being joined by a unit of ACE Ltd., which both reinsured Highlands and ceded business to it, and which supports the runoff.

Opponents of the plan, meanwhile, are asking the judge to confirm the special master's findings and reject the plan, a move that could end in Highlands' liquidation. Opponents include Highlands Insurance Co. (U.K.) Ltd., a Gloucester, England-based Highlands affiliate, and several asbestos defendant policyholders.

The Texas court has not yet scheduled a hearing on the mo-

tions, lawyers familiar with the case say.

Texas-domiciled Highlands, a large writer of excess and umbrella casualty and workers comp risks, was ordered into rehabilitation in 2003 after a failed effort to reorganize the company and wind down its business.

Highlands faces roughly \$640 million in liabilities, with asbestos and pollution claims accounting for about half of its exposure, according to court filings.

See **HIGHLANDS** page 36

## Private buyout deals produce new D&O risks

*More claims expected as directors' decisions face increased scrutiny*

By JUDY GREENWALD

The current trend towards taking public companies private, often by private equity firms, could lead to an increase in claims under directors and officers liability policies, say many observers.

Charges of violating fiduciary responsibility, for instance, could be made against directors and officers in connection with these deals by disgruntled shareholders, say observers.

More than \$100 billion in deals taking companies private have taken place so far this year in the United States, "and 2007 might prove to be kind of a record-setting year" for leveraged buyout activity, said Carl Pursiano, a New York-based senior vp with Liberty International Underwriters, a unit of Liberty Mutual Group Inc.

A major driving factor, say observers, is the more costly and time-consuming reporting requirements called for under the Sarbanes-Oxley Act for publicly held companies.

"I would say there's increased claim activity proportionate to the increased private equity takeover activity," said Kevin M. LaCroix, a D&O expert and director at Oak-Bridge Insurance Services L.L.C., a

Beachwood, Ohio-based brokerage.

Some observers believe there could also be more claims when many of these privately held companies are eventually brought public again.

Deals taking companies private can be accomplished by buying up the shares of a company, and are often structured through either a merger or a tender offer.

Observers say the trend has not yet lead to a dramatic increase in D&O claims. However, Richard J. Bortnick, an attorney with Cozen O'Connor in West Conshohocken, Penn., said, "Any D&O claim that wasn't there before" constitutes an increase in D&O exposure, "so I would say that companies going private creates a new genre of derivative suits" for plaintiff attorneys.

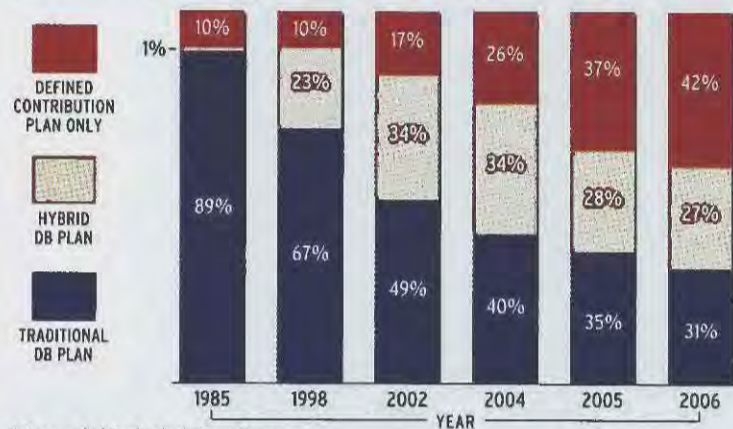
This trend is a concern to D&O underwriters, say some observers. "Definitely, people are watching" the issue from the perspective of liability under D&O policies, said Stephen Outerbridge, senior vp at Bermuda-based Ariel Reinsurance Ltd. "There are certainly allegations" in connection with these deals that could fall under a D&O contract, said Mr. Outerbridge.

Steve Shappell, Denver-based managing director in the legal and claims practice at Aon Corp.'s Financial Services Group, said, "Absolutely, it's an increase in exposure." The basic issue is, "you're tak-

See **D&O** page 36

### DECLINE OF DEFINED BENEFIT PLANS

How traditional defined benefit pension plans are declining at Fortune 100 companies\*



\*For newly hired salaried employees  
Source: Watson Wyatt Worldwide

## Big employers continue defined benefit exodus

*Defined contribution plans the only offering at 42% of companies*

By JERRY GEISEL

The nation's largest companies continue to move away from traditional and hybrid defined benefit pension plans in favor of 401(k) and other defined contribution plans, according to a survey.

Last year, 58% of Fortune 100 companies offered a defined benefit plan to new salaried employees. That's down from 63% in 2005 and 74% in 2004, according to a Watson

Wyatt Worldwide survey released last week.

By plan type, traditional defined benefit plans posted the greatest decline. Last year, 31% of Fortune 100 companies offered a traditional plan to new employees, compared with 35% in 2005 and 40% in 2004. In 1985, the overwhelming majority—89%—offered a traditional plan, according to the Arlington, Va.-based consultant's survey, which is based on corporate financial reports and announcements.

By contrast, more large U.S. corporations are offering only defined contribution plans to their new

See **SURVEY** page 6

## Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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ON OCT. 8, 2007, *Business Insurance* will celebrate its 40th anniversary of publication. Each week until then, *BI* will offer a peek at news we reported during the past four decades.

**MAY 24, 1971** The Insurance Institute of America Inc. authorized graduates of its risk management education program to use the title "Associate in Risk Management" following their names. The institute also authorized similar recognition for graduates of its programs in claims and management.

**JUNE 7, 1971** *Business Insurance* and Computerworld magazine announced a co-sponsored event in Chicago: the first Computer Protection/Insurance Workshop. Attendees from 27 states, Canada and Sweden were expected to attend and learn about computer protection, industrial hygiene and liability.

# Buyer coalition focusing on natural cat funding solution

Group seeking input on both commercial, personal lines issues

By MARK A. HOFMANN

WASHINGTON—A new policyholder group wants to influence the debate about natural catastrophe insurance as effectively as the Coalition to Insure Against Terrorism has the debate over terrorism insurance.

But the Washington-based Natural Catastrophe Policyholders Coalition is no clone of CIAT, despite some crossover in membership. Unlike CIAT, which focused first on creating a federal terrorism insurance backstop and then on efforts to extend and make the backstop permanent, NCPC does not advo-

cate a single legislative solution to improving availability and affordability of catastrophe insurance, said Jennifer Platt, director-federal government relations of the Washington-based International Council of Shopping Centers, one of NCPC's original members.

"We do not have a specific policy agenda yet, because we're still working on creating consensus," said Ms. Platt.

"This coalition is made up of groups that are interested in both a homeowners response as well as a commercial response," she said. "It's sort of a community approach."

She noted that current catastrophe insurance proposals tend to focus on homeowners insurance issues rather than commercial insurance issues.

The coalition's goal is two-

pronged, according to its mission statement. The group seeks to create a forum to share information and to discuss the availability and affordability of catastrophe insurance in the market and to develop and promote policies to ensure the availability and affordability of catastrophe insurance to both homeowners and businesses.

The group's genesis began in early 2006, when shopping center council members started swapping stories about the difficulty of finding wind coverage in Florida and the Gulf Coast, said Ms. Platt. Members also began reporting insurance cancellations in places far from the Gulf such as Long Island and Cape Cod, she said.

Members of the National Multi Housing Council and its sister organization, the National Apartment



Shopping centers' difficulty in finding Gulf Coast wind coverage was the impetus for a new coalition.

Assn., found themselves in the same situation, said Jeanne Delgado, vp-operations and risk management policy for the Washington-based NMHC. "Our members alert-

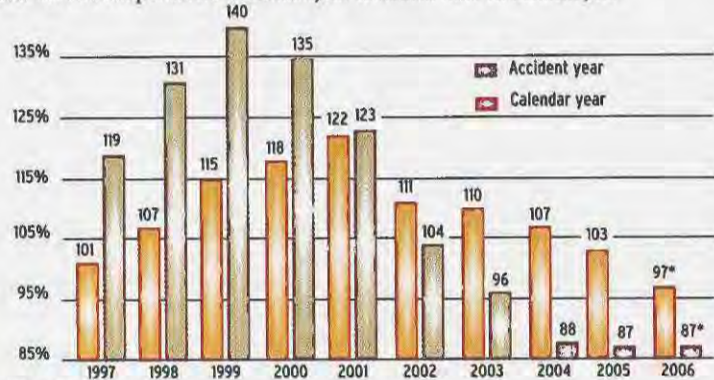
ed us early in 2006 as they prepared for first-quarter renewals and quickly understood the market for property insurance" in catastrophe-prone areas had significantly changed. "Multifamily property risk managers knew the hurricanes of 2005 would impact 2006 pricing, but the reality was far worse than expected," she said.

"In addition to the significant price hikes, capacity became the bigger issue. Many companies had no option but to self-insure some portion of their program," she added. "NMHC held national conference calls with our members and insurance experts to keep tabs on conditions and to pass along lessons learned from risk managers as they completed their renewals. It

See COALITION page 35

## UNDERWRITING PROFIT INCREASES

U.S. workers comp insurers—calendar year combined ratio vs. accident year



\*Preliminary  
Source: NCCI Holdings Inc.

## 'Excellent' comp results

Workers comp insurers post best year in decades

By ROBERTO CENICEROS

BOCA RATON, Fla.—U.S. workers compensation insurers posted "excellent" financial results for 2006, with all major measures improving significantly, according to an NCCI Holdings Inc. analysis released last week.

The insurers' 2006 calendar year combined ratio of 96.5% represents their best underwriting results in 30 years and a 6.5 percentage point improvement over 2005, according to the National Council on Compensation Insurance Inc.'s annual State of the Line report.

On an accident-year basis, the industry saw its fourth straight year of underwriting profits, with NCCI estimating insurers' combined ratio at about 87% for 2006.

Additionally, accident frequency continues to decline, the loss cost environment is generally stable, insurer reserves are the strongest in more than 20 years and the residual market continues to shrink.

Because of the positive results, "some parties" may feel it is time to address benefit levels, administrative rules and cost control measures, said the Boca Raton, Fla.-based organization that provides rating services for 30 states and compiles nationwide workers comp statistics.

In fact, NCCI so far this year has priced the potential impact of more than 150 bills and proposals introduced in several states vs. 130 for all of 2006.

While NCCI's short-term view of the workers comp line is optimistic, its long-term view is cautionary.

Medical costs continue to increase at or near double-digit rates, the Terrorism Risk Insurance Extension Act expires at the end of this year and it remains to be seen whether a permanent solution will emerge, while investment gains are down dramatically compared to the large returns of the late 1990s.

The record low interest rates of recent years, along with a need for the industry to strengthen its reserve position means the excellent underwriting results of 2006 are a necessity, NCCI Chief Actuary Dennis Mealy said in a statement.

The results are skewed by the experience of California, where reforms have substantially reduced costs and pricing, the NCCI noted. Excluding California, results would have raised the nationwide calendar year combined ratio about 10 percentage points to more than 105%.

The accident year combined ratio would have increased from 87% to 95% if California results were excluded.

## NCOIL raps NAIC on closed meetings

NAIC says it's exempt from open-meeting laws; more debate expected

By MEG FLETCHER

TROY, N.Y.—Leaders of the National Conference of Insurance Legislators have criticized the National Assn. of Insurance Commissioners for failing to maintain a rigorous approach to adopting accreditation standards and for failing to abide by states' "open meetings" laws.

In addition, 13 representatives of various consumer groups—all but one of whom belong to the NAIC's consumer liaison committee—echoed NCOIL's recommendation for more open meetings late last week. "Too often, committees or working groups operate in executive session without reasonable justification or necessity," they said in a May 10 letter to NAIC members.

NAIC leaders have rejected NCOIL's claims, setting the stage for a public airing of those issues during the NAIC's June 1-4 meeting in San Francisco and NCOIL's July 19-22 meeting in Seattle.

In the most recent exchange,

NCOIL President Alan Sanborn, a state senator from Michigan, in a statement expressed concerns over what he describes as "an unraveling" of the NAIC's approval process for additions to its accreditation program.



Closed-door NAIC meetings have led to 'an unraveling' of its accreditation program change process.

State Sen. Alan Sanborn, NCOIL

The NAIC's accreditation program sets minimum financial regulation standards for state insurance departments, and in many cases, a state's legislature must adopt the standards for that state to become accredited. All U.S. insurance

departments, except New York, are accredited.

Among the specific concerns of Sen. Sanborn, R-Macomb County, are NAIC procedures that he said reduce the amount of time state legislatures have to consider proposed changes to accreditation standards, according to his March 8 letter to Rhode Island Superintendent Joseph Torti, chair of the NAIC's Financial Regulation Standards and Accreditation Committee. In addition, the NAIC has weakened original language regarding the need to estimate

the cost for compliance, Mr. Sanborn wrote.

NCOIL's concerns are with the NAIC's process for revising accreditation standards, said Susan F.

See NCOIL page 35

## 'Women to Watch' nominations open

List will focus on leaders in insurance, risk and benefits

Business Insurance will publish a special report on "Women to Watch" in the July 30 magazine and online, and invites readers to

nominate outstanding women in insurance, risk management and employee benefits worldwide.

As part of the report, BI will profile current women executives who are doing outstanding work in insurance, reinsurance, risk management, employee benefits and related fields, such as law and consulting.

## WOMEN TO WATCH

Last October, BI produced a similar special issue recognizing 80 women in senior leadership positions. This year's report will focus on other women who have taken on executive roles or are poised to do so in the next year.

Business Insurance editors will review nominees and select the

list of "Women to Watch."

Among the criteria for inclusion are: recent professional achievements, influence on the marketplace and contributions to the advancement of women in business.

To nominate outstanding women, please visit [www.BusinessInsurance.com/Women-to-Watch](http://www.BusinessInsurance.com/Women-to-Watch) and fill out a brief nomination form.

The deadline for completing the form is Monday, June 4.

# Business Insurance OPINIONS

## Regulator-legislator tiff will benefit no one

IT'S GENERALLY NOT GOOD for insurance regulators and legislators to be at odds.

Under the state-based system of insurance regulation in the United States, insurance commissioners propose laws and state lawmakers, if they concur, enact them. Two associations representing these groups—the National Assn. of Insurance Commissioners and the National Conference of Insurance Legislators—are having a tiff over the NAIC's use of closed-door executive sessions during its quarterly meetings.

In a volley of recent correspondence, as we report on page 4, NCOIL Vp and state Rep. Brian Kennedy, R.I., charged that some of the regulators' closed meetings are unwarranted and violate state laws that require open meetings.

NAIC President Walter Bell, commissioner of the Alabama Department of Insurance, wrote back that the NAIC is a private, non-profit organization that is not subject to open-meeting laws and "as an organization, the NAIC does not have any regulatory authority."

NCOIL was not alone in finding those assertions troubling. Last week, a group representing 13 consumer organizations wrote to Mr. Bell, urging the NAIC to cease holding inappropriate closed-door meetings.

The NAIC may well be within its rights on policymaking when it comes to public accountability, but we think it is ironic that regulators who insist on transparency from the industry they regulate then do not uphold that standard for themselves. Moreover, if the NAIC has no regulatory authority, why meet, much less hold closed-door meetings.

On a practical level, saying in effect, "We're a private club and can do as we please," sends a bad message not only to voters—who elect 12 of the nation's commissioners—but also to the state legislators on whom regulators rely to implement model laws and standards.

And a closed-door policy does more than send a bad message. It also cuts off regulators from the views and insights of outside parties, meaning that regulators may lack the information they will need to develop new rules.

Insurance industry companies and customers will gain nothing from the NAIC and NCOIL's standoff. We urge both groups to discuss their differences and resolve them, for the benefit of the constituencies they both serve.

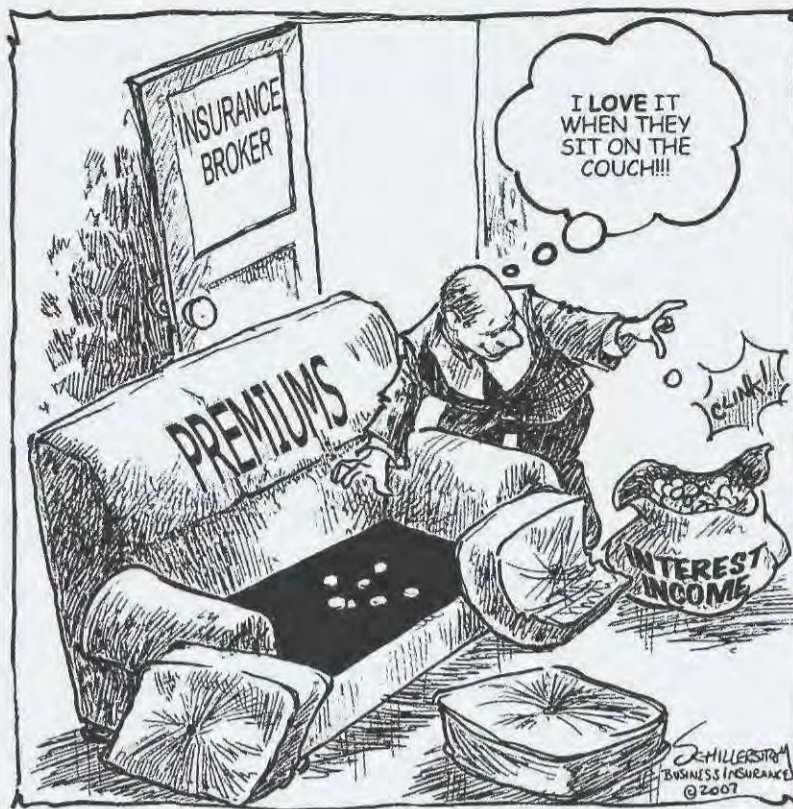
*A closed-door policy does more than send a bad message.*

## Policyholders to be heard on Capitol Hill

AS CONGRESS prepares to debate how to increase the availability of property insurance in catastrophe-prone areas and to make the coverage more affordable, one key voice hasn't received much of a hearing. That's the voice of commercial policyholders, whose concerns don't receive the same attention as those of homeowners and state officials.

Fortunately, that state of affairs may change soon. That's because a new group, the Natural Catastrophe Policyholders Coalition, has formed to give commercial policyholders a way to get their concerns heard on Capitol Hill. As we report on page 4, the NCPC wants to play much the same role in the area of natural catastrophe insurance as the Coalition to Insure Against Terrorism has played in promoting the federal terrorism insurance backstop. That's a worthy model to emulate, as the CIAT has proved to be a key player in the halls of Congress.

If lawmakers are to arrive at sound public policy decisions regarding catastrophe property insurance, they've got to take the interests of business as well as homeowners into account. We have no reason to doubt that the NCPC will provide that much-needed voice on Capitol Hill in the future.



## Letters

### Industry's conflicts unchanged in 40 years

TO THE EDITOR: Reading the May 7 *Business Insurance* editorial, plus reports from the recent New Orleans RIMS conference, I can only conclude that the three monkeys display an egregious form of obdurate obstinacy. For more than 40 years, insurance sellers, intermediaries and buyers have remained in self-denial about the inefficiencies and gross conflicts of interest they have allowed to continue. Every year, they insist on seeing, hearing and speaking "no evil."

First, your editorial challenges "risk managers" to "speak up to be heard." Is it possible this group is congenitally incapable of speaking up?

Second, a few outspoken souls during RIMS raised the issue of broker compensation, only to hear platitudes about "disclosure" and "transparency." No one suggested that all commissions are blatant conflicts of interest. Shouldn't a broker receive all its income from the client?

Third, I can't believe I'm still hearing about brokers generating investment income on premiums held before remitting them. Where is the buyers' backbone? Simply make out the premium checks to the insurers,

not the intermediaries.

I'm frustrated, because many of us have criticized this conflict-ridden and inefficient system for more than 40 years. In a 1971 speech to the San Francisco RIMS Chapter, I suggested 10 steps to change the system. Here are four relating to the discussions in New Orleans:

- Substitute fees for commissions.
- Insist on direct meetings with underwriters.
- Pay insurance companies directly.
- Eliminate contingency commissions.

Thirty-six years after these words were written, the system remains locked in inefficiency and conflict of interest.

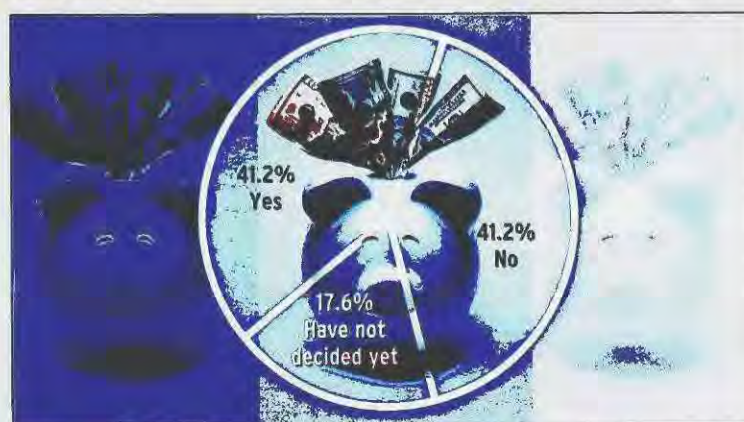
**Felix Kloman**  
Lyme, Conn.

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*Business Insurance* welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Please send your letters to: Letters to the Editor, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; fax: 312-280-3174; e-mail: [rcoccia@businessinsurance.com](mailto:rcoccia@businessinsurance.com)

## Online Poll at [www.businessinsurance.com](http://www.businessinsurance.com)

Does your organization intend to offer a Roth 401(k) plan next year?



**NEXT WEEK'S POLL:** How likely is Congress to help increase the availability of property catastrophe capacity?

BI Online Poll tool sponsored by Wausau Insurance Cos.

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## Supplemental pay debate heats up

*Some risk managers  
advocate avoiding  
commission business*

By DAVE LENCKUS

As brokers sort out their economic and ethical stances on supplemental commissions, risk management reaction to the new form of broker compensation ranges from unqualified acceptance to outright rejection.

One risk manager goes as far as to call for a new intermediary business model (see story, page 18).

But risk managers agree that they

want brokers to fully disclose all sources of compensation they accept.

"Brokers owe it to us," said D. Terry Fleming, director of the division of risk management for Montgomery County, Md., in Rockville. Mr. Fleming also is a Risk & Insurance Management Society Inc. board member and the president of the Potomac RIMS chapter.

The debate over supplemental commissions heated up early this year as insurers and brokers began to look at ways to replace contingent commissions. The largest brokers either have been forced to abandon or voluntarily stopped accepting that insurer-paid compensation following state investi-

gations of broker compensation practices. Losing those commissions has dried up more than \$1 billion of combined annual revenue for the world's four largest brokers.

Insurers pay intermediaries supplemental and contingent commissions based on the volume or profitability of that business.

But supplemental commissions are based on a broker's performance the previous year, so brokers—if they choose—can identify for clients the commissions paid by any single insurer.

Contingent commissions, which

See **BROKERS** page 18

## Katrina settlements mostly problem free

*Policyholder, insurer disagree on whether civil disorder a separate event*

By ROBERTO CENICEROS

**NEW ORLEANS**—Whether the fires, vandalism and looting that accompanied Hurricane Katrina amounted to a second event, separate from the wind damage, remains unsettled between at least one large commercial policyholder and its insurer.

But several risk managers attending the Risk & Insurance Management Society Inc.'s annual conference in New Orleans said that commercial property insurers have settled many 2005 hurricane-related claims with

minimal resistance, although the risk managers have heard of other accounts that have had to litigate for coverage.

Hiring the right adjusters and forensic accountants and properly managing insurance recovery efforts have helped avoid problems, risk managers added.

Mervyns L.L.C. stores in the New Orleans area were mostly successful in obtaining settlements for property and business interruption claims, said Gregory Valentine, director of risk management for the Hayward, Calif.-based retailer.

But one area of contention remains, Mr. Valentine said. Underwriters argue that factors including looting and fires that contributed to Mervyns' business interruption losses were separate events from Hurricane Katrina.

Mr. Valentine disagrees.

"As you walk around the New Orleans area and as you understand the area, (it is apparent that) all the events are linked, because without the hurricane, you don't have the lack of civil authority, you don't have the

See **KATRINA** page 16

# SPOTLIGHT

More than 9,000  
attended RIMS

**NEW ORLEANS**—The Risk & Insurance Management Society Inc. estimates that final attendance figures, which will be reported in a few weeks, will exceed 9,000 for the RIMS 2007 Conference & Exhibition in New Orleans.

RIMS 2006 in Honolulu had a lower-than-usual attendance, as 6,493 were at the conference in Hawaii.

In 2002, the last time RIMS visited New Orleans, the annual conference attracted 10,966 attendees.

# Insurers improve timeliness and quality of policy issuance

*More focus needed on specialty, excess coverage areas*

By RUPAL PAREKH

**NEW ORLEANS**—Major brokers and insurers are making positive strides when it comes to issuing policies that are both timely and accurate, risk managers report.

Even so, risk managers say areas such as specialty and excess coverage need greater improvement and the industrywide goal of issuing an accurate policy within 30 days of

binding has yet to be met. Risk managers, however, acknowledge that they must take more responsibility for the problem (see story, page 14).

Certain events—none more publicized than the controversy over slow policy issuance in the coverage fight between the World Trade Center leaseholder and its insurers—have called attention to thorny issues that can arise when a buyer lacks prompt documentation of coverage terms.

"It's frustrating just because you don't have everything in hand," said a Florida-based risk manager

who attended last month's Risk & Insurance Management Society Inc.'s conference in New Orleans and did not want to be named.

These days, the risk manager said, it takes two to four months from the time coverage is bound to the date the policy is in hand. "It seems like some of the specialty coverages come later" than other types of coverage. "I don't think the holdup is with the broker," it's the insurer, the risk manager said.

"There is a difference in the length of time it takes to bind and get policies back for specialty lines" said Rebecca L. Adair, risk manager

for Iowa State University in Ames, Iowa, who did not attend RIMS. "Some of that is that there are just fewer companies writing more technical risks," said Ms. Adair, who said her policies are generally in hand 30 to 45 days following binding.

Another area that generally takes longer than the rest is coverage in excess layers, risk managers noted.

"I would say that our lag time for underlying liability policies is about 60 days after renewal but these policies have been worked over to the point that getting the new policy within 30 days is not critical," said another risk manager at RIMS

who did not wish to be named.

"Excess liability policies are slower—90 days or even more. I would like to review them much sooner than I get them. Bermuda is slow in getting to us an endorsement which simply renews the policy for one more year," the risk manager said.

In a RIMS survey last year, the vast majority of risk managers reported wait times of 90 to 120 days for policies, and only 5% reported having policies in hand within 30 days of binding (*BI*, June 5, 2006).

"There was more frustration probably a number of years ago," said Ms. Adair. "By and large it's gotten better...from our experience we are seeing things done in a pretty timely manner."

**'I definitely believe the industry has improved both accuracy and timeliness of policy issuance.'**

Karl Zimmel, Alberto-Culver Co.

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"I definitely believe the industry has improved both accuracy and timeliness of policy issuance," said Karl Zimmel, director of risk management at Alberto-Culver Co., in an e-mail. "Five years ago it was not unusual to receive policies three to six months after renewal, particularly after various corrections," said Mr. Zimmel, who also attended the RIMS conference. "Last year I received most of my primary policies within 30 days of renewal and excess policies within 60 days of renewal."

"When it comes to property policies, FM Global is the fastest on the planet; we get them within a week or two," said one risk manager at the RIMS gathering who did not wish to be identified. American International Group Inc. "has actually improved on what used to take months."

Mr. Zimmel said he is a client of ACE Ltd. "I can confirm it improved last year and I know this year ACE is in position to hit the ultimate timing objectives, if brokers and insureds do their part."

Amid generally soft market conditions, insurers are aware that service is something that can set them apart in the eyes of clients, risk managers say.

"The market is soft in most places...and they've got to step up to the plate with quality service," said Iowa State's Ms. Adair. "With being held accountable for some other issues recently, there is a level of conscientiousness now that all insurance companies are striving to do better."

Brokerages also appear to have an intensified quality focus.

Last year, Aon Corp. delved into the issue of contract certainty. "Before we looked to our insurance

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## Contracts: Efforts target policy timeliness and accuracy

CONTINUED FROM PAGE 12

companies to do a better job—which is definitely a part of the equation—we wanted to see what our impact was on the issue as well,” said Warren Mula, executive vp and managing principal at Aon in New York. “We recognized that we were most certainly part of the problem...there was not the sense of urgency that we wanted to see on behalf of the organization on receiving the policies, checking them and getting them into clients hands.”

“The amount of time it was taking us prior to that was somewhere north of 100 days,” Mr. Mula said.

But with Aon’s internal efforts, policies are being turned around much faster, often within 30 days, he said. “It is much, much better, but absolutely not where we need to be as far as a consistent standard.”

“The timeliness of policy receipt and the accuracy of those policies has increased substantially in 2006 and 2007 in the London markets” said Tom Coughlin, chief executive officer of Willis Risk Solutions in New York. In contrast, the U.S. market has “pockets of improvements where we see some very good servicing. However, we have not seen (broad) movement on this front because there has been no external

authority imposing what the standard needs to be.”

Mr. Coughlin, who also attended the RIMS conference, said Willis has created a quality index that compiles statistics for clients, including measures of timely policy issuance.

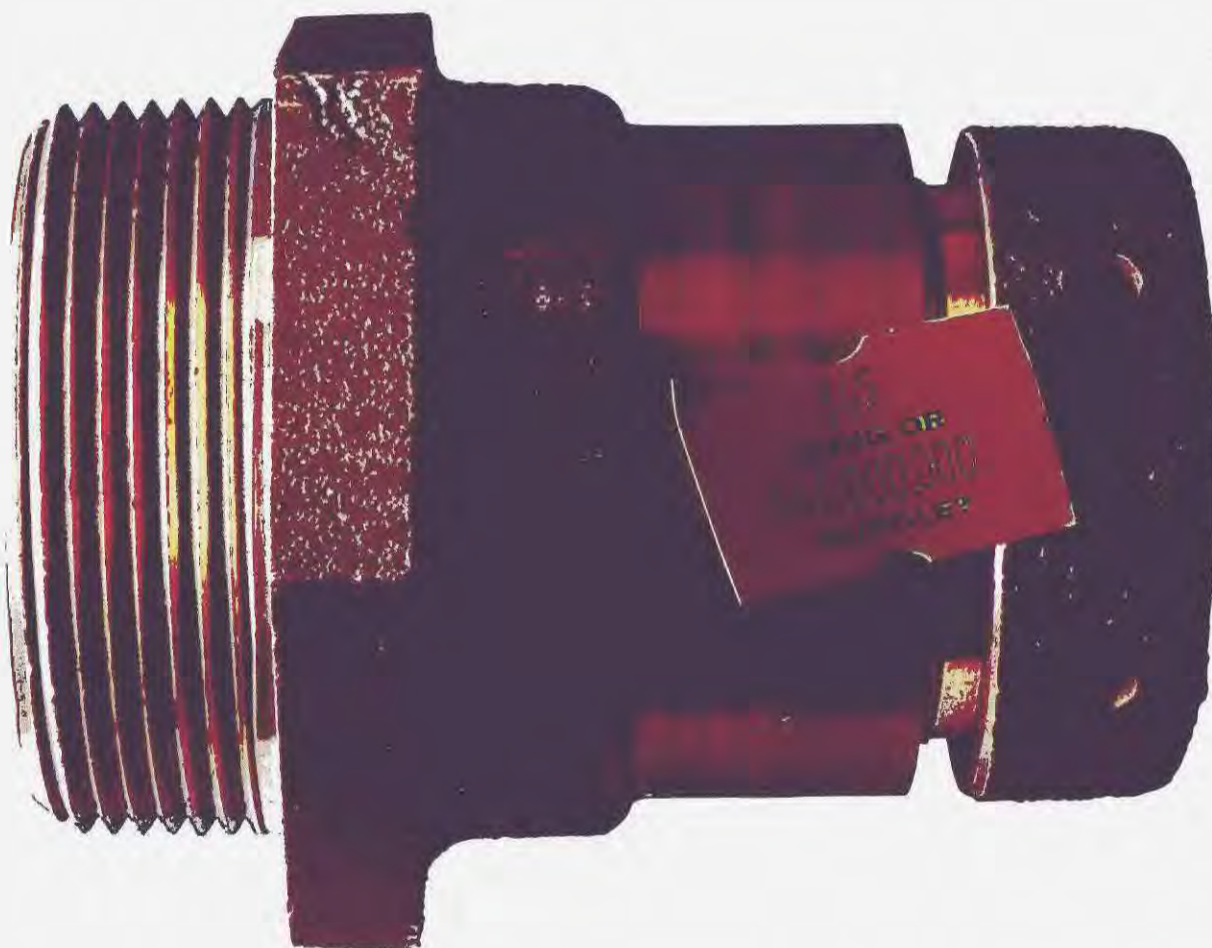
Joseph Varnas, chief operating officer of New York-based Marsh Inc., said in an e-mail that the broker is working “to drive operational efficiency and service upgrades across the insurance value chain. As a step in that direction, we’ve begun to create a single global operating platform internally. As we make progress, we’re working to automate as many of the touch points with the market

as possible. Once complete—and with the help of our market relationships—our clients will enjoy a much higher service level around policy turnaround.”

Most agree technology is key to consistent, high-quality service.

“The more we can rely on technology to transmit routine underwriting data, the cleaner that data is going to be,” said Michael Liebowitz, RIMS president and risk manager for New York University.

“If we get to the point where the time in which policies are issued to the clients is in a matter of days, it’s going to be because of technology,” said Aon’s Mr. Mula.



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## Who is responsible?

**NEW ORLEANS**—While insurers and brokers are making improvements in contract certainty, risk managers acknowledge that a large part of the responsibility for timely issuance and accurate policies rests squarely on their shoulders.

Getting information to underwriters early, and thoroughly checking policies immediately upon arrival, is crucial, risk managers say.

“The carriers and the brokers are not infallible,” but “risk managers bear a lot of responsibility” for contract certainty, said Michael Liebowitz, president of the Risk & Insurance Management Society Inc. and also risk manager for New York University.

“The risk manager can make it go that much quicker by getting timely accurate information to underwriters, so the quote can be given in 60 days prior to expiration (of the previous policy) as opposed to six minutes,” Mr. Liebowitz said.

Risk managers often tend “to get focused on small details.” By not looking at the policy’s overall picture, “sometimes we derail the process,” said Geoff C. Taylor, director of risk management for Nike Inc.

Mr. Taylor made his comments during a RIMS conference session titled “Contract Certainty—An Imperative or an Impossible Dream?”

“In order to get to the ultimate objective of receiving policies by the renewal date, we as an industry need to obtain quotes earlier,” said Karl Zimmer, risk manager for Alberto-Culver Co., who attended RIMS’ conference.

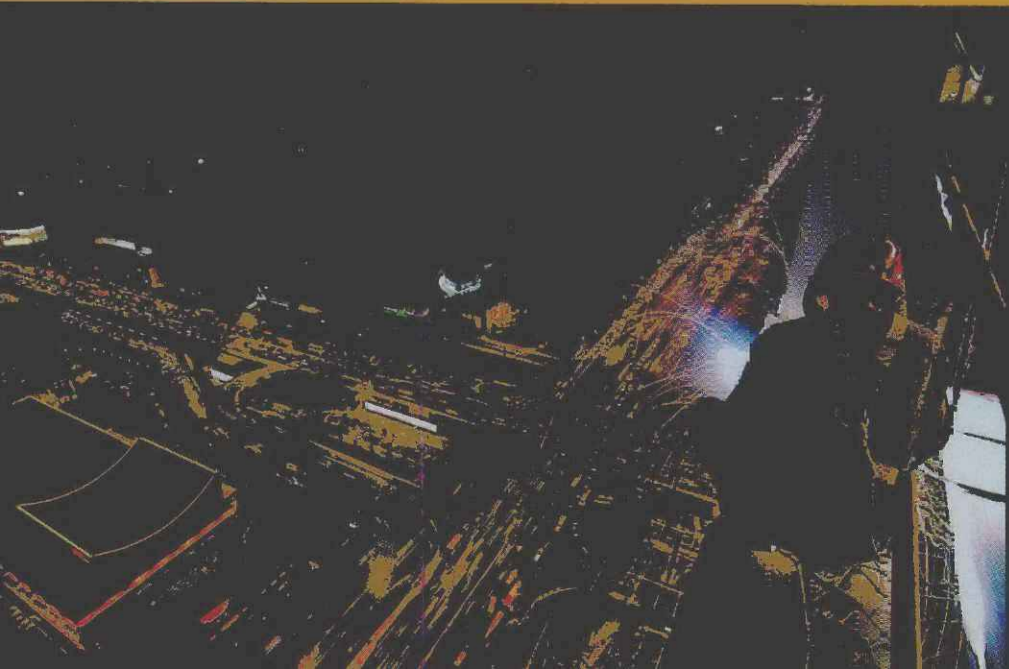
“As a risk manager, I understand I have responsibilities to (receive) timely policy issuance including: earlier submission of high-quality underwriting submissions, prompt responses to underwriters’ questions and timely binding of coverage,” Mr. Zimmer said. “It is not feasible to receive a policy by the renewal date if the renewal order is not given well in advance of renewal.”

And, “if there is something in there that doesn’t come back right, it doesn’t mean you can’t change it,” said Rebecca L. Adair, risk manager for Iowa State University in Ames, Iowa.

“We do have to take some responsibility and step up,” said Nike’s Mr. Taylor. “We’re the clients, we’re paying the money, and we can ask for changes if we want them.”

—By Rupal Parekh

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An insurance adjuster documents damage to a home from the impact of Hurricane Katrina in New Orleans. AP PHOTOS

# Katrina: Hiring the right claims adjuster

CONTINUED FROM PAGE 11

power outage, you don't have the vandalism, you don't have the fires," Mr. Valentine said. "All those events are linked."

Mr. Valentine did not name his insurers, but did say because he views them as long-term partners and worked amicably with them to settle most of his Katrina claim, he remains hopeful they will resolve their one remaining difference.

"We should negotiate a settlement because we are in this with our partners for the long haul," Mr. Valentine said.

Lessons learned from Hurricane Charley in 2004 shaped his approach to recovery efforts following Hurricane Katrina, added Andre H. Bate, vp and counsel for Naples, Fla.-based Health Management Associates Inc.

After Charley hit Florida, forensics experts were unable to answer his insurer's questions adequately, said Mr. Bate, who spoke to *Business Insurance* by telephone. The lack of information caused the insurer to slow its settlement of the claim.

So after Hurricane Katrina severely damaged an HMA hospital in Biloxi, Miss., the company first worked out an agreement with its

underwriter and adjusters on how insurance recovery efforts would be managed.

Each party appointed a representative to attend weekly meetings that continued throughout construction, Mr. Bate said. As agreed, all of the meetings were videotaped and transcribed by a court reporter.

When disagreements arose, the parties called in independent third-party experts to help decide the matter.

As a result, HMA settled its Hurricane Katrina claim six months ago and Mr. Bate is content with the process, although the business interruption portion was settled through negotiation at half the amount sought by the hospital operator, he said.

On a recent trip to London to discuss his property coverage renewal, underwriters told him that claims from several large accounts remain unresolved, Mr. Bate said.

That is the case for the risk manager for a retail company who

See **KATRINA** page 18



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# Brokers: Risk managers should be involved in insurer-selection process

CONTINUED FROM PAGE 18

requires brokers to present detailed coverage proposals from any insurer contacted about his placement, and brokers have to review all coverage proposals with him before placing his account.

Similarly, Ms. Guimaraes said if a broker is not coming back with quotes from or information on newly formed insurers, the risk manager has to question that.

Indeed, she said, the risk manager's responsibility at that point may be to "review the broker relationship."

If risk managers are not "engaged

in the process" by developing insurer relationships and reviewing all account marketing documents, "you leave yourself open to being managed rather than managing the process," Mr. East said.

That level of attention to the account is necessary because supplemental commissions are "still a risk," since they are designed to influence broker behavior, Mr. Hinton said.

"That's why risk managers also should pursue fee-based business" only, Mr. East said.

Daniel H. Kugler Jr., assistant treasurer, corporate risk management at Snap-on Inc. of Pleasant

Prairie, Wis., has had mostly fee-based-only arrangements with his

**'A broker can't have the same relationship with every insurer. That's impossible.'**

Laurence Glasser,  
Amerijet International Inc.

brokers over the past 10 years. The few programs on which brokers

receive a commission have been divulged to Snap-on, he said.

"I guess I always cringed at the idea of paying them a commission. It's not a good business model for me in developing a relationship with brokers," he said. "We're evolving to a point where I view the broking relationship as a partnership."

Mr. Kugler makes an exception when he has to use local brokers overseas and the commission they receive is immaterial. Allowing the commission is an "efficient" way to compensate those brokers, he said.

Mr. Fleming requires that his brokers refuse compensation from

insurers, and that has been stipulated "a number of years" in his broker agreements.

Still, Montgomery County was among organizations that received premium reimbursements from brokers as part of broker settlements with former New York Attorney General Eliot Spitzer.

Mr. Fleming said that one of his brokers placed coverage for one of his risks through a subsidiary that accepted contingent commissions, but the subsidiary's compensation arrangement was not disclosed.

Mr. Fleming eventually replaced his brokers, but he said he changed brokers for service-related reasons.

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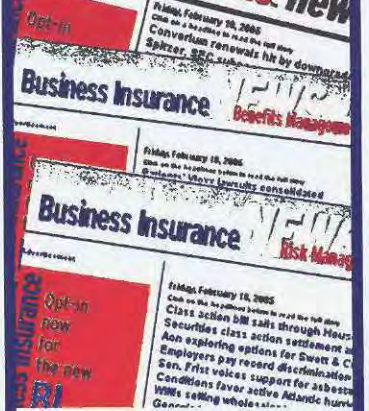
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# SARS outbreak prepares company for possible flu pandemic

*Emergency response plan formed after 2003 epidemic*

By **GLORIA GONZALEZ**

**NEW ORLEANS**—For Evergreen International Corp., the severe acute respiratory syndrome epidemic that hit in Taiwan in 2003 served as a dry run for a potential pandemic that could affect a substantial portion of the company's workforce and nearly all of its operations.

The SARS outbreak that developed rapidly in Taiwan—headquarters of the hotel, transportation and shipping company—led to the rapid formation and enactment of an emergency response plan that the company believes has prepared it for a major influenza outbreak that experts say is a certainty in the future, said Lin Fu-chiao, senior vp, risk control department for the Taoyuan, Taiwan-based company.

Risk management departments at companies that have not dealt with SARS often are not as prepared for a pandemic outbreak, with some suf-

fering from what observers refer to as "pandemic fatigue," or being tired of hearing about the possible pandemic and necessary readiness preparations.

Risk managers preparing for a pandemic say their plans are still evolving and there are key questions that have yet to be answered.

Still, there are several steps that can be taken to institute a pandemic response plan, experts say.

It's not a matter of if, but when a pandemic will occur, said Michael Osterholm, director of the University of Minnesota's Center for Infectious Disease Research and Policy.

"It's going to happen," Mr. Osterholm said during the opening address of the Risk & Insurance Management Society Inc.'s 2007 annual conference in New Orleans. "The only issue that we have to discuss is how do we alter what that unfolding risk will be like."

While risk managers generally are aware of pandemic risk, many are suffering from "pandemic fatigue," after the avian flu outbreak garnered so much publicity over the

past several years, said Farrah Ofner, risk manager for pharmaceutical maker and medical diagnostic provider F. Hoffmann-La Roche Ltd. in Basel, Switzerland (see story, page 22).

Risk managers often view pandemics as being similar to other major risks, such as fire or hurricanes, said John Russell, technical

director, consulting resource center, for Liberty Mutual Insurance Co. in Irving, Texas.

"Many companies have excellent crisis management, but they really should work on their pandemic flu planning," he said. "You can't plan for it in the same way you plan for other catastrophes."

Companies should focus on key

concerns when establishing a pandemic response plan, said Evergreen's Mr. Lin.

For example, a major concern for Evergreen during the SARS outbreak was that most SARS infections in Taiwan were imported from other countries. The U.S. Centers for Disease Control and Prevention said 78% of the Taiwan SARS infections

were imported.

Evergreen officials were concerned because many employees were expatriates, so the company instituted a policy that these employees had to undergo 10 days of observation before returning to the Taiwan office.

See **FLU** next page



MICHAEL MARCOTTE

Michael Osterholm told a session at the annual RIMS conference that it's not a matter of if, but when a pandemic will occur.



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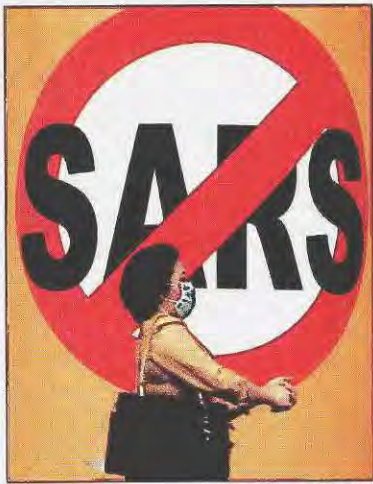
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The emergency response to the SARS outbreak in Taiwan in 2003 prepared Evergreen International for a possible pandemic.

## Flu: SARS outbreak prompted planning

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Given the rapid spread of the disease, the company instituted measures to minimize transmission among employees, Mr. Lin said. Evergreen educated employees on the symptoms of SARS and set up worksite medical booths to evaluate employees and their families. "That's very, very important," he said.

The company also developed software so employees could input body temperature data into the system; if body temperatures hit 37.5 degrees Celsius (99.5 Fahrenheit), the software triggered an emergen-

cy response, Mr. Lin said.

Companies must determine what the trigger will be for activating their pandemic response plans, with one possibility being the World Health Organization raising the alert level on a pandemic outbreak, said Mr. Russell of Liberty Mutual.

While companies are working with governmental agencies to develop pandemic response plans, risk managers say they should not rely on the government to take the lead in pandemic planning. "We have to form partnerships," said Mark Habersack, director of risk management for Boyd Gaming

Corp. in Las Vegas. "We can't depend on the government."

A key point in pandemic preparations is to choose a point person for the company's emergency response team. During the SARS outbreak, Mr. Lin was asked to take charge of the company's response, and he met immediately with every department head to help them identify and respond to all major risks.

"You need somebody to command everything," Mr. Lin said.

Pandemic planning should be viewed as an enterprise risk man-

See **FLU** next page

## Drugmaker ready for outbreak

Being the manufacturer of the No. 1 prescribed influenza medication has put pharmaceutical company F. Hoffmann-La Roche Ltd. at the forefront of preparations for a potentially deadly pandemic.

As part of its pandemic preparations, the Basel, Switzerland-based company has developed and tested a global manufacturing network that can produce in excess of 400 million doses of its influenza drug Tamiflu.

Roche has received and filled orders for Tamiflu from more than 80 countries, some of which are stockpiling or intend to stockpile enough of the drug to treat 20% to 40% of their population in the event of a pandemic.

A key question for corporations planning for a potential pandemic is whether they should stockpile the drug for their employees. The pharmaceutical company has sold Tamiflu supplies to about 250 companies, but interest in purchasing the medication has peaked, said Farrah Ofner, risk manager for the pharmaceutical company. "It's seen as an East Asia issue," she said.

The company said its manufacturing capacity is now significantly outstripping demand for the drug and it will tailor its production schedule to fit current demand.

Roche, though, said it has developed contingency plans that include maintaining a buffer stock at all times and keeping in close contact with manufacturing partners to rapidly respond to a surge in demand.

Gearing up Tamiflu production to full capacity will be triggered by Roche inventories of key ingredients of the drug falling below target levels or a declaration by the World Health Organization that a flu pandemic has evolved to phase 4, which involves human-to-human transmission of the disease.

While preparing its pandemic plans, the company faced an ethical dilemma related to whether it would stockpile Tamiflu for its own employees if other people were getting sick. Ultimately, the company decided to stockpile some supplies for its employees, Ms. Ofner said.

—By Gloria Gonzalez

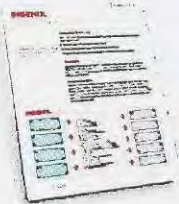


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# Flu: SARS outbreak plans useful in event of influenza pandemic

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agement function because it will involve every department and business unit, said Ms. Ofner of Hoffmann-La Roche.

The human resources department, for example, will play a critical role in making decisions and executing a company's pandemic plan, risk managers said. A key flu pandemic risk that differs from other potential catastrophes is that 30% to 40% of a company's workforce could be sickened and companies need to be able to respond to that possibility.

In addition, a sizable portion of the workforce, while not sick, may be forced to stay at home caring for sick relatives or children or may be unwilling to go to the office for fear of contracting the disease.

"You'll have employees that are scared," Ms. Ofner said. "You'll have employees that are sick."

If employees are encouraged or asked to come into the office, screening to look for signs of the disease will be critical, risk managers said.

If employees are encouraged to work from home, then the infor-

mation technology system needs to be prepared. In addition, security measures have to be in place to allow employees to work from home while protecting sensitive business data and customer information.

"It's an excellent idea, but you really have to prepare for it," Mr. Russell said.

Having a succession plan in place if senior executives or pandemic response coordinators fall ill is critical. "That should definitely be part of the vulnerability assessment," Mr. Russell said.

Communicating with employees may be difficult during a pandemic,

**'The only issue that we have to discuss is how do we alter what that unfolding risk will be like.'**

Michael Osterholm,  
University of Minnesota

and risk managers should plan in advance how they can best disseminate information. Evergreen created

a Web page for employees to get the latest news on the SARS outbreak and the company's response, Mr. Lin said.

Encouraging employees to engage in good personal hygiene habits, such as washing their hands frequently with antibacterial soaps, should be part of any pandemic response plan even if it will not be enough to halt transmission of the disease. "That's great to do anyway, but it's not going to protect your organization," Ms. Ofner said.

With the possibility of a substantial portion of a company's employees becoming ill, a thorough review

of workers compensation policy is critical to determine whether the coverage will even respond to a pandemic outbreak, risk managers said. Other insurance policies also need to be reviewed, including property and business interruption coverage.

Since there are numerous issues to consider, the most important step for risk managers is to identify key risks and develop a plan that addresses them to the best of risk managers' abilities.

"This is not going to be a fool-proof plan," Ms. Ofner said. "It's really trying to be as prepared as you can be."

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# Risks faced by mobile employees require 'systems approach'

## Specific objectives, tracking results back successful programs

By ROBERTO CENICEROS

**NEW ORLEANS**—Gaps often exist between job safety measures commonly implemented for employees in traditional workplace settings, such as corporate office buildings, and mobile employees who are more likely to get overlooked.

But a "systems approach" can help employers track and manage

job safety and health risks faced by workers who travel to conduct business or work from home and other remote sites, speakers told members of the Risk & Insurance Management Society Inc. at its recent conference.

Last year, 28.7 million U.S. employees worked remotely at least one day per month, said Wayne S. Maynard, director of ergonomics and tribology in Hopkinton, Mass., for Liberty Mutual Group's Research Institute for Safety. Separately, nearly 15 million employees worked remotely almost every day during 2006, he said.

Advances in personal communications technology allow "road warriors," such as salespeople and others, to work from airports, hotel rooms and their cars.

The technology encourages them to work longer hours under more stressful conditions. They are doing so with poorly designed electronic devices, or at facilities that lack appropriate ergonomic equipment, the speakers said.

Other mobile employees include those who might work at a client's office rather than their employer's facilities, package delivery drivers, and repair service workers with

computers mounted in their vehicles to stay in touch with dispatchers and receive orders.

Despite the growth of mobile workers, employers often overlook their special circumstances or "cut corners" when implementing job safety and health improvement measures such as ergonomic workstation assessments, injury prevention training and return-to-work programs, said Connie Guy, former risk manager for Graphic Packaging International in Atlanta.

For example, employers may set up security systems for their corporate offices, but forget about securi-

ty concerns faced by their mobile workers, Ms. Guy said.

Many employers do not even analyze their injury claims data to determine whether their mobile workers account for specific trends.

Insurers have been slow to help track such data, the speakers said. But employers should demand that their insurers help them identify and track claims filed by their mobile employee population, Ms. Guy said.

Rather than a piecemeal approach to improving mobile employee health and safety, a sys-



Delivery personnel are among those often overlooked by employers' safety and security programs.

tems approach offers employers a means to consistently address those risks faced by mobile employees, the speakers said.

Such an approach calls for pulling in expertise and resources from several departments within a corporation rather than relying on a single person to address mobile employee needs, Mr. Maynard said.

The purchasing department, for example, can help buy office furniture that is ergonomically appropriate for workers at home. The information technology department can help provide software programs and electronic devices that minimize stress on mobile employees. And line managers should be trained to recognize health and safety problems and offer solutions, speakers said.

A systems approach also calls for developing specific objectives, such as identifying and addressing the highest risk jobs, Mr. Maynard said. A schedule should be implemented to eliminate those risks and those responsible for doing so should be held accountable.

It is better to identify and address a few key objectives than identify many objectives but fail to address them properly, Mr. Maynard said.

Tracking results and continuous feedback also are necessary parts of a systems approach. Employees should be included in the process through job analysis, safety and health training if necessary.

"You have to inform the employees. You give them the tools. You don't set a standard and then say, 'Well, they didn't do it,'" Ms. Guy said. "Follow up with documentation, leave an audit trail, but check back (with employees) if you are serious about it. Otherwise you are just making noise."

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# Broker pay, policy delivery dominate industry issues

*Issuing accurate and timely policies is ongoing challenge*

By **DAVE LENCKUS**

**NEW ORLEANS**—Risk managers, brokers and insurers face a rapidly evolving business environment that presents numerous challenges, most notably appropriate broker compensation arrangements and timely insurance policy issuance, according to a panel of industry executives.

Other issues also are forcing buyers, brokers and insurers to re-examine their business models, the executives said during a session at the recent Risk & Insurance Management Society Inc. conference in New Orleans.

Broker executive Don Bailey compared the state of the insurance industry to the premise of "Waterworld," a movie about how life would change if the polar ice caps melted and water covered most of the Earth's land mass.

Similarly, buyers, brokers and insurers have to learn to operate in a different regulatory and business environment, said Mr. Bailey, chief executive officer of Willis North America Inc., the New York-based unit of Willis Group Ltd.

One of the most significant issues is broker compensation—particularly whether brokers should receive supplemental commissions for the volume or profitability of business they placed with insurers in the preceding year.

The world's two largest brokers are examining whether to accept these commissions to replace contingent commissions, which insurers had paid brokers based on their volume or profitability of business. The world's four largest brokers have promised state attorneys general they no longer will accept contingent commissions because of conflict-of-interest problems that form of compensation created between brokers and buyers.

But Willis, the world's third-largest broker, has announced that it will not accept supplemental commissions. Top Willis management has concluded that form of payment presents the same problems as contingent commissions.

Other brokers, many risk managers and state attorneys general have said brokers should be able to accept supplemental commissions as long as they are fully disclosed. Their rationale is that those commissions are not based on an intermediary's future actions and risk managers can see the amount of the compensation before binding coverage.

"Everyone has rationalized transparency, saying, 'As long as it's transparent, it's OK.'" Mr. Bailey said. "We have complicated something that should be simple."

First, risk managers must establish whether they want to work with an agent or a broker, he said. Then they "can talk about compensation."

If the risk manager wants a broker to manage the account and not be

an agent of the insurer, then "the broker should be paid only by the buyer—that's it," Mr. Bailey said. When an insurer's incentive is driving a broker's profit and growth, "that's unacceptable, and the broker should not be in that game."

Risk manager James K. Beckmann Jr. applauded Willis for its "line in the sand on this."

Mr. Beckmann, a senior vp and the chief risk officer at St. Louis-based Ascension Health, a Catholic nonprofit health system, said that much of the debate stems from intermediaries not clearly defining their business models as either a

brokerage or an agency.

It should be one or the other. If an intermediary wants both, it should move each business into a separate unit, he said.

Resolving the issue is difficult, said session moderator John Lupica, president and chief executive officer of ACE USA, a subsidiary of Bermuda-based ACE Ltd.

Many insurers, including ACE, depend on a distribution system that consists of both brokers and agents. Therefore, "I do believe the answer is transparency," Mr. Lupica said.

The panelists agreed that the

industry needs to do a better job of issuing timely and accurate insurance policies, though Messrs. Lupica and Bailey said their organizations have made significant improvements.

"The World Trade Center situation taught us a lot about this and having terms that are clear at the time of inception" of a policy, Mr. Bailey said.

He dismissed many of the reasons insurers have used to explain the difficulty of issuing accurate policies in a timely manner, suggesting that the problem would be solved if insurers "cared" to solve it.

Mr. Lupica agreed that the problem is "a focus issue."

"The last thing we want to do is go into a claim situation without a policy," he said.

On a policy-count basis, ACE issues more than 50% at the time of policy inception, he said. On a premium basis, about 30% are issued at policy inception, he said.

Even so, there are some genuine challenges—at least one of which is created by buyers—to issuing all policies in a timely fashion, he said.

The main one is that 40% of

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## Issues: Timeliness a two-way street

CONTINUED FROM PREVIOUS PAGE

renewals occur on Jan. 1. That load strains the resources of insurers, which cannot staff up to meet that peak demand and then reduce staff to handle renewals the rest of the year, Mr. Lupica said.

Mr. Beckmann, opining that a serious discussion of timely policy issuance is "long overdue for our business," questioned whether the problem is "as high a priority for buyers as it should be."

But, he said, the issue has been "moving further along in the last few years than it had in the last 10 to 15 years."

Besides insurers' efforts to speed up policy issuance, risk managers can help themselves, Mr. Beckmann said.

He suggested that the "first way" risk managers can speed up the policy process is to "think of their relationship with insurers as long-term commitments. If you bid out your account every year, you won't see your policies before your renewal date."

Risk managers also have to provide timely and "absolutely accurate" information to underwriters, he said.

In other areas, brokers should focus on regulatory changes, differ-

entiating themselves from competitors and investing in training, Mr. Bailey said.

Issues for insurers, beyond an evolving delivery system and regulatory environment, include rating agency reviews, staff retentions, evolving risks and pricing risks in a softening market, Mr. Lupica said.

Mr. Beckmann agreed that much greater "people investment" as well as differentiation through innovation is necessary in the insurance industry—even if that reins in profitability.

"It's not all about making money; it's also about making a difference," Mr. Beckmann said.

## Reputations on the line

*Risk managers advised to take leadership role*

By RUPAL PAREKH

**NEW ORLEANS**—Risk managers should take a proactive stance in managing risk to their company's reputation instead of waiting to react following a potentially damaging event, panelists said at the recent Risk & Insurance Management Society Inc. conference.

It takes years to build a first-class corporate reputation and image in the marketplace, speakers said during the session "Appearance Matters: Managing Reputational Risk."

However, "a single incident can cause immediate, irreparable harm," said Robert Peterson, national client development director for Memphis, Tenn.-based Sedgwick Claims Management Services Inc.

Threats to a company's reputation include product recalls, privacy breaches and executive misconduct.

Managing reputational risks is the responsibility not only of the chief executive officer but everyone at the company, the speakers said.

Risk managers can take a leadership role in protecting a business' reputation, said Reed Rainey, director of risk management for Minneapolis-based retailer Target Corp.

Risk managers should engage staff from other departments to join the reputational risk management effort—particularly the legal, media relations and human resources departments. Next, risk managers should lead senior managers and board members in preparing crisis management and business continuity plans to quickly recover should an incident arise, he said.

It is unclear whether product recalls, privacy breaches and executive misconduct allegations are increasing in frequency, but media coverage has skyrocketed—and negatively impacted companies' reputations, Mr. Peterson said.

### *Blog dangers*

In this day and age, blogging is a particular concern, as disparaging remarks can be made in a multitude of forums with complete anonymity, Target's Mr. Rainey said. "Blogs are a fascinating and difficult phenomenon to manage," he said. Even so, it is wise to closely monitor them, because a blog headline has the potential to later turn into a national headline in mainstream media.

Being forthcoming with the media is also paramount. Having no response can harm a reputation, and it is better to take the opportunity when given to defend any inaccurate information, Mr. Rainey said.

The focus of a reputational risk management strategy likely will vary depending on the industry, said Dave Arick, assistant treasurer—global risk management for International Paper Co. in Memphis, Tenn.

For example, issues such as "environmental stewardship" or sustainability of the forests in which the company operates top the list of possible threats to reputation at International Paper.

Risk managers should be mindful that problems at their company could also damage the reputation of a partner company, said Mr. Arick. Additionally, it is imperative to communicate to all employees that their actions can impact the company's reputation, he said.

To assist in the process, companies should consider appointing a board committee dedicated to management of the organization's reputation, recommended Mr. Arick.

And a business may want to hire an independent firm to help gauge corporate reputation by conducting surveys and monitoring what is being said about the company.



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# NASCAR confronts risks head-on

*Death of racing legend Dale Earnhardt sparks safety system overhaul*

By GLORIA GONZALEZ

**NEW ORLEANS**—Thrilling car chases at blazing speeds have made stock car racing one of the world's most popular but potentially deadly sports.

The risk management department of racing's governing body, though, has taken steps to prevent or curtail the threat and impact of car wrecks that have taken the lives of drivers and injured dozens of racing fans.

The National Assn. for Stock Car Auto Racing Inc., the sanctioning body that develops and enforces the rules for racing events, has identified two key risks: the threat of injuries or death to drivers and their competitors and the possibility of debris from a car crash flying into the stands, said David Holcombe, director of risk management for NASCAR and its publicly traded affiliate, International Speedway Corp.



REUTERS

Helmet systems made by HANS Performance Products of Atlanta are credited with greatly reducing injuries on the NASCAR circuit.

In the early days, there were few procedures or equipment to safeguard the lives of drivers or the audience, but safety equipment has evolved tremendously since NASCAR began making the rules in 1948. For example, cars now have equipment to keep the driver's head and arms in the car during a race to minimize potential injuries, he said.

The number of safety improvements made from NASCAR's early days through the late 1990s helped the sport experience no major crashes involving racecar drivers for several years before four drivers died within about a year, including the 2001 crash that killed racing legend Dale Earnhardt on the final lap of the Daytona 500.

"We were lulled into a false sense of security," Mr. Holcombe said during the keynote address at the 2007 Risk & Insurance Management Society Inc.'s annual conference in New Orleans.

NASCAR, which spent \$5 million to research those four wrecks, discovered that drivers' heads snapped forward uncontrollably during sudden stops from racing speeds, causing the head injuries that killed them.

In response, the organization mandated using the Head and Neck Support System, a helmet and shoulder harness to prevent the forward

ward motion of the driver's head. Mr. Holcombe said the HANS equipment is "probably the greatest device to save drivers," noting that no driver has died from a skull fracture or similar head injury since mandatory use of the equipment began in 2005. "Overall, it has worked quite well," he said.

Even so, NASCAR is still looking at ways to improve driver safety, including building cars with larger side windows so drivers can more easily and quickly exit the car in the event of a crash, particularly one

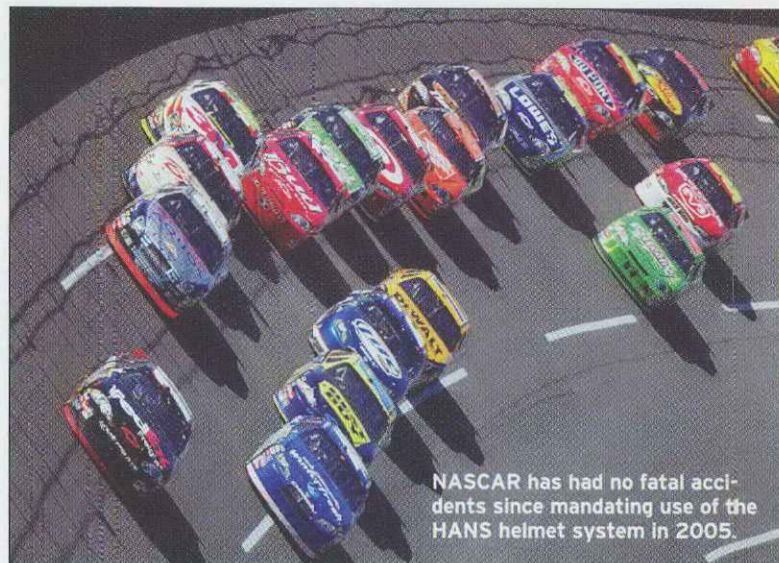
that engulfs the car in flames.

"These drivers are probably more scared of fire than anything else," Mr. Holcombe said.

In addition, a car is being developed that will have cocoon seats moved four inches to the center to prevent injuries or deaths caused by side impacts from other cars. "We hope that will make a big difference," Mr. Holcombe said.

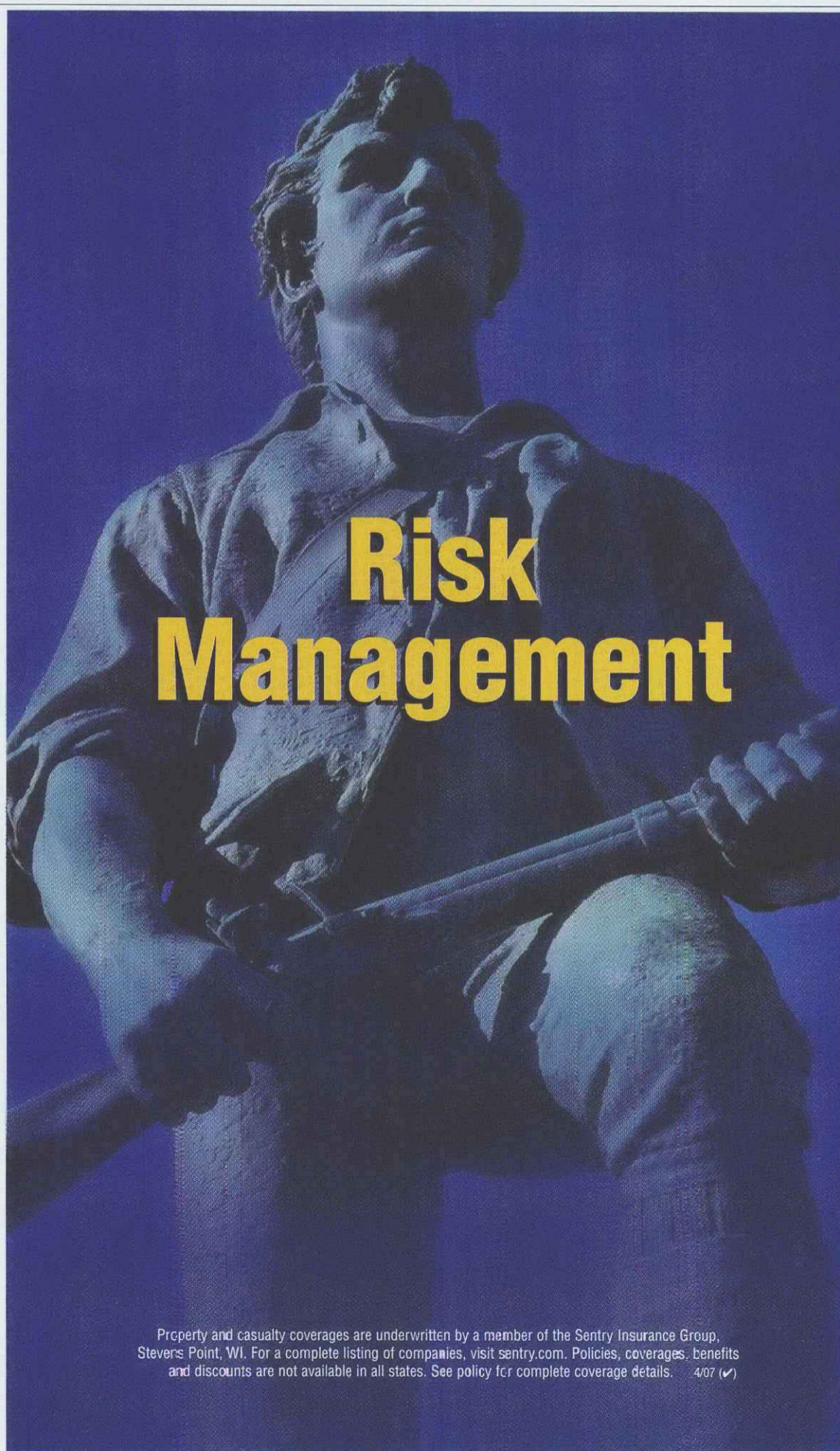
NASCAR spent much time debating whether to mandate the use of

See **NASCAR** next page



NASCAR has had no fatal accidents since mandating use of the HANS helmet system in 2005.

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# NASCAR: Safety regulations consider participants and spectators

CONTINUED FROM PREVIOUS PAGE

other safety procedures and equipment such as fire suits, considering whether not requiring these safety precautions would increase liability for the organization, he said. Two years ago, the organization began requiring the use of such equipment.

"NASCAR legally has struggled with the rules over the years," he said.

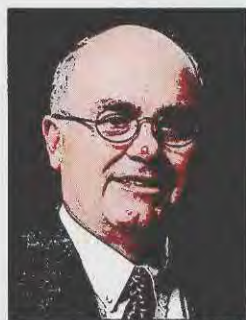
The worst day of Mr. Holcombe's NASCAR career was the day when a car crashed into a fence, and sent debris and fire hurtling into the stands. The crash caused three sig-

nificant injuries, although none was life-threatening, and 25 to 30 minor injuries. Fortunately, the fence prevented the car from going into the stands, he said.

"We know if we put (a car) where it's not supposed to be, it will alter the sport," Mr. Holcombe said.

The organization has imposed safety regulations to safeguard participants and spectators, including erecting retaining walls at racing facilities, according to a filing with the U.S. Securities and Exchange Commission.

For the publicly traded ISC, which had revenues of \$800 million last year, the biggest challenge Mr.



MICHAEL MARCOTTE

**'We know if we put (a car) where it's not supposed to be, it will alter the sport.'**

David Holcombe, NASCAR and International Speedway Corp.

Holcombe manages is the legal system due to the constant threat of litigation.

In 1992, he dealt with two lawsuits, but the organization is now

facing 33 lawsuits, he said.

Most of the injuries experienced by racing fans—3.75 million of whom attended events last year—are the result of alcohol, Mr. Holcombe said. The organization has a strong alcohol program, but patrons

are allowed to bring their own liquor into the tracks, he said.

Once there is an incident, the injured person is asked by the organization's doctors if they have had

anything alcoholic to drink. Officials gather statements from relatives and witnesses and collect evidence that could indicate the person's own culpability for the incident.

"It's critically important to be on the scene quickly," Mr. Holcombe said.

In addition, security has become a major issue since the Sept. 11, 2001, terrorist attacks, he said. Prior to that, the main security problem was fights between fans in the stands.

"Sept. 11 changed things completely," he said.

Now, officials from several government organizations, including the Bureau of Alcohol, Tobacco and Firearms, the FBI, the Federal Aviation Administration and the Secret Service attend all events. In addition, bomb-sniffing dogs are present at every racing venue and the organization has developed protocols for handling unattended packages. These enhanced security procedures have increased the organization's operational expenses, according to a SEC filing. "It has changed our business a lot," he said.

From an insurance perspective, growth in the stock car racing industry has created niches, with managing general agents specializing in coverage for race tracks, sponsors and race teams. Chubb Custom, a unit of Warren, N.J.-based Chubb Corp., recently began writing coverage for race tracks, he said.

The ISC maintains insurance policies that provide coverage within limits that the organization believes should generally be sufficient to protect it from a large financial loss due to liability for personal injuries sustained by people on its property, according to the SEC filing. The organization, though, noted, that there is no assurance that the insurance would be adequate or available at all times and in all circumstances.

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# Be clear and document employee privacy restrictions

## How to avoid pitfalls but build protections

By DAVE LENCKUS

**NEW ORLEANS**—While employers have significant latitude to restrict employee privacy to safeguard the workplace, minimize corporate liability and protect company integrity, dangerous pitfalls can easily be overlooked, an employer attorney warns.

In a session at the Risk & Insurance Management Society Inc.'s conference in New Orleans earlier this month, attorney John Barber outlined how employers can protect themselves without violating their employees' privacy rights and common mistakes to avoid.

The importance of limiting their employees' privacy rights at work is underscored by a New Jersey state appellate court's 2005 ruling in *Doe vs. XYZ Corp.*, said Mr. Barber, a partner with Lewis Brisbois Bisgaard & Smith L.L.P. in Los Angeles.

In that decision, the court held an employer liable for negligence for failing to catch an employee who used company equipment to download child pornography from the Internet and trade nude images of his 10-year-old stepdaughter. The court ruled that the company should have known how the employee was using company equipment.

The ruling means employers not only must forbid employees from using company equipment for any personal use but also makes it imperative that employers track employees' Internet use, Mr. Barber said.

Employers with collective bargaining agreements, however, have to be careful that their policies do not expose them to unfair labor practices claims, he said.

Imposing restrictions on employee privacy must go further than the Internet use if employers are going to protect themselves, he said.

Although the U.S. Constitution is silent on the right of privacy, the U.S. Supreme Court has recognized an implied right to privacy, Mr. Barber said. Meanwhile, many state constitutions may be interpreted to guarantee that right, as California's constitution has been, he said.

Those constitutional and case laws underpin various federal and state laws that control how and when employers may monitor employee communications by intercepting phone and electronic communications, he said.

But Mr. Barber assured session attendees—many of whom indicated that they work for companies with headquarters or subsidiaries in California—that satisfying the Golden State's privacy laws should keep them from inadvertently violating other state or federal privacy laws.

That's because "the Republic of California" safeguards employees' privacy more stringently than any other state or the federal government, he said.

A key factor for employers to remember is their employees' "reasonable expectation of privacy," Mr. Barber said. If employees do not expect privacy, they are not entitled

to it in most cases, he said.

The best way for employers to prove employees could not reasonably expect privacy is to obtain an explicit, signed privacy waiver. But a written policy that states the employer reserves the right to inspect an employee's work area, person and car and monitor phone calls suffices, Mr. Barber said.

"Essentially, you want to create the exact kind of culture in which you don't want to live," said.

### Creating expectations

Searching a vehicle would be "stretching the limits" of the employer's legal rights and may be

something that employers would do only in extreme circumstances, Mr. Barber said. "But you want to create the expectation you would."

Proof that employees understand the company's privacy policy is important and must be documented carefully, Mr. Barber said.

He suggested requiring employees to sign documents in which they both acknowledge having a copy of the policy and promise to read it. The acknowledgment should not state that the employee actually has read the document. If a privacy claim arises later, the employee would not be able to argue that he or she had not read

the policy without also acknowledging "lying" to the employer, Mr. Barber said. If the claimant had read the policy, he or she would have no right to privacy, he said.

Meanwhile, former employees have an expectation that their previous employers will keep personnel records private from prospective employers, Mr. Barber said.

But employers that meet that expectation could face difficulties if a former employee has serious problems and, for example, is potentially dangerous.

A court outside of California held a school liable for not informing a former employee's prospective

employer about the job candidate's involvement with child pornography, Mr. Barber said.

In other situations, California courts likely would not hold a former employer liable for failing to disclose such information, but he said he expects the state's courts eventually would expect employers to disclose information on potentially dangerous former employees.

If that situation arises before case or statutory law on the issue is clarified, employers should "get an attorney involved" before replying to an information request by the former employee's prospective employer.



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EVERYTHING WE KNOW GOES INTO EVERYTHING WE DO

# Building an insurance program in China poses challenges

*Risk managers must be aware of differences in policy wording, laws*

By GLORIA GONZALEZ

**NEW ORLEANS**—Creating an insurance program for a company's operations in China is a challenge for risk managers due to strict insurance market regulations, exclusions of basic risks in Chinese policies and differences in business practices, culture and language.

After Marriott International Inc. acquired the Renaissance Hotel

Group N.V. in 1997, Marriott faced numerous risk management challenges due to the insurance program inherited from Renaissance and its Chinese property portfolio, Hector Mastrapa, vp, insurance and risk management for Washington-based Marriott, said at the recent Risk & Insurance Management Society Inc. conference in New Orleans.

Renaissance hotels in China—which Marriott manages, but does not own—largely placed their own insurance using a combination of admitted and nonadmitted policies. Local coverage was limited and often placed on outdated policy forms while premiums, terms and condi-

tions were not competitive. The policies also excluded coverage for basic hotel equipment and services, such as pools and elevators.

Marriott embarked on a major overhaul of the insurance program and partnered with Beijing-based PICC Property & Casualty Co. Ltd., China's largest property insurer, to create the desired insurance program, Mr. Mastrapa said.

The PICC policy as written did not meet all of Marriott's needs, so Mr. Mastrapa and his consultants worked with PICC to craft a specific policy, which was a challenge because of the cultural and business differences, he said.

During the underwriting process, for example, Mr. Mastrapa said one of the PICC senior underwriters asked if the PICC policy was not good enough for the American company. Mr. Mastrapa said he assured the underwriter that Marriott was simply making changes it felt were necessary, changes that it had made on policies issued by U.S. companies such as New York-based American International Group Inc.

"It was a little bit of a pride issue and you have to find a way to defuse that so you can work through those issues," he said.

PICC was able to craft a broad commercial general liability policy that addressed the risks Marriott felt needed to be covered. The primary \$1 million layer was placed with PICC, with \$4 million in excess coverage provided by AIU Shanghai, a unit of AIG. While Marriott carries larger limits for the properties it manages outside of China, its insurers felt the limits were too high given that most other com-

panies carry only about \$500,000 total coverage, he said.

But several challenges remained despite the agreement reached with the two insurers to set up the program. Getting PICC's local branch offices not to compete against their parent was difficult because it is common for representatives from the local branches to contact the individual hotels directly to try to sell policies, he said.

In addition, getting all the hotel owners to agree to participate in the insurance program and pay their share of the premium was a challenge. It took four to five years to get 100% participation by the local hotels, he said.

Marriott has not incurred any substantial claims in the past three years, Mr. Mastrapa said. "Most of the claims we have are very small in nature," he said. "We haven't had anything problematic."

## Lost in translation

Risk managers creating an insurance program in China need to ensure that they extend their standard liability policies to include fire risks because most Chinese insurance policies exclude them, said Howard Tsang, executive director for Willis Risk Solutions in New York. In addition, the policy wording excludes losses resulting from a policyholder's "serious mistake," which essentially is the Chinese policy's translation of the term "gross negligence," he said.

Ensuring that policies issued in Chinese are properly translated is critical, Mr. Tsang said. One U.S. manufacturer with a facility in China ran into a coverage problem after being

sued for \$5 million due to a fire at its facility that damaged a nearby factory. While a local insurance policy was issued in Chinese, the U.S. risk manager did not realize until after the loss that the English version of the policy used a different form.

In addition, fire liability was purchased, but under the Chinese wording, there was a sublimit of \$125,000. Whenever there is a dispute in the policy wording, the court will use the Chinese wording of the policy, Mr. Tsang said.

Chinese insurance law also places numerous restrictions on insurance companies and in general requires that all risks in China be insured locally. In addition, all insurers and brokers transacting business in China have to be licensed locally, he said.

Domestic insurers in China control 98.8% of the property/casualty market; PICC is the largest, with 45% of the market. In contrast, AIG, the largest foreign insurer, holds only 0.4% of the market. "The Chinese insurance market is very much dominated by local insurers," Mr. Tsang said.

Above all, risk managers creating insurance programs in China have to be patient, Mr. Mastrapa said. "Things don't happen very quickly in China."

Knowing the cultural and business customs is also very important. The best way for risk managers to learn is to carefully observe what their Chinese business partners are doing and try to emulate them as much as possible, Mr. Mastrapa said.

"I think it signals to them that you're truly interested in assimilating into their culture and business environment," he said.

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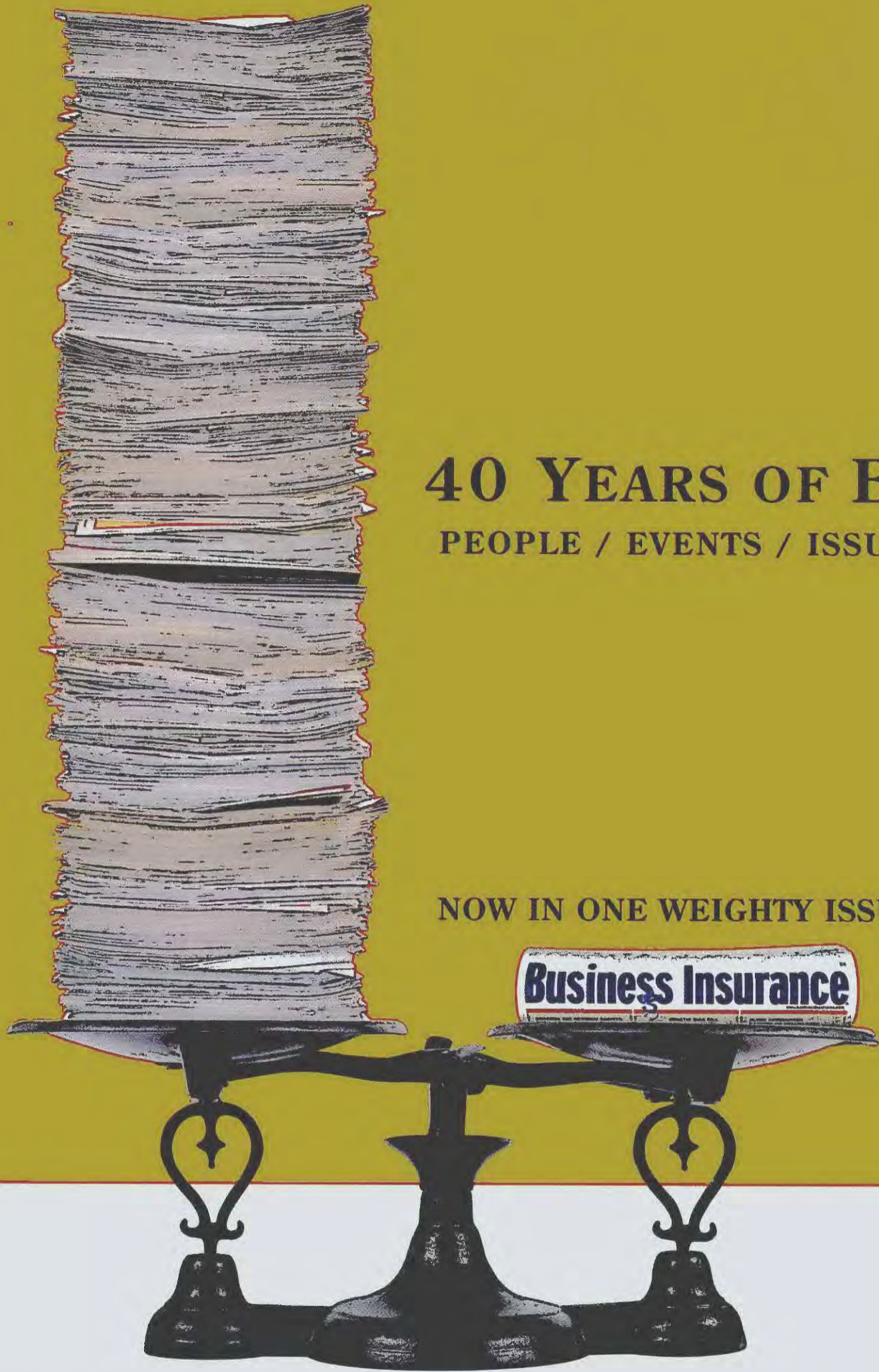
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 and  
 IN THE MATTER OF THE COMPANIES ACT 1985 (ENGLAND AND WALES)

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE No. 05542 of 2005  
 IN THE MATTER OF LION CITY RUN OFF PRIVATE LIMITED  
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Notice is hereby given that the Scheme of Arrangement dated 3 June 2005 as amended and supplemented by the Supplemental Scheme Document dated 27 January 2006 (together, the "Scheme") which became effective on 13 April 2006 has been finally implemented and completed in accordance with its terms as all Scheme Claims have been adjudicated or otherwise determined and all Ascertained Scheme Claims paid in full (or deemed to have been satisfied in full). In accordance with the provisions of Clause 7 of the Scheme, the Scheme is terminated and no further payments shall be made to Scheme Creditors by the Company in respect of Scheme Claims.

The date of the completion and termination of the Scheme is 18 April 2007.

For further details please contact Lion City Run-Off Private Limited, 1 George Street # 16-03, One George Street, Singapore 049145.

## LEGAL NOTICE

## REQUEST FOR PROPOSALS

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The New York City Housing Authority ("NYCHA") requests Proposals from qualified **INSURANCE CARRIERS** for Public Officials Liability Insurance Coverage. Carriers must be licensed in N.Y. State with "A.M. Best" rating of at least "A- VIII". Coverage is to become effective August 1, 2007.

Proposals must be in the format included in the Invitation for Bid package containing instructions, specifications and detailed submission requirements. Packets may be obtained by calling NYCHA's **Liability Insurance Broker: Towers Perrin Consultative Placement, One Stamford Plaza, 263 Tresser Boulevard, Stamford, CT 06901-3326 at (203) 363-1962.** In order to be eligible, completed bid proposals must be received by 3:00 P.M. EST on June 8, 2007.

All inquiries for additional information regarding the Invitation for Bid are to be directed to **William M. Mollica, Vice President, at the aforementioned address, telephone or e-mail at: [William.Mollica@towersperrin.com](mailto:William.Mollica@towersperrin.com).**



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## REQUEST FOR PROPOSALS

## REQUEST FOR PROPOSALS

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# International NEWS

## SCOR, Converium reach friendly takeover deal

By SARAH VEYSEY

PARIS—SCOR S.A. moved a step closer to buying its Swiss rival Converium Holding Ltd. last week when a friendly takeover deal was reached after months of wrangling.

SCOR and Converium announced May 10—just hours before Converium's annual general meeting—that Paris-based SCOR had increased its offer for Zug, Switzerland-based Converium.



Zug, Switzerland-based Converium recommends that its shareholders accept SCOR's sweetened deal.

SCOR said it would pay half a new SCOR share and 5.50 Swiss francs (\$4.53) per Converium share for the company—a 7.9% increase on its original offer, which bid 4 Swiss francs (\$3.30) per share.

Previously, its unsolicited offer valued Converium at about \$2.56 billion—a valuation Converium's board considered too low. The new bid values Converium at about \$2.76 billion.

As part of the new deal, which Converium's board recommended shareholders accept, SCOR said it would not terminate Converium employees in Switzerland, except where there is "just cause."

The French reinsurer also pledged to retain a strong presence in Zurich—where Converium has major operations—and to make it

one of three main European hubs, together with Paris and Cologne, Germany.

For its part, Converium said it would withdraw litigation filed against SCOR in the United States.

That complaint accused SCOR and a major shareholder of excluding Converium's U.S. shareholders from participating in SCOR's original bid offer (*BI*, April 23).

Although Converium's board sought to reassure Converium shareholders of the rationale behind a tie-up with SCOR, some attendees at the Swiss reinsurer's annual meeting spoke out against the proposed deal.

Rating agencies did not immediately change their ratings on either company in the wake of the announcement.

New York-based Standard & Poor's Corp. said its A- rating of Converium remained unaffected by the board's recommendation of SCOR's offer.

"The endorsement of the Converium board and stated commitment of the global executive committee to retain Converium talent and its clients lessens the potential for Converium's franchise value to be eroded should SCOR's revised bid be successful," S&P said in a statement.

Moody's Investors Service in New York said that the deal should strengthen SCOR.

"Moody's believes that an acquisition of Converium makes strategic sense for SCOR and would enhance its market position, with the combination of the two businesses resulting in a leading global reinsurer with a particularly strong position in Europe," it said in a statement.

Michael Zboron, managing senior financial analyst at A.M. Best Europe in London, a unit of Oldwick, N.J.-based A.M. Best Co. Inc., said that while a merger of SCOR and Converium would reduce the number of reinsurers, it would create a larger entity that could have more influence on pricing going forward.

## Model to quantify volcano risk

Probabilistic effort focuses on Europe, N. America, Japan

By RICHARD MILLER

Volcanic eruptions may be one of nature's most dramatic calamities, but there has been no catastrophe model to assess the potential insured losses.

And risk managers do not always properly consider the need for adequate volcanic risk insurance, even though disasters can cause both property and business interruption losses, experts say.

Now, however, one U.S.-based modeling firm is developing a product to calculate volcano exposures.

Risk Management Solutions Inc. in Newark, Calif., decided earlier this year to develop the industry's first probabilistic volcano risk model in the key territories of commercial interest—namely Europe, North America and Japan.

Up to now, volcano modeling has lagged other natural catastrophe models because the losses—compared with earthquakes—typically are lower, said Gordon Woo, a volcano risk expert and catastrophe risk consultant for RMS.

### 'Cinderella' risk

"In a way it's a Cinderella-type of risk—when it hits, then insurers will take notice," Mr. Woo said. "Most



Volcano modeling has lagged other cat models because losses are typically lower. Active volcano, Mount Etna in Italy, has caused problems in the past for residents.

volcanoes are in areas that are not highly populated, or have little insurance cover, and therefore the insurance risk consequences are not really that great."

There are, however, some notable exceptions—one of them being Mount Vesuvius near Naples, Italy.

Vesuvius, famous for destroying the ancient city of Pompeii in A.D. 79, has been dormant since it erupted in 1944.

A Swiss Reinsurance Co. analysis in 1999, using a scenario-based approach, estimated the economic loss of another Pompeii-type eruption of Vesuvius at \$35 billion—a

figure that has only grown higher in the meantime.

"Vesuvius is one of those risks where everyone knows that the potential loss could be enormous if there were an event, so at the moment in terms of insurance coverage there have been some discussions of ways of transferring this risk," said Mr. Woo. He declined to give more details of such discussions, saying they were confidential.

"I think as time progresses and perhaps if we know if (Vesuvius)

See **VOLCANO** next page

## Former HIH exec sent to prison

Company document left out key information from financial transaction

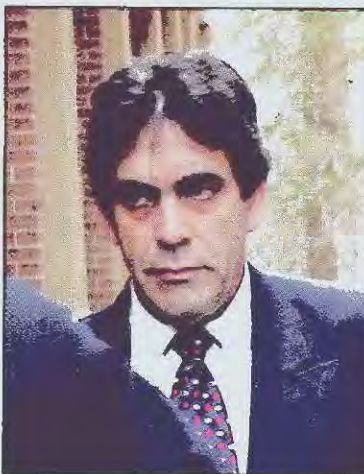
By ELIZABETH FRY

SYDNEY, Australia—Dominic Fodera, the former chief financial officer of collapsed insurer HIH Insurance Ltd., was taken into custody last week ahead of his sentencing for signing off on incomplete documents relating to an HIH financial transaction.

He faces up to five years in jail after the Supreme Court of New South Wales found him guilty of criminal charges April 9.

After hearing sentencing submissions, Justice Megan Latham adjourned the matter for sentencing on June 7 and revoked Mr Fodera's bail.

In November 2005, the Australian Securities and Investments



Dominic Fodera, former HIH CFO, faces up to five years in jail for omitting information from a transaction.

Commission charged Mr. Fodera with authorizing the issue in 1998 of a prospectus for convertible notes from which there was a "material omission."

The issue, which raised \$155 million Australian (\$96.7 million) for HIH, did not disclose an arrangement between HIH and the Australian unit of French bank Societe Generale, which was described by the HIH Royal Commissioner—which investigated the circumstances surrounding HIH's collapse—in April 2003 as a "total return swap."

Under the "total return swap," HIH agreed to provide \$35 million Australian (\$21.6 million) to Societe

See **HIH** next page

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## Volcano: Model to quantify risks

CONTINUED FROM PREVIOUS PAGE

starts becoming more active, some of these issues will become significant with insurance deals," Mr. Woo added.

The availability of volcanic risk insurance varies from country to country, experts say.

In Italy, extended cover for volcanic eruption is normally provided only for industrial and major commercial policies that have an earthquake extension on the policy, according to Jane Toothill, a volcanologist and head of European model development for Guy Carpenter's Instrat unit, part of Guy Carpenter & Co. Ltd. in London.

The Italian government makes provision for disaster payments in its budget, she noted.

"Volcanic eruption remains a commonly neglected peril among insurers and risk managers, but volcanic eruptions are not as infrequent as commonly assumed, and the potential extent of devastation and associated social and financial impact should not be underestimated," Ms. Toothill said.

While Vesuvius is viewed as the biggest volcanic risk in Europe, there are other active volcanoes that

pose economic risks, such as the Santorini volcano in Greece, the Teide volcano on Tenerife in the Canary Islands and volcanoes in Iceland that could threaten inhabited areas, experts say.

A recent eruption in Europe that caused problems was of Italy's volcano Etna in 2002. Residents of nearby Catania were exposed to volcanic ash—a health hazard—lava flows, and earthquakes associated with the eruption damaged buildings, Ms. Toothill said.

### Greatest risks

Worldwide, Japan and New Zealand are countries where volcanic risk is higher from an insurance perspective, noted Martin Bertogg, head of Swiss Re's earthquake group. In Europe and the United States, the frequency of eruptions affecting urbanized areas—and therefore the risk—is lower, he added. One area of risk that may be overlooked by insurers is the impact of an eruption on business interruption claims, Mr. Woo of RMS said.

For instance, while the proximity of Mount Fuji to Tokyo means the volcano would not cause physical damage, falling ash could cause major business interruption by

clogging air-conditioning systems and disrupting communications, Mr. Woo said.

"That is something which I think some insurers aren't really that aware of, but it is certainly one of the major risks," he said.

As for the reasons behind developing a volcano model at this time, Mr. Woo said it was partially a consequence of Hurricane Katrina, which struck the U.S. Gulf Coast in 2005.

"With Hurricane Katrina, the situation arose where there was some unmodeled loss," namely from flooding. "Obviously, it caused a huge insurance loss and I think after Katrina, all insurers are very wary of potential risk exposures which they have and which are not modeled," Mr. Woo said.

Still, Swiss Re's Mr. Bertogg questioned the effort and resources put into modeling a risk that is so limited in nature compared to other natural catastrophes. "I am sure the insurance industry will embrace that model once it is available, but it will probably not lead to a new era of risk assessment," he said.

"Modeling has definitely one positive point," he added. "It essentially creates awareness."

## HIH: Former exec sentenced

CONTINUED FROM PREVIOUS PAGE

Generale to enable it to buy the convertible notes and that any risk or loss associated with the notes would be borne by HIH, thus reducing Societe Generale's exposure as an underwriter.

The failure to disclose these matters gave the false impression to investors that Societe Generale would have a financial interest in the notes after they had been issued and subscribed for, and that Societe Generale regarded them as a sound financial investment.

Investors included several institutional investors, many of whom continued to hold the notes at the date of HIH's collapse.

The notes issue helped finance HIH's bid for FAI Insurance, which was launched in 1998.

Mr. Fodera's attorney, Graham Ellis, requested leniency for his client, saying Mr. Fodera's conduct reflected recklessness and inadequate due diligence rather than dishonesty and deception.

The court heard of the difficulties that Mr. Fodera had endured since the Royal Commission Enquiry into the HIH collapse, including a two and half year wait before charges were filed. "The delays were signifi-

cant and should not be overlooked," Mr. Ellis said.

The prosecutor, Alan MacSparran, noted that Mr. Fodera continued to deny his guilt and would not accept that his actions were deceptive and misleading. "For (Mr. Fodera) to say he was unaware that the omissions in the prospectus were material lies in the face of the jury's case against him," he said.

Mr. MacSparran said that Ray Williams, the founder and former chief executive officer of HIH, who was sentenced to four and a half years in 2005, saw his sentence reduced because of his cooperation and acceptance that signing a prospectus without making inquiries about HIH's true position was reckless. "(Mr. Williams) accepted the plea; Mr Fodera still maintains his innocence."

Mr. Fodera has also been charged with an additional four counts of failing to disclose information and two counts of failing to act honestly as a director.

HIH became Australia's biggest corporate failure in 2001 when it collapsed with losses of \$5.3 billion Australian (\$2.7 billion).

Mr. Fodera was the sixth person to be jailed over the 2001 corporate collapse.

## Market Moves



www.hrh.com

### HRH buys broker/MGA, retools Web site

**GLEN ALLEN, Va.**—Hilb Rogal & Hobbs Co. has acquired Global Special Risks L.L.C., an excess and surplus lines wholesale broker and managing general agency that specializes in the energy and nonmarine property markets, HRH said in a statement.

The purchase price for GSR, which had more than \$8 million in annualized revenue in 2006 from its offices in Houston and New Orleans, was not disclosed.

GSR's London and U.S. market access "will allow us to continue building our excess and surplus capabilities" in property and energy and "further assist our entry into the Lloyd's of London market," Martin L. Vaughan III, HRH's chairman and chief executive officer, said in a statement.

HRH said the 26-member GSR

staff would be retained.

Separately, HRH has rolled out a revamped Web site that includes additional customer resources and an improved navigational system.

The Web site of the insurance brokerage, ranked No. 10 in *Business Insurance's* 2006 rankings, is [www.hrh.com](http://www.hrh.com).

### AIG renames excess liability unit

**NEW YORK**—American International Group Inc. has changed the name of its Starr Excess unit to AIG Cat Excess Liability.

"The name AIG Cat Excess Liability more accurately reflects who we are and what we do," Geoff Smith, president of the New York unit, said in a statement.

In addition to offering catastrophic excess liability products, AIG Cat Excess Liability will offer insurance coverage on an admitted basis.



### Max Re rebrands as Max Capital Group

**HAMILTON, Bermuda**—Max Capital Group Ltd. is the new moniker for the former Max Re Capital Ltd., one of several revisions that the Hamilton, Bermuda-based organization said reflect changes made since its formation eight years ago.

Shareholders this month approved that change as well as renaming Max Capital's Bermuda operating company as Max Bermuda Ltd. The operating compa-

ny previously was named Max Re Ltd.

"Since inception in 1999, Max has evolved strategically from a reinsurer offering a combination of life reinsurance and structured reinsurance products, to a company whose product mix is diversified among specialty primary insurance and reinsurance offerings, and between property and casualty liability exposures," W. Marston Becker, chairman and chief executive officer of Max Capital Group Ltd., said in a statement "Our new name reflects that strategic evolution."

The changes extend to Max Capital's stock symbol, now MXGL on the NASDAQ and Dublin stock exchanges, and several Web sites: [www.maxcapgroup.com](http://www.maxcapgroup.com), [www.maxbermuda.com](http://www.maxbermuda.com) and [www.maxeu.com](http://www.maxeu.com).

### Lexington Insurance Co. sets up Bermuda office

**HAMILTON, Bermuda**—Lexington Insurance Co. has opened a property/casualty underwriting office in Hamilton, Bermuda, the Boston-based unit of American International Group Inc. announced.

Aside from providing local access in Bermuda to Lexington's property/casualty offerings, Lexington Bermuda also will offer primary employment practices liability coverage, the company said in a statement.

### Collins sets up capital markets arm

**MINNEAPOLIS**—John B. Collins Associates Inc. has formed Collins Capital Advisors L.L.C., the Minneapolis-based reinsurance brokerage and service provider announced.

Wall Street investment banking firm veteran Gregory G. Clapp,

most recently with Fox-Pitt, Kelton, is leading the New York-based Collins Capital Advisors as managing director.

While the new unit will offer traditional investment banking services, it also will offer capital market options that include securitizations, catastrophe bonds and insurance-linked securities, the company said in a statement.

### MHBT adds P/C practice to Austin office

**AUSTIN, Texas**—McQueary Henry Bowles Troy L.L.P. has added a property/casualty practice at its Austin, Texas, office, the Dallas-based insurance and risk management firm announced.

MHBT opened an Austin office in 2005 as an employee benefits practice. Adding a P/C practice was "a natural next step for us," said Keith Carmichael, president of the Austin office.

The new P/C practice is led by Senior Vp Brad Van Stavern, who most recently was a partner at Texas Associates Insurers. Mr. Van Stavern also has extensive health care industry experience, MHBT said.

### Engle Martin acquires litigation manager

**ATLANTA**—Insurance claims administrator and adjuster Engle Martin & Associates Inc. has acquired Litigation Management Services L.L.C., a specialty and non-profit services provider based in Atlanta.

Atlanta-based Engle Martin said Linda Wright, former LMS general partner, will continue serving LMS clients as claims director.

The acquisition, terms of which were not disclosed, "will afford for-

mer LMS clients greater flexibility with complex deductibles and self-insured retention arrangements and allow adjusters to concentrate on investigations and minimizing claims' costs," Ms. Wright said in a statement.

### OneBeacon moves U.S. headquarters

**CANTON, Mass.**—OneBeacon Insurance Group Ltd. has moved its U.S. headquarters to Canton, Mass., from Boston, and consolidated three Boston-area operations into the new, 280,000-square-foot facility.

"Not only will we benefit from the efficiencies of a common location," CEO Mike Miller said in a statement, "but we expect our employees will enjoy more varied careers due to the many opportunities available under one roof."

Its new address and phone number are: 1 Beacon Lane, Canton, Mass., 02021; 781-332-7000.

OneBeacon is a property/casualty insurance unit of Hamilton, Bermuda-based White Mountains Insurance Group Ltd.

### TO SUBMIT ITEMS

BI's new Market Moves column reports on activities by insurance industry companies and related entities. Personnel changes appear in Comings & Goings, while new product offerings appear in Products & Services. Please send Market Moves news to: Charmain Benton, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; [cbenton@businessinsurance.com](mailto:cbenton@businessinsurance.com). P&S and C&G items should be mailed to Joe Walker at the above address or e-mailed to [jwalker@businessinsurance.com](mailto:jwalker@businessinsurance.com).

## Coalition: Lack of wind cover sparks new group

CONTINUED FROM PAGE 4

became really important to raise the awareness of our risk managers that they were not going into a normal renewal and they had to be prepared. Many of our apartment owners have been forced to increase rents to offset the spike in insurance costs. This is not always an option and certainly not a desired one."

The housing council and the apartment association "are involved with the NCPC because, as commercial policyholders, adequate property insurance coverage at affordable prices is a necessary component to our continued operations," said Ms. Delgado. "Most of the emphasis in Congress to date has been directed toward homeowner relief and not recognizing the needs of commercial property owners. The NCPC will work to ensure that any relief measure adopted by Congress includes the commercial property market."

Earlier this year, "we saw there was going to be some traction on this issue," said Ms. Platt. The organizations decided to take the ad hoc group that had emerged around the windstorm insurance issue and formalize it. "We're looking to try to put the pieces together," she said.

The NCPC consists of a dozen trade associations; Greater New Orleans Inc., a New Orleans economic development organization; and Chamber Southwest Louisiana, a chamber of commerce in Lake Charles, La. "No individual companies are on board yet," she said.

"We are doing a local grass-roots component where we are trying to engage local development agencies and local chambers of commerce," she said. Parts of Louisiana are having a difficulty attracting businesses because of insurance costs. "This is a major obstacle for them," she said.

Representatives of the entities that formed NCPC approached Santa Monica, Calif.-based Rand Corp. to prepare a study of the commercial insurance market in the Gulf States. That study—"Commercial Wind Insurance in the Gulf States"—should be issued within the next few weeks.

Ms. Platt noted that NCPC has taken many of its cues from CIAT, and for good reason.

"CIAT has been extremely successful. To ignore a very successful model would be foolish," she said. "Policyholders need to be at the table—policyholders need have to have a voice."

An outside observer who is not directly involved with NCPC agreed.

"We're supportive of the efforts, but it is a policyholder effort," said Joel Wood, senior vp of the Council of Insurance Agents & Brokers in Washington. "The entire coastal insurance political equation is something of a quagmire. All of the major proposals tend to divide members of Congress along coastal vs. noncoastal lines. There have been various insurer-led efforts" on the catastrophe insurance issue. "No slap at those efforts, but the perceived self-interest of the risk

bearers has been one factor in the inability to enact any of these proposals," he said.

"One analogy I'd like to draw: In 2001, with the cataclysmic event of 9/11, the insurance industry was utterly unable to enact a terrorism reinsurance backstop. In late 2002, when the policyholders essentially took over the effort, TRIA was enacted. I think a similar analogy can be made here in that this is a very powerful coalition of commercial interests," Mr. Wood said.

## NCOIL: Closed-door meetings criticized

CONTINUED FROM PAGE 4

Nolan, executive director of Troy, N.Y.-based NCOIL. "Is the process that the NAIC is using to add new models or changes to models a meaningful process?"

NAIC leaders, however, maintain that the process is "extensive and deliberative," wrote NAIC President Walter Bell, the Alabama insurance commissioner, and Catherine J. Weatherford, the NAIC's executive vp and CEO, in an April 2 letter.

"From start to finish, the entire process to consider amendments and additions to accreditation standards spans nearly five years," they

wrote. In addition, "only those models that are critical to ensuring that a state insurance department has sufficient regulatory authority to monitor the financial solvency of its domestic industry become accreditation standards," they wrote. Since 1999, 33 new models have been developed and 56 more have been revised; the committee considered 22 and adopted four for accreditation purposes, they said.

Meanwhile, NCOIL Vp Brian Patrick Kennedy, a Rhode Island state representative, is the latest to criticize the NAIC for a policy that permits closed sessions for considering "strategic planning issues relat-

ing to legislative matters," NCOIL said in statement last week following a March 20 letter from Rep. Kennedy, D-Hopkinton/Westerly.

NAIC President Bell responded in a press release last week that while the NAIC has "a liberal open meetings policy," it asserts its right to conduct relatively few meetings in private. The NAIC is a nonprofit corporation with voluntary membership and "is not a state governmental entity," Mr. Bell wrote in an April 9 letter to Mr. Kennedy.

Also, he said several attorneys general have concluded open meeting laws did not apply to members of a multistate representatives group.

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## D&O: Private equity takeovers could hike claims

CONTINUED FROM PAGE 3

ing this company private and to do that, you've got to buy out all the public shares."

Lawsuits will charge that firms did not get the right valuation, he said. The allegations can range from an inadequate price per share, to charges that there has been lying and stealing at the company's expense. "You have the whole spectrum, from, 'Pay me a little more,' to, 'You're committing fraud and you're self-dealing,'" said Mr. Shappell.

For instance, litigation was filed by shareholders in connection with Weehawken, N.J.-based Hanover Direct Inc. being taken private last month by its major shareholder, New York-based Chelsey Direct L.L.C., a hedge fund affiliate.

**'It's a little bit of uncharted territory because the private equity transactions that are taking place right now are so much larger than we've seen historically.'**

Kevin LaCroix,  
OakBridge Insurance Services L.L.C.

According to a filing by Hanover with the Securities and Exchange Commission, shareholders charged that the offering price was inadequate. The shareholders also charged that company directors had conflicts of interest in approving the deal and breached their fiduciary duties. Hanover said in the filing that the complaint had no merit and it plans a vigorous defense. A spokesman could not be reached for comment.

In many cases, these lawsuits are settled by sweetening the deal and increasing the amount paid per share, say observers.

For example, according to statements issued by plaintiff law firm Bernstein Litowitz Berger & Grossman L.L.P. in New York and Bethpage, N.Y.-based Cablevision Systems Corp., a lawsuit filed in connection with an offer by the Dolan Family Group to purchase Cablevision's publicly held shares led to an increased offer of \$36.26 per share earlier this month—up from an original offer of \$27—in a deal valued at about \$22 billion. The parties agreed in principle to dismissal of the private litigation, subject to court approval, according to Cablevision.

Such extra payments would not fall under a D&O policy, but defense costs in connection with defending litigation may do so, say observers.

However, if the plaintiff can

prove there is a breach of fiduciary duty, "then it becomes a little more complicated" in determining what may fall under the D&O policy's coverage, said Mr. Shappell.

Management's solicitation of a private equity takeover without the board of director's knowledge could result in a D&O claim, said Mr. LaCroix. "That obviously can create a host of problems for owners, board members and management," he said.

Members of management could also be accused of conflicts of interest, leading to a D&O claim, if the private equity firm buying out their company offers them an ownership stake as an inducement to stay with the firm, said Mr. LaCroix.

Christopher Lang, managing director at Marsh Inc. in New York, said to reduce exposure, management must follow a process in which "shareholder interests are put first, and not necessarily management's. I think a lot of time you're seeing management engaged alongside with the private equity firms, and from a D&O perspective that certainly raises the potential for liability," said Mr. Lang.

Michael J. Biles, an attorney with Akin Gump Strauss Hauer & Feld L.L.P. in Austin said, "No two D&O policies are the same, and a lot of D&O policies will have specific exclusions, so my general advice to companies that are considering renewing their policies, especially companies that are considering going private, is that they make sure that such claims would be covered."

Some observers say the current trend could create problems down the road when, as expected, the companies are eventually brought public again by the private equity firms. That is "the bigger issue that we see," said Evan Rosenberg, senior vp of Chubb Specialty Insurance in Warren, N.J.

If the stock does not do well following an initial public offering, "the new shareholders would bring the claim in that situation." Because of the private buyout, these companies may be very heavily saddled with debt, according to Mr. Rosenberg. Claims could also arise from creditors if the company goes bankrupt, said Mr. Rosenberg.

Mr. Pursiano said also, "It is quite possible that we'll see some more claims activity as a result of the additional IPO activity that we see that results from the (leveraged buyout) activity that we see now."

Mr. LaCroix noted, "It's a little bit of uncharted territory because the private equity transactions that are taking place right now are so much larger than we've seen historically."

This means that after going private the acquired company "is going to be saddled with a lot of debt," and whenever that occurs, the "margin for error is slimmer" and could result in any number of moves, including selling assets or significantly downsizing operations. As a result, "the circumstances under which D&O claims could arise are certainly present" after an IPO, said Mr. LaCroix.

## Highlands: Official rejects runoff plan

CONTINUED FROM PAGE 3

Last July, Highlands' receiver sought court approval for a rehabilitation plan that would run off the insurer's liabilities over many years. Actuarial projections backing the plan suggested that Highlands would be able to pay all allowed policyholder claims in full through at least the first 10 years of the runoff, court documents show.

A number of policyholders and others objected to the runoff idea on various grounds, though, and the dispute was referred to Tom Collins, the court-appointed special master for the receivership. Along with Highlands (U.K.), those objecting included the Celotex Asbestos Settlement Trust, Dana Corp., Dow Corning Corp., Federal-Mogul Products Inc., Harley-Davidson Inc. and Allstate Insurance Co.

After a series of hearings over several months, Mr. Collins recommended against the runoff in an April 18 memorandum.

The Highlands plan is the first to be ruled on since Texas' 2005 enactment of the Texas Insurer Receivership Act, he noted. The act includes provisions for rehabilitations and liquidations but does not deal specifically with runoffs.

The receiver has framed the runoff as a rehabilitation, and though the plan is not a "true 'rehabilitation'...in the ordinary meaning of the word," Mr. Collins said he would defer to the receiver's judgment that a runoff is allowable under the law.

### Numerous flaws

The special master cited a number of flaws in the plan, though, that he concluded make it unworkable.

The long-tail nature of Highlands' environmental mass tort exposures makes it very difficult to predict its ultimate losses and require conservative projections if the plan is promising to pay allowed claims in full, Mr. Collins wrote.

The plan, however, uses mid-

### HIGHLANDS HISTORY

**JANUARY 1958:** Highlands commences business.

**NOVEMBER 2001:** Facing mounting losses on large commercial liability business, Highlands files a restructuring plan with Texas regulators and later announces it will stop writing new and renewal business.

**NOVEMBER 2003:** A Texas court orders Highlands into receivership.

**JULY 2006:** Receiver seeks court approval of a plan to run off Highlands' liabilities.

**SEPTEMBER 2006 TO APRIL 2007:** Hearings and briefings on objections to the runoff plan.

**APRIL 2007:** Court-appointed special master recommends rejecting the plan.

Source: Court filings

range loss projections provided by actuarial consultant Tillinghast; if Tillinghast's more conservative, high-end estimates are used, Highlands would be "underwater" by \$9 million after 10 years, Mr. Collins found.

The Tillinghast study also assumed that Highlands would be able to settle with future asbestos and pollution claimants for 50 cents on the dollar, a discount he found "overly optimistic and aggressive."

The Highlands plan also runs afoul of the Texas receivership law's requirement that it be "fair and equitable" to all parties, he wrote. This means, among other things, that all policyholders must be paid substantially the same percentage of the amount of their claims, and that no subclasses of claimants can exist within policyholder or other claimant classes.

Under the plan's terms, a current claimant might receive 100% of its allowed claim; if the estate runs short of funds after 10 years and converts to liquidation, though, a future claimant may receive only half of its allowed claim, he said.

"The estate cannot as a practical (and, in some instances, as a legal) matter recoup monies from claimants paid 100% of their claims years earlier. Therefore, to the extent to which the assets of Highlands' estate ultimately prove insufficient...the 'later' (policyholder) claims will not be able to receive, as they are entitled to receive by law, the equalized pro-rata payment," Mr. Collins found.

Highlands' workers comp liabilities also present the receiver with a "Catch-22," the special master said. These claims must be paid in full, and in a liquidation would be paid by state guaranty funds, which would then recoup as much as they could from the Highlands estate. The guaranty funds would not be triggered in a runoff, though, meaning that Highlands would have to pay the claims itself. If a future cash shortage forced it to defer or prorate payments to other policyholders, it would still have to pay the workers comp claims in full, potentially creating an illegal subclass of workers comp claimants, Mr. Collins concluded.

The special master's decision has thrown the Highlands rehabilitation into a "state of uncertainty," said David F. McGonigle, a Pittsburgh-based lawyer with Kirkpatrick & Lockhart Preston Gates Ellis L.L.P., who is not involved in the case.

It is unclear what may happen if the Texas court accepts Mr. Collins' recommendation and throws out the runoff plan, but the recommendation may be moving Highlands closer to liquidation, Mr. McGonigle wrote in an analysis of the case.

The runoff plan itself states that if it is not approved by the court, the estate will convert to a liquidation, he noted. The special master's decision, meanwhile, leaves "room for skepticism" that any rehabilitation plan could meet the standard of treating all class members substantially the same while also paying workers comp claims timely and in full, Mr. McGonigle wrote.

## AIG unit sues Catlin over MGA hires

**CLEVELAND**—A surplus lines unit of American International Group Inc. is suing underwriting rival Catlin Inc. for allegedly poaching seven employees from offices in Connecticut and Ohio.

AIG's A.I. Risk Specialists Insurance Inc., a managing general underwriter for Lexington Insurance Co., filed the suit last week in U.S. District Court in Cleveland against Catlin and the seven former officials of SRO Napa, an underwriting agency that RSI acquired last month.

RSI charges that the seven conspired with Catlin to copy confidential SRO Napa underwriting files and use them to solicit their former accounts.

A Catlin spokesman declined to comment.

Until last month, SRO Napa was owned by Toronto-based Fairfax

Financial Holdings Ltd. and underwrote excess casualty and surplus lines business for units of Hannover Reinsurance Co. of Germany, the complaint says. SRO Napa had 33 employees in offices in Napa, Calif.; North Olmsted, Ohio; and West Hartford, Conn.

In January, Donn Belzer and Grace Fortune, the top underwriting officers in the Ohio and Connecticut branches, respectively, quit to join Catlin.

Within two weeks, eight other underwriting employees followed, leaving the two SRO Napa offices with a total of three employees, the complaint says.

The RSI lawsuit names Mr. Belzer, Ms. Fortune and five of the other eight employees who quit.

According to the complaint, all seven of the named former SRO Napa employees downloaded confi-

dential computer files in the days before they quit, including underwriting files and lists of policies up for renewal and those being nonrenewed. The defendants took this information to Catlin and have used it to solicit SRO Napa business, RSI charges.

The suit charges Catlin and the seven former SRO Napa officials with misappropriation of trade secrets and conspiracy. It also charges the ex-employees with breach of contract and fiduciary duty.

RSI has asked the court for orders barring the defendants from using the alleged trade secrets and requiring them to return information taken from SRO Napa and to stop soliciting SRO Napa accounts.

Mr. Belzer and Ms. Fortune could not be reached for comment.

—By Douglas McLeod

# ABD: Integration plans unknown in bank-brokerage transaction

CONTINUED FROM PAGE 1

action as a means to assuage employee anxiety, this deal involves the bank parents and was not sealed independently by the brokerage subsidiaries.

Dave Zuercher, chairman, president and CEO of WFIS, noted in an e-mail response, that although various decisions have yet to be made, "the success of this acquisition won't be determined by how much money can be saved or how many positions can be eliminated. Our success depends on keeping talented people and adding more value, products and services to our customers."

According to *Business Insurance's* 2006 brokerage rankings, Wells Fargo was the world's fifth-largest broker—and fifth-largest broker of U.S. business—based on \$959.4 million in 2005 brokerage revenues. ABD was the 15th-largest broker of U.S. business, based on \$165.0 million in 2005 brokerage revenues from U.S. clients (*BI*, July 17, 2006).

"I look at this like the 'Brady Bunch,'" said Bobby Reagan, president of Atlanta-based Reagan Consulting Inc., referring to the popular 1970s sitcom. "The parents decide to get married and now the kids have to figure out how they can live together."

Whether Mr. Francis' departure is a sign that ABD management does not want to live with its new sibling and is a harbinger of more fallout to come remains to be seen.

No reason was given for his resignation, and attempts to reach Mr. Francis were unsuccessful.

This is not the first time, however, that Mr. Francis has balked at his firm being acquired.

He came to ABD in 1997 by way of Minet Technology Services, which ABD acquired from Aon Corp. shortly after the Chicago-based brokerage acquired the technology broker's parent Minet Group from St. Paul Cos. Inc.

Mr. Francis was very frank that he did not want Minet Technology, which he cofounded in 1987 as Compro Insurance Services and sold to Minet in 1994, to be absorbed in the mass consolidation occurring at that time with the world's largest brokers, and specifi-

**'I look at this like the "Brady Bunch." The parents decide to get married and now the kids have to figure out how they can live together.'**

Bobby Reagan, Reagan Consulting Inc.

cally sought out ABD.

After serving as managing director of ABD's technology service practice, he became president of its property/casualty operations and was chief operating officer before becoming president and CEO in December 2005.

In the wake of Mr. Francis' departure, ABD Chairmen Frederick J. de

Grosz and Bruce Basso will assume executive leadership of the brokerage "in what is expected to be a very seamless transition," an ABD spokesman said.

WFIS declined to comment about Mr. Francis' departure.

Brokerage observers say WFIS will benefit from the addition of ABD, but note that a successful integration is not a given.

ABD is "a sophisticated resource-driven broker that brings a lot of valuable deliverables" to upper middle-market customers like risk management, loss control and claims administration, said John Wepler, president of Marsh, Berry & Co. Inc. in Willoughby, Ohio. While WFIS provides services for some larger risk management accounts, it historically has served the middle and lower-middle market, he said.

WFIS now will be "more capable of writing a full palate of risks," Mr. Wepler said.

"On paper, ABD would be a great addition to WFIS' platform," agreed Timothy J. Cunningham, a principal with OPTIS Partners L.L.C. in Chicago. "ABD is a great firm with a great reputation, a real presence in the Silicon Valley and throughout the West Coast, with a good benefits practice. So it is certainly a

prime acquisition, there's no question about it."

But in situations in which merging brokers have not had the opportunity to work out at least some of the integration details before announcing the deal to employees, the firms may "end up behind the eight ball a little bit," Mr. Cunningham said. "And when you're behind the curve and you haven't thought through some of these issues, it can create a great deal of uncertainty. It can create morale issues particularly among the employees from the firm being acquired."

"One of the keys for success will be for current Wells employees to avoid 'helping' ABD to the extent it changes the character of one of the finest regional brokerages in America," said John Wicher of John Wicher & Associates Inc. in San Francisco.

"The tendency of buyers, particularly their corporate apparatus, is to

exert control over the acquired company," Mr. Wicher said.

"This can be viewed by the seller as an assault on the very culture that made them successful. The result is that the key employees begin a countdown to the date they can leave without being sued for breach of their employment agreement. The trick for Wells is not to meddle with the secret sauce, which has made ABD such a great business," Mr. Wicher said.

Indeed, Mr. Reagan said ABD could be in for a "bit of a transition."

ABD has "enjoyed a certain amount of freedom" as part of Greater Bay where it was the bank's insurance operation. "Now they are a smaller part of a big insurance operation," but "the specialized nature of their operation may allow them to continue to enjoy a certain level of independence," he said.

## Asbestos: Court ruling

CONTINUED FROM PAGE 1

sions, the attorneys said.

Many earlier insurer settlements over asbestos claims focused on policies' products hazard and completed operations provisions, which generally contained aggregate limits.

Insurer attorneys, however, predict that the New York State Supreme Court decision will have limited impact on asbestos liability cases.

In the case, four primary and excess insurers for contractor Robert A. Keasbey Co. argued that the aggregate limits of the products hazard and completed operations provisions in the general liability coverage they wrote for Keasbey for 17 years limited their liability to around \$100 million. The asbestosis claimants recovered those damages from the insurers between 1992 and 2001, according to court papers.

But in 2001, the asbestosis claimants' attorneys contended that many of the claimants were harmed at the time that Keasbey installed insulation that contained asbestos.

Because the insulation product—regardless of whether it was Keasbey's own brand or another manufacturer's—was still under the contractor's control at that time, the policy provisions covering third-party bodily injuries caused by product hazards and completed operations do not cover those claims, the attorneys argued. Instead, those claims triggered the policy's premises/operations provision, which covers bodily injuries that Keasbey caused during the time it provided services, the attorneys argued.

The trial court agreed.

In its decision, *Continental Casualty Co. et al. vs. Employers Insurance Co. of Wausau et al.*, the trial court relied on a 1997 state appellate court ruling involving identical coverage principles but a different insurance policy.

In the earlier case, *Frontier Insulation Contrs. vs. Merchants Mutual Insurance Co.*, the policy at issue contained a products hazard exclusion, rather than a products hazard coverage provision.

The trial court was influenced by the appellate court's reasoning that "a court should not merely look at whether the product caused the loss, but rather (should) focus on the location of the accident and the possession of the product" at the time harm was caused.

In the current case, the court said, "the evidence has shown that the injuries happened while the installation operations of defendant Keasbey were ongoing, which were covered under the operations coverage provisions" of Keasbey's primary and excess policies.

Because the premises/operations provisions did not contain any aggregate limits, Keasbey's insurers are exposed to as much as \$250 million of additional claims, the asbestosis claimants' attorneys said in court papers.

"Our case was a great affirmation that this was the law in New York," said asbestosis claimants' attorney August J. Matteis Jr., a partner with Kelley Drye & Warren L.L.P. in Washington.

Policyholder attorney Robert M. Horkovich, a partner with Anderson Kill & Olick P.C. in New York, characterized the decision as "very important."

"It addresses some of the cutting edge issues in disputes between policyholders and insurers," he said.

For asbestos defendants like Keasbey that were more than insulation manufacturers, the ruling is a "powerful decision," said policyholder attorney Lawrence A. Hobel, a partner at Heller Ehrman L.L.P. in San Francisco.

Of course, the decision is beneficial to policyholders with unresolved asbestos liability coverage claims, policyholder attorneys said.

In addition, some policyholders that thought they had resolved their asbestos claims may now be able to recover additional damages from their insurers, attorney said.

While attorneys for policyholders and insurers said that many of those settlements resulted in policy buybacks, they also said that some

## Brokerage sees changes

Chicago-based Acordia Inc., now known as Wells Fargo Insurance Services Inc., was formed in 1989 by Indianapolis-based Anthem Inc. to serve as Anthem's health plan administration and distribution arm.

It made its entrance into the retail brokerage business with the 1991 acquisition of Robinson-Connor Inc. of Erie, Pa., and grew its brokerage operations over the years via an aggressive acquisition strategy and emphasis on local service to middle-market businesses in midsized cities.

In 1997, Acordia's management, together with the lead investment banking groups Knightbridge Capital L.L.C. and Wand Partners Inc., bought \$285.9 million of Acordia's predominately property/casualty brokerage operations from Anthem for \$310 million.

Then in 2001, Wells Fargo & Co. acquired Acordia, which *BI* ranked as the world's seventh-largest brokerage in 2000 with \$337.2 million in 1999 brokerage revenues, in the biggest bank/broker deal to date.

While integration has not come without some bumps in the road, Acordia changed its name to Wells Fargo Insurance Services in February and plans are under way to more closely align all of Wells Fargo's insurance operations.

The brokerage has also seen significant management changes as of late.

After being tapped to succeed Chief Executive Officer Frank C. Witthun in 2003, Kevin W. Conboy, Acordia's chief operating offi-

cer, was replaced in December 2005 by Peter J. Wissinger, a 20-year veteran of Wells Fargo. After serving less than a year at the helm, Mr. Wissinger was then replaced by Dave Zuercher, who had been Acordia's chairman since the Wells Fargo acquisition.

ABD Insurance & Financial Services Inc., previously known as Alburger Basso de Grosz Insurance Services Inc., was formed through the 1990 merger of the Mario L. Basso Agency and the Alburger de Grosz Agency and continues to be run by Chairmen Bruce Basso and Frederick J. de Grosz.

It has made a name for itself serving the middle and upper-middle market and is particularly well-known for its directors and officers liability and technology specialties.

In addition to maintaining strong organic growth rate, the Redwood City, Calif.-based brokerage has grown its business through acquisitions such as Lucini/Parish Insurance Inc. in Reno, Nev., in 2005; Seattle-based Sullivan & Curtis Insurance Brokers of Washington L.L.C. in 2003; and Palo Alto, Calif.-based Minet Technology Services in 1997.

Greater Bay Bancorp acquired ABD in late 2001 for nearly \$200 million.

In terms of international capabilities, ABD was the first U.S. member of the Worldwide Broker Network, while WFIS formed the HLA Global network in 2001 through a joint venture with London-based broker HLF Insurance Holdings Ltd.

—By Sally Roberts

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# News In Brief

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permanent disability benefits over the next three years. The bill now goes to the full Senate. Numerous employer organizations, including the California Chamber of Commerce and the California Coalition on Workers' Compensation, are fighting the bill sponsored by Sen. Don Perata, D-East Bay.

## Chicago archdiocese to freeze DB pension plan

The Archdiocese of Chicago is freezing its defined benefit pension plan and beefing up its 403(b) savings plan. After June 30, lay employees of the Roman Catholic archdiocese will cease accruing benefits in the nearly 40-year-old pension plan, which is almost fully funded and covers about 10,000 employees. The archdiocese will make automatic, age-related contributions to so-called target date funds after June 30. Additionally, the archdiocese will continue to match 50% of employees' 403(b) plan contributions, up to the first 4% of pay. To boost employee participation, starting Jan. 1, 2008, the archdiocese will begin an automatic enrollment program for employees who haven't indicated whether or not they will make 403(b) plan contributions. The automatic enrollment contribution rate will be 3% of pay.

## Mercer units combine to form new consultancy

Three Mercer consulting units have combined into a single entity called Oliver Wyman. Combining Mercer Oliver Wyman, Mercer Management Consulting and Mercer Delta Organizational Consulting "enables us to address a broader range of our clients needs," said John P. Drzik, president and chief executive officer of Oliver Wyman, in a statement. M. Drzik previously served as president of Mercer Specialty Consulting.

## Concentra to separate main operating units

Health care services company Concentra Inc. plans to separate its two principal operating units, Health Services and Network Services, into two companies. Network Services,

which negotiates out-of-network claims for group health payers, will be spun off into an independently operated company called Viant Holdings Inc. Health Services, which operates more than 300 occupational health centers in 40 U.S. states, will retain Concentra's name.

## Lawmakers introduce bills shielding food industry

Bills designed to protect the food and beverage industries from lawsuits brought by people who blame their products for obesity and other health problems have been introduced in both houses of Congress. The measures, both called the Commonsense Consumption Act of 2007, hold that weight gain, obesity and related health problems are "based on a multitude of factors" and "cannot be attributed to the consumption of any specific food or beverage." The measures would bar suits alleging such health problems from targeting food manufacturers, marketers, advertisers and others under most circumstances.

## Calif. state retiree costs pegged at \$47.9B: Report

California's pay-as-you-go funding of retirement health benefits for state employees will require \$47.9 billion over the next several decades compared with a full-funding policy that would result in an actuarial liability of just \$31.28 billion, said state Controller John Chiang. Under the current system, California needs to set aside \$3.59 billion annually, the controller said announcing an actuarial analysis of California's long-term cost of state retiree health and dental benefits. But the state currently funds only \$1.36 billion annually, resulting in a liability of \$2.23 billion for 2007-2008. By prefunding the benefits, though, the state would need to set aside \$2.59 billion annually, Mr. Chiang said.

## Travelers arranges \$500 million cat bond

Travelers Cos. Inc. has arranged a three-year, \$500 million catastrophe bond reinsurance program for hurricanes and other loss events occurring in the Northeast United States. Under the arrangement with Longpoint Re Ltd., a new Cayman Islands insurer, Travelers may obtain reinsurance by entering into one or more agreements in which the amounts payable to Travelers will be based on an index. Travelers will be entitled to recover reinsurance if index-based losses reach a trigger of \$2.25 billion.

# Liberty: \$2.7B deal to add Ohio Casualty to the fold

CONTINUED FROM PAGE 1

more deeply into the local markets" in which they operate, said John L. Ward, chief executive officer of Cincinnati-based Cincinnati Partners L.L.C., an insurance industry consulting company.

Liberty Mutual's business is divided into four business units: agency markets, which accounted for 28% of its \$20.6 billion in net written premiums in 2006; personal markets, which accounted for 29%; commercial markets, which includes workers compensation, commercial automobile and general liability coverages, among others, which accounted for 20% of the total; and international markets, which accounted for 23%.

Liberty Mutual's largest line of business is private passenger automobile, which accounted for 27% of its net written premiums last year, followed by workers compensation, at 22%.

Ohio Casualty reported \$1.41 billion in total net written premiums in 2006. Its largest business segment, commercial lines, generated \$829.7 million in net premiums

written, or 58.7% of the total, and targets small and midsize commercial accounts with \$5,000 to \$7,000 in average premiums, according to the insurer's annual report.

Its other business segments are personal lines, which accounted for \$437.2 million in premiums, or 31% of the total, and specialty lines, which include commercial umbrella and fidelity and surety, which accounted for \$145.3 million in premiums and 10.3% of the total.

Although licensed in 49 states, its business is concentrated in the Mid-Atlantic and Midwest regions, including New Jersey, Pennsylvania, Kentucky and Ohio.

"From Liberty Mutual's perspective, they're executing their strategy" of pursuing independent insurance agency business, said John Wicher, principal of San Francisco-based John Wicher & Associates. "They've been completing about three deals a year, and they've emphasized geographic diversification, not only in the states, but overseas." This deal "gives them a really strong presence in midmarket commercial and personal lines in the Midwest."

# Asbestos: Judge's ruling could be costly for insurers

CONTINUED FROM PAGE 37

settlements may not have provided insurers a full release from their coverage obligations.

"Every policyholder should go back—even if they already settled their asbestos disputes—to check for whether their settlements provided for full release of the full policy or only of the products and completed operations provisions," Mr. Horkovich said.

Attorneys said insurers could be expected to argue that those claims are time-barred.

But Messrs. Hobel and Horkovich noted that in some jurisdictions, insurance regulations or case law bar insurers from misrepresenting coverage that is available to policyholders and prohibit them from putting their interests ahead of their policyholders.

"Obviously, there are standards for insurer conduct," said Laura Foggan, counsel for the Complex

Insurance Claims Litigation Assn. in Washington.

But suggesting that insurers acted in bad faith when they negotiated those earlier settlements "seems a little far-fetched," said Ms. Foggan, a Washington-based insurer attorney with Wiley, Rein & Fielding L.L.P.

Insurer attorney Cheryl P. Vollweiler, a partner with Wilson Elser Moskowitz Edelman & Dicker L.L.P. in New York, said the case was "highly fact-sensitive." How influential the case ultimately will be will depend on the outcome of any appeal, Ms. Vollweiler said.

Insurer attorney Gary Elden of Grippio & Elden L.L.C. in Chicago said he could not comment about an appeal.

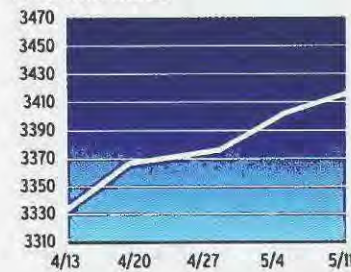
*Continental Casualty Co. et al. vs. Employers Insurance Co. of Wausau et al. New York Supreme Court for the State of New York, May 8; Index No. 601037/03.*

## Stock Index

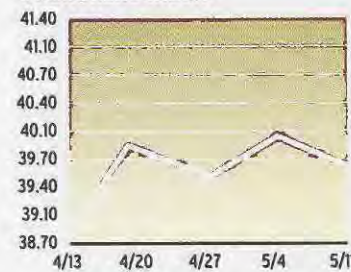
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at [www.BusinessInsurance.com](http://www.BusinessInsurance.com).

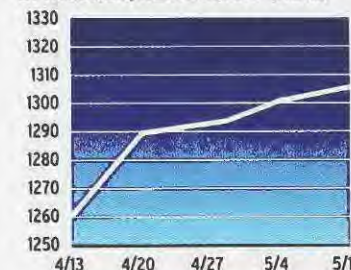
### BI STOCK INDEX



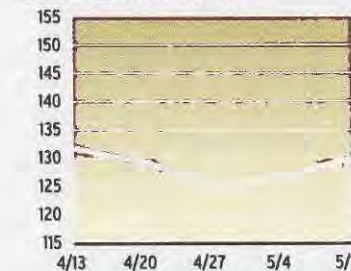
### BI BROKERS INDEX



### BI INSURER/REINSURERS INDEX



### BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

Indicator	Value	Change
BI STOCK INDEX	3411.91	0.40%
DOW JONES	13326.22	0.46%
S&P 500	1505.85	0.02%

### LARGEST GAINS

Ohio Casualty Corp.	29.44%
HCC Insurance Holdings	4.81%
Endurance Specialty	3.83%
Zenith National Insurance	3.82%
Chubb Corp.	3.44%

### LARGEST LOSSES

Fairfax Financial	-7.45%
SCOR S.A.	-5.52%
Argonaut Group Inc.	-5.10%
Marsh & McLennan	-3.92%
Gainsco Inc.	-3.75%

Source: Financial Content Inc. <http://financialcontent.com>



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## Open wide, and don't forget to wash your hands

Dentists in Minnesota who use "conscious sedation" in their practice now must continuously monitor their anxious patients' vital signs—even if it means accompanying them to the restroom—under a new directive from the Minnesota Board of Dentistry.

Although it was not the intent of the rule—which is being implemented to ensure patient safety and could help avoid claims of malpractice—it is an unintended consequence for patients who undergo lengthy procedures while sedated, said Marshall Schragg, executive director of the St. Paul-based dental board.

Mr. Schragg said he expected some complaints from Minnesota dentists after the rule was promulgated, particularly because it makes no exceptions for male dentists treating female patients or the reverse, which could lead to some embarrassing situations.

"They need to plan for those possibilities," Mr. Schragg said.

"Like mom always used to say, 'Go before you get in the car,'" he suggested.

Previously, patients could be escorted to the restroom by same-sex members of a dentist's staff. Mr. Schragg said the reason for the change is purely for patient safety and is not related to any specific occurrence.

Conscious sedation is a popular but controversial form of anesthesia usually used on patients who suffer from anxiety whenever they visit the dentist. The treatment produces a depressed level of consciousness either by injected anesthesia, inhalation of nitrous oxide, hypnosis or any combination thereof.

# Business Insurance END PAGE

Contributing: Roberto Ceniceros,  
Rupal Parekh, Joanne Wojcik

## The Lloyds of London: A relentless appetite for...rock?

For a centuries-old insurance market, Lloyd's of London is pretty darn hip.

A Los Angeles-based rock band is biting off of Lloyd's, having dubbed themselves "The Lloyds of London."

"Finding a good, catchy name (for a band), that's always the hard part," said the band's lead vocalist, Lloyd Miller.

When the band's drummer in early 2005 suggested the name "The Lloyds of London," on account of Mr. Miller's first name, it stuck.



The Lloyds of London rock The Joint.

Apparently the name rings a bell with some concertgoers. "We have people come up to us and say 'we've heard of you before,'" Mr. Miller said. "We're building a pretty good following."

The trio—which consists of a vocalist/guitarist, bassist and drummer and is now frequenting the Los Angeles club scene—may have more in common with the legendary

insurance market than they think: former Lloyd's Chairman Max Taylor is known for having played in the jazz and blues band "Skin Alley."

The Lloyds of London counts Jimi Hendrix and Pink Floyd among its influences, describing its music as "a modern sound that takes you to timeless domestic dimensions," with "elements of blues funk and hard rock," according to its MySpace site. Tracks by The Lloyds of London include: "Feeling the Groove," "Wasting Time" and "Creper." See and hear for yourself at [www.myspace.com/thelloydsolondon](http://www.myspace.com/thelloydsolondon).



## Court finds brewer liable for taster's alcoholism

While experience is generally considered a desirable commodity by employers when recruiting, one Brazilian brewer probably should have more closely questioned a beer taster's drinking habits.

According to the Associated Press, a Brazilian labor court has ordered Sao Paulo brewer Ambev to pay the equivalent of \$49,400 to an employee who claimed he became a drunk under company-sanctioned circumstances: As a beer taster, the employee was required to consume about a liter and a half of brew during each eight-hour shift.

Ambev successfully defended itself at a lower court hearing by claiming the employee's alcoholism was a pre-existing condition, not one that he acquired on the job. Last week, the employee won a reversal of that decision on appeal.



## Hockey player's comp claim sent to the penalty box

Missouri appeals court judges say they have great respect for professional athletes, but evidently not so much that they would award workers compensation benefits to an injured professional hockey player.

The judges for Missouri's Eastern District Court of Appeals recently body checked Steve Dubinsky's efforts to get the St. Louis Blues to pay him \$13,600 in benefits for a concussion the now-retired NHL player suffered in 2003 when he was struck with a stick.

At issue is a Missouri law that strips professional athletes of workers comp benefits when their post-injury wages exceed the benefits to which they otherwise would be entitled.

Mr. Dubinsky argued that legislators didn't mean for the Missouri law to apply to permanent partial disability cases like his. He also argued the law discriminates against athletes.

But a three-judge panel ruled the law is rational because professional athletes perform work with "a distinctive blend of risk combined with lucrative compensation."

The Blues paid Mr. Dubinsky \$241,443 in salary after his injury.

"While this court has great respect for professional athletes," the judges wrote, "the Legislature could have rationally placed a different value on those who risk bodily harm to provide entertainment from those, such as police officers and fire fighters, who risk bodily harm to protect society."

Former St. Louis Blues player Steve Dubinsky, above right, is not eligible to collect workers compensation for an injury he suffered during a game.



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